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**Suspected New-born Child Murder and Concealment of
Pregnancy in Scotland, c.1812-c.1930**

by

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This thesis explores the discovery, investigation and prosecution of, as well as the men and women involved as suspects and witnesses in, cases of suspected new-born child murder and concealment of pregnancy in Scotland between 1812 and 1930. The study utilises pre-trial and other legal documents relating to these cases to outline both the continuities with other studies and aspects of the subject that are peculiar to Scotland during the period.

An examination of the pre-trial documents not only reveals the various responses to suspicions of pregnancy and murder by the local community, it also shows that in a number of cases investigators harboured suspicions that members of the community were involved, either as an accessory to a crime, or withholding evidence. However, this information is largely ignored by prosecutors, and the vast majority of those tried were the victims' mothers, an outcome that this thesis argues was a combination of a number of legal and medico-legal processes and procedures.

This thesis also argues that the information provided by the pre-trial evidence can provide a more nuanced understanding of these 'crimes' – particularly at a local level – that is otherwise obscured by official statistics, that in turn can be used to challenge the prevailing historical consensus that has developed around certain aspects of the subject.

The first chapter provides the legal and medico-legal contexts. Chapters Two and Three look at the discovery of, and responses to, the signs of pregnancy, recent delivery and of the bodies of new-born infants. Chapter Three argues that whilst communities were quick to observe the signs of pregnancy, they were less inclined to inform the authorities of their suspicions until after the signs of delivery, or a body, had been discovered.

Chapter 4 looks at the profiles of suspects, and also at the geography of the 'crimes', and Chapter 5 looks at those men and women suspected of being an accessory to murder, and of helping to conceal a pregnancy or an infant's death. This chapter reveals that the pre-trial documents reveal that in a number of cases investigators suspected relatives, friends, the victims' fathers, and in some cases even doctors and midwives, to be involved in various ways in cases of suspected new-born child murder. As such it provides a strong challenge to the historiographical consensus that new-born child murder was a sex-specific crime, carried out by the victim's mother, acting alone.

Chapters 6 and 7 explore the role of the police and medical witnesses respectively, both prior to a formal accusation, and during the official investigation. Chapter 7 also includes a detailed look at the medical reports pertaining to the examination of suspects and the post mortem examination of the victims. The final chapter looks at the witnesses and evidence presented at the trial, focusing in particular on the medico-legal issues that made it difficult for prosecutors to secure a successful murder conviction. The chapter argues that whilst these issues could be part of a wider culture of sympathy towards new-born child murder suspects, the evidence from the verdicts and sentencing can also demonstrate a hardening of judicial attitudes over the period.

Declaration

This thesis has been composed by me and is my own work. It has not been submitted for any other degree or professional qualification

Tim Siddons

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Abbreviations

A. D. Advocate depute

C. A. Crown Agent

C. C. Crown Counsel

NAS National Archives of Scotland

NBCM&CP New-born child murder and concealment of pregnancy

P. F. Procurator fiscal

TNAPSS Transactions of the National Association for the Promotion of Social Science

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Introduction

Since at least medieval times infanticide is a subject that has generated official concern in Britain.¹ This concern – particularly about the suspected murder of new-borns – led to draconian legislation in 1624 in England and Wales, and 1707 in Ireland that made the concealment of the death of a new-born infant a capital offence.² In Scotland a similar Act of 1690 made concealment of pregnancy punishable by death if the infant was found dead or was missing.³ However, the severity of these laws meant that juries were reluctant to convict women accused of new-born child murder, which led the repeal of these Acts in the early nineteenth century. This did not equate to a decrease in concern about infanticide, however. In fact, the nineteenth century arguably witnessed an increase in official and public anxiety about infanticide, an anxiety that was linked to concern about illegitimacy and sexual morality,⁴ as well as perceived rising levels of violence.⁵ Indeed, historians have highlighted the ‘epidemic of infanticide’⁶ discussed by commentators in England and Wales in the 1860s and 1870s, and cases of suspected infanticide were brought before the courts in Britain on a regular basis throughout most of the nineteenth century. Towards the latter part of the nineteenth and early twentieth century, however, concern about the fate of illegitimate new-borns began to fade as concerns about the welfare of infants and older children came to the foreground, reflected

¹ P. E. M. Hair, ‘Homicide, Infanticide and Child Assault in Late Tudor Middlesex’, *Local Population Studies*, 9, Autumn (1972), pp. 43-6; R. H. Helmholz, ‘Infanticide in the Province of Canterbury During the Fifteenth-Century’, *History of Childhood Quarterly*, 2 (1974), pp. 379-90; B. A. Kellum, ‘Infanticide in England in the Later Middle Ages’, *History of Childhood Quarterly*, 1 (1974), pp. 367-88; W. L. Langer, ‘Infanticide: A Historical Survey’, *History of Childhood Quarterly*, 1 (1974), pp. 353-65.

² For a discussion of the English Act of 1624 (ratified in Ireland in 1707) see M. Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester, 1996).

³ For the Scottish Act see D. A. Symonds, *Weep Not For Me: Women, Ballads, and Infanticide in Early Modern Scotland* (Pennsylvania, 1997); the Act is also discussed briefly in Chapter One.

⁴ L. Bland, *Banishing the Beast: English Feminism & Sexual Morality, 1885-1914* (London, 1995); F. Mort, *Dangerous Sexualities: Medico-Moral Politics in England since 1830* (London, 1987).

⁵ L. Stone, ‘Interpersonal Violence in English Society, 1300-1980’, *Past and Present*, 101 (1983), pp. 22-33.

⁶ ‘Report of the Committee of the Harveian Society on Infanticide’, *The Lancet* (12 January, 1867), p. 61.

in issues such as baby-farming,⁷ burial and life insurance,⁸ vaccination, foster care and adoption.⁹

This official and wider public concern about infanticide has generated a wealth of source material, which scholars from a range of disciplines have utilised to create an academic subject with a large, rich and ever expanding historiography, varying considerably in approach and methodology. This thesis looks at the cases of new-born child murder and concealment of pregnancy (NBCM&CP) brought before the Scottish High Court between 1812 and 1930, exploring the circumstances behind individual cases: those involved; how these cases were discovered; and how local communities responded to them. Closely following the legal process from the initial investigation – including the role of the police and medical witnesses – through to the trial, this thesis offers the first in-depth analysis of the Scottish criminal precognitions relating to NBCM&CP across this period, adding an important new dimension to the subject. A close examination of pre-trial documents enables an examination of community responses to the signs of pregnancy, delivery and the discovery of bodies and throws light on aspects of the subject that are obscured by official statistics, contemporary responses to these statistics and the historiographical orthodoxies surrounding them.

Historiography

Since the 1970s there has been an enormous amount of work on the subject of infanticide. Nevertheless, within this literature, a number of strands can be usefully identified. Many of the studies of infanticide tend to be concerned, as Meg Arnot has noted, ‘to simply

⁷ L. Rose, *Massacre of the Innocents: Infanticide in Great Britain 1800-1939* (London, 1986); M. L. Arnot, ‘Infant death, child care and the State: the baby-farming scandal and the first Infant Life Protection legislation of 1872’ *Continuity & Change*, 9 (1994), pp. 271-311; L. Abrams, *The Orphan Country: Children of Scotland’s Broken Homes from 1845 to the Present Day* (Edinburgh, 1998); D. Grey, “‘More ignorant and Stupid Than Wilfully Cruel’: Homicide Trials and ‘Baby-Farming’ in England and Wales in the Wake of the Children’s Act 1908”, *Crimes and Misdemeanours*, 3 (2009), pp. 60-77.

⁸ Rose, *Massacre of the Innocents*; D. Grey, “‘Liable to Very Gross Abuse’: Murder, Moral Panic and Cultural Fears over Infant Life Insurance, 1875-1914’, *Journal of Victorian Culture*, 18 (2013), pp. 54-71.

⁹ D. J. R. Grey, ‘Discourses of Infanticide in England, 1880-1922’ (Ph.D. thesis, Roehampton University, 2008); Abrams, *The Orphan Country*’.

illuminate the existence of infanticide in past times in the West'.¹⁰ These works, using data from a number of sources, including ecclesiastical and secular court records, printed indictments, and coroners' inquisitions, measure the rates of accusations for, and prosecutions of, infanticide, and are situated within a positivist social scientific tradition.¹¹ A similar approach can also be found in general surveys of crime,¹² as well as in more recent studies.¹³

Perhaps the most significant study within this strand is that of Hoffer and Hull.¹⁴ A large part of their study of infanticide in England and New England involved the application of advanced statistical analyses to data collected from assize indictments, with two aims. The first, '[b]y combining quantitative methods and contemporary accounts', was to 'establish the chief characteristics of those men and women brought to the dock for the crime'. Such methods included the tests for statistical significance of the marital status of defendants, as well as of the age and legitimacy of the victims. Their second aim was to ascertain the 'environmental causes' of infanticide, to explain the fluctuations of prosecution rates across the early modern period. Using time series regression, Hoffer and Hull compared 'key economic, demographic, social, and emotional stress indicators with criminal indictments for the crime'.¹⁵ The aim was to see if there was any statistically significant correlation between infanticide and a variety of socio-economic

¹⁰ M. Arnot, 'Gender in Focus: Infanticide in England 1840-1880' (Ph.D. thesis, University of Essex, 1994), p. ix.

¹¹ R. W. Malcolmson, 'Infanticide in the Eighteenth-Century', in J. S. Cockburn (ed.), *Crime in England 1550-1800* (London, 1977); R. Sauer, 'Infanticide and Abortion in Nineteenth-Century Britain', *Population Studies*, 32 (1978), pp. 81-93; K. Wrightson, 'Infanticide in Earlier Seventeenth-Century England', *Local Population Studies*, 15 (1975), pp. 10-22.

¹² J. M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford, 1986); J. A. Sharpe, *Crime in Early Modern England 1550-1750* (Harlow, 1999).

¹³ J. R. Dickinson and J. A. Sharpe, 'Infanticide in Early Modern England: The Court of Great Sessions at Chester, 1650-1800', in M. Jackson (ed.), *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Aldershot, 2002); A. M. Kilday, *Women and Violent Crime in Enlightenment Scotland* (Woodbridge, 2007); A. M. Kilday, 'Maternal Monsters: Murdering Mothers in South-West Scotland, 1750-1815', in Y. Galloway Brown and R. Ferguson (eds), *Twisted Sisters: Women, Crime and Deviance in Scotland Since 1400* (East Linton, 2002).

¹⁴ P. C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England 1558-1803* (New York, 1984).

¹⁵ *Ibid.*, p. 113.

phenomena, including grain prices, levels of charity-giving, rates of prostitution, suicide and homicide.¹⁶

Another strand of the historiography focuses on the laws and legal processes relating to infanticide. A number of studies chart the development of the various British statutes that constituted the crime of child murder and concealment, focusing particularly on the debates surrounding the development of the seventeenth-century statutes, and their repeal in the nineteenth century.¹⁷ Others focus on legal processes, including the official investigation of suspected child murder and/or concealment,¹⁸ and how the courts dealt with the 'crime'.¹⁹ A number of studies use the pre-trial investigations of infanticide to investigate the actions and attitudes behind the initial suspicion and accusation of murder. Most notable is Mark Jackson's monograph on eighteenth-century England, which focuses on the processes whereby certain women were suspected of and prosecuted for murder,²⁰ and two recent studies of Ireland, which both utilise pre-trial court documents.²¹

The medical and medico-legal aspect of infanticide is a strand of the topic that has generated a great deal of academic output. Mark Jackson has looked at the medical investigation of infanticide, the role of the coroner and coroners' jury, as well as the

¹⁶ Ibid., Chapter 5.

¹⁷ Arnot, 'Gender in Focus'; Grey, 'Discourses of Infanticide'; Hoffer and Hull, *Murdering Mothers*; Mark Jackson, *New-Born Child Murder*; R. W. Ireland, "'Perhaps my Mother Murdered Me": Child Death and the Law in Victorian Carmarthenshire', in C. W. Brooks and M. Lobban (eds), *Communities and Courts in Britain, 1150-1900* (London, 1997); Rose, *Massacre of the Innocents*; D. S. Davies, 'Child-Killing in English Law', *The Modern Law Review*, 1, 3 (1937), pp. 203-23; Symonds, *Weep Not For Me*; T. Ward, 'Legislating for Human Nature: Legal Responses to Infanticide, 1860-1938', in Jackson (ed.), *Infanticide*.

¹⁸ A. R. Higginbotham, "'Sin of the Age": Infanticide and Illegitimacy in Victorian London', *Victorian Studies*, 32 (1989), pp. 319-37; R. Schulte, 'Infanticide in Rural Bavaria in the Nineteenth Century', in H. Medick and D. W. Sabean (eds), *Interest and Emotion: Essays on the Study of Family and Kinship* (Cambridge, 1984).

¹⁹ Arnot, 'Gender in Focus'; Beattie, *Crime and the Courts*; Dickinson and Sharpe, 'Infanticide in Early Modern England'; Jackson, *New-Born Child Murder*; Sharpe, *Crime in Early Modern England*.

²⁰ L. Abrams, 'From Demon to Victim: The Infanticidal Mother in Shetland, 1699-1899', in Galloway Brown and Ferguson, *Twisted Sisters*; Jackson, *New-Born Child Murder*; Schulte, 'Infanticide in Rural Bavaria'.

²¹ E. Farrell, 'The Crime of Infanticide and Women Suspects in Ireland, 1850-1900' (Ph.D. thesis, Queens University Belfast, 2010); E. Farrell, "'Infanticide of the Ordinary Character": An Overview of the Crime in Ireland, 1850-1900, *Irish Economic and Social History*, 39 (2012), pp. 56-72; E. Farrell, *'A most diabolical deed': Infanticide and Irish Society, 1850-1900* (Manchester, forthcoming 2013); C. Rattigan, *'What Else Could I Do?': Single Mothers and Infanticide, Ireland 1900-1950* (Dublin, 2012).

examination of both suspects and victims by medical practitioners,²² an area that is also covered by other historians.²³ The role of medical evidence in court has also been explored, as well as the development of medical jurisprudence and medical discourses surrounding in particular the difficulties in establishing proof of child murder in court.²⁴ The role of the medical profession in the shift to more lenient attitudes towards infanticidal women has also been of interest to historians. This relates in particular to the discourses concerning the temporary insanity of the puerperal woman, which generated a number of medico-legal debates, and culminated in the English Infanticide Act of 1922, which legally enshrined the concept of temporary insanity.²⁵

The subject of infanticide has also been of particular interest to historians of women, and feminist historians, some of which have looked at the various representations of infanticide in contemporary newspaper reports and other literary texts.²⁶ Others are concerned with the effect of gendered social policy on the socio-economic circumstances of women that drove them to murder their newly born infants.²⁷ The various reasons behind the commission of infanticide are also a theme of other studies.²⁸ The qualitative

²² Jackson, *New-Born Child Murder*; see also 'Suspicious Infant Deaths: the Statute of 1624 and Medical Evidence at Coroners' Inquests', in M. Clark and C. Crawford (eds), *Legal Medicine in History* (Cambridge, 1994); idem., 'Developing Medical Expertise: Medical Practitioners and the Suspected Murders of New-Born Children', in Roy Porter (ed.), *Medicine in the Enlightenment* (Amsterdam, 1995).

²³ Abrams, 'From Demon to Victim'; Arnot, 'Gender in Focus'; L. Gowing, 'Secret Births and Infanticide in Seventeenth-Century England', *Past and Present*, 156 (1997), pp. 87-115.

²⁴ Arnot, 'Gender in Focus'; G. K. Behlmer, 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England', *Journal of Historical Medicine and Allied Sciences*, 34 (1979), pp. 403-27; K. Clarke, 'Infanticide, Illegitimacy and the Medical Profession in Nineteenth Century England', *Society for the Social History of Medicine Bulletin*, 26 (1980), pp. 11-14; Jackson, *New-Born Child Murder*.

²⁵ Jackson, *New-Born Child Murder*; Hoffer and Hull, *Murdering Mothers*; H. Marland, 'Getting Away with Murder? Puerperal Insanity, Infanticide and the Defense Plea', in Jackson, *Infanticide*; Rose, *Massacre of the Innocents*; R. Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh, 1981); N. Walker, *Crime and Insanity in England, Volume One: The Historical Perspective* (Edinburgh, 1968).

²⁶ Symonds, *Weep Not For Me*; J. Thorn (ed.), *Writing British Infanticide: Child-Murder, Gender, and Print, 1722-1859* (Rosemont, 2003); G. Walker, "'Demons in Female Form": Representations of Women and Gender in Murder Pamphlets of the Late Sixteenth and Early Seventeenth Centuries', in W. Zunder and S. Trill (eds), *Writing and the English Renaissance* (London, 1996); J. McDonagh, *Child Murder and British Culture, 1720-1900* (Cambridge, 2003).

²⁷ Arnot, 'Gender in Focus', p. 4.

²⁸ Abrams, 'From Demon to Victim'; Higginbotham, 'Sin of the Age'; Schulte, 'Infanticide in Rural Bavaria'; Symonds, *Weep Not for Me*. Hoffer and Hull's *Murdering Mothers* also investigates this theme, and highlights that this issue is not exclusive to women's history.

sources surrounding the investigation of child murder have also been utilised to discuss broader issues within the social history of women.²⁹

There are a number of important studies of infanticide in the nineteenth century. Three of the early works on the subject are based solely on official statistics and published contemporary sources, and highlight contemporary concerns surrounding infanticide, and the various attempts at social reform. Lionel Rose's *Massacre of the Innocents* is the most important work of this kind. Whilst it has come under criticism for its lack of coherent structure and its author's belief that infanticide was a survival instinct, a ruthless, mechanical reaction to intolerable circumstances,³⁰ it does present a great deal of useful empirical information from a wide range of sources from across Britain regarding the perceived infanticide 'crisis' of the 1860s and '70s, as well as concern about baby-farming and burial insurance. Like Rose, R. Sauer sees infanticide as a form of population control, and accepts without question contemporary beliefs about the increase in the incidence of infanticide without looking at other factors that might have influenced these figures.³¹ George Behlmer's study of infanticide in the nineteenth-century is perhaps the most useful, encompassing a wide range of different discourses relating to the 'crime' that emanated from a number of sectors of society.³² His central focus is the role of the medical profession in highlighting infanticide as part of a wider problem of public health, particularly in the light of high rates of infant mortality, which also fed into moral issues surrounding illicit sexuality and illegitimacy.

It is the various discourses surrounding infanticide that are the focus of two of the most significant studies of nineteenth-century infanticide, by Meg Arnot and Daniel Grey, which cover the periods 1840-1879 and 1880-1922 respectively.³³ Apart from their theoretical approach, which takes gender as a primary category of analysis, these studies also differ from those of Rose, Sauer and Behlmer in employing the quantitative analyses

²⁹ Gowing, 'Secret Births'; Symonds, *Weep Not for Me*.

³⁰ Rose, *Massacre of the Innocents*, p. 187.

³¹ R. Sauer, 'Infanticide and Abortion in Nineteenth Century Britain' in *Population Studies*, 32 (1978), pp. 81-93.

³² G. K. Behlmer, 'Deadly Motherhood: Infanticide and medical opinion in mid-Victorian England', *Journal of Historical Medicine and Allied Sciences*, 34 (1979), pp. 403-27.

³³ Arnot, 'Gender in Focus'; Grey, 'Discourses of Infanticide'.

of court records as well as the qualitative study of other official documents, medico-legal texts and other contemporary literature. Meg Arnot's study of nineteenth-century England uses infanticide as a lens through which to look at gender,³⁴ and to a lesser extent class and race. It is less a survey of infanticide as a survey of how legal attitudes and government policies surrounding the various issues relating to infant and child welfare were constructed along gendered lines. She also explores the discursive formation of the various representations of women accused of killing their newly born infants. Arnot's thesis includes analysis of 700 cases of infanticide in England to examine wider aspects of Victorian society, including the bastardy clauses of the New Poor Law, and state intervention in child welfare. Arnot also looks at the medico-legal aspects of new-born child murder, the murder of older children, child neglect, the baby-farming scandals of the 1860s and 1870s and the issue of the insanity defence in cases of infanticide. Elsewhere, Arnot also uses the close reading of two cases of infanticide, one the murder of a new-born, the other a two-month old child to look at the various reasons why women might commit infanticide.³⁵ Whilst this thesis shares Arnot's belief that poverty, vulnerability, shame, and the desire to conceal pregnancy are all reasons that can be inferred from court records, it is less comfortable with her application of modern psycho-analytic theories into the minds of historical subjects, which cannot be so easily inferred from court records.³⁶

In many ways the work of Daniel Grey is an extension of Arnot's work into the latter part of the nineteenth- and early part of the twentieth century. His thesis explores the various discourses surrounding the homicide and neglect of children in England, and how they were deployed to 'challenge or reinforce cultural views of appropriate feminine and masculine behaviour'.³⁷ Grey's impressive study includes the quantitative analysis of 646 indictments in cases involving the murder or neglect of children aged twelve months or

³⁴ Arnot, 'Gender in Focus'.

³⁵ M. L. Arnot, 'Understanding women committing newborn child murder in Victorian England' in S. D'Cruze (ed.), *Everyday Violence in Britain, 1850-1950: Gender & Class* (London, 2000); M. L. Arnot, 'The murder of Thomas Sandles: Meanings of a mid nineteenth-century infanticide' in M. Jackson (ed.) *Infanticide: historical perspectives on child murder and concealment, 1550-2000* (Aldershot, 2002).

³⁶ Arnot, 'Understanding women', pp.63-66. A number of other historians also take this approach. See, for example, Schulte, 'Infanticide in Upper Bavaria'; Kilday, *Women and Violent Crime*.

³⁷ Grey, 'Discourses of Infanticide', p. 3.

under, which includes both London and the Western Assize circuits, to allow for an urban/rural comparison. Grey looks at how infanticide was represented in the press, debates surrounding the passage of the 1922 Infanticide Act, medical jurisprudence, the insanity defence, and issues surrounding parental neglect, baby-farming and midwifery and nursing. He also discusses the apparent paradox of the leniency shown to infanticidal women in a society obsessed with the sanctity of motherhood. The work of both Grey and Arnot is extremely useful in locating the various discourses surrounding infanticide, but they are more limited in what they can tell us about the individuals involved in cases of suspected infanticide, the individual circumstances behind each case, or the role of the community in the detecting and informing the authorities. Moreover, whilst each study offers close readings of individual cases, which are used effectively to illuminate a number of aspects of infanticide, they are less effective in a comparative context.

Another important work that incorporates analysis of court records is Ann Higginbotham's study of infanticide in nineteenth-century London.³⁸ Based on a sample of court records from between 1839-1906, Higginbotham argues that the infanticide panic of the 1860s and '70s was not grounded in reality and that 'infanticide was not a common response to illegitimate motherhood'.³⁹ She also makes a number of observations that are mirrored in other studies, including this one. First, the majority of suspects were female servants; secondly, pregnancies were concealed, and women were delivered alone and were discovered after a change of appearance had been noted, or a child's body had been discovered. Higginbotham also discusses the medico-legal difficulties in proving child murder, as well as the sympathy, both in fictional accounts of infanticidal women and in the courtroom in actual cases of suspected infanticide. Her study is part of a wider project looking at the experiences of unmarried mothers in Victorian London,⁴⁰ and, as such the legal process is largely ignored, both at the level of the community and in the courtroom. Moreover, the urban nature of the study means that there is no rural data with which to make comparisons.

³⁸ Higginbotham, 'Sin of the Age'.

³⁹ *Ibid.*, p. 328.

⁴⁰ A. R. Higginbotham, 'The Unmarried Mother and Her Child in Victorian London, 1834-1914' (Ph.D. thesis, Indiana University, 1985).

Conversely, Regina Schulte's study of infanticide in Upper Bavaria 1878-1910 is based solely on rural evidence.⁴¹ Part of a wider project looking at the investigation of various 'rural' crimes, it aims to reveal the 'social and psychic milieu which made child-killing possible.'⁴² Schulte uses pre-trial court records, the statements of judicial officials and the police, to reconstruct 'the subjective, emotional and material meaning of sexual relationships and maternity'.⁴³ The suspects in Schulte's study share a number of similar characteristics to the suspects in this thesis. First, the suspects in nineteenth-century Bavaria are female and, secondly, worked as either farm workers or servants. Again like this study, witnesses were largely drawn from the community in which the suspect worked and communities played an important part in deciding whether or not a particular 'crime' was prosecuted. Because Schulte is using court records to access the experience of women in a wider social context, she does not engage with the legal process. Moreover, in spite of her assertion elsewhere that court records are 'multilayered texts with several levels of meaning intertwined confusingly',⁴⁴ Schulte seems to treat the depositions as the unproblematic 'voices' of the women she is studying. This is certainly how Deborah Symonds treats the Scottish precognitions in her discussion of infanticide in Scotland.⁴⁵ Her reading of the suspects' declarations as literary texts is fraught with problems, not least Symonds's failure to acknowledge the legal contexts within which the documents were generated.

Arguably the work of Elaine Farrell and Cliona Rattigan on infanticide in Ireland makes much better use of pre-trial documents. In Farrell's study of Ireland between 1850 and 1900, the depositions of suspects and witnesses are amongst 4,645 references to suspected infanticide, attempted infant murder and concealment of birth.⁴⁶ Farrell uses these sources to look at the profiles of suspects and victims, the circumstances surrounding the commission and discovery of these 'crimes', and the subsequent

⁴¹ Schulte, 'Infanticide in Upper Bavaria', p. 77.

⁴² R. Schulte, *The Village in Court: Arson, Infanticide and Poaching in the Court of Upper Bavaria, 1848-1910* (Cambridge, 1994).

⁴³ Schulte, 'Infanticide in Upper Bavaria', p. 77.

⁴⁴ Schulte, *The Village in Court*, p. 13.

⁴⁵ Symonds, *Weep Not For Me*.

⁴⁶ Farrell, 'Infanticide of the Ordinary Character'.

treatment of suspects in the courtroom, aspects the ‘crime’ also covered by this thesis. A number of Farrell’s conclusions are also similar, particularly those surrounding the profiles of suspects and victims and the treatment of suspects by the courts. Farrell also looks at various members of the community, such as the fathers of the victims.⁴⁷ Cliona Rattigan’s survey of infanticide in Ireland between 1900 and 1950 includes analysis of 300 depositions, from which she draws similar conclusions to Farrell regarding the profiles of suspects and victims.⁴⁸ Rattigan’s discussion is very much centred on the community, including an interesting discussion of the role of members of the community – especially relatives of suspects – as accessories to murder and concealment of birth. She also looks at community involvement, and the role of the police, in the detection and investigation of cases of suspected infanticide – aspects of the ‘crime’ that have received little scholarly attention, but are looked at in this study. The methodologies employed by Farrell and Rattigan are similar to this study, though neither looks closely at the legal process and procedure and how these could have affected the data nor do they cover the medico-legal issues in any depth. Their work demonstrates the value of using pre-trial records quantitatively and qualitatively.

Another important aspect of infanticide in the nineteenth century was the psychological state of women accused of killing their infants, which became a pressing concern amongst medical practitioners in Britain from around the mid-nineteenth century. It is also a subject that has received a lot of scholarly attention. Cath Quinn argues that infanticide was an arena in which the new profession of psychiatry could legitimise itself by addressing the concerns of the infanticide ‘crisis’ of the 1860s,⁴⁹ from which time the concept of puerperal insanity began to gain currency in the courtroom. And whilst Donna Cooper Graves argues that ‘post-partum insanity was simply another factor contributing to the cultural view of women as irrational, unstable, and overly emotional’,⁵⁰ Hilary Marland shows how the concept could be used to fit a number of ‘infanticide

⁴⁷ E. Farrell, “‘The fellow said it was not harm and only tricks’: The Father in Suspected Cases of Infanticide in Ireland, 1850-1900, *Journal of Social History*, 45 (2012), pp. 990-1004.

⁴⁸ Rattigan, ‘*What Else Could I Do?*’.

⁴⁹ C. Quinn, ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in Late Victorian England’ in Jackson, *Infanticide*.

⁵⁰ D. C. Graves “‘...In a Frenzy While Raving Mad’: Physicians and Parliamentarians Define Infanticide in Victorian England’ in Bechtold and Graves, *Killing Infants*, p. 135.

scenarios’,⁵¹ and how the notion of a ‘transient form of puerperal insanity’ at the moment of birth itself’ ensured that in many cases ‘expert’ medical opinion as to the mental state of the accused was not required for a successful defence plea.⁵² This concept is important because, as both Tony Ward and Jonathan Andrews have observed, whilst the defence of puerperal insanity was primarily constructed around the murder of infants immediately or soon after birth, this type of murder was much less likely the result of puerperal insanity than the killing of older children.⁵³ Indeed, the puerperal insanity defence was rarely deployed in the cases looked at in this study but rather the more fluid notion of temporary insanity, made easier by the Scottish concept of diminished responsibility.⁵⁴

Karen Clarke argues that the willingness of juries to accept diminished responsibility, or temporary insanity, as a defence for infanticide, was partly due to the fact that Victorian society placed less value on the lives of new-borns.⁵⁵ This is exemplified by the fact that the killing of older children was treated with much more severity than the murder of new-borns, a claim that is backed up in other studies.⁵⁶ However, whilst attitudes to infant life may have played a part in creating judicial sympathy, there is little evidence in the Scottish criminal precognitions to substantiate this theory. Indeed, in some cases the efforts of many communities to revive new-borns discovered alive suggests the opposite.

The concepts of puerperal and temporary insanity allowed contemporaries to express sympathy for infanticidal women in spite of the transgression by these women of their maternal roles.⁵⁷ A number of studies also look at how literary representations of infanticide also approached this apparent paradox, such as Josephine McDonagh, who

⁵¹ H. Marland, ‘Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea’, in Jackson, *Infanticide*, p. 172.

⁵² *Ibid.*, pp. 181-2.

⁵³ T. Ward, ‘The sad subject of infanticide’ in *Social and Legal Studies*, Vol. 8 (1999), pp. 163-80; J. Andrews, ‘The boundaries of Her Majesty’s Pleasure: discharging child-murderers from Broadmoor and Perth Criminal Lunatic Departments, c.1860-1920’ in M. Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Aldershot, 2002).

⁵⁴ The concept of diminished responsibility is discussed in Chapters One and Eight.

⁵⁵ K. Clarke, ‘Infanticide, Illegitimacy and the Medical Profession in Nineteenth Century England’, *Society for the Social History of Medicine Bulletin*, 26 (1980), pp. 11-14; Schulte, ‘Infanticide in Upper Bavaria’.

⁵⁶ G. S. Frost, ‘Motherhood on Trial: Violence and Unwed Mothers in Victorian England’, in E. B. Rosenman and C. C. Klaver (eds) *Other Mothers: Beyond the Maternal Ideal* (Columbus, 2008); Sauer, ‘Infanticide’.

⁵⁷ Marland, ‘Getting Away With Murder’, p. 172.

explores the various literary representations of infanticidal women from a range of disciplines, placing these texts within their social, political and cultural contexts.⁵⁸ Like Meg Arnot and Daniel Grey, McDonagh suggests that representations of infanticide were dictated by prevailing attitudes to wider social issues. Ann Higginbotham has also examined some of the references to infanticide in contemporary novels, including Frances Trollope's *Jessie Phillips* (1843) and George Eliot's *Adam Bede* (1859). Both novels portray the infanticidal mother as victims 'of a censorious world and of the men who deserted them'.⁵⁹ This 'victim' trope was a powerful influence in Victorian society, and it fed into a number of debates surrounding infanticide, the New Poor Law and the responsibilities of father towards their illegitimate offspring. This thesis also shows how the 'victim' trope was deployed in the courtroom in order to elicit sympathy from prosecutors and juries alike.

Critique of the historiography

The work on infanticide discussed above, whilst by no means exhaustive, does cover its most important themes. Although the research to date has been broad, there are a number of limitations within this historiography.

One limitation to a more balanced understanding of infanticide is the positivist approach taken by many historians, using the quantifiable data from indictments and court records as a 'measure' of crime. Such an approach can lead to generalisations that do not take into account a number of factors that may have affected rates of accusation and prosecution, such as 'changing administrative procedures at the level of policing, of court practices and of the compilation of statistics'.⁶⁰ Indeed, one criticism of Hoffer and Hull's methodology is that their data is not an accurate reflection of the 'reality' of infanticide and is therefore simply not robust enough to allow for the advanced statistical analyses that they apply to it.

⁵⁸ McDonagh, *Child Murder and British Culture*.

⁵⁹ Higginbotham, 'Sin of the Age', p. 322.

⁶⁰ Arnot, 'Gender in Focus', p. x.

The positivist approach to infanticide has led to further assumptions, four of which in particular should be challenged. First, is the view that there was an increase in sympathy towards infanticidal women, which culminated in the substitution of child murder statutes with less severe Acts at the beginning of the nineteenth century.⁶¹ This Whiggish interpretation is based on the evidence of decreasing prosecution rates of infanticide, a reading that Mark Jackson rejects, arguing that:

Reliance on formal indictments and trial reports as a source of quantitative evidence has severely under-estimated the extent and persistence of local hostility towards suspects.⁶²

The second, often implicit, assumption made by most historians of infanticide is that the women charged with murdering their new-borns were guilty.⁶³ Although in some cases the level of violence inflicted on the victim strongly suggested foul play,⁶⁴ in most cases the causes of death were more ambiguous. Moreover, historians have shown that a common defence amongst suspects was that the child had been either stillborn, or died accidentally during delivery.⁶⁵ Whilst it would be naïve to suggest all of the accused were telling the truth, so too would the opposite. Such a viewpoint precludes investigation into the circumstances behind the suspicion and accusation of infanticide, and ignores the various factors that may allow some women's stories of stillbirth to be believed over others. Indeed, a key aspect of Mark Jackson's work on infanticide is in investigating this issue.⁶⁶

The third assumption, almost universally accepted by historians, is that infanticide is a crime committed by the victim's mother, acting alone. Lynn Abrams describes the crime

⁶¹ Abrams, 'From Demon to Victim'; Arnot, 'Gender in Focus'; Hoffer and Hull, *Murdering Mothers*, p. xi; Symonds, *Weep Not for Me*, Ch. 6.

⁶² Jackson, *New-Born Child Murder*, p. 14.

⁶³ *Ibid.*, p. 11. In fact, Jackson is the only historian I have read to have questioned this idea.

⁶⁴ Kilday, 'Maternal Monsters', p. 168. Kilday found that in south-west Scotland between 1750 and 1815, 'in 63% of the indictments brought to trial, blood was shed'. This is unusual in comparison to other studies.

⁶⁵ Abrams, 'From Demon to Victim', p. 196; Gowing, 'Secret Births', p. 105; M. Jackson, 'Something More Than Blood': Conflicting Accounts of Pregnancy Loss in Eighteenth-Century England', in R. Cecil (ed.), *The Anthropology of Pregnancy Loss* (Oxford, 1996), p. 202; Schulte, 'Infanticide', p. 88.

⁶⁶ Jackson, *New-Born Child Murder*, p. 8.

as ‘almost uniquely female,’ Hoffer and Hull simply call it ‘a crime of women,’ whilst Dickinson and Sharpe, discussing the early modern period, regard it as ‘a more sex-specific crime than witchcraft’.⁶⁷ Indeed, no study of infanticide thus far adequately questions or challenges this idea. Of course this assumption is based on the evidence that the vast majority of those prosecuted for child murder and concealment were the victims’ mothers. Nevertheless, a clearer distinction should be made between infanticide as a legally constructed ‘crime,’ and the act itself. This thesis will argue that the former does pertain to women, largely because female-specificity was written into the law, and this will have affected the legal investigation, and that a more in-depth analysis of the legal investigations may well reveal male complicity in the latter.

The fourth assumption made by a number of historians is that there is a ‘dark figure’ of undetected infanticide. In her study of south-west Scotland, for example, Kilday suggests that ‘the ‘true’ extent of infanticide...[is]...considerably more substantial than the Justiciary Court evidence suggests’.⁶⁸ However, this notion, as Christina Lerner states, ‘gives an objective status to certain actions as crimes which they do not actually have’.⁶⁹ Speculating about the numbers of possible undetected crimes is problematic, particularly in cases of new-born child murder. Moreover, this view also assumes that cases that did not make it to court were undetected, whereas it is possible that certain cases were unreported, which is an important distinction. Of course all of the historiographical assumptions discussed here are likely to be perpetuated in studies that rely solely on trial records and official statistics. Indeed, although recent studies are beginning to address this issue, there is a need for more studies that locate infanticide within the communities in which these ‘crimes’ were committed, particularly looking at the role and responses of the community – as both witnesses and accessories – medical witnesses and the police.

Another significant limitation within the historiography is the difficulty of making comparisons between studies, which frustrates any attempts to build up a more general

⁶⁷ Abrams, ‘From Demon to Victim’, p. 180; Dickinson and Sharpe, ‘Infanticide in Early Modern England’, p. 35; Hoffer and Hull, *Murdering Mothers*, p.107.

⁶⁸ Kilday, ‘Maternal Monsters’, pp. 163-4.

⁶⁹ Cited in Jackson, *New-Born Child Murder*, p. 9.

picture of infanticide in Britain. Part of the problem is the lack of pan-UK comparable records surviving for any substantial period of time. There is also a lack of research outside England,⁷⁰ although a number of recent studies have greatly improved our understanding of infanticide in Ireland in the nineteenth and twentieth century.⁷¹ Moreover, the majority of the English studies are based on material from London and the south-east and as a result, there are no adequate comparisons between the different socio-economic, legal and cultural conditions that exist within the United Kingdom. Indeed, a study of Scotland, which has a different legal system, as well as a different laws pertaining to, and processes of investigating new-born child murder may well reveal significant differences, as well as continuities, in attitudes towards, and official prosecution of, the crime and its suspected perpetrators. Another problem arises when studies are compared to each other. Studies that use analyses of quantitative data, for example, differ in geographical and temporal scope from the more qualitatively based works. In this respect, the patterns found in the former cannot, and should not, be explained using the latter. The various definitions of ‘infanticide’, and even ‘new-born’ also vary dramatically between studies, which also makes comparisons problematic.

A further issue lies in the wider comparative context of infanticide. A number of works certainly place their subject within socio-economic and demographic contexts: most studies discuss the socio-economic characteristics of suspects, whilst others make explicit links between infanticide and demographic phenomena such as illegitimacy,⁷² and infant mortality.⁷³ However, apart from Hoffer and Hull, no historian has engaged with such

⁷⁰ There are three studies of Scotland: Abrams, ‘From Demon to Victim’, focusing on Shetland; Kilday, *Women and Violent Crime*, in which the chapter on infanticide focuses on the south west of Scotland; and Symonds, *Weep Not For Me*. For Wales there is one published study, R. W. Ireland, ‘Perhaps my Mother Murdered Me’. There have been a number of recent studies of Ireland, including:; Rattigan, ‘*What Else Could I Do?*’; Farrell, ‘The Crime of Infanticide’; Farrell, ‘*A most diabolical deed?*’; E. Farrell, “‘Infanticide of the Ordinary Character’: An Overview of the Crime in Ireland, 1850-1900’, *Irish Economic and Social History*, 39 (2012), pp. 56-72.

⁷¹ Farrell, ‘*A Most Diabolical Deed?*’; Farrell, ‘The Crime of Infanticide’; Rattigan, ‘*What Else Could I Do?*’; C. Rattigan, “‘Dark Spots’ in Irish Society: Unmarried Mothers, Crime and Prosecution in Ireland, 1900-1950’ (Ph.D. thesis, Trinity College Dublin, 2007). See also M. Maguire, *Precarious Childhood in Post-Independence Ireland* (Manchester, 2009); J. Kelly, ‘Infanticide in Eighteenth Century Ireland’, *Irish Economic and Social History*, 19 (1992), pp. 5-22.

⁷² Arnot, ‘Gender in Focus’; Higginbotham, ‘Sin of the Age’; Jackson, *New-Born Child Murder*; Kilday ‘Maternal Monsters’, pp. 165-6; Schulte, ‘Infanticide’.

⁷³ Arnot, ‘Gender in Focus’; Rose, *Massacre of the Innocents*.

contexts in anything more than the very broadest sense. Any discussion of the relationship between infanticide and illegitimacy, for example, tends to focus more on the various debates surrounding both, rather than looking specifically at any correlation between empirical data. Whilst this study rejects the advanced statistical analysis carried out by Hoffer and Hull, it does support the usefulness of an empirical survey of court records to reveal initial patterns and make tentative generalisations that can be explored more qualitatively where such evidence is available.

Aims

This thesis has four clear aims. First, to produce a comprehensive survey of the legal and socio-cultural processes involved in the cases of suspected NBCM&CP in Scotland between 1812 and 1930. As such, it will be the first comprehensive study of these ‘crimes’ in Scotland during this period. Secondly, it will produce both a geographical spread of the ‘crimes’ and profiles of NBCM&CP suspects, which are both compared to broader demographic data. The third aim of the thesis is to challenge the four historiographical assumptions described above and finally, this thesis aims to demonstrate the value of examining pre-trial documents for the study of crime. By illuminating in particular the various legal and medical processes peculiar to Scotland, and how these processes affected attitudes towards, and responses to suspected infanticide, the study will create a broader comparative framework for a better understanding of the subject, particularly within a British context.

Sources

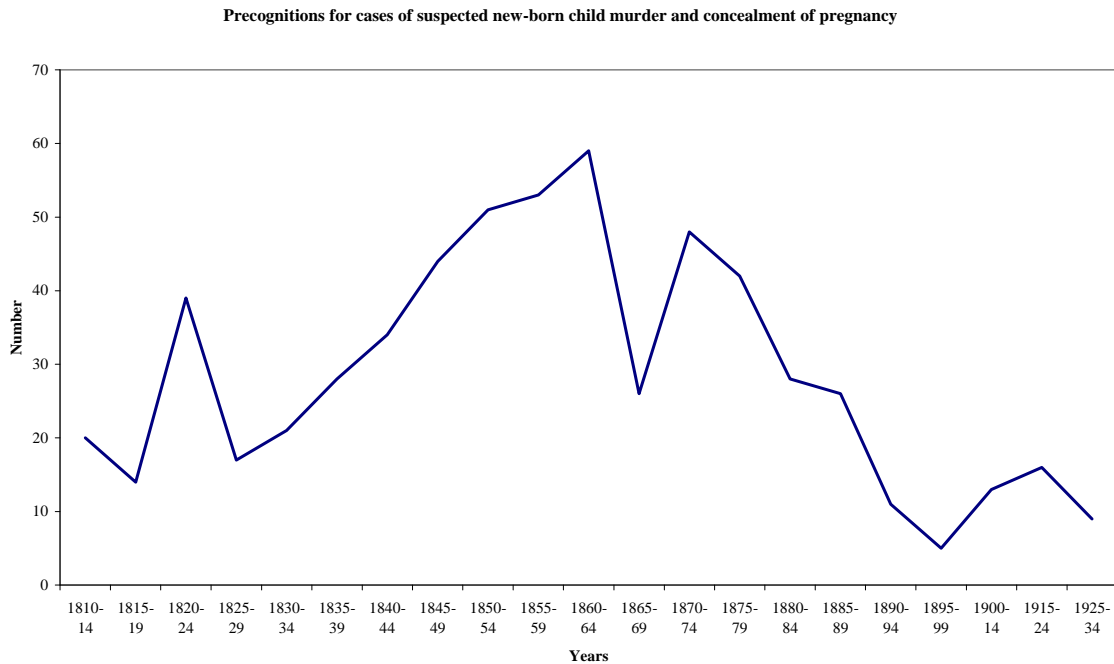


Fig. 0.1 Number of precognitions for cases of suspected new-born child murder and concealment of pregnancy in Scotland, 1812-1930.

Source: NAS, AD14/15, Criminal Precognitions.

This study is based on the analysis of a number of sources surrounding the investigation and prosecution of new-born child murder and concealment of pregnancy in Scotland between 1812 and 1930, most of which are High Court records housed in the National Archives of Scotland (NAS). By far the most important documents that inform this study are 602 pre-trial investigations, or precognitions.⁷⁴ These were reports compiled by a local official, usually a procurator fiscal, on behalf of the local magistrate (usually the sheriff substitute) and transmitted to the Crown Office in Edinburgh for a decision on whether or not to proceed with a trial. They usually contain the depositions of suspects and witnesses – including medical practitioners and police officers – as well as medical reports and other additional documents, including papers relating to the arrest and interrogation of the suspect, printed indictments, and notes passed between the procurator

⁷⁴ Series AD14 and AD15.

fiscal and the prosecuting advocates. As such, they provide a particularly rich and valuable source of both quantitative and qualitative information about the investigation of 'crime' in Scotland.⁷⁵ No criminal precognitions are available prior to 1812, and at the time the research was being undertaken the NAS's 75-year privacy clause meant that they could only be accessed up to 1930. This dictated the start and end dates of the project.

Whilst the Scottish criminal precognitions are a woefully underutilised resource they have not been completely ignored by historians. For example, both Deborah Symonds and Cassie Watson have both used the Scottish precognitions qualitatively to furnish discussions of a specific 'crime': infanticide and vitriol-throwing respectively.⁷⁶ In both cases there is no systematic analysis of the precognitions over time: Symonds's has handpicked a few cases for discussion, whilst Watson's work on Scotland is part of a wider survey of Britain that focuses on the medico-legal aspects of the crime. Another historian who has used the Scottish precognitions to look at the medical aspects of criminal investigations is Anne Crowther. In her book with Brenda White, *On Soul and Conscience: the Medical Expert and Crime*, Crowther utilises precognitions to examine the development of forensic medicine and the rise in importance of the medical 'expert' in Scottish courts from around the 1830s.⁷⁷ They argue that this rise to prominence of forensic medicine in the nineteenth century was in spite of the relative lack of technological advances. They also contend that the standard of testimony was higher in the urban centres, where leading academics were often employed to carry out post-mortem examinations. This thesis largely upholds these observations, although it does find that from the latter part of the nineteenth century most of the post-mortem examinations were no longer being carried out experienced medical men.

⁷⁵ M. A. Crowther, 'The Criminal Precognitions and Their Value to the Historian', *Scottish Archives*, 1 (1995), pp. 75-84.

⁷⁶ Symonds, Weep Not for Me (which is discussed in more detail above); K. D. Watson, "'Is a burn a wound?'" Vitriol-throwing in medico-legal context, 1800-1900' in I. Goold and C. Kelly (eds), *Lawyer's Medicine: The Legislature, the Courts and Medical Practice, 1760-2000* (Oxford, 2009), pp. 61-78.

⁷⁷ M. A. Crowther, and B. White, *On Soul and Conscience: The Medical Experts and Crime* (Aberdeen, 1988). See also M. A. Crowther, 'Medicine and the Law in Nineteenth-Century Scotland' in Y. Otsuka & S. Sakai (eds) *Medicine and the Law: Proceedings of the 19th Historical Symposium on the Comparative History of Medicine-East and West* (Tokyo, 1998); M. A. Crowther, 'The Toxicology of Robert Christison: European Influences and British Practice in the Early Nineteenth Century' in J. R. Bertomeu-Sanchez and A. Nieto-Galan (eds) *Chemistry, Medicine and Crime: Mateu J. B. Orfila (1787-1853) and His Times* (Sagamore Beach, 2006).

Ian Donnachie has used the quantitative analysis of the precognitions between 1812 and 1850 to 'highlight some of the patterns which can be detected from a preliminary investigation of the Justiciary Court records'.⁷⁸ As well as demonstrating how the precognitions can reveal the circumstances in which alleged offences occurred as well as the socio-economic background of those involved, Donnachie's survey comes to several conclusions: that there was an increase in recorded crime over the period; that 'crime' in Scotland was more urban than rural (especially murder); Scottish criminals were overwhelmingly male; and there was a decrease in crimes against the person over the period. Compared to Donnachie's findings, this thesis highlights many of the differences between NBCM&CP and other 'crimes' in Scotland: that it was predominantly rural and suspects were overwhelmingly female. These differences, as well as Donnachie's other findings, are typical of the rest of Britain and elsewhere during this, and other, time periods. What is more interesting is Donnachie's claim that NBCM&CP 'apparently declined over the period'.⁷⁹ This is contrary to this study which finds, as Fig. 0.1 clearly demonstrates, that there was a marked increase in precognitions against these 'crimes' over the period. This discrepancy can only be accounted for by assuming that Donnachie did not have had access to all of the precognitions for these 'crimes' when he carried out his research.

This study also utilises other court records, mainly to help furnish details regarding trials, verdicts and sentences. These include processes, or small papers, usually containing information found within the precognitions,⁸⁰ and Minute Books of the High Court of Edinburgh and the circuit courts, which contain trial details.⁸¹ The study will also make use of other legal records including *Cases Before the High Court and Circuit Courts of Justiciary Reports (Justiciary Reports)*, which detail trials in which there were contested points of law or medical testimony, and the prison registers of a number of Scottish

⁷⁸I. Donnachie, 'The Darker Side': A Speculative Survey of Scottish Crime During the First Half of the Nineteenth Century', *Scottish Economic and Social History*, 15 (1995), pp. 5-24.

⁷⁹ *Ibid.*, p. 14.

⁸⁰ Series JC26.

⁸¹ Series JC6-14.

prisons.⁸² The study also uses a variety of other documents, including those relating to various Acts concerned with the law and legal procedures; official Parliamentary papers, including the Censuses of Scotland; various medico-legal texts, including books of medical jurisprudence and medical journals; and, to a lesser extent, contemporary newspapers and journals.⁸³

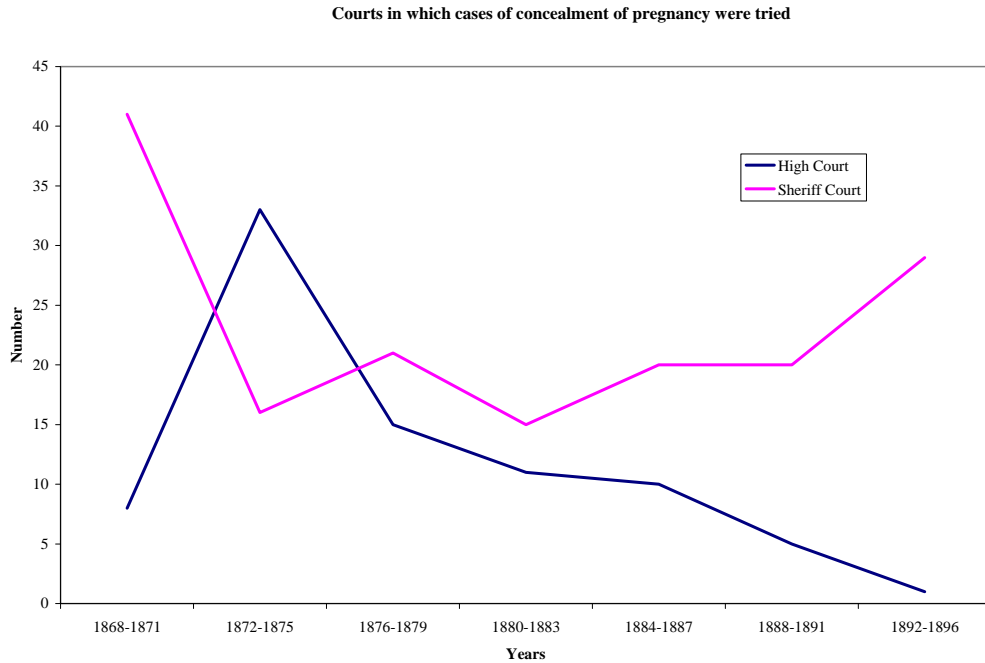


Fig. 0.2 Courts in which cases of concealment of pregnancy were tried in Scotland, 1868-1896
Source: *House of Commons Parliamentary Papers: Judicial Statistics Scotland*.

Source critique

There are a number of factors that make any analysis of the criminal precognitions problematic. Perhaps the most fundamental problem with regards to these legal sources is

⁸² Series HH21.

⁸³ Trials of new-born child murder rarely made the pages of newspapers beyond a few lines outlining the accused, the verdict and the sentence. One of the reasons for this was that until the end of the nineteenth century trials in Scotland would rarely last longer than a day. L. Farmer, 'Criminal Responsibility and the Proof of Guilt' in M. D. Dubber & L. Farmer (eds) *Modern Histories of Crime and Punishment* (Stanford, 2007), pp. 47-8.

that they are incomplete.⁸⁴ Indeed, contemporary newspaper reports, and prison registers reveal cases and suspects that are not recorded in the archives. Moreover, as demonstrated in Fig. 0.1, the bulk of the precognitions are clustered between 1840 and 1870. Whilst this might reflect the actual incidence of the ‘crime’, it could also reflect improvements in detection, or an increase in official concern about the prosecution of crime in general, or NBCM&CP in particular during that period. It could also reflect the decrease in official concern as the plight of older children became a more pressing social issue. Furthermore, as demonstrated in Fig. 0.2, not all cases of concealment of pregnancy in Scotland were dealt with in the High Court; certainly for most of the period between 1868 and 1896 (when these statistics are available) these cases were more likely to be tried in the sheriff courts. As such, the data cannot be said to reflect accurately the ‘reality’ of these ‘crimes’ in Scotland, which makes any advanced statistical analyses of limited value.

Further limitations lie in the ability to present a full picture of the whole legal process even using the cases that do survive. The reason for this is that some of the precognitions do not have corresponding trial records, and vice versa. Another frustrating aspect of record survival is the lack of trial transcripts prior to 1888. These potentially crucial sources of information have not been retained by the National Archives of Scotland. Record survival is a problem that is encountered by all historians who use legal records. As such, the reliance on a quantitative analysis of these records alone is fraught with problems. Thus a use of both quantitative and qualitative evidence can, arguably, offer historians of crime a better understanding of their subject, allowing them to reach firmer conclusions. The Scottish criminal precognitions offer historians this opportunity.

The Scottish criminal precognitions are not unproblematic documents. For a start, they are reports gathered for the Crown, for the prosecution. It is more than likely that the defence advocates will have gathered their own witness statements, and if so, they have not survived. This is an important distinction to make, because the evidence from these documents was based around extracting enough information to proceed with a trial. This

⁸⁴ Crowther, ‘Criminal Precognitions’, p. 75.

will have affected the whole direction of the report, and led to many questions not being asked.

As Louise Jackson reminds us, ‘depositions are complex documents with no clear authorial voice’.⁸⁵ The suspects’ declarations analysed in this study vary in style and length, but most were clearly responses to specific questions, and were transcribed in such a way so as to produce, in the words of Lynn Abrams, ‘a mediated and often stylised or formulaic version of what was actually said’.⁸⁶ That these are texts generated by legal officials with a specific agenda is important, and Michael Goodich reminds us that we must be:

...cognizant of the intervention of such persons in the narrative. We may often be painfully aware of their presence, functioning almost as hidden puppeteers, controlling both the subject of our inquiry, and even guiding our own analysis.⁸⁷

However, many historians do not make such qualifications, and even those who do tend to insert an introductory caveat that, yes, the documents are problematic, but little else. Stephen Robertson criticises the use of legal records to create ‘seamless narratives’, and argues that this:

...obscures the interpretive choices that the historian who created it made about what to take from the document, denying readers the opportunity to assess those decisions...In effect, historians have repressed the multiple texts that make up a legal record.⁸⁸

Related to this is the fact that the rest of the sources, legal, medical and literary, are all drawn from the educated, middle-class elite. Whilst this does not preclude the discussion of the general cultural milieu within which these texts were produced, it does place

⁸⁵ L. A. Jackson, *Child Sexual Abuse in Victorian England* (London and New York, 2000), p. 29.

⁸⁶ L. Abrams, *Oral History Theory* (New York, 2010), p. 19.

⁸⁷ M. Goodich, ‘Introduction’, in M. Goodich (ed.), *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials* (New York, 2006), p. 3.

⁸⁸ S. Robertson, ‘What’s Law Got to Do with It? Legal Records and Sexual Histories’, *Journal of the History of Sexuality*, 14 (2005), p. 167.

limits on how much this study will be able to access effectively the lives and opinions of the individuals that form its basis.

Methodology

The methodological approach of this study answers the call of Garthine Walker, who as early as 1994 advocated a quantitative and qualitative approach to the subject of female involvement in serious crime,⁸⁹ and builds on a growing body of historians including Mark Jackson, Regina Schulte, Cliona Rattigan and Elaine Farrell,⁹⁰ whose studies all utilise, to a lesser or greater extent, a combination of the quantitative and qualitative analyses of pre-trial documents.

This thesis is the first empirical study of new-born child murder and concealment of pregnancy in Scotland. It is based on a survey of court records, in what would be most accurately described as longitudinal content analysis, in which inferences can be drawn from the data to their context, which includes the ‘purpose of the document as well as the institutional, social and cultural aspects’.⁹¹ Data from suspects’ declarations, witness testimony, medical reports and other documents within the precognitions, plus data from indictments and trial records (where applicable) of 602 recorded cases of suspected NBCM&CP have been analysed in depth to create an Excel database with over 180 discrete categories. These categories cover every aspect of each case and have been used to create the various tables, graphs and charts within the thesis from which useful inferences, or what Hoffer and Hull refer to as ‘sound generalisations’,⁹² can be made.

Arguably, without qualitative evidence, the raw data from any empirical study alone can only hope to provide a tentative, if tantalising, understanding of the subject. The real

⁸⁹ Cited in Sharpe, *Crime in Early Modern England*, p. 156.

⁹⁰ Jackson, *New-Born Child Murder*; Schulte, ‘Infanticide in Rural Bavaria’; Rattigan, ‘*What Else Could I Do?*’; Farrell, ‘The Crime of Infanticide’.

⁹¹ C. Robson, *Real World Research: A Resource for Social Scientists and Practitioner-Researchers* (Oxford, 1995), p. 272.

⁹² Hoffer and Hull, *Murdering Mothers*, p. 95.

value to the historian of the Scottish criminal precognitions is the rich qualitative data, provided by, amongst others, the depositions of suspects and witnesses, detailed medical, and in some cases police, reports and the various notes passed between Crown Counsel and the procurators fiscal. These have all been utilised in this thesis to illustrate and explain many of the patterns revealed by the quantitative analyses. This approach has been particularly fruitful in providing a better understanding of the individuals involved in cases of suspected NBCM&CP, as well as the circumstances prior to the official investigation, at the level of the community. Indeed, this thesis has illuminated the various roles played by relatives, friends, neighbours, as well as the local police and local medical practitioners. This thesis also shows how the evidence from the community was filtered by prosecutors, a process that sometimes revealed tensions as prosecutors attempted to obtain the specific information required in order to proceed with a trial and draw up an indictment.

Whilst this study covers a period of 118 years using a rich body of quantitative and qualitative evidence, this thesis acknowledges explicitly that the criminal precognitions from which most of this evidence has been gleaned are documents generated by the legal process for a particular purpose. Stephen Robertson posits a methodology that engages with the law and the legal systems surrounding the production of legal texts, ‘to attend to the broader context of legal categories, legal doctrine, and legal institutions’,⁹³ and this has informed the structure of the thesis, which follows as closely as possible the legal process chronologically. Indeed, one of the arguments of this study is that no historical analysis of crime can be divorced from the legal process and the legal procedures that produced the evidence; they influence every aspect of the case. This is another reason why this study focuses only on cases involving the suspected murder of new-borns: by concentrating on the same ‘crime’ across the period the study can more usefully investigate, and posit explanations for, continuities and changes in, for example, the profiles of suspects and witnesses, their statements to investigators and the medical evidence. Indeed, the differences between cases of new-born child murder and the murder

⁹³ Robertson, ‘What’s Law Got to Do with It?’, p. 171.

of children older than new-born makes the latter, as Meg Arnot has noted, ‘warrant a separate discussion’.⁹⁴

After an overview of the legal and medico-legal contexts of this study in Chapter One, Chapters Two and Three examine suspected NBCM&CP prior to the official investigation. Chapter Two focuses on the signs of pregnancy, labour and delivery and the discovery of bodies that led to suspicions and accusations, whilst Chapter Three explores the surveillance and confrontation of suspects by the community, suspects’ responses to accusations of pregnancy, delivery and murder and when a community’s informal suspicion became an official accusation.

Chapter Four looks at the profiles, biographies and socio-economic backgrounds of the individuals suspected of NBCM&CP. It shows that the majority of suspects were young, unmarried women who were also the mothers of the infants they were accused of concealing and/or murdering, and that most of the cases occurred in rural areas of Scotland. This chapter also demonstrates that there were proportionally higher incidents of suspected NBCM&CP in areas where illegitimacy rates were high.

Chapter Five looks at other individuals involved in cases of suspected NBCM&CP, either as accessories to murder – of which there were very few – or who played a variety of other active and passive roles in concealing these ‘crimes’ from the rest of the community and/or the authorities. Only a handful of these cases resulted in indictments: most of the involvement was either not deemed serious enough, or there was not enough evidence to warrant investigation or prosecution.

Chapter Six explores the role of the police, tracing the development of the police force in Scotland from about the 1840s – which largely mirrors the general pattern of development in Britain – and describes their various duties in investigating cases of suspected NBCM&CP. This chapter also examines the interaction between the police and

⁹⁴ M. L. Arnot, ‘The Murder of Thomas Sandles: Meanings of Mid-Nineteenth-Century Infanticide’, in Jackson, *Infanticide*, p. 149.

local communities and the role of police detection in discovering the mothers of dead infants.

Chapter Seven looks at the role of medical witnesses in cases of suspected NBCM&CP. The first part explores the role of local doctors, midwives and other medical practitioners prior to the official investigation, both in examining suspects for the signs of pregnancy and delivery and, in some cases, in their roles as the suppliers of abortifacients for pregnant women and in assisting in the concealment of an infant's death from the authorities. The second part of the chapter focuses on the medical examination of suspects and victims during the official investigation, looking at the various tests employed by medical witnesses.

Finally, Chapter Eight looks at trials of cases of suspected NBCM&CP, looking at the various witnesses and their testimony – highlighting all of the issues that made proving child murder in the courtroom very difficult. This chapter also examines the verdicts and sentencing patterns, which shows that there were only a few successful child murder convictions, which led to prosecutors in most cases accepting guilty pleas of concealment of pregnancy and culpable homicide. This chapter acknowledges that there was a wider culture of sympathy within which judicial leniency operated, but argues that prosecutors were influenced more by the weight of evidence than by any other factor.

This thesis argues that the analysis of the pre-trial records relating to cases of suspected new-born child murder and concealment of pregnancy in Scotland between 1812 and 1930 offers new insights into these 'crimes' at the level of the community. This nuanced understanding also challenges a number of historiographical assumptions that have grown up around studies that have, on the whole, relied upon a reading of official, post-trial documents, contemporary accounts and official statistics.

Chapter One: Legal and medico-legal contexts

Introduction

This chapter looks at the institutions, personnel and procedures involved in the investigation and prosecution of NBCM&CP in Scotland between 1812 and 1930. It has two clear aims: first, to set the thesis in a legal context with an overview of the Scottish criminal justice system in general, as well as introducing the processes and procedures that will be explored in later chapters. Secondly, the chapter argues that the Scottish legal system – including the laws and rules of legal procedure – along with various legal and medico-legal discourses, played an important role in constructing the ‘crimes’ of newborn child murder and concealment of pregnancy. In other words, the ‘crime’ with which a suspect was eventually charged may not have been a reflection of the ‘crime’ which was initially accused, reported, or investigated. As such, official criminal statistics cannot be viewed simply as an index of actual ‘crime’, and we need to be aware of the degree to which they may mask this process of construction.

The chapter is divided into four sections. The first describes the criminal justice system in Scotland in the nineteenth and early twentieth centuries, looking at the institutions and personnel involved in its administration, and tracing its development over the period. The second section looks briefly at the legal procedure, from the official investigation through to the trial. The section also looks at the various rules of procedure that drove the investigation. Section three focuses on the laws relating to child murder, culpable homicide and concealment of pregnancy, looking at the various proofs required in each, and how these may have affected the legal process. Finally, the chapter examines the role of medical testimony, traces the development of forensic medicine, and explores the various medico-legal discourses and debates surrounding NBCM&CP in the nineteenth and early twentieth centuries. The chapter argues that the various elements of the criminal process described in these four sections all played a part in the legal and medico-legal construction of these ‘crimes’.

The Scottish criminal justice system

The two principal criminal courts of Scotland were the courts of Justiciary, and the sheriff courts. The Court of Justiciary was the supreme criminal court, and had exclusive jurisdiction over the four 'pleas of the Crown', murder (including child murder), robbery, rape, and fire-raising.¹ Trials were conducted at both the High Court in Edinburgh, and twice a year at circuit courts held at the principal towns throughout Scotland. There were three circuits, the north, west and south.² A second winter court was established in Glasgow in the 1830s to accommodate the increase in trials there. The High Court of Justiciary, in its modern form, was established in 1672: its president was the Lord Justice-General, his depute was the Lord Justice-Clerk, and five Commissioners of Justiciary made up the rest of the court. At least three judges usually sat in the High Court in Edinburgh, and one or two judges travelled on circuit.

The prosecution of crime in Scotland was a public function, exercised in the Justiciary courts by the Lord Advocate, the highest law officer in Scotland.³ In practice, his powers were delegated to his depute, the Solicitor General, and a number of deputies, collectively known as Crown Counsel. The Crown Office included the Lord Advocate and Crown Counsel, as well as the Crown Agent, who administered Crown Office business.

The sheriff court was the most important of the various inferior courts of Scotland.⁴ Primarily dealing with the prosecution of petty crime, they are of importance to this study less for this function, than for the role of their personnel in the investigation of crime. The Sheriff was primarily a judge, and as he was not required (except in Lanark and Edinburgh) to be resident, most of his duties were undertaken by a substitute, most of whom were, by the 1830s, advocates of at least three years standing, and appointed and

¹ D. Hume, *Commentaries on the Law of Scotland: Respecting Crimes*, vol 2 (Edinburgh, 1844), p. 18; G. Donaldson, *Scotland: The Shaping of a Nation* (Melksham, 1993), p. 110.

² On each circuit, three towns were usually visited for a few days, or until the 'crimes' from the surrounding counties had been tried. The north circuit usually included Aberdeen, Inverness and Perth; Glasgow, Inveraray and Stirling in the west, and Ayr, Dumfries and Jedburgh in the south.

³ W. G. Normand, 'The Public Prosecutor in Scotland', *Law Quarterly Review*, 54 (1938), pp. 345-6.

⁴ For a useful discussion of the inferior courts, see Kilday, *Women and Violent Crime*, pp. 25-38.

paid directly by the Crown.⁵ The prosecutor in the sheriff court was the procurator fiscal, a local lawyer.⁶ He received information regarding suspected crimes and deaths, and decided whether or not to conduct further investigations.

The nineteenth century witnessed the greatest expansion of the sheriff courts, and an increase in the importance of their offices in the day to day administration of criminal justice in Scotland.⁷ This included an increase in both centralised control of the courts – of which there was one for each county of Scotland, and its officers, who became increasingly professionalised. As the amount of criminal business increased, so too did the number of cases dealt with, both with judge and jury (solemn) and with a judge only (summary) in the sheriff courts. By 1870, the sheriff courts exercised common law jurisdiction over all cases with a maximum punishment of a £50 fine or two years imprisonment, and by the close of the nineteenth century the Court of Justiciary had come to play a decreased role in the day-to-day business of criminal justice.⁸

The expansion of the sheriff courts can be linked to a desire to reduce the time and cost involved in the increasing volume of criminal business in the nineteenth century.⁹ Although a number of procedural changes reduced the time and expense of Justiciary court proceedings, prosecutions in the sheriff courts were less time-consuming and cheaper. It is possible that, as the nineteenth century progressed, these factors may have influenced prosecutors in their decision as to what ‘crime’ should be prosecuted. New-born child murder had to be tried in a Justiciary court, but the lesser charge of concealment of pregnancy could be tried by the sheriff. It is necessary, then, to examine the procedures and personnel involved in a criminal investigation and prosecution, and

⁵ T. B. Smith, *A Short Commentary on the Law of Scotland* (Edinburgh, 1962), pp. 96-7. Smith suggests that the use of the words 'depute' and 'substitute' is misleading, 'since in the former case the sheriff-depute is depute to an office which, after being in abeyance since 1748, is now abolished...and the "sheriff-substitute" is substitute for no-one at all, but a judge in his own right'.

⁶ Normand, 'The Public Prosecutor'; Anon, 'A Procurator Fiscal – What he was, is, and will be', *Journal of Jurisprudence*, 21 (1877).

⁷ C. A. Malcolm, 'The Sheriff Court: Sixteenth Century and Later, in Stair Society, *An Introduction to Scottish Legal History*, 20 (Edinburgh, 1958), p. 361.

⁸ L. Farmer, *Criminal Law, Tradition and Legal Order* (Cambridge, 1997), pp. 70-1.

⁹ Smith, *Law of Scotland*, p. 207.

show how this process could allow for a ‘crime’ to be changed, in this case from one of child murder to the lesser charge of concealment of pregnancy.

Criminal procedure

This section describes the criminal process, from an official allegation of a ‘crime’, through to the subsequent trial, detailing the procedures and documents produced at each stage of the process, where necessary. This section is essentially an introduction to the processes which created the documents on which the bulk of this study is based, and illuminates the role played by both legal officials and criminal procedure itself in directing the investigation and prosecution of serious crime in Scotland in the nineteenth and early twentieth centuries.

The responsibility for investigating reported ‘crime’ lay with the procurator fiscal, with whom information regarding a suspected ‘crime’ had to be lodged. If satisfied with the credibility of the report, the procurator fiscal issued an ‘information’, or ‘complaint’, in writing, to a magistrate,¹⁰ who usually issued a warrant to apprehend the suspect, and investigate the allegations. In cases of suspected NBCM&CP, the warrant would also include the medical examination of any dead body, and the suspect (if she was the suspected mother of the child) for signs of recent delivery. The suspect was taken as soon as possible before the magistrate for judicial examination. If, at this point, it was felt that the case warranted further investigation, the procurator fiscal applied for another warrant to commit the suspect to jail ‘for further examination’, usually a period of a few days, allowing enough time for the ‘facts’ of the case to be ascertained.¹¹

The investigation into a crime was also called the precognition. As well as the suspect’s declaration, the precognition included the medical reports, witness statements – usually

¹⁰ In most cases the magistrate was the sheriff-substitute, but also included justices of the peace and baillies.

¹¹ *Rules to be Observed in Taking Precognitions and Making Presentments For Trial of Crimes Before Circuit Courts* (1765), in Hume, *Commentaries*, vol 2, pp. 535-7.

gathered by the procurators fiscal – and other documents such as reports, diagrams and other written evidence. Occasionally, precognitions contain photographs, and one even includes a baby’s cap. Once the precognition was concluded, the magistrate decided whether or not there was a case to answer, though by the mid-nineteenth century in practice procurators fiscal were sending precognitions directly to the Crown Office.¹² If it was felt that a prosecution should proceed, another warrant of commitment ‘until liberated in the due course of law’ was issued. At this stage, the prisoner could apply for bail, which was usually not granted for a capital charge, but could be for a lesser charge, such as concealment of pregnancy. A copy of the precognition was then sent to the Crown Agent, who then forwarded it to Crown Counsel, usually the advocate-depute responsible for prosecuting the trial.¹³ It was at this stage that a decision would be made whether or not to proceed with a trial, the charge or charges to be libelled, and the appropriate court in which to conduct the trial. If any aspects of the case were unclear, the precognitions could be handed to a more senior officer, and if necessary, the precognition would be given back to the procurator fiscal with instructions to obtain further suspect or witness statements, or clarification of existing evidence. If it was felt the evidence was not sufficient to support a successful prosecution, the procurators fiscal were instructed to liberate the prisoner immediately.

If the case was deemed serious enough for a Justiciary Court trial and Crown Counsel was satisfied with the evidence, the next stage was to prepare the libel, or indictment. This was usually done by the same advocate-depute who would conduct the prosecution, and was done so using the information contained in the precognition. A proof of the indictment was sent to the procurator fiscal in order for its accuracy to be agreed. A copy of the indictment, with an appended list of witnesses and list of assize (potential jurors) with the prosecutor’s name at the foot of each, had to be delivered to the accused (panel), with a citation to appear in court, at least fifteen days before the trial. Written proof of this delivery, called an ‘execution’, also had to be lodged with the court prior to the trial. For most of the nineteenth century, the indictment required ‘minute and

¹² Anon, ‘A Procurator Fiscal’, p. 374.

¹³ D. M. Walker, *The Scottish Legal System* (Edinburgh, 2001), p. 384.

scrupulous accuracy' in every detail respecting the charge or charges, the circumstances and location of the 'crime', and the correct designation of the suspect.¹⁴ Similarly, the list of witnesses also had to contain their correct designation, and it was vital that the pannel's copy of the indictment was exact. The inaccuracies in libels were often exploited by defence advocates, and successful challenges could lead to a case being dismissed.¹⁵

After 1887, the time between the warrant of commitment until liberated and the trial could not exceed 110 days. Prior to this a number of suspects were waiting for longer than this. For example, Agnes Easton, Margaret Laurence and Martha Reid all waited over 200 days in custody before their trials, in 1822, 1839 and 1864 respectively,¹⁶ and Elspet Murray was in custody for a staggering 242 days prior to her trial, in 1866.¹⁷ Moreover, in all of these cases the time spent in custody was not deducted from the final sentence.

The trial

The first step in the trial was to call the libel, on the day (known as the diet) stated in the citation.¹⁸ The trial procedure changed in 1887,¹⁹ after which all defendants entered their plea at a pleading diet in the sheriff court. If the plea was guilty and the 'crime' could be tried in the sheriff court, the case could be dealt with there and then. Otherwise, the second diet was set for ten days following the first in either the sheriff court or the High Court. Both the pannel and the prosecutor had to be present; if the pannel failed to appear, a sentence of fugitation was passed, and the accused was 'put to the horn'. If the prosecutor was late, or absent without sufficient warning or excuse, the diet could be deserted *simpliciter*, and the pannel liberated. Otherwise, the diet was deserted *pro loco*

¹⁴ A. Alison, *Practice of the Criminal Law in Scotland* (Edinburgh, 1833: Law Society of Scotland reprint, 1989), p. xix.

¹⁵ In a case from 1821 the case collapsed because in the defendant's copy of the libel the name of the prosecutor had been omitted. [NAS, AD14/21/103, Ann Sommerville.]

¹⁶ NAS, AD14/22/168, Agnes Easton; AD14/39/47, Margaret Laurence; AD14/64/136, Martha Reid.

¹⁷ NAS, AD14/66/242, Elspet Murray.

¹⁸ Unless otherwise stated, the following is based on Hume, *Commentaries*, vol. 2, pp. 263-84.

¹⁹ Criminal Procedure (Scotland) Act 1887, 50 & 51 Vict. c. 35.

tempore, postponed until a later date. It was at the beginning of the trial that any objections to the citation were raised. Then, the libel was read aloud, in full, and the plea called for. It was here that any special defences were lodged. The next stage was to debate the relevancy of the libel and any specific evidence. It was at this point, for example, that any objections to the wording of the indictment, and, after 1821, to any of the witnesses, had to be made.²⁰

Another issue regarding libels surrounded where (*locus delicti*), and the method (*modus operandi*) by which the child was supposedly murdered. Prior to 1887, the need for precision and accuracy within the libel resulted in extremely lengthy narratives, listing every possible cause of death indicated by the medical reports. On occasion, this led to objections from defence counsel. For example, in 1860, the defence advocate in Margaret Hannah's trial challenged the latitude taken in libelling the *locus delicti*: 'in or near a plantation known by the name of the Back of the Wall Plantation...or in or near the farm of Back of the Wall...or in or near a field...or elsewhere in said parish to the prosecutor unknown...', that the final alternative was too vague. However, the Solicitor-General repelled the objection.²¹

Objections to the *modus operandi* were more common. For instance, also in 1860, Ann McQue's defence objected to the alternative statement added to the *modus*, 'or you did then and there inflict some mortal injury upon the said child in some manner, and by some means, to the prosecutor unknown...or in consequence of some other violence to the prosecutor unknown'.²² It was claimed these words gave the prosecutor 'too wide a latitude', a claim with which the Lord Justice-Clerk and Lords Ivory and Neaves agreed, and the objection was sustained accordingly. Likewise, in 1862, a challenge to an alternative *modus* in Mary Scally or Scolly's libel was also sustained.²³ Not all objections were sustained, however. In 1861, for example, one defence advocate objected to the alternative, 'or did in some other way to the prosecutor unknown, maltreat the said child',

²⁰ Alison, *Practice of the Criminal Law*, p. 438.

²¹ *Justiciary Reports*, Irvine, III (1860), Margaret Hannah, pp. 634-45.

²² *Justiciary Reports*, Irvine, III (1860), Ann McQue, pp. 552-6.

²³ *Justiciary Reports*, Irvine, IV (1862), Mary Scally or Scolly, pp.195-6.

and used Ann McQue's case as a precedent. The objection was repelled, but with the provision that the 'prosecutor...confine himself to the kind of murder stated', namely 'choking or suffocation'.²⁴ In another case, in 1862, the defence advocate objected to the words 'did grasp and compress the throat of your said child', arguing that they should be struck out since the cause of death libelled was fracture of the skull alone, and not strangulation. The objection was repelled.²⁵ Nevertheless, it is clear that prosecutors were not able to give themselves too much latitude regarding the *locus delicti* and *modus operandi*. This issue with the accuracy of the libels was remedied in 1887, when the rules pertaining to the libel and citation were relaxed, and a less rigorous form of indictment was permitted.²⁶

A number of conditions exempted certain people from testifying in court. No one could give evidence if they did not appear on a list of witnesses, or had been issued a citation to attend court. However, this changed in 1852, from when it was permissible to call important witnesses, located at short notice.²⁷ No one qualified insane, or deemed incapable of understanding the concept of the oath could testify; nor could a husband testify against his wife and vice versa (except in a case of spousal abuse), and children under twelve (though in practice under fourteen) could not testify under oath, but could do so by judicial declaration. Boys of fourteen and under, and girls of twelve and under could not give evidence against a parent, and witnesses of any age could choose not to give evidence against their parents.²⁸ The last three conditions are of particular relevance to this study, as members of the immediate family, and other children, were often interrogated by procurators fiscal.

Once the objections, if any, to the libel and evidence were dealt with, the presiding judge declared the libel 'relevant to infer the pains of law', the pannel entered the plea, and the jury was sworn in. From 1828, a jury was not required in the event of a guilty plea and

²⁴ *Justiciary Reports*, Irvine, IV (1861), Alexandrina or Lexy Clark and Jane McKay, pp. 91-2.

²⁵ *Justiciary Reports*, Irvine, IV (1862), Christina Craig, p.189.

²⁶ Criminal Procedure (Scotland) Act 1887, 50 & 51 Vict. c. 35.

²⁷ Evidence (Scotland) Act 1852, 15 Vict. C. 27; Alison, *Practice of the Law*, p. 487.

²⁸ Alison, *Practice of the Criminal Law*, pp. 464-8.

the trial effectively became summary, saving considerable time and expense.²⁹ Indeed, it would seem highly probable that negotiation between the prosecutor and defence counsel before the trial may well have ensured a number of guilty pleas for lesser charges at this stage in proceedings. If the plea was ‘not guilty’, the jury was sworn in. The assize in Scotland consisted of forty-five people, summoned regularly by rotation, by the Sheriff of the county in which the suspected crime had taken place. Until 1910, the assize was exclusively male,³⁰ and from this list a jury of fifteen was selected by ballot, of which five could be peremptorily challenged by the pannel.³¹ Once the jury had been sworn in the prosecutor could no longer postpone the diet until a verdict had been reached.

The prosecutor then began his case. Crown witnesses were called and cross examined, and the suspect’s declaration was read out. The pannel’s defence did not commence until the prosecutor had closed his case, which had the dual advantage of leaving the prosecutor in the dark as to the line of defence, and of allowing the defendant the last word.³² Every Scottish prisoner was entitled to a defence, and whilst the majority of defence advocates were young and inexperienced, Archibald Alison contended in the early nineteenth century, that ‘such inexperience was offset by the accuracy with which they scrutinize the writs or executions...and the ingenuity with which they get up technical objections to the numerous forms’.³³

Until 1898, the judicial declaration or declarations taken before the magistrate at the beginning of the investigation served as the suspect’s only statement in court. After that date, the judicial examination was no longer required from the prisoner prior to the trial, and he or she was cross-examined like any other witness.³⁴ There seems to have been some debate surrounding the suspect’s judicial declaration in the nineteenth century in Scotland. Some commentators contended that an experienced or intelligent criminal learnt to say nothing incriminating, and that the system took advantage of a prisoner’s

²⁹ 9 Geo. IV, c. 29; Alison, *Practice of the Law*, p. 45.

³⁰ The Jury Trials Amendment (Scotland) Act, 10 Edw. 7 & 1, Geo. 5, c.31, allowed for women to sit on the jury.

³¹ *Ibid.*, p. xxi.

³² *Ibid.*, pp. xxiii-iv. Alison believed this is why there were so many ‘not proven’ verdicts in Scotland.

³³ *Ibid.*, p. xxii.

³⁴ Criminal Evidence Act, 1898 61 & 62 Vict. c. 36.

ignorance and simplicity.³⁵ Others took the opposite view, one sheriff believing that they 'had in many cases a very favourable effect towards the prisoner'.³⁶ This study will analyse suspects' declarations to see if they reveal any patterns that might suggest a certain line of defence was being used strategically, and if these patterns changed geographically, and/or over time.

Unlike suspects, the statements of other witnesses were not gathered under judicial oath, and until the mid-nineteenth century there was the peculiar situation where a witness could tell a completely different story in court to that told to the procurator fiscal in the precognition. From 1852, however, it became competent to examine a witness in court regarding such a change in a story.³⁷ Witnesses were not permitted to refer back to their original declarations, or to hear the testimony of other witnesses. The exceptions to this rule were medical witnesses: their original medical report was read aloud in court, and it was the contents of this document about which they were cross-examined. Moreover, medical witnesses were also permitted to remain in court and hear the evidence of other witnesses, leaving only when other medical opinion was being delivered.³⁸

There were three conditions regarding evidence in Scotland that had to be satisfied in order to obtain a successful conviction. First, the only evidence to which a jury could attach any weight was that delivered in their presence. Secondly, in the event of a 'not guilty' plea, a suspect's declaration alone was insufficient to prove guilt, and thirdly, a conviction could only be obtained on the testimony of at least two witnesses, or one witness supported by a chain of circumstantial evidence.³⁹ These conditions may well have been crucial in influencing the decision regarding the appropriate charge to libel, and this in turn will have affected the course of the investigation. This is particularly pertinent to new-born child murder, which, by its nature, and in medico-legal terms was, as we shall see below, extremely difficult to prove.

³⁵ J. C. Smith, 'Reforms Suggested in the Procedure in criminal Causes', *TNAPSS* (1860), p. 262.

³⁶ *Ibid.*, p. 268.

³⁷ Evidence (Scotland) Act 1852, 15. Vict. c. 27, section 3.

³⁸ Alison, *Practice of the Law*, p. 541.

³⁹ *Ibid.*, p. xxiii.

