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'A new-born of respectable class would have weighed more': Class, gender and child neglect in late-nineteenth century England

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Child neglect–legal history–poverty–gender–child protection

This article explores how child neglect was criminalised during the period that the first statutory offence existed but was not enforced. The article addresses a gap in scholarship by exploring the Victorian origins of the neglect law and the ways it disproportionately penalised poor families when a child suffered from a lack of material provision. This was particularly true for biological mothers and a limited number of biological fathers who were treated more harshly by Victorian juries if they transgressed middle-class expectations of gender. Class conflict and gender bias featured heavily in the trials involving neglectful parenting which, this article asserts, provides another example of the ways that the poor were punished for their economic misfortune during the late-nineteenth century. Understanding the effectiveness of enforcement during this period is important because of the heavy reliance of modern neglect law on Victorian legislation.

INTRODUCTION

Scholars interested in criminal child neglect have long emphasised the inadequacy of the current law and the need for reform.[1] The modern law is governed by section 1 of the Children and Young Persons Act 1933, which states that a person over sixteen years of age who has responsibility for a child and who 'wilfully assaults, ill-treats, neglects, abandons, or exposes [a child] in a manner likely to cause unnecessary suffering or injury to health' shall be guilty of a misdemeanour.[2] Action for Children (AFC) commissioned a report in 2013 which criticised the law for being 'antiquated, confusing and ultimately inadequate' because of its ongoing emphasis on notions of wilfulness and the exclusion of non-physical harms.[3] For years national and international sources have issued similar criticisms.[4] The AFC report concluded that a major contributory factor to the inadequacy of the law was its close association to the original offence under Victorian legislation.[5] The report argued the original offence was designed for problems of a different era and recommended the current law be scrapped and a new offence be created. In 2015 the law was updated so that non-physical harms were inserted within the definition of criminal neglect,[6] but the heavy reliance on nineteenth-century legislation remains in place today.

The first offence to criminalise child neglect was section 37 of the Poor Law Act 1868. This allowed poor law guardians to pre-emptively intervene if parents failed to provide adequate food, clothing, lodging or medical treatment for their children.[7] It carried a possible prison term of six months, with or without hard labour. However, there is virtually no scholarship about how this offence operated in practice, nor its context within a political landscape that sought to separate poor parents and children who failed to satisfy middle-class norms of morality.[8] Notable examples of how poor families were separated included residential poor law schools, workhouses, child emigration and child-rescue institutions like Barnardo's Homes.

An exception to the dearth of scholarship on the history of child neglect is an article written by two of the authors of the AFC report. Rachel Taylor and Laura Hoyano argue that the child cruelty offence that was introduced in 1889 was a specific response to section 37 being unenforced.[9] Child cruelty criminalised wider forms of parental failure than section 37 because it allowed any person who wilfully ill-treated, neglected, abandoned or exposed a child in a manner that caused unnecessary suffering or injury to health to be imprisoned for two years or fined 100 pounds.[10] This meant forms of harm beyond material deprivation, or lack of medical treatment, could be prosecuted and thus was a significant expansion of child protection law. The 1889 offence provides the bedrock for the 1933 offence in place today.

Taylor and Hoyano explain that the reason section 37 was not enforced was because it was meant to solve a unique problem posed by a religious sect called the Peculiar People, rather than genuinely protect children more broadly from parental neglect.[11] The Peculiar People believed medical treatment interfered with their religious beliefs so did not seek assistance when their children became ill. Taylor and Hoyano explain that section 37 was enacted to tackle this, and other instances of intentional failure to act, rather than accidental omissions. Contemporary papers from the House of Lords confirm Victorian lawmakers struggled to justify how an omission could be a criminal offence. Records show lawmakers removed and reinserted the word 'neglect' repeatedly when drafting the child cruelty offence in 1889.[12]

Understanding how parental neglect was criminalised during this period is important because there is a growing body of scholarship that suggests the poor laws were often used as a thinly veiled effort to penalise the poor for their impoverished status during the late-nineteenth century.[13] The last 30 years of the nineteenth century was a period of severe austerity with high rates of poverty throughout England. There is ample evidence that lawmakers used the poor laws to target certain sections of the poor population in the hopes of deterring welfare dependency. Victorian lawmakers believed poverty was a hereditary condition and consequently felt the only way to break the cycle of poverty was to separate poor parents from their children in the hope of preventing bad habits forming.[14] It was thought this would stop poor children becoming poor adults.

Although section 37 could have been used as a mechanism of separation by imprisoning parents who failed to provide material necessities, there is only one published case that cites the offence and the judge expressed considerable uncertainty about its application. In *R v Downes* Coleridge LJ said:

> '. . . I may say that had it not been for the statute to which we have been referred, I should have entertained great doubt upon this case; for apart from the argument founded upon the statute, I think the observations in the cases cited before Willes J, and Piggott B, are deserving of the greatest consideration. But it is not necessary that I should express any opinion upon the question, for I assent to the argument founded upon the statute. The statute makes it an offence punishable summarily to wilfully neglect to provide adequate medical aid for a child. By wilfully neglecting, I understand an intentional and deliberate abstaining from providing the medical aid, knowing it is obtainable.'[15]

Before *Downes*, three cases appeared before Willes J and Piggott J concerning fathers from the Peculiar People who failed to seek medical treatment and both courts showed no awareness of the duty imposed by section 37 despite it being in force.[16] Two of these cases formed part of the sample for this study. Thomas Hines was acquitted of manslaughter on the basis that he had acted under his Christian duty, albeit a mistaken duty. Piggott J explained: '[Hines] believed his duty to be in the direction in which he acted, and he carried out that duty to the utmost of his ability. He may altogether have mistaken what his duty was; still I believe it was an honest mistake'.[17] George Hurry was also acquitted of manslaughter, but convicted of exposure, when his daughter died from smallpox after he failed to seek vaccination.[18] Hurry was given a fine instead of a prison sentence. The Deputy Recorder noted in the transcript 'the prisoner stated that he and his people had never been satisfied as to what the law on the subject was, but now that they knew it, they would submit to it, as they were the last people who would break the laws of their country'.[19]

Coleridge LJ struggled to reconcile these precedents with the statutory duty because the courts' desire to be lenient toward Hines and Hurry owed to their Christian beliefs, which was the same argument advanced by the defendant in *Downes*. However, Coleridge LJ resolved the conflict by concluding 'in the present case the prisoner, from motives with which I have nothing to do, did wilfully neglect to provide [medical aid] and if he had proceeded summarily under against the statute, he would clearly have been liable'.[20]

Coleridge LJ's unfamiliarity with section 37 fits with Taylor and Hoyano's suggestion that the courts struggled to apply the 1868 law and that is why the new child cruelty offence was created.[21] Contemporary papers from the House of Commons support this conclusion. When debating the child cruelty offence an MP told the chamber: 'I am advised that the Board of Guardians are not the only persons who are competent to institute proceedings against parents . . . but I should be sorry if the fact such proceedings may be instituted by others should have any effect in inducing the Board of Guardians to be less vigilant than they already are'.[22] By exploring the consequences of not enforcing the 1868 Act we can expand our understanding of the 1889 Act in order to see what forms of parental neglect Parliament sought to criminalise. This is important because modern neglect law is inextricably linked to Victorian legislation and academics have argued that these origins cause serious problems with enforcement.[23]

RESEARCH STUDY AND METHODOLOGY

The lack of enforcement of section 37 raises important questions about whether child neglect was criminalised before 1889, and if so, how? This is a particularly important question because assumptions continue to be shared that child neglect was only punished after the term 'wilful neglect' was clarified in *R v Senior* and the child cruelty offence was introduced.[24] Both developments occurred in 1889, leaving the residual assumption that neglectful parenting was not criminalised before this time. Understanding whether child neglect was punished before these developments deserves consideration to see if accidental omissions, such as material deprivation, were another way the poor were punished for their economic status during the late-nineteenth century.

