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**THE OGRESS, THE INNOCENT,
AND THE MADMAN:
Narrative and Gender in Child Homicide Trials
in New Zealand, 1870 - 1925**

A thesis

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of the requirements for the degree

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Abstract

The murder of a child represents one of the most perplexing and unimaginable of crimes. This thesis, the first legal-historical investigation into child homicide in New Zealand, seeks to uncover some of the ways that people have ‘imagined’ and made sense of this complex crime in the past. The conclusions emerging from this study suggest that nineteenth and early twentieth-century observers of child homicide trials relied heavily on the interpretive power of familiar cultural narratives to convey meaning and achieve composure. Homicides involving children, though often disparate and deeply ambiguous events, were bounded by a narrow yet profoundly influential body of images, characters and representations. This repertoire of narrative conventions was not simply reflective of contemporary attitudes and understandings but worked actively to bolster and crystallise the meanings surrounding disturbing events.

Utilising quantitative and qualitative methodologies, this study draws on a comprehensive dataset of reported child homicide incidents occurring in New Zealand between 1870 and 1925. Select cases from this database are considered as a set of narrative texts using gender as the primary category of analysis. The popular and legal discourses surrounding these incidents are analysed within a post-structuralist theoretical framework to examine the divergent representations of those who were implicated in the suspicious death of a child. The research includes an investigation of criminal data for evidence of quantitative patterning in criminal typologies and sentencing, as well as analysis of textual evidence such as trial transcripts, coronial inquest reports, parliamentary debates, and newspaper reporting and commentary. The findings of this study demonstrate that the discursive constructions of child homicide in nineteenth and early twentieth-century New Zealand were highly gendered. Ultimately, child murder was imagined as an offence perpetrated by mothers. However, the impact of gender on trial proceedings and outcomes was by no means straightforward or clear cut. Cultural understandings of race, class, morality, madness and criminality all fed into the narrative construction of murder events and were shaped and reformed in relation to each other. In unpacking the stories of child murder, this thesis exposes the highly constructed nature of criminal legal discourse within and beyond the courtroom, and provides a historical basis for a more nuanced critique of understandings of child homicide crime in the present.

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Introduction

The executive has decided that the law shall be carried out and that the ogress shall pay the penalty of her crime with her life.¹

Minnie Dean, the Winton “baby-farmer” ... was passed to the hangman still defiantly protesting her innocence. She was a woman with a stone-cold heart, who carried on a hellish traffic in the destruction of harmless babes for filthy lucre.²

Storytelling

For generations of New Zealanders, the history of child homicide has had a human face – that of Minnie Dean, the Winton baby farmer.³ Those who experienced a South Island childhood will be familiar with the conventional images that make up the folklore surrounding Minnie Dean – hat-pins through the heart, rows of tiny bodies buried under the geraniums, and the unmarked grave of a murderer so wicked that nothing will grow over it. These fictions, borrowed from other places and times, became essential elements in the storying of Minnie Dean despite having no relevance to the events of her particular case. In fact, motifs such as these have surfaced and resurfaced in various forms across both national and temporal boundaries, and can be located all over Europe, as well as in the United States, Canada and Australia. The trope of the villainous old woman who traded the lives of other people’s children for pennies became a conventional element in the representation of the child murderer and remained pervasive in discourses on crime in New Zealand into the early twentieth century. However, it was not the only recurring narrative in relation to the murder of children. The

¹ ‘The Slaughter of the Innocents’, *Wanganui Herald*, 9 August 1895, p. 2.

² ‘Cases of Revolting Slaughter: Old Crimes Recalled: Story of a Callous Criminal’, *NZ Truth*, 29 September 1923, p. 5. The term ‘baby farmer’, in nineteenth and early twentieth-century parlance, referred to a person who fostered or adopted unparented (often illegitimate) infants for pecuniary gain.

³ Researching a history of child homicide inevitably means engaging in conversation on the topic. It quickly became clear in the course of such conversations that the story of Minnie Dean, the only woman to have been hanged as a result of legal proceedings in this country, is deeply embedded in New Zealanders’ understandings of child murder in the historical context. Minnie Dean’s execution took place in Invercargill on 12 August 1895.

‘dark’ stranger, the wicked stepmother, the madman, and the seduced and abandoned ‘innocent’ young woman were all commonly employed characters in the repertoire of narrative conventions concerning the representation of the child murderer. A complex nexus of ideas converted incidents of parental violence and fatal neglect into comprehensible stories that provided context for such deviant behaviour and afforded a reassuring gap between self and ‘other’. The elaboration of such ideas took place across the social spectrum. These same narrative forms were reproduced in varying modes in the texts of medical and psychiatric journals, in parliamentary debates, and in courtrooms around the country. The authoritative voice of medical, psychiatric and legal ‘knowledge’ produced their own persuasive stories that further ordered people’s imaginings. From the mid-nineteenth century criminal trial reports and coroners’ findings were presented for everyday consumption as news reports in the popular press. With the introduction of sensationalist-style newspapers early in the twentieth century, such as the *NZ Truth*, the evocative language and narrative strategies of the melodramatic and gothic genres were more explicitly employed to present frames of representation from which contemporaries could construct their images of the child murderer.

By uncovering contemporary narratives and using their conventional tropes as an analytical frame, this thesis investigates the ways in which people attempted to understand the disturbing reality of child homicide in their midst. Underlying this study is the argument that complex and contested meanings of the category of ‘child murderer’ existed within and beyond these over-arching tropes. These meanings were continually in flux as ideas about gender, class, race and deviance were constructed and reconstructed in relation to one another. My focus is on the use of court records, coroners’ inquest files and the detailed accounts of criminal trials reported in the popular press, as primary source material. These textual sources have, at their core, real people who experienced real events. Accordingly, they problematise and complicate cultural constructions even as they exploit and advance them. Sometimes countering the mythical orthodoxies and resisting culturally available representational categories, these sources reveal a picture of child murder which is complex, contradictory and multifaceted.

As Jim Phillips contends, the law does not constitute a ‘set of abstract, ahistorical and universal principles’.⁴ Neither does it ‘exist in a vacuum’. Rather, as Phillips reminds us, the law ‘is formed by, and exists within, human societies and its forms and principles’.⁵ Moreover, judicial actors were ‘products of their time’ and based their understandings of criminal incidents on ideologies that were culturally determined.⁶ The coroners’ courts, magistrates’ courts and supreme courts were often the scenes of tragic and compelling stories and became a stage for their telling. Within these stories competing and interlocking narratives can be found, as the different players – police and the accused, witnesses, defence and prosecution lawyers – struggled to find the ‘true story’.⁷

With this in mind, court records and the reportage of court trials can be conceived as a series of textual narratives to be analysed for their metaphors and representations, rather than as ‘a way in’ to people’s lives. As other researchers have acknowledged, court records pose formidable interpretive challenges. Carlo Ginzburg has shown that such evidence cannot be regarded as ‘an open window that gives us direct access to reality’.⁸ Official records, he suggests, provide only a glimpse through ‘distorted glass’. Any understanding of past events requires careful analysis of those ‘inherent distortions’, which include, most crucially, the ‘codes’ in which those events have been constructed’.⁹ Critical discourse studies can provide the methodological models for approaching this challenge. In her work on historicising experiences of ‘difference’, Joan Wallach Scott urged historians to analyse the discursive operation of textual evidence to uncover the

⁴ Jim Phillips, ‘Why Legal History Matters’, *Victoria University of Wellington Law Review*, 41 (2010), p. 295.

⁵ Ibid.

⁶ Ibid.

⁷ A number of social and legal historians have considered the courtroom as a theatrical site and highlighted the storied nature of witness testimonies. See for instance Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (London: Stanford University Press, 1988); Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries 1880-1930* (Chicago: University of Chicago Press, 1997); and Bronwyn Dalley, ‘Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-century New Zealand’, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), pp. 63-85.

⁸ Carlo Ginzburg, ‘Checking the Evidence: The Judge and the Historian’, *Critical Inquiry*, 18 (Autumn 1991), p. 90.

⁹ Ginzburg, p. 84.

ways that ‘categories’ have been constructed or produced.¹⁰ This thesis seeks to foreground the discursive element in the construction of the category of child murderer, looking continually for the ways that language and description create meanings. I take up Kathleen Canning’s notion of discourse as a ‘modified Foucauldian one of a convergence of statements, texts, signs, and practices across different, even dispersed, sites’.¹¹ In this study, those divergent sites include courtrooms, medical and psychiatric textbooks and journals, political debating chambers, and the pages of newspaper journalism. I contend that the distinct language and rhetoric circulating within and around these sites converged to form a discursive web that focused concern on two distinct groups – the young, single mother and the older female baby farmer. Such a focus effectively reduced this complex crime into identifiable, governable elements, and ultimately facilitated the introduction of gender specific legislative responses to the problem of child murder.¹²

Poststructuralist historians agree that our own interpretations as historians are themselves essentially ‘composed’ in narrative form. Hayden White argues that the past is knowable only through the model of narrative discourse – a discourse through which meaning is ‘created’ or ‘configured’ rather than ‘found’ or ‘discovered’.¹³ White argues that ‘the reality that exists in the past can only be knowable through the shape we give to it in the here and now’.¹⁴ Alun Munslow’s description of the potter-historian is a metaphor that holds particular appeal for me. Reminding us that ‘it is we who use the evidence; it does not dictate to us’, he says: ‘Historians constantly re-work its meanings like the potter shaping a bowl on the wheel. The clay remains what it is and, in a literal sense, the ‘fact’ of the

¹⁰ Joan W. Scott, ‘The Evidence of Experience’, *Critical Inquiry*, 17:4 (1991), pp. 779-80.

¹¹ Kathleen Canning, ‘Feminist History after the Linguistic Turn: Historicising Discourse and Experience’, *Signs*, 19:2 (Winter 1994) p. 379.

¹² A provision that holds maternal infanticide as a lesser charge than murder was introduced into statute in 1961. The infanticide provision (section 178), which has a maximum penalty of two years imprisonment is still current at the time of writing (*Statutes of New Zealand*, 1961, No. 43, Crimes Act, section 178, ‘Infanticide’, p. 404).

¹³ Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore and London: John Hopkins University Press, 1987), p. 173.

¹⁴ Alun Munslow, *The Routledge Companion to Historical Studies* (London and New York: Routledge, 2000) p. 103.

matter does not change. But what does alter is the shape we give to the clay'.¹⁵ Events in the past then, were real events; children died, and the men and women responsible for those deaths suffered the consequences of their actions. Decisions made by those in power impacted tangibly on the subjects they adjudged. But in reconstructing these events, I am sensitive to the gap between the lived experience and my own representations of that experience. The records, after all, can offer only traces of the presence of real people at the point in time where they have 'collided with' or 'brushed up against' the law.¹⁶ The full dimension of their lives and experiences remain ultimately unknowable.

This thesis provides a wide-ranging analysis of the social and legal history of the crime of child homicide in New Zealand within its conceptual framework. However, it is with the constructions and representations of those who killed children, and the slippages between myths and realities, that this study is primarily concerned. Writing in the 1990s, Sarah Maza identified the use of cultural narratives as a 'way in' to a society or culture, and an important and growing trend in Western historiography.¹⁷ She identifies courtroom narratives as particularly useful sources in the understanding of 'cultural thematics'.¹⁸ These stories, she contends, 'are the means whereby social actors attempt to impose fixed meaning on social experience in the context of a crisis in which meanings have become indeterminate'.¹⁹ Mariana Valverde also points to the richness of crime stories when used within a social narratology framework, as they most clearly demonstrate 'the partial and artificial character of all narratives'.²⁰ Judith Walkowitz's work in this area has influenced scholars across disciplines who are concerned with stories and motifs that recur across time and place. Her book *City*

¹⁵ Munslow, p. 104.

¹⁶ For a full discussion on the problematisation and reconsideration of archival sources see Emma Spooner, "'The Mind is Thoroughly Unhinged": Reading the Auckland Asylum Archive, New Zealand, 1900-1910', *Health and History*, 7:2 (2005), pp. 56-79. See also Franca Iacovetta and Wendy Mitchinson, eds, *On the Case: Explorations in Social History* (Toronto and London: University of Toronto Press, 1998).

¹⁷ Sarah Maza, 'Stories in History: Cultural Narratives in Recent Works in European History', *The American Historical Review*, 101:5 (December 1996), pp. 1493-1515.

¹⁸ Maza, p. 1495.

¹⁹ Maza, p. 1500.

²⁰ Mariana Valverde, 'As If Subjects Existed: Analysing Social Discourses', *Canadian Review of Sociology and Anthropology*, 28:2 (1991), p. 181.

of *Dreadful Delight* provides a reading of turn of the century London through ‘narratives of sexual danger’.²¹ The study uncovers the ways that meanings and understandings of sexual danger were ‘produced and disseminated’ by focusing on the stories surrounding accounts of child prostitution and the ‘Ripper murders’. Through careful use of discourse analysis, Walkowitz successfully demonstrates that these understandings were never fixed, but rather constituted a variety of discourses that ‘collide[d] and clash[ed]’.²² In relation to the Whitechapel murders, Walkowitz shows how the unknown character of Jack the Ripper led to ‘public fantasies containing contradictory and historically shifting meanings’, which never settled into a coherent set of understandings.²³ Differing versions shaped the set of murder cases into stories of sexual deviance, class conflict, and/or cautionary morality tales for women of the lower classes.

Reports of the Whitechapel murders and narratives of Jack the Ripper published in *The Times* also provide evidence for Marie-Christine Leps’ work on nineteenth-century discourses of deviance and criminality.²⁴ Like Walkowitz, Leps is concerned with ‘inter-textual modes of knowledge production’ and the ‘points of diffraction and divergence’ within and between sites of discourse.²⁵ Leps’ examination of the construction of nineteenth-century ‘knowledge’ about the criminal mind and body demonstrates the ways that scientific understandings about deviance helped to produce the criminal as a ‘type’ and transform the ‘phenomenon of crime’ into ‘simple facts of life’.²⁶ To uncover the ways that this knowledge was produced, Leps focuses on three areas: the emerging science of criminology; scientific treatises on ‘the criminal man’, and, importantly for this thesis, the development of the popular press and crime fiction. Newspaper ‘knowledge’, Leps claims, ‘actively sustained and participated in the discursive

²¹ Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992), p. 83.

²² Catharine Stimpson, ‘Foreword’ in Walkowitz, p. xi.

²³ Walkowitz, p. 3.

²⁴ Marie-Christine Leps, *Apprehending the Criminal: The Production of Deviance in Nineteenth-Century Discourse* (Durham and London: Duke University Press, 1992).

²⁵ Leps, p. 3.

²⁶ Leps, p. 2.

production of knowledge and power, which generated the “truth” of the time’.²⁷ Similarly, Ann Louise Shapiro describes how the authoritative voices of medicine and law reinforced cultural narratives and further shaped understandings of ‘reality’.²⁸ However, stories, as Walkowitz and Shapiro contend, always exist in tension with other stories.²⁹ The law’s stories as set out by the judicial system do not always command authority or intelligibility, particularly when they appear to conflict with familiar cultural scripts. For nineteenth and early twentieth-century observers of crime, the formulaic tropes and motifs of Western folk tales and the symbolic imagery and stock characters of the melodramatic and gothic genres provided a means for breaking down complex and disturbing events into more simple, identifiable elements. This was an important factor in affording these stories with what Shapiro refers to as ‘cultural weightiness’.³⁰ In homicide trials, the age, ethnicity and gender of the defendant, as well as the form of the evidence, all helped to shape the outcome of the story. In this way, the murders of some groups of children by some groups of adults came to be seen in formulaic terms. When defendants or the form of the evidence produced did not fit neatly within dominant cultural storylines, other narratives were brought into play.

The sometimes measured, sometimes sensational reportage found in the contemporary newspapers of New Zealand, as well as the ‘authoritative’ and yet contradictory texts arising from parliamentary debates, coronial inquests and criminal trials, are fascinatingly rich sources with which to work. Drawing on the studies of Walkowitz, Leps, Shapiro and others, this thesis offers a gender-centred post-structuralist reading of these sources, focusing on the textual processes that flowed into and out of material events and their consequences. Such a reading leads to understandings about the identities that discursive forms construct, as well as those they fail to register.

²⁷ Leps, p. 115.

²⁸ Ann Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-Siècle Paris* (Stanford, California: Stanford University Press, 1996), pp. 8-9.

²⁹ Shapiro, p. 8.

³⁰ *Ibid.*

International Contexts

Despite a growing body of literature over the last four decades, the historiography of child homicide remains narrow in scope. Shaped by the social concerns and anxieties of the societies it investigates, Western historiography has remained largely focused on the topics of criminal baby farming and maternal infanticide. The term ‘infanticide’ itself requires unpacking, particularly when used in the New Zealand context. There is no single accepted definition of the term in the research literature, although it is the one most commonly followed by Western scholars writing about women who have killed their own children. Following legal definitions in Britain and elsewhere, which define infanticide as the killing of an infant up to twelve months of age, the definition has become more or less conflated with ‘neonaticide’ or newborn child murder.³¹ Uniquely, New Zealand’s legal provision for infanticide relates to children under the age of ten years, and that child need not be the one most recently born to the mother but ‘any child of hers’.³² Furthermore, the defendant need not be the natural mother of the murdered child. A 1991 ruling allowed that the phrase ‘any child of hers’ might include any child under the legal guardianship of the defendant.³³ So, while the term has become historiographically fixed elsewhere, in New Zealand it remains slippery and undefined. In this thesis I follow the wider historiography and use ‘neonaticide’ and ‘new born child murder’ interchangeably, and ‘infanticide’ when referring specifically to the killing of babies up to twelve months old. I use the terms ‘child homicide’ or ‘child murder’ for the killing of any or older children.

While the topic of maternal infanticide has been of wide interest transnationally, the British historiography of this crime has been particularly consistent. In what has been described as a ‘watershed’ in British scholarship, Mark Jackson’s work on eighteenth-century English infanticide trials, published in the mid-1990s,

³¹ Phillip J. Resnick, defines neonaticide as the killing of a newborn child within the first twenty-four hours of life (Resnick, ‘Murder of the Newborn: A Psychiatric Review of Infanticide’, *American Journal of Psychiatry*, 126 (1970), p. 1414).

³² *Statutes of New Zealand*, 1961, No. 43, Crimes Act, section 178, retrieved online from <<http://www.legislation.govt.nz/act/public/1961/0043/latest/versions.aspx>> (accessed 28 May 2012).

³³ *R v P* (1991) 2 NZLR (CA) at 116.

generated a raft of scholarly studies that focused specifically on single mothers and the murders of their illegitimate new born infants.³⁴ In an introductory chapter in his later edited collection of essays on the topic, Jackson discusses the parallels that are apparent across time, from his own work in Britain in the early modern period, to the late twentieth century.³⁵ These parallels, he says, can be traced not only to the workings of the court but also extend to the wider context of social, political and cultural concerns.

Jackson goes on to suggest 'equally conspicuous parallels' across space, pointing out the ways in which infanticide trials throughout the Western world share significant central features.³⁶ My own work in the New Zealand context adds weight to this claim, exposing striking similarities to the situation in Britain, the United States, Canada and Australia. Nonetheless, discontinuities and shifts over time and across space are apparent. Socio-legal historians working within the nineteenth and twentieth-century sphere have traced clear shifts in focus over time: the discursive shift in the late-nineteenth century from socio-economic to medico-legal concerns perhaps being the most intensely researched.³⁷ Jackson points out that the history of infanticide in non-Western countries, especially where female infanticide has been practiced, follows a different trajectory.³⁸

³⁴ Anne-Marie Kilday and Katherine D. Watson, 'Infanticide, Religion and Community in the British Isles, 1720-1920: Introduction', *Family and Community History*, 11:2 (November 2008), p. 86; Mark Jackson, *New-born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-century England* (Manchester: Manchester University Press, 1996).

³⁵ Mark Jackson, 'The Trial of Harriet Vooght: Continuity and Change in the History of Infanticide', *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002), pp. 3-4.

³⁶ Jackson, 'The Trial of Harriet Vooght', p. 5.

³⁷ Historians such as Hilary Marland and Lucia Zedner have highlighted a shift in the perception of infanticidal mothers as economically vulnerable (or 'sad' women), to that of psychologically vulnerable (or 'mad' women) during the course of the nineteenth-century. Hilary Marland, *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain* (London: Palgrave Macmillan, 2004); Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford: Clarendon Press, 1991). For the 'medicalisation' of the laws relative to women's violent crime see also Katherine O'Donovan, 'The Medicalisation of Infanticide', *Criminal Law Review* (1984), p. 262, and Carol Smart, 'Disruptive Bodies and Unruly Sex: The Regulation of Reproduction and Sexuality in the Nineteenth Century', *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, edited by Carol Smart (London and New York: Routledge, 1992), p. 12; and Jill Newton Ainsley, "'Some Mysterious Agency": Women, Violent Crime, and the Insanity Acquittal in the Victorian Courtroom', *Canadian Journal of History*, 35 (April 2000), pp. 37-55.

³⁸ Jackson, 'The Trial of Harriet Vooght', p. 7. As in other Western countries, New Zealand statistics reveal no significant differentiation between the number of male and female infants killed by violence or neglect.

However, the more subtle distinctions within and between Western countries merit close and careful investigation, as comparative work across Britain continues to demonstrate.³⁹

Historians of child homicide working in the Australian context reflect the British precedent in establishing maternal infanticide and the fostering of illegitimate infants as areas of particular focus. Australian gender historian Judith Allen and social historians Renate Howe and Shurlee Swain have published authoritative histories on Australian women's experiences of crime, both as victims and as perpetrators.⁴⁰ Writing in the early and mid-1990s, these historians lamented the lack of interest in women's experiences in histories of crime in Australia and made the call to researchers to address the imbalance. A number of important gender studies have since been undertaken in the wider context of homicide and criminal justice in Australia, though few historians, apart from Swain and Allen, focus specifically on the issue of child homicide. A notable exception is Jan Kociumbas' work on infanticide and baby farming in nineteenth-century Australia.⁴¹ Kociumbas critiques earlier work in the field for accepting what she terms as the 'iconography' of infanticide, without questioning the basic assumptions regarding the female perpetrators of the crime. This lack of analysis, Kociumbas asserts, is especially evident in respect to the baby farmer. Almost without fail, contemporary texts vilified female baby farmers, representing them, in Kociumbas' description, as 'perhaps the most sinister and malicious inhabitants of the slum'.⁴² Early scholarly focus in Britain and Australia on the issue of baby farming and its relationship to child murder tended to reinforce this negative

³⁹ See for instance Kilday and Watson, 'Infanticide, Religion and Community', and following articles in the special issue of *Family and Community History*, 11:2 (November 2008), and Carolyn Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth Century England, Ireland, Scotland and Wales* (Columbus: Ohio State University Press, 2007).

⁴⁰ Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990); Shurlee Swain and Renate Howe, *Single Mothers and Their Children: Disposal, Punishment and Survival in Australia* (New York: Cambridge University Press, 1995).

⁴¹ Jan Kociumbas, 'Azaria's Antecedents: Stereotyping Infanticide in late Nineteenth-Century Australia', *Gender and History*, 13:1 (April 2001), pp. 138-160.

⁴² Kociumbas, p. 143.

stereotype, although several important studies have since subjected it to examination and critique.⁴³

Among the most convincing of these studies is Shurlee Swain's essay 'Toward a Social Geography of Baby Farming'.⁴⁴ Swain takes a spatial analytical approach to the subject, matching nineteenth-century charitable records and inquest reports with 'street mapping' data from a child mortality database to unravel the relationship between the Melbourne Lying-in Hospital and the work of baby farmers in the surrounding areas. This innovative use of evidence highlights the complexity of the business of paid child-fostering or adoption, demonstrating that in practice the nurturing of infants by Australian baby farmers ranged from the 'incompetent' to the 'professional'.⁴⁵ As Ruth Ellen Homrighaus shows in the British context, this group of child carers could also include the actively 'criminal'.⁴⁶ The work of historians such as Swain, Kociumbus and Homrighaus illustrates the importance of nuanced investigation into the practice of baby farming in order to understand more clearly the myths and realities that have shaped its narrative construction.

Judith Allen's earlier work on the state's responses to increases in the infant mortality rate identifies what she terms as the 'reproduction-related crimes' of abortion, infanticide and baby farming as having a 'significant impact' on the child death rate.⁴⁷ She suggests that as abortion-related legal indictments in the New South Wales courts increased after the turn of the century, numbers of those being charged with infanticide and concealment of birth decreased dramatically.

⁴³ British historian Margaret Arnot's 1994 article 'Infant death, child care and the state' is the earliest and most influential example of such a critique. For more recent work see Shurlee Swain, 'Toward a Social Geography of Baby Farming', *History of the Family*, 10 (2005), pp. 151-159; David Bentley, 'She-Butchers: Baby-Droppers, Baby-Sweaters, and Baby-Farmers', *Criminal Conversations: Victorian Crimes, Social Panic, and Moral Outrage*, edited by Judith Rowbotham and Kim Stevenson (Columbus: Ohio State University Press, 2005), pp. 198-214; Ruth Ellen Homrighaus, 'Wolves in Women's Clothing: Baby-Farming and the *British Medical Journal*, 1860-1872', *Journal of Family History*, 26:3 (July 2001), pp. 350-372, and Homrighaus, 'Baby Farming: The Care of Illegitimate Children in England, 1860-1943' (PhD thesis, 2003, Rev. edn, 2010).

⁴⁴ Swain, 'Toward a Social Geography of Baby Farming', pp. 151-159.

⁴⁵ Swain, 'Toward a Social Geography of Baby Farming', p. 158.

⁴⁶ Homrighaus, 'Baby Farming', p. 23.

⁴⁷ Judith Allen, 'Octavius Beale Re-considered: Infanticide, Baby-farming and Abortion in NSW 1880-1939', *What Rough Beast?* edited by Sydney Labour History Group (Sydney: Allen and Unwin, 1982), pp. 111-129.

She explains that ‘once women had the option of a relatively safe pre-natal rather than a post-natal solution, they took it’.⁴⁸

British historian Roger Sauer argues similarly, stressing that by the end of the nineteenth century in Britain, ‘infanticide had been largely replaced by abortion as the means of avoiding ... the social and economic burdens of an illegitimate child’.⁴⁹ Sauer’s contention, advanced by Allen’s careful quantitative analysis, suggests a certain justification for the consideration of the killing of an infant as a reproduction related offence, and certainly, studies undertaken within this framework have provided firm ground for understanding the nature of maternal neonaticide in the West, particularly in the context of the early modern period and through to the end of the nineteenth century.⁵⁰ However, I agree with Canadian sociologist Kirsten Kramer, who sees the conflation of infanticide with crimes related to sexuality and reproduction as ‘conceptually problematic’.⁵¹ Kramer points to the fact that unlike these other crimes, infanticide involves the killing of another (live-born) human being, and as such, demands a particular legal response.⁵² The approach laid out in this thesis moves beyond the investigation of maternal infanticide as an extreme form of birth control or a reproduction related crime, placing it instead within the wider framework of homicidal actions committed by adults against children.

Undoubtedly, issues of gender and matters of sexual difference are thickly woven into the discourse surrounding the crime of child homicide. In deploying gender as a primary category of historical analysis this thesis focuses on the various ways that gender identities were created and performed representationally in official and unofficial texts. There are countless dimensions on which notions of difference can operate; the category of gender, as Michelle Lazar eloquently

⁴⁸ Allen, ‘Octavius Beale Re-considered’, p. 120.

⁴⁹ R. Sauer, ‘Infanticide and Abortion in Nineteenth-Century Britain’, *Population Studies*, 32:1 (March, 1978), p. 91.

⁵⁰ See variously: Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990); Ann Higginbotham, ‘Sin of the Age: Infanticide and Illegitimacy in Victorian London’, *Victorian Studies*, 32:3 (Spring, 1989), pp. 319-337; George Behlmer, ‘Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England’, *Journal of the History of Medicine and Allied Sciences*, 34 (1979), pp. 303-427.

⁵¹ Kirsten Kramer, *Unwilling Mothers, Unwanted Babies: Infanticide in Canada* (Vancouver: UBC Press, 2005) p.10.

⁵² *Ibid.*

explains, is one which both ‘intersects with’, and is ‘shot through by other categories of social identity such as sexuality, ethnicity, social position and geography’.⁵³ In this study I am concerned not only with differences in the experiences of men and women implicated in the deaths of children, but with the nuances and complexities that can be traced within the gender categories themselves.

Court records show that a range of people came before the New Zealand courts charged with the offence of child murder; grandparents, step-parents, strangers, foster-carers and, of course, fathers were indicted in relation to the suspicious deaths of newborns and older children throughout the period in question. However, the social, moral and legal discourses swirling around the issue of child homicide came to centre around the feminine body and the female mind, framing the child murderer as either the victim of a ‘seducing’ male partner, as ‘temporarily insane’, or, in the case of the baby farmers, as heartless monsters. British historian Ann Higginbotham argues that the emphasis on the criminal actions of transgressing women allowed contemporaries to avoid the larger problems of illegitimacy, female poverty and childcare.⁵⁴ In New Zealand, the social gaze was similarly averted from these more intractable issues and others such as the problem of familial violence and a prevailing culture that viewed such violence as normative. Furthermore, while strongly reinforcing the visibility of criminal women, the gendered rhetoric rendered others involved in the crime of child homicide invisible in official debates on violent or neglectful child deaths. Most notable among these invisible subjects was the infanticidal father.

While feminist historians have analysed in detail the ways that women have been constituted by gender relations, less attention has been paid to the historical constructions of masculinity.⁵⁵ Although this is fast becoming a fertile area of

⁵³ Michelle M. Lazar, ed, *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse* (Hampshire: Palgrave Macmillan, 2005), p. 1.

⁵⁴ Higginbotham, p. 337.

⁵⁵ Notable early exceptions include the work of New Zealand historians such as Jock Phillips’ *A Man’s Country? The Image of the Pakeha Male – A History* (Auckland: Penguin, 1987) and Miles Fairburn’s *Nearly Out of Heart and Hope: The Puzzle of a Colonial Labourer’s Diary* (Auckland: Auckland University Press, 1995). Early international studies include J. A. Mangan and James Walvin, eds., *Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800-1940* (New York: St. Martin’s, 1987); and Michael Roper and John Tosh, eds., *Manful Assertions: Masculinities in Britain Since 1800* (London: Routledge, 1991).

research, it is surprising that it has taken until the last decade to germinate. It was as long ago as 1975 that Natalie Zemon Davis wrote:

It seems to me that we should be interested in the history of both women and men, that we should not be working only on the subjected sex any more than an historian of class can focus entirely on peasants. Our goal is to understand the significance of the *sexes*, of gender groups in the historical past.⁵⁶

This thesis takes a ‘gender encompassing’ approach – a term used by Gisela Bock, who also encouraged the writing of histories ‘in which women and men equally have a place’.⁵⁷ Much of the textual evidence explored in this study, as Bock has shown in another context, essentially represents ‘men’s thinking on gender’.⁵⁸ The law courts themselves were male-dominated arenas, made up of all male jurors and a male judge.⁵⁹ In the coroners’ courts, likewise, men sat in the position of authority and power. When a woman stood before the court accused of murder, the textual narratives which simultaneously flowed from and fed into such an event were filtered by male understandings of women’s minds and bodies. The rich primary source material used in my research demonstrates that similar understandings and imaginings about the masculine body and mind were brought into play when fathers and male strangers were implicated in the deaths of children. For the most part, however, contemporary medico-legal and populist discourse tended to turn a blind eye to male perpetrators of fatal violence against children in the belief that child murder was a crime perpetrated by mothers.

The historiographical focus on illegitimacy and maternal infanticide has perpetuated the idea that child killing in the nineteenth and early-twentieth

⁵⁶ Natalie Zemon Davis, “‘Women’s History’ in Transition: The European Case”, *Feminist Studies*, 3 (1975), p. 90, cited in John Tosh, ‘What Should Historians Do with Masculinity? Reflections on Nineteenth-Century Britain’, *History Workshop Journal*, 38 (1994), p. 179.

⁵⁷ Gisela Bock, ‘Women’s History and Gender History: Aspects of an International Debate’, *Gender and History*, 1:1 (Spring 1989), pp. 16, 17.

⁵⁸ Bock, p. 17.

⁵⁹ New Zealand juries were all male affairs until the 1942 Jurors’ Act enabled women aged over twenty-five years to sit on juries. It was not until 1963 that jury duty for women was on the same basis as men, but even then a woman could exempt herself from duty simply on the ground of being a woman (Anna Bradshaw, ‘The Colonial Medea: A Study of Indictments of Women for Serious Violence in the Christchurch Supreme Court 1900-1968’ (MA thesis, Canterbury University, 1999), p. 94).

centuries constituted a 'female crime'. Feminist historians traditionally have read the shifting responses to the infanticidal crimes of mothers as an 'expression of repressive state power', and highlight the state's complicity in the criminalising and medicalising of female 'deviance'.⁶⁰ These studies generally employ an overarching narrative of child murder which pits the female perpetrators of the crime against the patriarchy of law, medicine and psychiatry. This approach has been critiqued by later researchers such as Kramar, who insists that infanticide and its laws can and should be 'understood within a *legal* context' distinct from 'the medicalisation of women's deviance'.⁶¹

Moreover, these feminist studies, at times, unproblematically read agency and resistance in their female subjects. In these analyses, women who kill their children are deemed 'courageous' and 'resourceful', and hailed as 'revolutionaries' in a 'patriarchal society'.⁶² Their actions are understood to be an assertion of 'the right to reject motherhood'.⁶³ While it is important to consider evidence of female sexual agency and autonomy in these situations, which were bleak and often brutal, some historical analysts too easily assume positive psychological motives to actions that might be read in a number of differing ways if given a wider context. Agency, according to Joan Scott, 'cannot be understood apart from the very particular contexts in which it occurs'.⁶⁴ The agency of individuals brought before the courts of law, therefore, was 'specific to the contexts in which it was observed and documented'.⁶⁵ This thesis argues that the agency of men and women implicated in the suspicious deaths of children was

⁶⁰ Kramar, p. 2. See for instance, Smart, 'Disruptive Bodies and Unruly Sex', pp. 7-32; Constance Backhouse, 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada', *The University of Toronto Law Journal*, 34:4 (Autumn, 1984), pp. 477-478; Patricia Sumerling, 'Infanticide, Baby-Farming and Abortion in South Australia 1870-1910' (BA (Hons) dissertation, University of Adelaide, 1983).

⁶¹ Kramar, p. 10.

⁶² Backhouse, p. 477; Ann Jones, *Women Who Kill* (1980), cited in Backhouse, p. 477.

⁶³ Sumerling, p. 4. In a more recent study, Australian scholar Nicola Goc concludes that 'By challenging the world in which they lived, by refusing to submit their offspring to destitution and starvation, and death in the workhouse, the young 'Medeas' of London were as courageous in their actions, as Euripides' mythological heroine' (Nicola Goc, 'Medea in the Courtroom and on the Stage in Nineteenth-Century London', *Australasian Journal of Victorian Studies*, 14:1 (2009), p. 43).

⁶⁴ Joan W. Scott, 'Review: Heroes of Their Lives: The Politics and History of Family Violence by Linda Gordon', *Signs*, 15:4 (Summer 1990), p. 851.

⁶⁵ *Ibid.*

embedded not only within its ‘very particular’ contexts but also within wider, interconnected structures that encompassed legal, medical and psychiatric discourse as well as traditional lay ideologies regarding gender and class roles, parenthood, ethnicity, and criminal and sexual deviance.

The inclusion of men in the historical picture of child homicide provides opportunities for contextualisation and a more nuanced understanding of the archival sources. Daniel Grey’s study of discourses of infanticide in nineteenth and early twentieth-century England is one of only a few studies that have analysed the theme of masculinity in relation to newborn child murder in a considered way.⁶⁶ His sources include newspaper trial reportage of both men and women tried for infanticide, which he deconstructs for evidence of gender disparity and bias. Grey uncovers a distinct gender binary not only in the reportage of trials, but within the legal process itself, and concludes that discourses of ‘appropriate’ masculinity and femininity had ‘a profound influence’ on the different ways the crime of infanticide was dealt with during his timeframe.⁶⁷ However, my own findings from the same period in the colonial context reveal a more complex interplay. Within this analysis I am concerned to read the evidence not only for the ways in which the murder of children was codified in masculine or feminine terms, but also remain open to that which complicates, contradicts or distorts the picture of a sexual double standard. The number of New Zealand men charged with the murder of a child during the period of this study is small. Nevertheless, these incidents, and the discourses that surround them, are characterised by variety, ambiguity and dissonance, and often defy attempts to compartmentalise for the sake of coherence. And yet, their investigation exposes significant and revealing testimony that goes some way towards destabilising the centrality of the maternal subject in nineteenth and early twentieth-century incidents of child homicide.

⁶⁶ Daniel Grey, ‘Discourses of Infanticide in England, 1880-1922’ (PhD thesis, Roehampton University, 2008). See also Melissa Valiska Gregory, “‘Most Revolting Murder by a Father’: The Violent Rhetoric of Paternal Child-murder in the Times (London), 1826-1849”, *Writing British Infanticide: Child-murder, Gender, and Print, 1722-1859*, edited by Jennifer Thorn (Newark, London: University of Delaware Press, 2003), pp. 70-90.

⁶⁷ Grey, p. 481-2.

While historians such as Daniel Grey are beginning to address the gender disparity in the literature on infanticide, large areas of under-explored (and as yet unexplored) territory remain in the historiography of child homicide. Little historical research has been done, for instance, into the violent deaths of older children, or into child homicide within families.⁶⁸ Although there has been much interest in the socio-economic concerns of the lower classes and the connection between domestic service and infanticide, little consideration has yet been given to child murder occurring among the middle-classes. The role of familial violence and physical ‘discipline’ in child murder trials has also been largely omitted from the historical investigation. The attitudes and responses of the wider communities within which perpetrators and victims were situated, and the place of ethnicity in the discourses of child murder trials, are areas which have only begun to be considered historically.⁶⁹ All are subjects which merit more attention. In this thesis these under-researched areas are explored in an effort to broaden understandings of the ways the killing of children has been made sense of in the past.

The New Zealand Context

The ways that issues of race and ethnicity have been deployed and disseminated in past cases of child homicide has assumed a new relevance in the wake of more recent concerns surrounding the physical welfare of children. Since the early 1990s the issue of child homicide in New Zealand has frequently surfaced as a

⁶⁸ Exceptions include George Behlmer, who considers the deaths of older children by starvation and neglect among the lower classes and their connections with burial insurance in his *Child Abuse and Moral Reform in England, 1870-1908* (Stanford: Stanford University Press, 1982); Ann Higginbotham, who discusses murder cases involving older illegitimate infants in ‘Sin of the Age’, pp. 333-335; and Shurlee Swain and Renate Howe, who consider the deaths of older illegitimate children in their book *Single Mothers and Their Children*. Cliona Rattigan investigates the role of family members in the detection of infanticide in her articles “‘I Thought from Her Appearance That She Was in the Family Way’: Detecting Infanticide Cases in Ireland, 1900-1921’, *Family and Community History*, 11:2 (November 2008), pp. 134-151; and “‘Done to Death By Father or Relatives’: Irish Families and Infanticide Cases, 1922-1950’, *The History of the Family*, 13:4 (2008), pp. 370-383.

⁶⁹ A fine study of the ethnic dimensions of homicidal crime is Carolyn Conley’s, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth Century England, Ireland, Scotland and Wales* (Columbus: Ohio State University Press, 2007). This work includes a chapter on the crime of child murder.

topic of public debate.⁷⁰ The release of an international report in 2003, which declared New Zealand's record of fatal child abuse statistics to be among the worst in the world, served to consolidate public anxieties and construct a discourse of child abuse as social 'epidemic'.⁷¹ A defining feature of the contemporary discussion has been the strong focus on narratives of race. Criminological data indicate that Māori children currently carry around twice the risk of being the victims of family related homicide as non-Māori.⁷² This disparity, often the focal point of news media reportage, has been of intense social interest. Recent research on newspaper coverage of fatal and non-fatal child abuse has found a marked bias in reporting, with disproportionate coverage given to incidents where Māori are the victims or perpetrators.⁷³ Predictably then, 'just over half' of New Zealanders are claimed to hold the belief that the 'cause' of child abuse is 'ethnically based'.⁷⁴ The current focus on one particular group or 'type' of offender over another raises questions that are crucial to the concerns of

⁷⁰ Throughout the 1990s a series of fatal abuse cases were subject to intense media scrutiny, and were followed by a raft of print media editorials, articles and opinion pieces on the issues of child abuse and child homicide.

⁷¹ In 2003 the United Nations Children's Fund annual report on child welfare focused its concerns on the physical maltreatment of children, and published a league table of fatal child abuse statistics that placed New Zealand among the worst performing OECD nations. With Hungary, New Zealand's abuse fatalities were singled out as being six times higher than the average rate for the leading countries. Only Mexico and the United States rated higher. (UNICEF, 'A League Table of Child Maltreatment Deaths in Rich Nations', *Innocenti Report Card*, 5 (Florence: Innocenti Research Centre, 2003), retrieved online at <www.unicef.org/publications/pdf/repcard5e.pdf> (accessed 14 May 2011)). For references to New Zealand child abuse as 'epidemic' see for instance, Charlotte Renwick, 'The Child Abuse Epidemic', *Protecting Our Children* (online report) retrieved online from <<http://policyprojects.ac.nz/charlotterenwick/the-child-abuse-epidemic/>> (accessed 28 February 2012); and Editorial, 'Another Dead Baby – So What Can We Do?', *Nelson Mail*, 18 January 2012, retrieved online from <<http://www.stuff.co.nz/nelson-mail/opinion/6275575/Another-dead-baby-so-what-can-we-do>> (accessed 20 January 2012).

⁷² Cindy Kiro. 'Ngā mātua – Māori parenting - Abuse and discipline', *Te Ara - the Encyclopedia of New Zealand*, retrieved online from <<http://www.TeAra.govt.nz/en/nga-matua-Māori-parenting/4>> (accessed 21 December 2011). See also Mike Doolan, 'Child Death by Homicide: An Examination of incidence in New Zealand 1991-2000', *Te Awatea Review*, 2:1 (August 2004), pp. 9-10. Māori currently comprise around fifteen per cent of New Zealand's population of just over four million.

⁷³ Raema Merchant, 'Who Are Abusing Our Children: An exploratory study on reflections on child abuse by media commentators' (MSocSci. thesis, Massey University, Albany, 2010), p. 120. Merchant's research uncovered 'a 42 per cent over-reporting of Māori physical child abuse than would be statistically expected'. Moreover, she found 'almost without exception' that 'ethnicity is given more media coverage if that ethnicity is Māori, Pacific Island or other minority ethnic group' (Merchant, p. 121).

⁷⁴ Susan Pepperell, 'Ethnic label attached to child abuse', retrieved online from <<http://www.stuff.co.nz/national/5132346/Ethnic-label-attached-to-child-abuse>> (accessed 1 December 2011). This claim was made in relation to a Research New Zealand survey, which polled 503 people on their understandings of the issue of child abuse.

this thesis about the ways in which our understandings of crime are shaped. This thesis demonstrates that understandings and imaginings about the perpetrators of child abuse and homicide have not remained fixed over time. If, currently, the face of the child murderer is imagined as brown and male, this has not always been the case.⁷⁵ As this thesis shows, cultural narratives and understandings of child abuse and child homicide incidences investigated in late nineteenth and early twentieth-century New Zealand were firmly centred on the ‘white’ maternal body.⁷⁶ However, as discursive theorists of ‘whiteness’ have confirmed, the white body itself represents a racialised site requiring critical investigation.⁷⁷

Despite its wide-ranging approach, this thesis does not attempt to address ‘practices’ of infanticide occurring within the indigenous population.⁷⁸ Primary source material generated by Māori testimony, as well as that recorded by contemporary Pākehā commentators, suggests that if traditional forms of infanticide had been practiced in Māori society, such incidences were extremely rare by the mid-nineteenth century.⁷⁹ During the timeframe of this study, the

⁷⁵ Contemporary studies showing that perpetrators are more likely to be a non-biological parent, have concurrently led to an increased interest in the abusive or homicidal step-father (Mavis Duncanson, Don Smith and Emma Davies, ‘Death and serious injury from assault in children aged under five years in Aotearoa New Zealand: A review of international literature and recent findings’ (Wellington: The Children’s Commissioner, June 2009), p. 3).

⁷⁶ Here I include New Zealand born *Pākehā* of English, Scottish or Irish descent as well as first generation British migrants. (The term ‘Pākehā’ is the Māori language word for any New Zealander of European descent).

⁷⁷ My understandings of discursive theories of whiteness are informed by studies such as Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995) and Ann Louise Keating, ‘Interrogating “Whiteness”, (De)constructing Race’, *College English*, 57:8 (1995), pp. 901-918.

⁷⁸ Historical work with a central focus on child murder among the indigenous population of this country is yet to be conducted. A number of Māori scholars have argued convincingly that studies of this kind would be most sensitively achieved within a *kaupapa Māori* theoretical framework and should be undertaken within the aegis of Māori scholarship. On the ethics and responsibilities of ‘outsider’ research into Māori and iwi history see Angela Ballara, ‘“I riro i te Hoko”: Problems in Cross-Cultural Historical Scholarship’, *New Zealand Journal of History*, 34:1 (2000), pp. 20-33; Linda Tuhiwai Smith, *Decolonising Methodologies: Research and Indigenous Peoples* (Dunedin: University of Otago Press, 1999); and Nepia Mahuika, ‘“This Horrid Practice”: The Cannibalizing of Māori and Iwi History’, Keynote Lecture, New Zealand Historical Association Conference, *Centre and Periphery*, Massey University, 27 November 2009. I am grateful to Nepia Mahuika for making a copy of this paper available to me.

⁷⁹ The existence of infanticide as a traditional practice remains contested. See for instance, L.K. Gluckman, ‘Abortion in the Nineteenth Century Maori: A Historical and Ethnopsychiatric Review’, *The New Zealand Medical Journal*, 93 (1981), pp. 384-386; R.B. Hunton, ‘Maori Abortion Practices in Pre and Early European New Zealand’, *The New Zealand Medical Journal*, 86 (1977), pp. 567-579; Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present and Projected* (Auckland: Auckland University Press, 1991), pp. 47-48.

‘problem’ of infanticide in both lay and official rhetoric was centred almost exclusively on the Pākehā population. The particular problems experienced by Pākehā women who were faced with the sole responsibility for an ex-nuptial pregnancy arose from European cultural mores and were largely mitigated in Māori society by the centrality of the concept of *whānau*.⁸⁰ However, a small number of Māori individuals and families were tried before the New Zealand courts for the murder or manslaughter of their children, and these cases are closely read for the ways that contemporaries used ethnicity in relation to narrative understandings of this crime. Māori individuals charged with child homicide were invariably considered within the existing Western representations of the child murderer, most particularly that of the seduced innocent young woman or the ‘madman’ or ‘madwoman’. However, as with non-British migrant groups such as the Chinese, matters of ethnicity and race were central to the ways that these individuals and their actions were represented both in the courtroom and in the media.

Given current anxieties surrounding the fatal abuse and neglect of New Zealand children, it is surprising that there remains a sizable gap in the historical literature on this subject in New Zealand. At the time of writing, only three New Zealand studies reflect on this subject in a considered way.⁸¹ While my research draws heavily on the work of British, Canadian and Australian scholars in the fields of infanticide and child homicide, these New Zealand studies have proved invaluable as stepping off points. Bronwyn Dalley’s chapter ‘Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-Century New Zealand’ is perhaps the most comprehensively focused of these historical works.⁸² Placing the issue of

⁸⁰ Within the *whānau* (extended family) system, children tended to be cared for and looked after by all adult members of the extended family group, regardless of their status. The security of the system offered Māori single mothers and their children the practical support that Pākehā women often lacked.

⁸¹ I refer here to the work of Peter John Dean, ‘Child Homicide and Infanticide in New Zealand’ in *International Journal of Law and Psychiatry*, 7:4 (July/Aug 2004), pp. 339-348; Dalley, ‘Criminal Conversations’, pp. 63-85; and Lynley Hood, *Minnie Dean: Her Life and Crimes* (Auckland: Penguin, 1994).

⁸² Dalley, ‘Criminal Conversations’, pp. 63-85. Bronwyn Dalley’s superb crime study published in 2000, ‘The Cultural Remains of Elsie Walker’, first drew me to this area of research and continues to stand as an important model for my work (Dalley, ‘The Cultural Remains of Elsie Walker’, *Fragments: New Zealand Social and Cultural History*, edited by Bronwyn Dalley and Bronwyn Labrum (Auckland: Auckland University Press, 2000), pp. 140-162).

infanticide within the framework of the regulation of female sexuality, Dalley's investigation identifies child murder trials as a locus for 'narratives of female sexuality – and sexual danger'.⁸³ Dalley bases her methodology on the reading and interpretation of cases and case-notes in court records, and foregrounds the role of melodrama in the formation of cultural understandings about infanticidal crime.⁸⁴ This approach makes her study an extremely useful model for my own work. While her research shows that nineteenth-century judges and juries in New Zealand were exceptionally reluctant to convict women who had killed their own children, her micro-historical approach, which focuses on the trial records of two women who served long sentences for their crimes, clearly demonstrates that the courts were not uniformly lenient in cases of maternal infanticide.⁸⁵

The research and findings of New Zealand scholars engaged with issues that link closely to the subject matter of this study have provided the broader framework that has shaped my approach to this under-researched topic. Charlotte Macdonald's work on female criminality and the private and emotional lives of working class migrant women has considered women's experiences of challenging aspects of their lives from the viewpoint of individuals rather than from the focus of the institutions through which they were managed or governed.⁸⁶ Macdonald's approach underscores the fragmentary and conflicting nature of historical events and the constantly shifting boundaries within which events are defined. She insists that while crime in the nineteenth century was 'a predominantly masculine activity', the small but 'steady flow' of women who moved through the justice system demand historical attention.⁸⁷ This thesis is both an acknowledgement and a response to Macdonald's challenge to New Zealand

⁸³ Dalley, 'Criminal Conversations', p. 82.

⁸⁴ Dalley, 'Criminal Conversations', pp. 63-85.

⁸⁵ Both women were initially condemned to hang, but were later reprieved.

⁸⁶ Charlotte Macdonald, 'Crime and Punishment in New Zealand, 1840-1913: A Gendered History', *New Zealand Journal of History*, 23:1 (1989), pp. 5-21; and *A Woman of Good Character: Single Women as Immigrant Settlers in Nineteenth-Century New Zealand* (Auckland: Allen and Unwin, 1990); and Frances Porter, Charlotte Macdonald and Tui MacDonald, eds., *My Hand Will Write What My Heart Dictates: The Unsettled Lives of Women in Nineteenth-Century New Zealand as Revealed to Sisters, Family and Friends* (Auckland and Wellington: Auckland University Press; Bridget Williams Books, 1996).

⁸⁷ Macdonald, 'Crime and Punishment', p. 10.

historians to include those people in the background or on the peripheries whose historical presence is often overlooked.

Margaret Tennant, Andrée Lévesque, and others have provided a sound historiography regarding the experience of unmarried mothers and their children in nineteenth and early twentieth-century New Zealand.⁸⁸ Tennant's work in the areas of poverty and welfare provision in particular has been crucial for understanding the place of marginalised men and women as objects of state regulation. Her nuanced analyses highlight the exigencies experienced by individuals and families living on the fringes of 'respectable' society and recover something of the lived experiences of these people. My understandings of the changing meanings of Pākehā masculinity and the ways that notions of manliness and fatherhood were negotiated in the context of child murder trials throughout my period of study have been informed by Jock Phillips' work on the social construction of masculinities.⁸⁹

Studies concerned with the idea of gender as a relational concept, such as Caroline Daley's work on the Hawke's Bay community of Taradale between 1886 and 1930, have also been of significance to this thesis.⁹⁰ Such work highlights the ways that New Zealand men and women perform masculinity or femininity in particular situations, noting tensions not only between genders but within the

⁸⁸ Margaret Tennant, "'Brazen-Faced Beggars of the Female Sex': Women and the Charitable Aid System, 1880-1920", in *Women in History: Essays on European Women in New Zealand*, edited by Barbara Brookes, Charlotte Macdonald, Margaret Tennant (Wellington: Allen and Unwin, 1986), pp. 35-55; and "'Magdalens and Moral Imbeciles': Women's Homes in 19th Century New Zealand", *Women in History 2*, edited by Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington: Bridget Williams Books, 1992), pp. 72-75; and *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen & Unwin and Historical Branch, Dept. of Internal Affairs, 1989); Andrée Lévesque, 'Prescribers and Rebels: Attitudes to European Women's Sexuality in New Zealand, 1860-1916', in *Women in History: Essays on European Women in New Zealand*, edited by Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington, Allen and Unwin, 1986), pp. 1-12. See also Fiona Kean, 'Illegitimacy, Maintenance and Agency: Unmarried Mothers and Putative Fathers in Auckland, 1900-1910' (MSocSc thesis University of Waikato, 2002) and Claire Wood, "'Bastardy Made Easy'?: Unmarried Mothers and Illegitimate Children on Charitable Aid, 1890-1910' (BA (Hons) dissertation, University of Otago, 1990).

⁸⁹ Jock Phillips, *A Man's Country: The Image of the Pakeha Male: A History* (Auckland: Penguin, 1987).

⁹⁰ Caroline Daley, *Girls and Women, Men and Boys: Gender in Taradale, 1886-1930* (Auckland: Auckland University Press, 1999). I also include here Annabel Cooper and Marian Horan, 'Down and Out on the Flat: The Gendering of Poverty', *Sites of Gender: Women, Men and Modernity in Southern Dunedin, 1890-1939*, edited by Barbara Brookes, Annabel Cooper and Robin Law (Auckland: Auckland University Press, 2003).

gender categories themselves.⁹¹ Research undertaken by Erik Olssen on the construction of Pākehā families, and by Bronwyn Dalley on family involvement with child welfare agencies, has demonstrated the rapid changes in the perception and meaning of ‘family’ and ‘childhood’ from the late nineteenth century.⁹² Dalley’s analysis of child welfare practices in the twentieth century reveals the depth of the state’s involvement both in protecting children and in defining family life. Above all, her research highlights the vulnerability of children, whether living within or outside of their biological families. Closely connected to the concerns of this study are Anna Bradshaw’s reading of twentieth-century indictments of serious violence among women tried in the Christchurch Supreme Court, and Sally Maclean’s work on nineteenth-century child abuse trials, which offers a rare ‘child-centred’ historical viewpoint.⁹³ Though more concerned with cases of abuse and neglect than with homicide, the research of these two scholars, nevertheless, reveals a remarkable consistency in the thematics of familial violence and cruelty. These scholars and others, who have more fully investigated aspects of New Zealand family and community life, law and justice, and class, race and gender relations, are the specialists on whom I rely for my understanding of this period of New Zealand’s past.

The time frame of this study, 1870-1925, spans a period of rapid social transition.⁹⁴ While the Pākehā population at the beginning of the period was comprised primarily of British and other immigrants, within twenty years the majority of Pākehā were native born.⁹⁵ However, as James Belich contends,

⁹¹ Daley, p. 5.

⁹² Erik Olssen, ‘Families and the Gendering of European New Zealand in the Colonial Period, 1840-1880’, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), pp. 37-62; Bronwyn Dalley, *Family Matters: Child Welfare in Twentieth Century New Zealand* (Auckland: Auckland University Press, 1998).

⁹³ Bradshaw, ‘The Colonial Medea’; Sally Maclean, ‘Child Cruelty or Reasonable Punishment? A Case Study of the Operation of the Law and the Courts, 1883-1903’, *New Zealand Journal of History*, 40:1 (2006), pp. 7-24.

⁹⁴ James Belich, *Paradise Reforged: A History of the New Zealanders* (Auckland: Penguin, 2001), pp. 29-30.

⁹⁵ Annabel Cooper, Erik Olssen, Kirsten Thomlinson and Robin Law, ‘The Landscape of Gender Politics: Place, People and Two Mobilisations’, *Sites of Gender: Women, Men and Modernity in Southern Dunedin, 1890-1939*, edited by Brookes, Cooper and Law (Auckland: Auckland University Press, 2003), p. 24. Cooper, Olssen et al, found from marriage records that in the Dunedin area by the 1900s ‘more than 80 per cent of brides and almost 70 per cent of grooms were New Zealand born’.

throughout the period of investigation the country strengthened and tightened its relations with the British metropolis.⁹⁶ Towards the end of the nineteenth century the sex ratio had changed as the predominance of males gave way to higher numbers of females (a discrepancy that became further marked with the high male mortality rates of the First World War).⁹⁷ The environment became increasingly ‘settled’ and, as Tennant contends, ‘more concerned with issues of respectability’.⁹⁸ With shifting social contours and concerns, the ‘problem’ of illegitimacy, according to Tennant and Macdonald, became more conspicuous and less acceptable.⁹⁹ New ideologies of family life intersected with other changes occurring across this period. Ideas surrounding the roles of motherhood and femininity, and fatherhood and masculinity, evolved and the value placed on ‘family life’ increased.¹⁰⁰ With these ideas came new, focused concerns about childhood and expectations about the health and welfare of infants and older children. The size of Pākehā families reduced dramatically, bringing fears of ‘race suicide’ and attendant moral and racial ‘decay’.¹⁰¹ Reforms in education, housing and public health significantly increased state involvement in people’s lives.¹⁰² Legislation was introduced, amended and reformed as attitudes and anxieties shifted focus.

The period of study adopted in this thesis is book-ended by two important trials – that of the black American migrant, Anthony Noble, convicted in 1870 for the murder of an eight-year-old child, and that of white New Zealand-born abortionist, Daniel Cooper, who was charged with the baby farming deaths of newborn infants in 1923. Between the two trials stand the ‘Long Depression’ of the 1880s and ‘90s, The Great War, and over fifty years of social change. However, the narratives that were utilised in the effort to explicate meaning from

⁹⁶ Belich, p. 11.

⁹⁷ Cooper, Olssen et al, p. 24.

⁹⁸ Tennant, *Paupers and Providers*, p. 112.

⁹⁹ Ibid, and Macdonald, *A Woman of Good Character*, p. 164.

¹⁰⁰ Phillips, p. 222.

¹⁰¹ Phillipa Mein Smith, ‘Blood, Birth, Babies, Bodies’, *Australian Feminist Studies*, 17:39 (2002), pp. 305-323; Lynda Bryder, *A Voice for Mothers: The Plunket Society and Infant Welfare, 1907-2000* (Auckland: Auckland University Press, 2003), p. 2; Belich, *Paradise Reforged*, pp. 181-186.

¹⁰² Angela Wanhalla, ‘Family, Community and Gender’, *The New Oxford History of New Zealand*, edited by Giselle Byrnes (Melbourne and Auckland: Auckland University Press, 2009), p. 459.

these seemingly disparate events demonstrate a remarkable consistency. My exploration of the rhetorical patterns employed in the narration of homicidal incidents suggests that despite the cultural transitions occurring around them, the explanatory power of certain stories for the understanding of disturbing events was subject to more gradual shifts over time.

Methodology

In an observation on legal history method, Rosemary Hunter comments on the perspectives of different researchers in the field, and introduces the idea of legal *history*, as distinct from *legal* history. She writes:

Legal history, focuses primarily on statutes, cases, and judges (and legal practices), while legal *history* explores the legal dimensions of historical problems ... [one] reads legal texts as statements of law, while [another] read[s] them as historical documents to be mined for what they say about contemporary society and for evidence of how characters performed on the legal stage.¹⁰³

This thesis takes a legal *history* standpoint, using gender as a primary category of analysis to examine the divergent experiences of parents and others who were charged with child murder, and how they ‘performed on the legal stage’. Notions of the child murderer moved fluidly across legal, medical and popular texts. I use the theoretical framework of discourse analysis to deconstruct these texts in order to uncover ways that judicial ‘knowledge’ both relied on and contributed to the construction of cultural narratives and social attitudes, agendas and anxieties.

The analysis of individual incidents becomes meaningful only when considered in comparative context. It is necessary, for instance, to be able to assess a case’s typicality or exclusivity and how it fits into certain historical patterns.¹⁰⁴ As the

¹⁰³ Rosemary Hunter, ‘Australian Legal Histories in Context’, *Law and History Review*, 21:3 (2003), p. 607.

¹⁰⁴ In this thesis the word ‘case’ is used in its socio-historical sense as well as within its strictly legal definition.

topic of child murder has remained largely untouched in the New Zealand historical context, no quantitative research has previously been undertaken to discover how many men and women were accused, tried, committed or acquitted of the crime. I have therefore endeavoured to locate accounts of as many child homicides and homicide-related incidents as possible coming before a New Zealand coroner's inquest or court of law during the time frame of this study.

In the main, these cases proceeded through local police courts and magistrates courts, as well as in the supreme court sittings (which were held regularly around the country), and the courts of appeal. Individuals were processed, at the time of conviction, under the criminal code within the categories of concealment of birth, manslaughter, and murder, the first of these being the most frequent charge.¹⁰⁵ However, some accused individuals went only as far as the coroner's inquest before being dismissed by the coroner's jury. Rather than limiting this study to cases that resulted in formal criminal indictments, I have chosen to apply a wider net, which has required some discretion.¹⁰⁶ A wide range of factors, including the assumptions of family members and witnesses and decisions and actions taken by police, affected whether a person was formally charged over the death of a child and whether the incident appeared in the registers of crime. Consequently, I found the number of criminal cases listed in official statistical sources insufficiently representative for my purposes. In order to make my collection as comprehensive as possible I have relied heavily on incident and trial reports and coronial reports published in New Zealand newspapers, supplementing these, where available, with *New Zealand Law Reports*, the *Police Gazette*, judicial commentary from judge's notebooks, and criminal files held in New Zealand's National Archives. I have entered the details of individuals suspected of homicidal crime against children into a database which I have analysed for patterns, commonalities and discrepancies in the nature of the crime and in sentencing. My final dataset of cases consists of 272 individuals who were investigated on suspicion of causing

¹⁰⁵ Because of the difficulty in securing a conviction of murder or manslaughter as the result of insufficient evidence in these cases, concealment of birth was frequently used by the courts as an alternative charge.

¹⁰⁶ Cases which concluded with a coroner's inquest (and therefore did not appear in any registers of crime) have been included only in situations where a homicide event was strongly suspected and appears to have been likely.

the death of a child. Included in this number are 237 individuals who were formally charged with murder, manslaughter or concealment of birth.¹⁰⁷

From the database I have drawn a selection of cases to be used for more extensive qualitative evaluation. These are analysed as a set of narrative texts and considered closely in terms of their representational and evidential elements. Placed within the framework of popular narrative representations of those charged with child homicide, the individuals who are the subject of these cases have been selected for the ways that their circumstances embodied ideas of gender, race, class, violence and punishment. The textual evidence documenting their trials is read for the ways it engages with, problematises, and complicates the larger overarching narratives.

A primary source of information for this study is the New Zealand print media, in the form of nineteenth and early twentieth-century newspaper reportage on coroners' inquests and court trials. I have accessed these through the online repository 'Papers Past' using keyword searches to determine the spread of incidents across the period and across place in New Zealand. This repository contains, in digitised form, over seventy of the newspapers and periodicals that were circulating in New Zealand during the period of this study.¹⁰⁸ In order to gain some understanding of what a nineteenth or early twentieth-century child murder case meant for contemporaries, media reports are indispensable sources. Public interest in, and official reactions to, child homicides varied enormously. Some attracted very little notice, while others became public sensations. Newspapers played a central part in determining which trials were 'significant' or of special interest, featuring extensive reports on the progress and outcomes of particular trials for an eager reading public. These reports regularly include full verbatim accounts of coronial inquest findings and trial proceedings, including witness testimony. In addition, newspapers sometimes provide supplementary

¹⁰⁷ While my database is the most comprehensive collection of child homicide related incidences in New Zealand to date, the nature of the collection method means that there will inevitably be indictments and case trials that I have failed to uncover. For this reason my quantitative evidence is not presented here as definitive data that captures either a random sample or all incidences of child homicide. The figures I present are intended primarily to provide context and clarification for my particular arguments, rather than to assert any precise measure of fatal violence towards children, or the workings of the law.

¹⁰⁸ This number is growing consistently as ongoing digitisation takes place.

information about events outside the courtroom, such as the level of public interest in a case and events indirectly related to the trial. They may also include portraits of the accused, sketched during court sittings. A small selection of these trial portraits have been reproduced within this thesis.

Official court reporting was not introduced in New Zealand until 1883.¹⁰⁹ Before this time newspaper journalists were particularly concerned to offer detailed, impartial transcripts of trials. Certainly, when these nineteenth-century reports are read alongside official trial transcriptions, they can be seen to have followed proceedings and testimony with painstaking precision.¹¹⁰ However, the mediated nature of any such transcript is well recognised in this thesis. The seemingly balanced reporting of nineteenth-century newspapers represents yet another layer in the accretion of understandings and meanings surrounding a homicidal event. The *NZ Truth*, which began publication in 1905, led the trend towards the more sensationalist reporting of the early twentieth century and broadened the ways in which newspaper reportage framed courtroom events. New Zealand did not share the same degree of aggressive tabloid sensationalism as the British popular press; however, reporting in *Truth* is stridently opinionated in tone and, perhaps because of this, it became for a time one of the most widely read newspapers in the country.¹¹¹ Newspaper reports used for this thesis are supplemented as far as possible by published court reports and criminal case files held in the national archives in Auckland, Wellington, Christchurch and Dunedin. Criminal trial files are available only for a proportion of the trials held, and the volume of material in any particular file is variable; however, some contain a great deal of useful testimony including the depositions of witnesses, pieces of evidence such as letters and maps, and the judge's statements given in summing-up and sentencing. When taken together, these official and unofficial sources draw a richer and more

¹⁰⁹ Megan Simpson, 'The Action for Breach of Promise of Marriage in Early Colonial New Zealand: "Fitzgerald v Clifford" (1846)', *Victoria University of Wellington Law Review*, 41 (2010), p. 475.

¹¹⁰ On occasion, journalistic reporting reveals more information than official judicial transcripts as the latter may include elision or crossing-out of parts of witness testimony that have been disallowed by the court. For example see: *R v Annie Bates*, Hokitika, Richmond J, 13 January 1870, Concealment of birth, 'Christopher William Richmond Judge's Notes', Vol. 3 (1868-1870), MSS R532, J.C. Beaglehole Room, Victoria University of Wellington, pp. 303-318; and 'Circuit Court – Criminal Sittings', *West Coast Times*, 14 January 1870, p. 2.

¹¹¹ Papers Past - *NZ Truth* <<http://paperspast.natlib.govt.nz>> (accessed 7 June 2011).

detailed picture than the one which might be sketched solely from the criminal case files and published law reports.

The particular challenges in prosecuting the crime of child murder were also explored by medical professionals, through the medium of the medical journal. Medical texts such as the *Lancet* and the *British Medical Journal (BMJ)* hold a wealth of information that can be usefully deconstructed for the purposes of this study. These weekly publications catered for a professional readership within the medical sciences throughout Britain's colonies and provided a locus for technical discussion and debate on medical matters. Their content was not intended for the lay reader, although the ideas they propounded found a way (often via criminal trials) into the general media. Both the *Lancet* and the *BMJ* had a socio-medical slant, generating campaigns or commissions of inquiry on subjects of concern that included the 'problems' of the wet-nurse, the midwife, the baby farmer and the infanticidal mother.¹¹² Medical and psychiatric 'professionals' brought these ideas with them into the courtroom, where they had the power to influence judicial understandings about female deviance and reproductive insanity.

When a child's death was deemed to be of a suspicious nature it was investigated, in the first instance, by way of a coroner's inquest. During the period under investigation, coroners' juries were empanelled to determine whether or not there was sufficient evidence of a homicide having taken place to justify a formal indictment. This entailed the gathering of a half a dozen local men who were paid a set fee to consider the autopsy reports of medical specialists and the testimonies of eye-witnesses.¹¹³ These inquests, often referred to as coroners' courts, were

¹¹² Peter Bartrip, 'The British Medical Journal: A Retrospect', *Medical Journals and Medical Knowledge*, edited by W.F. Bynum, Stephen Lock and Roy Porter (London: Routledge, 1992), p. 138.

¹¹³ The Coroners Act 1908 states that: 'Every person who is summoned and duly attends and serves as a juror at any inquest held before a Coroner shall be entitled to be paid for each day's service the sum of eight shillings if he serves for more than four hours in the day, and the sum of four shillings if he serves for not more than four hours' (*Statutes of New Zealand*, 1908, No. 30, Coroners Act, clause 22, p. 502). Unlike in Britain, New Zealand coroners tended to have medical backgrounds and special interest in forensic science. Thomas Philson, Auckland coroner from 1858 to 1899, for instance, was a former provincial surgeon and superintendent of Auckland Hospital (H.D. Erlam, 'Philson, Thomas Moore', *Dictionary of New Zealand Biography (DNZB), Te Ara Encyclopedia of New Zealand*, retrieved online at <<http://www.teara.govt.nz/en/biographies/2p16/1>> (accessed 8 August 2012). Thomas Morland Hocken served as a ship's surgeon and general practitioner before taking up his post as Dunedin's coroner in 1863 (S.R. Strachan, 'Hocken, Thomas Morland', *DNZB, Te Ara Encyclopedia of New*

open to the public and sometimes attracted large crowds of onlookers and interested parties. Coroners' inquest files hold full reports of post-mortem operations (if carried out) as well as police and witness depositions. John Weaver has described the New Zealand archive of coroners' reports as 'among the best, if not *the* best, series of accessible inquests in the common law world'.¹¹⁴ Despite this, few New Zealand researchers have mined this rich vein of evidence. These reports have proven to be valuable sources for this study. Coronial investigations, held within days or even hours of the discovery of a body, represented the first opportunity for key witnesses to give testimony, and as such, they provide a record of interpretations of events often still in the process of being formulated into comprehensible narratives. The resulting stories that grew out of such shocking and unsettling evidence had usually found their shape by the time witnesses came to testify again in a court of law.

Organisation

This thesis utilises the main narrative tropes identifiable in the discourse surrounding child homicide to provide its unifying structure. Drawing on a selection of contemporary legal case files and relevant nineteenth and early twentieth-century textual sources, each chapter explores a primary representation of the child murderer to reveal the construction and dissemination of social and legal attitudes, agendas and anxieties.

Chapters One and Two consider the most persistent representation of the child murderer in the nineteenth and early twentieth centuries – that of the mother who destroys her newly born illegitimate child. Court records demonstrate that a visible majority of those who were indicted with the offenses of child murder, abandonment and concealment of birth were mothers who were young, white, unmarried and employed in the domestic services. Most commonly, accounts of these incidents revolved around narratives of the seduction and abandonment of

Zealand, retrieved online at <http://www.teara.govt.nz/en/biographies/2h39/1> (accessed 8 August 2012).

¹¹⁴ John C. Weaver, *A Sadly Troubled History: The Meanings of Suicide in the Modern Age* (Montreal and London: McGill-Queen's University Press, 2009), p. xiii.

young Pākehā women forced into the act of newborn child murder through shame and desperation.

The empathetic approach to this particular group of perpetrators was deeply embedded in the cultural forms and conventions of melodrama. Walkowitz describes melodrama as ‘the most important theatrical and literary form of the nineteenth century’.¹¹⁵ Her work in the British context demonstrates how melodramatic conventions came to serve as a ‘primary imaginative structure for a wide array of social constituencies’.¹¹⁶ The central narrative of melodrama highlighted the role of the submissive, victimised heroine and told her story in highly emotive and stylised forms. In court cases where young accused women stood centre stage, these melodramatic narratives provided a means for the explication of their intensely disturbing acts. The familiar plot-lines and one-dimensional characters of melodrama can be readily discerned within the discourse of nineteenth and early twentieth-century New Zealand court trials, and in cases of newborn child murder particularly, these narratives came to be relied on in an almost formulaic fashion.

Chapter One considers the structure of these narratives and the social contexts within which the crime of maternal neonaticide was placed. In particular, it explores the social implications of illegitimacy during the period under investigation for unmarried, deserted or widowed women, and their infants. The chapter also includes a consideration of the ‘shadowy figure’ of the absent father in neonaticidal crime and the parts that community surveillance and police detection played in the over-representation of this group of women in the courts.

In Chapter Two these ideas are further analysed in relation to a selection of New Zealand court trials involving women who were charged with the deaths, or concealment of the births, of their newborn illegitimate infants. Before the introduction of specific legislation for infanticide in 1961, cases of neonaticide were understood, in legal terms, as murder, with the punishments of hanging or

¹¹⁵ Walkowitz, p. 86.

¹¹⁶ Ibid.

life imprisonment with hard labour.¹¹⁷ The prevailing narratives, which positioned women's murderous actions as a product of the mental stresses caused by shame and socio-economic hardship, saw the great majority of such cases result in acquittals or in charges being dropped altogether. Other women suspected of murder were tried under the charges of manslaughter or concealment of birth, and if convicted, were usually served with nominal punishments. In this chapter, judicial pronouncements and rulings are unpacked in an effort to uncover the complex and paradoxical legal attitudes to women who, as Watson and Kilday contend, 'were charged with the most barbaric of crimes, yet treated with the greatest leniency'.¹¹⁸

Chapter Three investigates constructions of the child murderer within Pākehā families, with a particular focus on the representation of biological mothers and stepmothers as murderers. This chapter explores the changing status of the child, and the emerging interest in children as rights-bearing individuals. Community responses to incidences of cruelty and fatal neglect, and the work of child protection agencies in safeguarding the physical welfare of children in their own homes, are also given consideration here. The ways that the concept of reproductive insanity was utilised and understood by the courts and the medical and psychiatric professions is of particular salience in this chapter. In debates about how the courts have variously constructed women defendants, historians have identified the dominant mitigating frameworks used in the courts, which fit with the categories of 'mad' or 'sad' - and therefore blameless - women, as opposed to those viewed as 'bad'. Much has been written in this vein with the implication that women are constrained by the discourses of law, medicine and psychiatry into a binary that sees only 'bad' or 'good' women.¹¹⁹ The language of insanity is certainly in evidence in the trials of biological mothers accused of fatal

¹¹⁷ A conviction for murder carried an automatic death sentence, although that sentence could be commuted to life imprisonment with the agreement of the Colonial Secretary. Juries often issued their verdict with a recommendation to mercy, which was forwarded on by the presiding judge with his own recommendations. In cases of particular interest, local communities could present their own petitions in favour of the accused.

¹¹⁸ Anne-Marie Kilday and Katherine D. Watson, 'Infanticide, Religion and Community in the British Isles, 1720-1920: Introduction', *Family and Community History*, 11:2 (November 2008), p. 88.

¹¹⁹ For example Ania Wilczynski, 'Images of Women Who Kill Their Infants: The Mad and the Bad', *Women and Criminal Justice*, 2:2 (1991), pp. 71-88; Zedner, *Women, Crime and Custody in Victorian England*, pp. 38-39; and Ainsley, 'Some Mysterious Agency', p. 37.

violence against their children. However, my reading of the discourse posits a challenge to the existing literature, suggesting that the link between insanity and women's violence may not have been as explicitly gendered as feminist historians have claimed.

These ideas are revisited in Chapter Four, which focuses on narratives of masculinity and paternity in child homicide trials and the ways juries attempted to make sense of the crime of child murder when committed by fathers. Very few men stood charged with the deaths of their own children during the period under investigation. As a corollary, the image of the child-killing father or stepfather was not one which held currency among nineteenth and early-twentieth century observers of homicidal crime. This chapter closely examines cases where fathers were tried for the murder of infants and older children, to explore the ways that these men and their crimes were imagined. Without an over-arching narrative to aid in the understanding of these events, observers turned to a range of co-existing and competing cultural stories, which, unlike those told about murdering mothers, tended to be more contingent on evidence and the particular contexts of the crime. Nevertheless, this chapter argues that these narrative forms led to understandings that had the power to shape judicial discourse and influence trial outcomes.

The discursive constructs of race are foregrounded in Chapter Five. This chapter investigates the records from trials where issues of race intersect with ideas about sexuality, deviance and violence. The chapter is divided into three main sections, the first of which explores narratives of sexual danger in relation to the stereotypical figure of the 'dark stranger'. This particular motif was most familiar to writers of gothic fiction, whose craft drew heavily on cultural anxieties about the racialised 'other' to invoke terror, titillation and fascination. The codes and conventions of the gothic genre, like those of melodrama, were well understood and utilised across a range of discursive sites during the nineteenth and early-twentieth centuries.¹²⁰ The two trials investigated in this section borrowed heavily from gothic plot-lines, particularly in their stylised presentation of the murderous 'other' as dangerously unpredictable and hyper-sexualised, to frame murderous

¹²⁰ Howard L. Malchow, *Gothic Images of Race in Nineteenth Century Britain* (California: Stanford University Press, 1996), p. 3; Walkowitz, p. 131.

events in intelligible terms.¹²¹ The second section foregrounds child homicides committed by ‘white’ women who lived with Chinese men, focusing on the popular representation of such women and the racialised narratives of moral degeneration that surrounded their trials. In a final section, the discourses surrounding the murder of an eighteen-month-old Māori infant are unpacked to uncover the construction and representation of the crime and its perpetrators. The storying of events in this trial, which involved notions of witchcraft, or *māketu*, was explicit and reveals something of the difficulties faced in reading criminal events across cultures. The rhetorical devices of melodrama and the gothic genre were deployed in various ways in the trials considered in this chapter, to excite the horror, disgust or sympathy of jurors and contemporary observers. These cases together provide stark demonstration of the ways that courtroom stories both reflected and contributed to nineteenth and early-twentieth century discourses of race and crime.

The sixth and final chapter of this thesis investigates, in two parts, the discursive constructions surrounding the figure of the baby farmer. The chapter describes how, in New Zealand as elsewhere, the paid fostering and adoption of unparented Pākehā babies became the focus of public and government concern over the child death rate and child homicide. The representation of the baby farmer, in terms of the gendering of identities, presents a clearly drawn picture. Paid fostering of infants was often undertaken by married couples and their families; however, narrative conventions centred exclusively on the foster-mother imagined in archetypal terms as elderly, mercenary and devoid of maternal feeling. Minnie Dean came to epitomise this stereotype in New Zealand. Her high-profile trial, and the social contexts in which it was embedded, are considered closely in this chapter. Baby farming, as Homrighaus has shown, ‘aroused fear and anger in equal measure’.¹²² This emotive combination fuelled the first legislative responses specifically tailored to address the issue of infanticide. The second part of this chapter traces the narratives underpinning these responses through the changing perceptions and expectations surrounding child welfare in early twentieth-century New Zealand.

¹²¹ Walkowitz, p. 197.

¹²² Homrighaus, ‘Baby Farming’, p. 5.

The central task of this thesis is to explore the various ways that the most unimaginable of crimes – the murder of a child – might be ‘imagined’. My contribution to the literature on child homicide takes a narratological approach in order to gain understanding of the ways that this crime has been made sense of in the past. This approach has allowed me to take a wider focus than that of existing scholarly frameworks and to open areas of previously unexplored territory in the historiography. Much fine historical work has been undertaken in the area of maternal infanticide and female criminality, transnationally and from the perspectives of law, sexuality, and psychiatry. This thesis draws on this work and further expands on it, to uncover the extent to which it translates to the New Zealand context. My framework considers the crime of child murder in its widest sense and therefore includes the place of families and communities affected by the crime, as well as the role of non-maternal perpetrators, such as fathers, foster parents and strangers. This shifting investigative frame demonstrates one way of looking at the many faceted picture of child murder. The images it reveals are fractured and sometimes indistinct, but nevertheless, they carry the potential to generate new understandings about important aspects of society in the past and to provide cautions for the present.

Chapter One

Pitiable Tales: Maternal Neonaticide and Illegitimacy in Social Context

In December 1890, Annie Rauner stood before the Supreme Court of Auckland charged with concealing the birth of her newborn daughter. The baby girl, described in newspaper reports as ‘a child of shame’, had been born among the shrubbery of the city’s Western Park – the tiny body was found abandoned there some days later.¹ A reporter covering the case for the *Timaru Herald* described how Annie had come to Auckland city ‘from the country’ in order to take a position as a domestic servant. While there, she was said to have been ‘seduced by the son of her mistress and became pregnant’, and when her condition became apparent she was summarily evicted from the house. The report relays the words of the counsel for the defence, Mr O’Meagher, as he described for the jury the events following Annie’s dismissal:

[S]he was turned out and her seducer basely allowed her to wander about. After falling into the hands of several women, and being driven from place to place, she went out under the arch of heaven into the Western Park, and there she gave birth to a child. ... She may have covered [the child] up, but she did not know. ... [S]he was delivered of the child in the open air as if she was a beast of the field.²

An anonymous commentator was so moved by the young woman’s story they were compelled to put their feelings on the matter into verse. The poem, simply entitled ‘Annie Rauner’, was published in the Auckland newspaper the *Observer* after the preliminary police court hearing. It begins:

¹ ‘Child found dead in the Western Park’, *Observer* (Auckland), 25 October 1890, p. 6.

