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book review

‘Such Slow Murder’

Feminism, Moral Panic and Homicidal Women

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Annie Cossins

Female Criminality: Infanticide, Moral Panics and the Female Body

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Maternal infanticide is an issue of perennial interest to sociohistorical scholars, criminologists and feminist researchers. In this wide-ranging book, Annie Cossins argues that infanticide is a uniquely ‘feminine’ form of criminality insofar as it draws

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social and legal attention to women's bodies. Using an exemplary array of primary and secondary sources, Cossins examines maternal infanticide in two historical moments with case studies chiefly centred on England and Wales. The first period, the 1860s and 1870s, deals with infant mortality among the urban poor and focuses on the circumstances of unmarried working-class women who fell pregnant and had no real means of supporting themselves, let alone children. Cossins explains that while some of these women did kill their babies, the overwhelming proportion of infant mortality among this social cohort was the result of poor sanitation, disease, overcrowding and inadequate medical advice. Despite evidence of the social causes behind high infant mortality, popular belief remained vested in the idea that miscarriages and infant deaths were attributable to mothers and the women who assisted them. The second period Cossins addresses is the 1990s and early 2000s in England, a moment involving four high-profile criminal trials in which it was alleged that maternal infanticide explained instances of multiple infant deaths within the same family. As separate as these historical moments and examples seem, the concept of 'moral panic' is core to Cossins's analysis of both, as is the 'sexed bodies' approach. We engage both these perspectives as scholars trying to connect the traditions of cultural studies and legal studies.

Infanticide (defined by Cossins as the homicide of a child under twelve months) has a much longer history as a practice than as a crime. By 1624, when it was expressly criminalised in English law as 'the Destroying and Murthering of Bastard Children', the scope of the offence was confined to unmarried women. The subsequent 1803 Act, which extended its reach to the concealment of the birth of a dead baby, and the replacement Acts of 1922 and 1938 (by which time the term infanticide had been coined), were all restricted to women. As Arlie Loughnan has discussed, although criminal law had the effect of 'scoping' social and cultural understanding of infanticide around women, there seems to be no doubt that well into the nineteenth century infanticide (as a practice) continued to be committed by men as well as women.¹

As its subtitle suggests, *Female Criminality* extends far beyond crimes of infanticide. The examples offered in the nineteenth-century section of the book shift the focus away from infanticide toward baby farming, a set of practices related to wet nursing and out-of-home care of babies and not coincidentally the subject of

Cossins's previous book.² Baby farmers were typically women from the urban working classes who needed occasional work they could do within the home when money was tight while also caring for their own children. As a pejorative term, baby farming embraces a spectrum of practices from fostering or adoption through to tacit contract killing whereby money was exchanged to 'solve the problem' of illegitimate birth. As Cossins argues, the more lenient moral and criminal judgments attached to 'pitiful and destitute' women charged with killing their newborns or infants were not readily transferable to the 'avaricious' baby-farmer who had no biological relationship to the infants in their care but appeared to be making money out of the misery of others. (74) It is this state of affairs, already worked out in her previous book, that Cossins now approaches through the lens of 'moral panic'. As she states early on: 'The first task of this book is to determine whether or not infanticide—the nineteenth century's solution to thousands of unwanted illegitimate children—gave rise to a moral panic.' (16)

As is well known, 'moral panic' is a descriptive conceptual framework taken from sociology. The term is most closely associated with—although not actually coined in—Stanley Cohen's 1972 publication *Folk Devils and Moral Panics: The Creation of Mods and Rockers*.³ Cohen's book examines a historical moment in which the concept of the 'teenager' commanded popular sway. Cohen traces how certain practices, when amplified by the popular media and seized on by so-called 'moral entrepreneurs', could come to constitute a 'moral panic' particularly when taken up by a group of experts who explained the dangers and proposed solutions to what was now generally perceived as a social problem. *Folk Devils and Moral Panics* is regarded as one of the foundational texts in British criminology and it is hard to overstate the role it has played in inaugurating fields of inquiry that now include the sociology of deviance, media studies, cultural studies, as well as studies of crime and culture, crime and media, and fear of crime.

