

Law and Everyday Death: Infanticide and the Backlash against Woman's Rights after the Civil War

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In Philadelphia in July 1868, Hester Vaughn was tried for first-degree murder.¹ Vaughn was a young English immigrant, and had been a domestic servant. Unmarried and alone, she gave birth in a boarding-house and was found by neighbors with her dead infant. The baby's skull had been crushed; bludgeoned by a blunt instrument, according to the coroner. Clots of blood were found on the baby's head, and its abdomen showed signs of a severe beating.

Before the birth of her child, Vaughn had denied her pregnancy to the neighbors and other residents of the boardinghouse, who later found its body under the bed of the room she rented. At the trial, one woman testified that she had heard the baby crying. Vaughn, such testimony implied, had planned to murder her infant before its birth, and attempted to hide its very existence.² The all-male jury voted, quickly, to convict.

In his sentencing colloquy, Court of Common Pleas judge James Ludlow addressed the prisoner. Her crime was both heinous and prevalent, he charged. Infanticide had become so common, Ludlow concluded, that some woman must be made an example of. He sentenced Vaughn to hang "for the establishment of [the] principle" that death awaited women who killed their own children. She was taken to Moyamensing Prison to await execution.³

While Vaughn languished in a Philadelphia jail in the fall of 1868, suffragists in New York cast about for "issues ripe for agitation." Fresh from defeat in other venues—the failure of the popular referendum for

woman suffrage in Kansas in 1868 is only the most obvious—liberal woman’s rights advocates broadened and deepened their political focus. Their “search for a constituency” in the late 1860s, as Ellen DuBois put it, had been characterized primarily by rejection and disillusionment.⁴ They formed the Working Woman’s Association, a group composed of wage-earning women and middle-class woman’s rights activists, one of several attempts to form politically productive alliances.

The association found only one notable cause. Temporarily at least, their campaign to save Hester Vaughn from the gallows provided suffragists with a popular story, and a sensational topic. They used the Vaughn case as a means of raising and debating a range of issues about the violent oppression of women, laced with class, racial, and scientific undertones. Their reconstruction of Hester Vaughn’s story was cumulative, reaching its height for a several weeks in November and December 1868. It then disappeared from view almost as quickly.

This article is a study, in other words, of a celebrated case. The reason for the sudden disappearance of Vaughn from the pages of the liberal press are as intriguing as the decision to use her as an example of injustice in the first place. Hester Vaughn was plucked from obscurity by suffragists for strategic purposes. In their hands her story became a morality play that illustrated the flaws of the legal system by which she was trapped. And yet here, as with many other celebrated causes, there was palpable tension between the particularity of Vaughn’s life and the death of her newborn infant, and the issues and arguments that woman’s rights activists wanted to connect with her case.

To turn Vaughn into an appealing heroine of a legal drama, suffragists invented a Hester Vaughn in their own likeness. They challenged head-on Vaughn’s conviction and the system that had produced it. The construction of a coherent story in the press, especially in the liberal prosuffrage newspapers in New York, called into question the validity of the “facts” that had emerged from the trial. The debate between the two forums, between the law of the courtroom and narratives in the press, highlighted a dynamic that characterized popular debate about sensational criminal prosecutions. Public fascination with private violence allowed activists to exploit the pathos of an actual drama and to inject their own concerns into the plot. The trajectory of Vaughn’s life intersected with, and then quickly separated from, the social movement that grew up around the issues her plight represented.

What had looked in the courtroom like a depressingly quotidian, if underprosecuted, crime became a battle over women’s rights in the

press. Suffragists homed in on the Vaughn case as an example of the gendered meaning of responsibility and the role of law in the perpetuation of injustice. They drew out of the life of an English servant woman and the death of her baby a tangle of claims of innocence, violence, and indeterminacy. Even as her stature as a symbol of oppression grew, however, Hester Vaughn was also a real presence in the prison system of Pennsylvania. The “facts” of her case and her own maneuvering for release, combined with her apparent desire to escape the embrace of her own supporters, eventually undid the dramatic tissue that woman’s rights activists had constructed around her story. Perhaps the most important lesson of “Hester Vaughnism,” as advocacy on Vaughn’s behalf was popularly known, is that it backfired.

Stories and Strategies

The most striking feature of the debate over Vaughn is the plasticity of her story. Vaughn’s isolation and desolation were manipulable, as readily deployed by her opponents as by her defenders. The debate swirled away from Vaughn, from Philadelphia, and even from poor women, as New York suffragists spun the tale in their own interests and the opposition followed suit. Hester Vaughn truly became a vehicle, a vessel into which was poured the hopes and fears of liberal suffragists, much as Judge Ludlow had used Vaughn as a symbol for all the unpunished infanticides he spoke of at sentencing. Suffragists proceeded largely without regard, as their critics pointed out later with no little satisfaction, for the “facts” of Vaughn’s treatment by the very men suffragists accused of betraying her. In the mainstream press, suffragists eventually were exposed as manipulators of fact at best, moral monsters in more extreme formulations.

The backlash revealed the extraordinary difficulty of talking about infanticide in public, despite its everyday occurrence. Suffragists, no less than their opponents, apparently were incapable of a treatment of Vaughn that would both acknowledge her agency and yet remain sympathetic to her plight. The acknowledgment of deliberation and violence on Vaughn’s part undid the complex of sympathy that enveloped Hester Vaughn (and still does, in many historical treatments).⁵ Thus while the Vaughn case has received periodic attention from historians, they have not focused on the role of this kind of crime—infanticide—in the formation of an agenda for woman’s rights, or on the uses of actual cases by activists in the suffrage movement. Prosecutions for infanti-

cide, and the imposition of the death penalty on the women convicted of killing their own infants, had been the subject of a powerful critique twenty years earlier by author and activist Lydia Maria Child. Telling the story of Elizabeth Wilson, hanged in 1786 after she was convicted of infanticide, Child claimed that Wilson's brother frantically rode to the gallows with a pardon, only to find that his sister had already been executed by a vengeful and heartless state. He saw her corpse swinging on the scaffold.⁶

In Child's story of Wilson's execution, the state, rather than the woman, was the violent offender. Perhaps the example provided by Child's dramatic condemnation of the death dealt by a male legal system prompted suffragists to take up a similar case two decades later. Certainly the Vaughn case, which also involved a death sentence, provided a contemporary vehicle for raising questions about the "justice" meted out to lone and friendless women.

In the late 1860s, however, the deployment of publicity about a particularly poignant infanticide case, and the consequences of such publicity for the criminal defendant as well as for those who championed her cause, exposed the dangers of highlighting a form of intentional killing that was (and is) both ubiquitous and unspeakable. The everyday occurrence of infanticide travels uneasily alongside competing, even contradictory, reactions of horror at the death of a newborn and sympathy for the woman who killed her own offspring.

Woman's rights activists exploited the sympathy generated by Vaughn's plight. They also strove to distance the visceral repugnance that their audiences showed for women who "willingly" or "knowingly" killed their infants. This was a dangerous strategy, as later events proved. Once Vaughn's supporters had undertaken to make an example of a young woman whose isolation and misfortune made her vulnerable to public inquiry and prosecution, they all too quickly found themselves tarred with accusations that they colluded in her guilt, and by extension in the guilt of all women who sought to "avoid the responsibilities" of pregnancy and motherhood. Uncontrolled sexuality and violence by women lay at the root of such irresponsibility, charged their opponents. "Hester Vaughnism" thus provided liberal activists with a sensational vehicle, but a topic whose moral edges shifted ever further out of reach.⁷

Suffragists made two alternative, even contradictory, bundles of arguments on behalf of Vaughn. The first translated her tale into one of

rape and insanity. In this story line, Vaughn was a victim pure and simple; she bore no responsibility either for her pregnancy or the death of her newborn. Her conviction was based on a mistake of fact, a failure to appreciate the true circumstances of her pregnancy and labor.