To explore this question a sample of 50 court transcripts from the Old Bailey digital archives was assembled using key word searches reflective of the terminology used by the courts for different forms of neglectful parenting between 1868–1889.[25] It must be borne in mind that the Session Papers used for this study are not complete transcripts of the trials themselves so there are inevitable limits on the conclusions that can be drawn from these sources. Historians have explained how the rapid growth of daily newspapers earlier in the nineteenth century led publishers of the Old Bailey Session Papers to draft simplified accounts of trials to facilitate reporting.[26] The search terms 'child + neglect' produced 53 transcripts, three of which did not concern a neglected child. The terms 'endanger + life + child' and 'expose + child' were also searched because these terms were used to prosecute the offence of exposure of a child whereby life was endangered.[27] These searches returned 13 additional cases, four of which were already part of the 'child + neglect' search.[28] The other nine cases concerned children endangering life by administering noxious substances to others, which was not relevant to the question of child neglect enforcement. This left a sample of 50 transcripts which were investigated using empirical and qualitative research methods.

The first section of this article presents an empirical investigation of the data drawn from the transcripts of the sample. Information about the charges raised, defendant relationship to the victim, verdict, sentence and cause of death (if relevant) were tabulated and analysed. The data suggests parents who failed to materially provide for their children, or seek medical assistance, often faced far more serious charges including murder, felonious killing or manslaughter. The data further indicates that this was particularly true for biological mothers, who were convicted in greater numbers and with harsher sentences than biological fathers or foster mothers. Much like section 37, the offence of exposure was a misdemeanour that concerned children under the age of two whose health was at risk of permanent injury due to parental neglect. Misdemeanours without felonious activity would have been prosecuted at the Assizes, not the Old Bailey, so it is unsurprising these searches yielded cases connected to more serious offences. The cases from this study reveal that the availability of section 37 and residential welfare institutions did not prevent children from experiencing material neglect severe enough to cause death. The failure of the state to pre-emptively intervene in these families not only meant children were exposed to unnecessarily grave deprivation, but impoverished parents were unfairly criminalised for their destitution.

The remainder of the article looks beyond the data to conduct a qualitative investigation of the transcripts themselves. Exploring the language of witnesses, defendants and judges throughout these trials exposes unjust assumptions specifically about working-class mothers who were unable to provide material basics for their child. Due to the rules on jury selection during the period of observation all the cases discussed in this study were decided by middle-class property-owning men.[29] It becomes clear that the punishment for material deprivation of children disproportionately fell on biological mothers because biological fathers and foster mothers who faced the same charges were treated very differently by Victorian juries. Narratives of ineptitude, drunkenness and irresponsibility pervade the transcripts of biological mother defendants, which mirror broader discourses observed by other historians about the deviance of working-class women during this period.[30]

This article contributes to discussions about class and gender bias within the Victorian criminal justice system by showing that working-class mothers were considerably more likely to be found guilty, and receive longer sentences, if their child died from deprivation. This was true even if the father was also charged, unless the father was employed. Employed fathers were also disproportionately penalised compared to unemployed or deserting fathers. The social status of the defendants can be inferred from the trials themselves. Most cases concerned families where the poor law authorities or other charitable organisations were involved and those that did not made significant efforts to demonstrate their superior status. There is considerable scholarship about women who were accused of infanticide, or other forms of child killing throughout nineteenth-century England.[31] But there is no academic commentary about parents who were charged with killing their child through their failure to provide material necessities at a time when a neglect offence existed but was not used. This dearth of scholarship might be a consequence of child welfare historiographies focussing on rescue narratives, which were popular at the time. Or it might be a consequence of prioritising the rise of children's philanthropy rather than exploring the rise of parental culpability within the criminal justice system.[32] Whatever the reason, judicial practice during this period needs further investigation so that we can better understand the ways that parents were criminalised for neglecting their children before more powerful mechanisms of child protection were introduced at the turn of the century.[33]

EMPIRICAL FINDINGS

In order to understand the ways that parents were criminalised for child neglect before 1889 it was important to capture information about the types of charges used when the prosecution accused a defendant of neglecting their child but did not rely on pre-emptive offences such as section 37 or exposure. Table 1 presents this data, which shows three defendants from the sample faced the most serious charge of wilful murder, whereas the vast majority faced charges of manslaughter or felonious killing. All these offences were common law offences and the distinction between felonious killing and manslaughter is one of reporting rather than substance.

Table 1: Charges

Offence	Number charged within sample
Wilful murder	3
Manslaughter	20
Felonious killing	19
Failure to get medical treatment	2
Exposure of a child	6

The transcripts suggest the reason most cases did not result in murder charges was because there was insufficient evidence the parent intended the child be harmed. However, all three wilful murder cases involved defendants who inflicted deliberate harm. One of these was Margaret Waters who was labelled the infamous 'Brixton Baby Farmer' by the Victorian press for her practice of 'adopting' babies from vulnerable mothers then leaving them to starve in her basement.[34] She was villainised in newspapers for her indifference toward child welfare and sentenced to death at the Old Bailey. Another was Charles Shurety who was also sentenced to death for depriving his stepdaughter of food and warmth before beating her to death in a fit of an-

ger.[35] The last murder charge resulted in a verdict of insanity because the mother tried to kill herself after she killed her baby.[36] Ann Noakes was an unmarried mother who told the court she descended into desperation when the father of her infant refused to marry her. Noakes told the court that his refusal prompted the poor law guardians to remove her other children to the workhouse because they knew she could not afford to keep them. Witness testimony supported Noakes' version of events by repeatedly emphasising her suicide ideation. This evidence convinced the jury that Noakes did not have the mental ability to wilfully kill her child.

Most defendants from the sample faced charges of manslaughter or felonious killing when a child died from neglect. The majority concerned cases of material deprivation, but some were the result of withholding medical treatment. The two defendants charged with failure to get medical treatment were members of the Peculiar People, who Taylor and Hoyano argue were the intended targets of section 37. However, neither were charged under section 37 or received prison sentences for their convictions of failure to get medical treatment. In the limited number of cases where neglect did not cause death, defendants faced the lesser charge of exposure.[37] However, the findings in this study demonstrate that the severity of the charge did not always correlate with the severity of the sentence.

Most defendants were biological parents, but other carers were also included. Table 2 shows women were more likely to be charged than men because 17 defendants from the study were men and 33 were women. Eight cases concerned biological parents tried jointly whereas six cases concerned biological fathers tried alone. Two of the fathers tried alone were George Hurry and Thomas Hines. They were tried alone because the prosecution determined their wives had acted on their advice to withhold medical treatment.[38] There was no mention of the legal status of these wives as *feme covert* as the basis for non-prosecution. All the other biological fathers who were tried alone were widowers who did not have living wives. By contrast, seven biological mothers and three stepmothers were prosecuted alone despite being married to the biological father. There were also three unmarried mothers who were also prosecuted alone. The remainder of the sample were foster parents, or other family relations, except for Charles Shurety who was a stepfather.[39]

Table 2: Defendant relationship to victim

Relationship	Number within sample
Biological mother	18
Biological father	14
Foster mother	10
Foster father	1
Stepmother	3
Stepfather	1
Aunt	1
Uncle	1
Grandmother	1

The data from Table 3 shows biological mothers were not only more likely to be charged, but they were also more likely to be found guilty. Twenty-seven defendants were found guilty and 23 were found not guilty, including Ann Noakes' verdict of insanity. Seven guilty convictions were men but 20 were women including 14 biological mothers, three foster- mothers, two stepmothers and one aunt. Eight of the 14 biological mothers who were found guilty were tried alongside their husbands. In half of these cases the husband was found not guilty and the biological mother bore sole culpability. The remainder of the biological mother convictions were trials where the husband was not charged.