As worked out by Cohen, the moral panic framework relies first on the participation of 'moral entrepreneurs', that is, those who do the public moralising and draw attention to 'the problem'. Secondary 'experts' are then drawn in to articulate 'the problem' as requiring a specialised response that they are best placed to provide. In Cossins's nineteenth-century example a group of doctors appoint themselves as specialists on infanticide and use the vehicle of the *British Medical*

Journal (BMJ) to advance an expert discourse with the aim of attracting mainstream attention via the mass media. As Cossins points out, high-profile doctors, like Dr Ernest Hart, and high-profile journals, like *BMJ*, were a crucial ingredient in fermenting social and political concern about baby farming and its twentieth-century corollaries. Like the 'moral entrepreneurs' that preceded them, this expert discourse was central to the official responses to infanticide and the eventual creation of the *Infant Life Protection Act 1972*, the first British state regulation to cover children in care.

However, for the issue of baby farming to attract attention from the mainstream, it required a 'folk devil', some actual person to embody 'the problem'. In Cossins's first case study there are two folk devils, Charlotte Winsor and Margaret Waters, baby farmers whose trials in 1865 and 1871 became sensational media fodder. These working-class women 'threatened the moral fibre of British society by committing infanticide as a business transaction' (121) and bore the social and legal blame for infant deaths that were more accurately attributed to a combination of poor medical treatment and general high infant mortality, as well as neglect. As Cossins argues, the evidence adduced at the trials suggests that at least some of the children may not have died as a result of infanticide. She makes the point that, while the trials were the basis for protracted and salacious media interest, no attention was given to the causes of illegitimacy or infanticide or to the primary causes of infant ill health and death. Rather the popular press gave full scope to the idea of 'slow murder', (134) a term that would migrate across various moralising contexts. Although baby farming was not an offence in itself, Cossins makes a good case for the strong and manifold connections made between infanticide and baby farming within governmental, philanthropic and popular discourses.

While the moral panic analysis sits well with nineteenth-century public discourse around baby farming, it is harder to attach to recent media outbursts around mothers who kill. To Cossins's credit, *Female Criminality* takes great care in surveying the critical literature around the 'moral panic' framework and the many exceptions to Cohen's model that have been identified: not every moral panic relies on dominant notions of morality; not every social fear or anxiety is unfounded; not every expert label sticks firmly to its object. Yet the value of the moral panic lens, like any other research tool, must be that it brings certain issues into focus even as it

risks obscuring others. Cossins's commitment to the rubric of moral panic, however, is not explained at any point in the book. As a result of Cossins not arguing the case for the analytical rubric of moral panic, certain questions are left hanging in the margins, such as why it is important to decide whether or not debates around nineteenth-century infanticide constituted a moral panic or how that explanatory framework helps advance our understanding of the link between high rates of illegitimate birth and concurrently high rates of infant mortality.

Rather, for Cossins the 'causal basis' for both the development of a moral panic relating to female baby-farmers in the nineteenth century and the exaggerated response to cases of multiple familial infant deaths in four trials in the 1990s and early 2000s can be found in the 'sexed body' that provides the 'theoretical foundation' to her governing thesis. (257–9) In Cossins's somewhat prescriptive account, second-wave feminism relied on the sex/gender distinction where gender was understood to be the cultural ascription of social attributes (masculinity/femininity) while 'sex' was viewed as a biological foundation (male/female). Relying on the work of more recent feminist theorists such as Judith Butler, Cossins argues that this early position elided the way that 'sex', like gender, was constructed through particular power regimes and equivalently open to change. It is this operation—the construction of sex—that she sees at work in the discourses surrounding maternal infanticide.

