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**RUBBING THE RABBIT’S FOOT: GALLOWS,  
SUPERSTITIONS AND PUBLIC HEALTHCARE IN  
ENGLAND DURING THE EIGHTEENTH AND  
NINETEENTH CENTURIES**

ROBERTA M. HARDING\*

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## I. INTRODUCTION

Superstitions possess an ancient pedigree.<sup>1</sup> Even in today's technologically advanced and scientifically sophisticated society they continue to be part of the cultural landscape.<sup>2</sup> Superstitions are a manifestation of humankind's long-standing effort to comprehend the elementary principles of good and evil. For example, well-known general superstitions, such as breaking a mirror brings seven years of bad luck<sup>3</sup> and throwing salt over the left shoulder if any is spilled,<sup>4</sup> are designed to help people avoid misfortune. Other general superstitions are thought to generate good luck. Who has not heard that knocking on wood portends the continuation of good luck?<sup>5</sup>

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<sup>1</sup> See OTIS W. CALDWELL, *DO YOU BELIEVE IT? CURIOUS HABITS AND STRANGE BELIEFS OF CIVILIZED MAN* 12, 25, 27, 36 (Garden State Publishing 1937) (providing examples of the antiquity of superstitions); see also PHILLIP F. WATERMAN, *THE STORY OF SUPERSTITION* 12 (Ams Press 1970) (1929) (opining that "[t]he idea of luck among superstitious people has not changed much in the course of the ages").

<sup>2</sup> See STUART A. VYSE, *BELIEVING IN MAGIC: THE PSYCHOLOGY OF SUPERSTITION* 5 (Oxford University Press 1997). The author concludes that superstitious behavior is commonplace and notes that "everyday experience suggests that superstitious beliefs and behavior are widespread." *Id.* at 5, 14. See also Chris Hutchins, *Superstitions at Work*, LEXINGTON HERALD-LEADER, August 13, 1999, at Weekender 8 (examining the prevalence of superstitions in modern society); WATERMAN, *supra* note 1, at 12 ("The idea of luck among superstitious people has not changed much in the course of the ages."); ASTRA CIELO, *SIGNS, OMENS AND SUPERSTITIONS* 4 (George Sully & Co. 1918) ("There are few persons, no matter how rational or level-headed, who are not given to superstition in some form."). See also CALDWELL, *supra* note 1, at 219-41 (citing and discussing a number of studies conducted about the belief in and practice of superstitions in different cultures and eras).

<sup>3</sup> JAMES GRANT, *THE MYSTERIES OF ALL NATIONS: RISE AND PROGRESS OF SUPERSTITION, LAWS AGAINST AND TRIALS OF WITCHES, ANCIENT AND MODERN DELUSIONS, TOGETHER WITH STRANGE CUSTOMS, FABLES, AND TALES* 389 (Leith: Reid & Son 1880) (describing the practice of throwing salt over one's shoulder after spilling some quantity).

<sup>4</sup> CAROLE POTTER, *KNOCK ON WOOD: AN ENCYCLOPEDIA OF TALISMANS, CHARMS, SUPERSTITIONS & SYMBOLS* 168-70 (Beaufort Press 1983) (describing the superstition that if salt is spilled, then some of it must be thrown over the left shoulder).

<sup>5</sup> CIELO, *supra* note 2, at 48-49 (observing that "[o]ne of the most prevalent customs, indulged in by men of science as well as the illiterate man in the slums, is . . . knocking on wood to ward off evil or to prevent disappointment." (emphasis added)); ELIZABETH MARY WRIGHT, *RUSTIC SPEECH AND FOLK-LORE* 230 (Oxford University Press 1913) (noting that people knock on wood "if they have given vent to some expression of satisfaction over their own good health or fortune, or that of any member of their family").

Specific thematic superstitions also developed to address health care needs. In England, for example, as far back as the fifth century, magical spells and jewels were believed to provide medical assistance.<sup>6</sup> The adoption and implementation of capital punishment also generated a body of beliefs referred to as “gallows superstitions.” This was especially the case after hanging was adopted in the tenth century as England’s primary method of execution.<sup>7</sup> The merger of these two themes created medicinal gallows superstitions. During the eighteenth and nineteenth centuries, medicinal gallows superstitions ended up providing an unanticipated service for the poor who resided in England’s large urban centers. Monumental socioeconomic and demographic changes during this time frame helped make Britain an international economic powerhouse.<sup>8</sup> A ready supply of cheap labor provided by those who left their homes in the rural countryside and streamed into urban areas greatly aided the nation in making this transformation.<sup>9</sup> This progress, however, exacted a serious social cost. The transplanted population had to endure appalling work and living conditions, severely compromising the health of the urban poor.<sup>10</sup> With little or no access to medical care, Parliament’s dramatic expansion of the death penalty facilitated medicinal gallows superstitions’ functioning as a health care provider for the cities’ impoverished residents.<sup>11</sup>

The purpose of this Article is to explore how capital punishment contributed towards remedying a serious social problem that existed in England during the eighteenth and nineteenth centuries: inadequate public health care for the burgeoning population of urban poor.<sup>12</sup> The Article commences with a review of superstitions. It then explores superstitions associated with executions and reviews essential features of the medicinal gallows superstitions. The next section identifies and analyzes key aspects of Britain’s criminal justice, economic, and social environments that contributed to the heightened use of this genre of superstitions during the relevant time periods. Finally, the article examines the connection between these variables and the public health care function of medicinal gallows superstitions. It also addresses factors such as the liberalization

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<sup>6</sup> Winifred Nöth, *Semiotics of the Old English Charm*, 19 SEMIOTICA LA HAYE 59, 65 (1977) (noting that Old English magical spells were “a substitute for medical therapy”). See also JOAN EVANS, *MAGICAL JEWELS OF THE MIDDLE AGES AND THE RENAISSANCE PARTICULARLY IN ENGLAND 184–89*, 193–94 (stating that magical jewels were traditionally used in ancient medicine).

<sup>7</sup> See JOHN LAURENCE, *A HISTORY OF CAPITAL PUNISHMENT* 41 (The Citadel Press 1963) (describing executions during the Anglo-Saxon times).

<sup>8</sup> See Part V, *infra*.

<sup>9</sup> See Part V, *infra*.

<sup>10</sup> See Part V.D, *infra*.

<sup>11</sup> See Part VI, *infra*.

<sup>12</sup> This benefit would be in addition to the death penalty’s purported traditional purposes: retribution and deterrence. See *Gregg v. Georgia*, 428 U.S. 153, 177 (1976) (joint opinion) (noting that deterrence and retribution are the two traditional purposes of the death penalty).

of England's death penalty laws, the progress made in medicine and improving the access to health care, which contributed to the demise of the poor's reliance on medicinal gallows superstitions.

## II. SUPERSTITIONS

### A. Introduction

Although the term superstition has been described as being difficult to define with exactness,<sup>13</sup> superstitions developed as a response to mankind's desire to understand its own existence, explain nature, determine what the future held, and "propitiate Fate and invite Fortune, in the wish to avoid the evils he could not understand."<sup>14</sup> Thus, conceptually, it promotes the materialization of a specific outcome. Since the belief's veracity is irrelevant, superstitions can be, and frequently are, premised upon unfounded assumptions or misconceptions.<sup>15</sup> Consequently, psychological faith in the efficacy of the superstition is the first crucial component of superstitions.<sup>16</sup> Superstitions frequently have a second, action-based component, because the believer must engage in specific behavior.<sup>17</sup> This often requires the believer to interact in a specific manner with the

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<sup>13</sup> CALDWELL, *supra* note 1, at viii ("It is not easy to define superstition."). See also VYSE, *supra* note 2, at 19 (concluding that defining superstition is "an all-but-impossible assignment" and identifying different ideas about the meaning of superstition).

<sup>14</sup> T. SHARPER KNOWLSON, *THE ORIGINS OF POPULAR SUPERSTITION AND CUSTOMS* 1 (T. Werner Laurie Ltd 1994) (1930); RALPH MERRIFIELD, *THE ARCHAEOLOGY OF RITUAL AND MAGIC* 185 (B.T. Batsford Ltd. 1987).

<sup>15</sup> See OXFORD MINIREFERENCE DICTIONARY AND THESAURUS 639 (1996) (includes the following definition of superstition: "widely held but wrong idea"); VYSE, *supra* note 2, at 19 (noting that Dr. Judd Marmor, a psychiatrist, described superstitions as being "groundless in themselves and inconsistent with the degree of enlightenment reached by the community to which one belongs"); see, e.g., WATERMAN, *supra* note 1, at 9 (noting how superstitions are of such a magnitude that "even when the principles on which a custom was founded cease to be accepted, the custom will none the less remain . . ."); CALDWELL, *supra* note 1, at 215 (asserting that "pure superstitions" do not have a factual foundation); *id.* at 216 (noting that some superstitions are based upon misconceptions that "incorrect ideas . . . may sometimes have the appearance of factual foundation"). See generally Nöth, *supra* note 6, at 77 (discussing how although superstitions can be groundless, their veracity is irrelevant for them to be effective). It has been contended that a superstition can only exist if the premise is no longer logical or correct. Consequently, the false basis for the superstition becomes part of the term's definition. See HOWARD W. HAGGARD, *MYSTERY, MAGIC, AND MEDICINE: THE RISE OF MEDICINE FROM SUPERSTITION TO SCIENCE* 13 (Doubleday, Doran & Co. 1933).

<sup>16</sup> CALDWELL, *supra* note 1, at ix (noting that "[s]uperstitiousness involves an attitude of mind"). Furthermore, it is unnecessary to consciously believe in the superstition. A person's behavioral patterns often reveal whether a person unconsciously believes in the superstition or is psychologically influenced by the superstition. See *id.* at 216-17.

<sup>17</sup> See examples described *supra* notes 3-4; *infra* notes 31-32, 34.

designated inanimate object.<sup>18</sup> The psychic and physical components then work in tandem to achieve the desired outcome.

Tangible items used as a superstition fall within the following categories: charms, amulets, and talismans.<sup>19</sup> Charms are made from natural or manufactured materials, and particular powers are attributed to them.<sup>20</sup> To effectuate the belief associated with superstitions classified in this manner, the believer must perform an affirmative act.<sup>21</sup> Horseshoes are a perfect example because they are made from manufactured material and the practitioner must rub them in addition to believing that they portend good luck.<sup>22</sup>

Amulets resemble charms but possess two distinguishing characteristics. First, amulets are almost exclusively constructed from natural substances.<sup>23</sup> Their passivity is their second notable attribute. This means that, unlike charms the user does not actively interact with an amulet; instead, it is usually, though not always, “hung about the neck or on the wrist” of the person’s body.<sup>24</sup> Sometimes the item can be assigned to both categories. For example, a rabbit’s foot is constructed from a natural material that can be worn around the neck or remain in a specific location, such as a pocket, and simply be rubbed when needed. Talismans, the third category, are similar to amulets because they are usually kept on the person and used to ward off evil and bring good luck.<sup>25</sup> They differ from amulets because their central function is to attract positive influences.<sup>26</sup> Talismans, like amulets, can also be charms.<sup>27</sup> This dual categorization occurs if, in order to obtain the promised result, the adherent must interact with the object by touching, kissing, or waving it.<sup>28</sup>

<sup>18</sup> See examples described *supra* note 5; *infra* notes 35–36.

<sup>19</sup> CIELO, *supra* note 2, at 59–60 (discussing charms as a manifestation of superstitions); see POTTER, *supra* note 4, at 7 (describing amulets as a type of superstition); POTTER, *supra* note 4, at 185–86 (describing talismans as a type of superstition).

<sup>20</sup> WRIGHT, *supra* note 5, at 230.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* (noting that the horseshoe is a popular type of charm made from manufactured material).

<sup>23</sup> POTTER, *supra* note 4, at 7–8 (identifying different items classified as amulets).

<sup>24</sup> CIELO, *supra* note 2, at 59. See also ENCYCLOPEDIA OF MAGIC AND SUPERSTITION 180 (Octopus Books 1974) (noting amulets are “worn about the person”); GRANT, *supra* note 3, at 403 (citing a definition of an amulet as “a kind of medicament hung about the neck or other part of the body”); FANNY D. BERGEN, CURRENT SUPERSTITIONS 94–95 (Houghton, Mifflin and Company 1896) (providing a list of amulets worn around the neck, chest, in the ears, on fingers, and around the wrist and waist).

<sup>25</sup> POTTER, *supra* note 4, at 185–86 (listing items considered talismans); ENCYCLOPEDIA OF MAGIC AND SUPERSTITION, *supra* note 24, at 180 (noting that a talisman is an object “usually worn as an amulet to avert evil or bring fortune to the wearer”).

<sup>26</sup> POTTER, *supra* note 4, at 185–86; ENCYCLOPEDIA OF MAGIC AND SUPERSTITION, *supra* note 24, at 180.

<sup>27</sup> POTTER, *supra* note 4, at 185–86.

<sup>28</sup> *Id.* (compared to amulets, talismans are a “more active form of this sport”).

## B. *Categories of Superstitions*

The guiding principle of superstitions is to avoid the negative and obtain the positive.<sup>29</sup> This precept is inherently embodied in every superstition: general and specific. General superstitions that portend an ominous future include common beliefs such as walking under a ladder,<sup>30</sup> breaking a mirror,<sup>31</sup> and spilling salt.<sup>32</sup> The latter superstition contains the central tenet's positive dimension because the subject can prevent the ensuing tragedy from occurring by throwing salt over the left shoulder.<sup>33</sup> Knocking on wood is another example of this duality because it thwarts evil from occurring<sup>34</sup> and promotes and secures good fortune.<sup>35</sup> Rubbing a rabbit's foot or a horseshoe are examples of other general superstitions that promise good luck.<sup>36</sup>

Superstitions associated with specific contexts and themes are prevalent. Beliefs that belong to this category also incorporate the central positive and negative objectives. Sports superstitions are representative of this thematic category.

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<sup>29</sup> See CALDWELL, *supra* note 1, at 212 (noting how “[m]any superstitions deal with signs of good and bad luck”).

<sup>30</sup> See EDWIN AND MONA A. RADFORD, *ENCYCLOPEDIA OF SUPERSTITIONS* 159 (The Philosophical Library 1949) (categorizing the belief that “[t]o pass under a ladder will bring bad luck” as a general superstition); see also GRANT, *supra* note 3, at 394 (“If one look through a ladder, he should spit three times to prevent evil consequence; and it is unlucky to hand anything through a ladder.”); POTTER, *supra* note 4, at 213–14 (commenting on how it is believed that walking under a ladder will result in bad luck); BERGEN, *supra* note 24, at 83 (“It is unlucky to pass under a ladder.”).