In the second set of arguments, suffragists argued that a double standard divided society, slicing legal consequences according to gender and class and race, rather than guilt or innocence. Vaughn, they claimed, was convicted by her poverty and her sex and even her whiteness. She was unfairly punished for acts that wealthy women and all men (including “Negroes”) committed with impunity. The legal system was not so much mistaken, in this scenario, as inevitably corrupt, compromised by its lack of a woman’s voice in the making and administering of law.⁸

This critique of the double standard in law traveled alongside the claim of rape, and thus of innocence by any standard. Woven together, the claims constructed a vision of Hester Vaughn, of her trial and conviction, that personified a literal travesty of justice; factual innocence, that is, obscured by an unjust legal system. It was the factual half of the equation, the portrayal of Vaughn as the ultimate victim—a woman not morally responsible for her pregnancy (she had been raped) or legally responsible for infanticide (she was insane at the time)—that exposed suffragists to derision by the mainstream press and that undermined their alternative theory of a double standard in law. The story of Hester Vaughn, the celebrated case, eventually cost the cause dearly.

But while the going was good, the Vaughn case appeared to be the best of both worlds; a dramatic, heart-wrenching (the suffrage press titled stories about Vaughn with labels like “Another Dose of Heart-aching Facts”) example of the myriad consequences of women’s powerlessness.

The *Revolution*, the weekly newspaper edited by Elizabeth Cady Stanton and managed by Susan B. Anthony, noticed the Vaughn case early on in an editorial in August 1868. According to the editorial, Vaughn was a “poor, ignorant, friendless and forlorn girl who had killed her newborn child because she knew not what to do with it.” Vaughn had been “seduced” by “our society and our civilization,” which was implicated in her crime.⁹ The case then disappeared from the pages of the *Revolution* until November, when it emerged as a central feature of the cultivation of the “wholesome discontent” that Anthony urged upon laboring women in general and the Working Woman’s Association in particular.¹⁰ In a speech in early November,

the popular lecturer and activist Anna Dickinson described Vaughn's "terrible wrongs and sufferings," in what the *Revolution* labeled "her usual graphic and feeling manner," at a lecture at the Cooper Institute to benefit the Working Woman's Association.¹¹

In an editorial on November 19, Stanton picked up on Dickinson's use of the Vaughn story and changed the tone, ratcheting up the tale of seduction into a sentimental trope of female beauty and guilelessness exploited by male cunning and heartlessness. Stanton charged that Vaughn was a "pretty English girl" who had been seduced by her own employer, whom she had trusted when he offered her work for his family.¹² "But alas!" Stanton wrote, "her protector proved her betrayer, and she was turned into the street at the very time she needed shelter, love and care."¹³

The claim that "protection" of women by men was nothing more than a veil for oppression of the same women by the same men was plumbed not only in the Vaughn case, but was a staple of liberal suffragism. Private authority, especially male control of households and the sexuality that occurred within households, was the essence of the problem, according to woman's rights activists. For it was the rubric of "protection" that justified the virtual legal invisibility of married women under the system of coverture and provided the political mandate for men's "representation" of women's interest at the polls. Protection of this sort, for suffragists like Stanton, was the seedbed of abuse, the negation of individual rights by rendering women publicly invisible.¹⁴

As suffragists probed the Hester Vaughn story, weaving into the tale their critique of the "protection" afforded women by men, they eventually cast the blame for Vaughn's pregnancy on a purported bigamous husband, and eventually a rapist, in addition to the original (ambiguous) charge of seduction by a licentious employer. At a meeting of the Working Woman's Association in late November, journalist Eleanor Kirk filled in more detail on Vaughn, saying that "[Hester had] married the man she loved; but on coming with him to this country she found that he had another wife. She was deserted, and left to wander through the streets of a great city in a strange land. In that condition a child was born to her on the streets, when she was dragged in a dying condition to the Station-House. In the morning the babe was dead."¹⁵

Kirk called for the appointment of a committee, and the solicitation of the "influential persons in this city" to sign a petition asking for Vaughn's pardon. A delegation from the Working Woman's Associa-

tion consisting of Kirk and Dr. Clemence Lozier visited Vaughn at the Moyamensing Prison several days later. They then called a meeting to publicize the results of their inquiry on the evening of December 1 at the Cooper Institute. According to advance publicity about the meeting in the *New York World*, Vaughn had a "sweet, trusting face altogether, showing her to be a woman of a confiding, viny nature, who would cling to one she loved through good and evil treatment, and who would suffer and keep silence rather than let others know of her troubles."¹⁶ Vaughn, in this view, was a woman for whom "protection" was a trap (her confiding nature and trusting face were evidence of her vulnerability), and privacy an insulating device for her oppressor (her loyalty and reluctance to complain would shield the wrongdoer).

As the story gathered steam, the question of Vaughn's moral innocence in the conception of the child carried ever greater weight. The tale became one of outright rape, rather than a more subtle seduction at the hands of "civilization," or an employer, or even a deceptive bigamist. Vaughn had "yielded only to physical force," Kirk charged, and did not love the man who fathered her child.¹⁷ At the Hester Vaughn rally that night, Kirk reported that Vaughn would not reveal the name of the man who overcame her, "not in a moment of weakness and passion, but by superior strength—*brute force*."¹⁸ Vaughn's resolve, Kirk said, came from the desire to protect the woman who had since married her ravisher. "Glorious Hester Vaughn!" Kirk thundered to applause from the audience, "True as steel to her own sex."¹⁹

Vaughn's physical weakness as a woman, then, and her vulnerability to abuse in a spurious system of protection were no evidence of moral weakness, or lack of resolve, according to her defenders. Far from creating her own ruin, Vaughn had resisted, ultimately protecting another woman from the exposure of her husband's perfidy. Vaughn, in Kirk's portrait, was abused by male physical and social power but rose above it, refusing to shatter the potential happiness of another woman, who might be better served by the very man who had escaped punishment for the rape of Vaughn. This extraordinary sacrifice and virtue in the face of violence were typical of women, in the view of liberal suffragists. They were also undervalued (even unrecognized) by the men who claimed women were adequately represented by their husbands, fathers, and employers. Instead, innocent women were doubly punished, first by the men they trusted, and then by a legal system that ignored the painful truths of women's lives.

Dr. Lozier offered her medical opinion next, diagnosing the case as one of “puerperal mania,” or “puerperal blindness.” Vaughn had been blinded by the pain of giving birth, a blindness that Lozier claimed could last up to four days. It was this mania that explained the marks on the infant’s body, caused not by deliberate, calculated violence, but by virtue of having fallen or fainted on top of the baby. “I believe this poor girl when she says ‘I did not see’” Lozier reported. “That poor woman, in her agony, alone, without fire, without light, may have injured the child, but not wilfully. I said to her: ‘Hester, you love children?’ She replied: ‘No one ever loved children more than I do, no one. I dearly love them. I wish I had my little babe. It would be some comfort to me.’”²⁰

Given Vaughn’s fondness for children and her report that she “did not see” after giving birth, Lozier argued, the death was nothing more than an accident, brought on by temporary insanity, hardly the cold-blooded murder Vaughn had been convicted of. Vaughn would have drawn “comfort” from her baby, the only character in the plot as vulnerable as she, claimed her supporters. Instead, she suffered additional punishment.