While this poststructuralist perspective on sex as a discursive construction is now uncontested across feminist and cultural studies, the test of a general theory remains in its specific application. The variety of nineteenth- and twentieth-century discourses that circulate around baby farming and familial infant deaths are, according to Cossins, part of the fabric through which the sexed body is actively created and re-created. Yet, for all the attention given to the case studies, which are as discontinuous as one might expect given their historical and mediated specificity, connecting these two theoretical frameworks (the 'sexed body' and 'moral panic') has the effect of producing the 'sexed body' as a *necessary* result of contingent discourses (the logics of jurisprudence, the rise of disciplinary expertise, the market for tabloid sensationalism) rather than something that may have been otherwise. Thus, although Cossins cites the early work of Butler for its tantalising suggestion that sex and gender might be transformed, her book testifies instead to

the many historical stabilities around accounts of the sexed female body that make distinctions between the 'good' mother and the 'bad' or 'evil' one.

This contradiction is particularly apparent in Cossins's discussion of four separate trials from the 1990s and early 2000s, to all of which she applies the 'sexed body' concept. In each of the legal cases at hand mothers were tried for murder. Three women were convicted but on appeal their convictions were quashed. Cossins is forced to admit that the public and media attention given to these cases, and their manner of prosecution, does not fit with the moral panic framework elsewhere articulated. It is at this point that she relies exclusively upon the sexed bodies approach to analyse and understand the critical significance of these cases. There is an unresolved tension, however, in the way Cossins combines the concept of the sexed body with the complex expert medical evidence admitted in these trials. Insofar as she gives insufficient weight to the power of expert evidence in producing the convictions, there is a tendency to suggest that expert evidence lies outside of or is not involved in the production of the sexed female body. Yet it is clear from her account of the trials that statistics and other purported facts played a huge part in finding these women guilty.

The role played by scientific evidence in producing the infanticide convictions is made doubly clear since so much of that 1990s' expertise is now discredited. In the prosecution of Sally Clark, for example, the jury was presented with expert evidence that 'a family like the Clarks had a 1:8,543 chance of one SIDS death, and if that figure was squared, the chance of a second SIDS death was 1:73 million'. (223) Faced with these figures of probability, a conclusion of guilt would be hard to resist. Despite the continued rise to prominence of DNA/probability evidence since the 1990s, there is now considerable scholarly literature drawing attention to the dangers of linking probability with truth. This raises the question of whether the sexed body narrative was the real issue here or whether the scientific truth claims simply provided a persuasive narrative to juries that ultimately led to conviction. Although Cossins's account of the sexed body, alongside her continued commitment to the moral panic framework, marks a significant shift in how female criminality might be theorised, it also leaves open the possibility that there are other explanatory frameworks which could operate in this space.

Female Criminality is based on extensive research across both primary and secondary sources, including a wide range of legal, feminist and other social scientific literature. It offers a thoughtful revisiting of Cohen's concept of moral panic and the feminist concept of the sexed body. Through a careful investigation of the discourses brought to bear on infanticide and baby farming in the nineteenth century in Britain—the social characteristics of the different actors, the role of midwives and the expert intervention of doctors, the part played by parliamentary debate and the press—Cossins paints a complex picture crossed through by gender, class norms and, most notably, middle-class morality. If an equivalently dispersed welter of discourses continues to produce a sexed female body in contemporary culture and jurisprudence, then it is clear that we need an equivalently rich and textured socio-historical analysis to understand how.

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¹ Arlie Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law*, Oxford University Press, Oxford, 2012.

² See also Annie Cossins, *The Baby Farmers*, Allen & Unwin, Sydney, 2013.

³ Stanley Cohen, *Folk Devils and Moral Panic: The Creation of Mods and Rockers*, MacGibbon and Kee, London, 1972.

—BIBLIOGRAPHY

Loughnan, A., *Manifest Madness: Mental Incapacity in Criminal Law*, Oxford University Press, Oxford, 2012.

Cossins, A., *The Baby Farmers*, Allen & Unwin, Sydney, 2013.

Cohen, S., *Folk Devils and Moral Panic: The Creation of Mods and Rockers*, MacGibbon and Kee, London, 1972.