² ‘Concealment of Birth: A Shameful Case’, *Timaru Herald*, 11 December 1890, p. 4.

With downcast head, in veriest shame she stood,
Poor fallen sister, neither wife nor maid;
Her young life blighted in its girlhood,
Her fresh heart withered and her youth betrayed.

Alone she stood to bear the shame and scorn,
Untempted *Virtue* heaps upon the weak;
Marked ye her thin, clasped hands, her wasted form,
Her tear-dimmed eyes, and shrunken, pallid cheek?

Was her's alone the guilt that brought her here -
This soiled and crushed and bruised and broken heart?
Where is the wretch whose hand is hid in fear -
The dastard knave who played the villain's part?³

For contemporary readers, Annie Rauner's story represented a clear and recognisable narrative: that of the suspicious death and concealment of a newborn illegitimate infant. Replete with melodramatic conventions, stock characters and recurring motifs of youthful, pastoral female innocence, 'seduction', betrayal, shame and desperation, the textual commentary tells a story that was disseminated across a range of discursive arenas, from law and medicine, popular literature, theatre and the print media. Young domestic servants like Annie Rauner epitomised the figure of the infanticidal mother. Such 'girls' were objects of sympathy, 'basely deserted' by the men who had brought about their downfall, who found themselves before the courts charged with the murder or concealment of their own child.⁴ Western scholarship on the subject of child homicide has demonstrated the historical constancy of these themes across spatial and temporal

³ 'Annie Rauner', *Observer* (Auckland), 22 November 1890, p. 6.

⁴ The crime of concealment of birth was understood to be closely linked with murder in both the legal and lay contexts. The charge of concealment is examined in some depth in Chapter Two of this thesis. For further discussion on the historical link between the concealment of pregnancy by unmarried mothers and neonaticide see R. Sauer, 'Infanticide and Abortion in Nineteenth Century Britain', *Population Studies*, 32:1 (March 1978), pp. 81-93; George Behlmer, 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England', *Journal of the History of Medicine and Allied Sciences*, 34 (1979), pp. 303-427; Lionel Rose, *Massacre of the Innocents: Infanticide in Great Britain, 1800-1939* (London: Routledge and Kegan Paul, 1986); Ann Higginbotham, 'Sin of the Age: Infanticide and Illegitimacy in Victorian London', *Victorian Studies*, 33:2 (1989), pp. 319-338; and Mark Jackson, 'The Trial of Harriet Vooght: Continuity and Change in the History of Infanticide', *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Aldershot: Ashgate, 2002), pp. 1-17.

boundaries, confirming the trope of the unmarried infanticidal mother as among the most pervasive and enduring in the discursive arena of child murder.⁵

This chapter explores the particular understandings surrounding this mode of child killing by looking closely at the structures of the cultural narratives bounding the murderous mother and her child victim. Importantly, the chapter examines the social contexts within which notions of illegitimacy were embedded, and the implications for women (single, married or widowed) who found themselves pregnant with an illegitimate child. To begin, incidents relating to this particular sequence of criminal events have been isolated from the larger database of child homicide and concealment crime and scrutinised for evidence of patterning. The dominant script by which stories of newborn child murder were narrated is then unpacked and interpreted to reveal the ways that these infanticidal women were imagined and constructed as a ‘type’.

The second part of this chapter, which turns to focus on the infant victim, examines rates of infantile mortality throughout the period of research, highlighting the particular vulnerabilities of illegitimate newborn infants. This section includes an investigation into the activities of agencies and individuals concerned with the welfare of illegitimate or ‘unwanted’ children. The chapter goes on to explore the perceived relationship between the murder or concealment of infants and employment in the domestic services. Statistical findings which appear to link illegitimate births and incidents of neonaticide to this particular occupational category have captured the attention of scholars internationally, and my own figures for the New Zealand context demonstrate that domestic servants featured significantly among those indicted for neonaticide offences in this country. In this section I examine the special circumstances relating to this group of women and address questions about the men who fathered their unwanted children. A final section considers the actions and representation of widows and deserted wives who were implicated in the suspicious deaths of their illegitimate newborns. Overall, this chapter is concerned to provide context to the circumstances in which this type of crime occurred and explication of the cultural

⁵ On the prevalence of cultural narratives of maternal infanticide in the British context see Jennifer Thorn, ed, *Writing British Infanticide: Child Murder, Gender, and Print, 1722-1859* (Newark: University of Delaware Press, 2003); and Josephine McDonagh, *Child Murder and British Culture, 1720-1900* (Cambridge: Cambridge University Press, 2003).

narratives which imagined the perpetrators of maternal neonaticide as the passive victims of predatory men.

'Fallen Sisters': Patterns of Newborn Child Murder

Historians of child homicide within Western cultures have found that from the early modern period through to the twentieth century the majority of those indicted for child murder were unmarried women of the labouring classes.⁶ In seventeenth-century Britain, the numbers of suspicious deaths of newborn children attributed to this particular group of women led to a capital statute which was used specifically to convict single mothers who had concealed the birth and death of an illegitimate child. An Act to Prevent the Destroying and Murthering of Bastard Children (21 James I c27, 1624) stated that concealment of pregnancy, coupled with a failure to seek attendance in labour and the inability to produce proof of a living infant, was enough evidence to convict an unmarried woman of murder.⁷ Such a woman was considered guilty unless witnesses could otherwise prove her innocence. If convicted, the punishment was death by hanging. Amid growing dissatisfaction with such draconian laws, the statute was repealed in 1803 and the 'concealment of birth' provision was brought in for cases where murder could not be legally proven. The offence of concealment was punishable by up to two years imprisonment with or without hard labour.⁸

The growing empathy demonstrated towards young women accused of neonaticide offences, and the increasingly widespread use of the concealment of birth provision, form part of a pattern of events uncovered by Western historians of maternal infanticide.⁹ The act of newborn child murder itself has been shown to

⁶ Rose, pp. 15-21.

⁷ Olwen Hufton, *The Prospect Before Her: A History of Women in Western Europe, Volume One, 1500-1800* (London: Harper Collins, 1997), p. 272, and Mark Jackson, 'The Trial of Harriet Vooght', pp. 5-6. A Scottish equivalent to this act, An Act Anent the Murthering of Children (1690) was similarly reserved for unmarried mothers.

⁸ Katherine D. Watson, 'Religion, Community and the Infanticidal Mother: Evidence From 1840s Rural Wiltshire', *Family and Community History*, 11:2 (November 2008), p. 117. New Zealand legislation on concealment of birth replicated that of the English Offences against the Person Act (1828), which extended the concealment provision to mothers and fathers of legitimate as well as illegitimate infants.

⁹ Rose, pp. 73-74; Higginbotham, p. 323 and pp. 327-328.

have followed patterns bounded and defined by the social contexts in which it occurred. Common features discerned in British, Canadian and Australian court trials are replicated in the coroners' inquest reports and trial files of nineteenth and early twentieth-century New Zealand. These texts demonstrate that most single women accused of killing their newborn infant and/or concealing its birth had attempted to hide their pregnancy, laboured alone and in secret, abandoned or killed the child outright (often by suffocation or strangulation) and disposed of the body nearby. Mothers disposed of infant corpses as they were able: putting them into water closets, in shallow graves in the garden, or in ponds, rivers or the sea. Domestic servants, whose movements were closely monitored, were found with the bodies of their newborn infants in hatboxes, dress baskets or flour bags hidden in closets or under their beds. Typically, the crime was uncovered by the discovery of bloodied clothing or bedding, unexpected sickness or absence from work, or by the accidental discovery of the infant corpse itself. Sometimes family members, employers and workmates who had suspected a pregnancy interrogated women themselves and called in the authorities over what they considered to be suspicious circumstances. At other times, family and friends appear to have been genuinely ignorant of the events surrounding the births and deaths of illegitimate infants within their households.

Of the 272 men and women apprehended or accused of child murder, manslaughter or concealment of birth and identified in this study, 169 (or 62.0 per cent) were known to have involved the mothers of newly born illegitimate children.¹⁰ The ages of these women ranged from fourteen to thirty-two years, with an average age of twenty-one. Only two of these women can be identified as Māori, while the overwhelming majority were new migrants or settlers of British descent. Despite the distinct cultures and ethnicities that make up Pākehā society, ethnicity is rarely mentioned in reference to 'white' women accused of these

¹⁰ My collection of 272 cases includes 238 women (married, widowed and single) and thirty-four men. Judith Allen discovered a similar correlation between illegitimacy and infanticide in the Australian context. Quantifying demographic data for Sydney in the years 1880 to 1899, she found that unmarried women bore only 12.0 per cent of the children born yet they constituted a full 85.0 per cent of the defendants indicted for infanticide (Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990), p. 246). The discrepancy here may be partly accounted for by the fact that Allen's data considers indictments involving infants under twelve months old, while my own includes children up to the age of twelve.

crimes. While the names and customs of some are highly suggestive of Scandinavian, German, Irish or Italian descent, in the textual accounts that I have surveyed, the ethnicities of only two white women, Swedish migrant Annie Anderson and Alice Savieri, ‘a colonial of Italian parentage’, are referred to directly.¹¹

Incidents were reported up and down the country in tiny rural settlements as well as in larger cities, although a small majority of the reported cases I have uncovered occurred in the cities of Christchurch and Auckland.¹² Most commonly these women were never married and their offences were carried out on a first-born child, although some women were known to have already experienced one or more ex-nuptial pregnancies. These women reported having other illegitimate children who had died, or else were living with them or being cared for elsewhere. Others simply spoke of having suffered a previous ‘misfortune’ – the euphemistic term for an unwanted pregnancy. At least three women accused of the murder or concealment of an illegitimate newborn child were indicted on more than one occasion.¹³

Twelve married or widowed women were accused of destroying infants conceived outside of their marriage. Those with living husbands had illegitimate children born to them while their partners worked in other parts of the country or abroad. Some had been long deserted by husbands who never intended to return – their unwanted pregnancies resulting from attempts to form new relationships or the need for companionship. These women make up the numbers of mothers who were implicated in the suspicious or violent deaths of illegitimate infants. Nevertheless, such figures, gleaned as they are from judicial statistics and media reportage, cannot stand as representative of all those who may have committed fatal violence to newly born children. They only represent women who were in

¹¹ ‘Infanticide’, *Daily Telegraph* (Hawke’s Bay), 5 August 1884, p. 3; ‘A Child’s Death’, *Grey River Argus* (West Coast), 1 March 1907, p. 1. Discourses of race and ethnicity in relation to child murder incidents are explored in Chapter Five of this thesis.

¹² While contemporary perceptions of cities as the locus for murder, violence and danger were bolstered by official statistics that showed that the rate of deaths by violence was markedly lower in rural areas, in the New Zealand context this may have had as much to do with the higher population base and differing population structure found in the four main urban centres of Auckland, Wellington, Christchurch and Dunedin.

¹³ High mobility and the common use of aliases among the lower classes suggest that there may have been other cases of recidivism that I have missed.

situations where their crimes could be detected, and who actually stood accused before a coroner's court or a court of law.

Before specific infanticide legislation was introduced in New Zealand in 1961, a mother's deliberate killing of her child was legally murder, and therefore punishable by a mandatory death sentence.¹⁴ However, by the nineteenth century, as other historians have shown, very few women were found guilty of the murder of their own children.¹⁵ Incidents involving the suspicious deaths of illegitimate infants which did make it to the court system were dealt with in a number of ways. Cases were first heard by a grand jury, which returned either a 'no bill' (a finding that there was insufficient evidence to indict) or a 'true bill' (which held that the evidence warranted trial). As figure one (below) shows, a sizeable number (42.0 per cent) of the cases of suspected maternal neonaticide uncovered in this study were found to be 'no bills'. In the event of a murder charge, the percentage of women whose cases were declared to be a 'no bill' rose to 66.0 per cent. However, this finding was invariably followed by the laying of secondary charges of manslaughter or concealment of birth.¹⁶

¹⁴ This was the situation until 1941 when capital punishment for murder was temporarily abolished by the Labour Government. A change of government saw its re-introduction in 1949. Capital punishment was suspended again in 1958 and finally abolished in 1961 (Peter Spiller, Jeremy Finn and Richard Boast, *A New Zealand Legal History*, 2nd edn (Wellington: Brookers Ltd, 2001), p. 105).

¹⁵ Higginbotham, p. 323.

¹⁶ Of the forty-three women whose charges of murder were declared a 'no bill', thirty-six (or 83.0 per cent) were indicted on secondary charges of manslaughter or concealment of birth.

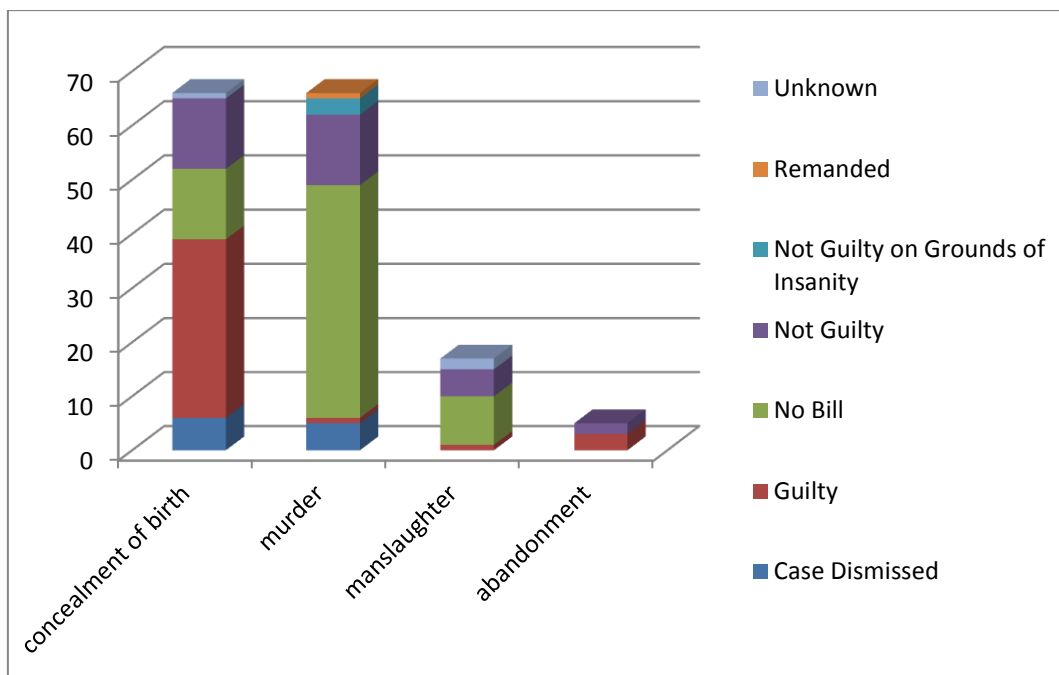


Figure 1: Verdicts Given for Mothers Formally Charged with the Concealment, Murder, Manslaughter or Abandonment (resulting in death) of a Newly Born Illegitimate Infant.¹⁷

A charge of concealment was seen as the clearest way to secure a conviction for the killing of a newborn baby. A legal requirement which demanded proof of live-birth before murder could be established, coupled with the private nature of childbirth, created a process where charging with anything harsher than concealment was rarely productive. Outcomes on concealment convictions in my research period range from two years imprisonment with hard labour to one week's probation. Those found guilty of manslaughter were sentenced to prison terms which ranged from two years to two months. Only one mother, from the sixty-six charged with murdering their illegitimate infants, was found guilty of that charge and sentenced to death. In that case the sentence was quickly commuted to life imprisonment. No woman was ever hanged in New Zealand for the murder of her own child.¹⁸

¹⁷ This chart represents verdicts returned on first charges laid against 157 women suspected of the murder of a newborn illegitimate child. Thirty-seven of the sixty-six women first charged with murder went on to be charged with manslaughter or concealment of birth. Of the 169 women included in my dataset of women investigated for illegitimate newborn child murder, two died while awaiting trial and a further ten were dealt with only at the level of coronial inquiry.

¹⁸ In Britain, the last legally sanctioned execution for maternal infanticide took place in 1849.

The outcomes of all indictments involving the deaths of children were heavily dependent on definitions of the extent of personal responsibility. However, trial records suggest that incidents involving young, unmarried mothers were among those where the concept of personal responsibility were most readily dispensed with. The popular and judicial view of this particular group of offenders, which framed them as not fully accountable or responsible for their actions, relied on what Christine Krueger describes as ‘a cover story with a long and distinguished history’.¹⁹ That story, she says, stemmed from a literary tradition of representation with its roots in sixteenth-century ballads, broadsides and romances, which located newborn child murder in ‘pastoral settings’ in order to ‘render mothers as rural innocents inhabiting a sacrosanct natural space’.²⁰ Krueger asserts that such representations contributed directly to romantic notions of the seduced and abandoned young mother that permeated early nineteenth-century courtroom discourse and enabled judges and juries to acquit young women of wilful murder. Laura C. Berry argues a similar point, though targets the late eighteenth century as the juncture at which the infanticidal mother began to be sympathetically rewritten as ‘the pitiable victim of an uncontrolled masculinity’.²¹ She cites the treatise of medical practitioner, William Hunter, *On the Uncertainty of the Signs of Murder in the Case of Bastard Children* (originally published in 1783) in which Hunter claims that women who committed infanticide were driven by an admirable (if misguided) sense of virtue:

A worthless woman can never be reduced to that wretched situation, because she is insensible to infamy; but a woman who has that respectable virtue, a high sense of shame, and a strong desire of being respectable in her character, finding herself surrounded by such

¹⁹ Christine L. Krueger, ‘Literary Defenses and Medical Prosecutions: Representing Infanticide in Nineteenth-Century Britain’, *Victorian Studies*, 40:2 (Winter 1997), p. 290.

²⁰ Krueger, p. 272.

²¹ Laura C. Berry, ‘Confession and Profession: *Adam Bede*, Infanticide and the New Coroner’, *Writing British Infanticide: Child Murder, Gender, and Print, 1722-1859*, edited by Jennifer Thorn, (Newark: University of Delaware Press, 2003), p. 198.

horrors, often has not strength of mind to meet them, and in despair puts an end to a life which is become insupportable.²²

Krueger goes on to suggest that these earlier sentimental narratives were eventually overshadowed by a Victorian counter-narrative which focused concern on the bodies of dead babies and the corruption of urban life.²³ Berry likewise asserts that in Victorian infanticide discourse the murder of newborns was sensationalised rather than sentimentalised.²⁴ As she writes, ‘an eighteenth-century narrative about the seduction and subsequent breakdown of innocent women was thus replaced by a focus on an inattentive society that has allowed its moral grip to relax’.²⁵ I argue that in New Zealand such counter narratives and discursive ruptures sat uncomfortably alongside each other, jostling for position, throughout the nineteenth century and well into the twentieth century.

As Bronwyn Dalley shows, the language of melodrama was widely deployed in the telling of nineteenth-century criminal stories, and was particularly suited to trials involving infanticide and concealment of birth.²⁶ Popularised in the working class theatres of London and Paris in the early nineteenth century, the language and conventions of melodrama quickly expanded to become one of the most popular literary and theatrical forms.²⁷ Foregrounding issues of gender and power, melodrama cast stereotypical characters in formulaic settings. The simplicity and familiarity of scripts that pitted virtuous and penniless young girls against villainous aristocratic men lent them particular appeal in explicating cases of child murder committed by young working class women. Indeed, nineteenth and early twentieth-century judges and defence attorneys who continued to call on William Hunter’s eighteenth-century expertise may well have read his treatise through the

²² William Hunter, *On the Uncertainty Of the Signs Of Murder In the Case Of Bastard Children* (London: J. Callow, 1812), p. 19, cited in Berry, p. 200.

²³ Krueger, p. 273.

²⁴ Berry, p. 200.

²⁵ Berry, p. 201.

²⁶ Bronwyn Dalley, ‘Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-century New Zealand, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), p. 69.

²⁷ Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992), p. 85; Ruth Harris, ‘Melodrama, Hysteria and Feminine Crimes of Passion in the Fin-de-Siècle’, *History Workshop*, 25 (1988), p. 43.

lens of nineteenth-century melodrama. Hunter's portrayal of the 'typical' infanticide describes the unwillingly pregnant woman as 'generally ... less criminal than the world imagine' and therefore deserving of 'the greatest compassion'.²⁸ He writes:

In most of these cases the father of the child is really criminal, often cruelly so; the mother is weak, credulous and deluded. Having obtained gratification, he thinks no more of his promises; she finds herself abused, disappointed of her affection, attention and support, and left to struggle as she can, with sickness, pains, poverty, infamy; in short, with complete *ruin for life*.²⁹

Hunter's description of ruined womanhood and male depravity and villainy narrates the primary imaginative structure by which these incidents came to be understood across a wide range of discursive settings. The language used in New Zealand courts and the print media throughout the period of this study continues to reflect aspects of Hunter's eighteenth-century rationale, revealing a mindset which views the 'disposal' of illegitimate infants by their mothers as a 'rational' act, motivated by a concept of decency to maintain personal respectability. The simplified tropes and motifs of melodramatic convention can be observed with some predictability in both the public and 'official' discourse surrounding these crimes.

The work of counter-narratives, such as those identified by Krueger and Berry, can also be discerned in the New Zealand records. The discourse of moral panic, which led the sensationalised infanticide debates of Victorian England in the 1860s and 70s, spread easily throughout the British colonies, advancing an alternative viewpoint that focused on the need to secure convictions for murder in order to protect a degenerating society.³⁰ Justice Richmond's words to the New

²⁸ William Cummin, M.D., *The Proofs of Infanticide Considered: Including Dr Hunter's Tract on Child Murder: William Hunter, 'On the Uncertainty of the Signs of Murder'* (First Published in 1784) (London: Wilson and Son, 1836), p. 5.

²⁹ *Ibid.*

³⁰ On the Victorian infanticide debates in England see for instance Margaret Arnot, 'Infant Death, Child Care and the State: The Baby Farming Scandal and the First Infant Life Protection Legislation of 1872', *Continuity and Change*, 9:2 (1994), pp. 271-331; Behlmer, 'Deadly Motherhood', pp. 303-327; Higginbotham, pp. 319-337.

Zealand Supreme Court jury, during the trial of Annie Bates in 1870, demonstrate such an outlook. The judge concluded his summary of the evidence against Annie, whose newborn daughter had been found strangled by tape and half-submerged in the soil of a water closet, by warning the men of the jury not to ‘yield to any natural feelings of commiseration for the prisoner in arriving at their verdict, but to look to the evidence alone’. He went on:

Women, no doubt, were, to a great extent, the victims of the vilely corrupt state of society in which they live; and men, no doubt, often thought that it did not become them to throw the first stone. But we should get worse instead of better, if we gave way to our feelings of lenity. Even for the sake of the prisoner herself, it would be better by far, if she were really guilty, that she should receive a conviction, than escape by the compassion which her position naturally excited.³¹

Despite the judge’s firm stance, the jury needed only a short absence before returning their verdict of ‘not guilty’. Annie Bates was acquitted of the charge of concealment of birth and discharged.³²

‘Little Unwanted’: The Vulnerability of Illegitimate Infants

In New Zealand, as elsewhere, the discourse of moral anxiety which focused on dead babies and social degeneration was most strongly voiced by those working at ‘the coalface’ of infanticidal crime. The concerns of coroners, who viewed and physically handled the corpses of infants and made pronouncements upon their suspicious deaths, and certain law makers who felt uneasy about witnessing women consistently evading the law, were further fuelled by anxieties being expressed internationally about women ‘making a mockery’ of the law, and panic about child mortality rates in general.³³

³¹ ‘Circuit Court: Criminal Sittings’, *West Coast Times*, 14 January 1870, p. 2.

³² *Ibid.*

³³ D. Seaborne Davies, ‘Child-Killing in English Law’, *Modern Law Review*, 1:3 (December 1937), p. 220. At the 1866 British Royal Commission on Capital Punishment, Justice Keating described the situation as ‘a solemn mockery of the law’.

The registration of vital statistics, which had been mandatory in New Zealand since the 1850s, created a raft of statistical information on the population's birth and death rates. During the period of study under investigation New Zealand had the lowest recorded rate of infant mortality in the world – a status that was regularly remarked upon in the Government's official year-books, although the exclusion of Māori from the figures until 1950 greatly assisted the favourability of those results.³⁴ However, the non-Māori population was not immune to spikes in the child mortality rate. Infant mortality peaked to over 125 per 1000 live births in the mid-1870s, and in the overcrowded 'slum' areas that developed in the larger cities, child death rates could be considerably higher.³⁵ For instance, Christchurch's general death rate in 1875 was almost double the national figure, and the infant mortality rate for that year reached 184 per 1000 live births.³⁶

Despite statistical results that showed an overall secular decline in infant mortality countrywide, anxieties about the numbers of babies dying continued to be voiced in official sources.³⁷ The 1902 Report of the District Health Officer for Auckland, for instance, noted that high levels of infant mortality were 'always a prominent feature of the Auckland death-rate'. His report showed that the death rate for infants under one year in 1902 was 'almost identical' with that of England and Wales. He warned:

³⁴ Conrad Schumacher, 'Why Did So Many Babies Die? Infant Mortality and Causes of Death in Dunedin, 1900-1920' (Research Essay, University of Otago, 1998), p. 10.

³⁵ David Thorns and Charles Sedgewick, *Understanding Aotearoa/New Zealand: Historical Statistics* (Palmerston North: Dunmore Press, 1997), Table 2.4, p. 40. (These figures do not include stillbirths or the deaths of Māori infants). For discussions on nineteenth-century 'slum' housing and death rates see Pamela Wood, *Filth, Dirt and Decay: A New World Arcadia* (Auckland: Auckland University Press, 2005); and Geoffrey Rice, 'Public Health in Christchurch, 1875-1910' in *A Healthy Country: Essays on the Social History of Medicine in New Zealand*, edited by Linda Bryder (Wellington: Bridget Williams, 1991), pp. 85-108.

³⁶ Christchurch Board of Health, Medical Officer's Annual Report, 22 February 1882, cited in Rice, p. 88. The comparatively high infant mortality rate across the 1870s corresponded with a high rate of ex-nuptial fertility. Ian Pool describes the decade of 1870 as 'one of the great eras of precocious child bearing in New Zealand' (Ian Pool, Arunachalam Dharmalingam and Janet Sceats, *The New Zealand Family from 1840: A Demographic History*, (Auckland: Auckland University Press, 2007), p. 100).

³⁷ This decline was interrupted between 1892 and 1896, probably due to epidemics of measles and whooping cough (F.S. Maclean, *Challenge for Health: A History of Public Health in New Zealand* (Wellington, 1964), p. 176, cited in Schumacher, p. 10).

Considering that this return includes the rates in large centres, such as London and Liverpool, with their poverty and overcrowding, it is by no means a flattering comparison for so small a town as Auckland.³⁸

These official concerns began to be reflected in newspaper reporting from the turn of the twentieth century. Before this time, the New Zealand print media displayed ambivalence towards issues of infant mortality and child welfare. The transcripts of witness testimony from some coronial inquests and court trials of high profile or sensational child murder cases were reproduced and discussed at length, while reports of infanticide or the discovery of infant bodies generally garnered little media interest. However, the shift that had been taking place across Western countries from the mid to late nineteenth century, in the ways that childhood and family life were perceived, brought with it a new public awareness of child welfare issues.³⁹ In the last decades of the nineteenth century the high infant death rate became a focus for legislative action, with infant life protection measures being introduced in Britain and its colonies. Journalists from the *NZ Truth*, which began publication in 1905, took up these transnational concerns and applied them to the New Zealand context with some enthusiasm. Commenting on the newly published statistical returns on infantile mortality for 1910, a *NZ Truth* article admonished:

1.15 per cent of all children born in the Dominion never see their first birthday. ...what an appalling record of SACRIFICED HUMAN LIFE this is! ... The numerous little “not wanteds” who from time to time are found in back yards, in Chinese camps, on doorsteps, and elsewhere, go to make up this distressing total.⁴⁰

³⁸ ‘Reports of District Health Officers, Etc’, *Appendix to the Journals of the House of Representative (AJHR)*, 1903, Vol. 3, H-31, p. 3.

³⁹ Viviana Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (New York: Basic Books, 1985), p. 11; Lionel Rose, *The Erosion of Childhood: Child Oppression in Britain, 1860-1918* (London and New York: Routledge, 1991), pp. 235-234. Changes in perceptions of childhood, families and parental roles are discussed in Chapter Three of this thesis.

⁴⁰ ‘Little Not Wanted: Appalling Infantile Mortality’, *New Zealand Truth*, 28 October 1911, p. 6.

LITTLE "NOT-WANTEDS."

APPALLING INFANTILE MORTALITY.

The Result of an Inquest.

No Further Light on the Mysteries.

Seventy-one out of every thousand of male children born in New Zealand, and fifty-two out of every thousand females, are found to have died before attaining the age of one year. So says the New Zealand Official Year Book for 1910, basing its assertion upon the statistics for 1909. The mortality is thus one in fourteen of male children and one in nineteen of females in New Zealand. To be exact, 1.15 per cent. of all children born in the Dominion never see their first birthday. When one comes to think of this, what an appalling record

SACRIFICED HUMAN LIFE

this is! In normal circumstances, not one of those children need have been sacrificed, and there exists no valid reason why each and every one of them should not have reached maturity.

Looking further into the official statistics, it will be seen that 469 males and 325 females died in 1909 under the age of one month, and, taking the same year, 160 males and 125 females died between the age of one month and three months, 151 males and 107 females died between the age of three months and six months, and 172 males and 125 females died between the age of six months and twelve months, making a total of 952 males and 632 females who died under the age of one year. Working this out at

SO MANY DEATHS PER THOUSAND,

we find that 34.74 males and 24.96 females died under the age of one month, 11.85 males and 9.60 females died between the age of one month and three months, 11.18 males and 8.21 females died between the age of three months and six months, and 12.74 males and 9.60 females died between the age of six months and twelve months, averaging 70.51 males and 62.37 females who died under the age of one year.

These figures are assuredly very appalling, and, read in conjunction with the New Zealand Official Year Book's further statement that "dealing with the results for ten years, the deaths of infants under one year are in the large proportion of three-fourths of the total deaths under five," call for some explanation. What has contributed to this extraordinary sacrifice of infant life? The figures supplied by the New Zealand Official Year Book show that in 1909 21.24 per cent. died from premature birth, 15.67 per cent. from marasmus, etc., 15.24 per cent. from diarrhoea and enteritis, 10.28 per cent. from bronchitis and pneumonia, 6.55 per cent. from convulsions, 1.71 per cent. from whooping cough, and the extraordinarily large percentage of 29.31

FROM MYSTERIOUS "OTHER CAUSES."

It is this last item which leads us to the main theme of this article.

Just realise it. 29.31 per cent. of the deaths of infants under the age of twelve months are not assignable to any definite or known cause, and are grouped under unspecified causes and may well be described as mysterious deaths. It is truly appalling to think, and yet the official statistics show, that practically one child out of every three who die under the age of twelve months dies from some unspecified, unknown, and mysterious cause which the authorities are unable to determine. The numerous little "not wanteds" who from time to time are found in back yards, in Chinese camps, on doorsteps, and elsewhere, go to

MAKE UP THIS DISTRESSING TOTAL

of one in three. Putting it this way, it is somewhat startling, but, remember, we are dealing with facts, not fancies, official figures, not romance, and the obvious deduction is one eminently adverse to New Zealand.

Poor little "not-wanted"! Within the past week or two in the city of Wellington alone, there have been found two miniature mites of humanity who came from God knows where, and who were thrown out as one might throw out a shovelful of refuse, one a newly-born infant, who probably did not live beyond the moment of birth, and the other a child anything up to ten days old, who had, according to medical testimony,

BEEN DELIBERATELY SUFFOCATED AND MURDERED.

Figure 2: 'Little "Not Wanted": Appalling Infantile Mortality', *NZ Truth*, 28 October 1911, p. 6. Despite the mortality decline the annual publication of child mortality rates continued to cause alarm into the twentieth century. Reports such as this one from the *NZ Truth* readily associated mortality figures with the problem of newborn child murder.

Infant mortality figures fell dramatically in the first quarter of the twentieth century, in parallel with the growth of the 'child saving' movements first begun in the 1890s.⁴¹ By 1925, infant mortality had dropped to 50.0 per 1000 live births.⁴² However, the mortality rate of illegitimate infants throughout the period remained disproportionate: at times, two to three times as high as that of their legitimate counterparts, bolstering the belief that infanticide was a common strategy used to avoid the burden of babies born outside of marriage.⁴³ As the above article indicates, with disturbing frequency newspapers carried reports of unclaimed infant corpses found floating in harbours, washed up on beaches, in the bottoms of wells, in water closets, in shallow graves in scrubland, or in vacant city allotments. As many of these babies were never identified, the real circumstances surrounding their births and deaths could never be known. However, the readily conflated problems of illegitimacy and neonaticide were identified as causal factors and passed into political, legal, and medical discourse surrounding the infant mortality rate.

Those entering into the debate were swayed by alarmist figures from Britain and elsewhere in the colonies and looked with the greatest unease to the situation closest to home. In Sydney, the bodies of nearly 300 unidentified dead infants had been officially registered between 1881 and 1889.⁴⁴ New Zealand's *Tuapeka Times*, reporting two decades later in 1909, quoted a Melbourne coroner who, after holding three inquests in a row on unclaimed infant bodies, declared that 'Melbourne was drifting into a condition similar to what existed at the worst period of the Roman Empire, when infanticide was so common that its

⁴¹ Philippa Mein Smith, 'Infant Welfare Services and Infant Mortality: A Historian's View', *Australian Economic Review*, 24:1 (1991), p. 22. Mein Smith challenges the idea that infant mortality rates dropped as a direct result of maternal and child health services instigated by the Infant Welfare Movement, suggesting that economic and social change were stronger factors.

⁴² Schumacher, Figure 1.1, 'New Zealand Infant Mortality Rates, 1872 to 1978', p. 19.

⁴³ Bronwyn Dalley, *Family Matters: Child Welfare in Twentieth Century New Zealand* (Auckland: Auckland University Press, 1998), p. 59. Schumacher's data for Dunedin from 1900-1919 found the comparative risk between the illegitimate and legitimate rate ranged from 2.10 to 2.65 (Schumacher, Appendix 2, Table A2.1. 'Illegitimate and legitimate infant mortality rates in the Dunedin metropolitan area (proportional estimate)', p. 60). Shurlee Swain found the death rate for illegitimate babies in Victoria, Australia to be 'at least three times that of legitimate children and possibly higher' (Shurlee Swain, 'The Concealment of Birth in Nineteenth-Century Victoria', *Lilith*, 5 (1988), p. 139).

⁴⁴ Allen, p. 31.

punishment was neglected altogether'.⁴⁵ That same year, Auckland coroner, Thomas Gresham, called a meeting of the Auckland Branch of the Liberal and Labour Federation to discuss his resolution that 'in view of the abandoning and putting away of newly-born infants which at present prevails in the Dominion, the Government be urged to establish Foundling Hospitals, such institutions tending to discourage infanticide'.⁴⁶

Scholars working in the British context have suggested that the concern about infanticide, which gripped British society in the mid nineteenth-century, was fuelled (in part) by a new breed of populist coroners who inflated statistical figures on violent child deaths to shore up their own professional status.⁴⁷ However, evidence from newspaper reports and *Police Gazettes* suggests that New Zealand coroners, such as Thomas Gresham, who continually fought to focus attention on the 'putting away of newly-born infants', were voicing genuine concern. In 1900, a year in which official statistics register only one person being committed for trial for concealment of birth, and one for abandoning a child, *Police Gazettes* and newspapers report a steady stream of infants abandoned dead or alive.⁴⁸ In March that year, the *West Coast Times* reported that the body of a week-old child, wrapped in brown paper and a sugar bag, had been found in the Roman Catholic Cemetery in Auckland.⁴⁹ In May, the *Police Gazette* recorded two incidents of abandonment: a live male newborn infant was discovered in a water closet in Lincoln; and in Lyttleton, a three-week-old baby boy was left on the doorstep of the Catholic chapel.⁵⁰ In June, the *Police Gazette* recorded the finding of the body of a female infant (the umbilical cord cut and left untied) in a bag on the Three-Mile Beach in Charleston.⁵¹ The *Wanganui Herald*, on 26 July,

⁴⁵ *Tuapeka Times* 7 Aug, 1909, p. 1.

⁴⁶ 'Prevalence of Infanticide: Foundling Hospital Suggested', *Otago Witness*, 16 June 1909, p. 12.

⁴⁷ Behlmer, 'Deadly Motherhood', p. 407-410; Higginbotham, p. 321-4; Krueger, p. 285; McDonagh, p. 126. These scholars show that a number of English coroners were particularly zealous in their efforts to uncover cases of newborn child murder and correspondingly creative in their use of statistical evidence for infanticide. McDonagh calls these figures a 'statistical "mirage"', summoned up to boost the professional status of coroners in their competition with lawyers'.

⁴⁸ *Statistics of the Colony of New Zealand for the Year 1900*, Part V - Law and Crime: 'Apprehensions, Commitments, Etc', p. 438.

⁴⁹ 'A Dead Child Found', *Westcoast Times*, 3 March 1900, p. 4.

⁵⁰ *Police Gazette*, No. 10, 15 May 1900.

⁵¹ *Police Gazette*, No. 13, 14 June 1900.

carried a report of an infant's body found in grassland near the town belt of Dunedin.⁵² In August, the *Police Gazette* recorded the body of a male child found in an advanced state of decomposition in a paddock at Montpellier.⁵³ The *Colonist*, in September, reported the unearthing of the body of an infant buried in a soapbox in the garden of a rental property in Dunedin.⁵⁴ In December the *Police Gazette* registered the discovery of a three-week-old baby boy abandoned in a private garden in Ponsonby.⁵⁵

Unlike their nineteenth-century predecessors, *New Zealand Truth* reporters were eager to sensationalise discoveries of unclaimed infant bodies found in public spaces. In high summer in 1912, the newspaper reported on a string of incidences occurring in Christchurch:

Another little “unwanted”, the second within a few weeks, was picked up on the river banks on Sunday. This “slaughter of the innocents” is getting quite common, and is a problem that will have to be faced before long, and those who undertake its solution have no easy task before them.⁵⁶

The following year, media focus was on Auckland when the body of a newborn baby boy was found by a worker distributing night soil at the Auckland City Council sanitary farm. A report of the incident in *NZ Truth* read:

Auckland's periodical “little unwanted” came to light as usual on Thursday of last week, in most horrible and revolting circumstances, which point to a cruel callousness and depth of degradation on the part of the parents which would disgrace a Hottentot or an Australian aborigine. Also, the coming to light of the child has brought prominently before the public of Auckland the ease with which the

⁵² ‘Body of a Child Found’, *Wanganui Herald*, 26 July 1900, p. 2.

⁵³ *Police Gazette*, No. 16, 1 August 1900.

⁵⁴ ‘Sensational Burying Case’, *Colonist* (Nelson), 10 September 1900, p. 4.

⁵⁵ *Police Gazette*, No. 26, 19 December 1900.

⁵⁶ ‘A Little Unwanted’, *NZ Truth*, 6 January 1912, p. 7.

body of a child can be disposed of by means of the antiquated sanitary system which is still in vogue in many parts of Auckland.⁵⁷

The sanitary worker who uncovered the body initially buried it in a nearby paddock, and was only later prompted by another worker to report his discovery to the City Council. The article records coroner Gresham's astonishment at the worker's actions:

Coroner Gresham: What! Is it such an ordinary thing for you to find the bodies of infants?

Witness (casually): Not very ordinary.

The Coroner: Have you found the bodies of infants before?

- Yes, but small ...

The Coroner: Were these bodies reported on?

- No, I couldn't say they were.⁵⁸

That discarded infant bodies were the result of unwanted illegitimate births was a view that was widely held both in New Zealand and internationally. The British coroners and medical professionals who had exposed an 'epidemic' of infanticide in urban England and Scotland in the mid-1860s had focused firmly on the vulnerability of illegitimate children.⁵⁹ For example, in 1867 the London Harveian Society heard an address by W. Tyler Smith M.D., president of a committee appointed to draw up a report on infanticide and infant mortality. He declared:

In the year 1864, there were born in England 47,448 illegitimate children. ... It is this great mass of human life which requires special

⁵⁷ 'Interring an Infant: Dreadful Discovery at a Depot', *NZ Truth*, 1 February 1913, p. 5.

⁵⁸ *Ibid.*

⁵⁹ Higginbotham, 'Sin of the Age', p. 320; Rose, 'Massacre of the Innocents', p. 41. Anxieties regarding the illegitimate mortality rate, and the fear that the problem of discarded infant bodies uncovered in British cities and towns had reached crisis proportions, resurfaced at intervals throughout the nineteenth century, leading to the formation of numerous medical societies, all aiming to promote debate. The Harveian Society, formed in 1831, led the investigation into infanticide that informed the British Royal Commission on Capital Punishment in 1866. For a comprehensive overview of the Royal Commission see D. Seaborne Davies, 'Child-Killing in English Law, Part 2', *The Modern Law Review*, 1: 4 (March 1938), pp. 269-287.

study, if we would deal with prevention of infanticide and the preservation of infant life.⁶⁰

For Tyler Smith, the vulnerability of the illegitimate child was in direct consequence to the poverty and shame associated with ex-nuptiality. He stated:

We need not go far to seek the causes which render the life of the illegitimate child less secure than the legitimate against violent, intentional, or accidental destruction. In its birth a disgrace, especially to its mother; the responsibility of its maintenance imperfectly or improperly defined; for the most part, born and reared in poverty (if reared at all); without participation in the ties and safeguards of home or family – it is not to be wondered at, if the illegitimate child fails, save as the exception, to reach maturity.⁶¹

Indeed, in this narrative, the temptation to murder was considered so great that the child born ex-nuptially could hardly be expected to survive at all:

As regards risks of existence, the illegitimate are more like animals low in the scale of creation, than ordinary human beings. ... Let us consider for a moment the various conditions under which single women are delivered, and we shall at once see the temptations to infanticide which exist, and what little chance there is of the infant being reared, if it should escape actual murder or death by neglect at or soon after birth.⁶²

The levels of ‘shame’ involved in an ex-nuptial pregnancy in nineteenth and early twentieth-century New Zealand were contingent on a range of variables, including ethnicity, religion, class and occupation. British historian Lionel Rose contends that illegitimacy among the English working classes was ‘less of a social stigma than an economic liability’.⁶³ In contrast, Cliona Rattigan shows that in Ireland ‘the shame and stigma associated with unmarried motherhood remained a

⁶⁰ W. Tyler Smith, ‘Address on Infanticide and Excessive Infant Mortality’, *British Medical Journal (BMJ)*, 1:2125 (12 January 1867), p. 21.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Rose, pp. 20-21.

powerful, driving force' in infanticide events.⁶⁴ Alysa Levene and Alice Reid, who have extensively researched the large mortality penalty associated with illegitimacy in England for the eighteenth and twentieth centuries respectively, found that while poverty, poor housing, poor maternal health and artificial feeding all had a part to play in infant deaths, these combined effects cannot account for the full mortality disadvantage of illegitimates.⁶⁵ Instead, Reid suggestively proposes that the lack of support and social integration, and consequentially poor psychological health of women suffering under the 'social reproof and ignominy' of single motherhood, may have had 'severe consequences for the health and survival of their children'.⁶⁶

The social implications of ex-nuptial pregnancy caused a degree of official consternation in the British colonies, and its links to the crime of newborn child murder continued to be perceived as unambiguous into the twentieth century. A 1904 Royal Commission on the Decline of the Birth-Rate and on the Mortality of Infants in New South Wales, Australia, looked with particular interest at infants born outside of marriage, noting that 'while many cases of death applied equally to legitimate and illegitimate babies, there were several "additional" causes of death in the case of illegitimate infants'. Among these were noted 'the prevalence of infanticide and foeticide'.⁶⁷ New Zealand, while priding itself that its rate of illegitimacy was 'less than in any of the Australian states except South Australia and Western Australia', nonetheless kept an anxious eye on its own figures.⁶⁸

Illegitimacy statistics for the non-Māori population, which first began to be tabled in 1873, recorded a steady increase in illegitimate births.⁶⁹ Reflecting on the

⁶⁴ Cliona Rattigan, "'Done to Death By Father or Relatives": Irish Families and Infanticide Cases', 1922-1950, *The History of the Family*, 13:4 (2008), p. 375.

⁶⁵ Alysa Levene, 'The Mortality Penalty of Illegitimate Children: Foundlings and Poor Children in Eighteenth-Century England', *Illegitimacy in Britain, 1700-1920* (Basingstoke, Hampshire: Palgrave Macmillan, 2005), p. 46-48; Alice Reid, 'The Influences on the Health and Mortality of Illegitimate Children in Derbyshire, 1917-1922', *Illegitimacy in Britain, 1700-1920* (Basingstoke, Hampshire: Palgrave Macmillan, 2005), p. 189.

⁶⁶ Reid, p. 189.

⁶⁷ Gail Reekie, *Measuring Immorality: Social Inquiry and the Problem of Illegitimacy* (Cambridge: Cambridge University Press, 1998), p. 73.

⁶⁸ 'Illegitimacy', *AJHR* (1906), Vol. 3, H – 31, p. x.

⁶⁹ Stevan Eldred-Grigg, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand, 1840-1915* (Wellington: Reed, 1984), p. 272. The figure of 23.0 illegitimate live births per thousand live births was recorded in 1879. By 1889 this figure had risen to 33.2 illegitimate live births per

figures for the previous decade, the *Appendix to the Journals of the House of Representatives 1906* noted that ‘the causes that led to the fall in the [Pākehā] birth-rate certainly did not greatly affect the number of illegitimate children’. However, it conceded that the statistical results were more indicative of changes in marriage habits than of any ‘increased looseness of living on the part of the people’.⁷⁰ Andrée Lévesque asserts that all official statistics on birth rates, illegitimacy and infant mortality were likely to be underestimates because neither still-births nor miscarriages before twenty-eight weeks required registration or a cemetery burial. This, she says, made the concealment of such births a ‘relatively easy matter, either by discreetly disposing of the body, or by stating that miscarriage occurred before twenty-eight weeks’.⁷¹

Practical solutions for countering the death rate among illegitimate Pākehā infants, such as Thomas Gresham’s scheme to establish state-funded foundling hospitals, polarised opinion. The Liberal and Labour Federation, who had heard Gresham’s address in 1909, took up his cause, writing letters to the Government advocating the establishment of foundling hospitals ‘at each of the chief centres throughout the dominion’. One writer to the editor of the *Otago Witness* noted wryly: ‘To this the Ministers gave the usual diplomatic reply, “that the matter would be kept steadily in view”’.⁷² Periodical observations on the subject in the Auckland based *Observer* betray that publication’s liberal bent. A commentary in June noted:

Illegitimate children we will always have with us, and, as Coroner Gresham says, under existing conditions the mother of such a child is placed in such a position that the temptation to “put the infant away” is

thousand, and by 1900 it stood at 46.4 per thousand. Erik Olssen makes the important point that figures for the European population fail to ‘fully capture the extent of extra-nuptial births, for they ignore the possibility that Māori communities carried the burden of raising the illegitimate children of Pākehā men’ (Erik Olssen, ‘Families and the Gendering of European New Zealand in the Colonial Period, 1840-1880’, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), p. 61).

⁷⁰ ‘Illegitimacy’, *AJHR* (1906), Vol. 3, H – 31, p. x.

⁷¹ Andrée Lévesque, ‘Prescribers and Rebels: Attitudes to European Women’s Sexuality in New Zealand, 1860-1916’, *Women in History: Essays on European Women in New Zealand*, edited by Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington: Allen and Unwin, 1986), p. 4.

⁷² ‘Labour Affairs, Socialism, Etc: To the Editor’, *Otago Witness*, 17 Nov 1909, p. 64.

often irresistible. ... The existence of State foundling hospitals, if it did not utterly obviate such possibilities, would at least have the effect of lessening them.⁷³

However, not all were sympathetic to the plight of these women or their children. While much of the efforts of early women's groups were focused on benevolent aid to their 'fallen sisters', the deeply eugenicist sentiments voiced by some female reformers at a Conference of the National Council of Women, held in 1923, tapped into a narrative which focused on the dangers that unmarried mothers and their 'degenerate' offspring might pose to an already degenerating society:

[T]he unfit – those unfortunates who are breeding imbeciles and sub-normals – are going on increasing absolutely without limit. One sees this again and again, particularly in the case of unmarried mothers. Very often we can excuse girls for their first fall, on the ground of ignorance – but that excuse does not apply a second time and these girls very often err a second time. We see this at the St. Mary's Homes. Sometimes, after as long as three years even at the home, these girls go out into the world again with every encouragement to go straight – and in a few months we have them returning in the same condition, going to bring another sub-normal degenerate child into the world.⁷⁴

Those strongly opposed to the establishment of state-run foundling hospitals feared they might provide too easy a solution for those burdened with the unwanted results of illicit sexual activity. Such institutions, it was argued, led to a societal loosening of morals and a corresponding upsurge in illegitimacy rates. These ideas were persistent and can be traced throughout the period under investigation. In 1875, fifty years prior to the National Council of Women's 1923 conference, the Otago Benevolent Society refused to have two of their unused rooms opened for the use of unwed mothers and their illegitimate babies, arguing that foundling homes, such as those long established in France, had led to just

⁷³ 'Foundling Hospitals', *Observer* (Auckland), 19 June 1909, p. 3.

⁷⁴ 'Woes of Women', *NZ Truth*, 29 September 1923, p. 7. Women's groups and their work in relation to criminal and destitute women and children will be explored further in Chapter Three.

such an increase in illegitimacy and the eventual breakdown of society.⁷⁵ In 1909, the same year that coroner Gresham was highlighting the plight of unwanted babies, the President of the Society for the Protection of Women and Children called for state intervention to ‘make illegitimacy a criminal offence with such drastic punishment for a second offence as might act as warning and prevent a repetition’.⁷⁶ Rather than opening foundling homes, the Society suggested the opening of detention homes for unmarried mothers, cautioning that ‘a girl who has lost her virtue is a menace to the community’.⁷⁷

However, as Margaret Tennant has shown, foundling homes and orphanages were operating in New Zealand throughout the nineteenth and early twentieth centuries.⁷⁸ With no equivalent to Britain’s Poor Law, a network of church-run charities and private benevolent groups had formed to provide for those in need, including orphaned or illegitimate children. Despite official consternation, foundling homes run according to the French style were opened by the French Roman Catholic nun, Mother Mary Joseph Aubert. The first of these began operating in 1886 at the Catholic sanctuary at Jerusalem, on the Whanganui River. By 1898 the Home was reportedly caring for forty-one infants and young children – ‘almost all illegitimate’.⁷⁹ Tennant’s early research on the Jerusalem Home found that there were seventy-four admissions to the institution in the years between 1890 and 1901. From this total, twenty-four had been ‘given for ever’ by the mother; six children were committed by the Wanganui magistrate; five had been found abandoned near the institution, and ‘others were brought by doctors,

⁷⁵ Lévesque, p. 5. Objectors may well have been referring to the findings of the London Harveian Society who in 1867 reported that ‘[h]ospitals conducted on the plan of the *Enfants Trouvés* of Paris, tend[ed] to encourage; 1: Illicit connexion; 2: An increase of illegitimate births; 3: The abandonment of illegitimate children by mothers who could afford to rear them; 4: The abandonment of children born in wedlock by parents not desirous of large families’ (Tyler Smith, *BMJ* (1867), p. 21).

⁷⁶ *Otago Daily Times*, 28 June 1909, p. 3, cited in Lévesque, p. 6.

⁷⁷ *Ibid.*

⁷⁸ Margaret Tennant, *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen and Unwin, 1989), pp.127-143.

⁷⁹ *Wanganui Chronicle*, 14 Sept 1889, p. 2.

nurses, aunts and grandmothers'.⁸⁰ Just under half of these children were less than one year old at the time of admission.⁸¹

Perhaps in response to coroner Gresham's campaign, in 1909 Mother Aubert travelled to Auckland and purchased a twenty-seven room house on three-and-a-half acres of land in Mount Eden for a proposed foundling hospital.⁸² The St Vincent de Paul's Foundling Home was established there, despite some contention, the following year. As well as taking in illegitimate and orphaned infants, Mother Aubert's Homes took in sick and dying children that could not be accommodated elsewhere, and consequently their high rates of mortality brought them constantly under the watch of the Hospital Boards and the Department of Education. Their concerns forced the closure of the St Vincent de Paul Home in 1916.⁸³

Although limited, there was a level of support available for children whose families could not, or would not, care for them directly. Throughout the period, there remained a steady flow of children who lived at asylums, orphanages and industrial schools. Moreover, unknown numbers of babies and young children were cared for in informal foster situations and 'baby farms', the majority of which were subject to state regulation after 1893.⁸⁴ The informal adoption of illegitimate Pākehā babies into Māori families also provided a solution for some unmarried mothers and their children. The practice was brought to the attention of parliamentary ministers in 1904.⁸⁵ Claims that 'the number of children so disposed of' was on the increase, brought demands for 'firm and prompt action ... on the part of the Government'; however, a book of reminiscences written by

⁸⁰ Margaret Tennant, 'Women and Welfare: The Response of Three New Zealand Women to Social Problems of the Period 1890-1910' (BA (Hons) dissertation, Massey University, 1974), p. 27.

⁸¹ After a series of measles epidemics killed a number of the infants in care, the remaining children were transferred to larger premises in Island Bay, Wellington. This became the Roman Catholic Home of Compassion.

⁸² 'A Foundling Home', *Manawatu Standard*, 25 July 1910, p. 3.

⁸³ Dalley, p. 58.

⁸⁴ The Infant Life Protection Act 1893 was enacted to regulate the private fostering of illegitimate infants. The workings of this act are considered in detail in Chapter Six of this thesis.

⁸⁵ 'Adoption of Children', 1904, *New Zealand Parliamentary Debates (NZPD)*, Vol. 129, pp. 350-351. The numbers involved in these informal adoptions are unknown, however, the MP for Wanganui, Mr Willis, claimed to have encountered 'quite fifty of these European children in the various *pas* along the Coast'.

Vernon Roberts in 1929 suggests that this option remained available to Pākehā women who were unable or unwilling to keep their illegitimate children. In Roberts' collection of tales regarding his work among the Waikato Māori, he records his opposition to the practice, explaining:

Someone conceived the idea of passing a little not-wanted to the natives, and the experiment was only too successful. ... A regular epidemic of adopting white children set in. The Maoris went to town and brought babies back at the rate of two or three a week.⁸⁶

These later adoptions appear to have been legally sanctioned: the adoptive mothers that he spoke to were able to provide the legal documentation conferring guardianship 'in proper form'. However, Roberts was extremely uncomfortable with the 'spectacle of a Maori woman nursing a white baby' and apparently 'registered' his 'private opinion of the people who were callous enough to pass the infants over to the Maoris'.⁸⁷

From the last decades of the nineteenth century, refuges and homes for the 'rescue' of 'fallen women' were operating in the four main centres. These homes were run by private charities as well as church groups and included the Salvation Army Homes, which were the most familiar to contemporaries in terms of their work with single mothers. There was also The Dunedin Female Refuge, which opened in 1873 (and became the Forth Street Maternity Hospital for Destitute Women in 1907), and the Alexandra Home for Friendless Women, which was opened in Wellington in 1879. Like other institutions, the Alexandra Home initially accommodated prostitutes as well as unmarried pregnant women up until the 1890s when the Home was open to 'first fall' maternity cases only.⁸⁸ Auckland's St Mary's Home, run by the Anglican Church, also limited its maternity care to 'first fall' cases from the 1890s. The non-denominational Door

⁸⁶ Vernon Roberts and G.T. Roberts, *Kohikohihinga: Reminiscences and Reflections of "Rapata"* (Vernon Roberts), (Whitcombe and Tombs Ltd, 1929), pp. 257-258.

⁸⁷ Roberts, p. 258.

⁸⁸ Margaret Tennant, "'Magdalens and Moral Imbeciles': Women's Homes in 19th Century New Zealand", *Women in History 2*, edited by Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington: Bridget Williams Books, 1992), pp. 72-75.

of Hope opened in the same city in 1896.⁸⁹ Both institutions included a children's nursery on the premises. Christchurch's single women in their first pregnancy could avail themselves of the Linwood Female Refuge, which was taken over by the Church of England in 1891 to provide for 'destitute unmarried women'.⁹⁰ In 1896, after five years in operation, it was noted that a total of 204 'girls' had passed through the doors of the Linwood Refuge.⁹¹ Those who were accepted into these institutions agreed to remain as 'inmates', usually for a six month period and, as a requisite of their stay, were required to do the heavy laundry work that was commissioned by local hotels and other businesses, as well as that of the institutions themselves.⁹² The majority of these homes and refuges were open only to 'first falls'. The matron of the Linwood Refuge, for example, stated that 'no girl who has offended more than once is admitted here'.⁹³ However, by 1911 concessions were made at the Linwood Refuge when it was divided into three distinct divisions: The first catered for 'women to be confined of their first child', the second housed 'aged and infirm women', and the third took in 'women to be confined of other than their first child'.⁹⁴

In 1909 the Salvation Army Homes were gazetted as 'Reformatory Institutions' so that young women found guilty of offences such as soliciting, vagrancy, or concealment of birth, could be sent there for a period of reformatory detention.⁹⁵ Concerns about whether young first offenders should be exposed to more hardened female criminals in the country's prisons meant that magistrates turned to this option increasingly in the twentieth century.⁹⁶ However, an enforced stay in

⁸⁹ Ibid.

⁹⁰ Winifred Norris, 'Linwood Refuge: Benevolent Institutions', 'The North Canterbury Hospital Board: Fragments of history: hospitals: tuberculosis and benevolent institutions and miscellaneous' (Unpublished, 1942), retrieved online from <<http://Christchurchcitylibraries.com/Heritage/Digitised/Norris - 1942>> (accessed on 22 June 2010)

⁹¹ Ibid.

⁹² Norris, 'Linwood Refuge', np.

⁹³ 'Three Comfortable Homes', *Star* (Canterbury), 16 January 1908, p. 4.

⁹⁴ Norris, 'Linwood Refuge', np.

⁹⁵ *Statutes of New Zealand*, 1909, No. 30, Reformatory Institutions Act, p. 334.

⁹⁶ Until 1913, when Christchurch's Addington Gaol was converted into the country's first women's prison, female prisoners carried out their sentences in small wings of the major prisons (Bronwyn Dalley, 'Prisons Without Men: The Development of a Separate Women's Prison in New Zealand', *New Zealand Journal of History*, 27:1 (1993), p. 50). The unsatisfactory conditions in

a Salvation Army Home constituted no soft option. Prison sentences were often shorter and did not always include the ‘hard labour’ that was part and parcel of the Salvation Army routine. Some women opted for a term in prison rather than being ‘consigned to the tender mercies of Booth’s loud religionists’.⁹⁷ An article in *NZ Truth* in 1909 asked:

Why is it that fallen females whom Magistrates give a chance of escaping prison by going to the Salvation Army Homes, time after time escape from these institutions, and, when again gathered in by the police, prefer gaol to the refinements of the Salvarmy Shelter? “Truth” doesn’t know the reason, but it’s not hard to guess. It is almost a weekly occurrence in the Wellington S.M.’s Court to find some female who ... elects to go to gaol rather than sojourn in a “shelter”, and the accompanying emphasis to the refusal to go to a Army Home speaks volumes.⁹⁸

Hilda Koberstein had ‘absconded’ from the Wellington Salvation Army Home when she was brought before the court for concealing the birth of her infant daughter. Already sentenced to a twelve-month reformatory sentence for attempted suicide, Hilda had escaped from the Home and slept in the open for several nights, eventually giving birth in a vacant section next to the Lambton Station. The body of Hilda’s baby girl was found the next day in a dress basket at the Thorndon tramway shelter. A *NZ Truth* article on the trial noted that:

From the girl’s demeanour in court when sentenced ... it was very apparent that she did not relish being sent back to the Salvarmy Home, from which delectable spot she had already absconded. She vigorously shook her head at his Honor and looked far from pleased with the prospect.⁹⁹

which female prisoners were accommodated came to official notice on several occasions throughout the period of research.

⁹⁷ ‘One More Unwanted’, *NZ Truth*, 21 June 1919, p. 6.

⁹⁸ ‘Lizzie’s Lapse: Gaol Preferred to Booth’s Shelter!’ *NZ Truth*, 18 December 1909, p. 5.

⁹⁹ ‘Hapless Hilda Koberstein’, *NZ Truth*, 5 May 1917, p. 2.

Despite the judge's warning that a second escape from the Salvation Army Home would necessitate a gaol sentence, Hilda took the first opportunity to abscond, and was back before the judge three days later. This time she was sentenced to three years imprisonment in Addington Gaol, but the gaol term clearly had little to do with the suspicious death and concealment of the baby girl. Rather, it was the fact that Hilda was suffering from a sexually transmitted disease that prompted the judge in this instance. He told her:

You are a menace to the community – just as great a menace as if you were suffering from leprosy or plague, or any other communicable disease. I cannot therefore allow you to be at large. What I must do now is send you to the prison where they will have to treat you in the hospital. ... [Y]ou may not have to serve anything like the sentence I propose to pass on you, providing you behave yourself and get rid of your disease. Then the Board may let you out.¹⁰⁰

But Hilda was nothing if not resourceful. Four months later she was reported to be 'at large' after having scaled a ladder in the prison garden, and dropping into the adjacent yard of the Addington Police Station. The article tells how she then 'strolled past' the station watch house 'to freedom and liberty'.¹⁰¹

As Hilda's story shows, the reality for an unmarried pregnant woman during this period was bleak, but women who found themselves with an unwanted pregnancy were seldom left entirely without resources or strategies for survival. The great majority of women faced with the birth of a child outside of marriage demonstrated tremendous resourcefulness in the face of often overwhelming difficulties, harnessing family and community assistance (if it was available and forthcoming), or seeking refuge in Salvation Army Homes, female shelters, or privately run lying-in establishments.¹⁰² From there they negotiated the ongoing care of their babies, leaving them with family, placing them with child minders

¹⁰⁰ Ibid.

¹⁰¹ 'At Large: Female Prisoners Escape from Addington Gaol', *NZ Truth*, 1 September 1917, p. 5.

¹⁰² An unknowable number of ex-nuptial pregnancies ended in abortion. Andrée Lévesque discusses the prevalence of the practice in nineteenth and early twentieth-century New Zealand, suggesting that the frequency of commentary in the daily press and medical journals was an indication that abortions were 'quite common' (Lévesque, p. 7).

for an on-going fee, or ‘adopting’ them out permanently into Māori or Pākehā families or with baby farmers. Many other women cared for their illegitimate children themselves, applying for maintenance payments from the father of the child, and/or carrying out home-based labour such as sewing or laundry work.¹⁰³

However, any, or all, of these options could break down. Some female refuges gave only temporary shelter until the child was born, and, as we have seen, most shelters only accepted women who were in their first pregnancy.¹⁰⁴ A number of women charged with destroying or concealing their infants testified to being turned away from one refuge after another before resorting to their crimes. Either the homes or orphanages were full, or the women themselves did not fit the criteria required to see them or their babies over the threshold.¹⁰⁵ Moreover, the institutions themselves tended to be set up for punishment rather than respite. This was recognised even in official terms; a report on Hospitals and Charitable Institutions for 1900 found that: ‘The main object of some of these institutions seems to be successful laundry-work and the money gained thereby’. It went on to comment: ‘There is little to commend here. The look of girls and babies tells its own tale’.¹⁰⁶

While fathers were often unwilling or unable to marry or provide regular maintenance payments for an illegitimate child, the majority of fathers did take responsibility. As Lévesque points out, ‘[a]most two thirds of first births to mothers under twenty-one occurred within seven months of marriage’.¹⁰⁷

¹⁰³ See Fiona Kean, ‘Illegitimacy, Maintenance and Agency: Unmarried Mothers and Putative Fathers in Auckland, 1900-1910’ (MA thesis, University of Waikato, 2002) and Claire Wood, ‘“Bastardy Made Easy”? Unmarried Mothers and Illegitimate Children on Charitable Aid, 1890-1910’ (BA (Hons) dissertation, University of Otago, 1990), pp. 47- 51. Examples of women’s applications for maintenance orders can also be found in Frances Porter, Charlotte Macdonald and Tui MacDonald, eds., *My Hand Will Write What My Heart Dictates: The Unsettled Lives of Women in Nineteenth-Century New Zealand as Revealed to Sisters, Family and Friends* (Auckland: Auckland University Press, 1996), pp. 414-17. Examples of illegitimate children being accepted into extended families and brought up by the relations of single mothers are cited in Wood, pp. 74-75, and Caroline Daley, *Girls and Women, Men and Boys: Gender in Taradale, 1886-1930* (Auckland: Auckland University Press, 1999), p. 19-20.

¹⁰⁴ Lévesque, p. 5.

¹⁰⁵ See for instance: ‘Alleged Infanticide’, *Poverty Bay Herald*, 9 December 1907, p. 5.

¹⁰⁶ ‘Annual Report on Hospitals and Charitable Aid Boards’, *AJHR* (1900), H-22, section 1, p. 31, cited in Lévesque, p. 5.

¹⁰⁷ Lévesque, p. 6. See also Pool et al, p.128, and Wood, pp. 9-10 on the prevalence of bridal pregnancy.

However, for those women who found themselves without a co-operative partner and unable or unwilling to access networks of support, the ‘disposal’ of an unwanted child could be, as Bronwyn Dalley suggests, ‘a final strategy for women struggling to survive within a limited frame of options’.¹⁰⁸

Domestic Service

A number of historians have attempted to explore and explain the statistical link between illegitimacy and employment in the domestic services.¹⁰⁹ Judith Allen’s research into illegitimacy in New South Wales, Australia, found that the two to three thousand illegitimate births registered annually in that state were due ‘primarily’ to urban domestic servants under twenty-five years of age.¹¹⁰ John R. Gillis’ findings in the context of domestic service in nineteenth-century London is in accord. Using the records of the London Foundling Hospital, Gillis calculates from a sample of twelve hundred applications that 65.6 per cent involved women working in the domestic services.¹¹¹ Shurlee Swain argues that domestic servants simply constituted the most visible group, suggesting that it was that group’s increased dependence on outside help which made them more observable in statistical data tabled from women’s refuges and foundling homes.¹¹²

However, for contemporaries there appears to have been little doubt that ‘the largest class of illegitimate children’ belonged to young mothers in domestic service.¹¹³ Alongside this belief stood the perception that these children were in particular danger from their mothers. In the discourse of the London Harveian

¹⁰⁸ Dalley, ‘Criminal Conversations’, p. 76. For single mothers’ efforts to cope with their illegitimate offspring see Shurlee Swain, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia* (New York: Cambridge University Press, 1995); and for a discussion of the welfare available to unwed mothers in New Zealand see Margaret Tennant, ‘“Magdalens and Moral Imbeciles”’, pp. 49-75.

¹⁰⁹ For further discussion on this link see: Rose, *Massacre of the Innocents*, pp. 15-21; Shurlee Swain, ‘Maids and Mothers: Domestic Servants and Illegitimacy in 19th-Century Australia’, *History of the Family*, 10 (2005), pp. 461-471; and John R. Gillis, ‘Servants, Sexual Relations, and the Risks of Illegitimacy in London, 1801-1900’, *Feminist Studies*, 5:1 (Spring 1979), pp.142-173.

¹¹⁰ Allen, *Sex and Secrets*, p. 26.

¹¹¹ Gillis, p. 144.

¹¹² Swain, ‘Maids and Mothers’, p. 470.

¹¹³ Tyler Smith, *BMJ* (1867), p. 21.

Society, it was the vulnerability of this group of women that made infanticide such an obvious ‘temptation’, as W. Tyler Smith explained:

When labour comes on, the poor creature has made no previous preparation for taking care of her infant. Discovery involves loss of character and immediate dismissal, and she is tempted, and in too many instances in her suffering and despair yields to the temptation, to destroy the child and hide and dispose of its body. This, as is well known, is a common history.¹¹⁴

My research into the correlation between infanticide and domestic service in the New Zealand context corresponds with findings elsewhere in the British colonies. Although the occupations of women have been ascertained in only eighty-one of my 169 cases of maternal infanticide or concealment involving children born ex-nuptially, of those for whom occupational status is known, at least seventy-two (or 88.0 per cent) involved women in domestic service. Only seven women were identified as employed in a named occupation other than domestic service. These women worked as laundresses, barmaids, prostitutes, actresses, waitresses and factory workers. These findings reflect the fact that in nineteenth-century New Zealand, as elsewhere, domestic servants formed the largest female occupational group – it is perhaps unsurprising then that so many newborn child murders were ascribed to those in service during that time frame.¹¹⁵ Government immigration schemes in the nineteenth century targeted single British women to provide badly needed domestic labour and service in the colony, providing assisted passages to suitable applicants. This push for servants, coupled with the dearth of factory or retail work for women, and the benefits of the live-in situation that most service positions provided, meant that the largest numbers of unmarried Pākehā women in the nineteenth century were employed in the domestic services throughout their childbearing years.

¹¹⁴ Ibid.

¹¹⁵ Domestic service work made up 61.0 per cent of the distribution of female labour until the 1890s. By 1921 more women were employed in the manufacturing and service industries combined than were in domestic service. See Table 13, ‘Industrial Distribution of the Female Labour Force, 1874-1966’, Gibson, p. 44.

Rose argues that the high rate of infanticide attributed to English domestic servants was related directly to the nature of their work. Servants, he says, were less able to ‘cover their tracks’ than ‘the upper-class ladies “in difficulties” who had the money ... and went through surreptitious channels to dispose of their embarrassments’.¹¹⁶ Moreover, as Dr W. Tyler Smith had indicated in his address to the Harveian Society, an illegitimate child would mean ‘instant dismissal without references’, costing a woman her home as well as her current and future income. Infanticidal crime carried out by servants also carried a higher likelihood of discovery because of the exposed position such women occupied. Often sharing restricted quarters with other servants within the employer’s household, these women seldom had the time or the privacy to give birth and conceal the body of a murdered child without arousing some suspicion. Moreover, they were usually isolated from family and friends who might act as accomplices or shield them from police or community interest. For young women like Minnie Garlick, who travelled alone to New Zealand through an assisted immigration scheme, the social isolation could be extreme.

Twenty-year old Minnie appeared before the magistrate in Auckland in 1874 charged with the murder of her newborn illegitimate daughter. Nine months earlier she had stepped off the barque *Woodlark* from London, into the busy port of Auckland, and quickly secured a job as a servant at a boarding house in Coburg Street.¹¹⁷ She may have already suspected her pregnancy and confided in the sailor she named as the father of the child. In any event, Charles Letty deserted the ‘Woodlark’ while it was still in port and was not heard from again.¹¹⁸ For the next nine months Minnie managed to work through the morning sickness and to conceal her changing shape. She also managed her labour alone and in silence. Her story, as she told it to the magistrate, was that her child was born alive at six a.m. She laid the baby girl on her bed, hiding her under a piece of blanket. She then dressed and was down stairs and ready for work by six-thirty. At some later

¹¹⁶ Rose, *Massacre of the Innocents*, p. 20.

¹¹⁷ The *Woodlark* carried sixty-five assisted single women destined for domestic service work in Auckland (Julia Millen, *Colonial Tears and Sweat: The Working Class in Nineteenth-Century New Zealand* (Wellington: A.H. and A.W Reed, 1984), p. 6).

¹¹⁸ ‘Concealment of Birth, Coroner’s Inquest: An Open Verdict Returned’, *Daily Southern Cross* (Auckland), 31 March, 1874, p. 3.

time in the day she returned to find the baby dead. She wrapped her in a bundle of clothes and threw the parcel into a dry well in the backyard.

Those hearing Minnie's story must have conceded that in her situation, in the servant's quarters of a small boarding house, the urge to suppress the loud cries of a newborn baby would have been strong. Indeed, the coroner's report on the body, when it was found several days later, described the deep bruises on the child's throat 'probably caused by a thumb and forefinger'. On the right side was the clear indentation of a fingernail. The coroner's jury found that death was due to 'asphyxia, caused by pressure on the windpipe, but by whom applied there is no evidence to show'.¹¹⁹ The Supreme Court jury showed the same reluctance to implicate Minnie in the death of her daughter. She was found 'not guilty' of the murder of her child. The details of Minnie Garlick's story follow a pattern that is repeated throughout the period. Like many other women acquitted of the murder of their illegitimate newborn infants she was then tried under the alternative charge of concealment of birth. This time the jury returned a 'guilty' verdict and Minnie was given a comparatively harsh sentence for that offence - nine months imprisonment with hard labour.¹²⁰

As domestic servants tended to live in households that were not familial, their first port of call in a time of crisis was often their fellow servants or employer. While employers were frequently the route by which suspicious deaths of newborns were revealed to the police, witness testimonies in child murder and concealment trials sometimes demonstrate evidence of compassion shown to young women by their employers throughout their ordeals. This kind of witness testimony is a rare example of evidence which captures such emotional connections, revealing networks of genuine support across class boundaries. Caroline Brougham's testimony, given during the coroner's inquest on May Gifford's newborn daughter, clearly demonstrates such connections. Caroline, a Motueka hotelkeeper, made the discovery of the dead child under a bed in an unoccupied room in the hotel. The baby girl, whom the coroner judged to have been born alive, was found 'curled up in a chamber [pot], immersed in a quantity of blood

¹¹⁹ Ibid.

¹²⁰ 'Auckland', *Wanganui Chronicle*, 13 April 1874, p. 2.

and fluid ... with the afterbirth lying on top'.¹²¹ Caroline's testimony states that immediately after the discovery she called her two daughters and May Gifford to her bedroom, where she related to them what she had found. She said: 'The accused ... put her arms around my neck and said she had given birth to the child on the previous Wednesday week. ... I gave her some brandy and water and covered her up on [my] bed'. Caroline's husband, Thomas, corroborated, telling the coroner's jury:

I went up to our own bedroom and saw May Gifford with her arms around my wife and sobbing. My wife said "Oh Tom its May poor motherless girl what can we do?" I said to May Gifford (the accused) "My girl I am sorry for you".¹²²

Aware of her youth and lack of familial support, May's employers assumed a parental role, offering guidance and understanding. Servants' freedom of movement and privacy were severely restricted, but interactions such as these suggest that the surveillance of such women was not always negative.

According to the testimony of domestic servant Mary Ann Bailey, who was tried for concealment of birth in 1876, her employer proffered more practical and immediate forms of 'support', though these claims were firmly refuted in court.¹²³ Mary Ann deposed that while in labour, she had called out to her employer, Margaret Pridgeon, who came to her room, bringing her 'hot water for her feet' and offering comfort. She allegedly put her hands on Mary Ann's stomach and told her 'she was going to be bad'.¹²⁴ Mary Ann claimed that soon after the birth, Mrs Pridgeon returned and uncovered the smothered infant from under the bed clothes, confirming its death and telling her 'it would be alright: and that no one would know anything about it'.¹²⁵ Mary Ann further alleged that Mrs Pridgeon had helped her to bury the baby's body in a nearby field. Despite Mrs Pridgeon's

¹²¹ Criminal Files, JC-N7:1, Supreme Court Depositions - Gifford, May - Concealment of Birth and Death of Her Child (Nelson), 31 July 1901, Archives New Zealand, Wellington.

¹²² Ibid. May Gifford was later found guilty of concealment of birth and sentenced to six months' probation.

¹²³ 'District Court', *Grey River Argus* (West Coast), 8 February 1876, p. 2.

¹²⁴ Ibid.

¹²⁵ Ibid.

strenuous denial that any such encounters had taken place, the Greymouth District Court jury appear to have favoured Mary Ann's version of events. Rather than indicting Mrs Pridgeon as an accessory, however, they used the testimony to acquit Mary Ann Bailey of the charge against her. In the jury's view, as they explained to the presiding judge, Mary Ann had informed Mrs Pridgeon of the child's birth and death; therefore, concealment of birth could not technically have occurred.¹²⁶

Co-workers could also provide a measure of emotional support, as the inquiries into the death of a Cambridge infant demonstrates. Sarah Johnson shared the servant's quarters on the upper floor of the Masonic Hotel with Lizzie Crawford and Rose Winter. If Lizzie or Rose actually helped Sarah during the mid-July night while she was in labour, neither was prepared to share that information with the court. Nevertheless Lizzie admitted that when Sarah went downstairs in her nightgown at six a.m., to 'go into the garden', she followed her down out of concern, asking 'what was the matter?'¹²⁷ Within the scope of the textual evidence available, it is difficult to gauge the real level of support that domestic servants like Sarah Johnson received from their fellow workers living in the same household. Often sharing sleeping quarters with other servants, it is hard to imagine that women in these situations, attempting to labour alone and in secret, were left entirely without assistance. However, fellow servants were sometimes responsible for bringing crimes of infanticide or concealment to police attention. Indeed, it was Rose and Lizzie's insistence that they had 'heard the cry of an infant', which led to the police discovery of Sarah's newborn baby boy in a shallow grave behind the pigsty.¹²⁸ This damning witness testimony, suggesting evidence of a live birth, was supported by a statement allegedly made by Sarah herself. In reference to the child, she reportedly told the arresting officer: 'I know now it was wrong to make away with it, but did not think so at the time'. Regardless of this evidence to the contrary, the jury at the coroner's inquest were anxious to suggest that Sarah's baby had been stillborn. After much deliberation, a

¹²⁶ Ibid,

¹²⁷ 'Sad Occurrence at Cambridge', *Waikato Times*, 27 July 1882, p. 2.

¹²⁸ 'Suspected Case of Infanticide', *Marlborough Express*, 26 July 1882, p. 2.

compromise was arrived at - their verdict held that the ‘imperfectly formed’ infant had ‘[d]ied from natural causes’.¹²⁹

The treatment Margaret Collins received from her co-workers appears less ambiguous. Sarah Dawson shared a room with Margaret in the servant’s quarters of the Exchange Hotel in Milton, though there was little evidence of either friendship or personal support in the evidence that Sarah gave during Margaret’s trial for the murder of her newborn baby girl.¹³⁰ Sarah’s suspicions were aroused when Margaret remained in bed one morning, complaining of a headache. She described her surveillance of Margaret throughout the day – how she later saw her on her knees washing the bedroom floor, and how she noted a pair of bloodstained scissors on the washstand by the bed. Sarah later returned to the empty bedroom and uncovered blood-stained clothes that had been hidden under the bed, as well as a rolled up blanket marked with blood.¹³¹ Sarah then left the house to fetch a local nurse, Isabella Pettigrew, and returned with her ‘to examine the evidence’. During the trial, Mrs Pettigrew described for the court how they had searched the room, turning up the mattress and finding the body of a baby girl hidden beneath. She deposed that Margaret Collins had confronted the two women, and begged for their assistance in covering up the crime, suggesting that they ‘dig a hole’ and ‘put it in the ground’, so that ‘it could be kept quiet and no one would know’.¹³² But neither of the women was prepared to act as an accomplice to the crime of murder. Mrs Pettigrew allegedly told Margaret that she ‘would not do such a thing for a thousand pounds’.¹³³ Margaret’s employers and the police were duly informed. The coronial inquest showed that the child had died from a throat wound that had completely severed the windpipe and carotid artery.¹³⁴ Nonetheless, the court opted for clemency and found Margaret not guilty of

¹²⁹ ‘Sad Occurrence at Cambridge’, *Waikato Times*, 27 July 1882, p. 2. The ‘bodily imperfections’ reportedly found on the child were not explained further. Sarah Johnson died in suspicious circumstances just days before she was due to appear before the Auckland Supreme Court on a charge of concealment of birth.

¹³⁰ Criminal Files, DAAC D256 267, File 15, Margaret Collins, April 1875, Archives New Zealand Dunedin Regional Office.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

murder. She was instead convicted of manslaughter, and on the understanding that she be kept apart from ‘the other female prisoners’, the judge pronounced an extraordinarily lenient sentence of two months of imprisonment without hard labour.¹³⁵

Ultimately, the reactions of employers and fellow servants to the crime of neonaticide were influenced by a wider set of conditions than the available evidence can provide access to. Nonetheless, glimpses of the emotional relationships shared between those living and working in domestic service situations can be evinced from testimony such as that of Mary Ann Bailey, and Caroline and Thomas Brougham, suggesting that emotional and practical support were available and forthcoming in some situations. In most cases though, the very nature of juridical evidence precludes any clear signs of support or assistance offered to infanticidal mothers by workmates or employers; anyone admitting to aiding and abetting in the concealment of an infant risked being arrested and charged as an accomplice. On the other hand, as might be expected, evidence is readily found of the monitoring of single women servants and the reporting of suspicious behaviour, such as that which took place in the workplaces of Margaret Collins and Sarah Johnson.

