

**A Severed Umbilicus:
Infanticide and the Concealment of Birth
in Natal, 1860-1935**



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**A thesis submitted in fulfillment of the requirements for the degree of
Doctor of Philosophy in History, in the Department of Historical Studies,
Faculty of Humanities, University of KwaZulu-Natal.**

November 2011

For Mum ... who lingers!

D e c l a r a t i o n

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Prinisha Badassy
November 2011

Associate Professor Julie Parle (Supervisor)
November 2011

A b s t r a c t

A Severed Umbilicus:

Infanticide and the Concealment of Birth in Natal, 1860-1935

by

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Supervised by: Associate Professor Julie Parle
Department of Historical Studies

This dissertation is an historical examination of the crimes of infanticide and the concealment of birth in Natal between 1860 and 1935, where more than thirty such cases were tried before the Supreme, Magistrate, and District Circuit Courts. This study does not look at the crime of infanticide and concealment of birth in isolation, however, but also considers the crime in relation to cases of ‘child murder,’ still-births, and abortion, since the term infanticide itself was highly contested and only fully defined in legal terms in South Africa by 1910. Some of the key themes this study covers include the ways in which legislation changed over time (for instance, the concept of “concealment of birth” altered to “infanticide” and the naming of the potential perpetrator from “woman” to “person.”); the problems posed for medical jurisprudence in trying to prove a separate existence of an infant from its mother; and whether a ‘live birth’ had occurred before a charge could be proffered. In Natal, it is clear that legislation shaped interpretation and practice, but practice and interpretation, across many social and institutional settings, also shaped legal definitions. Other arguments raised in this study relate to the “instability of the womb” and how puerperal insanity and emotional or psychological mental evidence began to outweigh the physical, bodily evidence in the courtroom. Furthermore, such issues as illegitimacy, baby-farming, infant life protection, mothercraft, miscegenation, incest, respectability, and local cultural practices are integral to understandings of the possible underlying motives for the acts of infanticide and concealment of birth. By tracing the meaning and incidences of infanticide and the concealment of birth across the social spectrum, this study offers insights into a range of issues in social, legal and medical history. These include: the study of the domain of the family; of labour and political economy; of medico-jurisprudence and clinical medicine; of changing gender power and hierarchies; and of gendered discourses of criminality.

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A c k n o w l e d g e m e n t s

This thesis has travelled for many years, to many cities, in many shapes and forms, and with many identities. Over the years, it has made friends out of strangers and critics out of friends, but all these people have left an indelible mark on its final form and existence.

Foremost, is Julie Parle – the bearer of calmness. Julie has endured this journey with me every step of the way and knew that I had it in me to finish this project. Her dedication to me and this dissertation, and her energy have spurred me on and kept me focussed. I am so grateful to Julie for inspiring, critiquing, editing and motivating and, most importantly, for making me realise that I actually have an important contribution to make to South African historiography. I consider myself extremely privileged and honoured not only to have been supervised by Julie, but also, to share a friendship with her that will undoubtedly endure.

I also owe due thanks to Catherine Burns. I started this project with Catherine and Julie as co-supervisors, but owing to circumstances beyond her control, Catherine had to pursue other projects. Nonetheless, she played an influential role in my completion of the dissertation over the last few years. Catherine is both invigorating and animated and she has an unparalleled way of making history come alive – that makes it both tangible and relevant. I am immensely thankful for the fateful day in 2000, when I first encountered Catherine in a lecture on Law and Society, which changed the course of my life forever.

Since my early days as a sprightly undergraduate student, almost ten years ago, the staff, faculty and friends of the History Department at the University of KwaZulu-Natal have been instrumental in shaping my academic career: Keith Breckenridge, Sandi Thompson, Thembisa Waetjen, Vanessa Noble, Gerry Maré, Richard Pithouse, Vukile Khumalo, Goolam Vahed, Jeff Guy – who first tutored me in the mysterious ways of the archives – Marijke du Toit, Kalpana Hiralal, Mandy Goedhals, Donal McCracken, and Clare Hull. This thesis is in many ways a testament to their unwavering dedication and commitment to History, academia and the pursuit of knowledge. The History Department is truly a sacred space that is both nurturing and humbling, and as the plaque in the McIntyre Library reads, – which some of you may know – suffering indeed does give knowledge. It gives richness and it gives depth to life.

I would also like to thank fellow graduate students of the History Department: Mxolisi Mchunu, Mwelela Cele, Eva Jackson, Hannah Keal and Amina Issa not only for sharing references and sources with me, but also for being encouraging and supportive and for understanding the vicissitudes of writing a dissertation.

I am greatly indebted to my colleagues at the Centre for Culture and Languages in Africa at the University of Johannesburg: Caroline Jeannerat, Karie Morgan, and Prema Chetty, for their steadfast support, honesty, and advice. Most especially Natasha Erlank to whom I am

immeasurably grateful for her enthusiastic interest in my work and for creating a space in which I could finally complete the dissertation. A special mention has to be made of Roedhina Bingham at the Inter-Library Loan desk, whose efficiency was greatly appreciated. I would also like to acknowledge Caroline Jeannerat, who read this thesis just as many times as I did – if not more – and whose comments and editorial suggestions have improved it considerably. In Caroline, I also found a great friend and consider myself very fortunate to know that I can always count on, and turn to her for invaluable advice.

During the final year of this thesis I had the privilege of working in the History Department at the University of the Witwatersrand whose support and encouragement held me in good stead until the final days of writing. I would like to thank Peter Delius, Clive Glaser, René Carstens, Mucha Musemwa, Noor Nieftagodien, and Sekibakiba Lekgoathi.

Much of the research for this thesis was completed while the Pietermaritzburg Archives was, and still is undergoing much need renovations, and through the chaos, dust, rubble, inoperable elevators and noise, the staff at the Archives were ever more accommodating and patient. So, a deep and gracious bow to the staff at the Pietermaritzburg Archives Repository for their generosity of spirit. Most especially Mr. Nicholas Maduna who, when the elevators were out of order, cordially climbed five flights of stairs (archival boxes in hand) many times a day and never complained. It is no exaggeration when I say that without his efforts, the research for this project would not have been possible.

My deep appreciation and gratitude to the CLIOHRES network who were both interested and encouraging in my work. To Aitor Ibarrola, Amadeo Serra, Ana Paula Avelar, Anabela Ferreira, Angela Campos, Attila Barany, Balazs Czetzy, Begona Echabe Perez, Csaba Levai, Danijel Grafenauer, Emilio Sáenz-Francés San Baldomero, Esteban Goti Bueno, Geert Castryck, Istvan Kornel, Istvan Vida, Klaus Van Eickels, Lorena Fernandez, Maria Jesús Cava Mesa, Maria A. Gago de Camâra, Mark Häberlein, Matjaz Klemencic, Mihaly Dobrovits, Nokuthula Cele, Nunziatella Alessandrini, Robert Kerepeszki, Thomas Sinclair, Vera Pavlovna Sidorova and Victor Zakharov, I say: *ngiyabonga ka khulu!* Through this research programme I had the absolute pleasure of meeting Mary Harris, Saul Dubow, Anna Agnarsdóttir, Vinita Damodaran, and Jan-Frederik Abbeloos, who were not only great travelling companions but who were wonderfully supportive, intellectually stimulating, and over the years have become valued friends.

Outside of the confines of writing, many people kept me motivated, sane and smiling. Firstly, my family who remain the compass in my life. The nagging phone calls and whimsical visits which provided much needed relief, distraction and invigoration. My parents, my siblings and their partners: Misha Badassy, Nirasha Badassy, Ravesh Badassy and Vino Dorsamy, whose faith and belief in me kept me strong, and who love me unconditionally. Also, my niece and nephew, Keshav and Kamika, who bring such joy and delight to our lives – their energies and innocent spirits make the world a better place. Secondly, our friends and family in Johannesburg who made this feel like ‘home’ and sustained my need for friendship and frivolity: Vani Naidoo, Logesh Yenketsamy, Vio Sukdev, Priya Gengan, Vishnu Sewnath,

Nerina and Devan Govender, Charlene and Nayan Khadua, Michelle Moodley, and not forgetting Prashanth Rampersad – the great fire maker!

For their constant and unwavering friendship, encouragement and acceptance, thank you to my dear friends Stephen Sparks, Suryakanthie Chetty, Vashna Jagarnath, Nafisa Essop Sheik, Ian MacQueen, Julian Brown, and Andrew MacDonald. Stephen, Surya, Vash, Nafisa and I started this ‘academic’ journey in 1999 and the friendship that we have forged over the years is truly a blessing. Since that time, we have lived life deliberately, we have lived life deep, we have sucked the marrow out of life and they make my life extraordinary.

I would like to duly acknowledge the financial assistance of the Clithres Doctoral Programme, funded by the European Union, and the University of KwaZulu-Natal Scholarships Office through which I received the African Academia Award as well as the UKZN Doctoral Scholarship. Much gratitude to the National Research Foundation (NRF) for the Prestigious Doctoral Scholarship, and for which I need to add this legal disclaimer: *The financial assistance of the NRF towards this research is hereby acknowledged. Opinions expressed and conclusions arrived at, are those of the author and are not necessarily to be attributed to the NRF.*

Finally, and most of all, my deepest love and greatest thanks to Anesh Naidoo, who never accepted anything less, and to whom I am forever emotionally and intellectually indebted. I wrote this in a letter to him when I was 17, and I am writing it here again, ... for very little has changed since then:

the girl began, singing:

how does love create immortality?

and the others replied:

love creates mystery.

and mystery creates thought.

thought creates action.

and action creates a life.

the essence of your life is your gospel.

and your gospel is your light.

your light is your immortality.

and so love creates immortality.

(Ben Okri, *Songs of Enchantment*)

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List of Abbreviations

1/EPI – Magistrate and Commissioner, Empangeni (Lower Umfolozi) (1887 - 1978)

1/HWK – Magistrate and Commissioner, Howick (Lion's River) (1882 - 1976)

1/LDS - Magistrate and Commissioner, Ladysmith (1850 - 1976)

AGO – Attorney General's Office (1845 - 1928)

BMJ – British Medical Journal

CNC – Chief Native Commissioner (1893 - 1952)

CS – Colonial Secretary (1900 - 1910)

CSO – Colonial Secretary's Office (1842 - 1919)

DBN – Durban

DS – District Surgeon

DPH – Department of Public Health (1901 - 1911)

GG – Governor-General (1905 - 1974)

GH – Government House

GOV – Governor of the Transvaal Colony (1901 - 1910)

II – Indian Immigration Department (1858 - 1924)

IRD – Immigration Restriction Department (1897 - 1912)

LD – Secretary to the Law Department (1900 - 1925)

LD – Secretary to the Law Department (1900 - 1925)

MJPW – Minister of Justice and Public Works (1861 - 1910)

MOH – Medical Officer of Health

MSCE – Master of the Supreme Court. Estates (1840 - 1971)

NCP – Natal Colonial Publications

NGA – Natal Government Asylum

NT – Natal Treasury (1846 - 1912)

PAR – Pietermaritzburg Archives Repository

PMB – Pietermaritzburg

PMG – Postmaster General (1855 - 1901)

RSC – Registrar, Supreme Court, Pietermaritzburg (1846 - 1966)

SAB – National Archives Repository (Public Records of Central Government since 1910)

SAMR – South African Medical Record

SGO – Surveyor General's Office (1837 - 1914)

SNA – Secretary of Native Affairs (1860 - 1932)

TAB – National Archives Repository (Records of the former Transvaal Province and its predecessors as well as of magistrates and local authorities)

URU – Decisions of the Executive Council (1910 - 1985)



Image 1: Map of the Natal Region¹

¹ Robert Morrell. *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*. (Pretoria: University of South Africa Press, 2001), 2.

*To force out the womb is grievous,
the knot of the cradle-skin is a flower;²*

² Isaac Schapera. *Married Life in an African Tribe*. (London: Faber and Faber, 1940), 224.

Introduction ¹

This dissertation begins with the case file of a woman named Rosaline.² At the Pietermaritzburg Archives Repository, nestled in a tightly bound volume of letters, minute papers, case files, and general correspondence of Attorney General G. A. de R. Labistour is a faded manila DL sized envelope. Inside this envelope are obscure bits and pieces of dried blades of grass, now 106 years old.³ While it is not unusual for the records of the Attorney General's Office to contain objects such as diaries, photographs, keys, maps, private letters or cloths of various shapes, textures and sizes that had been used as evidence in civil and criminal court cases, an envelope containing dried blades of grass is somewhat unusual. On closer inspection the case file revealed that a woman named Rosaline had been charged with concealing the birth of her child and that she had allegedly used these blades of grass to strangle the baby. It was from this startling revelation that this dissertation developed.

¹ The title of this thesis is not derived from any primary source; however, its intent is to convey the pathos of the moment of violence when the crime of infanticide or concealment of birth occurs.

² Pietermaritzburg Archives Repository [hereafter PAR], Attorney General's Office [hereafter AGO], 1/4/159, 117/1905, Assistant Magistrate, City. Body of Child found in the Dorp Spruit, 1st February 1905. For further details on this case, see the tabulated case summaries in the Appendix.

³ See Appendix for an image of these blades of grass.

This project uses the crime of infanticide as a window into the social dynamics of the private and domestic space in Natal, where love, lust, incest, ignorance, poverty, and rape, sometimes resulted in many unwanted and ‘illegitimate’ pregnancies. These crimes were created within their own set of orchestrating emotions and situations and were acted out in different settings, with varying energies, agendas and motives. The subjectivities that the study attempts to resurrect of the men and women convicted for this crime, help to draw out historical continuities with respect to the act of infanticide across boundaries of time and space. The study posits that the social, cultural and legal anxieties associated with the crime of infanticide and concealment of birth were multi-layered and complex. While a study of this kind might not appear to be of central importance to the historiography of Natal – since only a relatively small number of records on the reported incidences of infanticide and concealment of birth exist – micro-histories such as these, typically of marginal and ordinary men and women, reveal a particular historical narrative that would be difficult to arrive at through other avenues. These women and men were not merely crushed by the past, they lived through it, and they created it, and for this reason, their stories resonate in the present.

As Nigel Penn argues in *Rogues, Rebels and Runaways: Eighteenth Century Cape Characters*, the fact that records about marginal and ordinary characters such as these are to be found in the archives suggest that they attracted the attention of the colonial bureaucracy for a reason, and for this alone they cannot be ignored. Penn argues that “in keeping with the turbulent natures they displayed ... and consistent with the irrepressible qualities with which they first forced themselves into the historical

record, they demanded attention.”⁴ While the primary characters in this thesis were not necessarily “irrepressible” or embodied a “turbulent nature”, as Penn describes, it is the pathos evoked by the nature of their crimes that demands attention. This point is important because critics of the existing historiography of individuals’ experiences in Natal have tended to point towards an inclination for the writing of inward looking, exclusivist histories. Many of these histories fail to link the experiences of the various social and racial groups of colonial Natal and neglect to use these comparisons to interrogate the way in which the colonial state worked, to understand the shared experiences of women and men that cut across race and class, and to analyse the intersecting of medical, gender and legal histories.⁵

By the seventeenth century, the term infanticide was incorporated into the English language from the Latin *infanticidium*, meaning *the killing of a child*, denoting the practice of killing as well as the abandonment of children shortly after birth. Infanticide has long been practiced all around the world: for example, in previous centuries it was common among the Hakka people in China, the Rajputs in India, as well as the Kutch, Kehtri, Nagar, Gujarat, Miazed, Kalowries and Sindhis in Pakistan. Yet, the reasons for which it was practiced differed widely. Where in some areas of the world it was sanctioned as a form of ‘family limitation,’ the secondary literature surveyed shows that the practice of infanticide existed in different spaces and times for very different reasons.⁶ In some parts of the world infanticide was a response to

⁴ Nigel Penn. *Rogues, Rebels and Runaways: Eighteenth Century Cape Characters*. (Cape Town: David Philip Publishers, 1999), 1.

⁵ This point is eloquently discussed by Catherine Burns in ‘A Useable Past: The Search for “History in Chords”,’ in Hans-Eric Stolten (ed.) *History Making and Present Day Politics: The Meaning of Collective Memory in South Africa*. (Uppsala: Nordic Africa Institute, 2007), 351-362.

⁶ Here is a selection of key historical texts focusing on infanticide and child murder in different geographical locations. Lalita Panigrahi. *British Social Policy and Female Infanticide in India*. (New Delhi: Munishiram Manohar, 1972); Angus McLaren. *Birth Control in Nineteenth-*

ecological, financial, political or social hardships, whereas in others it was practiced as a cultural or religious custom. The forms it took, and the motives which led to the actual act of killing an infant, varied as much with circumstances, as with the habits and character of the people amongst whom it was found to exist.⁷ Thus, for example,

Century England. (London: Croom Helm, 1978); Constance B. Backhouse. 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada,' in *University of Toronto Law Journal*, 34:4, Autumn 1984, 447-478; René Leboutte. 'Offense Against Family Order: Infanticide in Belgium from the Fifteenth through the Early Twentieth Centuries,' in *Journal of the History of Sexuality*, 2:2, October 1991, 159-185; David I. Kertzer. *Sacrificed for Honor: Italian Infant Abandonment and the Politics of Reproductive Control*. (Boston: Beacon Press, 1993); Jonathan Dalby. 'Women and Infanticide in Nineteenth-Century Rural France,' in Verene Shepard, Bridget Brereton and Barbara Bailey (eds.) *Engendering History: Caribbean Women in Historical Perspective*. (Kingston: Ian Randle Publishers, 1995), 337-368; Laurel L. Cornell. 'Infanticide in Early Modern Japan? Demography, Culture, and Population Growth,' in *The Journal of Asian Studies*, 55:1, February 1996, 22-50; Pamela Scully. 'Narratives of Infanticide in the Aftermath of Slave Emancipation in the Nineteenth-Century Cape Colony, South Africa,' in *Canadian Journal of African Studies*, 30:1, 1996, 88-105; Kenneth Wheeler. 'Infanticide in Nineteenth Century Ohio,' in *Journal of Social History*, 31, 1997, 407-418; Stephen Wilson. 'Infanticide, Child Abandonment and Female Honour in Nineteenth-Century Corsica,' in *Comparative Studies in Society and History*, 30:4, 1998, 762-783; Jeffrey S. Richter. 'Infanticide, Child Abandonment, and Abortion in Imperial Germany,' in *Journal of Interdisciplinary History*, 28:4, Spring 1998, 511-551; Elna C. Green. 'Infanticide and Infant Abandonment in the New South: Richmond, Virginia, 1865-1915,' in *Journal of Family History*, 24:2, 1999, 187-211; Misty L. Bastian. "'The Demon Superstition': Abominable Twins and Mission Culture in Onitsha History,' in *Ethnology*, 40:1, 2001, 13-27; Jan Kociumbas. 'Azaria's Antecedents: Stereotyping Infanticide in Late Nineteenth-Century Australia,' in *Gender and History*, 13:1, 2001, 138-160; Sadatru Sen. 'The Savage Family: Colonialism and Female Infanticide in Nineteenth-Century India,' in *Journal of Women's History*, 14:3, 2002, 53-79; Padma Anagol. 'The Emergence of the Female Criminal in India: Infanticide and Survival Under the Raj,' in *History Workshop Journal*, 53, 2002, 73-93.

⁷ See also, Rashmi Dube Bhatnagar, Renu Dube and Reena Dube. *Female Infanticide in India: A Feminist Cultural History*. (Albany: State University of New York Press, 2005); Kirsten Johnson Kramer. *Unwilling Mothers, Unwanted Babies: Infanticide in Canada*. (Vancouver: UBC Press, 2005); Karol K. Weaver. "'She Made to Crush the Child's Fragile Skull': Disease, Infanticide, and Enslaved Women in 18th Century Saint-Domingue,' 25-44; Elna C. Green. 'Infanticide and Infant Abandonment in the New South,' 45-84; Shurlee Swain. 'Infanticide, Savagery and Civilization: The Australian Experience,' 85-106; Donna Cooper Graves. "'... in a frenzy while raving mad': Physicians and Parliamentarians Define Infanticide in Victorian England,' 111-136; Kirsten Johnson Kramer. 'Unwilling Mothers and Unwanted Babies: Infanticide and Medico-Legal Responsibility in 20th Century Canadian Legal Discourse,' 137-166; Sharon Kowalsky. 'Making Sense of the Murdering Mother: Soviet Criminologists and Infanticide in

the Norse Icelanders and the Svans of Russia used a method of killing an infant by filling its mouth with hot ash. In Africa, among the Tswana (of modern day or current Botswana and South Africa), Kikuyu (of now Kenya) and Ilso and Igbo peoples (of current Nigeria) not only was the practice of twin killing shortly after birth widely prevalent (as twins were considered to be abhorrent), but the Igbo people of Nigeria also believed that if a mother or father died after childbirth, then the newborn should be buried alive. In the Americas, the Tapirapé of Brazil allowed no more than three children per woman, which led to the killing of any additional births, whereas the Yukon and Mahlemuit Inuits of Alaska and Canada either threw female babies into the sea or stuffed grass in their mouths.⁸

Revolutionary Russia,' 167-194; Jane-Marie Collins. 'Bearing the Burden of Bastardy: Infanticide, Race and Motherhood in Brazilian Slave Society,' 199-230; Janet McShane Galley. "'The death seemed rather unusual to me': Infanticide Investigations into the Deaths of Legitimate Children in English-Speaking Victorian Canada,' 281-310; Brigitte Bechtold. 'The Relative Economic Valuation of Female and Male Offspring in Nineteenth-Century France,' 315-336; Andrea M. den Boer and Valerie M. Hudson. 'Sex-Selective Infanticide and the "Missing Females" in India and China,' 337-372; in Brigitte H. Bechtold and Donna Cooper Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006); Henrice Altink. "'I Did Not Want to Face the Shame of Exposure': Gender Ideologies and Child Murder in Post-Emancipation Jamaica,' in *Journal of Social History*, 41:2, 2007, 355-387; M. King. 'Drowning Daughters: A Cultural History of Female Infanticide in Late Nineteenth Century China.' Unpublished Thesis (PhD), University of California, Berkeley, 2007.

⁸ Clark Garber. 'Eskimo Infanticide,' in *Scientific Monthly*, 64:2, February 1947, 98-102. Gerber writes, "female infanticide is common among some of the tribes, particularly the Mahlemute and those of the Yukon. Many Indian mothers, to save their daughters from their own wretched lives, take them into the woods, stuff grass in their mouths, and leave them to die," 98. For more on these practises, see T. C. Hodson. '44. Female Infanticide in India,' in *Man*, 14, 1914, 91-92; Isaac Schapera. *The Khoisan Peoples of South Africa: Bushmen and Hottentots*. (London: Routledge & Sons, 1930); Isaac Schapera. *A Handbook of Tswana Law and Custom* (compiled for the Bechuanaland Protectorate Administration). (London: Oxford University Press, 1938); Lalita Panigrahi. *British Social Policy and Female Infanticide in India*. (New Delhi: Munshiram Manoharlal, 1972); Bojosi Otlhogile. 'Infanticide in Bechuanaland: A Footnote to Schapera,' in *Journal of African Law*, 34:2, Autumn 1990, 159-162; Kristin Ruggiero. 'Honor, Maternity, and the Disciplining of Women: Infanticide in Late Nineteenth-Century Buenos Aires,' in *The Hispanic American Historical Review*, 72:3, August 1992, 353-373; Helen L. Ball and Catherine M. Hill. 'Reevaluating "Twin Infanticide",' in *Current Anthropology*, 37:5, December 1996, 856-

By the late seventeenth century in Britain and in certain parts of Europe, when doctors, clergymen and legislators started becoming concerned about the apparent increase in murders of illegitimate or ‘bastard’ children by single and unmarried women, the more neutral term of ‘newborn child murder’ – instead of infanticide – was commonly used in court records, medical reports and legal discourse.⁹ In the early nineteenth century, infanticide came to be increasingly used to describe not only the murder of new-born children, but sometimes that of older children as well. Across much of Europe and Asia, however, the word infanticide was used during this time, but specifically to refer to the murder of a child at or immediately after birth.¹⁰ By the turn of the twentieth century, “infanticide applied to the killing, neglect, or abuse of newborn babies and older children [up to two years of age] in various domestic, institutional, and geographical locations.”¹¹ The term itself had come to be

863; Satadru Sen. ‘The Savage Family: Colonialism and Female Infanticide in Nineteenth-Century India,’ in *Journal of Women’s History*, 14:3, Autumn 2002, 53-79.

⁹ For more on this, see Lionel Rose. *The Massacre of the Innocents: Infanticide in Great Britain, 1800-1939*. (London: Routledge and Kegan Paul, 1986); Ann R. Higginbotham. “‘Sin of the Age’: Infanticide and Illegitimacy in Victorian London,” in *Victorian Studies*, 32, Spring 1989, 319-337; and Margaret L. Arnot ‘The Murder of Thomas Sandles: Meanings of a Mid-Nineteenth Century Infanticide,’ in Mark Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*. (Aldershot: Ashgate, 2002), 149-167; Peter C. Hoffer and N.E. Hull. *Murdering Mothers: Infanticide in England and New England, 1558-1803*. (New York: New York University Press, 1981); G. K. Behlmer. ‘Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England,’ in *Journal of the History of Social Medicine*, 34, 1979, 403-427; Sheena Sommers. ‘Bodies, Knowledge and Authority in Eighteenth Century Infanticide Prosecution.’ Unpublished Thesis (MA), University of Victoria, 2005.

¹⁰ Mark Jackson. ‘Historical Keyword: Infanticide,’ in *The Lancet*, 367:9513, 2006, 809. In Japan, for instance, the common term *mabiki* was used to refer to killing of an infant. The term literally means “to pull plants from an overcrowded garden,” but the practice involved smothering the baby’s mouth and nose with wet paper. See Cornell. ‘Infanticide in Early Modern Japan? Demography, Culture and Population Growth;’ and Hiroshi Shiono, Maya Atoyo, Noriko Tabata, Masataka Fujiwara, Jun-ich Azumi and Mashahiko Morita. ‘Medicolegal Aspects of Infanticide in Hokkaido District, Japan,’ in *American Journal of Forensic Medicine and Pathology*, 7:2, 1986, 104-106. See also Panigrahi. *British Social Policy and Female Infanticide in India*.

¹¹ Jackson. ‘Historical Keyword: Infanticide,’ 809.

used ubiquitously and colloquially to refer to newborn child murder. ‘Concealment of birth’, on the other hand, entered the law books with the passing of Lord Ellenborough’s Act in 1803 in Britain. Since successful convictions for infanticide or child murder necessitated proof of murder and carried a death sentence and were thus difficult to achieve, this revised statute permitted juries to return a lesser verdict of concealment of birth. This crime carried a two year imprisonment sentence and implied that the accused was not necessarily guilty of killing an infant, but that there was intent to deliberately conceal a stillbirth or the death of a newborn by failing to report its birth to the respective authorities.

In the earlier part of the nineteenth century in various geographical contexts, infanticide or the concealment of birth was essentially a private and clandestine act, most often carried out by single, poor women, which, it can be argued, is still the case today. This clearly raised considerable problems for both detection rates and, more importantly, the circumstances under which cases might be discovered and brought before the law. In most parts of the world throughout much of the eighteenth and nineteenth centuries, unmarried women, and domestic servants in particular, who concealed their pregnancies and births and who had been known to give birth to illegitimate children, were in many cases suspected of murder if these children were found dead.¹² So, in understanding the histories of infanticide in a Western trajectory,

¹² In this instance, see Laura Gowing, ‘Secret Births and Infanticide in Seventeenth-Century England,’ in *Past and Present*, 156, 1997, 87-115; Mark Jackson, ‘Infanticide: Historical Perspectives,’ in *New Law Journal*, March 1996, 416-420; Weaver, “‘She Crushed the Child’s Fragile Skull’: Disease, Infanticide and Enslaved Women in Eighteenth-Century Saint-Domingue,”; Rob Turrell, ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ in *Journal of Southern African Studies*, 29:1, March 2003, 83-103; Pamela Scully, ‘Rape, Race and Colonial Culture: The Sexual Politics of Identity in the Nineteenth Century Cape Colony, South Africa,’ in *American Historical Review*, 100:2, April 1995, 335-359; Scully, ‘Narratives of Infanticide in the Aftermath of Slave Emancipation in the Nineteenth-Century Cape Colony, South Africa,’ Ruggiero, ‘Honor, Maternity, and the Disciplining of Women: Infanticide in Late

social and economic class is a hugely important factor. In colonial settings race was inevitably equally significant. Moreover, the historiography of infanticide has shown that the perceived links between infanticide or concealment of birth and the range of socio-economic problems connected to illegitimacy and unmarried motherhood is a thread of argument that features in most studies of this crime.

This study specifically analyses the designation of infanticide and concealment of birth as a *crime* within an imperial context. It begins in 1846, when Ordinance 22 of 1846, 'For Punishing the Concealment of the Birth of Children within the District of Natal' – the first ordinance relating to the crime of the concealment of birth – was adopted, and closes in 1935 with the passage of the General Law Amendment Act of South Africa which revised rules of procedure and evidence for infanticide and concealment of birth cases. When my project began in 2005, under South African statute, perpetrators who were suspected of killing an infant were still tried under Section 113 of the General Law Amendment Act, 46 of 1935. In 2008, however, the Judicial Matters Amendment Act, No. 66 of 2008 was passed to amend Section 113 of Act 46 of 1935. The time parameters for this study were thus chosen prior to the passing of this new Amendment Act.¹³

In Natal, as elsewhere, discourses around the definition of infanticide developed with three main foci: medical, moral and legal. This study analyses infanticide as a crime

Nineteenth-Century Buenos Aires;' Judith A. Osborne. 'The Crime of Infanticide: Throwing the Baby Out with the Bathwater,' in *Canadian Journal of Family Law*, 6, 1987, 47-59; Behlmer. 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England.'

¹³ Government Gazette No 31908, Vol. 524, No. 166, Cape Town, 17 February 2009, No. 66 of 2008: Judicial Matters Amendment Act, 2008 - To amend the General Law Amendment Act, 1935, so as to further regulate the concealment of birth of a newly born child. See Appendix for the full version of the Judicial Matters Amendment Act, No. 66 of 2008.

by carefully tracing the gendered and racial aspects of what had been proclaimed a criminal offence by the mid-nineteenth century in Natal. It entails a contextualisation and analysis of a series of narratives, mainly found in state records, of individuals whose lives came to be dominated by these crimes. From these histories it is possible to imagine the lives of ordinary men and women, as well as to construct a view of the way in which the Natal colonial and early South African state authorities operated. Some of the key themes that this study covers are: the ways in which legislation changed after the first ordinance in 1846; the problems posed to medical jurisprudence in trying to prove a separate existence of an infant to its mother; and, the matter of whether a live birth had occurred needed to be determined before a conviction could be proffered. Other arguments raised in this thesis relate to debates about the “instability of the womb”¹⁴ or, how medico-legal views about the mental state of women accused of this crime may have influenced convictions. Furthermore, and, as explored in specific chapters, it will be argued that such issues as the practice of baby-farming;¹⁵ concerns about infant life protection; and growing concerns for racialised and gendered respectability are integral to this study.

The story of infanticide in this region needs to be seen within its context of colonial Natal. It was in 1843 that Natal was declared a Colony of what was then the largest

¹⁴ This phrase is borrowed from Carol Smart. ‘Disruptive Bodies and Unruly Sex: The Regulation of Reproduction and Sexuality in the Nineteenth Century,’ in Carol Smart (ed.) *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*. (London: Routledge, 1992), 17.

¹⁵ The term baby-farming became popular in late nineteenth century Britain. It referred to the care and raising of babies in exchange for money. Mothers who could not and did not want to raise their children would give them to these ‘foster homes’ and pay for this ‘service’ either periodically or with a lump sum. These baby farm houses became notorious for allegedly murdering infants, as this would make it more profitable for the baby farmer. Many baby farms also accepted infants without any question, so that the question of illegitimacy became connected to these farms. See Chapter 2 for an in-depth discussion of this practise in Natal.

Empire in the world. Prior to that, the short-lived Republic of Natalia had existed as a self-governing Boer Republic established by itinerant Voortrekkers. Until then the region had long been occupied in a haphazard manner by isiZulu-speaking farming communities.¹⁶ After British annexation in 1842 and particularly between 1849 and 1851 there was a tremendous influx of more than five thousand British settlers into Natal.¹⁷ Emigration from Britain was fuelled by the hope of brighter prospects against a background of the growing economic and social problems in Britain and much of Europe. Industrial depression, poor harvests and the potato blight spurred many individuals to accept Government grants in the form of apparently very generous plots of land in the Colony. Besides taking up posts as government officials, traders or artisans, many came as farmers and agriculturalists with the help of the Joseph Byrne Emigration and Colonization Company and the Christian Emigration and Colonization Society.¹⁸

By the 1850s, as many historians of this era of British imperialism have shown, the abolition of slavery in the British Empire had led to an acute labour shortage in Natal, as in many other colonial plantation and farming sites.¹⁹ In Natal, small numbers of

¹⁶ John Wright. 'PMB before the Voortrekkers,' in *The Witness*. Found at http://www.pmbhistory.co.za/portal/witnesshistory/custom_modules/TheWayWeWere/PMB%20before%20the%20Voortrekkers.pdf, accessed on the 3 December 2010.

¹⁷ Lisa Stockman. 'The Construction of Boundaries: British Women, Labour and the Home in Colonial Natal.' Unpublished Thesis (BA-Hons), University of Natal, Durban, 1997.

¹⁸ Charles Ballard. 'Traders, Trekkers, and Colonists,' in Andrew Duminy and Bill Guest (eds.) *Natal and Zululand, From Earliest Times to 1910: A New History*. (Pietermaritzburg: University of Natal Press, 1989), 126.

¹⁹ For further discussion on Natal, see Surendra Bhana and Joy Brain. *Setting Down Roots: Indian Migrants in South Africa, 1860-1911*. (Johannesburg: University of the Witwatersrand Press, 1990); Surendra Bhana and Bridglal Pachai (eds.) *A Documentary History of Indian South Africans*. (Cape Town: David Philip, 1984); Surendra Bhana (ed.) *Essays on Indentured Indians in Natal*. (Leeds: Peepal Tree Press, 1990); Andrew Duminy and Bill Guest. *Natal and Zululand, From Earliest Times to 1910: A New History*. (Pietermaritzburg: University of Natal Press,

Africans²⁰ living south of the Thukela River worked for wages, but many African men and women living in the region were able to refuse the sale of their labour through to the conclusion of the Anglo-Zulu War of 1879. In the interim the British authorities and their agents in India and the Far East looked to other colonial sites for their labour needs. Their aim was to staff the rapidly developing sugar, tea and coffee industry along the south Indian Ocean coastal plain, and Indian labourers, called 'coolies' by the Imperial officials and merchants of the day, were key to answering this shortage. A system of indentured labour – drawing on client and indebted hierarchies in India itself, a system that had already been tried in several other British colonies – was thus implemented and became a critical means through which British capitalist expansion was perpetuated in this region. This led to the particular concentration of people of Indian origin in Natal, a fact that plays a significant role in the cases of infanticide examined in this study, as discussed in Chapter One of this thesis. Between 1860 and 1874, however, owing to a period of economic depression and the collapse of settler small scale farming, there was a temporary halt in Indenture.

By the 1880s – in the aftermath of the Anglo-Zulu War, with the rising mining industry on the Witwatersrand and the absorption of Zululand into the Natal Colony

1989); Bill Freund. *Insiders and Outsiders: The Indian Working Class of Durban, 1910-1990*. (Pietermaritzburg: University of Natal Press, 1995); C.G. Henning. *The Indentured Indian in Natal, 1860-1917*. (New Delhi: Promilla, 1993). With regards to other parts of the Empire, see Marina Carter. *Voices from Indenture: Experiences of the Indian Immigrants in the British Empire*. (London, New York: Leicester University Press, 1996) and Walter Rodney. *A History of the Guyanese Working People, 1881-1905*. (Baltimore: The John Hopkins University Press, 1981).

²⁰ The term 'African' is used to identify people classified as either 'black', 'Bantu' or 'native' during the colonial and segregation years in South Africa. Elsewhere in the thesis, the word black is used as an umbrella term to refer to Africans, Indians and Coloureds as they were racially classified by the Apartheid government.

– there was a significant influx of African men and some women into urban areas of the Colony in search of employment.²¹ By the early 1900s, then, Natal was made up of a patchwork of different communities: British, Afrikaners, isiZulu-speaking people, people of Indian origin – mainly from South Asia, but also many who had come to Natal via Mauritius – and a small contingent of settlers from other European states such as Germany, Holland and Portugal, each group bearing its own religious, cultural and traditional systems.²² In this new social context of the Colony, different ideas about marriage, motherhood, child rearing and illegitimacy – and the contesting and interacting systems of health and healing in which these lay – did not exist in isolation from each other.²³ There were many ways in which these ideas overlapped or resonated with each other, but there were also differences.

In 1869, in the midst of a deep economic depression, infanticide was addressed for the first time in the Colony's newspaper media when David Dale Buchanan, the editor of the Colony's leading newspaper, *The Natal Witness*, re-published an article from the Cape newspaper, the *Advertiser and Mail*, which reflected on some of the social

²¹ It was not until well into the twentieth century that there were significant numbers of African women in the urban areas. The 1904 Census shows the number of African women in Durban and Pietermaritzburg as 693 and 1614 respectively. PAR, Natal Colonial Publications [hereafter NCP], 8/3/62, Colony of Natal Census 1904. Part 1. Table III. Shewing the Proportion Per Cent, Males and Females, of all Natives in relation to the Whole Population for each Magisterial District or Centre in the Colony of Natal, New Territory, and Zululand Included, 1904.

²² According to the 1904 Census, the population figures were tabled as: Europeans: 97109, 'Natives': 910727, and 'Asiatics': 100918. PAR, NCP, 7/3/16, Colony of Natal, Statistical Year Book for the year 1909, Pietermaritzburg, P. Davis & Sons, Government Printers, Longmarket Street, 1909.

²³ Karen Flint has written extensively on medical pluralism in Colonial Natal and the way in which indigenous medical knowledge and therapeutic practices about health and healing was shared and transformed. See 'Indian-African Encounters: Polyculturalism and African Therapeutics in Natal, South Africa, 1820-1948', in *Journal of Southern African Studies*, 32:2, June 2006, 367-385; and *Healing Traditions: African Medicine, Cultural Exchange, and Competition in South Africa, 1820-1948*. (Scottsville: University of KwaZulu-Natal Press, 2008).

problems that plagued the British diaspora in southern Africa. In his introduction to the article, Buchanan justified its inclusion by asserting that, while the article was particularly concerned with the plight of single white women in the Cape Colony, many of the issues raised by this article apparently reverberated in the younger colony of Natal. The article focussed on the state of unemployment in the Cape Colony which was seen as the cause of undermining the “social fabric, and hurrying many a young girl to perdition.” Buchanan emphasised that the article “grapple[d] powerfully with one of the most painful questions of the day,” how to rehabilitate “young girls” who were “hardened by long exposure to streets and the public trappings of shameless vice.”²⁴

The central theme of the article – which related to the demoralising virtues of unemployment, which in turn would result in increased criminal activity, specifically infanticide – resonates well with the experiences of and views about white women in Natal. Reflective of white metropolitan and settler attitudes, the article serves as a crucial vantage point in understanding how infanticide was interpreted as being the most pressing “social problem” affecting single white females, as illustrated in the following excerpt:

Paradoxical as it may sound, our criminals have committed the majority of their offences against the law by the sudden awakening of virtuous instincts; that is to say, many a girl has committed infanticide, or concealed the birth of child, not from deliberate cruelty or wrongdoing, but because in the very throes of birth she has suddenly become fully conscious of how much she has offended against the laws of chastity, and, in sudden alarm at the consequences of illicit love, has tried to hide her sin by putting away the object which would otherwise be a standing reproach to her. The sense of shame and of social degradation, so long dormant in her previous life, can no longer be

²⁴ ‘The “South African Magazine” – Social Problems,’ in *The Natal Witness*, 12 January 1869.

restrained and in a fit of *fright* and sudden resolution; she tried to undo her previous wrongdoing by an act of still more desperate folly and passion. It is to their ignorance that I trace the genesis of most of their misdemeanours, and not to their individual aptitudes or leanings to crime. Indeed, nothing has struck me more forcibly than the fact that many of the prisoners under long conviction for infanticide should be so quiet, good-tempered, and willing and obliging, while undergoing sentence. Far from having any special hatred for children, they will readily and tenderly look after such young creatures as come within their range, and if there are any small fry about the prisons requiring protection, they are generally the women who will attend to them most carefully. The maternal instinct is therefore not dead in their breasts; nor is indulgence of it towards alien infants regarded by them as an act of injustice to the innocent. They simply have done something wrong when in a fright, and are very sorry now – but that is all.²⁵

While the article reflects only on single white females, the experiences of anguish and despair that it describes can often be heard echoing in the stories of the other individuals that this thesis explores. The article also speaks to the many themes in which the larger study is interested, such as the common perceptions around women's sexuality and childbearing role, how the stresses of immigration and urbanisation affected incidences of infanticide in the Colony, and how notions of masculinity and misconceptions about "maternal instinct" affected verdicts and attributed culpability. This thesis is interested more specifically with the shifting gender and racialised norms affecting the incidences and prosecution of infanticide; the political significance of the criminal charge in different times and places; the purpose and operation of infanticide legislation; medical versus moral interpretations of child killing; and the way in which the state understood and constructed racial, class and gender boundaries through infanticide cases. In the above newspaper article white women who committed the crime of infanticide were presented as frail entities,

²⁵ 'The "South African Magazine" – Social Problems,' in *The Natal Witness*, 12 January 1869.

capable of making mistakes, but also capable of being rehabilitated. As the thesis will show, particularly in Chapters Three, Four and Five, the colonial media did not perceive African and Indian women in this manner.

It is critical to note that there is a second perception of infanticide that held true in Natal, in parallel to the colonial view, a conception that had not construed the practice as a *crime* but rather as a necessary procedure. Up until the mid-nineteenth century, infanticide had been sanctioned by some African groups who practiced twin killing or the killing of babies that were designated as 'abhorrent' or 'ill-fated'. Missionaries, anthropologists, travellers and historians writing in and about early nineteenth century cultural and religious customs of African communities appear to have held a common understanding that infanticide only occurred as a response to various beliefs which these writers saw as African superstitions.²⁶ While it has been a common understanding in ethnographic accounts that infanticide practices in African communities have predominantly fallen under the ambit of twin killing, as perpetrated by mothers and notably grandmothers, there have been other circumstances where infanticide was practised.²⁷ This could happen in instances when

²⁶ Henri A. Junod. *The Life of a South African Tribe – I. Social Life*. (London: MacMillan and Co. Limited, 1927), 40-41; Isaac Schapera. *Married Life in an African Tribe*. (London: Faber and Faber, 1940), 223-226; A. T. Bryant. *The Zulu People, As They Were Before the White Man Came*. 2nd Edition, (Pietermaritzburg: Shuter and Shooter, 1967, 1st Edition 1949), 638-644; Eileen Jensen Krige. *The Social System of the Zulus*. (Pietermaritzburg: Shuter and Shooter, 1950), 75-76; Monica Hunter. *Reaction to Conquest: Effects of Contact with Europeans of the Pondo of South Africa*. (Oxford University Press, 1964); Schapera. *A Handbook of Tswana Law and Custom*, 261-263; Harriet Ngubane. *Body and Mind in Zulu Medicine: An Ethnography of Health and Disease in Nyuswa-Zulu Thought and Practice*. (Academic Press, 1977), 48-53; Monica Wilson. 'Ritual: Resilience and Obliteration,' in John Argyle and Eleanor Preston-Whyte (eds.) *Social System and Tradition in Southern African: Essays in Honour of Eileen Krige*. (Cape Town: Oxford University Press, 1978), 150-164.

²⁷ John Sanderson. 'Polygamous Marriage Among the Kafirs of Natal and Countries Around,' in *The Journal of the Anthropological Institute of Great Britain and Ireland*, 8, 1879, 254-260; E. Sidney Hartland. 'Travel Notes in South Africa,' in *Folklore* 17:4, December 31, 1906, 472-487; J.

the mother gave birth prematurely, or if the child was born feet first, or with a physical disability, or “where its upper teeth grew before the lower”; or where neonatal teeth grew within the first month after birth; and, very rarely, in the cases of illegitimate children.²⁸

In *The Zulu People, As They Were Before the White Man Came*, A. T. Bryant – researching in the late nineteenth and early twentieth century – wrote that these “menacing contingencies,” referring to the above categories of children, were believed to be “polluting” and inauspicious. He illustrates this point by giving examples from the Congo, Kenya, Nigeria, Uganda and Guinea. He claimed that in the Congo if the child had been born with any physical disability it was killed “forthwith.” In Mombasa, if babies were born feet first, they were entrusted to the “medicine man” who would abandon the child in a neighbouring forest. Among the Taveta in Kenya, in times of famine the mother would apparently leave her baby at the edge of a cliff, so that when it rolled over “she had no hand in its destruction.” In Guinea, passive infanticide was practised when the mother of an infant died and in this situation the infant would be “thrown away in the bush alive.” Bryant then goes on to describe early “Zulu traditional practices of infanticide.” He writes:

Whenever an obvious monstrosity was born, or a child who, through some deformity, proved, after a year or two of trial, incapable of ever becoming an *umuNtu* (a normal human-being), perhaps through inability to stand or walk, a cow was first of all slaughtered for the ancestral spirits; after which a goat was taken and tethered near some

Rendel Harris. ‘A Recent Twin-Murder in S. Africa,’ in *Folklore*, 33:2, June 30, 1922, 214-223; Isaac Schapera. ‘Customs Relating to Twins in South Africa,’ in *Journal of the Royal African Society*, 26:102, January, 1927, 117-137; W. D. Hammond-Tooke. ‘Twins, Incest and Mediators: The Structure of Four Zulu Folk Tales,’ in *Journal of the International African Institute*, 62:2, 1992, 203-220; Otlhogile. ‘Infanticide in Bechuanaland: A Footnote to Schapera,’ 159-162.

²⁸ Bryant. *The Zulu People*, 638-639.

local forest, with the child comfortably laid down beside it to be devoured by any passing wild beast. The treatment of twins differed slightly from this, but only in its procedure; though equally barbarous and cruel.²⁹

The notion of twinship amongst Africans in this region, however, was somewhat complicated.³⁰ In *The Social System of the Zulus* anthropologist Eileen Krige, working in the early twentieth century, dedicates a section to the beliefs about twins held by isiZulu speaking people. In most isiZulu-speaking communities it was the twin born last that was killed. She construed however that the surviving twin was held in very high regard and was thought of as quite extraordinary. Only when the surviving twin reached the age of sixteen was he or she given a name and when this surviving twin married, no wedding dance was performed at the ceremony. Krige also states that “twins [were] said to have no brains ... yet [were] thought to be unusually sharp and clever.” Twins also possessed the gift of predicting the weather and, when a twin died, no mourning was allowed as this would have “angered the spirits.”

Bryant explains that “Zulus” conceptualisation of twinship was that there were two different types of twins: accidental – where each baby developed in a separate placenta and did not resemble each other – and, secondly, where twins had been connected by a single placenta and were, presumably, identical.³¹ If the twins were born to a father with many wives, then it was the responsibility of one of the other wives to kill the infant: the mother of the twins would be tasked with an errand and,

²⁹ Bryant. *The Zulu People*, 638-639.

³⁰ Krige. *The Social System of the Zulus*, 756. Monica Wilson also outlines more broadly some of the rituals associated with the birth of twins in South Africa in ‘Ritual: Resilience and Obliteration.’

³¹ The first of the twins to be born was referred to as the *uNqangi* or *uTshana*, and the second child, *uMuvá* if a boy, and *uMváse* if a girl.

during her absence one of the twins would be killed, generally by strangulation or suffocation.³² In monogamous marriages, the baby would be cast aside to an empty hut and left to die of starvation. Bryant argues that the “superstition” encasing this practice was the belief that if both twins lived, then their father would die.³³ Krige, however, maintained that the belief was that any member of the family would die.³⁴

Writing in the 1920s about the rituals and social system of the Thonga in South Africa, Henri Junod similarly observed that twin killing was a “strange custom” which had occurred “in olden times.”³⁵ Monica Wilson contended that the practice of twin killing in southern Africa had two roots: “practical and symbolic.”³⁶ What has been observed thus far with regards to the rituals of the Zulu, Thonga and Tswana is symbolic. The practical aspect, reluctantly extended by Bojosie Otlhogile in an article entitled ‘Infanticide in Bechuanaland: A Footnote to Schapera,’ published in 1990, is that in times of war or other hardships such as droughts and fires, when communities had to flee their homes, twins were harder to carry. An alternate explanation for twin killing offered by an article in *The Natal Witness* suggested that some women found it physically strenuous to nurse two babies. In November 1882, the newspaper reported on a case of child murder in the tiny town of Tarkastad in the Eastern Cape. A local woman, who was not identified in the article, had given birth to twins, a boy and a girl. A week after the birth, however, a neighbour, an African man named Peacock, noticed that she was carrying only one child, and enquired about the other child. The woman openly stated that after she had given birth, her husband had left in search of

³² This was done either through squeezing the windpipe or forcing grass or soil down the throat of the baby. Bryant. *The Zulu People*, 640; and Krige. *The Social System of the Zulus*, 75.

³³ Bryant. *The Zulu People*, 641.

³⁴ Krige. *The Social System of the Zulus*, 75.

³⁵ Junod. *The Life of a South African Tribe – I. Social Life*, 41.

³⁶ Wilson. ‘Ritual: Resilience and Obliteration,’ 154.

employment and, finding it impossible to “nourish two babies,” she “smothered the boy – who was the least value – and buried him in an anthill.” Peacock then reported the incident to the Field Cornet, who in turn reported the woman. The Magistrate in charge of the case had had the body exhumed, but “as putrefaction has already commenced the cause of the death could not be traced.”³⁷

Further afield in other parts of Africa, twins were also generally regarded with “detestation.” In 1904 *The Christian Express*³⁸ included a section on twin infanticide among the Yoruba people. The newspaper reported:

The motive for twin infanticide is the idea that the birth of such children is an unpropitious augury for a country; that it degrades the mother and reduces her to the level of the brute creation, and also that it places her conjugal fidelity in question. Detestation of these births is so great and severe that the twins are always put to death as soon as they are born and in some cases the mothers of such children are expelled from the town and left to live and die in a hamlet appointed far away from town ...”³⁹

In 1914, the *Journal of the Royal African Society* approached W. A. Norton to write an account of the customs and practices of central Africa, a task he admitted to finding quite overwhelming, due to the numerous problems associated with writing ethnologies. In his description on the issues surrounding childhood in German East Africa, he wrote that when he inquired about infanticide, he received “the significant answer that it was not practised *pasipo sababu*, ‘without cause!’” What this meant was that only if a child was a twin, or considered unlucky (because of having cut the wrong set of teeth first), then infanticide would be justifiable. He also found that a

³⁷ ‘South African Echoes,’ in *The Natal Witness*, Monday, 20th November 1882.

³⁸ This was a newspaper attached to the Lovedale Missionary Institute, founded by Rev. James Stewart. In 1922, the name was changed to *The South African Outlook*.

³⁹ *The Christian Express*, 1 March 1904.

Christian mother would find it difficult to go to church, fearing that her *kigego*⁴⁰ “would be made away with by its grandmother,” when left at home in her care.⁴¹

But twins were not always thought of as inimical to the prosperity of the family or the community. Monica Hunter and Monica Wilson both show that twins were revered among the amaPondo and isiXhosa. Hunter wrote that the Mpondo considered twins to be powerful, such that in times of storms, twins allegedly had the power to drive them away. “The twin carries no medicine, but just frightens the storm.”⁴²

The practice of twin killing amongst African communities, according to various ethnographic accounts, seems to have dissipated by the turn of the twentieth century.⁴³ Bryant noted that the practice of twin killing was virtually extinct amongst the “Zulus” by the time the British had established colonial rule, but Krige noted that by the 1930s twin killing was still generally practised among the Lovedu in northern South Africa.⁴⁴ Bryant’s observation could be regarded as having some veracity in that the records perused for this study of infanticide and concealment of birth in Natal did not reveal any cases of twin killing nor did they reveal any serious concern with this ritual, either on the part of the state, missionaries or the general public. Of course this could suggest a paucity of archival sources with regards to twin killing but it is also very possible to suggest that there was slow eradication of twin killing rituals among

⁴⁰ *Kigego* is the Swahili term for a child whose upper teeth have grown first.

⁴¹ W. A. Norton. ‘Customs of Central and South Africa: Some Notes and Comparisons,’ in *Journal of the Royal African Society*, 14:53, October 1914, 84.

⁴² Hunter. *Reaction to Conquest*, 298-299.

⁴³ See also Bastian. “‘The Demon Superstition’: Abominable Twins and Mission Culture in Onitsha History.’

⁴⁴ See Bryant. *The Zulu People*, 641; and Wilson. ‘Ritual: Resilience and Obliteration,’ 154.

isiZulu speaking people by the turn of the twentieth century.⁴⁵ By this time, through colonialism and the socio-economic and cultural forces of modernity, African attitudes towards the criminality of child killing had shifted to align with colonial and Christian notions. amaKholwa (Christian believers) communities in Natal, however, had long rejected infanticide as an acceptable practise.

In general, people who had come to the Colony from India saw children as economic assets.⁴⁶ Unlike in India, where female babies were routinely killed at childbirth, no obvious congruence existed in Natal. In India, before British social policy declared infanticide illegal, the practice was deeply embedded in a customary rhetoric of caste and marriage.⁴⁷ Settling in Natal meant that the dislocation of cultural practices displaced the burdens (such as bride wealth) that bearing a female daughter carried. In the early days of the Colony, the government feared that the high rates of infanticide that prevailed in India would be conveyed to Natal, but the records show that there were very few reported incidents of infanticide or concealment involving people of Indian origin. Perhaps, this was partly the result of the skewed sex ratios or the establishment of extended family networks which alleviated the difficulties of child rearing. There is also the possibility that incidences of infanticide or concealment of birth were simply not reported to the authorities for fear of repatriation.

⁴⁵ Despite the problems associated with ethnographic studies such as these – lack of theoretical focus, judgemental interpretations, incongruencies between precept and practise, or biased opinions – as Hammond-Tooke has pointed out, they “in fact, are invaluable historical documents.” W.D. Hammond-Tooke. *Imperfect Interpreters: South Africa's Anthropologists, 1920–1990*. (Johannesburg: Witwatersrand University Press, 1997), 94.

⁴⁶ Bill Freund. ‘Indian Women and the Changing Character of the Working Class Indian Household in Natal, 1860–1990,’ in *Journal of Southern African Studies*, 17:3, September 1991, 414–429.

⁴⁷ Panigrahi. *British Social Policy and Female Infanticide in India*, 2.

Locating the Study in the Secondary Literature

This is a new study for Natal, for very little has been written on the subject of infanticide, and so should be regarded as the opening up or beginning of academic enquiry into this topic. The story – or stories – pieced together and analysed here may appear fragmented and disjointed, but this is the inevitable consequence of what the extant records are able to tell us. This thesis relies mainly on court cases, but beyond these, parliamentary debates, medical records and newspapers also proved to be vital avenues for fashioning a history of infanticide and concealment of birth in Natal during the last decades of the nineteenth century and the opening decades of the twentieth century.⁴⁸ An evaluation of the social history of this time as well as the broad literature on colonialism, the colonial state and on the British Penal Codes in relation to court processes, strategies of control and modes of resistance in Natal are integral to this study. I will also draw comparisons to the Cape and Transvaal at the time. The work of legal scholars Martin Chanock, Peter Spiller and Rob Turrell has been most useful in understanding the intricacies of the colonial state and how South Africa's own penal system changed over the last two centuries.⁴⁹ Their works have

⁴⁸ Since this project is primarily concerned with the designation of infanticide and concealment of birth as a crime, mission and church records were not extensively consulted. Future research, however, which could include religious interpretations of child killing will warrant a careful investigation of mission and church sources, such as reports and newsletters, provided permission for use of these sources has been granted.

⁴⁹ These include: Martin Chanock. 'Writing South African Legal History,' in *The Journal of African History*, 30:2, 1989, 265-288; Martin Chanock. 'Criminological Science and the Criminal Law on the Colonial Periphery: Perception, Fantasy, and Realities in South Africa, 1900-1930,' in *Law & Social Inquiry*, 20:4, Autumn 1995, 911-939; Martin Chanock. *The Making of South African Legal Culture, 1902-1936: Fear, Favour, and Prejudice*. (Cambridge: Cambridge University Press, 2001); Peter Spiller. 'The Jury System in Colonial Natal, 1846-1910,' in *Journal of Natal and Zulu History*, 11, 1986, 1-11; Peter Spiller. *A History of the District and Supreme*

been most useful in plotting the development of infanticide and concealment of birth legislation in Natal.

It is also imperative to locate this topic in the broader imperial project of the late nineteenth and early twentieth centuries and within the emerging discourses on social eugenics, scientific racism and motherhood. The wider literature examining these issues includes key works by Anna Davin, Saul Dubow and Ann Stoler.⁵⁰ An analysis of the gendered nature of the context of colonial life and labour and the particular forms of patriarchy that took root in the Colony and later the Province of Natal shows how these structures powerfully shaped the social context in which the actual crimes were committed. Here I draw on the pioneering work of Shula Marks, Cherryl Walker, Vukile Khumalo, Robert Morrell, Sheila Meintjes and Jeremy Martens and the emerging schools of gender-sensitive historical work for this region.⁵¹ Julie Parle's seminal study *States of Mind: Searching for Mental Health in*

Courts of Natal, 1846-1910. (Durban: Butterworths, 1986); Turrell. 'The 'Singular Case' of Mietje Bontnaal, the Bushmanland Murderess,'; Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. (Westport: Praeger Publishers, 2004).

⁵⁰ Ann L. Stoler. *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. (Durham, N.C.: Duke University Press, 1995); Ann L. Stoler. 'Carnal Knowledge and Imperial Power: Gender, Race and Mortality in Colonial Asia,' in M. Di Leonardo (ed.) *Gender at the Crossroads of Knowledge: Feminist Anthropology in the Postmodern Era*. (Berkeley: University of California Press, 1991), 51-101; Ann L. Stoler. 'Making Empire Respectable: The Politics of Race and Sexual Morality in 20th Century Colonial Cultures,' in *American Ethnologist*, 16:4, November 1989, 634-660; Ann L. Stoler. 'Rethinking Colonial Categories: European Communities and the Boundaries of Rule,' in *Comparative Studies in Society and History*, 31:1, January 1989, 134-161; Anna Davin. 'Imperialism and Motherhood,' in *History Workshop: A Journal of Socialist Historians*, 5, Spring 1978, 9-45; Saul Dubow. *Scientific Racism in Modern South Africa*. (Cambridge: Cambridge University Press, 1995); Saul Dubow. *Illicit Union: Scientific Racism in Modern South Africa* (Johannesburg: Witwatersrand University Press, 1995).

⁵¹ Shula Marks (ed.) *Not Either an Experimental Doll: The Separate Worlds of Three South African Women*. (Pietermaritzburg: University of Natal Press, 1988); Cherryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. (Cape Town: David Philip Publishers, 1990); Vukile Khumalo. 'Political Rights, Land Ownership and Contending Forms of Representations

Natal and Zululand, 1868-1918, which provides an overview of the history of mental health in Natal, is integral to understanding how contesting and interacting western, indigenous African and Indian modes of healing operated in Natal.⁵² But what makes *States of Mind* especially useful for this study is the way in which it uses the social history of mental illness to carve out a more substantial and inclusive history of Natal.

Catherine Burns' scholarship on the politics of reproduction also serves as a vital source for understanding women's reproductive role in conjunction with the changing nature of the concept of motherhood and its correlations to public health in South Africa over the twentieth century.⁵³ Similarly significant is Susanne Klausen's early work on motherhood and the state, and how women's sexuality and childbearing role was perceived, written about and drawn into the ambit of medical professional work by medical practitioners during this period.⁵⁴ More directly, within the historical *oeuvre*, there have been only a select few studies on infanticide in South

in Colonial Natal, 1960-1910,' in *Journal of Natal and Zulu History*, 22, 2004, 109-147; Robert Morrell. *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*. (Pretoria: University of South Africa Press, 2001); Robert Morrell. 'Of Boys and Men: Masculinity and Gender in Southern African Studies,' in *Journal of Southern African Studies*, 24:4, December 1998, 605-631; Jeremy C. Martens. "'So Destructive of Domestic Security and Comfort': Settler Domesticity, Race and the Regulation of African Behaviour in the Colony of Natal, 1843-1893.' Unpublished Thesis (PhD-History), Queen's University, Kingston, 2001; Jeremy C. Martens, 'Settler Homes, Manhood and 'Houseboys': An Analysis of Natal's Rape Scare of 1886,' in *Journal of Southern African Studies*, 28:2, June 2002, 379-400.

⁵² Julie Parle. *States of Mind: Searching for Mental Health in Natal and Zululand, 1868-1918*. (Pietermaritzburg: University of KwaZulu-Natal Press, 2007).

⁵³ Catherine Burns. 'Reproductive Labors: The Politics of Women's Health in South Africa, 1900 to 1960.' Unpublished Thesis (PhD), Northwestern University, Evanston, Illinois, 1995; Catherine Burns, 'Controlling Birth: Johannesburg, 1920 to 1960,' in *South African Historical Journal*, 50, 2004, 170-198.

⁵⁴ Susanne Klausen. *Race, Maternity, and the Politics of Birth Control in South Africa*. (UK: Palgrave Macmillan, 2004); Susanne Klausen, "'For the Sake of the Race': Eugenic Discourses of Feeble-mindedness and Motherhood in the *South African Medical Record*, 1903-1926,' in *Journal of Southern African Studies*, 23:1, March 1997, 27-50.

Africa. Here, the works of Pamela Scully, Patricia van der Spuy and Sandra Burman are of utmost importance.⁵⁵ Pamela Scully's critical contributions eloquently bring to the fore the very damaging and desperate act of infanticide in slave societies in the Cape Colony as well as the ambiguous nature of motherhood during that time, where mothers could be both praised for their selfless devotion and condemned for inflicting harm.⁵⁶ Equally influential for my thesis has been the research conducted by Vertrees Malherbe on illegitimacy and bastardy in the Cape Colony.⁵⁷ Conceptions of and attitudes towards illegitimacy are central themes in this study and the writings of Burman, Spuy and Malherbe on the history of illegitimacy in the Cape provides a comparable context for delineating why high infant mortality rates or such practices as baby-farming compounded anxieties relating to illegitimacy in Natal.

From the international secondary literature it is evident that the experiences of the men and women who serve as the protagonists in this narrative of infanticide and concealment of birth are continuous throughout history and across geographical locations. Of particular relevance have been Mark Jackson's *Infanticide: Historical*

⁵⁵ Sandra Burman and Patricia van der Spuy. 'The Illegitimate and the Illegal in a South African City: The Effects of Apartheid on Births out of Wedlock,' in *Journal of Social History*, 29:3, Spring 1996, 613-635; Patricia van der Spuy. 'Infanticide, Slavery and the Politics of Reproduction at the Cape Colony, South Africa, in the 1820's,' in Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, 128-148; Sandra Burman and Margaret Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,' in *Journal of Southern African Studies*, 17, 1991, 379-387.

⁵⁶ In addition to those already mentioned, see also, Pamela Scully. *Liberating the Family?: Gender and British Slave Emancipation in the Rural Western Cape, South Africa, 1823-1853*. (Portsmouth, N.H: Heinemann, 1977); Pamela Scully. 'Criminality and Conflict in Rural Stellenbosch, South African, 1870-1900,' in *The Journal of African History*, 30:2, 1989, 289-300.

⁵⁷ Vertrees C. Malherbe. 'In Onegt Verwekt: Law, Custom and Illegitimacy in Cape Town, 1800-1840,' in *Journal of Southern African Studies*, 31:1, March 2005, 163-185; Vertrees C. Malherbe. 'Illegitimacy and Family Formation in Colonial Cape Town, to c. 1850,' in *Journal of Social History*, 39:4, 2006, 1153-1176; Vertrees C. Malherbe. 'Born into Bastardy: The Out-Of-Wedlock Child in Early Victorian Cape Town,' in *Journal of Family History*, 32:1, January 2007 21-44.

Perspectives on Child Murder and Concealment, 1550-2000, and Brigitte Bechtold and Donna Graves' *Killing Infants: Studies in the Worldwide Practice of Infanticide*.⁵⁸ Both these texts contain a multidisciplinary set of essays on the practice of infanticide in different parts of the world. The aim of both books ultimately is to identify similar patterns or shared themes with regards to the incidences of infanticide, child murder or the concealment of birth. In drawing out comparisons or analogies to other parts of the world, these studies have been especially valuable in Chapters Three (for understanding narratives of infanticide and concealment of birth with a specific focus on motives), Four (for providing comparative analysis with regards to media and press representations of infanticide cases) and Five (for thinking about the place of puerperal insanity in medical and legal discourses).

Interpreting and Using Court Records

Since this thesis relies heavily on archival and newspaper material housed in a colonial archive and makes use of court records and individual depositions, it is necessary to provide a commentary on the implications of this for historical research. Archival records are themselves marked by silences, bias and incompleteness. But the archives and the documentary evidence contained therein do offer some hope, as Nigel Penn reiterates, “nowhere else are the voices of the oppressed and vanquished – distorted though they might be – heard so clearly.”⁵⁹ The architecture of social life that these court cases help the historian reconstruct is one that includes individuals

⁵⁸ Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, and Bechtold and Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*.

⁵⁹ Penn. *Rogues, Rebels and Runaways*, 6.

that would otherwise be silenced and left out of the grand narrative of the history of Natal. Taking into account the process whereby these testimonies and depositions present in the archives were produced, it remains the challenge of the historian “to understand the context and conventions of these ‘stories from the archives’ before including them in historical narratives.”⁶⁰ Combing through court cases and depositions offers only glimpses into what these individuals thought about their lives and their situations.

In addition, court records are not immune to the problems associated with factors and biases due to rumour, testimony under pressure and imprecise interpretation, but they have the potential to open up social histories that have otherwise been neglected, and “are a valid avenue through which the ‘representative reality’ may be attained.”⁶¹ As Penn claims, “the reality of the past can only be partially represented.”⁶² That is, historical narrative is the imaginative construction of events by the historian through a variety of sources that tell parts of a story. In keeping with Hayden White’s observation, “narrative history is a distinctive and legitimate form of discourse which bestows meaning on events but does not thereby lose touch with real events or the real truth value of its factual statements.”⁶³

Court records, as described by Regina Schulte, “are multilayered texts with several levels of meaning intertwined confusingly.”⁶⁴ As rewarding as court cases can be, they are equally frustrating. As Carlo Ginzburg writes of transcriptions in *The Judge and*

⁶⁰ Penn. *Rogues, Rebels and Runaways*, 6.

⁶¹ Fatima Meer. *Race and Suicide in South Africa*. (London: Routledge and Kegan Paul, 1976), 15.

⁶² Penn. *Rogues, Rebels and Runaways*, 5.

⁶³ Penn. *Rogues, Rebels and Runaways*, 5.

⁶⁴ Regina Schulte. *The Village in Court: Arson, Infanticide, and Poaching in the Court Records of Upper Bavaria, 1848-1910*. (Cambridge: Cambridge University Press, 1994), 13.

Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice, “in the passage from spoken to written word, intonations, hesitations, silences and gestures are lost.” Unlike the transcriptions of the Inquisition trials on which his earlier studies were based, the court transcriptions used in this study do not note when individuals cried, laughed, shouted in anger or passion, or when they failed to answer questions. These were either lost by the inadequacies of court interpreters who distorted translations or with the actual transcribing process.⁶⁵ It could also be argued that in some instances both prosecutors and lawyers who acted on behalf of defendants manipulated witness responses by asking leading questions which elicited expected or anticipated answers. Ginzburg further elucidates this point in an article entitled ‘Checking the Evidence.’ He asserts that “[t]he use of court records does not imply that historians, disguised as judges, should try to re-enact the trials of the past – an aim that would be pointless, if it were not intrinsically impossible. The specific aim of this kind of historical research should be, I think, the reconstruction of the relationship (about which we know so little) between individual lives and the contexts in which they unfold.”⁶⁶ It is within this conceptual framework that the court cases selected for this study have been positioned.

There have been numerous studies on the historical use of court cases in the production of histories, some of which have interrogated the methodologies used in the process of the construction of historical narrative. Some have praised their usage, while others have dismissed the importance of court cases, particularly in colonial settings where subjects could not speak English. The problematic of translation and

⁶⁵ Carlo Ginzburg (Author) and Antony Shugaar (translator). *The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice*. (London, New York: Verso, 2002), 19.

⁶⁶ Carlo Ginzburg. ‘Checking the Evidence: The Judge and the Historian,’ in *Critical Inquiry*, 18:1, Autumn 1991, 90.

interpretation have become a highly contested site of struggle over representation and truth as a result.⁶⁷ Therefore, these court cases and the depositions that complement them, despite problems – such as the unreliability of interpretation and mediation, the complexity of contesting versions of events and biased trials – provide exciting and dynamic insights into colonial life.

Recent Africanist historiography dealing with court records show that scholars are now, much more so than in the past, circumspect about reading court records too literally or as the ‘truth.’ Actors, including those accused of crimes, were sometimes exercising far greater agency, strategically manoeuvring or playing on particular social conventions in order to escape or ameliorate their punishment. There was a plethora of reasons why women (and sometimes men) chose to kill their babies to avoid the consequences of unpropitious pregnancies. Indeed, while adultery and illegitimate progeny were oftentimes the suspected motive behind the crime, there were other possible explanations or motives that the court records do not necessarily reveal. For instance, it is possible that some women simply did not want to have another baby which, in certain communities, was considered to be less socially acceptable than claiming to have had a still-born child.⁶⁸

⁶⁷ For more on this, see David William Cohen. *Burying SM: the Politics of Knowledge and the Sociology of Power in Africa*. (Portsmouth, N.H.: Heinemann, 1992); David William Cohen. *The Combing of History*. (Chicago: University of Chicago Press, 1994); Carlo Ginzburg. *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*. (Harmondsworth: Penguin, 1992); Carlo Ginzburg. ‘Witches and Shamans,’ in *New Left Review*, 200, July/August 1993, 75-85; Luise White. ‘The Most Telling: Lies, Secrets, and History,’ in *South African Historical Journal*, 42:1, 2000, 11-25; and Vanessa Noble. “‘The Politics of Memory and Memory of Politics’: Remembering and Silencing in Written and Oral Narratives about the University of Natal’s Medical School.’ Unpublished paper presented on the 25th April 2006 at the History and African Studies Seminar hosted by the History Department at the University of KwaZulu-Natal.

⁶⁸ For instance, in *Honour in African History*, John Iliffe stresses the importance of women’s fertility and childbearing roles to notions of honour and respectability in early colonial Africa, (Cambridge: Cambridge University Press, 2005), 246-280.

Thinking about the reliability of court records Thomas McClendon writes about some of the problems encountered by the historian when using these records.⁶⁹ He states that “litigants sometimes lie, rules of evidence often exclude, and translation and transcribers may trammel the truth.”⁷⁰ In response to this and considering the possibilities of how to overcome this, Natasha Erlank suggests that emphasis should be placed on the “the need to read records across and according to both their contexts and the context of their production.”⁷¹ Adding a cautionary note to using court records, Rob Turrell writes that “reading trials can never be the same as listening to the evidence.”⁷²

Historians also face the challenge of missing court records. Writing in the 1980s about his research experience in South Africa, Harvey Feinberg found a similar situation relating to the Magistrates’ records at the Central Archives Depot (CAD), now known as the National Archives Repository (TAB) in Pretoria and at the Cape Town Archives (TBK). In an article entitled ‘Research in South Africa: To Know an Archive,’ Feinberg stated that “many of the Magistrates’ Court records have been destroyed deliberately, on the grounds that the CAD has insufficient room to store them.” Of the Cape Town Archives Repository, he added, “Magistrates’ Court records have been

⁶⁹ For more on the nature of the difficulties and limitations of using court records of colonial courts, see Kristin Mann and Richard Roberts. *Law in Colonial Africa*. (Heinemann Educational Books, 1991), particularly the chapters by Martin Chanock, ‘Paradigms, Policies, and Property: A Review of the Customary Law of Land Tenure,’ and David William Cohen, ‘Lloyd Fallers and the Construction of an African Legal System.’

⁷⁰ Thomas McClendon. *Genders and Generations Apart: Labor Tenants and Customary Law in Segregation-Era South Africa 1920s-1940s*. (Portsmouth: Heinemann and James Currey, 2002), 26.

⁷¹ Natasha Erlank. “‘Well Coming Straight to Business, Immediate Marriage is Absolutely Impossible’: Seduction Christian-Style in the Eastern Cape, c.1930.’ Unpublished paper presented on the 25th October 2005 at the History and African Studies Seminar hosted by the History Department, University of KwaZulu-Natal, 5.

⁷² Turrell. ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ 86.

culled and many have been destroyed for the years after 1902. Decisions on which to preserve seem to relate to the question of legal precedent rather than historical importance” and it is generally understood that the same principles were adhered to at the Pietermaritzburg Archives Repository (PAR), the main repository for this study.⁷³ In *Genders and Generations Apart: Labor Tenants and Customary Law in Segregation-Era South Africa, 1920s-1940s*, McClendon raises similar concerns. Primarily using court records to craft a social history of African labour tenant families residing in the Natal Midlands and the gendered and generational conflicts that arose over the precept of customary practices, McClendon acknowledges their inherent functionality but contends that they are equally frustrating since many of the Magisterial criminal court records were “scrutinised.” i.e. destroyed. He writes that from about the 1970s the South African Archives Services implemented a policy of decimating court records that were housed by the provincial and national archives, but that this process “did not reveal the standards that shaped what would continue to be part of the historical record and what would not.”⁷⁴

While this poses an aggravating hindrance to historians of twentieth century South Africa, there is however an additional difficulty presented by court records: shorthand. By the 1920s the proceedings of many court cases in Natal were transcribed by shorthand and while this method was essential in ensuring that testimonies and court proceedings were recorded verbatim, there was no standard system to which the courts adhered. Perusing various court records from the time period indicate that the standard Pitmann’s or Gregg’s style of shorthand was not

⁷³ H. M. Feinberg. ‘Research in South Africa: To Know an Archive,’ in *History in Africa*, 13, 1986, 393, 394.

⁷⁴ McClendon. *Gender and Generations Apart: Labor Tenants and Customary Law in Segregation-Era South Africa, 1920s-1940s*, 28.

employed by the Natal courts. Instead it appears as though clerks and court interpreters devised personal and individual shorthand styles to record court proceedings, making translation of these records rather difficult. While this applies only to four of the selected cases in the present study, it is nonetheless consequential since one of them appertains to the only Indian male accused.⁷⁵ So while these four court records can be used for statistical purposes, the fact that the proceedings were not transcribed into typed text and the peculiarities of the shorthand script means that the actual trials remain inscrutable.

The individual depositions available in court records in state and personal archives and collections are interesting for a number of reasons and open up for us an array of debates about matters that were crucial at the time relating to interpersonal relations, familial relations, labour relations, the blurring of gender, racial and class boundaries as well as inter-racial interactions in the colonies. From the court depositions which offer generous descriptions of everyday life experiences, interactions and emotions, it is evident how, from seemingly 'unimportant' social contexts such as this, we can gain access to social histories of the more intimate aspects of colonial life. By analysing the lived experience of individuals and families, it is possible to gain an insightful glimpse into crucial historical questions relating to the general situation of the private and intimate space of everyday life in the colonies. The testimonies, views and individual

⁷⁵ These include PAR, AGO, AGO 1/1/435, 15/1918, *The King versus Muniamma and Janki*. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), 1918; PAR, Registrar, Supreme Court [hereafter RSC], 1/1/127, 20-21/1920, Supreme Court Criminal Case. *The King versus Ushraff Khan*. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), 1920; PAR, RSC, 1/1/158, 16/1933, Supreme Court Criminal Case. *Rex versus Elsie Thompson Nimmo Also Known As Elizabeth Thompson Nimmo*. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), Alternatively Concealment of Birth, 1933. See Appendix for further details on these court cases.

stories that this project attempts to resurrect, become vehicles for historical memory and for sustaining historical continuity across boundaries of time and space.

Chapter Outline

This thesis is arranged according to five chapters. Chapter One plots the development of laws relating to infanticide and concealment of birth against a late nineteenth and early twentieth century medical, social, political and legal backdrop. It starts with Ordinance 22 of 1846 (Natal), followed by a discussion of Natal's 1910 infanticide law. The chapter then moves into a discussion of legislation that was passed during the Union years, namely Act No. 31 of 1917; the Criminal Procedure and Evidence Act; and the General Law Amendment Act 46 of 1935. The chapter also locates these changes and developments in the law in an imperial context and considers if and how infanticide and concealment of birth legislation in other parts of the British Empire shaped Natal and South African legislation. An analysis of the validities as well as the shortcomings of these laws is also provided which is set against an interrogation of the role that medical evidence played in determining both convictions and verdicts. The chapter ends with an overview of the thirty-five Supreme, District and Circuit court cases that were selected for this study. The cases were drawn from the records of the Registrar of Supreme Court (RSC) and the Attorney-General's Office (AGO). This overview includes statistical data showing the number of accused according to race, marital status and occupation. Data is also given on the ratio of female to male infanticides, the age of the infant, as well as the rural-urban divide with regard to the occurrence of infanticide cases.

Chapter Two explores the discourses prevalent in South Africa at the turn of the twentieth century concerning baby-farming, infant life protection legislation, adoption, infant mortality rates, mothercraft, and child welfare within a particular focus on illegitimacy. This chapter also reflects on the ways in which growing concerns about eugenics and race influenced the outcomes of these discourses. Chapter Three's subheading, 'Motives, Circumstances and Lived Realities,' best outlines the overarching theme in this chapter. It is a careful reading of the court cases in an attempt to discern why the men and women accused of the crimes of infanticide or concealment of birth allegedly killed their newborn children. The records of the Supreme Court and Attorney General's Office reveal two particular patterns or themes relating to the apparent motives behind these crimes. The first pattern shows that the peri-urban geographical location with the highest incident rate of infanticide or concealment of birth was Edendale – a mission station and area of African petty bourgeois settlement just outside Pietermaritzburg – and the second theme relates more broadly to inter-racial relationships. This chapter concentrates on two groups of women: Christian African women (who lived on the rural/urban periphery within a mission based community) and single white women whose pregnancies were the result of non-marital or inter-racial relationships. The chapter puts forwards an argument that these women were perhaps responding to the pressures of societal attitudes toward illicit and premarital sex and pregnancy. A section of this chapter develops the discussion raised in Chapter One regarding medical jurisprudence by looking at the difficulties posed by proving a live birth and separate existence before the courts were able to proffer a charge of concealment of birth or infanticide.