Responsibility and the Double Standard in Law

And yet Vaughn had been convicted of killing that same beloved child. The social difficulty of absorbing such an act is as great today as it was in 1868. The fact that infanticide is common does not make violence by women against newborns easier to talk or think about. Indeed, the assumption that the widespread availability of abortion has “solved” the problem of infanticide is a myth that retains considerable power in the early twenty-first century. Few statistical studies address the issue, which remains among the most unstudied and unspoken forms of infant death. Abandonment, smothering, strangling, and other forms of infanticide remain far more common than scholars, medical professionals, or media address openly. Infants are still frequently “tossed away in the trash, suffocated in bags, smothered in shallow graves.”²¹ The revelation that sudden infant death syndrome (SIDS) has sometimes been a euphemism for infanticide, for example, re-creates in contemporary language the medical and theoretical explanations that nineteenth-century woman’s rights activists deployed in their defense of Hester Vaughn.²² The death of infants is always painful, frequently inexplicable. The placing of blame in such circumstances violates the

sense that sympathy and respect for private grief are the most appropriate response to such profound loss. And yet the recent cases of Amy Grossberg and Susan Smith, two widely publicized infanticide trials, highlight the fact that the death of newborn infants remains, as it apparently has been throughout human history, a frequent if infrequently discussed (or prosecuted) occurrence.²³

Traditionally, infanticide was a difficult crime to prove, especially when the infant in question was a newborn killed shortly after birth by its mother. Smothering, crushing, abandonment, even beating of newly born infants may produce no marks different from those that result from a difficult labor or stillbirth. In nineteenth-century Philadelphia, thousands of dead newborns were found in alleys, ash heaps, privies, rivers, and so on. Doubtless many more were never discovered, or if found, never reported or recorded. The cause of death was, in most cases, undetermined and undeterminable. One historian has even speculated that women may actually have killed more frequently than men, if infanticides are added into the total number of other forms of homicide.²⁴

Hester Vaughn's case was thus unusual, not because it involved the death of a newborn, but because the evidence of violence was so unambiguous. A counterexample reveals the relative openness of the cause of death for Vaughn's infant. On the same day that Vaughn's trial was held, Rose Solomon, also a domestic servant, was tried in the same court for the same crime. But because Solomon's child showed "no marks of violence whatever," there was, as the district attorney admitted to the jury, no conclusive evidence that the child had not been dead before it was thrown in the sewer. It was a sad and unusual sight, the *Philadelphia Inquirer* reported, to see "those two young girls sitting side by side in the prisoner's dock, who, having fallen, in order to hide their shame, had brought themselves within one step of the gallows."²⁵ Solomon, like the majority of women accused of infanticide, was acquitted. In circumstances of ambiguity, compassion dominated legal outcomes.²⁶

But the sympathy that traditionally greeted defendants in infanticide cases was contingent. It depended both on a sense of plausible doubt about the cause of death (thus the exercise of compassion would not be based on an obvious ruse) and on the desperation of the accused (who presumably, therefore, acted out of panic and despair rather than as a calculating murderer). In Vaughn's case, the brutality of the death of her newborn seemed to belie innocent explanations. Vaughn's behavior before the birth, too, violated traditional legal and social norms.

In English law, a woman who refused the help of other women

when she gave birth was subject to suspicion. Any woman who was found to have concealed the death of an illegitimate child could be hanged for murder. By the nineteenth century, however, the law in Pennsylvania and other American jurisdictions required proof of a live birth for an infanticide conviction. Thus by the time of Vaughn's trial secrecy was no longer dispositive. Yet Vaughn's flat denial of her pregnancy to neighboring women and the fact that she gave birth "alone" despite the presence of experienced and (so the testimony implied) sympathetic women in the house, resonated with the traditional presumption that secrecy meant guilt. And according to her neighbors' testimony, Vaughn must have planned the murder of her baby even before its birth. Otherwise why conceal her pregnancy? Without the benefit of the usual ambiguity that sustained the sympathy of jurors and judges, Hester Vaughn drew the full wrath of the law.

Vaughn also symbolized a new fear. Her trial coincided with widespread campaigns for medical and legal control of women's reproduction. Doctors, lawyers, and clerics called for the enactment of legislation criminalizing abortion and the provision of birth control. Frequently, they drew no distinction between abortion and infanticide, calling both the betrayal of sacred duty. In England as well as the United States, alarm over infanticide coincided with fear of violence by women, and provided a powerful counterweight to romantic images of motherhood. Traditional associations between infanticide and unmarried women led many commentators to connect illegitimacy with women's violence. More recent notions of the essential "emotional" (as opposed to logical or rational) nature of all women also played into debates over infanticide. Opponents of abortion blended fear of irrationality with condemnation of woman's rights claims to a separate moral and legal world for women. The danger, they claimed, was that women would abuse and murder helpless infants and then shield their crime behind claims of "woman's sympathy."²⁷

In England, alarm over infanticide in the 1860s prompted widespread concern, even panic, over the hidden violence of women. For example, one coroner in a poor London parish claimed that twelve thousand women then living in London had killed their own newborns. The influential *British Medical Journal*, as the historian Ruth Homrighaus has shown, focused repeatedly and intently on "who was responsible for infanticide, why they committed the crime, and how

they could be stopped.”²⁸ Punishment, British doctors concluded, would be the best deterrent. The sympathetic involvement of well-meaning but ineffective upper-class women, they argued, only clouded the issue and shielded wrongdoers. Their concern, as well as their sense that infanticide was properly subject to criminal penalties, was mirrored in Judge Ludlow’s determination to impose the death penalty on Hester Vaughn. “[Y]ou have no idea how rapidly the crime of infanticide is increasing,” Ludlow assured a group of woman’s rights activists. “Some woman must be made an example of.”²⁹ Contrary to the exaggerated sympathies of “strong-minded” suffragists, the legal system knew murder when it saw it.

The activists’ campaign to save Vaughn drew stinging rebukes in defense of punishment. Hester Vaughn, the *New York Times* insisted, was a violent criminal: she did not deserve “apologies for her crime, mawkish sentimentality about her sufferings, and appeals, not only for her pardon, but for her triumphal release from the prison where she is confined.”³⁰

The sense that infanticide was both prevalent and largely unpunished was not confined to the working women whose interests the suffragists claimed to represent. Especially in large cities, married women of wealth and stature also “redde[n] their souls” with the blood of their own children. The problem was especially common in urban areas, where the lure of pleasure led women to sacrifice infants to their own selfish desires. Abortion, charged the conservative press, was as much a threat as the murder of newborns. Both were forms of infanticide. A *New York Times* editorial, written on the day of the Hester Vaughn rally in New York, claimed that “the horrible crime of infanticide prevails to such an extent in America, that in some localities the growth of the population is seriously affected by it. In great cities especially, its results are as shocking as they are alarming; and the attention of social philosophers and Christian moralists has lately been directed to the necessity of adopting some means of limiting its prevalence.” The *Times* also charged that upperclass women were guilty of infanticide: “It is not only practiced by women who, having gone astray, are so anxious to conceal the result of their error as not to stop at murder, but women who are legally married, and move in respectable society, redden their souls and their hands with the blood of legitimate children, to escape the troubles of maternity and the labors of nurture and

training.”³¹ The growth of flourishing businesses that openly advertised abortifacient medicines fueled a sense that the incidence of abortion among middle- and upper-class women was rising in proportion to falling birth rates among native-born, white Protestant women.³²