Table 3: Relationship to the victim and conviction

Relationship	Guilty	Not Guilty
Biological mother	14	4 (including 1 insanity verdict)
Biological father	6	8
Foster mother	3	7
Foster father		1

Stepmother	2	1
Stepfather	1	
Aunt	1	
Uncle		1
Grandmother		1

In cases where biological mothers were found guilty, but the biological father was not, guilt was often inferred from the mother leaving the child to go out for work. For example, Eliza Pollain was convicted of exposing her daughter to danger because her unemployed husband tied the child to a chair for 14 hours while Eliza was at work.[40] Eliza was sentenced to six months imprisonment with hard labour while her husband was found not guilty. The lenient treatment toward Eliza's husband was not unusual within the sample. The transcripts reveal that fathers who were employed, but where the child still experienced neglect, were viewed far less favourably than fathers who abandoned their children or were unemployed. For example, William Neale was found not guilty for the death of his six-month-old daughter because he was unemployed and could not afford food.[41] However, William's wife was found guilty of manslaughter because she did not take the child to the workhouse. By contrast, William and Mary Ann Jones were both found guilty of the manslaughter of their one-year-old son after he starved to death.[42] William worked as a painter and Mary Ann worked part-time as a firework maker. Both parents were heavily criticised for being inadequate parents despite their employment. Mary Ann was called a 'reeling drunk' by neighbours who gave evidence and William was censured by the court for asking for a pay advance from his employer. Neither defendant was recommended mercy, and both were imprisoned for over a year.

The differential treatment between fathers who were employed and those who were unemployed or absent, raises two important issues. First, it suggests paternal poverty was a greater violation of masculinity ideals than paternal desertion, which is in accordance with the 'civilisation initiative' advanced by the courts during this period. Historians have argued the courts used their sentencing powers to impose new standards of 'refined masculinity' on working-class men who were charged with criminal offences.[43] They argue new conceptions of manliness were shaped by the criminal justice system through harsh criminalisation of certain behaviours such as violence or aggression. The findings from this study suggest paternal poverty might have been another way the criminal justice system tried to correct undesirable behaviour in working-class men by punishing employed fathers more harshly if their child experienced material neglect.

Gendered differential treatment also suggests biological mothers were criminalised for material deprivation irrespective of a non-contributing father. For example, Margaret Smith was convicted of manslaughter when her daughter starved to death after her husband left for another woman.[44] Witnesses reported seeing Margaret intoxicated and the child becoming increasingly emaciated after the father deserted. Margaret was not recommended mercy and received an 18-month prison sentence. This also happened in the trial of Jane Bishop who was convicted of manslaughter after her son died from starvation following a reduction in her husband's welfare payments.[45] Jane's husband was 70 years old and there were three other young children in the family. The husband was not charged but Jane bore sole responsibility and was sentenced to six months imprisonment. The husband and children were invited to enter the workhouse at the conclusion of the trial because the court accepted the husband could not provide for them without Jane. These findings are problematic because the law at the time held parents equally responsible for material provision, yet it appears the courts disproportionately penalised mothers generally and fathers who were employed.[46]

Most mothers who were convicted with their husbands also received harsher sentences for the same death. For example, Elizabeth Wise was sentenced to 15 months imprisonment for the death of her six-month-old son whereas her husband Frederick was only sentenced to three months.[47] The disparity in treatment was justified on the basis that Elizabeth was more intemperate than her husband. A neighbour explained to the jury 'I should call him sober in the general acceptation of the term, but his wife is a confirmed drunkard'.[48] Elizabeth's culpability was further exacerbated when Frederick's violence toward her was presented as evidence of him fulfilling his parental duty. A doctor recalled in evidence Frederick telling him, 'I have frightened the mother, I hope it will do her good'.[49] When the doctor asked why Elizabeth had two black eyes Frederick replied, 'I have been giving her a thrashing for neglecting it'.[50] The jury strongly recommended mercy for Frederick whereas Elizabeth was sentenced to an additional year in prison.

Prison sentences for accidental deaths caused by material deprivation ranged between three and 18 months, with or without hard labour. However, the two fathers who refused to seek medical treatment because of their beliefs as Peculiar People received fines instead of prison terms. Interestingly, fines were used for all the defendants in the sample that were members of the Peculiar People. For example, George Hurry's daughter died from smallpox after he declined vaccination and refused medical treatment when she became ill.[51] Evidence from doctors confirmed the child would have been saved with medical assistance but George defended his decision based on his religious beliefs. George was acquitted of manslaughter but found guilty of exposure. Three years later he appeared as a witness for the defence of John Robert Downes who was charged with manslaughter after his son died of pleurisy.

Table 4: Sentencing

Charge	Minimum term	Maximum term	Other sentences
Wilful murder			Death
Manslaughter	3 months	18 months	50 shillings
Felonious killing	6 months	18 months	
Failure to get medical treatment			50 shillings
Exposure of a child		6 months	50 shillings

John Robert was also a member of the Peculiar People. Again, doctors confirmed the child would have survived with medical treatment, but George explained to the court 'we never call medical advice when we are ill, nor give medicine – we have religious objections to it'.[52] Blackburn J directed the jury to 'find the prisoner guilty, if you think that he had the means and ability to procure medical aid neglected to do so, and death ensued from that neglect. Unless both those matters are made out, it would not be manslaughter'.[53] Both George and John Robert were convicted and issued 50 shilling fines instead of prison terms. It is significant that not only were Peculiar People not charged under section 37, but when they were convicted of more serious offences, they were given lighter sentences than those available under section 37. This provides further evidence that the courts struggled to enforce neglect laws during this period because they were deeply sympathetic to parents who neglected their children for reasons other than poverty.

Table 5 presents the findings on sentencing arranged by the relationship to the victim. It shows biological mothers generally received longer sentences than biological fathers. Half the fathers who received prison terms were sentenced to the minimum tariff of three months, whereas only one mother experienced such leniency. The three biological fathers who received 18-month sentences were employed and the transcripts suggest the court took a dim view of their inability to provide in such circumstances. Biological mothers were particularly likely to receive longer sentences if there was evidence of intoxication. However, this was not the case for male defendants because male intoxication did not violate gender norms in the same way. For example, William Nottingham was found not guilty of manslaughter of his son because the court took a sympathetic view of William's inebriation.[54] Witnesses testified that William used his income on brandy instead of material provision and medical evidence determined the child died from starvation. However, witnesses told the court that William begrudged the child because his wife died in childbirth, and he did not want to care for it. William's eldest daughter explained 'my father did not always bring the baby food because he has spent it in other ways . . . I don't think he showed any fondness for the child – I am quite sure of that – he said he could do nothing for it'.[55] The jury found William not guilty of manslaughter and dropped an additional charge of exposure because he had been teetotal prior to his wife's death.

Table 5: Relationship to the victim and sentencing

Relationship	3 months	6 months	12 months	18 months	Fine	Death	Not guilty
Biological mother	1	5	4	4			4
Biological father	3			3	2		8
Foster mother		1		1		1	7

Foster father							1
Stepmother			1	1			1
Stepfather						1	
Aunt				1			
Uncle							1
Grandmother							1

Gendered treatment can also be observed in the trial of John Purcell and Margaret Flynn who were an unmarried couple charged with feloniously killing their daughter.[56] Witnesses explained that the couple would 'go out for whole days drinking' but Margaret's intemperance was criticised much more heavily than John's in witness testimony. Neighbours described Margaret as 'continually drunk' or 'tipsy' whereas John was acknowledged to drink regularly but his successful business as a tailor was heavily emphasised in evidence. A police inspector told the court 'the male prisoner said he always earned plenty of money and gave it to [Margaret] for the purpose of maintaining the children'.[57] Other witnesses claimed they had seen Margaret spending money on alcohol in local public houses. This evidence convinced the jury that Margaret neglected the child in favour of drinking. She was convicted and sentenced to six months imprisonment while John was acquitted.

To understand the differential treatment toward biological mothers compared to other defendants the court transcripts need to be studied in more detail. Close analysis of witness testimony, judicial guidance and defence statements support the findings from the empirical investigation. Not only were women treated more harshly by the courts if a child died from material deprivation in their care, but this was particularly true for biological mothers compared to others. The only exception to this observation were biological fathers who were employed but a child still died of neglect. The evidence from this study suggests Victorian juries were deeply unsympathetic toward employed fathers who were unable to provide material necessities despite generating income. Both types of defendants were consistently depicted as moral failures by witnesses who measured their characters against middle-class ideals of femininity and masculinity in front of juries of property-owning men. The deaths of their children were perceived as inevitable due to their transgression of class and gender norms. And yet this did not prevent juries from punishing these defendants more harshly than those where the child's death was deemed preventable by medical evidence such as George Hurry or John Robert Downes.