Chapter Four scrutinises the ways in which Natal newspapers reported on crimes of infanticide and concealment of birth. The chapter also interrogates the way Natal's white public responded to these cases. An underlying theme in this chapter is the construction of the notions of respectability and reputation, which were central components of settler ideology. The final, fifth chapter uses the cases of Emma Lovett (1894) and Lily Theron (1919) to explore the plea of puerperal insanity in cases of infanticide and concealment of birth. The records show that it was only in 1919 that puerperal insanity – or postpartum depression as it is referred to today – came to be used as a defence plea in cases of infanticide. Using these case studies and selected patient records of the Natal Government Asylum, this chapter attempts to analyse the manner in which puerperal insanity was understood by Natal's medical and legal fraternities.

The Appendix contains selected images, extracts of important but supplementary legislation, as well as a detailed table featuring summaries of the criminal cases of concealment of birth and infanticide that were tried before the Supreme and District Courts in Natal.

This thesis contributes to several sets of literature and academic debates. Histories of sexuality, childbirth, marriage, and inter-racial relationships have been researched and written on, but there appears to be no far-reaching study on infanticide in this region, more importantly one that looks at all racial groups as they were classified by the state. This project thus serves as a contribution to building a more substantial understanding of the private and personal spaces of colonial society and how this was juxtaposed against the public domain. It is hoped that this study also makes a critical

contribution both to the history of KwaZulu-Natal, as well as to wider colonial and transnational debates, about the history of infanticide and concealment of birth.

The cases presented in the thesis allow for the exploration of the meanings of infanticide in the social history of Natal. It is clear that legislation shaped interpretation and practice but practice and interpretation, across many social and institutional settings, also shaped legal definitions. This was true both in the British empire as a whole and in the colony and province of Natal. Here, for example, the concept of “concealment of birth” altered to “infanticide” and the potential perpetrator from “woman” to “person.” Some definitions of infanticide were shared across religious, ethnic, class and legal spaces. Oftentimes, however, the meanings of, and reactions to, infanticide were contested. The court cases used in this project will hopefully fashion a social history that is “written in chords;”⁷⁶ a story of ordinary men and women whose lives, experiences, interactions, emotions, cultures, individualities and histories intersected with the domestic, private, public and colonial nexus. After all, the purpose of history is not just to paint in flat colours: black, blue, red, but also to show the hues, shades and mottles of the past.

⁷⁶ This phrase is adapted from the chapter title by Catherine Burns. ‘A Useable Past: The Search for “History in Chords”,’ in Stolten (ed.) *History Making and Present Day Politics: The Meaning of Collective Memory in South Africa*, 355.

Chapter One

Unlawful Killing and Wilful Neglect - Genealogies of Infanticide and Concealment of Birth, 1840-1935

This chapter interrogates how legal and medical genealogies of infanticide and concealment of birth in Natal from the 1840s to 1935 were powerfully shaped both by the local social and political contexts in which they were created as well as external factors. As a colony of the British Empire, medical and legal professionals in Natal were greatly influenced by their counterparts in England as well as in other colonies of the Empire. Shifting attitudes and views, both locally and in the metropole, towards birth, babies, women and the law – as well as discourses on illegitimacy, infant life protection, motherhood and eugenics at the turn of the twentieth century – influenced local medical, legal and social welfare discourses which, in turn, affected the ways in which the state in Natal dealt with infanticide and concealment of birth, and child welfare more generally. Equally important, however, is understanding how Natal's unfolding political, economic, social and demographic history had an impact on changes in legislation.

It was only in the nineteenth century, as medical jurisprudence and forensic science developed, that the term infanticide became commonly used and synonymous with newborn child murder. By the 1860s, when the first utterances, of what would later

be called, social class eugenics were being heard in Britain, concerns about infant mortality rates and baby-farming scandals, as well as the definitions of infanticide, broadened and the usage of the term became increasingly prevalent.¹ Great agitation around infanticide began surfacing, so much so that in 1867 the *British Medical Journal* referred to “an epidemic of infanticide.”² The perceived links between infanticide and a plethora of social problems associated with illegitimacy and unmarried motherhood intensified anxieties about rising poor rates, the economic and sexual vulnerability of women, as well as the preservation of family morality. Most campaigners concerned with illegitimacy and high infant mortality during this time focussed primarily on the vulnerability of illegitimate children rather than the causes of the high infant mortality rates.³ For instance, in 1866 the Harveian Society of London⁴ set up a special committee to investigate the problem of infanticide, which reported that “the life of the bastard is infinitely less protected than that of the legitimate: the birth of the former is coupled with disgrace; the maintenance of the child is undefined and uncertain; poverty is about it, and the ties and safeguards of

¹ For more on baby-farming in Great Britain, see M. L. Arnot. ‘Infant Death, Child Care, and the State: The Baby-Farming Scandal and the First Infant Life Protection Legalisation of 1872,’ in *Continuity and Change*, 9, 1994, 271-311; Daniel Grey. “‘More Ignorant and Stupid Than Wilfully Cruel’: Homicide Trials and ‘Baby-Farming’ in England and Wales in the Wake of the Children Act 1908,” in *Crimes and Misdemeanours*, 3:2, 2009, 60-77; Benjamin Waugh. ‘Baby-Farming,’ in *Contemporary Review*, 57, 1890, 700-714. For more on eugenics, see Anna Davin. ‘Imperialism and Motherhood,’ in *History Workshop Journal*, 5, 1978, 9-65.

² Report of the Committee of the Harveian Society on Infanticide,’ in *The Lancet*, 89:2263, 12 January 1867, 61.

³ Ginger Suzanne Frost. “‘The Black Lamb of the Black Sheep’: Illegitimacy in the English Working Class, 1850-1939,’ in *Journal of Social History*, 37:2, Winter 2003, 293-322.

⁴ The Harveian Society of London was established in 1831. The Society was set up principally to deal with improving the image of the medical profession in Britain at the time, but it was also dedicated to the advancement and development of medical science. D.G. James presents a comprehensive overview of the Society in ‘The Harveian Society of London,’ in *Journal of Medical Biography*, 18:3, August 2010, 126.

home are wanting. The bastard finds the lot of an inferior animal rather than that of a human being.”⁵ The committee was set up specifically to draw up a report which addressed the causes of death in young children and to suggest the best means of regulating infanticide, preventing “excessive” infant mortality and to develop some plan for the care and rearing of illegitimate children other than the existing English workhouse system.⁶

The nature of court cases and the type of evidence in infanticide trials which were considered in an English context in the nineteenth century continued to have parallels in other geographical settings during the modern period. By the second half of the 1800s, besides medical jurisprudence taking centre stage at these hearings, the marital status and sexual behaviour of the mother had come to be regarded as especially important. A number of historical studies have shown that many of the central features present in nineteenth and early twentieth century British trials were reflected in many other geographical settings. Prosecutions of women in Canada, Ireland, Poland, Germany, France, and Italy have generally considered the social standing of the mother, as well as the evidential weight of concealment of the actual gestation, birthing and death of the child. One of the reasons this continuity across

⁵ ‘Report of the Committee of the Harveian Society on Infanticide,’ 61.

⁶ The committee was led by Charles Drysdale of the Malthusian League; Ernest Hart, who later became editor of the *British Medical Journal*; J.B. Curgenvven, a former military surgeon; George Greaves, an obstetrician; William Burke Ryan, author of *Infanticide: Its Law, Prevalence, Prevention and History*; and Edwin Lankester, coroner in Central Middlesex. ‘Report of the Committee of the Harveian Society on Infanticide,’ in *The Lancet*, 89:2263, 12 January 1867, 61-63.

space and time has existed is partly due to the similarities between the legal frameworks within which these women were prosecuted.⁷

This chapter first discusses infanticide and concealment of birth laws that were passed in Great Britain and then moves to a detailed discussion of Natal legalisation.

Interspersed between these two sections are references to laws passed in the Cape Colony and New South Wales since these had direct influence on the formulation of Natal's laws. The chapter then turns its attention to consider the medico-legal aspects of prosecutions against infanticide and concealment of birth, and this is followed by an overview of the court cases that were brought before the Supreme, Magistrates and District courts in Natal between 1869 and 1933.

The timeline below is a visual depiction of the genesis of the way in which legislation relating to infanticide and concealment of birth has developed over the last two centuries. It illustrates how laws that were passed in Natal and then in the later Union and Republic of South Africa were influenced by laws passed in Britain, the Cape Colony and, as will be discussed, New South Wales, Australia. The timeline starts in 1800 and shows when and where pertinent laws were passed, until 2008, when the Judicial Matters Act of South Africa was adopted. The upper section of the timeline

⁷ Constance B. Backhouse. 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada,' in *The University of Toronto Law Journal*, 34:4, Autumn 1984, 447-478; Stephen Wilson. 'Infanticide, Child Abandonment, and Female Honour in Nineteenth-Century Corsica,' in *Comparative Studies in Society and History*, 30:4, October 1988, 762-783; James M. Donovan. 'Infanticide and the Juries in France, 1825-1913,' in *Journal of Family History*, 16:2, 1991, 157-176; Kenneth H. Wheeler. 'Infanticide in Nineteenth-Century Ohio,' in *Journal of Social History*, 31, Winter 1997, 407-418; Jeffrey S. Richter. 'Infanticide, Child Abandonment, and Abortion in Imperial Germany,' in *Journal of Interdisciplinary History*, 28:4, Spring 1998, 511-551; Michelle Oberman. 'Understanding Infanticide in Context: Mothers Who Kill, 1870-1930 and Today,' in *The Journal of Criminal Law and Criminology*, 92:3/4, Spring - Summer 2002, 707-738.

applies to laws passed in Great Britain, New South Wales and the Cape Colony, while the bottom half reflects the situation in Natal and South Africa. The purposes for which these laws were passed, the provisions, as well the manner in which these laws are connected to each other will be discussed further.

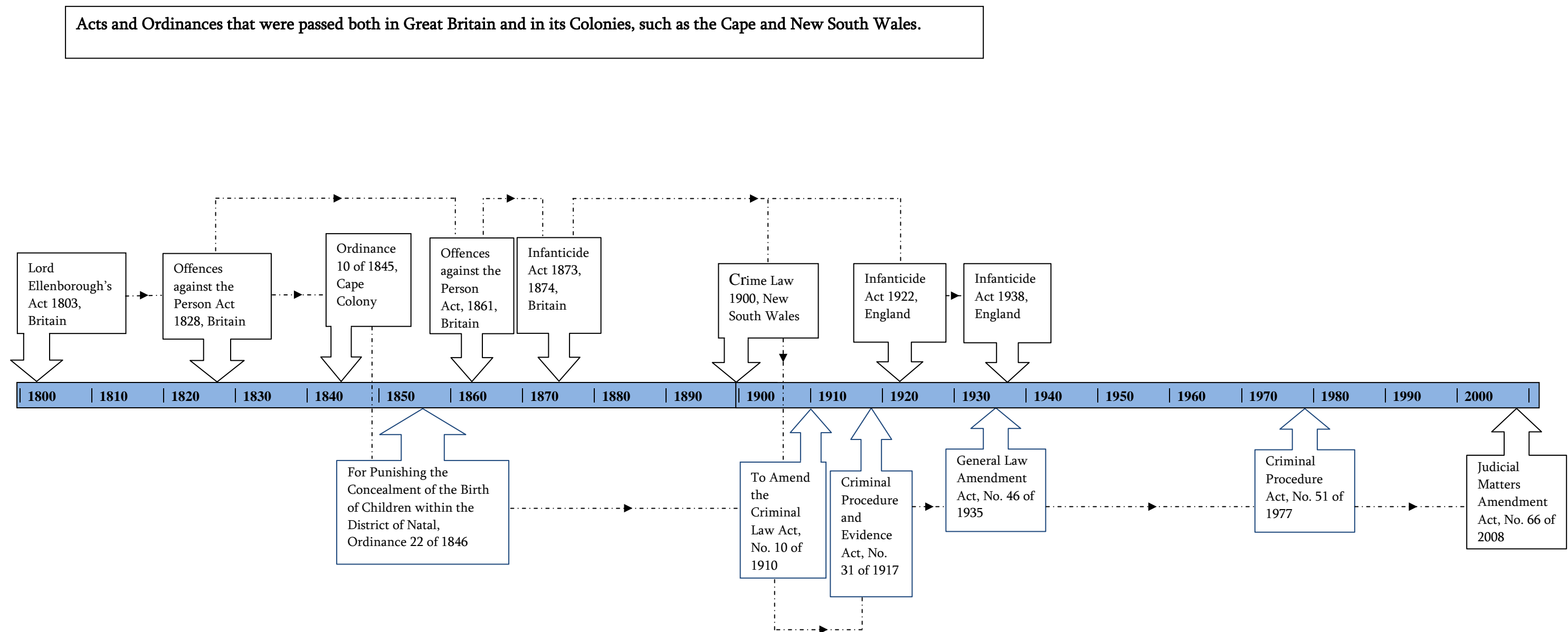


Illustration 1: Timeline of Infanticide and Concealment of Birth Legislation, 1800-2000

English Legal Genealogies of Infanticide and Child Murder

According to Mark Jackson in his book *New Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England*, many illegitimate children in seventeenth century England had to be supported and maintained at the expense of parishes.⁸ The antagonism of local tax-payers, heightened by the moral and religious shame of bearing a bastard child, forced increasing numbers of women to conceal their pregnancies and secretly murder their children. Indeed, in *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, Carol Smart argues that it was a desperate form of birth control for the lower classes.⁹ As a result of the clandestine nature of the act, witnesses were so rare that the prosecutions were ultimately forced to rely on circumstantial evidence to convict persons accused of this crime. In response to these difficulties and to the steady increase in the number of reported cases of child murders, the “Act to Prevent the Destroying and Murthering of Bastard Children” was passed in 1624.¹⁰ According to this Act, if the mother could be shown to have concealed the death of the child then this alone was sufficient to convict her of its murder which carried the death sentence as punishment.¹¹ Jackson further states that these “bastard-bearers” were constructed as requiring discipline,

⁸ Mark Jackson. *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England*. (Manchester: Manchester University Press, 1996), 31.

⁹ Carol Smart (ed.) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*. (London: Routledge, 2002), 17-18.

¹⁰ Jackson. *New-Born Child Murder*, 29-59.

¹¹ Keith Wrightson. ‘Infanticide in Earlier Seventeenth-Century England,’ in *Local Population Studies*, 15, 1975, 10-22.

both for their moral degradation and for the “sin” of bringing unnecessary economic burden and pressures to the parishes.

By the middle decades of the eighteenth century, shifting attitudes to medical evidence (which amounted to very little at the time), reappraisals of the character and nature of the accused women, as well as the introduction of new rules of evidence combined to undermine support for the 1624 Act, which were increasingly perceived as draconian by the courts. Efforts to repeal the 1624 Act were largely unsuccessful in the 1770s (when efforts to reform Penal law was instigated) but, in 1803, the Act was successfully repealed as part of a large scale progressive political and social reform movement led by Lord Ellenborough.¹² Unlike the 1624 Act which offered no alternative verdict, “Lord Ellenborough’s Act” gave juries the option of returning a verdict of concealment of birth with a sentence of two years’ imprisonment when the murder of an illegitimate child was not and could not be proven.¹³ According to Jackson, Lord Ellenborough’s Act mandated that the prosecution had to “establish that a dead child had been born alive rather than being able to rely merely on evidence of concealment to prove murder.”¹⁴ Historians R. Sauer, Peter C. Hoffer, N.E. Hull and Jackson contend that, as a result of the manner in which the Act was unconcerned with the murders of legitimate children by married mothers and

¹² Lord Ellenborough was born Edward Law and was an English judge. He also served as a Member of Parliament, Attorney General and as Lord Chief Justice for England and Wales. For further discussion on the Repeal of the 1624 and 1803 Acts, see Jackson. *New-Born Child Murder*, 158-181.

¹³ See also R. Sauer. ‘Infanticide and Abortion in Nineteenth-Century Britain,’ in *Population Studies*, 32:1, March 1978, 81-93.

¹⁴ Mark Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*. (Aldershot: Ashgate, 2002), 6.

because it linked infanticide specifically to “bastard” children, Lord Ellenborough’s Act crystallised negative presumptions about unmarried single women.¹⁵

In 1828, the ‘Offences against the Person Act’ replaced Lord Ellenborough’s Act.¹⁶ It was passed with the purpose of simplifying the law for the better administration of justice and it collated various earlier statutes into a single Act. Most noteworthy, this Act extended the charge of concealment to married women, thus ending the legal association of this crime with illegitimacy.¹⁷ All these changes in the law and criteria for indictments are clear indications of the shifting attitudes on the social and familial responsibilities of men and women as well as the condemnation of the behaviour of married and single mothers. However, they were not sufficient to break the perceived legal and social linkages between illegitimacy, single women and infanticide which have prevailed into the twentieth and twenty-first centuries.

The 1828 change to the law of infanticide was but one of three developments that help explain a steep increase in the number of cases brought before the English court by the 1840s.¹⁸ The second was the revision of the 1824 Poor Law, amended in 1844, which not only made it more difficult for unmarried women to obtain relief and affiliation for illegitimate children, but also curtailed the responsibility of the father to provide assistance. The bastardy provisions of the Poor Law were adopted in the hope that they would decrease sexual delinquency by changing the economic calculus

¹⁵ Jackson. *New-Born Child Murder*, 169; Sauer. ‘Infanticide and Abortion in Nineteenth-Century Britain’; and Peter C. Hoffer and N. E. Hull. *Murdering Mothers: Infanticide in England and New England, 1558-1803*. (New York: New York University Press, 1981), 33-64.

¹⁶ Also known as the Malicious Shooting or Stabbing Act 1803.

¹⁷ Josephine McDonagh. *Child Murder and British Culture 1720-1900*. (Cambridge: Cambridge University Press, 2003), 4.

¹⁸ ‘Infanticide under the New Poor Law,’ *The Times*, 8 August 1842, 6.

in which women would find themselves, if they became pregnant.¹⁹ Thirdly, a much more vigilant stance towards perpetrators began to be adopted. This is illustrated by the editorial of the *The London Times* of 2nd April 1845, a diatribe on the prevalence of concealment of birth and infanticide present in the country at the time. The editor wrote that cases of concealment of the birth of illegitimate children had become “so frightfully common” and that the reactions of the courts to this “had been ‘so extraordinary’ [i.e. too lenient] that the current legislation around this crime needed immediate and serious revision.” He went on to write: “the law is hardly plain enough for common apprehension; and as the law will not allow ignorance to be any excuse, we hope it will allow us the benefit of a chance of understanding it by giving us at least a declaratory act.”²⁰ With this he argued that, while there were laws in place to bring these mothers to book, judges and juries were often far too lenient in executing fitting punishments, and a declaratory act was therefore needed which would set forth a more clearly defined Law on infanticide. He closed the editorial by saying:

The helpless infant most needs the protection of the law; and yet, as the law stands, it is too often found refusing to punish the destroyer of the infant. [...] We would also make the punishment of concealing the birth more severe than it now is, and would place it more on a par with the greater offence. Such a course, we think, might put a check upon a now frequent crime.²¹

¹⁹ Aeron Hunt. ‘Calculations and Concealments: Infanticide in Mid–Nineteenth Century Britain,’ in *Victorian Literature and Culture*, 34, 2006, 71–94; Lionel Rose. *Massacre of the Innocents: Infanticide in Great Britain, 1800–1939*. (London: Routledge and Kegan Paul, 1986), 22–34; Ann R. Higginbotham. “‘Sin of the Age’: Infanticide and Illegitimacy in Victoria London,’ in *Victorian Studies*, 32, Spring 1989, 319–337.

²⁰ A Declaratory Act or Law is an act or statute which sets forth more clearly, and declares what is, the existing law. ‘Concealment,’ *The Times*, Wednesday, 2 April 1845, 5.

²¹ Concealment, *The London Times*, Wednesday, 2 April 1845, 5.

At the same time as calling for stricter application of the punishment for offenders of infanticide, the editorial did, however, reflect on the sexual double standard with regards to presumptions about the identity of offenders.

A mother, with any of the natural feelings of her sex, must go through an inconceivable amount of mental suffering in the thought of being the destroyer of her own child – of erasing from the book of life her own entry. A higher motive than that alleged at Isleworth – the sense of disgrace – a disgrace which she bears alone, and the partner and cause of her sin escapes – is also at work; the pangs of nature, the harassing, the excitement, the shame and the ruin are not shared with her. These are the degrees of guilt even in murder.

It was only to be in 1861 that Section 60 – Concealing the Birth of a Child of the Offences against the Person Act – was extended to include men as possible offenders in the crime of infanticide.

Until the 1870s, infanticide was seen by social commentators as a marker of the iniquitous social system and widespread poverty in England. The concern expressed in the editorial for the infants became a central focus in Victorian Britain from the mid-nineteenth century onwards. This was the result, as Smart argued in *Regulating Womanhood*, of the emergence of a close relationship between law and social engineering that emerged at this time. Smart states that the “science of social investigation and statistics” influenced legal developments in this period. Situating her argument in Foucault’s notion of biopolitics – a government’s regulations of its population through biopower²² – Smart asserts that, only when statistics on births,

²² In a Foucauldian sense, biopower is essentially the production of technologies of power by modern nation states with the purposes of controlling or managing populations. Foucault argues that it is the State’s use of power to appropriate, discipline, normalize or regulate the “anatomopolitics” of its subjects to ensure what the State deems a desirable population. For more on this

deaths and marriages began to be amassed in the early nineteenth century, that concerns for the preservation of infant life mounted and the pressure for reform could be exercised.²³ This link between state and law in relation to infant life is illustrated particularly strongly in the establishment in the 1850s of the English National Association for the Promotion of Social Science – a statistical society dedicated to improving public health systems. Apart from the problems of baby-farming, illegitimacy of children (to be discussed in Chapter Two) and various sanitary woes, the Association regarded infanticide as one of its main priorities.²⁴

The efforts of the Association directly resulted in amendments to the Infanticide Law in 1873 and 1874. The most notable changes in these amendments concerned Section 3. The 1873 Infanticide Law Amendment read:

If the mother of any child shall unlawfully and maliciously wound or inflict any grievous bodily harm upon such child during or immediately after its birth, and shall thereby cause its death, she shall be guilty of felony, and on conviction thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years, or to be imprisoned for any term not exceeding two years, with or without hard labour.²⁵

see, Michel Foucault. *The History of Sexuality Vol.1: The Will to Knowledge*. (London: Penguin, 1998), 140.

²³ Smart (ed.) *Regulating Womanhood*, 10-13.

²⁴ For more on the Association, see Ronald K. Huch. 'The National Association for the Promotion of Social Science: Its Contribution to Victorian Health Reform, 1857-1886,' in *Albion: A Quarterly Journal Concerned with British Studies*, 17:3, October 1985, 279-299.

²⁵ Infanticide Law Amendment 1873 - A Bill to amend the law relating to Infanticide. *British Parliamentary Papers*, 048879, 048880, 1873.

In 1874, the Act was amended as follows:

“If the mother of any child **shall wilfully** cause the death of such child during or immediately after its birth, **but shall not before the commencement of the pains of labour have premeditated causing its death**, she shall be guilty of felony, and conviction thereof, ...²⁶

This amendment suggested that, if courts were able to show intent and premeditation and thereby motive, it would have been easier to find women guilty of infanticide.

With the amendment, however, the difficulty lay in proving this intent.²⁷

Furthermore, the amendment paved the way for the defence plea of insanity by taking into account that a woman could have been affected by the *pains of labour* which could have resulted in temporary post-partum psychosis, and was therefore, not responsible for her actions.

Consequently, by the 1880s, with sophisticated interpretations of the 1874 Amendment Act – by using the insanity plea – fewer women came to be charged with this crime. The law seemed to take more seriously the stereotypical notion of the physiological weakness of the female body and mind. Attitudes to working mothers and the care of their children were changing and concerns about the health and well-being of the population were slowly transforming. Social commentators, local communities and legal authorities’ anxiety over suspicious infant deaths were beginning to change in that, in the context of growing nationalism and democratic reform, the state recognised and accepted its ability to provide for and be responsible for the health and wellbeing of its population. Of course, as Anna Davin has shown in

²⁶ Infanticide Law Amendment 1874 - A Bill to amend the law relating to Infanticide. *British Parliamentary Papers*, 049900, 049901, 1874. [Emphasis added]

²⁷ Infanticide Law Amendment 1874 - A Bill to amend the law relating to Infanticide. *British Parliamentary Papers*, 050816, 1875.

her seminal article ‘Imperialism and Motherhood’, by the late nineteenth and twentieth century – with high infant mortality rates and infanticide convictions ever increasing – these issues had heightened and this significantly altered the socio-political context in which infanticidal men and women were regarded by the courts.²⁸

It was only in 1922 in England that the word infanticide was used for first time in the principal Act governing the killing of newborns.²⁹ The Act was later revised in 1938 which - with amendments - is still in place in England (though not in Scotland or Northern Ireland).³⁰ What remains significant about the 1922 Act is that, if a jury did not find the “woman” [sic] guilty of infanticide, it was able to return either a verdict of manslaughter, or of guilty but insane, or of concealment of birth, which were retained from Section Sixty of the Offences against the Person Act of 1861.

Critically, what the 1822 Act abolished was the death penalty for a woman found guilty of infanticide. When the first case was tried under this Act, *The London Times* reported on it with much interest. The case was against a domestic servant from Coningsby, England, named Emma Temple. Nineteen years of age, she pleaded guilty to murdering her newly born child, claiming, however, that she had in fact not known what she was doing. The counsel for the defence said that this was the first case which came within the “wise and merciful provisions of the new Infanticide

²⁸ For more on this, see Davin. ‘Imperialism and Motherhood,’ 9-65.

²⁹ See Appendix for full version of the 1922 Infanticide Act.

³⁰ National Archives Repository [hereafter SAB], Governor-General [hereafter GG], 1840/53/423, Acts: Imperial. Transmits copies of the Infanticide Act, 1922. For the House of Lords discussion relating to the passing of this Act, see <http://hansard.millbanksystems.com/lords/1938/mar/22/infanticide-bill-hl>, accessed on 4 February 2011. See also the 2005 House of Commons Law Review Commission on Murder, Manslaughter and Infanticide available at <http://www.lawcom.gov.uk/docs/lc304.pdf>, accessed on 4 February 2011.

Act,” and her plea was accepted.³¹ When sentencing Emma Temple to four months imprisonment, the judge, Mr Justice Lush, said that he was relieved that she did not have to stand trial for murder and further commented that the Act “was a most wise and humane piece of legislation” and “marked a fresh step in the improvement of the criminal law.”³²

The 1938 revisions to the Act³³ introduced slightly different wording to the 1922 Act but clearly defined the word infant and indicated that, for a crime such as that of infanticide to be considered, the child should not have been older than twelve months. Furthermore, they also took into account that the mother may have been affected by the physical and psychological effects, not just of having given birth, but also of lactation and that, if the jury found that the “balance of her mind” was disturbed as a result, she could not be found guilty at all. After the 1938 Act, many of the former British colonies, such as Fiji, Canada, and New Zealand, adopted this Infanticide Act.

Having traced how British law dealt with infanticide and concealment of birth over the nineteenth and twentieth centuries, the next section of the chapter plots the genealogy of infanticide and concealment of birth laws in the Colony of Natal. These laws changed several times between 1840 and 1935 when the General Law Act of South Africa was amended, the last act on which this thesis focuses. Natal was somewhat more progressive than the Transvaal and Cape colonies in relation to

³¹ ‘New Infanticide Act – Judge on the First Case,’ in *The London Times*, Tuesday, 31 October 1922, 9.

³² ‘New Infanticide Act – Judge on the First Case,’ in *The London Times*, Tuesday, 31 October 1922, 9.

³³ See Appendix for full version of the 1938 Infanticide Act.

legislation regarding infanticide. For the first time in 1910, Natal adopted into the legal statute the word infanticide to refer to the murder of a new-born child. While the killing of infants clearly did exist as a crime prior to 1910, until then women and men suspected of killing a new-born child had actually been convicted of contravening the provisions of Ordinance 22 of 1846, which described this act as the ‘concealment of birth.’ As in England, changes in the law, both in Natal and later in the Union, reflected social and state anxieties about illegitimacy and to some extent the young infanticidal woman who, more often than not, was seen by the state as in need of guidance, discipline and rehabilitation.

Legal Genealogies of Infanticide in Natal and South Africa

Infanticide laws in the colonies of the Cape and Natal in the nineteenth century were largely derived from British precedents.³⁴ When Natal was proclaimed a Colony in 1843, it adopted the body of statutes that had governed the Cape Colony.³⁵ In 1846, Ordinance 22 ‘For Punishing the Concealment of the Birth of Children within the District of Natal’ was passed. The Ordinance stated:

³⁴ For more on this, see P.R. Spiller. *A History of the District and Supreme Courts of Natal, 1846-1910*. (Durban: Butterworths, 1986); Martin Chanock. ‘Writing South African Legal History,’ in *The Journal of African History*, 30:2, 1989, 265-288; and Albie Sachs. *Justice in South Africa*. (Berkeley: University of California Press, 1973), 84-94.

³⁵ For more on this see: Ordinance No. 12, 1845 – Aug. 27, 1845; Proclaimed, February 27, 1847 – For establishing the Roman-Dutch Law in and for the District of Natal. Pietermaritzburg Archives Repository [hereafter PAR], Natal Colonial Publications [hereafter NCP], 5/5/3, Natal Ordinances, Laws, and Proclamations, Vol.1, 1843-1870, (Pietermaritzburg: Vause, Slater, and Co. Government Printers, 1879), 1-2.

1. If any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such woman so offending shall be deemed to be guilty of the crime of concealing the birth of her child, and being convicted thereof shall be liable to be imprisoned with or without hard labour for any term not exceeding five years.
2. And be it enacted, that upon the occasion of the trial of any person charged with the commission of the said crime, it shall not be necessary to prove whether the child died before, or at, or after its birth
3. and if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find, in case, it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of the child endeavour to conceal the birth thereof; and thereupon it may be lawful for the Court to pass upon her any such sentence as might have lawfully passed upon her if she had been convicted upon an indictment for the crime of concealing the birth of her child.³⁶

This Ordinance is important because it was the first ever ordinance relating to criminal matters to be executed by the Natal colonial state. All previous ordinances had dealt with civil matters such as the payment and transfer of duties; fixing the age of majority; creating field cornets, constables, justices of the peace and resident magistrates; improving the law of evidence; amendments to laws regarding marriages; the regulating of sales by auction; or amending the law relating to the rights of execution creditors³⁷ within the District of Natal.³⁸ Having been drawn from the Cape

³⁶ PAR, NCP, 5/4/1, Ordinances and Laws of the Colony of Natal, Ordinance 22, 1846, 3.
[Emphasis added]

³⁷ This refers to a person who is appointed by a court to enforce the payment of monies owed by an injunction or court order.

Ordinance, 10 of 1845,³⁹ which was largely derived from Roman-Dutch law, Ordinance 22 of 1846 shared with it two critical features which Pamela Scully identifies in *Liberating the Family? Gender and British Slave Emancipation in the Rural Western Cape, South Africa*.⁴⁰

Firstly, where a woman had been accused of killing her child, both Ordinances allowed courts to return verdicts of the lesser crime of concealment of birth, which can be interpreted as a move towards leniency. Secondly, they both gave greater prominence to the role of the expert (in this case a doctor): the proof that “whether a child died before, or at, or after its birth” was made dependent on the testimony of the District Health Officer or Surgeon.⁴¹ Similarly, and as this chapter will later show,

³⁸ For instance, Ordinance No 14, 1845 - For erecting a District Court in and for the District of Natal; Ordinance No. 17, 1845 - For determining the qualifications of Jurors in the District of Natal; Ordinance No. 18, 1845 - For regulating the manner of proceeding in Criminal cases in the District of Natal; Ordinance No. 19, 1845- For altering, amending and declaring in certain respects the Law of Evidence within the District of Natal. PAR, NCP 5/5/3, Natal Ordinances, Laws and Proclamations. Compiled and edited under the Authority and with the sanction of his excellency the Lieutenant Governor and the Honorable the Legislative Council by Charles Fitzwilliam Cadiz, assisted by Robert Lyon, Vol. 1, 1843 - 1870, (Pietermaritzburg: Vause, Slater and Co. Government Printers, 1891).

³⁹ See Appendix for full version of this law.

⁴⁰ For a more in-depth discussion on the development of Ordinance 10 of 1845 under Cape Colony law, see Carina van der Westhuizen. ‘An Historical Overview of Infanticide in South Africa,’ in *Fundamina*, 15:2, 2009, 174-192; Vertrees C. Malherbe. ‘Born Into Bastardy: The Out-of-Wedlock Child in Early Victorian Cape Town,’ in *Journal of Family History*, 32:1, January 2007, 21-44; Pamela Scully. *Liberating the Family? Gender and British Slave Emancipation in the Rural Western Cape, South Africa, 1823-1853*. (Portsmouth, N.H: Heinemann, 1977), 146-49; and Pamela Scully. ‘Narratives of Infanticide in the Aftermath of Slave Emancipation in the Nineteenth-Century Cape Colony, South Africa,’ in *Canadian Journal of African Studies*, 30:1, 1996, 88-105.

⁴¹ Pamela Scully. *Liberating the Family? Gender and British Slave Emancipation in the Rural Western Cape, South Africa*, 146-49; and Pamela Scully. ‘Narratives of Infanticide in the Aftermath of Slave Emancipation in the Nineteenth-Century Cape Colony, South Africa,’ fn1, 102.

medical examinations and post-mortems became crucial aspects of evidence used in determining judgments.

Ordinance 22, 1846 stayed in place until 1910, when the Criminal Law of Natal was amended to include the “new crime” of infanticide. This law stated that:

9. The unlawful killing of a child within one week after its birth shall be a crime under the name of infanticide.

The crime of infanticide shall be punishable by imprisonment with or without hard labour for a term not exceeding five years, but nothing in this section shall be deemed to repeal or affect the law relating to murder of a child: Provided that a conviction or acquittal upon a charge of infanticide shall bar any subsequent charge of murder or culpable homicide of the same child.

If upon any charge of murder of a child or infanticide a question shall arise whether such child was born alive, such child shall be deemed to have been born alive if it is proved to have breathed, whether it has had an independent circulation.⁴²

The most crucial difference between Ordinance 22, 1846 and Section 9 Act 10, 1910 was the proviso concerning whether or not it should be proved at what point the child had died. Ordinance 22 stated that “...it shall not be necessary to prove whether the child died before or after its birth,” whereas Act 10 stated that it was necessary to prove that the child was able to exist independently from the mother. The significance of this for this study is that, as with Ordinance 10, 1845 in the Cape, the Natal Ordinance 22, 1846 allowed for the possible prosecution of an abortion as well as concealment of birth. By 1910, however, women who were suspected of procuring an abortion were charged under the separate offence of either “Procuring Abortion”

⁴² PAR, NCP, 5/3/17, To Amend the Criminal Law, Section 9 of Act 10 of 1910 (Natal), 37-42.

or “Administering drugs with intent to procure abortion.”⁴³ Another noteworthy change to the 1910 law was that it no longer automatically perceived the possible perpetrators of infanticide as women alone: whereas Ordinance 22, 1846 had read, “If any woman,” Section 9 of Act 10, 1910 is not sex specific. Unlike in Great Britain, throughout the nineteenth and twentieth century, the laws in Natal relating specifically to infanticide did not view the perpetrator specifically as a woman. It can be argued that the passage of the Act of 1910 happened for two possible reasons – the first relating directly to the increasing number of convictions for concealment of birth in the late nineteenth century put forward to the Supreme, Circuit and Magistrates’ Courts in Natal; and the second as a consequence of humanitarian attempts by the colonial state at moral reformism.

However, the state’s humanitarian efforts should be viewed with some caution. Moral reformism was not always quite so altruistic or ‘humanitarian’ as it appeared. It was far more contradictory and ambiguous. For much of the late nineteenth and early twentieth centuries, moral reformers – whether working for governments or as political campaigners – were white upper-middle class men and women who embraced Christian values. They tended to have condescending and unflattering views of the lower classes or darker skinned people, and while they wanted to improve the living and social conditions of the lower classes or of other racial groups, the motives behind amelioration projects were dubious and embedded in biopolitics

⁴³ The first such charge was brought before the Durban City Court in 1898. See PAR, Attorney General’s Office [hereafter AGO], I/1/1991, 90/1898. *Regina vs Cecil Thornton Reaney*, charged with the crime of Administering Drugs with intent to procure abortion. For a succinct but comprehensive overview of the practice of abortion in South Africa, see Helen Bradford. ‘Herbs, Knives and Plastic: 150 Years of Abortion in South Africa,’ in Teresa Mead and Mark Walker (eds.) *Science, Medicine and Cultural Imperialism*. (New York: St. Martins Press, 1991), 120-147.

and civilising euphemisms. Further, the extent to which the affected individuals embraced the policy of ‘upliftment’ is also debatable.

From the official Parliamentary Debates and discussions which culminated in the passage of the 1910 Law, the objectives of the colonial state appear to be twofold. First, it advanced Natal’s criminal law by giving prominence to medical evidence and, secondly, it allowed for a greater degree of pardoning. Unlike its precedents, the 1910 law stipulated that a guilty verdict could only be proffered if it was proven that the child had breathed independently of its mother, which in itself was imprecise, but also that a successful conviction could only be made if the child had been killed within one week of its birth. Therefore, not only would this have reduced the number of convictions for infanticide or concealment of birth, but it also made it more complicated to reach guilty verdicts. Instead those individuals – particularly white men and women – who were convicted were regarded by the state as in need of moral rehabilitation.

With regards to the increasing number of cases brought before the courts between 1884 and 1902, there had been in the region of three to four cases of infanticide or concealment of birth per annum, but, as Graph 1 [No. of Infanticide and Concealment of Birth Cases tried before the Supreme, Magistrates and District Courts in Natal, 1884-1909] below shows, this figure escalated to seventeen in 1904, and then leapt to forty-six in 1905. The tables [Table 1: No. of Concealment of Birth Cases by Race: European (E) and Coloured (C) and Table 2: No. of Concealment of Birth Cases by Race: European (E), Native (N), Indian (I) and Mixed (M)] further below show how the figures represented in Graph 1 were categorised according to race, and by the court at which the cases were tried, i.e. Supreme, Circuit or Magistrate’s Court. The

statistics for the graph and tables were drawn from the Statistical Year Books for the Colony of Natal from 1884 – when statistics on concealment of birth and infanticide were first recorded – until 1909.⁴⁴ It is necessary to note, however, that the Magistrates' records are missing for the years 1897 and 1899. It was only in 1900 that the number was tabulated according to race, this being either "European" or "Coloured." In 1906, the racial categorisation was further disaggregated to "European, Native, Indian, and Mixed and Others."

⁴⁴ Data for these graphs and tables were collated from the Natal Blue Book and Statistical Reports. See PAR, NCP, Natal Blue Books, 7/3/1-7/3/15, and 7/2/2/1-7/2/2/6, Supplement to the Blue Book for the Colony of Natal, Departmental Reports, 1889.

Graph 1: Number of Infanticide and Concealment of Birth Cases tried before the Supreme, Magistrates and District Courts in Natal, 1884-1909

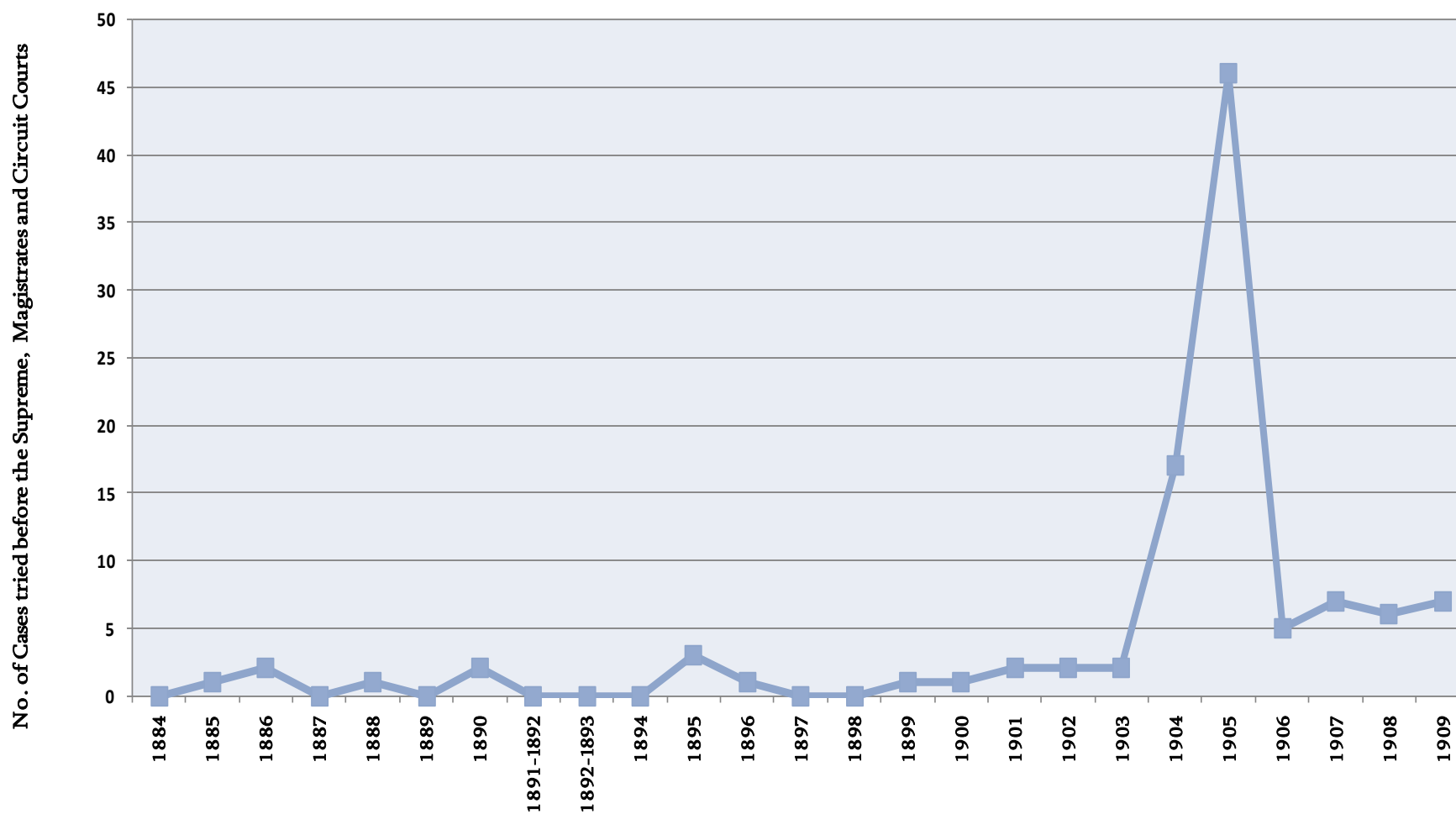


Table 1: No. of Concealment of Birth Cases by Race: European (E) and Coloured (C)									
		Persons Charged		Convictions		Acquittals		Otherwise disposed of.	
		E	C	E	C	E	C	E	C
1900	Supreme Court								
	Circuit Court		1		1				
	Magistrates Court								
1901	Supreme Court		2		2				
	Circuit Court								
	Magistrates Court								
1902	Supreme Court		1				1		
	Circuit Court		1		1				
	Magistrates Court								
1903	Supreme Court								
	Circuit Court		1		1				
	Magistrates Court								
1904	Supreme Court								
	Circuit Court								
	Magistrates Court	17		16		1			
1905	Supreme Court								
	Circuit Court								
	Magistrates Court	46		34		2		10	
Totals		63	6	50	5	3	1	10	

Table 2: No. of Concealment of Birth Cases by Race: European (E), Native (N), Indian (I) and Mixed (M)																	
		Persons Charged				Convictions				Acquittals				Otherwise disposed of			
		E	N	I	M	E	N	I	M	E	N	I	M	E	N	I	M
1906	Supreme Court																
	Circuit Court																
	Magistrates Court		2				1								1		
1907	Supreme Court																
	Circuit Court																
	Magistrates Court	1	2	1						1	1				1	1	
1908	Supreme Court																
	Circuit Court		1				1										
	Magistrates Court		4	1							2				2	1	
1909	Supreme Court																
	Circuit Court																
	Magistrates Court		5				3				1				1		
Totals		1	14	2	0	0	5	0	0	1	4	0	0	0	5	2	0

Looking at the trends in the cumulative number of reported cases, there is a significant increase between the period 1904 and 1906, as shown by the statistical and departmental reports of the Colony. In the context of the political economy of Natal post the South African War, there are a number of varying factors impacting on this sudden increment. These include stricter surveillance of ‘criminal’ activity in the Colony; a better developed legal and penal system; an increase in the population of the Colony; economic depression, moral panics, the imposition of a £3 tax in 1903 and the Bambatha Rebellion in 1906.

Tables 1 and 2, however, are indicative of two particular moments in the first decade of the twentieth century in Natal, first a preponderance of “European” accused, and then a shift to “Native” accused. The discussion begins with the former. Graph 1 and Table 1 shows that between 1900 and 1905, of the 69 individuals charged, 91 per cent were designated as European (including both British and Afrikaner) whereas from 1906 to 1909, there was just one such European and 14 Africans who were charged with this crime. It can be argued that there is a high probability that of the 91 per cent European cases, the majority involved charges against Afrikaner women due to the fact that, during the South African War and in its immediate aftermath, there was heightened persecution of Afrikaner men and women by the colonial state.⁴⁵ While the records of the Registrar of the Supreme Court and Attorney General’s Office show that there was an increase in the number of Afrikaners who were tried for high treason, a possible explanation of the exponential increase in the number of infanticide and concealment charges against Europeans relates to the stricter

⁴⁵ Johannes Michiel Wassermann. ‘The Natal Afrikaner and the Anglo-Boer War.’ Unpublished Thesis (PhD – History and Cultural History), University of Pretoria, 2004. Available at <http://upetd.up.ac.za/thesis/available/etd-03072006-095936/unrestricted/00front.pdf>.

surveillance of Afrikaner women, who were regarded as the “most disloyal inhabitants of the Colony.” Johan Wasserman argues that economic hardships through the confiscation of property and moveable assets, and the physical and psychological harassment endured by Afrikaner women during the South African War forced them into predicaments from which there was little escape: given the situation in which Afrikaner women found themselves, during and after the war, with the scale of arrests, deportation to concentration camps, as well as the “uncertainty of the whereabouts of loved ones”, it is understandable why this figure of 91 per cent could include a majority of Afrikaner women.⁴⁶

Moving on to the second moment, the 1905 to 1909 period, a possible reason for the substantial increase in the number of convictions against “Natives” relates to criminality. The latter years of the opening decade of the twentieth century has been loosely termed the reconstruction phase in South African historiography. In *The Making of South African Legal Culture*, Martin Chanock has argued that incidences of criminal activity increased during this period.⁴⁷ The central themes to Chanock’s argument are social dislocation, segregation and urbanisation that were caused indirectly by rapid industrialisation of the gold mining sector and more directly by the South African War itself. Related to this argument were the challenges that indigency, vagrancy, and unemployment posed to the respective colonial governments at the time.

⁴⁶ Wassermann. ‘The Natal Afrikaner and the Anglo-Boer War,’ 337.

⁴⁷ Martin Chanock. *The Making of South African Legal Culture, 1902-1936: Fear, Favour, and Prejudice*. (Cambridge: Cambridge University Press, 2001), 67-68

Paul La Hausse has made a similar argument for Natal. La Hausse argues that colonial authorities in Natal fixed their attention on the “nuisance” posed by Africans in the urban centres of Pietermaritzburg and Durban.⁴⁸ Coupled with stricter pass laws, transformed social relations and the unsympathetic imposition of the £3 tax, Africans in Natal now came under the unforgiving gaze of the colonial state, the consequences of which entailed greater surveillance of African men and women in the urban centres. A more ardent attempt by the colonial states at policing and the advent of what Chanock refers to as “new criminological thinking and policy” targeting urban Africans also serve as possible explanations for the sudden amplification in the number of charges brought against “Natives” between 1905 and 1909 as indicated by Tables 1 and 2.

Preceded by a turbulent period of social upheaval with moral panics, rebellion, increased corporal punishment and economic depression, the passing of the 1910 General Law Amendment Act [To Amend the Criminal Law] was intended as a necessary revision of the penal system at the time.⁴⁹ In its essence the purpose of this Act was to eliminate anomalies and set in motion stringent procedural norms that would eventually provide legislative precedent for the Criminal Law of the Union of South Africa.⁵⁰ The 1910 Act was passed primarily as an aid or procedural guide to criminal legislation and the Natal Legislative Assembly recorded that it hoped that it

⁴⁸ Paul La Hausse. “The Cows of Nongoloza’: Youth, Crime and Amalaita Gangs in Durban, 1900-1936,’ in *Journal of Southern African Studies*, 16:1, March 1990, 79-111.

⁴⁹ In ‘Flogging, Fear and Food: Punishment and Race in Colonial Natal,’ Stephen Peté and Annie Devenish provide a comprehensive account on the racialised nature of corporal punishment and the prison system in Natal after the turn of the 20th century, 3-21.

⁵⁰ See PAR, NCP, 2/2/28, Members of the Legislative Assembly, 5th Session of the 5th Parliament, 1909-1910, Vol. XX. (Pietermaritzburg: P. Davis and Sons, 1910), 36-37.

would create a more sophisticated system “for the better repression of crime.”⁵¹ The amendments made to the Criminal Law of Natal related to such crimes as housebreaking and theft, and its purpose was to effect many reforms in the administration of and performance of the law that were essential at the time.⁵² Most importantly for the purposes of this study, however, is that the Act declared infanticide a separate offence, from murder or culpable homicide.

In his closing remarks at the Legislative Assembly, where the Bill was debated, the Attorney General, T.F. Carter, specifically addressed infanticide and placed the sections of the new Bill on it into a historical context:

I will take the section numbered 9. That provided that if upon any charge of the murder or homicide of a child a question shall arise whether such child was born alive, such child shall be deemed to have been born alive if it is proved to have breathed, whether it has had an independent circulation or not. There is precedent for this in the New South Wales Act, and perhaps I may recommend the clause to the Committee, even in a stronger sense than by referring to the New South Wales Act, if I read from a memorandum of their Lordships the Judges. “It would,” they say, “we think, be much easier to secure a conviction in cases of infanticide if the accused were charged with some lesser offence, for which a lesser punishment might be given.” It is upon that opinion that we have, taking also the precedent of the New South Wales Act, framed this clause. In respect of that clause I may remark that a case which is surrounded probably with the greatest difficulties is that of a person charged with infanticide, to prove whether there has been a separate existence of the child alleged to be

⁵¹ PAR, NCP, 2/2/1/16, Debates of the Legislative Council of the Colony of Natal, 5th Session of the 5th Parliament, 16th June 1909, Vol. XX. (Pietermaritzburg: P. Davis and Sons, 1909), 153-154.

⁵² See PAR, NCP, 5/3/17, Act 10 of 1910 – To amend the Criminal Law, 37-42. This act repealed Ordinance 18 of 1845 for Regulating the Manner of Proceeding in Criminal Cases in the District of Natal, see PAR, NCP, 5/5/3, Natal Ordinances, Laws, and Proclamations, Vol.1, 1843-1870. (Pietermaritzburg: Vause, Slater, and Co. Government Printers, date), 3-15.

injured or not, and by this section we hope to improve the criminal law in a manner which has had the approbation of the highest authority to whom we have referred this matter.⁵³

Carter's speech is indicative of how other colonial settings within the British Empire influenced Natal's legislative interventions.⁵⁴ Like the 1873 and 1874 British Acts, the 1900 New South Wales Act also mandated that it was necessary to prove that the child had been "completely born alive," which was defined as being able to live independently from its mother. In her article 'Frailty Thy Name is Woman: An Evaluation of the New South Wales Infanticide Provision,' Mardi Flick asserts that, at that time, "Australia ha[d] followed the British example and recognised infanticide as

⁵³ See PAR, NCP, 2/2/28, Members of the Legislative Assembly, 5th Session of the 5th Parliament, 1909-1910, Vol. XX. (Pietermaritzburg, P. Davis and Sons, 1910), 38. According to Section 22A of the Crime Laws of New South Wales, 1900 - "Where a woman by any willful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child." For more on this, see Australasian Legal Information Institute, New South Wales Consolidated Acts, found at http://www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s22a.html, accessed on 21 June 2007.

⁵⁴ This was true for the Cape as well. Thinking about prostitution and contagious diseases legislation, Elizabeth Van Heyningen plots the ways in which ideas were shared between colonies and the metropole. 'The Social Evil in the Cape Colony 1868-1902: Prostitution and the Contagious Diseases Acts,' in *Journal of Southern African Studies*, 10:2, April 1984, 170-197. Similarly, writing about immigration legislation and policies in Natal at the turn of the twentieth century, Andrew Macdonald interrogates the ways in which Natal both influenced and was influenced by border control discourses in the metropole and periphery. See Andrew MacDonald. 'Strangers in a Strange Land: Undesirables and Border-Controls in Colonial Durban, 1897-C.1910.' Unpublished Thesis (MA-History), University of KwaZulu-Natal, 2007.

a distinct crime.”⁵⁵ However, unlike the manner in which the infanticide laws continued to develop in Natal, infanticide laws in New South Wales and in Britain became increasingly obsessed with and focussed on the vagaries of female biology, presuming an instability of the mind of the mother due to the effects of lactation or the birthing process. This point will be discussed further in Chapter Five.

After the formation of Union, Natal’s 1910 Infanticide Act did not extend beyond its borders. As no similar laws had ever been passed in the Cape or Transvaal provinces, in these regions the murder of an infant was still not distinguishable from other forms of murder which carried the death sentence as punishment.⁵⁶ Yet, despite the fact that the last time the death penalty was exercised in the Cape as punishment for infanticide had been prior to the passing of Ordinance 10 in 1845, legally individuals who were convicted for and found guilty of infanticide in that province after 1910 (as well as in the Transvaal) still faced the death penalty, unless their sentence was commuted.⁵⁷ In contrast, in Natal, at least until the 1960s, perpetrators continued to be tried under the 1910 Act, which only carried an imprisonment sentence of five years.⁵⁸ The passing of the 1917 Criminal Procedure and Evidence Act, however,

⁵⁵ Mardi Flick. ‘Frailty Thy Name is Woman: An Evaluation of the New South Wales Infanticide Provision,’ in *Australian Feminist Studies*, 20, Summer 1994, 194.

⁵⁶ See Robert Turrell’s discussion of Meitje Bontnaal’s case in *White Mercy: A Study of the Death Penalty in South Africa*. (Westport: Praeger Publishers, 2004), 77-82.

⁵⁷ See the cases discussed by Scully in *Liberating the Family?*, 148; and Patricia van der Spuy in ‘Infanticide, Slavery and the Politics of Reproduction at Cape Colony, South Africa, in the 1820s,’ in Mark Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Burlington: Ashgate, 128-148).

⁵⁸ As exemplified by the cases of Lily Theron, Ushraff Khan, Elsie Thompson Nimmo, Lydia Matthys, Temba Majola, Elizabeth Ngidi, Marry Gasa. PAR, Registrar, Supreme Court, Pietermaritzburg [hereafter RSC], 1/1/126, 16/1919, Supreme Court Criminal Case. The King Versus Lilly theron. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), 1919; PAR, RSC, 1/1/127, 20-21/1920, Supreme Court Criminal Case. The King Versus

made infanticide an exception to the mandatory death penalty for murder in South Africa. Under Section 235 of 1917, if a person was found guilty of murder, and if the murder was that of an infant, then the charge against the accused could be reduced to a conviction of concealing the birth of the child.

With the unification of South Africa in 1910, it became necessary to pass a new Criminal Procedure and Evidence Act (1917) for the purposes of consolidating and amending the laws in force in the various provinces of the Union, relating to procedure and evidence in criminal cases. Where Section 235, entitled “Concealment of Birth,” of the Criminal Procedure and Evidence Act (1917) Act stated that:

Upon an indictment charging a person with the murder of any person if, upon the evidence, it appears that the person alleged to have been killed was a child of which a woman had recently been delivered the accused may be convicted of the offence of endeavouring by secretly disposing of the dead body of the child to conceal the birth if such be the facts proved.⁵⁹

Ushraff Khan. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), 1920; PAR, RSC, 1/1/158, 16/1933, Supreme Court Criminal Case. Rex versus Elsie Thompson Nimmo Also Known As Elizabeth Thompson Nimmo. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), Alternatively Concealment of Birth, 1933; PAR, RSC, 1/1/203, 41/1951, Supreme Court Criminal Case. Rex versus Lydia Matthys. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910, (Natal), 1951; PAR, RSC, 1/1/328, 158/1959, Supreme Court Criminal Case. Regina versus Temba Majola. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), 1959; PAR, RSC, 1/1/332, 233/1959, Supreme Court Criminal Case. Regina Versus Elizabeth Ngidi, also known as Elizabeth Mgidi. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal), 1959; PAR, RSC, 1/1/429, 140/1963, Supreme Court Criminal Case. The State versus Marry Gasa. Charged with Infanticide within the Meaning of Section 9 of Act 10 of 1910 (Natal) Alternatively Contravening Section 113(1) read with Sections 113(2) and (3) of Act 46 of 1935, 1963.

⁵⁹ Union Gazette Extraordinary, 19 July 1917, Act No 31, 1917. The Act reads: ‘To consolidate and amend the laws in force in the several provinces of the Union, relating to procedure and evidence in criminal cases; and to make provision for other matters incidental to such procedure and evidence.’ [Emphasis added]

This was later repealed to state:

Substitution of Section 235 of Act 31 of 1917:

44. Section two hundred and thirty five of the principal Act is hereby repealed and the following section substituted therefore:

“Exposing an infant or concealment of birth.”

235. If at the trial of any accused upon a charge of murder or culpable homicide, it has been proved that the person alleged to have been killed was a recently born child and it has not been proved that the accused killed the child, he may be convicted of exposing an infant or of disposing of the body of a child with intent to conceal the fact of its birth, if the evidence establishes that he committed such offence.

According to Robert Turrell in *White Mercy: A Study of the Death Penalty in South Africa*, the passing of the Criminal Procedure and Evidence Act in 1917 and the amendment made to the section relating to ‘Concealment of Birth’ came about after an intense newspaper campaign and public outcry over the conviction and sentencing of Wilhelmina Louisa Radley. In 1915, this 21 year old, unmarried teacher in Senekal – in what was then the Orange Free State – was charged with killing her newborn infant. The presiding judge, A.F. Maasdorp, sentenced her to death, but with a recommendation for mercy. Outraged by this verdict and calling for more lenient sentencing, *The Friend* newspaper initiated a public campaign against this ruling to uphold “righteousness and justice.” At the same time the Editor of the *Times of Natal* made an appeal to the Governor General Lord Buxton for a commutation and “to set his seal on such a ‘bloody and inhuman warrant.’” The *Times of Natal* also urged the public to direct their protests “against the betrayer and the coward, and men like them, who crucify the memories of the mothers that bore them.”⁶⁰ Turrell argues that it was through these newspaper campaigns and public protests that Buxton reduced

⁶⁰ Turrell. *White Mercy: A Study of the Death Penalty in South Africa*, 92, fn 46.

Radley's sentence to two years imprisonment, and that the 1917 Criminal Procedure and Evidence Act was passed, which effectively differentiated between the murder of an infant from other forms of murder. Turrell also adds that, due to the passing of this Act in 1917, South Africa became the "only country in the British empire to exclude infanticide from the mandatory sentence of death for murder."⁶¹ In fact, because Natal had already adopted these provisions in its 1910 Act, it never applied the 1917 Act to cases of infanticide, but continued to apply the 1910 Act until the 1960s.

In 1935, a further amendment to the Union laws governing the crimes of infanticide and concealment of birth was made through the General Law Amendment Act 46 of 1935. This Act was primarily implemented to amend the laws relating to criminal and civil procedure and evidence, to magistrates' courts, to the police and to certain offences. In terms of concealment of birth it stated in Section 113:

1. Any person who disposes of the body of any child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding three years.
2. Whenever a person disposes of the body of such child which was recently born, otherwise than under a lawful burial order, he shall be deemed to have disposed of such body with intent to conceal the fact of the child's birth, unless it is proved that he had no such intent.
3. A person may be convicted under subsection (1) although it has not been proved that the child in question died before its body was disposed of.⁶²

⁶¹ Turrell. *White Mercy: A Study of the Death Penalty in South Africa*, 92, fn 46.

⁶² The General Law Amendment Act 46 of 1935, Union of South Africa, 14 May 1935. [Emphasis added]

The validity of this Act was questionable and, like its South African antecedents, is broad and lacks specific definition, leaving interpretation widely open to prosecution authorities. For example, unlike the 1900 New South Wales Act, the 1935 Act did not define the term 'child' nor that of 'body of child'. This opened up significant space for interpretation, making possible the questioning of at what stage a foetus becomes a child and is deemed able to have a separate existence and, therefore, whether prosecution can be applied.⁶³ Like Ordinance 22 of 1846, this Act 46 of 1935 also considered abortion an act of concealment of birth. The most critical change in this Act was, however, the manner in which it dealt with proof of innocence. Where earlier Acts had placed the onus onto the prosecution to prove that the accused had intended to kill the child, this Act, through its Subsection 2, placed the onus onto the accused to prove his or her innocence. Essentially, the 1935 Act proclaimed that the presumption by the law of intent to conceal becomes valid once it had been proven that a person disposed of the body of a child, and the onus of disproving this intent becomes the responsibility of the accused. In cases of infanticide or concealment of birth in present day South Africa, proving intent still remains a crucial element in proving culpability.

The second critical change of the 1935 Act was that it took stillbirths and miscarriages into account which previous laws had not. By stipulating the requirement for lawful burial orders in Section 2 and, by fixing the time period after which failure to report a stillbirth or miscarriage could result in a charge of infanticide, the 1935 Law was the first where, if a death certificate could be provided, there was less of a possibility that

⁶³ For an in-depth discussion on the legal and cultural definition of 'child' and the born alive debate, see Clarke D. Forsythe. 'Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms,' in *Valparaiso University Law Review*, 21, 1987-1986, 563-598.

an accused charged with concealment of birth would be found guilty. This was based on the premise that, if a death certificate could be provided, it implied that there had been no intent to conceal the birth of the child. The registration of births and deaths had first been mandated by Law 16 of 1867, “Law for the Registration of Marriages, Births and Deaths within the Colony of Natal.” This was later replaced with Acts 17 of 1894, 5 of 1896 and 5 of 1902. While this Law did not stipulate the limitations of when a child could be declared as stillborn, it did specify that, when any new-born child was found dead, the Registrar had to be informed.⁶⁴ A reading of this Law, together with the Ordinance 22 of 1846 and Act 10 of 1910, suggests that failure to register the death of a child could have constituted a crime of infanticide or concealment of birth. In addition to this, Section 16 of Law 16, 1867 stated that: “Every person who shall bury, or perform any funeral or religious service for the burial of any dead body, for which no certificate shall have been duly made and delivered as aforesaid, shall be liable to forfeit and pay a sum not exceeding £10.”⁶⁵ The Act also mandated that the Resident Magistrate of the District could order an investigation of the dead body.

It is critical to note that English law had a strong influence on South Africa’s 1935 law. This is suggested by the judge’s report in the 1950 case of *R v Oliphant* where the accused was charged with concealing the birth of her child by drowning him in a dam. According to the judge presiding over the case, Section 113 of the General Law Amendment Act 46 of 1935, under which the accused was charged, emulated English

⁶⁴ PAR, NCP, 5/5/3. Ordinances, Laws and Proclamations of Natal, Vol. 1, 1843-1870, 645-653; PAR, NCP, 5/3/1, Acts of the Parliament of the Colony of Natal, (Pietermaritzburg: William Watson, Government Printers, 1894), 42-45.

⁶⁵ PAR, NCP, 5/5/3. Ordinances, Laws and Proclamations of Natal, Vol. 1, 1843-1870, 645-653; PAR, NCP, 5/3/1, Acts of the Parliament of the Colony of Natal, (Pietermaritzburg: William Watson, Government Printers, 1894), 42-45.

law. He stated, “[t]he language here employed has been borrowed largely from the relevant English Acts.”⁶⁶ This view has been challenged by the historian, Carina van der Westhuizen who shows that the judge in this case had also consulted Roman-Dutch canonical texts, specifically *Matthaeus: De Criminibus* and *Simon van Leeuwens’ Commentaries on Roman-Dutch Law* in drafting his summation. Van der Westhuizen argues, therefore, that it is more precise to argue that the 1935 law is an amalgamation of Roman-Dutch law and English law.

While a more comprehensive and exhaustive study is still needed on the development of infanticide law across Empire, and how or whether these laws related to each other, this chapter has begun to consider how the laws in Natal were influenced by British and Australian legislation. It can be argued however, that what makes Natal’s law exceptional from British and Australian legislation is that it was not gender specific and therefore did not presume that a woman who committed infanticide or concealed the birth of her child had been provoked by a disruptive imbalance of her mental state. After the 1846 Ordinance, Natal legislation identified the perpetrator as “person” – which has been highlighted in the extracts of the Acts quoted in this chapter – and not as a woman, whereas Section 22 of the 1900 New South Wales Acts starts with: “If a woman...,” and the 1922 and 1928 English Acts with: “Where a woman....” These latter laws relegated women to the role of the irrational, unstable and overly-emotional sex. This also denied women agency and autonomy over their bodies, minds and reproductive lives. Some women chose to exercise infanticide, not because of mental instability, but rather to reclaim control over their futures. Deliberately choosing infanticide for some women implied a life saved from economic

⁶⁶ *R v Oliphant* 1950 1 SA 48 (O), as quoted in van der Westhuizen. ‘An Historical Overview of Infanticide in South Africa,’ 189.

ruin or material and moral poverty, as was the case for many women in Natal. Before addressing this issue further in the last section of this chapter, a discussion of the medical factors relating to the development of legislation over time follows.

The Moment of Life: Medico-Legal Aspects

By the twentieth century, the inter-dependence of law and forensic medicine was paramount in investigations of cases of death or injury to an infant. In the seventeenth century in England, inquests into the deaths of infants had been performed by Coroners, although most coroners' inquisitions were considered inadequate.⁶⁷ By the 1800s, however, medical professionals were increasingly being asked to give expert evidence in court cases which required scientific expertise. Prosecuting, enforcing or the sanctioning of criminal and statutory law, or punishing an offender had, and to date continues, to be reliant on the medical evidence of the resident District Surgeon or attending doctor. Critical within the ambit of forensic medicine, and, in cases relating to concealment of birth and infanticide, is what has been termed the 'moment of life,' the question of whether a live birth had occurred.⁶⁸

⁶⁷ Mark Jackson. 'Suspicious Infant Deaths: The Statute of 1624 and Medical Evidence at Coroners' Inquests,' in Michael Clark and Catherine Crawford (eds.) *Legal Medicine in History. Cambridge Studies in the History of Medicine*. (Cambridge: Cambridge University Press, 1994), 64-86; and B.T. Davis. 'George Edward Male MD - the Father of English Medical Jurisprudence,' in *Proceedings of the Royal Society of Medicine*, 67:2, February 1974, 117-120.

⁶⁸ It should be noted that it was only in the 1950s that the current definition of live-birth as disseminated by the World Health Organisation became widely accepted. According to WHO:

1. Any child is considered live-born who showed signs of life (breathing spontaneously, voluntary movements, heartbeat, etc);
2. after being completely expelled from the mother's body, though it still could be attached to the placenta inside the mother's body via the umbilical cord;

The question of whether parturition resulted in a live birth was most often the deciding factor in finding men and women guilty of the crime of infanticide or concealment.

In early twentieth century Natal, as well as in other parts of South Africa, procedures for determining whether a live birth had occurred were generally similar. When the body of a dead infant was found, it was necessary for the District Surgeon or a Health Officer to establish first whether the infant had been born alive. During this period doctors primarily used a hydrostatic test of the lungs to determine whether the infant had breathed independently from its mother.⁶⁹ In this procedure, the chest plate or sternum of the infant was removed and – by this definition – if the child had been born alive the lungs should have been pink or red in colour. They should also have appeared “expanded and inflated with rounded edges,” indicating a live birth. If, however, the lungs were “dark red or purplish in colour, small and with sharp edges,” then the infant was deemed not to have been born alive. Subsequently, the lungs

3. irrespective of the duration of the pregnancy (gestational age).

WHO. ‘Health Status Statistics: Mortality.’ Found at <http://www.who.int/healthinfo/statistics/indneonatalmortality/en/>. Accessed on 25 August 2010.

⁶⁹ Some of the cases where these tests were conducted include: PAR, RSC, 1/1/16, 45/1867, Regina versus Agnes Griffith. Charged with Infanticide, 1867; 1/1/45, 15/1890, Regina versus Nguda; 1/1/52, 8/1895, Regina versus Hester Linde; 1/1/18, 15/1869, Regina versus Sarah. Charged with Infanticide; 1/1/61, 3/1901, Regina versus Ntombizonki; 1/1/58, 1/1899, Regina versus Nobatagati, 1/1/158, 16/1933, Rex versus Elsie Thompson Nimmo also known as Elizabeth Thompson Nimmo. Charged with Infanticide, alternatively Concealment of Birth; 1/1/115, 20/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide; 1/1/126, 16/1919, The King versus Lilly Theron. Charged with Infanticide; 1/1/63, 22/1901, Rex versus Nocabane; 1/1/22, 55/1875, Regina versus Eliza Jane Dynes. Charged with Infanticide, 1875. See Case Summaries in Appendix for more.

were placed in containers filled with fresh water and, if they floated, it was taken to indicate that air had been inhaled and captured in the lungbags.⁷⁰

However, even despite the emphasis placed on proving a 'live birth' as mandated by legislation, this evidence was not always given precedence in determining the outcome of a trial. Even though, in many of the court cases selected for this study, doctors were able to prove 'a separate existence' in addition to a live birth, there were many instances where juries returned with a verdict of not guilty.⁷¹ A live birth implied that the child had respired and cried, but this could easily have happened if only the head had crested, and therefore the infant had effectively only been 'partially born.' A separate existence, on the other hand, implied that the newborn infant had lived independently of the mother, unattached by the umbilical cord. For these and other reasons, the lung test was not considered to be wholly reliable. Moreover, there are a number of other possible reasons why the lungs of a newborn could contain sufficient air to cause floatation. For instance, in some alleged cases of stillborn infants, air might have been transferred to the infant by the mother in an

⁷⁰ In addition to the lung tests as performed by doctors in twentieth century Natal, in South Africa today doctors also conduct a hydrostatic test of the stomach and what is called a crepitation of the lungs. This is when small pieces of lung tissue is held between the fingers and gently rubbed close to the ear of the examiner. A fine crackling sound is heard if the lungs had been aerated. In a comprehensive 2009 study, 'Child Law in South Africa,' Pieter Carstens and Reinette du Plessis offer significant insights into the medico-legal aspects pertaining to infanticide, concealment of birth and other 'sadistic' injuries to babies. Carstens and de Plessis also state that microscopic examination of the lungs and umbilical cords are performed to determine whether a live birth had occurred. In South Africa today, stillborn is defined as a gestation at 26 weeks or more. By means of radiology and histology, doctors today are able to verify the stage of development of the foetus. Pieter Carstens and Reinette du Plessis. 'Chapter 24 – Medico-Legal Aspects Pertaining to Children,' in Trynie Boezaart (ed.) *Child Law in South Africa*. (Claremont: Juta, 2009), 589-591.

⁷¹ The problematic of proving a 'separate existence' in cases of infanticide and concealment of birth is discussed in greater detail in Chapter Three of this thesis which uses the case of Bertha Clarisse (1908) to scrutinise the reliability of medical evidence in the courtroom.

attempt at resuscitation. Alternatively, putrefaction could have caused air to be introduced into the lungs in cases where the body of such an infant was found several days after death.⁷²

If the infant had not been born alive, then it had to be established whether the birth could be classified as a stillbirth. It was imperative to check on the viability of the infant to ascertain that it had fully developed and would have been able to live independently after birth. In the cases investigated by this study, doctors made specific observations on the physical measurements and development of the dead infant. Mass measurements, as well as head to heel, head circumference, overall mass, appearance of skin, hair, eyes and nails were noted in the post-mortem reports, as well as whether the stomach, small intestine and bladder were empty. In the case of male infants, the testicles were also examined. Most importantly, the body was carefully scrutinized for any external marks of violence. Doctors also employed the Haase's rule to determine the 'age' of the infant.⁷³

In all the cases of infanticide or concealment of birth surveyed for this study, District Surgeons or Health Officers had to decide on three different criteria:

⁷² For more on this, see Donna Cooper Graves. "...in a frenzy while raving mad": Physicians and Parliamentarians define Infanticide in Victorian England,' in Brigitte H. Bechtold and Donna Cooper Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006), 111-136.

⁷³ Haase's rule was formulated by Karl Friedrich Haase (1788-1865), a German gynaecologist. The formula is used to calculate the age of the foetus and gestation period by taking the length of the foetus in centimetres divided by 5, which should equal the duration of pregnancy in months. Adolf Faller, Michael Schünke, Gabriele Schünke, Ethan Taub (ed.) and Oliver French (translator). *The Human Body: An Introduction to Structure and Function*. (Stuttgart: Thieme, 2004), 680.

1. whether the infant had had a separate existence from the mother at the time of birth, in that was it a live birth;
2. whether the body of the infant was that of a full term baby; and
3. whether the accused, if female, had shown signs of parturition.

Generally, the size of her breasts was noted and whether or not they contained any milk. The shape and colour of the areola as well as the rigidity of the nipples were considered as important markers of a recent delivery. The woman's pulse was checked, and the general colour of her skin was recorded. A typical description of the abdomen and vagina would read as such, taken from case in 1869:

The skin of the abdomen relaxed and thrown into folds, with light coloured streaks passing from the groin towards the umbilicus. The globular form of the semi-contracted uterus could be felt at the lower part of the abdomen – the external parts were not swollen. The os uteri open and its margin relaxed. There was a slight discharge of lochia of a sero-sanguinous [sic] liquid with its usual peculiar faint disagreeable odour.⁷⁴

Using this information, the onus then fell on the prosecutors to show evidence for “wilful murder” or “intent to kill.”

The scope of western biomedical knowledge in Natal placed white doctors and medically trained professionals in an authoritative position. While medical evidence was not always reliable, it was certainly given credence in infanticide and concealment of birth cases, and was important in staking medical claims to power and knowledge, as well as the authority of doctors over midwives, or African and Indian healers for that matter. Owing to a lack of in-depth studies on midwifery in Natal

⁷⁴ PAR, RSC, 1/1/18-15/1869, Supreme Court Criminal Case. Regina versus Sarah. Charged with Infanticide, 1869.

during this period it is difficult to ascertain when doctor's "scientific" knowledge and practice took over from that of midwives.⁷⁵ Newspaper advertisements and other archival sources suggest that midwifery skills were in demand in Natal at the time. However, of the thirty-five cases consulted for this study, there was only one in which a midwife assisted in the delivery.⁷⁶ Medical authority in court cases thus functioned as a closed circuit and the authority of doctors was firm and unquestioned. After having reviewed the manner in which the legal system relied on medical evidence in prosecuting, the chapter now turns to a more in-depth analysis of the cases brought before Natal's Supreme, District and Circuit Courts between 1860 and 1935.

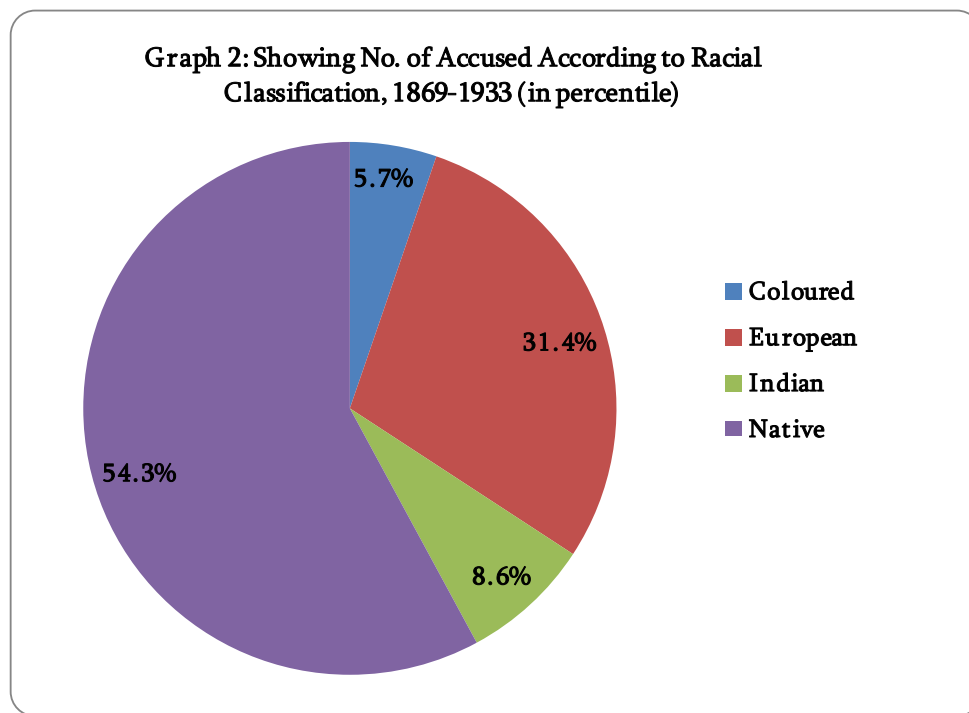
“Doing away with their children” ~ An overview of the Cases
Tried before the Natal Supreme, District and Circuit Courts,
1860-1935

The data for the following set of charts and graphs were extracted from the transcripts of court cases located in the collections of the Natal Supreme Court and the Attorney General's Office. The thirty-five court cases span the length of the time period of this study, and only reflect the cases brought before the Attorney General's Office and, subsequently, the Supreme Court. In other words, they do not include the cases that were first heard at the respective Magisterial Courts, but were not transferred to the

⁷⁵ Unlike for the Cape Colony, where Harriet Deacon's seminal article on midwives remains an influential text. Harriet Deacon. 'Midwives and Medical Men in the Cape Colony before 1860,' in *The Journal of African History*, 39:2, January, 1998, 271-292.

