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Bastards, Baby Farmers, and Social Control in Victorian Britain

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PhD Thesis

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Abstract

This thesis examines the development and enactment of legislation between 1834 and 1897 which sought to deal with the problems associated with the support of the bastard child. This Victorian legislation, reflecting a new paradigm of state intervention, represents the first example, apart from the obvious case of the criminal law, that eventually authorised in 1897 state encroachment into the domestic home. The thesis is divided into three main parts.

In the first part, I examine the Poor Law of 1834 and the bastardy legislation which followed to show how lawmakers sought to influence the behaviour of those women likely to produce illegitimate children. I argue that these provisions served not to deter women from having children but resulted in a lack of possibility of practical help which might have enabled women to care for their own children. One possible solution for a woman who faced the problem of providing care for her illegitimate child was to entrust them to someone else and to pay for childcare, in effect to employ a baby farmer.

The second part of the thesis examines the trials of four baby farmers charged with the murder of children in their care. I consider the cases of Charlotte Winsor (1865) and Margaret Waters (1870), which brought to wide public attention the practices of baby farming and marked a shift of official attention from the mothers of illegitimate children to those paid to care for them. I then consider the cases of Jessie King (1889) and Amelia Dyer (1896), a generation later than the other two cases, but which confirmed the earlier construction of baby farmers as child murderers.

In the third part of the thesis I evaluate the formal response of government to the issues raised by the dangers to child health posed by some baby farmers. This consists of analysis of the minutes of three select committees (1871, 1890, and 1896), constituted to consider legal solutions to the issue of baby farming. I examine the evidence presented to the committees in which some witnesses advocated direct inspection and regulation of the homes in which the baby farmers carried out their trade, in effect to take social control into the domestic circle. The first two committees resisted this, but the third resolved to create a regime of notification, mandatory inspection, and local-authority supervision which brought social control directly into the private home. This led to the Infant Life Preservation Act 1897, the foundation of a power of state inspection of childcare within the private home.

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In memoriam: Oliver Postgate, Geoffrey Linnell, and Bill Giddings.

"Life's not about how hard of a hit you can give... it's about how many you can take, and still keep moving forward."

Sylvester Stallone: Rocky Balboa

Chapter 1: 'The Tribe of Ogres who Fatten on Little Children'¹

Bastards were a problem in the nineteenth century. In 1834, evidence collected by the 1834 Royal Commission into the working of the Poor Laws put the blame for the cost to the parish of the support of bastard children firmly at the door of incontinent mothers:

A respectable widow would actually receive less for her children than a prostitute for the offspring of promiscuous concubinage.²

Witnesses drawn from those working within the Poor Law system, such as Overseers of the Poor or vestry clerks, called before the Commission spoke of the ways in which women were exploiting the system which provided support for them and their illegitimate infants. The tone of the Commission's report made it clear that these feckless women represented significant financial cost, not only to the parishes, but also to 'innocent' men caught in the net of affiliation.³

Less than fifty years later, Benjamin Waugh, founder of the new National Society for the Prevention of Cruelty to Children (NSPCC),⁴ writing for the *Contemporary Review*, a journal which published articles aimed at the sophisticated and intelligent reader, referred to the mothers of bastards thus:

I, for one, have no stone to throw at this torn, wits-driven class of woman. I have tears for her. The victim of a trust, maybe, for which there was no foundation, she has become an unhappy mother.⁵

Waugh's article reflects a sea-change of opinion which had become more prevalent from the 1860s onwards. In the same article, Waugh condemned a different group of women as being 'infamous creatures, mere she-things';⁶ he was referring to the baby farmers, the derogatory term used to refer to women providing long-term paid childcare in their own homes, who had become objects of scorn and derision.

The roots of the term 'baby farming' are thought to date from the 1860s, although in *Oliver Twist*, Dickens describes how his eponymous hero was 'farmed' to a 'branch-

¹ Benjamin Waugh, 'Baby Farming' 57 (May 1890) *The Contemporary Review* 700

² SG Checkland & EOA Checkland (eds), *The Poor Law Report of 1834* (first published 1834, Pelican 1974) 266

³ Were a child to be affiliated to a putative father, before 1834 the father would be liable for the financial support of the child and its mother, with payment given directly to the mother.

⁴ The NSPCC was formed in 1884 as the London Society for the Prevention of Cruelty to Children. It was renamed in 1889, in order to reflect its growing operation outside London. It was granted a Royal Charter in 1895

⁵ Waugh (n1), 706

⁶ *ibid* 705

workhouse...under the parental superintendence of an elderly female,'⁷ which fictional account accords with the descriptions of the later baby farms which came to public attention. In particular, as we shall see in the case of Margaret Waters, examined in chapter six, the baby farmers would keep a number of children within their home for extended periods of time. The term 'baby farmer' was, as Meg Arnot reminds us, pejorative.⁸ With it were associated a number of ills; especially neglect, cruelty, and murder of children. But baby farming as a quasi-industry was more complex than the simplistic notion that all baby farmers killed the children who were unfortunate enough to be under their care. Baby farming was not merely, as Ruth Homrighaus has claimed, 'a form of infanticide performed on unwanted children',⁹ but rather a complex set of practices which encompassed situations where children were given by their mothers to other women in order that the child should be cared for in a domestic home for payment. As we shall see in chapter five, this 'industry' was closely associated with private 'lying-in homes', rudimentary maternity homes, where a woman might go to be delivered of her baby in secret. Immediately after the birth, an inconvenient infant might then be passed via a 'procurer' to a domestic home in which care (such as it was) took place and the infant would often ail, and die. It is this final destination that is usually associated with the term 'baby farm'.

In this thesis, I ask why it was that the subject of paid-childcare taking place in the domestic home of the care-giver became the object of official government interest between 1834 and 1897. In particular, I consider why it was that the focus of official attention moved away from the mothers of illegitimate children to the baby farmers and whether legislative change during this period reflected any shift in such interest.

In order to interpret the results of my research I examine, in the next chapter, two possible frameworks. The first is Foucault's governmentality theory, and I question whether his concepts of governmentality and biopower can help my hypotheses relating to the exercise of direct, coercive, control over the lives of working-class women. I also examine the wider concept of social history and, in particular, social control and the social police, and consider whether it is better suited to analysis of my research.

Social history, as a discipline, focuses on the lives of those affected by macro level changes in society, in the case of this thesis, the changing attitudes to the provision of care for bastard

⁷ Charles Dickens, *Oliver Twist* (first published 1837-8, Penguin Classics 2002) 6

⁸ ML Arnot, 'Infant Life, Child Care and the State: The baby farming scandal and the first infant life protection legislation of 1872', *Continuity and Change* 9/2 (1994) 271

⁹ RE Homrighaus, 'Wolves in Women's Clothing: Baby-Farming and the British Medical Journal, 1860-1872', *Journal of Family History* 26/3 (2001) 350

children, that is, a child borne to a mother outside wedlock. In his introduction to the *Cambridge Social History of Britain 1750-1950*,¹⁰ FML Thompson noted how social historians draw widely on concepts from many disciplines in order to understand the everyday lives of people. For example, the concept of 'social control' was defined and developed by a group of social historians working in the 1970s. The seminal text, *Social Control in Nineteenth Century Britain*,¹¹ edited by AP Donajgrodzki, focussed on the relationships between the rich and poor in society, and in particular how social institutions, such as the legal system, religion, and philanthropy, maintained the social order.

The three volume *Cambridge Social History of Britain 1750-1950* was the result of collaboration of academics from a number of institutions. Volume three of the series, *Social Agencies and Institutions*¹² is particularly useful in the context of this thesis, introducing as it does the developing institutions of state which contributed to the control of the behaviour of Victorian citizens and refers to the earlier concept of 'social control'. By combining the *Cambridge Social History* with the work of AP Donajgrodzki et al,¹³ I draw conclusions from my research as to the operation of control over the mothers of illegitimate children and the baby farmers by the developing organisations of the state, and in particular, local government. Using these two bodies of work, I examine the official means of control exercised by the administrative state over behaviour occurring in the domestic home by using the examples of the Poor Law 1834, subsequent bastardy legislation, and the Infant Life Protection Acts of 1872 and 1897. For ease of reference, in this thesis I refer to this framework as 'social control' with a particular emphasis on the development of 'social police'. This last term refers to agencies and organisations within the growing public authorities whose function was to apply direct control to the behaviour of specific groups within society in order to make them conform with the norms of dominant social groups.

This thesis deepens current understanding of the history of baby farming, as exemplified by the work of Meg Arnot,¹⁴ Ruth Homrighaus,¹⁵ and Lionel Rose,¹⁶ by moving away from the position that baby farming was necessarily connected with the commission of crime and, in particular, murder. As we shall see, while many of the baby farmers who came to public attention were convicted of the crime of murder, not all baby farmers were guilty of that

¹⁰ FML Thompson (ed), *The Cambridge Social History of Britain 1750-1950, Vol 3: Social Agencies and Institutions* (Cambridge University Press 1990)

¹¹ AP Donajgrodzki (ed) *Social Control in 19th Century Britain* (Croon Helm 1977)

¹² Thompson (n3)

¹³ Donajgrodzki (n11)

¹⁴ Arnot (n8)

¹⁵ Homrighaus (n9)

¹⁶ L Rose, *The Massacre of the Innocents: Infanticide in Britain 1800-1939* (Routledge & Kegan Paul 1986)

offence. I explore how the baby farmers provided a 'solution' for the care of illegitimate children for women who had few options to provide financially for themselves and their children. I trace how the popular understanding of the quasi-trade contributed to the demonising representation of the baby farmers accused of murder.

I start my study with the 'New' Poor Law of 1834 which government used in an attempt to reduce the numbers of illegitimate children by restricting financial support for the mothers. I examine subsequent changes to the Poor Law legislation, particularly those changes which amended and/or developed the bastardy provisions, altering the ways in which women might access support for their children. I follow the change in focus of official interest away from the mothers of bastard children to the baby farmers, who emerged as a group of dangerous women, thought by law-makers, to be in need of control. The government attempted to provide this control via the Infant Life Protection Act 1872.

The finishing point of the thesis is the Infant Life Protection Act 1897. This Act was the second attempt to legislate to protect those children being looked after in the domestic home of their carers. It gave a mandate and a power to the developing local authorities to enter the homes of working-class women in order to monitor and inspect childcare taking place in the domestic circle. It is notable that the term baby farming was never used in the legislation, although it is clear from the evidence of the preceding select committees of 1871, 1890, and 1896, that the baby farms were its focus.

In chapter three we see examples of the interest shown by some nineteenth century women who were passionately interested in the ways in which legislators sought to control the lives and practices of working-class women, as mothers and baby farmers. Women campaigned and worked for change in legislation throughout the century, from the example of Mrs Fanny Trollope's campaigning novel *Jessie Phillips*, first published in 1842,¹⁷ which focussed on the iniquities of the bastardy provisions of the Poor Law 1834, to the women working as health visitors in Manchester, who gave evidence to the 1896 Select Committee on the Infant Life Protection Bill. In this thesis, I examine the contribution which these women made to the changes in legislation which had at its target working-class women and the ways in which they worked within their own homes.

Consulting primary sources such as court records, minutes of select committees, and papers held in the National Archives, enables me to examine in detail how it was that official interest in childcare became seemingly more urgent during the nineteenth century, and how the law

¹⁷ Mrs Fanny Trollope, *Jessie Phillips* (First published 1842-43, Nonsuch Publishing 2006)

developed following the apparent failure of the Poor Laws, Bastardy legislation, and the Infant Life Protection Act 1872. Literature relating to the Poor Laws reflects the official position at the start of the century and the public response to the need for support of children whose existence was inconvenient for their mothers. It also shows how working-class women in need of support were 'pulled' into the shared social space of society; a place in which people gathered and interacted with each other, and which was increasingly seen in the nineteenth century as being in need of control.¹⁸ Using the case studies of the baby farmers allows me to explore the ways in which paid care of children then became essentially hidden in what Mary Poovey has termed the 'domestic circle', a place where family-life was carried out, unhindered by official restriction on behaviour;¹⁹ while the aftermath of the criminal cases, and the legal and judicial responses to them, I argue, brought the issue of privately arranged childcare back to the public awareness.

Previous scholarship has focussed on the constituent parts of this thesis, some links have been made between the Poor Laws and infanticide, and also between the baby farmers and legal reform. However, in this thesis I approach these topics as forming part of a cohesive whole – a demonstration of how it was that social control was brought to bear on working-class women in their own homes, which were previously thought to be beyond the reach of the state. By examining the way in which the law changed its subject, from the mothers targeted by the New Poor Law 1834, to the baby farmers at whom the Infant Life Protection Act 1872 was aimed and, finally to the children who were the focus of the Infant Life Protection Act 1897, I argue that we can see how these changes in legal focus allowed the creation of a new form of social police which was to cross the threshold of the private home and penetrate the domestic circle.

Women are at the heart of this thesis, as feckless mothers and as baby farmers, and the legislation examined has women as its target. I examine the effects of this focus and, in particular, the way in which the bastardy provisions of the Poor Law 1834 'pulled' women into social space in order that they might access the financial and practical assistance needed in order that they and their child(ren) should survive. I further suggest that the development of the baby farming industry during the second half of the century demonstrates a strong desire for women, whether mothers or baby farmers, that they should be able to stay within the domestic circle, in order to retain privacy for the arrangements for the care of their children,

¹⁸ Robert D Storch, 'The Problem of Working-Class Leisure. Some Roots of Middle-Class Moral Reform in the Industrial North: 1825-50' in AP Donajgradzki (ed) *Social Control in 19th Century Britain* (Croon Helm 1977)

¹⁹ Mary Poovey, *Making a Social Body: British Cultural Formation 1830-1864* (University of Chicago Press 1995)

and to preserve their good 'name' and reputation. The privacy of baby farms allowed the baby farmers to neglect and/or ill-treat children in their care, since they were hidden away from public view. The changes in the various legislation, from the Poor Laws to the Infant Life Protection Acts, shifted law's focus away from an attempt to control the behaviour of feckless, immoral, women, towards an attempt to monitor paid-carers, and ultimately to construct the bastard child as a new target of the law.

In order to answer my thesis questions, why it was that paid childcare became an object of official government interest between 1834 and 1897, why such governments' interest changed and, how legislative change reflected this change in interest, I examine the discourse relating to issues associated with bastardy, baby farming, and child murder. The term 'discourse' has, as Carol Bacchi has suggested, become ubiquitous,²⁰ and can encompass a variety of written and other forms. In this thesis I follow what Bacchi has termed an 'analysis of discourses' in order to understand how the various discourses associated with bastardy and baby farming expose how some women were identified as targets for institutional and cultural change. In this thesis I reflect on the ways in which the issues of bastardy and baby farming were framed and question how working-class women were thus categorised.

R Keith Sawyer, has suggested that Foucault's definition of discourse in *Archaeology of Knowledge*²¹ and its development through subsequent works has led to a series of rather tortured definitions of discourse.²² While theorists following Foucault have focused on the ways in which 'common people' have been represented in discourse, as we shall see throughout this thesis, the voices of the women with whom we are concerned, the mothers of bastard children and the baby farmers, are very little heard in the contemporary sources. Thus, dominant discourses cannot be said to reflect directly their agency. In order to avoid confusion, in this thesis I use the term 'discourse analysis' to denote an examination of various sources of written information and published opinion, in order to understand the ways in which women associated with the baby farming industry were presented, and how such presentation shaped notions of the baby farmers and influenced the ways in which the state sought to influence directly the behaviour of those women.

²⁰ Carol Bacchi, 'Discourse, Discourse Everywhere: Subject "Agency" in Feminist Discourse Methodology' (2005) 13/3 *Nordic Journal of Women's Studies* 198

²¹ Michel Foucault, *The Archaeology of Knowledge* (first published as *L'Archeologie du Savoir* 1969, third edition, 2002 Routledge)

²² R Keith Sawyer, 'A Discourse on Discourse: An Archeological History of an Intellectual Concept' (2002) 16(3) *Cultural Studies* 433 437

The first discourse which I consider relates to the criminal cases of the baby farmers accused of the murder of the children in their care. The *Online Proceedings of the Old Bailey*²³ (OBSP) has been invaluable for this analysis, in giving records of those trials that took place in London. For the other cases (Charlotte Winsor and Jessie King), I have consulted newspaper reports and the works of near contemporary authors²⁴ in order to reconstruct a record of the proceedings.

The OBSP are not perfect accounts of the trial proceedings. Accounts are conflated, legal arguments are not included, and the judicial summing up is not reported. Yet Langbein has suggested that the OBSP are the only usable official sources of information of trials during the eighteenth and nineteenth century, and he suggests that they are a reasonably accurate source of information.²⁵ Supplementing the accounts from the OBSP with newspaper and other reports presents an opportunity, not just to 'fill in the gaps', but to examine the wider discourse in order to make assessment as to public opinion of the cases in particular and baby farming in general.

Official accounts of parliamentary business, such as the Hansard reports of the proceedings of Parliament, provide a rich resource as they expose the apparatus of legislative change. Examination of the debates in Parliament, such as those relating to the Poor Law Bill of 1834, for example, give a clear indication of the views of the lawmakers with regard to support of the Poor and the tensions which arose.

The minutes of the three select committees which considered the Infant Life Protection Bills of 1872, 1890, and 1896, are similarly a rich resource. The minutes are a verbatim account of the proceedings of the committees and include the questions posed to witnesses and their answers, and as such are quite illuminating. Here we have a report of the proceedings that has not been 'authored' as such in that the speech of the witnesses and the committee was recorded with no attempt to 'polish' it or to provide any emphasis. It could be argued that this presents a rich opportunity to get as close as possible to the committee itself. However, a document such as this also presents significant challenges. The remarks that are recorded are the bare words, and it may be tempting to read into the words on the page inferences that were not there. Thus, they need to be treated with some caution.

²³ 'Old Bailey Online – The Proceedings of the Old Bailey' <<http://www.oldbaileyonline.org/>>

²⁴ See for example RS Lambert, *When Justice Faltered: a study of nine peculiar murder trials* (Methuen 1935) for information relating to the trial of Charlotte Winsor; W Roughead, *'In Queer Street'* (W Green & Son 1932) gives an eye-witness account of the trial of Jessie King

²⁵ John H Langbein, 'Shaping the 18th Century Criminal Trial: A View from the Ryder Sources' (1983) 50 *University of Chicago Law Review* 1

The minutes are particularly useful, not just for the records of the proceedings of the committees, but also for the list of the witnesses called. It is noticeable that each committee relies on witnesses from different groups. As we shall see in chapter seven, witnesses at the first committee were dominated by members of the medical profession along with police officers who had been instrumental in the discovery in 1870 of the Margaret Waters baby farm.²⁶ The second committee (1890)²⁷ examined in chapter eight, was a much smaller affair than the first with only six witnesses called. These included a coroner, the Chief Constable of Edinburgh,²⁸ a representative of the Metropolitan Board of works, and representatives of three charities. The third committee (1896), also examined in chapter eight, was a much larger affair, calling 20 witnesses drawn from a number of groups, such as Her Majesty's coroners, local authority inspectors, charities associated with the 'rescue' of women and children, and representatives from those responsible for the administration of the Poor Laws.²⁹

Where available, I have used contemporary documents and other primary archival sources, in particular papers held at the National Archives relating to the criminal cases of Margaret Waters and Amelia Dyer, in the Criminal, Metropolitan Police Registers, and Home Office Series of papers.³⁰ These were identified using the *Discovery* catalogue of resources held at the National Archives, utilising a wide database search. Where appropriate, records were cross referenced to other series. Using archival records can be simultaneously illuminating and frustrating. The catalogue does not show details of the individual items in each archive box and it is not until you open the box or file that you know what lies within. I have also consulted records held at Canterbury Cathedral archives for the minutes of the Canterbury Union relating to the operation of the bastardy provisions of the Poor Laws,³¹ the Berkshire Record Office, Reading, for details of the inquests of the children killed by Amelia Dyer,³² and the Thames Valley Police Museum for papers relating to the arrest and trial of Amelia Dyer.³³

The second key area of discourse is that of the contemporary popular newspapers. The press, as Nicola Goc notes, had become increasingly powerful from the eighteenth century onwards, and in the nineteenth century newspapers were widely read across Britain. Topics such as infanticide, murder, famous trials, and executions were reflected in the popular press giving titillating details of famous murders, but also disseminating morality tales throughout the

²⁶ HC 372 (1871) Report of the Select Committee on Protection of Infant Life

²⁷ HC 346 (1890) Report from the Select Committee on the Infant Life Protection Bill

²⁸ Whose evidence related to the Jessie King case. See chapter six

²⁹ HC 343 (1896) Report from the Select Committee of the House of Lords on the Infant Life Protection Bill

³⁰ CRIM, HO, and MEPO series

³¹ Canterbury Cathedral Archives, The Precincts, Canterbury, CT1 2EH

³² Berkshire Record Office, 9 Coley Avenue, Reading, Berkshire, RG1 6AF

³³ Thames Valley Police Museum, Sulhamstead House, Sulhamstead, Reading, RG7 4DU

country.³⁴ The more serious end of the press, such as *The Times*, included reports of the proceedings in court and provide a useful supplement to reported cases and, as stated above, to the OBSP.

In order to reflect newspaper coverage as widely as possible, I have used the British Library on-line database of nineteenth century newspapers, performing database searches using keywords where appropriate and browsing more fully around key dates, such as the dates of trials. In order to ensure maximum coverage, where an event has been reported in more than one newspaper, as was common, I have chosen to use the version with the most detail. For reports from *The Times* I have used their digital archive, utilising the same techniques.

Another widely disseminated discourse was that of contemporary journals, some of which were aimed at a specific audiences. An example of this is the *Women's Suffrage Journal*, founded in 1870 and edited by Lydia Becker until her death in 1890. Articles within the journal are limited to those of interest to those involved with the campaign for the suffrage and article focus on that struggle. There are, however, a few entries relating to the 1871 Infant Life Protection Bill and, more broadly, issues relating to the operation of the Poor Laws. Similarly, the *Englishwoman's Review*, published between 1866 and 1910 had a defined readership, one interested in issues relating to the lives of women.

The *Contemporary Review*, founded in 1866, aimed for a readership which considered itself to be intelligent and of independent opinion. Articles reflect many interests, but for the purposes of this thesis, I focus on those relating to the fight for the suffrage, the administration of the Poor Laws, and various articles of interest to women. The journal was intended to be 'church-minded' rather than evangelical and had no political party ties.³⁵ *MacMillans'*, founded in 1859 by the bookseller Alexander MacMillan, aimed at the more literary end of the market and published in serial form a number of important novels and poems by contemporary authors, such as George Eliot, WM Thackeray, and Alfred, Lord Tennyson. Its editors were also committed to electoral reform, but whereas the *Contemporary Review* published overtly political articles, *MacMillans'* concentrated more on the literary than the political.³⁶

Finally, I use novels published in the nineteenth century, contemporary with the events covered by this thesis. I do not include such works as a form of primary evidence, but rather to demonstrate the penetration of knowledge of the subject matter of these novels into the drawing rooms of Victorian Britain. In particular, I use novels which have bastardy and/or

³⁴ Nicola Goc, *Women, Infanticide and the Press, 1822-1922* (Ashgate 2013)

³⁵ RC Terry (ed), *Oxford Reader's Companion to Trollope* (Oxford University Press 1999)

³⁶ George J Worth, *MacMillan's Magazine, 1859-1907: 'No Flippancy or Abuse Allowed'* (Ashgate 2003)

baby farming as tropes and plot devices. Examples of this include the campaigning novel *Jessie Phillips* in which Mrs Fanny Trollope provided an excoriating view of the Poor Law 1834 and, in particular, its bastardy provisions³⁷ and, from the other end of the century, *Esther Waters* by George Moore.³⁸

1.1 Thesis Structure

This thesis has three main parts which correspond with the answers to my thesis questions. After setting out in chapter two the timescales of the thesis and theoretical framework which I use to frame the results of my research, I address the first of my thesis questions, why childcare taking place in the domestic home of the caregiver became an object of official interest between 1834 and 1897. Chapter three focuses on the effects of the New Poor Law and, in particular, its bastardy clauses on women. Up until now, academic focus has rested on the structural development of the Poor Law institutions and has made links from this to the roots of the modern welfare state. Academic interest has tended towards the financial relationships between the individual and the state in, for example, decisions regarding 'settlement', which would allocate financial responsibility for those in need to a specific parish.³⁹ However, my interest is in the way in which an increasingly punitive regime of financial support incurred by the parishes attempted to deter women from pregnancy outside marriage.

As we shall see in chapter three, the predominant fear expressed by those who gave evidence to the Poor Law Commission was that women were exploiting both the parish and 'innocent' men by producing bastard children in order that they might gain easy financial support. In this they were influenced by the of Thomas Malthus and, in particular, his *Essay on the Principle of Population*,⁴⁰ which disseminated the theory that the provision of financial support to the poor would lead to an increase in population which could not be supported by the country's resources. I argue that this resulted in a system where women were deliberately 'pulled' into shared social space in order to access financial and practical support from the parish. This would have the effect of bringing them into contact with the social policing arrangements of the workhouses and made them the direct legal subject of the Poor Law bastardy provisions.

³⁷ Trollope (n 17)

³⁸ George Moore, *Esther Waters* (first published 1894, Oxford University Press 2012)

³⁹ Lorie Charlesworth, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2011)

⁴⁰ Thomas Robert Malthus, *An Essay on the Principle of Population and a Summary View of the Principle of Population* (First published 1798 Antony Flew (ed) Penguin 1970)

The initial effect of the bastardy provisions was thought to be successful. There is evidence to show that women were loath to enter the workhouse, and this continued to be the case throughout the nineteenth century. A survey of the minute books of the Canterbury Workhouse Incorporation between 1850 and 1890, for example, shows that there were only 46 bastardy orders granted at petty sessions during the whole of that period. These orders would have compelled the father of a bastard child to provide financial support, should the father fail to do so, the woman's only recourse was to enter the workhouse. A pregnant woman could not be assured that she would be accepted into the workhouse. In 1875, for example, an entry in the Canterbury Workhouse minute book shows that '[a] young woman who was enceinte applied to be admitted into the house the application was refused...'.⁴¹ Given that the Canterbury district covered the urban area of Canterbury, including the garrison of the East Kent regiment and its barracks, it is unlikely that the number of bastard children produced in this period in the Canterbury district was as low as 46. More academic work is needed in this area, but is outside the scope of this thesis. However, the low number of bastardy orders granted suggest that few women were able to access financial support from the father of their bastard child.

I complete the answer to the first of my thesis questions in chapters four and five, in which I address the alternatives available to a young, unmarried, woman who faced the problem of what to do to provide care, not just for her bastard child, but also for herself. Chapter four assesses the alternatives provided by the law and, in particular, the bastardy provisions of the Poor Laws and Bastardy Acts which were passed and updated throughout the period under review. The financial provisions of affiliation in the legislation, by which a mother might gain financial support from the fathers of her child, remained forbidding throughout the century leaving women with little choice. This may have led a desperate woman to use the services of the baby farming industry which I examine in chapter five.

In the second part of the thesis, I answer the second of my thesis questions, whether the nature of governments' interests changed during the period 1834 to 1897. I trace a change in the focus of the law away from the mothers of illegitimate children. By examining the baby farming 'trade' in chapter five, I show the growing popular awareness of baby farming. One example of this is the series of investigative reports published in the *British Medical Journal* (BMJ) between October 1867 and February 1868 in which the BMJ sought to persuade their readership that the baby farmers should be registered and inspected by the medical profession or the medical officers employed by the workhouses. If this campaign had been

⁴¹ Canterbury Cathedral Archives CC/Q/GB/A28

successful, the social police organisation of the New Poor Laws (medical officers) would have been given additional powers to enter and regulate behaviour occurring in the domestic homes.

Chapter six examines four criminal cases of murder committed by baby farmers which illustrate a growing body of knowledge with relation to baby farming. The discourse surrounding the cases, both official and unofficial, allows for an exploration of popular opinion relating to the women involved in the industry. Popular condemnation shifted from the transgressive mothers of bastard infants to the baby farmers who were depicted in the newspaper and journal reports as causing harm to the infants under their care. The existing social policing arrangements of the workhouses which focussed on the poor were shown to be deficient.

The third and final part of the thesis (chapters seven and eight) reflects on official responses to the criminal cases and to baby farming in general and answers the last of my thesis questions, how legislative change reflected official governments' interest. I also consider whether legislative change was limited to addressing conduct in shared social spaces. Using the minutes of three select committees and the surrounding discourse, I trace a change in the focus of enacted legislation, from a desire for self-regulation for the baby farmers with minimal monitoring by the local authorities, to a full-scale duty to inspect and monitor behaviour and welfare in the domestic circle and, in particular, the homes of the baby farmers. I examine the witnesses called before the committees and make assessments as to their motivation in giving evidence. I also examine wider responses to the committee, such as that of the 'Committee for Amending the Law in Places Wherein it is Injurious to Women', led by Lydia Becker, prominent campaigner for the suffrage. There are also links with other campaigners who had interest in issues relating to women as well as the leaders of charities, such as Dr Barnardo and Benjamin Waugh, whose work focussed on the welfare of children.

Chapter seven focuses on the first select committee held in 1871. Evidence to the committee established, with no doubt, the existence of the baby farming 'industry'. Witnesses, including representatives of the medical profession who had been involved in the BMJ campaign (above) gave evidence that, in their opinion, it was necessary to legislate for a system of registration and inspection of the premises in which children were held for payment. This proposal would have created a new form of social police, one which would have entered private homes in order to control the behaviour of the baby farmers and ensure the safety of the infants held therein. However, as we shall see, the government balked at this and the

resulting Act did no more than provide a system of registration which was easily ignored by the baby farmers.⁴²

The second and third select committees that I examine in chapter eight did not need to establish the facts of the industry. It is clear to see how the two committees focussed on potential changes to the legislation which would allow a new form of social policing arrangement to ensure the safety of children in domestic homes. The committees must have been influenced by the relatively new Prevention of Cruelty to Children Act 1889 which had itself marked a growing official interest in the welfare of children. The Infant Life Protection Act 1897 created a new form of social police which, because of its change of focus, was far more likely to be able to raise the standard of paid childcare taking place in a domestic home.

In the next chapter I set the parameters and theoretical framework for the rest of the thesis. I outline the time period under examination, starting with the enactment of the 'New' Poor Law 1834 and ending in 1897 after the Infant Life Protection Act had made its way to the statute books. I then examine the ways in which women's lives have been reflected in existing feminist historical scholarship with a focus on women's place in wider society and the importance of the representation of woman as the centre of the domain of the domestic circle.

Social control is at the centre of this thesis and I consider two possible theoretical frameworks. The first is that of Foucault's concept of governmentality, while the second, the concept of social control and the social police as developed by AP Donajrodzki, FML Thompson et al. For ease of reference, I refer to this second group of historians as the *Cambridge Social History*.⁴³ This framework allows for interpretation of the results of my research and, in particular, to trace the penetration of the emerging administrative state into the domestic circle.

⁴² Infant Life Protection Act 1872

⁴³ Donajrodzki (n13)

Chapter 2: A Bastard Shall Not Enter into the Congregation of the Lord¹

'Bastard' and 'baby-farmer' are both pejorative terms. The first associates women with sexual permissiveness, while the other implies a female, murderous intent towards a child. Issues relating to women and bastardy are under-researched² while, in recent years, academic scholarship where it has considered the practices associated with the phenomenon of 'baby-farming', has been quick to associate it with cruelty and the murder of helpless infants.³ I believe that we can learn more from the examples of the struggling mothers of bastard children and the baby-farmers than merely a history of money, morality, and murder. Rather, I suggest that the experiences of women with regards to bastardy and baby-farming illustrate a changing relationship between the burgeoning administrative state and those responsible for the care of children.

In this chapter I outline the timescale within which I work, starting with the 'New' Poor Law of 1834 and ending with the enactment of the Infant Life Protection Act of 1897. I consider the ways in which issues of gender might be used as a framework for an examination of the ways in which women were affected by the legislation relating to paid-childcare in the nineteenth century. Finally, I examine the conceptual framework of social control as linked with the work of Michel Foucault, and compare this with that defined in volume three of the *Cambridge Social History of Britain*.⁴ I argue that, in this context, the Cambridge framework of the 'social police' is more appropriate than a Foucauldian conception of governmentality to assist in an understanding the purpose and efficacy of legislation which aimed to change behaviours and punishment within the domestic circle. The concept of the 'social police', as I will explain, better captures the coercive powers that local authorities exercised under the Infant Life Protection Act 1897. This legislation permitted Officers of the local authorities to enter into private homes, to inspect, and prosecute breaches of the law which could be punished with a

¹ Deuteronomy 23:2

² Where previously researched this has tended to focus on the financial issues raised by the 1834 Poor Law Commission and the ensuing Poor Law 1834. See for example Thomas Nutt, 'Illegitimacy, paternal financial responsibility, and the 1834 Poor Law Commission Report: the myth of the old poor law and the making of the new' (2010) 63:2 *Economic History Review* 335. Ginger Frost has considered the issues relating to illegitimacy with focus on the children. Ginger Frost, "'The Black Lamb of the Black Sheep": Illegitimacy in the English Working Class, 1850-1939' (2003) 37(2) *Journal of Social History* 293

³ See for example: ML Arnot, 'Infant Life, Child Care and the State: The baby-farming scandal and the first infant life protection legislation of 1872', (1994) 9/2 *Continuity and Change*, 271; L Rose, *The Massacre of the Innocents: Infanticide in Britain 1800-1939*, (Routledge & Kegan Paul 1986)

⁴ FML Thompson (ed), *The Cambridge Social History of Britain 1750-1930, Volume 3: Social Agencies and Institutions* (Cambridge University Press 1993)

period of imprisonment. This represents an example of direct, coercive, legal force brought into the social circle of the private, working-class, home.

2.1 Time Period: 1834-1897

The 1834 Poor Law is the starting point for this thesis as it marked the provision, for the first time, of national standards for financial and practical support for the poor.⁵ The Poor Law Boards increased government influence over the lives of citizens and signalled an enlargement of the social sphere. As we shall see in chapter three the so-called 'New' Poor Law of 1834 abolished the practice of 'out relief'⁶ meaning that it was only possible to access financial and/or practical relief by leaving one's home and entering the workhouse, thus 'pulling' those in need from the domestic to the shared social space.

The Poor Laws have been linked with the development of the welfare state by authors such as Pat Thane⁷ and Lorie Charlesworth.⁸ However, their focus has been limited to the provision of financial support and the structural creations of the legislation, such as the workhouses. In effect, as Thane argued, this 'revolution in government' resulted in 'an enlargement of the public sphere' and she argues that the regulatory state became increasingly involved in the lives of citizens, particularly at a local level.⁹ I argue that not only did the Poor Laws and bastardy provisions set the foundations for a system of legislation and regulation aimed at the mothers and carers of bastard children, but that this system focussed on the financial support of women and children. I also argue that any attempt to correct the behaviour of mothers drew women into what Thane terms the public sphere of the workhouse where the fact of their bastard child became a matter of public note.

The target of this official government interest with relation to bastard children shifted in the 1860s from the mothers to the baby-farmers, women who provided paid childcare within their own homes. While the evidence that we shall examine in chapter eight suggests that charitable and other organisations sought involvement with the provision of such inspection,¹⁰ the legislative response to representations from charitable organisations was to put the

⁵ Pat Thane, 'Government and Society in England and Wales, 1750-1914' in FML Thompson (ed) *The Cambridge Social History of Britain 1750-1950* (Cambridge University Press 1990)

⁶ The term refers to the provision of financial support granted to those in need staying within their own homes. The granting of a dole differed from area to area and the rates awarded depended on local need and generosity of Poor Law officials.

⁷ Thane (n4)

⁸ Lorie Charlesworth, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2011)

⁹ Thane (n4) 18

¹⁰ Such philanthropic visiting can be equated with the practice of 'visiting the poor' undertaken by ladies of the upper classes, particularly in rural areas.

responsibility for the monitoring of so-called baby farms firmly with the developing local authorities and to give them the duty and power to enter the domestic circle. This development of the role of local authorities cannot be explained by governmentality theories alone, such as that developed by Foucault and discussed in this chapter, which posits a web-like network of power. Instead this formal 'reach' into the domestic circle was a more precise and specific power to inspect and change the behaviour of those living within a home. The legislative response of 1897¹¹ was to allocate a formal duty and power of inspection to local government authorities, in much the same way as had occurred with home-workers under the regime of the Factory Acts. This regularisation of paid childcare almost 'industrialised' childcare activities taking place in private homes in that legislation dictated formal registration of premises used for childcare and, eventually, made provision for the supervision of childcare taking place in the private home.

The period that is covered by this thesis is one in which ideas of masculinity and femininity may seem, at first glance, to be rigid and fixed. Lucy Williams suggests that the ideals which became dominant in the nineteenth century have been somewhat duplicated in the twentieth and twenty-first implying a lack of change in the last two hundred years.¹² While I agree that Williams may be correct to suggest that views of the masculine and feminine roles in society were relatively fixed during the first part of the period studied in this thesis, I believe that it is a mistake to suggest that this was the case during the whole of the period. As we shall see, a number of people contributing to the discourse relating to baby-farming were involved with the campaign for women's suffrage,¹³ and there were other contemporaneous campaigns associated with changes in the lives of women which have links with the issue of baby-farming.¹⁴ Any study of the issues relating to the inception of regulation of the baby-farmers has to be read within this context of changing mores and attitudes to the lives of working women in nineteenth century society. I argue that the drive for regulation of baby-farming in the private home, which we see at the end of the century, indicates a changing relationship between the administrative state and citizens which attempts to reconcile new, emerging, realities of the lives of working women with traditional conceptions of women as mothers and instinctive carers.

¹¹ Infant Life Protection Act 1897

¹² Lucy Williams, *Wayward Women*, (Pen and Sword History 2016)

¹³ For example Lydia Becker, a leading light in the campaign for women's suffrage had formed the 'Campaign for Amending the Law in Places Wherein it is Injurious to Women', whose report on the first Infant Life Protection Bill was damning and, it was suggested, led to the dilution of the resulting legislation. See chapter seven.

¹⁴ For examples the 'purity' campaigns associated with women's sexuality and, in particular the Contagious Diseases Acts. Lucy Bland, *Banishing the Beast: English Feminism & Sexual Morality 1885-1914* (Penguin Books 1995)

The deterrent effect of the bastardy provisions which started with the Poor Law 1834, made it increasingly difficult for a woman to gain financial support from either the father or the child or the parish. This initiative was, as we shall see, only partially successful. Chapter four suggests that while women were loath to enter the workhouse with its punitive regime and while fewer infanticides were reported, bastard children were still borne of mothers who had little chance of being able to care for them by themselves, financially or practically. One possible solution for these women was to employ the services of the baby farmers, a predominantly female-led quasi 'industry'. After the trial of Charlotte Winsor in 1865, which is discussed in chapter six, official attention turned to the conditions in which cared-for children were kept in the private homes of the baby-farmers. The baby-farmers have received academic attention, but this has tended to focus on the criminal associations of the trade – on murder and infanticide, and on the pressures which led these women to commit the crime of murder.¹⁵ This thesis examines the issues of baby-farming in the context of the changing power dynamic which, at the start of the period studied, 'pulled' deviant women into the social sphere for correction of their behaviour, and later sought to follow them into the domestic circle to regulate and maintain safe conditions for the paid-care of children.

The burgeoning medical profession and philanthropic organisations were much concerned with the need for control of the baby-farming phenomenon and, as we shall see in chapter seven, sought to impose standards of behaviour on the lives of those involved with baby-farming. Parliament responded in 1872 with legislation intended to promote self-regulation via registration of the baby farms but, in spite of the possibility of prison sentences for breaches of the law, did little to end the suffering of children kept by unscrupulous baby farmers. It was not until 1897 that local authority inspectors could monitor the conditions under which children were kept and were, eventually, given the legal power to remove children from cruel carers.¹⁶ By focussing on the ways in which Parliament created and enacted legislation aimed at this specific, largely female, sector of society, I expose the ways in which the law-makers and the law constructed these women as being 'dangerous' or in need of special control.

¹⁵ See for example RE Homrighaus, 'Wolves in Women's Clothing: Baby-Farming and the British Medical Journal, 1860-1872' (2001) 26/3 *Journal of Family History* 350 in which she defines baby-farming as 'a form of infanticide performed on unwanted children' (350); L Rose, *The Massacre of the Innocents: Infanticide in Britain 1800-1939* (Routledge & Kegan Paul 1986). An honourable exception to this is the work of Meg Arnot in which she examines the power dynamics associated with gender in the context of the passing of the first Infant Life Protection Act. ML Arnot, 'Infant Life, Child Care and the State: The baby-farming scandal and the first infant life protection legislation of 1872', (1994) 9/2 *Continuity and Change* 274

¹⁶ Infant Life Protection Act 1897 s5

The changes wrought by the Poor Laws and bastardy provisions had a very real effect on the lives of working-class women in the nineteenth century, and this needs to be more fully reflected in social history. Women from other social classes play their part in the story of reform as campaigners, instigators, philanthropists, while the working-class women appear as the deviants in need of control. As stated before, where the baby-farmers have appeared in social and cultural history, to them has been ascribed the role of criminal. By focussing on the inception of the Infant Life Protection Acts I examine the developing relationship between the growing administrative state and working-class women who continued to be contained within the domestic circle. This is not a story of criminal law, although the crime of murder does occur in the case histories; rather I focus on the ways in which local authorities were given the duty to enter the private home to check on the conditions in which children were kept, and the powers they were given to address inadequate childcare.

In order to be able to interpret the findings of my research, I need to set my work in context. My work covers a number of academic 'boundaries', and thus it is necessary to consider together what may appear to be disparate areas. The first area that I consider concerns the changes made to the ways in which the mothers of bastard children could access financial support for the children which they bore. These changes were driven by the 'New' Poor Law of 1834, and I examine the proposition that the Poor Law marks the beginning of the provisions which were later to develop into the welfare state. As I study the ways in which the state sought to regulate the provision of paid childcare, issues of gender are inseparable from considerations of motherhood and the conditions under which women lived in the nineteenth century. Therefore I examine the context provided by historians of the lives of women in the nineteenth century. Finally, I consider two possible theoretical frameworks relating to social control which may help to understand the ways in which law contributed to the control of the behaviour of women in private homes.

2.2 Women, the Poor laws, and Bastard Children

The effects of the 'New' Poor Law of 1834 on the working-class have been examined by Charlesworth, who views the 'New' Poor Law as being a forerunner of the modern welfare state. In her socio-legal history of the Poor Law legislation, she reminds us that this was formal law, and that it constituted 'a centralised bureaucratic system controlled, supervised and enforced from London',¹⁷ demonstrating the first instance of rationalised and nationally consistent support for the poor. The 1834 Poor Law marked a change from the local systems of support and supervision previously enjoyed, to one where the national courts increasingly

¹⁷ Charlesworth (n8) 9

played an supervisory role over the provision of support for the poor. Issues of finance pervade contemporary commentaries on the experiences of those subject to the strictures of the earlier Poor Laws¹⁸ and, while settlement¹⁹ was associated with all men and women, some groups suffered unequal treatment when attempting to access the support to which they were entitled. Charlesworth recognises one of these groups as women, pregnant or with young children. The majority of her study, however, relates to the legal relationship between the state/parishes and the individual, neglecting a more in depth analysis of the effects of the Poor Laws on women and bastard children. While expanding the body of knowledge of the operation of the Poor Laws, issues of gender are noticeably absent in Charlesworth's account of the issues associated with access to financial support for women with bastard children in the early nineteenth century.

Pat Thane has considered issues relating to the ways in which women's needs were met by the Poor Laws during the nineteenth century.²⁰ Her work does address the ways in which the Poor Law Guardians approached the support of deserted and unmarried mothers and, in particular, the ways in which morality affected the allocation of financial support by the Guardians. She also reflects on the ways in which Guardians privileged an understanding of motherhood as being necessarily part of a settled, married, family unit, one which was less understanding and supportive of those women who found themselves alone and in need of financial relief. She also considers the ways in which the authorities sought to minimise expenditure to women considered to be 'undeserving'.²¹ While Thane's work allows for an examination of the ways in which the Poor Law affected women in need, particularly those struggling to survive outside a family unit, it does not extend to those women whose needs were not met by the Poor Law Authorities. It is those women in whom I am interested and the ways in which they survived and the measures that they took to find a solution to the need to earn a living for themselves while providing care for their child(ren).

Not all women in the nineteenth century were in need of the support of the Poor Law Authorities. Women's place in society was, as I have said earlier, changing, these changes affecting women across classes. Feminist historians Leonore Davidoff, Jean L'Esperance, and Howard Newby have considered the place of women in late nineteenth century society while

¹⁸ The most obvious example of this is Thomas Robert Malthus, *An Essay on the Principle of Population and a Summary View of the Principle of Population* (First published 1798 Antony Flew (ed) Penguin 1970)

¹⁹ Settlement was a legal right associated with an individual which associated them with a parish and enabled them to access financial support. In this way it conferred upon them legal status.

²⁰ Pat Thane, 'Women and the Poor Law in Victorian and Edwardian England', (1978) *History Workshop* 6 29

²¹ *ibid* 39

Carl Chinn has focused on the experiences of working-class women living in urban areas between 1850 and 1939. They have shown how, in a society in which the pattern of work was changing from the agrarian to the increasingly industrial and focussed on urban areas rather than the countryside, the ideal woman was situated within the home, a simulacrum of a 'rural idyll', in which all residents were subject to the will of the male head of house. An idyll, it may have been seen to be, but Davidoff et al chart how such a home might become a gilded cage. The middle-class home was to be a private domain,

sheltered and separated from the public life of power – political, economic, educational, educational, scientific – this separation was doubly enforced by the physical walls of the house... The intensity of privacy was, of course, related to the core sexual relationship in marriage.²²

For middle-class women, this confinement to the home came at a cost – life was circumscribed, the privacy invoked by this vision of the home was controlled by, and focussed on, the husband. This ideology of the private home, dominant during the second half of the nineteenth century, revolved around the need to enjoy an orderly household. Women, children, and servants were all subordinate to the will of the man of the house as the 'dominant, patriarchal figure'.²³ Indeed, until the Married Woman's Property Act of 1882, the law confirmed that a wife had no 'legal personality', any property brought to a marriage became that of the husband and the common law assumed that he had all the rights and duties of the household.²⁴ Further, until the passing of the Offences Against the Person Act of 1828, a woman who had killed her husband might have been tried, not for murder, but for 'petty treason', an offence under the Treason Act 1351. Until 1790 on conviction she might have been burned at the stake. After this, the maximum sentence was changed to execution by hanging.²⁵

This enduring image of the home, governed by the husband/father, with order provided by the wife/mother who managed the children and servants perpetuated the symbiotic ideal of woman and home. By focussing on this 'cult of domesticity', Davidoff et al demonstrate that the innate purity of the women in settled homes 'was in stark contrast to the woman of the streets, the outcast, the one who had 'fallen' out of the respectable society which could only be based on a community of homes, the *ultima Thule* of prostitution.'²⁶ The city was presented in popular discourse to be the place of destitution, of desperation, and of promiscuity, far away

²² Leonore Davidoff, Jean L'Esperance, Howard Newby, 'Landscape with Figures: Home and Community in English Society' IN J Mitchell and A Oakley (eds) *The Rights and Wrongs of Women* (Penguin 1977) 141

²³ WR Cornish, *Law and Society in England 1750-1950* (Sweet & Maxwell 1989)

²⁴ *ibid* 367 This was very much the case for those families with property, although Equity provided some protection for a wife's property by means of the married woman's property trust.

²⁵ Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (Continuum 1993)

²⁶ Davidoff, L'Esperance, Newby (n22) 157

from the rural idyll and the 'beau ideal'. Working-class married woman worked outside the home in order to help financially support the family, usually in a casual occupation, ripe to be exploited. Davidoff et al suggest that the availability of work for the single woman became a target for first wave feminism; opportunities were limited, places in service for working-class women, or to become part of the army of unmarried governesses or companions for the more respectable middle classes. For working-class women these domestic occupations were situated within a home environment, but yet were not quite part of the 'beau ideal'.

This binary view of women within the urban home (pure, moral, married) and those living away outside a family home (depraved, prostituted) is incomplete. There were other women, such as unmarried servants or barmaids living-in at their employer's premises, for whom employment provided a home. Unwanted pregnancy, which may have occurred due to their sexual exploitation within that home,²⁷ could lead to its loss, and of what was popularly termed her 'character', meaning that she could be dismissed without being provided with a character reference by her employers. The loss of 'character' was serious and would make finding another situation extremely difficult, perhaps forcing the woman into a life of prostitution or other depravity.²⁸ It also ignores the experience of unmarried pregnant woman living in rural areas. As we shall see in chapters seven and eight, evidence was given to the select committees that illegitimate motherhood in rural areas did not carry the same level of stigma as in urban areas.

If Davidoff et al tell us that maternity was a role for the 'pure' wife, Carol Smart writes of those whose pregnancy was a target of regulation, one which contributed to the construction of a specific category of woman – one in need of formal control. The discourses associated with this project of control from the medical, legal, and emerging social science professions contributed to this 'problematic feminine subject who is constantly in need of surveillance and unruliness'.²⁹ Smart follows Foucault, tempered by Jacques Donzelot,³⁰ in suggesting this construction, formed as it was by scientific discourses, produced a part of the population 'amenable to regulation'.³¹

²⁷ For example there is evidence, including that given in the cases which appear in chapter six of this thesis, to suggest that many women who were unmarried and pregnant were likely to have been sexually exploited either by the husband of the house, or a male relative.

²⁸ However, Lucy Williams has identified a number of women who were dismissed for the crime of theft from their positions as servant who appear to have found another position with little difficulty. It is not, however, clear how 'respectable' were the houses in which they were employed. Lucy Williams, *Wayward Women* (Pen & Sword History 2016)

²⁹ Carol Smart, 'Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992) 7

³⁰ J Donzelot, *The Policing of Families* (Hutchinson 1980)

³¹ Smart (n29) 12

This is a different ‘type’ of woman – one who is not governed by her husband, one whose fecundity is problematic, one from a different class, and one who is governed by her ‘menstrual cycle and reproductive capacities’.³² Chronologically, Smart focuses on the end of the nineteenth century, and in particular on the Offences Against the Person Act 1861 (OAPA), the Contagious Diseases Acts of 1866 and 1869, the Infant Life Protection Act 1872, and the Criminal Law Amendment Act 1885. All of these laws, Smart suggests, were focussed at an attempt to legislate to control female sexual and reproductive behaviour. I agree that this characterisation is true in part. It is obvious that the abortion clauses of the OAPA³³ and the Contagious Diseases Act were focussed on the health of the body of women while the Criminal Law Amendment Act sought to protect young women from abduction or other ‘defilement’. This legislation did focus on the reproductive abilities and responsibilities of women. However, the first Infant Life Protection Act is different. Smart concludes that the act ‘set certain standards [for care] which were not extended to public institutions’.³⁴ But she is mistaken, for the Infant Life Protection Act 1872, as we shall see in chapter six, imposed nothing more than a framework of registration for baby farms, and thus the childcare taking place in public institutions, such as workhouse nurseries, was far more closely regulated than in the baby farms.

Smart’s focus is on the reproductive behaviour of women, and how the legal and medical discourses on the matters of infanticide, abortion, birth control, and baby-farming constructed some women as being ‘unruly’ and in need of control. She, therefore, closely associates the construction of ‘unruly’ women as being directly associated with their physical body. She includes baby farmers, who do not fit within her conception of ‘unruly women’ as being connected to the body, because baby farmers allowed a woman to ‘detach themselves from children in a context where legal policy sought to keep them fairly firmly attached’.³⁵ Her description of the case of Margaret Waters³⁶ links the practices of baby-farming with ‘shame and poverty’. Moreover, she connects the first and second Infant Life Protection Acts³⁷ with a ‘process that tried to establish certain standards for mothering’.³⁸ This second link is not obvious since baby-farming dealt, not with mothering, but with the ‘professionalised’ care of children, the focus of the legislation was not on the mothers of children, rather on paid carers.

³² *ibid* 13

³³ S 58-59

³⁴ Davidoff, L’Esperance, Newby (n22) 23

³⁵ *ibid* 22

³⁶ *R v Margaret Waters & Sarah Ellis* [1870] (Old Bailey Proceedings Online)

³⁷ Infant Life Protection Act 1872, Infant Life Protection Act 1897

³⁸ Davidoff, Esperance, Newby (n22) 23

Smart's rationale for the inclusion of baby farming is that the 'attach[ment] of children to women was a way of attaching women to marriage'.³⁹ If it is true that this was the primary function of the Infant Life Protection Acts, it is not clear why the legislators focused on the baby farms, and in the case of the Infant Life Protection Act 1897, why they created a regime of inspection rather than an attempt to outlaw or ban.

One way in which middle-class women might escape the stultifying atmosphere of the family home was, as Jane Lewis chronicles, to perform voluntary social work, with the working-class as their target. While Charlesworth makes much earlier links between voluntary work and the growth of the state with the inception of the 'New' Poor Law in 1834,⁴⁰ Lewis notes that past historians have located the development of the welfare state within the context of philanthropic work at the end of the nineteenth century.⁴¹ Lewis uses as her focus the work of Octavia Hill and Helen Bosanquet. These women, active at the end of the nineteenth century, both worked in the homes of the working-class, and both contributed to a regime of surveillance of the families with which they worked. Lewis notes that while both Hill and Bosanquet focussed on the needs of the poor, they had different motivations, and modes of working.

Hill employed female 'rent collectors' for the properties that she owned and maintained. The women would work, typically, with working-class women under the guise of a contractual arrangement – the collection of the rent. Hill believed that her rent collectors should aim to 'know the whole person' so that support could be given that they might work towards an improvement in their character, a restoration of independence, and towards a 'better life'. Bosanquet on the other hand, was of the opinion that charity was 'not a gift but a right'. Bosanquet worked with a group of volunteer, middle-class, women who would befriend working-class families, and be welcomed into their homes in a way in which some other visitors would not.⁴² These volunteer social workers aimed to become friends with, and influence the behaviour of the working-class families with which they worked by encouraging the women to emulate the ideals held by the middle-class, and in particular the duties of husbands and wives to each other, and to the family.⁴³ During the course of their work with families, volunteer social workers would collect information on families and report this back to their supervisors, and thus, it could be argued, they were providing a form of surveillance. But given that they

³⁹ *ibid* 30

⁴⁰ Poor Law 1834

⁴¹ Jane Lewis, 'Women and late-nineteenth-century social work' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992) 79

⁴² Lewis lists the school attendance officer and the NSPCC Inspector as examples of officials that might not be welcomed, and links this with notions of inspection.

⁴³ Lewis (n41) 93

were volunteers working on behalf of philanthropic organisations, could it be said that any such surveillance operated on behalf of the state?

Ultimately, Lewis concludes that the rent collectors and social workers employed by Hill and Bosanquet did not achieve the social change that they had hoped. They were not able to empower the poor, but perpetuated the social visiting associated with the rural 'squirearchy', harking back, perhaps, to something akin to Davidoff et al's concept of the beau ideal. Lewis notes that historians have seen the work of these volunteer social workers as 'an exercise in social control',⁴⁴ and that middle-class women were seeking to control the behaviour of working-class women. Surely, this voluntary work had not only the well-being of the poor as its target, but also an opportunity for middle class women to undertake the rescue work that would allow them to escape the confined nature of their own home.⁴⁵ However, as we shall see in chapters seven and eight, witnesses sharing the ethos of Hill and Bosanquet were to give evidence to the select committees and, it may be argued, the inspection regimes of the Infant Life Protection Act 1897 were a response to this evidence.

Carl Chinn's study of the lives of women living in urban areas shows the ways in which the working class supported themselves and each other through times of financial difficulty.⁴⁶ His focus is on women living in poverty, and much of his work relates to women as mothers and the ways in which this affected their day-to-day lives. He challenges many of the assumptions that have been made about women and poverty, and of interest for this thesis is the material relating to mothers as 'matriarchs', providing leadership for their families and neighbourhoods. This is a depiction of the strength of motherhood and the ways in which this had a positive effect, not only on a woman's direct family, but on a wider network of relationships. He describes a network of informal 'fostering' and 'adoption' taking place within a local area, with women supportive of one another and where the childcare given was totally benign. This depiction is a challenge to the dominant presentation of potentially hazardous baby farming as being the only possible solution for women with illegitimate children. This disjuncture may be due to the areas in which he places his study, in particular Birmingham and Liverpool, or it may reflect the period in which his study is set.⁴⁷ There is no mention of baby-farming per se, but Chinn's work and its presentation of the lives of women of the working class is very useful.

⁴⁴ *ibid* 98

⁴⁵ *ibid* 159

⁴⁶ Carl Chinn, *They Worked All Their Lives* (Carnegie Publishing 2006)

⁴⁷ This is a little puzzling as, in 1877, Sophia Martha Todd, a baby farmer was found guilty of the murder of a child in her care. Michael Macilwee, *The Liverpool Underworld: Crime in the City 1750-1900* (Liverpool University Press 2011)

Whether we agree that middle-class women were confined in their homes, freed only to work in the private sphere to rescue the fallen or the working-class, what is absent from these studies is discussion of intervention into the woman's world of the domestic circle by state sponsored organisations unless, as Chinn records, it was in the world of 'piece-work', where items for sale were made within the working-class home. Under these circumstances, at the turn of the next century the homemaker became subject to formal inspection under the terms of the Factories and Workshop Act of 1901.⁴⁸ I argue that the inspection regime introduced by the Infant Life Protection Act 1897 is akin to the inspection of the home-workers under this later legislation.

Lewis mentions the school attendance officer and the NSPCC inspector, both of whose targets would be children living in the private house. The attendance officer's role was to ensure that children attended school and, while the NSPCC officer was concerned with the condition of children, he represented a charity which, while it worked alongside the prosecuting authorities, represented philanthropy and had no official powers granted by the Prevention of Cruelty to Children Act other than as a 'bona fide [person] acting in the interest of the child'.⁴⁹ We need to look elsewhere for evidence of the state increasing its level of legal interaction with the lives of individuals.

The scholarship of these feminist authors has thus demonstrated that during the second half of the nineteenth century, the lives of middle-class women were circumscribed, dependant on the vertical relationship in a household of the husband and wife, while working-class women tended to live more precarious lives, moving in and out of work, and dependent on casual employment.⁵⁰ Working-class women might be constructed by the legal, medical, and social work discourse as being unruly, and in need of supervision and reform. These groups of women came together in the area of social and rescue work undertaken by middle-class women, seeking to befriend, support, and improve those of the working-class, and by extension their families. As for those women who did not have families, who were unmarried, pregnant, and desperate they are described as 'fallen', and subject to virtual persecution by the law by being aberrant mothers, living outside the social order,⁵¹ and thus outside the reach of Hill, Bosanquet, or their volunteers. Chinn's focus on those living in poverty offers a more

⁴⁸ Chinn (n46)

⁴⁹ The source of power to enter a private home to search for a child where there was 'reasonable cause to suspect that such child... has been or is being ill-treated or neglected' was granted, on application to a magistrate. Prevention of Cruelty to, and Protection of, Children Act 1889 s6

⁵⁰ Sally Alexander, 'Women's Work in Nineteenth-Century London' IN J Mitchell and A Oakley (eds) *The Rights and Wrongs of Women* (Penguin 1977) 97

⁵¹ Davidoff, L'Esperance, Newbury (n22) 24

intimate understanding of the lives of the women who might have been tempted to become baby-farmers, although baby farmers are absent from his work.

Smart does include a brief study of baby-farming, although her link between the first Infant Life Protection Act and legislation to control motherhood is troubling. Lewis considers that the issue of the control of women is more complicated than the theory that Hill and Bosanquet's women were inflicting 'social control' on the families that they assisted, but there is little assessment of the role of the state in this context. Charlesworth does consider that the Poor Laws were the root of the development of the welfare state, but her work lacks consideration of gender. The works of Davidoff et al, Smart, Lewis, and Chinn reflect society after 1865 when the problematic existence of baby-farming had become obvious and the need for control of the baby-farmers had overtaken a need to control the production of bastard children.

I see a continuity between the two periods linked by the need for the provision of care of the bastard child. Prior to 1865 the target of disapprobation was the woman who had allowed herself to fall pregnant without a man to support her and who needed financial support from the Parish, which was most often provided within the deliberately punitive workhouse regime. By the second part of the century, the place of women in society was changing. As we shall see in the next chapter, the drift of rural populations towards the urban environment resulted in an increasing number of women who worked, and lived, away from their families and informal support networks. Working-class women remained at risk of pregnancy outside marriage and, if they were not to lose their employment and their home, the evidence provided by the case histories shows that there was a need for them to be able to entrust their children to another, either on a temporary or a permanent basis. By examining the ways in which the Infant Life Protection Act 1897 created an official duty and power to inspect childcare taking place in the domestic home, this thesis contributes to a debate as to how the state disproportionately focussed on controlling the lives of working-class women as opposed to the middle and upper classes and, in the case of the mothers and carers for bastard children, how the state and its officials took the place of a husband or 'man of the house' in dictating standards of behaviour.