The final stage of the trial was the verdict and sentencing. The jury's decision, whether made in the jury box, or in a private room, was, by the nineteenth century, largely spoken vocally, by the chancellor of the jury, and comprised one of a range of four options: 'guilty', 'not guilty', 'not proven', or a special verdict. The judge would discuss the legality and competency of any verdict reached, and the jury was allowed to re-consider and alter the verdict if necessary.⁴⁰

In the event of a 'not guilty' or 'not proven' verdict, the pannel was *assoilzied simpliciter*, and dismissed from the bar. For 'guilty' verdicts, the sentence could either be pronounced immediately, which was the usual practice, or sentencing could be postponed until a later date. Both prosecutor and pannel had to be present when sentence was passed. The highest sentence was death, and had to be set for a date not before fifteen or after twenty one days south, or twenty and twenty six days north, of the Forth. Prior to moving for sentence, the prosecutor could restrict the libel to a punishment short of death, or prevent the judge from pronouncing a capital sentence.⁴¹ Alternatively, a Royal Pardon could be obtained through the High Court of Justiciary.⁴² The next highest punishment was transportation – usually to Australia – imposed for a sentence of seven years imprisonment or more. It was substituted with penal servitude in 1853, for shorter sentences, and by 1857 the latter had replaced transportation altogether. Penal servitude was a prison sentence, ranging from three years to life, usually with hard labour. The most common sentence was imprisonment up to two years, which may or may not have had conditions attached.⁴³ There was no appeal to the House of Lords against a Court of Justiciary decision until 1926.⁴⁴

There were two important influences on the process of investigation and prosecution of serious crime in nineteenth- and early twentieth-century Scotland. The first concerns the roles of both the procurators fiscal and the advocates depute. Private prosecution was

⁴⁰ Ibid., p. 640.

⁴¹ Ibid., p. xxiv.

⁴² Ibid., pp. 678-9.

⁴³ Ibid., p. 674. Such conditions might include solitary confinement for up to half the sentence, bread and water only, or hard labour – commonly the treadmill for the duration of the sentence.

⁴⁴ Criminal Appeal (Scotland) Act 1926, 16 & 17 Geo. 5 c.15.

extremely rare in Scotland, and once information had been presented to the procurator fiscal regarding a suspected crime, it was for him to decide whether or not a criminal investigation would be carried out. As this chapter has suggested, administrative and economic factors may well have influenced this decision. Conversely, the procurator fiscal may also have been influenced by community attitudes regarding a suspected 'crime', and this may have been more pronounced in more remote, rural areas, and further affected by religious views. Moreover, as the nineteenth century progressed, the growth of the police in Scotland affected the relationship between the procurator fiscal and the local community, as they became more active in criminal investigations. Arguably, then, the cases from which this study is based are those which contemporary authorities deemed worthy of investigation, and do not necessarily reflect the actual numbers of suspicious infant deaths reported to the procurators fiscal.

Once a precognition was forwarded to the Crown Office, the advocate-depute responsible for the case became the single most influential figure regarding the outcome of the investigation. It was his decision which crime would be charged, and in which court it would be tried, and his direct involvement in an investigation depended on the quality of the precognition. He could, for example, insist on a prisoner being re-examined, or for witnesses to be re-precognosed regarding evidence crucial to a specific charge. Moreover, in court the prosecutor had the power to restrict a murder charge at any point in the trial, as well as prevent capital sentences being imposed, and was probably more influential than the judge in this respect.

The second factor that influenced the outcomes of the investigation and prosecution of crime were the procedural rules. The strict requirements for constructing a competent libel, and the various rules of evidence needed to mount a successful prosecution were both driving forces behind the investigative process. As such, the procurator fiscal conducting the investigation had to consider what evidence was important, as did the advocate-depute framing the criminal libel. This has two clear consequences with regards to this study: first, the content of the precognitions was weighted in most cases towards the various legal requirements of the charges. Secondly, in those cases where the

investigation followed a different line of enquiry, perhaps based on local opinion, or offered conflicting evidence, the advocate-depute may have chosen to ignore it, or direct the investigation in another direction. This further suggests that a reported ‘crime’ may have had little resemblance to the ‘crime’ that was eventually prosecuted. Another reason for this was the nature of the laws themselves, and the way in which they were constructed.

The laws relating to new-born child murder

There were three ‘crimes’ relevant to this study; child murder, culpable homicide, and concealment of pregnancy. This section will take each in turn, giving a brief description of the proofs required in each, and will argue that the legal and medico-legal construction of these ‘crimes’ played a significant role in driving the investigation and in deciding what charge or charges were to be prosecuted.

Child murder

New-born child murder in Scotland was, from 1809, prosecuted solely under common law, as murder. In Scotland, a murder charge could be substantiated if, after obtaining sufficient proof that the victim had been murdered, either wicked recklessness or intent to kill on the part of the suspect was also established.⁴⁵ Proving a charge of new-born child murder, however, was further complicated by the need to prove that the child had been born alive, and had existed separately from its mother prior to its death. Meg Arnot notes that this created a peculiar gap in infant protection ‘which left the infant in the actual process of birth unprotected’.⁴⁶ What constituted a living child was a matter of some debate in Scotland. Perhaps the most important of the institutional writers, David Hume,

⁴⁵ Farmer, *Criminal Law*, p. 144.

⁴⁶ Arnot, ‘Gender in Focus’, p. 111.

defined homicide as the killing of a ‘person, or existing human creature’,⁴⁷ but avoided the issue of the child emerging from the womb. This lack of an official position on the matter led to differences in opinion in the courtroom. In a case from 1858, after a lengthy debate, the presiding judge charged the jury:

As to what is a living child, there is no difficulty about the law. A child that is not fully born has no separate existence from its mother, and is not, in the eye of the law, a living human being. It is in a state of transition from a *foetus in utero* to a living human being, and it does not become a living human being until it is fully born, and has a separate existence of its own.⁴⁸

In contrast, after a similar debate in 1892, Lord Young stated that ‘[i]t does not matter in the least, so far as the criminality of the accused is concerned, if the injuries were inflicted when the child was partly in the mother’s body’.⁴⁹ However, Lord Young’s opinion was not the prevailing view, and in practice medical practitioners were directed to give their opinions as to whether the child had been born alive, and had fully respired prior to death.⁵⁰ As this chapter will demonstrate, the cause of death of a new-born infant was often a source of medical and medico-legal conflict, even in cases where there were clear signs of violence, and as such a successful child murder conviction was extremely rare. In the majority of cases of suspected new-born child murder, then, there was usually an alternative charge, either concealment of pregnancy, or culpable homicide.

Culpable homicide

Culpable homicide was a nineteenth-century development peculiar to Scotland. Firmly established by the 1840s, it had, by the end of the century ‘come to be regarded both in practice and doctrinally as the central category of the law of homicide’.⁵¹ Three forms of culpable homicide are of interest to this study. The first involved the death of a new-born

⁴⁷ D. Hume, cited in Stair Society, *The Laws of Scotland*, 7 (Edinburgh, 1995), p. 217.

⁴⁸ *Justiciary Reports*, Jean M’Allum or McCallum, Irvine, 3 (1858), pp. 199-200.

⁴⁹ Stair Society, *Laws of Scotland*, p. 217.

⁵⁰ These medico-legal issues are discussed in Chapter 7.

⁵¹ Farmer, *Criminal Law*, p. 153.

child through an unlawful act, but without the intention to kill. Hume discussed the hypothetical case of

a woman who deserts and exposes, and thereby kills her infant child; though she do it in a way not so likely to destroy the child, as, for instance, by the side of a highway, and in the day-time. For still she does a very wrong thing, and exposes the child, less or more, to the hazard of what may happen.⁵²

The second form of culpable homicide was death through negligence, or omission. Acts such as failing to call for help at the birth, or failing to tie the umbilical cord, could come under the rubric of this charge. However, according to legal commentators, 'there is virtually no Scots authority on this point...and the matter has not arisen before in the courts other than in the context of failing to summon help at the birth of a child'.⁵³

A third form of culpable homicide was as a restriction to a charge of murder. Indeed, the appeal of culpable homicide to prosecutors was its flexibility for the purposes of sentencing and prosecution. The advocate-depute could restrict a murder charge to culpable homicide at any point in the trial, avoiding the capital sentence. There were three formal grounds for such a restriction: intoxication, provocation, and diminished responsibility. It was the development of the latter that concerns this study, and will be treated in greater detail below.

Concealment of pregnancy

The charge of concealment of pregnancy is extremely important, since it was the most common charge amongst the cases analysed in this study. The concealment of pregnancy statute, which was given Royal assent on 20 March 1809, stated:

...That...any Woman in that part of Great Britain called Scotland, who shall

⁵² Hume, *Commentaries*, vol. 1, p. 237.

⁵³ Stair Society, *Laws of Scotland*, p. 233. Failing to summon help at the birth was also one of the terms of the concealment of pregnancy statute.

conceal her being with Child during the whole space of her Pregnancy, and shall not call for and make use of Help or Assistance in the Birth, and if the Child be found dead or shall be amissing, the Mother being lawfully convicted thereof, shall be imprisoned for a period not exceeding two years, in such Common Gaol or Prison as the Court before which she is tried shall direct and appoint.⁵⁴

It repealed a 1690 Act 'Anent Child Murder', which, for the same terms, was punishable by death.⁵⁵

The wording of the statute led to three areas which gave rise to debate in the courtroom. First, there was some confusion surrounding what did, or did not constitute a disclosure of pregnancy. Hume suggested that disclosure to the father of the child, or a member of the suspect's immediate family alone, were still grounds for conviction under the statute:

For what if the mother disclose her pregnancy to some one, and her resolution withal to destroy the child as soon as born, and if she endeavour to seduce this confidant to approve and assist in the execution? Instead of invalidating, such a disclosure powerfully strengthens the presumption against the mother.⁵⁶

Hume's opinion was tested in 1852, when, in the High Court, a jury returned the following special verdict:

The jury find that the pannel concealed her being with child during the whole period of her pregnancy, with this exception, that she told the reputed father of the child when she was two months gone, that she was with child by him: Find, that she did not call for or make use of help or assistance in the birth; and find, that the child was afterwards found dead. But whether the matters thus found amount in law to the statutory offence libelled, the jury refer to the Court.⁵⁷

In the ensuing debate, the prosecution took Hume's line, arguing that 'the disclosure must be made with a view to the safety of the child...that the father of an illegitimate child had an interest in the concealment, and therefore a disclosure to him alone was not

⁵⁴ Concealment of Birth (Scotland) Act, 49. Geo. III. c. 14. The Act did not become officially known as concealment of pregnancy until 1892.

⁵⁵ Act Anent Child Murder, 1690, c. 21. For a detailed discussion of the Act, see Symonds, *Weep Not For Me*.

⁵⁶ Hume, *Commentaries*, vol. 1, p. 295.

⁵⁷ *Justiciary Reports*, Jean Kiellor, Shaw (1852), p. 578.

sufficient'.⁵⁸ For the pannel, the defence advocate argued that the jury had found that a disclosure had been made, and that the

Act made no distinction between one kind of disclosure and another, or the intention with which the disclosure was made, or between a disclosure made to the father, or to any other person.⁵⁹

Five judges debated the matter, and the pannel was found not guilty, and dismissed. However, two of the three judges had agreed with the prosecution, and the author of the report suggested that it was unlikely that this case settled the matter once and for all.⁶⁰

A second cause of debate regarding the concealment of pregnancy statute was whether or not the child had to have been a 'ripe child', that is, had gone to its full period of gestation before delivery. Hume regarded the statute as not requiring the infant to be fully grown,⁶¹ and the fact that the statute did not necessarily require a body was seen to support this view. In a case in 1841, the Lord Justice-Clerk stated that 'it was quite unnecessary for the prosecutor to aver that the child was full grown for the libel to be competent'.⁶² However, Hume suggested that premature labour could be an adequate defence, if brought on by an accident of some kind (and proved by medical evidence), 'for it would be rigorous, and...unjust, to presume that she would have persisted in concealing her pregnancy during the full nine months'.⁶³

The third debate concerned whether the concealment of pregnancy charge was still competent in the case of a stillbirth. Hume argued that a child born at its full time, but stillborn, was not an adequate defence, since 'the child may have died in the course of her labour, and owing to the want of due and timeful help...and is this the very evil provided for in the enactment?'.⁶⁴ Hume cited a case from 1815 in which the accused admitted concealing her pregnancy, but claimed the child had come six weeks early, and was

⁵⁸ Ibid., p.578.

⁵⁹ Ibid.

⁶⁰ Ibid., p. 579.

⁶¹ Hume, *Commentaries*, vol. 1, p. 297.

⁶² *Justiciary Reports*, Alison Punton, Swinton, 2 (1841), p. 577.

⁶³ Hume, *Commentaries*, vol. 1, p. 297.

⁶⁴ Ibid., p. 298.

stillborn. She was found guilty.⁶⁵ In 1841, one judge was unequivocal on the matter, stating that ‘the statute...merely required that a child should have been born. It is not, therefore, necessary for the prosecutor to prove the birth of a living child’.⁶⁶

There are two ways, not necessarily mutually exclusive, in which the concealment of pregnancy statute could be approached. First, it could be viewed, as it was by Hume, as a ‘species of culpable homicide, – a criminal neglect of the safety of the child’.⁶⁷ Its predominance as an alternative charge to child murder certainly supports this argument, as well as the fact that it was originally an Act against child murder. This understanding of the charge could certainly be applied in cases where there was clear evidence of neglect, such as failing to apply a ligature to the umbilical cord, or where the infant had subsequently died through want of relief because no assistance had been called for. It is also likely that many women agreed to plead guilty to concealment of pregnancy in order to escape the possibility of a graver sentence.

The second approach to concealment of pregnancy was not as a form of culpable homicide, but rather as a punishment for the sexual behaviour that resulted in the pregnancy in the first place. More specifically, the statute singled out the mother alone, since the wording of the charge pertained only to her and, Hume observed, the statute ‘has the singular situation of not admitting a charge of art and part’; that is, no one could be charged as an accessory.⁶⁸ As we have seen above, in the debate surrounding disclosure of the pregnancy, one of the arguments was that a disclosure to the putative father of the child was not a sufficient defence, since it could still be in his interest to conceal the pregnancy. Yet, in the terms of the statute, he could not be charged as an accessory in this situation, but he could if the charge was culpable homicide. Thus it can be argued that it was not the death of the infant, but rather the sexual behaviour of the female suspect, that this charge was penalising. This view is supported further by the cases in which there was clear evidence of a stillbirth, or where there was no belief in the

⁶⁵ Ibid.

⁶⁶ *Justiciary Reports*, Punton, p. 577.

⁶⁷ Hume, *Commentaries*, vol. 1, p. 293.

⁶⁸ Ibid., p. 299.

community that a murder had been committed.

Of course, the link between new-born child murder and sexuality was not a new one. Mark Jackson, for example, sees the English Act of 1624, as a direct response to the fears surrounding the increasing financial burden of bastardy,⁶⁹ and whilst the Scottish Act never referred to illegitimate children, its full title, 'Act for Preventing and Hindering Common Women from Murthering their Infants after their Birth',⁷⁰ suggests that it did so implicitly. Illegitimacy was certainly a live issue in Scotland, particularly after the official statistics were gathered in the second half of the nineteenth century, and the links between this concern and accusations of child murder, and concealment of pregnancy will be explored in this study.

This section has suggested that the legal construction of the laws relating to child murder had a major effect on the outcome of an investigation for suspected child murder. Whilst the majority of initial accusations were for new-born child murder, this does not reflect the final charge in most of these cases. This illustrates two things: first, it shows how important the laws and legal procedure were in the investigation and prosecution of crime. What may have seemed like a clear case of murder to the local community, and even to historians, was not necessarily so to prosecutors, who had to work within the constraints of the written law, and legal procedure. For this reason, crime can be viewed as a legal construction. Secondly, because they worked so closely within certain legal and procedural parameters, aspects of the investigation may well have been ignored by prosecutors. For example, in adding concealment of pregnancy as an alternative to murder, the prosecutor may well have ignored evidence of complicity in the suspected murder, knowing the difficulties of proving the murder charge in the first place, the peculiar construction of the statutory charge, and with a view to keeping time and cost to a minimum. This section has also underlined how crucial medical evidence was to the outcome of the investigation into suspected new-born child murder, and it is to this subject that we now turn.

⁶⁹ Jackson, *New-Born Child Murder*, p. 12.

⁷⁰ Symonds, *Weep Not for Me*, Chapter 5, fn. 1.

Medical testimony

The role of medical evidence in the investigation of suspected new-born child murder cannot be overstated. Having received information of a suspected new-born child murder, and/or concealment of pregnancy, the procurator fiscal petitioned for a warrant to apprehend the suspect and for the medical examination of both the body of the infant, and the suspect (if she was the reputed mother of the said infant). The 'customary manner' was for two qualified medical men, either surgeons or physicians, to carry out these examinations, and produce signed and dated medical reports or certificates, which were to be used in any subsequent trial.⁷¹ It was crucial that the information within the medical report was as accurate and unequivocal as possible, and it was not unusual for Crown Counsel to instruct the procurator fiscal to precognosce medical witnesses regarding their comments, particularly with regards to their opinion regarding whether the infant had been alive, and had respired, prior to its death. These issues were vital in deciding the appropriate charge, and were largely dependent on the quality of medical testimony, which may have varied considerably according to the individuals involved, regionally, and over time.

The development of medical jurisprudence in Scotland

The quality of medical testimony also bore a direct relation to the standard of training medical students received in the principles and techniques of forensic medicine. The development of medical jurisprudence in Scotland began in 1807, with the establishment of the first chair of medical jurisprudence at Edinburgh University.⁷² In 1833, the already popular course became compulsory for all medical students at Edinburgh, and by the 1830s it was also becoming usual for police surgeons appearing in court to hold academic appointments. From the 1840s an increasing number of university lecturers and

⁷¹ T. S. Traill, R. Christison, J. Syme, *Suggestions for the Medico-Legal Examination of Dead Bodies* (Edinburgh, 1839), p. 5.

⁷² Crowther and White, *On Soul and Conscience*, p. 2. Glasgow University's chair of medical jurisprudence was not established until 1839.

professors were appearing as medical witnesses. Anne Crowther and Brenda White argue that these developments can be traced to the appointment, in 1821, of Robert Christison as regius professor of medical jurisprudence at Edinburgh.⁷³ He gained notoriety through his teaching, writing, and in particular through his role in a number of high profile murder cases, including that of Burke and Hare, in 1828. Indeed, his reputation became such that ‘his evidence was rarely questioned’.⁷⁴ The ‘celebrity’ status of men such as Christison, in the early, and John Glaister in the late nineteenth and early twentieth centuries cemented the role of the medical witness as fundamental to murder trials. In 1856, knowledge of medical jurisprudence became a compulsory requirement for membership of the Faculty of Advocates, and so, by the mid-nineteenth century, medico-legal training was firmly established in Scotland.⁷⁵

Attempts were also made in the nineteenth century to improve the standard of the evidence of medical men in court. There were guidelines for the medico-legal examination of new-born infants prior to the nineteenth century. In 1765, a set of rules regarding the correct procedure in presenting criminal cases for trial was published, which included specific instructions regarding the post mortem examination of infants:

That the usual experiment by dropping the lungs in water, be tried, to know if it had breathed. The condition of the body of the child must also be inspected; whether it is to the full time; whether it has hair, and nails on the fingers and toes; whether the navel-string has been tied; and whether any, and what marks of violence appear on the body of the child.⁷⁶

This reference to the ‘usual experiment’ suggests that there was medico-legal knowledge on the subject. One important text regarding this medico-legal knowledge was published in 1783 by William Hunter.⁷⁷ Mentioned by a number of commentators, including Hume,

⁷³ Ibid., p. 10.

⁷⁴ Crowther, ‘The Toxicology of Robert Christison’, p. 136.

⁷⁵ Crowther and White, *On Soul and Conscience*, p. 3.

⁷⁶ *Rules to be Observed*, p. 535.

⁷⁷ W. Hunter, *On the Uncertainty of the Signs of Murder, in the Case of Bastard Children* (London, 1783).

Hunter's pamphlet cast doubt over the reliability of certain tests, including the hydrostatic lung test,⁷⁸ in proving that infants had lived and breathed before death.

A number of commentators in the early nineteenth century attributed a lack of rigour in medical testimony to the direct influence of Hunter's pamphlet. William Cummin, for example, was in no doubt as to its importance in criminal investigations into suspected child murder, claiming that 'The judges quote it with implicit faith in its perfection: the bar study it... and medical men probably will not find it safe to venture into the witness box without being familiarly acquainted with its contents'.⁷⁹ However, Cummin continued:

The tendency of Dr. Hunter's tract is to explode all the ordinary tests of child-murder: and being written in a plain and unpretending style, it is frequently found a convenient instrument for those engaged on behalf of the accused. It is known, moreover, that medical practitioners, many of them too indolent to make themselves better informed, have but too often implicitly acquiesced in the positions of Dr. Hunter, joining the lawyers in the cry that medical inquiry on the subject was incapable of attaining to any satisfactory conclusion.⁸⁰

Writing in the same year as Cummin, Alfred Swaine Taylor agreed that Hunter's views 'sufficed to discourage all further investigations on the subject in the greater number of the profession, and to create in our Courts of law that species of scepticism, with regard to this branch of medical evidence, which strips it of all claim to admission'.⁸¹ Moreover,

Taylor accused Hunter of allowing judgement to give way to feelings, particularly in respect to the death penalty and urged medical witnesses not to do the same:

⁷⁸ The hydrostatic lung test involved immersing the lungs of a new-born infant in water. If the lungs 'swam', then this was evidence that the child had respired prior to death. If the lungs sank, this was evidence of stillbirth. For a more detailed discussion of the hydrostatic lung test, see Jackson, 'Suspicious Infant Deaths'.

⁷⁹ W. Cummin, *The Proofs of Infanticide Considered: Including Dr. Hunter's Tract on Child Murder, with Illustrative Notes; and a Summary of the Present State of Medico-Legal Knowledge on that Subject* (London, 1836), p. 1.

⁸⁰ *Ibid.*, p. 4.

⁸¹ A. S. Taylor, *Elements of Medical Jurisprudence* (London, 1836), pp. 12-13.

The practitioner should remember, that, in the capacity of a witness he has a public duty to perform, to which his personal feelings must give way. The degree of punishment attached to a crime, should not be allowed to affect his testimony.⁸²

In Scotland, there was also concern regarding the standard of medical evidence in court. This led to the publication, again in 1836, of a pamphlet written by, amongst others, Robert Christison.⁸³ Circulated to all procurators fiscal in 1839, and regularly updated and circulated into the twentieth century, it outlined the correct procedures involved in the post mortem examination of dead bodies, and the subsequent medical report, stressing ‘points which are of essential consequence in Judicial Investigations, or which are apt to be neglected in common dissections’.⁸⁴ It contained within it a section relating to newborn infants, and provided an extensive list of the various tests that should be carried out. ‘Investigation’, Christison believed, ‘must be exhaustive’, both to ensure the greatest chance of discovering the correct cause of death,⁸⁵ but also to protect the medical witness’s reputation in court: the more rigorous the tests, the more informed he could be under cross-examination.⁸⁶ This was also stressed by other medical writers in the nineteenth century.

Another nineteenth-century development was the concept of diminished responsibility. Defined as ‘a weakness of intellect or mental disorder not amounting to insanity’,⁸⁷ diminished responsibility could restrict a murder charge to one of culpable homicide, by allowing for a special defence of ‘temporary’, or ‘puerperal insanity’ at the time of delivery. Such a defence was lodged at the beginning of the trial, as it was for Jean M’Callum, for example:

The prisoner pleads not guilty, and she says, that at and during her delivery, at the date mentioned in the indictment, she was temporarily so far deprived of her reason, as to render her irresponsible for her acts.⁸⁸

⁸² Ibid., p. 11.

⁸³ Traill et al., *Suggestions*.

⁸⁴ Ibid., p. 2.

⁸⁵ Crowther, ‘The Toxicology of Robert Christison’, p. 139.

⁸⁶ Ibid., p. 131.

⁸⁷ Farmer, *Criminal Law*, p. 153.

⁸⁸ *Justiciary Reports*, M’Callum, Irvine, 3 (1858), p. 188.

The nineteenth century saw a growth of interest in criminal insanity, and with particular reference to child murder, the concept of ‘temporary’ or ‘puerperal’ insanity gained considerable currency,⁸⁹ and can be seen as part of a nineteenth-century discourse which attempted to explain female criminality, and, according to Shani D’Cruze,

[b]ecause ‘the criminal’ was so strongly gendered as male, by the later nineteenth century at least the ideological confusion represented by female criminality had to be displaced by the categorisation of increasing numbers of female offenders as feeble minded.⁹⁰

The problem of infanticide was particularly difficult to explain to contemporaries, since it was antithetical to a woman’s expected role within the family as a mother: a nurturer, not a murderer. In their efforts to account for this ‘crime’ ‘in a way that maintained the mythology of motherhood and the maternal instinct’,⁹¹ a purely medical explanation for such violent behaviour was sought:

Rather than looking at the social meaning of infanticide and its contexts, doctors, lawyers, and judges categorised it as an isolated and biologically determined phenomenon, an unfortunate product of women’s “nature”.⁹²

In England, after much Parliamentary debate from 1880, these ideas were enshrined in the 1922 Infanticide Act.⁹³ In Scotland, the concept of ‘diminished responsibility’ ensured that there was no need for such a law,⁹⁴ and the development of diminished responsibility as a defence is one area which will be explored in this study.

In spite of developments in medical jurisprudence, there were no substantial technological advances in forensic medicine in the period. Writing in 1836, Taylor

⁸⁹ Smith, *Trial by Medicine*.

⁹⁰ S. D’Cruze, ‘Introduction’, in D’Cruze, *Everyday Violence*, p. 5.

⁹¹ E. Showalter, *The Feminine Malady: Women, Madness and English Culture, 1830-1980* (New York, 1996), p. 58.

⁹² *Ibid.*, p. 59.

⁹³ For a comprehensive overview of the debates surrounding English Infanticide Act, see Grey, ‘Discourses of Infanticide’, Ch 2.

⁹⁴ Walker, *Crime and Insanity*, Ch. 7.

conceded that '[i]n questions of poisoning, wounds, and infanticide, medical evidence must be regarded as still in a very defective state',⁹⁵ a situation which remained much the same throughout the nineteenth and early twentieth centuries. As such, Taylor, and other writers, stressed the importance of rigorous and exhaustive testing, combined with a methodical and systematic approach to post mortem examination. The success of such an approach again lay with the individual skill and experience of the medical practitioner, and an analysis of medical reports will identify how the standard of medical evidence varied, both geographically, and over time.

The combination of the lack of technological advancement in forensic medicine, and the medico-legal peculiarities of proving new-born child murder, created conflict and tension, as medical evidence was disputed both during the investigation and in the courtroom. During the investigation, the two medical practitioners sent to examine the body may have disagreed in certain matters, or certain aspects of a medical report may have been unclear. In both cases, Crown Counsel would most likely have required the medical men to be precognosed for clarification of their view on the case, or the medical reports were sent to an academic for his opinion on the evidence. In some cases, if it was possible, another post mortem may even have been demanded. This created tension between the medico-legal profession (which included academic medicine) and local surgeons and physicians, who may well have felt that their ability was being questioned.

These tensions were played out in the court, as medical men disputed the evidence of fellow professionals. These disputes were most obvious in cases where there were no obvious signs of murder, and where there was a question whether or not the infant had been fully born, and had respired before its death, illustrated by Taylor:

In the examination in chief, they [medical practitioners] have sworn that the proofs of the child having breathed after its birth, were sufficiently strong to enable them to assert that the child had lived; while in cross-examination, they have admitted to the existence of fallacies connected with those proofs, which they acknowledged themselves to be unable to answer or refute.⁹⁶

⁹⁵ Taylor, *Elements of Medical Jurisprudence*, p. 13.

⁹⁶ *Ibid.*, p. 11.

These disputes played a fundamental role in directing the prosecutor in his decision as to the appropriate charge, and it is likely that this was the main reason for the predominance of concealment of pregnancy as an alternative charge to murder, for example.

In many cases, medical witnesses were deployed to dispute what seemed like compelling medical evidence, creating a tension between the legal and medical profession. The need to prove that an infant had been fully born before its death may have seemed unnecessary, undoubtedly so when it was clear that the infant had been murdered. One commentator, discussing the outcome of a child murder trial in 1865, in which disputed medical evidence led to the accused walking free, stated with some frustration:

Whether this arises from any defect in the provisions of our law on the matter, or from the unsatisfactory condition of medical science in the investigation of cases of this nature, we cannot now stop to inquire. But it is impossible to avoid the conclusion, especially considering the small proportion which the cases which come to trial bear to the total number of child-murders committed during the year, that some means ought to be taken by the legislature to prevent the rapid spread of this moral pestilence, and to diminish the waste of infant life which is the result.⁹⁷

There was also tension between the legal system and wider society because of the peculiarities of the medico-legal proofs required in proving child murder. Within the community from which the initial accusation came, for example, there may have been little doubt as to a murder having been committed, and a restricted charge or indeed an acquittal based on disputed medical evidence would have led to dissatisfaction.

The professionalisation of medicine

The period from the mid-seventeenth century to the period at the end of this study saw the beginnings and gradual consolidation of the professionalisation of medicine in Britain, the wresting of medical knowledge from ‘unskilled men and women, and quacks’

⁹⁷ C. Rampini, *Trial of Mary Baird or Downie for Child – Murder; with Remarks* (Edinburgh, 1865), p. 1.

to be placed in the hands of professional medical men.⁹⁸ Scotland was at the forefront of this development, the beginnings of which can be seen in 1505 with the Incorporation of Surgeons and Barbers of Edinburgh which, in 1726, became the College of Surgeons. In 1599 the College of Physicians and Surgeons was established in Glasgow College of Physicians was formed in Edinburgh in 1681.⁹⁹ It was in the late seventeenth and the eighteenth century that the process really began to gather pace and by the mid-nineteenth century, 'considerable progress had been made in the organisation and delivery of medical training in Scotland'.¹⁰⁰ Indeed, Scottish medical schools were at the vanguard of medical training and, according to David Hamilton, in the 'first half of the nineteenth century 95 per cent of doctors in Britain with a medical degree had been educated in Scotland.'¹⁰¹ This progress was consolidated in the 1858 Medical Act,¹⁰² which laid the groundwork for the 'organisation, supervision and progress of medicine on a nationwide standard,' and paved the way for the state control of medicine.¹⁰³

The development of the professionalisation of medicine was due to a combination of factors, including increasing fears about public health in the wake of urbanisation,¹⁰⁴ and the development of new technology and the notion that as medicine and surgery became more scientific, so should medical education,¹⁰⁵ and, as discussed above, the beginning of the nineteenth century witnessed the emergence of the medical 'expert'. Importantly, as Shani D'Cruze and Louise Jackson observe, for most of the nineteenth century 'the professionalisation strategies used by the emerging medical elite ensured that this expertise was consolidated in male hands...the opportunity to qualify as a practitioner and to join the prestigious professional associations was closed to women on grounds of sex',¹⁰⁶ until 1892 – due in no small part to the efforts of Sophia Jex-Blake and others –

⁹⁸ R. Porter (ed.), *The Popularisation of Medicine 1650-1850* (London & New York, 1992), pp.4-5.

⁹⁹ J. Jenkinson, *Scottish Medical Societies, 1731-1939: Their History and Records* (Edinburgh, 1993), pp. 53-4.

¹⁰⁰ H. Dingwall, *A History of Scottish Medicine: Themes and Influences* (Edinburgh, 2003), p.196.

¹⁰¹ D. Hamilton, *The Healers: A History of Medicine in Scotland* (Edinburgh, 1981), p. 148.

¹⁰² Medical Act, 21 & 22 Vict. c.90.

¹⁰³ Dingwall, *A History of Scottish Medicine*, p. 172.

¹⁰⁴ Hamilton, *The Healers*, p. 146.

¹⁰⁵ Dingwall, *A History of Scottish Medicine*, p. 193.

¹⁰⁶ S. D'Cruze, and L. A. Jackson, *Women, Crime and Justice in England Since 1660* (Basingstoke, 2009), p. 106.

when women were allowed to enter Scottish universities as undergraduates.¹⁰⁷ By 1908, there were a considerable number of women attending universities,¹⁰⁸ which in turn will have increased the numbers of women doctors in Scotland. Although there were female doctors practising in Scotland from 1878,¹⁰⁹ they were rarely used in courts to provide expert testimony; none of the medical reports analysed in this study were performed by female medical practitioners. The late nineteenth century also witnessed the increasing professionalisation of nursing, which was seen as a role more suitable for women and, as Helen Dingwall states, 'perhaps met with rather less in the way of opposition'.¹¹⁰ But it was not until the First World War, and the efforts of the Scottish Women's Medical Service,¹¹¹ that women doctors and nurses began to gain respect amongst male medical practitioners.

Another important effect of the professionalisation of medicine was the decline in status of the midwife. By the mid-eighteenth century the man-midwife was becoming a more regular feature in the delivery room, due partly to the development of instruments such as forceps and the need for male medical practitioners to earn extra income.¹¹² The demise of the 'handywoman', the untrained midwife was also the result of pressure from other midwives who wanted professionalisation and the first training school for midwives was established in Edinburgh as early as 1726, with Glasgow following suit in 1771.¹¹³ However, the quality of this training should not be overstated: it consisted of a series of lectures, with 'less emphasis on practical skills'.¹¹⁴ Moreover, midwifery was not a full-time profession for most women in Scotland but rather a part-time occupation until after

¹⁰⁷ W. W. J. Knox, *Lives of Scottish Women: Women and Scottish Society 1800-1980* (Edinburgh, 2006), pp. 70-97.

¹⁰⁸ *Ibid.*, p. 90.

¹⁰⁹ Blake, *The Charge of the Parasols*, p. 195. Sophia Jex-Blake was practising from 1878.

¹¹⁰ Dingwall, *A History of Scottish Medicine*, p. 198.

¹¹¹ *Ibid.*, p. 191.

¹¹² J. Donnison, *Midwives and Medical Men: A History of the Struggle for the Control of Childbirth* (London, 1988), p. 34.

¹¹³ R. Mander and L. Reid, 'Midwifery Power' in R. Mander and V. Fleming (eds), *Failure to Progress: The Contraction of the Midwifery Profession* (London & New York, 2002), pp. 3-8; L. Reid, *Scottish Midwives: Twentieth-Century Voices* (East Linton, 2000), p. 2.

¹¹⁴ A. M. Nuttall, 'The Edinburgh Royal Maternity Hospital and the Medicalisation of Childbirth in Edinburgh, 1844-1914: A Casebook-Centred Perspective' (Ph.D. thesis, University of Edinburgh, 2002), pp. 61-2.

the Midwives (Scotland) Act of 1915, which sought to develop a new profession.¹¹⁵ Moreover, as Jacqueline Jenkinson asserts, from the 1830s the Scottish medical profession had been opposed to the formal training of midwives because they ‘had come to realise the importance of obstetrics to their day-to-day practice and income.’¹¹⁶

With regards to this present study, the consolidation of medicine and midwifery into the hands of male medical practitioners during the 19th century had some important effects regarding the witnesses, and the type of evidence, involved in the investigation and prosecution of cases of NBCM&CP. One of these effects, as outlined in Chapter 8, was the significant decline in the number of female medical witnesses (mainly midwives, and some nurses) from the 1830s. The predominance of male doctors as medical witnesses also had a bearing on the testimony provided in court; arguably their evidence will have been influenced more by wider middle-class attitudes towards suspects rather than rumour and local knowledge. This might have had some bearing on judicial attitudes towards suspected NBCM&CP as less emphasis was placed on the local circumstances behind individual cases.

Conclusion

This chapter has provided an overview of the legal framework in Scotland over the nineteenth and early twentieth centuries. It has looked at the various institutions, personnel, procedures and laws, as well as tracing the development of medical jurisprudence, and medico-legal discourses, relating to the investigation and prosecution of suspected NBCM&CP. As well as introducing the legal and medico-legal processes that will be visited in later chapters, it also serves to highlight a number of important themes that will be developed throughout the course of this thesis.

The over-arching theme of the chapter is that the ‘crimes’ of new-born child murder, concealment of pregnancy and culpable homicide, were legal and medico-legal

¹¹⁵ Ibid., pp. 62-3.

¹¹⁶ Jenkinson, *Scottish Medical Societies*, p. 82.

constructions. Once a formal accusation of murder had been made, it was filtered through a number of personnel, procedures, processes, and discourses. In the course of this filtering, a number of factors determined what the eventual 'crime' was to be charged, including the requirements of the laws, medico-legal evidence, procedural rules, the whim of individual prosecutors, and even administrative and economic considerations. However, this chapter has suggested that certain factors were more influential than others; in particular the legal and medico-legal discourses that created the laws, and the crucial role of the post mortem examination in determining the direction of the investigation.

This chapter also suggests that both the 'crime' of concealment of pregnancy, and the concept of diminished responsibility were gendered constructions, in that they were essentially sex-specific. Concealment was a 'crime' that only women could commit, and if is viewed as a punishment of sexual behaviour, this sex-specificity is evidence of a sexual 'double standard', since women suffered for their perceived illicit acts whilst men escaped punishment. Gendered discourses also operated within the legal and medical professions, which were predominantly male, and underpinned many of the debates that linked infanticide with issues such as illegitimacy, prostitution and even housing.

Finally, this chapter argues that the various legal, and medico-legal discourses involved in the construction of the 'crimes' related to suspected new-born child murder, affected the process of investigation and prosecution which, in some cases, could have resulted in certain evidence being prioritised and certain lines of inquiry being ignored. One consequence of this was that the 'crime' that was eventually prosecuted may not have reflected the circumstances in which the initial accusation was made. This thesis contends, then, that an analysis of the pre-trial investigations of suspected new-born child murder and concealment of pregnancy will not only illuminate the process of the construction of 'crime', but will also reveal that new-born child murder, as understood within the communities in which accusations were made, was not necessarily the same as that comprehended by official statistics, medico-legal, social, religious and gendered discourses, contemporary newspapers, or indeed historians.

Chapter Two: Suspicions, signs and discoveries

Introduction

In his discussion of new-born child murder in eighteenth-century England, Mark Jackson states that, '[t]he prosecution of a woman for the murder of her new-born child was...the culmination of a sequence of events that originated in the suspicions, gossip and rumours of the village or township in which the woman lived'.¹ The investigations into suspected new-born child murder and concealment of pregnancy in Scotland between 1812 and 1930 reveal the same process. First, it became the 'report of the country' that a woman was pregnant, and, if she persisted in concealing, or denying, her condition, communities watched closely for any signs of labour or recent delivery, or indeed, a dead body. This chapter examines the signs that led to the initial suspicion within a community that a woman was pregnant, was close to giving, or had recently given birth, and also explores the discovery of the bodies of new-born infants, focussing on where, by whom, and in what circumstances, bodies were found.

Pregnancy

In the eyes of the local community,² initial suspicions of pregnancy tended to be based on the unmistakable signs of pregnancy. The most obvious of these was, 'a gradual and progressive enlargement of the abdomen', from about the third month of pregnancy.³ Laura Gowing notes for early modern England, that '[n]eighbourly surveillance focused on watching women's stomachs',⁴ and this was also true for Scotland between 1812 and 1930, where it was by far the most common sign of pregnancy recorded in the

¹ Jackson, *New-Born Child Murder*, p. 60.

² Here, 'community' is defined as the immediate neighbourhood within which a suspect lived or worked.

³ A. S. Taylor, *The Principles and Practice of Medical Jurisprudence* (London, 1894), p.153.

⁴ Gowing, 'Secret Births', p. 90.

precognitions.⁵ Thus, for Catherine Stewart's neighbours, in 1853, it was 'quite obvious she was with child',⁶ and, discussing Grace Ferguson's appearance in 1867, one witness told investigators that there 'could be no mistake she was pregnant'.⁷ Likewise, in 1874, Christina Watson's belly was so pronounced, the 'conjecture was that she would probably bear twins'.⁸ An increase in size also made it difficult for stays, or corsets, to be worn. For example, Catherine Anderson and Annie Gilroy, in 1890 and 1893 respectively, both aroused suspicion amongst their neighbours when they were forced to remove their stays, as they increased in size.⁹ Similarly, in 1911, May Burgess's employer told investigators,

I was suspicious that she was in the family way. She stopped wearing corsets, and I spoke to her about it, and said 'You must wear your corsets May'. She said 'I don't know what you mean'. I said 'You know fine what I mean'.¹⁰

As well as an increase in size, there are a number of different symptoms of pregnancy, including cessation of the menses, the 'quickenings' (that is, the motion of the child in the womb), back pain,¹¹ and more general signs, some of which were outlined by medical jurist Theodore Romeyn Beck, in 1825:

a languid cast of countenance, nausea, heartburn, loathing of food, vomiting in the morning...occasional depravity of appetite, and congestion in the head which gives rise...to headach [sic], and erratic pains in the face and teeth...The breasts also enlarge...¹²

Of course, most of these symptoms were difficult to detect by others, particularly when a woman was intent on concealing her pregnancy.¹³ Moreover, the ambiguous nature of these signs as a positive indicator of pregnancy may have made the recording of them in

⁵ Mark Jackson, for example, states that in eighteenth-century England '[t]he physical sign most likely to arouse local suspicion was an increase in a woman's size'. Idem., *New-Born Child Murder*, p. 62.

⁶ NAS, AD14/53/486, Catherine Stewart.

⁷ NAS, AD14/67/251, Grace Ferguson.

⁸ NAS, AD14/74/514, Christina Watson.

⁹ NAS, AD14/90/14, Catherine Anderson; AD14/93/7, Annie Gilroy.

¹⁰ NAS, AD15/11/153, May Burgess, Deposition of Mary Nicholson or Bowie.

¹¹ Jackson, *New-Born Child Murder*, p. 61.

¹² T. R. Beck, *Elements of Medical Jurisprudence*, 2nd edition (London, 1825), p. 73.

¹³ Jackson, *New-Born Child Murder*, p. 61.

precognitions immaterial to the case. Nevertheless, a suspicion of a pregnancy often led to a search for further proof of the woman's condition, and occasionally these were recorded in the precognitions.

Beck wrote that 'we should attach great importance to the absence of the menses as indicating pregnancy',¹⁴ and this was the most common sign, after an increase in a woman's size, looked for by communities. Indeed, prior to modern sanitary products, clothing and sheets tended to bear the stains of menstruation as a matter of course, and a stoppage of a woman's monthly courses may well have been noticed. For example, in 1856, on hearing a rumour that her servant was pregnant, Hellen Davidson's employer checked her clothes, and noticed she did not menstruate,¹⁵ while in 1879, a neighbour of Mary McColl 'never saw any signs of her monthly discharges',¹⁶ and, in 1891, whilst not suspecting her fellow servant to be pregnant, Elizabeth Frail told investigators that '[h]aving never seen any signs of her monthly illness I remarked that it was impossible she could not be well if she did not alter'.¹⁷ In the period of this study, a household's dirty linen would usually be washed altogether on a regular basis, making it difficult for women, especially those in service, to conceal a cessation of the menses. Thus, when rumours of kitchen maid Elizabeth Ogilvie's pregnancy reached the laundry woman at Grange Muir House, Anstruther Wester, Fife, in 1862, she 'examined her clothes and saw no signs of her monthly courses'.¹⁸ Again, in 1868, Elizabeth Drysdale's grandmother sought to confirm her suspicions about her granddaughter's condition, and 'watched her linen',¹⁹ and, in 1872, Ann Grant 'observed the washings' of fellow servant Jane Inglis, for the same reason.²⁰

Another sign of pregnancy was the 'quickening', the period from about twelve weeks into the pregnancy when the movement of the foetus could be felt within the womb. Medical jurist, Alfred Swaine Taylor, claimed that this was a sign that '[n]o evidence but that of

¹⁴ Beck, *Elements of Medical Jurisprudence*, p. 75.

¹⁵ NAS, AD14/56/235, Hellen Davidson.

¹⁶ NAS, AD14/79/151, Mary McColl, Deposition of Janet Hall or Andrews.

¹⁷ NAS, AD14/91/93, Agnes Whannel.

¹⁸ NAS, AD14/62/169, Elizabeth Ogilvie, Deposition of Elizabeth Adamson or Lumsden.

¹⁹ NAS, AD14/68/201, Elizabeth Drysdale, Deposition of Elizabeth Scott or Drysdale.

²⁰ NAS, AD14/72/301, Jane Inglis.

the woman herself can establish',²¹ but this was not necessarily true in households where beds were shared. For example, Jean Webster or Taylor 'felt the motion of a child' from within bedfellow Isabell Fraser's belly, in Cairney, Aberdeen, in 1844,²² and the bedfellow of farm servant Margaret Grant – suspected of being pregnant in 1848 – told investigators that she 'felt the child moving'.²³ In cases where pregnant women shared a bed, sleeping with their backs to siblings or fellow servants was a simple way of dealing with this problem. This was the reason Margaret Horsburgh gave investigators as to why she did not notice her bedfellow's condition, in 1841,²⁴ and, in 1872, Jane McDonald claimed that Jane Morrison always slept with her back to her, until the delivery of her child, after which 'she started lying with her face towards her'.²⁵

There are also a number of other signs of pregnancy described by witnesses. In 1843, Helen Turnbull's employer became suspicious that she was pregnant because she became 'weak in her work', specifically churning,²⁶ and, in 1853, Helen Dorward's mother told investigators that she had suggested 'bleeding, then a mustard poultice' for her daughter's sore back, but claimed she did not realise her daughter was pregnant.²⁷ In 1863, Catherine Shepherd's employer stated that she 'latterly complained that she vomited her food', and that

she also refused to take what she used to get for food; for example, she used to get bread and butter and cheese to tea, but latterly she complained that she could not take butter, and wanted something tasty, such as herring.²⁸

Mary McColl's employer suspected that she had morning sickness and sent for a doctor to examine her in 1879,²⁹ and, in 1883, 59-year-old widow Jane Dale Stewart knew Mary McArthur was pregnant because, she told investigators, 'I saw it in her eyes'.³⁰ In 1930,

²¹ Taylor, *The Principles and Practice*, p. 155.

²² NAS, AD14/45/176, Isabell Fraser.

²³ NAS, AD14/48/205, Margaret Grant, Deposition of Elizabeth McCulloch.

²⁴ NAS, AD14/41/116, Grace Anderson.

²⁵ NAS, AD14/72/315, Jane Morrison.

²⁶ NAS, AD14/44/385, Helen Turnbull, Deposition of Angus McDonald.

²⁷ NAS, AD14/53/301, Helen Dorward, Deposition of Ann Ritchie or Dorward.

²⁸ NAS, AD14/63/269, Catherine Shepherd.

²⁹ NAS, AD14/79/151, Mary McColl.

³⁰ NAS, AD14/83/128, Mary McArthur.

postman Hugh Mackay suspected that Robertina MacBeath or Campbell was pregnant because he observed – innocently, no doubt – an increase in the size of her breasts.³¹

Some pregnancies went unnoticed because the physical signs were not apparent. Occasionally, pregnant women were unaware of their condition. For example, in 1813, a doctor was called out to attend Margaret Lockhart, who was feeling unwell, and removed a child that was dead in her womb. A note in the precognition from the sheriff-substitute clearly indicates the woman's defence:

I entered upon the enquiry with considerable prejudice against the woman, but in the course of it, the most serious charges disappeared, and if she and her relations are to be believed, even the concealment of pregnancy is taken off, however incredible it appears for a woman of 27 years of age coming to her full time, without even suspecting herself to be with child.³²

Similarly, in 1814, Jean McKay checked herself into the Royal Infirmary in Glasgow suffering from an unknown illness, for which a doctor had prescribed her mercury. Her pregnancy went undiagnosed, and she was delivered of a child in the Infirmary, which she threw out of a window, and then fled the scene. The prosecuting advocate refused to proceed with a case for concealment of pregnancy, because, he stated:

I scarcely think there is such evidence of concealment or of calling no assistance as a jury could be fairly asked to convict upon. She complained and shewed her belly and asked assistance, she did not say for what but the doctors and nurses might have discovered the disease and the sort of assistance wanted.³³

Again, in Stonehaven, in 1845, Margaret Goodfellow's mother told investigators,

my daughter said 'what is this that has come from me'. I said I did not know; but, on putting my hand below the clothes, I, to my surprise, found a child...I said, on finding the child, 'This is a child – how can this be'. My daughter said 'I dinna ken;' and I think she never did know that she was with child.³⁴

³¹ NAS, AD15/30/104, Robertina MacBeath or Campbell.

³² NAS, AD14/13/67, Margaret Lockhart, Sheriff-substitute's note.

³³ NAS, AD14/14/8, Jean McKay, Advocate-depute's note.

³⁴ NAS, AD14/45/174, Margaret Goodfellow, Deposition of Helen Moncur or Goodfellow.

In some cases women did not appear pregnant because the size of their belly did not increase. In 1864, for example, Martha Reid ‘did not look pregnant’,³⁵ and, in 1887, there was nothing in Isabella Mitchell’s appearance to suggest to her family or neighbours that she was pregnant.³⁶ Conversely, a woman’s belly may already have been large. Thus, in 1845, it was stated that Janet or Jess Duff was a ‘stout made robust woman’, and so witnesses could not tell that she was pregnant,³⁷ and, in 1864, Margaret McDonald was unaware of her farm servant’s condition because ‘she was a fat round girl’.³⁸ Similarly, in 1876, Christina Mackay’s employers assumed that her stoutness was her ‘natural appearance’,³⁹ and, in 1922, there was disagreement amongst Agnes Duncan’s neighbours as to whether or not she was pregnant, because she was a ‘big stout woman’.⁴⁰ The problem was compounded in those cases where a woman arrived into a community already pregnant. Jean Watson, for example, was eight months pregnant when she came to work at Caldwell House in Beith, Ayr, in 1840, and although fellow workers ‘noticed she was bulky’, they had ‘no suspicions she was with child’.⁴¹ Likewise, Mary Sinclair was three months pregnant when she came to work in Glasgow in 1886, but neither her employers, nor her fellow servants, were aware of her condition.⁴² Indeed, of the forty-nine cases in which a pregnancy was not suspected in the community, only six involved women who had been employed in the same place for ten months or more.

Signs of labour and recent delivery

In most cases, a woman suspected of being pregnant was watched closely for any signs that she was in labour, or had been recently delivered of a child. Mark Jackson comments that in general ‘concealing the signs of labour and child-birth presented even greater

³⁵ NAS, AD14/64/136, Martha Reid.

³⁶ NAS, AD14/87/64, Isabella Mitchell.

³⁷ NAS, AD14/45/219, Janet or Jess Duff.

³⁸ NAS, AD14/64/125, Ann Cameron.

³⁹ NAS, AD14/76/150, Christina Mackay.

⁴⁰ NAS, AD15/22/40, Agnes Duncan and Robert Duncan.

⁴¹ NAS, AD14/40/144, Jean Watson.

⁴² NAS, AD14/86/94, Mary Sinclair.

problems than concealing ... pregnancy'.⁴³ Indeed, labour could come on at any moment, and when it did, if a woman who was suspected of being pregnant complained of feeling unwell, or was suddenly confined to her bed, this generated suspicion that she was in labour. For example, in 1835, when Elizabeth Whyte complained of feeling ill, her neighbours and fellow field workers immediately suspected she was in labour,⁴⁴ and, in Creetown, Kirkcudbright, in 1847, a steward officer was informed that Elizabeth Diamond or Shaw had been 'ill in the night', and that the illness was suspected to be labour.⁴⁵ Likewise, in Rerwick, Kirkcudbright, in 1889, farmer's wife Marion Brown went into the room of her domestic servant, after she had had 'a bad night', in the belief that she had been in labour, and discovered the dead body of a new-born infant in her trunk.⁴⁶

On a few occasions, relatives, friends or employers were unaware of the real reason for a woman's illness. For example, in Kilmallie, Argyll, in 1842, Margaret or Peggy McLachlan, 'appeared to be experiencing great pain, as she very often ejaculated 'oich' 'oich'' which, a witness explained to investigators, 'in the Highlands is indicative of acute pain'. The real cause of her pain, however, went unnoticed.⁴⁷ Again, in 1845, domestic servant Elizabeth Marshall complained of 'pain within her', but refused to allow her concerned employers – who did not realise she was in labour – to send for a doctor,⁴⁸ and, in 1846, Helen McHarrie claimed she was unaware that her bedfellow was in labour, after she awoke complaining that she was 'all pains inside', and who for the next two hours was 'vomiting occasionally'.⁴⁹ Likewise, in Glasgow, in 1852, Margaret Cairns was so convinced that her sister – who was in labour – was dying from dropsy that rather than call a doctor, she sent for a priest,⁵⁰ and, in Govan, Renfrew, in 1854, Isabella

⁴³ Jackson, *New-Born Child Murder*, p. 65.

⁴⁴ NAS, AD14/35/140, Elizabeth Whyte.

⁴⁵ NAS, AD14/47/241, Elizabeth Diamond or Shaw.

⁴⁶ NAS, AD14/89/49, Margaret Austin.

⁴⁷ NAS, AD14/42/62, Margaret or Peggy McLachlan, Deposition of Eliza McPhee.

⁴⁸ NAS, AD14/45/376, Elizabeth Marshall.

⁴⁹ NAS, AD14/46/126, Margaret Templeton.

⁵⁰ NAS, AD14/52/50, Ann Irvine or Shirra.

Sarah Potter was concerned that the labour pains her servant was actually experiencing were a symptom of cholera.⁵¹

One of the most important determinants of where delivery took place was where the pregnant woman lived, and the opportunities this afforded for finding a suitable place to give birth alone. For most women, this place was indoors, sometimes in houses occupied by the women themselves, but usually in houses belonging to their families, employers, or in which they were lodgers. Most deliveries occurred in bed, but they also occurred in kitchens, privies, cellars and auxiliary buildings such as wash-houses and other offices. In rural areas, a variety of outbuildings provided relatively secluded spaces for child-birth, such as byres, barns, and cart sheds. Beyond the house and grounds, rural areas also offered numerous quiet, secluded spaces, which could be reached quickly at the onset of labour: including fields and woods. Arguably, pregnant women in urban districts had far fewer options when labour came on, for two reasons: first, because there was less secluded space in these areas and, secondly, because women in such areas often had fewer opportunities to leave their homes, or work, without arousing suspicion. As such, deliveries in urban areas were overwhelmingly indoors, although children were also delivered in outdoor (often communal) spaces such as privies, laundry rooms in tenement basements, and other shared rooms and outbuildings.

Another factor determining where a delivery took place was the length of time between the onset of labour and the birth of the child. If this gap was small, it was not easy for women to contrive to be alone in a place suitable for secret delivery.⁵² Ann Tain's labour, for example, 'came suddenly', in a turnip field, in 1819,⁵³ and Jane McIntyre's labour came on whilst 'thinning the marigold wurzel' in Barr, Ayr, in 1858: after complaining that 'her legs were sleepy', she stopped working and gave birth in a neighbouring field.⁵⁴ Likewise, in many cases, women shared rooms, or even beds, with relatives, fellow servants, lodgers, and even members of their employers' families, and labour often came

⁵¹ NAS, AD14/54/16, Jess McKay.

⁵² Jackson, *New-Born Child Murder*, p. 66.

⁵³ NAS, AD14/19/219, Ann Tain.

⁵⁴ NAS, AD14/58/166, Jane McIntyre.

during the night. In these circumstances, most women attempted to leave their rooms to be delivered elsewhere in the house, or, if possible, outside. In 1840, for example, the laundry maid at Caldwell House, Beith, Ayr, heard fellow servant Jean Watson in the water closet, and 'feared things were not right'.⁵⁵ Similarly, in 1864, Catherine McQuien left her room in the middle of the night 'saying she had looseness in the bowels, and said she would have to go outside', and was delivered of a child in the kitchen,⁵⁶ and in Mearns, Renfrew, in 1882, farmer's wife, Marion Wilson, heard moaning in the kitchen early one morning, and saw that attempts had been made to clear up blood from the kitchen floor. A doctor was called, who removed the afterbirth from farm servant Jane Gallocher.⁵⁷ Again, in Golspie, in 1885, servant Margaret Morrison's new-born child was 'born on the green outside the house between three and four in the morning'.⁵⁸

In some cases, however, the gap between labour and delivery was such that women were forced to give birth there and then, sometimes with witnesses present. For example, in 1842, Margaret Buchanan or Reid was delivered in the same room as her employer's nine-year-old daughter, Marion Lindsay, who told investigators that,

one night...while [she] was sitting at the kitchen fire, and the prisoner was lying in bed, [she] heard the prisoner moaning, but very low, and observed that she was very restless. That in the course of two or three minutes afterwards, [she] heard the cry of an infant, and saw the prisoner...with an infant in her hands....⁵⁹

Again, in 1845, in Liberton, Edinburgh, Helen Mitchel or Johnston was forced to deliver her child by the side of the road, whilst two witnesses looked on,⁶⁰ and, in 1862, Helen Armstrong gave birth whilst the seven-year-old daughter of the family she lodged with was watching. The girl deposed that she 'heard the child cry twice, then Helen put it under the bed'.⁶¹ Likewise, in the same year, Jane Watt gave birth in the same bed as a

⁵⁵ NAS, AD14/40/144, Jean Watson.

⁵⁶ NAS, AD14/64/288, Catherine McQuien, Deposition of Marion Mackenzie.

⁵⁷ NAS, AD14/82/120, Jane Gallocher.

⁵⁸ NAS, AD14/85/91, Margaret Morrison.

⁵⁹ NAS, AD14/42/224, Margaret Buchanan or Reid.

⁶⁰ NAS, AD14/45/299, Helen Mitchel or Johnston.

⁶¹ NAS, AD14/62/282, Helen Armstrong.

fellow servant Elizabeth Henry, who thought Watt had ‘had a flooding’,⁶² and Hellen Crockatt delivered her child in front of witnesses in her room at Glamis Castle, in 1873 – one witness deposed to having heard a ‘choked cry’ coming from beneath her petticoats.⁶³ Similarly, in 1879, Elizabeth McClure was delivered on the floor next to the bed of a fellow servant, who told investigators that when the child began to cry, McClure ‘began to cough to drown the noise’,⁶⁴ and, in the same year, Elizabeth Barron witnessed the birth of fellow servant Johanna McLennan’s new-born female infant:

I was in the bedroom when she gave birth to a child. She was standing at the bedside when the child dropped from her into the chamber pot. She put a piece of paper over it. I left the room at once when I saw what happened. I did not speak to her about it.⁶⁵

In Kirkcaldy, in Fife, in 1883, Isabella Paton saw blood dripping from her sister, and ‘heard something heavy fall from her’ at their parents’ house,⁶⁶ Jane Macdonald gave birth to her child on board a steamship, in 1887: ‘[a] sailor came just as the child was being born, and he assisted me to a warm place’,⁶⁷ and in Stranraer, in 1927, Robert Heron saw his daughter’s child ‘falling from her legs into a chamber pot’.⁶⁸

Even for those women who had a separate room, or separate lodgings, or had managed to find a secluded place in which to give birth, there was always the danger that the noises of child-birth and delivery would be heard. For example, Agnes Pollock’s employer ‘heard the cries of childbirth’ coming from her room, in Carnwath, Lanark, in 1841,⁶⁹ Agnes Locke’s screams of child-birth could be heard from outside her house, in Kirkcudbright, in 1859,⁷⁰ and farm servant John Malcolm immediately informed a constable after he heard the sound of Catherine Cockburn’s screams coming from her

⁶² NAS, AD14/62/159, Jane Watt.

⁶³ NAS, AD14/73/152, Hellen Crockatt.

⁶⁴ NAS, AD14/79/103, Elizabeth McClure, Deposition of Margaret Forrest.

⁶⁵ NAS, AD14/79/270, Johanna McLennan otherwise Joana McLennan otherwise Joan McLennan.

⁶⁶ NAS, AD14/83/224, Elizabeth Paton.

⁶⁷ NAS, AD14/87/9, Jane Macdonald.

⁶⁸ NAS, AD15/27/104, Mary Lynch Heron.

⁶⁹ NAS, AD14/41/84, Agnes Pollock.

⁷⁰ NAS, AD14/59/131, Agnes Locke.

house, in the same year.⁷¹ The noise most likely to be heard, however, was that of the infant itself. Thus, in 1818, Sophia Ross's sisters both heard the crying of a child coming from her room, in St. Nicholas, Aberdeen,⁷² and two fellow servants of Ann McIntosh claimed that they heard the cries of a new-born infant from her room, in Cooperstone Buildings, Aberdeen, in 1829.⁷³ Likewise, Catherine Nicolson deposed of hearing a sound 'of a choked or suppressed nature' coming from Mary Macarthur's room in Portree, Skye, in 1838,⁷⁴ and in Kincardine, Ross, in 1859, Flora Munro 'heard two cries like a kitten being suffocated', and after seeing blood, she suspected a child had been delivered by her lodger, Dolina Ross.⁷⁵ Again, in 1864, in Canonbie, Dumfries, on hearing the cries of a child from the next-door house, one witness exclaimed, 'she has it now',⁷⁶ and in a case from Bo'ness, Linlithgow, in 1875, a four-year-old girl deposed that:

I saw Maggie Marshall go out by the front door into the garden. – she had on a new frock. – I stood at the garden door and I heard a noise in the 'wee house' and I went away and told mamma. I dinna ken what kind of noise it was. – It was not Maggie Marshall crying. – The noise began a wee while after Maggie went into the wee house.⁷⁷

Similarly, farmer's wife Elizabeth Benny heard an 'unearthly sound', in Kilsyth, Stirling, in 1884, and discovered her servant's new-born infant, still alive,⁷⁸ and retired miner Alexander Scott heard a noise 'like a cat caught in a trap' in a wood near his house, in Carnwath, Lanark, in 1911, which turned out to be the new-born infant of his servant, Mary Todd.⁷⁹

⁷¹ NAS, AD14/59/318, Catherine Cockburn.

⁷² NAS, AD14/18/96, Sophia Ross.

⁷³ NAS, AD14/29/203, Ann McIntosh.

⁷⁴ NAS, AD14/38/4, Mary Macarthur.

⁷⁵ NAS, AD14/59/6, Dolina Ross.

⁷⁶ NAS, AD14/65/172, Margaret Bell or Banks, Advocate depute's note.

⁷⁷ NAS, AD14/75/254, Margaret Marshall, Deposition of Margaret Russell Baird.

⁷⁸ NAS, AD14/84/315, Isabella McKellar.

⁷⁹ NAS, AD15/11/53, Mary Todd.

Signs of recent delivery

Mark Jackson's observation for eighteenth-century England that in cases of suspected new-born child murder, '[d]irect witnesses to child-birth were...rare'⁸⁰ – or at least those witnesses willing to admit it – is also applicable to Scotland between 1812 and 1930. Yet, whilst in most cases women did manage to give birth alone, communities were quick to notice the signs of recent delivery. The first immediate indication that a specific woman had been delivered was an alteration in her appearance, specifically a reduction in her 'bulk'.⁸¹ For example, speaking to investigators in 1830, Janet Hunter attested to the reports that Mary Hamilton had been with child, and to a 'sudden change' in her appearance,⁸² and a neighbour of Jane Hutton noticed a change in her size, as she explained to investigators, in Dumfries, in 1852:

Latterly she had quite the appearance of a woman about to be confined in child birth. In the latter end of the week ending 15th May current she was in my house two days sewing, and then her appearance was as above described. I did not again see her until last Friday when her size was quite changed, and her appearance also. The bulk was gone.⁸³

Likewise, in 1863, Christian McFarlane's neighbours noticed that 'she was now 'single' – the breadth of her back being much reduced',⁸⁴ and, in Linlithgow, in 1872, Mary Meldrum's neighbours notified the police after they noticed a reduction in her size, but no subsequent 'child or burial'.⁸⁵ Again, in 1875, in Gordon, Berwick, police constable McGregor received a letter, in which the anonymous author wrote:

I do not think it wrong to let you know that one Isabella Telfer in the service of Mr Lyall as housemaid has given birth to a child on the 9 or 10 of this month and is concealing it and every person that has seen her sees plainly that she has had a child. And it must have been a child to its time by her appearance before.⁸⁶

⁸⁰ Jackson, *New-Born Child Murder*, p. 66.

⁸¹ *Ibid.*, pp. 67-8.

⁸² NAS, AD14/30/201, Mary Hamilton.

⁸³ NAS, AD14/52/415, Jane Hutton, Deposition of Agnes Armstrong or Beattie.

⁸⁴ NAS, AD14/63/278, Christian McFarlane.

⁸⁵ NAS, AD14/72/357, Mary Meldrum.

⁸⁶ NAS, AD14/75/229, Isabella Telfer.

The most common sign of recent delivery recorded in the precognitions was the presence of blood. Mark Jackson notes that blood was ‘regarded as a natural product of child-birth’ and, particularly in those cases in which a pregnancy was suspected, was usually interpreted by the community as a sign of a child having been delivered.⁸⁷ Bloodstains were usually found in beds and bedclothes. For example, in 1848, when housekeeper Helen Scott noticed bloody stains on Isabella Barron’s bedclothes, she suspected that she had borne a child,⁸⁸ and, in 1849, Mary Abernethy, on observing that her daughter’s bed ‘was all blood’, said to her, ‘dear me Ann, what is this, you are in an awful mess’.⁸⁹ Blood was also noticed on women’s clothing. Thus, Barbara Gibson became suspicious when she noticed ‘blood oozing through’ the shift of fellow farm servant, Barbara Norrie, in Inverarity, Forfar, in 1855,⁹⁰ and, in the following year, Jean Clark suspected that Helen Merchant had been recently delivered when she observed her ‘washing bloodstained clothes’, in Arngask, Fife.⁹¹ The discovery of large quantities of blood elsewhere could also lead to suspicions of recent delivery. For example, in Paisley, Renfrew, in 1833, spirit dealer Hugh Walker became suspicious that Jean Robertson had been delivered when he noticed blood dripping into his cellar from her house above,⁹² and when blood and butter – which had been used to assist in the delivery – was discovered in a field in Kilwinning, Ayr, in 1860, it was suspected that a local woman had given birth there.⁹³ Similarly, in 1911, miller’s wife, Margaret Shaw Craw, noticed blood on the bathroom floor, and, she told investigators, on looking in a press, or cupboard, ‘I noticed a small pile of bloodstained clothing. I did not touch it, but as I watched it, I thought I saw it move’.⁹⁴

Blood was not the only product of child-birth discovered by witnesses. For example, in 1824, Elspet Gordon, who had borne twelve children of her own, immediately recognised the substance in her servant’s bed as ‘lochial discharge’, specifically produced during

⁸⁷ Jackson, *New-Born Child Murder*, p. 66.

⁸⁸ NAS, AD14/48/433, Isabella Barron.

⁸⁹ NAS, AD14/49/91, Ann Abernethy.

⁹⁰ NAS, AD14/55/239, Barbara Norrie.

⁹¹ NAS, AD14/56/242, Helen Merchant, Deposition of Jean Clark.

⁹² NAS, AD14/33/194, Jean Robertson.

⁹³ NAS, AD14/60/193, Janet Bryan.

⁹⁴ NAS, AD15/11/82, Isabella Vallance Caskie or Tollman.

delivery,⁹⁵ and, in Prestonkirk, Haddington, in 1841, Alison Punton's mother discovered an afterbirth, although the body of the child her daughter was suspected of delivering was never found.⁹⁶ Similarly, in 1850, Ann Robertson, along with another servant at Rescobie Manse, in Forfar, heard a child's cry in the gig-house, and searched for the child in fellow servant Hannah Mitchell's room: they 'opened the Prisoner's chest and upon looking in ... saw what we then thought was the body of a stillborn child',⁹⁷ but which turned out to be an afterbirth, and in Neilston, Renfrew, in 1880, Mary Catterson's mother washed her sheets and found something 'like an afterbirth, but yet not like it'.⁹⁸

The precognitions also record a number of other signs of recent delivery, such as the smell of child-birth. For example, the 'green smell' coming from the person of Helen Duncan was proof enough for Janet Wright that Duncan had recently given birth in Falkirk, in 1843,⁹⁹ and in Inverness, in 1858, Margaret MacDonald recognised the smell of Christina Macleod's recent delivery, but commented that the 'stench was horrid, much worse than is usual at a birth'.¹⁰⁰ Again, in 1910, farm servant George McGregor told investigators that:

on the monday night the 25th february we were playing cards in the farm kitchen and the accused was sitting opposite me, and at that time I smelled a nasty smell coming from her but I could not describe the smell, I never smelled the same odour about her before.¹⁰¹

McGregor must have realised what the smell was, though, as he later told his employer that 'Annie had lost her calf'.¹⁰²

⁹⁵ NAS, AD14/24/93, Janet Stewart.

⁹⁶ NAS, AD14/41/249, Alison Punton. Arguably, without the afterbirth, this case may not have gone to trial. Indeed, the discovery of the afterbirth was important in cases where the body was missing as it could be used as evidence of the birth of a full grown child, and thus warrant a prosecution under the charge of concealment of pregnancy.

⁹⁷ NAS, AD14/50/600, Hannah Mitchell.

⁹⁸ NAS, AD14/80/128, Mary Catterson.

⁹⁹ NAS, AD14/44/397, Helen Duncan.

¹⁰⁰ NAS, AD14/58/3, Christina Macleod.

¹⁰¹ NAS, AD15/10/166, Annie French.

¹⁰² *Ibid.*, Deposition of Leith Emslie Longmore.

Another sign that led to suspicions of recent delivery was evidence of a recent burial. Farmer's wife, Margaret Anderson, for example, suspected that outdoor worker, Janet Rennie, had given birth after she saw 'earth turned over in a wood' and noticed a shovel in the cow shed, in Dunning, Perth, in 1859.¹⁰³ In 1870, it was the discovery of a bloodstained knife that alerted the employees of the Tontine Hotel, in Cupar, Fife, to the fact that the cook, Annie Maxwell or Gibson, had given birth. After finding the new-born infant, with its throat cut, one of the kitchen maids exclaimed, 'That's what the bloody knife's been about today'.¹⁰⁴

Some signs of child-birth were specific to certain areas of Scotland. For example, in Stornoway, on the Isle of Lewis, in 1862, servant Ann Macauley suspected her employer had just given birth when she was asked to get her three eggs with some hot water. She told investigators that 'I know that this sort of drink, composed of eggs and water is often given to women after child birth – especially in this Island so as to strengthen them'.¹⁰⁵ Similarly, in 1930, in Farr, Sutherland, police constable Robert Oliver suspected that Robertina MacBeath or Campbell had been recently delivered after he saw her burning brown paper which, he explained, 'in this area...is used to protect beds during confinement'.¹⁰⁶

The discovery of the body

A successful prosecution in a case of suspected new-born child murder required as clear a link as possible between the dead body and the suspected murderer. Consequently, investigators recorded in detail the circumstances behind the discovery of new-born infants: where they were found, by whom, and in what circumstances. This section, then, focuses on the location and condition of, as well who discovered, the bodies of dead new-born infants in Scotland between 1812 and 1930, an aspect of new-born child murder that

¹⁰³ NAS, AD14/59/73, Janet Rennie.

¹⁰⁴ NAS, AD14/70/239, Annie Maxwell or Gibson.

¹⁰⁵ NAS, AD14/62/140, Christina Macauley Campbell.

¹⁰⁶ NAS, AD15/30/104, Robertina MacBeath or Campbell.

has not been treated in any significant way by historians. Such a discussion is important because, as well as providing an interesting survey of the circumstances behind the discovery of the bodies of new-born infants in Scotland in this period, it can help to cast some light on the difficulties faced by women (and men) in their attempts to conceal bodies.

The total number of new-born infants among the cases analysed in this study is six hundred and six.¹⁰⁷ Table 2.1 shows that almost half of these bodies were discovered in the houses or grounds of the suspects' residence. The reason for this is threefold. First, the house was also the most likely place for delivery. Indeed, it is probable that in the majority of cases the body was discovered in the same place, or at least near to, the place where the birth took place. Secondly, it was difficult for women to dispose of a body quickly – particularly immediately after delivery, when they may have been physically incapable of doing so. Lastly, communities were quick to suspect labour and delivery, and bodies were found quickly, before they could be disposed of more permanently. Even if a delivery within the house had not been suspected, the presence of a dead body would usually be betrayed by the smell of decomposition. For example, in Lilybank, Dundee, in 1862, the woman living below Jane McDougall complained of a 'bad smell in the land', and saw maggots falling through the ceiling, and discovered the decomposing corpse of a new-born infant, hidden under the floor of the upstairs apartment,¹⁰⁸ and a police inspector who called at Betty Park's house in 1879 told investigators that he did not believe her story that the child had been taken away, because, he said, 'I thought I smelt a dead body in the room'.¹⁰⁹

¹⁰⁷ This includes three sets of twins and one case in which two bodies were discovered, one of which had been dead for over a year.

¹⁰⁸ NAS, AD14/63/242, Jane Watson or McDougall, Deposition of Agnes Langmuir.

¹⁰⁹ NAS, AD14/79/31, Betty Park, Deposition of John Richardson.

Table 2.1: Locations of the dead bodies of new-born infants

Location of body	Number	% of total ^a	Rural areas ^b (no.)	Urban areas (no.)	Discovered by chance (no.)
House	64	11	38	26	7
Bedroom	16	3	9	7	0
Bed	50	8	44	6	3
Trunk	45	7	31	14	2
W/C	20	3	11	9	5
Garden	38	6	29	9	8
Rubbish heap	17	3	11	6	7
Outbuilding	30	5	24	6	4
House/grounds total	280	46	197	83	36
Outdoors	89	14	65	24	18
Water	52	9	44	8	31
Wood	28	5	27	1	7
Churchyard	28	5	25	3	3
Outside of house total	197	33	163	36	59
Found alive	25	4	18	7	4
Missing	36	6	31	5	0
Not stated	68	11	56	12	1

Source: NAS, AD14/15, Criminal Precognitions.

^a n = 606 (new-born infants discovered or missing).

^b Rural areas are here defined as places that, in the 1901 census, had fewer than 5000 inhabitants.

Of those bodies discovered within houses and grounds, the majority were discovered within the house in which the accused was living. For example, in 1824, house servant, Susan Houston, concealed her new-born male child in the coal cellar of her Edinburgh employer's house,¹¹⁰ and Margaret Buchanan or Reid's dead infant was also discovered in her employer's coal cellar, in Glasgow, in 1842.¹¹¹ Similarly, Catherine Wood's employer found her new-born female infant under a pile of coal in the washing-house of her house in St. Andrews, in 1877,¹¹² and, in 1883, Mary McCartin's child was discovered hidden in a box in the kitchen of her parents' house in Maryhill, Glasgow.¹¹³ Some hiding places were more inventive. Mary Scott or Swan, for example, hid her dead new-born infant inside an 'old fashioned eight day clock', in 1885,¹¹⁴ and it took police two attempts to discover the body of Sarah Boyd's new-born female infant, which had

¹¹⁰ NAS, AD14/24/30, Susan Houston.

¹¹¹ NAS, AD14/42/224, Margaret Buchanan or Reid.

¹¹² NAS, AD14/77/252, Catherine Wood.

¹¹³ NAS, AD14/83/101, Mary McCartin and Mary Gillespie or McCartin.

¹¹⁴ NAS, AD14/85/300, Mary Scott or Swan.

been hidden within the woodwork of her father's kitchen, in London Road, Glasgow, in 1920.¹¹⁵

Water closets, or privies, were also occasionally used by women to dispose of new-born infants. In 1812, for example, the body of chamber maid Elizabeth Collins' or Callow's new-born infant was found in the water closet at the Tontine Inn, in Greenock,¹¹⁶ and, at Caldwell House, Beith, Ayr, in 1839, a servant 'heard the pump of the water closet drawn' one night, and after seeing blood in a chamber pot the following morning, discovered a dead new-born infant in the water closet.¹¹⁷ From the mid-nineteenth century, particularly in urban areas, pipes often connected domestic water closets and sinks to common drains and sewers, and these pipes were occasionally used to dispose of dead bodies. Thus, in 1870, Elizabeth Cuthbertson's dead infant was discovered in a cesspool connected to the water closet of the Glasgow flat in which she was a domestic servant, 'minus the head',¹¹⁸ and, in 1882, parts of a new-born infant were discovered in a drain at Blackett Place, Edinburgh.¹¹⁹ The suspect, on hearing that the remains had been discovered, said, 'My God I can never face the world again! [...] I may as well tell you the truth ... I had a child but it wasn't alive – I cut it up and put it down the water closet'.¹²⁰

The majority of bodies found indoors were discovered in the bedroom. For example, Mary Lamb's dead new-born male infant was discovered in a cupboard, or 'press', in her room in Glenbervie, Kincardine, in 1823,¹²¹ and Mary Ann Brownlie or Mackie hid her dead new-born male infant in a drawer in her room, in 1854.¹²² Most bodies were found in, or around, the bed, sometimes immediately following delivery. For example, a servant of widow Christina Campbell deposed in 1862 that she saw her mistress's child in the

¹¹⁵ NAS, AD15/20/96, Sarah Boyd.

¹¹⁶ NAS, AD14/12/88, Elizabeth Collins or Callow.

¹¹⁷ NAS, AD14/40/144, Jean Watson, Deposition of Jean Brown.

¹¹⁸ NAS, AD14/70/32, Elizabeth Cuthbertson.

¹¹⁹ NAS, AD14/82/47, Jessie Peattie.

¹²⁰ Ibid., Deposition of David Mackenzie.

¹²¹ NAS, AD14/23/189, Mary Lamb.

¹²² NAS, AD14/54/170, Mary Ann Brownlie or Mackie.

bed next to her, and that '[t]he child was lying with the head close to the vagina',¹²³ and, in 1880, Janet McDonald told investigators that after hearing Fanny Walker groaning in her bed:

I asked her what was the matter with her and if it was cramp. She said it was worse than cramp. She lifted the clothes and I saw the child lying beside her. It was black and dark in colour and quite dead.¹²⁴

Beds in nineteenth and early twentieth-century Scotland often had straw mattresses, within which dead infants were hidden. Mary MacArthur's infant, for example, was 'hidden in the straw of her bed' on Portree, Skye, in 1838,¹²⁵ and, in 1857, farm servant Catherine Nicolson discovered amongst the straw of her bed the dead new-born infant of its previous occupant, housemaid Euphemia McDonald.¹²⁶ In a case from Dumbarton in 1866, the bodies of two children were discovered in the straw of Bridget Quinn's bed, one a recently delivered new-born female child, and the other 'flattened' and 'completely dry'. The decay was such that medical witnesses were unable to determine the sex of the child, which must have lain within the bed for over a year.¹²⁷ Other areas of the bed in which infants were discovered included the 'bed head',¹²⁸ the bed 'tick',¹²⁹ and, in 1890, Margaret Davidson's employer pulled down her folding bed to reveal the dead body of a new-born infant on top of the bedclothes.¹³⁰

Bodies were also discovered in a woman's trunk or chest, which were most likely viewed by some women as the most convenient temporary location for dead bodies. In Clackmannan, in 1814, Katharine Ramsay, for example, kept her dead new-born infant in her chest for two days before it was discovered.¹³¹ The employers of Mary Cameron discovered the dead body of a new-born female infant in a basket in her chest in 1837,¹³²

¹²³ NAS, AD14/62/140, Christina Macauley or Campbell.

¹²⁴ NAS, AD14/80/82, Fanny Walker, Deposition of Janet McDonald.

¹²⁵ NAS, AD14/38/4, Mary MacArthur.

¹²⁶ NAS, AD14/57/364, Euphemia McDonald.

¹²⁷ NAS, AD14/66/27, Bridget Quinn.

¹²⁸ See, for example, NAS, AD14/54/296, Elizabeth Duncan.

¹²⁹ See, for example, NAS, AD14/63/234, Margaret Kininmonth.

¹³⁰ NAS, AD14/90/70, Margaret Davidson.

¹³¹ NAS, AD14/14/50, Katharine Ramsay.

¹³² NAS, AD14/37/32, Mary Cameron.

and, in 1896, Sarah Jane Murphy's new-born infant was discovered – its throat cut – inside Sarah's tin 'japanned box'.¹³³ Similarly, in 1922, the dead body of Barbara MacConnachie's child was discovered in her suitcase, in her bedroom in Strachur, Argyll.¹³⁴

In his discussion of infanticide in late nineteenth- and early twentieth-century England, Daniel Grey observes that 'the methods of disposing of a body ... seem to have been almost identical between town and countryside'.¹³⁵ Whilst this is generally true of Scotland between 1812 and 1930, Table 2.1 shows that, in urban areas, bodies were more likely to be discovered in or around the house. Of the one hundred and forty-three urban cases in which a dead body was discovered, 70 per cent were discovered in the house or grounds. The comparable figure for rural Scotland is 58 per cent. The reason for this is twofold. First, in urban areas there were fewer opportunities for the disposal of a body outdoors, and secondly, it was more difficult in urban areas for some women, servants in particular, to leave the house without arousing suspicion. Elizabeth Wilkie, for example, concealed the dead body of her new-born infant in her bed tick for three weeks before it was discovered, in King Street, Dundee, in 1812,¹³⁶ and Christian Craig kept her dead child in the house for almost three months before rolling it in a cloth and leaving it in a nearby close, in Aberdeen, in 1831.¹³⁷ There were, however, other options for women who did not want to keep their infant indoors. Some women, as discussed above, put their infants down water closets and drains, whilst others took more desperate measures: Elizabeth Edwards and Ann McQue, for example, threw their new-born infants from the windows of the tenement flats in which they were servants, in Glasgow in 1840, and in Edinburgh, in 1860 respectively.¹³⁸

A number of bodies were discovered within the grounds of the house in which the mother of the child lived, or worked. Most bodies were found buried, or concealed, in the garden.

¹³³ NAS, AD14/96/27, Sarah Jane Murphy.

¹³⁴ NAS, AD15/22/55, Barbara MacConnachie.

¹³⁵ Grey, 'Discourses of Infanticide', pp. 486-7.

¹³⁶ NAS, AD14/12/6, Elizabeth Wilkie.

¹³⁷ NAS, AD14/31/75, Christian Craig.

¹³⁸ NAS, AD14/40/236, Elizabeth Edwards; AD14/60/260, Precognition against Ann McQue.

In 1833, for example, servant Catherine McLeod's new-born infant was discovered in the grounds of the manse at which she worked, in Daviot, Inverness, 'covered with sand and stones',¹³⁹ and Ann Brechin wrapped the dead body of her daughter's new-born child 'in a guano bag' and buried it in her garden', in Kirkden, Forfar, in 1862.¹⁴⁰ Occasionally, bodies were found in rubbish heaps. Euphemia Grieve, for example, threw the dead body of her new-born infant on to a 'midden' in Wemyss, Fife, in 1837,¹⁴¹ and in Auckinleck, Fife, in 1856, Matthew McTurk had his ash pit cleaned out, in which was discovered a dead new-born male child.¹⁴² Likewise, a police constable discovered the dead body of Robertina Campbell's new-born female infant in the ash pit of her house, in Farr, Sutherland, in 1930.¹⁴³ In urban areas, most of the land outside of houses and flats was communal and, as discussed below, bodies were much more likely to be discovered by chance in these spaces. For example, in 1853, Margaret McGeichan's dead new-born female child was found at the back of the tenement in which she lived in Glasgow by a rag-gatherer.¹⁴⁴ Sophie Wallace put her new-born female child in a parcel before leaving it on the back green in Gordon Street, Leith, in 1872,¹⁴⁵ and, in 1886, Mary Sinclair's dead infant was found in an ash pit in Hillhead Street, Glasgow.¹⁴⁶

Outbuildings also provided spaces for concealing dead bodies. In rural areas, particularly on farms, there were a variety of buildings in which infants could be delivered and concealed. The body of Elizabeth Sutherland's new-born child, for example, was found in her father's barn, in Ellon, Aberdeen, in 1823.¹⁴⁷ Similarly, in 1837, Elizabeth Brown's dead infant was discovered in a byre at the farm where she worked,¹⁴⁸ and, in 1852, Jane Hutton's child was discovered in a cart shed, in Canonbie, Dumfries.¹⁴⁹ Other

¹³⁹ NAS, AD14/33/51, Catherine McLeod.