⁷⁶ PAR, AGO, 1/8/66-279A/1899, Regina versus Mongoposa for Infanticide, 1899.

Supreme Court.⁷⁷ The graphs below show the accused, of which there were thirty-eight in total, according to race, marital status and occupation. Data is also given on the ratio of female to male infanticides, the age of the infant, as well as the rural-urban divide with regard to the occurrence of infanticide cases.



⁷⁷ The reason that these statistics do not include the Magistrates' records, as noted in the Introduction, is partly due to scarcity of criminal and civil case records for the different Magisterial Districts in Natal. Existing records relating to infanticide and concealment of birth cases merely comprise correspondence between the different colonial departments. This correspondence related to issues of whether summonses had been issued or depositions had been transferred to the Attorney General, or if a post mortem had been conducted. The records of the Ladysmith Magistrate and Commissioner did contain useful material on some cases. With regards to the paucity of Magistrates' court records it is possible to speculate that portions of these records were destroyed due to insufficient storage space.

In absolute numbers the percentages in Graph 2 can be mirrored as 2 Coloured, 11 European, 3 Indian and 22 'Native' individuals charged with either concealment of birth or infanticide. In relation to the racial proportions of the population in the late nineteenth and early twentieth century Natal, it is not surprising that Africans constitute so large a proportion of the accused. However, given that the 'European' and Indian populace were fairly equal in number by the turn of the twentieth century, the figure for Indians appears to be rather low. This section begins with investigating this anomaly.

The figure for Indians is particularly unexpected given that, when Indians first arrived in the Colony from the 1860s as indentured labourers, both the colonial state and the Indian government feared that the trend of high rates of infanticide that prevailed in India during this time would be reproduced in Natal. This is evident in the various Commissions into the social and living conditions of Indians, held in Natal between 1870 and 1909, after which indenture ceased. It should be noted that Commissions such as these were instruments of the colonial government used to orchestrate a particular depiction that would justify or validate the indenture system in Natal. For instance, the Report of the Indian Immigration Commission (Wragg), 1885 to 1887, recognised that the problems of infanticide and abortion required serious attention, but that it was very difficult for the Commission to collate data on this.⁷⁸ On abortion, the Commission stated that "...a Medical Officer of an Indian Circle reported that abortions occurred at times and under circumstances which aroused suspicion of foul play," but nothing more.⁷⁹ By virtue of including some

⁷⁸ Y.S. Meer, et al. 'Report of the Indian Immigrants Commission, 1885-1887,' in *Documents of Indentured Labour: Natal 1851-1917*. (Durban: Institute of Black Research, 1980).

⁷⁹ Meer, et al. 'Report of the Indian Immigrants Commission, 1885-1887', 299.

statistical evidence, the Report supplied data on the number of deaths of infants under the age of eight days, in cases that included both free and indentured Indian parents.⁸⁰

Table 3: Return of Deaths of Indian Children, 0-8 yrs, 1873-1884 ⁸¹		
	Free	Indentured
1873	4	
1874		
1875		
1876	1	2
1877	1	3
1878	4	6
1879	2	4
1880	6	11
1881	6	16
1882	5	14
1883	12	14
1884	22	11
Total	63	81

⁸⁰ There were six definitions or groups of Indians in Natal: “Indentured Indian”- one who had been introduced, under the provisions of the various Acts dealing with Indian Immigration, by the Immigration Trust Board; “Re-indentured Indian” – one whose time had expired since the operation of Law 17, 1895 and had thereof elected to re-indenture himself under the provisions of that Act; “Free Indian”- this being one who had completed his indenture prior to the coming into operation of Law 17, 1895, and who was therefore not liable to the payment of £3 license, and had forfeited his right to a return passage, but may have reigned same by indenturing under Law 42, 1905; “Time Expired Indian” – one whose indenture had expired subsequent to the operation of Law 17, 1895; “Colonial Born Indian” – the child born in Natal of a “Free Indian,” of a “Time Expired Indian” who elected to pay £3 license to remain in the Colony without re-indenture under Law 17, 95, or of an Indian who arrived in the Colony at his own expense, as an ordinary Colonist, and independently of the Indian Immigration Trust Board. The latter description is that of a “Free Immigrant”. Meer. et al. *Documents Of Indentured Labour: Natal 1851-1917*.

⁸¹ Meer, et al. ‘Report of the Indian Immigrants Commission, 1885-1887,’ 299.

The figures represented in Table 3 above are reproduced from the Wragg Commission, which could not account for the increase from 1883 to 1884 of death of the children of free Indians but concluded that, owing to the difficulties in obtaining data on infanticide, the returns were probably not accurate. From the Natal Blue Books, it does not appear that data such as this exist for African and whites. While the number of deaths and births were recorded for different races, these were simply categorised as either “Over Age” or “Under Age.” In the early years of the Colony the ‘Returns of Deaths’ under a specific age (which varied from year to year) are recorded but this is given as a total number for the Colony and is not race specific.

Further commentary on infanticide by Indians provided in the Wragg Commission, probably written by a Medical Officer, read as:

There is very little infanticide here. If Indian customs prevailed in Natal, there would probably be more of it, because Hindoo [sic] law prohibits all widows from re-marriage, and, if such a law was in force here, a widow would have unlawful connection and would hide her shame by abortion or by infanticide. ... Indians seem very attached to their children and I cannot call to my mind any cases of infanticide. There have been many deaths of children within a few days after their birth. These children have been of both sexes. I always inspect the corpse in these cases and file an open certificate of death; that is to say, my certificate would probably run thus, ‘died apparently from natural causes’, and, in some cases, I would add, probably such and such a disease. I think that such a state of things is unsatisfactory in this extreme, in fact disgraceful, as it opens the door for infanticide. I do not know many cases of still-born children. I doubt if all cases of still-born children are reported even to the manager.⁸²

⁸² Meer, et al. ‘Report of the Indian Immigrants Commission, 1885-1887,’ 393, 403.

In other parts of the British Empire where indenture existed, this low rate of incidence of infanticide or concealment of birth was not the case, however. In his book *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920*, Hugh Tinker states that in the West Indies during Indenture infanticide became a common feature. This, he argues, was a result of the shortage of women (a problem experienced in Natal as well however), who were forced into concubinage, or polygynous marriages. The records of the Protector of Indian Immigrants in Natal reveal that this resulted in adultery, many divorces, endless disputes between men and women, and, in extreme cases, suicide.⁸³ In the West Indies this problem was so severe that many women who were there merely for the “pleasure” of the *sirdars*⁸⁴ and managers, or were also forced into marriages with ‘African Creoles,’ resorted to infanticide.⁸⁵ In *The Indentured Indian in Natal*, C. G. Henning argues that a possible reason why infanticide was not as common amongst Indians here as with the West Indies or other British colonies where the Indenture system was adopted such as Fiji and Mauritius is that, “in Natal [social and economic] circumstances were very different and saw the rise of a new generation of Colonial-born Indians which was linked to a steady birth rate.”⁸⁶

The question then remains of how to understand the reference to the “many deaths of children within a few days after their birth” as reported by the Natal 1885-1887

⁸³ Nafisa Essop Sheik provides a detailed account of the situation in Natal with regards to the imbalanced number of women to men. See ‘Labouring under the Law - Gender and the Legal Administration of Indian Immigrants under Indenture in Colonial Natal 1860-1907.’ Thesis (MA – History) University of KwaZulu-Natal, 2005.

⁸⁴ *Sirdar* was a title given to an Indian overseer or supervisor on the sugar, coffee and tea plantations.

⁸⁵ Hugh Tinker. *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920*. (London: Oxford University Press, 1974), 204-205.

⁸⁶ C. G. Henning. *The Indentured Indian in Natal (1860-1917)*. (New Delhi: Promilla, 1993), 121.

Indian Immigrants' Commission. It is likely that these deaths were the result of smothering, sometimes deliberate but also by accident, or perhaps of sudden infant death syndrome (SIDS).⁸⁷ It is also probable that many of the babies died of ill-nutrition, as many Indian women either through force or choice returned to work almost immediately and did not breast-feed for adequate periods of time. Other reasons could possibly include poor sanitation and water and hygiene on the estates and in the barracks.

One of the few incidents where a case of overlaying was reported to the authorities involved indentured Indians at Bishop's Estate in Avoca. In a letter to the Protector of Indian Immigrants in 1902, Dr W.R.W. James, who had been the Medical Officer of Avoca at the time, stated that he suspected "foul play" with regard to newborn babies at Bishop's Estate. This suspicion arose after one of his regular inspections at the estate, when Mr C. R. Bishop, presumably the owner of the Estate, had informed him that for some time he had noticed that all the newly-born infants "had died within a few days of their birth and very suddenly." Mr Bishop suspected that something was amiss and asked Dr James if there was anything he could do about it. During the visit Dr James noticed that a woman by the name of Minachi was pregnant and close to parturition. He had warned her to be particularly careful with her newborn infant

⁸⁷ Medical knowledge about Sudden Infant Death Syndrome only started to gain momentum in the 1960s, and it remains an area of contemporary medical science that requires substantial research. Prior to this, "unexplainable" causes of infant deaths, which occurred mainly at night while sleeping, were attributed to 'overlaying' or 'smothering.' Elizabeth deG R. Hansen provides an in-depth discussion on this in "Overlaying" in 19th-Century England: Infant Mortality or Infanticide,' in *Human Ecology*, 7:4, December 1979, 333-352. Therefore, when parents could not account for the sudden or unexpected death of a baby, they were either charged with infanticide by overlaying or, and this was probably true for such cases in Natal as well, the incident was simply dismissed or never reported. See also, Ariane Kemkes. "Smothered" Infants – Neglect, Infanticide or SIDS? A Fresh Look at the 19th Century Mortality Schedules,' in *Human Ecology*, 37:4, 2009, 393-405.

because, as he explained in his letter, “the coolies were suspected of doing away with their children.”⁸⁸ When he visited the estate again the next day, he learnt that Minachi had given birth to a full-term healthy child. As her husband was also present, Dr James again warned them both to be careful. However, the following day, the 15th September, Mr Bishop informed Dr James that the child was dead. Dr James then instructed Dr Ernest Hill (Natal’s Chief Health Officer, 1901-1911), to conduct a post-mortem which showed that the death of the infant was due either to suffocation or overlaying.⁸⁹ When asked to give evidence at the Verulam Court, Dr James added that he “strongly suspected that child [had] been purposely suffocated.”⁹⁰ The case file gives insufficient information as to whether Minachi was formally charged but what this incident indicates is that, taking into consideration the living conditions in Natal at the time – for Africans as well as whites – it is probable that there were many more unreported cases of overlaying, whether deliberate or not.

Having examined possible reasons for the low number of infanticide cases pertaining to Indians in Natal, the chapter ends by analysing the statistics in infanticide in Natal in greater detail. The following four graphs or charts relate to the marital status of the accused, the female to male sex-ratio of infanticides, the magisterial district where the case was tried, as well as the occupation of the accused. In *Killing Infants: Studies in the Worldwide Practice of Infanticide*, Brigitte Bechtold and Donna Cooper Graves

⁸⁸ PAR, II, 1/112, I2072/1902, Protector of Indian Immigrants, Durban: Medical Officer Avoca Circle Reports Death of Child on Mr. Cr Bishop's Estate from Suffocation or Overlaying, 1902.

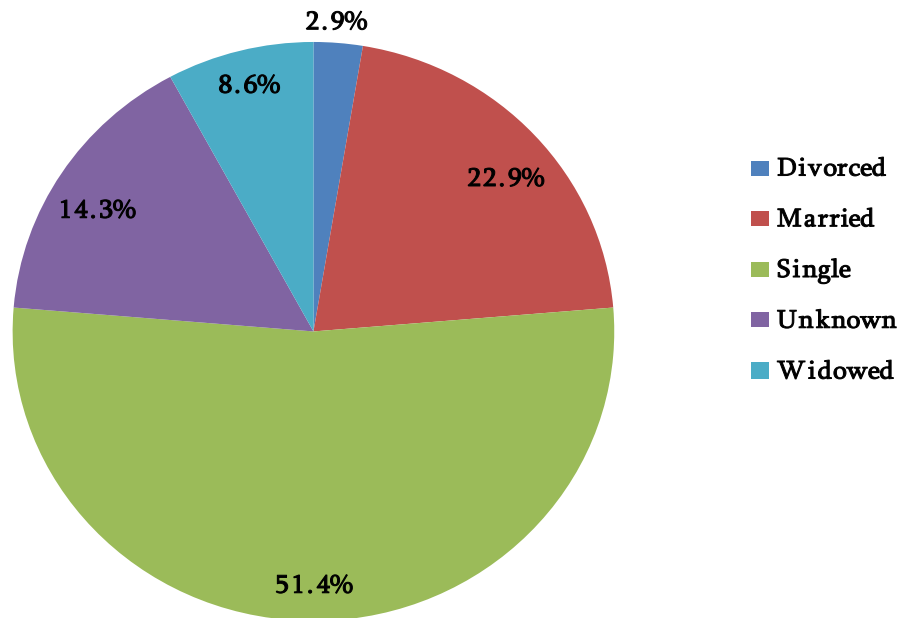
⁸⁹ For more on Dr Hill and his role in the Department of Health see Marcia Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ in *Journal of Natal and Zulu History*, 24/25, 2006-2007, 135-163.

⁹⁰ PAR, Indian Immigration Department [hereafter II], 1/112, I2072/1902, Protector of Indian Immigrants, Durban: Medical Officer Avoca Circle Reports Death of Child on Mr. Cr Bishop's Estate from Suffocation or Overlaying, 1902.

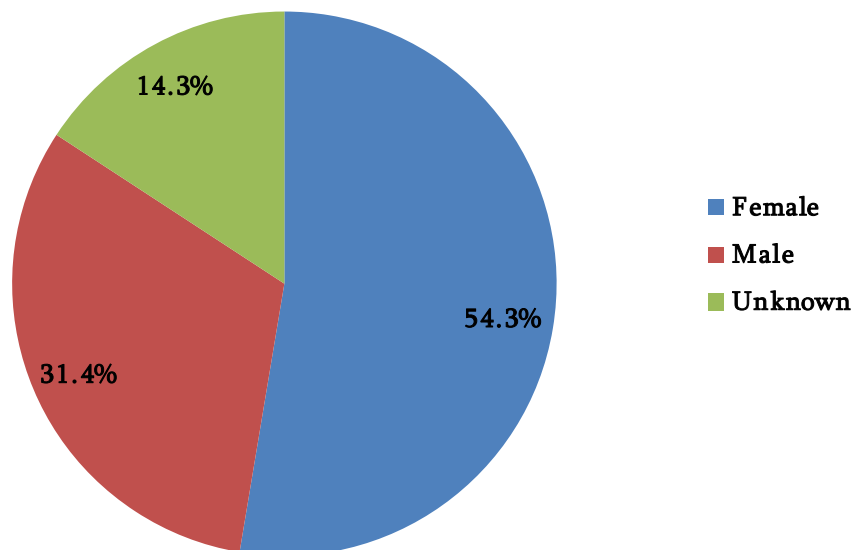
argue that studies in infanticide cannot be separated from the socio-economic and cultural forces of the context in which they are located.⁹¹ Therefore, the data in the graphs which follow are useful indices for rendering patterns and themes which aid in understanding the socio-economic and cultural context specific to Natal. While there were many more cases tried in the towns of Durban and Pietermaritzburg, these only accounted for 42.1 per cent of the cases, whereas the total for the rural areas combined is 57.9 per cent. With regards to the sex of the accused, 14.3 per cent were male and in keeping with archetypal infanticidal offender, 85.7 per cent were female. In most cases the accused was the mother of the infant, and more seldom the grandmother or the 'alleged' father. The ages of the accused was not noted in all cases, but of the recorded ages these ranged between 17 and 35 only.

⁹¹ Bechtold and Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*, 1-20.

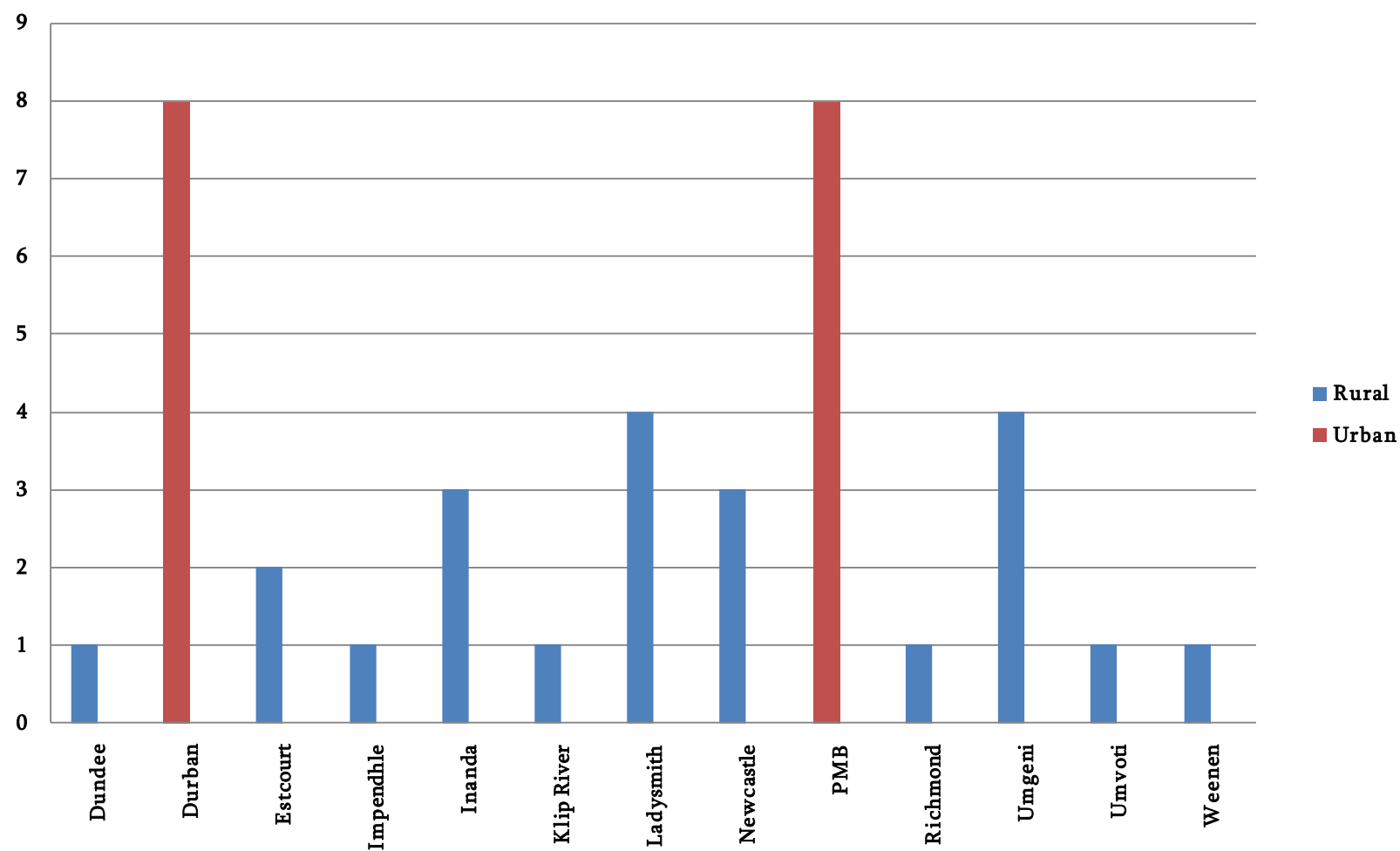
Graph 3: Showing No. of Accused According to Marital Status, 1869-1933 (in percentile)

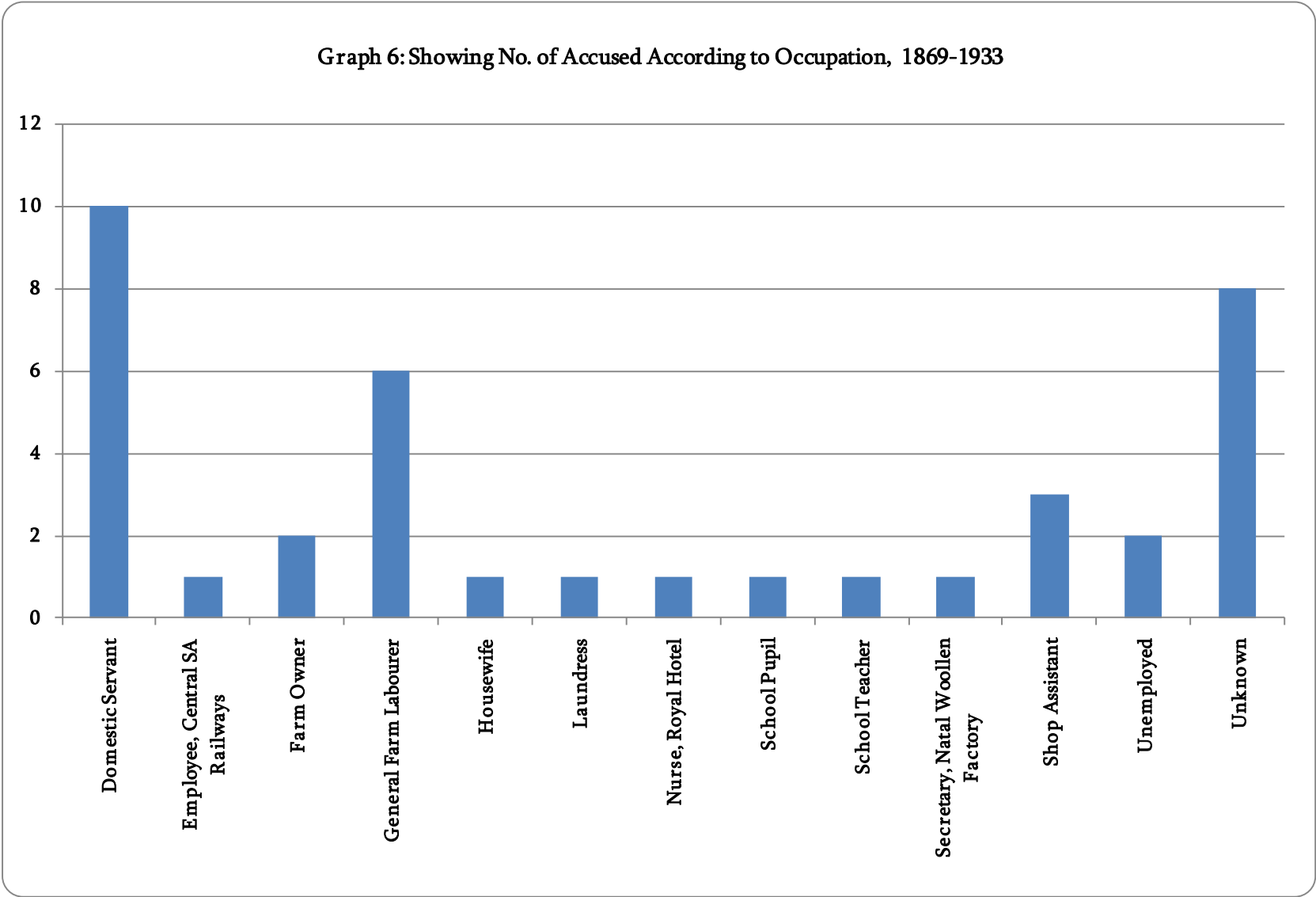


Graph 4: Showing Male to Female Sex Ratio of Infanticides, 1869-1933 (in percentile)



Graph 5: Showing No. of Cases per Magisterial District, 1869-1933





It is critical to note that 26.3 per cent of the women accused of these crimes were domestic servants.⁹² This parallels the common stereotype held of infanticidal women in the eighteen and nineteenth century Britain.⁹³ Similarly to Britain, the reasons for female African domestic servants in Natal committing infanticide or concealment of birth were linked to their economic circumstances, religious dispositions or their social and familial surroundings. By the twentieth century many African women left the rural areas in search of better prospects in the city, much to the disappointment of the families, particularly of the elder women.⁹⁴ We can surmise that the possible reason that many women (in Natal and elsewhere, as the historiography of infanticide posits) committed infanticide was because they were single, young women who did not want, or could not afford, to carry the burden or shame of raising a child by themselves. Often abandoned by the father of the child, and in the knowledge of bearing an ex-nuptial child, these women did not want to be tarnished as morally delinquent by the new community of the urban city, but also by their extended families. Illegitimacy, of course, did not necessitate the same conditions or

⁹² However, it should be reiterated that this figure as well as the graphs preceding it only reflect the cases that are housed in the Supreme Court and Attorney General's Records. They do not include the cases tried at the lower courts or actual incidences, and therefore the reflection of and analysis of the court records are offered as tentative interpretations.

⁹³ Jackson. *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, 1-3, 8; Lionel Rose. *Massacre of the Innocents: Infanticide in Great Britain, 1800-1939*. (London: Routledge and Kegan Paul, 1986); Hoffer and Hull. *Murdering Mothers: Infanticide in England and New England, 1558-1803*, 47; Laura Gowing. 'Secret Births and Infanticide in Seventeenth-Century England,' in *Past and Present*, 156, August 1997, 87-115; Higginbotham. "'Sin of the Age": Infanticide and Illegitimacy in Victoria London,' 319-337; G. K. Behlmer. 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England,' in *Journal of the History of Social Medicine*, 34, 1979, 403-427.

⁹⁴ There are many references to this in Cherryl Walker's *Women and Gender in Southern Africa to 1945*. (Cape Town: David Philip Publishers, 1990). See particularly the chapters by Jeff Guy, 'Gender Oppression in Southern Africa's Precapitalist Societies' (33-47), and Sheila Meintjes, 'Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times' (125-145).

constrictions for Africans, as it did for Indians and Europeans at the time due to the fact that the state considered children of Indian and African parents who were married by customary rites as ‘illegitimate’. Nevertheless, within these communities, the self-appointed morals and values warranted a certain degree of censure against premarital pregnancies. Illegitimacy did not carry the same Christian and Victorian moral implications as it did for European and amaKholwa women. Secondly, and perhaps more significantly, and as the court cases suggest, women who did commit infanticide or concealed their pregnancies feared unemployability or that they might have been dismissed from their employment, had their employers uncovered their pregnancies.

The statistics show that in about 58 per cent of the AGO and RSC cases, to which the archives give access, the accused knew the person who reported the crime to the police. They were family members, co-workers, employers, or neighbours. Some of the explanations offered by those who were accused were that the infant had been stillborn and, as they had “not know[n] what to do with the body,” they had disposed of it by means they thought most appropriate. From evidence presented in the court cases, it is possible to deduce that many women committed the crime because they feared having an illegitimate child, either through premarital relationships, adultery or miscegenation. These issues will be discussed further in Chapters Three and Four. In terms of the age of death of the infants, the case records show that all but two infants were neonates⁹⁵ who died soon after birth. In most cases the cause of death was asphyxia due to strangulation; other methods included “sheer neglect and exposure”, “haemorrhaging due to improper care of the umbilical cord”, drowning

⁹⁵ This refers to a newborn infant less than four weeks old.

and ill-nutrition. More extreme methods involved infants being thrown from a moving train, into fireplaces or toilets, and being buried alive.

Approximately 51 per cent of the cases resulted in a judgement of guilt. Sentencing ranged between three to twenty-four months imprisonment though most women received six months imprisonment with hard labour as punishment. The case in 1914 of Ntombi Radebe, who was charged with concealment of birth and found guilty, was the last time (until 1935) that an accused was sentenced to imprisonment with hard labour for this crime. There were two subsequent guilty verdicts thereafter, the first in 1919, of Lily Theron and the second was of Elizabeth Thompson Nimmo in 1933. While Lily was found “guilty, but mentally disturbed at the time with regards to section 29 of act 38 191,” and ordered to be kept in custody at the Natal Government Asylum, Elizabeth was “Cautioned and Discharged.”

Conclusion

Infanticide, in England, and in Natal as well as in other parts of the British Empire, was – in the late nineteenth and early twentieth century, seen as a socio-economic problem situated at the nexus of medical and legal debates. This chapter has traced how Natal’s laws on infanticide were shaped and influenced by laws passed in Britain and elsewhere in the Empire. From the nineteenth century onwards a crucial factor in infanticide laws, both in the colonies and the metropole, was determining whether an infant had breathed independently at the moment of birth. This was crucial in calculating culpability on the part of the accused in committing the crime of either infanticide or concealment of birth. The Parliamentary discussions of the 1910 Act

show how reforms to the law were connected to growing medical interventions but, on a deeper level, these discussions were immersed in the social and political rhetoric of the time, both of the metropole and of the colony.

As Chapter Two will show, concerns about baby-farming, illegitimacy, miscegenation, infant life protection, and motherhood were starting to gain momentum in Natal and South Africa more generally after the turn of the twentieth century. In the court cases utilized in this study, in every instance of the trials of cases of infanticide or concealment of birth, the infant was illegitimate. Even in the cases of married women, the child had been the result of an adulterous relationship and the women had presumably chosen to kill their infants to hide their infidelity. For single, young women, it was primarily the fear of ostracism or social stigma and, in some cases, unemployability that an ex-nuptial child occasioned.

Dealing with women who committed this crime often posed a conundrum to juries and courts. Unlike in England and in the early days of the Cape Colony, sentencing in Natal never resulted in the death penalty. As the thesis will later show, particularly in Chapters Three, Four and Five, the Natal court cases suggest that for the state it was perhaps more important to identify those women who needed the state's guidance at being better mothers. What follows in Chapter Two is a discussion of how child welfare and mothercraft – in light of the dilemmas posed by baby-farming and high infant mortality – became pressing issues for the Union state to address post World War One.

Chapter Two

“It’s a libel on the word mother”¹ ~ Baby-Farming, Illegitimacy and Infant Life Protection, South Africa, 1890-1930

This chapter is arranged according to four separate but overlapping themes: those of baby-farming, illegitimacy, infant life protection legislation, and high infant mortality rates. Following from Chapter One, the first part examines baby-farming practices in Natal and the implications of this for the crimes of infanticide and concealment of birth in this region. For here as elsewhere, for much of the late nineteenth and early twentieth centuries the implied link between baby-farming and infanticide was that baby-farming was considered to be “infanticide by neglect,”² “infanticide for hire”³ or a “veiled form of infanticide.”⁴ Moreover, in the minds of the authorities and some social commentators, baby-farming was also implicitly linked to illegitimacy and to a myriad of other associations relating to racial stereotypes and racial degeneration. The

¹ ‘Revolted Incident,’ in *The Mercury*, 6th June 1891.

² Tony Ward. ‘Legislating for Human Nature: Legal Responses to Infanticide, 1860-1938,’ in Mark Jackson (ed.) *Infanticide – Historical Perspectives on Child Murder and Concealment, 1550-2000*. (Aldershot: Ashgate, 2002), 249-269.

³ Ruth Ellen Homrighaus. ‘Baby Farming: The Care of Illegitimate Children in England, 1860-1943.’ Unpublished Dissertation (PhD-History), University of North Carolina, 2003.

⁴ Annie Besant. *The Law of Population: Its Consequences, and Its Bearing upon Human Conduct and Morals*. (London: Freethought Publishing, 1877), 22.

growing fears that illegitimacy and baby-farming apparently presented to the colonial and Union of South Africa state developed into agitation for changes to legislation relating to infant life protection. The second section of the chapter therefore interrogates the motivations (specifically the allegedly high rate of illegitimacy) for the passing the Infant Life Protection Act (1907; 1909; and the 1913 Children's Protection Act). It also discusses some of regulations the Act established for processes of adoption and foster care.

Concerns about the “problem of illegitimacy,” however, were further compounded by the increasingly high infant mortality rates that were being reported by the medical fraternity in South Africa at this time. The final two sections of the chapter trace the connection between the high infant mortality rates after the turn of the twentieth century – and the embedded ideas about illegitimacy and infanticide by neglect – to concerns about proper infant feeding, good parenting and proficient child welfare service. It is imperative to note that these concerns and anxieties did not exist separate from racial and class structures and prejudices that operated in Natal and South Africa more broadly at the time. Therefore, some of the derivative discourses discussed in this chapter include the emergence of social theories of race, class and gender, as well as notions of biological determinism, scientific racism and eugenics in the first part of the twentieth century as well as the role that the professional medical fraternity played in advancing these debates in South Africa.

Building on the work of feminist scholars of South Africa such as Catherine Burns, Susanne Klausen, Sandra Burman, Margaret Naude, Vertrees Malherbe and Linda Chisholm, this chapter also interrogates changing societal attitudes towards adoption, family formation and composition; the emergence of mothercraft as a social science;

and developments in foster care, health services and child welfare societies in the early Union years. This chapter finds its place in the existing literature by presenting a Natal-directed study, but also by considering how these issues correlated to understandings of infanticide and concealment of birth.

“This sinister business in babies”⁵ ~ Baby-Farming Practices in Natal and its Implication in Infanticide

The term baby-farming⁶ became popular in nineteenth century Britain and it referred to the care and raising of babies in exchange for money. Mothers who could not or did not want to raise their own children placed them in the care of ‘foster homes’ or ‘maternity homes’ together with monetary compensation. However, these ‘baby-farm houses’ became notorious for allegedly wilfully neglecting and murdering infants, apparently so as to increase their profit margins. Many baby-farms also accepted infants without any questions and the social problematic of illegitimacy became closely connected to these houses. Baby-farms became an easily accessible option for a mother who wished to put her child ‘out to nurse,’ and according to some, certain mothers chose this option in the knowledge that her child would be neglected. For much of the late nineteenth and early twentieth centuries, the image of the baby-farmer as opportunistic and deceitful was a stereotype that prevailed in many parts of

⁵ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do’, by a Special Correspondent. *Rand Daily Mail*, Friday, 29th October 1909; TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910.

⁶ There is no consistency as to the hyphenation of ‘baby-farming,’ ‘baby-farmer,’ or ‘baby-farm.’ While some authors use the non-hyphenated form, or have simply conjoined the words, the hyphenated form is retained here, as it appears in the sources.

the British Empire.⁷ According to Ruth Ellen Homrighaus “baby-farmers aroused fear and anger in equal measures.” More recently some feminist historians Homrighaus, Meg Arnot, and Shurlee Swain have also seen baby-farmers as individuals who committed calculated and premeditated crimes and who had made “a rational choice to benefit from infant deaths.”⁸ However, the use of the word baby-farmer conflated the criminality of ‘wilful murderers’ with the honest and hard labour of sincere foster mothers and carried the insinuation that paid wet-nursing, orphanages, maternity homes, foster homes, – whether registered or not – or uncertified adoptions inevitably equated to baby-farming.

Long before the atrocities of baby-farmers posed any real challenge to the Natal colonial state – by way of the alarmingly high death rates of white infants while in

⁷ During this time period the *British Medical Journal* [hereafter *BMJ*] reported prolifically on baby-farming practices in England and the Empire at large. It was in 1867 that the *BMJ* first published an article on a case of baby-farming. When the mother of a seven month old infant was questioned regarding the death of her child whilst under the care of a wet nurse, she stated that shortly after the birth of the child she was unable to suckle the baby and as a result “put it out to the care of a nurse.” However, after careful investigation, the District Coroner found that the mother of the child had had four children previously, all of whom had died while under the care of wet nurses, implying that that the mother purposefully gave up her children to wet nurses in the knowledge that they would be neglected until they died. ‘Baby-Farming,’ in *The British Medical Journal*, 355, October 19, 1867, 343. See also ‘The Massacre of The Innocents,’ in *The British Medical Journal* 1, 2195, January 24, 1903, 221-222; Ruth Ellen Homrighaus. ‘Wolves in Women’s Clothing: Baby-Farming and the British Medical Journal, 1860-1872,’ in *Journal of Family History*, 26:3, 2001, 350-372; Shurlee Swain. ‘Toward a Social Geography of Baby Farming,’ in *History of the Family*, 10:2, 2005, 151-159; Shurlee Swain. ‘Infanticide, Savagery and Civilization: The Australian Experience,’ in Brigitte H. Bechtold and Donna Cooper Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006), 85-105; M. L. Arnot. ‘Infant Death, Child Care, and the State: The Baby-farming Scandal and the First Infant Life Protection Legalisation of 1872,’ in *Continuity and Change*, 9, 1994, 271-311; Daniel Grey. ‘More Ignorant and Stupid Than Wilfully Cruel’: Homicide Trials and ‘Baby-Farming’ in England and Wales in the Wake of the Children Act 1908,’ in *Crimes and Misdemeanours*, 3:2, 2009, 60-77; Benjamin Waugh. ‘Baby-Farming,’ in *Contemporary Review*, 57, 1890, 700-714.

⁸ Homrighaus. ‘Baby Farming: The Care of Illegitimate Children in England, 1860- 1943,’ 5.

foster care – the conceptualisation of this stereotype already definitely occupied a place in popular culture by the 1890s. This was in part due to the role that local newspapers played in reporting on baby-farming scandals in the metropole and Empire at large. For instance, on April 3rd 1884, *The Natal Witness* published an article under the heading ‘Horrible Baby Farming Revelations.’ The article reported on Esther Williams and Emily Charlotte Green, of Milton, England, who had been charged with the wilful murder of two children, Henry James Kempton and Charles Robert Reynolds. At the time, Williams and Green were found to be caring for five other children at their home, and it was believed that Kempton and Reynolds had been placed in their care because they were illegitimate. Dr James Francis Waring was called to attend to the children who he initially found to be suffering from congestion of the lungs. After their deaths subsequently and his post-mortem examination, he found that both children had in fact starved to death.⁹ With regards to the notoriety attached to baby-farming, some recognition, however, should also be given to local theatre companies such as the Theatre Royal for the productions they showcased that made deliberate and blatant social commentary on the practice of baby-farming.¹⁰

⁹ ‘Horrible Baby Farming Revelations,’ in *The Natal Witness*, 3rd April 1884.

¹⁰ In 1879 the Theatre Royale advertised the staging of the production ‘*Nursey Chickweed* – or hints on Baby-farming,’ which was, perplexingly described as a “screaming farce.” In February 1880, the Theatre Royale presented a performance of the *H.M.S Pinafore* Musical. According to the review by *The Natal Witness*, one of the more popular songs of the Gilbert and Sullivan musical, ‘A Many Years Ago,’ was sung by the female protagonist, Buttercup, about her former life as a baby-farmer:

Buttercup:

Hold! Ere upon your loss
You lay much stress,
A long-concealed crime
I would confess!
A many years ago,
When I was young and charming,
As some of you may know,
I practised baby-farming.

While baby-farming was not a specific crime under which someone could be arraigned for child neglect or abuse, towards the end of the nineteenth century revelations about baby-farming practices in Natal became more frequent fanning the idea that this was a menace for the colonial state to regulate. One case that drew public attention occurred in June 1891 when *The Mercury* reported about an incident at the Durban Station where an African woman had been found suckling a white baby. Alexander Finlayson, who had reported the incident to the Editor of *The Mercury*, thought that this was very suspicious and when he asked the woman about the child, she initially insisted that the baby was in fact hers. Being further interrogated by Finlayson, however, she revealed “ten sovereigns and bundle of clothes,” which had been given to her by “someone from the Berea,” together with the baby.¹¹ Appalled by the situation, the Editor lambasted the police for not “interfering in cases of baby-farming,” which he referred to as “one of those terrible indecencies of life that will crop up.” He further condemned the mother of the child asking: “Think of the little one, what its habits will be, what it may become, what its shame? What a wretch of a mother to have – it’s a libel on the word mother.”¹²

Correspondence found in the Colonial Secretary’s Office files, between the Attorney General, Michael Henry Gallwey, and the Clerk of the Peace during that same month of June reveals that the mother in question was believed to be a Miss Moye. They had

Chorus:
Now this is most alarming!
When she was young and charming,
She practised baby-farming,
A many years ago.

The Natal Witness, 6 February 1879 and 19 February 1880.

¹¹ ‘Revolting Incident,’ in *The Mercury*, 6th June 1891. See Appendix for unabridged version of the article.

¹² ‘Revolting Incident,’ in *The Mercury*, 6th June 1891.

been alerted to this by a certain R. Jameson, from Bellair who had read of the case in *The Mercury*. In a letter dated 6th of June to the Colonial Secretary, Jameson said he hoped that the government had initiated an investigation into the matter, as he strongly believed that “the European child cannot surely be allowed to be brought up in barbarism” and that as “no one [was] interfering to prevent such a dreadful scandal the mere publication of which in the English papers, is certain to be fraught with mischief, unless we are able to deny it, or state that the child had been rescued.”¹³

Proceeding with the investigation, Finlayson was summoned to the Umlazi Magistrate to give a deposition as to what had transpired between himself and the ‘native girl’ at the Union Railway Station. After reviewing this deposition and the reports of the Natal Police, the Resident Magistrate at Umlazi, A. E. Titren, discontinued the investigation stating that he “declined to consider or deal with the bastard as a destitute child,” and consequentially no further action was necessary.¹⁴ In a letter responding to Jameson’s request and the outcome of the investigation, the Colonial Secretary stated that the only evidence his department could gather in relation to the matter was that “in January of 1891 a European woman gave birth to an illegitimate child, which was subsequently placed in charge of a native woman to nurse.” The Colonial Secretary added that if in fact this was the same case on which *The Mercury* had reported, then he “could find no breach of the law and the facts of the case did

¹³ Pietermaritzburg Archives Repository [hereafter PAR], Colonial Secretary’s Office [hereafter CSO], 1299, 1891/3018, R. Jameson. Calls attention to a paragraph in *The Mercury* relative to an alleged case of baby farming, 1891.

¹⁴ PAR, CSO, 1299, 1891/3018, R. Jameson. Calls attention to a paragraph in *The Mercury* relative to an alleged case of baby farming, 1891.

not require the action of the government.”¹⁵

“Infant life protection” would later – in the years just before the unification of South Africa – become a priority for the colonial government, but when cases of baby-farming surfaced in the 1890s, there was no distinct law in place by which perpetrators could be tried. On June 13th 1891, *The Mercury* again reported on the baby-farming incident and besides addressing the problem of the lack of legislation on this matter, the article also provides provocative insight into white opinion about the implications of baby-farming across race. It said:

I had a note last week about the deplorably sad treatment of a little child by its inhuman mother in relegating it to the care of a kafir woman who now has it at her kraal beyond Isipingo. I have since heard more details, and I find that in order to protect herself, the kafir woman, who received £5 for the baby-farming business, for it is little else, reported the matter to Segt. Hunt, who informed the Magistrate. Capt. Lucas ordered the police to find out, if possible, the names of both the father and mother. In this the Sergeant succeeded, and the kafir was permitted to take the child to her kraal, the mother of the poor infant saying she did not want it. Needless to say it was an illegitimate ... Whether the parents have since registered the child I do not know, but this I do know, that it is a pity some means cannot be found of dealing with such inhuman wretches.

The construction of moral discourses on the threats to “civilisation” in Natal at the time, as the article suggests, resonated with imperial and metropolitan discourses which cast Africans as immoral and ‘primitive,’ and also associated the degeneration of middle class British morality and respectability with increasing interaction with African incivility. The article concludes with: “Think for a moment how such a child

¹⁵ PAR, CSO, 1299, 1891/3018, R. Jameson. Calls attention to a paragraph in *The Mercury* relative to an alleged case of baby farming, 1891.

will be brought up amongst kaffirs, what a life it will lead, what a raw, untutored white savage it will be. Of course the offence to civilisation does not come under the head of slavery; but it is a little short.”¹⁶ While this can be easily identified as popular racist sentiment, at a more intrinsic level it is also a reflection of the then developing social eugenics discourse in South Africa. In many ways, these views of the threats to civilisation in a South African colonial context can be seen as a precursor to discourses on eugenics, race determinism and heredity fears which emerged in a more strongly coherent form in the early years of the twentieth century.¹⁷ Moreover, in South Africa, as this chapter shows, these discourses influenced debates around infant mortality and what would be viewed as “good mothercraft.” The comments in the article in *The Mercury* also hint at the hidden dangers that baby-farming posed specifically to the welfare of *white* children and it was this concern that incited the anxieties of the colonial state.

In addition, as already alluded to, at the beginning of the twentieth century, high infant mortality rates and the implicit link to illegitimacy as a corresponding factor, would help to fuel state fears of a burgeoning poor white community across the region, what would soon be the Union of South Africa. These fears were especially heightened in the post-South African War context, with increased economic hardships for whites; increased urbanisation and the high influx of single white women to the towns; increased vulnerability; as well as the increased prevalence of

¹⁶ *The Mercury*, 13th June 1891. See Appendix for unabridged version of the article.

¹⁷ For more on the rise of the eugenics movement in South Africa see Saul Dubow. ‘Chapter 4 – Biological Determinism and the Development of Eugenics,’ in *Scientific Racism in Modern South Africa*. (Cambridge: Cambridge University Press, 1995), 120-165 and Susanne Klausen. ‘“For the Sake of the Race”: Eugenic Discourses of Feeble-mindedness and Motherhood in the *South African Medical Record*, 1903-1926,’ in *Journal of Southern African Studies*, 23:1, March 1997, 27-50.

vagrancy, prostitution and miscegenation. In Natal, while the problem of poor whiteism was not as stark as in the Cape or the Transvaal, intra-racial concerns *vis-à-vis* the British and Afrikaner divide, as briefly suggested in Chapter One was particularly pronounced.

In the Transvaal, similar worries about baby-farming as in Natal plagued the authorities. In 1905, a Mr Showers, the Commissioner of the Transvaal Town Police, wrote to the Attorney General of Pretoria, Mr Burns-Begg, asking about legislation in relation to maternity homes and baby-farms. In his letter he questioned if there were any laws in existence in that Colony and beyond. His letter went on to say:

They have started a Maternity home here and there are some baby-farms and one case has been reported in which the lady running the Maternity Home thinks that a baby has been made away with. We are enquiring into the case. An oldish woman took a young half-witted woman to the Maternity Home: a child was born. The young woman was taken to Pretoria and the oldish woman took the child towards Krugersdorp. We have not found the child yet. We ought to have regulations or there may be trouble.¹⁸

In response, Burns-Begg wrote: “So far as I am aware there are no laws whatever dealing with Baby-farms or Maternity Homes. If you think the former are on the increase I should be glad to hear what steps you would suggest should be taken to deal with this evil.”¹⁹ Similar agitations for adequate legislation were echoed by the Public Health Department in the Cape Colony. Following a report in the *Cape Times* which revealed that the practice of baby-farming was widespread, Dr Alfred Jasper Anderson, the Medical Officer of Health for Cape Town (from 1901 to 1923) lobbied for legislation which would protect infant life, as he was “convinced that baby-

¹⁸ National Archives Repository [hereafter TAB], Secretary to the Law Department [Hereafter LD], 1086, AG2390/05, Baby Farms and Maternity Homes, 1905.

¹⁹ TAB, LD, 1086, AG2390/05, Baby Farms and Maternity Homes, 1905.

farming was the main reason for illegitimate deaths,” referring to the wilful murder of illegitimate infants.²⁰

In Natal, in 1907, the periodical *Mosquito and African Sketch*,²¹ ran a controversial editorial commenting on baby-farming in Natal.

The Paris Scandals, where hundreds of infants are supposed to have been destroyed at a maternity home fill us with horror. But I am told on the same undoubted authority that I have quoted before, that something very similar goes on in Durban. I alluded to the baby-farming as a disgrace and a danger, but the information that has come to me since the question was first mooted points to much worse. I mean professional procuring of abortion and worse. My authority tells me that the deaths of infants in Durban certified as from mal-nutrition and the like by duly qualified medical men is quite above the normal, and there is grave suspicion that all is not in order. The whole system of death enquiry by the magistrate is unsatisfactory. It is quite likely that in ninety cases in a hundred the magistrate comes to a correct decision but it is in the ten that the want of publicity prevents evidence coming forward that might have thrown a quite different light on the affair. I am speaking now, however, principally of cases where a duly certificated practitioner is concerned, and we all know the trades' unionism of the profession. Attack a doctor and all the other doctors will come like a hive of bees buzzing round the rash outsider. I suppose more crimes have been committed behind a doctor's certificate than without one, and yet it is almost hopeless to think of going behind the certificate of the duly qualified practitioner regularly attending a patient.²²

²⁰ Sandra Burman and Margaret Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,' in *Journal of Southern African Studies*, 17:3, 1991, 394; and Elizabeth van Heyningen. 'Public Health and Society in Cape Town.' Unpublished Thesis (PhD), University of Cape Town, 1989, 463.

²¹ *The Mosquito and African Sketch* was a weekly publication circulated in Durban between 1905 and 1907.

²² 'Editorial, Notes and Comments,' in *The Mosquito and African Sketch*. Vol. 2, No. 26. 3 January 1907. See also PAR, Attorney General's Office [hereafter AGO], I/8/116, 167A/1907, Paris Scandals. 3 January 1907.

The allegations made in this article against the illegal procuring of abortion – as well as the manner in which cases of infanticide were suppressed by the medical fraternity – were corroborated by Stacey Grimaldi, a Sergeant, who at the time headed the Criminal Investigating Department in Durban. On the 13th of May 1907, in a deposition delivered at the Durban Magistrate's Office, Grimaldi asserted that he had “reason to believe that certain crimes and offences [were] committed in Durban,” and that the Editor of *The Mosquito and African Sketch*, W.J. Mirrlees, could supply incriminating evidence.²³ The only response to these allegations from the medical fraternity of Durban was contained to a letter from Dr. P. Murison, Honorary Secretary of the Public Health Department at the time. His letter was rather aloof and evasive in tone and its purpose was simply to inform the Editor of *The Mosquito and African Sketch* that “the identity of his informant was no secret to the members of the medical professional” and that “their feelings towards him are sympathetic rather than hostile ... knowing as they do all the circumstances connected with the matter.”²⁴ Dr. Murison's cryptic conclusion to his letter leaves many questions unanswered and the archival source reveals that the case was left unresolved.

Nevertheless, the extract from the periodical and Dr Murison's letter are valuable in themselves for disclosing much about the medical fraternity in Durban. That doctors shared some degree of camaraderie is not surprising but Mirrlees' editorial implicitly implicated doctors in not only performing illegal abortions but possibly also falsifying death certificates. The latter remains questionable since this still remains a subject for historical enquiry but on the subject of abortion, as Helen Bradford has stated in her

²³ PAR, AGO, I/8/116, 167A/1907, Paris Scandals. 3 January 1907. Deposition of Stacey Grimaldi, 13 May 1907.

²⁴ PAR, AGO, I/8/116, 167A/1907, Paris Scandals. 3 January 1907. Deposition of Stacey Grimaldi, 13 May 1907, Letter from Dr P. Murison, MOH and Honorary Secretary, Public Health Department, 2 May 1907.

authoritative article on abortion in South Africa 'Herbs, Knives and Plastic: 150 Years of Abortion in South Africa' (1991) doctors "...wary of risking criminal prosecution, professional ruin and social ostracism," often performed abortions under the guise of induced miscarriages or with the use of abortifacients such as 'Widow Welch's female pills.'²⁵ During this time period, reasons for the early termination of a pregnancy (whether the individual understood the act in terms of present day definitions of abortion – i.e. that a foetus is considered as a human being from the moment of conception – or not, and thus comparable to infanticide) were often closely associated with illegitimacy or unwanted pregnancies.

It can be argued to some extent that by the turn of the twentieth century, in the absence of reliable and accessible contraception – and in addition to some of the other reasons already discussed in Chapter One such as social and religious pressures, and unemployability – women who wished to terminate unpropitious pregnancies resorted to infanticide after failed abortions or due to inaccessible means of procuring an abortion. Indeed, there were at that time very few options such as foster care – or even including baby-farms – available to mothers, or prospective mothers, who sought reprieve from the responsibilities of raising an illegitimate or unwanted child. There were a few orphanages and children's homes in Natal, but it is difficult to accurately say if these were open to all children of all races or religions.²⁶ Furthermore, another reason for the predicament that these women faced emanated from the lack of adequate child adoption legislation which was connected to the social stigma attached to adoption during this time period. With this in mind, the next

²⁵ Helen Bradford. 'Herbs, Knives and Plastic: 150 Years of Abortion in South Africa,' in Teresa Mead and Mark Walker (eds.) *Science, Medicine and Cultural Imperialism*. (New York: St. Martins Press, 1991), 128.

²⁶ Notably the St Cross Orphanage in Pietermaritzburg and St John's Orphanage on the Berea.

section of the chapter maps the development of Infant Life Protection legislation in South Africa, which included procedural guidelines pertaining to adoption and foster care, and also examines how anxieties about high illegitimacy and infant mortality rates prompted legislative change, and considers whether or not these changes might have affected rates of incidence of infanticide and concealment of birth convictions after Union.

“The perils of child life”²⁷ ~ Illegitimacy and Infant Life Protection Legislation

Agitation for legislation and concerns about illegitimacy and infant mortality rates in the first decade of the twentieth century was also prevalent beyond Natal's borders. Similar sentiments could be heard echoing in the Transvaal and Cape colonies, and this was true for Britain and its other dominions as well.²⁸ For instance, in 1903,

²⁷ PAR, Minister of Justice and Public Works [hereafter MJPW], 135, MJ82/1907, Reverend A. Hall Durban: May a deputation from the Durban Christian Ministers Association wait upon the Minister of Justice when next in Durban with reference to the better protection of infants, 1907.

²⁸ In the case of the Cape Colony for instance, *The Natal Witness* reported that illegitimacy appeared to be very prevalent among the Dutch communities. *The Natal Witness*, 1 May 1880. In 1904 the Principal Under Secretary of Pietermaritzburg wrote to his counterpart in Sydney enquiring about the infant birth and mortality rates. See PAR, CSO, 1761, 1904/4274, Principal Under Secretary, Pietermaritzburg. Letter to Principal Under Secretary, Sydney, asking to be supplied with a copy of the Report (with evidence) of the Committee appointed to enquire into the decrease of the birth rate and mortality among infants, 1904. See also, Vertrees C. Malherbe. ‘Illegitimacy and Family Formation in Colonial Cape Town, to c. 1850,’ in *Journal of Social History*, 39:4, 2006, 1153-1176; Vertrees C. Malherbe. ‘Born into Bastardy: The Out-of-Wedlock Child in Early Victorian Cape Town,’ in *Journal of Family History*, 32:1, January 2007, 21-44; and Sandra Burman and Patricia van der Spuy. ‘The Illegitimate and the Illegal in a South African City: The Effects of Apartheid on Births out of Wedlock,’ in *Journal of Social History*, 29:3, Spring 1996, 612-635; and Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939.’

Acting Colonial Secretary of Jamaica, T.L. Roxburgh, wrote to C.J. Smythe, the Colonial Secretary of Natal, enquiring about the situation regarding illegitimate children in the Natal Colony. He reported that 64 per cent of the births in Jamaica were illegitimate and he enquired as to whether a similar situation existed in Natal. He added "... that the true source of improvement in this matter must be a higher moral tone among the people and a healthier public opinion, [and] it [was] also felt that it may be possible to assist towards a better state of things by means of legislation."²⁹ A Commission had been appointed in Jamaica to review the Registration of Births, Deaths and Marriages laws but it was decided that a proper conclusion could only be reached if information from other colonies could be solicited. It was hoped that a review of the existing Registration laws in Jamaica would necessitate an amendment that would "give children of parents who may marry after the birth of such children the position and rights of off-spring lawfully begotten", and increase "the facilities for the registration of the paternity of children not lawfully begotten"³⁰ thereby making it inclusive of children conceived and born ex-nuptially and therefore reducing the number of children legally designated as being illegitimate.

Some of the questions put forward by the Jamaican Colonial Secretary's Office required statistics of the number of illegitimate births to the proportion of the population; whether there was a period when this rate was "excessively high"; or whether these had improved over time, meaning if the rate of illegitimate births had

²⁹ It should be noted that Acting Colonial Secretary of Jamaica, T. L. Roxburgh did not distinguish by race when he referred to the "population" or the "people." PAR, CSO, 1741, 1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

³⁰ PAR, CSO, 1741, 1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

decreased, and whether this improvement could have been attributed to provisions made to a law governing the Registration of Births. The questionnaire also touched on marriage registrations and the existence of laws relating to the legitimisation of illegitimate children whose parents subsequently married. As mentioned in Chapter One, at that time in Natal, under Law 16 of 1867 “all births” had to be registered: in fact however this excluded Africans and Indians, who came under “Native Law” and Indian Immigration Law respectively. Thus, in his reply Smythe reported that of the 3 483 births that had been registered in 1902, only 46 were illegitimate and noted that this referred only to the children of “European marriages” and those of the handful of Africans that were married by Christian rites. While these figures suggest that only 1.32 per cent were illegitimate births, this did not include the illegitimate births by white women that were never registered, or those of the vast majority of Natal’s population – non-Christian Africans, Indians and Coloureds. Smythe also commented that, under the Common Law of the Natal Colony, illegitimate children became legitimate by the subsequent marriage of their parents and that in his view there was no urgency to the question of illegitimacy in the Colony at the time. He added that the then current legislation had “proved to be satisfactory” and needed no revision.³¹

It is unclear as to which specific law Smythe was referring to in this letter, but it is most likely the he was meaning Act 5 of 1902 – Law for the Registration of Marriages, Births and Deaths within the Colony of Natal – which also accounted for the capturing of data for Africans who were married under Christian rites. Some years later, in 1906, Dr Ernest Hill, Chief Health Officer in Natal from 1901 to 1911, lobbied a bill to include those Africans who were married by Native Law, but the

³¹ PAR, CSO, 1741, 1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

Colonial Secretary did not support this amendment.³² Accordingly Smythe did admit that no proper statistics existed for the registrations of births of the children of Africans married by customary law. He did, however, alert Roxborough that there existed a law which “prohibited illicit co-habitation” between African men and women as a measure of preventing illegitimacy. Section 277 of Law 19, 1891 made this punishable as a criminal offence.

In 1908, Dr Hill, in his capacity as Chief Health Officer, received a similar enquiry from the District Health Officer of the Department of Public Health in New Zealand, Dr Pardy, with the purpose of obtaining information about any system that was in place in the Colony in relation to the protection of infants.³³ His letter stated that New Zealand had recently passed the ‘The Infant Life Protection Act,’ and he enquired if a similar Act existed in Natal. While no law existed in Natal at the time, under the banner of “Infant Life Protection”, offenders in this regard could be charged with the crime of “child-abuse;” “refusing and neglecting to provide sufficient and proper food, clothing, comforts” to a child under the age of thirteen; or “dangerously exposing a new-born child.”³⁴ However, these laws did not extend to

³² For more on Dr Hill’s role in petitioning for change and improvement to the registration of births, deaths and marriages see Marcia Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ in *Journal of Natal and Zulu History*, 24 & 25, 2006-2007, 135-163; and Julie Parle. ‘Chapter Five: Death in Black and White-Race, Suicide and the Colonial State,’ in *States of Mind – Searching for Mental Health in Natal and Zululand, 1868-1918*. (Pietermaritzburg: University of KwaZulu-Natal Press, 2007), 225-226.

³³ PAR, Department of Public Health [hereafter DPH], 30, DPH84/1908, District Health Officer Auckland New Zealand asks for information of any system in vogue in Natal regarding the protection of infants, 1908. For more on New Zealand’s 1907 Infant Protection Act see, Bronwyn Dalley. ‘Chapter One – Control, Reformation and Protection: The Basis of Child Welfare,’ in *Family Matters: Child Welfare in Twentieth-Century New Zealand*. (Auckland: Auckland University Press, 1998), 21-63.

³⁴ For instance, PAR, AGO, I/8/11, 22A/1869, John Bird, Resident Magistrate, Pietermaritzburg: Forwarding Depositions in the case of Kate Baatjes for Child Abuse, 1869; PAR, Registrar,

protect children who were adopted or in foster care. Dr Pardy further enquired as to whether the Health Officer could supply him with any pamphlets issued by the Health Department pertaining to the care of infants. He also questioned if there was any system of registering maternity homes, and any special record of the birth of illegitimate children. On the 22nd of February, Dr Hill replied as follows:

With regard to the subject matter of your letter of 14th January, we really are doing nothing in this Colony in the way of protection of infant life, up to the present. In point of fact, as of course you are aware, the white population is relatively small (it has never exceeded 95.000, and is now rather less than it was in 1904) and until quite recently, since depression has got a real grip of the country, it has been a prosperous and well-to-do community, and on that account there has been little or no necessity, for any legislation in this matter. Necessity, however, seems now to be arising, and recently a society for the protection of infants, has been formed in the town of Durban, but I have not yet received sufficient information, to admit of my forming a basis for my recommendations, in regard legislative measures.³⁵

Besides taking into consideration the condition of only the “white population,” Dr Hill recognised that adequate measures concerning the protection of infants needed to be instituted in Natal. As Chief Health Officer of Natal, Dr Hill was dedicated and committed to ensuring a system of public health that did not pander to the demands

Supreme Court [hereafter RSC], 1/1/42, 8/1888, Supreme Court Criminal Cases. Regina versus Annie, also known as Nomuka. Charged with Wrongfully, Unlawfully And Dangerously Exposing a Newborn Child, 1888. According to the court transcript Annie had abandoned her new-born male child in Prince Street, Pietermaritzburg, “in a hole or furrow in the ground under an iron fence, without protection of defence or the mean of sustenance.” She pleaded guilty and was sentenced to one year imprisonment with hard labour. See also, PAR, RSC, 1/1/51, 3/1894. Supreme Court Criminal Cases. Regina vs Edward James Pithey and Johanna Hertwig, ‘Ill-using a child of tender years while under their care and charge, and refusing and neglecting to provide sufficient and proper food, clothing, comforts, and care for the same, to the injury of the child’s health, and contrary to their duty towards such child, 1894.

³⁵ PAR, DPH, 30, DPH84/1908, District Health Officer Auckland New Zealand asks for information of any system in vogue in Natal regarding the protection of infants, 1908.

of capitalist barons, as was the case in Natal, prior to his appointment. He fervently believed that a good public health system protected all individuals and that Indians and Africans were also deserving of receiving proper medical care. As discussed in Chapter One, Dr Hill actively lobbied for universal registration of births, deaths and marriages, and he argued that “vital” and “reliable statistics” such as these was of “great value,” for the country to ‘move forward.’³⁶ He also believed that comparative mortality rates between Africans, Indians and whites in the colony – which will be discussed in the next section – were important indicators of the “disparities in wealth and social conditions,” between these groups and would assist in the better administration of public health apropos, improving sanitary conditions, “industrial pollution and unhealthy housing.”³⁷

Later that year, in 1908, the Transvaal Colony published a report – the Indigency Commission of 1906 to 1908 – to show that the high rate of illegitimate children was a serious concern for the state.³⁸ This report would also be significant for the Natal Colony because it was instrumental in the passing of a law protecting infants in the Transvaal that was wholly adopted by Natal in 1911. In the context of post-South African War, the period described as the reconstruction administration, the priorities of the colonial administrations was to restore an “efficient colonial state capable of mediating the relationships between the different social sectors and economic

³⁶ Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ 159-160.

³⁷ Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ 160-162.

³⁸ TAB, AMPT PUBS, Transvaal Colonial Publications [hereafter TKP], 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908, Presented to both Houses of Parliament by Command of His Excellence the Governor. Pretoria: Government Printing and Stationery Office, 1908. This Commission was primarily concerned with the plight of poor Whites in the Transvaal, the causes thereof, and some ways of alleviating this poverty.

interests at play in the Colony.”³⁹ The main concern for the Transvaal government, however, was focused on the rise of poor whiteism and indigency which was seen as a result of the various effects of poverty, economic depression, increasing urbanisation, competition for employment, and “moral perversion through illicit alcohol trafficking and prostitution.” The behaviour of poor whites in the cities was regarded as a red flag by the authorities as a signifier of racial degeneration. Inter-racial relationships between white women and African, Chinese and Indian men further intensified the states’ concerns for poor whites. In the hopes of alleviating the problem of poor white destitution, a Commission was appointed to investigate the “squalid, unhealthy and demoralising poor white settlements,” and to suggest ways of preventing the “perpetuation of indigency and crime.”⁴⁰ One aspect the Commission focused on was the high rate of illegitimate infant mortality and the implied association to infanticide.

Chapter Six of the Indigency Commission Report stated that the evidence compiled showed that while the birth of illegitimate children was common in the urban centres of the Transvaal, it was also not uncommon in the country districts, where, in addition, children in foster care were ‘better looked after’ than in the towns.⁴¹ When the Undenominational Children’s Home of Johannesburg was investigated, a representative had stated that: “It is really terrible. It is more serious almost than in

³⁹ Lis Lange. *White, Poor, and Angry: White Working Class Families in Johannesburg – Race and Representation*. (Aldershot: Ashgate Publishing, 2003), 65.

⁴⁰ TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

⁴¹ For more on the history of fostering in South Africa see, P. C. Henderson. ‘Questions on Fostering: An Anthropologist’s Perspective,’ in Sandra Burman (ed.) *The Fate of the Child: Legal Decisions on Children in the New South Africa*. (Cape Town: Juta, 2003), 10-31.

any other place. We are constantly having applications to take illegitimate babies.”⁴² The Commission argued that illegitimacy affected the question of indigency in two ways. It said that, in the first place, illegitimate children were often neglected during their early years and grew up uneducated and physically and morally “weak.” Secondly, it claimed, without any close or known relatives, illegitimate children became poor whites or were drawn into the “criminal classes.” The report also stated that the death rate among illegitimate children was “notoriously high.”

When offering suggestions to the Transvaal Government on how best to alleviate this problem, the Indigency Commission emphasised that illegitimacy was an extremely difficult subject to deal with. It further stated that assistance to the mother, whether directly or by compelling the father to support his child and its mother, “may only encourage the evil.” Dr Gilchrist, the District Surgeon of Fordsburg, stated that in his experience:

Ninety per cent of the cases where a girl got into trouble and someone adopted her baby for a lump sum down, or took it over for nothing, that girl went wrong again ... When the mother had to pay so much a month and the child was put under the supervision of a matron who went regularly to see how it went on, the girl always kept straight! In many cases, for instance in domestic service, mothers cannot nurse the children themselves, and in consequence give them to coloured women to look after. Women adopt children for a lump sum down and in many cases do not even know the mother’s name, and this is conducive to neglect and many deaths occur from ignorance and neglect, the guardian having little or no interest in the child.⁴³

⁴² TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

⁴³ TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

In some instances, women were driven to place their children in foster care or baby-farms as a result of poverty and not necessarily because of callousness or vindictiveness. As many women needed to earn a living, and as many places of employment disallowed women bringing their children to work, they perhaps chose options that best suited their economic means. So, while some women could afford 'good' foster mothers and monthly payments, other women, according to Sandra Burman and Margaret Naude, had the option of getting "rid of the child permanently, by abandonment, murder or adoption."⁴⁴

Debates at this time about illegitimacy as well as the role of the public and the state's perceptions around issues of morality closely correlated to discourses on infanticide.⁴⁵ As Chapter One has illustrated, in most of the cases of concealment of birth and infanticide that were tried before the Supreme, Magistrate's and Circuit Courts in Natal, the alleged motives or reasons given by the accused (either the mother or father) for committing this crime implied that the child was illegitimate, whether by moral, religious or cultural definitions.⁴⁶ Considering the burden to the state and the fears of racial degeneracy and 'pollution' it is not surprising that the Transvaal, Natal and Cape colonies started to develop a concern with the question of illegitimacy, particularly amongst their white subjects.

In dealing with the issue, the Indigency Commission in the Transvaal suggested that assistance should not be given "too freely to the white mother," but that, rather, she should, as far as possible, "be encouraged to contribute to the support of her child." At

⁴⁴ Burman and Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,' 392.

⁴⁵ Burman and Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,' 373-413.

⁴⁶ See 'Tabulated Case Summaries' in Appendix.

the same time, the Indigency Commission also recommended that an Infant Life Protection Act be passed, making it compulsory for persons who wished to take care of infants (whether illegitimate or not) to be registered. The need for such an Act, which was primarily concerned with the general welfare of (white) children, was emphasised by the District Surgeons of both Johannesburg and Pretoria. Further it was also recommend that the Act should appoint inspectors in accordance with the following suggestion made by the representatives of the Loyal Women's Guild:

We think that it would be a good thing if either the Government or the municipality appointed an inspector, say a woman who is known to be decent and to understand these things thoroughly who would have access to all the back courts to look into bringing up and life of the infants in this town. I think there is great deal of infant mortality, especially amongst the class of women we are speaking of (mothers of illegitimate children), because they are not known about. We have found cases where natives are looking after these children.⁴⁷

The Loyal Women's Guild had been established during the South African War. It was founded on the principle of drawing "together the various races, sections and classes in a common community and to band women together for their mutual benefit."⁴⁸ By the turn of the twentieth century women's organisations such as these initiated many charitable and volunteer societies and openly contributed to and participated in public debates. Middle class settler women in the southern African colonies adopted the British "tradition of voluntary work and do-gooding" and while they remained

⁴⁷ TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908, Presented to both Houses of Parliament by Command of His Excellence the Governor. Pretoria: Government Printing and Stationery Office, 1908.

⁴⁸ For more on the origins of the Loyal Women's Guild see Elizabeth van Heyningen and Pat Merrett. "The Healing Touch": The Guild of Loyal Women of South Africa, 1900-1912,' in *South African Historical Journal*, 47:1, 2002, 24-50; and Deborah Kirkwood. 'Settler Wives in Southern Rhodesia: A Case Study,' in Hilary Callan and Shirley Ardener (eds.) *The Incorporated Wife*. (London: Croom Helm, 1984), 159.

'loyal' to the welfare of women of a certain class and rank, with the slow decline into 'poor whiteism,' they shifted their focus to be more inclusive of women of all races.⁴⁹ The Loyal Women's Guild suggestion to the Indigency Commission that a woman be appointed to investigate the pitfalls of illegitimacy and infant mortality also points to the growing role of women as social workers and moral guardians, and on a deeper level it is indicative of how women in South Africa used situations such as these to articulate their voices in a political framework. With the advent of child-welfare clinics, maternity homes, and child life protection societies, in the post-World War One era, middle class women – both white and black (although the latter later than white women) – actively sought out and adopted these roles. Coinciding with the women's suffragette women in South Africa,⁵⁰ it was a way in which women could use their position as "moral agents" in the life of the nation; to assert their position and justify their participation in a political domain.⁵¹ This has been aptly illustrated by Marijke du Toit's research on Afrikaner women and their presence in the domain of politics. Du Toit writes that Afrikaner women sought to "to extend their sphere of action to include active participation in formulating social policy," and carved out a place in the public arena by taking up "leadership positions in philanthropic, cultural and party-political organisations."⁵²

⁴⁹ Kirkwood. 'Settler Wives in Southern Rhodesia: A Case Study,' 159.

⁵⁰ For more on the suffragette movement in South Africa, see, Cherryl Walker. 'Conceptualising Motherhood in Twentieth Century South Africa,' in *Journal of Southern African Studies*, 21:3, September 1995, 417-437; and Cherryl Walker. 'The Women's Suffrage Movement: The Politics of Gender, Race and Class,' in Cherryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. (Cape Town: David Philip Publishers, 1990), 313-345.

⁵¹ Antoinette M. Burton. *Burdens of History: British Feminists, Indian Women and Imperial Culture, 1865-1915*. (Chapel Hill: University of North Carolina Press, 1994), 41-42.

⁵² Marijke du Toit. 'The Domesticity of Afrikaner Nationalism: Volksmoeders and the ACVV, 1904-1929,' in *Journal of Southern African Studies*, 29:1, 2003, 155.

In Natal, similar concerns of the Loyal Women's Guild were echoed by the Mother's Union and the Durban Christian Ministers' Association (DCMA).⁵³ In 1907 the DCMA requested a meeting with the Minister of Justice to discuss the "perils of child life" in the Colony and to suggest and support "certain proposals" for the better protection of infants by legislation.⁵⁴ In 1909, Ellen Blackmore, who at the time was the Secretary for the Maritzburg Mother's Union, wrote to Dr Hill in his capacity as Health Officer for Natal, asking certain questions about nursing, and more importantly, about the treatment and mortality of infants. Advocating better training and registration of midwives, Blackmore stated in her letter that she was concerned that the high rate of infant mortality in the Colony was due to the large number of untrained and uncertified midwives, which she "hoped there was some law against." She also wished to enquire if there was any fund or Society then present in Natal that provided nurses for the poor. With regards to the care of infants, she asked:

Does the Health Department give addresses or distribute pamphlets on matters of health in the Colony [and] is there any provision made by which very poor mothers with babies can get good pure milk cheaper than about 4/- an Imperial pint so many of them cannot afford that and

⁵³ Very little is known about the Maritzburg Mother's Union and the DCMA. On the DCMA, a section in a biography on a Baptist minister from Natal, G.W. Cross which notes that the DCMA consisted of ministers of the "non-conformist" and "free churches." Kathleen Edith Cross. *Ours is the Frontier: A Life of G. W. Cross, Baptist Pioneer*. (Pretoria: University of South Africa, 1986), 168. The National Automated Archival Information Retrieval System (NAAIRS) of the National Archives and Records Service of South Africa indicates that the DCMA was operational from the 1890s to 1910 and were active in lobbying for reform to marriage and gambling laws. PAR, CSO, 1390, 1894/1006, Honorary Secretary, Durban Christian Ministers Association. Forwards a Petition Respecting The Laws Of Gambling, 1894; and PAR, CSO, 1850, 1908/692, Hon Secretary Durban Christian Ministers' Association. Durban. Asks that copies of the proposed amendments to the Marriage Law of the Colony may be submitted to the Association for its consideration, 1908.

⁵⁴ PAR, MJPW, 135, MJ82/1907, Reverend A. Hall Durban: May a deputation from the Durban Christian Ministers Association wait upon the Minister of Justice when next in Durban with reference to the better protection of infants, 1907.

give the children stale, diluted, tinned milk with disastrous consequences?⁵⁵

In reply to this Dr Hill answered that while there was no law which prevented the employment of untrained or unqualified midwives, Section 29 of Act 21 of 1899 made it compulsory for all midwives to obtain certificates of competence from the Colonial Secretary.⁵⁶ Dr Hill was also not aware of any fund or society that provided nurses to the poor, except perhaps the Maritzburg Benevolent Society. He also wished to place on record that even though the Health Department did not make any provision for supplying pure milk at a cheaper rate, it did issue leaflets and pamphlets to mothers on such topics as the prevention of diseases. He ended his reply by declaring that the Health Department could have initiated many more reforms to decrease infant mortality rates, but that they were very dependent on the funds they received from Parliament.⁵⁷

Later that year, much to the satisfaction of the lobbyists, the Transvaal Colony passed the Infant Life Protection Aid Act – For the Better Protection of the Lives of Infant Children. In 1911, a year after Union, this Infant Life Protection Aid Act was adopted as a national Act.⁵⁸ When the *Rand Daily Mail* reported on this law, it stated that the Act was,

⁵⁵ PAR, DPH, 32, DPH256/1909, Ellen Blackmore Secretary, Pietermaritzburg Mother's Union. Asks certain questions in respect to nursing, treatment and mortality of infants, 1909.

⁵⁶ PAR, Natal Colonial Publications [hereafter NCP], 5/3/7, Acts of the Parliament of the Colony of Natal, 1899.

⁵⁷ PAR, DPH, 32, DPH256/1909, Ellen Blackmore Secretary, Pietermaritzburg Mother's Union. Asks certain questions in respect to nursing, treatment and mortality of infants, 1909.

⁵⁸ TAB, Governor of the Transvaal Colony [hereafter GOV], 1209, PS 53/56/09, Act No. 24 Of 1909 Better Protection Of The Lives Of Infant Children, 1909 and TAB, Colonial Secretary [hereafter CS], 1004, 21284, Infant Life Protection Act, Natal, 1911. In 1913, however, this Act together with the Cape Colony Act: Infant Life Protection Act, 1907, was consolidated to

... framed with the object of dealing with a question of vital importance, and one which needs immediate attention. For years past in Johannesburg, unscrupulous people have been actually making a living out of this sinister business in babies. The principal aim of the Act is, of course, to frustrate the nefarious dealing of those who are known to ply the trade, and also to make sure that when children are adopted they will, under Government supervisions, receive health and clean treatment.⁵⁹

This newspaper article also confirmed that baby-farming had existed in Johannesburg since the 1890s, apparently often existing under the guise of being described as an orphanage. But, as we have seen, prior to the passing of the Infant Life Protection Act in 1907 in the Cape and in 1909 in the Transvaal no procedural code existed by which the state could act on baby-farming, illegal adoptions or unregistered foster homes. According to the newspaper, rescuing children from these baby-farms had often been achieved by “benevolent individuals” who wished to save “unfortunate infants from bad surroundings.” It reported that on the Rand, at the head of this mission were a Mrs Kloppers and her assistant, Miss Malan.⁶⁰ It is not surprising that the primary concern for both Kloppers and Malan was the welfare of white children and, as a result of their “unostentatious work,” they were able to rescue many white babies from “the clutches of coolies, Malays and others,” who were allegedly “adopted for the purposes of gain and a certain future of evil.”⁶¹ The newspaper’s commentary on this incident is laden with racist overtures and as Chapter Four will show colonial

become Act 25, The Children’s Protection Act 1913. This Act was later repealed by the Children’s Act 31 of 1937.

⁵⁹ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do’, by a Special Correspondent. *Rand Daily Mail*, Friday, 29th October 1909; TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910.

⁶⁰ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do’, by a Special Correspondent. *Rand Daily Mail*, Friday, 29th October 1909.

⁶¹ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do.’

newspapers certainly conformed to racial stereotypes and biased editorial styles that were either sympathetic or judgemental in nature, depending on the protagonist in question. This article is emblematic of this predilection, where the discourse of vulnerable children did not seem to cut across race prejudice, as the reportage focussed only on white infants.