2.3 Controlling and Governing the Poor

The concept of social control connects the two historical periods that are the focus of this thesis since this concept captures the way in which official attention shifted from the mothers of illegitimate children to the baby-farmers. I appreciate that this term has been used in many

ways, for example by criminologists and sociologists⁵² and, as suggested by Chunn and Gavigan, has become somewhat contentious.⁵³ However, I focus on two possible frameworks that can help to interpret the findings that I make in this thesis. The first follows the work of Michel Foucault, and in particular, his concepts of 'governmentality', 'discipline' and 'biopolitics'. The second is that developed in the third volume of the *Cambridge Social History*, which I introduced in the last chapter and uses the concept of social control and social police in a structured manner which enables me to trace the development and introduction of 'new' structures of control, particularly within the bounds of the highly structured class system of the nineteenth century. My reason for examining these literatures is that my concern in this thesis is in assessing how the Infant Life Protection Acts resulted in a transformation of the formal, bureaucratic state and how social control entered the private home, what Mary Poovey describes as the 'domestic circle' as opposed to the shared 'social space' which existed outside the private home.⁵⁴ The forces of social control associated with the Infant Life Protection Acts were targeted at women – as mothers and as care-providers whose lives were fixed within the domestic circle. We have seen in the preceding section how historians of women's lives in the nineteenth century have presented the lives of ideal women, as wives and middle-class mothers whose security was rooted in the home in contrast with the problematic, fecund, burdens on the rate-payers who were the target of the punitive clauses of the 'New' Poor Law of 1834.

Foucault's concepts of biopower,⁵⁵ governmentality, and discipline have been adopted by a number of scholars, working in disparate areas,⁵⁶ including feminist historians and sociologists and the study of the law.⁵⁷ As an 'historian of the present', Foucault developed means by which history could be used to inform the ways in which power was exercised in society, key to which was the concept of biopower, defined by him as

⁵² See for example, Stanley Cohen, *Visions of Social Control* (Polity Press 1985); (James J Chriss, *Social Control: an Introduction*, (Polity Press, 2007)

⁵³ Dorothy E Chunn & Shelley AM Gavigan, 'Social control: analytical tool or analytical quagmire?' *Contemporary Crises* 12 (1988)

⁵⁴ Mary Poovey, *Making a Social Body: British Cultural Formation 1830-1864* (University of Chicago Press 1995) 62

⁵⁵ There are two accepted spellings of the term, for the sake of consistency I use 'biopower'

⁵⁶ See for example Paul Hirst, 'Foucault and Architecture' [1993] 26 *AA Files* 52; Dieter Freundlieb, 'Foucault and the Study of Literature' [1995] 16(2) *Poetics Today* 301; Gerard Noiriel, 'Foucault and History: The Lessons of a Disillusion' [1994] 66(3) *Journal of Modern History* 547; Jan Goldstein, 'Foucault's Technologies of the Self and the Cultural History of Identity' IN John Neubauer (ed) *Cultural History after Foucault* (Aldine de Gruyter 1999)

⁵⁷ See for example Alan Hunt & Gary Wickham, *Foucault and Law* (Pluto Press 1994); Ben Golder & Peter Fitzpatrick, *Foucault's Law* (Routledge 2009); Ben Golder (ed) *Re-reading Foucault: On Law, Power and Rights* (Routledge 2013)

...a number of phenomena... namely, the set of mechanisms through which the basic biological features of the human species became the object of a political strategy, of a general strategy of power...⁵⁸

As Peter Miller and Nikolas Rose point out, Foucault suggested that the nineteenth century was the point at which the aim of government shifted from 'governing a territory and a population that were independent realities with inherent processes and forces'⁵⁹ towards government of a population as a whole – in effect, towards biopower. This is not to suggest that Foucault's concept of biopower was limited to government of behaviour taking place in shared social spaces.

Foucault developed the concept of governmentality or the 'conduct of conduct' in the series of lectures given at the Collège de France between 1977 and 1978,⁶⁰ although it had its roots in earlier works, in particular in *Discipline and Punish*⁶¹ and *History of Sexuality*.⁶² Foucault showed how the operation of governmental power throughout history became less focussed on the individual physical body, and more concerned with governing the population as a whole in order that a state might become as economically successful as possible. Foucault posited that the power associated with the government of the population came not only from above but that its roots and operation were more complicated than merely from the top of a country's class structure. Power he said 'is everywhere; not because it embraces everything, but because it comes from everywhere.'⁶³ In this way, he argued, concepts such as the links between the operation of power and social class became less important. This freedom allowed for what Jana Sawicki terms 'a politics of difference because it does not assume that all differences can be bridged.'⁶⁴ Lois McNay has suggested that this conception of the exercise of power has been a particularly attractive concept for those feminists who seek to understand the exercise of power against women, one that does not focus on 'essentialism or biologism'.⁶⁵

However, Mitchell Dean points out that there are problems with a definition of 'society' as a whole which does not take account of different classes or groups of people.⁶⁶ This observation is particularly apposite when discussing issues relating to a society which is (or was) as

⁵⁸ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-78* (Graham Burchell tr, Palgrave Macmillan 2009) 1

⁵⁹ Peter Miller & Nikolas Rose, *Governing the Present: Administering Economic, Social and Personal Life* (Polity Press 2008) 33

⁶⁰ *ibid*

⁶¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (First published as *Surveiller et Punir: Naissance de la Prison* 1975, Alan Sheridan tr, Penguin 1991)

⁶² Michel Foucault, *The Will to Knowledge: The History of Sexuality Volume 1* (First published as *La Volonté de Savoir* 1976, Robert Hurley tr, Penguin 1998)

⁶³ *ibid* 93

⁶⁴ Jana Sawicki, *Disciplining Foucault: Feminism, Power, and the Body* (Routledge 1991)

⁶⁵ Lois McNay, *Foucault and Feminism* (Polity Press 1992)

⁶⁶ Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (2nd edn Sage 2010)

structured at that of nineteenth century Britain. Of particular interest for this thesis is that section of society most affected by issues raised by the baby farmers, one directly affected by poverty and class. Dean suggests that structural changes in society, including the growth of the 'social' present problems when one is attempting to understand direct government of people in an increasingly liberal society focussed on economy.⁶⁷ The absence of the class structure in Foucault's theory is problematic for this thesis, as I argue that the growth of legal regulation of the baby farmers demonstrates a strong class dimension in the regulation of the lives of individuals and the growth of the Victorian formal state structure. I examine the development of formal institutions and structures which had a role in controlling the behaviour of working class women who gave birth, unmarried, and without the financial support of the father of the child. We shall see in chapter four, for example, how the mothers of children who were the target of the New Poor Law and both the Infant Life Protection Acts were predominantly from the working class, while those speaking against such deviant women and seeking to influence the creation and passage of legislation intended to control their behaviour⁶⁸ were drawn from the middle class and/or from the class of philanthropic women, such as Octavia Hill.⁶⁹

I am inclined to agree with Nancy Hartsock who, in taking issue with Foucault's image of power operating in capillaries, that is, at the lowest possible level of society,⁷⁰ suggests that this Foucauldian understanding of the operation of the power associated with governmentality prevents analysis of structures of domination.⁷¹ Foucault's work has been criticised for 'gender blindness', and for a lack of acknowledgment of women's agency,⁷² which suggest that his approach might not be helpful when considering the growth of a female-led quasi industry such as baby-farming. While men may have been involved on the fringes of baby-farming, the vast majority of baby farmers were women and it is reasonable to assume that baby-farming bridged the gap between 'inconvenient' maternity and childcare.

Miller and Rose have suggested that the concept of governmentality can be used in order to analyse the ways in which public authorities have sought to govern the individuals living within

⁶⁷ *ibid* 151

⁶⁸ For example those who gave evidence to the Commission for the Poor Laws (1833) and the Select Committees for the Protection of Infant Life (1871, 1890, and 1896). See chapter seven and eight

⁶⁹ Lewis (n41)

⁷⁰ Michel Foucault, *Society Must be Defended* (First published Éditions de Seuil/Gallimard 1997, David Macey tr Penguin 2004) 27

⁷¹ Nancy C M Hartsock 'Postmodernism and Political Change: Issues for Feminist Theory' in Susan J Hekman (ed) *Feminist Interpretations of Michel Foucault* (Pennsylvania State University 1996)

⁷² Jon Simons 'Foucault's Mother' in Susan J Hekman (ed) *Feminist Interpretations of Michel Foucault* (Pennsylvania State University 1996) 179

society,⁷³ while Rose states that ‘the thematics of sovereignty, of discipline, and of bio-power are all re-located within the field of governmentality’.⁷⁴ In *Security, Territory, Population*, Foucault developed the arguments that he had made in *Discipline and Punish* with regard to how the ‘basic biological features of the human species became the object of a political strategy’ in order that a population might be governed in order to maximise their usefulness to the state and the productivity of the nation.⁷⁵ Foucault used the example of a triangle of forces, ‘sovereignty, discipline, and governmental management, which has population as its main target and apparatuses of security as its essential mechanism’⁷⁶ to capture more completely the operation of power in his paradigm of governmental forces.

Rather than focussing punishment on those individuals who had committed an offence, Foucault suggested that governments would seek to prevent the commission of offences and exercise ‘positive control’ over all citizens.⁷⁷ Such positive control used techniques of security and discipline which would produce behaviour aligned with widely held norms,⁷⁸ and produce what Foucault termed, ‘docile bodies’.⁷⁹ Security, Foucault explained, allowed things ‘to happen’, while discipline regulated what happened.⁸⁰ It could be argued that the deterrent effect of the workhouse regime that we shall see in chapter four, had a disciplinary function imbuing in the population a compulsion to be able to provide financially for oneself and one’s family rather than depending on financial assistance from the parish. In this way, disciplinary techniques may have had a positive effect on the moral fibre of the population.⁸¹

If we were to follow this paradigm, we might argue that the deterrent effect of the workhouses with their increasingly punitive regime, acted as a technology of disciplinary forces by enforcing the norms of acceptable behaviour, persuading women not to produce children without the financial support of a husband. As Mary Poovey has suggested, the ‘New’ Poor Law 1834 brought the ‘problems of public health into the social domain... in the name of national well-being,’⁸² with the developing administrative state keen to bring aspects of the lives of the population into line with the need to increase the security and prosperity of the nation. In short, husbands were to pay to support their families with as little financial recourse

⁷³ Miller & Rose (n59)

⁷⁴ Rose (n60) 23

⁷⁵ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-78* (Graham Burchell tr, Palgrave Macmillan 2009)

⁷⁶ *ibid* 107-108

⁷⁷ Foucault (n61)

⁷⁸ Foucault (n75) 45

⁷⁹ Foucault (61)137

⁸⁰ *ibid* 45

⁸¹ Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (CUP 1999)

⁸² Mary Poovey, *Making a Social Body*, (University of Chicago Press 1995) 21

as possible to the parishes, moving towards a situation where families and, mothers in particular, became self-regulating and self-governing. Recent feminist work has used Foucauldian principles to examine social change relating to contemporary motherhood and the ways in which principles of governmentality have effectively led to women governing their own patterns of maternal behaviour.⁸³ This thesis does not argue that fear of the Poor Law 1834 led women to be self-governing and self-regulating, rather the suggestion is that any deterrent effect of the Poor Law gave impetus to women to find some other childcare solution.

The last point of the triangle is that of sovereignty. Mitchell Dean suggests that, for Foucault, sovereignty was separated from the government, 'autonomous from individual citizens and the collective citizenry',⁸⁴ it is linked with the juridical and notions of right, and the legal subject.⁸⁵ Simon Gunn suggests that this strategy demonstrates Foucault's scepticism of 'views which identified the modern state as the fulcrum of power'.⁸⁶ While Foucault's separation of sovereignty from formal government is a valuable concept in the understanding of the ways in which legal subjects are formed, in this thesis I examine the ways in which legislation, in particular the Infant Life Protection Act 1897 created a new form of local government with power over the lives of subjects. I explicitly link legislation with the structure of the formal state as it directed the lives of its citizens.

We might suggest that legislation, such as the 'New' Poor Law aimed to exercise regulatory power over the population, but Foucault did not address directly the link between legislation and social control. Alan Hunt and Gary Wickham note how often it is that law appears in Foucault's writing, yet there is tension between Foucault's concept of 'discipline' and law, one which has not yet been resolved satisfactorily and which focuses on the power of law as a negative concept, and one which both empowers the state and confines its actions.⁸⁷ Scholars, as Ben Golder and Peter Fitzpatrick have noted, have 'developed a piecemeal Foucauldian jurisprudence'⁸⁸ dependant on academic interest which, they suggest, is totally in line with Foucault's view of his work as forming a 'toolkit' for academics, even if he did not

⁸³ See for example: Vikki Bell 'The Vigilant(e) Parent and the Paedophile: The News of the Word Campaign 2000 and the Contemporary Governmentality of Child Sexual Abuse' (2002) 3(1) *Feminist Theory* 83; Angela C Henderson, Sandra M Harmon, Jeffrey Houser 'A New State of Surveillance? Applying Michel Foucault to Modern Motherhood' (2010) 7(3/4) *Surveillance & Society* 231; Wendy O'Brien, Kathy Lloyd, Caroline Ringuet-Riot 'Mothers governing family health: From an 'ethic of care' to a 'burden of care' (2014) 47 *Women's Studies International Forum* 317

⁸⁴ Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (2nd edn Sage 2010) 123

⁸⁵ *ibid* 129

⁸⁶ Simon Gunn 'From Hegemony to Governmentality: Changing Conceptions of Power in Social History' (2006) Spring *Journal of Social History* 705 710

⁸⁷ Michel Foucault, *Birth of Biopolitics: Lectures at the Collège de France 1977-78* (Graham Burchell tr Palgrave MacMillan 2008)

⁸⁸ Ben Golder & Peter Fitzpatrick, *Foucault's Law* (Routledge 2009) 5

make law the focus of his inquiry. They note that other authors have suggested that in his work Foucault marginalized the role of law and made it subject to other modes of power and that there have been disputes as to whether Foucault took proper account of the role of law, or whether it was somehow 'expelled'.⁸⁹ In *Discipline and Punish* and *The Birth of the Clinic*, for example, Foucault suggests that the change in the relationship between the state and those in need of discipline 'permitted the emergence of a new form of 'law': a mixture of legality and nature, prescription and constitution, the norm'⁹⁰ and that it was the 'gaze' of surveillance which made it possible for the state to punish.

Nikolas Rose shows how Foucault theorised that the technologies of government would have effect within the domestic home by means of what Rose terms 'responsibilization'.⁹¹

If we are to accept Foucault's contention that the law is concerned with the enforcement of societal norms, it might be implied that there is a dislocation between law and government; certainly one can see how the criminal law might be construed as having a normative force. It is generally agreed that not causing physical harm to one's fellow human-being is an admirable norm with which to comply, for example. If one were to follow Foucault's methodology it might, perhaps, seem obvious that the bastardy provisions of the 1834 Poor Law and subsequent bastardy legislation were a normative disciplinary force in their aim to deter women from acting outside the social norm of children being part of married family life, by ensuring that it would be as difficult as possible to access financial support for bastard children.⁹²

But, law performing a normative function cannot explain the way in which the Victorian lawmakers enacted legislation which created and shaped the formal organisation of what was becoming recognisable as the provision of welfare by the state to citizens in need. A good example of this is the way in which the New Poor Law's settlement provisions associated a pauper with a specific Parish organisation, that Parish being responsible for his financial upkeep.⁹³ At the end of the nineteenth century, the Infant Life Protection Act 1897 created a regime of formal, official, inspection; if there were a normative function for the legislation it was to take the form of measures when demanded a change in behaviour of the baby-farmers by those employed by the developing local authorities. The question has to be asked, in this context, was law creating a new 'technology' of government, or was it extending the structure

⁸⁹ Colin Gordon, 'Expelled questions: Foucault, the Left and the Law' in Ben Golder (ed) *Re-reading Foucault: on Law, Power and Rights* (Routledge 2013)

⁹⁰ Foucault (n61) 304

⁹¹ Rose (n81) 74

⁹² Given that there were ten attempts at legislation for this purpose during the nineteenth century, it may well be argued that any kind of normative attempt to proscribe behaviour was not successful.

⁹³ Charlesworth (n8)

of the state apparatus? This is a difficult question which can be answered either way, dependant on one's view of the operation of the administrative state. Given the rapid growth of the formal organisation of local government, and the evidence presented to the Select Committees for the Protection of Infant Life (in particular that of 1896), I argue that the duty to inspect, supervise, give advice to the baby-farmers and, to control the number of infants kept in any baby farm, represents an extension of the local councils, as part of the growing local government organisation, and of the wider administrative state exercising direct power on those inspected, with a coercive power that could result in prosecution and/or imprisonment.

I also see a problem in the context of this thesis with Foucault's concept of punishment for breach of the law. Pat O'Malley reminds us that in *Birth of Biopolitics*, Foucault links the work of Bentham and Beccaria with his concept of panoptican surveillance and, further, that crime is dealt as part of a 'cost benefit analysis', not attempting to eradicate crime, but to reduce it to a tolerable level.⁹⁴ This, O'Malley notes, can be seen as an extension of Foucault's discussion of a disciplinary force in *Security, Territory and Population*, and an historical move to liberal government, but it helps little to assist an understanding of the ways in which successive governments in nineteenth-century England attempted to deal with the problems associated first with the cost of support of bastard infants and secondly, the provision of their safety at the hands of the baby farmers. In particular, the links which Foucault makes in *The Birth of Biopolitics* between economics of the state, liberalism and a reduction in the size of the government⁹⁵ cannot assist an explanation of the ways in which the Infant Life Protection Acts (1872 and 1897) created new regulations which resulted in, an albeit small, increase in the size of the formal administrative state.

This thesis is concerned with the way in which the law and the state interacted with citizens, not as a normative force, which aimed to make people self-regulating, but rather as direct means to correct behaviour, either by guidance, or by formal prosecution and imprisonment. Accordingly, I set aside governmentality and biopower as the main framework for the arguments in this thesis. I suggest that the concept of 'social control' as developed by a number of sociologists and historians and, in particular, those associated with volume three of the *Cambridge Social History of Britain*,⁹⁶ may be more fruitful. It allows for a closer examination of the ways in which the ruling and middle-classes attempted to use legislation to impose directly their moral standards on the working-class and, in our case, on working-

⁹⁴ Pat O'Malley, 'The Birth of Biopolitical Justice' in Ben Golder (ed) *Re-reading Foucault: On Law, Power and Rights* (Routledge 2013)

⁹⁵ Foucault (n87)

⁹⁶ FML Thompson (ed), *The Cambridge Social History of Britain 1750-1950, Vol 3: Social Agencies and Institutions* (Cambridge University Press 1990)

class women. This desire to impose values from one class to another was mobilised by fear of change of the social order, or one which focuses more on the need of a burgeoning industrial society to have docile workers.⁹⁷ For the purpose of this thesis, I take inspiration from FML Thompson's broad description as the term 'social control' being 'generally used to denote the imposition of opinions and habits by one class upon another'.⁹⁸ This concept will facilitate understanding of the findings of this thesis and, in particular, the ways in which government opted for an increase in regulation and direct, coercive force on the working-class where paid-childcare was provided in private homes.

The concept of 'social control' is highly contested. Dorothy Chunn and Shelley Gavigan have suggested that the term is at best ambiguous, and not effective for an analysis of the ways in which control is exercised.⁹⁹ The point is well made, particularly with regard to the way in which non-coercive social control is exercised. They criticise the concept for being ahistorical and determinist and find it unsatisfactory for use by critical scholars. The examples on which they draw come from criminology (David Garland¹⁰⁰) and sociology (David Downes & Paul Rock¹⁰¹), and suggest that, in these contexts, the lack of precision and ahistoricism is problematic. I am, therefore, as Chunn and Gavigan said, going to 'begin with a perfunctory acknowledgment of the definitional problems associated with the concept and proceed to use it anyway'.¹⁰²

Michael Ignatieff suggested that, broadly agreeing with Foucault, the reform and construction of old institutions, such as the prisons and workhouses, 'gave expression to a new strategy of class relations'.¹⁰³ However, Ignatieff focused on the humanitarian intentions of the reformers, and the ways in which they communicated with those targeted. He took issue (as do I) with Foucault's 'notoriously cloudy' answers to the question of agency of those who were the targets of the reformers, and posited that the growth of 'state agencies of control and repression'¹⁰⁴ were very necessary for a capitalist society to be able to grow and develop. While the circulating forms of power¹⁰⁵ about which Foucault wrote are somewhat nebulous,

⁹⁷ John A Mayer, 'Notes towards a Working Definition of Social Control in Historical Analysis' in Stanley Cohen & Andrew Scull (eds) *Social Control and the State* (Blackwell 1983)

⁹⁸ FML Thompson 'Social Control in Victorian Britain' (1981) 34(2) *Economic History Review* 189, 190

⁹⁹ Chunn & Gavigan (n53)

¹⁰⁰ Who recently used the concept in David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford University Press 2010)

¹⁰¹ See for example David Downes & Paul Rock, *Understanding Deviance* (Oxford University Press 2004)

¹⁰² Chunn & Gavigan (n53)107

¹⁰³ Michael Ignatieff, 'State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishments' in Stanley Cohen & Andrew Scull (eds) *Social Control and the State* (Blackwell 1983)

¹⁰⁴ *ibid* 96

¹⁰⁵ Foucault (n75) 29

Ignatieff suggested that it would be impossible to influence the behaviour of a stratum of society without some form of threat of force or coercion. We shall see in chapter three, how the Poor Law Commission of 1834 reported how the expense of supporting the poor was a burden to the parishes of England and how the Poor Law of 1834 attempted to directly reduce this cost. Nineteenth century contemporary sources, such as Patrick Colquhoun,¹⁰⁶ understood crime to be very much associated with a particular social class and, therefore believed that if the commission of crime were to be prevented, it would be necessary for the behaviour of the working class to be regulated by, not only policing public houses and gambling, but also through formal education and religious and moral instruction.¹⁰⁷ It is not too much of a stretch to extrapolate the provision of workhouses as part of this drive to control the antics of the feckless poor.

Legislation, however, could only go so far to influence the behaviour of those at whom it was aimed; there needed to be some kind of enforcement or coercion. AP Donajgrodzki categorises one such solution as the 'social police'. This characterisation is not to suggest that there was any single organisation which represented a state desire to enforce specific behaviours, rather that there was a general belief that 'social order was the product of a common morality, which was sustained and expressed by its general diffusion throughout the institutions of society.'¹⁰⁸ He defined the 'social police' as 'a set of attitudes especially evoked when control of the poor was under discussion'.¹⁰⁹ We see clearly in this definition the imposition of control on the poor by those in a higher social class. The 'social police' brought direct supervision to a specific part of society; for example, the occupational supervision of servants, or that of the apparatus of the Poor Law and, of course, the developing Police Force(s) in Britain. By utilising the concept of the 'social police' in the context of bastardy and baby-farmers it is possible to examine the ways in which various forms of direct control were exercised over the lives of the women caught with the reality of an inconvenient child.

FK Prochaska recognises that there has been resistance by historians to study the work of those men and women who worked directly with the poor in preference of studies of the lives of the great philanthropists, such as Thomas Barnardo, or the societies that they founded.¹¹⁰ While the philanthropic organisations, such as the eponymous charity formed by Dr Barnardo,

¹⁰⁶ Founder of the Thames River Police, an organization which focused on preventative policing rather than the detection of crime.

¹⁰⁷ Mark Neocleous 'Social Police and the Mechanisms of Prevention' (2000) 40 *British Journal of Criminology* 710

¹⁰⁸ AP Donajgrodzki, "'Social Police' and the Bureaucratic Elite: A Vision of Order in the Age of Reform' in AP Donajgrodzki (ed) *Social Control in Nineteenth Century Britain* (Croom Helm 1977)

¹⁰⁹ *ibid* 52

¹¹⁰ FK Prochaska, 'Philanthropy' in FML Thompson (ed) *The Cambridge Social History of Britain 1750-1950* (Cambridge University Press 1990) 359

were very much separate from the growing formal state provision, work by organisations such as this could be seen to contribute to the 'social police'. Prochaska noted how the family was seen as 'the fundamental social unity of British society, its protection the cornerstone of philanthropic policy',¹¹¹ and this belief does explain the ways in which various philanthropic organisations focussed their works on the support of families during the second of the nineteenth century. She also noted the ways in which the working classes supported each other in time of need, particularly relating to issues of domestic economy, as we saw earlier in the work of Carl Chinn.¹¹² The poor would look after one another, drawing on the provisions of the workhouse only when absolutely necessary. It is not too much of a stretch of the imagination to understand, in this context, how the quasi-industry of baby farming became established in British society. But, this claim is not to suggest that members of the working-class would reject out of hand the philanthropic interventions of the middle and upper classes. Under some circumstances, for example religious orientated campaigns such as those under the auspices of the bible societies or dissenting religions were welcomed by those whom they helped.¹¹³ Where there was a class element to the provision of aid to the poor, Prochaska recognised that the ruling classes would expect their superior status in society to be recognised by those that they helped, and that this expectation would be reinforced during times of social tension, when the ruling classes 'openly expressed a desire to subordinate the lower classes through charitable agencies, especially schools and visiting societies.'¹¹⁴ There was an irresistible link between 'good works' and assistance to those in poverty, an assumption being made that the poor would always be with us, but would be improved by their contact with their social superiors from the middle and upper classes.

Judith Fido strengthened the links between philanthropic work and social control in her examination of the work of the Charity Organisation Society (COS),¹¹⁵ and in particular in the way in which it attempted to give structure to the ways that all charities worked. Prochaska also recognised the links between the Society and the work of volunteers.¹¹⁶ Volunteers they may have been, but they did contribute to the working of an organisation which sought formalisation of its methods across the charitable network, and which could well be deemed

¹¹¹ *ibid* 360

¹¹² Chinn (n46)

¹¹³ This is very nicely illustrated by the fictional example of 'Ruth' in the novel by Mrs Gaskell. Ruth is depicted as a victim of seduction who was given home and succor by Mr Benson, a dissenting minister. Ruth leaves behind her shady past and becomes a heroine, nursing the poor and sick, finally dying from illness she has caught during the course of her philanthropic endeavours. Elizabeth Gaskell, *Ruth*, (First published 1853, The World's Classics, 2008)

¹¹⁴ Prochaska (n110) 370

¹¹⁵ Judith Fido, 'The Charity Organisation Society and Social Casework in London 1869-1900' in AP Donajgrodzki (ed) *Social Control in Nineteenth Century Britain* (Croom Helm 1977)

¹¹⁶ Prochaska (n98) 387

to be part of the 'social police'. We have already seen in the earlier discussion of Lewis' work, how women were involved in philanthropic work in the nineteenth century,¹¹⁷ and we shall see in the chapters relating to the Select Committees (chapters seven and eight), the clear link between the work of philanthropists and the shaping of legislation designed to control the behaviour of baby-farming and baby farmers.

As for law, it became one of the primary means of enforcing social control in nineteenth century Britain. Not only did law create and/or develop the structures of a burgeoning bureaucratic state, but it also provided for the prevention, detection, and punishment of crime. With the migration of the poor and the working class from the countryside in order to find work, either in the new industries in the north and north-west of England or in the service industries of London, there was popular unease regarding criminality in the urban areas. Vic Gatrell tells us that, in a similar manner to the moves for centralisation of the working of the Poor Law Unions and the Poor Law boards, efforts were made to re-organise the management of the police leading to a 'nascent law and order bureaucracy'.¹¹⁸ In London the functions of policing moved further away from the local watch committees, and increasingly the faceless Victorian state was more involved with the enforcement and management of law than were the local magistrates with their local connections and reputations.

2.4 Policing the Poor

During the second half of the century, the formal force of the police was to become a powerful presence in relation to the working class in their supervision of activities in the streets, that is, in the social sphere outside the private home and domestic circle. The numbers of police officers employed in London grew and attempts were made to concentrate control of policing within Scotland Yard. Outside London the government were forced to deal with the disturbances caused by the 'Swing Riots' of the 1830s, which unrest contributed to the eventual reform of the rural police forces through the County Police Acts of 1839 and 1849.¹¹⁹ Local police forces grew in size and became more organised, although day to day control remained local under the auspices of the local watch committees. Police officers themselves tended to be drawn from the unskilled or semi-skilled working classes, but, in practice, they were very much under the control of those represented on the watch committees, likely to be

¹¹⁷ Jane Lewis, 'Women and late-nineteenth-century social work' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

¹¹⁸ VAC Gatrell, 'Crime, authority and the policeman-state' IN FML Thompson (ed), *The Cambridge Social History of Britain 1750-1930, Volume 3: Social Agencies and Institutions* (Cambridge University Press 1993) 258

¹¹⁹ County Police Act 1839; County Police Act 1840

representatives of the middle and upper classes.¹²⁰ The watch committees were responsible to stipendiary magistrates and they thus represented the interests of central government, albeit in a diluted manner.¹²¹

Gatrell suggested that the poor were the primary target of the criminal law and the police. The majority of offences created during the second half of the century were aimed at criminalising poorer people, such as the increase of legislation relating street offences, including loitering with intent. There was a formal focus on vagrants and the non-respectable working class and, as Gatrell notes, there was a 'proliferation [of] bye-laws governing public space'.¹²² Public houses and parks, enjoyed by the poor, were increasingly licensed and controlled, and where there were breaches of regulations, the police intervened directly into the lives of those breaking the law.

The framework of social control and the concept of the 'social police' give possibilities for an understanding of the legal and social implications of the law as related to bastardy and, during the second half of the nineteenth century, to baby-farming. The 1834 Poor Law provided the first nationwide attempt to solve a number of given problems, the bastardy provisions being one facet of this. Using the concept of the 'social police' allows the actions of government sponsored bodies to be considered together along with the influence of philanthropists on the creation of law aimed at providing control of the behaviour of the lower classes.

However, what this framework lacks is a focus on the reform of behaviour in the domestic home by agents of the state. Gatrell tells us that the lower-class behaviour which was most seen to be in need of reform was that taking place in shared social spaces and thus addressed by legislation and action by official bodies. After 1834 the limitation of financial assistance for those in severe poverty provided by the workhouse brought the poor into those shared social spaces, and the abolition of 'out-relief' made it nigh on impossible for help to be obtained if one were to remain within the domestic home. While charitable organisations, such as the NSPCC, penetrated into the domestic circle in order to give support to families or to prosecute those committing crimes against children, during the nineteenth century the state was still loathe to impinge on the autonomy of the family within the home. We shall see, in chapters seven and eight, from the evidence presented to the Select Committees by representatives

¹²⁰ C Emsley, 'The Birth and Development of the Police' IN T Newburn (ed) *Handbook of Policing* (Willan 2003) 66

¹²¹ A petition for the appointment of a stipendiary magistrate would be made by the borough to the Secretary of State (Municipal Corporations Act 1863 and 1882). Salaries were paid from local funds, but responsibility for their performance rested with the Home Office. RM Jackson, 'Stipendiary Magistrates and Lay Justices' (1946) 9(1) MLR 1

¹²² Gatrell (n118) 279

from the COS and other philanthropic organisations, how organisations such as the NSPCC argued that the 'social police' should intervene in the domestic circle. The final argument of this thesis is that the provisions of the Infant Life Protection Act 1897 took formal state inspection of paid childcare into the private home.

In summary, the framework of 'social control' and the concept of the 'social police' allows an understanding of the way in which government legislated and acted so that the values and habits of the upper and middle classes should be imposed on the working class, with particular regard to issues relating to the production and care for the inconvenient child. Using this framework, this thesis traces the way in which official attention shifted from attempts to prevent women being delivered of bastard children to a pragmatic acceptance of the need to safeguard those (usually) bastard children cared for in the private home of a baby farmer. I extend this framework of 'social control' to cover official state supervision of the domestic circle.

2.5 Conclusions

During the nineteenth century and, in particular, following the Poor Law of 1834, the provision of services delivered by the state to citizens grew both in function and in the power wielded by the new local authorities. During the second quarter of the century, women who became pregnant out of wedlock, or who had been seduced or raped, found it increasingly difficult to access financial and practical support for them and their infant. If a woman had no family to support her, her only option was to enter the workhouse and her behaviour became stuff of the shared social space, in the guise of the workhouse and the parish. The second half of the century saw a number of high profile court cases of the murder of infants at the hands of those paid to care for them. These brought to public attention issues associated with what appeared to be a quasi-industry of paid childcare which allowed women to pass on to another the responsibility for the care and welfare of their children. Campaigns were raised and demands made of parliament to legislate to control the baby-farmers.

Examples from both of the above illustrate the ways in which the developing state organisations and, in particular, the local authorities exercised power over the lives of women and the care of illegitimate children. The questions raised by this thesis focus on the relationship between the powers of this growing state organisation and the domestic home. While the principle put forward by Sir Edward Coke in 1828 that 'a man's house is his castle, et domus sua cuique est tutissimum refugium'¹²³ held strong, it appeared that the same could not be said for a woman and her home, at least not if she were caring for a bastard child.

¹²³ 'and each man's home is his safest refuge' Sir Edward Coke, *The Institutes of the Laws of England*, 1628

In this chapter I have noted how the timescale covered by this thesis coincides with an historical period during which ideas of gender roles were in a state of flux. I noted how Davidoff, L'Esperance and Newby considered the place of, largely, women of the middle-class in the nineteenth century. Lewis extended this in her study of the roles of female philanthropists and their influence on those with whom they worked. Smart's concern was the way in which legislation attempted to control female sexuality, while Chinn recorded the challenges faced by working-class women. What is absent is a study of the relationship between representatives of the formal state and intervention by local authorities and their officials into the private home of working-class women. This is the gap which this thesis fills.

In order to understand the motivation, and impact, of the developing legislation into the lives of women, I considered two possible frameworks for analysis of my research. The first, a Foucauldian framework of governmentality, I find deficient due to its lack of attention to class structure and gender and, in particular, I find that the concept of a 'web of power' and power from below, does not address the impact of a formal interaction between the state and the citizen via legislation and the development of state organisations of supervision and control.

The second framework I considered is more persuasive in the context of this thesis. The concept of 'social control' as developed by Donajrodzki, FML Thompson, Gatrell, et al, allows for an examination of the ways in which the ruling and middle classes sought to impose their standards of morality and behaviour on the working-class. It allows for an exploration of the developing institutions of the state, from the workhouses made consistent throughout the country, starting in 1834, to the inspection regimes mandated by the Infant Life Protection Act 1897. Using this framework, I am able to link legislation with the stated aims of enforcing the control of behaviour in nineteenth century Britain. However, by focussing on the ways in which behaviour taking place in the social space was controlled, the *Cambridge Social History* did not take their theories into the private home. I extend this framework and take it there.

In the next chapter I begin my examination of the implications of the 'New' Poor Law of 1834 on the lives of women with bastard children. Starting with Thomas Malthus' *An Essay on the Theory of Population*,¹²⁴ I assess the ways in which the discourse prompted by this important work had an impact on the discussions within parliament, and without, relating to the support of bastard children and, in particular the effect on the report of the Royal Commission for the

¹²⁴ T R Malthus, *An Essay on the Principle of Population* (First Published 1798 and 1830, Penguin 1970)

Poor Law of 1834.¹²⁵ I evaluate the success, or otherwise, of the bastardy provisions of the Poor Law and subsequent legislation and I consider how effective were these provisions in controlling the behaviour of women likely to fall pregnant outside marriage and how such control measures brought women into the public sphere.

¹²⁵ SG & EOA Checkland (eds), *Report of the Commissioners of the Poor Laws* (First published 1834, Pelican 1974)

Chapter Three: A generation drunk on Malthusian wine¹

The argument at the centre of this thesis is that the legislators of the 19th century attempted to create a new form of 'social police' to control the behaviour of working-class women who gave birth to, or cared for, bastard children. In this chapter I focus on the first of my thesis questions, why it was that paid childcare taking place in the private home of the care-giver became an object of official government interest between 1834 and 1897. This chapter begins by examining the emergence of the so-called 'New' Poor Law of 1834. I argue that it is at this point in history and the development of the law, which represents a direct response to middle-class unease relating to the cost of supporting the poor in general, and single mothers in particular, since the regime of the Elizabethan Poor law² and the 18th century Bastard Children Act.³ Specifically, I argue that the bastardy provisions of the New Poor Law and subsequent legislation amending those provisions resulted in a situation where a woman could only access practical and financial help by being leaving her home and/or family to enter the much-reviled workhouse where she would be expected to comply with the regulations of the Poor Law authorities. There, he was 'pulled' into the social space of the workhouse, in an attempt to force compliance with middle-class norms of acceptable behaviour.

This is a clear example of the ways in which the middle and upper classes sought to impose standards of behaviour onto women of the lower-class, albeit this imposition appears to have been influenced more by monetary concerns than the purely moral associated with illegitimacy. By examining how the bastardy provisions of the Poor Laws put pressure on women to enter the social space, in this case the workhouse, in this chapter I lay the foundations for an examination in the next chapter of official attitudes towards childcare which took place in the domestic circle, away from direct, official control, in order to answer the first two of my thesis questions.

I start with a brief literature review of existing scholarship relating to the issues raised by the Poor Laws, and then consider the influence of the works of Thomas Malthus on the Royal Commission whose evidence contributed to the enactment of the so-called 'New' Poor Law of 1834. Next I examine the direct influence of the Royal Commission charged with inquiring into the state of the 'old' Poor Laws on the legislators and the impact that their report had on the

¹ M Blaug, 'The Myth of the Old Poor Law and the Making of the New' (1963) 23(2) *Journal of Economic History* 151

² Act for the Relief of the Poor 1601

³ Bastard Children Act 1732

debates in the Houses of Parliament. This commission resulted in extra powers and provisions aimed at reducing the amount of financial support available to women in an effort to reduce the number of illegitimate children reliant on the parish for their support. I review this legislation and the impact on the lives of single mothers by examining those few reported cases in which the courts balanced the needs of the mothers and illegitimate children against those of the putative fathers. Finally, I examine the legislative changes made to the bastardy provisions of the Poor Laws until the Bastardy Law Amendment Act of 1873.

3.1 Academic Commentary

The changes in society, so obvious at the beginning of the 19th century, affected not only those employed in agriculture and the 'new' industries then gaining traction in urban areas, but also women who were the mothers of bastard children. Scholarship relating to the impact of industrialisation on the employment of women has led to differing conclusions. For example, Ivy Pinchbeck, writing in 1930, suggested that, overall, the changes driven by the industrial revolution were advantageous for women in that they resulted in 'social and economic independence'.⁴ Wanda Neff, in using a combination of factual evidence and reference to contemporary novels to illustrate her points, considered the ways in which the industrial revolution impacted on the lives of women workers and, in particular, how it made working life more precarious.⁵ Both authors considered working class women in a number of industries, including agricultural and factory work but, with the exception of Governesses, ignore domestic servants. Jane Rendall redressed the balance somewhat,⁶ but what is lacking in all of these works is detailed attention to the difficulties associated for a woman who lived away from the family unit. With the exception of an acknowledgement that the lives of textile workers and dressmakers were precarious and lonely, links with 'casual prostitution',⁷ and Neff's examples drawn from characters of contemporary novels,⁸ there is no reflection of the difficulties associated with becoming a single mother in Victorian society living away from the larger family unit. I return to this in the next chapter.

⁴ I Pinchbeck, *Women Workers and the Industrial Revolution 1750-1850* (George Routledge & Sons Ltd 1930) 313

⁵ WF Neff, *Victorian Working Women* (George Allen & Unwin Ltd 1929)

⁶ J Rendall, *Women in an Industrializing Society: England 1750-1880* (Basil Blackwell 1990)

⁷ *ibid* 69

⁸ See for example that of Jenny Wren, a character from *Our Mutual Friend* by Charles Dickens. WF Neff, *Victorian Working Women* (George Allen & Unwin Ltd 1929) 119

In contrast, much has been written relating to the Poor Laws themselves although, with the exception of Lorie Charlesworth,⁹ David Englander,¹⁰ and Nicola Verdon,¹¹ little has been published since the 1960s and 1970s. That which has been, as we saw in chapter two, has focused on the financial implications of the legislation for those claiming support and the effect that this had on the finances of the parishes.

One of the earliest such works is Beatrice and Sidney Webb's *English Poor Law Policy*, first published in 1910.¹² The Webbs were early members of the Fabian Society, and committed supporters of socialism. Beatrice had served as a member of the Poor Law Commission of 1905, and had been one of the co-authors of the Minority Report of the commission (described by Margaret Cole as 'one of the great State Papers of the century'¹³) which called for radical reform of the Poor Laws. Given this background, it is perhaps not surprising that the Webbs' work on the Poor Laws had a decidedly socialist flavour. Thus they noted the '...absence of provision for independent women'¹⁴ and also the punitive regime of the workhouses and the way in which the authorities were 'encouraging boards of guardians to make the workhouse... an exclusively disciplinary institution.'¹⁵

Gertrude Himmelfarb, an American intellectual historian with significant links with the neo-conservative movement in the United States,¹⁶ brought a significantly different political view from the Webbs to the issues surrounding the Poor Laws and their effect on women. While Himmelfarb's work focuses on a specific political reading of Victorian 'sensibilities' and morality in line with her political orthodoxy and the liberal concept of individual responsibility and changing notions of what constituted 'society', she does make the very apposite observation that many other legal reforms of the nineteenth century, such as the Factory Acts of 1833 and beyond as well as other legislation, dealt solely with the conditions facing women and children in the new industries, and thus that the experience of working-class women would be different from those working within the home, and very different from the experiences of women of the middle-class.¹⁷

⁹ Lorie Charlesworth, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Routledge 2011)

¹⁰ D Englander, *Poverty and Poor Law Reform in 19th Century Britain, 1834-1914* (Longman 1998)

¹¹ N Verdon, 'The Rural Labour Market in the Early Nineteenth Century: Women's and Children's Employment, Family Income, and the 1834 Poor Law Report' (2002) LV(2) *Economic History Review* 299

¹² S Webb and B Webb, *English Poor Law Policy* (First published 1910, Frank Cass & Co 1963)

¹³ M Cole, *Beatrice and Sidney Webb* (Fabian Tract, Fabian Society 1955) 24

¹⁴ S Webb and B Webb, *English Poor Law Policy* (First published 1910, Frank Cass & Co 1963) 27

¹⁵ *ibid* 159

¹⁶ G Himmelfarb, 'From Victorian virtues to modern values' (1955) 6(3) *American Enterprise* 76

¹⁷ G Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (Vintage Books 1985) 143

Ursula Henriques¹⁸ examined more than the purely economic issues raised by the New Poor Law, rather she assessed the implications for women of the bastardy clauses of the Poor Law of 1834 and on subsequent legislation. In her later work, she identified the perceived inherent cruelty of the legislation as it affected the welfare of women and illegitimate children, and on the way in which formal avenues of support, such as the local poor-houses, were made less accessible. She also found links between the passage of the legislation and the influence of Malthus, attributing to him and the *Essay on the Principle of Population* the direct inspiration for the Commissioners whose report provided evidence that contributed to the format and content of the Act, including those provisions relating to the reduction of financial support available to the mothers of illegitimate children.¹⁹ However, the time period covered by Henriques is confined to the first half of the 19th century.

Pat Thane continued this examination of women's interaction with the legislation and showed its inherent lack of attention to the issues affecting them. The legislators had, in her opinion, considered able-bodied men to be the primary 'target' of poverty.²⁰ In another contribution to the debate Lisa Cody examined the bastardy clauses of the legislation from an explicitly feminist perspective, and reflected on the legislation's apparent double standard in the 'new' ideology of liberalism that emerged at the beginning of the nineteenth century,²¹ while C Newman has recently subjected the punitive nature of the workhouses to examination.²² The liberal political bias of the Poor Laws and the contemporary opposition, was examined by Paul Johnson, who suggested that the Poor Laws reflected the growing contract economy and legal arrangements between citizens, and argued that the law led to an entrenched middle-class belief in the "latent fecklessness and immorality" of manual labourers.²³

Academic authors such as George R Boyer,²⁴ and Thomas Nutt²⁵ demonstrated close relationships between the Poor Laws and the influence of Thomas Malthus and his 'Essay on

¹⁸ URQ Henriques, 'Bastardy and the New Poor Law' (1967) 37(1) *Past and Present* 103; URQ Henriques, 'How Cruel Was the Victoria New Poor Law?' (1968) 11(2) *Historical Journal* 365

¹⁹ URQ Henriques, 'Bastardy and the New Poor Law' (1967) 37(1) *Past and Present* 103 109

²⁰ Pat Thane, 'Women and the Poor Law in Victorian and Edwardian England' (1978) 6 *History Workshop* 29

²¹ LF Cody, 'The Politics of Illegitimacy in an Age of Reform: Women, Reproduction, and Political Economy in England's New Poor law of 1834' (2000) 11(4) *Journal of Women's History* 131

²² C Newman, 'To Punish or Protect: The New Poor Law and the English Workhouse' (2014) 18 *International Journal of Historical Archaeology* 122

²³ P Johnson, 'Class Law in Victorian England' (1993) 141 *Past & Present* 147

²⁴ GR Boyer, 'Malthus Was Right After All: Poor Relief and Birth Rates in Southeastern England' (1989) 97(1) *Journal of Political Economy* 93

²⁵ T Nutt, 'Illegitimacy, paternal financial responsibility and the 1834 Poor Law Commission Report: the myth of the old poor law and the making of the new' (2010) 63(2) *Economic History Review* 335

the Principle of Population' on the Poor Law of 1834 and in particular on Malthus' thesis that the financial maintenance of the poor would serve only as encouragement for an increase in the size of families. However, as we shall see later in this chapter, the very existence of this influence and the accuracy of Malthus' statements and logic was much later questioned by Mark Blaug²⁶ and James Huzell²⁷ in the 1960s, although their conclusions were in turn challenged by later authors such as George R Boyer,²⁸ M E Rose,²⁹ and Neil Chamberlain³⁰ in the 1970s and 1980s. As a result, later authors reverted to the position that Malthus' essay was one of the key influences on the shape of the New Poor Law. In these academic commentaries we see a focus on the legislation from a political and economic point of view with particular regard to the cost of support of the poor to the parish, and a concern with the financial efficiency of welfare support for those in need. In contrast, there is less attention paid to the direct impact of the legislation on those individuals subject to it. RJ Mayhew's recent biography of Malthus provides a comprehensive examination, not only of his influence on the Poor Law Commissioners, but also on other contemporary writers and influence thus allowing for a fuller picture of the construction of the Poor Law of 1834 with its aim of producing savings for the rate payers of the parishes.³¹

3.2 Thomas Malthus

At the end of the eighteenth century an essay had been published which was to challenge the utopian thinking that preceded it regarding the growth of population. This was to have a significant and lasting effect on public policy. In particular, it was thought that those women who produced, or were at risk of producing, illegitimate children were targets for control in order to correct their sexual incontinence. As such, I argue that it plays a key role in the development of social control mechanisms targeted at women 'pulling' them from the domestic circle, represented by home and/or family, into the social space of the workhouse acting, not only as a deterrent, but also once in the workhouse as a punitive regime focussed on changing behaviour.

Thomas Malthus, clergyman and essayist, typifies a popular image of the intellectual man of the eighteenth century. Malthus was highly educated and studied Newtonian Mathematics at

²⁶ Blaug (n1)

²⁷ JP Huzel, 'Malthus, the Poor Law and Population in Early Nineteenth-Century England' (1969) 22(3) *Economic History Review* 430

²⁸ Boyer (n25) 93

²⁹ ME Rose, *The Relief of Poverty, 1834-1914* (Macmillan 1972)

³⁰ NW Chamberlain, *Beyond Malthus: Population and Power* (Prentice-Hall 1970)

³¹ RJ Mayhew, *Malthus: The Life and Legacies of an Untimely Prophet* (Belknap Press 2014)

the University of Cambridge.³² He published his essay *On Principle of Population* in 1798³³ in opposition to other contemporary writers, such as Richard Price, who believed that the strength of a state was exemplified by a steadily increasing population.³⁴ Malthus constructed his essay using statistical analysis to support his argument and sought to address concerns regarding the seemingly incessant growth in the number of population, a growth which Malthus believed, and tried to prove, outstripped the availability of those resources necessary to support such a burgeoning population. Of particular (and oft-quoted) note is his position that unchecked growth in population would increase in a 'geometrical ratio',³⁵ one which would endanger population due to diminishing availability of the resources needed to support it.

Malthus was explicitly critical of the workings of the Old Poor Law, and the Speenhamland system with its system of outdoor relief and allowances given to working men dependent on the number of children in a family unit, with complicated financial calculations dependent on the price of bread.³⁶ He suggested that this would lead to an unfettered increase in population and to increased pressure on the limited resources available to the country. In addition, he argued that:

The poor-laws of England tend to depress the general condition of the poor in ... two ways. [The] first obvious tendency is to increase population without increasing the food for its support... [the poor-law] may be said therefore in some measure to create the poor which they maintain...³⁷

He believed that should conditions for the non-working poor be improved, it would depress the conditions for those not in the workhouses by artificially increasing the cost of food as merchants were faced with a ready market, supported by payments made by the parish:

I feel no doubt whatever that the parish laws of England have contributed to raise the price of provisions and to lower the real price of labour.³⁸

³² While at Cambridge, Malthus attained the rank of 'ninth wrangler' in his degree examinations meaning that he not only achieved a 'first' in his third year studies, but that his mark placed him ninth amongst all mathematics students at the university, showing that he was not only gifted, but also able to apply himself well to his studies. *ibid*

³³ Thomas Robert Malthus, *An Essay on the Principle of Population and a Summary View of the Principle of Population* (First published 1798 Antony Flew (ed) Penguin 1970)

³⁴ For example, in Price's *Observations on Reversionary Payments* published in 1771, he stated 'Everyone knows that the strength of a state consists in the number of people. The encouragement of population, therefore, ought to be one of the first objects of policy in every state.' RJ Mayhew, *Malthus: The Life and Legacies of and Untimely Prophet* (Belknap 2014)

³⁵ Malthus (n33) 73

³⁶ The so-called Speenhamland system had come into existence in Speenhamland, Berkshire, in 1795. Magistrates decided to fix a 'minimum standard' of living by supplementing earned incomes in relation to the price of bread, and the size of workers' families. This system was soon to be imitated in other counties and was ratified by parliament in 1796. M Blaug, 'The Myth of the Old Poor Law and the Making of the New', (1963) *Journal of Economic History* 23(2) 151

³⁷ Malthus (n33) 38

³⁸ Malthus (n33) 39

Malthus aimed to show, scientifically, that providing financial support to the poor had an adverse effect on the markets, and that as merchants and shopkeepers were aware that the parish would, in effect, subsidise the cost of bread and other goods, such intervention would eventually have a deleterious effect on the lives of those whom the well-meaning legislators sought to help through the existing Poor Laws.

The early nineteenth century had seen some middle-class disquiet as to the cost to the parish of the maintenance of the poor. Poverty had become a key interest amongst political economists such as Edmund Burke and Arthur Young,³⁹ and this resulted in the appointment of a Royal Commission to investigate provision of support for the poor. Malthus' conclusions were very much in line with opinions of the time such as those of Burke and Young, and in his essay he demonstrated quite clearly a change in focus away from the concept of a successful population as that which was large in number towards that which was productive and financially efficient, which chimed with a clear move towards the belief that population should be as productive as possible. In effect Malthus, in his scientific study of the situation of the poor and of the need to make provision for their support, had disseminated a number of 'truths' which were to be taken very seriously by the royal commissioners in their investigation of the Poor Law, the report of which was published in 1834. As we shall see later in this chapter, Malthusian opinions had a great impact on the findings of the Royal Commission created to review the workings of the existing Poor Laws, and on the subsequent legislation.

3.3 The New Poor Law

In this section, I examine the Royal Commission of 1834 set up to scrutinise the working of the 'old' Poor Law legislation, and the subsequent passage of the 'new' Poor Law through the Houses of Parliament, its operation and the adjustments made to it during the 19th century, in order to improve its effectiveness. I argue that, by responding to the work of Malthus and by seeking to reduce the number of illegitimate children supported financially by the parishes, nineteenth century Poor Law Commissioners and the legislature implicitly embraced the ethos of middle-class control of the working class and paupers, and that this became more refined as the century progressed, in effect forming part of the growing 'social police' of the 19th century. As we shall see, the mechanisms of control developed and strengthened by this legislative framework which had been intended to control the behaviour of the mothers of illegitimate children, operated in the social space by extending the possibility of financial relief only to those who entered the workhouse. Early attempts at controlling the numbers of illegitimate children by removing financial assistance from the mothers in an attempt to prevent

³⁹ *D Englander, Poverty and Poor Law Reform in 19th Century Britain, 1834-1914* (Longman 1999) 5

pregnancy outside marriage were overtly punitive. However, this approach was ameliorated slightly by the operation of the courts during the second half of the nineteenth century in the ways in which they found in favour of women who sought financial support for them and their infants.

3.3.1 The Royal Commission on the Poor Laws of 1834

In February 1832 the Whig government appointed a Royal Commission to make inquiry into the current state of the Poor Laws. The commission of nine was led by Charles Blomfield, Bishop of London, and amongst the other members were Nassau Senior, professor of Political Economy at Oxford, and Edwin Chadwick, a noted social improver.⁴⁰ The local Poor Law commissioners who gave evidence to the 1834 Royal Commission, while nominally independent of parliament, had been appointed to their post by government. Their uniform evidence and the results of the surveys presented to the Commission had significant impact on the content of legislation relating to the support of those in poverty, and thus I argue that their reports and documents reflect official responses to the perceived need for formal changes in legislation as it related to the support of the poor. Not only were the commissioners responsible for the day-to-day administration of relief granted to those in need but the official report of the Royal Commission, written by Nassau Senior and Edwin Chadwick, had considerable impact on the content of formal legislation.⁴¹ The conclusions embedded in the report, that reform of the existing poor laws was necessary and long overdue in order inter alia to reduce the financial burden to the parish of illegitimate children, was to lead directly to the 1834 Poor Law. This direct impact of a body external to government on the content and passage of legislation demonstrates the ways in which influence could operate not only in the formal mechanisms of central government. But it showed how in this case power and influence could be delegated to a lower form of 'government'. The 1834 Poor Law Act created the bureaucracy needed to administer the Poor Law and workhouse system, including the means of collecting and reporting statistical information to parliament. These bureaucratic mechanisms were to be essential for the furtherance of the collection of data and for on-going constructions of 'truth' relating to the poor.

The main thrust of the recommendations of the commission was focussed largely on the rural poor, thought to be the most costly to support. As we have seen, Malthus had been particularly critical of the Speenhamland system, suggesting that it 'contributed to raise the price of

⁴⁰ CM 31 1844 Report of the Poor Law Commission

⁴¹ A Brundage, *The English Poor Laws, 1700-1930* (Palgrave 2002) 65

provisions and to lower the real price of labour',⁴² making it less efficient. This 'outdoor relief' was therefore seen to be problematic, leading to significant cost to the ratepayers of a particular parish, and it was thus proposed that this system should be replaced by the existing 'indoor relief' accessible only within the workhouse, albeit that this provision should be reformed and changed.⁴³ This shift led to the so-called 'workhouse test', where should an applicant for financial support refuse to enter the workhouse, they would then be deemed not to be truly in need of support.⁴⁴ In this manner, those entering the workhouse left behind the autonomy of the private home; in the workhouse they were expected to work for their relief and to follow all the rules of the house.

The overriding message of the 1834 report was that the cost of supporting the poor should be minimised as far as possible to the benefit of the rate payers of the parish, the vast majority of whom were male. Given that some of the anxiety of the commissioners was associated with the cost of supporting the children of the poor, this can be seen to present a predominantly androcentric view of the problems associated with illegitimacy, and indeed paternity in general, these being primarily financial.

The commissioners devoted a significant part of the report to the topic of 'Bastardy'. The report examined the difficulties of supporting illegitimate children and, in particular, the difficulties for the mother to claim financial support from the father of the child. The 'old' Poor Law provisions, as it stood, allowed for a woman to affiliate her child relatively easily by swearing paternity before the magistrates, and should the putative father not fulfil his financial obligations, he could be admitted to the 'house of correction'.⁴⁵ This approach had provided for a straightforward way for a woman to be able to ensure that a man would provide for his child and its mother.

It might have been expected that the 1834 commission would be broadly in favour of a measure that allowed the expense of the upkeep of the child to remain with the father of the

⁴² Malthus (n33) 39

⁴³ As Nicola Verdon has pointed out, this change to the provision of outdoor support and the increasing mechanism of agricultural industries was particularly punitive to women and children who had traditionally earned money through occupations such as 'gleaning', an activity which was reduced. This change had a knock-on effect on the income of whole families. N Verdon 'The Rural Labour Market in the Early Nineteenth Century: Women's and Children's Employment, Family Income, and the 1834 Poor law Report' (2002) LV(2) *Economic History Review* 299

⁴⁴ A literary depiction, and criticism, of the process of applying for relief exists, amongst others, in chapter ten of Mrs Fanny Trollope's campaigning novel, *Jessie Phillips* (First published 1842-43, Nonsuch Publishing 2006). Outdoor relief is refused to Mrs Greenhill, who is forced to forgo her freedom and enter the workhouse. Trollope's depiction of the Assistant Commissioner of the Board of Guardians is critical, and the reader is invited to sympathise with the applicant.

⁴⁵ Bastard Children Act 1732 s1

child. However, the language in the report, and the evidence presented to, and the findings of, the commission belie this. Women were presented as being 'grasping', and that they would seek to affiliate their child, on their word alone, to as affluent a man as possible, in order that they should make money from the children that they bore. Women were not presented as the innocent parties, far from it. Typical was the evidence of Edward Tregaskis, vestry clerk from Cornwall, as presented to the commission:

We know and are satisfied from long and serious observation and fact occurring that continued illicit intercourse has, in almost all cases, originated with the females; many of whom, under our knowledge, in this and neighbouring parishes, do resort to it as a source of support... and received the fixed weekly allowances from the parish officers' and a deliberate repetition of offence gives them in this manner a right to claim the allowances, which, when added together according to the number of their children generally with them, is sufficient in many cases to afford support.⁴⁶

It is not clear what would entail 'long and serious observation', and how such observation would lead to the conclusion that 'illicit intercourse... originated with the females'. Other witnesses gave testimony that women would swear a child to a man, not the father, but one more likely to be able to afford the maintenance payments, while a witness from Swaffham, Norfolk, gave evidence of a woman in receipt of 14s per week for her 'seven bastards', a sum more than she would have received were she a widow and they legitimate.⁴⁷

The evidence presented by the commissioners largely relied on hearsay statements provided by Poor Law overseers from around the country, which was hardly scientific. The language and the evidence thus presented by the commissioners were misogynistic, suspicious of women 'playing the system' at the expense of men, either as sworn fathers or as rate payers of the district, and whether they supported a single child or their rates contributed to the support of many. Where morality was mentioned, fault was predominantly seen to lie with the woman; the mothers of these children, it appeared to the commissioners, had seduced men into impregnating them so that they might receive an income from the parish. The commissioners were scathing in their consideration that the existing bastardy laws 'increase the expense which they were intended to compensate, and offer temptations to the crime which they were intended to punish, and that their working is frequently accompanied by perjury and extortion, disgrace to the innocent and reward to the shameless and unprincipled',⁴⁸ and their recommendation was that such bastardy laws should be entirely abolished.

⁴⁶ Royal Commission on the Poor Laws, *The Poor Law Report of 1834* (First published 1834, SG Checkland & EOA Checkland eds, Penguin Books 1974) 263

⁴⁷ *ibid* 265

⁴⁸ *ibid* 477

Echoing Malthus directly, the Commissioners noted that for an illegitimate child only one of the parents could be identified, the mother, and that to award parish relief to her gave 'to the vice privileges', and that it was women who were in need of control.⁴⁹ Parish relief should be restricted, they concluded, and women should not be rewarded for immoral behaviour. Their recommendation was that the minimum of financial support should be paid to the mother for the purposes of supporting the child; she should not be allowed to profit from the parish, or to support herself. Rather, her financial support should be provided by her family as perhaps the commissioners thought that familial pressure might contribute to controlling her sexual behaviour. With such control taking place in the family, in the domestic circle, there would be no need for the parish to 'police' her behaviour. A bastard child was to be a burden to the mother and the Commissioners 'trust[ed] that as soon as it has become both burthensome and disgraceful it will become... rare'.⁵⁰ Perhaps unsurprisingly, the commissioners recommended that it was useless to punish the supposed father. Their conclusion was that the 'object of law is not to punish but to prevent',⁵¹ and thus they kept the mother of the child as their target for control.

In those cases where women had been seduced, or abandoned by a dishonest man who had promised marriage, the recommendation of the commissioners was that the woman should still have access to civil remedies for breach of promise, or for the parents of the woman to bring an action against the father for loss of the daughter's services. These provisions bring the potential actions into the realms of private law; a breach of contract of marriage, or the removal of the woman's function as a resource for the father. Men, from this point of view, were to be brought to task for not honouring a contractual obligation, or for interfering with the rights of another man and not for having been involved in the production of an inconvenient child. While the commissioners acknowledged that it could be concluded that such reduction in practical support might lead to an increase in infanticide, they dismissed this out of hand. They believed that in a civilised country it had never been heard that a mother should kill her child because she could not afford to keep it. They provided no evidence for this assertion, which contradicted some of the opinions later heard in the House of Lords.

All of the above shows an intention to use the proposed legislation as a tool of control, not necessarily to punish a woman directly, as previously, by sending her to the house of correction. But by making life difficult for a single mother, it was thought that it might influence a woman's private behaviour, thereby preventing illicit, unmarried, and thus immoral

⁴⁹ *ibid* 479

⁵⁰ *ibid* 482

⁵¹ *ibid* 483

intercourse and thus presumably imposing the norms of 'moral' behaviour. Women clearly were the target of social control at this point, with the intention that any immediate correction and/or support should take place in the domestic circle, in the seat of the wider family of the woman concerned. But by focusing on the behaviour of the women, the recommendations of the commissioners completely ignored the role of men in the production of illegitimate children, save where they were duped by women seeking to make a profit from the parish, in which case the commissioners understood men to be victims rather than willing or equal participants or principals. In 1834 the resulting report of the Commissioners contributed greatly to the Poor Law Bill, both in its construction and passage through the Houses of Parliament.

