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Babies in the Privy: Prostitution, Infanticide, and Abortion in New York City's Five Points District

ABSTRACT

Excavation of a privy shaft associated with a 19th-century tenement at 12 Orange Street in New York City's Five Points district revealed the skeletal remains of two full-term neonates and a fetus. The well-preserved neonatal remains, probably twins, represent either concealment of a stillbirth or neonaticide, a subtype of infanticide. The presence of the "quicken" fetus in a different privy layer reflects concealment of a miscarriage or an induced abortion. Historical documents indicate that city authorities closed a "disorderly house" or brothel located in the tenement's cellar in 1843 due to neighbors' complaints. Within this historical context, the discovery of the skeletal remains provides an opportunity to trace changes in American social and legal attitudes regarding infanticide, abortion, and prostitution and explore the difficult choices faced by workingwomen in New York City from the colonial period to the middle of the 19th century.

Introduction

Archaeology opens windows on the past that have been clouded both by the passage of time and the deliberate attempts of many people to erase evidence of their actions, often nefarious and many times illegal, hoping they will be forever forgotten. The archaeological record brings the harsh light of discovery to bear on the results of these activities. It does not distinguish between artifacts and deposits related to illegal activities and those that resulted from otherwise innocuous behavior and cannot be edited for content. It is this constant that provides archaeologists the opportunity to investigate the full range of past human behavior, from the glorious to the atrocious. Such an opportunity was presented in 1993 when excavations of a privy associated with a 19th-century tenement in New York City's infamous Five Points district revealed

the incomplete skeletal remains of two full-term infants, probably twins, found in the same stratum and a fetus aged 20–22 weeks (4½–5 gestational months) discovered in a lower soil level. Mixed among faunal refuse in the privy that historical documents indicate was associated with a brothel closed by city authorities in 1843 (Yamin 2000; Cantwell and Wall 2001:216–223; Yamin, this volume), these remains represent an extended metaphor of the difficult choices working-class women faced in Five Points and other urban centers during the middle 19th century.

Even though it is impossible to determine conclusively whether the remains of the two newborns represent stillbirths, a case of infant abandonment, or infanticide, their discovery provides an opportunity to trace the changes in American social and legal attitudes regarding unwanted babies and infanticide from the colonial period to the middle of the 19th century. And while previous studies by historians have exhaustively explored the nature of contraception and abortion in historical America (Mohr 1978; Brodie 1994), this Five Points privy has yielded a tangible reflection of a miscarriage or abortion that occurred in an era when women recognized that giving birth could very likely result in their own deaths.

Together, these fetal remains represent only the third such case from a privy reported in the archaeological literature but the first from such a tightly defined historical context. In 1973, the partial remains of a seven-month fetus were recovered along with bones of a newborn from a late-18th-century privy at Head House Square in Philadelphia, but the contents had been brought from elsewhere to fill in the abandoned privy and had no specific relationship to the lot in which it was located (Burnston 1982, 1997:53). Several bones from a six-month fetus were recovered from a privy associated with an 1870s restaurant and saloon in Minneapolis, but again the context was ill defined (McCarthy and Kirby 1997; McCarthy and Ward 2000). Despite this paucity of evidence in the archaeological record, infanticide is an issue of broad archaeological interest (Scott 1997).

Privies embody “ideas about cleanliness, health, beauty, and privacy, as well as provide data on diet, socioeconomic status, [and] divisions between households. ... “ (Wheeler 2000: 1). In this case it is the privy behind 12 Orange Street (renamed Baxter Street in 1854) in America’s most notorious 19th-century slum that links infanticide and abortion not only to prostitution but also to the issues of women’s health and their victimization and exploitation in the rapidly expanding urban manufacturing economy. It is a fact that the privy was associated with a multi-occupant tenement building and its refuse cannot be specifically associated with any one group of residents, prostitutes or otherwise. The artifact assemblage in the strata in which the fetal and newborn remains were found, however, differs significantly from those observed in other Five Points privies that have been archaeologically documented (Yamin, this volume). This, combined with documentary evidence that in 1843 a John Donohue was indicted for running a “disorderly house” in the cellar of 12 Orange Street, makes it very likely that prostitutes were associated with the strata and, by extension, the skeletal remains. Perhaps the presence of the multiple sets of remains themselves contributes to a “brothel pattern.” It is not the only explanation but the one that best fits the existing artifactual and documentary evidence.

The question of who is responsible for placing the infants’ remains in the privy is another one entirely. The presence of multiple remains is difficult to explain, but the most likely of many equally plausible explanations is that one or more prostitutes working at the tenement used their privy to dispose of unwanted babies. Pregnancy was certainly an ever-present complication of prostitution, and women working as prostitutes faced an even higher risk of poor maternal health and miscarriage than did women of the middle and upper classes. What may be the most intriguing question is why, in an era of fairly reliable chemical and mechanical abortifacients, a woman would choose to carry twins to full term if they were unwanted.

Of course, another person in the neighborhood, perhaps even a midwife or physician, may have used the privy as a relatively safe place to dispose of the remains of unwanted children; if discovered, the authorities might simply

assume that the prostitutes at the tenement were responsible. Whatever the actual circumstances, the most interesting aspect of the discoveries in the Five Points privy is the opportunity to explore the intersection between the socioeconomic plight of workingwomen in urban America and their health, access to health care, reproductive choices, and the laws that govern all of these issues. These are topics of critical importance to modern American society, yet their roots lie in the traditions of common law that accompanied the first British colonists to the New World in the 17th century.

Historical Context

Abortion and prostitution were two issues that served as lightning rods in the debate over privacy and women’s sexual behavior in late-antebellum New York City (Mohr 1978; Brodie 1994; Srebnick 1995). In the decades between 1830 and 1860, rapidly changing economic patterns brought waves of young people to the large East Coast cities, increasing America’s urban population five times over its level in the 1820s. New York was particularly attractive to young women raised in the rural counties of the mid-Atlantic region due to its expanding manufacturing economy and the social opportunities embodied in its vast metropolitan expanse. Amy Srebnick (1995:59) notes that urban women during this period were caught in a society where “new sexual codes emerged that disassociated female sexuality from bourgeois discourse and family life and associated it with venality, danger, and most of all working-class culture.”

As the gap between domestic and working-class culture grew, the role of women in society changed as well. For instance, in the 1830s and 1840s the legal status of married women underwent a fundamental alteration in response to the new economic and social realities.

For centuries Anglo-American law had rendered wives dependent on and subservient to their husbands by denying them legal identities and by depriving them of control of property ... the complex of mid-nineteenth-century statutes which endowed wives with independent legal personalities and gave them the right to own their own property obliterated the very foundations of the patriarchal family (Basch 1983:9).

Prior to this period, “coverture imposed serious procedural and substantive disabilities on the wife. She could neither sue or be sued in her own name, she was limited in making contracts and wills, and all of her personal property as well as the management of her real property went to her husband” (Basch 1983:17). Beginning with Mississippi in 1839, the states began to pass statutes that allowed married women to own property they had brought to the marriage (Basch 1983:27). New York stood at the forefront of this movement: “The boldest of the statutes, the New York Earnings Act of 1860, gave wives the right to sue and be sued and included their wages as part of their separate estate. ... By 1865 twenty-nine states had passed some form of married women’s property law” (Basch 1983:28).

Unmarried women also began to experience and respond to the changes in American society in the 1830s and 1840s. Urban women working in New York’s burgeoning service and manufacturing sectors earned their own incomes, meager though they were, and began to establish their own social milieu. Participants in this less-restrained society ignored many of the conventions and restrictions bound up in respectable domestic culture and consequently ignited a backlash from those who linked social position and class with sexual identity.

New York’s workingwomen were subjected to the antebellum period’s harshest labor practices and wages that were often inadequate for even the most basic of needs (Stansell 1987:105). In his diary, contemporary writer and lawyer George Templeton Strong noted that “we have our Five Points ... our swarms of seamstresses to whom their utmost toil in monotonous daily drudgery gives only bare subsistence, a life barren of hope and of enjoyment” (quoted in Auchincloss 1989:138). Labor reformer Matthew Carey wrote in 1830: “Their numbers and their wants are so great, and the competition so urgent, that they are wholly at the mercy of their employers” (quoted in Stansell 1987:111).

To make up for this untenable financial situation, many workingwomen supplemented their employment with casual prostitution. They often viewed prostitution as “a part of everyday life: a contingency remote to the blessed, the strong and the fortunate, right around the corner for the weak and unlucky. ... neither a tragic

fate, as moralists viewed it ... nor an act of defiance, but a way of getting by” (Stansell 1987:176), especially in light of the misfortunes that often accompanied urban women’s lives (e.g., male desertion, widowhood, unemployment and underpayment, and unplanned pregnancies). For a seamstress earning \$6.00 a month in 1850, a week’s unemployment could easily result in homelessness and starvation. Given these alternatives, prostitution flourished in the antebellum period as wages fell in response to the increasing number of unskilled laborers that entered New York’s workforce.

The expansion of New York’s commercial sex industry began in the 1820s and was seen by contemporaries to have reached epidemic proportions in the 1830s and 1840s (Rosen 1982; Gilfoyle 1992; Hill 1993). At least 200 brothels operated in New York City in the 1820s, a figure that grew to more than 600 by the end of the Civil War (Gilfoyle 1992:31). Ranging from high-class parlors on Broadway to the bawdy houses scattered among the tenements, prostitution was a citywide phenomenon that was but one of the many vices in great supply in the Five Points district.

Five Points was New York’s, and perhaps America’s, most notorious slum: located in Lower Manhattan, east of City Hall, where Anthony Street crossed Orange and Cross Streets to form a five-cornered junction, it was described by contemporary writers as a “sink of iniquity,” “hell of horrors,” “the great central ulcer of wretchedness,” and “the very rotting skeleton of civilization, from which emanates an inexhaustible pestilence that spreads its poisonous influence through every vein and artery of the whole social system” (quoted in Hill 1993: 190). In 1873 *Frank Leslie’s Illustrated Newspaper* defined the roughly one-mile-square area as bounded by Canal Street, the Bowery, and Chatham, Pearl, and Centre streets (Anbinder 2001:17). Comprising primarily wooden two-and-a-half story buildings after 1813 when the city’s Collect Pond was filled, by 1830 the district’s sordid reputation was sealed as the center of prostitution shifted from the waterfront into Five Points (Anbinder 2001:19). Timothy Gilfoyle (1992:38) quotes 19th-century journalist George Foster as stating that in Five Points “nearly every house and cellar [was] a groggery below and a brothel above.”