Paternity

Although Lizzie Crawford and Rose Winter may have been reticent about their own involvement in the events surrounding the birth and death of Sarah Johnson’s baby, they were more forthcoming on the topic of paternity, willingly providing the police with the name of the man they believed to have fathered the child. While the names of putative fathers were published in newspaper reports on crimes of this nature from time to time, in the majority of reported incidences fathers remained conspicuous by their absence – a situation which was a cause for some unease among contemporaries.

Shurlee Swain, in her study of the relationships between illegitimacy and domestic service in Australia, argues that the stereotype which depicted the single

¹³⁵ ‘Telegrams’, *Bruce Herald* (Otago), 16 April 1875, p. 5.

mother as a seduced and deserted domestic servant obscured ‘disturbing questions about the identity of the fathers’.¹³⁶ Bronwyn Dalley also points to the shadowy figure of the fugitive father, whose absence ‘facilitated an imaginary space that could be filled with stock male characters’.¹³⁷ When that figure was associated with the downfall of a young domestic servant, the imaginary space was most effortlessly filled by the socially superior employer or other male members of the family living within the household – personas that fitted neatly with the stock melodramatic images of innocence, seduction and betrayal.

Assessing courtroom narratives in turn of the century Paris, Ruth Harris demonstrates the potency of melodramatic theatrical plotlines in explaining ‘issues of immense psychological complexity’ such as murder.¹³⁸ A play’s success, she says, rests on ‘its ability to absorb the audience’s sympathy by revealing the dastardly doings of the heroine’s enemies and contrasting them to the “pure” and commendable aspirations of the heroine’.¹³⁹ The same strategies and devices, Harris suggests, were utilised in the assessment of French murderesses and the reconstruction of criminal events. That these conventions were understood and accepted in nineteenth and early twentieth-century New Zealand can be evinced in the words of judges and commentators on trials like those of Annie Rauner and Bertha Brown.

Annie Rauner’s testimony in 1890 identified the father of her child as the son of her employer – a man, who it was claimed, had cruelly cast her out to give birth alone ‘under the arch of heaven ... as if she was a beast of the field’.¹⁴⁰ As the poem that begins this chapter demonstrates, the meanings of such events were already fully formed within public understandings, and provoked righteous indignation which was aimed directly at the male antagonist. The second half of the poem takes a dramatic shift away from the passive innocence of the seduced country girl (the ‘trembling victim’) to the culpability of her ‘seducer’ (imagined

¹³⁶ Swain, ‘Maids and Mothers’, p. 462.

¹³⁷ Dalley, ‘Criminal Conversations’, p. 77.

¹³⁸ Harris, p. 45.

¹³⁹ Harris, p. 46.

¹⁴⁰ ‘Concealment of Birth: A Shameful Case’, *Timaru Herald*, 11 December 1890, p. 4.

here as a snake). While the law effectively provided the man with anonymity, the writer demands that he be identified and brought to justice:

Must he escape his trembling victim's fate,
And move unmarked among his fellow-men?
Can neither law nor justice overtake,
The scoundrel lurking in his sensual den?

Rouse ye, my brothers, in the cause of right;
Tear off the mask that hides the viper's face;
Drag forth the wretch into the public light,
And brand him with indelible disgrace!¹⁴¹

The poem's anonymous author was not alone in his strength of feeling on the issue of paternal responsibility in cases of maternal neonaticide. Judges frequently referred to women coming before the courts on child murder or concealment charges as 'more sinned against than sinning'. In the case of Bertha Brown, tried for concealment of birth in 1909, the *Bay of Plenty Times* quoted Justice Cooper as saying he 'could not help feeling a certain amount of sympathy with the prisoner in the position in which she had been placed. ... As the law stands at present, the man who was responsible for her position could not be brought before the court'. The judge refused to pass sentence on her 'under such circumstances', allowing her to leave the court in the company of the Matron of the Salvation Army Home.¹⁴²

Earlier, in 1896, an editorial in the *Marlborough Express* spoke at length on the 'inequality of treatment meted out by society and by the law of the land to the seduced and the seducer'.¹⁴³ Prompted ostensibly by a concern about the number of illegitimate births in New Zealand and of incidences of concealment of birth, which were perceived to be 'steadily increasing every year', the editorial was more specifically a response to the Supreme Court trial of sixteen-year-old domestic servant Mary Anderson, who had left her newborn baby in a bedroom closet, where it was found by the coroner to have suffocated on 'the foecal matter

¹⁴¹ 'Annie Rauner', *Observer* (Auckland), 22 November 1890, p. 6.

¹⁴² 'The Woman Pays: A Sympathetic Judge', *Bay of Plenty Times*, 20 October 1909, p. 2.

¹⁴³ 'An Unequal Law', *Marlborough Express*, 11 August 1896, p. 2.

left in its mouth and air passages'.¹⁴⁴ But the text omits any mention of the child victim or the act of wilful or culpable homicide, remaining focused on the male's active villainy and the young woman's passive victimhood in such a case. It begins:

As the law stands at present, a girl who is seduced and bears a child, and who, through ignorance, shame, or criminal instinct, conceals the fact of its birth, is liable to very severe punishment, but he of whose lust she has been a victim goes Scot free. The weaker offender, whose offence is most probably mainly the outcome of weakness of character than of any innate immorality may be sentenced to a long term of imprisonment, perhaps – though this is rare indeed – to the death penalty.¹⁴⁵

Here, the woman's act of murder, whether by violence or neglect, is overshadowed by the act of lustful 'immorality' carried out by the 'chief sinner' – the father of the child:

But the man who has sinned with her and who in many instances has taken a base and villainous advantage of the girl's weakness – the chief sinner, in fact – is allowed to walk about in the world, neither society nor the law taking notice of his responsibility for the consequences of his wickedness.¹⁴⁶

In this narrative then, the element of blame is effectively removed from the young mother and the crime is recast as a consequence of male 'wickedness'. Interestingly, it was to 'the women of New Zealand' that the editorial made the call to action on the matter, stating:

Now that the women of New Zealand have got the right of voting for members of Parliament and are yearly taking more interest in the state of the laws as they affect the weaker sex, there ought to be a

¹⁴⁴ 'Saturday August 1', *Hawkes Bay Herald*, 1 August 1896, p. 2. Mary Anderson was tried for concealment of birth in the Napier Supreme Court. The charge was found to be a 'no bill'.

¹⁴⁵ 'An Unequal Law', *Marlborough Express*, 11 August 1896, p. 2.

¹⁴⁶ *Ibid.*

widespread agitation amongst them for an alteration of the law as it concerns seduction.¹⁴⁷

The idea that incidences of neonaticide were preceded by an unequal balance of power between naive young girls and predatory men in positions of authority added veracity to the sympathetic narrative that served to mitigate women's criminal offending. Moreover, it was a conclusion that was easily arrived at by contemporaries and historians alike. Indeed, Allen argues that 'while there is little evidence of paternity in these cases, the long hours and lack of reasonable and guaranteed time off ... suggests that few men apart from members of the household and visitors had access to these women'.¹⁴⁸ However, Annie Rauner's situation appears to be unusual among the incidents identified in this study. The case files which form the basis of the evidence here demonstrate that when a father is mentioned, it is invariably someone from outside of the work environment and within the same social class. Gillis' research in the English context also found that 'sexual relations leading to illegitimacy were ... rarely between servant and master but between persons similar in background and social standing'.¹⁴⁹ Unwanted pregnancies appear most frequently to have resulted from consensual sex with a boyfriend or fiancée as an agreed step towards marriage. The father of Annie Bates' child was identified as her 'sweetheart', Joe Smithson, who worked at the establishment where Annie had been previously employed as a dance girl.¹⁵⁰ John Cline, a roadman for the Napier County Council, was jointly charged alongside Alice Shepherd when she confessed to strangling their illegitimate newborn son at birth.¹⁵¹ Fifteen-year-old Annie Tiney named a seventeen-year-old neighbour, Joseph Tait, as the father of her child who was

¹⁴⁷ Ibid.

¹⁴⁸ Allen, *Sex and Secrets*, pp. 26-27.

¹⁴⁹ Gillis, p. 143. Tanya Evans reports similar findings for the earlier period in her "*Unfortunate Objects*": *Lone Mothers in Eighteenth-Century London* (Hampshire and New York: Palgrave MacMillan, 2005), pp. 2-3 and 32, and Simone Caron's sample of Rhode Island infanticide cases tried between 1870 and 1938 found that none of those employed as domestic servants claimed to have been impregnated by their employers (Simone Caron, "Killed By its Mother": Infanticide in Providence County, Rhode Island, 1870-1938, *Journal of Social History*, 44:1 (Fall 2010), p. 217).

¹⁵⁰ *R v Annie Bates*, Hokitika, Richmond J., 13 January 1870, Concealment of birth, 'Christopher William Richmond Judge's Notes', Vol. 3 (1868-1870), MSS R532, J.C. Beaglehole Room, Victoria University of Wellington, p. 317.

¹⁵¹ 'Alleged Murder', *Otago Witness*, 7 July 1909, p. 12.

found with its head ‘smashed with a spade’.¹⁵² It was local tailor Tom Cleaver who was reported to have fathered the child that Sarah Johnson buried behind the pigsty by the Masonic Hotel in Cambridge. Sarah’s fellow servants described for the police how she had been ‘keeping company’ with the man for over two years, though, just as Minnie Garlick’s sailor had done, Tom Cleaver ‘cleared immediately after the occurrence’.¹⁵³

In the majority of court trials involving maternal neonaticide, however, the paternity of child victims was not considered or discussed. While the father remained a shadowy figure in the background of these crimes, public imaginings were allowed full reach. A letter sent to the editor of the *NZ Truth* in 1909, after the trial of Bertha Brown, suggests that literary and theatrical convention played their part in such imaginings:

Mr Editor,

Sir, – Do you think it was fair to publish the unfortunate girl’s name and not the man’s? Perhaps he is one of the so-called toffs of this God-fearing city.

Trusting you will publish his name in full when you comment on the case.

– I am,

A Mother.¹⁵⁴

When unmarried couples were indicted jointly for the murder, manslaughter, or concealment of their newborn infants, the presence of the father in the courtroom left less room for such imaginings. Chapter Four will show that these men seldom fitted easily with stereotypical expectations and this problematised not only the ways in which they could be understood as murderers of children or accomplices

¹⁵² ‘A Pitiful Tragedy’, *Ashburton Guardian*, 13 November 1905, p. 2. Joseph was later charged with having carnal knowledge of a girl under the age of consent (*Ashburton Guardian*, 18 November 1905, p. 2).

¹⁵³ ‘The Inquest’, *Waikato Times*, 27 July 1882, p. 2.

¹⁵⁴ ‘A Woman’s Woe’, *NZ Truth*, 23 October 1909, p. 7.

to crime, but also disturbed understandings of the infanticidal mothers as seduced ‘innocents’.

Widows and Deserted Wives

My research plainly demonstrates that domestic servants and other single women were not the only ones who might experience an illegitimate pregnancy as a social and material disaster. The case files collected for this study include those of twelve women who were identified as widows or deserted wives, and who appeared before the courts charged with the murder or concealment of their illegitimate newborn babies. Their married or widowed status did not appear to have afforded these women any less sympathy. Generally, they were provided with the same leniency by the court system and the public media as never-married women, being given the benefit of the doubt in legal proceedings and being sympathetically portrayed as victims of circumstance. The trial of Florence Farndale demonstrates a case in point.

In December 1907, a gruesome discovery was made by two small boys playing along the high tide mark of Auckland’s Ponsonby beach. Among the flotsam and jetsam cast up by the tide was the headless and handless body of a newly born baby girl.¹⁵⁵ Police questioning led to thirty-two year old Florence Farndale, a mother of two who was reportedly married to a medical man who had been absent for some years in the Congo. The matron of a private lying-in home told police that Florence had given birth to a healthy (though clearly illegitimate) daughter at her establishment in November, but that she had ‘displayed none of the attachment which might be expected on the part of a mother’.¹⁵⁶ Indeed, she ‘seemed anxious to get rid of the child and have it put into a Home’.¹⁵⁷ The matron testified that on one occasion Florence had got into a cab and gone to three different ‘Homes’ but failed to have the child taken in.¹⁵⁸ She then approached the local police matron, telling the woman that the baby belonged to a friend who had

¹⁵⁵ ‘Alleged Infanticide’, *Poverty Bay Herald*, 9 December 1907, p. 5.

¹⁵⁶ ‘Charge of Murder’, *Auckland Star*, 18 February 1908, p. 3.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

recently died. Florence's requests for assistance in getting the child cared for were again unsuccessful. Several nights later, Florence left her house late at night and returned without the child. When questioned, she informed the police detective that the baby had been taken in by the Salvation Army Home. However, when the detective asked her to accompany him to the home in a cab, she changed her story, stating:

I took baby away at dusk on Tuesday and went for a blow up the harbour on a ferry boat. Baby was restless. I walked up and down, then set it on the side rail of the steamer which lurched, and baby fell overboard.¹⁵⁹

During the trial, medical experts were questioned in an attempt to account for Florence's silence during the alleged incident; if her story was to be believed, she had apparently watched her child fall overboard and slip into the water without calling out or even mentioning it to anyone else on board. It was conceded that a woman in her position might well lose the power of speech as a result of the shock. Counsel for the defence put it to the jury that if they believed that was the case, they might also allow that 'under the circumstances she would decide to say nothing of the occurrence later on'. In his summary of the case, the judge directed the jury that there could be no justification for bringing in a verdict of manslaughter. This was, he said, 'either a case of murder or not murder'. However, he informed them that if he himself 'were in the place of a jurymen, he would say to himself, "this unhappy woman's story may be true, and if there is cause for reasonable doubt, then she must be given the benefit of that doubt and acquitted"'.¹⁶⁰ No witnesses from the ferryboat were questioned in court, and the issue of the tiny missing body parts appear to have been satisfied by the bizarre suggestion that they had been 'gnawed off by a shark'.¹⁶¹ After twenty minutes of deliberation the jury returned their verdict of 'not guilty' and the prisoner, in 'a hysterical condition', was discharged.¹⁶²

¹⁵⁹ 'An Auckland Tragedy: A Pitiabale Case', *Auckland Star*, 20 December 1907, p. 3

¹⁶⁰ 'Death of an Infant: Mother Acquitted of Murder', *Poverty Bay Herald*, 19 February 1908, p. 6.

¹⁶¹ 'Inquest on a Child', *Bay of Plenty Times*, 20 December 1907, p. 3.

¹⁶² 'Charge of Child Murder: Accused Acquitted', *Colonist (Nelson)*, 19 February 1908, p. 3.

A later commentary on the trial published in the Auckland *Observer* sums up the outcome in melodramatic fashion, with the counsel for the defence, Mr Singer, playing the part of the rescuing hero in the sad story of Florence Farndale:

The acquittal of Florence Farndale on a charge of infanticide is a big and brilliant feather in the cap of Lawyer Singer, who acted as defending counsel for the accused woman. ... The police had their facts marshalled carefully and supplemented by a bevy of witnesses. Mr Singer, on the other hand, called no witnesses, but put his faith in his own eloquence, and a simple relation of facts which, taken together, revealed a pathetic story. That the lawyer's faith was not misplaced has been proved by the acquittal of the accused person.¹⁶³

According to this observation, the *story* told by the defence resonated with the 'truth' more strongly for the jury than the police's 'carefully marshalled facts' and witness testimonies. Florence Farndale was a married woman, but her status as an abandoned wife allowed her crime to be seen as another 'pitiable tale' characterised by callous men and wronged and desperate women.

Community surveillance played an important part in the policing of single, widowed or deserted women who had attempted to dispose of illegitimate infants they had either actively murdered or allowed to die. As with domestic servants, a secret birth was often uncovered when the women's unusual behaviour or apparent illness aroused suspicion, or when the body of the child was discovered. In both urban and rural communities in New Zealand, it was most often close relatives or neighbours who brought infanticide cases to the attention of authorities.¹⁶⁴

Neighbourhood children discovered the body of Mary Jane O'Sullivan's infant daughter and were called to testify against her when she was tried for murder at the Supreme Court in New Plymouth. Nine-year-old George Ewings told how he

¹⁶³ 'Pars About People', *Observer* (Auckland), 29 February 1908, p. 4.

¹⁶⁴ Cliona Rattigan found a similar situation in her investigation into community responses to maternal infanticide in early twentieth-century Ireland (Cliona Rattigan, "'I thought from her appearance that she was in the family way": Detecting Infanticide Cases in Ireland, 1900-1921', *Family and Community History*, 11:2 (November 2008), p. 136).

and his six-year-old brother had been playing with a ball, which had ‘rolled under Mrs O’Sullivan’s Barn’.¹⁶⁵ While retrieving the ball he found ‘a parcel’ and brought it out into the light to investigate. Mary Jane’s son, Willie, unwrapped the parcel, and the three boys later testified to having seen ‘two legs and feet of a baby’. Confronted with the partially unwrapped infant corpse, Mary Jane attempted to make light of the situation, telling the boys that they had uncovered ‘a little pig from the butchers’ which the dog had dragged under the barn. The boys were not convinced. The Ewings brothers ran home to tell their parents, and within ten minutes, two police officers were investigating the scene. Mary Jane repeated her story to the police, insisting that the boys had seen nothing more than ‘a piece of dog’s meat’ and adding that George was a ‘little story-teller’.¹⁶⁶ However, the police officers were inclined to believe the boys’ story and took Mary Jane into custody. She eventually led them to a Māori *kete* which held the baby girl’s body, saying: ‘I am not the first that fell into misfortune – don’t go hard against me.’¹⁶⁷

Neighbourhood friends told how Mary Jane had been widowed two years earlier and had formed a relationship with a local man, Robert Pringle. Robert had been out of town looking for labouring work when he reportedly took ill and died. Dr Croft, who carried out the forensic examination on the body of the child, revealed that several months earlier Mary Jane had come to him saying that ‘she was in an unfortunate trouble’. She estimated she ‘was gone four or five months in the family way’ and asked the doctor to ‘get rid of it for her’.¹⁶⁸ He testified that he had refused to terminate the pregnancy.

After her arrest, Mary Jane’s immediate anxieties were with the public nature of the inquest and the shame of being exposed to members of her community. She told the arresting officer: ‘I suppose there will be a crowd at the court at the inquest tomorrow’.¹⁶⁹ She also told him: ‘I suppose I am in for two or three years’ – a statement which suggests a good level of lay understanding about

¹⁶⁵ ‘Supreme Court: Criminal Session’, *Taranaki Herald*, 3 May 1882, p. 2.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

contemporary court practice.¹⁷⁰ Mary Jane must have been aware that it would have been difficult to dispute that the child had been wilfully murdered – the piece of tape that had been twisted three times around its neck was still deeply imbedded in the skin when the body was found.¹⁷¹ Despite this, she does not appear to have believed that as a mother she might be found guilty of murder in a court of law. Indeed, her assumption that she would be tried on a lesser charge than murder proved to be well founded. During the Supreme Court trial, the defence counsel was instructed by the accused to state that due to extreme despair and distress she ‘did not know what she was doing at the time’. Moreover, she wished that it be impressed on the court that she was the mother of three ‘very young children’ who would be left motherless in the event of her imprisonment. The judge told the accused: ‘You, as a widow and a mother of children, ought to have known better than to have endeavoured to conceal your shame, as you have done.’ However, he did not feel it ‘incumbent’ to pass ‘the utmost sentence of the law’ upon her. Mary Jane O’Sullivan was instead charged and found guilty of concealment of birth and imprisoned for twelve months.¹⁷²

Taken as a group, the twelve widowed or deserted wives indicted for murder or concealment and identified in this study suggest that neither age nor marital status took a central role in the ways that infanticidal women were viewed by the New Zealand courts and wider society. The precarious economic and emotional conditions that befell any pregnant woman without a male provider appear to have been well recognised. It is perhaps for these reasons that such women were able to fit relatively seamlessly into the framework of the prevailing sympathetic narrative, which effectively mitigated their actions. However, while the actions of older, more experienced women could be conceptually embedded within the dominant narrative, at times the ‘cultural weight’ of alternative or even oppositional stories provided sites for what Ann Louise Shapiro has called

¹⁷⁰ ‘Untitled’, *Clutha Leader*, 31 March 1882, p. 4.

¹⁷¹ ‘Supreme Court: Criminal Session’, *Taranaki Herald*, 3 May 1882, p. 2.

¹⁷² *Ibid.*

‘stories-in-tension’.¹⁷³ The vastly different outcomes that could eventuate in such situations will be investigated further in the following chapter.

Conclusion

This chapter has explored the social contexts of one of the most commonly understood images of child homicide in nineteenth and early twentieth-century New Zealand – that of the murder and concealment, by the mother, of an illegitimate newborn child. Daily newspaper coverage of criminal trials brought the maternal child murderer into public discourse, reinforcing cultural understandings and the associations between morality, poverty, violence, and crime. In the central narrative, both the mother and child were viewed as the innocent victims of a callous society inhabited by predatory men. But this story contained discursive ruptures within its framework: the discourse which concerned itself with the representation of the neonaticidal mother as a figure of pity sat uncomfortably alongside a counter discourse that focused on the dead child. For the medical coroner the child was the central subject. The coronial gaze was directed upon the bodies of the dead babies – coroners held the tiny bodies in their hands, calculated their measurements and weight, scrutinised them for signs of violence, and carefully dissected their lungs for signs of respiration. But in a court of law the child was present only as an imaginary object and referred to only in the discourse of forensic science. In the courts, the public gaze was focused firmly on the flesh and blood body of the young woman in the dock. In a murder indictment both judge and jury were acutely aware that the life or death of the woman who stood before them rested in their own hands. In this situation, for those charged with such a responsibility, the death of the child may have carried less weight than the potential death of the woman accused of its murder.

I have argued that the dominant representation of the mother as murderer was of the young, single woman who destroyed her child out of desperation to avoid a life of grinding poverty and social censure, and that the violent or neglectful actions that led to the death of her child were mitigated by beliefs about such a

¹⁷³ Ann-Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-Siècle Paris* (Stanford, California: Stanford University Press, 1996), p. 50.

woman's ignorance and youth coupled with her despair and shame. This representative strategy was enabled by the popular currency of melodramatic narratives that positioned young 'fallen' women as tragic heroines. This narrative was successfully expanded to include widowed or deserted women whose resort to murder could be seen to have resulted from extreme desperation and confusion. Conversely, the evidence suggests that on the whole, women who actively murdered their newborn children or allowed them to die acted strategically and decisively. Certainly the children's bodies found neatly packaged, with fractured skulls, with tape wrapped around their necks, or with their mouths and nostrils packed with earth and leaves, attested to a degree of conscious action on the part of their killers. Moreover, when women were confronted with their actions they often worked as active agents in their own survival, utilising available cultural narratives and affecting the outcomes of their trials by their self-representation.

The absence of fathers in incidences of newborn murder and concealment both enabled and encouraged the perception of these women as the victims of male seduction. A commonly held assumption, gleaned from melodramatic convention, was that young working class women were in constant danger from unscrupulous male employers and other men in the classes above them. While this situation was not unknown, the evidence in this chapter suggests that single women were more likely to meet the fathers of their babies on equal terms during the course of their working and social lives. The great majority of unmarried mothers accused of neonaticide offenses were young European migrants or Pākehā New Zealanders from the working classes, and the fathers of their children shared similar characteristics and backgrounds.

The bearing of an ex-nuptial child carried a high degree of shame and suffering and placed those without family or community support in a precarious position. However, this chapter has shown that unmarried or deserted pregnant women were seldom left entirely without resources. Networks of institutional and non-institutional support that reached across boundaries of class and ethnicity were available. While these were limited and problematic, a great number of women facing an ex-nuptial pregnancy utilised them with a measure of success. In the attempt to understand why some women chose to murder or fatally neglect their newborn children, contemporaries turned to the language of melodrama and

tropes of passivity, victimhood and powerlessness. However, evidence from the sources discussed here suggests that the motivations for these acts may have been more varied and complex than was imagined.

This chapter has identified a central narrative at work in the story of newborn child murder, which focused on the sympathetic reading of the maternal murderer. Having considered how this sentiment was formed and disseminated in the social context, the following chapter will investigate the ways in which the sympathetic narrative was put into effect in the workings of the New Zealand judicial system.

Chapter Two

Obvious Temptations: Illegitimacy and Newborn Child Murder before the Law

Summarising the evidence in a case of concealment of birth in 1911, Justice Denniston gave the following advice to the jury:

Concealment of birth is a crime as to which the reason for its enactment is not generally understood. When it is publicly discussed it is generally on the lines of the hardship of the position of the woman, often the victim of seduction, left to bear the consequences of her lapse and to undergo the ordeal of maternity, while the seducer goes unbranded and unpunished. This is true in very many cases, and it is impossible not to sympathise with such a sentiment. But concealment was made a crime not for the punishment of the mother, but altogether for the security of the infant. A secret delivery is always a temptation, and often a deliberate preliminary to the destruction of the infant.¹

Acknowledging the difficulties of working within a legal framework which was not in accord with societal expectations, Justice Denniston urged the jury not to look upon the existing law as a ‘dead letter’, where no penalty or a ‘merely nominal penalty’ might apply.² Indeed, when presiding over a similar case the following year, he expressed the opinion that the judicial failure to act in concealment cases itself operated as an incentive to murder. He asked the jury to consider this:

Suppose a young woman said, “If I get rid of this child there will be no more about it; but even if I’m caught I go before the Court and get off

¹ ‘Concealment of Birth: Judicial Statement’, *Evening Post* (Wellington), 14 November 1911, p. 2.

² *Ibid.*

on probation. It is an obvious temptation for a young mother when she is alone and the child is not legitimate.³

Justice Denniston's comments illustrate the kinds of judicial concerns regarding the level of sympathy extended to the infanticidal mother and its implications in terms of legal outcomes, which are central to the work of this chapter. Continuing the focus on maternal neonaticide, this chapter considers the ways that the cultural narratives surrounding mothers who killed their illegitimate newborn infants were articulated in the legal setting. Legal reforms, court decisions, and the testimony of medical and psychiatric experts in the nineteenth and early twentieth century all demonstrate a marked reluctance to condemn or punish harshly women who were indicted for this crime – a situation which I argue is illustrative of the success of a representational strategy which portrayed such women as legitimate objects of sympathy.

Any attempt to uncover contemporary thought on matters of crime and deviance locally necessarily requires an understanding of the British legal ideologies with which Pākehā New Zealand were so closely aligned. In this chapter I describe the various challenges and dilemmas faced by the judicial system in nineteenth and early twentieth-century England in ensuring convictions in cases of maternal neonaticide. The difficulties faced by policy makers seeking workable legislation for the crime are canvassed using government reports and the *British Medical Journal*, which directly informed legal and procedural decisions in Britain and its colonies. The ways that these impacted on trial proceedings in New Zealand are demonstrated throughout the chapter using a selection of cases tried in the New Zealand courts.

The chapter is organised into five sections. In the first, I begin the discussion on the medical evidentiary problems facing prosecutors for the Crown, with a focus on the 'live-born' rule.⁴ This English principle of common law required proof of the 'separate existence' of the child victim before any prosecution for murder

³ 'Little Not Wanted: Abandoned Babe's Birth Concealed', *NZ Truth*, 17 February 1912, p. 5.

⁴ This common law principle in relation to infanticide is explored at length in D. Seaborne Davies, 'Child-Killing in English Law', *The Modern Law Review*, 1:4 (March 1938), pp. 205-208, and George Behlmer, 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England', *Journal of the History of Medicine and Allied Sciences*, 34 (1979), pp. 410-412.

could take place. The contested nature of emerging forensic scientific techniques provided particular challenges for the use of this ruling in the courts, though my evidence suggests that despite the considerable physiological complexities inherent in the concept, as a legal ‘tool’ the ‘live-born’ ruling was well understood and well utilised.

The second section of this chapter considers the use of the concealment of birth charge, the historical roots of which were briefly discussed in the previous chapter. I have argued that the charge of concealment of birth became almost formulaic in cases where convictions for murder proved too difficult to secure; however, the concealment charge was not without its own judicial challenges and complexities. The centrality of medical jurisprudence remains an important consideration in the third section of this chapter, which looks closely at the insanity plea in cases of newborn child murder. Throughout the nineteenth century, defendants in neonaticide trials tended to be viewed by the courts, and in the wider social context, as ‘sad’ cases. Some scholars contend that by the end of the century, the image of the infanticidal mother as ‘mad’ came to dominate the legal discourse, leading eventually to gender specific legislation which relied on the concept of reproductive ‘insanity’.⁵ This section considers how far this concept was understood and utilised within the New Zealand judicial system in relation to the murder of illegitimate infants by their mothers.

Case trials that most clearly demonstrate the work of the sympathetic narratives of melodramatic convention are highlighted in a fourth section of this chapter. Here, I focus on incidences where the agency of women defendants was fully subsumed by the tropes of ‘innocence’ and passive victimhood posited by a paternalistic judiciary. This discussion leads into a final section, which considers incidences that run counter to established understandings of the murder of illegitimate infants. Paternalism, compassion and lenience were not the only legal responses when women killed their illegitimate children. To illustrate, I focus on one case trial which is typical in many respects but exceptional in others. Sarah Flanagan and her mother, Anna, were tried together for the murder of Sarah’s illegitimate

⁵ See for instance Hilary Marland, ‘Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea’, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002), pp. 168-192; and Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford, Clarendon Press, 1991).

newborn son. What ultimately set this case apart was that both women were convicted of murder and sentenced to death for their crime. This trial produced a raft of textual evidence in the form of coronial and court reports and editorial commentary, all of which were widely published in the country's newspapers. Here, these texts are unpacked in an effort to uncover some of the discursive ruptures and competing 'truths' inherent in the crime of newborn child murder.

Overall, this chapter seeks to trace the cultural narratives surrounding the character of the maternal child murderer from the criminal justice perspective, in order to demonstrate the ways that nineteenth and early twentieth-century New Zealand law both reflected and challenged popular understandings of crime, deviance, and gender.

Judicial Challenges: The 'Live-born' Ruling

In Britain, the strength of the sympathetic narrative and its implications in terms of legal outcomes had long been a cause for official consternation.⁶ Calls for legal reform in England during the 1860s were prompted by anxieties surrounding a perceived increase in suspicious infant deaths, and were further fuelled by the understanding that murder convictions for women facing the death penalty were almost impossible to achieve. Justice Keating, in his evidence for the English Report of the Capital Punishment Commission 1866, highlighted this gap between legal and public opinion on the death penalty in cases of infanticide, commenting that:

It is in vain that judges lay down the law and point out the strength of the evidence, as they are bound to do; juries wholly disregard them, and eagerly adopt the wildest suggestions which the ingenuity of

⁶ James Donovan shows that French law makers were equally mired in debate, as French juries displayed similar reasoning in their reluctance to convict women accused of newborn child murder (James M. Donovan, 'Justice Unblind: The Juries and the Criminal Classes in France, 1825-1914', *Journal of Social History*, 15:1 (Autumn 1981), pp. 89-107).

counsel can furnish ... Juries will not convict whilst infanticide is punished capitally.⁷

As the report noted, sympathetic juries gratefully accepted any evidence that might be used to mitigate the act of newborn child murder, and the testimony of obstetric and psychiatric experts provided ample material. The situation proved particularly difficult for judges concerned about the undermining of legal doctrine, who were left, to use Seaborne Davies' expressive phrase, 'wallow[ing] in the troughs of difficult questions of physiology'.⁸ Legal proof of murder in the case of a newborn infant required firm evidence that the child had not been stillborn. Given the private nature of childbirth, verification that the child had lived after parturition was challenging to say the least. In cases of neonaticide and concealment of birth, the defendant was very often the only witness to the offence and, according to English historian Roger Smith, was not, in law, permitted to incriminate herself.⁹

Moreover, the extant technologies used by medical coroners to verify respiration in newborn infants were subject to much debate among medical experts, making categorical proof of live-birth one of the supreme challenges of forensic medicine.¹⁰ The usual test for the verification of live-birth was the 'floating lung', or hydrostatic lung test, which was grounded on a seventeenth-century discovery that foetal lungs floated on water after respiration had been established.¹¹ Performed during autopsy, the test involved the removal of the lungs, which were then placed in a container of pure cold water and observed for signs of buoyancy. For further clarification, the lungs were then cut into small pieces and the

⁷ *British Parliamentary Papers 1866*, 21, p. 625, cited in Seaborne Davies, 'Part 1', p. 219.

⁸ Seaborne Davies, 'Child Killing in English Law', p. 208.

⁹ Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981), p. 146.

¹⁰ Behlmer, p. 410.

¹¹ Thomas Laqueur, 'Bodies, Details, and the Humanitarian Narrative', *The New Cultural History*, edited by Lynn Hunt (Berkeley: University of California Press, 1989), p. 186.

experiment repeated. Tissue from a lung that had not fully respired, theoretically, would sink to the bottom.¹²

The test was always controversial, and cases which proved exceptions to the rule were noted and discussed at length in the medical journals.¹³ Indeed, the veracity of the hydrostatic test for use in a court of law was being called into question by the eighteenth century. William Hunter's article 'On the Uncertainty of the Signs of Murder in the Case of Bastard Children', which was read to the British Medical Society in 1783 and published in *Medical Observations and Inquiries* the following year, pointed to serious flaws with the test, suggesting, among other possibilities, that a mother or midwife may have breathed into the child's mouth in an attempt to resuscitate it.¹⁴ Despite the test's early and wholesale discreditation by French experts, it continued, albeit controversially, as the primary basis for determining live-birth in England throughout the nineteenth century.¹⁵ In New Zealand court trials, coroners' findings on the floating lung test were used with regularity well into the twentieth century.

Divergent understandings about the physiology of childbirth further complicated points of law on the subject in court proceedings. The act of homicide was legally defined as 'the killing of a human being by a human being', but the point at which a newborn infant became a human being *in law* was held open to interpretation.¹⁶

¹² Johann Ludwig Caspar, M.D., *A Handbook of the Practice of Forensic Medicine: Including the Biothanatology of Newborn-Children and the First Part of the Biological Division, Volume III* (London: The New Sydenham Society, 1864), pp. 62-80.

¹³ See for instance A.T. Thompson, 'Lectures on Medical Jurisprudence, Lecture XIX: The Evidences of Infanticide', *Lancet*, Vol. 1 (11 February 1837), pp. 688-693; 'The Hydrostatic Test', *Lancet*, Vol. 2 (18 July 1885), p. 127; 'Signs of Live-birth', *Lancet*, Vol. 2 (18 July 1885), pp. 124-125; J.A. Braxton Hicks, MD., 'The Effects of Artificial Respiration on the Stillborn', *British Medical Journal (BMJ)*, 2:2601 (5 November 1910), pp. 1416-1418; 'The Hydrostatic Test of Stillbirth', *BMJ*, 2:2083 (1 December 1900), p. 1567.

¹⁴ William Cummin, M.D., *The Proofs of Infanticide Considered: Including Dr Hunter's Tract on Child Murder: William Hunter, 'On the Uncertainty of the Signs of Murder' (First Published in 1784)*, (London: Wilson and Son, 1836), p. 16. See also, Hunter, *Medical Observations and Inquiries*, Vol. 6 (1784), pp. 266-290.

¹⁵ Behlmer, p. 410. Physicians, such as John Brodhead Beck, in the United States, also argued that bodily decomposition could accumulate gases in the lungs without the infant having breathed. For more on medical understandings of neonaticide in the nineteenth-century American context see Simone Caron, "'Killed By its Mother": Infanticide in Providence County, Rhode Island, 1870-1938', *Journal of Social History*, 44:1 (Fall 2010), p. 214.

¹⁶ James Fitzjames Stephen, *A Digest of the Criminal Law (Crimes and Punishments)*, 3rd edn (London: Macmillan and Co., 1883), p.151, cited in Daniel Grey, 'Discourses of Infanticide in England, 1880-1922' (MA thesis, Roehampton University, 2008), p. 156.

W. Tyler Smith, in his 1867 address to the English Harveian Society, explained his view:

A child in the womb is considered by the law *pars vescerum matris*. The child is not held as “in being” until the umbilical cord has been divided, and its own independent circulation set up. If it be killed while a foot or an arm remains in part or altogether *in utero*, it is no murder.¹⁷

Legal reformer Fitzjames Stephen was equally firm in his understanding of the matter, though for him the severance of the cord and the matter of independent circulation were irrelevant. He stated that:

The line must obviously be drawn either at the point at which the foetus begins to live, or at the point at which it begins to have a life independent of its mother’s life, or at the point when it has completely proceeded into the world from its mother’s body. It is almost equally obvious that for the purposes of defining homicide the last of these three periods is the one which it is most convenient to choose.¹⁸

Even clear signs of respiration, it was conceded, might not necessarily indicate a separate existence, as the child may have breathed and then expired during the third stage of delivery.¹⁹ Exactly what all this meant in practical terms was hotly debated in both medicine and law, and, with no clear consensus, a legal loophole became apparent between the crimes of abortion and murder. This loophole was put to use with some regularity in the defence of neonaticide in Britain and continued to be utilised into the twentieth century. Reformers were well aware of the inconsistencies and from early in the 1860s had been making their frustrations clear. Medical practitioner George Greaves, writing in 1862, complained that:

It is in the eye of the law of England, no crime to strangle a child with a cord, to smash its skull with a hammer, or to cut its throat from ear to

¹⁷ W. Tyler Smith, ‘Address on Infanticide and Excessive Infant Mortality’, *BMJ*, 1:2125 (12 January 1867), p. 24.

¹⁸ *History of Criminal Law*, Volume III, p. 2, cited in Seaborne Davies, ‘Child Killing in English Law’, p. 205.

¹⁹ Rose, p. 72.

ear ... [if] its lower extremities are at the time within the body of the mother.²⁰

Until the end of the nineteenth century the criminal law of New Zealand closely replicated that of England.²¹ The courts that had been established around the mid-nineteenth century were very much shaped on the English model, though much was borrowed from the experiences of the Australian colonies.²² Furthermore, as Peter Spiller notes, the backgrounds of the judges themselves led to an overall ‘atmosphere and ethos’ that was quintessentially British.²³ All of the nineteenth-century New Zealand Supreme Court judges were British born and trained, except for the controversial Justice Worley Bassett Edwards, who, in 1896, became the first locally trained Supreme Court judge.²⁴ The English doctrine of judicial precedent that dictates that prior decisions of judges be referred to when deciding cases had been a fundamental element of New Zealand’s common law system from the 1840s.²⁵ As New Zealand judges and lawyers looked to British legal precedents when trying cases, the use of the live-born ruling among defence counsel in maternal neonaticide trials was unsurprising.

When eighteen-year-old Catherine Small appeared at the Christchurch Supreme Court in 1920, charged with the murder of her newborn son, the counsel for the

²⁰George Greaves, ‘Observations on Some of the Causes of Infanticide’ (1862), cited in Behlmer, p. 411. The situation was still eliciting comment early in the twentieth century. In 1904 Stanley B. Atkinson wrote: ‘There is no authorized definition of live-birth in the theory of the law, and the proof of this condition, in conformity with any definition submitted, is often not easy’ (Stanley B. Atkinson, ‘Life, Birth, and Live-Birth’ in *Law Quarterly Review*, 20 (1904), p. 134, cited in Grey, p. 158).

²¹Jeremy Finn, ‘Colonial Government, Colonial Courts and the New Zealand Experience’, *A New Zealand Legal History*, edited by Peter Spiller, Jeremy Finn and Richard Boast, 2nd edn (Wellington: Brookers Ltd, 2001), p.102. The introduction of the *Criminal Code Act 1893*, which codified New Zealand law and procedure, signalled the first major move towards independent reform. This act was itself based on the failed English ‘Criminal Code Indictable Offences Bill’ of 1878, prepared by the Criminal Code Commission chaired by Sir James Fitzjames Stephen (Sir Rupert Cross, *The Making of English Criminal Law*, 6 (1978) Crim. L. R. 652, cited in A.T.H. Smith, ‘New Zealand Criminal Procedure’, retrieved online at <www.law.cam.ac.uk/faculty-resources/10006372> (accessed 5 April 2011)).

²² Peter Spiller, ‘The Courts and the Judiciary’, *A New Zealand Legal History*, pp. 188 and 190.

²³ Spiller, p. 195.

²⁴ Bernard Brown, ‘Edwards, Worley Bassett 1850-1927’, *Dictionary of New Zealand Biography*, Te Ara – The Encyclopedia of New Zealand, updated 1 September 2010, retrieved online at <<http://www.TeAra.govt.nz/en/biographies/3e2/1>> (accessed 5 April 2011). Justice Edwards became the resident judge for Auckland in 1903.

²⁵ Spiller, p. 176.

defence was prepared to admit that if the child had been born alive, there could be no doubt that it had been strangled to death by the accused; however, it was pointed out that the case for murder required proof not only that the child had ever been alive in the 'legal sense', but that its death was not due to 'some act performed by the girl before it was wholly born'.²⁶

A post-mortem performed by two medical men found that the baby boy had been born alive, and the tape tied around his neck – coupled with the fact that 'the head and lips were almost black' – prompted the conclusion that death had resulted from asphyxia. Dr Tom Pettey said he 'knew that the child had been born alive' by the state of the lungs, which 'were distended with air and floated readily in water, both as a whole and when cut up into small pieces'.²⁷ However, he signalled an awareness of the problems inherent in the hydrostatic lung test, stating that '[a]n absolutely conclusive test was that the lividity of the child's body above that [tape] mark was so much greater than that below the mark. This showed that circulation must have been set up'.²⁸ The results of the hydrostatic test taken together with the evidence of circulation were, to his satisfaction, 'absolutely conclusive proofs of live-birth in the physiological sense, though, of course, not in the legal sense, as that practically meant that one had to see the child born'.²⁹ On cross-examination, Dr Pettey denied the possibility that strangulation might have been caused by the umbilical cord, stating that the marks were 'not consistent with such a theory'. Though he was prepared to admit to the possibility that 'the girl in her excitement' might have attempted to tie a blouse around the child's neck with the tape 'to keep it warm'.³⁰ Nevertheless, it was conceded that '[n]o one could say that the lower extremities were born before the child died', and therefore it was quite possible 'that the mother might have wickedly and deliberately strangled the child before it was fully born (in which case she would not be guilty of murder)'.³¹

²⁶ 'Catherine Small's Baby', *NZ Truth*, 21 February 1920, p. 5.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid. These findings were backed by a second medical witness, Dr Well.

³⁰ Ibid.

³¹ Ibid.

Justice Herdman, presiding over the first murder trial of his career, was, in this case, reluctant to demonstrate the ‘absolute fearlessness’ he was later renowned for.³² In his summary, the judge ‘stressed the responsibility that lay on the jury of giving any doubt, if doubt existed, to the girl’, and reminded them again that even if she ‘wickedly and deliberately strangled the child before it was fully born ... she would not be guilty of murder’.³³ The jury, having no conclusive answers to the questions raised by the defence acquitted Catherine Small on all charges.

The same defence was successfully used to acquit Mary Ann Reid of the murder of her illegitimate newborn twins in 1916. Mary Ann and her four children had been living with her parents at Hornby, in West Christchurch, since being deserted by her husband several years earlier.³⁴ The prosecution rested on Mary Ann’s admission to her mother that she had given birth outside in the garden and that the bodies of two children could be found in the scrub. It was alleged that when her father brought the bodies back to the house in a sack, Mary Ann’s mother reacted by crying out: ‘Oh May, you’ve killed them!’ Mary Ann allegedly replied with the words: ‘Oh mother, if you knew what I have suffered, mentally and bodily, you would forgive me’.³⁵

Further evidence pointed to premeditation on the part of the accused. It was found that Mary Ann had stripped several lengths of linen from a piece of sheeting, later found in her room, and taken them with her when she went into the garden to give birth. On medical forensic examination of the bodies, the linen strips were found tightly wound around the necks of the infants, causing their death from asphyxiation.³⁶

³² Legal contemporaries described Justice Herdman as ‘absolutely fearless, and ready to employ force ruthlessly for the purpose of upholding law and order’ (Susan Butterworth, ‘Herdman, Alexander Lawrence, 1867-1953’, *Dictionary of New Zealand Biography*, Te Ara - the Encyclopedia of New Zealand, updated 1 September 2010 <<http://www.TeAra.govt.nz/en/biographies/3h18/1>> (accessed 5 April 2011).

³³ *Lyttelton Times*, 11 Feb 1920, p. 5, cited in Anna L. Bradshaw, ‘The Colonial Media: A Study of Indictments of Women for Serious Violence in the Christchurch Supreme Court 1900 to 1968’ (MA thesis, University of Canterbury, 1999), p. 116.

³⁴ ‘Alleged Infanticide: The Fate of Illegitimate Twins’, *NZ Truth*, 27 November 1915, p. 5.

³⁵ *Ibid.*

³⁶ *Ibid.*



Figure 3: 'Mary Ann Reid (Accused of Infanticide)', *NZ Truth*, 27 November 1915, p. 5. This profile of the accused, sketched during her trial for the murder of her newborn twins, was reprinted for readers of the *NZ Truth*.

Aware of the weight of evidence against his client, Mary Ann's defence counsel registered his intention to set up a defence of insanity. However, the judge, Justice Stringer, shortened proceedings considerably, citing the prosecution's inability to prove beyond any doubt that the infants had ever existed as 'human beings as required by law'.³⁷ Indeed, he told the court that it was 'not necessary' to hear the case for the defence and instead directed the jury himself on their duty to acquit the prisoner:

This woman is charged with murder, and murder, as you have heard, means the killing of one human being by another human being. ... The evidence ... is that these children breathed. That is all [the doctor] can say. He cannot say that breathing may not have taken place before the child was properly born. There is not, therefore, that complete proof which the law requires that they were human beings. There may be another offence committed by this woman, but the charge you have to deal with here is murder. I therefore direct you, as a matter of law, that there is not sufficient evidence to say these children were human beings

³⁷ 'A Charge of Murder', *NZ Truth*, 26 February 1916, p. 3.

within the meaning of the law. Therefore, it is your duty to return a verdict of ‘not guilty’.³⁸

Mary Ann Reid was duly acquitted and immediately discharged.³⁹

Despite their different circumstances, thirty-one-year-old mother of four, Mary Ann Reid, and eighteen-year-old Catherine Small were viewed similarly as women who had been used or abandoned, and whose bleak and desperate situations had forced their hand. Clearly, the judges and juries in these trials accepted that a compassionate response was appropriate in these cases and were prepared to utilise the intricacies of jurisprudence to achieve the acquittals they believed were warranted.

Concealment of Birth

Unsurprisingly, the offence of concealment of birth was turned to with regularity, as a conviction on a concealment charge involved none of the difficulties of proof of live-birth. That a concealment charge was in many cases simply an alternative verdict on a murder indictment was an uncomfortable reality that was acknowledged openly. In addressing the Wellington jury in 1875, when Alice McCartney was charged with murder, Justice Johnston ‘felt bound’ to warn them ‘against an error which was of too frequent occurrence, namely, that of leaning unduly to the side of mercy’.⁴⁰ He explained:

It often happened that a Grand Jury had the choice of finding a person guilty upon alternative indictments. The greater crime may be of a serious character, and may possibly infer serious punishment, and in such cases it was observable that there was a tendency to ignore the indictment charging the prisoner with the more serious offence, and to find a true bill upon the lesser indictment.⁴¹

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ ‘Supreme Court Wellington’, *Marlborough Express*, 14 April 1875, p. 7.

⁴¹ Ibid.

Despite his stern reminder to the jury that in this case ‘the vindication of the law ought to be their first consideration’, the jury nevertheless reacted predictably, rejecting the murder charge, and finding a true bill on the lesser indictment of concealment of birth.⁴²

Judicial recognition of the close relationship between concealment and murder was still being demonstrated nearly forty years later. Justice John Denniston’s 1911 address to the court, with which this chapter opened, warned against the popular rejection of legal expectations in cases of concealment, suggesting that excessive leniency on that front acted as an incentive to murder.⁴³ Denniston focused on the pressures at work on single mothers like Mary Brown, who managed to conceal their pregnancies and deliver their infants in secret. In such situations, ‘when there is deliberate concealment’, he informed the court, ‘there are the greatest temptations and facilities for so dealing with the infant as to ensure that it is not born alive, or to destroy life immediately after birth’.⁴⁴

Justice Denniston’s frequent referrals to the ‘temptations’ at work on the single or deserted mother suggest his familiarity with the writings of English reformer William Acton, who spoke at length of the temptations felt by the abandoned young mother ‘to make away with her child’.⁴⁵ However, like Acton, the Scottish born and educated Denniston did not believe that temptation necessarily absolved a woman’s guilt – indeed, he presided over the trial of Sarah and Anna Flanagan – the only New Zealand trial where a mother was found guilty of the murder of her illegitimate newly born child. For the most part, however, Denniston and other judges who publically acknowledged the shortcomings of the legal situation nevertheless found ways to work within its constraints, utilising the flexibility of the concealment of birth charge at their discretion.

⁴² Ibid.

⁴³ ‘Concealment of Birth: Judicial Statement’, *Evening Post* (Wellington), 14 November 1911, p. 2 and ‘Little Not Wanted’, *NZ Truth*, 17 February 1912, p. 5.

⁴⁴ ‘Concealment of Birth’, *Evening Post* (Wellington), 14 November 1911, p. 2.

⁴⁵ W. Acton, *Prostitution, Considered in its Moral and Social Aspects*, 2nd edn (London: Churchill and Sons, 1870), cited in Tony Ward, ‘Legislating for Human Nature: Legal Responses to Infanticide, 1860-1938’, *Infanticide – Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002), p. 251.

The charge of concealment of birth was itself far from clearly defined. The provision for a charge of concealment in the Offences against the Persons Act 1867 held that:

If any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years.⁴⁶

Predictably, problems arose in defining exactly what was meant by the phrase 'secret disposition'. Mary O'Connor wrapped her dead baby's body in a skirt and then 'concealed it from view' by leaving it on the ground in a vacant city allotment in Auckland's Derby Street.⁴⁷ The counsel for the defence, citing a list of English precedents, successfully quashed the indictment on the grounds that 'the secret disposition of the body is of the essence of the offence'.⁴⁸ Simply leaving the wrapped bundle in a public place was not seen to constitute an attempt at a secret disposition or 'concealment'.

Mary Brown's 1911 concealment trial before Justice Denniston involved a further twist. In a signed statement, Mary Brown herself testified to the secret disposal of the body of her newborn child. She said:

On Easter Monday last I gave birth to a male child which was dead. I kept it in my box till the following Thursday, when I wrapped it in a piece of blue cloth and threw it in the River Avon near the Park at the

⁴⁶ *Statutes of New Zealand*, 1867, No. 5, Offences against the Person Act, section 57, 'Concealment of Birth', p. 67. This was replicated in the Crimes Act 1893 which held that: 'Every one is liable to two years imprisonment with hard labour who disposes of the dead body of any child in any manner with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth' (*Statutes of New Zealand*, 1893, No. 56, Crimes Act, section 174, p. 355).

⁴⁷ *R v O'Connor* (1887) 6 NZLR (SC) at 197.

⁴⁸ *R v O'Connor* (Digest of Cases 1861-1902) 5, *Gazette Law Reports* (SC) at 395.

Armagh Street Bridge. I did not show the child to any one, or tell any one about my giving birth to it.⁴⁹

Four weeks later the body of a newborn baby was discovered in a decomposed state, floating in the River Avon. Presumably the level of decomposition would have made forensic examination of the body difficult, and besides, evidence as to whether the baby had in fact been born alive was irrelevant to a charge of concealment. More importantly, Mary's insistence that she had given birth to a male child, cast serious doubt on the fact that the infant found in the river was hers at all – the body found was that of a baby girl. The counsel for the defence, referring to English legal precedent, asked Justice Denniston to 'direct the jury that they must acquit the prisoner', arguing that there had been 'no identification of the body found as that of which the accused had been delivered'.⁵⁰

The judge, however, did not agree. He refused to accept the authority of *R v. Mary Ann Williams*, in which it was found that the dead body of a child must be found and identified, on the ground that the finding was 'only an extract of a summing up by a Judge', and as such did not 'lay down any principle of law'.⁵¹ Instead, Justice Denniston directed the jury that on the evidence, which included Mary's confession that she had given birth to and disposed of the body of a child, 'they might find the prisoner guilty'.⁵² The jury did so, though they included a recommendation of mercy in view of the 'circumstances under which the offence was committed'. The judge further rejected the defence's suggestion that the prisoner be sent home and ordered up for sentence when called on, stating: '[It] would not do to treat [these incidences] as mere cases to come up for sentence when called upon. The class of case had been too lightly treated hitherto'.⁵³

⁴⁹ *R v. Brown* (1911) 31 NZLR (C.A) at 225.

⁵⁰ *Lyttleton Times*, 15 August 1911, p. 5, cited in Bradshaw, p. 105.

⁵¹ *R v. Brown* (1911) 31 NZLR (C.A) at 225-26. In the English case referred to, Judge Montague Smith stated: 'A man cannot be convicted of murder unless the corpse of the murdered person is found, otherwise the prisoner charged might be executed, and the individual supposed to have been killed by him might prove to be in fact living. So in the present case, the child of which the prisoner is said to have been delivered may at this moment be somewhere alive. I must direct you to return a verdict of 'not guilty'' (*R v. Mary Ann Williams* (11 c.c.c.684) 7th edn, Vol. I, p. 778).

⁵² *R v. Brown* (1911) 31 NZLR (C.A) at 225.

⁵³ *Lyttleton Times*, 15 August 1911, p. 5, cited in Bradshaw, p. 105.

Nevertheless, despite the firmness of his words, Justice Denniston was far from resolved on the matter. On further discussion he reserved the case for the consideration of the Court of Appeal, who upheld his decision, finding that: ‘In a charge of concealment of birth it is not necessary that the dead body of the child should be found and identified’.⁵⁴ Mary Brown was sentenced to be held for three months in a Samaritan Home.⁵⁵



Figure 4: New Zealand Court of Appeal in Session, c. 1903. This image includes (from left to right) Cooper J, Connolly J, Williams J, Robert Stout CJ, Denniston J, and Edwards J. (Reproduced with the permission of the Hocken Library).

Notwithstanding the legal complications, prosecutions on concealment charges were often successful. From the dataset of 169 mothers investigated in relation to the suspicious deaths of their illegitimate newborn infants between 1870 and 1925, I have recorded 108 charges of concealment of birth. In forty cases a concealment charge was laid as a secondary or tertiary indictment after a murder

⁵⁴ *R v. Brown* (1911) 31 NZLR (C.A) at 225. The Courts of Appeal involved all judges who were available to attend, and included the trial judge whose ruling was being challenged (Jeremy Finn, ‘John James Meikle and the Problem of the Wrongly Convicted: An Enquiry into the History of Criminal Appeals in New Zealand’, *Victoria University of Wellington Law Review*, 41 (2010), p. 520).

⁵⁵ ‘Supreme Court Christchurch’, *Grey River Argus* (West Coast), 14 November 1911, p. 6.

or manslaughter charge was put aside due to ‘insufficient evidence’; in sixty-eight cases concealment of birth was the first and only charge laid. Of the 108 total, fifty-three women (or 49.0 per cent) were found guilty of concealment and received sentences ranging from one week’s probation to the maximum penalty of two years in prison with hard labour.⁵⁶ A further 45.0 per cent were either found not guilty, or their cases were dismissed or declared a ‘no bill’.⁵⁷

The evidence from coronial reports confirms the reluctance of New Zealand juries to convict on anything harsher than concealment of birth, even when forensic evidence pointed clearly to murder. My sample of indictments on charges of concealment includes that of Bridget Gee, whose newborn child was found to have died as a result of a fractured skull and ‘an incised wound from the mouth across the cheek’, which ‘could not possibly have been caused by accident’.⁵⁸ A steel busk, cut from a piece of clothing that was found under the bed of the accused, was even produced at the coroner’s inquest as evidence of the murder weapon.⁵⁹ Similarly, the coronial findings on Madeline Cross’s baby suggested that the child’s throat had been cut with the pair of scissors found in Madeline’s bedroom.⁶⁰ The bodies of Annie Tiney’s and Marion Emmens’ babies were found with fractured skulls.⁶¹ The newborn infants of Mary Jane O’Sullivan, Catherine Small, and Pourewa Maru, among others, were discovered with the tape or string with which they had been strangled, still tied around their necks.⁶² The bodies of other babies, such as those belonging to Annie Anderson and Adelia Olsen, were reportedly found with unspecified ‘marks of violence’ on their bodies.⁶³ While not

⁵⁶ The maximum penalty was enacted in three cases. These trials all occurred in or near the first decade of the period under investigation, in 1871, 1877 and 1880.

⁵⁷ Sarah Johnson 1882 (case file 5) died before her Supreme Court hearing. No outcomes have been able to be traced on the remaining four cases.

⁵⁸ ‘Inquest’, *Otago Witness*, 10 June 1871, p. 11.

⁵⁹ *Ibid.*

⁶⁰ ‘A Reported Confession’, *Nelson Evening Mail*, 28 May 1898, p. 3; and ‘Supreme Court’, *Evening Post* (Wellington), 7 June 1898, p. 6.

⁶¹ ‘A Painful Case’, *Hawera and Normanby Star*, 2 October 1906, p. 5; and ‘A Pitiful Tragedy’, *Ashburton Guardian*, 13 November 1905, p. 2.

⁶² ‘Supreme Court’, *Taranaki Herald*, 3 May 1882, p. 2; ‘Catherine Small’s Baby’, *NZ Truth*, 21 February 1920, p. 5; ‘Baby Murder Charge’, *NZ Truth*, 17 December 1925, p. 8.

⁶³ ‘Telegrams’, *Waikato Times*, 12 July 1884, p. 2; ‘The Coroner’s Inquest’, *Bush Advocate*, 6 August 1902, p. 2.

all concealment indictments were masking cases of suspected neonaticide, these examples appear to confirm that lawyers, judges and juries were prepared to utilise the lesser charge as an alternative to one that was punished capitally, if at all possible.

Regardless of the judicial grumblings of judges such as John Denniston, no serious agitation for political reform on the question of newborn child murder in New Zealand occurred until the 1890s. The Infant Life Protection Act 1893, which was enacted to regulate the fostering of unparented (mostly illegitimate) infants, closely followed the provisions of the Victorian Infant Life Protection Act 1890.⁶⁴ However, like the Australian act, New Zealand's infant life protection legislation occurred as a direct result of anxieties about incidences of baby farming in the colony rather than as a reaction to the problem of maternal neonaticide.⁶⁵ Nevertheless, the issue helped, for a time, to focus governmental concerns on the welfare of infants in general terms. New Zealand's Criminal Code Act was also introduced in 1893, and it was during the lead up to this act that the first significant attempt to resolve the problem of securing convictions for maternal neonaticide was put forward. The provision for the offence of 'neglecting to obtain assistance in childbirth' was initially included in the first Criminal Code Bill 1893, though the issue proved too contentious to bring into consolidated statutory form. In its original version the provision reads:

(1) Every woman who, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies either just before or during or shortly after birth, unless she proves that such death was not caused by such neglect, or by any wrongful act to which she was a party, is liable to the following punishment:

(a) If the intent of such neglect be that the child shall not live, to imprisonment with hard labour for life.

⁶⁴ M. John Thearle and Helen Gregory, 'Child Abuse in Nineteenth Century Queensland', *Child Abuse and Neglect*, 12:1 (1988), p. 95. The Australian act had itself been modelled on the English *Infant Life Protection Act 1872*.

⁶⁵ The social and legal implications of this act will be fully explored in Chapter Six.

(b) If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment with hard labour for seven years.⁶⁶

When the bill actually went before the House in September 1893, the clause had been amended, with the punishments significantly reduced to seven years with intent to murder and two years for intent to conceal.⁶⁷ However, it was quickly pointed out that as the bill stood, a woman charged under section 177 was assumed to be guilty unless she could prove her own innocence. Such a situation, concluded one commentator, was a perversion of one of the primary tenets of British law – that anyone be deemed innocent until proven guilty.⁶⁸ Another speaker protested that:

[I]t is shameful of the Government to ask this House to pass such a clause ... it appears to me ... that there is a disposition to deal more harshly with women than has ever been done before. ... A most ungenerous and unmanly spirit has actuated the framers of this measure in that direction.⁶⁹

The Criminal Code Act 1893 was passed at the end of that year without the inclusion of section 177, though at least one conservative commentator in the House viewed its omission as cowardly, complaining: ‘there are some who would venture to go in the direction of doing away with punishments altogether. That seems to be the tendency nowadays. Let us have no law at all; license – that is what is wanted’.⁷⁰

⁶⁶ ‘Criminal Code Bill’, *New Zealand Parliamentary Bills 1893* (1:1) cl. 177(1), ‘Neglecting to Obtain Assistance in Childbirth’, p. 37. This original version of the bill initiated by Sir Peter Buckley appears to be a reproduction of an unsuccessful English provision which demanded that there be a requirement for women to summon ‘reasonable assistance’ while giving birth, with a sentence of penal servitude for life if it could be proved her non-compliance was intended to cause the death of the child, and seven years imprisonment if in attempt to conceal the birth only (*Hansard* (UK), 23 February 1880, Vol. 250, 3rd series, pp. 1235-1247, cited in Grey, p. 93).

⁶⁷ ‘Criminal Code Bill’, *New Zealand Parliamentary Bills 1893* (1:2) cl. 177(1), ‘Neglecting to Obtain Assistance in Childbirth’, p. 37.

⁶⁸ ‘Criminal Code Bill’, 4 September 1893, *New Zealand Parliamentary Debates (NZPD)*, Vol. 81, p. 593.

⁶⁹ ‘Criminal Code Bill’, *NZPD*, p. 591.

⁷⁰ ‘Criminal Code Bill’, *NZPD*, p. 593.

The recourse to the concealment provision in suspected cases of newborn child murder remained widespread into the twentieth century. These ‘pious perjuries’, as Mary Beth Wasserlein Emmerichs describes concealment convictions accomplished despite evidence of violence, must have proved workable to a degree, as the Crimes Act of 1908 similarly contains no specific legislation to deal separately with infanticide or child homicide.⁷¹ Indeed, it was not until fifty years later that the subject resurfaced, after an examination of the Crimes Bill by Sir George Finlay in 1958 led to the second attempt at including an infanticide clause in New Zealand law.⁷² Three years later, a provision for infanticide was included in the Crimes Act 1961 to deal specifically with the homicide of children by their mothers. This legislation, still current at the time of writing, allows for a finding of not guilty of culpable homicide by reason of insanity.⁷³

The Insanity Plea

British historians have argued that the mitigating factors of shame and desperation that featured so strongly in infanticide narratives of the nineteenth century were increasingly overshadowed in the late nineteenth century by an alternative though roughly contiguous story, in which the character of the infanticidal mother was envisioned as temporarily insane.⁷⁴ Puerperal insanity, according to Hilary Marland, was a disorder that had long been implicated in infanticide case trials, and new ideas around the classification of this condition led to a consolidation of the link between childbirth and mental impairment.⁷⁵ Once it could be claimed scientifically that such women were unaware of their actions, or, at the very least,

⁷¹ Mary Beth Wasserlein Emmerichs, ‘Trials of Women for Homicide in Nineteenth-Century England’, *Women and Criminal Justice*, 5 (1993), pp. 105-106; and *Statutes of New Zealand*, 1908, No. 32, Crimes Act, pp. 567-670.

⁷² George Finlay, *Report on the Crimes Bill 1957* (Auckland: Justice Dept, 1959).

⁷³ *Statutes of New Zealand*, 1961, No. 43, Crimes Act, section 178(1): Infanticide, p. 404.

⁷⁴ See for instance Hilary Marland, ‘Getting Away with Murder?’ p. 191; and Martin J. Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990), p. 268.

⁷⁵ Marland, pp. 172-173. Puerperal insanity was the term generally used to describe the various mental disorders ‘concomitant with and consequent upon the whole period of child-bearing and rearing’. By the 1880s, these were properly classified as the insanity of pregnancy, insanity ‘connected with the puerperal state’, and lactational insanity (M.D. Macleod, ‘An Address on Puerperal Insanity’, *BMJ*, 2:1336 (August 7, 1886), p. 239).

had temporarily lost control, British defence counsel began to use the argument with increasing regularity.⁷⁶ The ways that the concept of reproductive insanity was utilised and understood by the courts and the medical and psychiatric professions have been of particular interest to British historians such as Mark Jackson, Tony Ward, Cath Quinn, Pauline Prior and Hilary Marland.⁷⁷ While some of these scholars write from within a legal history framework, others situate their studies within the asylum systems, utilising medical and psychiatric records and patient case notes. The evidence from their diverse source material leads to a clear consensus among these writers that in Britain the insanity plea was frequently used to explain the crime of child murder. Marland, for example, identifies the development of ‘a formulaic explanation’ for the crime of maternal infanticide as puerperal mania came to be seen as an ‘almost normal side-effect of giving birth’.⁷⁸

Medical and psychiatric texts such as *The Lancet* and the *British Medical Journal*, which were widely read throughout the British colonies, regularly published articles on the link between childbirth and insanity, and certain of those singled out illegitimacy as a major predisposing cause.⁷⁹ In 1886, for instance, the Medical Superintendent of the East Riding Asylum in England, Doctor Macleod, delivered an address on puerperal insanity, which was later published in the *British Medical Journal*. Listing the possible causes of the disease, Macleod writes:

⁷⁶ Marland, p. 172.

⁷⁷ Tony Ward, ‘The Sad Subject of Infanticide: Law, Medicine and Child Murder, 1860-1938’, *Social and Legal Studies*, 8:2 (1999), pp. 163-180, and ‘Legislating for Human Nature’, pp. 249-69; Cath Quinn, ‘Images and Impulses: Representations of Puerperal Insanity and Infanticide in Late Victorian England’, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002), pp.193-215; Pauline Prior, ‘Murder and Madness: Gender and the Insanity Defense in Nineteenth-century Ireland’, *New Hibernia Review*, 9:4 (2005), pp. 19-36; Hilary Marland, ‘Disappointment and Desolation: Women, Doctors and Interpretations of Puerperal Insanity in the Nineteenth Century’ in *History of Psychiatry*, 14:3, (2003), pp. 303-320, and *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain* (Hampshire and New York: Palgrave Macmillan, 2004), and ‘Languages and Landscapes of Emotion: Motherhood and Puerperal Insanity in the Nineteenth Century’, *Medicine, Emotion and Diseases, 1700-1950*, edited by Fay Bound Alberti (Basingstoke: Palgrave Macmillan, 2006), pp. 53-78.

⁷⁸ Marland, ‘Getting Away with Murder’, p. 191.

⁷⁹ Puerperal and ‘lactational’ insanity, and discussions of symptoms, causes and treatments, appeared in a wide variety of medical literature in the late nineteenth and early twentieth century, including psychiatric and general medical journals and specialist textbooks on obstetrics, medical jurisprudence and psychiatry (Grey, p. 223).

There is a cause which may act as predisposing and exciting – namely, the influence upon the mother of the birth of an illegitimate child. The moral effect of the shame and degradation; the physical effects of less attention and care during pregnancy, parturition, and the puerperal state, are, no doubt, a combination of circumstances of powerful import.⁸⁰

Indeed, using statistical figures gleaned from a range of sources, Macleod went so far as to propose that ‘insanity is nearly three times more common among [mothers of illegitimate children] than among married women’.⁸¹

Despite a raft of challenges to the concept of reproductive related madness over the next decades, and the fact that its aetiology was never fully agreed upon, British medical literature continued to report on ideas surrounding puerperal insanity into the twentieth century.⁸² In these texts, the common narratives surrounding the unmarried mother, with their familiar tropes of shame, weakness, and degradation, continually resurface. In 1902, for example, the *British Medical Journal* published an article by Robert Jones, the Medical Superintendent of the London County Asylum, who claimed that single women who succumbed to puerperal insanity tended to be:

[W]eak minded, with weakened emotional inhibition, unable, therefore, to restrain their passion, and thus were more readily tempted. They were of the type which is also less likely to be helped and more liable to neglect, disappointment, and shame.⁸³

It was these factors, according to Jones, which made insanity during childbirth ‘more marked’ among single mothers, ‘where the moral shock of disappointment and shame in addition to the nervous exhaustion becomes an additional strain’.⁸⁴

⁸⁰ Macleod, ‘An Address on Puerperal Insanity’, p. 240.

⁸¹ Macleod, p. 241.

⁸² Kirsten Johnson Kramar, *Unwilling Mothers, Unwanted Babies: Infanticide in Canada* (Vancouver: UBC Press, 2005), pp. 85-86.

⁸³ Robert Jones, ‘Puerperal Insanity’, *BMJ*, 1:646 (March 8 1902), p. 581.

⁸⁴ Jones, p. 580.

In 1908, the English Society for the Abolition of Capital Punishment singled out the ‘seduced young servant-girl’, who was the victim of ‘a callous society’, suggesting that the total lack of maternal instinct in such a girl was evidence in itself of her insanity.⁸⁵ Indeed, they argued further that the typical cases of unmarried mothers killing their babies could *all* be attributed to the particular mental and physical conditions resulting from childbirth.⁸⁶

Agitation for legal reform regularly surfaced in Britain throughout the period of investigation, and in the first decades of the twentieth century reformers began to turn to the biomedical and psychiatric opinions of experts such as Macleod and Jones in their efforts to find a workable solution to the problem of obtaining convictions for newborn child murder.⁸⁷ The death penalty had long been seen, both popularly and judicially, as an unsuitable response to mothers charged with the murder of illegitimate infants, and the laying of concealment of birth charges was acknowledged as inappropriate in most cases. The concept of reproductive insanity afforded a middle ground and provided an avenue for legislators to deal with women in a manner more in line with contemporary opinion.⁸⁸

A resurgence of legal and governmental interest in the problem after the First World War led to the passage of the English Infanticide Act 1922.⁸⁹ The terms of the 1922 act effectively reduced murder to manslaughter on the basis that the defendant ‘had not fully recovered from the effect of giving birth ... and by reason thereof the balance of her mind was then disturbed’.⁹⁰ Historians of the act have convincingly shown that the infanticide provision was not created by sympathetic legislators working for the benefit of women, but was enacted out of concern to meet the sympathetic responses of juries head-on and find a legally

⁸⁵ C. Heath, *Some Notes on the Punishment of Death* (London, S.A.C.P., 1908), pp. 9-11, cited in Ward, ‘Legislating for Human Nature’, p. 258.

⁸⁶ *Ibid.*

⁸⁷ Ward, ‘Legislating for Human Nature’, pp. 257-265. Martin J. Wiener notes that the number of findings of insanity or unfitness to plead in homicide cases had increased markedly in England for both women and men towards the end of the century (Wiener, ‘Judges v Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth Century England’, *Law and History Review*, 17:3 (1999), p. 467).

⁸⁸ Kramar, p. 90.

⁸⁹ Ward, ‘Legislating for Human Nature’, p. 253.

⁹⁰ Infanticide Act 1922 (UK), section 1. An amendment in 1938 replaced the term ‘newly-born’ with ‘an infant less than twelve months of age’.

workable way to hold female perpetrators criminally responsible for their crimes.⁹¹ The medico-legal concerns leading up to and generating from the passage of the English act moved across colonial borders, and, while New Zealand was slow to implement specific infanticide legislation, when it finally did so in 1961, it essentially replicated the English act which relied on the idea of reproductive related madness as its cornerstone.⁹²

Significantly then, despite the well-documented connection between infanticide and mental illness in Britain, the discourse of reproductive insanity rarely appeared when New Zealand mothers were charged with the murder of their illegitimate newborns. Following the formula laid down by the English M’Naghten Rule 1843, the insanity provision included in New Zealand’s Criminal Code Act 1893 stated that ‘no person shall be convicted of an offence by reason of an act done or omitted’, if, while ‘labouring under natural imbecility or disease of the mind’, they were ‘incapable of understanding the nature and quality of the act’.⁹³ Medical texts such as the *Lancet* and the *British Medical Journal* had long been advancing theories on puerperal and lactational insanity which could fit loosely within the legislative framework in regards to ‘disease of the mind’, yet few defence counsels attempted to present their defendants as suffering from a mental disease.

⁹¹ Kramar, p. 92; P. Bergin, ‘The Crime of Infanticide: A Case for its Abolition in New South Wales’ (Australian National University, Faculty of Law, June 2004), p. 7; Ward, ‘Legislating for Human Nature’, p. 176; Katherine O’Donovan, ‘The Medicalisation of Infanticide’, *Criminal Law Review* (May 1984), p. 261. Nor was the provision, as some historians have suggested, a clear example of the ‘medicalisation’ of law and women’s deviance (For this argument see for instance E. Showalter, *The Female Malady: Women, Madness, and English Culture, 1830-1980* (New York: Penguin, 1985); Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989); Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford: Clarendon Press, 1991); and O’Donovan, ‘The Medicalisation of Infanticide’, pp. 259-264. Both Tony Ward, in the English context, and Kirsten Johnson Kramar, in the Canadian, highlighting the criminal justice perspective, persuasively argue that infanticide legislation constituted ‘a solution to a straightforward legal problem rather than a well thought out appropriation of sexist psychiatric knowledge’ (Kramar, p. 94).

⁹² See *Statutes of New Zealand 1961*, No. 43, Crimes Act, section 178: Infanticide, pp. 404-406.

⁹³ *Statutes of New Zealand 1893*, No. 56, Criminal Code Act, section 23(1), p. 328. This provision was replicated in section 43 of the Crimes Act 1908. Formulated in a case of attempted murder of a British Prime Minister, the M’Naghten Rule 1843 allowed for the use of psychiatric theory in legal cases, and became the standard test for criminal liability in relation to mentally disordered defendants in common law (Sheila Hafter Gray, ‘Insanity Defence: Historical Development and Contemporary Relevance’, *Criminal Legal Review*, 10:2 (Spring 1972), pp. 559-565).

My full data set of 272 cases taken across the fifty-five years from 1870 to 1925 has revealed only thirty-nine incidences where insanity or mental impairment was referred to as a mitigating factor in the murder of a child. Interestingly, thirteen of these cases applied to the defence of a father or other male relative.⁹⁴ The trials of twenty-five women cited reproductive or some other form of insanity as mitigation, though only thirteen women were actually declared not guilty of their crimes on the grounds of insanity. When those accused of newborn child murder are further disaggregated from the total, the results are still more revealing.

On this subject, Anna Bradshaw, in her study of women indicted for violent offences in the Christchurch Supreme Court from 1900 to 1968, has noted that:

[T]he narratives offered by the defence and the women involved became formulaic for indictments related to concealment of birth and neonaticide. ... Typically the defence would argue that the baby was not born alive or that death resulted from the mental confusion of the mother following childbirth or puerperal mania. There were no exceptions to this pattern from 1900 to 1968.⁹⁵

However, she identifies only four cases in that period where the defence of insanity was used – and only one of those involved the murder of a newborn.⁹⁶ Nonetheless, she maintains that ‘[m]ental illness dominated the *narratives* of all “neonatal” indictments throughout the twentieth-century’.⁹⁷ My own research for the period 1870 to 1925 has not shown this to be the case. Of the twenty-five occasions where some form of insanity was mentioned when a mother was on trial for the murder of her child, eighteen of these involved the deaths of older children; only seven involved the murder [or concealment] of a neonate.⁹⁸

⁹⁴ This disparity will be discussed at length in Chapter Four.

⁹⁵ Bradshaw, p. 127.

⁹⁶ Bradshaw, Table 5:2, p. 275.

⁹⁷ Bradshaw, p. 126 (my own emphasis).

⁹⁸ These incidents were placed evenly throughout the period of research. They were: Alice Sheehan 1876 (case file 12); Margaret Wilson 1878 (case file 227); Catherine Boyle 1884 (case file 41); Fanny Bonnington 1884 (case file 43); Sarah Flanagan 1891 (case file 43); Lillian Hobbs 1906 (case file 97); and Hilda Holden 1920 (case file 134).

Examining infanticide cases in turn of the century Paris, Ann-Louise Shapiro found that the link between female reproductive biology and criminal madness, while evident in other French trials involving women, was missing entirely in cases of maternal newborn child murder. She suggests that the perceived rationality of the act of neonaticide, when committed against an illegitimate newly born infant, may have negated the requirement for medico-legal expertise or psychiatric discussion.⁹⁹ Shapiro did not find a single medical report in a criminal proceeding for infanticide which ‘specifically labelled the emotional distress of a defendant as mental disease’; however, in the New Zealand context, as I have said, I have uncovered seven such cases. While among a distinct minority, these case trials illustrate succinctly how psychiatric representations of the maternal body and mind could be put to work by defence counsel and juries in effecting desired outcomes. Ultimately, however, as the cases described below demonstrate, the narratives of embodiment utilised in these trials of young, single mothers tended to complicate the very issues they were expected to resolve.

In Britain, as mentioned, the move towards interpreting female criminality as indicative of biological or psychological disorder was marked, and certain defence lawyers in New Zealand not only demonstrated a keen understanding of this trend but were prepared to put it to use. Edward Shaw, who defended eighteen-year-old Catherine Boyle on a charge of murder in 1884, was one such example. The body of a newborn child, later identified as belonging to Catherine, had been discovered in a copper at the house where she worked as a domestic servant.¹⁰⁰ The coroner’s inquest showed that the child’s mouth had been tightly plugged by a piece of wet rag and that a strip of cloth had been tied tightly around the neck. In addition, the infant’s skull was found to have been ‘crushed into small fragments’.¹⁰¹ Witness evidence pointedly drew attention to the fact that a blood stained axe was found nearby.

⁹⁹ Ann-Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-Siècle Paris* (Stanford, California: Stanford University, 1996), p. 133.

¹⁰⁰ ‘Insanity in the Courtroom: The Alleged Child Murder at Wellington’, *Marlborough Express*, 9 Jan 1884, p. 2.

¹⁰¹ *Ibid.*

The local doctor who had first attended the accused stood as a witness for the prosecution. During cross-examination he was asked by defence counsel Edward Shaw to draw his attention to a paragraph contained in the work of a text by English psychiatrist Henry Maudsley, entitled *On the Physiology of the Mind*.¹⁰² The paragraph in question, which was read aloud to the court, referred to the different classes of insanity accompanying delivery. Shaw asked the witness to corroborate:

Mr Shaw – ‘Is there any aberration of mind during the process of delivery?’

Witness: ‘Undoubtedly; a patient loses control over herself at the time, especially when it is the first delivery, when the pain is likely to be more acute.’¹⁰³

But the doctor was not prepared to support an insanity plea in this instance. He told the court:

Puerperal insanity comes on only some days after delivery. I have never come across a case in which the aberration continues after delivery. The acute pain is relieved when the child is born. There was nothing unnatural in the prisoner’s manner that morning.¹⁰⁴

Undeterred, Shaw opened his case for the defence by calling three of his own medical experts. The testimony of Dr H.W. Diver, who had attended the prisoner while she was being held in the Wellington Lunatic Asylum, was paraphrased by the *Marlborough Express* thus:

Dr H.W. Diver deposed that ... there was a distinct form of mania which accompanied births in some instances. He had met with several. He had had cases where he was compelled to bleed a patient at the time of delivery in order to keep her quiet. ... He had known of a case in

¹⁰² Henry Maudsley, *On the Physiology of the Mind* (Harvard University: D. Appleton, 1877). Excerpts from this three volume publication also appeared in the *Journal of Nervous and Mental Disease*, 5:1 (January 1878), pp. 141-152.

¹⁰³ *Marlborough Express*, 9 Jan 1884, p. 2.

¹⁰⁴ *Ibid.*

which childbirth was accompanied by homicidal mania. There was such a case in the Asylum the other day. The mother had to be put in a padded-room, and the child had to be removed in order to save its life.¹⁰⁵

A second doctor, Dr F.B. Hutchinson, was called to the stand. He confirmed for the court that Dr Maudsley was recognised as ‘an authority on brain subjects’, and ‘agreed generally with his remarks ... regarding the connection of the uterine nerves with the brain’. He also claimed to have been acquainted with cases of mania accompanying childbirth, and stated his belief that such mania might take any form. Likewise, the third witness for the defence, Dr Truby King, who was later to become the Superintendent of Seacliff Lunatic Asylum and a leading reformer in infant welfare, testified to witnessing cases ‘in which women had wholly lost their reason during delivery’, adding that he had read of cases in which homicidal tendencies developed during childbirth, only to ‘pass away shortly after delivery’.¹⁰⁶

Shaw’s line-up of medical professionals was uniformly clear on the question of the hereditary nature of insanity, and the case for the defence was able to provide evidence of insanity in Catherine’s family. The local police chief was examined and offered a crucial piece of evidence in the following interchange:

Chief Detective Brown: ‘I knew prisoner’s father. I believe he died in the Lunatic Asylum at Wellington.’