3.3.2 Legislating for Control

Given the Poor Law Commission's focus on bastardy, and its report redolent with the language of morality, money, and misogyny, it is not surprising that the passage of the resulting Bill through the Houses of Commons and Lords should have been accompanied by debate surrounding the proposed changes to the support of women and children. During the debates in the House of Lords the language was as much related to vice, immorality, and adverse effects on the strength and security of the country as it was to efficiency and productiveness of the population. This language implied that as far as the House of Lords was concerned, the Bill represented a point in history at which the ethos of government was on the cusp of a change, where legislation was to be aimed at enforcing those norms of behaviour that the Lords wished to impose on the population; that is, of traditional Christian morality, marriage and of the production of children only within the institution of marriage. In this way, we clearly see how the legislators targeted working-class women in an attempt to make them change the behaviours that they exhibited in the domestic circle in order that they might conform.

Typical of those focusing on the moral health of the nation was Lord Althorp's introduction to the Bill, where he suggested that, in describing the law as it stood, and with particular reference to the provisions for the support of illegitimate children:

the present state of the law... was a direct encouragement to vice and immorality and that the effect of imprisoning the reputed fathers of illegitimate offspring, frequently the finest young men in the country, was to demoralize and corrupt them, and the consequent mischief and injury inflicted upon the whole community was incalculable.⁵²

His sympathy, like that of the Poor Law Commission, seemed to rest entirely with those men whose lives could be ruined by the affiliation of an illegitimate child, and on the effect that, by extension, this had on community. Althorp's was not the only opinion voiced regarding this

⁵² HC Deb vol 22 col 867 April 17 1834 867

point of view. For while Sir Samuel Whalley suggested that the proposed changes would 'operate as a direct premium upon vice and immorality' in that young men could be deterred from 'incurring the liabilities', his conclusion was that 'the hardship of throwing upon the woman the maintenance of her offspring would lead to still worse crimes.'⁵³ While he was not specific, it is fair to assume that he referred to a possible increase in the number of infanticides, and that he disagreed directly with the conclusion of the commissioners that financial want for mothers would not lead to infanticide. This apparent sympathy for women who might be driven to such acts is rare in the debates and may have been influenced by Whalley's work as a Poor Law Guardian, thus grounded in reality and experience.

This belief that such changes in the law might lead to further crimes and degradation was shared by a number of MPs, though the language remains that of shame, of 'blunted feelings', and of recklessness. There was little sympathy for anyone associated with the production of illegitimate children (other than those men who had been 'duped' by their erstwhile sexual partners), and there was a powerful belief that the measures proposed in the Bill would lead to fewer illegitimate births and a decrease in behaviour seen to be immoral. Indeed, Joseph Hume⁵⁴ while speaking of the law in Scotland at the time told the house:

There the responsibility rested with the woman, and although this state of the law did not entirely prevent the birth of illegitimate children, yet it led to this – that a woman very rarely, if ever, had a second illegitimate child.⁵⁵

As the Bill passed through its committee stages in both Houses, there was some support for those women involved in cases of illegitimacy, including the voice of George Robinson, Conservative Member of Parliament for Westminster, who alluded to the fact that decisions were being made by parliament that impacted greatly on the lives of those who did not have the vote, referring to a political issue which was set to become increasingly urgent during the course of the century.⁵⁶ Other members were concerned with the links between illegitimacy and other crimes, such as procuring abortion, concealment of birth and infanticide.⁵⁷

It was not until the so-called 'battle of the bishops' in the House of Lords that women were given any real support during the debates.⁵⁸ In this debate, the Bishops of Exeter and London were in disagreement regarding the bastardy clauses. Exeter appeared to be more sympathetic to the plight of the mother and sensitive to the discrepancy between the treatment

⁵³ HC Deb vol 22 col 867 April 17 1834 892

⁵⁴ Liberal Member of Parliament for Weymouth and Melcombe Regis

⁵⁵ HC Deb vol 22 col 867 April 17 1834 892

⁵⁶ HC Deb vol 24 col 520 June 18 1834 523

⁵⁷ HC Deb vol 24 col 520 June 18 1834 531

⁵⁸ Brundage n(41)

of the mother as opposed to the father, while London was convinced that there was a deterioration in female morality which needed to be addressed forthwith. More support for women came from the Earl of Falmouth who was 'satisfied that, in nine cases out of ten, the seducer was the real offender, and not the woman, for she generally, by his arts, became his victim.'⁵⁹ The disagreement continued, to be re-visited once again in the sitting of August 8.⁶⁰

Notwithstanding this limited support for women, the Lord Chancellor stated categorically that:

The question for their Lordships was one of expediency, - namely, in what manner it was possible to legislate to prevent bastardy, and to prevent bastard children from becoming burthensome to the parish in which they might be born.⁶¹

Clearly, the intention of those members of the House of Lords in favour of the Bill was that it should act in a fashion to impose the norms of the moral, male, majority on those women living in rural poverty who found themselves to be pregnant with an illegitimate child. Making the woman ultimately financially responsible for the upkeep of her child was, it was thought, a valid means of imposing chastity on the unmarried poor and of influencing behaviour so that women, in particular, should comply. There was some support for women, for example the Earl of Falmouth attempted an amendment to punish equally the father of an illegitimate child for he did not see 'why the Legislature should inflict upon the unfortunate female so grievous a penalty, while her hardened seducer should be let off scot-free.'⁶²

Formal punishment for the production of a bastard child was also debated during the sitting of the House of Lords of August 4, 1834. Reading the records of the debates, it is impossible to ignore the fact that the Poor Law Bill intended to punish and to control, rather than to support, those in need of help. Some women who found themselves in the position of having to support a child by themselves were sometimes, it appeared, to be pitied. They were not only 'women of notoriously abandoned character, but of young girls of sixteen or seventeen years of age, who had been trepanned from the paths of virtue by the wily seducer.'⁶³

The bastardy clauses made up a large proportion of the Bill, demonstrating how important the issue was to the legislature. While most of those speaking for or against the Bill showed a distinct preference for punishment of those who produced illegitimate children at the cost of the parish, there were as we saw, a few such as the Bishop of Exeter⁶⁴ and the Earl of

⁵⁹ HL Deb vol 25 col 577 July 28 1834 602

⁶⁰ HL Deb vol 25 col 1046 August 8 1834

⁶¹ HL Deb vol 25 col 577 July 28 1834 604

⁶² HL Deb vol 25 col 911 August 4 1834

⁶³ HL Deb vol 25 col 911 August 4 1834, Earl of Falmouth at 913

⁶⁴ HL Deb vol 25 col 1046 August 8 1834

Falmouth, who were more merciful in their descriptions of and their attitudes towards women who were pregnant with an illegitimate child. However, the prevailing tone was that of discipline and punishment, of the distrust of those who might seek to make money from the production of children, and of links between licentiousness and crime of other kinds. But, let it not be forgotten, the primary focus of the Poor Law Amendment Bill was to save money for the parish and for those property-owners who paid the rates.

The Bill became law on 14 August 1834, but not before formal protests had been lodged, demonstrating the uneasiness that some MPs and members of the House of Lords felt in the overt penalisation of the mother of the child. For, as the first protest said, 'both parents, [are] equally bound by those [Christian] principles to maintain their offspring'⁶⁵ while the second protest feared 'another and more appalling consequence... tempting [women] to the destruction or the abandonment of the wretched infants'.⁶⁶

The resulting legislation made it more difficult for the poor in general to access support from the parishes. The abolition of 'outdoor relief' and the introduction of the 'workhouse test' sought to ensure that financial support was accessed only by those in the greatest need who really had no alternative means of support and were prepared to leave their homes and enter the workhouse. The new bastardy clauses allocated the financial responsibility for the upkeep of any bastard child to the mother, but did allow the parish to seek support from the putative father should the child become chargeable to the parish on the death of the mother. Limitations were put on the amount of support possible from the father, and should the parish's application be successful the legislation made it explicit that the monies so gained should be applied solely for the support of the child, not for the mother. She was to remain the responsibility of the parish. It is also noticeable that the application for maintenance, according to the legislation, could only be made by the parish guardians. Once a woman entered the workhouse, application could only be made by the guardians to the quarter sessions on behalf of the parish and the mother's agency was completely denied. She was treated, in law at least, as an adjunct to the infant and not a person in her own right. The legal and financial relationship here was between the parish and the father, save only for the fact that the woman had to enter the workhouse with its punitive and uncomfortable regime and become in this manner chargeable. An illegitimate child was seen to be a burden on the parish rather than on its mother, and the mother's behaviour and her residence in the workhouse made her 'public property'.

⁶⁵ HL Deb vol 25 col 1046 August 8 1834 1098

⁶⁶ HL Deb vol 25 col 1046 August 8 1834 1100

It is not an exaggeration to say that the 1834 Poor Law was not popular. There were various scandals associated with the running of what became to be known as the 'New Bastilles', and these came to the attention of the public, partly through the publication of works such as G Wythen Baxter's 1841 compilation of accounts of abuse in workhouses⁶⁷ and Charles Dickens' 'Oliver Twist', first published in 1837-8, and subtitled 'The Parish Boy's Progress'.⁶⁸ Michael Rose has noted that there was significant opposition to the imposition of the new Unions, not just from the property-owners and rate-payers but also, in areas such as the West Riding of Yorkshire, where working men were beginning to suffer from the commercial depression which was affecting areas of the country which depended on manufacturing industries.⁶⁹

This financial situation for single mothers worsened through the economic hardships of the 1840s until, in 1844, Sir James Graham, the Home Secretary, introduced a Poor Law Amendment Bill.⁷⁰ This Bill sought to remove the responsibility for gaining support from a putative father from the parish, and to make the responsibility solely that of the mother. So important were the bastardy measures in the Poor Law Amendment Act of 1844 (the so-called 'Little Poor Law'), that they form the first nine clauses of the legislation. By means of this statute, it was made clear that the parish was to retain limited responsibility for the support of illegitimate children, and should a woman be found to be neglecting her child, so that it became chargeable to the parish (through financial rather than physical neglect), she was to be subject to punishment as 'a Rogue and a Vagabond'.⁷¹ This, too, was predictably subject to criticism. Frances Trollope's novel *Jessie Phillips*, first published in serial form in 1842 and in book form in 1844,⁷² roundly criticised the working of the Poor Laws, from the inflexibility of the provisions of the workhouse test, to the injustice experienced by its eponymous heroine, who was unable to affiliate her child, or to hold its father to any kind of legal account.⁷³

From the 1844 Poor Law Amendment Act onwards, the illegitimate child would become less of a financial burden to the parish. The responsibility for the maintenance of the child remained legally with its mother, while the law gave the parish the ability to reclaim the cost of

⁶⁷ GW Baxter, *The Book of the Bastilles* (Private Binding 1841) British Library reference: W19/8463

⁶⁸ Charles Dickens, *Oliver Twist* (First published 1837-8 Philip Horne ed, Penguin 2002)

⁶⁹ ME Rose, 'The Anti-Poor Law Movement in the North of England' (1966) 1 *Northern History* 70

⁷⁰ HC Deb Vol 72 col 471 February 10 1844

⁷¹ Poor Law (Amendment) Act 1844 s6

⁷² F Trollope, *Jessie Phillips* (First published 1842-43, Nonsuch Publishing 2006).

⁷³ After the father of her child reneges on his agreement to marry her, Jessie enters the workhouse. After the child was born in a barn, it was taken by another character from the novel, abandoned, and is found and killed by its father. Jessie was arrested and charged with infanticide. At the end of her trial, Jessie expires, gracefully, in the dock just before she was to be found not guilty by reason of insanity.

maintenance from a putative father on those occasions where the mother and/or the child became the responsibility of the parishes, when they entered the workhouse. This response from the legislature was in effect to transfer that financial responsibility to the parents of the child, to the putative father in some cases and, ultimately, to the mother who had been given the foundational legal responsibility for the support her child, thus moving the problem of finance into the domestic circle.

3.4 Poor Laws In Action

In the previous section we have seen how the legislature sought to minimise the financial inconvenience to the parish of illegitimate children and of the poor and, in effect, to push the legal responsibility for bastard children back into the domestic circle. It follows, therefore, that attempts would be made to pass the total financial responsibility for such children to the parents. During the eighteenth century, this objective had meant that it was likely that the father of a bastard child would be pursued, first by the parish and then possibly by the mother, to support the product of a man's indiscretion. There was also the possibility that the father, should he refuse to pay for the support of his bastard progeny, could be imprisoned.⁷⁴

One of the key changes made by the 1834 Poor Law Act to the availability of support that a woman could claim for herself and her child was in the different methods of affiliating that child to its father. Prior to the 1834 Poor Law Act, affiliation was a relatively straight-forward process. A woman would appear before the magistrates at the petty sessions and swear to the paternity of her child. If her claim were successful, an order would be made against the father to provide financial support.⁷⁵ The parish would assist in the collection of this, and would pass the money directly to the mother for her support and for that of her child. As we have seen above the suspicion enunciated by the 1834 Poor Law Commission was that many women were misusing these affiliation proceedings, and that some were making a considerable living from the system.

Thus, the 1834 Poor Law Bill as drafted proposed to remove entitlement to any kind of affiliation for the mothers of illegitimate children, and the children were to be the mother's sole financial responsibility with no practical assistance available from the parish. It was indeed suggested that the prospect of a lack of financial support from the parish purse would discourage their indulging in illicit sexual behaviour. The resulting 1834 'New' Poor Law, while still enabling affiliation proceedings, limited them to an application by the parish on behalf

⁷⁴ Bastard Children Act 1732 s1

⁷⁵ Bastard Children Act 1732 s1

of those women who had become chargeable and who had entered the workhouse, out of the private into the social space. At this point they were totally beholden to the parish for their support. For those women who chose not to enter the workhouse, it was not possible for them to affiliate formally their child,⁷⁶ as it was only possible for affiliation proceedings to be brought by the parish to indemnify the public purse for the support of the child. The role of the woman, if she was in the workhouse with her child, was reduced to that of a witness at the quarter sessions, albeit one whose evidence had to be corroborated by a third person, to the extent that

no part of the Monies paid by such putative Father in pursuance of such Order shall at any Time be paid to the Mother of such Bastard Child, nor in any way be applied to the Maintenance and Support of such Mother.⁷⁷

In effect, the mother had been completely de-centred, the financial relationship was between the child, the parish and the putative father; the woman, by her status as a single mother, and inmate of the workhouse (in that she was chargeable to the parish) and thus living in the social space, was relevant to the proceedings only as a witness. This was not a legal measure concerned with the welfare of the child, the mother or the father. Rather, it was an instrument of social control which aimed to impose standards of behaviour upon women by making it difficult for them to behave in any manner other than the most moral and chaste, according to the Commissioners, the politicians, and those who enacted and administered the Poor Laws and the resulting bureaucratic systems. In this way, the middle-class imposed their standards of morality on the poor. It is quite obvious that the intended target of the legislation was control of working-class women's pregnancy and that it was an overt attempt to regulate the behaviour of women in order to make them conform with the dominant norms of polite society. In this respect the parish and the workhouse were performing the role of the 'social police' in seeking to impose the standards of behaviour of the middle and upper class majorities onto working-class women.

As noted above, prior to the 1834 Poor Law, a man could be sworn as a putative father on the word of the woman alone. Section 69 of the 1834 Act required that a woman's word should be corroborated by a witness, and this requirement was retained through the other legislation passed during throughout century. It could be argued that because of this requirement, it could be nigh on impossible for a woman to provide the needed supporting statement for what

⁷⁶ This state of affairs is explained to the eponymous heroine of *Jessie Phillips*. Jessie visited a solicitor who explained to her how the 'new' law would not allow her to affiliate her child to the unpleasant Frederic Dalton, who cannot be held to legal account. In the book and, one suspects, in reality for women in similar (real) positions to the fictional Jessie, her only recourse is to enter the workhouse. Trollope (n72)

⁷⁷ Poor Law 1834 s72

is usually a very private act. In practice the English courts could and did find that payment of any form of financial support at any point by the father would constitute corroborating evidence, as exemplified in the case of *R v George Simmons*.⁷⁸

The example of the *Simmons* case suggests that a limited number of men were held to financial account for the responsibility of their offspring. Just as the discourse surrounding the Poor Law Commission suggested that prior to the 1834 Act women would use an affiliation order as a means of making money from an unsuspecting man, later in the century it appeared that, in a few cases, the man would be held to account for his children, whether or not the woman was unmarried. The case of *Hardy v Atherton*⁷⁹ found that a man was liable for the financial responsibility of his child whether or not the mother subsequently married another man. However, this principle was not followed in *Pearson v Heys*,⁸⁰ which held that, should the affiliation order include the restriction that support would cease on the marriage of the mother, it would indeed cease at that point.

Malthus had pointed out

The father of a child may not always be known, but the same uncertainty cannot easily exist with regard to the mother.⁸¹

This very obvious point emphasises the fact that the primary responsibility for the care and upkeep of the child remained with the woman, a fact confirmed by the various statutes through the century, and this was not to change. A man, should he wish, could withdraw from the life of the child, and if there were no corroborating evidence as to his parental responsibility, he could even deny the child's paternity in a way that a mother simply could not deny her maternity. However, if a bastardy order was found against a man this would have been granted by the magistrates in a very public forum.

To sum up, the first half of the nineteenth century witnessed a change in the way in which single mothers, and the mothers of pauper children, were presented in the prevailing discourse, influenced by the arguments based on the rise of the population echoed in Malthus' essay. There were references to morality, but these were subsumed by the arguments in favour of limiting population, although in the criticism of the ways in which women used the process of affiliation, there was a palpable air of disapproval of the behaviour of certain women prevalent in the evidence given to the Commission. In particular, concern existed that many

⁷⁸ *R v George Simmons* 1859 168 Bell

⁷⁹ *Hardy v Atherton* 1881 All ER Rep 695

⁸⁰ *Pearson v Heys* 1881 All ER Rep 554

⁸¹ Malthus (n33) 71

women affiliated their illegitimate children, not to the actual father of the child, but to 'innocent' or undeserving men, dependant on their ability to pay support. Alternatively, it was suggested that women might affiliate their child to a soldier, 'from whom nothing can be recovered, and who can only be sent to the tread-wheel for a short time',⁸² necessitating the support of the child to be passed to the parish once more, the woman receiving money from the beleaguered rate payers.

3.5 Further Adjustment and Change

In respect of the aims of the bastardy provisions to reduce the incidence of bastard children and their cost to the parish, the 1834 Poor Law was not a success. A report of the Poor Law Commissioners, dated 1844, acknowledged that there had been difficulties in the working of the law designed to reduce the monetary burden to the ratepayers, and suggested that instead of action against the father being driven by the parish, an 'independent civil remedy' should be given to the mother of a bastard to 'remove the barrier which the necessity of chargeability now interposes between the woman and her means of legal redress.'⁸³ In other words it was proposed that the financial relationship was to be directly between the woman and the man, with the parish taking a much reduced role, unless the woman and child were to become destitute and chargeable on their entering the workhouse. As Thane observed,⁸⁴ the guardians privileged the concept of the settled, family, unit, which was echoed by the legislators in attempting to compel women to remain in the domestic circle rather than to seek parish assistance in the public.

While this measure theoretically widened the availability of legal redress to all women whether pregnant or delivered of an illegitimate child, and whether they entered the workhouse or not, the motivation of the commissioners in 1844 remained focussed on the cost to the parish of illegitimate children. Thus, if the mother were to be able to obtain a civil order against the father, she would not, they reasoned, require parish relief. Their report also included the recommendation that the proceedings available to the mother should be 'the cheapest and most direct which can be afforded... and should... be... decided by the justices in petty sessions.'⁸⁵

⁸² Royal Commission on the Poor Laws, *The Poor Law Report of 1834* (First published 1834, SG Checkland & EOA Checkland eds, Penguin Books 1974) Evidence of Captain Chapman, 263

⁸³ CM 31 1844 Report of the Poor Law Commission

⁸⁴ Thane (n20)

⁸⁵ CM 31 1844 Report of the Poor Law Commission

The recommendations of the Poor Law Commissioners were included in the 1844 Poor Law Bill presented to the Commons in February 1844. They addressed many of the issues that had made the bastardy clauses of the 1834 Act unpopular, including an ascription that they had been a contributory factor to the Rebecca Riots.⁸⁶ Therefore, this particular legislation in seeking to minimise the role of the parish (in order that it should be spared the costs of action), theoretically widened the potential availability of financial support to all single women, but in practice limited the practical assistance available to single mothers, adding the threat of a legal penalty for being a 'rogue or vagabond'.⁸⁷

The resulting Poor Law (Amendment) Act of 1844, the so-called 'Little Poor Law', completely removed the role of the parish from any legal action to be taken by the mother against the father, save only where the mother was resident in the workhouse. The transaction became a civil action between the mother and the father, with the parish's involvement limited to those few occasions when the mother and child became chargeable. An application could be made to the magistrates to call the father before them, and to make an order for the recovery of monies spent by the parish in the support of the child while no financial support would be available for the mother. It may appear that this particular legislation widened the availability of support to all women, not just those admitted to the workhouse, but the parishes were explicitly prohibited from taking part in any proceedings to help women to gain support, except in the case of death or incapacity of the mother.⁸⁸ In this new formulation the mother returned to the centre of the legal relationship, while the parish was removed from the equation, save only for occasions of acute financial distress seeing the mother consigned to the workhouse, and inconvenience to the parish was confined to those cases of complete maternal destitution.

The 'little Poor Law' of 1844 was complemented by the 'Act to make certain provisions for Proceedings in Bastardy' enacted in May 1845⁸⁹ which laid down the procedural provisions that would enable a woman to take civil action against the putative father. Such an action would take place before a justice of the peace at the petty sessions, and it was still necessary for a woman's claim of paternity to be supported by corroborative evidence. The 1845 Act also allowed that a woman could 'be assisted in her Application by Counsel or Attorney', presumably seeking to address the fact that legal assistance was no longer available from the

⁸⁶ The Rebecca riots were a series of protests that took place in Wales in response to what was seen as being unfair taxation. Henriques (n18)

⁸⁷ The Vagrancy Act 1824 allowed for the imprisonment of those deemed to be idle and disorderly. The punishments were harsh (hard labour in the House of Correction), and the definition was wide ranging. It was widely criticised for criminalising the poor and needy without any reference to the circumstances that may have left them in such a condition.

⁸⁸ Poor Law (Amendment) Act 1844

⁸⁹ Act to make certain Provisions for Proceedings in Bastardy 1845

parish. Again, while on the face of it this change may appear to be a positive step, it is not clear how many women would have been aware of this, and indeed how many would have been in a financial situation to be able to afford to employ counsel or attorney. Without this knowledge or financial ability to employ assistance, women would have remained unable to gain any help for their claims.

There are few reported cases relating to the ways in which the Poor Law provisions and those of the later bastardy laws directly impacted upon the fathers of illegitimate children, and these tend to be towards the end of the century. Those that there are show that various attempts were made by fathers to evade the statutory poor law financial responsibility for the child, including arguments surrounding the location of conception of the child as in *Hampton v Rickard*,⁹⁰ whether a woman was single when she applied for the order as in *Stacey v Lintell*⁹¹ or, indeed, whether a man was in the jurisdiction and whether it were possible for an order to be served on him as in *R v Farmer*.⁹² The low incidence of reported cases was possibly because of the cost of going to law. Perhaps those that there are were brought either with the assistance of well-meaning lawyers acting pro bono or brought by those who could afford to go to law, where the fathers were of the middle or upper classes. However, they do give a strong impression that men would attempt to be released from their responsibilities of support for their children when possible and that the courts would, on occasion, hold them firmly to account. As these cases were heard in the appeal courts, the parties must have had access to some form of representation, and thus it is possible that these cases were limited to those of a higher class who were able to afford the costs of litigation.

The Bastardy Laws Amendment Act of 1872⁹³ had set the maximum rate of support as that of five shillings a week for the first thirteen years of a child's life, which amounted to a significant on-going financial commitment. Should the mother of the child enter the workhouse, the father might be pursued for payment by the representatives of the parish and he might not be able to escape his financial responsibility. The Poor Law Amendment Act 1868 had legislated that the workhouses should act as the collection agencies for men to whom a child had been affiliated. Requests for Bastardy Orders were heard in open court at the magistrates courts and petty sessions and were therefore a matter of public knowledge.⁹⁴ These were further

⁹⁰ *Hampton v Rickard* 1874 All ER Rep 1297

⁹¹ *Stacey v Lintell* 1879 All ER Rep 1166

⁹² *R v Farmer and another* 1891 All ER Rep 921

⁹³ Act to Amend the Bastardy Laws 1872

⁹⁴ The British Medical Journal reported in 1896 that affiliation hearings at the petty session were one source of prospective clients for the Baby-Farmers. 'Report on the Baby Farming System and its Evils' [1896] *British Medical Journal*, 22 February 1896 489

reported in the proceedings of the meetings of the Poor Law Guardians attached to the workhouses and it is therefore possible to make some estimation of the number of men who were found liable to pay for their children. An examination of the Workhouse minute books for the Canterbury Union between 1850 and 1890 shows that were 46 successful bastardy orders awarded by the Canterbury magistrates in the Canterbury area, consisting of 15 parishes.⁹⁵ Given that Canterbury was quite a sizeable conurbation in that period, and a barracks town to boot,⁹⁶ it is unlikely that this number reflects accurately the total requests to the magistrates.⁹⁷

The law imposed a financial burden and not physical custody on the fathers of illegitimate children. Until the 1834 Poor Law they could have had a child sworn to them by a woman with no corroboration necessary and, as we have seen, this was possibly a matter of some anxiety. After the 1834 Act, corroboration of paternity was necessary, which provided some level of protection for the putative father. However, during the second half of the century, the courts were creative with the form that corroboration should take, particularly after the passage of the 1844 Act:

it is quite clear that the policy of that Act [Poor Law Amendment Act 1844], and the subsequent Acts was to throw on the father a portion of the burden of maintaining the child.⁹⁸

The 1844 legislation was thus aimed at defraying the expense of an illegitimate child as much to the father as possible, and saving the parish purse while making financial responsibility some kind of incentive for men to conform with the norm of chaste behaviour save in marriage.⁹⁹ It is perhaps understandable how these financial penalties could have compelled some men to seek to persuade women to dispose of their illegitimate children on a more permanent basis. Certainly evidence presented at the trials of the baby farmers (and, in particular, that of Jessie King), in the contemporary discourses and in the evidence presented to the select committees suggest that, on occasion, men or their families would pay a fee to a baby farmer in order to ease the financial pressure of an illegitimate child.

⁹⁵ Workhouse Minute Books, Canterbury Incorporation 1850-1890. Canterbury Cathedral Archives Ref CCA-CC-Q/GB/E

⁹⁶ The Canterbury workhouse records show that, on 19 April 1859, the infirmary reported that there was a high number of prostitutes being referred to the house in 'a state of disease'. A further entry shows that the Superintendent of Police gave 'aid to suppress the nuisance'. Workhouse Minute Books, Canterbury Incorporation 1850-1890. Canterbury Cathedral Archives Ref CCA-CC-Q/GB/E

⁹⁷ This is an area of legal history which is woefully under-researched and which needs further investigation. However, it is outside the scope of the current thesis.

⁹⁸ *Hardy v Atherton* 1881 All ER Rep 695, Huddlestone at 696

⁹⁹ As Martin Wiener has pointed out, during the 19th century the law focused on crimes thought to be typically associated with men, such as crimes of violence. The dominant agenda was increased control of deviant men. MJ Wiener, *Men of Blood* (Cambridge University Press 2004)

Nonetheless, there was undeniably a safety net in place for those women who remained vulnerable, and who became destitute and in need of practical support. The 1834 and 1844 Poor Laws had formalised and regulated the functioning of the workhouses, and centralisation of their management in London aimed to provide a parity of provision across the country. However, stigma remained for those who entered the workhouse, and the experience was not without trauma, to say the least. Contemporary stories of cruelty abounded¹⁰⁰ and the system was regimented and severe. Contravention of the rules might result in a stay in a workhouse penitentiary or a period of time picking oakum.¹⁰¹ I argue that the fears associated with the workhouses were a considerable driver in a woman's reluctance to seek parish assistance,¹⁰² and that this contributed strongly to the construction of her child as being 'inconvenient' to her. I return to this in the next chapter.

3.6 Conclusions

This chapter has laid the foundations to answer the first of my thesis questions – why it was that paid childcare taking place in private attracted government interest during the period 1834-1897. I have examined the inception of the 'New' Poor Law of 1834, linking it with its roots in Malthus' *Essay on the Principle of Population*,¹⁰³ and argued that the bastardy provisions of the 1834 Poor Law and subsequent legislation were intended to minimise the cost to the parish of the support of bastard infants. By ensuring that the mothers of illegitimate children would only be able to access financial support by leaving their homes and entering the public workhouses, legislators and Poor Law officials sought to impose standards of morality and behaviour on the working-class women who were at risk of becoming single mothers. In this way, the Guardians and the legislators perpetuated the Victorian notion of pregnancy, motherhood, and unruly women as needing to be confined within the home and the domestic circle,¹⁰⁴ albeit now, as we shall see in the next chapter, she was to be confined in the very public and punitive arena of the workhouse. It is, perhaps, no surprise that many women were not receptive to the prospect of entering the workhouse were they to become pregnant. In the next chapter I develop the answer to the first thesis question which is why it

¹⁰⁰ See for example GW Baxter, *The Book of the Bastilles* (Private Binding 1841) British Library reference: W19/8463

¹⁰¹ L Mackay 'A Culture of Poverty? The St Martin in the Fields Workhouse 1817' (1995) 26(2) *Journal of Interdisciplinary History* 209-216

¹⁰² For example, Henriques quotes from a report of a Commission of Inquiry for South Wales of 1844 that the commissioners had 'seen two girls with bastard children who would not go into the workhouse, and could not filiate the children for lack of corroborative evidence.' The children were in a state of starvation. Henriques (n18)

¹⁰³ Malthus (n33)

¹⁰⁴ Carol Smart, 'Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

was that the subject of paid-childcare taking place in the private home of the care-giver became the object of official government interest between 1834 and 1897, by examining the options realistically available to these woman. I start with the provision offered by the state workhouses which clearly represent provision in the social space. I then turn to those possible solutions for an unmarried, pregnant, woman who might wish to keep the fact of her pregnancy secret. These solutions developed organically in order that a woman might keep the knowledge of her pregnancy within the domestic circle and to allow her to retain her employment and/or security of home, and includes charitable organisations which, I will argue, in many ways represented the social space. I also start to examine the quasi-industry baby-farming which, following a number of reports of increasing numbers of corpses of infants abandoned in the streets, sparked public and official interest in matters associated with the welfare of bastard children, ultimately leading to recognition that infants remaining in the domestic circle warranted official attention in order to ensure their safety.

Chapter Four: Even to the very last, baby's road to the grave is made safe and smooth¹

In the second half of the nineteenth century, what was an unwed mother to do with an inconvenient child? Her choices were limited and stark. If she were lucky, it might just be practicable for her to keep her child, possibly supported financially by the father. However, if she were unable to marry him, this option came with the risk of being regarded as an outcast by polite middle and working class society. If her home depended on her employment, as was the case for a number of working class women employed as servants, she ran the risk of being cast out, not just from her employment but from her home. She could be faced with an invidious choice.

The last chapter considered the Poor Law and various pieces of bastardy legislation which made it difficult for an unmarried woman with a child to access any kind of practical, financial, support, either from the parish or the father of the child. In the middle of the nineteenth century, the provisions of the 1844 Poor Law (Amendment) Act and the 1845 Bastardy Act applied. Thus, it was legally possible for a woman to seek the assistance of the courts to gain financial support from the father of the child, although she retained financial responsibility for the child.

In this chapter, I continue to address the first of my research questions; how it was that paid childcare became an object of official interest for government. In order to do so I consider the solutions available to a single mother during the second half of the nineteenth century including the workhouses, funded by parish ratepayers and controlled by central government. I also consider the alternatives, including charities, regulated and funded by the trustees of the foundations to which they were answerable, and the baby farmers whose work was not regulated and existed completely outside the law away from any kind of regulation. It is this last option that, I argue, precipitated official government interest into paid childcare.

I begin by considering the possible help offered to single, pregnant women by the workhouses, access to which entailed leaving the privacy of her home in order to enter the very public workhouse. In the period after the 1834 Poor Law, the workhouses developed a reputation for their punitive nature and hard way of life which may have deterred women from seeking official help. I then focus on some of the charitable alternatives available to women who did not want to enter the workhouse but needed support outside their families. Some of these

¹ B Waugh, 'Baby-Farming' 57 (1890) *May Contemporary Review* 700

alternatives necessitated a move into an environment in which a woman's behaviour would be scrutinised and judged by the social police, whether in the guise of Poor Law officials, or workers for a charitable foundation. It would be impossible to access support without self-identifying as being in need. Here, in the social space, a woman would be subject to the gaze of public officials, unable to remain in the privacy of her home, subject to the judgment of those whose help she sought and to the attempts which would be made to control or alter her behaviour. She would, in effect, become public property.

The most extreme option for a desperate woman might be to kill her child. I examine the popular fear of infanticide, which was prevalent during the second half of the century. Campaigners such as Edwin Lankester and Andrew Wynter warned in the 1860s of the high numbers of infants whose corpses were seemingly scattered in the streets, leading to calls for increased control over expectant mothers. The final option for an unmarried woman who had to find a solution for a bastard child was that of the baby-farming industry, which I shall consider in the next chapter.

4.1 The Workhouse

In comparison to the academic commentary relating to the Poor Laws of 1834 and 1844, commentary regarding the second half of the nineteenth century is not as plentiful. This is, perhaps, not surprising – that legislation was a sea change to the provision of support for the poor. However, as we shall see, due to popular opposition to the implementation of the 'new' workhouse system, it was not possible to implement quickly many of the provisions of the 1834 Act. Hence new buildings and structural arrangements for the new system were not constructed until the second half of the century while the organisation of the bureaucracy needed to administer the system was similarly delayed, which implies that the 'new' legislative provisions took some time to be accepted. Mary MacKinnon has examined how the campaign against the provision of 'outrelief' for those loath to enter the workhouses continued into the second half of the century.² The Poor Law authorities and the local officials, known as the Guardians, in particular, were anxious that the provision of support for women should not interfere with the prevalent concept of family and women's place within it. Thane notes how Guardians were 'inclined not to give poor mothers outdoor relief to enable them to bring up their families at home',³ presumably in an attempt to force the father and the wider family to take financial responsibility. The vast majority of the Guardians of the workhouses were male,

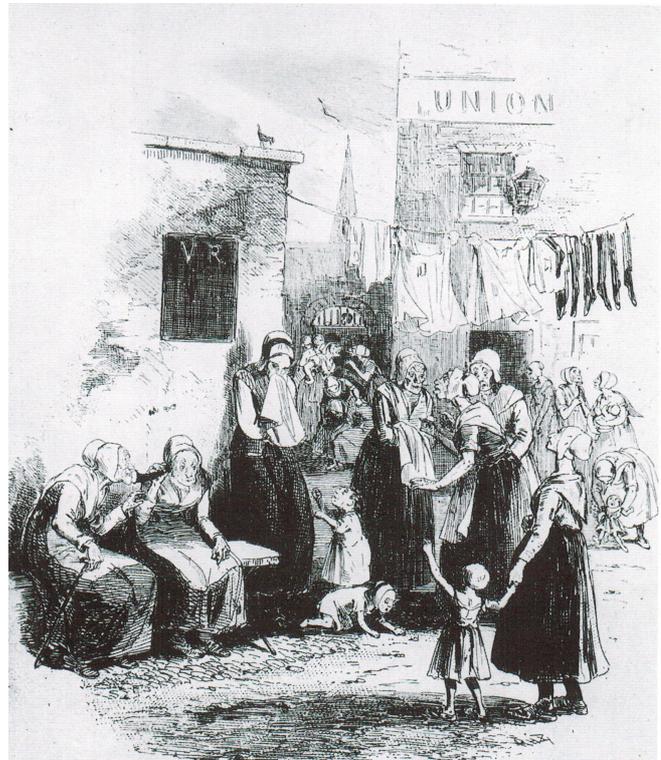
² Mary MacKinnon, 'English Poor Law Policy and the Crusade against Outrelief' (1987) 47/3 *The Journal of Economic History* 603

³ Pat Thane, 'Women and the Poor Law in Victorian and Edwardian England' (1978) 6 *History Workshop* 29 37

representing the communities in which they lived and worked and the popular ethos of control of women by men – within our without the home. Typical of these is the Chairman of the Andover Board of Guardians in the 1830s who was ‘the harshest type of Guardian, who made even applying for relief as burdensome as possible.’⁴ This view of the Guardians was repeated in novels of the time, such as *Jessie Phillips*,⁵ and must have been familiar to the reading public. In the second half of the century, there were campaigns for women to stand as Guardians for the poor, presumably as it was felt that this would ameliorate the punitive stance of some Guardians.⁶

As we saw in the last chapter, during the first half of the 19th century, the workhouse provisions of the 1834 and 1844 Poor Laws were much criticised by contemporary authors and campaigners. The ‘terrors’ of the

workhouse were as familiar to Victorian audiences as the memory is to us in the twenty-first century. An contemporary illustration by Hablot K Browne, thought to have been drawn around 1840⁷ (right), depicts the women’s yard of an unnamed workhouse. The women wear a uniform, their faces are pinched and grotesque, and at the very centre of the image are two children, one reaching up to its mother who appears to be weeping, and the other, an infant, crawls unnoticed on the ground. The image is that of an unhappy place, filled as it is with grotesques and women in despair while children lack for care.



We are accustomed to think of the workhouses in this manner. Earlier in the century Dickens had described the misery of *Oliver Twist* during his time in the workhouse and there are other tropes of fear of the workhouse during the nineteenth century. It is therefore tempting to believe without question the prevailing discourse of shame, one of incredible longevity.

⁴ Norman Longmate, *The Workhouse* (Pimlico 2003) 68

⁵ F Trollope, *Jessie Phillips* (First published 1842-43, Nonsuch Publishing 2006).

⁶ CA Biggs, ‘Women As Poor Law Guardians’ (1881) *The Englishwoman's Review* (Thursday, September 15, 1881) 398

⁷ Getty Images, ‘Workhouse Yard’ <<http://www.gettyimages.co.uk/license/3325424>> accessed 18 October 2016

However, it is also worth remembering that the workhouse provided in a number of instances the only possible access to medical or other assistance for the very poorest in the community. The prevalent view of the workhouses as being places of cruelty, both in the nineteenth and twentieth centuries has also been challenged.

Much of what has been written about conditions in the workhouses is associated with the reforms of the 1830s and 1840s. The popular discourse of the time focussed on the cruelty of the workhouse. Thus, *The Times* between 1837 and 1842 printed a number of tales of cruelty experienced by paupers at the hands of the poor law guardians.⁸ The nickname for the workhouses was the 'Bastilles', the term deriving from the French garrison of that name, with its associations with the beginning of the French Revolution and speaking, perhaps, of a fear greater than that of mere domestic cruelty. Pamphleteers and contemporary writers, such as those represented in the collection amassed and re-published by GRW Baxter,⁹ wrote diatribes criticising the operation of the workhouse, including the poor diets, the separation of families, and the punitive regimes. In a pamphlet in this collection, William Cobbett quotes a letter to *The Times*, signed by 'An Englishwoman' criticising the 'New Poor Law', in which she suggested that when considering the possible cruel fate of the workhouse, a mother's despair might

turn to madness, and infanticide by the climax to seduction? If such be the case, if one infant's life be immolated at the altar of Malthusian expediency, its cry shall go up to heaven, and be heard far above the din of faction or party...¹⁰

But putting aside the stories of cruelty, poor diet and the scandals associated with their regimes, the workhouse can be seen very clearly as an instrument of social control. The physical position of those houses built following the New Poor Law tended to be removed from the rest of society. As Henriques commented, '[g]oing to the Union workhouse meant being moved far from one's own community.'¹¹ Uniforms were to be worn, for example in the St Martin in the Fields workhouse in 1817 'Women pregnant with, or the mothers of, illegitimate children, wore blue and yellow dresses'.¹²

It should not be forgotten that the legislators' main intent was to deter those who might be tempted to seek assistance from the workhouse, thus reducing costs to the ratepayers. Newman suggests that the very architecture and location of workhouses is indicative of local

⁸ D Roberts, 'How Cruel Was the Victorian Poor Law' (1963) 6(1) *Historical Journal* 97

⁹ GW Baxter, *The Book of the Bastilles* (Private Binding 1841) British Library reference: W19/8463

¹⁰ Quoted in GW Baxter, *The Book of the Bastilles* (Private Binding 1841) British Library reference: W19/8463

¹¹ URQ Henriques, 'How Cruel Was the Victorian Poor Law?' (1968) 11(2) *Historical Journal* 365, 366.

¹² L Mackay, 'A Culture of Poverty? The St Martin in the Fields Workhouse, 1817' 26(2) (1995) *Journal of Interdisciplinary History* 209 216

attitudes to poverty and the poor,¹³ while Englander notes that the choice of architecture led to '[the] spectacle of large efficient prison-like establishments' which would 'strike terror among the able-bodied population.'¹⁴ These 'new' edifices of the Poor Laws represented visually the punitive atmosphere of the workhouse. In Ripon, North Yorkshire, for example, a number of small workhouses in the area were replaced in 1854 by one much grander and, physically, more prepossessing. Its architect had also designed Armley Jail, and he included an imposing (locking) gate, courtyard, and cell-like rooms for the inmates of the Ripon workhouse. The workhouse is today a museum which focuses on the misery and the hardships of past inmates for interested visitors. It states on its website that 'The grim atmosphere of the Workhouse Museum has been carefully maintained in order to give visitors a sense of what life in a Victorian Workhouse could have been'.¹⁵ This reinforces the dominant image of the workhouse as being forbidding and unwelcoming. Many of the workhouses were not constructed until a considerable time after the passing of the 1834 New Poor law, delays caused by the initial outcries against the legislation. This delay would have contributed to a possible lack of opportunity for those women who wished to enter the houses during that period.

The regime of the workhouse, therefore, can be seen as one of routine punishment, of the inmates being removed from their community, and of being marked out as transgressant - that transgression made clearly visible. The statistical returns and categorisation of inmates demanded by the New Poor Law counted those who were subject to the bastardy legislation and to the workhouse regime, reporting the usage and attendance at the workhouses to central government. At the time these provisions were nominally intended to promote increased morality and adherence to societal norms. But, as Henriques further noted, the workhouses and the workhouse test were accepted as a 'means of disciplining the rural labourers.'¹⁶ It is clear that the workhouses intended to control, not to eliminate, pauperism and that the quantification and enumeration of those entering the workhouses contributed to the building of a new science of knowledge associated with the care of the poor and further of the support of illegitimate children.

But is this negative view of the workhouses entirely fair? David Roberts, writing in 1963, suggested that the Poor Law was not, in itself, cruel and that the assistance offered to the truly

¹³ C Newman, 'To Punish or Protect: The New Poor Law and the English Workhouse' 18 (2014) *International Journal of Historical Archaeology* 122

¹⁴ D Englander, *Poverty and Poor Law Reform in 19th Century Britain* (Longman 1998)

¹⁵ Ripon Museums, 'Workhouse Museum and Gardens'

<http://riponmuseums.co.uk/museums/workhouse_museum_gardens> accessed 18 October 2016

¹⁶ URQ Henriques, 'How Cruel Was the Victorian Poor Law?' (1968) 11(2) *Historical Journal* 365

destitute was very welcome. Further, Roberts suggests that this was the view of contemporary historians, and thus that the tales of cruelty disseminated at the time, and since, were exaggerated.¹⁷ It is true that scandals were widely reported in the contemporary press as well as being immortalised by authors such as Charles Dickens.¹⁸ However, we should not forget that for those in need the workhouses provided proper accommodation and sustenance as well as access to medical care. The availability of workhouse accommodation increased as the nineteenth century advanced, and as public opposition receded. There is evidence to suggest, as in the example of the notorious baby farmer, Amelia Dyer, convicted of the murder of infants in her care in 1896,¹⁹ that the workhouse became a short-term solution to an acute problem of poverty, and that for some women the workhouse enabled them to survive periods of unemployment and a lack of lodging.²⁰ MacKinnon notes that as the century proceeded, workhouses became less and less full, and that in most parts of the country they were running at less than 50% capacity in the 1850s.²¹ Perhaps this was because of the changing needs of the poor due to the migration from the rural to urban areas. But perhaps, also, it was because of the stigma and fear associated with the workhouse.

While it was accepted that a 'certain class' of woman, namely prostitutes, might not be disinclined to enter the workhouse to get support, for those women whose 'fall from grace' might be temporary the workhouse was seen to be an invidious choice, one which might adversely affect a woman's redemption and damage her reputation. Indeed, it might not be possible for a woman to enter the workhouse were she pregnant. The minute books of the Canterbury Incorporation show that on the 11 May 1875, a 'young woman who was enceinte applied to be admitted into the house. The applicant was refused...'.²² This is only one example from one Union, but one which supports the evidence of Daniel Cooper, Secretary to the 'Society for the Rescue of Young Women and Children', given before the 1871 Select

¹⁷ D Roberts, 'How Cruel Was the Victorian Poor Law' (1963) 6(1) *Historical Journal* 97

¹⁸ While one should treat with caution the evidence presented in contemporary novels, it is striking that in 'Oliver Twist' (published in 1838), Charles Dickens lists examples of the cruelty to which workhouse children were subjected, and in particular that of an infant scalded to death. This was echoed in a much later scandal of the Wigan Workhouse, reported in the Illustrated Police News of 18 January 1868, where an infant was, indeed, scalded to death.

¹⁹ Dyer entered the workhouse on a number of occasions, seemingly as a form of respite or in avoidance of her creditors. In the Bristol workhouse in 1895 she met 'Grannie' Smith who was to live with her. 'Grannie' Smith reported her suspicions regarding children in Dyer's care to an NSPCC Inspector. This led to an investigation into the household, and to Dyer's arrest for murder. A Rattle & A Vale, *Amelia Dyer: Angel Maker* (Andre Deutsch 2007)

²⁰ M Levine-Clark, 'Engendering Relief: Women, Abledbodiedness, and the New Poor Law in Early Victorian England' (2000) 11(4) *Journal of Women's History*

²¹ Mary MacKinnon, 'English Poor Law Policy and the Crusade Against Outrelief' (1987) 47(3) *The Journal of Economic History* 603

²² Workhouse Minute Books, Canterbury Incorporation 1850-1890, Canterbury Cathedral Archives Ref CC/Q/GB/A28

Committee.²³ There was also the very practical problem as to how a woman who might enter the workhouse to give birth should find some means to support herself so that she might at some point leave and support herself and her child, particularly if she was not able to affiliate the child and to gain support from the father.

Daniel Cooper's evidence, to the 1871 ILPA select committee showed that a high proportion of the women rescued by the 'Society for the Rescue of Young Women and Children' (nine out of ten) were urban domestic servants²⁴ and,

that in many instances the fathers of their children are their masters, or their masters' sons, or their masters' relatives; and therefore they find it difficult, from the circumstances in which they are placed with their masters, to bring it home to them.²⁵

While this statement reflects on the difficulties of affiliation of a child born as the result of an assignation within the woman's place of employment, it also speaks of the limited social circles in which this class of young women was likely to move.²⁶ Harrison suggests that for some middle-class men, female servants were, in some cases, seen as being a 'solution' to the problem of sexual continence in middle-class men, and certainly it would be preferable for men in a middle-class family to satisfy their sexual urges with a servant than of availing themselves of the service of prostitutes.²⁷ As for female servants, their activities were limited to those approved by the mistress of the house, boyfriends, or 'followers', were habitually forbidden,²⁸ and so their lives were socially circumscribed.²⁹ Thus the only attractive (for whatever reason) young men that they were likely to meet would be associated with the family that employed them and in whose house they were likely to live. Entry into the workhouse

²³ HC 372 (1871), Report of the Select Committee on the Protection of Infant Life, para 2507

²⁴ As I have noted in the last chapter, the effect of changing work patterns on the lives of domestic servants has been little considered by authors such as Neff, Pinchbeck, and Rendall. Ebery and Preston point out that the term 'domestic servant' covers a great number of roles with distinction made not only in the position itself (eg the status of Cook being higher than that of Housemaid) but also between houses. Working in the house of the upper classes would have had significantly more status than a position in a house of the new middle classes. M Ebery & B Preston, 'Domestic Service in Late Victorian and Edwardian England, 1871-1914' (1976) *Geographical Papers* 11

²⁵ HC 372 (1871), Report of the Select Committee on the Protection of Infant Life 114

²⁶ This is depicted by the eponymous heroine of George Moore's novel, first published in 1894. In the novel, *Esther Waters*, a young, innocent, and deeply religious young woman enters service and is made pregnant by a fellow servant. Esther's struggle to support herself and her son, including a brush with a baby-farmer, was controversial on publication, but gives evidence that the possibility that a young woman may be faced with such difficult choices continued to be well-known at the end of the century, three years before the notorious case of the real-life baby-farmer, Amelia Dyer. G Moore, *Esther Waters* (First published 1894, Oxford University Press 2012)

²⁷ JFC Harrison, *Early Victorian Britain* (Fontana 1988) 120

²⁸ P Horn, *The Rise and Fall of the Victorian Servant* (Gill & MacMillan 1975) 92

²⁹ In an advice book aimed at the new middle-classes, Mrs Eliot James advised her reading public as to the best ways in which to recruit and manage their servants. One of the issues dealt with by her is the danger of recruiting servants directly from the workhouses and of the tricky relationship between servant and mistress. The tone of the book is of kindness and moral improvement, for both parties. Mrs E James, *Our Servants: Their Duties to Us and Ours to Them. Including the Boarding-Out Question* (Ward, Lock, & Co 1883) 29

would bring them into contact with women of more dubious professions, and Cooper suggested in his evidence to the 1871 Select Committee that were it not for organisations such as his, some would be tempted to lead an 'evil life', to work as prostitutes to support their children. His view of the workhouse was that it should be reserved for the truly destitute, the kind of people with whom a 'decent' young woman should not consort.

From 1860 onwards, criticism of the workhouse system was less than it had been in the years immediately after the Poor Laws of 1834 and 1844, although it had not ceased. For example, writing in the *Contemporary Review* in 1870, Florence Hill³⁰ attacked the ways in which 'pauper children' were kept and educated in large school, missing out on the benefits of a family upbringing.³¹ Other contemporary authors, such as Andrew Mearns brought to public attention the miseries of 'outcast London' in 1883.³² There does, however, seem to be a tendency to situate the problems of poverty in urban areas, which is somewhat ironic given that the authors of the 1834 Poor Law legislation were anxious to address issues of the cost of support of the rural poor.

In the second half of the nineteenth century the Poor Law system provided a safety net for those in real need of practical support. However, in order to access that support, a pregnant woman would have to first leave the privacy of her home, whether with her family or an employer, and gain entry to the workhouse and put herself under the scrutiny of the workhouse officials working in the shared social space. This may have been a difficult decision for any woman to make, but particularly odious were she repelled by the thought of the punitive regime of the workhouse, but for most single women, the fear could be amplified by the thought that she might not be able to leave the workhouse if she were not able to support herself and her child, particularly if she was not able to affiliate the child to gain financial support from the father. For a woman, loath to enter the workhouse she might therefore seek another solution to her problem and the charitable help available at the time.

³⁰ Florence Hill was a noted reformer in the areas of prison reform and Poor Law reform. She was particularly concerned with the treatment of pauper children and orphans. She was an advocate of the 'boarding-out system', which removed many children from the workhouses to live with foster parents, supervised by the Poor Law Authorities. Deborah Sara Gorham 'Hill, Rosamond Davenport (1825–1902)' in *Oxford Dictionary of National Biography*. Ed HCG. Matthew and Brian Harrison. Oxford: OUP, 2004. Online ed Ed David Cannadine. May 2007.

³¹ Florence Hill, 'The Family System for Workhouse Children' (1870) *The Contemporary Review* Aug 1870/15 240

³² Andrew Mearns, 'The Outcast Poor', (1883) *The Contemporary Review* Dec 1883/44 916

4.3 Charity

Should a woman wish to support herself and her child financially by working, she was faced with a difficult decision, how to access care for her child, particularly if she had no family available to support her. In his evidence to the 1871 Select Committee, Cooper recognised the difficulty faced by those women who might wish to return to service, particularly as many situations would not allow for a resident infant. The Rescue Society aimed to support those who had 'fallen', to rescue them and place them in employment, primarily domestic service. This resulted in a difficult decision for a mother who might not wish to give up her child but for whom it would be practically impossible to keep it with her. Some charities sought to assist women to be able to stay out of the workhouse, and to return to employment. But, how practically could these women be helped?

Perhaps one of the most famous of the charities aimed at supporting children at the time was The Foundling Hospital, founded in 1739 by George Coram, which 'adopted' illegitimate foundling children and took total responsibility for their upbringing.³³ In fact, 'foundling' is a bit of a misnomer in the context of Coram's hospital, meaning as it does a child whose parents are unknown. Unlike foundling hospitals in other countries which took in abandoned children anonymously, no matter who were the parents or the situation of the mother, Coram's hospital took children directly from the arms of their mothers, and vetted them in their applications for the admittance of their children.³⁴

Coram had identified the need in the eighteenth Century for some place of sanctuary for unwanted children and had provided for the creation of the Foundling Hospital in London. Here a woman, if judged to be 'respectable', might be able to leave her child to be cared for with the possibility of a better, more secure life than she could provide. Unlike foundling hospitals in Europe at this time, it was not possible for a woman to leave her child without answering to the Hospital authorities as to her identity and her reputation. Thus, even at the point of giving up her child, a woman's behaviour and her character was scrutinised, this may not have been direct social control, but implicit as those who had not conformed with society's ideals of respectable behaviour were excluded.

This was to be the only foundling hospital in England and it cared for a relatively small number of children per year, in spite of a huge potential need. The governors of the hospital had found

³³ G Pugh, *London's Forgotten Children: Thomas Coram and the Foundling Hospital* (The History Press 2007)

³⁴ RK McClure, *Coram's Children: The London Foundling Hospital in the Eighteenth Century* (Yale University Press 1981)

that there were more applications for admittance than there were funds available and the possibility of admittance was soon to be limited.³⁵ Tokens left with the children by the mother (and sometimes the fathers) hint at the fact that all not all children received into the hospital were born in similar circumstances. Some are very modest, a button perhaps, while others were slightly more lavish.³⁶ Some of the children who entered the foundling hospital were possibly the result of illicit relationships between servants and members of the family employing them while others, the hospital records showed, were born into a family in poverty. All were left to be adopted by the organisation, to be cared for, to be educated, and to be launched upon the world, usually in the case of the girls as a domestic servant or, in the case of the boys, agricultural workers or the armed services.

In June 1801 the hospital governors made the decision that from that point only illegitimate children should be eligible for admission to the hospital. Not all of the children whose mothers applied were admitted to the hospital; five children were turned away for every child admitted. Clearly, there was a need for asylum for children whose parents, for whatever reason, were not able to care for them and this one organisation could not possibly provide a haven for all those children and parents in need. Thus for the few who were admitted, there were many more whose existence presented their parents with a challenge. Successful admission was decided on the results of a ballot, held in front of those who subscribed to the charity, mainly well-to-do women in their own right or the wives of men prominent in society. If a child was judged to be of good health, the mother was given a token. Lots would then be drawn to decide which children should enter the hospital and which would be refused.³⁷ This was hardly a private occasion and one can only imagine the distress for mothers whose behavior had been judged and who might still not gain admission for their child. What happened to those children or mothers who were not successful is not known.

This example of the lack availability of provision at the Foundling Hospital is typical of the charities of the time. Supply of charitable and practical assistance was constantly outstripped by demand as evidence presented to the Select Committee of 1871 showed.³⁸ There were far more illegitimate children and far more desperate mothers than could be helped by the charities of the day.³⁹ Towards the end of the century too, charity itself was under scrutiny.

³⁵ Pugh (n33)

³⁶ The Foundling Hospital Museum, Brunswick Square, London, exhibits a collection of these tokens.

³⁷ Pugh (n33) 94

³⁸ See for example the evidence of Mrs Susannah Meredith (Female Prisoner's Aid Society); Reverend Oscar Thorpe (Incumbent at Christ Church, Camberwell), HC 372 (1871) Report of the Select Committee on Protection of Infant Life.

³⁹ As we shall see in subsequent chapters that examine the evidence presented to the Select Committees for the Protection of Infant Life.

Bodies were formed to consider possible solutions to the question of the poor, such as the 'London Society for Organising Charitable Relief and Repressing Mendicity' (commonly known as the Charity Organisation Society, (COS)).

The COS was, as David Owen notes, a somewhat self-confident organisation, unwilling to cooperate with other organisations, or to take account of critics of its work.⁴⁰ The society's aims included the rationalisation of charitable relief, including those institutions created and maintained by the Poor Laws, considered by the COS to be inherently lax. Poverty and pauperism were to be attacked as enemies, with the ultimate aim that they should be defeated and eradicated. Private charity, in their opinion, should only be allocated to the truly deserving, while those who did not deserve such charity should rely on public relief (workhouses). The COS was anxious to discourage begging (mendicity) and the indiscriminate allocation of alms in general, and the Poor Laws themselves were under attack from those who felt that they encouraged laxity and laziness in the poor. Typical is an article of 1868, in which the Guardians of the Poor in London were criticised for 'mismanagement'.⁴¹ This criticism is very reminiscent of the discourse of the 1830s in general, and of Malthus' essay in particular, and is typified by an article published in *The Contemporary Review* in 1875 in which the author suggested that

The more the Poor are allowed to believe that there is somewhere at hand a fund on which they can ultimately be *sure*, each one of them, to be able to draw for the supply of what it is their own primary duty to provide for themselves the worse.⁴²

The tenor of this quotation is strikingly similar to the comments relating to the abolition of the 'old' Poor Law and the passing of the new in 1834. The article's criticisms of the working of the Poor Law were echoed in the same edition of *The Contemporary Review* by W Walter Edwards, a member of the COS, who suggested that the Poor Law should be completely abolished for many of the same reasons.⁴³ Just as we saw in chapter three, the availability – or lack of it – of financial and practical support was, it was suggested, a valid tool of social control. It is difficult to think of it this as a carrot rather than a stick, the conditions facing those in need smack far more of a stick of direct control.

Difficult as it may have been for an orphaned or abandoned child, it is not to say that there was no possibility of help. Infants lodged in the workhouses without their mothers, either abandoned or orphaned, had their champions. Florence Hill, the social reformer, wrote

⁴⁰ D Owen, *English Philanthropy 1660-1960* (Harvard University Press 1964) p230

⁴¹ EW Holland, 'The Poor Laws and Metropolitan Poor Law Administration', (1868) *The Contemporary Review* 8 502

⁴² Lyttleton, 'The Poor Laws' (1875) *The Contemporary Review* 26 169. Given the date of publication of this piece, it is reasonable to assume that the author of this particular piece was 4th Baron Lyttleton (1817-1876).

⁴³ W Walter Edwards, 'The Poor Law: A Proposal for its abolition' (1875) *The Contemporary Review* 26 639

passionately about the need for children to grow within a family environment rather than the wards of a workhouse,⁴⁴ and some workhouses would ‘board-out’ their children to foster parents. The homes in which the children would be lodged would often be supervised by volunteer ladies, blurring the lines between the state-run workhouses and philanthropic intervention.⁴⁵ The philanthropist and campaigner, Dr Barnardo, was even prepared to appear before the courts and risk the rigours of the law in order to prevent the return of children under his care to what he believed to be a sub-standard family situation.⁴⁶ But, as said above, the availability of charitable help for women struggling to find a suitable home for their infants was far outstripped by demand.

4.4 Support from the Family and Community

In the nineteenth century it was possible for some women to survive and to support their children themselves, due to the support of their family and/or community, in spite of popular disapproval for the mother of a bastard child. There is some evidence to show that in rural communities, ironically the very communities at which the 1834 Poor Law was focussed, women would keep and support their illegitimate children, in spite of the fact that they might be admonished by authority for their illegitimate status.⁴⁷ As was described in chapter three, one of the aims of the ‘new’ Poor Law was that responsibility for the support of illegitimate children could be passed back to the family, then direct familial control exercised over women.

Carl Chinn suggests that in working-class urban communities, there was a strong culture of ‘collective self-help’ which led to women sharing the burden of child care amongst them.⁴⁸ This may be because of an ethos of mutual support, but it could also be indicative of different possibilities of employment. In some urban areas in the nineteenth century, such as Birmingham, the geographical focus of Chinn’s study, it was not uncommon for women to be employed as outworkers, making matchbooks, or carding hooks and eyes, for example, while in rural areas, workers could care for their children as the mothers worked in the fields and elsewhere in agriculture. It was also not uncommon for an illegitimate child to be brought up within the wider family. For example, there are apocryphal stories of children who discovered

⁴⁴ Florence Hill, ‘The Family System for Workhouse Children’, (1870) *The Contemporary Review* Aug/15 240

⁴⁵ Evidence of Joanna Hill, HC 346 (1890) Report from the Select Committee on the Infant Life Protection Bill

⁴⁶ J Pearman, ‘The Curious Cases of Dr Barnardo: In questions relating to the custody and education of infants the rules of equity shall prevail.’ Forthcoming

⁴⁷ V Holmes, ‘Absent Fireguards and Burnt Children: Coroners and the Development of Clause 15 of the Children Act 1908’ (2012) 1 *Law, Crime and History* 21

⁴⁸ C Chinn, *They Worked All Their Lives: Women of the Urban Poor, 1880-1939* (Carnegie Publishing Ltd 2006)

relatively late in their lives that what they thought was their sister was in fact their mother. Such stories persisted well into the twentieth century and today.