Concern over the vulnerability of children increased as the rate of abortions and the apparent power of women grew in the nineteenth century. Woman’s rights activists were frequently blamed for threats to the welfare of children, and the decision whether to have children at all. Letters to the editor in Philadelphia papers about the Vaughn case revealed that the connection between Vaughn’s situation and the practices of upper-class women was widely perceived. Fighting back against New York suffragists, for example, one outraged correspondent claimed that “we have the authority of Henry Ward Beecher and other divines, for believing that amongst the virtuous matrons of the virtuous city of New York, [infanticide] is of frequent occurrence and regarded as a very trifling offence; therefore . . . we need not be surprised if these ladies pass resolutions condemning the Philadelphia jury which regards so trifling an offence as the killing of an innocent babe, ‘murder in the first degree.’” Opponents translated “Hester Vaughnism” into an excuse to attack the middle-class women who defended Vaughn, charging them with the crime Vaughn had been convicted of.³³

These attempts to deflect support for Vaughn by arguing that her case represented simply a more overt form of the abortion (and associated selfish individualism) practiced by wealthier women, were met head-on by suffragists. In a column in the *Revolution*, Parker Pillsbury claimed that agitation for the pardon and release of Hester Vaughn was expressly designed to “unfold that very evil [infanticide] in all its horrible enormity and extent.”³⁴ Suffragists shared with Judge Ludlow the sense that infanticide was a growing and urgent problem in American cities. They embraced the claim that abortion and infanticide were identical morally, if not criminally. To hammer home the connection, they shot back at Philadelphia, insisting that “infanticide is as fashionable among the virtuous matrons of Philadelphia as those of [New York].”³⁵ Pillsbury’s speech on behalf of Vaughn at the Cooper Institute was directed at precisely this issue, arguing that to hold Vaughn guilty was to apply a double standard. It would be unfair, Pillsbury argued, to hold a working woman accountable for a practice indulged in with impunity by “fashionable matrons” and their husbands. Pillsbury also

claimed that the press itself was as guilty as any patron of the famous abortionist known as “Madame Restell”: “Did it never occur to you that in large numbers of these newspapers—religious papers not excluded—professional infanticide is advertised in a disgusting form? (Applause.) Have your not in your own city professional murderers? How many newspapers have you too pure to advertise these murders from week to week? (A voice, ‘None.’).”³⁶

“The loathsome operators of the abomination,” claimed suffragists, were the real murderers.³⁷ But the legal system punished only innocent young women who had no control over their actions and were too poor to provide shelter and care for their babes. The *Revolution* reported a case in January 1869 in which a newborn froze to death after its mother gave birth in a shed near Bethlehem, Pennsylvania. “Why not try her for murder?” the editor queried rhetorically, implying that Hester Vaughn, like the woman in the story, was a victim of circumstances outside her control.³⁸

As the historian Linda Gordon has pointed out, nineteenth-century woman’s rights activists did not support abortion, focusing instead on abstinence and husbands’ responsibility for respecting their wives’ desires for “Voluntary Motherhood.” In the nineteenth century, liberal suffragists accepted broadly what most twentieth- and twenty-first-century feminists deny categorically: that is, they equated abortion with infanticide. As Gordon put it, motherhood in nineteenth-century activism was both central to respect for women, and the site of male sexual tyranny.³⁹ To embrace abortion would be to countenance sexual licentiousness, woman’s rights activists concluded, instead of attacking the problem where it began, in the unlimited access of husbands to their wives’ bodies. Exemption from motherhood was not a viable alternative in nineteenth-century suffragism, for it would mean the abandonment of the source of women’s unique ability to rise above individual identity, and all the selfishness that such individualism implied. According to one report of the Hester Vaughn rally, Elizabeth Cady Stanton’s announcement that the *Revolution* accepted no advertisements for abortifacients or other forms of birth control was greeted with applause.⁴⁰

Woman’s rights activists also welcomed the opportunity to recast Hester Vaughn in their own image. As they warmed to the task of creating a womanly portrait of Vaughn to counter the unfeeling, man-made law, activists plunged into a narrative of character that chal-

lenged the miserable story of her trial. In the retelling, Vaughn acquired a delicacy and refinement that were hidden from the harsh and hardened perception of lawyers and judges. Her qualities, essentially those of every woman, were obvious to those activists who claimed that they shared her womanly virtues. In the process of discovering the “true” Hester Vaughn, the debate swirled away from the discussion of Vaughn and infanticide among the working poor to the concerns of middle-class women. Elizabeth Cady Stanton’s speeches, editorials, and letters on Vaughn’s behalf created an identity for Vaughn that had eluded a callous legal system. Reporting on a visit to Moyamensing Prison, Stanton said, “On seeing the poor girl, . . . we felt more than ever convinced of her innocence.” Her description of Vaughn was of a middle-class girl manqué, a woman who (in a just society) would not have fallen into economic or social distress: “She has a quiet, self-possessed manner, and is gentle in her movements and speech. She can read and write, and is very intelligent for one of her class,” wrote Stanton. By sentencing Vaughn to die a felon’s death, Stanton implied, the court had fundamentally mistaken her character. The real quality of Hester Vaughn was revealed instantly to a sympathetic woman by her manner even in the confinement of a prison, and by the cultural and material trappings of her life. “[Hester] showed us several of Leigh Richmond’s stories that she had been reading, and exhibited undergarments that she had made that were very neatly embroidered. Everything about her indicates a taste for order, cleanliness, and beauty.”⁴¹

The order and beauty that Hester had brought to her cell in the Moyamensing Prison, suffragists implied, belied the claim that chaos and violence marked her earlier existence. No woman of such impeccable orderliness could have been the monster of violence and abandon that her arrest, trial, and conviction determined she was. Instead, the legal system and the law itself must be to blame.

Sex and the Legal System

A delegation of activists led by Stanton met with Pennsylvania governor John White Geary to demand Vaughn’s pardon. They argued that not only was a class-based double standard at work in the fixation of blame for pregnancy and illegitimate birth among poor women, but that a legal double standard lay at the root of Vaughn’s, and by extension all women’s, treatment by the legal system. According to Stanton’s

report of the meeting, the governor himself conceded that “justice would never be done in cases of Infanticide, until women were in the jury-box.”⁴² Because of the gendered nature of criminal definitions and criminal punishment meted out to women, charged Stanton, the entire system was corrupt. Stanton condemned the “holocaust of women and children we offer annually to the barbarous customs of our present type of civilization, to the unjust laws that make crimes for women that are not crimes for men!”⁴³

