

**On the uncertainty of the signs of murder in the case of bastard children /
by William Hunter.**

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ON
THE UNCERTAINTY
OF
THE SIGNS OF MURDER
IN THE CASE OF
BASTARD CHILDREN.

BY THE LATE
WILLIAM HUNTER, M.D. F.R.S.

PHYSICIAN EXTRAORDINARY TO THE QUEEN,
AND MEMBER OF THE ROYAL ACADEMY OF SCIENCES AT PARIS.

London:

PRINTED FOR J. GALLOW, CROWN COURT,
PRINCES STREET, SOHO.

1818.

THE EVIDENCE

THE EVIDENCE OF MURDER

IN THE CASE OF

BASTARD CHILDREN

WILLIAM HUNTER, M.D.F.R.S.

PHYSICIAN EXTRAORDINARY TO THE QUEEN

AND MEMBER OF THE ROYAL ACADEMY OF MEDICAL SCIENCES

LONDON:

PRINTED FOR J. LARSON, CORNHILL

1841

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TO THE
Members of the Medical Society.

Read July 14, 1783.

GENTLEMEN,

IN the course of the present year, one of our friends, distinguished by rank, fortune, and science, came to me upon the following occasion: In the country, he said, a young woman was taken up, and committed to jail to take her trial, for the supposed murder of her bastard child. According to the information which he had received, he was inclined to believe, from the circumstances, that she was innocent; and yet, understanding that the minds of the people in that part of the country were much exasperated against her, by the popular cry of *a cruel and unnatural* murder, he feared, though innocent, she might fall a victim to prejudice and blind zeal. What he wished, he said, was to procure an unprejudiced

enquiry. He had been informed that it was a subject which I had considered in my lectures, and made some remarks upon it, which were not perhaps sufficiently known, or enough attended to ; and his visit to me was, to know what these remarks were. I told him what I had commonly said upon that question. He thought some of the observations so material, that he imagined they might sometimes be the means of saving an innocent life : and if they could upon the present occasion do so, which he thought very possible, he was sure I would willingly take the trouble of putting them upon paper. Next day I sent them to him in a letter, which I said he was at liberty to use as he might think proper. Some time afterwards he told me that he had great pleasure in thanking me for the letter, and telling me that the trial was over ; that the unfortunate young woman was acquitted, and that he had reason to believe that my letter had been instrumental. This having been the subject of some conversation one evening at our medical meeting, you remember, Gen-

tlemen, that you thought the subject interesting, and desired me to give you a paper upon it. I now obey your command,

In those unhappy cases of the death of bastard children, as in every action indeed that is either criminal or suspicious, reason and justice demand an enquiry into all the circumstances; and particularly to find out from what views and motives the act proceeded. For, as nothing can be so criminal but that circumstances might be added by the imagination to make it worse; so nothing can be conceived so wicked and offensive to the feelings of a good mind, as not to be somewhat softened or extenuated by circumstances and motives. In making up a just estimate of any human action, much will depend on the state of the agent's mind at the time; and therefore the laws of all countries make ample allowance for insanity. The insane are not held to be responsible for their actions.

The world will give me credit, surely, for having had sufficient opportunities of knowing a good deal of female characters. I have seen the private as well as the public virtues, the private as well as the more public frailties of women in all ranks of life. I have been in their secrets, their counsellor and adviser in the moments of their greatest distress in body and mind. I have been a witness to their private conduct, when they were preparing themselves to meet danger, and have heard their last and most serious reflections, when they were certain they had but a few hours to live.

