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Illegitimacy, concealed births, and how the Laytons were arrested - Two cases of alleged  
infanticide in Natal, 1908.

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// Introduction

This paper is an exploration of issues concerning illegitimacy and its link to infanticide. At the turn of the twentieth century high infant mortality rates in certain part of Europe and Britain and its dominions was a considerable concern for the ruling governments at the time. In South Africa, this was further compounded by anxieties over baby-farming scandals. By 1908, when the Transvaal government had just published the report of an Indigency Commission which delved into the distresses of the poor white problem of that colony, and a society for the protection of infants was gaining momentum in Natal, two noteworthy cases of infanticide were tried before the Durban courts. The first involving the Laytons, which garnered great public support and another concerning the death of a child by Bertha Clarisse.

Initially used to describe the practice of killing as well as the abandonment of children shortly after birth, the term infanticide was incorporated into the English language by the 17<sup>th</sup> century. Derived from the Latin *infanticidium*, literally meaning *the killing of a child*, this mode of ‘family limitation’ or contraceptive was sanctioned by many ancient and tribal world communities, such as the Norse Icelanders, and the Svans of Russia, who adopted a method of killing the infant by filling it’s mouth with hot ash.<sup>1</sup> It was also 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.<sup>2</sup> In Africa, among the Tswana (Portuguese East Africa), Kikuyu (Kenya) and Ilso and Igbo people (Nigeria) not only was the practice of twin killing widely prevalent, but the Ibo people of Nigeria also believed that if a mother or father died after childbirth, then the newborn should be buried alive.<sup>3</sup> In the Americas, the Tapirapé of Brazil allowed no more than three children per woman and the Yukon and the Mahlemuit Inuits of

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<sup>1</sup> Helen L. Ball and Catherine M. Hill. “Reevaluating "Twin Infanticide",” in *Current Anthropology*, **37**:5, December 1996, 856-863.

<sup>2</sup> Lalita Panigrahi. *British Social Policy and Female Infanticide in India*. New Delhi: Munshiram Manoharlal, 1972; T.C. Hodson. ‘44. Female Infanticide in India,’ in *Man*, **14**, 1914, 91-92; 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.

<sup>3</sup> See Isaac Schapera. *The Khoisan peoples of South Africa: Bushmen and Hottentots*. London: Routledge & Sons, 1930; *A handbook of Tswana law and custom* (compiled for the Bechuanaland Protectorate Administration) London: Oxford University Press, 1938; Bojosi Otlhogile. ‘Infanticide in Bechuanaland: A Footnote to Schapera,’ in *Journal of African Law*, **34**:2, Autumn, 1990, 159-162.

Alaska and Canada either threw female babies into the sea or stuffed grass in their mouths.<sup>4</sup> While modern ethnological literature generally fixated on the idea that Europe's others were more inclined to commit infanticide, there was increasing concern about infanticide in 18th century Britain. Furthermore, from the literature surveyed it is evident, that the practise of infanticide existed in different spaces and times for very different reasons. Indeed in some parts of the world infanticide was a response to ecological, financial or social hardships, but in other communities and groups it was practised as a cultural or religious custom.

By the 18<sup>th</sup> century in Britain, when doctors, clergy men and legislators started becoming concerned about the apparent increase in murders of illegitimate or 'bastard' children by single and unmarried mothers, the more straightforward term of 'newborn child murder' was used recurrently in court records, medical reports and law discourses.<sup>5</sup> The simplicity of the term child murder was partly a result of the limitations in forensic processes. Across 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.<sup>6</sup>

It is only in the 19<sup>th</sup> century as medical jurisprudence developed a keen interest, that the term infanticide becomes commonly used and synonymous with newborn child murder. By the 1860s when the first utterances of eugenics were being heard in Britain, concerns about infant

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<sup>4</sup> Ball and Hill. "Reevaluating "Twin Infanticide";" 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; Clark Garber. "Eskimo Infanticide," *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 lived, take them into the woods, stuff grass in their mouths, and leave them to die." p98.