By the 1840s, the city's sex trade was concentrated between City Hall Park and Five Points. In this area gangs mixed with sailors, dock workers, and streetwalkers in a swirling maelstrom of humanity viewed by the middle class and moral reformers alike as representing the depths of depravity toward which respectable society was being dragged. By 1850, the population density of Five Points was the highest in the city; by way of example, the Old Brewery, a ramshackle five-story tenement located in the heart of Five Points, was reportedly the home of more than 1,000 people crammed into the building's myriad rooms, cellars, and subcellars (Stansell 1987: 47). Landlords subdivided older houses into multifamily dwellings and often encouraged prostitutes to lease rooms as a means of increasing their rental incomes (Gilfoyle 1992: 42–45). Law enforcement officials rarely prosecuted landlords for renting their buildings or rooms as brothels, citing frequent acquittals and small penalties. In fact, the New York Court of Errors ruled, "if a tenant was prevented from 'beneficial enjoyment' of the property because a prostitute shared the same dwelling, the tenant was excused from payment of rent. ... but this decision only allowed the tenant to leave; it did not force the landlord to eliminate the prostitution" (Gilfoyle 1992:336,n.10).

Although by 1860 the area had lost its reputation as the city's center of wickedness, in the 1830s and 1840s Five Points was characterized by "tenant-houses ... [where prostitutes] occupy suites of apartments interspersed with those of the respectable laboring classes, and frequently difficult to be distinguished from them" (Citizen's Association of New York quoted in Stansell 1987:174). Ruth Rosen (1982) notes that it was not uncommon for near-destitute residents to rent corners of their rooms to prostitutes. The concentration of brothels in Five Points was remarkable; Gilfoyle (1992:40) reports, "on the single blockfront bounded by Anthony, Leonard, Orange, and Centre Streets, there were at least seventeen domiciles of sex in each of the four decades from 1820 to 1859. ... and an adjoining block usually contained ten or more similar establishments." Based on indictment records from the New York District Attorney's Office that historian Gilfoyle collected, Tyler Anbinder (2001:208) reports that a brothel was located

in nearly every building along the streets that radiated from the Five Points intersection. Along Orange Street, where the privy with the infants' remains was located, brothel proprietors were identified in 13 of 17 residences situated in the one block between the Five Points intersection and Leonard Street (Anbinder 2001:208).

Many among the genteel bourgeois viewed prostitution and its associated vices as dominant components of urban culture, at the center of which were the workingwomen who struggled in a paternalistic society that increasingly perceived them as degraded and unrespectable. Antebellum middle-class constructs defined the rightful role of women as homemakers and equated immorality with prostitution, and prostitution with poor women. Prostitutes "served as symbols of and as scapegoats for the social uncertainty that accompanied the changing urban community in the mid-19th century" (Hill 1993:113).

Abortion and Infanticide in 19th-Century New York City

The links between antebellum prostitution, abortion, and infanticide were easily forged by domestic society and propagated through the popular "penny" press, an innovation in urban print culture that began in New York in 1833. The penny press, so-named because each issue cost one cent, was aimed at a widespread, diverse audience and was hawked to the public by newsboys on the streets (Srebnick 1995:65). As social hysteria toward prostitution and abortion rose in the 1830s and 1840s, this new form of journalism fed into the fears of the middle class through its daily recitation of sensational crime stories, lurid tales of violence and sex, and a focus on the underside of urban life (Barth 1984). Gilfoyle (1992:133) notes, "more than any other single institution, the penny press transformed the prostitute and abortionist into national celebrities." Then as now, the penny press exploited the public's taste for sex and violence through crime "news" that chronicled the daily life of the streets while exposing the private lives of each issue's subjects for the vicarious pleasure of the papers' readers. That immigrants, the working class, and prostitutes constituted such a large percentage of those whose struggles the papers salaciously recounted secured their place at the bottom of

New York's social hierarchy, at least in the eyes of the bourgeoisie.

Like prostitution, crime was perceived to be rampant in New York City in the 1830s and 1840s. Social disruption associated with the large number of immigrants flooding into the city and the changing economic base was thought the harbinger of a downward spiral into chaos, a feeling that reduced the tolerance of the citizenry and police alike toward prostitution and other public displays of immoral behavior (Barth 1984; Srebnick 1995). "The family was undergoing rapid change as home and work-place were separated, new white-collar classes emerged, and the quest for economic opportunity led increasing numbers of young adults away from their families or 'communities of origin'" (Reed 1996:24). As a result, issues of sexual conduct became the main focal points for the moral reformers of the era, beginning with prostitution in the 1830s. By the early 1840s, abortion had replaced prostitution as the main topic of discourse regarding women's rights (Mohr 1978).

The sensational trial of Ann Lohman in 1841 on charges of criminal abortion laid the foundation for more than a century and a half of rancorous debate on the issue, fusing "concern about sexual conduct ... with anti-crime campaigns; vice and crime were regarded by many not only as intimately connected, but as constituting a cause-and-effect relationship" (Srebnick 1995:95). New York City's abortionists enjoyed their greatest prosperity from 1840 to 1871 (Gilfoyle 1992:135). Often "irregular" doctors (those outside the medical establishment) and midwives, abortionists served the needs of women from every social and economic station and were kept particularly busy by women "of the upper middle strata" (Gilfoyle 1992:135).

Ann Lohman was among the most famous, and most prosperous, of New York's abortionists. Advertising her services under the name "Madame Restelle," Lohman was convicted of criminal abortion in the 1841 trial, the first of many for her, and was sentenced to one year in prison, a term she never served (Browder 1988). Her case led to the enactment of the 1845 New York Abortion Act, which for the first time held the mother as well as the practitioner criminally liable of a misdemeanor for an abortion, regardless of the stage of

pregnancy. Prior to this act, abortionists were charged under New York's 1829 abortion statute, which was originally intended to protect women from quacks and unsafe medical practices (Hill 1993:237). Under the 1829 act, only the person performing the abortion was criminally liable (Means 1968; Mohr 1978; Brodie 1994). This earlier statute was one of the most restrictive in the country at the time and prohibited anyone, including a doctor, from attempting an abortion at any stage of pregnancy. An abortion performed after "quickening," the point at which movement of the fetus is first discernible (usually at 18 to 20 weeks), was an act of manslaughter or, if the mother died, murder. The sentence for an abortionist convicted of performing the procedure prior to quickening was up to one year in prison and a fine not to exceed \$500 (Means 1968).

Until 1829, common law permitted abortions prior to quickening, the determination of which was left to the mother. But the relatively strict 1829 law also placed the determination of quickening in the hands of the mother, effectively making the law unenforceable except under extraordinary circumstances (Means 1968; Mohr 1978; Brodie 1994). Even the 1845 law was rarely used to prosecute abortionists or mothers, although it later served as the basis for moral reformers and physicians to attack the abortion industry in the decades after the Civil War, when public tolerance of abortion decreased and enforcement became stricter (Mohr 1978). Consequently, contemporary estimates in the 1850s placed the number of abortions at one in every four pregnancies (Lane 1997:119–120).

It was the concerted lobbying of physicians that resulted in successful campaigns to outlaw "induced miscarriages" at any stage of pregnancy. "Victorian women did have many ways to procure miscarriage relatively easily and safely. ... There was little outcry about abortions being immoral or unethical until the American Medical Association (AMA) began a campaign to curb it in mid century" (Brodie 1994:33). Beginning in the late 1850s, physicians led by Horatio Robinson Storer, publisher of the influential *Journal of the Gynaecological Society of Boston*, petitioned state legislatures to criminalize both abortion and contraception (Brodie 1994:266–275). This movement coincided with physicians' efforts to professionalize

medicine by controlling who could practice and the therapies that were allowable. Part of the motivation underlying these efforts was in response to the changing roles of women in the new market economy as physicians, exclusively male, sought to establish positions as both protectors of public health as well as moral arbiters (Reed 1996:26). "The campaign against abortion was seen as a way to elevate their status among the general public by emphasizing their medical and scientific expertise in obstetrics and gynecology. ... The growing public concern with women's health and the increasingly open reliance of middle-class, married couples on abortion as a family limitation practice provided a focal issue" (Brodie 1994:270). By 1880 induced abortion was illegal and non-physician practitioners were officially out of business.

The AMA's postbellum campaign against abortion drew law into the social arena of women's reproductive choices. It also set up and sharpened divisions between men and women in the new American society:

The law, the most effective instrument of social control in a modern society, was in all of its manifestations male. It was created, shaped, disseminated, altered, and adjudicated by men. Men fashioned disabilities for women, subsequently devised ways of remedying them for women, and ultimately determined how far concessions to women should go. Few social institutions offer a clearer view of the way men delineated the boundaries of women's lives than the law (Basch 1983:225).

Men attempted to erect many of these boundaries around the independent, single, working-women who had begun to emerge as a social force in New York in the 1830s and 1840s. As with the issue of artificial contraception, Janet Brodie (1994:154–155) notes:

The power to curtail pregnancies and thus to separate sexual intercourse from reproduction threatened to alter the relations between men and women, to diminish the power of husbands over their wives and of parents over their children, especially their daughters. ... Opponents feared that if fear of pregnancy were removed from sexual intercourse, wives' sexual faithfulness could not be assured, legitimate children might not so easily be distinguished from illegitimate children ... offering women some power over reproduction raised in some minds the specter of illicit female sexual activity before and during marriage.

In contrast, it was at this same time that laws governing the coverture of married women began

to loosen. This apparent paradox underscores the bourgeois view of domestic married life as the preferred goal for women, in opposition to the socioeconomic trends of the times that were reforming the relationships between the sexes and providing for women both increasing choices and greater risk of exploitation.

In both the colonial and antebellum periods, police and prosecutors alike tended to overlook abortions unless the procedure was performed to cover up crimes of adultery or fornication or in cases where the mother died. Such a case competed with Lohman's abortion trial for sensational front-page headlines in 1841, when New York "cigar girl" Mary Cecilia Rogers was found dead in the Hudson River (Srebnick 1995). Rogers's death was very likely due to an abortion performed by one of Lohman's associates in Hoboken, New Jersey, although none of the suspects in her death was ever prosecuted. Together, Rogers's death and Lohman's trial initiated the movement that ultimately resulted in New York's 1845 abortion law, which was passed largely through the assistance of Assemblyman Frederick Mather, Rogers's distant cousin.

Unlike the history of abortion and prostitution in New York City, both the intensity of social condemnation and the number of prosecutions for infanticide fell consistently from their peak in the 18th century to an almost imperceptible level in the 20th century (Lane 1997:190,234). Infanticide was one of the great scandals of the colonial period, to such a degree that both British and American midwives' laws dating from the 17th century specifically mandated that all illegitimate births be reported to the authorities (Langer 1974; Piers 1978; Rose 1986). Social mores based on religious beliefs and strict inheritance laws made concealment of the death of an illegitimate birth a capital offense. Laws passed throughout the American colonies, especially in 17th-century New England, equated obscuring the death of a baby, whether born alive or not, with murder (Beck 1817; Klepp 1994:74; Lane 1997:29).