Prosecutor – ‘Do you know what was the cause of his being there?’

Witness: ‘Mr Boyle went into the asylum because he was out of his mind ... I heard that he had been out in the Colonies [previously] and had had a sunstroke out here’.¹⁰⁷

In reference to this testimony, Dr Diver stated unequivocally that ‘[i]f there was insanity in the family, this circumstance would be attributable as the primary

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

cause of child-destruction'. Dr Hutchison was in accord, adding that '[i]nsanity in the parent was always a predisposing cause of insanity in the child.'¹⁰⁸

However, this impressive display of psychiatric unanimity was not enough to convince the jury that Catherine was entirely without culpability – they offered a verdict of 'guilty, but while in a state of insanity', explaining that they 'did not wish to entirely exonerate the prisoner'. The judge, after instructing the men on the proper procedure in sentencing, ordered them to reconsider the verdict. They returned four hours later declaring Catherine not guilty of the murder of her baby girl on the grounds of insanity.¹⁰⁹ She was ordered to be kept under 'strict custody until the pleasure of the Colonial Secretary shall be known'. Significantly, Catherine was not returned to the mental asylum but was committed to gaol; a situation that did not go unnoticed or without comment. Two months later the following letter to the editor appeared in Wellington's *Evening Post*:

Sir – During the excitement of race meetings and other stirring events poor Catherine Boyle seems to have been entirely forgotten. For what reason is she detained all this time in gaol? If she be sane why not liberate her; and if not, the gaol certainly is not the proper place for her. ... Surely this young girl is not being kept in the choice society of those hardened wretches who periodically inhabit the gaol? She has already suffered sufficiently for her fault.

I am, &c., H.K.¹¹⁰

Catherine Boyle spent three months in incarceration before being released on 21 April 1884.¹¹¹

That same year, Blenheim lawyer Mr McIntire presented a similar case in the defence of sixteen-year-old domestic servant Fanny Bonnington, who was tried for concealment of birth. Fanny was originally indicted for manslaughter after the body of her newborn child was found in the water closet at her employer's home,

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ 'The Case of Kate Boyle', *Evening Post* (Wellington), 15 March 1884, p. 3.

¹¹¹ 'Release of Kate Boyle', *Marlborough Express*, 22 April 1884, p. 2.

but despite the appearance of ‘several stab wounds’ on the child’s body, and Fanny’s admission that she had ‘put it down the closet’, the charge of manslaughter was declared a no bill.¹¹² In defending the concealment charge, Mr McIntire began his case by informing the jury that:

Even assuming that the prisoner put the body into the place where it was found – of which there was no direct evidence, she was not responsible for her actions at the time, [and furthermore] ... there was insanity in several members of her family.¹¹³

A local doctor was called to testify that ‘a sister of the prisoner [had] suffered recently from acute melancholia after her confinement’, and he confirmed for the court his belief that ‘[m]elancholia and insanity were very near neighbours’.¹¹⁴ Fanny’s parents put forward more evidence of insanity in the family – her grandfather had to be ‘looked after and watched’ as he had ‘lost his memory in the latter part of his life and didn’t care to have anything to do with society in his old age.’ An uncle was also said to have been in the Wellington Asylum for the ‘past three or four years’.¹¹⁵ Fanny’s mother further testified to her daughter’s ‘strange behaviour’, which had manifested since an illness five years previously, and had left her with a tendency to sleepwalk. She told the court how Fanny would go out to draw water from the well in the middle of the night, and ‘sometimes she would light a candle and take it out amongst the trees, till [she was] brought ... back’.¹¹⁶

Like Catherine Boyle, Fanny was acquitted on the grounds of insanity and ordered to be detained during the Colonial Secretary’s pleasure. Fanny’s quiet demeanour in the courtroom suggested her tendency to homicidal lunacy had been of a fleeting nature, and an application was made to have the prisoner sent to the hospital instead of the asylum. However, the presiding judge, Justice Richmond, refused the application, stating firmly that ‘the girl had got off cheaply, and the

¹¹² ‘Supreme Court’, *Hawkes Bay Herald*, 7 July 1884, p. 3.

¹¹³ ‘Supreme Court’, *Marlborough Express*, 21 October 1884, p. 2.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

usual course in cases of criminal lunatics must be followed'.¹¹⁷ Nonetheless, in a further parallel to the case of Catherine Boyle, there was a marked reluctance to house the prisoner with 'lunatics'. Despite Justice Richmond's ruling, Fanny was kept apart from other patients during her stay in the Mount View Lunatic Asylum. In a short article on her release, which took place three months after the committal, it was reported that:

During her detention she has been suffering from no mental disease, she has not been associated with the ordinary patients in the hospital, but has been employed as an assistant in the kitchen work. In fact, she has simply been a servant without wages.¹¹⁸

Evidence of puerperal madness was seldom employed as explicitly as a defence in cases involving single women indicted for neonaticide, although lay ideas about women's temporary loss of reason during childbirth and diminished responsibility can be seen to have had some bearing on trial outcomes. Nearly forty years later, in 1920, eighteen-year-old waitress Hilda Holden was tried for manslaughter when medical evidence on the body of her newborn illegitimate child showed it to have been killed by 'throttling'.¹¹⁹ No attempt was made to deny that Hilda had caused the injuries to her child, and a suggestion from medical expert Dr Grace Stephenson that the marks around the infant's throat may have been the result of 'the mother assisting herself at birth' was soundly rejected by two further experts in the field.¹²⁰ While no insanity plea had been formally entered, and the question of Hilda's ongoing sanity had not been a matter for supposition, the jury nevertheless demonstrated a lay understanding of the concept of puerperal insanity in finding that 'the death of the child was caused by the mother when she was not in a mental condition to realise the effect of her act'.¹²¹ Nevertheless, they did not feel able to show definitively that the accused 'did not know that what she was doing was a wrongful act', stressing that it was 'merely that she did not

¹¹⁷ 'Blenheim', *Waikato Times*, 23 October, 1884, p. 5.

¹¹⁸ 'Local and General News', *Marlborough Express*, 29 January 1885, p. 2.

¹¹⁹ *R v Holden* (1920) NZLR (CA) at 459.

¹²⁰ Dr Stephenson herself claimed that such a scenario was 'possible but not at all probable'. This is the sole example I have uncovered of a female medical expert testifying in a Supreme Court trial in a professional capacity.

¹²¹ *R v Holden* (Digest of Cases 1903-1923) 94 Gazette Law Reports at 468.

realise the *effect* of her act'. They therefore put forward a verdict of 'guilty' on the charge of manslaughter.¹²²

Defence counsel Allan Moody pushed for the case to go to appeal, arguing that the verdict was 'unequivocally one of "not guilty"', as 'an act must be voluntary and intentional to make it a crime'.¹²³ However, the appeal court found otherwise, and the guilty verdict was upheld. The court held that:

There is no justification for the mother's act, although her mental condition may have been such that she may not have realised that the effect of her act would be to kill the child. Had she realised that, it would have been murder. ... If [the jury] had found that her mental condition was such that she did not understand the nature and quality of the act ... then of course she would have been acquitted on the ground of insanity under s. 43 of the act; but the jury have not so found, and we are therefore of the opinion that the verdict is a verdict of "Guilty" and cannot be interfered with.¹²⁴

Unlike Shaw and McIntire in the previous cases, lawyer Allen Moody made no serious attempt at utilising the concept of puerperal insanity as a mitigating factor, despite the substantial body of medical knowledge available on the subject. In spite of such material and the significant impact that it had on neonaticide trials in Britain, the New Zealand courts were more inclined to find insanity in cases where the defendant had a marked history of insane behaviour, or where they continued to demonstrate mental aberration or impairment. From the incidents identified in this study, it appears that the mitigation of insanity was also more likely to be turned to in cases where mothers and fathers were accused of inflicting fatal violence on one or more of their older, legitimate children.¹²⁵ Further exploration of insanity as a mitigating factor for child murder in relation

¹²² Ibid.

¹²³ *R v Holden* (1920) NZLR (CA) at 458.

¹²⁴ *R v Holden* (1920) NZLR (CA) at 461.

¹²⁵ This fits with Cath Quinn's research which shows that only 11.0 per cent of puerperal insanity patients in Devon asylums between 1860 and 1922 were single mothers, as opposed to the 87.0 per cent of married women and 2.0 per cent of widowed patients (Cath Quinn, 'Include the Mother and Exclude the Lunatic: A Social History of Puerperal Insanity, c. 1860-1922' (PhD thesis, University of Exeter, 2003), p. 158, cited in Grey, p. 222).

to these situations will follow in Chapter Three which focuses on fatal violence to children within families, and Chapter Four, which considers paternal child killers.

Judicial Paternalism

On occasion, defence counsel abandoned all recourse to legal points of physiology and obstetrics, or the mitigating factor of insanity, relying solely on the potency of melodramatic narratives of female passivity and youthful desperation. In these cases judges and juries simply and openly disregarded the evidence before them, even rejecting the guilty pleas of women who willingly confessed to the murder of their illegitimate newborn babies. In 1905, at the half-yearly sitting of the Supreme Court in Napier, domestic servant May Heeney answered to a charge of murder with the words 'I am guilty'. Proceedings were immediately halted while the defending lawyer consulted with his client, after which the charge was formally put before her again. This time she pleaded 'not guilty'.¹²⁶ On her arrest May had made statements to the police, detailing how she had given birth to a child among some flax bushes beside a public road and admitting to abandoning the baby there 'without looking to see if it was dead or alive'.¹²⁷ The mutilated body of the baby girl had been discovered three days later beside the roadway. A post-mortem on the child suggested that she had breathed for at least an hour after birth and that her body had later been partially devoured by animals.¹²⁸

Counsel for the defence of May Heeney made it clear to the jury that the accused was being tried for murder and warned them that if they were to find her guilty of that charge, 'the Judge must sentence her to death'. 'The jury', he went on, should 'thus recognise their awful responsibility and ... keep in view the fact that they had the life of a young girl in their hands'. He invited them to find a verdict of manslaughter, asking them to consider whether the accused had not already been 'sufficiently punished by the awful suffering she had gone through'.¹²⁹ Justice Edwards appeared to be moved by the plight of the accused, telling the court that

¹²⁶ 'Supreme Court', *Poverty Bay Herald*, 1 May 1905, p. 3.

¹²⁷ 'The Waimata Case', *Poverty Bay Herald*, 2 December 1904, p. 2.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

‘it was not desired to make the matter hard for the unhappy young creature’. However, he stressed that ‘if the jury found that [the] accused left the child on the roadside, intending to kill it, they should find her guilty of murder, but if they found that she merely abandoned it with the hope of saving herself, they would return a verdict of manslaughter’. The jury, discounting the evidence entirely, returned their verdict of ‘not guilty’ on all charges, and May Heeney was immediately discharged.¹³⁰

Similarly, Justice Reed rejected the guilty plea of twenty-year-old Gisborne woman Pourewa Maru when she was charged with murder in 1925. The trial was reported by *NZ Truth* in melodramatic style, describing it as ‘the saddest story it would ever have been possible to hear’.¹³¹ The article, emotively sub-titled ‘Mercy to A Maori Girl Who Never Had A Chance: ADOPTED, UNTAUGHT, SEDUCED’, illustrates a striking courtroom scene:

“Kei te whakaae Au!” The cry, wrung from the very depths of a soul in agony, echoed through the Supreme Court at Gisborne last week ... “I am guilty” was the cry, but Judge Reed refused to accept it, and ordered that a plea of not guilty should be entered.¹³²

A post mortem on the newborn infant found that ‘a cloth had been wound tightly around the neck and across the mouth and nose’. However, as the medical witness began to describe his findings on the body of the child, Justice Reed halted proceedings and withdrew to discuss the matter with counsel in private. When the court resumed, the jury were informed that the doctor was not prepared to swear that the infant had been live born. They were also told that the judge had chosen not to admit ‘other evidence’ as ‘he did not think it should be admitted when a person was being tried for life’. What this other evidence might have been is a matter for conjecture; nevertheless, Justice Reed directed the jury that ‘[u]nder the circumstances, he would ask [them] to bring in a verdict of not guilty’.¹³³ Though

¹³⁰ ‘Supreme Court’, *Poverty Bay Herald*, 1 May 1905, p. 3.

¹³¹ ‘Baby Murder Charge: Mercy to a Maori Girl Who Never Had a Chance. Adopted, Untaught, Seduced’, *NZ Truth*, 17 December 1925, p. 8.

¹³² *Ibid.*

¹³³ *Ibid.*

acquitted of murder, Pourewa was convicted on a charge of concealment and sentenced to be detained for two years in a Church of England reformatory. The *NZ Truth* article notes that Justice Reed, ‘in a few kindly words at the end of the trial, told the unfortunate woman that the Court did not regard her as a criminal, and was only anxious to give her a chance in life’.¹³⁴

Although twenty years apart, these case trials display remarkable similarities, affirming that paternalism played a significant part in the way that maternal neonaticide cases were tried in the New Zealand courts across the period under investigation. In these trials the trope of the suffering ‘child’ came to rest on the young women in the courtroom – the suffering of their murdered infants had been effectively silenced. Both women freely admitted to their crimes but were disallowed their status as ‘rational, autonomous agents’.¹³⁵ While expressing a willingness to speak ‘the truth’ on their own terms, these women were instead directed to remain quiet while the reasoned voices of the judge and jury constructed an alternative, more authoritative ‘truth’ on their behalf. Their own voices had been effectively subsumed by a narrative in which they were recast as wayward children requiring guidance and compassion. Legislation permitting the accused to give evidence in their own trial had, in fact, been in action since 1889, although the practice of this was rare indeed as the defence counsel forfeited its right to the final summing up by allowing the accused to take the stand.¹³⁶ To allow a woman to speak on her own terms in such a situation was a risk that few defence counsel were prepared to take – particularly when the outcome relied so heavily on the representation of the accused as weak and victimised.

The details of the trial of May Heeney in 1905 were published in full and caused some comment among contemporaries. An observation in the Nelson newspaper, the *Colonist*, struck at the heart of the issue of paternalism, stating:

When a woman is arraigned, and the charge heard by a jury of men, there is inevitably a great amount of maudling [sic] sympathy

¹³⁴ Ibid.

¹³⁵ Ward, ‘Legislating for Human Nature’, p. 269.

¹³⁶ Bronwyn Dalley, ‘Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-century New Zealand’, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), p. 69.

manifested. The trial is a farce, a mock tribunal, where pseudo-gallantry gets home on injustice.¹³⁷

Shifting the focus to the child victim and the larger problem of infant mortality, the commentator goes on:

There is blood demanding justice in every land and clime where men have to decide the fate of women. And does this indisputable fact make for the preservation of innocent life, or for the security of life itself? No! There is something lost to justice, there is a license to commit crime, there is an incentive to female lawlessness.¹³⁸

The commentary identified the ‘urgent need for reform’ and went on to suggest a radical step (a step that would take another forty years to be realised) – that ‘in the best interests of justice, a woman should in all indictable offences be tried by women’.¹³⁹ Clearly, for this writer the remedy for the problem of securing convictions on female murderers lay in the more pragmatic approach that female jurors might bring to the legal process.

This focus on the jury, however, downplays the power of individual judges. Despite their supposed role as impartial arbiter, court practice meant that the interpretive authority of the presiding magistrate was extreme. After all proceedings, including the presentations by prosecution and defence and witness testimony, judges concluded with often lengthy summations which at times, as we have seen, included clear directives for the jury. In practice, the judge’s interpretation of events often determined the outcome of cases.

¹³⁷ ‘Lubrications’ by Cosmos, *Colonist* (Nelson), 14 June 1905, p. 2.

¹³⁸ Ibid.

¹³⁹ Ibid. In fact, this idea had been first put forward in 1896 by the National Council of Women, who, at their first meeting, passed the motion that married women should be eligible to serve on juries where women were being tried and where men were being tried for offences against women and girls (‘The Women’s Convention’, *Hawera and Normanby Star*, 23 April 1896, p. 2). The New Zealand Jurors’ Act 1942 enabled women (aged over twenty-five) to sit on juries.

Counter Narratives: Guilt and Condemnation

In the courtroom the sympathetic narrative of maternal victimhood and ‘innocence’ was the primary imaginative structure for the crime of neonaticide, and accordingly, judicial paternalism and compassionate lenience were the common responses. But as Shapiro has shown, criminal stories always exist in tension with other stories.¹⁴⁰ Certain judges and prosecuting authorities directed juries towards lenience, while others regularly sought to secure convictions for manslaughter or concealment but were thwarted by juries who were unwilling to see women punished for crimes against their unwanted illegitimate infants.¹⁴¹ However, on occasion the familiar stories failed to achieve what Shapiro terms the ‘cultural weightiness’ necessary for an acquittal. In such rare cases both judges and juries disregarded the familiar conventions of representation and a murder indictment was pushed through to conviction.

In the ‘typical’ homicide trial, as Martin J. Wiener notes, the focus was on the roles played by the ‘actors’, as well as ‘the character of the act’, and how it might be assessed.¹⁴² It is an impossible task for the researcher to discern the grounds on which some cases are won and others lost. Court decisions in the past, as now, had much to do with the dispositions and characters of the defendant and witnesses, and the ways they were assessed and measured. Guilt or innocence might hinge on a range of factors quite apart from accurate evidence of infringement of the law. Visual signifiers such as a defendant’s appearance or demeanour, or the conduct or veracity of witnesses, remain largely unavailable to the historian. It is possible, however, that such details had important parts to play in the trials of Phoebe Veitch and Sarah Flanagan, who were both found guilty of the murder of their illegitimate children and sentenced to hang for their crimes.

The Veitch and Flanagan case trials form the centrepieces of Bronwyn Dalley’s microhistorical study ‘Criminal Conversations’, which investigates the child murder trial as a site for public discourse about matters of sexuality, criminality

¹⁴⁰ Shapiro, p. 50.

¹⁴¹ Nevertheless, judges who pushed for a guilty verdict on these lighter charges were generally less willing to allow a jury to convict on a murder charge and send a woman to the gallows or to a lifetime of imprisonment.

¹⁴² Wiener, ‘Judges and Jurors’, p. 479.

and gender relations.¹⁴³ The two trials, spaced eight years apart, were both sensational events that drew crowds of spectators to the Supreme Court hearings and generated a mass of textual commentary in the country's newspapers. In this way they were atypical of the trials discussed thus far, many of which passed with the minimum of attention. The public interest surrounding these cases had as much to do with the sensational stories that the women wove around themselves and the events of their crimes than the actual offences themselves. Their situations, in reality, were not markedly different from other women who found themselves before the courts charged with the murder of their illegitimate children – they shared the same stories of economic vulnerability, failed relationships, societal condemnation and personal desperation. But the level of narrative composure by the women involved and the intensity of public interest in their stories, as well as the outcomes of their trials, set these two cases apart. Only one of these case trials, that of Sarah Flanagan, will be discussed here. Phoebe Veitch's daughter, Flossie, was three years old at the time of her death in 1883 and the case for her murder was never perceived as neonaticide. The account of her trial and the complex stories she built up around the drowning of her mixed-race child will be fully investigated in Chapter Five, which considers the role of ethnicity in narratives of child murder.

Sarah Flanagan's son was less than three weeks old when he was killed by violent means in 1891. The baby boy's severed head was discovered under a gooseberry bush by children collecting fruit in an untenanted Lyttleton garden.¹⁴⁴ Police investigations on the find led to Sarah, a thirty-two-year-old spinster, who was arrested along with her parents Anna and Daniel Flanagan. Sixty-three-year-old Daniel had held the position of police constable for twenty-five years, and so the family, who lived at the Addington Police Station, was well known in the community.¹⁴⁵ But the respectability that Daniel's status afforded the family stood to be seriously compromised by Sarah's second pregnancy out of wedlock, and, unsurprisingly, some effort was made to keep the birth of another illegitimate child as quiet as possible.

¹⁴³ Dalley, pp. 63-85.

¹⁴⁴ 'Alleged Child Murder', *Otago Witness*, 22 January 1891, p. 22.

¹⁴⁵ *Ibid.*

Sarah's baby boy was born in the Flanagan household, with a local midwife, Jane Freeman, in attendance.¹⁴⁶ Jane had attended Sarah in her previous confinement two years earlier and had fostered the child until its death at two weeks old. Sarah Flanagan was presented to the midwife as 'Mrs Stevens' – a married woman whose husband was away in Wellington. Arrangements were made for Jane Freeman to take the newborn infant back to her home in Hereford Street to 'nurse'.

Jane Freeman's testimony given during the coronial inquest on the baby's death was reproduced in several newspapers, including the *Otago Witness*.¹⁴⁷ She deposed that Sarah and her mother collected the child late one evening nearly three weeks after his birth, paying the maintenance fee of sixteen shillings, and telling her that Sarah was taking him to her 'husband' in Wellington.¹⁴⁸ Several days later, after the report of the discovery of the child's head was published in the *Canterbury Press*, both women returned to Hereford Street and asked Jane if the police had been making any inquiries. Anna Flanagan then relayed what she described as 'a most unfortunate affair'. From Jane's recollection, the story she proffered went as follows:

On Monday night when we left your house, Mrs Stevens went up one of the streets to bid a friend goodbye. While I went for a cab, three men took hold of her, put a rope around her neck, and ropes round her wrists, and tore the child from her, and severed the head from the body.¹⁴⁹

According to Jane's testimony, Anna then offered her a one pound note for the 'kindness' she had shown to the family, and said:

I come to ask you to say nothing about it; there is only you and Mrs Higgs know anything about Mrs Stevens having a baby. ... If they come to you, tell them there's been no baby here lately, and no one has

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

gone away with a baby. We won't forget you if you will see us out of this.¹⁵⁰

When Daniel Flanagan was arrested he repeated the story of Sarah's abduction, though his knowledge of the dramas that had been taking place in the lives of the women in his household appeared vague indeed. He is alleged to have told the arresting officer:

I know nothing about this. My daughter has not been doing right. There was a child here for a couple of hours I believe. My daughter and her mother went out in the evening. My daughter came home very late that night, when I was in bed. She rang the bell, and I let her in. She complained to me that three men had lassoed her, and had snatched something from her – what it was she did not say – and only for a man who came to her assistance they would have killed her.¹⁵¹

As police constable, Daniel kept a diary of criminal occurrences in which he recorded every incidence occurring in his sub-district.¹⁵² Yet, according to the police sergeant for the Christchurch area, there was no record of any crime or occurrence of that kind entered in the diary. Nevertheless, little was made of Daniel's failure to report what at the very least appeared to be the violent abduction of his daughter. With no other evidence forthcoming, the charge against Daniel Flanagan for being an accessory after the fact was declared a 'no bill' and he was allowed to go home.¹⁵³

Several witnesses attested to seeing both Sarah and her mother on the night in question. A cab driver deposed that he had seen the women in the area in which the child's head was found, and Jane Freeman's daughter testified to seeing them both running up the street away from the scene of the crime. Conversely, no sightings of Sarah's alleged abductors or of the abduction itself were forthcoming, and Sarah and Anna were committed to stand trial for murder.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ 'The Alleged Child Murder, *Press* (Canterbury), 21 January 1891, p. 3.

At the Supreme Court trial, the counsel for the defence of Anna Flanagan, Mr Stringer, contended that Anna had left her daughter with the child on the night the baby was killed, and knew nothing more until Sarah arrived home with her terrifying tale of abduction and murder. Robert Stout, acting in Sarah's defence, proved himself on the cutting edge of medico-legal knowledge and argued insanity.¹⁵⁴ Sarah, he insisted, had succumbed to a 'sudden impulse' and killed the child in 'an attack of mania'.¹⁵⁵ He told the jury:

A woman in the state in which Sarah Flanagan was in at the time, was liable to be seized with sudden maniacal passion, and in that, kill the thing she most loved.¹⁵⁶

Medical witness, Dr Symes, who had examined the baby's head, corroborated to a point, telling the jury that 'it sometimes happened that a woman became insane with acute mania quite a month after the birth of a child'. He affirmed that 'in some cases the natural instinct of the mother was quite changed', adding that 'very often mothers thus afflicted were fond of their child and suddenly took aversion to it'.¹⁵⁷ However, he was not prepared to go so far as to suggest that the actions of the accused in this particular case were caused by an attack of puerperal insanity. In fact the key points put forward by the prosecution discounted that diagnosis. He informed them: 'A crime committed by a person in this state would not show evidence of premeditation, and after the person had come to her senses she would not usually take steps to secure her safety'.¹⁵⁸ Indeed, Sarah had been arrested while attempting to board a ship bound for Sydney under the name of 'Mrs Cullen', and furthermore, when approached by the arresting officer she had flatly denied that her name was Flanagan and would not admit to her identity until after her arrest.¹⁵⁹

¹⁵⁴ Robert Stout was later appointed as Chief Justice, a post which he held from 1899 to 1926 (David Hamer, 'Stout, Robert – Biography', from the Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/2s48/1>> (accessed 2 February 2011))

¹⁵⁵ 'The Infanticide Trial', *Manawatu Herald*, 28 February 1891, p. 3.

¹⁵⁶ 'The Murder Case', *Star* (Canterbury), 26 February 1891, p. 4.

¹⁵⁷ 'The Trial', *Star* (Canterbury), 25 February 1891, p. 3.

¹⁵⁸ *Ibid.*

¹⁵⁹ 'The Infanticide Case', *Star* (Canterbury), 12 January 1891, p. 3.

Further forensic and witness evidence strengthened the case for the prosecution – wild barley seeds (growing plentifully in the untenanted garden) were found stuck in the weave of Sarah’s clothes; a brown paper bag of the kind Anna was carrying, was found ‘thickly covered in blood’ near where the head was discovered; a witness testified to a conversation with Anna in which she had spoken of killing the child ‘if it was in my way’.¹⁶⁰ Sarah’s defence rested on Stout’s ‘eloquent language’ and reasoned argument, which painted his client as a biologically driven woman given to ‘uncontrollable impulses’. This was given credence by Sarah herself who sobbed ‘hysterically’ throughout the proceedings, periodically ‘creating a scene’ with fits of fainting or shrieking and crying out excitedly during witness testimony. Media reporters revelled in recounting her outbursts in detail in the newspapers. The *Canterbury Star* described, for instance, how during the prosecution of her mother, Sarah attempted to leave the dock, requiring several people to restrain and calm her. Her words were reproduced in print for the readers to consider:

Oh, my poor mother; I never did no murder! I am going to be put to death! Oh, I’ll tell the Judge. Before God, and before everybody, I’ve done nothing! ... Oh, I won’t stop here; let me go; I wouldn’t kill a baby for all the world!¹⁶¹

Such excerpts created a vivid picture for eager readers. For the crowds of spectators who crammed the gallery in the courtroom, the atmosphere during the trial proceedings must have been intense. Robert Stout took twenty-five minutes in his final summary, ending by ‘very eloquently and pathetically’ urging the jury ‘not to send two women to a shameful death unless they were absolutely sure of their guilt’.¹⁶²

Jurors were faced with a small range of options when deciding a verdict in a case of murder: they could find the defendant guilty of murder, guilty of murder but with a recommendation to mercy, not guilty by reason of insanity, or not guilty. A recommendation to mercy was taken to imply that the death penalty should be

¹⁶⁰ ‘The Trial’, *Star* (Canterbury), 25 February 1891, p. 3.

¹⁶¹ ‘The Murder Case’, *Star* (Canterbury), 26 February 1891, p. 4.

¹⁶² *Ibid.*

commuted to life imprisonment (though this was not always the result when men were convicted of murder). The jury in the case of Anna and Sarah Flanagan found both women guilty. A recommendation to mercy was included in the case of ‘the elder woman on account of her advanced age’.¹⁶³ The judge then attempted to pronounce the sentence of death over the women whose ‘piercing shrieks’ and protestations of innocence continued until they were forcibly exited from the courtroom. In the words of one commentator who witnessed the sentencing, ‘Thus ended a scene surely painful enough to make the most persistent horror-hunter in the gallery feel sated’.¹⁶⁴

Two days later, a petition to the Governor in favour of the commutation of the sentence was signed by several leading residents of Lyttelton. The petition was straightforward, offering no ground other than that ‘in the opinion of the petitioners the claims of justice would be met and society sufficiently protected’ if the women’s sentences were commuted to life imprisonment.¹⁶⁵ The subsequent commutation of the death sentences on both women, which was confirmed two weeks later, caused a further wave of textual commentary. Despite the softening of the official stance, in general terms the public mood appeared to remain firmly against the women. An editorial piece in the *Southland Times* appealed to the need to uphold the law, and berated the Executive for bowing to ‘mere sentiment’ in its decision to keep the women from the gallows. It reads:

We are concerned with the absence of any solid ground for interference with the course of justice. ... It is unfair to the law, it is unfair to society that mere sentiment in any form should be permitted to override the law. ... The Executive, the ultimate court of appeal in criminal cases, ought to be deaf to every sentimental plea and, except in the circumstances supposed, should unflinchingly perform its one duty of administering the law, or rather suffering the law to take its ordinary course, unchecked. ... That the decision of the Executive was weak and

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ ‘The Christchurch Murder Case’, *Feilding Star*, 28 February 1891, p. 2.

indefensible, and calculated to bring the law into contempt and inefficiency, we firmly maintain.¹⁶⁶

An editorial appearing in Wellington's *Evening Post* displayed similar outrage. Despite the publication's 'anti-capital punishment' standpoint, the editor claimed 'no hesitation in expressing disapproval of the commutation of the death sentence on Sarah Jane Flanagan'. He wrote:

If ever there was a case in which the last dread penalty of the law was deserved, it was this. ... The case was one of premeditated murder, pure and simple without one of the distinguishing features of what is known as infanticide, except the relation between the murderer and her victim.¹⁶⁷

For the writer, the concept of premeditation was key to what set this case apart from others of its kind:

It is not, we know, usual to inflict the death penalty in a certain class of cases of infanticide. An unfortunate girl, suffering from the physical and mental agony of her situation, is rightly deemed scarcely morally responsible for, in her temporary frenzy, destroying the life of the being she has just brought into the world. It is only in the rare cases where premeditation can be proved, or may reasonably be inferred, that life for life is exacted from the law.¹⁶⁸

The editorial displayed a keen understanding of the sympathetic narrative in relation to cases of maternal child murder, but clearly neither Sarah Flanagan's persona nor her actions allowed her access to this narrative convention. Her age, her 'dissipated habits', and the age of her child, were all elements leading to the definitive conclusion that: 'If ever a woman deserved hanging Sarah Jane Flanagan did'.¹⁶⁹

¹⁶⁶ 'Untitled', *Southland Times*, 17 March 1891, p. 2.

¹⁶⁷ 'Misplaced Clemency', *Evening Post* (Wellington), 14 March 1891, p. 2.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

It is likely that all these aspects served to work against Sarah Flanagan; but arguably, no single characteristic of the crime or the perpetrator can be said to have set the public opinion so firmly against her. She was thirty-two years old: ‘middle aged ... no young girl acting under a temporary delirium arising from pain and anguish’,¹⁷⁰ but the same might have been said about thirty-year-old Florence Farndale, whose four-week-old son’s body was found decapitated and floating in the Ponsonby Harbour in 1907. As described in Chapter One, the case for the Crown was not strongly prosecuted in Florence’s trial. She was acquitted of all charges and the circumstances surrounding the child’s death were described as a ‘pathetic story’.¹⁷¹ Mary Ann Reid, whose case was discussed earlier in this chapter, was thirty-one when she was alleged to have strangled her newborn twins with strips of sheeting. Despite evidence of premeditation and an admission on the part of the accused, Mary Ann was also acquitted and released.¹⁷² Like Sarah, Florence and Mary Ann had both had prior experience of pregnancy and childbirth.

Sarah’s reputation for ‘dissipated habits’ hinged on a witness’ assertion that she was ‘addicted to drink’.¹⁷³ Certainly the concept of respectability was ubiquitous in nineteenth-century society and played its part in the workings of the justice system, but my evidence suggests that in court trials for child murder the issue carried less weight than might be expected. When Mary Ann Weston was tried for manslaughter after she was found lying intoxicated in a public place with her dead baby in her arms, the jury declared the case a ‘no bill’, despite coronial findings that indicated the three-week-old infant had suffocated under her mother’s body.¹⁷⁴ Isabella Faulkner was also charged with manslaughter when the corpse of her syphilitic, malnourished and neglected four-month-old son was brought before the coroner.¹⁷⁵ Isabella described herself as a ‘woman of the town’ and was said to be ‘always intoxicated’. The jury in her 1889 trial nevertheless could not ‘go so

¹⁷⁰ Ibid.

¹⁷¹ ‘Pars About People’, *Observer* (Auckland), 29 February 1908, p. 4.

¹⁷² ‘Alleged Infanticide: The Fate of Illegitimate Twins’, *NZ Truth*, 27 November 1915, p. 5.

¹⁷³ ‘The Trial’, *Star* (Canterbury), 25 February 1891, p. 3.

¹⁷⁴ ‘Dunedin Supreme Court’, *Southland Times*, 6 January 1882, p. 2.

¹⁷⁵ ‘Inquest’, *Otago Daily Times*, 11 July 1877, p. 3.

far' as to convict her of manslaughter and instead she was cautioned and discharged.¹⁷⁶ Jan Robinson's study of the issue of respectability in relation to women's crime in nineteenth-century Canterbury uncovers similar ambiguities. In her investigation into the extent to which stereotypes of 'madonna' and 'whore' affected outcomes in court trials she finds little evidence of the polarisation of female criminals; rather, she concludes that the women offenders included in her study were perceived 'to be located on a continuum between these two extremes'.¹⁷⁷

The fact that the inquest on Sarah Flanagan's baby boy took place over his severed head was a macabre detail that must have impacted on the way that the crime and its perpetrators were imagined. The very fact of its missing body would have made the illegitimate baby all the more visible in the narrative frame of reference. However, this case was not unique in its observable brutality. Coroners' inquest reports reveal cases where infant bodies were found 'chopped up' by a spade, incinerated in a furnace, or with axe blows to the skull.¹⁷⁸ Nevertheless, the violence perpetrated on these tiny bodies did not appear to affect the levels of sympathy afforded those who perpetrated the acts, or the leniency that was extended to them.¹⁷⁹

Wiener describes court trials as 'complex social performances in which a variety of "scripts" may be employed'.¹⁸⁰ The jury in the trial of Sarah and Anna Flanagan were faced with a number of possible scripts, all competing for primacy and claiming to be seen as the 'truth': Were Sarah and her mother designing murderesses who viciously mutilated a tiny infant because he 'got in the way'? Or was Sarah a confused single mother who had carried out a terrible 'mistake' in a

¹⁷⁶ Ibid.

¹⁷⁷ Jan Robinson, "'Of Diverse Persons, Men, Women and Whores": Women and Crime in Nineteenth Century Canterbury' (MA thesis, University of Canterbury, 1983), p. 270.

¹⁷⁸ Agnes Sargeson, 1886 (case trial 37) and Annie Mary Tiney, 1905 (case trial 97); Flora Waite, 1921 (case trial 143); Catherine Boyle, 1884 (case trial 32). The inquest into the death of Florence Farndale's child, as discussed in the previous chapter, was held in the presence of the infant's 'headless and handless' body.

¹⁷⁹ It is interesting to note, however, that Simone Caron's study of infanticide in Rhode Island found that 'visible violence to an infant's body' appeared to be a factor in determining findings of murder in the American context, while age, marital or immigrant status played lesser parts in determining outcomes (Caron, p. 213).

¹⁸⁰ Wiener, 'Judges and Jurors', p. 481.

fit of desperate panic? Or, had she been abducted and abused, and forced to witness her baby murdered by wicked men? Was Anna a loving mother and grandmother, innocent of any crime, and bewildered by the events going on around her? All these, and other competing truth claims circulated during the trial, but the one that rose to the surface was that of the heartless killers who carried out the murder of an unknowing infant in order to rid themselves of an expensive and embarrassing encumbrance. In this narrative, the conventional melodramatic tropes of seduced innocents and rapacious males were entirely overlooked, despite Sarah's attempt to position herself as the protagonist in just such a story. The medicalised rationale of the new mother driven to homicidal mania as a consequence of her biological instability was also unable to gain a foothold in this scenario. The dominant narrative here was one of condemnation.

It is difficult to say with assurance why a trial followed a particular course. The researcher can use only what is made available in terms of the textual evidence. We are privy here to a range of surprisingly rich textual accounts, including coroners' evidence, the minutes of evidence taken down by clerks of the court, and accounts taken during proceedings (or produced retrospectively) by newspaper journalists, but wringing meaning from such evidence can only go so far. The real connections between text, context and action can only be speculated.

Anna Flanagan did not fare well in incarceration. Four months into her sentence she was sent to the prison hospital under the expectation that she was about to die.¹⁸¹ The following year it was her mental health that appeared to be in jeopardy and she was transferred to the Sunnyside asylum where she remained until her release in 1895.¹⁸² The public attitude towards Sarah remained hardened. Petitions for her early release in 1896 and 1902 were ignored and she remained in the Terrace Gaol in Wellington until her release, after fifteen years of imprisonment, in 1906.¹⁸³

¹⁸¹ 'Untitled', *Taranaki Herald*, 24 June 1891, p. 2.

¹⁸² Dalley, p. 67.

¹⁸³ 'How to Celebrate the Record Reign', *Evening Post* (Wellington), 2 October 1896, p. 5; 'Interprovincial', *Bush Advocate* (Hawkes Bay), 15 March 1902, p. 3; Dalley, p. 67.

Conclusion

This chapter has explored the implications of the cultural narratives surrounding the figure of the maternal child murderer in terms of judicial understandings and legal outcomes. The evidence produced here attests to the importance of the role of melodramatic conventions in the legal processes associated with this crime. For the most part, supreme court juries throughout the period of this study acted with humanitarian sympathy towards women accused of the murder of their illegitimate infants. This stance was enabled by a dominant cultural narrative which focused on the vulnerability and passivity of the maternal perpetrator, utilising familiar tropes of feminine frailty and victimhood. In this scenario, women who killed were themselves victims – abandoned by callous male partners and forced to suffer the consequences of society's moral disapprobation of sexual relations and childbirth outside marriage. This narrative operated effectively in the New Zealand courts to ensure the penalties for the crime of neonaticide were filtered through paternal understanding and compassion for young women in desperate situations.

New Zealand juries generally balked at the prospect of enacting the death penalty when the accused was a woman, particularly in the context of a crime which carried so much sympathetic weight. The evidence in this chapter has shown that in order to prevent indictments, judges and jurors regularly employed judicial precedents which focused on the technical difficulties in establishing both live-birth and intent. The secretive nature of ex-nuptial pregnancy and childbirth, coupled with the ambiguities of emerging ideas in forensic science, created a situation which, in the hands of a sympathetic jury, could render a conviction practically unobtainable within the criminal legal framework. As a corollary, those seeking legal reprisals for the violent or neglectful deaths of infants turned with regularity to the charge of concealment of birth. However, as this chapter has shown, an indictment for this lesser charge came with its own set of challenges and complexities, which could be exploited or ignored depending on the inclinations of judges and juries.

British historians have demonstrated how, by the end of the nineteenth century, the insanity plea was increasingly used to explain the crime of child murder. Both

the quantitative and qualitative evidence that I have uncovered in this chapter suggests that while the concept of reproductive insanity was understood by medical and psychiatric practitioners in New Zealand it was seldom utilised within the New Zealand judicial system as mitigation for the murder of illegitimate newborn infants by their mothers. It would appear that the problems of incarcerating 'reformable' young women with 'lunatics' made the widespread use of the insanity plea unworkable unless clear, recognisable, and ongoing evidence of insanity could be affirmed.

While women who killed their illegitimate infants were essentially represented as passive victims, they were not entirely disempowered by the workings of the judicial system. Although their own stories were strongly mediated by the official discourses of law and medicine, sources suggest that they continued to operate with a degree of agency. Their words and actions were restricted, but they could affect the outcomes of their trials by how far they were willing to conform to representational expectations. Conclusions about criminal culpability and levels of contrition might be drawn from a defendant's demeanour. A woman's silence or emotional outbursts, and signs of physical weakness, all lent emotional weight to their representation as an individual requiring pity and understanding. Whether utilised consciously or unconsciously, such signifiers played their parts in the way trials were ultimately decided.

Finally, cultural narratives are never shared by all groups in the same way. The trial of Sarah and Anna Flanagan demonstrates the interplay of counter narratives and the unequal power of different competing stories in case trials for child murder. Here, as Dalley shows, the scenario that the defendants presented in their own defence was framed in terms of literary melodrama.¹⁸⁴ It was a story characterised by distinct moral polarities in which Sarah was positioned as the innocent and wronged heroine. It was also a story of urban danger where unprincipled and unpitying male criminals appeared from the shadows of city streets. These were familiar and recognisable images readily understood by a nineteenth-century audience; however, juries were not always inclined to follow literary convention rather than the requirements of justice. Despite the centrality

¹⁸⁴ Dalley, p. 69.

of the sympathetic narrative in newborn child murder trials, divergent and complex meanings about innocence, culpability and mitigation can be discerned within the legal understandings of this crime. The condemnation of Sarah Flanagan offers an example of a divergent narrative which presented some mothers as fully culpable murderesses plainly worthy of repudiation and punishment – a trope which tended to fit more comfortably within the frameworks of narrative conventions surrounding some of the subjects of the following chapter.

Chapter Three

Dangerous Relations: Parental Violence and Neglect within Families

As the previous chapters have shown, by the late nineteenth century in New Zealand the personal welfare of the illegitimate child was a recognised area of concern that was freely discussed within the institutions of government, law and medicine. Infants born ex-nuptially were statistical subjects who attracted a measure of social, political and cultural attention. However, powerful social conventions against interfering in the privacy of family relations have left the lives of children living within families largely hidden from view. Therefore, the subject of parental violence or neglect occurring within the domestic space of the family is less easy to discern in its historical dimensions. Records generated by the criminal justice system and the media reportage of courtroom trials are among the few written sources that offer access to this disquieting subject. Although mediated and fragmentary, such sources offer invaluable material for the reconstruction of aspects of this dimension of family life.

The concept of ‘family’ is itself a historical construct, never fixed but constantly being reworked and restructured into ideological forms. As Lyn Abrams demonstrates, families are ‘places of the imagination as well as concrete collections of individuals’.¹ By the nineteenth century, throughout Western countries, a domestic ideal which comprised of the breadwinning father, the child-rearing mother, and a number of dependent children, had come to represent, for the middle classes, the idealised ‘imaginary family’.² By the period of this study, this model was recognised among all classes of the Pākehā population as the conventional family form.³ Nevertheless, as Leonore Davidoff and Catherine Hall

¹ Lyn Abrams, ‘Families of the Imagination: Myths of Scottish Family Life in Scottish Child Welfare Policy’, *Scottish Tradition*, 27 (2002), p. 43.

² Ibid.

³ For Māori the domestic ‘ideal’, across tribal groups, remained centred on the loose family affiliations of the *whānau* system throughout the period under investigation. Some urban Māori, and Māori women who married Pākehā men, were among the exceptions who chose to set up their households after the European model. As Erik Olssen writes, ‘Māori wives, almost always lived in

show, the actual boundaries of the nineteenth-century family remained ‘indistinct and shifting’.⁴ Conditions among the colonial working classes particularly challenged aspirations to the idealised family structure. Migration, seasonal employment or unemployment, desertion, sickness, and widowhood: all such exigencies and crises required individuals to adopt flexible living arrangements and functional strategies for emotional support and economic survival.⁵

Despite the realities, great symbolic weight came to be placed on the idealised two-parent family, as the functional family home and domestic sphere were regarded as crucial to the strength of the nation as part of the British Empire.⁶ The result, according to Abrams, was a tension between the way families were expected to be, and the way they behaved in actuality.⁷ This chapter suggests that in New Zealand, while nineteenth and early twentieth-century working class families were subject to increasing intervention by the state and voluntary agencies as a consequence of this tension, the inviolability of the idealised family ‘unit’, and the sanctity of the role of motherhood in particular, held a strong and abiding influence which coloured the ways that violent and neglectful parents were perceived and were dealt with by the law.

European-style houses and took responsibility for managing them, whereas the European husbands almost always ended up as part of the Māori world of mutual obligation’ (Erik Olssen, ‘Families and the Gendering of European New Zealand in the Colonial Period, 1840-80’, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), p. 40).

⁴ Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850*, Rev. edn (London and New York: Routledge, 2002), p. 321.

⁵ While the middle classes were not immune to any of these conditions, working class Pākehā families tended to fragment more easily under the pressure of such hardships. Many working class migrants arrived in New Zealand after a series of previous migrations within their countries of origin. Periodic economic depression forced labouring men to seek work in Australia or elsewhere in New Zealand, leaving families dislocated and distant. Also, accidental death rates for males labouring in the goldfields, tree-felling, gum-digging, or land-clearing were extremely high, and the families they left behind often faced insurmountable difficulties in remaining together as a unit. See Debra Powell, ‘“It was hard to die frae hame”: Death, Grief and Mourning among Nineteenth-Century Scottish Migrants to New Zealand’ (MA thesis, University of Waikato, 2007), p. 64; and *Statistics of the Dominion of New Zealand for the Year 1911*, ‘Occupations of Males who Died During the Year 1911’, p. 343. Historians have also noted that de facto relationships that were accepted as marriages may have been more common among the working classes in nineteenth-century New Zealand than previous sources have suggested. See Erik Olssen, ‘Families’, pp. 49-50; and Claire Wood, ‘“Bastardy Made Easy”? Unmarried Mothers and Illegitimate Children on Charitable Aid – Dunedin 1890-1910’, (BA (Hons) dissertation, University of Otago, 1990), p. 42.

⁶ For the importance of the idealised family in British nation and empire building see for instance, Abrams, p. 43; and Anthony S. Wohl, ed., *The Victorian Family: Structure and Stresses* (London: Croom Helm, 1978), p. 9; and in the New Zealand context Olssen, ‘Families’, p. 55.

⁷ Abrams, p. 43.

This chapter continues to explore the interplay of narratives and the unequal power of different competing stories in case trials for child murder, focusing closely on the representation of Pākehā mothers, stepmothers and married couples implicated in the violent or neglectful deaths of legitimate children. The close reading of discourses that defined and interpreted family violence and neglect are contextualised with a more general reading of quantitative data on child deaths, and the outcomes of criminal trials. The first section considers emerging ideas around the concepts of ‘child cruelty’ and child protection, and the focus on families of the working classes. This section describes governmental and judicial responses to such concerns and includes an investigation into the activities of child protection groups who were working to highlight the problem of child neglect and abuse within Pākehā families.

The chapter goes on to focus firstly on the issue of neglect, and then on the fatal abuse of children, utilising specific case trials to explore aspects of the narrative construction and representation of child murder occurring within families. Trial outcomes relied heavily on the evidential testimony of local community members, themselves grappling with the tensions between ‘public’ and ‘private’ business and the rapidly changing ideologies surrounding child protection and the rights of the child. In these sections, special attention is given to local community responses to the crimes of child cruelty and child murder or manslaughter in order to uncover the ways in which people attempted to understand the problems of extreme child neglect or family violence in their midst.

Although step-parents were rarely accused of causing the deaths of children in their care, New Zealand stepmothers featured significantly in trials for neglect and cruelty offenses, as Sally Maclean shows.⁸ The previous chapters in this thesis demonstrate that individuals appearing in court records tended to be those in situations which left them open to close community surveillance, and the tendency towards closer scrutiny of step-parented families may help to explain the numbers of stepmothers who came before the courts on charges of neglect or violence towards older children. Nevertheless, the narrative of the unfeeling stepmother,

⁸ Sally Maclean, ‘Child Cruelty or Reasonable Punishment? A Case Study of the Operation of the Law and the Courts 1883-1903’, *New Zealand Journal of History*, 40:1 (2006), pp. 7-24.

with its long tradition in literature and folklore, was easily assimilated into the discourse of such trials.

Biological mothers who stood before the court for the murder of their own offspring defied such easy stereotyping and in some cases the label of insanity was applied to bridge the gap between expectations of conventional maternal behavior and the realities of extreme violence. The final section of this chapter explores the use of the insanity defense, and divergent ideas surrounding the concept of ‘madness’ in relation to the maternal child murderer who kills an older, legitimate child.⁹ Overall, the present chapter seeks to weave notions and concerns about gender, class, motherhood and criminal culpability with empirical detail on the legal responses to fatal child abuse and neglect to reveal the various ways such incidents were understood, and how these understandings affected court trials and their outcomes.

I have identified forty-one recorded incidences of parental involvement in the deaths of children within two-parent families between the years 1870 and 1925. These involved twenty-seven mothers, nineteen fathers, and one stepmother. Included in this number are six couples who were jointly charged or otherwise implicated in their children’s deaths. All but eight of the forty-seven individuals involved were arraigned under the charges of murder, manslaughter or concealment of birth.¹⁰ Of the sixteen charged with manslaughter, seven women and four men were found guilty and received sentences ranging from three months to ten years imprisonment. One woman and two men were found guilty of the murder of their legitimate children, and all three had their death sentences commuted to life imprisonment. Nine mothers and six fathers (or around one third of those brought to trial) were found not guilty of their crimes on the grounds of insanity.

⁹ The insanity defence in relation to fathers is an issue that will be explored in depth in Chapter Four.

¹⁰ Agatha McPhee 1871 (case file 148), Elizabeth Mayhead 1903 (case file 50), Mary Humphries 1906 (case file 51), Katie Gardiner 1911(case file 272), and David Jeffrey 1916 (case file 278) all died of self-inflicted wounds before charges were laid against them for the murder of their children. Margaret and Louis Anderson 1897 (case files 52 and 194) and Mrs Walter Wright 1876 (case file 21) were all discharged after coroners’ inquests.

British immigrants and New Zealand born Pākehā make up the largest ethnic group within this number, although one Chinese, one Italian, one German, and two Māori individuals are also identified, so that those who were clearly non-British in terms of their origins comprise about one in eight of the total group. The very small number of Māori indicted for these offences represents too small a sample for any evidence of patterning. Nevertheless, these cases will be considered closely in Chapter Five which includes an exploration into the ethnic dimensions of this crime.

Judith Allen's Australian study of 'reproduction related' offences from the 1880s to the end of the twentieth century identifies a shift in patterning over time in infanticide trials.¹¹ She suggests that the nineteenth-century predominance of neonaticide offences committed by unmarried mothers began to give way, early in the twentieth century, to higher numbers of those involving older married women who killed older children.¹² No such patterning is evident in the cases identified in this study. The dataset used here shows that indictments involving married mothers and legitimate children occurred with a fairly even consistency in New Zealand over the fifty-five years between 1870 and 1925. It may be that some further collection taken over a longer time-span will reveal the 'striking shifts in patterns' that Allen found in the Australian context.¹³

¹¹ Judith Allen, *Sex and Secrets: Crimes involving Australian Women since 1880* (Melbourne: Oxford University Press, 1990), p. 245.

¹² *Ibid.* Allen notes a steady decrease in Australian incidences of neonaticide involving illegitimacy from the turn of the century, offset by increasing prosecutions for abortion (Allen, p. 162). She found that after 1910 older, married women were as likely to be tried for infanticide as young, unmarried women. From the 1930s, she says, 'married women over twenty-five years old with other living children dominated instances of infanticide' (p. 245).

¹³ Allen, p. 246. Similarly, no clear evidence of patterning over time can be discerned on indictments on fathers during this period, although again this is likely to be attributable, in part, to the small size of the sample.

The Emergence of 'Child Cruelty'

Much has been written by Western historians on the 'sacralisation' of childhood.¹⁴ This shift in ontological thought, which took place from around the mid to late nineteenth century, reconceptualised the middle class view of childhood. Where children had once been conceived as parental property and (at least for those of the working classes) as wage-earners, under the influence of shifting ideologies, children of all classes became reconceived as subjects who were 'innocent, ignorant, dependent, vulnerable, generally incompetent and in need of protection and discipline'.¹⁵ The growing sentimentalisation of child life came with an increasing awareness that not all childhoods fitted neatly into the newly idealised model, and it was against this background that child welfare policy and practice began to be developed.

The rising awareness of children's issues took place across a range of Western countries. Paris held the first international conference on child welfare in 1882, and in that same year the state of Massachusetts pioneered a law to protect children from cruelty and neglect.¹⁶ A second conference held in Florence in 1896 was the catalyst for the formation of the International Congress for the Welfare and Protection of Children.¹⁷ Historians of British child welfare such as Lionel Rose, Harry Hendrick and George Behlmer, have described an intense concern with the issue of 'child cruelty' in England, which became a focus of middle class anxieties from the 1870s, reaching a peak around the turn of the century.¹⁸ During

¹⁴ This is a term most frequently attributed to the work of sociologist Viviana Zelizer. See Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (New York: Basic Books, 1985), p. 11. See also Harry Hendrick, 'Children and Childhood', *Refresh*, 15 (Autumn 1992), p. 2, retrieved online from <<http://www.ehs.org.uk/ehs/refresh/assets/Hendrick15a.pdf>> (accessed 6 December 2010); and Dorothy Scott and Shurlee Swain, *Confronting Cruelty: Historical Perspectives on Child Protection in Australia* (Victoria: Melbourne University Press, 2002), pp. 9-10.

¹⁵ Hendrick, 'Children and Childhood', p. 2. The evangelical revival of the eighteenth century, in its fostering of humanist compassion for the weak and helpless, has been identified as crucial to these changing ideologies (Davidoff and Hall, p. 25).

¹⁶ Lionel Rose, *The Erosion of Childhood: Child Oppression in Britain, 1860-1918* (London and New York: Routledge, 1991), p. 235.

¹⁷ *Ibid.*

¹⁸ Rose, *The Erosion of Childhood*, pp. 233-244; Harry Hendrick, *Child Welfare: England, 1872-1989* (London and New York: Routledge, 1994), pp. 43-60; Behlmer, *Child Abuse and Moral Reform in England, 1870-1908* (Stanford, California: Stanford University Press, 1982), p. 226. Behlmer notes a hiatus in public interest in the issue of parental violence and neglect which was

this 'first wave' of concern, Britain and its colonies replicated the Massachusetts law and introduced others which directly targeted the physical welfare of children. As well, a vast array of charitable institutions and societies were created to protect and advocate for the vulnerable child.¹⁹

During the period of this study, the household and family featured strongly in public debate and state activity in New Zealand, and important initiatives were introduced to engage with the problems of infant and child welfare. Legislation was enacted, for example, to make school attendance compulsory for primary school-aged children, and labour laws were strengthened to prevent the exploitation of child workers.²⁰ The Plunket Society was formed and an Infant Life Protection Act introduced and reinforced in response to high infant mortality and a decline in the birth rate.²¹ However, in New Zealand the problems of domestic and familial violence and child cruelty were met with a more muted response.

In England, an obvious need for child protection legislation had been uncovered by reformers associated with child welfare organisations such as the National Society for the Prevention of Cruelty to Children, and England's Child Protection Act, introduced there in 1889, came about as a direct result of the long and concerted efforts of those associated with the Society.²² In New Zealand, however, there had been no such agitation for reform on the issue of cruelty. Isolated incidents of parental violence or mistreatment before the turn of the century, passed largely without comment. New Zealand legislation, enacted in

evident from 1914 - so much so, in fact, that by the 1920s it was claimed that 'child abuse was extinct in the higher walks of life, and rapidly vanishing amongst the roughest and most uncivilized classes'. Two further 'waves' of concern took place: from the 1960s with the discovery of the 'battered child syndrome' and then from the early '90s with the focus on sexual abuse and fatal violence within families.

¹⁹ Behlmer, p. 57.

²⁰ *Statutes of New Zealand*, 1877, No. 21, Education Act, part IV, section 89, p. 127; *Statutes*, 1875, No. 89, Employment of Females and Others Act, section 4, p. 378; *Statutes*, 1891, No. 32, Factories Act, section 56, p. 78. See also Jeanine Graham, 'Child Employment in New Zealand, 1840-1900', *New Zealand Journal of History*, 21:1 (1987), pp. 62-78.

²¹ Plunket was initially known as the Society for Promoting the Health of Women and Children. The Society was founded by Sir Truby King and given Governor-level endorsement in 1907, *Statutes*, 1893, No. 35, Infant Life Protection Act.

²² George Behlmer gives a detailed account of the origins and passage of the English Children's Protection Act 1889 in *Child Abuse and Moral Reform*.

1890, just one year after the introduction of the English act, was, in the words of New Zealand Government Minister the Hon. Dr Pollen, ‘simply a copy of [the] statute which had been passed by the Imperial Legislature in its last session’.²³

The Honorable Minister argued against the ‘slavish’ adoption of such measures when ‘there was no necessity, to his mind, for encumbering our statute-book, which was already greatly over laden with laws that could have no immediate beneficial operation’. For Pollen and others, the object of the act, which was ‘the prevention of cruelty to and better protection of children’, was an extraneous issue as ‘the conditions for which the act was intended to provide had practically no existence in this colony at all’.²⁴ However, it was unanimously agreed that it was ‘better to prevent evil from asserting itself than to attempt to cure it after it had arisen’.²⁵

Those looking to official figures might be forgiven for coming to such conclusions: even in the wake of a severe depression in the economy in the 1880s and 1890s, few cases of child cruelty came to official notice. Under the terms of New Zealand’s Child Protection Act 1890 intentional ill-treatment or neglect of a child was punishable by a fine of up to one hundred pounds or up to two years imprisonment, and a Magistrate could order the removal of a child or children from the family home.²⁶ However, the law was never heavily enforced, and it was a full three years from its introduction before an individual was charged under the act.²⁷ Indeed, in the eight years between 1892 (when the annual police reports began recording returns) and 1901, only thirty-five cases of child cruelty or neglect had been tried in New Zealand’s courts of law.²⁸

Nevertheless, despite governmental assertions that New Zealand children were not yet in need of protection, societies and agencies with a focus on child welfare

²³ Children’s Protection Bill, 3 July 1890, *New Zealand Parliamentary Debates*, Vol. 97, pp. 260-61.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Statutes*, 1890, No. 21, Children’s Protection Act, sections 3 and 7, pp. 78 and 80. Before the 1890 act, child cruelty cases involving violence were charged under the Crimes Act 1867 as assault, assault causing grievous bodily harm or assault causing actual bodily harm.

²⁷ ‘Parental Castigation’ *Wanganui Chronicle*, 19 September 1893, p. 2.

²⁸ Maclean, pp. 10-11.

formed and were kept extremely busy in their work among families. Throughout the 1890s, Societies for the Protection of Women and Children (or the SPWC) were established in Auckland, Wellington and Dunedin, and the Children's Aid Society was founded in Christchurch.²⁹ The SPWC employed 'visitors' working in semi-professional positions to call into the homes of the poor to assess their needs. The group focused their efforts primarily on the work of 'compelling husbands and fathers to recognise and discharge their duties', which essentially meant following up cases of unpaid maintenance for deserted women and children.³⁰ Nevertheless, some attempts were made to address the problems of child neglect and domestic violence when incidences were brought to their attention. The process by which concerned citizens could report such incidences was explained in the *Otago Daily Times*:

Every case brought under the notice of the Society is investigated by the chairman, who is in attendance at a certain place one hour every day for that purpose. Having investigated a case he decides what steps should be taken with regard to it. As a rule, a letter from the secretary is sufficient to produce the desired effect; but when necessary the Society has recourse to the law.³¹

It was understood that communities regulated and kept watch over their own members, and while a number of cases were reported to local societies by the police, it was expected that incidences of abuse or neglect would be identified and reported by individuals living within neighbourhoods:

No active steps are taken by the committee to find out such cases as the Society deals with. The mere knowledge of the fact that a society exists for the protection of women and children causes people outside of it to bring cases under its notice.³²

²⁹ Maclean, p. 21.

³⁰ 'Society for the Protection of Women and Children', *Otago Daily Times*, 11 February 1899, p. 8. See also Bronwyn Labrum, 'The Changing Meanings and Practices of Welfare 1840s-1990s', *The New Oxford History of New Zealand* edited by Giselle Byrnes (Melbourne and Auckland: Oxford University Press, 2009), p. 399.

³¹ 'Society for the Protection of Women and Children', *Otago Daily Times*, 13 February 1899, p. 3.

³² *Ibid.*

However, I argue, along with Sally Maclean, that only a small minority of cases of child neglect or abuse were ever reported to social agencies or legal authorities. Maclean's study of child abuse trials processed in the South Island courts between 1883 and 1903, elicited evidence that child abuse often went unreported and unprosecuted.³³ My own research, conducted over the whole of the country similarly found that witness testimonies taken from incidences that did result in prosecutions commonly reveal evidence of prior or on-going neglect or violence, and a marked reluctance by neighbours to involve those outside of their immediate communities. Anne-Marie Kilday and Katherine D. Watson acknowledge 'neighbourly surveillance' and community policing as having been the norm in the British context. They write: 'Violence in the family was never entirely a private matter and community intervention and informal mediation were commonplace'.³⁴ My research suggests that New Zealand communities tended similarly towards self-policing, although there is evidence that individuals struggled, and failed, to address long-standing and extreme cases of child neglect and cruelty occurring within their neighbourhoods.

Moreover, the debates on child protection instigated by groups such as the SPWC and the Children's Aid Society took place against a background peppered with contradiction and mixed messages and within a culture of violence that existed despite the claims of parliamentarians. The courts themselves sentenced parents under the Child Protection Act for the use of excessive violence towards their children while simultaneously rebuking others for failing to control their wayward offspring. Judges regularly commented on the need for physical punishment to be carried out by parents to stem the flow of delinquent children being brought before them. Indeed, those who were guilty of the 'evils of laxity of home discipline' were said to be culpable of 'a crime against their children'.³⁵ On sentencing fourteen-year-old Martin Murphy for the indecent assault of an eight-year-old girl, in 1900, Justice Denniston commented that it was 'a pity to see so

³³ Maclean, p. 11. Maclean's cases are mainly from the Christchurch area, but include two from Dunedin and one from Wellington.

³⁴ Anne-Marie Kilday and Katherine D. Watson, 'Infanticide, Religion and Community in the British Isles, 1720-1920: Introduction', *Family and Community History*, 11:2 (November 2008), p. 88.

³⁵ 'Juvenile Depravity', *Hawkes Bay Herald*, 27 February 1889, p. 2.

young a lad convicted'. In the judge's opinion, this was 'another case for domestic discipline ... a sound thrashing by the boy's father would have been the commonsense solution of the case'.³⁶

The law further encouraged and promoted physical punishment by sentencing boys to be flogged or birched by the police. The Criminal Code Act 1893 gave no minimum age for physical punishment using the birch or whip, and flogging using a cat-o'-nine-tails could be carried out from around the age of sixteen.³⁷ On sentencing fifteen-year-old James McLaren in 1888, a Dunedin judge opined: 'It is difficult to know whether a boy of this age ought to be flogged with the 'cat'... a good birching cannot hurt; it will inflict pain but it cannot be suggested there is any cruelty about it'.³⁸ Convicted on a charge of stealing a fowl 'to the value of two shillings' by a Thames court in 1875, eight-year-old John Quadri was sentenced to be privately whipped and incarcerated for twenty-four hours in the local prison.³⁹ In 1895, a 'fatherless boy' was spared a conviction by a judge who declared that if someone from the boy's neighbourhood would whip him with ten good strokes of the birch, the offense would be expiated.⁴⁰ A newspaper article describes how a volunteer from the neighbourhood agreed, 'amid roars of laughter from a crowded court'.⁴¹

Historians of child protection legislation have shown how governmental concern for neglected and vulnerable children was effectively deflected by a social focus on the delinquent and criminal child.⁴² Dorothy Scott and Shurlee Swain have described how the presence of large groups of poor, urban children in the Australian state of New South Wales caused considerable unease among the 'respectable classes', who pressured for legislation to bring unsupervised (and

³⁶ 'Supreme Court', *Timaru Herald*, 7 Feb 1900, p. 3.

³⁷ *Statutes of New Zealand*, 1893, No. 56, Criminal Code Act, section 14, pp. 325- 326.

³⁸ 'Supreme Court', *Otago Daily Times*, 12 April 1888, p.2. McLaren was sentenced to six months imprisonment with hard labour, and privately whipped with twenty strokes of the birch rod.

³⁹ 'This Day', *Thames Star*, 17 December 1875, p. 2.

⁴⁰ 'Stratford and Ngairé', *Hawera and Normanby Star*, 26 October 1895, p. 4.

⁴¹ Ibid.

⁴² See Hendrick, *Child Welfare*, pp. 7-12, Scott and Swain, *Confronting Cruelty*, p. 4; Bronwyn Dalley, *Family Matters: Child Welfare in Twentieth-Century New Zealand* (Auckland: Auckland University Press, 1998), pp. 15-16.

therefore potentially dangerous) children under control.⁴³ In New Zealand, as in Australia and England, any governmental apprehensions concerning the problem of parental neglect centered not on the problematic family, but were projected outward, to the threat to societal stability that unsupervised and undisciplined children might engender.

This dualistic view of children as both victim and threat influenced legislation enacted throughout Western countries, and in New Zealand, laws which enabled indigent or neglected children to be committed into institutional care came early with the introduction of the Neglected and Criminal Children Act 1867.⁴⁴ The act enabled provincial councils to establish industrial schools in which children who were judged to be either delinquent or neglected, could be detained.⁴⁵ These residential institutions, in effect, came to be used as orphanages or reformatories and were often mired in controversy. While the 1867 Act and the later Industrial Schools Act 1882 both specified the separation of neglected children from those held to be in the ‘criminal’ class, in reality no such distinction was made until an overhaul of the system by the Education Department in 1900.⁴⁶ Up until that point, vulnerable children who had been removed from environments that were deemed abusive or dangerous were institutionalised with other ‘children’ up to the age of twenty-one, who had been branded as delinquent, criminal or ‘viciously uncontrollable’.⁴⁷ Young children and youths were housed together and subject to the same regime of punishment and reform. Bronwyn Dalley explains how the numbers of children committed to New Zealand’s industrial schools became increasingly unmanageable from the 1880s due to the economic exigencies of the period. She describes how overcrowding reached dangerous proportions as admissions rose from around 800 children in 1880 to 1,700 admissions by the turn

⁴³ Scott and Swain, *Confronting Cruelty*, p. 4.

⁴⁴ *Statutes of New Zealand*, 1867, No. 14, Neglected and Criminal Children’s Act, pp. 165-174.

⁴⁵ Included in the act is the ruling that a boy of any age attempting to abscond from an industrial school would receive a ‘private whipping’ in punishment (*Statutes*, Neglected and Criminal Children’s Act, section 46, p. 172).

⁴⁶ Dalley, *Family Matters*, p. 18.

⁴⁷ *Ibid.* It should also be noted that a sizeable number of children were committed to industrial schools by parents who simply lacked the means to keep them, and as Claire Wood shows, many of these destitute children were illegitimate. Wood quotes figures which suggest that in 1906 illegitimate children represented thirty per cent of all children admitted to industrial schools (Wood, “Bastardy Made Easy”, pp. 91-93).

of the century. This jump, she says, far exceeded the growth in numbers of children as a proportion of the total population.⁴⁸ The numbers of parents who were unable, unwilling, or deemed incapable of caring for their own children appeared to be intrinsically linked to the economic circumstances of families: a detail that served to buttress the popular assumption that child neglect was a problem of the poor.

Indeed, the fatal neglect cases brought to the attention of the law and identified in this study appear to have taken place almost exclusively among the families of the lower working classes.⁴⁹ As a result of the immigration drives spearheaded by Sir Julius Vogel, the Pākehā population, which was calculated at 248,400 in 1870, had almost doubled by the following decade.⁵⁰ This rapid increase in the Pākehā populace compounded with deteriorating economic conditions from the mid-1870s, provoking fears about the establishment of a pauper class.⁵¹

Although New Zealand towns and cities never experienced the extremes of overcrowding which occurred in Britain, slum conditions quickly developed in the urban centres as the influx of poor migrants strained resources of housing and infrastructural systems. The replication of conditions associated with Old World urbanised living, which included overcrowding in cheap, closely-packed and insanitary housing, and the use of open drains, sewers and cesspools, quickly became a major problem in rapidly expanding centres such as Auckland, where it was claimed that ‘the filthy accumulation of years’ had rendered parts of the city ‘almost uninhabitable’.⁵² Late nineteenth-century trial records and Charitable Aid

⁴⁸ Dalley, *Family Matters*, p. 18.

⁴⁹ Likewise, the dataset collated by Sally Maclean for her study of child abuse and neglect cases tried in nineteenth and early twentieth-century New Zealand included only one incident which was not from a working class family. This case (*R v Harriet Drake* 1902) will be discussed later in the section on fatal abuse.

⁵⁰ *Statistics of the Colony of New Zealand for the Year 1880*, Part II – Population and Vital Statistics’, pp. ix and xxii. At the 1881 census there was estimated to be 489,933 non-Māori persons living in the colony.

⁵¹ Margaret Tennant, *Paupers and Providers: Charitable Aid in New Zealand* (Auckland: Allen and Unwin and Historical Branch, Department of Internal Affairs, 1989), p. 2.

⁵² *New Zealand Herald*, 11 August 1871, p. 2, cited in Duncan Anderson, “‘Armed with power for preventing the spread of infectious disease’: The Making of the Public Health Act 1872 and its implementation in Auckland Province, 1870-1876’ (MSocSc dissertation, University of Waikato, 2002), p. 15. See also Pamela Wood, *Filth, Dirt and Decay: A New World Arcadia* (Auckland: Auckland University Press, 2005), and Geoffrey Rice, ‘Public Health in Christchurch, 1875-1910’,

case notes describe homes without furniture, bedding or heating, where children were found naked and half-starved.⁵³ Certainly, such poor material circumstances could lead to insanitary living conditions, sickness and want of food, but as Abrams asserts, poverty did not necessarily impact on the quality of material or emotional care that children could expect, and both British and colonial diaries and autobiographies from the period often describe tough but loving childhoods despite situations of intense deprivation.⁵⁴

Nevertheless, a general perception that child abuse and neglect were problems of the working classes prevailed, though those working in the area of child protection had come to recognise children's vulnerability across class boundaries. In an address to the annual meeting of the Glasgow branch of the Royal Scottish Society for the Prevention of Cruelty to Children in 1915, the Catholic Archbishop Maguire of Glasgow declared he 'wished the Society had the right to investigate the homes of the better classes as well as the homes of the poor, as they might often find cases which surprise them very much'.⁵⁵ While the RSSPCC understood that parental cruelty and neglect was also to be found among the rich, it admitted that 'unfortunately the Society had no means of bringing [these] cases to light'.⁵⁶ As Abrams argues, 'The surveillance of working class families had a long history but the middle classes were, and still are, more resistant to interference in the private sphere of parent-child relations.'⁵⁷ For the most part then, it was families in the poorest of homes who were brought into contact with those who wished to 'save' and 'protect' their children.

In tracing cases of serious neglect and cruelty, and identifying children in danger, child protection agencies relied primarily on visual signs of bodily abuse,

A Healthy Country: Essays on the Social History of Medicine, edited by Linda Bryder (Wellington: Bridget Williams, 1991), pp. 85-108.

⁵³ Margaret Tennant, 'The Decay of Home Life? The Home in Early Welfare Discourses', *At Home in New Zealand: History, Houses, People*, edited by Barbara Brookes (Wellington: Bridget Williams, 2000), pp. 30-31.

⁵⁴ Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes from 1845 to the Present Day* (Edinburgh: John Donald, 1998), p. 5. Perhaps the best example of this in the New Zealand context is John A. Lee, *Children of the Poor* (London: T. Weiner Laurie, 1934).

⁵⁵ Abrams, p. 210. Behlmer notes that the London SPCC also argued that child cruelty was 'unrelated to economic status' (Behlmer, *Child Abuse*, p. 94).

⁵⁶ Abrams, p. 210.

⁵⁷ Abrams, p. 211.

starvation, and neglect which brought children suffering ongoing mistreatment to the notice of school teachers and other adults outside the family home. This emphatic reliance on neighbourly surveillance in ‘bringing cases to light’ meant that particularly vulnerable groups remained in the shadows; in the case of newborns and very young infants, for instance, the signs were very much harder to detect.

Infant Deaths

In her investigation into infanticide in New South Wales, Australia, Judith Allen observes that, ‘especially where legitimate infants were involved ... uncertified infant deaths leading to inquests were generally accepted to have been accidents’.⁵⁸ According to the records of Australian coroners, she notes, legitimate infants appear to have, ‘drowned themselves in kitchen sinks, set themselves alight, scalded themselves on teapots, poisoned, shot or stabbed themselves, threw themselves into bays some distance from their homes and died from head injuries received while playing. Numbers of babies and young children died from starvation in the homes of non-starving parents’.⁵⁹ In New Zealand too, coroners’ reports on the deaths of legitimate children show inquest findings of accidental or ‘natural’ deaths in cases where witnesses have described babies being shaken by intoxicated parents, and where older children succumbed to head injuries inflicted under suspicious circumstances.⁶⁰ Coroners frequently returned ambiguous verdicts on the deaths of babies such as: ‘inattention at birth’; ‘decline’; ‘failure to thrive’; ‘debility’; ‘atrophy’; ‘inanition’; ‘teething’; or ‘overlaying’.⁶¹ All such

⁵⁸ Judith Allen, ‘Octavius Beale Re-considered: Infanticide, Babyfarming and Abortion in NSW, 1880-1939’, *What Rough Beast? The State and Social Order in Australia*, edited by Sydney Labour History Group (Sydney: Allen and Unwin, 1982), p. 116.

⁵⁹ *Ibid.*

⁶⁰ See inquest number 194: Fanny McDonald, cited in Laurie Gluckman, *Touching on Deaths: A Medical History of Early Auckland Based on the First 384 Inquests* (Auckland: doppelganger, 2000), p. 216; Inquest on Frank Mills, ‘Inquest at the Morgue’ (*Canterbury Press*, 15 August 1902, p. 6; Inquest on Eric Brown, ‘Children’s Foster Homes’, *Otago Witness*, 1 July 1908, p. 89; and Coronial Inquest: D. Jnr Donovan, J46Cor 1893/645 (Micro U 5400), Archives New Zealand, Wellington.

⁶¹ ‘Inattention at birth’ was usually used when a woman gave birth unattended, and can refer to accidents during the birthing process or the failure to attend to a newborn child, resulting in its death. Decline, failure to thrive, debility, atrophy, and inanition all refer to bodily weakness due to

questionable categories went onto official registers as accidental or ‘natural’ in origin. How many of these verdicts masked cases of deliberate suffocation, starvation or neglect can only ever be speculated, although, as Allen notes tellingly, as women turned increasingly to abortions in the early twentieth century (a contention supported by the marked increase in abortion related deaths), the numbers of accidental deaths of infants due to inattention at birth, overlaying, and other misadventures, showed an inverse decline.⁶²

While on first appearance statistics on Pākehā infant death suggest very few died as the result of direct criminal action, a deeper reading of these figures in conjunction with a wider range of sources presents a different range of possibilities. In 1872, for example, (see Table 3:1 below) deaths from accidental or violent causes accounted for just fifty-four deaths in Pākehā children under five years old (or 3.5 per cent of deaths from all causes). However, deaths registered in the highest categories did not necessarily represent definitive verdicts. Diarrhoea, convulsions, and debility and atrophy were all symptoms or indicators as much as they were causes of death, and, as Rose maintains, cases of starvation or poisoning could easily be concealed under the more physically observable symptoms of seizures or ‘dietetic’ complaints.⁶³

malnutrition or starvation. Teething was sometimes reported as a cause of death though this may have been due to the popular habit of weaning infants when the first teeth came through - in these instances death was more likely to be due to contaminated milk. The term overlaying or ‘overlying’ refers to accidental or homicidal suffocation.

⁶² Allen, ‘Octavius Beale’, pp. 119-120. Bradshaw found a similar decline in the number of women charged with neonaticide offences in the Christchurch Supreme Court from the 1930s, in correlation with an increasing number of charges laid against abortionists (Anna Bradshaw, ‘The Colonial Medea: A Study of Indictments of Women for Serious Violence in the Christchurch Supreme Court 1900-1968 (MA thesis, Canterbury University, 1999) Table 5:10, p. 58).

⁶³ Lionel Rose, *The Massacre of the Innocents: Infanticide in Britain 1800-1939* (London and Boston: Routledge and Kegan Paul, 1986), p. 12. For the Australian context see, ‘Slaughter of the Innocents’, *NZ Truth*, 26 October 1907, p. 8.

Table 1: Causes of Death for Pākehā Infants under Five Years for the Year 1872

CAUSES OF DEATH		UNDER 1 YEAR	UNDER 5 YEARS
Infectious diseases (total)		314	454
<i>[includes for instance]</i>	<i>Dysentery/Diarrhoea</i>	239	296
	<i>Whooping cough</i>	31	44
	<i>measles</i>	1	1
Developmental diseases (total)		227	260
<i>[includes for instance]</i>	<i>Atrophy and Debility</i>	196	213
	<i>Teething</i>	25	40
Diseases of the nervous system (total)		154	238
<i>[includes for instance]</i>	<i>Convulsions</i>	116	165
	<i>Apoplexy</i>	1	4
Respiratory disease (total)		117	177
<i>[includes for instance]</i>	<i>Bronchitis</i>	63	91
	<i>Pneumonia</i>	40	59
Other (total)		119	128
<i>[includes for instance]</i>	<i>Want of Breast Milk</i>	3	3
	<i>Premature Birth</i>	57	57
	<i>Unspecified Causes</i>	30	35
Tubercular diseases (total)		55	87
Gastrointestinal and Liver/ kidney disease (total)		68	85
Accidental and violent death (total)		13	54
<i>[includes for instance]</i>	<i>Suffocation</i>	7	9
	<i>Drowning</i>	1	20
	<i>Poisoning</i>	1	7
	<i>*Murder or Manslaughter</i>	0	0
Cardiovascular disease (total)		17	24
ALL CAUSES	TOTAL	1084	1507

Figures sourced from *Statistics of the Colony of New Zealand for the Year 1872*, Part 1, Number 5: 'Deaths of Males from Different Causes at Different Ages' and Part 1, Number 5A: 'Deaths of Females from Different Causes at Different Ages'. (Figures do not include stillbirths).

*Note that no deaths have been registered as attributable to murder or manslaughter for this year despite Caroline Witting 1872 (case file 270) being found guilty of the murder of her three children (two of whom were under five). Jane Lyons 1872 (case file 277) was also found guilty of the manslaughter of her eight-week-old infant. It is possible that that these deaths have been registered in the category of 'drowning' or 'accident or negligence'.

In transnational debates on child mortality, commercial infant ‘soothing syrups’ containing opium or laudanum were understood to have been responsible for a number of infant deaths attributed to other causes such as convulsions, decline, or atrophy.⁶⁴ These branded medicines, used to keep babies quiet and manageable, were identified as among the leading causes of preventable infantile mortality by the New South Wales Commission on the Decline of the Birth-rate which presented its findings in 1907. The Commissioner reported that ‘baby opiates’ were being ‘imported and sold in Australia by the thousand gross, and have certainly left long rows of tiny graves in our cemeteries’.⁶⁵ The Commissioner’s hyperbole was extended across the Tasman with the inclusion of an incident from New Zealand among the list of accidental and neglectful opium poisonings catalogued in his report – the New Zealand case was characterised as being ‘probably a very common one’.⁶⁶

⁶⁴ Contemporary commentators claimed that apart from the risk of poisoning, some babies were dosed regularly with commercial opiates to keep them asleep while parents worked away from home. Such infants were at risk of dying from exposure to cold or, as the drug is an appetite suppressant, from the effects of atrophy or debility.

⁶⁵ ‘Slaughter of the Innocents’, *NZ Truth*, 26 October 1907, p. 8.

⁶⁶ *Ibid.*



A NEW PROTECTOR.

The Legislative Council have taken up the matter of protecting the infant life of the Colony with great earnestness.—*News item.*

The New Protector: Sh——' Sh——' Don't cry any more, dears; this creature will have to reckon with me first.

Figure 5: 'A New Protector', *New Zealand Free Lance*, 14 September 1907, p. 12.

The dangers of opium based soothers in New Zealand were acknowledged in debates leading up to the amended Infant Life Protection Act 1907. In this portrayal it is the chemists and druggists (depicted here as a devilish imp) who are identified as the bogeymen needing to be kept at bay by the venerable sword of the legislative council. Mothers and other female caregivers are entirely absent from the picture.