<sup>31</sup> See BERGEN, *supra* note 24, at 86 (classifying “[b]reaking a looking-glass shows that you’ll have seven years of ill luck” as a general superstition); CIELO, *supra* note 2, at 96–97 (noting that to break a mirror is “considered unlucky, and the person breaking one will have bad fortune for seven years”).

<sup>32</sup> *A DICTIONARY OF SUPERSTITIONS* 342 (Iona Opie & Moira Tatum eds., Oxford University Press 1989).

<sup>33</sup> POTTER, *supra* note 4, at 168–70 (noting the belief that if salt is spilled, then some of it must be thrown over the left shoulder to counteract the impending doom). See also GRANT, *supra* note 3, at 389 (describing the superstition associated with the spilling of salt on a table or floor).

<sup>34</sup> CIELO, *supra* note 2, at 48–49 (“One of the most prevalent customs, indulged in by men of science as well as the illiterate man in the slums, is . . . knocking on wood to ward off evil or to prevent disappointment.”). This general superstition also is a charm because the believer, by knocking on wood, interacts with a natural material. See *id.* at 59–60 (discussing charms as a manifestation of superstitions).

<sup>35</sup> CALDWELL, *supra* note 1, at 35 (observing how people knock on wood when “they speak of their success or good fortune”); WRIGHT, *supra* note 5, at 230 (noting that people knock on wood “if they have given vent to some expression of satisfaction over their own good health or fortune, or that of any member of their family”).

<sup>36</sup> See POTTER, *supra* note 4, at 158 (categorizing the rabbit's foot as a “good luck charm”); WRIGHT, *supra* note 5, at 230 (noting that the horseshoe is a charm people “hang over doors and chimney pieces ‘for luck’”).

ry.<sup>37</sup> For example, beliefs associated with baseball players are “legendary.”<sup>38</sup> Another popular area of specialization pertains to gaming,<sup>39</sup> in particular, beliefs associated with playing cards.<sup>40</sup> The dramatic arts also have a body of superstitions.<sup>41</sup> For example, telling an actor to “break a leg” is believed to ensure a successful theatrical performance.<sup>42</sup> The medical field is replete with superstitions as well.<sup>43</sup> The critical governing duality exists in this context because “many popular supernatural beliefs had as their object the cure of illness or the maintenance of health.”<sup>44</sup> It was common for “amulets and charms [to be] employed for the alleviation of bodily suffering.”<sup>45</sup> The ancient origins of these curative and preventative medicinal beliefs make them among the most enduring superstitions.<sup>46</sup>

### III. EXECUTION SUPERSTITIONS

The adoption and implementation of the death penalty resulted in the development of a number of superstitions. These beliefs can be categorized in a variety of ways. The method of execution provides one basis. At one time, beheading was an official method of execution in England.<sup>47</sup> In the tenth centu-

<sup>37</sup> CALDWELL, *supra* note 1, at vii (commenting on the prevalence of superstitions in sports); *see also* POTTER, *supra* note 4, at 252–55 (describing and discussing sports superstitions).

<sup>38</sup> *See* VYSE, *supra* note 2, at 5; CALDWELL, *supra* note 1, at vii (providing a “virulent example of the prevalence of superstitions in sports”). Examples of baseball superstitions include routines before pitching, pregame rituals, wearing a specific uniform number, not talking about a no-hitter in progress, and using a lucky bat or glove. *See* CIELO, *supra* note 2, at 147 (listing some of the major superstitions associated with baseball).

<sup>39</sup> EDWARD TAYLOR, *PRIMITIVE CULTURE* 72 (Vol. 1 1871) (describing superstitions associated with gaming).

<sup>40</sup> *See* KNOWLSON, *supra* note 14, at 232–35 (identifying many “omens relating to card games”).

<sup>41</sup> *See* CIELO, *supra* note 2, at 135–36 (enumerating beliefs associated with the theater); KNOWLSON, *supra* note 14, at 225–29 (identifying and describing superstitions associated with the theater).

<sup>42</sup> *See* POTTER, *supra* note 4, at 193 (listing phrases used instead of “good luck” in the theatre). *See also* CIELO, *supra* note 2, at 135–36 (naming some of the superstitions in the world of theater); KNOWLSON, *supra* note 14, at 225–29 (identifying and describing superstitions that exist in the theater).

<sup>43</sup> VYSE, *supra* note 2, at 12–13. *See also* WRIGHT, *supra* note 5, at 235.

<sup>44</sup> VYSE, *supra* note 2, at 12–13. *See also* WRIGHT, *supra* note 5, at 235 (noting that many superstitions address curing bodily ills).

<sup>45</sup> GRANT, *supra* note 3, at 401–02.

<sup>46</sup> HAGGARD, *supra* note 15, at 16–17 (stating that the practice of medicine during ancient times was a merger of superstition and religion).

<sup>47</sup> LAURENCE, *supra* note 7, at 28–30. It was, however, generally reserved for executing members of the aristocracy and nobility. *Id.* In 1870, the British government outlawed beheading as a method of execution. *Id.*

ry, hanging was adopted as the primary method of execution.<sup>48</sup> The relatively early selection of hanging as the most common way to carry out executions and the longstanding practice of executions occurring in public forums resulted in the creation of a plethora of superstitions in this context,<sup>49</sup> which can be referred to as gallows superstitions.

Superstitions in this context can be general or specific. The belief that a section of a rope used to hang a criminal brings good luck embodies this traditional polarity.<sup>50</sup> In a similar vein, the body parts of an executed person were considered valuable charms that would generate good fortune.<sup>51</sup> A macabre gallows superstition, the "Hand of Glory," aptly illustrates this belief. Burglars used this superstition to facilitate the successful completion of their criminal venture.<sup>52</sup> First, the prospective thieves constructed a "Hand of Glory" by severing the hand of a hanged man, drying it out, and placing it in a candlestick holder.<sup>53</sup> After entering the targeted home, the robbers lit the fingers and thumb

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<sup>48</sup> *Id.* at 41 (hanging was "[t]he usual mode of inflicting death upon criminals in Anglo-Saxon times" and was substituted for mutilation).

<sup>49</sup> *Id.* at 112 (concluding that the development of gallows superstitions was a consequence of the prevalence of hanging). See also JOHN DEANE POTTER, *THE FATAL GALLOW TREE* 70 (Elek Books 1965) (noting that "[s]uperstition . . . was also rampant around the scaffold" and opining that since England had "gallows at nearly every crossroads it is not surprising that many superstitions and legends grew up around them"); JUSTIN ATHOLL, *SHADOW OF THE GALLOWES* 68 (John Long Ltd. 1954) (opining that "as hanging became an accepted feature of his life, many superstitions arose associated with it"); LEON RADZINOWICZ, *VOLUME I: A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750, THE MOVEMENT FOR REFORM, 1750-1833* 190 (Macmillan Co. 1948) ("One of the effects of public executions was to encourage the growth of the [gallows] superstitions.").

<sup>50</sup> POTTER, *supra* note 49, at 70 (stating a piece of rope used to hang someone was thought to bring good luck); ATHOLL, *supra* note 49, at 69.

<sup>51</sup> GEOFFREY ABBOTT, *LORDS OF THE SCAFFOLD: A HISTORY OF THE EXECUTIONER* 67 (Robert Hale: London 1991) (noting that English hangmen "did a good trade in providing the superstitious with severed portions of their victims' corpses for use as . . . lucky charms.").

<sup>52</sup> See *A DICTIONARY OF SUPERSTITIONS* 100-01, 142-43 (Iona Opie & Moira Tatum eds., Oxford University Press 1989) (describing the gallows superstition pertaining to the "Hand of Glory"). See also WILLIAM HENDERSON, *NOTES ON THE FOLKLORE OF THE NORTHERN COUNTIES OF ENGLAND AND THE BORDERS* 332-33 (EP Publishing Ltd. 1973) (reciting a short story about the "Hand of Glory").

<sup>53</sup> *ENCYCLOPEDIA OF MAGIC AND SUPERSTITION*, *supra* note 24, at 179 (describing how the "Hand of Glory" could be assembled by using "the hand itself [as] a five-fold candle"). For descriptions of the various formulae used to manufacture the "Hand of Glory," see RADFORD, *supra* note 30, at 142; HENDERSON, *supra* note 52, at 200-01, n. 1. For example, some variations of the formula called for using the hand as the candle holder, while with others it was essential that the candle be made from human fat and placed in the "Hand of Glory." *A DICTIONARY OF SUPERSTITIONS*, *supra* note 52, at 100-01 (citing instances when the "Hand of Glory" was activated by placing a candle in the hand and describing how a candle made of the fat of someone who was hanged is lighted and placed in the "Hand of Glory").

of the “Hand of Glory.”<sup>54</sup> This action activated the promised favorable powers to stupefy the occupants of the house, rendering them incapable of halting the commission of the crime.<sup>55</sup> Although the “Hand of Glory” superstition was primarily an English phenomenon, it also existed in Ireland<sup>56</sup> and other European countries, including France, Germany, and Spain.<sup>57</sup>

Gallows superstitions also existed in more specific contexts. For example, the merger of gaming and gallows themes produced the belief that a section of the rope used to hang someone would bring good luck at cards.<sup>58</sup> Healthcare and gallows superstitions spawned another subcategory of beliefs: those devised to address medical concerns.<sup>59</sup> Once again, the methods of execution provided a useful way to subdivide these specific beliefs.<sup>60</sup> When beheading was an official method of execution in England, a number of sanguinary superstitions developed.<sup>61</sup> It was generally believed that blood obtained in this manner possessed extraordinarily powerful medicinal qualities.<sup>62</sup> Accordingly, during the fourteenth and fifteenth centuries, “[t]hrongs of people attended the public beheadings at Tower Hill [in London] . . . [and] dipped cloths and handkerchiefs in the executee’s blood to [use] . . . as a means of curing and preventing certain diseases.”<sup>63</sup> The potency of the curative powers was enhanced when the blood was of noble heritage.<sup>64</sup> For example, “many cures [were] said to have been wrought” to those who gathered the blood of King Charles I of England when he was beheaded in the seventeenth century.<sup>65</sup> This notion crossed geographic and cultural boundaries. French executioners sold healing unguents “reputedly made of the *blood* and fat of their victims which

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<sup>54</sup> HENDERSON, *supra* note 52, at 332 (explaining how the fingers of the “Hand of Glory” were lit after being placed in a candle holder).

<sup>55</sup> RADFORD, *supra* note 30, at 142–43 (describing how the “Hand of Glory” “renders motionless all persons at whom it is presented, and they cannot stir a finger”).

<sup>56</sup> HENDERSON, *supra* note 52, at 202 (relating an account of Irish thieves using the “Hand of Glory”).

<sup>57</sup> *Id.* at 200–02 (referencing “the foreign superstition of the Hand of Glory”); ABBOTT, *supra* note 51, at 67 (describing the use of the “Hand of Glory” in different countries). See generally PETER LINEBAUGH, *The Tyburn Riot Against the Surgeons*, ALBION’S FATAL TREE CRIME AND SOCIETY IN EIGHTEENTH-CENTURY ENGLAND (Douglas Hay, ed., 1975).

<sup>58</sup> POTTER, *supra* note 49, at 71.

<sup>59</sup> See Part VI, *infra* (detailing the development of healthcare superstitions around the rise of hanging deaths).

<sup>60</sup> *Id.* (A piece from a hanging rope was thought to improve one’s luck at cards).

<sup>61</sup> See *The Bloody Tower of London* (The History Channel broadcast June 26, 2000).

<sup>62</sup> See *id.*

<sup>63</sup> *Id.*

<sup>64</sup> RAYMOND CRAWFURD, *THE KING’S EVIL* 101 (Oxford 1911).

<sup>65</sup> *Id.* Charles I was executed on January 30 in 1649. *Kings and Queens of the United Kingdom (from 1603)*, BRITISH MONARCHY, <http://www.royal.gov.uk/output.Page76.asp>.

possessed amazing curative properties.”<sup>66</sup> After King Louis XVI of France was guillotined in the eighteenth century, the mob “rubbed handkerchiefs and pieces of cloth on the bloodstains”<sup>67</sup> and his blood reportedly “effected miraculous cures.”<sup>68</sup> In the mid-nineteenth century, Chinese executioners collected their victims’ blood to manufacture medications to sell.<sup>69</sup> In addition to acting as a general panacea, the executed person’s blood was also thought to cure specific ailments, such as skin blemishes.<sup>70</sup> More healthcare superstitions developed as the number of executions carried out by hanging increased.<sup>71</sup>

#### IV. MEDICINAL GALLOWS SUPERSTITIONS

Given the longevity of hanging’s reign as the predominant method of execution in England,<sup>72</sup> it is not surprising that many gallows superstitions dealt with medical problems. Anyone who wished to use medicinal gallows superstitions for health care purposes, however, needed access to the corpse and the appliances used to carry out executions by hanging, such as the rope, the gallows, and the halter.<sup>73</sup>

##### A. *The Executed Person’s Corpse*

The executed person’s corpse or parts of it were believed to contain healing properties. This is understandable given that the belief in the puissance of cer-

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<sup>66</sup> ALISTAR KERSHAW, *A HISTORY OF THE GUILLOTINE* 116 n.2 (Barnes and Noble 1993) (emphasis added).

<sup>67</sup> Geoffrey ABBOTT, *THE BOOK OF EXECUTION: AN ENCYCLOPEDIA OF METHODS OF JUDICIAL EXECUTION* 191 (Headline 1994). King Louis XVI was executed on January 21, 1793 in Paris, France. See CIELO, *supra* note 2, at 132.

<sup>68</sup> CRAWFURD, *supra* note 64, at 101.

<sup>69</sup> HOWARD ENGEL, *LORD HIGH EXECUTIONER: AN UNASHAMED LOOK AT HANGMEN, HEADSMEN AND THEIR KIND* 144–45 (Firefly Books 2006). Interestingly, this superstition survived into the twentieth century. At an execution in France in 1939, “women push[ed] forward to soak their handkerchiefs” in the executed person’s blood. ABBOTT, *supra* note 67, at 202; see JOHN TOLAND, *THE DILLINGER’S DAYS* 327 (Random House 1963). This belief could explain why people dipped their handkerchiefs and pieces of paper in John Dillinger’s blood that had pooled in the alley where he was shot and killed. See Stephen Kinzer, *Felony and Urbane, Dillinger Still Charms*, N.Y. TIMES, July 25, 2004, at 12; Robert McG. Thomas, Jr., *Thomas Connor, Last of Dillinger Detail*, 91, N. Y. TIMES, April 21, 1997, at B10 (one person saw a woman put her handkerchief in Dillinger’s blood).