The women for whom the support of an illegitimate child caused most struggle and worry were those who tended to be physically removed from their families, as servants, barmaids and governesses employed in jobs that provided them with accommodation.⁴⁹ These young women were not those living in extreme poverty, rather they struggled to maintain their employment so as to keep their home and their job, and possibly to be able to continue to support financially the rest of their families. This struggle is depicted in the literary example of *Esther Waters*, the heroine of an 1894 novel who fell pregnant and was abandoned by a fellow servant. The novel was considered on its publication to be 'controversial and influential' and its publication and success shows that the challenges and struggles faced by pregnant servants were, at the very least, recognised by the reading public.⁵⁰

In the novel, Esther, who had been brought up as a member of the deeply conservative and evangelical Plymouth Brethren, had taken a job as a kitchen maid in a house on a horse-racing estate, far away from her family home in Barnstaple. Thrust into unfamiliar surroundings and a culture of gambling, Esther fell in love with William Latch, son of the cook, was seduced and fell pregnant. Her employment was terminated, and she made her way to London where she struggled to support herself and her child. Eventually, she was reunited with William, they married and ran a public house and (illegal) gambling business. However, marital happiness was short-lived as William died from consumption. Eventually, Esther found a home with a former mistress, and lived out her days in suitable purity.⁵¹ Esther's troubles had been compounded by the fact that, once her pregnancy had been discovered, she was unable to remain in the employment which also provided her with accommodation, and this must have been the case for (real-life) servants, barmaids, and governesses who fell pregnant and faced the hardship of losing their home and being cast out onto the streets.

As we have seen above, for the mother of an illegitimate child, limited support may have been available to her. It may have been possible, although difficult, to affiliate the child to its father and to get some financial support. Desperation may have driven her to enter the workhouse, although I argue that the fear of the (well-known) terrors of the houses, as the Poor Law Commissioners intended, would have acted to deter her wherever possible from becoming a

⁴⁹ John R Gillis, 'Servants, Sexual Relations and the Risks of Illegitimacy in London, 1801-1900' in Judith L Newton, Mary P Ryan, Judith R Walkowitz (eds) *Sex and Class in Women's History* (Routledge & Kegan Paul 1983)

⁵⁰ Stephen Regan (ed), 'Introduction' in George Moore, *Esther Waters* (First published 1894, Oxford University Press 2012)

⁵¹ G Moore, *Esther Waters* (First published 1894, Oxford University Press 2012)

financial burden on the parish. Some charitable organisations provided practical and financial support, although these were reserved for the ‘respectable’ fallen woman and many were closely linked with formal religions, and demand outstripped supply. For those women living in their original community, or with their family, support may have been more readily available. But for those women living independently, physically removed from their family and community, they were faced with a more significant challenge. Certainly, the evidence given at the trials of Waters and Dyer and the contemporary discourses which surrounded them demonstrate that the customers of the baby farmers tended to be servants, barmaids and governesses.

But, what happened to those women who were not respectable enough to be rescued, or whose fall from grace was so spectacular that they could not find anyone willing to help care for their children? It is difficult to say. The cases reported in the trials of Waters and Dyer, discussed in chapter six, focus on the children of ‘respectable’ mothers, although in the case of Charlotte Winsor, there was evidence of the mother’s involvement in the death of the child.⁵² For some women, infanticide may have appeared to be the only option.

4.5 Infanticide

The cold reality for most women who found themselves single and pregnant, if entering the workhouse, or of finding a way to entrust the child to the care of another was not possible, for whatever reason, was the choice between disposing of the child before, during, or soon after birth. Once again, contemporary literature shows that there was public awareness of the issues associated with the need to dispose of a child permanently. Some novelists implied that it might be possible for a child to be ‘sold’ to another who might be interested in its care or to provide an heir.⁵³ Alternatively, authors might construct a situation in which their protagonists, such as George Eliot’s poor Hetty Sorrel,⁵⁴ faced with an invidious choice between life and death for their infant, or a judicial and capital end to her own life.

Certainly, there were suspicions and moral panics that many women were disposing of their own children by violent means. Edwin Lankester,⁵⁵ for one, suggested in 1866 that there was

⁵² ‘The Case of Charlotte Winsor’ (1866) 21(535) *Saturday Review* 106

⁵³ The sale of an infant appears in the first chapter of Andrew Forrester’s novel, *The Female Detective*, widely considered to be the first appearance in fiction of a female detective. A Forrester, *The Female Detective* (first published 1864, The British Library 2012)

⁵⁴ George Eliot, *Adam Bede* (First published 1859, New English Library 1961) Again, Hetty is presented as an innocent – one who is led astray, is exploited, and who suffers shame. She delivers her own child in secret while attempting to join her erstwhile lover – who was unaware of her condition – and leaves the child to die from exposure. Her ‘rescue’ from the gallows is facilitated by the man who led her astray, following which the character is disposed of in the novel by her transportation – gone, and for the remainder of the novel, forgotten.

⁵⁵ Coroner for Central Middlesex

a large number of women who were systematically killing their offspring – he estimated that there were living in London 12,000 women who had murdered their infants.⁵⁶ This almost unbelievably large number might, as Judith Flanders suggested, make Lankester seem a little mad,⁵⁷ but given that contemporary commentators such as Andrew Wynter (who was later to edit the *British Medical Journal*) repeated the statement,⁵⁸ it suggests that there was great disquiet regarding infanticide in the Metropolis.

The death of an infant at the hands of its mother had been a source of public anxiety, at least since the seventeenth Century. The 1624 Act ‘to prevent the Destroying and Murthering [sic] of Bastard Children’ had been aimed firmly at ‘lewd Women’ who might kill their children to ‘avoid their shame.’⁵⁹ This legislation reversed the burden of proof, and made the murder of an illegitimate child a capital offence. However, an examination of cases of infanticide reported in the Old Bailey Session Papers for the seventeenth and eighteenth centuries shows an increase in the number of acquittals as time passed, perhaps suggesting an unwillingness on the part of juries to convict. The 1624 Act was repealed in 1803 by Lord Ellenborough’s Act,⁶⁰ the statute itself admitting that the old legislation had been ‘found in sundry cases difficult and inconvenient, to be put into practice’.⁶¹ Homicide of an bastard infant from this point was to be governed by the common law under the offence of murder or manslaughter.

The report of the 1866 Capital Punishment Royal Commission⁶² noted that juries were less inclined to convict where a woman who appeared to them to be in distress was likely to be condemned to death. Seaborne Davies suggested that, because of the reticence of judges to send desperate women to hang, this led to ‘the somewhat rare spectacle in the nineteenth century of the Judges in the van of criminal law reform.’⁶³ It appears that the severity of the legal penalty for those women who were driven to kill their illegitimate child was regarded by juries as being too harsh. This feeling may well have inspired George Eliot in her sympathetic description of Hetty Sorrel and her legal fate in *Adam Bede*.⁶⁴ The changes to the burden of proof in the 1803 legislation, and the abolition of the discrete offence of the murder of a bastard child, did little to address the concerns of campaigners such as Edwin Lankester watching what appeared to be an increasingly large number of violent infant deaths. Commentators writing during the second half of the nineteenth Century, including William Burke Ryan, spoke

⁵⁶ ‘Dr Lancaster [sic] on Child Murder’ *The Times* (Aug 15 1866) 7

⁵⁷ J Flanders, *The Invention of Murder* (HarperPress 2011) 226

⁵⁸ A Wynter, ‘The Massacre of the Innocents’ (1866) 4(23) *Contemporary Review* 607

⁵⁹ An Act To Prevent the Destroying and Murthering of Bastard Children 1624

⁶⁰ Malicious Shooting Act 1803

⁶¹ *Ibid* s3

⁶² CM 3590 1866, Report of the Capital Punishment Commission

⁶³ DS Davies, ‘Child-Killing in English Law Pt 1’ (1937) (Dec) *Mod L Rev* 203

⁶⁴ George Eliot, *Adam Bede* (First published 1859, New English Library 1961)

of a 'torrent of infanticide', and we have already seen how the coroners of the time raised the spectre of abandoned corpses of babies in the streets of London.⁶⁵

But we should note that, even during the early nineteenth century, the 1803 infanticide legislation was aimed squarely at convicting of those women who killed their own bastard children who, due to the shame associated with their conception and birth, were seen to be more at risk than the legitimate. Other legal problems associated with the conviction of those suspected of killing infants included the forensic identification of whether an offence had been committed by the mother, that is whether in fact the child had been born alive or whether there had been a still-birth. For the very definition of the murder of a new-born infant was under challenge.⁶⁶ The nineteenth century courts struggled to decide whether only independent breath was sufficient, or whether the child had to be completely independent of the mother, that is detached from the umbilical cord. This principle had been explored in *R v Senior*, where it was questioned whether a wound inflicted while the child was 'in ventre sa mère' would result in an offence of manslaughter, whether the child was breathing or not.⁶⁷ The Homicide Law Amendment Bill of 1872 proposed a definition of a person in being including 'a child in the act of birth which has breathed',⁶⁸ although this still left in doubt the issue raised in *Senior* as to whether the child was a person in being while still attached to the umbilical cord. D Seabourne Davies noted that the question of the separation of the infant from its mother was linked in the Victorian minds with the 'theological view of the emergence of the soul.'⁶⁹ We cannot come to a conclusion as to what the Victorian answer was to the question of at what point the infant achieved independent life. We can only take account of the fact that the issue was one of theological and legal debate, and that it rumbled through the child murder and baby farming cases of the second half of the nineteenth century.

What we can tell from reading the cases and from the commentaries is that the disposal of a child, when brought to full term by its mother and if born still alive, seems to have been viewed both as an evil, 'twelve thousand murderesses living in our midst',⁷⁰ and yet also as a difficult challenge for the courts in that juries may be unwilling to convict. Indeed it also exposed the need to control the behaviour of women. Unsurprisingly, it appeared that the draconian

⁶⁵ WB Ryan, *Infanticide: its Law, Prevalence, Prevention and History* (Churchill 1862)

⁶⁶ As indeed it has been in recent years. The recent case of *CP (A Child) v First-tier Tribunal (Criminal Injuries Compensation)* (*British Pregnancy Advisory Service/Birthrights and another intervening*) [2014] EWCA Civ 1554, examined the point at which a mother could be held criminally responsible for behavior during pregnancy which might lead to physical harm once born. This case confirmed the leading case: *AG's Ref (No3 of 1994)* 1998 AC 245

⁶⁷ *R v Joseph Senior* [1832] 347 MOOD 1298

⁶⁸ Quoted in DS Davies, 'Child-Killing in English Law Pt 1' (1937) (Dec) Mod L Rev 203

⁶⁹ DS Davies, 'Child-Killing in English Law Pt 1' (1937) (Dec) Mod L Rev 203

⁷⁰ A Wynter, 'The Massacre of the Innocents' (1866) *Contemporary Review* 4/23 607

drafting of legislation, intended to force women into behaving in a more moral and restrained manner, was simply not effective, while the reports concerning the apparent deluge of infant deaths served to create a 'truth' of feminine murderous tendencies. Wynter suggested that infanticide would not exist if 'there were no previous concealment of the woman's pregnant condition',⁷¹ suggesting that the crinoline was in some part to blame for this. This was not the last occasion on which a male commentator, or even a judge, has blamed the fashion of a woman's clothes as being a contributory factor to improper behaviour, or an encouragement for crime.⁷² WB Ryan felt that a lack of moral education was to blame, along with a need for a 'sincere and charitable attempt to make women more independent and therefore more self-reliant',⁷³ although, perhaps not surprisingly, he was quick to point out that a woman should not aim to lose their femininity. This speaks of an interesting dichotomy that a woman should be assisted to achieve self-reliance, which would result in a reduced need for the support of a man, and yet that she should retain her feminine 'essence'.

Whatever the limited disagreements between the commentators, it is clear that during the second half of the nineteenth century, the disposal of an infant by its mother was viewed as being highly problematic and that there was a need to control the behaviour of those women seen to be at the greatest risk of behaving in such a manner. Commentators such as Wakefield and Lankester decried the seemingly relentless disposal of the corpses of illegitimate children in the street,⁷⁴ while the cases in the OBSP show that juries and judges continued the trend of unwillingness to punish to the full extent of the law, or even to convict at all, if there was a possibility that a single woman might be sent to the gallows due to her desperation. The despatch of an illegitimate infant by a mother at the point of birth, for whatever reason and by whatever device, tended to be a solitary experience. The birth may have been concealed and the mother is likely to have been attempting to avoid discovery even of the very fact of the birth. As Meg Arnot has noted, following McLaren, migration to the urban areas led young women to be parted from their families, and from the 'folk knowledge'

⁷¹ *ibid*

⁷² For example, Judge James Pickles was very much criticized for coining the notion of contributory negligence for women who, he maintained, encouraged their rape by wearing mini-skirts. This view has been, quite rightly, superseded. L Thomas, 'The Sobering Subject of Consent' *The Telegraph* (Online 28 March 2007) Comment

⁷³ WB Ryan, *Infanticide: its Law, Prevalence, Prevention and History* (Churchill 1862) 31

⁷⁴ Lankester was responding, in part, to the growth in the number of corpses of infants that were found in the streets of London. This increase in number might well have been caused by the social problems associated with the Act to Amend the Laws Concerning the Burial of the Dead in the Metropolis 1852. This regulated the burial of corpses. As Lee Jackson notes, the poor were no longer able to secrete the bodies of stillborn children in open graves, a long-standing informal arrangement. This may well have led to an increase in the number of corpses abandoned in the streets. L Jackson, *Dirty Old London: The Victorian Fight Against Filth* (Yale University Press 2014)

associated with the prevention of conception and abortion⁷⁵ such lack of knowledge may well have resulted in an inconvenient child. The cases in the OBSP tell of women employed and living in the houses of their employers and who took what appeared to them to be the only route possible, and this is certainly a familiar trope in contemporary novels, such as those noted above. The impression is that of women suffering from poverty, who felt that they had no alternative but the disposal of their baby, and it might be concluded that juries had sympathy for this.

To summarise, the legal situation regarding the Poor Laws and, in particular, the bastardy provisions, had left women in a situation where, if they wanted to access practical and financial help from the Parishes, they would have to leave the privacy of their family and the domestic home in order to enter the social space of the workhouse and to become subject to control from the Poor Law officials in their role as 'social police'. There was some charitable provision available to women who wanted to give their children a better chance at life but, as in the case of the Foundling Hospital, this was frequently over-subscribed and, in the case of the Foundling Hospital, any mother attempting to leave their child with the hospital had to be provide her identify and prove her 'respectability'. In this way, some of the charities at least, still represented the shared social space. There was, too, the possibility that some women may kill their own children. It is difficult to know exactly how many mothers did commit infanticide as the births of still-born children were not registered which would encompass those killed at the point of birth. In spite of this, as we have seen, there was great uneasiness during the second half of the century with regard to the numbers of infants disposed of in this fashion.

This situation led to a unfilled need for a solution for those women who had a bastard child, either with no access to any kind of financial support, or who were unwilling to court popular disapproval by entering the workhouse or to expose their 'shame' to public knowledge. Into this void, almost organically, emerged the baby-farming 'industry' which I introduce in the next chapter.

4.7 Conclusions

As we have seen, life could be difficult for an unmarried woman with a child. The official government solution for those with a bastard child was that she should either remain with her family, who would take financial responsibility for her and control her behaviour, or that she should leave the privacy of her home in order enter the workhouse in the very public sphere to access support. For many women the first option might not be feasible due either to the

⁷⁵ ML Arnot, 'Understanding women committing newborn child murder in Victorian England' in S D'Cruze (ed) *Everyday Violence in Britain, 1850-1950* (Pearson 2000) 60

shame that it might bring on the family, or the more pragmatic reason that her wages were necessary for the support of the rest of the family. The workhouse, too, was not attractive, its architecture and daily routines often resembled that of a prison and there was stigma associated with being an inmate. But, there were few other realistic options available. The provision of charitable support was not consistent across the country and demand frequently exceeded supply. Should a woman be able to access charitable support this too might 'pull' her into the social space, away from her family and at risk of her situation being broadcast to a judgemental society. Loss of a servant's 'good character' could seriously affect her ability to find employment in a respectable family. A truly desperate woman might take the ultimate option, to kill her child soon after birth. In this way, she might be able to remain in the domestic circle of the home and family, but it is difficult to imagine that any woman taking this option would be anything less than desperate.

Official interest in childcare, therefore, started with the introduction of the Poor Laws of 1834 and 1844 with the attendant bastardy legislation. The centralised bureaucracy of the workhouses and Unions made it possible to enumerate accurately the number of women accessing the support of the parishes, at the cost to the ratepayers, and those women using the workhouse facilities were 'pulled' into the shared social space. Their entry to the workhouses would be recorded and, should they attempt to get financial support from the putative father of their child, this would take place in open court at the petty sessions. Women in this situation were very much part of the social space and it is, perhaps, no surprise that government took an interest in the cost of childcare, particularly where it had to be funded by the parish.

Charities could provide help for some women although it was difficult to access and, for some, would still necessitate moving into the shared social space away from the privacy of home and family. Charitable foundations themselves, as we have seen, were a seat of controversy. The Charitable Organisation Society sought to wrestle overall control of charitable functions and to limit access to those 'truly deserving' of its help, leaving the 'undeserving poor' to the ministrations of the workhouses.

Official interest was also directed towards the apparent growing number of infant corpses said to be abandoned in the street. Lankester and other campaigners brought to official consideration the dangers of infanticide while, paradoxically, juries at the Old Bailey seemed unwilling to convict women accused of killing their new-born infant. This, I argue, marks the beginning of the change in official interest – away from the purely fiscal towards concern for the welfare of bastard children. This change was strengthened and became more obvious

with the calls for regulation of the baby farms. In the next chapter I introduce the baby farming industry using the discourse which appeared following the notorious criminal case of Charlotte Winsor in 1865. This was the inspiration for the first public campaign for the control of baby farming by the investigative reporters of the *British Medical Journal*, and which introduced the intricacies of the industry to wider public knowledge. The issues raised were repeated and amplified by popular contemporary newspapers and became part of wider calls for reform and control. This discourse provides a rich resource to assist with revealing the answer to the second of my research questions relating to the changing nature of governments interest relating to paid childcare.

In this chapter I have answered the first of my thesis questions, why it was that paid childcare taking place in the private home became an object of official government interest between 1834 and 1897. I found that official interest relating to the topic of the care of bastard children was primarily concerned with the financial implications to the interests of parish rate-payers and government in general. I have demonstrated that the various Poor Laws and legislation relating to bastardy from 1834 onwards aimed to reduce the cost of illegitimate children to the parishes by making it increasingly difficult for women to access financial support, either from the fathers of the children or the state, as represented by the parishes.

Chapter Five : ‘A Good Home, with a Mother’s Love and Care, is Offered to Any Respectable Person wishing her Child to be Entirely Adopted’

In this chapter I focus on the emergence of the ‘industry’ of baby farming into public consciousness in nineteenth century Britain. This focus enables me to complete the answer to my first question, which is why paid childcare in private homes became an object of official government interest between 1834 and 1897. It also enables me to begin to answer my second questions, which is whether the nature of governments’ interest changed from a fiscal concern to one that centred on the physical welfare of bastard infants. I consider whether the social police which had been represented by the officials associated with the Poor Laws and the workhouses were forced to change their focus and seek admittance into the private sphere of the family home, traditionally a space free from interference from representatives of the administrative state. It is my position that the scandals associated with the baby-farming industry created an official need to penetrate the family home.

Baby farming became a matter of public interest when investigative journalists from the *British Medical Journal* (BMJ) responded to the first trial of a woman providing paid childcare for the offence of murder with a series of articles, which created a body of knowledge which was reinforced and expanded by further scandals associated with the murder of infants in the so-called foster-homes. I focus on how baby farming was defined in contemporary newspaper and journal accounts, and investigative reports by the BMJ and the National Society for the Prevention of Cruelty to Children (NSPCC). I exclude, at this point, the ‘official’ records of the courts and of the legislature as they related directly to criminal cases associated with the murder of infants in the care of baby farmers, although I return to them in the next chapter. The materials that I use here correspond roughly with the two Infant Life Protection Acts (1872 and 1897), which in turn correspond with two groups of the prosecutions of criminal baby farmers that I examine in the next chapter, the first consisting of Charlotte Winsor (1865) and Margaret Waters (1870), and the second group which consists of Jessie King (1889) and Amelia Dyer (1896). It is notable that, while a generation separates the two groups of cases, the tone of the commentaries surrounding them is remarkably similar.

5.1 Structure of the Industry

Baby farmers seem to have formed themselves into a quasi-industry, with a loose structure that was consistent throughout the country, and throughout the century. This informal structure lent the industry to formal regulation by the law, and as we shall see, to the

legitimation of an industry that had been developed completely outside governmental control, and which was not formally recognised until its exposure by the criminal cases of Charlotte Winsor (1865) and Margaret Waters (1870).

The baby farming industry was broadly divided into three parts, although the parts often overlapped. The first, the lying-in houses, were a form of maternity home, usually run by a woman who claimed midwifery skills. As we shall see later in this chapter, some of these were supported by medical doctors. The second part was that of the procurer, usually a woman, who would take a child from its parent(s) with promises that the child would either be permanently adopted or fostered. The procurer would either advertise for children in the newspapers, or would have an arrangement with one of the lying-in houses that children should be passed to her. The final part of the industry and, usually, the final stop for the infants would be the foster-homes. As we shall see in the case of Margaret Waters (1870), women tended to move between the roles or, as in the case of Amelia Dyer (1896) might fulfil all three roles.

Homrighaus¹ and Arnot² have examined the links between the genesis of the 1872 Infant Life Protection Act and the influence of the campaigns in the BMJ of 1868 and 1896. While Arnot's paper includes an examination of the first select committee for the Protection of Infant Life which took evidence from Ernest Hart, editor of the BMJ,³ Homrighaus suggests that the BMJ campaigns contributed to the creation of subsequent child welfare legislation, including the Infant Life Protection Act and to the ultimate creation of the welfare state. However, I argue that this account has flaws. The BMJ campaign was aimed very closely at the situation regarding children who were sent into the custody of foster parents and its ultimate aim was to secure the passing of the Infant Life Protection Act. This was obviously not the only piece of nineteenth-century legislation relating to child welfare, and I question whether it can be shown that there were links between the BMJ and other legislative measures (for example the various Poor Laws,⁴ Protection of Cruelty to Children Act,⁵ and the Child Custody Act⁶ which have stronger links than has the Infant Life Protection Act to the development of the welfare state. I also argue that this supervision marks a departure from an official desire to reduce

¹ RE Homrighaus, 'Wolves in Women's Clothing: Baby-Farming and the British Medical Journal, 1860-1872', (2001) 26/3 *Journal of Family History* 350

² ML Arnot, 'Infant Life, Child Care and the State: The baby-farming scandal and the first infant life protection legislation of 1872', *Continuity and Change* 9/2 (1994) 271

³ Michael Rose, too, examines the legislative steps, albeit briefly. ME Rose, *The Relief of Poverty, 1834-1914* (Macmillan 1972)

⁴ See chapter four

⁵ Prevention of Cruelty to, and Protection of, Children Act 1889

⁶ Custody of Children Act 1891

the number of illegitimate children. Rather, the official government position changed to an acknowledgement that infants should not be the subject of a commercial transaction, and that they should be treated decently and humanely.

5.1 Baby Farming

Women of the middle class, or those of the working class who were faced with the problem of dealing with an inconvenient child but were in a relatively secure financial position, possibly due to a financial contribution from the natural father of the child,⁷ may have been able to avoid the workhouse and take advantage of the burgeoning quasi-industry of baby farming that existed at the time. Paying someone else to look after a child was never illegal, and it would have been impractical to have tried to legislate against it as it was ubiquitous in all sections of society, from paid nurses and nannies in middle and upper class houses to the informal arrangements between women in the new urban centres as exemplified by the factory workers in Manchester.⁸ Such a measure would especially have hit hard at the upper classes as most, if not all, households in which there was an infant or child(ren) employed a nanny or nurse to provide the day-to-day immediate care. There is significant evidence, not the least of which being the criminal cases of the notorious baby farmers that we shall examine in the next chapter, to suggest that this quasi-industry of baby farming grew to meet the needs of women who needed to find practical assistance to allow them to continue to earn their living, unfettered by a child and desperate to maintain their privacy and to stay out of the social space, represented by the workhouses and charitable provisions. There appears to have been a broad contemporary acceptance of the necessity for some kind of solution to deal with the problem of an inconvenient child. An article published in the *Examiner* of 1879 reminded readers of 'the obvious fact, which it is all-important to bear in mind, that baby-farming, in the broad sense of the term, must always be practised and permitted.'⁹

Nearly all of the existing scholarship regarding baby farming makes links between baby-farming and criminal activity, the ultimate example of this being Ruth Homrighaus' description of '[b]aby-farming, [as] a form of infanticide performed on unwanted children by hired nurses'.¹⁰

⁷ J Greenwood, *The Seven Curses of London* (First Published 1869, Dodo Press 2011) 25

⁸ HC 343 (1896) Report from the Select Committee of the House of Lords on the Infant Life Protection Bill

⁹ 'Professional Baby-Farming' *The Examiner*, 4 October 1879

¹⁰ Homrighaus (n3). Homrighaus later revised her definition to include 'benevolent' baby-farmers. RE Homrighaus, *Baby Farming: the care of illegitimate children in England 1860-1943* (PhD thesis, University of North Carolina 2010) quoted in Jim Hinks, 'The Representation of 'Baby-Farmers' in the Scottish City, 1867-1908' (2014) 23:4 *Women's History Review* 560

Lionel Rose's book *Massacre of the Innocents*,¹¹ indicates quite clearly his belief that all baby farmers committed infanticide. Margaret Arnot, too, makes explicit links between baby farming and infant death,¹² while George Behlmer touches on the baby farming industry in an article relating to infanticide.¹³ Little mention is made of benevolent baby farming, perhaps not surprisingly, since the majority of available evidence relates to those women charged with the murder of children in their care. Other authors examining the incidence of infanticide ignore the baby farming industry completely.¹⁴ Nicola Goc's recent work has been very helpful with her analysis of the ways in which the London Times responded to tales of infanticide and baby farming, although she too links baby farming with the certain death of infants.¹⁵

Descriptions of the baby farming industry, such as those mentioned above, tend to focus on those instances where a woman would take care of a child within her own house, in private, away from the external controls of the social space. Here, in her home, she had agency and control over her life, hidden from the 'social police', represented in these cases by Workhouse officials or those working for charitable foundations, any of whom might try to force a change in her behaviour. These women ran what I call the rudimentary 'foster homes'. Few of the modern authors include the other branches of the trade that I shall explore, such as the 'lying-in houses',¹⁶ or the procurers. Arnot does mention the lying-in houses, but only in passing and only as they acted as a gateway to the police investigation into the crimes of Margaret Waters and the management of her foster-home. In his book Michael Rose does examine the lying-houses, and the links between the latter and the foster-homes. However, much of his examination is drawn solely from the evidence of a letter to the editor in *The Times* from an anonymous correspondent.¹⁷ Rose's work relates mainly to the ways in which the lying-in houses were seen as factories of infant death as part of his investigation into infanticide. He also does examine briefly the links between the Poor Laws, the bastardy legislation and the difficulty in obtaining affiliation orders, one of the acknowledged reasons at the time for a woman's need to find a (sometimes deadly) solution to her inconvenient child. But by

¹¹ L Rose, *The Massacre of the Innocents: Infanticide in Britain 1800-1939* (Routledge & Kegan Paul 1986)

¹² Arnot (n2)

¹³ George K Behlmer, 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England' (1979) October *Journal of the History of Medicine* 403

¹⁴ See for example: AR Higginbotham, "'Sin of the Age": Infanticide and Illegitimacy in Victorian London' (1989) 32(Spring) *Victorian Studies* 319; T Ward, 'The Sad Subject of Infanticide: Law, Medicine and Child Murder, 1860-1938' (1999) 8 *Social & Legal Studies* 163

¹⁵ N Goc, *Women, Infanticide and the Press 1822-1922: News Narratives in England and Australia* (Ashgate 2013)

¹⁶ A form of maternity home, run by an unlicensed 'midwife', sometimes with the co-operation of a doctor.

¹⁷ AB, 'Baby-Farming – Letter to the Editor' *The Times* (14 July 1870) 4

focussing on infanticide per se, his examination mainly addresses the methods by which children were ultimately killed, and there is little analysis of over-arching systems of social control beyond this.

Both Rose and Arnot document the links between the early baby-farming cases and the development of the Infant Life Protection Act. In Arnot's more comprehensive, feminist, account she concentrates on the links between power dynamics and gender issues arguing an imbalance of political power that discriminated against the mothers of illegitimate children. However, once again the issue of baby-farming is exclusively linked to the crime of murder. Both Arnot and Homrighaus document the resistance to the proposed legislation from contemporary feminists, such as the *Campaign to Amend the Law in Points Wherein it is Injurious to Women* (CALIPWIW),¹⁸ which added another dimension to the issue of gender as regards the legislation, in that the campaign aimed to minimise interference into the private lives of women. This resistance demonstrates the complexity of the issue given that the legislation's apparent aim was to protect the lives of children and nominally to provide a system of childcare which sought to provide solutions to the problems experienced by women.

5.1.1 Emergence of Baby-Farming

Baby farming as a concept and as a means of making money might appear not to have been confined to the 'private sector', that is taking place only in the private homes of those women taking care of infants. As we have seen, Dickens described how Oliver Twist had been 'farmed' to a branch workhouse in 1837,¹⁹ and the criminal case of Bartholomew Drouet at the Old Bailey on 9 April 1849 exposed the practice of the Holborn Union who, due to overcrowding in their workhouse, entered into a financial arrangement with Drouet 'knowing that [he] farmed children' to lodge pauper children at his establishment.²⁰ The 1851 Poor Law Amendment Act made it legally possible for parish unions to contract with each other to take in orphans from one parish to another,²¹ and this contractual arrangement between parishes was itself not without scandal. In 1869 an inquest was held into the death of a 15-month old child who had died in the babies' ward of St Luke's Workhouse. The rules of the workhouse had led the child to be separated from her mother when the family were admitted there, and the baby and 18 other children were put in the care both of an inmate of the workhouse who was paid for her services, and of 'a lunatic young woman, who was never let out alone.'²² The

¹⁸ Committee for Amending the Law in Points Wherein it is Injurious to Women, *Infant Mortality: Its Causes and Remedies* (A Ireland & Co 1871)

¹⁹ Charles Dickens, *Oliver Twist* (First published 1837-8 Philip Horne ed, Penguin 2002)

²⁰ *R v Bartholomew Peter Drouet* [1849] Old Bailey Session Papers (unreported)

²¹ Poor Law Amendment Act 1851 s6

²² 'The Baby Farm at St Luke's Workhouse, London' *Glasgow Daily Herald* (Glasgow, 10 February 1869) 5

care of the child was clearly insufficient, and as a correspondent to the *Daily News* suggested, expecting three women, a pauper, a 'lunatic', and a 'child of twelve' to care for so many children was courting disaster. However, what is striking about the correspondence in the *Daily News* is that the author does not call for the abolition of workhouse nurseries, but rather that the age of separation of mother from child within the workhouse should be raised to two years old.²³

I do not include workhouse nurseries or the foster carers who were contracted by the workhouses as a topic of study here, and I place them outside the scope of this thesis, in that the provisions for the care for children were already theoretically and practically under the existing inspection regime and supervision of the Poor Law Commissioners, and therefore in the social space. Similarly, while there is evidence that transferring infant children from one workhouse to another and to foster homes was expedient for the workhouse authorities, there is no evidence that the unions sought to profit financially from such an arrangement. But what is evident is that by describing the nursery in St Luke's Workhouse as a 'baby farm', it is suggested to the contemporary reader that this arrangement was less than adequate, that children were at risk from insufficient care and attention, and that they were doomed to suffer and die.

A point of agreement amongst the contemporary writers was the probable class of those mothers seeking to avail themselves of the baby farmers. As stated above, there was a prevalent belief that this was an urban rather than a rural problem, and one particularly within the servant class, where a girl might fall prey to 'the master's son, or the master's footman'²⁴ or a problem of '[female f]actory hands, female servants and the daughters of small tradesmen'.²⁵ The possibility of becoming father to an illegitimate child led to a situation where a man might be willing to pay to relieve himself of a responsibility, or he might 'regard himself as a fellow deserving of condemnation, perhaps, but entitled to some pity, and, still more, of approval for his self-sacrificing.'²⁶ It is noticeable in these works that girls who had fallen pregnant under these circumstances, where the balance of sexual power was not in their favour, were not the object of condemnation. They were routinely referred to as having been seduced, or being 'poor girls' or the victims of a 'paramour'.

²³ 'The Baby Farm at St Luke's Workhouse – to the Editor of the Daily News' *Daily News* (London, 16 February 1869) 6

²⁴ A Wynter, 'The Massacre of the Innocents' (1866) 4/23 *Contemporary Review* 607

²⁵ 'Baby-Farming and Infanticide' *Saturday Review of Politics, Literature, Science and Art* (18 June 1870) 793

²⁶ J Greenwood, *The Seven Curses of London* (First published 1869, Dodo Press 2011)

There were cases of mothers, and other relatives, killing their children in order to profit from a life insurance policy, such as that of George Horton (executed in 1889 for the murder of his daughter), or of Mary Ann Cotton (executed in 1873 for the murder of her stepson). While it is true that both of these killers profited from the death of children by the collection of insurance payments, I do not include them as baby farmers for the simple reason that they did not accept for payment responsibility for the care of children not their own. Benjamin Waugh, founder of the NSPCC, might have agreed that they were not baby farmers, but for different reason; these women had killed the children violently, and quickly, and had not starved the children to death, thereby prolonging their agony.²⁷ However, it should be noted that Waugh suggested that the baby farmers were not violent towards their charges in 1890, before the conviction of Amelia Dyer who did despatch babies in a swift and brutal fashion.

As Margaret Arnot stated, the term 'baby farming' came into popular use during the second half of the 1860s,²⁸ and certainly it would appear that the first public appearance of the term was in the BMJ in 1867,²⁹ although as I have shown above the concept of 'farming' children was in common currency before then. It is, as Arnot notes, a value-laden term because in the pages of the BMJ it is often followed by the term 'child-murder'³⁰. It would appear that for the Victorian press, at least, a baby farmer was nothing more than a murderer, but why should this be, and what precisely did a 'baby farmer' do to attract such disapproval and vehement dislike? In this section I use evidence of the newspaper and journal articles, together with evidence from contemporary literature, to examine in some depth the popular understanding of the growing 'industry'.

5.2 Defining the Industry

Baby farming encompasses the practices of the arrangement of adoption, paid childcare, and fostering, but is also associated with the more permanent removal of infants from their birth-mother. In addition, there are links to abortion and the practice of 'natal-death'.³¹ In many of the cases of which we are aware, the women who were accused of causing the death of infants in their care had also acted as somewhat shady midwives, or to use the contemporary term, *accoucheuses*,³² and given the state of medical and gynaecological knowledge of the time, it is entirely conceivable that they were also involved in the procurement of abortion.

²⁷ B Waugh, 'Baby-Farming', (1890) *Contemporary Review* 57 700 706

²⁸ Arnot (n2)

²⁹ Homrighaus (n1)

³⁰ BMJ 25 Jan 1868 for example

³¹ By this I mean achieving a still birth.

³² A term used to denote a de facto female midwife or obstetrician

This multiplicity of constituent parts means that providing a definition of baby farming is not straight forward. Arnot describes it as a term ‘used loosely to describe all situations where women accepted payment in exchange for the care of children who were not their own’.³³ Paid child care can hardly have been a new phenomenon, and yet following the conviction of Charlotte Winsor for murder in 1865 the level of anxiety associated with this so-called ‘industry’ rose and, despite some medical involvement, garnered adverse attention from the medical profession, and from a number of campaigning articles in the contemporary press, primarily in periodicals. A letter from a correspondent known as ‘AB’ to the editor of *The Times* led to increased attention on the issue.³⁴ Inquests of children who had died while in the custody of baby farmers were also freely reported, as were court cases of the alleged murderers of illegitimate infants.³⁵ Baby farming also gradually became more closely associated with commerce, in that infants were perceived as a commodity to be bought, sold, or otherwise disposed of. In light of this, I extend the definition of ‘baby farming’ to one closer to that used by the contemporary investigative writers³⁶ to encompass a number of practices all of which were related to the exploitation and commodification of infant life for the purposes of financial gain, whether by charging mothers for the maintenance of the life of their child, or by procuring the child’s disappearance or, as we shall see in the next section, its death.

So what did the baby farmers do? From the evidence exposed by the criminal cases of Winsor (1865), Waters (1870), King (1889), and Dyer (1896), the unifying theme is that they all made money from the disposal (whether temporarily or permanently) of infants. As noted above, there seemed to be, broadly, three major branches of this ‘industry’. The first, ‘lying-in houses’, were de facto nursing homes providing a range of services including abortion, midwifery (and the procurement of a ‘quiet’ birth, where an infant would be killed as it was born) and the physical transfer of unwanted infants, either to a foster home or another destination, such as a permanent, adoptive, home. The second branch, as described by Benjamin Waugh in 1890, were the ‘procuresses’ who would then transfer the infant to the foster homes, either to be cared for, or more likely, to be subjected to what could be a lengthy death.³⁷ Moreover, it appears that the practitioners, the baby farmers themselves, tended not to work exclusively in one branch or another. Certainly, we see that Waters (1870) and Dyer (1896) commenced their trade in the lying-in houses, and then graduated to the fostering and care of infants in

³³ Arnot (n1)

³⁴ AB (n17).

³⁵ Ginger Frost, “‘The Black Lamb of the Black Sheep’: Illegitimacy in the English Working-class, 1850-1939’, (2003) *Journal of Social History* 37/2 293

³⁶ See for example: B Waugh, ‘Baby-Farming’, (1890) *Contemporary Review* 57 700; A Wynter, ‘The Massacre of the Innocents’ (1866) 4/23 *Contemporary Review* 607

³⁷ Benjamin Waugh, ‘Baby Farming’ 57 (May 1890) *The Contemporary Review* 700

their own houses. In the case of Dyer, towards the end of her career she simultaneously fulfilled the role both of procuress and foster parent.

5.2.1 The Lying-in House

Outwardly, there was a veneer of respectability attached to the typical lying-in house. The series of investigative articles published by the BMJ in 1868 described establishments that were referred to as being clean, well-furnished, with bright fires and pianos to give the illusion of middle-class comfort.³⁸ However, the BMJ author suggested that ‘there are uglier instruments in the cupboard’,³⁹ a conclusion perhaps not surprising in a series of articles titled ‘Baby farming and Baby-Murder’. The evidence presented in the article, while it is not explicit, hints at links between the lying-in houses and abortion, in addition to the usual services associated with confinement.⁴⁰

Abortion had been confirmed as being illegal in Lord Ellenborough’s Act of 1803,⁴¹ while the Offences Against the Person Act of 1861 (OAPA) had set the standard sentence for abortion as being between three years and life imprisonment. However, in spite of this legislation, it was still possible for an abortion to be arranged illegally, sometimes by a qualified doctor, as exposed by the case of Neill Cream (1892),⁴² or by other, more shady and also illegal means.

While abortion was one of the services offered by the lying-in houses, it does not correspond with my definition of baby farming where the body of the infant is the commodity to be exploited or traded, and thus I do not include abortion as a topic of study in this thesis. However, the lying-in houses did offer a number of services at the point of parturition, or after, including the procurement of a ‘still birth’:

Midwives wickedly inclined – and there are but too many of them – know well how easy it is to produce a still birth, or, in the horrible language of the craft, a “quiet one”.⁴³

Commentators such as Wynter⁴⁴ noted that the law regarding such a practice was deficient, as it was assumed that the child was not a person in being until it was fully detached from the

³⁸ It is somewhat ironic that one of the incidents that led Dyer to relocate her establishment in Bristol was the misappropriation of a piano that she was purchasing on credit. She sold it to defray her debts. A Rattle and A Vale, *Amelia Dyer: Angel Maker* (Andre Deutsch 2007)

³⁹ ‘Report on the Baby Farming System and its Evils’ [1896] *British Medical Journal*, 22 February 1896 489

⁴⁰ For example, one of the subjects of the article confides in the investigator that ‘if the [pregnancy] was not too far gone, the affair could be managed for a much larger sum than would be charged for confinement only.’ ‘Report on the Baby Farming System and its Evils’ [1896] *British Medical Journal*, 22 February 1896 489

⁴¹ Malicious Shooting Act 1803

⁴² Angus McLaren, *A Prescription for Murder: The Victorian Serial Killings of Dr Thomas Neill Cream* (University of Chicago Press 1993)

⁴³ A Wynter, ‘The Massacre of the Innocents’ (1866) 4/23 *Contemporary Review* 607 608

⁴⁴ Wynter was later to become editor of the *British Medical Journal*

mother and breathing independently.⁴⁵ One possible offence that could have been committed in a situation such as this would be that of the concealment of the birth, the maximum penalty for which being a prison sentence of two years, with or without hard labour.⁴⁶ As Wynter commented

the most monstrous fact is that, as far as the law is concerned, a woman may do this openly, and the law will hold her harmless.⁴⁷

So, while it was illegal to procure or perform an abortion, the despatch of a child during the process of birth could be carried out with relative legal impunity unless the circumstances of the birth were concealed.

The lying-in houses continued their trade throughout the century. In 1895, *Lloyd's Weekly Newspaper* reported the case of the wonderfully named Mrs Bouchier (who had decided that the French form of her name was more 'consistent with her profession' than was her right name, Butcher). Mrs Bouchier was a qualified midwife, in possession of a diploma awarded by the City of London Lying-in Hospital, who received women into her care who had been recommended by that hospital. Mr Samuel Babey, an inspector employed under the terms of the Infant Life Protection Act,⁴⁸ gave evidence as to her incriminating links with baby farmers, and evidence was heard by the coroner regarding a number of infants who had met their end in her care.⁴⁹ Clearly, at the end of the century, lying-in houses continued to be associated with the baby farming trade, as well as with abortion.

5.2.2 Neglect

Should the child be born alive, the lying-in houses were able to offer other services for the disposal of an inconvenient child. One option was to ensure that the child died through neglect, soon after birth, either in the lying-house itself or after transmission to a foster home. In AB's letter to *The Times* in 1870, she described how her undercover investigation, posing as an expectant mother, had led to a meeting with an *accoucheuse* who suggested that she should forebear from seeing the child once it was born as then she wouldn't 'feel the loss at all.' In AB's report, the *accoucheuse* recounted a case in her establishment where she had taken the child from its mother and eventually starved it to death. A doctor had been called to

⁴⁵ *R v Joseph Senior* 1834 347 MOOD 1298

⁴⁶ Offences Against the Person Act 1861; The offence of concealment had been created in Scotland in 1809. Concealment of Birth (Scotland) Act 1809

⁴⁷ Wynter (n43) 608

⁴⁸ Babey was employed by the London County Council, and seems to have been one of a very few 'inspectors' working in the field, although the legislation gave no powers of entry. The primary purpose of Babey's post would therefore have been associated with the registration of the baby-farmers. He appears later in this thesis as he gave evidence to the Select Committees.

⁴⁹ 'Nursing Out' *Lloyd's Weekly Newspaper* (3 February 1895) 3

medicate it as it 'seemed to be ailing', and finally the child died. An inquest had been arranged, as had a funeral, and the implication was that the *accoucheuse* had escaped without any kind of action taken against her.⁵⁰ Similarly, the BMJ reported an offer made by one *accoucheuse*, that

she could dispose of child by neglecting it at birth, and it could then appear as if it was still-born or had died in the birth.⁵¹

Indeed, other evidence from the same period such as Wynter's description of the 'wickedly inclined' midwives,⁵² or the evidence presented in the case of Margaret Waters, gives these accounts some sense of veracity. But, while the infant in the case reported in the BMJ where a doctor had been called in had been the subject of an inquest, we know from other sources (such as WB Ryan⁵³) that the coroners themselves felt that their influence was limited. Due to a lack of financial resources, it was not possible to employ investigators, and thus, due to the numbers of potential cases, it was not possible to investigate fully all the cases of infant death presented to them.

5.2.3 'Adoption' or 'Putting out to Nurse'

Where a child was not killed during the birth itself, or soon after, the proprietor of a lying-in house could dispose of it by means of adoption or by arranging that it should be 'put out to nurse'. As the *accoucheuse* investigated by AB had said, the choice was informed, largely, by the amount of money available to the mother.⁵⁴ Adoption arrangements were not legally formalised until the Adoption of Children Act 1926, and until that point no records were kept or registrations made of children who were transferred from one household to another, nor were payments for adoption outlawed. Therefore, transferring the guardianship of a child from one person to another or its adoption was not illegal, and so the lying-in houses were committing no criminal offence in transferring a child from one adult to another. Due to the fact that the custody arrangements of infants were not recorded, it made it difficult for a child to be traced once it had been transferred from one establishment to another.

While it is not explicit in the advertisements or in the contemporary accounts, it seems to have been well understood that in most of these cases, 'adoption' alluded to a means of permanent disposal, possibly on-site in the lying-in house or, potentially in a foster home. Once a premium had been paid by the mother, the child would be transported to its next, often its resting, place. The cases of Winsor (1865), Waters (1870), King (1889), and Dyer (1896)

⁵⁰ AB (n17)

⁵¹ 'Baby-Farming and Baby-Murder' [1868] *British Medical Journal* 29 February 1868 175

⁵² Wynter (n43) 608

⁵³ WB Ryan, *Infanticide: Its Law, Prevalence, Prevention and History* (Churchill 1862)

⁵⁴ AB (n17)

indicate how often it might be that a child would meet its death, either through neglect or from more violent means. Greenwood, in 1869, had found a similar situation. He suggested that the payment made by the parent for an ‘adoption’ was tantamount to ‘blood money’, and that ‘adopters’ preferred to take charge of a sickly child, as its death would lead to fewer official questions.⁵⁵

There was another form of adoption which the *accoucheuse* might arrange, literally the sale of an inconvenient infant to someone who wanted (or needed) to have a child, while hiding the fact that it was adopted, for example to provide an heir, a practice dubbed ‘baby-planting’ by Lionel Rose.⁵⁶ AB recounted the tale of the wife of a ‘Navy Man’ whose desire to have a child, and an heir, led her to purchase an otherwise unwanted infant from a midwife. Simply, a confinement was simulated during which the midwife, using copious quantities of blood and perhaps a placenta purchased from a butcher, would insert an infant (usually drugged) into a happy maternal bed.⁵⁷ While the infant was more likely to survive this kind of transaction, there could be no doubt that the child was treated as a commodity to be bought and sold, one that had a real value on its head; AB’s informant explained the relative value of the sexes – boys, perhaps not surprisingly, had a higher monetary value.⁵⁸ Typical of the baby-planting cases might be that which involved Mary Ann Hall, charged in 1870 with ‘conspiring with Annie Augusta to palm off upon George James Looe a certain child as the child of the last named defendant with intent to injure and prejudice him.’⁵⁹ This particular case was discovered by the police in the course of their investigations into baby farming establishments, and while it is not clear from the newspaper report what ‘intent to injure or prejudice’ involves, I suspect that the intention was to deceive George Looe into supporting a child not his own and its ‘mother’. The newspaper does not report the outcome.⁶⁰

5.2.4 Procuring the Infant Child

We have seen that one source of infants supplying the baby farming industry were those who, surviving the lying-in houses, would typically be transferred to a foster-home to be ‘cared for’ or (more probably) killed. However, for those children whose mothers had not been resident in a lying-in house, there was another means of transferring them to their final place of rest, through the hands of women to whom Waugh referred as the ‘Procurers’ who provided a steady stream of children for the foster homes.

⁵⁵ J Greenwood, *The Seven Curses of London* (First Published 1869, Dodo Press 2011)

⁵⁶ Rose (n11)

⁵⁷ AB (n17)

⁵⁸ *ibid*

⁵⁹ ‘Mary Ann Hall, charged with conspiring...’ *Daily Telegraph* (14 December 1870)

⁶⁰ MEPO/3/94 1870

For Waugh, the procurer (apparently almost always a woman) was an odious creature, a ‘foul and poisonous deceiver’,⁶¹ often working in league with the foster homes. Her role was to acquire children from, usually, the mothers and pass them on to the foster homes. Her appearance was one of respectability, her trade was organised, she advertised in the newspapers throughout the country, and she made use of the rail network to collect the children that she passed on to the receivers. Waugh suggested that the procurer was interested only in the money that she could gain from the mother of the child, and that she cared little if the child at the centre of the transaction lived or died. However, Waugh also noted that the procurer herself did no harm to the child, the physical danger started once the child was passed to the foster home. Thus ‘behind the ordinary screen of an English house, and the great liberties allowed to everybody in the treatment of children in it, without attracting anybody’s attention, the child is slowly changed from a bonny baby into a skin and bone corpse.’⁶²

There may be another reason why the procurers may have been described as having a respectable appearance and being women who could ‘blend in’. David Wilson, an expert on serial killers, in his study of the case of Mary Ann Cotton,⁶³ suggests that tradition expects that killers are ‘monsters in human shape’, and therefore immediately recognisable to the general public. Where a killer was of an attractive appearance, such as George Smith of ‘brides in the bath’ fame or the poisoner George Chapman,⁶⁴ it was thought that they would have a ‘hold’ or ‘power’ over their victims allowing for an easy murder. Further, that we expect those who are going to cause harm to other human beings as being ‘grotesque and diabolical’ and thus a woman who could pass as normal is more threatening.⁶⁵ The presentation of the apparent mundane respectability of the procurers both heightens the sense of evil associated with them and the implication that they were somehow able to exert some kind of power over the mothers of the children that they were to obtain.

If they did not come into contact with a procurer or foster home via the lying-in houses, how would women who were unable to afford the services of a midwife, or the £50 fee for such a confinement, make contact with a suitable procurer? The most likely means of contact was via the advertisements in the newspapers, as seen below

⁶¹ B Waugh, ‘Baby Farming’ *Contemporary Review* 57 (1890) 700

⁶² *ibid*

⁶³ D Wilson, *Mary Ann Cotton: Britain’s First Female Serial Killer* (Waterside Press 2013)

⁶⁴ D Wilson, *A History of British Serial Killing: The Definitive History of British Serial Killing 1888-2008* (Sphere 2009)

⁶⁵ Wilson (n63)

A respectable person wishing her child to be entirely adopted—premium £5, which sum includes everything.—Apply, by letter only, to Mrs. Oliver, Post-office, Gear-place, Brixton.

Adoption.

A HAPPY Home is offered to an Infant from birth or otherwise—premium of £10 required.—Address Alpha, Post-office, Grange-road, Bermondsey.

Adoption.

A RESPECTABLE householder, with good references, wishes for an Infant to nurse or adopt—with small premium.—Address to P. P., Post-office, Peckham-rye.

Adoption.

A NY lady desirous of adopting a fine healthy Infant of good birth, a few hours old, may hear of the same on application, in strict confidence, by letter only, addressed B. Y., Post-office, Lamb's Conduit-street, London, W.C.

Adverts such as these published in *Lloyds Weekly News* on 5 June 1870, seem to have followed their own conventions to enable understanding by those who read them. An investigation by the National Society for the Prevention of Cruelty to Children (NSPCC)⁶⁶ showed common phrases and traits in adverts such as:

She often professes that she has been married, three, five, or seven years, has had “no child”, and is “anxious to adopt one from the birth.”⁶⁷

Waugh's 1896 investigation implied that the role of procurer was separate from the receivers, and this may well have been the case on a number of occasions. Certainly, the act of advertising for a child to adopt was not illegal and remained unregulated, even after the enactment of the Infant Life Protection Acts.

One more source of securing contact with infants was the affiliation courts where mothers sought to affiliate their illegitimate child to the putative father in order to gain financial support for the child. These orders were commonly granted at the petty sessions in open court and hence were open to the public. Should a woman be unable to gain affiliation for her child, and hence financial support, it might have been tempting if she were approached at that time to give up her child, particularly if she was duped into believing that the child would be adopted by someone who would care for it and who would give it a better life.

5.2.5 The Foster Homes

Once a child had been acquired, either by the *accoucheuse* working in the lying-in house or by a procurer, it would be transferred to the ‘foster home’ where it would be far from public attention or supervision. It is, perhaps, the descriptions of the conditions in the foster homes that are most familiar to us when we think of baby farming, and certainly these have received more popular and academic attention than have the other branches of the industry. From the evidence presented in the trial of Waters, King, and of Dyer, and from the pamphlets and

⁶⁶ Benjamin Waugh was joint secretary of the London Society for the Prevention of Cruelty to Children which became the NSPCC in 1889. NSPCC, *A Pocket History of the NSPCC* (NSPCC 2011)

⁶⁷ Waugh (n37) 706

newspaper reports we see a picture of neglect, with children lying ill with no medical care,⁶⁸ corpses of children retained in cupboards,⁶⁹ and children starving to death.⁷⁰

As we have seen, the foster homes became a matter for public comment from 1860 onwards. For example, the BMJ's series of articles in 1868 and 1896 further exposed to public gaze the associated practices. It was claimed that children were routinely deprived of appropriate nutrition and of medical attention when it was needed, and were kept in atrocious conditions. In the *Contemporary Review*, Benjamin Waugh raised the suspicion that in baby-farming establishments was that the children were destined for death, whether their parent(s) paid for on-going maintenance or not:

For little human lives, frail and dependent, neglect furnishes an easy, smooth and safe incline to the grave; and the "farmers" know it.⁷¹

Waugh further commented that the epithet "farm" was particularly apposite as:

They are comparable with sheep farms, whose motive is fleece and flesh which can be turned into money on which the farmer keeps his family and "gets along".⁷²

The children, in addition to being weakened due to lack of appropriate nourishment, were often drugged. Thus evidence at the Waters and Dyer trials hinted at the use of laudanum to keep the children quiet.⁷³ But not all children who were lodged in foster-homes were destined for a quick death. Where a parent was willing to pay a regular stipend, children were more assured of life, although in the case of Mary Anne Johnson's child, this was sadly not the case. A paper-bag maker, Mary Anne struggled to earn enough money to pay Mrs Thorne five shillings per week to keep her child. He died due to a lack of care, and the *Daily News* reported that the inquest jury in delivering their verdict added a call for regulation of baby farming.⁷⁴ Other foster parents, it was reported, were not fit to care for children and were purely murderous. In 1868 for example, *Reynolds's Newspaper* reported the inquest of the illegitimate son of Mrs E Sinmer. The child (unnamed) had been entrusted to a baby farmer, Mrs Billups, and soon died. A short time after this the coroner presided at another inquest on a child in the care of Mrs Billups, who had died shortly after a bath. It appeared that she could not account for the presence of water in the child's lungs, and it seemed that she had an unfortunate track record when it came to the longevity of children in her care.⁷⁵

⁶⁸ *ibid*

⁶⁹ Rattle & Vale (n38)

⁷⁰ HC372 (1871) Report of the Select Committee on Protection of Infant Life

⁷¹ Waugh (n37)706

⁷² *ibid*

⁷³ *R v Margaret Waters & Sarah Ellis* [1870] Unreported (Old Bailey Proceedings Online)

⁷⁴ 'Baby Farming in St Lukes' *The Daily News* (31 December 1867) 3

⁷⁵ 'The Extraordinary Baby-Farming at Deptford', *Reynolds Newspaper* (3 May 1868) 1

Looking at the ways in which the foster homes were described in the popular and campaigning press, and at the evidence of the Waters and Dyer trials, it is clear that these establishments were lower on the social scale than were the lying-in houses. Certainly, when Greenwood's investigations led him to the house of the Oxleeks, he described Mr Oxleek as an 'indolent, ease-loving, pipe-smoking, beer-soaking wretch'.⁷⁶ The descriptions and images of the foster home owners are of those living in poverty, of houses covered in dirt, with rampant disease, and widespread use of drugs and alcohol, a far cry from the almost self-conscious respectability of the lying-in houses.

Whether the parents of the children who were lodged in the foster homes were aware of the conditions in which the latter were kept is a moot point. As we have seen, there was a business connection between the lying-in houses and the foster homes, with the first providing the children for the second, and there is evidence associated with the case of Amelia Dyer to suggest that the mothers of children entrusted to her were very aware of their likely fate.⁷⁷ However, if we are to accept the depiction by George Moore of baby farming in his novel *Esther Waters*, the realisation of the possible fate of a child might only come slowly to a mother seeking a home for her infant.⁷⁸

What should not be forgotten is the fact that not all baby farmers were malevolent. There is evidence to suggest that some foster parents would become emotionally attached to their charges, and indeed in some cases would seek support from the law to retain custody should the child be reclaimed by its parent.⁷⁹ It is a truism that we can only learn from that about which we have evidence and the main body of available evidence regarding the baby farming industry is that which was exposed by the cases of the murder of children. This does not mean that all baby farmers were inclined to neglect or kill their charges, just that those who did were more likely to come to the attention of the public. Certainly, the fictitious Esther Waters was eventually able to find a nurse who would care for her son and keep him safe until he could be returned to his mother,⁸⁰ while in 1891, the *Bristol Mercury* published a report

⁷⁶ This account is also notable for the description of Mr Oxleek who appears to be as involved in the trade as is his wife. Baby-farming being a primarily female undertaking, the description of a man involved is rare. J Greenwood, *The Seven Curses of London* (First Published 1869, Dodo Press 2011)

⁷⁷ Rattle & Vale (n38)

⁷⁸ In Moore's novel, his eponymous heroine, having fallen pregnant by a fellow servant seeks employment as a wet nurse. In order to do this, she has to find a place for her son. At first he is lodged with 'Mrs Spires' who, it soon becomes obvious, would not hesitate to 'neglect' him and 'let him go off quiet'. *Esther Waters* was hailed at the time of its publication as being one of the great naturalist novels of the late 19th century, thus showing acceptance and knowledge of the issues associated with baby-farming. G Moore *Esther Waters* (First published 1894, Oxford University Press 2012)

⁷⁹ 'Re: Carey, An Infant' *The Times* (16 February 1883) 3

⁸⁰ G Moore *Esther Waters* (First published 1894, Oxford University Press 2012)

relating to a case before the local magistrates, at which a mother sought to have a child returned to her from the baby farmer with whom the baby had been placed. The court found in favour of the mother, but the child ‘clung passionately to the woman who had acted the mother’s part to her, and the separation so affected the latter that she fainted before she could leave the court.’⁸¹

5.2.6 Clientele

So, who were the clients of the baby farming industry? Starting with the lying-in Houses, and given the fact that a premium was charged, and that the stated fees were in the region of £50 in 1870, we can assume that their target market was the embarrassed relatively well-off classes. Certainly, during her investigations into the lying-in houses, AB took care to dress well, and to show off her fine jewellery to the women whom she interviewed.⁸² Indeed the BMJ despaired whether it would be possible for people to ‘teach our kitchen-maids that the murder of a foetus is a crime, while they know that their young mistresses can be directed by their milliners to places of agreeable retirement.’⁸³ In contrast to those women giving birth in solitude and killing their own children in secret, we have a picture of a different, more monied market, one perhaps more concerned with paying to retain their ‘respectability’, for whom appearing pregnant in public might adversely affect both their reputation and/or their prospect of a suitable marriage.

As for the clients of the foster homes whose child was transmitted there via the lying-in houses, they would obviously have been of the class likely to avail themselves of those establishments, such as the mother of the child at the centre of the Waters case (1870), an unmarried seventeen year-old girl from a respectable family who had been ‘outraged’ while away from home and who had become pregnant. She had been confined at a lying-in house, and the child had been sent to the care of Waters. However, while this family appeared to be respectable, and intended that the infant should survive, Greenwood suggested that many of the women who used the services of the foster-homes were ‘working girl[s] or women’ who would face the loss of their livelihood and, very likely, their home. What to do with the child

⁸¹ ‘Cases respecting adopted children are constantly cropping up in the course...’ *Bristol Mercury* (12 September 1891) 5. In this case the child had been placed with foster-parents, and weekly payments made by the mother for a while, after which the mother disappeared. The foster-mother cared for the child for seven years and, noting that the birth-mother had accused the foster-mother of cruelty, no evidence of which was found, the *Bristol Mercury* mused ‘The theory of cruelty is negatived by the genuine affection which existed between [the foster-mother and child]’. The sympathies of the correspondent are clearly with the foster-mother, at a time when the courts found that the rights of a parent over a child were inalienable.

⁸² AB (n17)

⁸³ ‘Baby-Farming and Baby-Murder’ [1868] *British Medical Journal* 29 February 1868 197

would be a 'terrible dilemma'.⁸⁴ So there may have been an element of pragmatism associated with the decision to lodge an infant with a foster-parent, whether or not the mother concerned was aware of the potential consequences. There was a financial cost to be paid for the ongoing maintenance of the child or for a 'final' adoption, the premium. In 1869 Greenwood had found this latter to be in the region of £15, and suggested that this was very often paid by the father of the child, the seducer. His supposition was that the majority of these men were from the trades classes, able to lay their hands on such an amount and willing to do so to avoid the embarrassment of marriage to an 'unsuitable' girl. By 1890 this premium had increased or, indeed, was found to be on a sliding scale, 'from £5 for servants to £200 for genteel people.'⁸⁵ It appeared that the industry's charges had been adjusted to meet the needs of its target market.

Not all the mothers were able to pay the fees or premium with ease, either from their own resources or from the resources of the father. For example, at the inquest of her child, Alfred, in 1867, Mary Anne Johnson, as mentioned previously, gave evidence that she was by trade a paper-bag maker, and that Alfred, was the illegitimate child of a soldier who did not provide any financial support. Her income was seven shillings per week, and this led her to place the child with a baby farmer. Indeed, she added that, on occasion, 'I have lived upon a penny roll, and had nothing else to eat. I did that to support my child. I could not support myself and child on 7s a week.'⁸⁶ The impression is one of desperation, of a woman in need of support. The inquest jury in calling for regulation of the baby farming industry sympathised with her predicament, and it is noticeable that their call for reform was aimed at the baby farming industry rather than at tighter control either over the mother, father or the child.