That knowledge of women has enabled me to say, though no doubt there will be many exceptions to the general rule, that women who are pregnant without daring to avow their situation, are commonly objects of the greatest *compassion*; and generally are less criminal than the world imagine. In most of these cases the father of the child is really criminal, often cruelly so; the mother is weak, credulous, and deluded. Having obtained gratification, he thinks no more

of his promises ; she finds herself abused disappointed of his affection, attention, and support, and left to struggle as she can, with sickness, pains, poverty, infamy ; in short, with compleat *ruin for life !*

A worthless woman can never be reduced to that wretched situation, because she is insensible to infamy ; but a woman who has that respectable virtue, a high sense of shame, and a strong desire of being respectable in her character, finding herself surrounded by such horrors, often has not strength of mind to meet them, and in despair puts an end to a life which is become insupportable. In that case, can any man, whose heart ever felt what pity is, be *angry* with the memory of such an unfortunate woman for what she did ? She felt life to be so dreadful and oppressive, that she *could not* longer support it. With that view of her situation, every humane heart will forget the indiscretion or crime, and bleed for the sufferings which a woman must have gone through ; who, but for having listened to the

perfidious protestations and vows of our sex, might have been an affectionate and faithful wife, a virtuous and honoured mother, through a long and happy life; and probably that very reflection raised the last pang of despair, which hurried her into eternity. To think seriously of what a fellow-creature must feel, at such an awful moment, must melt to pity every man whose heart is not steeled with habits of cruelty; and every woman who does not affect to be more severely virtuous and chaste than perhaps any good woman ever was.

It may be said that such a woman's guilt is heightened, when we consider that at the same time that she puts an end to her own life, she murders her child. God forbid that killing should always be murder! It is only murder when it is executed with some degree of cool judgment, and wicked intention. When committed under a phrenzy from despair, can it be more offensive in the sight of God, than under a phrenzy from a fever, or in lunacy? It should therefore,

as it must raise our horror, raise our pity too.

What is commonly understood to be the murder of a bastard child by the mother, if the real circumstances were fully known, would be allowed to be a very different crime in different circumstances.

In some (it is to be hoped *rare*) instances, it is a crime of the very deepest dye: it is a premediated contrivance for taking away the life of the most inoffensive and most helpless of all human creatures, in opposition not only to the most universal dictates of humanity, but of that powerful instinctive passion which, for a wise and important purpose, the Author of our nature has planted in the breast of every female creature, a wonderful eagerness about the preservation of its young. The most charitable construction that could be put upon so savage an action, and it is to be hoped the fairest often, would be to reckon it the work of phrenzy, or temporary insanity.

But, as well as I can judge, the greatest number of what are called murders of bastard children, are of a very different kind. The mother has an unconquerable sense of shame, and pants after the preservation of character: so far she is virtuous and amiable. She has not the resolution to meet and avow infamy. In proportion as she loses the hope either of having been mistaken with regard to pregnancy, of being relieved from her terrors by a fortunate miscarriage, she every day sees her danger greater and nearer, and her mind more overwhelmed with terror and despair. In this situation many of these women, who are afterwards accused of murder, would destroy themselves, if they did not know that such an action would infallibly lead to an enquiry, which would proclaim what they are so anxious to conceal. In this perplexity, and meaning nothing less than the murder of the infant, they are meditating different schemes for concealing the birth of the child; but are wavering between difficulties on all sides, putting the evil hour off, and

trusting too much to chance and fortune.— In that state often they are overtaken sooner than they expected ; their schemes are frustrated ; their distress of body and mind deprives them of all judgment, and rational conduct ; they are delivered by themselves, wherever they happened to retire in their fright and confusion ; sometimes dying in the agonies of childbirth, and sometimes, being quite exhausted, they faint away, and become insensible to what is passing ; and when they recover a little strength, find that the child, whether still-born or not, is completely lifeless. In such a case, is it to be expected, when it could answer no purpose, that a woman should divulge the secret ? Will not the best dispositions of mind urge her to preserve her character ? She will therefore hide every appearance of what has happened as well as she can ; though if the discovery be made, that conduct will be set down as a proof of her guilt.