Not surprisingly, these colonial statutes were rooted in English common law:

The legal heritage of most of America was distinctly English. Except for a few jurisdictions, the impress of the common law on American law was pervasive. Most states stipulated their adherence to the common law in early statutes or state constitutions. American law, moreover, was knitted to English law through a

shared group of precedents, statutes, procedures, and theories (Basch 1983:16).

Among these early laws were proscriptions against infanticide. “In early modern Europe, statutes tailored to the quick and unforgiving prosecution of unmarried women for [infanticide] appeared in 1624 in England and in 1690 in Scotland, and during the 17th and 18th centuries hundreds of single women in Scotland and England were prosecuted for this capital crime” (Symonds 1997:69–70).

The common law statutes notwithstanding, social consensus regarding infanticide and subsequent penalties was not, however, uniform throughout the colonies and was strongly influenced by the prevalent religious beliefs. In Puritan New England, pregnancy outside of marriage was seen as evidence of sin and fornication, and concealment of an illegitimate birth was held as the most serious of offenses. During the late-17th century the rate of indictments for infanticide in Massachusetts was more than double the rate in London, despite that city’s much higher population and exorbitant level of illegitimacy (Lane 1997:56). In contrast, in colonial Pennsylvania there was little support to prosecute infanticide as murder. Between 1718 and 1775, eight women were convicted of concealment in Pennsylvania; of these, three were hanged (Klepp 1994:74–75). Between 1779 and 1792, 15 women were charged with concealment, but only three were convicted, and two of these three women were subsequently pardoned. Over the period between 1682 and 1800, 73 women were prosecuted in Pennsylvania for concealment and infanticide; of these, 57 were tried, 24 convicted, and 8 executed (Klepp 1994:75,n.9). Over time, juries in Massachusetts eventually adopted the more humanitarian position prevalent in the southern colonies: “of the 71 cases [of infanticide] brought in Massachusetts, which led all of North America, only 26 resulted in conviction, just two after 1740, with executions dropping in rough proportion” (Lane 1997:56).

In 1786 and again in 1790, the Pennsylvania concealment law was revised to require independent proof that the baby was born alive before the woman could be convicted. In 1794, the legislature again amended the law to require evidence that the woman purposely planned the child’s death and reduced the sentence from

hanging to a maximum of five years in prison. After 1794, most of the women prosecuted in Pennsylvania for infanticide were tried for concealment rather than murder (Klepp 1994:76).

In colonial New York, the illegal death of a fetus or infant was viewed, at least officially, as a very serious offense. In her paper on the discovery of fetal remains in a privy at Head House Square in Philadelphia, Sharon Burnston (1982) notes that New York City’s Common Council passed a law in 1716 that specifically addressed both abortion and infanticide. Quoting Claire Fox (1966:442–445), Burnston (1982: 169) relates the sections of the Oath of a Mid Wife that defined their numerous duties:

you Shall not Suffer any Womans Child to be Mur-
thered Maimed or Otherwise hurt as much as you say.
... you Shall not Give any Counsel or Administer any
Herb Medicine or Potion or any other thing to any
Woman being with Child whereby She Should Destroy
or Miscarry of that she goeth withall before her time. ...
you shall not Consent Agree Give or Keep Counsel that
any Woman be Delivered secretly of that she goeth with
but in the presence of Two or three Witnesses ready. ...
you shall not Conceal the Birth of any Bastard Child
within the Corporation of the City of New York but
Shall forthwith upon Understanding thereof Give Knowl-
edge of the same to the Mayor Recorder and Aldermen
of the City of New York ... or [to the] Chief Magistrate
of the Ward where such Bastard Child Shall be born.

New York City’s law was based on the Act Anent Child Murder passed in Scotland in 1690, which itself loosely followed a 1623 English statute. The 1690 act “ordered juries to presume guilt, placed the burden of proof on the woman accused, and, most important, presumed that women could kill their own children. ... (Symonds 1997:128). The Scottish law was replaced in 1809 by another statute that downgraded the capital crime to one where the penalty was no more than two years of imprisonment (Symonds 1997:159).

Clearly during the colonial period, a woman carrying an illegitimate baby not only risked social ostracism but also the full wrath of the law, as did those who might assist her. The colonial period was one of strict class, racial, and economic divisions where women had little personal freedom or few individual rights. Because of these hierarchical boundaries, an unmarried or unfaithful pregnant woman may very well have been driven to dispose of

her baby upon birth. The women accused of infanticide or concealment were almost always poor and unmarried and often servants or others living at the periphery of respectable society (Lane 1997:50). In colonial New England, 4 of 17 early homicide cases were prosecuted under these laws; every one of the four women was found guilty, and all but the one woman who died in jail were hanged (Lane 1997:50).

Throughout the first half of the 19th century, the practicalities of urban life in a wage economy eroded the primary role religion had played as a social mediator and significantly affected the dynamics of personal relationships between men and women. In urban New York these changes resulted in much higher incidences of abortion, infanticide, and prostitution. Whereas in the colonial period few young people remained unmarried, and children were accepted as extra workers on the family farm, by the early-19th century city children were only financial liabilities until they could bring needed cash into the household (Lane 1997:119). Most men could support themselves and had little economic need to marry, but for most unskilled women it was virtually impossible to support themselves, let alone also care for and support an infant. In addition, as Roger Lane (1997:119) points out: “there was no way for a poor woman safely to give up a live infant. ... Wet nursing was expensive, and before the invention of pasteurization, much later in the century, cow’s milk was slow death and the poorhouse the last stop for almost all ‘foundlings’ admitted to it.” Indeed, Marilyn Hill (1993:389, n.78) notes that few infants remanded to the Almshouse lived for more than a year. She recounts a poignant diary entry that prominent New Yorker Philip Hone wrote on 8 December 1838, when an abandoned infant was found on his doorstep during a dinner party that he was hosting for some of the city’s most illustrious citizens (Hill 1993:389,n.78):

My feelings were strongly interested, and I felt inclined at first to take in and cherish the little stranger; but this was strongly opposed by the company, who urged, very properly, that in that case I would have twenty more such outlets to my benevolence. I reflected, moreover, that if the little urchin should turn out bad, he would prove a troublesome inmate; and if intelligent and good, by the time he became an object of my affection the rightful owners might come and take him away. So John Stotes was summoned, and sent off with the little wanderer to the almshouse.

Given the exceedingly high infant mortality rates for almshouse infants and children during the antebellum period, it is very unlikely that this “little wanderer” ever reached adulthood.

In contrast to the colonial period, early Victorians generally adopted a compassionate view towards mothers accused of infanticide. This was due in part to recognition of the physical discomfort and fear of death that accompanied childbirth and the mental anguish these factors caused (Showalter 1980; Ward 2002). Secondly, in the new market-based society both prosecutors and judges alike formed a conception of “the ‘fallen woman’ as a subject heavily determined by social forces, the antithesis of the autonomous, rational masculine self” (Ward 2002:251; also Anderson 1993). This view laid the foundation for modern interpretations regarding the stresses of pregnancy and awareness of postpartum depression that, in turn, have greatly influenced prosecutions for infanticide in which jurisprudence functions in a therapeutic manner rather than a punitive one to determine what is best for both the accused and society at large (Schwartz and Isser 2000:154).

One of the abiding features of criminal justice, from the Victorian era to the present, is that the resolution of this tension [between the two modes of subjectification of the accused] varies according to the gender of the defendant: courts are more likely to accept portrayals of women offenders as “sad” or “mad” rather than “bad,” and less inclined to treat them as rational, autonomous agents (Ward 2002:269).

While this perspective continues into modern society, another one arose in the wake of the postbellum antiabortion movement in which poor women were seen as the cause of their own wretched circumstances. This “blame the victim” mentality refused to recognize the social and economic forces that had trapped many women in the perilous underworld of the urban environment and consequently retarded various attempts to improve workingwomen’s lives until well into the 20th century.

In a juristic irony, as the number of prosecutions for infanticide fell through the 19th century, the number of infants whose remains were found markedly increased. Lane (1997: 119) estimates that the number of infanticides that actually occurred during this period but were not reported to a reluctant justice system was larger by an order of magnitude than the

number of adult homicides. He notes that in Philadelphia during the 1860s, the reported annual total of “dead infants found” in vacant lots, privies, and gutters reached about one every other day (Lane 1997:119). Thousands more were reported as stillborn or having died of suffocation and other causes which the primitive methods of forensic investigation during that period could not identify.

Cases of infanticide were also reported in the Five Points district. Interestingly, Anbinder (2001:224) describes two cases where the remains of unwanted babies were found in the 1840s, the same period from which the strata in the privy at 12 Orange Street date. The first case was in 1841 when passersby discovered the body of a newborn on Anthony Street. The second case was reported in the *New York Herald* in 1849 and concerned the remains of a newborn found in a sink in a house at 6 Doyer Street, two blocks east of Orange Street. In the latter case police arrested Eliza Rafferty, a 30-year-old Irish woman who told them the baby was stillborn. The coroner, however, ruled that the infant had been strangled. Anbinder (2001:476, n.41) notes that the results of the case were never published and that no indictment was apparently brought against Rafferty for the death of her baby.

With an increasing number of states outlawing abortion after the Civil War, infanticide rates for America’s urban centers at least maintained their antebellum levels and probably swelled. Lane (1997:309–310) notes, “the biggest wild card in counting urban homicides is infanticide ... the dark figure for [which] was surely far higher than the official one. ... If the number of infanticides were actually counted [the antebellum] murder rate might well be higher, even much higher, than [the modern murder rate].”

The urban infanticide rate began to decline in the early-20th century as the result of two major developments, one technological and one social, that greatly assisted single and poor pregnant women (Lane 1997:190). The first was invention of the pasteurization process, which significantly increased the safety of the nation’s milk supply and gave infants left at the almshouses their first real chance for survival. The second was the growing practice of women giving birth in hospitals or under professional physicians’ supervision (Starr 1982:49–50; Lane 1997:

190), which reduced the opportunities for both the concealment of pregnancies and commitment of the act itself. By the 1920s, indictments for infanticide had all but disappeared, the result of better living standards, increased wages, and greater access to health care for women of all economic levels. Pressure on unwed mothers during this period was also eased by an increase in the number of adoptions, especially of girls, as the news reports began to highlight high-profile adoptions by celebrities like Babe Ruth and George Burns and Gracie Allen (Lane 1997:235).