'I SUPPOSE THEY ARE NOT ALL DRUNKARDS': NARRATIVES OF CLASS

It is unsurprising these types of defendants were depicted as moral failures given child rescue narratives consistently depicted working-class parents as threats to their children in order to justify state interference.[58] Modern historiographies have explored the various ways working-class parents were routinely characterised as deficient for their inability to meet middle-class expectations of domesticity. Lydia Murdoch explains a key accusation leveraged against the poor was their perceived inability to maintain sufficient boundaries between productive and reproductive spaces, or human and animal spaces.[59] She argues poor households seldomly satisfied middle-class aspirations for the separation of adults, children, sexes and livestock, which fuelled anxiety about the working classes raising their own children. Murdoch asserts child rescuers deliberately misrepresented poor parents as incompetent so their children could be made available to public authorities for a conversion experience from 'street arabs' to English citizens.[60]

Harry Hendrick complements Murdoch's analysis by suggesting the increased regulation of poor parents during this period needs to be understood as a struggle for control between destitute families and the state. He explains there was a 'condition of England' question that held minimal standards of living in urban slums would contribute to the failure of the English race.[61] It was felt this could be prevented by incorporating poor children into the body politic, which was a radical concept during the late-nineteenth century because residual feelings about hereditary pauperism lingered on. Lawmakers thought the health of the English citizenry required poor children be included in any future vision of the state in order to preserve imperial strength and defence of the realm. In response, child protection discourses began to stress the common linkages of English heritage between all classes of society based on overt racial constructions such as 'English versus colo-

nial' or 'civilised versus savage'. These ideas allowed even the most destitute children to be seen as valuable members of the Empire if they were sufficiently reformed from their biological origins.

However, lawmakers felt this conversion could only be successfully achieved by separating poor parents from their children and empowering the state with the task of reformation.[62] Class conflict was a central theme to the distribution of welfare during this period because harsh welfare policies were justified on the contemporary assumption that poverty was either the result of a hereditary condition or personal failure, rather than misfortune.[63] Modern research has shown this assumption was misplaced, but these enduring beliefs help explain why the courts in this study showed little mercy for parents who were unable to pay for clothes, food, lodging or medical assistance as a result of their destitution.[64] This type of disadvantage was perceived as evidence of personal failure that warranted punishment rather than evidence of vulnerability that warranted support.

The trials of Caroline Brooks and Laura Addiscott provide compelling examples of these assumptions in operation during criminal proceedings at the Old Bailey.[65] Both women were charged with manslaughter following material deprivation of a child. The significant differences were that Caroline was charged with the death of her biological child and lived in extreme poverty, whereas Laura was a middle-class woman running a foster home charged with the death of a foster child. Caroline was found guilty. Laura was not.

Caroline was charged with killing her daughter Barbara who was less than a year old when she died. There were numerous witnesses for the prosecution but only Caroline appeared for the defence. This was common practice during this period because although defendants were allowed to call witnesses to support their case, they could not compel anyone to appear on their behalf, and rarely knew the case for the prosecution. Historians have argued the lack of defence witnesses, coupled with other systemic problems within the justice system more generally, tilted trials in favour of the prosecution.[66] Old Bailey trials were notoriously brief because defendants had no right to know what evidence would be produced against them before trial. This made it almost impossible for the accused to offer a defence, which invariably shifted trials in favour of the prosecution. This imbalance was further compounded by wider forms of social inequality such as the Juries Act 1825 which imposed a minimum level of wealth for men to be eligible to serve on a jury. Historians have reasoned that these rules were in place to ensure jurors were not tempted to accept bribes from the accused or their associates.[67] However, it must be considered that they also provide further evidence of class conflict within criminal justice system during the late-nineteenth century.

The brief trial of Caroline Brooks was filled with evidence of extreme poverty from the 16 witnesses called for the prosecution. Witnesses included: two police constables, two medical practitioners, two 'visitors of the poor' from local charities, Caroline's husband's employer, Caroline's daughter's school mistress and several working-class women who lived near the Brooks household. Police officers confirmed Barbara appeared starved when they were called to attend the property a week before she died. The parents told the police she was sick with measles and diarrhoea which was why she appeared so ill.[68] They produced medical certificates from Ormond Street Hospital which confirmed they had tried to get medical treatment but were turned away. The first medical practitioner confirmed Barbara was sick with disease but told the court that no action was taken because parish officials had arranged for Barbara and her siblings to be removed to the workhouse. The second medical practitioner, who was the chief doctor at the Shoreditch workhouse where Barbara died the following week, told the court 'the cause of death was deprivation of food, neglect, and filth . . . I do not attribute the death to measles'.[69]

However, the most condemnatory evidence came from the women who lived nearby. One described Barbara as 'naked and filthy . . . left crawling about on the floor' whereas another swore she had seen Barbara 'in an emaciated state . . . covered in her own soil'.[70] Another claimed Caroline was a disreputable character because she had been seen at the local public house. Jane Chamberlain told the court 'I know the prisoner, I see her at the Pritchard's public house – I go there for beer . . . I saw them one day when I went there in the morning, afternoon, and evening, all in one day'.[71] Accusations of this nature were not unusual in these cases, particularly from neighbours. The Temperance Movement had escalated by the end of the century owing to successful campaigns launched by middle-class reformers. Lucia Zedner explains that anti-inebriate supporters focussed on the importance of legislating against drunkenness for specific sections of the population who were perceived to be particularly threatening when intoxicated, namely the poor and women.[72] She explains how intoxicated women were seen to exacerbate the 'condition of England' question because of their role in producing healthy English citizens. Just like poverty, intoxication was wrongly assumed to be heredi-

tary, which meant impoverished women who drank posed a unique threat to both contemporary and future society. Women in these circumstances were viewed as particularly problematic because they were perceived to risk passing their dependency on alcohol *and* welfare support to their children.

By suggesting Caroline was a drunkard, Jane implied a dangerousness into her character in front of a jury of middle-class men. However, the evidence of the two 'visitors of the poor' conflicted with Jane's evidence. Joseph Knowles described Caroline as a 'quiet, sober and industrious' woman who he believed 'did everything in her power [but was] in a great state of destitution'.[73] He concluded, 'humanly speaking, they would have all been dead in the winter but not for my assistance'.[74] The other visitor, Sarah Worster, echoed this view. She told the court 'I think they did the best they could for their children'. She went on to explain that the family had not taken themselves to the workhouse because Caroline feared her husband and daughter would die from the conditions inside. The jury strongly recommended mercy for Caroline because of her extreme poverty.[75] She was found guilty and sentenced to three months imprisonment.[76]

Caroline's trial was not unusual compared to other biological mothers within the sample, yet stands in stark contrast to the trial of Laura Addiscott who ran a foster home for 'friendless children'. Laura was accused of killing Kate Smith who was 10 years old when she died in an emaciated condition. The court was given conflicting causes of death from the two medical practitioners who gave evidence. Dr Thomas Bond, a lecturer in forensic medicine at Westminster Hospital, told the court 'Kate Smith died from starvation – the condition of the body after death . . . indicates gross neglect; the complaint of lice, the sores on the head . . . she was extremely emaciated, there was no cushion for bones, no muscle – the drawing up of knees is a usual condition in death from exhaustion'.[77] However, Laura's personal physician, Dr James Ayres, told the court the death was caused by a lack of monetary provision from Kate's biological mother. Unlike Dr Bond, Dr Ayres gave evidence for the defence and made this assertion despite telling a police court the cause of death was starvation three weeks earlier. Dr Ayres explained his change of heart by saying 'I came to the conclusion that it was a case of starvation, but I was duped . . . the children would have been better cared for if they had had more money . . . I attended them as a matter of charity'.[78]