5.3 Contemporary Views of the Industry

In this section I examine the ways in which the structure of the industry was evident to the contemporary authors, and to the public who read those articles. Evidence from the contemporary newspapers and journals exposes very clearly the ways in which those working within the industry organised themselves, the dominant practices, and the ways in which the baby farmers presented themselves to their potential market. A semiotic study of the contemporary newspaper and journal articles gives a very strong impression of an emerging industry anxious to market itself in the most effective manner in order to maximise its profits. The same articles present explicit condemnation of the industry and those working within it.

⁸⁴ J Greenwood, *The Seven Curses of London* (First Published 1869, Dodo Press 2011) 22

⁸⁵ Waugh (n37) 706

⁸⁶ 'Baby Farming in St Luke's' *The Daily News* (31 December 1867) 3

One remarkable early text, that of a long letter from a correspondent, 'AB', to *The Times*,⁸⁷ made clear links between the baby farming industry and the connivance of the medical profession. It told of an undercover investigation into the industry, and revealed the involvement of doctors in abortion, in lying-in houses and in the transmission of infants to foster-homes following birth. The language used was redolent of novels of the time.⁸⁸ These accounts reveal as much about the author and the readership as they do about the subject under discussion. Notwithstanding the dramatic tone of the letter, it served to describe the workings of the industry, its organisation, and its prevalence at the time. Indeed, on the same day of publication, an accompanying editorial avowing AB's letter as being 'an exact and truthful relation' of the facts of baby farming was published,⁸⁹ perhaps acknowledging that some people might have found the contents of the letter beyond belief.

The BMJ first brought baby farming to public attention following the scandals associated with the notorious case of Charlotte Winsor, tried in 1865 for the murder of a child in her care. The interest aroused by this case grew into a more pressing concern for legislators following a series of investigative articles published in the BMJ between January and March 1868. Peter Bartrip shows how the medical profession had a growing interest in the institutions associated with the Poor laws, which grew to encompass issues of public health in general including the provision of medical services via the Poor Law infrastructure. Bartrip has suggested that at the time, the BMJ was predominantly the mouthpiece of the British Medical Association, whose members were struggling for professional advancement, including a call for the licensing and supervision (by doctors) of midwives.⁹⁰ In light of this, it might be tempting to see the BMJ articles as being mere propaganda on behalf of a medical profession trying to justify its status, but the discovery two years later by the Police of the so-called 'Brixton Baby Farm', in which Margaret Waters plied her trade, brought to greater popular attention the realities of the continuing baby farming trade and vindicated the BMJs seemingly dramatic articles.

The emergence of baby farming as a 'problem' was an oblique response to the case of Charlotte Winsor, convicted of murder in 1865, and the main focus of those writing about the

⁸⁷ AB (n17) The author of this letter is said to be Fanny Hudson, the 31 year old wife of a British Army Officer who had been posted abroad. J Hinks, 'Detective Fictions, Baby-Farming detectives in the press, 1867-1895' (Conference Paper, British Crime Historians Symposium, University of Liverpool 26 September 2014), unpublished.

⁸⁸ See for example, A Forrester, *The Female Detective* (first published 1864, The British Library 2012)

⁸⁹ 'Under the head of "Baby Farming"...' *The Times* (London 14 July 1870) 9

⁹⁰ PWD Bartrip, *Mirror of Medicine: A History of the BMJ 1840-1990* (British Medical Journal and Clarendon Press 1990)

case was to expose the industry to public gaze. The investigative articles published in the BMJ in 1868⁹¹ are among the first of these, creating a truth of baby farming as an industry that was in need of formal control, especially as it took place behind closed doors in the atmosphere of the private home away from the control of the social police in the form of Poor Law officials. There was some acknowledgement that some of those taking children in were doing it from the best of motives, but even this was subsumed in a conflation of 'baby farming' with 'child murder'. The language of trade, business, and farming appeared in most of the early campaigning articles, along with the language of 'massacre',⁹² 'murderesses',⁹³ and 'barbarism'.⁹⁴ It is very clear that the intention of all the campaigns was to show that all women involved in baby farming were in some way evil, and that their insistence on payment for the care of children brought into question their suitability for nurture, or indeed their femininity and essential humanity.

The ultimate demonstration of an attack on the lack of feminine capacity for nurture was surely the allegation that among those involved with the industry were abortionists and those who permanently disposed of infants. There was also a concern that growing numbers of infants were being propelled out of the world at the moment of, or shortly after, their entry into it with the assistance of midwives. Writing in the *Contemporary Review*, Wynter, reflecting on 'the late Mr Wakley[']s'⁹⁵ suggestion that 'that the number of infants who left this world on "washing-days" was remarkable',⁹⁶ brought into question the number of still-births. This account suggested that new mothers might conspire with midwives to ensure that their newborns breathed for only a short period of time, and Wynter added that these practices allowed many women to escape the reach of the law. For, so long as the woman did not hide the fact of the birth, the subsequent death might be found to be an unfortunate and tragic occurrence.⁹⁷

The behaviour of some mothers, it is true, was criticised, but this criticism was not, as we might expect, solely focused at the lower classes but also at those women who might put their life of fashion ahead of their responsibilities as a 'natural' mother. Thus Wynter wrote that:

⁹¹ 'Baby-Farming and Child-Murder', [1868] *British Medical Journal* 25 January 1868, 75; 'Baby-Farming and Child-Murder', [1868] *British Medical Journal* 8 February 1868, 127; 'Baby-Farming and Child-Murder', [1868] *British Medical Journal* 22 February 1868, 175; 'Baby-Farming and Child-Murder', [1868] *British Medical Journal* 29 February 1868, 197; 'Baby-Farming: Infant Mortality', [1868] *British Medical Journal* 21 March 1868, 278

⁹² Wynter (n43)

⁹³ *ibid*

⁹⁴ 'Baby-Farming and Infanticide, *Saturday Review of Politics, Literature, Science and Art* (18 June 1807) 793

⁹⁵ Thomas Wakley, surgeon and journalist who wrote for, amongst others, *The Lancet*

⁹⁶ Wynter (n43) 608

⁹⁷ *ibid* 608

Still more immediately reprehensible is the infanticide brought about by fashionable ladies, who buy an alien nourishment for their children, lest their own figures should suffer in the performance of a function which maternal love should render sacred.⁹⁸

Not only does Wynter's opinion reflect the exaltation of motherhood that had developed from the late eighteenth century,⁹⁹ but this statement is interesting, referring as it did to the practice of the employment of wet nurses which one would not usually associate with infanticide, or indeed baby farming as, in most cases, the wet-nurse would lodge in the home of the parents of the child that she was nursing. Her conduct would be subject to the control of the mother of the child. It relates to Wynter's belief (to be echoed in his evidence given to the Select Committees) that, in their desire to gain employment as a wet nurse, a mother might subjugate the needs of her own child and send it to a baby farmer, thus bringing about its death.¹⁰⁰ Wet-nursing had already been a source of anxiety to the medical profession earlier in the century, an article in the *Lancet* of 1859 suggested that there was a link between breast milk 'tainted' with criminality which could be transmitted to an innocent child.¹⁰¹ In its focus on women of both working and the 'fashionable' upper and middle classes, the wet nurses and their employers, opinions such as those expressed by Wynter and the *Lancet* clearly demonstrate the ways in which it was believed that women should fulfil their primary role, that of a mother to their own children, rather than have them risk developing criminality. If this was the predominant view, it is perhaps no surprise that those women who chose not to, or who were not able to, care for their own children should have been viewed as aberrant.

Perhaps one of the more surprising aspects of this early attention to the problem of what to do with an inconvenient child, is the criticism of Coram's Foundling Hospital, set up as it was in order to care for foundlings, that is, for children whose parents, for whatever reason, made the decision to give them into the custody of another. Wynter made a link between the Foundling Hospital and a shortening of life expectancy, but not necessarily of those consigned there as residents. He argued that the foster parents who took in foundling children would skimp on nourishment for their own children in order to feed the foundlings.¹⁰² If this were the case, it would appear that his criticism was not aimed at the fact that the Foundling Hospital

⁹⁸ *ibid* 610

⁹⁹ E Badinter, *The Myth of Motherhood: An Historical View of the Maternal Instinct* (Souvenir Press 1981)

¹⁰⁰ It was Esther's intention to become a wet nurse that first brought her and her child into contact with the first, and probably maleficent baby-farmer in Moore's novel. G Moore, *Esther Waters* (First published 1894, Oxford University Press 2012)

¹⁰¹ CHF Routh, 'Selection of Wet Nurses From Among Fallen Women', *The Lancet* (1 June 1859) 580

¹⁰² The use of wet-nurses and foster-parents was not limited to the desperate or the single mother. As Gathorne-Hardy notes, the practice was quite common amongst parents about to go out to one of the colonies (usually India). J Gathorne-Hardy, *The Rise and Fall of the British Nanny* (Hodder and Stoughton 1972). As we shall see, this was a topic of concern for the third Infant Life Protection Committee. HC343 (1896)

would care for children, but rather at the fact that such care might be at the physical expense of the children of the foster parents.

The structure and purpose of this apparently burgeoning industry did not change very much during the course of the century and there was a resurgence in interest during the 1890s, possibly awakened by the case of Jessie King (1889), which we shall examine in the next chapter. In a similar manner to the revelatory BMJ articles of 1868, Benjamin Waugh, writing in the *Contemporary Review* in 1890, questioned the received beliefs of the time that the baby farming industry was in abeyance, and he wrote in some detail of the industry as he found it in the course of his work with NSPCC. Waugh's prose focused on the business-like nature of the baby-farms, and of the farmers who showed little, if any, feeling towards their charges. The language, like that used in the BMJ articles, was of 'monsters', and of 'infamous creatures, mere she-things',¹⁰³ that is women who treated children cruelly and saw them only as a resource to be exploited. Waugh called for reform of the Infant Life Protection Act 1872, and indeed he appeared as a witness before the 1896 Select Committee, although he had not been called as a witness to the Select Committee which had sat in July 1890.

The language of the articles published in the 1890s was that of baby farming as being an 'industry', one that used the bodies of infants as raw materials to be processed in order to make a financial gain. The example of baby farmers advertising for children was reprised in both the works of Waugh and the BMJ, with a note from the BMJ to the effect that while some journals and newspapers had chosen to reject such advertisements, some procurers were resorting to advertise in *Exchange and Mart* which demonstrates a very clear association between that journal and commerce.¹⁰⁴

As occurred in the earlier publications, the mothers of the children were not made a target of disapproval. Any disapproval was reserved for those working within the industry, behind closed doors away from the control of the Poor Law or medical institutions. However, whereas the earlier discourse had made some criticism of the operation of the Poor Laws and bastardy legislation in leaving women with few choices as to what to do with their illegitimate children, the later articles in the BMJ and the *Contemporary Review* virtually ignored the issues of the legislative obstacles to the welfare of women and children, choosing to concentrate more closely on the issues of supervision and control of the baby farmers. There was nonetheless still a tacit acceptance of the necessity for the industry, with particular reference to the need

¹⁰³ Waugh (n37) 700

¹⁰⁴ 'Report on the Baby Farming System and its Evils' [1896] *British Medical Journal* 22 February 1896 489

for some form of care for illegitimate children. Acceptance of the industry is illustrated by references to the need for improved registration of the births of illegitimate children, another example of the enumeration and classification of which the Victorians were so fond, which would have given more accurate information regarding the size of the problem which, up until the point of compulsory registration, could only be estimated. The later writers in the BMJ and Benjamin Waugh were less likely than their predecessors to criticise the working of the Poor Laws or bastardy legislation although Waugh did suggest that the affiliation courts, at which mothers would attempt to gain financial support from the fathers of their children, were a useful source for the baby farmers to identify vulnerable women as particular targets for their market in that their very public nature made it easy for the procurers to pinpoint possible sources of 'business'.

These later articles bring very little new to an understanding of the ways in which the industry worked. However, what they do achieve is to give confirmation of the fact that the first Infant Life Protection Act did little to alleviate the worst excesses of baby farming. It is striking that in spite of the 26 years that separated the Waters (1870) and Dyer (1896) convictions for the murder of children in their care, the same issues are covered in both phases of publication. The issue of newspaper advertisements aimed at potential customers was still a cause for concern in the BMJ articles of 1896, although there is a suggestion that such advertising was on the wane. However, as we shall see in the next chapter, advertising was one of the methods used by Dyer to procure the infants from which she profited. The lack of criticism in both discourses, separated as they were by thirty years, of the mothers of illegitimate children is also striking, although Waugh does suggest that some, at the least, were 'infamous creatures, mere she-things, who look out for foul and dishonourable people to consign their children to.'¹⁰⁵ However, it was accepted as more likely that the mothers would make sacrifices to keep their children safe, and would hope to entrust them to someone who would care for them. The similarities, and the few differences between these two sets of articles, allow for a more complete understanding of the way in which the criminal cases associated with baby farming provided the context in which legislation was introduced, debated and enacted. Many of those who wrote and published articles relating to baby farming were part of campaigns against the industry and sought to influence the direction of future legislation. The campaigns and, ultimately, the legislators sought to impose control over a part of the population which was seen to be problematic and in need of regulation and control

¹⁰⁵ Waugh (n37) 705

5.3 Conclusions

During the second half of the nineteenth century, the issues associated with baby farming came to public attention and opinions were reinforced by a number of criminal cases of baby farmers accused of the murder of children in their care. While academic research has focussed on the criminal associations of the industry and, in particular, the foster-homes, baby farming, as an entity, is not that straight-forward. In this chapter I have shown how, without any official input, the baby farmers created a loosely organised set of practices which were to stay consistent throughout the period. Evidence for this growing industry comes from a number of sources, including some of the campaigns intended to bring to the notice of legislators.

The investigative articles published by the BMJ provided a focus for a campaign aimed at legal regulation of the baby farmers, while commentaries such as that of AB's letter to *The Times* entertained while they informed. However, while various contemporary commentators, including the BMJ, attempted to attract official notice for regulation of all of the discrete parts of the industry, that is the lying-in houses, midwives, and the procurers, as we shall see in chapter six, it was only the conditions within the foster homes which caught official attention. By doing this, I complete the answer to my first thesis question, that official interest into matters associated with paid childcare which took place in the private home became a matter for government interest due to the revelations associated with the practice of baby farming as it was revealed during the second half of the nineteenth century.

The growing discourse associated with the evils of the baby-farming industry overpowered that concerned with the morality and the financial cost of bastard infants to the parishes. As we have seen in this chapter, there were campaigns by the BMJ and social reformers calling government attention to the need to regulate paid childcare taking place in the domestic home so as to stem the apparent tide of infant murder. The revelations of actual cases of brutality and cruelty shown to infants provided extra impetus and urgency for calls for legislative change. In the next chapter I introduce the case histories of four baby farmers convicted of the murder of children in their care. I use these to continue to answer the question introduced in this chapter; how governments' interest into the issues of paid childcare changed from the purely fiscal, as shown in previous chapters, to a focus on the welfare of children looked-after in the baby farms. As we shall see, these criminal cases had a direct effect on legislation associated with issues relating to paid childcare.

Chapter 6: ‘You will know all mine by the ribbons round their neck’¹

The death of a child is always tragic, even more so when that death is at the hands of another. The murder of a child is often associated with calls for action and especially for legislation to prevent such a tragedy from reoccurring.² In the nineteenth century the criminal cases of four child-murderers were a catalyst for calls for change in the law relating to the paid care of children.

In this chapter I complete the answer to the second of my research questions, why it was that the nature of governments’ interest in paid childcare changed focus from the mother to the baby farmer towards the end of the nineteenth century. To do so, I examine four case histories of women who were convicted of killing children in their care in order to understand the response of the courts and the effect on government. These cases offer evidence of the ways in which the developing criminal justice system reacted to a particular type of exploitation of the body of the infant child and of the effect that this reaction had on dominant opinions. The newspaper reports, journal articles and other publications of the time show how the women who were dubbed ‘baby farmers’ came to be seen by courts and the press as distinct from other child-murderers. I argue that identification of the baby farmers as being ‘different’ from other murderers moved government focus regarding the support and care of bastards away from the fiscal cost of their support towards that of their welfare. I further argue that the contemporary reports of these crimes are evidence of the thinking of those who sought to influence the general reading public, and that these opinions would have had direct influence, not only on those giving evidence to the select committees of 1871, 1890, and 1896, but also on those members of the committee hearing that evidence. The discourse surrounding the baby farmers reflects the working of the criminal justice system in relation to female murderers, although I suggest that the nature of the baby farming trade amplified the public’s horror. The discourse also reflects the ways in which the developing public authorities sought to extend use of the law to prevent the exploitation of the infant child.

¹ From Amelia Dyer’s confession. A Rattle & A Vale, *Amelia Dyer: Angel Maker* (Andre Deutsch 2007)

² A modern example of this is the murder of Peter Connelly in 2007. The case raised many questions relating to the oversight of child protection issues and was the subject of academic comment. See for example: Ray Jones, *The Story of Baby P* (Policy 2014) and Joanne Warner, *The Emotional Politics of Social Work and Child Protection* (Policy 2015). Both authors examine the effects of Peter Connelly’s murders and the implications for the Social Work profession and, in the case of Warner, sought to understand the nuances of the various discourses associated with the case.

I have selected the following cases not just because their notoriety led to significant popular, contemporary, comment, but also because they correspond with identifiable attempts to change the law relating to paid childcare in general, and baby farming in particular. The first two cases demonstrate clearly the shift in attention away from the mothers of illegitimate children to those paid to care for them. The second two show how the provisions of the Infant Life Protection Act 1872, which provided for registration of baby-farms but made no provision for direction supervision of the baby farmers, had little effect in the prevention of infant death.

The first of these cases, that of Charlotte Winsor, was heard in 1865 at the Exeter Assizes and, while it pre-dates the first campaign of the BMJ series of campaigning articles by three years, it is the first case in which a baby farmer was convicted for the murder of a child in her care. It is of particular interest for this thesis due to the decision of the prosecuting authorities to ignore the possible criminal culpability of the mother of the child in the case, in favour of her evidence against the baby farmer thereby demonstrating the change in official focus from the mothers to the carers. The second case, that of Margaret Waters, tried in 1870, marks the first execution of a baby farmer, and it had a great influence on the passage of the first Infant Life Protection Act.³

The third case is that of Jessie King (1889), the last woman to be hanged in Edinburgh. While this is a Scottish case, taking place in a different criminal jurisdiction, Scotland shared with England and Wales the Infant Life Protection legislation passed in 1872 and, as we shall see in chapter eight, Scottish police officers associated with the case of Jessie King gave evidence to the 1890 Select Committee. The final case involves the most notorious of all the baby farmers, Amelia Dyer (1896). While academic commentary refers to both Waters and King, Dyer rarely appears in academic works. However, her crimes are well known and she has achieved wide notoriety.

6.1 The Early Baby-Farmers

6.1.1 Charlotte Winsor (1865)

Charlotte Winsor's case is a landmark as she was the first baby farmer to be convicted of the murder of a child in her care. Her case is particularly important as it demonstrates the point at which popular and official attention turned from the mother of a murdered child to the baby farmer who provided paid-care. Winsor lived in a rural area, about a mile from Torquay.

³ Infant Life Protection Act 1872

The child's mother, Mary Jane Harris,⁴ was not married to the father of the child, 'a well to do farmer',⁵ by whom she had already had another child. This first child was still living, presumably in the care of another baby farmer. Mary Jane, therefore, was hardly complying with the contemporary view of an ideal woman. As she was employed as a servant, the social policing arrangements of the Poor Law authorities would not have been involved in her life unless she had opted to affiliate the child to his father via the petty sessions. She was therefore outside the supervision of any form of social police. Neither could her behaviour said to be under the control of the father of the child, she was not married to him, and there seemed little likelihood that she ever would be. There was no 'dominant, patriarchal figure'⁶ in Mary Jane's life. This particular set of circumstances puts Mary Jane outside the scope of the women who appear in Davidoff et al's examination of the place of women in Victorian society.⁷ Rather, she appears to comply more with the image of the 'fallen' woman, one whose reproductive life was in need of formal control.⁸ And yet, Mary Jane's indiscretion did not result in the ultimate penalty for the death of a child; instead that fate was reserved for the baby farmer, Charlotte Winsor.

On 15 February 1865, the body of Harris' son Tommy was found by the side of the road between Torre and Torquay, wrapped in a copy of the *Western Times* newspaper. He had been handed to Charlotte Winsor with a weekly fee of 3s to pay for his care. It appeared that Winsor was an experienced baby farmer and the newspaper report suggested that she had persuaded Mary Jane to seek a more permanent solution to her child-care problem, although Harris denied this at trial. Initially, Harris stood trial alongside Winsor, although their accounts of the child's death differed. Winsor suggested that Harris had tried to poison the child, which Harris denied. The medical evidence showed that the child appeared to have been well nourished, but that he had most likely died from exposure.⁹ The reports of the case in the *Times* give little direct evidence of the involvement of Charlotte Winsor in the death of the child. She claimed that the child had been sent to an unidentified aunt of Harris. Some of Harris's relatives were produced before the court, all of whom testified that they had not

⁴ Sometimes referred to as Mary Jane Harries. For consistency, I use Harris throughout.

⁵ 'Western Circuit, Exeter' *The Times* (20 March 1865) 7

⁶ WR Cornish, *Law and Society in England 1750-1950* (Sweet & Maxwell 1989)

⁷ Leonore Davidoff, Jean L'Esperance, Howard Newby, 'Landscape with Figures: Home and Community in English Society' IN J Mitchell and A Oakley (eds) *The Rights and Wrongs of Women* (Penguin 1977)

⁸ Carol Smart, 'Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

⁹ One is reminded of the fictional case of Hetty Sorrell in *Adam Bede*. George Eliot, *Adam Bede* (First Published 1859, New English Library 1961)

received a child from her. The case against Winsor appeared less than conclusive given the paucity of evidence against her.

At their trial for murder at the Exeter Assizes, the judge in the case, Baron Channell,¹⁰ gave a lengthy summation, after which the jury retired at 7.00pm on a Saturday evening. The jury deliberated until nearly midnight, at which point they indicated that they were unlikely to reach an agreed verdict. Given that it was impossible for court business to be heard on Sunday and that Baron Channell was due to open the assizes at Bodmin on the following Monday, he would not be able to hear the verdict in person. The jury was discharged, with no verdict recorded against either Winsor or Harris, and the two were remanded once again into custody. This was particularly unfortunate for Winsor, as it was reported by *Trewman's Exeter Flying Post* that eight of the jurymen were in favour of acquittal, while only four were in favour of conviction.¹¹

The case was re-heard at the next assizes, which commenced on 28 July 1865, with both women having remained in custody until that point. Somewhat surprisingly, and controversially, the prosecution been decided that Harris should act as a witness against Winsor, and that the women should be tried separately. Winsor's barrister, Henry Folkard,¹² made representations to the court that she should not be tried again, having once been 'put in peril', but this was overruled and the case proceeded with testimony given by Harris. *The Times* reported that her evidence made a 'great sensation' in the court, while 'the prisoner sobbed bitterly when Mr Carter stated that he should call Harris.'¹³

Harris' evidence clearly had a great effect on the case against Winsor. Harris presented herself as being totally without blame, and stated that she had not asked Winsor to kill the child.¹⁴ During his summing up the judge warned that the jury should not pay attention to the evidence of an accomplice, save where there was supporting evidence. After the summing up, which took two hours, the jury retired to consider their verdict for an hour and twenty minutes. The verdict on Winsor was that of murder and the sentence inevitably that of death¹⁵ Winsor was remanded to custody to await the carrying out of the sentence, while the

¹⁰ Channell had a long, distinguished career. He was called to the bar in 1827 and joined the order of serjeants-at-law in 1840. He was appointed commissioner of the assize in 1856. JA Hamilton, 'Channell, Sir William Fry (1804-1873)', in H Mooney (ed) *Oxford Dictionary of National Biography* (Online edn Oxford University Press 2004)

¹¹ 'Supposed Child Murder at Torquay', *Trewman's Exeter Flying Post* (22 March 1865) 7

¹² Henry Folkard was called to the Bar in 1858 and worked predominantly in the Western Circuit. He was appointed Recorder of Bath in 1887, and died in 1914.

¹³ 'The Torquay Murder' *The Times* (29 July 1865) 12

¹⁴ 'A Professional Murderess' *Caledonian Mercury* (1 August 1865)

¹⁵ *ibid*

Caledonian Mercury reported that Harris remained in custody, presumably to stand trial for a lesser offence.

Winsor's execution was scheduled for 2 August, being the Wednesday following the conclusion of the trial. Calcraft, the official executioner, travelled from London to Exeter, and Winsor's grave was dug in the grounds of Exeter Jail. However, Calcraft returned to London without having carried out the sentence, as Winsor's indefatigable counsel had lodged an appeal. Accordingly, a temporary reprieve was granted so that an appeal could be heard at Queen's Bench.¹⁶

The grounds for the appeal were that the second trial was illegal due to the discharge of the first jury before a verdict had been reached. Lambert also argued that the evidence given by Harris should have been inadmissible as she had pled 'not guilty' at the first trial, but had not been acquitted of the offence for which she had been charged, that of murder. The appeal was unsuccessful and on the 24 February, the conviction and sentence of death was upheld. Another date was set for the execution, but was once again stayed, due to a writ of error heard on 4 May 1866 in the Court of Exchequer.¹⁷

Although the final appeal was unsuccessful, Winsor escaped execution. On 12 May 1866 a conditional pardon was granted by the Crown, on the advice of the Home Office, commuting Winsor's death sentence to that of imprisonment for life. The decision was not popular. Press reports criticised those who felt that commutation was necessary because of Winsor's gender, and it was also claimed that '[t]he crime of Charlotte Winsor places her altogether out of the pale of mercy'.¹⁸ While she might have escaped the gallows, she had not escaped public condemnation. She was described as being 'devoid of feeling', and there was even a suggestion that her execution had been halted because there were in existence letters that 'would bring home crime to several parties', implying perhaps that she had information that could be damaging to those who had used her baby farming services in the past.¹⁹

The decision of the courts that Winsor should stand trial for the murder of Tommy with Harris as witness against her is somewhat peculiar. Neither of the women conformed with the ideal of womanhood of the time. The prosecution's decision, however pragmatic, also complied with the perceived need to control and govern women who are not under the authority of a husband or father. Although Harris bore a child out of wedlock, and thus was in need of some kind of

¹⁶ *Charlotte Winsor v The Queen* (1866) LR 24 January 289 (QB)

¹⁷ *Charlotte Winsor v The Queen* (1866) 1 LR 390 (Exchequer)

¹⁸ 'The Case of Charlotte Winsor' *Trewman's Exeter Flying Post* (16 May 1866)

¹⁹ 'The Convict Charlotte Winsor' *Dundee Courier & Argus* (18 May 1866)

control,²⁰ Winsor behaved far outside the general norm of maternal care. The child was not hers, she was not under the supervision of husband or patriarch and, according to Harris' evidence, she was the primary instigator of bringing Tommy's short life to a close. While Carol Smart posits that the baby farmers were seen to be in need of control as they allowed a woman to 'detach themselves from children in a context where legal policy sought to keep them fairly firmly attached',²¹ in this situation Winsor's position is more complex.

If Harris had given up her position as servant in order to care full-time for her child, she may well have become chargeable to the parish because of Tommy's illegitimacy. There is no evidence that she would be able to marry the father of the child and, given that this was her second child to the same man, that would appear extremely unlikely. There may have been little point in attempting to address her problematic fecundity after the child had been produced. She was, however, working as a servant and it would have been understood that her employer would bear some responsibility to ensure that she would behave as a respectable member of society.

Winsor, on the other hand, had no legal connection with the child, her relationship with it was purely one of commerce. She appeared to have been working on her own as a baby farmer; certainly I have found no reference to husband or other member of her household.²² In this context, Winsor was completely outside the norms of respectable family life. There was nobody to exercise control over Winsor's behaviour and she may have been seen as the ultimate instigator of the death of the child, which led her to the dock. However, contrary to this view of Winsor as principal protagonist and therefore most culpable, is Carl Chinn's depiction of women living in poverty forming supportive networks of informal fostering to help the mother of an illegitimate child.²³ If this were the case, then it might be tempting to view Winsor's situation with more sympathy and to conclude that she was, indeed, a victim of prosecutorial pragmatism.

Charlotte Winsor's trial does not appear in many academic or 'true crime' works, perhaps because she did not hang for her crimes, although the hearings did expose the trade of baby farming to public awareness. The reports of the case do not, however, dwell on the substance of baby farming, or on the conditions under which Thomas, the child at the centre of the case,

²⁰ Smart (n8)

²¹ Davidoff, L'Esperance & Newby (n7) 22

²² As we shall see in the following cases, this was quite common amongst the baby-farmers, women would enter the trade in order to support themselves or their dependent family.

²³ Carl Chinn, *They Worked All Their Lives* (Carnegie Publishing 2006)

was kept, save only that he appeared to be well-nourished and cared for. The next case study, that of Margaret Waters, exposed a far more seedy side of the baby farming trade.

6.1.2 Margaret Waters (1870)

The case of Margaret Waters has been examined by a number of academic writers, most of whom made links between the Waters case and the inception of the Infant Life Protection Act 1872. Margaret Arnot adopts a feminist stance to examine the Waters case, situating it within a wider discourse, part of which sought to construct mothers and, in particular, women who would not conform to the picture of ideal motherhood, as being deviant and in need of control. She contrasts this discourse with the other competing and contested discourse that the state should be reluctant to interfere in matters of the private home.²⁴ Her discussion of the Waters case and its links with the Select Committee of 1871 focuses on the issues of gender uncovered by the case and reflected by the witnesses called to give evidence to the committee.

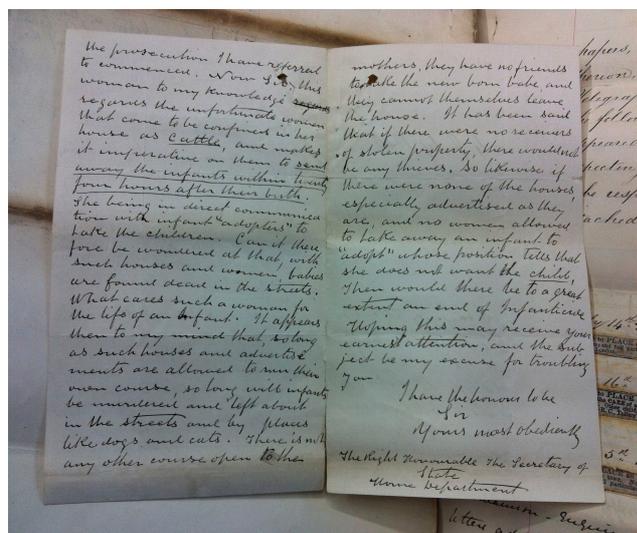
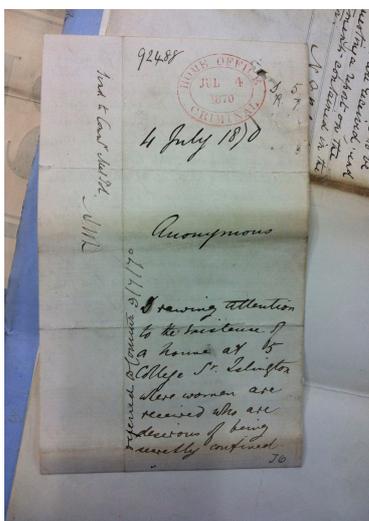
Arnot suggests that the discourse surrounding both the Waters case and the Select Committees made it unlikely that issues relating to women's rights would be addressed sympathetically either by the committee or in the resulting legislation. In particular, campaigns for the suffrage were causing consternation, in government and beyond, which may have influenced the official view of women. Arnot may well be right that there was little hope of passing legislation which was sympathetic to women but, as we shall see in the next chapter, a significant proportion of the MPs sitting on the committee had an active interest in women's rights and the campaign for the suffrage. However, my interest in looking at the case of Margaret Waters relates to the second of my thesis questions, whether the nature of governments' interest in paid childcare arrangements changed during the nineteenth century.

Waters' baby farm was discovered, almost by accident, by Sergeant Relf of the Metropolitan police. He had been instructed to investigate the seemingly large number of infant corpses found in the streets of Brixton. Relf had commenced his investigation by focussing on the lying-in houses²⁵ which were, at the time, the main source of concern. Anonymous letters, such as that depicted below, and sent to the police, suggested possible addresses for their

²⁴ ML Arnot, 'Infant death, child care and the state: the baby-farming scandal and the first infant life protection legislation of 1872' (1994) 9 *Continuity and Change* 271, 280

²⁵ As we saw in the previous chapter, the term lying-in house denoted a rudimentary maternity home, whose chief attraction was that these were places where women could give birth in secret.

attention, and one of these may have been the catalyst for this particular investigation and thus into Waters' activities.²⁶



Anonymous letter held in the National Archives

During his investigation in Brixton, Relf was able to connect one of these lying-in houses, with the household of Margaret Waters and Sarah Ellis. Relf's evidence regarding Waters' house presented at the Old Bailey, gave a vivid description of neglect, of children lying in their own excreta, unnaturally quiet and emaciated and who 'did not appear to have power to cry, or make any noise.'²⁷

One of these infants was the child of Janet Cowen.²⁸ Janet was 17 years of age and, while living away from home, had been 'outraged' by the husband of the lady in whose house she was staying. It is distinctly possible that Janet had been employed in the house as a servant.

²⁹ Janet returned to live with her parents and had been sent to a lying-in house for her confinement. Her father, wishing to find somewhere for the child to be sent after the birth, answered an advertisement in *Lloyds Weekly London Newspaper* for what purported to be a

²⁶ MEPO 3/93 1870

²⁷ *R v Margaret Waters & Sarah Ellis* [1870] Old Bailey Proceedings Online

²⁸ In the newspaper reports, the mother of John Cowen appears as Jeannette, while the OBSP records her as being Janet. For consistency, I refer to her as Janet. Similarly, the family surname appears as both Cowan and Cowen. Once again, I use the spelling, Cowen, given in the OBSP for consistency.

²⁹ The meaning of the term 'outraged' is not explained. However, given that Janet was 'staying away from home', it is distinctly possibility that she was working as a servant and that the master of the house either raped her or seduced her. We are not told the identity either of her employer or her alleged attacker. The statement which Cowan read to the coroner's court on 27 June 1870 stated that he had applied to the magistrates at Bow Street, on behalf of his daughter, for the arrest of the father of the child, but that his daughter had been too ill to participate in the action and thus, no prosecution took place. 'The Baby-Farming Case at Brixton' *The Times* (28 June 1870) 11

'respectable couple' who wished to adopt a child. The advertisers expressed a desire to 'adopt' a child completely, but were not willing to give their address. Mr Cowen had an initial meeting with the advertiser, 'Mrs Willis' (who turned out to be Waters), who told him a story of her family life (married for thirteen years, but with no children), and she seemed to have convinced him that his grandchild would be best served by being placed with her.

The child was handed to 'Mrs Willis' who took total charge of him, with a payment of £2 cash. The next time that Cowen saw his grandson was when he accompanied Relf as he entered the Waters house. The descriptions of what they found in the house was dramatic; ten children were discovered, most of whom were in a perilous state of health, all of whom were unnaturally quiet, and all of whom seemed to be grossly underfed. In an attempt to save them, the children were removed from the house on 11 June 1870 and sent to the nearest workhouse. The condition of the Cowen baby, just less than a month old, was described thus:

It had scarcely a bit of flesh on its bones, and the only thing I should have known it by was the hair; it was not crying or making any noise, not any of them, that I heard; it appeared to be dying almost; it could not make any noise, it was much too weak, I think, to make the slightest sound; it was scarcely human, it looked more like a monkey than a child...³⁰

In spite of the ministrations of the workhouse staff, John Cowen died on 24 June 1870. Margaret Waters and her sister, Sarah Ellis, were formally charged with his murder and were remanded to appear before the Old Bailey on 21 September 1870. The case against them focussed on causation, whether Waters had provided enough food for the sustenance of the infants or whether she had deliberately neglected them so that they might die. At the end of the case for the prosecution, the judge directed that there was no evidence against Sarah Ellis, and accordingly ordered that she should be found not guilty. At the end of the defence case and the judge's summing up, the jury took 45 minutes to find Margaret Waters guilty of murder and she was sentenced to death.³¹ Although Sarah Ellis was cleared at the Old Bailey of the murder of the Cowen infant, she was later found to be guilty of fraud,³²

Following the verdict Waters gave a statement to the court denying her guilt. She maintained that the evidence that had been presented against her had been exaggerated. She did accept that she deserved punishment but she maintained that she was not guilty of murder. In passing sentence the death sentence, Lord Chief Baron Kelly 'was greatly affected and shed tears'.³³ The verdict was welcomed, in some quarters at least. *The Times* felt that '[s]ociety

³⁰ *R v Margaret Waters & Sarah Ellis* [1870] Old Bailey Proceedings Online, Evidence of Caroline Guerra

³¹ It should be noted that this was not an atypical length of time for a jury to reach a verdict of murder.

³² 'Trial of the Brixton Baby-Farmers', *Glasgow Daily Herald* (24 September 1870)

³³ Kelly was opposed to capital punishment, speaking in favour of abolition during parliamentary debates as early as 18347. H Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (Continuum 1993)

may be thankful that such a crime has been brought home to one of its perpetrators',³⁴ while the parents of children given over to the baby farmers were, in the opinion of the editor, 'no better than accomplices in the murder of their children.' The writer of the editorial called for journals to desist from carrying the advertisements of baby-farmers, and the editorial repeated the familiar cry that baby farming was caused, in part, by lax morality, and by the weakness of those giving in to 'human passions'.

Was Waters a murderess? Did she have the intent to kill the children? Certainly the issue raised by the defence at her trial was that of causation and the defence argued that she had not intended that the children should die. Homrighaus describes Waters as being 'a victim of... a "moral panic"',³⁵ while Arnot sees her as being 'a sort of scapegoat for all infant death'.³⁶ Certainly, public opinion at the time regarding baby farming and infant deaths in general was high, as we saw in previous chapters. Looking at the reports of the trials and court appearances, it is easy to see why Homrighaus and Arnot reached these conclusions. There was little sympathy for Margaret Waters during the time when she and her crimes were in the public eye.

While it may have only taken the jury at her trial 45 minutes to return a guilty verdict, it is clear that Waters was not without support. Shortly before her execution, Dr Edmunds read a statement at a meeting of the Dialectical Society,³⁷ which included a statement from Waters which gave a different view of her and of her case.³⁸ The impression was that Waters had a difficult life, had suffered the loss of a husband, and had a struggle to make ends meet financially. A failure to make a success of a business making collars had led her into the baby farming industry. Edmunds is reported as stating that:

From what he could judge she had no intention of murdering any of the children, but they died off, as they might have been expected to die off, from diarrhoea, thrush, and convulsions...³⁹

Here Edmunds echoes directly the medical evidence presented at the Old Bailey trial. There are also suggestions that Waters' customers were of a higher class than was she.

³⁴ 'The so-called "Baby Farming Case" has ended' *The Times* (24 September 1870)

³⁵ RE Homrighaus, 'Wolves in Women's Clothing: Baby-Farming and the British Medical Journal, 1860-1872' (2001) 26/3 *Journal of Family History* 350

³⁶ Arnot (n24) 277

³⁷ The Dialectical Society was dedicated to the investigation of the phenomena of spiritualism, and was a highly respected association of professional individuals.

³⁸ 'Baby-Farming in London: Extraordinary Revelations', *The Times* (7 October 1886)

³⁹ *ibid*

The National Archives also contain letters from those objecting to the penalty about to be exacted upon Waters and pleading for clemency.⁴⁰ In particular there are three letters from JR Mayo, Waters' solicitor, giving further information that he felt may have some impact on a plea for mercy. He argued that the evidence at the trial showed no intent of murder, and therefore that the verdict should only have been manslaughter. He had also found jurors who had not believed that Waters had been guilty of wilful murder, and that some of them had been desirous that a recommendation for mercy should have been made, but that they were outvoted during short jury deliberations, implying that the verdict against Waters had not been unanimous.

Some petitioners such as Jacob Coupland, a Baptist minister, re-iterated the medical evidence that children who were removed from their parents were always at a disadvantage, and thus would be inherently more at risk of death, implying that Waters might be less culpable than the jury had found. In this view he was supported by others such as Alfred Kelly who suggested that Waters had been 'illegally adjudged guilty' due to problems with the medical evidence. Other petitioners gave personal recommendations as to her character, such as her brothers, Joseph and Jacob Forth, whose arguments ranged from the suggestion that it would not have made financial sense for Waters to have killed any of the children, when she could have 'sold' them, to a plea that

[d]ark and unnatural though her conduct has been, it is plain that she took any course, however criminal rather than extinguish life (emphasis in the original).⁴¹

Other correspondents gave personal recommendations, including Dr Pickstock⁴² who stated that he had knowledge that Waters' house was well managed and that he would have been happy to entrust his own children to her care. Another correspondent, James Lewis, had lodged in the same house as Waters, and had found her to be very pleasant.⁴³

Not surprisingly the Waters case was also of interest to those involved in the campaigns either for the abolition or the retention of capital punishment. Two petitions were sent, one from the Society for the Abolition of Capital Punishment, and another from a group in Manchester opposing the forthcoming execution. Others, who were in favour of the death penalty, such as Edmund Holmes, felt that Waters was a scapegoat, and that it should have been the parents of the child who should have been facing a charge of murder. Alfred Kelly (cited above), while a retentionist, saw that the case would be problematic in that

⁴⁰ MEPO (n26)

⁴¹ *ibid*

⁴² Dr George Pickstock trained at Guy's Hospital between 1849 and 1854.

⁴³ MEPO (n26)

If, sir, this innocent person be executed, it will cause thousands of people to advocate the abolition of capital punishment who have been hitherto opposed to it – it will be a dark blot on the history of England in the 19th century, and will be visited by God upon the nation!⁴⁴

Some of the other letters held in the National Archives seem to have been precipitated by Waters' statement read by Dr Edmunds at the Dialectical Society,⁴⁵ such as that of Charles Webb, stage manager of the Theatre Royal, Glasgow, who used it as authority for his opinion that hanging Waters would not stop the practice of baby farming.

If the details of Waters' life included in the paper read to the Dialectical Society are accepted as being accurate, then Homrighaus and Arnot's conclusions that Waters was the victim of public opinion or of a moral panic is entirely conceivable. Certainly the newspaper reports of the proceedings at the various courts suggest the weight of negative public feeling. Some of the letters written by Waters' supporters held in the pleadings file at the National Archives⁴⁶ would also support Homrighaus and Arnot in their conclusions.

The court cases heard against Waters were well reported. Details of the initial inquest had been reported in *The Times*,⁴⁷ as were the proceedings at the Police Court at which Waters and Ellis were committed for trial at the Old Bailey. In addition to the official proceedings there were reports that several women had been present at the Police Court, one of whom wished to claim money for the support of a child that she held, presumably one whom Waters had further farmed out. Others present at the court were mothers who wanted information about the whereabouts of their children, who might have been transferred to the workhouse. Waters refused to answer them except via her solicitor. As for the magistrate, he 'thought that persons who could part with their children in the way they had done did not deserve much consideration.'⁴⁸ One can only presume that these women left court with no information about the welfare of the children they had given up to the care of Waters and Ellis, and this report is notable for its relatively rare disapprobation towards the mothers of children in the care of the baby farmers

The *Illustrated Police News* reported the execution of Margaret Waters on 22 October 1871 and, in referring to the 'confession' read by Dr Edmunds at the Dialectical Society, its report suggested that she was not guilty of murder, but that she had been convicted of the crime of baby farming in general. The issue of causation, the author felt, was tenuous and that

⁴⁴ HO 12/9223 1870

⁴⁵ 'Baby Farming in London: Extraordinary Revelations' *The Times* (7 October 1870)

⁴⁶ HO (n44)

⁴⁷ See for example, 'The Baby-Farming Case at Brixton', *The Times*, 28 June 1870

⁴⁸ 'The Baby-Farming Case' *The Times* (29 June 1870) 11

the connection between her treatment and the death [of John Cowen] was so problematical that no jury, judge or secretary would have sent the prisoner on such insufficient and shaky evidence of it, but for the prejudice created by her calling.⁴⁹

Margaret Waters it appeared had been judged and convicted by what we might now call 'the court of public opinion'. The *Illustrated Police News* concluded its article thus:

it is difficult to avoid the conclusion that the hanging of Waters for the murder of Baby Cowen was legally wrong though morally right.⁵⁰

The reports of her execution include the, almost familiar, descriptions of self-possession and self-control. On the morning of her execution there was no demonstration outside Horsemonger-lane Gaol, although a few scores of people gathered, but not, *The Times* suggested, enough people to be called a 'crowd'. Not all the newspaper reports or their correspondents were supportive of the hanging. Typical of these is a letter published in the *Morning Advertiser* from one signing himself 'Eagle Eye', who was firmly of the opinion that until the law was changed, allowing women to claim from the putative father a reasonable sum of money to be able to support their children, and also supporting them in claiming this money from the fathers, then illegitimate children would remain relatively unprotected.⁵¹ A correspondent 'Fides' writing to the *Women's Suffrage Journal*, called for radical change in the law. In Fides' opinion, it was the unfairness of the Bastardy laws, placing the financial burden of the child on the mother, which was at fault, and in her/his opinion, the lawmakers of England were to blame for the death of the child.⁵²

As in the case of Charlotte Winsor, Waters was living in an all-female household with her sister. Carol Smart includes Waters amongst her examples of Victorian women who were deemed to be 'unruly' and in need of control⁵³ and certainly, the verdict at the Old Bailey corresponds with that view. We also see writ large, as Smart suggests, links between baby-farming, shame, and poverty. Janet Cowen gave up her child, or rather her father did on her behalf, in order to avoid the shame of single-motherhood. This begs the question as to whether Janet's father gave up the child in order to control more closely his daughter's reputation or his own.⁵⁴ Janet did not give evidence at any of the court appearances, her voice was silenced in favour of her father's. Waters presented to her clients an illusion of family life for their children. In brokering her deal with Mr Cowen she described her fictional 'happy marriage', and evoked a desire that this marriage should be blessed with a child. The reality,

⁴⁹ 'The Baby-Farming Case', *Illustrated Police News* (22 October 1870) 3

⁵⁰ *ibid*

⁵¹ 'Baby Farming and Child Murder', *Morning Advertiser* (10 October 1870)

⁵² 'Correspondence', (1870) *Women's Suffrage Journal* 1 November 1870 94

⁵³ Smart (n8)

⁵⁴ The court records show that Robert Cowan was a musician with a post in one of the volunteer regiments which implies that he may have been concerned to maintain his good name and position.

as we have seen, was very different. There was no patriarchal figure involved in the Waters household; in effect, Waters was filling the role of leading party in the affair, to the extent that her sister, who had a child, was excluded from the conviction. Waters may have been held to account, not only for the death of the children in her care, but also for living outside the norm of family life and for providing a service that would allow other women to do the same.

Winsor and Waters may have been the most notorious of the early baby farmers, but they were by no means the only ones to come to the attention of the law. For example, 1867 saw an inquest into the death of a child in St Luke's, who had been in the nominal care of a Mrs Matilda Thorne, who would habitually keep between three and four children in her household.⁵⁵ A few months later, in 1868, another inquest was held, this time in Deptford, into the death of another child. The baby farmer in this case was Mrs Billups⁵⁶ who was initially incapable of being examined by the coroner due to the fact that she was drunk.⁵⁷ Mrs Billups was said to

live in a cellar, and gave her profession as a midwife, although there was evidence to suggest that she was also farming the children that she delivered.⁵⁸ In both of these cases the verdict was neither murder nor manslaughter. In the case of Matilda Thorne the jury found that the death of the child was due to a lack of care, and requested that the coroner should write to the Home Secretary on the matter, while in the case of the tipsy Mrs Billups, the coroner could find no evidence of violence, and thus he directed that the jury should find an open verdict. Just over a month after Waters' execution, Mary Hall was charged with fraud, having attempted to 'foist the child of another woman upon Mr Loe as his



own',⁵⁹ while a poster dated 20 June 1871, (reproduced above), advertised a £50 reward and

⁵⁵ 'Baby Farming in St Luke's', *The Daily News* (31 December 1867) 3

⁵⁶ Who we saw in chapter five

⁵⁷ 'Baby Farming at Deptford', *Lloyd's Weekly Newspaper* (12 April 1868) 10

⁵⁸ 'The Extraordinary Baby-Farming Case at Deptford' *Reynolds Newspaper* (3 May 1868) 1

⁵⁹ 'The Extraordinary Charge of Fraud', *Morning Advertiser* (2 November 1870)

a pardon for any person involved with, but not responsible for, the death of a child whose body had been found in the streets.⁶⁰

These two early cases of women tried for the murder of children in their care show how the phenomenon of the burgeoning baby-farming industry came to the attention of both the wider reading public and to government. The case of Charlotte Winsor (1865) pre-dated, and may well have precipitated, the *British Medical Journal* campaign of articles, published in 1868. The case of Margaret Waters (1870) had a direct connection with the Select Committee on the Protection of Infant Life which met in 1871. As we have seen, the discourse regarding both cases was available throughout England, and it would have been very difficult to avoid syndicated newspaper and journal articles about the cases. While the *Contemporary Review*, founded to publish articles of interest for an intellectual readership, did not publish anything which directly referenced baby-farming until 1890, it had published a number of articles relating the Poor Laws, and its readership would have been very well aware of the difficulties associated with the support of children within the Poor Law system.⁶¹ The *Women's Suffrage Journal* also published articles relating problems facing children who had been abandoned to the care of the workhouses, conflating this with the issue of baby farming.⁶² The cumulative effect of articles such as these, the BMJ series of articles, and the reports which emanated from the courts must have resulted in a febrile need for an official response. We shall return to this in the next chapter when we examine the first Select Committee on the Protection of Infant Life (1871). In the next section of this chapter, I examine the second phase of baby-farming cases.

6.2 The Later Baby-Farmers

While there had been, since the first group of baby-farming cases, an official effort to stem the tide of baby farms and to safeguard those children who had been kept in less than ideal conditions, the mechanism of control was limited and the system of baby farming continued unabated, with the requirements for registration flouted and the restriction on keeping more than one infant avoided by taking in a child, waiting until they died, and then taking in another – a practice known as ‘baby sweating’. In 1890 the *Illustrated Police News* reported the case of a Mrs Muncey who kept a registered baby farm and lying-in house in which five or six children had died. At the inquest on the infants the wonderfully named Samuel Babey, an inspector

⁶⁰ MOPO (n26)

⁶¹ See for example: EW Hollond, ‘The Poor Laws and Metropolitan Poor Law Administration’(1868) *The Contemporary Review* August 502

⁶² ‘Public Baby Farming’, (1870) *Women's Suffrage Journal* 1 November 1870

employed by London County Council,⁶³ gave evidence that Mrs Muncey had been lax with her registration and that the Infant Life Protection Act had been infringed on several occasions. At its conclusion the jury returned a verdict of manslaughter against Mrs Muncey who was then remanded in custody.⁶⁴ The later magisterial investigation against Mrs Muncey acquitted her of manslaughter, although she was later prosecuted by London County Council for not having entered the name of the child concerned in the register, an offence under the Infant Life Protection Act 1872. She was sentenced to one month's imprisonment with hard labour.⁶⁵

A year later, in 1891, Frederick Greenwood⁶⁶ called the attention of his readers to the plight of unwanted children. In a paean of praise for the work of Benjamin Waugh and the recently formed London Society for the Prevention of Cruelty to Children (SPCC),⁶⁷ he suggested that:

The hanging of a murdering baby farmer once in a quarter of a century is not enough to limit the dreadful business in which Mrs Waters had a hundred competitors and has now a hundred successors.⁶⁸

Meanwhile, in the fictional world, a popular drama shown at the Drury Lane Theatre in 1885, *Human Nature*, included as part of its plot line, not only the thrilling narrative of the Soudan War [sic], but also a wife guilty of 'intrigue' with a false friend, followed by the kidnap at the hands of and rescue from a notorious baby-farmer of the child at the centre of the tortuous relationship.⁶⁹ Clearly, baby farming was still a topic that could bring readers to newspapers, and was also seen as a valid plot device in a, no doubt, thrilling stage production.

Given the shortcomings of control mechanisms, together with a thriving baby-farming trade, it is not surprising that more scandalous cases emerged after the Infant Life Protection Act 1872. I now turn to the cases of two baby farmers who were working at the end of the nineteenth century, and whose cases coincided with two attempts to reform the deficient Infant Life Protection Act 1872. Evidence relating to the case of Jessie King, executed in 1889, was presented to the Select Committee of 1890, while the case of Amelia Dyer, executed in 1896,

⁶³ London County Council was one of the few local authorities to employ an inspector with the responsibility for monitoring baby-farming establishments. Babey was appointed in February 1878 by the Metropolitan Board of Works and had been transferred to the employment of LCC on its establishment in 1889 to supervise the provisions of the ILPA1. As we shall see in a later chapter, Babey gave evidence both to the 1890 and 1896 Select Committees, his evidence highlighting the lack of provision for inspection of baby farming establishments across the capital.

⁶⁴ 'A Baby Farmer Committed', *Illustrated Police News* (28 June 1890)

⁶⁵ 'Police Intelligence', *Standard* (24 September 1890) 2

⁶⁶ 1803-1909. Author and journalist, who edited the *Pall Mall Gazette* 1865-1880

⁶⁷ The SPCC was formed in 1883. It was renamed the National Society for the Prevention of Cruelty to Children (NSPCC) in 1889 as branches had been set up all over the UK.

⁶⁸ F Greenwood, 'Cruelty to Children', *The Illustrated London News* (24 January 1891) 111

⁶⁹ 'New Dramas in London: "Human Nature" at Drury-Lane' *The Illustrated London News* (26 September 1885) 318

coincided with the select committee of the same year. Indeed it is likely that the revelations surrounding the Dyer case had influence on the findings of the latter.

The cases of King and Dyer have a number of striking similarities with each other and with Margaret Waters' case (1870). In all of the cases we see the contemporary construction in the newspaper accounts and in the court cases of the women as being 'unfit', of being adversely affected by alcohol or drugs, in particular laudanum which was common at the time, and of being 'unnatural', cold and calculating. Both King and Dyer had a history of offending and of incarceration, implying a pattern of behaviour that was considered in need of correction. In all three cases we see poverty, women who moved establishment on a regular and frequent basis both to avoid discovery of their operations and also to keep one step ahead of their creditors. Both women, too, were not legally married, although Jessie King lived with a male sexual partner. There is also contemporary interest in the fate of both women after their conviction and, in the case of Jessie King, she became a de facto 'poster girl' for those arguing for the moral effectiveness of the death penalty.

6.2.1 'Jessie King, like her paramour Pearson, has seen better times'⁷⁰

Jessie King baby farmed in Scotland on a relatively small scale, and for approximately two years. Her career was described as being 'chaotic', and somewhat haphazard. It is thought that the number of children who met their ends at her hands was about five.⁷¹ She was tried for the deaths of two children with whom she is known to have been involved, and while it was thought that more children had met their deaths in her establishment (including one of her own children), there was insufficient evidence for her to be tried for these offences.

Jessie King was the last woman to have been hanged in Edinburgh, and has achieved a certain amount of notoriety for this fact alone. Recent popular scholarship has suggested that Jessie had been led astray by a dominant older male partner and that he escaped punishment at her expense.⁷² Little has been written about Jessie King, so in this section I use contemporary newspaper reports of her case to assemble the facts and to gauge public response at the time. One rich source is *In Queer Street*, written by William Roughead, Scottish lawyer, and early proponent of the 'true-crime' genre of literature, although his book was aimed at the 'serious' reading market and not the populist. While apprenticed as 'Writer

⁷⁰ 'The Confessions of a Baby Farmer' *Pall Mall Gazette* (13 November 1888) 6

⁷¹ J Niclleathain, 'Baby-Killer? *The Jessie King Story* (STV Productions 2015)

⁷² See for example: L Yeoman 'Baby Killer? The last woman hanged in Edinburgh' (2012) <www.bbc.co.uk/history/0/20122581> accessed 2 October 2013

to Her Majesty's Signet',⁷³ Roughead attended King's trial and in 1932 he published an account of the trial which, while it had the benefit of representing a first-hand statement of account of the trial, was written some time later from his memories. I use this work⁷⁴ together with fuller details of the case from the *Scotsman* and other newspapers.

Jessie King was born in Glasgow on 27 March 1871. Her mother died when she was 18 months old, and her father when she was 18 years old. Her father is said to have taken another woman as a wife (or partner) when Jessie was a child, leading to a difficult relationship between her and her father. She appears to have had a troubled early life, moving in 1882 to Bonhill, Alexandria, where she worked in the mills at Renton before being transferred at some point to the Magdalene Asylum in Edinburgh for fallen women, where she stayed for some 18 months.⁷⁵ From here she moved to Glasgow and worked in a laundry, although there were rumours that she had been imprisoned for three or four months for concealment of pregnancy.⁷⁶

Returning to Edinburgh at some point before 1887, King found work in a laundry and lodgings. She formed a relationship with Thomas Pearson, a jobbing gardener, who was much older than she. She was already pregnant by another man when she started living with Pearson, and gave birth to a daughter, Grace, who is recorded as having had her vaccinations, but then disappeared from the historical record. After a move to Dalkeith Road in 1887, King seems to have started her baby farming career. She continued to live with Pearson, and newspaper accounts of her trial suggested that he supported her work, although he spent much of his time in the local public houses apparently having little practical involvement with the children that King farmed. Indeed, there is no evidence that he was directly responsible for the deaths of the children.

The newspapers reported that King took into her care at least three children, the first of whom, Walter Andersen Campbell, disappeared in 1887. The mother of the child had died soon after his birth and his father, David Ferguson Findlay, had arranged for his adoption by King on payment of £5, in spite of the fact that the child's aunt had offered to take care of him if Findlay

⁷³ Roughead was training to be a solicitor. Writers to the Signet had special privileges in relation to the drawing up of documents which were required to be 'signed'.

⁷⁴ W Roughead, *In Queer Street* (W Green & Son 1932)

⁷⁵ This stay in a Magdalene home implies that Jessie may have worked as a prostitute. The Magdalene Homes had an ethos of reform, and here Jessie may have trained to work in the laundry industry of the time.

⁷⁶ A change of 'Concealment of Birth' would have been brought under those circumstances where a child had been still-born and where the birth had not been registered, or where a new-born child was found to have died. The offence was created in Scotland by the Concealment of Birth (Scotland) Act 1809, some 50 years earlier than similar legislation in England and Wales, in response to the fact that juries were increasingly loathe to convict women of infanticide, which remained a capital offence.

would pay for its support. Clearly, Findlay felt that a one-time payment for £5 would be preferable to an on-going financial commitment. The child had been handed to King when he was three months old and he disappeared soon after. The second child to disappear was Alexander Gunn, whom King had claimed to have tried to give to 'Miss Stirling's Home' as King had no means of supporting him.⁷⁷ She did not manage to gain entry for the child, and so she strangled him. After this King took into her care Violet Duncan Tomlinson from her grandmother, and soon after she poured whisky down the throat of the child to keep her quiet, and strangled her. In October 1888 King gave birth to another child, Thomas Kean, who was fathered, presumably, by Pearson. Little is heard of the child until King later entrusted his custody to the Catholic church, via her confessor, while she was in prison, awaiting execution.

King's murderous enterprise was exposed by accident as a group of boys were playing football in the street. The boys had discovered a package wrapped in a waterproof coat in a doorway and it is thought that they used this as a makeshift ball. One of them kicked the parcel, and it was found that it contained the body of a child which the boys reported to the police. When the police visited the King/Pearson household, they discovered the body of another infant hidden in a closet, wrapped in canvas. When King was taken to the police station, she freely admitted that she had been responsible for the deaths of the children, but sought to exonerate Pearson by making a confession, although she was later to withdraw this. She appeared before the High Court of Justiciary in Edinburgh on 18 February 1889. As Roughead noted, accounts of the court proceedings are limited. However by using his account and that of the contemporary newspapers, it is possible to create a quite vivid picture of the court and of the trial.

The odds were stacked against King from the outset of the trial. Roughead described her as being a 'miserable little creature in the dock',⁷⁸ and the first part of the trial was taken up with a reading of the three confessions that King had made after her arrest. She had been warned of the effect that these confessions might have on her case by a Poor Law officer who attended her before interview and, in particular, he advised her that they might lead to her being hanged. The *Glasgow Herald*⁷⁹ and the *Aberdeen Journal*⁸⁰ reported the proceedings of the court and the evidence given and in the case of the *Aberdeen Journal*, it commented on the 'sensation' created in court during the reading of these confessions.

⁷⁷ Miss Emma Stirling ran a number of Children's homes in Edinburgh. She was a campaigner on behalf of children.