Over and over, woman’s rights activists pointed to the cases of General Cole, Daniel Sickles, and Daniel McFarland, each of whom had killed his wife’s lover and had been acquitted in highly publicized jury trials. Killings such as these, argued suffragists, were the true murders, while the death of newborn infants in ambiguous circumstances provided a legal system that was inordinately sympathetic to the vengeance of men with an excuse for punishing helpless women. An editorial in defense of Vaughn in the *New York World*, for example, charged, “It is an insult to the intelligence of America to say that the good order of society and the sanctity of human life require a felon’s grave to be dug for and filled by this unhappy girl in the land which had made Daniel E. Sickles a hero and a statesman.”⁴⁴ A letter to the editor in the *Revolution* entitled “General Cole and Hester Vaughn” hammered home the connection: “Is the man to be forgiven who, through a mistaken idea of revenging the dishonor of his family, shoots another, and no sympathy be extended to a woman who kills a child, the fruit of an outrage perpetrated upon her—a perpetual reminder of her misery and shame? . . . Let not the jury that acquitted Gen. Cole dare to answer in the affirmative.”⁴⁵

Here was another ground of complaint: juries, judges, and lawyers were all men. By definition, argued suffragists, those who controlled the legal system were incapable of understanding the tribulations of women. The *Revolution* complained that women whose lives were dominated by men were nonetheless powerless to protect themselves against a legal system that punished them for crimes committed by men against them. As one letter to the editor put it, how could Hester Vaughn in justice be punished for the death of a baby that was the “result of an outrage upon her”? The fact of rape, according to liberal suffragists, and its lack of punishment were the key to true moral responsibility in Hester Vaughn’s case. Equally important, they claimed, no man could understand the fear of rape and the burdens of pregnancy. The insanity brought on by the pres-

sure of such burdens was special, confined to women, and incomprehensible to men.

Because of this dual vulnerability based on gender, argued the liberal press, the legal system should recognize the fundamental divide between men and women in competence to judge “crimes” committed by women. As suffragists saw it, if an all-male jury could acquit General Cole of the deliberate killing of his wife’s lover on a theory that sexual betrayal rendered him temporarily insane with jealousy, then women should in equity have the same power to determine the mental effects of pregnancy on a desperate woman. The claim that women should be empowered to make such determinations was a response to the “unwritten law” that procured the acquittal of wronged and vengeful husbands in the 1860s.⁴⁶ According to Parker Pillsbury, “man’s inhumanity to woman in general, to [Hester Vaughn] in particular, has pointed, poisoned every arrow of her affliction.”⁴⁷ As one editor put it in the *Revolution*: “Men can feel for the wrongs of a man, but only women can feel for woman; let her be tried by a jury of her peers, wives and mothers, women who, while knowing the depth and purity of maternal love, know also of the agency that almost robs them of reason when ushering a new life into the world; women who pray for death rather than dishonor, feeling through sympathy the bitterness of shame. Let women defend woman, let them be her judge, then and only then can justice be done, that sublimest justice that is tempered with *charity*.” The conviction of a lone and desperate woman like Hester Vaughn fed into long-standing complaints made by woman’s rights advocates that the legal system demonized the women it presumed to punish.⁴⁸ As one activist put her complaint, “The only case in which [a woman’s] individuality is acknowledged by the law, is in her punishment.”⁴⁹

If men like Daniel Sickles and other jealous husbands were privileged by an unwritten law that allowed jurors to sympathize with wounded pride and sexual humiliation, then woman’s rights women wanted parallel doctrines and the power to implement them. Stanton especially called for the training of women in law, as the only valid means of ensuring justice for women. Professional women “of wealth,” Stanton argued, would provide the real protection that women like Hester Vaughn needed. The Vaughn case, Stanton insisted, “carries with it a lesson for the serious thought of every woman, as it shows the importance that women of wealth, education and leisure study the laws under which they live, that they may defend the unfortunate of

their sex in our courts of justice, and, as able advocates, avail themselves of every advantage the law gives for acquittal."⁵⁰

Far from defending her with the zealotry she deserved, Vaughn's lawyer, according to her defenders in the woman's press, had taken her last thirty dollars and had then given her only the most lackluster defense. Ernestine Rose put it succinctly: "Woman is being constantly told that man is her natural protector. Was the man that called himself a lawyer, who took the last few cents she had in her purse but failed to consult with her and failed to advocate her cause her natural protector?" The implication, of course, was that no woman lawyer would have left her client so bereft and friendless.⁵¹

And the very essence of the jury trial, the concept of trial by equals, demanded that women serve on juries in cases involving "the mothers of the race." Motherhood defined women's legal as well as personal lives, the *Revolution* maintained, and should be understood as a source of women's separate legal identity and separate legal power. The sensibilities of men and women, and their relative positions of power, were so very different, that men could not presume to understand the motives or actions of women. "If nobles cannot judge peasants, or peasants nobles, how can man judge woman?" queried Stanton, overlooking her own call for upper-class women to represent "the unfortunate of their sex" in the same issue of the *Revolution*. Gender, rather than class, was the central determinant of character, Stanton implied, and thus of legal responsibility. Without women as both the source and administration of law for women, injustice was not only predictable, it was inevitable.⁵²

Activism versus Actual Results

Stanton and other suffragists made much of the Vaughn case. But its appeal was bounded by the circumstances of her case and the nature of her crime. As a strategy, the use of Hester Vaughn was both brilliant and misguided. No one, apparently, really wanted to hang Hester Vaughn—thus it was easy to argue that the sentence should not be carried out. But her appeal as a sympathetic victim was also limited. Like other women accused of infanticide in the nineteenth century, Vaughn was simultaneously pitied and despised. And she had already been convicted. A new trial was out of the question. Her quiet disappearance, as Governor Geary hinted to the delegation of New York activists that visited him on Vaughn's behalf, was the only practical

resolution of the quandary that her presence in the Pennsylvania prison system created.

By the end of December, the Vaughn case quietly disappeared from the pages of the woman's rights press, but not because suffragists agreed with the governor. Nor did the Working Women's Association, which had taken up her defense, ever again find such an appealing issue, or raise working women's legal consciousness in any broad-ranging way. Arguably, the backlash from the association's advocacy for Vaughn was more powerful than the short-lived and qualified sympathy it generated.

In part, activists laid themselves open to the criticism, at least insofar as they based their appeal on rape and insanity. If Vaughn was not really a rape victim; if her employer had not ravished and then betrayed her; and if Vaughn was not afflicted by puerperal mania and blindness when her newborn died, then her status as victim was called into question. Without the claim that there had been a fundamental factual mistake in Vaughn's conviction, the force of the suffragists' arguments was diluted, despite their claims for a double standard in society and a double standard in law. As one critical report noted in December, the "woman who is supposed to have provided a final settlement for her child by driving in the soft part of its head upon the brain" was painted by suffragists with "all the glowing colors of morbid sympathy." The evident violence of the case haunted suffragists' efforts to reconstruct Vaughn as a gentle, cultured victim.⁵³

And it was the "facts" that opened activists to the derision of the mainstream press, especially the popular weekly *The Nation*. By mid-December, opponents charged Stanton, Anthony, and their allies with outright falsehood. "Nearly all the picturesque part of the New York narrative were pure fiction," concocted to serve the selfish interests of the "wild and reckless" women of the woman's rights movement, charged *Nation* editor E. L. Godkin. But "the liar, no matter what the cause he serves, holds only the ground he camps on." The exposure of the "truth," according to the *Nation*, undercut not only the power of woman's rights arguments in the debate over the Vaughn case, but also of suffragism altogether. The response was fast and furious.⁵⁴

Horace Greeley's influential *New York Tribune*, cautiously supportive at first, turned quickly into an opponent. The paper labeled the activities of New York suffragists "interference" in the orderly administration of justice and mercy, which had been "plainly and pointedly rebuked, as it deserved." For as the *Tribune* claimed, Vaughn had