Recounting their visits to one of these so-called orphanages, Miss Malan's statement reads as follows:

I visited a coloured woman in the Malay camp and found that she had in her charge a sweetly pretty child of five years. The little one's hair was golden, her complexion pink and white and she possessed wonderful blue eyes. I asked the woman to hand over the child: and she replied that she was willing to if she got a money recompense. I asked her what she wanted and she told me that she had received cash down with the child when she took it over. Further, she stated that if I gave her £100 I could take the handsome girl. I explained that that was impossible and she flew into a rage and blurted out: 'You want the child, do you? If you can give £100 I will hand it over. Do you think that I can't get £100 easily through her? She is very pretty and very nice, and when she is big, I will get £100 in no time through her.' I could do nothing further that day; but I had the child rescued later. Poverty had a great deal to do with the loose methods of parents parting with their own flesh and blood.⁶²

Miss Malan added that there were many instances where children had been handed over to Coloured women because their parents were simply at the point of starvation and when the child was raised by these Coloured women, they were "lost to the church and also to civilisation." Miss Malan also reported that there were some cases where women gave up their children because they have been deceived by "immoral"

⁶² 'Baby-Farms on the Rand. Sinister Traffic - What the new Law will do.'

men who had abandoned these women. Of the new Act, she asserted that “in view of the evil[,] there is an opportunity for some good to be done.”⁶³

The underlying motivation for the introduction of the Act in the Transvaal lay not only in the findings of the Indigency Commission of 1908, but also because of the high rates of infant mortality that were being reported by the Medical Health Officers of the different colonies at that time.⁶⁴ Evidence received before the Commission had stated that the death rate among illegitimate children was “abnormally high,” that baby-farming existed to a large scale, and that the baby-farmers of white children were in fact Coloured and ‘Coolie’ women. In the minds of medical professionals high illegitimate birth rates were linked to high infant mortality. The cause of these deaths was mainly due to ignorance, ill-treatment or neglect – either on the part of the mother who had very little knowledge of proper child rearing methods, or on the part of baby-farms acting as foster homes – and if a charge could be proffered under these circumstances, it was infanticide. This point is well illustrated by the case of Kate Baatjes, which is discussed in Chapter Four. When Kate Baatjes’ child was found abandoned in Longmarket Street, Pietermaritzburg, she was initially charged with “child abuse,” “malicious neglect and exposing an infant.” However, when it was

⁶³ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do.’

⁶⁴ On the Commission, Lord Selbourne, High Commissioner for South Africa and Governor of the Transvaal and Orange River colonies, noted “that the report is the most valuable and able one, and is the result of prolonged and careful investigation into the general, social, and industrial conditions of the country. It covers a wide field, and deals with the most fundamental difficulties which the South Africa Governments have to face.” TAB, GOV, 1179, 87/4/08, Transvaal Indigency Commission, 1908.

established that this negligence had caused of death of the infant, the indictment was changed to one of infanticide.⁶⁵

As mentioned, Dr Anderson, MOH of Cape Town, was influential in lobbying for legislation for the protection of children. For Cape Town he found that the “infant mortality rate for illegitimate children was much higher than the average for all infants in the city.”⁶⁶ He also found that there were many “private houses” that took in illegitimate children to conceal their existence and in 1903 he reported that “there have been repeated deaths of young infants at several houses, and in one instance I counted five such deaths in one house, three of them being those of illegitimate children.”⁶⁷ In subsequent years, Dr Anderson prolifically reported on and made public the increasing prevalence of illegitimacy in the city. In their article ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ Sandra Burman and Margaret Naude put forward the argument that the passing of the Infant Life Protection Act in 1907 in the Cape Colony was, in large part due to Anderson’s efforts.⁶⁸ The Transvaal 1909 Act contained very similar provisions to those concerned in the Cape Colony Act and the introducers of this Act in the Transvaal were of the opinion that a law such as that in the Cape as well as the English Act (of 1908)

⁶⁵ See PAR, AGO, I/8/11, 22A/1869, John Bird, Resident Magistrate, Pietermaritzburg: Forwarding Depositions in the case of Kate Baatjes for Child Abuse, 1869; and PAR, RSC, 1/1/18, 11/1869, Supreme Court Criminal Case. Regina versus Kate Baatjes.

⁶⁶ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ 393.

⁶⁷ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ 394.

⁶⁸ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ 395.

“...was bound to minimise the evils which the Indigency Commission found to exist.”⁶⁹

One of the main features of the Transvaal Act was a penalty of £100 or six months imprisonment for any person who, “after adopting a child ill-treated it or failed to report to a Magistrate that the child was in his or her possession.” The Act also mandated that the age limit for adopting a child was before the child turned seven years of age and the future parents must have obtained a certificate from a Magistrate which showed that they were “fit and proper persons to have care of a child.”⁷⁰

Another important clause of the Act was that people who adopted a child had, at any time on demand, to hand over the child to their biological parents. The Act also stipulated that a magistrate could, without notice, order a medical examination of the adopted child and if the person who had care and custody over the child refused to allow or obstructed this examination, then that person would be guilty of

⁶⁹ TAB, GOV, 1209, PS 53/56/09, Act No 24 Of 1909 Better Protection of the Lives of Infant Children, 1909. This “English Act” that the quotation makes reference to is the 1908 Children Act. This was based on the 1872 ‘Infants Protection Bill – to make better provision for the protection of infants entrusted to persons to be nursed or maintained for hire or reward’. However, there were some problems with the 1872 act, specifically with regards to baby-farming. For instance, the 1872 Act did not provide “for the complete registration and inspection of every house where any child is taken in, to be nursed by those who are not related to the child.” Furthermore, there were some institutions and nurseries that were exempt from inspection. The Special Purposes and Sanitary Committee of the Metropolitan Board also believed that the Act should mandate that only Medical Health Officers should be assigned to carry out inspections as they were in the best position to acquire information with respect to cases of baby-farming. ‘Baby-Farming in the North,’ in *The British Medical Journal*, 1 May 1880, and British Parliamentary Papers, 046866-1871, A Bill for the Better Protection of Infant Life. For more on this see also Grey. “More Ignorant and Stupid than Wilfully Cruel’: Homicide Trials and ‘Baby-Farming’ in England and Wales in the wake of the Children Act 1908.’

⁷⁰ TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910. The age limit for adoption changed to 16 with the passing of the 1923 Adoption of Children Act. For more on this history of adopting legislation in South Africa see, Sandra Ferreira. ‘The Origin of Adoption in South Africa,’ in *Fundamina*, 13:2, 2007, 1-10.

contravening the Infant Life Protection Act. A very important clause (which was most probably an attempt at curbing baby-farming activities) was that no insurance was allowed to be taken out on a child's life by its adoptive parents. The Act also put in motion a procedure by which children could be adopted. For instance, those prospective parents who wished to adopt a child needed to advertise as such in a local newspaper, and a District Magistrate needed to be informed of the adoption within three days of finalising the process. Furthermore, if the address of the adoptive parents changed, or if the child was moved to a new location, or if the child or infant died, a Magistrate also needed to be notified.⁷¹ These provisions were also mandated in the post-Union Act.

However, high infant mortality rates continued to plague the state and medical fraternity well into the Union years. Reformulating adoption and foster care legalisation was only one avenue through which infant mortality rates could be reduced, but this did not address the high number of infant deaths which resulted from improper and inadequate care such as unsanitary conditions, incorrect feeding methods, infectious diseases, or lack of appropriate medical attention. What follows in the next section is an analysis of reported infant mortality rates by the medical profession and the suggested causes of this high mortality rate, including those such as infanticide by neglect.

⁷¹ TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910. In the Union years, it was only in 1923 that Act 25, the Adoption of Children Act was passed, which legalised adoption.

Infant mortality, Infant Care and the Medical Fraternity

In addition to the problems associated with illegitimacy of children and proper infant care, anxieties around high infant mortality rates remained a pressing concern for the new Union government. This can be seen from a number of sources. For instance, between 1907 and 1911 articles in the *South African Medical Record (SAMR)* show that the medical fraternity in South Africa was deeply concerned with the increasingly high infant mortality rates in the country as compared to other parts of the British dominion, but also in relation to the earlier years of the colonies.⁷² Tied to this were concerns around infant feeding, poor parenting, and the problem of unqualified midwives, as well as the relationship between high illegitimate infant mortality and “passive infanticide.”

In writing about infant feeding in a 1907 article, C. T. McClure, a physician, argued that the question of how infants should be properly fed was “most pertinent” as it had some correlation to all the “misdemeanours” surrounding inadequate infant care. By misdemeanours he referred to the lack of education and incompetence on the part of mothers, and poor advice given to mothers as well as to unsanitary living conditions. He noted that he was writing this article in “...an age when infant mortality is the most unsatisfactory section of the Registrar-General’s reports.”⁷³ The most detrimental

⁷² See for instance, ‘Notes on Infant Feeding,’ and ‘Report of the Registrar of Births and Deaths, Orange River Colony,’ in *South African Medical Record* [Hereafter *SAMR*], Vol. V, January, 1907; ‘Death Rates in Different Sections of the Community in Natal, 1904-1908,’ in *SAMR*, January 1909; ‘Report on Johannesburg Native, Coloured and Asiatic Infant Mortality,’ in *SAMR*, Vol. IX, June 1911; and ‘Report of MOH for Johannesburg,’ in *SAMR*, Vol. X, August 1912, 326-330.

⁷³ C. T. McClure. ‘Notes on Infant Feeding,’ in *SAMR*, Vol. V, January, 1907, 1.

problem regarding infant feeding, he maintained, was “ignorance,” both on the part of the mother, but also the medical profession at large. He added that “[f]ar be it for me to cast a slur on science, but our scientific leaders remind me of the hunt for the philosopher’s stone in their attempts towards the mutation of milks.”⁷⁴ By this, he was implying that medical professionals could not reach a unanimous consensus as to what should constitute an infant’s diet, which he argued was simple human milk, and that mothers who could not suckle made do with anything that was available to them which could have been cow’s, goat’s or donkey’s milk, condensed milk or cream. “Needless to say,” he added, “many infants developed Rickets diseases or simply became weak and feeble.”⁷⁵

In 1909, at a meeting of the South African Medical Congress, Dr Ernest Hill, presented a paper on the comparisons of the different causes of infant death rates for ‘Europeans’ and Indians. He prefaced his talk by delineating why he chose these two particular “racial groups”, claiming that in Natal they existed at the “two extremes of the social scale in respect of material and social prosperity,” yet ironically the registration of deaths for these two groups were fairly reliable. Thinking about explanations for the difference in death rates, Dr Hill considered whether or not it was due to social circumstances, such as “prosperity versus poverty with regards to food, clothing, housing, exposure to weather, climatic changes, sanitary conditions, a

⁷⁴ McClure. ‘Notes on Infant Feeding,’ 1.

⁷⁵ By the 1920s, there was still no consensus amongst doctors about either the correct and proper method of feeding or what the better substitute for human milk would be. See for instance E. P. Baumann transcribed address to the Eighteenth South African Medical Congress. ‘The Use of Simple Cow’s Milk Mixtures in Infant Feeding,’ in *SAMR*, Vol. XXI, 28 April 1923, 182-186.

lack of medical attendance or education.”⁷⁶ Commenting specifically on infant mortality between 1904 and 1908, he added:

There are some features about the infantile mortality which are decidedly interesting. The European infantile mortality from all causes was 72, the Indian 123 per 1,000 births. The chance of an Indian infant dying in a year is one and two-thirds as great as a European. The chance of death in the first month is more than two to one, for whereas only one-third of European deaths occur in the first month, nearly half of the Indian deaths are so recorded. About two-thirds of the deaths in each group in the first month are due to premature birth, injury at birth or wasting diseases.

In explaining the differences, Dr Hill drew attention to the feeding regimes of infants, arguing that breast-fed babies would suffer less from gastroenteritis, which at time was the leading cause of infant mortality.⁷⁷ Concurring with present-day breast-feeding campaigns, Dr Hill also noted that despite the unsanitary living conditions of Indians in Natal, breast-fed Indian children suffered less from diarrhoeal diseases than bottle-fed white infants. He concluded his article by stating that,

The general conditions of life, and the fact that many Indian women work in canefields and elsewhere adequately account for the low initial vitality of the children. A large proportion of white mothers do not suckle their children, many more after three months or so substitute other articles in whole or part. Breast feeding is necessarily universal with Indian immigrants. With an environment entirely adverse, with scanty foul clothing, with all opportunities for sucking dirty objects, with very little care bestowed the breast fed Indian child of the very poorest classes in the community, runs the gauntlet of intestinal trouble

⁷⁶ Ernest Hill. ‘Death Rates in Different Sections of the Community in Natal, 1904-1908,’ in *SAMR*, January 1909, 16.

⁷⁷ According to the World Health Organisation [hereafter WHO], diarrhoeal diseases such as gastroenteritis is still one of the leading causes of neonatal mortality. See WHO, ‘Diarrhoeal Diseases,’ found at <http://www.who.int/mediacentre/factsheets/fs330/en/index.html>, accessed on 4 March 2011.

far more successfully than his pampered white contemporary. A more eloquent testimonial of the value of breast feeding could not be found.⁷⁸

In the wider imperial context, discourses on breast-feeding in addition to revolving around issues of infant mortality, infant care, and mothercraft were also closely concerned with ideas about female decency and modesty, and in some part they were embedded in cultural, religious, and superstitious understandings.⁷⁹ That white women – according to Dr Hill – did not breast-feed their children for longer than three months was no overstatement. In the early twentieth century, white women in Natal readily turned to domestic servants to act as wet nurses or to bottled milk as substitutes.⁸⁰ However, improper breast-feeding practices, either through neglect or lack of knowledge were considered by medical experts as one of the causes of high infant mortality.

Subsequent to Dr Hill's article, in 1911, Dr Charles Porter, Medical Officer to the Johannesburg Municipality published similar statistics on infant mortality in relation to main South African towns, namely Pretoria, Cape Town, Kimberley and Johannesburg and, two Indian cities, Bombay and Bangalore.⁸¹ He included these

⁷⁸ Hill. 'Death Rates in Different Sections of the Community in Natal, 1904-1908,' 18.

⁷⁹ Valerie Fildes. *Breasts, Bottles and Babies: A History of Infant Feeding*. (Edinburgh: Edinburgh University Press, 1986); Nancy Rose Hunt. "Le bébé en brousse': European Women, African Birth Spacing and Colonial Intervention in Breast Feeding in the Belgian Congo,' in *International Journal of African Historical Studies*, 21, 1988, 401-32; and Thoko Ndaba and Catherine Burns. 'The History and Politics of Breastfeeding in South Africa in the Context of the Current HIV Driven Breastfeeding Crisis.' Unpublished paper presented on the 1st June 2004 at the History and African Studies Seminar hosted by the History Department at the University of KwaZulu-Natal. [Permission to cite granted]

⁸⁰ See Joy Brain. 'Health and Disease in White Settlers in Colonial Natal,' in *Natalia*, 15 December 1985, 64-78.

⁸¹ An earlier report submitted to the *SAMR* by Dr Porter provided statistics for Johannesburg in relation to Glasgow, London, Dublin, Paris, St Petersburg, Berlin. Cairo, New York, Buenos Aires, Sydney, and Brisbane, where the infant mortality rates in these cities were higher than

latter two by way of comparison with regards to Indians in South Africa. His table is reproduced here:

Table 4: Infant Mortality per mille ⁸²				
	Natives	Coloureds	Asiatics	Whites
Pretoria	340	126	304	121
Cape Town	216 for all Coloured races			104
Kimberley	302 for all Coloured races			80
Bombay	-	-	404	-
Bangalore	-	-	352	-
Johannesburg	361 for all Native and Coloured races		295	117

Of these statistics in Table 4, Dr Porter admitted there was a wide margin for error, because the data for these comparisons was not complete and that there were “owing to the wildly differing proportions of the racial elements in these towns” which needed to be taken into account. Yet, despite the lack of reliable statistics, a result he said of various bureaucratic hurdles, Dr Ported insisted that the report was “a very valuable one,” since many of his deductions – particularly that inherited syphilis was also a major cause of infant deaths – were extremely important for thinking about ways of reducing infant mortality rates.⁸³ This focus on infant mortality rates in the *SAMR* was in most instances linked to a eugenicist discourse on motherhood. In her

that recorded for Johannesburg. ‘Report of the M.O.H for Johannesburg, 1909-1910 and 1910-1911,’ in *SAMR*, Vol. X, 10 August 1912, 326-330.

⁸² ‘Report on Johannesburg Native, Coloured and Asiatic Infant Mortality,’ in *SAMR*, Vol. IX, June 1911, 160.

⁸³ ‘Report on Johannesburg Native, Coloured and Asiatic Infant Mortality,’ 160.

article “For the Sake of the Race:’ Eugenic Discourses of Feeble-mindedness and Motherhood in the *South African Medical Record*, 1903–1926,’ Susanne Klausen argues that in the articles published in the *SAMR* relating to issues of motherhood and child welfare between 1903 and 1926, white medical doctors focussed on the health and overall wellbeing of white children since they occupied the role of the future generation of the white race.⁸⁴

With regards to the causes of death, Dr Porter remarked that a large percentage of the mortality rate for Africans, Indians and Coloureds occurred in the early months, just after birth, with 21 per cent in the first week, and 39 per cent in the first month. He identified some of the causes as respiratory diseases, “prematurity,” diarrhoeal diseases and “ill defined conditions described as ‘debility’ and ‘convulsions.’”⁸⁵ Referring to Africans, Indians and Coloureds, Dr Porter noted that:

- The mortality is very much greater than amongst whites, and probably greater taking the whole of the towns, that figures indicate.
- It is much greater than amongst kraal natives.
- The incidence is peculiarly on the first month.
- Bad hygiene, syphilis, lack of medical attendance, and, most of all, condensed milk are responsible factors.⁸⁶

A further observation that Dr Porter made was that “neglect, due to town mothers being often immoral, and not wanting the child,” accounted for many deaths of African, Indian and Coloured children. While these factors may have resulted in “actual infanticides,” as suggested by Dr Porter, he warned against making this assumption. Very little can be gleaned from this statement since Dr Porter does not

⁸⁴ Klausen. ‘For the Sake of the Race.’

⁸⁵ ‘Report on Johannesburg Native, Coloured and Asiatic Infant Mortality.’

⁸⁶ ‘Report on Johannesburg Native, Coloured and Asiatic Infant Mortality.’

clearly define what infanticide means in this context, nor does he state whether the statistics he presented included those of deaths established as being caused by infanticide.

One of the ways of reducing infant mortality rates in South Africa proposed by welfare agencies and medical professionals was through the implementation of mothercraft programmes which would instruct women (white women in particular) in the skills of “good and proper infant care”, and this included good hygiene; correct feeding methods; regular exercise and sufficient sleep. Mothercraft had initially emerged as a disciplinary knowledge in the early 1900s and was strongly influenced by a New Zealand based doctor and child welfare and health reformer, Dr Truby King.⁸⁷ Truby King’s programme – which developed into a much wider world movement – was endorsed by leading South African medical and social welfare professionals, such as Dr Lilian Robinson and A. Simpson Wells.⁸⁸ It was a regime that was purportedly neutral and ‘scientific,’ but which in fact was laden with ideas about class, race and gender, as this next section illustrates.

⁸⁷ Linda Bryder. *A Voice for Mothers: The Plunket Society and Infant Welfare, 1907-2000*. (Auckland: Auckland University Press, 2003), 8-11.

⁸⁸ Klausen. “For the Sake of the Race,” 46-47.

“How this evil can be controlled?”⁸⁹ ~ Discourses of Mothercraft
and Child Welfare

As illustrated in Chapter One, by the 1920s rates of incidences of infanticide and concealment of birth convictions had started to decrease in Natal. This section considers some of the reasons why this was so, by suggesting two possible explanations. The first relates to mothercraft and the emphasis placed by Child Welfare organisations and the Union state on training young and inexperienced women in the skills for raising healthy children. This was based on the premise that high infant mortality and cases of infanticide by neglect were possibly due to a lack of knowledge on the part of the mother. The second considers the increasing availability of alternative options to prospective mothers of illegitimate children, such as contraception, abortion, and growing child welfare services.

It was only in 1913 that the Union of South Africa passed the Children's Protection Act. This was based on laws that already existed in the Transvaal, Natal, and Cape Colonies, but the 1913 Act was designed primarily with white children as the focus.⁹⁰ In her article 'Class, Colour and Gender in Child Welfare in South Africa, 1902-1918,' published in 1990, Linda Chisholm argued that this Act further “entrenched the differential treatment of children in South Africa not only according to ‘specific categories of need,’ but also according to categories of class, colour and gender.”⁹¹ As a

⁸⁹ Lilian A. Robinson. 'Some Problems of Child Welfare,' in *SAMR*, Vol. XV, 24 November 1917, 341.

⁹⁰ Linda Chisholm. 'Class, Colour and Gender in Child Welfare in South Africa, 1902-1918,' in *South African Historical Journal*, 23, 1990, 103.

⁹¹ Chisholm. 'Class, Colour and Gender in Child Welfare in South Africa,' 100.

tool of social intervention, that Act transmitted many of the colonial preoccupations about race and class into the Union years. On a basic level, the Act attempted to protect children from cruelty, neglect, abuse and exploitation. On a much broader level, however, the 1913 Act resonated with discourses that originated in or about racial degeneration in urban areas which had surfaced during the first decade of the twentieth century in the Transvaal, Natal, and Cape Colonies.⁹²

An integral aspect of the discourse concerning infant protection related to the role of mothers in proper and efficient child care. As in Britain and other parts of the empire, the solution to improving the overall health and lifespan of infants for ensuring racial superiority lay in the educating of mothers in child rearing. By the turn of the twentieth century, and this is true for much of the Northern hemisphere, women were seen as the custodians of the moral and physical health of the nation. As Anna Davin argued in the seminal article 'Imperialism and Motherhood,' "... good motherhood was an essential component in [the] ideology of racial health and purity."⁹³ According to Saul Dubow at the heart of the nascent eugenics movement in South Africa was the concept of "biological determinism."⁹⁴ In 'For the Sake of the Race,' Klausen argues that in the *SAMR*, the eugenics discourse was the underlying thread in most articles concerning motherhood and matters related to child welfare

⁹² This is also evidenced by the 1913 Report of Commission Appointed to Enquire into Assaults of Women. The Commission was essentially a response to a moral panic among whites relating to the perceived rise in the number of assaults by black men against white women. The Union state approached this problem by understanding these fears as resulting from urban degeneration and the increasing number of black men in the city centres. TAB, Biblioteek, P721, Report of the Commission Appointed to Enquire into Assault on Women, (UG 39-1913). See also Timothy Keegan. 'Gender, Degeneration and Sexual Danger: Imagining Race and Class in South Africa, ca.1912,' in *Journal of Southern African Studies*, 27:3, September 2001, 459-477.

⁹³ A. Davin. 'Imperialism and Motherhood,' in *History Workshop Journal*, 5, Spring 1978, 12.

⁹⁴ Dubow. 'Chapter 4 – Biological Determinism and the Development of Eugenics,' in *Scientific Racism in Modern South Africa*, 120.

and that eugenics was accepted as a tool for nation-building by the medical profession.⁹⁵

In the early Union years, debates around women's responsibility for the health of a nation persisted in the public domain.⁹⁶ There were various efforts, by the state, welfare organisation and the medical fraternity to inculcate an ideology of good mothercraft amongst working class whites and urban Africans, Indians and Coloureds. The formation of organisations such as the Mothercraft League, established first in Natal in 1912, and later in the Transvaal, and the Helping Hand for Native Girls, in addition to regional child welfare societies, were some of the attempts at reducing infant mortality and improving child care.⁹⁷ According to Alan Gregor Coble, the Mothercraft League was founded by a group of white women missionaries belonging to the American Board of Missions. The organisation initially identified themselves by the isiZulu name: Inhlangano Yab'Ondhlayo, and described their mission as "... a league of South African women of all colours, who wish to serve Christ by the promotion of Christian training in the home and Christian social services for Natives in towns."⁹⁸

⁹⁵ In the 1920s, H. B. Fantham an exponent of eugenics makes similar arguments in the *South African Journal of Science* [SAJS]. 'Heredity and Man: Its importance both Biologically and Educationally,' in *SAJS*, 21, 1924, 524; and 'Some Factors in Eugenics,' in *SAJS*, 22, 1925, 404.

⁹⁶ Klausen. 'For the Sake of the Race.'

⁹⁷ In Chapter 5 of her thesis on reproductive health in South Africa, Catherine Burns considers the efforts made by doctors and nurses at Bridgman Memorial Hospital, Johannesburg in educating women on proper rearing methods. See 'The Founders of the Bridgman: Mothercraft to Maternal Health,' in 'Reproductive Labors: The Politics of Women's Health in South Africa, 1900 to 1960.' Unpublished Thesis (PhD), Northwestern University, Evanston, Illinois, 1995.

⁹⁸ Alan Gregor Coble. *The Rules of the Game: Struggles in Black Recreation and Social Welfare Policy in South Africa*. (Westport, Connecticut: Greenwood Press, 1997), 85.

It must be noted, however, that many of these organisations were both paternalistic and racist, driven by and first conceived of with the welfare of white children as the primary objective. This can be illustrated by a letter in 1914, from Jessie Hertslet⁹⁹, who served as General Secretary of the Mothercraft League in Natal, to Lady Gladstone asking for assistance in addressing the problems posed by 'native girls' who cared for white children, clearly demonstrating the deeper anxieties of racism and insubordination of domestic servants. In the letter, the 'ladies' of the Mothercraft League, wished, she said, to draw attention to the increasing number of 'native girls' who were moving into the urban centres, and taking up employment as domestic servants. Hertslet wrote that "many of these girls, who are respectable on arrival, succumb into temptations with which they are surrounded and fall into sin ... which is a serious menace to the whole community and especially to the little children in the charge of such girls."¹⁰⁰ Some of the recommendations that the League put forward included:

1. Native girl servants should have safe and private sleeping quarters, if possible, in the house, in which they can lock themselves and secure the window. These should be visited by the mistress.
2. A girl not living with her parents and refusing to sleep at her employer's or at hostel for native women should be reckoned as of loose character and not employed.
3. Nurse girls, unless of exceptional character, should not be allowed to take European children out for any length of time, as they often congregate with girls of loose character and boys, and the children hear and see things likely to rob them of all innocence.
4. Native girls away from their homes are often tempted to sin by their loneliness especially in the evenings. A mistress who wishes to have a respectable servant will try to provide a suitable employment for her leisure hours and will show interest in the girl's welfare.

⁹⁹ In 'Reproductive Labors' Catherine Burns spells Hertslet as 'Hertzlet.' The form taken here is as it appears in the corresponding newspaper source.

¹⁰⁰ 'Mothercraft League – Inhlango Yab'Ondhlayo,' in *Ilanga Lase Natal*, 24 April, 1914, 2.

5. As it is a very great help to the girls to keep in touch with their churches, we would request that you would kindly allow your servants a free afternoon on which to attend girl's classes as well as Sunday afternoon for her church services. There is no doubt that this would make the girls give better and more willing service.¹⁰¹

The supposed overall object of the Mothercraft League was to improve the lives of 'native girls' who were apparently the "subjects of severe temptations" and belonged to a race that was "only beginning to emerge from heathendom."¹⁰² In Natal, the relationship that mistresses shared with their domestic servants was, in all senses of the word, ambiguous. While these mistresses espoused a 'civilising mission' ideology, the ulterior motives was undeniably rooted within the boundaries of the 'colonial order of things.'¹⁰³ The primary objective of the Mothercraft League was ultimately to protect white children, but the only way this could be achieved was by keeping a watchful eye over their servants, under the guise of 'saving them.' Similarly, in her study on the creation of nurseries in the Dutch East Indies, Ann Stoler argues that deep concerns about the "damaging influence of the native nursemaid" was starkly expressed in child rearing manuals and mothers were encouraged to keep their domestic servants under strict surveillance.¹⁰⁴

¹⁰¹ 'Mothercraft League – Inhlango Yab'Ondhlayo,' in *Ilanga Lase Natal*, 24 April, 1914, 2.

¹⁰² 'Mothercraft League – Inhlango Yab'Ondhlayo,' in *Ilanga Lase Natal*, 24 April, 1914, 2.

¹⁰³ Ann Laura Stoler. *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*. (Durham, N.C.: Duke University Press, 1995).

¹⁰⁴ Stoler also notes that that was a problem that was still prevalent in the 1920s in South Africa. She adds that when Andrew Carnegie's Carnegie Corporation commissioned a project (The Carnegie Commission) delving into the problems of 'poor whites,' the results of the project emphasised the harmful role 'native servants' had on the health of white children, and that "it bore the hallmark of the barbarism with which these people were in daily contact of their 'raw' native servants." Ann Stoler. 'Tense and Tender Ties: The Politics of Comparison on North American History and (Post) Colonial Studies,' in *The Journal of American History*, 88:3, December 2001, 850-852.

At the end of her letter Hertslet added that she hoped that missionaries and others who were interested in the welfare of “Native” girls would try and circulate the letter. Missionaries, as John Iliffe has pointed out more generally for Africa, “devoted much energy to protecting urban women, especially domestic servants who might contaminate white families.”¹⁰⁵ Importantly, there were, however, also Christian African women-led organisations emerging in the post-World War One period, such as the Bantu Women’s Self-Improvement Association (1918) and the Bantu Purity League (1919). Earlier efforts in ‘reclaiming’ a sense of black women’s agency were directed under the guise of women’s prayer unions whose primary concern was the immorality of young African women.¹⁰⁶ The Bantu Purity League according to Shula Marks was established in order to “improve the moral standards of African ‘girls,” and directed their efforts at educating young women about sexual purity and continence.¹⁰⁷ The League “aimed ‘to keep the girls pure in the right way’ – at a time when the extent of premarital pregnancy, especially amongst Christian girls, was causing a considerable alarm in black and white mission circles.”¹⁰⁸ In the 1920’s Afrikaans women belonging to the Afrikaanse Christelike Vroue Vereniging (Afrikaans Christian Women’s Society) also became actively involved in ‘vrouesake’ (women’s issues).¹⁰⁹ Essentially, it can be argued that the efforts of these organisations

¹⁰⁵ John Iliffe. *The African Poor: A History*. (Cambridge: Cambridge University Press, 1987), 134.

¹⁰⁶ Iliffe. *The African Poor: A History*, 134. See also Deborah Gaitskell. ‘Wailing for Purity: Prayer Unions, African Mothers and Adolescent Daughters 1912-1940,’ in Shula Marks and Richard Rathbone (eds.) *Industrialisation and Social Change: African Class Formation, Culture and Consciousness, 1870-1930*. (London: Longman, 1982), 338-357.

¹⁰⁷ Shula Marks. ‘Patriotism, Patriarchy and Purity: Natal and the Politics of Zulu Ethnic Consciousness,’ in Leroy Vail. *The Creation of Tribalism in Southern Africa*. (Berkley: University of California Press, 1989), 228.

¹⁰⁸ Marks. ‘Patriotism, Patriarchy and Purity: Natal and the Politics of Zulu Ethnic Consciousness,’ 228.

¹⁰⁹ For more see du Toit. ‘The Domesticity of Afrikaner Nationalism: Volksmoeders and the ACVV, 1904-1929.’

were an attempt to avoid unpropitious pregnancies in the hope of avoiding illegitimate births and their associated ills.

At the first South African Child Welfare Conference held in 1917, the problems of proper infant care – poverty, ignorance and defective hygiene – were described as the “three most formidable lions” in the path of child welfare programmes.¹¹⁰ Dr Lilian Robinson, who was a member of the Cape Town based Child Life Protection Society, described the conference as a “stock-take” of the moral, mental, and physical needs of the child. From Dr Robinson’s comprehensive account of the conference, the concept of mothercraft was evidently the main focus of debate. However, an important interjection that Dr Robinson made regarding high infant mortality rates across the different racial groups was that, and in addition (and significantly for this thesis) to substandard sanitation, an inadequate water supply, overcrowding in slum tenements, and apathy on the part of the general public, there was the practice of baby-farming as reported by the Child Life Protection Society.¹¹¹ On this, she wrote:

In spite of all the activities of the Child Life Protection Society [baby-farming] constitutes a serious menace to the infant life in our midst. There are a large number who simply live upon the deaths of the babies committed to their care. Such women receive an unwanted child with a

¹¹⁰ Robinson. ‘Some Problems of Child Welfare,’ 339.

¹¹¹ The problem of inadequate sanitation amenities in South African cities and its dangerous impact on public health had always posed a problem for colonial and thereafter provincial governments. In 1887, *The Natal Witness* published a report on the finding of a Select Committee on Sanitation. The article stated that “the excess of the death-rate seems principally due to the large infant mortality, attributable chiefly (according to medical evidence) to an insufficient supply of water, overcrowded dwellings, and the vitiated atmosphere caused by defective drainage, and want of cleanliness.” ‘Sanitary,’ in *The Natal Witness*, 14 August 1877. For more on the problems of sanitation on public health in general see M. W. Swanson ‘The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909,’ in *Journal of African History*, 18:3, 1977 and Stephen Sparks. ‘Playing At Public Health’ - The Search for Control in South Durban 1860-1932.’ Unpublished Thesis (Honours-History), University of Natal, 2002.

sum of money down, and no questions asked. The child is then insured in what is practically a burial club, and before it is six months old the sum necessary to bury it has been secured and the baby lies in a nameless grave.¹¹²

And despite the many efforts of the Society to rescue these babies, Dr Robinson added that they were greatly hampered by adequate legislation. In a section entitled “How this evil can be controlled,” Dr Robinson suggested that:

Early notification of births would be one weapon by which this evil could be tackled. Numbers of these babies die within the first four weeks before their births are registered. A record should be kept of every foster-mother, and her house inspected at least once a month by specially-trained women inspectors. Men are worse than useless for this purpose. Every foster-mother should be required to bring her foster-children to a consultation bureau if the inspector considers it necessary. It is extremely desirable that the foster-mother should not be given the whole amount of the money but that at least a third should be kept back and the infant's food bought and its various necessities provided out of this. With condensed milk at 1s. 2d. a tin, the temptation to these women to make one tin take the place of two, or even three, is very great indeed.¹¹³

In keeping with the aims of some of the mothercraft associations discussed above, some of her final comments were directed at the question of housing for mothers of illegitimate children and the dire need for domestic education for ‘girls’ as a way of alleviating the problems with proper infant care. What remains important about this article by Robinson, as well as those by Hill and other medical professionals and social workers, is that the perspectives they offered were crucial in shaping state interventions. However, these developments were located in the 1920s era of the

¹¹² Robinson. ‘Some Problems of Child Welfare,’ 341.

¹¹³ Robinson. ‘Some Problems of Child Welfare.’

liberal state (eager to win the white working class vote) and philanthropic work, which fixed its attention to the plight of poor whites.

Subsequently, in 1920, at the Presidential Address to the Eastern Province Branch of the British Medical Association, Dr G. Porter Mathew further stressed the important role women played in the health and strength of the nation, referring particularly to the “white race.”¹¹⁴ According to Klausen, underlying all these articles in the *SAMR* on the ways in which high infant mortality rates could be reduced, was the concept of education and training women in how to be good mothers. For instance, the yearly Baby Shows that were held by the Child Life Protection Society and Infant Consultation Bureaux, where “model” European babies were put on display, and where mothers were educated in “proper infant care,” were undoubtedly a glaring testament to this.¹¹⁵ Dr Porter Mathew seemed inclined to attribute the ignorance of women about how to be “good mothers” to basic intuition. In his lecture, he stated that “the human mother, alone, seems to lack “instinct” in the rearing of her offspring.” Klausen further states that Porter Mathew believed that it was a woman’s responsibility to equip herself with knowledge of mothercraft, since “women were destined by nature” to be the “source from which a long line of historical stars may rise.”¹¹⁶ He went on to say: “Take infant life: does not every true woman long to mother something, from the age of infancy, when the more decrepit the doll the greater the affection lavished, to old age with the special predilection of grannie for

¹¹⁴ G. Porter Mathew. ‘Woman’s Responsibility to the Health of the Nation,’ in *SAMR*, Vol. XVIII, March 1920, 109-111, as quoted in Klausen. ‘For the Sake of the Race,’ 45. For more on Porter and his role in the eugenics movement in South Africa, see Klausen. ‘For the sake of race.’

¹¹⁵ The Bureaux also started a Milk Fund that provided mothers with Allenbury’s bottles at wholesale prices, as well as oatmeal and barley to nursing mothers. They also supplied indispensable drugs such as cod-liver oil and pamphlets on correct feeding methods. Robinson. ‘Some Problems of Child Welfare,’ 340.

¹¹⁶ Porter Mathew. ‘Woman’s Responsibility to the Health of the Nation,’ 110.

the black sheep? Yet how often is this natural instinct allowed to evaporate in mere false sentiment. Elaborate this normal individual potentiality, and how magnificent a destiny it becomes then to “mother the nation.””¹¹⁷

An underlying theme in Dr Porter Mathew’s article was about ‘saving the [white] child’ as they were the “greatest future asset of a nation,” and as Klausen contends, the two most important factors causing the degeneration of the white race that need to be eradicated were feeble-mindedness and physical disability.¹¹⁸ To this end, many reforms were put in place to deal with the high infant mortality rates in South Africa, such as improving the sanitation system in white-settled suburbs or areas, and the introduction of teaching mothercraft at clinics and maternity homes. According to Burman, Naude, and Klausen, the establishment of maternity homes and clinics really started to gain momentum in the 1920s and while these efforts were first directed at white women, by the 1930s racially segregated maternity homes and clinics developed in the urban areas. Child welfare organisations, with a similar agenda of reducing infant mortality rates, also extended their efforts into smaller towns and “villages” as well as to the “Coloured and Native populations in the bigger towns.”¹¹⁹ Their efforts included “free dinners for expectant mothers, summertime baby camps, as well as dental clinics.”¹²⁰ By 1924, Dr Boyd, who was the Medical Officer of Health for Pretoria, reported that white infant mortality rates had in fact decreased

¹¹⁷ Porter Mathew. ‘Woman’s Responsibility to the Health of the Nation,’ 109, as quoted in Klausen. ‘For the Sake of the Race,’ 43.

¹¹⁸ Porter Mathew. ‘Woman’s Responsibility to the Health of the Nation,’ 109.

¹¹⁹ J. J. Boyd. ‘Infantile Mortality in South Africa and New Zealand,’ in *South African Medical Record*, Vol. XXII, July 1924, 321-331.

¹²⁰ Neil Roos. ‘Work Colonies for White Men and the Historiography of Apartheid.’ Unpublished paper presented on the 1st April 2010 at WISER, University of the Witwatersrand, 24.

substantially since the turn of the century, due in large part to the implementations of adequate public health systems.

In his paper Dr Boyd said that he also wished to enlighten the South African Medical Congress that, besides what he described as the already established reasons for high infant mortality rates in South Africa, there were still a number of “class related causes” that needed to be addressed. The first of which he thought was most overlooked was that high birth rates were inevitably linked to high mortality rates. Another factor which influenced the mortality rates, he argued, was “the social standing of the parents and what it [connoted] in superior intelligence, better surroundings and better care,” noting that the rate was much higher in “slums” and “in the children of unskilled labourers.”¹²¹ Lastly, he wished to draw attention to the role played by Coloured nurses (most probably referring inclusively to Africans, Indians and Coloureds) who were employed to care for infants, and that it was all these factors that required the most attention. Resonating with suggestions made by other members of the medical fraternity as well as social workers, he ended his talk by offering some measures that could be implemented to lower the infant mortality rate:

1. The establishment of local Health Authorities, either Town or District Councils throughout the Union.
2. The appointment of properly qualified wholetime Health Officers and Sanitary Inspectors for such areas, individually or for combination areas, and the appointment of Health Visitors for Child Welfare work.
3. The education of the people, parents, school teachers, boys and girls in the principles of health and parental responsibility.
4. The elimination of the native as far as possible from the care of European children.

¹²¹ Boyd. ‘Infantile Mortality in South Africa and New Zealand.’

5. The annual publication by the Union Health Department of statistics regarding health and infantile welfare in the Union.¹²²

Whether or not the “elimination of the native as far as possible from the care of European children,” actually resulted in lower infant mortality rates remains insignificant, but the racial distinction is illustrative of the role that medical men played in advocating for racial separateness. In the intervening years leading up the 1930s and the passing of the General Law Amendment Act 46, 1935, the *South African Medical Journal* (*SAMJ*) – established in 1926 through the merger of the *South African Medical Record* and the *Transvaal Medical Journal* – continued to report on infant mortality and its relationship to racial degeneration.¹²³ However, during this time increasing availability to birth control options, and the shift to medicalized technologies of contraception, as well as the implementation of “state-sponsored programmes designed to increase the fertility rates of white South African women,” resulted in decreased infantile mortality as reported by the *SAMJ*.¹²⁴ For the purposes of my study, it is imperative to note that the records of the Supreme, Magistrate and District courts in Natal suggest a similar decline in the number of reported cases of infanticide and concealment of birth at the same time as the general decline in infant mortality. It may be argued that those factors, such as good mothercraft, proficient child welfare services, and access to contraception that led to

¹²² Boyd. ‘Infantile Mortality in South Africa and New Zealand.’

¹²³ Adrianus Pijper. ‘Facts and Figures about South Africa’s White Population,’ in *SAMR*, Vol. IX, 26 October 1935, 713 and K. B. A. McNeil. ‘Are We Making the Best of our Future Citizens in South Africa from the Time of Conception,’ in *SAMR*, Vol. IX, 9 November 1935.

¹²⁴ Catherine Burns. ‘Controlling Birth: Johannesburg, 1920 to 1960,’ in *South African Historical Journal*, 50, 2004, 172 and Pijper. ‘Facts and Figures about South Africa’s White Population,’ 713. See also, Susanne Klausen. ‘Women’s Resistance to Eugenic Birth Control in Johannesburg, 1930-39,’ in *South African Historical Journal*, 50:1, 2004, 152-169.

the general decline may also have resulted in the decreased rate of reported infanticide.

Conclusion

During the time period covered in this chapter, societal attitudes to and legal and social provisions for illegitimate children and unwed single mothers changed in relation to political, economic and medical contexts. In the opening years of the twentieth century, some poor, single or abandoned women, who could not and possibly did not want to raise a child, placed their children in the care of baby-farms where, for a substantial fee, and with a deceptive promise of being cared for, they were tragically neglected. Working within this framework then, illegitimate children were linked to baby-farms, which if media sources are to be trusted were notoriously known for practising a form of infanticide by neglect. This in turn added to the “problem of illegitimacy” of children for the authorities. In this manner illegitimacy became connected with significant concerns relating to infant life protection and child welfare. The ambit of child welfare, both medical and social, in Natal and South Africa particularly in the early Unions years, was concerned primarily with high rates of infant mortality in the urban centres and supposedly the effect that poor mothercraft had on this statistic. This is what Ann Stoler would identify as an imperial venture and campaign at “child saving and better parenting.”¹²⁵

¹²⁵ Ann Laura Stoler. ‘Matters of Intimacy as Matters of State: A Response,’ in *The Journal of American History*, 88:3, December 2001, 896.

Published infant mortality rates, both in Britain and in other parts of the empire discursively signified progress and the development of a “stronger race,” and the importance of these statistics as a reflection of the “evolution of white society” was evidently reflected in articles published in the *South African Medical Record* and from 1926 in the *South African Medical Journal*. Similarly, social welfare reforms and what can loosely be termed as activism by religious groups, concerned mothers, and amateur social workers found some satisfaction in improved legislation regarding infant protection. However, debates regarding the health of the “white race” in South Africa continued for much of the twentieth century. Race welfare discussions on eugenics and “the degeneration of the race” in the *South African Medical Journal* continued instruction on proper infant feeding, as well as new discussion on birth control clinics and the apparent value of baby shows not only intensified but was reflective of the ideological landscape of South African society during this time.¹²⁶

During the 1920s and 1930s in Natal and South Africa at large, changing societal attitudes to single mothers and illegitimate children disaggregated some of the stigma attached to adoption and state run foster homes. More significantly, it could be argued that for some desperate women, who had considered that their only recourse after an illegitimate birth was infanticide, now there were other possible options available to the prospective mother of an illegitimate child. Nonetheless, these of course were still dependent on her “social and economic circumstances,”

¹²⁶ A. Marr Geddes. ‘How to Conduct a Baby Show,’ in *South African Medical Journal* [hereafter *SAMJ*], Vol. III, 14 April 1934, 251-253; I. J. Block. ‘Observations from the Work of a Birth Control Clinic,’ in *SAMJ*, Vol. III, 14 July 1934, 490-492; P. W. Laidler. ‘The Practice of Eugenics,’ in *SAMJ*, Vol. III, 24 November 1934, 823-834; ‘Our Land: Is Our Population Satisfactory,’ in *SAMJ*, Vol. IX, 26 October 1935, 701-704; and A. Jurriaanse. ‘Degeneration and its Remedy,’ in *SAMJ*, Vol. IX, 26 October 1935, 704-71.

and further compounded by her race and class designations.¹²⁷ These shifting attitudes also implied that instead of punishing the mothers of illegitimate children, the state and child welfare organisations opted to find means to ‘rescue’ and ‘rehabilitate’ these women through the establishment of child nurseries, clinics and “rescue homes,” and, although this straddled the fine line between contrition and retribution, it was hoped that these measures would deter women from repeating their ‘mistakes.’ Most significantly, however, this chapter has illustrated how, over this time period, the legal and moral concerns with illegitimacy shifted focus from immorality on the part of the mother to the welfare of the child. This important shift and line of argument is further raised in Chapters Four and Five of this thesis.

What follows in Chapter Three is a close examination of selected court cases heard before the Supreme, Magistrates and District courts in Natal between 1890 and 1915 in an attempt to derive an understanding of possible motives or reasons why individuals committed infanticide or concealment of birth. Building on the theme of the connections between illegitimacy and infanticide, the chapter considers whether the fear of bearing an illegitimate child could have been a possible motive underlying these crimes. Moreover, the chapter also reflects on whether or not miscegenation was an influencing factor in these cases and the degree to which women who did commit infanticide or concealment of birth were responding to societal and community pressures and expectations.

¹²⁷ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896 -1939,’ 378.

Chapter Three

“...I am going to burn it so that it will not be seen!”¹ ~ Motives, Circumstances and Lived Realities

It is within the milieu of legislation and moral reformism, state concerns about infant mortality and poor whites, and imperial pressures on notions of motherhood and infant care sketched in the previous two chapters, that we situate the cases of the Nomacala Nxumalo (1886), Hester Cinde (1895), Ntombizonki (1901), Ncikwana (1905), Bertha Clarisse (1908), and Richard Thornton Hamilton Harrison (1914). These case studies reveal deep-seated assumptions about what the state and the communities around these individuals thought about matters such as the position of women, inter-racial and inter-generational relationships, and criminal procedure and the place of medical jurisprudence in the courtroom. Read through legal documents, this chapter considers some of the reasons and plausible motives the women and men convicted of the crimes of infanticide or concealment of birth may have had for killing their newborn children. The records of the Supreme Court and Attorney General's Office reveal particular patterns or themes relating to the possible motives behind these crimes, evident in the cases selected for this study.

¹ Pietermaritzburg Archives Repository [hereafter PAR], Attorney General's Office [hereafter AGO], I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914, Deposition of Florence Maud Harrison.

There are two major themes in this chapter: the first concerns a group of women whose geographic location made them susceptible to shared pressures placed on them by their community.² This is shown in the legal cases I recovered in my research that involved the community at Edendale that demonstrate the complex interweaving of colonial law, medical knowledge, customary practices and Christian values. Originally a farm, Edendale was established as a mission station in 1851 just outside Pietermaritzburg, occupied mainly by a *kholwa* farming community but, by the twentieth century, through the sub-division of the farm and private land ownership, it had developed into an area of African petty bourgeois settlement. The second major thread relates more broadly to the issue illegitimate children that were the result of inter-racial relationships. For instance, this chapter also discusses in detail the cases of Richard Thornton Hamilton Harrison and his family, and of Bertha Clarisse. Both of these cases comment on the regulation and policing of inter-racial relationships by the state.

More broadly, however, this chapter is also located within the prevailing perceptions of the relationship of sexual morality, marriage and respectability circulating within

² The various derivations of the term community make it a complex and difficult term to define. In *Class, Community and Conflict: South African Perspectives*, Belinda Bozzoli asserts that the “myriad uses of the term [community], the vagueness with which it is approached, and the romantic connotations which it holds, make it all the more mysterious as a concept.” Writing about forced removals in Apartheid era South Africa, Bozzoli used the word “community” in a specific way. She employs it to “refer to a group of people experiencing the trauma of forced removals by government decree... The word may also be used to refer to the general membership of black, Indian or coloured urban township...often used to distinguish township-dwellers in general, from the specific groups who constitute a township.” Belinda Bozzoli. ‘Class, Community and Ideology in the Evolution of South African Society,’ in Belinda Bozzoli (ed.) *Class, Community and Conflict: South African Perspectives*. (Johannesburg: Raven Press, 1987), 4-5. The term can also be utilized to describe social cohesion that is defined by space and place. It is in this sense that the term “community” is used in this chapter of the thesis but this is juxtaposed against the problematic interpretations of community, that of exclusion and isolation.

the British Empire at this time.³ These perceptions were grounded in the presumption that honour and good motherhood, predicated on a Christian Victorian ideal, was determined by the marital status of the woman. The increasing condemnation by the latter half of the nineteenth century of bastardy and unmarried motherhood meant that many single and, in particular, working class women, struggled to live up to these expectations. What follows in this chapter is an attempt to read the sources so as to look for indications as to motive in a context of social attitudes towards women – both Christian African women who lived on the rural/urban periphery within a mission based community and single white women – who allegedly committed the crimes of infanticide or concealment of birth, and who were perhaps responding to the pressures of social attitudes toward illicit and premarital sex and pregnancy.

It should be noted however that, when working with criminal court records as a tool in recreating social history, attention has to be given to the ways in which these records were created and are interpreted by an historian. Court documents as they exist in a colonial state archive are merely the records of the proceedings of trials as they were heard before different magistracies, district or supreme courts. Crucially, however, they are not a total or complete reflection of proceedings as they do not reflect biases, omissions, evasions, lies, or half truths, or pretences. The reason they exist, and the intent with which these records were created, is vastly different to the meaning that a historian may find in them. Historians comb through criminal court records looking for clues that can be pieced together to create some semblance of the

³ For more on this see Ann L. Stoler. ‘Making Empire Respectable: The Politics of Race and Sexual Morality in 20th-Century Colonial Cultures,’ in *American Ethnologist*, 16:4, November 1989, 634-660, specifically the section on white degeneracy, motherhood and the eugenics of empire. Focussing on Natal, Nafisa Essop Sheik provides a comprehensive discussion in ‘Customary Citizens and Customary Subjects: Colonial Respectability and Marriage Law in 19th Century Natal.’ Unpublished paper presented on the 27th May 2009 at the History and African Studies Seminar hosted by the History Department, University of KwaZulu-Natal.

social world in which to locate the subjects of their study. Crucial to this process is deciphering and understanding what motivated their subjects in committing certain crimes. Criminal court records, however, rarely provide uncomplicated narratives from which motives can be discerned.

When working with court records, it can be a somewhat difficult task to try to establish a person’s conscious or unconscious reasons for committing a particular act since lawyers were obliged to establish or prove *intent*, alternatively *mens rea* or guilty mind, rather than motive. In other words, the question of whether the accused *intended* to commit the crime, implying forethought *vis-à-vis* to the reasons why they may have committed the crime, was of highest importance in these court cases.

Indeed, Rob Turrell argues that “it is often dangerous for historians to mine court records for social information without taking care to read legal evidence according to legal codes and conventions.”⁴ So too, in cases of infanticide for the court to secure a conviction, it was only necessary to prove intent and (to quote Turrell again), “establishing a motive [was] irrelevant to a criminal conviction.”⁵ This was particularly true in cases of concealment of birth and infanticide, such that the 1935 General Law Amendment Act made no reference to motive and was worded:

1. Any person who disposes of the body of any child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction

⁴ Rob Turrell. ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ in *Journal of Southern African Studies*, 29:1, March 2003, 84.

⁵ Turrell. ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ 84.

to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding three years.⁶

However, motives did become relevant when sentencing was decided upon. So court records can, if carefully dissected by the historian, suggest underlying motives, and this is, it can be argued, important to do because “the discovery of motive prises open hidden social worlds and interior landscapes of pain and oppression.”⁷

“The milk was conclusive”⁸ ~ Edendale and the Political and Moral Economy of Birth and Christianity

Between 1886 and 1905 there were four cases of infanticide or concealment of birth (of a total of eighteen such cases which came to trial during this period) brought to the Natal court that revolved around the community at the Edendale mission station. The outlook of Edendale was marked by a staunch patriarchal mission Christianity, and an examination of the cases of Nomacala Nxumalo (1886), Hester Cinde (1895), Ntombizonki (1901) and Ncikwana (1905) reveals the complexities of the relationship between African patriarchy to mission Christianity, more precisely Wesleyan Methodism (at Edendale first under the leadership of Reverend James Allison and thereafter the Wesleyan Mission Society).⁹ The Christian residents at Edendale found

⁶ The General Law Amendment Act 46 of 1935, Union of South Africa, 14th May 1935. [Emphasis added]

⁷ Turrell. ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ 84.

⁸ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846, 1886.

⁹ PAR, Registrar, Supreme Court [hereafter RSC], 1/1/39, 42/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846, 1886; PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22

themselves in an intermediary position as, by the early 1900s, this community was considered by the colonial state to be the most “progressive Christian community” in Natal.¹⁰ Edendale, as described by Sheila Meintjes, “held its reputation as a respectable, Christian village.”¹¹ Christian Africans saw themselves as different, perhaps even superior to non-Christian Africans and Indians, and they constantly strove for the colonial state to recognise their status as such. In aspiring to be exempt from Native Law, Christian Africans at Edendale, and elsewhere at other mission stations in Natal, adopted an English Victorian lifestyle, dress and behavioural codes, home decoration, and what was considered to be good respectable Christian etiquette.¹² But, at the same time, many of these Christians still maintained some of their customary practices such as *ukulobola* (bridewealth) and the preservation of the *ibandla*, or customary court, where conflicts between residents were settled by the elected headman. Meintjes describes this cultural world as “a distinctive blend of its own, a synthesis of elements of custom from an African past, combined with

of 1846, 1886; PAR, RSC, 1/1/52, 8/1895, Supreme Court Criminal Cases. Regina versus Hester Cinde. Charged with Contravening the Provisions of Ordinance Number 22, 1846, Entitled “Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal,” 1895; PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895; PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Charged with Contravening the Provisions of Ordinance Number 22, 1846, Entitled “Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal,” 1901; PAR, AGO, I/1/226, 41/1901, Rex versus Ntombizonki. Charged with Concealment of Birth, 1901; PAR, AGO 2/1/6, CPM50/1905, Magistrate Umgeni Division: Rex versus Ncikwana. Charged with Concealment of Birth, 1905.

¹⁰ Sheila Meintjes. ‘Property Relations amongst the Edendale Kholwa, 1850-1900,’ in *Journal of Natal and Zulu History*, VII, 1984, 27.

¹¹ Sheila Meintjes. ‘Edendale 1851-1930: Farmers to Townspeople, Market to Labour Reserve,’ in John Laband and Robert Haswell (eds.) *Pietermaritzburg 1838-1988: A New Portrait of an African City*. (Pietermaritzburg: University of Natal Press and Shuter & Shooter, 1988), 69.

¹² In *Honour in African History*, John Iliffe also discusses the relationship between of the social pattern in the rise of respectability among the *amakholwa* in Natal and the process by which this was gained, either through material possession, education or marriage in the case of African females. See particularly the chapters on ‘Respectability,’ and ‘Honour and Gender.’ John Iliffe. *Honour in African History*. (Cambridge: Cambridge University Press, 2005), 246-280.

Wesleyan and Victorian morality.”¹³ The term ‘heterogeneity’ best encapsulates the nature of the community at Edendale in the way that residents straddled the divisions between Christian and customary practices.

This was not the perception of many white Natalians, however. As Vukile Khumalo writes in his article ‘Political Rights, Land Ownership and Contending Forms of Representations in Colonial Natal,’ “...between 1880 and 1910, colonial authorities, chiefs and some missionaries saw mission stations as places of vice, idleness and moral decay.” He further states that African patriarchs also often thought that mission women were immoral, “had too much freedom and were attracted to bad habits.”¹⁴ Missionaries, however, argued that the problem lay with women who were “separated from the authorities of their homestead,” for instance when they went to find work in the towns, where their “lives became polluted and degenerate.”¹⁵ The liminal position in which these women found themselves oscillated between a Christian *kholwa* lifestyle and African customary values but within a paradigm that was patriarchal and closely controlling of women’s movements and sexuality. These points are particularly pertinent to the cases of Nomacala Nxumalo and Hester Cinde which follow below.

¹³ Sheila Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,’ in Cherryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. (Cape Town: David Philip Publishers, 1990), 126.

¹⁴ Vukile Khumalo. ‘Political Rights, Land Ownership and Contending Forms of Representations in Colonial Natal, 1960-1910,’ in *Journal of Natal and Zulu History*, 22, 2004, 140.

¹⁵ Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,’ 141-142.

// Nomacala Nxumalo

According to her testimony before the court, just after sunset on Wednesday the 19th of May 1886, Mantyebe (about 10 years of age) had been returning from herding calves and, on her way home, at the side of the road near the garden of one Nobayeni, she noticed a dog standing beside something.¹⁶ When she moved closer to the dog she noticed the body of a child lying on the ground. When she realised that the child was dead, she hastily returned home and informed her father, Joel Nsimang, about the body of the baby. When Joel Nsimang arrived at the scene he confirmed that the child was dead and immediately reported this to the minister at Edendale. The minister accompanied Nsimang to where the body lay. He had taken with him a box, into which he placed the body, and thereafter reported the incident to the District Surgeon, Dr Charles Ward.

By the evening of the 19th, word had spread around the village that the body of a child had been found. In her deposition on the 8th June 1886, Maria Untuba, one of the elder women at Edendale, recalled the afternoon of the 19th of May. She remembered meeting her neighbour Nobayeni (near whose garden the body was found) at her house that evening, and that Nobayeni's sister, Nomacala Nxumalo, was visiting her. Nomacala lived with their father at Rietspruit, about 20kms north of Edendale. Their family were part of the group of Christian Edendale residents who in the 1870s had relocated to Rietvlei and Cedara regions in search of fertile land and wage employment.¹⁷ After discussing the incident with each other that evening neither

¹⁶ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846, 1886. Deposition of Mantyebe, daughter of Joel Nsimang, before James Forder, Resident Magistrate, 8th June 1886.

¹⁷ For more on these resettlement movements in the 1870s see Meintjes. 'Edendale 1851-1930: Farmers to Townspeople, Market to Labour Reserve.'

Maria nor Nobayeni could identify the mother of the child since none of the women in the village had been “in the family way.”¹⁸

In the aftermath of the discovery of the body of the baby, Samuel Khumalo, the headman at Edendale, took matters into his own hands and began investigations. On Thursday the 20th of May, he instructed Maria Untuba, Margaret Gule and several other elder women of the village to examine the younger women to ascertain who had recently given birth to a child. It was then that Nomacala Nxumalo was identified as being the mother of the child. In her deposition to Resident Magistrate James Forder, Nobayeni, Nomacala’s sister, stated that: “Several women were examined and in turn my sister the prisoner, on examining her private parts and bosom the women at once said that my sister had lately given birth to a child. Maria Untuba examined my sister and Margaret Gule.”¹⁹

In her deposition, Nobayeni revealed that she had been unaware that her sister had given birth to a child or indeed had been pregnant. On the day of the incident Nobayeni had been in Pietermaritzburg and had only returned that afternoon. After being examined however, Nomacala had confessed to her that she had given birth to a child but said that it had been stillborn. Nobayeni also claimed that Nomacala had said that she had intended to inform her about what had happened during the course of the afternoon, but that by the time Nobayeni returned home, the body had already been found. Nobayeni also stated that Nomacala had asserted that:

¹⁸ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, deposition of Nobayeni, sister to Nomacala Nxumalo.

¹⁹ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, deposition of Nobayeni, sister of Nomacala Nxumalo.

... upon giving birth to the child she had fainted [sic] away and on reviving she came away to my house and found I was away ... She further said that she had given birth to the child in my garden and had left it there as it was dead and had come home to tell me. She said she had put the body aside in a secret place and covered it with a little grass – while she came to ask me to go back with her – and not finding me at home she had waited for me.²⁰

When Samuel Khumalo was asked to make a deposition, he stated:

I am headman at Edendale. From enquiries made by me, I have ascertained that Nomacala Xumalo is the mother of the child that was found dead at Edendale Wednesday 19th instant, the child appears to have been still born[sic] on the afternoon of the 19th instant and was concealed by the mother immediately after birth, but was found by a dog and dragged into street where the body was seen by a little girl, and she told the other natives who informed the Minister. **The woman is an adultery** [sic], **she is not married**. I have heard that she has had two other **illegitimate children** one is said to have been still born [sic], the other I believe lived for a few days and then died.

This first deposition was drawn up on the 25th of May 1886, but Khumalo was recalled on the 4th of June to clarify his statement. This time he stated:

I did not know that the prisoner was in the family way but after the body was found I heard people had suspected she was in the family way. The prisoner lives with her father at Cedar [sic] Station, and was on a visit to Edendale. She was stopping at the house of Saul Mavimbela. I said that woman was an “usifebe” [sic] meaning a **prostitute** not an adultery. **She has not been married**.²¹

²⁰ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846, 1886. Deposition of Nobayeni, sister of Nomacala Nxumalo.

²¹ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846, 1886. Deposition of Samuel Khumalo. [Emphasis added]

Nomacala's own deposition of the 26th of May 1886 read as follows:

I reside with my father at Riet Spruit, The female child that was found dead at Edendale is mine, she was still born [sic] on Wednesday (19th instant) afternoon, and after the birth I placed the child where it was found and went on to tell my sister Nobayeni who resides nears by, what had happened, but before I had time to inform my sister the body of my child was discovered, and I was alarmed as all the natives knew about it and I said nothing. I have no husband. I have had four children, my first child is alive, my second child only lived a few days, my 3rd was still born [sic] and my 4th child is the one that was still born [sic] last Wednesday. The child was born at the place it was found. I was confined in the garden close by to where the body was found and it must have been dragged onto the road which is not much used and has long grass. I did not conceal the child in any way. I only went to tell my sister and intended to return and carry the body to the house, but during my absence the body was seen by a girl who was passing. The body has now been buried. The child did not breathe and was quite dead when born.²²

The condemnation of the character of Nomacala, by the Edendale residents – that she was not married, that she concealed her pregnancy, that she also concealed the birth of her child as a result of its illegitimate status – did little to support her case. The social status of illegitimate children particularly within African Christian communities was one of degradation and indignity. As Meintjes points out, for the *amakholwa* at Edendale “respectability was the hallmark of social distinction,” and marriage was a benchmark of this respectability.²³ Samuel Khumalo's characterisation of Nomacala is illustrative of the stigma attached to women who bore children out of wedlock. Marriage among African Christians was a cornerstone of the type of

²² PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846, 1886. Deposition of Nomacala Nxumalo, before RM James Forder, 26th May 1886.

²³ Meintjes. 'Edendale 1851-1930: Farmers to Townspeople, Market to Labour Reserve,' 68.

respectability they wished to espouse.²⁴ In his testimony Khumalo stressed the fact that Nomacala was unmarried and had already had other illegitimate children and was therefore “a prostitute,” and guilty of the crime of concealment of birth. Nomacala’s trial concluded with a guilty verdict and sentencing of twelve months imprisonment with hard labour. In this African Christian community marriage was the compelling moral force which gave women the status of respectability and the unmarried mother was considered as both fallen and immoral, which was a particularly poignant force in the eventual outcome of Nomacala’s case.

// “My girl is still a virgin”²⁵ -Hester Cinde

In his deposition on the 14th December 1894 to Resident Magistrate James Forder, Lukas Msimang stated that three days previously he had visited his second home in Edendale to tend to the overgrown grass and to weed potatoes. On visiting the water closet he had noticed “some blood on the privy seat, little patches of blood and a clot of blood [that] was still fresh and wet.” He called the attention of Johannes Nxumalo to inspect the “water closet” and Nxumalo said “it was like what would come from a woman after confinement.” Later that day, Msimang had then decided to demolish the wattle, daub and stick structure and when he removed the corrugated iron roofing, he could see “something in the pit dugout under the seat.”²⁶ Nxumalo returned to help him and using a stick to move the object around they saw that it was

²⁴ David Welsh aptly illustrates this point in *Roots of Segregation*, where he discusses a newspaper advertisement describing a wedding of a kholwa family, which he argues, evoked a bourgeois respectability to which this community aspired. See *The Roots of Segregation: Native Policy in Colonial Natal, 1845-1910*. (Cape Town: Oxford University Press, 1971), 300.

²⁵ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde, Charged with Concealment of Birth, 1895. Deposition of Emma Cinde, 14th December 1894.

²⁶ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde, Charged with Concealment of Birth, 1895. Deposition of Lukas Msimang, 14th December 1894.

the body of an infant lying face downwards. Msimang subsequently reported the matter to the Reverends Baker and Smith who then advised him to send a letter to the Resident Magistrate reporting the incident.

A few days prior to this incident, Hester Cinde, owing, she later said in her deposition, to ill health, had returned from Durban where she had been working to visit her parents. She had complained to her mother, Emma Cinde, that her stomach and limbs “pained her.” Her mother had then engaged the services of Dr Francois Colani Dumas of Pietermaritzburg to examine her daughter. In addition to the symptoms that Hester described, Dr Duamas had apparently found that she was suffering from metritis – an inflammation of the uterus. Before this visit to the doctor, however, there had been rumours circulating among the women at Edendale that Hester was pregnant, but her mother maintained that she never suspected her daughter was in the ‘family way’ and that she had been under the impression that her “girl was still a virgin and has never had connection with a man.”²⁷

Following the discovery of the child’s body, and as had Samuel Khumalo before him in the 1886 case of Nomacala, Lukas Msimang requested that the elder women conduct an examination of the younger women to determine if anyone had given birth recently. To this effect, Ellen Kunene, Filda, Eliza Ngomezulu, Margaret Lulu and Mankungulu were tasked with inspecting the younger woman at Edendale. In her deposition, Eliza Ngomezulu reported that between forty and fifty women had been inspected and that they had “examined all the young girls by pressing and squeezing their breasts and [that] when [she] got to the prisoner [she] pressed her

²⁷ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895. Deposition of Emma Cinde, 14th December 1894.

breasts, [which] were very full and swollen, and on pressing them milk came on the first squeeze.”²⁸

In his summary of the case, however, the presiding judge, Chief Justice Michael Henry Gallwey, proclaimed that there was no definite proof that the child found at Msimang’s premises was in fact the same child to which Hester had given birth, and nor was there proof that Hester had taken the body of the child to Msimang’s “water closet.” He made this judgement on the basis of Msimang’s deposition which revealed that there had been a period of time between the discovery and Dr Campbell Watt’s post-mortem examination during which the body of the child had been left unattended. Despite Dr Campbell Watt’s report stating in his examination that he believed that child had been born alive, that there were signs of asphyxia and that death had probably been due to neglect, and that Hester’s examination revealed that there were signs of a recent delivery, Gallwey decided that no definite connection could be made between Hester and the body that had been found.

Hester Cinde’s case is particularly relevant to this study as it is an illustration of the nexus of competing legal, cultural, social, economic and colonial forces. Like Nomacala Nxumalo’s case, what remains pertinent about Hester’s case is the framework it provides for thinking about the ways in which the African Christian community at Edendale responded to cases of infanticide and concealment of birth. In both Nomacala’s and Hester’s cases the description of the inspection of the young girls can be interpreted as analogous to the related practice of virginity testing.²⁹ As in

²⁸ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895. Deposition of Eliza Ngomezulu, 19th December 1894.

²⁹ In recent years in South African historiography there has been a rekindled interest in the practice of virginity testing as a response to the HIV/Aids epidemic in KwaZulu-Natal. See for

ukuhlolwa kwezintombi (virginity testing), there was a clear hierarchy between the inspectors (the *abahloli*; singular – *umhloli*) and the girls or young women who were tested (the *izintombi*; singular – *intombi*).

These types of inspections were imbued with a cultural significance that reveals the ways in which sexual responsibility was perceived and how older African women and men regulated sexual activity. Similar to virginity testing in the early twenty first century, the inspections performed in these cases were also at the behest of the chief or his headman who instructed the elder women to perform the examination.

Likewise, girls would also be inspected in the presence of their mothers and grandmothers. What this significantly indicates is not only the attempts made by the older generation in maintaining authority over younger African men and women, but that there was a meaningful attempt to maintain customary practices within this African Christian paradigm at Edendale. Meintjes argues that the “retention of [cultural practices] was crucial in establishing particular patterns of gender power relations on the mission stations. ... The significance of continued customary practices

instance Fiona Scorgie. ‘Virginity Testing and the Politics of Sexual Responsibility: Implications for AIDS Intervention,’ in *African Studies*, 61:1, 2002, 55-75; and Suzanne LeClerc-Madlala. ‘Virginity Testing: Managing Sexuality in a Maturing HIV/AIDS Epidemic,’ in *Medical Anthropology Quarterly*, 15:4, 2001, 533-552. Ethnographic studies show that virginity testing referred to the inspection of young girls by older women to determine if they were sexually chaste and to regulate premarital sexual behaviour. Scorgie, LeClerc-Madlala and others, however, have considered what the revived practise of virginity testing in contemporary South Africa and the HIV/Aids endemic denotes. Both Scorgie and LeClerc-Madlala argue that ultimately, virginity testing is a way of managing the epidemic by “exerting greater control over women and their sexuality.” LeClerc-Madlala. ‘Virginity Testing,’ 533. For earlier ethnographic studies that comment on virginity testing see Max Gluckmann. ‘Zulu Women in Hoecultural Ritual,’ in *Bantu Studies*, 9, 1935, 255-271; Eileen Krige. ‘Girls Puberty Songs and Their Relations to Fertility, Health, Morality and Religion among the Zulu,’ in *Africa*, 38:3, 1968, 173-198; A. T. Bryant. *The Zulu People, as They were Before the White Man Came*. 2nd Edition. (Pietermaritzburg: Shuter and Shooter, 1967, 1st Edition 1949); and Eileen Krige. *The Social System of the Zulus*. (Pietermaritzburg: Shuter and Shooter, 1950).

for the position of young girls ... suggests that the freedom they had gained in the new society was a matter of form.”³⁰ At the end of the court case and despite powerful circumstantial evidence of her guilt, Hester was found not guilty and discharged, and while it is true to an extent that women enjoyed certain freedoms and independence at mission stations, these were only relative because they remained under the scrutiny and control of their elders. What these case studies explicitly illustrate is that the women who act as the protagonists in this chapter were subjected to and constrained by a dual legal system – colonial and customary laws.

// “From the corner of a ploughed field”³¹ ~ Ntombizonki

On the 3rd of January 1901, six years after Hester’s case, a young woman called Ntombizonki was summoned to the Umgeni Magistrate’s Court in Pietermaritzburg to make a declaration with regards to depositions of oath made against her by residents at Edendale. She stated:

I gave birth to the child and it was dead and so I buried it. I was alone when the child was born and I buried it that night by moonlight. I was alone when I buried the child I was afraid to report the birth because the child was dead if the child had lived I would have reported it.³²

Suspensions of Ntombizonki’s culpability had first arisen when her “class leader” Eliza Msane – who identified herself as a Wesleyan Methodist – had noticed that

³⁰ Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,’ 142.

³¹ PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Post-mortem report by Dr Campbell Watt, 28th November 1900.

³² PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Charged with Contravening the Provisions of Ordinance Number 22, 1846, Entitled “Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal,” Declaration of Ntombizonki, 3rd January 1901.

Ntombizonki, her pupil, “appeared to be with child.”³³ Knowing that Ntombizonki’s husband, John Masikana, had been working in Johannesburg for close to two years, Msane had found this very peculiar and had sought counsel from two other elder women at Edendale, Rebecca Hlatshwayo and Matilda Kunene.³⁴ Hlatshwayo and Kunene agreed to examine Ntombizonki and confirmed Msane’s suspicion that Ntombizonki was pregnant. Shortly after the examination, however, it was rumoured that Ntombizonki had given birth but when Eliza visited her, she denied that she had been pregnant in the first instance. Not knowing what Ntombizonki had done with the body of the child, Msane then reported the matter to Stephen Mini, Chief of Edendale, who initiated an inquiry into the matter. According to his deposition, Mini reported that, after considerable questioning, Ntombizonki eventually admitted that she had given birth to a child and had buried the body as the child was “born dead.”³⁵

The body of the child was exhumed and Dr Campbell Watt, the District Surgeon, was instructed by the Resident Magistrate, J. C. C. Chadwick, to perform a post-mortem examination. In his report Dr Campbell Watt noted that the body of the child “was presented to [him] in a rough box and wrapped in rags. It had small fragments of earth adhering to it and [he] was informed that that the body had been exhumed ... from the corner of a ploughed field.”³⁶ He also remarked that he could not find any external signs of violence on the body and that putrefaction was evident, but that he

³³ PAR, AGO, I/1/226, 41/1901, Rex versus Ntombizonki Charged with Concealment of Birth. Deposition of Eliza Msane, widow of Charles Msane, 31st December 1900.

³⁴ From the handwriting of the transcript of the deposition it is difficult to accurately identify the second woman as Matilda Kunene. While her surname is easily decipherable as Kunene, her first name is slight harder to read. Matilda best matches the script.

³⁵ PAR, AGO, I/1/226, 41/1901, Rex versus Ntombizonki Charged with Concealment of Birth. Depositions of Stephen Mini, Chief of Edendale, 26th November and 31st December 1900.

³⁶ PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Post-mortem report by Dr Campbell Watt, 28th November 1900.

believed from the characteristics of the lungs that “artificial inflation” had occurred. While he gave no further details about why he thought this, he did affirm that he thought respiration had taken place and therefore that the child had not been “born dead.” To confirm this conclusion Dr Campbell Watt added that he also found the stomach was “full of a pale liquid with air bubbles floating on it – indicating that the child had swallowed.” After examining Ntombizonki he also confirmed that she was the mother of her child and at the end of his report he surmised that the death of the child may have been due to a difficult delivery or to the “want of necessary attention immediately after birth.”³⁷ From Dr Campbell Watt’s report it is possible to deduce that while the child had been born alive, there was some uncertainty as to whether the child had lived independently from its mother.

From other depositions by Ntombizonki’s family and other Edendale residents, who simply recounted the events of the crime and echoed similar sentiments to Mini, Resident Magistrate Chadwick ascertained that she had intended to conceal the birth of the child. While, in his view the intent was apparent in this case, there is no ostensible evidence from the depositions as to the underlying motive behind the crime. However, from reading between the lines it seems likely that, since her husband had been absent in Johannesburg for two years – which was a point that all witnesses belaboured in their testimonies – she had had an adulterous relationship which resulted in the birth of an illegitimate child. Ntombizonki was found guilty and sentenced to six months imprisonment with hard labour.

Ntombizonki’s case is significant because it allows for an exploration of the effect of the changing political and economic structures at the turn of the twentieth century

³⁷ PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Post-mortem report by Dr Campbell Watt, 28th November 1900.

on the working class in South Africa, particularly in the context of the South African War and the burgeoning migrant labour system of the mining industry. Added to fears of women's uncontrolled sexuality were anxieties surrounding the changing nature of the family or homestead as well as the “changing patterns of child rearing,” and sexual education. Shula Marks and others argue that a powerful cause of these changes was the migrant labour system.³⁸ She notes that “the migrant labour system, which deprived the villages of young men and put great pressures on the girls on their return, exacerbated these problems at a time when safe forms of external sexual intercourse were either forgotten or frowned on by the church.”³⁹ Marks and many others have further shown how the migrant labour system imposed great strains on women and was significantly disruptive. In *Women and Gender in Southern Africa*, Cherryl Walker concurs that migrant labour had destabilising effects such as “marital breakdown, rising illegitimacy and a loss of respect for their elders among the young on familial relationships.”⁴⁰ In line with this argument Meintjes asserts that migrant labour altered hierarchical systems, and the control that older patriarchs wielded started to dwindle owing to the independence that younger men and women found in

³⁸ See for instance Isaac Schapera. *Migrant Labour and Tribal Life: A Study of Conditions in the Bechuanaland Protectorate*. (Oxford: Oxford University Press, 1947); Colin Murray. ‘Migrant Labour and Changing Family Structure in the Rural Periphery of Southern Africa,’ in *Journal of Southern African Studies*, 6:2, April 1980, 139-156; and Cherry Walker. ‘Gender and the Development of the Migrant Labour System c. 1850-1930: An Overview,’ in Cherryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. (Cape Town: David Philip Publishers, 1990), 168-196.

³⁹ Shula Marks (ed.) *Not Either an Experimental Doll: The Separate Worlds of Three South African Women*. (Pietermaritzburg: University of Natal Press, 1988), 23 and Shula Marks. ‘Patriotism, Patriarchy and Purity: Natal and the Politics of Zulu Ethnic Consciousness,’ in Leroy Vail (ed.) *The Creation of Tribalism in Southern Africa*. (Berkeley: University of California Press, 1989), 228.

⁴⁰ Walker. ‘Gender and the Development of the Migrant Labour System c. 1850-1930: An Overview,’ 192.

the towns.⁴¹ In 1880 a report on Edendale to the Secretary of Native Affairs regarding the complaints received from the elders about impetuous youth and migrant labour, read:

The people concerned in these practices disregard all counsel and defy all authority... Drunkenness, immorality and abandonment of wives by their husbands, are some of the results which are taking place. The orderly and respectable people are greatly distressed at this state of things, but powerless to alter it.⁴²

While the elders often felt powerless to act against the changing social dynamics at Edendale (and elsewhere in the region), they did contrive to maintain their control and authority and controlling younger men's and women's sexuality was a means by which older men and women could impose their authoritative position. Therefore, when cases of infanticide or concealment of birth were discovered – which perhaps epitomised absolute moral and religious degradation for the elders – the headman and elder women of Edendale took it upon themselves to investigate the crimes and identify the perpetrators. The way in which the public participated in incidents of infanticide or concealment of birth is further illustrated in the case of Ncikwana, discussed below. At Edendale public perceptions of single urban women were congruous with the way in which the community reacted to these cases. If, for instance, Nomacala and Hester had been married, and if Ntombizonki's husband had lived with her, the reactions to the births of the supposedly stillborn children could

⁴¹ Meintjes. 'Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,' 131. Thomas McClendon raises similar points in *Genders and Generations Apart*. Thomas V. McClendon. *Gender and Generations Apart: Labor Tenants and Customary Law in Segregation-Era South Africa, 1920s-1940s*. (Portsmouth, NH: Heinemann, 2003).

