"I am going to burn it, so that it will not be seen!"

Infanticide and the case of Richard Thornton Hamilton Harrison,
Natal, 1846-1917

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infanticide /in-fan-ti-syd/ n. the killing of an infant.

1 Please note that this is a work in progress. Please do not cite without permission.
In 1903, R Paxton of the Mooi River area penned a letter to the Protector of Indian Immigrants regarding one of his employees Sadar Singh. In this letter, he wrote:

Sir,

The bearer of this letter Sadar Singh (Indentured Indian) wishes to see if you can let him have an Indian woman to look after his baby, whose mother died in giving it birth. There's one thing I wish to bring to your notice and that is that he told me he is tired of looking after the child and if he cannot get an Indian woman to look after his child, he will kill that child and then kill himself, so I thought it was best to send him down to you.1

Letters such as these are not uncommon in the records of the Protector of Indian Immigrants.2 Indian men living in the Colony often petitioned to the Protector asking for help in procuring a ‘wife.’ Besides commenting on the specificities of Indenture in Natal and the distortions entailed in the skewed gender ratio in this context, this letter more importantly sheds light on some of the reasons why individuals such as Sadar Singh committed the ‘crime’ of infanticide. He represents only one group of the population present in Natal during this turbulent time, but his experiences of anguish and despair can often be heard echoing in the stories of other individuals that this study will attempt to explore. This letter speaks to the many themes that the larger study is interested in, such as the common perceptions around women’s sexuality and childbearing role, how the stresses of immigrations and urbanisation affected incidents of infanticide in the colony, and how notions of masculinity and misconceptions about the ‘instability of the womb

1 Pietermaritzburg Archives Repository [hereafter PAR], Indian Immigration Department [hereafter II], II 1/19/11477/1903, R Paxton, Falkirk, Mooi River: Sadat Singh wishes to get an Indian woman to look after his baby.

2 For more on letters such as these see, Nafisa Essop Sheik. Labouring under the Law: The Legal Administration of Gender in Colonial Natal, 1860-1910. Thesis (MA) – University of KwaZulu-Natal, 2006.
and mind’ affected verdicts and culpability. But this paper is interested more specifically with the shifting gender and social norms affecting the incidences and prosecution of infanticide; political significance of the charge in different times and places; 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 around infanticide cases.

This paper and the larger study is an investigation of infanticide, and the concealment of birth in Natal starting in 1846 and ending in 1917. It uses this crime of infanticide as a window into the social dynamics of the private and domestic space in colonial Natal, where love, lust, incest and sometimes rape 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 men and women convicted for this ‘crime’ and that the study attempts to resurrect, help to draw out historical continuities with respect to the act of infanticide across boundaries of time and space. 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*, the fact that characters such as these are to be found in the archives, suggests that they attracted the attention of the colonial bureaucracy for a reason, and for this alone cannot be ignored. Penn argues that “in keeping with the turbulent natures they displayed more than two hundred years ago, and consistent with the irrepressible qualities with which they first forced themselves into the historical record, they demanded attention.”3 This previous point is important because critics of the existing

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historiography of individual’s experiences in Natal have tended to point towards a
tendency for the writing of inward looking, exclusivist histories. Many of these
histories fail to link the experiences of different social and racial groups in colonial
Natal and fail to use these comparisons to understand the way 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.

In the broader global context, infanticide became a very contentious subject
during the Victorian period and while many women chose to abort their babies,
hiding their shame, it was nevertheless seen as a criminal act. Infanticide has
historically been committed by men and women throughout 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 primarily because of the way in which the offenders are
constructed. The infanticidal woman or man, is not an abstract legal participant,
who acts outside of any social or emotional context. In time, they came to be
regarded as social causalities 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.

In the earlier part of the 18th century in various geographical contexts,
infanticide was essentially a private and clandestine act, most often carried out by
single poor females. This of course 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
most of the seventeenth and eighteenth 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 most cases suspected of murder if these children were found dead.4

:: english legal genealogies of infanticide ::

According to Mark Jackson in ‘New Born Child Murder,’ during the 17th century in England, many illegitimate children had to be supported and maintained at the expense of parishes.5 The antagonism of local tax-payers, heightened with the moral and religious shame of bearing a bastard child, forced women to conceal their pregnancies and secretly murder their child. And as result of the clandestine nature of the act, witnesses were so rare that the prosecution was ultimately forced to rely on circumstantial evidence. In response to these difficulties and the increase in the number of child murders, in 1624, the “Act to prevent the Destroying and Murthering [sic] of Bastard Children,” was passed.6 According to this Act, if the mother could be shown to have concealed the death of the child then this alone was enough to convict her of its murder. Jackson further states that these ‘bastard-bearers’ were constructed as requiring discipline

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both for their moral deterioration and for the ‘sin’ of bringing an unnecessary economic burden and pressures to the parish.