Another ambiguous cause of accidental death in New Zealand infants under one year old was suffocation, which was usually attributable to 'overlying'. The belief that this category of accidental deaths masked cases of deliberate smothering was bolstered, in part, by British statistics which revealed that illegitimate infants were twice as likely to suffer from overlying as their legitimate counterparts.⁶⁷ A Melbourne coroner voiced this conviction in unequivocal terms in a letter to the press in 1894 in which he stated that 'in 90 per

⁶⁷ Rose, *Massacre of the Innocents*, p. 178. It should be acknowledged that the correlation between overlying and the deliberate smothering of illegitimate infants was far from clear cut. Factors such as the increased likelihood of bed-sharing in a single bed and poorer overall health due to artificial feeding in infants whose mothers worked outside of the home, are likely to have played a part in these mortality figures.

cent of 500 infant corpses examined, death was due to wilful suffocation'. He went on to claim that by his own estimation there were '1400 women living in Melbourne who have cheated the hangman'.⁶⁸

Others were less eager to condemn parents whose children died through overlaying, though mindful of the extent of negligence involved in some cases. In New Zealand, in 1881, Dunedin coroner Dr Thomas Moreland Hocken used the inquest on the death of Mary Ann Weston's three-week-old infant as a platform to draw public attention to the worrying number of overlaying cases coming before him. He admitted that he had not previously held formal inquests as the obvious distress of the mothers in all other cases suggested that they had 'taken great care' of their babies.⁶⁹ However, the case before him was of a markedly different character to those with which he usually dealt. It was a case, as the coroner informed his jury, 'with sad and discreditable surroundings, but one of a nature, I am afraid, inseparable from large towns like Dunedin'.⁷⁰ Mary Ann Weston was a middle-aged alcoholic, whose two older children had already been placed in an industrial school – she was found lying in the street with her three-week-old daughter dead in her arms.⁷¹ The coroner's jury found that the suffocation of the child was attributable to the mother's neglect and carelessness and concluded that the case was one of manslaughter. Dr Hocken strongly affirmed the finding, telling the jury:

You may think it is not one of those aggravated cases of manslaughter. No doubt the poor woman was grieved about the thing, but still it is a case of manslaughter, and of course you could come to no other conclusion.⁷²

The men of the Grand Jury of the Dunedin Supreme Court, however, did not share the Doctor's certainty. Mary Ann was never indicted for the manslaughter of her

⁶⁸ 'Wholesale Child-Murder', *Evening Post* (Wellington), 6 February 1894, p. 2.

⁶⁹ 'Manslaughter of an Infant', *Otago Witness*, 31 December 1881, p. 10.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

child. Her case was found to be a ‘no bill’, and she was released from court without trial.⁷³

While deaths attributable to overlaying were numerous enough to elicit public concern from coroners both in New Zealand and Australia, New Zealand women were seldom charged in such occurrences. I have found only a single incidence of a woman convicted of the manslaughter of her legitimate child by overlaying – an outcome possibly effected by the full confession offered by the accused woman.⁷⁴ Furthermore, despite the anxieties raised by the Melbourne Birth-rate Commission over the use of opium or laudanum based ‘soothers’, I have uncovered no incidences occurring during the time frame of this study where New Zealand parents were charged with the deliberate or accidental poisoning deaths of their infants.⁷⁵ However, it cannot be assumed that the low rate of convictions relating to the deaths of legitimate infants is indicative of the absence of crime. In interrogating the non-policing or under-policing of crimes it is not enough to literally-read documentary evidence as representative or indicative.⁷⁶ Rather, as Judith Allen asserts, ‘the rich range of available sources need to be used by historians critically and in relation to each other’, in order to interrogate criminal practices that were more effortlessly hidden from view.⁷⁷

Alcoholism and Child Neglect

The lives of very young infants, like that of Mary Ann Weston’s daughter, were severely compromised by the abuse of alcohol in those responsible for their care. England’s National Society for the Prevention of Cruelty to Children was well aware of that fact, and identified alcoholism as the single most important cause of ‘parental wickedness’, claiming that around half of the cases brought to their

⁷³ ‘Dunedin Supreme Court’, *Southland Times*, 6 January 1882, p. 2.

⁷⁴ Ann Whitely 1884 (case file 31).

⁷⁵ The only New Zealand case in this period involving the suspected poisoning of an infant is that of *R. v. Minnie Dean*, 1896. This case, involving a foster mother, is investigated in detail in Chapter Six.

⁷⁶ Allen, *Sex and Secrets*, p. 9.

⁷⁷ *Ibid.*

attention ‘had drink in the background’.⁷⁸ Indeed, parental alcoholism was recognised as a causal element in the majority of neglect cases identified in this study. In a typical incidence, Janet McKinlay was charged with manslaughter when she was found with the decomposing body of her infant daughter in her bed.⁷⁹ According to a coroner’s inquest report reproduced in the *Canterbury Star*, Janet had applied for wages owed to her husband after he was sentenced to three months imprisonment for ‘brutally ill-using’ his heavily pregnant wife.⁸⁰ Janet was still confined to her bed after the birth of her fifth child when she received the three pounds and ten shillings, and, according to her thirteen-year-old son, Duncan, he was sent straight to the bottle store to spend the money on Irish whiskey.⁸¹

At the inquest Duncan described his mother’s week-long drinking bout and the death of his baby sister, which a later post-mortem confirmed to be from neglect and starvation. Despite Janet’s insistence that he ‘not tell any person’ about the child’s death, Duncan sought help from neighbours who informed the local police. His mother was reportedly found ‘lying on a bed stupidly drunk, with the deceased child lying at her back, dead’.⁸² However, Janet McKinlay’s extreme poverty coupled with her unenviable situation as an abused wife with a husband in jail and four living children to attend to, positioned her as an object of pity, and she was not regarded as fully responsible for the death of her child. Janet was found by a jury to be ‘not guilty’ of the charge of manslaughter and released.⁸³

While neighbours were prepared to inform legal authorities when a child’s corpse was in evidence, it seems that the recourse to assistance from the law was used only as a last resort among community members, even in clearly observable incidences of child neglect occurring in families. In 1894, an amendment to the English Children’s Protection Act made it a specific offence to cause a child

⁷⁸ Rose, *Massacre of the Innocents*, p. 13.

⁷⁹ ‘Inquest: Committal for Manslaughter’, *Star* (Canterbury), 19 April 1875, p. 2.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

suffering by virtue of drunkenness of the parents.⁸⁴ The recourse to such an amendment suggests that the link between alcoholism and child neglect was widely recognised by English legislators. Certainly, witness testimonies found in the records of coronial inquests and trial reports suggest that among the closely built cottages of urban New Zealand communities, the suffering of neighbourhood children at the hands of alcoholic parents was all too evident; however, it seems few individuals were prepared to incite legal action on behalf of neglected and vulnerable children. This point is most clearly illustrated by the indictment of John and Mary Ann Clarcken, in 1895, for the manslaughter of their two-year-old daughter Lizzie.⁸⁵

John, an out-of-work miner, his wife Mary Ann, and their seven children, appear to have been well known in the small mining town of Thames. John was acknowledged to be a drunkard.⁸⁶ He had spent ten days in the Thames Hospital where he was treated for ‘chronic indulgence in liquor’, and at that time was said to have been ‘so dirty and uncared for’ that he was placed in a separate ward apart from other patients.⁸⁷ In 1893 John was found guilty of public drunkenness and having no sufficient lawful means of support, and was incarcerated for two months in Mount Eden Gaol.⁸⁸ He was arrested and convicted again the following year and served with a twelve month prohibition order.⁸⁹ On visiting the Clarcken household in 1893 to make the first arrest, Constable William Bern noted that the house was ‘in a filthy state and unfit for habitation’. He found holes in the floorboards and panes of glass missing from the windows, and ‘practically no furniture or bedding in the house except for a few rags’. The children, he noted, were very poorly clad and Lizzie, then about seven-weeks-old, was ‘in a wasted condition, apparently through starvation and want of proper nourishment’.⁹⁰ As a result of the visit, a relieving officer from the Charitable Aid Board was informed of the situation, and monetary relief was granted to the family. In addition, the

⁸⁴ Rose, *Massacre of the Innocents*, p. 177.

⁸⁵ ‘Resurrexi’, *Thames Star*, 5 September 1895, p. 2.

⁸⁶ ‘Death of an Infant’, *Thames Star*, 19 June 1895, p. 2.

⁸⁷ *Ibid.*

⁸⁸ ‘Death of an Infant’, *Thames Star*, 20 June 1895, p. 4.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

Magistrate who presided over John's trial, organised for the Clarken's eldest boy to fetch a can of milk from his own nearby farm on a daily basis 'for no charge'.⁹¹ Despite ongoing financial and practical assistance by the Charitable Aid Board and members of the community, in March 1895 Lizzie was found dead – at two years old she had apparently succumbed to heart failure due to 'want of nourishment'.⁹²

At the inquest and subsequent trial, members of the Thames community attested to their knowledge of the situation at the Clarken household, and to the ongoing neglect of the children. The Hanlon family had lived near the Clarken home for twenty years, and Isabella Hanlon, herself the mother of eighteen children, told how she had taken food to the Clarken children on many occasions.⁹³ Isabella's nineteen-year-old daughter May deposed that she had been in the Clarken house 'hundreds of times', as the parents were seldom home and the children were 'nearly always naked and always hungry'.⁹⁴ Sometimes she fed them with bread and milk found in the house, and at other times brought food for the children from her parents' home. When the baby, Lizzie, was particularly distressed, May admitted that she would take her back to her own home to wash, dress and feed her.⁹⁵ She related an incident where she had entered the house at ten o'clock on a mid-winter night, as the baby was alone and crying. Lighting a candle to find her way in the dark, May discovered the child in a 'wretched' condition lying in wet clothes on a bed of straw, beside a broken window.⁹⁶

In the light of her testimony the young woman can be seen to have displayed considerable pluck, on occasion confronting both John and Mary Ann with the charge of neglecting Lizzie, demanding that they take the child indoors when she was found locked outside in the rain, and even in one instance, standing in front of Lizzie while she ate in order to prevent the intoxicated father from taking the food

⁹¹ Ibid.

⁹² 'Alleged Criminal Neglect, *Otago Witness*, 4 July 1895, p. 11.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

for himself.⁹⁷ Other neighbours spent time in the Clarcken home, attending Mary Ann at the birth of her seventh child Bertha, and helping out during the seven days of her confinement. All attested further to the vulnerable state of the children, and of Lizzie in particular. Yet, no one from the Thames community was willing to bring the situation to the attention of the law until Lizzie Clarcken had actually starved to death.

Both John and Mary Ann were convicted of manslaughter in causing Lizzie's death by neglect.⁹⁸ John was singled out as the more blameworthy of the two parents, though both were treated with surprising leniency. The presiding judge reminded John that he had 'brought himself into his present position through his drunken habits and neglect of his home and duty'.⁹⁹ The child's death, he was satisfied, was 'unintentional', but John's drunkenness and negligence had 'brought him into the position of a criminal'.¹⁰⁰ On the manslaughter charge he was sentenced to four months imprisonment in the Mount Eden Gaol – a period of incarceration only eight weeks longer than that imposed on his previous conviction for being found drunk in a public place. The jury strongly recommended Mary Ann for mercy and the judge was willing to comply. Despite being found guilty of the manslaughter of her child, he told Mary Ann: 'On you I shall pass no sentence'. She was instead ordered to come up for sentencing if ever called upon at a later date.¹⁰¹

Mary Ann was not called upon again for the manslaughter charge. However, three months later she appeared before the Supreme Court once more, this time charged under the Child Protection Act 1890 for the wilful neglect of five-month-old Bertha.¹⁰² Constable Bern had continued to watch the family while John served his sentence in Mount Eden Gaol. He found that despite ongoing assistance from the Charitable Aid Board, which included a quart of milk a day for the baby,

⁹⁷ 'Death of an Infant', *Thames Star*, 20 June 1895, p. 4.

⁹⁸ 'Resurrexi', *Thames Star*, 5 September 1895, p. 2.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² 'Neglecting a Child', *Thames Star*, 26 November 1895, p. 2.

Bertha was emaciated and dirty and ‘wasting away’.¹⁰³ Mary Ann was ordered to take the child to the local doctor, who found that she was suffering from ‘inanition for want of food and was inadequately clad’.¹⁰⁴ Both the constable and doctor saw the child on two more occasions before something was done to save her life. Finally, it was admitted that there had been no improvement in the child’s condition and that she ‘could not continue to live if an improved system of care and nourishment was not adopted’.¹⁰⁵ Bertha was placed in Ponsonby’s Saint Mary’s Orphanage where she duly recovered, and Mary Ann was arrested and held in the Shortland Gaol until her trial. This time judge and jury did not hesitate to find Mary Ann fully culpable. In a strongly worded statement Justice Conolly referred to the case as ‘a very bad one’ in which the accused must be ‘look[ed] upon as a bad woman’; a woman who was found ‘wanting in that which was possessed by many of the vilest, namely, love of their offspring and desire to protect them from injury’.¹⁰⁶ The judge pointed out that on being liberated after causing the death of one of her children through wilful culpable neglect, the accused had immediately started to ‘pursue a course which would kill [another] child’. He considered such a situation as ‘little short of an attempt to murder’.¹⁰⁷ Mary Ann was sentenced to a term of twelve months imprisonment with hard labour for the wilful neglect of Bertha.¹⁰⁸ The fate of the remaining five Clarken children remains unknown.

As with the trials of unmarried mothers implicated in the deaths of their illegitimate children, definitions of personal responsibility remained central to the ways that murdering mothers within families were imagined and dealt with by society and the law. The marked reluctance of the juries in finding the mothers fully culpable in the McKinlay and Clarken trials is echoed in other cases tried within the period under investigation. At the coroner’s inquest on one of the newborn twins of Margaret and Louis Anderson in 1897, for example, it was

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid. It might be noted, however, that this sentence was far short of the two-year maximum penalty allowed for this offence under the terms of the Child Protection Act 1890.

claimed that both the mother and father had been in a state of intoxication during the children's birth, though, in the ensuing investigations Margaret came to be framed as a victim of her bullying and neglectful husband. A witness who came to attend Margaret found the babies on the floor where they had been born, and it was she who washed, dressed and settled the infants and their mother into a bed.¹⁰⁹ On returning two days later she found Louis, Margaret, and 'another woman' lying intoxicated in the house.¹¹⁰ Within three days one of the twins was found dead, though, despite a coronial finding that stated that the death was caused through wilful neglect, no charges were laid against the parents.¹¹¹ On the death of the second twin several days later, the onus of responsibility fell upon the father and the lying-in nurse who had remained to look after the child in the family home while Margaret was recovering in hospital. At the second inquest both Louis and the nurse, Mrs Whelan, passed the blame for the child's death between them – each charging the other with being drunk on a daily basis. A strong verdict was passed that 'the child had died of wilful neglect, due to the carelessness of Mrs Whelan and also of Anderson (the father) who showed by his habits utter neglect and want of provision for his wife and child'.¹¹² Louis Anderson was later charged in court with failing to provide for his family.¹¹³

The narrative that diminished the role of birth mothers in the deaths of their children by neglect relied on their framing as victims of their husbands' cruelty, insobriety or failure to provide, or their own dependence on the 'demon drink'. As discussed later in this chapter, maternal culpability was also understood to be mitigated by the state of women's mental health. The strong belief in the sanctity of the mothering role was given positive reinforcement by commentators like the English doctor, Edward Berdoe, who advocated on behalf of working class families, but singled out mothers for particular praise. He opined:

¹⁰⁹ 'Death of an Infant: Shocking Details', *Evening Post* (Wellington), 11 January 1897, p. 2.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² 'A Sad Case of Neglect: A Verdict Blaming its Father and Nurse', *Evening Post* (Wellington), 19 February 1897, p. 2.

¹¹³ 'A Shocking State of Affairs', *Otago Daily Times*, 16 March 1897, p. 7.

I am not over-anxious to defend the beery and self-indulgent pauper male parent. He is too often careless enough of his family; but of the mother I can, on the whole, say nothing but good. “A mother”, says Coleridge, “is the holiest thing alive”, and I should endorse the sentiment even had I no other experience wherewith to illustrate it than that gleaned from my East London parish work.¹¹⁴

The redefinition of the parental roles was crucial to the nineteenth-century reworking of the idealised family form. British historians of the family suggest that by the end of the nineteenth century ‘home and family’ had effectively been ‘annexed to the moral dominion of the mother’.¹¹⁵ As motherhood became associated with greater responsibility for the spiritual, moral and physical welfare of the family, the paternal role in the ideal home diminished until, as Abrams argues, children became ‘almost exclusively a female domain’.¹¹⁶ In her study of Scottish fatherhood, Abrams effectively demonstrates that in the view of late nineteenth-century Government and the Scottish NSPCC, ‘fatherhood entailed material support and little more’.¹¹⁷ But despite the clear delineation between the male and female parenting roles that was so marked in official discourse, the stories that emerge from court trials suggest that this was not necessarily how families lived in reality. The trial narratives arising from New Zealand coroners’ inquests and court reports reveal that some out-of-work fathers acted as child minders while their wives worked inside the home or outside in the community.¹¹⁸ Other men were clearly actively involved in their children’s lives either through necessity, obligation, or choice.

¹¹⁴ Edward Berdoe, ‘Slum-mothers and Death Clubs: A Vindication’, *Nineteenth Century*, 29 (April 1891), p. 563.

¹¹⁵ Trev Lynn Broughton and Helen Rogers, eds, *Gender and Fatherhood in the Nineteenth Century* (Hampshire and New York: Palgrave Macmillan, 2007), p. 1; Claudia Nelson, *Invisible Men: Fatherhood in Victorian Periodicals, 1850-1910* (Athens and London: University of Georgia Press, 1995), p. 209.

¹¹⁶ Lynn Abrams, ‘“There was Nobody like my Daddy’: Fathers, the Family and the Marginalisation of Men in Modern Scotland’, *Scottish Historical Review*, 78:2 (October 1999), p. 221.

¹¹⁷ Abrams, ‘Nobody like my Daddy’, p. 222.

¹¹⁸ For example Fred Wain 1883 (case file 188) was employed as a groundsman for the Dunedin Caledonian Society. He acted as a child-minder (of sorts), taking his son to work with him every day until complaints were received about the child being locked in the Caledonian Society Clubroom while he worked (‘Inquest’, *Otago Witness*, 7 April 1883, pp. 9-11). This case is fully investigated in the next section.

However, as Western scholars have shown, the cultural emphasis on the idealised role of motherhood strengthened the notion of all mothers' natural and intrinsic capacity to nurture and protect. Sherri Broder and others have argued that this emphasis negatively impacted on women accused of mistreating or causing the deaths of their children. On the subject of infanticide in late nineteenth-century Philadelphia, Broder writes:

[C]ultural convention emphasized women's role to the exclusion of their partners. As bearing and rearing children were female responsibilities, so infanticide and abandonment were female abdications of responsibility. Women, as primary care providers, were rendered responsible for child care and thus were also blamed for neglect. Men, on the other hand, were not seen to be intimately associated with the domestic sphere.¹¹⁹

However, the cases presented in this chapter suggest that this was not necessarily true in practice. The surrounding discourse that continued to insist on the inherent and natural goodness of biological mothers might well have begun to unravel when held up against the negligent acts carried out by the women indicted in the case trials above. On the face of it, the actions carried out by these mothers ran in direct opposition to dominant ideologies about the nature and role of motherhood. Instead, the jurymen involved chose to situate these women in a frame in which their actions were effectively mitigated. The criminally neglectful mother as sufferer and victim remained intelligible within the accepted paradigms of motherhood and such a woman could therefore be a plausible object of sympathy. However, the stepmother accused of child neglect or abuse could expect no such endorsement.

¹¹⁹ Sherri Broder, 'Child Care or Child Neglect? Baby Farming in Late Nineteenth Century Philadelphia', *Gender in Society*, 2:2 (1988), p. 166. Bronwyn Dalley's New Zealand overview of mid twentieth-century debates on child abuse found similarly that in the 1960s mothers were 'afforded more than their fair share of responsibility' and were targeted as the source of such social problems (Bronwyn Dalley, 'Deep and Dark Secrets: Government Responses to Child Abuse', *Past Judgement: Social Policy in New Zealand History*, edited by Bronwyn Dalley and Margaret Tennant (Dunedin: University of Otago Press, 2004), p. 184).

Fatal Abuse: Stepmothers as Abusers

Sympathetic narratives of maternal victimhood, weakness and degradation were seldom present in the case trials of any mothers who were not the biological parent of the children they were accused of ill-treating.¹²⁰ In fact, the textual evidence from trial transcripts and newspaper reporting suggests that there was little reluctance to apportion blame upon stepmothers who neglected or abused children in their charge. Perhaps this might be expected given the primary imaginative structure surrounding the role of stepmother. As an editorial published in 1875 explained:

The very name of stepmother is taken to emblemise simply so much cruelty and oppression. Story books and nursery tales teem with accounts of the shameful stepmother who always does such cruel despite to the lovely daughter of the poor dead wife, and is invariably such a monster of wickedness from end to end.¹²¹

This motif appears to have been easily assimilated into the discourse of court trials involving abusive, neglectful or murderous stepmothers, colouring the ways that such women were ‘imagined’ in the courtroom, and within the communities in which they lived.

Maclean found that the overwhelming majority of child cruelty prosecutions identified in her South Island study involved families with step-parents or in informal adoptive situations.¹²² Of the nineteen defendants charged with child abuse offences that Maclean uncovered in her research, twelve were identified as step or adoptive parents, and of the six natural parents charged, three were prosecuted with their step-parent partner.¹²³ Maclean argues that the conventions that worked against interference into family relations were weaker in the case of step-parented families, and neighbours were more willing to intervene or report

¹²⁰ This includes adoptive mothers and foster mothers.

¹²¹ ‘Stepmothers’, *Bruce Herald* (Otago), 10 December 1875, p. 7.

¹²² Maclean, p. 11. Maclean’s study primarily considers non-fatal abuse, with the exception of *R v. Harriet Drake* 1902. This case, involving a biological mother tried for the manslaughter of her eight-year-old child, will be investigated later in this chapter.

¹²³ *Ibid.*

violence occurring in such homes. Nevertheless, in presenting her findings she remains open to the possibility that there may simply have been higher levels of violent behaviour in adoptive and stepfamilies.¹²⁴ Certainly, it appears that contemporary commentators believed this to be the case. The renowned child expert, Dr. Barnardo, for example, shared the common conviction that stepmothers were more naturally abusive. In 1885 he wrote:

It is, perhaps, too much to expect that the second wife of a working-man should have the same affection towards her husband's children by a former wife as towards her own; but case after case has come before us in which the jealousy of a step-mother has led to the most cruel treatment of the little folks committed to her charge ... maternal affection is jealously exclusive, and degenerates, in numerous instances, into a hatred that results in many a tale of long-continued cruelty.¹²⁵

However, my own research into incidents involving fatalities, which spans the whole of New Zealand for the fifty-five years from 1870-1925, has uncovered only one recorded incidence of abuse carried out by a stepmother that resulted in the death of a child. The figures imply that in incidences involving families during this period, biological mothers were twenty-six times more likely to be implicated in the suspicious deaths of their children than were stepmothers.¹²⁶ This detail suggests that, contrary to the popular view, it was not necessarily step-parented children who were exposed to the highest levels of violence in their homes. Rather, as Maclean has argued, it is more likely that neighbours practised greater vigilance towards step-parents because of contemporary perceptions that these particular families harboured more cruelty or violence. In its turn, the greater number of cruelty indictments brought against stepmothers gave further credence to the story of the 'wicked stepmother', reinforcing social mistrust in this difficult parenting role.

¹²⁴ Ibid.

¹²⁵ *Day and Night*, May 1885, p. 74, cited in Behlmer, *Child Abuse and Moral Reform*, p. 175.

¹²⁶ Recent figures on fatal child abuse suggest that stepmothers make up around three per cent of perpetrators compared to biological parents who comprise eighty per cent (UNICEF, *A League Table of Child Maltreatment in Rich Nations*, *Innocenti Report Card, 5* (Florence: Innocenti Research Centre, September 2003), Figure 4: 'Perpetrators of Physical Abuse of Children, p. 8.)

SIR,—Will you kindly insert this letter and inform me by footnote if there is in Otago a society for the protection of children?

There is in this town what appears to me to be a case of wanton cruelty to a step-child, and I shall be glad to know if there is any means of putting a stop to it.—I am, etc.,

Gore, June 20. LYNX.

[There is a society for the protection of women and children in Dunedin. The secretary is Miss Statham, Water street.—ED. O.D.T.]

Figure 6: 'To the Editor', *Otago Daily Times*, 22 June 1899, p. 7. Letters to the editors of local newspapers such as this one from the *ODT* demonstrate the level of surveillance of step-parents within the neighbourhoods and communities in which they lived.

When father and stepmother Fred and Margaret Wain were accused of the manslaughter of Fred's seven-year-old son Henry in 1883, public interest in the case was high. The full report of the coroner's inquest ran over three pages of the *Otago Witness*, describing in harrowing detail the accounts of cruelty and neglect that the many inquest witnesses freely supplied.¹²⁷ In fact, so many witnesses came forward to volunteer evidence against Fred and Margaret Wain, the coroner was forced to put a limit on the number so that the inquest would not run into a third day.¹²⁸ The testimony of neighbours, police, and doctors revealed that during the few months that the Wain family had lived in the South Dunedin district, the seven-year-old had spent his days in a locked room without food or water, been beaten until bones were broken, and subjected to bizarre punishments, supposedly in the effort to break him of the 'evil habit' of masturbation.¹²⁹ That the case had

¹²⁷ 'Inquest', *Otago Witness*, 7 April 1883, pp. 9-11.

¹²⁸ Ibid.

¹²⁹ A post-mortem operation found 'evidence of a bladder stone which had passed'. It was suggested that 'the boy had probably tried to get relief to the bladder and his doing so had been mistaken for the habit which his parents complained of' ('Inquest', *Otago Witness*, 7 April 1883, p. 11).

already generated a good measure of debate or ‘gossip’ is made clear by the coroner’s opening address to his jury. He told them:

I dare say you have heard a great many reports about this case ... I ask you to dismiss from your minds any remembrance you may have of these reports. A great many of these reports are often very baseless ... and are often proved to be entirely without foundation.¹³⁰

The interest in what became known as ‘The Wain Case’ continued through to the Supreme Court trial, where it was reported that the approaches to the courthouse and the courtroom itself were crowded with onlookers.¹³¹

While the evidence put forward at the coroner’s inquest had shown that Henry had suffered beatings and abuse from both parents, it was Margaret Wain who became the focus of the later court trial, and of the media commentary that accompanied it. The post-mortem operation carried out on the child’s body revealed that his death was, in fact, due to tuberculosis of the lungs and brain.¹³² However, the Crown proposed to ‘prove by testimony of witnesses, a long course of cruel and inhuman treatment to this child, and then to show, by medical testimony, that the effect of that treatment was likely to cause ... a child disposed to tuberculosis to develop it much more readily than it other-wise would be developed’.¹³³ The prosecution was successful in its endeavour – both Fred and Margaret Wain were convicted of manslaughter and each was sentenced to seven years imprisonment.¹³⁴ Newspaper reports suggest a widespread satisfaction with the result, and reveal the depth of vilification felt towards Margaret in particular. An editorial in Wellington’s *Evening Post* claimed:

The verdict is a righteous one, and we trust the punishment to follow will be exemplary. ... The stepmother’s conduct is a blot on

¹³⁰ Ibid.

¹³¹ ‘Sentence of the Wains’, *Star* (Canterbury), 16 July 1883, p. 3; ‘The Child Murder Case at Dunedin’, *Wanganui Herald*, 14 July 1883, p. 2.

¹³² ‘Inquest’, *Otago Witness*, 7 April 1883, p. 9.

¹³³ ‘The Alleged Manslaughter by Parents’, *Evening Post* (Wellington), 20 April 1883, p. 2. As Henry’s birth mother had died from general paralysis as a result of chronic alcoholism, the boy was believed to have been born with a disposition to the development of tuberculosis.

¹³⁴ *Waikato Times*, 17 July 1883, p. 2.

womanhood and on human nature. Such a Fury represented on the stage would appear unnatural, but truth is stranger than fiction, and this tragedy of real life has shown a character beside which the old hag in that powerful play, “The Two Orphans” appears a mild, amiable old woman.¹³⁵

The *Waikato Times* took the opportunity to offer further defamatory comments on the character of Margaret Wain, suggesting that, ‘the general feeling is that the female prisoner got her deserts. In the police sheets she figures as a woman of violent temper and a bigamist’.¹³⁶ Contrastingly, public opinion on Fred Wain was distinctly muted, though the *Evening Post* offered this telling comment: ‘As for Wain, some pity may perhaps be admitted in his case for having a wife who was apparently able to influence him to such culpable callousness as he displayed’.¹³⁷ ‘The Wain Case’ appears to stand as the sole case trial in which a stepmother was implicated in the death of a child during the period under investigation. However, the idea that biological fathers may have been negatively influenced or led by their wives to commit the vicious or callous acts that they inflicted on their children was echoed in other cases involving stepmothers where parents were jointly tried.¹³⁸

One further example, while not resulting in death, is particularly illustrative of a popular mind-set which sought to apportion blame on stepmothers. The behaviour of stepmother Caroline Fleming was likewise at the centre of the 1885 child cruelty trial that was popularly referred to as the ‘Fleming case’. Caroline and her husband, Alexander, were jointly indicted with inflicting grievous bodily harm on Alexander’s two children, eleven-year-old John and five-year-old Isabella.¹³⁹ During the trial it was claimed that Alexander had tied his son to a bedpost and

¹³⁵ ‘The Dunedin Manslaughter Case’, *Evening Post* (Wellington), 14 July 1883, p. 2.

¹³⁶ *Waikato Times*, 17 July 1883, p. 2.

¹³⁷ *Ibid.*

¹³⁸ See for instance the 1893 case against Arthur and Alice Cribb, who were jointly indicted for the ill-treatment of Arthur’s two children (‘Alleged Ill-treatment of a Child’ *Press* (Canterbury), 29 July 1893, p. 5); and the trial against Fred and Jessie Bignall who were charged with wilful cruelty in 1905 (‘Shocking Ill-treatment of Children: Stepmother’s Inhuman Conduct’, *Evening Post* (Wellington), 17 November 1905, p. 4).

¹³⁹ ‘Brutal Treatment of Children by Parents’ *Grey River Argus* (West Coast), 23 March 1885, p. 2.

whipped his naked body with a cartwhip.¹⁴⁰ The child was allegedly beaten so severely that witnesses were ‘horrified by the sight of marks which could only be the result of whippings equal to the lash prescribed for hardened criminals’.¹⁴¹ However, Alexander was acquitted of the charges against him, while the children’s stepmother, said to be ‘actuated by a cruel mind’, was found guilty of ill-treating both children, and gaoled for two years with hard labour.¹⁴²

As the ‘Wain Case’ had done two years earlier, the Fleming trial ‘exited popular indignation to a high pitch’.¹⁴³ Again, hostile crowds blocked the streets surrounding the Dunedin Courthouse, prompting a reporter from the *Grey River Argus* to claim that ‘the whole female population of Kensington and South Dunedin appeared to be there’.¹⁴⁴ However, the strongest show of indignation and disapproval seems to have taken place within the Flemings’ own community of Kensington, where neighbours reportedly gathered to shout abuse at the couple as they left to attend court. By evening, that disapproval had intensified into a frightening show of ‘rough music’:

The Flemings remained in town until after dark and on returning to their home they found a large crowd gathered outside their residence. The two then separated and Mrs Fleming managed to get inside the gate before being recognised, and her husband also effected an entrance, fortunately without an opportunity having occurred for any personal violence. The crowd nevertheless, occupied themselves in stoning the roof until the appearance of the police obliged them to move. They then retreated to a paddock opposite and burned the two defendants in effigy.¹⁴⁵

Such evidence suggests that neighbours and other observers of step-parented families had little trouble imagining stepmothers as perpetrators of cruelty and

¹⁴⁰ ‘The Fleming Cases’, *Westcoast Times*, 28 March 1885, p. 2.

¹⁴¹ ‘Brutal Treatment of Children by Parents’ *Grey River Argus* (West Coast), 23 March 1885, p. 2.

¹⁴² ‘Sentence of Inhuman Stepmother’, *Te Aroha News*, 18 April 1885, p. 3.

¹⁴³ ‘Brutal Treatment of Children by Parents’ *Grey River Argus* (West Coast), 23 March 1885, p. 2.

¹⁴⁴ ‘Alleged Gross Ill-treatment of Children’, *Otago Daily Times*, 27 March 1885, p. 2.

¹⁴⁵ *Ibid.*

mistreatment, despite the fact that the most severe cases of abuse which resulted in fatalities appear to have occurred with greater frequency in biological families.

Biological Mothers as Abusers

Records emanating from the proceedings of nineteenth and early twentieth-century court trials for child neglect suggest that New Zealand jurors looked eagerly for mitigating circumstances when mothers were implicated in the neglectful deaths of their own children, and, as I have shown, notions of blame were often deflected away from the biological mother. However, on occasions when mothers were charged with the use of extreme violence against older children, more ambiguity is evident in the framing of those accused.

As with cases of neglect, witnesses to violence appear to have been reluctant to intervene or to report incidences perpetrated by biological parents unless they actually resulted in the death of a child. Indeed, the evidence from court hearings suggests that those living within communities, who did intervene, risked censure. Ellen Clark testified in court that she had witnessed eight-year-old Daniel Donovan being beaten by his mother more than once in the week that she had lived next door to the Donovan family.¹⁴⁶ It might be presumed then that other neighbours had been aware of ongoing violence in the Donovan household, yet only one other person from the Freeman's Bay community was prepared to serve as a witness against Daniel's mother in a court of law.¹⁴⁷

Kate Donovan was the first to be charged under New Zealand's Child Protection Act 1890. Those attending the Auckland Police Court trial in 1893 heard from neighbour, Ellen Clark, how Daniel had been whipped and beaten so severely by his mother in the incident in question, that she 'nearly fainted' at the sight of his body. Attracted by the child's screams, Ellen had peered in through the windows of the house, attempted to force the locked door and threatened to 'call a

¹⁴⁶ 'Parental Castigation', *Wanganui Chronicle*, 19 September 1893, p. 2.

¹⁴⁷ The arresting police constable and a local doctor also provided evidence for the prosecution, although in the case of the doctor this was said to be so weak as to actually mitigate the prosecution argument (Ibid).

policeman'.¹⁴⁸ In court Kate Donovan stated that she did not consider the whipping too severe, insisting that the boy had grossly misbehaved himself.¹⁴⁹ The counsel for the defence, for his part, attempted to shift the focus to the witness Ellen Clark, who, it was noted, had only lived alongside the defendant for one week. Was she in the habit of peering into people's windows? Had she never beaten her own little boy? The Bench, it was pointed out, frequently censured parents for not controlling their children, yet, 'unfortunately there were persons who would try to interfere with parents when they tried to control their children. The question was: what were parents to do?'¹⁵⁰ Despite this call to reason by the defence, Kate Donovan was found guilty of ill-treating her son. She was fined forty shillings and returned home with Daniel in tow.¹⁵¹

Four weeks later, Daniel's name again turned up in the official records – this time in a coronial report. The post-mortem carried out on Daniel's body showed that his sudden death had been caused by a fracture of the skull.¹⁵² The inquest, which took place at the bar of the Rob Roy Hotel in Freemans Bay, heard a confusion of testimonies in which Daniel's mother, neighbours, and other witnesses told conflicting stories. The boy had eaten poisoned oranges, or had fallen and hit his head on a fence; he spent the morning at school with his sister, or else he spent it lying on a stranger's couch bleeding from a head-wound. No one from the community was prepared to suggest a connection between the boy's violent, sudden death and the ongoing violence in the Donovan household.¹⁵³ In fact, neighbours came forward to offer positive accounts of Kate's maternal character. Annie Melrose deposed that she had 'always found [Mrs Donovan] kind and affectionate towards her children and only beat them when they were naughty,' and added in reference to the earlier indictment for child cruelty, that '[h]er whole

¹⁴⁸ Ibid, and 'People are Not Satisfied', *Observer* (Auckland), 21 October 1893, p. 2.

¹⁴⁹ 'Parental Castigation', *Wanganui Chronicle*, 19 September 1893, p. 2.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Coronial Inquest: D. Jnr Donovan, J46Cor 1893/645 (Micro U 5400), Archives New Zealand, Wellington. The report also noted signs of neglect in the form of intestinal worms and bodily sores.

¹⁵³ Daniel's father, 'a seaman', was apparently in San Francisco during the incidences referred to, leaving the family temporarily reliant on Charitable Aid.

affair was only a bit of spite'.¹⁵⁴ Despite claiming to be 'dissatisfied' with the variously opposing points of evidence, the coroner's jury gave Kate Donovan the benefit of the doubt. They found that 'no evidence was forthcoming to show how the fracture was caused', and an open verdict was brought in on Daniel's death.¹⁵⁵

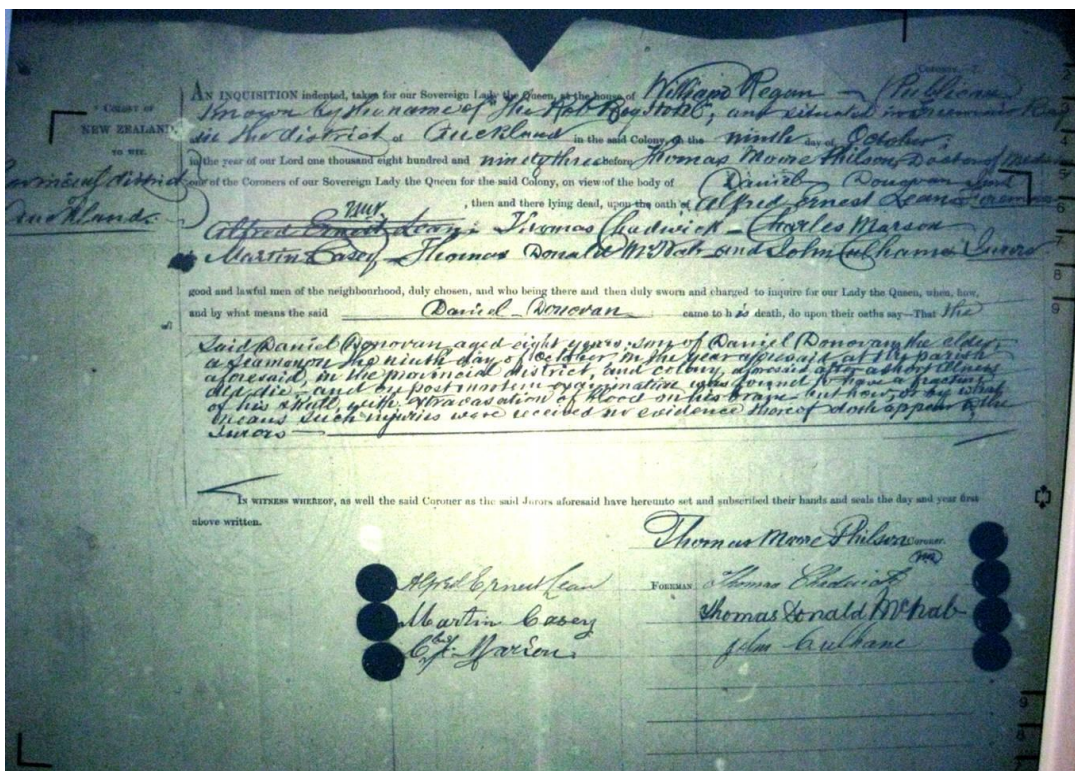


Figure 7: Coronial Inquest Report - D. Jnr. Donovan.

The inquest headed by coroner Thomas Philson brought in an open verdict on the death of eight-year-old Daniel Donovan despite the suspicious nature of his injuries. The verdict reads: 'The said Daniel Donovan aged eight years ... after a short illness did die and on post-mortem examination was found to have a fracture of his skull with extravasation of the blood on his brain, but how, or by what means such injuries were received no evidence thereof doth appear to the jurors'.

There was little room for such uncertainty in the circumstances surrounding the death of eight-year-old Dorothy Drake at Otaki in 1902. The description of the injuries on the child's body left few in doubt that she had died of shock after a

¹⁵⁴ Coronial Inquest: D. Jnr Donovan.

¹⁵⁵ Ibid. This case has not been included in the dataset as Kate Donovan was not accused of causing the death of her son.

‘punishment’ administered by her mother and two older sisters.¹⁵⁶ The post-mortem report attested to the viciousness of the assault, noting that the extent of the contusions on the body meant that a piece of unbruised skin ‘as wide as a shilling’ could not be found. A deep depression on the right side of the child’s head carried the marks of the metal handle of a riding whip, and the inside of the scalp showed extensive bruising.¹⁵⁷

The weight of the medical evidence in this case, coupled with the fact that the woman accused of manslaughter was the matriarch of a ‘well-known and highly-respected’ middle class family, attracted considerable public interest in the trial.¹⁵⁸ As with the Wain and Fleming trials in Dunedin, the public gallery of the Wellington Supreme Court was said to be crowded with onlookers.¹⁵⁹ The prosecution presented evidence to show that Dorothy had been systematically abused by her mother, who was motivated by the malice she had felt towards the child since her birth. Witnesses were produced who were willing to attest to ongoing neglect and cruelty on the part of Harriet towards her daughter. Notably, these witnesses were ‘outsiders’, no longer immediately associated with the family or the Otaki community – two former domestic servants; a sister-in-law from Eltham who had fostered Dorothy for two and a half years; and a former labourer on the Drake family farm.¹⁶⁰ From those within the Otaki community however, there was a distinct closing of ranks. A long line-up of defence witnesses from the Otaki district attested to the respectability of the Drake family and to Harriet’s affection for her children and devotion to her domestic duties. Harriet’s husband, Arthur, stood by his wife resolutely insisting that: ‘a warmer-hearted or more self-sacrificing woman there could not be ... she was entirely

¹⁵⁶ Coronial Inquest: Dorothy Drake, J46Cor 1902/456-829 (Micro U 5426), Archives New Zealand, Wellington. Harriet Drake’s defence counsel’s suggestions that Dorothy’s death may have been due to concussion from an earlier fall, or even haemophilia, were unable to gain traction in the face of Harriet’s admission that she had given the child ‘a severe thrashing’ (‘Charge of Manslaughter’, *Evening Post* (Wellington), 16 August 1902, p. 5.)

¹⁵⁷ Coronial Inquest Report: Dorothy Drake.

¹⁵⁸ ‘Evidence at the Inquest’, *Evening Post* (Wellington), 30 June 1902, p. 2.

¹⁵⁹ ‘The Otaki Murder Case’, *Hawera and Normanby Star*, 10 September 1902, p. 2; ‘The Otaki Murder Case’, *Evening Post* (Wellington), 21 August 1902, p. 5.

¹⁶⁰ ‘Charge of Manslaughter’, *Evening Post* (Wellington), 15 August 1902, p. 5.

devoted to her household, and lived solely for the benefit of the children, who were very fond of her'.¹⁶¹

Harriet's defence counsel stressed that while the consequences of her act were shocking, it could not be suggested that they were intended or contemplated.¹⁶² The act itself was not one of deliberate or designed cruelty, but occurred in an outburst of passion. He appealed for mercy for a woman who had brought up her children in a creditable manner, and discharged her duty as a loving mother, and whose remaining seven children should not be left without a mother's loving attention and devotion.¹⁶³ The jury did, in fact, deliver their guilty verdict with a unanimous recommendation to mercy. However, the sentencing judge was pragmatic; he informed the court that, 'those who give way to their passions and allow themselves to use unrestrained violence towards young children must learn that the punishment which will follow will be a severe one'.¹⁶⁴ Harriet Drake was sentenced to six years with hard labour in Wellington's Terrace Gaol – a result that reportedly prompted a round of 'hurrahs' from the women in the public gallery.¹⁶⁵

The textual evidence surrounding the trial of Harriet Drake demonstrates that public opinion on the character of the murderous mother could become deeply divided when maternal violence was not easily mitigated by the influences of poverty, alcohol or mental illness. While many were prepared to view Harriet as a good mother who overstepped the boundaries of parental control with unfortunate circumstances, others struggled to reconcile such actions with the maternal role. The writer of an opinion piece on the Drake trial printed in the *Auckland Observer* expressed incredulity at the idea that a biological mother might commit such an 'unnatural' crime, and called for stronger punishment in the face of such an aberration:

¹⁶¹ 'The Drake Manslaughter Case: A Severe Sentence', *Evening Post* (Wellington), 9 December 1902, p. 5.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ 'The Otaki Manslaughter Case', *Evening Post* (Wellington), 19 August 1902, p. 5.

That any woman should have behaved so fiendishly to any child; much less to her own offspring, is almost inconceivable and there will be many people who will consider that for a person of such unnatural instincts some form of punishment other than the mere restraint upon liberty should be devised.¹⁶⁶

The inconceivable nature of violent crimes committed by mothers whose natural instincts were believed to have preconditioned them to nurture and care for their children challenged deeply held understandings about the maternal body and mind. However, in other cases the concept of maternal madness appears to have been readily utilised as a medium for making sense of the incomprehensible.

The Insanity Defence

In the previous chapter I suggest that psychiatric discourse did not feature greatly in New Zealand court trials where mothers were charged with the murders of their illegitimate newborn infants. However, in my research into homicide cases involving biological parents accused of killing older, legitimate children, the use of psychiatric opinion on the aberrations of the mind is strongly in evidence.¹⁶⁷ The dataset of cases includes twenty-three incidences where a legitimate child's death was directly and solely attributable to the violent or neglectful actions of the biological mother. In twelve (or 52.0 per cent) of these incidences the notion of maternal insanity was considered in some way as a mitigating or explanatory factor. In eight court trials (or 44.0 per cent of those tried) such defendants were found not guilty on the grounds of insanity.¹⁶⁸

¹⁶⁶ 'The Fretful Porcupine' *Observer* (Auckland), 13 December 1902, p. 16.

¹⁶⁷ This finding is in accord with a study undertaken in 1970, by Dr. Phillip Resnick of Cleveland's Case Western Reserve University. Resnick found that mothers who killed older children were more often psychotic, suicidal, or suffering from extreme depression; whereas mothers who killed newborns seldom presented with these conditions. In 2006, Resnick and other scholars released a study that summarised data from decades of research on infanticide which confirmed that mothers who kill older children are less likely to be rational than those who commit neonaticide (Phillip J. Resnick, 'Murder of the Newborn: A Psychiatric Review of Infanticide', *American Journal of Psychiatry*, 126.10 (1970), pp. 1414-1420).

¹⁶⁸ Of the twenty-three women, eighteen were actually brought to trial. Katie Gardiner, 1911 (case file 272) and Agatha McPhee, 1871 (case file 148), died of self-inflicted wounds before charges could be laid; Agnes Corrado, 1889 (case file 40) was found mentally unfit to plead; two others

Martin J. Wiener ascertains that findings of insanity or unfitness to plead increased markedly in Britain towards the end of the nineteenth century, for both men and women.¹⁶⁹ This observation reflects the increasing use of medical and psychiatric ‘experts’ who were brought in to instruct courts on conditions such as paranoia, schizophrenia, puerperal mania and depression, and to adjudicate on the meanings of ‘temporary insanity’ in murder trials.¹⁷⁰ Judith Allen notes for the Australian context that the nineteenth-century focus on illegitimate neonaticide in the crime of infanticide became ‘relocated in a post-war psychiatric discourse as a manifestation of the depression suffered by married women in situations of marital disharmony or estrangement, immigration ... and poverty’.¹⁷¹ This discourse reflected lay understandings of madness that had been utilised in child murder trials long before the mid-nineteenth century when psychiatric medicine consolidated the links between social and biological stress and mental impairment. The readiness to associate ‘distressful circumstances’ with ‘distress of reason’, can be discerned in the New Zealand court trials of biological mothers and fathers throughout the period under investigation.¹⁷²

were discharged after a coroner’s inquest. Of those tried, two women had their insanity pleas rejected and were found guilty. They were Caroline Witting, 1872 (case file 273) and Ema Ngaripo Makara, 1903 (case file 126).

¹⁶⁹ Martin J. Wiener, ‘Judges v Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth Century England’, *Law and History Review*, 17:3 (1999), p. 467.

¹⁷⁰ Wiener, p. 502.

¹⁷¹ Allen, *Sex and Secrets*, p. 234.

¹⁷² Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1891), p. 149.

TWO TRAGEDIES.

A MOTHER'S CRIME.

(BY TELEGRAPH.)

AUCKLAND, Monday.

A little girl three years of age was murdered on Saturday at Rakawahi, near Kalkohu. Her throat was cut with a knife, and the wound was afterwards backed with a tomahawk. The child's mother, Amy Stewart, was arrested yesterday for murder. Trouble and poverty are supposed to have completely unbalanced the mother's mind.

LATER.

Mrs Stewart is aged 22, and is the daughter of Thomas Baldwin, of Rakawahi. She cut the child's throat first with a knife, and afterwards severed the windpipe with a tomahawk. The woman was brought in to Kalkohu. The husband is an old man, and was sent to the Auckland hospital last week, not being likely to recover. This fact evidently preyed on the woman's mind. The family have also suffered extreme poverty.

Figure 8: 'Two Tragedies', *Hawke's Bay Herald*, 28 June 1898, p. 3. Poverty and 'trouble' were commonly understood to predispose individuals to 'madness'. Amy Stewart was later judged to have been 'temporarily insane' at the time of the offence and was committed to an Auckland asylum.

While poverty and marital disharmony were understood to have a shattering effect on the minds of both men and women, medical and psychiatric experts in murder cases involving mothers could point to the particular tensions and strains of the female reproductive cycle as a recognisable cause of insanity. Despite the fact that the Harveian Society and 'the majority' of British doctors considered illegitimacy as a major cause of puerperal insanity throughout the nineteenth century, single women made up only a small proportion of the puerperal insanity patients in

British Asylums.¹⁷³ In fact, it was older, married women who tended to be diagnosed with, and treated for, both puerperal and lactational insanity.¹⁷⁴

Annie Roil was described as ‘a good wife and very fond of her children’ during her Supreme Court trial in 1884.¹⁷⁵ That she had taken her two youngest children and drowned them in the Heathcote River was an almost inconceivable act, but was accounted for by the fact that she had suffered from ‘an attack of puerperal mania’ after the birth of her last child, and for one night had been clearly ‘quite insane’.¹⁷⁶ Family members declared that Annie had ‘not been the same woman’ in the six months since the episode – she complained of burning pains in her head and had said that she feared she was going out of her mind. Moreover, irrefutable evidence of a family history of insanity was produced during the trial proceedings – Annie’s father was being held in the Christchurch Lunatic Asylum and her mother had recently died there. Predictably there was no hesitation in finding Annie not guilty of the murders on the grounds of insanity.¹⁷⁷ However a conversation alleged to have taken place while the accused was awaiting trial suggests that Annie Roil acted with a degree of rationality in drowning her two small children. It was reported that Annie was aware that she had come close to dying during her last difficult labour, and the severe headaches she continued to suffer had brought her close to suicide on a number of occasions. As a religious woman, Annie’s husband’s atheistic world-view left her with the fear that after her death the children would be brought up outside of religion. She had apparently

¹⁷³ Behlmer, *Child Abuse*, pp. 22-23.

¹⁷⁴ Cath Quinn, ‘Include the Mother and Exclude the Lunatic: A Social History of Puerperal Insanity, c. 1860-1922’ (PhD thesis, University of Exeter, 2003), p. 158, cited in Daniel Grey, ‘Discourses of Infanticide in England, 1880-1922’ (PhD thesis, Roehampton, 2008), p. 222. Similarly, Jonathon Andrews’ British survey of female child murderers who were discharged from the Broadmoor and Perth Criminal Lunatic Departments between 1860 and 1920, found that ‘murdering mothers sent to those institutions were typically married women, from poor or lower middling families’ (Jonathon Andrews, ‘The Boundaries of Her Majesty’s Pleasure: Discharging Child Murderers from Broadmoor and Perth Criminal Lunatic Department, c. 1860-1920, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002), p. 223).

¹⁷⁵ ‘Charge of Murder’, *Star* (Canterbury), 31 March 1884, p. 3.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

‘sen[t] the children to go before her’ in a determined attempt to ‘save’ them, before unsuccessfully attempting suicide by drowning.¹⁷⁸

Similar motives appear to have induced Ellen Hart to murder her three young children and attempt suicide in 1925. Ellen’s ‘spur of the moment’ decision to slash the children’s throats with a razor as they were getting ready for school, occurred after weeks of heated argument with her husband over his changing views on religion.¹⁷⁹ She showed immediate remorse, informing neighbours of her actions and telling the arresting officer, ‘I shouldn’t have done it’, and ‘I suppose I’ll hang for this’.¹⁸⁰ Ellen was taken to Seacliff Mental Hospital, ‘solely for the purposes of observation’, and at the subsequent trial medical experts proffered a range of thoughts on the woman’s mental state.

As Ellen’s youngest child was fifteen months old and presumably no longer breast-fed, the concept of puerperal or lactational insanity was not considered. Instead, psychiatrists reported variously that she ‘showed no signs of emotion’; or that she seemed ‘quite cheerful and unimpressed by the position she was in’. An ear, nose and throat specialist was questioned on his finding that Ellen suffered from an hereditary eye complaint which affected her vision; and it was reported that on being subjected to intelligence tests, Ellen was found to have ‘the intelligence of a girl of twelve, whereas the average adult had the intelligence of a girl of sixteen’.¹⁸¹ Remarkably, this evidence, taken together with a report by a psychiatric expert that he had watched Ellen finish off a dinner so large that he ‘couldn’t have tackled it [him]self’, was accepted as definitive proof of insanity. The jury found that Ellen Hart had committed her crimes ‘while in the grip of an uncontrollable impulse’. She was acquitted of murder on the grounds of insanity

¹⁷⁸ Ibid.

¹⁷⁹ ‘Religion Drove Me to It’, *NZ Truth*, 5 December 1925, p. 9.

¹⁸⁰ Ibid. Ellen’s admission that she was both aware of committing a crime and knew that it was wrong demonstrate that the judge was prepared to accept a flexible interpretation of the requirements of the M’Naghten Rule, and of the Crimes Act 1908, for an insanity committal. Both stipulated that insanity in a defendant rested on them having no awareness, at the time of the act, of what they were doing, or that it was wrongful (*Statutes of New Zealand*, 1908, No. 32, Crimes Act, section 43(2), p. 577).

¹⁸¹ ‘Mother Who Slew Her Three Children Found Insane: Victim of a Dread Disease’, *NZ Truth*, 18 February 1926, p. 7.

and readmitted to Seacliff Mental Hospital.¹⁸² With this result the *NZ Truth*, which had reported extensively on the incident and trial, was able to reassure its readers that this seemingly incomprehensible act of maternal violence had, in fact, been carried out by a ‘victim of a dread disease’.¹⁸³

Daniel Grey asserts that the ‘dominant popular view’ of maternal child murder in late Victorian and Edwardian England was that the only plausible explanation for the crime was the madness of the defendant, though, as Grey says, ‘whether such madness fitted legal definitions of insanity was another matter’.¹⁸⁴ On this point Tony Ward quotes Carl Heath, an agitator for the abolition of capital punishment in Britain, who argued in 1908 that ‘if there is any condition of mind which can rightly be described as insane, it is that in which a mother loses all maternal instinct’.¹⁸⁵ In this narrative the very act of fatal violence perpetrated on a child by its natural mother constituted its own proof of insanity. The acceptance of this account effectively primed public opinion to excuse murdering mothers as not fully responsible for their actions.¹⁸⁶

That these incidences typically involved the attempted suicide of the women themselves gave further impetus to the framing of their actions as desperate and deranged. Like Annie Roil, who believed she was ‘saving’ her children by sending them to heaven, Ellen Hart had killed her children in the conviction that she did not want them to ‘suffer for her sins’ after her planned suicide. Widowed and penniless, Katie Gardiner beat her twelve-year-old daughter to death with a poker before drowning herself in a nearby stream in 1911.¹⁸⁷ Shamed by an attempted rape which was about to be publicised in court, Agatha McPhee killed

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Grey, p. 442. Ellen Hart’s 1925 case suggests that this view was still influencing courtroom decisions in the inter-war period.

¹⁸⁵ Tony Ward, ‘The Sad Subject of Infanticide: Law, Medicine and Child Murder 1860-1938’, *Social and Legal Studies*, 8:2 (1999), p. 166. Earlier manifestations of this idea are prevalent. For example, English alienist Forbes Winslow, writing in 1854 on the trial of a mother for child murder and attempted suicide, held that ‘the act itself bears insanity stamped on its very face’ (Forbes Winslow, ‘Recent trials in lunacy’, *Journal of Psychological Medicine*, 7 (1854), p. 617, cited in Smith, *Trial by Medicine*, p. 59).

¹⁸⁶ Moreover, an insanity acquittal offered a viable alternative to the discomfiting prospect of executing women who clearly caused the deaths of their children by violent means.

¹⁸⁷ Katie Gardiner 1911 (case file 272). See ‘A Masterton Horror’, *NZ Truth*, 25 February 1911, p. 5.

her youngest child who was reported to be ‘rather helpless through paralysis in the side’, before taking her own life in 1871.¹⁸⁸ Such incidents were constructed in distinct ways, utilising familiar tropes and structures to facilitate their understanding. Within the discourses surrounding this scenario there is little evidence of the demonisation of these women as murderesses. Rather, their behaviour was located within the sphere of extreme maternal sacrifice and devotion.

This set of circumstances was well recognised as a type by the twentieth century. A survey of infanticidal mothers in England’s Broadmoor Criminal Lunatic Asylum in 1902 identified the typical infanticide case as one where a woman, ‘perhaps weighed down by the strain of lactation’ and ‘overwork and anxiety’ becomes depressed:

The thought of suicide projects itself into her mind, she cannot leave the child behind, it must be sacrificed first; the dreadful thought is banished again and again only to recur with renewed intensity, until it really seems to fascinate, and finally overwhelm her.¹⁸⁹

The inference that such a woman is compelled to act contrary to her natural maternal nature is made implicit in this narrative construction. The killing of another human being has become construed as the *inability* to act, or to reason, against a stronger outside force. There is a sense that the woman herself has disappeared as a subject; ‘overwhelmed’ and therefore unaccountable. Viewed either as passive victims of their emotional state, or as extreme examples of maternal sacrifice and devotion, mothers who killed older children could be ‘understood’ within the existing paradigms of femininity and motherhood.

However, this view did not prevail when Caroline Witting, a ‘Prussian’ immigrant, was tried for drowning her three youngest children in a South Island creek in 1872. The case shares striking similarities to other incidents of murder and attempted suicide uncovered in this study; nonetheless, this mother was found

¹⁸⁸ Agatha McPhee 1871 (case file 148). See ‘Dreadful Tragedy in Otago’, *Wellington Independent*, 9 May 1871, p. 3.

¹⁸⁹ John Baker, ‘Female Criminal Lunatics: A Sketch’, *Journal of Mental Science*, 14, p. 21, cited in Ward, ‘The Sad Subject of Infanticide’, p. 167.

guilty of murder and sentenced to hang for her crime. Caroline Witting was in an abusive relationship with a violent man who was convinced that their youngest child was not his.¹⁹⁰ She had spent two months in hospital suffering from depression and ‘mental derangement’ after the birth of the child – witnesses attested to her being delusional, suicidal, and having ‘a mind that was not properly balanced’.¹⁹¹ In the ten months since the birth she had complained constantly of headaches that she feared would ‘bring her to something that she was not aware of’.¹⁹²

After a heated marital argument, Caroline took four of her children to the Waikiwi Creek where she first attempted to drown nine-year-old Augusta. The child escaped to the far side of the creek where she witnessed the murder of her three young brothers. Augusta testified that her mother had kissed the baby and told him ‘goodbye’ before throwing him into the water. She also reported that her mother told the other boys, aged eight and four, to ‘go down and she would come to them’ as she held them under the surface of the water.¹⁹³ Caroline was discovered the next morning wandering in the bush in her petticoat and a pair of sheepskin slippers, and ‘in a great state of mud and wet’. Witness Samuel Morton told the court:

She looked wild, like a wild animal, with a glare in her eyes. Her superior faculties appeared to be suspended. ... She appeared as if she had lost her reason. She always broke the conversation and turned it to something else. She said she would get into trouble with her husband for staying away so long; that he would beat her.¹⁹⁴

Samuel Morton claimed he ‘thought she was mad, and treated her somewhat like a lunatic, speaking in a soothing manner’. Although Caroline had reportedly known

¹⁹⁰ Criminal Files, DAAC, 21218 D437/908, *R v Witting* 1872, Judge’s Notes of Proceedings – Circuit Courts Invercargill and Lawrence Criminal Cases (Judge H.S. Chapman) (1872-5), Archives New Zealand, Dunedin.

¹⁹¹ ‘The Waikiwi Tragedy’, *Tuapeka Times*, 5 December 1872, p. 6.

¹⁹² *Ibid.*

¹⁹³ *R v Witting* 1872, Judge’s Notes.

¹⁹⁴ *Ibid.*

the witness for years, she apparently showed no recognition, but allowed him to take her hand and lead her out of the bush.¹⁹⁵

Counsel for the defence, Mr Wade, proposed that the evidence on the state of Caroline Witting's mental health, coupled with the 'unnatural and improbable character of the act' must 'naturally lead to the conclusion that madness was the cause of the act itself'.¹⁹⁶ He asked the jury:

[C]an you believe gentlemen, taking all these circumstances into consideration, that she was responsible for her acts on that eventful afternoon: Is it capable of belief that such a thing could be done? Can you from the evidence placed before you come to any other conclusion than that the woman was mad? I cannot. ... If you wish a cause suggested, gentlemen, for this madness, I say that the unhappy life which the poor woman led with her husband might have the effect of culminating in insanity which renders her irresponsible for her actions.¹⁹⁷

But neither the judge nor jury were disposed to a sympathetic view of the accused in this case. Rather, it was the framing of the events proposed by Mr Harvey for the prosecution that resonated with greater veracity for those standing in judgement of Caroline Witting. Mr Harvey told the court:

She calmly, coolly, and deliberately selected the four youngest children, the four she could master and ... showing a calm calculation of chances – she removes her gown, folds it carefully, and places it on the stump of a tree for safety. Does this look like the act of a woman who had lost her reason? To me it seems as if she then had the determination of carrying out this crime on her mind, and that she removed her dress to prevent it being marked or stained, with the intention of putting it on afterwards when she returned. ... In first putting in the eldest, whom she considered might be most capable of

¹⁹⁵ Ibid.

¹⁹⁶ 'The Trial of Caroline Witting for Murder', *Southland Times*, 29 November 1872, p. 3.

¹⁹⁷ Ibid.

resistance then dashing in the child which she held in her arms, and then the other two; all these systematic acts showed an amount of deliberate planning incompatible with insanity.¹⁹⁸

This reading of the accused as a cold-blooded murderess carrying out her killings with calm deliberation was reinforced by the suggestion of a possible motive: that Caroline had committed the murders in an ‘outrage’ over her husband’s accusation of unfaithfulness. Mr Harvey suggested to the jury that:

[H]er passion had carried her away, and, with a determination and a coolness, which, in the case of women committing such acts, men seldom equal, she perpetrated the murders with which she is charged. ... I believe that in a moment of excitement, urged on by passion, she committed this crime. I put it to you therefore, that it will be your duty to find the prisoner guilty of wilful murder.¹⁹⁹

The framing of the defendant in the guise of Medea, the legendary sorceress who slew her three children to spite her husband, clearly evoked a powerful image for those in judgement of the crime. Justice Chapman, in an elaborate summing up, positioned himself openly in opposition to the defence. Obviously well read on the extant theories of insanity, he himself rebutted the defence case on every point, taking an unusually rigid view of the insanity defence. He told the court:

When we hear the circumstances of the crime with which the prisoner is charged, they are so revolting to the ordinary feelings of a woman to her offspring ... the first impression on our minds is that there must have been some mental derangement existing in the mind of the prisoner at the time. But that impression is one which we must discard. ... I must caution you that you must not draw any inference from the nature of the act itself. ... That is not enough. ... [A]nd even if it had been proved that she was afflicted with puerperal mania at the time of the birth of her youngest child, that mania is usually of a very short

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

duration, of a peculiar nature in itself, and does not necessarily lead to insanity at any other time.²⁰⁰

The jury returned their guilty verdict without a recommendation for mercy, and the judge made no attempt to soften the formalities, telling the ‘hysterical’ prisoner:

They could hardly have come to the conclusion that you were so deranged as not to know what you were doing; or knowing it, not to know that it was wrong. I now have to pass on you the sentence of the law, which is that you be taken to the place from whence you came, and thence to the place of execution, and there be hanged by the neck until you be dead, and that your body be buried within the precincts of the gaol. May the Lord have mercy on your soul.²⁰¹

Caroline Witting’s case stands out as anomalous among insanity acquittals for women at this time. Four other women in similar circumstances during the 1870s were found to be ‘labouring under an uncontrollable impulse’ and therefore were found not guilty of their crimes.²⁰² Courts were typically ready to stretch the rules to cover mothers who they viewed as distressed or deranged, but this narrative was rejected in the Witting case. The jury were inclined to accept a more sinister counter narrative in which a ruthless and angry wife would murder her children to spite her husband. It may be that the testimony of nine-year-old Augusta, who had survived her mother’s murder attempt, focused the jury’s attention on the child victims of the crime in this instance. It is also possible that Caroline’s nationality may have reduced sympathy for her in court.²⁰³ The intentions and motivations of the men of the jury are open to speculation but, as with the Flanagan case discussed in the last chapter, few real conclusions can be drawn from an uncharacteristic verdict. Nevertheless, the textual evidence which surrounds it

²⁰⁰ Ibid.

²⁰¹ ‘The Waikiwi Tragedy’, *Tuapeka Times*, 5 December 1872, p. 6. A petition for the commutation of Caroline Witting’s death sentence prepared by defence counsel, Mr Wade, was successful and in December 1872 the sentence was downgraded to life imprisonment.

²⁰² Catherine Drake 1875 (case file 255); Mrs Walter Wright 1876 (case file 21); Alicia Sheehan 1876 (case file 60); Margaret Wilson 1878 (case file 227).

²⁰³ Contemporary reports of atrocities in the Franco-Prussian war (1870-71) had inflamed anti-Prussian sentiment that was disseminated in New Zealand’s popular press.

demonstrates that complex and fluid notions of culpability, intentionality, and agency were at work in the nineteenth and early twentieth-century understandings of such crimes.

Conclusion

This chapter has positioned nineteenth and early twentieth-century incidences of parental abuse and fatal neglect within their social and legal contexts to explore the cultural narratives at work in the understanding of these crimes. Lyn Abrams discusses a tendency that has been used in the recent past by those outside of child protection agencies, to deny intra-family abuse by centering concern on traditional scapegoats such as ‘perverts’ and ‘bogey-men’ (that is, paedophiles and strangers).²⁰⁴ More recently, attention has been focused on so-called ‘outsiders’ to the family, such as stepfathers. Contrastingly, those working within the area of child welfare affirm that for children, the family home, whether headed by biological parents or otherwise, has long been the primary locus for danger.²⁰⁵ This thesis demonstrates that despite the realities, the urge to locate child abuse and violence outside of the biological family can be seen to have a historical precedence.

The trials investigated in this chapter took place during a period when emerging ideologies surrounding child welfare and the rights of the child were coming into conflict with the inviolability of the idealised family unit and ongoing concerns about poverty, alcoholism, child delinquency and criminality. The tensions that resulted were manifested not only at the social and intra-community levels, but also at the institutional level, within the provinces of government and law: Government ministers introduced child protection legislation while confidently denying the need for it; the courts, forced to censure some parents for their excessive use of violence, continued to rebuke others for not punishing enough; members of the public were moved to indignation when cases of child cruelty did

²⁰⁴ Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes From 1845 to the Present Day* (Edinburgh: John Donald, 1998), p. 238.

²⁰⁵ Christine Alder and Kenneth Polk, *Child Victims of Homicide* (Cambridge: Cambridge University Press, 2001), p. 1.

come to light, yet few were willing to speak up against violence occurring among the families living within their own communities.

I have argued that familiar tropes which negatively stigmatised the role of stepmother led to closer surveillance of step-parented families within neighbourhoods, and as a result, stepmothers were over-represented in indictments for non-fatal child neglect and abuse. Public trials involving stepmothers generated a welter of outraged emotion among communities and the wider society. The ease with which violent and neglectful stepmothers could be 'imagined' in court trials was ultimately reflected in juridical outcomes.

Some historians have maintained that the cultural emphasis on the role of motherhood negatively impacted on biological mothers accused of mistreating or causing the deaths of their children. However, the sources used here have not shown this to be the case. The textual evidence surrounding late nineteenth and early twentieth-century New Zealand court trials for parental neglect and violence suggest that the strength of the narrative of the sanctity of motherhood prevails. In the storying of biological mothers accused of fatal neglect, women were frequently viewed as passive victims of poverty or alcoholism, or believed to have been driven to their behaviour by husbands who mistreated them or did not provide for their families. Even in cases where mothers committed acts of lethal violence, while their acts might be seen as 'inhuman' or 'unnatural', the women themselves were more likely to be framed in human terms as subject to human failings.

In the same vein, the courts often conflated extreme maternal violence with mental illness. The idealisation of the relationship between mother and child supported the lay belief that only women whose minds were deeply disordered could perpetrate acts of fatal violence on their own offspring. However, the courtroom operated as a site for a complex array of competing narratives, and juries searched among them for recognisable stories and images on which to base their understandings of particular crimes. The trials of women like Mary Ann Clarcken, Margaret Wain, Ellen Hart and Caroline Witting demonstrate the ways that knowledges extracted from other discursive settings were inserted into the

legal story, generating a range of meanings which had real implications for the law and those it appraised.

In this chapter, and in previous chapters, I have suggested that in cases of child murder the role of father was often found wanting, whether the problem was one of desertion, domestic violence, alcoholism or child maintenance. The following chapter turns to focus on the paternal child murderer in the attempt to unpack the narrative conventions at work in the understandings of fathers who kill.

Chapter Four

In Father's Hands: Imagining the Paternal Child Murderer

A reading of the various Anglo-colonial texts which reflect late nineteenth and early twentieth-century perceptions of child homicide provides a strong impression that the murder of children was a woman's crime. As the previous chapters show, representations of child homicide in political, legislative and medical debate and in the contemporary popular print media focused almost exclusively on the female perpetrator. Typically these texts fixed their concerns on what was regarded as an archetype of child murder: the young, single mother who had been 'seduced' and deserted and had killed her child at birth. Rendered in a deeply sympathetic light, the infanticidal mother became a point of focus for anxieties about the corruption of young women and masculine depravity. This concentrated interest in the infanticidal mother has been attributed to a range of ideological factors, perhaps most revealingly by British historian Ann Higginbotham who suggests that in emphasising the actions of individual transgressing women, the focus was effectively deflected from the more complex social processes at work.¹ While this course may have rendered the understanding of child murder more intellectually manageable, the failure to account for those cases where perpetrators fell outside of the imagined paradigms both simplified and distorted the social realities.

Unlike maternal child murder, paternal child murder was never labeled as a social problem, nor was it recognised as a pattern to be addressed or openly discussed in the popular press and medical journals. This might be explained by the simple fact that the number of men charged with the suspicious deaths of their children in New Zealand was small, especially in comparison to women. However, as the court records demonstrate, fathers *were* charged and found guilty of killing their offspring. Despite the complexity of ideas which existed about fatherhood,

¹ Ann Higginbotham, 'Sin of the Age: Infanticide and Illegitimacy in Victorian London', *Victorian Studies*, 32:3 (Spring 1989), p. 337.

masculinity and crime, child murder was not a readily discernible motif within their conceptual framework, and consequently, no over-arching cultural narrative was available for contemporaries to draw on in their attempts to understand instances of paternal child homicide. The ways that these cases were articulated through the legal process are therefore significant for what they reveal about co-existing and rivaling cultural constructions of the child murderer.

This chapter examines some of the ways that fatal violence and paternity were understood within the structures of what was popularly understood to have been a woman's crime. It questions how the criminal justice system made sense of murders committed by fathers and how ideas about men's capacity for violence, or nurturing, were expressed in the trial setting. Beginning with a discussion of the quantitative evidence for cases of paternal child murder tried in the New Zealand courts, the chapter goes on to contextualise those numbers with a consideration of aspects of the role of nineteenth-century New Zealand fatherhood. In subsequent sections the investigation of case files from child murder trials continues. While the evidence here is narrower than in previous chapters, my readings of courtroom narratives deepen with the close examination of a small number of well documented trials, first taking those in which fathers were accused of the murder of their illegitimate newborn infants. The chapter then examines the interplay of cultural narratives in trials in which the question of sexual deviancy was in evidence. A final section investigates the use of the insanity plea in trials involving fathers who killed older children. Overall then, this chapter seeks to uncover the alternative narratives deployed in the 'imagining' of the paternal child murderer, and to examine their influence on the verdicts passed on those charged.

Fiends and Madmen: Fathers as Murderers

In New Zealand, as elsewhere, the great majority of those who stood trial for murder were men. Between 1872 and 1925, 173 men and 73 women were indicted and stood trial for murder in the Supreme Courts (See Table 2, below).² Moreover, men were twice as likely to be convicted of that crime as women: 42.0 per cent of men tried were convicted of murder in comparison to only 19.0 per cent of women. The percentage of men found insane when figures are taken from all murders stands at 10.4 per cent, around three per cent lower than the corresponding figure for women.³

² New Zealand criminal statistics suggest that many men and women apprehended or taken into custody on the suspicion of murder were not tried in court. In 1880 for instance, fourteen people were arrested on a charge of murder. Of those, only one man and three women were indicted, and only two women convicted (*Statistics of the Colony of New Zealand for the Year 1880*, Part V – Law and Crime, pp. 218 and 229). It should be noted that the use of the concealment of birth charge in cases of suspected neonaticide would have had some bearing on the smaller number of women indicted for murder.

³ Carolyn Conley's research into homicide trials in late nineteenth-century Britain found a greater disparity in the English figures, with 16.0 per cent of female killers being found insane compared to 6.0 per cent of males. The figures for the New Zealand context appear to be more in line with those of Scottish homicide trials in which men and women stood a roughly equal chance of being judged insane on a murder charge (Carolyn Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth-Century England, Ireland, Scotland and Wales* (Columbus: Ohio University Press, 2007), pp. 22-23).

Table 2: Total Indictments, Convictions and Findings of Insanity for Murder in the New Zealand Supreme Courts, 1872-1924.

Year	Indicted		Convicted		Found Insane	
	Men	Women	Men	Women	Men	Women
1872-74*	8	3	4	1	0	0
1875-79	22	10	10	3	0	3
1880-84	21	11	9	4	2	2
1885-89	16	7	10	0	1	2
1890-94	21	6	4	2	1	1
1895-99	21	7	6	2	3	0
1900-04	12	4	5	1	1	0
1905-09	18	10	7	1	2	1
1910-14	6	5	4	0	1	1
1915-19	13	4	6	0	2	0
1920-24	15	6	8	0	5	0
Totals	173	73	73 (42% of all men indicted)	14 (19% of all women indicted)	18 (10.4% of all men indicted)	10 (13.6% of all women indicted)
% all indictments	70.3%	29.6%				

(Statistics compiled from *Statistics of the Colony of New Zealand (1872-1924)*, Part V – Law and Crime).

*Differences in the collation of data in the statistical year books have prevented the disaggregation of murder indictments for the years 1870 and 1871. Otherwise totals are given for five yearly periods. In some years infanticides were listed separately despite being charged in the courts as murder. Where this is the case, these have been included in the total indictments for murder.

However, in cases where a child was the victim, the numbers present a different picture. Of the larger thesis dataset of 272 persons who were held in suspicion of a child's death between 1870 and 1925, men made up only 12.5 per cent of the total number.⁴ Within this period I have identified thirty-four incidences where men were either held to account in a New Zealand coroner's court, or charged with the murder, manslaughter or concealment of birth of a child in a court of law. Twenty-eight of these incidences involved fathers who were charged with killing or concealing the births of their own children.⁵ Fathers who stood accused of these crimes were primarily British migrants or Pākehā New Zealanders; only two men have been identified as being from another ethnic group.⁶ Occupations varied and included men labouring as roadmen, miners, slaughtermen and railway workers, as well as two land-owner farmers, a cabinet maker, and an accountant, which suggests that the class background of these fathers was diverse. Generally living within families, these men tended to be settled members of communities rather than peripatetic seasonal workers or transients.

Sentencing patterns, based on those fathers who were indicted on the deaths of their children, do not follow those of the general patterns for murder. While the small size of the sample makes it unreliable in a statistical sense, it nevertheless reveals some suggestive trends. Out of the twenty-eight apprehensions, seventeen fathers were indicted on a charge of murder. Of these, eleven were acquitted, and four (or 23.5 per cent) were found guilty and sentenced to hang (although two of

⁴ Since mothers committed the overwhelming majority of neonaticide offences and were the primary care givers of children such a pattern is not unexpected, although, as Jeffrey Adler's quantitative analysis of the nineteenth-century Chicago homicide log demonstrates, this pattern does not always follow. Adler's study shows that the gender of Chicago's child killers changed over time. Before 1890 women committed 69.0 per cent of Chicago's child homicides. However, in the last decade of the nineteenth century, men committed 84.0 per cent of the city's child homicides, compared to 31.0 per cent before 1890 (Jeffrey Adler, "My Mother-in-law is to blame, but I'll walk on her neck yet": Homicide in Late Nineteenth Century Chicago', *Journal of Social History*, 31:2 (Winter 1997), p. 261).

⁵ Unlike the figures presented in the previous chapter this number includes fathers implicated in the deaths of illegitimate as well as legitimate children. Three 'grandfathers' have been included among them, as in these cases there was a strong likelihood that the children killed were born of an incestuous relationship between father and daughter.

⁶ These men are Hirini Ngatimo Hohepa, 1908 (case file 127) and Fong Chong, 1888 (case file 9). Their cases are considered in the following chapter, which investigates the trials of Māori parents and migrants of visible ethnic minority groups.

these men had their sentences commuted to life imprisonment).⁷ In comparison, only three (or 3.70 per cent) of the eighty-one mothers who were indicted for murder were found guilty. It appears that juries were more able, or more willing, to find fathers guilty beyond reasonable doubt than they were mothers accused of similar crimes. However these figures also suggest that both men and women were far more likely to gain an acquittal for murder when the victim was their own child.⁸

Of particular note is that six fathers (or 40.0 per cent of those tried for murder) were found insane. This indicates that men were four times more likely to be found insane on a murder indictment if their child was the victim.⁹ The rate of insanity findings for maternal child murder (at 15.0 per cent) is much closer to that of all women tried for all murders (a difference of less than 2.0 per cent). This is probably reflective of the fact that the great majority of women's violent offending at this time involved child victims.¹⁰ Much has been written on the judicial tendency to find women defendants insane when charged with violent offences – an inclination which, from the turn of the twentieth century, increased markedly towards a distinct trend.¹¹ This scholarship, typified by Lucia Zedner

⁷ The two remaining fathers are Alfred Hellyer, 1907 (case file 104), who committed suicide while awaiting trial and Joseph Hall, 1881 (case file 122), whose case was declared a 'no bill'.

⁸ Carolyn Conley also found that English juries were less likely to convict parents indicted for the murders of their own children than those accused of killing adults or nonrelated children. Moreover, when English parents were convicted they received more lenient sentences than other murderers. In Scotland, on the other hand, the conviction rate for parents accused of killing their children was the same as for people accused of killing adults (Conley, p. 165).

⁹ Conley's research suggests that men and women who killed children in England and Wales were nearly five times more likely to be found insane than those who killed adults. In Ireland, they were twice as likely to be acquitted on the grounds of insanity, and in Scotland child-killers stood four times the chance of being found insane (Conley, p. 164).

¹⁰ See for instance Judith Allen's findings for late nineteenth-century Australia, which suggest that 80.0 per cent of murder indictments laid against women were for infanticide (Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990), pp. 29-30).