⁷⁸ Roughead (n75) 77

⁷⁹ 'High Court of Justiciary: Edinburgh Murder Trial – Sentence of Death' *Glasgow Herald* (19 February 1889) 9

⁸⁰ 'The Stockbridge Child Murders: Sentence of Death' *Aberdeen Journal* (19 February 1889) 5

The first prosecution witness, Catherine Whyte, was the mother of one of the children. Due to the fact that she was in service when she had become pregnant, it was obvious that it would be impossible for her to care for the child herself, and thus she had sent her child to King with a premium of £3. Other witnesses corroborated Whyte's evidence, and more evidence was given of the comings and goings in the King household. This evidence gives a clear impression of an archetypal baby farm with children arriving, and then disappearing in quick succession. Medical evidence regarding these showed that the children had died from strangulation, and it seemed clear that the infants had suffered fatal violence.⁸¹

The most damning evidence against King was that of Thomas Pearson, King's lover. Roughead described him as being 'an elderly man of ill-favoured aspect'⁸² and this bad impression of him amongst historians and writers has persisted into the twenty-first century. Before he gave evidence against King, Pearson was issued with a formal warning of the perils of perjury by the judge⁸³ and it was clear that the authorities were aware that as he cohabited with King and took money from her for drink, it was likely that he had some connection with the commission of the crimes. A lack of evidence against him had led to a prosecutorial decision not to charge Pearson, and it was agreed that that he should give evidence against King. Pearson swore that he was unaware of the death of any of the children, and that the money that King received with the children was used for general household expenses. His position was that of complete ignorance of any of the deaths, and that he was innocent of any wrongdoing. Under cross-examination, he admitted to King's counsel that he was in the habit of using several names, the inference to be drawn by the jury presumably being that he was inherently dishonest and therefore not worthy of belief.

King, unlike Waters or Dyer, was living with Pearson who, presumably, saw himself as the head of the household. However, as we have seen, Pearson was rough, to say the least, and in the warnings given him by the judge when he gave evidence against King, it can be deduced that any good character was questionable. So, in spite of the fact that King was living in a more typical household, this family situation was still aberrant by the standards of the time and, in no way complied with the dominant image of a 'proper' home.⁸⁴

⁸¹ Evidence was given by two doctors, one of whom, Dr Joseph Bell, was the inspiration for the character, Sherlock Holmes

⁸² Roughead (n75) 89

⁸³ This warning implies that the evidence that Pearson was to give was covered by the 'corroboration rule' which was, according to John Langbein a 'judicially developed safeguard for cases involving the testimony of crown witnesses' where an 'apprehended criminal was excused from prosecution in exchange for testifying against former confederates'. We might now call this a 'plea bargain', not embedded in law but rather in the practices of the courts and prosecutors. JH Langbein, *The Origins of Adversary Criminal Trial* (Oxford University Press 2003)

⁸⁴ Davidoff, L'Esperance & Newby (n7)

Once again it appeared that prosecutorial pragmatism may have allowed the guilty to go free in order to achieve a successful prosecution against the prime target. While King was, in all likelihood, the principal in the baby-farm and probably directly responsible for the deaths of the children, it is unclear why the prosecution did not seek any conviction against Pearson. But, given that King's confessions exonerated Pearson completely it may have been difficult to convict him. Roughead suggested that had Pearson been tried alongside King this may have introduced doubt into the minds of the jury regarding King's guilt, and that 'the Solicitor-General might have failed to obtain a conviction; so he made... the best of a bad job.'⁸⁵

No witnesses were called for the defence, and the only strategy of King's defence advocate, Fitzroy Bell,⁸⁶ was to attempt to influence the jury's verdict by suggesting that King shared moral responsibility for the deaths with the parents of the children placed in her care. King was not able to give evidence on her own behalf,⁸⁷ but Bell called no character witnesses to support her. Historians such as Louise Yeoman and Eleanor Gordon present King as being 'damaged' due to her upbringing, her lack of education, and her drinking,⁸⁸ but no evidence of this was presented at the trial. Fitzroy Bell did suggest that the medical evidence of the causes of death was inconclusive and that, while the defence of duress was not available to a charge of murder, that King was acting under the influence of Pearson which lessened her culpability. The judicial summing up, while critical of those parents who had given up their children to King, made much of King's confessions. The judge noted that she had been represented by a 'law officer',⁸⁹ and that she had been in 'her sober senses' at the time that the confessions were made. The jury took only three minutes to return an unanimous verdict of 'guilty'. On receiving the sentence of death, King 'subsided into an hysterical fit'⁹⁰ and had to be carried from the dock.

⁸⁵ Roughead (n75) 99

⁸⁶ It is possible that Bell would have been appointed to defend King while in court, the so-called 'dock brief' which would have given little, or no, time for preparation of her defence. Walker notes that the quality of such representation was 'patchy'. (DM Walker, *A Legal History of Scotland* (Butterworths 2001) 445). Given that Bell practiced at the Bar for a very short period of time, he may not have been a highly skilled barrister.

⁸⁷ Defendants were not able to give evidence on their own behalf until the passage of the Criminal Evidence Act 1898 which allowed defendants to give evidence under oath.

⁸⁸ Yeoman and Gordon appear in J Niclleathain, 'Baby-Killer? *The Jessie King Story* (STV Productions 2015)

⁸⁹ Roughead notes that this provision of legal advice was in accordance with the Criminal Procedure (Scotland) Act 1887 (50 & 51 Vict cap 35 s17). Roughead (n75)

⁹⁰ 'High Court of Justiciary: Edinburgh Murder Trial – Sentence of Death', *Glasgow Herald* (19 February 1889)

Immediately following the verdict it was reported that King had attempted suicide,⁹¹ although this was later denied by the Roman Catholic Chaplain, Father Donleavy.⁹² There was some degree of sympathy for King and her plight. A petition was sent on her behalf to the Secretary for Scotland, signed by 1,842 people,⁹³ although there was also significant feeling against her, typified by the refusal of the town council to support her petition.⁹⁴ One woman was reported by the *Dundee Courier and Argus* to have 'said that she would "rather pull the rope" herself than hear of the sentence being commuted.'⁹⁵

King's execution, which took place behind the prison walls away from the public view was fully reported, in spite of the fact that journalists were excluded from the side of the scaffold. Much was made of the fact that she clutched a crucifix, holding it tightly while her arms were pinioned to her sides. As was habitually the case, the newspaper reports focussed on the garb of the officials, on the procession and on the ceremonial aspects of the execution. A crowd gathered outside the prison, but whether out of curiosity or to demonstrate their disapproval of the execution is not reported.

Contemporary accounts of Jessie King were divided. On the one hand, her crimes were described as being 'peculiarly heartless. They were committed upon infants, and evidently with cool premeditation.'⁹⁶ Some reports after her execution, however, give a different and more sympathetic view; she was depicted as having 'found' religion, as behaving with bravery and dignity, and as being a worthy part of the ritual of execution, in direct contrast with her hysterics immediately after the sentence. Such a conversion is a familiar trope at the end of the nineteenth century.⁹⁷ Indeed, the movement for the retention of capital punishment used this evangelical opportunity to save souls as a potent argument in favour of their cause.

I suspect that King was treated harshly by the press of the time because of her gender, and because she represented deviant womanhood. However, I am struck by the absence of reports of her own child and of the fact of her maternal status. The first time that the living child appeared in the contemporary newspaper reports was in the report of her will in which she allocated custody of the child to the Catholic Church. It is also clear that by cohabiting

⁹¹ 'Execution of Jessie King: Scene at the Scaffold' *Dundee Courier and Argus* (12 March 1889); W Roughead, *In Queer Street* (W Green & Son 1932)

⁹² It is not surprising that Father Donleavy should have denied the attempt at suicide. As King's confessor he would have been anxious that she should be able to meet death in the spirit of the Catholic faith. Suicide is considered by the Catholic Church to be a mortal sin. 'The Edinburgh Child Murders: Execution of Jessie King' *Glasgow Herald* (12 March 1889)

⁹³ 'The Condemned Woman, Jessie King' *Glasgow Herald* (9 March 1889)

⁹⁴ 'The Stockbridge Murders' *Glasgow Herald* 96 March 1889)

⁹⁵ 'Execution of Jessie King: Scene at the Scaffold' *Dundee Courier and Argus* (12 March 1889)

⁹⁶ 'The Edinburgh Child Murders: Execution of Jessie King' *Glasgow Herald* (12 March 1889)

⁹⁷ H Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (Continuum 1993)

with Pearson she transgressed the standards of middle-class decency. The next baby-farmer, Amelia Dyer (1896), was also treated particularly harshly by the contemporary press but, unlike Jessie King, there has been no softening of attitude towards her.

6.2.2 Amelia Dyer: ‘The Woman Who Murdered Babies for Money’⁹⁸

At the time of her arrest, Amelia Dyer seems to have been ground down by the challenges of a hard life. She lived in poverty, dependent on alcohol and drugs, frequently moving house in order to stay one step ahead of her creditors. She had been separated from her husband and, while she doted on her daughter and son-in-law, her son was serving overseas with the Marine Regiment and she had no other immediate family to share her life. As we shall see, Dyer fits completely with Smart’s definition of the baby-farmers and their role in allowing women to escape the shame of deviant motherhood.⁹⁹

Amelia Dyer is probably the most notorious of all the nineteenth century baby farmers. It is true to say that we know more about Dyer than the other baby-farmers because the contacts that she had with the authorities left a larger and more accessible paper trail of documents available to the researcher. There is a panel display in Reading Museum and also a very well researched biography regarding her life and her crimes,¹⁰⁰ while the Thames Valley Police Museum holds documents and photographs relating to her.¹⁰¹ In order to examine Dyer’s life and career I use these sources together with newspaper reports relating to her crimes, the Old Bailey Session Papers and documents held at the National Archives.

The most striking thing about Dyer’s career as a baby farmer is its length. She is known to have been active between 1869 and 1896, with some breaks in that time when she was incarcerated either in prison, in asylums or in the workhouse. However it is not possible to make an accurate assessment of how many children passed through her care. Nonetheless, given that the newspapers reported that in the period between June and April 1896, she had been entrusted with more than 50 children aged between birth and 10 years,¹⁰² it must have been a very large number. Rattle and Vale also speculate on a ‘tangible thread’ linking Dyer with the Waters case which would make her very influential in the growth of the industry.¹⁰³

⁹⁸ Rattle & Vale (n1)

⁹⁹ Smart (n8)

¹⁰⁰ Rattle & Vale (n1)

¹⁰¹ Thames Valley Police Museum, Sulhamstead House, Sulhamstead, Reading, RG7 4DU

¹⁰² ‘The Reading Horrors: Mrs Dyer’s Confession Read in Court’ *Lloyd’s Weekly Newspaper* (3 May 1896)

¹⁰³ Rattle & Vale (n1)

Amelia Dyer was born in 1838 in Bristol, a place to which she remained linked throughout her life, either by residence or by procuring infants living in the city and its environs. Her mother died when she was eleven years of age, and the young Amelia remained with her father, and was educated until the age of fourteen, her level of education being reflected in the lucidity of the letters she sent after her arrest. Her childhood was said to have been simple, and while her family were not rich by any means, her early life was comfortable, and she was not exposed to extreme hardship. On leaving school she was apprenticed to a corset maker and took lodgings in the centre of Bristol where she met her first husband, George Thomas. After her marriage Dyer worked at the Bristol Royal Infirmary in 1863 and gained experience in a number of nursing disciplines. She was obliged to resign from this position when she fell pregnant with her first daughter.¹⁰⁴ Shortly after the pregnancy, a meeting with a woman called Ellen Dane introduced her to the possibility of making a living by keeping a lying-in house and becoming a baby farmer. During the 1870s she worked for a short period at the Bristol Lunatic Asylum.¹⁰⁵ Following George's death in 1869, she married William Dyer in 1872, and gave birth to two more children, Mary Ann (commonly known as Polly) and William.¹⁰⁶ She also commenced farming babies in earnest, advertising in the local newspapers, and was known to be running a lying-in house.¹⁰⁷

Dyer came to the notice of authorities following the death in 1879 of an infant in her care, after which she attempted suicide by taking an overdose of laudanum. After the inquest on the death of the child, at which the jury censured her for her treatment of the children,¹⁰⁸ she was arrested and appeared at the Long Ashton Police Court on 29 August 1879. As it had not been possible to prove her direct involvement in the deaths of the children, she was charged under the Infant Life Protection Act 1872 with the offence of receiving children in an unregistered house and was sentenced to six months' hard labour, the maximum penalty allowable under the law.¹⁰⁹ She had claimed ignorance of the law although, if Rattle and Vale are correct that she had been involved with Waters in 1870, this could not have been the case. In any event, as we have seen, the prosecution of Waters was widely reported, and it is likely that Dyer would have been very well aware of the potential penalties for unregistered baby farming.

¹⁰⁴ It is thought that this child was 'farmed out' – she does not appear in the later accounts of Dyer's life

¹⁰⁵ Rattle and Vale speculate that she may have been dismissed for cruelty. Rattle & Vale (n1)

¹⁰⁶ At the time of her execution, William was serving in Malta with the Royal Marine Artillery. HO 144/267/A57858B 1896

¹⁰⁷ Rattle & Vale (n1)

¹⁰⁸ 'An inquest was held on Saturday at Bristol....' *Supplement to the Chronicle & Mercury* (30 August 1879). The newspaper reports that she had been in the habit of receiving children for a period of two years, during which time seven had died, along with two of her own children.

¹⁰⁹ 'The Bristol Baby Farming Case' *Lloyd's Weekly Newspaper* (31 August 1879) 1

Following her release from prison in 1880, she briefly worked in a corset factory until, in 1884, she moved to the Fishponds area of Bristol and started baby farming once more. During the next five years she seems to have moved to a number of addresses in Bristol, presumably in an attempt to stay ahead of creditors who were pursuing her. In 1890 a child had been entrusted to her by a governess (name unknown) who, instead of abandoning the child, continued to take a further interest and indeed tried to re-claim her. Unable to find the child, the governess, who had by this time married the father of the child, reported the matter to the police who visited Dyer's house in October 1891. Dyer told the police that she had handed over the child to a third party and did not know where it currently was. She was not arrested, but the fear of discovery may have contributed to her admission to the county asylum. She was released from the asylum in January 1892 and immediately established another lying-in house in Totterdown, Bristol. The governess continued to pursue her and reappeared on Dyer's doorstep on 23 December 1893, after which Dyer took another overdose of laudanum. She was admitted again to an asylum, this time in Wells, Somerset. On her discharge in January 1894 she started baby farming once more, and once again the governess appeared in April the same year accompanied by the police. Dyer escaped arrest on this occasion and sought to re-enter the Wells Asylum which refused her. She attempted suicide once more, and was admitted to Bristol General Hospital which found that she was not insane. On her release from hospital she re-commenced her trade as a baby farmer until she was admitted to the Gloucester County Asylum, whence she was transferred to Barton Regis workhouse infirmary in Bristol. It was here that she met Jane Smith (known as Granny Smith), who was to live with her, and who gave evidence against her at her trial at the Old Bailey.

This chain of events in Dyer's history does suggest troubled mental health. It is unlikely that she would willingly have entered an asylum or a workhouse. While both kinds of establishment had improved during the course of the nineteenth century, at the end of the century workhouses were still, by no means, welcoming institutions. George Lansbury,¹¹⁰ a founding member of the Labour Party and a social reformer, described in 1892 the mixed workhouse at Poplar as being like 'Dante's Inferno'.¹¹¹ However following her arrest, Dyer's history of incarceration was interpreted by the prosecution as evidence of her ability to simulate madness. On her release from the workhouse, she moved to a number of addresses. Finally, she appeared in Caversham, near Reading, in August 1895 where once again she established another baby farm, taking in children for whom she had advertised in the Bristol area and who

¹¹⁰ Grandfather of Angela Lansbury (actress) and Oliver Postgate (author and animator)

¹¹¹ N Longmate, *The Workhouse* (Pimlico 2003)

were collected from railway stations. There were several house moves in the space of a very few months as, presumably, Dyer attempted to stay one step ahead of her creditors or the police. In March 1896 Evalina Marmon handed over her daughter Doris to Dyer. One day later another child was handed to Dyer by Annie Sargeant and on 30 March 1896 a carpet bag containing the corpses of three children was discovered floating in the Thames. Following a tip-off to an NSPCC officer by Granny Smith police officers searched Dyer's house, and she was arrested.

The case certainly caught the public imagination. The discovery of the corpses in the carpet bag and the subsequent trial of Dyer, her daughter and son-in-law caused a sensation in the



newspapers of the time. Crowds of people visited the house in which she had lived, and still more flocked to the river and the site of the discovery of the children.¹¹²

Even the police officers involved in the case were photographed (left)¹¹³ together with the artefacts involved, the carpet bag and the tapes tied around the neck, together with the brick used to weight the bag down and to cause it to sink in the river. *Lloyd's Weekly* printed a pen and ink sketch of the police officers involved in the case in their report of the proceedings

of the magistrates court,¹¹⁴ while other images were deployed, such as those of Dyer and Arthur Palmer in the dock.¹¹⁵ They show Dyer as a dumpy, middle-aged woman, sitting slightly in front of Palmer, perhaps in order to give the correct artistic perspective, but this positioning does serve to underline her role as the principal in the case. The newspaper reports of the investigations still on-going were very full and were appeared all over the country. The *Bristol Mercury*,¹¹⁶ for example, reflected on the fact that Dyer had been resident in that city, and it

¹¹² 'The Murder of Children at Reading', *Belfast News-Letter* (13 April 1896) 5

¹¹³ Photograph courtesy of Thames Valley Police Museum

¹¹⁴ 'Reading Horrors: Prisoners in Court Yesterday', *Lloyds Weekly Newspaper* (26 April 1896) 11

¹¹⁵ 'Baby Farming Horror', *Reynolds Newspaper* (19 April 1896) 3

¹¹⁶ 'The Bristol Police and the county constabulary... collecting local information', *The Bristol Mercury* (14 April 1896) 8

re-capped her history while she was living there. Reports of the coroner's inquest referred to identification evidence, including that of Evalina Marmon who had to identify the body of her infant daughter.¹¹⁷ The inquest jury's verdict was that of 'found dead'.

In the reports of Dyer's next appearance at the police court attention moved slightly away from the story of the investigation to the more human side of the case. *Reynold's Newspaper* subtitled its report, 'Sensational Letters, Mother's pathetic story', which very much sets the tone of the article.¹¹⁸ It was recorded that there was 'sensation' in the court during the reading of the letters between Dyer and the mothers of the children in question, while Evalina Marmon's agitation at the sight of the bag in which the body of her child was found was palpable. It was further noted that the prisoners (Dyer and Arthur Palmer) were unmoved by the contents of the letter as read in court which reinforced the construction of Dyer as being cold and heartless. In very close proximity to this article on the same page in *Reynolds* was another entitled 'More Traffic in Babies' which reported a baby-farming case taking place in Brentwood, Essex, and another reporting a case heard at Exmouth police court in which a woman was remanded for the killing of her own child, found at the base of the cliffs. As each of these three articles follow one from another it is quite difficult to see where one ends and the others begin. Dyer's potential culpability is conjoined with that of the women in the other cases, the implication being that she was as responsible as were the other women.

Much of the evidence presented to the police court concerned the letters sent by Dyer to the mothers of the children, filled as they were with inaccuracies and down-right lies. In these letters Dyer presented herself as being a happily married woman with no children. Thus their use as evidence against her, together with her use of aliases, marked her out as being dishonest.¹¹⁹ The proceedings of the magistrates' court were also dramatic, and this is reflected in the reports. Witnesses were called, including Granny Smith, whose story was said to be 'thrilling',¹²⁰ and it began to look as though Dyer's criminal enterprises were spread throughout the south of England.¹²¹

The most exciting evidence was saved for the hearing of 2 May 1896 when Dyer's confession to the crimes was read in court. In a letter that she had written while on remand in Reading Gaol, addressed to the chief of police, Dyer took responsibility for her crimes, and tried to exonerate her daughter and son-in-law. The response among the spectators in court was

¹¹⁷ 'Baby Farming at Reading: Alleged Wholesale Murder', *Berrow's Worcester Journal* (18 April 1896)

¹¹⁸ 'Baby-farming Horror', *Reynolds Newspaper* (19 April 1896)

¹¹⁹ 'The Child Murders at Reading', *The Times* (20 April 1896) 10

¹²⁰ 'The Baby Murders: Sensational Evidence – Yesterday', *Reynolds Newspaper* (26 April 1896) 1

¹²¹ 'Reading Horrors: Prisoners in Court Yesterday', *Lloyd's Weekly Newspaper* (26 April 1896)

said to be that of 'a painful sensation'.¹²² Evidence was given to suggest that she was in her right mind when the letters were written, and thus they could not be explained as the work of a mad woman. Her sanity was established to give her confessions authority. Arthur Palmer was discharged, there being not enough evidence to keep him in custody, but Dyer was remanded in custody and was transferred to London for her trial at the Old Bailey. As for Polly, she remained in custody awaiting the completion of investigations against her.

In the press reports Dyer seemed to have been condemned by popular opinion. The descriptions of her crimes were striking and she was presented as being dishonest, cunning, and quite heartless in the ways in which she misrepresented herself to the mothers of the children whose lives she exploited. But if she were presented as being devoid of maternal feeling towards the infants that she killed, that is not the case when it came to her attitude towards Polly and Arthur Palmer. Her letter of confession written to the court was a heartfelt plea to ensure that Polly and Arthur did not share her fate and if we are to believe what she wrote, she accepted full responsibility for all the crimes and was resigned to her probable fate. Indeed, in her letter she described her crimes as being 'awful' and 'wicked', while Polly's evidence, heard directly after the reading of the letter in court, certainly pointed towards Dyer's guilt and to Polly's innocence.

While both women were on remand Polly continued to write to her mother, pleading that the latter should further exonerate her, and she urged Dyer to change the statements that she had already given in order to place Polly into a better light. Dyer's letters in response tell how she was thinking suicidal thoughts, and that:

I trouble more about you and Arthur than I do myself... I am tempted to do such awful things – do what I will I can't shake it off.¹²³

She did, indeed, write a letter from Holloway on 18 May 1896 confirming Polly's story.

On 18 May 1896 Dyer was indicted for the 'wilful murder of Doris Marmon' at the Old Bailey. The prosecution focussed on proving that Dyer had taken the child from her mother, that she had transported the child in the carpet bag, and that she had been identified walking near the river on the night that the child disappeared. Given Dyer's letters of confession which had been published in most of the newspapers in advance of the hearing, realistically there was only one possible course of action for the defence. Accordingly, defence witnesses were called to testify to Dyer's insanity, including witnesses who had sent her to the asylums during her time in Bristol. A more up-to-date assessment of her mental condition was given by the

¹²² 'The Reading Horrors: Mrs Dyer's Confession Read in Court', *Lloyds Weekly Newspaper* (3 May 1896)

¹²³ HO 144/267/A57858B 1896

psychiatrist L Forbes Winslow in her defence,¹²⁴ who had examined her while she was on remand at Holloway. In one letter he wrote that, in his opinion, she was suffering from ‘monomania’,¹²⁵ while in his evidence at the Old Bailey, he added that he ‘considered she was a person of unsound mind, suffering from delusions and hallucinations’.¹²⁶ Following the defence witnesses, the prosecution called rebuttal evidence from medical officers who had had more recent contact with Dyer than the Bristol medical men. These medical officers considered that she was not, in point of fact, insane.

As we have seen, the newspapers reported that Dyer was simulating insanity and given her experience of being an attendant at the Bristol Asylum, and also as an asylum patient in her earlier life, this was indeed possible. However, in a letter written to Polly two days before the Old Bailey trial, Dyer wrote

I do believe they are going to try and send me to the Asylum once again but they will find themselves deceived. I have had enough of Asylums. No Asylum will ever hold me again I will do anything rather than go there any more. If I know it!¹²⁷

This suggests that Dyer was not a willing participant in her defence of insanity and, if we are to believe her earlier letters of confession, it did appear that she had accepted her responsibility and her impending fate. The judge and the jury did not believe in her counsel’s defence of insanity. Mr Justice Hawkins pointed out in his summing-up that it was ‘a flimsy plea of insanity, advanced as an afterthought for the defence...’.¹²⁸ The jury agreed and returned a verdict of guilty in less than five minutes.¹²⁹ The entire trial took less than two and a half hours starting at 7.30pm.¹³⁰

Reflection in the newspapers on the verdict was not kind to Dyer. In its editorial of 23 May, *The Times* suggested that the murder for which she had been convicted was just the tip of the iceberg, and that Dyer’s only motive in killing the children was that of obtaining money. In its

¹²⁴ Winslow (1844-1913) was a well-known psychiatrist who gave expert evidence in a number of court cases, including that of Florence Maybrick (1889), and was instrumental in the search to identify Jack the Ripper. He gave a name as a possible suspect in that case to the police, who investigated the theory, and found it to be without foundation

¹²⁵ Monomania is defined as a form of mental illness characterized by a single pattern of repetitive or intrusive thoughts and actions.

¹²⁶ *R v Amelia Dyer* [1896] (Old Bailey Proceedings Online) Evidence of Forbes Winslow

¹²⁷ HO (n124)

¹²⁸ ‘The Trial of Amelia Elizabeth Dyer’ *The Times* (23 May 1896) 11

¹²⁹ ‘The Reading Crimes: Mrs Dyer Sentenced to Death’ *Sheffield and Rotherham Independent* (23 May 1896) 5

¹³⁰ FW Ashley, *My Sixty Years in the Law* (John Lane, The Bodley Head 1936) 178. Ashley also erroneously claimed that Dyer’s barrister, had been instructed at the very last minute, had very little time to prepare her defence, and made very little argument in her support. In fact Dyer did have representation. Dyer’s barrister, Ardeshir Kapadia, had been involved in her defence since her first appearance at the Reading Police Court. A Rattle & A Vale, *Amelia Dyer: Angel Maker* (Andre Deutsch 2007)

report of Mr Justice Hawkins' comments while sentencing Dyer, she was described as being 'treacherous' and 'barbarous'. Moreover, the editorial went on to link Dyer's actions with those of other baby farmers, who were in need of control. There was, finally, reference to the select committee then sitting to consider amendments to the laws relating to infant life protection.¹³¹

Unlike the case of Jessie King, or of the earlier baby farmers, little was heard of Dyer in the newspapers following her conviction until the reports of her execution. No petitions were raised and the files in the National Archives contain no evidence of anyone pleading for her life. Her execution took place at Newgate on June 10 1896. *The Times* reported that, 'she continued to maintain the phlegmatic demeanour which she exhibited at her trial.'¹³² As we have seen in the previous cases, it was not unusual to depict the condemned as accepting their fate

The *Illustrated Police News* (IPN) reported the execution in some detail. In contrast with the image of self-control in the reports of *The Times*, the IPN reported that '[t]he condemned woman was in a wretched and agitated state of mind and passed a very restless night.'¹³³ The IPN recorded her appearance, her dress and hair, and the fact that she weighed fifteen stone, implying a level of unattractiveness and showing that she was well-fed. It added that the raising of the black flag was greeted by some hooting from the large crowd assembled outside the prison. Furthermore, on the afternoon of the same day an auction was held of Dyer's possessions. There was great interest and the IPN recorded a crowd of 1,000 people. The total raised was about £7 15s, which was not a huge amount of money.¹³⁴ It also noted that the day before the execution, there had been '[d]isgraceful scenes' where effigies of the three male prisoners executed that day, together with one of Dyer were suspended from a fake gibbet, while doggerel verses were sung, and a collection made for the singer. The IPN reported that 'in a good many instances considerable sums were received',¹³⁵ suggesting that this was a popular spectacle.

¹³¹ 'The Trial of Amelia Elizabeth Dyer' *The Times* (23 May 1896) 11

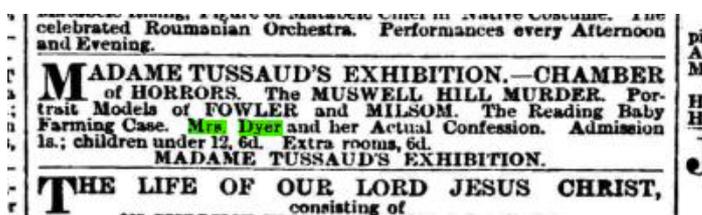
¹³² 'Execution at Newgate' *The Times* (11 June 1896)

¹³³ 'Execution of Mrs Dyer' *Illustrated Police News* (20 June 1896) 6

¹³⁴ *ibid*

¹³⁵ *ibid*

The final contemporary words regarding Amelia Dyer may be found in the following advertisement, published the same day as the IPN article above. Dyer had become a resident of the 'Chamber of Horrors' in Madame Tussaud's Exhibition. Her transmogrification into a monster had become complete.¹³⁶



6.3 Conclusions

The case histories in this chapter indicate that, in spite of the time period separating the two groups of cases and the introduction of the measures legislated by the first Infant Life Protection Act, the issues relating to baby farming remained remarkably constant. The women tried for the murder of children in their care were vilified by the press reports of the trials but, in the cases of Margaret Waters and Jessie King, some sympathy was shown following their conviction while they were waiting for the sentence of the courts to be carried out. No such contemporary sympathy was shown towards Charlotte Winsor or Amelia Dyer.

For the purposes of this thesis the cases show the inability of the social policing arrangements of the Poor Laws to control the actions of those caring for illegitimate children. While mothers might find themselves under the scrutiny of officials if they were to enter the workhouse, if they entrusted their bastard infants to another person, the mothers became free from observation and control. The problems then associated with the child were 'pushed' into the private sphere in which the baby farmers operated, in their own homes. In direct contrast to the enduring image of a home, governed by a male figure who managed the behaviour of all within the home, the baby farmers, most of whom worked in an all-female establishments, contravened the dominant image of domesticity and safety. While Davidoff et al may have identified the transgressant woman as being an outcast, literally outside the decent home,¹³⁷ in the baby-farmers we see a class of criminal women offending, not only against the law, but against the 'beau ideal' of home and family and, within the family home.

¹³⁶ 'Madame Tussaud's Exhibition – Chamber of Horrors' *Morning Post* (20 June 1896)

¹³⁷ Davidoff, L'Esperance & Newby (n7) 157

The Winsor case represents the beginning of official legal interest into the phenomenon of baby-farming. We see demonstrated very clearly in the discourse surrounding the case the switch of official focus from the mother of a murdered child to the baby farmer. This shift is exemplified in the way in which the Crown chose to use the mother as a witness against Winsor. Official opprobrium continued, as we have seen, in the case of Margaret Waters in 1870. The Waters case, as we shall see in the next chapter, was the catalyst for the Select Committee on Protection of Infant Life in 1871. The police officer responsible for discovering the Waters baby farm gave evidence at the committee, as did the Superintendent in charge of policing Brixton.

The two later cases serve as evidence to show that the first Infant Life Protection Act was not effective in the prevention of infant death at the hands of baby farmers. We have seen that there were a number of cases concerning baby farmers between 1872 and 1890, but it was the case of Jessie King which re-ignited official interest in the matter of baby farming. King's case shocked the authorities and it showed that baby farming was not a matter limited to the urban areas of England. The contemporary discourse shows an element of sympathy for King, because of her gender, her motherhood, and the fact that evidence was given against her by her sexual partner, Thomas Pearson, who appears to have been an extremely unsympathetic character. Indeed, in a recent documentary, historians Jim Hinks,¹³⁸ Dr Louise Yeoman,¹³⁹ and Eleanor Gordon¹⁴⁰ constructed King as a victim, a vulnerable adult who was in thrall to her older partner.¹⁴¹ As we shall see in chapter eight, the Bill associated with the King case was withdrawn when the government fell.

There was very little sympathy for Dyer at the time of her conviction and execution, and there is very little sympathy now. From Rattle and Vale's 'true-crime' book which re-constructs her life,¹⁴² to appearances in documentaries such as 'The Victorian Slum' shown on the BBC in November 2016,¹⁴³ her story seems to be ubiquitous whenever baby-farming is mentioned. There may be a number of reasons for this. While the other baby-farmers that we have examined in this chapter were known to have killed relatively few infants, an estimation of the number of infants killed by Dyer, given the length of her career, could be anywhere in excess of 200 infants. But, perhaps more persuasively, we know what she looked like. Dyer, as depicted in the surviving pictorial images of her, resembles a hard faced criminal, staring full

¹³⁸ University of Manchester

¹³⁹ Historian and Broadcaster

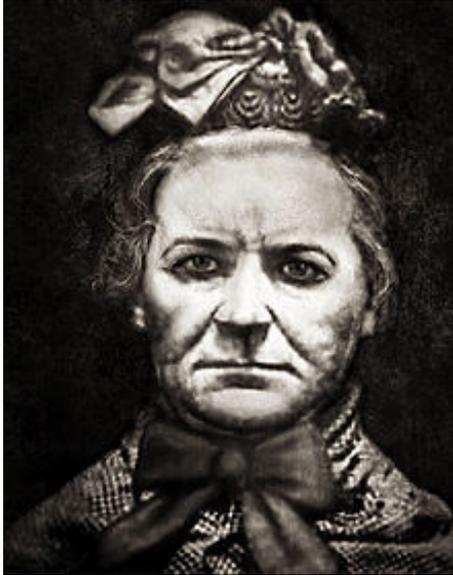
¹⁴⁰ Professor of Social and Gender History, University of Glasgow

¹⁴¹ J Niclleathain, 'Baby-Killer? *The Jessie King Story* (STV Productions 2015)

¹⁴² Rattle & Vale (n1)

¹⁴³ 'The Victorian Slum' (Wall to Wall Production for the BBC 2016)

at the camera and fixing the viewer with her gaze (below). While she is not thought to have been influenced in her actions by a third party, it is highly possible, as Rattle and Vale speculate, that she was working closely with her daughter in the trade.¹⁴⁴ Nonetheless



whatever may be the reasons for the difference in opinion, twenty-first century cultural and social history have treated the other baby farmers far more kindly than they have Amelia Dyer.

To complete the answer to the second of my thesis questions, the case histories in this chapter strongly suggest that the reason that government interest in paid childcare changed during the second half of the nineteenth century was due to the revelations of infant mortality associated with the trials of the baby farmers. The discourse that accompanied the trials made the baby farmer a

popular focus of interest. The level of attention paid by the newspapers, whose purpose was to entertain as well as to inform, and the wideness of the circulation of those stories far outside the local areas in which the cases took place, gives a strong indication that the scandals associated with baby farming were well known in Victorian England. As we shall see in the next two chapters, this knowledge and tide of opinion was to inform law-makers and effect a change to legislation related to paid childcare taking place in private homes.

The existing social policing arrangements of the Poor Laws could not influence the behaviour of the baby farmers. Operating in the domestic circle, the baby farmers were out of reach of direct social control. The challenge for the law-makers was to create a new form of social police that would be able to supervise the baby farmers in their own homes. In the next two chapters I examine the three select committees devoted to the protection of the life of infants and answer the last of my thesis questions, how legislative change reflected the change in focus away from the mothers of bastard infants towards those paid for their care. I examine the way in which the 'reach' of the legislation created a new form of social policing, one which entered the family home.

¹⁴⁴ Rattle & Vale (n1)

Chapter 7 : Because I delivered the poor who cried for help, And the orphan who had no helper¹

As we saw in the previous chapter, the trial of Margaret Waters generated a good deal of coverage in the mainstream contemporary print media. Calls for government action to control the emerging baby farming industry led to the formation of the 1871 Select Committee on Protection of Infant Life, which proposed legal remedies for the perceived problems of baby farming and the large numbers of deaths of infants. The minutes of this committee give an opportunity to examine the creation and implementation of the formal legislation, the Infant Life Protection Act 1872.

In the last chapter, I answered my second research question; how it was that governments' interest relating to the provision of paid childcare changed during the period covered by this thesis, by examining the events surrounding the criminal cases of four baby-farmers who were convicted for the murder of infants in their care. I now move to consider the last of my thesis questions: how legislative change reflected this change in interest. In this chapter, I examine the first select committee, convened in 1871, which considered issues relating to the protection of the life of infants put out to nurse. In the next chapter, I consider the second (1890) and third (1896) select committees, which were convened in response to Bills for the protection of infant life to complete the answer to my thesis questions.

Using the records of Hansard and the minutes and evidence of the Select Committee on Protection of Infant Life 1871 (hereinafter the select committee), I examine the ways in which the legislature responded to the burgeoning scandal of baby farming, and observe the beginning of changes of attitude and formal practices relating to the control of paid childcare taking place in the private sphere. The official discourse surrounding the enactment of the Infant Life Protection Act 1872, and other associated legislation, demonstrates the impact of the Waters case by informing the focus of discussion in committee and suggestions for change to the Poor Laws and bastardy legislation. However, as the cases of Jessie King (1889) and Amelia Dyer (1896) showed, these legislative changes did not provide the promised solution to the apparently high levels of infant mortality, particularly amongst illegitimate children 'put out for adoption' by their parents. The first attempt at legislating to address the problem of baby farming covered in this chapter appears to have limited itself to utilising existing arrangements of social control, viz the emerging local authorities, to address the problem of

¹ Job 29:12

baby farming, rather than to take the more radical step of creating a new inspection regime which would take a new form of social police into the private sphere and the family home.

As Chantal Stebbings has written, the workings of the select committees demonstrate, by recording the interaction between members of parliament and the expert witnesses, what the members of parliament involved with the creation and development of the law thought.² Thus, I argue that the minutes of the proceedings of the select committees show the influence of the unelected witnesses on the committee and how these witnesses influenced the ultimate legislation. In this chapter I review the evidence presented before the first committee, not only for the details of what was said, but also to understand which individuals were called, and which organisations and interests that they represented. I believe that the very choice of witnesses was in itself indicative of the tensions that surrounded the issues of infant mortality and the operation of the Poor Laws and, in particular that of illegitimacy. We shall see that representatives of the medical profession, perhaps not surprisingly, felt that they were best positioned to supervise an industry which included the lying-in houses. Representatives of the Poor Law organisations seem to have been defensive, perhaps due to the criticism of the working of the Poor Laws in contemporary publications,³ and did not seem to have any interest in taking further responsibility for the safety of illegitimate children. The witnesses who represented charities, on the other hand, gave evidence of the arrangements made by their charities to 'board-out' infants and made it clear that the success of such a system required realistic fees to be paid to foster parents and that the homes in which children were cared for needed to be inspected and supervised. We also see that the charities did not wish to become subject to inspection and regulation by the state.

The amended Infant Life Protection Bill that was presented to parliament as a result of the select committee's report allocated responsibility for the registration of the baby farms to the local authorities, and did not provide for any inspection regime, thus leaving a desperate lacuna for the baby farmers to fill. Why this was the 'solution' is not clear. It is true that there was disagreement between the witnesses as to the efficacy of the provisions of the workhouses, but the possible involvement of the medical profession is completely ignored in the recommendations of the committee, as were the experiences of those charities who already operated a system of boarding-out and attendant supervision.

² C Stebbings, 'Benefits and Barriers: The Making of Victorian Legal History' in A Musson and C Stebbings (eds), *Making Legal History: Approaches and Methodologies* (Cambridge University Press 2012) 76

³ See for example: EW Hollond, 'The Poor Laws and Metropolitan Poor Law Administration' (1868) *The Contemporary Review* August 502. Hollond advocated full repeal of the Poor Laws

In this chapter I first review the proposals for legislative change that were made by Sir William Charley in the form of a House of Commons Bill in 1871 and the opposition to the Bill. I examine the Select Committee set up to examine issues associated with the growing risk to infant life presented by the baby farmers. In particular, I consider the membership of the committee and the witnesses called, together with a thematic examination of the evidence presented. Finally, I examine the resulting Infant Life Protection Act 1872, together with supporting legislation.

7.1 Legislating To control: Proposals and Opposition

The case of Margaret Waters had, as we have seen in chapter five, caused a sensation among readers of the popular press. It is therefore not surprising that parliament took an interest in the emerging baby farming industry soon after Waters' conviction and execution in 1870. The first formal indication of a possible legislative response came on the 16 February 1871, when Sir William Charley asked in the House of Commons whether the government intended to introduce a Bill addressing the issues of the protection of infant life. The response from Henry Bruce, Home Secretary, was that no Bill had been prepared by the government, but that Charley should introduce his own private member's Bill.⁴ Charley did so on the 21 February, and he was supported by Dr William Brewer and Dr Lyon Playfair, both of whom went on to sit as members of the select committee.

Charley's Bill focussed on the management of the baby farmers themselves. It provided that any person taking in any child under the age of six years should be licensed, such licence to be issued by a justice of the peace. Furthermore, it was proposed each licence holder should be certified as being of good character by a 'JP, a clergyman, minister of religion [sic] or medical practitioner'.⁵ Such a licence, issued annually, would only be granted to those who were shown to be of good character, and who had the financial wherewithal and adequate food and lodging to take care of a child. If an unlicensed person were to take care of a child, including for the purpose of wet nursing, they could be found guilty of a misdemeanour, and on conviction would be liable for a sentence of up to six months imprisonment or a fine.

In Charley's Bill the intention was that baby farming should become a matter for management by the Poor Law authorities, and that supervision of the baby farmers should be provided by the Poor Law officers, the existing social policing organisation which supervised the care for illegitimate children within the Poor Law system, including those boarded out by the workhouses. It was proposed that each child taken in by a baby farmer should be registered

⁴ HC Deb vol 204 col 315 16 February 1871

⁵ HC Bill (1871) [49] Bill for the Better Protection of Infant life

by the Poor Law medical officer, and that birth certificates of the children kept within each baby farm should be lodged with him. The Poor Law medical officer would then personally inspect each child, and would report in writing to the Poor Law board each quarter on the state of health and condition of the child, taking inspection directly into the home of the baby farmer. Should a child die in the custody of a baby farmer, the coroner was to be notified and an inquest held. In such cases, burial of the infant could not take place without a coroner's certificate of death. Further, it was suggested that the operation of the inspection regime should be co-extensive with the districts of each Poor Law union to which the medical officers were appointed.

It seems that the Bill was aimed firmly at the children of the poor. It would have extended the social control function of the Poor Law authorities into private homes, some of which would have had no previous involvement with the workhouses. Amanda Vickery reminds us that in the Victorian Period the concept of the privacy of the home had reached its peak,⁶ and thus this may have been felt by politicians as a step too far for government intrusion into the private home at this time. In exempting the arrangements for childcare made by parents who were resident overseas,⁷ and boarding schools the Bill underlined its aim at the working class who were already subject to some social control, such as the workhouse organisations or the medical officers.

Feminist opposition to the Bill was typified by that of the Committee for Amending the Law in Points Wherein it is Injurious to Women (CALPWIW). This committee had been formed from the Manchester branch of the National Society for Women's Suffrage⁸ and members of the committee were heavily involved with the campaigns regarding other issues important to women. These included the introduction of the Contagious Diseases Acts with their ratification of state sponsored medical intrusion into the very bodies of women on their removal to a registered hospital. In this context, it is not surprising that the activists of CALPWIW should object to a Bill that had the potential to intervene in the lives of women in their private homes. The committee objected strongly to the inspection of women who took in a child, usually a neighbour's, for the purpose of eking out a meagre living. They saw this as being an interference on what was mainly an informal arrangement between two women and not a matter for the state. In their view, this situation was very different from one where baby farmers were exploiting infants for profit in an atmosphere conducive to harm. Highlighting the class

⁶ Amanda Vickery, 'An Englishman's Home is his Castle?' (2008) 199 *Past & Present* 147-149

⁷ As we shall see, the committee was concerned that the imposition of licensing restrictions would impact unfairly on the children of parents living in India and the other colonies.

⁸ The society had been formed in 1867 and was led by Lydia Becker, a prominent campaigner for the rights of women. GK Behlmer, *Child Abuse and Moral Reform in England 1870-1908* (Stanford University Press 1982) 33

dimension of the discourse relating to baby farming and its focus on the working class, CALPWIW suggested that the 'ladies of England' would object if a similar licensing scheme prevented the employment of servants who were unable to find a position if they were not able to find nurse for their child who was able to provide evidence of registration.⁹

CALPWIW's second objection was that the Bill, 'by increasing officialism, police interference, and espionage',¹⁰ would add to the financial burden of the rate payers. This could be read as being a blanket objection to inspection of the private sphere, dressed up in terms likely to appeal to those who paid the rates. Indeed their rationale was that:

It is not the actual number of officials to be called into being by the Infant Life Protection Bill, nor yet the additional powers to be confided to them, which awakens our distrust, so much as the tendency to multiply the departments of life taken out of the hands of private persons to be given over to the State, manifested in this and many kindred proposals.¹¹

The CALPWIW objected strongly to the imposition of representatives of the state into the private home and into the lives of women. It was not, in their view, desirable that the state should have any kind of interference with the relationship between the mother and the carer of her child, and they campaigned so that the state should 'content itself with imposing and inflicting punishment where such duties have been carelessly or culpably devolved upon incompetent substitutes [for parents]'.¹² However, the committee was silent as to how it was that the state should be able to detect such incompetency.

The *Women's Suffrage Journal* was similarly critical of the Bill. In the opinion of 'Lancet' (a nom de plume),

the notion of compelling everybody who takes a child to nurse to obtain a licence, and to submit to a monthly inspection from the parish doctor, is simply preposterous.¹³

For the author of this piece, and others in following editions of the journal, the true cause of the baby farming problem lay with the bastardy and affiliation regulations of the Poor Laws.

There was popular disquiet from other quarters. The *Examiner* (a weekly newspaper, originally established in 1808 as an intellectual journal, but whose standards of journalism were much diminished by this time) suggested on 4 March 1871 that:

We fear the plan will be futile, if it is not mischievous... we have small faith in magistrates or policemen as head-nurses. There is more to be hoped from private effort.¹⁴

⁹ Committee for Amending the Law in Points Wherein it is Injurious to Women, *Infant Mortality: Its Causes and Remedies* (A Ireland & Co 1871)

¹⁰ *ibid* 8

¹¹ *ibid* 9

¹² *ibid* 7

¹³ 'Mr Charley's Baby-Farming Bill', (1891) *Women's Suffrage Journal* 1 May 50

¹⁴ 'A New Phase of Baby-Farming' *Examiner* (4 March 1871) 227

The *Examiner* clearly did not relish the thought of the representatives of the state being involved in the care of children taking place in the social circle and preferred the option of the more traditional visits by volunteers. It is not surprising that such opposition from the contemporary press would be reflected by the MPs in the House of Commons. In the next section I examine the immediate response to the proposals for legislative change and the Select Committee formed to examine them.

7.2 The Select Committee 1871

It was generally understood that there would be opposition to the Charley's Bill on its presentation in the House of Commons. As a result, Charley introduced a motion on 5 May 1871 for the formation of a select committee to hear evidence from witnesses, and to make recommendations for the structure of an amended Bill.¹⁵ The motion was passed, and the committee constituted. It met between 15 May and 17 July 1871, and produced what was described by the *Examiner* as 'an unusually small number of pages'.¹⁶

While it is true that the report that resulted from the committee and its deliberations was 'small' (some four pages of recommendations), it was supplemented by a full account of the proceedings of the committee, and extensive accounts of the evidence given before the committee. These are illuminating, for here we have a report of the proceedings that has not been 'authored' as such in that the verbatim speech of the witnesses and the committee was recorded with no attempt to 'polish' it or to provide any emphasis. It could be argued that this presents a rich opportunity to get as close as possible to the committee itself. However, a report such as this also presents challenges. The remarks that are recorded are the bare words, and it may be tempting to read into the words on the page inferences that were not there, such as George Melly's description of 'ladies pottering about' in a question posed to Daniel Cooper¹⁷ regarding the possibility of volunteer inspectors.¹⁸ As Melly was active in the campaign for women's suffrage, it is unlikely that this was a disparaging comment as to the nature of women's charitable work, but it is not possible to hear the tone of the voice, to see the raise of an eyebrow, or to hear the fluency of the response, or the stutter of a witness to what might appear to be a tricky question. So, these witness statements need to be treated with a modicum of caution and the temptation to infer meaning should be resisted.

What the evidence and the resulting report do demonstrate are a number of existing themes, that reflect on and develop the discourse already in existence relating to the topic of baby

¹⁵ HC Deb 5 May 1871 vol 206, col 269

¹⁶ 'The Prevention of Baby-Farming' *Examiner* (19 August 1871) 823

¹⁷ Cooper was the Secretary to the Society for the Rescue of Young Women and Children

¹⁸ Evidence of Daniel Cooper, para 2662

farming, and I shall examine them later in the chapter. Some of these themes are directly related to the Waters case, while others reflect on the operation of the Poor Laws, the bastardy legislation, and the need for effective and efficient registration of births and deaths. Given the breadth of the issues that the committee considered, it is not surprising that the witness statements cover a dense 224 pages, and that not all of the issues raised by witnesses were reflected in the final report, or in the final legislation.¹⁹

7.2.1 Members

The committee had 17 members, and was chaired by Spencer Horatio Walpole who had been Home Secretary, but was now at the end of his political career.²⁰ The rest of the committee was politically balanced and consisted of seven Conservative and nine Whigs.²¹ Social reformers were well represented, including a clutch of members who were sympathetic to and involved in the campaign for women's suffrage. For example, Jacob Bright²² had introduced and spoke at some length on the Women's Disabilities Bill, which sought to extend the suffrage,²³ and his wife was a leading member of the CALPWIW.

This involvement with social reform was echoed by other members of the committee, such as George Melly, part of a Unitarian family of philanthropists, and who too was involved in the campaign for women's suffrage.²⁴ William Charley, who introduced this Infant Life Protection Bill, likewise had an interest in the welfare of women, having taken a key part in the drafting of legislation aimed at protecting young women and girls.²⁵

Other members of the committee had interests in the continued administration of the Poor Laws and represented the existing Poor Law social policing arrangements. George Sclater-Booth had been the first secretary for the Poor Law Board, and remained interested in urban reform,²⁶ while William Torrens had sat as one of the Commissioners for the Irish Poor Law

¹⁹ An example of this is the evidence of Mrs Susannah Meredith, whose expression of a need of legislation to prevent wayward parents from having custody of their children anticipated the struggles of some philanthropists such as Thomas Barnardo, and the campaign for and the inception of the Custody of Children Act 1891.

²⁰ D Beales, 'Walpole, Spencer Horatio (1806-1898)', *Oxford Dictionary of National Biography*, (Online edn, Oxford University Press 2004)

²¹ A full list of members of and witnesses to the committee is included at Appendix 1

²² A Ruston, 'Bright, Jacob (1821-1899)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

²³ HC Deb 3 May 1871 vol 206 col 67

²⁴ EJ Stewart, 'Melly, George (1830-1894)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2012)

²⁵ JB Atley, 'Charley, Sir William Thomas (1833-1904)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

²⁶ HCG Matthew, 'Booth, George Sclater, first Baron Basing (1826-1894)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

Inquiry. Torrens was no stranger to the concept of ‘farming out’ children, having obtained in 1869 legal authority for the London guardians to board out pauper children from their workhouses.²⁷

Given the subject matter of the committee, it may not be surprising that religious men were chosen to focus on the issues of morality associated with illegitimacy and the charitable treatment of those women who had thus ‘fallen’. However, not all of these were representatives of the established church. Non-conformist members of the House of Commons were well represented. In addition to Bright and Charley, Henry Winterbotham had been raised as a Baptist, and took part in educational reform movements.²⁸ Arthur Kinnaird was a philanthropist and devout evangelical Christian, who took a keen interest in the welfare of the poor and the working class.²⁹

This, therefore, was a committee on which were represented a number of key reformers of the time. Some members were highly likely to be sympathetic to the changing position of women in society, including those considered as ‘fallen’, others had direct experience of involvement in reforms to improve the lot of the working man, while yet others had been involved in the administration of the Poor Laws. There were lawyers,³⁰ and at least one doctor.³¹ The committee should have been well equipped for the task ahead of them.

7.2.2 Witnesses³²

The evidence heard before the Select Committee of 1872 had three main purposes. The first, was to explore the realities of the baby farming industry so that the committee might understand how it worked and the scale of the problem. The second was to explore the formal arrangements already in place regarding illegitimate children; in particular, those provided by the Poor Law and workhouse institutions, and also those charitable organisations set up to help women with bastard infants. Finally, the committee needed help to make recommendations for legislation to address the issues raised.

²⁷ M MacDonagh, ‘Torrens, (William) Torrens McCullagh (1813-1894)’, *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

²⁸ HC 372 (1871) Select Committee on Protection of Infant Life, *Proceedings of the Committee and Minutes of Evidence*

²⁹ Kinnaird was also a footballer of some note who had been a member of the committee of the Football Association. F Prochaska, ‘Kinnaird, Arthur Fitzgerald, tenth Lord Kinnaird of Inchture and second Baron Kinnaird of Rossie (1814-1887)’, *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

³⁰ Charley was appointed Common Serjeant by the Corporation of London in 1878 and ultimately became a judge at the Old Bailey. JB Atley, ‘Charley, Sir William Thomas (1833-1904)’. *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

³¹ William Brewer

³² A full list of Members of the Committee and Witnesses called is at Appendix 1

For the first of these purposes, witnesses from the Metropolitan Police (Gernon and Relf), gave evidence regarding the Waters case. In the case of Sergeant Relf, this testimony included a reprise of the very dramatic evidence regarding neglected and dying children that he gave during Waters' trial at the Old Bailey and which was examined in chapter six. Gernon, his superior officer, focussed more on the existence and mechanics of the trade apart from the Waters case and on the difficulties facing the police in the investigation of the houses in which infants were kept.

William Cameron and Charles Cameron, journalists working in Scotland, told of the situation north of the border.³³ The instances of baby farming that they reported were very similar to those described by Gernon and Relf. The methods that they used were similar to that of AB, whose letter to *The Times* we saw in chapter five,³⁴ in that Charles Cameron employed agents who would enter the baby farms in order to gather information.³⁵

The evidence that these two groups gave was based on statements of observation and fact. The choice of police officers and, in particularly, the very dramatic evidence in which Sergeant Relf described the conditions in the Waters baby farm, must have made very clearly the links between baby-farming and crime, which given the committee's brief to 'inquire as to the best means of preventing the lives of INFANTS put out to NURSE FOR HIRE by their parents'³⁶ (emphasis in the original) is obvious.

Coroners and representatives of the medical profession also gave evidence as to the existence and formation of the industry. The witnesses who had been involved in the campaigns for regulation of baby farming drew upon this experience as authority for their statements.³⁷ As we have seen, the BMJ had run a series of investigative articles in 1868 revealing the existence of the baby farming trade, and the Harveian Society³⁸ had performed an investigation into the industry uncovering the conditions in which children were being kept, which had spawned the Infant Life Protection Society (ILPS). However, not all the doctors who gave evidence were members of the society or had been involved with its campaign. As we shall see, Drs Edmund Syson and Walther Whitehead came from Manchester and Salford

³³ The Infant Life Protection Act 1872 operated in Scotland and Ireland as it did in England and Wales

³⁴ AB 'Baby-Farming – Letter to the Editor' *The Times* (14 July 1870) 4

³⁵ Evidence of Charles Cameron paras 4459-4462

³⁶ HC 372 (1871) Report of the Select Committee on Protection of Infant Life iii

³⁷ See for example the evidence of Ernest Hart and Dr Alfred Wiltshire.

³⁸ The Harveian Society had been formed in London in 1831 as the Western London Medical Society. Soon after its inception it changed its name in honour of William Harvey (1578-1657), who had been the first doctor to describe the circulation of blood around the body. 'The Harveian Society of London' <<http://www.harveiansocietyoflondon.btck.co.uk/>> accessed 3 April 2015

respectively to give evidence and questioned the existence of baby farming in the North-West. The majority of the evidence presented by all the doctors followed that which had already been published in the BMJ and elsewhere.

In the minutes there are hints of the tension between and within the medical profession and other professions.³⁹ However, this point has been well developed by other authors who conclude that the select committee was an opportunity for the medical and legal professions to demonstrate their professionalism, and in particular their suitability for the post of coroner⁴⁰ and I do not intend to examine this aspect in detail.

As we have seen, in the original Bill, Charley had proposed that any form of registration of baby farmers needed to be supervised by the existing social policing arrangements within the management structure of the Poor Law authorities. It was therefore logical that witnesses should have been called from those authorities. Accordingly, John Bowring (Clerk to the Guardians of the City of London Union) and Uvedale Corbett (Metropolitan Poor Law Inspector) gave evidence with particular relation to the support of illegitimate children, while William Farr, as Head of the Statistical Department of the General Registry Office,⁴¹ gave evidence regarding the difficulties of quantifying accurately the levels of actual infanticide.

Five philanthropic societies were represented, (Daniel Cooper (Secretary to the Society for the Rescue of Young women and Children), George Gregory (Treasurer of the Foundling Hospital), Jane Dean Main (Superintendent of the Refuge for Deserted Mothers), Susannah Meredith (Treasurer of the Female Prisoners' Aid Society), and Oscar Thorpe (Vicar of Christ Church Camberwell)), all of which were actively involved in the support of women and children in financial distress. The choice of witnesses, in some cases, was obvious, George Gregory, as treasurer of the Foundling Hospital, for example, gave evidence of the way in which the Hospital boarded out their children from London to foster homes in the countryside. Others may have been chosen to give evidence due to familiarity with members of the committee. For example, there was a long standing professional relationship between Mrs Jane Dean Main and Charley, who had described Main's refuge as being the 'most admirable of all refuges in London'.⁴²

³⁹ For example, Edmund Syson suggested that the Manchester Coroner had "little class feeling" for doctors as he was legally trained. Evidence of Edmund Syson, para 2252

⁴⁰ ML Arnot, 'Infant death, child care and the state: the baby-farming scandal and the first infant life protection legislation of 1872' (1994) 9 *Continuity and Change* 271

⁴¹ The General Register Office was created by s2 of the Act for Registering Births, Deaths, and Marriages in England 1836. In the minutes of the select committee it is habitually referred to as the "General Registry Office". For clarity and consistency, I use the description as in the committee minutes.

⁴² Quoted in L Rose, *Massacre of the Innocents*, (Routledge & Kegan 1986) 47

Some of these witnesses were sceptical of the very existence of baby farming as they had no experience of this area, and Cooper in particular was subjected to some very intensive questioning from the committee due to his denial of the existence of the trade.⁴³ The evidence given by these witnesses also related to the levels of mortality in infants removed from their mothers. What these philanthropists had in common was an awareness of the impact of poverty on the lives of mothers and their bastard infants and they gave evidence of the difficulties that unmarried mothers would face in finding financial and practical support.⁴⁴ While they agreed that it was regrettable that some infants were left motherless, once again, the lack of criticism of the moral behaviour of the mothers is notable.

Women were under-represented as witnesses. The only two female witnesses were those working in the philanthropic sector, providing support for women in need. While we know little about Jane Dean Main, save her connection with Charley, Susannah Meredith was a philanthropist of some note. Her focus was on religious reform and the saving of the souls of those who had sinned. She worked with women prisoners and ex-prisoners and made great contributions to programmes of social reform.⁴⁵ The influence of the two women speaking before the committee is important. As we saw in chapter two, Jane Lewis points out that by working in this manner, women had significant impact on social reforms of the time.⁴⁶ However, in this context, Susannah Meredith's contribution to the debate was out of step with the other witnesses. Unlike Jane Dean Main, her focus was on removal of children from women whose behaviour had brought them into contact with the prison system. From her point of view, the child of an ex-convict would be better served by removal from the influence of its mother. The society desired a law that would enable them to do this, anticipating the Custody of Children Act 1891.

What was missing from this committee were any representatives from that part of society who might give a child to a baby farmer. Conclusions were drawn without consulting the working-class women who were most affected by the issues of baby farming.

⁴³ Evidence of Daniel Cooper, para 2633 where Melly and the rest of the committee repeat the questions asked

⁴⁴ See for example the evidence of George Gregory or Jane Dean Main

⁴⁵ Bill Forsythe, 'Meredith, Susanna (1823–1901)', *Oxford Dictionary of National Biography*, (Online edn Oxford University Press, 2004)

⁴⁶ Jane Lewis, 'Women and late-nineteenth-century social work' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

7.3 Defining the Problem: Baby Farming or ‘Nurses for Hire’

The committee had been constituted to ‘inquire as to the best means of preventing the Destruction of the Lives of Infants put out to Nurse for Hire by their parents.’⁴⁷ The term ‘baby farming’ was not part of the terms of reference for the committee, but during the debates in the House of Commons prior to the inception of the committee, and in the minutes of the committee, it is clear that baby farming was the focus.

There was broad agreement that baby farming was a nationwide issue, focussed on the urban areas. However, within these parameters there was still disagreement amongst the witnesses. In particular, Herford and Lankester agreed that there was a problem with the trade’s existence in London. However Herford testified that he saw no reason for legislation in Lancashire as, in his opinion, baby farming posed little of a problem in the north west.⁴⁸ This claim is surprising, given that another notorious baby farmer had been committed for trial in Manchester in March 1871 and it is difficult to believe that Herford, as coroner for Manchester, would not have been aware of it.⁴⁹

Further away from London, the evidence given by William Cameron and Charles Cameron showed that there was a thriving baby-farming business in Edinburgh, Glasgow and Greenock. By using similar techniques to those of the journalists of the BMJ, that is, by advertising in newspapers and by using a lady to undergo an undercover investigation, they had found an industry which operated in much the same way as it did in London. Again, the majority of the evidence presented related to baby farming in urban areas, although the witnesses did confirm that they had not investigated the rural areas.⁵⁰

As we have seen in chapter two, Ivy Pinchbeck has suggested that earlier in the century the industrial revolution had given women an independence that they had not hitherto enjoyed.⁵¹ This North West/London/Scotland divide could also be understood in the context of those new opportunities as women moved to take up employment. Evidence given by Edmund Syson⁵² and Walter Whitehead⁵³ underlines this as they described how the children of women working in the factories in Manchester would be entrusted to other women living in the area on a daily

⁴⁷ HC 372 (1871) Report of the Select Committee on Protection of Infant Life i

⁴⁸ *ibid* para 2042

⁴⁹ ‘The Manchester Baby-Farming Case’ *Lancaster Gazette* (25 March 1871) 2. Frances Rogers was convicted of causing the death of infants in her care (for which she received 5s weekly), and was ultimately sentenced to 20 years penal servitude.