While sex was one of the primary arbiters of behavioral norms and social value, race governed every facet of antebellum life. On New York City’s socioeconomic scale, African Americans fell below even the most recent immigrants, prohibited from almost all occupations except menial labor (Curry 1981:16–23; Hill 1993:55). African American women toiled as laundresses or street peddlers, among the only paid employment they could find (Stansell 1987:13). Yet, given even these dire economic conditions, according to official records and contemporary city guides, apparently only a small number of African American women turned to prostitution. While several African American brothels operated in the city, and Gilfoyle (1992:41) reports that the “spatial boundaries typical of black prostitution later in the century were absent in antebellum New York,” the very low percentage of African American women arrested for prostitution most likely reflects their limited numbers in the commercial sex industry (Hill 1993:56). This low representation is probably due to both the small percentage of the city’s population that African Americans comprised and the context of racism and crime in antebellum New York City. Population statistics indicate that in 1825 African Americans comprised 7.5% of New York City’s population, but by 1860 they accounted for only 1.5% (Curry 1981:4–5; Hill 1993:55). But it was not merely due to the small number of African American women who lived in New York City that so few were prostitutes. Hill (1993:56) argues that “black women may have avoided prostitution more than white women because they were discriminated against by clients, or because they feared racially motivated abuse by customers as well as legal harassment and reprisals by the police and courts.”

It is also possible that, in actuality, there were many more African American prostitutes than were reported. Given the universal racism of the antebellum period, New York officials simply may have ignored much of the African American sex trade unless it resulted in blatant public disturbance (Hill 1993:57). Gilfoyle (1992:41) reports that while many African American brothels in Five Points catered to an exclusively African American clientele, many others accommodated an integrated mix of both patrons and workers. In general, most of the historical data regarding population figures, occupations, mortality and homicide rates, and other government vital statistics reflect only the information reported for whites, with little data collected from African Americans and other minority groups. Police often ignored crime in the African American community unless it involved white individuals, so little contemporary data on this aspect of African American life was collected (Lane 1997:150). This is true of homicides as well as of abortions and certainly of infanticides.

From their place at the bottom of the city's social and economic system, African American women struggled to survive along with their white female counterparts in the wage economy of antebellum New York. It is unclear whether the abortion and infanticide rates for the antebellum African American community met or exceeded those for the workingwomen of European descent, but, as Lane (1997:234) points out, African Americans were sympathetic to the plight of single mothers and had for many generations followed a tradition of informal adoption that may have given pregnant African American women an option more preferable than either abortion or infanticide.

Antebellum Infant Mortality

Early-19th-century New York City was characterized by the rapid increase of tenement housing in response to the influx of immigrants drawn to the city by its emerging manufacturing economy. Concomitant with this increase in population density was a marked upsurge in both the prevalence of infectious disease and infant mortality rates, largely the results of poor sanitation and polluted water and food supplies. While infant mortality in the colo-

nial United States was always excessive, rates during the first half of the 19th century were exceedingly high for both African Americans and European-descended populations, although in most urban areas African American rates were disproportionately greater.

Newborns and young children suffered the highest mortality rates in all of America's cities. For example, a contemporary study found that between 1807 and 1827 in Philadelphia 47% of children's deaths occurred before the age of one year, while 81% of all childhood deaths occurred before the age of five years (Emerson 1827). These figures do not include stillbirths or fetal deaths. Nationally, deaths of children under 10 years of age accounted for 40%–50% of total mortality for the whole American population prior to 1850 (Curry 1981:143). Even this high estimate is derived from incomplete mortality schedules that do not reflect the actual number of deaths that occurred, particularly among minority groups.

Official government census data also reflect the steadily increasing childhood mortality that marked the first half of the 19th century. In 1820 in New York City, children under 14 years of age comprised 37.4% of the white population and 26.7% of free persons of color (Curry 1981:256). By 1840, these figures had dropped to 26% and 20%, respectively. By 1850, these rates had fallen even further, to 23.6% and 18.8%, respectively. Between 1820 and 1850, the number of living children in the white population fell 37%, while those in the free African-American population fell 30%.

Although historical mortality records are typically incomplete and often classify specific diseases under broad headings, the prevalence of the diseases that dominated the 19th century can be estimated from the existing documentation. The primary causes of death for children during this period were dysentery, cholera, and numerous other bowel disorders and infections related to poor sanitation and nutritional inadequacies. Coroners often classified these diseases according to symptoms rather than etiologies and did not report specific differential diagnoses. Although tuberculosis (then known as consumption) was the primary cause of death for adults in America throughout the 19th century, the majority of infant and childhood deaths were due to the unsanitary living conditions that

characterized America's cities prior to the advent of 20th-century health reforms.

Insights into antebellum infant mortality and illegitimate births are provided through an uncommonly direct survey of prostitution in New York City during the 1850s. Under the direction of Dr. William Sanger, resident physician at the City Almshouse at Blackwell's Island, police officers administered a questionnaire among the prostitutes of the city in 1855 (Sanger 1939). Among the questions asked were: "If you have had children, how many?"; "Were these children born in wedlock?"; and "Are these children living or dead?" Published in 1858, the answers to these questions illustrate the often-wretched conditions into which babies were born in the antebellum metropolis and the factors that put prostitutes at high risk for poor maternal health.

The questionnaire data collected by Sanger indicate that "of every hundred children borne by women who [were] prostitutes ... fifty-seven were the fruit of promiscuous intercourse" (Sanger 1939:480). The "excessive mortality among this class of children" was demonstrated through the second question, the results of which indicate that of 1,917 children born to prostitutes (including 1,090 illegitimate births), 62% died. Using comparative data from the New York State Census of 1855 and the City Inspector's reports of 1854, 1855, and 1856, Sanger (1939:481) calculated that the infant mortality rate for the general population of New York City was 18.5%. The infant mortality rate among prostitutes was almost four times that for the general population between 1854 and 1856. To underscore the excessive rate of infant mortality, Sanger (1939:481) continued: "This calculation must be taken in connection with the cases of abortion produced by extraneous means, not admitted to in the replies of the interrogatories, and which will probably never be known. ... It is impossible to doubt that these are far more frequent than recorded in the tables."

When analyzed by whether the mother was single, married, or widowed, the infant mortality rate for children of single women who were prostitutes was over 14% greater than that for the other two categories (Sanger 1939:481). Sanger's data also indicated that between 1854 and 1856 premature births and stillbirths together accounted for 12.5% of the births reported for New York City. Applying the

same rate to births among prostitutes, Sanger (1939:482) calculated that the infant mortality rate for the children of prostitutes presented "features which place it almost on a level with the infanticide of some Eastern nations," where the practice, especially involving infant girls, remained a common cultural tradition.

Clinical Determination of Newborn Viability

When undocumented fetal or neonatal remains are discovered, law enforcement authorities employ pathologists and occasionally physical anthropologists to determine if the remains represent an illegal abortion, a stillborn baby, or a baby that died as the result of willful neglect or abandonment (infanticide or neonaticide). In modern medicolegal terms, the loss of a fetus up to 28 weeks old is termed an abortion or miscarriage, even though a fetus of 26 weeks may survive with intensive hospital care (Mason 1989). After 28 weeks (24 weeks in the United Kingdom) the death may be classified as a premature birth or stillbirth (Scheuer and Black 2000). A stillbirth is defined in most jurisdictions as a fetus that has survived to near full term but is not alive when delivered. Under most legal codes, a child does not have a "separate existence" nor become a legal person holding civil and personal rights until he or she is completely free from the mother's body (Knight 1997:121). Until this separate existence is obtained, the infant cannot be the victim of murder or infanticide. In the case of a stillbirth, the infant never lived in the legal sense of the term and charges of murder or infanticide cannot be brought against the mother.

An abortion may be natural, therapeutic, or criminal. About 20% of pregnancies fail naturally (Knight 1997:115), while therapeutic abortions are performed to save the life of the mother or if there is substantial risk that, if born, the child would suffer from serious mental or physical abnormalities. A legal abortion is one conducted within the laws of the country by a registered medical practitioner in a hospital or regulated health-care facility. Such procedures usually require only the pregnant woman's consent, unless the woman is a minor.

Infanticide is defined as parental killing of an infant that is between one day and 12 months

old at time of death (Resnick 1970; Mason 1989). Neonaticide is a subtype of infanticide and represents the killing of a newborn within 24 hours of birth (Silva et al. 1998). Both the legal and psychiatric professions have focused on motivational factors within individual perpetrators in order to understand the basic psychological reasons that underlie infanticide and neonaticide. Among the four motivational factors for infanticide identified by Phillip Resnick (1969, 1970) is the altruistic parental motive, in which the parent believes that death will relieve the infant of real or imagined suffering. In unwanted infanticide, the victim's death results from a parental lack of desire for the pregnancy or the newborn. These are the two most likely motives for infanticide among workingwomen in antebellum New York City. The other two (killing under the influence of active psychotic processes and accidental infanticide in the absence of homicidal intent) represent relatively small percentages of the causes for documented intentional infant deaths. A new system to classify the psychological causes for infanticide and neonaticide proposed by J. Arturo Silva and colleagues (1998) places more emphasis on the cultural and environmental factors (the psychosociocultural aspects) that underlie the practice, conceptualizing specific behaviors within their cultural matrix and addressing the external stressors, such as economic conditions and religious beliefs, that affect and direct human behavior. From this perspective, infanticide can be clearly linked to the overwhelming economic and social pressures exerted on financially distressed women struggling to survive on the periphery of respectable society.

Clinically, the determination of whether a baby was stillborn or had died from neglect or abandonment is based on the viability of the fetus at birth. As modern medicine has evolved so has the definition of viability, but in the late-18th and early-19th centuries it was based on anecdotal rather than medical evidence (Williams 1957; Hoffer and Hull 1981; Weir 1984; Knight 1997). The criteria for viability included a test to determine whether the lungs of the infant floated when immersed in water, which was thought to demonstrate that the baby had drawn at least one breath before expiration. It has since been proven that this analysis has little value because biochemical processes associated with postmortem

decomposition may also introduce air into the lungs of a deceased fetus or neonate. Additionally, coroners searched for dermal bruises that might indicate circulation, and therefore cardiac function, had occurred after delivery. Since numerous physiological and taphonomic factors may also obscure these criteria, even today the determination of viability is based on the specific circumstances of each case.