¹⁴⁰ NAS, AD14/62/210, Elizabeth Duncan and Ann Brechin.

¹⁴¹ NAS, AD14/37/150, Euphemia Grieve.

¹⁴² NAS, AD14/56/209, Agnes Brown.

¹⁴³ NAS, AD15/30/104, Robertina MacBeath or Campbell.

¹⁴⁴ NAS, AD14/53/164, Margaret McGeichan.

¹⁴⁵ NAS, AD14/72/298, Sophie Wallace.

¹⁴⁶ NAS, AD14/86/94, Mary Sinclair.

¹⁴⁷ NAS, AD14/23/187, Elizabeth Sutherland.

¹⁴⁸ NAS, AD14/37/404, Elizabeth Brown.

¹⁴⁹ NAS, AD14/52/415, Jane Hutton.

locations included a hen-house,¹⁵⁰ granary,¹⁵¹ outworker's bothy,¹⁵² and a turnip shed.¹⁵³ Larger houses in rural estates provided a number of other buildings in which new-born infants could be concealed. In 1847, at Tulliebole Castle, Kinross, Ann Borrowman's dead infant was discovered in a bucket in the washing house,¹⁵⁴ Hannah Mitchell's infant was discovered hidden amongst the straw in the gig-house at Rescobie Manse, in Forfar, in 1849,¹⁵⁵ and byrewoman Jane Bell concealed her dead new-born female child in the boilerhouse at Kirkconnel Hall, Dumfries, in 1867.¹⁵⁶ In urban areas there were fewer outbuildings, and they tended to be communal. For example, in 1855, Hellen Tough's new-born female infant was found dead in a pail of water in a washing-house situated in the basement, and used by the residents, of a tenement in George Street, Aberdeen,¹⁵⁷ and Christina McKay hid her dead infant in a communal outhouse on the back green of her flat in Abbeyhill, Edinburgh, in 1876.¹⁵⁸ Similarly, in 1885, a joiner sent to open the door of an outside privy in Clydesdale Street, Hamilton, after the key had gone missing, discovered the dead body of a new-born female infant among some newspapers.¹⁵⁹

The areas outwith houses and grounds in which bodies could be concealed depended on a number of factors. One was the availability and accessibility of a suitable space to bury, or conceal, a body without being seen. Another factor was the physical and mental ability of women (if they were acting alone) to dispose of the bodies immediately after delivery: immediately following delivery, women may not have been capable of walking any great distance, or of digging a hole. Moreover, disposing of the body would have been made more difficult if, for example, it was dark, the weather was bad, or if the ground was frost-hardened. So, whilst a number of bodies were carried elsewhere to be disposed of, or buried, the majority of bodies discovered outdoors were found above ground, close to the place in which the delivery took place, in fields, woods, hills, moors, hedges, and in

¹⁵⁰ NAS, AD14/55/239, Barbara Norrie.

¹⁵¹ NAS, AD14/58/142, Agnes Davidson or Tough.

¹⁵² NAS, AD14/62/152, Barbara Fraser.

¹⁵³ NAS, AD14/70/268, Elizabeth Lyon and George Wishart.

¹⁵⁴ NAS, AD14/47/504, Ann Borrowman.

¹⁵⁵ NAS, AD14/50/600, Hannah Mitchell.

¹⁵⁶ NAS, AD14/67/142, Jane Bell.

¹⁵⁷ NAS, AD14/55/254, Hellen Tough.

¹⁵⁸ NAS, AD14/76/150, Christina McKay.

¹⁵⁹ NAS, AD14/85/159, Jane Haggart.

ditches. In some cases it is clear that there was no obvious hiding place, and bodies were left in out in the open, or thrown wherever an opportunity presented itself. For example, in 1859, Margaret Carlyle threw her dead new-born male infant into a quarry, where it was discovered by a police constable and his wife during an evening walk,¹⁶⁰ and, in 1881, Isabella McNeill's dead new-born child was discovered behind a local distillery, in Campbeltown, Argyll.¹⁶¹ Urban areas offered even less in the way of space for concealing dead bodies, and women were often forced to leave them in the open. For example, Mary Sinclair's new-born female child was found dead in Pollockshaws Road, Glasgow, in 1847,¹⁶² Catherine Stewart threw her dead child into a vacant lot on Clarence Street, Edinburgh, in 1853,¹⁶³ and, in 1878, Esther Smith's new-born female infant was discovered lying dead in a neighbouring street in Cathcart, Renfrew.¹⁶⁴

Mining areas perhaps offered better hiding places for bodies in the form of disused coal pits. For example, coal bearer Elizabeth Greenhorn concealed the dead body of her new-born male child in a coal pit at Greenend Colliery, Old Monkland, Lanark, in 1815,¹⁶⁵ and Mary Meldrum's new-born female infant was discovered in an old mine shaft in Linlithgow, in 1872, after a man was lowered into the pit at the request of a police constable.¹⁶⁶

A number of bodies were discovered in water. Flora Munro's new-born infant, for example, was discovered in a bag in the river Alness, near Rosskeen, Ross, in 1828,¹⁶⁷ and fishermen discovered the body of a new-born infant in a river in Old Montrose, in 1839.¹⁶⁸ In 1838, fisherman discovered a dead new-born infant floating in the sea just off the Caithness coast,¹⁶⁹ and, in 1852, Euphemia Bruce's new-born infant was discovered

¹⁶⁰ NAS, AD14/59/343, Margaret Carlyle.

¹⁶¹ NAS, AD14/81/295, Isabella McNeill.

¹⁶² NAS, AD14/47/409, Mary Sinclair.

¹⁶³ NAS, AD14/53/486, Catherine Stewart.

¹⁶⁴ NAS, AD14/78/130, Esther Smith.

¹⁶⁵ NAS, AD14/15/58, Elizabeth Greenhorn.

¹⁶⁶ NAS, AD14/72/357, Mary Meldrum.

¹⁶⁷ NAS, AD14/28/284, Flora Munro.

¹⁶⁸ NAS, AD14/39/103, Christina McIntyre.

¹⁶⁹ NAS, AD14/38/32, Johana or Joan Sinclair.

floating in the water at Earl Grey Dock, in Dundee.¹⁷⁰ In 1818, a scavenger in St. Nicholas, Aberdeen, discovered the dead body of Sophia Ross's new-born male infant by the side of a loch,¹⁷¹ in 1823, Isobel Umpherston's new-born female child was discovered in a pond in Fouldean, Berwick,¹⁷² and Elspet Gordon discovered the dead body of a new-born infant in a moss pit full of water whilst playing in the parish of Crathie and Braemar, in Aberdeen, in 1824.¹⁷³ Agnes Collins's dead new-born infant was discovered in the mill dam at New Dailly, Ayr, in 1833.¹⁷⁴ In 1848, the body of Isabella Barron's new-born infant was discovered with a cord with a stone attached around its neck in a urine pit outside a harvest-workers' bothy in Leuchars, Fife,¹⁷⁵ and seven-year-old Ann Govan, saw a 'wee baby' in a well, in 1865.¹⁷⁶

Another common location for the discovery of dead bodies was in a 'plantation', or wood. For example, Helen Brebner or Bremner's new-born infant was discovered 'under a clod' in a wood in Upper Banchory, Kincardine, in 1821,¹⁷⁷ and, in 1824, in Edderton, Ross, Katherine McKenzie buried her dead infant in a nearby wood.¹⁷⁸ Similarly, Agnes Cunningham buried her new-born female infant in a wood near the farm at which she worked, in Lamington, Lanark, in 1846,¹⁷⁹ the dead body of Marion Murray's new-born infant was discovered by the foot of an elm tree in a wood near Kailzie, Peebles, in 1848,¹⁸⁰ and John McComb discovered two dead new-borns, a male and a female, lying side by side in a wood in Kilwinning, Ayr, in 1860.¹⁸¹ Again, farm labourer Charles Nelson's attention was drawn towards 'two magpies on a fence screaming' by the side of a wood in Abbey St. Bathans in Berwick, in 1870, in which he found the dead body of a new-born infant.¹⁸²

¹⁷⁰ NAS, AD14/52/304, Euphemia Bruce.

¹⁷¹ NAS, AD14/18/96, Sophia Ross.

¹⁷² NAS, AD14/23/147, Isobel Umpherston.

¹⁷³ NAS, AD14/24/93, Janet Stewart.

¹⁷⁴ NAS, AD14/33/372, Agnes Collins.

¹⁷⁵ NAS, AD14/48/433, Isabella Barron.

¹⁷⁶ NAS, AD14/65/34, Margaret Walker.

¹⁷⁷ NAS, AD14/21/95, Helen Brebner or Bremner.

¹⁷⁸ NAS, AD14/24/86, Katherine Wood.

¹⁷⁹ NAS, AD14/46/243, Agnes Cunningham.

¹⁸⁰ NAS, AD14/48/134, Marion Murray.

¹⁸¹ NAS, AD14/60/93, Janet Bryan.

¹⁸² NAS, AD14/70/193, Alison Hall.

Occasionally, bodies were discovered still in the possession of the women who had given birth to them. Margaret McIntyre's dead infant was found in her bag, in Glencruitten, Argyll, in 1870,¹⁸³ and a carpet bag was the hiding place of Ann McGuire's dead infant, in Glasgow, in 1880.¹⁸⁴ In 1910, Roberta Archibald and her dead child were discovered by police at the flat of a friend of hers in Duke Street, Edinburgh,¹⁸⁵ and in an unusual case from 1851, Jean McRobbie posted her dead new-born infant by train to her uncle in Glasgow for him to bury.¹⁸⁶

The condition of bodies

The condition of the body when it was discovered was a crucial factor in determining the outcome of the judicial investigation. The results of the post mortem examination had a direct bearing not only on Crown Counsel's decision whether or not to prosecute, or what the appropriate charge or charges would be, but also on the outcome of the trial. The less accurate the medical report, the more likely its credibility could be challenged by the defence, leading to the defendant either being dismissed at the bar, or acquitted by the jury.

There are three particular circumstances that made it extremely difficult for medical witnesses to produce a detailed and accurate post mortem report. First, and most obviously, was if the body was missing. There are only thirty-six such cases within the precognitions;¹⁸⁷ twenty-nine of which (83 per cent) were in rural areas, and twenty-two (61 per cent) in areas near to a river, loch, or the sea. Secondly, if only fragments of the

¹⁸³ NAS, AD14/70/189, Margaret McIntyre.

¹⁸⁴ NAS, AD14/80/162, Ann McGuire.

¹⁸⁵ NAS, AD15/10/11, Roberta Archibald.

¹⁸⁶ NAS, AD14/52/213, Jean McRobbie.

¹⁸⁷ The number of cases involving missing bodies may well have been greater than the precognitions suggest. Indeed, the only possible charge in a case where the body was missing was concealment of pregnancy and, from the mid nineteenth-century, trials for this crime were increasingly being prosecuted in the sheriff courts. Only thirteen cases involving a missing body appear in the precognitions after 1850, and there are no cases after 1878. An analysis of sheriff court records may well reveal a number of concealment of pregnancy cases in which the body was never recovered.

body were recovered. As discussed above, some women dismembered their infants, usually in an attempt to dispose of them in water closets and drains, and in others, animals had eaten the body, or parts of it. For example, in 1849, the two frontal bones of an infant's forehead were discovered in a pig-sty in Ellon, Aberdeen,¹⁸⁸ the hounds of the Linlithgow and Stirling Hunt found and devoured all but the left leg of Agnes Whyte's new-born infant in a wood near Bathgate, in 1861,¹⁸⁹ and rats or crabs had partially devoured Mary McColl's new-born infant, found in the water at Campbeltown harbour, in Argyll, in 1879.¹⁹⁰ Another reason for the discovery of body parts was if the body had been burnt. For example, an article entitled 'Inhuman Atrocity!' from the *Edinburgh Observer*, in October 1822, discusses the circumstances behind the discovery of Jean Christie's child, in Saline, Fife:

The unhappy mother lived under the roof with an old woman, whose apartment was separated only by a thin partition, on whom she called to make her a warm drink, but prohibited her from preparing it at the fire of the room they were in, saying that she had just heaped on a large fire to warm the house, which she was unwilling to have touched or broken down. The old woman was surprised on finding a very disagreeable smell issuing from the fire, and after repeatedly interrogating the sick female, without obtaining any satisfactory answer, turned up the coals, and to her unspeakable horror, found in the midst of them, the half-consumed remains of the unnatural parent's inhumanity.¹⁹¹

Again, in 1854, Mary Buchan was stirring the fire at her sister's house, at Kirkliston Distillery, in Linlithgow, when she discovered 'a wee hand' in the ashes.¹⁹² Indeed, a number of dead new-born infants may well have been successfully disposed of by burning.¹⁹³

The third circumstance that hindered the post mortem examination was the extent of putrefaction, and there were eighty-five cases in which the bodies were putrid. Perhaps unsurprisingly, the majority of decomposed bodies – including sixty-three per cent of the

¹⁸⁸ NAS, AD14/49/223, Marjory Bannerman.

¹⁸⁹ NAS, AD14/61/320, Agnes Whyte.

¹⁹⁰ NAS, AD14/79/151, Mary McColl.

¹⁹¹ *Edinburgh Observer* (12 October, 1822).

¹⁹² NAS, AD14/54/303, Janet Gibson.

¹⁹³ For example, see NAS, AD14/19/11, Mary Ann Wilson and Isabella Halliday; AD14/62/218, Janet McArthur; AD14/75/229, Isabella Telfer.

bodies discovered by chance¹⁹⁴ – were found outwith the house and grounds, in woods, fields, outbuildings, and water (including rivers, lochs, and wells), amongst other spaces. Bodies were also more likely to remain concealed for longer if they had been buried.

The vast majority of bodies, then, were discovered immediately, or soon after death, but twenty-five new-born infants were still alive when they were found, and died later on. In two of these cases, the infants had been left exposed to be discovered alive, such as a case from Aberdeen, in 1834, where Sarah Hay or Clark, a midwife, was delivered of a child, whom she suckled, and ‘then had it laid in Adelphi Court for it to be taken up and properly cared for’.¹⁹⁵ Indeed, the precognitions reveal that in most cases there was no intention by the child’s mother for it to be discovered alive. In Edinburgh, in 1845, for example, a surgeon taking a walk in Queen’s Park observed a ‘respectably dressed woman...throw something among the nettles’, which he discovered was still alive,¹⁹⁶ and, in Stoneykirk, Wigton, in 1858, Eliza Watt discovered Ann Rowan’s new-born child alive, but cold and bleeding from the nose and mouth.¹⁹⁷ In most of the other cases it was also the cries of the child that alerted witnesses to its presence. In 1874, for example, Margaret Murdoch heard the sounds of a child coming from the bed of fellow farm servant, Helen Allan or Colville:

I lifted the child, but she tried to prevent me, and I had to hold her down until I got the child. I saw this was a newly born male child. It was alive but with little life in it. The skull of the child was cut bare as if by a pair of scissors and it was bleeding. I also saw that the child was all marked about the neck as if by the pressure of fingers.¹⁹⁸

In most cases the infant was found with mortal injuries, and died within a few hours of being discovered. Occasionally, however, the infant survived for longer. For example, Isabella McKellar’s new-born male infant lived for three days before dying of its injuries

¹⁹⁴ These cases are discussed in the next section of this chapter.

¹⁹⁵ NAS, AD14/34/280, Sarah Hay or Clark. The lack of infant abandonment in the records is perhaps unsurprising: both new-born child murder and concealment of pregnancy could only be charged if the child died, and, arguably, most babies abandoned with the intention of being discovered may well have survived, at least in the short term.

¹⁹⁶ NAS, AD14/45/299, Helen Mitchel or Johnston, Deposition of David Mackintosh.

¹⁹⁷ NAS, AD14/58/141, Ann Rowan.

¹⁹⁸ NAS, AD14/74/421, Helen Allan or Colville.

in Kilsyth, Stirling, in 1884,¹⁹⁹ and, in 1920, Lizzie Beattie's new-born female infant survived for two weeks after being discovered in nettles at the bottom of the garden: indeed, the child lived long enough to be registered.²⁰⁰

Who discovered bodies?

Who discovered the body depended on where and in what circumstances the body was concealed in the first place. If the body was concealed within the house or grounds of the accused, then family members, employers, or fellow servants were most likely to discover the body. If medical men or women, or the police, had been called as soon as labour, or a recent delivery was suspected, then they were more likely to discover the body, often after an admission by the suspected woman. In one case, in 1911, a local charwoman was actually employed to search for the body, but there is no evidence to suggest that this was a common practice.²⁰¹

If a body was concealed outwith the house and grounds, it was more likely to be discovered unintentionally. In 1828, for example, farm labourer Hugh Mackay found a new-born female infant by the side of a road in Lairg, Sutherland,²⁰² and William Wallace discovered Janet Kirkland Dalziel's new-born infant under a bramble bush on his father's farm in Mauchline, Ayr, in 1832.²⁰³ Men and women in the course of their employment often discovered bodies. As discussed above, fishermen discovered bodies in the sea, lochs and rivers, and hawkers and scavengers discovered bodies on beaches and in ashpits. Farm workers also discovered a number of bodies, such as farm labourer, James Jardine, who discovered the dead body of a new-born male child in a byre at Criffel House, Kirkbean, Kirkcudbright, in 1849.²⁰⁴ Similarly, crofter's son, David Alexander, discovered the dead body of a new-born infant in a field in Ardlach, Nairn,

¹⁹⁹ NAS, AD14/84/315, Isabella McKellar.

²⁰⁰ NAS, AD15/20/149, Lizzie Beattie.

²⁰¹ NAS, AD15/11/82, Isabella Vallance Caskie or Tollman.

²⁰² NAS, AD14/28/283, Margaret Campbell.

²⁰³ NAS, AD14/32/53, Janet Kirkland Dalziel.

²⁰⁴ NAS, AD14/50/219, Martha Bryce.

whilst watching cattle, in 1856,²⁰⁵ and, in Walten, Caithness, in 1872, farm servant, William McDonald, found the dead body of a child whilst lifting dung into a cart.²⁰⁶

Children also discovered a number of dead bodies. Indeed, the nature of children's games, and the places in which such games were played, meant that there was always a chance that children would discover even the most well-hidden of bodies. For example, an eleven-year-old boy found Margaret McRae's dead child in a hollow covered in stones in Kintail, Ross, in 1828,²⁰⁷ and, in 1835, two girls discovered Mary Morrison's newborn female child buried in her father's garden in Dirleton, Haddington.²⁰⁸ In Carnwath, Lanark, in 1841, Hugh Smith's three-year-old son said to him, 'Papa you dinna ken what I saw in the court yesterday...It was a wee bairn',²⁰⁹ and, in 1852, three brothers, aged between twelve and eighteen years, discovered a dead child in the loch of Slains, Aberdeen, 'in a bag weighed down with stones'.²¹⁰ Similarly, two boys discovered Christina Reid's dead infant whilst playing marbles in Thurso, Caithness, in 1876,²¹¹ and Agnes Duncan's dead male infant was discovered on a rubbish heap by fourteen-year-old James O'Connor, who was looking for waxcloth to make a tent, in St. Ninians, Stirling, in 1922.²¹²

In a number of cases, there was also confusion amongst children as to what they had actually discovered. For example, in Newton-Stewart, Wigton, in 1852, thirteen-year-old Jessie Tier discovered a dead body in the river, and shouted to Edward Jamieson, 'God's sake Ned, there is either a monkey or a child in the water'.²¹³ Similarly, in 1882, thirteen-year-old Alexander Brabender discovered a child's body in an ash pit in Greenock, thinking at first that it was 'a monkey'.²¹⁴ This confusion was not limited to children, however. In Coupar Angus, Perth, in 1921, a farm servant noticed an object floating in

²⁰⁵ NAS, AD14/56/162, Ann MacArthur.

²⁰⁶ NAS, AD14/72/315, Jane Morrison.

²⁰⁷ NAS, AD14/28/277, Margaret McRae.

²⁰⁸ NAS, AD14/35/432, Mary Morrison.

²⁰⁹ NAS, AD14/41/84, Agnes Pollock.

²¹⁰ NAS, AD14/52/253, Helen Sangster or Whitecross.

²¹¹ NAS, AD14/76/250, Christina Reid.

²¹² NAS, AD15/22/40, Agnes Duncan.

²¹³ NAS, AD14/52/229, Agnes McClelland.

²¹⁴ NAS, AD14/82/118, Kate Brabender.

the river and shouted to another man, ‘look here, what is this? [...] It is a teddy bear or a monkey’,²¹⁵ and in Inch, Wigton, in 1926, farmer’s son Thomas Millar explained to investigators about his discovery of Agnes Jane Calderwood’s dead new-born female infant:

I came across what I took to be, in the dim light, the carcase of a young pig. I just swept it before me with the chaff and the straw, and told McGrady [a farm worker] to throw it out. His remark that it looked like a monkey caused me to examine it more closely.²¹⁶

When Donald Sinclair reached into the cistern of the communal lavatory in Stobcross Street, Glasgow, in 1922, and felt something soft, his immediate thought was that it was a ‘stolen ham’. It turned out to be a dead new-born infant.²¹⁷

Conclusion

This chapter has discussed in detail the various signs that led communities in Scotland between 1812 and 1930 to suspect that local women were either pregnant, or had recently been, or were about to be, delivered of a child. The chapter has shown that in the majority of cases communities identified pregnancies – usually by the size of a woman’s belly – and that, once suspected, a pregnant woman was watched closely for behaviour that might indicate that she was about to be delivered, such as being confined to her bed, or contriving to get herself to a secluded spot to give birth alone. Moreover, even if a woman was successful in giving birth alone, communities often observed the signs of delivery – typically a reduction in size, often coupled with the presence of blood.

This chapter has also demonstrated that the majority of the bodies of new-born infants were discovered dead, immediately or soon after delivery, within the house of the accused. Arguably, in most cases there was either no pre-meditated plan with regards to

²¹⁵ NAS, AD15/21/166, Annie Robertson Watson, Deposition of John Watson.

²¹⁶ NAS, AD15/26/1, Agnes Jane Calderwood.

²¹⁷ NAS, AD15/22/75, Elizabeth King.

disposing of the body, or, if there was, it could not be put in place. Indeed, the successful concealment of a body was determined not only by the surrounding geography, but also by the timing and speed of labour, and the physical and / or mental condition of women immediately following delivery. The precognitions suggest that most women had to hide bodies quickly, and that the bodies were discovered before they could be removed to a more permanent location. Nevertheless, in a number of cases, bodies were successfully concealed, or at least concealed long enough for decomposition to set in and render any post mortem useless. In speculating on the most successful methods of disposing of the body of a new-born infant, there are perhaps four: first, throwing it into a large river, or the sea; secondly, burial in a field or wood; thirdly, throwing the body to pigs; and lastly, by burning.

Although some women in this study were successful in concealing either their pregnancy, the signs of recent delivery, or the body of their new-born child, none were able successfully to conceal all three, which is why (in part) they ended up in court. Although this study cannot comment on women who may have been effective in their concealment, it does suggest that, on the whole, pregnancies were noticed, and the community watched pregnant women until the signs of delivery were observed, or a body was discovered. Either way, a suspect was usually quickly identified by communities, who either confronted suspects directly with, or informed the authorities of, their suspicions. These responses by the community are the focus of the following chapter.

Chapter Three: Surveillance, responses and confrontation

Introduction

In his discussion of new-born child murder in eighteenth-century England, Mark Jackson observes that ‘suspected pregnancies and births and the bodies of dead children attracted the attention of legal authorities only as a result of the persistent interest and agitation of a woman’s neighbours, relatives and employers’.¹ Whilst this statement can also be applied to Scotland between 1812 and 1930, it needs some qualification. For example, were the authorities as likely to be informed of a pregnancy than of a delivery or of the discovery of a body? Was the whole of the community willing to inform the authorities about their suspicions? This chapter looks at the circumstances leading up to a formal accusation of, and subsequent investigation into, cases of suspected NBCM&CP in Scotland between 1812 and 1930. It will examine the surveillance of women suspected by their communities of being pregnant, the various responses made by communities to their suspicions, as well as the responses of suspects to the accusations made against them. This chapter will argue that communities were less likely to alert the authorities to a suspected pregnancy, but rather watched for the signs of delivery, or a body, and only then informed the authorities. Furthermore, this chapter will argue that the manner in which a number of cases came to the attention of the authorities suggests that there was reticence amongst some members of the community about transferring a suspicion into a formal accusation, and explores some of the reasons why this may have been the case.

Surveillance: pregnancy

In all but a few cases, a suspected new-born child murder began with a suspicion in the community that a local woman was pregnant; a suspicion that quickly became the

¹ Jackson, *New-Born Child Murder*, p. 60. Louise Jackson also notes the role of neighbours and relatives in the discovering and reporting of child abuse in nineteenth-century England. Idem., *Child Sexual Abuse*, p. 33.

‘common report’.² For example, in Kinghorn, Fife, in 1827, ‘it was always the clatter about the mill that Helen Mitchell was with child’,³ and, in an 1832 case, a note from the prosecuting advocate states that ‘[t]he precognition abounds with evidence of a rumour, or common belief – on the subject’.⁴ In 1845, Margaret Fyfe’s condition was the ‘clatter amongst the country in Errol, Aberdeen’,⁵ in 1854, a police constable deposed that Elizabeth Duncan’s pregnancy had been ‘rumoured for a while’,⁶ and, in 1874, in reference to Christina Watson’s condition, one witness stated that ‘[i]t was a general topic of conversation and of speculation as to who would turn out to be the father, throughout the district for miles around’.⁷

The vast majority of women whose pregnancies were identified were young, and unmarried.⁸ Indeed, it is likely that the behaviour of young, single women would have been scrutinised more closely by communities, particularly women who had recently arrived in the community – either to work, or returning home after a period of employment.⁹ Communities also watched women with a reputation for promiscuity. For example, in 1845, a neighbour of Jessie Leithhead or Waddell deposed that ‘I understood that she allowed men to come about her house last winter’,¹⁰ and, in 1856, Agnes Brown was considered ‘a light character’ in Auchinleck, Ayr, particularly amongst the railway workers, who called her ‘navie [sic] nanny’.¹¹ Similarly, Jessie Tait or Davidson became the subject of gossip in Hawick, in 1859, because of ‘baker lads calling at night’,¹² while in Whitburn, Linlithgow, in 1877, with reference to one suspect, a witness deposed that ‘the accused Isabella is a girl of loose character I understand’,¹³ and, in 1886, Margaret

² Jackson, *New-Born Child Murder*, p. 60; Schulte, ‘Infanticide in Rural Bavaria’, pp. 92-3.

³ NAS, AD14/27/181, Helen Mitchell or Anderson.

⁴ NAS, AD14/32/253, Marjory McIntyre and Marjory Lennox or McIntyre.

⁵ NAS, AD14/45/155, Margaret Fyfe.

⁶ NAS, AD14/54/296, Elizabeth Duncan.

⁷ NAS, AD14/74/514, Christina Watson.

⁸ The profiles of suspects are treated in the next chapter.

⁹ The pregnancies of women who recently arrived into the community were not always easily detected, however. As the previous chapter discusses, forty-three of the forty-nine cases in which a pregnancy was not suspected involved women who had arrived into the community already pregnant.

¹⁰ NAS, AD14/45/379, Jessie Leithhead or Waddell, Deposition of Mary Renwick or Elliot.

¹¹ NAS, AD14/56/209, Agnes Brown, Deposition of James Morton.

¹² NAS, AD14/59/145, Jessie Tait or Davidson.

¹³ NAS, AD14/77/146, Isabella Martin, Deposition of Janet Campbell or Aitchison.

Anderson was, according to one witness, ‘of loose character and was too familiar with the militia men and officers at the leanys [sic] at Irvine Moor’.¹⁴

Communities also paid close attention to women who had been previously convicted, investigated, or suspected, of new-born child murder and/or concealment of pregnancy.¹⁵ For example, it was possible that Janet Hannah’s condition was watched closely by neighbours in Kirkcudbright, in 1818, because she had been blamed for the death of a new-born infant found in a wood four years previously, and there were also rumours relating to another child that had ‘disappeared’.¹⁶ Similarly, in 1831, the precognition against Elizabeth or Eliza Wishart, contains a note from the procurator fiscal, who commented on the ‘great public excitement against the prisoner as to the disappearance of a former child and, a charge of incest’ with her own father.¹⁷ Again, in 1845, Isabell Fraser’s employer told investigators that when he struggled to get her out of bed one morning, he ‘desired her to get up and go to her work or else go home to her mother and not be playing some of her old tricks again by which I meant getting rid of a child as I had heard she had done so on a former occasion’,¹⁸ and, in 1864, a fellow servant made a similar discovery about Isabella Shand:

Some weeks ago I was in Huntly and I was there told that the prisoner was the mother of a child that was found in the river Bogie some two years ago, the mother of which was never found out, and to be aware of her as she would play the same trick again and I told some fellow servants of this, and it put us on the alert in this matter.¹⁹

¹⁴ NAS, AD14/86/22, Margaret Anderson, Deposition of Thomas Ballantine.

¹⁵ Of the 618 individuals investigated in this study, thirty-eight (6 per cent) had been suspected of committing similar ‘crimes’. Eight had been previously convicted, and the rest had either had charges against them dropped, or had been subject to gossip and rumour, but not a judicial investigation.

¹⁶ NAS, AD14/18/62, Janet Hannah, Procurator fiscal’s note.

¹⁷ NAS, AD14/31/48, Elizabeth or Eliza Wishart.

¹⁸ NAS, AD14/45/176, Isabell Fraser.

¹⁹ NAS, AD14/64/140, Isabella Shand.

Responses to the signs of pregnancy

There were a number of responses made by communities to the signs of pregnancy. Communities rarely alerted the police to suspected pregnancies, except when the women involved had been previously convicted or suspected of concealing their pregnancies or murdering their infants.²⁰ There is evidence that the kirk session was informed in twenty-five cases. For example, the precognition against Elizabeth Wilkie in 1812, contains an extract from a session in Dundee regarding the reports of her pregnancy,²¹ and, in the same year, John Hempseed, officer to the kirk session at Torryburn, Fife, deposed that a demand was made for Katharine or Catherine Lowden or Lothian to attend the session regarding the reports about her condition.²² In 1819, Margaret Gunn was brought before the kirk session at Louisburgh, Wick, and ‘gave up’ Peter Bremner as the father of her unborn infant,²³ and, in 1820, the minister at Barr, Ayr reprimanded Janet Foster alias Forrester for her ‘dissolute manner of living’.²⁴ Occasionally the kirk would also arrange for the physical examination of women suspected of being pregnant. For example, in 1821 the session of Blairgowrie, Perth, organised the examination of Margaret Martin by a surgeon,²⁵ and, in Kirkcowan, Wigton, in 1834, the kirk session arranged for a midwife to examine Elizabeth Milroy.²⁶

Kirk sessions – comprising the minister and lay elders – met regularly to make decisions regarding the parish and, prior to 1845, administered poor relief to the parish. Moreover, they also investigated and reprimanded parishioners for various ‘sins’, including illegitimate pregnancy. As such, the kirk session was an integral part of Scottish

²⁰ Some of these cases are discussed in Chapter Six.

²¹ NAS, AD14/12/6, Elizabeth Wilkie.

²² NAS, AD14/12/87, Katharine or Catherine Lowden or Lothian.

²³ NAS, AD14/19/121, Margaret Gunn and Peter Bremner.

²⁴ NAS, AD14/20/183, Janet Foster alias Forrester.

²⁵ NAS, AD14/21/14, Margaret Martin.

²⁶ NAS, AD14/34/174, Elizabeth Milroy.

society,²⁷ and it is perhaps surprising that they feature so infrequently in the precognitions. This could be a reflection of the waning influence of the church in matters of local discipline during the nineteenth century,²⁸ but equally it is likely that investigators simply did not require kirk session evidence to prove that a suspect had been pregnant, since they could interrogate the same members of the community who will have lodged the report in the first place.

Communities, if they were to inform the authorities at all, were most likely to call a doctor or a midwife regarding a suspected pregnancy. However, such a response is recorded in only forty cases (9 per cent), which mirrors Jackson's observation that 'generally neither midwives nor male medical practitioners were involved in investigations at this stage'.²⁹ Typically it was employers who called for medical assistance, to ascertain whether or not a servant was pregnant. For example, in 1823, Mary Lamb's employers insisted she obtain a doctor's certificate after they were advised of her condition, in Glenbervie, Kincardine.³⁰ In 1855, Isobel Edwards's employer also called a surgeon after she suspected Edwards was pregnant,³¹ and, in 1927, Mary Walker was asked by her employers to produce a doctor's certificate to say she was not pregnant.³² It was not always employers who took suspects to a surgeon. For example, in 1834, the mother of Elizabeth Milroy took her to a doctor to refute claims that her daughter was in the family way. Unfortunately, the surgeon merely confirmed local suspicions that her daughter was pregnant.³³

The fear of dismissal from employment was certainly an important factor in a woman's decision to conceal her pregnancy, and, in a number of cases, employers dismissed their pregnant servants. For example, in 1855, Catherine McGregor left her position as farm

²⁷ A. Blaikie, 'Rituals, Transitions and Life Courses in an Era of Social Transformation', in T. Griffiths and G. Morton (eds), *A History of Everyday Life in Scotland, 1800-1900* (Edinburgh, 2010), p.103. For a general overview of religion in Scottish Society, see C. G. Brown, *The People in the Pews: Religion and Society in Scotland since 1780* (Glasgow, 1993).

²⁸ Blaikie, 'Rituals', p. 103.

²⁹ Jackson, *New-Born Child Murder*, p. 65.

³⁰ NAS, AD14/23/189, Mary Lamb.

³¹ NAS, AD14/55/166, Isobel Edwards.

³² NAS, AD15/27/60, Mary Walker.

³³ NAS, AD14/34/174, Elizabeth Milroy.

servant after rumours of her condition reached her employer,³⁴ in 1873, Annie Digney's employer 'put her away because she was in the family way',³⁵ and, in 1874, Jane McNaughton was so convinced of her domestic servant's pregnancy that she had 'hired another girl ready for her confinement'.³⁶

However, not all pregnant women were asked to leave. Indeed, some employers were even aware of a servant's condition when they were hired. For example, in 1841, Hugh Smith deposed that when he engaged Agnes Pollock, '[s]he appeared to me at the time to be like a woman who was with child',³⁷ and farmer Thomas Agnew Robertson told investigators that when Margaret Templeton came to his service, at Kirkcolm, Wigton, in 1846, 'she appeared far advanced in pregnancy'.³⁸ In a number of other cases, the relevant employer, aware of a servant's condition, chose not to dismiss her. For example, in 1853, Mary Lun or Renton was threatened with dismissal, but this was never carried out,³⁹ and, in 1867, widow Catherine Arnott suspected that her byrewoman was pregnant, and charged her with being so, but in the face of her denial nothing was done until the child was delivered.⁴⁰ A number of employers were extremely sympathetic to their employees, such as Rose Harvey who, in 1879, rather than dismiss her pregnant servant, told the procurator fiscal that 'I intended being kind to her until near her confinement when I would have sent her to the Maternity Hospital'.⁴¹

The most likely response to a suspected pregnancy was for one or more members of the community to confront the woman in question directly. In two cases this resulted in a physical examination of the pregnant woman. First, in 1896, a fellow worker at the North British Station Hotel, in Glasgow, suspecting that Jane McLintock was pregnant, demanded to see her breasts, and felt the child in her womb,⁴² and, in 1927, Eileen Hayes

³⁴ NAS, AD14/55/192, Catherine McGregor.

³⁵ NAS, AD14/73/343, Annie Digney.

³⁶ NAS, AD14/74/396, Margaret Philp.

³⁷ NAS, AD14/41/84, Agnes Pollock, Deposition of Hugh Smith.

³⁸ NAS, AD14/46/126, Margaret Templeton.

³⁹ NAS, AD14/53/216, Mary Lun or Renton.

⁴⁰ NAS, AD14/67/142, Jane Bell.

⁴¹ NAS, AD14/79/69, Margaret or Maggie Stewart.

⁴² NAS, AD14/94/96, Jane McLintock.

examined the breasts of her domestic servant Mary Walker, because she suspected she was pregnant. However, Walker may have only agreed to this examination because Mrs Hayes was a doctor.⁴³ Laura Gowing notes that in the early modern period '[t]he bodies of single women were open to public investigation and challenge',⁴⁴ and Mark Jackson also finds that in the eighteenth century, 'it is clear that many women later accused of murder had been interrogated and physically searched while they were pregnant.'⁴⁵ By the nineteenth century this does not seem to have been the case.

In some cases a direct accusation of pregnancy led to angry exchanges. For example, in Edinburgh, in 1824, vegetable seller Catherine Sutherland told investigators that she had been 'attacked' by Susan Houston for spreading gossip about her being with child,⁴⁶ and, in 1840, after being told that Elizabeth Edwards was pregnant, her employer

took the prisoner aside and mentioned the circumstance to her – informing her at the same time, that on that account, it was considered proper by him and his wife that she should be paid off...the prisoner however denied being in the state that had been supposed; and she threatened she would prosecute those who had said that such was the case.⁴⁷

Similarly, in 1842, when Mary Alexander remarked to Margaret Buchanan, that 'she was surely in the family way...the prisoner flew into a passion and denied it'.⁴⁸ In Markinch, Fife, in 1845, Isobel McLaren or Dobie spoke many 'oaths' against labourer's wife Mary Thomson regarding rumours circulating the district about her suspected pregnancy,⁴⁹ and, in 1859, Mary McIntyre told investigators that the accusation regarding her pregnancy was 'traceable to parties who had ill will against her in the neighbourhood'.⁵⁰ Again, in 1886, Annie Halden blamed collier's wife Elizabeth Hepburn specifically, for 'raising stories about her',⁵¹ and schoolteacher Elizabeth Mary Burns threatened to bring up the

⁴³ NAS, AD15/27/60, Mary Walker.

⁴⁴ Gowing, 'Secret Births', p. 114.

⁴⁵ Jackson, *New-Born Child Murder*, pp. 64-5.

⁴⁶ NAS, AD14/24/30, Susan Houston.

⁴⁷ NAS, AD14/40/326, Elizabeth Edwards.

⁴⁸ NAS, AD14/42/224, Margaret Buchanan or Reid.

⁴⁹ NAS, AD14/45/105, Isobel McLaren or Dobie.

⁵⁰ NAS, AD14/59/108, Mary McIntyre.

⁵¹ NAS, AD14/86/113, Annie Halden.

members of the West Calder School Board with defamation of character because of the rumours surrounding her condition, in 1893.⁵²

In most cases, however, a woman's pregnancy was alluded to in a less confrontational and more light-hearted way. For example, in 1847, Mina Crichton approached fellow farm worker Anne Borrowman, she told investigators, and

I asked her if any farmers needed shearers and I repeated the words of an old song to her to this effect that that was no for her as her back it couldna hold, and the rest fell a laughing, and she asked me what I meant – I said if she was not married it was time she was.⁵³

Similarly, Margaret Grant told investigators about how the subject of her suspected pregnancy was approached, in 1848:

I have sometimes heard the men servants joking with her and saying 'Maggy when you are going to cry we will go for the midwife to you' and she took this all in good part and never minded what was said.⁵⁴

Jokes were also made about Catherine Rae's condition in 1852,⁵⁵ and, in 1872, Mary Meldrum's condition was a cause of some amusement for the community, as described by a neighbour:

I turned my head and saw the accused close behind us. Her bulk caused her petticoat to stick up in front, and as she is very little, and her clothes very short, I said to her 'Mary I can't keep from laughing at you' and she answered 'By God ye can lauch awa'. We all laughed; but there was nothing said about her bairn tho' we were all thinking about it and pitying her.⁵⁶

⁵² NAS, AD14/93/12, Elizabeth Mary Burns.

⁵³ NAS, AD14/47/504, Ann Borrowman.

⁵⁴ NAS, AD14/48/205, Margaret Grant. To 'cry' was a common expression that meant to give birth.

⁵⁵ NAS, AD14/52/394, Catherine Rae.

⁵⁶ NAS, AD14/72/357, Mary Meldrum.

Strategies of pregnancy denial

Since an increase in the size of a woman's belly was the clearest indication of pregnancy, a number of strategies were employed by women in their attempts to hide this from family, employers, friends and neighbours. The most common tactic was one that Mark Jackson observes in eighteenth-century England, where women 'attempted to conceal their pregnancies by wearing the kind of loose clothes that were sometimes in fashion'.⁵⁷ For example, in 1823, Ann McDougal wore her clothes 'loose about her',⁵⁸ Margaret or Peggy McLachlan wore additional layers of clothing in 1842,⁵⁹ and, in 1874, Margaret Harten successfully concealed her pregnant state from one neighbour, who attributed her appearance to 'the manner in which she wore her clothes'.⁶⁰ Corsets were also used in an attempt to flatten a woman's expanding belly. For example, Jessie Leithhead or Waddell tried to hide her bulk with corsets in 1845,⁶¹ and, in 1930, a constable's wife discussed Robertina MacBeath or Campbell's attempts to do the same:

I noticed she had a very peculiar shape which seemed to me to be caused by her being tightly tied in front to conceal her condition. It seemed as if the child had been pressed out of place; it was showing at her sides.⁶²

Whether asked directly or indirectly about their condition, at some point during their pregnancies, the majority of women analysed in this study had either to deny that they were, or offer a plausible excuse as to why they appeared, pregnant. In some cases, though, women avoided answering the question altogether. For example, in 1832, Janet Kirkland Dalziel 'neither confessed nor denied' to witnesses in Mauchline, Ayr, that she was pregnant,⁶³ in 1848, Margaret Grant simply laughed off jokes made about her

⁵⁷ Jackson, *New-Born Child Murder*, p. 63. Laura Gowing also notes that in early modern England, 'clothing seems...to have disguised pregnancy to some extent' Gowing, 'Secret Births', p. 91, fn. 7.

⁵⁸ NAS, AD14/23/204, Ann McDougal, Deposition of Margaret Pearson.

⁵⁹ NAS, AD14/42/62, Margaret or Peggy McLachlan.

⁶⁰ NAS, AD14/74/50, Margaret Harten.

⁶¹ NAS, AD14/45/379, Jessie Leithhead or Waddell.

⁶² NAS, AD15/30/104, Robertina MacBeath or Campbell, Deposition of Mary Oliver.

⁶³ NAS, AD14/32/53, Janet Kirkland or Dalziel.

condition,⁶⁴ and, in 1880, sixteen-year-old farm servant George Petrie told investigators about a conversation he had with Helen Roberts: 'I spoke to her once during the hoeing of the turnips about being with child. She gave me a slap on the side of the head and said nothing.'⁶⁵

In most cases women simply denied that they were pregnant. For example, in 1852, Agnes McLelland replied to one witness's question about her pregnancy by saying 'time would try as frost tried the kail,'⁶⁶ and 'time would try all' was the response of both Mary Lun or Renton and Mary France to questions about their condition, both in 1853.⁶⁷ Again, in 1879, Mary McColl denied that she was pregnant, insisting that 'she wished she was pregnant as it would be better for her'.⁶⁸ Most of these denials also came with an explanation as to the appearance of pregnancy and there were a number of different excuses offered for why women appeared to increase in size. For some, it was their 'natural state'. Jane Millar, for example, was 'inclined to be stout',⁶⁹ and Isabella Vallance Caskie or Tollman claimed that the combination of her family tending to stoutness and 'good feeding' accounted for her appearance, in 1911.⁷⁰ Some excuses were more inventive: Isabella Laing's 'fat appearance arose from getting drops of brandy in the morning, when cholera was prevalent in the district',⁷¹ and Ann Affleck's appearance was due to 'a habit of hers of stooping and sticking herself out'.⁷² A number of women blamed previous pregnancies for their bulk: Jane Skinner complained in 1841 that her size was the result of 'bad usage which she met with the birth of her youngest child',⁷³ Elizabeth Stewart had also had a child previously 'and was large since that time',⁷⁴ and, in 1874, Ann Tinman told neighbours that not being properly bandaged following the birth of a previous child accounted for her bulk. In his deposition, her

⁶⁴ NAS, AD14/48/205, Margaret Grant.

⁶⁵ NAS, AD14/80/253, Helen Roberts.

⁶⁶ NAS, AD14/52/229, Agnes McLelland.

⁶⁷ NAS, AD14/53/216, Mary Lun or Renton; AD14/53/234, Mary France.

⁶⁸ NAS, AD14/79/151, Mary McColl .

⁶⁹ NAS, AD15/08/92, Jane Millar.

⁷⁰ NAS, AD15/11/82, Isabella Vallance Caskie or Tollman.

⁷¹ NAS, AD14/49/349, Isabella Laing.

⁷² NAS, AD14/50/285, Ann Affleck.

⁷³ NAS, AD14/41/2, Jane Skinner.

⁷⁴ NAS, AD14/45/193, Elizabeth Stewart.

employer, a physician, agreed that ‘females do swell in bad management’.⁷⁵ Some women blamed their clothing for making them look larger. For Annie Sheen it was the big jacket she wore,⁷⁶ and Marjory Ann Ritchie Stuart made a similar excuse in 1914, telling one witness, ‘I have been putting on more clothes for the cold weather’.⁷⁷ A number of women used stays or corsets as an excuse for the change in their shape. In 1854 Mary Brown told witnesses who enquired about her increased size that ‘these stays are too big’,⁷⁸ as did Margaret Carlyle in 1859.⁷⁹ A pair of new stays,⁸⁰ broken stay fasteners,⁸¹ and broken corset steels,⁸² were also excuses given by women for their appearing to be pregnant.

The majority of women utilised medical uncertainty surrounding the symptoms of pregnancy in order to establish a credible denial. Beck, writing in 1825, warned that ‘[t]here is no one invariable sign of pregnancy’,⁸³ and medical jurists in general stressed the need for caution in diagnosing pregnancy, because a number of other factors could account for the various symptoms. Prominence of the abdomen, for example, could be a sign of dropsy, an abnormal accumulation of fluid in the body.⁸⁴ Although, as one physician in 1877 commented, ‘[i]n general dropsy there are swellings of other portions of the body besides the belly’, and suggested that ‘ovarian dropsy’ – which was rare – was most likely to resemble the swelling of advanced pregnancy.⁸⁵ Dropsy was a common excuse for swollen bellies. For example, in 1820, Christian Cruickshank explained to the kirk session of Cairney, Aberdeen, that a ‘dropsical complaint’ accounted for her bulky appearance,⁸⁶ and Christian Craig’s claim that she was ‘dropsical’ was bolstered by the fact that her mother had died of the same condition some

⁷⁵ NAS, AD14/74/101, Ann Tinman.

⁷⁶ NAS, AD14/87/116, Annie Sheen.

⁷⁷ NAS, AD15/14/110, Marjory Ann Ritchie Stuart.

⁷⁸ NAS, AD14/54/268, Mary Brown.

⁷⁹ NAS, AD14/59/343, Margaret Carlyle.

⁸⁰ NAS, AD14/77/4, Margaret Crichton.

⁸¹ NAS, AD14/87/9, Jane MacDonald.

⁸² NAS, AD15/08/92, Jane Millar.

⁸³ Beck, *Elements of Medical Jurisprudence*, p. 80.

⁸⁴ J. W. Estes, ‘Dropsy’, in K. F. Kiple (ed.), *The Cambridge World History of Human Disease*, vol. 1 (Cambridge, 1993).

⁸⁵ NAS, AD14/77/190, Janet Clark.

⁸⁶ NAS, AD14/20/135, Christian Cruickshank.

years earlier.⁸⁷ Similarly, Margaret Goodfellow had dropsy in her leg in 1845, and told neighbours that the seaweed poultice that was applied to it made the disease ‘fly to her body’,⁸⁸ Ann Irvine or Shirra had a doctor’s certificate confirming her dropsy, in 1852,⁸⁹ and Mary Jane Scott claimed that she had been suffering from dropsy for the past two years.⁹⁰

Another cause of swelling was the suppression of the menses.⁹¹ Medical jurists warned that, as well as pregnancy, there were ‘numerous disorders of the uterus under which the menses were suppressed’.⁹² It was believed that if menstruation was suppressed, or if it was irregular, blood became obstructed, remained within the body, and thus caused swelling. The use of this explanation allowed women to explain not only their increase in bulk, but also why they had ceased menstruating. For example, in 1824, Susan Houston claimed that the ‘cessation of her periodic discharge’, and the increase in her bulk, was the result of ‘an obstruction’, caused by a cold,⁹³ ‘a want of shoes’ was said to have brought on the cold that stopped Mary Cairns’s courses,⁹⁴ and Ann Andrew claimed ‘severe cold and hard work’ were the reasons why her courses had stopped.⁹⁵ Likewise, Helen Sangster or Whitecross explained both the stoppage of her courses, and her headaches, on her feet getting wet in the moss.⁹⁶ Indeed, cold was the most common reason given by women for problems with menstruation, but other factors behind the stoppage, or irregularities in women’s courses, included specific illnesses such as choleric,⁹⁷ measles,⁹⁸ and dysentery,⁹⁹ as well as unspecified stomach or internal problems,¹⁰⁰ general ‘ill health’,¹⁰¹ or having a ‘delicate constitution’.¹⁰²

⁸⁷ NAS, AD14/31/75, Christian Craig.

⁸⁸ NAS, AD14/45/174, Margaret Goodfellow.

⁸⁹ NAS, AD14/52/50, Ann Irvine or Shirra.

⁹⁰ NAS, AD14/72/132, Mary Jane Scott.

⁹¹ Taylor, *The Principles and Practice of Medical Jurisprudence*, p. 153.

⁹² *Ibid.*, p. 152.

⁹³ NAS, AD14/24/30, Susan Houston.

⁹⁴ NAS, AD14/34/153, Mary Cairns.

⁹⁵ NAS, AD14/52/249, Ann Andrew.

⁹⁶ NAS, AD14/52/253, Helen Sangster or Whitecross.

⁹⁷ For example, see NAS, AD14/41/84, Agnes Pollock.

⁹⁸ For example, see NAS, AD14/47/4, Barbara Jarvies.

⁹⁹ For example, see NAS, AD14/50/285, Ann Affleck.

¹⁰⁰ For example, see NAS, AD14/45/105, Isobel McLaren or Dobie; AD14/78/62, Elizabeth Cowie.

¹⁰¹ For example, see NAS, AD14/52/198, Helen Lennox; AD14/73/343, Annie Digney.

Women also gave a number of other reasons why they had swelled. In 1813, Margaret Bald or Bauld ‘turned indisposed on account of having imprudently bathed...whereby her belly swelled’,¹⁰³ and, in 1823, Ann McDougal claimed that she had swelled as a result of having typhus a few years earlier.¹⁰⁴ Elizabeth Wilson’s largeness stemmed, she claimed, from a mercury-based medicine she had taken two years previously,¹⁰⁵ mercury given to Jean Watson for a cold was also her explanation as to why she was bulky, in 1839,¹⁰⁶ and, after suffering from a cold in 1857, the medicine and the wrapping administered by a doctor was, claimed Agnes Davidson or Tough, the cause of her swelling.¹⁰⁷ Other explanations included ‘nervous wind’,¹⁰⁸ a ‘tumour or ulcer’,¹⁰⁹ and, in 1914, Helen Timoney claimed that her stomach had been swollen ever since an appendix operation.¹¹⁰

The precognitions occasionally record the reasons given by women for other, more general symptoms of pregnancy. Women gave a number of explanations for feeling illness, pain, and discomfort. Some claimed that they were suffering from a bowel complaint,¹¹¹ others that they were suffering from rheumatic pain.¹¹² For Sarah Jane Murphy, a boil caused the pain in her side,¹¹³ and Margaret or Peggy McLachlan’s breast was sore after puncturing it with a needle.¹¹⁴ Margaret Stewart said she suffered from ‘cramp in the heart’,¹¹⁵ and Mary Jane Kennedy claimed that dropsy and consumption had affected her chest.¹¹⁶ Other ailments women claimed to have suffered included

¹⁰² For example, see NAS, AD14/55/166, Isobel Edwards.

¹⁰³ NAS, AD14/13/50, Margaret Bald or Bauld.

¹⁰⁴ NAS, AD14/23/204, Ann McDougal.

¹⁰⁵ NAS, AD14/39/305, Elizabeth Wilson.

¹⁰⁶ NAS, AD14/40/144, Jean Watson.

¹⁰⁷ NAS, AD14/58/142, Agnes Davidson or Tough.

¹⁰⁸ NAS, AD14/61/103, Maria Whisker.

¹⁰⁹ NAS, AD14/86/22, Margaret Anderson.

¹¹⁰ NAS, AD15/14/103, Helen Timoney.

¹¹¹ For example, see NAS, AD14/45/176, Isabell Fraser.

¹¹² For example, see NAS, AD14/80/5, Mary Campbell.

¹¹³ NAS, AD14/96/27, Sarah Jane Murphy.

¹¹⁴ NAS, AD14/42/62, Margaret or Peggy McLachlan.

¹¹⁵ NAS, AD14/62/186, Margaret Stewart.

¹¹⁶ NAS, AD14/69/265, Mary Jane Kennedy.

toothache,¹¹⁷ lumbago,¹¹⁸ neuralgia,¹¹⁹ ‘a slight touch of influenza’,¹²⁰ and anaemia.¹²¹ In 1878, Margaret Cowie or Raeside told neighbours that she was suffering from ‘her womb coming down’,¹²² and, in 1854, according to one neighbour, Elizabeth Duncan was ‘always complaining’ and would ‘never take medical advice’.¹²³

The signs of pregnancy, then, according to Taylor, were ‘easily mistaken...without medical ‘expertise’.¹²⁴ Indeed, the ambiguous nature of the symptoms of pregnancy allowed pregnant women to construct plausible explanations as to why they had increased in size, or were feeling unwell, that served to deflect accusations of pregnancy, at least temporarily. This not only allowed many women to remain in employment, it also gave them time to consider other options, which may have included attempting to procure an abortion, or contacting the child’s father for a promise of, if not marriage, then at least financial support for the child. Nevertheless, for all pregnant women, the time would eventually arrive for labour and child-birth, the signs of which were, arguably, much more difficult for women to conceal than those of pregnancy, especially from communities that were already suspicious, and were watching closely.¹²⁵

Surveillance: confinement, labour and delivery

Most denials of pregnancy were not believed, and communities remained vigilant in watching women they suspected of being pregnant, and were sensitive to any changes in behaviour that might indicate the onset of labour, or delivery. For example, suspicion was aroused if a woman suspected of being pregnant complained of feeling unwell, or was suddenly confined to her bed. Thus, in 1835, when Elizabeth Whyte complained of feeling ill, her neighbours and fellow field workers immediately suspected she was in

¹¹⁷ For example, see NAS, AD14/45/55, Jean or Jane Lobban.

¹¹⁸ For example, see AD15/30/107, Caroline Ross.

¹¹⁹ For example, see NAS, AD14/86/19, Agnes Cowan.

¹²⁰ For example, see NAS, AD15/21/166, Annie Robertson Watson.

¹²¹ For example, see NAS, AD15/26/94, Margaret Keay.

¹²² NAS, AD14/78/89, Margaret Cowie or Raeside.

¹²³ NAS, AD14/54/296, Elizabeth Duncan, Deposition of Elizabeth Martin or Scott.

¹²⁴ Taylor, *The Principles and Practice of Medical Jurisprudence*, p. 154.

¹²⁵ Jackson, *New-Born Child Murder*, p. 65.

labour, and a doctor was sent for,¹²⁶ and farmer's wife Marion Brown went into the room of her domestic servant, after she had had 'a bad night', in 1889.¹²⁷

If women veered from their daily routine in an attempt to be delivered in seclusion, suspicions were also quickly aroused. For example, when fifteen-year-old fisherman's daughter Charlotte Galt noticed Jane Skinner going up 'to the old manse' in Garvie, Banff, in 1841, she became suspicious, and a search of the old manse revealed a dead new-born infant wrapped in a bundle.¹²⁸ In 1860, a sawyer, suspicious that Margaret Hannah was near to her confinement, followed her into a wood in Old Luce, Wigton, where he discovered signs of her recent delivery,¹²⁹ and, similarly, two witnesses testified to having seen Elizabeth Drysdale go into a wood near Peebles, in 1868, presumably to give birth to the child later found in the river Tweed.¹³⁰ The sudden absence of a woman suspected of being near her confinement also put the community on full alert, such as in Kirkintilloch, Dumbarton, in 1871, when Isabella White's disappearance for one night led her employer to suspect that she had been confined, and institute a search for the body.¹³¹ Again, in 1877, a search was made for Margaret Crichton, who 'went missing for a few hours', as it was suspected she was near her confinement.¹³²

The close surveillance of a woman suspected of being near her confinement occasionally led to her being caught in the process of childbirth. For example, in 1863, in Logie Rait, Perth, Christian McFarlane's delivery was watched, unbeknown to her, by two neighbours, one of whom described the event to investigators:

About 4 o'clock Mrs Forbes who lives in the room above us came and told me that she (McFarlane) was in the garden, and Mrs Forbes thought she was ill, meaning in labour: - This garden is in front of the McFarlanes' house and close to the side of the road...I went up to Mrs Forbes as we could see better into the garden from her window. We saw McFarlane lying on her side close to the dike in

¹²⁶ NAS, AD14/35/140, Elizabeth Whyte.

¹²⁷ NAS, AD14/89/49, Margaret Austin.

¹²⁸ NAS, AD14/41/2, Jane Skinner.

¹²⁹ NAS, AD14/60/312, Margaret Hannah, Deposition of Edward Saunders.

¹³⁰ NAS, AD14/68/201, Elizabeth Drysdale, Depositions of Janet Brown and Christina Munro or Brown.

¹³¹ NAS, AD14/71/18, Isabella White.

¹³² NAS, AD14/77/4, Precognition against Margaret Crichton, Deposition of John Williamson.

the grass. She then got up on her knees with her hands on the grass, and after being in that position for a very little while she sat down with her back to the dike...About an hour afterwards my husband came in and told me that he had seen McFarlane wrapping something into her petticoat and going away towards her house.¹³³

Similarly, in Kilmarnock, in 1872, three neighbours of Janet Reid entered her garret room during, or just after, her delivery. One 'saw blood running from the bed to the floor', and another saw the 'child between her legs'.¹³⁴ There is also evidence that in some cases members of the community went to great lengths to observe pregnant women for signs of confinement. For example, in Alvah, Banff, in 1885, farm servant, Peter Shaw, suspicious that fellow servant Margaret Main was going to give birth, watched her, 'with a spy glass', enter a field and sit on a pile of weeds where he later discovered the dead body of a new-born infant.¹³⁵

Responses to signs of recent delivery

Communities were much more likely to inform the authorities in response to a suspected delivery.¹³⁶ The kirk session was informed only rarely. For example, in Kirkoswald, Ayr, in 1829, in a letter to the procurator fiscal, the reverend James Inglis stated that:

[o]ne of my elders applied to me last night at a late hour informing me that a woman of loose character was suspected of child murder...I must say that justice and a regard to public feeling requires that the case should be investigated.¹³⁷

The kirk tended to call the police in these circumstances, but occasionally they arranged for the medical examination of a suspected woman, such as in Leslie, Aberdeen, in 1846, where, having been informed of a suspicion that harvest labourer Margaret Dae or Dow

¹³³ NAS, AD14/63/278, Christian McFarlane, Deposition of Isabella Robertson.

¹³⁴ NAS, AD14/72/278, Janet Reid, Depositions of Mary Ewart or McNaughton and Annie Poland or Green.

¹³⁵ NAS, AD14/85/260, Margaret Main.

¹³⁶ See Chapter Six.

¹³⁷ NAS, AD14/29/222, Elizabeth or Betty Jamieson. Letter to the procurator fiscal from the reverend James Inglis.

had been recently confined, the session confronted her, and demanded that she undergo a medical examination.¹³⁸ Communities were much more likely to call a doctor or a midwife about a suspected delivery than with a pregnancy.¹³⁹

In general, women managed to give birth in secret, but communities were generally quick to recognise the signs of recent delivery.¹⁴⁰ The precognitions suggest that communities were less likely to confront women directly regarding suspected deliveries. Nevertheless, they do record some confrontations of women suspected of having given birth. For example, in 1842, Christian Ross was challenged by three female neighbours, her breasts were examined, and the child was discovered under her bed,¹⁴¹ and, in 1856, around ten neighbours entered Agnes or Ann McKinnon's house in Govan demanding that she admit to giving had a child.¹⁴² Similarly, in 1859, after seeing a quantity of blood, and suspecting a recent delivery, Jane Yorkston felt the belly of Catherine Bennie or Binnie, the results of which confirmed her suspicion.¹⁴³ However, on the whole it seems that the physical examination of women suspected of having been recently delivered was left to medical practitioners.

Usually, it was someone who knew the suspect more intimately who approached her regarding the suspicion of a delivery. For example, Ann Ross was confronted by her sister in 1848, and admitted to her that she had had 'a laddie' and that she had buried it in the garden,¹⁴⁴ and Jane McNaughton confronted her domestic servant in 1873, asking her, 'What's this you have been about Maggie? This is an awful case, is it a boy or a girl?'¹⁴⁵

¹³⁸ NAS, AD14/46/3, Margaret Dae or Dow.

¹³⁹ See Chapter Seven for a full discussion of local medical involvement.

¹⁴⁰ The various signs of delivery are discussed below, in Chapter Two.

¹⁴¹ NAS, AD14/42/154, Christian Ross.

¹⁴² NAS, AD14/56/144, Agnes or Ann McKinnon.

¹⁴³ NAS, AD14/59/313, Catherine Bennie or Binnie.

¹⁴⁴ NAS, AD14/48/200, Ann Ross, Deposition of Catherine Ross or Paterson.

¹⁴⁵ NAS, AD14/74/396, Margaret Philp.

Witnesses also used other strategies in their attempts to gain an admission of delivery from women. In 1855, Jane Reid, for example, suspected fellow servant Janet McIntosh had given birth, and told investigators of a conversation they had one morning:

‘I said ‘Janet, what a dreaming I had about you last night.’ She asked ‘what was it’ – I said I had dreamed she had a lassie in Mrs Hogg’s bed – She laughed and said ‘She has been awful clever then’. I thought she would unburden her mind to me but she did not and no more passed between us on this occasion’.¹⁴⁶

Likewise, a neighbour confronted Elizabeth McNab, in Auchtermuchty, Fife, in 1864, with her suspicions of her having been recently delivered. ‘I put the question to her this way’, she told investigators, ‘[t]hat I understand there was a person in prison for putting away her child. The prisoner then remarked that she knew a woman in Strathmiglo who had put away her child, and that she got clean off as the child was never got’.¹⁴⁷

In just over half of the cases in which the community confronted a suspect, she admitted that she had been delivered. Janet or Jessie Kessen admitted to fellow mill workers in Pollockshaws, Renfrew, in 1836, that she had given birth to a child, but told them that the child was still alive and was ‘at nurse’ in Glasgow,¹⁴⁸ Catherine Shepherd admitted to her employer, in Dundee, in 1863, that she had had ‘a bairnie at six months’,¹⁴⁹ and Jessie Gibson confessed in St Cyrus, Kincardine, in 1876, telling a neighbour, ‘well, Mary it is as time as God is in heaven it just fell from me at the hedgeside’.¹⁵⁰

For some employers, the discovery of the signs of delivery was the moment when they dismissed an employee. Thus, in 1845, when Isabell Fraser remained ill in her bed after her delivery, her employer told investigators that ‘I desired her to get up and go to her work or else go home to her mother’, and, in 1864, on discovering bloody rags, Jane Storrar immediately sacked her servant, stating that ‘it is well known in this house that

¹⁴⁶ NAS, AD14/55/208, Janet McIntosh.

¹⁴⁷ AD14/64/203, Elizabeth McNab, Deposition of Robina Smith or Scott.

¹⁴⁸ NAS, AD14/37/357, Janet or Jessie Kessen.

¹⁴⁹ NAS, AD14/63/269, Catherine Shepherd, Deposition of Catherine Farquharson or Summers.

¹⁵⁰ NAS, AD14/76/305, Jessie Gibson, Deposition of Mary Murray or Stephen.

you have given birth to a child, and besides that you have been stealing butter'.¹⁵¹ Likewise, in 1921, one employer told investigators about her servant's reply to her enquiry regarding the state of her health:

'I'm all right now. I have had a little one'. I said 'My God where is it?' and she replied 'It is down at the woodie' (a place about 500 yards from my house) 'It was stillborn'. I then told her to leave the house and go to her own people, and she went away.¹⁵²

Denials of labour and child-birth

Only seventy-seven cases within the precognitions record the specific reasons given by women in explaining potential signs of labour or recent delivery.¹⁵³ In a further thirty-four cases women actually admitted that they had been delivered, in twenty-five cases either the delivery itself was witnessed, or a medical examination had revealed unequivocal signs of recent delivery – such as the placenta still within the womb, and in fifteen cases either the women were not suspected, or simply were not asked whether they had been recently delivered.¹⁵⁴ In those cases in which specific denials of labour and recent delivery were recorded, women offered a variety of plausible explanations for symptoms of labour and recent delivery that, as with denials of pregnancy, conformed to lay notions of the female body.

A number of reasons were given for the symptoms of labour, or for a sudden confinement. Whilst a few admitted they were in labour – such as Agnes Johnston who called for two aunts as soon as labour came on, in Channelkirk, Berwick, in 1816¹⁵⁵ – most women blamed other ailments for their symptoms. Amongst these were

¹⁵¹ NAS, AD14/64/154, Barbara Taylor.

¹⁵² NAS, AD15/21/184, Catherine Munro, Deposition of Jane Black.

¹⁵³ Of the six hundred and two cases, in four hundred and forty-eight no information is recorded.

¹⁵⁴ One reason for this is that the evidential requirements needed to prosecute new-born child murder and concealment of pregnancy did not include witness testimony to a denial of recent delivery. Indeed, the medical evidence that a woman had been recently delivered was more important in the judicial investigation, and as such any denial prior to this examination was immaterial to the case.

¹⁵⁵ NAS, AD14/16/66, Agnes or Nany or Nancy Johnston.

headaches,¹⁵⁶ toothaches,¹⁵⁷ bilious attacks,¹⁵⁸ bowel complaints,¹⁵⁹ rheumatic pain,¹⁶⁰ and cramp.¹⁶¹ One woman claimed that the pain in her side was occasioned by a recent fall,¹⁶² and, in 1875, Margaret Smith told witnesses that ‘she had been ill like this before, and would soon get better’.¹⁶³ The reason for handloom weaver Jane Watson or McDougall’s confinement in Dundee, in 1863, was that because of the scarcity of mill work, she had been forced to stay at home, where she ‘winded pirns instead’.¹⁶⁴

For those women whose actual deliveries had been witnessed, a denial that they had given birth was fairly pointless, but some attempted to do so nevertheless. When, for example, Christian McFarlane was confronted by a neighbour with claims that she had been witnessed giving birth, ‘she did not answer...In a minute or two however she said that “her body had run through her during the night”’.¹⁶⁵ In cases where the sound of an infant’s cries had been heard, women occasionally attempted to attribute the sound to other causes. For example, in Lesmahagow, Lanark, in 1884, farmer Archibald Prentice heard a ‘squeel’ coming from the room of one of his servants, Mary Callander, who tried to claim that Prentice’s collie, Beauty, was in her room. However, ‘there was no dog there.’¹⁶⁶ Likewise, in the same year the neighbours of Elspet Gordon or Catto heard the cries of an infant coming from her room, in Nellfield Place, Aberdeen. One of the neighbours told investigators that ‘before one o’clock, Mrs Catto came into my house and asked me “Have you got the cat yet?” and I said “No Mrs Catto, it was not a cat it was a child”’.¹⁶⁷ Similarly, farmer George Donald heard a noise coming from the room of his domestic servant, Marjory Ann Ritchie Stuart, in Banchory Ternan, Kincardine, in 1914.

¹⁵⁶ For example, see NAS, AD14/61/10, Elizabeth or Betsy Grant.

¹⁵⁷ For example, see NAS, AD14/93/12, Elizabeth Mary Burns.

¹⁵⁸ For example, see NAS, AD14/75/229, Isabella Telfer.

¹⁵⁹ For example, see NAS, AD14/58/245, Agnes Halliburton or Duncan.

¹⁶⁰ For example, see NAS, AD14/77/324, Christy or Christina Macrae or MacLean.

¹⁶¹ For example, see NAS, AD14/82/274, Jane Inglis.

¹⁶² NAS, AD14/42/224, Margaret Buchanan or Reid.

¹⁶³ NAS, AD14/75/210, Margaret Smith.

¹⁶⁴ NAS, AD14/63/242, Jane Watson or McDougall.

¹⁶⁵ NAS, AD14/63/278, Christian McFarlane, Deposition of Isabella Robertson.

¹⁶⁶ NAS, AD14/84/54, Mary Callander.

¹⁶⁷ NAS, AD14/84/68, Elspet Gordon or Catto, Deposition of Margaret Sangster or Walker.

She denied that the noise was that of a child, claiming instead that it was the sound of her trunk opening and closing.¹⁶⁸

The precognitions do not record any specific reasons given by women for the reduction in the size of their bellies, probably because there was no obvious explanation for such a physiological alteration without the presence of other signs, such as blood. Of course, it is not uncommon for women to remain quite large immediately after delivery, and occasionally a delivery was not suspected immediately. Ann Cumming, for example, believed Jane McGillivray was still pregnant after her delivery, in Knockando, Elgin, in 1858.¹⁶⁹ In some cases, women suspected of having been recently delivered claimed that they were still pregnant. For example, in the investigation of Margaret Brown in 1878, thirteen-year-old servant Isabella Robertson deposed that ‘I suspected she was with child, and when she was ill in the barn I said to her “is anything to come over you” and she answered “it is a long time to that”’.¹⁷⁰ In 1864, Elizabeth McNab was searched by two witnesses and the police after suspicions that she had given birth, and discovered ‘a pad...under her dress to make her look bulky’,¹⁷¹ and, in 1886, Agnes Cowan also ‘pretended she was still pregnant’ by wearing padding, although ‘sometimes she forgot’.¹⁷²

The sudden presence of large amounts of blood was a clear indication of recent delivery, and generally required an explanation. As in eighteenth-century England, ‘some women claimed that the presence of blood on clothes and bed-clothes, usually interpreted by a woman’s neighbours as indicative of recent delivery, was, on the contrary, a mark of normal menstruation’.¹⁷³ Sarah or Sarai Bremner, for example, claimed the blood on her clothing was the result of ‘natural causes’,¹⁷⁴ Elizabeth Lyon attributed the presence of blood to her ‘usual illness’,¹⁷⁵ and Margaret Johnston’s explanation for blood was her

¹⁶⁸ NAS, AD15/14/110, Marjory Ann Ritchie Stuart.

¹⁶⁹ NAS, AD14/58/439, Jane McGillivray.

¹⁷⁰ NAS, AD14/79/30, Margaret Brown.

¹⁷¹ NAS, AD14/64/203, Elizabeth McNab.

¹⁷² NAS, AD14/86/19, Agnes Cowan.

¹⁷³ Jackson, ‘Something More Than Blood’, p. 203; Symonds, *Weep Not for Me*, p. 86.

¹⁷⁴ NAS, AD14/58/7, Sarai or Sarah Bremner.

¹⁷⁵ NAS, AD14/70/268, Elizabeth Lyon and George Wishart.

‘normal female complaint’.¹⁷⁶ A number of women explained the presence of excessive amounts of blood on a ‘flooding’, a sudden return of their menses after a stoppage, an account that could also explain their sudden reduction in size. For example, when Captain Robert Sutherland saw his housekeeper, Mary Macintyre, lying on the floor of her room in her own blood, she told him she’d always been irregular in her courses, and that a ‘stoppage had come away’.¹⁷⁷ Likewise, in 1865, Janet McPherson told her sister that ‘a great gathering, and a great quantity of blood has come from me’. Suspicious, Janet’s sister searched for, and discovered, a dead child in the water closet, in Duddingston, Edinburgh.¹⁷⁸ Likewise, in 1868, Clementia Cameron explained that her courses, which had been ‘lodged’ for three months, had suddenly come away, thus explaining the presence of blood in her room,¹⁷⁹ and Jessie Henderson claimed that she flooded ‘always that time of year’, when blood was discovered in her room in Blackford, Perth, in 1888.¹⁸⁰ Other explanations for the presence of blood included a cut finger,¹⁸¹ a bleeding nose,¹⁸² and, in 1896, Sarah Jane Murphy told her employer that ‘something inside she’d had for years burst’.¹⁸³

In his discussion of the accounts of women suspected of new-born child murder in eighteenth-century England, Mark Jackson observes that sometimes ‘suspects acknowledged that the substance of which they had been delivered possessed more form and substance than blood, but nevertheless denied that the substance constituted a child’.¹⁸⁴ In Scotland, between 1812 and 1930, women often gave similar accounts, particularly if the body of the child had not yet been discovered. For example, in 1819, Euphemia or ‘Effy’ Mill or Younger initially denied that the body of a child discovered in St. Andrews was hers, telling investigators that she had given birth to ‘a substance the size of her folded fist’, and although it ‘gave a kick’, it was ‘not a child’.¹⁸⁵ Similarly, in

¹⁷⁶ NAS, AD14/74/121, Margaret Johnston.

¹⁷⁷ NAS, AD14/59/108, Mary Macintyre.

¹⁷⁸ NAS, AD14/65/269, Janet McPherson, Deposition of Helen McPherson.

¹⁷⁹ NAS, AD14/68/311, Clementia Cameron.

¹⁸⁰ NAS, AD14/88/140, Jessie Henderson.

¹⁸¹ For example, see NAS, AD14/66/183, Jane Scougall.

¹⁸² For example, see NAS, AD15/21/47, Margaret McKenzie.

¹⁸³ NAS, AD14/96/27, Sarah Jane Murphy.

¹⁸⁴ Jackson, ‘Something More Than Blood’, p. 203.

¹⁸⁵ NAS, AD14/19/204, Euphemia or ‘Effy’ Mill or Younger.

1823, Molina Arcus – whose child was never discovered – told investigators that she had produced ‘a lifeless lump of matter’,¹⁸⁶ Isabella Dawson or Wilson told a neighbour that her miscarriage ‘came off in pieces and was unpleasant to look at’,¹⁸⁷ and, in 1872, Mary Fraser admitted to her stepfather that she had been delivered of something ‘soft’ and had ‘thrown it under the bed’, where a dog or cat ‘ate it’.¹⁸⁸ Likewise, in Thurso, Caithness, in 1876, Christina Reid admitted that she had miscarried, but that ‘[i]t came like ‘lumps of liver’’,¹⁸⁹ Williamina Roughead claimed she had had a ‘4 months miscarriage’ that looked ‘just like a piece of skin’,¹⁹⁰ and, in 1920, when challenged about a suspected delivery in Saltcoats, Ayr, Margaret MacBride claimed that only ‘a lump came away’.¹⁹¹

For the majority of women, then, a denial of labour, and of recent delivery, depended upon the willingness of family, employers, and neighbours, to accept their account of illness, or the presence of blood. However, in most cases the pregnancy was also suspected, and as a consequence denials of labour or delivery, no matter how plausible, tended not to be accepted by communities. The arrival of a doctor or midwife, or of the police signalled, for a number of women, the end of their claims that they had not given birth, and for most, this moment came when the body of their child was discovered.

Surveillance: the discovery of the body

In the majority of cases, the discovery of a dead body was simply the postscript to the unofficial investigation, the suspected woman either having confessed to, or a medical examination confirmed suspicions of, the recent delivery of a new-born infant. Often, the arrival of a midwife or doctor, or the police, would lead to an admission by the suspect and/or the discovery of the body. Sometimes, however, it was the persistence of neighbours, relatives, employers or fellow workers that led to the discovery of the body.

¹⁸⁶ NAS, AD14/23/248, Molina Arcus and Robert Arcus.

¹⁸⁷ NAS, AD14/55/310, Isabella Dawson or Wilson, Deposition of Euphemia Whitecross or Henderson.

¹⁸⁸ NAS, AD14/72/313, Mary Fraser, Deposition of John Mackenzie.

¹⁸⁹ NAS, AD14/76/250, Christina Reid, Deposition of John Craven (surgeon).

¹⁹⁰ NAS, AD14/78/152, Williamina Roughead, Deposition of Philip Whiteside Maclagan M.D.

¹⁹¹ NAS, AD15/20/161, Margaret MacBride, Deposition of Mary Lees.

For example, in 1835, a neighbour of Marion Carsewell was so convinced that she had given birth that she ‘snuck through the back door’ and discovered the dead child under the bed,¹⁹² and, in 1890, a neighbour entered Catherine Anderson’s room, to look for a shawl Catherine had borrowed from her she told investigators, and discovered a dead new-born female child in a trunk.¹⁹³

In cases where it was not immediately apparent who the mother of a dead infant was, it was the combination of police detection and medical inspection that helped to identify the mother, but occasionally the behaviour of women after the discovery of a body led neighbours to suspect that they were the child’s mother. For example, in 1851, when the body of a new-born infant was discovered on a beach in Airth, Stirling, one witness told investigators that ‘[a]ll the young women came [to see the body] except the prisoner’,¹⁹⁴ and likewise, in 1922, a neighbour became suspicious that the recently discovered dead body of a new-born infant may have been that of Agnes Duncan because, she explained to investigators,

the accused did not appear anxious to speak about the matter and made the excuse that she would require to go and attend to her dinner. I think, the accused, had she been clear of it, would have talked to me more about the matter as, she, the accused is much inclined to speak about anything that takes place in the rows.¹⁹⁵

Community responses to discovering the body

Once a suspect had confessed to having had a child, she often revealed where the body was. In other cases, the body was searched for, and usually found quickly, by employers, relatives, medical witnesses and the police. Occasionally, the whole of the neighbourhood became involved in the search. Very few confrontations between witnesses and suspects after the discovery of the body were recorded. Of these, about half involve a denial and

¹⁹² NAS, AD14/35/306, Marion Carsewell, Deposition of Ann Bowsfield or Preston.

¹⁹³ NAS, AD14/90/14, Catherine Anderson. The fact that Anderson had previously been convicted of concealment of pregnancy, and that it was believed by neighbours that she was about to flee the area was probably the real reason why her room was searched.

¹⁹⁴ NAS, AD14/52/198, Helen Lennox .

¹⁹⁵ NAS, AD15/22/40, Agnes Duncan and Robert Duncan, Deposition of Margaret Wilson.

half an admission of murder. For example, in 1825, having been asked why she had not called for help in delivering her child – which was discovered with a ‘napkin’ wrapped around its neck – Janet Stewart replied, ‘because the Devil was with me’,¹⁹⁶ and, in 1835, Elizabeth Whyte said to one witness, ‘I wish my hands had been tied when they were loose’.¹⁹⁷ Similarly, in 1858, Jane McIntyre confessed to a fellow field worker that she had been delivered of a child, and that ‘she had hung it’,¹⁹⁸ and in the same year Agnes Halliburton or Duncan confessed to strangling her new-born infant to Sarah Bell, who told investigators that ‘she shewed me how she did this by putting her open hand on my throat’.¹⁹⁹ Again, in 1896, in reply to her employer’s question as to why she cut her new-born infant’s throat, Sarah Jane Murphy replied, ‘I don’t know, the devil must have been in me I think’.²⁰⁰

Informing the Authorities: the body

The police were generally informed after the discovery of every body in this study.²⁰¹ Doctors and midwives were called in a minority of cases, and usually in conjunction with the police. The kirk was generally not informed about the discovery of a dead body, although occasionally the kirk session did carry out investigations after such a find. For example, in 1820 the minister of Slains, Aberdeen wrote to the procurator fiscal regarding the discovery of the dead body of a new-born infant:

In regard to discovering the unfortunate mother, or the inhuman miscreant, who exposed it...there is a young woman in the parish, against whom there was a great clamour on account of a suspicion that she had been with child.²⁰²

Similarly, after the discovery of a dead new-born infant covered with sand and stones in the grounds of the manse at Daviot, Inverness, in 1833, the session there asked a midwife

¹⁹⁶ NAS, AD14/25/68, Janet Stewart, Deposition of Catherine Tait.

¹⁹⁷ NAS, AD14/35/140, Elizabeth Whyte.

¹⁹⁸ NAS, AD14/58/166, Jane McIntyre, Deposition of Jane Gallocher.

¹⁹⁹ NAS, AD14/58/245, Agnes Halliburton or Duncan.

²⁰⁰ NAS, AD14/96/27, Sarah Jane Murphy.

²⁰¹ See Chapter Six.

²⁰² NAS, AD14/20/93, Janet Burd.

to examine all of the unmarried women in the parish for recent signs of delivery,²⁰³ and the minister of Dunscore, Dumfries, having been informed of the discovery of a dead new-born infant, ordered its dissection by surgeons at the farmhouse where it was discovered, in 1859.²⁰⁴

Informing the Authorities: reluctance and discretion

This chapter has argued that generally communities were unlikely to inform the authorities of a suspected pregnancy. The most obvious reason for this was that at this stage no crime had been committed, nor would it have been expected in most cases. This chapter has also suggested that in most cases one or more members of a community did confront a pregnant woman regarding her condition. However, some members of the community did not confront suspects, for a number of reasons. Some probably felt that the matter was none of their business, whilst others may not have believed the rumours in the first place, such as one employer from Islay, Argyll, who told investigators in reference to her domestic servant's condition that 'I heard a rumour that she was in the family way, but I did not attend to it, as the Bowmore people are in the habit of talking scandal'.²⁰⁵ For others, it was fear of the suspect, or her family, that influenced their silence. For example, one of the reasons why Grace Ferguson was not confronted about her pregnancy was that, as mentioned by the procurator fiscal in a note to Crown Counsel, '[h]er family are very peculiar people and live at variance with all their neighbours'.²⁰⁶ In some cases, witnesses simply did not know how to approach the matter. For example, in Kilmalie, Argyll, one of the kirk elders, Alexander Cameron, heard a rumour that a local woman was pregnant, and although 'he thought it was his duty as an elder to ask her whether there was any truth in it', he admitted to investigators that 'from feelings of delicacy he put off from time to time doing so, and from all he now

²⁰³ NAS, AD14/33/51, Catherine McLeod. It is interesting to note that only unmarried women were examined. Clearly the assumption that a married woman would not conceal her pregnancy prevailed in this situation.

²⁰⁴ NAS, AD14/59/132, Margaret Murdoch.

²⁰⁵ NAS, AD14/89/51, Jessie McCallum.