To be convinced, as I am, that such a case often happens, the reader would wish

perhaps to have some examples and illustrations. I have generally observed, that in proportion as women more sincerely repent of such ruinous indiscretions, it is more difficult to prevail upon them to confess; and it is natural. Among other instances which might be mentioned, I opened the bodies of two unmarried women, both of them of irreproachable and unsuspected characters with all who knew them. Being consulted about their healths, both of them deceived me. One of them I suspected, and took pains to prevail with her to let me into the secret, if it was so; promising that I would do her the best offices in my power to help her out of the difficulties that might be hanging over her: but it was to no purpose. They both died of racking pains in their bowels, and of convulsions. Upon laying out of the dead bodies, in one of the cases a dead child, not come to its full time, was found laying between the unhappy mother's limbs; and in the other, a very large dead child was discovered, only half born. Such instances will sufficiently shew what a

patient and fixed resolution the fear of shame will produce. A young unmarried woman, having concealed her pregnancy, was delivered during the night by herself. She was suspected; the room was searched, and the child was found in her box, wrapped up in wet clothes. She confessed that the child was her's, but denied the having murdered it, or having had an intention to do so. I opened the child with Mr. Pinkstan, of St. Alban's-street, and the lungs would not sink in water. Her account of herself was this: she was a faithful and favourite servant in a family, which she could not leave without a certainty of her situation being discovered; and such a discovery she imagined would be certain *ruin* to her for life. Under this anguish of mind she was irresolute, and wavering from day to day as to her plan of conduct. She made some clothes for the preservation of her child (a circumstance which was in her favour), and she hired a bed-room in an adjacent street, to be ready to receive a woman in labour at a moment's notice. Her scheme

was, when taken in labour, to have run out to that house, to be delivered by a midwife, who was to have been brought to her. She was to have gone home presently after, and to have made the best excuse she could for being out. She had heard of soldiers wives being delivered behind a hedge, and following the husband with the child in a short time after; and she hoped to be able to do as much herself. She was taken ill of a cholic, as she thought, in the night; put on some cloaths, both to keep her warm, and that she might be ready to run out, if her labour should come on. After waiting some time, she suddenly fell into such racking pain and terror, that she found she had neither strength nor courage to go down stairs, and through the street, in that condition, and in the night. In despair she threw herself upon the bed, and by the terror and anguish which she suffered, she lost her senses, and fainted. When she came to a little recollection, she found herself in a deluge of discharges, and a dead child lying by her limbs. She first of all attended to

the child, and found that it was certainly dead. She lay upon the bed some time, considering what she should do; and by the time that there was a little day-light she got up, put all the wet cloaths and the child into her box, put the room and bed into order, and went into it. The woman of whom she hired the room and who had received a small sum of money as earnest, though she did not know who she was, swore to her person, and confirmed that part of her story. Mr. Pinkstan and I declared that we thought her tale very credible, and reconciled it to the circumstance of the swimming of the lungs, to the satisfaction of the jury, as we shall hereafter do to the reader. She was acquitted; and I had the satisfaction of believing her to be innocent of murder.

In most of these cases we are apt to take up an early prejudice; and when we evidently see an intention of concealing the birth, conclude that there was an intention of destroying the child: and we account for

every circumstance upon that supposition, saying, why else did she do so and so? and why else did she not do so and so? Such questions would be fair, and draw forth solid conclusions, were the woman supposed at the time to be under the direction of a calm and unembarrassed mind; but the moment we reflect that her mind was violently agitated with a conflict of passions and terror, an irrational conduct may appear very natural.

Allow me to illustrate this truth by a case. A lady, who, thank God! has now been perfectly recovered many years, in the last months of her pregnancy, on a fine summer's evening, stepped out, attended by her footman, to take a little air on a fine new pavement at her own door, in one of our most even, broad, and quiet streets. Having walked gently to the end of the street, where there was a very smooth crossing place; she thought she would go over, for a little variety, and return towards her house by walking along the other side of the street,

Being heavy and not unmindful of her situation, she was stepping very slowly and cautiously, for fear of meeting with any accident. When she had advanced a few steps in crossing the street, a man came up on a smart trot, riding on a cart, which made a great rattling noise. He was at a sufficient distance to let her get quite over, or to return back with great deliberation; and she would have been perfectly safe, if she had stood still. But she was struck with a panic, lost her judgment and senses, and the horror of confusion between going on, or returning back, both of which she attempted, she crossed the horse at the precise point of time to be caught and entangled in the wheel, was thrown down, so torn and mashed in her flesh and bones, that she was taken up perfectly senseless, and carried home without the least prospect of a recovery. This lady was in the prime of life, living in affluence, beloved by her family, and respected by all the world. No imagination could suggest an idea of her intending to destroy herself; but if her situation in

life at that time could have favoured such a supposition, we see in fact that the most unquestionable proof that she could have saved herself, either by going on, or by turning back, or by standing still, would have signified nothing towards proving that she had intended to put an end to her own life and to that of her child. One shudders to think that innocent women may have suffered an ignominious death, from such equivocal proofs and inconclusive reasoning.