Almost 50 years ago, Cyril Polson's (1955: 403) *The Essentials of Forensic Medicine* stated, "proof of live-birth, an essential ingredient of infanticide, is notoriously difficult and for this reason alone the charge is likely to fail." Even the most modern advances in forensic technology have not served to change that fact; at present, the only absolute evidence that a baby survived after birth is the presence of extraneous material in the baby's digestive tract or stomach (Knight 1997:123). This could include saliva or milk in the stomach or the gastrointestinal tract. Under current American legal guidelines, when the remains of a full-term fetus are recovered, medical examiners assume the baby was viable if there are no medical or physiological reasons to preclude spontaneous breathing. A fetus is now considered viable if development had progressed past 26 weeks in utero, at which stage more than 50% of deliveries survive (Knight 1997:122–125). Between 21 and 26 weeks survival is problematic, and under 21 weeks a fetus is insufficiently developed to survive independently. In contrast, historical abortion and infant concealment laws defined "quickening," the first movement of the fetus that begins around 18 to 20 weeks, as the threshold that determined whether an abortion was legal or criminal.

The cause of death in the vast majority of infanticide cases is mechanical asphyxia through smothering, strangulation, or choking (Knight 1997; DiMaio and DiMaio 2001). Most of these modes of death leave little or no physical traces and are virtually impossible to identify in dry skeletal remains. Some traumatic deaths result in cranial fractures, particularly of the frontals and parietals (Hobbs 1984; Crist et al. 1996). These fractures may accompany suffocation and other types of violent action. Weapons are less commonly involved. It is rare for infants to be deliberately stabbed or shot, and in most reported instances these types of deaths are ruled accidental.

Analysis of Fetal and Infant Skeletal Remains

When the skeleton of an infant is recovered within the forensic context, physical anthropologists attempt to estimate the age of the individual and then examine the remains for a possible cause of death. These determinations are particularly important for legal purposes, as penalties vary significantly for illegal abortions, child abuse, negligence and accidental deaths, the different degrees of murder, and abandonment. Soft tissue and skeletal lesions in suspected child abuse cases must be carefully documented since other, noncriminal, factors may also create lesions that mimic those of abuse (Snow and Luke 1970; Duhaime et al. 1987; Crist et al. 1996). Since fetal and full-term cranial bones look very different from those in the adult skull, pathologists and other criminal investigators may misinterpret unfused sutures and normal skeletal variants as evidence of trauma.

At present, there are no completely accurate, commonly accepted methods for determining the sex or racial ancestry of fetal and infant remains through skeletal examination (Byers 2002:189). Some research does suggest that the morphology of the fetal and neonate ilium varies by sex (Boucher 1957; Weaver 1980, 1986; Mittler and Sheridan 1992), but methods based on this bone have not yet been proven consistently accurate. More recent research on a documented historic-period sample of 61 children under 11 years of age (including 16 infants between birth and 6 months old) suggests that morphological features of both the mandible and ilium are sexually dimorphic (Schutkowski 1993). Using these features, the sex of children under 5 years old was correctly determined for 70%–90% of the remains included in the study when assessed using these two bones.

The determination of the age at death is much more precise. Estimating the age at death from immature remains consists of establishing the physiological age of the skeleton and then correlating that result with chronological or gestational age (Ubelaker 1987; Huxley and Angevine 1998; Byers 2002). Anthropologists employ a range of methods to estimate physiological age, depending on which skeletal elements are present and their degree of

preservation. These include documenting the appearance of ossification centers, taking measurements of long bone lengths, and assessing the calcification and development of both the deciduous and permanent dentitions (Ubelaker 1987; Byers 2002). With fetal remains, body length and other regression formulae based on a large series of skeletal measurements are used (Fazekas and Kósa 1978; Kósa 1986; Scheuer and Black 2000). Because males and females differ in their rates of skeletal development, each aging technique includes standard deviations designed to reflect the biological variation inherent in chronological aging.

Anthropologists report the age range of fetal and neonate remains in terms of 28-day lunar months (Fazekas and Kósa 1978; Kósa 1986; Scheuer and Black 2000), which are also given in chronological or gestational ages (based on a 31.1-day solar calendar) by many obstetric and gynecological references (Huxley and Angevine 1998). Clinically, pregnancy is considered to last 266 days from the date of conception or 280 days (10 lunar months or 9 gestational months) from the first day of the last menstrual period. Gestational age is divided into three stages (Avery 1999): preterm (less than 259 days or 37 weeks from the first day of the last menstrual period), term (259 to 286 days inclusive), and post-term (287 or more days or 41 or more weeks). Forensic anthropologists always report an age range rather than a specific age to reflect human variation and the potential statistical errors of the aging techniques.

Examination of the remains for lesions related to abnormal development, perimortem trauma, or disease completes the anthropological autopsy. Since most acute diseases do not affect the skeleton, the vast majority of skeletonized fetal and newborn remains do not present pathologic lesions. More frequently, immature skeletal remains present lesions resulting from trauma. These may include cranial fractures or fractures of the long bones, clavicles, or ribs. In general, it is rare that a specific cause of death can be ascertained from skeletonized fetal or infant remains.

Neonatal and Fetal Remains from 12 Orange Street, Five Points

The well-preserved skeletal remains of two full-term neonates and two bones from a fetus

were recovered from a stone-lined privy shaft at Block 160, Excavation Unit 2, during excavations conducted by archaeologists from John Milner Associates, Inc. (JMA), prior to construction of a new federal courthouse at Foley Square in Lower Manhattan (Yamin 2000; Cantwell and Wall 2001:216–223; Yamin, this volume). The privy was located in Lot 43 behind a tenement building that had formerly stood at 12 Orange Street (renamed Baxter Street in 1854), one of the streets that created the infamous Five Points intersection (Figure 1 in Yamin, this volume). This privy (Feature AG) included deposits with a *terminus post quem* (TPQ) of 1840, as indicated by the ceramic and glass artifacts found in the privy's primary soil layers. Historical documents indicate that a brothel operated in the cellar of the tenement at 12 Orange Street until July 1843, when neighbors' complaints prompted authorities to shut it down. The privy shaft was subsequently disturbed by construction of a stone wall in the early 1890s.

The first individual recovered from the privy shaft (Neonate 1) was almost complete, including six deciduous tooth crowns, most of the left ribs, and most of the unfused vertebrae. The second full-term infant (Neonate 2) consisted of only cranial elements and portions of the upper limbs. The third individual, a fetus aged 20–22 weeks (4½–5 gestational months), was represented by a right humerus and a left scapula, both of which were partially intact.

Disturbance to the privy shaft disarranged the skeletal remains of both neonates, relocating most of the first infant's remains and some bones from the second to higher stratigraphic levels. Portions of both skeletons were therefore recovered from strata designated with four different catalog numbers. Table 1 provides

provenience data for each of the two neonates. The fetal remains were recovered from Catalog Unit 980, a small lens of primary privy deposits located along the privy's wall. The TPQ for this unit is 1840; the TPQ for the fill overlying the units in which the skeletal remains were recovered is 1892.

Data Collection and Analytical Methods

The respectful and dignified treatment of the remains from the Orange Street privy was of primary concern throughout the project. All of the individual bones were cleaned and stabilized using an anhydrous alcohol solution and soft brushes under the direction of archaeological conservator Gary S. McGowan. The remains were repackaged individually in 4-mm-gauge polyethylene bags and stored in buffered fiberboard archival containers.

Examination and analysis of the remains began by laying out each bone in anatomical position on a table lined with inert polyethylene foam (Ethafom) to reduce the potential for breakage and to protect the remains from abrasion during examination. Each bone was then identified, and bones were grouped together by individual. The use of the anatomical position facilitates identification of each skeletal component and determination of the minimum number of individuals represented. It also allows patterns of trauma and pathology to be discerned. The skeletal inventory was coded using standardized forms from Jane Buikstra and Douglass Ubelaker (1994).

Subsequent to identification, each bone and tooth was macroscopically and microscopically examined to document morphological

TABLE 1
PROVENIENCE OF SKELETAL COMPONENTS FROM NEONATES 1 AND 2

Catalog Number	Neonate 1	Neonate 2
973	Left tibia, left fibula, and left radius	Cranium, mandible, left and right humeri, left ulna, left radius, and one left rib
981	—	Right clavicle
984	Left ulna and left femur	—
985	Cranium, mandible, and all postcranial elements except those from catalog units 973 and 984	—

characteristics, developmental anomalies, lesions, and indications of trauma. The degree of erosion and fragmentation of each bone was also noted and recorded. Erosion refers to complete destruction of bony tissue and is not reversible. Erosion is particularly common at the epiphyseal ends of long bones and on the surfaces of the cranium. Fragmentation denotes the breakage of bones into smaller pieces without destruction of the bone tissue comprising the fragments. Fragmentation is reversible with the use of consolidants. No attempts were made to consolidate any of the remains from the privy at Block 160. Additionally, no invasive sampling of the remains was undertaken, including sampling for DNA analysis.

Osteological lesions were classified as representing either antemortem, perimortem, or postmortem events. Antemortem lesions are those that formed while the individual was alive and may include partially or completely healed fractures, healed periosteal infections, or modifications of specific bones resulting from repetitive motions. Perimortem lesions are those that occurred around the time of death and therefore may be related to the cause or manner of death. Perimortem lesions may exhibit partial healing. Postmortem damage refers to lesions that resulted from taphonomic processes after deposition as well as damage that may have occurred during excavation or subsequent laboratory processing. Lesions were classified based on assessments of fracture patterns, degree of erosion on fractured edges, and color differences between fractured and periosteal surfaces (following Micozzi [1991]; Ubelaker and Adams [1995]; and Haglund and Sorg [1997]).

Pathologic lesions were recorded as either infectious or traumatic in origin. Infectious (periosteal) lesions are defined as areas of abnormal proliferative growth found on the external surfaces of long bones and the ectocranial and endocranial surfaces. Periosteal reactions were recorded by location, extent of involvement, and degree of remodeling according to terminology suggested by the Paleopathology Association (1991), Buikstra and Ubelaker (1994), and Ortner (1994). Reactions were graded as mild, moderate, or severe and reported as either remodeled (healed) or unremodeled (unhealed).

When scoring pathologic lesions and other anomalies, the term “not observable” was

used to indicate that a particular bone was either absent or not sufficiently preserved for assessment. It was also used to indicate that a category of analysis could not be performed on an individual due to extensive fragmentation or erosion of the required skeletal components. The term “none” was used to document the incidence where a particular category of pathology could be adequately assessed and no lesions were observed. The term “indeterminate” was used to indicate that the requisite skeletal components were sufficiently intact for assessment but techniques were unavailable for use, as in the determination of sex for immature individuals. The use of “indeterminate” assumes that the potential exists for these areas to be addressed pending further research.