²⁰⁶ NAS, AD14/67/251, Grace Ferguson.

hears he regrets having done so'.²⁰⁷ Likewise, in 1854, a neighbour of Anne Howieson or Wilson sent for her to discuss the rumours of her pregnancy, but she told investigators, 'my courage failed and I could not do it'.²⁰⁸

This chapter has also shown that whilst communities were less inclined to confront women suspected of having been delivered, on the whole the authorities were called. However, there are one hundred and twenty-two cases (20 per cent) in which there was a significant delay between the 'crime', and the authorities being informed,²⁰⁹ and where it is clear that the reason for the delay was reluctance on the part of the community to alert the authorities immediately. For example, in 1844, Elizabeth Hunter's pregnancy was the 'common talk of the village', yet the sheriff officer was not informed until a month after the suspected delivery.²¹⁰ In two cases the gap was considerable. In the first, Jean Archibald was suspected of murdering her new-born infant in St. Ninians, Stirling, in 1826, but absconded before she was apprehended. The case was re-opened, eleven years later because, the prosecuting advocate explained, 'information was lodged against her now on grounds of a private quarrel'.²¹¹ Similarly, in 1852, local jealousies prompted members of the village of Dunmore, also in Stirling, to lodge an official accusation of child murder against Helen Lennox, a year after the 'crime' had been committed.²¹² A letter from the procurator fiscal to Crown Counsel outlined the main reasons why:

The circumstances are shortly these:- The girl joined the Episcopal church, a chapel in connexion with which was lately built and endowed by the Countess of Dunmore, and latterly made rather strong professions of religion, was confirmed, stood as Godmother to a child, and otherwise brought herself into notice and received in consequence the patronage and countenance of Lady Dunmore and her clergymen. This led the villagers to talk openly about their suspicions of the girl's connexion.²¹³

²⁰⁷ NAS, AD14/42/62, Margaret or Peggy McLachlan.

²⁰⁸ NAS, AD14/54/221, Ann Howieson or Wilson.

²⁰⁹ Cases with a gap of 2.5 weeks or more have been included here.

²¹⁰ NAS, AD14/44/210, Elizabeth Hunter.

²¹¹ NAS, AD14/37/199, Jean Archibald.

²¹² NAS, AD14/52/198, Helen Lennox.

²¹³ *Ibid.*, Procurator fiscal's note.

There are a number of reasons for a community's reluctance to make a formal accusation. First, for many witnesses it is clear that they did not want to be involved in a criminal investigation, particularly if the suspect was an employee of theirs. For example, after Catherine Shepherd admitted that she had been delivered of a 'bairnie at the sixth month', in 1863, her employer did not inform the authorities,²¹⁴ and, in 1887, although Jessie Gibson dismissed her domestic servant after she saw marks on the floor, she did not inform the authorities of her suspicion.²¹⁵ Some witnesses were scared to become involved. For example, in 1829, in Kirkoswald, Ayr, local women asked by the minister to ascertain whether or not the rumours about Elizabeth Jamieson's delivery were true, they refused to go, 'for fear of trouble',²¹⁶ in 1859, the reluctance amongst the community to report Ann Kelly was explained by one witness, who stated that '[s]he is a very violent and quarrelsome woman and no one would venture to take any liberty with her',²¹⁷ and the author of an anonymous letter regarding a suspected concealment of pregnancy in 1864 stated that 'plenty of people would have told the authorities had it not been for fear of the consequences'.²¹⁸ It is worth noting that this reluctance seems to have characterised the community's response to other categories of crime. For example, Peter King, in his discussion of England between 1740 and 1820 also finds similar reasons why victims of property crime were reluctant to prosecute offenders.²¹⁹

Sympathy for the accused was another reason why certain members of the community may have exercised discretion in implicating a suspect.²²⁰ For example, a sergeant deposed in 1869 that a number of witnesses in the investigation against Jessie Brown were reluctant to speak out,²²¹ and, in 1911, Helen Graib, did not inform the authorities about fellow servant May Burgess's concealment of pregnancy because, she admitted to

²¹⁴ NAS, AD14/63/269, Catherine Shepherd.

²¹⁵ NAS, AD14/89/49, Margaret Austin. This is taken from a precognition against the accused from an investigation in 1887 from which there were no proceedings.

²¹⁶ NAS, AD14/29/222, Elizabeth or Betty Jamieson, Letter to the procurator fiscal from the reverend James Inglis.

²¹⁷ NAS, AD14/60/98, Ann Loney or Kelly, Deposition of Agnes Jones or Glover.

²¹⁸ NAS, AD14/64/166, Elizabeth McKinnon.

²¹⁹ P. King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford, 2000), p. 31.

²²⁰ *Ibid.*, p. 33.

²²¹ NAS, AD14/69/26, Jessie Brown, Deposition of Daniel Murray.

the procurator fiscal, she did not want to 'say anything that would hurt my friend'.²²² Similarly, in 1930, when asked why she chose not to call the authorities sooner about the discovery of the dead body of a new-born infant delivered by a fellow servant, Alice MacRae replied, that 'I was afraid to disclose what I had seen because I thought Douglas might have placed the body there and she would be sent to prison'. However, she added, the situation 'preyed on my mind', and she eventually went to the procurator fiscal in Dunoon.²²³

Perhaps the most common reason for a long gap between the alleged crime and a formal accusation, was the reluctance of witnesses to come forward in the absence of a body. Without this concrete proof, many witnesses were unwilling to be the first to make such a serious allegation. For example, in 1886, although Ann Barr noticed that Agnes Cowan was pregnant, and not only observed a change in her appearance, but also saw Cowan's bloodstained clothing, she did not want to alert the authorities, she told the procurator fiscal, 'in case I was mistaken'.²²⁴ Indeed, in a number of cases the discovery of the body was the cue for witnesses to come forward with their suspicions. For example, it was only after the skull and part of the head of a new-born infant were found in a nearby wood near Closeburn, Dumfries, in 1837, that Barbara Siddons alerted the authorities as to her suspicions about local woman Margaret Rae,²²⁵ in 1842, despite the suspicion within the community of Kilmalie, Argyll, that Margaret or Peggy McLachlan had recently been delivered of a child, an official investigation was only launched after child's body was uncovered by dogs,²²⁶ and, in 1845, it was only when the body of Margaret Fyfe's new-born female child was discovered floating in the mill dam that the police were notified, in spite of the fact that it was 'the clamour of the country' that it had been murdered.²²⁷ In about half of the ninety-eight cases in which bodies were discovered by chance, the delivery had been suspected, and, arguably, it is possible that these cases may never have come to light had the body not been discovered. Indeed, the reason behind one

²²² NAS, AD15/11/153, May Burgess.

²²³ NAS, AD15/30/91, Nancy Douglas.

²²⁴ NAS, AD14/86/19, Agnes Cowan.

²²⁵ NAS, AD14/37/232, Margaret Rae.

²²⁶ NAS, AD14/42/62, Margaret or Peggy McLachlan.

²²⁷ NAS, AD14/45/155, Margaret Fyfe.

anonymous letter regarding a suspected new-born child murder in 1874, claimed its author, ‘was that ‘it will soon be over two weeks since it hapned [sic] and the naburs [sic] seme [sic] to be dead over the matter’.²²⁸

Conclusion

This chapter has looked at the various responses of communities in Scotland between 1812 and 1930 to suspected pregnancy, delivery, and to the discovery of the dead body of a new-born infant, as well as the responses of suspects to accusations of pregnancy, delivery and murder. Of course these responses are only those recorded by investigators, and as such reflect the type of evidence that procurators fiscal felt was needed to substantiate the case against a suspect, rather than the full picture of what actually happened in these communities. Nevertheless, this analysis has revealed some useful trends. First, this chapter has suggested that certain women – young, unmarried women in particular, were watched more closely by communities, and that, arguably, pregnancies amongst these women were more likely to be detected than those of older, married women. Secondly, communities were more willing to confront women directly and less likely to inform the authorities with suspicions of pregnancy, whilst with respect to the signs of delivery, or the discovery of a body, the opposite was true. Finally, this chapter has also shown that whilst all of the cases in this study were eventually brought to the attention of the authorities, not all members of the community were quick to inform the authorities about suspected new-born child murders or concealment of pregnancies.

²²⁸ NAS, AD14/75/312, Marion McConechy or McNeish and William Christie.

Chapter Four: Suspect profiles, geography and demographics

Introduction

One of the main purposes of a precognition was to help Crown Counsel draw up the indictment against a suspect if the case went to trial. It was crucial, therefore, that the personal details of suspects were accurate, and as such the precognitions contain a good deal of biographical information regarding the alleged perpetrators of NBCM&CP in Scotland between 1812 and 1930. The aim of this chapter is to analyse this information, in order to identify the main characteristics of suspects and, because of the geographical and temporal scope of this study, compare it with data relating to the general population of Scotland in the same period. Such a comparison will highlight the differences between the suspects and the population in general, and although such an approach may not explain the individual circumstances behind alleged ‘crimes’, it can help to form theories about why suspected new-born child murder occurred in certain groups, and/or certain areas, that can then be applied to individual cases. At the very least this chapter provides biographical data that can be compared with that of other studies, as well as evidence of a link between cases of suspected NBCM&CP and certain demographic trends discussed in some of these studies.

Sex, age and civil status

NBCM&CP suspects were predominantly female; only five of the six hundred and eighteen suspects were male. Also, as indicated in Fig. 4.1, the majority of suspects were also young: the mean age of suspects was twenty-six years, but over half of the suspects were between fifteen and twenty-four, and the modal age was twenty-one years old. That most of the suspects were women aged between 15 and 39 years old is unsurprising since all but eleven of these women were also the victims’ mothers.¹

¹ Neither the women who were not the children’s mothers, nor any of the male suspects, were investigated as principal suspects, but rather as an accessory. These cases are discussed in more detail in the next chapter.

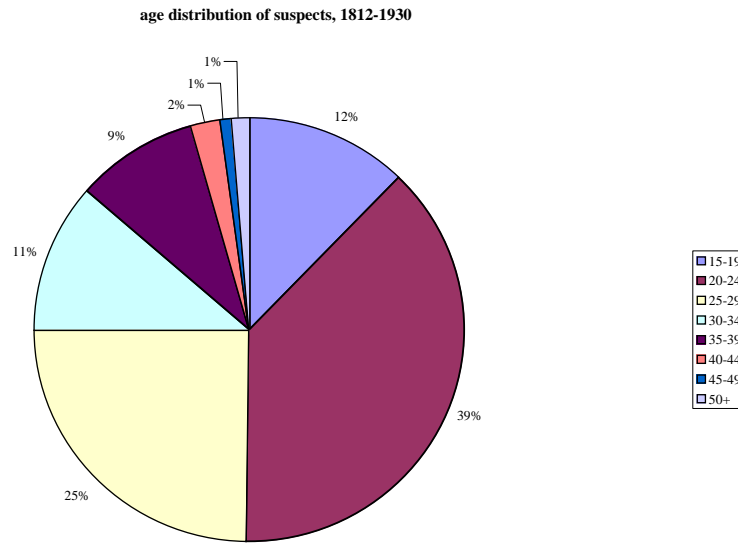


Fig. 4.1 Age distribution of NBCM&CP suspects.²
Source: NAS, AD14/15, Criminal Precognitions.

The civil status of suspects in Scotland during the period also mirrors that of suspects in other studies. Of those suspects whose status was recorded,³ three hundred and sixty-three (83 per cent) were never married, forty-one (9 per cent) were married, and thirty-seven (8 per cent) were widows. The number of married women is misleading, because only ten married suspects were actually living with their spouse at the time of the alleged 'crime'. Of these, six were not the victim's mother, four had been recently married and the husband was not the father of the child, and there is only one married couple accused of killing their own new-born infant recorded in the archives.⁴

Ten of the thirty married women living apart from their husbands told investigators that they were separated or estranged, but no specific reason was given. For others, husbands had either deserted them,⁵ been away at sea for some time,⁶ enlisted in the army,⁷ or

² n=548.

³ n=441.

⁴ NAS, AD14/23/248, Molina Arcus.

⁵ NAS, AD14/58/245, Agnes Halliburton or Duncan; AD14/78/89, Margaret Cowie or Raeside; AD15/22/75, Elizabeth King.

emigrated to America.⁸ Four women had deserted their husbands: Annie Maxwell or Gibson, investigated in 1870, had married her husband – a farmer’s son – five years previously, but left after only seven months, because of his ‘dissipated habits’,⁹ and Margaret Lyon, referring to the husband of her daughter, Agnes – accused of new-born child murder in 1885 – told investigators that ‘[h]e was unkind to her and I was obliged to take her away from him’.¹⁰ Similarly, the husband of Margaret Baxter or Pratt – investigated for new-born child murder in 1899, was prosecuted and convicted of assaulting her,¹¹ and, in 1921, Edith Campbell or Wilson told investigators that she had left her husband ‘owing to his drinking habits and his treatment of her’.¹² In this latter case, however, Edith’s husband, after reading about the case in a local newspaper, wrote to the prosecutors with his version of why his wife had left him:

[S]he deserted me on the 5th May 1919, and she had no cause whatever to take such steps as I had a good home and did my duty as a husband. She left me for the reason that she contracted debt while I was in France and she never wrote me one letter for eight months the time I was in France. My wife was the mother of a male child before I married her which was illegitimate and I have one little girl of the marriage which I am going to claim. I am taking divorce proceedings. I am sorry to say she has been unfaithfull [sic] to me...¹³

This letter may have been an attempt to salvage his reputation, tarnished by newspaper reports, and/or a strategy to aid his case for gaining custody of his child. Alternatively, of course, he could have been telling the truth. Moreover, the suggestion by Edith that she was ill-used by her husband may also have been a strategy by her to elicit sympathy. Either way, this is a reminder that the precognitions are not simply documents that can be read at face value, and that any incidental information – however interesting – is, at best, piece-meal, and lacks context. This underlines just one of many difficulties that historians face in attempting to access the everyday lives and experiences of past societies.

⁶ NAS AD14/14/6, Elizabeth Paterson or Livingston; AD14/55/245, Agnes Russell or Meryweather.

⁷ NAS, AD14/19/11, Mary Ann Wilson; AD14/49/228, Precognition against Janet Douglas or Boyd.

⁸ NAS, AD14/45/299, Helen Mitchell or Johnston; AD14/73/305, Isabella Simpson or Frew.

⁹ NAS, AD14/70/239, Annie Maxwell or Gibson.

¹⁰ NAS, AD14/85/191, Agnes Lyon or Lennie, Deposition of Margaret Smith or Lyon.

¹¹ NAS, AD14/99/70, Margaret Baxter or Pratt.

¹² NAS, AD15/21/170, Edith Campbell or Wilson.

¹³ Ibid., Letter from Edith Campbell or Wilson’s husband, dated 10 September 1921.

There is a striking consensus within the historiography regarding the sex and civil status of the alleged perpetrators of NBCM&CP. First, most historians agree that the majority of suspects were women and that new-born child murder was ‘a rare example of a gender specific crime: men were seldom involved’.¹⁴ Thus it is claimed that in early modern Chester, ‘[m]en figured very rarely as principals in infanticide prosecutions’,¹⁵ and that, in southwest Scotland between 1750 and 1815, ‘[t]here was...no instance of a man being the sole defendant in an infanticide case throughout the entire period’.¹⁶ Secondly, most studies agree that the vast majority of suspects were ‘young...women’.¹⁷ For example, evidence suggests that the mean age of new-born child murder suspects in Shetland between 1699 and 1920 was twenty-six.¹⁸ This is also the mean age of infanticide suspects in Ireland between 1850 and 1900.¹⁹ Finally, most historians agree that the women accused of new-born child murder were predominantly unmarried. For example, ‘single women or spinsters’ accounted for 90 per cent of the suspects in eighteenth-century England,²⁰ and for 95 per cent of suspects in southwest Scotland between 1750 and 1815.²¹

Occupation

Since the majority of NBCM&CP suspects were women, it is worth discussing briefly the working experience of women in Scotland during the period of this study, which for the majority of Scottish women was much the same as it had been in the seventeenth and eighteenth centuries: concentrated in the three areas of textiles, domestic service and

¹⁴ Kilday, *Women and Violent Crime*, p. 59.

¹⁵ Dickinson and Sharpe, ‘Infanticide in Early Modern England’, p. 41.

¹⁶ Kilday, *Women and Violent Crime*, p. 70.

¹⁷ D. Symonds, ‘Reconstructing Rural Infanticide in Eighteenth-Century Scotland’, *Journal of Women’s History*, 10, 2 (1998), p. 64.

¹⁸ Abrams, ‘From Demon to Victim’, p. 182.

¹⁹ Farrell, ‘Infanticide of the Ordinary Character’, p. 60.

²⁰ Jackson, *New-Born Child Murder*, p. 29.

²¹ Kilday, ‘Maternal Monsters’, p. 165.

agriculture.²² Women's work in this period was also influenced by a middle-class, patriarchal idealisation of femininity that placed woman as wife and mother 'to the virtual exclusion of all others.'²³ This ideology emphasised the importance of domesticity and domestic training; not only to provide good servants and future wives amongst both the middle- and working-classes,²⁴ but also as a way to reform 'fallen women', women whose sexuality was, from the mid-nineteenth century, being viewed as a danger to the moral fabric of society.²⁵ For working-class and middle-class women alike, the type of work that was deemed suitable was domestic service – which was the main source of employment for Scottish women for most of the period –²⁶ and textile work. For the middle-classes, occupations such as teaching and nursing were also seen as suitable for their sex.²⁷

However, there were some important changes over the period. By the end of the nineteenth century there was a decline in domestic service, due mainly to the unwillingness of young women to take up this type of employment as other, more attractive, employment opportunities became available. For working-class women these opportunities included work in the numerous factories that were springing up in the expanding towns and cities, as manufacturing became more mechanised.²⁸ For middle-class women the later nineteenth century saw employment opportunities as shopkeepers, clerical workers and as self-employed businesswomen and, for some, the opening up of universities to female undergraduates allowed them entry into the 'respectable', male dominated professions.²⁹ The final change was the steep decline in agricultural work in

²² D. Simonton, 'Women Workers, Working Women', in D. Simonton (ed.), *The Routledge History of Women in Europe Since 1700* (London and New York, 2006), p. 148.

²³ E. Breitenbach and E. Gordon, 'Introduction', in E. Breitenbach and E. Gordon (eds), *Out of Bounds: Women in Scottish Society, 1800-1945* (Edinburgh, 1992), p. 1; K. Barclay, *Love, Intimacy and Power: Marriage and Patriarchy in Scotland, 1650-1850* (Manchester, 2011).

²⁴ L. Moore, 'Educating for the 'Woman's Sphere': Domestic Training Versus Intellectual Discipline', in Breitenbach and Gordon, *Out of Bounds*, p. 26.

²⁵ L. Mahood, 'Family Ties: Lady Child-Savers and Girls of the Street 1850-1925', in Breitenbach and Gordon, *Out of Bounds*, p. 50.

²⁶ E. Breitenbach, *Women Workers in Scotland* (Glasgow, 1982), p. 5.

²⁷ Breitenbach and Gordon, *Out of Bounds*; E. Gordon and G. Nair, *Public Lives: Women, Family and Society in Victorian Britain* (New Haven and London, 2003), pp.180-83.

²⁸ Simonton, 'Women Workers', p. 148. The figures relating to these occupations are explored in more detail below.

²⁹ Gordon and Nair, *Public Lives*, pp. 180-3.

the latter part of the nineteenth century, due mainly to changes in technology: from the mid-nineteenth century onwards agricultural work ceased to be as labour-intensive as it had been up to then.³⁰ Most studies of infanticide identify suspects as either domestic servants or agricultural workers. As demonstrated below, this is also true of Scotland between 1812 and 1930. However, a comparison of the occupations of NBCM&CP suspects with the occupations of the general population of women in Scotland can determine whether the former simply mirrored the latter, or if suspects were more likely to be employed in either service or agricultural work during a period when both of those occupations were in decline and other occupations were increasing. If this was the case, questions can be asked about the nature of these occupations that made the women employed in them more likely to become suspects in cases of NBCM&CP than those in other occupations.

The occupations of persons suspected of NBCM&CP in Scotland between 1812 and 1930 are outlined in Table 4.1. They have been organised into six occupational categories – based on those of the 1861 census of Scotland, and Figs. 4.2 and 4.3 show the occupational categories of suspects between 1812 and 1930 compared with the whole female population of Scotland between 1851 and 1911. There are a number of problems with using the census data for such a comparative project,³¹ and some historians have questioned the usefulness of using published census data at all to access women's occupations in nineteenth-century Britain, not least because, as Cowman and Jackson

³⁰ Simonton, 'Women Workers', p. 148.

³¹ There are a number of difficulties in trying to calculate accurately the number of women working in each occupational category at each census: first, not all censuses used the same occupational categories, and even when they did, the types of employment within each category often changed from census to census. Secondly, the age group of women differs from census to census. For example, the censuses of 1851-61 include women between 15 and 49; the censuses of 1871-91 include all women over the age of 20, the 1901 census 20-64, and the 1911 census all women over the age of 10. Thirdly, information from the censuses of 1821-31 and 1841 have been omitted entirely; the former because they do not contain data regarding specific occupations, and the latter because specific occupations have been recorded, but not categorised. The 1921-31 censuses have also been omitted because the dissimilarities in the categories were too great to be useful – partly because the data included all females, and partly because the data from the principal cities and towns were recorded separately. Moreover, in both figs. 4.2 and 4.3 the 'indefinite' category has been omitted, because in the censuses this category includes housewives and children as well as the unemployed, and is by far the largest category in the censuses, but cannot be usefully compared to the suspects' data.

observe, 'a great deal of women's work has, historically, been hidden or 'free'.³² Censuses only recorded one occupation whereas many women had more than one means of making a living, as indicated by some of the suspects in this present study. For example, Mary Cairns, from St. Ninians, Stirling, told investigators in 1834 that she had a number of jobs, including 'winding pirns for weavers ...washing ...and doing any thing else for which she was employed by the neighbours as well as sometimes in Stirling'.³³ Likewise, Helen Mitchel or Johnston – investigated for new-born child murder in 1845, described herself as a 'servant, sewer and washer',³⁴ Janet Reid, investigated in 1872, was a 'domestic servant, sewer and dressmaker',³⁵ and, in 1877, Isabella Martin, who lived in Whitburn, Linlithgow, with her parents, was an outdoor worker and a housekeeper, occasionally doing washing and cleaning.³⁶

Another problem with using census data to analyse female employment is that, as Breitenbach and Gordon remark, censuses 'tended to omit casual, part-time and seasonal work'.³⁷ Again, the precognitions involve women engaged in seasonal agricultural work. A number of suspects, including Janet Hannah, in 1818,³⁸ Margaret Dae or Dow, in 1846,³⁹ Barbara Marr or Ferriday or Farraday, in 1852,⁴⁰ and Agnes Whyte, in 1861,⁴¹ were harvest workers – employed as shearers or reapers, and other seasonal work included potato gathering,⁴² and tree-barking.⁴³ In two cases domestic servants were allowed by their employers to engage also in harvest work: first, the employer of Margaret Brown, a shoemaker in Fyvie, Aberdeen, in 1878, 'allowed her north to get a

³² K. Cowman and L. A. Jackson (eds), *Women and Work Culture: Britain, c.1850-1950* (Aldershot, 2005), p. 2.

³³ NAS, AD14/34/153, Mary Cairns.

³⁴ NAS, AD14/45/299, Helen Mitchel or Johnston.

³⁵ NAS, AD14/72/278, Janet Reid.

³⁶ NAS, AD14/77/146, Isabella Martin. It is possible that the housekeeping and other tasks were for her parents, which may indicate the 'free' work discussed by Cowman and Jackson.

³⁷ E. Gordon and E. Breitenbach (eds) *The World is Ill Divided: Women's Work in Scotland in the Nineteenth and Early Twentieth Centuries* (Edinburgh, 1990), p. 4; see also T. Meldrum, *Domestic Service and Gender, 1660-1750: Life and Work in the London Household* (Harlow, 2000), p. 6.

³⁸ NAS, AD14/18/62, Janet Hannah.

³⁹ NAS, AD14/46/3, Margaret Dae or Dow.

⁴⁰ NAS, AD14/52/292, Barbara Marr or Ferriday or Farraday.

⁴¹ NAS, AD14/61/320, Agnes Whyte.

⁴² For example, see NAS, AD14/13/18, Sarah Dunsmuir or Denmark.

⁴³ For example, see NAS, AD14/63/231, Elspet McDonald.

harvest wage’,⁴⁴ and, in the same year, another domestic servant in Aberdeen – also called Margaret Brown – was allowed by her employer, a wright, to engage in harvest work ‘to eke out her wages’.⁴⁵ Having said that, this thesis contends that a comparison of the occupations of NBCM&CP suspects with those of Scottish women in the censuses is a useful exercise for exploring any broad and basic differences there might be between the data.

Most suspects fall within the ‘domestic’ category, and suspects within this category are over-represented in relation to the occupational categories of the general female population of Scotland even though, as Lynn Jamieson states, ‘domestic service was the main occupation for women in most of the counties of Scotland from the mid-nineteenth through the early twentieth century’.⁴⁶ The ‘domestic’ category overwhelmingly comprises indoor household servants: suspects recorded as ‘domestic’ or ‘household’ servants (what Higgs refers to as the ‘maid-of-all-work’),⁴⁷ housekeepers⁴⁸ and servants with specific, but low status, duties such as table or kitchen maids. The small number of higher status service positions, such as cooks and children’s maids is most likely a reflection of the relative numbers of these servants compared to more general servants. It may suggest that higher status servants were less likely to engage in sexual activity. These servants, Meg Arnot suggests ‘held hope of making a good marriage because the money they could save made them attractive to men of the upper-working class or lower middle-class’, and thus may have ‘absorbed to some extent the apparent values and sense of propriety of her master and mistress’.⁴⁹ Given the importance placed on domesticity and training in domestic economy in the nineteenth century – particularly as a way of reforming ‘fallen’ women, it is perhaps somewhat ironic that the majority of NBCM&CP

⁴⁴ NAS, AD14/78/107, Margaret Brown.

⁴⁵ NAS, AD14/79/30, Margaret Brown.

⁴⁶ L. Jamieson, ‘Rural and Urban Women in Domestic Service’, in Gordon and Breitenbach, *The World is Ill Divided*, p. 140.

⁴⁷ E. Higgs, ‘Domestic Service and Household Production’, in A. V. John (ed.), *Unequal Opportunities: Women’s Employment in England, 1800-1918* (Oxford, 1986) pp. 136-7.

⁴⁸ ‘Housekeeper’ has been used in this study to denote a low status position because often, in a household in which she was the only servant, the housekeeper was no more than a general servant. Also included are those women who, at the time the precognition was taken, were acting as housekeeper to a relative because, as Higgs discusses, the official censuses included under the title ‘domestic servant’ a significant minority of women who were related to the head of the household. Idem., ‘Domestic Service’, p. 130.

⁴⁹ Arnot, ‘Gender in Focus’, p. 14.

suspects were domestic servants. At the same time, the very fact that these women were in occupations deemed suitable to their sex might well have had a bearing on the way they were treated by the authorities.⁵⁰

Table 4.1: Occupations of NBCM&CP suspects

Occupational category (total number) ⁵¹	Employment type	No. of suspects
I – Professional (5)	Midwife	2
	Teacher	2
	Post-Office worker	1
II – Domestic (243)	Indoor servant / Housekeeper	194
	Cook	17
	Laundry maid	10
	Child's maid / Wet nurse	10
	Charwoman / Washerwoman	7
	Chamber maid	2
	Bar maid	2
	Sick nurse	1
	III – Commercial (2)	Part owner of schooner
Carter		1
IV – Agricultural (180)	Farm servant / field / outdoor worker	88
	General servant (in and out)	68
	Dairymaid	14
	Byrewoman	5
	Tenant farmer	5
V – Industry / manufacture (67)	Textiles: manufacture	42
	Textiles: processing	9
	Industrial / factory	4
	Retail / hospitality	7
	Mine workers	3
	Other	2
VI – Indefinite (8)	Pauper	3
	Unemployed	3
	Beggar	1
	Other	2

Source: as Fig. 4.1 .

⁵⁰ Attitudes towards NBCM&CP suspects are discussed in Chapter 8.

⁵¹ n=506. No occupation was stated for one hundred and twenty-five suspects, and in eleven more than one occupation was recorded against a suspect.

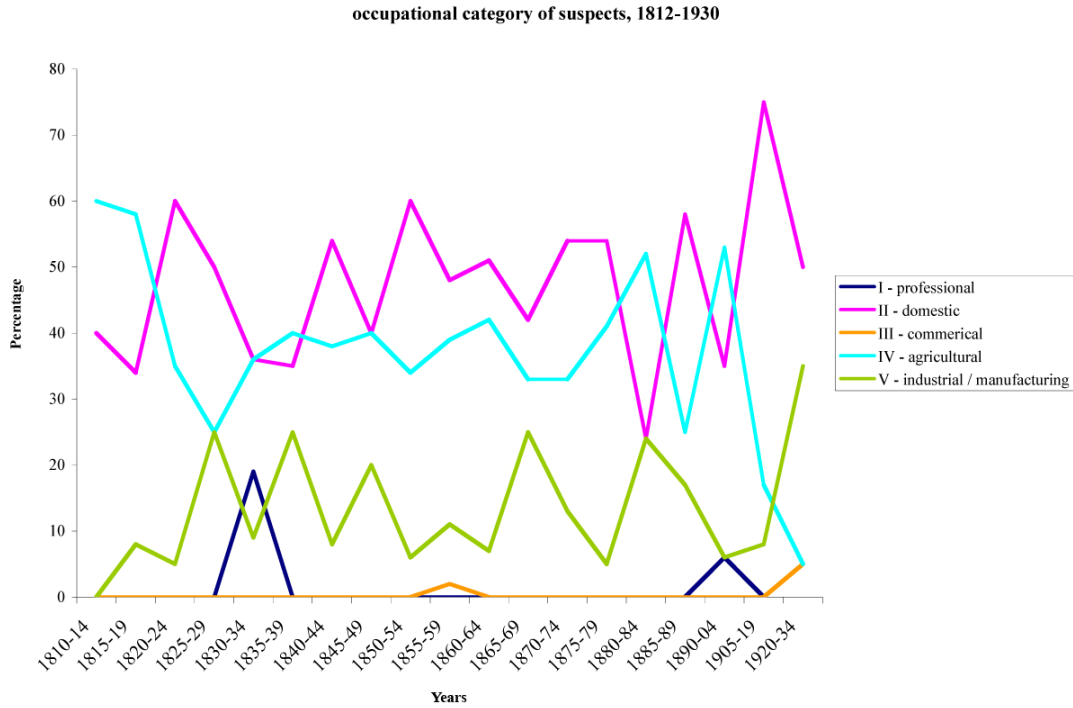


Fig. 4.2 Occupational categories of NBCM&CP suspects. ⁵²
 Source: as Table 4.1.

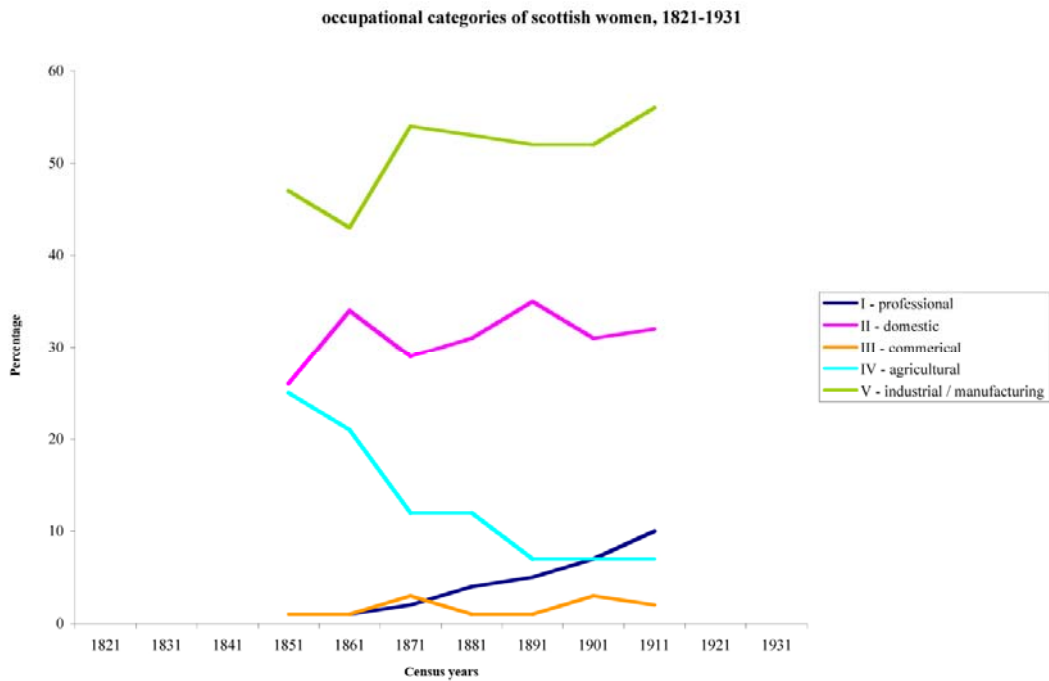


Fig. 4.3 Occupational categories of Scottish women, 1851-1911.
 Sources: Censuses of Scotland, 1851-1911.

⁵² n=469.

The second largest occupational category amongst NBCM&CP suspects was 'agricultural', and was probably the most over-represented occupational group as compared with the general population of Scotland. Indeed, the number of Scottish women working in agriculture fell sharply from just over 20 per cent in 1851, to under 10 per cent by 1891, whilst amongst suspects, the number involved in agriculture remained between 30 and 60 per cent until about 1900, only falling below 10 per cent by the end of the period. Agricultural workers include farm servants, field labourers, and harvest hands, but the distinction between farm and domestic servants could also be blurred. 'General servants', for example, often worked both inside and outside the farm and could have a range of duties, including working in the kitchen, general housekeeping and, as Laura Gowing notes for early modern England, 'spinning, looking after animals, picking crops and making dairy products'.⁵³ A number of suspects were employed in this way. For example, Elizabeth Stewart worked on a farm in Slaphouse, Ayr, as an 'in and out' servant, telling investigators that she did 'anything that was required',⁵⁴ and, similarly, Barbara Norrie also worked as an 'indoor and outdoor servant' in Inverarity, Forfar, and shared the work with another servant, alternating between indoor and outdoor work on a weekly basis.⁵⁵ As such, these women, and those who were simply recorded as 'servant' but worked on a farm, have also been placed in the 'agricultural' category.

Most other studies of new-born child murder and infanticide also agree that most new-born child murder suspects were, as Mark Jackson observes for eighteenth-century England, 'some form of servant'.⁵⁶ Studies focused on urban areas, for example, find most suspects in domestic service,⁵⁷ and domestic servants also form the majority of suspects in rural south-west Scotland in the eighteenth century.⁵⁸ Laura Gowing observes that most of the women suspects of new-born child murder in early modern England were 'servants living in, usually in agricultural communities',⁵⁹ and, in early modern Scotland,

⁵³ Gowing, 'Secret Births', p. 89.

⁵⁴ NAS, AD14/45/193, Elizabeth Stewart.

⁵⁵ NAS, AD14/55/239, Barbara Norrie.

⁵⁶ Jackson, *New-Born Child Murder*, p. 64.

⁵⁷ Arnot, 'Gender in Focus', p. 10; Higginbotham, 'Sin of the Age', pp. 319-37; Hoffer and Hull, *Murdering Mothers*.

⁵⁸ Kilday, 'Maternal Monsters', p. 167.

⁵⁹ Gowing, 'Secret Births', p. 89.

Deborah Symonds finds that suspects were ‘often working away from home as agricultural servants’.⁶⁰

As with the general female population of Scotland, most of the suspects in the ‘industrial and manufacturing’ category worked in the textile industry,⁶¹ either in production – spinning, making baby-linen, or working a machine in a cotton mill, for example – or processing and finishing – including bleaching and dyeing.⁶² Some of the other industries in which suspects were employed included mining and retail. The two occupations in the professional category – teacher and midwife – were viewed as typically female occupations and were not considered positions of particularly high status. The ‘industrial and manufacturing’ category is under-represented amongst NBCM&CP suspects, but the small numbers of suspects in the ‘professional’ and ‘commercial’ categories probably reflects the general picture for Scotland.

Generally, like the census data, precognitions tend to record a suspect’s occupation at the time the ‘crime’ was committed, and occasionally also at the time of the investigation. However, sometimes a more detailed employment history is provided. These cases tend to record the service history of suspects: service contracts tended to be six-monthly, and whilst some servants remained with the same employer for longer, most of the suspects in the precognitions had had a number of different employers over the course of a few years, intermingled with periods of unemployment, or of living at home with their parents. Some suspects had even more varied employment histories: for example, Catherine McIntyre, who began her working life in 1909, aged fourteen, as a calico printer and left after a year to nurse her mother. She then worked as a ward maid at Ruchill Hospital, Glasgow, and had two further jobs before working at Lipton’s Biscuit Factory, where she

⁶⁰ Symonds, ‘Reconstructing Rural Infanticide’, p. 64.

⁶¹ J. J. Smyth, ‘‘Ye Never Got a Spell to Think About it.’ Young Women and Employment in the Inter-War Period: A Case Study of a Textile Village’, in Gordon and Breitenbach, *The World is Ill Divided*, p. 96. For a discussion of the Dundee jute workers, see E. Gordon, *Women and the Labour Movement in Scotland, 1850-1914* (Oxford, 1991).

⁶² Meg Arnot, ‘Gender in Focus’, pp. 7-10; I. Pinchbeck, *Women Workers and the Industrial Revolution, 1750-1850* (London, 1985), p. 111.

was still employed at the time she was accused of murdering her new-born infant, in 1913.⁶³

The socio-economic status of NBCM&CP suspects can be analysed by looking both at their occupations and the occupations of their families, measured by the occupations of suspects' fathers (Table 4.2). Only twenty-one (3 per cent) suspects can be considered very poor. Some were receiving parochial assistance: for example, eighty-year-old Isabella Halliday – co-accused of suspected new-born child murder in 1819, was looked after by the kirk session of Borgue, Kirkcudbright,⁶⁴ and, in 1854, widow Jane Mill received money from both the seaman's fund, and parochial assistance for her children.⁶⁵ Similarly, in 1854, Agnes Davidson or Tough received parochial relief for herself and her children – her husband had left her some years previously,⁶⁶ Catherine McTaggart or Preston, a soldier's widow was, in 1863, receiving money for her four children,⁶⁷ and Margaret Walker was in receipt of 11s a week from the parochial board of Stonehouse, Lanark, in 1865, on account of her 'bad eyes'.⁶⁸ In some cases a suspect's parent was a pauper, such as Margaret Smith's mother, who was receiving assistance in Weston and Roberton, Lanark, in 1865,⁶⁹ and the father of Ann Pirie, who was also being helped financially by the parochial Board of Rhynie, Aberdeen, in 1866.⁷⁰

Most of the suspects in extreme poverty were receiving no support from the parish. Financial relief under the old Poor Law in Scotland, which existed until 1845, was 'limited to the aged and infirm poor',⁷¹ although occasional relief was granted at the discretion of the kirk session. Importantly, 'many parishes refused to support a woman with an illegitimate child',⁷² and the report of the Royal Commission on the Poor Law in

⁶³ NAS, AD15/13/108, Catherine McIntyre, Report from HM Prison Duke Street, Glasgow.

⁶⁴ NAS, AD14/19/11, Mary Ann Wilson and Isabella Halliday.

⁶⁵ NAS, AD14/54/246, Jane Mill.

⁶⁶ NAS, AD14/58/142, Agnes Davidson or Tough.

⁶⁷ NAS, AD14/63/97, Catherine McTaggart or Preston.

⁶⁸ NAS, AD14/65/34, Margaret Walker.

⁶⁹ NAS, AD14/65/35, Margaret Smith.

⁷⁰ NAS, AD14/66/243, Ann Pirie.

⁷¹ G. Nicholls, *A History of the Scotch Poor Law* (1856: Reprinted, New York, 1967), p.183.

⁷² R. Mitchison, *The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845* (Edinburgh, 2001), p. 201.

Scotland in 1844 stated that ‘the authorities do, as a general rule, resist all claims made on behalf of illegitimate children’.⁷³ The New Poor Law of 1845 was more complex,⁷⁴ and although Blaikie suggests that ‘[m]ore unmarried mothers appear to have been relieved under the New Poor Law’,⁷⁵ the system varied from parish to parish. Moreover, the tendency under the new system was to refuse outdoor relief to unmarried women with illegitimate children and to offer them indoor relief in the poorhouse instead – an option most women would have resisted.⁷⁶ Women with relatives, who were theoretically able to help in supporting the child, were also denied outdoor relief.⁷⁷

The situation of women with neither friends nor family to support them, or parochial support was particularly desperate. Such was the case of Christina Macleod – investigated for new-born child murder in 1858.⁷⁸ Pregnant, orphaned and with no friends on which to rely, she travelled from lodging to lodging, leaving each as soon as the accusations of pregnancy became too much, until the child was eventually born in secret.

Likewise, unemployment was also a cause of poverty, but for the able-bodied this was no ground for obtaining relief. For example, Catherine Anderson, an out of work mill worker accused of new-born child murder in Aberdeen, in 1890, was ‘very badly off’, having ‘no fire nor light nor food’, and often reliant on donations of food from a neighbour.⁷⁹ Such was the case also of Janet Reid, living in a garret room in Kilmarnock, Ayr, alone with her illegitimate child of thirteen months.⁸⁰ Unable to receive financial assistance, Reid supported herself by sewing and dressmaking, but the doctor who examined her told investigators that ‘she appeared miserably poor’.⁸¹ Similarly, the sister of Agnes Cowan

⁷³ Cited in A. Blaikie, *Illegitimacy, Sex and Society: Northeast Scotland, 1750-1900* (Oxford, 1993), p. 162.

⁷⁴ Poor Law (Scotland) Amendment Act 1845, 8 & 9 Vict. c. 83.

⁷⁵ Blaikie, *Illegitimacy, Sex and Society*, p. 182.

⁷⁶ *Ibid.*, pp. 163-84.

⁷⁷ *Ibid.*, p. 183.

⁷⁸ NAS, AD14/58/3, Christina Macleod.

⁷⁹ NAS, AD14/90/14, Catherine Anderson, Deposition of Catherine Strachan.

⁸⁰ NAS, AD14/72/278, Janet Reid.

⁸¹ *Ibid.*, Deposition of John Borland.

– accused of new-born child murder in Dailly, Ayr, in 1886 – made the scale of Agnes’s poverty clear to investigators:

Table 4.2 Occupations of NBCM&CP suspects’ fathers.⁸²

Occupational category (total number)	Employment type	No. of suspects
I – Professional (8)	Boatman / sailor	3
	Inspector of the Poor	1
	Provost of Wick	1
	Soldier	2
	Teacher	1
II – Domestic (2)	Servant	2
III – Commercial (9)	Carter	6
	Hotel keeper	1
	Newspaper vendor	1
	Chimney sweep business	1
IV – Agricultural (57)	Crofter / farmer	27
	Farm servant / worker	17
	Fisherman	3
	Gamekeeper	2
	Gardener	4
	Mole catcher	1
	Poultry dealer	1
	Skinner	1
	Tacksman	1
V – Industrial / Manufacturing (123)	Baker	2
	Blacksmith	4
	Butcher	3
	Cooper	1
	Factory worker	1
	Foundry worker	4
	Grocer / Victualler	2
	Labourer	61
	Skilled labourer	11
	Mechanic / engineer	4
	Miller	1
	Miner	7
	Paper maker	1
	Shoemaker	6
	Textiles worker	14
Watchmaker	1	

Source: as Fig. 4.1.

⁸² n=199

I know she had no fire, no change of clothes, nor a mat to lay on the floor... sometimes she could burst out into tears as if she was almost away in her mind with distress and despair she had so many difficulties. It was pitiful to see her.⁸³

The police constable who investigated this case deposed that when he went to Agnes's garret room, there was 'no furniture, but a stool'.⁸⁴

In contrast, twenty-five suspects (4 per cent) had privileged origins. Thirteen came from a farming background,⁸⁵ such as tacksman's daughter, Margate Rae, investigated in 1837. A note from the procurator fiscal in this case reads, 'Rae's father and relatives are all very respectable people in their station'.⁸⁶ Similarly, Mary Bulloch, who was accused of murdering her new-born infant at Bellstane farm, Newmonkland, Lanark, was the daughter of a tenant of some respectability within the community,⁸⁷ and George Wishart, joint tenant of a farm in Inch, Aberdeen, was accused of aiding in the murder of the new-born infant of Elizabeth Lyon in 1870.⁸⁸ Likewise, Marion McConechy or McNeish – accused of new-born child murder in 1875 – was a widow and tenant farmer from the Isle of Arran, Bute,⁸⁹ and in another case, the procurator fiscal, investigating an accusation of new-born child murder against farmer's daughter Isabella Kennedy in 1885, commented that '[t]his woman belongs to well-to-do people'.⁹⁰ Again, in 1929, the

⁸³ NAS, AD14/86/19, Agnes Cowan, Deposition of Annie Cowan or Diamond.

⁸⁴ Ibid., Deposition of Thomas Gaitey.

⁸⁵ The difficulties in measuring the actual socio-economic status of tenant farmers has already been discussed, but unless stated otherwise in the precognitions, it has been assumed here that tenant farmers are amongst the better off suspects, or relatives of suspects.

⁸⁶ NAS, AD14/37/232, Margaret Rae, Procurator fiscal's note. Smout describes tacksmen as either close relatives to Highland clan chiefs, leasing large blocks of land over several generations, or any farming tenant who held a lease (tack) over a period of time. The latter definition best describes this particular case, although Smout claims that tacksmen were confined to the Highlands, and this case is from Dumfries. Idem., *A History of the Scottish People, 1560-1830* (Glasgow, 1975), p. 129.

⁸⁷ NAS, AD14/58/368, Mary Bulloch and Mary Bell or Bulloch.

⁸⁸ NAS, AD14/70/268, Elizabeth Lyon and George Wishart.

⁸⁹ NAS, AD14/75/312, Marion McConechy or McNeish and William Christie.

⁹⁰ NAS, AD14/85/258, Isabella Kennedy.

procurator fiscal noted in the precognition against Elizabeth Cam Birrel Page, from Strathmiglo, Fife, that the ‘accused’s relations paid out a large sum for her defence’.⁹¹

The remaining suspects from better-off backgrounds include Euphemia Bruce, investigated in 1852, who, when initially questioned, gave a false identity. A note to Crown Counsel from the procurator fiscal explains her reluctance to state her real name: ‘this is a very melancholy case. The accused is a daughter of the late provost of Wick; and a lady-like young woman. She is of course in great distress and grief’.⁹² Perhaps the wealthiest suspect was Catherine Mckay or Watson, a widow from Montrose – accused of new-born child murder in 1857. Not only did she own a grocery shop, but she was also part-owner of a schooner, *William*, that ran between Montrose and Newcastle.⁹³ Thirty-seven year old Catherine told investigators that one of the reasons she did not marry the putative father of her child was that she was ‘worried he would squander her means’. Others included the daughters of two tailors,⁹⁴ a poultry dealer,⁹⁵ road contractor,⁹⁶ teacher (deceased),⁹⁷ hotel proprietor,⁹⁸ and a watchmaker.⁹⁹

The majority of suspects (92 per cent) came from relatively modest or poor backgrounds. This is indicated by the occupations of the suspects (mainly domestic, agricultural, and low-status textile workers) and the occupations, where stated, of suspects’ fathers – the majority of which were in manual work, or were self-employed craftsmen or tradesmen. However, a number of factors make it difficult to determine accurately the socio-economic backgrounds of all NBCM&CP suspects. First, whilst generally a person’s occupation offers a reasonable clue as to their socio-economic position, the precognitions tend not to elaborate on the nature of the work, or details of wages earned. There are some exceptions: for example, Margaret Murray told investigators that she earned £4 for

⁹¹ NAS, AD15/29/77, Elizabeth Cam Birrel Page.

⁹² NAS, AD14/52/304, Euphemia Bruce.

⁹³ NAS, AD14/57/216, Catherine Mckay or Watson and Eliza Mennie or Cameron.

⁹⁴ NAS, AD14/28/283, Margaret Campbell; AD14/64/286, Isabella Stuart.

⁹⁵ NAS, AD14/35/247, Ann Bryce; AD14/39/268, Ann Bryce. These two separate cases involve the same suspect.

⁹⁶ NAS, AD14/42/397, Helen Cockburn.

⁹⁷ NAS, AD14/57/143, Agnes Hunter.

⁹⁸ NAS, AD14/64/166, Elizabeth McKinnon.

⁹⁹ NAS, AD14/85/91, Margaret Morrison.

half a year as a domestic servant in Greenock, Renfrew, in 1863,¹⁰⁰ Mary Mullen or McKenna received 6s 6d a week as a bleachfield worker in Pollockshaws, Renfrew, in 1866,¹⁰¹ and, in 1882, Kate Brabender earned 10s a week as a tailoress, also in Greenock. Maggie Bryson was, in 1900, receiving £8 for half a year as an ‘outworker or housekeeper’ in Galston, Ayr,¹⁰² and Annie Robertson Watson told investigators in 1921 that she had left her job as a shop-girl in Coupar Angus, Perthshire, because the wages were only 22s a week, and required an eight mile journey by bicycle.¹⁰³ However, in the majority of cases there is no indication of the wages earned, and in some cases these may have been relatively high. For example, thirty-nine year old Agnes Adam from Burntisland, Fife – accused of new-born child murder in 1884 – worked in an oil mill, and on being asked about the type of work she did there, a neighbour told investigators, ‘I understand that her work was a secret part of the oil refinery – and she worked in a room by herself’.¹⁰⁴ It is not clear whether this work entailed higher wages or status, but her work was certainly important enough for her employer to help pay for the defence.

Secondly, the wages and status of a suspect’s occupation does not necessarily reflect the socio-economic background of her family – and this is particularly problematic in those cases where the father’s occupation is not given. For many women in the nineteenth and early twentieth centuries, work was viewed as a temporary stage of the female life-cycle, a prelude to marriage, a means of saving some money and developing the necessary training in domesticity.¹⁰⁵ As such, some domestic servants were from middle-class backgrounds, such as Agnes Taylor – suspected of new-born child murder in 1855 – who was domestic servant to the reverend James Walker in Huntly, Aberdeen, and was also

¹⁰⁰ NAS, AD14/63/82, Margaret Murray.

¹⁰¹ NAS, AD14/66/37, Mary Mullen or McKenna.

¹⁰² NAS, AD14/1900/1, Maggie Bryson.

¹⁰³ NAS, AD15/21/166, Annie Robertson Watson. Witnesses in this case claimed that Annie was actually dismissed from her employment because of her pregnancy.

¹⁰⁴ NAS, AD14/84/264, Agnes Adam.

¹⁰⁵ This is a generalisation, and does not take into account those women who never married, or the fact that many women had no choice but to work in order to supplement the family income. Moreover, the notion of service as part of the female life-cycle has been challenged by a number of historians: Jayne Stephenson and Callum Brown, for example, question the consensus that describes women’s paid work as ‘a temporary and economically necessitated interlude to a dominating domesticity in, successively, the parental and marital homes’, and stress that work for many women was neither temporary nor peripheral to their lives. Idem., ‘The View from the Workplace: Women’s Memories of Work in Stirling, c.1910- c.1950, in Gordon and Breitenbach, *The World is Ill-Divided*, p. 7.

the daughter of the Inspector of the Poor of the same parish.¹⁰⁶ Having said that, the precognitions usually state clearly whether a suspect was particularly respectable or otherwise, and it seems reasonable to conclude that most of the suspects in this study were from relatively humble backgrounds.

The geographical spread of suspects

The precognitions provide information about the nationality of the suspects in Scotland between 1812 and 1930, and, in some cases, details of where they were born, or grew up. Of the six hundred and eighteen suspects, five hundred and eighty-five (94.4 per cent) were Scottish, only twenty-nine (5 per cent) Irish, and four (0.6 per cent) were English. No other nationalities are represented in the data. Nevertheless, this is probably a fair reflection of the general demographic trends of Scotland in the period: the proportion of those of Irish birth in Scotland never went above the 1861 peak of 7 per cent,¹⁰⁷ and although a number of other nationalities were present in Scotland during this period, they were concentrated in urban areas, and it is unlikely that many were employed as domestic and agricultural servants in the same numbers as Scots women during the period of this study.¹⁰⁸

Information regarding suspects' place of birth is provided in two hundred and thirty-two cases. Of these, one hundred and twenty-five (54 per cent) were still living in the same county – all but twenty-nine in the same parish – that they grew up in, one hundred and seven (46 per cent) were residing in a different county; thirty-five (15 per cent) in either an adjacent county, or within the same region, and seventy two (31 per cent) in a different region altogether. If the suspects from Ireland (28) and England (4) are omitted from the results, then the percentage of suspects who were living in the same county as they were born rises to 63 per cent. In 1851, in Scotland as a whole, 'about 54 per cent of the population were recorded as not living within 2 kilometres of their stated place of

¹⁰⁶ NAS, AD14/55/240, Agnes Taylor.

¹⁰⁷ M. Anderson, 'The Social Implications of Demographic Change', in F. M. L. Thompson (ed.), *The Cambridge Social History of Britain, vol. 2, People and their Environment* (Cambridge, 1990), p. 6.

¹⁰⁸ *Ibid.*, pp. 6-7.

birth'.¹⁰⁹ Thus, it can be argued, NBCM&CP suspects were less mobile than the general population. One possible explanation for this lies in the fact that a number of suspects were already the mothers of illegitimate children, and generally women with children were less mobile than women with no children.¹¹⁰

Table 4.3 shows the spread of suspects in the counties of Scotland, split into eight regions, and, at first glance, the figures seem roughly to mirror the patterns of population growth for Scotland – as shown in Fig. 4.4.¹¹¹ For example, the regions with the highest number of suspects are the south-west, east-midland, and south-east – all of which are in the 'industrial and commercial central belt', which, in 1821, contained 47 per cent of Scotland's population, 68 per cent in 1911, and 75 per cent by 1931.¹¹² Despite the growing importance of the urban population, as indicated by Fig. 4.5, far more new-born child murder and concealment of pregnancy investigations took place in rural areas.¹¹³ In Scotland as a whole, by 1850 more Scots were living in urban than rural areas:¹¹⁴ by 1851 the cities of Glasgow, Edinburgh and Dundee, housed 11, 6 and 3 per cent of the population respectively.¹¹⁵ Glasgow, by far the largest city in Scotland in this period, contained 13 per cent of the population in 1861, and 16 per cent in 1911.¹¹⁶ In contrast, only 26 per cent of NBCM&CP suspects lived in urban areas, and only 12 per cent in the four largest cities (Glasgow, Edinburgh, Dundee and Aberdeen). NBCM&CP in Scotland

¹⁰⁹ Ibid., p. 11.

¹¹⁰ Blaikie, *Illegitimacy, Sex and Society*, pp. 126-7. Blaikie states that '[r]econstitution studies in England have demonstrated far lower levels of geographical mobility amongst bastard-bearers than others'.

¹¹¹ The regions are based on those used in the 1861 census onwards: North – Orkney, Shetland, Sutherland, Caithness; North-west – Inverness, Ross and Cromarty; North-east – Nairn, Elgin (Moray), Banff, Aberdeen, Kincardine; East-Midland – Forfar (Angus), Perth, Fife, Kinross, Clackmannan; West-Midland – Stirling, Dumbarton, Argyll and Bute; South-west – Renfrew, Ayr, Lanark; South-east – Linlithgow, Edinburgh, Haddington, Berwick, Peebles, Selkirk; South – Roxburgh, Dumfries, Kirkcudbright, Wigtown.

¹¹² Anderson, 'The Social Implications of Demographic Change', p. 2.

¹¹³ Rural areas are here defined as places that, in the 1901 census, had fewer than 5000 inhabitants. R. J. Morris, 'Urbanisation', in A. Cooke, I. Donnachie, A. Macsween and C. A. Whatley (eds), *Modern Scottish History 1707 to the Present: Vol. 2: The Modernisation of Scotland, 1850 to the Present* (East Linton, 2003), pp. 140-1.

¹¹⁴ Anderson, 'The Social Implications of Demographic Change', pp. 5-6.

¹¹⁵ Census of Great Britain, 1851.

¹¹⁶ Censuses of Great Britain and Scotland, 1861 and 1911; T. Hart, 'Urban Growth and Municipal Government: Glasgow in a Comparative Context, 1846-1914', extract in A. Cooke et al., *Modern Scottish History, Vol. 4: Readings, 1850 to the Present* (East Linton, 1998), p. 148.

was a rural phenomenon, which is in contrast to all other ‘crimes’ (except those specific to rural areas, such as poaching), which were very much urban phenomena.¹¹⁷

Generally, the historiography of new-born child murder also situates the ‘crime’ within a rural setting. Of course there were cases of new-born child murder in urban areas, as the numerous studies of London attest,¹¹⁸ but on the whole the ‘crime’ was much more likely to occur in the countryside. Mark Jackson, for example, observes that in eighteenth-century northern England ‘the majority of women tried for [new-born child] murder in the Northern Circuit courts did not come from large towns such as Leeds, Sheffield, or Newcastle, but from small villages and townships’.¹¹⁹ The three studies of new-born child murder in Scotland also find that the majority of cases were in rural areas although this is unsurprising since one is based on the predominantly rural early modern period,¹²⁰ and the other two are both studies of particularly rural parts of the country, the south-west and Shetland.¹²¹

The reason why there are more rural cases than urban is not clear, but there are a number of possible explanations. First, the anonymity of towns and cities meant that it was easier for women not only to conceal their pregnancies, but also to dispose of any body without being caught. Secondly, infants exposed in urban areas were probably more likely to be discovered alive, and thus reunited with the mother, or nursed by someone else. A third reason could be that women in urban areas had stronger support networks than their rural counterparts. Women working in factories and mills – many of which were predominantly female environments – may have protected each other from the gaze of authority if they got into trouble. Conversely, many of the women in rural areas were living away from home and many had only recently moved to the area. Not only were

¹¹⁷ P. King, ‘Urbanization, Rising Homicide Rates and the Geography of Lethal Violence in Scotland, 1800-1860’. Unpublished paper presented at Stirling University (2010). Kindly supplied by the author.

¹¹⁸ Studies of, or including, London include Arnot, ‘Gender in Focus’; Higginbotham, ‘Sin of Our Age’; Hoffer and Hull, *Murdering Mothers*.

¹¹⁹ Jackson, *New-Born Child Murder*, p. 42.

¹²⁰ Symonds, *Weep Not For Me*.

¹²¹ Kilday, ‘Maternal Monsters’; Abrams, ‘From Demon to Victim’.

these women observed more closely, but without a strong support network they had little protection from accusations of pregnancy, childbirth and murder.

Table 4.3 Regional and county spread of NBCM&CP investigations

Region and Counties	Number of suspects	Percentage of total
North region	20	3
Orkney and Shetland	1	Neg
Caithness	12	2
Sutherland	7	1
North-west region	36	6
Inverness	17	3
Ross and Cromarty	19	3
North-east region	100	17
Aberdeen	56	9
(City of Aberdeen)	(10)	(2)
Banff	17	3
Elgin (Moray)	11	2
Kincardine	12	2
Nairn	4	1
East-Midland region	115	18.5
Fife	44	7
Forfar (Angus)	31	5
(Dundee)	(10)	(2)
Kinross	3	0.5
Perth	36	6
Clackmannan	1	Neg
West-Midland region	60	10
Argyll (Bute)	22	4
Dumbarton	12	2
Stirling	26	4
South-West region	139	22
Ayr	37	6
Lanark	70	11
(Glasgow)	(28)	(5)
Renfrew	32	5
South-East region	80	13.5

Berwick	12	2
Edinburgh	36	6
(City of Edinburgh)	(19)	(3)
Haddington	11	2
Linlithgow	12	2
Peebles	6	1
Selkirk	3	0.5
South region	67	10
Dumfries	20	3
Kirkcudbright	18	3
Roxburgh	9	1
Wigtown	20	3

Source: as Fig. 4.1.

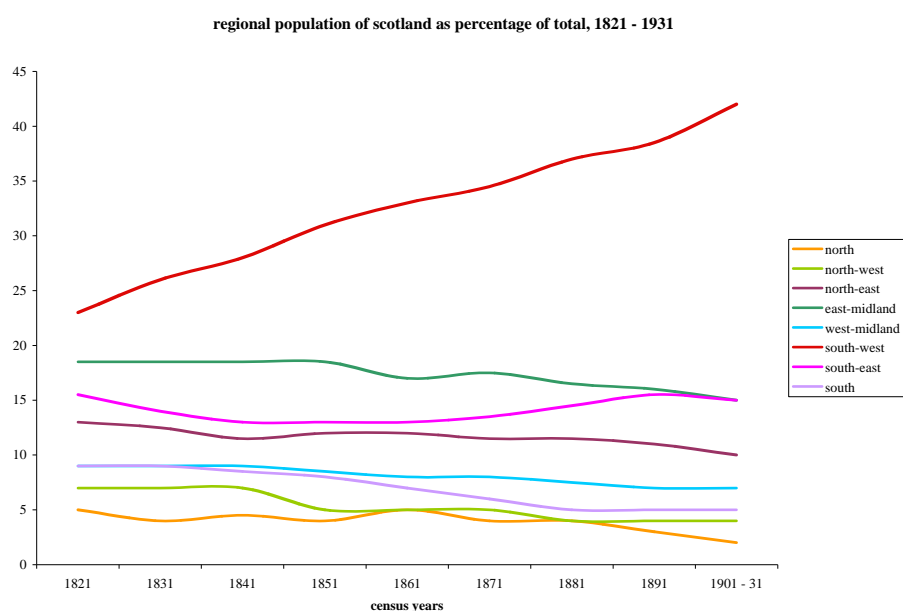


Fig. 4.4 Regional population of Scotland as a percentage of the total population, 1821-1931.
Source: Censuses of Scotland, 1821-1931.

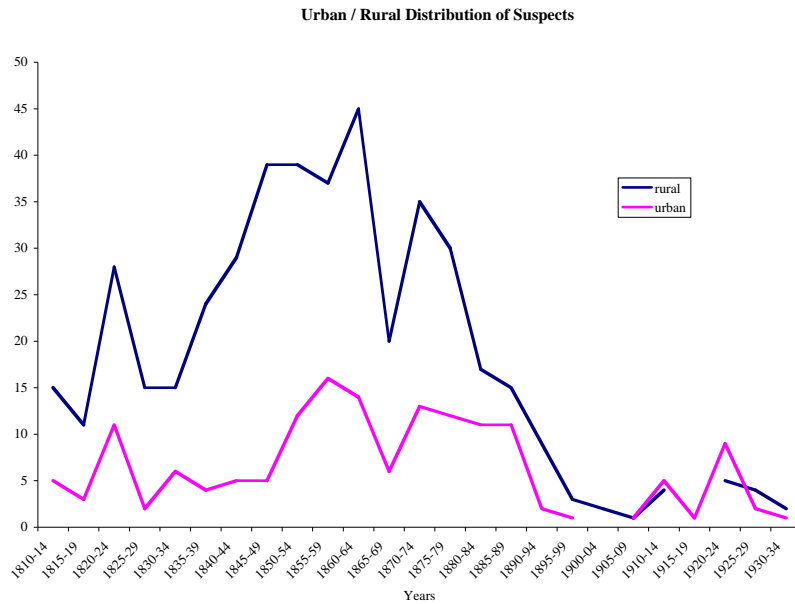


Fig. 4.5 Urban / rural spread of NBCM&CP investigations, 1812-1930.
Source: as Fig. 4.1.

New-born child murder and illegitimacy

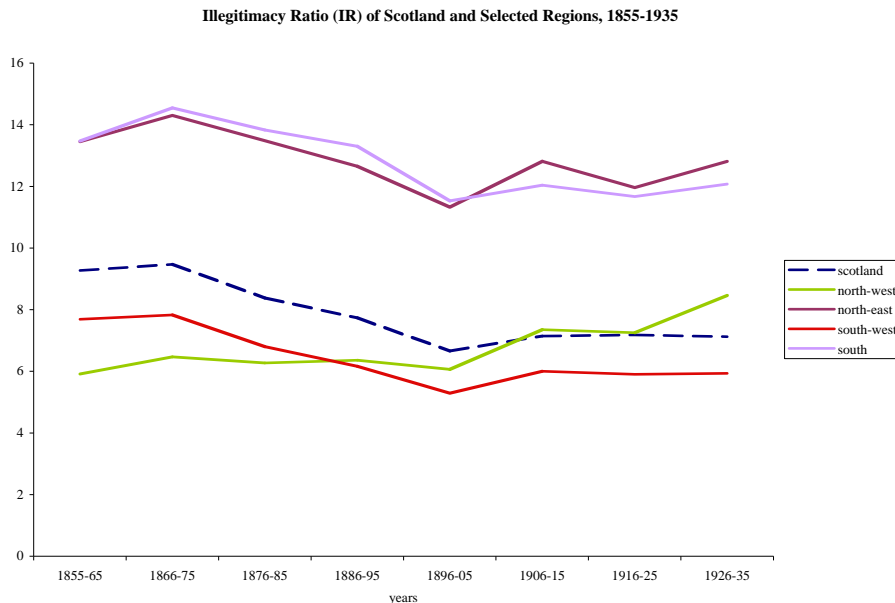
Arguably, the main reason why cases of suspected NBCM&CP were higher in rural areas is because so too was the illegitimacy rate. Since the overwhelming majority of new-born child murder victims were illegitimate, and most of the alleged perpetrators were the mothers of said victims, the link between illegitimacy and new-born child murder is perhaps an obvious one. It is certainly a link that has been identified by historians: for example, Carolyn Conley's study of infanticide in Britain between 1867 and 1892 finds that 'almost all neonaticides involved illegitimate children',¹²² and, in her study of eighteenth-century Scotland, Anne-Marie Kilday suggests that the 'higher illegitimacy levels of south-west Scotland...may be tentatively linked to the relatively high levels of infanticide'.¹²³ Moreover, in his study of seventeenth-century England, Keith Wrightson

¹²² C. Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth Century England, Ireland, Scotland and Wales* (Columbus, 2007), p.171.

¹²³ Kilday, 'Maternal Monsters', p. 165.

suggests that illegitimacy figures could be used as a ‘slender basis for speculation on the incidence of killing base children at birth’.¹²⁴

National statistics regarding the rates of illegitimacy were recorded in Scotland from 1855, and Fig. 4.6 shows the illegitimacy ratio (IR) for Scotland and selected regions between 1855 and 1935:¹²⁵ the southern counties of Dumfries, Kirkcudbright and Wigtown, and the north-eastern counties of Nairn, Elgin (Moray), Banff, Aberdeen and Kincardine ‘seldom had less than 14-18 per cent of their total births illegitimate’.¹²⁶ The two regions most over-represented by suspects are the north-east and the south (which includes the counties of south-western Scotland). In contrast, the regions in which illegitimacy was lower than the national average – which include the urban and industrial areas of the central belt, as well as the far north and north-west – generally tend to be



¹²⁴ Wrightson, ‘Infanticide’, p.19.

¹²⁵ The illegitimacy ratio (IR) is the number of illegitimate births as a percentage of total births.

¹²⁶ C. Smout, ‘Aspects of Sexual Behaviour in Nineteenth-Century Scotland’, in P. Laslett, K. Oosterveen and R. M. Smith (eds), *Bastardy and its Comparative History* (Cambridge, 1980), p. 199. For a detailed discussion of illegitimacy in north-east Scotland, see Blaikie, *Illegitimacy, Sex and Society*, and for Dumfries see R. J. M. Paddock, ‘Aspects of Illegitimacy in Victorian Dumfriesshire’, Unpublished PhD thesis (University of Edinburgh, 1989).

Fig. 4.6 Illegitimacy ratio (IR) of Scotland and selected regions, 1855-1935.

Source: M. Flinn (ed.), *Scottish Population History from the 17th Century to the 1930s* (Cambridge, 1977), pp. 350-1.

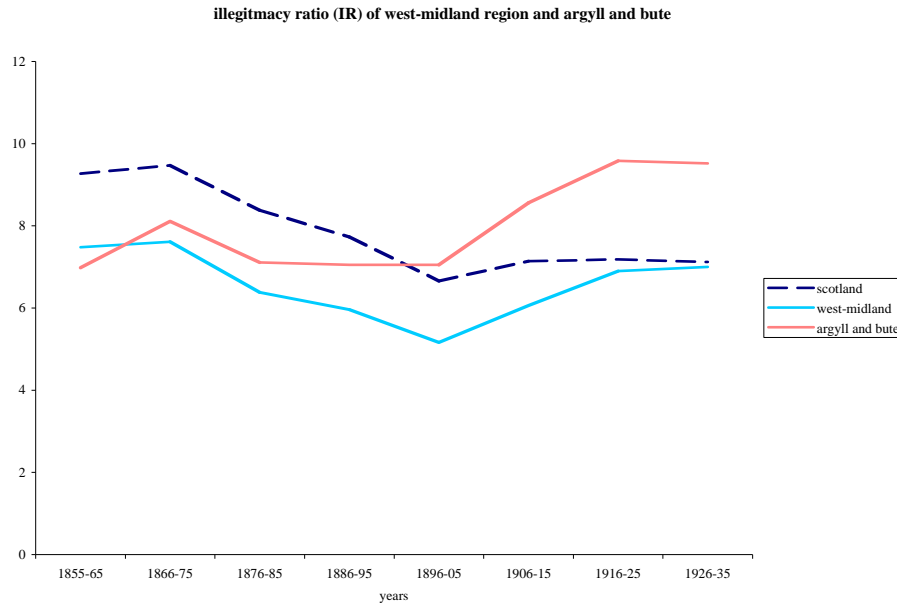


Fig. 4.7 Illegitimacy ratio (IR) of west-midland region and Argyll and Bute, 1855-1935.

Source: as Fig. 4.6.

under-represented by suspects.¹²⁷ This may also have been the case in Shetland, where Lynn Abrams finds only forty cases of suspected new-born child murder between 1699 and 1920.¹²⁸

The graph relating to the west-midland region in Fig. 4.7 requires some explanation. It is seemingly the one exception to a clear link between illegitimacy and suspected new-born child murder, because it witnessed an increase in suspects from the 1850s, yet had an IR that was below the national average. However, whilst the counties of Stirling and Dumbarton both had a significantly lower IR than the national average, the IR of Argyll and Bute was increasing throughout the period 1855-1935 and had overtaken the national average by the 1880s. Moreover, between 1855 and 1930, about 45 per cent of the

¹²⁷ It must be noted that the fluctuations in the north and north-west regions graphs are due to the fact that there are so few cases from these areas. This fact alone strengthens the argument that there were few cases of new-born child murder in areas of low illegitimacy.

¹²⁸ Abrams, 'From Demon to Victim', p. 181.

NBCM&CP suspects in the west-midland region came from Argyll and Bute, and this, coupled with the fact that the vast majority of suspects from Dumbarton and Stirling came from rural areas anyway, helps to explain the apparent discrepancy, and perhaps even strengthens the case for a clear and direct link between new-born child murder and illegitimacy.¹²⁹

Whilst the fact of high Scottish illegitimacy was clear to contemporaries,¹³⁰ an explanation for it proved more elusive, and still remains ‘largely unexplained’.¹³¹ A number of theories were put forward, but most, such as drink, an excess of females in the population, and the absence of rural prostitution, were all refuted by the Registrar-General, who showed that for every area of high illegitimacy that had one or more of these conditions, there were others with similar conditions which had low levels of illegitimacy.¹³² Another contemporary explanation for high Scottish illegitimacy was low literacy levels, although the Registrar-General also refuted this theory.

For some nineteenth-century commentators, the problem lay in the state of rural housing, and the ‘bothy system’ in particular. Bothies were ‘communal sleeping quarters for unmarried farm servants’.¹³³ Ultimately though, the claims regarding the bothy system and chaumering – a system peculiar to the north-east, in which male farm servants were housed in lofts above the farm steadings, and ate ‘in the farm kitchen together with the dairymaids’,¹³⁴ was also refuted by the Registrar-General, who showed that in ‘bothying counties there were ‘three to five per cent less sinners against the Seventh Commandment’ than in non-bothying districts’.¹³⁵ Indeed, there are only three cases between 1812 and 1930 where new-born child murder and concealment of pregnancy

¹²⁹ However, the numbers are small: 24 between 1812 and 1854, 25 between 1855 and 1884, and only 11 between 1885 and 1930.

¹³⁰ K. Boyd, *Church Attitudes to Sex, Marriage and the Family, 1850-1914* (Edinburgh, 1980).

¹³¹ Anderson, ‘The Social Implications of Demographic Change’, p. 36.

¹³² Smout, ‘Aspects of Sexual Behaviour’, pp. 200-1.

¹³³ *Ibid.*, pp. 201-2.

¹³⁴ Blaikie, *Illegitimacy, Sex and Society*, p. 38.

¹³⁵ *Ibid.*

suspects were living in a bothy, and it not clear in either of these cases whether or not the suspect was also in the bothy when the child was conceived.¹³⁶

However, the link between illegitimacy and the living arrangements of agricultural workers made by nineteenth-century commentators is an important one. Indeed, two hundred and twenty-seven (37 per cent) of the suspects in this study worked on a farm – either as an indoor or outdoor servant. Farms were ideal arenas for men and women to engage in sexual relations with discretion, and with relative frequency, but since the majority of suspects did not live or work on farms, there must be something else about living in rural areas that accounted for a higher rate of pregnancy amongst women. A broader theory – one that can be applied not just to rural areas, but the whole of Scotland – is required: Michael Anderson has posited such a theory:

illegitimacy was high among those groups of the population where parental and community control over courtship was relatively low and where women who bore illegitimate children could, if necessary, support themselves relatively easily.¹³⁷

This theory raises two important points. With respect to the notion of control over courtship: in general, young women living away from home had more opportunities for sexual encounters, and this would certainly explain the predominance of servants among the mothers of illegitimate infants. Mark Jackson comments on the ‘opportunities available to servants for sexual liaisons’,¹³⁸ and, as J. M. Beattie observes:

women in service were, on the one hand, most commonly in their early child-bearing years and on the other, in close and constant contact with men, both the members of the family they worked for, and their fellow servants.¹³⁹

This does not, however, explain why servants in rural areas were more likely to become pregnant than their urban counterparts, or why so few women in industrial or manufacturing occupations – many of which required young women to live away from

¹³⁶ NAS, AD14/48/433, Isabella Barron; NAS, AD14/58/7, Sarah or Sarai Bremner; NAS, AD14/62/152, Barbara Fraser.

¹³⁷ Anderson ‘The Social Implications of Demographic change’, pp. 37-8.

¹³⁸ Jackson, *New-Born Child Murder*, p. 49.

¹³⁹ J. M. Beattie, cited in Kilday, ‘Maternal Monsters’, p. 167.

home – had illegitimate children. A clue to the answer can be found in the investigation by the Registrar General in 1883, which, Smout remarks, showed that

almost half Scottish illegitimate births were to ‘domestic servants’ – but this includes very large numbers in rural areas sleeping in farm kitchens and elsewhere under no supervision at all...¹⁴⁰

Indeed, both the work and courtship patterns of domestic servants in urban areas were generally under much tighter control by employers, particularly at night, and the opportunities for sexual encounters amongst urban servants were more restricted.¹⁴¹ As Smout observes, ‘[m]uch courtship in town and country alike took place out of doors...on the traditional walk where men and girls became better acquainted – but if you wanted to carry things further town life must have presented some problems’.¹⁴² There were similar problems in nineteenth-century London where, Samantha Williams observes, ‘[t]he demands of service and, in particular, long work hours, meant that it could be very difficult for servants to meet men.’¹⁴³ To put it simply, whilst all women engaging in sexual activity ran the risk of becoming pregnant, women in rural areas had sex more frequently than their urban counterparts, and so ran a greater risk of becoming pregnant.

¹⁴⁰ Smout, ‘Aspects of Illegitimacy’, p. 196.

¹⁴¹ Meg Arnot also points out that there was contemporary concern that restricting the courtship practices of domestic servants forced women into clandestine relationships, so increasing the chance of any subsequent pregnancy being concealed, and the child murdered. Idem., ‘Gender in Focus’, p. 12.

¹⁴² Smout, ‘Aspects of Illegitimacy’, p. 205.

¹⁴³ S. K. Williams, “‘I was forced to leave my place to hide my shame’: The Living Arrangements of Unmarried Mothers in London in the Early Nineteenth Century”, in J. McEwan and P. Sharpe (eds), *Accommodating Poverty: The Housing and Living Arrangements of the English Poor, c.1600-1850* (Basingstoke, 2001), pp. 105.

Living arrangements of NBCM&CP suspects

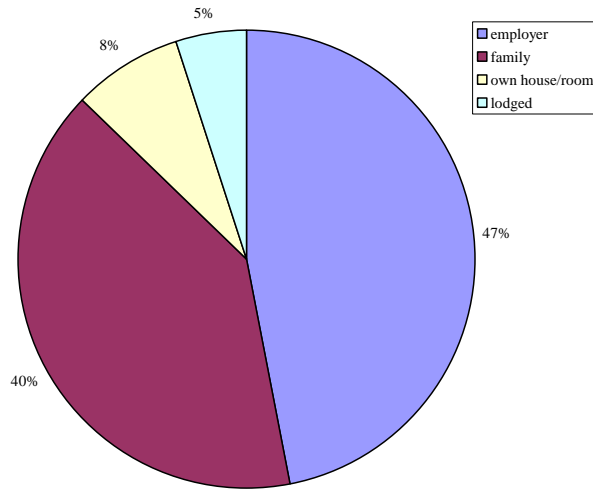


Fig. 4.8 Living arrangements of NBCM&CP suspects.
Source: as Fig. 4.1.

Family members suspects lived with

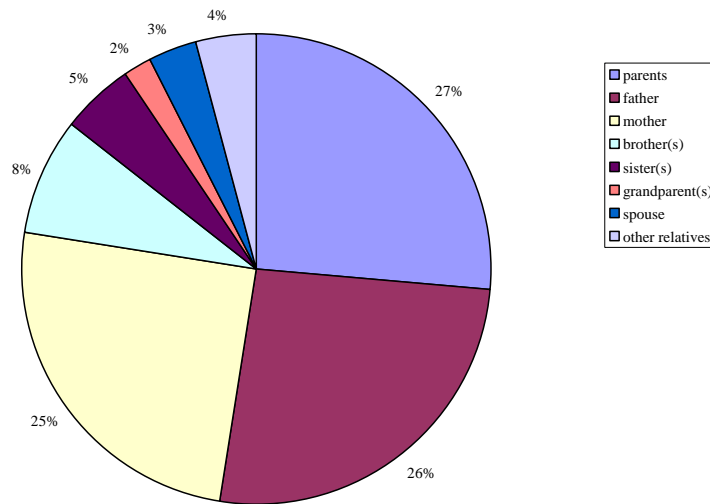


Fig. 4.9 Family member(s) NBCM&CP suspects lived with.
Source: as Fig. 4.1.

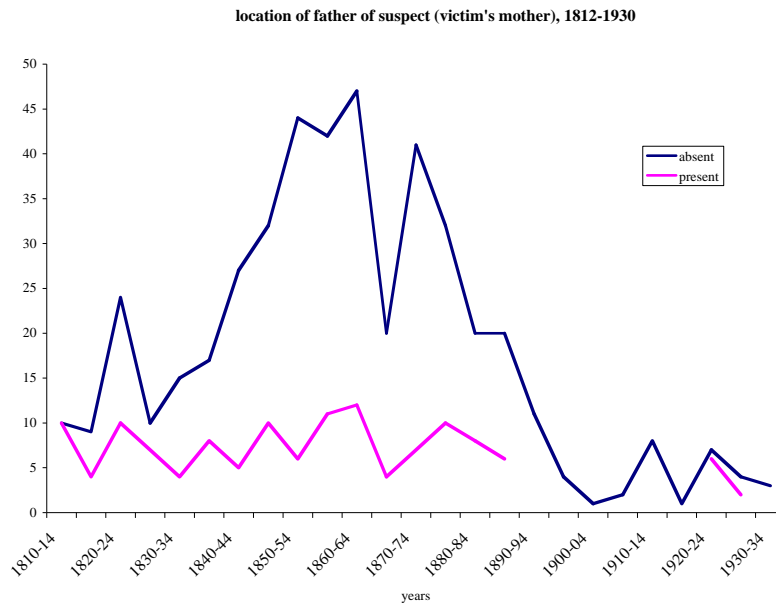


Fig. 4.10 Location of the fathers of NBCM&CP suspects.
Source: as Fig. 4.1.

Another important factor controlling the courtship patterns of women was whether or not they lived at home, where parental – particularly paternal – discipline may well have restricted sexual behaviour. Fig. 4.8 shows that 60 per cent of the new-born child murder and concealment of pregnancy suspects were living away from home when the alleged ‘crime’ took place. The majority were living with their employers, although some lived in houses or rooms by themselves, or lodged with others.¹⁴⁴ Of those suspects who were living with their family, fig. 4.9 shows that only 27 per cent lived with both parents, suggesting a lack of familial stability amongst suspects. Fig. 4.10 shows how few suspects between 1812 and 1930 had their father in the household at the time the alleged ‘crime’ was committed, and again suggests that a lack of paternal authority may have been an important factor in increasing the opportunities for sexual relationships amongst the young women in this study.

The second point raised by Michael Anderson’s theory about high rural illegitimacy relates to the ability of women in rural areas to rear an illegitimate child compared to

¹⁴⁴ n=598.

those in urban areas. It seems that in some parts of Scotland there was little, or no, stigma attached to illegitimacy,¹⁴⁵ and that having illegitimate children was no barrier to finding employment. Indeed, there is evidence that in the north-east of Scotland pregnant servants, rather than being dismissed, would temporarily leave work to be delivered of the child at their parents' house, and return to work afterwards.¹⁴⁶ However, 'the questions of how and where' the child was reared, remarks Andrew Blaikie, 'remain unanswered'.¹⁴⁷ In late nineteenth-century Banff, illegitimate children were most likely to stay with their grandparents. For example, in the parish of Rothiemay in 1881, Blaikie finds a positive relationship between illegitimacy and 'the proportion of households headed by grandparents' and similar figures have also been calculated for other areas of Scotland.¹⁴⁸ Blaikie also finds that '19.1 per cent of unmarried women who lived with their offspring did so as household heads and all of these were lone parents',¹⁴⁹ women perhaps without familial support, living in lodgings with their child or children. Moreover, lone parents who had been domestic servants were forced to find alternative employment, and most became either 'independently housed agricultural labourers under different conditions of hire from living-in servants', or paupers.¹⁵⁰

For a significant minority (40 per cent) of the women suspected of concealing their pregnancies and/or killing their infants in Scotland between 1812 and 1930, this was not their first pregnancy. Of the two hundred and thirty-eight women who had children still living, 60 per cent had one child, 21 per cent had two, and 19 per cent had three or more children. Fig. 4.11 shows that relatives, usually a grandparent or grandparents, looked after 73 per cent of suspects' previous children. If great-grandparents are included, then the figure is closer to that of Blaikie's for Banff, and suggests that the usual practice throughout Scotland was for illegitimate children to be reared by their grandparents.¹⁵¹

¹⁴⁵ Smout, 'Aspects of Sexual Behaviour', p. 207; Flinn, *Scottish Population History*, p.362.

¹⁴⁶ Blaikie, *Illegitimacy, Sex and Society*, p. 127.

¹⁴⁷ *Ibid.*, p. 123.