Most of these reflections would naturally occur to any unprejudiced person, and therefore upon a trial in this country, where we are so happy as to be under the protection of judges, who, by their education, studies, and habits, are above the reach of vulgar prejudices, and make it a rule for their conduct to suppose the accused party innocent till guilt be proved; with such judges, I say, there will be little danger of an innocent woman being condemned by false reasoning. But danger, in the cases of which we are now treating, may

arise from the evidence and opinions given by physical people, who are called in to settle questions in science, which judges and jurymen are supposed not to know with accuracy. In general I am afraid too much has been left to our decision. Many of our profession are not so conversant with science as the world may think: and some of us are a little disposed to grasp at authority in a public examination, by giving a quick and decided opinion, where it should have been guarded with doubt; a character which no man should be ambitious to acquire, who in his profession is presumed every day to be deciding nice questions upon which the life of a patient may depend.

To form a solid judgment about the birth of a new-born child, from the examination of its body, a professional man should have seen many new-born children, both still-born, and such as had outlived their birth a short time only; and he should have dissected, or attended the dissections of a number of bodies in the different stages of advancing

putrefaction. I have often seen various common and natural appearances, both internal and external, mistaken for marks of a violent death. I remember a child which was found in a compressed state and globular form, and, like hardened dough, had retained all the concave impressions which had been made where any part of the skin and flesh had been pressed inwards. The jury had got an opinion that this moulding of the flesh could not have happened, except the infant had been put into that compressed state while it was alive. My anatomical employments enabled me to remove all their doubts about the fact. I offered to make the experiment before them, if they pleased; the child should be laid in warm water, till its flesh should become soft and pliable, as in a body just dead; then it should be compressed, and remain so till cold, and then they would see the same effect produced. They were satisfied, without making the trial.

In many cases, to judge of the death of a

child, it may be material to attend accurately to the force of cohesion between the skin and the scarf-skin: and still more, to be well acquainted with the various appearances of the blood settling upon the external parts of the body, and transuding through all the internal parts in proportion to the time that it has been dead, and to the degree of heat in which it has been kept.

When a child's head or face looks swoln, and is very red, or black, the vulgar, because hanged people look so, are apt to conclude that it must have been strangled. But those who are in the practice of midwifery know that nothing is more common in natural births, and that the swelling and deep colour go gradually off, if the child lives but a few days. This appearance is particularly observable in those cases where the naval string happens to gird the child's neck, and where its head happens to be born some time before its body.

There are many other circumstances to

be learned by an extensive experience in anatomy and midwifery, which, for fear of making this paper prolix, and thence less useful, I shall pass over, and come to the material question, *viz.* in suspicious cases, how far may we conclude that the child was born alive, and probably murdered by its mother, if the lungs swim in water?

First, We may be assured that they contain air. Then we are to find out if that air be generated by putrefaction.

Secondly, To determine this question, we are to examine the other internal parts, to see if they be emphysematous, or contain air; and we must examine the appearance of the air-bubbles in the lungs with particular attention. If the air which is in them be that of respiration, the air-bubbles will hardly be visible to the naked eye; but if the air-bubbles be large, or if they run in lines along the fissures between the component *lobuli* of the lungs, the air is certainly emphysematous, and not air which had been taken in by breathing.

Thirdly, If the air in the lungs be found to be contained in the natural air-vesicles, and to have the appearance of air received into them by breathing, let us next find out if that air was not perhaps blown into the lungs after the death of the infant. It is so generally known that a child, born apparently dead, may be brought to life by inflating its lungs, that the mother herself, or some other person, might have tried the experiment. It might even have been done with a most diabolical intention of bringing about the condemnation of the mother.

