



Motherhood on Trial

A Comparative Analysis of the Miscarriage of Justice in Infanticide Cases

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Introduction

This project involved a **comparative analysis** of the three infanticide cases listed in the adjacent table to examine **women's experiences in the courtroom** from a **feminist perspective**. Each woman was accused and/or convicted of infanticide, followed by a total exoneration. Such unjust convictions not only marginalise women, but also undermine public trust in the law, making their study essential.

Cases

Years

Jurisdictions

Joanne Hayes

1985

Ireland

Sally Clark

2003

England

Kathleen Folbigg

2023

Australia

Methodology & Thematic Analysis

The main method employed was **thematic analysis**. The following themes were chosen to structure my analysis, and examined using examples from the chosen cases. They were then situated in an **interdisciplinary context** including **critical feminist theory**, with a focus on **centralising female voices**, i.e, the defendants themselves, the women who supported them, and the work of female academics.



The Legal Case & Judgment



The Impact of Protest, the Media and the Public Eye



The Misrepresentation of Medical and Statistical Evidence

Findings & Conclusions

Based on the compilation of my thematic analysis, I drew three conclusions, which broadly represent the lessons learned from the tragic miscarriages of justice in all three cases.

Public Attention & the Law in the Media

- The media translates the law into **human stories**, generating **attention and sympathy**.¹
- This allows **activism and academic work** to foster, creating external conditions for the review of cases.
- Eg: **Sally Clark** was reframed by the media as a 'wronged, respectable mother' upon her appeal.²

The Importance of Legal Uncertainty

- **Absolute legal certainty** in cases must be challenged, as it disregards the natural possibility of errors.³
- **Constant vigilance**, and an **acceptance of uncertainty** is required to identify and rectify wrongful convictions.
- Egs of oversight: **Hayes** - medical evidence confirming stillbirth ignored,⁴ and **Folbigg** - Sudden Infant Death Syndrome evidence neglected.⁵

The Rejection of Neutrality

- All cases show the **dangers of subscribing to neutrality**, or the 'unstated male norm'.⁶
- Its predominance, observed through **patriarchal ideals of women** shaped each case in some way.
- Egs: **Hayes & Clark** - vilified due to their sexuality⁷ and career⁸ respectively, **Folbigg** - private diaries distorted to question 'mothering capacity'.⁹

References

1. Richard Nobles and David Schiff, 'A Story of Miscarriage: Law in the Media' (2004) 31 *JLS* 221.
2. Ibid.
3. Dennis Eady, 'Miscarriages of Justice: The Uncertainty Principle' (DPhil Thesis, Cardiff University 2009)
4. Joanne Hayes, *My Story*, (Brandon Book Publishers, 1985)
5. Emma Cunliffe, *Murder, Medicine and Motherhood* (Hart Publishing, 2011)
6. Alissa Rubin Gomez, 'The Feminist Neutrality Paradox', (2023) 127 *Dick. L. Rev* 673
7. Report of the Tribunal of Inquiry into "The Kerry Babies Case" (Pr. 3514, 1985).
8. Helena Kennedy, *Misjustice* (Penguin, 2018)
9. Cunliffe (n. 1)