¹⁴⁸ *Ibid.*, p. 140.

¹⁴⁹ *Ibid.*, p. 145.

¹⁵⁰ *Ibid.*, p. 153.

¹⁵¹ *Ibid.*

Both the percentage of suspects who lived with their children as a lone parent (18 per cent), and the occupations of these women are also similar to Blaikie’s findings for Rothiemay.¹⁵² Indeed, although three of the women were in domestic service, none were in permanent, full-time employment: one woman was described as an ‘occasional servant’, one an ‘occasional washerwoman’, and another was a ‘domestic servant, sewer and dressmaker’. Of the rest, seven women were farm workers, five women worked from home, engaged in among other things lint pulling or sewing, two women kept a ‘shebeen’ – an unlicensed eating and drinking establishment, and two women were in receipt of parochial relief. Indeed, it is clear that women living alone with their children were more restricted in the type of work they could do – and that apart from farm work, working from home was the best option, and that it was likely that a number of different jobs were needed to make enough money to survive.

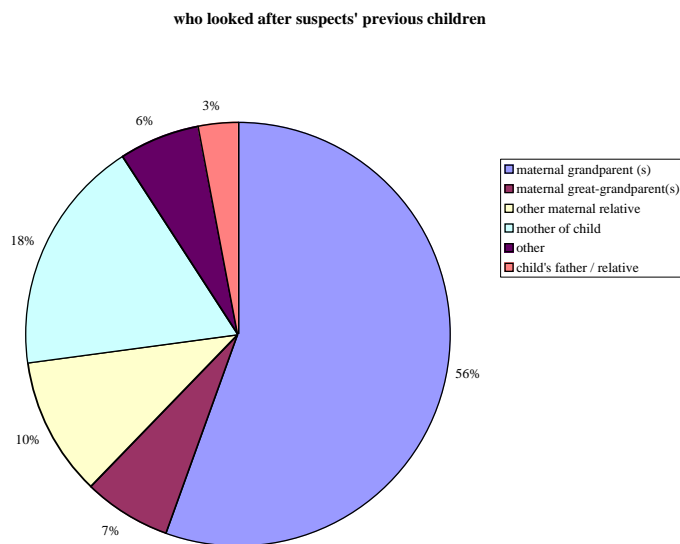


Fig. 4.11 Figures charged with the care of NBCM&CP suspects' previous children.¹⁵³
 Source: as Fig. 4.1.

¹⁵² n=18.

¹⁵³ n=162.

Only fifteen (9 per cent) living children of NBCM&CP suspects lived with a person who was not their mother, or related to her. Seven were being nursed, or boarded, with someone else. For example, in 1845, the five- or six-year-old child of Elizabeth Stewart, from Ayr, was boarded out at the cost of 1s 6d a week,¹⁵⁴ and Martha Reid's child had been nursed up to the age of ten months, but had died soon after being returned to her, in 1863.¹⁵⁵ Helen Kelly – suspected of new-born child murder in 1870, had two previous children, one of which was living with a widow nearby,¹⁵⁶ and, in 1887, Annie Sheen was paying a Mrs Niven 2s 9d a week to keep her two-year-old illegitimate child.¹⁵⁷ In five cases, a child was being reared by its father, or one of his relatives, and, in 1884, one suspect's ten-year-old daughter was 'kept in one of the public institutions'.¹⁵⁸

This chapter has explored the linkage between illegitimacy and new-born child murder, but there are four caveats preventing this theory from being wholly conclusive. First, the numbers of legitimate infants being murdered at birth may well have been higher than the records suggest. The dearth of married couples within the records is discussed in the next chapter, but, as Dickinson and Sharpe argue, '[i]nfanticides committed by married couples would be more difficult to detect – and possibly more difficult to prove before the courts – than those carried out by single women'.¹⁵⁹

Secondly, the geographical spread of the alleged 'crimes' does not in all cases correspond to where the infants were actually conceived. Of the women whose length of service is recorded, 69 percent had arrived at their present employment already pregnant.¹⁶⁰ Since in most cases previous employers are not mentioned, whether or not the conception occurred in a similar environment cannot be ascertained. Moreover, as both Andrew Blaikie and Rory Paddock have demonstrated for Banff and Dumfries respectively, there were enormous inter-parochial variations in the rates of illegitimacy, variations that are

¹⁵⁴ NAS, AD14/45/193, Elizabeth Stewart.

¹⁵⁵ NAS, AD14/64/136, Martha Reid. It was generally agreed amongst many of the witnesses in this case that Martha's ten month old child had died as a result of her neglect.

¹⁵⁶ NAS, AD14/70/86, Helen Kelly.

¹⁵⁷ NAS, AD14/87/116, Annie Sheen.

¹⁵⁸ NAS, AD14/84/68, Elspet Gordon or Catto.

¹⁵⁹ Dickinson and Sharpe, 'Infanticide in Early Modern England', p. 42.

¹⁶⁰ n=331.

masked in a general survey such as this.¹⁶¹ As such, the data that suggests a link between illegitimacy and new-born child murder and concealment of pregnancy investigations in Scotland are far from robust, and must be treated as such.

Thirdly, it is also possible that the predominance of accusations of concealment of pregnancy and suspected new-born child murder in rural areas was linked, not to the patterns of illegitimacy, but rather the likelihood of detection in these areas. As Mark Jackson argues for eighteenth-century England:

It is significant that the majority of women...did not come from large towns...but from small villages and townships. This is not to say that unmarried women became pregnant less frequently, or that dead and abandoned babies were not discovered as often in large towns...However, it is likely that suspects were identified and brought to justice more readily in the country, in small parishes where the proximity of rate-paying neighbours and relatives ensured that the slightest change in appearance or behaviour of an unmarried woman was readily detected, and where the body of a child could be rapidly traced to the woman concerned.¹⁶²

Evidence would suggest that there is some validity in this statement. As Chapter Two of this thesis has argued, rural communities in particular were quick to identify a pregnancy, and watch for signs of delivery. However, whilst concealing a pregnancy may well have been easier in urban areas, finding a suitable location for a secret delivery on the sudden onset of labour was more difficult. Moreover, the above does not explain the similarities between patterns of new-born child murder accusations, and the patterns of illegitimacy in rural Scotland between 1812 and 1930.

The final caveat is the possibility that the patterns of investigations, rather than reflecting the actual patterns of illegitimacy, may well reflect local and national concerns about illegitimacy, or general issues of morality, which in turn affected criminal prosecutions. There was a significant increase in investigations between the years 1840 and 1864, and two important events occurred in this period that may have affected the prosecution of concealment of pregnancy and new-born child murder: the Disruption, in 1843, and

¹⁶¹ Blaikie, *Illegitimacy, Sex and Society*; Paddock, 'Aspects of Illegitimacy'.

¹⁶² Jackson, *New-Born Child Murder*, p. 42.

secondly, as discussed above, the publication of the illegitimacy statistics for Scotland, in 1858.

Some commentators have described the Disruption of the Church of Scotland as the most important event in nineteenth-century Scotland,¹⁶³ when, in May, 1843, ‘two-fifths of the clergy, and, perhaps 50 per cent of parishioners, renounced the Establishment to form the Free Church’,¹⁶⁴ and, at least in the short term, the Free church became, Callum Brown argues, ‘the symbol of an energetic, evangelical and puritan crusade that was to be unleashed in Scotland in the second half of the nineteenth century’.¹⁶⁵ Moreover, it is also likely that the Established church also became more vigilant against immorality, in an attempt to re-define itself and to maintain its very survival in the years immediately after the Disruption.

It is perhaps unsurprising that, on the publication of the Scottish illegitimacy figures in 1858, the most vocal commentary came from the Free Church. Indeed, ‘not only did Scotland appear to have an exceptionally high percentage of her children born before marriage, but the worst areas were the counties of the northeast and the southwest Lowlands where rural virtues might be expected to be deeply ingrained’.¹⁶⁶ For the proud, puritanical men of the Free Church, this was nothing short of, a ‘national disgrace’.¹⁶⁷ It was Free Church minister, The Reverend James Begg, who made the link between illegitimacy and rural housing, and, in 1858, in an open letter to the Duke of Buccleuch, Begg warned that ‘[t]he day of judgement alone will unfold the drunkenness, profligacy, infanticide, and crime, which have sprung directly from this vile bothy system’.¹⁶⁸

There are two obvious consequences of this revived concern with, and purge of, immorality in Scotland: first, at the parish level, young, unmarried women not only might

¹⁶³ C. G. Brown, ‘Religion’, in A. Cooke et al, *Modern Scottish History*, vol. 1, p. 76.

¹⁶⁴ Blaikie, *Illegitimacy, Sex and Society*, p. 163.

¹⁶⁵ Brown, ‘Religion’, p. 80.

¹⁶⁶ Smout, ‘Aspects of Sexual Behaviour’, p. 199.

¹⁶⁷ Ibid.

¹⁶⁸ *The Witness*, May 5, 1858; Boyd, *Scottish Church Attitudes*, pp. 29-31.

have been watched more closely for signs of pregnancy and, perhaps more importantly, those women who might have normally given birth to their illegitimate infants may have felt compelled to conceal their pregnancies, and even murder their infants, because of the added pressure from a more puritanical, and less understanding, kirk and community. Secondly, at a national and provincial level, since many of the most important Scottish men – crucially including many leading judges and advocates – were members of the Free Church, it is possible that through their influence, the reporting, investigation, and prosecution, of ‘crimes’ against morality – particularly crimes such as concealment of pregnancy and new-born child murder – will have been pursued with more vigour, especially in those areas identified as having high rates of illegitimacy. Furthermore, the women accused of new-born child murder and concealment of pregnancy may also have been treated more punitively than women tried for the same ‘crimes’ in other areas of Scotland.¹⁶⁹

Conclusion

A number of general conclusions can be made about the suspects who made judicial declarations as recorded in the precognitions between 1812 and 1930. First, the overwhelming majority of suspects were unmarried women aged between 18 and 30, and were the mothers of the alleged victims. Secondly, most of these women were also domestic or agricultural servants, from generally low socio-economic backgrounds, and lived and worked mainly in rural areas of Scotland. Thirdly, these characteristics of new-born child murder and concealment of pregnancy suspects are also mirrored by most, if not all, of the other studies of these ‘crimes’. This chapter has argued that one possible explanation for this can be found in the link between new-born child murder and concealment of pregnancy with the rates of illegitimacy: the areas of high illegitimacy in Scotland were also areas in which there were relatively high numbers of women being accused of concealing their pregnancies and murdering their new-born infants. Of course all fertile women who engaged in sexual activity were at risk of pregnancy, but in rural –

¹⁶⁹ Sentencing patterns are analysed more fully in Chapter Eight.

especially agricultural areas – sexual activity could be engaged in with less difficulty, and with more frequency, than in other settings. Moreover, women living away from home, with less strict parental controls over courtship – women in service, for example – had more opportunities for frequent sexual activity. As such, servants living in rural areas were more likely to become pregnant than their urban counterparts.

Finally, the evidence from this chapter could also be used to suggest that a key overarching reason for the women in this study to conceal their pregnancies and/or murder their new-born infants was economic. For a young, pregnant, unmarried woman, living away from home, without a family willing or able to support her child, unlikely to qualify for permanent poor relief, and with the likelihood of being dismissed from her employment, her future would have looked very bleak indeed. For a woman who already had children, the financial burden of another was, in many cases, too much for her, and her family, and for all women, there was little likelihood of support from the child's father. In this light, it is perhaps unsurprising that women felt no other option was open to them other than to conceal their pregnancies in the first instance, and, when the time came, even to murder their new-born infants. However, as the next chapter will demonstrate, in many cases they did not act alone.

Chapter Five: Accessories to new-born child murder and concealment of pregnancy

Introduction

Only sixteen of the six hundred and two investigations into a suspected NBCM&CP in this study resulted in an indictment for someone other than the victim's mother. This figure mirrors the findings of most, if not all, of the British studies of infanticide. Anne-Marie Kilday, for example, finds that, of the 140 cases of new-born child murder in south-west Scotland between 1750 and 1815, only five (less than 5 per cent) involved an accomplice.¹ Dickinson and Sharpe assert that '[i]nfanticide was essentially a secret act, most often carried out by the mothers of the children involved in isolation',² and Hoffer and Hull emphasise 'the number of times infanticide was committed by a single woman, acting alone'.³ Indeed, a consistent feature of the historiography of new-born child murder is its female specificity, 'a rare example of a gender specific crime: men were seldom involved'.⁴ In early modern Chester, for example, '[m]en figured very rarely as principals in infanticide prosecutions',⁵ and in south-west Scotland between 1750 and 1815 '[t]here was...no instance of a man being the sole defendant in an infanticide case'.⁶ A male sole defendant appeared in only one case of new-born child murder between 1812 and 1930,⁷ and only five men were labelled as an accessory.

Given the rarity of accomplices in cases of new-born child murder, why does this study devote an entire chapter to accessories? There are two reasons. First, whilst most studies of infanticide mention accessories, such a discussion is usually limited to a percentage figure, and the paucity of information regarding the accomplices has led one historian to

¹ Kilday, *Women and Violent Crime*, p. 70.

² Dickinson and Sharpe, 'Infanticide in Early Modern England', p. 43.

³ Hoffer and Hull, *Murdering Mothers*, p. 104.

⁴ Kilday, *Women and Violent Crime*, p. 59.

⁵ Dickinson and Sharpe, 'Infanticide', p. 41.

⁶ Kilday, *Women and Violent Crime*, p. 70.

⁷ NAS, AD14/26/172, Duncan Clark. This case has not been included in this analysis because the child was delivered with assistance, and was seen alive and healthy by a number of witnesses before it was handed to Clark.

dismiss such cases as ‘infanticidal anomalies’.⁸ Whilst such a view is understandable, to dismiss such cases as anomalous leaves no room for a fuller and more nuanced discussion of new-born child murder, nor does it encourage consideration of why so few accomplices were indicted in the first place. Secondly, the pre-trial investigations in Scotland between 1812 and 1930 reveal a number of cases in which the victim’s mother was suspected of having assistance, but the individuals concerned were not indicted. Furthermore, by broadening the definition of ‘accessory’ beyond complicity in murder, the precognitions also indicate a variety of different ways in which women were assisted by family, friends, and other associates. Indeed, by penetrating the skein of official statistics provided by trial minutes and indictments, a more complex picture of suspected NBCM&CP can be gleaned, one which challenges the historiographical consensus that new-born child murder and concealment of pregnancy were solitary ‘crimes’.

This chapter will examine cases of suspected NBCM&CP in Scotland between 1812 and 1930 in which someone other than the mother of the victim was involved. The various forms of involvement can be usefully separated into three groups: first, accessories to murder; secondly those individuals actively involved; and lastly those individuals passively involved in the suspected ‘crime’. It will also look at the various individuals, and groups of people involved. The chapter makes three arguments: first, that the involvement of other women and men as revealed in the pre-trial documents begs a re-evaluation of the prevailing historiographical consensus regarding the solitary and sex-specific nature of new-born child murder; secondly, that an analysis of the factors that precluded suspected accessories from being prosecuted will help to illuminate the constructed nature of the ‘crimes’ of new-born child murder and concealment of pregnancy; and finally, that the various strategies used to conceal pregnancies and dead infants suggest a revision of existing notions of a ‘dark figure’ of infanticide.⁹

⁸ Kilday, *Women and Violent Crime*, p. 70.

⁹ See the Introduction for a discussion of the ‘dark figure’ of infanticide.

Accessories to Murder

Of the 602 cases of suspected NBCM&CP between 1812 and 1930, sixty-two (10 per cent) involved a suspicion that at least one other individual had been complicit in the murder of the accused's new-born infant. Only sixteen of these cases resulted in those individuals being indicted, three as sole defendant, and thirteen as co-accused. Thirty-nine include cases in which the victim's mother was suspected of having had assistance in murdering her infant, but where no formal charges were laid. For example, Marjory McIntyre or Lennox was suspected of assisting in the murder of her daughter's new-born female child. That she absconded undoubtedly compounded her guilt in the eyes of investigators, and the prosecution was suspended until her apprehension.¹⁰ Six cases involved an accusation that an individual attempted to procure an abortion for the suspect prior to her delivery. For example, in 1826, the disappearance of the alleged father of Margaret Paterson's child aroused the suspicions of investigators, and she was asked if he had advised her to harm the child,¹¹ and in a further five cases the accused was asked directly if the father of the child had assisted her in murdering the child, or advised her to do so.¹² It is not clear why these questions were asked. It is possible they were based on feelings from within the community, or on the hunch of the procurator fiscal, or were put regardless of any prior suspicions.

In some cases it was the declaration of witnesses during precognition that alerted the authorities to their complicity. For instance, after the procurator fiscal wrote to Crown Counsel seeking permission to examine judicially Elizabeth Wilkie's parents regarding their involvement in the murder of her new-born male child,¹³ the couple both emitted declarations, though neither was committed. Similarly, in Edinburgh a neighbour of Ann Abernethy, whose dead new-born infant was discovered in his cellar, had been reluctant to give evidence when the precognition was initially taken in February 1849. Henry

¹⁰ NAS, AD14/29/255, Marjory McIntyre and Marjory McIntyre or Lennox.

¹¹ NAS, AD14/26/162, Margaret Paterson.

¹² NAS, AD14/24/122, Isobel Urquhart; AD14/40/316, Marion White; AD14/51/206, Margaret McKenzie; AD14/72/357, Mary Meldrum; AD14/81/295, Isabella McNeill.

¹³ NAS, AD14/12/6, Elizabeth Wilkie.

Michie, 30, a married shoemaker eventually made his declaration in May, and part of his statement reads as follows:

I did not see any child in the cellar when I went there on the Monday morning. I did not look particularly into the barrell where the child was said to have been found...I did not put any child or bundle into that cellar on that morning or the previous evening...I have seen the prisoner twice at the prison since she was put there. My object was just to see how she was and to let her mother know. I gave the name Henry McKay at the prison and my reason for doing so was that I did not wish to expose myself...Interrogated: how was that exposing you? Declares I think it would expose me, but I don't choose to say in what way it would expose one. Declaring I am not the father of any child born by Ann Abernethy. I never had any connection with the prisoner or used any improper liberties. I never heard any rumour that I was the father of the child to which she gave birth.¹⁴

In this case, the procurator fiscal clearly believed that Michie was not only the putative father but also that he was involved in the death of Ann Abernethy's child. Similarly, in 1876, the sheriff-substitute believed that the mother and sister of Christina Reid were not telling the truth. Her sister testified that not only was she not aware of Christina's pregnancy, but also that it would have been impossible for her to have been delivered of a child in the house without her knowledge. For her part, Reid's mother denied everything as well, denying that her daughter had been delivered in the house, adding that 'I was not party to carrying the child to the yard and laying stones on it'.¹⁵ In a case from 1927, the procurator wrote to Crown Council regarding the father of Mary Lynch Heron, claiming that he was 'obviously not a truthful witness'. His reasons for making this claim were that:

[n]ot only did he make an entirely different statement in the precognition from what he made to the police, but it is apparent that he is not telling the truth when he says he went for the nurse before going to St. Andrew Street (which is in the opposite direction). Mrs Garrett, to whom he went in St. Andrew Street, says she referred him to Mrs Reid for directions as to where the nurse lived, and he went to Mrs Reid and enquired.¹⁶

¹⁴ NAS, AD14/49/91, Ann Abernethy.

¹⁵ NAS, AD14/76/250, Christina Reid.

¹⁶ NAS, AD15/27/104, Mary Lynch Heron.

Occasionally, the suspicion that a witness was accessory to murder came from Crown Counsel, who returned the precognition to the procurator fiscal with an instruction to re-precognosce those individuals. For example, a witness in the investigation into the death of Christina Halliday's child in Dumfries, in 1847, stated that she had heard Halliday and her father whispering in the water closet prior to the child's delivery there.¹⁷ In spite of this evidence, he was initially not even precognosced as a witness. Crown Counsel insisted that he was interrogated, although his denial of the claims against him prevailed, and the case against him went no further. In her declaration, Ann Gall claimed that she had not realised she was pregnant, and was not aware if she had been delivered of a child, since she was given chloroform in the kitchen by an unknown man, and had been unconscious.¹⁸ As well as Hector Mackenzie, a 'quack doctor' who was initially apprehended, Crown Counsel also believed that the child's father was involved, and were confident that evidence would come to light that would implicate him. Again, these suspicions came to nothing.

It is clear in a number of cases that an accusation against an accessory came from the community. In 1812, in Haddington, various body parts of a new-born infant were discovered in and around the farm at which Euphemia or Effy Hunter – the suspected mother of the child – was a servant.¹⁹ The wife of Hunter's employer was clearly suspicious of the alleged father of the child, Andrew Denholm, also a servant at the farm, stating that he 'seemed to be very much vexed after the parts of the child had been discovered'. Denholm denied everything, claiming that 'he knew nothing of Euphemia Hunter being delivered of a child, nor was he in any degree accessory to the murder of the child'. In Ayr in 1846, mother and daughter Helen Frith and Jean Harris or Frith were implicated in the death of Helen's new-born girl by a travelling hawker, Isaac McDougall, who lodged with them. Helen, he claimed, 'in great pain said to her mother "come here" – and he heard in her room much scraping then her mother shouted "my

¹⁷ NAS, AD14/47/236, Christina Halliday.

¹⁸ NAS, AD14/56/246, Ann Gall.

¹⁹ NAS, AD14/12/26, Euphemia of Effy Hunter. A detailed and interesting discussion of this case can be found in Symonds, *Weep Not For Me*, pp. 165-68.

God what am I to do with this”²⁰. Similarly, in Greenock, in 1856, having been called to assist in the delivery of Catherine McIntyre’s female infant, the physician, Barclay Henry, witnessed Catherine and her mother on the floor, bent over the child, attempting to strangle the child with the umbilical cord.²¹ He prevented the murder on that occasion, but left the two women alone with the child, and when he returned the child was dead. The umbilical cord was wrapped around the child’s neck. Similarly, it was a local midwife who, in 1865, inspected the dead child of Isabella McKerchar in Perth. Suspecting foul play, she claimed McKerchar’s mother had tried to cover up the real circumstances behind the infant’s death.²² The declaration of the mother clearly indicates the nature of this attempt: ‘I don’t recollect saying that I tried to rub out a mark from the child’s brow and I don’t think I said so, and I have no recollection of seeing any such mark’. In 1922, neighbours noticed a ‘singeing smell’ coming from the house of Agnes Duncan and her father Robert.²³ The discovery of the partially burnt body of a child in a pile of rubbish recently tipped by Agnes’s father, and a suspicion that they had an incestuous relationship, ensured that they were both indicted for murder.

A number of accusations against accessories to murder came from the accused themselves. Margaret Clark made two claims about the father of her child, farm servant William Finnie;²⁴ first, that Finnie had ‘desired her to kill the child’, and secondly, that he had threatened to kill her and her child if she revealed her pregnancy to anyone. A similar accusation from Dunmore Village, Stirling in 1852 saw nineteen-year-old Helen Lennox state that the alleged father of her child, engine-driver James Ogilvie, threatened to kill her if she did not destroy the child.²⁵ In 1856, Hellen Davidson told a police officer that the father of her infant gave her pills because he ‘wanted her to destroy the child in any way and to go away with her and leave his wife and family’,²⁶ and, similarly, in 1860, Jean Smith also claimed that the putative father of her child had given her

²⁰ NAS, AD14/46/120, Helen Frith and Jean Harris or Frith.

²¹ NAS, AD14/56/192, Catherine McIntyre jnr and Catherine McIntyre snr.

²² NAS, AD14/85/286, Isabella McKerchar.

²³ NAS, AD15/22/40, Agnes Duncan and Robert Duncan.

²⁴ NAS, AD14/25/100, Margaret Clark.

²⁵ NAS, AD14/52/198, Helen Lennox.

²⁶ NAS, AD14/56/235, Hellen Davidson, Deposition of Andrew McGregor.

money for the purpose of procuring medicine to ‘put the child away’.²⁷ In 1880 Catherine Budge, an unmarried servant from Lybster in Caithness, went into considerable detail about the role of the alleged father of her child, Alexander Sutherland, in its death.²⁸ She declared that on the day of the alleged crime,

on my way home, when near the middle of Lybster Plantation, I was met by the said Alexander Sutherland. We had made an appointment for meeting. I was at that time feeling labour pains and I told Sutherland how I felt and that I must give word to Mrs Macdonald the mid-wife that night. He said that I was not near my time and that I had no need to tell Mrs Macdonald...There by the roadside I found myself in labour and Sutherland loosed off my red petticoat and put it under me and the child and he took up the child and bade me stop there till he came back, and he went away carrying the child with him. I have not seen the child since.

Budge further stated that the next night, having asked Sutherland what he had done with the child, he said ‘there is no fear of it, it I’ll no trouble ye’. Sutherland’s denial was succinct: ‘I was not with Catherine Budge when the child was born and I declare the whole story to be untrue’. Likewise, in 1897, Eliza Downie also claimed that the father of her child, David Chalmers, had taken away her child. He denied the claim, stating that Downie had murdered the child, and they were both indicted.²⁹ In 1862, Elizabeth Duncan made a similar claim about her mother, Ann Brechin.³⁰ In her declaration, she stated that ‘[m]y mother was present when the child was born’, and that she ‘assisted me and immediately took it away’. In 1861, Alexandrina or Lexy Clark from Caithness claimed that a friend of hers, Jane Mackay, a fifty-year-old pauper, was present at the birth, and that the child gave one cry and then Mackay took it away, adding that she was so weak ‘I didn’t care about the bairn’.³¹ In her defence, Jean Mackay denied saying ‘it would not be a proper birth’, and that she would ‘take the child away’.

Why were comparatively few accessories indicted for murder? First, in most cases involving suspected accessories there was not have enough compelling evidence to

²⁷ NAS, AD14/60/25, Jean Smith.

²⁸ NAS, AD14/80/227, Catherine Budge.

²⁹ NAS, AD14/97/73, Eliza Downie and David Chalmers.

³⁰ NAS, AD14/62/210, Elizabeth Duncan and Ann Brechin.

³¹ NAS, AD14/61/28, Alexandrina or Lexy Clark and Jean Mackay.

warrant a trial. Examples of compelling evidence can be found in the case of Elizabeth Lyon and George Wishart, in 1870, in which three factors ensured that both were indicted for murder.³² First, Wishart showed the inspector where he had hidden the body; secondly, Lyon claimed that Wishart had taken away the child after its birth and Wishart admitted the child was alive when it was born, and that it was moving – though it did not cry – and that he took it below some weeds and covered it up; and thirdly, the medical report showed that the child had had its throat cut with a knife, and a bloodstained jacket of Wishart’s was discovered, which he claimed he had been wearing for the slaughter of a lamb some days previously. A further claim by the inspector that Wishart had asked him to ‘keep the matter quiet’ did not help his cause.

However, a lack of forensic technology between 1812 and 1930 meant that there was no scientific evidence that could link a murder suspect to the scene of the crime and, as such, prosecutors relied on either a confession, or on the victim’s mother testifying against accessories, or turning ‘King’s Evidence’. For example, in 1817, twenty-six-year-old farm servant Isobel Milne was delivered of a new-born child, and was assisted by fellow servant Janet Reid who, Milne claimed, had taken the child away.³³ Having chosen to testify against her friend, with whom she had been living and working with for eighteen months, Milne turned ‘King’s Evidence’, and became a witness for the prosecution. Reid’s libel was found not proven, and she was liberated. The victim’s mother also turned ‘Kings Evidence’ in two further cases: first, in 1819, when an eighty-year-old woman who lodged with the victim’s mother admitted to putting the child ‘in a dish, where it must have perished’³⁴; and secondly, in 1828, when the victim’s mother claimed that a fellow servant and the alleged father of her child took the body away.³⁵

A second reason why so few cases involving accessories resulted in indictments perhaps lies in the outcome of those cases that were prosecuted. In every one of the sixteen cases, the co-accused was either liberated having been found not guilty, or the proceedings were

³² NAS, AD14/70/268, Elizabeth Lyon and George Wishart.

³³ NAS, AD14/17/98, Isobel Milne and Janet Reid.

³⁴ NAS, AD14/19/11, Mary Ann Wilson and Isabella Halliday. The procurator fiscal actually wanted to indict Wilson in this case because of Halliday’s age.

³⁵ NAS, AD14/28/328, Mary Raffles and David Douglas.

dropped prior to trial. In all but five cases, the victim's mother was also liberated. The case against Eliza Downie and David Chalmers highlights the problems facing prosecutors in cases involving an accessory.³⁶ A letter to Crown Counsel by the procurator fiscal outlines the view of the agent for both parties:

In his view of the case, if both accused are indicted he thinks the Crown will be unable to convict either of them...If, on the other hand, the man were to be used as a witness the defence would at once throw out the blame upon him, and, in view of the active part he took in the matter and the different versions given by him to the police, the jury, Mr Stronach thinks, would probably believe the woman's story and acquit her.

Crown Counsel's proposed answer to this is outlined in an extraordinary letter to the procurator fiscal:

The P.F. [procurator fiscal] will communicate this decision to the agent for the male accused and will explain to him verbally that any statement which he thought it right to communicate to the P.F. would be carefully considered. C.C. [Crown Counsel] does not invite such a statement, but if the male accused was to tell his story as the female accused has told hers, and did C.C. believe the story which they do not that of the female and particularly if that story were corroborated by the accused's wife, possibly the case might take a different shape.

In spite of their statement to the contrary, it seems that Crown Counsel were inviting Chalmers to construct a plausible alibi. As a married man, Chalmers' statement would be more believable than Downie, an unmarried farm worker of lower status, if backed up by his wife. Either his agent or his wife refused to acquiesce with this suggestion, because Chalmers and Downie were both indicted. It is also possible that prosecutors were not enthusiastic about prosecuting married men in these types of cases. For example, in 1846, there was a strong belief that Edward Ensell had assisted in the murder and disposal of Elizabeth Guthrie's new-born infant, which he was also suspected of fathering.³⁷ However, the fact that Ensell was married with three children led to the advocate depute's note, which read, 'This man to be immediately liberated.'

³⁶ NAS, AD14/97/73, Eliza Downie and David Chalmers.

³⁷ NAS, AD14/46/19, Elizabeth Guthrie.

Active Involvement

The pre-trial investigations into cases of suspected NBCM&CP in Scotland between 1812 and 1930 reveal sixty-eight cases (11 per cent) in which another individual, or group of individuals, were actively involved in the ‘crime’, but were not recorded as being a murder suspect. The majority of these cases involved assistance in the disposal of the body. An important distinction between these cases and those involving an accusation of murder is that there was no suggestion that the child was still alive when it was taken away. There are two ways in which the body of a new-born infant could be disposed of: concealing the body informally, usually by burying, or formally, in a churchyard by agreement of kirk officials. In the former, the precognitions show that, in some cases, the body was never discovered, and, as well as suspicions that the child had been buried, in two cases it was suspected that the body had been burnt. One woman claimed that she had been delivered in a lodging house in Glasgow, and nursed the child for eight days before ‘a lady came and took the child away’,³⁸ and another case involved the exposure of a living child by the daughter of the accused.³⁹

Twenty-three cases involved the body of the new-born infant being interred in a churchyard – with a further four attempts to do so – prior to any official investigation. In these cases, a coffin was procured, and the child was taken to the church and buried by church officials with seemingly few questions asked. In some cases, as in Aberdeen in 1837, the child was also dressed in ‘grave clothes’ before being confined.⁴⁰ The ubiquity of infant mortality in nineteenth-century Britain ensured that burying children was a

³⁸ NAS, AD14/45/250, Christina MacFarlane. This may well be a case of baby farming, which caused a sensation in England in the 1860s and 70s. There was some evidence of the practice in Scotland, such as an ‘exposé’ of baby-farming in Glasgow in 1870, the high profile case of Jessie King, hanged in 1889 for the murder of two children, and a series of cases in Glasgow around the 1910s and 20s. For Glasgow in 1870 see Rose, *Massacre of the Innocents*, pp. 82-4. For Jessie King see E. Ewan, S. Innes, R. Pipes, S. Reynolds (eds), *The Biographical Dictionary of Scottish Women*, p. 197. For the High Court records of the Jessie King case see NAS, AD14/89/146 and JC26/1408. For the Glasgow baby-farming cases of the 1910s-20s see, for example, *The Scotsman*, 19 September 1907, 21 February 1908, 4 January 1910, 12 January 1911, 5 February 1921, 23 April 1925 and 20 October 1930. For baby farming in England, see M. L. Arnot, ‘Infant Death, Child Care and the State: the Baby-Farming Scandal and the First Infant Life Protection Legislation of 1872’, *Continuity & Change*, 9, 2 (1994), pp.271-311.

³⁹ NAS, AD14/34/280, Sarah Hay or Clark.

⁴⁰ NAS, AD14/37/40, Ann Mearns.

frequent occurrence, and since there was no legal requirement to register stillbirths, even after the Registration Act,⁴¹ the arrival of family members or even an employer, with the stillborn child of a relative or servant, would not necessarily have aroused suspicion amongst church officials. Jean Walker's new-born female was interred in the east corner of Kinneff churchyard, Kincardine, at the behest of her employer, Elizabeth Burness.⁴² In her deposition, Burness, whose son was the father of Walker's child, claimed that 'it is usual to inter dead-born children in the evening, or at night'.⁴³ Although the beadle and the gravedigger agreed to the burial, the beadle's wife was suspicious, and she informed the authorities. Similarly, in 1848, at Inch, Wigton, James Scott took the dead body of his mother's new-born female child to the church to be buried.⁴⁴ The beadle – who was also the gravedigger – consented to the grave being dug, even though the seventeen year old refused to reveal the identity of the child's mother. In another case from Kilmarnock, in 1872, it was the local community who had Janet Reid's new-born infant interred in the churchyard.⁴⁵ The parochial undertaker coffined, and the sexton buried, the child, before being told to exhume it the next day.

For many people, it was essential that a stillborn child be given, if not a full Christian burial, at least a burial in consecrated ground. Moreover, since illegitimate infants were not entitled to a baptism,⁴⁶ it can be argued that there may well have been both cultural and religious reasons behind the hasty burial of new-born infants, rather than merely a desire to evade the authorities. That over half of the cases occurred in the north of Scotland and, more specifically, three on the Gaelic-speaking Scottish Isles, further bolsters this theory. The first of these was from Islay in 1864, when Anne Cameron's new-born female child was buried without either the authorities, or even a doctor having been informed.⁴⁷ In the same year, the father of Catherine MacQuien, accompanied by a

⁴¹ Registration (Scotland) Act 1854, 17 & 18 Vict. c.80. There was no legal requirement to register stillbirths in Scotland until 1939. For a full discussion of the Act and stillbirth, see G. Davis, 'Stillbirth Registration and Perceptions of Infant Death, 1900-60: the Scottish case in National Context', *Economic History Review*, 62 (2009), pp. 629-54.

⁴² NAS, AD14/44/47, Jean Walker.

⁴³ In certain parts of Scotland stillborn infants were buried at night.

⁴⁴ NAS, AD14/48/136, Susanna Hutcheson or Scott.

⁴⁵ NAS, AD14/72/278, Janet Reid.

⁴⁶ Blaikie, *Illegitimacy, Sex and Society*, p. 76.

⁴⁷ NAS, AD14/64/166, Anne Cameron.

labourer, travelled from mainland Inverness to the island of Vally, North Uist, with a coffin, to the house of his daughter's employers in order to claim the body of her child and have it interred in Kilmur burying ground.⁴⁸ Again, in 1881 on the Isle of Skye, the family of Margaret McKinnon had her dead new-born child buried in the churchyard.⁴⁹ Interestingly, her father was not present at the funeral: whilst it may have been culturally important to have the child buried in consecrated ground, the fact of its illegitimacy, and even perhaps the understanding of how it met its demise, meant that he could not bring himself to attend.

In an extraordinary case from 1851, Jean McRobbie parcelled up her dead child and had it posted from Blackford, Perth, by train. It was delivered to her uncle in Glasgow, who attempted to have the child interred.⁵⁰ It was only when the undertaker's sister became suspicious that the authorities were called. Similarly, in 1854 in Kilmarnock, Ayr, it was the sexton, called on by the father of Mary Ann Brownlie or Mackie to bury her dead male child, who became suspicious and alerted a criminal officer,⁵¹ and, in 1879, one of the brothers of Janet Purdie asked the Inspector of the Poor for a coffin for her dead new-born female child.⁵² Rather than provide the coffin, however, the inspector informed the superintendent of police.

Another form of active involvement in a case of suspected NBCM&CP was the harbouring of a suspect, or an attempt to prevent her from being charged, or even investigated. For example, in 1812, Jannette or Jannett Sutherland's brother-in-law was informed that if he did not produce Janette 'as soon as better' he would be fined 300 merks,⁵³ and, in 1828, the family of Margaret Macrae took more drastic measures to ensure that she was not investigated for the suspected murder of her new-born female child. A letter from the procurator fiscal to a surgeon involved in the case intimated that, whilst taking the prisoner to Dingwall prison, 'the officers in charge of her had been

⁴⁸ NAS, AD14/64/288, Catherine MacQuien.

⁴⁹ NAS, AD14/81/28, Margaret McKinnon.

⁵⁰ NAS, AD14/52/213, Jean McRobbie.

⁵¹ NAS, AD14/54/170, Mary Ann Brownlie or Mackie.

⁵² NAS, AD14/79/186, against Janet Purdie.

⁵³ NAS, AD14/12/22, Jannette or Jannett Sutherland.

deforced and she carried away the Fiscal knew not whither, - and that the child had never been subjected to surgical examination by dissection', it having disappeared when another surgeon left it in order to collect his tools.⁵⁴ Similarly, in 1837, Mary Cameron emigrated to America with her uncle and his family in her efforts to evade capture,⁵⁵ and, after the disappearance of Catherine Hunter, in 1839, John Johnston, blacksmith, and the constable entrusted with keeping her under house arrest until her removal to prison, were accused by the procurator fiscal of being involved in the escape plan.⁵⁶ There are also a number of cases involving medical witnesses playing an active part in attempting to help NBCM&CP suspects.⁵⁷

A number of cases involved witnesses providing an alibi for women against a charge of concealment of pregnancy. The most common of these alibis was that the accused had disclosed her pregnancy to a witness, an admission that took the case outwith the terms of the Concealment of Pregnancy Act. Proof that the accused was preparing for the birth of a child could also be used as a defence. In 1817, for example, nursery maid Isobel or Bell Pearie or Pirie was investigated about the death of her new-born infant.⁵⁸ The governess, Elizabeth Ann Cook, mentioned seeing baby clothes, an indication that the accused had planned to have the baby. Similarly, in 1855, Catherine MacGregor was suspected of concealing her pregnancy,⁵⁹ and the procurator fiscal accused her neighbour, sixty-seven-year-old Isabella Graham – also a midwife – of actually supplying baby clothes she claimed she had found in the prisoner's trunk. In 1874, in spite of Christina Watson stating in her declaration that she had not prepared baby clothes, 'though it was her intention to do so', her agent, John Annan, testified in court that Watson had indeed bought cloth for that purpose,⁶⁰ and, in 1873,⁶¹ Isabella Simpson or Frew's mother had initially deposed that she was not aware of her daughter's pregnancy. However, the accused's agent later claimed that her testimony 'was false, and that she was aware of the

⁵⁴ NAS, AD14/28/277, Margaret Macrae.

⁵⁵ NAS, AD14/37/32, Mary Cameron.

⁵⁶ NAS, AD14/39/185, Catherine Hunter.

⁵⁷ These are discussed in Chapter Seven.

⁵⁸ NAS, AD14/17/75, Isobel or Bell Pearie or Pirie.

⁵⁹ NAS, AD14/55/192, Catherine McGregor.

⁶⁰ NAS, AD14/74/514, Christina Watson.

⁶¹ NAS, AD14/73/305, Isabella Simpson or Frew.

pregnancy and that she had assisted in the birth and the child had lived for a short time and died of natural causes'. The procurator fiscal highlighted the reason for this evidence:

The statement is no doubt made with the view of exculpating the prisoner by showing that at the time of the birth she had with her mother an experienced person to whom was entrusted the doing of what was necessary for the child.

Eleven of the fourteen cases involving concealment of pregnancy alibis came to light following completion of the precognition, and prior to the trial. Agents for the accused (to which all defendants were entitled) were able, from 1852, to introduce an exculpatory witness at short notice, even if they had not been designated as a witness in the indictment. Such a strategy was also used even when the accused had claimed she had not informed anyone else of her condition, such as in the case of Jane Watson or MacDougall, a handloom weaver in Dundee. Despite declaring she did not disclose her state, two witnesses, the wife of another weaver and another female associate, came forward claiming that McDougall had told them she was in 'the family way'.⁶² In 1864, an attempt was made to use a misinterpretation of the Gaelic language to construct a concealment alibi.⁶³ A witness in the case against Catherine MacQuien, Donald McDonald, the alleged father of her child, having been precognosed in Gaelic, stated on the 26 February that '[d]uring the whole time of our intercourse there never was any direct conversation between us that would lead me to be certain she thought she was in the family way'. In March he made another statement, this time claiming that

the last time she had connection with me she said 'Oh Donald I am as I am good at all events.' I answered 'And if you are I cannot help it and will admit it any time you place it before me.' The expressions made use of by the prisoner are often used in the country in Gaelic when a woman refers to herself or another as being pregnant. - from the language the prisoner used I understood that she was pregnant first as clearly as if she had used the plainest language...when I was formerly examined by the P.F. [procurator fiscal] I suspect he did not quite understand the exact meaning of what I said as he had not an interpreter and his gaelic is not very good...

⁶² NAS, AD14/63/242, Jane Watson or McDougall.

⁶³ NAS, AD14/64/288, Catherine MacQuien.

In his response to the claim, the procurator fiscal stated that

with reference to the particular language used by the prisoner to the witness, and which led him to believe that she was pregnant, that it has been found a matter of considerable difficulty for the sheriff; who is intimately conversant with the gaelic language; to translate the words into english in any more intelligible form than they appear in the precognition ... The sheriff as well as the sheriff clerk depute who also knows gaelic well both state that altho' they are ready to believe that the prisoner's language may have been understood by the witness to mean she was pregnant - yet they do not remember of hearing the particular expression before...

In this particular case the procurator fiscal was willing to believe the witness, but in other cases prosecutors must have felt a great deal of frustration, as indicated in a note from the procurator fiscal to Crown Counsel in one such case from 1885:

[A]s it is the statutory crime alone which is charged it has occurred to me to bring the nature of the defence under your notice. I do so the more readily on account of the manner in which the accused gave her declaration, and of her entire ignorance, even yet, of the value of the defence to be made for her.⁶⁴

In a number of cases, there is evidence that the accused, or her relatives and associates, organised a concealment alibi. In 1863, the procurator fiscal investigating the suspected concealment of pregnancy of Margaret Kininmonth stated that '[t]here has been an attempt by the accused and her friends to get her case taken out of the statute'.⁶⁵ A month after the initial precognition, two witnesses, an aunt of the accused and Cecilia Cant, the daughter of a labourer, both made statements that the accused had disclosed her being with child to them. Cecilia then admitted that she had been asked to sign a document to that effect, although the aunt stuck to her story. Interestingly, it seems that the idea to get signed statements from witnesses attesting to a pregnancy disclosure came from William Simpson, a sheriff and bar officer. In the same year, the mother of Christian MacFarlane tracked down the alleged father of her daughter's child, Angus Cameron, a railway gaffer, and made him sign a certificate stating that he had been told of her pregnancy.⁶⁶ Cameron told investigators that, whilst he admitted having 'connection' with McFarlane,

⁶⁴ NAS, AD14/85/257, Alexanderina More.

⁶⁵ NAS, AD14/63/234, Margaret Kininmonth.

⁶⁶ NAS, AD14/63/278, Christian MacFarlane.

he was not aware of her pregnancy, and that Macfarlane's mother 'told me that my signing such a paper might get her clear of the trouble into which she had got in consequence, as she said, of my connection with her'.

There is one case in which an attempt by an outside party for a concealment alibi proved detrimental to the accused. In 1869, Mary Johnston, a farm servant in Kirkmahoe, Dumfries, was accused of child murder and concealment of pregnancy.⁶⁷ The local minister, reverend Hogg, sympathetic to the accused, wrote to the putative father of her dead infant:

I am sorry to have to write you under very painful circumstances at the most urgent request of Mary Johnston. She was confined of a child last week under very suspicious circumstances, so much so indeed that a policeman is watching her bedroom night and day to prevent her escape. She is accused of child murder. She says you are the father of the child and she implores you to come and see her on the receipt of this letter at once. The body of the child was gotten under a heap of stones in a wood near the house. Come immediately, you may be the means of saving her from the scaffold. Do not delay a moment. She will be removed to jail as soon as she can leave her bed. She is at West Duncow in this parish.

The putative father, a shepherd, would actually have best served the accused by staying away. His admission that he was aware of her pregnancy took the case out of the statute, and Johnston was charged with child murder. She eventually pled guilty to culpable homicide, and was sentenced to five years penal servitude. Indeed, such an alibi was only effective in those cases in which concealment of pregnancy was the sole charge libelled. Discounting this case and another in 1864, every other case involving a concealment of pregnancy alibi was successful in securing an acquittal for the accused, the majority being abandoned by the prosecuting advocate prior to the trial.

⁶⁷ NAS, AD14/69/161, Mary Johnston.

Passive Involvement

Passive involvement refers to circumstances in which a suspect was aided by another party's silence, rather than by any positive action on their part. Forty-five cases (7 per cent) involved such individual or individuals. A number of cases involve witnesses who were, or were suspected of being, aware of the delivery of a new-born child later found dead, and had not mentioned the fact to anyone. In 1842, for example, a church elder voiced his opinion regarding the delivery of Peggy McLachlan's new-born infant, suggesting that it was 'very likely that if Peggy had given birth to a child, her...sister would have been called upon to assist'.⁶⁸ In the same year, Marion Lindsay, a nine-year-old girl, admitted to witnessing not only the delivery, but also the murder of Margaret Buchanan or Reid's new-born infant.⁶⁹ Her precognition states that

one night – Sunday night shortly before the New Year – while the declarant was sitting at the kitchen fire, and the prisoner was lying in bed, the declarant heard the prisoner moaning but very low, and observed that she was very restless. That in the course of two or three minutes afterwards, the declarant heard the cry of an infant, and saw the prisoner, who then sat up, with an infant in her hands, and saw her place one hand on the back of its head, and the other one over its face. That the prisoner then appeared to press the infant's head between the palms of her hands, and the declarant thought at the time, that the prisoner was 'choking the wean'. That the prisoner then put the wean into a piece of blanket which was beside her, wrapped the blanket close round it, and so as to completely cover up the wean. That she then thrust the wean so wrapped up under the chaff mattress, between the mattress and the straw; and the prisoner lay on the mattress, above the wean...That the prisoner said to the declarant that she was not to tell there was a wean in the house, or she, the prisoner, would be hanged, and the declarant being afraid did not then speak to anyone about it.

Of course, there was no suggestion by the authorities that Marion had done any wrong in keeping quiet, probably because of her age. Her age also prevented her from testifying in court, undoubtedly to the great relief of the accused, who was convicted of concealment of pregnancy, and imprisoned for seven months.

⁶⁸ NAS, AD14/42/62, Margaret or Peggy McLachlan.

⁶⁹ NAS, AD14/42/224, Margaret Buchanan or Reid.

Two cases, in 1855 and 1859, involved a fellow servant of the accused being shown the dead body of the child immediately after delivery. In the latter case, the fellow servant even helped to mop up the blood.⁷⁰ In 1873, the community of Roseneath, Dumbarton, suspected Mary Thomson was with child. She ‘went away’ for three weeks at the beginning of October, and returned altered in her shape; it was suspected she had been delivered of the child, which was eventually discovered dead in April 1874.⁷¹ However, Thomson’s family, which included her parents, a sister and a brother, all denied knowledge not only of the delivery but also of any rumours surrounding Mary’s pregnancy. Similarly, in a case from Perth in 1880, the procurator fiscal had doubts regarding the truthfulness of Mary Campbell’s family:

I am strongly of [the] opinion...that the birth occurred in her father’s house, and that they [her family] must have known of it. The fact of food being found in the child’s stomach...confirms this view.⁷²

In some cases, the delivery of a child was suppressed to protect a party other than the accused. For example, in 1852, an accusation of child murder was made a year after the child’s body was initially discovered. The surgeon at that time had examined the suspect, Helen Lennox, and stated that she had not been delivered of a child. The following year, however, another surgeon discovered that Lennox had at one time had a child, and she was charged with child murder and concealment of pregnancy. Not only did the original surgeon attempt to disguise the facts – perhaps out of loyalty to Helen Lennox’s patron, Lady Dunmore, but the procurator fiscal also stated that ‘[w]e have our suspicions that the prisoner’s mother and her brother-in-law James Ogilvie (who is supposed to be the father of the child) were cognisant of the girl’s pregnancy, and of her intention to destroy the child’.⁷³ The purpose behind the attempts of Sarah Sophia Rate’s employers to cover up the delivery of her new-born child in 1862 was contemplated by the procurator fiscal who explained that they had only recently moved from trading from a caravan to a shop in Aberdeen, ‘and this catastrophe has wounded their vanity and irritated them very

⁷⁰ NAS, AD14/55/197, Janet Anderson; AD14/59/108, Mary MacIntyre.

⁷¹ NAS, AD14/74/425, Mary Thomson.

⁷² NAS, AD14/80/233, Mary Campbell.

⁷³ NAS, AD14/52/198, Helen Lennox.

much'.⁷⁴ However, the fact that the alleged father of the child was a part owner of the shop, and that Sarah was only fourteen might well have compounded their decision to keep the incident quiet.

Other cases involved more general suspicions of the untruthfulness of witnesses surrounding the circumstances of a particular case. In 1831 the niece of Christy or Christian McKenzie was, according to the procurator fiscal, 'obstinate in giving her evidence'. He also 'considered that her evidence was of the utmost importance', and implored that the sheriff-substitute 'grant warrant for incarcerating her within the tollbooth of Cromarty for concealing the truth'.⁷⁵ The procurator fiscal wanted Sarai or Sarah Bremner's sister examined under oath for the same reason.⁷⁶ In 1852, Crown Counsel voiced frustration that a case for child murder could not be established, and that they were 'impressed with the belief that the mother of P [prisoner] knows more than she has stated'.⁷⁷ In 1859, the sheriff-substitute wanted the entire family of Agnes Locke precognosed under oath.⁷⁸ A neighbour of Margaret Stewart was suspected by others in the community of attempting to conceal the truth about the whereabouts of the child of which they suspected Stewart had been recently delivered.⁷⁹ She was warned that if she did not go to the police then they would go themselves, and accuse her of being an accessory to the murder. After the declaration of one witness, an aunt of the accused, the procurator fiscal made this note: 'A cunning old woman, and very unwilling to speak'.⁸⁰ In another case, the denial by Robert Milne, gatekeeper at Inch railway station, Aberdeen, that he was the father of the new-born child his servant was suspected of murdering, was met with scepticism by the procurator fiscal, for two reasons.⁸¹ First, the accused, Jane Blacklaws, declared that Milne was the child's father. Secondly, it was the belief within the community that a former child of the accused, fathered by Milne, had

⁷⁴ NAS, AD14/62/157, Sarah Sophia Rate.

⁷⁵ NAS, AD14/31/35, Christy or Christian McKenzie.

⁷⁶ NAS, AD14/58/7, Sarai or Sarah Bremner.

⁷⁷ NAS, AD14/52/253, Helen Sangster or Whitecross.

⁷⁸ NAS, AD14/59/131, Agnes Locke.

⁷⁹ NAS, AD14/62/186, Margaret Stewart.

⁸⁰ NAS, AD14/63/278, Christian MacFarlane.

⁸¹ NAS, AD14/75/292, Jane Blacklaws.

met its death by overlaying when it was two months old. Finally, in 1930 the mother of one child murder suspect was described simply as a 'hostile witness'.⁸²

In some cases, witnesses admitted to being untruthful, or were forced to explain apparent discrepancies in their testimony. In 1812, for example, Elizabeth Collins or Callow, chambermaid at the Tontine Inn, Greenock, was suspected of murdering her new-born infant.⁸³ Fellow servant, Mary Lloyd, initially claimed to be ignorant of the whole matter, and was interrogated a second time. Whilst she was not suspected of assisting in any 'crime', it is clear that she was helping her friend by attempting to cover up the circumstances of the case. Hellen McGregor absconded after the dead body of her new-born female child was discovered.⁸⁴ An associate, Mary McVicar or McMillan, who allowed McGregor to lodge with her for three days, was forced to tell the procurator fiscal that 'I did not say what I knew, to a gentleman who called at my house on the Sabbath following'. Her rather lame excuse was that 'I was not aware that he was in authority'. In a 1911 case, Mary Bowie made contradictory statements regarding the state of her former employee, suspected of new-born child murder. In her statement to the police she stated that she was aware that her servant was pregnant, but in her precognition, however, she claimed that '[i]t did not strike me that the girl was in the family way...I did not seriously entertain such a thought'.⁸⁵ Pressed as to the meaning of her statement to the police she continued:

Sometimes in the morning she did not wear corsets and one day I was sending her out a message in the morning and I remarked to her that I thought she should not go out as she was but should put on her corsets as she looked untidy...I did not mean to suggest that her not wearing corsets indicated that something was wrong.

It seems likely in this particular case that Mary Bowie's contradictory statement was an attempt to get out of the trouble of having to testify in court.

⁸² NAS, AD15/30/104, Robertina MacBeath or Campbell.

⁸³ NAS, AD14/12/88, Elizabeth Collins or Callow.

⁸⁴ NAS, AD14/47/151, Hellen McGregor.

⁸⁵ NAS, AD15/11/153, May Burgess.

A further form of assistance was when a family member or members denied knowledge of both the pregnancy and delivery, whilst other members of the community had suspicions. These cases have been deliberately kept separate from other similar cases discussed above because there is no indication that the concealment was necessarily anything more than a desire to protect a family member. Nevertheless, these efforts to protect a suspect arguably suggest that women were not entirely alone in these circumstances. Of the six hundred and eighteen suspects within the six hundred and two cases looked at, three hundred and seventy four (61 per cent) had at least one family member precognosed as a witness. In one hundred and eighty five of these cases (49 per cent) at least one family member denied all knowledge of any of the circumstances of the case. In one hundred and twenty four cases (33 per cent) cases there was no denial,⁸⁶ a further five cases involved a non-relative denying all knowledge, and in one case there are no witness statements.

There are twenty-six cases in which a family member or members actually incriminated the suspect. In general these cases involved family members who admitted to hearing the cries of a child, or to having called for medical assistance, after signs of delivery, or after the body of a child was discovered. Occasionally, in cases where there were signs of violence, relatives called the police. Sometimes, a family member's revelations were potentially more damning to a suspect's case, such as in Argyll, in 1814, when the brother-in-law of Lizy MacNicol mentioned to the investigators that three years previously MacNicol had a child 'which she attempted to destroy' but was prevented from doing so.⁸⁷ In 1852, according to the procurator fiscal, the family of Ann Mitchell 'did not seem desirous to keep back anything'.⁸⁸ Two years later, the twelve-year-old daughter of Jane Mill admitted to witnessing her mother killing her new-born male child by pressing its hands and face and putting it under the bedclothes.⁸⁹ Elizabeth McIlwraith's aunt explained to investigators that she had no option but to call the authorities: 'we could not but suspect that foul play had been used, when we found the

⁸⁶ There are sixty-four cases (17 per cent) from which this information was not collected.

⁸⁷ NAS, AD14/14/55, Lizy MacNicol.

⁸⁸ NAS, AD14/52/231, Ann Mitchell.

⁸⁹ NAS, AD14/54/246, Jane Mill.

body in such suspicious circumstances'.⁹⁰ Similarly, in 1884, Elizabeth Reddie's brother told investigators that, 'my sister...came home to my mother's house and told us she had had a child and had killed it' and he notified the authorities.⁹¹

Types of people involved as accessories

This section looks specifically at the individuals involved in the various forms of assistance provided for women in cases of suspected NBCM&CP in Scotland between 1812 and 1930. The section will be divided into two parts, the first looks at the relatives of the accused, and the second looks at non-relatives. The aim of the section will be to provide a more nuanced account of the various individuals involved in assisting women in new-born child murder and concealment of pregnancy, as well as asking whether or not the relationship of an individual to a suspect, and/or the sex of that individual influenced the form of assistance offered.

Relatives of the accused

Hoffer and Hull, in their study of infanticide in early modern England, observe that 'when more than one individual was involved, assistance was likely to come from within the family'.⁹² This echoes a study of early modern Chester, in which family members were also the most common accessories.⁹³ This was not the case in Scotland between 1812 and 1930. Table 5.1 shows that, of the 195 individuals or groups of individuals involved in assisting in cases of suspected new-born child murder and concealment of pregnancy, 85 (44 per cent) were related to the victim's mother, whilst 110 (56 per cent) were non-relatives.⁹⁴ Furthermore, of the cases in which the victim's mother was assisted

⁹⁰ NAS, AD14/73/59, Elizabeth McIlwraith.

⁹¹ NAS, AD14/84/376, Elizabeth Reddie.

⁹² Hoffer and Hull, *Murdering Mothers*, p. 103.

⁹³ Dickinson and Sharpe, 'Infanticide', p. 43.

⁹⁴ For the purposes of quantification, in cases in which an unspecified number of individuals were involved, they have been counted as one unit.

in some way only 77 of the 153 cases (50 per cent) involved at least one relative, compared with 96 (63 per cent) involving at least one non-relative.⁹⁵

Table 5.1: Forms of involvement and individuals involved by relationship to victim's mother in cases of suspected NBCM&CP

Form of Involvement		Individuals involved					
		Relatives			Non-relatives		
		Male	Female	Unspecified group*	Male	Female	Unspecified group
Accessory	Indicted	1	7	-	4	4	-
	Murder suspect	3	11	5	25	2	-
	Abortion	-	-	-	6	-	-
Active	Dispose of body	4	7	3	5	1	1
	Body churchyard	6	1	13	3	3	6
	Harbouring accused	1	-	2	5	1	-
	Concealment alibi	-	4	1	6	8	-
Passive	Pregnancy / delivery concealment	-	1	1	5	2	1
	Withholding information	1	5	8	6	15	1
Total		16	36	33	65	36	9

Source: NAS, AD14/15, Criminal precognitions.

* The group labelled 'unspecified' contains family members where the details of the individual, or of a group of individuals has not been specified in the precognitions.

The single largest group of individuals related to the accused is that which comprises unspecified family members, involved mainly in the disposal of the body – particularly having the body interred in a churchyard, and withholding information. The second largest group of relatives is the suspect's mothers. One study of early modern England observes that '[t]he most frequent aider and abettor in the few neonaticides involving accessories was the unwed mother's own mother'.⁹⁶ If the figures from indictments alone are taken into account, this is also true of Scotland between 1812 and 1930, where seven of the thirteen individuals indicted as an accessory to new-born child murder (54 per cent) were the mother of the co-accused. If all of the forms of assistance are taken into

⁹⁵ The actual number of family members may well have outnumbered non-relatives, since thirty-three cases involved a group of at least two family members. Moreover, if the one hundred and eighty five cases in which at least one family member denied knowledge of the 'crime' or 'crimes' the accused was suspected of are taken into account, then the number of family members will outstrip individuals unrelated to the accused.

⁹⁶ Hoffer and Hull, *Murdering Mothers*, p.103.

account, the mothers of the accused are not the most frequent 'aiders and abettors', but they do remain the single largest group of relatives, comprising twenty five per cent of all relatives. This may understate matters if it is considered that the mother of the accused may have been the driving force in the majority of cases involving unspecified family members. Sisters of the accused also feature amongst those assisting in cases of new-born child murder and concealment of pregnancy. The predominance of mothers and sisters probably reflects the likelihood that these were the members of the family in whom a pregnant woman was most likely to confide.

The lack of male relatives amongst those assisting the victim's mother is interesting. Indeed, only nineteen per cent of relatives suspected of assisting a family member were male, and the majority of those (63 per cent), helped with the disposal of the body. The precognitions show that it was male members of the family, usually a father or brother, who tended to organise the burial of a dead child. However, even in these cases the burial may have been ordered by the victim's mother, as the deposition of James Tough, who organised the burial of his step-daughter's dead new-born infant, suggests:

I told both Ramsay the joiner, and the undertaker that the child was dead born. No person said that to me. I just concluded that it was stillborn because I saw it dead. It was my wife who told me to get the child interred.⁹⁷

The lack of male family members as accessories is perhaps unsurprising. Women were more likely to confide in female relatives, and male relatives were more likely to be at work when any 'crime' was committed. It can be argued that this was also a common gendered assumption of both investigators and the community alike. Whilst there is no evidence in the precognitions to confirm this, it is possible that these assumptions may well have precluded male relatives from being suspected of helping in the first place.

⁹⁷ NAS, AD14/85/286, Isabella McKerchar.

Non-relatives

The pattern of assistance amongst non-relatives is almost the opposite to that of individuals related to the accused. First, men were much more likely to feature: of the one hundred and ten non-relatives, sixty-five (59 per cent) were men. Of these, the overwhelming majority (63 per cent) were the putative fathers of the victim. It is clear

Table 5.2: Designation of accessories in relation to suspects in cases of suspected NBCM&CP

Individuals				
Relatives			Non relatives	
Male	Father	8	Putative father	41
	Uncle	1	Male associate	3
	Brother	4	Medical man	17
	Husband	1	Constable	1
	Son	1	Reverend	1
	Brother-in-law	1	Legal agent	2
Female	Mother	20	Fellow servant	12
	Aunt	3	Female associate	18
	Sister	11	Midwife	4
	Daughter	1	Employer	2
	Niece	1	-	-
Group	Family	26	Employers	7
	Family member	1	Family of child's father	2
	Parents	6	-	-
Total		85	-	110

Source: as Table 5.1.

that investigators were keen to locate the alleged fathers of the victims, and they often went to great trouble attempting to locate them. This was primarily because investigators were required to present to Crown Counsel the best possible case. Often the alleged father was needed to substantiate – or not – a woman's claim that she had revealed her condition to her child's father.

However, it can also be argued that the desire to locate the putative father was also a desire to pin at least some of the responsibility for new-born child murder on to putative

fathers, who, as the previous chapter explains, were throughout the course of the nineteenth century increasingly being blamed for placing unmarried women into situations that led to an infanticidal act.⁹⁸

Medical witnesses, who will be discussed in chapter seven, formed just under 20 per cent of non-relatives, and, whilst putative fathers dominate the male non-relatives, the majority of female non-relatives were fellow servants and female associates – who could be loosely grouped together as friends of, or at least those with sympathy towards, the accused. Together they accounted for 27 per cent of non-relatives, and although two of the three individuals indicted as a sole defendant came from this group, over three quarters of fellow servants and female associates either provided concealment alibis, or withheld information from investigators. Perhaps Helen Graib, fellow servant and friend of May Burgess, echoed the sentiments of most of the fellow servants and neighbours of other new-born child murder suspects in her reluctance to 'say anything that would hurt my friend'.⁹⁹

A 'dark figure' of new-born child murder?

Finally, it is worth perhaps speculating about the one notable absence amongst the accessories – husbands. Excepting one case involving a married couple suspected of new-born child murder,¹⁰⁰ there are no married couples within the precognitions. Given the ubiquity of infant mortality in nineteenth-century Scotland, the burial of an infant would have been an all too common experience for church officials and gravediggers alike and the interment of dead new-borns as stillborn was one method by which married (and unmarried) couples could bury a child they had murdered with relative ease.

⁹⁸ Wiener, M. J. *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge, 2004), p. 123; C. L. Krueger, 'Literary Defenses and Medical Prosecutions: Representing Infanticide in Nineteenth-Century Britain', *Victorian Studies*, 40 (1996-7), 271-94; Arnot, 'Gender in Focus', p. 167.

⁹⁹ NAS, AD15/11/153, May Burgess.

¹⁰⁰ NAS, AD14/23/248, Molina Arcus.

The opportunities this situation afforded to conceal foul play did not go unnoticed by contemporaries. Speaking at the annual meeting of the National Association for the Promotion of Social Science (NAPSS) in Manchester in 1866, Edwin Lankester, Coroner for Central Middlesex, condemned the ‘practice of allowing undertakers to bury still-born children, upon the slightest possible evidence of the fact that the bodies brought to them are really what they are represented to be’, suggesting that this rendered ‘it very probable that children may be destroyed at their birth, and buried as still-born children, who nevertheless had lived and been destroyed after their birth’.¹⁰¹ Speaking at the NAPSS meeting in Bristol, 1869, Mr Aspland, a doctor and magistrate, addressed the issue:

I speak further as the director of a cemetery, and my attention has been repeatedly drawn to very suspicious burials that take place there. My strong impression is that attention to the registration of stillborn children would have more effect in checking infanticide than any appeal to the sentimental feelings, or the establishment of hospitals for the reception of women.¹⁰²

Indeed, the willingness of church officials and gravediggers to bury dead infants without question certainly suggests that this could have been an effective way of attempting to conceal murdered infants, amongst both married and unmarried women, and their families.

¹⁰¹ *Transactions of the National Association for the Promotion of Social Science* (Manchester, 1866), Edwin Lankester, p. 220.

¹⁰² *Transactions* (Bristol, 1869), Mr Aspland, p. 214; see also Davis, ‘Stillbirth registration’, pp. 631-3.

There is some evidence that, if a child was not stillborn, a registration of death from natural causes was a potentially easy process. In Lesmahagow, in Lanark, in 1872, Mary Callender, kitchen servant, was delivered of a female child, which was discovered alive, and died later.¹⁰³ Her brother registered the death of the child, and her mother and her employer organised the funeral. The child had been seen with blood spilling from its mouth and nose, and foul play was suspected. It was only after the rumour reached a constable who happened to come across the funeral party, that the authorities became involved. Clearly, the death was registered without the need for a doctor's certificate or, alternatively, such a certificate was easily obtainable.

Conclusion

Amongst the 602 investigations into cases of suspected new-born child murder and concealment of pregnancy in Scotland between 1812 and 1930 covered by this study, in 153 (25 per cent) there is evidence of the mother of the victim receiving assistance, either actively (in the commission of murder, aiding in the disposal of the body, harbouring, or providing an alibi), or passively (by withholding information or remaining silent). If we add to these those cases in which a family member or members denied any knowledge of events (185 cases), then we can say that 56 per cent of cases involved a suspect having assistance of some kind or other. This figure rises further still, to 65 per cent, if a further fifty-four cases in which there was a delay between the commission of the 'crime' and the authorities being informed – which could suggest an attempt to keep the matter quiet – are taken into account. This presents a far more detailed and nuanced understanding of the circumstances surrounding cases of new-born child murder and concealment of pregnancy than is indicated by the indictments alone, and challenges the consensus that new-born child murder was committed by the mother of the infant, acting alone. Moreover, although females were still more likely to be involved as accessories, the

¹⁰³ NAS, AD14/84/54, Mary Callender.

numbers of men involved begs a re-consideration of the notion of new-born child murder being a sex-specific 'crime'.

Finally, this chapter has also argued that the burial of new-born infants in churchyards was both a strategy of evasion, and possibly a cultural and religious phenomenon. It has also tentatively suggested that this may well have been a strategy used more successfully by married and unmarried couples in order to conceal the murders of unwanted children. More speculatively, the role of the putative fathers may also be under-represented in the precognitions between 1812 and 1930. Two hundred and forty eight of the six hundred and two precognitions include the deposition of the alleged father of the victim. Of these, forty one (16 per cent) were involved in some way in the suspected 'crime'. If the same percentage of putative fathers were involved in all of the cases, then ninety-six cases (16 per cent) would involve their assistance. If historians are to discuss a 'dark figure' of infanticide at all, then these two may well provide at least two avenues worthy of further investigation.

Chapter Six: The role of the police

Introduction

This chapter look at the role of an agency whose involvement in cases of suspected NBCM&CP has hitherto remained largely absent from the historiography of infanticide: the police. It will first examine the different types of law enforcement officers and other individuals working for the police, and then explore their involvement, both before, and during official investigations into cases of alleged NBCM&CP in Scotland between 1812 and 1930. Because of the way in which precognitions were structured, evidence of the involvement of the police and other law enforcement officers is often limited to depositions, and as such there is not the richness of detail that can be found in other sources.¹ Nonetheless, the statements of police officers were often extremely detailed, and every now and then the precognitions also contain police reports, which themselves reveal much about police involvement in a particular case. This chapter will therefore discuss not only the kinds of law enforcement officers who were involved over the period, but also how they were involved, and how certain cases were ‘solved’ by the police.

The development of the police followed a slightly different trajectory in Scotland than in England.² One of the reasons for this was that a number of forces in Scotland – both urban and rural – were established a lot earlier than their English counterparts. The Metropolitan force, established in London in 1829, is often credited as Britain’s first. However, as David Barrie points out, many Scottish police forces were established prior to government legislation, and a number of Scottish burghs had a

¹ Such as police notebooks, or depositions from other courts. Louise Settle, for example, has discovered rich police reports in cases of prostitution prosecuted in the burgh court of Edinburgh in the 1920s and 1930s.

² For the development of the Scottish police, see D. Barrie, *Police in the Age of Improvement: Police Development and the Civic Tradition in Scotland, 1775-1865* (Cullompton, 2008); A. Dinsmoir and A. Goldsmith, ‘Scottish Policing – A Historical Perspective’, in K. Scott and D. Donnelly (eds), *Policing Scotland* (Cullompton, 2005); W. G. Carson, ‘Policing the Periphery: The Development of Scottish Policing 1795-1900, Part I’, *Australian and New Zealand Journal of Criminology*, 17, 4 (1984), pp. 207-32; W. G. Carson, ‘Policing the Periphery: The Development of Scottish Policing 1795-1900’ Part II’, *Australian and New Zealand Journal of Criminology*, 18, 1 (1985), pp. 3-16. For the development of the police in Edinburgh, see J. McGowan, ‘The Emergence of Modern Civil Police in Scotland: A Case Study of the Police and Systems of Police in Edinburghshire 1800-1833’ (Ph.D. thesis, Open University, 1997).

police force before 1829.³ Rural police forces also developed relatively early in Scotland, with no fewer than twelve counties in Scotland possessing some form of ‘rudimentary force by 1839’.⁴ The fact that the average number of law enforcement officers involved in cases of suspected NBCM&CP between 1812 and 1930 (Fig. 6.1) had peaked by 1849 suggests that, by this time, the police had been uniformly established across Scotland, a process that was not mirrored in England until the mid-1850s. However, as Figure 6.1 also demonstrates, the number of police officers per case in urban areas was much greater than in the countryside, where the numbers of police officers increased much more gradually between 1812 and 1930. The increasing number of higher-ranked police officers and officers whose only role was to investigate ‘crimes’ in Scottish cities, especially Edinburgh and Glasgow, may explain this.

Figure 6.2 shows the different types of law enforcement officers who appear as witnesses in the precognitions over the whole period 1812-1930. The vast majority (87 per cent) of law enforcement witnesses were police officers – constables (39 per cent), sergeants (13 per cent), detectives or criminal officers (10 per cent), higher-ranking officers (21 per cent) and other men and women employed by the police (4 per cent). The remaining witnesses include sheriff or court officials (12 per cent) and the wives of police officers (1 per cent). However, Figure 6.3 indicates that this was not the case throughout the period. Up until about 1840 half, and in some cases more, of the witnesses were sheriff officers – usually members of the community who worked for the procurator fiscal on a part-time basis. Moreover, many of the constables at this time were also part-time – usually with other occupations. For example, one of the constables who investigated a case of suspected new-born child murder in Edinburgh, in 1813, was a tobacconist and grocer.⁵ The special constable and rural constable involved in a case in Ardrossan, Ayr, in 1820, were a weaver and

³ Barrie, *Police in the Age of Improvement*, p. 20. For example, before 1829, local Police Acts were established in Glasgow (1800), Greenock (1801), Port Glasgow (1803), Edinburgh (1805), Leith (1806), Inverness (1808), Gorbals (1808), Kilmarnock (1810), Perth (1811), Dumfries (1811), Calton (1819), Airdrie (1821), Bathgate (1824), Dingwall (1824), Dundee (1824), and Anderston (1826); Carson, ‘Policing the Periphery, Part I’, p. 210. There was an established police force in Glasgow as early as 1779.

⁴ Carson, ‘Policing the Periphery, Part I’, p. 211.

⁵ NAS, AD14/13/26, Margaret Aitken alias Robertson.

wright respectively,⁶ and the constable in Catherine Hunter's case in Dumfries, in 1839, was a blacksmith by trade.⁷

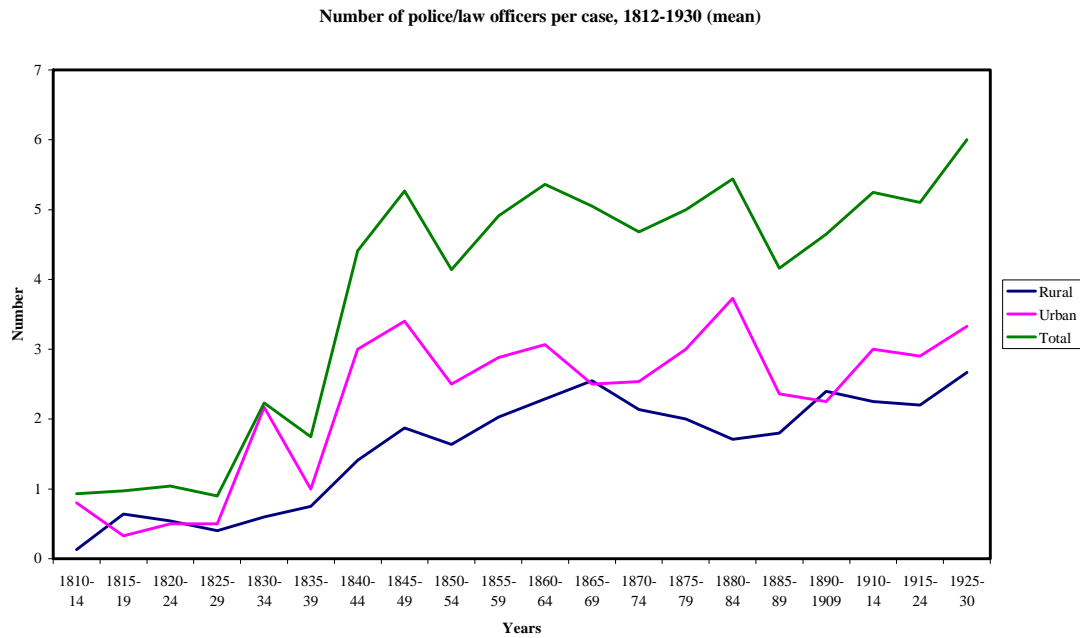


Figure 6.1 Average numbers of police and law officers per case.
Source: NAS, AD14/15, Criminal precognitions.

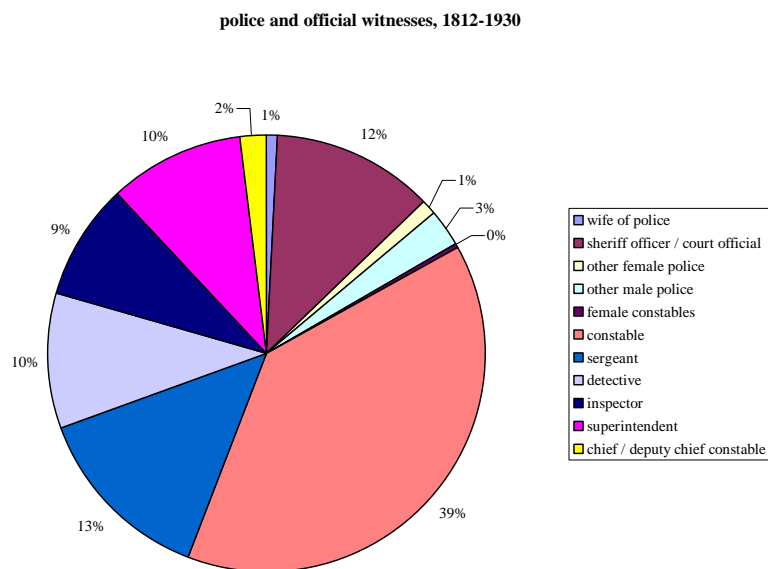


Figure 6.2 Law enforcement witnesses.
Source: as Fig. 6.1

⁶ NAS, AD14/20/185, Agnes McNeill or Lamont.

⁷ NAS, AD14/38/185, Catherine Hunter.

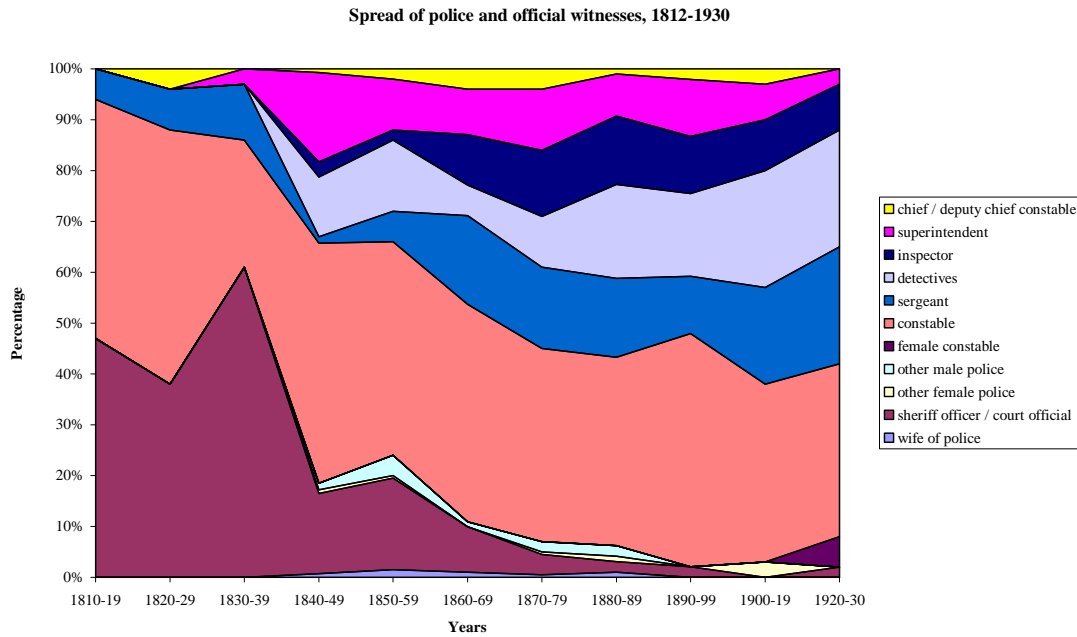


Figure 6.3 Spread of police and official witnesses.
Source: as Fig. 6.1.

The role of the police before the judicial inquiry

A second reason why Scotland's police forces developed differently from those of England is that they were established for the management of society: the role of the police in dealing with criminal activity was just one of a number of duties, which included 'lighting, cleansing, paving...the supply of water, gas and sanitation, the control of nuisances, and the inspection of common-lodging houses'.⁸ Furthermore, as Brenda White has concluded, there was a strong association between the police and public health in Scotland.⁹ As such, it has been argued, the development of the police into an institution concerned primarily with 'criminal' activity was smoother in Scotland than in England, and there was 'less suspicion on the part of the populace that the constabulary were associated with any political agenda'.¹⁰ This led to a positive relationship between the police and locals and, as a consequence, communities not only 'became more comfortable with the idea of a permanent police

⁸ Barrie, *Police in the Age of Improvement*, p. 19.

⁹ B. White, 'Training Medical Policemen: Forensic Medicine and Public Health in Nineteenth Century Scotland', in M. Clark and C. Crawford (eds), *Legal Medicine in History* (Cambridge, 1994), p. 159.

¹⁰ Dinsmoir and Goldsmith, 'Scottish Policing', p. 44.

presence’, but also ‘began to seek help and advice from the police by reporting crimes and incidents’.¹¹

On the whole, the precognitions reinforce the argument that the relationship between the police and local communities was harmonious, for two reasons. First, as discussed below, they show that many police officers – especially part-time officers in rural areas – were embedded within the community, having lived in the area their whole lives. Secondly, the precognitions also indicate that although there was reluctance amongst some members of the community to report their suspicions to the authorities, there is little evidence to suggest that this reticence was due to hostility towards the police.¹² In fact, the police were usually the first port of call in cases of NBCM&CP and in some cases they were informed of a suspected pregnancy. For example, in 1849, after learning of Agnes Wallace’s suspected pregnancy, town officer, John Kilgour, ‘watched her for months’,¹³ and, in 1854, police constable John Mackay told the procurator fiscal that Elizabeth Duncan’s pregnancy had been ‘rumoured for a while’.¹⁴ The neighbours of Elizabeth Gilmour, in Torryburn, Fife, in 1861, felt it necessary to inform a police constable that she was pregnant,¹⁵ and, in 1920, tailor Jack Forman told a superintendent of police that he suspected his domestic servant was pregnant.¹⁶

The police were more likely to be informed of a suspected pregnancy if the woman had either been previously convicted, or suspected, of concealing a pregnancy and/or murdering her infant. For instance, in 1846, a constable new to Gretna, Dumfries, was told to watch out for Agnes Carruthers since ‘she was...in the family way, and had been in the habit of having children and putting them out of the way’.¹⁷ Likewise, in his deposition in the case of Christina Hall, in 1856, a police constable stated that she had been suspected of murdering her new-born three years previously, but no charges had been brought against her,¹⁸ and a constable in Humbleton, Haddington, in 1859, was

¹¹ Ibid., p. 45.

¹² AD14/69/26, Jessie Brown; AD14/84/264, Agnes Adam.

¹³ NAS, AD14/49/274, Agnes Wallace.

¹⁴ NAS, AD14/54/296, Elizabeth Duncan.

¹⁵ NAS, AD14/61/42, Elizabeth Gilmour.

¹⁶ NAS, AD15/20/161, Margaret MacBride.

¹⁷ NAS, AD14/46/222, Agnes Carruthers.

¹⁸ NAS, AD14/56/145, Christina Hall.

informed that not only was Catherine Foggo pregnant, but that she had also threatened to 'put the child away'.¹⁹ Similarly, a rumour reached a constable in Auchtertool, Fife, in 1863, concerning Margaret Kininmonth, that 'it had been suspected that she had been previously delivered of children that had never been heard of, and people hinted, that it would be the same this time'.²⁰

The police were much more likely to be called after a suspected recent delivery. For example, in 1820, a special constable in Ardrossan, Ayr, was informed about the rumour that Agnes McNeill or Lamont had recently given birth,²¹ in 1824 the chief constable of Ayrshire received a 'report' that Jean Smith 'had borne a child', the body of which he discovered,²² and, in 1841, district constable Donald Ross was told that Alison Punton was 'suspected of having a child and burying it in the ground'.²³ In 1857, having been entrusted with disposing of Catherine McKay or Watson's newborn infant, John Cameron instead got drunk and went to the police,²⁴ a rumour reached the lieutenant of police in Dundee, in 1859, that Jean Anderson had had a child and destroyed it,²⁵ and, in 1888, a farmer in Blackford, Perth, called the police after seeing a 'bundle' which he suspected was the child of one of his servants.²⁶

As Chapter 3 has demonstrated, there were a number of reasons why witnesses might have been reluctant to come forward with their suspicions, and, in some cases an anonymous letter to the police kick-started the official investigation. For example, in Montrose, in 1864, a letter addressed to the superintendent of police stated that:

I feel it my duty to inform you that it is the firm opinion of the public that Miss Mackinnon of the Crown Temperance [Hotel] is believed to have made a concealment of pregnancy, it was plainly seen that she was in that way within this last fortnight and which has unaccountably disappeared, and is rumoured not to be the first one nor the second.²⁷

¹⁹ NAS, AD14/59/318, Catherine Foggo, Deposition of James Grant.