¹¹ Lucia Zedner plots this shift towards the medical/psychiatric interpretation of women's crimes such as infanticide (which she calls 'the most female of crimes') in *Women, Crime and Custody in Victorian England* (Oxford: Clarendon Press, 1991), p. 90. See also 'Women, Crime and Penal Responses: A Historical Account', *Crime and Justice*, 14 (1991), pp. 307-362. This idea of the 'medicalisation' of the laws relative to women's violent crime has been a focus for other feminist scholars working in this field. See for instance Katherine O'Donovan, 'The Medicalisation of Infanticide', *Criminal Law Review* (1984), p. 262, and Carol Smart, 'Disruptive Bodies and Unruly Sex: The Regulation of Reproduction and Sexuality in the Nineteenth Century', *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, edited by Carol Smart (London and New York: Routledge, 1992), p. 12; and Jill Newton Ainsley, "'Some Mysterious

and others, identifies gender itself as the important variable. However, the disaggregation of the New Zealand data by type of crime (or indeed, by victim) complicates the case for a simple gender dichotomy, suggesting that there may have been deeper processes at work when jurors had to assess the sanity of murdering parents.

Like women, men were more likely to be found guilty when charged with the non-capital offence of manslaughter: of the six tried under this charge, five were convicted and one was declared insane. Men received harsher sentences for manslaughter when compared to women sentenced under the same charge – two men received gaol sentences of seven years, and another of ten years.¹² Five men were tried for concealment of birth, either as a first charge or as a secondary indictment after a murder charge was found to be unsustainable, and again, comparatively long sentences are in evidence. Two men were found guilty of concealment: Chinese market gardener Fong Chong, who was tried alongside his English wife in 1888, received the maximum sentence of two years imprisonment with hard labour, and New Zealand born slaughterman Stuart Harland, who was also jointly charged, was sentenced to five years ‘reformatory detention’.¹³

As in the previous chapters, a feature of the material collected for cases of paternal child homicide offences is its uniformity over time. The textual evidence from court records and the reports of trials published in the popular press demonstrates that the same structures and tropes which can be discerned from the beginning of the period of this study continue to emerge in court trials through the Great War and into the mid-1920s. This feature is perhaps surprising given the context of shifting gender ideologies, and the instability of constructions of fatherhood, male violence and crime.

Agency”: Women, Violent Crime, and the Insanity Acquittal in the Victorian Courtroom’, *Canadian Journal of History*, 35 (April 2000), pp. 37-55.

¹² Hirini Ngatimo Hohepa, 1908 (case file 127) was imprisoned for ten years. Fred Wain, 1883 (case file 188) and William Tynan, 1914 (case file 110) were sentenced to seven years each. (There are differing reports as to whether Tynan was sentenced under a charge of manslaughter or attempted murder).

¹³ These cases will be explored at length in this and the following chapters.

Family Men

While notions of childhood and motherhood were undergoing the reconstructions described in the previous chapter, so too were notions of masculinity and fatherhood reconceived and recomposed during this time. British and American historians of masculinity who have charted the evolution of definitions of 'manliness' identify the late nineteenth and early twentieth century as the point at which there was a perceptible shift away from the 'cult of rugged masculinity' towards a new model of 'masculine domesticity'.¹⁴ Historical studies which focus on the middle class family, such as Leonore Davidoff and Catherine Hall's *Family Fortunes*, present evidence of men who, by the middle of the nineteenth century, were engaged with 'intense involvement' with their children.¹⁵ Erik Olssen and Andrée Lévesque have shown that the move towards companionate marriages, that has been traced elsewhere, was also clearly evident in New Zealand from the 1880s.¹⁶ This suggests that aspects of these middle class ideals were filtered down into the world of working class New Zealand families.

Jock Philips, in his influential study of the stereotype of the New Zealand male, *A Man's Country?* presents much convincing evidence to show that a new domestic ideal was at work from the 1880s and 'firmly established' by the 1920s; however, he stresses the tensions and conflict that this model brought to bear on New Zealand men and their families.¹⁷ Among the first to consider masculinity as a

¹⁴ Angus McLaren, 'Males, Migrants and Murder in British Columbia', *On the Case: Explorations in Social History*, edited by Franca Iacovetta and Wendy Mitchinson (Toronto and London: University of Toronto Press, 1998), p.159. See also Margaret Marsh, 'Suburban Men and Masculine Domesticity, 1870-1915', *Meanings for Manhood: Constructions of Masculinity* edited by Mark C. Carnes and Clyde Griffin (Chicago and London: University of Chicago Press, 1990) p. 112.

¹⁵ Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (London and New York: Routledge, 2002), p. 329.

¹⁶ Erik Olssen and Andrée Lévesque, 'Towards a History of the European Family in New Zealand', *Families in New Zealand Society*, edited by Peggy G. Koopman-Boyden (Wellington: Methuen, 1978), pp. 8-9, and Olssen, 'Families and the Gendering of European New Zealand in the Colonial Period, 1840-80', *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), pp. 37-62. For more on the 'emergence' of the companionate marriage see Robert Griswold, 'Divorce and the Legal Redefinition of Victorian Manhood', *Meanings for Manhood: Constructions of Masculinity*, edited by Mark C. Carnes and Clyde Griffin (Chicago and London: University of Chicago Press, 1990) p. 97; and Marsh, 'Suburban Men and Masculine Domesticity', p. 112.

¹⁷ Jock Phillips, *A Man's Country: The Image of the Pakeha Male – A History*, Rev. Edn (Auckland: Penguin, 1996), pp. 222 and 225.

social and historical construct, Phillips' 1987 study identifies the primary narrative surrounding the New Zealand male as pertaining to an idealised model of the rural, white 'pioneering' man, strongly bound to the land, and to the culture of labour and industry.¹⁸ Fundamental to the construction of this model are discourses of masculine homosociality or 'mateship', and independence from the 'feminizing' influences of domesticity.¹⁹ Phillips presents a sensitive and wide-ranging analysis of the stereotype, scrutinising its effect on the New Zealand male as worker, as sportsman, as soldier, as 'drinker', and as husband. The role of father, however, receives only the most cursory treatment in Phillips' study.²⁰ Nevertheless, there is a strong impression that for much of the twentieth century, New Zealand family men, subject to the pressures of two influential but deeply opposing ideals – that of the 'rugged individual' and that of the 'domesticated provider' – commonly made ambivalent parents.²¹

Accounts of fathers 'hovering in the margins' of family life and the domestic environment are certainly in evidence in the sources emanating from child homicide trials. In the 'Flanagan trial', discussed at length in Chapter Two, policeman Daniel Flanagan's claim that he was ignorant of the events surrounding his daughter's pregnancy and the birth and death of his grandchild, was widely accepted as plausible. Plausible too was Charles Dean's denial of any knowledge of the details of the baby farming business that was going on in the two-roomed

¹⁸ Phillips, pp. 38-42. Internationally, book-length monographs on the history of masculinity remained rare before the mid-1990s. Exceptions include Peter Stearns, *Be A Man! Males in Modern Society* (New York: Holmes and Meier, 1979); J. A. Mangan and James Walvin, eds., *Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800-1940* (New York: St. Martin's, 1987); Carnes and Griffen, *Meanings for Manhood* (1990); and Michael Roper and John Tosh, eds, *Manful Assertions: Masculinities in Britain Since 1800* (London: Routledge, 1991).

¹⁹ Matthew Bannister, 'Kiwi Blokes: Recontextualising White New Zealand Masculinities in a Global Setting', *Genders Online Journal*, Issue 42 (2005), retrieved online from <http://www.genders.org/g42/g42_bannister.txt> (accessed 13 June 2011). New Zealand historian Miles Fairburn also focused attention on the 'man alone'. His studies locate New Zealand men outside of the home and family, living as 'atomised' individuals and immersed in the worlds of trade and industry and same-sex mateship. See Miles Fairburn, *The Ideal Society and its Enemies: The Foundation of Modern New Zealand Society, 1850-1900* (Auckland: Auckland University Press, 1989) and *Nearly Out of Heart and Hope: The Puzzle of a Colonial Labourer's Diary* (Auckland: Auckland University Press, 1995).

²⁰ Phillips, pp. 234 and 236.

²¹ Phillips, pp. 252-260.

cottage he shared with his wife Minnie.²² Contemporaries readily accepted that Minnie Dean systematically murdered children in her care (as was commonly believed) without their ‘foster father’ raising any questions as to their welfare or whereabouts. Charles’ defence that the children in his household were of no concern to him is comprehensible only if we allow as feasible the *idea* of completely ‘separate spheres’ between men and women within families. Courtroom testimony from trials such as those of the Flanagans and Minnie Dean, or of John Sharp, whose case is described later in this chapter, demonstrate that some men did conform to dominant constructions of the father’s role as distant (even disinterested) provider, or lived up to the negative stereotypes of irresponsible wife deserter, authoritarian disciplinarian or drunken and loutish bully.²³ But such records also provide glimpses of the ‘intense involvement’ uncovered by Davidoff and Hall, demonstrating examples of men being positively active in their children’s lives – as nurturing fathers to their own legitimate and illegitimate offspring, or as affectionate and concerned stepfathers and foster parents.²⁴

Illegitimacy and Infanticide

Despite recognition by scholars that the nineteenth and early twentieth-century father constituted a deeply ambiguous figure, a historical focus on those men who were reluctant to take on the paternal role provides the impression that few men who were the genetic fathers of illegitimate children were expected or prepared to be fathers in the social sense. Bronwyn Dalley, for instance, insists that in the nineteenth century, ‘[s]ingle motherhood was female business, something to

²² The *Timaru Herald* reported that as there was ‘not a tittle of evidence’ against the husband, he was allowed to leave the court ‘without a stain on his character’ (‘Why Charles Dean was Discharged’, *Timaru Herald*, 13 June 1895, p. 4). Aspects of this case are investigated in Chapter Six.

²³ Other examples of these negative stereotypes can be found in the trial records of John and Mary Ann Clarken, Alexander and Caroline Fleming and Caroline Whitting, whose cases were described in the previous chapter.

²⁴ Some examples include the trials of Robert Hodgson, 1925 (case file 154) and Harry Keogh, 1924 (case file 153), described later in this chapter. See also the testimony of foster father Richard Burns (*R v Carrick*, 1918) in ‘Who Murdered Donald Lewis Carrick?’ *NZ Truth*, 23 February 1918, p. 5.

concern women and their families rather than men'.²⁵ Patricia Crawford, referring to an earlier period, asserts that, 'even the bare minimum of responsibility', in the form of maintenance payments from putative fathers, 'had to be enforced in many cases'.²⁶ However, Fiona Kean's research into the use of, and responses to, maintenance proceedings in the New Zealand context demonstrates that while this still held true to some extent early in the twentieth century, 'the majority' of fathers of illegitimate children in her study were actively involved in formally acknowledging their paternity and upholding their financial responsibilities.²⁷ Moreover, Kean's evidence of the families of putative fathers caring for or providing financial support for their illegitimate offspring is suggestive of wider-ranging expectations of paternal responsibility.²⁸ Statistics for marriage patterns also indicate that many men took their paternal responsibilities seriously. At least from early in the twentieth century, it seems that marriage was the most common response when sexual relations outside of marriage led to an unplanned pregnancy. The New Zealand Official Year Book first began collating statistics on ex-nuptial conceptions in 1913. In that year it was recorded that 62.0 per cent of women under twenty-one gave birth within seven months of marriage, and 42.0 per cent of those between twenty-one and twenty-four had babies born within the seven month mark.²⁹

Whatever the level of involvement in their children's lives, for most men childbirth remained an esoteric part of the female domain, unless emergencies, remoteness, or secrecy forced them to become involved in the birth of their children.³⁰ As a corollary, fathers were considerably less likely than mothers to be directly implicated in the deaths of newborn children. Nevertheless, as my figures

²⁵ Bronwyn Dalley, 'Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-Century New Zealand', *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), p. 77.

²⁶ Patricia Crawford, *Parents of Poor Children in England, 1580-1800* (Oxford and New York: Oxford University Press, 2010), p. 75.

²⁷ Fiona Kean, 'Illegitimacy, Maintenance and Agency: Unmarried Mothers and Putative Fathers in Auckland, 1900-1910 (MA thesis, University of Waikato, 2002), p. 120.

²⁸ Kean, p. 92.

²⁹ Claire Wood, "'Bastardy Made Easy"? Unmarried Mothers and Illegitimate Children on Charitable Aid – Dunedin 1890-1910', (BA (Hons) dissertation, University of Otago, 1990), Table 5, pp. 9-10.

³⁰ Caroline Daley, *Girls and Women, Men and Boys: Gender in Taradale, 1886-1930* (Auckland: Auckland University Press, 1999), pp. 17-18.

show, some fathers were found to have assisted with secret births and infanticides, and were brought before the courts on charges of murder. Twelve (or 42.0 per cent) of the twenty-eight fathers I have identified as being accused of the murder, manslaughter or concealment of a child between 1870 and 1925, were involved with the death of a newborn illegitimate infant.

Twenty-four-year-old Stuart Harland was among the six of these men who were charged alongside their wives or ‘sweethearts’. Stuart had been married to nineteen-year-old Heatherbelle for just over a month when they were both arrested on the suspicion of infanticide in 1922.³¹ The couple had left their home in Bluff for several weeks and rented an upstairs room in Laura Mould’s boarding house on Dundas Street in Dunedin. Soon after they returned home to Bluff, seven-year-old Neil Harris discovered a parcel under a bush across the road from the boarding house. Wrapped in a piece of tablecloth, a bloodied towel and two layers of brown paper, he found the body of a baby girl – her throat tightly bound with packing tape secured with a granny knot at the front.³²

An address found on one of the brown paper layers led police to Mrs Mould’s boarding house, and an inspection of the room previously occupied by the Harlands revealed an array of incriminating evidence. Bloodied sheets, towels and clothing had been rolled up and hastily hidden, and a bolt of the same tape as that found around the child’s neck was discovered with ‘a slight bloodstain at the end’ where it had been torn from the roll.³³ The signed deposition of William Evans, the medical practitioner who examined the infant’s body, records his findings in a resolute manner. It states: ‘I am of the opinion that the child was a fully developed one. That it proceeded in a living state from the body of its mother and that the cause of death was asphyxia following strangulation’.³⁴ However, during the murder trial neither the presiding judge, Justice Hosking, nor the men of the Dunedin Supreme Court jury were ready to accept the doctor’s ready assurance that a homicide had been committed. Avoiding a verdict that might consign the

³¹ ‘Certificate of Marriage’, Criminal Files DAAC D256, file 442ae, Supreme Court Dunedin – Indictments – Stuart Cecil Harland and Heatherbelle Harland 1922, Archives New Zealand, Dunedin.

³² Testimony of William Evans, Harland Criminal Files, p. 5.

³³ Testimony of Detective Beere, Harland Criminal Files, p. 14.

³⁴ Testimony of William Evans, Harland Criminal Files, p. 6.

young couple to capital punishment, the jury, at Justice Hosking's direction, turned instead to the 'born-alive ruling', and acquitted them both on that point of law.³⁵

R v Harland
Are you satisfied beyond
reasonable doubt that
the child in question
met its death after it
had completely
proceeded in a living state
from the body of its
mother SH

Figure 9: Jury Response - Harland Trial (1922).

The jury trying the Harlands for murder responded in the negative when asked if they were 'satisfied beyond reasonable doubt that the child in question met its death after it had completely proceeded in a living state from the body of its mother' (Criminal Files, DAAC D256, File 442ae, Supreme Court Dunedin – Indictments – Stuart Cecil Harland and Heatherbelle Harland 1922, Archives New Zealand, Dunedin).

In an unusual move the couple were charged again under the little used section 220 of the Crimes Act 1908, suggesting that the Crown were convinced that a

³⁵ 'Harlands Hit Hard: End of Notorious Case', *NZ Truth*, 18 November 1922, p. 6. The Harlands were fortunate in their defence counsel, celebrated lawyer A.C. Hanlon, who, with the presiding judge, put this defence forcefully to the jury early in the trial. Crucially, Justice Hosking also chose to exclude a vital piece of evidence pertaining to 'certain admissions made by the male accused when shown the bloodstained clothing' ('Murder Trial Collapses', *NZ Truth*, 19 August 1922, p. 5).

more serious offence had been committed than concealment.³⁶ This section stated that: ‘Everyone is liable to imprisonment for hard labour for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such a child had been born’.³⁷ But even without the spectre of capital punishment, the second jury hesitated to find Stuart and Heatherbelle guilty of the crime for which they were tried. The judge at a third trial in which the couple were tried for the concealment of the birth of their child, registered his dissatisfaction with the proceedings thus far. He said:

I must assume that the [first] jury thought either that a complete birth had not been proved or else that some other person ... had strangled your poor baby – the jury in the second trial may have concluded the child was killed after it had become a human being, or that some other person had murdered your child. How anyone could have strangled your child, I cannot conceive.³⁸

The third jury conceded that Stuart and Heatherbelle were guilty of concealment of birth, but added a strong recommendation for mercy on behalf of the female accused on account of her youth. However, the sentence laid down by the judge suggests that he did not share the jury’s desire for clemency. Noting that the provisions of the Criminal Code Act 1908 only allowed for a maximum period of two years’ incarceration on a charge of concealment, he turned instead to the Crimes Amendment Act 1910, which, he told the court, ‘gives me, as a Judge, the power to impose a sentence of reformatory detention not exceeding ten years’.³⁹ Apparently aware that he was running counter to popular opinion he stressed: ‘Were I to unduly extend the term of reformatory detention it might be thought that I was punishing you for a crime of which you had not been found guilty’. By

³⁶ This is the only incidence that I have come across where this section of the act was utilised after a murder charge had failed.

³⁷ *Statutes of New Zealand*, 1908, No. 32, Crimes Act, section 220, p. 609. The crime of abortion was dealt with separately in sections 221-223 of the Crimes Act.

³⁸ ‘Harlands Hit Hard: End of Notorious Case, *NZ Truth*, 18 November 1922, p. 6.

³⁹ *Ibid.*

way of compromise, Stuart was sentenced to five years reformatory detention and Heatherbelle was to be detained for a period of two and a half years.⁴⁰

Any motivation for the secrecy in which the couple surrounded their daughter's birth, or for the disposal of her body in such a manner, is not made clear either in the case notes or the newspaper coverage of the Harland trials. It may have been that the child was not fathered by Stuart, or that the couple did not wish to answer questions about a child born so soon after their marriage. One possible motivation for murder was suggested during the first trial when boarding house keeper, Mrs Mould, testified to a conversation in which Stuart Harland stated that he and his wife wished to be free to travel around the country unencumbered by a child.⁴¹ While the incentives to murder were not as clearly drawn as those in cases of abandoned single women, the reluctance of the three juries to condemn the actions of the young newlywed couple suggests some level of empathy with any possible motive.

The same eagerness to overlook condemnatory evidence that the juries demonstrated in the Harland trial was evident in other cases where young couples were suspected of causing the deaths of their illegitimate newborns. In a strikingly similar case in 1909, Alice Shepherd and John Cline were arrested when a young boy fishing for eels found an infant's body in a game-bag weighted with stones, in a Woodville creek.⁴² At the couple's trial for murder, the jury was provided with a full confession. Alice had told the arresting officer that John was with her in the rented room of a boarding house when she gave birth, and watched as she strangled their newborn son by binding tape tightly around his neck. She said that John had then taken the baby's body away in a bag.⁴³ Despite this startling confession and evidence provided by a shop owner that the game-bag that held the child's body had been recently purchased by John himself, the couple were acquitted on all charges.⁴⁴

⁴⁰ Ibid.

⁴¹ 'Murder Charge Thrown Out', *NZ Truth*, 16 September 1922, p. 4.

⁴² 'Napier Assizes', *Nelson Evening Mail*, 30 June 1909, p. 3.

⁴³ 'Alleged Murder', *Otago Witness*, 7 June 1909, p. 12.

⁴⁴ Ibid.

In a case tried seven years earlier, in 1902, the remains of a newborn male infant were uncovered in the furnace of a boiler in a Masterton butcher's shop. The case against Thomas Murcott, who was employed there as a butcher's assistant, and his twenty-year-old 'sweetheart' Katherine Alexander, did not even make it to court. Despite strong suspicions to the contrary, the case for murder was declared a 'no bill' when it was claimed that the poor condition of the bodily remains left insufficient hard evidence to try the couple.⁴⁵

A Dunedin jury demonstrated a similar reluctance to condemn the young ploughman Joseph Valentine, who was tried alone for the murder of his illegitimate son in 1888.⁴⁶ Under pressure from the maternal grandparents to find a home or otherwise provide for the child, Joseph took the week-old baby from its mother at nine o'clock in the evening, with the claim that he was taking him to his sister's house nearby. Instead, he rode with the child, on horse-back, thirteen miles to the Clutha River – a trip that was later explained by his sudden recollection of a debt that was owed to him from someone in the area. Stopping to rest at the river, he allegedly dismounted, stumbled in the dark, and dropped the bundled infant. He then claimed that the baby 'rolled down the bank of the river, and was carried away'.⁴⁷ He told the court that he had waded into the water but found only the shawl that the child had been wrapped in.⁴⁸

However, Police Constable James Pratt testified that after a thorough investigation of the scene where the accident was said to have taken place, he was 'thoroughly satisfied that no person had been in that particular spot for a week previous'.⁴⁹ If any person had been in the river, he claimed, they 'could not have got out without making marks or leaving a trace.'⁵⁰ Furthermore, he argued that 'the accused could not have gone down the river bank as he stated, to look for the child, on

⁴⁵ 'Inquest on the Body of an Infant', *Thames Star*, 30 January 1902, p. 2, and 'Supreme Court', *Bush Advocate* (Nelson), 7 May 1902, p. 2.

⁴⁶ 'The Balclutha Infanticide Case', *Marlborough Express*, 15 January 1889, p. 4.

⁴⁷ 'The Alleged Infanticide', *Southland Times*, 11 January 1889, p. 2.

⁴⁸ *Ibid.*

⁴⁹ Testimony of James Pratt, Criminal Files DAAC D256 291 File 10, Joseph Valentine 1888, Archives New Zealand, Dunedin.

⁵⁰ *Ibid.*

account of a projecting rock more than two or three yards'. He concluded: 'I am satisfied that the accident as described never happened at this spot'.⁵¹

Robert Stout, acting in defence of Joseph Valentine, rested his case on the claim that as no body had been recovered, the death of the child could not be proved.⁵² Without a body, the account of the accused man was the only evidence that a death had taken place, and that account held that 'the occurrence was accidental'.⁵³ Stout conceded that the prisoner had 'acted in a very stupid manner', but, as he pointed out, the evidence of his actions only served to prove that 'he was a particularly stupid man'.⁵⁴ The jury appeared to accept this strangely circular logic – Joseph Valentine was acquitted of the charge of murder, and released.

Despite evidence which, on the surface, appears deeply suspicious to say the least, all of these young fathers were found not guilty of having a part to play in the deaths of their newborn infants.⁵⁵ In earlier chapters I have shown that when single mothers were tried alone, blame and censure could be deflected from them onto the shady figure of an imagined male antagonist. However, when fathers were present in the courtroom, they seldom equated with any popular stereotype. These men had not seduced unwitting girls, and cowardly abandoned them to their fate, but had formed mutual relationships and shared in the consequences of their choice to destroy their infants. Such men held a deeply ambiguous position in the cultural imagination, which served to confound any clear interpretation of their acts. The discourse of innocence, naiveté and desperation which is evident in the trials of single women charged with infanticide offences, is entirely absent in the case notes and media reportage of paternal infanticide. Nevertheless, while few attempts to contextualise events are apparent in these cases, it seems that young single fathers were similarly treated with extreme leniency by sympathetic juries and compassionate judges.

⁵¹ Ibid.

⁵² 'The Balclutha Infanticide Case', *Marlborough Express*, 15 January 1889, p. 4.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ In fact, of the twelve men tried over the deaths of newborn infants, only one was found guilty of murder and two found guilty of concealment of birth.

With a dearth of available cultural narratives to draw on, contemporary observers of other case trials looked elsewhere for stories to help them make sense of the incomprehensible. As the previous chapters show, narratives of innocent girls falling prey to the sexual depravity of men were everywhere apparent. The fictive imaginings of melodrama can be clearly discerned in cases where murdering fathers further transgressed into crimes of sexual immorality. The following case trial suggests that, in such incidences, there was less uncertainty as to how the infanticidal father might be imagined and how he should be dealt with by the law.

Child Murder and Sexual 'Deviancy'

Martin J. Wiener has described how the changing ideologies of the nineteenth century had their corresponding effects in the British criminal justice system.⁵⁶ It was during this time, he argues, that the eighteenth-century notion of the 'man of honour' was giving way to that of the 'man of dignity'.⁵⁷ The traits of 'reasonableness, forethought, prudence and self command' that such a man required, meant that visible masculine aggression came to be met with increasing disapproval and 'treated with ever greater severity'.⁵⁸ The focus in what Wiener refers to as 'the nineteenth-century war on interpersonal violence' quickly moved from violence between men, to that carried out by men against women.⁵⁹ As Wiener writes:

From newspapers and magazines to fiction to politics to the administration of the law, violence against or even serious mistreatment of women was being regarded more gravely and argued about more intensely.⁶⁰

⁵⁶ Martin J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004).

⁵⁷ Wiener, p. xii.

⁵⁸ *Ibid.*

⁵⁹ Wiener, p. 35. Wiener maintains that few prosecutions for rape or sexual assault were tried in British criminal courts before 1820 (Wiener, p. 38).

⁶⁰ Wiener, *Men of Blood*, p. 38.

However, ‘the greatest “villain” of the Victorian public imagination’ was a role that was reserved for the sexual predator.⁶¹ Judith Walkowitz has shown the impact of the urban legends surrounding ‘Jack the Ripper’ on the cultural imaginary of Victorian London, and the significance of their part in the formation of late nineteenth-century narratives of sexual danger.⁶² The hysteria evoked by the Whitechapel murders, along with a corresponding media-driven fear of sexual vice, fed directly into the shifting ideologies on crime, prompting middle and upper class Victorian men and women to actively seek to protect all women from ‘deviant’ forms of sexuality.⁶³ Similar concerns can be detected in New Zealand in the second half of the nineteenth century, beginning with the enactment of ‘rape, abduction and defilement of women’ provisions in the Offences against the Person Act, 1867. A perceived increase in sexual violence against women during the 1860s provided the motivation for this legislation which made rape, attempted rape, indecent assault and ‘carnal knowledge’ illegal.⁶⁴

To understand the roles that were either appropriated by or attributed to men accused of such crimes, Angus McLaren argues that it is necessary to turn to the ‘standard cast of male characters’ that were popularly portrayed in contemporary melodramatic plays and novels.⁶⁵ Like McLaren, I contend that in the ‘theatrical environment’ of the nineteenth-century and early twentieth-century courtroom, a combination of fact and melodramatic fantasy worked together to influence the outcomes of trials involving ‘deviant’ sex and murder.⁶⁶ The 1876 trial of William Woodgate, the only man in New Zealand to be hanged for the murder of his own child, was directed in just such a way.

William Woodgate, an immigrant from Devonshire, England, and an ex-master mariner, was charged at the Blenheim Supreme Court with murdering his

⁶¹ Wiener, *Men of Blood*, p. 135.

⁶² Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late Victorian London* (Chicago: University of Chicago Press, 1992), p. 2.

⁶³ Walkowitz, pp. 6-7.

⁶⁴ *Statutes of New Zealand*, 1867, No. 5, Offences against the Person Act, sections 48-52, pp. 64-65.

⁶⁵ Angus McLaren, *Trials of Masculinity: Policing Sexual Boundaries, 1870-1930* (Chicago: Chicago University Press, 2008), p. 16.

⁶⁶ McLaren, *Trials of Masculinity*, p. 37.

newborn illegitimate son at Resolution Bay in Queen Charlotte Sound.⁶⁷ Rumour and gossip had been circulating about the details of the case from the time of the man's arrest. From the beginning, the question of incest figured centrally. A full month before the Supreme Court trial the *Marlborough Express* told its readers:

FROM Picton we hear that most terrible disclosures have been made of a course of immorality and crime rarely paralleled, if true. At present all we have to go upon is hearsay. It appears that a man named Woodgate, residing near the mouth of Queen Charlotte Sound, had a brother who died some time ago, leaving a wife and two daughters. It would appear that Woodgate thereupon took all three to wife, and the illegitimate children resulting from this incestuous intercourse have been destroyed. Each of the females are said to have borne children, who have been destroyed by dashing them to pieces against the stones! Owing to a quarrel among the parties at the late ragatta, some of the persons concerned informed the police, and the man Woodgate was brought before the Bench at Picton on Monday last, charged with murder, and remanded till Saturday next. Mr Conolly represents the police in the matter, and Mr Rogers is retained for the defence.

Figure 10: 'The Late Fire', *The Marlborough Express*, 8 November 1876, p. 5. The *Express*' early report on the incident was gleaned from local 'hearsay'.

The case as set down at the Supreme Court by the Crown prosecutor, Mr Conolly, retained much of the article's sensational nature.⁶⁸ Mr Conolly claimed that some time after settling his farm on a remote part of the Sound, William had moved his brother's widow, Jane, and her two young daughters, Elizabeth and Susan, into his home. Two children, fathered by William, were born to Jane before she died of an unspecified illness.⁶⁹ Conolly informed the court that 'shortly after the death of

⁶⁷ 'R v. W.H. Woodgate', Reports of Cases Determined by the Court of Appeal of New Zealand, Vol. II, 1875-77, edited by Alexander J. Johnston (1877), p. 321.

⁶⁸ Ibid.

⁶⁹ Ibid.

the mother [the prisoner had] commenced a criminal intercourse' with the younger of his two nieces.⁷⁰ That child, Susan, would then have been around twelve years old. Susan alleged that she was pregnant by the age of fourteen, and that the baby, delivered by William himself, had been taken away by him and was not seen again. In the words of Mr Connolly, 'no charge was then made against the prisoner and he continued his career of vice, and the girl was again pregnant'.⁷¹ This time there was a witness to her pregnancy outside the home. A Māori woman, the wife of a trader, spoke briefly to Susan while her husband and William were doing business. She took note of the girl's condition, and later when she met with the girl's maternal grandmother at a local 'Māori wedding', passed the information on.⁷²

The girls' maternal grandfather James Heberley sailed out to the remote homestead at Resolution Bay with two of his adult sons to confront William, but they were told by Elizabeth that Susan was away, nursing a woman in Tikorangi.⁷³ Some months later Elizabeth took an opportunity to escape the remote farm, informing her grandparents that she had been held there against her will. She told them that on the occasion of her grandfather's visit she had been forced to lie: Susan, then less than a week away from labour, had been hidden away in a back room.⁷⁴ When William next sailed into Picton on business he was confronted by Susan's maternal uncle, John Heberley, who charged him not only with immoral behaviour but with the murder of Susan's child.⁷⁵ William Woodgate's arrest soon followed.

Sixteen-year-old Susan Heberley made an ideal prosecution witness. Described as 'a rather good-looking girl', she reportedly gave her evidence with 'remarkable coolness and child-like simplicity'.⁷⁶ Indeed, her testimony as it reads is lucid and credible. She described how she was made to kneel on a piece of sacking on the

⁷⁰ 'Alleged Murder', *Marlborough Express*, 15 November 1876, p. 7.

⁷¹ *Ibid.*

⁷² 'Resident Magistrate's Court', *Marlborough Express*, 22 November 1876, p. 7.

⁷³ *Ibid.*

⁷⁴ '*R v. W.H. Woodgate*', *Reports of Cases*, p. 325.

⁷⁵ 'Resident Magistrate's Court', *Marlborough Express*, 22 November 1876, p. 7.

⁷⁶ 'Alleged Murder', *Marlborough Express*, 15 November 1876, p. 7.

floor of her uncle's bedroom throughout the six hours of her labour, with her face against the wall.⁷⁷ She claimed that William told her he would smother the baby as soon as it was born, and that 'after the pain had left her', she heard the baby cry loudly once, and then go silent.⁷⁸ She then heard William leave the house and not return till the following morning. Both sisters alleged that they looked for the baby's body for several days but found no trace. They further alleged that their uncle threatened to shoot them on several occasions and that he warned he would do so if they ever told anyone of what had transpired.⁷⁹

Nonetheless, counsel for the defence, Mr Rogers, appears to have been assured of a favourable outcome for his client. He called no witnesses for the defence, submitting that there was no actual evidence of murder having been committed.⁸⁰ The entire case, he pointed out, rested shakily on the testimony of two illiterate girls. Furthermore, accepting the supposition that a child had been born to Susan Heberley, and that that child could not be accounted for, the charge of murder against William lay entirely in his alleged confession to Susan that he planned to smother the child. Mr Rogers pointed to an English precedent in which it was ruled that a prisoner might be convicted on his own confession, but only when backed by independent corroborative evidence.⁸¹ However, as Mr Rogers went on to show, evidence against Woodgate was entirely lacking, as the body of the child had not been found.

A further point submitted to the jury for consideration, given that the child had existed, was this:

Supposing that [the] prisoner smothered it, was this newly born child such a person as to be capable of being murdered? It was not capable of being murdered if it had not a separate existence from its mother. If it

⁷⁷ 'R v. W.H. Woodgate', Reports of Cases, p. 322.

⁷⁸ 'R v. W.H. Woodgate', Reports of Cases p. 332.

⁷⁹ 'R v. W.H. Woodgate', Reports of Cases, pp. 322, 324, 326, and 327.

⁸⁰ 'Supreme Court Sitings: The Woodgate Murder', *Marlborough Express*, 9 December 1876, p. 6.

⁸¹ This was referred to as 'Wheeling's Case' (William Oldnall Russell, *Russell on Crimes and Misdemeanours*, Vol. 3 (London: Stevens, 1865, p. 366).

was killed before it was actually separated from its mother the person killing it was not guilty of murder.⁸²

The 'live-born ruling', so successfully utilised in the defence of others tried for newborn child murder during this period, held particular relevance in this case. Susan herself testified that she had been on her knees with her face against the wall as the baby was born and that she never saw the child at any time. She stated further, that she 'could not tell whether the child was completely born or not when it cried'.⁸³ It was therefore left to the prosecution to satisfy the jury beyond reasonable doubt that not only had there been a child born to Susan Heberley, and that it had died at the hands of the defendant, but that it had not died while still in the process of being born. To conclude his argument for the defence, Mr Rogers reminded the jury that although the case was 'undoubtedly one of shocking depravity, they must not look at it from a moral point of view. They were there to try the prisoner for murder, not for immorality'.⁸⁴

A report in the *Marlborough Express* claimed that the general impression among those in the courtroom was that after hearing the judge's summing up of the case, 'the jury would find the prisoner guilty, not of wilful murder, but of a lesser offence, namely the secret disposition of the body of the child'.⁸⁵ Instead, the Blenheim jury returned a verdict of guilty on the capital offense of murder and William Woodgate was sentenced to be hanged.

In a court of appeal hearing which caused a minor sensation in legal circles, the jury's guilty verdict was upheld.⁸⁶ Court of Appeal Judge, Justice Johnston was roundly criticised for not giving an impartial hearing to the case, apparently exhibiting a 'high degree of impatience' towards any argument used 'in favour of the prisoner'. Moreover, the judge was said to have read out a written decision dismissing the appeal, which had been prepared even before the hearing had taken

⁸² 'Supreme Court Sittings: The Woodgate Murder', *Marlborough Express*, 9 December 1876, p. 6.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ 'The Woodgate Murder', *Marlborough Express*, 6 December 1876, p. 5.

⁸⁶ 'R v. W.H. Woodgate', Reports of Cases, p. 320.

place.⁸⁷ Individuals outside of the judiciary also held grave reservations about the verdict and the carrying out of the sentence on William Woodgate. A large petition demanding a commutation of the death sentence was raised by the people of Picton, and signed by those who suspected a miscarriage of justice, as well as those who were morally or philosophically opposed to capital punishment.⁸⁸ However, according to an article published in the *Wanganui Chronicle*, the feelings of local signatories were decidedly mixed. The reporter declared:

Had the prisoner been a stranger ... the feeling would have been altogether different, but he was a man well known, and, previous to the committal of the offence for which he was about to suffer the extreme penalty of the law, was thought to be a hardworking [sic], as he was known to be a hospitable man. ... The offence was partly forgotten in the thought of the penalty about to be exacted, and, while all condemned the crime, many there were who had a strong feeling of sympathy for the perpetrator.⁸⁹

Sympathy for the condemned man turned to hostility towards the agents of the law, when the petition was rejected and a hangman was brought in from Blenheim to carry out the execution at the Picton Gaol. Indeed, the level of antagonism in the town persuaded the executioner to 'alter his mind', and only with some difficulty was a second man engaged to carry out the sentence.⁹⁰ William Woodgate was hanged at 6.20 am on the 25th of January 1877, and his body was buried within the precincts of the Picton Gaol.⁹¹

Such an outcome on a charge of newborn child murder was atypical to say the least, particularly in a case based entirely on circumstantial evidence. Held in

⁸⁷ 'Friday, May 4', *Evening Post* (Wellington), 4 May 1877, p. 2.

⁸⁸ Another compelling reason for signing was offered by Crown Prosecutor, Mr Conolly, who himself signed the petition for commutation, citing 'an especial aversion to our town being the scene of an execution, and especially of that of a man who had lived for many years in the neighbourhood' (Mr Conolly on the Woodgate Case', *Marlborough Express*, 17 February 1877, p. 7).

⁸⁹ 'Execution of Woodgate', *Wanganui Chronicle*, 5 February 1877, p. 2.

⁹⁰ Wellington's *Evening Post* records that the people of Picton 'hissed the would-be hangman through the town, and fairly frightened him out of his purpose' (*Evening Post*, 25 January 1877, p. 2).

⁹¹ 'Execution of Woodgate', *Wanganui Chronicle*, 5 February 1877, p. 2.

comparison with other incidents where men and women were charged with the deaths of their illegitimate infants it is fair to conclude that William Woodgate was tried by a jury who were negatively biased against him and a partial court of appeal judge. While Picton locals and ‘friends’ of the accused man attempted to construct an image in the language of positive masculinity, insisting on his ‘hardworking’ and ‘hospitable’ nature, I suggest that the ease with which he could be imagined as a murderer of newborn babies depended on the overriding representation of him as a sexual deviant.

Sexual offences were not punished capitally, but that they constituted the crimes most abhorrent to society is evidenced by the kinds of sentences that were handed down by the courts and the language used to describe offenders. Those accused of such crimes as sodomy, sexual assault, child molestation, bestiality and incest, were framed in inhuman terms. The *Auckland Observer*, commenting on the sexual assault of a twelve-year-old girl in 1882, declared:

[T]here is only one kind of punishment that appeals directly to [the] senses ... of such inhuman monsters ... Brutalised to the level of a beast, they must be treated as a ferocious animal. The remedy is the lash, applied unsparingly at intervals during a term of imprisonment.⁹²

The punishments for sexual assault, which had been set down in the Offences against the Person Act 1867, were amended the following year to strengthen sentences from two years imprisonment, to seven years with provisions for solitary confinement and flogging.⁹³ The incest taboo was strongly held, and any breach was punished harshly. Legislation which made incest a separate crime was introduced in New Zealand with the Crimes Amendment Act 1900, in the wake of pressure from the Society for the Protection of Women and Children.⁹⁴ However, the crime of incest was regularly dealt with by the New Zealand courts before this

⁹² ‘Assaults on Women’, *Observer* (Auckland), 3 June 1882, p. 179.

⁹³ *Statutes of New Zealand*, 1868, No. 20, Offences against the Person Amendment Act, p. 127. The flogging provision allowed for some discretion of the court on the instrument to be used and the number of strokes to be ‘awarded’. The act suggests that the offender be ‘once, twice or thrice privately whipped’ with the maximum number of strokes not to exceed fifty at each whipping.

⁹⁴ Jeremy Finn, ‘The Legal Environment of Salmond’s Time’, *Victoria University of Wellington Law Review*, 38 (2008), p. 695. Sir Robert Stout, the lawyer who had so deftly defended Joseph Valentine in 1889, tried, in his role as Member of Parliament, to include a separate provision in the 1893 Criminal Code Act. However, his bill was left to flounder after its second reading.

time, under the terms of the Offences against the Person Act 1867 and the Criminal Code Act 1893.⁹⁵



Figure 11: 'The Minotaur Menace', *NZ Truth*, 1913

That incest clearly evoked the nightmare of bestial depravity can be seen in this image from the *NZ Truth*. The nineteenth-century tropes of animalistic males and their defenceless female victims were still evident into the twentieth century. In this case Justice Edwards is portrayed as shielding a young woman from her inhuman attacker. The image was published after the judge handed down four sentences of flogging in one sitting. All were for sexual offences and two were cases of incest.

In any murder trial, competing stories and truth claims circulated within the courtroom and through the popular media. The mode of emplotment adopted throughout the trial of William Woodgate was that which allied most closely with melodramatic convention. It was a sordid story of deviancy, sexual slavery, and brutality, with clear lines drawn between victims and villain. The weight of these cultural tropes and structures effectively precluded other possible readings of the events which occurred at Resolution Bay. In this narrative the dead child of William Woodgate and Susan Heberley was reduced to little more than the

⁹⁵ The Criminal Code Act 1893 included punishments for rape and the 'defilement of children' which were set at a maximum of life imprisonment with hard labour and flogging (*Statutes of New Zealand*, 1893, No. 56, Criminal Code Act, sections 192 and 194, p. 358).

mechanism by which the discourse of immorality was transmitted. In the midst of all this testimony it is possible to forget that the man was tried for infanticide and not for his sexual crimes against his young niece. Indeed, the prisoner himself, by his own admission was resigned to being punished for a crime other than the one he had been charged with. William's own account came to light only after the trial had concluded. He claimed that the baby boy had been stillborn and that the murder story had been invented by the two girls who 'wished him ill'.⁹⁶ This was the version of the events that he held onto right up to his execution. To the priest who was assigned to him in his last few days, William was said to have insisted that 'while not guilty of murder, of everything else attributed to him he was guilty, and deserved the punishment accorded to him'.⁹⁷

The stock stories of nineteenth-century melodrama in which defenceless women suffered the attentions of rapacious and violent men could be fundamental to the understanding of murders in which sex crimes were involved, as cases in the following chapter will further demonstrate. However, when men whose life stories conformed more closely to moral expectations were on trial for their lives, the mitigating language of insanity was more often in evidence in the narrative construction of their crimes.

Insanity

The popular understanding of child murder as a woman's crime resulting from temporary insanity brought on by the biological disturbances of childbirth or lactation could not be readily transferred into accounts of men killing their children. However, the willingness to understand such violent offenders as mentally ill was not solely reserved for women.

The question of insanity was considered as a mitigating or explanatory factor in eleven (or 39.0 per cent) of the twenty-eight homicide incidences in this study involving fathers. In six court trials such men were acquitted of their crimes by reason of insanity. In cases where there had been no previous history of madness,

⁹⁶ 'Execution of Woodgate', *Marlborough Express*, 27 January 1877, p. 6.

⁹⁷ *Ibid.*

these men were presented as suffering under some form of ‘temporary’ insanity. The counsel for the defence in these cases usually explained their extraordinary actions as being provoked by depression, physical exhaustion or emotional confusion. While it was true that men had no recourse to the mitigating defences of puerperal or lactational psychosis, juries were familiar with the situations of poverty and despair that these men described for the courts. However, as described in Chapter Two, in New Zealand law, the kinds of insanity which might mitigate an act of murder were rather more narrowly defined.

Replicating the formula laid down by the English M’Naghten Rule 1843, the insanity provisions in both the Criminal Code Act 1893 and the later Crimes Act 1908 state that in order to be excused from a crime due to insanity a person must ‘be labouring under *natural imbecility* or *disease of the mind* to such an extent as to render such person incapable of understanding the nature and quality of the act’ and of knowing that it was wrong.⁹⁸ In practice, the definition of insanity in any given case was left very much to judicial discretion. How closely a jury was prepared to stray from the strictly legal definitions in its understanding of madness and murder depended on a range of conditions, which could include the prior reputation of the defendant and the persuasive power of particular judges and counsels.

Few appeared to doubt the insanity of George Dean when he killed his two-year-old daughter Lily in 1890. The earliest reports appearing in the print media framed the incident as a ‘sad’ and ‘tragic’ occurrence.⁹⁹ George was described as ‘the unhappy father’ – a man beleaguered by debt and depression, and driven to his murderous acts by specifiable social conditions.¹⁰⁰ The father of five had inexplicably taken his child into the woodshed and struck her twice on the head with a wood axe.¹⁰¹ Apparently, after ‘quietly remarking to his wife’ that he had

⁹⁸ My emphases. *Statutes of New Zealand*, 1893, No. 56, Criminal Code Act, section 23(1), p. 328, and *Statutes of New Zealand*, 1908, No. 32, Crimes Act, section 43, p. 576.

⁹⁹ ‘Horrible Murder in Abel Smith-Street’, *Evening Post* (Wellington), 1 October 1890, p. 3, and *Evening Post*, 2 October 1890, p. 2.

¹⁰⁰ *Evening Post* (Wellington), 2 October 1890, p. 2

¹⁰¹ Coronial Inquest: Lily Dean, J46:Cor 1890/598 (micro U 5400), p. 15, Archives New Zealand, Wellington

‘killed dear little Lily with the axe’, George resumed his seat on the sofa and calmly remained there until his arrest. Wellington’s *Evening Post* reported that:

The circumstances of the tragedy are peculiarly sad, because there seems reason to conclude that Dean, brooding over recent pecuniary troubles, has brought himself into a condition of morbid melancholy, under the influence of which he committed the murder. Under no other circumstances does it seem possible for him to have been tempted to such an unnatural act.¹⁰²

Apparently ‘well known about town as an industrious and attentive express-man’, George had been unable to work for several weeks due to strike action, and as a result was accruing debts.¹⁰³ The newspaper reported rumours that the man had been ‘harshly treated by the Empire Loan Company’ with whom he was in arrears with payments on a debt. After losing his cart, and therefore his livelihood, George’s ‘low-spirits’ had apparently turned to deep depression.¹⁰⁴

At the coroner’s inquest the mother of the dead child told how her usually attentive husband had become ‘dejected and apathetic’ and developed worrying delusions that ‘his children were starving’.¹⁰⁵ The Dean’s family physician, Dr Rawson, testified that he had attended the family for eight years and though he’d had ‘no cause to apprehend insanity, he had always regarded [George] as “a dull man,” not of strong intellect’. He told the coroner he was aware that the strike had ‘affected’ the accused, but ‘considered it not improbable that he would regain his mental balance ere long’.¹⁰⁶ Though George was officially charged with murder at a sitting of the Wellington Magistrate’s Court, he never came to be tried on that charge.¹⁰⁷ Instead, on the verdict of the coroner’s jury, George Dean was

¹⁰² ‘Horrible Murder in Abel Smith-Street’, *Evening Post* (Wellington), 1 October 1890, p. 3.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ ‘Verdict of Insanity’, *Evening Post* (Wellington), 3 October 1890, p. 2.

¹⁰⁶ *Ibid.*

¹⁰⁷ ‘The Child Murder Case’, *Evening Post* (Wellington), 2 October 1890, p. 2.

committed as a criminal lunatic and sent to be detained in an asylum ‘at the pleasure of the Colonial Secretary’.¹⁰⁸

That depression and financial pressures had unsettled George Dean’s reason was a scenario that no one was prepared to refute. Rather than horror, the violent murder committed by this homicidal father elicited sympathy and understanding. In fact, one commentator’s perception of the incident metaphorically took the axe from the hands of the murdering father and placed it elsewhere, far from the family home. They wrote:

Morally, the murder of this little child is upon the heads of those who brought this causeless, useless, aimless strike to this country, as much as if they lifted the axe used in the dreadful deed.¹⁰⁹

The frustration and desperation felt by working class families crippled by strike action was well understood and its context made the murder of Lily Dean an ‘imaginable’ or even understandable occurrence.

For other men, their standing in the community or their reputations as attentive fathers carried weight in their framing as blameless ‘victims’ of temporary madness. Robert Hodgson, an accountant for the New Zealand Farmer’s Co-operative, was charged in Christchurch in 1925 with cutting the throat of his nine-year-old son, Frederick.¹¹⁰ ‘[A]lways regarded as a steady, sober man’, Hodgson was spoken of by ‘everyone ... with the greatest respect’.¹¹¹ His fellow members of the Ashburton Working Men’s Club insisted that ‘it would be difficult to find a more happy and contented family than the Hodgsons of Havelock Street appeared to be’, and that Robert ‘thought there were no such children in the world as his: in fact, they almost amounted to an obsession with him – particularly Freddy’.¹¹² The incongruity of these testimonies when compared to the violence perpetrated on the child himself implied ‘an unmistakeable suggestion of insanity permeating

¹⁰⁸ ‘Crowners Quest Law’ [sic], *Evening Post* (Wellington), 4 October 1890. The power of the coroner in circumventing the Supreme Court trial was, however, a matter for some concern, with one observer calling it ‘a most improper, and a very dangerous precedent’.

¹⁰⁹ ‘A Chapter of Horrors’, *Evening Post* (Wellington), 2 October 1890, p. 2.

¹¹⁰ ‘The Tragedy at Dromore’, *NZ Truth*, 24 January 1925, p. 6.

¹¹¹ ‘Ashburton’s New Year Horror’, *NZ Truth*, 10 January 1925, p. 5.

¹¹² *Ibid.*

the whole tragic affair'.¹¹³ Even the crown prosecutor declined to argue with the psychiatrist's findings that Robert had been 'suffering from an attack of acute excitement, which was practically epileptic in character', and that he was therefore 'incapable of understanding the nature and quality of the act of killing his son and knowing that such act was wrong'.¹¹⁴ The confirmation that Robert's father had spent twenty-four years incarcerated in a mental asylum, coupled with his own erratic and bizarre behaviour while on remand, was considered ample proof for the Supreme Court jury to fully acquit him of the murder of his son.¹¹⁵



Figure 12: 'The Tragedy at Dromore', *NZ Truth*, 24 Jan. 1925, p. 6.

This image of Ashburton accountant Robert Hodgson appeared in the *NZ Truth* at the time of his murder trial where he was charged with 'almost sever[ing]' the head of his nine-year-old son with a razor. The benevolence of the image contradicts reports in which he appeared pale and muttering and 'starey-eyed', or as 'a physical wreck' who was unable to 'walk without assistance'.¹¹⁶

In October 1924, just five months prior to the murder of Frederick Hodgson, another apparently loving father was charged with murdering his son, and was similarly found to have been 'incapable of knowing the nature and quality' of his murderous act.¹¹⁷ Auckland father of four, Harry Keogh, after having a

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ 'The Dromore Case', *Evening Post* (Wellington), 12 February 1925, p. 11.

¹¹⁶ 'Ashburton's New Year Horror', *NZ Truth*, 10 January 1925, p. 5.

¹¹⁷ 'A Sad Case', *Hawera and Normanby Star*, 31 October 1924, p. 7.

‘presentiment’ of his own death, stabbed his sixteen-month-old baby boy with a dessert knife and then attempted to cut his own throat.¹¹⁸ In a mind-set which mirrors that of several women defendants charged with the murder of their children, Harry claimed that his ‘only son’ was ‘too good to leave behind’.¹¹⁹ As with maternal murder/suicides, the murders of children by fathers in the throes of suicidal despair were deemed to be lamentable tragedies. Justice Herdman, who presided over the Keogh trial described it as ‘the saddest of sad cases’ and declared that ‘the only conclusion he could come to was insanity’. The jury concurred, and Harry was duly acquitted.¹²⁰

These case trials, spanning thirty-five years, demonstrate how lay definitions of insanity continued to prevail in assessing the culpability of murdering fathers. In such situations where insanity was understood as psychological disturbance, rather than as mental disorder emanating from brain disease, psychiatric expertise was often considered unnecessary.¹²¹ However, as Sir Robert Stout was at pains to point out when summing up the case against John Deighton in 1900, in the matter of New Zealand law only two ‘kinds’ of insanity were recognised as mitigating an act of murder – imbecility and ‘disease of the mind’ – and if juries were to comply with the letter of the law in the Deighton case, then neither definition could be called on to acquit the murder accused.¹²²

Like Harry Keogh, John Deighton claimed that he had been intending to take his own life after cutting the throat of his twelve-week-old daughter.¹²³ Counsel for the defence, Mr Jellicoe, put it to the Wellington Supreme Court jury that ‘if Deighton *had* taken his own life after killing his child they would not have hesitated to return a verdict of suicide while temporarily insane. Why, therefore, should they hesitate now?’¹²⁴ Moreover, the blame for the father’s uncharacteristic

¹¹⁸ ‘I’ve Killed Desmond’, *Evening Post*, 6 August 1924, p. 11.

¹¹⁹ *Ibid.*

¹²⁰ ‘A Sad Case’, *Hawera and Normanby Star*, 31 October 1924, p. 7.

¹²¹ Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981), p. 149.

¹²² *R v. Deighton* (1900) 18 NZLR (SC) at 892.

¹²³ Coronial Inquest: Mona Caroline Rebecca Deighton, J46: Cor 1900/203 (Micro U 5400), p. 8, Archives New Zealand, Wellington.

¹²⁴ ‘The Cuba-Street Murder Case’, *Evening Post* (Wellington), 30 May 1900, p. 2.

behaviour, according to Mr Jellicoe, rested with the child's mother. Central to the presentation of the defence case was the supposed 'wretched condition of the man's home, due to no fault of his own, but to the intemperate habits of his wife'.¹²⁵ A medical witness was called to testify that Mrs Deighton's alcoholism and 'bad temper' were more than capable of having 'unhinged the accused's mind'.¹²⁶ The doctor told the court that he had seen John Deighton soon after the murder, and that the man was convinced that his children were neglected and 'better out of the world'.¹²⁷ Taking together 'the state of [his] home, his wife's intemperance, the fact that he committed the deed, and the fact that he was not drunk', the doctor concluded unequivocally that the 'accused was temporarily insane when he committed the act'.¹²⁸

Chief Justice Sir Robert Stout's summary of the case dwelt meticulously on the various points of law in regards to an insanity plea, and in doing so directly and determinedly undermined the case for the defence. He told the jury:

What is called the burden of proof is on [the accused] to show that he was insane at the time that he committed this act. Now, I must tell you what is the kind of insanity, and the only kind of insanity, that is recognised by our law. It is not a kind of insanity that doctors might recognise. Doctors may differ about the state of a man's mind at the time he did certain things. Some persons imagine that no man is sane who commits suicide or murder; but that is not how our law puts the matter.¹²⁹

Referring to the Criminal Code Act 1893, Justice Stout informed the jury that as there was no suggestion that John Deighton was an imbecile, to acquit the accused they must find that he had been 'labouring under a diseased mind' to such an extent that he was incapable of understanding his actions. However, he reminded

¹²⁵ Ibid.

¹²⁶ 'The Deighton Murder', *Evening Post* (Wellington), 30 March 1900, p. 6.

¹²⁷ *R v. Deighton* (1900) 18 NZLR (SC) at 891

¹²⁸ 'The Deighton Murder', *Evening Post* (Wellington), 30 March 1900, p. 6.

¹²⁹ *R v. Deighton* (1900) 18 NZLR (SC) at 892.

them firmly and repeatedly that ‘there was no evidence whatever that the man had any mental disease. ... of any kind either before or after the act’.¹³⁰ He went on:

These are the things you have to keep in mind; not doctors’ opinions at all. ... Do you think there was any evidence to show you that when this man killed his child he did not know he was killing it, and did not know he was doing wrong? Unless he shows you that he did not know he was killing his child and did not know he was doing wrong, then it is your bounden duty to find him guilty.¹³¹

The jury did find John Deighton guilty of murder, but delivered their verdict with a strong recommendation to mercy. His death sentence was subsequently commuted to imprisonment with hard labour for life.¹³²

Descriptions of John Deighton in the popular press betray little in the way of evaluation or elucidation on his character. The family, according to the *Marlborough Express*, ‘appear to be people in fairly good [financial] circumstances’ though ‘the union is believed not to have been a happy one’.¹³³ The newspaper informed its readers that, ‘Deighton bears a good character, and what was the reason of the sudden impulse is not yet explained, as the man had not been drinking’.¹³⁴ That the court was unwilling to declare him insane left commentators unable to frame him conceptually as either a dangerous criminal or an object of sympathy. John was portrayed simply as an ‘ordinary’ father, struck with an inexplicable ‘sudden impulse’ to kill.

Similar ambiguity is evident in the representation of the seventy-two-year-old Scottish farmer, John Sharp, who beat his youngest daughter to death with a piece of wood.¹³⁵ Although attempts by the popular press to contextualise events are more apparent in this case, the jury’s refusal to find the man insane, despite the testimony of four doctors to the contrary, made commentators unsure as to

¹³⁰ *R v. Deighton* (1900) 18 NZLR (SC) at 893.

¹³¹ *R v. Deighton* (1900) 18 NZLR (SC) at 892.

¹³² *Ibid.*

¹³³ ‘A Case of Infanticide’, *Marlborough Express*, 10 March 1900, p. 3.

¹³⁴ *Ibid.*

¹³⁵ ‘Father’s Fearful Crime’, *NZ Truth*, 14 August 1920, p. 5.

whether to construct the character of the accused as ‘sad’, ‘mad’ or ‘bad’. At the coroner’s inquest on the body of his seven-year-old daughter, John was described as ‘very deaf and possessed of a violent temper’.¹³⁶ He was said to have ‘ill-treated’ his wife ‘on several occasions’ and was prone to taking ‘strange turns’.¹³⁷ At the same time it was reported that Southland deer stalkers and sportsmen, among whom he was ‘well known’, ‘usually found him a quiet, inoffensive man, who revelled in stories and records of the chase and yarns dear to Scotsmen’.¹³⁸ As commentators had done twenty years earlier when covering the murder of the Deighton child, a reporter for the *NZ Truth* settled on the concept of an ‘uncontrollable impulse’ in an attempt to decipher meaning behind John Sharp’s murderous actions.

With his wife away nursing a sick relative, John had been left alone with his four daughters. The reporter claimed that:

The kiddies, owing to his deafness and irritability, did not understand him and, unfortunately showed little sympathy toward him. The old man was in a mess, utterly lonely and neglected. He retired within himself and played up hell from Tuesday to the culminating night of the awful deed.¹³⁹

On receiving a letter from his wife which revealed that she intended to stay away longer, John allegedly flew into a rage, threatening to ‘shoot the lot’ of them. Giving way to dramatic licence, the reporter declared:

The rural quietness of the night was broken with the shrieks of the children and wild words of the enraged parent, who was now completely deranged by the maniacal violence of his temper. ... Little Sophia ... was not so nimble and got caught ... by her infuriated parent, now armed with a formidable stick of manuka. [The sisters] heard the thuds of numerous blows. Then little Sophia’s screams were

¹³⁶ ‘Old Man’s Maniacal Outbreak’, *NZ Truth*, 22 May 1920, p. 5.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

not heard any more. After the awful deed the demon of violence departed from Sharp. He apparently realised what he had done and re-entered the house.¹⁴⁰

The report goes on to describe Sophia's killer, no longer under the 'uncontrollable impulse' that had overtaken him, in pathetic tones:

At 8 o'clock on Sunday morning a lonely, bedraggled horseman was seen crossing the Beaumont Bridge. A few recognised in him the unfortunate John Sharp. ... He rode up to the police station, made his confession and surrendered.¹⁴¹



OLD JOHN SHARP
(Sentenced to Death.)

Figure 13: 'Old John Sharp', *NZ Truth*, 14 August 1920, p. 5. The man's irascible nature is succinctly captured in this court portrait which appeared in the *NZ Truth* shortly after his sentencing for the murder of his seven-year-old daughter.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

The jury of the Dunedin Supreme Court found John Sharp guilty of the murder of his daughter but asked for clemency in light of his old age. The conferment of the sentence of death was commuted to life imprisonment, although in an interesting twist, the *Marlborough Express* reported that upon notice of the commutation John was moved from the Dunedin Gaol to Seacliff Mental Hospital, ‘to become a subject for study by mental specialists ... for the rest of his life’.¹⁴²

In the trials explored in this section witnesses for the defence used the language of appropriate masculinity, describing the accused men as ‘industrious and attentive’, ‘steady and sober’, or ‘quiet and inoffensive’.¹⁴³ Such references supported their reputations as good men and good fathers, which was a crucial factor if they were to be understood as suffering under an unexplainable impulse or ‘temporary’ aberration of the mind. But this discourse restricted success only to those men whose lives could be seen to conform clearly to expected conventions. For men such as George Dean and Robert Hodgson juries were prepared to accept a rather loose interpretation of the legislation as it applied to the mitigation of insanity. For John Sharp, with his alternative reputation as a wife beater, and John Deighton, with his squalid home and alcoholic wife, jurors opted for a more stringent interpretation of the law, however, both men were considered worthy of judicial mercy despite being found fully culpable of heinous crimes. The cautious and sometimes confused portrayal of events reflects the ambiguous position in which men like John Deighton and John Sharp were held. Placed outside of the context of the mitigating framework offered by the insanity provision, and with no other familiar or recognisable cultural narratives for contemporaries to draw on, these men appear to have been regarded with a confusing mixture of sympathy, condemnation and understanding.

¹⁴² ‘Local and General News’, *Marlborough Express*, 10 September 1920, p. 4.

¹⁴³ George Dean was described as ‘industrious and attentive’ in the *Evening Post*, 1 October 1890, p. 3; Robert Hodgson was said to be ‘regarded as a steady, sober man’ in the *NZ Truth*, 10 January 1925, p. 5; and John Sharp’s friends reportedly found him ‘a quiet, inoffensive man’ (*NZ Truth*, 22 May 1920, p. 5).

Conclusion

Historians of crime and gender have maintained that masculine criminality increasingly became a matter for concern over the course of the nineteenth century, with the problem of male violence particularly evoking ‘strong but complex and often conflicting sentiments’.¹⁴⁴ This chapter has suggested that despite the breadth of interest in the question of violent crime at this time, violence towards infants and young children was generally omitted from the discourse on male criminality. The relative silence surrounding paternal child homicide meant that the murder of children was unquestioningly regarded as a woman’s crime. The evidence produced here has shown that the absence of male-oriented tropes into which the paternal child murderer could be placed left perpetrators in a culturally ambiguous position. While female murderers of children tended to be framed as passive victims of their own crimes, murdering fathers were more variously constructed in ways that took into account the social and psychological variables surrounding their individual situations.

However, sharp lines of gender differentiation are not evident in these case trials. Like women, men could find themselves judged by the degree to which notions of appropriately gendered behaviour coloured their acts. Industrious workers and apparently loving family men tended to be viewed sympathetically, particularly if it could be construed that they were driven by the stresses of poverty, depression, or desperation. When paternal child murders occurred in the context of such specifiable social conditions, and particularly if they were accompanied by attempts at suicide, fathers could rely on the narrative of ‘temporary insanity’ similar to that utilised in maternal child homicide trials. Distinctions between those fathers who were found insane and those who were deemed fully culpable and convicted of the murder of their children lay primarily with the persuasive power of defence counsel and the particular sympathies of judges and juries. My evidence suggests that courts were eager to accept portrayals of murdering fathers as ‘sad’ or ‘mad’, rather than ‘bad’, although, just as some women were unable to benefit from the mitigating frameworks available to the maternal child murderer,

¹⁴⁴ Wiener, *Men of Blood*, p. xii.

some men found themselves facing unsympathetic juries and uncompromising judges, and were met with the full force of the law.

Subject to the same melodramatic conventions evident in women's trials, men whose killing was carried out alongside sexual crimes could be easily appropriated into the role of villain, and denounced as brutes or animals. The trial of William Woodgate can be seen as reflecting the wider trends identified by Wiener, McLaren and Walkowitz, in which masculine sexual deviancy and aggression was met with increasing condemnation and severity of punishment. Yet, the intense debates surrounding the execution of Woodgate reveal that there were always strong counter discourses at work.

The evidence produced in this chapter belies any singular historical interpretation of late nineteenth and early twentieth-century attitudes towards masculinity, fatherhood, morality, and paternal violence. The texts generated by the events played out in the New Zealand courts of law present a picture which is necessarily complex. As with all criminal trials, interconnected discourses determined agency, culpability, and appropriate judicial responses. When the perpetrator or victim of murder was of a recognisable ethnic minority, the issue of race introduced an extra dimension into the discursive web. The following chapter attends closely to the discursive constructs of race in child homicide trials, uncovering the varying ways that the issue of ethnicity permeated the legal system and the popular media, and its impact on judicial outcomes.

Chapter Five

Light and Shadows: Invoking Narratives of Race in Child Murder Trials

Current understandings of child abuse and child homicide in New Zealand have been strongly imbued with notions of ethnicity and race.¹ Since the 1990s, child homicides occurring within Māori families have captured the attention of news media and Government. The phrase ‘Māori child abuse’ has entered the lexicon of child welfare, with the Māori stepfather taking a central place in the discourse. The resulting focus on one particular group or ‘type’ of individual perpetrator over another raises questions central to the concerns of this thesis about the ways in which our understandings of crime have been shaped in the past. This thesis demonstrates that understandings and imaginings about the perpetrators of child abuse and homicide have not remained static over time. As previous chapters have shown, a distinct majority of child homicide incidences reported and investigated in late nineteenth and early twentieth-century New Zealand involved individuals or families of British descent, and understandings of the crime generally centred around the ‘white’ maternal body.² This chapter builds on previous arguments by looking specifically at race as one more category of analysis within the narrative framework. While the number of trials where a racial discourse was explicitly invoked were few, the ways that notions of racial difference were composed, positioned and deployed in these cases is exceptionally revealing.

New Zealand society, during the period under investigation, included those from a wide variety of ethnic origins, although the majority were descendants or migrants

¹ In this chapter I identify both ‘ethnicity’ and ‘race’ as symbolic markers of identity. A focus in this study on the nineteenth and early twentieth-century language of criminal profiling means that it is the embodied aspects of race which feature most prominently here.

² Here I include New Zealand born Pākehā of English, Scottish or Irish descent as well as first generation British migrants. From my database of 272 individuals investigated for the murder of a child between 1870 and 1925, only around four per cent of the total numbers involve individuals from other recognisable ethnicities.

from European countries, and primarily British.³ While Britain was itself made up of a collection of diverse cultures and ethnicities, ‘Britishness’, as Michael Goldsmith notes, was the ‘presumptively unmarked category’ against which ethnic minorities were measured.⁴ Non-European ethnic groups who were not considered ‘white’, such as the Chinese, were viewed as ‘outsiders’, while Māori, by the very nature of their indigeneity, held a more ambiguous status.⁵ This chapter considers the racial and ethnic inflections of the textual material relating to child homicide trials between 1870 and 1925, in order to uncover where Māori and other ‘racialised’ categories were located within the socio-legal space.

Of the reported incidences in the research database, only eleven involved either victims or alleged perpetrators who were recognisably non-British, and only seven such events involved individuals or families who were non-white. In these latter trials in particular, tropes of racial difference often intersected with ideas about sexuality, deviance and violence, generating sensational imaginings. Structured around the compelling circumstances of a murder, courtroom dramas reflected discourses of race and crime which were situated somewhere between the melodramatic and the gothic.⁶ In contrast, despite the differing cultural, class and ethnic identities of Pākehā New Zealanders, the idea of ethnicity was seldom deployed overtly when the victims or perpetrators of child homicide offences were white. Precise ethnic classifications were rarely offered, and never formed a

³ Angela McCarthy, ‘Migration and Ethnic Identities in the Nineteenth Century’, *The New Oxford History of New Zealand* edited by Giselle Byrnes (Melbourne and Auckland: Oxford University Press, 2009), p. 117.

⁴ Michael Goldsmith, ‘Are Blondes a Racial Category? Exploring “Connexions”’, *CNZS Bulletin of New Zealand Studies*, 1 (2008), p. 94.

⁵ An understanding of Māori as ‘racially homogeneous’ with Pākehā further complicated the ways that they were understood in terms of racial hierarchy. For more on this concept see James Bennett, ‘Maori as Honorary Members of the White Tribe’, *Journal of Imperial and Commonwealth History*, 29 (2001), pp. 33–54. Peter Adams, *Fatal Necessity: British Intervention in New Zealand, 1830-1847* (Auckland: Auckland University Press, 1977), p. 210; James Belich, *Paradise Reforged: A History of the New Zealanders, 1880-2000* (Auckland: Penguin, 2001), pp. 207-215; and Nan Seuffert ‘Jurisdiction and Nation Building: Tall Tales in Nineteenth Century Aotearoa/New Zealand’, *Jurisprudence of Jurisdiction*, edited by Shaun McVeigh (Oxon: Routledge, Cavendish, 2007), pp. 117-119.

⁶ On the salience of the gothic mode in nineteenth-century New Zealand, Edmund G.C. King identifies two particularly strong strands in the writing of New Zealand settler novelists: that of the ‘ethnographic gothic’ and the ‘settler gothic’. Both, he claims, provided nineteenth-century readers with ‘terrifying pleasures’ through their explorations of the ‘conflict between the civilized and the barbaric, the modern and the archaic’ (Edmund G.C. King, ‘Towards a Prehistory of the Gothic Mode in Nineteenth-Century New Zealand Writing’, *Journal of New Zealand Literature*, 28:2 (2010), p. 41).

significant part of the discourse. When an ethnic label was referred to, it was typically offered simply to differentiate a victim or perpetrator as ‘European’, when others involved in the case were non-white. However, as Warwick Anderson maintains, ‘whiteness’ is ‘a category ... filled with flexible physical, cultural and political significance’.⁷ In homicide trials involving Pākehā mothers whose victims were thought to be of mixed race, whiteness ceased to be the ‘invisible norm’, and instead became ‘a problem to be investigated’.⁸

This chapter begins with a close reading of the 1871 trial of Anthony Noble. Only three trials involving the murder of children between 1870 and 1925 featured someone unknown or previously unconnected to the child as the perpetrator, and only one of those individuals, Anthony Noble, was a person of colour.⁹ Nevertheless, this trial both participated in, and helped to shape, the recurring motif of the threatening ‘dark’ stranger in the New Zealand imaginary. A decade after the trial and execution of Anthony Noble, the search for the alleged murderer of four-year-old Flossie Veitch centred on the profile of an itinerant male who was identified as a ‘supposed negro’.¹⁰ Fictive imaginings about the dangers of the non-white male stranger loomed large in the unfolding events surrounding the arrest of the child’s mother for murder. The hunt for the elusive ‘Darky Sam’, as he was known in the New Zealand press, is explored here as an example of the persistence of these ideas and motifs.

The second part of this chapter shifts focus to the 1888 trials of two Pākehā women living among Chinese communities, who were charged over the deaths of their newly born daughters. This section considers the ways that the ‘whiteness’ of Pākehā women who cohabited with Chinese men was brought into question in the context of a homicide enquiry. The findings uncovered here suggest that in

⁷ Warwick Anderson, *The Cultivation of Whiteness: Science Health and Racial Destiny in Australia* (Melbourne: Melbourne University Press, 2002), p. 3.

⁸ Anne McClintock *Imperial Leather: Race, Gender and Sexuality in the Colonial Conquest* (New York: Routledge, 1995), p. 5.

⁹ In 1875 John Mercer was accused of murdering twelve-year-old Isabella Thompson (case file 157), and in 1924 Robert Scott was charged with the murder of eleven-year-old Gwendoline Murray (case file 145). Both men were found guilty and were hanged for their crimes.

¹⁰ New Zealand Constabulary, Missing Friends Notice, Criminal Files, P-1, 279/1883/1079, Wanganui Child Murder Case – Phoebe Veitch - Accused of Murdering Her Daughter Phoebe (1883) Archives New Zealand, Wellington.

discrete ways such women became ‘racialised’ through their association with their Chinese partners. A final section explores the trial of Ema and Hirini Ngatimo Hohepa, convicted in 1908 of the manslaughter of their infant son. As with the earlier trial of Anthony Noble, this twentieth-century casefile represents one sensational and isolated case, yet its investigation is constructive. The matter of race remained central to the ways this family was represented in the courtroom and the print media, and the textual evidence this trial produced reveals much about the work of colonialist discourse within European law.

A close reading of the discrete number of trials investigated in this chapter reveals that social understandings of racial difference were played out in a variety of ways through the New Zealand court system. At times, the work of hyperbole and myth can be traced with clarity as discursive constructs of race were merged with ideas of deviance and criminal violence. At other times, the inflections are less distinct. Overall, the trials discussed here illustrate most clearly how ‘real’ and imagined stories were structured and restructured in relation to one another: each depending on and building upon the work of the other in the shaping of cultural narratives.

Gothic Imaginings: The Trial of Anthony Noble

The trial of Anthony Noble in 1871 for the murder of an eight-year-old child reveals the complex interactions between understandings of crime and fictive tropes from literary and ethnological imaginings. In previous chapters I have argued that in incidents involving the murder of a child, a level of literary imagination was often required to fill the epistemological gap between evidence and act. Popular and judicial understandings of maternal infanticide were smoothed by the reiteration of tropes and stereotypes central to the genre of melodrama and reinforced by the authoritative voices of the medical and psychiatric professions. In this case involving a black male migrant – a ‘wanderer’ and a social outsider – the language of gothic fiction and anthropological discourse offered a means for explicating the ‘unimaginable’.

On the ninth of January 1871, the Wellington *Evening Post* reported that ‘a child named Mary Ann Malumby [sic], eight and a half years old’, had been

‘diabolically murdered between ten and eleven last night’ in the West Coast town of Hokitika. The newspaper’s readers were informed that that very morning ‘a colored [sic] man, who recently served two years for a brutal assault on a woman’, had been arrested in relation to the murder.¹¹ Unsurprisingly, public interest was intense, and the coroner’s inquest on the death, held at the West Coast Times Hotel, was reported to have been ‘uncomfortably filled with spectators’.¹²

What they heard from Mary Ann’s distraught mother was a nightmarish story set in darkness and flickering shadows. Alice Mullaumby told how she and her husband had left their home at nine o’clock in the evening to run an errand, leaving their three young girls asleep in the locked and darkened house. Returning with several friends an hour later, she found the doors of the house unlocked and ajar. Alice told the court:

I went in and turned into [the] bedroom and laid my hand where my child slept and she was gone out. My friend Guerin struck a light and the first thing I saw was blood on the sheet where my child lay. I saw a track of blood out of my bedroom, into [the] front room and from [the] front room into [the] kitchen, and halfway on [the] kitchen floor ... I found a great pool of blood. On the step of [the] door and outside on the ground I saw more blood.¹³

After a frantic search, Mary Ann’s body was found in a far corner of the garden – her throat had been slashed and her skull fractured.¹⁴ On further inspection of the body by candlelight, local doctor Fitzgerald Dermott claimed to have found evidence that was suggestive of rape or sexual assault.¹⁵

The discovery of a distinct left-handed axe in nearby shrubbery the following morning, led police investigations to Anthony Noble, a recently-employed cook at the nearby Butcher’s Arms Hotel. The suspect was a fifty-one-year-old American

¹¹ ‘Hokitika’, *Evening Post* (Wellington), 9 January 1871, p. 2.

¹² ‘The Murder at Hokitika’, *Daily Southern Cross* (Auckland), 19 January 1871, p. 2.

¹³ Testimony of Alice Mullaumby, p. 2. Criminal Files, J22:4/8, Records Relating to Murders – Anthony Noble for Murder of Mary Jane Mullaumby – 1871 (Hokitika), Archives New Zealand, Wellington. (These records will hereafter be referred to as Criminal Files (Noble)).

¹⁴ Testimony of Dr Fitzgerald Dermott, pp. 6-7. Criminal Files (Noble).

¹⁵ Testimony of Dr Fitzgerald Dermott, p. 7. Criminal Files (Noble).

man from Baltimore. Described as ‘the son of a free negro’ and a ‘Spanish woman’, he was furnished with a notorious past, having allegedly abandoned his American wife in Liverpool and later, after travelling to New Zealand, committing a serious assault ‘on a woman near the Hau Hau tramway’.¹⁶ The Mullaumby family were represented, contrastingly, as well-regarded Hokitika locals, reportedly well known in the township as a ‘quiet, well conducted’ working class family going through difficult times.¹⁷ Thomas, a labourer, was said to be ‘in delicate health due to ophthalmia’, which had left Alice having to ‘take in washing to assist their livelihood’. The couple were described as ‘fond and careful of their children’. Mary Ann, ‘the murdered child’, was referred to as ‘an interesting, timid young creature, only eight years of age’.¹⁸ With the characters in the story of Mary Ann Mullaumby’s murder quickly and firmly established, newspaper coverage of the subsequent trial was uncomplicated and remained close to a readily accepted gothic script.

Howard Malchow has identified the pervasiveness of the gothic genre in nineteenth-century popular culture and its ability to ‘manipulate deeply buried anxieties’ about racial difference.¹⁹ The gothic novel, according to Malchow, represented unconscious fears about ‘the threatened destruction of the simple and pure by the poisonously exotic, by anarchic forces of passion and appetite, carnal lust and blood lust’.²⁰ These tropes could be appropriated effortlessly, either consciously or unconsciously, in the framing of trials like that of Anthony Noble. Their effect was to distance such crimes, and the terror and disgust they engendered, by setting them within the sphere of the racialised ‘other’. Martin J. Wiener has observed ‘several converging cultural streams’ that make up the ‘master Victorian narrative’ on masculine violence, and among them he identifies the citing of the treatment of women as ‘a measure of civilisation’.²¹ By the

¹⁶ ‘Sewell-Street Tragedy’, *West Coast Times*, 17 February 1871, p. 2; and *Timaru Herald*, 14 January 1871, p. 3.

¹⁷ ‘The Murder at Hokitika’, *North Otago Times*, 31 January 1871, p. 4.

¹⁸ *Ibid.*

¹⁹ Howard L. Malchow, *Gothic Images of Race in Nineteenth Century Britain* (California: Stanford University Press, 1996), p. 5.

²⁰ *Ibid.*

²¹ Martin J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004), pp. 30-31.

nineteenth century, he says, the idea of the ‘woman-respecting’ British man was archetypal, and acted as a ‘mirror image’ to that of ‘the impulsive and fractious “native” overseas, who generally mistreated his womenfolk.’²²

These ideas moved with British migrants into the colonial environment. The subplots of popular nineteenth-century novels drew on such imaginings and gave voice to European anxieties about the dangers posed to white women and girls living away from the ‘home’ countries. Kirstine Moffat contends that these sexual anxieties were central to the plot of Jules Verne’s novel, *Among the Cannibals*, written in 1868 and set in the Waikato during the New Zealand Wars. Here, Verne’s white female characters are placed in fear of suffering “a fate worse than death” – rape and sexual enslavement by their Maori captors’.²³ Such a fate, Moffat says, represents ‘one of the ultimate European fears: the contamination and despoliation of pure and virtuous European women’.²⁴ Contemporary ethnological and scientific theories of race provided material and language for popular writers to draw on in the exposition of the savagery and carnality of the ‘native’ male. The cultural prejudices and fears of ethnological observers were expressed in sensational reports from other ‘far-off lands’ that featured regularly in the popular media of the British colonies. Nineteenth-century New Zealand newspapers featured discussions, for instance, on the practice of suttee among the ‘Hindustan’ and polygamy and wife-killing among African tribes people; such reports gave credence to novelistic representation and provided further fuel for mythologising the rapacious nature of men of colour.²⁵

Within days of the Mullaumby murder, another homicide incident took place in Lyttleton. Simon Cedeno, a butler and ‘native of Panama’ attacked two white

²² Wiener, p. 31.

²³ Kirstine Moffat, ‘Five Imperial Adventures in the Waikato’, *Journal of New Zealand Literature*, 29:2 Special Issue, Writing the Waikato (2011), p. 59.

²⁴ Ibid.

²⁵ See for example ‘Hindoo Barbarities’, *Thames Star*, 22 August 1884, p. 2; ‘Hindoo Women’, *Southland Times*, 26 September 1885, p. 4; ‘The Position of Women in Africa’, *Star* (Canterbury), 8 December 1894, p. 3. Additionally, India, in particular, had long been framed as a nation peopled by a ‘race of infanticides’. For more on British attitudes to child murder in India see Josephine McDonagh, *Child Murder and British Culture, 1720-1900* (Cambridge: Cambridge University Press, 2003), pp. 142-144.

housemaids with a knife, killing one and seriously injuring another.²⁶ This incident, described as a ‘horrible tragedy’ was reported alongside the ‘shocking outrage’ of the rape and murder of Mary Ann Mullaumby.²⁷ The two unrelated incidents, positioned together in this way, appeared to validate the uncontrollable impulses that coloured men might be subject to, and the dangers that such men could pose to local white girls and women. The texts emanating from Anthony Noble’s trial for the murder of Mary Ann Mullaumby suggest that the alleged sexual assault carried much weight in the way in which the crime was framed. In newspapers, the incident was reported as ‘a double crime’, with ‘the atrocious conduct of the murderer on all particulars’, making it ‘one of the most remarkable crimes that have been committed in the colony’.²⁸

Of Noble’s previous conviction for assault it was reported that rape had been the ‘presumed object of his attack’, although in trial records detailing the earlier incident, in which Noble had struck a woman on the head with a ‘bundle of supplejacks’, no such claim had been made.²⁹ In fact, the presiding judge in that case stated that ‘it was impossible to tell’ whether the defendant had been motivated by ‘lust or plunder’.³⁰ Nevertheless, the idea that the assault was a precursor to rape appears to have taken a firm hold in the popular imagination.