<sup>70</sup> See JAMES BLAND, *THE BOOK OF EXECUTIONS* 149 (1993) (noting that in 1870 people in France dipped their handkerchiefs in the executed person’s blood to gather blood to get rid of warts).

<sup>71</sup> See generally Part IV, *infra*.

<sup>72</sup> See *supra* notes 48–49; Part VII, *infra* (noting the demise of hanging as a method of execution in England).

<sup>73</sup> See Appendices A and B for a list of the medical conditions and their corresponding superstitions.

tain people's body parts is deeply rooted in history. In ancient Rome it was customary to sacrifice humans because "parts of the body were potent charms."<sup>74</sup> Ultimately, this led to the establishment of the general belief that the corpse of someone hanged "possessed therapeutic powers, able to cure sickness and heal wounds."<sup>75</sup> One common and prevalent superstition that emerged from this notion was that general cures could be obtained if the afflicted individual touched or rubbed the corpse of an executed person.<sup>76</sup> It also was believed that doing this remedied more specific ailments, such as skin blemishes.<sup>77</sup> Since the public nature of executions<sup>78</sup> made it relatively easy to access corpses, this superstition gained tremendous popularity and crowds witnessing executions "would . . . storm the gallows after an execution to touch the body of the hanged."<sup>79</sup> Although variations developed, all can be classified as charms because the person seeking medical attention had to interact with—rub or touch—the corpse, a tangible object composed of natural substances.<sup>80</sup>

Pursuant to one popular version of this practice, discharging the superstition's restorative properties required that the diseased part of the patient's body come into contact with a specific body part of the corpse.<sup>81</sup> A well-known variant of this superstition necessitated using a hanged man's hands because they

<sup>74</sup> NIGEL DAVIES, *HUMAN SACRIFICE: IN HISTORY AND TODAY* 50 (William Morrow and Co. 1981). *See also id.* at 214 ("[P]eople cherished as holy relics the victim's remains, such as his hair and bones.").

<sup>75</sup> PETER LINEBAUGH, *ALBION'S FATAL TREE* 109 (Pantheon Books 1975). *See ENGEL, supra* note 69 (explaining how executioners made and sold ointments and unguents from the corpses of the executed criminals to fix medical problems). *See Appendix A* for gallows superstitions requiring the use of the executed person's body.

<sup>76</sup> *See* ARTHUR KOESTLER, *REFLECTIONS ON HANGING* 18 (Gollancz 1956) (noting that the corpses of recently hung people were touched to cure physical maladies); JAMES BLAND, *THE COMMON HANGMAN: ENGLISH AND SCOTTISH HANGMEN BEFORE THE ABOLITION OF PUBLIC EXECUTIONS* 101 (Ian Henry Publications 1984) ("The bodies of hanged criminals were widely believed to have curative powers, and many people paid for the privilege of having parts of their own bodies rubbed against them.").

<sup>77</sup> *See* LINEBAUGH, *supra* note 57, at 109 (noting that in Dorset, England "it was believed that touching the corpse of the hanged person would cure common skin complaints"); POTTER, *supra* note 49, at 70 (relating the belief that "touching a newly-hanged corpse could cure a wart or other skin blemish").

<sup>78</sup> Executions in England were held in public venues until 1868. LAURENCE, *supra* note 7, at 26; V.A.C. GATRELL, *THE HANGING TREE: EXECUTION AND THE ENGLISH PEOPLE 1770-1868* 589-90 (Oxford University Press 1996); JUSTIN ATHOLL, *THE RELUCTANT HANGMAN: THE STORY OF JAMES BERRY, EXECUTIONER 1884-1892* 49 (John Long Ltd. 1956).

<sup>79</sup> RADZINOWICZ, *supra* note 49, at 190.

<sup>80</sup> *See* JOHN SYMONDS UDAL, *DORSETSHIRE FOLK-LORE* 186 (Toucan Press 1970) ("To touch the corpse of a person who has been hanged was long looked upon as a 'charm' or cure for certain diseases."); *see also* Part II.A.

<sup>81</sup> *See* Nöth, *supra* note 6, at 64, 70 (Some Old English charms, or spells, also required contact between the afflicted part and the object containing the curative properties.).

were considered to possess extraordinary restorative powers.<sup>82</sup> The "Gallows Touch,"<sup>83</sup> as this superstition came to be called, had regal origins. It developed in response to the pervasiveness of scrofula, a disease that afflicted the neck and the upper chest.<sup>84</sup> In the quest to find a healing agent for this troublesome ailment, people came to believe that they would be cured if the king touched them.<sup>85</sup> Eventually, this royal remedy was supplanted by the Gallows Touch because "when the monarchs of England allowed their thaumaturgical powers to lapse and no longer 'touched' those inflicted with scrofula, the 'death sweat' of executed malefactors was still held to possess the power to cure this disease, 'the king's evil.'"<sup>86</sup> With this revision, the Gallows Touch's medicinal powers were released when the hand of a hanged man touched or rubbed the afflicted area of the person seeking treatment.<sup>87</sup> In addition, some configurations were very specific about what had to be done to effectuate the relief sought. In some locales, the affected part had to be "touched with the back of the left hand,"<sup>88</sup> while another required stroking the diseased area nine times with the executed

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<sup>82</sup> A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 100 (the hand of a person whose death was brought about by judicial execution was "deemed particularly efficacious"). *See also* DONALD RUMBELOW, *THE TRIPLE TREE: NEWGATE, TYBURN AND OLD BAILEY* 188 (Harrap: London 1982) (describing gallows superstitions that called for the use of an executed person's hands).

<sup>83</sup> LAURENCE, *supra* note 7, at 112 (noting that the "Gallows Touch" was an "old superstitious method"); POTTER, *supra* note 49, at 70 (explaining that the "Gallows Touch" was "[o]ne persistent belief"). The "Gallows Touch" also was referred to as the "dead-stroke." A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 100; WRIGHT, *supra* note 5, at 252.

<sup>84</sup> Originally, scrofula was considered an ailment causing the enlargement of the glands in the neck. CRAWFURD, *supra* note 64, at 14; *id.* at 38 (noting that at one time in England the medical literature defined scrofula as being the multiple swelling of glands in the neck and throat); *id.* at 127 (A diagnosis of scrofula, or the King's Evil, was appropriate if the swellings "seizeth the Neck and Throat, and so marcheth down all along the Mastoideal Muscle."). Later in the early seventeenth century, during the reign of Queen Elizabeth I, the ailment's scope was expanded to include the enlargement of glands located "in the fore part of ye necke and under the Chin: also on the sides of the cheekes, and sometime spreadeth itself upon the brest, and under the Arme-pits and Groynes." *Id.* at 76-77 (William Clowes, one of Queen Elizabeth I's surgeons, quoting the definition formulated by Paulus of Aegina).

<sup>85</sup> HAGGARD, *supra* note 15, at 66 (noting that the Kings of England and France engaged in the "superstitious ritual of touching scrofulous patients to heal them"); VYSE, *supra* note 2, at 13 (observing that the healing power from a monarch's touch was one of the most widely held beliefs). *See generally* CRAWFURD, *supra* note 64, at 15-24 (recounting some of the history of the "royal touch" in France and England). Due to this imperial connection, scrofula also was also known as "the King's Evil." *Id.* at 14.

<sup>86</sup> LINEBAUGH, *supra* note 57, at 110.

<sup>87</sup> *See* A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 99-100 (describing the belief that the Gallows Touch would cure scrofula).

<sup>88</sup> *Id.* at 100.

person's hand.<sup>89</sup> Even though the Gallows Touch originally focused on healing diseases of the throat,<sup>90</sup> its therapeutic scope eventually broadened.<sup>91</sup> For example, it was deemed especially efficacious as a treatment for warts, wens,<sup>92</sup> and other skin problems.<sup>93</sup> An observer recounts how, "[a]t a mass execution and burning in 1786, twelve spectators went up to the gallows, where the executioner 'rubbed the still warm hands of the six dangling bodies upon their necks and faces as a supposed cure for wens.'"<sup>94</sup> At another eighteenth century hanging, a "young woman 'with a wen upon her neck was lifted up [to the gallows] and had the wen rubbed with the dead man's hands.'"<sup>95</sup> In addition, it was believed that the Gallows Touch could get rid of other types of growths such as goiters, bleeding tumors, ulcers, cancerous growths, and other swellings.<sup>96</sup> This super-

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<sup>89</sup> *Id.* (identifying and describing the different cures available by touching the corpse's hand).

<sup>90</sup> *Id.* at 99. It warrants noting that there is no indication that the throat ailments the Gallows Touch was thought to remedy were limited to those caused by contracting scrofula.

<sup>91</sup> LINEBAUGH, *supra* note 57, at 109–10 (identifying some of the "cures" purported to result from the Gallows Touch); A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 100 (describing the therapeutic versatility of the Gallows Touch).

<sup>92</sup> A wen is a type of cyst. WEBSTER'S COLLEGE DICTIONARY 1513 (1995).

<sup>93</sup> See UDAL, *supra* note 80, at 186 (The Gallows Touch was considered particularly effective for curing "skin complaints."); ENGEL, *supra* note 69, at 58 ("[A] touch from a hand of a hanged criminal was a cure for warts, wens and other blemishes to beauty."); GATRELL, *supra* note 78, at 81–82 (reciting the superstition that a wen or wart would be cured by stroking it with a hanged man's hand); DAVID D. COOPER, THE LESSON OF THE SCAFFOLD: THE PUBLIC EXECUTION CONTROVERSY IN VICTORIAN ENGLAND 22 (1974) (mentioning the view that the touch of a hanged man cured skin lesions); RADFORD, *supra* note 30, at 98, 249 (describing instances when the Gallows Touch was used to cure skin blemishes and noting that it was believed that the Gallows Touch cured warts); A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 99–100 (describing how the touch of a dead man's hand was a popular cure for warts and wens); THOMAS HARDY, *The Withered Arm*, in *WESSEX TALES* 93–94 (1888) (the character Trendle who cures the villagers through magic and folk-remedies informs Gertrude about the availability of the Gallows Touch to correct her skin problems); Wright, *supra* note 5, at 252 ("Formerly the approved cure was the dead-stroke (Nhp.), the stroking by the hand of the person who had just been hanged . . ."). Interestingly, other non-gallows superstitions relied on to fix skin diseases also required placing the curative object on the infected area. See CALDWELL, *supra* note 1, at 121 (noting the belief that "[s]kin diseases may supposedly be cured by applying to the affected part the warm flesh or entrails of a freshly killed fowl"). The curative item's lifelessness is another similarity. *Id.*

<sup>94</sup> RUMBELOW, *supra* note 82, at 188 (emphasis added).

<sup>95</sup> LINEBAUGH, *supra* note 57, at 110. See also ENGEL, *supra* note 69, at 58 (recounting an incident in nineteenth century England where a man cured a wen on his neck by rubbing it with the hand of someone who had been hanged).

<sup>96</sup> See GRANT, *supra* note 3, at 417 (the hand of a dead man was thought to "dissipate[ ] tumors of the glands"); GATRELL, *supra* note 78, at 81–82 (the Gallows Touch was used to cure tumors and cancers); A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 99–100 (people believed that the Gallows Touch cured tumors.).

stitution also provided gender-specific healthcare, as women relied on it to treat infertility.<sup>97</sup> To obtain this medical assistance, a woman would have her bosom stroked by the hand of an executed man.<sup>98</sup>

Pursuant to another permutation, the ailing area had to touch the hung person's neck.<sup>99</sup> As a result, people with withered and disfigured limbs tried to fix these problems by "plac[ing] the[ir] [limbs] upon the neck of a recently hanged man."<sup>100</sup> The renowned British author Thomas Hardy's reference to this manifestation of the Gallows Touch in his short story "The Withered Arm" gives credence to the conclusion that by the mid-nineteenth century it was probably a well-known practice in England.<sup>101</sup> Gertrude, the story's central protagonist, has a "withered" left arm.<sup>102</sup> Since previous efforts to mend her arm failed,<sup>103</sup> she is amenable to trying "some other sort of cure altogether."<sup>104</sup> This leads to Gertrude's consultation with Trendle, the local conjurer.<sup>105</sup> Trendle advises her that the "only one chance of doing it"<sup>106</sup> that he knows is if she uses the Gallows Touch by placing her arm on the "neck of a man who's been hanged."<sup>107</sup>

The Gallows Touch also functioned as a preventative health care measure.<sup>108</sup> For example, parents believed their children would be healthy if they were stroked by the hands of a man who had been hung.<sup>109</sup>

### B. *The Execution Implements*

The second group of healthcare-oriented gallows superstitions is derived

<sup>97</sup> LINEBAUGH, *supra* note 57, at 109 (describing the belief that a stroke from the dead hand could make a woman "fruitful").

<sup>98</sup> *Id.* One commentator mentions a gallows superstition that required women to have their bosoms stroked by the hand of an executed man. RADZINOWICZ, *supra* note 49, at 190. Unfortunately, the author does not provide a reason for this action. Since it necessitated that there be contact between a woman's bosom and the hand of an executed person, a reasonable conclusion is that the author was describing a practice designed to remedy infertility.

<sup>99</sup> LINEBAUGH, *supra* note 57, at 109.

<sup>100</sup> *Id.* (recounting the belief that a "withered limb could be made whole"); UDAL, *supra* note 80, at 186 (noting how the Gallows Touch was also used "as a cure for a shrunken or withered limb" by positioning "the limb . . . upon the neck of the corpse as soon as possible after it has been 'cut down,' and before it has had time to become cold").

<sup>101</sup> HARDY, *supra* note 93, at 67.

<sup>102</sup> *Id.* at 80.

<sup>103</sup> *Id.* at 87, 89, 91–93 (describing how Gertrude's "whole time was given to experimenting upon her ailment with every quick remedy she came across").

<sup>104</sup> *Id.* at 92.

<sup>105</sup> *Id.* at 84, 92–93 (noting that he is called "Conjurer Trendle").

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> LINEBAUGH, *supra* note 57, at 109.

