
Dear HASSers,

Please note that this paper is derived from Chapter Three of my dissertation. The Chapter is entitled: “...I am going to burn it so that it will not be seen!”¹ - Motives, Circumstances and Lived Realities.’ I have selected a section from this Chapter to present, with the hope that the comments and responses will help convert this paper into a concise and focussed journal article.

Happy reading!

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.

Prinisha Badassy

| “The milk was conclusive”² - Edendale and the Political and Moral Economy of Birth and Christianity, 1885-1905

// Introduction

Read through legal documents, this paper 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.³ 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 before the Natal courts that revolved around the community at the Edendale mission station. The cases of Nomacala Nxumalo (1886), Hester Cinde (1895), Ntombizonki (1901), Ncikwana (1905) 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, criminal procedure and the place of medical jurisprudence in the courtroom. The cases of this group of women - whose geographic location made them susceptible to shared pressures placed on them by their community⁴ - demonstrate the complex interweaving of colonial law, medical knowledge, customary practices and Christian values.

² 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.

³ By the turn of the twentieth century, the term infanticide applied to the killing, neglect, or abuse of newborn babies, however, ‘concealment of birth’ is the intent to deliberately conceal a stillbirth or the death of a newborn by failing to report its birth to the respective authorities.

⁴ 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.

More broadly, however, this paper is also located within the prevailing perceptions of the relationship of sexual morality, marriage and respectability circulating within the British Empire at this time.⁵ 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 paper is an attempt to read the sources so as to look for indications as to motive in a context of gender and generational indifferences towards women – Christian African women who lived on the rural/urban periphery within a mission based community – 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, 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 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 easily 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* the reasons why they may have committed the crime, was of highest importance in these court cases.

⁵ 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.

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.”⁶ 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.”⁷ This was particularly true in cases of concealment of birth and infanticide, such that the 1935 General Law Amendment Act (under which a charge against infanticide could be proffered) 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 to a fine not exceeding one hundred pounds or imprisonment for a period not exceeding three years.⁸

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.”⁹

// Edendale

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 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) uncovers 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).¹⁰ The Christian residents at

⁶ Rob Turrell. ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ in *Journal of Southern African Studies*, 29:1, March 2003, 84.

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

⁸ The General Law Amendment Act 46 of 1935, Union of South Africa, 14th May 1935. [Emphasis added]

⁹ Turrell. ‘The ‘Singular Case’ of Mietje Bontnaal, the Bushmanland Murderess,’ 84.

¹⁰ 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, 1/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, Charged with Contravening the Provisions of Ordinance Number 22 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

Edendale found 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.¹¹ Edendale, as described by Sheila Meintjes, “held its reputation as a respectable, Christian village.”¹² 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.¹³ But, at the same time, many of these Christians still maintained some 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 Wesleyan and Victorian morality.”¹⁴ 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

within the District of Natal,” 1895; PAR, AGO, 1/1/174, 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, 1/1/226, 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.

¹¹ Sheila Meintjes. ‘Property Relations amongst the Edendale Kholwa, 1850-1900,’ in *Journal of Natal and Zulu History*, VII, 1984, 27.

¹² 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.

¹³ 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.

¹⁴ Sheila Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,’ in Cheryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. (Cape Town: David Philip Publishers, 1990), 126.

too much freedom and were attracted to bad habits.”¹⁵ 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.”¹⁶ 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.

// 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.¹⁷ 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.¹⁸ After discussing the incident with each

¹⁵ 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.

¹⁶ Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,’ 141-142.

¹⁷ 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.

¹⁸ For more on these resettlement movements in the 1870s see Meintjes. ‘Edendale 1851-1930: Farmers to Townspeople, Market to Labour Reserve.’

other that evening neither Maria nor Nobayeni could identify the mother of the child since none of the women in the village had been “in the family way.”¹⁹

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.”²⁰

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:

... 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.²¹

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

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

²⁰ PAR, AGO, I/1/107, 97/1886, Supreme Court Criminal Cases. Regina versus Nomacala Nxumalo, 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 Nobayeni, sister of Nomacala Nxumalo.

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**.²²

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.²³

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

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 Samuel Khumalo. [Emphasis added]

²³ 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.

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.²⁴ 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 respectability they wished to espouse.²⁵ 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”²⁶ -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.”²⁷ Nxumalo returned to help him and using a stick to move the object around they saw that it was the body of a foetus 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

²⁴ Meintjes. ‘Edendale 1851-1930: Farmers to Townspeople, Market to Labour Reserve,’ 68.

²⁵ 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.

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

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

complained to her mother, Emma Cinde, that her stomach and limbs “pained her.” Her mother had then engaged the services of Dr Francois Colani Daumas 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.”²⁸

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 breasts, [which] were very full and swollen, and on pressing them milk came on the first squeeze.”²⁹

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

²⁸ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895. Deposition of Emma Cinde, 14th December 1894.