“frankly confessed her guilt” in August, only a week after sentencing, months before the suffragists claimed she had steadfastly maintained her innocence.⁵⁵

The Vaughn case, as Greeley (pompously, if accurately) predicted it would, became a cause célèbre in New York as a vehicle for polemic about abstract principles, rather than about Vaughn’s actual experience. The *New York Times* accused suffragists of manipulating and misrepresenting “virtually every circumstance” of Vaughn’s actual conduct and her treatment at the hands of the legal system. Vaughn, argued mainstream editors, had been created by suffragists for their own misguided ends. The reality was far more sordid and revealed that woman’s rights activists were themselves perpetrators of a double standard. They sacrificed truth when it suited their purposes, charged Godkin. In the process, they also denied the moral responsibility of a violent woman, “sniveling” and “ranting” about the suffering of Hester Vaughn, but never honestly addressing the real “crime of infanticide.” Men, not women, argued Greenley and Godkin, had acted according to principle and objective fact.⁵⁶

The reality, of course, is what is unrecoverable, perhaps unknowable at the time. And certainly both sides used Hester Vaughn as a talking point, a label, rather than as a genuine subject. Vaughn’s victimhood or criminal agency was translated into the moral accountability of all women, and the symbol of the worth of woman’s rights activism. The ambiguities of her case remain unresolved—was her pregnancy the result of a consensual liaison, or rape? Did her newborn baby die after its head was deliberately and repeatedly smashed against a bedpost, or did Vaughn faint, as she later claimed, and “overlie” the baby? How many days after its birth did the child die? Did Vaughn receive a fair trial, or was her case bungled by a lazy lawyer and a corrupt criminal justice system inherently biased against women? Did Vaughn “freely confess her guilt” to the governor of Pennsylvania the week after her conviction, as reported later in the *New York Tribune*, or did she “steadfastly maintain her innocence,” as suffragists claimed?

The answers to these questions were abstracted away from the particulars of the case, as the debate careened away from Vaughn, from Philadelphia, and from poor women. New York woman’s rights activists “made” the Vaughn case; they spun the story in ways that bear the stamp of liberal suffragism in the late 1860s, especially claim that a double standard pervaded all of society, a standard based in the lack of

women's political power, but with ramifications for all aspects of women's lives. Woman's rights activists, who had attended (and been outraged by) the sensational trials of men who were acquitted of violence because of their finely tuned sense of marital virtue and husbandly honor, wanted their own "unwritten law," their own access to legal power through emotional appeal. But their choice of cause was compromised by fear of women's violence and Vaughn's own strategic behavior, which eventually undercut the credibility of the extravagant claims suffragists made on her behalf. For all their claim to instant sympathy and identity between them, in the end Vaughn eluded her champions, eliding their embrace even at the moment of her apparent triumph.

Vaughn herself, her thoughts and feelings, have remained mysterious and unspoken, despite the intense flurry of attention her case provoked. The trial record was destroyed in the 1960s by the city of Philadelphia. Her lawyer left no papers. Nor did Vaughn herself publicize her tale. The debate over whether she was a calculating murderer or a guileless victim took place almost without her voice. Yet the undeniable presence of Vaughn was both central to the suffragists' appeal, and their essential problem.

Vaughn's only official statements in the entire process formed the basis of the undoing of the suffragists' claims on her behalf. In early December, at the height of the campaign to free her, and apparently in response to an overture by authorities, Vaughn made two affidavits. In the first, she denied having claimed that her employer was the father of her child; she also denied that she concealed the identity of the man to protect the woman he later married: "He was not a gentleman at all, but a laboring man; I do not know if he is married; I have not heard since I have been here that he was married; I never saw or heard of him after he did the act; I know nothing about him at all."⁵⁷ Vaughn also swore that she "was entirely satisfied with [my lawyer's] efforts in my behalf. . . . But he ought to have visited me in prison before the trial, I think, as the counsel for a woman in another cell visited her every day."⁵⁸

The next day, according to the *Tribune*, and well before a series of stories and editorials appeared in the *Revolution* implying that Vaughn still suffered under threat of execution, Governor Geary "informed" Vaughn that "he will never enforce the sentence of the Court." The inescapable implication was that suffragists themselves had ignored the unpleasant facts that rendered their "Hester Vaughnism" untenable, attempting to excuse the inexcusable by creating a tissue of lies about Vaughn, about judicial process, about criminal punishment.⁵⁹

The difficulty, of course, was that Vaughn's affidavits, and especially her release, were the solution to her own incarceration, even as they simultaneously undermined the claims of her supporters. In December, as the delegation from New York visited Harrisburg to plead with him for Vaughn's pardon, Governor Geary had referred obliquely to the tension between a happy resolution for Vaughn and the blazing publicity that New York suffragists insisted was the most efficacious strategy. As the governor and prison officials assured Stanton, "the women of Pennsylvania had already *quietly* moved in this matter."⁶⁰ The effectiveness of such discreet action, the warden of Moyamensing Prison warned, might be undermined by the very public sympathy and Vaughn rallies in New York. But Stanton charged ahead, assuring herself and her readers that no actions in a "sister state could interfere with the proposed justice and mercy to a helpless criminal."⁶¹ Their enthusiasm and their conviction that their support could only help a friendless prisoner led suffragists to make claims of "fact" that evaporated under scrutiny or under pressure on Vaughn.

The final unraveling of the New York suffragists' campaign occurred in early 1869, when they waited on a train platform for Vaughn, whom they learned had been pardoned and freed. They brought with them some three hundred dollars that had been collected for Vaughn during the height of the campaign. But Vaughn herself never came, although the delegation waited on the platform until midnight. She had gone home to England instead. Her pardon had been conditioned on her return to England. Perhaps she, too, wanted only to leave, to go home to England, to her father and sister who did not know of her pregnancy, or incarceration, or any of the other nightmarish aspects of her American experience.

Several weeks later, a letter from Vaughn addressed to a Philadelphia doctor was published in the *New York World*: "I would be obliged to you if you could get that money from New York for me," wrote Vaughn, "as what I had when I came away is all gone."⁶²

Conclusion

"Hester Vaughnism" tainted the woman's rights movement with an aura of baby killing and irresponsibility. The deconstruction of the *Revolution's* story made the deployment of similar claims more difficult in suffrage activism—violence, abortion, the legal system, all had proven costly. Historians who read only the suffrage press have assumed that

the Vaughn campaign revealed the “injustices [she] suffered” and marked a significant success for the Working Woman’s Association and the suffragists who led it.⁶³

Attention to a wider spectrum of public discussion, however, reveals that Hester Vaughnism also created a backlash, explaining the abrupt cessation of stories and editorials on Vaughn in early 1869. The cost of agitation on Vaughn’s behalf also helps explain the narrowing of suffragists’ causes in the 1870s, as they absorbed the lessons of Hester Vaughnism. And although there is no record of a conscious decision by Elizabeth Cady Stanton, Susan B. Anthony, or other New York activists to abandon such controversial topics, their own record of their successes does not include Hester Vaughn. There is no mention of the Vaughn case, or the campaign to save her, in the multivolume *History of Woman Suffrage*.