<sup>109</sup> *Id.* (noting that nurses would bring children to the gallows for such practices in London).

from the appliances used to carry out executions by hanging. These tools include the hanging rope, the halter, and the gallows.<sup>110</sup>

Given that the rope was the most important accoutrement, it is understandable how it “has always been an object of superstition.”<sup>111</sup> Beliefs requiring the use of this execution tool were primarily directed at curing physical ailments.<sup>112</sup> The underlying premise of the Gallows Touch is evident in this context because several of these superstitions require contact between the infected region and the rope.<sup>113</sup> This was needed to activate the object’s restorative properties.<sup>114</sup> For example, it was believed that a person could get rid of blemishes by putting a piece of a rope used to hang a man on them.<sup>115</sup> Applying “[a]n inch or two of rope used in a hanging was highly regarded as a painkiller for a victim of toothache.”<sup>116</sup> It was also thought that the rope could restore vision.<sup>117</sup> The person with impaired vision would wear a length of a hanging rope around his or her neck in order to release its therapeutic powers.<sup>118</sup> This particular superstition functions as an amulet because it requires passively using a tangible object made from a natural material, in this case, the rope.<sup>119</sup>

The gallows is the structure erected to suspend the noose used to hang the condemned.<sup>120</sup> As another piece of the equipment employed to implement executions by hanging, the gallows also generated another set of superstitions designed to address healthcare concerns. Since the gallows was constructed

<sup>110</sup> See LINEBAUGH, *supra* note 57, at 109–110 (listing different ailments that could be cured using execution instruments from the gallows).

<sup>111</sup> RADZINOWICZ, *supra* note 49, at 190; LAURENCE, *supra* note 7, at 55 (“The rope has always been an object of superstition to the ignorant.”).

<sup>112</sup> Gerald D. Robin, *The Executioner: His Place in English Society*, 15 BRIT. J. SOC. 234, 249 n.43 (1964) (noting the existence of superstitions about the “supposed healing power of the hangman’s rope”). See ATHOLL, *supra* note 49, at 69 (commenting upon “the supposed medical attributes of the hangman’s rope”); FREDERICK DRIMMER, UNTIL YOU ARE DEAD: THE BOOK OF EXECUTIONS 136 (1990) (stating “[s]uperstitious people believed they could ward off bad luck and cure illness” with a hanging rope).

<sup>113</sup> See Part IV.A, *supra* (describing and discussing the gallows touch).

<sup>114</sup> See Part IV.A, *supra*.

<sup>115</sup> ENGEL, *supra* note 69, at 57–58 (explaining how “hanging ropes were good for the complexion”).

<sup>116</sup> *Id.* at 240.

<sup>117</sup> BRIAN BAILEY, HANGMEN OF ENGLAND 115 (1989).

<sup>118</sup> *Id.* at 115 (noting that a wife whose husband sight was failing “had been told that if her husband wore round his neck a length of rope that had been used to hang someone, his sight would be restored”).

<sup>119</sup> Hanging ropes were usually made from hemp. See JOHN BEALE BORDLEY, HEMP 1 (1799).

<sup>120</sup> The gallows is a device usually consisting of two upright posts supporting a cross-beam from which a noose is suspended and used for execution by hanging. WEBSTER’S COLLEGE DICTIONARY 434 (1995).

from wood,<sup>121</sup> it is not surprising that a general belief arose that "wood from the gallows itself had miraculous curative powers."<sup>122</sup> Consequently, splinters from the gallows were in great demand to provide relief from toothaches.<sup>123</sup> Unfortunately, there is no information available about whether the splinter was to be directly applied to the ailing location or put in a pouch and worn on the body as an amulet.<sup>124</sup> A piece of wood from the gallows,<sup>125</sup> as opposed to a splinter of the wood, could also alleviate the pain from a toothache, or even prevent toothaches altogether.<sup>126</sup>

Another medicinal superstition called for the sufferer to gather wood chips or shavings from the gallows. A person ailing from ague<sup>127</sup> would be cured by putting these chips or shavings into a bag and wearing the bag around his or her neck.<sup>128</sup> Wood chips also had preventative medicinal properties. For example, people could avoid contracting ague by fashioning and wearing an amulet similar to the one used to cure the disease, or by wearing the wood chips next to the skin.<sup>129</sup> The amulet version of this superstition can also be designated a talisman since the amulet is designed to attract positive energy by warding off disease.<sup>130</sup>

The final curative superstition in this category required using the halter that

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<sup>121</sup> *Id.*

<sup>122</sup> ENGEL, *supra* note 69, at 58.

<sup>123</sup> A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 172 ("[A] stopping from the wood of the gallows tree . . . was considered . . . 'a terrible suer thing for toothwark.'"); ABBOTT, *supra* note 67, at 240 (claiming "splinters from the gallows were believed to be a certain cure for a toothache"); LINEBAUGH, *supra* note 57, at 109 (Residents in northern England believed that a splinter of wood from the gallows could cure a toothache in the north of England.).

<sup>124</sup> See LINEBAUGH, *supra* note 57, at 109–110 (discussing the Gallows Touch).

<sup>125</sup> A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 172 (noting that a piece of the gibbet from the gallows was believed to cure toothaches). Although the superstitions make a distinction between "splinters" and "pieces" of wood from the gallows, those pertaining to the latter do not provide information on the requisite size of the piece. *Id.*

<sup>126</sup> See A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 172 (explaining that a piece of the gibbet from the gallows was believed to cure toothaches).

<sup>127</sup> Ague is a sharp fever with periods of chills and sweating. WEBSTERS II: NEW RIVERSIDE UNIVERSITY DICTIONARY (1988), at 87. It is often malarial in origin. *Id.* See LINEBAUGH, *supra* note 57, at 109–110.

<sup>128</sup> A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 172 (noting that as far back as 1650 it was thought that amulets containing wood chips from the gallows would cure or prevent ague); GRANT, *supra* note 3, at 417 (describing how ague could be cured by placing chips cut from the gallows in a bag and hanging it around the neck); RUMBELOW, *supra* note 82, at 189. See POTTER, *supra* note 4, at 7–8 (describing the amulet category of superstitions). See also Part II.A, *supra* (describing amulets).

<sup>129</sup> A DICTIONARY OF SUPERSTITIONS, *supra* note 52, at 172.

<sup>130</sup> See POTTER, *supra* note 4, at 185–86 (describing talismans as a type of superstition); See also Part II.A, *supra* (describing talismans).

secured the person being hung.<sup>131</sup> Headaches could be cured or prevented by tying the halter around someone's head.<sup>132</sup> Since the halter was constructed from natural material, leather, and worn passively after being placed around the head, this belief could be classified as an amulet.<sup>133</sup>

## V. THE CREATION OF THE NEED TO USE MEDICINAL GALLOWES SUPERSTITIONS IN ENGLAND DURING THE EIGHTEENTH AND NINETEENTH CENTURIES

### A. Introduction

Since gallows superstitions developed after England adopted hanging as its primary method of execution in the tenth century<sup>134</sup> and superstitions had been used for medicinal purposes for five centuries prior to that time,<sup>135</sup> it is reasonable to assume that the merger of these two categories of beliefs probably occurred during the tenth century. Thus, these medicinal gallows superstitions have a fairly old pedigree. The convergence of crucial and unique legal, economic, and social considerations suggests they were only frequently used in England during the eighteenth and nineteenth centuries.<sup>136</sup> The legal component involved the capital punishment policies implemented during these time peri-

<sup>131</sup> The halter is the leather component of the hanging apparatus that immobilizes the torso. WEBSTER'S COLLEGE DICTIONARY 547 (1995).

<sup>132</sup> ATHOLL, *supra* note 49, at 69 (tying a halter about the head that was used to hang someone will cure a headache); LINEBAUGH, *supra* note 57, at 109 ("A halter, wherewith anyone has been hanged, if tied about the Head, will cure the Headache . . ."); RUMBELOW, *supra* note 82, at 189 ("Headaches were supposed to be cured if a halter, with which anyone had been hanged, was tied about the head."); *See also* GRANT, *supra* note 3, at 417 (noting that the halter had to be tied about the head).

<sup>133</sup> *See* POTTER, *supra* note 4, at 7 (describing amulets as a type of superstition).

<sup>134</sup> ATHOLL, *supra* note 49, at 68 (opining that "as hanging became an accepted feature of life, many superstitions are associated with it"); LAURENCE, *supra* note 7, at 11 (concluding that the development of gallows superstitions was a consequence of the prevalence of hanging); POTTER, *supra* note 49, at 70 (opining that since England had "gallows at nearly every crossroads it is not surprising that many superstitions and legends grew up around them"); RADZINOWICZ, *supra* note 49, at 190 ("One of the effects of public executions was to encourage the growth of [these] superstitions."). *See also* POTTER, *supra* note 49, at 70 ("Superstition . . . was also rampant around the scaffold.").

<sup>135</sup> England had a lengthy tradition of using such superstitions. Nöth, *supra* note 6, at 59, 60, and 65 (noting Old English magical spells were "a substitute for medical therapy"); *see also* EVANS, *supra* note 6, at 193–94 (noting that magical jewels were traditionally used in ancient medicine). For example, magical spells and jewels were used in the fifth century for medicinal purposes. *See* POTTER, *supra* note 4.

<sup>136</sup> *See generally* GATRELL, *supra* note 78, at 6 ("Late eighteenth- and early nineteenth-century English people were very familiar with the grimy business of hanging."); *see also* ATHOLL, *supra* note 78, at 49 ("During the seventeenth and eighteenth centuries "every Assizes produced its crop of death sentences and the gallows and gibbet were as much a part of the English landscape as windmills were a part of the Dutch").

ods, while the economic factor stemmed from major developments in the industrial sphere.<sup>137</sup> Finally, significant demographic changes and their ensuing effects on employment and living conditions contributed to the creation of this situation.<sup>138</sup>

### B. *The Criminal Justice Environment*

Alterations to England's criminal justice system played an enormous role in creating a social climate conducive to fortifying the popularity of the medically-oriented gallows superstitions during the eighteenth and nineteenth centuries. The major contributing factor was the enactment of a plethora of criminal laws substantially increasing the number of death-eligible offenses.<sup>139</sup> This trend began when the British Parliament adopted the Waltham Act in May of 1722.<sup>140</sup> The Waltham Act, or the Black Act as it was colloquially called,<sup>141</sup> was promulgated for the seemingly innocuous purpose of deterring and penalizing anyone stealing deer and sheep from estates owned by the royals and the aristocracy.<sup>142</sup> Actually, it was an extraordinarily significant event in the annals of England's death penalty jurisprudence because it transformed seemingly minor transgressions into capital offenses, especially those that interfered with another's property rights.<sup>143</sup>

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<sup>137</sup> See Parts V.B, V.C, *infra*.

<sup>138</sup> See Part V.D, *infra*.

<sup>139</sup> See discussion *infra* notes 143–45.

<sup>140</sup> See RADZINOWICZ, *supra* note 49, at 49–51 (stating that the actual title of the Waltham Act said, “An Act for the more effectual punishing wicked and evil disposed Persons going armed in Disguise, and doing Injuries and Violences to the Persons and Properties of His Majesty’s subjects, and for the more speedy bringing the Offenders to Justice.”); RUMBELOW, *supra* note 82, at 157.

<sup>141</sup> The phrase “Black Act” was coined because sheep and deer rustlers routinely blackened their faces to avoid detection at night. Robin Hood and his men contributed to the enactment of this, as well as many other statutes against criminal activities. RUMBELOW, *supra* note 82, at 157. Consequently it should come as no great surprise that under the Act “blackening the face” was a capital offense. *Id.* at 120 (stating that the Waltham Act denominated “disguising” a capital offense).

<sup>142</sup> VISCOUNT TEMPLEWOOD, *THE SHADOW OF THE GALLOWS* 18–19 (1951) (noting that landowners’ concerns about people poaching on their estates prompted the adoption of the Waltham Act). See PETER LINEBAUGH, *THE LONDON HANGED, CRIME AND CIVIL SOCIETY IN THE EIGHTEENTH CENTURY* 49–51 (1991) (noting that poaching in the Waltham and royal Windsor forests was the impetus for passing the infamous Waltham Black Act).

<sup>143</sup> RADZINOWICZ, *supra* note 49, at 49–51; *Id.* at 143 (describing how at the end of the eighteenth century the death penalty was imposed for “a great many trifling offenses, particularly against property”); LAURENCE, *supra* note 7, at 13 (“Property, even more than person, was under the guardianship of the gallows.”); ROY PORTER, *LONDON, A SOCIAL HISTORY* 152–53 (Harvard University Press 1998) (stating that many of the 1,200 people who were executed in the eighteenth century were not hardened criminals but were the “laboring poor, servants, and salespeople who stole from their employers”). Execution statistics from the

The expansion of these draconian measures continued unrelentingly as the number of death-eligible offenses grew throughout the eighteenth century.<sup>144</sup> Even the advent of a new century did not abate this trend. By its apex in the early nineteenth century, there were an estimated 200 to 350 death-eligible crimes.<sup>145</sup> This state of affairs led one commentator to observe that “[t]here is probably no other country in the world in which so many and so great a variety of human actions are punishable with loss of life as in England.”<sup>146</sup> As a result, capital punishment was an omnipresent fixture in the lives of England’s residents during these two centuries.<sup>147</sup>

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1820’s confirm this conclusion as two-thirds of the individuals executed during those years had been convicted of property crimes. GATRELL, *supra* note 78, at 7.

<sup>144</sup> RADZINOWICZ, *supra* note 49, at 4 (“In the eighteenth century . . . [the] number [of capital offenses] began spectacularly to increase.”); Blackstone’s Commentaries published between 1765 and 1769 recorded 160 capital statutes. *Id.* at 3. See E. ROY CALVERT, CAPITAL PUNISHMENT IN THE 20TH CENTURY 4 (Kennikat Press 1927) (“[A]s late as 1780 the English law recognised over two hundred capital crimes.”); CHARLES DUFF, A HANDBOOK ON HANGING: BEING A SHORT INTRODUCTION TO THE FINE ART OF EXECUTION 151–52 (New York Review of Books 2001) (noting that by the nineteenth century Great Britain had at least 220 capital offenses).