²⁰ NAS, AD14/63/234, Margaret Kininmonth.

²¹ NAS, AD14/20/185, Agnes McNeill or Lamont.

²² NAS, AD14/24/157, Jean Smith.

²³ NAS, AD14/41/249, Alison Punton.

²⁴ NAS, AD14/57/216, Catherine McKay or Watson and Eliza Mennie or Cameron.

²⁵ NAS, AD14/59/91, Jean Anderson.

²⁶ NAS, AD14/88/140, Jessie Henderson.

²⁷ NAS, AD14/64/166, Elizabeth McKinnon.

Likewise, in 1866, an anonymous letter alerted the authorities not only to the fact that two of Bridget Quinn's new-born infants had disappeared in suspicious circumstances (one twelve months previously), but that two men were suspected of assisting her.²⁸ Again, in 1874, in the village of Gordon, Berwickshire, the constable received an anonymous letter:

Dear sir, I am sorry to have to write to you on such an occasion as this. But it is my duty to do so and I do not think it wrong to let you know that one Isabella Telfer in the service of Mr Lyall as housemaid has given birth to a child on the 9 or 10 of this month and is concealing it and every person that has seen her sees plainly that she has had a child. And it must have been a child to its time by her appearance before. But however no person has seen anything of it but it was well known to almost every person in the villages of Greenknow and Gordon that she was going to have a child and therefore it is a great pity that she should go unpunished...[N]ow believe me this is perfectly true. She always denied it and that [she] did not look very well[.] [S]he had always been intending destroying it and has done it at last. Believe me, yours respectfully, a friend.²⁹

It was an anonymous letter, sent to the sergeant, in 1874, that implicated William Christie, farm servant, in the death of Marion McConechy or McNeish's new-born female child:

Dear Sir, We have a strong suspicion on Mrs McNeish that she had a child and that her and her servant man did away with it and the sonner [sic] the better you shall have the Doctor on the ground to prove it.³⁰

Also, in 1883, an anonymous letter to the police in Maryhill, Glasgow, alerted them to suspicions surrounding Mary McCartin and her family's attempts to cover up her pregnancy.³¹ The letter claimed that 'it is all the talk of the people a young woman in the Pawn Close is said to have given birth to a child but where the child is nobody can know it is also said that her sister married in Maryhill has given birth to a child but that the child is the former['s] and the latter giving birth to it is only a hoax'.

The police were occasionally tipped off about the location of a body. For example, in Ballingry, Fife, in 1844, a local constable was informed by a member of the

²⁸ NAS, AD14/66/27, Bridget Quinn.

²⁹ NAS, AD14/75/229, Isabella Telfer.

³⁰ NAS, AD14/75/312, Marion McConechy or McNeish and William Christie.

³¹ NAS, AD14/83/101, Mary McCartin and Mary Gillespie or McCartin.

community about exactly where the body of Elizabeth Herd's new-born infant had been buried,³² and, in 1859, a police sergeant in Hawick received an anonymous letter advising him to search the garden of Jessie Tait, where the dead body of her new-born infant was discovered.³³

As part of the local community, especially in rural areas, not only were police officers well-known, but their wives were also part of local gossip networks, and in a few cases the rumours of suspected pregnancies and deliveries had been passed on to police officers by their wives. For example, in Creetown, Kircudbright, in 1847, reports reached a Stewart officer's wife that Elizabeth Diamond or Shaw had been 'ill in the night',³⁴ and, in 1930, after Robertina MacBeath or Campbell was observed to have altered in appearance, the wife of the constable in Farr, Sutherland, was asked by a neighbour, 'What has happened to Berta's child?'³⁵

The role of the police during the judicial inquiry

Once the procurator fiscal had been informed of an alleged 'crime', the police carried out a number of functions, the most important of which was apprehending the suspect. In most cases, when the police arrived, the suspect was already there, more often than not lying in bed, and occasionally very unwell. In other cases, the suspect had been identified, but was either in hiding, or had absconded. In these circumstances, the police sometimes carried out extensive enquiries in order to locate these women, often involving them in considerable amounts of detective work. For example, in 1853, a rag gatherer found the dead body of a new-born infant on a tray behind a tenement near St Andrews Square, Glasgow. Robert Mitchell, an assistant inspector of criminal police, traced blood from the body to a flat in which lodged eighteen-year-old Margaret McGeichan, who admitted to being the mother of the child.³⁶ Similarly, the following year, the Edinburgh detective, James M'Levy, investigated a case involving Mary Brown, a kitchen maid whose new-born infant's remains were discovered by a

³² NAS, AD14/44/315, Elizabeth Herd. Deposition of James Anstery.

³³ NAS, AD14/59/145, Jessie Tait or Davidson, Deposition of John Guild.

³⁴ NAS, AD14/47/241, Elizabeth Diamond or Shaw.

³⁵ NAS, AD15/30/104, Robertina MacBeath or Campbell, Deposition of Margaret Harper.

³⁶ NAS, AD14/53/164, Margaret McGeichan.

labourer cleaning the drains of the Royal Exchange Buildings, tenement flats in the Writers' Court.³⁷ He later documented how he worked out who the mother was in a chapter titled 'The Dead Child's Leg', in his *Curiosities of crime in Edinburgh*.³⁸ Having first ascertained that the drain in which the child's remains were discovered was 'a main pipe, into which all the pipes of the different houses led', M'Levy then adduced that 'one of these houses was Mr W – te's inn, which contained several females'.³⁹ He then 'heard a window drawn up in that stealthy way I am accustomed to hear when crime is on the outlook'.⁴⁰ Having 'sufficient opportunity to scan and treasure up her features...her pale...beautiful face',⁴¹ M'Levy then describes how he obtained Brown's confession:

I rolled up the leg of the child in a neat paper parcel, and writing an address upon it to Mary B – n, at W – te's, I repaired to the inn... The moment her hand touched it, she shrunk from the soft feel as one would do from that of a cold snake, or why should I not say the dead body of a child? It fell at her feet, and she stood motionless, as one transfixed, and unable to move even a muscle of the face.

'That is not the way to treat a gift,' said I. 'I insist upon you taking it up.'

'O God, I cannot!' she cried.

'Well I must do so for you,' said I, taking up the parcel.

'Is that the way you treat the presents of your friends; come,' laying it on the table, 'come, open it; I wish to see what is in it.'

'I cannot, - oh, sir, have mercy on me, - I cannot.'⁴²

The detective eventually got Mary to open the parcel, and she 'unfolded the paper, laid the object bare, and...fell senseless at my feet'.⁴³ When she came to, M'Levy implored her to confess:

'Oh sir,' she cried, as she threw herself upon the floor on her knees, and grasped and clutched me round my legs, and held up her face, - her eyes now streaming with tears, her cap off, her hair let loose, - 'if I do, will you take pity on me, and not hang me?''⁴⁴

³⁷ NAS, AD14/54/268, Mary Brown.

³⁸ J. M'Levy, *Curiosities of crime in Edinburgh during the last thirty years* (Edinburgh, 1861).

³⁹ *Ibid.*, p. 30.

⁴⁰ *Ibid.*, p. 31.

⁴¹ *Ibid.*

⁴² *Ibid.*, pp. 34-5.

⁴³ *Ibid.*, p. 37.

⁴⁴ *Ibid.*, p. 38.

Similarly, in 1877, portions of a new-born child were discovered in a drain, in Glasgow. With no leads, all the superintendent of police, John Hannah Neilson, could do was go door to door asking for information. When he reached the house at which Susan Watson Duncan was domestic servant, as soon as she opened the door she 'burst into tears' and confessed that the infant was hers.⁴⁵

Detective work was crucial in discovering dead infants' mothers in a number of other cases. For instance, the remains of a new-born infant were discovered in the ashes in a fireplace in Kirkliston, Linlithgow, in 1854. James Allan, the district constable who initially looked into the case, told investigators that the suspect, domestic servant Janet Gibson, had initially attempted to hide the child's arm in her pocket, but he had discovered it and taken it from her.⁴⁶ In 1859, the constable (a former shoemaker) investigating the discovery of a body in a river in Kirkcudbright, narrowed down the list of potential suspects when he recognised the heel marks in the river bank as belonging to spinning clogs. Dressmaker, Agnes Locke, was apprehended soon afterwards.⁴⁷ Similarly, in a case from Stonehouse, Lanark, in 1865, the cloth used to strangle a new-born infant was traced back to seventeen-year-old Margaret Walker.⁴⁸ The sergeant who investigated the case also remembered seeing Walker when the body of her new-born child was recovered:

I observed the accused when we took the child's body out of the well. She was standing up and when it was handed to me I chanced to lay it down close to her. She called, '...who ever did that should be hanged'.⁴⁹

Occasionally the job of the police was made very easy, such as in 1899, for example, when a dead new-born infant was discovered in a wood in Langside, Lanark. The address of the mother of the child was written on the brown paper in which the child was wrapped.⁵⁰

⁴⁵ NAS, AD14/77/66, Susan Watson Duncan.

⁴⁶ NAS, AD14/54/303, Janet Gibson, Deposition of James Allen.

⁴⁷ NAS, AD14/59/131, Agnes Locke, Deposition of John McKenna.

⁴⁸ NAS, AD14/65/34, Margaret Walker.

⁴⁹ Ibid., Deposition of Roderick Munro.

⁵⁰ NAS, AD14/99/70, Margaret Baxter or Pratt. Ann Higginbotham discusses a similar case from London, in 1887, idem., 'Sin of the Age', p. 326.

Often, during their apprehension, a suspect would discuss the circumstances surrounding the alleged crime, but, as Crown Counsel reminded the procurator fiscal in a case from 1859: ‘witness and suspect statements [taken] by other parties including the police must be voluntary’.⁵¹ An interrogation without a judicial admonition was a serious enough breach of procedure to warrant the case being thrown out of court. Regardless of this, the precognitions are full of voluntary statements made by suspects to police officers, such as Ann McQue’s confession to a criminal officer, in 1860, that she had thrown her new-born infant from a tenement building after he had traced the body to her flat,⁵² Elizabeth Reddie’s admission to police officers, in 1884, that she had put her foot on her new-born infant’s neck and killed it,⁵³ and Sarah Jane Murphy’s candid confession to a constable in Dunoon, Argyll, in 1896:

That about 2 o’clock Sunday morning 26th July she gave birth to a child, that it gave “one squeal” after it was born. She got up out of bed, dressed herself, carried the child to the scullery and laid it on the bench, after which she took the knife and cut its throat as she was afraid it would squeal again and the master and mistress might hear it.⁵⁴

Similarly, in 1922, the police officer who apprehended Elizabeth King was told by her that she had been delivered of a child and had tied tape around its neck and murdered it.⁵⁵

Another crucial function of the police was gathering physical evidence. This included evidence linking the suspect to a recent delivery, any potential weapons, and a range of other items that either linked the suspect to a potential crime or, conversely, provided an alibi. This evidence needed to be carefully labelled and kept in a secure place prior to any subsequent trial. The most important item of physical evidence was the dead body.⁵⁶ In many cases, the police also discovered the bodies for themselves, usually after a quick search of a suspect’s room, or of her trunk, but in a few cases the police had, often literally, to do some digging around to find the body. For example,

⁵¹ NAS, AD14/59/132, Margaret Murdoch.

⁵² NAS, AD14/60/260, Ann McQue, Deposition of James Leadbetter.

⁵³ NAS, AD14/84/280, Elizabeth Reddie, Deposition of Robert Lumsden.

⁵⁴ NAS, AD14/96/27, Sarah Jane Murphy, Deposition of Donald Calder.

⁵⁵ NAS, AD15/22/75, Hannah McGowan otherwise McMath, Deposition of Benjamin Marr.

⁵⁶ The specific productions found in cases of NBCM&CP can be found in Chapter 8.

in Shotts, Lanark, in 1873, the neighbours of Isabella Simpson or Frew were alerted by a dog scraping in her garden. The police were called, and a sergeant, James Tait, 'dug in the garden' and found the body of a new-born child.⁵⁷ Likewise, a constable found Annie Halden's dead new-born buried under her front step in Dreghorn, Ayrshire, in 1886.⁵⁸

It was important that a body was carefully watched until the arrival of a medical practitioner, or, if it was transported to a medical practitioner, that this was done under the careful eye of the police. For example, in his testimony at the trial of Margaret Hannah, in 1860, Constable Arthur McNeil explained that

I was at the finding of the body of [the] child. We carried it in a handkerchief to Saunder's house, then put it in a basket, along with the stones that had been found on it, and carried it to Glenluce. The superintendent had charge of it till he went to Stranraer; then he left it with me, and I kept it till next day. I gave it to Drs McCormick and Orgill. After the superintendent left the child with me, and I took it to my own house, and kept it there over night, in the same room as myself. I did not sleep much that night.⁵⁹

The reason for this care with the body was to ensure that it was not tampered with prior to the post-mortem, or that such could not be claimed in court. Therefore, when the police failed in this duty, it provoked the ire of Crown Counsel. For instance, in a case from Whifflet, in 1849, a police officer allowed the body of the infant to be carried to the police office by a ten-year-old boy.⁶⁰ The body had been discovered with a clump of grass in the child's mouth, and a note from Crown Counsel to the procurator fiscal asked for an assurance that the grass 'couldn't have been put in by the child's own action'. The police also failed to preserve the said piece of grass as evidence, which also annoyed the prosecuting advocate. In 1860, one young police officer made a couple of mistakes in his handling of a case of suspected new-born child murder. After the discovery of a pair of twins lying side by side in a ditch in a wood in Kilwinning, Ayrshire, Janet Bryan, a farm servant, admitted to that they were hers, but implored the officer not to lift them until it was dark. He agreed, and waited for several hours before removing them. Furthermore, he washed their bodies prior to

⁵⁷ NAS, AD14/73/305, Isabella Simpson or Frew, Deposition of James Tait.

⁵⁸ NAS, AD14/86/113, Annie Halden.

⁵⁹ *Justiciary Reports*, Irvine, III, Margaret Hannah (1860).

⁶⁰ NAS, AD14/49/349, Isabella Laing, Note from Crown Counsel.

the medical inspection: 'I thought they were too dirty for the doctors to examine,' he explained to the procurator fiscal.⁶¹ Likewise, in 1864, in Channelkirk, Berwickshire, the police officer who discovered Mary Smaill's dead new-born infant, removed the apron strings that had been tied around its neck prior to the medical examination,⁶² and, in 1883, the police officer who allowed a post-mortem to be carried out without a warrant led to an angry note from Crown Counsel to the procurator fiscal: 'The constable's mistake in allowing any doctor to see the body without instructions having been attained to guide him as to who was the medical examiner appears to be a fit subject for the notice of his superior officer.'⁶³

Female police officers

The precognitions contain reference to only two female police officers – Mary Burn, in 1922, and Helen or Ellen Webster in 1927 and 1930.⁶⁴ This is not surprising since the first woman police officer in the UK was sworn into the Grantham force in 1915,⁶⁵ and in the 1920s there were only a few hundred women police officers in Britain.⁶⁶ Moreover, both of the women police officers in the precognitions were based in Glasgow which, until beyond our period, was the only police force in Scotland to appoint women in any significant number. The first policewoman in Glasgow was Emily Miller, on 6 September 1915.⁶⁷ The paucity of female police officers is highlighted by a case in Stranraer, in 1925, when a male officer was put night and day in charge of Agnes Jane Calderwood, who was in the female sick ward of the poorhouse, until she was well enough to be transferred to prison. That a male officer was in the female ward caused a scandal, prompting a newspaper article and an angry letter from the governor of the poorhouse to the procurator fiscal. No action was taken against the police, on the grounds that the suspect was a murder suspect, and that 'there was no policewoman in the district'.⁶⁸

⁶¹ NAS, AD14/60/93, Janet Bryan.

⁶² NAS, AD14/64/277, Mary Smaill.

⁶³ NAS, AD14/83/253, Helen Bruce.

⁶⁴ NAS, AD15/22/75, Elizabeth King; AD15/27/60, Mary Walker; AD15/30/91, Nancy Douglas.

⁶⁵ Jackson, *Women Police*, p. 18.

⁶⁶ *Ibid.*, p. 19.

⁶⁷ <www.policemuseum.org.uk> accessed on 4 September, 2009.

⁶⁸ NAS, AD15/26/1, Agnes Jane Calderwood, Procurator fiscal's note.

Louise Jackson notes that '[t]he argument for the necessity of women police was initially won on the grounds of gender difference: that it was appropriate, ethically, for women officers to deal with female victims or offenders'.⁶⁹ The fact that the same female police officer is recorded in two Glasgow cases of suspected new-born child murder indicates that women police officers were preferred in these cases, but the lack of cases makes this claim impossible to substantiate. Having said that, there are a number of women who, throughout the period, were employed by the police – usually on an *ad hoc* basis, specifically to deal with female suspects; either as searchers – to help suspects change clothes, and to acquire stained clothing for evidence – or nurses, to look after the suspect if she were too ill to be taken to prison immediately. This is similar to the situation in England, where, as Jackson and D'Cruze observe, female searchers were used in cases of rape or indecent assault.⁷⁰ The first female searcher was recorded in a case, again from Glasgow, in 1845,⁷¹ and Jean Munro or Ogilvie, a flaxdresser's wife, was employed by the police to search Bethridge Findlay or Duncan, from Lumsden village, Auchendoir, Aberdeen, in 1860.⁷² Female turnkeys, employed in the cells at police stations, also searched female prisoners, such as in Leith, Edinburgh, in 1872 and Greenock, in 1882,⁷³ and, in a case from Aberdeen the following year, a female turnkey attended one suspect in her house between 13 and 24 December until she was well enough to be committed to prison.⁷⁴

Female searchers or turnkeys tended to be employed in the larger police offices – generally in urban areas. In rural Scotland, the wife of the local constable or sheriff officer often performed this role. Often, especially in the first half of the nineteenth century, suspects were initially detained at the local constable's house – such as in the case of Janet Mundell, who spent the night in the house of a burgh officer and his wife, in Annan, Dumfries, in 1850.⁷⁵ In these cases, the officers' wives often helped with searching suspects, and ensured that they were nursed properly. In one case, in 1880, the search of Isabella McNeill – suspected of stealing a silver brooch – by

⁶⁹ Jackson, *Women Police*, p. 4.

⁷⁰ D'Cruze and Jackson, *Women, Crime and Justice*, pp. 105-6.

⁷¹ NAS, AD14/45/262, Janet Sinclair.

⁷² NAS, AD14/60/32, Precognition against Bethridge Findlay or Duncan.

⁷³ NAS, AD14/72/298, Sophia Wallace; AD14/82/118, Kate Brabender.

⁷⁴ NAS, AD14/84/68, Elspet Gordon or Catto.

⁷⁵ NAS, AD14/50/207, Janet Mundell.

sergeant's wife, Janice McIntyre, revealed that McNeill was pregnant with a child that a few months later she would be accused of murdering.⁷⁶

The standard of policing, 1812-1930

There were a number of issues with the standard of policing in nineteenth-century Scotland. In a six-month period in 1847, for example, 106 officers were dismissed from the Glasgow force alone, '71 for being drunk on duty, 11 for being absent without leave, 20 for being worn-out and unfit for further service, and 4 for assaulting prisoners.'⁷⁷ Of course the precognitions do not reveal these types of issues affecting the police forces of Scotland, but there are a few cases in which unprofessionalism and incompetence amongst individual police officers potentially, or indeed materially, affected the outcome of an investigation. A number of issues relating to handling the dead body have already been discussed, but most of the problems with the police related to the apprehension of the suspect. In a few cases, for example, police officers allowed suspects to escape, such as in a case from Inverness, in 1858. Christina MacLeod, suspected of new-born child murder, was tracked down at Rannoch. The police constable, James MacMahon, explained to investigators:

I took her along with me to Gairloch but in consequence of my being exhausted with fatigue and being unable to procure any assistance although I sent several messages to two of the neighbouring constables to come and help me, I was so overcome that she effected her escape.⁷⁸

It seems likely that the suspect escaped whilst the constable was asleep. In another case, in 1860, John Mosscrip, superintendent, was called to a house in Kelso, Roxburghshire, where it was rumoured that Mary Kerr had given birth and murdered her infant. Mosscrip had interrogated the suspect, and told her to see the doctor. However, he did not accompany her, and she subsequently walked to Edinburgh (a distance of over thirty miles), dumping the child's body on the way, prior to her apprehension. The extent of decomposition on the child's body precluded a child murder charge, and Crown Counsel blamed Mosscrip directly, 'for not being

⁷⁶ NAS, AD14/81/295, Isabella McNeill.

⁷⁷ D. Grant, cited in Dinsmoir and Goldsmith, 'Scottish Policing', p. 56.

⁷⁸ NAS, AD14/58/3, Christina MacLeod.

energetic enough...[and] allowing the woman to escape with the child'.⁷⁹ In Kilmonivaig, Inverness, in 1867, Anne Gillies managed to escape from a window of her employer's house, whilst apparently being watched by two police officers.⁸⁰

Other issues regarding suspects included the problem of interrogating suspects prior to the judicial admonition. Whilst Crown Counsel was constantly reminding procurators fiscal that suspects' statements to the police had to be voluntary, this did not happen in all cases. This was certainly true in a case from Knockando, in 1872, as this note from the procurator fiscal demonstrates:

You will see from Constable Macmillan's precognition that in taking the accused to the police office he had asked her if the child was alive when she buried it and that she had said it was crying. I think it is to be regretted that he did this but as he did so I thought it fair to the prisoner to ask her if she had made such a statement and I accordingly did so.⁸¹

The police officer's biggest mistake in this case was admitting what he had done in his precognition. It seems very likely that there were many more instances in which suspects were interrogated by police officers about alleged crimes.

Often, the distances between crime scenes and police offices were such that officers would stop for 'refreshments', occasionally with prisoners and evidence. The precognitions reveal two occasions in which this led to complaints regarding police behaviour. The first was in a case in 1858, and was revealed at the trial, and described in *The Witness*:

Hassett and Thomson [the police officers] left Bellstane with the child on the Sunday afternoon. Airdrie, we are informed, is distant from Bellstane about four miles. But these leisurely officers had to stop on the way to get bread and cheese, and Thomson obligingly 'opened up the head of the child' for the entertainment of the people at the inn. The four miles occupied them about three hours. 'I keep a time-book', says Mr Hassett, 'but there is no marking in it of the time spent' in the inn or, we suspect, of anything else to the purpose.⁸²

⁷⁹ NAS, AD14/60/114, Mary Kerr.

⁸⁰ NAS, AD14/67/164, Anne Gillies.

⁸¹ NAS, AD14/72/318, Elizabeth Edwards, Procurator fiscal's note.

⁸² *The Witness*, 'Law and Infanticide' (23 January, 1858). This incident was not recorded in the precognition, and only came out in the trial, of which there are no transcripts.

Similarly, in 1902, police inspector, Hugh Campbell, stopped at a hotel whilst being driven to the police station with suspected new-born child murderer Jessie Stewart. Not only did he buy himself and his driver a whisky each, he also ordered a 'half whisky' for the suspect.⁸³ Naturally, the suspect's agent brought this up – and also accused the police of giving the details of the case to the press – in the hope of having the case dismissed.

Interestingly, all of the above cases were from rural areas. Whilst this does not mean that rural police officers were less competent than their urban counterparts, it could suggest that they were less aware of the correct procedure in cases of suspected murder. Whilst there were more new-born child murder cases in rural Scotland, murder and violent crime was very much an urban phenomenon.⁸⁴ Of course, some mistakes cannot be put down to incompetence, lack of professionalism, or a lack of training. For example, in 1882, simple bad timing caught out one unfortunate police constable. He had been asked by his sergeant to watch a house in Belgrave Crescent, Edinburgh, to make sure that Margaret or Maggie McGlashan, suspected of having recently been delivered, did not leave. However, the suspect managed to leave the building unnoticed, with the child in a tin box. The constable's initial explanation described how at one point he 'went round the back lane to see if I could get any truth in the matter'. This clearly did not satisfy the procurator fiscal, because in the precognition, the words 'see if I could get any truth in the matter' have been crossed out, and 'ease myself' has been added.⁸⁵ It is to be hoped that the officer was treated with sympathy; after all, 'having been there for six hours' he clearly needed to go.

On the whole, though, this study endorses the viewpoint of the new history of policing, which tends to eschew the traditional view of the nineteenth century police forces as being unprofessional and incompetent, and which contends that on the whole the standards of policing were generally high.⁸⁶ Certainly, the majority of police officers in the precognitions seem to carry out their duties without any problems, and there are some examples of very good policing. Moreover, the real extent of the amount of police work that was often involved in many of the cases in

⁸³ NAS, AD15/02/108, Jessie Stewart, Deposition of P. Sutherland, hotelkeeper.

⁸⁴ King, 'Urbanization', p. 14.

⁸⁵ NAS, AD14/82/45, Margaret or Maggie McGlashan, Deposition of William Purdie.

⁸⁶ Barrie, *Police in the Age of Improvement*, p. 43.

this study is obscured by the nature of the precognitions, and the police often went to great lengths to apprehend a suspect, confirm or repudiate a suspect's story regarding the putative father of her infant and carry out other related enquiries. In addition, in some cases, police officers also drew plans of the crime scene.

Police discretion

Although the procurator fiscal made the decision as to whether an alleged 'crime' was serious enough to warrant further investigation, it is likely that increasingly, as the police became the first port of call in cases of suspected NBCM&CP, they reported suspected crimes to the procurator fiscal. A few precognitions contain these police reports, which outline the details of the case,⁸⁷ and in some cases precognosce witnesses in the case. For example, in 1859, a police report includes the depositions of Margaret Murdoch, the woman eventually prosecuted for murdering her new-born, as well as other witnesses,⁸⁸ and, similarly, a police report from cases in 1873 and 1911 also contain the depositions of a number of witnesses.⁸⁹ It seems highly probable that, from the 1850s, the police in Scotland reported many more cases to the procurator fiscal.

The importance of police discretion has been noted by historians,⁹⁰ and whilst there was less scope for discretion in cases of suspected murder than, say, theft or breach of the peace, it is not unreasonable to suggest – albeit speculatively – that some suspected new-born child murder cases were deliberately reported to the procurator fiscal by the police as cases of concealment of pregnancy. This was either out of sympathy for the circumstances of a suspect, to protect 'respectable' members of the community, or to ensure that recorded crime figures were kept low. The practice of 'cuffing' – concealing recorded crime figures by the police, certainly occurred in England and Wales during the nineteenth and twentieth centuries,⁹¹ and there is no

⁸⁷ See for example, NAS, AD14/13/26, Margaret Aitken alias Robertson, Sheriff officer's report; AD14/50/289, Isabella McPhun, Letter from constable.

⁸⁸ NAS, AD14/59/132, Margaret Murdoch.

⁸⁹ NAS, AD14/73/343, Annie Digney; AD15/11/153, May Burgess.

⁹⁰ B. Godfrey, P. Lawrence and C. A. Williams, *History and Crime: Key Approaches to Criminology* (London, 2008), pp. 53-4; King, *Crime, Justice and Discretion*, p. 73.

⁹¹ Godfrey et al, *History and Crime*, pp. 31-2.

reason to doubt that it was happening in Scotland as well. By recording suspected new-born child murders as concealment of pregnancy, the figures for violent crime would have been kept much lower, and this may well account for the considerable drop in High Court indictments for NBCM&CP from about the mid-1860s, as well as the relatively low levels of new-born child murder in urban as compared to rural Scotland between 1812 and 1930.

Conclusion

This chapter has offered a brief insight into the role of the police in cases of NBCM&CP, both prior to and during the official investigation. It has argued that on the whole the police were approached by local communities, especially with suspicions of a suspected delivery. It has also suggested that, on the whole, the police throughout the period were competent and professional in carrying out their duties, and in some instances demonstrated extremely impressive powers of detection. Conversely, there is also evidence of police incompetence and a lack of professionalism, as would be expected in a period when the standard of policing was extremely varied. The police also performed an important function with regards to collecting evidence for the trial – including the body and other material items, and they also often recorded the ‘voluntary’ statements of witnesses and suspects – some of which could prove to be useful evidence in court. The next chapter explores the role of another type of witness, also involved both before and during the judicial investigation and whose testimony during the trial was probably the most important with regards to the success or failure of the prosecution – medical practitioners.

Chapter Seven: The role of medical practitioners

Introduction

Medical practitioners were involved at every stage of a case of suspected NBCM&CP. Prior to the official investigation, they were called to examine pregnant women, or women suspected of being in labour, or having been recently delivered, and they were also called to inspect the bodies of newborn infants. Once the procurator fiscal had been informed of a suspected murder, a warrant was issued for the apprehension and medical examination of the suspect (if she was also the alleged mother of the child), and a post-mortem examination of the infant (if the infant was dead). The resulting medical reports were sent with the precognition to Crown Counsel, and formed the basis of their decision whether or not to prosecute. These reports were the single most important factor in determining whether or not a case made it to court. Without proof that an infant had died an unnatural death, a murder charge could not be sustained, and, similarly, a charge of concealment of pregnancy would not hold without proof that a woman had been pregnant, and, more crucially, that she had recently given birth to the child.

There are two parts to this chapter. The first will explore local medical involvement prior to the official investigation, looking at the role of the various medical practitioners at the local level involved in cases of suspected NBCM&CP; the second will analyse the medical reports pertaining to the examination of suspects and the post-mortems, as well as examine the various tests involved in the medical reports and how they changed over the time.

Medical involvement prior to the judicial inquiry

Of the 602 cases of suspected NBCM&CP analysed in this study, 180 (30 per cent) record the involvement of local medical practitioners at some point prior to a formal accusation. Fig 7.1 shows that just under half (47 per cent) of the 247 medical witnesses at this stage were women: eighty-six midwives, twenty-five nurses, three matrons and three female surgeons. Of the male medical practitioners there were seventy surgeons, forty-five physicians, twelve apothecaries/druggists, two

Local Medical Witnesses

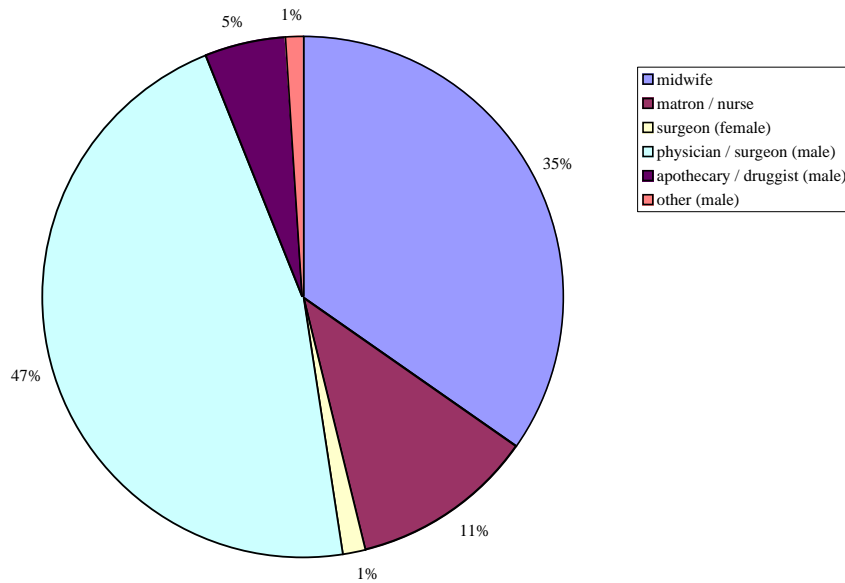


Fig. 7.1 Local medical witnesses.
Source: NAS, AD14/15, Criminal Precognitions.

accoucheurs (man-midwives), and a medical botanist. They were called either by members of the community, or were consulted by the pregnant women themselves. Fig. 7.2 reveals three phases: up to 1835, midwives were most likely to be called upon; from the 1840s to the beginning of the 1880s, local male medical witnesses featured more prominently; and, finally, from the 1890s, the proportion of male and female local medical witnesses was roughly the same. These trends may reflect changes in preference for a certain type of medical practitioner, either by the community or by investigators. Prior to the 1840s, the community may have felt more comfortable dealing with local midwives, but thereafter investigators preferred the testimony of medical men with recognisable qualifications. The rise in female practitioners as witnesses from the 1890s can perhaps be explained by the increasing numbers of practising female doctors and better-trained midwives, whose testimony was more likely to be accepted both in and outwith the courtroom.¹

¹ For midwives in court see Chapter 8.

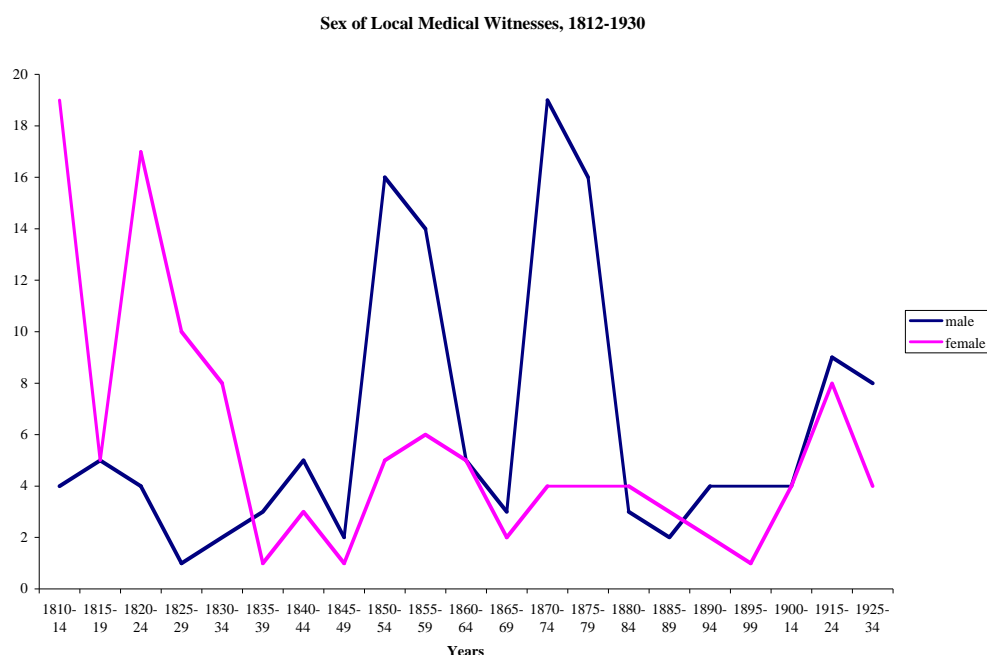


Fig. 7.2 Sex of local medical witnesses.
Source: as Fig. 7.1

Local medical practitioners and suspected pregnancy

Only forty-two cases involved local medical witnesses examining a woman suspected of being pregnant. This mirrors Mark Jackson's finding for eighteenth-century England, where 'generally neither midwives nor male medical practitioners were involved in investigations at this stage'.² As this study has already demonstrated, women suspected of being pregnant were usually confronted directly, and/or were watched closely for signs of labour or delivery. When medical practitioners were called in a case of suspected pregnancy, it was usually by a woman's employers. For example, in 1838, Reverend Collins had his servant examined by a surgeon, who suggested that he dismiss her,³ Isobel Edwards was told to leave by her employer after a surgeon confirmed that she was pregnant,⁴ and byreman James Amos was advised by a physician to dismiss outworker Hannah or Hanny Strathearn for the same reason.⁵ Alternatively, some employers demanded a doctor's certificate. For example, in 1823, after Mary Lamb's employers heard a rumour that she might be

² Jackson, *New-Born Child Murder*, p. 65.

³ NAS, AD14/38/32, Johana or Joan Sinclair.

⁴ NAS, AD14/55/166, Isobel Edwards.

⁵ NAS, AD14/79/196, Hannah or Hanny Strathearn.

pregnant, they demanded that she produce a certificate stating otherwise,⁶ as did Janet McPherson's new employers, in 1869.⁷ Occasionally, the relatives of a woman suspected of being pregnant would consult a doctor. Elizabeth Milroy's mother took her to a surgeon, for example, to refute the charge laid by the kirk session of Kirkcowan, Wigton, that Elizabeth was with child,⁸ and Janet or Jess Duff's mother also demanded that she obtain a certificate to prove that she was not pregnant,⁹ in Falkland, Fife, in 1845.

In a few cases pregnant women consulted a doctor of their own volition. For example, in 1874, Margaret Jack went to a surgeon regarding 'pains in her belly' and was told that she was pregnant,¹⁰ and, in 1900, a doctor told Margaret Bryson that the most likely reason for the stopping of her courses was that she too was with child.¹¹ The advantage of consulting a doctor alone was that regardless of his/her opinion, the truth of a woman's condition could still be concealed from the rest of the neighbourhood. As such, in 1848, Elizabeth Laird or Stewart told neighbours that a local doctor had told her she was not pregnant, although the doctor in question 'denied consulting with any unmarried woman regarding a pregnancy'.¹² Likewise, in 1920, Sarah Boyd told neighbours that she was suffering from 'tapeworms' and had a 'poisoned stomach', and that a doctor from the Royal Samaritan Hospital for Women, in Glasgow, had told her she had 'an inward growth that would burst'. However, beside her name in the admissions book of the hospital was written 'Pregnant, 3 months'.¹³

Occasionally, medical practitioners failed to identify a pregnancy. An earlier chapter has already discussed how the symptoms of pregnancy were often difficult to detect, particularly in its early stages, and when a woman was intent on concealing her condition. The signs of pregnancy could be mistaken for other illnesses or conditions, and vice versa. For example, in 1813, neither Margaret Lockhart's family, nor a local surgeon suspected that she was pregnant, and she was prescribed a variety of treatments.¹⁴ Similarly, Jessie or Janet Rendells or Reynolds – who was with child – was

⁶ NAS, AD14/23/189, Mary Lamb.

⁷ NAS, AD14/65/269, Janet McPherson.

⁸ NAS, AD14/34/174, Elizabeth Milroy.

⁹ NAS, AD14/45/219, Janet or Jess Duff.

¹⁰ NAS, AD14/74/398, Margaret Jack.

¹¹ NAS, AD14/1900/1, Maggie Bryson.

¹² NAS, AD14/48/156, Elizabeth Laird or Stewart, Deposition of William Newman.

¹³ NAS, AD15/20/96, Sarah Boyd.

¹⁴ NAS, AD14/13/67, Margaret Lockhart.

treated for the stoppage of her menses, in Gifford, in 1844,¹⁵ and Helen Frith consulted two doctors with a 'dropsical complaint', neither one detecting that she was pregnant. One of the doctors – perhaps attempting to salvage some professional pride – claimed that 'he had prescribed a placebo because he was suspicious that she was pregnant'.¹⁶ In another case, Ann Abernethy's mother told investigators that

Dr Sinclair, Elder St. came to my house about some money which he was owing me...The Dr asked how my daughter was and she said very well. I said to him, 'She is not very well – her feet are swelled, and so are her bowels' – on this the Dr pressed her belly and said 'you are hard there like a married woman.' She said nothing. I still had no suspicion [that she was pregnant], and the Dr seemed to have none because he ordered some pills and powders for her.¹⁷

In 1852, Helen Sangster or Whitecross was treated by a surgeon for irregular courses,¹⁸ in 1862, Jane Watt told the procurator fiscal that a physician had given her pills for her irregularity though she was pregnant,¹⁹ in 1868, Margaret Stewart was treated for a 'discharge' by a surgeon in Montrose, who was apparently unaware that she was pregnant,²⁰ and, in 1879, Mary McColl was diagnosed with a 'growth', and was told she would need an operation.²¹

In some cases women were supplied with certificates even when it was quite obvious that they were pregnant. For example, in 1823, Mary Lamb gave birth soon after receiving a doctor's certificate stating otherwise,²² as did Margaret Grigor after she had obtained a letter from a midwife in Duffus, Elgin, in 1836.²³ In 1865, Janet MacPherson gave birth three days after she was given a line to say that she was not pregnant: the doctor in question explained to investigators that he 'thought her honest', and since there was no areola on her breasts, and 'no movement in her abdomen', he had no reason to suspect that she was pregnant.²⁴ Likewise, in 1927, when Mary Walker's employers (who were both doctors) confronted the surgeon who had supplied her with a certificate saying that she

¹⁵ NAS, AD14/44/258, Jessie or Janet Rendells or Reynolds.

¹⁶ NAS, AD14/46/120, Helen Frith and Jean Harris or Frith, Deposition of James Lindsay Crawford.

¹⁷ NAS, AD14/49/91, Ann Abernethy, Deposition of Mary Hepburn or Abernethy.

¹⁸ NAS, AD14/52/253, Helen Sangster or Whitecross.

¹⁹ NAS, AD14/62/159, Jane Watt.

²⁰ NAS, AD14/62/186, Margaret Stewart. The doctor in question, J. R. Wolfe, also told investigators that he declined to give Margaret a certificate to say that she was not pregnant. The procurator fiscal dismissed this contradiction by explaining that 'He has recently come to Montrose and appears professionally of no great repute'.

²¹ NAS, AD14/79/151, Mary McColl.

²² NAS, ad14/23/189, Mary Lamb.

²³ NAS, AD14/36/101, Margaret Grigor.

²⁴ NAS, AD14/65/269, Janet McPherson.

was not pregnant, when it was quite clear that she was, he claimed that he thought the certificate was simply to state that 'she was in good health'.²⁵ Whilst it is possible that these medical practitioners genuinely did not realise these women were pregnant, it is also likely that some doctors were willing to provide such certificates regardless of a woman's condition. The incentives for doing so were most likely financial, but doctors and midwives may also have provided pregnant servants with certificates for the benefit of their employers, to allow them to gain employment elsewhere, thus saving families from the shame, or other difficulties, that would come with the birth of an illegitimate child within the household. However, most medical practitioners correctly identified the condition of pregnant women and generally refused to supply certificates stating otherwise.

Local medical witnesses and suspected labour and delivery

Of the 180 cases involving local medical practitioners prior to the official investigation, 56 per cent were called to examine women suspected of either being in labour, or of having already given birth. For example, in 1835, a surgeon was called after it was commonly believed that Elizabeth Whyte was in labour, although by the time he arrived the child had been delivered.²⁶ Similarly, in 1844, some of Mary Ann Smith or Blackstock's neighbours suspected that she was in labour, one telling another 'that she thought it was going to be a miscarriage'.²⁷ They sent for a surgeon who, after realising that the child had already been born, delivered the afterbirth. Usually, medical assistance was called after a suspected delivery, as in Ross, in 1824, when a midwife was called to examine Isobel Urquhart after it was suspected she had given birth.²⁸ Again, a surgeon confirmed a neighbour's suspicion that Christina McIntyre had recently been delivered, in Brechin, in 1839,²⁹ in 1877, the employers of Helen McMahan alias Henderson sent for a surgeon after he was informed of rumours that she had just given birth,³⁰ and, in 1850, the Reverend David Esdaile sent for a midwife following the discovery of an afterbirth inside his table maid's trunk, in Rescobie, Forfar.³¹ Finally, in 1922, Jeanie Clark sent for the district nurse after she suspected her lodger, Barbara

²⁵ NAS, AD15/27/60, Mary Walker, Deposition of Eileen Rose Hayes.

²⁶ NAS, AD14/35/140, Elizabeth Whyte.

²⁷ NAS, AD14/44/23, Mary Ann Smith or Blackstock, Deposition of Margaret McConchie or Carson.

²⁸ NAS, AD14/24/122, Isobel Urquhart.

²⁹ NAS, AD14/39/103, Christina McIntyre.

³⁰ NAS, AD14/77/156, Helen McMahan alias Henderson.

³¹ NAS, AD14/50/600, Hannah Mitchell.

MacConnachie, had been delivered of a child.³²

The arrival of a doctor or midwife after a suspected delivery usually signalled the moment when a suspect confessed to having given birth, and revealed the whereabouts of the body. For example, the surgeon asked by the kirk session of Leslie, Aberdeen, to examine Margaret Dae or Dow, ascertained that she had recently been delivered, and found the child in her chest.³³ Similarly, the midwife sent to examine Elizabeth McDowall in Wigton, in 1847, discovered the dead child in the farm servant's bed,³⁴ and a midwife also found Georgina Mackay's dead child next to her in the bed, in Kildonan, Sutherland, in 1853.³⁵ In Applegarth, in 1859, the surgeon sent to examine Elizabeth Jane Smith located her dead new-born infant under her bed,³⁶ and, in 1876 the surgeon sent to examine Mary Findlay, on observing dried blood on her hands, demanded that she show him the body of the child, which she subsequently did.³⁷ In Golspie, in 1885, Margaret Morrison admitted to a midwife that she had been recently delivered, and that the child's body was hidden in her trunk,³⁸ and, in 1927, district nurse Edith McKenzie discovered Elizabeth Munro's dead new-born infant under her bed in Abernethy, Inverness.³⁹

For some women, even the threat of a doctor being called was enough to extract a confession. For example, after large quantities of blood were found in Jane Bell's bed in Hoddam, Dumfries, in 1867, she told fellow servant Edward Byers that her courses had returned. He insisted that they visit a local surgeon, and on the way there Jane admitted that she had given birth.⁴⁰ Indeed, whilst women refused to be examined by neighbours and employers, the authoritative figures of the local midwife or doctor were generally not resisted. However, some women did attempt to resist medical inspection, such as Jane Fraser, who, in 1874:

put herself in a fighting attitude, put out her right fist and held the bed clothes around her neck with the other hand, so that she could not be seen; and she threatened to knock the brains out of any one of us who touched her.⁴¹

³² NAS, AD15/22/55, Barbara MacConnachie.

³³ NAS, AD14/43/3, Margaret Dae or Dow.

³⁴ NAS, AD14/47/212, Elizabeth McDowall.

³⁵ NAS, AD14/53/301, Georgina Mackay.

³⁶ NAS, AD14/59/133, Elizabeth Jane Smith.

³⁷ NAS, AD14/76/266, Mary Findlay, Deposition of Charles Hunter.

³⁸ NAS, AD14/85/91, Margaret Morrison.

³⁹ NAS, AD15/27/93, Elizabeth Munro.

⁴⁰ NAS, AD14/67/142, Jane Bell.

⁴¹ NAS, AD14/74/548, Jane Fraser, Deposition of George Allan.

Local medical witnesses and the discovery of a body

Medical practitioners were called by the community to inspect the body of a dead new-born in sixty-five precognitions. Often they were called in conjunction with the police, especially if the body was discovered immediately after a suspected delivery, but occasionally the medical practitioner was summoned alone. For example, in Calder, Nairn, in 1813, a midwife was called by the church elders to inspect the body of a dead new-born infant,⁴² and, in 1840, the minister of Avoch, in Ross, informed a surgeon when the body of his maid's new-born infant was discovered in her room.⁴³ In some of the cases where the identity of a child's mother had not been immediately ascertained, medical men and women were called to inspect local women for signs of recent delivery. For example, in Slains, Aberdeen, in 1820, after the discovery of a dead new-born infant, the kirk session suggested that every unmarried woman in the parish be medically examined. The minister disagreed, and instead two physicians and two midwives were made available for 'those voluntarily wishing to clear themselves'.⁴⁴

Medical witnesses were also generally called if the infant was discovered alive, such as in Glasgow, in 1854, when on discovering Catherine Vass's new-born infant still alive, her employer 'called out to her "You monster"', and 'ran to a doctor with the child in an attempt to revive it'.⁴⁵ Likewise, in 1864, in Rhynie, Aberdeen, when Isabella Shand's new-born infant was discovered alive in the gished, a local physician was called. Prior to his arrival, the infant was bathed in hot water and wrapped in blankets in an effort to keep him alive.⁴⁶ Similarly, a surgeon was called to attend the new-born infant of Lizzie Beattie, discovered in nettles by her mother in Bervie, Kincardine, in 1920,⁴⁷ and, in 1926, a nurse was asked to attend to the new-born infant of Margaret Keay, discovered in a bundle at Brenachoil Lodge, Callander, in Perth.⁴⁸

⁴² NAS, AD14/13/46, Ann or Anne Falconer.

⁴³ NAS, AD14/40/20, Anne Allan.

⁴⁴ NAS, AD14/20/93, Janet Burd, Deposition of George Pirie.

⁴⁵ NAS, AD14/54/61, Catherine Vass, Deposition of Marion Munro or Crawford.

⁴⁶ NAS, AD14/64/140, Isabella Shand.

⁴⁷ NAS, AD15/20/149, Lizzie Beattie.

⁴⁸ NAS, AD15/26/94, Margaret Keay.

Medical practitioners as accessories to murder and obstructing the law

Whilst the majority of medical practitioners acted professionally and with integrity, there is evidence in the precognitions that some helped suspects in various ways. For example, a number of suspects discussed going to their local surgeon, or to an apothecary and being able to purchase abortifacients. There was widespread use of various substances to induce miscarriage throughout the period 1812-1930,⁴⁹ and there were certainly attempts made by a number of NBCM&CP suspects to abort their infants. For example, in 1821, Helen Brebner or Bremner, discussing a previous pregnancy, declared that she ‘parted with it after getting physic from a midwife’,⁵⁰ and other women were asked about whether they had used abortifacients, such as Katharine Cardno, in 1814.⁵¹ Moreover, as discussed in a previous chapter, a number of women stated that the alleged fathers of their infants had asked, or demanded, that they abort their pregnancies.

The precognitions reveal that some doctors supplied abortifacients to suspects, although all of them denied doing so. For example, in 1856, Helen Merchant visited a medical botanist, Peter Mungo Carruth, in Montrose, who was well known to the police as someone who prescribed such drugs.⁵² Carruth, described as a ‘quack’ by the procurator fiscal, was suspected of supplying abortifacients a year later, this time to Catherine McKay or Watson.⁵³ Likewise, Mary Bulloch was given tincture of cantharides – a known abortifacient – by a druggist, in 1858.⁵⁴ It is in this light that some historians have argued that new-born child murder is a form of ‘*post hoc*’ contraception.⁵⁵

In general, attempts to procure abortion through the use of drugs by women in this study were unsuccessful. In most cases such attempts were probably made at a late stage in the pregnancy, when such methods were unlikely to work. The most effective way of getting rid of an unwanted foetus during this period was by instrumental abortion, and there are a few references to this in the precognitions. For example, in 1856, Ann Gall claimed she had no recollection of her delivery

⁴⁹ R. Mitchison and L. Leneman, *Girls in Trouble: Sexuality and Social Control in Rural Scotland, 1660-1780*, pp. 109-10; B. Brookes, *Abortion in England, 1900-1967* (Kent, 1988), p. 6

⁵⁰ NAS, AD14/21/95, Helen Brebner or Bremner.

⁵¹ NAS, AD14/14/30, Katharine Cardno.

⁵² NAS, AD14/56/242, Helen Merchant.

⁵³ NAS, AD14/57/216, Catherine McKay or Watson and Eliza Mennie or Cameron.

⁵⁴ NAS, AD14/58/368, Mary Bulloch or Mary Bell or Bulloch.

⁵⁵ A. Macfarlane, *Marriage and Love in England, 1300-1840* (Oxford, 1993), p. 62.

because she was 'given chloroform in the kitchen by a man',⁵⁶ and when she came to there was no sign of the child. Hector McLean McKenzie, an apothecary from Peterhead, was suspected of delivering the infant, and was arrested as an accessory to murder, but was later released without charge. In 1857, Catherine Watson, who it was suspected wanted an abortion, was overheard talking to a Doctor Birse – 'a very dissipated character and much addicted to drink' –⁵⁷ regarding the procuring an abortion.⁵⁸ For his part, Birse claimed he had refused to do this, but had offered to be present at her confinement. Similarly, in 1870, Alison Hall's sister claimed that the previous year a doctor had offered to procure abortions for both of them for twenty pounds.⁵⁹

In some cases, local medical witnesses claimed that suspects had not recently given birth to a child. For example, in 1852, the villagers of Dunmore, Airth, suspected that Helen Lennox was the mother of a dead new-born infant discovered some time previously, but '[a] village surgeon examined her person, and gave it his opinion that she had never had a child'.⁶⁰ Not satisfied with this, the matter was pursued by the villagers, and eventually another physician examined her and observed signs that she had been delivered. Similarly, in 1855, a doctor was sent to examine the daughter of the Inspector of the Poor in Huntly, for signs of recent delivery. Dr Bremner issued a certificate stating that she had not been recently delivered, but when it transpired that she had given birth, he admitted that '[f]rom the respectability of the girl and her parents...and that I had previously attended her for irregular courses, I did not think it necessary to examine her person'.⁶¹ Likewise, in 1874, the surgeon who initially examined Margaret Harten claimed that there was no milk in her breasts, and that she had not been recently delivered of a child. However, a further inspection by another surgeon revealed that she had in fact recently given birth.⁶² In all of the above cases, the suspect was either from, or was employed by, a respectable family, suggesting that doctors may have been encouraged to apply discretion if the families involved were from a particular social class.

There are a number of cases in which medical practitioners were suspected of being involved in concealing the suspicious nature of a new-born infant's death from the authorities. For example, in 1812, the family of Sarah Bridgeford, having been told by the midwife that the dead infant had not

⁵⁶ NAS, AD14/56/246, Ann Gall.

⁵⁷ NAS, AD14/57/216, Catherine McKay or Watson and Eliza Mennie or Cameron, Deposition of John Pennycook.

⁵⁸ Ibid., Deposition of Elizabeth Ferrier or Pennycook.

⁵⁹ NAS, AD14/70/193, Alison Hall, Deposition of Catherine Hall.

⁶⁰ NAS, AD14/52/198, Helen Lennox.

⁶¹ NAS, AD14/55/240, Agnes Taylor, Deposition of James Bremner.

⁶² NAS, AD14/74/50, Margaret Harten.

been viable, attempted to have the child interred in the churchyard at Garioch, Aberdeen.⁶³ However, the procurator fiscal was informed, and a surgeon was sent to inspect the body prior to the burial. Not only did his report state that the child had come to its full term, but also that its head had been ‘stove in’.⁶⁴ A letter from the minister to Crown Counsel probably spared the midwife from a judicial investigation:

From the recollection of what the midwife said at Balquhain, I have to observe, that while she hesitatingly expressed her opinion of the child being only of six months, she begged that the doctor might be called to declare his sentiments, and she stated afterwards, both to Mr Smith and myself that she was averse to say the worst, and wished to keep as far within bounds as possible. She thought the child had been sometime dead, and was a good deal vanished; and she told Mr Smith that considering its firm feel when she washed it, after having been so long in the ground, she was inclined to think it was nearer the full time than she had declared it to be to the justices.⁶⁵

Similarly, in 1837, after discovering the dead body of Ann Mearns’s new-born infant, the local midwife failed to alert the authorities, who did not find out about the case until nine weeks later. She admitted to investigators that she had been paid to keep quiet.⁶⁶ Also, in 1877, after inspecting the dead new-born child of Isabella Martin, the midwife told the procurator fiscal, ‘I dressed the child in grave clothes and left it in the house’, without informing anybody else.⁶⁷

It was not just midwives who failed to inform the authorities in some cases. For example, in 1844, neighbours of Elizabeth Hunter heard the cries of a child, and believed strongly that ‘she was delivered of a child at or about the time of Dr Torrance’s visit’.⁶⁸ For his part, Dr Torrance claimed that he suspected Hunter had given birth before his arrival. However, the procurator fiscal did not believe Torrance, and pointed out that they had met each other by chance that very day, yet the doctor had not mentioned these suspicions. Likewise, in 1851, the procurator fiscal investigating the suspicious death of Jane Park’s new-born infant wrote to Crown Counsel regarding Robert Burgess, the surgeon who initially examined the child.⁶⁹ Burgess, he stated, ‘appears to say the mark on the neck is from the umbilical cord’, referring to the deep indentation around the infant’s neck (which

⁶³ NAS, AD14/12/34, Sarah Bridgeford.

⁶⁴ Ibid., Medical report by James Murray.

⁶⁵ Ibid., Minister’s Deposition.

⁶⁶ NAS, AD14/37/40, Ann Mearns.

⁶⁷ NAS, AD14/77/146, Isabella Martin, Deposition of Janet Campbell or Mitchison.

⁶⁸ NAS, AD14/44/210, Elizabeth Hunter and Catherine Hunter, Deposition of William Spence.

⁶⁹ NAS, AD14/51/375, Jane Park.

could not have been caused by the umbilical cord). Rather than suspect the surgeon of attempting to cover-up any foul play, the procurator fiscal simply added, 'this is a very stupid witness'. In 1853, after examining Helen Taylor's dead new-born infant, a surgeon had the child immediately coffined and interred,⁷⁰ and, in 1872, the surgeon called to a farm in Rathven, Banff, where Ann Ingram's new-born infant had been discovered dead with a deep indentation round its neck, told the grieve to 'put her home, and get the child interred.'⁷¹ In a similar case, in 1874, James Tweedie, esquire, instructed his physician to inspect the dead body of his serving maid's new-born child, which had been found in twelve 'portions' at Rachan House, Peebles. The doctor, Alexander Kello, had claimed the child was either a miscarriage, or born prematurely, in an attempt to prevent an official investigation. However, the authorities were notified, and the police surgeon's report contradicted Kello's opinion, and the case became a criminal matter.⁷² It is likely that Kello's motive in this case was to keep the unwanted publicity of an investigation and trial away from the Tweedies, rather than out of particular sympathy with the suspect.

It is tempting to assume that the medical practitioners in these cases were complicit in a 'crime', or at the very least perverted the course of justice to protect a suspect, her family, or her employers. However, it is also possible that most of them believed that the infant had died of natural causes. Indeed, in most of these cases described above, there were no obvious signs of violence on the infant. The overall death rate did not begin to decline in Scotland until the 1870s, but throughout the period of this study infant mortality remained very high – between 120 and 130 per every thousand live births between 1855 and 1900. By 1930 this had fallen to 77 per thousand, which is still high by today's standards.⁷³ Illegitimate infant mortality was even higher.⁷⁴ As such, the sight of a dead new-born infant was probably a common sight for many Scots. Moreover, at no point in the period of this study were doctors expected to register the deaths of stillborn children, and so the immediate interment of dead infants was a common practice during this period, and would not necessarily have been viewed as suspicious.

Other cases of medical witnesses attempting to help suspects include midwife, Isabella Graham,

⁷⁰ NAS, AD14/53/342, Helen Taylor.

⁷¹ NAS, AD14/72/310, Ann Ingram, Deposition of Charles Lamont.

⁷² NAS, AD14/74/121, Margaret Johnston.

⁷³ B. Kenefick, 'Demography', in A. Cooke, et al., *Modern Scottish History*, Vol. 2 (2003), p. 109; M. Anderson and D. J. Morse, 'The People', in W. Hamish Fraser and R.J. Morris (eds), *People and Society in Scotland, 1830-1914* (Edinburgh, 2000), pp. 22-30;

⁷⁴ Blaikie, *Illegitimacy, Sex and Society*, p. 76.

who, in 1855, was accused by the procurator of supplying the baby clothes she claimed to have found in Catherine McGregor's trunk,⁷⁵ and a surgeon who, in 1874, speculated at length in his precognition on which of a number of young women could have recently given birth to the dead new-born infant discovered recently in Galashiels, but who omitted to mention the actual mother of the child.⁷⁶ In another case, in 1858, the procurator fiscal alerted Crown Counsel to the attitude of one local doctor towards Ann Taylor, accused of new-born child murder in Edinburgh, writing that although

[h]e is an able an accomplished person...I must not disguise that he is sensitive and so unwilling to be instrumental in bringing serious punishment on the accused, that he tries and will try to adopt any view or medical opinion that would save her.⁷⁷

On the whole, however, local medical witnesses who examined women suspected of either being pregnant, or of having been recently delivered, did so in a professional manner, and informed the authorities regardless of whether or not there were suspicions of foul play. However, the precognitions also show that in some cases medical witnesses exercised discretion when it came to alerting the authorities. This may have been because they were genuinely of the opinion that a child had been stillborn or had died naturally during delivery, but there may have been other reasons why medical witnesses were reluctant to inform the authorities in these cases. First, the intimate relationships many local doctors and midwives had with suspects and their relatives, or employers, may well have made them less inclined to believe that they were either pregnant or had given birth in the first place, or that they had caused their infant any deliberate harm. It is also likely that in some cases, the discretion of local doctors and midwives was based on economic pragmatism. These men and women could ill-afford to lose the income provided by local families, particularly in rural areas. Their unwillingness to turn a blind eye to suspicious infant deaths, to attest to a stillbirth or miscarriage, and to have a dead infant interred as stillborn, could potentially alienate them from the community on which their livelihood relied. Conversely, doctors may well have been less likely to exercise discretion in cases of suspected NBCM&CP if they did not know the suspect, or her employers were not regular customers, or if a suspect, her family, or employers, were disreputable members of the community.

⁷⁵ NAS, AD14/55/192, Catherine McGregor.

⁷⁶ NAS, AD14/74/40, Catherine Scott.

⁷⁷ NAS, AD14/58/365, Ann Taylor.

The medical examination of suspects and victims

When a report of a suspected NBCM&CP reached the procurator fiscal, and he deemed the case worthy of further investigation, a warrant was obtained for the apprehension and, if applicable, medical examination, of the suspect or suspects, and for a post-mortem examination of the dead infant. The medical examinations were carried out by 'suitably qualified' medical practitioners, which, as Chapter One has highlighted, for the period of this study meant male surgeons or physicians.

The findings of the medical examinations were incorporated into medical reports which were signed, 'on soul and conscience', by the medical men involved. The original documents were kept with the suspect's declaration and any other items of evidence, to be delivered to court prior to any subsequent trial. Copies of the medical reports were appended to the precognition that was sent to Crown Counsel. The 602 precognitions examined in this study contain 958 medical reports; 426 pertaining to the suspect and 532 to the victim. This section will look first at the medical examination of suspects, then the post mortem of the victims, focusing on the various observations and conclusions described in the resulting medical reports. Finally, the section will briefly explore what the medical reports can reveal about the evolution of medical jurisprudence between 1812 and 1930, and whether the pattern of change backs up the pattern described in Chapter One.

The medical examination of suspects

426 precognitions contain a medical report based on the examination of a NBCM&CP suspect. Of the 176 precognitions in which there is no report, in most there is no explanation as to why the report is missing. Cases in which the lack of a medical report is explained include twelve in which the gap between the delivery and the suspect's apprehension was too long,⁷⁸ ten in which a doctor or midwife had arrived in time to remove the placenta,⁷⁹ and seven in which the suspect had absconded before an examination could take place.

The examination of the suspect was generally carried out by a single doctor, and this examination served three purposes: the first was to ascertain whether or not the suspect was well enough to be

⁷⁸ For example, see NAS, AD14/13/18, Sarah Dunsmuir or Denmark; AD14/72/425, Mary Thomson.

⁷⁹ For example, see NAS, AD14/23/17, Jean Dowal or McDowal; AD14/52/187, Janet Kennedy or Hume; AD15/13/108, Catherine McIntyre.

removed to prison, and/or interrogated. A number of women were not in a fit state to be removed immediately, and in these cases suspects were either taken to hospital, or remained in bed under 'house arrest' until a doctor had deemed them fit enough to be removed to prison. For example, the month's delay in Catherine Stewart's removal to prison in 1853 was due to the fact that 'she is lying in the maternity hospital',⁸⁰ in 1869, Mary Jane Kennedy was not medically examined by a doctor right away because she was suffering from 'milk fever',⁸¹ and, in 1874, a surgeon stated that Catherine Scott was suffering from 'a fever due to confinement'.⁸² Usually these suspects remained in bed for between one week and a fortnight, although Janet McPherson, apprehended in 1865, was indisposed for eighteen days due to 'milk fever'.⁸³

The second and most important purpose of the examination of the suspect was to determine whether or not she had been recently delivered of a child. The signs of recent delivery, as summarised in a medico-legal dissertation about infanticide, in 1821, were deemed to be:

A slight paleness in the face...the eye is a little sunken...The pulse is full and undulating...the breasts are tumid, and on pressure emit lactiform fluid. There is a dark areola round the nipples; the belly is soft; the skin of the abdomen is lax, lies in folds, and is traversed in various directions with shining reddish and whitish lines...A line of a brownish colour commonly extends from the centre of the pubis to the navel...The uterus may be felt through the abdominal parietes...A discharge of serous fluids, mixed with blood...takes place from the vagina...The external genital organs...are tumefied, and dilated throughout the whole of their extent; the orifice of the uterus is soft, supple, and considerably dilated. Sometimes the anterior margin of the perineum is a little torn.⁸⁴

These signs of recent delivery are mentioned in most – if not all – the various medico-legal works throughout the nineteenth and early twentieth centuries. Indeed, as Table 7.1 demonstrates, these were the *only* signs of recent delivery mentioned by medical practitioners between 1812 and 1930. Just one of these observations was internal (the dilation of the *os uteri* – the mouth of the womb), the rest concentrating on external observation.

By far the most common recorded observation was the presence of milk in the breasts, which is

⁸⁰ NAS, AD14/53/486, Catherine Stewart

⁸¹ NAS, AD14/69/265, Mary Jane Kennedy.

⁸² NAS, AD14/74/40, Catherine Scott.

⁸³ NAS, AD14/65/269, Janet McPherson.

⁸⁴ W. Hutchinson, *A Dissertation on Infanticide, in its Relations to Physiology and Jurisprudence* (London, 1821), pp. 90-1.

mentioned in 339 (87 per cent) medical reports. This was viewed as the most clear-cut sign of recent delivery not only in this but also in other historical periods.⁸⁵ In discussing the eighteenth century, for instance, Mark Jackson notes that ‘[p]roof of recent delivery...depended almost exclusively upon demonstrating the presence of milk in a suspect’s breasts’.⁸⁶ Indeed, so important was this evidence that medical practitioners saw the absence of milk, regardless of the other signs, as suggesting that a suspect might not have given birth. Ann Mitchell’s breasts, for example, when examined by a doctor in 1852, emitted ‘a few drops [of milk] but were flaccid,’ leading him to claim that there were ‘no indications of recent delivery’, although he also conceded that she ‘may possibly have given birth’.⁸⁷ Such ambiguity could also occur if the examination of the suspect was carried out immediately after delivery. For instance, in 1849, Janet Kennedy was examined on the same day as her suspected delivery, at which time no milk was found in her breasts. When she was re-examined two days later her milk had ‘come in’.⁸⁸

Table 7.1 Observations made in the examination of suspects

Observation	Number	Percentage of total ⁸⁹
Milk in breasts	339	87
Organs of generation	260	67
Abdomen	254	65
Lochia (vaginal discharge)	241	62
Os Uteri (orifice of uterus)	212	54
Areola around nipples	211	54
Uterus (external)	195	50
General / ‘Usual Tests’	100	26
Perineum / fourchette torn	42	11

Source: as Fig. 7.1.

The ‘general’ category includes, amongst other observations, the state of a suspect’s skin, her pulse, sunken eyes, and stains on a suspect’s clothing. The other external observations feature in around 50 per cent , or even less, of the cases, indicating that many of these signs were viewed as ambiguous – that they could be attributed to other female ailments.⁹⁰

⁸⁵ Gowing, ‘Secret Births’, p.117.

⁸⁶ Jackson, ‘Developing Medical Expertise’, p. 148.

⁸⁷ NAS, AD14/52/231, Ann Mitchell.

⁸⁸ NAS, AD14/49/311, Janet Kennedy.

⁸⁹ n=390.

⁹⁰ Jackson, ‘Developing Medical Expertise’, p. 149.

As demonstrated in Chapter 2, suspects often took advantage of the ambiguities surrounding the signs of pregnancy and delivery to deny their condition. Generally, the arrival of a medical practitioner signalled the end of the charade, but occasionally suspects would continue the pretence, and offer alternative explanations to midwives and doctors. For instance, in 1834, Elizabeth Milroy told her doctor that a ‘lump of hers’ came away, and ‘that milk being found in her breasts was no proof against her for virgins had been found with milk in their breasts’.⁹¹ Medical jurists acknowledged that with regards to breast milk, ‘it is possible for this secretion to take place independently of pregnancy’,⁹² and as such this was not necessarily such a desperate explanation. However, the fact that it is the only case in which a suspect proffered such an explanation suggests that it was not viewed as particularly convincing.

Similarly, two suspects claimed that their condition was due to ‘false conception’, a medical phenomenon in which a woman would have the appearance of pregnancy but where moles (fleshy lumps) – or hydatids as they were also called – were expelled instead of a foetus.⁹³ This was the claim of Margaret Kennedy in 1835, an explanation with which the doctor who examined her concurred.⁹⁴ This diagnosis was strengthened by the fact that there was hardly any milk in the woman’s breasts and, crucially, that there was no body. In 1848, Elizabeth Laird or Stewart also claimed that she had had a ‘false conception,’ a story backed up by her mother, who told investigators that she ‘put something in the fire which had come from her daughter’.⁹⁵ In this instance, however, whilst the examining doctor acknowledged such a condition existed, he was not convinced that it was the explanation for this case:

I do not exactly know what idea is attached to the expression ‘false conception’ by the common people. I have read in writers of medical jurisprudence of substances called moles or hydatids being sometimes expelled from the womb, although I have never seen a case that could not be explained upon this hypothesis that the substance expelled was the placenta of a blighted ovum. It is generally understood by writers in Midwifery and Medical Jurisprudence that moles or hydatids are contained in the uterus not longer than 3-5 months. I do not remember having read or heard of such substances being contained in the womb for seven months before expulsion.⁹⁶

⁹¹ NAS, AD14/34/174, Elizabeth Milroy.

⁹² Hutchinson, *Dissertation*, p. 92; Jackson, ‘Developing Medical Expertise’, p. 149.

⁹³ Beck, *Elements*, pp. 101-3.

⁹⁴ NAS, AD14/35/11, Margaret Kennedy.

⁹⁵ NAS, AD14/48/156, Elizabeth Laird or Stewart.

⁹⁶ *Ibid.*, Deposition of John Paxton.

Chapter Two discusses a common defence used by women accused of killing their new-borns; that they had passed a substance, a lump that was not a child. However, in none of these cases do the women mention a false conception, so again it is not clear whether this really was a concept with which people were well acquainted.

The third element of a suspect's medical examination was to work out how much time had elapsed since the delivery, in order to create a link to the dead child (if there was a body), or to a time when the woman was suspected of being delivered.⁹⁷ Milk only remained within a woman's breasts for a short space of time if she was not breastfeeding, and the other signs of delivery also diminished over time.⁹⁸ As a result, the length of time between delivery and apprehension could be worked out, and if these times corresponded with the amount of putrefaction (or lack of it) on the body, or fitted in with the chronology of when a witness had observed a decrease in the suspect's bulk, then a link to the 'crime' could be established. Of course, if there was a substantial gap between the delivery and a suspect's apprehension, and the signs of delivery had significantly diminished, the work of the examining doctors became more complicated. For example, Janet McGregor or Hunter was apprehended and medically examined on the 24 June 1872. However, because the alleged crime was suspected to have been between 1 April and 31 May of the same year, the doctor found little evidence of childbirth, and in his report stated that he 'cannot with certainty pronounce she'd recently borne a child.'⁹⁹ Such ambiguity in the medical report could have been a problem for prosecutors, and such reports must have been frustrating for Crown Counsel. For example, in a case from 1869, Crown Counsel asked the procurator fiscal to re-precognosce the medical witnesses so that they could be 'pushed to say if Prisoner definitely gave birth.'¹⁰⁰

The post-mortem examination of new-born Infants

By the beginning of the nineteenth century, the post-mortem examination was probably the most crucial element in determining the outcome of a case of new-born child murder.¹⁰¹ This is reflected

⁹⁷ Traill, et al., *Suggestions*, p. 32; T. S. Traill, *Outlines of a Course of Lectures on Medical Jurisprudence* (Edinburgh, 1840), p. 73.

⁹⁸ Beck, for example, noted that the signs of delivery had disappeared after about ten days. *Idem.*, *Elements*, p. 100.

⁹⁹ NAS, AD14/72/242, Janet McGregor or Hunter.

¹⁰⁰ NAS, AD14/69/26, Jessie Brown, note from Crown Counsel.

¹⁰¹ Mark Jackson locates the marked growth in the use of medical evidence in trials of new-born child murder in England from the mid-eighteenth century. *Idem.*, *New-Born Child Murder*, p.87.

in the fact that the majority of precognitions – 532 (88 per cent) – contain a medical report relating to the post-mortem. Of the seventy cases in which there is no report, in thirty-six the body was missing and in a further thirteen the body was either too decomposed to be dissected, or only fragments of the body had been recovered. In ten cases a post-mortem was performed but there is no report, and in a further ten, no explanation for the lack of any record of a post-mortem is given.

414 (76 per cent) post-mortems were carried out by two doctors, a further sixty-eight by three or more. Crown Counsel frowned upon the use of one doctor, although there are sixty cases in which this was the case. For example, in a precognition in 1861, a note from Crown Counsel to the procurator fiscal included eight issues relating to the medical report, as well as a question: ‘why was the post mortem not conducted by two medical men?’¹⁰² The testimony of two medical witnesses would have been viewed as more robust in the courtroom.

Tables 7.2 and 7.3 show the various external and internal observations recorded in the medical reports. The first observation made in most cases was the sex of the infant. This was an important observation in terms of framing the indictment, but had no medico-legal value as such. Of the 522 infants in which the sex could be identified, 275 (53 per cent) were female, and 247 (47 per cent) were male. Whilst the ratio of female to male infants was higher, there is no evidence to suggest that female infants were more likely to be the victims of new-born child murder in Scotland as was (and still is) the case in other parts of the world.¹⁰³

Another important observation – one that was emphasised by medical jurists – was the length of time the body had been dead.¹⁰⁴ The state of the body was crucial in determining the outcome of any potential prosecution. For example, if the body was missing completely, if only fragments of the body were extant, or if it was in an advanced state of decomposition, then a post-mortem could not be carried out. Whilst medical jurists, such as Alfred Swaine Taylor, maintained that cases of new-born child murder could be – and were – prosecuted successfully without a body,¹⁰⁵ in practice this was a rare occurrence. Of the forty-nine cases in this study in which the body was either

¹⁰² NAS, AD14/61/20, Harriet Whitehead, note from Crown Counsel.

¹⁰³ For example, female infanticide was noted as a problem in nineteenth-century India, and modern China. L. Panigrahi, *British Social Policy and Female Infanticide in India* (Delhi, 1972); D. E. Mungello, *Drowning Girls in China: Female Infanticide since 1650* (Plymouth, 2008).

¹⁰⁴ Taylor, *Principles and Practice* (1865 ed.), p. 944.

¹⁰⁵ *Ibid.*, p. 885.

missing (37), incomplete (7), or was too putrid to examine (5), in thirty-eight, the eventual charge on the indictment was concealment of pregnancy, and in ten the charges were dropped. None of the cases in which the body was missing completely resulted in a charge of murder.

Table 7.2 External post-mortem observations¹⁰⁶

External observation	Reason for observation	Number	Percentage
Sex of infant	I	522	98
Signs of putrefaction	TD	84	16
Signs of violence	CD	329	62
Umbilical cord untied	CD	290	55
Length	M	363	68
Weight	M	329	62
Nails	M	156	29
Hair	M	121	23
Organs of generation	M	57	11
Other external	M/LB/CD	34	6
Other measurements	M	26	5

Source: as Fig. 7.1.

CD=Cause of Death; LB=Live-birth; M=Maturity; I=Indictment; TD=Time of Death.

Table 7.3 Internal post-mortem observations¹⁰⁷

Observation	Reason for observation	Number	Percentage
Lungs	LB	474	89
Scalp/Brain	CD	292	55
Stomach	LB	267	50
Heart	CD	256	48
Large intestine	LB	237	45
Urinary bladder	LB	180	34
Liver	CD/M	138	26
Small intestine	LB	87	16
Foramen Ovale	LB	80	15
Ossification	M	72	14
Ductus arteriosus	LB	67	13
Kidneys	CD	58	11
Other internal	CD	61	11
Spleen	CD	37	7
Ductus venosus	LB	32	6
Gall bladder	CD	16	3

Source: as Fig. 7.1.

CD=Cause of Death; LB=Live Birth; M=Maturity.

¹⁰⁶ n=532.

¹⁰⁷ n=532.

Of course, the rate of decomposition depended on a number of factors, such as the time of year, or where the body had been concealed. Decomposition was delayed in winter, or if the body was placed in cold water. Eighty-four of the bodies examined by medical witnesses in this study showed varying degrees of putrefaction. In five cases, decomposition was so far advanced – both externally and internally – that the post-mortem examination could not be carried out. Unsurprisingly, none of these cases resulted in a murder charge, and it is likely that most of the cases in which decomposition was advanced did not even make it past the judicial investigation. This would certainly explain why there were so few bodies in this condition within the medical reports. The remaining seventy-nine reports mention varying degrees of external putrefaction not extensive enough to preclude an internal post-mortem examination and useful for determining when the infant was delivered.

The remaining external and internal observations recorded by medical witnesses were used to answer three crucial medico-legal questions pertaining to new-born child murder. first, whether the child was viable at birth; secondly, if the child was born alive and, thirdly, the cause of death. What medical jurists and the courts expected from the medical reports were, as Mark Jackson summarises, ‘evidence of prematurity and still-birth; the results of the lung test for live-birth; and evidence of violence.’¹⁰⁸

Signs of maturity

According to Taylor, ‘[o]ne of the first questions which a witness has to consider in a case of alleged child murder is that which relates to the age or probable degree of maturity which the deceased child may have attained in utero.’¹⁰⁹ It was generally accepted that a child became viable – i.e. it could sustain life independently from its mother – from about seven months.¹¹⁰ Writing in 1825, Theodore Romeyn Beck stated that ‘[i]f it can be proved that the child, which is the subject of investigation, has not attained this age...no charge of infanticide can or ought to be entertained’.¹¹¹ Later writers disagreed with this, arguing that a charge of child murder should be sustained regardless of the viability of a child, because the wilful destruction of a child, whatever its age, was

¹⁰⁸ Jackson, *New-Born Child Murder*, p.90.

¹⁰⁹ Taylor, *Principles and Practice*, p. 886.

¹¹⁰ *Ibid.*

¹¹¹ Beck, *Elements*, p. 245.

still murder. However, as Taylor conceded, ‘the chances of natural death, in all new-born children, are great in proportion to their immaturity’,¹¹² and so, in practice, if it could be demonstrated that a child had not reached seven months before delivery, then a natural cause of death – such as stillbirth or miscarriage – was more likely to be recorded by medical witnesses.

There were a number of ways in which the viability of a new-born infant could be established. A number of measurements could help ascertain this, the most common being the infant’s length and weight: at seven months, a child was held to be about twelve to thirteen inches long, weighing between two and four pounds; by nine months, an infant was expected to be about eighteen inches long and weighing between six and seven pounds.¹¹³ Other measurements that could indicate the level of maturity included the centrality of the umbilical cord. The closer to the exact centre of the infant, the closer to full term it was.

Other observations relating to intra-uterine maturity included the state of development of its hair and nails; the thickness of the skin and the presence on it of vernix – a ‘white unctuous matter’; the presence of meconium in the large intestines; the presence, or not, of the membrane pupillares – which kept the pupils of an infant prior to seven months closed; and, in the case of male infants, whether or not the testes had descended into the scrotum.¹¹⁴ Ossification – the hardening of the bones – throughout the skeleton, was also a sign of maturity. From the early 1870s, medical reports begin to mention an ‘osseous nodule’ or nucleus, the ‘centre of ossification of the lower epiphysis of the femur’, which appears at the end of the ninth month of gestation. John Glaister considered the presence or absence of this osseous nucleus as the most reliable measure of intra-uterine maturity.¹¹⁵

According to the medical reports in this study, the vast majority of infants were viable at birth. In fact, taking all of the various signs of maturity listed in Table 7.3 into account, of the 478 cases in which the intra-uterine age of the infant was recorded, in only three cases was the infant thought to have been less than seven months at the time of delivery. The mean length of the 360 infants where this was recorded was 20.2 inches – the shortest being 15 inches and the longest a massive 30

¹¹² Taylor, *Elements*, p. 415.

¹¹³ *Ibid.*, p. 416.

¹¹⁴ Taylor, *Principles and Practice*, pp. 888-90.

¹¹⁵ J. Glaister, *A Text-book of Medical Jurisprudence and Toxicology*, 4th ed. (Edinburgh, 1921), p. 483.

inches; and of those infants weighed (325), the mean was 7 pounds – the lightest being 3 pounds and the heaviest 11 pounds. The fact that the signs of maturity were not recorded in every case suggests that this was not considered by the courts as the most important medico-legal aspect of the case, but equally the fact that there were so few infants who could be seen as non-viable also suggests that these cases were unlikely to be prosecuted – at least not in the High Court.

Signs of Live Birth

Taylor considered proof of whether or not an infant was alive at the time of its birth a more important medico-legal question than that of viability.¹¹⁶ The two crucial signs of live-birth were the evidence of respiration and of the independent circulation of blood.¹¹⁷ The signs of an infant having respired were the arching of the chest; the lungs filling the chest and being pink, florid, and crepitous to the touch. Perhaps the most important test on this matter was the hydrostatic lung test, in which the lungs were placed in water, both whole and in pieces: the floating, or swimming, of the lungs indicated that the child had breathed.¹¹⁸

The lungs were observed by doctors in 474 (90 per cent) cases, and the hydrostatic lung test carried out in 95 per cent of these. In 416 cases the lungs floated, and in thirty-three cases they sank. Taylor stressed that the lungs need not be fully inflated for the child to have breathed, nor, for that matter, did the child even have to have breathed for it to have been living, for a time at least. Thus, even the lungs sinking could not be considered as conclusive proof that the child was dead or stillborn. Nevertheless, he conceded:

Although physiologically a child may live for a certain period after its birth without breathing, – and legally its destruction during this period would amount to murder, yet there are at present no satisfactory medical data to enable a witness to express a positive opinion on this point.¹¹⁹

Another indication of live-birth was the evidence that the blood of a new-born infant had been circulating independently of its mother prior to death. The main signs of independent circulation

¹¹⁶ Taylor, *Elements*, p. 415.

¹¹⁷ Arnot, 'Gender in Focus', p. 115.

¹¹⁸ Beck, *Elements*, p. 153-60; Taylor, *Principles and Practice*, p. 903-12. For a good discussion of the hydrostatic lung test, see Jackson, *New-Born Child Murder*, pp. 93-100.

¹¹⁹ Taylor, *Principles and Practice*, p. 893.

were based on the state of the three foetal vessels: the ductus arteriosus – which allows blood from the umbilical cord to bypass the foetal lungs; the ductus venosus – which shunts blood from the umbilical to the brain, bypassing the liver; and the foramen ovale – which allows blood to enter the left atrium of the heart to the right prior to independent circulation. ‘In the foetus’, wrote Beck, these passages ‘will be found pervious, and containing blood. In the child which has respired, on the contrary...[they] will be found collapsed and empty of blood’.¹²⁰ However, whilst the state of the foetal vessels furnished proof of whether independent circulation had been established in the infant, there were differences between individuals as to exactly when these changes occurred, and as such these observations were not considered conclusive, and did not feature significantly within the medical reports. Indeed, the most important piece of medico-legal evidence was the state of the lungs – which was also true in the eighteenth century.¹²¹

Signs of violence

It was crucial, medical jurists stressed, that an infant was examined meticulously for any cuts, bruises, lesions and fractures – any signs of violence at all that might help identify the cause of death. Tables 7.4 and 7.5 show the various marks and signs of violence recorded in medical reports between 1812 and 1930. Altogether there are 586 signs of violence recorded in the medical reports.