⁴² PAR, Secretary of Native Affairs [hereafter SNA], 1/1/1, 410/1880, Mason to SNA, 22 July 1880 in Meintjes. 'Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,' 132.

well have been different. As is evident in Ncikwana’s case below, the uncertainty of her marital status influenced the outcome of her trial.

// Ncikwana

According to the deposition by Bomvana, another resident at Edendale, on Saturday the 4th of February 1905, he had been hoeing the fields and then had gone to the river to bathe. On his way to the river, he had passed a certain woman named Nckiwana whom he knew as the niece of another Edendale resident, Boya. At the river he had observed that the riverbed was heavily marked with footprints and a little further away he had noticed a place in the sand as if something had been interred. Bomvana had then reported this to other men at the village who, after inspecting the riverbed, returned to Boya’s home where they interrogated Ncikwana, since she was the last one who had been seen at the river. The matter was subsequently reported to the police. When questioned at the Umgeni Magistrate’s Office, before Jasper Lennon, Boya stated that:

Last ploughing season when I came home I found the prisoner at my kraal. I drove her away and I was told that she came to Maritzburg. I turned her away after the ploughing season. She was not then in the family way. Last Thursday I hear[d] that the prisoner gave birth to a child on her way back to Edendale and that she hid the child on the banks of the river. ... I do not know who seduced her.⁴³

⁴³ PAR, AGO 2/1/6, CPM50/1905, Magistrate Umgeni Division: Rex versus Ncikwana. Charged with Concealment of Birth. Deposition of Boya ka Hlozana, before Resident Magistrate Jasper Lennon, 10th February 1905.

Neither Boya nor Bomvana could positively say whether Ncikwana was married or not, but Bomvana believed that “a man named Gilini [was] her lover.”⁴⁴ While Ncikwana’s deposition is not included in the docket for this case, in a letter to the Clerk of the Peace, Resident Magistrate Lennon reported that Ncikwana had pleaded guilty to having given birth to a child and to having buried it at the riverbed. The body of the child had been found five days after its birth, and Dr Campbell Watt, the District Surgeon who performed the post mortem examination, found that the “the nostril and left eye were stained with blood slightly and the tongue was protruding between the lips.”⁴⁵ He also noted that the umbilical cord had been severed with a blunt instrument. He concluded, however, based on the appearance of the lungs and the results of the lung test that the child had never breathed and was therefore stillborn and had probably died during labour.

Ncikwana’s sentence was two months imprisonment with hard labour. When issued with the summons of charge against her, Ncikwana had pleaded guilty from the onset. Yet, even if she had not pleaded guilty, it would have been difficult for the judge to acquit her on the charge of concealing the birth of her child, since the depositions proved otherwise. Her case is integral to this study since it reaffirms the complexities of public participation and agency, specifically at Edendale where residents were able to exercise control over their own moral and material possessions. This moral compass of Edendale is clearly reflected in the cases of infanticide and concealment of birth that involved the community. The fact that Ncikwana’s uncle refused to accommodate her implies that he thought poorly of her character.

⁴⁴ PAR, AGO 2/1/6, CPM50/1905, Magistrate Umgeni Division: Rex versus Ncikwana. Charged with Concealment of Birth. Deposition of Bomvana ka Mqwazana, before Resident Magistrate Jasper Lennon, 10th February 1905.

⁴⁵ PAR, AGO 2/1/6, CPM50/1905, Magistrate Umgeni Division: Rex versus Ncikwana Charged with Concealment of Birth. Post-mortem report by Dr Campbell Watt, 8 February 1905.

Gender relations and the responsibilities placed on women as purveyors of morality were equally important pillars in the scaffolding of community life at Edendale. And, in as much as these stories are about the specifics dynamics of religion, customary practices and patriarchy, more significantly, these stories also resonate with the power and control exercised by the elder women at Edendale. The intra-gender hierarchy and the social relations between elder and younger women at Edendale suggest that elder African *kholwa* women were able to articulate some form of agency, control and power over younger women. At Edendale, as Meintjes shows, women, particularly married women, were entrusted to be the custodians of morality, education, knowledge sharing and the upbringing of well-mannered children at the mission station. Any deviation from the strict rules of behaviour was frowned upon and, as much as African men were disdainful towards women whom they considered to be loose and immoral, elder African women were even more antagonistic towards younger women who were perceived to be insensitive to the “discipline of Christian and Victorian morality.”⁴⁶

From the various depositions made in these four court cases it is apparent that the elder women were far from forgiving or protective towards the women accused of infanticide or concealment of birth. Instead, their depositions suggest that they fervently tried to expose the accused, either through the circulation of rumours about the accused, by physical inspections, or by the character profiles of the accused given to the resident magistrate. For instance, in the case of Nomacala Nxumalo, Maria Untuba – one of the elders or *umhloli* – emphasised and belaboured the fact that she and the other elder women who conducted the examination were convinced that Nomacala was the one that had given birth to the child. The same was true in the

⁴⁶ Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,’ 145.

cases of Hester Cinde and Ntombizonki. Furthermore, in Hester Cinde’s case, the *abahloli* also substantiated their conclusions by asserting that they examined not just the breasts of the young girls, but their entire bodies, specifically their “private parts” and their “stomachs.”⁴⁷ Nomsatiana, alias Eliza Ngomezulu, one of the witnesses in Hester Cinde’s case, stated that:

I pressed her breasts and the very full and swollen and on pressing them milk came, on the first squeeze with one hand milk came ... I looked at her stomach which showed a mark up the stomach which a woman has after confinement and before confinement since last in the family way, but no young girl shows before she is in the family way.⁴⁸

The “mark up the stomach” that Nomsatiana thought was clearly indicative of Hester’s pregnancy is known as the *Linea Nigra* (pregnant women usually develop this line – which runs from the abdomen to the pubis – during the second trimester and usually regresses postpartum).⁴⁹ In all probability Nomsatiana and the other elders referred to this line by some other term but, together with vaginal and breast inspections, these women used these observations to astutely determine whether a woman had been confined or not. Another striking feature of these cases is that the *abahloli* witnesses were in the majority in these cases. Their depositions are not only long and detailed as compared to those of their male counterparts, but it appears that their depositions were also given precedence in the court cases. This is evident from the careful scrutiny of their depositions by the Resident Magistrates – James Forder,

⁴⁷ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895.

⁴⁸ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895. Deposition of Nomsatiana alias Eliza Ngomezulu, wife of Abednego Ngomezulu, before Resident Magistrate James Forder, 19th December 1894.

⁴⁹ See Helene B. Bernstein and Milena Weinstein. ‘Chapter 9. Normal Pregnancy & Prenatal Care,’ in A.H. DeCherney and L. Nathan. Current Diagnosis and Treatment: Obstetrics and Gynecology, 10e. Found at <http://0-www.accessmedicine.com/content.aspx?aID=2384287>, accessed on the 17 February 2011.

in the cases of Nomacala and Hester, J. C. C. Chadwick in Ntombizonki's case and Jasper Lennon, Acting Magistrate in Rex versus Ncikwana. The depositions of these women are laden with annotations by the magistrates, sections and specific sentences have been highlighted suggesting that the depositions of these women and their opinions were endowed with a significant measure of credibility.

Less surprisingly, perhaps, equally respected in trials of infanticide and concealment of birth were post-mortem reports. Although not always reliable, doctors and district surgeons' examinations of the bodies of both the deceased infant and respective mother was given much prominence in hearings. What follows in the next section is a discussion of the case of Bertha Clarisse and the extent of the reliability of medical evidence in the court room. Bertha's case also broaches the subject of miscegenation as a motive for committing infanticide or concealment of birth in Natal.

Compounding this notion of illicit unions between African men and women, Shula Marks furthers this argument in *Not Either an Experimental Doll: The Separate Worlds of Three South African Women*. She argues that African women were also prone to accusations of miscegenation, not only by the colonial state, but by the elder men and women in their communities. Young African women – not necessarily Christian women – who found employment in the towns or the homes of white settlers, often did so to find refuge from the gerontocratic order under which they lived. She writes that “colonial employment opened up opportunities to women who wished to escape unwelcome marriage partners and the constraints of a ... patriarchal order.”⁵⁰ She states that, as a result of the newfound independence that some African women found in the towns, there was an increased concern for adolescent sexual

⁵⁰ Marks (ed.) *Not Either an Experimental Doll*, 23.

purity.⁵¹ At the root of this disquietude posed to both black and white patriarchs, was the aversion to miscegenation. African men’s fears of miscegenation became fixated on the notion that “their women were a prey to men of other races,” and through this African men would disinherit control over “their women,” and more specifically over their sexual purity.⁵² The colonial state also saw miscegenation as a growing concern, but these anxieties were embedded in the prevailing imperial eugenicist discourse at the time. In ‘Making Empire Respectable: The Politics of Race and Sexual Morality in 20th-Century Colonial Cultures,’ Stoler contends that for the colonial state “[m]étissage (interracial unions) ... represented the paramount danger to racial purity and cultural identity in all its forms.”⁵³

Bertha Clarisse and the Status of Medical Evidence in the Courtroom

In February of 1908 Bertha Clarisse, “‘European’, age not stated,” was charged with murdering her newborn child.⁵⁴ On the 13th of February, Bertha Clarisse appeared before the Resident Magistrate at the Durban Circuit Court and made this statement:

⁵¹ Similarly in *Genders and Generations Apart*, Thom McClendon also points out that the accelerated movement of women (and juniors) into the urban areas was bound up in gender and generational struggles over control of sexuality and labour by patriarchs and the colonial authorities. McClendon. *Gender and Generations Apart*.

⁵² Marks (ed.) *Not Either an Experimental Doll*, 24.

⁵³ Stoler. ‘Making Empire Respectable,’ 647.

⁵⁴ PAR, AGO, I/1/336, 65/1908, Rex vs Bertha Clarisse. Charged with Murder, 1908. See also PAR, AGO, I/9/34, 60A/1908, Subpoena of Arthur William Tuffs, Pauline Clarisse, Ivanikoffe Clarisse and John Clarisse in Rex Versus Bertha Clarisse, for Murder, 1908.

I live with my mother at 91 Fountain Lane [Durban]. I gave birth to a baby on the 2nd February last. It was born in a water closet at 91 Fountain Lane. At 7.30 am no one was present. I was alone. Whilst in that state my mother came to relieve nature and in turn found me. She asked what I was doing. The baby was living. She put me in bed and attended to the baby. When my mother came into the water closet I was lying on the floor, with my baby alongside of me. My mother took hold of the baby and washed it. The body was behind the door. My mother nor my father knew I was pregnant. I told no one, not even the father [Aliside] Jettoo. I have been keeping company with him for thirteen months. We have had connection together during that time.

If Bertha was indeed guilty of committing infanticide, we can infer that the motive may have been rooted in her illicit relationship with Jettoo. From Jettoo’s deposition it is apparent that he was an Indian domestic servant in the employ of the Clarisses. Given the social and political context at the time – where inter-racial relationships were not only regarded as dishonourable and immoral, but were also illegal⁵⁵ – Bertha’s illicit relationship with Jettoo and an illegitimate child would have tainted her reputation as being debauched and dissolute. She went on to say,

I am not aware if A. Jettoo slept at our house, he may have. I don’t know if he slept at our house the night before the birth. I had no pains at all, until I went to the water closet. I saw Jettoo before the birth at 5.30pm on the 1st instant. I next saw him again on the 8th instant passing my window. I have not seen him since. He last had connection with me last October. He did not say to me “why didn’t I tell my mother I was pregnant.” I went to the water closet in the ordinary way. I did not expect the baby to be born. I have never been examined by the doctor. Nothing was wrong with the baby after its birth. I only saw a small mark on the eye, the right one. I don’t know how the baby died. I did not put it to the breast. Only my mother and I were present when the baby died. The floor of the water closet is made of cement.

⁵⁵ According to Section 16 of Act No. 31 of 1903, “Criminal Law Amendment Act,” which prohibited indecent relations between white women and ‘coloured’ persons. *Acts of the Parliament of the Colony of Natal: 1903*. (Pietermaritzburg: Times Printing and Pub. Co., 1903), 96-101.

There was also sand inside, blown in from outside. I can't account for any bruises or marks on the head.⁵⁶

On July 7th, Bertha Clarisse was summoned to appear in court. Defended by R. L. Goulding, she pleaded not guilty. Pauline Clarisse, mother of Bertha, stated that her daughter had given birth to a female child on the 2nd of February. When she found Bertha, she was unconscious and the afterbirth and blood covered the cement floor. She found the child alive, dressed it and gave it honey and water mixed with oil and placed it in a cot. She then asked Jettoo to get a certain grass to boil and make a broth for Bertha as she was suffering from colic. Later that afternoon, Pauline heard the child groaning and noticed an injury on the infant's head. By 3 o'clock in the morning, the child had died and Pauline had sent for Dr Birtwell, so that he could issue a death certificate.

The next morning the body had been delivered to the mortuary and, from the post-mortem, Dr Birtwell testified that he believed the child had died from a fracture to the skull, haemorrhaging, and shock caused by “some violence.” Dr Mundy, who also performed the post-mortem, agreed with Dr Birtwell that the injuries could not have been caused by the child being delivered onto a hard cement floor. He ascertained that these injuries would only have occurred if the child had fallen at least two feet. He also added that the super-renal gland⁵⁷ had obviously been injured from the outside and that the bruises found under the ribs were those of finger marks. Neither he nor Dr Birtwell, however, could account for the eyelid being black. It is, however, quite possible that this was either the result of retinal haemorrhaging or perhaps

⁵⁶ PAR, AGO, I/1/336, 65/1908, Rex versus Bertha Clarisse. Charged with Murder, 1908. Deposition by Bertha Clarisse.

⁵⁷ Also known as the adrenal glands, which are endocrine glands situated above the kidney and responsible for regulating stress with the release of adrenaline.

“shaken baby syndrome.”⁵⁸ Even though the post-mortem report evidently showed that the injuries sustained by the child could not have been caused by Clarisse delivering the baby in an upright position with the child falling onto the cement floor, and that there were finger marks on the body of the child, Clarisse was found not guilty.

Bertha’s case highlights the inconsistent and unreliable utilisation of medical evidence in the courts. It is not surprising then that, shortly after this case, on the 10th of July, the Natal Branch of the British Medical Association passed a resolution pertaining to medical evidence.⁵⁹ The resolution deplored the irregularity in the use of medical evidence in court and the lack of appropriate procedural methods with regards to the gathering of information and evidence. The Association also stated that it condemned the “pitting [of] medical men against each other as partisans,” in court cases. The resolution also suggested to the Medical Council of the Natal branch the following remedies:-

1. The appointment of a medico-legal expert to advise the Law Department prior to the trial of serious criminal offences involving medical evidence.
2. Where medical evidence is conflicting, the appointment of medical assessors to advise the Court,

⁵⁸ It was only in the 1940s that the phrase ‘Shaken Baby Syndrome’ was introduced and properly described by the medical fraternity. Since then there had been long standing debates with regards to the diagnosis of this, and it is only in recent times that doctors are able to accurately diagnose this. For more on this see for instance, Matti Kontkanen and Kai Kaarniranta. ‘Retinal Haemorrhages in Shaken Baby Syndrome,’ in *Acta Ophthalmologica*, 87:4, June 2009, 471-473.

⁵⁹ ‘Natal Resolution re Medical Evidence,’ in *South Africa Medical Record*, Vol VI, Jan-Dec, 10 July 1908, 211.

And finally,

3. That medical witnesses should not sit by and prompt counsel in Court, but should act strictly as witnesses.⁶⁰

It is difficult to know the circumstances from which these recommendations developed or if it was in response to a specific court case in Natal. Moreover, whether any of these suggestions were contemplated by the Natal Law Society is difficult to establish, but medical evidence in cases of concealment of birth and infanticide was considered critical, even if post-mortem results were not necessarily agreed upon as being decisive in suggesting a definite verdict. In Natal, both prosecutors and defence lawyers turned to Alfred Swaine Taylor’s canonical manuscript *The Principles and Practice of Medical Jurisprudence* (1865), when drafting their briefs for court hearings.⁶¹ Taylor’s manual was intended to aid lawyers in applying science in the courts of law to enable juries to arrive at informed conclusions.

As Taylor noted in his forensic textbook, the hydrostatic test – used to determine whether or not a baby had breathed independently after birth – was not always reliable and needed to be employed with caution. The general conclusions that can be drawn from the hydrostatic test according to Taylor were:

⁶⁰ 'Natal Resolution re Medical Evidence,' 211.

⁶¹ Alfred Swaine Taylor. *The Principles and Practice of Medical Jurisprudence*. (London: John Churchill and Sons, 1865). See specifically the cases of Hester Cinde and the Layton Family. PAR, RSC, 1/1/52, 8/1895, Supreme Court Criminal Cases. Regina versus Hester Cinde. Charged with Contravening the Provisions of Ordinance Number 22, 1846, Entitled “Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal,” 1895; PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895; and PAR, AGO, I/1/336, 64/1908, Rex versus Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

1. That the hydrostatic test can only show whether a child has or has not breathed, - it does not enable us to determine whether a child has been born living or dead.
2. That the lungs of children that have lived after birth may *sink* in water, owing to their not having received air, or to their being in a diseased condition.
3. That a child may live for a considerable period when only a portion of the lungs has been penetrated by air.
4. That a child may survive birth even for twenty-four hours, when no part of its lungs has been penetrated by air.
5. Hence the sinking of the lungs (whether whole or divided) in water is not a proof that a child has been *born* dead.
6. That the lungs of children which have not breathed and have been born dead, may float in water from putrefaction or artificial inflation.
7. That the lungs as situated in the chest undergo putrefaction very slowly, - that if but slightly putrefied, either the case must be abandoned, or other sources of evidence sought for.⁶²

In Natal, medical evidence played a significant role in trials and inquests of infanticide and concealment of birth.⁶³ Of the thirty-five cases tried before the

⁶² Taylor. *The Principles and Practice of Medical Jurisprudence*, 912.

⁶³ For more on this see George K. Behlmer. ‘Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England,’ in *Journal of Historical Medicine and Allied Sciences*, 34, 1979, 403-427; Tony Ward. ‘The Sad Subject of Infanticide: Law, Medicine and Child Murder, 1860–1938,’ in *Social and Legal Studies*, 8:2, 1990, 163-180; Christine L. Krueger. ‘Literary Defenses and Medical Prosecutions: Representing Infanticide in Nineteenth-Century Britain,’ in *Victorian Studies*, 40, Winter 1997, 272-294; Donna Cooper Graves. “‘...in a frenzy while raving mad’: Physicians and Parliamentarians Define Infanticide in Victorian England,’ 111-136; and Kirsten Johnson Kramar. ‘Unwilling Mothers and Unwanted Babies: Infanticide and Medico-Legal Responsibility in 20th Century Canadian Legal Discourse,’ in Brigitte H. Bechtold and Donna Cooper Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006), 137-166; Kirsten Johnson Kramar and William D. Watson. ‘The Insanities of Reproduction: Medico-Legal Knowledge and the Development of Infanticide Law,’ in *Social & Legal Studies*, 15:2, 2006, 237-255; and Daniel John Ross Grey. ‘Chapter 3 - ‘Child-Murder or What?’: The Centrality of Medical Jurisprudence in Infanticide Trials,’ in ‘Discourses of Infanticide in England, 1880-1922.’ Unpublished Thesis (PhD), Roehampton University, University of Surrey, 2008, 144-200.

Supreme and District courts, only eight cases did not include a post-mortem report in the court transcripts.⁶⁴ This is partly because, by the turn of the twentieth century, the concept of a “live-birth” – where a baby is able to live independently from its mother – and its subsequent relationship to prosecution in cases of infanticide and concealment of birth was greatly contested.⁶⁵ Post-mortem reports showing whether a live-birth had occurred were important and necessary in securing a conviction against someone suspected of committing either infanticide or concealment of birth. As mentioned briefly in Chapter One, in addition to proving a live birth, doctors were also responsible for proving “separate existence” – that the child was fully independent of the mother when the child died (as in cases of stillbirths to prove concealment of birth) or had been killed.

According to Taylor, a separate existence meant that the child had been born “viable,” that is, literally, with a capacity to live.⁶⁶ This point becomes especially significant in the case of the Laytons which features in Chapter Four of this thesis. In the summation of that case, the presiding judge, Sir Henry Bale advised the jury that they “had to be certain not only that the child was physiologically born, but ... be satisfied

⁶⁴ See Appendix – Case Summaries, for full details on the types of evidence produced and included in the court cases.

⁶⁵ ‘Medico-Legal and Medico-Ethical – Alleged Infanticide,’ in *The British Medical Journal*, 2:1454, 10 November 1888, 1077-1078; ‘Medico-Legal and Medico-Ethical - The Judicial Definition of Live Birth,’ in *The British Medical Journal*, 1:2098, 16 March 1901, 684-685; ‘Medico-Legal and Medico-Ethical,’ in *The British Medical Journal*, 1:2248, 30 January 1904, 282-283; ‘Life, Birth, and Live-Birth,’ in *The British Medical Journal*, 1:2263, 14 May 1904, 1149-1150; ‘Review: Life, Birth, and Live-Birth,’ in *Harvard Law Review*, 17:8, June 1904, 589-592; C. H. W. Parkinson. ‘Rigor Mortis in Stillborn Children and its Importance from a Medico-Legal Point of View,’ in *The British Medical Journal*, 2:2282, 24 September 1904, 755-756; J. A. Braxton Hicks. ‘The Effects of Artificial Respiration on the Stillborn,’ in *The British Medical Journal*, 2:2601, 5 November 1910, 1416-1418; Godfrey Carter. ‘Legal Definition of Live Birth,’ in *The British Medical Journal*, 2:3425, 28 August 1926, 385-387; Howard M. Stratford. ‘Live Birth,’ in *The British Medical Journal*, 2:3427, 11 September 1926, 503.

⁶⁶ Taylor. *The Principles and Practice of Medical Jurisprudence*, 886.

that the child was born alive from a legal point of view.”⁶⁷ His instruction implied that, had the child been born “viable” with the capacity to live independently from its mother, the Layton family could well have been found guilty of infanticide. As mentioned in Chapter One, this centrality of proving separate existence in cases of infanticide was augmented by Attorney General T.F. Carter’s comments in the Natal Legislative Assembly on the introduction of the Section 9 of the 1910 General Law Amendment Act.

... the greatest difficulties is that of a person charged with infanticide, to prove **whether there has been a separate existence of the child** alleged to be injured or not, and by this section we hope to improve the criminal law in a manner which has had the approbation of the highest authority to whom we have referred this matter.⁶⁸

The difficulties, however, in proving separate existence – as in some of the cases discussed in this chapter as well as in Chapter Four – point to the fact the medical evidence in the court room was – and is – not always reliable. Point 5 of Taylor’s conclusion is particularly relevant to the case of Ncikwana and the difficulties posed by the inconsistency of medical evidence in infanticide and concealment of birth cases. In his post-mortem report, Dr Campbell Watt recorded that the lungs of the child had floated in water but that, when he expressed the air from them and repeated the test by placing the lungs in water again, they had sunk. At the end of his report, Dr Campbell Watt concluded that the child had in fact been stillborn; however, when describing the outward appearance of the body, he could not explain why he had found blood stains on the nostril and eyes or why the tongue of the baby

⁶⁷ ‘The Layton Case, Alleged Infanticide, The Accused Acquitted, Scene in Court,’ in *The Natal Mercury*, Thursday, July 2, 1908.

⁶⁸ See PAR, NCP, 2/2/28, Members of the Legislative Assembly, 5th Session of the 5th Parliament, 1909-1910, Vol. XX, Pietermaritzburg, P. Davis and Sons, 1910, 38. [Emphasis added]

was protruding. As recorded above, Taylor identified that the sinking of the lungs (whether whole or divided) in water was not proof enough that a child had been born dead, and that the hydrostatic test could only prove whether a child had breathed or not. However, Dr Campbell Watt’s medical report suggests that his deductions of the child being stillborn were based on the fact that the “characteristics [of the lungs] prove[d] conclusively that the child had never breathed.”⁶⁹

Richard Thornton Hamilton Harrison ~ Incest and Miscegenation as Plausible Motives

The case of Richard Thornton Hamilton, a retired Police Sergeant, 39 years of age and owner of Greyridge farm, who was first charged with the crime of infanticide and, subsequently, with incest, is included here for a number of reasons.⁷⁰ Firstly, the story is interesting in itself, animating the inner domain of domestic life in rural Newcastle in colonial Natal, providing us with a slice of fascinating and poignant social history. Secondly, this is the first case that followed after the passage of Act 10 of 1910 which made infanticide a distinct offence. Thirdly, following Bertha Clarisse’s case, Harrison’s indictment allows for a compelling discussion of the perils of miscegenation and how this can be interpreted as a motive for committing infanticide or concealment of birth. Finally, this case allows us to see the ways in which the

⁶⁹ PAR, AGO, 2/1/6, CPM50/1905, Magistrate Umgeni Division: Rex versus Ncikwana. Charged with Concealment of Birth. Post-mortem report by Dr Campbell Watt, 8 February 1905.

⁷⁰ PAR, RSC, 1/1/115, 20/1914, Supreme Court Criminal Cases. Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide, 1914; PAR, RSC, 1/1/115, 19/1914, Supreme Court Criminal Cases. Rex versus Richard Thornton Hamilton Harrison. Charged with Incest, 1914.

colonial state's assumptions about race, gender and criminality were unsettled by infanticide cases such as this.

During the month of June 1914, Pagel's Circus was performing in the centre of town in Newcastle. On the 14th, Florence Maud, the elder daughter of Harrison, 17 years of age, and her younger sister Blanche, aged 14, had taken a trip with their father into town to see the circus. It was here that several of their family acquaintances noticed her wearing a large black overcoat, leading to speculations that she was “far gone in the family way.” A month later, in July 1914, Florence reported the murder of her child at the local police station. She recorded that, since “about 1912,” Harrison had been having sexual intercourse with her and, as a result, she had fallen pregnant. Florence stated that this had happened because her father wanted to punish her as she had fallen in love “with the native Nkwetshi and wanted to marry him; and had a sexual relationship with him.” According to Florence, Harrison always carried a pistol and had on many occasions threatened to “blow [her] brains out, if [she] reported the matter.”⁷¹ Moreover, some years prior to this, Harrison had apparently shot a ‘native’ who tried to “ravish” Florence and since that time he had not allowed ‘natives’ on the premises, except as servants. Ironically, Harrison himself had married, both by customary and Christian rites, Elizabeth Ndlovu in 1904, the mother of Florence and Blanche.⁷²

⁷¹ PAR, AGO, I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914

⁷² PAR, Master of the Supreme Court Estates [hereafter MSCE], 21768/1934, Harrison, Richard Thornton Hamilton, 1934. In 1910, Elizabeth Ndlovu was committed to the lunatic asylum. She died shortly after that.

In her deposition at the Magistrates Court, Florence accused her father of murdering her child. According to Florence:

About five days after I returned from the Circus I gave birth. I bore my child on the small bed in the big room. It was just after Breakfast in the morning. The accused assisted in the labour. After the birth of the child accused took it to his room, I watched him go through the passage into his own room with the child. Accused remained away about half an hour, and then returned with the body of the child in a cloth, I could just see its head, its eyes and mouth were shut. Accused said see now it is dead, and without saying anything more returned with the body to his room. He remained away about five minutes and then returned to me. Up till 3pm he was in and out of my room, after this hour he chopped a lot of wood and brought it into my room, placing it by the stove. The placenta came away a few minutes after the child. Accused removed the baby. I did not see the Accused sever the umbilical cord. I don't know when it was out, I knew it should be cut. I cannot remember if the placenta had come away when the child was removed. The child was crying when the Accused took it out of my room and he placed his hand over its mouth. I heard the child cry once in his room, I don't know how it died. I did not again see the body but at night when Accused brought something into the room which was contained in apparently the same cloth as I had seen the body. It was about the same size as the body and was heavy. He carried it hanging in the cloth and taking it to the stove where there was a fire burning, placed it on the fire saying: “I am going to burn it so that it will not be seen.”⁷³

Florence further stated that it was just a week after her child was born that her father again had sexual intercourse with her. He had apparently bought her the black coat about nine months prior to this to hide her pregnancy. When Blanche asked her about the “size of her stomach” she had told her that she was pregnant but she did not tell Blanche who the father was. Florence also stated that, sometime after the birth of the baby, Blanche had told her that she had seen Harrison burying the body at the

⁷³ PAR, AGO, I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914, Deposition of Florence Maud Harrison.

back of their shed. Florence said that she had been tired of acting as her “Father’s wife” and that she longed to marry Nkwetshi.

When questioned about her relationship with Nkwetshi, Florence stated:

I had been to Nkwetshi’s kraal once before with my mother. My mother went there to get some peaches and I accompanied her. I have only been twice to Nkwetshi’s kraal. I went to Nkwetshi’s kraal to marry him. I knew that he was going to marry me. Nkwetshi made love to me at my Father’s house, and said he would marry me. We loved each other. He had never told me at his kraal that he would marry me, except when I went to him on the second occasion. Nkwetshi had never written to me. He cannot write, nor can I. I only once had sexual intercourse with Nkwetshi, this was at his kraal before I came to this Court. We indulged [sic] in external intercourse. I lay on my side. He did not get on top of me. When I said just now that I had only once been to Nkwetshi’s I meant lately.⁷⁴

The particularities contained in the narrative of the testimonies, particularly by Florence and Nkwetshi, whether concocted or not, were evidently directed at proving intent on the part of Hamilton. When Nkwetshi was called before the Acting Magistrate for examination, he proclaimed:

I know the girl Florence Harrison. She came to my kraal the day before I brought her in here. **Yes I love her but the authorities will not allow it.** She also says she loves me. I do not remember if it is two weeks or not since she came to my kraal. I asked her if her Father consented to her coming to me, she said yes. She slept at my kraal undressed and lay down beside me. I could not then control myself and had sexual intercourse with her. I did not have penetration. Florence did not inform me of anything having taken place at home and in connection with herself and her Father. I brought her at her request, and for the purposes of ascertaining whether I would be allowed to take her as wife. This was the first time I had sexual intercourse with her. I do not

⁷⁴ PAR, AGO, I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914.

know of any other native having had intercourse with her. I worked for her father but did not take notice. I left Accused's employ not long after the sheep came down in May. I had not noticed that she was pregnant.⁷⁵

In his report to the Attorney General's office, regarding his examination of Florence, dated the 28th August 1914, Dr Charles Cooper, the District Surgeon for Newcastle, found that her breasts were lactating and that this would not have been so unless she had had a child. The blood on the blanket that he had found at the Harrison house was quite “thick, moist and mouldy.” Dr Cooper further stated that, as he had found a considerable amount of blood and other fluids on the blanket and that “it was fairly moist all over, it was most likely that the placenta had been placed in the blanket.” At the end of his report, Dr Cooper added: “I saw Florence Harrison on Tuesday last, but saw no signs of insanity.”⁷⁶ In September, Dr John Edward Briscoe undertook a second examination. In his report, he stated that he had come to the conclusion that she had recently given birth to a child as her “breasts were pendulous and lactating and there were thin lines on the skins of her breasts showing that they had been distended.” Her womb, he found, was a quarter of an inch longer than the normal womb that has borne children and on the right side of the mouth of the womb he found a fissure or tear, from which he inferred that the head that passed through was that of a full term sized baby. Dr Briscoe also ended his report stating that he found “no signs what-ever of insanity.”⁷⁷

⁷⁵ PAR, AGO, /I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914, Deposition of Nkwetshi Kubheka. [Emphasis added]

⁷⁶ PAR, AGO, /I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914.

⁷⁷ PAR, AGO, /I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914.

Dr Briscoe’s final sentence in his report is quite telling. It is likely that knowing the history of mental illness in their family, (her mother, Elizabeth Ndlovu, had been committed to the Natal Government Asylum) and, given the scope of Florence’s account of what happened, both Drs Cooper and Briscoe were instructed by the Resident Magistrate to ascertain if her behaviour had been prompted by mental instability. Reported cases of incest within ‘European’ families, let alone among other race groups, were somewhat rare in Natal and perhaps, if they found that Florence had displayed ‘signs’ of insanity, the state could then dismiss the case or find her guilty but of “unsound mind.” In so doing, the state could offer some protection to Harrison and his family, and circumvent any dishonour, humiliation and disrespect that a guilty verdict and hefty sentence could warrant.

In April of 1915, however, the case took a dramatic turn. The court case had originally been scheduled for September that year and was later adjourned to April 1915. Before the case could be tried though, it was eventually dissolved. In the last correspondence regarding why this had happened, the Assistant Magistrate of the Newcastle Division wrote to the Attorney General regarding the adjournment stating:

I regret to inform you that this case had moved from an extremely strong case to a weak one. The sister Blanche had appeared before the Magistrate this morning to say that both her and sister Florence had been instructed by the native Nkwetshi to say that their father was infact [sic] the father of the child and that he had been having sexual intercourse with Florence. Further, the Witness Florence Maud Harrison was convicted of contravening section 16 Act 31 of 1903^[78] and sentenced to four months imprisonment with hard labour. She was found at midnight on the 4th inst in the act of fornication with a Native in Mrs Long’s bathroom, to which she had admitted the Native. From the evidence it would appear that the Witness is an ordinary prostitute

⁷⁸ Which forbade illicit sexual intercourse between a white woman and a Coloured person

as the Native to my knowledge was unknown to the witness when she entered Mrs Long’s service.⁷⁹

The Assistant Magistrate’s missive is laden with racial and sexual prejudices and stereotypes. In the end the case was dissolved primarily because Florence’s testimony was now considered unreliable because of her promiscuous sexual relationships with ‘native’ men, for which she was branded “an ordinary prostitute.”

The case of Harrison highlights the messiness and blurred class, gender and racial boundaries of colonial life in Natal. Official concerns about infanticide were part of a larger preoccupation with moral reform specifically related to sexual morality, legitimacy, good parenting and racial purity. During this time state interventions in this realm were crucial to the constitution of whiteness and the consolidation of racial boundaries in Natal. Nkwethsi’s statements: “Yes I love her but the authorities will not allow it,” epitomises the extent to which the state attempted to engraft an ideology that forbade any inter-racial relationship in Natal. The idea being that this was detrimental to the purity of the white race which would lead to its degeneration and ultimately challenge the racial superiority that white Natalians possessed. Miscegenation, but also any form of sexual “deviance” as in other British colonies, was perceived to be a threat to colonial structures that would alter the racial divides and these fears were played out well into the Union years in South Africa.

By the end of the Harrison case there are three possible scenarios with three possible motives, but what underlies these motives can be traced back to the way the state policed sexual morality in Natal. First, that Harrison was really guilty of incest and

⁷⁹ PAR, AGO, /I/1/406, 62-63/1914, Rex versus Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914.

wanted to hide the fact that he was the father of his daughter's child and therefore threw the baby into the fire. Second, from Blanche's statement we could infer that since Nkwetshi was the father of the child, Florence was actually guilty of infanticide because she wanted to conceal her illicit sexual relationship with Nkwetshi, of which her father disapproved. Lastly, that Harrison did kill the baby, not because he was the father, but rather because it proved that his daughter continued her relationship with Nkwetshi, despite his protestations.

Conclusion

To try to understand and interpret the motivating factors in the crime of infanticide it is necessary to examine the circumstances that shaped the lived realities of the men and women accused of this. Infanticide can be seen as a response to societal construction of and constraints on motherhood and parenting. This is quite evident in the cases that this chapter discusses. In proper medico-legal terms all these cases can be termed as neonaticide, which is the killing of children within the first twenty-four hours of birth. Michelle Oberman, who has written extensively on infanticide in the American context, argues that women who are accused of committing neonaticide are generally very young and that an overwhelming majority of these women tend to be unmarried.⁸⁰ She further argues that, at the time of the birth, many of the fathers to these children are absent from the women's lives altogether. This is a particularly striking feature in the cases of Nmacala Nxumalo (1886), Hester Cinde (1895), Ntombizonki (1901), Ncikwana (1905).

⁸⁰ Michelle Oberman. 'Understanding Infanticide in Context: Mothers Who Kill, 1870-1930 and Today,' in *The Journal of Criminal Law and Criminology*, 92:3/4, Spring - Summer 2002, 709.

While it was certainly difficult for the courts to prove that infanticide had occurred in any of these cases, it is interesting to note that Bertha Clarisse was in fact charged with murder and not infanticide or concealment. And, while in this case the medical evidence revealed that there was strong certainty that the baby had been wilfully killed, Clarisse was found not guilty and discharged. Incriminating evidence also included her alleged relationship with Jettoo and, as has been shown in the Harrison case, there is also the possibility that Clarisse attempted to conceal this forbidden relationship by killing the baby. But the leniency afforded to Clarisse is indicative of the hierarchies of justice that contaminated Natal's legal system. The differential treatment of white women by the Natal courts was not restricted to cases of infanticide or concealment of birth and in keeping with this line of thought, it is possible to argue that, in finding Clarisse innocent, the colonial state was in fact helping her reclaim her place in respectable society.

As Peter Spiller has shown in his study on the District and Supreme Courts of the Colony of Natal, juries were extremely racially biased, often uninterested in cases where the accused was Indian or African and, most importantly, resented the fact that their time was taken up by sitting in on such cases. By 1828, the Cape Colony authorities had adopted a trial by jury system as a general move towards adopting an English system of law. When Natal was annexed in 1844, this system was adopted despite the fact that English settlers constituted only a small percentage of the population. To be able to serve as a juror, one had to be male, between the ages of twenty-one and sixty years and possess or rent immovable property of a certain value. While government and legal officials, advocates, attorneys and doctors were excluded, Law 10 of 1871 and Law 14 of 1883 also barred African and Indian men from serving on juries. This meant that Indian and African men and women were tried by white

men who did not understand “questions of Native language, customs, motives and feelings.”⁸¹ Verdicts were thus largely predetermined by the powerful context of settler racism.⁸²

Verdicts handed down by juries were dependent upon and influenced by a number of factors: the address by the judge in summing-up, newspaper reports, public opinion and sentiment, the characteristics of both the accused, the complainant and, most importantly, the racial and gender categories of the individuals concerned. Racially biased juries, operating within the small white Natal community where public sentiment against Indians and Africans was ubiquitous, often resulted in prejudiced and wrongful verdicts of guilty in criminal cases more generally.⁸³ The iniquitous operation of the Natal legal system – despite the evidence presented in court, including medical forensic information – is reflective of the social politics prevalent in Natal during this time. As mentioned in Chapter One, of all the cases of infanticide and concealment of birth tried before the Supreme and District Courts, only one white woman, Johanna Cathrina Schraivesande, who was found guilty, actually served a prison sentence. Her case is discussed in greater length in Chapter Four.

As Pamela Scully concludes in her article on infanticide at mission stations in the Cape Colony in the post-emancipation period (specifically 1843-1870), “the emphasis on searching out, and then pardoning, perpetrators of infanticide enabled the dual

⁸¹ This was a statement made by Mr Justice Henry Connor, a puisne judge from 1858 to 1874 and Chief Justice of Natal from 1874 to 1890, in an article in the *Times of Natal*, as cited in Peter R. Spiller. ‘The Jury System in Colonial Natal, 1846-1910,’ in *Journal of Natal and Zulu History*, 11, 1986, 2.

⁸² Spiller. ‘The Jury System in Colonial Natal, 1846-1910,’ 1-11. See also P. R. Spiller. *A History of the District and Supreme Courts of Natal, 1846-1910*. (Durban: Butterworths, 1986).

⁸³ Spiller. ‘The Jury System in Colonial Natal,’ 4.

and ambiguous project of humanitarianism to be elaborated in practice – blame in order to pardon and mark the person in order to demonstrate how much he or she needs our help.”⁸⁴ In *White Mercy – A Study of the Death Penalty in South Africa*, Rob Turrell makes a similar argument, that there was a general reluctance in South African courts to carry out the full sentences in cases where white women were found guilty in capital offences. As Minister of Justice in 1911 General Hertzog wrote, “[c]asses where women destroy their newly born offspring, especially if illegitimate, are unhappily not rare, but it had justly been made the custom to take a merciful view of these acts generally committed in a state of great mental distress and bodily suffering.”⁸⁵

Furthermore, it is also evident that class played a significant role in the cases of infanticide that were brought before the courts. As Julie Parle argues in *States of Mind* with regard to the instances of suicide, wealthier families of sufficient means could, with good connections, cover up incidents that carried the taint of stigma. She further argues that because of the social censure that suicide carried, it is probable that District Surgeons and Magistrates shared a “reluctance to stigmatise colonists with the shame of a verdict of suicidal death.”⁸⁶ It is quite possible to extend this argument to the case of infanticide as well, since charges of criminality amongst the

⁸⁴ Pamela Scully. ‘Narratives of Infanticide in the Aftermath of Slave Emancipation in the Nineteenth-Century Cape Colony, South Africa,’ in *Canadian Journal of African Studies*, 30:1, 1996, 100.

⁸⁵ National Archives Repository [hereafter TAB], GG, 1604, 51/423, Death Sentences. Martha Foginyaan, Minister of Justice’s Report (General Hertzog), 16 November 1911, as reproduced in Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. (Westport: Praeger Publishers, 2004), 78.

⁸⁶ Julie Parle. *States of Mind – Searching for Mental Health in Natal and Zululand, 1868-1918*. (Pietermaritzburg: University of KwaZulu-Natal Press, 2007), 236.

different races in Natal resulted in very different penalties for each group. According to the Chief Commissioner of Police in Natal:

The criminal population may be said to consist of casual offenders and habitual criminals, and I venture to suggest that the mode of prison treatment should be different for each class. The casual offenders may also be divided into two classes – those who repent and those who do not. The latter will probably soon pass through the hands of the Police again, and eventually be numbered with the habitual criminals, but to the former, especially in European cases, where repentance may be considered sincere, a helping hand should be extended. There is this difference between European and Native offenders – that to the European imprisonment generally means ruin, whereas the social position of the Native is in no way affected thereby, nor does it detract from his value as a labourer. In a small community like ours, a European finds it difficult to hide his identity, and no matter how desirous he may be of earning an honest livelihood after release from prison, he finds himself unable to obtain remunerative employment, and consequently lapses again into crime.⁸⁷

In the cases presented in this chapter the crime of infanticide can be separated into two distinct categories: death by acts of omission, where the killing of the child is passive and this would imply death by neglect or abandonment, or death by acts of commission, where the act of killing the child entails an active participation.⁸⁸ That the women, whose cases this chapter discusses, were found guilty of killing or concealing the birth of the child, does not necessarily mean that they actually committed the crime. In the case of Nomacala for instance – where Dr Ward, the District Surgeon concluded that the baby was stillborn (but this was only because he

⁸⁷ PAR, Natal Colonial Publications [hereafter NCP], 7/4/2, Bound Departmental Reports, Part V – Judicial. Annual Report of the Criminal Investigation Officer for the Year Ended December 31, 1895, p E1, as quoted in Parle. *States of Mind – Searching for Mental Health in Natal and Zululand, 1868-1918*, 236-237.

⁸⁸ Denise R. Shaw. ““What she want to go and do that for?”: Examining Infanticide in Toni Morrison’s *Beloved*,” in Bechtold and Cooper Graves (eds.) *Killing Infants*, 257.

could not perform a lung test since the “dog-bites [sic] had penetrated the chest and torn the lungs on both sides) – was still found guilty and sentenced to twelve months imprisonment with hard labour.⁸⁹ In all probability her child could have been stillborn but, owing to the fact that she concealed her pregnancy from her sister and placed the body “in a secret place,” this implied that she also intended to conceal the birth of her child.

The layers of pathos, desperation, prejudices, and pity reflected in these cases are not only illustrative of the socio-economic context but also the socio-political surrounding in which these cases were located. And, underscoring all the cases discussed in this chapter is the question of sexual morality: that the elder residents at Edendale were determined to police and control the supposed sexual proclivities of younger African women and that the colonial state attempted to forbid inter-racial sexual relations. From Bertha Clarisse’s testimony we can postulate that since neither of her parents was aware of her pregnancy, and more significantly, that their servant Jettoo was the father, she committed infanticide to conceal her relationship with Jettoo which was prohibited by law. Similarly, even though the details of the Harrison case are somewhat vague, if it was in fact true that Nkwethsi and Florence Maud concocted the entire case, this was done so as to safeguard their relationship.

In isolation, the cases examined in this chapter represent what at first can be interpreted as incomprehensible acts against humanity but, when they are considered together, these cases are able to provide an understanding of infanticide and concealment of birth in relation to the plight of the individual who was possibly

⁸⁹ PAR, RSC, 1/1/39, 42/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 of 1846. Post Mortem Report of Dr Charles Ward, 20th May 1886.

acting in response to the strict moral structures of the society in which they found themselves. What follows in Chapter Four is an analysis of the manner in which leading Natal newspapers, particularly *The Natal Witness* and *The Natal Mercury*, reported on the crimes of infanticide and concealment of birth. It is also juxtaposed against Chapter Three by interrogating the ways in which Natal’s white public reacted differently to cases of infanticide and concealment of birth.

Chapter Four

“Secrecy was the essence of the crime!”¹ Newspaper Representations and Public Responses to Cases of Infanticide and Concealment of Birth, Natal, 1860-1910

Infanticide –

A most revolting case of the above nature has just come to light, the body of a young child having been discovered in the vault of a necessary [sic] adjoining the building known as the “Victoria Hotel.” The deed appears to have been committed in a most diabolical manner, the head having been twisted off from the body, and then thrown in for concealment. A native woman has been taken up on suspicion, as the wretched mother and perpetrator of the deed, and securely lodged in gaol. Further investigations are being instituted by the Resident Magistrate, and we sincerely trust that the guilty party, or parties, will speedily meet with that punishment the cruel and wicked act demands.²

At first glance, this 1859 *Natal Witness* report of a “diabolical” incident of infanticide is unsettling and disturbing for the historian, and presumably this would have been true for the readers of the day. However, on closer inspection there is more that can

¹ ‘The Layton Case, Alleged Infanticide, The Accused Acquitted, Scene in Court,’ in *The Natal Mercury*, Thursday, July 2, 1908.

² ‘Infanticide,’ Supplement to *The Natal Witness, and Agricultural and Commercial Advertiser*, 23 December 1859.

be drawn from its reading for it is precisely newspaper articles such as these that have the potential to trigger a plethora of questions necessary for historical investigation. For historians working with newspaper sources it is understood, as it is in the case of court records, that this genre necessitates working within a specific set of rules and precautions.³ As a historical source, it is not necessarily the ‘factual’ details that newspapers offer, but rather the context in which particular articles came to be produced – the character of newspaper; the editorial style; the newspaper’s management and ownership; its readership; reception and circulation; the time and place in which they were written and by whom; as well as their impact – that are of higher importance.⁴ It is within this framework that this chapter is structured.

This chapter is an analysis of the manner in which Natal newspapers reported on and represented trials of the crimes of infanticide and concealment of birth and, in turn, how the (white) public responded to these cases. In Natal, while there have been many seminal works that have considered public reaction to crimes of varying nature

³ This is particularly pertinent for historians of Africa working with colonial newspapers. In ‘Writing Histories of Contemporary Africa,’ an article published in *The Journal of African History*, Stephen Ellis cautions the use of newspaper articles when writing African histories by stating that while “newspapers provide a more accessible and more comprehensive documentary record for historians,” they were ultimately “tawdry propaganda sheets” for governments in power. He goes on to say that historians should be sceptical of regarding newspapers as legitimate and reliable records and to think about the “parochial” ways in which colonial newspapers were produced. ‘Writing Histories of Contemporary Africa,’ in *The Journal of African History*, 43:1, 2002, 15-17. James Brennan echoes these sentiments in an article on Indian newspapers in Colonial Tanganyika. He suggests that when historians use newspapers as primary sources, they should be cognizant of the fact that “newspapers themselves were produced as informational fragments in composite, a naked business model of advertisements, sports results, commodity prices, official departures and arrivals, and other local notices.” James R. Brennan. ‘Politics and Business in the Indian Newspapers of Colonial Tanganyika,’ in *Africa*, 81:1, 2011, 42.

⁴ I have highlighted the word factual in this sentence to draw attention to the fact that like court records the credibility of the facts presented in newspaper articles is questionable. Newspaper articles are not exempt from errors, biases or fabrication.

and degrees, there has been very little historical research focusing on the different ways in which the press reported on these crimes.⁵ This chapter is an attempt at contributing to this growing area of historical inquiry of Natal's historiography.

Press narratives of crime reporting in Natal played a crucial role in shaping settler public opinion, including on the issue of infanticide. As Daniel Grey has stated, in the context of England in the late nineteenth and early twentieth centuries

"...newspapers played a key role in telling the story of an infanticide case to the public, and their detailed descriptions of the defendant and his or her actions allows the exploration of broader cultural beliefs about what it meant to be considered 'infanticidal'...."⁶ Reporting on cases of infanticide and concealment of birth, newspapers in Natal also utilised and influenced public opinion to make social and

⁵ Here I am thinking primarily of Natal's rape scares in the last three decades of the nineteenth century, and other moral panics that both crippled and enraged Natalians in the twentieth century such as the Maphumulo uprising in the immediate aftermath of the Zulu rebellion of 1906. Norman Etherington. 'Natal's Black Rape Scare of the 1870s,' in *Journal of Southern African Studies*, 15:1, 1988, 36-53; Jeremy C. Martens. "'So Destructive of Domestic Security and Comfort': Settler Domesticity, Race and the Regulation of African Behaviour in the Colony of Natal, 1843-1893.' Unpublished Thesis (PhD-History), Queen's University, Kingston, 2001; Jeremy C. Martens. 'Settler Homes, Manhood and 'Houseboys': an Analysis of Natal's Rape Scare of 1886,' in *Journal of Southern African Studies*, 28:2, June 2002, 379-400; and a more recent seminar presentation by Vukile Khumalo. "'A Great Invitation': Publics, Assemblies and Opinion Formation in Natal, 1900-1910.' Unpublished paper presented on the 19th May 2010 at the History and African Studies Seminar hosted by the History Department, University of KwaZulu-Natal. On the 'disturbances' of 1906 see, Shula Marks. *Reluctant Rebellion: Disturbances in Natal, 1906-08*. (Oxford: Clarendon Press, 1970); Jeff Guy. *The Maphumulo Uprising – War, Law and Ritual in the Zulu Kingdom*. (Scottsville: University of KwaZulu-Natal Press, 2005); Jeff Guy. *Remembering the Rebellion – the Zulu Uprising of 1906*. (Scottsville: University of KwaZulu-Natal Press, 2006); and Leigh R. Anderson. 'Society, Economy and Criminal Activity in Colonial Natal, 1860-1893.' Unpublished Thesis (PhD-History), University of Natal, 1993.

⁶ Daniel John Ross Grey. 'Discourses of Infanticide in England, 1880-1922.' Unpublished Thesis (PhD), Roehampton University, University of Surrey, 2008, 86.

class distinctions on issues concerning illegitimacy, immorality and respectability and, at the same time, worked within racial parameters.

The newspaper reports, editorials and letters to editors used for this chapter have been drawn from two prominent Natal newspapers, *The Natal Witness* and *The Natal Mercury*, both of which had a largely white readership.⁷ Other popular Natal newspapers such as *Ilanga Lase Natal* and the *Indian Opinion* – both of which were first published in 1903 and were dedicated to small elite literate African and Indian audiences respectively – rarely reported on criminal cases of infanticide or concealment of birth and, when they did so, these articles were generalised and concerned with wider moral, social and political issues. African and Indian newspapers in Natal and elsewhere in colonial Africa largely were media platforms that not only criticised their respective governments but also provided a fulcrum for anti-Imperial and nationalistic discourses.⁸ In 1915, however, the *Ilanga Lase Natal* did publish a brief philosophical statement on infanticide. It read: “We asked a question the other day regarding the case of infanticide, whether it was the result of lack of ethical propriety, or of economic shortage. We felt the awfulness of the case,

⁷ For a history of *The Natal Witness* see Simon Haw. *Bearing Witness: The Natal Witness 1846-1996*. (Pietermaritzburg: Natal Witness, 1996); and for *The Natal Mercury* see Terry Wilks. *For The Love of Natal - The Life and Times of The Natal Mercury 1852-1977*. (South Africa: Robinson & Company, 1977).

⁸ R. Hunt Davis Jr. ‘Qude maniki! John L. Dube, Pioneer Editor of Ilanga Lase Natal,’ and Uma Mesthrie. ‘From Advocacy to Mobilization: Indian Opinion, 1903-1914,’ in Les Switzer (ed.) *South Africa’s Alternative Press: Voices of Protest and Resistance, 1880s-1960s*. (Cambridge: Cambridge University Press, 1997), 83-126; and Isabel Hofmeyr, Preben Kaarsholm, and Bodil Folke Frederiksen. ‘Introduction: Print Cultures, Nationalisms and Publics of the Indian Ocean,’ in *Africa*, 81:1, 2011, 1-22. Writing in the context of colonial Kenya, Bodil Folke Frederiksen further illustrates the political stance taken by African and Indian newspapers, in ‘Print, Newspapers and Audiences in Colonial Kenya: African and Indian Improvement, Protest and Connections,’ in *Africa*, 81:1, 2011, 155-172. For a similar analysis on Tanzania’s Indian print media see Brennan. ‘Politics and Business in the Indian Newspapers of Colonial Tanganyika.’

so deferred the answer.”⁹ Similarly, when the *Indian Opinion* reported on infanticide, it was in the context of the social hardships endured by Indians in the Colony and Empire at large, or in relation to the duties of an Indian parent and was rather moralistic in tone.¹⁰ So, while these types of articles remain important as referents in shedding light on what African and Indian intellectuals thought about infanticide, they are not utilised in this chapter as they do not comment on specific criminal trials of infanticide or concealment of birth.

The relationship shared by the white press in Natal with its readers was a complex one. John Lambert writes that the Natal “colonial press served as a forum for imperialist ideology and was active in maintaining a British identity,” which espoused the idea that English-speaking Natalians had “birth, intelligence, and education, good stock ‘on which to engraft a respectable community.’”¹¹ This was also true for other colonial presses in the British Empire. Writing under the umbrella theme of imperial ‘co-histories’¹² and the role of the press, scholars such as Chandrika Kaul, Julie F. Codell, and Simon Potter have considered the multifarious roles played by the press in shaping and defining imperial identities both in the colonies (India, Australia, New Zealand, Canada) and in Britain. They argue that the imperial press systems present in

⁹ *Ilanga Lase Natal*, 14th May 1915.

¹⁰ ‘Written in Blood,’ 1st September 1906; ‘Administrative Methods,’ 27th February 1909; ‘A Peaceful Crusade,’ 26th April 1913 in *Indian Opinion*.

¹¹ John Lambert. ‘The Last Outpost’ The Natalians, South Africa, and the British Empire,’ in Robert Bickers. *Settlers and Expatriates: Britons Over the Seas*. (Oxford: Oxford University Press, 2010), 154, 156. See also John Lambert. ‘“The Thinking is Done in London”: South Africa’s English-Language Press and Imperialism,’ in Chandrika Kaul (ed.) *Media and the British Empire*. (Hampshire: Palgrave Macmillan, 2006), 37-54.

¹² The term “co-histories” describes the historiography and theoretical approach that is similar to what are also called transnational histories: these can be described as the nexus where metropolitan and colonial histories are both contiguous and mutually influential to each other.

those colonies were instrumental in maintaining, producing, and re-producing ideas about Britishness.¹³

As early as 1846, just three years after Natal was declared a colony, *The Natal Witness* also proclaimed its role as a purveyor of “truth”; after all, the paper’s masthead read: “The Truth, The Whole Truth and Nothing but the Truth.”¹⁴ The newspaper understood that its relationship to its readership was also one of “fidelity.” In reports of legal proceedings of criminal crimes, *The Natal Witness* affirmed that:

The press is expected to add itself to the jury, and sometimes to do even more – to take its place beside the judge. ... When sentence has been pronounced, the Press becomes an executioner, and, laying hold of the sword of justice, mercilessly inflicts wounds on the hapless and the innocent. ... All that is required in the Press is fidelity; and this necessitates exposure to the malignity of the malicious, the anger of the offended, the resentment of those who can resent and the misconstruction and misrepresentations of the liar. All of which, we hope, the *Witness* is equal to, and if not, then we shall glory in an honourable and noble defeat.¹⁵

This, however, was a rather noble ambition. As this chapter will demonstrate, crime reporting in *The Natal Witness*, as well as *The Natal Mercury*, was not so

¹³ See for instance Chandrika Kaul. *Press and Empire: the London Press, Government News Management and India, circa 1900-1922*. (University of Oxford Press, 1999); Simon James Potter. *News and the British World: the Emergence of an Imperial Press System, 1876-1922*. (Oxford: Clarendon Press, 2003); Julie F. Codell. *Imperial Co-Histories: National Identities and the British and Colonial Press*. (New Jersey: Fairleigh Dickinson University Press, 2003); and Kaul (ed.) *Media and the British Empire*; and Glen O’Hara. ‘New Histories of British Imperial Communication and the ‘Networked World’ of the 19th and Early 20th Centuries,’ in *History Compass*, 8:7, 2010, 609-625.

¹⁴ Basil Leverton. ‘*The Natal Witness* and ‘Open Testimony’,’ in John Laband and Robert Haswell. *Pietermaritzburg 1838-1988: A New Portrait of an African City*. (Pietermaritzburg: University of Natal Press and Shuter & Shooter, 1988), 202.

¹⁵ *The Natal Witness*, 26 March 1847.

unequivocal. In cases of infanticide and concealment of birth, Natal newspapers adopted two approaches. The articles were either sympathetic in nature or judgemental and this depended, not necessarily on the sex of the accused, but on his or her race. By analysing the reportage of the court cases of Kate Baatjes (1869), Eliza Jane Dynes (1875), Nobayeni (1877), Louis Pithey and Mary McDaniel (1876), Johanna Christina Schraivesande (1899), and the Layton family (1908), it is apparent that newspapers also uncritically adopted the social distinctions that were prevalent in colonial Natal. Moreover, in keeping with Lambert's argument above, it is clear that these Natal newspapers also saw themselves as custodians of imperial morality and respectability.¹⁶

The construction of the notions of respectability and reputation, which were central components of settler ideology, are important themes in the press coverage of these court proceedings. White settler respectability was a means by which English-speaking Natalians could maintain positions of authority and social distinction and this was mirrored against racial exclusion. Focussing on colonial settings, historians of empire such as Ann Stoler, Kirsten McKenzie, Saul Dubow, Alan Lester, Robert Ross and Catherine Hall have deliberated on why the culture of respectability within the British Empire took on different forms and was more pronounced and prominent in these locations than in Britain itself. They have put forward an argument which suggests that, because settler communities were so far removed from Britain and were

¹⁶ This was true for the Cape Colony as well. See Kirsten McKenzie. "Franklins of the Cape": The *South African Commercial Advertiser* and the Creation of a Colonial Public Sphere, 1824–1854,' in *Kronos: Journal of Cape History*, 25, 1998/9, 88–102; Christopher Holdridge. 'Circulating the *African Journal*: The Colonial Press and Trans-Imperial Britishness in the Mid Nineteenth-Century Cape,' in *South African Historical Journal*, 62:3, 2010, 487–513; and Christopher Holdridge. 'Laughing with Sam Sly: The Cultural Politics of Satire and Colonial British Identity in the Cape Colony, c. 1840–1850,' in *Kronos: Journal of Cape History*, 36:1, November 2010, 28–53.

to a large extent “denied the rights” that ordinary Britons enjoyed, the settler identity that was thus formed was one that became “more assertive and defensive.”¹⁷ This suggests that white settlers were more forthright in articulating what they perceived as Victorian virtues and, by replicating a Victorian lifestyle, they redefined themselves according to the bourgeois lifestyles of the metropole’s upper classes. This “trans-imperial Britishness”¹⁸ was signified by “material culture” and the “social behaviour” of what was perceived of as British respectability.¹⁹ Writing on the development of respectability and settler identity in South Africa, historians such as Vivian Bickford-Smith, Pamela Scully, Robert Morrell, and Lynn Thomas have described how these British virtues of dress, language, consumption, land ownership and tea-drinking, were not just markers of ‘Britishness’ but, in Natal and the Cape specifically, romanticised and discursive mediators of whiteness and white racism.²⁰

¹⁷ Ann L. Stoler. ‘Rethinking Colonial Categories: European Communities and the Boundaries of Rule,’ in *Comparative Studies in Society and History*, 31:1, January 1989, 134-161; Ann L. Stoler. ‘Making Empire Respectable: The Politics of Race and Sexual Morality on 20th Century Colonial Cultures,’ in *American Ethnologist*, 16:4, November 1989, 634-660; Kirsten McKenzie. *Scandal in the Colonies: Sydney and Cape Town, 1800-1850*. (Melbourne: University of Melbourne Press, 2004); “My Own Mind Dying within Me’: Eliza Fairbairn and the Reinvention of Colonial Middle-Class Domesticity in Cape Town,’ in *South African Historical Journal*, 36:1, May 1997, 3-23; Saul Dubow. *A Commonwealth of Knowledge: Science, Sensibility and White South Africa*. (Oxford and New York: Oxford University Press, 2006); Saul Dubow. ‘How British Was the British World? The Case of South Africa,’ in *The Journal of Imperial and Commonwealth History*, 37:1, 2009, 1-27; Alan Lester. *Imperial Networks. Creating Identities in Nineteenth-Century South Africa and Britain*. (London: Routledge, 2001); Alan Lester. ‘British Settler Discourse and the Circuits of Empire,’ in *History Workshop Journal*, 54, 2002, 25-48; Catherine Hall. *Civilising Subjects: Metropole and Colony in the English Imaginations, 1830-1867*. (Chicago: University of Chicago Press, 2002); Robert Ross. *Status and Respectability in the Cape Colony, 1750-1870: A Tragedy of Manners*. (Cambridge: Cambridge University Press, 1992), 65-66, 79-88.

¹⁸ This phrase is borrowed from Lester. ‘British Settler Discourse and the Circuits of Empire,’ 31.

¹⁹ McKenzie. *Scandal in the Colonies*, 183.

²⁰ Vivian Bickford-Smith. *Ethnic Pride and Racial Prejudice in Victorian Cape Town*. (Cambridge: Cambridge University Press, 1995); Pamela Scully. *Liberating the Family?: Gender and British Slave Emancipation in the Rural Western Cape, South Africa, 1823-1853*. (Portsmouth, N.H:

In so doing, settler communities proved that they were worthy of respect and therefore racially superior to Africans, but this was also set against imperial politics and Natalians' desire for gaining responsible government. In Natal, this was played out in various settings. White settlers defined themselves in relation to both Africans and Indians, flaunting their intellectual, cultural and moral sophistication in contrast to the supposed uneducated and uncivilised 'natives.'²¹ So, when cases of infanticide and concealment of birth surfaced, which in the public imagination was marked by their contiguity to illegitimacy and immorality, they were seen as a threat to white settler claims to respectability, even though the definition of respectability in itself was contestable.²² Therefore, when settler newspapers reported on this crime, the reportage was either sympathetic or judgemental in nature depending on the race of

Heinemann, 1977); Robert Morrell. *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*. (Pretoria: University of South Africa Press, 2001); Lynn M. Thomas. 'The Modern Girl and Racial Respectability in 1930s South Africa,' in *The Journal of African History*, 47, 2006, 461-490.

²¹ In a thesis investigating immigration laws and border control in colonial Natal, Andrew MacDonald uses Natal's Immigration Restriction Department as a case study to interrogate the regulation of individuals deemed undesirable by the colonial state and how this related to moral panics amongst the settler population. For more on this see Andrew MacDonald. 'Strangers in a Strange Land: Undesirables and Border-Controls in Colonial Durban, 1897-C.1910.' Unpublished Thesis (MA-History), University of KwaZulu-Natal, 2007.

²² In the later colonial period in most parts of the Empire, respectability also came to be closely wound up with understandings of sexual morality/activity, marriage, reproduction and motherhood. In addition to this, by the 1920s in South Africa, Black intellectual elites engaged with the ideas of respectability to counter or reject racist structures. Thomas. 'The Modern Girl and Racial Respectability in 1930s South Africa'; Sheila Meintjes. 'Edendale, 1851-1930: Farmers to Townspeople, Market to Labour Reserve,' in Laband and Haswell (eds.) *Pietermaritzburg 1838-1988: A New Portrait of an African City*, 66-69; Nafisa Essop Sheik. 'Customary Citizens and Customary Subjects: Colonial Respectability and Marriage Law in 19th Century Natal.' Unpublished paper presented on the 27th May 2009 at the History and African Studies Seminar hosted by the History Department, University of KwaZulu-Natal. However, writing about respectability in the segregation years, David Goodhew contends that the notion of respectability was then understood in terms of religion, education and law. See 'Working-Class Respectability: The Example of the Western Areas of Johannesburg, 1930-55,' in *The Journal of African History*, 41:2, 2000, 241-266.

the accused. This was so prevalent that the portrayals by newspapers of the crime of infanticide and concealment of birth suggest that these newspapers actually regarded the same crime of infanticide as constituting a 'different' crime for whites and Africans. The atrocity of the crime was played down in articles on cases involving whites, where the accused was not portrayed as brutish or "wicked." In the case of whites the crime was viewed as circumstantial whereas when an African person committed the crime it was seen as heinous and almost inherent to their nature and either worthy of reportage that highlighted the incivility of the African woman or of no commentary at all.

But, what did *The Natal Witness* understand by respectability? In March of 1847, the newspaper received, what they referred to as a "couplet," from a reader who went by the *nom de plume* of "BY ONE WHO KNOWS THE DEVIL WHEN HE SEES HIM." The short poem was the reader's conception of what respectability entailed:

RESPECTABILITY

Pray, what do you mean by RESPECTABILITY?
Is it wisdom, or worth, Sir, or rank, or gentility?
Is it rough round sense? or a manner refined?
Is it kindness of heart? or expansion of mind?
Is it learning, or talent, or honour or fame,
That you mean by that phrase, so expressive to name?
No, no, these are not, Sir, the things here in vogue;
A respectable man, Sir, may be a great rogue,
A respectable fellow, may be a great fool, -
Have lost e'en the little he picked up at school;
Be a glutton, adulterer, deep drowned in debt;
May forfeit his honour, his best friend forget;
May be a base sycophant, tyrant, or knave,
A professional calling is all he need have.

He must ne'er soil his hands with the meanness of trade
Not exhibit a conscience, nor of an oath be afraid!²³

The Natal Witness, however, cautioned readers that the couplet should be treated as an historical reference, for it believed that the verse was illustrative of a version of public opinion which had “long since passed away.” Rather they proposed that in Natal respectability demanded “moral perception,” and “intellectual excellence of character.”²⁴

Over the ensuing years *The Natal Witness* attempted – to a large extent successfully – to propagate and instil these ideas in the white Natalian public. In this fledgling British colony newspapers were, metaphorically speaking, Natalian’s window to the world. White settlers read, learnt and debated about issues and events that newspapers reported on. This chapter, then, interrogates how Natal newspapers did this when reporting on cases of infanticide and concealment of birth. Equally significant, however, are the occasions on which the newspapers did *not* write or report in detail on certain infanticide and concealment of birth court cases. For example, the cases of Kate Baatjes, Sarah, Nobayeni, Unomlota, and Rose – as picked up from the legal documents – are either absent from the newspaper records or scant.²⁵ These silences are significant in demonstrating how the print media considered stories of infanticide and concealment of birth.²⁶

²³ *The Natal Witness*, 26 March 1847.

²⁴ *The Natal Witness*, 26 March 1847.

²⁵ See Appendix for complete details of these court cases.

²⁶ The theorizing of the concept of silences and its centrality to the production of history has been ongoing debate among historians. Most notable are the works by David William Cohen. *The Combining of History*. (Chicago and London: University of Chicago Press, 1994) and Michel-Rolph Trouillot. *Silencing the Past: Power and the Production of History*. (Boston: Beacon Press, 1995).

The cursory and brief style of reportage on African cases of infanticide and concealment of birth is emblematic of the deeper racial dynamics present in Natal during this time period. As will be shown below, when newspapers did report on these cases, they did not take the form of a feature story but were simply relegated to the court roundup columns and there is a range of probable reasons why this was the case: that these newspapers found no purpose in reporting on these cases in detail since these individuals were not regarded as belonging to a white settler community; that their stories would not have had an impact on the newspaper's readership; or, possibly, that committing infanticide was considered innate to their biological character.

So, when *The Natal Witness* reported on the court case of Kate Baatjes (1869), it was reduced to a two-line sentence under the heading "Criminal Sessions" and the newspaper only reported that she had been found guilty of having caused the death of her child and was sentenced to six months imprisonment. There was no coverage of the circumstances or events surrounding the case.²⁷ In successive years, however, she did receive further attention in *The Natal Witness*, but this took the form of one-liners that merely gave updates on her continued criminal activity. For instance, on the 12th September 1871, the paper reported that she had been charged with disturbing the peace, but had been discharged and cautioned. On the 23rd of July 1872, this time indicted for "being drunk and incapable," she had been fined 10s or a month's imprisonment; and, finally, on the 26th of March 1873, she had been charged with vagrancy and fined 1s or three days imprisonment.²⁸ Unlike the cases of Eliza Jane Dynes, or Louis Pithey and Mary McDaniel, as the subsequent sections in this

²⁷ 'Criminal Sessions,' *The Natal Witness*, 23rd March 1869.

²⁸ *The Natal Witness*. 12th September 1871, 23rd of July 1872, 26th of March 1873

chapter will show, there was no dedicated article that reported on the details of the infanticide or concealment case.

Similarly, when Nobayeni, who in 1877 was charged with “Contravening the Provisions of Ordinance No. 22 of 1846 entitled ‘Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal’,” *The Natal Witness* simply reported that she was a “Native woman charged with concealing the birth of her child in the Inanda Division of Victoria County.” She served a six month imprisonment sentence and, soon after her discharge, *The Natal Witness* reported that she faced another charge of contravening the 30th and 32nd by-laws of the Colony, by disturbing the peace. However, in this insert she was given some consideration and described as “an old offender.”²⁹

The silencing of African cases of infanticide in these newspaper accounts inadvertently places emphasis on the cases where white settlers were the perpetrators. This kind of silencing, particularly its location and meaning, as Michel-Rolph Trouillot argues, demands attention because “[the silences] can be used to reveal the differential power of various groups of agents in producing history.”³⁰ In this regard, then, Natal newspapers possessed both access to and control of the production of history and, in light of the particularities of the Kate Baatjes case, this statement is noteworthy. It seems rather perplexing that these newspapers did not report on this intriguing case where Baatjes had imprudently abandoned her child in

²⁹ ‘Resident Magistrate’s Court, - Thursday, October 18th 1877,’ *The Natal Witness*, 23rd October 1877.

³⁰ Michel-Rolph Trouillot. ‘Silencing the Past: Layers of Meaning in the Haitian Revolution,’ in Gerald M. Sider and Gavin A. Smith. *Between History and Histories: The Making of Silences and Commemorations*. (Canada: University of Toronto Press, 1997), 38.

Longmarket Street in the centre of Pietermaritzburg. According to the court records, the post-mortem showed that the child had died from “exposure to cold and damp, or from improper food give at irregular intervals.”³¹ Even though the abandonment of her child would have been understood as in keeping with her ‘character,’ why the Natal newspapers chose not to report on what would presumably have been a sensational case of a child being “cast aside” on a “public highway” is confounding.³² Arguably, this silencing is censoring of a particular kind. By repressing African stories of infanticide and concealment of birth, and highlighting the cases of white settlers, such as that of Eliza Jane Dynes (1875), which is featured in the section below, Natal newspapers inadvertently contributed to the already established racial and class stratification present in the region.

³¹ Pietermaritzburg Archives Repository [hereafter PAR], Registrar, Supreme Court [hereafter RSC], 1/1/18, 11/1869, Supreme Court Criminal Case. Regina versus Kate Baatjes. Charged with Culpable Homicide and malicious neglect and exposing an infant, Kate Baatjes did unlawfully cast, throw and expose the child upon the ground in Longmarket Street and highway and of such exposure, abandonment and for want of due care and attention requisite to any infant, the said child did become sick, weak, languid, distempered and did languish and was thus killed. See also, PAR, Attorney General’s Office [hereafter AGO], I/8/11, 22A/1869, John Bird, Resident Magistrate, Pietermaritzburg: Forwarding Depositions in the case of Kate Baatjes for Child Abuse, 1869. PAR, AGO, I/8/11, 45A/1869, John Bird, Resident Magistrate, Pietermaritzburg: Forwarding additional evidence in the case of Kate Baatjes; since the child in the case died, 1869. PAR, AGO, I/8/11, 65A/1869, John Bird, Resident Magistrate, Pietermaritzburg: Enclosing report from the District Surgeon in the case of Kate Baatjes, 1869.

³² PAR, RSC 1/1/18, 11/1869, Supreme Court Criminal Case. Regina versus Kate Baatjes. Charged with Culpable Homicide and malicious neglect and exposing an infant.

“An absence of design of concealment”³³ ~ Eliza Jane Dynes

On the 7th of October 1875, Eliza Jane Dynes allegedly murdered her baby girl. When she appeared before Justice Meller at the Supreme Court in Pietermaritzburg on the 13th November 1875, *The Natal Witness* reported that “the prisoner, a young and respectably dressed girl was charged with maliciously killing and murdering a female child.”³⁴ At the trial, Michael Gallwey, the Attorney General, appeared for the Crown, and Advocate Shepstone was appointed by the judge as counsel for Eliza.³⁵ One of the first witnesses questioned at the trial was Mrs Carlyle, the wife of Rev E. J. Carlyle for whom Eliza had worked as a domestic servant, and it was at the Carlyle’s home that the body of the baby had been found in the toilet. In her testimony Mrs Carlyle reported that towards the end of September that year she had noticed that there was something particularly different about Eliza’s figure but, when she had asked Eliza about it, her reply had been that “she was quite well, but that she was aware she was getting quite stout.” On the morning of the 7th of October, Eliza had gone about her daily duties, but in the afternoon Mrs Carlyle noticed that she appeared to be in considerable pain and had thereafter disappeared for a short time from her work. When Mrs Carlyle had enquired as to her absence, Eliza said that she had been at the “water closet.” Mrs Carlyle noticed that when she went to the “water closet” the second time, Eliza took to the toilet with her a pail filled with water from the stream

³³ ‘Criminal Session, Saturday, November 20th 1875,’ *The Natal Witness*, Tuesday, 23 November 1875.

³⁴ ‘Criminal Session, Saturday, November 20th 1875,’ *The Natal Witness*, Tuesday, 23 November 1875. [Emphasis added]

³⁵ PAR, RSC, 1/1/22, 55/1875, Supreme Court Criminal Cases. Regina versus Eliza Jane Dynes charged with infanticide, 1875.

close to their house. According to the newspaper article, she had then returned to work after putting on an overskirt and went home that evening as usual. However, when Eliza had returned the next morning, she looked ill, claiming to have a headache. At this time Mrs Carlyle did not know that Eliza had given birth to a child but, owing to Eliza's ill health, requested for Dr Charles Gordon to attend to her.³⁶

At the hearing, Dr Gordon testified that, on Saturday the 9th of October, Mrs Carlyle had requested him to attend to Eliza and he had found that she had been pregnant and that she delivered the child, which had been subsequently found in the toilet. Dr Gordon had then been instructed to conduct a post-mortem on the body of the baby. During his cross-examination he explained that he thought "it was hardly possible that the child could have been born without the mother knowing it, unless she was in convulsions or a fainting fit at the time." When Eliza was called for questioning, she eventually stated that she did not intentionally kill her baby, but that she had had a miscarriage.³⁷ Dr Gordon's post-mortem report had proved otherwise, however. From his external inspection of the body of the child he had found that there was "peculiar dark liquid that oozed from the mouth and nose," and when he did an internal examination of the abdomen, he found the same liquid (which he could not identify) in the stomach. In his summation, Dr Gordon stated that he believed the child had been born alive because the state of the lungs proved that the child had breathed

³⁶ 'Criminal Session, Saturday, November 20th 1875,' *The Natal Witness*, Tuesday, 23 November 1875.

³⁷ 'Criminal Session, Saturday, November 20th 1875,' *The Natal Witness*, Tuesday, 23 November 1875.

freely; however he also added that, as there were no external signs of injuries to the body, he could not decisively say what the exact cause of the death had been.³⁸

After reviewing the ‘facts’ of the case, *The Natal Witness* article commentated on the jury’s summation and decision: -

After the Attorney General had addressed the jury Mr. Shepstone on behalf of the prisoner contended that not only was there no evidence of infanticide but there was no proof whatever that the prisoner made any attempt to conceal the birth. She knew that Mrs. Carlyle suspected her situation and if she wished to conceal she would certainly not have gone where she did, and where such a crime could be so easily detected. Mr Shepstone concluded by saying that her friends had now forsaken her and that her confinement in prison, not to speak of her disgrace, was already sufficient punishment.

Concurring with Shepstone and in Eliza’s defence *The Natal Witness* article reiterated the fact that Eliza had left her apron in full view of Mrs. Carlyle and had immediately gone back to work after returning from the toilet. The article stated that this showed “an absence of design of concealment,” and that it was quite possible that she did not know she had delivered a baby by the simple fact that she returned to her duties, which she could not have done if she had been in considerable pain as “one would suspect of a woman who had recently given birth.” In conclusion, the article stated that:

The charge of murder having been dropped it remained for them only to decide whether there was any evidence of an attempt to conceal the birth of her child, a crime that had grown too common, not only here but in the old countries. The prisoner’s case would have stood in a much better light had she not attempted to deny her situation; at the same time, as she presumably knew that another month would be apt

³⁸ PAR, RSC, 1/1/22, 55/1875, Supreme Court Criminal Cases. Regina versus Eliza Jane Dynes charged with infanticide, 1875.

to elapse before parturition, she may have intended to tell some of her friends or at least to leave her place of employment at the expected period. It was not likely that had she any idea that the birth would come upon her then, she would go right under the eyes of her mistress to commit a crime which she knew would be at once suspected and detected. When her mistress afterwards asked her she said she had had a miscarriage, and may not have been aware that it was not a natural birth. Briefly the question they were to answer was, did she by her own act and deed place the child where it was found?