<sup>5</sup> For more on this see, L 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 Victoria London,' in *Victorian Studies*, Spring 1989, 319-337;

<sup>6</sup> Jackson. 'Historical Keyword: Infanticide,' p809. 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 this practise involved smothering the baby's mouth and nose with wet paper. See 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; and Hiroshi Shiono; Maya Atoyo, Noriko Tabata, Masataka Fujiwara, Jun-ich Azumi and Mashahiko Morita. "Medicolegal aspects of infanticide in Hokkaido District, Japan." *American Journal of Forensic Medicine and Pathology*, **7**:2, 1986, 104-106. See also Panigrahi. *British Social Policy and Female Infanticide in India*.

mortality rates and baby-farming<sup>7</sup> scandals, particularly in the colonies, the meanings of infanticide broadened and its usage became prevalent.<sup>8</sup> Great agitation around infanticide began surfacing such that the *British Medical Journal* referred to it as an epidemic of infanticide.<sup>9</sup> Most campaigners during this time focussed primarily on the vulnerability of illegitimate children rather than the causes of the high infant mortality rates.<sup>10</sup> Such that the Harveian Society on Infanticide, established in 1867, stated 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 home are wanting. The bastard finds the lot of an inferior animal rather than that of a human being.”<sup>11</sup> The committee was set up specifically to draw up a report that addressed the causes of death in young children and to suggest the best means of regulating the crime, preventing excessive infant mortality and to suggest some plan for the care and rearing of illegitimate children other than the workhouse system which was present in England at the time.

Furthermore, the nature of court cases and the type of evidence that was considered in an English context continued to have parallels to cases that were tried in the rest of Europe and in some parts of the Americas. Besides medical jurisprudence taking centre stage at these hearings, the marital status and sexual behaviour of the mother was given considerable prominence. There are a number of historical surveys and studies that show how many of the central features present in nineteenth and early twentieth century English trials have been reflected in many other geographical settings. Prosecutions for women in Canada, Ireland, Poland, Germany and France, and Italy have always considered the social standing of the

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<sup>7</sup> The term baby farming became popular in late nineteenth century Britain and it referred to the care and rearing of babies in exchange for money. Mothers who could and did not want to raise their children would give them to these ‘foster homes’ in turn and either pay or lump sum or periodically. These baby farm houses however became notorious for murdering infants, as this would make it more profitable for the baby farmer. Many baby farms also accepted infants without any question and so the question of illegitimacy was largely connected to these farms.

<sup>8</sup> ML Arnot. ‘Infant death, child care, and the state: the baby-farming scandal and the first Infant Life Protection Legalisation of 1872,’ *Continuity and Change*, **9**, 1994, 271-311. For more on eugenics see Anna Davin. ‘Imperialism and Motherhood,’ in *History Workshop Journal*, **5**, 1978, 9065.

<sup>9</sup> ‘Report of the Committee of the Harveian Society on Infanticide,’ *The Lancet*, **1**, 1867, 61

<sup>10</sup> 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.

<sup>11</sup> “Report of the Committee of the Harveian Society on Infanticide,” 61

mother but have also measured the evidential weight of concealment of the actual gestation, birthing and death of the child. And one of the reasons this continuity across space and time has existed is partly due to the similarities within the legal framework within which these women were prosecuted.<sup>12</sup>

At the turn of 20<sup>th</sup> century “infanticide applied to the killing, neglect, or abuse of newborn babies and older children in various domestic, institutional, and geographical locations.”<sup>13</sup> The term itself, was used ubiquitously to refer to newborn child murder. However, the agitation and concerns in Britain about illegitimacy and infant mortality rates was also prevalent far beyond its borders, not only to the rest of Europe but also its dominions.<sup>14</sup> For instance in 1903, Acting Colonial Secretary of Jamaica, T. L. Roxburgh wrote to CJ Smythe, Colonial Secretary of Natal, questioning the state of illegitimate children in the Natal Colony. He reported that 64% 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, it [was] also felt that it may be possible towards a better state of things by means of legislation.”<sup>15</sup> A commission was appointed in Jamaica to review that Registration of Births, Deaths and Marriages, but it was decided that a proper conclusion could only be reached if information from other colonies could be solicited. In reply to this Smythe reported that of the 34,883 births in 1902, only 46 were illegitimate and this referred only to the children of European marriages. Smythe also commented that there was no urgency in the question of illegitimacy in the colony at the time and that the current

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<sup>12</sup> 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 Cosica,' 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*, 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.

<sup>13</sup> Jackson. 'Historical Keyword: Infanticide,' 809.