Unlike Caroline Brooks, the only neighbour to give evidence for the prosecution was a post-office employee who lived above the Home. He described seeing children eating grass from the back garden and begging for money in the street in a destitute condition. Several children who lived at the Home at the time of Kate's death also gave evidence. Kate's sister Ellen provided detailed accounts of a persistent lack of food, clothing and adequate living space. Other child witnesses described seeing multiple children die in the home from starvation. Ellen told the court 'there was no bed, we slept on the floor . . . there was no fire in the back parlour, only when they burnt the vermin off my sister . . . I was there when she died, and when all three others died'.[79] Another child named Esther Edgar told the court, 'I was hungry nearly all the time I was there – I was cold – I never complained to Miss Addiscott because we were afraid to do so'.[80]

Narratives of class become more potent in the defence testimony. Unlike the trials of biological mothers, Laura had several defence witnesses to help her case. Local business representatives, other middle-class foster mothers, members of her family and Dr Ayres all gave evidence for the defence. Business representatives repeatedly emphasised Laura's financial security as a means of verifying her moral character. An owner of a local pawn shop explained that Laura never had cause to attend his shop and told the court he had consulted most pawn shops in the area to confirm she had not tried to obtain money under a false name. The local coal merchant testified that Laura always paid her bills on time, while Laura's sister referred to their middle-class upbringing as evidence of her sisters' morality. She explained '[we] have not done anything to earn a livelihood [we] have always had father and mother', thereby highlighting Laura's financial independence from both the State and the 'condition of England' problem.[81] Another defence witness sought to highlight the quality of Laura's childcare by directly comparing it to a working-class household. He said, 'it was very well conducted indeed . . . considerably superior to the accommodation in the houses of honest working men'.[82] This further implied there was an inevitable superiority between the Home and any working-class household.

The most potent evidence of class-based narrative came from Laura's mother and Dr Ayres. The mother started her evidence by emphasising the family's independent financial status. She explained her husband was an officer in Her Majesty's Customs for 36 years and her daughter inherited the money to start the Home from her grandmother. The mother told the court her husband was in great distress because of the trial so she decided to use her maiden name when dealing with the authorities in order to preserve the reputation of

her married name. She told the jury 'the coroner said, “if you are the mother of Miss Addiscott surely your name is Addiscott” and then I told him who I was – and he did not rebuke me for saying what was untrue'.[83] This is important because it suggests the mother assumed the jury would understand why reputational damage would be a legitimate reason for lying to the coroner. Dr Ayres contributed to the class conflict by emphatically telling the court Kate could not have died from starvation because she was simply not genetically strong enough to survive. Despite stating the cause of death was starvation three weeks earlier, Dr Ayres concluded by reflecting on the condition of the poor more generally. He told the court 'a poor person might die of consumption, but if he had 500 shillings to [get medical help] he might survive . . . seeing the condition which these children were, nothing could have saved them from death; the best treatment could not have saved them in my opinion . . . I am perfectly ready to argue it must always be hereditary; it may never be set fire to because there is always a spark in the system ready to be ignited'.[84]

These remarks are a power demonstration of Victorian misconceptions that the working classes were genetically inferior to the middle classes from birth. By concluding Kate's death was inevitable due to her economic status, Dr Ayres insinuated there was nothing Laura could have done to keep her alive. This effectively absolved Laura of criminal liability. Discourses of class-based inferiority played well into the agendas of child rescuers because they legitimised interference from the middle class. Modern historians have explained how rescuers depicted poor children as 'waifs, outcasts, homeless, helpless, friendless and hopeless, destitute, hungry, ragged, degraded, wretched, miserable and pitiable' in order to justify separating them from their parents.[85] Other historians reflect on the ways these depictions helped demonise poor parents, which enabled rescuers like Thomas Barnardo to offer an 'obliteration of the [child's] past and complete disassociation from their biological family'.[86] These depictions also reinforce ideas that the lives of poor children were condemned to failure without help from the 'better' classes, as seen from Dr Ayres' evidence. Although Dr Bond's professional opinion was that Kate could have been saved if she had received more food, Dr Ayres implied her death was inevitable due to her working-class origins.

Worryingly, some modern historians continue to share misleading assumptions about child poverty from this period without investigating the role of entrenched class bias within the primary sources. For example, Ginger Frost briefly describes the trials of Mary Ann Morer and Martha Jones in her chapter 'The kindness of strangers revisited: Fostering, adoption and illegitimacy in England, 1860–1930'.[87] Both defendants were found not guilty of killing foster children in their care and coincidently form part of the sample. Frost explains the manslaughter charges against Mary Ann for the death of two-month old George Peacock failed 'partly because the cause of death was natural, but also because Mary Ann and her husband were clearly fond of the baby since they had no children of their own'.[88] Frost goes on to provide a similar explanation for Martha Jones who was found not guilty for the manslaughter of Adeline Dorothy Brown by saying '[she] was not the most careful of nurses, but [Martha] insisted that she “loved it with a mother's love” '.[89]

Frost asserts neither defendant was neglectful because they suffered from 'legal and economic powerlessness' which she attributes to a wider problem caused by biological mothers failing to pay for childcare during the late-nineteenth century.[90] However, the transcripts of the trials reveal a much more complex picture than mere default by the biological mothers. Mary Ann told the court that the money from the mother was insufficient, stating 'the money she gave us was to buy things for the child, I had nothing for its keep'.[91] Yet the mother defended these allegations by explaining she had always paid the agreed amount and told the court '[Mary Ann] never requested me to take it back again, or said she could not afford to keep it – indeed she said if I never paid a halfpenny her husband would keep it for nothing'.[92] The transcript confirms the mother paid Mary Ann the agreed amount but no questions were raised by the prosecution regarding the sufficiency of the amount. The trial for Martha Jones was similar because the defendant told the court 'I have done my duty to the child. I am innocent of the charge. I did my best for the baby'.[93] However, the transcript confirms the biological mother paid the agreed amount, but witnesses' evidence suggested the money was used for alcohol rather than material provision for the child. Witnesses described Martha as 'frequently the worse for liquor' or 'the worse for drink in the middle of the day'. They detailed a steady decline in the child's health, leading to Martha being evicted from her lodging 'in consequence of her behaviour toward the child'.[94]

There are inevitably gaps in our understanding about these cases because the trials were so short and very little extrinsic evidence survives. As a result, it is impossible to know how much the care from either foster mother contributed to the deaths. In Mary Ann's case no medical opinion was offered for the cause of death, whereas the medical testimony from Martha's case concluded 'the death was produced by neglect and star-

vation . . . if it had had proper food, care, and attention, no doubt its life would have been prolonged'.[95] Despite our limited understanding about these cases, Frost's analysis remains problematic because it continues to share the misleading assumption that the death of poor children during this period was unavoidable. This not only exacerbates misunderstandings about the nature of poverty, but it also fails to acknowledge that the state had the power to pre-emptively intervene through the poor law under section 37 in both cases but did not. Frost's analysis also fails to situate these not-guilty verdicts within the context that they occurred, namely, a period when certain parents were disproportionately blamed when their children died from lack of material provision. By remaining uncritical of the embedded class bias that permeates the transcripts, Frost's analysis struggles to frame these verdicts within the wider historiographies of other commentators who recognise the experiences of working-class families during this period as an ongoing battle with the state.[96]

'SHE WAS A SILLY BITCH WHO DID NOT KNOW BETTER': NARRATIVES OF GENDER

Historians have explored in depth the various ways middle-class gender norms were used by the Victorian courts to measure the respectability of working-class offenders and to shame them. Andrew August explains how middle-class ideals of femininity centred around notions of male dependency, passivity, frailty, chastity, sobriety, piousness and virtue.[97] He argues the reason working-class female offenders were particularly problematic because they disrupted models of both femininity and the rule of law. Thus, they were 'doubly deviant' because they transgressed the norms of gender *and* law.[98] August goes on to compare these perceptions with those of working-class male offenders who were perceived to only break legal norms because the middle classes expected working-class men to be violent. He builds on the conclusions of other historians who suggest working-class female offenders were treated more leniently by Victorian courts because their criminal behaviour was perceived to be less dangerous than male criminality.[99]

Godfrey, Farrall and Karstedt discuss how female defendants from this period usually benefitted from lighter sentencing because the courts were committed to a 'civilising initiative' that punished the 'dangerous masculinities' of working-class men by imposing harsh sentencing for specific behaviours.[100] The authors suggest the courts were less concerned with correcting undesirable femininity because they were focussed on breaking the perceived link between working-class men and violence.[101] Although working-class men were broadly incorporated into democratic and social structures by the late-nineteenth century, residual fears lingered within the middle classes that 'ordinary' working-class men had failed to be assimilated into the domestic environment. The authors argue this lack of domesticity justified the courts punishing working-class men more severely than women, even if it meant female defendants were privileged in terms of sentencing. They conclude 'even if clearly outside the norms of respectability, [women's] crimes might have been seen as petty, and it was the men who were deemed in need of civilising'.[102]

However, the findings from this study suggest gender bias worked against working-class women where the offence concerned the death of a biological child due to deprivation. More mothers were charged with a crime when a child died from material neglect than fathers and they consistently received harsher sentences. This finding is particularly striking in cases where both parents were charged for the same death but only the mother was convicted because it suggests mothers bore more responsibility to provide for their children than fathers despite the position of the law. Again, the exception to this were cases where the father was employed, where it appears the courts were willing to punish fathers who were unable to provide for their children as a condemnation of failed masculinity.