By the middle decades of the 18th century, shifting attitudes to the medical evidence, 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. The act came to be seen as draconian by the courts, and in practice prosecutors still had to prove that the baby was born alive and that the accused had murdered it. Medical jurisprudence played an integral part in determining the verdict for the women and the bodies of children were examined for any signs of ill-treatment, neglect and violence, but despite the privileging of medical testimony, in most cases it was generally inconclusive. This ultimately helped the defence more than it did the state. Jackson argues that “doubts about medical evidence both reflected and contributed to the courts' general reluctance to convict.”

Efforts to repeal this law were largely unsuccessful in the 1770s, but in 1803, the act was repealed as part of a large scale conservative reform movement lead by Lord Ellenborough. “Lord Ellenborough’s Act” gave the juries an option of returning to a verdict of concealment of birth with a sentencing of two years imprisonment when the murder of an illegitimate child was not and could not be proven. In 1828, the Offenses against the Person Act, replaced Lord Ellenborough’s Act and most importantly extended the charge of concealment to married women thus ending the ‘legal’ association of this crime with illegitimacy.

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7 Jackson, New-Born Child Murder, 103.

:: local legal genealogies of infanticide ::

Infanticide laws in the Cape and Natal colonies were powerfully shaped by these English legal genealogies.9 When Natal was proclaimed a Colony, it adopted the body of statutes that had governed the Cape Colony. In 1846, Ordinance 22 ‘For punishing the concealment of the birth of children within the District of Natal,’ was passed. The ordinance stated:

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.10

This Ordinance stayed in place until 1910, when the Criminal Law of Natal was amended to also include the “new crime” of Infanticide. This law stated that “the unlawful killing of a child within one week after its birth shall be a crime under the name of infanticide.”11

This I argue happens to for two main reasons – the first relating directly to the increasing number of convictions put forward to the Supreme, Circuit and Magistrates Courts in Natal and second as an attempt by the colonial state at moral reformism. Between the years 1884 and 1902, there had been in the region of 3 to

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"I am going to burn it…"

4 cases of infanticide brought before the courts, but in 1904, as Table 1 shows, this figure escalated to 17 and then to 46 in 1905.

![Graph showing the number of concealment of birth and child murder cases tried before the Supreme, Magistrates and District Courts in Natal, 1884-1910.](image)

Table 1: Graph showing the number of concealment of birth and child murder cases tried before the Supreme, Magistrates and District Courts in Natal, 1884-1910.**

Looking at the trends in the cumulative number of cases there appears to be a significant increase between the periods 1904 and 1906, as shown by the statistical and departmental reports of the colony. This trend may appear to suggest a dramatic increase in child murder and concealment of birth cases in Natal during this time; however, this paper suggests that this increment is the result of a number of varying factors. These include stricter surveillance of ‘criminal’ activity in the colony, a better developed legal system, an increase in the populations of

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** Data for these graphs were collated from the Natal Blue Book and Statistical Reports. See PAR, NCP, Natal Blue Books, 7/3/1-7/3/15, and 7/2/21-7/2/2/6, Supplement to the Blue Book for the Colony of Natal, Departmental Reports, 1889.
the Colony, various economic and political crises such as the South African War between 1899 and 1902, the imposition of the £3 tax in 1903 and the Bambatha Rebellion in 1906.

In 1910, the amendments made to the Criminal Law of Natal affected such crimes as housebreaking and theft, but more importantly its purpose was to effect many reforms in the administration and performance of the law that were very necessary at the time. 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.13

In his closing remarks at the Legislative Assembly, where the Law was debated, the Attorney General, T.F. Carter said:

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 it 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.