Subsequent to the initial examination, each bone was measured using steel sliding calipers following standardized anthropometric guidelines for immature human remains (Fazekas and Kósa 1978; Buikstra and Ubelaker 1994). Each tooth crown was identified using the standard Universal System of tooth charting (adult teeth numbered 1–32; deciduous teeth lettered a–t). The age range of each individual was then estimated by assessing the bone measurements and degree of dental development using comparative data included in Moorrees et al. (1963a, 1963b), Fazekas and Kósa (1978), and Ubelaker (1989). Since the mandibles from both neonates were present, sex determination was based on comparative data regarding the sexual dimorphism of immature mandibles reported by Holger Schutkowski (1993).

Results: The Neonates

The neonatal skeletal remains from 12 Orange Street represent two distinct immature individuals. Development of the cranial elements and long bones (Figures 1 and 2) indicates that both sets of remains represent full-term individuals who died near the time of birth. Their viability at birth cannot be determined from the remains, although both individuals appear to have developed normally.

The remains of both neonates were partially commingled in the privy shaft (Table 1). Except for the right clavicle, Catalog Unit 973 contained the cranial and postcranial remains from Neonate 2 and the left radius and portions

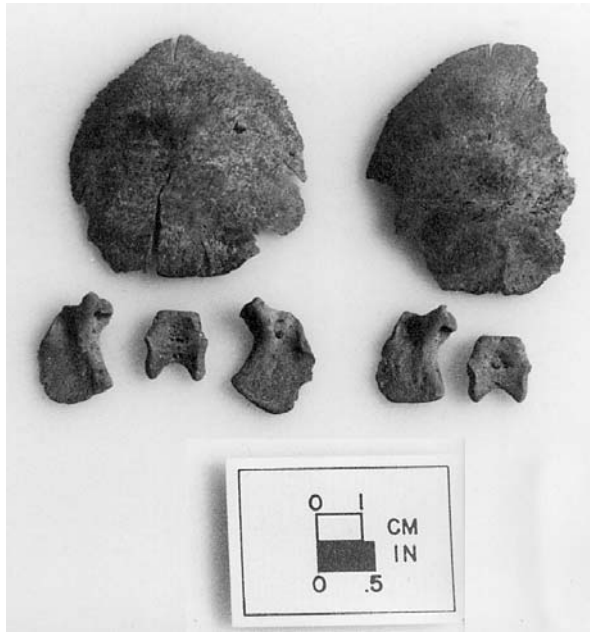


Figure 1. Posterior and inferior aspects of unfused occipitals from Neonate 1 (at left) and Neonate 2.



Figure 2. Anterior aspect of humeri from Neonate 1 (at left) and Neonate 2.

of the left lower limb from Neonate 1. Catalog Unit 985, a component of the primary privy deposit in which both neonates were discarded (Figure 2 in Yamin, this volume), contained the majority of remains from Neonate 1 and had no skeletal elements associated with the second infant. It is possible that ribs and unfused

vertebral portions recovered from Catalog Unit 985 are associated with both individuals; however, the subsequent disturbance of the original stratigraphic units precludes assignment of the separate elements to a specific individual. Since all of these axial components were recovered from Catalog Unit 985, they are most likely associated with Neonate 1.

Catalog Unit 973 was a component of an upper stratigraphic layer in the privy shaft and included disturbed deposits that had been shoveled back into the privy during construction of the intrusive wall in the 1890s. Deposits in Catalog Unit 973 had been originally mixed with those from Catalog Unit 985, found at a greater depth. Disturbance in the 1890s most likely accounts for the lack of skeletal components from Neonate 2 and probably also explains why only three bones from Neonate 1 were found in the disturbed fill that comprised Catalog Unit 973.

Table 2 presents the inventory of skeletal remains from both neonates. All skeletal elements are intact and in excellent condition, with minimal fragmentation and little erosion. In addition to skeletal remains, Neonate 1 also included six deciduous tooth crowns (Table 3). These were found in situ in the maxillary and mandibular crypts. The remaining crowns were most likely lost postmortem. No tooth crowns were recovered with the second individual.

As discussed above, physical anthropologists have yet to adopt noninvasive methods that consistently indicate the sex and ancestry of immature human remains. Among the most promising research on sex determination is that conducted by Schutkowski (1993). Using Schutkowski's methods, the shapes of the two mandibles are distinctly different (Figure 3), suggesting that the sex of Neonate 1 was different than that of Neonate 2. The mandible associated with Neonate 1 presents (1) a prominent chin with elevated structures on either side of the midsagittal plane, (2) a U-shaped dental arcade, and (3) buttressing and eversion of the horizontal rami and gonial angles. According to Schutkowski (1993), these are all features characteristic of immature males. The mandible from Neonate 2 presents none of these features, and its shape is markedly parabolic compared to the mandible from Neonate 1 (Figure 3). This suggests that Neonate 2 was female.

TABLE 2
INVENTORY OF SKELETAL COMPONENTS
FROM NEONATES 1 AND 2

Bone	Neonate 1	Neonate 2
Skull		
Left frontal	Partial	Partial
Right frontal	Complete	Complete
Left parietal	Complete	Fragments
Right parietal	Fragments	Fragments
Left temporal	Complete	Complete
Right temporal	Complete	Complete
Occipital squamous	Complete	Partial
Occipital basilar	Complete	Complete
Occipital left lateral	Complete	Complete
Occipital right lateral	Complete	—
Left maxilla	Complete	Partial
Right maxilla	Complete	—
Left mandible	Complete	Complete
Right mandible	Complete	Complete
Sphenoid body and lesser wings	Complete	Complete
Sphenoid left greater wing	—	Complete
Sphenoid right greater wing	Complete	—
Vomer	Partial	—
Left zygomatic	Complete	—
Right zygomatic	Complete	—
Upper Limb		
Left scapula	Complete	—
Right scapula	Complete	—
Left clavicle	Complete	—
Right clavicle	Complete	Complete
Left humerus	Complete	Complete
Right humerus	Complete	Complete
Left ulna	Complete	Complete
Right ulna	Complete	—
Left radius	Complete	Complete
Right radius	Complete	—
Lower Limb		
Left ilium	Complete	—
Right ilium	Complete	—
Left pubis	Complete	—
Right pubis	Complete	—
Left ischium	—	—
Right ischium	Complete	—
Left femur	Complete	—
Right femur	Complete	—
Left tibia	Complete	—
Right tibia	Complete	—
Left fibula	Complete	—
Right fibula	Complete	—
Axial Components		
Left ribs	10 present (including first)	1 present
Right ribs	3 present (including first)	—
Vertebral centra	4 cervical, 7 thoracic, 5 lumbar	—
Vertebral arches	35 unfused arches	—

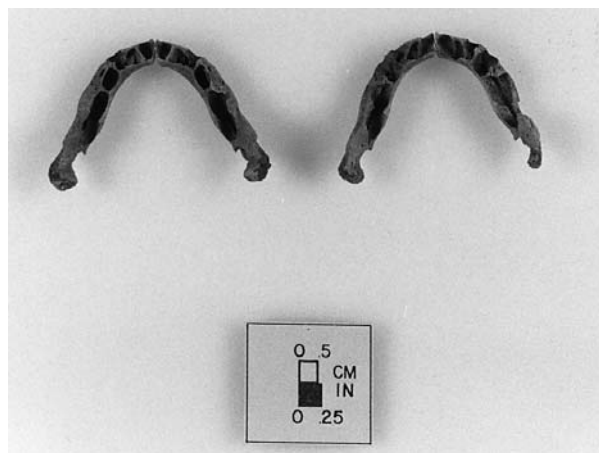


Figure 3. Superior aspect of mandibles from Neonate 1 (at left) and Neonate 2.

The ilia from Neonate 1 also suggest the infant was male. On both bones the cranial extensions of the vertical sides of the greater sciatic notches pass along the lateral rims of the auricular surfaces. Both sciatic notches are fairly narrow, and the curvatures of both iliac crests exhibit a marked S-shape when viewed superiorly. The remains from Neonate 2 do not include ilia.

The age at death for each neonate was determined by comparing metrical data from these remains with developmental data from documented fetal and full-term skeletons collected by Fazekas and Kósa (1978). Their study sample consisted of 138 human fetuses (71 males and

67 females) ranging in age between the third and tenth lunar months. The fetal remains were from autopsies performed in Hungary and represent a very narrow sample for comparative purposes. Because documented immature remains constitute a tiny percentage of the forensic and archaeological cases recorded by physical anthropologists, a more applicable comparative sample currently does not exist.

Results of the metrical analyses of the neonatal remains using regression formulae developed by Fazekas and Kósa (1978) indicate that both individuals represent full-term fetuses who died around the time of birth (Table 4). The degree of calcification of the dental remains from Neonate 1 supports this age range (Table 3). The overall age range for Neonate 1 is $9\frac{1}{4}$ – $9\frac{1}{2}$ lunar months (37–38 weeks or 259–266 days), while Neonate 2 died between 9 – $9\frac{1}{2}$ lunar months (36–38 weeks or 252–266 days). These estimates fall within the clinically defined full-term period (37–41 weeks or 259 to 286 days inclusive from the first day of the last menstrual period). The body lengths of both neonates also place them within the full-term period. Both individuals from the privy represent normally developed full-term fetuses. There is no skeletal evidence to suggest that the infants were nonviable when they were delivered.

The close similarities in the size, skeletal morphology, and degree of development of the two neonates (Figures 1 and 2) strongly suggest that they were twins. Since the remains were

TABLE 3
DENTAL INVENTORY AND AGE ESTIMATES FOR NEONATE 1

Arcade and Tooth	Calcification Stage ¹	Age Estimate ²
Maxillary		
Deciduous right central incisor (dri ¹)	Crown $\frac{3}{4}$ complete	Birth \pm 2 months
Deciduous right lateral incisor (dri ²)	Crown $\frac{3}{4}$ complete	Birth \pm 2 months
Deciduous right first molar (drm ¹)	Crown $\frac{1}{2}$ complete	Birth \pm 2 months
Mandibular		
Deciduous left lateral incisor (dli ¹)	Crown $\frac{3}{4}$ complete	Birth \pm 2 months
Deciduous right first molar (drm ¹)	Crown $\frac{1}{2}$ complete	2 months \pm 1 month
Deciduous left first molar (dlm ¹)	Crown $\frac{1}{2}$ complete	2 months \pm 1 month

¹ Following Moorrees et al. (1963a, 1963b).

² Following Moorrees et al. (1963a, 1963b) and Ubelaker (1989).