Counsel for the defence of Anthony Noble, Mr South, showed a keen awareness of the danger of such a position for his client. He acknowledged the narrative strength of the alleged rape, referring to the ‘violation’ of the child as a crime ‘almost fouler’ than the murder itself, and accepted that such details had caused ‘a stream of indignation’ to ‘flow ... forth from this place, and very properly’.³¹ Given the emotional intensity surrounding the details of the case, he stressed the

²⁶ ‘Horrible Tragedies’, *Timaru Herald*, 11 January 1871, p. 2.

²⁷ *Ibid.* Justice Gresson presided over the trials of Simon Cedeno and Anthony Noble. Cedeno was found guilty of murder and executed on 5 April 1871 (*R v Simon Cedeno*, 8 March 1871, New Zealand’s Lost Cases Project, <<http://www.victoria.ac.nz/law/nzlostcases/CaseDetails.aspx?casenumber=00337>> (accessed 14 September 2011).

²⁸ *Timaru Herald*, 14 January 1871, p. 3.

²⁹ *Ibid.*

³⁰ *R v Anthony Noble*, 13 January 1868, New Zealand’s Lost Cases Project, retrieved online from <<http://www.victoria.ac.nz/law/nzlostcases/CaseDetails.aspx?casenumber=01374>> (accessed 14 September 2011).

³¹ ‘Supreme Court’, *West Coast Times*, 18 January 1871, p. 2.

imperative for the jury to ‘disconnect ... from all feeling’ and to ‘go into the evidence fairly and after grave and calm deliberation, come to a conclusion’.³² If Noble was to be viewed in bestial terms – as a man who had given himself over to animal instinct – counsel for his defence astutely employed the narrative of the hunt, suggesting to the jury that while they might feel they had the culprit before them, they were, in all likelihood, looking at a man who had been mistakenly targeted and ‘bagged’ like an animal.³³ Mr South warned the jury of ‘the tendency of the action of the police in such cases’. He told them that ‘keen as sportsmen to “bag that game”, they thus fixed on a man – “spotted” him, as it was called – and tried to surround him with suspicion and obloquy’.³⁴

In his summing up, sentencing judge, Justice Gresson, expounded further on the necessity for emotional detachment in this case. He identified two ‘dangers’ for the jury in their interpretation of events. Firstly, that they might be swayed by uncorroborated rumour and gossip – in a case ‘so shocking and atrocious in its character, they must’ he said, ‘in a community like this, have heard and read a great deal of it outside the court’.³⁵ Allied to this possibility was the risk, ‘when such a crime was committed’, of being influenced by the desire to find an appropriate scapegoat, or in Justice Gresson’s words, ‘some person upon whom vengeance might be wreaked’.³⁶ The possibility that racial prejudice might have some part to play in the jury’s reading of events was not explicitly stated in the judge’s list of ‘dangers’; however, the discourse of the principles of equality before the law could be clearly discerned throughout the hearing, making apparent the tensions felt by those in judgement of the coloured murderer so accused.

Wiener argues that such concerns led to an increasingly ‘liberal’ judicial understanding in regards to race within the British Isles; with an emphasis on ‘equality’ for all who came to be judged by British law.³⁷ Caroline Conley

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ ‘The Atrocious Murder at Hokitika’, *Grey River Argus*, 19 January 1871, p. 4.

³⁶ Ibid.

³⁷ Martin J. Wiener, ‘Murder and the Modern British Historian’, *Albion: A Quarterly Journal Concerned with British Studies*, 36:1 (Spring 2004), pp. 7-8. He found, however, that the emphasis on equality was less discernible in cases tried within the colonies. While Wiener’s studies in this

similarly identifies evidence of judicial leniency shown towards coloured defendants accused of violent crimes in late nineteenth-century Britain.³⁸ Her comparative study of crimes tried across the United Kingdom found that both English and Scottish judges often gave lighter sentences to defendants who were thought to be from ‘uncivilised countries’. Moreover, her quantitative assessments reveal that only one of the twenty-eight Africans and Asians tried for homicide in an English court in that period was executed for their crime.³⁹ According to Conley, some British judges insisted that ‘more patience, attention, and vigilance should be exercised in the trial of a foreigner’, particularly when they were perceived to belong to a ‘hot-blooded race’.⁴⁰ The need to guard against racial prejudice in the Mullaumby murder trial was brought home to the jury by Anthony Noble’s defence counsel, Mr South. However, his appeal was couched in extremely careful terms. ‘It would be an act of great presumption’, he told them, ‘to suppose that because this prisoner was a man of “colour” he might not receive all that consideration and fairness of trial which would be given to one of their own blood and colour, under whatever circumstances place’.⁴¹ Indeed, Mr South claimed to be confident that the jury would be ‘throwing around him a halo of protection’ for that very reason.⁴²

The evidence against Noble was, in the main, circumstantial. Noble identified the murder weapon as his own, though insisted that he had left the axe overnight by the pile of wood that he had split the previous day and had not seen it again until

area focus on the English colonies of Australia, Canada, Africa and India, he does not extend his research to New Zealand. See also Wiener, *An Empire on Trial: Race, Murder and Justice under British Rule* (Cambridge: Cambridge University Press, 2009).

³⁸ Caroline Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late-Nineteenth Century England, Ireland, Scotland and Wales* (Ohio: Ohio State University Press, 2007), p. 59.

³⁹ Conley, p. 59.

⁴⁰ Conley, pp. 58-9. There is some evidence to suggest that the Irish-born New Zealand judge, Justice Gresson, was of the same mind-set. Gresson had presided over the trial of the sailor Charles Melbourne who was acquitted of assault in 1864. Accused of stabbing a Pākehā merchant in retaliation for calling him ‘a bloody nigger’, both judge and jury were of the view that the provocation had been sufficient to excuse the man’s violent reaction in such a case (Jeremy Finn and Charlotte Wilson, “‘Not Having the Fear of God Before Her Eyes’: Enforcement of the Criminal Law in the Supreme Court in Canterbury, 1852-1872”, *Canterbury Law Review*, 11 (2005), p. 162).

⁴¹ ‘Supreme Court’, *Westcoast Times*, 18 January 1871, p. 2.

⁴² *Ibid.*

confronted by police the following morning.⁴³ He explained the blood-stains that were found on his clothing as being from a goose he had butchered for the pot.⁴⁴ The pile of keys that were found in Noble's room admittedly included one that fitted the lock of the Mullaumby family home – but, the lock was not an unusual one, and it was pointed out that such a key might unlock any number of doors in the neighbourhood.⁴⁵

A tantalising piece of evidence was offered by two young boys who swore that they had observed the accused man speaking with Mary Ann on the day of the murder.⁴⁶ They insisted that they had watched him follow the girl, offer her an apple, and in a low tone of voice, say something to her that had made her cry. Despite claiming to have been in a position some distance from the scene, one boy maintained that he had heard Noble say 'something about "between 9 and 10 o'clock"' and that Mary Ann had told him 'she'd tell her mother'.⁴⁷ The storied nature of the boys' testimony lent a deeply theatrical air to the proceedings and offered an enticing script for the understanding of how the night's events might have unfolded. However, a lack of judicial engagement with the boys' tale suggests an awareness that they were simply swept up in the drama of the events around them.

The most damning evidence against the accused was provided by the witness testimony of prisoner John Hartley. Indeed, without Hartley's 'evidence', as Mr South ventured to suggest, the weakness of the prosecution's case was such that they were simply 'grappling with a shadow'.⁴⁸ However, John Hartley's testimony proved to be pivotal to the jury's decision to convict. Under oath, he related a

⁴³ Testimony of William James, p. 12, Criminal Files (Noble).

⁴⁴ Testimony of John Hartley, p. 29, Criminal Files (Noble).

⁴⁵ Testimony of William James, p. 12, Criminal Files (Noble). Harder to explain was the presence of a pipe found in Noble's possession which was reported to have been stolen from the home of Henry Smith on the night of the murder. The Smith household, from which several items had been reported stolen, was situated close to that of the Mullaumby family home. If Noble had robbed the Smith household then he could be positively placed near the scene of the crime. However, the prisoner did not deny being in the area – he told arresting officers that he had 'gone walking' that evening but had returned home and was woken by the screams of Mrs Mullaumby much later in the evening.

⁴⁶ Testimony of the Meyers brothers, pp. 25-26, Criminal Files (Noble).

⁴⁷ *Ibid.*

⁴⁸ Testimony of William James, p. 12, Criminal Files (Noble).

conversation between himself and Anthony Noble which he alleged to have taken place in their shared prison cell, and which included a full and detailed confession of the murder.⁴⁹ The jury were not informed that John Hartley, serving his third gaol term for larceny related offences, had arranged with gaol officials to extract a ‘confession’ from the murder accused in exchange for certain benefits.⁵⁰ On the contrary, they were told by the prosecution that ‘it would be hard to think’ that the man’s testimony might not be believed: ‘They could scarcely suppose any human being such a fiend as deliberately to swear away the life of another, especially when there was no motive or object to be gained’.⁵¹ The jury required little time in which to weigh the veracity of the stories brought before them. After less than a fifteen minute retirement they declared Anthony Noble guilty of the capital offence of murder and he was sentenced to be hanged at the upper gaol of Hokitika on 16 January 1871.⁵²

In the days before his execution, Anthony Noble, apparently in preparation for divine judgement, admitted to murdering Mary Ann Mullaumby and provided a signed confession of his crime.⁵³ The confession included a frank and detailed relation of events from the burglary of a neighbouring household, the forced entry of the Mullaumby house, and the murder of Mary Ann. However, the condemned man denied the allegation of rape. In his account of his actions on the night in question he explicitly distanced himself from any malevolent intent, describing his decision to break and enter into (what he believed to be) the empty houses of his neighbours and steal their possessions, as emanating from a powerful force beyond his rational control. Of the murder and the events that preceded it, he concluded, ‘it must have been Satan – I never did such a thing in all my life’.⁵⁴

Noble also maintained that the boys’ story had been a fabrication, as had been the alleged conversation with John Hartley. Tellingly, the folder of papers relating to the trial of Anthony Noble, now held in Archives New Zealand, Wellington,

⁴⁹ Testimony of John Hartley, p. 29, Criminal Files (Noble).

⁵⁰ Telegraph from G.G. Fitzgerald, Sheriff, Criminal Files (Noble).

⁵¹ ‘Supreme Court’, *Westcoast Times*, 18 January 1871, p. 2.

⁵² ‘Execution of the Murderer Noble at Hokitika’, *Grey River Argus*, 18 February 1871, p. 2.

⁵³ ‘The Convict’s Confessions’, *Westcoast Times*, 17 January 1871, p. 2.

⁵⁴ *Ibid.*

includes a signed telegraph recording that one ‘John Hartley (sic)’ was ‘awarded 15 pounds and the remission of his sentence’ for his assistance in the case of Anthony Noble.⁵⁵ It appears that Hartley not only provided the ‘evidence’ that secured Noble’s conviction – he also took on the job of hangman.⁵⁶

Whether or not the testimonies of the two child witnesses and the prisoner Hartley were fictitious, the stories they presented were ones that could be easily accepted by a public anxious for comprehension and closure. Anthony Noble’s path to the gallows was a smooth one. He was charged as a homicidal stranger and a sexual predator. That the murder of the child may have occurred as part of a botched burglary attempt was not a possibility given consideration at any point in the proceedings. Likewise, there was no suggestion of him labouring under any kind of insanity. Rather, he was seen as a man who had given himself over to his ‘natural’ bestiality and ‘savage’ instincts. The carrying out of the death sentence on Anthony Noble generated none of the anxiety or tension apparent in *R v Woodgate*, whose trial, which took place only six years later, was considered in the previous chapter. Unlike the Woodgate trial, in Noble’s case there was no petition for mercy, and no effort to gain a reprieve – even the strong and growing movement of those fundamentally opposed to capital punishment remained silent.

The stories emanating from Anthony Noble’s crime in 1870 provided concrete details to the reading public that helped to fortify the motif of the wandering, threatening, ‘dark’ stranger, and give it contemporary character. That fictive imaginings about the unrestrained bestiality of dark-skinned men continued to generate such anxieties beyond this moment is revealed in the case trial of Phoebe Veitch, who was charged with the murder of her four-year-old daughter in 1883. In the sensational account of her daughter’s death, as told by this working class Pākehā woman, the spectre of the night-stalking dark stranger was brought to its full imaginative force.

⁵⁵ Telegraph from G.G. Fitzgerald, Sheriff, Criminal Files (Noble).

⁵⁶ Ibid. Notably, the formal petition for John Hartley’s early release contains no mention of the Noble trial, stating only that ‘the petitioner has endeavoured to conduct himself in a manner conformable to the prison regulations’ and ‘merited the favourable recommendation of the gaol authorities’ (Petition to His Excellency Sir George Ferguson Bowen, Criminal Files (Noble)).

The Search for 'Darky Sam': Investigating the Death of Flossie Veitch

The motif of the 'dark' stranger haunted reports of the death of four-year-old Flossie Veitch, who was found drowned at the Whanganui river mouth in February 1883. The tragedy of Flossie's death sparked an investigation in which a range of racial 'types' were invoked and invested with meaning. Press coverage of the unfolding story, as it played out in the inquest and subsequent court hearings, brought these ideas into the public arena and provided readers with an entry into what Bronwyn Dalley calls 'the voyeuristic, transgressive pleasures of the criminal story'.⁵⁷

Local newspapers first included the news that the body of a 'Maori half-caste' child had been found washed ashore amid reports of flooding damage around the Wanganui Township.⁵⁸ Later reports stated that after closer examination by a medical expert the drowned child appeared to have been 'a well-nourished and cared-for girl of between three and four years of age' who was, '(judging by the shape of the eyes), the offspring probably of a Chinaman and a European'.⁵⁹ Police investigations led quickly to the door of Phoebe Veitch who had arrived in the coastal town of Wanganui only two weeks earlier. The young single mother had already gained a measure of notoriety in that short time. Deserted by her husband, with three children from three different fathers, and pregnant for the fourth time, Phoebe was a woman struggling to keep her family on the meagre income from the occasional needle-work that she could find.⁶⁰ Moreover, Phoebe's misfortunes were marked on her body. Suffering from syphilis, the condition had begun to take its toll on the soft tissues of her face, destroying part

⁵⁷ Bronwyn Dalley, 'Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-Century New Zealand, *The Gendered Kiwi*, edited by Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999), p. 68.

⁵⁸ 'Wednesday, February 28', *Wanganui Herald*, 28 February 1883, p. 2.

⁵⁹ 'The Child Murder Case', *Wanganui Chronicle*, 1 May 1883, page unknown, Constabulary Memoranda, Criminal Files, P-1, 279/1883/1079, Wanganui Child Murder Case – Phoebe Veitch Accused of Murdering Her Daughter Phoebe (1883), Archives New Zealand, Wellington. The child in question, also christened Phoebe, was better known by the name of Flossie.

⁶⁰ 'Child Murder at Wanganui', *Timaru Herald*, 3 March 1883, p. 3; 'The Supposed Murder Case', *Wanganui Herald*, 2 March 1883, p. 2.

of her nose and jaw, and affecting her speech and her hearing.⁶¹ Questioned by police, Phoebe told them that her daughter, Flossie, had fallen from the wharf while they were out walking, but as it had been night time and there was no-one about to offer assistance, she had gone home alone and mentioned the incident to no-one.⁶² At the coroner's inquest on Flossie's body, which took place at the Forder's bar in the Wanganui Township, Phoebe identified the child as her own and repeated her story to the jury, insisting: 'I never killed it; it fell overboard quite accidentally'.⁶³

During the course of the inquest, however, a neighbour testified that Phoebe had 'not been fond' of the little girl and had told her that she had tried to get her 'into a convent, as she was so cross and troublesome'.⁶⁴ Others claimed that Phoebe had told them that she planned to send Flossie away to live with an unnamed 'dark lady' who wished to adopt her, and that after the 'adoption' she did not expect to ever see the child again. One woman maintained that Phoebe had spoken of a dream in which the 'adoption' had been intercepted by a jealous aunt who had drowned Flossie in the river.⁶⁵ Thereafter, Phoebe's own story changed dramatically. She relayed to the large and undoubtedly fascinated crowd of onlookers the story of the past nine years of her life – it was a sinister tale with elements of gothic tension and melodramatic plot twists. She told how, at the age of fourteen, she had suffered 'a misfortune' and given birth to her first child. Sometime afterwards, a mysterious dark-skinned man had begun to take an interest in her, offering her money and 'taking her out for walks', until eventually Phoebe 'fell in the family way by him' and the child, Flossie, was born.⁶⁶ Those

⁶¹ Initially diagnosed as having 'a cancer on the nose' or the disease lupus, Phoebe's eventual death is registered as resulting from 'congenital syphilis'. This signals the more probable cause of her earlier symptoms ('Report of surgeon on death of Phoebe Veitch', J40, 91/531, Archives NZ, Wellington, cited in Dalley, p. 66). Among the pages of witness depositions from the Wanganui Supreme Court hearing, filed in the National Archives, can be found the traces of a pencil sketch of the face of Phoebe Veitch. The crudely drawn likeness describes the thick bandage that Phoebe wore across her face during her trial for murder (Criminal Files (Veitch)).

⁶² 'The Supposed Murder Case: Coroner's Inquest', *Wanganui Chronicle*, 2 March 1883, p. 2, Criminal Files (Veitch).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Testimony of Eliza Blight, Regina by Police v. Phoebe Veitch, Criminal Files (Veitch).

⁶⁶ 'The Child Murder Case', *Wanganui Chronicle*, 1 May 1883, page unknown, Criminal Files (Veitch).

gathered for the inquest heard how this 'dark' man repeatedly threatened to kill Phoebe and continued to stalk and torment her throughout her later marriage to Robert Veitch and beyond. Having been deserted after two years of marriage, and without any protection from her stalker, she explained how she had moved to Wanganui in an effort to escape him. However, the man had followed her and had lured her and the child, under the cover of darkness, to the wharf, where he himself murdered Flossie.⁶⁷

Uncorroborated, second-hand evidence offered by witnesses suggests that Phoebe's family members believed Flossie's father to have been 'a Chinaman'; however, Phoebe's own accounts were altogether more reminiscent of the motif of the wandering and threatening dark stranger.⁶⁸ She described the murderous father of her story as 'tall and good looking' with a scar over his left temple.⁶⁹ He spoke with a Scottish accent and had an image of naked dancing girls tattooed onto his left arm. He was a dashing dresser and wore a gold ring carved with figures on his left hand and kept a glass scarf pin through which could be seen three naked girls 'cavorting' with a man. He also wore a black soft felt hat and carried a sheath knife and a double barreled pistol, about a foot in length, in his left breast pocket. He would appear in a variety of changes of dress: sometimes he wore a moustache and closely cropped hair, and at other times he sported full whiskers and a curly wig. He worked as a cook and was, she thought, a half-caste from the West Indies or perhaps Fiji. She believed the man went by the name of Frank, but that his name was actually Sam Timaru.⁷⁰

According to Phoebe's account, her exotic pursuer stationed himself outside her Wanganui home. He slipped letters under her door, lurked behind buildings and accosted her in the street, until finally she agreed to his demands to take their child and meet with him in an isolated spot near the wharf.⁷¹ Her recollection of

⁶⁷ Ibid.

⁶⁸ 'The Supposed Murder Case: Coroner's Inquest', *Wanganui Chronicle*, 2 March 1883, p. 2, Criminal Files (Veitch).

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

their conversation on the night of Flossie's death was detailed and dramatic as the following excerpt from the coronial inquest demonstrates:

He said to me "now for a settlement up – it must be settled one way or another this night." I said "what do you mean to do?" He said "I must either have the child, or you must come away with me ... if you don't choose to do that I will take the child and leave you to yourself." He gave me ten minutes to consider what I was to do. I told him that I had taken care of the child, fed and clothed her and brought her up as nicely as I could. ... I told him I struggled on by myself without help from anyone. He said "well, it must be settled now one way or other, will you give up the child?" I said "No, I'll not part with her ... I love her as I love my life". ... he said "if you will not part with her you shall have her corpse!" He took her by the shoulders and threw her into the sea. ... I screamed out when he threw her in. He put his hand over my mouth and put the muzzle of his pistol on my forehead, saying, "If you speak one word I'll blow your brains out. There shall be two corpses instead of one".⁷²

Those assembled at the inquest were aware that Phoebe's own narrative represented only one account in a range of possibilities, and for certain members of the coroner's jury the theatrical nature of her testimony satisfied them that it could only be a fabrication. The coronial verdict records that 'the child came by its death by drowning ... and was thrown into the Whanganui River either by its mother or by the man whom she says is its father'.⁷³ However, four jury members strongly dissented and refused to sign the verdict saying that they wished to bring in an alternative verdict of wilful murder against Phoebe Veitch.⁷⁴ A case was duly made out for Flossie's murder and Phoebe was committed to be tried at the next sitting of the Supreme Court.

In the enquiry into the whereabouts of Flossie's alleged father, George Green informed police that he had known both the accused woman and a man answering

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

to the description of Sam Timaru, in Nelson nine years earlier. He insisted that 'Timaru was a real darky or "nigger"' and was known to him as 'Darky Sam'.⁷⁵ On the strength of that information a 'Missing Friends' notice was issued in the New Zealand *Police Gazette* for 'Samuel Timaru, also known as "Darky Sam" or Johnston – a supposed negro'.⁷⁶ Two photographs, alleged to have been likenesses of the man known as Darky Sam, were obtained. However, when Phoebe was shown the photographs she showed no recognition, claiming that they did not show the father, and murderer, of her child.⁷⁷

Despite a later claim by the counsel for the defence of Phoebe Veitch that the police 'neglected to take proper steps' to find the man that the accused had described, an assortment of police correspondence archived in the constabulary memoranda on the Veitch case suggests that strenuous and wide-ranging efforts were made in that regard.⁷⁸ A detective was reported to have 'made every possible inquiry' on board ships leaving Wanganui 'of all coloured men he could see as to whether a coloured man of the description of Frank Timaru was known in the district'. His job included ensuring that 'the public in this neighbourhood were all on the alert to see or hear of such a man'.⁷⁹

In New Plymouth the 'well-known coloured man' Henry Clark was traced and questioned.⁸⁰ An unnamed 'Chinaman' who had been employed as a cook at Browne's Hotel, where Phoebe's uncle was barman, was tracked down in Feilding.⁸¹ In Hawera, Henry Summers, a 'half-caste' American Indian, with black, curly hair and a scar on his temple, was spoken to. However, while he was reportedly in the possession of 'a cigar holder with the images of women on it', he

⁷⁵ Correspondence to the Inspector of Police, Wanganui, 5 March 1883, Criminal Files (Veitch).

⁷⁶ Missing Friends Notice, Criminal Files (Veitch).

⁷⁷ Correspondence from the Inspector of Police, Wanganui, to the Commissioner of the Armed Constabulary, Wellington, 3 May 1883, Criminal Files (Veitch).

⁷⁸ 'Charge of Child Murder', *Hawkes Bay Herald*, 1 May 1883, p. 4. Counsel for the defence brought particular attention to the fact that a note had been appended to the 'Missing Friends' notice in the *Police Gazette* which dismissed the importance of the man-hunt in stating that 'the prisoner's tale was not believed to be correct'.

⁷⁹ Correspondence to the Inspector of Police, Wanganui, 3 March 1883, Criminal Files (Veitch).

⁸⁰ Correspondence to the Inspector of Police, Wanganui, 19 March 1883, Criminal Files (Veitch).

⁸¹ Correspondence from Constable John Gillespie to the Inspector of Police, Wanganui, 7 March 1883, Criminal Files (Veitch).

was soon discounted as a suspect.⁸² In Marton, police tracked John Johnson, a West Indian cook, whose father was reported to be a ‘Scotchman’. Johnson also sported a scar on his temple, and had tattooed arms, a moustache and ‘large, piercing eyes’, and, it was noted, was ‘very easily excited’.⁸³ John Johnson had also worked as a cook at Browne’s Hotel, and tantalisingly, was known to have worn a sheath knife and ‘a pin answering the description of the one mentioned by Mrs Veitch’.⁸⁴ However Johnson was also disregarded as a suspect, although he was able to assist police back on the trail of Samuel Timaru. Johnson recalled working with a ‘Fiji native’ going by the name of Sam who wore a tattoo of a naked woman on one arm, and was by all reports ‘a good billiard player’. This last piece of information led police to re-evaluate reports of a West Indian man known as ‘Frank’ or ‘Frankie’ who was said to have been a billiard marker at a hotel in the township of Bulls, and conclude that it was ‘quite possible’ that the two might be one and the same.⁸⁵ At this point, however, they reached a dead end: neither ‘Sam’ nor ‘Frankie’ had been seen in the colony in the past three years.⁸⁶ By the time of Phoebe Veitch’s murder trial, the search for the menacing, dark figure of Phoebe’s description had concluded without a satisfactory suspect being found.

Satisfied that the accused woman’s story had been no more than an elaborate fabrication, the Supreme Court jury found Phoebe Veitch guilty of the capital offence of murder.⁸⁷ However, her pregnancy affected a stay of execution, and the

⁸² Correspondence from the Police Office, Hawera to the Inspector of Police, Wanganui, 10 March 1883, Criminal Files (Veitch).

⁸³ Correspondence from the Constabulary Station, Marton to the Inspector of Police, Wanganui, 7 March 1883, Criminal Files (Veitch).

⁸⁴ Correspondence from Constable John Coyle to the Inspector of Police, Wanganui, 4 March 1883, Criminal Files (Veitch).

⁸⁵ Correspondence from the Police Office, Hawera to the Inspector of Police, Wanganui, 24 March 1883, Constabulary Memoranda, NA; and correspondence from Constable Thomas Price (no date), Criminal Files (Veitch).

⁸⁶ Ibid.

⁸⁷ ‘The Trial of Phoebe Veitch’, *Manawatu Standard*, 1 May 1883, p. 2. Court reporters who closely covered the case were similarly convinced that Phoebe’s version of events was fictitious. The reporter for the *Wanganui Chronicle* wrote: ‘If the counsel for the prisoner is convinced ... the real murderer is still walking about (a half-caste from India, with a black wig and thick curly whiskers, a Scotchman with his hair cut close, and a half-caste Chinaman, three rolled into one), we think he ought ... to bring the matter under the notice of the Government. But it is certain that no such impossible person was ever cook ... at the hotel kept by the prisoners uncle’ (‘Nulla Dies Sine Linea’, *Wanganui Chronicle*, 3 May 1883, Criminal Files (Veitch)).

following month Phoebe's sentence was commuted to life imprisonment.⁸⁸ In the week following the commutation, Phoebe wrote a full confession, admitting that she alone had been responsible for Flossie's death.⁸⁹ Eight years into her life sentence, in the advanced stages of congenital syphilis, Phoebe died in the Terrace Gaol in Wellington.⁹⁰

In her own personal narrative, Phoebe Veitch composed her short and troubled life as a cautionary tale with a racial discourse taking centre stage. It was a story steeped in dark romantic material, in which she played the part of an unprotected young white girl brought to grief by the lascivious attentions of a dark stranger. The life and death of four-year-old Flossie featured merely as a climactic device in this narrative. Clearly, some elements of Phoebe's story had been drawn from fact. Police investigations demonstrated that numbers of coloured and mixed-race men worked as cooks or hotel staff in the towns in which Phoebe had been based, and witness testimony suggested that the existence of a man such as the one she had described to police had not been entirely contrived. In presenting these verifiable elements within a familiar narrative where dark-skinned men lurked in the shadows to torment young white women and girls, Phoebe endeavoured to persuade agents of the law and the wider public of her innocence. Instead, her narration, with its conflicting details and hyperbolic flourishes, aroused suspicion and finally, irritation and anger.

The murder of a child by a dark-skinned stranger, whether real or imagined, manipulated fears about the threat that any such men might pose to the families of white settler communities. The imagery and tropes of the gothic genre offered a language that could be utilised in the understanding of these events. However, the framing of a murder event in such a way had the effect of shifting the focus from the murdered child as subject. In this telling of events, the victim figured only as

⁸⁸ Phoebe's fourth child was born in the Wanganui gaol four months after her trial (*Manawatu Times*, 24 September 1883, p. 2). There are no records to indicate whether this child survived or where it was taken after its birth. Bronwyn Dalley reports that seven-year-old Herbert was sent to an industrial school as a child 'with no visible means of subsistence' (*Wanganui Chronicle*, 9 May 1883, cited in Dalley, p. 76).

⁸⁹ Phoebe Veitch, Confession, 7 June 1883, J40, 83/604, Archives NZ, cited in Dalley, p. 66.

⁹⁰ 'Death of Phoebe Veitch', *Wanganui Chronicle*, 3 September 1891, p. 2.

an object around which sexual imaginings around racist stereotypes could be teased out, validated and reinforced.

As Bronwyn Dalley indicates, in the dominant mind set of the era, dark-skinned men such as Sam Timaru ‘had no business with white women’, but conversely, white women who chose to associate with men believed to be of an inferior race crossed socially proscribed boundaries and risked loss of respectability and standing within their wider communities.⁹¹ The censure of Pākehā women who formed intimate relationships with Chinese men was particularly marked, and such associations regularly drew open condemnation from the popular press.⁹² On occasion, the infants of white women who lived with Chinese men died in circumstances that were considered suspicious. When legal proceedings concerning such deaths were instigated, as the following section shows, courtroom stories could be intricately intertwined with ideas of foreign deviance and the ruination of white womanhood.

Trouble at Round Hill: ‘Whiteness’ on Trial

Scholars researching the histories of Chinese in New Zealand claim that racial prejudice against Chinese communities rose sharply in the 1880s, at a time when the Chinese population in New Zealand was falling.⁹³ James Ng suggests that the extreme racism, which had ‘set a precedent’ in North America and Australia, directly fed antagonisms towards the Chinese working and living in New Zealand,

⁹¹ Dalley, ‘Criminal Conversations’, p. 73; Jessica Heine, ‘Colonial Anxieties and the Construction of Identities: The Employment of Maori Women in Chinese Market Gardens, Auckland, 1929’ (MA thesis, University of Waikato, 2006), p. 66.

⁹² See for instance ‘A Chinese Hell in New Zealand: Wholesale Debauchery’, *Auckland Star*, 8 May 1888, p. 5; ‘Canton in Southland’, *Otago Witness*, 9 March 1888, p. 14; ‘The Chinese: An Essay’, *Hawera and Normanby Star*, 19 May 1888, p. 2; ‘Yellow Taste in Girls’, *NZ Truth*, 12 December 1925, p. 6; ‘Kissed a Chinaman: Feminine Flippancy in a Fruit Shop’, *NZ Truth*, 4 July 1925, p. 12.

⁹³ James Ng, ‘Chinese settlement in New Zealand, past and present’, retrieved online from <<http://www.stevenyoung.co.nz/The-Chinese-in-New-Zealand/History-of-Chinese-in-NewZealand/Chinese-settlement-in-NZ-past-and-present.html>> no page numbers (accessed 1 November 2011). The Chinese reached a total population in New Zealand of 5,000 or more between 1874 and 1881, and in the 1881 census registered a figure roughly equivalent to one per cent of New Zealand’s non-Māori population (Ng, footnotes).

although, he says, the agitation against them took on milder forms.⁹⁴ Apart from the threat posed by economic competition, a focus of antagonism here (as elsewhere in the British colonies) stemmed from anxieties about the dangers Chinese men might pose to white women and girls.⁹⁵ Among the list of vices attributed to the Chinese, according to Kate Bagnall, was ‘sodomy, seduction, debauchery, paedophilia, rape, murder, gambling and opium use’.⁹⁶ Any social realities that may have fuelled such anxieties might be best explained, as James Belich suggests, in ‘simple demographic terms’.⁹⁷ According to Belich, of the 5,004 Chinese registered in New Zealand in the 1881 census, only nine were women.⁹⁸

For white politicians and social commentators, the presence of communities of Chinese men unaccompanied by their wives and families, carried with them the inevitability of crime, sexual perversion and immorality.⁹⁹ Such fears about the ‘ruination’ of European women stood alongside more fundamental concerns about threats to national health and fitness and the purity of the ‘white’ race.¹⁰⁰ An abhorrence of the idea of racial mixing and ‘inbreeding’ was openly voiced by commentators in Australia and New Zealand, who cautioned against race

⁹⁴ Ng, ‘Chinese Settlement’, (n.p). Nevertheless much legislation and policy was introduced which related only to Chinese. Between 1870 and 1920 ‘no fewer than twenty’ bills were introduced for the restriction of Chinese immigration or economic activity (Brian Moloughney and John Stenhouse, ‘Drug Besotten, Sin Begotten Fiends of Filth: New Zealanders and the Oriental Other, 1850-1920’, *New Zealand Journal of History*, 33:1 (1999), p. 47).

⁹⁵ Kate Bagnall, ‘Rewriting the History of Chinese Families in Nineteenth-Century Australia’, *Australian Historical Studies*, 42:1 (March 2011), p. 65.

⁹⁶ Bagnall, p. 66. See also Lynette Shum, ‘Remembering Haining Street: With both eyes open’, retrieved from <<http://www.stevyoung.co.nz/The-Chinese-in-New-Zealand/Current-Historical-Research/REMEMBERING-HAINING-STREET-With-both-eyes-open.html>> (accessed 1 November 2011).

⁹⁷ Belich, p. 228.

⁹⁸ Ibid. This disparity was still marked at the end of the period of study. The 2,927 Chinese men registered as living in New Zealand in 1926 were joined by only 447 Chinese females (many of whom would have been children under 14 years of age), (Angela Wanhalla, ‘Family, Community and Gender’, *The New Oxford History of New Zealand*, edited by Giselle Byrnes (Melbourne and Auckland: Auckland University Press, 2009), p. 502).

⁹⁹ Bagnall, p. 66.

¹⁰⁰ Heine, p. 4. As Heine shows, Māori girls were also believed to be in danger from ‘intermingling’ with Chinese men – so much so that their moral welfare became the focus of a 1929 Governmental Inquiry into Chinese employment practices. On this subject see also Barbara Brookes, ‘National Manhood: Te Akarana Maori Association and the work of Maori Women on Chinese Market Gardens in Late 1920s New Zealand’, *Rethinking the Racial Moment: Essays on the Colonial Encounter*, edited by Alison Holland and Barbara Brookes (Newcastle: Cambridge Scholars Publishing, 2011), pp. 157-78.

‘pollution’ and the creation of a ‘piebald breed’.¹⁰¹ Inevitably, the relationships which did develop between Pākehā women and Chinese men were subject to much negative stereotyping, which was interwoven with notions of destitution, immorality and vice. In this way the Pākehā wives, sweethearts or sexual partners of Chinese men were caught up in the process of Oriental othering. In the few cases where such women were accused of crimes against their children, courtroom discourses challenged understandings of white motherhood, and in distinct ways the ‘whiteness’ of such women was called into question.

Press headlines were strident in their reporting of the death of a child from starvation in the Chinese mining village of Round Hill in Western Southland in 1888. The *Ashburton Guardian*, covering the inquest on the three-month-old baby girl, declared it, in a much vaunted phrase, to be a case of ‘Inhuman Motherhood’.¹⁰² The *Te Aroha News* report of the Magistrate’s hearing which followed promised to relay ‘A Shocking Story’ which would provide readers a glimpse into the unsavoury ‘Career of a European Woman among the Chinese’.¹⁰³ *The Southland Times* covered the Supreme Court Trial of Elizabeth Allen, *alias* Phemister, *alias* Mrs Wong See Que, for the manslaughter of the baby girl, and reported that the amassing of ‘facts’ on the case led to a consensus that the mother showed not only ‘a want of natural affection for her offspring, but a condition of mind, amounting to inhumanity’.¹⁰⁴

The story of Lizzie Allen’s passage from humanity to bestiality was conveyed by the popular press in fragments of rumour and conjecture. She was thought to be the daughter of ‘the notorious Mary Allan [sic]’ – a woman well known to the Dunedin Police, with ‘hundreds of convictions ... recorded against her,’ and was therefore understood to be a recipient of ‘bad blood’.¹⁰⁵ The very basics of her small family’s grim circumstances were relayed at trial. Lizzie was ‘a married

¹⁰¹ Bagnall, p. 70; Ng ‘Chinese Settlement’; Heine, p. 4.

¹⁰² ‘Inhuman Motherhood’, *Ashburton Guardian*, 18 September 1888, p. 2.

¹⁰³ ‘Died from Starvation: A Shocking Story: Career of a European Woman among the Chinese’, *Te Aroha News*, 15 September 1888, p. 5.

¹⁰⁴ ‘Supreme Court: Criminal Business’, *Southland Times*, 14 September 1888, p. 2.

¹⁰⁵ ‘Inhuman Motherhood’, *Ashburton Guardian*, 18 September 1888, p. 2.

woman, but not living with her husband'.¹⁰⁶ Instead, she and her children were living in a 'hut' at Round Hill with a man named Lee Chum, and the baby, christened Rosina Allen, was born there.¹⁰⁷

At the coroner's inquest on baby Rosina it was disclosed that she was the second of Lizzie's children to have died within the month.¹⁰⁸ Witnesses, both Chinese and Pākehā, testified to Lizzie's frequent alcoholic binges and the infant's 'deplorable state', and it was claimed that the mother had twice been observed 'lying drunk alongside the corduroy track with the child beside her, exposed to the weather'.¹⁰⁹ She was said to have been 'in the habit' of spending long hours in the public house at the Chinese mining camp and on one occasion had returned with Rosina 'in a condition that no mother would allow'.¹¹⁰ Leaving the sick infant with a male neighbour, she apparently continued her drinking binge into the next day, coming home at midnight 'beastly drunk' and 'quite incapable of giving the infant any food'. Rosina reportedly died on the evening of the following day.¹¹¹ Lizzie's apparently callous reaction to the death of her baby was noted by witnesses and repeated in the press: it was claimed that when neighbour Yape Yet came to inform her of the death, 'she would not go home [with him] unless he bought half a bottle of whisky'.¹¹²

These textual representations demonstrate an interpretation of events which was wholly devoid of the sympathy often drawn by stories of 'fallen' or deserted women mired in alcoholism and extreme poverty. The deification of the maternal role and its central position in the ideal of white womanhood allowed some

¹⁰⁶ Little is known about Lizzie's marital status and her children's parentage and ethnicity. While she was referred to as Mrs Wong See Que or Mrs Lee Quee by her Round Hill neighbours, the courts list a version of this name only among her aliases. Newspapers refer to her as 'A Chinaman's Paramour'. The name used in court differs in spelling to her assumed maiden name of Allan. It is possible that Allen may have been Lizzie's married name and that the rumoured connection to Mary Allan was misplaced.

¹⁰⁷ 'Supreme Court: Criminal Business', *Southland Times*, 14 September 1888, p. 2.

¹⁰⁸ 'Died from Starvation: A Shocking Story: Career of a European Woman among the Chinese', *Te Aroha News*, 15 September 1888, p. 5.

¹⁰⁹ *Ibid.*

¹¹⁰ 'Supreme Court: Criminal Business', *Southland Times*, 14 September 1888, p. 2.

¹¹¹ 'Died from Starvation: A Shocking Story: Career of a European Woman among the Chinese', *Te Aroha News*, 15 September 1888, p. 5.

¹¹² *Ibid.*

criminal mothers to be framed as victims and sufferers, overpowered by the ‘demon’ drink, as previous chapters have shown. Lizzie’s association with the Chinese community and her relationships with Lee Chum and the mysterious Mr Wong See Que, appear to have prevented her access to such mitigating narratives. As the *Southland Times* reporter openly conceded:

[W]hen it was stated on oath that the inhuman mother was a dweller in the vile dens of the Chinese diggers, and was so often intoxicated that the infant was neglected for hours and hours together, it was impossible for a jury to return any other verdict than one of manslaughter against such a parent.¹¹³

The jury offered no recommendation for mercy with their guilty verdict and Lizzie Allen was sentenced by the judge to four years imprisonment with hard labour.¹¹⁴

However, there is little indication that this show of judicial firmness reflected a heightened sense of empathy for the child. In this instance, the death of a baby by starvation and neglect appears to have provoked feelings of resignation rather than outrage or regret. The reporter for the *Ashburton Guardian* went so far as to declare Rosina’s death a blessing, claiming that:

In such surroundings perhaps it was as well the wretched infant did not live to realise its parentage. Begotten in infamy, filth, and debauchery, its future could not be at best a hopeful one.¹¹⁵

The framing of the death of the child and the punishment given to the mother are notably harsh when considered in relation to other cases tried during this period. In real terms, the ‘career’ of thirty-five year old Lizzie was not dissimilar to that of women discussed in earlier chapters, such as Mary Ann Weston, who in 1882 was released without charge after she was found lying intoxicated in the street with her dead child beneath her.¹¹⁶ Janet McKinlay’s infant daughter died from

¹¹³ Ibid.

¹¹⁴ ‘Supreme Court: Criminal Business’, *Southland Times*, 14 September 1888, p. 2.

¹¹⁵ ‘Inhuman Motherhood’, *Ashburton Guardian*, 18 September 1888, p. 2.

¹¹⁶ ‘Dunedin Supreme Court’, *Southland Times*, 6 January 1882, p. 2.

starvation and neglect as a consequence of her mother's extreme battles with alcoholism, yet Janet was acquitted by a sympathetic jury.¹¹⁷ Two children belonging to Mary Ann Clarcken suffered a similar pattern of neglect yet their mother was initially afforded a sympathetic hearing before finally being 'looked upon as a bad woman' and sentenced to twelve months imprisonment for manslaughter.¹¹⁸ The infant of Jane Lyons died as a result of injuries sustained in a shocking public display of abuse from her inebriated mother, yet Jane received only a three month gaol sentence for manslaughter after the jury recommended her to mercy on the grounds of the 'weak state she was in at the time'.¹¹⁹ The jury sitting in judgement of Lizzie Allen appear to have more effortlessly imagined a woman in her situation capable of acting against her maternal nature, and more deserving of judicial punishment.

The telling of stories like Lizzie Allen's in the popular press served as a means for the reinforcement of ideas about 'social contamination' and 'moral contagion'.¹²⁰ Such moral tales gave substance to reports and discussions of intimate relationships between Chinese men and white women which were printed and reprinted in various colonial newspapers and designed to provoke moral outrage among their predominantly Pākehā readership. Understandings of class appear in these discourses and are overlaid and intersected with particular imaginings of gender, ethnicity and race. Regardless of the diverse cultures and ethnicities in Pākehā society, in every piece of textual representation I have uncovered in this area, these women are referred to simply as 'white' or 'European'. Whether they were Australian or New Zealand born, or of Irish, Nordic, or English extraction, for example, – the fact of their 'whiteness' appears to have been of singular importance in highlighting the non-whiteness of others. Any such white women who associated with Chinese men were characteristically believed to be of the

¹¹⁷ 'Inquest' *Star* (Canterbury), 19 April 1875, p. 2.

¹¹⁸ 'Death of an Infant: Shocking Details' *Evening Post* (Wellington), 11 January 1895, p. 2.

¹¹⁹ 'Magisterial', *Auckland Star*, 7 December 1872, p. 3; 'Criminal Sittings', *Auckland Star*, 8 January 1873, p. 2. Jane Lyons was a mother of eight and a known alcoholic who appeared regularly before the courts for drunk and disorderly conduct. Her two-month-old infant had been a sole surviving twin.

¹²⁰ Heine, p. 72.

‘lower type’.¹²¹ This judgement was underpinned, as Bagnall suggests, by an assumption that ‘white women who would contemplate life as the wife of a Chinese man would themselves be depraved and immoral’.¹²² For contemporary commentators these women were best understood as women with ‘history’ or the once innocent daughters of the poor.¹²³

Earlier in 1888, Round Hill, also known as ‘Canton’, had been the focus of media attention around the country with North Island’s *Auckland Star* and South Island’s *Otago Witness* featuring articles describing ‘the headquarters of the Chinese in Southland’.¹²⁴ The reports present a ‘Chinese Hell’, graphically illustrating the ‘noise and stench from the hovels’ and the ‘reeking’ gambling dens and opium huts found in the settlement.¹²⁵ In particular, they express concern about the numbers of young European women living in the community.¹²⁶

The reporter for the *Otago Witness* takes his readers on a guided tour through the Chinese mining village, and expresses some astonishment that the European women he spoke with appeared to be intelligent, cheerful and attractive rather than ‘the frowsy, blowsy bells one would expect to find them’. However, he promptly returns to familiar narratives in order to comprehend his experience of these women. Even the most ‘clever-looking’ among them, he insists, ‘has a history, and underneath an affected *gaietie de coeur* there beats a woman’s heart oftentimes wrung with anguish and remorse’. Such women are ‘the fallen in our midst’ upon whom ‘nothing but ruthless contempt is bestowed’, but he reminds his readers that they are also objects to be pitied. He wonders:

¹²¹ Heine, p. 68. For instance, a *NZ Truth* writer reporting on a case of carnal knowledge in 1925 involving a teenaged mixed race couple refers to ‘the remarkable point’ that the girl in question was ‘not of the type usually associated with such sordid affairs. Rather she spoke in quite [a] refined tone of voice and had all the appearance of a well brought up child’ (‘Lure of the Yellow Man’, *NZ Truth*, 17 Oct 1925, p. 8).

¹²² Bagnall, p. 68.

¹²³ ‘Canton in Southland’, *Otago Witness*, 9 March 1888, p. 14.

¹²⁴ ‘A Chinese Hell in New Zealand: Wholesale Debauchery’, *Auckland Star*, 8 May 1888, p. 5; and *Otago Witness*, 9 March 1888, p. 14.

¹²⁵ ‘A Chinese Hell’, *Auckland Star*, 8 May 1888, p. 5

¹²⁶ The reporter for the *Star*, for instance, opines: ‘I am sure anyone visiting Round Hill and seeing the number of young girls that these Chinese have stopping with them would shudder’ (*Auckland Star*, 8 May 1888, p. 5).

What revolt against men's cruelty and caprice has brought them to such a pass – has led them to abandon the true instincts of womanhood, and degraded them to so low a level as the mistresses and playthings of Chinamen, with whom the most depraved of them cannot have an idea in common?¹²⁷



Figure 14: Round Hill or 'Canton', c. late 1880s.¹²⁸

Anglo-Chinese families pose for a photographer outside a hotel at Round Hill, late 1880s. In 1888 Round Hill was reported to have a population of 'almost 350 Chinese and 40 or 50 Europeans, half of the latter being women'.

This discourse foregrounds the notion that interracial relationships were unnatural and one-sided because of insurmountable differences in culture, habits and customs. However, as recent scholarship has shown, many formal and informal relationships were forged between Chinese men and non-Chinese women. Some women formed long-term de-facto partnerships with Chinese men after being

¹²⁷ 'Canton in Southland', *Otago Witness*, 9 March 1888, p. 14.

¹²⁸ Ibid. This image reproduced with the permission of the Hocken Library, University of Otago (Reference: S08-193c –E2084/9).

widowed or deserted, or on escaping unhappy marriages.¹²⁹ Despite James Belich's claim for nineteenth-century Chinese migrants that 'Pākehā would not marry them', interracial marriages between Chinese men and Pākehā women certainly did take place, and were tolerated and accepted in their communities.¹³⁰ In New Zealand, marriages between Chinese men and European women were legal and any children were legitimate. This was not the case in America, for instance, where in the 1860s anti-miscegenation laws were introduced to discourage such unions.¹³¹

In spite of the overt racism evident in the popular press, some scholars insist that 'New Zealanders did not "other" the Chinese as radically and systematically as we might think'.¹³² Brian Moloughney and John Stenhouse, in particular, provide evidence that the flagrant racism of government ministers and interest groups did not always filter down to the level of families and communities.¹³³ The anxieties expressed in a second case in 1888, when an Anglo-Chinese couple were tried on the death of a newly born child, give a measure of support to this argument. In the Wellington trial of Chinese market gardener Fong Chong and his British wife Clara, judicial concerns about deviations from official legal procedure stimulated a spirited demand for fair and just law.¹³⁴ However, as with the previous case, the resort to disproportionate sentencing suggests that ethnic dimensions still coloured the way perpetrators of crime might be imagined.

Police arrested Clara Fong Chong after the body of a week-old female child was discovered in a sugar bag on the beach at Evans Bay in Kilbirnie.¹³⁵ Clara, a recent British migrant living in nearby Newtown, had been married for less than

¹²⁹ Witnesses testifying at the trial of Lizzie Allen included Mary Leewellyn, who was described as 'a widow residing at Round Hill', and midwife Ellen Wiseman, who was referred to as 'a married woman living with Chum Ham' ('Supreme Court: Criminal Business', *Southland Times*, 14 September 1888, p. 2).

¹³⁰ Belich, p. 229. James Ng records that there were ninety-three legal Anglo-Chinese marriages registered in the 1886 New Zealand Census (Ng, 'Chinese Settlement' (n.p)).

¹³¹ Andrew Markus, *Fear and Hatred: Purifying Australia and California 1850-1901* (Sydney: Hale and Ironmonger, 1979), pp. 258-9, cited in Bagnall, p. 69.

¹³² Brian Moloughney and John Stenhouse, "'Drug-Besotted, Sin-Begotten Fiends of Filth": New Zealanders and the Oriental Other 1850-1920', *New Zealand Journal of History*, 33.1 (1999), p. 63.

¹³³ Moloughney and Stenhouse, p. 59.

¹³⁴ Fong Chong was also known by the alias Wa Chong.

¹³⁵ *R v Fong Chong and Clara Fong Chong* (1888) 6 Gaz LR (CA) at 376.

three months when she gave birth to a child which, neighbours claimed, was heard crying on several occasions.¹³⁶ Despite Clara's denial to police that a baby had been born to her, a medical examination proved otherwise. Her refutation, together with the testimony of her neighbours and the discovery of 'bloodied linen' in her home, ensured her arrest. Despite a claim that there was 'not a tittle of evidence against the husband', Fong Chong was also taken into custody and stood trial for murder alongside his wife.¹³⁷

A medical expert described the infant found on the beach as 'a European child, as distinguished from a half-caste Chinese', and apparently five days old 'at least'.¹³⁸ He found clear 'marks ... of violence on the neck, as though caused by the impression of a finger and thumb', which indicated that the baby girl had been suffocated using 'external pressure'.¹³⁹ At trial the jury were asked by counsel for the defence, Mr Jellicoe, to consider as 'reasonable theories' that the marks on the child's neck 'might have been caused at birth, in the absence of a skilled attendant', or that they occurred post-mortem as a result of forcing the body into the bag in which it was found. He implored the jury 'not to send two fellow creatures to their execution on the mere inference ... that the child had not died a natural death'. Mr Jellicoe reminded them that as they 'hoped to stand before the judgment seat of the Almighty' they must therefore 'reject all inference and conjecture' and 'not be prejudiced by the nationality of the male prisoner'.¹⁴⁰ Indeed, he suggested that what they were dealing with may have been a simple misinterpretation of cultural practice. He informed the jury that:

Chinamen had little respect for dead bodies, and in their own country they were not accustomed to use public cemeteries for burial purposes ... there [i]s nothing surprising in the supposition that the prisoner should dispose of the body of his child by either burying it himself or putting it into the sea in order to save undertakers' expenses. ... In that

¹³⁶ 'The Evans Bay Infanticide Case, *Evening Post* (Wellington), 9 February 1888, p. 4. Clara's aunt testified to her having arrived in the colony, three years previously, aboard the *British Queen*.

¹³⁷ *Ibid.*

¹³⁸ 'Supreme Court', *Evening Post* (Wellington), 14 April 1888, p. 2.

¹³⁹ 'Supreme Court', *Evening Post* (Wellington), 13 April 1888, p. 3.

¹⁴⁰ 'Supreme Court: Criminal Sittings', *Evening Post* (Wellington), 14 April 1888, p. 2.

case, as he would have little regard for the body, the marks on the neck might have been caused by him in shoving it into the bag.¹⁴¹

The jury were not sufficiently swayed by the available evidence to find the couple guilty of the murder of Clara's baby. However, they were declared guilty of concealment of birth, and the presiding judge, Justice Prendergast, conferred the maximum sentence of two years imprisonment on them both.¹⁴²

However, the case was brought before the Court of Appeal on several details, one of them being the issue of entrapment. While being held in the Terrace Gaol, Clara had been instructed to carry out some sewing work, with the intention that it be used as evidence at trial. Calico found wrapped with the body of the child featured needlework of an 'extremely bad' quality and this was compared in court, by an 'expert' in such matters, to the work done by Clara while awaiting trial.¹⁴³ Both articles were affirmed to be 'the work of the same person'.¹⁴⁴ During the trial Justice Prendergast had voiced strong disapproval of proceedings that had induced the accused woman to perjure herself in such a way, declaring them to be 'improper' and even 'un-English'.¹⁴⁵ Nonetheless, the evidence obtained by entrapment appears to have been the very proof used by the Court of Appeal to confirm the conviction. The two points of evidence identifying the body with the accused couple were the 'similarity of age' of the child, which was disregarded as 'perhaps unimportant', and the similarity of the sewing work.¹⁴⁶ The Court of Appeal upheld this evidence as sufficient to show that 'the child found was that which the prisoner had given birth to', and, furthermore, held that as 'that child was born by the male prisoner's wife in his house ... it was not improbable that he should have taken it to dispose of its body'. The judges concluded:

It is not necessary to produce eye witnesses to prove facts – inferences may justly and properly be drawn by the jury from the circumstances,

¹⁴¹ 'Supreme Court', *Evening Post* (Wellington), 14 April 1888, p. 2.

¹⁴² *Ibid.*

¹⁴³ 'Town and Country', *Timaru Herald*, 18 April 1888, p. 2.

¹⁴⁴ *R v Fong Chong and Clara Fong Chong* (1888) 6 Gaz LR (CA) at 377.

¹⁴⁵ 'Gaol Evidence against Criminals', *Evening Post* (Wellington), 17 April 1888, p. 4.

¹⁴⁶ *R v Fong Chong and Clara Fong Chong* (1888) 6 Gaz LR (CA) at 379-80.

and we are all of the opinion in this case that the jury were justified in drawing the inference that the body found was secretly disposed of by both prisoners.¹⁴⁷

In cautioning historians against the assumption that harsh sentences were a result of racial prejudice, Kevin Mullen warns that ‘we must look to the nature of the offence rather than to discrimination to explain disproportionate sentencing patterns’.¹⁴⁸ However, the cases of neonaticide and concealment of birth discussed throughout this thesis demonstrate the importance placed on clear and unambiguous physical evidence in the evaluation of these crimes. In the period under investigation, as previous chapters have shown, a great number of indictments for concealment of birth were quashed by reason of insufficient evidence and even the strongest circumstantial evidence was regularly disregarded. Sentencing for those found guilty of concealment, throughout this period, averaged around three months imprisonment, with one day of incarceration being not uncommon.¹⁴⁹ Only three other individuals besides Mr and Mrs Fong Chong received the maximum penalty of two years imprisonment with hard labour. Justice Prendergast’s open disapproval of ‘improper’ proceedings demonstrates that New Zealand judges were anxious to show a meaningful commitment to the rule of law. Nevertheless, I suggest that understandings and imaginings about race played a central role in the judicial approval of ‘inference’ in the finding of this case, and in the maximum sentences given to the accused parties. While the murder (or concealment of the birth) of children among ‘white’ communities might be attributed to desperate individuals acting in a manner alien to their true maternal or paternal nature, it appears that the same crimes by Chinese migrants (and those closely associated with them) could more easily be interpreted as a reflection of ‘national character’.

In his study of race and crime in ‘the late British Empire’, Wiener points to the ‘complex interaction ... of stark racial inequality and the deep-rooted liberal

¹⁴⁷ Ibid, p. 380.

¹⁴⁸ Kevin Mullen, *Dangerous Strangers: Minority Newcomers and Criminal Violence in the Urban West, 1850-2000* (New York: Palgrave Macmillan, 2005), p. 109.

¹⁴⁹ After 1900 a majority of those tried for concealment of birth received probationary sentences or were sentenced to reformatory detention in Church run reformatories.

premises of the criminal law'.¹⁵⁰ The unfolding of trials involving Anglo-Chinese families like that of Mr and Mrs Fong Chong, and those involving Māori families, as detailed in the following section, suggest that the complexities and tensions between these divergent positions were no less apparent in the New Zealand context.

Māori Child Murderers in the Courts

In the period under investigation the majority of the Māori population lived rurally and semi-autonomously, remaining largely isolated from predominantly Pākehā urban society.¹⁵¹ For the most part then, Pākehā understandings of Māori culture and *tikanga* were fragmentary at best, and even when considered in earnest, remained rife with assumption and misconception.¹⁵² From the days of earliest contact European observers positioned Māori as a potent subject of gothic discourse. The idea of New Zealand as a country with a dark and dangerous inner core was established in the nineteenth-century European popular mind by early ethnological accounts of traditional tattooing practices, infanticide and ritual cannibalism.¹⁵³ Popular nineteenth-century writers, such as Jules Verne, who set their novels in the 'frontier imaginary' of colonial New Zealand, drew heavily on ethnological theories of race and cast their Māori antagonists as 'the ultimate threat ... representing all the things Europeans most feared about the racial "other"'.¹⁵⁴

The enthusiasm for such stories was displayed in the popularity of these novels throughout the British colonies. As well, public addresses on such subjects as

¹⁵⁰ Wiener, *An Empire on Trial*, p. x.

¹⁵¹ Belich, p. 191; Michael King, *Nga Iwi O Te Motu: 1000 Years of Māori History* (Auckland: Reed, 1997), pp. 50-51.

¹⁵² The word *tikanga* encompasses a range of meanings including customs, codes and practices (*Te Aka Māori-English, English-Māori Dictionary* <www.maoridictionary.co.nz> accessed 2 February 2012).

¹⁵³ Malchow, p. 80.

¹⁵⁴ Moffat, p. 58; Jules Verne, *Among the Cannibals* (London: Ward, Lock and Tyler, 1876); see also Rolf Boldrewood, *War to the Knife, or, Tangata Maori* (London and New York: Macmillan, 1899); and Susie Mactier, *Miranda Stanhope* (Auckland: Brett Printing, 1911), pp. 78-79. I am grateful to Kirstine Moffat for references to these texts.

‘The Ancient History of the Maori’ and “‘New Zealand of the Past’ ... when it was a land unknown to people in civilized countries’ toured New Zealand and were regularly met with packed houses.¹⁵⁵ Like the nineteenth-century novels, these accounts of the early history of Māori were often replete with titillating details of the immorality and brutality of the indigenous people in their ‘savage state’.¹⁵⁶ In 1877, for instance, the Reverend Thomas Buddle toured a series of lectures which described ‘in felicitous language’, the ‘condition of the Maori race prior to the appearance of the early European settlers’.¹⁵⁷ The Reverend’s talks reportedly ‘proceeded in logical order to notice the habits of religion, cannibalism, infanticide, polygamy, slavery, and the other features of Maori life’.¹⁵⁸ With the steady demise of these ‘uncivilised’ practices, such discourse helped to support an image of Māori as a worthy and receptive people, eager to be elevated from their ‘pre-modern’ state and therefore ideally positioned for ‘Europeanization’.¹⁵⁹

Nineteenth-century primary source material generated by Māori testimony, as well as that recorded by contemporary Pākehā commentators, illustrates that while infanticide may have had a place in early Māori society, it was extremely rare by the mid-nineteenth century.¹⁶⁰ The perceived demise of what some believed to have been a customary practice was attributed to the early and widespread acceptance of Christianity among the diverse tribes. However, if traditional forms of infanticide had been as prevalent as some early missionaries and ethnographers claimed, its passing would have owed as much to the deep decline in the Māori population, which in the nineteenth century included an abysmally high disease-

¹⁵⁵ ‘The Ancient History of the Maori’, *Hawera and Normanby Star*, 11 January 1898, p. 2; ‘Rev Thomas Buddle on “New Zealand”’, *Auckland Star*, 29 September 1877, p. 2.

¹⁵⁶ ‘Maori-Life’, *Tuapeka Times*, 16 November 1869, p. 3.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Adams, p. 31.

¹⁶⁰ Ian Pool argues that while infanticide is known to occur in ‘every society’; there is no strong evidence that it constituted ‘a general custom’ among Māori (Ian Pool, *Te Iwi Maori: A New Zealand Population Past, Present and Projected* (Auckland: Auckland University Press, 1991), pp. 47-48). For early ethnological accounts of infanticide among Māori from a British perspective see for instance, A. Marjoribanks, *Travels in New Zealand* (London: Smith, Elder, 1846), pp. 148-154, and Richard A. Cruise, *Journal of a 10 months residence in New Zealand* (1820), Second edition, edited by A.G. Bagnall (1974).

related child mortality rate.¹⁶¹ High rates of infertility and a lack of stigma attached to illegitimacy (despite contrary claims by some missionaries) may also have lessened the likelihood of neonaticide occurring among Māori living in traditional communities.¹⁶² A very small number of suspicious child deaths among Māori were investigated by police. Undoubtedly, geographical remoteness and resistance to colonial assimilation among some *iwi* and *hapu* suggests that an unknown number of homicide incidents remained hidden from the Pākehā judicial system.¹⁶³ Furthermore, as Māori families and communities were ‘more likely to care for their [mentally] disturbed family members using their own methods’, as Lorelle Burke shows, it is reasonable to assume that other *whānau* and *hapu* similarly chose to deal with those suspected of causing child deaths without recourse to European systems.¹⁶⁴ However, the evidence that a small number of child killings *were* readily reported to police suggests that such deaths were treated as serious and exceptional occurrences.

During the time-frame of this study, five cases brought before the New Zealand courts involving the suspicious death of a child involved a victim or perpetrator who was recognisably Māori. The earliest of these occurred in 1892.¹⁶⁵ Homicide incidents most likely to come to the attention of European authorities and legal officials were those arising where Māori families or individuals lived in, or near to, European settlements such as Auckland.¹⁶⁶ These incidents which resulted in *whānau* or individual Māori women being investigated over the deaths of children tended to follow the same general course as that involving non-Māori: Police received reports of infant bodies found, or of murders witnessed, by others in the community; young, single mothers were treated with compassion and leniency in

¹⁶¹ L.K. Gluckman, ‘Abortion in the Nineteenth Century Māori: a Historical and Ethnopsychiatric Review’, *New Zealand Medical Journal*, 93 (1981), pp. 384-6.

¹⁶² *Ibid.*

¹⁶³ The diverse *iwi* (or tribes) are made up of smaller *hapu* (or clan groups).

¹⁶⁴ Lorelle Burke, ‘“The voices caused him to become porangi”’: Māori patients in the Auckland Lunatic Asylum, 1860-1900’ (MA Thesis, University of Waikato, 2006), p. 60. The word *whānau* refers to an extended family group.

¹⁶⁵ In Gisborne, Bella and Horiana Christian (Case files 45 and 192), described as ‘Spanish-Maori half-castes’, were charged with the murder of their sister Zena’s illegitimate newborn child.

¹⁶⁶ Census figures indicate that by 1911 the majority of the Māori population were dwelling within the wider Auckland province (‘Number of Maoris in Each County’, *New Zealand Official Year Book*, 1911, p. 584).

the courts; and signs of insanity were noted and accounted for in older, married women and men. In these cases, whānau and other tribal members were not averse to involving local police and utilising the European legal system and its institutions. In 1899, twenty-five year old Ani Makara was admitted to an Auckland insane asylum by members of her iwi because of her erratic mental state, which included ‘a mania for burning houses’.¹⁶⁷ Four years later she was handed to police by members of another *papa kāinga* (settlement) after drowning her one-year-old son in a swamp.¹⁶⁸ Homeless and uncared for, Ani had found her way to a *papa kāinga* at Whakarepa, in the Hokianga, and been invited to stay. Within days her strange behaviour had become evident and the sudden disappearance of her child led to a search for the baby’s body, which when found, was passed to the coroner for post-mortem and inquest. According to media reports, Ani Makara was acquitted of the murder of her child on the grounds of insanity and, despite her fragile mental state, was apparently discharged from custody.¹⁶⁹

Extended family was instrumental in the arrest of Matiu, Hirini and Ema Ngatimo Hohepa in 1908, after an eighteen-month-old child was burned to death in a *papa kāinga* at Otarao, near Whangarei.¹⁷⁰ Having been terrorised by the *kaumatua* Matiu (known to the family as ‘Timo’), who appeared to be suffering a form of religious mania, whānau members later gave detailed witness testimony to the murder of Timo’s grandson and the attempted murder of his six-year-old son.¹⁷¹

In its summation of the homicide incident, the coroner’s jury found that the baby, Mekerene, was ‘wilfully murdered by the father and mother and ... grandfather’ in an ‘outrage’ generally understood to be ‘the outcome of tohungaism, since it was stated by witnesses that the deeds were done to drive Satan out of the

¹⁶⁷ Lorelle Barry and Catharine Coleborne, ‘Insanity and Ethnicity in New Zealand: Māori Encounters With the Auckland Mental Hospital, 1860 – 1900,’ *History of Psychiatry*, 22:3 (2011), pp. 285-301.

¹⁶⁸ ‘The Courts’, *Wanganui Chronicle*, 17 November 1903, p. 5.

¹⁶⁹ Ibid. Her discharge suggests the possibility that she was reclaimed by her whānau or other members of her tribe.

¹⁷⁰ ‘Murder of an Infant’, *Hawera and Normanby Star*, 13 November, 1908, p. 5.

¹⁷¹ The term *kaumatua* refers to a male elder or patriarch.

children'.¹⁷² At trial, witnesses testified that married couple Hirini and Ema, and Hirini's father Timo, had 'been behaving in a very peculiar manner'. Timo had taken to 'represent[ing] himself as "Christ", and for several days prior to the incident the three had begun to 'roll their eyes and talk of witchcraft'.¹⁷³ Timo's twenty-year-old daughter claimed that her mother had 'announced', at various times, that the whānau were being martyred by some of the Waikato natives', or "'mākutud" by white men'.¹⁷⁴ This disturbing behaviour came to a head with Timo's insistence that they 'must all die' and 'shall all be burnt with fire'.¹⁷⁵ In a greatly agitated state, he ordered that the two children be ritually cleansed and 'thrown' onto an open fire in the kitchen of the family whare. In the following events, the boy, Mahaera, received serious burns to his legs, hands and face.¹⁷⁶ Baby Mekerene, placed onto the fire by his mother, at her husband's insistence, was burned to death.¹⁷⁷ On arrest, Timo Hohepa was immediately admitted to the Avondale Asylum 'in a state of raving lunacy'.¹⁷⁸ Mekerene's parents, Hirini and Ema were charged with murder and stood trial before Justice Edwards at the Auckland Supreme Court.

The merging of Christian and traditional Māori belief which was demonstrated in this case was not uncommon.¹⁷⁹ Belief in elements of the supernatural, such as omens, *tapu* (spiritual restrictions), demons and 'malignant spirits', were deeply enmeshed in the Māori world-view. By the mid-nineteenth century, as Lachy Paterson shows, while there had been an 'almost universal conversion of Māori to

¹⁷² 'Terrible Infanticide Case', *Thames Star*, 8 August 1908, p. 2. The word *tohunga*, meaning an 'expert' or 'adept', was understood in this context to refer to a specialist in sorcery or witchcraft.

¹⁷³ 'Charge of Murder', *Otago Witness*, 18 November 1908, p. 40.

¹⁷⁴ *Ibid.* Mākutū can be understood as a form of sorcery.

¹⁷⁵ 'Barbarous Fanaticism: Child's Terrible Death', *Thames Star*, 13 November 1908, p. 1.

¹⁷⁶ 'Sensational Witchcraft Case: A Sequel: Old Maori Charged with Counselling Murder', *Wanganui Herald*, 11 November 1909, p. 6.

¹⁷⁷ 'Maori Fanatics', *Marlborough Express*, 13 November 1908, p. 2.

¹⁷⁸ *Ibid.* One year later Timo was declared mentally sound and stood trial for the murder of his grandson. The court found that he was 'insane when the deed was committed'. Nevertheless he was ordered to be 'kept in strict custody in Auckland Gaol, until such time as the pleasure of the Minister should be known' ('Supreme Court Auckland', *Wanganui Herald*, 26 November 1909, p. 5).

¹⁷⁹ Lachy Paterson, 'Government, Church and Māori Responses to Mākutū (Sorcery) in New Zealand in the Nineteenth and Early Twentieth Centuries', *Cultural and Social History*, 8 (2011), p. 175.

Christianity’, Christian and Māori religions tended to be practiced simultaneously – ‘the two worlds’, as he says, ‘co-existed’, though not always smoothly.¹⁸⁰

The phenomenon of *mākutu* (sorcery) was acknowledged as one ‘site of conflict’ for law makers and government officials.¹⁸¹ Experts in witchcraft, known as *tohunga mākutu*, were men or women who were ‘looked down upon within Māori society but feared nevertheless’ and the majority of *mākutu*-related murders involved the ‘punishment’ or execution of such experts in retributive action.¹⁸² Paterson notes that these *mākutu*-related murders brought some Māori communities into conflict by confronting the ‘religious primacy’ of the Christian church over Māori and challenging ‘the State’s claim to sovereignty’.¹⁸³ However, the case in question involved the murder and attempted murder of young children, and this served to confuse the ways that the incident might be imagined. How the family witnesses understood the children’s role in the *mākutu* is not divulged. Neither is it made clear whether the immediate whānau accepted their kaumatua as a *tohunga*, or believed him to be *porangi* (mad) and suffering from a manic episode, although their complicity in the children’s burning suggests the former rather than the latter. Newspaper headlines proclaiming the accused parents as ‘Maori fanatics’ and ‘child burners’ indicates the Pākehā framing of events as that of the actions of ‘natives’ who had regressed to acts of barbarous primitivism. The horrific nature of the incident and the details of the children’s suffering were made clear in the reporting of the coroner’s hearing and throughout the Supreme Court trial. Indeed, Crown prosecutor Mr Tole, in his opening remarks, warned the court that ‘the circumstances ... were particularly awful and revolting, and hardly credible as happening in a civilised country’.¹⁸⁴

In terms of the judicial reading of events, Justice Edwards put it to the jury that:

¹⁸⁰ Paterson, p. 178.

¹⁸¹ Ibid.

¹⁸² Paterson, p. 176. When bad luck or an unexplained death was attributed to the actions of a *tohunga mākutu*, retribution was sanctioned by the Māori law of reciprocity or *utu*. Furthermore, Biblical references to sorcery and its punishment meant that the practice of killing suspected *tohunga mākutu* was not considered inconsistent among Christian Māori (Paterson, p. 188). The state system of justice was represented as being based on Christian principles which served to cause further confusion for Māori (Lachy Paterson, ‘Māori “Conversion” to the Rule of Law and Nineteenth-Century Imperial Loyalties’, *Journal of Religious History*, 32: 2 (June 2008), p. 221).

¹⁸³ Paterson, p. 175.

¹⁸⁴ ‘Charge of Murder’, *Otago Witness*, 18 November 1908, p. 40.

If the accused ... believed they were destroying demons and nothing more, then they were entitled to be acquitted on the ground of insanity. If they thought they were dealing only with a human being, then it was murder, but if, on the other hand, they thought they were exorcising an evil spirit without destroying the life of the child, then it was manslaughter.¹⁸⁵

While not directly urging the jury towards a finding of insanity on the murder charge, counsel for the defence of Mekerene's parents, Mr Carruth, requested an appeal for mercy on the ground that the father was 'suffering strongly at the time from the influence of religious mania' and that the mother 'acted under fear of [her] husband and his father'.¹⁸⁶ However, Mr Tole, for the prosecution, was careful to remind them of the peculiarities of the law in relation to insanity, and in doing so revealed something of the problems inherent in 'fitting' Māori into a Eurocentric legal system. 'It seemed', he contended, 'that some evil influence sometimes affected Māoris, but our code of criminal law recognised nothing save mental unsoundness as extenuation'. He argued that '[f]anaticism ... was a matter of imagination, which did not relieve persons from responsibility or afford an excuse for crime so long as it did not so affect them as to take away their reason'.¹⁸⁷ Mindful of the extenuating circumstances, and denied the option of an insanity finding, the jury chose to believe that the death of Mekerene had not been intended. They held that the whānau had been conducting a form of exorcism, which had resulted in manslaughter.

In a case held nine years earlier, 'superstitious dread' generated by customary spiritual belief likewise led to the death of a child. In this prior case though, no one was prepared to suggest that the mother was of sound mind when committing the murder. Irish migrant Agnes Corrado was found insane after drowning her four-month-old daughter in a bathtub in the conviction that she was destroying a fairy changeling child.¹⁸⁸ Charged with her child's murder, the married mother of four was reported to have spoken 'rationally' and 'calmly' to police explaining

¹⁸⁵ Ibid.

¹⁸⁶ 'Maori Child Burners', *Taranaki Herald*, 16 November, 1908, p. 2.

¹⁸⁷ 'Barbarous Fanaticism: Child's Terrible Death', *Thames Star*, 13 November 1908, p. 1.

¹⁸⁸ 'A Horrible Case of Infanticide', *Bush Advocate* (Hawke's Bay), 12 October 1889, p. 2.

that the dead child ‘was not hers’ as her own child ‘had been changed’.¹⁸⁹ In a similar case Conley cites an English trial in 1884 in which two women were charged for severely burning a three-year-old child by placing him naked on a hot shovel.¹⁹⁰ Reported as an act of ‘gross superstition’, the women had allegedly claimed that the child was ‘an old man left by the fairies as a substitute for a real child whom they had taken from its mother’.¹⁹¹ These women were not charged with attempted murder or manslaughter, but were instead found guilty on a charge of child cruelty.¹⁹² However, like Hirini and Ema Hohepa, these two English women were considered to be ‘influenced’ by superstition while still remaining rational and therefore responsible for their act.

The Auckland jury trying Hirini and Ema Hohepa acknowledged the influence of māku on the mind of the male accused, and qualified their guilty finding with a recommendation for mercy on the ground of his having acted under ‘superstitious dread’.¹⁹³ Ema Hohepa, seen as carrying out her part ‘under fear of [her] husband’, was also found guilty but recommended for mercy.¹⁹⁴ However, Justice Edwards strongly rejected the plea for mitigation, claiming that ‘no fear of injury to herself could justify a mother in burning her child to death’. Addressing the father, the judge told him that he had ‘committed a shocking crime under the influence of a barbarous and ignorant superstition’. He informed him and the court that, ‘[i]f the Maoris dreaded Makutu they must be taught to dread still more the power of the law’.¹⁹⁵ Disregarding the jury’s appeal for leniency, Justice Edwards imposed some of the harshest sentences that were handed down for the manslaughter of a child in the period under investigation. Hirini and Ema were committed to ten years’ and five years’ imprisonment respectively.¹⁹⁶

¹⁸⁹ Ibid.

¹⁹⁰ *The Times*, 26 May 1884, p. 8b, cited in Conley, p. 234

¹⁹¹ Ibid.

¹⁹² Ibid. Conley records that one woman was acquitted and the other sentenced to one week of imprisonment.

¹⁹³ ‘Maori Fanatics’, *Marlborough Express*, 13 November 1908, p. 2.

¹⁹⁴ Ibid.

¹⁹⁵ ‘Maori Child Burners’, *Taranaki Herald*, 16 November, 1908, p. 2.

¹⁹⁶ Ibid. Father and stepmother Fred and Margaret Wain each received sentences of seven years for the manslaughter of their son in 1883.

Justice Edwards' stance reflects the wider goal in British legal and political policy for Māori 'advancement' – a goal to which belief in mākutu ran directly counter. Only four years earlier, in 1885, Edward Tregear had published his popular (and highly contested) book *The Aryan Maori*. In it, he advanced an already widespread belief that Māori were descendants of the same Aryan race as the Britons, and, above all other indigenous peoples, were ideally placed for 'improvement' and assimilation into British civilization.¹⁹⁷ For a time this mind-set prevailed and, as Raeburn Lange writes, '[t]he tasks of protecting and preserving a savage race and of transforming savages into civilised and Christian citizens were seen as an almost sacred trust'.¹⁹⁸ The stamping out of practices involved in Māori 'superstitious' belief gained clear legislative backing in 1907 with the passing of the Tohunga Suppression Act which explicitly proscribed the use of 'sorcery' and spiritual healing.¹⁹⁹ The act was passed, according to Mamari Stephens, at a time when the country was thought to be 'caught in the grip of a tohunga "craze"' – a situation, which she says was largely led by the print media.²⁰⁰ Despite the propinquity of the Hohepa trial to the passing of the act, neither the killing of baby Mekerene, nor the attempted murder of six-year-old Mahaera, which was dealt with in the later trial of Matiu Hohepa, appear to have been interpreted as acts of tohungaism by the courts. It may be that the age of the victims and the horrific nature of their suffering were factors that took the events beyond the realm of European understandings of tohunga-related crime. Unwilling to condemn the parents to the gallows and without recourse to a finding of insanity, the jury instead found baby Mekerene to have been a victim of manslaughter, and his parents were dealt with according to the prevailing (Anglo-

¹⁹⁷ Nan Seuffert, 'Jurisdiction and Nation Building: Tall Tales in Nineteenth Century Aotearoa/New Zealand', *Jurisprudence of Jurisdiction*, edited by Shaun McVeigh (Oxon: Routledge Cavendish, 2007), p. 118.

¹⁹⁸ Raeburn Lange, *May the People Live: A History of Māori Health Development 1900-1920* (Auckland: Auckland University Press, 1999), p. 61.

¹⁹⁹ *Statutes of New Zealand*, 1907, No. 13, Tohunga Suppression Act. Prior to the passage of this Act, the prosecution of 'harmful' healing practices was provided for by section 240 of the Criminal Code Act 1893. This section allowed for the imprisonment for up to one year of anyone found 'pretend[ing] to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration', or claiming expertise 'in any occult or crafty science'.

²⁰⁰ Mamari Stephens, 'Return to the Tohunga Suppression Act 1907', *Victoria University of Wellington Law Review*, 32 (2001), p. 437. Contemporary scholars stress the instrumental part played by Christian Māori, educated young Māori reformers, and some traditional chiefs in leading the 'war on Māori 'superstition''. See for instance, Paterson, p. 185.

European) understandings of that crime. The unusually harsh sentences meted out by Justice Edwards for the manslaughter of Mekerene Hohepa, however, were clearly intended to serve as an example to other Māori of the civilising power of European law.

Conclusion

This chapter has shown how the courtroom both reflected and contributed to nineteenth-century discourses of race. As with the previous chapter, my evidence here has been narrow, and has relied on the close examination of only a handful of crimes. The textual evidence produced from these few trials by no means paints a clear picture of the racialised nature of jurisprudence in nineteenth and early twentieth-century New Zealand; however, it is highly suggestive of the construction of social meanings, agendas and anxieties in regards to race and crime. Each of these trials and their reporting in the print media draws out plotlines or subtexts shaped by contemporary fears about sexual danger, pollution and racial regression. The familiar tropes and motifs which formed the essence of these ideas constrained the ways that trials were interpreted and understood by judges, jurors, the press and the public.

Anne McClintock has argued that ‘no social category exists in privileged isolation; each comes into being in social relation to other categories, even if in uneven and contradictory ways’.²⁰¹ Like class and gender, notions of race shaped the ways that homicide events might be imagined, and therefore influenced the progression of trials; however its impact was not always clear-cut or directly apparent. In the courtroom the ‘stark racial inequality’, so evident in the contemporary print media, was often challenged directly by the ‘liberal premises of the criminal law’.²⁰² Humanitarian idealism in the form of concerns about the impartiality of law is certainly in evidence in the cases considered in this chapter. This is demonstrated in the words of defence counsel, individual judges and the courts of appeal, although the humanitarian ideals these men espoused were not

²⁰¹ McClintock, p. 9.

²⁰² Wiener, *An Empire on Trial*, p. x.

always carried through in action. The requisite to deliver a fair and just law to all was shadowed closely by popular cultural narratives and colonialist agendas and anxieties, which supported a tendency towards disproportionate sentencing.

The case of Anthony Noble, with which this chapter began, demonstrates how one sensational and unrepresentative trial can become a potent source for the reinforcement of cultural narratives. Certainly, the heightened emotions and intensity of feeling surrounding the rape and murder of a child were always evident regardless of the race or ethnicity of the alleged perpetrator. In fact, all such cases tried in New Zealand courts during the period of this study resulted in the execution of the accused.²⁰³ While such a crime was an extremely rare event in colonial New Zealand, the cultural thematics surrounding it were implicit and deeply embedded in the contemporary psyche. Anthony Noble embodied the physical stereotype of the ‘dark stranger’ produced and reproduced in gothic literature, and reinforced by contemporary ethnological theories of race. This facilitated a ready understanding of him as a dangerous man and simultaneously fortified the mythological racial narrative.