<sup>145</sup> GEORGE RYLEY SCOTT, THE HISTORY OF CAPITAL PUNISHMENT INCLUDING AN EXAMINATION OF THE CASE FOR AND AGAINST THE DEATH PENALTY 37–40 (Torchstream Books 1950) (observing that between the late eighteenth century and the early nineteenth century the number of capital crimes was estimated to be between 200 to 350); see RADZINOWICZ, *supra* note 49, at 4 (nineteenth century legal commentators estimated that the number of capital offenses ranged from 200 to 223). Radzinowicz determined that the British criminal law added approximately one hundred and ninety capital offenses during a one hundred and sixty year period, from the Restoration to the death of King George III in the early nineteenth century. *Id.* See also WILLIAM J. BOWERS, EXECUTIONS IN AMERICA 169 (Lexington Books 1974) (stating that from the end of the fifteenth century until approximately 1819 England had 223 capital offenses); ABBOTT, *supra* note 51, at 138–39 (noting that in 1826 Great Britain had more than 200 capital offenses); GATRELL, *supra* note 78, at 7 (noting that there were over 200 capital crimes); DOUGLAS HAY, PROPERTY, AUTHORITY AND THE CRIMINAL LAW IN ALBION’S FATAL TREE: CRIME AND SOCIETY IN THE EIGHTEENTH CENTURY ENGLAND 18 (1975) (mentioning that by 1820 England had more than 200 capital offenses); LAURENCE, *supra* note 7, at 13 (observing that the number of capital offenses reached 222 before reforms were implemented in the nineteenth century); CHARLES DUFF, A HANDBOOK ON HANGING: BEING A SHORT INTRODUCTION TO THE FINE ART OF EXECUTION 151–52 (New York Review of Books 2001) (noting that by the nineteenth century Great Britain had at least 220 capital offenses).

<sup>146</sup> RADZINOWICZ, *supra* note 49, at 3 (quoting Sir Samuel Romilly).

<sup>147</sup> See GATRELL, *supra* note 78, at 6 (noting that during the “[l]ate eighteenth- and early nineteenth-century English people were very familiar with the grimy business of hanging”); see also ATHOLL, *supra* note 78, at 49 (“During the 17th and 18th centuries every Assizes produced its crop of death sentences and the gallows and gibbet were as much a part of the English landscape as windmills were a part of the Dutch.”).

### C. *The Economic Environment*

The extraordinary expansion in the capital crimes code paralleled the heightened interest in the protection of property that resulted from Britain's transformation into an international economic powerhouse during the eighteenth and nineteenth centuries.<sup>148</sup> The adoption of Mercantilism as its dominant economic policy<sup>149</sup> and the Industrial Revolution<sup>150</sup> caused Britain's economy to flourish.<sup>151</sup>

The creation of more moneyed classes was a major consequence of this economic boon.<sup>152</sup> This was accompanied by growing concerns about the security of the newly acquired property purchased through the profits from this financial

<sup>148</sup> RODERICK FLOUD AND PAUL JOHNSON, *THE CAMBRIDGE ECONOMIC HISTORY OF MODERN BRITAIN, VOLUME I: INDUSTRIALISATION, 1700-1860* 195 ("Britain's transformation from an economic backwater into Europe's leading economy with sophisticated commercial and financial institutions and a large manufacturing sector occurred during the mercantile era of growing long-distance trade."); W. HORROCKS, *A SHORT HISTORY OF MERCANTILISM* 197 (Meuthen & Co. Ltd. 1924) ("[T]he Mercantile System . . . has been the leading factor in their [countries'] economic . . . advancement."); *see generally* PORTER, *supra* note 143, at 187 (stating that economic prosperity spread to England's Northern cities with the advent of the Industrial Revolution).

<sup>149</sup> *See* GATRELL, *supra* note 78, at 85. *But see* HORROCKS, *supra* note 148, at 30-31 ("There is a legitimate difference of opinion as to when are to find the beginnings of Mercantilism . . ."). *See also id.* at 30-98 (providing a summation of the history of Mercantilism in England). Mercantilism began in the eighteenth century. FLOUD & JOHNSON, *supra* note 148, at 197 (Cambridge University Press 2004).

<sup>150</sup> The Industrial Revolution spanned approximately one hundred years, from about 1750 until about 1850. It has also been posited that the Industrial Revolution commenced in the 1780s. DEREK BEALES, *FROM CASTLEREAGH TO GLADSTONE: 1815-1885* 28 (W.W. Norton & Co. 1969). However, recent findings suggest that it may be futile to try and determine an accurate time period for the Industrial Revolution. FLOUD & JOHNSON, *supra* note 148, at 2 ("Perhaps the concept of an industrial revolution is indeed the product of an obsolete historiography.").

<sup>151</sup> *See* FLOUD & JOHNSON, *supra* note 148, at 195 ("Britain's transformation from an economic backwater into Europe's leading economy with sophisticated commercial and financial institutions and a large manufacturing sector occurred during the mercantile era of growing long-distance trade.").

<sup>152</sup> *See* J.H. PLUMB, *GEORGIAN DELIGHTS* 9 (Little Brown and Co. 1980) (The early eighteenth century witnessed a "growth of affluence amongst the middle and upper-middle classes."); PORTER, *supra* note 143, at 187 ("Commercial and imperial success created platoons of middle-class jobs . . ."); *See* N.F.R. CRAFTS, *BRITISH ECONOMIC GROWTH DURING THE INDUSTRIAL REVOLUTION* 62-63 (Clarendon Press 1985) (tabling the changing income levels during the Industrial Revolution and Mercantilism); BEALES, *supra* note 150, at 66-69 (discussing how the middle class grew during the eighteenth and nineteenth centuries. FRIEDRICH ENGELS, *THE CONDITION OF THE WORKING CLASS IN ENGLAND* 28 (Basil Blackwell 1971) ("Large-scale industry . . . has raised a small number of the middle classes to positions of great wealth and influence.")).

bonanza.<sup>153</sup> As Mercantilism began to pay dividends in the early eighteenth century, there was a concomitant rise in the number of capital offenses, specifically property crimes, as members of the aristocracy and the burgeoning affluent classes called upon Parliament to adopt harsh criminal legislation to protect their assets.<sup>154</sup> Interestingly, this coincided with the adoption of the Waltham Act in 1722, after Mercantilism had been in existence for several decades, and thus more individuals had accumulated substantial wealth.<sup>155</sup> Since the financial benefits first achieved under Mercantilism continued to endure when the Industrial Revolution commenced in the mid-eighteenth century, the number of death-eligible property offenses also continued to increase.<sup>156</sup> Ultimately, by the end of the Mercantilism economic phase and at the height of the Industrial Revolution, the majority of British death penalty laws imposed the severest penalty — the loss of life — for the commission of property offenses, many of them minor infractions.<sup>157</sup> Execution statistics evidence the strength and tenacity of the fusion between capital punishment and economic advancement. Many of the 1,200 people executed in the eighteenth century “were not hardened criminals but were the laboring poor, servants, and salespeople who stole from their employers.”<sup>158</sup> During the time period spanning Mercantilism and the beginning of the Industrial Revolution, slightly more than 86% of all executions carried out in London and its environs were for crimes against property.<sup>159</sup>

#### D. *The Social Environment*

As can be imagined, these commercial milestones produced vast changes in society.<sup>160</sup> Among the most important were unprecedented alterations to the demographic landscape caused by the economy’s dependence on maintaining a steady supply of workers. As industrialization increased, the centers of industry shifted to urban locations, creating a large class of impoverished people living in these cities. Extraordinarily dismal working and living conditions were two

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<sup>153</sup> See RADZINOWICZ, *supra* note 49, at 143; LAURENCE, *supra* note 7, at 13.

<sup>154</sup> See RADZINOWICZ, *supra* note 49, at 143; LAURENCE, *supra* note 7, at 13.

<sup>155</sup> See Part V.B, *supra* for a discussion of the Waltham Act.

<sup>156</sup> RADZINOWICZ, *supra* note 49, at 4 (determining that the British criminal law added approximately one hundred and ninety capital offenses during a one hundred and sixty year period, from the Restoration to the death of King George III in the early nineteenth century).

<sup>157</sup> See RADZINOWICZ, *supra* note 49, at 143 (stating that at the end of the eighteenth century the death penalty was imposed for “a great many trifling offenses, particularly against property”); LAURENCE, *supra* note 7, at 13 (“Property, even more than person, was under the guardianship of the gallows.”).

<sup>158</sup> PORTER, *supra* note 143, at 152–53; GATRELL, *supra* note 78, at 7.

<sup>159</sup> HORROCKS, *supra* note 149, at 197 (“[T]he Mercantile System, forced upon the nations by necessity, has been the leading factor in their [countries’] economic upbuilding and advancement.”).

<sup>160</sup> See CRAFTS, *supra* note 152, at 12–13.

unfortunate consequences of this exodus to the cities. These considerations, in turn, affected the utilization rate of the gallows superstitions at issue.

### 1. Demographics

Many of England's rural inhabitants fled their fiscally stagnated agrarian communities and relocated to the country's emerging urban centers to pursue burgeoning employment opportunities there.<sup>161</sup> This trend began when Mercantilism dominated the commercial arena in the eighteenth century.<sup>162</sup> The pace accelerated in the mid-eighteenth century with the advent of the Industrial Revolution.<sup>163</sup> When the Industrial Revolution reached its peak in the early nineteenth century, almost one million people resided in London.<sup>164</sup> Around the same time, approximately 40.5% of the labor force worked in manufacturing, industry and mining and only 22% worked in agriculture, forestry and fishing.<sup>165</sup> By the mid-nineteenth century, when the Industrial Revolution's pace began to slacken, approximately four and one-half million people inhabited London.<sup>166</sup>

This demographic factor resulted in an unprecedented explosion in the number of poor living in these urban commercial centers.<sup>167</sup> At one time, "[o]ver 30 per cent of London's population lived in poverty."<sup>168</sup> Mercantilism and the In-

<sup>161</sup> ENGELS, *supra* note 152, at 112 n.1. Friedrich Engels toured the country for approximately two years, and this book is a product of his trip. *Id.* at xi. He investigated England's industrial centers and studied the social conditions there from 1842 until 1844. *Id.*

<sup>162</sup> *See, e.g.*, LINEBAUGH, *supra* note 142, at 221 (remarking that the "recomposition of the agrarian labour force" continued during the Industrial Revolution).

<sup>163</sup> BEALES, *supra* note 150, at 32 (The "[u]rban population increased much more rapidly than [the] rural" during the Industrial Revolution.); LINEBAUGH, *supra* note 142, at 221 (observing that the urban poor and working class populations drastically increased during the Industrial Revolution); PORTER, *supra* note 143, at 186 ("The most remarkable social phenomenon of the [nineteenth century] is the concentration of population in cities . . ."). *See also* ASA BRIGGS, VICTORIAN CITIES 81 (1963) (discussing the tremendous increase in population that occurred in cities such as Manchester, Leeds, Sheffield, Bradford, and Birmingham during the Industrial Revolution from 1821-1851).

<sup>164</sup> *See* PORTER, *supra* note 143, at 185-86; *id.* at 150 (noting that even in the nineteenth century London's population continued to explode); *id.* at 205 (remarking how "London grew astonishingly in the nineteenth century").

<sup>165</sup> *See* CRAFTS, *supra* note 135, at 15.

<sup>166</sup> PORTER, *supra* note 143, at 205 (noting that "[b]y 1881 [the population] had soared to 4.5 million" from only one million on 1800). *See also id.* ("Between 1841 and 1851 alone, some 330,000 migrants flooded into [London] . . .").

<sup>167</sup> *See* LINEBAUGH, *supra* note 142, at 221 (stating that the urban poor and working class populations drastically increased during the Industrial Revolution). *See generally* BRIGGS, *supra* note 162, at 325 ("Poverty was not merely a consequence of particular developments in industry: it was the biggest single fact of contemporary existence, 'the problem of problems.'").

<sup>168</sup> BRIGGS, *supra* note 163, at 325.

dustrial Revolution also contributed greatly towards the enlargement of the affluent classes.<sup>169</sup> There were many whose accumulation of wealth resulted from their direct involvement with these two economic movements.<sup>170</sup> This growth is evidenced by the expansion in the number of families involved in commerce from the late seventeenth century to the middle of the eighteenth century, and in industry from the late seventeenth century until the early nineteenth century.<sup>171</sup> These individuals also substantially contributed towards stimulating the growth of the middle and upper classes<sup>172</sup> because increases in the number of wealthy individuals heightened the demand for goods and services.<sup>173</sup> This lured more people into the lucrative field of commerce.<sup>174</sup> Ultimately, the rise in activity at this level of business dealings boosted the number of prosperous city dwellers.<sup>175</sup> The intensification of the existing social stratification was one consequence of the pervasiveness of growth at all levels in the community.<sup>176</sup> Eventually, as many as eight social classes were identified, four above the poverty level and four below it.<sup>177</sup>

## 2. Living Conditions

The dismal living conditions of the impoverished city dwellers were a product of economic progress and the concomitant increase in the number of poor subjects who, due to this urbanization, left their rural homes and relocated to

<sup>169</sup> See PLUMB, *supra* note 152, at 9; PORTER, *supra* note 143, at 187; CRAFTS, *supra* note 152, at 62–63; BEALES, *supra* note 150, at 66–69; ENGELS, *supra* note 152, at 28.

<sup>170</sup> See ENGELS, *supra* note 152, at 28 (“Large-scale industry . . . has raised a small number of the middle classes to positions of great wealth and influence.”). See also CRAFTS, *supra* note 152, at 62–63 (tabling the changing income levels during the Industrial Revolution and Mercantilism).

<sup>171</sup> CRAFTS, *supra* note 152, at 13.

<sup>172</sup> See *id.*; see also BEALES, *supra* note 150, at 66, 69 (describing the presence of the middle class, the professional middle class, and the manufacturing class).

<sup>173</sup> See, e.g., PORTER, *supra* note 143, at 186 (describing the ways how “prosperity derived from servicing the rich”). *Id.* at 187 (“Commercial and imperial success created platoons of middle-class jobs . . .”).

<sup>174</sup> See *id.*

<sup>175</sup> *Id.* (“Commercial and imperial success created platoons of middle-class jobs . . .”); PLUMB, *supra* note 152, at 9 (The early eighteenth century witnessed a “growth of affluence amongst the middle and upper-middle classes.”); BEALES, *supra* note 150, at 66–69 (discussing how the middle class grew during the eighteenth and nineteenth centuries).

<sup>176</sup> BEALES, *supra* note 150, at 66, 69 (observing the presence of the middle class, the professional middle class, and the manufacturing class); see also PORTER, *supra* note 143, at 147–48 (noting that “London society was many-layered” and describing the different masses of laborers).