Table 7.4 Marks and signs of violence recorded in medical reports

Type of violence	Part of the body					Total
	Head	Face/mouth	Neck / throat	Rest of body	Umbilical cord	
Cut/stab	7	10	17	10	48 ^a	92
Fracture	66	10	-	6	-	82
Asphyxia	-	106	161	4	-	271
Marks / scratch / bruise	36	39	-	35	-	110
Other	-	10	-	11	-	21
Burn	-	-	-	4	-	4
Accidental / natural	3	-	-	3	-	6
Total	112	175	178	73	48	586

Source: as Fig. 7.1.

^a In some of these cases the umbilical was torn rather than cut.

¹²⁰ Beck, *Elements*, pp. 152-3.

¹²¹ Jackson, *New-Born Child Murder*, p. 93.

Table 7.5 Type of violence recorded in medical reports

Signs of violence					
Intentional violence	No.	Ambiguous/inconclusive	No.	Non life-threatening	No.
Ligature around neck	66	Signs of asphyxia	242	Marks/scratches - body	27
Cut or stabbed	44	Skull fractured	66	Fracture/bruising - body	14
Substance in mouth	29	Bruising - head	9	Bruising - face	9
Other violence	13	Burnt	4	Other violence	9
		Accidental / natural	6		
		Umbilical untied	48		
Total	152	Total	375	Total	59
Percentage	26	Percentage	64	Percentage	10

Source: as Fig. 7.1.

Three important conclusions can be drawn from these tables: first, the most common marks of violence (accounting for 46 per cent of all marks of violence) related to signs of asphyxiation: strangulation, suffocation, smothering and drowning. Indeed, the majority of the marks of violence (79 per cent) were found on the head or neck of the victims. Secondly, most of the marks of violence – including most of those related to asphyxiation – could be construed as having a more innocent explanation. As Chapter Eight will discuss, these last two findings would prove crucial in the courtroom, where any doubts regarding the cause of death would make it difficult for prosecutors to secure a conviction for murder. Finally, only 26 per cent of the marks of violence can be attributed to intentional murderous violence or deliberately excessive force. Such violence included cut throats, stab wounds, strangulation with a ligature and suffocation by stuffing the infant's mouth with a substance, such as earth, leaves or cloth. These conclusions are consistent with the majority of other studies in finding that asphyxia was the most frequent cause of death.¹²² Indeed, in 1968, Samuel X. Radbill claimed that [t]he methods used in infanticide have not changed much throughout history. Blood is rarely shed.'¹²³

One study that does not find asphyxia to be the most common cause of death is Anne-Marie Kilday's study of south-west Scotland between 1750 and 1815, where she finds that in 'a highly significant 63 per cent of the indictments brought to trial blood was shed'.¹²⁴ Interestingly, 37 per cent of the cases in this study from the same regions as those investigated by Kilday involve

¹²² Wrightson, 'Infanticide', p. 15; Malcolmson, 'Infanticide', p. 195.

¹²³ S. X. Radbill, 'A History of Child Abuse and Infanticide', in R. E. Helfer and C. H. Kempe (eds), *The Battered Child* (Chicago, 1968), p. 13. Quoted in Kilday, *Women and Violent Crime*, p. 67.

¹²⁴ Kilday, *Women and Violent Crime*, p. 67.

excessive force or intentional violence, ten per cent higher than the figure for the whole of Scotland (as shown in table 7.5). This lends some weight to her theory of a ‘regional dimension to the nature of Scottish infanticide’, which certainly merits further research.¹²⁵

Kilday, commenting on the predominance of excessive and bloody violence inflicted by the women in her study, argues that ‘their actions shatter traditional conceptions of infanticidal women as pitiable, desperate “victims” who killed with a conscience.’¹²⁶ It is certainly tempting to conclude that the relatively small number of cases with signs of intentional or excessive force against the new-born infants in this present study gives renewed credence to the ‘traditional’ view. Yet an alternative perspective can also be urged, in which the use of excessive violence in which blood was shed is seen as an act of desperation, often by women not fully in control of their actions. Excessive violence involving weapons or force may well have been the result of panic when the infant began to cry, or the result of ‘exceptional mental conditions’,¹²⁷ such as insensibility brought about by the pain of childbirth.¹²⁸ Moreover, in most of the cases in which excessive violence was used – if the infant’s throat was cut, or a ligature was tied around its neck, or its skull fractured – there was little attempt to dispose of the body properly. This does not sit well with the actions of a cold, calculating killer. Indeed, it can be argued that deliberately murdering a new-born infant without leaving any evidence of violence in the form of tell-tale marks is a far more violent act. Indeed, as one doctor deposed, in 1877: ‘I may state that a newly born child can be suffocated very easily.’¹²⁹ Likewise, in 1924, the experienced police surgeon, Henry Duncan Littlejohn, when asked about the lack of any signs of violence on a child suspected of being suffocated, wrote:

The hand placed over the mouth and nostrils, for a minute, or slight compression of the neck by the hand is quite sufficient to cause suffocation in an infant and leaves no trace of the means employed. There can be no doubt that many cases of infanticide are due to such action but have to be departed from by the Crown owing to the absence of medical evidence as to the manner by which suffocation was produced.¹³⁰

¹²⁵ Ibid., p. 67-8, fn 37.

¹²⁶ Ibid., p. 79.

¹²⁷ Gowing, ‘Secret Births’, p. 88.

¹²⁸ This was a common defence amongst new-born child murder suspects in Scotland between 1812-1930, and is discussed in Chapter Eight.

¹²⁹ NAS, AD14/77/46, Isabella Martin, Deposition of Dr George Hunter.

¹³⁰ NAS, AD15/24/66, Sarah Halbert.

Evidence of Labour and childbirth

Most of the precognitions do not go into any detail about suspects' labour or their experience of childbirth. This may well be because in most cases women were either not asked to provide these details or, if they were, this information was not copied into the suspect's declaration if such details were not seen as being material to the case. Laura Gowing suggests that, in early modern England at least, because of the 'legal and social weight placed on the moment of birth...[w]omen recounting secret births were compelled to erase the experience of labour and to retell it in other ways...a story of a short, painless or unexpected labour was the safest one for a woman accused of killing her child, as it could explain why she had not called for help'.¹³¹ The Scottish evidence between 1812 and 1930 uncovers some quick and relatively painless deliveries. For example, Agnes Smith's labour was fifteen minutes, and the birth was, as she described it, 'very, very easy'.¹³² Whether this was true or not, there were undoubtedly some quick deliveries, as the precognition of a witness to the labour of one suspect attests:

The Dec[arent] was sitting at the kitchen fire, and the prisoner was lying in bed, the Dec heard the prisoner moaning but very low, and observed that she was very restless. That in the course of two or three minutes afterwards, the Dec heard the cry of an infant.¹³³

Laura Gowing also discusses an 'established knowledge' that poor women, especially the mothers of bastards, bore children quickly and easily, and thus 'stories of illegitimate births and the murder of new-borns created a culture in which such labours were meant to be shamefully easy'.¹³⁴ This was certainly not a culture confined to seventeenth-century England. For example, in 1858, thirty-year-old doctor James Cullen told investigators: 'From my experience in midwifery I have observed that illegitimate children are born with easier labour than others'. The cause of this, he continued,

appears to me to be the feeling of shame acting upon the nervous system joined with a desire for concealment [that] produces relaxation of the muscles and hastens labour to such an extent that in very many cases the child is borne without the usual amount of suffering and consequently very little noise is made by the mother.¹³⁵

¹³¹ Gowing, 'Secret Births', pp. 98-9.

¹³² NAS, AD14/47/181, Agnes Smith.

¹³³ NAS, AD14/42/224, Margaret Buchanan or Reid, Deposition of Marion Lindsay.

¹³⁴ Gowing, 'Secret Births', p. 99.

¹³⁵ NAS, AD14/58/368, Mary Bulloch and Mary Bulloch or Bell.

Interestingly, the prosecuting advocate crossed out Cullen's deposition, and he was not listed as a Crown witness. Either his point of view was not shared, or it was considered immaterial to the case.

Whilst it is true that, in claiming that labour and childbirth was quick and unexpected, a suspect could bolster her defence that she had been unable to call for help, the evidence of a long and protracted labour could also enhance a defence based on the infant dying naturally during the birth. Evidence of a difficult delivery was recorded in the medical reports and included signs from the body of the suspect, such as a torn perineum or fourchette, and from the victim, such as the presence of the caput succedum (a gathering of blood underneath the scalp, or an elongation of the child's head). For example, in 1833, the doctors examining Catherine Fotheringham's dead infant discovered that the upper bones of its head were 'relaxed', and concluded in their report that this was the result of severe labour and that death was the result of 'pressure to the brain'.¹³⁶ In some cases, a suspect's testimony backed up such observations. For example, in 1842, Ann Bruce told the procurator fiscal that, for her, childbirth was natural, 'the head having come first, but it was a rather slow delivery and she was in great pain'.¹³⁷

The development of medical jurisprudence, 1812-1930

In the late 1830s, the quality of medical testimony in Scotland was criticised as being inadequate. Sub-standard medical reports – not just in cases of new-born child murder – were exposed in court, to the frustration of prosecutors and the embarrassment of the medical fraternity. As discussed in Chapter One, there was a concerted effort in the late 1830s to improve the quality of medical evidence in court with, amongst other things, the appointment of professors of medical jurisprudence as police surgeons, the publication of *Suggestions for the Medico-Legal Examination of Dead Bodies*, in 1839,¹³⁸ the establishment of compulsory courses of medical jurisprudence in Scottish universities, and the medico-legal training of advocates. Indeed, within the precognitions, the first medical report to be openly criticised by Crown Counsel was in 1839, the same year as the publication of *Suggestions*.¹³⁹

¹³⁶ NAS, AD14/33/82, Catherine Fotheringham.

¹³⁷ NAS, AD14/42/5, Ann Bruce, Procurator fiscal's note.

¹³⁸ White, 'Training Medical Policemen', pp. 154-5.

¹³⁹ NAS, AD14/39/47, Margaret Laurence.

The study of the medical reports in cases of NBCM&CP between 1812 and 1930 provides an excellent opportunity to explore the development of medical jurisprudence in Scotland – at least in respect to the ‘crime’ of new-born child murder. For example, one crude way in which the medical reports can be used to measure the development of the medico-legal training of the medical men involved in examining suspects and victims is simply by counting the number of observations made in each of the reports. Figure 7.3 shows that these increased throughout the period. Between 1812 and 1839, medical reports average 2.5 external, and 2.5 internal, observations. Indeed, on the whole reports were very brief. The following report from 1812 is one example:

That the child had apparently been brought forth at the full time. That the frontal occipital bones were both fractured, or rather stove in. But that from the circumstance of the lungs sinking in water, there is strong reason to suspect that the child had not been born alive.¹⁴⁰

From then on, things improve: between 1840 and 1869, reports averaged 4 external and 5.5 internal observations, and between 1870 and 1930 the numbers are 5 external and 7.5 internal observations.

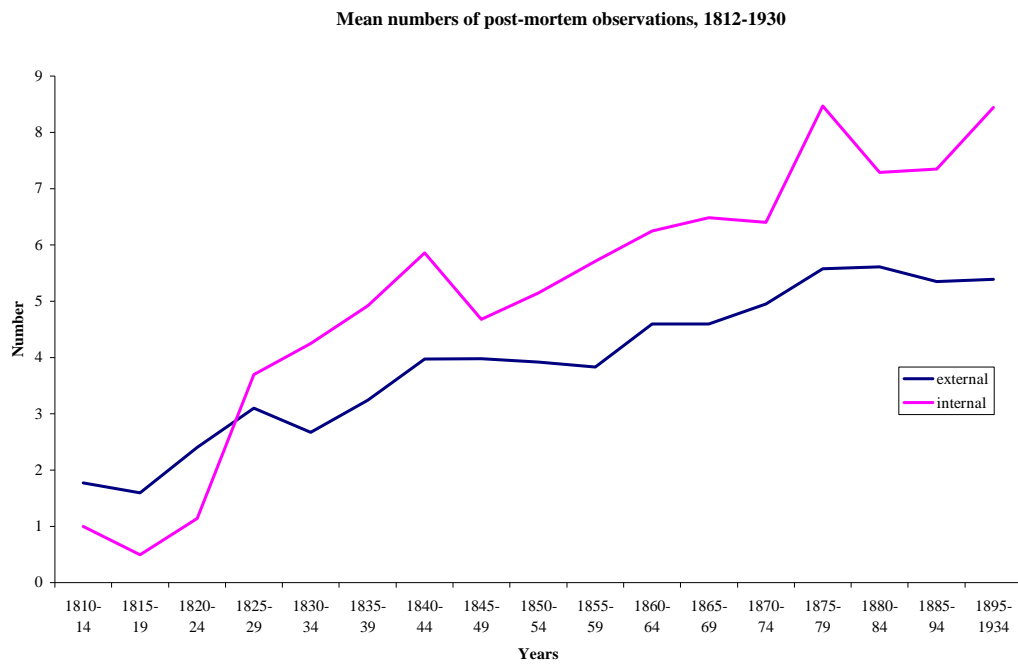


Figure 7.3 Mean post-mortem observations recorded in medical reports. Source: as Fig. 7.1.

¹⁴⁰ NAS, AD14/12/34, Sarah Bridgeford.

This does not necessarily imply that medical witnesses were not rigorous in their examinations – indeed, their notes may well have been extremely detailed. For example, in discussing a post-mortem examination of a new-born infant in 1826, doctors David Scott and Charles Grace stated that ‘we drew up our report accordingly, divested, of course, of all reasoning and technical phraseology, and, in short, conceived in such simple common language as to be intelligible to all.’¹⁴¹ However, the fact that the pamphlet, *Suggestions for the Medico-Legal Examination of Dead Bodies*, issued to all of Scotland’s procurators fiscal in 1839, contains specific advice to doctors to make detailed notes, signed and dated, and lodged with the law-authorities,¹⁴² suggests that such notes were not being made by the majority of medical practitioners.

Another sign of the improvement in the standard of medical reports across the period is the percentage of post-mortem reports that included a cause of death (Fig. 7.4), which increased steadily for most of the period between. As Chapter Eight will demonstrate, the omission of a cause of death in medical reports was a common criticism made by prosecutors, because not only did it make the framing of the indictment more difficult, but any uncertainty among doctors surrounding the cause of death would be seized upon by defence advocates in the courtroom, and could potentially undermine a case.

¹⁴¹ *Edinburgh Medical and Surgical Journal*, 26 (1826), p. 70.

¹⁴² Traill, et al, *Suggestions*, p. 9.

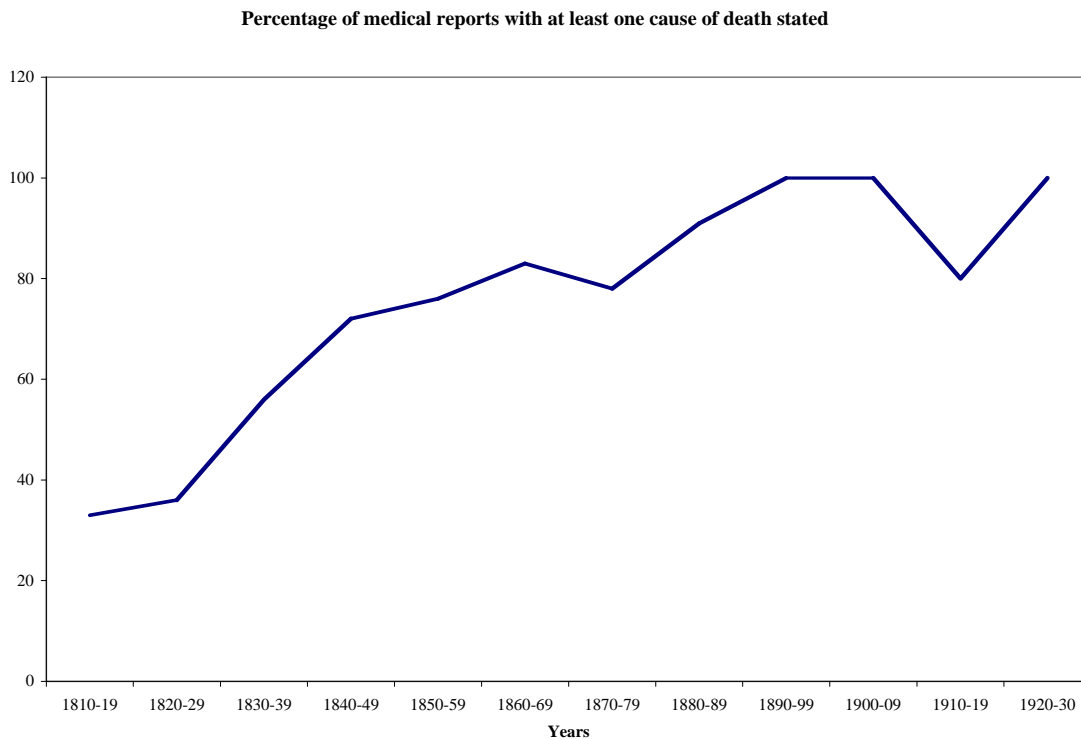


Fig. 7.4 Percentage of medical reports stating at least one cause of death.
Source: as Fig. 7.1.

Another improvement in the post-mortem included the location of the dissection. Post-mortems were subject to criticism for not being conducted in a room close to all the necessary equipment, with access to water, with enough light to view the body, and free from the distractions of people unconnected with the case.¹⁴³ In the first half of the nineteenth century, many of the post-mortems in this study were performed at, or near to, the place where the body was discovered, such as in houses, outbuildings, churches and hotels. For example, in Ceres, Fife, in 1826, rather than dissect the dead new-born infant of Margaret Paterson at the house in which the suspect lived, the doctors involved ‘caused it to be removed to a neighbouring house, in order that our inspection might go on uninterrupted, and also that the feelings of the mother might not be harassed by witnessing the dissection of her child’.¹⁴⁴

¹⁴³ Traill, et al, *Suggestions*, pp. 7-10.

¹⁴⁴ *Edinburgh Medical and Surgical Journal*, 26 (1826), p. 64.

Similarly, in 1859, one examination took place on a farmhouse kitchen table with the rest of the household looking on,¹⁴⁵ and, in the same year, Jane Jamieson's new-born child was dissected by the side of the dunghill where it was discovered.¹⁴⁶ The inspection of a dead infant took place in a suspect's house in 1879,¹⁴⁷ and a farmhouse was the location for the post-mortem of Elizabeth Cam Birrel Page's dead infant, as late as 1929.¹⁴⁸ However, from the 1850s onwards post-mortems were usually being performed in police offices, county buildings, infirmaries, or other spaces specifically designed for such procedures.

Another sign of, and indeed reason for, the improvement in the medical reports and the quality of medico-legal testimony in court was the experience of the medical practitioners performing post mortems. The names of 69 per cent of the doctors involved in the medical examinations analysed in this study had not appeared before, suggesting that most of the medical practitioners involved in the examination of suspects and victims were inexperienced. For example, in 1818, Charles Smith told investigators that the post mortem examination of Janet Hannah's dead new-born was 'his first inspection of a new-born child'.¹⁴⁹ Likewise, in 1873, physician James Clark stated that 'I had not examined the body of so young a child before'.¹⁵⁰

However, as Figures 7.5 and 7.6 demonstrate, from 1812 to the mid-1880s not only does the percentage of doctors for whom the examination was their first decrease, but the number of examinations carried out by the most experienced of the medical practitioners increases. Indeed, a number of practitioners were extremely experienced: Henry Duncan Littlejohn, police surgeon of Edinburgh, is recorded on twenty-four occasions between 1855 and 1893; Charles Grace performed fifteen post-mortem examinations in Fife between 1826 and 1856, and Francis Ogston – police surgeon of Aberdeenshire – also carried out fifteen post-mortems in a forty-three year period, beginning in 1831. A further forty or so men carried out between six and fourteen post-mortems each, and some of the men who appear less frequently were also very experienced in dissection,

¹⁴⁵ NAS, AD14/59/132, Margaret Murdoch.

¹⁴⁶ NAS, AD14/59/139, Jane Jamieson.

¹⁴⁷ NAS, AD14/79/103, Elizabeth McClure.

¹⁴⁸ NAS, AD15/29/77, Elizabeth Cam Birrel Page.

¹⁴⁹ NAS, AD14/18/18/62, Janet Hannah.

¹⁵⁰ NAS, AD14/73/59, Elizabeth McIlwraith.

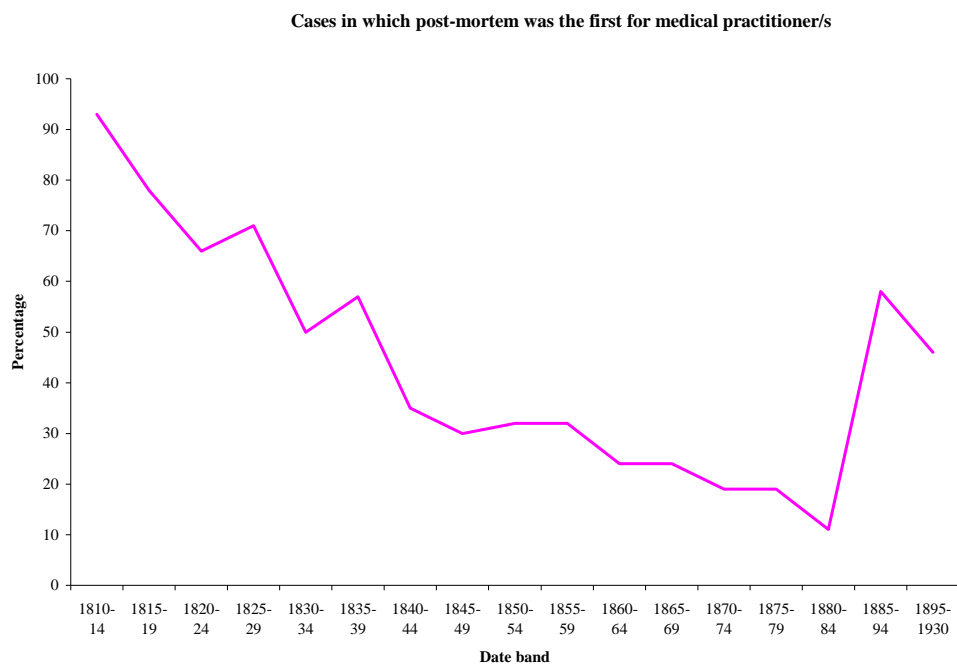


Figure 7.5 Cases in which the post mortem was the first for the medical practitioner/s.
Source: as Fig. 7.1.

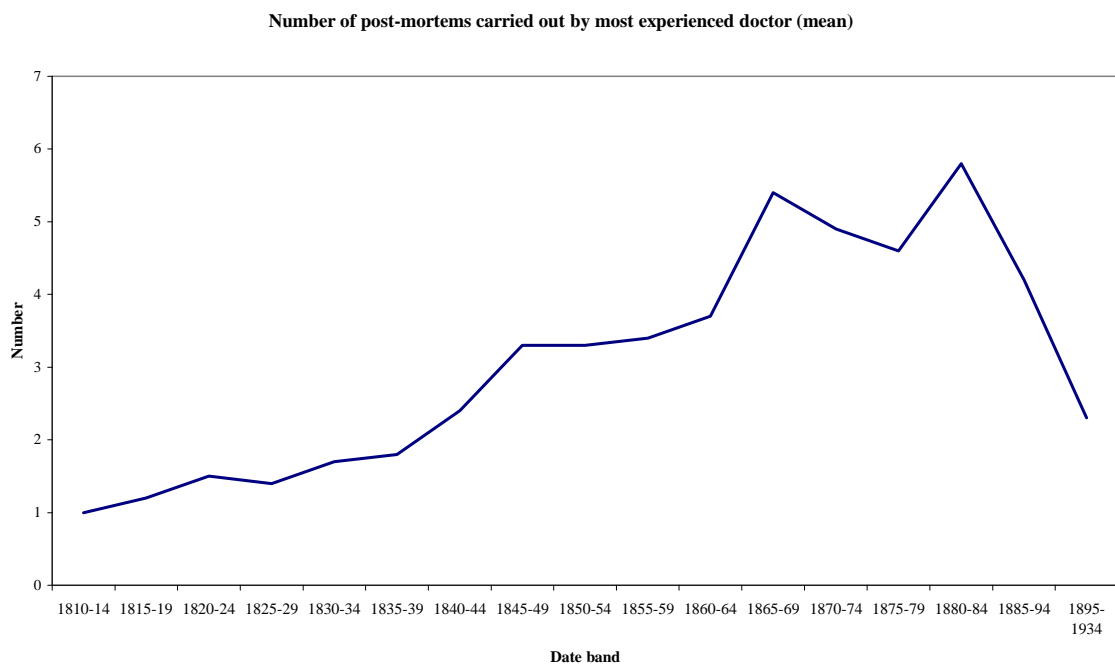


Figure 7.6 Number of post-mortems carried out by most experienced doctor.
Source: as Fig. 7.1.

including John Glaister and Thomas Clouston. Not only were all of these men becoming more experienced in examining the bodies of new-born infants, but their knowledge was also being

passed on to the young, inexperienced men who were assisting them.

From the mid-1880s, however, the number of experienced medical practitioners performing post-mortems of new-borns decreases, whilst the number of post-mortems being carried out by doctors for the first time increases. Moreover, these inexperienced doctors were also fairly young. The reason for this change is not entirely clear, but there are three possible explanations. First, the prevalence of inexperienced doctors from this time may be a reflection of the fees being paid for such work. For example, in 1920, Harvey Littlejohn complained about the fee he had received for four hours work, but his request for more money was refused.¹⁵¹ It is possible that experienced doctors stopped working in this field because the remuneration was deemed insufficient. Secondly, by the 1880s, the standard of medico-legal training – both for doctors and advocates – had improved to such an extent that the quality of medical testimony in court was uniformly adequate, regardless of the experience of the medical practitioner. Thirdly, as the following chapter will demonstrate, it was extremely difficult for medical testimony to secure a successful new-born child murder conviction. Arguably, by the 1880s this fact made the need for ‘expert’ medical testimony in cases of suspected NBCM&CP unnecessary, and it may well be that young, inexperienced medics were encouraged to conduct post-mortems in cases of new-born child murder as part of their medical training.

Whilst the quality of medical reports and the quality of medico-legal training both improved between 1812 and 1930, forensic technology changed very little over the period. As Crowther and White state, ‘the success of forensic medical men depended on careful post-mortem examinations, close observation and commonsense rather than technical developments’.¹⁵² This was certainly true of the post-mortem examinations of new-born infants: indeed, the procedures and tests discussed by John Glaister in 1921 were virtually identical to those discussed by Beck in 1825.¹⁵³ There were only two forensic developments over the period that related to new-born child murder: first, in the 1870s, the discovery of the osseous nucleus in the thigh bone, the presence of which was an accurate proof of the maturity of the child; and secondly, the early-twentieth-century test that could distinguish human blood from that of other mammals.

¹⁵¹ NAS, AD15/20/25, Marion Stone.

¹⁵² Crowther and White, *On Soul and Conscience*, p. 10.

¹⁵³ Beck, *Elements of Medical Jurisprudence*; Glaister, *A Text-book of Medical Jurisprudence*.

Conclusion

This chapter has examined the role of medical witnesses both before and during the official investigation. It has shown that, prior to the investigation, if medical practitioners were called at all it was usually to examine women for the signs of recent childbirth. Furthermore, the mix of male and female medical practitioners at this stage was roughly equal. It has also argued that, whilst in most cases medical practitioners alerted the authorities as soon as they were aware that a 'crime' may have been committed, this was not always the case. Indeed, the cases in which a doctor, midwife or other medical practitioner supplied abortifacients, or attempted to conceal the circumstances of a suspicious infant death from the authorities suggest that the medical profession as a whole cannot be viewed simply as another branch of authority, and that in some cases their involvement in cases of suspected NBCM&CP was complex.

This chapter has also explored the medical examination of suspects, and the post-mortem examination of the dead infants, carried out by medical practitioners during the period. It has looked at the various tests involved, as well as the standard of medical reports, and argued that the quality of medical testimony improved between 1812 and 1930, mirroring the development of medical jurisprudence in Scotland over the same period. However, whilst the quality of medical reports improved, the technology did not. Indeed, nineteenth-century medical textbooks conceded that most of the various observations and tests relating to the suspicious deaths of new-born children were subject to the same critique as they had been in the eighteenth century. Crucially, these doubts were raised in court by defence advocates, often with the help of another medical witness, and will be discussed in the next chapter.

Chapter Eight: The trial

Introduction

This chapter focuses on the final stage of the judicial process – the trial. Here, the prosecution of those men and women accused of NBCM&CP, based on the charges and evidence as described in the libel, or indictment, was played out in the courtroom. There is one major problem in accessing Scottish NBCM&CP trials: the transcripts for most of the Scottish High Court trials – including all of the trials analysed in this study – no longer exist.¹ The details of trials were occasionally printed in full in the national newspapers, but these were generally high-profile cases or causes célèbres: most of the cases analysed in this study merited only a few lines in these newspapers.² So whilst a lot of the quantitative data can be retrieved from the indictments and trial minutes, what was said and done during the trials themselves is largely obscured.

The lack of trial transcripts is not, however, as great an impediment as might at first appear, for three reasons. First, there are trial reports in the *Justiciary Reports* – cases in which specific legal and medico-legal issues arose during the trial that required consideration. Secondly, the precognitions themselves can act as a proxy of the trial: they contain almost all of the evidence that would eventually form the basis of the indictment and would be debated in court. Thirdly, many of the notes passed between Crown Counsel and procurators fiscal, in which certain aspects of the evidence were discussed, were clearly in anticipation of the challenges this evidence was likely to face in the courtroom. Furthermore, as this chapter will demonstrate, in a number of cases, the outcome of the trial had already been decided by mutual consent between prosecutors and the agents of the accused, resulting in a guilty plea that precluded the need for a jury trial, and these decisions were based largely on the evidence contained within the

¹ Regrettably, the majority of trial transcripts were destroyed by the National Archives of Scotland.

² This study has not looked in depth at local newspapers, which may well have sent reporters to cover new-born child murder trials of local interest in detail. There is no evidence that *The Scotsman* covered any new-born child murder trials in any detail.

precognitions. The trial minutes and the precognitions may therefore be judged to provide a reliable guide to the content and outcome of trials.

The chapter will look first at the various witnesses and the testimony produced in trials of NBCM&CP, with particular emphasis on the suspects' testimony and the issues surrounding certain aspects of the medical evidence. The trial data will then be examined, including the charges, verdicts and sentences. Finally, the chapter will explore some of the reasons for the patterns observed and the environment of sympathy – both judicial and popular – within which many of these trials seemed to take place.

Witnesses and evidence in court

The evidence in cases of NBCM&CP can be placed into four groups. First, there was the testimony of the defendants, through suspects' declarations; secondly, the testimony of the witnesses; thirdly, the physical evidence gathered during the investigation; and, lastly, the medical evidence: medical reports, the cross-examination of the medical practitioners who produced the reports, and the testimony of 'expert' medical witnesses.

Suspects' declarations

Until 1898, the declaration emitted by suspects under oath was their only testimony – they were not allowed to speak for themselves at the trial. Of the 618 suspects in the 602 cases of suspected NBCM&CP analysed in this study, 603 (98 per cent) emitted a declaration under oath. The declarations made by suspects varied enormously in length, style and content. Most included basic biographical information, as well as information relating to the accusation levelled against them, and these latter statements have been placed into a number of categories, outlined in Fig. 8.1, which demonstrates that, for most of the period between 1812 and 1930, suspects denied murdering their new-borns.

In fact, of the 603 suspects who made statements, 462 (77 per cent) made either one or more in which they claimed they were not guilty of murder.

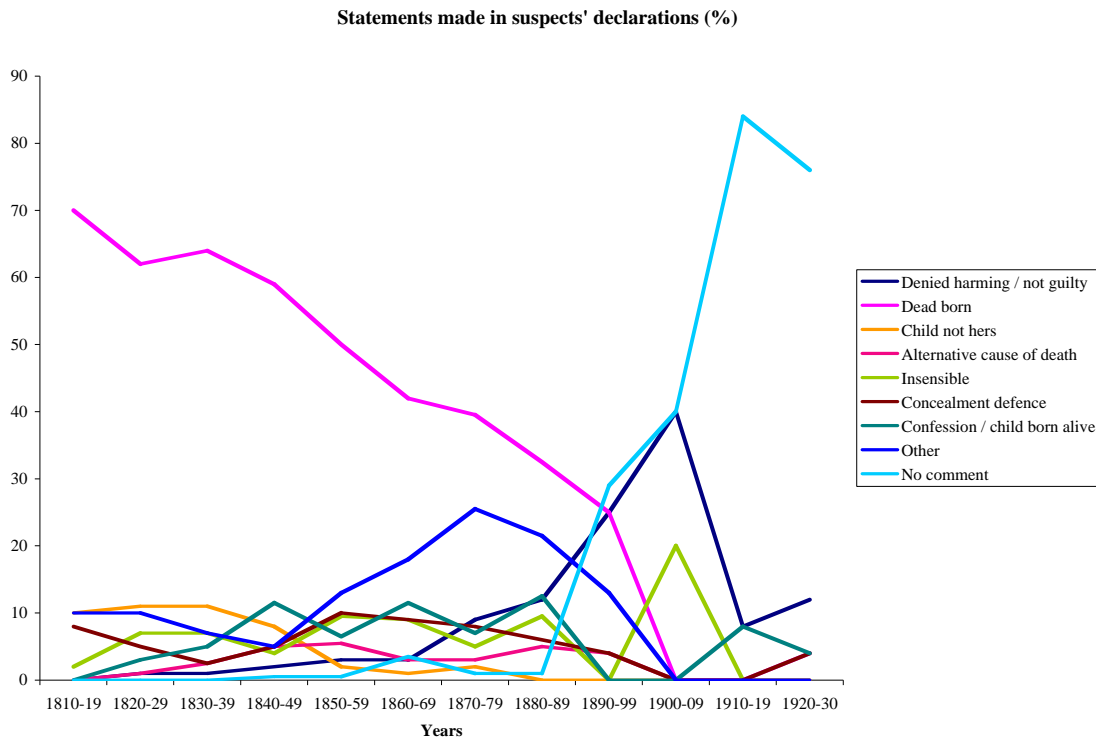


Fig. 8.1 Percentage of statements in the declarations of NBCM&CP suspects by decade.
Source: NAS, AD14/15, Criminal precognitions.

The most common statement of denial made by suspects was that the child had been born dead. For example, in 1814, Katharine Ramsay told the sheriff-substitute that her child had been stillborn and that ‘some days before it had died’ after she had fallen.³ Similarly, in 1837, Elizabeth Brown declared that she was ‘delivered unexpectedly’ after being ‘hurt by a cow’ and that the child had been born ‘quite dead’.⁴ Some suspects stated that they had not felt the child moving within the womb for a number of days, or weeks. In

³ NAS, AD14/14/50, Katharine Ramsay.

⁴ NAS, AD14/37/404, Elizabeth Brown.

1842, for example, Ann Bruce told her interrogators that she had felt ‘no motion for two days before’ her delivery, and that her child was ‘dead when she tore it from her’.⁵

Other women claimed that their children had not come to their full time. This included Catharine Mackay who, in 1832, told the sheriff-substitute that she had been delivered of a twelve-week-old ‘miscarriage’,⁶ and Agnes Hunter who, in 1857, stated that her child was a month premature and ‘had been dead for some time before’ its delivery.⁷ For many women, their delivery had been unexpected. For instance, in 1821, Helen Brebner or Bremner, deposed that her pregnancy still had seven weeks to go when she was ‘overtaken with labour’,⁸ and, in 1887, Annie Sheen simply deposed that her child came ‘early’ and ‘suddenly’.⁹ An unexpected labour, some women also claimed, meant that they were unable to call for assistance, and as a result the child had died through the want of attention, such as in the case of Ann Ingram who, in 1872, claimed that the cause of her infant’s death was the navel string being wound around its neck.¹⁰

The above narratives of stillbirth and miscarriage are similar to those made by new-born child murder suspects in eighteenth-century England, where Mark Jackson finds that ‘a number of women provided their accusers and the courts with a chronological narrative of pregnancy which made explicit the premature and accidental nature of the loss of that pregnancy.’¹¹ The similarities in the stories told by new-born child murder suspects across time suggest two things. First, that these women were telling the truth, that their children were stillborn, and for the reasons given. Indeed, as Mark Jackson observes, there was a recognised association between the injuries sustained by heavy lifting, or a fall, and miscarriages and spontaneous abortions in obstetrical texts.¹² Secondly, because of the association between mechanical injury and miscarriage, the ‘stillbirth’ defence was the most believable and difficult to disprove medically, particularly if there were no

⁵ NAS, AD14/42/5, Ann Bruce.

⁶ NAS, AD14/32/116, Catharine Mackay.

⁷ NAS, AD14/57/143, Agnes Hunter.

⁸ NAS, AD14/21/95, Helen Brebner or Bremner.

⁹ NAS, AD14/87/116, Annie Sheen.

¹⁰ NAS, AD14/72/310, Ann Ingram.

¹¹ Jackson, ‘Something More Than Blood’, p. 202.

¹² *Ibid.*, p.203.

visible signs of violence on the infant's body. It was in the late 1880s, when suspects were entitled to legal advice prior to their interrogation, that this defence strategy declined in favour of simple statements of denial, such as 'I put no hands on the child',¹³ or 'I am not guilty of murder'.¹⁴

There were a number of other statements of denial made by suspects. Some claimed that they had never had a child, or that the dead infant that had been discovered was not theirs. Others posited a number of alternative explanations for the deaths of their infants. In 1820, for example, Margaret Marshall deposed that her child was 'killed by the cold',¹⁵ and Margaret Grigor and Mary MacArthur, in 1836 and 1838 respectively, both stated that their infants were accidentally smothered in bedclothes.¹⁶ Similarly, in 1864, Christian Craig claimed that after it was born, her infant 'fell into the privy',¹⁷ and, in 1872, Jane Inglis stated that her infant had died after she had given birth in the scullery and it 'fell on to the stone floor'.¹⁸

Twenty-seven suspects confessed to murdering their new-born infants: twelve by strangling or smothering, including Janet Kennedy or Hume who, in 1852, deposed that she had strangled her infant with a stocking, because 'I was afraid it would come to life again',¹⁹ and Mary McCue, who, in 1863, told her interrogators that she 'killed it by compressing its mouth with my hands',²⁰ adding that 'It was just [that] the Devil was tempting me at the time that I did this and I can give no other explanation of my conduct'.

Seven women stated that they had exposed their infants after delivery.²¹ In 1827, for example, Grace Pryce deposed that her child 'was alive when born' and that she 'left it

¹³ NAS, AD14/88/139, Margaret Guthrie or Gentry.

¹⁴ NAS, AD14/91/93, Agnes Whannell.

¹⁵ NAS, AD14/20/142, Margaret Marshall.

¹⁶ NAS, AD14/36/101, Margaret Grigor; AD14/38/4, Mary MacArthur.

¹⁷ NAS, AD14/62/139, Christina Craig.

¹⁸ NAS, AD14/72/301, Jane Inglis.

¹⁹ NAS, AD14/52/50, Janet Kennedy or Hume.

²⁰ NAS, AD14/63/83, Mary McCue.

²¹ Anne-Marie Kilday has expressed surprise that relatively small numbers of suspects exposed their infants. One possible explanation is that in most cases exposed infants were discovered alive, and survived.

outside John Fraser's house',²² and, in 1849, Janet Kennedy stated that her child was 'living when born', that she rolled it in an apron and left it alive and when she returned it was dead.²³ Similarly, in a detailed statement in 1877, Margaret Crichton explained to her interrogators the moments immediately after the delivery of her child:

I did not know what to do. I covered the child with my dress – I could not move on account of something which came from me. I was lying on my face at the time – when the afterbirth came away from me I put it in a hole at the foot of the tree near where I was lying – I had only my brown dress and a single petticoat on – I had nothing to cover the body with – I then went to get a drink out of the burn. I fell on my knees in the ditch and wiped my knees with grass – I carried the baby up to the gate in my dress – It was still moaning – I crossed the gate and laid it down – I pulled two handfuls of grass and put the grass on it. I stood at the gate to hear if it was still moaning but as it ceased I came away to my mother's house...I can't say its sex. I tore the cord – when I had the child it gave a scream and I became unconscious. When I came to myself I tore the cord and I saw the child move its arms. I opened its mouth and rather compressed its cheeks with my hands – it moaned and that is all I know.²⁴

Suspects also mention a number of other methods of killing infants. In 1860, for instance, Ann McQue admitted to throwing her new-born infant from a tenement building,²⁵ while in 1884, Elizabeth Reddie confessed to murdering her infant, stating that 'I put my foot on its throat and killed it',²⁶ and, in 1886, Agnes Cowan told her interrogators, that 'after the child was born I drowned it in a pail of water'.²⁷ A few suspects confessed to murder without specifying the method, including Helen Lennox who, in 1852, deposed that she had been 'bribed by the putative father to destroy the child'.²⁸

A further sixty-one (10 percent) suspects made more ambiguous statements that were neither outright confessions nor denials, but that generally included an admission that the infant had been born alive. In 1824, for example, Martha Milree or Milroy deposed that her child 'gave a little cry' and 'lived two or three minutes' and that she had attempted to

²² NAS, AD14/27/224, Grace Pryce.

²³ NAS, AD14/49/311, Janet Kennedy.

²⁴ NAS, AD14/77/4, Margaret Crichton.

²⁵ NAS, AD14/60/26, Ann McQue.

²⁶ NAS, AD14/84/280, Elizabeth Reddie.

²⁷ NAS, AD14/86/19, Agnes Cowan.

²⁸ NAS, AD14/52/198, Helen Lennox.

call for help,²⁹ and, in 1844, Mary Ann Smith or Blackstock stated that her child ‘fell from her when it was born’ and ‘gave a cry’, but that there was no sign of life after it had fallen on the floor.³⁰ Similarly, in 1867, Grace Ferguson told her interrogators that she did not know if her child was fully grown, or if it was alive. Moreover, though admitting tying part of a skirt around her child, she did not know if it was around the neck of the child or not, adding: ‘I was in a great hassle. I cannot tell how I tied it’.³¹

The remaining statements in the suspects’ declarations include both admissions and denials of concealment of pregnancy, statements regarding the suspects’ mental and physical state at the time of, or just after, the birth,³² and ‘other’ statements. This last category reflects the increasing variety of questions being asked by interrogators from the 1840s. In ninety-five (44 per cent) of the 218 statements in this category, suspects did not acknowledge their infant, either claiming to be unsure if it was dead or alive when it was born, or being unable to say whether the child was male or female. Such statements could be evidence of psychological disassociation, a refusal by suspects to believe in the reality of their condition, or that the child was real,³³ Equally, these women simply may not have been able to think of a defence strategy at the time or, of course, they could have been telling the truth.

Seventy-two (33 per cent) of the statements in the ‘other’ category pertained to the body of the suspects’ infants,³⁴ and the remaining fifty-one (23 per cent) statements included claims by suspects that they had received no assistance at the delivery, alternative explanations for the symptoms of childbirth and assertions that the infant’s father had had a hand in the alleged ‘crime’.

From 1887, suspects’ declarations changed considerably. From this point they were more likely to make ‘no comment’ in their declarations, or state simply that they were ‘not

²⁹ NAS, AD14/24/159, Martha Milree or Milroy.

³⁰ NAS, AD14/44/23, Mary Ann Smith or Blackstock.

³¹ NAS, AD14/67/251, Grace Ferguson.

³² These cases of insanity or temporary insanity are discussed in detail below.

³³ Abrams, ‘From Demon to Victim’, pp. 198-9.

³⁴ There is a full discussion of the discovery of dead new-born infants in Chapter Two.

guilty'. After 1898, almost all of the suspects did not make a judicial declaration. There is a simple explanation for both of these changes. From 15 October 1887 suspects were entitled to access to an agent prior to their judicial examination;³⁵ these agents were clearly advising suspects to say as little as possible beyond a denial of the charges, or to say nothing at all. Although, from 1898, defendants in Scotland were allowed to speak for themselves in court,³⁶ the advice to make no comment during their judicial declaration means that there is no record of the defence made by most of the suspects in cases of NBCM&CP from 1888.

Trial witnesses

From 1821, important witnesses could be called at short notice and whilst this led to a few last-minute witnesses, particularly in cases of concealment of pregnancy,³⁷ on the whole the majority of the witnesses in the NBCM&CP trials in this study were also listed in the indictment. Chapter One discusses a number of technical reasons that prevented certain individuals from having to give evidence in court, but witnesses were also omitted from indictments for other reasons. Most commonly, prosecutors might leave out witnesses whose evidence mirrored that of others. The law of evidence in Scotland required at least two forms of proof, so prosecutors generally preferred at least two or three witnesses to events. If there were four or five witnesses in the precognition, one or two would be omitted from the indictment. Occasionally, witnesses were omitted from the indictment because they may have had evidence that conflicted with the prosecution's case. For example, in 1877, the precognition against Isabella Martin included two women from Linlithgow prison, in which the suspect was being remanded. One of these witnesses claimed that Martin had admitted murdering her infant, 'by putting her hand in its mouth and nostrils to keep it from crying'.³⁸ The second witness told investigators that

³⁵ Criminal Procedure (Scotland) Act 1887, 50 & 51 Vict. c.35.

³⁶ Criminal Evidence Act 1898, 61 & 62 Vict. c.36.

³⁷ A concealment of pregnancy charge could not be sustained if the suspect had revealed her condition to another person. Chapter 5 shows that some trials collapsed because of witnesses called at short notice who testified that the accused had revealed her condition to them.

³⁸ NAS, AD14/77/146, Isabella Martin, Deposition of Isabella Baxter.

Martin had told her that ‘she had the child in the morning...and she did not hear it cry nor did she feel it move and that she did not put a hand upon it’.³⁹ The second witness was not listed on the indictment – presumably because her testimony would have weakened the case. Witnesses were also excused from testifying in court if they were too old or too ill to attend and, in other cases, witnesses of a higher social status were also granted permission to be excused from court.⁴⁰ Such requests were accepted in cases from Dundas, Tulliebole, Wemyss and Glamis castles.⁴¹

Fig. 8.2 shows the breakdown of witnesses at the trial. The majority of witnesses came from the local community, and their testimony, which was centred mainly on the signs of pregnancy, delivery and the discovery of the body, has already been discussed in Chapters Two and Three. Most of the other witnesses were made up of officials – the sheriff-substitutes, procurators fiscal and court clerks – who testified to the accused being the right person; the police, who are discussed in Chapter Six, and medical men and women, who are discussed in Chapter Seven. There were other types of witnesses who testified in court, such as ‘expert’ witnesses – from medical men asked to comment on medical reports, ascertain the sanity of a suspect, or to carry out forensic tests on bloodstained evidence,⁴² to weavers or weaving agents who identified bloodstained cloth either discovered wrapped around, or near to, a dead body,⁴³ and civil engineers, surveyors or architects who were sometimes asked to produce a plan of the crime scene.⁴⁴ The Crown produced most of the witnesses, but defence advocates also produced exculpatory witnesses – who testified on behalf of the defendant. These witnesses included medical men who challenged the medical reports or argued that the suspect’s state of mind was a mitigating factor in the alleged ‘crime’⁴⁵ and members of the community who provided an alibi for the defendant or, more often, acted as character witnesses, attesting to a suspect’s previous good behaviour.

³⁹ Ibid., Deposition of Mary Green or Alexander.

⁴⁰ NAS, AD14/68/311, Clementina Cameron, Letter from James Dundas to Crown Counsel.

⁴¹ NAS AD14/68/311 (Dundas); AD14/47/504 (Tulliebole); AD14/52/293 (Wemyss); AD14/73/152 (Glamis).

⁴² See, for example, NAS, AD14/70/268 and AD14/74/115.

⁴³ See, for example, NAS, AD14/44/397; AD14/58/142 or AD14/65/34.

⁴⁴ See, for example, NAS, AD14/49/349; AD14/58/166 or AD15/30/104.

⁴⁵ Examples of these witnesses and their testimony are provided below.

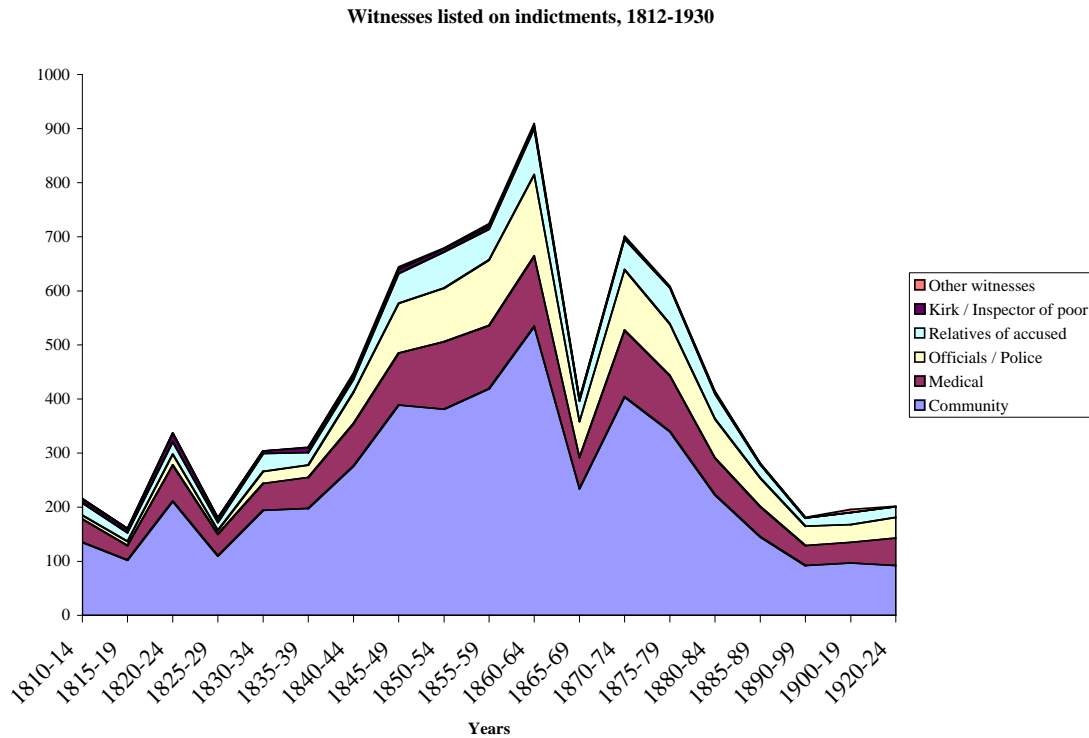


Fig. 8.2 Breakdown of witnesses listed in NBCM&CP indictments.

Source: As fig. 8.1.

As indicated in Fig. 8.3, the majority of witnesses from within the community were female. This is because female employers, colleagues, family friends and relatives were more likely to have day-to-day contact with suspects and therefore were more likely to have been aware of a suspect's condition and subsequent change in appearance, as well as notice the signs of labour and delivery. Moreover, lay female witnesses were probably viewed as being more authoritative when it came to discussions about the pregnant body and the signs of childbirth than lay male witnesses – who were often away from suspects for most of the day, and were less likely to have either observed them first-hand, or be involved in gossip networks.⁴⁶

Fig. 8.3 also shows that the majority of official witnesses were male. As noted by Shani D'Cruze and Louise Jackson, the nineteenth century witnessed the 'exclusion of women

⁴⁶ D'Cruze and Jackson, *Women, Crime and Justice*, p. 105.

from an official capacity within courts of law'.⁴⁷ This is most clearly demonstrated amongst medical witnesses. Chapter 1 discusses the emergence of the medical 'expert' in Scottish courts and the professionalisation of medicine, both of which, for most of the nineteenth century – and especially from the 1830s – combined to consolidate the medical profession as male, and to exclude women from the profession and to marginalise midwives. Indeed, throughout the period of this study women were rarely used in British courts to provide expert medical testimony; it was not until 1927 when the first woman police surgeon in Britain was employed by the City of Manchester Police, to provide expert medical testimony in court.⁴⁸ No women in Scotland between 1812 and 1930 were used to provide *expert* medical opinion in any of the trials analysed in this study. This is in contrast to earlier periods, when midwives and juries of matrons were regularly used in court as 'expert' witnesses in cases of witchcraft and infanticide.⁴⁹ Indeed, as D'Cruze and Jackson assert, [t]he exclusion of women from an official capacity within courts of law can be viewed as a nineteenth-century phenomenon.⁵⁰

These attitudes towards female medical practitioners were also mirrored in the Scottish courts. Fig. 8.3 shows a steep decline in the number of female medical witnesses in cases of NBCM&CP in the 1830s. The numbers begin to increase right at the end of the period, which suggests that from the 1830s the testimony of midwives and nurses was not valued by either investigators or prosecutors until the end of the period. This may well be a reflection of prevailing attitudes towards female medical practitioners by the medical profession in general. Moreover, confidence in the quality of the standard of medical training received by medical practitioners, and the status of forensic 'experts' may well have played a big part in an unwillingness of Scottish investigators and prosecutors to use the testimony of untrained female midwives and nurses.

⁴⁷ Ibid.

⁴⁸ S. D'Cruze and Jackson, *Women, Crime and Justice*, p. 106.

⁴⁹ Ibid., p. 105; R. Marshall, 'Birth of a Profession', *Nursing Mirror* (1995), i-vii.

⁵⁰ D'Cruze and Jackson, *Women, Crime and Justice*, pp. 105-6.

Sex of witnesses in cases of suspected NBCM&CP, 1812-1930

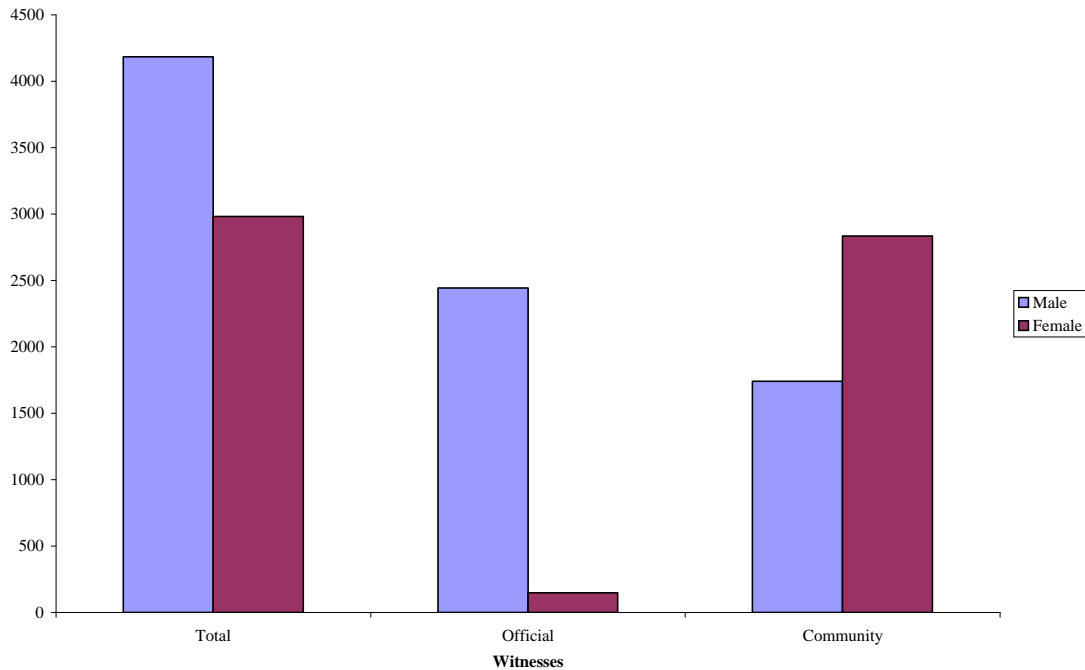


Fig. 8.3 Male and female witnesses in NBCM&CP indictments.
Source: as Fig. 8.1.

There is some qualitative evidence that the Scottish courts viewed the testimony of midwives as unreliable in nineteenth century. For example, in a case at the Perth Circuit, in 1867, the names of the medical men who had produced the medical reports had not been included in the list of witnesses. As such, no medical evidence existed to prove that the child had been born at its full period of gestation except the testimony of a midwife, who had ‘examined the child on the day after its birth, and found that it had been born at full time’.⁵¹ In his charge to the jury, Lord Deas

said it appeared to him, there had been a mistake committed in not citing the two doctors who signed the medical reports. He had never seen a similar case in which medical evidence had not been led to prove that the child had been born at full time; and in the absence of such evidence, the *loose statement of a midwife* could not be taken. On the whole he thought the only safe verdict for the jury to return

⁵¹ *Justiciary Reports, Irvine V (1867)*, Margaret Fallon, p. 367.

was one of not proven. The jury unanimously returned a verdict of not proven, and the panel was dismissed from the bar.⁵²

However, not all prosecutors dismissed the medical opinions of midwives. For example, in 1847, J. M. Bell, the prosecuting advocate in the case against Elizabeth McDowall, having received the precognition, sent it back to the procurator fiscal with further instructions:

Ask Mrs Alexander (mid-wife) whether she thought the umbilical cord was cut, or had been ruptured or torn. If it had been cut, is that quite inconsistent with the supposition that the child had dropped suddenly from the P[risoner] while standing on the floor? Is it consistent with Mrs Alexander's experience that first-born children have been thus suddenly expelled from the body of the mother, standing? – As to the marks on the throat which she thinks are such as would have been produced by seizure with the hand...is there any other way, which occurs to her, by which it is equally likely that these marks could have been produced?...If so, state what it is. Show Mrs A[lexander] the "half-blanket" and other clothes and ask her whether, on examining them, she is able to form any opinion whether the P[risoner] was probably lying upon that half-blanket re at the time she was delivered? And whether their appearance is inconsistent with her having been standing on the floor, and the child then dropping from her.⁵³

It is clear that Bell was confident that Mrs Alexander could answer his questions and that as such he would have expected her to do the same in court. The procurator fiscal's reply shows less confidence, however: 'Would it not be desirable in this case to have the benefit of higher medical authority'.⁵⁴ It seems that the advocate-depute's opinion of the midwife's abilities in medical jurisprudence was not the prevailing one.

There is also further evidence of a lack of respect for midwives as medical authorities. For example, a precognition from 1881 contains two notes written to Crown Counsel from Isabella Baxter, a midwife, regarding her fee for being a witness in the case. The first note complains that 'I was a whole day away from my professional duties and only paid one half crown. Now I wish to know if a midwife holding a Diploma is just to be

⁵² Ibid., p. 68. My italics.

⁵³ NAS, AD14/47/212, Precognition against Elizabeth McDowall, Note by advocate-depute to procurator fiscal.

⁵⁴ Ibid., Note from procurator fiscal to advocate-depute.

paid as a common witness'.⁵⁵ The second note, written two months later, states: 'the party that examined the witness at Lochgelly paid me with two shillings and sixpence after I had given evidence which was an insult to the profession'. It was finally agreed that the midwife should get more money, but only after the Lord Advocate became involved. His note to the procurator fiscal suggests his annoyance at having to do so: 'PF ought to be able of a liberal interpretation of rules as possible to meet this case'. Even after midwives became officially regulated in Scotland in 1915, with the establishment of the Central Midwives Board of Scotland (CMBS),⁵⁶ their presence in court as 'expert' witnesses was conspicuous by its absence.

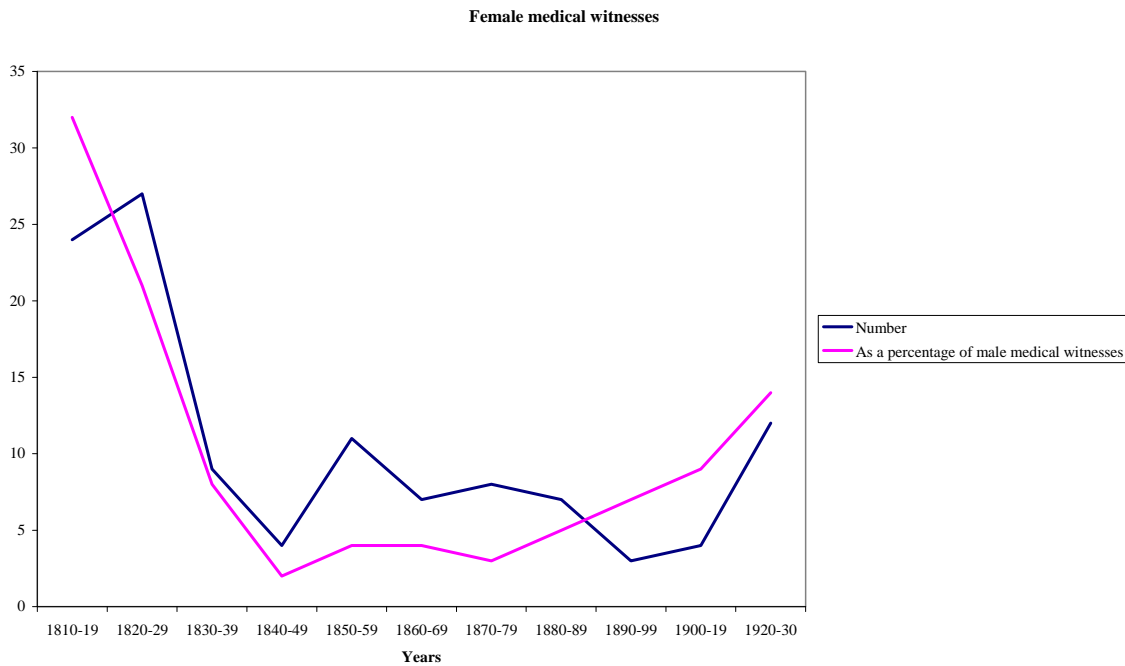


Fig. 8.4 Female medical witnesses in cases of suspected NBCM&CP.
Source: As fig. 8.1.

⁵⁵ NAS, AD14/82/337, Precognition against Catherine Forsyth Oswald or Marshall. Alison Nuttall notes that whilst diplomas were handed out to midwives between the 1840s and 1915, these were not formally recognised by the medical profession. Nuttall, 'The Edinburgh Royal Maternity Hospital', p. 65.

⁵⁶ On the regulation of midwives, see Cowell and Wainwright, *Behind the Blue Door*; Donnison, *Midwives and Medical Men*; Nuttall, 'The Edinburgh Royal Maternity Hospital'. For a comprehensive overview of the professionalisation of midwives and nurses in England, see Grey, 'Discourses', Chapter 7.

Physical evidence

The amount of physical evidence gathered from investigations increased significantly from the 1840s, probably as a direct result of an increase in the number of police officers involved in cases of NBCM&CP. The types of evidence gathered during these investigations are displayed in Fig. 8.5. The majority of items (75 per cent) relate to a suspected delivery, and include bloodstained clothing: petticoats, shifts and nightdresses; and bedclothes, such as sheets, bed ticks and pillowslips. The remaining items included suspected weapons (9 per cent); items found on, or around the victim's body (8 per cent); and various other miscellaneous items (8 per cent). The majority of physical evidence in trials of NBCM&CP, therefore, was related to the signs of delivery.

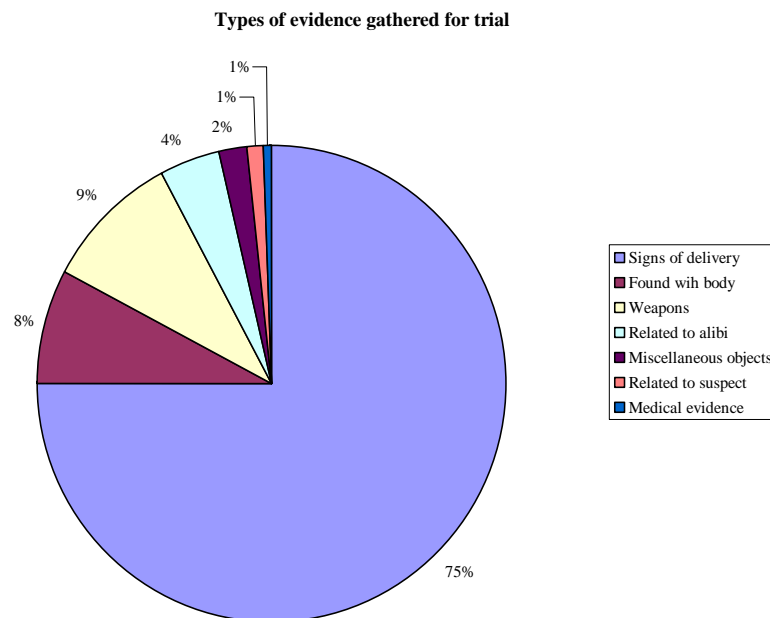


Fig. 8.5 Physical evidence gathered during NBCM&CP investigations.
Source: as Fig. 8.1.

Issues with the evidence

Crown Counsel returned precognitions to procurators fiscal in 147 (24 per cent) cases, for reasons outlined in Fig. 8.6. Most of these were in anticipation of the potential challenges this evidence would face in the courtroom. In about 42 per cent of these cases, Crown Counsel requested additional evidence; either the precognitions of new, or the re-precognitions of existing witnesses. This information was generally sought in order to strengthen the case, and included evidence linking the suspect to the body; information as to whether or not the suspect had disclosed her pregnancy to any witnesses; and clarification of any admissions of guilt by suspects. In a few cases, prosecutors also asked for information regarding the suspected father of the infant, and a few precognitions were also returned with procedural queries; for example, why specific witnesses had or had not been questioned, or why only one medical witness had performed the post-mortem. Just under half of the precognitions were returned because of issues with the medical evidence, of which four caused particular debate in the courtroom: inadequate medical evidence; the cause of death; the proof of live birth; and the issue of ‘separate existence’.

Inadequate medical reports

Crown Counsel had a number of issues with the medical reports. The single most common problem was they were deemed inadequate or incomplete. One of the main shortcomings of medical reports was the omission of a cause of death, which was the case in 132 reports. For example, in 1862, the precognition in the case of Elizabeth Ogilvie was returned because ‘the report does not indicate the cause of death’,⁵⁷ and, in 1864, an advocate-depute’s note to one procurator fiscal demanded that ‘the medical gentlemen will be asked to explain the reason of [sic] their inability to discover the exact cause of

⁵⁷ NAS, AD14/62/169, Elizabeth Ogilvie.

death.⁵⁸ The lack of a cause of death on the medical report not only made it more difficult for prosecutors to frame the indictment, but it also made the report potentially more vulnerable to a challenge in the courtroom.

A number of precognitions were returned because medical reports lacked sufficient detail. For example, in 1839, Crown Counsel demanded that the doctor involved in the post-mortem examination of Margaret Laurence's new-born infant produce a second and more specific report,⁵⁹ and, in 1848, the precognition against Isabella Barron was returned with a demand for more medical evidence, including the sex of the infant, which had been omitted from the report.⁶⁰ Likewise, in 1861, the precognition against Harriet Whitehead was returned with a request for five specific pieces of medical evidence, including the appearances of unaided delivery, whether there was food in the stomach and intestines, how long the child had been dead, and whether or not the child had been weighed and measured.⁶¹

There was an acknowledgement amongst prosecutors that the criticism of medical reports, often by other medical 'experts' enlisted by Crown Counsel to evaluate them, could lead to conflict with medical witnesses. For example, in a case from 1837, in his note to the procurator fiscal asking for additional medical evidence, the prosecuting advocate added: 'the communication should be made under the instructions of Crown Counsel in such a manner as not to give offence to these medical gentlemen'.⁶² Prosecutors were not always so sensitive to the feelings of doctors, however. In 1874, for example, Crown Counsel returned a precognition, complaining that the evidence

upon which the accused has been committed consists of what is termed in the precognition as "a clatter" as to her being in the family way, combined with the testimony of three medical men, to the effect that they were satisfied or quite satisfied, 'or suspected' that the accused had been delivered of a child. CC request the PF to ascertain and report whether the medical witnesses will or will not say

⁵⁸ NAS, AD14/64/277, Mary Smail.

⁵⁹ NAS, AD14/39/47, Margaret Laurence.

⁶⁰ NAS, AD14/48/433, Isabella Barron.

⁶¹ NAS, AD14/61/120, Harriet Whitehead.

⁶² NAS, AD14/37/404, Elizabeth Brown.

that to their certain knowledge the women showed unmistakable symptoms of recent pregnancy.⁶³

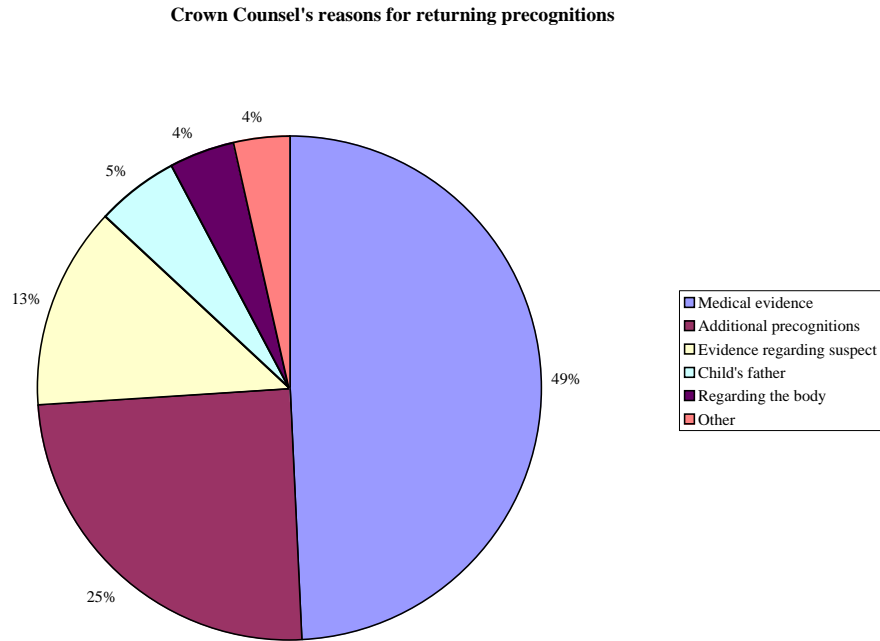


Fig. 8.6 Reasons for the return of preagnitions to procurators fiscal by Crown Counsel.
Source: as Fig. 8.1

Similarly, in 1883, there is a palpable sense of frustration in the correspondence between Crown Counsel and the procurator fiscal regarding one medical report, in which the recorded cause of death did not tally with the suspect's description of the circumstances in which her infant died. The advocate depute essentially asked the doctors to re-write their medical report to reflect the suspect's confession that she had placed her child into a drain whilst it was still alive. The response from the medical men was terse: '[O]ur report was based on post mortem appearances alone and not on statements made by the woman ten days afterwards. We cannot allow any statement of hers to interfere with our opinion.'⁶⁴

⁶³ NAS, AD14/74/398, Margaret Jack.

⁶⁴ NAS, AD14/83/224, Elizabeth Paton, Deposition of Alexander Leslie Curror and Henry Gordon.

Cause of death

One of the issues surrounding the cause of death was that a number of marks and signs of violence on the body of new-born infants recorded by medical witnesses could be countered with suggestions of more innocent explanations for their appearance. The various marks, scratches and bruises around the head and neck of an infant, recorded as signs of murderous violence, could equally be explained as the marks made during childbirth, particularly if the woman had given birth alone and the delivery had been protracted or unexpected.⁶⁵ For example, in 1852, the prosecuting advocate in one case asked for the medical witnesses to be re-precognosed, to ascertain whether the injuries to the head of Ann Irvine or Shirra's new-born infant 'could have been inflicted during delivery and whether hands, or an instrument, or if the child being thrown over a wall, can account for the injury'.⁶⁶ Similarly, an advocate depute queried the opinion of the medical witnesses with regards the marks of strangulation on the neck of Catherine McIntyre's new-born infant, in 1913:

CC [Crown Counsel] desire to be informed by the medical advisers whether in view of the fact that a number of bruises appear on the neck, and which to some extent at least are placed one above the other, and also by the fact that the skin has been abraded, these circumstances do not tend to show that successive efforts were made by the girl to assist labour by pulling the child forward. It also suggests itself to CC that the marks caused by intentional choking would have been fewer in number and perhaps no abrasion.⁶⁷

A fractured skull could be blamed on the child falling from its mother during delivery. Thus, in 1847, the advocate depute, J. M. Bell, questioned medical witnesses to the effect: 'Could the mother be delivered, standing on the floor, as she says she was? Also, could a fall of the child upon the floor, in the act of delivery, cause the injuries seen on its head?'.⁶⁸ Likewise, a note written by the procurator fiscal on the precognition against Jean Kelso or McChesnie, in 1854, reads: I do not know that the child has been wilfully destroyed but death appears to have been caused by its falling to the ground when

⁶⁵ Jackson, *New-Born Child Murder*, p. 102.

⁶⁶ NAS, AD14/52/50, Ann Irvine or Shirra.

⁶⁷ NAS, AD15/13/108, Catherine McIntyre, Advocate-depute's note.

⁶⁸ NAS, AD14/47/241, Elizabeth Diamond or Shaw.

born',⁶⁹ and the notes of one advocate depute, in a case in which two doctors differed in their opinions regarding death resulting from an accidental fall, highlights the difficulty likely to be faced by prosecutors in court:

Littlejohn [carried out post-mortem for the Crown] Utterly impossible that fall could cause cord to snap and present appearance of being cut...If death had been produced by fall, the child could never have breathed.

Dr Charles Bell [medical witness for the defence] Death was undoubtedly caused by the fall of the child from the prisoner.⁷⁰

A difficult delivery could also cause the skull to fracture,⁷¹ and, in 1876, medical witnesses were asked whether or not a severe labour could have led Mary Findlay accidentally to pull out the tongue of her new-born infant.⁷²

Another issue with the signs of violence was the question of whether or not the violence was inflicted before or after the death of the infant.⁷³ For example, in 1860, a medical witness claimed that the ligature found wrapped around Bethridge Findlay or Duncan's new-born infant must have been applied after its death, 'as there was no ecchymosis [bruising] on the neck'.⁷⁴ Likewise, in 1868, a medical witness hired by the defence claimed that the wrapping of the string around the neck of Clementina Cameron's new-born infant 'must have been done after death, because the skin was dry and there was no ecchymosis'. However, the reply from the eminent Henry Duncan Littlejohn, who produced the medical report, was emphatic: 'The rule in cases where death is caused by a ligature around the neck is to find no ecchymosis...This is one of the best established facts in medical jurisprudence'.⁷⁵ This serves to highlight the conflicting medical opinion that characterised many cases of suspected new-born child murder.

⁶⁹ NAS, AD14/54/155, Jean Kelso or McChesnie.

⁷⁰ NAS, AD14/82/45, Margaret or Maggie McGlashan.

⁷¹ Jackson, *New-Born Child Murder*, p.102.

⁷² NAS, AD14/76/266, Mary Findlay

⁷³ Jackson, *New-Born Child Murder*, p.102.

⁷⁴ NAS, AD14/60/32, Bethridge Findlay or Duncan, Deposition of Alexander Bremner Thomson.

⁷⁵ NAS, AD14/68/311, Clementina Cameron, Depositions of Andrew Inglis and Henry Duncan Littlejohn.

Another sign of violence that produced debate was the issue of whether death could be caused by the loss of blood from the umbilical cord. Failure to tie the umbilical cord was an act that could form the foundation of a criminal charge as a ‘specific and technical cause of death’.⁷⁶ Some doctors thus recorded failure to tie the umbilical as a cause of death, and it was libelled in some cases on the indictment. For example, in 1886, a note from the procurator fiscal stated: ‘For the consideration of CC and in the authority of Brechin, 4 Irv: 206 I have taken the liberty of inserting in the modus the failure to tie the umbilical cord of the child’.⁷⁷

However, as Jackson also notes for eighteenth-century England,⁷⁸ loss of blood from the umbilical cord alone was insufficient evidence to uphold a murder charge, for three reasons. First, there was some debate as to whether blood would flow freely from a cord that had been rent or torn by hand, rather than cut with a sharp instrument, and, secondly, there was also the possibility that the cord might have snapped accidentally if the child had fallen from its mother during delivery. Thirdly, there was also debate as to whether the commencement of respiration in the new-born diverted the blood away from the umbilical cord, thus eliminating the possibility of an infant bleeding to death. For example, in 1850, one medical witness was asked by the advocate depute ‘whether full respiration prevents bleeding from the umbilical cord’.⁷⁹ The physician’s answer was that respiration had the opposite effect, and actually increased bleeding. However, the advocate depute was unconvinced, stating: ‘Dr Simpson says full respiration stops bleeding from the umbilical’. Here is evidence not only of the impact of the medico-legal training of advocates, but also of the fact that some of the doctors carrying out post-mortem examinations did not fully understand the biology of new-born infants, a fact that created more conflict in the courtroom.

The doubts concerning the cause of death affected the framing of the indictment, and this can be demonstrated if the causes of death listed on the indictments (Fig. 8.7) are

⁷⁶ *Justiciary Reports*, Irvine, IV, Elizabeth Duncan and Ann Brechin (1862), pp. 206-7.

⁷⁷ NAS, AD14/86/39, Maria Fairley.

⁷⁸ Jackson, *New-Born Child Murder*, p.102.

⁷⁹ NAS, AD14/50/600, Hannah Mitchell.

compared with those stated in the medical reports (Fig. 8.8). The only similarity between the two is in the category ‘asphyxia’, which accounts for 49 and 42 per cent respectively. The second largest category within the indictments is those cases in which the only charge was concealment of pregnancy (37 per cent), and so no cause of death was listed. In contrast, only 16 per cent of the medical reports recorded the cause of death as either natural or without apparent cause. Likewise, violence was listed as a cause of death in only 15 per cent of indictments, compared with 29 per cent in the medical reports. Exposure and loss of blood from the umbilical cord featured in only two and one per cent of indictments respectively, as opposed to 10 and 9 per cent of medical reports. Generally the suspects involved in these cases were indicted for concealment of pregnancy.

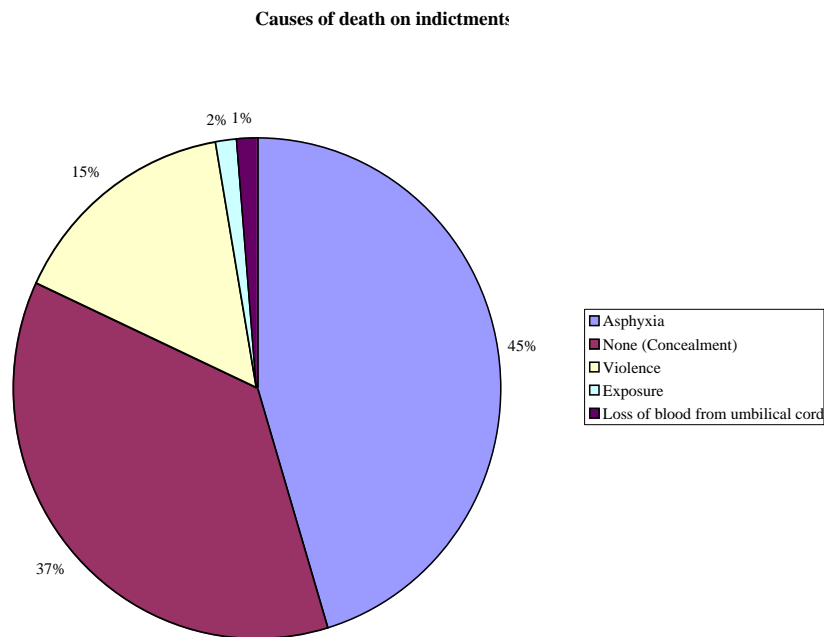


Fig. 8.7 Causes of death in NBCM&CP indictments.
 Source: as Fig. 8.1.
 n=606 (469 cases).

Causes of death recorded in medical reports

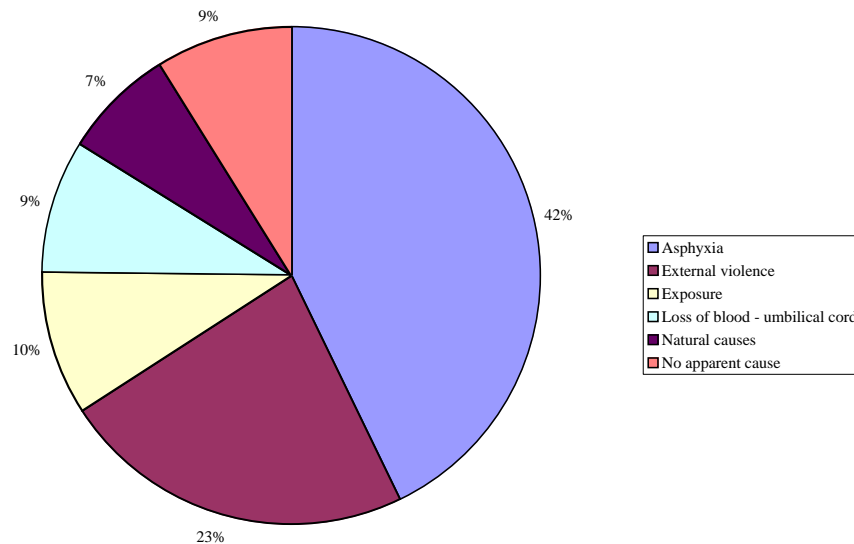


Fig. 8.8 Causes of death recorded in medical reports.
Source: as Fig. 8.1.
n=555 (445 cases).

The ambiguities surrounding the marks of violence led to conflict in the courtroom, as the doctors who produced the medical reports went head to head with exculpatory medical witnesses. For example, the advocate depute gave up the case against Catherine McIntyre junior and her mother, Catherine McIntyre senior, after the testimony of a medical witness, who stated that the death of Catherine junior’s infant was the result of a fall, and the umbilical cord becoming wrapped around the child’s neck, during delivery.⁸⁰ Circuit court judge, Lord Cockburn, in his memoirs, *Circuit Journeys*, discusses the exculpatory medical witness in a trial from 1846, in which he presided:

There was a child murder at Dumfries, where doctors differed as to their scientific “tests” of the child having been born alive...But its throat was found crammed full of bits of coal, and there were marks of a thumb and two fingers on the outside of the neck. These practical tests had little effect upon medical opinion; but as

⁸⁰ NAS, AD14/56/192, Catherine McIntyre Jnr and Catherine McIntyre Snr, Note in the schedule for the registrar.

mothers don't generally throttle children that are dead, they were quite satisfactory to the jury. Whenever any of the murderous appearances, such as finger-marks on the neck, was put to one of the doctors in defence, the scientific gentleman, after parading his vast experience, always stated that however these things might startle the ignorant, they were of no consequence to a person of great practice, and that he had seen hundreds of children born with these very marks. "Ay, but, doctor", said an agrestic [sic]-looking juryman, "did ye ever see ony 'o them born wi' coals i' their mooth?"⁸¹

Live-birth

Sixty-two per cent of medical reports stated that a new-born infant had been born alive. As Chapter Seven explains, most of the tests regarding the important question of whether the infant was alive when it was born surrounded the signs of maturity, whether an independent circulation of blood had been established, and proof that respiration had taken place. The question of the maturity of an infant was not the cause of much debate in Scottish courts – most of the signs were clear enough in most cases, but there was some debate surrounding whether or not circulation had been established. For example, in the trial of Helen Frith and Jean Harris or Frith, in 1846, the closed state of the ductus arteriosus, it was agreed by three medical witnesses, was proof that a new-born infant must have been alive for at least twenty-four hours. This evidence was used to acquit the two defendants, because a witness had claimed that the child had been killed and buried within a space of a few hours.⁸² However, as one doctor deposed in 1870: 'Dr Alfred Taylor in his "Medical Jurisprudence" says, that the open or contracted state of the foramen ovale or ductus arteriosus furnishes no evidence of a child having been alive'.⁸³ The state of the foetal vessels is not recorded in most of the medical reports, and there is very little debate about their efficacy in proving live birth within the precognitions.