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.\textsuperscript{14}

This quotation shows how other colonial settings within the British empire shaped Natal’s legislative interventions. In 1917, seven years after the formation of Union, the Criminal Procedure and Evidence Act was passed. This law was passed for the purposes of consolidating and amending the laws in force in the several provinces of the Union, relating to the procedure and evidence in criminal cases. Section 235 of the Act stated:

Section 235-Concealment of Birth
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.\textsuperscript{15}

This paper and the larger study does not intend to look at this ‘crime’ of infanticide in isolation, but rather look at the crime in relation to cases of ‘child murder,’ still-births, and concealment of births, since the term infanticide itself

\textsuperscript{14} See PAR, NCP, 2/2/2/28, Members of the Legislative Assembly, 5\textsuperscript{th} Session of the 5\textsuperscript{th} 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 the 21 June 2007.

\textsuperscript{15} Union Gazette Extraordinary, 19\textsuperscript{th} July 1917, Act No 31, 1917.
was open to contestation and only properly defined in legal terms by 1910. The case discussed below illustrates the complex ways in which race, class and gender intersected in cases of infanticide and concealment of birth.

:: the case of richard thornton hamilton harrison ::

The case of Richard Thornton Hamilton is included here for a number of reasons. Firstly, the story is interesting in itself, animating the inner sanctum of domestic life in rural Newcastle in colonial Natal, providing us with a slice of fascinating social history. Secondly, this case allows us to see the ways in which the colonial states assumptions about race, gender and criminality were unsettled by infanticide cases such as this. Hamilton, a retired Police Sergeant, 39 years of age and owner of Greyridge farm, was first charged with the crime of infanticide and subsequently, with incest.

During the month of June 1914, Pagel’s Circus was performing in the centre of town in Newcastle. On the 14\textsuperscript{th}, 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 she was first noticed wearing a large black overcoat by several of their family acquaintances who speculated 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. Apparently, since about 1912, Harrison had been having sexual intercourse with his daughter and as result she had fallen pregnant. Florence stated that this has happened because her father wanted to punish her, because 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
".. I am going to burn it…"

Moreover, some years prior to this, Harrison had apparently shot a ‘native’ who tried to “ravish” Florence and since that time he did not allow ‘natives’ on the premises except as servants. Curiously, Harrison himself was married both by customary and Christian rites to Elizabeth Ndlovu in 1904, the mother of Florence and Blanche.  

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

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17 PAR, Master of the Supreme Court. Estates [hereafter MSCE], 21768/1934, Harrison, Richard Thornton Hamilton, 1934. In 1910, Elizabeth Ndlovu was admitted to the Lunatic Asylum. She died shortly after that.
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.”

In her deposition, Florence went on to say that it was just a week after her
child was born that her father 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 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 told her that she had seen Harrison
burying the body at the 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 Nketshi’s kraal. I went to Nkewtshi 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

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18 PAR, AGO, 62-63/1914/1/1/406, Rex vs Richard Thornton Hamilton Harrison. Charged with
Infanticide and Incest, 1914, Deposition of Florence Maud Harrison.
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.19

When Nkewtshi was called before the Acting Magistrate for examination, he said:

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 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.20

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 this would not have existed unless she had had a child. The blood that he found on the blanket was quite ‘thick, moist and mouldy.’ Dr Cooper further stated that as he 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.”21 In September, a second examination was undertaken by Dr John Edward Briscoe. 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 which inferred that the head that passed through was of full size. Dr Briscoe also ended his report stating that he found “no signs what-ever of insanity.”22

The court case had been scheduled for September that year, but was later adjourned to April the next year before the case 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 saying:

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 acts 31 of 190323 and sentenced to four months imprisonment with hard labour. She was found at midnight on the 4th inst

21 PAR, AGO, 62-63/1914/I/1/406, Rex vs Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914


23 Which forbade illicit sexual intercourse between a White women and a Coloured person
in the act of fornication with a Native in Mrs Longs bathroom, to which she had admitted the Native. From the evidence it would appear that the Witness is an ordinary prostitute as the Native to my knowledge was unknown to the witness when she entered Mrs Longs service.24

So this case and others like it allow for the exploration of the meanings of infanticide in the social history of colonial 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 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 the meanings of, and reactions to, infanticide were contested.

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 project preoccupied with moral reform. Further, during this time state interventions in this realm were crucial to the constitution of whiteness and the consolidation of racial boundaries. For the larger project, cases such as these will hopefully fashion a social history that is “written in chords”;25 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.

24 PAR, AGO, 62-63/1914/1/1/406, Rex vs Richard Thornton Hamilton Harrison. Charged with Infanticide and Incest, 1914