<sup>177</sup> PORTER, *supra* note 143, at 276–78 (listing the eight social classes as upper middle class, lower middle class, higher-class labour, regular standard earnings, small regular earnings, intermittent earnings, casual earnings, and “the lowest class of occasional labourers, loafers and semi-criminals”).

large urban locales.<sup>178</sup> This situation provided a breeding ground for diseases.<sup>179</sup> First, the accommodations were woefully substandard. In their quest to maximize the return on their investments, landlords crammed as many people as possible into the smallest space possible.<sup>180</sup> The architectural design of these tenements further lined the owners' pockets because it required constructing the dwellings close together on narrow streets, which maximized the number of buildings that could be constructed in an area.<sup>181</sup> Being in such close proximity meant substandard ventilation was the norm.<sup>182</sup> This had an adverse effect on the residents' health, as it facilitated the spread of communicable air-borne diseases.<sup>183</sup> The ease of transmission was assisted by rental policies that called for packing many people into individual units.<sup>184</sup>

Second, the lack of basic and adequate sanitation systems and services contributed towards making their living situation a disease-ridden cesspool.<sup>185</sup> The few communal toilets available could not possibly serve such large populations.<sup>186</sup> As a result, many residents of these neighborhoods had no option but to dump human waste into the badly drained streets.<sup>187</sup> The waste ultimately seeped into the water table, contaminating the water supply and creating yet another source of disease.<sup>188</sup> Since the residents used this water to satiate their

<sup>178</sup> See Part V.D.1, *supra*.

<sup>179</sup> An excellent summary of the conditions that contributed to the diseased state of the impoverished can be found at Edwin Chadwick, *Report from the Poor Law Commissioners on an Inquiry into the Sanitary Conditions of the Labouring Population of Great Britain* (1842) VICTORIAN WEB, <http://www.victorianweb.org/history/chadwick2.html>.

<sup>180</sup> ENGELS, *supra* note 152, at 44–45 (noting that sometimes fifteen to twenty people could occupy a single tenement apartment); *id.* at 36 (noting that in one study two-thirds of the families investigated had members were “packed into a single room”).

<sup>181</sup> *Id.*

<sup>182</sup> See *id.* at 45 n.2 (quoting The Artizan, Oct. 1843 at 229) (detailing the “old, ill-ventilated, towering houses crumbling to decay” in slums of England); see e.g., *id.* at 43 n.2 (to maximize the number of rental units, many tenements had dank cellar apartments, which made it exceptionally difficult for the air to circulate or for fresh air to enter the dwelling).

<sup>183</sup> *Id.* at 48 n. 4 (stating that the overcrowded living situations were detrimental to the residents' health); *id.* at 111 (“There is ample proof that the dwellings of the workers who live in the slums . . . give rise to many illnesses.”).

<sup>184</sup> ENGELS, *supra* note 152, at 36, 44–45.

<sup>185</sup> See *id.* at 34–44 (describing the conditions of the slums in different areas of England). See generally Chadwick, *supra* note 179.

<sup>186</sup> See ENGELS, *supra* note 152, at 44 (noting that in the working class sections of the factory town of Nottingham there is generally “only one privy to several dwellings”). One recorder observed the following: “In this part of the town there are neither sewers nor any private conveniences whatever belonging to the dwellings; and hence the excrementitious and other refuse of at least 50,000 persons is, during the night, thrown into the gutters, . . .” *Id.* at 43, n.1 (quoting The Artizan, Oct. 1843, at 230).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* (“In this part of the town there are neither sewers nor any private conveniences

thirst, they were exposed to a great risk of contracting the ailments contained in the waste.<sup>189</sup> In addition, the waste disposed of in the gutters caused a “foetid exhalation *disgusting to both sight and smell.*”<sup>190</sup>

The air’s quality was as disagreeable as its odor. The following passage vividly describes the noxious properties of the air that many Londoners breathed during the eighteenth century:

The infinite Number of *Fires, Sulphurous and Bituminous*, the vast expense of Tallow and foetid Oil in Candles and Lamps, under and above the Ground, the clouds of Stinking Breathes and Perspirations, not to mention the ordure of so many diseases’d, both intelligent and unintelligent animals, the crowded *Churches, Church Yards and Burying Places*, with the putrifying *Bodies*, the *Sinks, Butchers Houses, Stables, Dunghills* etc. and the necessary Stagnation, Fermentation, and mixture of Variety of all Kinds Of Atoms, and more than sufficient to putrefy, *poison and infect the Air for Twenty Miles around it, and which in Time must alter, weaken and destroy the healthiest of Constitutions.*<sup>191</sup>

Breathing such polluted air not only caused health problems, but also exacerbated existing ones.

Understandably, these living arrangements were disastrous to the residents’ health. The combined effect of each consideration would have weakened the poorer residents’ resistance, placing them at a greater risk of contracting a host of physical maladies. The financial inability to secure nutritious and adequate food only aggravated this dire situation.<sup>192</sup>

whatever belonging to the dwellings; and hence the excrementitious and other refuse of at least 50,000 persons is, during the night, thrown into the gutters, causing . . . an amount of solid filth and foetid exhalation disgusting to both sight and smell, as well as exceedingly prejudicial to health.”); *see also id.* at 48 (The River Aire “enters the town crystal-clear and undefiled, and leaves it thick, black and stinking with every imaginable kind of refuse.”).

<sup>189</sup> *Id.*

<sup>190</sup> ENGELS, *supra* note 152, at 43, n.1 (“In this part of the town there are neither sewers nor any private conveniences whatever belonging to the dwellings; and hence the excrementitious and other refuse of at least 50,000 persons is, during the night, thrown into the gutters, causing . . . an amount of solid filth and *foetid exhalation disgusting to both sight and smell*, . . . .” (emphasis added) (quoting The Artizan, Oct. 1843, at 230)).

<sup>191</sup> PORTER, *supra* note 143, at 162; ENGELS, *supra* note 152, at 43, n.1.

<sup>192</sup> Many diseases were found to be due to poor diets and nutrition more so than bad living conditions. Insufficient quantities of food often did not allow the poor to fight off the ailments that plagued them. Problems digesting food most commonly consumed by the working class also caused health issues. *See* ENGELS, *supra* note 152, at 114 (commenting on how poor diets contributed towards the general ill well-being of impoverished residents of city slums); *see also id.* at 32 (remarking on how the mortality rate is affected by “[a] continual lack of sufficient food”).

### 3. Employment Conditions

Most of the jobs available to the impoverished majority were not conducive to having and maintaining good health. First and foremost, the workers were at a great risk of having their physiological systems overly-taxed because of their long and arduous work hours.<sup>193</sup> This was especially ruinous to the health of children, who provided a substantial part of the labor needed for private industry to thrive.<sup>194</sup>

Second, workers performing certain tasks associated with particular occupations were extremely vulnerable to becoming afflicted with specific health problems. For example, the lengthy work days required most factory workers to remain in an upright position for an inordinate number of hours.<sup>195</sup> Damage to the spine and hips and misshapen limbs were frequent deleterious health consequences.<sup>196</sup> Child workers were particularly susceptible to these problems because this work condition frequently arrested their physical development.<sup>197</sup> Standing day in and day out also caused many workers to develop deep abscesses in their shins and thighs and ulcers in their legs.<sup>198</sup> Individuals who filed at a lathe also risked suffering debilitating changes to their bodies' structure.<sup>199</sup> Executing this task necessitated working in a bent-over position, which was "responsible for innumerable bent backs and crooked legs. One leg only is affected, and the result is that [when the worker stands up] his legs have the shape of a letter K. The deformed leg is popularly called the 'hind leg.'"<sup>200</sup>

The interaction between protracted work days and the requirement that workers assume specific positions to perform certain tasks also rendered female employees prone to suffer from a variety of ailments.<sup>201</sup> For example, female fac-

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<sup>193</sup> Many laborers worked twelve hours per shift and sometimes worked double. ENGELS, *supra* note 152, at 170.

<sup>194</sup> *Id.* at 158. Children laborers were often preferred because they would work for a lower wage than adults, especially men. *Id.* Also, children and women proved to be more skillful at hand-labor, and children worked better than adults due to small machines. *Id.* at 168.

<sup>195</sup> *Id.* at 170-71 ("The inevitable consequences were the appearance of nervous disorders, and a general lassitude and bodily weakness.").

<sup>196</sup> *Id.* at 171-72. Other types of physical problems included ulcers in the legs, varicose veins, falling in the arch of the foot, and bending in the knees and large bones.

<sup>197</sup> *Id.* (stating that a physician observed that children from factories developed a "knock-kneed appearance from the very long hours the children [were] worked in the mills").

<sup>198</sup> *Id.* (noting a physician's observations of ulcers on the legs of those "employed in factories, with and without varicose state of the veins, which are not to be observed in other classes of society at the same period of life"). See also P. Gaskell, *The Manufacturing Population of England*, (1833) VICTORIAN WEB, <http://www.victorianweb.org/history/workers2.html> (an excerpt describing the life of a typical worker).

<sup>199</sup> ENGELS, *supra* note 152, at 171-72.

<sup>200</sup> *Id.* at 228.

<sup>201</sup> *Id.*

tory workers who stood for many hours each work day were susceptible to deformed pelvises.<sup>202</sup> This increased the occurrence of miscarriages within this group of female employees.<sup>203</sup> Women employed in the embroidery division of the lace industry also had a heightened miscarriage rate.<sup>204</sup> This is attributable to spending hours working in a crouching position.<sup>205</sup> The runners, another occupation in the lace industry, which had a predominantly female workforce, “suffer[ed] from disturbances of the functions of the uterus.”<sup>206</sup> Female factory workers suffered from similar gynecological problems, such as never menstruating or menstruating irregularly.<sup>207</sup> Those toiling at dressmaking and millinery establishments also were apt to experience serious problems with their reproductive systems.<sup>208</sup>

Loss of vision was an occupational hazard for men, women and children alike. Of the positions in the lace industry, those working as threaders and runners had the greatest risk of permanently losing their vision.<sup>209</sup> Children involved in manufacturing glass “often [went] blind for weeks at a time.”<sup>210</sup> Many females working in millinery and dressmaking establishments lost their eyesight because of the intense visual acuity needed to perform many of the requisite tasks.<sup>211</sup> The nature of these assignments and the substantial amount of time spent doing them also made these employees susceptible to contracting severe headaches.<sup>212</sup>

Conditions in certain workplaces also heightened the likelihood that employ-

<sup>202</sup> *Id.* at 181 (describing the effect work can have on “the physique of the women operatives”). See also P. Gaskell, *The Manufacturing Population of England*, (1833) VICTORIAN WEB, <http://www.victorianweb.org/history/workers2.html> (an excerpt describing the life of a typical worker).

<sup>203</sup> *Id.* at 182.

<sup>204</sup> *Id.* at 217 (citing evidence of a higher prevalence of “anemia, difficulties in childbirth and miscarriages among the female operatives”).

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* The task of being a runner consisted of “keeping track of a solitary thread, which is picked out from a complicated pattern by means of a needle.” *Id.*

<sup>207</sup> *Id.* at 183–84 (“Menstruation often does not begin until the seventeenth or eighteenth year, and occasionally is even postponed to the twentieth year.”). See also *id.* at 188 (observing that women who work in factories were “rendered unfit to bear children”).

<sup>208</sup> The long hours worked by dressmakers, lack of fresh air, and unhealthy food they were served lead to problems with reproduction for the women. *Id.* at 238. Engels noted that “[a]ll the doctors examined by the Children’s Employment Commission were unanimously of the opinion that it would be impossible to imagine any type of work which would be more likely than this one to destroy health and lead to premature death.” *Id.*

<sup>209</sup> Threaders inserted thread and needles into small holes. Over time, performing these tasks cause these employees’ vision to become impaired. ENGELS, *supra* note 152, at 216.

<sup>210</sup> ENGELS, *supra* note 152, at 235.

<sup>211</sup> *Id.* at 238 (describing how girls were “engaged in hard and tiring work, which inflicts a great strain on their eyes”).

<sup>212</sup> *Id.*

ees would suffer from a variety of throat ailments. For example, in textile mills, almost all workers constantly inhaled factory dust, which led to incessant coughing and hoarseness.<sup>213</sup> Those engaged as wet spinners and doubles were especially susceptible to developing a hoarse voice.<sup>214</sup> “Bleachers” encountered this risk as well because they “continuously inhal[ed] chlorine.”<sup>215</sup>

Exposure to, and the risk of, contracting scrofula<sup>216</sup> was another serious health problem that existed in numerous workplaces. This affliction was especially rampant in the large child labor force. For example, in 1833, one physician observed that there were “[i]nnumerable cases of scrofula” among the children who worked in the textile mills.<sup>217</sup> Children hired by lace manufacturers as runners had the most elevated risk of contracting scrofula.<sup>218</sup> Scrofula was also a common complaint among the child workers responsible for embroidering lace.<sup>219</sup>

Regardless of the specific type of workplace—mill, factory or workshop—all were dank, usually overcrowded and normally provided extremely poor ventilation.<sup>220</sup> Individually or collectively these factors were not conducive to a healthy workforce. This state of affairs was aggravated by draconian and oppressive work policies, such as imposing heavy penalties in the form of lost wages, for tardiness and absences, even when due to illness.<sup>221</sup> During his tour of England’s industrial centers in the early nineteenth century, Friedrich Engels observed that “factory owners are not prepared to suffer any inconvenience whatever and dismiss their workers outright if they are so presumptuous as to fall ill.”<sup>222</sup> This policy further jeopardized the workers’ physical well-being because employees suffering from highly infectious diseases could not afford to miss a single minute, much less a single day, and would therefore come to work ill, facilitating the spread of the disease to other workers. When these workers

<sup>213</sup> *Id.* at 184 (noting that the “usual consequences of inhaling factory dust are the spitting of blood, heavy, noisy breathing, pains in the chest, coughing and sleeplessness”).

<sup>214</sup> Wet spinners, which is the wet spinning of linen yarn, have water spurted onto them continually, leaving their clothes and skin wet at all times and themselves standing in water. *Id.* Those working in doubling rooms are subjected to the same working conditions, only to a lesser degree. Workers in both positions were generally plagued with chest ailments and colds. *Id.* at 184–85.

<sup>215</sup> *Id.* at 220 (“Bleaching” required the worker to use chlorine to bleach cotton products).

<sup>216</sup> See Part IV.A, *supra* for a description of scrofula.

<sup>217</sup> ENGELS, *supra* note 152, at 177.

<sup>218</sup> See *id.* at 217. See *supra* note 208 for a description of a runner’s duties.

<sup>219</sup> ENGELS, *supra* note 152, at 217.