Unlike the findings related to class, observations of gender bias were not unique to biological parents, as seen in the case of Elias and Mary Ann Lipman.[103] Elias and Mary Ann were charged with the manslaughter of their 13-year-old nephew Joseph when he died 10 weeks after entering their care. Elias offered to look after Joseph without payment on behalf of his sister and her husband who were travellers. The biological mother told the court: 'I made no arrangement to pay so much a week, but I was to send when I could any nourishment that he might require'.[104] Three neighbours gave evidence indicating Joseph was persistently emaciated and covered in lice or vermin throughout his time in the Lipman household. However, the doctor who gave evidence to the court determined the cause of death was a 'disease of the lungs, and an ill-developed state of the nervous system'.[105] Mary Ann accused the biological mother of not contributing enough money. She told the court 'we are not gainers from the affair, we were to have 10 shillings; but we

only got 2 shillings; some money was left with someone to bury it, but I do not know with whom'.[106] Elias told the court 'I never received a penny, and I did not expect anything'.[107] Mary Ann was sentenced to 18 months in prison whereas Elias was acquitted.

Unlike the cases where the biological father was acquitted but the mother was convicted, Elias was neither unemployed nor absent. He worked as a fishmonger and lived in the family home with his wife and four children. But the jury did not feel his failure to provide material basics for Joseph was worthy of criminal sanction whereas Mary Ann's failure was. Historians largely agree that the 'civilizing initiative' was predominantly geared at working-class men but August asserts that there were instances where the courts sought to punish working-class women too if they were 'non-conforming' with gendered ideals.[108] He discusses the various ways women navigated a complex terrain of gendered expectations with courts and newspapers that treated women who successfully performed non-threatening versions of femininity more favourably. Unacceptable presentations of womanhood included aggression, intemperance, and promiscuity, and it appears from the evidence of this study the courts also viewed the material deprivation of children as a threatening version of femininity.

Shani D'Cruze discusses how working-class women sought to affirm their compliance with middle-class ideals of gender by publicly playing out ritualised contests about reputation and respectability that involved insulting, or even physically assaulting, their antagonists.[109] She argues the four core triggers for these contests were property, husbands, space and children.[110] It appears the Old Bailey served as an alternative public forum for these demonstrations of gender compliance, and standards of childcare served as a fifth trigger because the most critical testimony throughout the study consistently came from working-class female witnesses against working-class female defendants. Mary Ann's trial was no exception. Even though medical expert evidence concluded Joseph died from a lung disease, Mary Ann was convicted of manslaughter for exacerbating his condition by not feeding him properly despite Elias being equally responsible. Evidence from neighbours was particularly critical of Mary Ann's childcare, which provides a powerful illustration of the 'ritualised contests' described by D'Cruze.[111] One witness told the court 'the child was not washed at all, only his face was wiped'.[112] Another said Mary Ann called Joseph a 'bastard' while others claimed Mary Ann was aggressive in public and that Joseph was always covered in dirt, scabs and sores because she did not wash him.[113] Accusations of this nature presented Mary Ann as 'non-conforming' with gendered expectations and her conviction might be better understood as a condemnation of her failed femininity rather than criminal liability for Joseph's death.

Witness testimony from Jane Bishop's trial provides another example of these ritualised contests played out at the Old Bailey. Jane was convicted for manslaughter after her 15-week-old son died of starvation following a reduction in her husband's welfare support. Four women who lived near the Bishop household gave scathing evidence against Jane during the trial. Mary Woodruff told the court 'I do not think it was properly cleaned or washed since the day it was born – it was not properly wrapped up when I saw it – I have very often seen her drunk'.[114] Jane Duff explained 'the prisoner used to leave it almost every Saturday . . . she was not capable of wet nursing the child through being in drink'.[115] Catherine Higgins described a visit to the Bishop household and said 'the prisoner was lying drunk on the head of the table . . . the baby was lying in the corner, either on a chair or on the floor . . . it had no linen on, and it was quite destitute – it was not clean, it was filthy'.[116] The last witness Ellen Richards told the court 'it was wasting away very much, and it seemed to get worse, and as to clothing, it had no baby's clothing, no clothing to keep a baby warm'.[117]

At the conclusion of the trial Jane offered an oral and written defence. This was highly unusual because only one other defendant from the sample took such action. Jane told the court 'well gentlemen, I am very sorry it has happened, and I have never starved my child: I own to neglecting it and not dressing it as it ought to be . . . I thought my husband would have given the child a little food; I am given to drink at times, but I am not half so bad as they make out.[118] She then went on to submit a written statement declaring:

> 'Mrs Duff came to nurse [me] and got drunk constantly with brandy which she purchased by taking money from the till, and had taken a dislike to Mr Bishop, when he found her out, which she now vented upon [me]; and that four of the female witnesses were the worst women in Dover, and turned against [me] when

> there were no more clothes to pawn for drink; that [I] saw Mrs Higgins nearly drunk with her baby, and called a policeman who made her give the child up'[119]

This is a clear demonstration of reputational competition, as described by D'Cruze.[120] All five women sought to publicly shame each other for non-conforming female behaviour. Jane was shamed for failure to comply with norms of cleanliness, sobriety and virtue, which prompted her to shame her accusers in return. However, other witnesses gave evidence that presented a different picture of Jane. A police superintendent, workhouse nurse, workhouse master, medical officer and surgeon also gave evidence for the prosecution. The infant was not described as filthy, nor was Jane presented as intemperate or immoral. Their collective testimony presented a picture of a family in severe destitution, which might be why Jane was sentenced to prison for six months after being strongly recommended to mercy by the jury. A six-month tariff suggests the courts took a sympathetic view of Jane because most sentences for manslaughter within the sample were longer.[121]

The clemency directed at Jane might be explained by August's assertion that the Victorian courts determined the severity of female culpability by exploring their ongoing threat to 'orderly femininity' rather than the severity of their offence. He explains 'those whose crimes seemed less threatening to gender order or to society overall or who successfully performed acceptable feminine roles in court saw more lenient treatment than 'improper' women'.[122] The evidence from the witnesses who were representatives of the state did not support the unfeminine depiction of Jane presented by her neighbours. Extreme poverty did not contravene gendered ideals in the same ways as uncleanliness, drunkenness, violence or immorality. As Anette Ballinger explains, 'women who conform to dominant expectations of femininity and acceptable standards of womanhood may benefit from the gendered nature of law by being treated with leniency as long as those who *fail* to conform to such expectations pay the full punitive price'.[123] Jane did not fail to conform based on the evidence of the impartial witnesses. Her predominant crime was extreme poverty, for which she was punished by being convicted for manslaughter and sent to prison. Her case was similar to Caroline Brooks, who was also recommended to mercy after evidence from state actors conflicted with the evidence from another ritualised gender contest.