<sup>14</sup> See also, 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.

<sup>15</sup> PAR, CSO, 1741/1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

legislation proved to be satisfactory and needed no revision.<sup>16</sup> It is unclear as to which specific law Smythe is referring to in this letter. It is most likely the registration of births and deaths that was revised in Natal in 1902 prior to this letter. And contrary to what Smythe is saying here, from the Protector of Indian Immigrants records, we know that birth and death rates of Indian babies in this instance was a significant statistic for the Protector's office to record, and therefore would have been available for Smythe to report back to the Jamaican Colonial Secretary. Furthermore, the Registration for Births and Deaths and Marriages Act, did account for the capturing of data for Africans who were not married under Christian rites. In 1906, Dr Ernest Hill, Chief Health Officer in Natal from 1901 to 1911, lobbied a bill to include this group of people but the Colonial Secretary did not support this amendment.<sup>17</sup>

In 1908, the District Health Officer of the Department of Public Health in New Zealand, Dr Pardy, wrote to Natal's Chief Health Officer with the purpose of obtaining information about any system that was in place in the Colony in relation to the Protection of Infants.<sup>18</sup> 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. He further enquired as to whether the Health Officer could supply him with any pamphlets issued by the Health Department with regard 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 22<sup>nd</sup> of February, the Health Officer for Natal replied as follows:

With regard to the subject matter of your letter of 14<sup>th</sup> 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

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<sup>16</sup> Pietermaritzburg Archive Repository [hereafter PAR], Colonial Secretary Office [hereafter CSO], 1741/1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

<sup>17</sup> For more on this, see 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.

<sup>18</sup> 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.

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.<sup>19</sup>

Besides taking into consideration the condition of only the ‘white population,’ the District Health Officer appears to have been considerably blasé about the matter of infant protection and infant mortality in Natal. It is important to note that in 1905 the number of concealment of birth and infanticide cases tried before the Supreme and Circuit courts escalated to a staggering 46 convictions from just 17 in 1904. There was evidently a predicament concerning infant life not only in the Colony but the rest of the Empire. Closer to home, the Transvaal Colony for instance also 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 colonial state.<sup>20</sup>

Chapter six of the report stated the evidence compiled showed the birth of illegitimate children was common in the urban centres in the Transvaal but also that it was not uncommon in the country districts, but that children in foster care were ‘better looked after’ than in the towns. When the Undenominational Children's Home was interviewed, a representative stated that -:  
“It is really terrible. It is more serious almost than in any other place. We are constantly having applications to take illegitimate babies.”<sup>21</sup> The commission argued that illegitimacy affected the question of indigency in two ways. In the first place illegitimate children were often neglected during their early years and grew up uneducated and weak. Secondly, without any close or known relatives, they became poor whites or were drawn into the ‘criminal classes.’ The report also stated that the death rate among illegitimate children was “notoriously high.”

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<sup>19</sup> 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.

<sup>20</sup> National Archives Repository [hereafter 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 with the plight of poor Whites in the Transvaal, the causes thereof, and some ways of alleviating this poverty.

<sup>21</sup> TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

When offering suggestions to Transvaal Government on how best to alleviate this problem, the 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.<sup>22</sup>

The debates at this time about illegitimacy as well as the role of the public and the state’s perceptions around issues of morality lends itself quite intrinsically to discourses on infanticide. In most cases of concealment of birth and infanticide that were tried before the Supreme and Circuit Courts in Natal, the motive or reason given by the accused, either the mother or father, for committing this crime, was oftentimes an illegitimate child. Given this, it is not surprising that both the Transvaal and Natal colonies started to develop a concern with the question of illegitimacy. In dealing with the problem, the Commission suggested that assistance should not be given too freely to the mother, and that rather, she should, as far as possible, be encouraged to contribute to the support of her child. At the same time, the 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 of such an Act, which was primarily concerned with the general welfare of children, was emphasised by the District Surgeons of both Johannesburg and Pretoria. Further it was also recommend that the

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<sup>22</sup> TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.