The narrowing of woman’s rights activism and rhetoric after the 1860s has long been noted by historians. Attention to the treatment of Vaughn and her champions in the mainstream press reveals that woman’s rights activists paid a price for their choice of infanticide as a cause and Hester Vaughn as a heroine. The tension between the principles invoked by liberal suffragists in their advocacy on Hester Vaughn’s behalf, and the gritty legal “facts” of Vaughn’s case, silenced debate for suffragists. The victim in the case, no tawdry lover as in sensational “unwritten law” trials, but a tiny and defenseless newborn, undercut the viability of a widespread appeal based on the case. Instead, the prospect of violence by women undermined sympathy for women’s independence and activism. And suffragists’ strategic manipulation of the story eventually sapped their own credibility, revealing them, according to their opponents, as untrustworthy and scheming meddlers in legal process. The silence that envelops infanticide testifies to the virulence of the backlash, as well as the painful inadequacy of woman’s rights rhetoric.

NOTES

I would like to thank Austin Sarat, Martha Umphrey, and the members of the Program on Law, Jurisprudence, and Social Thought at Amherst College, the Ad Hoc Workshop of the University of Pennsylvania Law School, the Brown Bag Lunch Series in Women’s History at the University of Pennsylvania History Department, the University of Virginia Legal History Workshop, the Center for Human Values at Princeton University, and the Legal History Colloquium at New York University Law School. I also thank Cornelia Hughes

Dayton, Bridget Crawford, Hendrik Hartog, Heide Heller, Kathleen Brown, Drew Faust, and Matthew Sommer.

1. *Commonwealth v. Hester Vaughn*, No. 298, Records of the Court of Common Pleas, Docket Book, 1868, 330–31. Infanticide prosecutions in Pennsylvania have not been studied systematically. Thus although we know that ninety-two prosecutions were initiated between 1682 and 1800, G. S. Rowe, “Infanticide, Its Judicial Resolution, and Criminal Code Revision in Early Pennsylvania,” *Proceedings of the American Philosophical Society* 135 (1991): 207, there is no reliable information on the number of reported or prosecuted infanticides in Pennsylvania since 1800.

2. Dr. Shapleigh, the coroner for the City of Philadelphia, testified that the infant had been killed by a blunt instrument, which had fractured the skull in several places (*Philadelphia Inquirer*, July 1, 1868).

3. According to one report in the suffrage press, Judge Ludlow remained adamant even after Vaughn’s cause had been taken up by woman’s rights activists. In response to a challenge to the harshness of the death penalty in such a case, Ludlow retorted, “It is for the establishment of a principle, ma’am” (*Revolution*, December 10, 1868, 358). On the use of infanticide prosecutions for purposes of deterrence, see Cornelia Hughes Dayton, “Narratives of Infanticide: Changing Configurations of Gender, Race, and Class in Eighteenth-Century New England,” paper presented to the Annual Meeting of the Law and Society Association, Phoenix, 1994.

4. Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women’s Movement in America, 1848–1869* (Ithaca, N.Y.: Cornell University Press, 1978), 146. See also William Leach, *True Love and Perfect Union: The Feminist Reform of Sex and Society* (Middletown, Conn.: Wesleyan University Press, 1980).

5. A story illustrates the ongoing difficulty of treating Vaughn as anything other than a victim. As I have worked on this project, the Biddle Law Library at Penn began to receive calls from a lawyer-filmmaker interested in making a popular movie about the case. After he was referred to me, we had several conversations about Vaughn, and I sent him a draft of this paper. He called me after reading the paper, deeply distressed at what I had found in the records and the popular treatment of Vaughn outside the woman’s rights press. “If she’s not a victim,” he said, “there’s no point in making the film.” Telephone conversation with Daniel Zipser, Los Angeles, November 19, 1998.

6. Lydia Maria Child, *Fact and Fiction: A Collection of Stories* (New York, 1849), 146–49; Daniel A. Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture* (New York: Oxford University Press, 1993), 147–49.

7. On the ubiquity of infanticide in contemporary America, see Michelle Oberman, “Mothers Who Kill: Coming to Terms with Modern American Infanticide,” *American Criminal Law Review* 34 (fall 1996): 4. For the language of irresponsibility and women’s sexuality, see *New York Times*, December 1, 1868, 4.

8. Arguments about mental distress and a double standard in law still characterize scholarly and popular studies of infanticide. See, e.g., Judith A. Osborne, “The Crime of Infanticide: Throwing Out the Baby with the Bathwa-

ter," *Canadian Journal of Family Law* 6 (1987): 47; Keith Wrightson, "Infanticide in European History," *Criminal Justice History* 3 (1982): 1; Phillip J. Resnick, "Murder of the Newborn: A Psychiatric Review of Neonaticide," *American Journal of Psychiatry* 126 (1970): 55; Paul Ramsey, introduction to *Infanticide and the Handicapped Newborn*, ed. Dennis J. Horan and Melinda Delahoyde (Provo: Brigham Young University Press, 1982), vii.

9. *Revolution*, August 6, 1868, 74.

10. *Revolution*, October 1, 1868, 198.

11. *Revolution*, November 2, 1868.

12. Throughout Europe and in England in the eighteenth and nineteenth centuries, one historian has concluded, "It seems to have been taken for granted that the upper classes were entitled to the favors of pretty girls of the lower classes and that fornication was looked upon as an inevitable aspect of lower class life." William L. Langer, "Infanticide: A Historical Survey," *History of Childhood Quarterly* 1 (1974): 357. But see Joan Jacobs Blumberg, "'Ruined' Girls: Changing Community Responses to Illegitimacy in Upstate New York, 1890-1920," *Journal of Social History* 18, no. 2 (1984): 247. According to one source, more than 90 percent of all unmarried mothers in England in 1871 were (or, more likely, had been) domestic servants: "in many instances the fathers of their children are their masters, or their masters' sons, or their masters' relatives, or their masters' visitors." Langer, "Infanticide," quoting Mr. Cooper, secretary of the Society for the Rescue of Young Women and Children.

13. *Revolution*, November 19, 1868, 312.

14. On the critique of private authority, see Elizabeth B. Clark, "Self-Ownership and the Political Theory of Elizabeth Cady Stanton," *Connecticut Law Review* 21 (summer 1989): 937-39; Pamela Haag, *Consent: Sexual Rights and the Transformation of American Liberalism* (Ithaca, N.Y.: Cornell University Press, 1999), 42-43.

15. *New York Tribune*, November 24, 1868, 5.

16. *New York World*, December 1, 1868, 1.

17. *Ibid.*

18. *New York World*, December 2, 1868, 1.

19. *Ibid.*

20. *Ibid.*

21. Randal C. Archibold, "Dignity for the Tiniest Victims: Paramedics Arrange Funerals for Abandoned Infants," *New York Times*, December 7, 1999, B1. Even though the article speaks in terms of abandonment, it describes eleven cases of infanticide in one county on Long Island in a single year. These infants were found in recycling bins, shallow roadside graves, and so on. It is safe to assume that a large proportion of such "abandoned" newborns are never discovered.

22. See, for example, Steven Pinker, "Why They Kill Their Newborns," *New York Times*, November 2, 1997, 52; Christine Blatchford, "Getting Away with Murder," *Toronto Sun*, March 15, 1996, 5; Blaine Harden, "Tale of 8 Infant Deaths: A Long-Standing Mystery; New Probe, Old Doubts in Infant Deaths," *Washington Post*, April 3, 1998.

23. For a discussion of widespread yet rarely reported or publicized cases

of infanticide, see, e.g., Oberman, "Mothers Who Kill," 4 (Amy Grossberg and Susan Smith stories).