<sup>220</sup> See *id.* at 45 n.2 (detailing the “old, ill-ventilated, towering houses crumbling to decay” in slums of England) (quoting The Artizan, Oct. 1843 at 229).

<sup>221</sup> *Id.* at 182–83; see *id.* at 202 (observing that a set of factory rules stated “a worker who is three minutes late loses a quarter of an hour’s pay, while anyone who is 20 minutes late loses a quarter of a day’s pay”).

<sup>222</sup> *Id.* at 183.

returned to their abodes, the deplorable conditions there fueled the spread of the disease to their family members and other residents.<sup>223</sup>

#### VI. THE USE OF MEDICINAL GALLOWS SUPERSTITIONS TO ADDRESS THE HEALTH CARE NEEDS OF THE URBAN POOR

The workplace and living conditions that the cities' destitute inhabitants experienced were not conducive to maintaining good health. Consequently, disease, like the economy, flourished. This generated a tremendous need for medical treatment for the indigent, both preventative and curative. Unfortunately, few healthcare options were available. Seeking medical assistance from traditional medical providers was one alternative; however, a variety of obstacles compromised the feasibility of pursuing this course of action. As a result, many residents resorted to using gallows superstitions to take care of their medical needs.

##### A. *Traditional Health Care*

Although an increasing number of British subjects benefitted from the financial prosperity achieved during these centuries of economic progress,<sup>224</sup> hordes of city dwellers were still in impecunious situations.<sup>225</sup> Healthcare in England during the eighteenth and nineteenth centuries was largely handled by the private sector.<sup>226</sup> Consequently, obtaining medical attention through this channel was not a viable option for this segment of society because the dire state of their finances rendered it cost prohibitive to seek the services of a private physician.<sup>227</sup> As Raymond Crawford notes, "So it came, that all at once a horde of sick poor was turned adrift, to find relief for their sufferings as best they might."<sup>228</sup> Public healthcare providers were virtually non-existent.<sup>229</sup> Although the situation did slightly improve in the eighteenth century with the opening of

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<sup>223</sup> See Part V.D.2, *supra*.

<sup>224</sup> See Part V.C, *supra*.

<sup>225</sup> See Part V.C, *supra*.

<sup>226</sup> In the past, religious orders had been one option. But "[w]ith the dissolution of the monasteries [in England], the great majority of such religious foundations ceased to exist as active agencies of medical relief." CRAWFURD, *supra* note 64, at 64. With the destruction of the Catholic Church in the 1500's, this form of health care was no longer available to those living in poverty.

<sup>227</sup> See G. PARKER, *THE EARLY HISTORY OF SURGERY IN GREAT BRITAIN: ITS ORGANIZATION AND DEVELOPMENT* 138-39 (A.H. Black, Ltd. 1920) (stating that treatment at the few public hospitals was cost prohibitive); see also Engels, *supra* note 152, at 217.

<sup>228</sup> CRAWFURD, *supra* note 64, at 64-65. The problem created by the general unavailability of health care became graver because the exodus to urban locales constantly elevated the number of people who needed medical attention under circumstances with few formal options. *Id.*

<sup>229</sup> See PARKER, *supra* note 227, at 137-38.

a few medical facilities for the indigent,<sup>230</sup> the supply remained insufficient to handle the ever-burgeoning demand.<sup>231</sup> For example, London, with millions of residents, many of them poor,<sup>232</sup> had only two hospitals available to treat the indigent during the relevant time period.<sup>233</sup> Furthermore, neither facility had substantial bed space.<sup>234</sup> Given the potentially large number of indigent patients who would be seeking treatment at these facilities, the lack of hospital beds aggravated an already precarious situation. The case in London was especially acute because the lack of similar institutions in other locations throughout the nation meant that other impoverished people had no choice but to travel there to obtain medical attention.<sup>235</sup> This consideration compounded the problems faced by the two already overburdened public hospitals.

The scientific status of medicine during the relevant time period also probably diminished the likelihood that impoverished individuals would seek treatment from conventional healthcare providers.<sup>236</sup> For example, if it was likely that surgery would be part of a medical treatment plan, then poorer residents might be deterred from even considering pursuing this option because of their well-founded fear that a hospital stay would evolve into a death sentence.<sup>237</sup> Since the battle against sepsis was not won until the nineteenth century, there was a genuine risk that surgeries performed prior to that time could ultimately result in death from disease.<sup>238</sup> Furthermore, since the use of anesthesia was not perfected until the middle of the same century,<sup>239</sup> potential patients might decide to forego obtaining conventional medical treatment to avoid experiencing excruciating pain. The totality of these factors created a situation where it was

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<sup>230</sup> Indeed, one commentator proclaimed that the revival of hospitals for the sick poor “was one of the greatest social achievements of the eighteenth century.” *Id.* at 137.

<sup>231</sup> See Part V.D.1, *supra* (describing the population explosion in the cities during the eighteenth and nineteenth centuries).

<sup>232</sup> See Part V.D.1, *supra* (discussing the number of poor people who moved to London and the resulting population explosion during the eighteenth and nineteenth centuries). As previously noted, at one time an estimated thirty percent of London’s residents lived in poverty. BRIGGS, *supra* note 163, at 325.

<sup>233</sup> PARKER, *supra* note 227, at 137–38 (noting that London had two general hospitals and fewer were in the provinces).

<sup>234</sup> *Id.* (stating that 300 beds were maximum capacity at each hospital).

<sup>235</sup> *Id.* at 137–38 (observing that there were few hospitals for indigent patients in the provinces, and since there were few hospitals for the poor, many people traveled hundreds of miles for treatment). See also PORTER, *supra* note 143, at 167.

<sup>236</sup> See *infra* notes 238–39.

<sup>237</sup> PARKER, *supra* note 227, at 137–38; PORTER, *supra* note 143, at 167.

<sup>238</sup> W.J. BISHOP, *THE EARLY HISTORY OF SURGERY* 162–69 (Robert Hale Ltd. 1960) (detailing the history of the discovery of the causes of sepsis and the adoption of antiseptic practices in medicine).

<sup>239</sup> PARKER, *supra* note 227, at 165–66 (listing the history of anesthesia used up to this point); BISHOP, *supra* note 238, at 155–62 (mapping the steps used on the course of finding the proper use of anesthesia).

extremely unlikely that members of the ranks of the urban poor would obtain health care from traditional sources.

### B. Gallows Superstitions and Health Care

Although the odds of being treated by conventional modalities were slim, the lower class of the urban population had another healthcare alternative existed at their disposal: medicinal gallows superstitions. It is not surprising that the penurious denizens of England's cities sought health care through this method because "[w]here the inhabitants were destitute of medical resources, amulets and charms were employed for the alleviation of bodily suffering."<sup>240</sup> The death penalty legislation enacted during these centuries contributed towards making these superstitions function as a form of public healthcare because the constant increase in the number of capital offenses guaranteed the continuous availability of the items needed to effectuate the superstitions' curative and preventative properties: the body of the condemned and the various tools used to implement execution by hanging.<sup>241</sup> Lastly, the public nature of executions made it easy to access these necessary ingredients.<sup>242</sup>

As previously noted, the impoverished inhabitants of the urban locales lived and worked in deplorable conditions.<sup>243</sup> These circumstances detrimentally affected their physical well-being, rendering them very susceptible to contracting a host of diseases and afflictions.<sup>244</sup> On the home front, the polluted drinking water supply and the impoverished inhabitants' malnourishment made them easy prey for diseases feverish in nature.<sup>245</sup> One physician, commenting on the connection between poverty and feverish diseases, noted that "privation and insufficient food, clothing and shelter make the poor incapable of resisting the ravages of [typhoid fever]."<sup>246</sup> The residents were also vulnerable to suffering from scarlet fever and ague, two other ailments involving high fevers.<sup>247</sup> The inadequate ventilation endemic to their housing arrangements and their places of employment made for the facile transmission of these highly contagious dis-

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<sup>240</sup> GRANT, *supra* note 3, at 401–402; *see also* EVANS, *supra* note 6, at 193 (noting that peasants in eighteenth century England used magical jewels for medicinal purposes).

<sup>241</sup> *See infra* note 247 (discussing the proliferation of legislation establishing death eligible offenses during the eighteenth and nineteenth centuries); *See also* Part V.B, *supra* (discussing the criminal justice environment).

<sup>242</sup> Executions were not barred from being held in public venues until 1868. *See* GATRELL, *supra* note 78, at 592.

<sup>243</sup> *See* Parts V.D.2, V.D.3, *supra* (describing the living and working environments of the urban poor).

<sup>244</sup> *See* Parts V.D.2, V.D.3, *supra*.

<sup>245</sup> *See* Part V.D.2, *supra*.

<sup>246</sup> ENGELS, *supra* note 152, at 114. *See id.* at 111–13 for a more detailed discussion of the population's vulnerability to contracting typhus and the toil exacted on their communities.

<sup>247</sup> *See supra* note 127 (describing ague). *See also* ENGELS, *supra* note 152, at 111, 122.

eases.<sup>248</sup> This is one “reason why fever epidemics spread with such rapidity.”<sup>249</sup> The poor’s increased likelihood of contracting different types of diseases with fevers explains the development of a medicinal gallows superstition directed at curing and preventing them.<sup>250</sup> The individual seeking medical attention for this infirmity would need access to the wooden gallows because releasing the desired curative properties required gathering wood chips from it, placing them in a bag, and wearing it around the neck as an amulet.<sup>251</sup> Of course, it would be preferable to stave off these devastating fevers. Fortunately, the same belief functioned as a talisman<sup>252</sup> and consequently, could prevent people from suffering this affliction.<sup>253</sup> Keeping the wood chips next to the skin could add additional preventative assistance.<sup>254</sup>

The pervasiveness of scrofula in the workplace,<sup>255</sup> especially among the younger members of the industrial workforce, explains the popularity of the Gallows Touch as a cure for this disease. The afflicted individual would take the hands of the corpse and rub them on the infected glands.<sup>256</sup> This same superstition was used to provide relief from other ailments in the same general region of the body.<sup>257</sup> In certain industries, workers’ throats were constantly besieged by various irritants.<sup>258</sup> These chemicals and dust particles led to interminable fits of coughing and hoarseness.<sup>259</sup> Breathing the extremely polluted air would have aggravated these conditions and also led those not employed under those circumstances to risk suffering from diseases of the throat.<sup>260</sup> Fortunately, the Gallows Touch afforded a remedy for these discomforts as well.<sup>261</sup>

The lamentable circumstances of their lives also enhanced the risk that these residents would suffer from more serious problems, such as goiters, bleeding

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<sup>248</sup> See Part V.D.2, *supra* (explaining how working in overcrowded environments aided in the transmission of diseases).

<sup>249</sup> ENGELS, *supra* note 152, at 114.

<sup>250</sup> See generally Part V, *supra*.

<sup>251</sup> See *supra* notes 128–29 (detailing this particular gallows superstition). See also Appendix A.

<sup>252</sup> See Part II.A, *supra* (classifying talismans as a type of superstition).

<sup>253</sup> See Part IV, *supra* (noting different cures). See also Appendix B.

<sup>254</sup> See *supra* notes 128–29; Appendix B.

<sup>255</sup> In fact, scrofula has been described as “an almost universal complaint among the working classes.” ENGELS, *supra* note 152, at 115. See *id.* at 213 (describing how many of the framework knitters “had all the symptoms of scrofula”). See *supra* notes 218–221.

<sup>256</sup> See Part IV.A, *supra* (discussing how the “Gallows Touch” could cure scrofula).

<sup>257</sup> See Part IV.A, *supra*.

<sup>258</sup> See Part V.D.3, *supra* (identifying the workers at risk of contracting diseases of the throat).

<sup>259</sup> See *id.*

<sup>260</sup> See Part V.D.2, *supra*.

<sup>261</sup> See Part IV.A, *supra* (describing how the Gallows Touch was thought to cure such diseases of the throat as scrofula).

tumors, ulcers, and cancer.<sup>262</sup> For example, those working at occupations requiring that they stand for long hours, day in and day out, caused these employees to develop abscesses and ulcers in their legs.<sup>263</sup> Once again, it was believed that touching or rubbing the hands of an executed man would provide a remedy for these maladies.<sup>264</sup> The prevalence of the problem and the tenacious belief in this remedy is confirmed by the significant number of references to the Gallows Touch as the preferred cure for these troubles.<sup>265</sup>

On a smaller scale, “[p]eople in the eighteenth century were prone to a host of minor ailments—particularly skin disease.”<sup>266</sup> The poorer residents’ constant exposure to the filthy air and the absence of adequate nutrition would have made them liable to be subject to epidermis complaints as well.<sup>267</sup> The prevalence of these conditions helps explain why there are many references to using the Gallows Touch to cure skin blemishes, such as warts and wens.<sup>268</sup> If for some reason an individual was unable to gain access to the corpse, then the infected area could be healed by rubbing a piece of the hanging rope on it.<sup>269</sup>

Malformed limbs were another infirmity frequently suffered by the impoverished population. Poverty presented a financial impediment to parents’ ability to purchase nutritional sustenance for their children.<sup>270</sup> As a result, many children suffered from rickets.<sup>271</sup> “[I]t is quite common to find that the victims of the disease suffer from deformities of the spine and legs.”<sup>272</sup> Given the vast numbers of stricken children, it is understandable why the Gallows Touch superstition was relied on to straighten their crooked limbs.<sup>273</sup> Consistent with tradition, relief could be obtained by placing the afflicted limb on the executed person’s neck.<sup>274</sup> Adult and child workers whose occupations required them to maintain certain body positions, such as standing or crouching, also risked hav-

<sup>262</sup> See Part V.D, *supra*.

<sup>263</sup> See Part V.D.3, *supra*.

<sup>264</sup> See Part IV.A, *supra*; Appendix A.

<sup>265</sup> See Part IV.A, *supra* (identifying and discussing the Gallows Touch as a remedy for serious growths, cancer and ulcers).

<sup>266</sup> PLUMB, *supra* note 152, at 15.

<sup>267</sup> See Part V.D.2, *supra*.

<sup>268</sup> See Part IV.A, *supra*; Appendix A.

<sup>269</sup> See Part IV.B, *supra* (describing this medicinal gallows superstition); Appendix B.

<sup>270</sup> See ENGELS, *supra* note 152, at 114 (“The workers have neither the time nor the money to procure proper food for their children.”).

<sup>271</sup> *Id.* at 115. See generally Chadwick, *supra* note 179, at 2 (“[T]he younger population [during the mid-nineteenth century], bred under noxious physical agencies, is inferior in physical organization . . .”).