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.<sup>23</sup>

A year later in 1909, that the Transvaal Colony passed the Infant Life Protection Act – for the better protection of the lives of infant children, and it was after Union that Natal adopted this act.<sup>24</sup> When the Rand Daily Mail reported on the Law, it stated that the law “is 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.”<sup>25</sup>

The motives for the introduction of the bill were clearly garnered from the Indigency Commission of 1908. Evidence received before the commission also stated that the death rate among illegitimate children was abnormally high, that baby farming existed to a large extent and that the baby farmers of White children were in fact Coloured and ‘Coolie’ women. In the Cape Colony an act had been passed in 1907 containing very similar provisions to those

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<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 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, Secretary to the Law Department [hereafter LD], 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910.

concerned in the Act and the introducers of this Bill in the Transvaal were of the opinion that a law such as that in the Cape as well as the English Act, “was bound to minimise the evils which the Indigency Commission found to exist.”<sup>26</sup>

One of the main features of this Act was a penalty of 100 pounds or six months imprisonment against 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. Furthermore, before this child was adopted, the proposed parents must obtain a certificate showing that they were capable of caring for a child. Another important clause of the Act was that people who adopted a child had to at any time, on demand of course; hand over the child to the respective parents. The act also stipulated that a magistrate could at any time 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 will be guilty of contravening the Infant Life Protection Act.

So it is within this milieu of legislation and moral reformism, state concerns about infant mortality and poor whites, imperial pressures on notions of motherhood and infant care, that we find the cases of the Laytons and Bertha Clarisse in Natal in 1908. Both the infants in these cases were illegitimate but under entirely different circumstances. Their cases however reveal deep-seated assumptions about what the state and the communities around them thought about the position of women, inter-racial relationships, criminal procedure and the place of medical jurisprudence in the court room.

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<sup>26</sup> TAB, GOV, 1209, PS 53/56/09, Act No 24 Of 1909 Better Protection Of The Lives Of Infant Children, 1909