There were cases within the sample where women paid the 'full punitive price' which supports Ballinger's assertion. For example, Ann Hatchard was convicted for the manslaughter of her stepdaughter Alice Laurence following persistent evidence of non-conformity with gendered ideals from a range of witnesses.[124] Unlike most trials concerning a female defendant, there were no working-class female witnesses instigating a reputational contest in Ann's trial. Instead, the witnesses included the biological father, their landlady, a medical officer, a police officer and a childminder. The father explained Alice 'had some bad bruises . . . I could see that she was scalded'.[125] The medical officer confirmed the child had experienced violence by saying 'the body was covered in bruises . . . she admitted having struck the child in the eye for some dirty little act'. The police officer confirmed he had interviewed Ann following concerns raised by neighbours. Ann told him she had not noticed the child screaming in the bath 'until her skin was coming off' and admitted to giving 'her a smack on the head and knocking her against the fireplace'.[126] Although the childminder was a witness for the defence, she corroborated the negative picture presented by the prosecution by telling the court 'the father brought it to me, through his wife's filth and drunkenness'.[127] Ann was sentenced to 12 months imprisonment with hard labour.

Other examples included Margaret Smith who was sentenced to 18 months imprisonment after witnesses detailed her numerous arrests for public drunkenness.[128] Emily Curme was sentenced to 12 months with hard labour after witnesses detailed her history of pawning and public disorder.[129] The same happened in the trials of Elizabeth Wise and Albina Calo who both received longer sentences than their husbands for the same death after witness testimony implied non-conformity with feminine ideals.[130] Ballinger explains how the gendered context in which defendants commit crimes is lost when historians emphasise the leniency of female offenders based solely on trial outcomes.[131] She advocates for the approach adopted by Susan Edwards who identifies that attention must be directed toward an analysis of the differences in the treatment between genders based on case facts, rather than merely focussing on the statistical end product based on conviction rates.[132]

The empirical analysis of this study suggests the courts were not lenient toward women when they were charged with killing a child through deprivation. However, the qualitative investigation has shown a more textured reality. Gendered ideals affected both men and women who were charged with neglect-related crimes during the late-nineteenth century. The findings from this study suggest women were punished more harshly for failing to comply with gender expectations when children experienced neglect in their care, whereas men were only punished if the court felt they had the means to provide but still failed. This meant absent fathers, and unemployed fathers, were treated more sympathetically. In contrast, biological mothers were consistently punished for failing to provide because their clemency depended entirely on their compliance with gendered norms. Although both genders experienced biased treatment at the Old Bailey, it appears expectations of successful femininity required more than material provision to escape criminal liability.

CONCLUSION

This article has explored the ways that child neglect was criminalised during the period that the first neglect offence existed but was not enforced. It has shown that a consequence of non-enforcement was that parents faced far more serious charges of manslaughter or exposure where a child experienced material neglect. Mothers were disproportionately criminalised for their failure to comply with middle-class feminine ideals except in cases where the father was employed, where the courts were prepared to punish non-conformity with masculine ideals.

It is important to look at material from this period for two reasons. First, because it provides further evidence of the ways poor families were punished for their destitution during the late-nineteenth century. The middle classes were seldomly charged for offences related to child neglect, and when they were, they escaped liability. Material deprivation of a child was not only another way that poor parents were punished by the state during this period, but it was a uniquely gendered punishment because of the disproportionate impact on employed fathers and mothers more generally.

The second reason is because the state is still struggling to investigate and prosecute child neglect cases today. The current law is overly reliant on the 1889 child cruelty offence, which this article asserts was the first genuine legislative attempt to protect children in their homes. Although the 1868 Act purported to introduce criminal child neglect, it was really an attempt by lawmakers to bring parents with religious objections to vaccination and medical treatment into the mainstream. The evidence from this study suggests the state struggled to enforce the 1868 Act and that is why parents faced much more serious charges. That is relevant because although non-physical harms were recently incorporated into modern practice, the criminal law has not gone far enough to address the types of harms children experience in neglectful homes. Relying on Victorian legislation causes certain problems to reoccur. For example, the terminology of wilfulness is outdated and confusing, which makes it difficult for police and social workers to respond.[133] Second, it prevents the law from dealing with the full range of harms experienced by neglected children.[134] Lastly, the current definition of criminal neglect is substantially different to the definition in the Children Act 1989 and related guidance, which exacerbates confusion.[135] We have seen from this study how ineffective intervention can have serious consequences for vulnerable children even where the danger is not deliberate, as in the case of severe poverty. This is yet another reason why the current law on child neglect needs substantial reform.

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[1]†††† R Taylor and L Hoyano, 'Criminal child maltreatment: a case for reform' (2012) 11 *Criminal Law Review* 871; C Piper, 'Neglect Neglected in the Crime and Courts Act' [2013] Fam Law 722; A Gill, 'Updating the criminal law on child neglect: protecting children from severe emotional abuse' (2014) 2 *IALS Student Law Review* 41; R Gilbert et al, 'Burden and consequences of child maltreatment in high-income countries' (2009) 373 *The Lancet* 68.

[2]†††† Children and Young Persons Act 1933, s 1.

[3]†††† Action for Children, *The criminal law and child neglect: An independent analysis and proposal for reform* (February 2013), 2–3.

[4]†††† R Gilbert et al, above n 1; United Nations Committee on the Rights of the Child, 'Considerations of Reports Submitted by States Parties under Article 44 of the Convention: concluding observations: United Kingdom of Great Britain and Northern Ireland' (2008), para 50.

[5]†††† Action for Children, above n 3, 7–9.

[6]†††† Serious Crime Act 2015, s 1.

[7]†††† Poor Law Act 1868, s 37.

[8]†††† See R Pimm-Smith, 'District Schools and the erosion of parental rights under the Poor Law: A case study from London (1889–1899)' (2019) 34 *Continuity and Change* 401; L Murdoch, *Imagined Orphans: Poor Families, Child Welfare, and Contested Citizenship in London 1870–1914* (Rutgers University Press, 2006).

[9]†††† Taylor and Hoyano, above n 1, 874.

[10]†††† Prevention of Cruelty, and Protection of, Children 1889, s 1.

[11]†††† Taylor and Hoyano, above n 1, 872–873.

[12]†††† See *Hansard*, HL Deb, vol 338, cols 273–321 (5 August 1889) (Lord Herschell) debates preceding the Prevention of Cruelty, and Protection of, Children 1889, s 1.

[13]†††† See Pimm-Smith, above n 8; AW Ager, *Crime and Poverty in 19th Century England: The Economy of Makeshifts* (Bloomsbury Academic, 2014); E Hurren, *Protesting about Pauperism: Poverty, Politics and Poor Relief in Late-Victorian England 1870–1900* (The Boydell Press, 2007); S King and A Tompkins (eds), *The Poor in England 1700–1850: An economy of makeshifts* (Manchester University Press, 2003); LH Lees, *The Solidarities of Strangers: The English Poor Laws and The People, 1700–1948* (Cambridge University Press, 1998).

[14]†††† H Fawcett MP, *Pauperism: Its Causes and Remedies* (Macmillan, 1871).

[15]†††† (1875) 1 QBD 25, para 29.

[16]†††† See *R v Hurry* (1872) 76 CC Ct Cas 63; *R v Wagstaffe* (1868) 10 Cox CrC 530; *R v Hines* (1874) 80 CC Ct Cas 309.

[17]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021), August 1874, trial of THOMAS HINES (t18740817–560).

[18]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 8 September 2021), May 1872, trial of GEORGE HURRY (t18720506–435).

[19]†††† Ibid.

[20]†††† Above n 15, para 30.

[21]†††† Taylor and Hoyano, above n 1, 874.

[22]†††† *Hansard*, HC Deb, vol 333, cols 587–588 (28 February 1889).

[23]†††† Piper, above n 1, 722.

[24]†††† [1899] 1 QB 283; Taylor and Hoyano, above n 1, 876; The Prevention of Cruelty, and Protection of, Children Act 1889, s 1.

[25]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 8 December 2021) for this search tool.

[26]†††† S Devereaux, 'The City and the Session Paper: “Public Justice” in London 1770–1800' (1996) 35 *Journal of British Studies* 468.

[27]†††† Offences Against the Person Act 1861, s 27.

[28]†††† The trials of Margaret Waters, Annie Marie Well, Elizabeth Buckley and the joint trial of Raphael and Albina Calo were returned in all three searches.