²⁹ PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895. Deposition of Eliza Ngomezulu, 19th December 1894.

of the inspection of the young girls can be interpreted as analogous to the related practice of virginity testing.³⁰ As in *ukhlohlwa kwezintombi* (virginity testing), there was a clear hierarchy between the inspectors (the *abahloli*; singular – *umhloli*) and the girls or younger 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 for the position of young girls ... suggests that the freedom they had gained in the new society was a matter of form.”³¹ 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 paper were subjected to and constrained by a dual legal system – colonial and customary laws.

³⁰ 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 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).

³¹ Meintjes. ‘Family and Gender in the Christian Community at Edendale, Natal, in *Colonial Times*,’ 142.

// “From the corner of a ploughed field”³² – 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.³³

Suspicious of Ntombizonki’s culpability had first arisen when her “class leader” Eliza Msane – who identified herself as a Wesleyan Methodist – had noticed that Ntombizonki, her pupil, “appeared to be with child.”³⁴ 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.³⁵ 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.”³⁶

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

³² PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Post-mortem report by Dr Campbell Watt, 28th November 1900.

³³ 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.

³⁴ 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.

³⁵ 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.

³⁶ 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.

corner of a ploughed field.”³⁷ He also remarked that he could not find any external signs of violence on the body and that putrefaction was evident, but that he 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.”³⁸ 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 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.³⁹ She notes that “the migrant labour system, which deprived the villages of young

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.

³⁸ PAR, RSC, 1/1/61, 3/1901, Supreme Court Criminal Cases. Rex versus Ntombizonki. Post-mortem report by Dr Campbell Watt, 28th November 1900.

³⁹ 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.

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.”⁴⁰ Marks and other scholars have further shown how the migrant labour system imposed great strains on women and was significantly disruptive. In *Women and Gender in Southern Africa*, Cheryl 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.”⁴¹ 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 the towns.⁴² 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.⁴³

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

⁴⁰ 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.

⁴¹ Walker. ‘Gender and the Development of the Migrant Labour System c. 1850-1930: An Overview,’ 192.

⁴² 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).

⁴³ 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.

// 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 Ncikwana 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.⁴⁴

Neither Boya nor Bomvana could positively say whether Ncikwana was married or not, but Bomvana believed that "a man named Gilini [was] her lover."⁴⁵ 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."⁴⁶ 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 – alternatively the hydrostatic test – that the child had never breathed and was therefore stillborn and had probably died during labour.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ 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.

In Natal, medical evidence played a significant role in trials and inquests of infanticide and concealment of birth.⁴⁷ Of the thirty-five cases tried before the Natal Supreme and District courts between 1860 and 1935, only eight cases did not include a post-mortem report in the court transcripts.⁴⁸ 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.⁴⁹ 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. 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.

The difficulties, however, in proving separate existence point to the fact the medical evidence in the court room was – and is – not always reliable. The case of Ncikwana is particularly relevant in pointing to 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

⁴⁷ 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.

⁴⁸ See Appendix – Case Summaries, for full details on the types of evidence produced and included in the court cases, in Prinisha Badassy. ‘A Severed Umbilicus – Infanticide and the Concealment of Birth, Natal, 1860-1935.’ Unpublished Thesis (PhD-History), University of KwaZulu-Natal, 2011.

⁴⁹ ‘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.

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 was protruding. Furthermore, 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."⁵⁰

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.

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 specific 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."⁵¹

⁵⁰ 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.

⁵¹ Meintjes. 'Family and Gender in the Christian Community at Edendale, Natal, in Colonial Times,' 145.

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 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.”⁵² 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.⁵³

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).⁵⁴ 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, 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.

⁵² PAR, AGO, I/1/174, 8/1895, Regina versus Hester Cinde. Charged with Concealment of Birth, 1895.

⁵³ 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.

⁵⁴ 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.

Compounding the 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.”⁵⁵ 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 purity.⁵⁶ 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.⁵⁷

// 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 paper 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.⁵⁸ 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 Nomacala Nxumalo (1886), Hester Cinde (1895), Ntombizonki (1901), Ncikwana (1905).

⁵⁵ Marks (ed.) *Not Either an Experimental Doll*, 23.

⁵⁶ 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*.

⁵⁷ Marks (ed.) *Not Either an Experimental Doll*, 24.

⁵⁸ 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.

In the cases presented in this paper 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.⁵⁹ That the women, whose cases this paper 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 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.⁶⁰ 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 the cases discussed in this paper 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. In isolation, the cases examined in this paper 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 acting in response to the strict moral structures of the society in which they found themselves.

⁵⁹ 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.

⁶⁰ 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.