<sup>272</sup> ENGELS, *supra* note 152, at 115.

<sup>273</sup> See Part IV.A, *supra* (explaining how the Gallows Touch was used to cure physical deformities); Appendix A.

<sup>274</sup> See Part IV.A, *supra*.

ing the same physical infirmities.<sup>275</sup> Fortunately for these victims, the above-referenced variation of the Gallows Touch was believed to be effective in this context.

Female workers experienced unique physical deformities and health problems if they labored in a vocation that required them to assume certain physical positions for lengthy periods with no respite. As previously stated, it was common for pelvises to become deformed,<sup>276</sup> resulting in a rise in the rate of miscarriages for the impoverished segment of the population.<sup>277</sup> The nature of the work in a variety of occupations caused many female workers to “suffer from disturbances of the functions of the uterus”<sup>278</sup> and to experience a multitude of problems with their reproductive systems.<sup>279</sup> These considerations suggest that infertility was a common problem, which is why the Gallows Touch was used to correct this condition.<sup>280</sup> Effectuating this superstition required having the bosom of the afflicted woman stroked by the hand of an executed man.<sup>281</sup>

Visual impairment was another common occupational hazard, especially in certain industries.<sup>282</sup> In the manufacturing sector, employees who held certain positions in the stocking and lace industries were faced with a greater risk of permanently losing their vision.<sup>283</sup> Children employed at companies manufacturing glass<sup>284</sup> and females employed by clothing manufacturers were especially prone to losing their eyesight.<sup>285</sup> Considering that blindness was a universal vocational hazard, it is understandable why a medicinal gallows superstition existed to cure it. In order to reverse this health condition, the sufferer created an amulet from a segment of a rope used to hang someone and wore it around his or her neck.<sup>286</sup> Since the Gallows Touch also functioned as a general curative agent and one variation required contact between the executed person’s hand and the afflicted area, it is conceivable that this too was available to re-

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<sup>275</sup> See Part V.D.3, *supra*.

<sup>276</sup> See Part V.D.3, *supra* (describing deformities that developed in women workers).

<sup>277</sup> See Part V.D.3, *supra*.

<sup>278</sup> ENGELS, *supra* note 152, at 217.

<sup>279</sup> See Part V.D.3, *supra* (identifying the problems workers experience with their reproductive systems).

<sup>280</sup> See Part V.D.3, *supra*.

<sup>281</sup> See Part IV.A, *supra* (discussing how a gallows superstition developed to combat infertility in women).

<sup>282</sup> See Part V.D.3, *supra*.

<sup>283</sup> See Part V.D.3, *supra*; see also ENGELS, *supra* note 152, at 213, 216–17.

<sup>284</sup> ENGELS, *supra* note 152, at 235 (noting that the children workers’ “eyes are inflamed and they often go blind for weeks at a time”).

<sup>285</sup> *Id.* at 213 (stating that the lighting used in knitting exposes the knitter to “a great risk of eyestrain”); see *supra* note 213.

<sup>286</sup> See Part IV.B, *supra*; Appendix B; Part II.A, *supra* (describing the properties of an amulet).

store vision.<sup>287</sup>

The repetitive performance of a multitude of minute tasks also caused women in the millinery and dressmaking workshops to be prone to headaches.<sup>288</sup> Another curative medicinal gallows superstition was developed to treat this complaint. This belief, like the primary one used to restore vision, required the afflicted person to access one of the execution implements, in this case, the halter.<sup>289</sup> The headache sufferer would wrap the halter around his or her head to obtain relief.<sup>290</sup> Given that the minutiae of their work made them prone to headaches, it is understandable why the same superstition was used to prevent contracting a headache.<sup>291</sup>

The impoverished also suffered from toothaches.<sup>292</sup> Rubbing a piece of a hanging rope on the sore tooth could lead to respite from pain.<sup>293</sup> If for some reason a hanging rope was unavailable, then a different execution tool could be used.<sup>294</sup> This curative medicinal superstition called for using a splinter or a piece of wood from the gallows.<sup>295</sup>

#### VII. THE DEMISE OF MEDICINAL GALLOWS SUPERSTITIONS' PUBLIC HEALTH CARE ROLE

Due to the extraordinary number of capital offenses and the substantial rise in the impoverished segment of the urban population during the eighteenth and nineteenth centuries, it is understandable that these residents would increasingly use medicinal gallows superstitions to satisfy their health care needs. Reliance on this category of thematic beliefs most likely started to decline in the early-to-mid-nineteenth century when England implemented drastic changes to its criminal justice environment.<sup>296</sup> Specifically, legislation revising the coun-

<sup>287</sup> See Part IV, *supra* (discussing the cures associated with the gallows superstitions); Appendix A.

<sup>288</sup> See Part IV.B, *supra*.

<sup>289</sup> See *supra* note 131 (defining a halter).

<sup>290</sup> See Part IV, *supra* 132–134 for discussion of the gallows superstitions for the cure of headaches; Appendix B.

<sup>291</sup> See Part IV, *supra*.

<sup>292</sup> See *supra* notes 116, 123–126 (identifying the various medicinal gallows superstitions that existed to stop a tooth from hurting).

<sup>293</sup> See *supra* note 116; Appendix B.

<sup>294</sup> See Part IV.B, *supra*.

<sup>295</sup> See *supra* note 123 (discussing the use of splinters from the gallows to cure a toothache); see also Appendix B.

<sup>296</sup> RADZINOWICZ, *supra* note 49, at 40 (stating that the reform movement “achieved its main objectives within a short space of about ten years from 1823-1833”); LAURENCE, *supra* note 7, at 14 (noting that more than one hundred and ninety capital offenses were abolished between 1820 and 1860 and that a great number were abolished between 1832 and 1837); GATRELL, *supra* note 78, at 9–10 (remarking that the retreat from executions became evident in the 1830’s, and by 1837 most capital statutes had been repealed).

try's stance on capital punishment was enacted.<sup>297</sup> These new laws essentially thwarted urban dwellers' ability to continue to rely on gallows superstitions to satisfy their health care needs.<sup>298</sup>

England's capital punishment reforms had their genesis in the early nineteenth century with Parliament's enactment of legislation substantially reducing the number of death eligible offenses.<sup>299</sup> By the late nineteenth century, capital punishment was authorized as an appropriate penalty for only four crimes: murder, treason, piracy, and arson of dockyards and arsenals.<sup>300</sup> The legislation responsible for this enormous reduction in the number of capital offenses probably had the greatest effect on the demise of this category of superstitions because fewer capital offenses meant fewer executions.<sup>301</sup> Fewer executions reduced the number of corpses available to use in order to effectuate certain curative and preventative superstitions, such as the Gallows touch.<sup>302</sup> This also meant fewer execution implements were available.<sup>303</sup>

Additional laws adopted in the late nineteenth century further stymied the ability of the impoverished to rely on medicinal gallows superstitions as a treatment modality. In 1868, the British Parliament promulgated The Act to Provide for the Carrying out of Capital Punishment in Prisons.<sup>304</sup> This Act halted the long-standing practice of performing executions in public venues.<sup>305</sup> Now not only were there fewer corpses, but it also would be extremely difficult, if not impossible, for those searching for medical aid to even access a corpse. This consequence would have had a disastrous effect on the ability to use any of the gallows superstitions that required using the body of a person executed by hanging. Implementing this privacy regulation also would have rendered it impossible for the impoverished to gain access to the gallows and the halter, preventing the use of the medicinal gallows superstitions that required these execution tools to obtain the desired health care benefit.<sup>306</sup> The total demise of this genre of superstitions occurred eighteen years later when the British prison system imposed a regulation prohibiting the executioner from supplying and

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<sup>297</sup> LAURENCE, *supra* note 7, at 14.

<sup>298</sup> GATRELL, *supra* note 78, at 9–10.

<sup>299</sup> RADZINOWICZ, *supra* note 49, at 40; LAURENCE, *supra* note 7, at 14; GATRELL, *supra* note 78, at 9–10.

<sup>300</sup> The Offenses Against Person Act, 1861, Royal Commission on Capital Punishment: Minutes of Evidence, 1949-51 5 (HMSO 1953); BLAND, *supra* note 56, at 16.

<sup>301</sup> GATRELL, *supra* note 78, at 9.

<sup>302</sup> See Part IV.A, *supra*.

<sup>303</sup> See Part IV.B, *supra*.

<sup>304</sup> GATRELL, *supra* note 78, at 589.

<sup>305</sup> *Id.* at 589–90; LAURENCE, *supra* note 7, at 26; ATHOLL, *supra* note 78, at 49. See *supra* notes 79, 240.

<sup>306</sup> See Part IV, *supra* (identifying and describing medicinal gallows superstitions that used the gallows and the halter).

retaining the rope used to hang a malefactor.<sup>307</sup> With the adoption of this policy, none of the ingredients needed to effectuate the healthcare superstitions associated with them — the corpse, the gallows, the halter or the rope — could be legally acquired. Thus, by the late nineteenth century, poor urbanites would have been unable to have their medical needs addressed by utilizing these superstitions.

### VIII. CONCLUSION

Capital punishment and public healthcare certainly make odd bedfellows, but the convergence of legal, economic, and social factors created a situation ripe for this to occur. The economic prosperity experienced during the eighteenth and nineteenth centuries in England, the Industrial Revolution, and the ensuing industrialization and urbanization caused an unprecedented number of rural inhabitants to relocate to cities. The universally unsanitary and oppressive conditions of their living and work environments exposed the ever-increasing number of urban poor to a wide array of medical disorders. Yet the paucity of public hospitals made it unlikely that the vast majority of this segment of society would be able to obtain medical assistance through this mechanism. In addition, the severe lack of financial resources made it cost-prohibitive for them to secure conventional treatment in the private sector. It is understandable why those occupying the lower echelons of society turned to the contextual superstitions that blended medicinal and gallows superstitions as a way to fulfill their healthcare needs. Consequently, these specific gallows superstitions played a role in ameliorating the health care crisis encountered by poorer residents.

Increasing financial prosperity contributed to the enactment of a substantial number of criminal statutes that imposed the death penalty. The swelling ranks of the urban poor led many in the burgeoning affluent classes to perceive a threat to the security of their property. This stimulated demands to institute harsh criminal legislation that imposed severe penalties for the commission of property offenses. As a result, Britain's death penalty jurisprudence in the eighteenth and nineteenth centuries called for imposing the ultimate sanction for the commission of a multitude of offenses, many of them minor property infractions, increasing the number of people executed. This consequence and the public nature of executions guaranteed not only that the public would have access to the bodies of those executed, but also that there would be a steady supply of bodies and tools used to carry out executions. Although these draconian laws were primarily adopted to protect the property interests of the aristocrats and the newly emerging upper and middle classes, they also had the incidental effect of stimulating the use of gallows superstitions for medicinal

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<sup>307</sup> ATHOLL, *supra* note 78, at 53–54 (noting that until 1886 the hangman provided the rope and after carrying out the execution could retain possession of the rope). It also specified that the rope remain in the government's possession after the execution. *Id.* See Part IV, *supra* (identifying and describing medicinal gallows superstitions that used the rope).

purposes, since traditional avenues were essentially unavailable. Therefore, the rich used these draconian death penalty laws as a weapon against the poor, yet ironically these laws became one way the poor were able to address the health problems derived from their living and working conditions. These superstitions prevented and cured a variety of ailments, although curative beliefs significantly outnumbered preventative ones. Both required using the body or body parts of the condemned, or the implements used to carry out the execution: the rope, the gallows, and the halter, all of which were generally available because of the number of executions being carried out.

Ultimately, radical reforms to England's criminal justice environment led to the dissolution of one of history's more ironic partnerships. The demise of the medicinal gallows superstitions commenced in the early to mid nineteenth century with the enactment of legislation drastically reducing the number of capital offenses. Subsequent laws impeded the populace's ability to obtain the execution tools. The process was completed by 1886, when the British prison system instituted a regulation barring the executioner from removing the hanging rope from the prison. These developments could certainly be considered positive changes. For example, the decrease in the number of death eligible offenses would result in a decline in the number of executions, which would bode well for the impoverished because the overwhelming majority of the executees were members of that group.<sup>308</sup> On the other hand, the changes adversely affected the poor because they frustrated their ability to access the items needed to effectuate the gallows superstitions they relied on to satisfy their need for medical treatment. Thus, medicinal gallows superstitions were forcibly ended as it became extremely difficult, if not impossible, for them to continue their role as a public healthcare provider.

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<sup>308</sup> GATRELL, *supra* note 78, at 8 (“[A]part from the execution of a few wealthy forgers or murderers, most of the hanged were poor and marginalized people . . .”).

APPENDIX A  
 CURATIVE AND PREVENTATIVE GALLOWS SUPERSTITIONS:  
 THE EXECUTED PERSON'S BODY

<b>Ailment</b>	<b>Curative</b>	<b>Preventative</b>
Bleeding Tumor	Touch/rub it with the hand of a hanged man	None
Cancerous Growths	Touch/rub them with the hand of a hanged man	None
Children's Good Health	None	Stroke children with the hands of a hanged man
Deformed Limbs	Place the limb on the neck of a hanged man	None
Goiter	Touch/rub it with the hand of a hanged man	None
Illnesses	Touch/rub the body of a hanged man	None
Infertility	Stroke a woman's bosom with the hand of a hanged man	None
Scrofula	Touch the hand of a hanged man	None
Skin Complaints	Touch/rub the body of a hanged man	None
	Touch/rub the skin lesion with the hand of a hanged man	None
Swellings	Touch the throat with the hand of a hanged man	None
Throat Diseases	Touch the throat with the hand of a hanged man	None
Ulcers	Touch/rub them with the hand of a hanged man	None

APPENDIX B  
 CURATIVE AND PREVENTATIVE GALLOWS SUPERSTITIONS:  
 THE EXECUTION IMPLEMENTS

<b>Ailment</b>	<b>Curative</b>	<b>Preventative</b>
Ague/Fever	Fill a bag with wood chips from the gallows and wear it around the neck	Keep wood chips from the gallows next to the skin or inside a _____ worn around the neck and resting on skin
Blindness	Wear a piece of rope used to hang someone around the neck	None
Headache	Wrap a halter used to hang a man around the head	Wrap a halter used to hang a man around the head
	Splinter of wood from the gallows	None
Skin Complaints	Piece of a rope used to hang someone	None
Toothache	Splinter of wood from the gallows	Splinter from the gallows
	Piece of a rope used to hand someone	None