[29]†††† See the Sex Disqualification Act 1919 and the Juries Act 1825.

[30]†††† See, for example, L Zedner, *Women, Crime and Custody in Victorian England* (Oxford University Press, 1991); C Conley, *The Unwritten Law, Criminal Justice in Victorian Kent* (Oxford University Press, 1991); A Davies, ' “These Viragoes are no less cruel than the lads”: Young Women, Gangs and Violence in Late-Victorian Manchester and Salford' (1999) 39 *The British Journal of Criminology* 72.

[31]†††† See N Goc, *Women, Infanticide and the Press, 1822–1922* (Routledge, 2016); A Cossins, *Female Criminality: Infanticide, Moral Panics and The Female Body* (Palgrave Macmillan, 2015); L Rose, *Massacre of the Innocents* (Routledge, 1986); K Callahan, 'Women Who Kill: An Analysis of Cases in Late-Eighteenth and Early-Nineteenth Century London' (2013) 46 *Journal of Social History* 4.

[32]†††† See M Flegel, 'The Dangerous Child: Juvenile Delinquents, Criminality, and the NSPCC' in *Conceptualizing Cruelty to Children in Nineteenth-Century England: Literature, Representation and the NSPCC* (Routledge, 2009); H Hendrick, *Child Welfare 1872–1989* (Routledge, 1994); S Swain, 'Childhood Lost: Idealized Images of Childhood in the British Child Rescue Literature' (2009) 2(2) *Journal for the History of Childhood and Youth* 198; J Heywood, *Children in Care: The development of the service for the deprived child* (Routledge, 1965).

[33]†††† Custody of Children Act 1891; Poor Law Act 1899; Children Act 1908; Adoption of Children Act 1926.

[34]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021) September 1870, trial of MARGARET WATERS (t18700919–769). Note legal adoption did not come into force until 1926.

[35]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021) December 1879, trial of CHARLES SHURETY (t18791215–106).

[36]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021) April 1880, trial of ANN NOAKES (t18800426–428).

[37]†††† Offences Against the Person Act 1861, s 27.

[38]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021), August 1874, trial of THOMAS HINES (t18740817–560) and June 1875, trial of JOHN ROBERT DOWNES (t18750605–427).

[39]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021), December 1879, trial of CHARLES SHURETY (t18791215–106).

[40]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021) June 1874, trial of ELIZA POLLAIN (t18740608–434).

[41]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 18 October 2021) January 1887, trial of WILLIAM JOSEPH NEALE (t18870131–253).

[42]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 18 October 2021) January 1887, trial of WILLIAM JONES and MARY ANN JONES (t18770108–197).

[43]†††† J Archer, ' "Men Behaving Badly"? Masculinity and the Uses of Violence, 1850–1900' in S D'Cruze (ed), *Everyday Violence in Britain, 1850–1950* (Harlow, 2000), 41–54; JC Wood, 'Drinking, Fighting and Working-Class Sociability in Nineteenth-Century Britain', in S Schmid and B Schmidt-Haberkamp (eds), *Drink in the Eighteenth and Nineteenth Centuries* (Routledge, 2014), 71–80.

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[45]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021) January 1877, trial of JANE BISHOP (t18770108–201).

[46]†††† Poor Law Act 1834, s LVI.

[47]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 31 August 2021) August 1878, trial of FREDERICK WISE and ELIZABETH WISE (t18780806–674).

[48]†††† Ibid.

[49]†††† Ibid.

[50]†††† Ibid.

[51]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 8 September 2021), May 1872, trial of GEORGE HURRY (t18720506–435).

[52]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 8 September 2021), June 1875, trial of JOHN ROBERT DOWNES (t18750605–427).

[53]†††† Ibid.

[54]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 8 September 2021), August 1874, trial of WILLIAM NOTTINGHAM (t18740817–537).

[55]†††† Ibid.

[56]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 9 September 2021), November 1870, trial of JOHN PURCELL and MARGARET FLYNN (t18701121–36).

[57]†††† Ibid.

[58]†††† For late-nineteenth century discourses on parents being depicted as threats to their children in order to justify state intervention see FD Hill, *Children of the State* (Macmillan, 1889); J Nassau Senior, 'Education of Girls in Pauper Schools' in Mendella Bute Smedley (ed), *Boarding-Out and Pauper Schools Especially for Girls Being a Reprint of the Principal Reports on Pauper Education in the Blue Book for 1873–74* (Henry King & Co, 1875).

[59]†††† Murdoch, above n 8, 90–91.

[60]†††† Murdoch, above n 8.

[61]†††† Hendrick, above n 32, 44.

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[63]†††† Fawcett, above n 14, 71–91.

[64]†††† For discussions about misplaced assumptions about the poor during this period see Murdoch, above n 8; Pimm-Smith, above n 62.

[65]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org version 8.0, last accessed 14 July 2021), September 1868, trial of CAROLINE BROOKS (t18680921–796); and August 1879, trial of LAURA JULIA ADDISCOTT (t18790805–737).

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[69]†††† Ibid.

[70]†††† Ibid.

[71]†††† Ibid.

[72]†††† Zedner, above n 30, 221–222.

[73]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org version 8.0 last accessed 14 July 2021), September 1868, trial of CAROLINE BROOKS (t18680921–796).

[74]†††† Ibid.

[75]†††† Ibid.

[76]†††† Ibid.

[77]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org version 8.0 last accessed 31 July 2021), August 1879, trial of LAURA JULIA ADDISCOTT (t18790805–737).

[78]†††† Ibid.

[79]†††† Ibid.

[80]†††† Ibid.

[81]†††† Ibid.

[82]†††† Ibid.

[83]†††† Ibid.

[84]†††† Ibid.

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[88]†††† Ibid, 129.

[89]†††† Ibid, 129.

[90]†††† Ibid, 130.

[91]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 24 July 2021), August 1868, trial of MARY ANN MORER (t18680817–731).

[92]†††† Ibid.

[93]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 23 August 2021), April 1884, trial of MARTHA JONES (t18840421–483).

[94]†††† Ibid.

[95]†††† Ibid.

[96]†††† Murdoch, above n 8; Swain et al, above n 84*;* Hendrick, above n 32.

[97]†††† A August, 'A Horrible Looking Woman: Female Violence in Late-Victorian East London' (2015) 54 *Journal of British Studies* 844.

[98]†††† Ibid, 847.

[99]†††† Ibid, 847–851.

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[101]†††† Ibid, 698.

[102]†††† Ibid, 716.

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[105]†††† Ibid.

[106]†††† Ibid.

[107]†††† Ibid.

[108]†††† August, above n 97, 852.

[109]†††† S D'Cruze, *Crimes of Outrage* (Routledge, 1998), 61.

[110]†††† Ibid, 51.

[111]†††† D'Cruze, above n 109, 61–63.

[112]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 23 October 2021), August 1870, trial of ELIAS and MARY ANN LIPMAN (t18700815–645).

[113]†††† Ibid.

[114]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 August 2021) January 1877, trial of JANE BISHOP (t18770108–201).

[115]†††† Ibid.

[116]†††† Ibid.

[117]†††† Ibid.

[118]†††† Ibid.

[119]†††† Ibid.

[120]†††† Above n 109, 61–63.

[121]†††† See Table 5 above.

[122]†††† August, above n 97, 855.

[123]†††† A Ballinger, 'Masculinity in the Dock: Legal Responses to Male Violence and Female Retaliation in England and Wales, 1900–1965' (2017) 16(4) *Social and Legal Studies* 461.

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[126]†††† Ibid.

[127]†††† Ibid.

[128]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 November 2021), November 1880, trial of MARGARET SMITH (t18801123–64).

[129]†††† *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 8.0, last accessed 11 November 2021), March 1887, trial of EMILY CURME (t18870328–504).

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[132]†††† S Edwards, *Sex and Gender in the Legal Process* (Blackstone Press, 1996), 371–372.

[133]†††† Piper, above n 1, 722.

[134]†††† Baroness Butler-Sloss, Action for Children, above n 3, 1; Piper, above n 1, 722.

[135]†††† Piper, above n 1, 722.