// How the Laytons were arrested

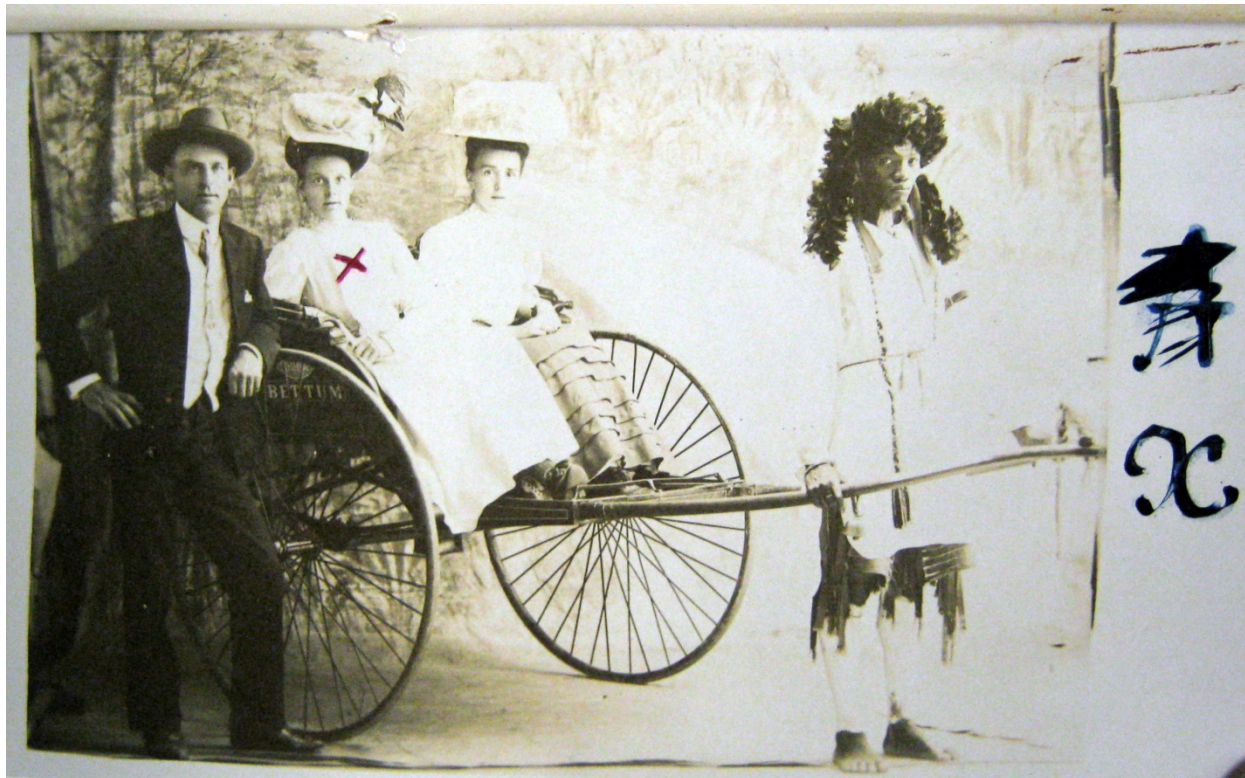


Image 1: Edward, Rose and Ruby Layton, Durban, Natal, 1908<sup>27</sup>

Anxious to have a souvenir of his visit to Durban with his daughters, Edward Layton commissioned John Munro of the Beach Photographic Studio to capture this image of himself and his daughters on a rickshaw. This was on the 29<sup>th</sup> of January 1908. On the 4<sup>th</sup> of March that year, Munro was subpoenaed to the Attorney-General's office to sign a deposition which stated that Edward Layton was the man in the photograph, and that the 'girls' were his daughters. This photograph 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 and Ruby May Layton who had been charged with the crime of infanticide.

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<sup>27</sup> PAR, Attorney General's Office [hereafter AGO], I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

This case is interesting for a number of reasons. Besides commenting on legal procedures and investigative methods used in criminal cases in Natal during this time, it also sheds light on public participation and interest in cases of this nature. It also hints at the role that sensationalism may have played in the eventual verdict decided upon in such cases. So, on the 29<sup>th</sup> 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, for the defence.<sup>28</sup> Edward Layton, widower, first gave evidence and replying to Mr Renaud, described his arrival in Durban to meet his daughters, who had travelled from Melbourne. He noticed nothing particular in the appearance of either of his daughters when he met them at the boat, S.S. Miltiades. On the same night they slept at the Fern Villa Private Hotel in Durban. Early the next morning, one of the girls asked whether he was not going to get up, as they wished to have a look around Durban before they left that evening for Pretoria. Layton replied that it was only 6 o'clock but he got up regardless. He took his daughters through the smoking room to the roof gardens of the hotel, which commanded a good view of the town.

After breakfast Layton and his daughters left the hotel for the Back Beach. A Mr Lock, an acquaintance, who had by the time of the trial returned to Australia, accompanied the Layton family to the Beach. Having paid a visit to Munro's studios, his daughters and himself had their photographs taken in a rickshaw. At about 11 o'clock they walked back to Fern Villa Hotel, where they had lunch. After lunch, his daughters and himself took a tram, to the Berea, and went on a tour of the museum, town hall and library. Layton himself had not been in that part of Durban before. 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 the bloodied sheets in the room of his daughters. He expressed his regret and paid the balance owing by him without demur. By this stage, it appears as though he was unaware of what had happened the previous night. Mr Dare, a porter at the Fern Villa confirmed this in his deposition stating that when he and Mr Layton went to meet the daughters at the boat, he noticed that Rose "hung back when meeting her

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<sup>28</sup> The name mother of Rose or Ruby, or the wife of Edward Layton is not mentioned in the court transcripts. It is stated that she is deceased.

father as if to escape observation.”<sup>29</sup> A Cumming, a passenger on the S.S. Miltiades, also believed Rose was pregnant. He stated that there was a rumour on board that one of the girls was pregnant, and he noticed that she did not join in any of the games on board.

Mary Graham, a maternity nurse, then informed the court that she paid a visit to Fern Villa on January 29<sup>th</sup>, when Mrs Young drew her attention to two young women who were accompanied by a clean shaven man. She noticed that one of the girls looked very pale and tired. After they had left the place, Mrs Young asked her to look at the state of the room, which the girls had occupied on the previous night. She saw blood on the mattresses of the bed, and also a towel which had apparently been used to wipe partly washed blood-stained hands. From the state of the room Mary thought there had been a “definite confinement.”<sup>30</sup> This was first brought to the attention of Mrs Young by Millicent Burne, housemaid at Fern Villa. When Ms Burne entered the room, she noticed a champagne bottle on the dressing counter and found the bed linen saturated with blood. There were two coir mattresses on the bed. The upper one was soaked with blood and on this being removed; it was found that the blood had soaked through to the lower one. When Mrs Young approached the girls about it, 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.”<sup>31</sup> Millicent further noted that a towel in the room also had blood stains on it and that newspaper which has been put in the drawers of the washstand was missing. Ms Graham further commented that when she examined the bed, she found more blood than would come about from an ordinary menstruation and was of the opinion that “so profuse a flow was likely to be the result of haemorrhage or confinement.”<sup>32</sup>