The jury retired and in about five minutes returned a unanimous verdict of acquittal. His Lordship on discharging the prisoner told her he hoped this would be a warning to her for the rest of her life, and trusted that warning would reach beyond her individual case.³⁹

This case of infanticide is not necessarily atypical in comparison to the cases that this study has already discussed. It is, in fact, quite formulaic and for this time period Eliza Jane Dynes conforms to the archetypal profile of the infanticidal woman: unmarried, domestic servant within the ranks of the working class, made vulnerable and arrested by the fear of losing her employment. By the 1860s, as Mark Jackson and others have shown in the context of England, many of the cases brought before the assizes were against unmarried domestic servants.⁴⁰ This was not unique to England. By the mid-nineteenth century the image of the infanticidal female domestic servant can be found in parallel histories of other parts of the world: Elna Green has shown this for

³⁹ 'Criminal Session, Saturday, November 20th 1875,' *The Natal Witness*, Tuesday, 23 November 1875.

⁴⁰ Mark Jackson. *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*. (Aldershot: Ashgate, 2002), 1-3, 8; Lionel Rose. *Massacre of the Innocents: Infanticide in Great Britain, 1800-1939*. (London: Routledge and Kegan Paul, 1986); Peter C. Hoffer and N.E. Hull. *Murdering Mothers: Infanticide in England and New England, 1558-1803*. (New York: New York University Press, 1981), 47; Laura Gowing. 'Secret Births and Infanticide in Seventeenth-Century England,' in *Past and Present*, 156, August 1997, 87-115; Ann R. Higginbotham. "'Sin of the Age": Infanticide and Illegitimacy in Victoria London,' in *Victorian Studies*, Spring 1989, 319-337; G. K. Behlmer. 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England,' in *Journal of the History of Social Medicine*, 34, 1979, 403-427.

Richmond, Virginia, USA; as has Sharon Kowalsky for Russia; Kenneth Wheeler for Ohio, USA; David Kertzer for Italy; Constance Backhouse for Canada and Kristin Ruggiero for Buenos Aires.⁴¹ Surrendering to economic pressures and social realities and unable to hide their pregnancies due to the lack of privacy, domestic servants were frequently tried and found guilty of concealment and infanticide.

But, Eliza Jane Dynes' court case and newspaper accounts are important for other reasons too. Her case is one instance where these two historical sources work together to produce an historical narrative. The limitations of the court record are, at least partly, overcome by the detailed reportage – however nuanced – found in newspapers. As already observed, newspaper accounts, especially crime reporting, like court records reveal just as much as they conceal. In the Registrar of the Supreme Court record, 1/1/22, 55/1875, there is no transcript of the proceedings of the court case. Neither are there any summonses, nor depositions made by the witnesses or the defendant. The only evidential piece of paper included in this file is the post-mortem report submitted by Dr Charles Gordon. While the post-mortem is valuable in itself, as it provides a meticulous summary of the autopsy of the child's body, it is only from the newspaper articles that we understand the circumstances and events surrounding the case.

⁴¹ Elna C. Green. 'Infanticide and Infant Abandonment in the New South,' and Sharon Kowalsky, 'Making Sense of the Murdering Mother: Soviet Criminologist and Infanticide in Revolutionary Russia,' in Brigitte H. Bechtold and Donna Cooper Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006), 45-84 and 167-194 respectively; Kenneth Wheeler. 'Infanticide in Nineteenth Century Ohio,' in *Journal of Social History*, 31, 1997, 407-418; David I. Kertzer. *Sacrificed for Honor: Italian Infant Abandonment and the Politics of Reproductive Control*. (Boston: Beacon Press, 1993), 33; Constance B. Backhouse. 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada,' in *University of Toronto Law Journal*, 34:4, Autumn, 1984, 447-478; Kristin Ruggiero. 'Honor, Maternity, and the Disciplining of Women: Infanticide in Late Nineteenth-Century Buenos Aires,' in *The Hispanic American Historical Review*, 72:3, August 1992, 353-373.

If the narrative of Eliza Jane Dynes' infanticide trial was wholly dependent on Dr Gordon's reports, which contain important clues, it would be possible to construct some sort of historical account. This would read along the lines of what the findings of the report suggest: that Eliza had given birth to a full-term female baby, that the umbilical cord showed signs of laceration and had not been tied with any ligature; that there was a peculiar liquid oozing from the mouth and the nose, and that the state of the lungs proved that the child had breathed freely and had therefore been born alive.⁴² In terms of its historical relevance to this study of infanticide in Natal, this would fall under the theme of the incongruity of medical evidence with the not-guilty judgements returned by the courts.

But, the newspaper articles of the case position it in a different framework and the historical narrative takes on a kaleidoscopic dimension. By adopting a sympathetic and compassionate tone the article is an ideal referent for interrogating the way in which race was reified in Natal newspapers. Unlike in the cases of African women, for Eliza the disrepute and disgrace caused by her conviction "was sufficient punishment," not to mention that her friends had forsaken her as a result. The article also suggests that it could have been possible that Eliza was acting under duress by asking the question: "did she by her own act and deed place the child where it was found?" Her non-guilty verdict thus falls into the patterns of leniency against white women adopted by Natal juries as discussed in Chapter 3. And the judge's closing statement "on discharging the prisoner [that]... he hoped this would be a warning to her for the rest of her life" places Eliza in the category of the fallen woman who,

⁴² PAR, RSC, 1/1/22, 55/1875, Supreme Court Criminal Cases. Regina versus Eliza Jane Dynes charged with infanticide, 1875.

because of her race and position in society, was deserving of redemption.⁴³ So, one might argue, despite the salaciousness and subjectivity that characterised much crime reporting, including this case, such details may serve as a valuable counterpoint for historical inquiry.

Similarly, in the case of Louis Pithey and Mary McDaniel which is examined in greater detail below, the story revealed by the court records is almost entirely different to that which was conveyed by the newspaper articles. In the Attorney General Records, the Pithey-McDaniel case is constrained to a one page missive from the Chief of Police, M. Walker, to the Attorney General.⁴⁴ In this letter Walker had simply reported that the evidence for this case was minimal. If the newspaper articles did not tell a different story, this file would have been relegated to the pile of court cases that have been incorporated in this study merely for statistical purposes. What follows in the next section of this chapter is a reflection of how crime reporting by Natal newspapers attempted to influence public perception by interweaving the details of the crime with moral annotations.⁴⁵

⁴³ 'Criminal Session, Saturday, November 20th 1875,' *The Natal Witness*, Tuesday, 23 November 1875.

⁴⁴ PAR, AGO, I/8/18, 328A/1876, Regina vs. Mary McDaniel and Louis Pithey, 1876.

⁴⁵ Similar issues have been raised on the relationship between newspapers and the public in late eighteenth and nineteenth century England. On this theme see Anne Baltz Rodrick. "Only a Newspaper Metaphor": Crime Reports, Class Conflict, and Social Criticism in Two Victorian Newspapers,' in *Victorian Periodicals Review*, 29:1, Spring 1996, 1-18; Heather Shore. "Undiscovered Country": Towards A History of the Criminal 'Underworld', in *Crimes and Misdemeanours* 1:1, 2007, 41-68; Elizabeth Foyster. 'Introduction: Newspaper Reporting of Crime and Justice,' in *Continuity and Change*, 22:1, 2007, 9-12; Esther Snell. 'Discourses of Criminality in the Eighteenth-Century Press: The Presentation of Crime in *The Kentish Post*, 1717-1768,' in *Continuity and Change*, 22:1, 2007, 13-47; and Peter King. 'Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London,' in *Continuity and Change*, 22:1, 2007, 73-112.

“A case of fearful mystery ... and startling revelations”⁴⁶ ~ Louis Pithey and Mary McDaniel

Newspaper articles are written during a specific time period, for a specific audience and with a specific intent. In the case of *The Natal Witness*, they reported on local and international events to a largely white settler population and not necessarily for the purposes of posterity.⁴⁷ Unlike testimonies and depositions, historians have considered newspaper articles to serve as unintentional sources.⁴⁸ Court transcripts, testimonies and depositions – or other archival records such as governmental correspondence, departmental reports or commissions – were created as records and therefore are regarded as “intentional,” whereas newspaper articles were written with the purposes of informing their readership on current events and therefore act as “unintentional” sources. For instance, in colonial Natal, newspapers such as *The Natal Witness*, *The Natal Mercury*, and *The Natal Advertiser* were essentially produced with the intent to shape public opinion of the day. Newspaper articles often contain two elements: verifiable facts and an opinion. While the ‘verifiable facts’ can be cross-checked with other archival sources such as in the case of crime reporting, court case records would suffice but it is the opinion and the commentary that newspaper articles offer that make them a valuable source for the historian wanting to acquire a

⁴⁶ ‘Durban,’ in *The Natal Witness*, Friday, 8th September 1876.

⁴⁷ For more on *The Natal Witness* and the succession of editors since its inception, see Leverton. ‘*The Natal Witness* and ‘Open Testimony’, 202-204.

⁴⁸ In ‘The Source: The Basis of our Knowledge About the Past,’ in *From Reliable Sources: An Introduction to Historical Methods*, Martha C. Howell and Walter Prevenier discuss the disjuncture between intentional and unintentional sources. (Ithaca: Cornell University Press, 2001), 17-42.

sense of the political and social consciousness of the time. Neither of these types of sources, however, is free from prejudices or distortions.

For instance, an illustration of this is an article published on the 8th of September 1876 by *The Natal Witness*. The newspaper reported on a case of concealment of birth, which their Durban Correspondent labelled a “serious atrocity.” Describing those accused in the crime *The Natal Witness* stated that the evidence implicated “a young man who moves in high-toned circles in this town.”⁴⁹ However, the newspaper could not disclose more than that – perhaps due to the regulations set out in Ordinance 26, 1846 which regulated the printing and publication of newspapers as well as served to to prevent the “abuses arising from the publication of blasphemous and seditious libels”⁵⁰ – and concluded the article by promising their readers that “when all of the particulars are ready for the public ear, there will be some startling revelations.”⁵¹ As promised, there were two subsequent reports published on this – the Pithey case – the first a few days later and the second in October of 1876. The September 12th article read as follows:

A young fellow of this town has got himself into a scrape. He was arrested at noon on Thursday on a charge of murder and a St Helena girl, named Mary McDaniel, was placed in the cells for having committed the crime of concealment of child-birth. For about a week their arrests have been pending and the town was full of all kinds of extravagant rumours concerning their affair. The young man who has

⁴⁹ ‘Durban,’ in *The Natal Witness*, Friday, 8th September 1876.

⁵⁰ Ordinance 26 of 1846: Ordinance for preventing the mischiefs arising from the Printing and Publishing, within the District of Natal, of Newspaper, and papers of a like nature, by persons not known, and for regulating the printing and publication of such papers in other respects; and also for restraining the abuses arising from the publication, in said District, of Blasphemous and Seditious Libels. W. J. Dunbar Moodie. *Ordinances, Proclamations, Relating to the Colony of Natal, 1836-1855. Volume 1.* (Pietermaritzburg: May and Davis, 1856), 182-191.

⁵¹ ‘Durban,’ in *The Natal Witness*, Friday, 8th September 1876.

been so susceptible, is **respectably** connected in town, is named Louis Pithey and was a clerk in T. W. Edmond's store at the time of the arrest. Our new Superintendent of Police, Mr. Alexander, has worked up the case with a promptness and a shrewdness, quite unknown to the slow style of ferreting out crime here. The clue the police had to work on was a scrap of secret chat that had been gleaned, to the effect that Mary McDaniel, a good looking St Helena girl, had given birth to a child in secret, and it had since been buried. The little one had been heard to make a noise when born. Inside of an hour after the police got on the scent, they had three witnesses who knew of the occurrence before the Magistrate, and their depositions were taken. The story told a serious aspect. This girl had been in service here in a gentleman's house. She was known to be a **very fast character**.⁵²

By positioning Pithey as a respectable Durban gentleman, the articles seemed to suggest that he was the victim of scandal which could have potentially damaged his respectable reputation, and threatened his "social mobility."⁵³ McDaniel, on the other hand, seems to have been painted with the same prejudiced brush that Natalians employed towards St Helenians more generally.⁵⁴ McDaniel was described as a "very fast character" implying that she was promiscuous; and in all probability, if McDaniel had concealed a birth, it was that of a child that was illegitimate. These signifiers of race and miscegenation position Pithey's vulnerability against McDaniels' culpability. The article continued, to state:

⁵² Durban,' in *The Natal Witness*, Tuesday, 12th September 1876. [Emphasis added]

⁵³ McKenzie. *Scandal in the Colonies*, 183.

⁵⁴ Writing about the racially stratified prison system in Natal, Stephen Peté and Annie Devenish argue that even though people from St Helena were of European descent, because of their mixed race status they were treated and classified as 'half-castes' by the colonial state. 'Flogging, Fear and Food: Punishment and Race in Colonial Natal,' in *Journal of Southern African Studies*, 31:1, March 2005, 3-21. It should also be noted that within the racial economy of Natal, St Helenians were however held in higher regard than Indians and Africans. For more on this point see Daniel Yon. 'Race-Making/Race-Mixing: St. Helena and the South Atlantic World,' in *Social Dynamics*, 33:2, 2007, 144-163.

After leaving town she went to live with some friends of hers on the Berea. All this occurred six months ago. One Saturday night she went to town to the store where young Pithey worked, and while there was confined. There was no one present but the prisoner and one or two Kaffirs who have since returned to the kraals and no trace of them can be found. The child was alive; and its mother in a weak state was then conveyed back to the Berea, and the child left with the young man. No one has seen it since; a witness stated that it has been buried. The affair was kept very quiet, and after a while Mary McDaniel came to town and lived alone in a little house in a secluded part. Murder will out. The women who had known of the girl's condition and the circumstances of that night were talking of it, and on Thursday, August 31st, it leaked out. The case was one of peculiar construction and of serious aspect. The Magistrates here were being shifted and could not give it instant consideration or the principals might have been arrested a week ago. Last Thursday the warrants were given, and in half-an-hour's time the prisoners were in custody, and a close search had been made for the body of the child, which was supposed to have been buried at the back of the store. No vestige of it remained. On Thursday afternoon a private preliminary examination took place before Mr Mesham, and yesterday afternoon there was another investigation. What has transpired is not known. There is one thing evident, without the body or a confession on the part of Pithey it will be next to impossible to prove murder. There is no question of the concealment of birth, and the girl has so far acted with cold indifference about the matter. The male prisoner is out on £600 bail.⁵⁵

In the final article of the series concerning Pithey, *The Natal Witness* empathised with the “**respectable** young Durban man,” who, for the month of September, had been the “subject of gossip in that town,” which presumably they interpreted as being unnecessarily defaming to his character. The October 23rd article also described McDaniel as a “good-looking but rather dissolute St Helena girl,” whom they thought was responsible for the crime of concealment. The article also hinted at the possibility

⁵⁵ Durban,’ in *The Natal Witness*, Tuesday, 12th September 1876. [Emphasis added]

that Pithey could have been an innocent bystander and the victim of unnecessary scandal, as he was merely employed in the store where McDaniel had given birth. In the end, however, both accused were acquitted due to the lack of sufficient evidence that could warrant imprisonment but *The Natal Witness* maintained that the case was one of gossip which had “turned into a mystery.”⁵⁶

In writing about the use of newspapers and petitions as a tool of representation, historian Vukile Khumalo has argued that newspaper discussions and the succession of articles in them on certain cases “allowed for a sustained engagement with a specific use that helped readers and writers to reflect on their positions.”⁵⁷ Similarly, when *The Natal Witness* had reported in 1875 on the case of Helena Stevens, also of St Helena, emphasis was placed on the “unpleasant gossip” regarding the paternity of the child and the character of Helena and the fact that she was accused of concealing the birth of an *illegitimate* child.⁵⁸

The following two cases, that of the Schraevesandes and Laytons is illustrative of how Natal’s white public, at the instigation of the media, loyally and compassionately supported the individuals accused of infanticide, despite the strong indications of their culpability. Moreover, the vigorous support by the public for these individuals, either through petitioning, overwhelming attendance at court houses, letters to the editors, or monetary assistance, significantly altered the outcome of the cases.

⁵⁶ ‘Heads of News,’ in *The Natal Witness*, Tuesday, October 3rd, 1876.

⁵⁷ Vukile Khumalo. ‘Political Rights, Land Ownership and Contending Forms of Representations in Colonial Natal, 1960-1910,’ in *Journal of Natal and Zulu History*, 22, 2004, 145.

⁵⁸ *The Natal Witness*, Tuesday, 30 March 1875.

The Schravesandes and Public Petitioning

In February 1899, Johanna Cathrina Schravesande and her husband Pieter Schravesande were both charged with culpable homicide in the death of a male baby. The body of the child had been uncovered by Indian employees of the Newcastle Corporation. While clearing out the water closet at the Schravesande's home, they had found in a bucket the body of a "newly born male child wrapped up in an old black petticoat together with a brick and fastened with safety pins."⁵⁹ The District Surgeon, J.E. Briscoe, reported that, from his examination of the body, the child had been strangled and that marks on the throat indicated that strangulation had most probably been caused by the pressure of a hand on the throat. At the back of the head he had found "two severe wounds" and that the skull was fractured, which had damaged the brain. He also noted that the umbilical cord had been broken or torn and had not been cut, showing deliberate signs of violence. After it was ascertained that Mrs Schravesande was the mother of the child, she confessed to having killed her baby and said that the reason for her actions was because she had been guilty of adultery. She further divulged that "being anxious to conceal the fact from her husband, had kept him in ignorance [and] that one night she took opening medicine⁶⁰ and on going early the next morning to the water closet her labour pains came on unexpectedly and she there and then delivered of a child."⁶¹

⁵⁹ PAR, Colonial Secretary's Office [hereafter CSO], 1606, 1899/2039, Petitions re imprisonment of Johanna C Schravesande, convicted of culpable homicide, 1899.

⁶⁰ Alternatively, a form of diuretic.

⁶¹ PAR, CSO, 1606, 1899/2039, Petitions re imprisonment of Johanna C Schravesande, convicted of culpable homicide, 1899.

When asked why she had not called out for assistance considering that the water closet was a mere 70m from the house, Mrs Schraivesande explained that she was “biting [her] cheek to keep [herself] from screaming out.” There was, however, a conflicting element in her rendition of the birthing process. At first, she said that the baby had fallen into the bucket at which point she had supposedly fainted; but, when asked about the strangulation marks on the neck of the baby, she said “...the child’s head came first [and] [t]o help delivery [she] grasped the child by the head and neck and helped it come.” A second perplexing detail was that she could not account for the wounds found on the head of the baby. She did admit that after she had recovered from her fainting spell she had covered the dead body with her cloak and had then returned to the main house where, she said, she had hidden the body from her husband. At the conclusion of the trial, however, it was only Mrs Schraivesande, and not her husband, who was found guilty of the murder of a male child and sentenced to 24 months imprisonment with hard labour. While her husband was acquitted of the charge of culpable homicide, it is unclear as to why her husband was indicted in the first instance. Perhaps, it was suspected that he had some part in concealing the birth of the child.

This case is included in this chapter, not because of the particulars of the crime, but because of the great public furor it caused when judgement was passed and the terms of Mrs Schraivesande’s imprisonment were announced. When the presiding judge, W. H. Beaumont, sentenced her to a two year imprisonment with hard labour, the residents of Newcastle fervently believed that this was a miscarriage of justice as they questioned the ways in which evidence had been used in the trial. Consequently, the Governor of Natal, Sir Walter Hutchinson, received seven petitions, with a total of

885 signatures.⁶² This can be regarded as a impressive number since it amounted to 33 per cent of the European population of Newcastle at the time, and also because, by October that year (1899) with the outbreak of the South African War, there were only a hundred ‘Europeans’ left in Newcastle. ⁶³A slew of letters was exchanged between the Governor, the Colonial Secretary, Henry Binns, and Justice Beaumont in an attempt to decide on a resolution pertaining to the petitioners’ request. In one such letter to the Colonial Secretary, Attorney General Henry Bale advocated that, while “the sacredness of child life is undoubted,” it was important to take into consideration the physical and emotional effects that imprisonment would have on Mrs Schraivesande if the terms of her imprisonment were not reviewed. He further stated that the “disgrace of a conviction” and the effect that this would have on her “domestic relations render it possible to advise a reduction of sentence.”⁶⁴

In addition to the support received from the public, Mrs Schraivesande also found a sympathiser in Justice Beaumont, the very judge who laid down her sentencing. When he was asked to submit a review of the case to Colonial Secretary Binns, Justice Beaumont described Mrs Schraivesande as a “respectable, working woman,” who “all

⁶² The Statistical Year Book of the Colony of Natal indicates that for the year 1899, the return of the population statistics for ‘Europeans’ in the Newcastle area was 2, 564. 33 per cent of the residents in Newcastle were therefore instrumental in petitioning against Mrs Schraivesande’s sentencing. PAR, Natal Colonial Publications [hereafter NCP], 7/3/6, Statistical Year Book of the Colony of Natal for the year 1899. Pietermaritzburg, W.M. Watson, Government Printers, 1900.

⁶³ Johannes Michiel Wassermann. ‘The Natal Afrikaner and the Anglo-Boer War.’ Unpublished Thesis (PhD-History and Cultural History), University of Pretoria, 2004, 72. Available at <http://upetd.up.ac.za/thesis/available/etd-03072006-095936/unrestricted/03chapter3.pdf>.

⁶⁴ PAR, CSO, 1606, 1899/2039, Petitions re imprisonment of Johanna C Schraivesande, convicted of culpable homicide, 1899.

through the trial, lasting four days, ..., behaved with admirable fortitude and gave her evidence wonderfully well.”⁶⁵ On the trial he commented that:

All the circumstances of the case, as disclosed by the evidence, raised a strong doubt in my mind as to whether the prisoner had not intentionally made away with the child; but there was the possibility of her having, as she said, been unexpectedly confined at the water closet, and then in the agonies of mind and body which followed having no proper control of herself or her actions. The matter was one for the decision of the jury and they found her guilty only of culpable homicide; but considering all the circumstances I could not remove from my mind the conviction that she might, if she had so wished, called for assistance before losing control of herself; and her not doing so was indication of a determination to conceal, the fact and result of her illicit intercourse. I saw the prisoner subsequently, and there could be no doubt that she was suffering from severe prostration, probably both mental and bodily. I have no desire that she should be unduly punished, and whatever, I may have felt it my duty to do when I passed sentence on her, I shall be more than pleased if His Excellency can see fit to exercise his clemency in reducing the sentence.⁶⁶

From this case, as well the cases earlier in the chapter, it is important to identify respectability as marker not only of class but of racial hierarchy as well. From the newspaper reports, as well as Justice Beaumont’s description of this case, the word ‘respectable’ has been used in all instances to describe the white individuals that were accused regardless of their economic class. The inference was the perception held by white settlers in Natal that, because these individuals were ‘respectable,’ they were wrongfully accused, despite the circumstantial evidence pointing to Mrs Schraivesande’s culpability. The petitions also suggest that committing adultery or

⁶⁵ PAR, CSO, 1606, 1899/2039, Petitions re imprisonment of Johanna C Schraivesande, convicted of culpable homicide, 1899. [Emphasis added]

⁶⁶ PAR, CSO, 1606, 1899/2039, Petitions re imprisonment of Johanna C Schraivesande, convicted of culpable homicide, 1899.

committing infanticide was a dishonour far less severe than imprisonment and this points more directly to the preservation of an illusion to respectability. The language employed by the petitioners in the Schraivesande case is evocative of a similar sentiment. Here is a selection of various extracts from the petitioners which included both men and women:

That it is humbly submitted that the sentence is unduly severe in view of the strong recommendation to mercy made by the jury and to the peculiar circumstances of the case.

That the woman was convicted chiefly on the confession she made to exonerate her husband who was arraigned with her. That the child was killed during the agony of delivery when the woman was hardly responsible for her actions.

Petitioners have learnt through the public press that a woman charged with murder has been proved guilty of culpably killing her new born child. The medical man who attended her after her confinement was called as a witness against her and appears to have been required by the Judge to say all that he knew. For the purposes of this petition it may be admitted that his Lordship was legally right: but there is a far higher principle involved than the mere question whether the woman in the agony of travail was or was not guilty of a crime and whether or not particular evidence was technically admissible.

The sanctity of home life demands that the relations between a man and woman in and after child-birth and the surgeon employed to attend her shall be as highly privileged in a Court of Law as those of pastor and penitent or attorney and client. Petitioner therefore prays Your Excellency to reconcile the principle contended for by the exercise of the Royal Prerogative of mercy.

That your petitioners are humbly of the opinion that sufficient weight was not given by the Judge to the peculiar circumstances of the case and to the very strong recommendation to mercy made by the jury.

That your Petitioners pray that your Excellency will be pleased to take the case into your merciful consideration with the view of making a substantial reduction in the sentence in the interests of the unhappy prisoner herself and also of her husband and child if it should seem meet to your Excellency. And your petitioners as in duty bound will ever pray.⁶⁷

Petitioning was an avenue that many individuals in Natal chose as a way of making themselves and their problems heard by the Government. This was also true for whites, Indians and Africans living in the region.⁶⁸ Petitions were chosen over letters of complaints that were lodged at court houses because the latter were often neglected whereas petitions at least received some governmental recognition and consideration. Petitions have been used throughout history to voice demands, including those of working class and middle class citizens, but especially that of the underclass. David Zaret has argued that the petition “was a device that both constituted and invoked the authority of public opinion.”⁶⁹ Writing on the colonial period in Eastern Nigeria, Chima J. Korieh states that “petitions were used by individuals as well as groups as a means to seek remedy for grievance for a number of types of actions, ranging from taxation, court cases and a variety of other issues.”⁷⁰ Even though petitions were regarded by intellectual elites as little more than a bargaining tool and a “subscription to British Constitutional practice,” in colonial

⁶⁷ PAR, CSO, 1606, 1899/2039, Petitions re imprisonment of Johanna C Schraivesande, convicted of culpable homicide, 1899.

⁶⁸ Khumalo. ‘Political Rights, Land Ownership and Contending Forms of Representations in Colonial Natal, 1960-1910’; Prinisha Badassy. ‘Turbans and Top Hats: Indian Interpreters in the Colony of Natal, 1880-1910.’ Unpublished Thesis (BSocSc-Honours), University of Natal, 2002.

⁶⁹ David Zaret. ‘Petitions and the “Invention” of Public Opinion in the English Revolution,’ in *The American Journal of Sociology*, 101:6, May, 1996, 1499.

⁷⁰ Chima J. Korieh. “‘May It Please Your Honor’: Letters of Petition as Historical Evidence in an African Colonial Context,” in *History in Africa*, 37, 2010, 83-106.

Natal, in addition to settlers, Africans and Indians also made frequent use of petitions to make the government aware of their grievances.⁷¹

Because petition writing followed specific conventions and required such details as the request to the ruling body, the motivation and name of petitioners, they also serve as valuable historical sources. They not only reflect the mind-set and opinions of the petitioners, but the communities in which they located themselves. They become a symbolic organ of the *vox populi* and, on a broader level, petitions also revealed what individuals thought about state responsibility as well as the expectations they have of governments. The petitions submitted to the Governor of Natal by the residents of Newcastle are evidence of this. A significant feature of these petitions is that, in appealing to the power held by the government, the petitioners also validated the colonial state's sovereignty over the settlers. The drawing up of a petition and the collection of signatures was a strategy which whites, Africans and Indians employed to seek redress for various grievances. Those individuals who could not read or write also wielded some agency by placing the mark of cross to represent a signature so that

⁷¹ Antony Copley. *Gandhi Against the Tide*. (Oxford: Basil Blackwell, 1987), 39. Petitioning became a form of political activism and was used to elicit change, since this was one of the few means through which Indians and Africans could draw the attention of the government to injustices. One such example of this is when the Indian Women's Association canvassed against Act 17 of 1895, which required all indentured Indians who had completed their term of indenture to pay an annual £3 residence tax. This organisation was founded in 1908 and they began their campaign against the £3 tax by publishing various petitions in the newspaper, *The African Chronicle*. The Act, 17 of 1895, was eventually repealed in 1913 due to the formidable public campaign against it. For more on this see Devarakshanam Govinden. 'Indian Women's Association, Women's Petition: Domestic Unhappiness,' in Margaret J. Daymond, , Dorothy Driver, Sheila Meintjes, Leloba Molema, Chiedza Musengezi, Margie Orford and Nobantu Rasebotsa (eds.) *Women Writing Africa: The Southern Region*. (New York: Feminist Press, 2003), 155-156. For other such examples see Badassy. 'Turbans and Top Hats: Indian Interpreters in the Colony of Natal, 1880-1910.'

they too could also form part of the dialogue in which the public engaged with the state.

In the case of Mrs Schraivesande, the petitions submitted to the Governor were both a form of protest *and* an exertion of the moral stance of a self-defined community. By using morally laden phrases – such as “to exonerate her husband,” “the agony of delivery,” “the sanctity of home life,” “strong recommendation to mercy,” “merciful consideration,” and “in duty bound will ever pray” – as well as alluding to the fact that Mrs Schraivesande had an older child to care for, the petitions were a request for an act of mercy to be granted to Mrs Schraivesande. It should also be noted that of all the cases analysed for this study this is the only instance where a white person accused was found guilty, and her sentencing was eventually reduced to six months imprisonment. In this case, as the petitioners looked to the press as a source of information on the case, the media both transfixed and instigated public outrage. The same was true for the case of the Layton family in 1908. As will be shown in the next section, an important feature of this case is the way in which the power of the press has the ability to influence or alter verdicts. Moreover, the court case as well as the newspaper articles which complement them, also reveal how, when white settlers were charged with infanticide, these cases captured the public imagination in a profound way.

How the Laytons were Arrested



Image 2: From left, Edward, Rose and Ruby Layton, unidentified rickshaw puller, Durban, Natal, 1908⁷²

Anxious to have a souvenir of his visit to Durban with his daughters, in the summer of 1908 Edward Layton commissioned John Munro of the Beach Photographic Studio to capture the image of himself and his daughters on a rickshaw. The clues and codes embedded in this photograph suggest that the image projected of Layton and his

⁷² PAR, AGO, I/1/336, 64/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

family is one of a respectable middle class. The hats, the style of clothing and adornment, the 'whiteness' of the dresses, as well as their composure are signifiers of the particular image they wished to emulate: that of an honourable, affluent, and reputable family. The photograph was captured on the on the 28th of January 1908 and, together with various items of clothing, a blanket, copies of newspapers and a sack, were used as evidence in a case against Edward, Rose Bessie (marked X in the picture) and Ruby May Layton who had been charged with the crime of infanticide.

This case is interesting for a number of reasons. Besides providing us with a means of commenting on legal procedures and investigative methods used in criminal cases in Natal during this time, it also sheds further light on public participation and interest in cases of this nature - scandalous, violent, but also involving settlers. It also hints at the role that media sensationalism may have played in the eventual verdict decided upon in such cases. The events leading up the trial are discussed below in great length partly because this kind of textured detail permits a partial but intriguing glimpse into everyday life in colonial Natal, but also to demonstrate the inner-workings of Natal's legal and criminal departments.

On the 29th of June at the Durban Circuit Court, Edward, an employee of the Central South African Railways, Rose Bessie, 19 years of age, and Ruby May Layton, 17 ½ in age, appeared before the Chief Justice, Sir Henry Bale. David Calder, Clerk of the Peace, prosecuted and Eugene Renaud with Ness Harvey acted for the defence.⁷³ Edward Layton, a widower, first gave evidence and, replying to Mr Renaud, described his arrival in Durban to meet his daughters, who had travelled to Natal from

⁷³ The name of the mother of Rose or Ruby, or the wife of Edward Layton is not mentioned in the court transcripts. It is stated that she was deceased.

Melbourne. He had noticed, he said, nothing peculiar in the appearance of either of his daughters when he met them at the boat, the S.S. Miltiades. That night they had slept at the Fern Villa Private Hotel in Durban. Early the next morning, one of the 'girls' asked whether he was going to get up, as they wished to have a look around Durban before they left that evening for Pretoria. According to his testimony in court, Layton replied that, during the course of the day, they visited Back Beach, Munro's studios, where they had their photographs taken, then went to lunch at Fern Villa Hotel and, after lunch, the Laytons took a tram to the Berea and went on a tour of the museum, town hall and library. They returned to Fern Villa, and Layton paid the bills, 5s extra being charged for soiled bed sheets about which he enquired. He was informed by the son of Mrs Young, owner of Fern Villa, that they had found bloodied sheets in the room of his daughters. He expressed his regret and paid the balance owing without demur, suggesting that he had been unaware of what had happened the previous night – when, apparently, a newborn child had been killed.

Suspensions had first arisen when Millicent Burne, housemaid at Fern Villa, had found the bed linen and mattresses saturated with blood during her cleaning routine of the room occupied by the 'girls.' She had also noticed that a towel in the room had blood stains on it and that a newspaper, which had been put in the drawers of the washstand, was missing. Burne had then informed Mrs Young who approached the girls about it at breakfast. According to her deposition, Mrs Young stated that Rose, the elder, who looked very ill to Mrs Young, "said she was very sorry," while Ruby May said "...it was the voyage that had made her sister like that."⁷⁴

⁷⁴ PAR, AGO, I/1/336, 64/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

Coincidentally, during the course of mid-morning on January 29th, Mary Graham, a maternity nurse and friend of Mrs Young, had visited Fern Villa. In her deposition, Miss Graham stated that Mrs Young had asked the nurse to look at the state of the room which the girls had occupied the previous night. Miss Graham saw blood on the mattresses of the bed and also a towel which had apparently been used to wipe partly washed, blood-stained hands. Miss Graham further commented that, when she examined the bed, she had found more blood than would come about from ordinary menstruation and was of the opinion that “so profuse a flow was likely to be the result of haemorrhage or confinement.”⁷⁵

On that same day, Layton and his daughters had left Durban at 5.50pm on the corridor train to Pretoria. On leaving Fern Villa, one of the daughters had been seen carrying a travelling rug. At the Durban Station, the Ticket Collector, H. Craven, had noticed that Rose looked very ill. She held, he said, a hat box and some wraps. When Craven had offered to carry a wooden box that Mr Layton was holding, he had declined. And when Mr Davis, the conductor on board the train, had enquired as to whether Mr Layton and his daughters would need beds for the night, he had noticed that one of the girls was not present. Mr. Layton then informed him that she was in the lavatory.

At the court hearing Detective Albert James Cuffs, of Pietermaritzburg, stated that he had received depositions, taken by the City Coroner inquiring into the finding of the body of a newly-born male child along the railway line about half a mile south of Zwaartkop Station on the morning of January 30th. Pancham, an Indian, employed by

⁷⁵ PAR, AGO, I/1/336, 64/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

the Natal Government Railway as a plate-layer, had found the naked body with a piece of cloth around its neck and some bloodied paper lying next to the body. Once alerted about the body, and accompanied by Dr. Ward, the District Surgeon, and several police officers, Detective Cuffs had then gone to the place where it was lying. He saw the body lying about 8ft. from the railway line, and it had, he reported, all the appearance of having been thrown from a passing train. On examining the body, it was found that a ligature had been tied tightly round its neck. The baby's body had then been conveyed to the City where, in his presence, a post-mortem examination was held, and it was pronounced that death had been caused by strangulation, brought about by tying a piece of tape round the neck. Dr Ward was of the opinion that the child had breathed but died of asphyxia shortly after birth. Two copies of the "*Natal Mercury*," dated 14th and 15th June, had been found near the body of the child; these, presumably, were the missing copies to which Millicent Burne had referred in her deposition. There was also a covering, which Detective Cuffs found to be a lady's skirt, but this was too saturated with blood to determine its colour.

Using the train schedule and the proximity to which the body was found from the train line, Detective Cuffs concluded that the body must have been dropped there between the hours of 9pm on the 29th and 6am on the 30th. He pointed out that it was significant that the body had been found where it had, rather than close to Durban. The reason was that, from his observation, it would have been extremely difficult for any person to have disposed of the body of a child from a train travelling between Durban and Pietermaritzburg, because passengers would still have been awake. After the Pietermaritzburg station – which the train left at 10pm – this could however, have been done, he said, without difficulty as the passengers generally settled down to sleep. At this point the countryside was apparently well wooded and would have appeared from the train to offer secure 'concealment.' However, the strategy of the

offender had not worked as, when the body was apparently thrown from the train, it dropped close to the plate-layer's Indian barracks. Suspicions were thereafter directed at the Laytons and on February 11th in Pretoria and in the presence of Sub-Inspector Gamble of the C.S.A.R. Police and Detective-Sergeant Geale of the C.I.D. Pretoria, Detective Cuffs visited the railway workshops where he arrested Edward Layton.

When giving his deposition prior to the court hearing, Layton said the charge was ridiculous, and added, "Have you seen the girls? They are only bits of kiddies and they were all right when I met them on the boat." Layton had then asked, "Where was the body found?"⁷⁶ A visit had then been paid to the Layton residence where the Detective found both girls. After being cautioned, Rose made no statement, while Ruby had asked, "Are we the only ones arrested for this?" Layton then said that he thought the police were wrong and asked for a doctor to be called in to examine the girls. Dr Reinhard was called, but Layton expressed dissatisfaction with his report and asked for another doctor, specifying that he wanted a Dr. Savage to perform the examination. Both doctors then examined the girls, and both recommended that the girls should spend a night under observation in hospital. The following day Layton was temporarily released.

A search was made of the Layton house and Detective Cuffs found some clothing and a piece of tape. The detective also produced a portmanteau which, he said, had been found in the possession of Layton. It was empty and damp inside and had the appearance of having been washed. There were certain marks in the bag, which Detective Cuffs took to be stains, and it was this portion that had evidently been

⁷⁶ PAR, AGO, I/1/336, 64/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

washed and cleaned out. There were certain stains of a dye, magenta in colour, on the clothing of Rose and Ruby, particularly on a blouse and skirt. There were also similar stains on the piece of flannelette which was tied round the neck of the child. Parallel investigations at the Fern Villa Hotel revealed a copy of the "*Natal Mercury*" in a chest of drawers in the room which the daughters had occupied.

At the court hearing, when asked if he or one of his daughters had thrown a child from the train, Layton bluntly answered no. He proceeded to say:

On arriving in Pretoria we went to the house I had fixed up there. The house was a long way from town, but in a very healthy spot. The girls worked away at the house, and in the afternoon, they went with me down town, the house being a mile and half from the town. We walked all the way, and walked all the way back. In the evening we returned to town, went to the Opera House, where "The Forty Thieves" was playing. The next morning, Saturday, the girls did some shopping; in fact they nearly walked me off my legs. Later, when a detective came to me, and intimated that one of my daughters had given birth to a child; I ridiculed the idea, and said, "Why, they are only children!" In fact, I thought for a moment that the detective was simply joking because I was a popular man in Pretoria, and did a lot of singing for nothing. Seeing that the detective was serious, I asked for a medical examination of the girls.⁷⁷

In his closing statement, Mr Calder remarked that if he had said anything strong in the prosecution's opening statement it was not his fault. "He was bound to admit that the evidence presented by the witness in regard to the alleged condition of the girl, Rose Layton, was not entirely satisfactory." Yet, he added, the evidence was of such a nature that it deserved to be taken in conjunction with the whole circumstances of the case. Referring to the medical evidence, Mr Calder commented that he thought

⁷⁷ PAR, AGO, I/1/336, 64/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

the jury was entitled to find that the child had been born alive and that it had been killed. "It was not unnatural for a girl who had been indiscreet to seek to hide her shame." Mr Calder suggested that if the more serious charge of murder failed, it was necessary for the jury to find a verdict of concealment of birth.

In response to this Judge Henry Bale commented that a verdict of concealment of birth could not be returned, both because he had no jurisdiction where the child was alleged to have been placed, and because the body of the child had not been concealed. Any passengers from the train could see the body, he said. Mr. Renaud then contested the prosecutor's argument by pointing out, first, that there was no evidence that Rose had in fact given birth to a child at Fern Villa; and second, that there was no evidence that the body of the child found on the railway line had been alive when it was born; and, third, that there was no proof that the child found was the son of Rose. Renaud also emphasised the fact that no marks of violence had been found on the child alleged to have been thrown out of the railway carriage window by the either one of the Laytons.

Further, Mr Renaud argued in defence that the "law assumes the every newborn child has been born dead until the contrary appears from the evidence. The onus of proof that a living child has been destroyed is thereby known on the prosecution and no evidence imputing murder can be received unless it is first made certain that the child survived its birth and was legally a living child when violence was offered to it."⁷⁸

With this argument Renaud wanted the jury to consider whether or not the process of breathing had been perfectly established and whether the child had been fully born

⁷⁸ PAR, AGO, I/1/336, 64/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

before death occurred. He then ended his closing argument by asking for justice and not mercy.

When Sir Henry Bale delivered his summing up of the case, *The Natal Mercury* reported it as follows and it is quoted in full and at some length here because it shows that, even before the jury could decide on a verdict, the judge exhibited a certain degree of leniency towards the Laytons.

Resuming an hour later, his Lordship, in great minuteness, travelled over the evidence in charging the jury. Could the jury, in view of the expression of opinion by Dr Ward, say that the child discovered was born alive? The jury had to be certain not only that the child was physiologically born, but they had to be satisfied that the child was born alive from a legal point of view. Having quoted definitions from that standpoint, his Lordship Mr Calder, had suggested that it was competent for the jury to find the second prisoner [Rose Layton] guilty of the crime of concealment of birth. But to do that the jury would have to be satisfied that the concealment of birth took place within his [the judge's] jurisdiction, and there was no such evidence. There was also another reason why they could not find the second prisoner guilty of concealment of birth. There must be proved a secret disposition of the body, and a disposition could only be secret where the body was not likely to be found.

In using the phrases “born alive” and physiologically born”, it is most likely that Bale was asking the jury to be certain that the baby had the characteristics as that of a normal functioning living baby.⁷⁹

Secrecy was the essence of the crime. But the place where the body was found was close to the railway line, where it could be seen by passengers of the train. They could not find the prisoner guilty of the

⁷⁹ See also the section entitled ‘The Moment of Life’ in Chapter One, which delineates the meanings attached to ‘live birth.’

crime of concealment of birth. The only issue was as to whether there was a “killing or not.” Proceeding, his lordship analysed the evidence. There was nothing to show that the female prisoner threw a body out of the train. The conduct of the male prisoner, Edward Layton, was quite consistent with innocence; had he been a participator in the alleged crime, he would have resisted the medical examination. On the contrary, the male prisoner asked for a medical examination of his daughters, and neither showed a disposition to shirk it. His Lordship pointed out that the body found near the railway line was not marked and the train in which the accused were travelling was going at 14 or 15 miles an hour near the spot where the body was discovered. One would have expected marks on the body had it been thrown from the train. If Dr. Ward, the District Surgeon, of many years experience, who saw the body, and made the post-mortem examination, could not say if the child was born alive, could the jury say so! And they must say so if they found the prisoners guilty. Concluding, his Lordship impressively said, they were in the presence of one of life’s great tragedies. They were in the presence of one of life’s great mysteries; and he asked them to retire to consider their verdict.

The Verdict

The jury retired at 2.30pm and returned after an absence of 15 minutes. Amidst breathless silence, and in reply to the customary query: “have you agreed upon your verdict?” asked by the registrar, the foreman of the jury announced that the three prisoners were unanimously found not guilty. Immediately shouts and demonstrations were heard and seen emanating from the crowded gallery, although his Lordship, after the jury had retired, had particularly asked for silence, whatever the verdict of the jury proved to be.

“Order!” was shouted to the crowd and the noise was at once silenced, his Lordship remarking that the display was disgraceful.

His Lordship briefly discharged the accused.

The girl prisoners, who had maintained remarkable self composure during the trial broke down on hearing the verdict, and cried, and their father “armed” them out the court.⁸⁰

⁸⁰ ‘The Layton Case, Alleged Infanticide, The Accused Acquitted, Scene in Court,’ in *The Natal Mercury*, Thursday, July 2, 1908. [My thanks to Mwelela Cele for providing me with a copy of this article.]

In some regard the Layton trial serves as the quintessential case of a middle class settler family charged with infanticide. It can also be argued that the preservation of racial respectability and reputation was of higher importance than finding justice for the tragedy of callousness of the events on the night of the train journey to Pretoria. The case was concluded over three days and for three days running the court house had been packed with on-looking supporters. Such was the popularity of the court case that, after the verdict had been decided upon, there were numerous appeals from the public for the Attorney General's office to provide some reparations for Layton and his family. A letter to the Editor of *The Natal Mercury*, from 'HUMANITY' roughly read as thus:

I have no doubt whatever that the sympathies of everyone in Durban, and indeed, in the whole Coolny [sic], will go out to this unfortunate family in the distressful position in which they have been placed, and, whilst all will rejoice with them that the cloud of disgrace had been dispelled by the common sense of a judge and jury, we must not forget that this consummation has only been reached at considerable monetary loss to themselves. In fact I understand that they are now penniless, and that Mr. Layton has lost his situation through his long absence from Pretoria. It is only possible for us to dimly realise the feelings of a father, who has saved up for five years to make a home for motherless girls, and, just when happiness seemed at hand, to be suddenly deprived of his savings, and, worse still, of his livelihood. I, therefore, venture to ask your readers to subscribe to make some reparation for this loss. Unfortunately, I am only a poor man myself, but I enclose half-a-sovereign, and leave my appeal to the warm hearts of the Durban public.⁸¹

Despite the weight of medical and other evidence in this case, pointing to the fact that in all probability the Laytons were in fact guilty of the crime of infanticide, the

⁸¹ 'A Public Appeal,' in *The Natal Mercury*, Thursday, July 2, 1908.

public appeal of the case illustrates on a deeper level the need to preserve a sense of the moral higher ground that white Natalians presumed to possess. The pressures to maintain the image of white superiority in Natal powerfully shaped the social context in which these cases were tried. It is quite evident that a certain sense of sympathy was bestowed upon the Layton family newly arrived from Australia and without a mother. Furthermore, it is possible that the fact that Edward Layton was a “popular man” in Pretoria swayed the jury’s decision in the end. After all, it was only due to a technicality that the Rose could not be charged with concealment as this was outside the jurisdiction of Judge Bale.

The letter to the Editor from ‘HUMANITY’ sought to construct an image of Edward Layton as no more than a victim of an unfortunate incident who was now in need of the generosity that could be afforded to him by the compassionate people of Durban. As in the case of the Schraivesandes, it is difficult to assume who constituted this ‘public.’ The different strata of white ‘public society’ that existed in Natal during this time included farmers, hunters, traders, teachers, nurses, civil servants, missionaries, mothers, married and single women, doctors and more. They should not, however, be regarded as a homogenous group, but rather as a group of individuals who shared similar ideologies. They did, however, largely share a certain understanding of what it meant to be white in a British colony and how reputations were contiguous to notions of honour, respectability and virtue.

Conclusion

It is possible to reflect on some of the reasons why newspaper editors gave certain crime stories precedence over others, just as it is possible to understand why certain infanticide and concealment of birth cases captured the public imagination in the ways that they did. There was a strong tradition of crime reporting in Natal newspapers in the late nineteenth and early twentieth centuries and, in some instances, newspapers had daily columns dedicated to the outcomes of the criminal sessions at the court houses. During these times, the propensity of local newspapers to favour certain criminal cases over others can be attributed to the levels of sensationalism that these cases offered, or to the degrees that the cases stirred public agitations or garnered public support. Also, like most newspapers that pandered to the proliferation of gossip and rumour, reportage of cases involving well-known Natalians who were involved in scandalous cases was also a trend that developed in Natal newspapers over this period.

In Natal, the ideologies that framed reportage were a reflection of the different editorships that spearheaded the newspapers, but differences in reportage over this time period, from the 1860s to the 1910s, also reflected different social, economic and political climates. Over the course of the late nineteenth and early twentieth centuries these newspapers underwent significant changes impacting on the readership who were either in agreement or not with the newspapers' overall views

of various issues.⁸² Different editors imposed personal biases on the ways in which news stories were reported.⁸³ Considering the different personalities of succeeding editors at *The Natal Witness*, Simon Haw argues that, while David Dale Buchanan – the founding editor – was generally a liberal, the overarching attitude of the newspaper’s attitude towards Indians and Africans in the colony was best described as paternalistic. Buchanan’s successor, Ralph Ridley, however, possessed “far less enlightened views” on African people which, as John Lambert asserts, was evidently reflected in newspaper reports.⁸⁴ These stereotypes of Africans as uncivilised and ‘savage’ were often portrayed as both paternalistic and racist in newspaper reports. This was particularly true for crime reporting, under which cases of infanticide were categorised.

When stories of Africans guilty or accused of infanticide or concealment of birth were reported on, journalists used terms such as ‘savage,’ ‘diabolical,’ ‘wretched,’ ‘wicked,’ and perpetrators were rarely given much consideration. Africans who were seen as

⁸² B. Leverton provides a thought provoking analysis of the relationship between the reportage of *The Natal Witness* and government politics in ‘*The Natal Witness* and ‘Open Testimony’, Laband and Haswell. *Pietermaritzburg 1838-1988: A New Portrait of an African City*, 202-204. In the same edited collection Richard Steyn provides a short account on the nature of ‘The Freedom of the Press’ and *The Natal Witness*, over the twentieth century, 205.

⁸³ Such an example can be found in the case of Alfred Aylward who served as Editor of *The Natal Witness* from 1879 to 1881. In an article in the *Journal and Natal and Zulu History*, Donal McCracken argues that “under Aylward’s leadership the editorial policy of *The Witness* ... was aggressively pro-Boer, though under previous editors this had not always been the case.” Considering the time period during which Aylward was editor of *The Witness* he was praised by many as being fairly progressive for his critical editorials on the British government. For more on this see Donal P. McCracken. ‘Alfred Aylward: Fenian Editor of *The Natal Witness*,’ in *Journal of Natal and Zulu History*, IV, October 20, 1981, 49-61.

⁸⁴ John Lambert presents an interesting comparison between Buchanan and John Robinson, editor of *The Natal Mercury* who also maintained a tradition of political independence in favour of serving Natalian interests. Lambert. ‘The Last Outpost’ The Natalians, South Africa, and the British Empire,’ 156.

imperilling the codes of respectability and decency were subject to judgemental, if not slanderous, reportage. However, when white Natalians were the perpetrators of these crimes, Natal newspapers adopted a much more compassionate view of these individuals. This is not only demonstrated by the choice of words, but also by the length and sustained reportage of specific cases. In the case of the Laytons for instance, between March and July 1908, *The Natal Mercury* reported diligently as the case progressed. This was also true for the Pithey-McDaniel and Schraivesande cases. For Kate Baatjes and Nobayeni, in-depth and sustained reportage on their cases proved to be the contrary.

By 1910, a particular type of settler respectability had come to occupy a prominent place in what constituted settler identity. However, the prescription for upholding this respectability meant that colonialists constantly strove to create a “closed and racially exclusive colonial society.”⁸⁵ The different strands of reportage in these newspapers perhaps speak to a broader narrative about the colonial governments’ comprehension of citizenship and subjection and how the Natal “newspaper-reading public” was imagined.⁸⁶ However nebulous their understandings of respectability were, Natalians aspired to and desired to be men and women of character, to be “gentlemen” and “ladies.” What is evident from this chapter is that newspaper accounts of the cases of infanticide and concealment of birth were racially biased. Within a colonial situation such as Natal where a dominant and subject people exist, the convergence of the binary categories of gender and race becomes the point of focus where notions of respectability, racial membership, racial exclusivity and sexual

⁸⁵ Morrell. *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*, 324.

⁸⁶ Luise White. *Speaking with Vampires: Rumor and History in Colonial Africa*. (Berkeley: University of California Press, 2000), 254.

morality came to be reflected by newspaper accounts of crimes of infanticide and concealment of birth. Furthermore, the racial motivation behind the public response to these cases is reflected in the veneer of respectability that Natalians endeavoured to solidify and the reputations that they wished to uphold.

Building on the themes of racial superiority and preservation, Chapter Five furthers this discussion by examining the role of puerperal insanity as a defence plea in cases of infanticide. More broadly, the chapter addresses the objectification of nineteenth and early twentieth century medical science with race, class and most significantly gender. The chapter finds as its leading protagonist, Lily Theron who, in 1919, was charged with infanticide and was successful in using puerperal insanity as a defence plea. The chapter also presents an overview of the ways in which puerperal insanity was understood and how patients at the Natal Government Asylum – later known as the Pietermaritzburg Mental Hospital – who were diagnosed with this sometimes murderous malady, were cared for there.

Chapter Five

“In a fit of mental derangement”¹ ~ Medico-legal Discourses of Puerperal Insanity and Infanticide, Natal, 1890-1920

*“Mania is more dangerous to life, ... melancholia to reason.”*²

In 1820, Dr Robert Gooch, an erudite and extensively cited nineteenth century British physician, produced one of the first treatises on puerperal³ mania: *Observations of Puerperal Insanity*.⁴ This was first read at a meeting of the Royal College of Physicians in London, and in 1829, he further published *On Some of the*

¹ ‘A Durban Tragedy,’ in *The Natal Witness*. 16th October 1894, 3.

² Robert Gooch. *On Some of the Most Important Diseases Peculiar to Women*. (London: The New Sydenham Society, 1829), 54. Found at <http://www.archive.org/stream/goochonsomemost01gocgoog#page/n116/mode/2up>, accessed on the 17 April 2011. Also quoted in Hilary Marland. ‘Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea,’ in Mark Jackson (ed.) *Infanticide – Historical Perspectives on Child Murder and Concealment, 1550-2000*. (Aldershot: Ashgate, 2002), 172.

³ According to the Oxford English Dictionary, *puerperal* refers to the period occurring or existing after childbirth and characteristic of or relating to the period after a birth. Increasingly, by the second half of the twentieth century, the terms “post-natal” and “post-partum” replaced puerperal to describe the period post delivery. Currently, puerperal insanity is labelled as puerperal or post-partum psychosis with the less severe but more common form of clinical depression following childbirth referred to as post-partum depressions or by the more colloquial phrase, “baby blues.”

⁴ Robert Gooch. *Observations on Puerperal Insanity*. (London, 1820) (Extracted from *Medical Transactions*, Sixth Volume of Royal College of Physicians, read at the College, 16 December 1819), as cited in Hilary Marland. *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain*. (New York: Palgrave Macmillan, 2004), 225.

Most Important Diseases Peculiar to Women. While he recognised that a person’s mind may have become “disordered” at any time, in his article he identified two periods during gestation that, in his view, made women particularly susceptible to some form of ‘instability:’

During that long process, or rather succession of processes, in which the sexual organs of the human female are employed in forming, lodging, expelling, and lastly feeding the offspring, there is no time at which the mind may not become disordered; but there are two periods at which this is chiefly liable to occur, the one soon after delivery when the body is sustaining the effects of labour, the other several months afterwards, when the body is sustaining the effects of nursing.⁵

In this, Gooch was classifying two primary periods during which post-partum women could find themselves prone to some form of psychological instability. The first period was labelled as ‘puerperal mania’ and the second, ‘insanity of lactation’. In earlier diagnoses of puerperal mania, Gooch had noted that the more serious form of puerperal mania was that which could be discerned with what he called “degrees of excitement.” When this form of mania occurred immediately after parturition, with what he referred to as “constant” and “rapid” pulses, and the behaviour being “furious” and “ungovernable,” it was far more dangerous than when it occurred much later after delivery. Being the first British physician to write about puerperal insanity, Gooch’s treatise remained influential for much of the nineteenth century even after his death in 1830. As Hilary Marland notes in *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain*, “[f]ew writing on the subject after Gooch would fail to acknowledge his findings, even if they were to disagree with them.”⁶ Over the course of the nineteenth century, with an increasing number of publications by gynaecologists and obstetricians that linked reproduction and the female life cycle

⁵ Gooch. *On Some of the Most Important Diseases Peculiar to Women*, 54.

⁶ Marland. *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain*, 30.

with women’s mental disorders, discussions about and the consequent rise in the condition, firmly placed ‘puerperal insanity’ in medical debates and discourses.

This chapter begins by looking at the developments in clinical knowledge about the illness over the eighteenth and nineteenth centuries, with particular reference to how different understandings of this illness were conceived and debated by the Western medical and legal fraternity; the differing diagnoses of puerperal insanity; changes in the ways in which the illness was treated; and how, by the turn of the nineteenth century, and predominantly in Britain, puerperal insanity came to be a common defence plea in most cases of infanticide.⁷ In early twentieth century Natal, while the sources strongly suggest that there were cases of infanticide, child murder or concealment of birth that were the result of the mother suffering from what appears to have been puerperal insanity, the existing records of the Registrar of Supreme Court of Natal indicate that there was only a single criminal conviction for infanticide at the level of the Supreme Court where the defence plea had been puerperal insanity. This is the case of Lily Theron in 1919.

First, however, there will be a discussion on selected case studies of some of the women who were admitted to the Natal Government Asylum [NGA]⁸ for either being diagnosed with puerperal mania or displaying similar symptoms to this. Their stories come through from the patient records in a single Natal Government Asylum Patient

⁷ Hilary Marland. ‘Disappointment and Desolation: Women, Doctors and Interpretations of Puerperal Insanity in the Nineteenth Century,’ in *History of Psychiatry*, 14:3, 2003, 313.

⁸ According to Julie Parle, the Natal Government Asylum was originally referred to as the Natal Government Lunatic Asylum. In 1910, until the end of World War One, it was renamed the Pietermaritzburg Mental Hospital and its name was later changed to Town Hill Hospital. Julie Parle. *States of Mind: Searching for Mental Health in Natal and Zululand, 1868-1918*. (Pietermaritzburg: University of KwaZulu-Natal Press, 2007), 22-24. In this chapter I will use the more general term of Asylum.

Case Book – which only covers white patients admitted during the years 1904-1908, and their progress records until 1919 – and the Registrar of the Supreme Court Reception Orders.⁹ Following this section is an in-depth analysis of the one of the women admitted to the NGA, Emma Lovett. Lovett was admitted to the Asylum on two different occasions, and her story and experience – like many of the other women that this chapter discusses – are important because they illustrate the complexities and difficulties that this form of mental illness exemplifies, on a personal level, but also within the social and public paradigm of colonial Natal in the late nineteenth and early twentieth centuries.

In many ways this chapter relies heavily on the research and writings of Julie Parle, but it also builds on her and others’ work in extending the existing historiography of late nineteenth and early twentieth century notions of mental illness in colonial Natal. For the sections on the Natal Government Asylum and Emma Lovett, two specific sets of data that were first used in Parle’s research are utilised here, these being the only Patient Case Book from the Natal Government Asylum for the time period covered in this study available to her and a set of documents from the Department of the Minister of Justice and Public Works relating to the case of Emma

⁹ While remaining alert to the professional ethics of utilizing patient records in historical writing, it should be noted that except for the NGA Patient Case Book, all other medical records used for this study are available in the public domain at the Pietermaritzburg Archives Repository. My argument for not abbreviating, obscuring, disguising or reducing patient’s names to initials is one that holds agency and identity at its core. Deliberately altering the names of patients, would, I believe, not only simply relegate these individuals to psychiatric ‘case studies’ – thereby “stripping down their identity” – but would further marginalise and silence a group of individuals whose life experiences came to be defined by their mental illness and whose stories now exist through the reports and letters of doctors, magistrates and family members, and not by their own voice. For a more sophisticated debate that grapples with the ethics of using patient records as a historical source, see Julie Parle. ‘The Voice of History? Archives, Ethics and Historians.’ Paper presented on the 8th November 2005 at the History and African Studies Seminar hosted by the History Department, University of KwaZulu-Natal.

Lovett. Parle’s findings and analysis of these primary sources have been extensively published and, while her scholarship focuses on the history of mental health within the ambit of medical pluralism in the context of colonial Natal, this chapter attempts to converse with her research by considering the ways in which puerperal insanity as a form of mental illness was understood in legal and medical spheres.

Mapping Medical Understandings and Pathologies of Puerperal Insanity

In 1866, nearly forty years after the publication of Dr Gooch’s *Treatise*, Dr John Batty Tuke divided puerperal insanity into three distinct and separate forms: the first being, ‘Insanity of Pregnancy’; the second, ‘Puerperal Insanity’; and thirdly, ‘Insanity of Lactation.’ Dr Tuke’s paper remains one of the most influential and detailed analyses of puerperal mania. During his time at the Royal Edinburgh Asylum, Dr Tuke conducted a study of 155 women who had been admitted for puerperal insanity; of these, 28 occurred before delivery, 73 during the puerperal period and 54 during lactation. In all these cases the form of mental instability was classified either as acute mania or melancholia.¹⁰

Dr William Smouth Playfair (former Professor of Obstetric Medicine at King’s College, London), whose 1884 ‘*Treatise on the Science and Practice of Midwifery*’ was regarded as an authoritative text right through until the early twentieth century in the study of gynaecology and obstetrics – and whose work features later in this chapter in the case of Lily Theron – demonstrated in his study that “the insanity of pregnancy” was the least common of all three forms. Dr Tuke added that, quite often,

¹⁰ J. Young. ‘Case of Puerperal Mania,’ in *Edinburgh Medical Journal*, XII, September 1867, 266.

these conditions did not necessarily exist independently of each other, in that “insanity of pregnancy” did not always cease with labour. Even if the symptoms of insanity of pregnancy abated after labour or, as in some cases, disappeared entirely before ‘confinement,’ it was generally found, he said, that these symptoms could reappear several months or years after delivery and in this case could be labelled as insanity of lactation. This is a point that will be further elaborated, when the case of Emma Lovett is discussed.

However, Dr Tuke maintained that the ‘puerperal maniac’ as a rule had symptoms which were entirely distinguishable from any other form of insanity. And in contradiction to Dr Gooch’s hypothesis that a cursory examination would be insufficient to ascribe the label of puerperal maniac, Dr Tuke provided a detailed description of what a woman suffering with puerperal insanity would look like:

She is pale, cold, often clammy, with a quick, small, irritable pulse, features pinched, generally weak in the extreme, at times almost collapsed-looking. But withal she is blatantly noisy, incoherent in word and gesture; she seems to have hallucinations of vision; staring wildly at imaginary objects, seizes on any word spoken by those near her which suggests for a moment a new volume of words, catches at anything or anyone about her, picks at the bed-clothes, curses and swears, will not lie in bed, starts up constantly as if vaguely anxious to wander away, and over all there is a characteristic obscenity and lasciviousness. Suicide is often attempted but in a manner which shows that it is not the result of any direct cerebration; she may wildly throw herself on the floor, attempt to jump from the window, or draw her cap-strings round her throat, but there is no method about it, it is an impulse, the incentive of which is purely abstract.¹¹

In considering the causes of puerperal insanity, Dr Playfair also deliberated whether “hereditary predisposition” could be a possible aetiology. He argued that, only if a full

¹¹ J. B. Tuke, ‘Cases Illustrative of the Insanity of Pregnancy, Puerperal Mania, and Insanity of Lactation,’ in *Edinburgh Medical Journal*, XII, June 1866-7, 1083-1011, 1091.

and complete history of the patient was recorded, and if this showed that other members of the family had suffered from some form of mental derangement, then this could be an almost certain cause. To this list of probable causes Dr Playfair added post-partum haemorrhaging; exhaustion due to severe and complicated labour; “over-frequent pregnancies”; lactation during the early months of pregnancy; anaemia and the age of the patient. He attributed the emotional and mental condition of the woman to “morbid dread ... - a woman’s complete and utter fear of failing as a mother; and shame, degradation and fear of exposure in the case of unmarried or adulterous women.”¹²

An intriguing observation that Dr Tuke made was that, in his view, it was women who had been diagnosed with puerperal insanity but who had not been admitted to an asylum, who showed instances of the most *curable* form of insanity. He did make this statement tentatively though, and reiterated that this did not extend to cases which were placed under the care of the asylum as a last resort. Both Drs Playfair and Tuke argued that attention should be paid to the types of routine treatment meted out to the patient. In the early nineteenth century, women would have been shaved and have had something cold applied to the head; a tartar emetic would be administered; and purging, blistering and bleeding the shaven head were all routine remedies.¹³ Tuke argued, however, that not only were these over-active measures clearly contradictory but, as a result of the “over stimulation to the mind,” oftentimes the patient relapsed into dementia. He further advised that opiates or any other form of stimulant should be avoided as a treatment. Rather, food, a good dose of beef tea,

¹² W.S. Playfair. *A Treatise on the Science and Practice of Midwifery*. (Philadelphia: Lea Brothers & Co., 1884), 591.

¹³ See also, Nancy Theriot. ‘Diagnosing Unnatural Motherhood: Nineteenth-Century Physicians and ‘Puerperal Insanity’,’ in *American Studies*, 26, 1990, 74.

strong soup, long baths and sleep were thought to best combat the effects of puerperal mania.¹⁴ And both doctors emphasised the fact that placing a woman in an asylum could do more harm than good and the mania could develop into “incurable chronic dementia.”

Puerperal insanity was thought to be indicative of a particular form of mental disorder and, for most of the nineteenth century, it was considered to render women completely vulnerable and unaware of their actions post-partum. In keeping with Anne Digby’s commentary on nineteenth and early twentieth century views that perceived a link between women’s frailty and their reproductive system is that this best epitomizes what she terms as “women’s biological straitjacket.”¹⁵ Digby argues that, by the turn of the eighteenth century, medical views held that women’s health was “determined by her femininity,” and, as a result, they were regarded as “frail and unstable” and puerperal insanity, then, signified a complete breakdown of the postpartum mother.¹⁶ Quoting Mary Poovey, Digby adds: “This set of assumptions – that woman’s reproductive function defines her character, position and value, that this function is influenced by an array of nervous disorders – mandates the medical profession’s superintendence of women.”¹⁷ In analysing gynaecological papers,

¹⁴ See Playfair. *A Treatise on the Science and Practice of Midwifery*, 595-597; Tuke, ‘Cases Illustrative of the Insanity of Pregnancy’, 1093; M.D. MacLeod. ‘An Address on Puerperal Insanity,’ in *The British Medical Journal* 2, 1336, August 7, 1886, 239-242; Ernest W. White. ‘A Note on the Treatment of Puerperal Insanity,’ in *The British Medical Journal* 1, 2197, February 7, 1903, 306; Robert Jones. ‘The Medical Treatment of Insanity,’ in *The British Medical Journal* 1, 2312, April 22, 1905; and Sir Robert Armstrong. ‘Notes, Comments and Abstracts - Puerperal Insanity,’ in *The Lancet*, 23 June 1923, 1297.

¹⁵ Anne Digby. ‘Chapter 6 - Women’s Biological Straitjacket,’ in Susan Mendus and Jane Rendall (ed.) *Sexuality and Subordination: Interdisciplinary Studies of Gender in the Nineteenth Century*. (London and New York: Routledge, 1989), 192, 205, 207.

¹⁶ Digby. ‘Women’s Biological Straitjacket,’ 193.

¹⁷ Digby. ‘Women’s Biological Straitjacket,’ 193.

treatises and books, Digby shows how during the nineteenth century, these were primarily concerned with the “dominance of the reproductive system” on female health. She extends this argument by stating these assumptions were then translated “into theories relating female insanity to the reproductive cycle.”¹⁸ This imposed “straitjacket” by the largely male medical fraternity, she argues, did much to bring about even stricter gender hierarchies that already existed during this time period.

A survey of the *British Medical Journal* and *Lancet* confirms that in the latter half of the nineteenth and early twentieth centuries, obstetricians, general practitioners and surgeons became exceedingly interested in the topic of puerperal insanity. There were numerous articles, accounts and case studies on how to diagnose this ‘disease’, its symptoms and conditions, and how to treat it.¹⁹ Coupled with this were, building on Gooch and Tuke, observations on the disorders of insanity of pregnancy, insanity of lactation and puerperal fever.²⁰ But increasingly, these medical men laid emphasis on

¹⁸ Digby. ‘Women’s Biological Straitjacket,’ 193.

¹⁹ See for instance, A. Campbell Clark. ‘Clinical Illustrations of Puerperal Insanity,’ in *The Lancet*, 21 July 1883, 97-99; A. Campbell Clark. ‘Clinical Illustrations of Puerperal Insanity,’ in *The Lancet*, 4 August 1883, 180-181; A. Campbell Clark. ‘Clinical Illustrations of Puerperal Insanity,’ in *The Lancet*, 18 August 1883, 277-279; MacLeod. ‘An Address on Puerperal Insanity,’ Robert Barnes. ‘On the Causes, Internal and External, Of Puerperal Fever,’ in *The British Medical Journal* 2, 1402, November 12, 1887, 1036-1042; ‘Puerperal Insanity,’ in *The Lancet*, 20 April 1901, 1158; Robert Jones. ‘Puerperal Insanity,’ in *The British Medical Journal* 1, 2149, March 8, 1902, 579-586; White. ‘A Note on the Treatment of Puerperal Insanity,’ Jones. ‘The Medical Treatment of Insanity,’ Alexander Stookes. ‘Puerperal Fever,’ in *The British Medical Journal* 2, 2608, December 24, 1910, 2004; Armstrong. ‘Notes, Comments and Abstracts.’

²⁰ Puerperal fever or Child-Bed Fever is a form of septicaemia that women contract after labour, the most common form of infection being genital tract sepsis. If left untreated, it is fatal and often puerperal fever was confused with puerperal mania. ‘Discussion on Puerperal Fever,’ in *The British Medical Journal* 1, 744, April 3, 1875, 456; Edward John Tilt. ‘On Puerperal Fever,’ in *The British Medical Journal* 1, 747, April 24, 1875, 542-543; F. Churchill. ‘Puerperal Fever,’ in *The British Medical Journal* 1, 795, March 25, 1876, 380; and Leonard Colebrook. ‘The Story Of Puerperal Fever: 1800 To 1950,’ in *The British Medical Journal*, 1:4961, February 1956, 247-252.

the fact that the birthing process itself was in fact dangerous and pathological as opposed to being a normal and natural process.²¹

‘Instability of Womb and Mind’ ~Diminished Responsibility as Defence Plea in the Context of Puerperal Insanity

In *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, Carol Smart writes that “... the nineteenth century gave rise to quite distinct ‘understandings’ of women’s unstable and unruly reproductive functions. The whole metaphor of women’s bodies became one of instability of womb and mind. The criminal trial, moreover, became a forum for the ... consolidating of such constructions of the feminine.”²² While “childbirth was redefined as abnormal and risky,” and understood as being the cause of deranged and dangerous behaviour in childbearing mothers, obstetric practitioners, alienists and lawyers began to explain cases of infanticide as a possible symptom of puerperal insanity.²³ If infanticide was regarded as the complete rejection of what was considered to be the ‘female nature,’ that of the caring, loving, soft, composed and calm woman, a diagnosis of puerperal

²¹ Digby. ‘Women’s Biological Straitjacket,’ 196. Articles in the *South African Medical Journal* [hereafter *SAMJ*] during this time, also articulated similar concerns on the dangers posed to women post-delivery. Such articles include: Dr Strachan. ‘A Case of Puerperal Eclampsia,’ in *SAMJ*, Vol. 111, March, 1895, 315; G. Casalis. ‘Notes on Puerperal Infection,’ in *SAMJ*, Vol. 11, November 1899, 150-158; George Marr. ‘An Early Case of Puerperal Eclampsia, with Some Observations on Aseptic Technique in Obstetric Work,’ in *SAMJ*, Vol. 111, October 1905, 197-199.

²² Carol Smart (ed.) *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*. (London: Routledge, 1992), 17.

²³ Marland. *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain*, 175; and Cath Quinn. ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in late Victorian England,’ in Jackson (ed.) *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, 193.

insanity could perhaps best explain and provide a rationale for women committing this crime.

As more scientific knowledge about puerperal mania developed, its utilization in explaining infanticide cases became more frequent.²⁴ But, even by the closing decades of the nineteenth century, puerperal insanity still remained an ambiguous and elastic term. While most doctors and medical experts generally agreed that it was triggered by childbirth, as Marland explains there was no real consensus:

regarding its onset, preconditions, causes, prevalence, precise timing and duration, where it should be treated, how it should be treated, if it was more likely to affect first-time mothers or women who had borne many children, the chances of recurrence, and whether it would prevail more among undernourished, mistreated and deserted poor women than among well-to-do, but feebly constituted ladies for whom childbirth was considered a massive physical and mental shock.²⁵

Writing as recently as the 1990s, in ‘Postpartum Psychosis: A New Defense?’, Amy Nelson further states that even today “the exact cause of postpartum psychiatric illness is not clear; however, some researchers believe that it is a ‘biopsychosocial’ illness. This term implies that the illness is caused by the many biochemical, emotional, psychological, and social changes a woman experiences after childbirth.”²⁶ Marland argues that it was this vagueness and flexibility which allowed lawyers to use puerperal insanity as a defence plea in cases of infanticide and concealment of birth. As such, it increasingly became an avenue through which many women evaded imprisonment for murder or infanticide. Post-partum psychosis or illness allowed

²⁴ Marland. *Dangerous Motherhood*.

²⁵ Marland. *Dangerous Motherhood*, 178.

²⁶ Amy L. Nelson. ‘Postpartum Psychosis: A New Defense?’, in *Dickinson Law Review*, 95, 1991, 630.

defence attorneys to strategically employ this as a means of exonerating those women charged with infanticide or concealment of birth, whether they were in fact mentally ill or not. Moreover, using puerperal insanity as a defence plea could be extended to any situation: either to explain an act of desperation by young unmarried women who, through a combination of pain, fear and shame, had been driven into a temporary frenzy; or to describe the effects of lactation on married and older women. In Natal, while Emma Lovett was never tried for the crime of infanticide, Lily Theron, in 1919, appears to be the first infanticide criminal case where the accused was found to have been suffering with puerperal insanity and was subsequently found guilty, but “with an unsound mind.”²⁷

By the middle of the nineteenth century the insanity defence in criminal cases was increasingly applied to illustrate diminished responsibility on the part of the accused.²⁸ While there were concerns that the insanity plea would be used indiscriminately, the passing of the M’Naghten Rules in the 1840s established guidelines that would aid juries in deciding on whether the defendant was suffering from a defect of reason and was acting out of “irresistible impulse” and was therefore “not guilty by reason of insanity.”²⁹ In Natal, the 1868 Custody of Lunatics Law followed these principles, declaring that a prisoner would be acquitted of criminal

²⁷ Pietermaritzburg Archives Repository [hereafter PAR], Registrar, Supreme Court [Hereafter RSC], 1/1/126, 16/1919, Rex vs Lily Theron, European, Aged 22, Indicted for the crime of Infanticide, 1919.

²⁸ Roger Smith. ‘The Boundary between Insanity and Criminal Responsibility in Nineteenth Century England,’ in Andrew Scull (ed.) *Madhouses, Mad-Doctors, and Madmen: The Social History of Psychiatry in the Victorian Era*. (London: Athlone, 1981), 363-384.

²⁹ Tony Ward. ‘The Sad Subject of Infanticide: Law, Medicine and Child Murder, 1860-1938,’ in *Social and Legal Studies*, 8:2, 1990, 167-168; and Catherine Damme. ‘Infanticide: the Worth of an Infant Under Law,’ in *Medical History*, 22:1, 1978, 15.

charges if “he” [sic] was found to be insane at the time of committing the crime.³⁰ In cases of infanticide and concealment of birth, jurors and lawyers were further assisted by Alfred Swaine Taylors’ *Principles and Practises of Medical Jurisprudence*. As Chapter Three of this thesis has noted, Taylor’s guidebook was the authoritative text to which lawyers turned in cases of infanticide and concealment of birth. Taylor used case studies to illustrate the distinction between “deliberate child-murder by there being no motive, no attempt at concealment, nor any denial of the crime on detection,” to those murders prompted by “sudden impulse.”³¹ By describing the case of Mrs Ryder who was tried in 1856, Taylor placed emphasis on “the lack of subterfuge or denial,” “lack of motive,” or “the mother’s attachment to the child” as defining characteristics of puerperal insanity.³² On Mrs Ryder’s case, he noted,

There was an entire absence of motive in this as in most other cases of a similar kind. The mother was much attached to the child, and had been playing with it on the morning of its death. She destroyed the child by placing it in a pan of water in her bedroom. The medical evidence proved that she had been delivered about a fortnight previously – that she had had an attack of fever, and that she had probably committed this act while in a state of delirium. She was acquitted on the ground of insanity ... it was evidently a case in which the insanity was only temporary, and the prisoner might be restored to her friends on a representation being made in the proper quarter.³³

In late nineteenth century Britain, the increasing medicalisation of infanticide and the increasing importance placed on the role of medical witnesses moved the focus from *mens rea* (guilty mind) to proving puerperal insanity instead. Marland asserts

³⁰ Parle. *States of Mind*, 37.

³¹ Alfred Swaine Taylor. *The Principles and Practice of Medical Jurisprudence*. (London: John Churchill and Sons, 1865), 1122.

³² Marland. ‘Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea,’ 179.

³³ Taylor. *The Principles and Practice of Medical Jurisprudence*, 1122. Also quoted in Marland. *Dangerous Motherhood*, 179.

that even if the slightest indication of the existence of insanity could be proved in cases of infanticide, the woman would be declared insane. It is imperative to note that women accused of infanticide or concealment of birth perhaps used this to their advantage. As Parle remarks “...madness could be feigned by those who wished to avoid the full stricture of criminal law.”³⁴ Even when medical men and jurors were reluctant or not entirely convinced that a woman was in fact suffering from puerperal insanity, they seemed to “err on the side of accepting the insanity plea.”³⁵

However, the ease and inclination of medical men, jurors, lawyers, and alienists to apply labels of insanity, abnormal, deranged, dangerous and related nomenclature to women arraigned for committing infanticide points to a broader argument concerning the manner in which the nineteenth century male medical profession understood women’s neurosis to be intermittently linked to the vagaries of women’s biology. In her article ‘Diagnosing Unnatural Motherhood: Nineteenth-Century Physicians and ‘Puerperal Insanity’,’ Nancy Theriot writes that “many feminist historians and sociologists writing about women’s insanity have concentrated on the power of physicians to categorize women’s behavior as normal, neurotic or insane, and have pointed out how such categorizations both reflect and help maintain gender stereotypes and the imbalance of power between women and men.”³⁶ However, this ideological gender imbalance did not exist in isolation from the law.

³⁴ Parle. *States of Mind*, 37.