⁵⁰ Evidence of Charles Cameron, para 4480

⁵¹ Ivy Pinchbeck, *Women Workers and the Industrial Revolution 1750-1850* (Routledge 1930) 313

⁵² Medical Officer of the Board of Health, Salford

⁵³ Doctor working at St Mary’s Hospital for the Diseases of Women and Children, Manchester, and Medical Superintendent at Day Nursery in Manchester

basis. Due to the 'new' forms of employment, women's homes were less likely to be associated with their work, so a woman having a child would not necessarily lose her place to live. While the children were still at risk due to negligent or ignorant care during the day, the risk of foul play or neglect was reduced as they were returned to their mother at night. Syson and Whitehead agreed with the findings of CALIPWIW relating to daily childcare and, in particular, that there was little need of formal inspection for day nurseries.⁵⁴

More than one of the witnesses suggested that the root of the problems associated with baby farming was the private nature of the agreement between the mother and the baby farmer, unsupervised by any kind of official or charitable body. The language of commerce and industry was used by more than one of the witnesses before the committee. For example, John Curgenvén spoke of the fact that a woman would enter the 'trade of nursing children, and therefore she should be subject to the rules of that trade and the laws relating to it',⁵⁵ such rules being dictated by the terms of a licence. I assume that he was referring to the regulatory framework proposed by the Bill. He further described the ways in which the baby farmers made a 'contract' with the mothers, and, should the payment for the upkeep of the child be too little, it was for the baby farmers to make a 'better contract'.⁵⁶ John Bowring, Clerk to the Guardians of the City of London Union, echoed this position.⁵⁷ In his evidence regarding registration, William Farr compared baby farms with public houses, lodging houses, lunatic asylums and factories in order to emphasise the importance that they be registered, particularly where baby farming took place 'on a large scale, and systematically'.⁵⁸

7.4 Legitimacy

In chapter two we saw how official attention at the beginning of the century was focussed on the problems associated with the support of the bastard infant. We have seen in chapters six and seven, how this focus on the illegitimate child shifted from the issue of financial support within the parishes and workhouses, to that of the welfare of children put out to nurse with the so-called baby farmers. In the record of evidence, we now see that this shift had become complete. The committee had been constituted to consider the dangers to all infants put out to nurse, whether legitimate or illegitimate, but it quickly became apparent that the majority of children who were considered to be in danger of early death at the hands of baby farmers

⁵⁴ Committee for Amending the Law in Points Wherein it is Injurious to Women, *Infant Mortality: Its Causes and Remedies* (A Ireland & Co 1871) 5

⁵⁵ Evidence of John Curgenvén, para 1091

⁵⁶ *Ibid*, para 1100

⁵⁷ Evidence of John Bowring, para 4167

⁵⁸ Evidence of William Farr, para 3790

were likely to be illegitimate.⁵⁹ Accordingly, the committee focussed on the issues associated with the support of illegitimate children, which led to some discussion of the effectiveness of the bastardy legislation, including affiliation, and the low levels of financial support available to the children if indeed a woman were able to affiliate her child, which as we have seen in chapter four, was not an easy undertaking.

In an attempt to aid understanding of the true scale of the problem of illegitimacy, William Farr, head of the statistical department of the General Registry Office, gave evidence to the committee to show that the number of illegitimate births recorded in London, at least, had dropped between 1851 and 1869.⁶⁰ He stated that one explanation for this could be that in London prostitutes were more available, and that they tended to be infertile, thus reducing the birth-rate.

Other witnesses, such as William Farr, bemoaned the lack of statistical information available to the committee and, in particular, that births and deaths were not being registered in an effective manner. Still-births were also not required to be recorded, and in fact the registrars were legally unable so to do.⁶¹ So, while witnesses had given evidence to show that it was difficult to quantify the number of infants who had been killed by their mothers or who had been stillborn, the committee accepted the need to do something to reduce the risk to infant life.

The focus of the committee, and the witnesses, was on working-class mothers of illegitimate children who were seen to be in need of state control, whereas mothers of legitimate children were not. In particular, the committee were concerned with those women whose aberrant sexual behaviour might have brought them to the official attention of the Poor Law Authorities, usually due to their having a bastard child.⁶² The opinion that these women were in need of control was demonstrated to the extreme by Edward Herford who stated that, by having given birth to an illegitimate child, women had effectively put themselves outside the law as,

[t]he word 'illegitimate' means something which is contrary to law, and the law recognises certain means for increasing the species, and that is not the legitimate way according to the common acceptance of the term.⁶³

⁵⁹ For example, Andrew Gernon estimated that two thirds of children put out to nurse were illegitimate

⁶⁰ Evidence of William Farr, para 3606

⁶¹ *ibid*, para 3609

⁶² Carol Smart, 'Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

⁶³ Evidence of Edward Herford, para 2053

While illegitimacy may have offended moral sensibilities, it was not a criminal offence. Herford may have been suggesting that the women contravened natural laws, and thus he determined that he saw the mothers of the illegitimate as being in need of control.

A woman's need for access to money to support her bastard infant was a key point for discussion. For example, Ernest Hart felt that changing the bastardy laws to make fathers fully responsible for the ongoing upkeep of their infants would increase the need for baby farming, as did Benson Baker.⁶⁴ They believed that if a father were to bear more financial responsibility, he might put pressure on the mother of the child to give it over to a baby farmer, and, in this way might escape an on-going financial commitment. Edward Herford, on the other hand, suggested that there was a need to change the law to make the fathers of the infants financially responsible and to enable women to retain the custody of their children.⁶⁵

There were some witnesses, such as John Curgenvin, who suggested that there was no difference in the incidence of mortality between the illegitimate and the legitimate, the commonality being a high incidence of mortality among those who were boarded out, that is, sent to paid nurses and who were not cared for by their mother.⁶⁶ In his opinion it was the action of removing the child from its natural mother that was at fault, and not so much the quality of its care. In the nineteenth century, health benefits and character traits were considered to be transmitted via breast-milk to an infant.⁶⁷

This set of opinions conform with the contemporary ideal that a woman's place was at the centre of the domestic, private, circle. As Davidoff, L'Esperance, and Newby suggested, the dominant 'cult' of domesticity emphasised the transgressant nature of the mothers of bastard infants, who had put themselves outside the bounds of respectable society.⁶⁸ Yet, the tone of the committee and the evidence from the witnesses related more to the practicalities of dealing with the progeny than it did to the mother's behaviour.

However, Edwin Lankester made the suggestion that a woman's main motivation for disposing of her child was the fear that having an illegitimate child would prevent her from getting a husband, this being a woman's primary objective in life, regardless of her station in life.⁶⁹ While Lankester's attitude is certainly paternalistic and gives the impression of a man who had a

⁶⁴ Evidence of Ernest Hart, para 232-233, evidence of Benson Baker, para 1657

⁶⁵ Evidence of Edward Herford, para 2034

⁶⁶ Evidence of John Curgenvin, para 1188

⁶⁷ CHF Routh, 'Selection of Wet Nurses From Among Fallen Women' (1859) 1 (June 11) *The Lancet* 580

⁶⁸ Leonore Davidoff, Jean L'Esperance, Howard Newby, 'Landscape with Figures: Home and Community in English Society' IN J Mitchell and A Oakley (eds) *The Rights and Wrongs of Women* (Penguin 1977)

⁶⁹ Evidence of Edwin Lankester, para 3190

fixed view of women and their aims; it also suggests that Lankester's views were coloured by class. While the view of women's place at the centre of a settled family home was dominant, it was by no means a given that women of the working class would marry the men with whom they were involved sexually, although the family unit was still a desirable aim for any woman. Jeffrey Weeks cites contemporary studies by Charles Booth and Havelock Ellis which found that pre-marital sex amongst the working-class was not unusual.⁷⁰ Weekes noted that the number of common-law relationships did not decrease throughout the century, and that in some areas, the proportion actually increased.⁷¹ The prevalence of common law relationships suggest that Lankester was not as familiar with the realities of working-class life as he supposed. While he, and many novelists of the time, recorded the challenges faced by unmarried women,⁷² there is evidence to suggest that unmarried mothers in a rural environment were, at the least, tolerated.⁷³ In urban areas, there is evidence that unmarried mothers living in a family environment would on occasion give a child to her parents to be raised, creating a fiction that the child was a sibling, leaving the mother free to continue her life.⁷⁴

Some links were made in the evidence between the mothers of illegitimate children, prostitution and morality. The most obvious example of this was in the evidence of Daniel Cooper, representing the Society for the Rescue of Young Women and Children (hereafter Rescue Society) which sought to support those women who had 'fallen'. While acknowledging that some mothers 'maintained their children by prostitution',⁷⁵ Cooper proved to be broadly supportive of the women his society helped. He stated that the majority of those helped by the Rescue Society (nine out of ten) were domestic servants, and that 'in many instances the fathers of their children are their masters, or their masters' sons, or their masters' relatives, or their masters' visitors'.⁷⁶ Cooper's evidence reflected an image of women as the victims of the men who had power over them, and revealed the consequences for a servant losing their position when adding 'nearly all the prostitutes of London have been domestic servants'⁷⁷ and that it was their 'fall' that had led to the necessity to earn their living on the streets.

⁷⁰ Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality Since 1800* (3rd edn, Pearson 2012)

⁷¹ *ibid* 75

⁷² For example George Eliot, Elizabeth Gaskell, Charles Dickens and Fanny Trollope

⁷³ V Holmes, 'Absent Fireguards and Burnt Children: Coroners and the Development of Clause 15 of the Children Act 1908' (2012) 1 *Law, Crime and History* 21

⁷⁴ C Chinn, *They Worked All their Lives: Women of the Urban Poor, 1880-1939* (Carnegie Publishing Ltd 2006)

⁷⁵ Evidence of Daniel Cooper, para 2449

⁷⁶ *Ibid*, para 2445

⁷⁷ *Ibid*, para 2499

Given that the majority of the committee's business and the evidence of its witnesses concerned the plight of illegitimate children, rather than babies born in wedlock, it is also not surprising that the working of the bastardy laws came under scrutiny, and in particular the measures that could be taken to ensure that children were properly financially supported by their parent(s). Some of the witnesses, such as Edward Herford, were adamant that the only children to be the subject of the Bill should be those that were illegitimate and, in particular, that there should be no justification for any "interference in the case of an ordinary married woman's child."⁷⁸ Clearly, Herford believed that the private sphere of a married woman's home should be sacrosanct, whereas a household containing an illegitimate child had little expectation of privacy and the state had the right to interfere and to supervise.

7.3.3 Links with The Poor Laws and Bastardy Legislation

The original Bill was intended to work alongside the Poor Laws; the inspection of the baby farms was to be performed by the medical officers attached to the Poor Law Unions thereby making use of an existing form of social policing.⁷⁹ As we have seen, in the contemporary press there had been significant criticism of the ways in which the Poor Laws were administered. Outside the committee some authors, such as EW Holland, had gone as far as to suggest the complete abolition of the Poor Laws,⁸⁰ while Florence Hill had made a very strong case for changes to be made in the ways in which children were treated within the workhouses.⁸¹ It is therefore not surprising that some of the witnesses before the committee were critical of the ways in which the Poor Laws provided support for women with illegitimate children.

We have seen in the cases of Charlotte Winsor (1865) and Jessie King (1889) how some of the parents and, in particular, the fathers of the children handed to the baby farmers preferred to pay a single 'premium' for their children to be 'adopted' rather than paying a regular weekly rate for their maintenance, a preference which led to the death of the children concerned. This link between baby farming and the fathers was reinforced, however indirectly, by William Cameron, who gave evidence of the annoyance of the father of a child whose mother had reclaimed it from the baby farmer 'because he would have to pay her something for keeping the child, and he induced her to take [the baby] back again to these women'.⁸²

⁷⁸ Evidence of Edward Herford, para 2051

⁷⁹ HC Bill (1871) [49] Bill for the Better Protection of Infant life

⁸⁰ EW Holland, 'The Poor Laws and Metropolitan Poor Law Administration' (1868) *The Contemporary Review* August 502

⁸¹ Florence Hill, *The Boarding Out System*, (Pamphlet, BL Ref L66/221 1869)

⁸² Evidence of William Cameron, para 4348

The legitimacy, or otherwise, of a child could affect the options available to a mother looking for assistance with its care. As we saw in chapter four, the Foundling Hospital accepted only illegitimate children in the nineteenth century. The criteria for admission included the good character of the mother and also a ballot held in front of an audience, a rather public humiliation for some women seeking help.⁸³ In his evidence, Whitehead showed that some nurseries founded on philanthropic basis preferred to take legitimate children unless the mother of an illegitimate child could be shown to be of 'good character',⁸⁴ while Herford felt that there was no reason which could 'justif[y] interference in the case of an ordinary married woman's child.'⁸⁵ Presumably the witnesses felt that the mother of an illegitimate child had less right to privacy and should thus be more closely supervised.

There was broad agreement throughout the evidence before the committee that the going rate for support of a child in a baby farm was set at 2s 6d. I do not believe that this figure was accidental nor, as many of the witnesses stated, was it a sufficient amount of money to ensure that the child would thrive. Why half a crown? Simply, I believe, because it was the amount of money prescribed by law that an affiliated father should pay towards the support of his offspring.⁸⁶ Many of the witnesses, including George Gregory, treasurer of the Foundling Hospital and Jane Dean Main, the superintendent of the Refuge for Deserted Mothers, gave evidence that it was not possible to place an illegitimate child in a decent home for the sum of 2s 6d, with Jane Dean Main stating that she never paid a nurse less than 5 shillings per week.⁸⁷ Charles West, Physician to the Hospital for Sick Children, also testified that 2s 6d was not enough money to feed a child, particularly in London, and he felt that this was the main reason why it was that so many children in baby farms were fed bad food.⁸⁸ This disparity between the amount of money which a father was liable to pay and the costs of supporting a child was addressed by a new Bastardy Amendment Bill, introduced by Charley on 9 April 1872. The Bill did not limit the amount of money that a father was liable to pay, but the resulting act did. However, it did raise the financial liability of the father to 5s per week, in line with the evidence presented before the select committee.⁸⁹

⁸³ G Pugh, *London's Forgotten Children: Thomas Coram and the Foundling Hospital* (The History Press 2007)

⁸⁴ Presumably by this Whitehead was referring to those women who had been seduced or raped and deserted. Evidence of Walter Whitehead, para 3285

⁸⁵ Evidence of Edward Herford, para 2051

⁸⁶ Poor Law (Amendment) Act 1844 s3

⁸⁷ Evidence of Mrs Jane Dean Main, para 4645

⁸⁸ Evidence of Charles West, para 2924

⁸⁹ An Act to Amend the Bastardy Laws 1872, s65

Confirming my findings in chapter three, affiliation was acknowledged by the select committee to be a difficult process.⁹⁰ Witnesses who gave evidence to the committee of the difficulty that women had in affiliating their children tended to represent the philanthropic societies, such as Daniel Cooper, who worked directly with women. Those working within the Poor Law and workhouse system, such as Uvedale Corbett, had, perhaps not surprisingly, a different view. Corbett's evidence echoed the evidence given before the Poor Law Commission of 1834, and the 'injuries' suffered by men who were wrongly charged with being fathers. In his view, if there were to be more support available to the mother of an illegitimate child, this would lead to increased immorality, and in fact 'the throwing of the whole onus upon the mother of getting an order on the putative father has had a good moral effect upon the mother.'⁹¹ It is very difficult to see how he came to this conclusion without suspecting some prejudice, and I am not sure that the committee were in agreement with him. Again, redolent of the approach of the 1834 Commission into the effectiveness of the 'old' Poor Laws, Corbett defended the provision of support and suggested that it should only be available on entry to the workhouse, as not only did this promote morality, '[i]t certainly is for the protection of the rates.'⁹²

As we have seen in chapter four, some women preferred to entrust their children to a baby farmer rather than the punitive regime of the workhouse. But it should not be forgotten that the workhouses did care for abandoned children even if, as Corbett stated, they would take significant steps to ensure that the infant was entitled to such care before allowing them in to the workhouse. He also testified that the workhouse authorities jibbed at taking in infants who had been cared for by a baby farmer, as they would prefer the child to remain with those who had been caring for it.⁹³ Although he did not state it explicitly, his evidence suggested that the primary motive for refusal on the part of the workhouse guardians would be concern for the public purse rather than the welfare of the child. Similarly, in his evidence, Alfred Wiltshire suggested that the situation for infants would not improve if the responsibility for them were given to the Poor Unions since the class of men elected to the boards of guardians 'is not one which would give very great consideration to infants.'⁹⁴ Again, we see a link with the discourse surrounding the 1834 Poor Law and the explicit need to make savings on behalf of the parish and the ratepayers.

⁹⁰ The 1868 amendment to the Poor Laws had allowed for parishes to appoint officers to receive money to be paid by the father if so ordered at a petty session. However, the amount payable by the father to support his bastard child had not been increased since the Poor Law 1834. Poor Law (Amendment) Act 1868

⁹¹ Evidence of Uvedale Corbett, para 3961

⁹² Ibid, para 4003

⁹³ Ibid, para 3939

⁹⁴ Evidence of Ernest Hart, para 446

Given the connections between some of the members of the committee, the witnesses and the Poor Law boards and the relevant guardians, it is not surprising that some of the evidence of the philanthropic organisations regarding the actual working (or not) of the workhouses and accusations of inefficiency caused a flurry of concern and a request for evidence from the workhouses. Daniel Cooper and Jane Dean Main both told of the difficulties experienced by women close to their confinement in gaining entry to the workhouses. John Bowring (Clerk to the Guardians of the City of London Union) was called to refute the assertions made, and extra tabular evidence consisting of returns from several workhouses was accepted and included as an appendix to the official report. This evidence showed that pregnant women nearing confinement were very rarely refused access to a workhouse. In contrast, when Daniel Cooper re-appeared before the committee with his tabular evidence in support of his statements that women were being turned away from workhouses, the committee undertook to send the evidence to the Poor Law Board 'so that the fullest opportunity of investigating the charges may be afforded, and so that counter statements may, if necessary, be made',⁹⁵ but they declined to receive them in evidence or to include them with the appendices, with no reason given for this decision.

In the next sections I examine the proposals for change which emerged from the Committee, including a suggestion for registration and supporting legislation. I review the resulting Infant Life Protection Act 1872, with its surrounding framework of ancillary legislation, including reform of the Bastardy Laws.

7.4 Registration and Supervision – A Solution?

In Charley's 1871 Bill, the Poor Law unions had a significant part to play in the inspection of baby farms, including the provision of a written report to be submitted quarterly to the Poor Law Board on the welfare of each child.⁹⁶ However, the 1872 Bill as amended by the committee and introduced into the House of Commons on 7 February included no reference to a role of inspection for anyone associated with the Poor Law unions or the workhouses.

7.4.1 Registration

The majority of the witnesses who had given evidence to the committee were in favour of registration of the baby farms and the women running them as a first step in improving the care of infants. Some witnesses, such as Curvengen, felt that registration should also be extended to midwives and lying-in houses, although it was accepted that this was outside the

⁹⁵ Evidence of Daniel Cooper, para 4893

⁹⁶ HC Bill (1871) [49] Bill for the Better Protection of Infant life

scope of the Bill.⁹⁷ The resulting report focussed on the provision of care given in 'private houses', leaving the supervision of children held in the workhouses or boarded-out by them, outside its remit. Presumably the committee were convinced that the existing supervisory arrangements for these children were adequate.

The intended purpose of the proposed registration scheme is more difficult to assess. Some witnesses had given their opinion that the process of registration along with registration would allow for better co-operation between the medical officers and the local nurses,⁹⁸ while others suggested that registration would lead to increased professionalism of the women working in the baby farming industry, with a rise in the standard of care given to the infants. It is difficult to understand how registration on its own would have made any difference to the lives of infants in the care of unscrupulous women.

7.4.2 Supervision and Inspection

The issue of supervision for the baby farmers is key to this thesis. As we have seen, the majority of the witnesses felt that some form of supervision and/or inspection of the baby farmers was necessary in order that the proposed legislation should be effective. However, there was disagreement as to how this should be carried out and, indeed, whether the existing social policing arrangements of the Poor Law system would be sufficient. Another suggestion was that supervision should be carried out by teams of 'ladies' who might seek to befriend and advise in a supportive manner.

Some witnesses were in favour of official inspection carried out by existing authorities linked with the state. The original Bill framed by Charley and representatives of the committee for the Protection of Infant Life had called for professional inspection, working along the same lines as the Union Medical Officers, and funded by government. This initiative would have extended the powers of the Poor Law authorities to visit houses which may have had no other contact with the Poor Laws and the attendant stigma. This inspection of private homes was likened to the legal provisions for the protection of lunatics, with Charley in his questioning of Charles West suggesting that an 'infant has the same claim upon the State as a lunatic.'⁹⁹ Curgenvin agreed with Melly that it would be right to extend the principle of inspection to

⁹⁷ Evidence of John Curgenvin

⁹⁸ Evidence of Benson Baker

⁹⁹ Evidence of Charles West, para 2965. This refers to the Lunatic Asylums Act 1853. The earlier Lunacy Act 1833 had made provision for the supervision of all 'lunatics' by medical officers, funded by deductions from the income of those 'lunatics'.

children, equally as helpless as lunatics, particularly as the 'children may be made useful members of society'.¹⁰⁰

Ernest Hart, as a representative of the BMJ's campaign, was convinced of the effectiveness of the concept of inspection by medical officers, in concert with local groups of volunteer lady inspectors, working in the same manner as they did under the Poor Law regulations for children who had been boarded out. Inspection by a medical officer would, in his opinion, have allowed for the discovery of those baby farms such as that run by Margaret Waters. Similarly, an early inspection by a Poor Law inspector might have uncovered the ghastly situation in which children were being kept and have allowed for their rescue. Other medical witnesses, such as Alfred Wiltshire, suggested that such medical inspection would also have an educational purpose, leading to better feeding of the infants which would reduce mortality. On balance, there seems to have been more support amongst the witnesses for the supervision to be of the medical variety, with philanthropic ladies providing 'friendliness' and support.¹⁰¹ It certainly implies a lack of support for the suggestion that some private homes should be subject to inspection and control by an official government organisation.

Some of the witnesses, such as Ernest Hart, felt that inspecting baby farms would be an ideal task for committees of 'ladies desirous of finding useful occupations'.¹⁰² He justified his suggestion as, under the Poor Law regimes, women volunteers inspected those homes in which infants were 'boarded out'. Other witnesses, such as Sergeant Relf, suggested that, were 'ladies' to inspect houses, children may be better cared for, perhaps because their influence would have a positive effect on moral welfare.¹⁰³ While the proposed use of 'ladies' could be seen to have been suggested primarily to save the state money, it also suggests a desire to return to the private philanthropic visiting habitual earlier in the century, such as that exemplified in the novels of Jane Austen, George Eliot and Fanny Trollope. While philanthropic 'visiting' would have kept representatives of the state out of the private home, it would have given an opportunity for middle-class women to effect social reform.¹⁰⁴

However, not all the witnesses were in favour of any official inspection of the private home. Edward Herford was not in favour of registration and inspection, as it would cause 'inconvenience' to the poor.¹⁰⁵ Other witnesses suggested that the stigma attached to official

¹⁰⁰ Evidence of John Curgenvin, para 1399

¹⁰¹ For example, Evidence of Rev Oscar Thorpe

¹⁰² Evidence of Ernest Hart, para 245

¹⁰³ Evidence of Sergeant Relf, para 872

¹⁰⁴ Lewis (n46)

¹⁰⁵ Evidence of Edward Herford, para 2020. It is not clear what he meant by 'inconvenience', but I assume that he referred to an imposition of inspection by an official of the state.

inspection may deter women from using the 'respectable' baby farms. Daniel Cooper, for example, felt that a woman's reputation may have been more important to her than the health of her infant, and that if she were to contract with a baby farmer that may lead to discovery of the 'shame' associated with a bastard child.¹⁰⁶ He further suggested that inspection by 'ladies', far from their interference being seen as 'friendly', would be seen as being agents of the state, as spies and an 'impertinent interference'.¹⁰⁷

7.5 Legislating for Change

The report of the committee is relatively short, considering how much evidence was heard. It consisted of a short summation of the state of the baby farming industry, with a somewhat surprising conclusion that, while criminal baby farming was carried out in London and the larger towns of Scotland, that child mortality elsewhere in the country was due to carelessness rather than criminality.¹⁰⁸ In referring to so-called 'criminal baby farming'¹⁰⁹ the committee made a direct link with bastard infants, and stated that the death rate for such children would be higher in urban areas.

There were four main recommendations in the report, the first of which was that registration of births and deaths should be made compulsory. The second recommendation was for police registration and supervision of lying-in houses where infants were kept. The third recommendation was for the licensing of nurses and their houses, but limited to those 'for payment, take charge at the same time of two or more infants under one year of age, and for longer periods than a day'.¹¹⁰ Exemptions from licensing were provided for those houses which would already be under the supervision of the workhouses or charities such as the Foundling Hospital. The final recommendation was that those nurses who were not required to register compulsorily should be encouraged to register voluntarily. There were no recommendations regarding inspection or closer supervision of the baby farming industry. The intention, it might appear, was that of creating some form or system of self-regulation without any kind of formal means of social control.

The resulting report and Bill met with mixed responses. In the House of Commons on 6 March 1872, Charley introduced the second reading of the Bill. It was not opposed, although there

¹⁰⁶ Evidence of Daniel Cooper, para 2606

¹⁰⁷ Ibid, para 2839

¹⁰⁸ This is particularly surprising in view of the fact that Charlotte Winsor lived and baby farmed in a rural area just outside Torquay.

¹⁰⁹ This turn of phrase appears to relate to those occasions where a child was physically harmed, or killed, by the paid-carer. Certainly, there never was on the statute book a criminal offence of 'baby-farming'

¹¹⁰ HC 372 (1871) Report of the Select Committee on Protection of Infant Life vii

was criticism that the Bill did not go far enough in some areas. Kinnaid (who had been a member of the select committee) suggested that as this was a private member's Bill, it was advisable for it to be cautious in its aspirations with a view to making it more stringent at a later date.¹¹¹ Some members (for example, Donald Dalrymple, Liberal MP for Bath) called for measures to be taken to punish those parents who gave up their children to an unlicensed baby farmer, but this proposal was dismissed as unjust by Brewer, who had been a member of the committee. There was general agreement that the Bill was a good start, but that it needed to be supplemented by additional legislation to address registration, affiliation and the support of bastard children. As the Bill's sponsor, Charley acknowledged that it was not stringent enough in its provisions.

In the world outside the Houses of Parliament, the Bill received a mixed reception. The *Examiner* of 19 August 1871 was broadly supportive, and the authors hoped that the Bill would be introduced in the next Government session.¹¹² However, six months later, the *Saturday Review* described the Bill as being 'a poor little Bill, and it was feebly introduced.'¹¹³ This particular article was concerned with sexual morality, and it suggested that, for the state to be seen to be involved in the care of bastard children, would be to encourage immorality. The language is redolent of the 1834 Poor Law Commission with the supposition that women might affiliate their children to 'innocent' men and that girls would dishonestly select male 'victims' who could pay for their support.

The *Saturday Review* did not ignore the fact that the Bill did not allow for the inspection of those establishments that cared for children, and quoted Charley as explaining that this measure had been removed from the Bill because of 'difficulty', which might lead to the failure of the whole Bill. The author of the article condemned this omission;

[i]f it is intended that illegitimate children shall continue to be 'killed off' quickly, Mr Charley's pretence of doing something may usefully conceal a determination to do nothing.¹¹⁴

Strong criticism indeed.

The Infant Life Protection Act did little more than the Bill. Compulsory registration was limited to those houses keeping two or more infants for a period of longer than 24 hours. The register was to be held by the local authority, and registration was for a period of one year, with no charge to be made to the baby farmer. A power was given to the local authority to refuse registration if it were unsatisfied by the suitability of the applicant or her house, but the Act gave no power of inspection or entry into a baby farm to anyone. However, the authority were

¹¹¹ HC Deb 6 March 1872 vol 209 col 1486

¹¹² 'The Prevention of Baby-Farming', *Examiner* (19 August 1871)

¹¹³ 'Infant Life Protection', *Saturday Review* (9 March 1872) 303

¹¹⁴ *ibid*

able to remove the name of a particular baby farm from the register if it were 'proved to the satisfaction of the local authority that any person whose house has been so registered... has been guilty of serious neglect... or that the house... has become unfit for the reception of infants'.¹¹⁵ How unfitness was to be so shown is unclear.

The punishment for offences committed under the Act were limited to six months imprisonment or a financial penalty of five pounds. Obviously, the penalties for other offences, such as murder or manslaughter, remained where such a case could be proven. A real limiting factor for the effectiveness of this Act was that the expenses incurred by the local authorities in upholding the legislation would be defrayed from the local rate, although there was provision for any fines collected in relation to the Act to be returned to the local authority.

What was missing from the Act was any form of responsibility to ensure compliance with the legislation. The local authorities were to register baby farms, but had no power to inspect the houses in which the children were to be kept or to assess the baby farmer's suitability to care for children. They had the responsibility to maintain that system of registration, including the provision of registration documents to the baby farmers, all of which was free, but no resources were given to them from central government. In short, legislators neither allocated responsibility for the behaviour of the baby farmers to an existing form of social police, nor did they create any new means of social control. It could be said that because of this, the Act was unlikely ever to succeed.

7.6 Supporting Legislation

As noted above, the committee had acknowledged that other legislation would be needed to protect further the lives of illegitimate children. To this end, Charley introduced a Bastardy Laws Amendment Bill on 9 April, which received Royal Assent on 10 August. Amongst its provisions, it removed the 2s 6d limit of financial support payable by the father which, on paper, may have gone some way to provide more effective support for infants.¹¹⁶ The final piece in the legislative puzzle was the Registration of Deaths and Births Bill,¹¹⁷ which was referred to a whole House committee on 9 July 1872. However, it was withdrawn on 21 July 1873, with another Deaths and Births Bill introduced into the House of Commons on 23 April 1874.¹¹⁸ This Bill was passed to the House of Lords on 28 July 1874, and was passed back to the

¹¹⁵ Infant Life Protection Act 1872

¹¹⁶ An Act to amend the Bastardy Laws 1872

¹¹⁷ HC Bill (1872) Registration of Births and Deaths

¹¹⁸ HC Bill (1874) Deaths and Births

Commons¹¹⁹ on 5 August, thus closing the gap identified by the select committee preventing the recording of still-births.

7.8 Conclusion

Was it possible that the Infant Life Protection Act 1872 might curb the problem of baby farming? I think it was unlikely. The majority of the witnesses had been chosen from the medical profession, the police, and the Poor Law unions, and while they did disagree with each other, it is natural that the committee came to conclusions highly influenced by their evidence, which as Arnot notes, much of this was given by representatives of the relatively new medical profession.¹²⁰ Where the philanthropists raised doubts regarding the effective working of the Poor Laws and the workhouse system, these were refuted by those working in the workhouse system, and those refutations were accepted by the committee. Indeed, the representatives of the Poor Law unions, were supported by the committee members with, it would seem, little hesitation.

The recommendations of the committee, while acknowledging the need for some form of supervision and control, had been diluted by the time the Bill became law. The supervising agency, recommended by the committee witnesses to be, variously, the Poor Law medical officer, the police, or a group of philanthropic women, became in law the local authority. But, with no powers of inspection or funding and with power to do little more than maintain a register of baby farming establishments, it is difficult to see how this became anything other than a fairly toothless example of social control. The only legal restrictions, in this case the necessity to register the baby farm, were left in the social space. It is difficult to comprehend how the legislators intended these measures to work. The evidence given before the committee had made it clear that risk to infants was most acute where a child was kept in a domestic home, and yet the legislators balked at extending the reach of the state into the domestic circle. No new form of social police was created, and existing forms of social police, such as the Poor Law authorities, were not given the power to extend their responsibilities to ensure the safety of infants. The transformation in the proposed legislation from Charley's first Bill, which provided for inspection regimes, to that of the resulting act with little legal force behind it, meant that it had become a 'poor little law' with loopholes that continued to be exploited by the next generation of baby farmers.

For the purpose of this thesis, however, the most notable aspect of the Infant Life Protection Act 1872 and its preceding committees and Bills is that it was not addressed at reforming the

¹¹⁹ Deaths and Births Registration Act 1874

¹²⁰ Arnot (n40)

behaviour of mothers of illegitimate children. The official focus is firmly on the baby farmers, working in the private sphere of their own homes, underlining my conclusions in chapter six with regard to my second thesis question, how governments' interest in paid childcare changed. In the next chapter I answer my third question, how legislation reflected a change in focus towards the private sphere. As we shall see, the failure of the first Infant Life Protection Act, exposed by the case of Jessie King and underlined by the dramatic case of Amelia Dyer, made it almost impossible that its defects could continue to be ignored. There were two further attempts at the end of the century to reform the Infant Life Protection legislation. The first of these attempts, in 1890, failed to get beyond the select committee stage, but the second was successful and led to the much more rigorous Infant Life Protection Act 1897, which extended supervision of the baby farmers into the private home. With it, social policing and social control entered the domestic circle of the family home.

Chapter 8 : Now Gods! Stand up for Bastards¹

In spite of the provisions of the Infant Life Protection Act 1872, children in the somewhat dubious 'care' of the baby farmers continued to be ill-treated, and to die. For example, in 1889, the *Daily News* reported an inquest into the death of an eight month-old baby girl. The baby farmer at the centre of the case, Mrs Nibbs, had been registered with the local authority per the Infant Life Protection Act 1872, but still the child died from neglect.² Other women who had come to the attention of the law had not registered with the authority and were aware that they were in breach, such as Margaret Adams who was fined £5 in 1890, in whose care were found two infants in terrible condition. The *Morning Post* reported that she denied being a baby farmer on the somewhat dubious grounds that she did not seek to profit from her care of the children.³

As we saw in the previous chapter, the Infant Life Protection Act 1872 was much diluted from the Bill that was first proposed. In action, it proved not to be as successful as the government and campaigners would have liked. Due to its loopholes, unscrupulous baby farmers could continue to carry on their trade relatively unmolested by the law. In this chapter I show how, in seeking to close these loopholes, the legislation was changed to reflect governments' changing interest in paid childcare, an interest that resulted in legislation which took government supervision into the domestic circle of the working-class home.

Chantal Stebbings describes the law makers of the 19th century as being 'pragmatic' and willing to compromise in their efforts to legislate for the reform of a society experiencing significant upheaval,⁴ and I believe that it was this 'pragmatism' which had led to the dilution of the first Infant Life Protection Act from its more rigorous antecedents in the Bill that was first presented to parliament. Pragmatic it might have been, effective it was not. In this chapter, I trace two attempts to reform the Infant Life Protection Act 1872. I work chronologically, starting with the first select committee, held in 1890. First, I assess why it was that the committee was constituted. Then I review the membership of the committee and the surprisingly low number of witnesses called, before analysing the substance of the discussions before the committee.

¹ King Lear, Act 1 Sc 2

² 'Baby-Farming in Kennington' *Daily News* (5 January 1889)

³ 'Infant Life Protection Act' *Morning Post* (6 February 1890) 2. I suspect that Mrs Adams was relying on the wording in s2 of the Infant Life Protection Act 1872 which stated that 'it shall not be lawful for any person to retain or receive for hire **or reward** in that behalf more than one infant...' (emphasis is mine).

⁴ C Stebbings, 'Benefits and Barriers: The Making of Victorian Legal History' in A Musson and C Stebbings (eds), *Making Legal History: Approaches and Methodologies* (Cambridge University Press 2012) 81

I examine the Bill that was presented to parliament, and I ask whether, had it been placed on the statute book, it might have gone some way to addressing the continuing problem of baby-farming.

In the second part of the chapter, I look at the very different select committee that was formed in 1896 from members of the House of Lords. The membership of the committee was smaller in number but had a much larger number of witnesses appearing before it than that of 1890. I review the membership of the committee and the witnesses who appeared before it and I draw conclusions from the differences between this committee and those which went before. I examine the Bill that was produced and which was enacted in terms almost as drafted. The second Infant Life Protection Act⁵ allowed for officials employed by local authorities to inspect the conditions of children being cared for in a private home, with a statutory power of entry in order to do so. By turning the focus of the law from the baby farmer to the child, this legislation allowed the 'policeman-state' to move from the social space into the domestic circle.

8.1 The Continuing Baby-Farming Situation

It was probably the death of Isaac Arnold (otherwise John Bailey) in 1888 that precipitated further action from government.⁶ Athelstan Braxton Hicks,⁷ coroner for Mid-Surrey, held an inquest into the death of the unfortunate child which the newspapers reported in full. At the end of the inquest, Braxton Hicks issued an excoriating statement with regard to the baby farmers. The chief target of his ire was Mrs Jane Arnold, the procuress who had sent the child to the house of the foster parent in which he died. Isaac was just one of the children that Arnold had passed to Mrs Jessie Chapman, the foster parent, who was registered under the Infant Life Protection Act 1872. In Chapman's care the child's health quickly failed and he died, probably as a result of poor feeding.⁸

The account given by *The Times* was of a organised ring of baby farmers. Just as we saw in chapter four, Mrs Arnold, as procuress, would advertise to adopt children, collect the child and the premium from the parent(s) and then transfer the child to a foster home, some of which might be registered under the Infant Life Protection Act. A premium might be paid to the foster parent, but more likely an agreement for weekly maintenance would be made between Mrs Arnold and the foster parent. Typically Mrs Arnold would then disappear leaving the child financially unsupported. Some of the children would be kept by their foster parents at their

⁵ Infant Life Protection Act 1897

⁶ 'The Alleged Baby Farming' *The Times* (5 October 1888) 5

⁷ Barrister and coroner for Mid Surrey. He was the son of John Braxton Hicks, obstetrician, after whom the 'phantom' contractions felt in pregnancy are named.

⁸ 'Yesterday, Mr A Braxton Hicks, the coroner for Mid Surrey...' *The Times* (28 September 1888) 5

own expense and might survive, while others might fail, and die. At the end of the inquest, Braxton Hicks censured Mrs Arnold for her behaviour and for the false statements that she had made in court. He declared that she was the head of a ‘most pernicious system of “sweating infants”’,⁹ implying a belief that she understood the loopholes in the Infant Life Protection Act 1872. He further stated that the Infant Life Protection Act was ‘totally incompetent’ to deal with the case before him as it focussed only on those households in which more than one infant at a time was lodged. The Act, as we have already noted, only targeted the behaviour of the baby farmers in the private sphere and ignored the role of the procuresses, such as Mrs Arnold.

8.2 The first review: The 1890 Committee

In December 1888, C.S. Kenny,¹⁰ in what may have been one of his last appearances in the House of Commons, asked whether the Secretary of State for the Home Department had taken heed of Braxton Hicks’ recommendations at the end of the Arnold inquest. Stuart-Wortley¹¹ responded that proposals for change were being considered, and that the local authorities with responsibility for the operation of the Infant Life Protection Act 1872¹² had been consulted and that a new Bill would soon be presented.¹³

The Bill was first introduced into the House of Commons on 14 February 1890. It extended the provisions of Infant Life Protection Act 1872 to those baby farmers keeping children under five years old and imposed reporting responsibilities on anyone taking a child from a baby-farmer. At the second reading on 17 March, the Bill was debated, and it was clear that there was opposition to it. In particular, to the fact that it would ‘catch’ under its provisions households other than the baby farms at which it was aimed. It was described by JR Kelly as ‘one of the strangest Bills that was ever brought before the House’.¹⁴ There was a clear class dimension to this criticism as, not only would it impact adversely on the lives of the poor, but also on middle or upper-class parents working in India who might choose to leave their children

⁹ The term ‘sweating infants’ denoted that a woman would take in one infant at a time. This avoided the notification requirements of the Infant Life Protection Act 1872. Once the child had either been neglected to death or otherwise disposed of, the baby farmer would take in another child. ‘The Alleged Baby Farming’ *The Times* (5 October 1888) 5

¹⁰ CS Kenny was Liberal MP for Barnsley. He retired from parliament at the end of 1888, and took up position at the University of Cambridge as Reader in Law. Among his works of note is *Outlines of Criminal Law* published in 1902. AL Goodhard & R Cosgrove (rev), ‘Kenny, Courtney Stanhope (1847-1930)’, *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

¹¹ Tory MP and at the time Under-Secretary of State for the Home Department

¹² The first Infant Life Protection Act had specified what constituted ‘local authorities’ in Schedule 1 of the Act. As local government developed during the century and, especially following the Local Government Act 1888, new bodies took over the responsibilities of those specified by the Infant Life Protection Act 1872.

¹³ ‘House of Commons’ *The Times* (15 December 1888) 8

¹⁴ HC Deb 17 March 1890, vol 34, col 981

in the care of a friend or relative, as that person would have to register as a baby farmer. In this way, the proposed legislation would apply to family arrangements outside the working-class which would link the baby farmer to middle class families. Other members decried the Bill as being 'clumsy', while Dr Clark¹⁵ suggested that its only effect would be 'to manufacture criminals.'¹⁶ In the face of such opposition, it was no surprise that the Bill was referred to a select committee.

The select committee was duly nominated and first met to deliberate in June 1890. It was chaired by Stuart-Wortley, who by this time had been appointed Home Secretary. Membership included Sir Herbert Maxwell, an assistant whip for the Conservative government. As with the membership of the 1872 committee, sitting as part of the 1890 committee were lawyers (Francis Hervey, William Lawrence), campaigners for reform of the Poor Laws and for women's suffrage (George Bartley, Walter Crewe, William Hanley), philanthropists and campaigners for reform of education (Lees Knowles, William Gorton).¹⁷

What is most obvious about the witnesses called to give evidence in 1890 is that, compared to the 1872 and 1896 committees, there were so few of them. There were six in total. Braxton Hicks represented coroners, and had been the instigator of the campaign that led to the matter of baby-farming being considered once again before parliament. William Henderson, the chief constable of Edinburgh gave evidence that included some of the issues raised by the Jessie King case, while Samuel Babey, an inspector employed by London County Council, whom we have already met in earlier chapters, testified as to the operation of the Act in London. The last three witnesses represented charitable organisations. George Gregory, the treasurer of the Foundling Hospital had given evidence at the 1872 Select Committee, Joanna Hill was the secretary of the King's Norton boarding out committee,¹⁸ and Charles Stuart Loch represented the Charity Organisation Society.

It is noticeable that there were no medical witnesses on this occasion nor, with the tangential exception of Joanna Hill, were there any witnesses representing the Poor Law boards. Joanna Hill was one of a family of social reformers, along with her sisters Rosamund and Florence. All three women campaigned for the interests of those affected by the Poor Laws and, in particular for the welfare of children.¹⁹ Florence, for example, in an article published in the

¹⁵ Dr Gavin Clark, MP for Caithness. EA Cameron, 'Clark, Gavin Brown (1846-1930)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

¹⁶ HC Deb 17 March 1890, Vol 34, col 981

¹⁷ A full list of members of the committee and witnesses called is at Appendix 2

¹⁸ The 'boarding out committees' oversaw the conditions of homes in which children were placed by the Poor Law authorities.

¹⁹ Deborah Sara Gorham, 'Hill, Rosamond Davenport(1825-1902)', *Oxford Dictionary of National Biography*, (Online edn, Oxford University Press, 2004)

Contemporary Review, aimed at the 'thinking classes', had argued for a 'family system' for those infants and children kept in the workhouses.²⁰ Joanna's focus, like that of her sisters, was on the improvement of conditions for women and children within the Poor Law systems.²¹

The committee was short in duration, hearing evidence over four days, with a meeting for deliberation, one for amendments to be made to the Bill, and another to present the Bill to the House of Commons. Unlike the committee of 1871, there was no need for the existence of baby-farming to be explained as the members were aware of the industry. The evidence of Braxton Hicks and Samuel Babey showed that there still was a deadly trade in infants, and that the 1872 Act was, in the words of William Henderson, a 'dead letter'.²² As was the case in the Committee of 1871, some strong themes emerge from the minutes, including the inefficiency of the 1872 Act in that the loopholes in the legislation allowed the practice of 'baby sweating', the need for some right of inspection for baby farms and the continuance of the practice of advertising for infants.

However, on occasion witnesses giving evidence contradicted each other. Braxton Hicks and Babey were mostly in agreement over the need for inspection, with Braxton Hicks suggesting that this was only done thoroughly in London where the county council had employed Babey.²³ In his turn, Babey testified that on his appointment in 1878, he had discovered that the Metropolitan Board of Works²⁴ were urging change to the legislation as far back as May 1873, shortly after the enactment of the 1872 Act. He had also found that very little had been done in the way of registration, and that only six baby farmers had been registered in the six years since the Act had become operative, implying that there were many establishments working without any kind of supervision.²⁵

The same too was true in Scotland, Henderson reporting that baby farms in Edinburgh were registered by the Medical Officer of Health employed by the local authority, but that no routine inspections took place and further that he was not aware of any.²⁶ Babey had been inspecting the baby farms that were registered with London County Council, and had found that in the registered houses the children tended to be kept well. However, once again, he pointed out

²⁰ Florence Hill, 'The Family System for Workhouse Children' (1870) *The Contemporary Review* August 240

²¹ Lydia Murdoch, *Imagined Orphans: Poor Families, Child Welfare, And Contested Citizenship In London* (Rutgers University Press 2007)

²² HC 346 (1890) Report from the Select Committee on the Infant Life Protection Bill Evidence of William Henderson, para 254

²³ Evidence of Athelstan Braxton Hicks, para 83

²⁴ The Metropolitan Board of Works oversaw the construction of the infrastructure of London. It was replaced in 1889 by London County Council following the Local Government Act 1888

²⁵ Evidence of Samuel Babey, para 341

²⁶ Evidence of William Henderson, para 253

that he had no right of entry to a property should the householder refuse him access, reflecting the concept of the sanctity of private property and the limitations of the Infant Life Protection Act 1872.²⁷

The issue of the right of access to private houses was debated by witnesses and the committee,²⁸ and while Henderson and Babey were clearly of the opinion that they should have some legal right of access in order to inspect the way in which a child was being kept, other witnesses suggested that perhaps it might be better to use the provisions of the recently passed Prevention of Cruelty to Children Act 1889. Section six of the Act allowed for a warrant to be issued by a magistrate if there were 'reasonable cause to suspect that [a child... was] being ill-treated or neglected in any place'²⁹ in order that the child could be rescued and taken to a place of safety. Henderson gave evidence that while it was possible to apply for a warrant, in his experience, this was rarely done.³⁰

The committee re-considered the issue of registration of the baby farms. Braxton Hicks was adamant that more registration was needed, that it should be extended to all houses which kept children under five years of age and not limited to more than one infant and that where two or more adults lived together and worked as baby farmers, that they should both be liable for registration, and that baby farmers should be required to give notice to the county council should any child be removed from the premises. Babey agreed with him, and testified that, in his opinion, the exemptions from registration as provided by the Infant Life Protection Act 1872 (ie, the Foundling Hospital, various charities and the workhouses and their boarding-out arrangements) should be removed.³¹ This suggestion was vigorously resisted, not surprisingly, by George Gregory and Joanna Hill, both of whom testified that the inspection regimes provided by their own organisations were sufficient, and that there was no need for registration of the nurses employed by them.³² Their reasoning was not just that they were providing a suitable inspection regime, but also that registration as a baby farmer might deter women from being employed as nurses. The stigma of baby farming still existed, both inside the metropolis and also in the rural areas where the nurses employed by the Foundling Hospital and the boarding-out committee lived. As far as the practicalities of any possible inspection were concerned, both Joanna Hill and Babey addressed the issue of the employment of women as inspectors. Hill was of the opinion that it would be preferable for an

²⁷ Evidence of Samuel Babey, para 374

²⁸ See for example, Evidence of Charles Loch, para 1270

²⁹ Prevention of Cruelty to Children Act 1889 s6

³⁰ Evidence of William Henderson, para 269

³¹ Evidence of Samuel Baby, paras 434, 435

³² Evidence of George Gregory, para 779-782 and evidence of Joanna Hill, para 990

inspection to be performed by a woman,³³ while Babey agreed that they might be superior in their understanding of children, but that they would not be 'suitable' in approaching the 'criminal' work needed by the Inspectors.³⁴

Given the attention that the Bill had received in the House of Commons, it is no surprise that many of the questions from the committee concerned whether the witnesses felt that registration should be necessary for those people taking care of children whose parents were posted in India, or otherwise working away from home. Braxton Hicks felt that there should be no differentiation, that children were at risk wherever they were cared for outside their family home,³⁵ whereas Joanna Hill disagreed, suggesting that any need for registration as a baby farmer would deter neighbours from taking in a child.³⁶ This theme, as discussed below, was reconsidered in the evidence in the 1896 committee.

As for the parents of the children held in the baby farms, Babey felt that they should be legally liable for the fate of their children, even after the latter had been given to the baby farmers,³⁷ and indeed the Poor Law of 1834 had legislated that the mother of a bastard child was legally responsible for its upkeep.³⁸ However, I suspect that the liability that he hoped for was that, should a child be murdered, the mother might be held equally liable for the act with the actual perpetrator, which would have stretched the ability of the criminal law to deal with such a situation.³⁹ Given that Babey had been instrumental in the discovery of children kept in the poor conditions of the baby farms, this strength of opinion is, perhaps, not surprising.⁴⁰

The views of Charles Stewart Loch, the secretary of the Charity Organisation Society (COS) are also important to consider. The COS was concerned with what the society considered to be the laxity of the existing Poor Law systems. As we saw in chapter six, there was criticism and calls for the Poor Laws to be repealed completely,⁴¹ and such calls continued

³³ Evidence of Joanna Hill, para 1211

³⁴ Evidence of Samuel Babey, para 654. It is not clear what Babey meant by 'criminal work'. Baby farming per se was never a criminal offence. One can only surmise that he was referring to those situations where children had been killed or otherwise harmed.

³⁵ Evidence of Braxton Hicks, para 68, 69

³⁶ Evidence of Joanna Hill, para 1178

³⁷ Evidence of Samuel Babey, para 390

³⁸ Poor Law (1834)

³⁹ This brings to mind the first trial of Charlotte Winsor at which the mother of the child was co-defendant. As we saw in chapter five, at Winsor's second trial Harris was a witness against her. While in 1889, Fitzroy Bell's defence of Jessie King, such as it was, relied on an argument that the mothers of the children were equally as liable as she.

⁴⁰ See for example 'A Baby Farmer Committed' *Illustrated Police News* (28 June 1890) 2

⁴¹ See for example: EW Hollond, 'The Poor Laws and Metropolitan Poor Law Administration' (1868) *The Contemporary Review* August 502

during the next two decades.⁴² The COS' main concern was that charitable assistance should only be given to the 'deserving poor' and, in particular, that public relief (ie that funded by the parishes) should be reserved for those not deserving of charity. Their approach has been described by David Owen, as being particularly punitive.⁴³

Loch acknowledged that he did not deal directly with baby farmers, but that his organisation kept registers of the charities working with mothers and children, and a copy of the list that he presented to the committee is included as an appendix to the report. The most noticeable aspect of his evidence to the committee is the difference between him and the other witnesses. He testified that, in his opinion, the 1872 Act was sufficient as it stood⁴⁴ and further, that in some situations where a child was adopted by a baby farmer for a lump sum, it was advantageous for the child and that the practice should not be banned.⁴⁵ In his opinion, all that was necessary to safeguard children was better enforcement of the Prevention of Cruelty to Children Act.⁴⁶

In the light of the evidence presented by the other witnesses, Loch's is remarkable in that his view of the baby-farming panic is so vastly different from that which had gone before. David Owen suggests that at the time of the committee, the success of the COS was waning. As Owen points out, the doctrine under which the COS worked had remained little changed from their view in the 1860s that the only route to social reform lay 'through the rehabilitation of individuals' and further that they were resistant to the changing social climate in which they were working, which saw greater responsibility for the moral and practical support of the population being provided by institutions of government,⁴⁷ and this is evident from Loch's testimony. This ethos is no different from that practised by Octavia Hill; as noted in chapter two, Hill's inspectors engaged with individual tenants in an attempt to 'reform' their behaviour and promote self-responsibility.⁴⁸ Loch was in total accord with Hill, who had, like him, been influenced by the thinking of Thomas Chalmers.⁴⁹ Loch gave evidence that he was in favour of the inspection of properties in which children were kept and, without prompting, he referred

⁴² See for example: W Walter Edwards, 'The Poor Law: A Proposal for its Abolition', (1875) *The Contemporary Review* June 639

⁴³ David Owen, *English Philanthropy 1660-1960* (Harvard University Press 1964)

⁴⁴ Evidence of Charles Loch, para 1303

⁴⁵ *ibid* para 1327-1332. It is not clear why Loch should think that lump-sum adoption was advantageous, since he did not explain the comment and the committee did not pursue the point.

⁴⁶ *ibid* para 1398

⁴⁷ D Owen, *English Philanthropy 1660-1960* (Harvard University Press 1964) 239

⁴⁸ Jane Lewis, 'Women and late-nineteenth-century social work' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992) 79

⁴⁹ Chalmers (1780-1847) believed that the ultimate source of social distress lay not within the structure of the society, but rather with the individual and was an expression of human weakness. David Owen, *English Philanthropy 1660-1960* (Harvard University Press 1964) 225

to 'Inspectresses',⁵⁰ perhaps influenced by Hill's use of female rent collectors. He stated that, in his opinion, women would make superior inspectors.⁵¹ The overall message from Loch's evidence was that he believed that new legislation was not necessary, and that the enforcement of that which existed was all that was needed, ie the registration of houses containing more than one infant under the age of 12 months.⁵² As I have said, Loch's evidence was out of step with the rest of the witnesses and, it would appear, with the committee.

The amended Bill was due to be reported on 1 August 1890. The provisions of the Bill reflect much of the evidence presented to the committee. The age limit of children covered by the Bill was raised from one to five years, while the burden of proving a child's legitimacy was placed on the baby farmer. The child's legitimacy was important because, as saw in chapter three, if it were illegitimate the legal responsibility for its support lay solely with its mother and if legitimate, also with the father. It was proposed that more information regarding the child should be placed on the register entry of a baby farm, including where the child had been for the previous three months, presumably in a bid to control the procurers. The Bill gave the power of inspection, and should access to the private be refused, the means of attaining a warrant for entry. There were also exemptions for those relatives or guardians, who were taking care of children whose parents were in India. Charities and organisations established by acts of charter, those placed in a home by the boarding-out committees of local authorities and workhouse unions, and those cared for by the 'necessary absence' of their parent,⁵³ or those sent to the seaside for their health were also exempt from inspection.

However, the Bill did not make it onto the statute book. It ran out of time and was withdrawn on 6 August 1890. The *Pall Mall Gazette* described it as being 'thrown overboard'⁵⁴ and there was little, if any, other comment, except for a letter from Joanna Hill, published in the *Englishwoman's Review* in January 1891, in which she stated that the Bill was still before the House of Commons.⁵⁵ This error demonstrates a lack of public awareness that the Bill had been discontinued. Hill's letter is also remarkable as it is an isolated example of feminist comment on baby farming at the time. Whereas earlier in the century the *Women's Suffrage Journal*⁵⁶ had carried a number of articles relating to baby farming, reforming comment now seemed to be focussed on the operation of the Poor Laws. Similarly, *Macmillans*, a journal

⁵⁰ Evidence of Charles Loch, para 1282

⁵¹ *ibid* para 1306

⁵² *ibid* para 1377-1398

⁵³ HC Bill (1890) [76] Infant Life Protection, cl6(e)

⁵⁴ 'An August Afternoon in the House of Commons Yesterday', *Pall Mall Gazette* (7 August 1890)

⁵⁵ 'Infant Life Protection', *Englishwoman's Review* (15 January 1891) 1

⁵⁶ See for example, 'Baby Farming', *Women's Suffrage Journal* (2 September 1872) 118

aimed at an intellectual readership,⁵⁷ published articles about the Poor Laws, but articles about baby farming at this period are notably absent.⁵⁸

If the Bill had become law, it is possible that the lives of more children might have been saved. As we saw in chapter six, the NSPCC had been suspicious of Dyer's exploits in 1895 when she was living in Bristol. Without any power of entry to her premises, John Ottley, the NSPCC inspector, could do no more than he did, and there was no representative of the local authority with any duty to inspect her baby farm. Because of this she was able to escape any possible penalties and relocate to Reading. There were also reports of other baby farmers and other tragedies, for example, nine week-old Albert Weston who died 29 January 1893 at the hands of Ellen Barnard who was censured by the inquest jury who found her guilty of manslaughter.⁵⁹

8.3 Call for Action: The 1896 Committee

As we have seen, the 1890 Bill died a quiet death in the House of Commons. The practice of baby-farming continued, seemingly unabated. While the 1890 committee was still hearing evidence, Braxton-Hicks heard another inquest into the death of a child at which Babey testified.⁶⁰ In 1895 two more baby-farming cases were reported, that of Mrs Bouchier, as which was discussed in chapter four,⁶¹ and a baby farm in Bristol at the inquest of which John Ottley appeared as a witness.⁶²

While the baby-farming industry continued to function, so too did the campaign against it. In 1890 Benjamin Waugh published an article in the *Contemporary Review*⁶³ in which he, once again, attacked the component parts of the baby-farming industry, viz the procurer and the foster-parent. In 1896 before Dyer's baby farm was discovered, the *British Medical Journal* (BMJ) published another series of campaigning articles against the practice of baby-farming. The BMJ's focus was on the inefficiency of the 1872 Act and the loopholes that it contained when it was enacted. They described it as having been 'emasculated',⁶⁴ and put the blame for this firmly at the door of Lydia Becker and the Women's Vigilance Society, whose committee (CALIPWIW), as we saw in chapter seven, had campaigned against the Act with

⁵⁷ George J Worth, *Macmillan's Magazine, 1859-1907: 'No Flippancy or Abuse Allowed'* (Ashgate 2003)

⁵⁸ See for example, relating to the Poor Laws: 'Philanthropy and the Poor Law', (1891) *Macmillans* 65 76

⁵⁹ 'Inquests', *The Times* (17 February 1893). The verdict from the inquest would have led to a trial. Unfortunately, no reports of this trial have been found.

⁶⁰ 'A Baby Farmer Committed' *Illustrated Police News* (28 June 1890) 2

⁶¹ 'Nursing Out' *Lloyd's Weekly Newspaper* (3 February 1895) 3

⁶² 'Baby Farming at Knowle', *Bristol Mercury* (13 February 1895) 3

⁶³ B Waugh, 'Baby Farming' (1890) 57 *Contemporary Review* 700

⁶⁴ 'Report on the Baby Farming System and its Evils: I History' (1896) *British Medical Journal* 22 February, 489

regard to the risk of unwarranted interference with the lives of working-class women that the Bill represented.⁶⁵

In 1896 the BMJ's campaign was more focussed than it had been in 1868. The BMJ reported how the Act had been implemented in London,⁶⁶ and how the industry in Australia was controlled and policed.⁶⁷ The BMJ was particularly impressed by the Australian legislation; in the state of Victoria, baby farmers were heavily supervised by the police, and there was no age limit to the children who would come under this supervision. This, the BMJ suggested, should be the model for England, together with systematic inspection of those houses in which baby-farming was thought to occur.⁶⁸ Similar to the BMJ campaign of 1868, this series of articles was a clarion call for change and the strengthening of the Infant Life Protection Act 1872 and, moreover, for police inspection of the private homes in which baby-farming was occurring.

Benjamin Waugh and the NSPCC also campaigned for change. In April 1896, just after Dyer's arrest, a meeting was reported by the *Daily News* at which 'a baby-farming detective' (presumably an NSPCC inspector) gave a talk in which he described the neglect and deaths of many children of unfortunate women, where

many a broken-hearted girl finds her way to Harpur-street;⁶⁹ many a dreadful letter is dropped into the box. The existence of such babies must be kept SECRET – shame, disgrace, must be hidden.⁷⁰

Once again, the sympathy towards the mothers of the children is striking. Waugh's detective (described by the author of the piece as resembling Sergeant Cuff⁷¹) reserved his ire for the women who neglected the children entrusted to them. The report of the meeting finished with a campaigning call for the reform of the Infant Life Protection Act, and on the same page in the newspaper it is immediately followed by a report on the inquest of one of Dyer's victims in Reading.

⁶⁵ Committee for Amending the Law in Points Wherein it is Injurious to Women, *Report: Presented at the Annual Meeting for the Association for the Defence of Personal Rights* (A Ireland & co 1871)

⁶⁶ 'Report on the Baby Farming System and its Evils: II The working of the Infant Life Protection Act in London' (1896) *British Medical Journal* 29 February 1896

⁶⁷ A Cossings, *The Baby Farmers. A Chilling Tale of Missing Babies, Shameful Secrets and Murder in 19th Century Australia* (Allen & Unwin 2013); *Makin v Attorney General New South Wales* [1894] AC 57

⁶⁸ 'Report on the Baby-Farming System and its Evils: IV Infant Life Protection Act in Australia' (1896) *British Medical Journal* 14 March 670

⁶⁹ Harpur-street was the location of the headquarters of the National Society for the Protection of Children

⁷⁰ "'Not Wanted": A Talk About Baby-Farmers and Their Ways', *Daily News* (25 April 1896) 2

⁷¹ The fictional Sergeant Cuff appears in the *Moonstone*, first published in 1868. He is said to be the first detected to appear in an English novel, and became a by-word for a detective. This is quite ironic, as in the novel, Cuff was not initially successful at solving the mystery of the theft of the jewel. Wilkie Collins, *The Moonstone* (First published 1868, Oxford University Press 1982)

As result of the campaigning, from the BMJ and also from the London County Council who, it was reported, had 'approved' it,⁷² the Infant Life Protection Bill was introduced into the House of Lords on 28 February 1896 by the Earl of Denbigh⁷³ and referred to a select committee on 9 March 1896.⁷⁴ The committee met on 19 and 24 March to agree its constitution and terms of reference, and witnesses were first heard on 24 April 1896.