That same day, Layton and Rose and Ruby left Durban at 5.50pm on the corridor train to Pretoria. On leaving Fern Villa, one of the daughters was seen carrying a travelling rug. At the Durban Station, Ticket Collector, H. Craven noticed that Rose looked very ill. She held a hat

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<sup>29</sup> PAR, AGO, I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

<sup>30</sup> PAR, AGO, I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908. Deposition by Mary Graham.

<sup>31</sup> PAR, AGO, I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

<sup>32</sup> PAR, AGO, I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

box and some wraps and when Craven offered to carry a wooden box that Mr Layton was holding, he refused. And when Mr Davis, the conductor on board the train enquired as to whether Mr Layton and his daughters needed beds for the night, he noticed that one of the girls was not present. Mr. Layton informed him that she was in the lavatory.

Detective Albert James Cuffs, of Pietermaritzburg, in his affidavits, stated that he received depositions, which had been taken by the City Coroner, who inquired into the finding of the body of the newly-born male child at a spot situated about half a mile south of Zwaartkop Station on the morning of January 30<sup>th</sup>. Pancham, an Indian, employed by the Natal Government Railway, had found the body on the main line, quite near to the station. When he found the body, it was naked, with a piece of cloth around its neck and some bloodied paper lying next to the body. Detective Cuffs then went to the place where the body was discovered, and was accompanied by Dr. Ward, the District Surgeon, and several police officers. He saw the body lying about 8ft. from the railway line, and it had 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 body was 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 and died of asphyxia shortly after birth.

Two copies of the "Natal Mercury," dated June 14<sup>th</sup> and 15<sup>th</sup>, were found near the body of the child. 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. The corridor train left Pietermaritzburg at 10pm., and arrived in Zwaartkop about 25 minutes later. From his observation, the detective thought it would be extremely difficult for any person to have disposed of the body of a child from a train travelling between Durban and Pietermaritzburg, but that after the Pietermaritzburg station, this could have been done without difficulty as the passengers generally settled down to sleep. The country was apparently well wooded at the spot where the body was found and would appear from the train to offer secure 'concealment.' However, when the body was supposedly thrown from the train, it dropped close to the plate-layer's Indian barracks. It was highly probable for the body to have been seen in daylight and Detective Cuffs

concluded that the body must have been dropped there between the hours of 9pm on the 29<sup>th</sup> and 6am on the 30<sup>th</sup>. Suspicions were thereafter directed to the Laytons and on February 11<sup>th</sup> 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.

On the warrant being read, the charge explained, and cautioned, 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 then asked, "Where was the body found?"<sup>33</sup> A visit was then paid to the Layton residence where they found both girls, and as Layton had explained his fears as to the effect the shock of the charge would have upon the girls – one of whom he said was very delicate – the warrant was handed to the matron and after she had read it to the girls in their room, the three accused were taken away. After being cautioned, Rose made no statement, while Ruby asked, "Are we the only ones arrested for this?" Layton then said that he thought the Police were wrong and he 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 the night under observation in hospital. The following day Layton was temporarily released. A search was made of the Layton house and Detective Cuff found some clothing and a piece of tape. The detective also produced a portmanteau, which, he said, was 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 washed and cleaned out. There were certain stains of a dye, magenta 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. Detective Cuffs also found a copy of the "*Natal Mercury*" in a chest of drawers in the room at Fern Villa.

At the court case when asked if he or his daughter threw a child from the train, Layton bluntly answered no. He proceeded to say:

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<sup>33</sup> PAR, AGO, I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.

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.<sup>34</sup>

The only question asked by Mr Calder was in reference to the bottle of champagne found at Fern Villa Hotel, in the room occupied by the girls. Layton said that the bottle did not contain real champagne. It was, he believed, "kola" champagne and that it was most probable that one of his daughters purchased the drink. In his closing statement, Mr Calder remarked that if he had said anything strong in his opening statement it was not his fault. "He was bound to admit that the evidence presented by witness in regard to the alleged condition of the girl, Rose Layton, was not entirely satisfactory." Although, 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 the jury was entitled to find that the child was born alive and that it was 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 failed, it was necessary for the jury to find a verdict of concealment of birth.