³⁵ Marland. ‘Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea,’ 181.

³⁶ Theriot. ‘Diagnosing Unnatural Motherhood: Nineteenth-Century Physicians and ‘Puerperal Insanity’,’ 71. See also, Nancy Theriot. ‘Women’s Voices in Nineteenth-Century Medical Discourse: A Step toward Deconstructing Science,’ in *Signs*, 19:1, October, 1993, 1-31.

The law governing crimes of infanticide and concealment of birth in Britain and New South Wales at the turn of the twentieth century unquestionably followed in this tradition of conceptually portraying women as individuals completely at the mercy of their reproductive organs.³⁷ As discussed in Chapter One, the 1873, 1874, 1922, and 1938 Infanticide Acts in Britain, as well as Section 22A of the 1900 New South Wales Crimes Act, included such phrases as “the pains of labour,”³⁸ alternatively, “that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.”³⁹ These Acts relegated women to the role of the irrational, unstable and overly-emotional sex. Moreover, it also denied women agency and autonomy over their bodies, mind and reproductive lives. It can be argued that some women chose to exercise infanticide not through a “fit of temporary insanity” but rather to reclaim control over their futures. Deliberately choosing infanticide for some women implied a life saved from economic ruin or material and moral poverty.⁴⁰

The question of diminished responsibility in cases of infanticide and concealment of birth undoubtedly played a huge part in the outcome of trials. Medical and legal constructs as discussed above not only made infanticide a sex-specific crime but also buttressed the popular representation that it was “the act of a woman driven mad by

³⁷ A useful critique on the notion of female hysteria underwritten in infanticide legislation can be found in Anna Motz. *The Psychology of Female Violence: Crimes Against the Body*. (Philadelphia: Psychology Press, 2001), 105-112.

³⁸ Infanticide Law Amendment 1874 - A Bill to Amend the Law Relating to Infanticide. British Parliamentary Papers, 049900, 049901, 1874.

³⁹ Mardi Flick. ‘Frailty Thy Name is Woman: An Evaluation of the New South Wales Infanticide Provision,’ in *Australian Feminist Studies*, 20, Summer 194, 194.

⁴⁰ Brigitte H. Bechtold and Donna C. Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006), 134-135.

the pain of childbirth and by shame.”⁴¹ Although, according to Marland, Daniel Grey and Cath Quinn, by the early 1900s puerperal insanity as a specific condition began to disappear not only from the British psychiatric lexicon⁴² but also in medical literature and in asylums as a distinct nosological category, in Natal, discourses on and attention to puerperal insanity by the medical and psychiatric profession continued into the opening decades of the twentieth century. As the records of the Natal Government Asylum suggest as well as articles published in local medical journals – such as Dr Harry Egerton Brown’s ‘Puerperal Insanity; With Special Reference to the Diagnosis and Treatment,’ published in 1907 in the *Transvaal Medical Journal* – puerperal insanity was still a frequently used diagnosis.

The chapter now turns to a discussion of case studies of women who were admitted to the Natal Government Asylum and diagnosed with puerperal psychoses. As mentioned earlier, information about these case studies is drawn primarily from the records of the Natal Government Asylum – this being the European Patient Case Book, 1904-1919 – as well as, the published *Natal Blue Books* and *Statistical Registers* as discussed by Julie Parle in *States of Mind: Searching for Mental Health in Natal and Zululand, 1868-1918*. Reception Orders (also sometimes called “Committal Papers”) located in the records of the Registrar of the Supreme Court of Natal, are also incorporated in this section. These Reception Orders contain information from a family member about the individual they wished to be placed under the care of the

⁴¹ Daniel Grey ‘Discourses of Infanticide in England, 1880-1922.’ Unpublished Thesis (PhD), Roehampton University, University of Surrey, 2008, 260.

⁴² According to Quinn, the introduction of Kraepelin nosology by influential German psychiatrist Emil Kraepelin, in the 1890s, as well the “discovery of the role played by chemical hormones in the early twentieth century, resulted in the reconceptualization of insanity around the event of childbirth and the decline of the disease label ‘puerperal insanity’.” See Quinn. ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in late Victorian England,’ 193, fn 3.

Asylum; medical reports attesting to the state of mind of the patient; and an order by the District Magistrate, either authorising the detention of the patient or rejecting the application altogether.⁴³ Bearing in mind that the Patient Case Book only covers patients admitted between the years 1904 and 1908 (updated with progress notes until 1919), the Reception Orders, which start in 1916 and continue through to 1959, serve as invaluable historical sources in the writing of studies on mental health for this region. Moreover, unlike legal and newspaper accounts which only recorded cases of women who had been successful in committing infanticide, medical records, whose concern is with intent and course of action rather than outcomes, also comment on attempted infanticides.⁴⁴ No statistical survey of these records has yet been attempted however and what follows in the section on the Natal Government Asylum is only a random selection of the Reception Orders that pertain specifically to cases where women were admitted to the Asylum with diagnoses relating to puerperal insanity.

“I am not a train for Glasgow”⁴⁵ ~ Cases of Puerperal Mania at the Natal Government Asylum

When the Mental Disorders Act was passed in 1916, it was mandatory for all patients who were to be admitted to the Asylum to have a Reception Order issued which certified their ‘detention.’⁴⁶ The Reception Orders for the Asylum are an important

⁴³ A. Kruger provides a concise discussion on Reception Orders in *Mental Health Law in South Africa*. (Durban: Butterworth, 1980), 64-66.

⁴⁴ This point is further elaborated on by Quinn in ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in late Victorian England,’ 200.

⁴⁵ Case file of Elizabeth Webb, Admission No.:2493. Admitted on the 11th September 1908. Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case-book), 1901-1908.

⁴⁶ Kruger. *Mental Health Law in South Africa*, 23.

source as they document the committal of all patients to the Asylum regardless of racial categorisation.⁴⁷ After the opening of the Asylum in 1880 several Patient Case Books survived at the present day Town Hill Hospital, formerly the Pietermaritzburg Mental Hospital until the 1980s or 1990s, However, there are now only two existing Patient Case Books remaining, and it appears as though the others were accidentally or negligently destroyed.⁴⁸

As Parle describes, in Natal different Case Books were kept for Indians, ‘Natives’ and Europeans and, after 1919, patient records were moved to loose leaf folders. One of the existing Case Books spans the years 1904 to 1908 and it contains details of 251 ‘European’ patients with information on patient admissions and short progress notes.⁴⁹ These patient records also occasionally contain letters written by or addressed to patients. While this ‘European’ Patient Case Book, offers only a partial glimpse into the complete daily routines of the Natal Government Asylum, for the purposes of this study it provides valuable insight into the ways in which puerperal insanity was understood, interpreted and treated. For instance, one of Maggie Laing’s letters is a poignant example of the confused state of mind of a woman who was committed because she was diagnosed as suffering from puerperal mania:

Marry Good. You had better arrange things better it is disgusting this life whatever is wrong you had better come here there is something very deep here I cannot sleep at night sometimes you had better make everything more pleasant we all seem to be a lot of I cannot say but I wish everything better you know I want to see you but they say such things about me that terrifies me and you know someone else than the

⁴⁷ Julie Parle. ‘Family Commitments and Economies of Emotions: The Family and Mental Illness in Natal to c. 1960.’ Unpublished paper presented on the 4th November 2009 at the History and African Studies Seminar hosted by the History Department at the University of KwaZulu-Natal. [Permission to cite granted]

⁴⁸ Parle. *States of Mind*, 87-88.

⁴⁹ My sincerest gratitude to Julie Parle for sharing this Case Book with me.

one above he wishes to see you doesn't like you but I know he wishes us all to be good a kind. Please see about everything. M. Laing⁵⁰

Maggie Laing had been admitted to the Natal Government Asylum on the 28th July 1906. She was then 28 years of age, and was discharged later the same year. The causation of her insanity was identified as being “child-birth” and the Physician Superintendent's remarks in the Case Book noted that she was “incoherent, violent and noisy in nature.” It was also recorded that, before her admission, she had been consuming copious amounts of alcohol and “picking imaginary objects off her person.” According to the writings and theories of Gooch, Tuke, Playfair and others, Maggie displayed the typical symptoms of a woman suffering from puerperal mania, but of all the women admitted to the asylum for puerperal insanity between 1904 and 1908, Maggie had the fastest ‘recovery’ time. While she was not suicidal or “collapsed looking,” in keeping with Tuke's description, she was “blatantly noisy, incoherent in word and gesture.”⁵¹

According to the Case Book, between 1904 and 1908, there were six European women admitted to the Asylum after a diagnosis of a predisposition to puerperal insanity or an excitable state due to childbirth. Emily Galt was admitted twice during this period and Martha Lydon had been previously admitted under the name of Martha Jackson.⁵² The table below offers a summary of the Asylum records for these women. It shows their date of birth, nationality, marital status, occupation, and their place of residence.

⁵⁰ Case file of Maggie Laing, Admission No.:2142. Admitted on the 28th of July 1906 .Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case Book), 1904-1908.

⁵¹ Tuke. ‘Cases Illustrative of the Insanity of Pregnancy, Puerperal Mania, and Insanity of Lactation,’ 1091.

⁵² On the day she was admitted to the NGA, her case file noted: “Admitted 15 August 1905. Is very much annoyed that she should be brought here again – says she should have been sent into hospital. Previously here as Martha Jackson.” NGA Records X1 (European Patient Case-book), 1904-1908.

It then goes on to describe their mental and physical appearance as recorded by presiding doctors. Information on family history, abnormalities, and whether or not patients were delusional, excitable, or dangerous were also recorded, most probably for the purposes of proffering correct diagnoses and suitable treatments.

Table 5: Synopsis of Records of Patients Diagnosed with or having Symptoms Relating to Puerperal Mania, 1904-1908 ⁵³								
Admission Number	1833	2037	1970	2038	2125	2142	2433	2493
Name	Emily Galt	Emily Galt	Mrs Martha Lydon	Mme Marie Josephine Gabriel Chadier de Folcka	Helen C Humphrey	Maggie Laing	Emma Lovett	Mrs Elizabeth Webb
Nationality	European	Born in Cape Colony is a half-case Kaffir	European	French. Mauritius	English	Scotch	Colonial	English
Admitted	14 November 1904	2 January 1906	15 August 1905	4 January 1906	13 June 1906	28 July 1906	22 April 1908	11 September 1908
Previous Admission			996, Vol. 6.8.05	c/o Martin / 28 Moranis Lane/ Durban			[Readmission] Age 42 on first admission.	
Sex	F	F	F	F	F	F	F	F
Age	33	35	34		32	28	56	29
Marriage	Married	Married	Married	Married	Married	?	Widow	Married
Occupation	At Home	Housewife			Housewife			
Where From?	Newcastle	Halting Spruit, Natal		Durban	Durban	Durban	Stanger.	Ixopo. [Crossed out: PM Burg"]
Kind		Mania					Acute Melancholia	

⁵³ Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case-book), 1904-1908. For more information on the “Progress of these Tables in the Appendix.

“...in a fit of mental derangement...”

Insanity				None			Brother an idiot.	
Other Diseases					Mother neuralgic. Somnambulist.		One child became insane.	
Predisposing			Previous Attack	Puerperal				Puerperal
Exciting	Accidental poisoning of a child.		Puerperal		Probably confinement 6 months ago	Child-birth	Death of husband.	
(First) Mental	Walking about in an aimless manner.	Extreme exaltation, excitement, and rapid flow of ideas.			Monomania of suspicion - poisons		Depression	
(Recent) Mental	Fancies she has to go and live with some other man.	Noisy, but not violent. Constantly singing music hall ditties, and posturing.		Maniacal. Violent, destructive, indecent language.	Noisy etc	Mania	Depression + suicidal and also homicidal.	Melancholic
Suicidal	?	No, but speaks of poisoning herself.		[Crossed out: "No"] Yes	?	No	Yes	Probably
Dangerous	?	Might be.	Yes, might be	Yes	Yes	Yes	Yes	Probably
Duration of Existing Attack			Stated two months	3 months	12 days	2 weeks	2 days	3 months
Other Facts or Remarks		3 rd admission		Has been treated at Kimberley.	Somnambulist		During her former attack she killed her	

“...in a fit of mental derangement...”

				Husband is M.A.C. de Folcka, 23 Crossman Road, Kimberley			child.	
Delusions			Of [?lump mative?] wealth		Many	Yes	Present	Present
Other Abnormalities							Suicidal	
Appearance		Dark skinned - Native half caste	Worried	Quiet	Stout jovial looking lady	Plump rosy	Melancholic + listless	Pale flabby and anaemic
Skin			Pale	Pale	Ruddy	Fair	Pale	Pale
Fatness		Thin	Thin	Fair	Fat	Plump		Fat + Flabby
Disease				Puerperal Mania	Mania	Puerperal Mania	Melancholia (Rec)	Ac Melanch
Discharged or Dead	Discharged	Discharged	Discharged	Discharged	Discharged to Father	Discharged	To Loose Leaf Sheets	Discharged
Date of Discharge / Death, etc	1 July 1905	18 August 1909	19 December 1905	23 March 1907	12 October 1908	9 October 1906	20 November 1919	11 February 1910

The women featured in this Table exhibited symptoms that were in keeping with the imagined archetypal puerperal maniac. In all cases, the women were loud, noisy, suicidal and delusional. Dr Gooch referred to this as “rumbustious behaviour.” In “*A Practical Compendium of Midwifery*,” he wrote: “When puerperal mania does take place, the patient swears, bellows, recites poetry, talks bawdry, and kicks up such a row that there is the devil to pay in the house: it is odd that women who have been delicately brought up, and chastely educated, should have such rubbish in their minds.”⁵⁴

As Chapter Four discussed at some length, colonial settler society mandated specific modes of appropriate behaviour. These expectations were fraught with gender and racial inequalities and were embedded in ideologies of respectability and reputation. Women who therefore deviated from these expectations, were considered an anomaly and in need of rehabilitation. Dr Tuke’s description above of the behaviour of a puerperal maniac concurs with Dr Gooch’s findings. In the Case Book, Martha Lydon, Maggie Laing, Emma Lovett, Helen Humphrey and Elizabeth Webb were also described as having shows signs of delusion. Furthermore, even though Emily Galt and Emma Lovett were not diagnosed with puerperal mania, Emily was said to have accidentally poisoned a child and Emma Lovett, as will be discussed in the next section, killed both her child and grandchild. All the women except Maggie Laing were married, and all except for Emma Lovett were between the ages of 25 and 35. In the Progress records of these women, doctors reported on how their insanities were manifested by “hallucinations; violent masturbation; abstract and discomfoting dreams; the craving but also the absolute denial of food; if not married - the desire to

⁵⁴ Robert Gooch. *A Practical Compendium of Midwifery; Being the Course of Lectures on Midwifery’ and on the Disease of Women and Infants, Delivered at St. Bartholomew’s Hospital*, prepared for publ. by G. Skinner. (London: Longman, Ress. Orme, Brown, Green, Paternoster-Row, 1831), 290.

be a bride; religious fervour; beating their bodies against a wall; as well as accusing nurses who had supposedly ill-treated them or poisoned their food”. Emily Galt, for instance, accused one of the nurses of strangling her.

Much emphasis was also placed on accurately recording their menstrual cycle, most probably to ascertain if there were any correlations with menstruation and changes to “normal behaviour,” or whether or not their behaviour was a result of climacteric changes. If these women had children at home, many were very anxious about their well-being and wished to return to them. In the case of Martha Lydon, she was under the delusion that she was the victim of a conspiracy plot and that she had large sums of money of which people were trying to cheat her. Marie de Folcka had apparitions that a snake was in her bed and that the snake was her child. Webb on the other hand often had outbursts of incoherent speech. Apart from thinking she was a ship and a house, she would randomly exclaim: “There are no witnesses”; “I am not a train for Glasgow”; or “I did not die just now.”⁵⁵ According to the medical literature on puerperal insanity, these descriptions clearly follow a particular pathology pertaining to hallucinations, delusions, and incoherence and reinforced preconceptions of the unruly, troublesome and unstable nature of these women.

But, in commenting on the value of patient Case Books in the 1860s, Dr Tuke had made an interesting argument relating to their reliability. He wrote that, to some extent, there would always exist a “source of fallacy” with regard to the observations made by clinicians in the Case Books of government and public hospitals.⁵⁶ The reason for that, he argued, was primarily because they were based on incorrect and imperfect

⁵⁵ Case file of Elizabeth Webb, Admission No.:2493. Admitted on the 11th September 1908. Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case-book), 1901-1908.

⁵⁶ Tuke. ‘Cases Illustrative of the Insanity of Pregnancy,’ 1084.

information obtained from the patient. He also remarked that this was true for all cases of insanity, notwithstanding class or education, as pertaining to inquiries about possible hereditary dispositions, history of previous attacks, or even earlier indicative symptoms. In defence of all asylum physicians, he wrote, the fault of inaccurate diagnoses seldom lay with them but with the patients who often did not or could not reveal the necessary and accurate information. In the “middle and higher classes” he found that patients suppressed or perverted the truth, whereas in the case of the poor, simple data such as age, habits or state of health could not be supplied.⁵⁷ He cautioned however, that in most patient cases, it was a question of nomenclature, where according to one doctor a patient could be classified as melancholic, but to another the person could be designated as having acute dementia or such like.⁵⁸

In the absence of patient Case Books for African and Indians in the Colony, a valuable source of statistical data on the number of women diagnosed with puerperal insanity can be found in the Natal Blue Books, which cover the period 1895 and 1909. This date differs from the case studies discussed above as they were collated from the Statistical Returns of the Natal Government Asylum and reproduced in the Natal Government’s Blue Books and, furthermore, they are inclusive of all racial groups present in Natal at the time. According to these Blue Books, between the years 1895 and 1909, the total of number of European women admitted (including readmissions) to the Asylum was 278, ‘Native’ 184 and Indian 68; and of men – European 516, ‘Native’ 711 and Indian 321. Table 6, which appears below, shows the percentage of these women that were diagnosed with puerperal insanity, while Table 7 shows the probable causes to which these aetiologies can be attributed. The data reflected in these tables is extracted from Julie Parle’s paper, ‘Fools on the Hill: The Natal

⁵⁷ Tuke. ‘Cases Illustrative of the insanity of Pregnancy,’ 1084.

⁵⁸ Tuke. ‘Cases Illustrative of the Insanity of Pregnancy,’ 1090.

Government Asylum and the Institutionalisation of Insanity in Colonial Natal,’ and focuses specifically on puerperal insanity.

Table 6: Showing the Form of Mental Disorder in the Admissions as a Percentage, 1895-1909 ⁵⁹					
Form Of Mental Disorder	Male	Female	Europeans	Natives	Indians
Mania:					
Puerperal	0.0	2.7	1.5	0.1	0.3
Melancholia:					
Puerperal	0.0	1.4	0.6	0.1	0.3

Table 7. Showing the Probable Cause of Insanity in the Patients Admitted, 1895-1909								
Probable Cause	Aetiology of Admissions in Categories of Race and Sex							
	Male				Female			
	E	N	I	Total	E	N	I	Total
				M				F
Pregnancy	0	0	0	0	2	6	1	9
Change of Life	0	0		0	3	0	0	3
Parturition and the Puerperal State/Puerperium	0	0	0	0	11	2	1	14
Lactation	0	0	0	0	2	0	0	2
Uterine and Ovarian Disorders	0	0	0	0	0	0	0	0

⁵⁹ Both Tables 6 and 7 are courtesy of Dr Julie Parle, who generously provided me with a full set of statistics of the Natal Government Asylum admissions and general patient records. See also, Julie Parle. ‘Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal,’ in *Journal of Natal and Zulu History*, 19, 199-2001, 1-39; and Julie Parle. ‘Chapter 2 – Fools on the Hill,’ in *States of Mind*. These tables are reproduced unabridged, in the Appendix.

Some of the other “Probable Causes” attributed to women include ‘Domestic Trouble,’ ‘Intemperance,’ ‘Hereditary’ and the overwhelming category of ‘Unknown,’ which accounted for 47.5 per cent of the admissions. Of the eleven European women that were admitted, we can assume that these tables included the women noted in the NGA Case Book for the period 1904 to 1908. In the instance of ‘Native’ women, it is interesting to note that second to the category of ‘Previous Attacks,’ the next highest probable cause is ‘Pregnancy.’ Given that the intake of African women to the Asylum “was always very low”⁶⁰ that fact that ‘Pregnancy’ as a cause accounts for a large proportion of admissions, is indicative of the prevailing discourses on women and birthing at the time and correlates to the arguments made by Smart and Digby – that the vagaries of women’s reproductive capabilities made them more susceptible to disruptive imbalances of the mind. The same argument can be made with regards to Indian women. Their causes fall into three categories only: ‘Other Bodily Diseases and Disorders,’ ‘Pregnancy’ and ‘the Puerperal State.’ The latter two combined account for 3 per cent of the admissions as opposed to 2.9 per cent for ‘Other Bodily Diseases and Disorders’.

From the classifications used in these tables, there appears to be some degree of overlap between the different manifestations of ‘puerperal insanity,’ ‘puerperal mania,’ and ‘puerperal melancholia.’ For most of the nineteenth century all three were used and puerperal insanity was one of the most standard categories in psychiatry. In medical literature puerperal melancholia and mania seem to exist at either ends of the spectrum, and puerperal insanity, as described by Dr Gooch, was recognised by the onset of sudden and irrational bursts of raving “madness.”⁶¹ The

⁶⁰ Parle. ‘Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal,’ 32.

⁶¹ Gooch. *On Some of the Most Important Diseases Peculiar to Women*, 54.

refinement of categories of the forms of mental disorders reflected in the records of the NGA is illustrative of late nineteenth and early twentieth century psychiatry and the introduction of refined nosological categories.⁶² According to Parle, as well as Quinn and Grey and others, the “Kraepelinian revolution” starting in the 1890s with the publication of Emil Kraepelin’s influential textbook *Compendium der Psychiatrie*, resulted in, not just the reconceptualisation of forms of insanities, but also of aetiologies (their causes).⁶³ Quinn also argues that, as the field of psychiatry expanded and became more professionalised, doctors began to concentrate on particular specialisms around mental health. In Natal, eminent South African physician, Dr Egerton Brown, was of the opinion that puerperal insanity could also take the form of “the katatonic excitement of dementia precox.”⁶⁴ In an address to the South African Medical Congress in 1907, Dr Egerton Brown – with the purposes of informing his colleagues about the contradistinctions between puerperal insanity and other forms of mental illnesses with symptoms akin to puerperal insanity, which also occurred after parturition – stated that:

There can be little doubt that it has been the practice up to very recently to call any form of mental disease occurring within a reasonable time of parturition “puerperal insanity,” or commoner “puerperal mania,” but to-day it is easily demonstrated that although mania may occur after parturition it is quite a different disease from the exhaustion psychosis due to parturition – in fact, it is simply a link in an attack of manic-depressive insanity. ... Regarding the diagnosis, this is by no means so simple as one would imagine, and as I have already pointed out that any form of mental disease may be exacerbated by the physical and mental exhaustion of parturition, thus it stands to reason

⁶² Parle. ‘Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal,’ 32.

⁶³ Parle. *States of Mind*, 55-56; Quinn. ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in late Victorian England,’ 193; and Grey ‘Discourses of Infanticide in England, 1880-1922,’ 226-227.

⁶⁴ H Egerton Brown. ‘Puerperal Insanity; with special reference to the Diagnosis and Treatment,’ in *Transvaal Medical Journal*, Vol. V, July 1908, 313.

that the medical man who sees very few cases of insanity may easily be mistaken in his diagnosis. The commoner forms of mental disease which occur after parturition are mania, melancholia, and the katatonic excitement of dementia precox.⁶⁵

Asylum case studies, however, with specific reference to Galt, Lydon, Lovett, Humphrey, Webb, and Folcka, bring to the fore the very tangible problems in identifying cases of puerperal insanity as opposed to other diagnoses. These figures or case studies presented here are by no means an absolute real account of incidences of puerperal insanity in Natal and the reasons for this are varied. The most prominent and obvious one is the elusive number of puerperal insanity cases that were never reported, or where local communities and families chose to treat women within the confines of the home. When these women were eventually admitted to the asylum for ‘General Mania / Melancholia,’ childbirth was not a probable cause because many years may have lapsed between childbirth and admission. In keeping with Egerton Brown’s observations on diagnosing, not knowing what to enter in the Causation column of the casebook, this was left blank and the insanity was simply described as mania, melancholia or delirium. Moreover, puerperal insanity may not have been as widespread as the Table 6 suggests but, compared to causes of other mental illnesses, it was not a rare disorder or it is possible that the diagnosis was being made more frequently.⁶⁶ The latter seems more likely, especially in light of the number of admissions categorised under the probable cause of Unknown as suggested by Table 7. It is also probable that puerperal insanity might have been ‘over diagnosed.’

⁶⁵ Brown. ‘Puerperal Insanity; with special reference to the Diagnosis and Treatment,’ 310, 313.

⁶⁶ For a similar account in Britain, see I. Loudon. ‘Puerperal Insanity in the 19th Century,’ in *Journal of Royal Society of Medicine*, 81, February 1988, 76-79.

In *States of Mind*, Parle argues that the preservation of health records for this region or lack thereof makes the task of writing socio-medical history difficult and challenging.⁶⁷ It is per chance, as in the case of the European Case book, that some records survived. Consequently, Reception Orders that are housed in the Records of the Registrar of the Supreme Court remain another vital avenue for any historian writing about mental health in this region and, while they do not provide considerable detail on admissions and treatments in the asylum as with the Patient Case Books, on occasion they do provide adequate information regarding the reasons put forward by asylum superintendents as to the cause and course of insanity. For instance, on the 23rd December 1916, Olive Maud Harris (who was also referred to as Alice Maud Harris) was admitted to the Pietermaritzburg Mental Hospital⁶⁸ by her husband, Herbert Richard Harris of Madeline Road, Durban. The grounds for his application were that he found that his wife had become “very disliking” of and violent towards him. When asked why he believed she was ‘mentally disordered or defective’ he answered:

She has also struck the nurse employed by me to look after the children and house. Her habits have been far from cleanly which was never the case normally. She has neglected baby (4 ½ months) when I have been without Nurse. She has taken practically no interest in the household affairs except when at intervals, when a little better. She has been most insulting to me, the Nurse and servants without cause. Lately she has been talking utter nonsense nearly all day and often disturbs my rest in the night and acts in a peculiar way marching up and down the room and posing etc. Inclined to wish to wreck things at times. Tries to walk along the verandah [sic] railings. My Nurse girl informed me Sunday

⁶⁷ See also, Edward Higgs and Joseph Melling. ‘Chasing the Ambulance. The Emerging Crisis in the Preservation of Modern Health Records,’ in *Social History of Medicine*, 10:1, 1997, 127-136.

⁶⁸ By 1910, the name of the Natal Government Asylum has changed to the Pietermaritzburg Mental Hospital. See Parle. *States of Mind*, 24.

she expressed wish to kill baby and chased her with a knife in her hand. Eventually locked herself in the house. Is very imaginative.⁶⁹

But this was not Olive's first admittance to the Asylum. She had arrived in the Colony from England in 1913 and, a year later, at the age of 29, had been placed in the care of the Pietermaritzburg Mental Hospital for the similar reasons of being violent and threatening to kill her husband and her child. The details of her first admission are scanty, and it is unclear as to whether these separate incidents pertain to different children but, for her admission in 1916, both Drs Birtwell and Ross agreed that she was suffering from puerperal insanity. In his report, Dr Birtwell added that she spoke in a “very rambling manner” and she sat and smiled to herself. She also told him that when she lived in Devonshire in England, sometimes London would shift its position according to the wind. Harris also told Dr Birtwell that he would often find his wife grimacing at the furniture and, on one occasion, he found her with her hands around their baby's neck trying to choke the child. Dr Birtwell found no difficulty in attributing the cause of her illness to “child bearing.” Dr Ross's report commented on her “delusionary, restless and excited” state of mind, and that she had long conversations over the telephone with imaginary persons. Olive also insisted that she should be referred to as Lady Harris and her husband as Lord. Dr Ross also found Olive to be both homicidal and suicidal.

As an employee of the Eastern and South African Telegraph Company, Harris could afford to have his wife admitted to the hospital. He had attempted to administer some care at home, but had found that this was “useless.” Family circumstances, such as affordability, social standing and support networks no doubt dictated whether a

⁶⁹ PAR, RSC, 1/27/1, 15/1916, Attorney General Natal, Mental Disorders Act No. 38, 1916. Re. Olive Maud Harris of 29 Madeline Road, Durban. Reception order granted by the Magistrate at Durban on 12th December 1916, 1916.

family member would be admitted to the asylum. In *States of Mind* Parle shows that under the Natal Custody Of Lunatics Law, No. 1 of 1868, when applicants could prove that families had sufficient means for the patient’s maintenance, it was ‘lawful’ for the Asylum to “agree with any relative, guardian, or friend of such lunatic or idiot, for his maintenance whilst detained therein.”⁷⁰ Parle argues that this meant that white middle class families could admit the family member as a private fee paying patient which allowed for extra benefits for the patient, such as “extra food, nursing and material comforts not provided to state funded patients.”⁷¹ The Asylum, however, remained one of the last possible channels for family members in finding some recourse in dealing with individuals who were mentally ill and, in most cases, harmful to themselves.⁷² However, by the early 1900s, for certain conditions such as alcoholism, suicide and presumably puerperal insanity, whites – and more rarely, Indians – began to use it as a resource and they did so more readily than did Africans.

The case of Devanai (No. 83953) is illustrative of how the admission of other racial groups and non-paying patients were received by the Asylum. On the 19th February 1917, Kistna Reddy (No. 83504), of the Railway Barracks in Durban, submitted an application on behalf of his wife because he believed she was mentally disordered, stating that she was:

Violent and attacks her children or any person by. Has attempted to seriously assault different members of her family. Has on several

⁷⁰ Parle. *States of Mind*, 38.

⁷¹ Parle. *States of Mind*, 38.

⁷² See also Catherin Coleborne. ‘Families, Patients and Emotions: Asylums for the Insane in Colonial Australia and New Zealand, c. 1880-1910,’ in *Social History of Medicine*, 19:3, 2006, 425-442.

occasions when nursing baby (seven months) thrown it on the ground and says that she wished to kill her baby.⁷³

Drs George Lindsay Bonnar and David Kerr examined Devanai and Dr Bonnar found that she appeared “very sullen.” On being questioned about what she saw, Devanai replied that she saw “three different kinds of the devil at night – white, black and green.” Apparently they talked to and danced for her. Dr Cross reported that she talked incessantly and that “she assured [him] that she saw big snakes on the rafters of her house. On referring to the baby she became violent and told the attendant that she would murder it [sic] as it was not hers. A Dutchman had deceived her. He offered her £250.”⁷⁴ The cause of her disorder was captured as ‘Unknown’ and Dr Bonnar prescribed a treatment of Bromide and close observation throughout the course of the day. In the absence of other available alternatives, most patients at the Asylum – including Maggie Laing – received this treatment. At the time of this admission, Davanai was 36 years old, but according her Reception Order, she had been admitted, the year before, in 1916, for exhibiting similar behaviour but “was sent home early.” To this effect, her husband Kistna Reddy, a free Indian, had appealed in a special affidavit to the Assistant Magistrate, H. C. Lugg, to admit his wife despite his low income and inability to pay for the maintenance costs. He pointed out that he worked for the South African Railways and that his earnings would not cover the costs of the hospital. Taking into consideration Reddy’s financial circumstances and the fact that he had six other children to care for, Lugg consented to the admission on

⁷³ PAR, RSC, 1/27/2, 49/1917, Attorney General Natal, 3 March 1917, Mental Disorders Act No. 38, 1916. Re. Devanai No. 83953, wife of Kistna Reddy of Railway Barracks, Greyville, Durban. Reception order granted by the Magistrate at Durban on 19th February 1917.

⁷⁴ PAR, RSC, 1/27/2, 49/1917, Attorney General Natal, 3 March 1917, Mental Disorders Act No. 38, 1916. Re. Devanai No. 83953, wife of Kistna Reddy of Railway Barracks, Greyville, Durban. Reception order granted by the Magistrate at Durban on 19th February 1917.

the grounds that Reddy “may be regarded as in poverty and unable to pay maintenance for his wife.”⁷⁵

While Devania had not killed her child, the fact that she attempted to do so was reason enough for her to be admitted to the Asylum. In the context of the social, cultural, medical and legal constructs and constricts of womanhood and motherhood at the time, by rejecting maternal ties, duties and bonds Devanai like, Galt, Lydon, de Folcka, Humphrey, Laing, Lovett, Webb and Harris, “represented the antithesis of female nature.”⁷⁶ However, because puerperal insanity was presumed to be a illness caused by female biology and to occur at a particular moment in a woman’s life-cycle – childbirth – which would pass, puerperal insanity was considered to be a mental illness that over time would cure itself. Presumably, to be fully cured would entail a resumption of ‘normal’ everyday life. As discussed above, while there was no specific treatment for puerperal insanity, patients with such diagnoses would receive general treatments meted out to patients at the Asylum. However, careful attention was paid to physical symptoms. If women’s menstruation returned to a normal cycle, if she started to gain weight, if she showed any indication of longing or interest in her husband or children, these were taken as signs or proof that she was getting better and could be discharged into the care of her family. However, some women, such as Emma Lovett (whose case is discussed in the next section, and as the records of the Asylum suggest), never fully recovered and, in keeping with Dr Tuke’s observations, endured what he referred to as the “permanent effects” of puerperal insanity.

⁷⁵ PAR, RSC, 1/27/2, 49/1917, Attorney General Natal, 3 March 1917, Mental Disorders Act No. 38, 1916. Re. Devanai No. 83953, wife of Kistna Reddy of Railway Barracks, Greyville, Durban. Reception order granted by the Magistrate at Durban on 19th February 1917.

⁷⁶ Marland. *Dangerous Motherhood*, 171.

“...she works well in the laundry”⁷⁷ ~ the Case of Emma Lovett

On the 16th of October 1894, *The Natal Witness* ran an article entitled ‘A Durban Tragedy.’ The page three article reported how Emma Lovett, the wife of Henry Debney Lovett who was a painter in Victoria Street, “in a fit of mental derangement” had drowned her two and-a half year old daughter, Florence Louisa Lovett, in a bath.⁷⁸ The next day, the *Witness* featured another article about this incident but this time in much starker detail:

Infanticide in Durban

A MOTHER DROWNS HER CHILD

A sensation was caused in Victoria Street, Durban, on Monday, soon after noon, by the report of an infanticide, the child concerned being 2½ years of age, daughter of Mr H. Lovett, painter. It appears, (says *The Mercury*) that between 11 and 12 o’clock the mother sent two of her daughters out on an errand, and while they were away, she took the little girl into the bathroom, and in answer to a knock at the door from the kafir [sic] told him she was giving the child a bath. On the return of the two daughters, Mrs Lovett bluntly told them she had drowned the baby in the bath, and this she had done by wrapping the unfortunate child in a blanket, apparently to prevent it struggling. The distressed girls at once went down to the Court House to inform their father. Mr Lovett was one of the jury men empanelled by the Circuit Court for the trial of the native Umhlola for grievous assault. When the court assembled after luncheon at 2 o’clock, Mr Lovett was absent, and the sad circumstances having been reported to his Lordship the case under trial was postponed until the morning. Dr Sutherland entered the witness box and said he was summoned suddenly to Mr Lovett’s house at noon that day on a report that one of the children, about three years of age, was nearly drowned. He went to the house and found the child

⁷⁷ Case file of Mrs Emma Lovett, Admission No.:2433. Admitted on the 22nd April 1908. Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case-book), 1904-1908.

⁷⁸ ‘A Durban Tragedy.’ *The Natal Witness*. 16th October 1894, 3.

quite dead. Death was due to drowning. The mother, who exhibited every symptom of insanity, said she had drowned the child in a bath of water. The shock to Mr Lovett was so great that he could not be expected to discharge the duties of a jurymen for at least 24 hours. We understand that Mrs Lovett, who has a large family, was sent to Maritzburg a short time ago for the benefit of her health, but the cure does not appear to have been permanent. The sad occurrence cast quite a gloom over the neighbourhood, and much sympathy was expressed with the terribly afflicted family.⁷⁹

The life story of Emma Lovett is one of despair, sorrow, anguish, heartbreak, faith and love. When this incident occurred, Emma Lovett was not charged with the crime of infanticide or even culpable homicide, but she was immediately admitted to the Natal Government Asylum. Between 1894 and 1902, when she was released for the first time, a series of correspondence was exchanged between Emma’s family and various colonial state officials regarding her admittance and the appeal for discharge from the asylum. Segments of her story used for different intentions from this study have been previously published by Parle.⁸⁰

The first of many letters from Henry Lovett was received on the 25th of July 1896. In this letter he acknowledged his wife’s action, but he attributed her behaviour to a “disease, commonly known amongst females, as ‘change of life’,” alternatively menopause. He further conveyed that they had “been married for over 28 years and

⁷⁹ ‘Infanticide in Durban - A Mother Drowns Her Child.’ *The Natal Witness*, Wednesday, October 17, 1894, 3.

⁸⁰ These include ‘Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal,’ in the *Journal of Natal and Zulu History, States of Mind: Searching for Mental Health in Natal and Zululand, 1868-1918*; and as part of an edited collection of short stories entitled *True Stories*. Parle. ‘Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal;’ Parle. *States of Mind*; and Julie Parle. ‘Asylum,’ in Shelagh McLoughlin (ed.) *True Stories*. (Pietermaritzburg: Shuter and Shooter Publishers, 2010). See also, Parle. ‘The Voice of History? Archives, Ethics and Historians.’

during that time [his] wife has borne 13 children, 8 of which [were] still living, [he had] been in the colony for over 33 years, and during that time, have borne an **unblemished character**.” Hoping to implore the empathy of the Colonial Secretary he further stated that “[his] wife was born in the Colony and has also **borne the best of characters** and has always been a **good wife** and **fond mother**.”⁸¹ In 1897, Dr Hyslop who was the Medical Superintendent at the Natal Government Asylum sent a letter to the Colonial Secretary reporting that, on the night of the 9th of February, Emma had tried to commit suicide. Dr Hyslop appeared to find this somewhat perplexing as, for some time prior to this he had been prepared to certify her “as being of sound mind.” Unfortunately for Ms Lovett, she was only discharged several years later, despite the vigorous attempts and appeals made by her family. On the 15th November 1897, the first of Henry Lovett’s petitions reached the office of the Colonial Secretary. He pleaded:

1. That Mrs Lovett did on the 15th day of October 1894, whilst under a fit of temporary insanity take the life of her youngest child, for which act she was confined in the Natal Govt Asylum.
2. That Mrs Lovett has now been confined in the Asylum since November 1894. And your petitioner is of opinion that Mrs Lovett is now in her right mind.
3. That Mrs Lovett has for some months past been in failing health, owing I consider to the constant confinement, which will, in the opinion of your petitioner, hasten the end of her life, if she be not speedily released therefrom.
4. That your petitioner is quite prepared to undertake the responsibility and care of Mrs Lovett.
5. Your petitioner now prays for Your Excellency’s kind consideration of Mrs Lovett’s case, and should the Medical Officer certify Mrs

⁸¹ PAR, Minister of Justice and Public Works [hereafter MJPW], 137 JPW, 1732/1908, Allison and Hime: Forward a Petition by Emma Lovett Praying for her release from the Asylum, 1900-1908, 1908. [Emphasis added]

Lovett fit for release, that you will use your clemency in her behalf and grant her release.⁸²

On the 9th of February 1898 he wrote again, but this time to the Under Secretary of Natal, that he had made arrangements for a nurse to undertake care of his wife, when released, and that, judging from the letters he received from his wife, he firmly believed that “prolonged confinement is telling on her health and consequently on her spirits.”⁸³ But, yet again, Dr Hyslop refused her discharge despite her ‘troublesome’ nature, and what he termed annoyance to all those around her at the asylum, including both medical staff and other patients. In 1899, Henry Lovett then commissioned Drs Campbell-Watt and G.E. Odin-Taylor to examine his wife so as to ascertain whether she was fit for discharge. He also appointed Attorneys Allison and Hime to act on the family’s behalf. Desperate to have his wife discharged from the Asylum, Mr Lovett attempted to appeal on many different legal and administrative levels, such as the Colonial Secretary and Minister of Justice and Public Works, to ensure the wellbeing of his wife, despite that fact that the decision to discharge Emma lay firmly in Dr Hyslop’s authority. Emma was eventually released in January 1902.

But, and as Parle has related, her story does not end there. When Emma had been charged in the first instance, she had stated that she wanted to kill her baby but that “the worst punishment she could get would be too little for her.” While the baby in question was already 2½ years old, this was still regarded as a case of infanticide. As discussed in Chapter One, it was only in 1910, with the passing of Act 10 of 1910, that the term “infanticide” referred to the killing of an infant within one week of its birth.

⁸² PAR, MJPW, 137 JPW, 1732/1908, Allison and Hime: Forward a Petition by Emma Lovett, 1908.

⁸³ PAR, MJPW, 137 JPW, 1732/1908, Allison and Hime: Forward a Petition by Emma Lovett, 1908.

Despite being released in 1902, in 1908 she was again charged with murdering a child, this time her grandchild, Jessie Violet Bennett, by throwing boiling water on the child.⁸⁴

In keeping with Dr Tuke's findings on the possible permanent effects of puerperal insanity, Emma's case appears to follow this trajectory. In an article published in 1867 'Cases Illustrative of the Insanity of Pregnancy, Puerperal Mania, and Insanity of Lactation,' Dr Tuke noted that "... as curable as these diseases are, there are still 'classes' of patients which endure permanent effects, in that the 'patient is congenitally weak-minded.'" ⁸⁵ Expanding this description, he added:

... girls whose weakness has been taken advantage of, become maniacal after confinement or during nursing, and, although the mania disappears, a greater degree of imbecility is left after the attack than existed previously. In these patients, also, the disease is almost sure to recur with each confinement.⁸⁶

When Emma was committed the second time, she was 56 years old and a widow. The brief entries in the Case Book concerning her progress suggest that she was remorseful of her actions, and exceedingly suicidal and melancholic. The 25th of April 1908 entry reads: "Says she is unhappy on account of what happened outside. Says she regrets harming the child + does not know why she did it. It was not a planned affair but an impulse over which she had no control. She could not guarantee not to do a like act if discharged." For much of 1908 and 1909 she appeared to be stable, but in

⁸⁴ PAR, MJPW, 137 JPW, 1732/1908, Allison and Hime: Forward a Petition by Emma Lovett, 1908.

⁸⁵ Tuke, 'Cases Illustrative of the Insanity of Pregnancy, 1011.

⁸⁶ Tuke, 'Cases Illustrative of the Insanity of Pregnancy, 1011.

February of 1910, she began to talk about the delivery of justice and that she should be “burned before crowds of people” or that she should be sent away to “be hung.”⁸⁷

On August 26th, 1917 it was noted:

Her bodily condition has quite returned to normal. She is able to give a fairly good account of herself. Gets periodically depressed, depression being due she says to the thought of the two children she killed. She has no recollection of having killed them + cannot understand it as she was always so fond of children. Suffers from periodical attacks of migraine otherwise her health for her age is good + she works well in the laundry.

As Parle notes, by 1919 Emma was still a patient at the Asylum and one of the last entries reads: “Mentally unchanged, periodical attacks of depression recur in which she begs to be allowed to expiate her sins. Is always quiet. Slightly depressed. Has taken no more fits.”⁸⁸

One of the aspects that remain significant about Emma Lovett’s case is that it clearly demonstrates the relationship between the authority of the state, the body, the mind and emotion, in that the petitions and dialogues that these generated conveyed much about the emotional or mental state of the individual and their families. Similarly, the depositions of women accused in the court cases are also able to offer such reflections. As has been shown in previous chapters, the power of the depositions, petitions and letters is that they allow the historian to hear the voices of the protagonists, and seldom elsewhere in the archival records can their voices be heard with such clarity. But, these cases also give way to a variety of many other voices that come through the

⁸⁷ Case file of Mrs Emma Lovett, Admission No.:2433. Admitted on the 22nd April 1908. Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case-book), 1904-1908.

⁸⁸ Case file of Mrs Emma Lovett, Admission No.:2433, Natal Government Asylum Records X1, 1904-1908 and quoted in Parle. *States of Mind*, 120-121.

narrative. What Henry Lovett’s letters and the petitions from Allison and Hime reveal is that, while he considered that her condition was partly due to the onset of “the climacteric”, he awarded great attention to and placed emphasis on the language of emotion. The significance of this affect is that they wished to associate the turmoil and anguish that Emma was experiencing as an explanation for her behaviour. Secondly, Emma’s family also attempted to appeal to the compassion of the colonial authorities. By using phrases such as: “the family naturally feel it very hard;” “the husband has never had a blemish on his character;” “My wife was born in the Colony and has the best of characters,” or “She has always been a good wife and fond mother,” in their letters and petitions, they hoped the colonial state would empathise with this settler family.⁸⁹

On the premise that, by the early twentieth century women suffering with puerperal insanity were being viewed with a certain degree of empathy by doctors, nurses, asylum superintendents and, in some ways, by the public as well, it can be argued that in light of the cases already discussed in this thesis, women charged with infanticide who were adjudicated criminally in a legal context, were treated differently to those who were declared mentally ill, as in the case of Emma Lovett. Taking into account the circumstances surrounding the events of Emma Lovett’s case, in relation to those discussed in this and previous chapters, in many ways her life story is a conundrum to the medical and legal underpinnings of infanticide cases. On both accounts of committing infanticide, Emma was never criminally charged with committing a

⁸⁹ PAR, MJPW, 137 JPW, 1732/1908, Allison and Hime: Forward a Petition by Emma Lovett. Catherine Coleborne provides an interesting analysis of the role played by families in the committal of a patient, but she also explores issues of emotion and family relationships in ‘Families, Patients and Emotions: Asylums for the Insane in Colonial Australia and New Zealand, c. 1880-1910.’ See also David Wright. ‘Getting Out of the Asylum: Understanding the Confinement of the Insane in the Nineteenth Century,’ in *Social History of Medicine*, 10:1, 1997, 137-155.

crime, neither was her case tried before a District Magistrate. It can be argued that using puerperal insanity as an explanation or a rationale for Emma’s action, made the ‘crimes’ more comprehensible and a biological product of the consequence of her maternal state rather than simply a fault on her part. The same can be said about Lily Theron, whose case is discussed in the following section. Unlike Emma, however, Lily was criminally arraigned for committing infanticide and was found guilty but with an “unsound mind.”

“... An Abnormal State of Mind”⁹⁰ ~ Puerperal Insanity in the Case of Lily Theron

On the evening on the 28th of May 1919, Mbobo, a sanitary man of the Richmond Municipality, was walking home to the old hospital quarters when he heard “the sound of cats fighting.” He decided to investigate and what he found instead was a naked newborn baby. The umbilical cord and after-birth were still attached to the child and the grass all around the body was covered in blood. Later, in the course of his cross-examination at the trial, Mbobo recalled that it had been a very cold night and that when he had found the baby, it was still alive and “crying in a very low cry.”⁹¹ He said that he had found the child near the gate (Point X on the map below) of the house of Mr Theron, whom he knew very well but, when he called out for help, it was Mrs Theron and her daughter Lily who came out instead. He added that Mrs Theron “lifted the child’s head and then remarked that she did not know to

⁹⁰ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, European, Aged 22, Indicted for the crime of Infanticide. Cross-Examination of Dr Carte, 1919.

⁹¹ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, European, Aged 22, Indicted for the crime of Infanticide, 1919.

“...in a fit of mental derangement...”

whom the child belonged.” Both Mrs Theron and Lily then went back into the house, leaving the child naked and cold, and Mbobo to deal with the consequences.⁹²

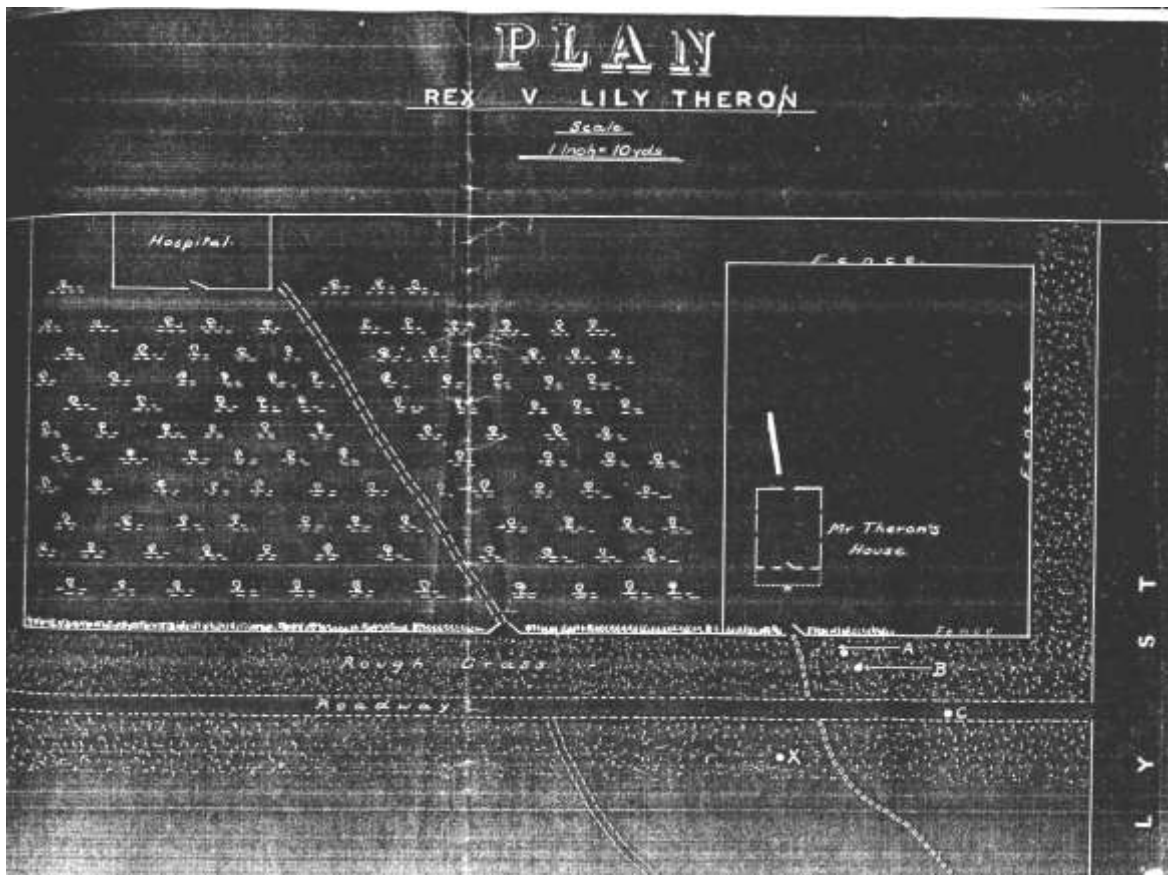


Image 3: Map of Murder Scene, Rex vs Lily Theron, 1919.⁹³

Mboba asked one of Mrs Theron’s sons to report the incident at the Police Station, and it was sometime after this that Constable Daniel Robert Hare arrived at the

⁹² Annotation to map: A – where the child was born, B – where ‘blood’ was found, C – where a ‘clot of blood’ was found and X- where the child was found.

⁹³ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, European, Aged 22, Indicted for the crime of Infanticide, 1919.

Theron home. During this time, Mbobo had waited with the infant and no member of the Theron household offered any assistance. Mbobo stated that it had “appeared as if they were ironing clothes.”⁹⁴ When Constable Hare arrived, he summoned Sergeant French and the District Surgeon, Dr Alexander Edward Carte. Dr Carte removed the umbilical cord, induced artificial respiration and wrapped a white cloth round the body. Dr Carte also observed that the ground all around the infant was covered in blood and, in his medical report, estimated that he believed that the female child had been born at sometime between three to four hours prior, and had been a full-term baby. After some discussion between Hare, French and Carter, it was decided that the wife of David Matiwane, Cecilia, should take care of the baby until the next morning. Matiwane was the interpreter for Sergeant French, and his wife was a “respectable, decent woman; quite as good as any English woman.” According to Dr Carte, she was a “particularly respectable type of Native.”⁹⁵

The infant had died by the next morning however and, in his post mortem report, Dr Carte concluded that the death of the child was as a result of “asphyxia, exposure to cold and a fracture to the skull.” In her testimony Cecilia confirmed that she had received the child at around ten o’clock on the evening of the 28th May and had given the baby a warm bath and had tried to keep it warm, but the infant had died at two o’clock the next morning. Dr Carte also added that there were signs of injuries around the neck, which could have occurred during the birth process as the infant was being delivered or immediately after it had been born. He also suggested that it “...could have been done by the mother’s hand in trying to relieve herself,” by pulling the infant out so as to expedite the delivery.

⁹⁴ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Mbobo.

⁹⁵ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Dr Carte.

Dr Carte was also instructed to examine Lily Theron at the request of Constable Hare. Owing to the proximity of the site where the body of the child was found to the Theron household, Constable Hare suspected that Lily might have given birth to the child. After some discussion between Hare and Sergeant French, and the Theron family, Lily admitted to giving birth to the child and consented to the medical examination. Dr Carte’s medical report on Lily noted that she was 22 years of age and had a little boy of two years old. Lily had also told Dr Carte that the man who was the father of the child was willing to marry her “despite what had happened.” But when Dr Carte had asked her about the occurrence of this birth and how it had happened, her response was: “I do not know what happened.”⁹⁶ Dr Carte went on to add that he believed that, due to a number of different observations he had made of Lily, she was not in fact responsible for her actions at the time the child was born.

When questioned about the “state of mind” of Lily at the time of the birth, Dr Carte diagnosed her condition as being that of “transient mania.” During the cross examination, Attorney General John Barclay Lloyd interrogated Dr Carte’s response by referencing the work of Dr Playfair – *A Treatise on the Science and Practice of Midwifery*. Dr Carte recognised Dr Playfair as a “man of very great eminence in obstetrics,” and Attorney General Lloyd proceeded to read to the court a section from the *Treatise* relating to “transient mania.”

Transient Mania during Delivery: There is a peculiar form of mental derangement sometimes observed during labour which is by some talked of as a temporary insanity. It may perhaps be more accurately described as a kind of acute delirium, produced in the latter stage of labour by the intensity of the suffering caused by the pains. According to Montgomery, it is most apt to occur as the head is passing through the os uteri or at a later period during the expulsion of the child. It may consist of merely a loss of control over the mind, during which the

⁹⁶ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Dr Carte.

patient unless carefully watched, might in her agony seriously injure herself or her child. Sometimes it produced actual hallucinations, as in the case described by Tanier in which the patient fancied she saw a spectre standing at the foot of her bed which she made violent efforts to drive away. This kind of mania, if it may so be called is merely transitory in its character, and disappears as soon as the labour is over.

In the *Treatise*, Dr Playfair goes on to write that, from a medico-legal point of view, this may be of absolute importance when deciding on verdicts as, in some cases of infanticide, it has been held that the mother has destroyed the child when in this state of ‘transient frenzy’ and when she is not responsible for her actions.⁹⁷

Attorney General Lloyd then asked Dr Carte to confirm that this was the ‘class of mania’ from which Lily suffered and whether he particularly agreed with Dr Playfair that this kind of mania was “an abnormal state of mind” and “merely transitory in its character and disappears as soon as labour is over.”⁹⁸ With a rather obtuse response Dr Carte answered: “Yes, it is to be differentiated from what is known as insanity which goes on.” However, with the next two questions posed to him, Dr Carte contradicted this response and qualified what he believed to be the correct prognosis of Lily’s condition.

She was apparently normal next day. I have seen a case last for three to four days when it was not safe to give the mother her child. As a rule it lasts for a few hours. I know that Dr Playfair says differently but I do not think you would wish me to read that it disappears at the very moment. Puerperal insanity is different; it lasts for months very often. One is transitory and the other is not. Puerperal insanity always lasts for some time. ⁹⁹

⁹⁷ Playfair. *A Treatise on the Science and Practice of Midwifery*, 590.

⁹⁸ See also PAR, RSC 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Dr Carte. [Emphasis added.]

⁹⁹ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Dr Carte.

Lloyd then asked Dr Carte if it was normal for a European woman who had given birth to ‘be up and walking about’ as was the case for Lily; to which Dr Carte said, “No, the more animal the woman the more she can do. As a rule the patient is in bed on these occasions. I have had experience of native women. As a rule they think nothing of child birth. The child is born in the fields and they go on hoeing immediately afterwards.”¹⁰⁰ Of course racial slants and stereotypes like these were not uncommon in Natal and southern Africa during this period. Nineteenth century western medical science objectified both the supposed physical and mental differences of the ‘inferior’ races. African sexuality and the physiognomy of the African subject was the foundation on which racial hierarchies were manifested and disseminated.¹⁰¹ As Saul Dubow asserts in *Scientific Racism in Modern South Africa*, as whites were considered to be members of an “advanced race”, the stresses of civilisation predisposed them to insanity or other mental illnesses.¹⁰² However, in this particular instance, it is evident that Attorney General Lloyd was trying to establish that the reason Lily appeared ‘lucid’ and active after this incident was because she had experienced what was referred to as “transient mania,” and this had disappeared as soon as the birthing process was over, returning her to a normal state of mind.

In his concluding remarks to the court Dr Carte added that he did not think that Dr Playfair’s work was much more complicated than it had appeared during his questioning and that Dr Playfair would not have necessarily concluded that the mania would have passed as quickly as was implied. Dr Carte insisted that he had in fact experienced quite the opposite and believed that “transient mania” may have

¹⁰⁰ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Dr Carte.

¹⁰¹ For more on this see Saul Dubow. *Scientific Racism in Modern South Africa*. (Cambridge: Cambridge University Press. 1995).

¹⁰² Dubow. *Scientific Racism in Modern South Africa*, 49.

developed into puerperal insanity and he also alerted the court that, in his view, “transient mania” occurred among animals as well as human beings. Adding to this, he said that Dr Playfair’s description of “transient mania” may also have referred to the effects of labour, where labour “is the contraction of the muscles to expel the child and the after-birth.” This, Dr Carte argued, may last for several days and is generally accompanied by considerable pains. “The after pains are due to the efforts of the womb to recover itself and to expel foreign matter.”¹⁰³

One of the questions posed to Dr Carte was whether Lily’s mental ill-health could have been inherited from her mother as, during the court case, it was revealed that Mrs Theron had in fact been rather callous towards the child. Dr Carte’s comment was that it was “quite possible,” but that he “did not have much evidence to prove this.” Mrs Theron’s testimony, however, did much to reveal her culpability in the death of the infant.

I am the mother of the accused. I remember the night when a baby was found outside my house. Up to that time I did not know that my daughter was in the family way. During that evening I saw her at the table when we had our meal. I did not look at the time but it was at the time of the arrival of the train. She leaves her work at six o’clock and as soon as she arrives we eat. It will be after six. She came in to tea that evening. She seemed quite well, she ate her meal as usual. She was her ordinary health and spirits. After tea she went out. I cannot say how long she was away. She came back again and went into her room. I cannot say how long she had been in when the kafir [sic] called me to see the baby. We both went out and saw the baby and it looked to me as if she was wearing a night shirt with a blanket over it. I had no idea at the time that the baby was my daughter’s child. I didn’t pick up that little baby and make it warm because I was ignorant of the law. I did not know whether the law would allow me to do it. My husband always told me that a case like that should be reported. When we got

¹⁰³ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Dr Carte.

back to the house, we did not talk this matter over at all. The policeman came there immediately afterwards and I gave him a blanket. It took some time for my boys to get the policeman's house and yes, the baby remained there out in the cold all that time. Up till the next morning I had no suspicion that my daughter was in the family way or had had a baby. I never thought it was a case of pregnancy. On the night that the native called to us my daughter said that I should pick the child up and take it in. She said “Mother, there is a little child, pick it up and bring it inside.”¹⁰⁴

According to Mrs Theron, after her meal that evening, Lily had asked her mother's permission to go to a Mrs Walford. Lily worked for Mr Walford, who owned a grocer's and confectioner's store in town. Mrs Walford's recollection of that evening was that when Lily came to her, she had looked very pale, sickly and was out of breath, as if she had been running. She said that Lily had said that she wanted to borrow 10/- from her in order to go to Pietermaritzburg. About three months prior to this, Mrs Walford had suspected that Lily was pregnant “because of her figure and the shape of her face.” It was on her return home that evening that Lily had delivered the baby. When Mrs Walford visited her the next morning, she asked Lily why she had not told her of her pregnancy, as Mrs Walford would have “taken her in and done the very best for her,” implying that she was aware that Lily was unmarried and therefore bearing an illegitimate child. At that instance, Lily had “burst out crying and never spoke of the matter again.” At the court case, however, she did make the following admission: “That a child was born of her on the date alleged in the indictment but that at the time of its birth [the accused] was unaware of what was happening.”¹⁰⁵

The judgment that followed seems to have been in keeping with the manner in which the state viewed and was partially sympathetic to white women who stood trial. Not

¹⁰⁴ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Mrs Theron.

¹⁰⁵ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Cross-Examination of Lily Theron.

only was Lily found guilty of the crime of infanticide, but the jury wished to add that she had a disordered mind at the time so as to afford some degree of leniency to her sentence. Lily was ordered to be kept in custody at the Pietermaritzburg Mental Hospital in accordance with Section 29(2) of the Mental Disorders Act 38 of 1916,¹⁰⁶ until the Governor General permitted her discharge.¹⁰⁷ The jury also issued a rider, but this concerned Mrs Theron. This was that “protection be afforded to any female child of tender years of Mrs Theron the mother of the accused in view of her callous and inhuman conduct in the present case.”¹⁰⁸

It was only two years later, that a Minute Letter from the Prime Ministers’ Office in Pretoria warranted a discharge to Lily, but this was subject to certain conditions:

1. That she is placed under the care of her father.
2. That she remain at home under his care.
3. That her father report to the Physician Superintendent of the Pietermaritzburg Mental Hospital every two months as to her behaviour.
4. That at the end of a period of twelve months the question of unconditional discharge or conditional liberation for a further period be specially considered.¹⁰⁹

In Dr Tuke’s findings in his 1865 article “*On the Statistics of Puerperal Insanity*,” he had noted that two of the most dangerous consequences of puerperal insanity were

¹⁰⁶ Where any person is, with reference to a charge of murder or culpable homicide or a charge involving serious violence, detained as a State patient at a mental institute. The case may be referred to a judge who, at any time after the order of detention, on written application being made to him, that such person may be discharged either absolutely or conditionally.

¹⁰⁷ For more on the 1916 Mental Disorders Act see Kruger. *Mental Health Law in South*; J. T. Dunston. ‘The Mental Disorders Act, 1916 (Union of South Africa), in Some of its Medical Aspects,’ in *South African Medical Record*, Vol. XIV, November 1916, 347-354; and H. Egerton Brown. ‘Mental Disorder and the Law,’ in *South African Medical Journal*, Vol. IX, 27 April 1935, 265-269.

¹⁰⁸ PAR, RSC, 1/1/126, 16/1919, Rex vs Lily Theron, Judgement, 1919.

¹⁰⁹ National Archives Repository [Hereafter SAB], Decisions of the Executive Council [Hereafter URU], 541, 3337, Discharge of Governor-General’s Decision Patient Lily Theron, 1921.

suicide and infanticide and this he considered to be “irresistible impulses.” He further stated: “As a rule such patients have no memory of the action and rarely attempt to hide the evidence of the crime. Cases occur in which the child is murdered and the mother is found sleeping quietly with the blood marks unwashed from her person and her clothes.”¹¹⁰ While Lily did not make any attempt to bury the body of the child and conceal any evidence of the infanticide, it is probable to deduce that she was in fact suffering with “transient mania.” This point can also be corroborated with Dr Egerton Brown’s discussion of puerperal insanity. In his article on the diagnosis and causes of puerperal insanity, Dr Egerton Brown had also described symptoms similar to those displayed by Lily Theron. He claimed that,

the emotional stress [of parturition] depends on the amount of moral shock the birth causes; this is well illustrated by the frequency with which the mothers of illegitimate children are affected, the proportion being, according to some observers, as great as two to one. In passing it may be of interest to ... speak of a sort frenzy incident to unfortunate girls in giving birth, in misery and secrecy, to which it is feared often prompts infanticide or suicide; this statement it is well to bear in mind in cases of infanticide, when considered from the medico-legal standpoint.¹¹¹

From the court transcripts, it is apparent that the question of “transient mania” was debated at length. Throughout the cross examination Dr Carte remained uncertain about the actual diagnosis of Lily. He shifted between defining her condition as either “transient mania” or puerperal mania, but never really committed himself to an exact diagnosis. Nonetheless, the puerperal insanity plea was used in this case, very effectively, to show that Lily did not have a motive; that the motive did not show any

¹¹⁰ John B. Tuke. ‘On the Statistics of Puerperal Insanity as Observed in the Royal Edinburgh Asylum, Morningside,’ in *Edinburgh Medical Journal*, 10, 1864-65, 1015.

¹¹¹ Brown. ‘Puerperal Insanity; with special reference to the Diagnosis and Treatment,’ 311.

denial; that there was clearly a lack of subterfuge in the way in which the child was killed; and that she did have other children, and was clearly attached to these children.

Furthermore, this did not apply solely to cases of infanticide. Increasingly, in the twentieth century, as discussed earlier, jurors and prosecutors became more concerned with the state of the mind of the accused such that this aspect was privileged over actual physical and forensic evidence.¹¹² This redefined the motive for infanticide or concealment of birth criminal cases and also re-cast the accused into the role of ‘confused’ or of unsound mind.¹¹³ The construction of insanity as being brought about by the pains of labour or emotional stresses of bearing an illegitimate child diminished any trace of responsibility on the part of Lily and showed that, in fact, she had no criminal intent and therefore could not be held accountable for the crime. Her case became one of sympathy rather than censure. In addition to that, Lily Theron’s case mirrored some of the attitudes about Natal society at the time with regards to emotion and responsibility, not to mention the prevalent racial and sexual stereotypes.¹¹⁴

¹¹² For more: Marland. ‘Disappointment and Desolation: Women, Doctors and Interpretations of Puerperal Insanity in the Nineteenth Century;’ and Marland. ‘Getting away with murder? Puerperal Insanity, Infanticide and the Defence Plea.’

¹¹³ Mark Jackson examines the role of developing medical discourses and its use in the courtroom in *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England*. (Manchester, Manchester University Press, 1996), 60-110. For an earlier account, see Louise A. McIlroy. ‘The Influence of Parturition upon Insanity and Crime,’ in *The British Medical Journal* 1, 3503, February 25, 1928, 303-304; and ‘Guilty But Insane,’ in *The British Medical Journal* 2, 3943, August 1, 1936, 262.

¹¹⁴ Dana Rabin provides an interesting critique on the use of emotion in infanticide cases in eighteenth century England. ‘Bodies of Evidence, States of Mind: Infanticide, Emotion and Sensibility in Eighteenth-century England,’ in Jackson (ed.) *Infanticide – Historical Perspectives on Child Murder and Concealment*.

Her case needs to be read within the context of the political, social, economic and legislative milieu of post-war South Africa; the rise of poor whiteism, women's political and philanthropic activism, increasing social welfare services, and increasing racialism, as discussed in Chapter Two. By the 1930s, the records of the Supreme, Magistrate and District Courts showed a rapid decline in the number of infanticide cases. After Lily's case in 1919, there were only two cases tried in Natal's court until 1935. These were those of Ushraff Khan in 1920 and Elizabeth Thompson Nimmo in 1933. Khan was found not guilty but, and despite the overwhelming evidence pointing to her culpability, Nimmo was simply cautioned and discharged. While very little can be gleaned from Khan's case, as the transcript of the trial has been preserved in a now undecipherable shorthand, Nimmo's case reveals that, by the 1930s, the state had shifted its stance on the treatment of white female offenders for even though the concluding judgement recognised that she had committed the crime, she was discharged.¹¹⁵

Conclusion

In *States of Mind*, Parle also argues that, when insanity was coupled with race particularly in colonial Natal, these individuals were seen as “potential transgressors of class and race.”¹¹⁶ Quoting Sally Swartz, she adds: “...in the colonial context, fear of insane women's unruly, reproducing, bleeding or lactating bodies was closely linked

¹¹⁵ This point is poignantly argued by Martin Chanock in ‘Criminological Science and the Criminal Law on the Colonial Periphery: Perception, Fantasy, and Realities in South Africa, 1900-1930,’ in *Law & Social Inquiry*, 20:4, 1995, 911-939.

¹¹⁶ Parle. *States of Mind*, 20.

with anxiety about racial borders and racial purity.”¹¹⁷ In Lily Theron’s case it had become more acceptable to settler society to prove that she was mentally unstable at the time of the murder than to show that she had actually committed the crime with intent and motive. In the early twentieth century the regulation of white mental health was of utmost importance to the colonial state, as it was thought to be a fundamental constituent of racial superiority. Rather than criminally charge Lily, she was placed in the care of the Pietermaritzburg Mental Hospital. It is possible to argue that this sentencing was passed down as a gesture of leniency but it could simultaneously be interpreted as an attempt by representatives of the state to remove those settlers, particularly women, who they thought would ‘dilute’ and contribute to the degeneration of the white race.

Puerperal insanity, as has been shown in the cases of the women committed to the Asylum and in the case of Lily Theron, was a complicated condition to clearly define and this uncertainty resulted from the difficulty in ascertaining its causes; the onset of the condition; its duration; and its ultimate impact on the woman, as well as on those around her. Moreover, this condition could be further classified as either melancholia – which could be recurring and where the depression was intense but subdued – or mania, which could be described as excitable, deviant and violent. Both, however, could result in infanticide, either through sheer neglect or a momentary loss of reason, or due to an ‘irresistible impulse’. What is possible to deduce from the case of Theron, and perhaps Nimmo too is that, to a certain extent in Natal, in cases of infanticide and concealment of birth, by the close of my period of study with regards to medical, legal, and popular attitudes towards the infanticidal woman and appropriate responses, there had been a shift from repentance to recovery, or

¹¹⁷ Parle. *States of Mind*, 19.

rehabilitation, since prevention was considered to be better than penalty. As Quinn attests, “[a]s the conceptualisation of infanticide shifted from a rational strategy for the concealment of unwanted pregnancies to an irresistible impulse as the result of an illness linked to the maternal state, so the focus moved from the morally fallen single woman to highlighting a potential instability in all women.”¹¹⁸

¹¹⁸ Quinn. ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in late Victorian England,’ 214.

Conclusion

Infanticide has historically been committed by men and women across the globe and across all racial, ethnic, geographical, religious and class barriers. Moreover, the very act of killing a child has drawn the attention of authorities in almost every world society at some point or the other. Infanticide occupies a somewhat unique place in criminality, however, primarily because of the way in which the offenders are constructed, in law, and also by the communities in which they lived.

By the nineteenth century in the broader global context, infanticide and the concealment of birth had, arguably, become an even more contentious subject than ever before. Throughout history, many women chose to conceal their pregnancies or to abort their babies – likely in response to socio-economic, psychological, emotional, cultural, or religious pressures – but by the late 1800s these actions had come to be seen as a criminal act. Indeed, and as this thesis has shown, the infanticidal woman or man was not an abstract legal participant who acted outside of any social or emotional context. In time, as the law and medical jurisprudence developed and as attitudes changed towards young unwed women – who were the most usual perpetrators of infanticide, perhaps victims of seduction or sexual exploitation, or overcome by the effects of puerperal psychosis – they were increasingly regarded as social casualties who were perhaps acting out of an overwhelming stress. As a result, infanticide was placed into a medico-legal category that continues to be stretched and reconstructed

today while working within and around particular cultural and religious understandings.

It can be argued that in colonial and early twentieth century Natal the act of infanticide was largely a response to the pressures of social attitudes toward illicit or premarital sex and pregnancy. Reading between the lines of the various deposition and court transcripts on which this thesis has drawn, the stigma attached to illegitimacy appears to be the motive behind many of the cases that were tried before the Supreme and District courts. Significantly, the codes of shame, honour and conduct that operated in Natal were shared among women of all racial groups. Indeed, there were degrees of variation between African, Indian and white women, but these socio-cultural factors contributed to the ways in which these women understood their place in the communities around them. As John Iliffe writes in *Honour in African History*, “[h]uman beings seldom do things they believe to be wrong. They do wrong things because they believe them to be right. That is why honour is so important. It is an immensely powerful motivator.”¹

This study has used the crimes of infanticide and concealment of birth to illustrate how this form of violence can provide important evidence about the way colonial society actually worked, especially its contradictions and tensions as well as colonial conceptions of gender, race, class, and justice. Chapters Three and Four in particular have illustrated how the court cases and depositions burst with what may be regarded as incidental or arbitrary information, yet it is from these minute details that we are able to add to the narrative and build a clearer picture of nineteenth and twentieth century South Africa. In these personal testaments, individuals ultimately provide a

¹ John Iliffe. *Honour in African History*. (Cambridge: Cambridge University Press, 2005), 8.

commentary about their crimes in relation to the private and broader public life of the colony and the metropole, as well as the people and the places in the cultural, economic, political and social setting of Natal.

John Tosh has argued that “history is a cultural resource, a storehouse of accumulated human experience for our contemplation and delight,” but, at the same time, its applicability and relevance cannot be dismissed.² The relevance of this study is drawn not from history’s ability to give us prophecy, but rather from the fact that history enables a recalculation and analysis of past events, since it is “perspective rather than prophecy, [that] is the contribution historians make to the rational understanding of the contemporary world.”³ A study of the past or learning from history will not enable ready-made answers and it may not enable prophecy, but it will broaden outlooks and in doing this create an understanding to improve the present. History stems from our desire to learn about the past because, in part, much of it is so foreign and different to us; and, because the past is defined by this difference, it makes sense to learn from the past by analogy. History is a form of human agency, a dialogue and conversation that provides clues and connections with people in the past.

In her book *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*, Carol Smart points out that “...when understood in class terms, acts such as infanticide, abortion, contraception and baby farming are rational responses to severe legal and material penalties consequent upon unmarried motherhood” and

² John Tosh (ed.) *Historians on History*. (Harlow: Longman, 2000), 3. I must add though that this notion of history is somewhat naïve in that all history, whether trivial or popular is nonetheless imbued with some political agenda.

³ Tosh. *Historians on History*, 8.

bastardy.⁴ It is important to remember that the perceived link between illegitimacy and infanticide or the concealment of birth has prevailed well into the twenty-first century. Therefore, by theorising and understanding this crime in nineteenth and early twentieth century South Africa, this project contributes to our understanding and interpretations of the phenomenon of this problem in South Africa today and thus may offer some perspective for the twenty-first century. After all, it is unlikely that the basic socio-cultural and economic or religious based motives for infanticide have changed appreciably over the years. The relevance of this study to contemporary South Africa therefore finds its place amidst the unsettlingly high reportage of child murder, abandonment and infanticide cases found in local newspapers today.⁵ For

⁴ Carol Smart (ed.) *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*. (London: Routledge, 1992), 24.

⁵ Some recent reports include 'Dead Baby Found at Oprah School,' 18 February 2011. Found at <http://www.mg.co.za/article/2011-02-18-dead-baby-found-at-oprah-school/>; 'Baby Strangled to Death,' 20 January 2011. Found at <http://www.iol.co.za/news/crime-courts/baby-strangled-to-death-1.1014522>, accessed on the 21 January 2011; 'Girl Hid Foetus in School Bag – Police,' 5 November 2010. Found at <http://www.iol.co.za/news/crime-courts/girl-hid-foetus-in-school-bag-police-1.722313>, accessed on the 20 January 2011; 'Baby's Body Found in Field,' 25 October 2010. Found at <http://www.iol.co.za/news/crime-courts/baby-s-body-found-in-field-1.688657>, accessed on the 21 January 2011; Vuyolwethu Gwala and Bronwynne Jooste. 'Don't Abandon Your Babies,' 19 August 2010. Found at <http://www.iol.co.za/news/south-africa/don-t-abandon-your-babies-1.673501>, accessed on the 21 January 2011; Natasha Landman. 'Baby Flushed Down Toilet,' in *The Times*, 7 April 2010. Found at <http://www.timeslive.co.za/local/article391093.ece/Baby-flushed-down-toilet>, accessed on 21 January 2011; 'Mom Held for Infanticide,' 13 April 2010. Found at <http://www.iol.co.za/news/south-africa/mom-held-for-infanticide-1.480442>, accessed on the 21 January 2011; Gabisile Ndebele. 'Baby Burned, Dumped in Field - Residents Say Corpse of Newborn is Latest of Many,' in *The Times*, 20 July 2010; Gabisile Ndebele. 'Outrage Over Dumped Baby,' in *The Times*, 21 July 2010; SAPA. 'Dead Babies Found at Waste Company Premises,' in *The Times*, 21 July 2010; SAPA. 'MEC Denies Negligence in Baby Deaths,' in *The Times*, 21 July 2010; SAPA. 'Soweto Police Investigating Dead Baby,' in *The Times*, 21 July 2010; SAPA. 'ANC Asks Mums Not to Dump Babies,' in *The Times*, 21 July 2010; 'Foetus Dumped in Taxi,' 14 June 2010. Found at <http://www.iol.co.za/news/south-africa/foetus-dumped-in-taxi-1.486971>, accessed on the 21 January 2011; 'Woman Dumps Foetus in Bin,' 11 June 2010. Found at <http://www.iol.co.za/news/south-africa/woman-dumps-foetus-in-bin-1.486784>, accessed on the 21 January 2011; 'Foetus Found Near School Hostel,' 31 May 2010. Found at <http://www.iol.co.za/news/south-africa/foetus-found-near-school-hostel-1.485722>,

instance on the 21st of July 2010, *The Times* newspaper published a disturbing photograph of a newborn baby girl that had been burned and then dumped in the open veld in Soweto.⁶ The image was accompanied by an article by Gabisle Ndebele in which she wrote: “This baby has become the latest statistic in the increasing number of children dumped by their parents across South Africa. Statistics reveal that the abandonment rate has reached as high as 30 babies a month. Gauteng provincial hospitals treated 208 abandoned babies in 2007 and 273 dumped babies in 2008.” Since then, various political organisations, children’s-rights bodies, and media monitoring agencies have responded to this, demanding answers and actions from the South African police, state hospitals and other government ministries. One such reply came from Sibani Mngadi, then spokesman for the Minister for Women, Children, and Persons with Disabilities. His statement read: “As we respond to this and other babies being dumped, we have to establish what drives parents into committing such horrendous crimes against their own children.”⁷

The phenomenon of “Jet Babies” – labelled as such because of the high number of babies found abandoned in public toilets and clothing stores⁸ – has certainly arrested the attention and concern of the many philanthropic and religious organisations in South Africa. The ‘Door of Hope’ is one such organisation in Johannesburg and provides a “safe house” where mothers can place their unwanted infants to be cared for. It can be argued that the reasons that many women abandon their children or leave them for dead in South Africa currently are not that dissimilar from late

accessed on the 21 January 2011; ‘Baby Found in Maize Bag,’ 8 January 2010. Found at <http://www.iol.co.za/news/south-africa/baby-found-in-maize-bag-1.469770>, accessed on the 21 January 2011.