The single most important sign of live-birth was the proof that respiration had taken place, evidenced by the state of the lungs, and the result of the hydrostatic lung test. From

⁸¹ H. Cockburn, *Circuit Journeys* (Hawick, 1983 ed.), p.187.

⁸² *Justiciary Reports*, P. Arkley, I, Helen Frith and Jean Harris or Frith (1846), pp. 121-33.

⁸³ NAS, AD14/70/189, Margaret McIntyre, Deposition of Neil McNab Campbell.

at least as early as 1783 there had been doubts about the efficacy of this test – it was argued that putrefaction, artificial inflation, and disease could all cause the lungs of a stillborn child to swim.⁸⁴ However, as Chapter 7 demonstrates, the hydrostatic lung test was carried out in most of the medical reports analysed in this study, and there is very little evidence in the precognitions that the test was challenged at all between 1812 and 1930. As Katherine Watson notes, ‘despite lingering doubts about the efficacy of the hydrostatic test, textbooks of forensic medicine were generally agreed that if it was properly done it could offer good evidence of respiration’.⁸⁵ If an issue surrounding the lungs did arise, it was usually to question why medical men had failed to establish the proof of respiration. For example, in 1886, after evaluating a medical report in which the doctors had omitted to record whether respiration had taken place or not, in spite of the lungs having floated, Professor Hay commented, in a thinly-veiled attack: ‘I think that capable medical men could have satisfied themselves in this case whether the child had breathed or not, but I don’t think it is clear from the report that Drs Leslie and Fraser have satisfied themselves.’⁸⁶

Separate Existence

Whilst the hydrostatic test could furnish proof of respiration, it could not establish that an infant had been born alive and, crucially, that it had enjoyed a separate existence from its mother.⁸⁷ In legal terms, a child could not be treated as having had a separate existence if it had not been fully separated from its mother before its death and, as Meg Arnot notes:

[As] the nineteenth century progressed, it became clear that there was a gap between the abortion law and the law on infanticide which left the infant in the actual process of birth unprotected: it was quite possible for an infant to be cold-

⁸⁴ Hunter, *On the Uncertainty of the Signs of Murder*; Jackson, *New-Born Child Murder*, pp. 95-100.

⁸⁵ K. D. Watson, *Forensic Medicine in Western Society: A History* (London, 2010), p. 215.

⁸⁶ NAS, AD14/86/112, Agnes Robertson.

⁸⁷ Watson, *Forensic Medicine*, p. 205.

bloodedly decapitated on its passage from the mother's body, yet no crime be committed.⁸⁸

Arguably, this issue was the greatest single stumbling block to securing a successful child murder conviction, and as the medical jurist, Alfred Swaine Taylor, conceded, 'there is no certain medical sign which indicates that a child, which may have died at or about the time of birth, has been entirely born alive'.⁸⁹ From the 1850s, the issue of separate existence begins to appear in the precognitions, which suggests that it was a concept that played an important part in Scottish new-born child murder trials.⁹⁰ For example, in the trial of Jean M'Allum or M'Callum, in 1858, the issue was raised about whether her infant had been fully born prior to the application of a black tape tightly around its neck, which the medical report stated had caused the death of the infant. One of the doctors stated that '[t]he sole grounds of my opinion that the child was born alive, are the evidences that respiration and circulation of the blood had taken place', but had to admit that '[t]hese things do not enable me to say with certainty that the child was alive when fully born'.⁹¹ The Lord Justice-Clerk's charge to the jury was clear:

There is no kind of homicide that can be committed except upon a living human being...As to what is a living child, there is no difficulty about the law. A child that is not fully born has no separate existence from the mother, and is not, in the eye of the law, a living human being. It is in a state of transition from a *foetus in utero* to a living human being, and it does not become a living human being until it is fully born, and has a separate existence of its own.⁹²

The jury found the charge against the defendant not proven.

The precognitions indicate that, in a number of cases, prosecutors anticipated the courtroom debate surrounding separate existence, and requested the opinions of medical witnesses about the issue. For example, in 1852, in answer to a question from Crown Counsel about whether an infant was fully born when alive, one doctor's reply was:

⁸⁸ Arnot, 'Gender in Focus', p. 111. Mark Jackson notes that the issue of separate existence was also being debated in eighteenth-century England. Jackson, *New-Born Child Murder*, p. 99.

⁸⁹ Taylor, *Elements*, p. 471.

⁹⁰ It is possible that trials prior to the 1850s also debated the issue of separate existence, but there is little evidence to prove this either way.

⁹¹ *Justiciary Reports*, Irvine, III (Jean M'Allum or M'Callum), p. 197.

⁹² *Ibid.*, Irvine, pp. 199-200.

‘After the head and chest were born if not the whole body’.⁹³ Conversely, in 1858, one doctor refused to state whether Jane McGillivray’s new-born infant had been born alive, ‘in consequence of the difficulty of knowing when a child is held to be born’,⁹⁴ and, in 1860, a note from the procurator fiscal in one case emphasised the problems faced by prosecutors:

The present case, as regards the charge of child murder, is attended with the difficulty which occurs in almost all similar cases, from the want of absolutely positive and conclusive evidence that the child had been fully born alive, and separated from the mother, before the infliction of the injuries which caused the death.⁹⁵

When pushed, most of the medical witnesses in the precognitions conceded that it was possible that an infant could breathe whilst partially expelled from its mother, but not everyone shared this belief. For example, in 1851, Dr James Girdwood stated that ‘in all my experience I have never met with such a case, and I do not know any medical man who has’.⁹⁶ It was also accepted by most medical witnesses that an infant could have been killed, accidentally or otherwise, whilst still in the maternal passages. For example, in 1921, the exculpatory medical witness was Dr Francis Browne, research pathologist at Edinburgh Maternity Hospital, who was employed by the Medical Research Council to investigate the problems of stillbirth. He told investigators that he had conducted ‘post-mortem dissections of upwards of 500 still-born infants, abortions and infants born shortly after death’,⁹⁷ and that the medical report he was asked to evaluate had failed to prove that the child was born alive, or that it had been strangled whilst enjoying a separate existence from its mother.

In some cases, the idea that a child could be killed whilst still in the maternal passages provoked incredulity. For example, the medical report into the death of Margaret Marshall’s new-born infant, discovered in a privy, in 1875, stated the possibility that the

⁹³ NAS, AD14/52/394, Catherine Rae, Deposition of R. Smith.

⁹⁴ NAS, AD14/58/439, Jane McGillivray, Deposition of James Gerrard.

⁹⁵ NAS, AD14/60/98, Ann Loney or Kelly.

⁹⁶ NAS, AD14/51/195, Ann Howieson or Wilson.

⁹⁷ NAS, AD15/21/170, Edith Campbell or Wilson.

child was not fully born before it died. In a lengthy note to Crown Counsel, the procurator fiscal vented his frustration at this opinion:

It appears to me that the medical men, upon whom so much depends, attach scarcely so much weight as they might to the circumstance that a thick layer of an earthy substance was plastered over the mouth of the child.- They certify that the death was due to this cause; and as they saw the privy in which the body was found, and are aware that the child was lying four feet below the seat – I am at a loss to understand how they admit it a possibility that the lungs were inflated only when the child was in the maternal passages. It seems to me that if death was caused after the cord had been deliberately torn, and after the child had fallen among the filth and tar at the bottom of the privy,- the child must have lived a second or two at least before it was suffocated.⁹⁸

Likewise, in 1888, the procurator fiscal investigating the suspected murder of Jessie Henderson's new-born infant, sent the following note to Crown Counsel:

The evidence of child murder seems, unfortunately, to be very strong. The only point on which both medical men are not equally strong is as to the possibility of the paper being forced into the child's mouth after the head protruded from the outlet of the vagina and before complete birth...It seems almost impossible to suppose that the woman could have forced paper down the child's throat before complete birth.⁹⁹

The clear frustration of the two procurators fiscal is mirrored by Henry Duncan Littlejohn in a note to Crown Counsel regarding the post-mortem report of Catherine Fletcher McKellar's new-born infant, in 1892. Having been asked whether the umbilical cord could have been manually wrapped around her infant's neck whilst in the process of delivery, his answer was, 'that if the medical report states full and complete respiration, the child must have had separate existence'.¹⁰⁰

Importantly, separate existence was a legal, not a medical, definition of live-birth and, as John Glaister emphasised, one that was 'judge-made and not statutory'.¹⁰¹ As such, it was an issue that could, and was, ignored or dismissed in some cases. For example, in his

⁹⁸ NAS, AD14/75/254, Margaret Marshall.

⁹⁹ NAS, AD14/88/140, Jessie Henderson.

¹⁰⁰ NAS, AD14/92/86, Catherine Fletcher McKellar.

¹⁰¹ Glaister, *Medical Jurisprudence*, p. 461.

charge to the jury in the trial of Margaret Hannah, in 1860, the Lord Justice-Clerk stated: 'The case of M'Callum had been referred to by the counsel for the defence. In that case a suggestion was thrown out, and it was not an improbable suggestion in that case, that the child had been murdered in the course of being born. I am not aware that there is in the present case any room for such a suggestion.'¹⁰²

Likewise, in a case of culpable homicide, in 1892, in his charge to a jury, Lord Young stated:

It does not matter in the least, so far as the criminality of the accused is concerned, if the injuries were inflicted when the child was partly in its mother's body, and no suggestion of that kind was made at the time by the girl herself.¹⁰³

The cases of Margaret Hannah and Elizabeth Scott were atypical, however, and rather than create a precedent with regards to the issue of separate existence, they serve to highlight the apparent leniency shown by the courts in most of the other cases of newborn child murder.

Charges, verdicts and sentencing

Fig. 8.9 shows that from 1840 just about every precognition resulted in a trial. Before that, a number of the precognitions lacked sufficient evidence for Crown Counsel to continue with the prosecution. It also shows that the number of trials increased markedly up to about 1860, before declining even more sharply. It is not clear why the number of prosecutions increased, but it was probably a combination of several factors, the most important being an increase in vigilance among both the public and prosecutors, and the establishment and elaboration of police organisation.

¹⁰² *Justiciary Reports*, Irvine, III, Margaret Hannah (1860), pp. 641-2.

¹⁰³ *Justiciary Reports*, White, III, Elizabeth Scott (1892), p. 244.

The decline in prosecutions was a product of the decrease in concealment of pregnancy charges from the end of the 1850s. This could reflect a decrease in either the number of these cases, or of vigilance amongst the Scottish public, but as fig. 0.2 has demonstrated (see ‘introduction’), from the 1850s, concealment of pregnancy was increasingly being tried in sheriff courts. From 1887 defendants made two court appearances: the first at the sheriff court, where the plea was entered. If the plea was guilty, the sheriff could either deal with the case there and then, if the charge was within his jurisdiction, which was the case with concealment of pregnancy, or remit the case to the High Court.

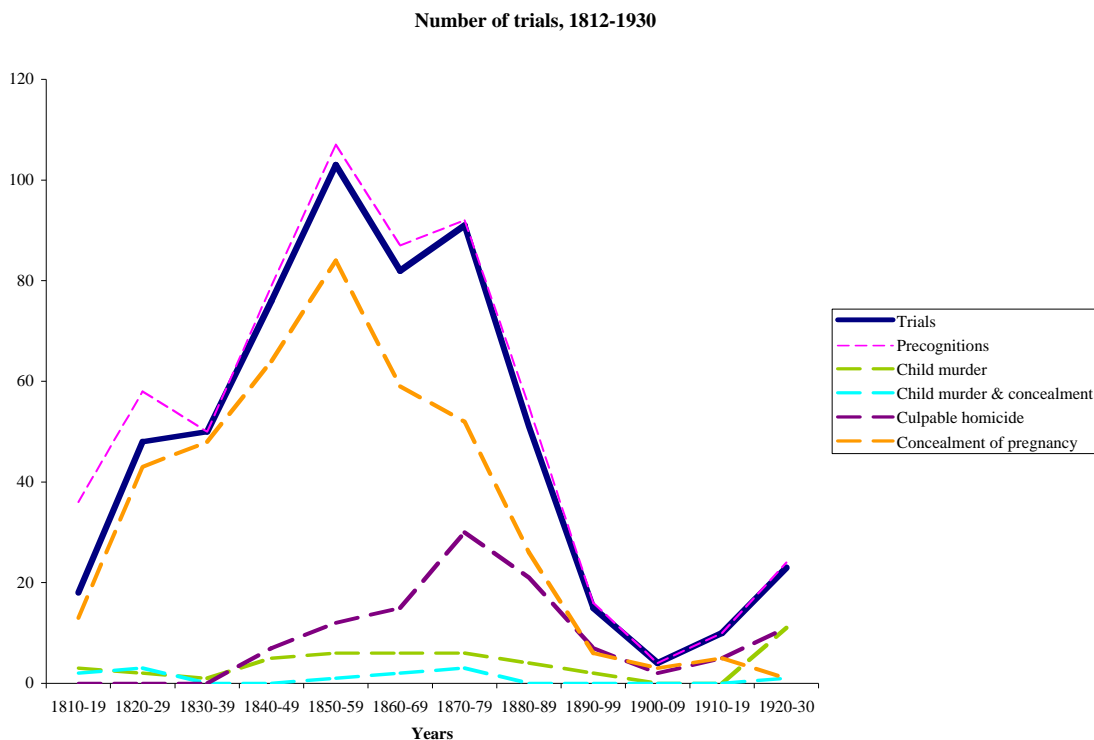


Fig. 8.9 Number of prosecutions, trials and final charges.
 Source: NAS, JC6-14, High Court minute books.

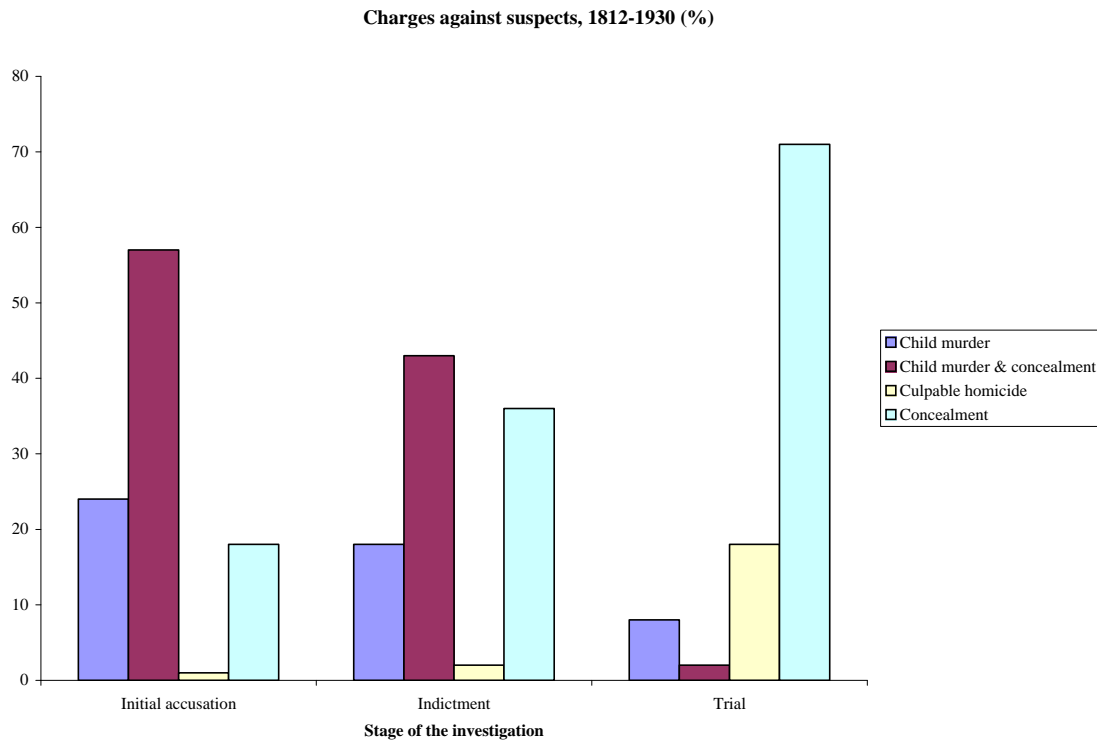


Fig. 8.10 Charges against suspects at various stages of the investigation.
 Source: NAS, AD14/15, Criminal precognitions; JC6-14, High Court minute books.
 (Initial accusation, n=602; Indictment, n=591; Trial, n=571)

Fig. 8.9 also shows the gradual increase from the 1840s of the charge of culpable homicide; a charge peculiar to Scotland and which by this period was more common than charges of murder. The relative lack of child murder charges is striking, especially when compared with the number of cases that began with an accusation of murder. Indeed, as indicated in Fig. 8.10, although ‘child murder’ formed the majority of charges in the initial accusation and indictments, ‘concealment of pregnancy’ made up the majority (72 per cent) of the final charges at the trial. ‘Child murder’, by contrast, formed only 10 per cent of final charges.

The trend indicated above is hardly surprising given that the evidence presented in the precognitions not only supported the claims by suspects that they did not wilfully murder their new-born infants, but also provided proof that suspects concealed their pregnancies

and were delivered of infants. Most suspects were therefore advised to plead guilty to concealment of pregnancy. In those cases where suspects had confessed to murdering their infants and/or witnesses testified the same, and where concealment of pregnancy could not be charged as an alternative, the courts generally accepted a plea of culpable homicide. Whilst ‘culpable homicide’ formed only 18 per cent of overall charges at the trial, Fig. 8.9 shows that the number of these charges increased from around the 1840s, and from the 1850s it also increased as a percentage of overall charges. This reflects the development of the culpable homicide charge in Scotland.¹⁰⁴

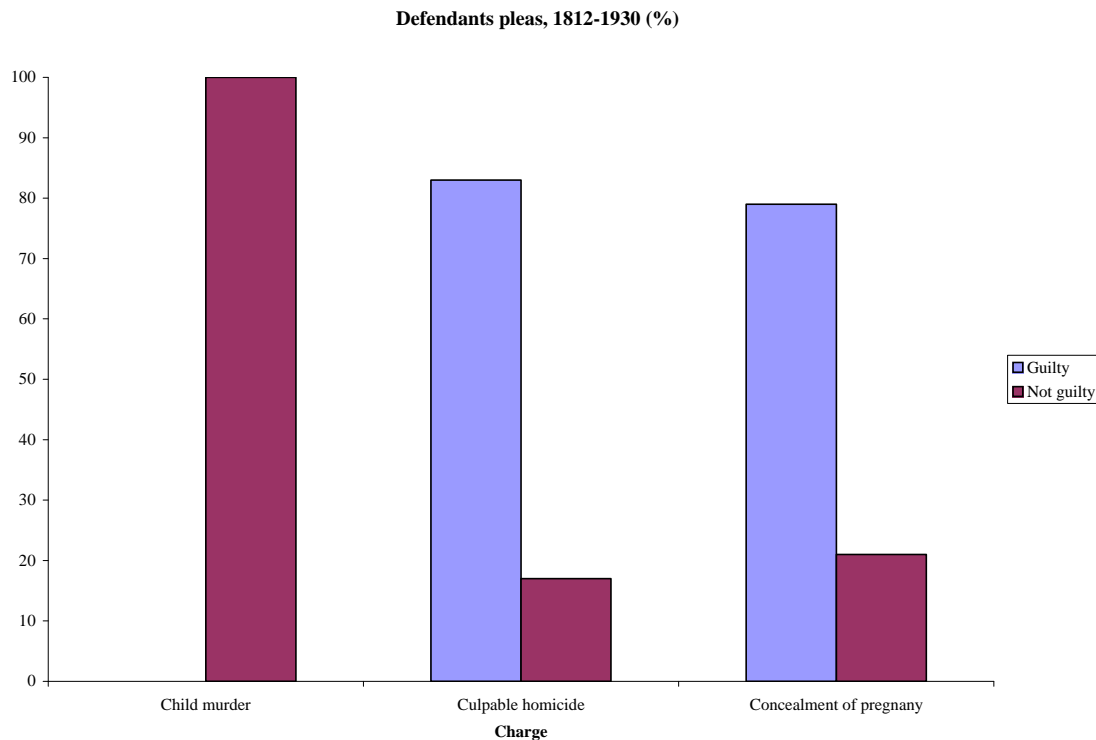


Fig. 8.11 Pleas made by defendants at the trial.
Source: NAS, JC6-14, High Court minute books.

¹⁰⁴ Farmer, *Criminal Law*, p.153.

The practice of accepting pleas seems to have been a Scottish phenomenon in the nineteenth century,¹⁰⁵ though there is evidence that some cases of concealment in nineteenth-century England ‘provide examples of an early form of plea bargaining’.¹⁰⁶ Unsurprisingly, 99 per cent of the trials in this study in which a guilty plea was entered resulted in a successful conviction (Figs. 8.11 and 8.12). In cases where a ‘not guilty’ plea was entered, juries found defendants guilty in 57 per cent of cases. There was clearly an incentive for prosecutors to accept a plea, whether it be for concealment of pregnancy or culpable homicide, not only to secure a guaranteed conviction, but also to save the time and expense of a jury trial.

Table 8.1 shows the various sentences imposed by the courts between 1812 and 1930. The majority of sentences were imprisonment, usually in a local prison. Ten suspects were transported and thirty-one given sentences of penal servitude – imprisonment with hard labour of some description. Nevertheless, there was an incentive for defendants to enter a guilty plea. Although there were only four convictions of child murder throughout the whole period, three out of the four resulted in life sentences, one of those only after the death sentence was commuted.¹⁰⁷ The fourth case resulted in a five-year prison sentence after a plea of insanity was accepted. If we take ‘life’ to be thirty years, the average sentence for child murder was 23.75 years. Although culpable homicide could also result in a life sentence, the average sentence for this charge was 4.7 years. The average sentence for concealment of pregnancy was nine months.

¹⁰⁵ Carolyn Conley finds that nearly a quarter of Scottish murder defendants pled guilty to culpable homicide, as compared to fewer than 5 per cent of defendants in England and Ireland. Idem., *Certain Other Countries*, pp. 17-8.

¹⁰⁶ Higginbotham, ‘Sin of the Age’, p. 332.

¹⁰⁷ NAS, JC8/66/114, Minutes of the trial of Margaret Hannah (1860). The commutation of the death sentence was the result of furious negotiation, and included the jury’s petition – which recommended leniency, as well two further petitions, one with 300 signatures, and another ‘signed by 1,000 respectable married and unmarried ladies’ NAS, GD/1097/1, Defence papers of George and John Dalziell, writers to the signet.

Table 8.1 Charges and sentences

Charge	Sentence							
	Death by hanging		Transportation		Penal servitude		Imprisonment	
	No.	Duration (mean)	No.	Duration (mean)	No.	Duration (mean)	No.	Duration (mean)
Child murder	1	Remitted to penal servitude - life	1	Life	1	Life	-	-
Culpable homicide	-	-	9	17.2 years	30	8.1 years	59	13 months
Concealment of pregnancy	-	-	-	-	-	-	355	9 months

Source: as Fig. 8.11.

Judicial leniency

One of the accepted concepts within the historiography of infanticide is that of increased judicial leniency from the eighteenth century onwards, indicated by declining indictment rates, increased acquittals, and the repeal of the draconian child murder statutes in the early nineteenth century.¹⁰⁸ The evidence from Scotland between 1812 and 1930 also suggests judicial leniency in cases of suspected new-born child murder. First, of the 464 cases in which murder was one of the initial charges, only fifty-seven (12 per cent) resulted in a final charge of child murder, of which fifty-three resulted in 'not guilty' verdicts. Prosecutors acknowledged this issue. For example, in a case from 1922, in a 'statement of facts', the procurator fiscal noted that 'concealment appears to have been her main object but there seems little reason to doubt that the child was deliberately murdered', but added that,

¹⁰⁸ Jackson, *New-Born Child Murder*, p.13.

[t]here is no reason to doubt that she was in an enfeebled condition physically and was suffering from a good deal of anguish when the crime was committed and looking to the sympathetic verdicts which juries return in such circumstances, I do not think more than a verdict of culpable homicide would be obtained.¹⁰⁹

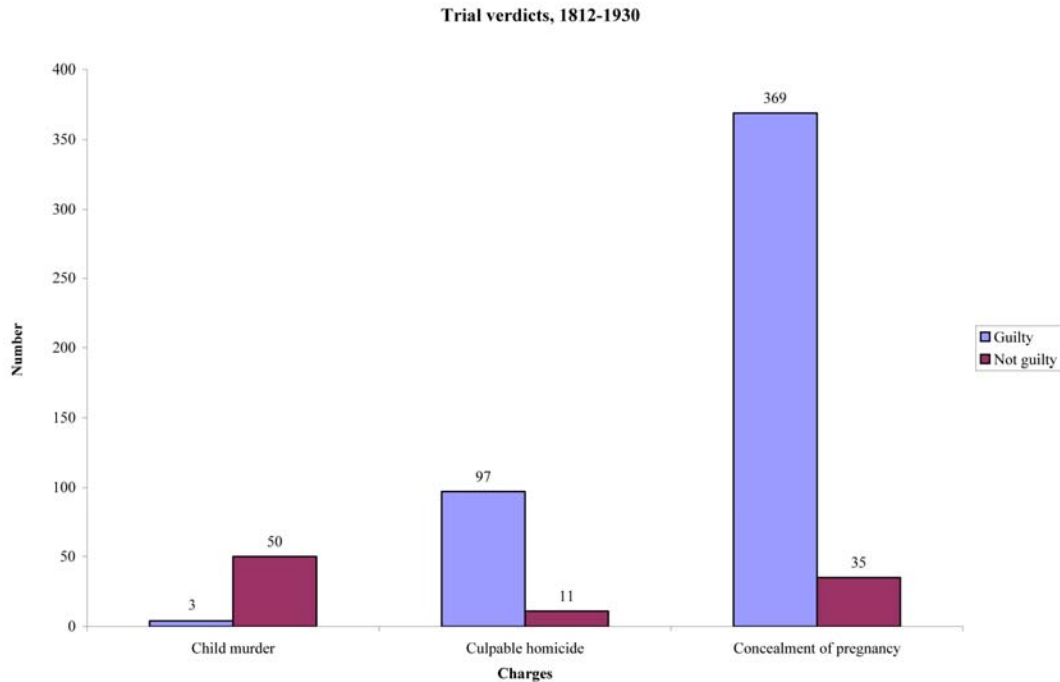


Fig. 8.12 Guilty and not guilty verdicts by charge.
Source: as Fig. 8.1.

Another example of judicial leniency is the fact that, in a majority of cases prosecutors accepted a suspect’s plea of concealment of pregnancy, even when in some cases the evidence hinted strongly at murder. For example, in 1823, a suspected new-born child murder was recorded in a pamphlet with the rather sensational title *Inhuman Atrocity*, because of the violent way in which the child was apparently murdered. The advocate depute, however, in accepting a plea of concealment of pregnancy from the suspect, wrote that ‘it seems desirable to keep the circumstances connected with that part of the case out of view’.¹¹⁰

¹⁰⁹ NAS, AD15/22/37, Mary Moss.

¹¹⁰ NAS, AD14/23/156, Jean Christie.

Arguably, judicial leniency operated within a wider culture of sympathy that seemed to develop in the second half of the eighteenth century, one in which medical issues such as separate existence and temporary insanity could be deployed effectively in the courtroom, and in which prosecutors could accept pleas of lesser charges, at least in the case of female defendants. It is not clear why this happened, but the gendered penal policy that favoured female offenders was probably based on attitudes towards women as being less capable of physical violence, and more vulnerable to economic and psychological suffering.¹¹¹ In the case of suspected new-born child murder suspects, some of the reasons for judicial sympathy were mentioned by medical jurist, Alfred Swaine Taylor:

The frequent acquittals which take place on charges of child murder, in spite of strong evidence of criminality, most probably depend on the fact that there are many extenuating circumstances in the prisoner's favour. She may be young, unfortunate, friendless, and perhaps tempted by a seducer, or by utter destitution, to the perpetration of the crime.¹¹²

The precognitions reveal a number of suspects in similar circumstances, the most common of which was probably a difficult economic situation. Without the prospects of advancement at work, or a respectable marriage, the future would have seemed very bleak for young, pregnant women, particularly domestic servants. As Mark Jackson argues, facing dismissal and an uncertain future, these women, 'perhaps more than any other group of women, possessed strong motives for concealing their pregnancies and giving birth in secret'.¹¹³

One of the biggest problems facing unmarried pregnant women in Scotland was the lack of financial support available from the parish. For example, in her deposition to investigators in 1872, the mother of new-born child murder suspect Mary Meldrum discussed her daughter's previous child, stating that '[t]he father did not own the child but fled the place', and further complained that '[m]y daughter got nothing from the

¹¹¹ King, *Crime, Justice and Discretion*, pp. 283-6.

¹¹² Taylor, *Elements*, p. 492.

¹¹³ Jackson, *New-Born Child Murder*, p. 49.

Parochial Board'.¹¹⁴ Many pregnant women found themselves in desperate economic circumstances. For example, Elizabeth McIlwraith's confession to murder, in 1873, was unambiguous: 'I knew I was unable to provide for the child, and I killed it in a state of despair',¹¹⁵ and in her admission of murder to police in 1879, Betty Park told the inspector that 'it would be a poor hen that could not scrape for one chicken'.¹¹⁶ A lack of accommodation was also a problem. In reference to the murder of her new-born child in 1877, Margaret or Maggy Mutch told one witness that 'she would not have done it if she had anywhere to go',¹¹⁷ and, in 1886, in confessing to drowning her new-born infant in a pail of water, Agnes Cowan stated that 'I had no father or mother and no home. I could barely manage my four year old'.¹¹⁸ In all of these cases, pleas of culpable homicide were accepted by prosecutors and, in Agnes Cowan's case, the sheriff substitute, '[w]hen taking the Declaration...put it to the Accused if there was nothing in her bodily or mental state at the time, that induced her to take the child's life'.¹¹⁹ It seems that because of her circumstances she was offered the chance to make a plea of temporary insanity.¹²⁰

Another factor that seemed to generate sympathy was the failure of the putative father either to either acknowledge, or to support, a suspect's child. For example, Jane McIntyre confessed to killing her new-born infant in 1858 because she was 'grieved and depressed on account of the father's refusal to acknowledge the child – he having stated that he would drown himself first sooner than acknowledge it'.¹²¹ Women had little hope of receiving financial support from the fathers of their illegitimate children if they did not want to make any contribution and pursuing the matter through the courts was difficult and effective only if paternity could be established. Even if a claim were successful, there was no guarantee of payment.¹²² For example, in 1877, Isabella Martin's father deposed that 'I had a good deal of trouble with her previous child. I had to go to see the father who

¹¹⁴ NAS, AD14/72/357, Mary Meldrum, Deposition of Margaret Arnott or Meldrum.

¹¹⁵ NAS, AD14/73/59, Elizabeth McIlwraith.

¹¹⁶ NAS, AD14/79/31, Betty Park, Deposition of John Richardson.

¹¹⁷ NAS, AD14/77/3, Margaret or Maggy Mutch, Deposition of Janet Alexander or Still.

¹¹⁸ NAS, AD14/86/19, Agnes Cowan.

¹¹⁹ Ibid., Procurator fiscal's note.

¹²⁰ Peter King also finds that 'economic hardship and destitution' was pleaded in mitigation in a high proportion of trials of theft in eighteenth-century England. Idem., *Crime, Justice and Discretion*, p. 304.

¹²¹ NAS, AD14/58/166, Jane McIntyre.

¹²² Blaikie, *Illegitimacy, Sex and Society*, Chapter 7.

after decree against him was got went to America leaving me the burden of it'.¹²³ The Poor Law Act of 1845 allowed putative fathers who refused to maintain an illegitimate infant to be prosecuted as vagabonds, but only 'after the paternity has been admitted or otherwise established' and if the 'child becomes chargeable to any parish'.¹²⁴ Either way, this did not help the economic plight of the child's mother.

The tendency to leniency was also quickened in cases where suspects claimed to have been seduced and/or had a promise of marriage reneged on by the father of the child. For example, Elizabeth Cuthbertson told investigators in 1870 that the father of her child had made an unfulfilled promise of marriage prior to their sexual intercourse,¹²⁵ and, in 1880, Fanny Walker, accused of murdering her new-born infant, was also seduced by the child's father with a promise of marriage. The circumstances in which she found out that she had been deceived were particularly unfortunate, as described by a witness:

About 4 p.m. of Saturday 3rd January last a young woman called at my house. I answered the door myself. She asked me if William Mitchell was in. I said no he is not bidding with me now and was married on the Wednesday previous on which she stepped back on the stair head – seemed much put about and said do you know that he was going out with a girl out at Crosshill and she said no it was at Strathbungo. She was sorry like and tears came down her cheeks and she said. He is a rascal I am afraid he has left that girl in the well I think she is in the family way.¹²⁶

Putative fathers and their responsibility for the illegitimate children they fathered was a subject that exercised some sections of the middle class in the 1860s and 1870s. In 1869, the chairman of the meeting of the National Association for the Promotion of Social Science (NAPSS) spoke on the idea of making the fathers of murdered illegitimate infants legally accountable:

¹²³ NAS, AD14/77/146, Isabella Martin, Deposition of Thomas Martin.

¹²⁴ Nicholls, *A History of the Scotch Poor Law*, pp. 180-1.

¹²⁵ NAS, AD14/70/32, Elizabeth Cuthbertson.

¹²⁶ NAS, AD14/80/82, Fanny Walker, Deposition of Mary Norvall or Pollock.

If they were of opinion that the man was the greatest offender, and the woman the weaker of the two, and that she was really very often tyrannised over and overpowered, he held that such a man ought to be made amenable to the law.¹²⁷

He also agreed that in legislating against seducers, there could be ‘the liability of a man’s being prey to a designing woman’, but that they should not be ‘frightened or deterred from legislation by feelings of that kind’.¹²⁸ Likewise, Mrs Edward Parker, chairman of the 1877 meeting of the National Association for the Promotion of Social Science (NAPSS), in Aberdeen, passionately defended the position of infanticidal women seduced by men:

The trust of an innocent girl had been betrayed. The greatest injury had been placed upon her by some coward, who did not stand by her when she was placed in the dock. If the pitying angels ever shed tears over human misery, they must surely do so over the plight of a girl in court, surrounded by men, betrayed by a man, brought into her position by men, judged by a jury of men, – not a jury of her peers – and forsaken by the man who ought to acknowledge the parentage.¹²⁹

The strength of these feelings, whilst not gaining success in making the fathers of children accountable, undoubtedly influenced the treatment of women accused of newborn child murder in the courtroom, and in some cases led to the charges being dropped. For example, after the prosecuting advocate read the case against Fanny Walker, he returned the precognition, with a note: ‘On further consideration with explanation as to circumstances CC deemed it expedient not to call this case. Accused will be liberated’.¹³⁰

Another defence that created sympathy was the claim by a suspect, made in a few cases, that she had been raped.¹³¹ For example, in 1865, a Free Church elder deposed that Ann McDonald had made a statement to him claiming that her pregnancy was the result of her being raped. Part of her statement to him reads:

¹²⁷ *Transactions* (Bristol, 1869). Chairman, p. 214.

¹²⁸ *Ibid.*

¹²⁹ *Transactions* (Aberdeen, 1877). Mrs Edward Parker, pp. 304-5.

¹³⁰ NAS, AD14/80/82, Fanny Walker.

¹³¹ For a discussion on rape narratives, including those in cases of infanticide, see M. Chaytor, ‘Husband(ry): Narratives of Rape in the Seventeenth Century’, *Gender & History*, 7, 3 (1995), pp. 378-407, and G. Walker, ‘Rereading Rape and Sexual Violence in Early Modern England’, *Gender & History*, 10, 1 (1998), pp. 1-25.

...my father having sent me to Redcastle one day last year...I met on the way a lad...We travelled together, until we came near to the Muir of Ord, where he parted with me. Before the parting, he took hold of me, and put me down, and had connection with me. I resisted him as well as I could, but he put me down, and accomplished his purpose.¹³²

Similarly, in 1872, Mary Fraser, from Inverness, claimed that she had been 'forced' by her previous mistress's son into having sex with him.¹³³ Similarly, in 1885, nineteen-year-old Isabella Kennedy, also from Inverness claimed that she had been raped. In her deposition, Isabella's mother stated:

I asked her why she did not tell any person that she was going to have a child and she told me she could not tell any body about it seeing the way she had got with child. I asked her how she got with child and she told me that she had been attacked by three men one night in Tomatin at the roadside and that the three of them had had with her by force.¹³⁴

Again, in 1908, in the precognition against nineteen-year-old Helen Rae, the procurator fiscal's note states: 'Accused does not appear to be strong mentally and is rather simple in nature. She has stated to her sister that her seducer...forced her by threats of violence to yield her person'.¹³⁵

All of the reasons for judicial sympathy cited above rested on the view of women as victims: of socio-economic circumstances or the false promises of a male seducer. There were other factors that could also engender sympathy in the courtroom. A suspect's socio-economic status was also important. For example, in 1857, in the precognition against Catherine McKay or Watson, the widow of a respected ship-owner, and Eliza Mennie or Cameron, a labourer's wife, much was made by the procurator fiscal of the respectability of the former, in contrast to the latter.¹³⁶ Of course, the fact that only twenty-five suspects came from privileged backgrounds could indicate that status may

¹³² NAS, AD14/65/222, Ann McDonald, Deposition of Hugh Fraser.

¹³³ NAS, AD14/72/313, Mary Fraser.

¹³⁴ NAS, AD14/85/258, Isabella Kennedy, Deposition of Margaret McIntosh or Kennedy.

¹³⁵ NAS, AD15/08/126, Helen Rae.

¹³⁶ NAS, AD14/57/216, Catherine McKay or Watson and Eliza Mennie or Cameron.

have affected a suspect's chances of being prosecuted in the first place. A suspect's standing within the community – whether they, or their family, were considered respectable, was equally important, and this was another reason why defence advocates deployed character witnesses in court. It has also been suggested that young, good-looking women also fared better in court, though there is no evidence in the precognitions to support this.¹³⁷

Insanity

Another example of judicial leniency was the use of the gendered notion of reproductive insanity. The issue of responsibility was a crucial factor in the outcome of any criminal prosecution, and was a particularly pertinent issue in cases of new-born child murder. In Scotland the concept of insanity in these cases was more fluid than that laid down in the 1800 Criminal Lunatics Act,¹³⁸ or the 'M'Naghten Rules' of 1843, which formed the concept of insanity in English courtrooms.¹³⁹ Rather it had the unique concept of 'diminished responsibility', a common law defence which 'compels the jury to consider the accused's responsibility for his/her actions at the time of the offence',¹⁴⁰ and effectively allowing a charge of murder to be reduced to culpable homicide. Indeed, in Scotland, the 'M'Naghten Rules' were 'merely interesting news'.¹⁴¹ The phrase 'diminished responsibility' was first used in 1844, but the plea was developed in the seventeenth century from the idea of 'partial insanity', which was rejected by English jurists. Hume suggested that with regards to 'the inferior degrees of derangement, or natural weakness of intellect, which do not amount to madness...relief of these must be sought either in the discretion of the prosecutor, who may restrict his libel...or in the course of application to the King for mercy.'¹⁴² In 1867 Lord Deas asked a jury in a case

¹³⁷ King, *Crime, Justice and Discretion*, p. 283.

¹³⁸ 1800 39 & 40 Geo. III c. 94.

¹³⁹ For a comprehensive discussion of M'Naghten see Grey, 'Discourses', p. 204.

¹⁴⁰ N. Walker, *Crime and Punishment in Britain* (Edinburgh, 1965), p. 279.

¹⁴¹ *Ibid.*, p. 144.

¹⁴² N. Walker, *Crime and Insanity in England, Vol I: The Historical Perspective* (Edinburgh, 1968), pp. 138-41.

of murder to take the accused's drunkenness at the time as a form of diminished responsibility. The jury found the defendant guilty of culpable homicide. This innovation, states Nigel Walker, achieved 'by means of the jury's verdict what had normally been left to the royal prerogative of mercy – the substitution of a lesser penalty than death. Lord Deas continued to steer juries in this way, and his fellow judges followed suit. By 1909 the phrase 'diminished responsibility' – was being used by judges.¹⁴³ By the 1930s diminished responsibility was used regularly, and the Lord Advocate seems to have been willing to accept medical evidence of diminished responsibility and reduce the charge itself to culpable homicide.¹⁴⁴

Table 8.2 Types of insanity recorded in precognitions and/or trial minutes

Type of Insanity	Number	Percentage
Insensible – unconscious	67	47
Insensible – pain	27	19
Weak minded	18	13
Insensible – agitation	9	6
Epilepsy	6	4
Insanity in family	4	3
Insensible	4	3
Insensible – exhaustion	2	1
Puerperal insanity	2	1
Menstrual insanity	1	1
Placed in asylum	1	1
Attempted suicide	1	1
Total	142	100

Source: NAS, AD14/15, Criminal precognitions; JC6-14, High Court minute books.

¹⁴³ Ibid., pp. 142-44.

¹⁴⁴ Ibid., p.144.

The concept of diminished responsibility allowed considerable latitude in what constituted a state of 'partial insanity'. Table 8.2 describes the different types of 'insanity' that were deployed as evidence of diminished responsibility in trials of suspected NBCM&CP. Puerperal insanity was mentioned in two cases. The first was in 1857, when Catherine McKay or Watson told the sheriff substitute that 'I was as daft as daft could be' immediately after the delivery of her child.¹⁴⁵ Prosecutors believed that her defence counsel would claim that Watson was suffering from puerperal insanity. Again, in 1859, the father of Janet Dochart or Dochart sent for an accoucheur after he suspected she had given birth, and told investigators that, judging by her state, he had been 'afraid of puerperal mania'.¹⁴⁶ The notion of puerperal insanity was first described in 1820,¹⁴⁷ and developed from a gendered discourse that viewed female bodies as more unstable than those of males and that recognised 'women's reproductive system as having a powerful influence over the mind' was applied.¹⁴⁸ Puerperal insanity became acknowledged within the medical community, so that '[b]y the mid-nineteenth century, alienists agreed that mental disorder could afflict women at any time from conception to weaning.'¹⁴⁹

In practice, there were three categories of puerperal insanity: insanity of pregnancy, insanity of the puerperal period and insanity of lactation.¹⁵⁰ The first and last of these were not invoked in any of the cases analysed in this study, although there is one case in which the concept of menstrual insanity is mentioned. In 1908, a special defence was lodged at the trial of Jane Millar; that 'The accused's plea is not guilty and specially she was insane at the date of the alleged crime.'¹⁵¹ A doctor stated that 'when she saw that she had given birth to a child she got into a state of frenzy, when she did not really know what she was doing, and was not responsible for her actions.'¹⁵² In addition, her

¹⁴⁵ NAS, AD14/57/216, Catherine McKay or Watson and Eliza Mennie or Cameron.

¹⁴⁶ NAS, AD14/59/74, Janet Dochart or Dochart, Deposition of Peter McLaren.

¹⁴⁷ Grey, 'Discourses', p. 220.

¹⁴⁸ Ibid., p. 201.

¹⁴⁹ Watson, *Forensic Medicine*, p. 216; Arnot, 'Gender in Focus', pp.174-92.

¹⁵⁰ Grey, 'Discourses', p. 220.

¹⁵¹ NAS, AD15/08/92, Jane Millar.

¹⁵² Ibid., Deposition of Joseph Young.

employer also deposed that ‘[a]lmost every month she was strange in her manner and I do not think when she was in that way she was accountable for her actions’.¹⁵³

Cases of insanity were discussed in the precognitions that were not related to the reproductive system. For example, in 1823, the prosecuting advocate abandoned the trial of Isobel Robb alias Scott, because ‘circumstances induced him to’. It is likely that these circumstances were the testimony of Patrick Blaikie, physician to the lunatic asylum of Aberdeen, who had examined Isobel for signs of recent delivery and stated at the end of his report, ‘I further certify that from her countenance and expression of her eyes it is probable that she labours under slight mental alienation’.¹⁵⁴ Likewise, the surgeon of Duke Street Prison, Glasgow, wrote to Crown Counsel about Margaret Baxter or Pratt, stating that, ‘I am suspicious regarding this woman's mental condition and I am of opinion that she will require to be watched in the hospital by an attendant night and day’.¹⁵⁵ The proceedings against Margaret were subsequently dropped.

It is clear from the precognitions that epilepsy was reason enough to argue diminished responsibility. For example, in 1864, a note on the precognition of Martha Reid, who was tried for concealment of pregnancy, reads: ‘Charge withdrawn after case called today, as accused took epileptic fit in court.’¹⁵⁶ In a case from 1922, the surgeon of Duke Street prison, Gilbert Garry, wrote to Crown Counsel regarding Hannah McGowan otherwise McMath:

I have to report for your information that she has on one or two occasions had severe attacks of nerve disturbance in the shape of hysterical or hystero-epileptic fits. She has been subject to such since she was about nineteen years of age. during such she is excited and is not aware of what she is doing, or rather has no control over her actions, and in the fits there is considerable violence in the muscular action displayed.¹⁵⁷

¹⁵³ Ibid., Deposition of Margaret Learmonth. For a discussion of menstrual insanity, see Arnot, ‘Gender in Focus’, pp. 175-9.

¹⁵⁴ NAS, AD14/23/214, Isobel Robb alias Scott.

¹⁵⁵ NAS, AD14/99/70, Margaret Baxter or Pratt, Deposition of A. Dryden Moffat.

¹⁵⁶ NAS, AD14/64/136, Martha Reid. In fact, she had been in prison for seven months.

¹⁵⁷ NAS, AD15/22/38, Hannah McGowan otherwise McMath.

Although this case was not dismissed, a plea of guilty was accepted and the child murder charge was dropped. Moreover, her sentence was nine months imprisonment, which may be judged to have been lenient, considering that a cord had been discovered wrapped around the child's neck.

A number of suspects, it was claimed, were weak-minded, such as Ann Turnbull, who confessed to murdering her infant and had a special defence lodged for her, '[t]hat she is a person of naturally weak intellects'.¹⁵⁸ Similarly, in 1921, Margaret McKenzie's special defence was that she was insane at the time the alleged offence was committed. More specifically, there was an unsuccessful attempt to have her certified 'mentally defective' under section 9 of the Mental Deficiency and Lunacy (Scotland) Act 1913, which, in common with the law of England, acknowledged that mental defectives did not know the difference between right and wrong and were therefore unfit to plead.¹⁵⁹ Professor John Glaister, after examining Margaret, concluded that she was 'fit to plead'. Nevertheless, the court showed leniency by dropping the charge of child murder, accepting a plea of culpable homicide, and handing her a fifteen-month sentence. The testimony of her mother may have helped the court's decision:

Margaret was a twin child of seven months. She was weakly as a child, but is now quite robust; when about 15 or 16 years she developed a great craving for sweets, and ordered them in large quantities from shopkeepers for which afterwards I had to pay. I began to fear at that time that her mind was affected, and I had her specially examined by the family doctor, who told me there was nothing wrong with her mind. She has however always been regarded as rather simple, and one easily led away.¹⁶⁰

There is no evidence within the precognitions that weak-minded women were seen as more prone to new-born child murder.¹⁶¹

¹⁵⁸ NAS, AD14/48/152, Ann Turnbull.

¹⁵⁹ Grey, 'Discourses', pp. 241-2.

¹⁶⁰ NAS, AD15/21/47, Margaret Mackenzie, Deposition of Margaret Mackenzie [senior].

¹⁶¹ This is in contrast to England, where, in 1913, the Home Office believed that young, weak-minded women were likely to 'produce more babies and kill them'. Grey, 'Discourses', p. 249.

Throughout the period of this study, it was widely acknowledged that women could suffer a temporary ‘frenzy’ at the moment of delivery,¹⁶² and this was the claim made by the majority of the suspects in this study who declared insanity. For example, in 1814, Bessy Mackay told her interrogators that she was ‘totally insensible to what had passed’ during her delivery.¹⁶³ In 1833, Ann Tweedie stated that her child was ‘smothered whilst she was in the faint’,¹⁶⁴ and, in 1849, on being asked how her infant had received a significant head injury, Janet Douglas or Boyd claimed that she had been ‘insensible for nearly two hours with the pain of birth’ and suggested that ‘the injury may have happened then’.¹⁶⁵ Similarly, in 1867, Anne Gillies claimed that she was ‘taken by surprise...became unconscious and fell off the chair’, and when she awoke the child was dead,¹⁶⁶ and Catherine Budge told her interrogators, in 1880, that at the time of delivery ‘everything grew black about me’.¹⁶⁷ A number of women claimed that they had become unconscious and, like Jane Morrison, they had awoken to discover their child ‘on its face in the discharges’.¹⁶⁸

The medical witnesses within the precognitions also acknowledged the concept of temporary insanity. For example, in 1888, after Elizabeth Gibb declared that she was ‘not conscious of having done anything’ to her child, in 1888, one doctor deposed that:

I think it probable that the pain of child bearing, the desire of secrecy, and the desire to go about her work as usual, may have induced a state of frenzy [sic] in the accused during which she killed her child.¹⁶⁹

Moreover, the concept was also being taught in universities. For example, in his published lecture notes, Francis Ogston, stated:

¹⁶² Walker, *Crime and Insanity*, pp. 126-7; Jackson, *New-Born Child Murder*, p. 121.

¹⁶³ NAS, AD14/14/13, Bessy Mackay.

¹⁶⁴ NAS, AD14/33/327, Ann Tweedie.

¹⁶⁵ NAS, AD14/49/228, Janet Douglas or Boyd.

¹⁶⁶ NAS, AD14/67/164, Anne Gillies.

¹⁶⁷ NAS, AD14/80/227, Catherine Budge.

¹⁶⁸ NAS, AD14/82/289, Jane Morrison.

¹⁶⁹ NAS, AD14/88/210, Elizabeth Gibb, Deposition of John Urquhart.

As hitherto administered, the law has not been at all adverse to the recognition of temporary insanity as an excuse for the destruction of the infant by the then supposed unconscious female. It has even gone a step further, in admitting that the destruction of the infant by the mother may be effected without the intention having been conceived, thus removing the act altogether out of the category of murder.¹⁷⁰

The concept of temporary insanity did not require proof of ‘disease of the mind’.¹⁷¹ Indeed, the link made between physiological factors and temporary insanity or ‘transitory mania’ was not grounded in robust medico-legal terms. Rather, the concept of temporary insanity, loosely defined, could be applied to a number of socio-economic conditions as well. For example, in a detailed report on the mental state of Elizabeth Cam Birrel Page, accused of cutting her new-born infant’s throat with a razor blade, in 1929, William Boyd concluded that:

Prior to the crime the accused passed through a state of mental anxiety and fear. She was worried, remorseful and apprehensive. As a result she did not sleep...and this lack of sleep must undoubtedly have had a serious effect on her general health. She is of a nervous disposition, excitable and of weak intellect, as evidenced by the examination of her nervous system, physical make-up, and general intelligence. There were adverse circumstances at home, there was no maternal influence, and no one to whom she could confide her troubles. The resulting repression would undoubtedly have a malign influence on the accused’s mental state.’¹⁷²

Sympathy from within the local community

In his study of new-born child murder in eighteenth-century England, Mark Jackson finds that ‘the further a case moved from its local context, the more likely was the jury to find in favour of the accused.’¹⁷³ However, judicial leniency did not operate within a vacuum and it needs to be viewed in the context of wider public distaste for the death penalty, for

¹⁷⁰ F. Ogston, *Lectures on Medical Jurisprudence* (London, 1878), p. 207.

¹⁷¹ Walker, *Crime and Insanity*, p.129.

¹⁷² NAS, AD15/29/77, Elizabeth Cam Birrel Page.

¹⁷³ M. Jackson, *New-Born Child Murder*, p. 133.

example.¹⁷⁴ There is also evidence between 1812 and 1930 of a great deal of sympathy for individual female new-born child murder suspects within their own neighbourhoods. For example, in 1817, the employers of Isobel Pearie, who had been in their employment for nine years, were very sympathetic, telling investigators that Isobel had risen to nursery maid from under nursery maid through ‘her good conduct and extreme gentleness towards the children’.¹⁷⁵ Her case never made it to trial. Likewise, the employers of Elizabeth Edwards called her ‘an honest, sober, civil girl’,¹⁷⁶ and, in 1856, a petition was received from a number of the ‘respectable’ citizens of Auchinleck, Ayr, including the inspector of the poor, postmaster and the minister, in favour of Agnes Brown, who was accused of new-born child murder:

Your petitioners, most respectfully, are of the opinion, that she was always of a weak mind, or fatuous, particularly, since she sustained a severe injury upon her head, and, therefore, your Petitioners beg leave to commend her to your kind consideration, and clemency and your Petitioners shall ever pray.¹⁷⁷

The petition seemed to do the trick, and Agnes was charged with concealment of pregnancy. Likewise, in 1872, the procurator fiscal investigating an accusation against Janet Reid noted that ‘the witnesses generally wish to favour the accused’,¹⁷⁸ and, in 1885, Jane Haggart’s employer described her as ‘the most respectable woman in every way’.¹⁷⁹

Sympathy was also evident in the testimony of character witnesses in court. For example, in 1833, Helen or Nelly Simpson or Melrose had five exculpatory witnesses, including the Reverend Mr Baird.¹⁸⁰ In 1864, Mrs Mary McAuslan, keeper of the Temperance Hotel in Dunoon, was the character witness for one suspect,¹⁸¹ and a Roman Catholic

¹⁷⁴ In Cockburn’s *Circuit Journeys*, p. 187, it is noted that ‘hanging is at such a discontent now’.

¹⁷⁵ NAS, AD14/17/75, Isobel or Bell Pearie or Pirie.

¹⁷⁶ NAS, AD14/40/236, Elizabeth Edwards.

¹⁷⁷ NAS, AD14/56/209, Agnes Brown.

¹⁷⁸ NAS, AD14/72/278, Janet Reid.

¹⁷⁹ NAS, AD14/85/159, Jane Haggart.

¹⁸⁰ NAS, AD14/33/332, Helen or Nelly Simpson or Melrose.

¹⁸¹ NAS, AD14/64/124, Mary McGlashan.

priest testified on behalf of Esther Dechan, in 1873.¹⁸² In 1925, a rector from England wrote in defence of Margaret Keay, who was charged with child murder whilst in Scotland with her employer. In his letter to Crown Counsel, he wrote:

I have known Margaret Keay since she was a baby, and have had frequent opportunities of seeing and teaching her. I have always found her steady and trustworthy and fond of children though not of quick intelligence. Her parents have lived in the parish for many years, and are highly esteemed and very respectable people.¹⁸³

The evidence against judicial leniency

For all the evidence of judicial leniency in cases of suspected NBCM&CP in Scotland, the position is not as clear-cut as it seems at first glance. For a start, although there were so few new-born child murder convictions, murder was indicted in the majority of cases. However, as this chapter has demonstrated, evidential requirements and issues with the medical evidence made a successful murder conviction difficult to secure. In this light, it can be argued that plea bargains were an expedient and effective method of securing a conviction of some sort, rather than an acquittal of murder.

Another argument against judicial leniency is demonstrated in Fig. 8.13, which shows that the average length of custodial sentences between 1812 and about 1860 actually increased. This is largely down to the increase in the average length of culpable homicide sentences during this period, but it nevertheless suggests that new-born child murder suspects were treated more harshly between 1812 and 1860, although it is difficult to provide a reason for this harshness. Furthermore, as Table 8.1 shows, although the average length of sentences in cases of concealment of pregnancy remains fairly constant between 1812-1930, the figure, about nine months, is significantly higher than those found in England during the same period. For example, Ann Higginbotham finds that of the women convicted of concealment in the Central Criminal Court (formerly The Old

¹⁸² NAS, AD14/73/55, Esther Dechan.

¹⁸³ NAS, AD14/26/94, Margaret Keay, Letter from Arthur H. Thirsby Pelham.

Bailey) between 1839 and 1906, half received sentences of less than a month and fewer than 10 percent received a sentence of longer than six months.¹⁸⁴

The nineteenth century witnessed a growth in concern about female sexuality, prostitution, illegitimacy and ‘dangerous sexualities’.¹⁸⁵ It has been argued in Chapter One that the gendered nature of the Scottish concealment of pregnancy charge (that it was a female-only ‘crime’ pertaining only to the mother of the child) makes it concerned less with the death of the illegitimate infant rather than as a punishment of the sexual behaviour that led to the pregnancy in the first place. In this light, the average sentence of nine months for concealment of pregnancy is, arguably, quite harsh, and the incredulity of one suspect when charged with concealment underscores this harshness: ‘She cried a good deal and said that she did not see why she should be sent to Dunse for not letting people know she was in the family way.’¹⁸⁶

There is certainly a lot of discussion within the precognitions about the sexual behaviour of suspects. For example, in 1845, Jessie Leithhead or Waddell’s neighbours told investigators that she ‘was in the habit of letting men come to her house’,¹⁸⁷ and, in 1892, a policeman perhaps spoke for the community when he deposed that ‘Catherine Fletcher McKellar is a woman of loose character who goes with men, and has had illegitimate children’.¹⁸⁸ Clearly, the sexual history of a suspect was important to prosecutors, and although there is no direct evidence that women were being punished for their sexual behaviour rather than for murder, it is clear that the suspects’ sexuality was of concern. For example, in 1934, Elizabeth Cam Birrel Page, having served five years ‘at his majesty’s pleasure’ for child murder after being declared insane at her trial, received a conditional release, as indicated by a note in the precognition:

¹⁸⁴ Higginbotham, ‘Sin of the Age’, p. 332; Grey, ‘Discourses’, Ch. 3.

¹⁸⁵ Mort, *Dangerous Sexualities*; L. Mahood, *The Magdalenes: Prostitution in the Nineteenth Century* (London, 1990); Walkowitz, *City of Dreadful Delight*; D’Cruze and Jackson, *Women, Crime and Justice*, p. 65.

¹⁸⁶ NAS, AD14/78/152, Williamina Roughead, Deposition of Philip Whiteside Maclagan, M.D.

¹⁸⁷ NAS, AD14/45/379, Jessie Leithhead or Waddell.

¹⁸⁸ NAS, AD14/92/86, Catherine Fletcher McKellar.

The girl has had a very unhappy home life and there is no doubt that she took the life of her newborn child while she was in a state of distraction. At the trial CC formed a very unfavourable impression of her father and if the proposal had been to return her to her home CC would have strongly opposed to it. The present proposal seems unobjectionable if due safeguards can be devised to protect the woman from her own sexual proclivities.¹⁸⁹

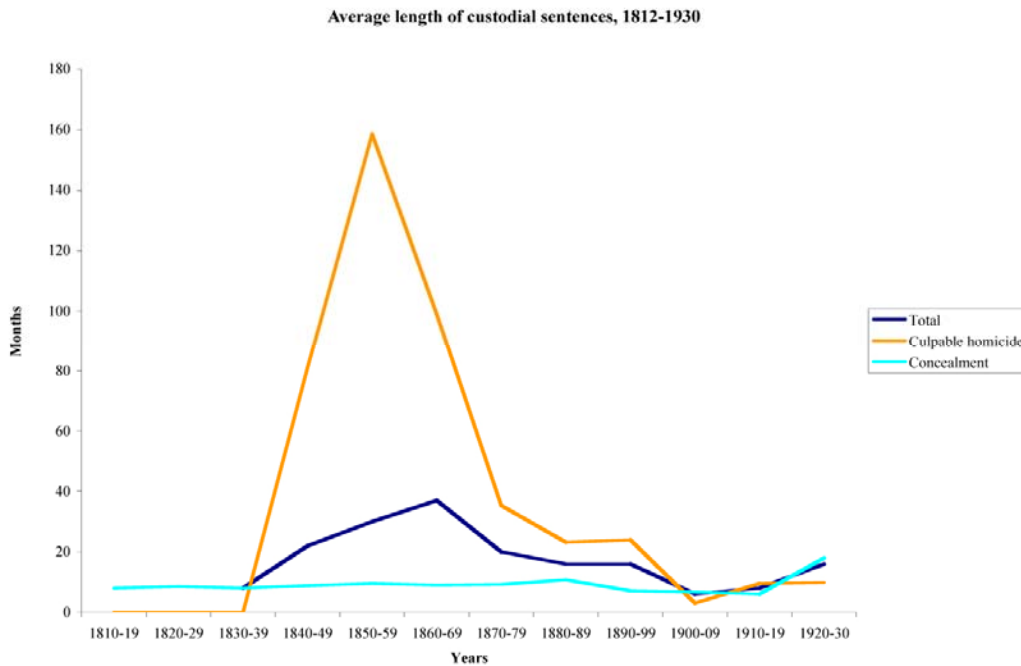


Fig. 8.13 Average length of custodial sentences.
Source: NAS, JC8-14, High Court minute books.

The precognitions also reveal, on occasions, harsh attitudes towards individual suspects. For example, in 1836, the procurator fiscal in the case of Margaret Grigor wrote to the prosecuting advocate: ‘The case has excited considerable sensation in the district, and there is but one opinion of the party, guilty. I may mention that the party accused is of a very bad race,’¹⁹⁰ and, in 1858, the procurator simply referred to one suspect as a ‘wretched woman’.¹⁹¹ Arguably, if new-born child murder suspects did not conform to

¹⁸⁹ NAS, AD15/29/77, Elizabeth Cam Birrel Page.

¹⁹⁰ NAS, AD14/36/101, Margaret Grigor.

¹⁹¹ NAS, AD14/58/365, Ann Taylor.

the trope of the young, innocent victim, then they could expect little sympathy in court. For example, in 1846, Lord Cockburn revealed his rather candid attitude towards one woman convicted of child murder: ‘This was said to have been the fourth illegitimate that she had disposed of by violence. A tall, strong, dour, ogress.’¹⁹² Even women who did conform to the ‘victim’ stereotypes occasionally did not escape punitive justice. For example, in 1860, twenty-five-year-old Margaret Hannah, who had never had a previous child, and whose defence included a plea of temporary insanity, was found guilty of child murder and sentenced to death.¹⁹³

Mark Jackson argues that historians have ‘underestimated the extent and persistence of local hostility towards [new-born child murder] suspects’.¹⁹⁴ There is certainly evidence in this present study of hostility towards suspects from the local community. Not only did almost every case in this study begin as a formal accusation of murder, a number of witnesses were quite vocal in their disdain for certain suspects. For example, in 1847, a fellow servant of Mary Sinclair called her ‘a murderer’ after it was suspected she had done away with her infant,¹⁹⁵ and similarly, in 1852, Ann Andrew’s 74-year-old neighbour confronted her, shouting ‘Ye murderous limmer, where have you putten that bairn?’¹⁹⁶ In 1872, one witness was particularly frank about her feelings for suspect Mary Jane Scott, ‘I never liked her, none of us like her.’¹⁹⁷

There is also evidence of wider community hostility towards individual suspects. For example, included within the precognition against Carolina Cameron, in 1820, is a letter addressed to Crown Counsel, which states: ‘the good women about Bellshill think that you are going to forget Carolina Cameron altogether although they know that the proof is clear that she was the cause of the death of her child.’¹⁹⁸ Similarly, in 1921, the procurator fiscal sent a precognition from Alness, Ross and Cromarty, to Crown Counsel with the note attached: ‘There was considerable consternation in the district when the

¹⁹² Cockburn, *Circuit Journeys*, p.187.

¹⁹³ NAS, AD14/60/312, Margaret Hannah.

¹⁹⁴ Jackson, *New-Born Child Murder*, p. 14.

¹⁹⁵ NAS, AD14/47/409, Mary Sinclair.

¹⁹⁶ NAS, AD14/52/249, Ann Andrew.

¹⁹⁷ NAS, AD14/72/132, Mary Jane Scott.

¹⁹⁸ NAS, AD14/20/199, Carolina Cameron.

facts of this case became public, and Crown Counsel may consider the advisability of expirating [sic] the circumstances in court by bringing the accused to trial'.¹⁹⁹

Conclusion

This chapter has looked at the trials of NBCM&CP cases, looking at the witnesses and evidence contained in the precognitions, as well as the various statistics arising from the trials. It has argued that whilst the majority of initial accusations and indictments contained child murder as a charge, the vast majority of final charges constituted the lesser offences of concealment of pregnancy or culpable homicide. Moreover, most of these lesser charges were based on a guilty plea, accepted by Crown Counsel because of the overwhelming weight of evidence against child murder, and the time and money that could be saved by not having to call a jury. Finally, the chapter has argued for a more nuanced understanding of the concept of judicial leniency in the prosecution of new-born child murder in Scotland between 1812 and 1930. Whilst the acquittals for child murder and the high rate of conviction on lesser charges are examples of a culture of sympathy for suspects, based on individual socio-economic circumstances and wider, gendered discourses that viewed women as victims of circumstance, men and their own unstable bodies, there was also evidence of judicial harshness, particularly in cases of culpable homicide until about 1860. Moreover, this chapter has also questioned how lenient the charge of concealment of pregnancy conviction really was, especially if it is considered as a punishment of female sexuality.

¹⁹⁹ NAS, AD15/21/184, Catherine Munro.

Conclusion

This thesis contributes to the historiography of new-born child murder and infanticide both in terms of its geographical coverage and the methodology employed. It joins other Scottish, numerous English and three recent Irish studies – with a thesis on Wales on the way – to add to a substantial body of work that is beginning to encompass the whole of Britain from the early modern period to the early twentieth century. Its use of pre-trial and trial records builds on the work of Mark Jackson in illuminating both the legal processes and the socio-cultural forces at work in the investigation and prosecution of cases of suspected new-born child murder and concealment of pregnancy (NBCM&CP).

First and foremost, this study has provided a survey of the cases of suspected NBCM&CP brought to the attention of the authorities in Scotland between 1812 and 1930, from the initial suspicion of pregnancy through to the official investigation and trial. The use of pre-trial documents in particular has allowed for a focus on the local processes involved in the investigation of these ‘crimes’, an area that has not been covered by many historians. Where this thesis breaks new ground is in its focus on the police and medical practitioners at the local level. With the former, the interaction between the police and the community and the methods employed by the police in detecting the mothers of dead infants are particularly intriguing. With the latter, it is clear that the role of medical practitioners at the level of the community was complex. Whilst on the one hand the community turned to them to examine suspects for signs of pregnancy and delivery, doctors and midwives also helped to provide abortifacients and even attempted to cover up the circumstances of the births and deaths of infants.

Continuities within the thesis

This thesis covers a period of 118 years, yet the structure and much of the content of the precognitions changes very little over the period. The physical appearance of the documents alters slightly, the number of generic, printed schedules increases and, by the end of the period, all of the documents are typed. Furthermore, although the witness statements and suspects’ declarations vary enormously in length, they tend to

follow quite rigid patterns across the whole period: similar questions are asked, the same procedures are involved, and so much of the testimony follows similar narrative patterns. Minimal reference is made by suspects or witnesses to outside events not pertinent to the circumstances of the case, further adding to the appearance of continuity.

There are also a number of continuities in the data. One of these is the socio-economic circumstances of NBCM&CP suspects. Most were young, unmarried, and were either agricultural or domestic servants. Whilst there were cases from all over Scotland, the majority were from rural Scotland. Another similarity is in the circumstances of both the births and deaths of the infants: the places in which deliveries took place; where bodies were discovered; and the physical appearance of the dead infants do not change across the period. The type and proportion of witnesses also changed little between 1812 and 1930. The majority of witnesses were from the local community, and most were female. Official witnesses were overwhelmingly male and, in terms of the numbers involved, changed little throughout the period (save for a slight increase in the number of police officers from about 1840). The testimony of witnesses also barely altered during this period. The lack of successful murder convictions was also a common thread over the 118 years.

These continuities highlight the importance of the legal process and procedure in the investigation and prosecution of suspected NBCM&CP. Once an official accusation was made, every decision at every stage of the investigation passed through a legal filter. The legal process dictated whether a prosecution would proceed and also the content of the precognitions, which were based on the questions asked by investigators and prosecutors. Moreover, the answers elicited from suspects and witnesses were also filtered. The precognitions were not verbatim transcripts of what was said, but rather official interpretations written in a formulaic legal style. As such, these sources are not open windows into the 'reality' of the cases analysed in this thesis, let alone the thoughts and feelings of suspects and witnesses. In this light, the legal process cannot be separated from any study of crime.

Changes over time in the thesis

This study also reveals a number of important changes over the period. First, the number of investigations (and prosecutions) rose from the beginning of the period to a peak in the mid-1860s, after which it decreased quite rapidly until the end of the period. These patterns may reflect the actual number of cases, but it is much more likely that these changes were the result of administrative changes. For example, the rise in investigations can be related to, on the one hand, the development of the police force from the 1840s and to the professionalisation of local justice from the 1830s, and the later decline in prosecutions was due to the increasing use, in part to save time and money, of the sheriff courts to process lesser crimes, which included concealment of pregnancy.

There were also significant changes in some of the evidence over the period. For example, suspects' declarations became simplified from 1887, from which time they were entitled to see an agent prior to their judicial declaration. From this point suspects stated either that they were 'not guilty' or – in most cases – made no comment at all. The medical evidence also changed over the period. Up to about 1840, medical reports were generally poorly written and lacking in specific detail. By the 1850s, the quality of the medical reports and the experience of the men writing them improved. Moreover, the medico-legal training of advocates from the 1850s also helped to improve the quality of medical reports. Importantly, however, forensic technology hardly changed at all: medical practitioners were carrying out the same tests by the end of the period as they were at the beginning.

Similarities with other studies

The findings of this thesis converge with those of other studies of new-born child murder and infanticide in a number of ways. First, in the socio-economic profiles of suspects, who were universally young, unmarried and the mothers of the illegitimate infants they were accused of killing. These were not the very poorest in society, but for many having a child would have plunged them into economic crisis. Most other studies (excepting those based on London, of course) also find new-born child murder

to be a largely rural phenomenon and a number also link this 'crime' to illegitimacy. Indeed, it can be argued that areas of high illegitimacy would produce more dead illegitimate infants and so more accusations of new-born child murder. This urban/rural difference is intriguing. The relative lack of urban cases may partly reflect the number of urban illegitimate infants: it was harder for urban servants to engage in sexual activity as frequently as their rural counterparts and so there were fewer pregnancies. Equally, it could also be due to the fact that infants exposed in towns and cities were more likely to be discovered alive, or that in the city it was much more difficult to link an unidentified dead baby to a suspect. Similarly, bodies may have been easier to dispose of in towns and cities with large rivers, or by the sea.

Another possible explanation for the relative lack of cases of urban cases is that women in towns and cities had more developed support networks than women in rural areas. This study has shown that most suspects were new to the area and were already pregnant when they arrived. So, not only did they not have friends or relatives nearby, but their pregnancies were spotted and they were watched closely until the delivery. It is interesting that there are very few cases involving female factory workers, particularly in places like Dundee, where the vast majority of mill workers were women. Arguably, here women looked after each other to ensure pregnancies and infant deaths were kept away from the gaze of authority.

Another similarity between this and other studies concerns three medico-legal issues that made securing a successful conviction of murder difficult: accurately determining the cause of death; proving live-birth; and the issue of separate existence. The ambiguities surrounding these resulted in murder charges being dropped in some cases and being dismissed completely in others. The increasing deployment of diminished responsibility in trials of new-born child murder and infanticide from the mid-nineteenth century is also discussed in a number of studies, which demonstrates the increasing importance of psychiatry in medico-legal debate.

This thesis also concurs with a number of studies that focus on various gendered aspects of NBCM&CP. First, it is sensitive to the fact that, as elsewhere, men dominated the legal system and that this affected the treatment of suspects. In particular, there were powerful discourses that were deployed in the courtroom that

saw female new-born child murder suspects as passive victims: of poverty; of men who had seduced, or raped, them and were unwilling to help provide for the child; and of their own weak and unstable bodies. In this period, it was believed that women were particularly vulnerable during pregnancy and at or around the time of and immediately after childbirth. These discourses were successfully utilised both prior to and during the trial in mitigation, allowing for murder charges to be dropped, pleas of lesser charges to be accepted, cases to be dismissed, and defendants to be acquitted.

It is important to emphasise that the discourses that rendered female NBCM&CP suspects as passive victims do not represent the actual motivations for these 'crimes'. This thesis has deliberately omitted the question of why the suspects in this study concealed their pregnancies or murdered their new-born infants. Whilst economic circumstances and shame may have led women to conceal their pregnancies, it does not necessarily follow that they also murdered their infants. Most of the women who confessed to murder did not give a specific reason why and it is unhelpful to offer modern, psychological explanations for new-born child murder – not least because these tend to apply to women who have murdered older children. However, it is possible to speculate that many of the stories told by suspects and deployed in the courtroom by defence advocates that invoked these 'victim' tropes were defence strategies, used deliberately because of their success in securing a sympathetic response.

The roles of 'expert' witnesses in this period were also drawn along gendered lines. In medicine, the nineteenth century witnessed the gradual medicalisation of childbirth, in which authority over the pregnant female body was wrested from the 'unprofessional' and 'untrained' midwife, and transferred to the professional, male, medical practitioner. This can be seen in the gradual marginalisation of the midwife as a credible medical witness: in the first half of the nineteenth century, midwives regularly examined suspects, and occasionally dead infants, and testified to this in court. By the 1850s, midwives' testimony in the courtroom was less well received and little had changed in that respect by the end of the period. Conversely, female lay witnesses predominated when it came to testifying about the signs of pregnancy and childbirth. To a lesser extent, the roles of women who helped the police – as searchers or nurses – suggests that policing too worked along gendered lines.

Like a number of other studies, this thesis also argues that in many cases of new-born child murder, communities and prosecutors alike were more concerned with punishing the sexual behaviour that led to the illegitimate conception than the actual murder itself. For a start, the fact that witnesses discuss the sexual reputation of suspects in a number of cases suggests that this was information that investigators were keen to obtain. The fact that, in most cases, prosecutors not only dropped the murder charge, but accepted pleas of concealment of pregnancy also bolsters this theory. Finally, it can be argued that because only the mother of a dead infant could be charged with concealment of pregnancy, it was designed to punish the sexual behaviour that led to her illegitimate pregnancy. This provides another explanation for the predominance of unmarried women amongst suspects.

A number of studies of infanticide and new-born child murder discuss an ‘infanticide panic’ in England in the 1850s and 1860s,¹ related particularly to coroners in London, who exaggerated the extent of new-born child murder. Interestingly, the Scottish data shows that the highest rates of prosecutions was also in the 1850s and 1860s, which could also be an indication of a moral panic over new-born child murder, compounded by the publication, in 1858, of the Scottish illegitimacy figures, which were extremely high in certain areas. This may have led to cases of suspected NBCM&CP being pursued more vigorously in certain parts of Scotland.

Differences between this thesis and other studies

All of the substantial differences between this thesis and other studies of new-born child murder and infanticide are related to the peculiarities of the Scottish law and legal procedure. This vindicates the approach taken by this study, to use both the pre-trial and trial documents, and to shadow closely the legal process. Without such an approach, these important differences would have remained obscured.

¹ Higginbotham, ‘Sin of the Age’, pp. 320-3.

First, the charges of concealment of pregnancy and culpable homicide made a considerable difference to the way in which NBCM&CP were investigated and prosecuted compared to elsewhere. Concealment of pregnancy in Scotland differed from concealment of birth in England because, throughout the period, it only applied to the mother of the infant. Given the fact that it was easy to prove, it is little wonder that prosecutors accepted so many guilty pleas. Culpable homicide was a very flexible charge, and could be substituted for a charge of murder at any point in a trial by the prosecutor.

Secondly, the way in which crimes were investigated in Scotland was also different and the precognitions are unique in that respect. Moreover, there were different evidential requirements – such as the need for two witnesses to a ‘crime’, so that a suspect’s confession alone was not enough to secure a conviction – that made it more difficult for prosecutors to build a convincing case. This problem was compounded with a supposedly hidden ‘crime’ such as new-born child murder. This is another reason why plea bargains were so readily accepted, and why there were fewer trials but a higher conviction rate in Scotland compared to the rest of Britain.

Whilst the differences between this and other studies are important, the most significant feature of this thesis is how its methodology can provide a more nuanced understanding of the subject, allowing an exploration of areas that other studies have only examined cursorily. In particular, this study has illuminated many of the local processes involved in the accusation and investigation of suspected new-born child murder and has also explored and challenged four historiographical assumptions: that there was a progressive leniency towards suspects over time; that suspects were guilty of murder; that the ‘crime’ was committed by the victims’ mothers, acting alone; and that there is a ‘dark figure’ of undetected infanticide.

The evidence in the precognitions and trial records shows that the concept of judicial leniency is a complex one. The fact that so few cases of murder were successfully prosecuted suggests that judicial leniency was a feature of new-born child murder in Scotland between 1812 and 1930. This view is reinforced by the apparent willingness of the courts to restrict murder charges and to convict women of lesser charges, often in spite of overwhelming evidence of murder, including confessions in some cases.

Furthermore, this study has revealed evidence of a wider culture of sympathy to suspects within the neighbourhood, which in some cases led to reluctance on the part of some witnesses to talk to the authorities and, in other cases, to community support for suspects in the form of a petition asking for mercy. Having said that, there is also evidence to support the contrary view, that there was a degree of judicial severity during this period. For example, not only did the prosecution rates increase between about 1840 and the 1860s, but the average length of sentences also increased – due largely to cases of culpable homicide. Even the average sentence for concealment of pregnancy, which changed little over the period, was significantly higher than in England. There is also evidence of local hostility to NBCM&CP suspects – indeed the majority of cases began as accusations of murder, and there are many examples of angry confrontations between suspects and witnesses.

From the outset, this thesis argues that the assumption that new-born child murder suspects were guilty is problematic. Based on the findings of this study, this position remains unchanged, largely because such an assumption contradicts the evidence. For a start, the vast majority of suspects denied murdering their new-born infants and were not convicted of murder either. Whilst the medical evidence shows that most infants were born at full time and had breathed, most showed no signs of violence and so could have been stillborn, as most of the suspects claimed in their declarations. Indeed, throughout this period stillbirths were very high – especially amongst illegitimate infants. Also, a number of women claimed to have been rendered temporarily ‘insensible’ at the time of the delivery, and so unable to look after the child, or not responsible for inflicting any violence. Regardless of this, it is not the historian’s job to play detective and this study demonstrates that individual cases were more complex than the trial statistics would suggest.

This thesis also set out to challenge the assumption that new-born child murder was a sex-specific crime, committed by the victims’ mothers, largely acting alone. Indeed, this is one aspect of the ‘crime’ on which almost all historians agree. However, whilst this thesis has shown that peculiarities in the law and the legal process meant that the majority of suspects were eventually charged with concealment of pregnancy, it has also revealed a number of cases in which suspects received help – which ranged from committing murder and concealing the body, to attempting to hide the truth from the

rest of the community and the authorities – from friends, relatives, employers, the father of the child and even doctors and midwives. In a number of these cases, investigators and prosecutors were keen to press charges, but were faced with a lack of evidence. This study has cast a light on community involvement in new-born child murder, which should force a rethink not only about the solitary nature of the ‘crime’, but also about how a decision was made to conceal a pregnancy in the first place, and who was involved in the decision-making process.

The light cast on the role of accessories in cases of new-born child murder is one of a number of reasons why this thesis has avoided a direct discussion of the motivations for new-born child murder. It is impossible to understand the individual circumstances behind the deaths of the infants in this study. For the most part suspects do not offer an explanation as to why they killed their infants, and to provide modern psychological explanations for the actions of historical subjects is, arguably, unhelpful. There is, however, some evidence to speculate that the main factor that drove women to conceal their pregnancies in the first place was economic. For most women in this study, having a child would have been an intolerable financial burden, and most, if not all, of the pregnancies were unwanted. It does not follow, though, that these women murdered their infants.

This thesis also sought to test the notion of a dark figure of undetected infanticide and there is certainly evidence to call this idea into question. This study has shown that communities were very effective at discovering pregnancies and watching closely for the signs of delivery, so that all of the cases analysed were eventually reported to the authorities. Arguably, very few pregnancies therefore went undetected. The exception to this may have been women whose pregnancies were not noticeable, married couples that claimed a child was stillborn, and women who avoided the gaze of the community altogether, such as vagrants. However, these will have been few and far between and the figure for undetected new-born child murder was probably not as large as the historiography implies.

This may not be the case with unreported new-born child murder. There are a number of cases in which individual members of the community were reluctant to go to the police, and in some cases the gap between the ‘crime’ and it being reported was

substantial. Moreover, this reluctance was often compounded if the child's body was missing, and by the mid-nineteenth century cases in which there was no body were not being prosecuted in the High Court, if at all. It is possible that a new-born child murder prosecution could be avoided if the child's body could be disposed of successfully. This study has suggested three methods of concealing an infant that may have been more successful than others: throwing it in a large body of water, such as a river, or the sea; throwing it to the pigs; or burning it. Arguably, if in these cases the authorities were never informed, 'crime' had been committed in the first place and so unreported NBCM&CP should not be counted as part of a 'dark figure' of crime. Either way, the concept of the 'dark figure' needs to be refined.

Further research

Because this study closely shadows the legal process, there are a number of avenues of research that have been left unexplored. For example, the wider cultural representations of NBCM&CP could be illuminated with a detailed examination of contemporary newspapers and novels. An analysis of the Kirk session records for this period may also reveal much about community responses to suspected pregnancies and the incidence of exposed infants, discovered and rescued before their demise. The role of the police and local doctors could also be further explored by looking at the notebooks or casebooks of various individuals and, finally, records from prisons, police, and sheriff courts may also provide useful information about the prosecution of NBCM&CP. The precognitions also offer the opportunity to engage in a much more theoretically-based study: legal and medico-legal documents, as well as the witness statements and suspects' declarations provide fruitful material for both a discourse and gender analysis, for example.

This thesis has demonstrated the usefulness of studying a single 'crime' over a significant period of time, using an analysis of both quantitative and qualitative data. Analysing the statistical data relating to the prosecution of a 'crime' alongside those of the pre-trial investigation allow for a more detailed understanding of the particular local circumstances of a case and provide alternative explanations for the patterns of prosecution that can challenge existing interpretations. Crucially, this study contends

that the single biggest influence on the outcome of NBCM&CP investigations was the law, procedures and evidential requirements and suggests that, where possible, analyses of pre-trial and trial documents should be used together in the study of crime. Finally, it is to be hoped that this thesis will prove the first of many that will utilise the woefully underused Scottish criminal precognitions, to develop a history of crime in Scotland that at the time of writing still lags seriously behind that of England and other countries.

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