TABLE 4
BODY LENGTH AND AGE ESTIMATES FOR NEONATES 1 AND 2

Bone and Measurement ¹	Neonate 1 Body Length ²	Age Estimate ³	Neonate 2 Body Length ²	Age Estimate ³
Cranial Bones				
Frontal height	47.4	9½–10	47.4	9½–10
Frontal width	40.2	8–8½	41.4	8–8½
Temporal height	44.7	8½–9	44.7	8½–9
Temporal width	42.8	9½–10	42.8	9½–10
Tympanic ring diameter	36.5	9–9½	36.5	9–9½
Occipital height	50.3	9½	52.0	9½
Occipital width	46.2	9½–10	—	—
Occipital basilar length	43.5	9½	45.7	9½
Occipital basilar width	49.3	9½	49.3	9½
Occipital lateral length	55.3	9½	55.3	9½
Occipital lateral width	57.0	9½	53.8	9½
Maxilla height	46.1	9½	41.1	9–9½
Maxilla oblique length	46.3	9½	—	—
Mandible body length	53.0	9½	50.1	9–9½
Mandible arc width	45.7	9½	43.1	9–9½
Mandible full length	48.9	9½	46.8	9–9½
Average	47.1±5.1	9¼–10	46.4±5.1	9–9½
Upper Limb				
Humerus length	50.1	8–8½	48	8–8½
Radius length	53.1	>10	46.7	9–9½
Ulna length	49.9	8½–9	46.7	8–8½
Clavicle length	50.1	>10	47.7	>10
Average	50.8±1.3	9–9½	47.3±0.6	8¾–9¼
Lower Limb				
Femur length	52.8	7½–8	—	—
Tibia length	52.7	8½	—	—
Fibula length	51.0	8½–9	—	—
Average	52.2±0.8	8¼–8½	—	—
Combined Postcranial Average	51.5±1.1	8½–9	47.3±0.6	8¾–9¼
Best Overall Average	49.3	9¼–9½	46.9	9–9½

¹ Following Buikstra and Ubelaker (1994) and Fazekas and Kósa (1978).

² In centimeters; from regression formulae in Fazekas and Kósa (1978).

³ In lunar months; based on comparative data from Fazekas and Kósa (1978).

commingled in the same soil layer, it is more likely that they represent babies from the same delivery rather than two infants from separate women who discarded their newborns together. The potential familial affinity of these two individuals could possibly have been assessed through comparative DNA tests; however, no invasive sampling of the remains was undertaken prior to their reburial.

Neither individual presents evidence of infectious disease or nutritional disorders. Small

patches of mildly raised, porotic bone located on the anterior surfaces of the distal femora from Neonate 1 may be related to an infection but more likely represent normal development at the metaphyseal plates. The frontals from both individuals present porosity with evidence of remodeling and fairly deep vascular grooves on their endocranial surfaces. While also possibly indicating infection, it is more likely that these areas reflect rapid growth of the cranial bones and adjacent brain tissue. Additionally, the

ectocranial surfaces of the parietals from both neonates exhibit irregular porosity and a transversely organized linear appearance. Although similar in appearance to cranial lesions associated with rickets (vitamin D deficiency), most nutritional deficiency disorders rarely appear before 2–4 months postpartum and are atypical of neonates. This is because the required vitamins continually pass from mother to fetus, where they are stored in the liver (Steinbock 1976; Ortner and Putschar 1985). Even if no vitamin intake occurs after birth, several months pass before most nutritional diseases are manifest.

Results: The Fetal Remains

In June 1996, Dr. Pamela Crabtree, the faunal consultant to the Five Points Archaeological Project, identified a humerus and scapula from Catalog Unit 980 (Feature AG, EU 2, Lot 43, Stratum IV, Level 2) that she suspected represent a human fetus. Comparison of these bones with documented fetal remains in the collection of the Mütter Museum at the College of Physicians of Philadelphia confirmed this determination. These human fetal bones were mixed among the remains of fetal pigs

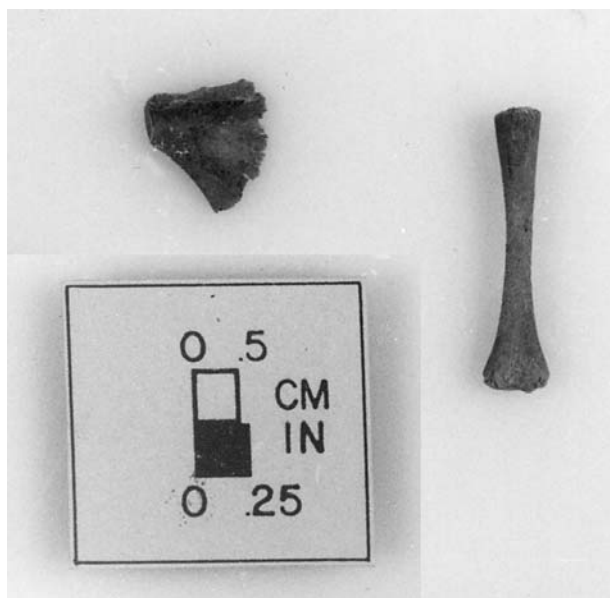


Figure 4. Anterior aspect of right humerus and left scapula from a fetus aged 20–22 weeks ($4\frac{1}{2}$ –5 gestational months).

and other refuse located adjacent to the privy's stone wall in a sandy loam deposit with a *TPQ* of 1840.

The two fetal bones are (1) a partially intact right humerus and (2) a fragmented left scapula (Figure 4). The diaphysis of the humerus is intact except for the proximal metaphyseal surface, which is mildly eroded with exposure of the underlying trabecular bone. The medial and superior borders of the scapula are eroded and fragmented. The posterior edge of the scapular spine is also eroded.

Based on both the degree of development and provenience data, the two fetal bones most likely represent the same individual. The bones are not associated with the two neonates recovered from Catalog Units 973, 984, and 985, discussed above. Catalog Unit 980 was a component of soils that had been missed when the privy was emptied during its use by the residents of 12 Orange Street. The humerus and scapula recovered from this unit are most likely the remnants of a fetus whose other bones were separated and lost when the privy was cleaned out.

Based on comparisons with data from Fazekas and Kósa (1978) and Scheuer and Black (2000), measurements of the humerus and scapula indicate that the remains represent a fetus aged 5–5½ lunar months (20–22 weeks or $4\frac{1}{2}$ –5 gestational months) at death. This age estimate takes into account the erosion and fragmentation of the two bones, which reduces the precision of the measurements (Table 5). Neither bone presents any evidence of pathology or developmental abnormality.

The Question of Perimortem Events at 12 Orange Street

The remains of the two neonates and the fetus from the privy at 12 Orange Street in Five Points represent in microcosm the tragedy that often accompanied life in antebellum New York City. The fact that the remains were discovered in situ in distinct privy shaft deposits mixed among faunal bones almost certainly reflects at least two deliberate attempts to conceal the deaths of these immature individuals, a crime of corpse abuse. The question of whether the deaths themselves represent illegal acts needs to be addressed within the context of antebellum

TABLE 5
MEASUREMENTS OF FETAL REMAINS FROM
CATALOG UNIT 980

Bone and Measurement ¹	Side	
	Left	Right
Upper Limb		
Humerus length ²	—	(33)
Humerus width	—	8
Humerus diameter	—	4
Scapula length ²	(16)	—
Scapula width ²	(14)	—
Scapula spine length	15	—

¹ Following Buikstra and Ubelaker (1994) and Fazekas and Kósa (1978); all measurements in millimeters (mm).

² Minimum lengths and width due to erosion.

laws governing infanticide and illegal abortion, both topics of considerable interest and controversy prior in the 19th century.

Perimortem events refer to those actions that occurred around the time of death and resulted in the observed evidence, including the nature and location of the recovered remains. In the case of the skeletal remains in the privy at 12 Orange Street, it is virtually impossible to determine the actual sequence of events that led to their unseemly disposal. Like the deceased baby found on Anthony Street in 1841, did someone unconnected to their birth find these abandoned infants and discard them in the privy to avoid any implication in their deaths? Did their mother live or work in the tenement at 12 Orange Street or in one of the adjoining tenements and, unprepared for motherhood, allow the babies to die through neglect or worse? Were they stillborn? If so, perhaps their mother was unaware of their disposal in the privy, having been assured by her midwife or other attendants that the infants had been properly buried when the opposite was true. The windows of history are too fogged to ever ascertain the precise answers.

Instead, reconstructions of the perimortem events may be based on anecdotal evidence from similar cases. The conclusion that the neonatal remains represent a single incident of concealment is compelling based on corroborative archaeological and osteological evidence. Both babies were found in the privy within the same primary stratigraphic

levels, which date from the early 1840s. Their remains were partially commingled and had originated from the same soil deposit prior to disturbance of the privy during construction of an intrusive wall in the 1890s, indicating they had been buried together. Even though viability cannot be determined from the skeletal remains, the osteological analysis indicates that both full-term fetuses presented no developmental abnormalities and were most likely alive when born. There are no obvious fractures or any other evidence of perimortem trauma. This lack of trauma may suggest that the infants were stillborn, but many causes of death leave no trace on the skeleton.

Historical precedents for hiding the remains of deceased infants in privies are all too common among 19th-century city police reports and coroners' inquests. Lane (1997:121) describes typical cases of women prosecuted for infanticide in antebellum Philadelphia and their fateful actions:

Almost all of the accused were single mothers; several had not reported their pregnancies to anyone, trying to the last minute to hide their bellies under the billowing clothing of the day. Typically they had given birth alone, and then perhaps stuffed the infant's throat with a rag to keep it from crying out, or—having gone to the privy, the only place in the home or boardinghouse where they might safely be alone—had dropped it down, into the vault below, immediately on cutting the cord.

Given the extremely precarious financial condition of the typical single workingwoman in antebellum New York City, difficult as it is to imagine, a woman living or working at 12 Orange Street or nearby may very likely have delivered these infants alone and then purposely discarded them in the backyard privy. Based on both the stratigraphic relationships of the soil layers in which the remains were found and the degree of skeletal commingling, it is highly unlikely that the remains represent anything other than a single act of concealment performed by one person. But was this act a criminal one? Beyond abuse of the corpses, the deaths of the babies themselves represent criminal acts only if the mother, or some other individual, actively caused the newborns to die.

Assuming that it was an unwanted pregnancy, perhaps the most intriguing question is why a

woman would bring twins to term when so many reliable means of abortion were available, even to workingwomen trapped in the poverty of Five Points. Many of these women aspired to be mothers, hoping that motherhood would lead to marriage and elevate them from the streets into more stable domestic circumstances (Hill 1993:242,313–317). Perhaps the mother of these children believed that their father, possibly a respectable man of means, would deliver her from the hell of Five Points upon their birth. This may have been a myth that she waited too long to realize was untrue, leaving her with a desperate choice faced too often by unmarried pregnant women.