In response to this Sir Henry Bale commented that such a verdict could not be returned, because he had no jurisdiction where the child was alleged to have been placed, and another point was that the child was not concealed. Passengers from the train could see the body. Mr. Renaud then contested that there was no evidence that Rose had in fact given birth to a child at Fern Villa, that there was no evidence that the body of the child found on the railway line was

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<sup>34</sup> PAR, AGO, I/1/336-108A/1908, Rex vs Edward Layton, Rose Bessie Layton, and Ruby May Layton. Charged with Murder, 1908.



alive when it was born, and that there was no proof that the child found was the son of Rose. Renuad also emphasised the fact that no marks were found on the child alleged to have been thrown out of the railway carriage window by the either one of the Laytons. 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:

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<sup>35</sup>, 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] 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.

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 crime of concealment of birth. The only issue was as to whether there 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,

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<sup>35</sup> In using this phrase, it is most likely that Bale was asking the jury to be sure that the baby had the characteristics as that of a normal functioning living baby.

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.<sup>36</sup>

The case was concluded over three days and for three days running the court house was packed with on looking supporters. Such was the popularity that after the case 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,

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<sup>36</sup> The Layton Case, Alleged Infanticide, The Accused Acquitted, Scene in Court. *The Mercury*, Thursday, July 2, 1908. [My thanks to Mwelela Cele for providing me with a copy of this article.]

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.”<sup>37</sup>

Despite the weight of medical evidence in this case, pointing to the fact that in all probability the Laytons were in fact guilty of the crime of infanticide, the public appeal of the case illustrates on a deeper level, the need to preserve a sense of whiteness in Natal and perhaps Empire at the time. As Robert Morrell and others have shown, the pressures to maintain white superiority in Natal powerfully shaped the social context in which these cases were tried<sup>38</sup>. 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.

Another important point that this cases highlights is the vague and unreliable usage of medical evidence in the courts. It is not surprising then that shortly after this case, on the 10<sup>th</sup> of July, the Natal Branch of the British Medical Association passed a resolution pertaining to medical evidence.<sup>39</sup> The resolution deplored the irregularity of 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 branch that 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,

And finally,

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<sup>37</sup> ‘A Public Appeal.’ *The Mercury*, Thursday, July 2, 1908.

<sup>38</sup> Robert Morrell. *From Boys to Gentlemen: Settler Masculinity in Colonial Natal, 1880-1920*. Pretoria: University of South Africa Press, 2001.

<sup>39</sup> ‘Natal Resolution re Medical Evidence,’ in *South Africa Medical Record*, VOL VI, Jan-Dec, 10 July 1908, 211.

3. That medical witnesses should not sit by and prompt counsel in Court, but should act strictly as witnesses.<sup>40</sup>

// Bertha Clarisse

In February of 1908, around the same time as the Layton incident, Bertha Clarisse, White, age not stated, was charged with murdering her newborn child. <sup>41</sup> On the 13<sup>th</sup> of February, Bertha Clarisse appeared before the Resident Magistrate, Durban and made this statement:

I live with my mother at 91 Fountain Lane. I gave birth to a baby on the 2<sup>nd</sup> 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 of the father A. Jettoo.<sup>42</sup> I have been keeping company with him for thirteen months. We have had connection together during that time. 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 1<sup>st</sup> instant. I next saw him again on the 8<sup>th</sup> 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. There was also sand inside, blown in from outside. I can't account for any bruises or marks on the head.<sup>43</sup>

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<sup>40</sup> 'Natal Resolution re Medical Evidence,' in *South Africa Medical Record*, VOL VI, Jan-Dec, 10 July 1908, 211.

<sup>41</sup> PAR, AGO, I/1/336-65/1908, Rex vs Bertha Clarisse. Charged with Murder, 1908.

<sup>42</sup> An Indian in the employ of the Clarisses.

<sup>43</sup> PAR, AGO, I/1/336-65/1908, Rex vs Bertha Clarisse. Charged with Murder, 1908. Deposition by Bertha Clarisse.