⁶ See Appendix for this image.

⁷ ‘Take Your Unwanted Child to a Shelter,’ *The Times*, Thursday 22nd July 2010.

⁸ Jet Stores being the name of a leading South African retail company.

nineteenth century and early twentieth century Natal. Indeed, the current dilemma of the HIV/Aids pandemic is an important additional reason, but poverty, ignorance, the stigma of illegitimacy, and lack of support networks also feature highly.

As the thesis has shown, within the rubric of extenuating circumstances in which infanticide and concealment of birth are exercised, there are many possible motives which can be alluded to, such as fear of shame or dishonour that bearing an illegitimate child would warrant; fear of unemployability or loss of employment, as well as the abandonment by the biological father which would result in insufficient financial assistance to raise a child. There were also “altruistic” motives, such as post-partum depression, where it can be argued, a woman’s actions were due to an imbalance of her mind prompting the belief that this was a merciful act. In the cases that were tried before Natal’s courts, some of “infanticide by neglect” were, very probably, due to the unavailability of options such as medicalised and successful abortions, obtainable contraception or fully developed and accessible child welfare systems.

In the Introduction to this thesis, an extract from *The Natal Witness* is included, of which an excerpt reads:

Far from having any special hatred for children, they will readily and tenderly look after such young creatures as come within their range, and if there are any small fry about the prisons requiring protection, they are generally the women who will attend to them most carefully. The maternal instinct is therefore not dead in their breasts; nor is indulgence of it towards alien infants regarded by them as an act of injustice to the innocent. They simply have done something wrong when in a fright, and are very sorry now – but that is all.⁹

⁹ ‘The “South African Magazine” – Social Problems,’ in *The Natal Witness*, 12 January 1869.

While as Simone de Beauvoir argued a few decades ago in *The Second Sex*, it is possible that an uncomplicated concept of maternal instinct does not exist, for, as she claims: “the word hardly applies, in any case, to the human species. The mother’s attitude depends on her total situation and her reaction to it,”¹⁰ the powerful socially constructed myth of motherhood, regardless of race and class, is that it is instinctual, nurturing, and that is the ultimate embodiment of femininity. Women, therefore who transgressed or failed to comply with this ideology – as in the case of this study, by committing, infanticide, baby-farming or concealing their births – were perceived as being inescapable victims of their biological make-up and yet deserving of being punished. In Natal, moreover, and as this thesis has shown, this form of ‘dangerous motherhood’ was further complicated by racial and class constructions.

In nineteenth and early twentieth century Natal, as elsewhere, where so diverse a group of individuals existed, possible explanations for why men and women chose to commit infanticide are multifaceted and complex. Moreover, there were sets of several interacting and contesting factors operating in various manners in Natal which further complicate an analysis of the crimes of infanticide and concealment of birth. These included the effects of racial and class understandings and attitudes to marriage, courtship, and sexuality; the degrees of adherence to and influence of different religious and cultural practices; the prevalence and extent of sexual violence in the form of rape and incest; socio-economic consequences of poverty and urbanisation; and concerns about miscegenation and prostitution.¹¹ The case studies discussed in this thesis have illustrated that ways in which infanticide as a crime was exercised,

¹⁰ Simone de Beauvoir. *The Second Sex*. Translated and Edited by H. M. Parshley. (England: Penguin Books, 1972), 526.

¹¹ Similar explanations have been offered for the high rate of illegitimate births in the Cape Colony. See Sandra Berman and Margaret Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896 – 1939,’ in *Journal of Southern African Studies*, 17:3, 1991, 378.

constructed and understood at a state, legal, medical and public level. Above all, as this thesis has argued throughout, it must be remembered that on an individual level, these crimes were created within their own set of orchestrating emotions and situations and were acted out in different settings, with varying energies, agendas and motives. And this is the very stuff of human history.

Appendices

Appendix A:

Image 4: Dried grass which was used as evidence in a suspected case of infanticide against a woman named Rosaline.¹



¹ Pietermaritzburg Archives Repository [hereafter PAR], Attorney General's Office [hereafter AGO], 1/4/159, 117/1905, Assistant Magistrate, City. Body of Child found in the Dorp Spruit, 1st February 1905.

Appendix B:

Judicial Matters Amendment Act, 2008²

No. 66 of 2008: To amend the General Law Amendment Act, 1935, so as to further regulate the concealment of birth of a newly born child; ...

Substitution of section 113 of Act 46 of 1935

1. The following section is hereby substituted for section 113 of the General Law Amendment Act, 1935:
2.
“Concealment of birth of newly born child”
 - (1) Any person who, without a lawful burial order, disposes of the body of any newly born child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.
 - (2) A person may be convicted under subsection (1) although it has not been proved that the child in question died before its body was disposed of.
 - (3) The institution of a prosecution under this section must be authorized in writing by the Director of Public Prosecutions having jurisdiction.”

This “new” section 113 of Act 46 of 1935 came into operation on 17 February 2009.

² Government Gazette No 31908, Vol. 524, No. 166, Cape Town, 17 February 2009, No. 66 of 2008: Judicial Matters Amendment Act, 2008.

Appendix C:

Infanticide Act, 1922 – United Kingdom of Britain³

Chapter 18: An Act to provide that a woman who wilfully causes the death of her newly-born child may, under certain conditions be convicted of Infanticide.

Section 1

1. Where a woman by any wilful act or omission causes the death of her newly-born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
2. Where upon the trial of a woman for the murder of her newly-born child, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission she had not fully recovered from the effect of giving birth to such child or by reason the balance of her mind was then disturbed, the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, returning in lieu thereof a verdict of infanticide.
3. Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a newly-born child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section sixty, of the Offences against the Person Act, 1861.
4. The said section sixty shall apply in the case of the acquittal of a woman upon an indictment for infanticide as it applies upon the acquittal of a woman for murder, and upon the trial of any person over the age of sixteen for infanticide it shall be lawful for the jury, if they are satisfied if the accused is guilty of an offence under section twelve of the Children's Act, 1908, to find the accused guilty of such an offence, and in that case that section shall apply accordingly.

³ National Archives Repository [hereafter SAB], Governor-General [hereafter GG], 1840/53/423, Acts: Imperial. Transmits copies of the Infanticide Act, 1922.

Appendix D:

Infanticide Act, 1938 – United Kingdom of Britain

Chapter 36: An Act to repeal and re-enact with modifications the provisions of the Infanticide Act, 1922.

1. Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, if the circumstances were such that but for this Act the offence would have amounted to murder or manslaughter, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.
2. Whereupon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, if the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder or manslaughter, return in lieu thereof a verdict of infanticide.
3. Nothing in this Act shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section sixty, of the Offences against the Person Act, 1861, except that for the purposes of the proviso to that section a child shall be deemed to have recently been born if it had been born within twelve months before its death.
4. The said section sixty shall apply in the case of the acquittal of a woman upon an indictment for infanticide as it applies upon the acquittal of a woman upon an indictment for murder.

This Act does not extend to Scotland or Northern Ireland.⁴

⁴ 1938 Infanticide Act, found at http://www.legislation.gov.uk/ukpga/1938/36/pdfs/ukpga_19380036_en.pdf, accessed on the 4 April 2011.

Appendix E:

Ordinance 10, 1845 – Cape Colony

No. 10, 1845.—(Signed) P. MAITLAND.

Ordinance for Punishing the Concealment of the Birth of Children.

WHEHEAS the concealment by mothers of the birth of their children is a highly suspicious and reprehensible proceeding; And whereas such concealment is not, by the law of this Colony, deemed to be a crime ; And whereas it is expedient that such concealment should be constituted and declared to be a crime:—

Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that if any woman shall be delivered of a child, and shall, by secret burying, or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such woman so offending shall be deemed to be guilty of the crime of concealing the birth of her child, and, being, convicted thereof, shall be liable to be imprisoned,

Ordinance No. 10, 1845, extended to Natal.

Punishment for concealing birth with or without hard labour, for any term not exceeding five years.

2. And be it enacted, that upon the occasion of the trial of any person, charged with the commission of the said crime, it shall not be necessary to prove whether the child died before, at, or after its birth.
3. And be it enacted, that if any woman, tried for the murder of her child, shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying, or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof (but it shall not be necessary to prove whether the said child died before, at, or after its birth); And thereupon it shall and may be lawful for the Court to pass upon her, any such sentence as might have been lawfully passed upon her, if she had been convicted upon an indictment for the crime of concealing the birth of her child.
4. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.⁵

⁵ W. J. Dunbar Moodie. Ordinances, Proclamations, Relating to the Colony of Natal, 1836-1855. Volume 1. (Pietermaritzburg: May and Davis, 1856), 116-117.

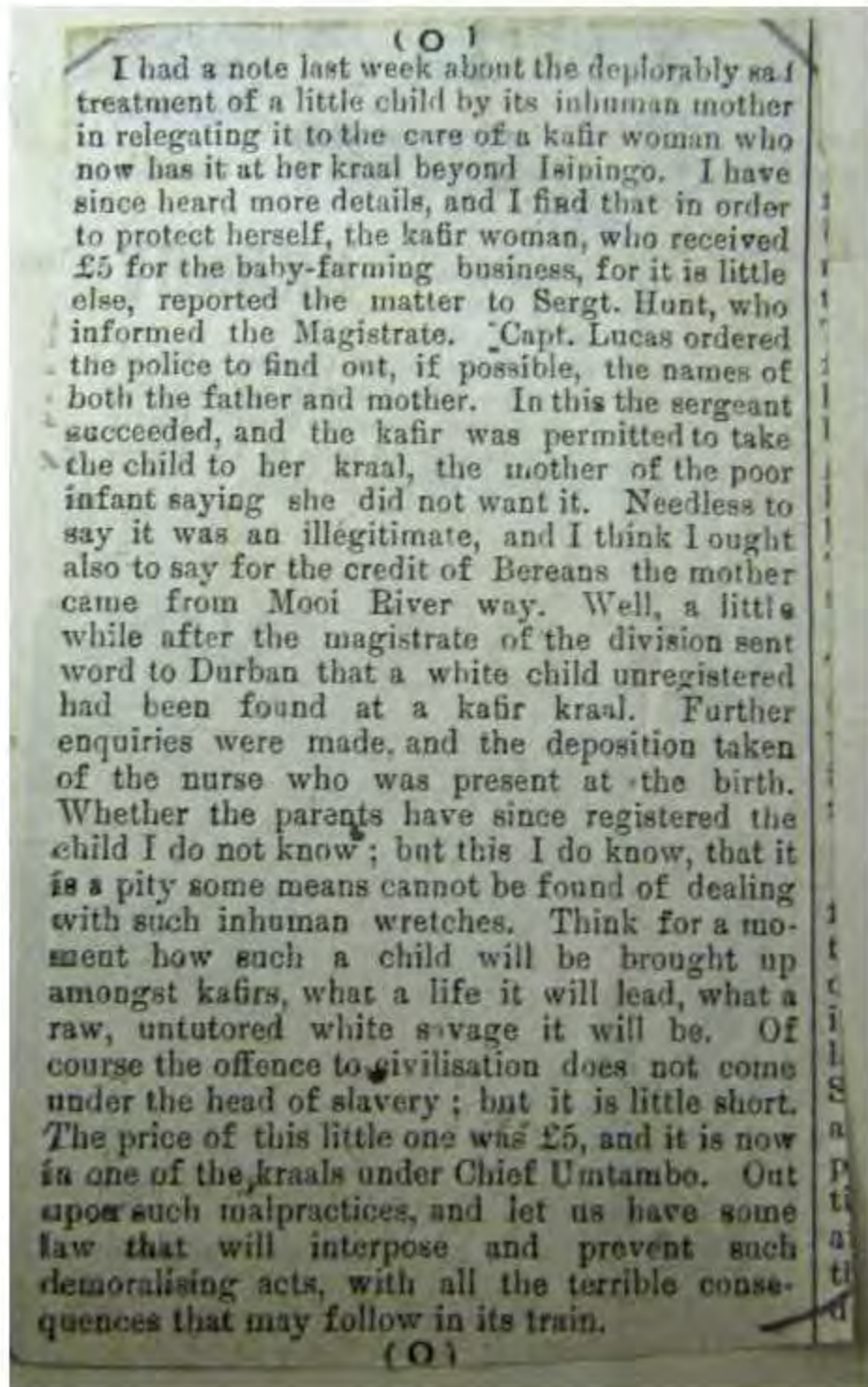
Appendix F:

Image 5: 'Revolting Incident,' *The Mercury*, 6th June 1891



Appendix G:

Image 6: *The Mercury*, 13th June 1891



Appendix H:

The following tables pertain to the Natal Government Asylum [NGA] case studies discussed in Chapter 5.⁶ The tables offer further information relating to the cases of Emily Galt, Martha Lydon, Mme Marie Josephine Gabriel Chadier de Folcka, Helen C. Humphrey, Maggie Laing, Emma Lovett and Elizabeth Webb. They are concerned specifically with the progress of the cases whilst under the care of the NGA.

Table 8: Emily Galt, 1904-1905	
Admission Number	1833
Name	Galt, Emily
Facts of Medical Certificate	
Progress of Case	<p>Nov 22nd Very noisy, sleeps very little. Has several outbursts during the day of acute excitement. These subside + she is then depressed. Talks a great deal about Mr. Alexander, whom she says she cohabits with, and appears to be rather upset about religious matters.</p> <p>Jan 5th Has become much quieter, only occasionally having short outbreaks of excitement. She is now melancholic. During her last menstruation she was excited about 4 days.</p> <p>March 23rd Has now delusions of persecutions, accuses one of the nurses of strangling her, and also says her food is sometimes poisoned. Rather erotic.</p> <p>14.4.05 Seems quite rational these last few days.</p> <p>28.4.05 Writing a fair number of letters, asking for information concerning Mr. Alexander, and talking about the cruelty of her husband.</p> <p>9.5.05 Still writing to several people, saying that she intends getting a divorce from her husband. Writes nice letters to her children.</p> <p>23rd June 05 Her husband called about 2 weeks ago wanting to take her away but she refused to go with him and stated she intended to take out a suit for divorce. Accordingly she remained until her discharge arrived but she has twice been hysterical + moody. Today (23.6.05) on the round she said "I defy you James Hyslop. Dr</p>

⁶ Town Hill Hospital, Natal Government Asylum Records X1 (European Patient Case-book), 1904-1908. [Courtesy of Julie Parle]

	Pringle take me home” and turned her back on us. 1 July 05 Has been quieter lately and this day discharged relieved. 1.7.05 Discharged
Inset Document	
Discharged or Dead	Discharged
Date of Death / Discharge	01 July 1905

Table 9: Emily Galt, 1906-1909	
Admission Number	2037
Name	Galt, Emily
Facts of Medical Certificate	Depressed appearance, but at times excited + restless – abuses husband and accuses him of intention to “batter her to death”. Spits at, swears + moans at, + slaps her husband. Sings and attitudinises at windows. – Dr Hyslop. Change of facial appearance.
Progress of Case	<p>Adm 2.1.06 Is a readmission case, see P49. Has a frequent burst of excitement during which she dances along the veranda and sings comic songs. She also recites in dramatic manner or sings mournful songs in an affected manner. Frequently she declaims against the nurses or patients + uses vile language. She has had to be locked up.</p> <p>4th.1.06 Sulphonal – noisy at night. Sleeps little.</p> <p>8th.1.06 Same. Complains that a Kaffir man was put into her room for immoral purposes.</p> <p>10.1.06 Slightly quieter now.</p> <p>13.1.06 Swears a lot. Sleeps fairly.</p> <p>18.1.06 Much improved, + is now rarely noisy. Sleeps + eats well. Was up at the laundry recently.</p> <p>24.1.06 Still goes to work daily + is much improved at present.</p> <p>6.2.06 Rather worse again. Says she is pregnant – have no examined.</p> <p>19.2.06 Very delusional still. Makes such a noise and says such things to Nurses in Hall</p>

	<p>that she has her meals outside.</p> <p>1.3.06 Very much the same. Noisy at times. Eats + sleeps well.</p> <p>29.3.06 Same.</p> <p>2.5.06 Much improved lately – quiet, rational not delusional and industrious + always tidy.</p> <p>10.8.06 Has become quite well. Is pregnant.</p> <p>19.9.06 Was delivered of a female child on the 4th and has had a good puerperium. The child was never put to the breast and was sent away after 3 days. Belladonna plasters were applied to the breasts and no trouble of lactation occurred. Only once she complained of feeling strong in the head; no mental complications arose, and she is quite fit for discharge.</p> <p>Oct 6.06 Seems to be rather excited today – very restless. For a week past she has been subject to colicky pains.</p> <p>16.10.06 Restless, talkative, quarrelsome. Seems to be mildly maniacal, but is well enough to be in the sewing room.</p> <p>11.11.06 Recovered again and is at Kingsburg. Healthy.</p> <p>27.3.07 Had kept well + was recommended for discharge but suddenly displayed a marked delusion. Says that one day she was taken out of her room by A.M.O. + led into the yard. Looking up she saw 3 baby faces + took this as a sign from heaven + considers this a marriage ceremony with the A.M.O. She holds this delusion very persistently so cannot be discharged. Is now much depressed but is fairly healthy.</p> <p>17.7.07 Same.</p> <p>19.1.08 Delusions as strong as ever. Healthy.</p> <p>28.5.06 Quiet and healthy + keeping her delusions very quiet.</p> <p>2.11.08 Same. Still has the delusions noted above.</p> <p>18.8.09 Has remained quiet + improved + today was discharged although known to have the delusion re A.M.O.</p>
Inset Document	<p>[Inset Document: Letter addressed, on back, to Dr F Aitken, Asst Med Officer.] Natal Govt Asylum 19.12.07 To Dr F Aitken, Assistant Med Officer Sir, Will you kindly arrange for me, a meeting with my lawyer, Messers Fraser +</p>

	McGibbon, Lyle's Chambers, C
Discharged or Dead	Discharged
Date of Death / Discharge	18 August 1909

Table 10: Martha Lydon, 1905	
Admission Number	1970
Name	Lydon, Mrs Martha
Facts of Medical Certificate	(1) Medical Pract - Very excited. States brother is going to murder her. Hears voices and says that spirits tell her that they have got money for her. Thinks she has been mistaken for another woman and that one of the patients is a man in disguise who is here to watch her, etc.
Progress of Case	<p>[Please note confusion of names: Mrs Jane Lydon written above and in original entry form, crossed out in all and replaces with Mrs Martha Lydon. Also a note in parenthesis: "see previous 996 Martha Jackson"]</p> <p>Admitted 15 August 1905</p> <p>Is very much annoyed that she should be brought here again – says she should have been sent into hospital. Previously here as Martha Jackson.</p> <p>Aug 19</p> <p>Still anxious about her children – has a swollen leg.</p> <p>Sept 1st</p> <p>Talks in a rational manner. Very anxious to return to her children. Attendants state that she is not rational in her statements.</p> <p>Sept 10th</p> <p>Always worrying to go out and hides behind doors and in corners of the chance of being able to slip out somehow. Still labours under the delusion that she is here as the result of some plot and that she has a large sum of money which people are trying to cheat her out of. If one asks here about this money she is very reticent about it – does not like to acknowledge her delusion and says "Oh well I may have it. I don't know."</p> <p>Sept 15th</p> <p>Mrs Lydon is better. She is less distressed, and does not keep on worrying me about her children and the 'mistake' made in sending her here instead of 'some other woman'/ She eats well and does a little work.</p> <p>Sept 29th</p> <p>Condition continued. Goes to the dances and appears to enjoy them.</p> <p>19.12.05</p> <p>Discharged cured.</p>

Inset Document	
Discharged or Dead	Discharged
Date of Death / Discharge	19 December 1905

Table 11: Mme Marie Josephine Gabriel Chadier de Folcka, 1906-1907	
Admission Number	2038
Name	de Folcka, Mme Marie Josephine Gabriel Chadier
Facts of Medical Certificate	Dull at 1st, irritable – tried to break a cup at Dr's face: indecent language: tries to smash furniture + strikes people. Dr Sakir- Durban. Excited + incoherent. Says a snake is on her bed + that snake is her child. Left the house one night undressed. Wants to cut her throat. Insults her mother and does not ask about her child. Dr Durmat. Durban
Progress of Case	<p>4.1.06 Admitted late at night + was rather passive + apathetic, + markedly dejected. At each visit of the night nurse she was out of bed, she screamed at intervals throughout the night.</p> <p>5.1.06 Refused all food. Got laxative. Wanders quietly about. Violently resisted talking.</p> <p>6.1.06 Refused food and was fed by the nasal tube with an egg-custard. Never in bed at night + was violent + excited last night.</p> <p>7.1.06 Refused food today but drank the custard when I threatened to use the tube again. Slept fairly well last night.</p> <p>8.1.06 Resists most attentions violently, e.g. bathing + feeding. Today was fed but without the tube. Slept part of the night.</p> <p>10.1.06 Takes food. Insists on standing under the water tap in the yard.</p> <p>13.1.06 Still very resistive. Sleeps fairly.</p> <p>18.1.06 Resistive to a degree and so is being allowed considerable freedom. She displays in a marked manner the irresolution of resistive melancholics. Is with difficulty made to take food, but sometimes once the 1st mouthful is given she finishes the rest of the meal herself. Does not sleep well. I have been unable to detect</p>

	<p>delusions as she rarely speaks or answers one.</p> <p>24.1.06</p> <p>No change.</p> <p>6.2.06</p> <p>Not now so resistive + takes her food suo spoute. Still will not talk.</p> <p>19.2.06</p> <p>Has developed dysentery. Ipecac Putr treatment started today. Will not remain in bed.</p> <p>22.2.06</p> <p>Pot Sod Sulph 3ii q.bis.hor until 3i is taken. Then ipecac as above Milk + Aq calcis.</p> <p>1.3.06</p> <p>Much better re dysentery. Mentally slightly improved. Out in yard today.</p> <p>29.3.06</p> <p>Still improving.</p> <p>2.5.06</p> <p>Although not nearly so resistive she is not much more improved mentally. She stands about all day + never speaks to anyone. She eats readily her own food + that of other if not observed – she will not eat in hall. She often stands about her room at night instead of going to bed.</p> <p>10.8.06</p> <p>Said she wishes to get well + go home but makes no effort to waken up. Very healthy.</p> <p>19.9.06</p> <p>Is stout + healthy but seems to make no improvement mentally. She never speaks but shakes or nods the head in reply to questions. At night she sits on a chair + lays her head on the bed. Rather sleepless.</p> <p>11.11.06</p> <p>No real improvement.</p> <p>12.12.06</p> <p>Improving gradually. Has been informed of husband's death.</p> <p>Jan 07</p> <p>Still improved. Has received a photo of her child + she stands about with it in her hand. Is ready to show it to one + is pleased when it is commented upon. Sleeps fairly well + is eating well too.</p> <p>March 7.07</p> <p>Talks much more readily. Does not now stand about holding herself bent forwards as she used to. Is very healthy + sleeps most of the night. Desires to go home.</p> <p>Discharged to friends. Cured.</p> <p>23.3.07</p>
Inset Document	
Discharged or Dead	Discharged
Date of Death / Discharge	23 March 1907

Table 12: Helen C Humphrey, 1906-1908	
Admission Number	2125
Name	Humphrey, Helen C
Facts of Medical Certificate	Restless, noisy, sings. Says she is queen of the earth. Incoherent. Dr Addison. Dr Dinnot.
Progress of Case	<p>Admitted 13.6.06</p> <p>Noisy up to midnight + refused hypnotics. Liq Morphine 3p at 1pm caused her to sleep. Is not very troublesome during the day – plays piano + talks etc. But at night she becomes “high”.</p> <p>14.6.06</p> <p>Eats well. Sulphonal 3p.</p> <p>15.6.06</p> <p>Slept. Rather more quiet. Sulphonal 3p. Very rambling + incoherent in her conversation, noisy, restless.</p> <p>17 June</p> <p>Same. Sulphonal 3p each night.</p> <p>Jun 26th</p> <p>Slightly improved/</p> <p>July 9th</p> <p>Still improving. Stopped sulphonal last night. Her husband came to see her yesterday but I judged it best not to bring them together, as she is still very far from well.</p> <p>24.7.06</p> <p>Friends came to see her and she behaved very well. Said yesterday that I was her husband. Is very much quieter + not so demonstrative. She is rather thinner now than on admission.</p> <p>10.8.06</p> <p>Continues improved and tries to occupy herself at times. Does without sulphonal now. She is rather silly at times and says her name is not Humphreys.</p> <p>18.8.06</p> <p>Not so well again for 2 days. Sat on the floor + refused to go to bed.</p> <p>14.9.06</p> <p>Rather worse again – demonstrative, restless, etc. Refused to go to bed because she was afraid of what was under the pillow – a piece of brown paper!! Trional grs XV.</p> <p>20.9.06</p> <p>Still continues not so well – in fact she is more like her condition when admitted than she has ever been – irresponsible – untidy, restless + incoherent.</p> <p>16.10.06</p> <p>No improvement.</p> <p>11.11.06</p> <p>No sign of improvement yet. Is anxious to arrange with me for going to Durban</p>

	<p>with some of the other patients. Restless, frivolous, irresponsible. Laughs and cries easily. Healthy.</p> <p>27.3.07</p> <p>Has been continuing very well lately. She refuses absolutely to return to her husband whom she charges with various things. If her home life were comfortable + happy she might be discharged now – otherwise it would be a risk. Healthy.</p> <p>15.5.07</p> <p>Mrs H has unfortunately developed an illusion. Says she hears someone talking to her when in hall, apparently from upstairs. The talk is about herself + is always kindly.</p> <p>10.7.07</p> <p>I have found that this patient was merely copying Miss Blaine + really did not hear voices. Continues well + is healthy.</p> <p>29.9.07</p> <p>Mention of her husband + her return to him upsets her. She will hardly discuss it + declares her fixed determination not to go back to him. Otherwise is normal + healthy.</p> <p>19.1.08</p> <p>Says she does not feel sure enough of herself to go out, as it is only recently that she has been able to think properly. Is becoming stout again as she was on admission.</p> <p>22.5.08</p> <p>Continues much the same, healthy.</p> <p>12.10.08</p> <p>Has remained well to date.</p> <p>Discharged on Recog to father.</p>
Inset Document	
Discharged or Dead	Discharged to Father
Date of Death / Discharge	12 October 1908

Table 13: Maggie Laing, 1906	
Admission Number	2142
Name	Laing, Maggie
Facts of Medical Certificate	Excited - violent - noisy - incoherent - delusional. Dr Birtwell.
Progress of Case	Admitted 28.7.06 Excited and restless + refuses to keep her clothes on. Refuses her food requiring to be fed. Pot Brom 3i

	<p>29.7.06 Pot Brom 3i. Fed.</p> <p>30.7.06 Pot Brom 3i. Fed. Was taking a great deal of alcohol before admission + was picking imaginary objects off her person + clothes. Is quieter now + took some food today.</p> <p>10.8.06 Takes her food well now + is quiet but at times incoherent.</p> <p>9.10.06 Discharged – recovered.</p>
Inset Document	<p>Marry Good. You had better arrange things better it is disgusting this life whatever is wrong you had better come here there is something very deep here I cannot sleep at night sometimes you had better make everything more pleasant we a</p>
Discharged or Dead	Discharged
Date of Death / Discharge	09 October 1906

Table 14: Emma Lovett, 1908-1919	
Admission Number	2433
Name	Lovett, Emma
Facts of Medical Certificate	Wants to go to gaol + be hanged. Wants to die. Sleepless. Tried to scald a child of 7 yrs in order to be hanged. Dr Bruce. Dr Manning.
Progress of Case	<p>[On Previous page in Red Pen: "N.B. The attorney-general wishes his dept to be communicated with before Mrs Lovett is discharged, in case it should be necessary to take actions against her. Papers A.G. Dept 328/08"]</p> <p>Admitted. Readmission.</p> <p>22.4.08 Late at night. Remembers being here before. In her blouse she had a rope of new calico secreted – probably to commit suicide with should a chance occur. Would only talk if pressed for an answer and not always then.</p> <p>23.4.08 Slept a little – quiet today but restless and still melancholic. Eats fairly.</p> <p>24.4.08 Seems to have a watchful furtive look. Says she does not want to live.</p> <p>25.4.08 Does not sleep much yet will not take a draught. Says she is unhappy on account of what happened outside. Says she regrets harming the child + does not know</p>

	<p>why she did it. It was not a planned affair but an impulse over which she had no control. She could not guarantee not to do a like act if discharged.</p> <p>26.4.08 Reports a good night's sleep.</p> <p>28.4.08 Is doing a little sewing and is more cheerful.</p> <p>12.5.08 Continues improved.</p> <p>20.5.08 Same.</p> <p>28.5.08 Same.</p> <p>15.6.08 Condition is apparently normal. Is fairly cheerful and occupies her usefully.</p> <p>17.8.08 Same, healthy.</p> <p>8.10.08 Same, healthy.</p> <p>1.12.08 There is no change. Healthy.</p> <p>6.4.09 Asked to be recommended for discharge, and was informed her release was improbably – not to be recommended on a/c of her history. Healthy.</p> <p>15.10.09 Condition unchanged.</p> <p>11.2.10 She is very depressed at times, asking to be delivered up to justice so that she may be burned before crowds of people. Works well.</p> <p>29.9.10 Gets very depressed at times, says she is tired of life, that she has no right to live + asks us to send her away to be hung. Works well.</p> <p>1911 Feb 1st Periodically gets depressed.</p> <p>May 1st Well in health + fairly well mentally at present.</p> <p>Aug 1st Same as on May 1st.</p> <p>Nov 1st No change.</p> <p>1912 Feb 1st Has periodic attacks of migraine + is depressed at these times.</p> <p>May 1st No change.</p> <p>Aug 2st Still in same condition.</p>
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	<p>Nov 1st No change. In fair health.</p> <p>1913</p> <p>Feb 1st Well physically except for attacks of migraine + muscular rheumatism. Mentally no change.</p> <p>May 1st The same. Health fair.</p> <p>Aug 1st Is no change in her condition.</p> <p>Nov 1st Still suffers periodically from migraine + muscular rheumatism. Becomes very depressed at times, saying she is not fit to live + ought to be tried for her crimes.</p> <p>1914</p> <p>Feb 1st No change.</p> <p>May 1st Is no change in her condition.</p> <p>Aug 1st Still gets periodically depressed. No change physically.</p> <p>Oct 1st No change in her condition.</p> <p>1915</p> <p>Feb 1st Always slightly depressed + retarded, at times becomes acutely so, expresses suicidal longings + asks to be sent to gaol to be punished for her crimes. Acute depression usually synchronous with an attack of migraine.</p> <p>May 1st No change in her condition.</p> <p>Sept 6th No change to report. Health continues satisfactory.</p> <p>1916</p> <p>Feb 10th Periodical fits of depression recur still with many self-accusatory ideas and requests to be delivered up to justice for her crimes. At her best is always quiet + dull, conversing very little. Works well still.</p> <p>June 17th Occasional attacks of diarrhoea with gastric upset are the only features of note in her bodily health beyond her migraine. Mentally there is no change.</p> <p>Sept 8th There is no change to report.</p> <p>1917</p> <p>Feb 9th Beyond an occasional cold or an attack of migraine there has been nothing of note in her condition of late.</p> <p>July 15th Today it was noted that her speech became impaired towards evening + that she</p>
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	<p>was in a dazed condition. In the evening had a typical epileptic fit. (Grand Mal). July 16th Except that she is a little dazed she is today quite well but has been kept in bed. Aug 26th Her bodily condition has quite returned to normal. She is able to give a fairly good account of herself. Gets periodically depressed, depression being due she says to the thought of the two children she killed. She has no recollection of having killed them + cannot understand it as she was always so fond of children. Suffers from periodical attacks of migraine otherwise her health for her age is good + she works well in the laundry. Dec 9th No mental change. In fair health. 1918 May 9th She shows periodical attacks of depression in which she declares she is unfit to live + asks that she be handed over to the police. Keeps in fair health. Sept 13th In same state, fairly bright at present + working in the laundry. Dec 20th No change. 1919 April 24th Mentally unchanged, periodical attacks of depression recur in which she begs to be allowed to expiate her sins. Is always quiet. Slightly depressed. Has taken no more fits. Nov 20th No change. To Loose Leaf Sheets.</p>
Inset Document	Mrs Lovett (EF. M.B. I.) Asks for discharge to care of daughter, Mrs Burns.
Discharged or Dead	To Loose Leaf Sheets
Date of Death / Discharge	20 November 1919

Table 15: Elizabeth Webb, 1908-1910	
Admission Number	2493
Name	Webb, Mrs Elizabeth
Facts of Medical Certificate	Absent minded + restless. Delusions of persecution + of having committed crimes. Does not know her relations. Drs Ward + Watt.

Progress of Case	<p>Admitted 11.9.08 Excited + melancholic. Full of delusions. 12.9.08 Condition the same. Thinks she is a ship, a house etc. Talks of having committed crimes + exclaims – “There are no witnesses.” Physical condition poor. She is flabby + anaemic. No albumen. Puerperal case. 14.9.08 Scalp very septic. 21.9.08 Conversation incoherent, e.g. “I am not a train for Glasgow.” + “I did not die just now.” Has menorrhagia, + is in bed. 29.9.08 Still in bed because she passed 2 suspicious looking stools. Her motions became normal after Caster oil + laudanum. Temperature normal. Mental condition absolutely unimproved. 6.10.08 Has become suicidal and asks for knives and asks to be allowed to drown herself. 23.10.08 Violent yesterday + today – says persons have taken her money etc. No mental improvement. 17.11.08 Has continued more or less excited + incoherent. Keeps on talking about “a dreadful mistake”. Does not look healthy – very pale + flabby – urine healthy. 21.11.08 There is no change. Is being exercised regularly + is on tonic treatment. 8.2.09 Remains unimproved. Is better physically. 10.3.09 Still melancholic + delusional. 5.4.09 Escaped for a short time yesterday. Still an excited melancholic. 13.10.09 Condition unchanged, continues to scratch herself, full of delusions. 30.1.10 No improvement in her condition. Very depressed + miserable, constantly talking about the dreadful blunder she has made + the awful sins she has committed. 8.2.10 Her husband having signed a bond she is to be discharged soon. 11.2.10 She has been today discharged as relieved. Discharged.</p>
Inset Document	
Discharged or Dead	Discharged
Date of Death / Discharge	11February 1910

Appendix I:

Table 16 and Table 17 are the unabridged versions of Tables 6 and 7 in Chapter. These tables are also reproduced here from Julie Parle's article, 'Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal,' in *Journal of Natal and Zulu History*, 19, 1999-2001, 1-39.⁷

Table 16: Showing the Type of Mental Disorder in the Admissions to the Natal Government Asylum, 1895-1909					
Form Of Mental Disorder	Male	Female	Europeans	Natives	Indians
Congenital or Infantile Mental Deficiency:					
(a) With Epilepsy	1.1	1.1	2.1	0.7	0.0
(b) Without Epilepsy	2.2	3.2	3.5	2.3	0.9
Epilepsy Acquired	3.5	2.5	3.5	3.8	1.5
General Paralysis of the Insane	2.6	0.0	4.8	0.0	0.3
Moral (Added 1908)	0.0	0.0	0.0	0.0	0.0
Insanity with Grosser Brain Lesions (1908)	0.0	0.0	0.0	0.0	0.0
Acute Delirium (1908)	0.0	0.0	0.0	0.0	0.0
Confusional Insanity (1908)	0.0	0.0	0.0	0.0	0.0
Stupor (1908)	0.1	0.0	0.0	0.0	0.3
Mania:					
Acute	27.2	23.1	15.3	30.8	37.7
Chronic	10.3	9.4	8.3	13.5	6.1
Recurrent	6.7	8.5	8.9	7.3	3.3
A.Potu	3.9	0.9	6.0	0.7	3.0
Puerperal	0.0	2.7	1.5	0.1	0.3
Senile	4.5	5.9	3.9	6.4	3.3
Simple (1904/5)	3.8	3.7	2.7	5.0	3.0
Adolescent (1904/5)	0.7	0.5	0.5	0.8	0.6
Homicidal (1904/5)	0.2	0.0	0.2	0.1	0.3
Recent (1908)	7.0	7.1	4.8	8.3	8.5
Melancholia:					
Acute	12.6	15.1	16.7	9.9	13.7

⁷ Both Tables 16 and 17 are courtesy of Julie Parle, who generously provided me with a full set of statistics of the Natal Government Asylum admissions and general patient records. See also, Julie Parle. 'Fools on the Hill: The Natal Government Asylum and the Institutionalisation of Insanity in Colonial Natal,' in *Journal of Natal and Zulu History*, 19, 1999-2001, 1-39; and Julie Parle. 'Chapter 2 – Fools on the Hill,' in *States of Mind*.

Chronic	2.7	4.8	4.5	1.8	4.0
Recurrent	1.0	3.7	2.7	0.8	1.5
Puerperal	0.0	1.4	0.6	0.1	0.3
Senile	0.1	0.5	0.2	0.1	0.3
Excited (1904/5)	0.1	0.0	0.0	0.0	0.3
Recent (1908)	3.4	3.7	3.8	1.6	7.0
Alternating Insanity (1908)	0.0	0.5	0.3	0.0	0.0
Delusional Insanity: (1908)	0.0	0.0	0.0	0.0	0.0
(a) Systematised	0.8	0.7	1.4	0.3	0.6
(b) Non-systematised	1.0	0.2	0.3	1.4	0.6
Volitional Insanity: (1908)					
(a) Impulse	0.1	0.0	0.0	0.1	0.0
(b) Obsession	0.1	0.0	0.2	0.0	0.0
(c) Doubt	0.0	0.0	0.0	0.0	0.0
Moral Insanity (1908)	0.0	0.5	0.2	0.1	0.0
Dementia:					
Primary	1.0	1.1	0.3	1.6	1.2
Secondary	5.6	3.4	3.6	6.0	5.8
Senile	1.9	3.2	2.9	1.8	1.8
Organic (i.e., from Tumours, Coarse Brain Disease, &c.,)	1.2	0.0	1.4	0.8	0.0
Not Insane	0.2	0.0	0.3	0.1	0.0

Table 17: Showing the Probable Cause of Insanity in the Patients Admitted to the Natal Government Asylum, 1895-1909

Probable Cause	Aetiology As A Percentage Of Admissions In Categories Of Race And Sex											
	Male				Female				Total			TOTAL
	E	N	I	Total	E	N	I	Total	E	N	I	
				M				F				
PHYSICAL:												
Intemperance in Drink/Alcohol	18.2	1.3	3.1	7.3	2.5	1.6	0.0	1.9	12.7	1.3	2.6	5.9
Intemperance Sexual	0.4	0.0	0.0	0.1	0.4	0.0	0.0	0.2	0.4	0.0	0.0	0.1
Venereal Disease or Syphilis	1.4	0.0	0.3	0.5	0.4	0.0	0.0	0.2	1.0	0.0	0.3	0.4
Self Abuse (Sexual)	1.0	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.6	0.0	0.0	0.2
Over Exertion	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sunstroke	0.6	0.0	0.6	0.3	0.0	0.0	0.0	0.0	0.4	0.0	0.5	0.2

Accident or Injury	1.4	0.8	0.3	0.9	0.7	0.0	0.0	0.4	1.1	0.7	0.3	0.8
Pregnancy	0.0	0.0	0.0	0.0	0.7	3.3	1.5	1.7	0.3	0.7	0.3	0.4
Change of Life	0.0	0.0	0.0	0.0	1.1	0.0	0.0	0.6	0.4	0.0	0.0	0.1
Fevers	0.8	0.0	0.0	0.3	0.7	0.0	0.0	0.4	0.8	0.0	0.0	0.3
Privation and Starvation	0.4	0.3	0.0	0.3	0.7	0.0	0.0	0.4	0.5	0.2	0.0	0.3
Old Age	1.0	0.4	0.3	0.6	3.2	0.5	0.0	1.9	1.8	0.4	0.3	0.9
Other Bodily Diseases and Disorders	3.7	0.6	0.3	1.6	2.5	0.5	2.9	1.9	3.3	0.6	0.8	1.6
Previous Attacks	5.2	6.3	5.0	5.7	11.5	5.4	0.0	7.9	7.4	6.1	4.1	6.3
Heredity	3.3	2.1	1.2	2.3	7.2	2.7	0.0	4.7	4.7	2.2	1.0	2.9
Congenital Defect Ascertained	3.1	1.3	0.3	1.7	4.0	0.0	0.0	2.1	3.4	1.0	0.3	1.8
Parturition and the Puerperal State/Puerperium	0.0	0.0	0.0	0.0	4.0	1.1	1.5	2.6	1.4	0.2	0.3	0.7
Lactation	0.0	0.0	0.0	0.0	0.7	0.0	0.0	0.4	0.3	0.0	0.0	0.1
Uterine and Ovarian Disorders	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Puberty/Adolescence	1.0	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.6	0.0	0.0	0.2
Epilepsy	2.7	2.8	0.9	2.4	1.4	0.5	0.0	0.9	2.3	2.3	0.8	2.0
Insangu Smoking	0.0	1.5	5.0	1.7	0.0	0.0	0.0	0.0	0.0	1.2	4.1	1.3
Exigencies and Privations Due to War	3.3	0.6	0.9	1.6	2.2	0.0	0.0	1.1	2.9	0.4	0.8	1.4
Other Ascertained Causes (incl. Epilepsy and Insangu Smoking)	1.0	1.0	1.2	1.0	1.4	0.0	0.0	0.8	1.1	0.8	1.0	1.0
Congenital Fright	0.2	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0
Imprisonment	0.0	0.0	0.0	0.0	0.0	0.5	0.0	0.2	0.0	0.1	0.0	0.0
Paralysis	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.2	0.1	0.0	0.0	0.0
Influenza	0.2	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0
Hemiplegia	0.2	0.4	0.0	0.3	0.4	0.0	0.0	0.2	0.3	0.3	0.0	0.2
Infantile Paralysis	0.2	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0
Brain Tumour	0.2	0.1	0.0	0.1	0.0	0.0	0.0	0.0	0.1	0.1	0.0	0.1
Drug Habit	0.4	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.3	0.0	0.0	0.1
Unknown	35.1	62.2	67.6	54.3	35.3	58.7	67.6	47.5	35.1	61.5	67.1	52.6

Appendix J:

Image 7: The body of a newborn baby that was found in an open veld in Orlando, Soweto on the 20th July 2010. The body of the female infant was slightly burnt, wrapped in a white linen cloth and surrounded by rotting food and other debris.⁸



⁸ 'Take Your Unwanted Child to a Shelter,' in *The Times*, Thursday 22nd July 2010; and 'Outrage over Dumped Baby,' in *The Times*, Wednesday 21 July 2010.

Appendix K:

Summary of Court Cases

Brief Note on Tabulated Case Summaries:

The following six tables present a summary of the thirty-five cases of infanticide and concealment of birth found in the records of the Registrar of Supreme Court and Attorney General's Office files. Each table provides information relating to the court trial, statistical data, investigative process and eventual outcome of the case. Table 18 includes the archival reference for the case and, for ease of navigation, the year and name of accused columns are repeated in each table thereafter. In cases where data is missing, this implies that the records were unclear or simply did not contain such information.

Table 18: Showing Details Relating to Selected Court Cases such as the Charge Proffered; Place, Time and Jurisdiction of Court Case; and Plea, 1869-1933								
	Year	PAR Reference	Name of Accused	Crime	Date of Court Session	Court	District	Plea
1	1869	RSC 1/1/18-11/1869; AGO I/8/11-22A/1869	Kate Baatjes	Culpable Homicide and Malicious neglect and exposing an infant, Kate Baatjes did unlawfully cast, throw and expose the child upon the ground in Longmarket Street and highway and of such exposure, abandonment and for want of due care and attention requisite to any infant, the said child did become sick, weak, languid, distempered and did languish and was thus died.	22 March 1869	Supreme Court, Pietermaritzburg [hereafter PMB]	PMB	Not Guilty
2	1869	RSC 1/1/18-15/1869	Sarah	Infanticide	21 June 1869	Supreme Court, PMB	PMB	Not Guilty
3	1870	AGO I/1/36-5/1870	Charlotte Pearson	Contravening the Provisions of Ordinance No. 22 of 1846 entitled "Ordinance for Punishing the Concealment of the Birth of Children within the District of Natal."	16 February 1870	Durban Circuit Court	Durban	Not Guilty
4	1875	RSC 1/1/22-55-1875	Eliza Jane Dynes	Infanticide	20 November 1875	Supreme Court, PMB	PMB	Not Guilty

5	1877	AGO I/1/56-27/1877	Nobayeni	Contravening the Provisions of Ordinance No. 22 of 1846 , etc.	23 April 1877	Durban Circuit Court	Inanda	Not Guilty
7	1880	AGO I/173-95/1880	Unomlota	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	20 October 1880	Durban Circuit Court	Durban	Not Guilty
6	1880	AGO I/1/72-77/1880	Rose	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	18 August 1880	Durban Circuit Court	Durban	Not Guilty
8	1886	RSC 1/1/39-42/1886; AGO I/1/107-97/1886	Nomacala Nxumalo	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	4 August 1886	Supreme Court, PMB	Umgeni	Not Guilty
9	1886	RSC 1/1/39-62/1886; AGO I/1/110-137/1886	Katrina	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	4 November 1886	Supreme Court, PMB	Umvoti	Guilty
10	1890	RSC 1/1/45-15/1890; AGO I/1/136-37/1890	Nguda	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	4 June 1890	Supreme Court, PMB	Impendhle	Guilty
11	1894	RSC 1/1/53-8/1895; AGO I/1/174-8/1895	Hester Cinde	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	9 February 1895	Supreme Court, PMB	Umgeni	Not Guilty
12	1895	AGO I/1/174-11/1895	Unobesutu alias Sarah	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	14 February 1905	Durban Circuit Court	Durban	Guilty
13	1896	AGO I/1/184-61/1896	Nomtingili	Infanticide	17 August 1896	Klip River Circuit Court	Ladysmith	Guilty
14	1898	AGO I/1/202-132/1898	Hester, alias Bibi	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	19 October 1898	Klip River Circuit Court	Ladysmith	Not Guilty
18	1899	CSO 1606-1899/2039; CSO 1619-1899/5005; AGO I/8/63-430A/1898	Johanna Cathrina Schraivesande	Culpable Homicide	23 February 1899	Newcastle Circuit Court	Newcastle	Not Guilty
19	1899	CSO 1606-1899/2039; CSO 1619-1899/5005; AGO I/8/63-430A/1898	P Schraivesande	Culpable Homicide	23 February 1899	Newcastle Circuit Court	Newcastle	Not Guilty
16	1899	1/LDS 3/3/13-261/1899	Nomafa	Infanticide	22 February 1899	Klip River Circuit Court	Ladysmith	Not Guilty
15	1899	RSC 1/1/58-1/1899; AGO I/1/204-1/1899	Nobatagati	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	4 February 1899	Supreme Court, PMB	PMB	Not Guilty
17	1899	AGO I/8/66-279A/1899	Mongoposa	Infanticide	14 July 1899	PMB Magistrate Court	PMB	Not Guilty
20	1900	AGO I/1/223-55/1900	Nomagwababa	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	25 August 1900	Weenen District Court	Weenen	Not Guilty
21	1901	RSC 1/1/61-3/1901; AGO I/1/226-41/1901	Ntombizonki	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	4 February 1901	Supreme Court, PMB	Umgeni	Not Guilty
22	1901	RSC 1/1/63-22/1901;	Nocabane	Contravening the Provisions of Ordinance No. 22	4 August 1901	Supreme Court,	PMB	Not

		AGO I/1/233-226/1901		of 1846, etc.		PMB		Guilty
23	1902	RSC 1/1/65-2/1902; AGO I/1/238-11/1902	Jane alias Nobelungu	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	4 February 1902	Supreme Court, PMB	PMB	Not Guilty
24	1902	AGO I/1/242- 67/1902	Elizabeth Kanuka	Contravening the Provisions of Ordinance No. 22 of 1846, etc.	22 April 1902	Klip River Circuit Court	Klip River	Guilty
26	1905	AGO II/1/6-CPM50/1905	Ncikwana	Concealment of Birth	10 February 1905	Umgenti Magistrates Court	Umgenti	Not Guilty
25	1905	AGO II/1/6-CPM6/1905	Nomgqibelo	Concealment of Birth	20 December 1904	Umgenti Magistrates Court	Umgenti	Not Guilty
27	1905	AGO 1/4/159-117/1905	Rosaline?	Infanticide	27 January 1905	Durban Circuit Court	Umgenti	
28	1908	AGO I/1/336-64/1908	Edward Layton	Murder	1 July 1908	Durban Circuit Court	Durban	Not Guilty
			Rose Bessie Layton	Murder	1 July 1908	Durban Circuit Court	Durban	Not Guilty
			Ruby May Layton	Murder	1 July 1908	Durban Circuit Court	Durban	Not Guilty
29	1908	AGO I/1/336-65/1908	Bertha Clarisse	Murder	7 July 1908	Durban Circuit Court	Durban	Not Guilty
31	1914	AGO I/1/406-62,63/1914; RSC 1/1/115-20/1914	Richard Thornton Hamilton Harrison	Infanticide and Incest	19 February 1915	Supreme Court, PMB	Newcastle	Not Guilty
30	1914	1/LDS 3/4/1/8-L25/7/14	Ntombi Radebe	Concealment of Birth		Ladysmith Magistrates Court	Ladysmith	
32	1918	AGO 1/1/435-15/1918	Muniamma	Infanticide	20, 21 May 1918	Verulam Magistrates Court	Inanda	Not Guilty
			Janki	Infanticide	20, 21 May 1918	Verulam Magistrates Court	Inanda	Not Guilty
33	1919	RSC 1/1/126-16/1919	Lily Theron	Infanticide, as provided by Section 9 of 1910	16 September 1919	Supreme Court, PMB	Richmond	Not Guilty
34	1920	RSC 1/1/127-20/1920; RSC 1/1/127-21/1920	Ushraff Khan	Infanticide, as provided by Section 9 of 1910, and Culpable Homicide	28 September 1920	Supreme Court, PMB	Dundee	Not Guilty
35	1933	RSC1/1/158-16/1933	Elizabeth Thompson Nimmo	Infanticide or alternatively Concealment of Birth	5 December 1933	Supreme Court, PMB	Estcourt	Not Guilty

Table 19: Showing Details Relating to Selected Court Cases, such as Respective Attorneys; Magistrates; and Place and Time of Alleged Crime, 1869-1933

Year	Name of Accused	For the Crown	For the Accused	Presiding Judge	Magistrate	Date of Crime	Place/ Vicinity of Crime
1869	Kate Baatjes	Michael Henry Gallwey	Mr Dryden		John Bird	4 February 1869	Longmarket Street, PMB
1869	Sarah	Michael Henry Gallwey	Mr Dryden			20 May 1869	Aasvogel Krantz, PMB
1870	Charlotte Pearson				John Davies	19 December 1869	Pinetown
1875	Eliza Jane Dynes	Michael Henry Gallwey	Mr Shepstone			7 October 1875	PMB
1877	Nobayeni					January 1877	Inanda Location
1880	Unomlota					10 Aug 1880	Stamford Hill, Durban
1880	Rose					30 June 1880	Royal Hotel, Durban
1886	Nomacala Nxumalo	Michael Henry Gallwey	Mr Dulcken		James Forder	19 May 1886	Edendale, PMB
1886	Katrina	Michael Henry Gallwey	Undefended			30 August 1886	Groot Riet Vley Farm, Umvoti
1890	Nguda	Michael Henry Gallwey	Undefended			20 March 1890	Loteni, PMB
1894	Hester Cinde		Mr Scott		James Forder	10 December 1894	Edendale, PMB
1895	Unobesutu alias Sarah			Justice Beaumont		4 January 1895	Botanic Gardens Road, Durban
1896	Nomtingili			Justice Turnbull		25 May 1896	Field in Ladysmith
1898	Hester, alias Bibi		Undefended	Justice Beaumont		April 1898	Premises of Major Arthur Thomas Swaine
1899	Johanna Cathrina Schraivesande		Mr Watt	Justice Beaumont		3 November 1898	Water closet at Schraivesande Home
1899	P Schraivesande		Mr Watt	Justice Beaumont		3 November 1898	Water closet at Schraivesande Home
1899	Nomafa					17 February 1899	Found on Dr Anderson's premises
1899	Nobatagati		Undefended	Justice Mason		25 November 1898	154 Loop Street, PMB
1899	Mongoposa					9 July 1899	Loop Street, PMB
1900	Nomagwababa		Undefended			22 April 1900	Bushman's River, Weenen
1901	Ntombizonki	R. F. Morcom	Undefended	Justice Mason	J. C. C. Chadwick	23 November 1900	Field in Edendale
1901	Nocabane	R. F. Morcom	Undefended	Justice		7 June 1901	Charlie Browns Farm,

				Beaumont			Camperdown
1902	Jane alias Nobelungu	R. F. Morcom	Undefended	Chief Justice Henry Bale		31 December 1901	338 Pietermaritz Street, PMB
1902	Elizabeth Kanuka	G. L. Fraser	Mr Carter	Justice Beaumont	Cecil Gower Jackson	19 March 1902	Bessiefontein, Klip River
1905	Ncikwana				Jasper Lennon	4 February 1905	Edendale, PMB
1905	Nomgqibelo						Boom Street, PMB
1905	Rosaline						Dorp Spruit, Durban
1908	Edward Layton	David Calder - Clerk of the Peace	Eugene Renaud	Chief Justice Henry Bale		28 January 1908	Fern Villa Hotel, Durban and Zwaartkop Railway Stations
1908	Rose Bessie Layton	David Calder - Clerk of the Peace	Eugene Renaud	Chief Justice Henry Bale		28 January 1908	Fern Villa Hotel, Durban and Zwaartkop Railway Stations
1908	Ruby May Layton	David Calder - Clerk of the Peace	Eugene Renaud	Chief Justice Henry Bale		28 January 1908	Fern Villa Hotel, Durban and Zwaartkop Railway Stations
1908	Bertha Clarisse	David Calder - Clerk of the Peace	R.L. Goulding		George Brunton Warner	2 February 1908	Fountain Lane, Durban
1914	Richard Thornton Hamilton Harrison	Edward Wingfield Douglas	Accused	Justice Hathorn		19 June 1914	Greyridge, Newcastle
1914	Ntombi Radebe						Ladysmith
1918	Muniamma				H. C. Ward	23 January 1918	Verulam
1918	Janki				H. C. Ward	23 January 1918	Verulam
1919	Lily Theron	John Barclay Lloyd	J.G.H. Randles	Justice Tatham		28 May 1919	Richmond
1920	Ushraff Khan	W. S. Bigby	Andrew Fox	Justice Hathorn		20 June 1920	Dundee
1933	Elizabeth Thompson Nimmo	Cyril Chester Jarvis	J.R. Brokensha	Justice Carlisle	C. W. Mitchell	16 July 1933	Estcourt

Table 20: Showing Statistical Data on Selected Court Cases such as Sex, Age, Marital Status, Occupation, and Existing Children of the Accused; and Sex, Birth Date and Age of Deceased Infant, 1869-1933

Year	Name of Accused	Sex	Age	Race	Marital Status	Occupation of Accused	Existing Children	Infant Sex	Infant Birth Date	Infant Age
1869	Kate Baatjes	F		Coloured	Unknown	Unknown		Female, Neela Baatjes	4 August 1868	18 months
1869	Sarah	F	15	Native	Single	Domestic Servant	No	Male	20 May 1869	Died soon after birth
1870	Charlotte Pearson	F		European	Widow	Farm Owner	Yes	Male	19 December 1869	Died soon after birth
1875	Eliza Jane Dynes	F		European	Unknown	Domestic Servant		Female	7 October 1875	Died soon after birth
1877	Nobayeni	F		Native	Unknown	Unknown		Unknown	January 1877	Died soon after birth
1880	Unomlota	F		Native	Married	Domestic Servant		Female	10 August 1880	Died soon after birth
1880	Rose	F		Native	Single	Nurse, Worked in Royal Hotel		Male	30 June 1880	Died soon after birth
1886	Nomacala Nxumalo	F		Native	Single	General Farm Labourer	Yes, 1st child alive. 2nd died a few days after birth, 3rd still-born	Female	19 May 1886	Died soon after birth
1886	Katrina	F		Native	Single	General Farm Labourer		Female	30 August 1886	Died soon after birth
1890	Nguda	F		Native	Married	Unknown		Female	20 March 1890	Died soon after birth
1894	Hester Cinde	F		Native	Single	Shop Assistant, worked in PMB		Female	10 December 1894	Died soon after birth
1895	Unobesutu alias Sarah	F		Native	Single	Domestic Servant		Female	4 January 1895	Died soon after birth
1896	Nomtingili	F		Native	Single	Domestic Servant	None	Female	25 May 1896	Died soon after birth
1898	Hester, alias Bibi	F		Coloured	Single	Domestic Servant	None	Female	April 1898	Died soon after birth
1899	Johanna Cathrina Schraivesande	F	30	European	Married	Housewife	Yes, young son	Male	3 November 1898	Died soon after birth
1899	P Schraivesande	M	40	European	Married	Secretary of Natal Woollen Factory, Newcastle	Yes, young son	Male	3 November 1898	Died soon after birth
1899	Nomafa	F		Native	Single	Domestic Servant	Yes,	Female	17 February 1899	Died soon after birth

							“illegitimate” son: 3yrs			
1899	Nobatagati	F		Native	Single	Domestic Servant		Male	25 November 1898	Died soon after birth
1899	Mongoposa	M		Native	Single	Unknown	No	Female - Indian	9 July 1899	Died soon after birth
1900	Nomagwababa	F	18	Native	Single	Domestic Servant	No	Female	22 April 1900	Died soon after birth
1901	Ntombizonki	F		Native	Married	School Pupil	No	Female	23 November 1900	Died soon after birth
1901	Nocabane	F		Native	Married [but not living with her husband]	General Farm Labourer	No, but previous child also died a week after birth	Male	7 June 1901	Died soon after birth
1902	Jane alias Nobelungu	F		Native	Single	Domestic Servant	No	Unknown	31 December 1901	Died soon after birth
1902	Elizabeth Kanuka	F	17	Native	Single	General Farm Labourer	No	Male	19 March 1902	Died soon after birth
1905	Ncikwana	F		Native	Unknown	Unknown		Female	4 February 1905	Died soon after birth
1905	Nomgqibelo	F		Native	Single	Laundress		Unknown		
1905	Rosaline?	F		Native	Unknown	Unknown		Female	10 January 1908	Died soon after birth
1908	Edward Layton	M		European	Widowed	Employee of the Central South African Railways	Yes, 2 daughters	Male	28 January 1908	Died soon after birth
1908	Rose Bessie Layton	F	19	European	Single	Unemployed	No	Male	28 January 1908	Died soon after birth
1908	Ruby May Layton	F	17	European	Single	Unemployed	No	Male	28 January 1908	Died soon after birth
1908	Bertha Clarisse	F		European	Single	Shop Assistant, worked at Madam Anthony, West Street	No	Female	2 February 1908	Died soon after birth
1914	Richard Thornton Hamilton Harrison	M	39	European	Widowed	Farm Owner	Yes, 2 daughter: 16 and 18yrs and 2 sons: 7 and 5yrs	Unknown	19 June 1914	Died soon after birth
1914	Ntombi Radebe	F		Native	Unknown	Unknown		Unknown		
1918	Muniamma	F	35	Indian (Free)	Married	General Farm Labourer, Umdhloti Valley Estate Mount Moreland	Yes	Female	22 January 1918	Died soon after birth
1918	Janki	F	18	Indian (Free)	Divorced	General Farm Labourer, Umdhloti Valley Estate	Yes, 4yrs	Female	22 January 1918	Died soon after birth

						Mount Moreland				
1919	Lily Theron	F	22	European	Single	Shop Assistant, Worked in a Grocer and Confectioner's shop	Yes, son: 2yrs	Female	28 May 1919	Died soon after birth
1920	Ushraff Khan	M	40	Indian	Married	Unknown		Unknown		Died within one week of its birth
1933	Elizabeth Thompson Nimmo	F	26	European	Single	School Teacher	None	Male	16 July 1933	Died immediately after born

Table 21: Showing Details Relating to Selected Court Cases, such as the Cause of Death to the Infant; Relationship between Accused and the Deceased Infant; Types of Evidence Produced in Court; and the Person Responsible for Reporting the Incident to the Authorities and their Relationship to the Accused, 1869-1933						
Year	Name of Accused	Cause of Death	Relationship to Infant	Types of evidence produced in court	Reported By?	Relationship to the Accused
1869	Kate Baatjes	Died of Mesenteric Disease, aggravated by neglect, exposure to cold and damp, from improper food given at irregular intervals.	Mother	Post-mortem, death certificate.		
1869	Sarah	Excessive bleeding from the umbilical cord. Cut too closely to naval.	Mother	None.	William Abraham Swanepoel	Employer
1870	Charlotte Pearson	Secret Burying - claims the child was still born.	Mother	Medical Report	Philip Jordan Payn , lived in the vicinity, also a farm owner.	Neighbour
1875	Eliza Jane Dynes	Child found in a privy cesspool.	Mother	Medical Report		Unknown
1877	Nobayeni	Secret Burying.	Mother	None.		Unknown
1880	Unomlota	Infant was either suffocated or by some injuries to the head that was inflicted with a sharp pointed instrument. The body was placed on an ant heap but had been dragged away and mutilated by dogs or some other animal.	Mother	Medical Report, map or murder scene.	Richard Evelyn Goble	Employer
1880	Rose	Placed child in water closet on the premises of Royal Hotel.	Mother	Post-mortem	Sodingo, also employed at the Royal Hotel, found the child in the water closet.	Co-worker
1886	Nomacala Nxumalo	Post Mortem found that there were dog bites on the neck. Covered it with grass in a certain garden.	Mother	Medical Report	Joel Nsimanga's daughter Mantyebe.	None
1886	Katrina	Secret burying in a ditch.	Mother	Medical Report	Hans Kleinboy, accused lived with him and his wife Martha.	Co-worker
1890	Nguda	Secret burying.	Mother	Depositions	Nagusuka	Mother-in-Law
1894	Hester Cinde	Body was found at the bottom of a pit of a privy. Asphyxia, but District Surgoen found no signs of violence.	Mother	Medical Report, map or murder scene.	Luke Msimang	Owner of neighbouring house.

1895	Unobesutu alias Sarah	Secretly disposed of body by covering it up in a rubbish heap on premises at the Botanic Gardens.	Mother	Medical Report	Upitaoita, domestic servant in neighbouring house found infant body in rubbish heap.	None
1896	Nomtingili	Exposure and covered it up in a field in Ladysmith.	Mother	Medical Report	Jane Ellis	Employer
1898	Hester, alias Bibi	Secret burying.	Mother	Depositions	Major Arthur Thomas Swaine of the Royal Irish Rifles.	Employer
1899	Johanna Cathrina Schraivesande	Strangulation and fracturing of the skull	Mother	Medical Report	Indians in the employ of Newcastle Corporation who were cleaning out the water closet	None
1899	P Schraivesande	Strangulation and fracturing of the skull.	Father	Medical Report	Indians in the employ of Newcastle Corporation who were cleaning out the water closet	None
1899	Nomafa	Excessive bleeding from the umbilical cord. Cut too closely to naval.	Mother	Medical Report	Dr Anderson, employer.	Employer
1899	Nobatagati	Neglect, excessive bleeding from the umbilical cord and want of proper attention after birth.	Mother	Map, cap, hat, coat, pouch, trousers, shirt, and a blanket.	Leah alias Ntobana reported to John Bruce, employer. Ntobana found the body on his premises at the bottom of the garden.	Co-worker
1899	Mongoposa	Accused's mother was a licensed midwife and she was in fact responsible for the scraping of the infant's scalp. Scalp had a sharp object inserted into it and cause of death was a combination of shock, haemorrhage, and exhaustion.	None - son of possible local midwife	Medical Report	Dr Walter Galbraith Wight, District Surgeon, Umgeni Division - Also responsible to final delivery of child.	District Surgeon
1900	Nomagwababa	Threw baby into Bushman's River.	Mother	Medical Report	Newman Hall Robinson, was informed by another servant that there was a baby in the river.	Employer
1901	Ntombizonki	Secret burying.	Mother	Medical Report	Eliza Msane, Class leader. Accused was in her class.	Teacher/Class Leader
1901	Nocabane	Buried it in a field in Camperdown, but a piece of paper was stuffed in the mouth. Suffocation.	Mother	Medical Report, map, piece of paper that was stuffed in the baby's mouth.	Nomapondo	First wife of Husband
1902	Jane alias	Disposed of the child by throwing it	Mother	Medical Report	Sarah Borland	Employer of

	Nobelungu	into the bucket of a privy at PMB.				Jane.
1902	Elizabeth Kanuka	Ill-nutrition and neglect. Covered the body of the dead child with stones.	Mother	Post-mortem	Mali, 12 years of age, cousin to Elizabeth Kanuka.	Cousin
1905	Ncikwana	Secret burying.	Mother	Medical Report	Boya ka Hlozana	Kraal Chief and uncle to accused.
1905	Nomgqibelo	Not stated.	Mother	None.	Not stated.	Not stated.
1905	Rosaline?	Asphyxia, and strangulation or drowning.		Blades of grass found with the body of deceased infant.	Abraham van Amsterdam, carpenter, working building near the Native Police Barracks.	None
1908	Edward Layton	Asphyxia.	Maternal Grandfather	Photographs, handkerchief, items of clothing, material, mattress, wool blanket, visitors book.	Pancham, Indian in the employ of the NGR and lived at Zwaartkop. Discovered the body at train station.	None
1908	Rose Bessie Layton	Asphyxia.	Mother	Photographs, handkerchief, items of clothing, material, mattress, wool blanket, visitors book.	Pancham, Indian in the employ of the NGR and lived at Zwaartkop. Discovered the body at train station.	None
1908	Ruby May Layton	Asphyxia.	Maternal Aunt	Photographs, handkerchief, items of clothing, material, mattress, wool blanket, visitor's book.	Pancham, Indian in the employ of the NGR and lived at Zwaartkop. Discovered the body at train station.	None
1908	Bertha Clarisse	Fracture of the skull, haemorrhage and shock caused by some violence.	Mother	Sketch of house, and medical report	Ivanikoffe Clarisse, took body to mortuary and asked Dr Birtwell for death certificate.	Brother to Accused
1914	Richard Thornton Hamilton Harrison	Baby thrown into stove/fireplace.	Father, but also alleged grandfather	Map, blanket, and coat.	Florence Maud, mother of deceased child and daughter of Harrison.	Daughter
1914	Ntombi Radebe	Not stated.		None.		
1918	Muniamma	Asphyxia and strangulation.	Maternal Grandmother	None.	Jambu Naidu, ex-boyfriend of Janki and possible father of child.	Ex-boyfriend
1918	Janki	Asphyxia and strangulation.	Mother	None	Jambu Naidu, ex-boyfriend of	Ex-boyfriend

					Janki and possible father of child.	
1919	Lily Theron	Asphyxia, fracture of lower jaw and exposure to cold.	Mother	Map	Mbobo, sanitary man for Richmond Municipality. Lived near Theron premises.	Lived in the vicinity.
1920	Ushraff Khan			None.		
1933	Elizabeth Thompson Nimmo	Baby thrown out of moving train - and death due to a fractured skull.	Mother	Map and photograph [this is not included though]	Christoffel Philippus le Roux, Ganger of SA Railways and Harbours, stationed at Frere.	None

Table 22: Showing Details Relating to Selected Court Cases, such as Father of Deceased Infant; Possible Accomplices; District Surgeon Responsible for Conducting the Post-Mortem; the Number of Witnesses Questioned, 1869-1933						
Year	Name of Accused	Father of Infant	Possible Accomplice	District Surgeon	No. Of Witnesses	Witnesses Questioned
1869	Kate Baatjes	Unknown	None	Dr Charles Miller Aldridge	9	District Surgeon [hereafter DS].
1869	Sarah	Unknown	None	Dr Charles Miller Aldridge	Not included.	
1870	Charlotte Pearson	As Pearson is a widow, father unknown.	Elizabeth alias Umgubugana	Dr William Henry Addison	4	Domestic Servants, DS, Philip Jordan Payne-Neighbour, Mafuta - worked for Payne.
1875	Eliza Jane Dynes	Unknown	None	Dr Charles Gordon	3	
1877	Nobayeni	Unknown	None	None	2	
1880	Unomlota	Unknown	None	Dr William Henry Addison	11	DS, Hospital Superintendent, Police Constable.
1880	Rose	Mother did not know what the father's name was.	None	Dr William Henry Addison	9	Workers at Royal Hotel, Thomas Crane – proprietor of Hotel, Police Constable, Police Superintendent.
1886	Nomacala Nxumalo	Unknown	None	Dr Charles Ward	7	Edendale residents, DS.
1886	Katrina	Umvoti Policeman	None	Dr Daniel Birtwell	3	Co-workers, DS.
1890	Nguda	Lala	None	None	5	Mother in Law, Neighbours.
1894	Hester Cinde	Unknown	None	Dr Dugald Campbell Watt	12	Grandmother, Mother, Neighbour, Policeman, Elder women in Edendale.
1895	Unobesutu alias Sarah	Unknown	None	Dr Daniel Birtwell	11	Neighbouring domestic servants, DS, Neighbours - the Thompsons, Mrs Cullen - Mistress and Mrs O'Flaherty - Owners of house, Police Constable.
1896	Nomtingili	Unknown	None	Dr Henry Charles Procter	5	Employer, DS, neighbour, fellow servants.
1898	Hester, alias Bibi	Unknown	None	Dr Henry Charles Procter	4	DS, Police Superintendent, Native Sergeant, Major Arthur Thomas Swaine.
1899	Johanna Cathrina Schraivesande	Not the husband: P Schraivesande	None	Dr JE Briscoe	Not included.	
1899	P Schraivesande	Mother - Johanna C	None	Dr JE Briscoe	Not	

		Schravesande			included.	
1899	Nomafa	Unknown	None	Dr Henry Charles Procter	2	Dr Procter and Dr John George Anderson, employer.
1899	Nobatagati	Unknown	None	Dr Charles Ward	4	Employer, fellow servant, DS, Police Constable.
1899	Mongoposa	Ramasamy	Mother - who was a licensed midwife.	Dr Walter Galbraith Wight	4	DS, mother of Accused, father of child.
1900	Nomagwababa	Unknown	None	Dr James Bunney Brewitt	12	Employer, Induna at Edendale, father of Accused, fellow servants, Police Constable.
1901	Ntombizonki	Unknown	None	Dr Dugald Campbell Watt	6	DS, Class leader - Eliza Msane, Chief at Edendale, brother-in-law, Accused's niece.
1901	Nocabane	Njuja (Nocabane is the second wife)	None	Dr Joseph Adam Nolan	7	DS, Natal Police Sergeant, Accused's husband's first wife and nephew.
1902	Jane alias Nobelungu	Lover in Durban	None	Dr Charles Ward	5	Employer, fellow servant, DS, Constable, and House surgeon at Greys Hospital.
1902	Elizabeth Kanuka	ManKomeni	None	Henry Thomas Platt	4	Maternal cousin.
1905	Ncikwana	Unknown	None	Dr Dugald Campbell Watt	4	DS, employer, Edendale residents, Police Constable.
1905	Nomgqibelo	Unknown	None	Dr Charles Ward	3	Neighbours.
1905	Rosaline?	Unknown	None	Dr Charles Ward	6	Possible accused - Rosaline, Father of Rosaline, Police Constable, fellow mission station resident: van Amsterdam, DS.
1908	Edward Layton	Unknown	Father and sister	Dr Charles Ward	24	Proprietor of Hotel, guests and employees of Hotel, passengers on ship, railway workers, Police Constable.
1908	Rose Bessie Layton	Unknown	Father and sister	Dr Charles Ward	24	Proprietor of Hotel, guests and employees of Hotel, passengers on ship, railway workers, Police Constable.
1908	Ruby May Layton	Unknown	Father and sister	Dr Charles Ward	24	Proprietor of Hotel, guests and employees of Hotel, passengers on ship, railway workers, Police Constable.
1908	Bertha Clarisse	Aliside Jettoo	Mother	Dr Daniel Birtwell	8	Detective, Accused's mother, father and brother, father of child, District Surgeon, Health Officer.
1914	Richard Thornton Hamilton Harrison	Richard Thornton Hamilton Harrison / Nkwetshi	Unknown	Dr Charles Cooper and Dr John Edward Briscoe	12	Accused's daughters: Florence Maud, Blanche, DS, boarder on farm, Constable, Sergeant, Nkwetshi: alleged father of deceased infant.
1914	Ntombi Radebe	None	None	None	Not included.	None

1918	Muniamma	Jambu Naidu	Daughter and mother of baby	William James Hill	7	Health Officer, Midwife, Mount Moreland Indian labourers, Jambu: alleged father of deceased infant.
1918	Janki	Jambu Naidu	Mother	William James Hill	7	Health Officer, Midwife, Mount Moreland Indian labourers, Jambu: alleged father of deceased infant.
1919	Lily Theron	Unknown	Mother	Alexander Edward Carte	6	DS, Accused's mother, Employee: Margaret Walford, Constable, Draughtsman.
1920	Ushraff Khan	Noorbi alias Noorjan alias Sookdaye – [Mother]	None		12	
1933	Elizabeth Thompson Nimmo	Unknown	Sister - although she claims not to have known	Bertram James Brewitt	6	Owner of boarding house where Accused lived, Accused twin sister, fellow train passengers, railway station workers, Head Constable of Frere Police.

Table 23: Showing Details Relating to Selected Court Cases, such as Alleged Motives, Judgements, Sentencing and Riders, 1869-1933					
Year	Name of Accused	Possible Motive or reasons given by Accused	Judgment	Sentence	Rider
1869	Kate Baatjes		Guilty of Assault	14 Months with hard labour	She only stayed in until the 26th of August 1869
1869	Sarah		Not Guilty	Discharged	
1870	Charlotte Pearson	Claimed it was a still-birth.	Not Guilty		
1875	Eliza Jane Dynes		Not Guilty	Discharged	
1877	Nobayeni		Guilty	6 Months imprisonment	
1880	Unomlota		Not Guilty	Discharged	
1880	Rose	Co-workers believed that it was white baby.	Guilty of Infanticide	6 Months imprisonment with hard labour	
1886	Nomacala Nxumalo	The Headman Samuel Kumalo, said that she was an Usifebe meaning prostitute and she claims the baby was still born.	Guilty	12 Months hard labour	
1886	Katrina	DS reported that the skin was whitish, could have been mixed race.	Guilty	10 Months hard labour	
1890	Nguda		Guilty	12 Months hard labour	
1894	Hester Cinde		Not Guilty	Discharged	
1895	Unobesutu alias Sarah		Guilty	6 Months imprisonment with hard labour	
1896	Nomtingili		Guilty	24 Months with hard labour	
1898	Hester, alias Bibi		Guilty	24 Months with hard labour	
1899	Johanna Cathrina Schraivesande	Confessed to being guilty of adultery.	Guilty	6 Months with hard labour - Reduced from 24 months	Judge appealed for Recommendation to mercy, because he believed that she was suffering from severe prostration, both mentally and bodily
1899	P Schraivesande	Did not know his wife was pregnant.	Not Guilty	Discharged	

1899	Nomafa		Not Guilty	Discharged	
1899	Nobatagati		Guilty	6 Months with hard labour	
1899	Mongoposa	Lack of knowledge, mal-practice.	Not Guilty	Discharged	
1900	Nomagwababa		Guilty	3 Months hard labour	
1901	Ntombizonki		Guilty	6 Months hard labour	
1901	Nocabane		Guilty	12 Months hard labour	
1902	Jane alias Nobelungu	Claimed it was a still-birth.	Not Guilty 7 to 2	Discharged	
1902	Elizabeth Kanuka	Claimed she did not know what to do with the baby after it was born. Neglect.	Guilty	6 Months imprisonment with hard labour	
1905	Ncikwana		Guilty	2 Months imprisonment with hard labour	
1905	Nomgqibelo		Case Dismissed - Lack of evidence		
1905	Rosaline?				
1908	Edward Layton		Case dismissed	Discharged	
1908	Rose Bessie Layton		Case dismissed	Discharged	
1908	Ruby May Layton		Case dismissed	Discharged	
1908	Bertha Clarisse		Not Guilty	Discharged	
1914	Richard Thornton Hamilton Harrison	Incest or miscegenation	Not Guilty	Case withdrawn after 2nd witness Blanche Harrison was called who said that the whole case was trumped up at the instance of the native Nkwetshi.	None
1914	Ntombi Radebe		Guilty	2 Months imprisonment with hard labour	None
1918	Muniamma	Jambu believed that the mother, Muniamma, 1st Accused, was responsible for killing the child.	Not Guilty, Unanimous	None	None
1918	Janki	Jambu believed that the mother, Muniamma, 1st Accused was responsible for killing the child.	Not Guilty, Unanimous	None	
1919	Lily Theron	She was found to have suffered from transient	Guilty, but mentally	That Lily is ordered to be kept in custody in the PMB gaol pending the signification of his Excellency the	That any female children of tender years of the mother

		mania	disturbed at the time with regards to section 29 of act 38 1916.	Governor's general decision (section 29 (2) of act 38 of 1916)	of Lily, Wilmelina Margaret Theron, be "afforded" protection in view of her callous and inhuman conduct in the present case. This rider was decided as unanimous.
1920	Ushraff Khan		Not Guilty	Discharged	
1933	Elizabeth Thompson Nimmo	Accused not questioned	Guilty to Concealment, Not Guilt to Infanticide	Cautioned and Discharged	None

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