The discovery of the fetal remains in a different primary privy deposit with a *TPQ* of 1840 indicates that use of the privy at 12 Orange Street to conceal the remains of unwanted pregnancies apparently was not an isolated incident. Because of their clandestine mode of interment and the fact that the remains represent a “quickened” fetus, the two bones represent at least a concealed miscarriage if not an illegal abortion. Between 1830 and 1845, abortions performed after quickening of the fetus (usually at 18 to 20 weeks) were illegal and, though prosecuted selectively, were considered acts of manslaughter by the abortionist. The mother was not held liable for the abortion until after enactment of New York’s 1845 Abortion Act, whereby both the mother and the abortionist were held criminally liable of a misdemeanor, regardless of the stage of pregnancy.

Abortions were relatively accessible in New York City during this period, as evidenced both by the number of advertisements for such services carried in the city newspapers and the numerous references to preventing such procedures by contemporary social workers and public health officials. Prostitutes certainly availed themselves of these services, which, even after the passage of the strict 1845 Abortion Act, were rarely prosecuted (Mohr 1978; Gilfoyle 1992; Hill 1993). But those cases that were brought against abortionists were highly publicized in the penny press and periodically sparked police crackdowns on such activities. This was certainly true of Madame Restelle’s trial in 1841, around the time that the neonatal and fetal remains were disposed of in the privy at 12 Orange Street.

Just as hiding the remains of neonates in privies was, though deviant, not unusual in antebellum urban America, abortions were not uncommon events in brothels. Hill (1993:238) notes that “a number of prostitutes’ abortions may have been performed in their brothels, and, unless a death [of the mother] occurred, no one was the wiser.” Hill (1993:238) also quotes an article published in the *National Police Gazette* in 1846 that reported “a ‘so-called’ doctor had delivered a five-month-old fetus to a young prostitute named Mary Arkley, in the attic of Honey Brewster’s den at 474 Broome Street ... Arkley later died, and an investigation was conducted.” In a case from 1840 that also involved a prostitute’s abortion, a Dr. Thomas Gage conducted a procedure that caused the prostitute, Ellen Gallagher, to enter premature labor and deliver a live six month-old fetus “which was ‘thrown into the vessel under the bed’ and then ‘wrapped in paper and thrown from the dock’” (quoted in Hill 1993:240). After testimony from a number of doctors representing both sides of the case and the housekeeper who ran the brothel, Gage was acquitted when 4 of the 12 jurors voted against conviction. Interestingly, the housekeeper, Eliza Taylor, refused to allow Gallagher to stay in her house for the abortion, so Gage moved Gallagher into the house next door—“Mrs. Pratt’s at 472 Broome, [a house] of the same character” (quoted in Hill 1993:241)—where he had previously boarded women who were waiting for abortions. Where was it that Gage disposed of the fetal remains? It would seem unlikely that his services included arranging for their proper interment in an official burial ground.

It is possible that the fetal remains represent a natural miscarriage and that the mother or another party disposed of the remains in the privy rather than face the expense of burial in a cemetery. As previously noted, about 20% of pregnancies fail naturally, a figure that was probably much higher for poor workingwomen who suffered from chronically inadequate nutrition. Perhaps the mother chose not to reveal her pregnancy and terminated it herself by ingesting any of the numerous abortifacients that were available at the time, relying on the privy to dispose of the evidence. Personal reasons for concealing a pregnancy are complicated and varied, and the additional economic pressures

on poor women in the urban environment may have made early termination of the pregnancy the only choice of a desperate mother.

The identity of the perpetrator or perpetrators responsible for the skeletal remains in the privy will probably remain a mystery. The most likely suspects are the residents of the tenement at 12 Orange Street, who had daily access to the privy and certainly knew the typical nature of its contents. Historical evidence demonstrates that abortions and acts of infanticide were common in New York City's brothels and that a brothel was closed down at the property in 1843, so it is not difficult to associate the skeletal remains in the privy with the prostitutes working for John Donohue in his "common, ill-governed, and disorderly house" in the tenement's cellar. As recorded by Sanger (1939) in 1858, more than 60% of the children born to prostitutes in New York City died, most due to poor maternal care, abortions, and stillbirths. This represents an infant mortality rate almost four times higher than that for the city's general population. It is also likely that cases of infanticide likewise occurred at a higher frequency among New York City's prostitutes. Prostitution, abortion, and infanticide formed three sides of a desperate triangle for many poor women in antebellum New York City, and in Five Points in particular.

But other residents living at 12 Orange Street may be equally plausible candidates for these deeds. Like numerous others throughout Five Points, this tenement's residents comprised a transient mix of immigrants, the working poor, and prostitutes. While the links between abortions and prostitutes are historically documented and it is clear from Dr. Gage's trial that even the remains from abortions performed by "physicians" were often discarded inappropriately, it is more problematical to associate a full-term pregnancy with a working prostitute. Even though many prostitutes did choose to carry their pregnancies to full term and raise their children (Hill 1993:242,313–317), pregnancy could pose a range of practical occupational difficulties for a woman working in the sex industry. For that reason alone, a more likely scenario for the disposal of the neonates may involve another resident of the tenement, one who concealed her pregnancy until the last minute and then retired to the privy behind

the building to give birth and, perhaps with prior knowledge of the final disposition of the aborted fetus, likewise consigned her babies to their secret grave. Without DNA analysis it is impossible to know whether all three children shared the same mother.

Of course, in the midst of the city's most infamous district, it is possible that the privy at 12 Orange Street was chosen by parties unknown who sought an anonymous place among the teeming tenements to discard these most innocent of Five Points' nameless citizens.

Conclusion

The skeletal remains discovered in 1993 in the privy at 12 Orange Street represent tales of desperation, exploitation, and victimization of women from New York City's antebellum past. Possibly associated with use of the tenement by prostitutes, they also reflect social and legal attitudes regarding infanticide and abortion. Prior to the Civil War, women accused of infanticide and illegal abortions, usually single and poor and often recent immigrants, were viewed by many as pitiable victims of abuse and exploitation, a perspective that changed after the 1860s to one that equated these women with depravity and blamed them for their low circumstances. These changing views corresponded to the widening gap between the culture of domesticity and the society formed by the laboring poor and were sharpened as the roles of women in both communities, often at odds with one another, crystallized.

Beginning in the 1830s, issues of sexual conduct became intertwined with middle-class fears of increasing crime and immigration. Women's rights to privacy and competent health care were soon pitted against the criminalization of abortion, while infanticide, always illegal though sporadically prosecuted, continued apace. As domestic culture enveloped New York City, government started to regulate illicit behaviors that began in public and moved behind closed doors. Yet it was the emphasis on the rules of respectable social conduct that no doubt fostered and sustained much of the very behavior the state laws were designed to arrest.

Due to its unique position geographically, socially, and economically, New York City served as the national focal point in the debates

regarding prostitution, abortion, and, to a lesser degree, infanticide, which never generated the same level of discourse. "In the antebellum era, New York sustained the shocks of industrialization, urbanization, and the westward-moving frontier ... With the important exception of slavery, New York history in the three decades before the Civil War encompassed or presaged the major historical forces at work in nineteenth-century America" (Basch 1983: 28–29). And it was in the Five Points district, made infamous through the penny press as well as numerous references in books and religious tracts, where the dichotomy between acceptable domestic culture and street life for the working poor was most pointed.

Antebellum New Yorkers were fairly accustomed to reports of infant remains found in common areas throughout the city. Had the skeletons of the two neonates and the fetus been discovered when they were deposited in the Orange Street privy, however, the case very possibly would have been sensationalized in the city's penny press and even may have attracted Edgar Allen Poe's attention, as did the death of Mary Rogers in 1841 (Srebnick 1995). In fact, the famous Rogers murder case, which served as the basis for Poe's best-selling story "The Mystery of Marie Roget," began with her disappearance from her mother's boardinghouse at 126 Nassau Street, located just five blocks from Orange Street. The Rogers case and the remains from Five Points may be linked by abortion, the issue that replaced prostitution in the debate over privacy issues and women's sexual behavior in the 1840s. An abortion may have cost Rogers her life and may also be the most likely explanation for the discovery of the partial fetal remains in the privy at 12 Orange Street.

Abortion, infanticide, and prostitution were practices that plagued the social reformers of the 19th century. Yet, in many cases it was the strict moral codes promulgated by these reformers that drove women of all social stations to conceal their pregnancies and take the lives of their babies. While not bound by the codes of acceptable conduct that regulated domestic culture, the economic realities of antebellum New York City placed considerable pressure on single workingwomen who became pregnant. Subject to rare exceptions, infanticide

is the result of an act that is not premeditated. It is effected by the means immediately at hand and usually by a person who is, at least temporarily, legally irresponsible. Abortion, both legal and illegal, was often the only choice a workingwoman in 19th-century New York City could make.

Abortionists in 19th-century New York accommodated the needs of women from every rank, particularly those from the middle- and upper-economic classes who could afford the procedure. Yet these same women looked down at prostitution as an evil force spreading across the city, robbing the virtues of immigrant women and those moving into the city from the rural areas seeking a better life. Both issues, abortion and prostitution, were tied to public and private expressions of female sexuality that reflected outward signs of social position, class, and values. Assumptions of female behavior and respectability did not allow for what prostitutes advertised in abundance: sexuality and public freedom (Srebnick 1995). Instead of charity and benevolence, by the 1860s these women were shown little sympathy and only minimal attempts to understand the underlying reasons for their acts. Abortion, prostitution, and infanticide had no place in acceptable middle-class domestic culture, yet all three issues were intimately linked with and shaped women's lives in 19th-century New York City.

The skeletal remains from the privy at 12 Orange Street represent three of the innumerable infants who died in America during the 19th century, victims of the social milieu in which they and their mothers were trapped. While their names never appeared on a tombstone, nor their births ever officially recorded, the archaeological discovery of their remains grants these anonymous babies a sort of immortality their parents will never know. Their discovery also underscores the power of archaeology to make tangible the struggles of workingwomen in 19th-century urban America, particularly in the face of both a rapidly changing economy and an increasingly intolerant social environment. The bones of these babies serve as a poignant reminder of the grindingly harsh conditions of the urban world, their fleeting lives easily forgotten among the bustling chaos of New York City's Five Points.

Epilogue

The Five Points archaeological project laboratory was located in the basement beneath the United States Customs House at 6 World Trade Center. It was in this laboratory that the skeletal remains of the two infants and the fetus from the Orange Street privy were first identified. The laboratory was destroyed following the terrorist attacks of 11 September 2001 when the World Trade Center's north tower collapsed onto the Customs House. Fortunately, all employees had been evacuated prior to the collapse and escaped uninjured.

It was also fortunate that the skeletal remains escaped destruction on that tragic day. They had been removed earlier in the year by the United States General Services Administration for a proper and respectful burial in a Staten Island cemetery under the ecclesiastical oversight of the Roman Catholic Diocese of New York.

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