But the most dangerous and the most common error into which we are apt to fall, is this, *viz.* supposing the experiment to have been fairly made, and that we have guarded against every deception above mentioned, we may rashly conclude that the child was born alive, and therefore must probably have been murdered; especially in a case where the mother had taken pains, by secreting the child, to conceal the birth. As this last circumstance has generally great

weight with a jury, I will only observe, that in fair equity, it cannot amount to more than a ground of suspicion, and therefore should not determine a question, otherwise doubtful, between an acquittal, or an ignominious death.

Here let us suppose a case which every body will allow to be very possible. An unmarried woman, becoming pregnant, is striving to conceal her shame, and laying the best scheme that she can devise, for saving her own life, and that of the child, and at the same time concealing the secret—but her plan is at once disconcerted, by her being unexpectedly and suddenly taken ill by herself, and delivered of a dead child. If the law punishes such a woman with death for not publishing her shame, does it not require more from human nature than weak human nature can bear? In a case so circumstanced, surely the only crime is the having been pregnant, which the law does not mean to punish with death; and the attempt to conceal it by fair means should

not be punishable by death, as that attempt seems to arise from a principle of virtuous shame.

Having shewn that the secreting of the child amounts at most to suspicion only, let us return to the most important question of all, *viz.* If in case of a concealed birth, it be clearly made out that the child had breathed, may we infer that it was murdered? Certainly not. It is certainly a circumstance like the last, which amounts only to suspicion. To prove this important truth to the satisfaction of the reader, it may be thought fit to assert the following facts, which I know from experience to be true, and which will be confirmed by every person who has been much employed in midwifery.

1. If a child makes but one gasp, and instantly dies, the lungs will swim in water as readily as if it breathed longer, and had then been strangled.

2. A child will very commonly breathe as soon as its mouth is born, or protruded from the mother, and in that case may lose its life before its body be born; especially when there happens to be a considerable interval of time between what we may call the birth of the child's head, and the protrusion of its body. And if this may happen where the best assistance is at hand, it is still more likely to happen when there is none; that is, where the woman is delivered by herself.

3. We frequently see children born, who from circumstances in their constitution, or in the nature of the labour, are but barely alive; and after breathing a minute or two, or an hour or two, die in spite of all our attention. And why may not that misfortune happen to a woman who is brought to bed by herself?

4. Sometimes a child is born so weak, that if it be left to itself, after breathing or sobbing, it might probably die, yet may be roused to life by blowing into its lungs ap-

plying warmth and volatiles, rubbing it, &c. &c. But in the cases which we have been considering such means of saving life are not to be expected.

5. When a woman is delivered by herself, a strong child may be born perfectly alive, and die in a very few minutes for want of breath; either by being upon its face in a pool made by the natural discharges, or upon wet cloaths; or by the wet things over it collapsing and excluding air, or drawn close to its mouth and nose by the suction of breathing. An unhappy woman delivered by herself, distracted in her mind, and exhausted in her body, will not have strength or recollection enough to fly instantly to the relief of the child. To illustrate this important truth, I shall give a short case.

A lady, at a pretty distant quarter of the town, was taken with labour pains in the night-time. Her nurse, who slept in the house, and her servants, were called up, and I was sent for. Her labour proved

hasty, and the child was born before my arrival. The child cried instantly, and she felt it moving strongly. Expecting every moment to see me come into her bed-chamber, and being afraid that the child might be someway injured, if an unskilful person should take upon her the office of a midwife upon the occasion, she would not permit the nurse to touch the child, but kept herself in a very fatiguing posture, that the child might not be pressed upon, or smothered. I found it lying on its face, in a pool which was made by the discharges; and so completely dead, that all my endeavours to rouse it to life proved vain.

These facts deserve a serious consideration from the public: and as I am under a conviction of mind, that, when generally known, they may be the means of saving some unhappy and innocent women, I regard the publication of them as an indispensable duty.