24. Roger Lane, *Violent Death in the City: Suicide, Accident, and Murder in Nineteenth-Century Philadelphia* (Cambridge: Harvard University Press, 1979). See also Sharon Ann Burnston, "Babies in the Well: An Underground Insight into Deviant Behavior in Eighteenth-Century Philadelphia," *Pennsylvania Magazine of History and Biography* 106 (1982): 151–86. Infanticide has been practiced in human societies on every continent and at every level of social and industrial development. See, for example, Kathryn L. Moseley, "The History of Infanticide in Western Society," *Issues in Law and Medicine* 1, no. 5 (1986): 345; Simon Mays, "Infanticide in Roman Britain," *Antiquity* 67 (December 1993): 883; W. L. Langer, "Infanticide: A Historical Survey," *History of Childhood Quarterly* 1 (1974): 353; S. C. M. Scrimshaw, "Infanticide in Human Populations: Societal and Individual Concerns," in *Infanticide*, ed. Glenn Hausfater and Sarah B. Hardy (New York: Aldine, 1984), 439. For treatments of infanticide in early America, see N. E. H. Hull and Peter Hoffer, *Murdering Mothers: Infanticide in England and New England, 1558–1803* (New York: New York University Press, 1984); Dayton, "Narratives of Infanticide.

25. *Philadelphia Inquirer*, July 1, 1868, 4.

26. On the acquittal rate for women accused on infanticide, see Constance B. Backhouse, "Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada," *University of Toronto Law Journal* 34 (1984): 448. The difficulty of proving infanticide underlies an English statute enacted in 1623, which provided that any woman found to have concealed the death of an illegitimate child could be hanged for murder. *Laws Respecting Women* (London, 1777), 307. An identical law was passed by the Pennsylvania legislature in 1718. By the end of the eighteenth century, however, the law required proof of a live birth for an infanticide conviction. An Act Amending the Penal Laws of this State, September 15, 1786, and reenacted April 5, 1790.

27. On the antiabortion campaign in the mid-nineteenth century, see Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York: Knopf, 1985), chap. 10; James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800–1900* (New York: Oxford University Press, 1978), 147–225.

28. Ruth Ellen Homrighaus, "Wolves in Women's Clothing: Baby-Farming and the *British Medical Journal*, 1860–1872," typescript, 3; Edwin Lankester, "Third Annual Report of the Coroner for Central Middlesex," *British Medical Journal*, April 28, 1866, cited in Homrighaus, "Wolves in Women's Clothing," 29 n. 18; Ann R. Higginbotham, "'Sin of the Age': Infanticide and Illegitimacy in Victorian London," *Victorian Studies* 32, no. 3 (1989): 319.

29. *Revolution*, December 10, 1868, 358.

30. *New York Times*, December 1, 1868, 4.

31. *Ibid.*

32. For a discussion of the reasons behind increased rates of abortion beginning in the 1840s, and the complementary growth of a commercial abortion industry, see Mohr, "The Great Upsurge of Abortion, 1840–1880," chap. 3 in *Abortion in America*.

33. *Evening Star*, December 2, 1868, 3.
34. *Revolution*, December 10, 1868, 361.
35. *Evening Star*, December 3, 1868, 4. See also *ibid.*, December 5, 1868, 1: "Could I be put upon a Court stand, and compelled by law to state what little I know, I would produce an 'earthquake' in Philadelphia. . . . Thousands yearly are thus infanticided in fashionable life in Philadelphia. I lie not! [signed] M.D."
36. *New York World*, December 2, 1868, 1.
37. *Revolution*, December 10, 1868, 361.
38. *Revolution*, January 14, 1869, 21.
39. Linda Gordon, "Why Nineteenth-Century Feminists Did Not Support 'Birth Control' and Twentieth-Century Feminists Do: Feminism, Reproduction, and the Family," in *Rethinking the Family: Some Feminist Questions*, ed. Barrie Thorne and Marilyn Yalom (New York: Longman, 1982), 45-46.
40. *New York World*, December 2, 1868, 1. As Linda Gordon pointed out, nineteenth-century suffragists were caught in a quandary. They were committed both to individual fulfillment and respect for women, and to opposition to birth control. Only in the twentieth century, argued Gordon, did feminists "change their minds, [and then they] took the initiative in finding the technology they needed" ("Nineteenth-Century Feminists," 46). Gordon saw a similar quandary in twentieth-century feminists' approach to abortion and birth control, as the role of the family and motherhood fell out of view, and individualism assumed much greater prominence. "The problem is to develop a feminist program and philosophy that defends individual rights and also builds constructive bonds between individuals" (51).
41. *Revolution*, December 10, 1868, 353, 354. See also *New York Tribune*, December 11, 1868, 5.
42. *Revolution*, December 10, 1868, 354.
43. *Revolution*, November 19, 1868, 312.
44. Reprinted in *Philadelphia Evening Star*, December 2, 1868, 1.
45. *Revolution*, December 31, 1868, 406.
46. On these cases, see Hendrik Hartog, "The Unwritten Law and Husband's Rights," *Journal of American History* 84 (1997): 67-96. Hartog's argument that such cases represented a reassertion of husbands' rights highlights the parallel that woman's rights activists saw to the Hester Vaughn case. See also Melissa Ganz, "Wicked Women and Veiled Ladies: Gendered Narratives of the McFarland-Richardson Trial," *Yale Journal of Law and Feminism* 9 (1997): 255-303; Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999), 68ff.; Robert M. Ireland, "The Libertine Must Die: Sexual Dishonor and the Unwritten Law in the Nineteenth-Century United States," *Journal of Social History* 23 (fall 1989): 27-44.
47. *Revolution*, December 10, 1868, 361.
48. *Revolution*, December 31, 1868, 406. Linda Kerber's work on women's service on juries, "'Woman is the Center of Home and Family Life': Gwendolyn Hoyt and Jury Service in the Twentieth Century," also makes this point. See *No*

Constitutional Right to Be Ladies: Women and the Obligations of Citizenship (New York: Hill and Wang, 1998), 124–220.

49. Maria Giddings, “Justice to Woman: Address of the Woman’s Rights Convention, to the Legislature,” *Una*, April 1854, 250, quoted in Nancy Isenberg, *Sex and Citizenship in Antebellum America* (Chapel Hill: University of North Carolina Press, 1998), 131.

50. *Revolution*, December 10, 1868, 360. For earlier critiques of the justice meted out to women in a male-run legal system, see the speech of Wendell Phillips condemning the ridicule of Daniel Sickles’s wife in the courts and press during Sickles’s trial. *Proceedings of the Ninth National Woman’s Rights Convention held in New York City, May 12, 1859* (Boston, 1860), 13; Isenberg, *Sex and Citizenship*, 152.

51. *New York World*, December 2, 1868, 1.

52. *Revolution*, December 10, 1868, 360.

53. *New York Times*, reprinted in *Revolution*, December 10, 1868, 361.

54. *Nation*, December 10, 1868, 470.

55. *New York Tribune*, December 8, 1868, 2.

56. *New York Times*, reprinted in *Revolution*, December 10, 1868, 361.

57. *New York Tribune*, December 8, 1868, 2.

58. *Ibid.*

59. *Ibid.*

60. *Revolution*, December 10, 1868, 354.

61. *Ibid.*

62. *New York World*, August 5, 1869, 5.

63. See, for example, Lana Rakow and Cheris Kramarae, eds., *The Revolution in Words: Righting Women, 1868–1871* (New York: Routledge, 1990), 73.