8.3.1 Committee Membership and Witnesses

As this was a committee of the House of Lords, the committee was less obviously divided down party lines.⁷⁵ It was small in number (seven members in total), and was chaired by the Earl of Denbigh who had brought the Bill into the Lords. Other members included Viscount Llandaff,⁷⁶ Secretary of State for the Home Department, and the Bishop of Winchester, Randall Davidson, who was later to become Archbishop of Canterbury.⁷⁷ Philanthropists were represented by Lord Kinnaird,⁷⁸ who had been influenced by the work of the Earl of Shaftesbury.⁷⁹ Lord Belper had initially taken the Liberal whip, but had left the party due to the Irish question, and was thus an independent, while Lord Thring had started his career as a parliamentary draftsman and was a lawyer and legal reformer.⁸⁰ The final member of the committee, Lord Reay, was replaced by Sidney Hobart, Earl of Buckingham on 23 April.

Unlike the 1890 committee, that of 1896 heard evidence from a wide range of witnesses. The London County Council was represented by Alfred Spencer, Samuel Babey, and Miss Isabel Smith. Spencer was the chief officer for the Public Control Department, while Babey and Smith worked as inspectors in London upholding the provisions of the Infant Life Protection Act 1872. There were three coroners who gave evidence, Clifford Luxmoore Drew, WE

⁷² 'Report on the Baby-Farming System and its Evils: III The Amendment of the Infant Life Protection Act' (1896) *British Medical Journal* 7 March 617

⁷³ Rudolph Feilding, Earl of Denbigh was Roman Catholic, and had a reputation for charitable works.

⁷⁴ HL Deb 9 March 1896, vol 38, col 413

⁷⁵ A full list of Committee members and witnesses is at Appendix 3

⁷⁶ A Lentin, 'Matthews, Henry, Viscount Llandaff (1826-1913), *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

⁷⁷ S Mews, 'Davidson, Randall Thomas, Baron Davidson of Lambeth (1848-1930)' *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2011)

⁷⁸ N Fishwick, 'Kinnaird, Arthur Fitzgerald, eleventh Lord Kinnaird of Inchture and third Baron Kinnaird of Rossie (1847-1923)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004)

⁷⁹ Shaftesbury was a noted philanthropist and evangelical Christian. He was a great support of Dr TJ Barnardo and his eponymous charity. This association would have brought him into close contact with Barnardo's campaigns, including Barnardo's 'philanthropic abduction' of children from the premises of baby farmers. J Wolff, 'Cooper, Anthony Ashley, seventh earl of Shaftesbury (1801-1885)' *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2004); J Pearman, 'The Curious Cases of Dr Barnardo' Forthcoming

⁸⁰ CP Ilbert & HCG Matthew (rev), 'Thring, Henry, Baron Thring (1818-1907)' *Oxford Dictionary of National Biography* (Online ed Oxford University Press 2004)

Baxter, and Braxton Hicks. Hicks had also given evidence to the 1890 Select Committee. Unlike the committee of 1871 which, as we saw, heard evidence from many doctors, only one gave evidence, Hugh Percy Dunn, who was on the staff of the West London Hospital. John Tatham had qualified as a doctor, although his evidence before the committee related to his work as Head of the Statistical Department of the General Register Office at Somerset House. The Poor Law boards were represented by William (Will) Crooks, Guardian of the Poor in Poplar⁸¹ and Marian Mason, Local Government Board Inspector.

Charity workers were also represented, and these fall into two groups. The first of which Benjamin Waugh, director of the NSPCC, and Dr Thomas Barnardo, founder of Barnardo Homes, were the best known. Both were in favour of the provision of charity for all those in need without any kind of discrimination relating to their 'worthiness'. As we have seen above, Waugh had been heavily involved with the campaign for reform of the Infant Life Protection Act, while Barnardo was not afraid to put his reputation on the line in order to represent the interests of the children that he helped.⁸² He quite openly practiced the 'rescue' of children from destitution including snatching them directly from baby farms.⁸³ Both men, probably because of the nature of the work that they undertook, were anxious that the baby farms should come under increased official scrutiny.

Other witnesses representing charitable organisations included, Mrs Wethered, a member of the committee of the Paddington and Marylebone Association for the Rescue and Care of Friendless Girls, Miss Steer who worked for the Bridge of Hope, a charity for the rescue of women and children, Mrs Abrahams who was the founder and manager of a Roman Catholic rescue home, and Deaconess Gilmore who worked in the poor parishes of Battersea. Like Waugh and Barnardo, these witnesses worked directly with those that their charities assisted and provided help for those in need indiscriminately. There was a religious foundation associated with their work, but this did not affect how the organisation apportioned their assistance.

The second group is represented by Mrs Crowder, of the COS. As we saw earlier in the chapter, the ethos of the COS was that charity should only be given to those who were truly deserving and that ultimately, the responsibility for one's fortunes rested with the individual.

⁸¹ Crooks was, along with George Lansbury, one of the early leaders of the Labour movement. J Shepherd, 'Crooks, William [Will] (1852-1921)', *Oxford Dictionary of National Biography* (Online edn, Oxford University Press 2013)

⁸² Barnardo was involved in a number of court cases after he had refused to return children to their parents as he felt that would not be in the best interests of the child. J Pearman, 'The Curious Cases of Dr Barnardo', forthcoming

⁸³ TJ Barnardo 'Is Philanthropic Abduction ever Justifiable?' (1885) IX *Night and Day* 98

The society was under popular scrutiny, and contrary to Owen's conclusion that their star was on the wane,⁸⁴ contemporary articles suggest that the opposite was true – that their influence was, in fact, growing.⁸⁵

It is noticeable that there was a much higher proportion of women giving evidence in 1896 than there was in 1871 or 1890. Not only were women represented amongst the philanthropists, but two gave evidence of the organisation in Manchester of the emerging professional lady health visitor movement who were already working with women in their own homes. Mrs Hardie was the president of the Manchester Ladies' Health Society, while Mrs Bostock was a paid health visitor.

This seemed to be a relatively balanced committee, with evidence given by campaigners, charity workers, and witnesses who were working with women in their own homes. Babey and Miss Smith testified from an enforcement point of view, while the Manchester health visitors provided first-hand evidence of the support of women in their own homes. Unlike the earlier committees, conclusions could be reached informed by testimony from those working practically in the field. However, it should be noted that, still, no mothers were represented, neither was any woman who provided paid childcare.

8.3.2 The Evidence

As in the previous committees, the evidence presented reveals a number of themes, and this was determined by the direction of questioning from the members of the committee. As we might expect, there were questions as to the effectiveness of the Infant Life Protection Act 1872 and some relating to the recommendations of the draft Bill. With the inclusion of the witnesses from Manchester, the committee also had the opportunity to explore the practicalities of inspection which, although not provided for in the Infant Life Protection Act, took place in London. Evidence was also given by a local authority that used women in the role of inspectors. Other questions referred to some of the class-issues that had caused difficulty during the reading of the 1890 Bill, such as the care of children whose parents were working in India, or those philanthropists who provided holidays by the seaside for needy children.

Overwhelmingly the majority of the questions and evidence presented to the committee related to the supervision and inspection of childcare. Here there was disagreement amongst the witnesses. Some felt that all childcare should be subject to a regime of registration and

⁸⁴ David Owen, *English Philanthropy 1660-1960* (Harvard University Press 1964)

⁸⁵ John A Hobson. 'The Social Philosophy of Charity Organisation' (1896) 70 *The Contemporary Review* 710

inspection and that the exemptions for charities and workhouses should be removed, while others suggested that it would only be necessary to supervise and inspect paid childcare taking place in working-class private homes. As we shall see, the final outcome of the committee, and the Bill which was presented before parliament and was enacted, exempted many of the organisations that provided childcare, leaving only the baby farms in private homes subject to regulation and control. As such, the legal framework gave the state, for the first time, authority to control aspects of the behaviour of working-class women providing paid childcare in the private sphere. In order to avoid the stigma which would have been associated with the need for a woman to be registered as a baby farmer, the Act which was passed made one revolutionary change. As we shall see, government put the child at the centre of the legislation - it was to be the child which needed to be registered with the local authority and its welfare was subject to inspection.

As in 1890, the committee did not need to be convinced of the existence of the baby-farming industry. Spencer and Babey gave evidence relating to how the Infant Life Protection Act 1872 operated in London. It seems from the evidence that the London County Council took their responsibilities seriously. Spencer explained the registration regime, which included the completion of a number of forms and the processing of 'certificates of good character'.⁸⁶ This last requirement was over and above the minimum requirements of the Infant Life Protection Act, which allowed for a local authority to refuse registration should the applicant be deemed to be of bad character, but made no requirement that the authority should inquire as to character. As stated above, the Metropolitan Board of Works had made representations in 1873 and later in 1877 regarding the paucity of provision for enforcement of the Act, but had been rebuffed by the Secretaries of State (Bruce in 1873, and Cross in 1877), who had quite erroneously suggested that ample provision had been made for inspection and enforcement, and that the Board of Works should 'make the present law known'.⁸⁷

Both Spencer and Babey gave evidence as to the weaknesses of the Infant Life Protection Act and in particular, as to the loophole that allowed for the practice of 'baby sweating', where a baby farmer would retain one infant under a year old at a time, and any number of children above one year of age, thereby avoiding the need to register an establishment. This evidence was supported by Luxmoore Drew who suggested that where a death occurred in such homes, this was largely due to starvation and neglect of the child,⁸⁸ while John Tatham testified that an illegitimate child was more likely to be born in a weak condition than was a legitimate

⁸⁶ Evidence of Alfred Spencer, para 7-9

⁸⁷ Evidence of Alfred Spencer, para 24; evidence of Isabel Smith, para 1025-1028

⁸⁸ Evidence of Clifford Luxmore Drew, para 223

baby,⁸⁹ which may have been the case. If a pregnant mother could not afford the correct nutrition or care for herself, her foetus would be very likely to suffer and the infant be weak at birth.

As far as the monitoring of establishments was concerned, both Babey and Smith spoke of the difficulty in keeping track of the baby farmers as they moved establishment, or as children were transferred from one house to another. The evidence also showed the surprisingly low number of houses registered in the county of London, 41 at the time of the committee hearings. This apparently low number may have been due to the baby farmers exploiting the loophole in the law. Miss Isabel Smith replied when asked if every establishment was registered,

No, because at present the woman who knows that her house and methods will not bear investigation evades registration by keeping not more than one infant of statutory age, knowing that she may keep any number of children over the age of one year.⁹⁰

The appearance before the committee of two inspectors working for London County Council may have led to the impression that at least some baby farms in London were being properly supervised. However, Miss Smith told the committee that in addition to her work inspecting the baby farms, she also worked for the council ensuring compliance with the Shop Hours Act.⁹¹ In spite of this, her opinion was that there could not be 'many houses kept by persons infringing the law' as two inspectors were employed.⁹² Given the size of the area covered by London County Council, and the evidence given by the coroners and Babey, it is difficult to accept this assertion as being accurate, unless the vast majority of baby farmers were technically sweating babies.

Or, it may have been possible that there were fewer children in need of the care of baby farmers. John Tatum gave evidence as to the percentage of illegitimate births. In the years between the committees this had reduced from 7 per cent of live births in 1871 to 4.9 per cent in 1896. However, he conceded that he could not give evidence as to the number of concealed births or still-births but was of the opinion that these too were in decline. While he suspected that some mothers, by stating that they were married due to shame, were registering births as legitimate when they might not be so, he had no doubt that the reduction in illegitimate births was 'owing to a very large extent to the increase of morality generally throughout the country.'⁹³

⁸⁹ Evidence of John Tatham, para 1248

⁹⁰ Evidence of Isabel Smith, para 1059

⁹¹ Shop Hours Act 1892

⁹² Evidence of Isabel Smith, para 1116

⁹³ Evidence of John Tatum, para 1206

The evidence presented showed that there was a very low number of prosecutions for non-compliance with the registration requirements of the Infant Life Protection Act 1872. In fact, Spencer gave evidence that there had been no prosecutions under the terms of the Act, and only 24 women struck off the register for maltreatment of infants.⁹⁴ We know from the case of Amelia Dyer that some prosecutions did take place outside London. Thus it was possible that London County Council's decision to employ inspectors had a deterrent effect or baby farmers were exploiting the loophole in the law and were sweating babies, or baby farmers were escaping undetected. There were also suggestions that the Prevention of Cruelty to Children Act had 'frightened' bad parents into treating their children in a kinder manner, and that the provisions of the Act may have had a deterrent effect on abuses by the baby farmers.⁹⁵ However, this suggestion is contradicted by Babey's evidence that in practice it had been found that the provisions of the Prevention of Cruelty to Children Act were of no assistance when dealing with the neglect of infants by the baby farmers as it was difficult to prove cruelty rather than ignorance.⁹⁶

8.3.3 The Charities and the Unions

The main concern of the witnesses who represented the charities and the Poor Law unions was that they should retain their exemption from registration as had applied under the Infant Life Protection Act 1872. For example, Mr Rudolf from the Church of England Waifs and Strays Society testified that while the society was in favour of an extension of the provisions of the existing Infant Life Protection Act, the charity was anxious to keep its exempt status as they already had rigorous procedures for recruitment and supervision of the foster parents whom they employed.⁹⁷ The same was true for the other charities, and the boarding-out committees. In particular, Mrs Wethered⁹⁸ gave evidence that registration of all wet nurses would hinder the rescue work in which her charity was involved as it would make it more difficult to find foster parents due to the stigma of being labelled a baby farmer.⁹⁹ In this, there was very little difference between the evidence heard by this committee and that of 1890. The stigma of registration and the inconvenience to the charities and the boarding-out committees were seen by these representatives to be a threat to their work, and that it would overshadow

⁹⁴ Evidence of Alfred Spencer, para 10

⁹⁵ Evidence of Braxton Hicks, para 718.

⁹⁶ Evidence of Samuel Babey, para 409. Hendrick notes how the creation of the NSPCC and the Prevention of Cruelty to Children Act was part of a movement towards a change in the structuring of 'legal relations' within the family. H Hendrick, *Children, childhood and English Society 1880-1990* (Cambridge University Press 1997) 47

⁹⁷ Evidence of Mr E Rudolf, para 863

⁹⁸ Committee member of the Paddington and Marylebone Association for the Rescue and Care of Friendless Girls

⁹⁹ Evidence of Mrs Wethered, para 2863

the very purpose of their foundation. Evidence was also given of the difficulty of inspection of foster parents once recruited.¹⁰⁰

The witnesses from the charities gave evidence as to their contribution in bringing some of the baby farmers to successful prosecution. The NSPCC had a formal role to bring prosecutions for neglect and cruelty under the provisions of the Prevention of Cruelty to Children Act. Waugh testified that outside the London area NSPCC inspectors inspected all houses in which an infant lived, whether the household was registered as a baby farm or not, unlike Babey and Isabel Smith who were limited to those registered houses.¹⁰¹ Barnardo gave evidence of his co-operation with the NSPCC and other agencies in taking in children who had been removed from unsafe situations under the provisions of the Prevention of Cruelty to Children Act.¹⁰²

There was general agreement among the witnesses from the charities and the poor law unions that something needed to be done to prevent the deaths of children. But, once again, the representative from the COS was seen to be in serious disagreement with the majority of the other witnesses, Mrs Crowder, who represented the COS, gave evidence against the proposed Bill, suggested that it was

too interfering; that it would hinder many acts of kindness and help that neighbours show to each other now by taking children in time of sickness or other special circumstances.¹⁰³

Her other argument was there was simply no necessity for any more inspection, for those of a 'lower class' were already being inspected by representatives from the Poor Board, district nurses and various other visitors who were voluntarily admitted into homes. Here Mrs Crowder echoed some of the objections heard in the House of Commons at the introduction of the 1890 Bill, and again in the House of Lords in 1896. But, unlike the members of parliament and the campaigners for reform, Mrs Crowder was not convinced that there was a problem, and that the COS '[thought] that the evil of the treatment of these children is somewhat exaggerated.'¹⁰⁴ But in relation to this matter, within the committee, hers was a lone voice.

Members of the committee, in their questioning as whether any change to the legislation might adversely impact on those parents employed in India who might need to leave their children in England, reflect the class distinctions that were being made between paid childcare in general, and the working-class baby farmers in particular. The majority of the witnesses who were asked the question suggested, as did Spencer, that there would be a need for some kind

¹⁰⁰ Evidence of Miss Steer, para 2976

¹⁰¹ Evidence of Benjamin Waugh, para 1770

¹⁰² Evidence of Thomas Barnardo, para 2050

¹⁰³ Evidence of Mrs Crowder, para 2564

¹⁰⁴ Evidence of Mrs Crowder, para 2607

of exemption in this case of middle or upper class parents seeking care for their children.¹⁰⁵ How this was to be practically achieved was another matter for debate. It was suggested, as it was in 1872 and 1890, that the Act should cover only those children who were illegitimate, although Braxton Hicks had earlier suggested that only 60 per cent of the infants whose deaths he dealt with had been illegitimate.¹⁰⁶

Not all the witnesses saw baby-farming as being something that affected only the working-class, and neither did they feel that this was a 'problem' associated with the whole of the working-class. Will Crooks, for example, suggested that rather than being the target of the Bill, the working classes were in favour of its provisions,¹⁰⁷ while Wynne Baxter testified that he had seen evidence that the Bill should really be aimed at those of a 'better' class as,

[w]hen a daughter of a working man gets into trouble, as a rule, she marries at the eleventh hour, whereas, amongst those in a more affluent position there is an endeavour to screen the shame and get rid of the child; and so baby-farming starts.¹⁰⁸

Thus, it was Baxter's opinion that the provisions of the Bill would not 'press hard upon the working-classes if it was law.'¹⁰⁹ If the evidence of Wynne Baxter and Will Crooks was correct, and illegitimacy amongst the lower classes were not the problem thought by the other witnesses, then limiting the Act to apply only to the illegitimate¹¹⁰ would not necessarily have provided the intended solution of the reduction of deaths of infants as not all children sent to baby farms were illegitimate. Deaconess Gilmore, while disagreeing with Baxter and Crooks, testified that the majority of births of whom she was aware were illegitimate. However, she also suggested that the mothers with whom she was in contact were fond of their children, and unlikely to wish them harm so that there was no link between illegitimacy and a desire to dispose of a child.¹¹¹

The witnesses from the charities, while disagreeing with each other regarding certain provisions of the Bill or the desirability of registration did all agree on one thing, that the primary reason why a young woman would give up her baby into the care of another woman was poverty. Miss Steer, representing the Bridge of Hope which rescued women and children in the regions of the Ratcliffe Highway,¹¹² suggested to the committee that

[The Bill] looks over the fact that poverty is at the bottom of it all; the mother cannot afford [child care], and that is how it all happens.¹¹³

¹⁰⁵ Evidence of Alfred Spencer, para 111

¹⁰⁶ Evidence of Braxton Hicks, para 813

¹⁰⁷ Evidence of William Crooks, para 1374,

¹⁰⁸ Evidence of Wynne Baxter, para 1425

¹⁰⁹ Evidence of Wynne Baxter, para 1447

¹¹⁰ Alfred Spencer stated in his evidence that between one and two percent of infants kept at registered baby-farms were legitimate. Evidence of Alfred Spencer, para 81

¹¹¹ Evidence of Deaconess Gilmore, para 2302

¹¹² The scene of the famous murders of 1811

¹¹³ Evidence of Miss Steer, para 3027

The committee made no response to this claim as it was outside the scope of their constitution.

8.3.4 Control: Registration and Inspection

There was one aspect of the Bill with which all the witnesses (with the exception of Mrs Crowder) did agree, and that was the need for more compulsory inspection and monitoring of the standards of care for children who were cared for in baby farms. As we saw earlier in the chapter, there was disagreement over whether all establishments in which paid childcare took place should be registered, with the charities and boarding-out committees arguing that they should be exempted. However, there was broad agreement of the need for some kind of inspection and supervision. What form it should take was a matter for debate.

The BMJ's campaign for reform of the Infant Life Protection Act 1872 spoke admiringly of the system in Australia and, in particular of the 'prominent position assigned to the police in the administration of the Australian act.'¹¹⁴ Braxton Hicks, not surprisingly considering that he was a campaigner for change, was in favour of such compulsory inspection, and gave evidence that as it was the police's role to investigate crime, it was therefore logical that they should be involved in the close supervision of the conduct of the baby farmers.¹¹⁵ His suggestion hints at an assumption on his part that most, if not all, baby farmers would be criminally inclined. Other witnesses testified that inspection by the police would be objectionable to those taking care of children,¹¹⁶ while yet others felt that this would be a job either for the NSPCC, voluntary inspectors, or poor law officers. This last was suggested by Mrs Crowder, on the ground that the poor were used to visits;

I think you would find generally that those of a lower class are accustomed to being visited by district nurses and other visitors; they do not seem to mind how much inspection they have; but the minute you reach a better class they resent interference; persons like the parents of old servants; and servants themselves even in my employ, have told me that their parents have often had nurse-children, and they tell me that they would not have them if they had to be inspected.¹¹⁷

The scope of intervention proposed varied from one witness to another. For example, during the questioning of Samuel Babey, when Lord Thring raised the issue of class,

Do you really think that the County Council ought to be able to come into my house, because any officer thinks he has reason to believe that I have a child kept for hire or reward, under the age of five years?¹¹⁸

¹¹⁴ 'Report on the Baby-Farming System and its Evils: V The Infant Life Protection Act in the Provinces' (1896) *British Medical Journal* 21 March 747

¹¹⁵ Evidence of Braxton Hicks, para 381

¹¹⁶ Evidence of Miss Smith, para 1119; Deaconess Gilmore, para 2308; Evidence of Miss Mason, para 2416

¹¹⁷ Evidence of Mrs Crowder, para 2572

¹¹⁸ Evidence of Samuel Babey, para 585

Babey answered in the affirmative, with a proviso that an officer 'would not exercise [such power] unless it were in a very serious case.'¹¹⁹ Of course, the two establishments would have been at either end of the social spectrum, Thring as a member of the upper class, while Mrs Crowder's example came from the ranks of the poor. Benjamin Waugh, on the other hand, gave evidence that not all baby farmers came from the lowest classes as, in the course of his work he had come across a lady, the wife of a lawyer, in whose house were found three hundred disused garments of children and who appeared to be keeping children for profit.¹²⁰

In the matter of the inspectors, it was generally agreed that gender mattered. Miss Smith suggested that lady inspectors would be preferable if recruited with knowledge of nursing and the care of infants,¹²¹ and in this she had the support of, amongst others, Dr Barnardo, Deaconess Gilmore and Mrs Wethered.¹²² The committee had the opportunity to hear evidence from the health visitors from Manchester; Mrs Hardie and Mrs Bostock testified regarding the scheme already in action in the city of Manchester, run under the auspices of the Ladies' Health Society, with salaries for health visitors found by the Manchester City Council. This is an early form of partnership between a local government authority and a charity.

This enterprise seemed to be female-led, with lady superintendents and lady health visitors, and run very much in the manner of Octavia Hill's rent-collectors in their attempt to support the tenants of Hill's properties.¹²³ Their role appeared to be that of an official 'friend', gaining voluntary entry into houses of mill hands and working people. They had few official powers, as such, but where need arose, worked with the officers of the NSPCC who did have the power of prosecution and of forced entry where it could be shown that it was likely that a child was in danger of cruelty, although the health visitors would attempt to conceal their involvement so as not to jeopardise their ability to enter houses as 'friends'.¹²⁴ Their focus was on the poorer areas of Manchester and Salford where infant mortality was likely to be at the highest, and Mrs Bostock suggested that this higher level of mortality was likely to be due more to ignorance than malice.¹²⁵ While neither Mrs Hardie nor Mrs Bostock professed any knowledge of the existing Infant Life Protection Act, both women were aware of children being nursed for profit, and both testified that such children would be unlikely to thrive. This system

¹¹⁹ *ibid*

¹²⁰ Evidence of Benjamin Waugh, para 1577-1583

¹²¹ Evidence of Miss Smith, para 1122

¹²² Evidence of Thomas Barnardo, para 2011; Evidence of Deaconess Gilmore, para 2349; Evidence of Mrs Wethered, para 2901

¹²³ Jane Lewis, 'Women and late-nineteenth-century social work' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992) 79

¹²⁴ Evidence of Mrs Hardie, para 2672

¹²⁵ Evidence of Mrs Hardie, Mrs Bostock

of health-visiting appeared to have come into being, not at the instigation of any form of authority, but from the benevolence and philanthropy of a group of ladies, with financial support from the Corporation of Manchester. From the evidence that was given to the committee, it seemed to be a system that was effective as a means of prevention of harm rather than just one of control and cure.

As we shall see, the committee clearly took notice of many of the representations made to them, evident in the amended Bill returned to the Houses of Parliament. In the next section, I examine this amended Bill, and its relatively quick passage to the statute book and how the tension between voluntarism and compulsion was resolved.

8.4 The Amended Bill and Legislation

The committee sat for two more days on 25 June and 7 July, and made changes to the Bill. Tantalisingly there are no minutes of the discussions of the committee. It was not until 8 March 1897 that the Bill amended by the select committee was presented to the House of Lords by the Earl of Denbigh and, following a second reading on the 29 March, was referred to a committee of the whole House for 13 May. A memorandum at the front of the Bill that was presented to the House of Lords gives details of the changes that were made. Given the evidence that was presented to the committee, it showed how members were so mindful of the representations made regarding the perceived difficulty of recruiting foster parents, due to the negative perception of being a baby farmer, that the requirement for registration of the person providing care for the child had changed to that of notification to the relevant local authority of the location of a child being fostered or adopted. One of the few insertions made by the committee to the Bill was that any expenses incurred by the local authority in enforcing compliance with the provisions of the Act were to be defrayed from the local rate. Given that the Infant Life Protection Act 1872 had no provisions for any expenditure, this was a vast improvement.

The Hansard report of the committee stage¹²⁶ shows that the Lords were anxious to give the authorities the duties and legal powers that were needed in order to ensure supervision of child care in the private sphere. However, as in 1890, given the anxiety relating to the children of parents in India, it is reasonable to assume that the legislation was aimed at the working-class. The age limit for such a notification of the retention of a child 'for hire or reward' was increased to five years of age, and it was to be necessary to notify the local authority upon the reception of more than one infant.¹²⁷ In this key point, initial official attention changed from the

¹²⁶ HL Deb 13 May 1897, vol 49, col 313

¹²⁷ HL Bill (1897) Infant Life Protection s2

fitness of the person taking care of the child, to the monitoring of a child's whereabouts and in whose care it remained. It was then the duty of the local authority to ensure the safety of the child. Local authorities were given the legal power to monitor compliance with the Act and to employ inspectors to enforce the legislation and seek to ensure the safety of the children. Perhaps the most important provision was that of section 3(5) and 3(7),¹²⁸ which allowed an authority to apply to a magistrate for a warrant to impel entry to inspect houses or the infants in which they were kept if the inspector had been refused entry and where he had reason to believe that there was a breach of the Act. By changing the focus of the registration clauses of the Act, official attention moved from the fitness of the baby farmer to the welfare of the child. This measure took official inspection directly into private houses, ostensibly less to scrutinise the behaviour of the baby farmer but rather to monitor the health of the child.

There was also some attempt to address the contentious problem of lump sum payment 'adoptions' by legislating that anyone receiving an infant with a payment of less than twenty pounds should notify the authority as, presumably, such a low amount of money would not suffice to support a child for a long period of time. If such notification were not to take place, then the adoptive parent would forfeit the sum paid to them, while the child, if it were thought to be necessary, could be taken to a workhouse or similar place of safety.

The select committee had clearly taken note of both the evidence of the witnesses who appeared before it, and also of the debate in the House of Lords before the Bill had been referred. For the list of exemptions from notification and from inspection included the relatives of any child, any representatives of the local government board, or hospitals, convalescent homes or 'institutions established for the protection and care of infants and conducted in good faith for religious or charitable purposes.'¹²⁹ These exemptions were slightly wider than the proposals of the 1890 Bill. Hansard shows no discussion of this clause in the House committee, and so it can be construed that it was not contentious.

The Bill was passed by the Lords, and a commencement date for the Act was set for 1 June 1898. It was referred to the Commons, and having failed to be read on 3 June, and again on 27 July, it was reported as being non-contentious. The Bill finally received Royal Assent on 5 August 1897 with no further debate recorded.¹³⁰

¹²⁸ Infant Life Protection Act 1897 s3(5)

¹²⁹ HL Bill (1897) Infant Life Protection s14

¹³⁰ HC 163 (1897), Public Bills. Return of the number of public bills, distinguishing government from other bills, introduced into this House, or brought from the House of Lords, during the session of 1897

To summarise, the Infant Life Protection Act 1897 gave local authorities the duty to enforce compliance in its local area by employing inspectors to perform compulsory inspections. These inspections would focus on the welfare of the child, rather than the fitness of the baby farmer. Inspectors were also able to apply to the magistrates for warrants to enter establishments which retained more than one child under the age of five years old for hire and reward, whether they had notified the local authority or not. Due to the list of exemptions for relatives, the workhouses, and charities, practically speaking the only establishments which would qualify to be in need of notification, supervision, and inspection were those working-class private homes in which children were kept. The Act was intended to provide a means for local authorities to enforce some control over the baby farmers in the working-class private sphere. In this way the legislators took the policeman-state, as defined in chapter two, into the domestic homes of working-class women who provided childcare for financial reward.

8.5 Conclusions

The attempts to reform the Infant Life Protection Act in 1890 had failed partly because of a nervousness amongst the politicians and some of the witnesses who had appeared before the committee regarding state interference in the homes of those seen to be 'respectable'. The Bill of 1890 as it was finally amended and presented by the select committee failed to reach the statute book as the government fell and the Bill fell with it. In spite of the attempts of a number of campaigners, including Braxton Hicks and the BMJ, any further attempt at reform did not reach the House of Lords until 1896 at around the same time that Amelia Dyer's crimes were becoming notorious, shocking the country. Perhaps these revelations gave added impetus to the law-makers to complete the work of reform.

The provisions of the Infant Life Protection Act 1872 may have led to Parliament being more comfortable with the concept of compulsory inspection of the care of children, but as we saw these were limited to those establishments where children were being cared for in a private home where there was no existing supervision by the local government boards or charities. We might not be surprised at the willingness of government to legislate in this manner. The Prevention of Cruelty to Children Act 1889 had, after all, given power for any person who was, in the opinion of a magistrate, 'bona fide acting in the interest of any child' to apply for a warrant to enter premises to search for a child where there was a reasonable belief that it was at risk of cruelty.¹³¹ However, the Prevention of Cruelty to Children Act had not given a routine right of inspection or supervision. The Infant Life Protection Act 1897 was different.

¹³¹ Prevention of Cruelty to, and Protection of, Children Act 1889

Was the Infant Life Protection Act 1897 an improvement on the Infant Life Protection Act 1872? In changing the focus from the supervision of the behaviour of baby-farmers to concern, coupled with inspection, on the welfare of the child, I believe that it was, and that it was quite revolutionary. The law followed the child, keeping track where s/he was kept, and the state took on the responsibility for care for the child. A foster home receiving a child had a legal responsibility to tell the local authority from where the child had come (s2(1)), this section presumably being aimed at controlling the activities of the procurers. Local authorities were under a duty and given the power to inspect those foster-homes where children were kept, whether notified or not, with some exemptions. Funding was provided for the local authorities (the local rate) clause to transfer any fines received into the local rate to offset expenses. By shifting the focus of official attention to the health and welfare of the child,¹³² this Act was constructed in such a way that its provisions should have provided an increased level of safety for those children cared for by baby farmers.

While the committee had heard that the working-class mothers of Manchester were being supported by the 'new' breed of health visitors, with other women in the United Kingdom perpetuating the tradition of philanthropic visiting, albeit performed by professional visitors, the committee chose not to follow this model slavishly. However, it can be argued that, in changing the official focus away from the foster parent to the child, the supervisory focus of the local authorities became much more akin to that practiced by the health-visitors or, indeed, that of Octavia Hill's rent-collectors, than supervision by the police as argued by the BMJ.

Childcare provided by the Poor Law boards or charities such as Barnardo's or the Foundling Hospital was outside the scope of the legislation as these had a public element to them. The workhouse boarding-out committees provided supervision for children fostered out by the workhouses, while the charitable organisations provided their own methods of supervision which were publicly monitored. The select committee had accepted that the supervisory arrangements of those organisations was sufficient. Where the arrangement between foster parent and mother was 'private', control was vested in the local authorities; the policeman-state had finally been given authority to cross over the threshold into the domestic home in order to fulfil the state's responsibility to a child.

By considering the Select Committees that considered the problem of how best to protect the life of infants cared for by baby-farmers, we can see how governments' interest changed from

¹³² It might be said that, for legitimate children, the state was, in effect, exercising its responsibility as *parens patriae*. If the child was legally an orphan, that too would have been the case. For an examination of the way in which the law of *parens patriae* was exercised in relation to children of the poor, see J Pearman, 'The Curious Cases of Dr Barnardo', forthcoming.

the behaviour of the mothers of bastard infants towards the baby-farmers. We can also see how the third select committee in 1896 refined this attention even further, moving away from the behaviour or 'fitness' of the baby farmer towards the welfare of individual infants. By choosing to legislate that local authorities should follow individual infants we see the emergence of the state's welfare responsibility for children cared for within the private sphere. This answers the third of my thesis questions, how legislation reflected the change in interest from the mothers of illegitimate children to the baby farmers. I have further shown how the Infant Life Protection Act 1897 was drafted in such a manner that state actors were able to cross the threshold of the family home and address conduct taking place in the domestic circle of the private home.

Chapter 9 : Conclusions

In this thesis I have considered the ways in which the legislators of the nineteenth century addressed issues relating to paid childcare taking place in the domestic circle of the homes of working-class women. In doing so, I have answered my thesis questions; why it was that paid childcare taking place in the private home of the care-giver become an object of official government interest between 1834 and 1897, whether the nature of governments' interest changed over the period, and how legislative change reflected any change in interest. I have also demonstrated how these changes in legislation were linked to changes in patterns of social control in the nineteenth century and, in particular, to the extension of the reach of the social police into the domestic home.

In this last chapter I review my findings and consolidate the answers to my thesis questions.

In chapter two I defined the historical period of my study as one delimited by the 'New' Poor Law 1834 and the Infant Life Protection Act 1897. I considered social history as it focussed on the lives of working-class women living within that period and, in particular, those affected by issues relating to women and the care of children. I also examined the frameworks offered by Foucault's concept of governmentality and the *Cambridge Social History*.¹ As the legislation that I study had a direct, coercive, force over the lives of working-class women taking care of children in the private sphere, I concluded that the framework of social control and the concept of the social police offered by the *Cambridge Social History* is more relevant for this thesis than Foucault's governmentality framework.

9.1 Government Interest in Paid Childcare

As we saw in chapter three, the Royal Commission of 1834 which had been charged with reviewing the operation of the 'old' Poor Law, heard evidence that suggested that the mothers of illegitimate children were prone either to claim financial support from the parishes or to attempt to affiliate their offspring to 'innocent' men. The 'New' Poor Law of 1834 which followed the Commission included stringent bastardy provisions, which allocated the financial responsibility for the upkeep of infants to their mothers,² with no possible legal recourse to the father of the child. The legislation marked a new type of social control, one which relied upon the deterrent effect that a woman would not be able to access any practical or financial help

¹ FML Thompson (ed), *The Cambridge Social History of Britain 1750-1950, Vol 3: Social Agencies and Institutions* (Cambridge University Press 1990)

² Poor Law 1834 s71

from the father of the child. In order to be able to access support from the parish (state) organisation, a pregnant woman would have to leave the privacy of the domestic circle in order to enter the shared social space of the workhouse. The social policing arrangements of the workhouse system were particularly harsh. For example, on entry to the workhouse women would be separated from their children, would be forced to wear a uniform and would have to undertake menial tasks in order to 'earn' their keep. The harshness of these provisions were relieved slightly during the course of the century; the 1844 Poor Law Amendment Act allowed once more mothers to seek financial support from the father of their child which would negate the need to enter the workhouse. The legislators, however, chose to leave the legal and financial responsibility for the upkeep of the child with the mother. Ultimately, she had to find a way to provide care for her child with little official support. Pat Thane has noted how the Guardians of the workhouses privileged morality when allocating assistance for mothers of bastard children,³ which I found created challenges for those for whom assistance was not available.

Later in the century, out-relief, the payment of financial support from the parish while the mother remained in her home, became possible, but was rare. Examples from the minute books of the Canterbury incorporation show that on the few occasions when out-relief was granted to a woman with more than one child, this relief would be limited to legitimate children.⁴ Bastardy orders, granted at the petty sessions, which required a man to support his bastard child were administered by the workhouse officials and listed in official documents, so even if the mother of a bastard was not resident within the workhouse itself, she was still subject to the supervision of the social policing organisation of the workhouse authorities.⁵

In answer to my first question, why it was that paid childcare taking place in the private home of the care-giver become an object of official government interest between 1834 and 1897, I found that government interest at the start of this period was influenced by the findings of the Royal Commission into the Poor Laws of 1834. The Commission found that the financial implications to the parishes for the support of unmarried mothers was particularly onerous for rate-payers. The existing out-relief system of financial aid was seen to be overly generous and, indeed that it encouraged immorality. The response of legislators was to attempt to

³ Pat Thane, 'Women and the Poor Law in Victorian and Edwardian England', (1978) *History Workshop*, 6

⁴ For example, the Workhouse Minute Books of the Canterbury Union show that Mary Ann Blogg had four legitimate children and one illegitimate. On 13 August 1861 she was granted four shillings and four loaves weekly for the legitimate children. Support for the illegitimate child was her concern, alone. Workhouse Minute Books, Canterbury Incorporation 1850-1890. Canterbury Cathedral Archives Ref CCA-CC-Q/GB/E

⁵ Poor Law (Amendment) Act 1868 s41

induce women to follow middle-class mores of sexual propriety. The 1834 Poor Law made it impossible for a woman to make any financial claim on the father of an illegitimate children with her only recourse being to enter the workhouse. In this manner the social control organisation of the Poor Law authorities were brought to focus on the behaviour of single, working-class women and they can be said to be the target of legislation intended to deter them from immoral behaviour. The middle and upper classes were desirous of imposing their standards of behaviour on working-class women, less for the good of their souls, but rather for the good of the pockets of the rate-paying classes.

There were few other sources of support for the mothers of bastard infants. As I found in chapter four, should a woman chose not to enter the punitive regime of the workhouse, very few alternatives were available, the majority of which were not provided by the growing administrative state. Charitable provision was limited and, in some cases, access to such provision depended on a woman's ability to prove her own 'good character' in line with the ethos of the relevant charity. Limited help may have been provided by a woman's family and community, but if she were physically removed from her family home related to employment such as a servant, barmaid, governess, or other occupation which demanded that she lived on the premises of her employer, this would not have been possible. For a women who was pregnant and alone, the choice of what to do with her child was limited and she may have been tempted to make use of the emerging industry of the baby farmers.

Baby farming, as we saw in chapter five, encompassed a number of practices, ranging from the arrangement of adoption, paid childcare and long-term fostering. There were also links with abortion and with the killing of new-born infants by midwives. This aspect of the industry, which was brought to attention by a series of investigate articles published in the *British Medical Journal* (BMJ) in 1868,⁶ was predominantly associated with the foster homes in which children were most likely neglected, left to ail and ultimately, to die.

Government interest into the welfare of children who were cared for outside their mothers' immediate domestic circles increased following the emergence of the baby farmers into popular awareness during the second half of the century. In chapter six, I examined the cases of four baby farmers convicted of the murder of infants in their care, details of whose cases were widely disseminated in the newspapers. The first case, that of Charlotte Winsor (1865), who was found guilty of murder, demonstrated a change of judicial focus from the mother of

⁶ 'Baby-Farming and Child-Murder', (1868) *British Medical Journal* 25 January 1868, 75; 'Baby-Farming and Child-Murder', (1868) *British Medical Journal* 8 February 1868, 127; 'Baby-Farming and Child-Murder', (1868) *British Medical Journal* 22 February 1868, 175; 'Baby-Farming and Child-Murder', (1868) *British Medical Journal* 29 February 1868, 197; 'Baby-Farming: Infant Mortality', (1868) *British Medical Journal* 21 March 1868, 278

a murdered child towards the baby farmer. Winsor and the mother were initially charged jointly with the murder of the child. The prosecuting authorities, after a trial in which the jury failed to reach a verdict, chose to prosecute Winsor, the baby farmer, on her own, using the evidence of the mother against her.

Five years later, the case of Margaret Waters (1870), who was convicted of the murder of two children in her care, led to calls for some kind of official legislative response to the practice of baby farming. The printed media reports of the case were mixed in their response to Waters; articles in the syndicated newspapers were condemnatory, whereas others, such as a correspondent ('Fides') to the *Women's Suffrage Journal* were more sympathetic, blaming Waters' situation on the desperate poverty in which she lived. 'Fides' also condemned the bastardy laws which had led desperate women to entrust their children to baby farmers.⁷ Waters was executed amidst an atmosphere of conflicting discourses, some extremely hostile, while others sought to excuse her conduct and show her not fully culpable for the crimes of which she was convicted, with a few correspondents assigning blame to the state of the law as it related to the support of illegitimate children. As we noted, after the case of Charlotte Winsor (1865), while the baby farmers were vilified in the popular press, the same was not true of the mothers who had given up their children for 'adoption' by the baby farmers who were notably absent from reports, whether official or in the newspapers.⁸

The Winsor and Waters cases and the surrounding discourse mark a change in attitude to the women who provided care for bastard infants. This shift is exemplified by the evidence heard against the two women at their trials for murder. The role of the mothers in the death of the child is minimised and, in the case of Winsor, the mother's evidence was used against her. In the trial of Waters the voice of the mother was completely absent. The family of the dead infant was represented by her father and no evidence was presented on behalf of the mother. The dominant discourse fails to reflect the thoughts and opinions of the mothers or the baby farmers, their agency was, in effect, denied.

In spite of initial attempts to legislate to control baby farming through the Infant Life Protection Act 1872, which was riven with loopholes, baby farming continued, seemingly unabated. As we have seen, Carol Smart has suggested that the Infant Life Protection Act 1872 was part of a series of legislation which aimed to control female sexual and reproductive behaviour.⁹ This may have been its intention, but as we saw in chapter six, the Act's focus was not on the

⁷ 'Fides' 'Correspondence', *Womens' Suffrage Journal* (1 November 1870) 94

⁸ See for example, 'The Baby-Farming Case' *The Times* (29 June 1870) 11

⁹ Carol Smart. 'Disruptive bodies and unruly sex: The regulation of reproduction and sexuality in the nineteenth century' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

behaviour of potential mothers, but a rather weak attempt to control the behaviour of the baby farmers. The Infant Life Protection Act 1872 did nothing more than provide a framework of registration of women who kept children in their own houses for money with no provision made for inspection or regulation of the baby farmers. It is not clear why the government omitted such a regime but, given the evidence presented to the select committee, reviewed in chapter seven, it is highly probable that legislators felt that to allow representatives of the state to enter the domestic home was too great an extension of the social policing arrangements of the time.

The inefficiencies of Infant Life Protection Act 1872 were demonstrated in the convictions for murder of Jessie King (1889) and Amelia Dyer (1896). These cases, as we saw in chapter six, showed that, without doubt, the Infant Life Protection Act 1872 had not been successful in reducing the numbers of children killed at the hands of the baby farmers. The conviction of Jessie King and the surrounding publicity gave political impetus to form a select committee year after her execution (1890). An Infant Life Protection Bill was drafted by the committee, but fell with the government the same year.

The Dyer case was coterminous with the Infant Life Protection Select Committee of 1896 and the newspaper reports of the lurid details of Dyer's long career as a baby farmer were widely reported while the committee was sitting. Once again, the newspapers were sympathetic to the mothers of the children and, in this very dramatic case, the mothers of two of the children who met their deaths in Dyer's dubious care gave evidence at her committal at the Police Court. The newspapers reported that one of the mothers became 'overcome' with emotion at having to identify the corpse of her child.¹⁰ The judgmental focus of the prosecution and the focus of the surrounding discourse was the baby farmers; the mothers of the children were presented as victims alongside their infants. As we saw in chapter six, after Dyer's conviction she received scant sympathy from the newspaper commentators, or from the Select Committee. Dyer was universally reviled. In 1897, at the end of the period studied in this thesis, we see in the form of the Infant Life Protection Act 1897, the change in the official government focus from the mothers of bastard children to the baby farmers had become complete.

The emergence of the baby farmers as a problem for legislators, which diverted official attention from the behaviour of single mothers, created a new legislative challenge. Obviously, where it could be proven that a baby farmer had killed a child in her care, the criminal law provided the means of prosecution for the common law offence of murder. But governments were compelled to provide protective measures for adopted and boarded-out

¹⁰ 'Baby-farming Horror', *Reynolds Newspaper* (19 April 1896)

children and, in particular, a means of controlling the environment in which bastard children were 'farmed'. The *British Medical Journal* (BMJ), as we saw in chapter five, had campaigned in 1868 for a change in the law which would mandate registration and inspection of the baby farms, and the lying-in houses. Had this campaign been successful, it would have created a new set of social policing practices which would, in inspecting the homes of the baby farmers, have entered the domestic circle.

We noted in chapter seven how contemporary feminist campaigners, such as the 'Committee for Amending the Law in Points Wherein it is Injurious to Women' (CALPWIW), were opposed to the supervisory measures proposed by the BMJ, protesting that such measures would interfere with informal, mutually beneficial, arrangements which were not the business of the state. The domestic home, it was argued, was beyond the control of anyone other than those who lived within it. As we saw in chapter two, Davidoff et al have shown how the dominant middle-class view of the home was as a quasi-rural 'idyll' with a woman at its centre and a patriarchal figure in overall control.¹¹ For three of the baby-farmers that we have studied, there was no patriarchal figure to manage the domestic home, and all four of the baby farmers were struggling to maintain their households. Leaving aside the actuality of the offences committed therein, these were no idylls but places of crushing poverty in which the baby farmers struggled to maintain their households.

We saw how the first select committee (1870), triggered by the case of Margaret Waters, was convened to consider and report on the issues relating to the protection of children. The resulting Bill required registration of those houses in which more than one infant under the age of one year was cared for and details of the applicants.¹² There were no provisions for inspection or external regulation. The legal target of the resulting legislation was those working-class women who were thus classified as baby farmers. The Infant Life Protection Act 1872, in focussing on the behaviour of women required them to register as baby farmers. The term 'baby farmer' was, as we have noted, pejorative¹³ and, as had been foreseen by witnesses and members of the committee, it was no surprise that few women were to register with the local authorities for fear of being branded a baby farmer. It appeared that arguments relating to the sanctity of the privacy of the domestic circle triumphed over those who advocated any state supervision of the domestic home.

¹¹ Leonore Davidoff, Jean L'Esperance, Howard Newby, 'Landscape with Figures: Home and Community in English Society' IN J Mitchell and A Oakley (eds) *The Rights and Wrongs of Women* (Penguin 1977)

¹² Infant Life Protection Act 1897 s(10)

¹³ ML Arnot, 'Infant Life, Child Care and the State: the baby-farming scandal and the first infant life protection legislation of 1872' (1994) 9(2) *Continuity and Change* 271

The Infant Life Protection Bill 1890, drafted by a select committee responding to the prosecution of Jessie King for murder the previous year, was to fall with the government of 1891. Another select committee was convened in 1896, in response to repeated campaigns for reform of the Infant Life Protection Act 1872. Evidence was presented by a number of philanthropic workers who undertook visiting to the homes of the poor, in much the same manner as those women rent collectors working for Octavia Hill, chronicled by Jane Lewis and examined in chapter two.¹⁴ While those drafting the legislation which became the Infant Life Protection Act 1897 chose to allocate responsibility for supervision of childcare taking place in the domestic sphere to local authorities, the inclusion of a provision for visits by 'women nominated by the local authorities'¹⁵ is redolent of Octavia Hill's rent collectors. Evidence presented to the committee urged an ethos of encouraging changes in behaviour to a standard more acceptable to the middle-class. The legislators changed the focus of the law, away from scrutinising and attempting to control the behaviour of working-class women, to measures which aimed to follow infants cared for in private homes and to supervise and inspect the conditions under which they were kept. In this way, government made it possible for the social police arrangements of the developing local authorities to inspect behaviour in the domestic home.

9.2 Conclusions

In answer to the first of my thesis questions, why it was that paid childcare taking place in the private home of the care-giver become an object of official government interest between 1834 and 1897, I have shown that the subject of paid childcare taking place in the domestic home first became an object of official government interest following the 1834 Royal Commission on the Poor Laws. I have argued that the imposition of total financial responsibility for bastard children upon their mothers in an attempt to reduce the cost to the rate-payers, resulted in working class women being 'pulled' into the shared social space of the workhouse. Even with the dilution of the bastardy provisions during the century, by giving the Poor Law organisations the responsibility for administering bastardy orders against the fathers of children, women in receipt of money from the fathers were still visible in the shared social space together with the reality of their status as the mothers of bastards.

For those mothers of illegitimate children who wished to maintain their privacy and not be drawn into the social space, we have seen that there were few practical alternatives to the

¹⁴ Jane Lewis, 'Women and late-nineteenth-century social work' in Carol Smart (ed) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* (Routledge 1992)

¹⁵ Infant Life Protection Act 1897 s(2)

workhouse. In chapter four I explored these alternatives and found that many were vastly over-subscribed and thus there was limited availability for a large number of single women which may have led to a need for cheap, easily available and, above all, discreet forms of childcare which would enable a woman to continue her life unencumbered by her child. In chapter five I examined the quasi-industry of baby farming which emerged, almost organically, in response to the needs of mothers who did not wish to enter the punitive regime of the workhouse, and who were in need of paid care for their children. I extended the definition of baby farming from that more commonly associated with inevitable infant death in the foster homes, to one more closely aligned with contemporary understanding. In particular I explored the role of the lying-in houses and the procurers in ensuring that the foster homes had their customers. I also noted in chapter eight that, while the foster homes were to be regulated by the Infant Life Protection Act 1897, the lying-in homes and procurers remained outside the reach of the law.

In answer to the second of my thesis questions, whether the nature of governments' interest changed during the period 1834-1897, in examining the discourse surrounding the criminal case of Charlotte Winsor (1865), I found that the case marked a shift in official prosecutorial attention away from the mother of a bastard child to the baby farmer. In the Winsor case, and those which followed, chronologically, I showed how public interest and popular concern called for measures to address the emerging 'problem' of the baby farmers rather than to address the behaviour of the mothers of bastard children.

The conviction of Margaret Waters for murder (1870) and the resulting select committee of 1871 marked the start of legislative measures which reflected the change in official interest from the mothers of bastards to their carers, by moving away from the financially focussed provisions of the Poor Laws and Bastardy Laws towards the regulatory effects of the Infant Life Protection Act 1872. By examining the minutes of the 1871 Select Committee I have demonstrated how evidence was heard from predominantly male witnesses who had direct professional and philanthropic interests in the issues raised. In particular, I noted in chapter seven how the representations against the findings of the select committees, made by feminists involved with the 'Campaign Against Legislation Wherein it is Injurious to Women',¹⁶ led by Lydia Becker, and in particular the issues associated with intrusion into the private homes of working-class women, were partially ignored. Following the Select Committee of 1872, a scheme of registration was introduced. However, there were no legal measures

¹⁶ Committee for Amending the Law in Points Wherein it is Injurious to Women, *Infant Mortality: Its Causes and Remedies* (A Ireland & Co 1871)

introduced that would have enabled the inspection of the domestic home to which Becker and her colleagues had been opposed.

The examination of the proceedings of 1890 and 1896 select committees in chapter eight showed an increasing recognition of the importance of evidence presented by witnesses representing charities and philanthropic organisations. I demonstrated how the ethos and methods of trail-blazing feminist reformers such as Octavia Hill were echoed in the evidence given to the 1896 Select Committee by the health-visitors working in Manchester. Thus, I found that the campaigning women of 1896 showed a conscious desire that support given to women in their own homes should be of the informal 'befriending' variety rather than the formal inspection mandated by the Infant Life Protection Act 1897. I have shown how legislative change marked by the Infant Life Protection Act 1897, in giving a duty and the power of inspection to local councils, allowed the social policing arrangements of the emerging administrative state to move into the family home in order to inspect and regulate the quality of care given to children. In this way, I have extended the concept of social control and, in particular, that of the social police, into the domestic circle.

In seeking to control the behaviour of the baby farmers, the Infant Life Protection Act 1872 continued to focus on working class women as subjects of the law, in need of direct control and regulation. The Infant Life Protection Act 1897 moved the focus of the law to the welfare and supervision of the child. In this way, the legislators gave the power, and the duty, to the new social policing organisation of the local authorities to enter the domestic circle of the working-class home in order to ensure the safety of the infants held therein.

By widening the definition of the practices associated with the term baby farming, this thesis has deepened our understanding of the history of baby farming. Considering the witnesses and the evidence presented before the three select committees (1871, 1890, and 1896) I have shown the contributions made by women to changes in the legislation, as campaigners and philanthropic practitioners working to support working-class women. I have taken the concept of social control and have shown how, in legislating as it did in 1897, government took the developing organisations of the developing administrative state into the private homes of the working-class in order to monitor the safety of children.

Fundamentally, this thesis has been concerned with legislation relating to the support and protection of bastard infants. The Infant Life Protection Acts may not have specified the legitimacy of the children protected, but it is clear from the minutes of the select committees that it was widely accepted that illegitimate children were at the most risk at the hands of the

baby farmers. I have explored the way that the state legislated to protect the safety of infants being cared for in the private homes of the baby farmers, but I have only been able to consider briefly workings of the bastardy legislation and the effects of limiting the provision of financial support to working-class mothers. While this is a natural consequence of a focus on the development of the legal framework associated with the administrative state, we should not forget the mothers of the bastards who were at risk of being given to the baby farmers. More academic investigation is needed into the working of the bastardy provisions of the Poor Laws of the nineteenth century to provide a fuller, more comprehensive context to our understanding of the challenges faced by unmarried mothers in the nineteenth century.

Appendix 1

Committee on the Protection of Infant Life 1871

Membership

George Sclater-Booth	MP for North Hampshire, First secretary of Poor Law Board, 1 st Baron Basing	Conservative
Dr William Brewer	MP for Colchester, had served as member of the Metropolitan Board of Works	Liberal
Jacob Bright	MP for Manchester, radical	Liberal
William Thomas Charley	MP for Salford, Protestant. Supporter of social work and worked for the protection of children. In 1878, appointed to senior legal office of Common Serjeant by the Corporation of London. Made QC in 1880 and worked at the Old Bailey.	Conservative
Sir Thomas Hesketh	MP for Preston	Conservative
Alfred Illingworth	MP for Bradford	Liberal
William Keown	MP for Downpatrick	Conservative
Arthur Kinnaird	MP for Perth. Evangelical clergyman	Liberal
William Johnston	MP for Belfast, member of the Orange Order	Conservative
Viscount Mahon, Philip Stanhope	MP for New Ross. Particular interest in cultural causes	Conservative
George Melly	MP for Stoke-upon-Trent	Liberal
Dr Lyon Playfair	MP for Edinburgh and St Andrew's Universities. Member of the Privy Council, made Baron Playfair in 1892	Liberal
Henry Raikes	MP for Chester	Conservative
Richard Shaw	MP for Burnley	Liberal
William McCullagh Torrens	MP for Finsbury Sat as Commissioner for Irish Poor Law Inquiry, 1835	Liberal
Spencer Horatio Walpole	MP for Cambridge University Chair of Committee	Conservative
Henry Winterbotham	MP for Stroud Under-Secretary for State for the Home Office	Liberal

Witnesses

Benson Baker	Medical Officer for Marylebone, Committee Member of the Harveian Society
John Bowring	Clerk to the Guardians of the City of London Union
Charles Cameron	Medical doctor, and editor of the North British Daily Mail
William Cameron	Special Commissioner of the Northern Daily Mail
Daniel Cooper	Secretary to the Society for the Rescue of Young Women and Children
Uvedale Corbett	Metropolitan Poor Law Inspector
John Curgenvin	Secretary of the Harveian Society and Secretary to the Infatn Life Protection Society
William Farr	Head of the Statistical Department of the General Registry Office
Supt Andrew Gernon	Metropolitan Police
George Gregory	Treasurer of the Foundling Hospital
Ernest Hart	Surgeon and Editor of the British Medical Journal
Edward Herford	Coroner for Manchester
Edwin Lankester	Coroner for Middlesex
Mrs Jane Dean Main	Superintendent of the Refuge for Deserted Mothers
Mrs Susannah Meredith	Treasurer of the Female Prisoners' Aid Society
Sergeant Relf	Metropolitan Police. Discovered Waters' baby farm
Edmund Syson	Medical Officer of the Board of Health, Salford
Rev Oscar Thorpe	Incumbent at Christ Church, Camberwell
Dr Charles West	Physician to the Hospital for Sick Children
Dr Walter Whitehead	St Mary's Hospital for the Diseases of Women and Children. Medical Superintendent of Day Nursery
Dr Alfred Wiltshire	MRCP and Medical Inspector of the Privy Council

Appendix 2

Select Committee on the Infant Life Protection Bill 1890

Members

George Trout Bartley	MP Islington East Author of pamphlets on social questions, including the Poor Laws and education. Campaigner for reform of the Poor Law System	Conservative
William Corbet	MP Wicklow East	Irish Parliamentary Party
Lord Francis Hervey	MP for Bury St Edmunds	Conservative
John Kelly	MP for Camberwell North	Conservative
Lee Knowles	MP Salford West Unpaid parliamentary secretary to the Head of the Local Government Board. Philanthropist and support of the Guinness Trust for Housing the Poor	Salford West
William Frederick Lawrence	MP Liverpool Abercrombie Lawyer	Conservative
Walter McLaren	MP Crewe Campaigner for Women's Suffrage	Liberal
Nevil	MP Cricklade	Liberal
Story-Maskelyne	Scientist – Mineralogist	
William Mather	MP Gorton Special interest in education	Liberal
Sir Herbert Maxwell	MP Wigtownshire First Lord of the Treasury	Conservative
Patrick O'Brien	MP Monaghan North	Irish Parliamentary Party
Francis Powell	MP Wigan	Conservative
James Parker Smith	MP Glasgow Partick	Liberal
Francis Stevenson	MP Eye	Liberal
John Wilson	MP Edinburgh Central	Independent Liberal
William Woodall	MP Hanley Supported extension of the franchise, and leader of the Women's Suffrage Bill in Parliament in 1884	Liberal
Charles Stuart-Wortley	MP Sheffield, Hallam	Conservative

Witnesses

Athelstan Braxton Hicks	Coroner for the County of Surrey and London
William Henderson	Chief Constable of Edinburgh
Samuel Babey	Inspector of the Metropolitan Board of Works for Infant Life Protection
George Barrow Gregory	MP and Treasurer of the Foundling Hospital
Joanna Hill	Secretary to the King's Norton Boarding-out Committee
Charles Stewart Loch	Secretary of the Charity Organisation Society

Appendix 3

Select Committee of the House of Lords on the Infant Life Protection Bill 1896

Members

Rudolph Feilding, Earl of Denbigh	Roman Catholic, Philanthropist
Henry Matthews, Viscount Llandaff	Lawyer, Catholic. Raised to the peerage in 1895
Randall Davidson, Lord Bishop of Winchester	Scot. Confidante of the Queen. Was to become Archbishop of Canterbury
Henry Strutt, Lord Belper	Initially a Liberal, but had left the party because of the Irish question
Arthur Fitzgerald Kinnaird, Lord Kinnaird	Had been a banker. Later worked for voluntary associations, highly influenced by Lord Shaftesbury (as was Barnardo). Interests included ragged schools, founder of the Boys' Brigade, and had established Homes for Working Boys. Strongly evangelical.
Donald Mackay, Lord Reay	Devout Presbyterian Replaced on 23 April 1896 by Earl of Buckingham
Henry, Lord Thring	Had been Parliamentary draftsman. Legal Reformer
Sidney Hobart, Earl of Buckingham	Liberal

Witnesses

Mrs Abrahams	Founder and manager of St Pelagia's Homes, Roman Catholic rescue Homes
Samuel Babey	Inspector for the Infant Life Protection Act for the London County Council
Thomas John Barnardo	Founder of Barnardo Homes
Wynne Edwin Baxter	Coroner for the Eastern Division of the County of London
Mrs Bostock	Health Visitor employed by the Ladies' Health Society, Manchester
Athelstan Braxton Hicks	Coroner for the Kingston District of Surrey and the South Western District of the County of London
William Crooks	Member of the London County Council for Poplar, and Guardian of the Poor
Mrs Crowder	Honorary Secretary of the Charity Organisation Society Board School Manager in St George's-in-the-East
Mr E de M Ruldolf	Secretary of the Church of England Waifs and Strays' Society
Hugh Percy Dunn	Fellow of the Royal College of Surgeons. On staff of the West London Hospital
Deaconess Gilmore	Head of the Deaconesses' Institution of the Diocese of Rochester
Mrs Hardie	President and Secretary of the Ladies' Health Society, Manchester
Clifford Luxmoore Drew	Her Majesty's Coroner for the Western Division of London
Marian M Mason	Local Government Board Inspector, Boarding Out Children
Miss Isabel G Smith	Inspector for the Infant Life Protection Act for the London County Council
Alfred Spencer	Chief Officer of the Public Control Department of the London County Council
Miss Steer	Honorary Superintendent of the Bridge of Hope, general mission in Ratcliffe Highway for the rescue of women and children
John F W Tatham	Head of the Statistical Department of the General Register Office at Somerset House
Rev Benjamin Waugh	Founder and Director of the National Society for the Prevention of Cruelty to Children
Mrs Wethered	Member of the Committee of the Paddington and Marylebone Association for the Rescue and Care of Friendless Girls, member of the Committee of the London Diocesan Council for Rescue and Preventative work.

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