On July 7<sup>th</sup>, Bertha Clarisse was summoned to appear in court. Defended by R. L. Goulding, she pleaded not guilty. Paulin Clarisse, mother of Bertha stated that her daughter had given birth to a female child on the 2<sup>nd</sup> of February. When she found Bertha, she was unconscious and the afterbirth and blood covered the cement floor. When she found the child alive, she 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, Paulin heard the child groaning and noticed an injury on the infant's head. By 3 o'clock the child had died and Paulin had sent for Dr Birtwell, so that he could issue a death certificate. The next morning the body was delivered to the mortuary and from the post-mortem, Dr Birtwell testified that he believed the child 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 born on the floor. He argued that these injuries might have occurred if the child had fallen at least two feet. He also added that the super-renal gland<sup>44</sup> appeared to have been obviously injured from the outside and that the bruises they found under the ribs were that 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 shaken baby syndrome.<sup>45</sup> Even though, the post-mortem report evidently showed that the injuries sustained to the child could not have been caused by Clarisse delivering the baby in an upright position, and the child falling on the cement floor subsequently and that there were finger marks on the body of the child, Clarisse was also found not guilty

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<sup>44</sup> Also known as the adrenal glands, which are endocrine glands situated above the kidney and responsible for regulating stress with the release of adrenaline.

<sup>45</sup> It was only in the 1940s that the phrase 'Shaken Baby Syndrome' takes hold in the medical fraternity. Since that term there are 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.

// Conclusion

To try to understand and interpret the crime of infanticide it is necessary to examine the circumstances that shaped the lived realities of the men and women accused of this. At the outset, infanticide can be seen as a response to societal construction of and constraints on motherhood and parenting. This is quite evident in the cases of the Laytons and Bertha Clarisse. In proper medical terms both 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 an overwhelming majority of these women tend to be unmarried as well.<sup>46</sup> 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.

While it was certainly difficult for the courts to prove that infanticide had occurred in both these cases, it is interesting to note that both the Laytons and Clarisse were in fact charged with murder and not infanticide or concealment. It was still two years before Natal would adopt the Infanticide Act of 1910, and neither could it have been possible for the District Court to convert both these cases to that of concealment of birth since in both cases the body of the child was not hidden or buried. It could also be possible to argue that one of the reasons for the leniency of the court in these cases was that both women who actually committed the crime were single White females and this is another prominent featured narrative of infanticide cases in Natal, together with the subject of illegitimacy. In a way, it is possible to argue, that in finding both these women innocent, the colonial state was in fact helping these women to reclaim their space in a respectable society.

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

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<sup>46</sup> Oberman. 'Understanding infanticide in Context: Mothers who kill, 1870-1930 and Today,' 709.

to stigmatise colonists with the shame of a verdict of suicidal death.”<sup>47</sup> It is quite possible to extend this argument to the case of infanticide as well since charges of criminality amongst the 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. <sup>48</sup>

Besides being single, both Rose Layton and Bertha Clarisse were also financially insecure. Both relied on the financial resources of their family and appeared to be quite vulnerable in this regard. Further, another similar feature is that there was possibly a lack of trusted and knowledgeable confidants in both the women’s lives. Even though Rose had her sister, she was her junior and could perhaps only offer physical support. Bertha on the other hand confided in no-one. Given the types of death endured by both infants; it is also possible to speculate that in both cases, the accused were also coerced into killing the child. Rose, by her younger sister Ruby, out of fear for their father and lack of any support structures in their newly adopted country of residence and; in the case of Bertha, by her mother, out of fear that her daughter was bearing the offspring of an interracial relationship. An equally dramatic and traumatic set of events surrounded the birth and deaths of the infants in both cases and both women appear to have experienced immense pain and bleeding post delivery. In isolation, both these cases represent what at first can be interpreted as incomprehensible acts against humanity, but when

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<sup>47</sup> Parle. *States of Mind – Searching for Mental Health in Natal and Zululand, 1868-1918*, 236.

<sup>48</sup> Parle. *States of Mind – Searching for Mental Health in Natal and Zululand, 1868-1918*, 236-237.

they are considered together, they are able to provide an understanding of infanticide in relation to the plight of the individual who is acting in response to the strict moral structures of the society in which they found themselves.