In more subtle ways, the understanding of Pākehā women as bad mothers was supported by narratives of racial pollution, when such women chose to cohabit with men of ‘degenerate’ races. Negative tropes and discursive assumptions about the debasement of European wives or partners of Chinese men are evident in trial records for child murder and concealment of birth, and as with other trials discussed here, the treatment of the criminal accused, and the understanding of their crimes, appear to have been prejudiced by their popular representation.

Trial records show that Māori experienced the Pākehā legal system in uneven ways. The Hohepa trial exposes some of the means by which cultural misunderstandings and prevailing colonialist agendas constrained the reading of criminal events and influenced trial outcomes. The investigation of this unusual trial has revealed how it, in turn, became a vehicle by which stories of the ‘power’ of European law could be transmitted and reinforced.

²⁰³ Conley’s figures for the English context show that eighty-eight per cent of those accused of rape and murder involving a weapon were found guilty and hanged.

In investigating the role of the courts in the production and dissemination of the mythology of the child murderer, this chapter has demonstrated how narratives from even exceptional trials helped to construct the body of images and representations that shaped contemporary understandings of crime. The following chapter, focusing on those who made a business of fostering unparented infants, illustrates the full extent of the power of such images in the construction of social meaning. This final chapter reveals how the figure of the ‘baby farmer’ became crystallised as the discursive and pictorial stereotype of the child murderer.

Chapter Six

Murderous Monsters: Constructing the Criminal Baby Farmer

WANTED, by a respectable married woman with no young children, a baby to nurse, or one or two young children to bring up, or a baby to adopt. Thoroughly comfortable home in the country. Terms very moderate. Apply by letter addressed "B.D.," office of this paper. a17

Figure 15: Advertisement in the *Southland Times*, 11 May 1889, p. 3. "B.D." was one of the pseudonyms used by baby farmer Minnie Dean, the only woman to be legally hanged in New Zealand.

Thus far, this thesis has highlighted the social and judicial leniency usually demonstrated in cases involving the suspicious deaths of children throughout the late nineteenth and early twentieth-centuries. Sympathetic cultural narratives were particularly in evidence in the popular representations of young mothers suspected of destroying infants they were unable or unwilling to care for. These narrative forms were readily utilised in trials for infanticide and concealment of birth and directly influenced the sentencing attitude of the judiciary concerning these crimes. In exploring the judicial reluctance to prosecute those responsible for their children's deaths, some Western historians point to a cultural paradigm that allowed infanticide to be viewed as a 'lesser form' of murder. D. Seaborne Davies, for instance, identifies 'a general feeling' among those compiling the British Report of the Capital Punishment Commission 1866, that the murder of infants could not be regarded as 'so heinous as other forms of murder because of the nature of the victim'.¹ The Commission maintained, furthermore, that '[t]he killing of a child by its mother did not create the same feeling of alarm in society as other forms of murder did, and public opinion, consequently, did not insist

¹ British Parliamentary Papers, 1866, 21, pp. 5, 15, 291, cited in D. Seaborne Davies, 'Child Killing in English Law', *The Modern Law Review*, 1:3 (1937), p. 221.

upon the death sentence as a deterrent'.² Constance Backhouse shows the persistence of such views. She quotes an English doctor writing in 1911 who claimed that:

In comparison with other cases of murder, a minimum of harm is done by [infanticide]. The victim's mind is not sufficiently developed to enable it to suffer from the contemplation of approaching suffering or death. ... Its loss leaves no gap in any family circle, deprives no children of their breadwinner or their mother, no human being of a friend, helper, or companion. The crime diffuses no sense of insecurity.³

However, any claim that social and judicial leniency was reflective of the lower status of the infant is tested when the focus falls on the murdered foster child. Within the time-frame of this study, the deaths of infants in paid fostering situations – often illegitimate and 'unwanted', and of whose loss it might be said 'le[ft] no gap' – generated an intensity of concern that transformed the subject of the murdered child into an issue demanding radical legislative action.

The final chapter of this thesis brings this study back to the area of investigation with which it began. The illegitimate or otherwise 'unwanted' infant continued to be the most salient image in judicial discourse concerning the victims of child murder. Nineteenth and early twentieth-century understandings of maternity and child care meant that it was white women who failed in their role of 'mothering' these babies who were popularly viewed as the perpetrators of these crimes.⁴ In this chapter, I argue that the work of cultural narratives in constructing meanings

² Ibid.

³ Constance Backhouse, 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada', *University of Toronto Law Journal*, 34:4 (1984), p. 463.

⁴ Ethnic perceptions mirrored actual reported incidences. As previous chapters have shown, in New Zealand the vast majority of infanticide cases investigated involved white women. Private, paid fostering of infants was also carried out primarily in Pākehā families. While Prinisha Badassy found that native African women often fostered white children for money in late nineteenth and early twentieth-century South Africa, the adoption of Pākehā babies into Māori families, as discussed in Chapter One, seldom involved financial exchange and was perceived as an entirely separate issue (Prinisha Badassy, 'This Sinister Business in Babies: Infanticide, the Perils of Baby Farming Scandals and Infant Life Protection Legislation, South Africa, 1890-1930' (*WISH*, Wits Institute for Social and Economic Research, 2012), pp. 20-26, retrieved from <wiser.wits.ac.za/system/files/seminar/Badassy2012.pdf> (accessed 14 April 2012)).

and understandings was at its most transparent when suspicious deaths and suspected murders occurred in the context of paid fostering operations, which were popularly referred to as ‘baby farms’.⁵ Here I investigate the means by which the foster mother replaced the unmarried mother as the dominant character around which stories about the murder of children were narrated.

The term baby farming first began to appear in text in Britain in the late 1860s to describe the occupation of ‘those who receive infants to nurse or rear by hand for a payment in money, either made periodically ... or in one sum’.⁶ The expression was deliberately pejorative and emphasised the economic connotations of the arrangement, which, historians such as Margaret Arnot and Sherri Broder contend, was at the crux of the process of its cultural demonisation.⁷ The introduction of a ‘cash nexus’ placed such foster mothers as ‘economic rather than moral agents’, at a time when the Western ideals of maternity and domesticity were becoming paramount in Britain and its colonies.⁸ The baby farmer, as Ruth Ellen Homrighaus expresses so succinctly, mocked the ‘sacred duty [of parenthood] and replaced a mother’s love with the love of money’.⁹ Such a position sorely challenged Victorian constructions of normative family relationships and, according to these scholars, it was this challenge, rather than ‘an uncluttered concern for the welfare of the child’ that provided justification for state intervention.¹⁰

⁵ The terms ‘baby farm’ and ‘baby farmer’ follow no consistent pattern of hyphenation. I adopt the unhyphenated usage except when it occurs in the context of quotation.

⁶ J.B. Curgenvén, ‘On Baby-farming and the Registration of Nurses’, *London Times*, 1869, p. 3, cited in Rosie Findlay, “‘More Deadly than the Male?’ Mothers and Infanticide in Nineteenth Century Britain”, *Cycnos*, p. 5, retrieved online from <<http://revel.unice.fr/cycnos/document.html?id=763&format=print>> (accessed 24 June 2009). Curgenvén was a leading reformer in the movement to regulate foster care in Victorian England. The earliest use of the term, uncovered by Ruth Homrighaus, occurs in the 19 October 1867 issue of the *British Medical Journal* (Ruth Ellen Homrighaus, ‘Baby Farming: The Care of Illegitimate Children in England, 1860-1943’ (PhD thesis, 2003, Rev. edn, 2010), p. 2).

⁷ Margaret L. Arnot, ‘Infant Death, Child Care and the State: The Baby-Farming Scandal and the First Infant Life Protection Legislation of 1872’, *Continuity and Change*, 9:2 (1994), pp. 272 and 282; Sherri Broder ‘Child Care or Child Neglect? Baby Farming in Late-Nineteenth-Century Philadelphia’, *Gender and Society*, 2:2 (June 1988), p. 133.

⁸ Arnot, p. 272; Broder, pp. 132-33.

⁹ Ruth Ellen Homrighaus, ‘Wolves in Women’s Clothing: Baby-Farming and the *British Medical Journal*, 1860-1872’, *Journal of Family History*, 26:3 (July 2001), p. 358.

¹⁰ Arnot, p. 282. The quotation here is taken from Harry Hendrick’s discussion on twentieth-century concerns regarding child abuse. He writes: ‘It would be perverse to conclude that the

Historians of the baby-farming phenomenon throughout Western countries have found that the sentencing attitude of the judiciary towards paid foster mothers found guilty of infanticide was markedly different to that shown towards mothers who killed their own children.¹¹ Homrighaus' research in the British context established that baby farmers convicted of murder made up the largest single category of female offenders executed in nineteenth and twentieth-century Britain.¹² Moreover, she found that those found guilty of manslaughter often served sentences of ten, fifteen or twenty years, which were greatly disproportionate to the sentences served by parents similarly convicted.¹³

In this study I draw on the cases of fourteen individuals who were investigated regarding the suspicious deaths of fostered or adopted children in their care. While many more infant deaths were investigated by New Zealand coroners under the terms of the Infant Life Protection Act 1893, I have elected only to include those cases where the term 'baby farming' was used directly either in the courtroom, by a coroner, or in the print media. My figures show that just over one third of those investigated were indicted and found guilty of murder, manslaughter, cruelty or abandonment.¹⁴ Of the three individuals charged with murder – Charles Dean, Minnie Dean and Daniel Cooper – two were found guilty and hanged for their crimes.¹⁵

To examine the arguments and evidence about these cases in their contexts, this chapter is divided into two parts. The first of these explores the business of fostering or 'adopting' un-parented infants prior to the Infant Life Protection Act 1893, which was enacted to bring the paid care of infants under legislative and regulatory control. To begin, nineteenth-century concepts of paid foster and adoptive care are explored within their wider settings. In Britain the 'farming' of very young children and its disproportionate impact on illegitimate infants had

"discovery" of abuse had much to do with an uncluttered concern for the welfare of the child' (Harry Hendrick, *Child Welfare: England, 1872-1989* (London: Routledge, 1994), p. 256).

¹¹ Homrighaus, 'Baby Farming', p. 5; Arnot, p. 279.

¹² Homrighaus, 'Baby Farming', p. 153.

¹³ *Ibid.*

¹⁴ Five (or 35.0 per cent) of the fourteen individuals investigated were found guilty under these charges.

¹⁵ Charles Dean, 1895 (case file 291) was acquitted of all charges.

been identified as a social problem since the mid-1860s. The discovery of such practices in the colonies of Australia and New Zealand in the following decades caused considerable alarm and led to an increase in surveillance of women who took in infants to nurse or adopt. Public understandings of the system were filtered through strong narrative conventions, which highlighted the figure of the criminal baby farmer who was presented as an aged woman who worked alone. Consequently, while New Zealand court records demonstrate that married couples were often involved in paid fostering operations, when allegations of fatal neglect or abuse arose, the spotlight of suspicion typically fell on the female caregiver despite the obvious presence of a 'foster father' in many of these homes. Through the examination of a series of late nineteenth-century coroners' inquest reports published in the print media, this section goes on to trace the discourses arising from cases which aroused public concern, focusing particularly on the rhetoric that reflected popular understanding.

In part two, this chapter explores the introduction of legislation designed to protect the lives of 'farmed' infants, and traces its influence on early twentieth-century representations of paid foster and adoptive care. The Infant Life Protection Act 1893 and its amendments, enacted in 1896 and 1907, sought to regulate the activities of wet-nurses, lying-in house keepers, adoptive parents, and foster parents.¹⁶ Its provisions focused on the close official supervision of all foster and adoptive mothers, though did little to address the underlying problems that fed the organised fostering of 'unwanted' babies. The investigation of cases that influenced public opinion and shaped social policy on this issue continues throughout this section. The high profile trial of Minnie Dean is explored here alongside other trials of men and women brought before the courts on similar charges. Hanged for her part in the death of an illegitimate adopted infant, Minnie Dean became New Zealand's archetype of the child murderer. In this trial, fictive tropes that facilitated and enabled the verdict and its consequences were amplified and invested with further potency. In this way, the name of Minnie Dean and the

¹⁶ Infants might be 'put out' to be wet-nursed (breast fed) or dry-nursed by foster mothers. The proprietors of 'lying-in homes' who offered accommodation and assistance to women during their confinement sometimes played a part in the network of child carers, passing on the newly born infants to agents or foster parents for a fee. Other agents also obtained and passed on babies within this network for pecuniary gain. This rapid turnover of care was commonly referred to as 'sub-farming' or 'baby-sweating'.

details of her crimes were submerged into folklore and superstition. The Dean case has been covered extensively by a number of writers, most sensitively perhaps by Lynley Hood.¹⁷ Hood paints a picture of Dean as a well-meaning but misunderstood woman, scape-goated by police and an increasingly hostile public. In locating Minnie Dean in context, as part of a working class network of child carers and ‘baby sweaters’, my own research adds a further layer to the various permutations of her representation.

The social worth of infant life increased markedly towards the end of the nineteenth century, and became increasingly important in the twentieth, as Chapter Three has shown. In this section, the changing rhetoric surrounding the fostering of infants is traced as concerns for child life and welfare shifted emphasis. Over the first two decades of the century, responses to infant neglect moved focus from criminal reform to education. The vigorous promotion of private child-care and the ever-tightening legislative restrictions surrounding it served to erode and fracture narrative conventions. Towards the end of the period under investigation then, the figure of the ‘den-dwelling’ baby farmer had lost much of its immediacy and interpretative potency. Nevertheless, as my discussion of the 1923 trial of Daniel and Martha Cooper demonstrates, the nightmare of criminal baby farming continued to be evoked and given expression. Overall, this chapter explores the stories of men and women who made their income from fostering or adopting other people’s babies, and how those stories came to encapsulate a set of beliefs that had the power to demonise individuals and galvanise legislative action.

¹⁷ Lynley Hood, *Minnie Dean: Her Life and Crimes* (Auckland: Penguin, 1994).

Part One: Deaths in Paid Foster Care, 1870-1893

Baby Farming in Social Context

A number of historians writing in the area of crime, child welfare and the fostering of infants have followed the dominant narrative in presenting baby farmers as individuals with criminal intent, in whose homes unwanted children were routinely killed either by violence or neglect. Judith Allen, for instance, defines the term baby farming as: ‘the payment of people to take unwanted babies and dispose of them’.¹⁸ Carolyn Strange describes the act of ‘abandoning’ newborns with baby farmers as ‘a form of passive infanticide’.¹⁹ In a similar vein, Lucy Sussex claims that ‘there was frequently a tacit agreement that, in handing over a child to the farms, a mother was paying for her baby’s quiet disposal. In an age of high infant mortality, the resultant deaths attracted little attention’.²⁰ Nevertheless, in seeking to reframe the activities of baby farmers from a feminist perspective, these writers position the individuals who comprise their research subjects as rational agents whose reputations were sacrificed under the machinations of patriarchal political power. Sussex, Margaret Arnot and Lynley Hood, for example, present the female subjects of their focused studies as public ‘scapegoat[s] for all infant death’.²¹ These scholarly works highlight the complex nature of nineteenth-century foster care and confirm that its investigation requires a nuanced approach. The best of these studies consciously uncover a system that was neither ‘fully criminal’ nor particularly ‘compassionate’.²² In Shurlee Swain’s extensive study into the fostering of illegitimate infants in Melbourne, Australia, baby farming emerges as a legitimate ‘economic exchange’, nonetheless

¹⁸ Judith Allen, ‘Octavius Beale Reconsidered: Infanticide, Baby Farming and Abortion in NSW, 1880-1939’, *What Rough Beast? The State and Social Order in Australia*, edited by Sydney Labour History Group (Sydney: Allen and Unwin, 1982), p. 112.

¹⁹ Carolyn Strange, *Toronto’s Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995), p. 75.

²⁰ Lucy Sussex, ‘Portrait of a Murderer in Mixed Media: Cultural Attitudes, Infanticide and the Representation of Frances Knorr’, *The Australian Feminist Law Journal*, 4 (March 1995), p. 43.

²¹ Arnot, p. 277; Sussex, p. 51; Lynley Hood, pp. 165-166.

²² Shurlee Swain, ‘Toward a Social Geography of Baby Farming’, *History of the Family*, 10 (2005), p. 151.

‘predicated on the vulnerability of single mothers, the disposability of their children, and in many cases, the desperation of poor women who s[aw] taking infants to nurse as a way of earning an income’.²³ As Homrighaus shows, it was, in most instances, a mutually beneficial arrangement, advantageous both to those struggling to keep an illegitimate child and to others in desperate need of supplementary income. Ultimately, however, it was a system that was open to the worst kinds of abuse.²⁴

While illegitimacy could represent an enormous challenge for all involved, as discussed in Chapter One of this thesis, this was often met by a timely marriage or the child’s absorption into extended family. Ginger Frost’s research into experiences of illegitimacy in London and Lancaster at the end of the nineteenth century found that, ‘[t]he most typical situation for an illegitimate child was to remain in a private family, usually the maternal home’.²⁵ Separation from extended family posed obvious challenges for first and second generation migrant women who fell pregnant outside of marriage; however, it is plausible that those family members willing to provide support in the Home countries might have extended the same level of support in the colonial environment.

In her historical research into families living in the New Zealand township of Taradale, Caroline Daley found that an illegitimate status ‘did not necessarily exclude’ children from family or community.²⁶ Shirley Wallace’s study of mortality figures among orphaned and illegitimate children in New Zealand provides further evidence that this was the case. In Wallace’s sample of families in the settlements of Tolaga Bay and Little Akaloa, the births of fourteen children living within families were registered as illegitimate. She calculates that over half (57.0 per cent) of these children’s mothers went on to marry, with the average age

²³ Ibid.

²⁴ Homrighaus, ‘Baby Farming’, pp. 9 and 21.

²⁵ Ginger Frost, “‘The Black Lamb of the Black Sheep’”: Illegitimacy in the English Working Class’, *Journal of Social History*, 37:2 (2003), p. 296. She writes: ‘When trouble came, women turned to siblings, aunts/uncles, cousins and parents ... the nuclear family remained the goal for most men and women, but the saviour in times of trouble was the extended family’ (Frost, p. 316).

²⁶ Caroline Daley, *Girls and Women, Men and Boys: Gender in Taradale, 1886-1930* (Auckland: Auckland University Press, 1999), p. 21.

of the child when their mother married being 6.25 years.²⁷ Interestingly, although all of these women had wed before their children had turned twelve, none was married before their child was two years of age.²⁸ I argue that the support of families and communities, as well as the availability of short or long-term fostering, were all important components in the range of strategies that made such scenarios possible.

My qualitative evidence suggests that the eventual inclusion of illegitimate children into their mother's (or father's) immediate or extended family often depended on their being 'put out to nurse' for the first few years of their life.²⁹ When a foster mother was found, mothers, fathers or other family members generally paid a set fee by the week, and visited as regularly as they chose. Hood suggests that 'five to eight shillings per week for long-term care' constituted 'standard market rates' in the late 1880s.³⁰ This system appears to have worked for some, although the number of reports of birth mothers defaulting on payments and effectively abandoning their infants with foster mothers suggests that even these figures were too much for some working women to sustain long-term.³¹

For others, a more anonymous and permanent solution to an unwanted pregnancy was required. Single mothers or fathers, or their families, could take the option of handing over an unwanted baby to an interested party for a lump sum payment, on the understanding that a permanent adoptive home would be found.³² Homrighaus contends that these arrangements were facilitated by the availability of cheap

²⁷ Shirley Wallace, 'The Mortality of Orphaned, Illegitimate and Abandoned Children from Colonial New Zealand Times' (MA thesis, University of Auckland, 2011), p. 84.

²⁸ Ibid.

²⁹ The movements of such infants registered under the *Infant Life Protection Act* can be traced through Infant Life Protection records such as the Registers of Particulars of Infants and Foster Homes 1909-1916 (BAAA 1958, 1/c – 2/b, Archives of New Zealand, Wellington).

³⁰ Hood, p. 95. In 1907, the Government paid ten shillings per week for the maintenance of infants in privately run foster homes registered under the *ILP Act* ('Infant Mortality: The Duty of the State', *Press* (Canterbury), 4 September 1907, in 'Infant Life Protection – Criticisms' (1907), CW, ACC W1043, Archives New Zealand, Wellington).

³¹ Sherri Broder notes a similar trend in Philadelphia. She describes child abandonment with baby farmers as a 'common mode of desertion' which constituted an 'obvious occupational hazard' for baby farmers operating there (Broder, p. 139).

³² Lynley Hood's research into the business dealings of Minnie Dean demonstrates that a range of family members interfaced with baby farmers and sub farmers. Hood located the source of payment for sixteen of the babies adopted by Minnie Dean. Of these, 'four were paid for by their mothers, five by their fathers and seven by their grandparents' (Hood, p. 94).

newspaper advertising and the accessibility of rail travel.³³ In New Zealand, as elsewhere, families utilised this system, ‘answer[ing] classified advertisements, arrang[ing] meetings at railway stations, and hand[ing] their babies over with adoption premiums to women they had never met and about whom they knew nothing’.³⁴ These paid ‘adoptions’ were rarely legally sanctioned even after the introduction of an Adoption Act in 1881, as the provisions of the act were restrictive and required the consent of a district court judge.³⁵ Instead, the passing of an infant permanently from one family or individual to another generally consisted of an agreement drawn up between the two parties.³⁶

The reports from New Zealand coroners’ inquests and court trials demonstrate the generally unremarkable nature of these various solutions to the problem of childcare. A number of trials discussed throughout this thesis make mention of legitimate and illegitimate infants having been ‘put out to nurse’, or older children being temporarily or permanently ‘boarded out’ in response to family difficulties and crises. As well, state and church-run institutions utilised the services of private foster home keepers to care for un-parented infants who were too young to be committed to children’s homes or industrial schools.³⁷ While the mortality risk for fostered infants in the nineteenth century was high, and the emotional toll on all parties involved can only be imagined, it appears that a great many children were successfully negotiated through these networks of care.³⁸

³³ Homrighaus, ‘Baby Farming’, p. 10.

³⁴ Ibid.

³⁵ *Statutes of New Zealand*, 1881, No. 9, Adoption of Children Act, pp. 48-50. This New Zealand act represented the first of its kind in the British Empire. There is nothing within the act to suggest that its proponents were concerned with the permanent childcare arrangements of baby farmers; its stated aim being to ensure ‘that the benevolent might find wider scope for generous action’. However, the restrictive provisions of the act and the unpopularity of legal adoption before the Second World War ensured that few adoption orders were taken up under the act during the period under investigation. Anne Else contends that there were only thirty legally registered adoptions in 1882, and by 1918 the number had only reached 280 (Anne Else, *A Question of Adoption: Closed Stranger Adoption in New Zealand, 1944-1974* (Wellington: Bridget Williams Books, 1991), p. xi).

³⁶ Although not legally binding, these homespun agreements could be produced as evidence in court when a child’s family failed to abide by the agreed terms of the adoption.

³⁷ The Dunedin Roman Catholic Orphanage, St Vincent de Paul, was one such institution which boarded out babies into private care (Bronwyn Dalley, *Family Matters: Child Welfare in Twentieth-Century New Zealand* (Auckland: Auckland University Press, 1998), p. 51).

³⁸ In 1867 J.B. Curgenven estimated that the mortality risk for ‘nurse infants’ was around seventy-five per cent (Curgenven, ‘Waste of Infant Life’, p. 1, cited in Homrighaus, ‘Baby Farming’, p. 39). In New Zealand, by the first decade of the twentieth century, the mortality rate of children in

For foster or adoptive parents, the taking in of newly born infants appears to have been done with an awareness of the particular risks involved. By the early nineteenth century, medical doctors had identified the correlation between artificial feeding and infant mortality.³⁹ The susceptibility to bacterial infection and gastrointestinal diseases from contaminated milk or unsuitable food was exceptionally high among infants whose health had, in some cases, already been compromised by their ‘unwanted’ status. Although commercialised ‘humanised’ milk was available and aggressively marketed in New Zealand by the beginning of the twentieth century, its advocates complained that foster mothers were slow to accept it, preferring to feed babies on combinations of sugared cow’s milk, maizena, or ‘pap’ (a slurry of water mixed with bread, wheat flour, or oats) as they had always done.⁴⁰ Furthermore, as the cases discussed in this chapter will show, the fragile economics of commercial fostering operations meant that in many cases children were housed in the barest of conditions, without appropriate heating or sanitation. The opportunity for the cross-infection of viral diseases was markedly increased in these homes where infants were closely lodged and, deprived of breast milk, had little natural immunity to infectious disease. The use of opium-based infant soothers – deemed indispensable in the management of some foster homes – added an extra layer of risk to the tenuous hold on life that some of these infants held. Before the introduction of legislation to monitor the progress of fostered infants in 1893, their births and deaths could pass unnoticed by anyone other than those directly involved.

registered private foster homes had dropped dramatically to around two per cent (Dalley, p. 5). At the turn of the twentieth century, around four hundred infants and children were registered as being in care, although it is likely that many more were living in unregistered homes. By 1910 the numbers of registered children had reached over a thousand (‘Protection of Infant Life’, *Hawera and Normanby Star*, 14 November 1910, p. 4).

³⁹ Emily Stevens, Thelma Patrick and Rita Pickler, ‘A History of Infant Feeding’, *Journal of Perinatal Education*, 18:2 (2009), retrieved online from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2684040/> (accessed 22 May 2012).

⁴⁰ Infant Life Protection Files, CW W1043, 40/8/28, Feeding and Care of Infants (1907-1928), Archives New Zealand, Wellington. The frustration of District Agents on this issue can be discerned in memorandums to the ILP Office filed in this archive. For instance, in 1908, Sarah Jackson complained to Dr Purdy in Auckland that, ‘[i]t is difficult to get foster-parents to read leaflets [on the welfare of the baby], and they invariably think they know more than any pamphlet can teach them’. Jackson later wrote to the Secretary for Education in Wellington to tell them, ‘I beg to say that from what I know of the foster-parents generally, I do not think many of them are capable of making an intelligent use of the pamphlet “Baby’s Welfare”’.

When coroners *were* charged with investigating the deaths of fostered or adopted infants they usually took a philosophical stance. Even the deaths of babies whose wasted bodies attested to serious negligence on the part of their carers tended to be viewed with resignation. This stance reflects the complexity of understandings regarding the fatal neglect of children. While the suffocation or poisoning of an infant might constitute a clear criminal action, the ‘non-action’ involved in a case of child neglect carried a high degree of ambiguity. Reflecting on the deaths of babies ‘entrusted to the care’ of foster parents in 1907, child welfare reformer Dr Truby King observed that in ‘certain licensed homes’ there were conditions ‘well known and recognised as causes of malnutrition, such as deficient and improper feeding, deficient clothing, deficiency of light and air’. Dr King included in this list of disadvantages, ‘ignorance and a lack of kindly interest and attention’.⁴¹ Such statements mirrored the observations of early investigators into the protection of infant life in England, who claimed in 1871 that such deaths were not generally due to ‘active criminality’ but rather to ‘improper and insufficient food, opiates, drugs, crowded rooms, bad air, want of cleanliness, and wilful neglect’; all factors which were ‘sure to be followed in a few months by diarrhoea, convulsions, and wasting away’.⁴² If the lines between ignorance, wilful neglect and criminality were so hopelessly blurred, it is little wonder that coroners faced difficulties in establishing the point between a ‘natural’ death and homicide.

However, New Zealand coroners were not unaware of the prospect for active criminality in foster situations. That some individuals took full advantage of the poor life chances of such infants and hastened the demise of those in their ‘care’ was an idea that had long been associated with the baby farming trade. The existence of criminal baby farmers who increased their profits by destroying babies actively and immediately, or more passively by deliberate starvation or neglect, had come to public attention in England in the 1860s and was discussed

⁴¹ ‘Protection of Infant Life’, *Evening Post* (Wellington), 23 August 1907, p. 2.

⁴² ‘Report from the Select Committee on Protection of Infant Life’, *Parliamentary Papers*, London, House of Commons, 1871, 7 (372), p. vii, cited in Thomas R. Forbes, ‘Deadly Parents: Child Homicide in Eighteenth- and Nineteenth-Century England’, *Journal of the History of Medicine and Allied Sciences*, 41 (1986), p. 192.

extensively in Britain and the colonies throughout the later part of the nineteenth century.⁴³

Narrative convention singled out older widowed women as the most likely culprits in such operations. The trope of the aged ‘hag’ was already clearly recognisable in James Greenwood’s *The Seven Curses of London*, published in 1869, which included a chapter on ‘The modern and murderous institution known as “baby farming”’.⁴⁴ Promising an exposé into ‘the hidden mysteries of adopted-child murder’, Greenwood ‘made it [his] business to invade the den of ... one of those monsters in woman’s clothing who go about seeking for babies to devour’.⁴⁵ His description of those who took in infants for money as ‘vile hags’ and female ‘ogres’ who ground shillings out of the ‘poor little bones’ of unwanted babies, owes much to traditional folklore. The archetypal motif of the evil old child-eating woman reappears worldwide and in a variety of guises from the witch in Hansel and Gretel to the East-European figure of Baba-Yaga.

Contemporary events fed into this imagery, lending them temporal and spatial immediacy. Details of the trial of child minder Charlotte Winsor, who in 1865 was found guilty of smothering an infant to death in exchange for a fee, would certainly have been fresh in Greenwood’s mind.⁴⁶ In the year following the publication of Greenwood’s book, amid a flurry of articles and ‘exposés’ on baby farms, Londoner Margaret Waters was charged with having murdered a number of adopted children through a systematic process of starvation and neglect.⁴⁷ Waters’ sensational trial and her subsequent hanging is said to have prompted the public enquiry in 1870, which led to the passing of the first English Infant Life

⁴³ As well as being discussed openly in parliamentary debate, many articles on criminal baby farming were published, most notably in the *British Medical Journal* and *The Lancet*, and in English newspapers *The Sun* and *The Pall Mall Gazette*. See for instance: Ernest Hart, *BMJ*, 2:364 (21 Dec. 1867), p. 570; and *BMJ*, 1:377 (21 March 1868), p. 276; ‘Report on the Baby-Farming System and its Evils’, *BMJ*, 1:1838, (21 March 1896), pp. 747-748; ‘Traffic in Children’, *The Lancet*, 157:4043, (23 Feb. 1901) p. 569; ‘Baby Farming’, *The Lancet*, 161:4143, (24 Jan. 1901), pp. 250-252. Highly publicised trials of criminal baby farmers took place in Australia, Canada, New Zealand and the United States during this time.

⁴⁴ James Greenwood, *The Seven Curses of London* (Oxford: Basil Blackwell, 1869), p. 21.

⁴⁵ Greenwood, pp. 25 and 32.

⁴⁶ Greenwood, pp. 22 and 31. For the most detailed account of the trial of Charlotte Winsor see Homrighaus, ‘Baby Farming’, pp. 18-20, 31-83.

⁴⁷ Margaret Waters was hanged in 1870 for the murder of five of the eleven babies found in her care. She claimed to have adopted over forty children.

Protection Act 1872.⁴⁸ The findings of this public enquiry and the exposure of further cases of abuse and murder as they made their way through the British court system, helped to crystallise the idea of baby farms, at least in the minds of the middle classes, as ‘centres of infanticide’.⁴⁹ By implication, those whose income depended on the ‘farming’ of other women’s babies were believed, at the very least, to be capable of murder.

New Zealand Baby Farmers, 1880-1893

The final two decades of the nineteenth century represent the peak of concern about the existence of a New Zealand ‘trade’ in babies. As a result of increasing vigilance against those suspected of profiting from such a trade, distressing cases of neglect and abuse were uncovered which compounded and reinforced stereotypical imaginings. Dorothy Scott and Shurlee Swain contend that the spectre of the criminal baby farm already ‘existed in the colonial imagination’ well before any such activity was uncovered in the cities of Australia.⁵⁰ In New Zealand too, the graphic imagery of the ‘ghoulish’ trade reproduced in the reporting of British trials was well understood. It was eight years after the introduction of the English Infant Life Protection Act 1872 before the presence of an advertisement placed in a Christchurch newspaper raised suspicions that criminal baby farming could be operating in New Zealand. Ruminating on the connotations of regular advertisements for ‘children to adopt’, a columnist for the *Otago Witness* demonstrated his recognition of the popular narratives associated with such advertising:

⁴⁸ Arnot, p. 272. The key provisions of the English act provided for the registration of those receiving payment for nursing two or more infants under one year of age for a period longer than a day (Carolyn Conley, *Certain Other Countries: Homicide, Gender, and National Identity in Late Nineteenth-century England, Ireland, Scotland and Wales* (Columbus: Ohio University Press, 2007), p. 201). The passing of the first British Infant Life Protection Act 1872 is covered in depth in Arnot’s ‘Infant Death, Child Care and the State’, and in George Behlmer, *Child Abuse and Moral Reform in England, 1870-1908* (Stanford: Stanford University Press, 1982), Chapter Two. See also Lionel Rose, *Massacre of the Innocents: Infanticide in Great Britain, 1800-1939* (London; Boston: Routledge & Kegan Paul, 1986), Chapters Nine, Eleven and Twelve; and Ann Higginbotham ‘Sin of the Age: Infanticide and Illegitimacy in Victorian London’, *Victorian Studies*, 33.2 (1989).

⁴⁹ Findlay, p. 7.

⁵⁰ Dorothy Scott, and Shurlee Swain, *Confronting Cruelty: Historical Perspectives on Child Protection in Australia* (Victoria, Melbourne University Press, 2002), p. 16.

Ghastly, ghoulish, enigmatical, altogether horrible in its suggestion, is the following advertisement, which appears at intervals in the *Star*: “Mrs Smith’s Saturday advertisement. Children adopted. Moderate premium. Mrs Smith, first house down Port Chalmers road.” Ponder this well. We know that more children enter this world than have any legal right to do so, and that children exist whom their mothers and fathers ... don’t care to acknowledge and are glad to be rid of. Hence, apparently, the need of such services as are tendered to society by Mrs Smith. She will disembarass us of these little strangers who have unlawfully interpolated themselves into the stream of events, - *adopts* them – takes them over for good and all. Why does she do it? Philanthropy, let us hope, and mere goodness of heart – aided by a “moderate premium!” What happens and what does she do with them when the moderate premium is exhausted? That beats me quite. The more I dubitate, muse, and perpend, the more I can’t understand it. Anyhow the trade is brisk enough to justify a standing “Saturday advertisement”. Mrs Smith always has vacancies it seems, and is always “asking for more”.⁵¹

The suggestion of criminal activity is implicit in the reporter’s interpretation of Mrs Smith’s simple advertisement. Grasping the meaning behind the writer’s obvious irony would have required little effort for nineteenth-century readers – if one woman was regularly adopting new children, what was happening to those previously taken in? In fact, Mrs Smith continued advertising and adopting children for over a decade before any real concerns were raised, as will be shown.

Four years after the reporter for the *Otago Witness* first noted the activities of Mrs Smith, the actions of another Dunedin foster mother came under scrutiny. This time a death was publicly investigated and the possibility that criminal baby farms were operating in the colonies was brought to official attention. The prospect that foster mothers might be systematically disposing of their newly adopted charges was raised at the coronial inquest into the death of three-month-old illegitimate

⁵¹ ‘Passing Notes’, *Otago Witness*, 17 January 1880, p. 16.

infant, John O'Connor.⁵² The baby boy, who had died 'in a state of extreme emaciation', had been in the charge of Mrs Catherine Dewar.⁵³ The evidence presented to the coroner showed that Mrs Dewar 'had had charge of a number of children, most of whom had died'.⁵⁴

For the police witness who testified at the inquest, the implications of Mrs Dewar's fostering operation were clearly sinister. It was 'understood', he said, 'that some mothers entered into a contract with other women to try and get rid of their children in this way'.⁵⁵ Testifying in her own defence, Catherine told the coroner's jury that John's mother had agreed to pay her ten shillings a week to care for him, but had disappeared after paying only one pound. She admitted that she had been to the police several times 'to get the child taken off her hands, as she could not afford to keep it'.⁵⁶ However she denied deliberately starving the baby, suggesting instead that he had been disabled. She told the jury: 'It seemed to be an idiot' and 'never seemed able to suck right ... it had no fear at all, and its limbs were stiff'.⁵⁷ John O'Connor was the third child to have died in the care of Mrs Dewar that year, and by her own admission she had made no effort to seek medical assistance for the starving infant.⁵⁸ The coroner set the jury the unenviable task of ascertaining 'whether the death of the child was caused by one of those numerous wasting diseases which attacked children or by the neglect of the woman who had charge of it'. Faced with a task well beyond their discernment, the coroner's jury chose to err on the side of caution. They found John O'Connor to have died 'from natural causes'.⁵⁹

However, the details of the investigation had caused unease. The jury had been shown through Mrs Dewar's three-roomed home and, as the coroner reminded them, they had all seen the 'squalid condition of the house ... and general

⁵² 'Baby Farming in New Zealand', *Marlborough Express*, 17 January 1884, p. 2.

⁵³ *Ibid.*

⁵⁴ *Ibid.* Catherine Dewar admitted to caring for only three fostered infants along with her own three children.

⁵⁵ *Ibid.*

⁵⁶ 'Inquest', *Otago Daily Times*, 17 January 1884, p. 3.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

surroundings, which were not suited to the general care of children'. Their concerns were such that the jury included a rider to their verdict, which stated:

The Jury learn from the evidence that something very much akin to 'baby-farming' exists in Dunedin, and they are therefore of opinion that the Legislature should pass an Act similar to that in force in the Home Country.⁶⁰

Both the police and the coroner's jury viewed Catherine Dewar's home as 'akin' to a baby farm. The use of this pejorative term suggests that what they witnessed there was enough to give them strong misgivings about Mrs Dewar's fostering operation. Furthermore, the coroner spoke openly about his own qualms regarding the death of John O'Connor. He declared himself to be 'glad of the opportunity' to bring to attention the 'many cases brought under his notice in which young children entrusted to the care of others had died under circumstances not quite free from suspicion'.⁶¹ His words imply that the circumstances surrounding this child's short life may not have been uncommon.

In England at this time, Reverend Benjamin Waugh was founding the London Society for the Prevention of Cruelty to Children: a body that took a special interest in 'confirm[ing] in harrowing detail the worst cases of baby farming and criminal neglect'.⁶² An article written by Waugh and published in the *British Contemporary Review* in May 1890, was apparently 'enthusiastically received in the colonies', and according to Scott and Swain, provided 'a new vocabulary' for Australian parliamentarians in their own debates on the baby farming problem.⁶³ The imagery employed in Waugh's article of 'innocent and helpless infants' and the 'vilest' of women who were thought to be intent on exploiting them, featured strongly in such debates.⁶⁴ These same images were just as powerfully evoked in

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Forbes, p. 195. The Society became national in 1895.

⁶³ Forbes, p. 195; Scott and Swain, pp. 22-23. In 1889 the New South Wales branch of the National Society for the Prevention of Cruelty to Children instituted a campaign against baby farming which led, in 1890, to a national debate on infant life protection (Scott and Swain, p. 21).

⁶⁴ Scott and Swain, p. 22.

New Zealand as new cases of dubious or suspicious fostering operations were uncovered and brought before the courts.

Several months after the publication of Waugh's article, and nearly eleven years after the *Otago Witness* first warned of the presence of baby farms in Dunedin, Mrs Myra Smith was brought before the Dunedin City Police Court charged with wilfully ill-treating and neglecting two of her fostered children.⁶⁵ This time the familiar tropes were utilised explicitly by the *Otago Witness* reporter. The stereotype of the aged 'hag' featured openly in the description of the accused as 'an elderly woman of small stature, whose house, or rather den, is somewhere in the North-East Valley'.⁶⁶ The neglected children in her charge were characterised, in juxtaposition, as 'helpless little mortals' who were 'left to rot in sores and filth'.⁶⁷ Noting that a number of child deaths had been reported in the house, the journalist reminded readers of his earlier investigations into Mrs Smith's dealings in adopted infants and wondered aloud: '[H]ow many unfortunate little bantlings, "adopted" into the elastic family of Mrs Smith, has she promoted to a better world in the interval?'⁶⁸

Testifying in court, local police officer, Constable Walker, admitted that he had been previously informed that 'Mrs Smith kept a baby farm, and that she ill-treated and neglected the children in the house'.⁶⁹ He was aware that a child had died 'about four months ago' and claimed to have 'heard from several undertakers' that other children from the Smith household had been recently buried.⁷⁰ However, it appears that it was only under the insistence of a concerned neighbour that the constable agreed to investigate. He was shocked by what he found, describing the

⁶⁵ 'Passing Notes', *Otago Witness*, 13 November 1890, p. 24.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ 'A Painful Case', *Otago Witness*, 13 November 1890, p. 24. In his report, the writer for the *Otago Witness* put it this way: 'Constable Walker admitted that he had known for years that Mrs Smith trafficked in babies' ('Passing Notes', *Otago Witness*, 13 November 1890, p. 24).

⁷⁰ 'A Baby Farm', *Poverty Bay Herald*, 7 November 1890, p. 2; 'A Painful Case', *Otago Witness*, 13 November 1890, p. 24.

interior of the house as ‘sickening in the extreme’.⁷¹ The four-roomed cottage housed thirteen people, including eleven children, Myra herself, and her seventy-year-old invalid father.⁷² On entering the front room he found five infants and a twelve year old, all of whom were described as being ‘in a very pitiable state’. Inspecting one of the children closely he found that:

The lower portion of the child’s body bore signs as if it were scalded, the skin being red and the flesh inflamed and swollen. The whole of the body of the child was covered with a mass of filth. There were also blue and black marks on the hip, which had the appearance of healed-up sores. It also appeared to be weakly and delicate, and its clothes were simply sticking together with filth and dirt.⁷³

Another officer on the scene noted that ‘when Mrs Smith was undressing the child it gave forth no sound, and did not cry in any way’. He claimed to have ‘a very strong suspicion that the child was drugged’.⁷⁴ Constrained by legal technicalities, the Dunedin Police Court Magistrate nevertheless sentenced Myra Smith to three months’ imprisonment - the strongest punishment available to him for a charge of child cruelty.⁷⁵ Myra Smith’s name does not appear again in relation to the fostering of children. It is likely that the children in her household were charged with being without means of support and re-homed in state orphanages or industrial schools, or repositioned elsewhere within the unofficial networks of care.

Among other women in the Otago district who were expressing their willingness to re-home such un-parented infants was Mrs Williamina Dean. At the time of

⁷¹ ‘A Painful Case’, *Otago Witness*, 13 November 1890, p. 24. Another witness also attested to the ‘thick and evil atmosphere’ inside the house and spoke of being physically unwell due to ‘the sickly smell’.

⁷² One of those children was removed from the house the evening before the inspection. Five of the remaining children were said to be Mrs Smith’s ‘own’, but whether they were her biological children or hers by adoption is not made clear (‘A Painful Case’, *Otago Witness*, 13 November 1890, p. 24).

⁷³ ‘A Painful Case’, *Otago Witness*, 13 November 1890, p. 24.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* The Magistrate explained that if the case had been brought before the Supreme Court the maximum sentence of two years would have been applicable under the provisions of the Child Protection Act 1890. Being tried in the Police Court required that the case be dealt with at a summary level, hence the three-month maximum penalty.

Myra Smith's court appearance, Minnie Dean and her husband Charles were housing thirteen fostered children in their two-roomed cottage at Winton.⁷⁶ While Myra Smith was still carrying out her sentence in the Dunedin Gaol, a coronial inquest was called to investigate the death of a six-week-old infant who had been living in the Dean home. Although the infant was judged to have died from natural causes, the investigation prompted another recommendation to the Government that 'something ... be done in the way of legislation' to enforce the regular inspection of foster homes, and to 'restrict persons who adopt such means of living as Mrs Dean'.⁷⁷ The interest in this case was said to be high enough that the details 'found [their] way into some of the Home papers'.⁷⁸ The condition of the house at Winton, known as 'The Larches', was apparently 'the subject of a good deal of comment ... a paragraph about the matter appearing in the *Yorkshire Weekly Post* of date May 30, 1891'.⁷⁹ Two months later, a second infant died at what the police were now calling 'the Winton Baby Farm'. However, after an inquiry into the matter, the coroner, Mr Rawson, deemed an inquest on the three-month-old infant 'unnecessary'.⁸⁰

These disturbing situations were not confined to the Southland district. In Auckland at this same time coroner Dr Thomas Philson was preparing to investigate the death of another child who had died in suspicious circumstances in foster care.⁸¹ Three-month-old Bella Watson was found to have died in 'a sort of private children's house at Mount Eden', operated by a married couple with the unpromising name of Stickley.⁸² The child's mother, domestic servant Mary Watson, claimed that Bella 'had not been looked after properly' and alleged that she knew of another infant who had died that month under the care of Mr and Mrs

⁷⁶ 'She Practiced Baby Farming', *Marlborough Express*, 26 March 1891, p. 2. The house was said to be made up of a 12x14-foot living area, and a 10-foot lean to, although as Lynley Hood points out, the exact measurements differ between reports. Nevertheless, the coroner's jury found it to be 'entirely inadequate for the purpose for which [it was] used' ('Baby Farming in Southland', *Poverty Bay Herald*, 26 March 1891, p. 2). The children included eleven infants from six-weeks to two-and-a-half years old, as well as an eleven year old and a fifteen year old.

⁷⁷ 'She Practiced Baby Farming', *Marlborough Express*, 26 March 1891, p. 2.

⁷⁸ 'The Child Murder Cases', *West Coast Times*, 1 June 1895, p. 4.

⁷⁹ *Ibid.*

⁸⁰ 'The Winton Baby Farm', *Daily Telegraph*, 12 May 1891, p. 3.

⁸¹ 'Telegrams', *Inangahua Times*, 11 July 1891, p. 2.

⁸² 'Want of Proper Food', *Tuapeka Times*, 22 July 1891, p. 6.

Stickley.⁸³ The inquest on Bella's death took place in the Stickley home, which, a reporter who was present at the proceedings described as 'a hovel' in 'dilapidated condition'.⁸⁴ Detailing the scene for the readers of the *Tuapeka Times*, he wrote:

The rooms are not papered, except a few patches here and there, and in some places daylight may be seen through the walls. In one of the rooms gathered round a fire were a number of little children – some in cradles, and some being nursed by others not very much older or bigger than themselves.⁸⁵

Daisy Stickley claimed to have twelve children under her care at the time of investigation aged from three months up to fifteen years; most, she said, were illegitimate.⁸⁶ She explained that the fostering of children was entirely 'her own enterprise', but that her husband, who was currently out of work, assisted her in the management of the home.⁸⁷ She attested to having had 'as many as thirty little ones under her care at different times' and had previously registered six deaths, although none of these had resulted in an inquest being sought.⁸⁸ On being questioned on these infant deaths, Mrs Stickley appeared vague. One, she believed, had died from 'teething' and another from convulsions – the rest had apparently 'just pined away'.⁸⁹

Baby Bella's mother admitted to having been three weeks in arrears with the weekly payment of six shillings that had been agreed for the infant's care. That the baby was found to have died from 'want of proper food' was a detail that must have appeared deeply suspicious to a jury familiar with stories of unprofitable infants being starved to death by their carers.⁹⁰ However, after some consideration

⁸³ 'Private Children's Home', *Auckland Star*, 10 July 1891, p. 4. Mary Watson claimed that another woman who had been confined with her in the Costley Home had given her child to Mrs Stickley to nurse, and that that child had also died.

⁸⁴ 'Want of Proper Food', *Tuapeka Times*, 22 July 1891, p. 6.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ 'Private Children's Home', *Auckland Star*, 10 July 1891, p. 4.

⁸⁸ 'The Baby-Farming Scandal', *Observer* (Auckland), 18 July 1891, p. 3.

⁸⁹ 'Private Children's Home', *Auckland Star*, 10 July 1891, p. 4.

⁹⁰ Such understandings were being illustrated in criminal investigations as early as 1884 in comments such as that of the police witness in the Dewar case. Police then claimed that it was

they decided that Bella Watson had died from malnutrition due to ‘natural causes’ and that ‘no blame was attachable to Mrs Stickley’.⁹¹ Nevertheless, just as the Dunedin jurors had done, Dr Philson’s jury added a rider to their verdict. In this case they included the recommendation that the ‘institution’ being run by Mr and Mrs Stickley, be inspected ‘periodically’ by ‘medical gentlemen’.⁹²

This was a recommendation that was followed up. In 1892, the Inspector of Charitable Institutions, Dr Duncan McGregor, filed a report to the Auckland Charitable Aid Board expressing his great concerns regarding the fostering of children at Mr and Mrs Stickley’s Mount Eden home.⁹³ In an unannounced visit to the house McGregor had found eight children being cared for, half of whom, he was told, were ‘paid for by their mothers or friends’; the remaining half had been placed there and were being paid for by the Charitable Aid Board.⁹⁴ Dismissing Mrs Stickley’s claim that they had been ‘caught at their worst’, Dr McGregor maintained that ‘it was evident the normal condition of the place was filthy beyond measure’. He described the interior of the house and its surroundings as ‘squalid and dirty in the extreme’. He considered the children to be ‘not sufficiently fed’, and found their mattresses ‘wet and rotting’ and covered with ‘bedding so dirty as to be unfit for a dog kennel’.⁹⁵

Duncan McGregor was well known for his strong-minded and controversial views on poverty and social policy.⁹⁶ His judgement of the Stickley home, viewed as it

‘understood that some mothers entered into a contract with other women to try and get rid of their children in this way’ (‘Baby Farming in New Zealand’, *Marlborough Express*, 17 January 1884, p. 2).

⁹¹ ‘Private Children’s Home’, *Auckland Star*, 10 July 1891, p. 4.

⁹² *Ibid.*

⁹³ Annual Report on Hospitals and Charitable Institutions, *Appendices to the Journals of the House of Representatives (AJHR)*, 1892, H-3, p. 3. This report was published in various newspapers including the *Poverty Bay Herald* (‘Shocking Treatment of Children’, *Poverty Bay Herald*, 20 May 1892, p. 4).

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ In 1876, McGregor published a series of articles on ‘The Problem of Poverty in New Zealand’ in which he warned that the ‘hopelessly lazy, the diseased, and the vicious’ were ‘eating like a cancer into the vitals of society’. He advocated for the permanent incarceration of criminals, drunkards and paupers so that they be ‘weeded out by natural selection’ (Margaret Tennant, ‘McGregor, Duncan – Biography’, *Dictionary of New Zealand Biography (DNZB)*, Te Ara - the Encyclopedia of New Zealand, updated 1 September 2010 <<http://www.teara.govt.nz/en/biographies/2m7/1>> (accessed on 10 May 2012)).

was through a distinctly conservative, middle class lens, may well have been unnecessarily harsh. It is possible that the supposed ‘filth’, the sparse furniture and bedding, and the ‘insufficiently clad’ children in the Stickley household, may have been no worse than might be found in neighbouring homes. Charitable Aid records demonstrate that similarly poor conditions could be found in working class homes around the country at this time, as Chapter Three shows.⁹⁷ A rejoinder written by John Stickley himself and published in the *Auckland Star* suggests that he felt strongly that such a misunderstanding had taken place. He called the doctor’s report ‘inflammatory and incorrect’, insisting that the poor condition of the house had been greatly exaggerated.⁹⁸ He excused the allegations made against himself and his wife as assumptions and misinterpretations: the house was in disorder as it was being prepared for cleaning; the ‘rotten’ mattresses were simply discoloured due to an accident with limewash; and Mrs Stickley’s reluctance to co-operate was a consequence of the doctor’s ‘overbearing and insulting manner’.⁹⁹ Public reaction to the publication of Dr McGregor’s findings, however, was unequivocal. The editor for the *Star* called the situation ‘a disgrace to the whole community’. He proclaimed that ‘[s]uch a state of things is simply intolerable. It calls for measures of the most drastic kind’.¹⁰⁰ For this writer, despite the clear involvement of John Stickley in this case, it was the avarice of women like Daisy Stickley that lay at the heart of such neglect. He said:

It appears, unfortunately, that the amount paid by the [Charitable Aid] Board is sufficient to induce women to get a few unhappy children into their clutches, and to bring them up solely with an eye to profit, and with utter disregard of their physical and moral wellbeing.¹⁰¹

Furthermore, the greed of such women, in the writer’s view, was matched by their proclivity for deceit. The editor called for the employment of female inspectors in

⁹⁷ See also Margaret Tennant, ‘The Decay of Home Life? The Home in Early Welfare Discourses’, *At Home in New Zealand: History, Houses, People*, edited by Barbara Brookes (Wellington: Bridget Williams, 2000), pp. 30-31.

⁹⁸ ‘Correspondence’, *Auckland Star*, 20 May 1892, p. 4.

⁹⁹ *Ibid.*

¹⁰⁰ ‘Editorial’, *Auckland Star*, 17 May 1892, p. 4.

¹⁰¹ *Ibid.*

Charitable Aid work in the area of fostering, as '[n]othing is more certain from the history of baby-farming than that male inspectors are constantly deceived by women who board children'.¹⁰²

Continuing reports of trials of criminal baby farmers taking place in England and Australia kept the subject of fostered infants before the public eye. In Sydney, in 1892, John and Sarah Makin were charged with murder after the bodies of thirteen infants were unearthed from the backyards of their rented homes.¹⁰³ Unusually, in this case John Makin was found to be in charge of what was judged to be a criminal operation and was hanged in August 1893 at the Sydney Gaol. His wife Sarah was sentenced to fourteen years imprisonment.¹⁰⁴ The following year, twenty-seven-year-old Frances Knorr (alias Minnie Thwaites) and her husband Rudolf were charged with the murder of two adopted illegitimate infants.¹⁰⁵ This time only Frances stood trial and was hanged for murder.¹⁰⁶ That these criminal fostering operations were as likely to be run by married couples as by older, single women did little to upset the familiar stereotypes. As Lucy Sussex describes, cartoons printed in Australian newspapers at the height of interest in these cases featured caricatures of the female 'witch, or crone, complete with missing teeth and warty nose'.¹⁰⁷ If a male accomplice lurked somewhere in the shadows of such pictorial imaginings, he remained unacknowledged.

The details of these sensational court trials were widely reported in New Zealand newspapers and produced new levels of public attentiveness. In August 1893, a letter writer in the Auckland *Observer* expressed suspicious concern at the

¹⁰² *Ibid.*

¹⁰³ Heather Radi, 'Makin, Sarah Jane (1845–1918)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, retrieved online from <<http://adb.anu.edu.au/biography/makin-sarah-jane-13271/text23651>> (accessed 3 April 2012).

¹⁰⁴ Jan Kociumbas, 'Azaria's Antecedents: Stereotyping Infanticide in late Nineteenth-Century Australia', *Gender and History*, 13:1 (2001), p. 140.

¹⁰⁵ Lucy Sussex, 'Portrait of a Murderer in Mixed Media', *The Australian Feminist Law Journal*, 4 (1994), p. 47. Knorr was charged in September 1893 and was hanged the year after, in January 1894.

¹⁰⁶ The two infants died while Frances had been living alone in Melbourne. At that time, Rudolf was serving a prison sentence in Adelaide (Kathy Laster, 'Knorr, Frances Lydia Alice (Minnie) (1867–1894)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, retrieved online from <<http://adb.anu.edu.au/biography/knorr-frances-lydia-alice-minnie-13030/text23559>> (accessed 3 April 2012)).

¹⁰⁷ *Bulletin*, November 1892, cited in Sussex, p. 49.

‘extraordinary number of advertisements ... in the local dailies ... having reference to babies’.¹⁰⁸ The letter reads:

Baby boys, baby girls, babies ‘from the birth’, and other descriptions of babies too numerous to particularise have been ‘freely quoted’, to borrow a commercial phrase. ... Who are the parties that are anxious to dispose of superfluous babies? Who ... are the individuals that so constantly announce, per the medium of the ‘wanted’ columns in the daily paper, their desire to adopt babies and who promise ‘a kind home’ and who, in the great majority of cases, don’t forget to add that ‘a premium will be required’? It seems to me that these advertisements should be viewed with a certain amount of suspicion.¹⁰⁹

Referring directly to the cases of the ‘infamous Makins’ and of an unnamed English couple ‘now in the hands of justice’, the writer offers an answer to his or her own loaded question:

The Australian papers also are full of advertisements relating to babies. What does it mean? Well, so far as these Australian papers are concerned, at all events, it generally means – baby-farming. ... That is what these advertisements mean, as a general rule, in London, and in the great Australian cities. ... Is Auckland any better, socially and morally, than other and larger cities? I fear not. Baby farming is carried on here to a very considerable extent *-sub rosa-* if I am correctly informed.¹¹⁰

For the writer the term baby farming carries no ambiguity. Baby farmers like the Makins were ‘wholesale baby-murderers’ who ‘made a business of baby-slaughter’.¹¹¹ While the writer contends that ‘the subject is not a pleasant one, nor ... one that can be pursued’, he or she nevertheless ventures to suggest that ‘the veil which conceals a very dark corner in our social life’ be lifted:

¹⁰⁸ ‘The Demand for Babies’, *Observer* (Auckland), 19 August 1893, p. 3.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

Auckland detectives could a tale unfold on the subject, I expect, if they cared to. Demand always creates supply. If there was no baby-farming in Auckland, there would, it is pretty safe to assume, be fewer ‘wanteds’ in the papers referring to babies.¹¹²

Whether based on real or imagined goings-on, this new ‘awareness’ meant that known child-fostering operations, such as that of Minnie and Charles Dean’s in Winton, came increasingly under police and community surveillance. That same year, in the course of a police inspection at the Dean’s home, Winton policeman Constable Rasmussen became concerned about the whereabouts of one of Minnie’s adopted children.¹¹³ On a previous visit to the Larches two years earlier in 1891, he had noted the presence of a ‘sickly’ infant called John Clark. Asked to explain the child’s absence at the second visit, Minnie maintained that John had been sent home to his family in Christchurch. Obviously less than satisfied with Minnie’s account, Constable Rasmussen began an investigation into the disappearance of baby John.¹¹⁴ However, while the search for John Clark was taking place within the networks of South Island police, Minnie Dean was discovered in the process of procuring another infant.

The owner of a Christchurch boarding house alerted police to the suspicious activities of a woman who had ‘acquired’ a baby while lodging at his establishment. The man was concerned that the baby was not being cared for properly, and had been left to cry ‘all night’.¹¹⁵ The police detective who attended the call out confirmed the baby girl’s distress. He reported that she appeared ‘dirty and uncared for’, and had ‘evidently not ... been changed for some time’. More worryingly, her feeding bottle contained only ‘sour, curdled milk’.¹¹⁶ On questioning, the foster mother put up an apparently well-rehearsed smokescreen, informing the detective that she was Mrs A. Presnell, ‘the wife of Frederick

¹¹² Ibid

¹¹³ By this time, in 1893, Minnie and Charles Dean were fostering seven children.

¹¹⁴ Hood, pp. 106,107. It would seem that this investigation was not concluded. No satisfactory explanation for John Clark’s whereabouts appears to have been recorded. John Clark (also known as Henry Cockerill) was included among the list of missing infants catalogued during Minnie Dean’s later trial.

¹¹⁵ Hood, p. 108.

¹¹⁶ Ibid.

Presnell, who was formally a farmer at Clinton, Southland, but now residing with Mrs King, who kept a boarding house in Albany St, Dunedin'.¹¹⁷ However, the networks of police communication had positioned the detective a step ahead, as his report details:

I then told her that I was convinced that she was telling me a lie. That I had reason to believe that she came from near Invercargill, where she kept a baby farm, and that I had a lot of correspondence from Invercargill lately, about a child, which she was supposed to have given to a Mrs John Thompson of Christchurch and that I had reason to believe that her name was Mrs Dean.¹¹⁸

On further investigation the grandmother of the baby girl was traced and the infant was duly returned with the remains of the twenty-five pounds adoption fee.¹¹⁹ While the family complained that the 'marked difference for the worse in [the baby's] appearance' was such that they claimed to 'scarcely know it', no charges of child neglect appear to have been laid against Minnie Dean in this incident.¹²⁰ However, as Hood contends, 'the police were in no doubt as to her guilt'.¹²¹ Moreover they were convinced that her plans were murderous. In a letter to the Commissioner of Police, the Christchurch Police Inspector wrote:

I think it possible that the baby taken from this woman by the Chief Detective would never have reached Winton. The probability is that she would have thrown it into the harbour upon the arrival of the train at Dunedin.¹²²

¹¹⁷ Correspondence re Mrs Dean in Christchurch. P1 1895/845, National Archives Dunedin, cited in Hood, p. 108.

¹¹⁸ *Ibid.*

¹¹⁹ Hood, p. 109.

¹²⁰ *Ibid.* Such a charge could have been made under the provisions of the Children's Protection Act 1890 (section 3). Hood suggests that the respectability of the child's family prevented them from pressing any such charges.

¹²¹ Hood, p. 112.

¹²² Correspondence re Mrs Dean in Christchurch. P1 1895/845, National Archives Dunedin, cited in Hood, p. 112.

Echoing the warnings of the anonymous letter writer in the *Auckland Observer*, the Christchurch Inspector informed the Commissioner of Police that:

Baby farming is increasing rapidly in this Colony and the adoption of children upon premiums ... the system pursued by the Makins in Sydney lately – leads directly to the crime of infanticide. From a return lately prepared by the Detectives I find there are no less than twenty baby farms here; places where there are from two to seven babies.¹²³

Fears that criminal baby farming was on the rapid increase were being fanned on several fronts simultaneously. The issue focused the attention of police, church and special interest groups, and the general public, in a way that the more contested problem of maternal infanticide had not. These groups endeavoured to convince the new Liberal Government, which had come to power in 1891, that the welfare of fostered children deserved the attention of the legislature. In 1892 the Christchurch branch of the Anglican St Saviours Guild discussed the promotion of legislation on baby farming, and the formation of a local Society for the Protection of Women and Children was proposed primarily to campaign for the introduction of laws for infant protection.¹²⁴ Such calls were backed by concerned members of the public. A letter writer to the *Lyttleton Times* in 1893 neatly summarised the problem as he or she saw it:

A woman, whose charges are cheap and her home nasty, secures the newborn babe for five or six shillings a week. She finds, however, that one child does not pay for her “trouble”, and she takes in half a dozen, and divides generously between the six that amount of “trouble” which would hardly suffice for one. Candle boxes are called into service for cradles, old sacks take the place of blankets, and watery milk or indigestible gruel is substituted for natural nourishment. Here we have all the conditions that go to make that anything but flourishing establishment – a baby farm.¹²⁵

¹²³ Ibid.

¹²⁴ ‘St Saviours Guild’, *Press* (Canterbury), 20 September 1892, p. 5.

¹²⁵ ‘Baby Farming’, *Lyttleton Times*, 29 July 1893, p. 6.

The writer's solution was equally succinct: 'There is obviously only one remedy for this state of things. The State must sweep these "farms" away'.¹²⁶

Facilitated by understandings of the baby farmer as a source of filth and depravity, and of mercenary barbarity, government ministers were already instigating a plan of attack to ensure the policing of impoverished child minders such as the Stickleys and the Deans. Part Two of this chapter examines the introduction of legislation for the protection of infant life, and the monitoring of its provisions among foster and adoptive families. In this section, two widely publicised murder trials are foregrounded. Contemporary understandings of Minnie Dean's 1895 trial drew heavily on cultural narratives of the female criminal baby farmer. For observers, it highlighted the inadequacies of legislation for the protection of infants and prompted a raft of amendments. The trial of Daniel Cooper in 1925 generated a different set of understandings. In the years between the two trials, the ways that the private 'care' of un-parented infants was imagined had shifted dramatically; however, the trials remained connected by narrative threads.

¹²⁶ Ibid.

Part Two: Deaths in Paid Foster Care, 1893-1925

Legislative Responses 1893- 1896

A decade after government attention was first called upon to regulate the activities of baby farming in New Zealand, the circumstances of fostered infants were brought forward for parliamentary discussion. The Commissioner of Police put the issue high on the agenda, including it in the 1893 Annual Report on the Police Force of the Colony. The report states:

[A]ttention is called to what appears to be a growing evil in this colony – viz., “baby-farming.” That this evil exists there can be no doubt; and it appears that children, either by advertisement or otherwise, are placed [out to nurse] in most unsuitable homes, where it is perfectly well understood that the sooner the child dies the better pleased all concerned will be. ... Another system of disposing of infants is by so-called adoption, where children are taken for a lump sum entirely off their mothers’ hands, provided no more question are asked. Sums from £6 to £20 are paid down as a premium; and for such helpless infants there is absolutely no protection. The recent disclosures in Sydney considerably opened the eyes of the public on these matters, and I believe some legislation is now absolutely required to deal with this evil in this colony.

A. Hume, Commissioner of Police.¹²⁷

During Parliamentary debate in August, Hume’s report was read to the House by Mr W. Hutchison. Hutchison declared it to be ‘a very disturbing and, he had good reason to believe, a not exaggerated statement, which must have already arrested the attention of the Minister of Justice, and indeed of all the members of the Government’.¹²⁸ With reports of baby farming murders in Britain and Australia

¹²⁷ ‘Annual Report on the Police Force of the Colony’, *AJHR* (1893), H – 26, p. 3.

¹²⁸ ‘Baby Farming’, 30 August 1893, *New Zealand Parliamentary Debates*, Vol. 81, p. 434.

having already ‘arrested the attention’ of the public, government ministers showed a willingness to instigate legislative measures. On the advice of the Police Commissioner, a bill to introduce an Infant Life Protection Act to provide for the official registering of foster homes was put before the House.¹²⁹ Not all were convinced of the immediate need for such measures, however. At the second reading of the bill, The Honourable Dr. Grace claimed ‘in defence of the morality of this country’ that:

He did not really think this evil called baby-farming existed in the colony at all ... He knew the surroundings of Wellington pretty well and he did not hear of any baby-farming. ... These were crimes peculiar to large cities, and in cities such as they had in the colony they had not reached such a state of degradation.¹³⁰

Others strongly begged to differ, claiming that there was a ‘great need’ for legislation on the matter. The Honourable Mr Walker spoke of a case in Christchurch that he himself had been acquainted with, where children were ‘taken in for so much, and shamefully neglected’.¹³¹ He was informed that the police faced ‘great difficulty in dealing with such a case’. If they ‘interfered too much’, he was told, ‘the children would be sent away next day to some other worse place, where they would be just as badly treated’.¹³²

The Honourable Sir Buckley concurred, insisting further that:

With a few exceptions the disclosures that had been made showed that these houses were of such a character as almost made one’s flesh creep, and it was to be regretted that any such state of things should exist in the colony.¹³³

¹²⁹ The New Zealand act was modelled on the Australian Infant Life Protection Act 1872 (Victoria).

¹³⁰ ‘Infant Life Protection’, 28 September 1893, *New Zealand Parliamentary Debates*, Vol. 82, p. 800.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

The Infant Life Protection Act was introduced into statute in October of 1893. Its provisions required that any foster carer or adoptive parent, who housed a child less than two years of age, apply for registration with a local authority.¹³⁴ The death of any registered infant had to be notified within twenty-four hours and a coroner was required to hold an inquest on the body.¹³⁵ The act also charged that such homes make themselves open at all times for inspections by ‘a member of the police force ... accompanied by a legally-qualified medical practitioner’.¹³⁶

Despite the potentially invasive nature of the new law and the shocking claims made by those who had called for its introduction, the passing of the act into legislation generated little in the way of media commentary. There was no public consternation from feminist groups, such as that elicited by the enacting of similar legislation in England. There, suffragists such as Lydia Becker had strongly opposed bills to regulate baby farms as patriarchal interference into women’s domestic labour.¹³⁷ In New Zealand, as in Victoria, which had introduced its Infant Life Protection Act in 1890, the public response was muted. In practice, for most foster families, their official registration as child carers probably made little impact on their daily lives. Those whose activities the new law was initially intended to curb found ways of operating under the official radar. The desire for concealment and secrecy that surrounded illegitimate births could still be exploited by carers who wished to avoid registration, for whatever reason.¹³⁸ Nevertheless, for Police Commissioner Hume, it must have seemed that order had been restored. In his Annual Report on the Police Force of the Colony the

¹³⁴ *Statutes of New Zealand*, 1893, No. 35, Infant Life Protection Act (sections 5 and 6), p. 142. Persons exempt from the act included those fostering the children of near relatives, and public institutions, such as Church or State orphanages and children’s homes (section 16, p. 145). Failure to register under the act was punishable by six months imprisonment or a twenty-five pound fine (section 5b, p. 142).

¹³⁵ *Statutes*, Infant Life Protection Act (section 13), p. 145.

¹³⁶ *Statutes*, Infant Life Protection Act (section 8), p. 143.

¹³⁷ George Behlmer, *Child Abuse and Moral Reform in England 1870-1908* (Stanford California: Stanford University Press, 1982), pp. 33-34.

¹³⁸ Minnie Dean continued to foster infants under two-years old after the introduction of the act and until her arrest in 1895, despite being unregistered. A charge of breaching the law in 1894 resulted in Minnie being fined one penny. In view of the penalty for failure to register which was set at six months imprisonment and a £25 fine, this would suggest that the legislation was being lightly policed at this time.

following year, he asserted confidently that baby farming was ‘finished’.¹³⁹ In May 1895, however, during the course of police investigations at Winton, the bodies of three children were unearthed from the garden of Minnie and Charles Dean.

Increasingly subject to community and police surveillance, Minnie Dean’s movements appear to have become a matter of public interest. Commuters had noted Minnie boarding a train from Winton to Lumsden carrying a baby in her arms. On arrival in Lumsden, however, she disembarked carrying only her luggage, which included a large metal hatbox.¹⁴⁰ The following day, a newsagent on the train from Gore to Milton reported to police that he had witnessed Mrs Dean in negotiation with a woman over the adoption of another baby. On investigation, Jane Hornsby admitted to handing over her four-week-old granddaughter, Eva, to a woman at Milburn station with a ten-pound fee.¹⁴¹ Several days later Mrs Hornsby accompanied police to The Larches and identified Minnie as the woman who had taken the child, but while clothing she recognized as belonging to the baby was found, Eva Hornsby was nowhere to be seen. Minnie herself steadfastly denied all knowledge of the child or the adoption. Nevertheless, police felt they had enough evidence to arrest her on a charge of murder.¹⁴² When excavations of the yard at the Larches turned up the freshly buried bodies of both of the missing children as well as the badly decomposed body of an older child, Charles Dean was also taken into custody.¹⁴³

Within days the press had carried out some investigations of its own. Keen to provide its readers with a glimpse into a baby-farming ‘den’, the *West Coast Times* printed a ‘special’ report on the living arrangements of the accused couple:

A photograph of the Dean’s house has been taken, and will probably be produced at the inquest. No adequate idea can, however, be obtained of

¹³⁹ Annual Report on the Police Force of the Colony, *AJHR* (1894), H – 14, p. 2.

¹⁴⁰ *R v Dean* (1895) NZLR (CA) at 273; ‘Alleged Child Murder’, *Poverty Bay Herald*, 13 May 1895, p. 2.

¹⁴¹ ‘Winton Baby-Farming Case’, *Otago Daily Times*, 4 June 1895, p. 2.

¹⁴² ‘The Winton Child Murders: Trial of Minnie Dean Sentenced to Death’, *Otago Daily Times*, 9 July 1895, p. 3.

¹⁴³ *Ibid.*, p. 2.

the condition of the house without seeing it. It is in truth a wretched hovel, and the former inmates have apparently had little or no regard for cleanliness. The house is an unpainted weatherboard structure, measuring 18ft 10in by 11ft 3in and with a small lean-to at the back. The walls are unpapered and the floor uncarpeted, and in the room at the back in which most of the children slept, the ground can be seen between the rough boards of the flooring. There is very little furniture in the house and the beds are of a very rough description, the bedding portion of which consists of old bags is also far from clean, and the whole surroundings are extremely wretched and squalid.¹⁴⁴



Figure 16: Crime scene excavations at 'The Larches', home of Minnie and Charles Dean. The cross in the foreground indicates the position of the two newly buried infants.¹⁴⁵

¹⁴⁴ 'The Child Murder Cases', *West Coast Times*, 1 June 1895, p. 4. Hood points out that the size of the house was earlier reported as '24 feet by 16 feet'. She contends that as such reports became increasingly hostile, 'the smaller [the house] became' (Hood, p. 96).

¹⁴⁵ Image from *New Zealand Graphic*, reproduced at 'Police search Minnie Dean's garden', retrieved online from <<http://www.nzhistory.net.nz/media/photo/police-search-minnie-dean-garden>> (Ministry for Culture and Heritage), updated 21 June 2008 (accessed 6 April 2012).

The coronial inquests on the exhumed bodies turned the spotlight from housing arrangements to the fostered children and the manner of their deaths. At the inquest into the death of Eva Hornsby, medical experts described the two small deep bruises on the back of the baby's neck, which they found to be consistent with forceful asphyxiation.¹⁴⁶ The pathologist, Doctor McLeod, speculated that such marks might result from the infant's head being pressed forcefully against a cloth and intentionally suffocated.¹⁴⁷ An inquest on the second body identified it as belonging to one-year-old Dorothy Edith Carter. Post mortem analysis of the infant's internal organs by Otago University's forensic expert, Professor Black, found what he estimated 'corresponded to 37 grains of opium' in the stomach and intestines. He informed the inquest jury that 'around one grain of opium would be a poisonous dose for a child that age'.¹⁴⁸ A chemist from Bluff, who had been brought in for the inquiry, testified to having sold 6d of laudanum on the 30th of April to a woman who signed the poison register as 'Mrs Gray'. A second witness, Mrs Cox, deposed that she had met 'Mrs Gray' at the Bluff hotel on that very same day, and given the woman her illegitimate granddaughter, Dorothy Edith Carter, with a promise to pay a ten pound premium for her adoption.¹⁴⁹ Mrs Cox positively identified the accused as the person she knew as 'Mrs Gray'.

Further witnesses described Minnie's movements on and off trains and at various stations and railway hotels. Of particular interest was the weight of the hatbox that made up part of the woman's luggage. Witness testimony confirmed that Minnie had possession of two infants at various stages in her journey. At an earlier point, when she was seen with a child, a porter attested to the lightness of her luggage. Later, when Minnie was seen alone, the hatbox was reported to be unusually heavy.¹⁵⁰ With both infants having been found to have been 'wilfully murdered', the conclusion that their bodies had been hidden in the hatbox by Minnie Dean for the return journey to Winton, was considered a logical one.

¹⁴⁶ 'The Winton Child Murders: Trial of Minnie Dean Sentenced to Death', *Otago Daily Times*, 9 July 1895, p. 3.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ 'The Winton Baby Farming Horror', *Mataura Ensign*, 31 May 1895, p. 3.

¹⁵⁰ 'Winton Baby Farming Case', *Otago Witness*, 30 May 1895, p. 23.

Before the final inquest on the third exhumed body could take place, the magisterial hearing against Minnie and Charles Dean began. The court heard from the Deans' fifteen-year-old adopted daughter, Esther Wallis that 'she knew of twenty-two children who at one time or other were in Mrs Dean's keeping'.¹⁵¹ With both Minnie and Charles in attendance at this hearing, the girl assured the court that that Mrs Dean was 'fond of children' and claimed further that Mr Dean 'took no part' in his wife's affairs, disapproved of her adoption activities, and was often away from home'.¹⁵² At the end of the three-day hearing Charles Dean was discharged. As there had been, in the words of the Magistrate, 'no evidence at all' against the man, he was allowed to leave the court 'without a stain on his character'.¹⁵³ His wife, on the other hand, was committed to trial on two counts of murder.

Whether Charles Dean attended the inquest on the third body, which took place two days later on the tenth of June, is not clear.¹⁵⁴ It is noteworthy, however, that on this occasion the testimonies of the eldest of the adopted children, nineteen-year-old Margaret Cameron and fifteen-year-old Esther Wallace, changed markedly in detail and in tone.¹⁵⁵ Both girls had been present at the exhumation of the bodies and, despite the grisly nature of the scene, had obviously treated the tiny corpses to close inspection. They both considered the skull of the older child (now with only a piece of the scalp and hair attached) to be that of an adoptive brother named Willie Phelan. Under questioning, Margaret Cameron recalled the details of a number of other children whose whereabouts had not yet been established. She deposed that:

¹⁵¹ 'The Winton Baby Farmer', *Hawkes Bay Herald*, 11 June 1895, p. 4.

¹⁵² Hood, p. 146.

¹⁵³ 'The Winton Baby Farming Case', *Press* (Canterbury), 10 June 1895, p. 5.

¹⁵⁴ Charles' release from custody meant that he was no longer required to be present. I have uncovered no mention of his attendance in any press reports on the inquest.

¹⁵⁵ That their adopted father's presence or absence at the coronial hearings may have had some bearing on the nature of the girls' testimony is evidenced by an aside included in the newspaper report on the third inquest. Both the *Press* and the *Hawkes Bay Herald* reported a complaint by Sergeant MacDonnell that after his release Charles Dean, despite being 'warned not to do so', had 'forced himself' into the Charitable Aid Board home where Esther Wallace was being boarded. After having managed to 'communicate' with his adopted daughter, Sergeant MacDonnell claimed that 'the girl was not now so willing to give evidence as she had been'. While the nature of this exchange is not clear, it is possible that Charles attempted to intimidate or dissuade Esther from testifying honestly ('The Winton Baby Farming Case', *Press* (Canterbury), 11 June 1895, p. 5; 'The Winton Baby Farmer', *Hawkes Bay Herald*, 11 June 1895, p. 4).

[A] child named Cyril Scoular was brought from Oamaru by Mrs Dean about five years ago. He remained at the Larches about three years. One day in April, about two years ago, when all the grown-up people about the house were absent, he disappeared, and Mrs Dean said he had been taken away in a buggy by a lady from Gore.¹⁵⁶

However, Margaret maintained that she had found no buggy tracks leading to the house and that no one else had seen a visitor arrive that day.¹⁵⁷ She was later told by Minnie that Cyril had ‘gone to Sydney’, Australia, and was shown a photograph of him there with his new family. In a particularly damning statement, Margaret told the inquest jury that she did not believe that the child in the photograph was Cyril.¹⁵⁸

Around the same time, she recalled, ‘a boy named Henry’ who had been at the house for ‘eight or nine months’ had ‘disappeared in the same way, when no one but Mrs Dean and the children were about the house’.¹⁵⁹ The photograph that was produced on this occasion had an inscription on the back that read “from Henry S. Thomson with love to Mrs Dean”. Margaret told the jury that in her opinion ‘[t]he writing was Mrs Dean’s’.¹⁶⁰ A third child, Sydney McKernan, who had been brought to the house as a newborn four years earlier, had also disappeared in suspicious circumstances. The jury were informed that when Sydney’s mother had come to enquire after him a year after his disappearance, Minnie denied ever

¹⁵⁶ ‘The Winton Baby Farming Case’, *Press* (Canterbury), 11 June 1895, p. 5.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.* A letter from Cyril’s mother, Ellen Scoular, advising Minnie of the death of Cyril’s father, was produced at the inquest. Sent two years after Cyril’s disappearance, it nevertheless contained language that suggested Ellen believed her child to be living with the Deans. In a postscript, Ellen wrote: ‘P.S.- Trusting the wee fellow is a good boy’ (Hood, p. 157). Cyril was officially declared dead by Chief Justice Robert Stout in 1914 when an application to release legacies left to him in his father’s estate was brought before the Supreme Court. The application was denied, with Stout declaring that the child had died before the will was made; ‘no doubt’ he said ‘murdered by Dean’ (‘Echoes from a Baby Farm’, *Wanganui Chronicle*, 8 July 1914, p. 5).

¹⁵⁹ ‘The Winton Baby Farming Case’, *Press* (Canterbury), 11 June 1895, p. 5. This child was thought to be John Clark (also known as Henry Cockerill), the ‘sickly’ child whose disappearance had sparked police investigations in 1893.

¹⁶⁰ *Ibid.*

having the child. When the woman later returned with Constable Rasmussen, they were told that he had been given away ‘to a lady from Woodlands’.¹⁶¹

Continuing in the same vein, Margaret described the disappearance of five-year-old Willie Phelan. Here Margaret’s testimony revealed something of the nature of her mother’s treatment towards some of her adopted children.¹⁶² She claimed that Minnie had an active ‘dislike’ of Willie Phelan, whose mental disabilities had become evident early on.¹⁶³ She deposed that Mrs Dean ‘did not treat the child well, but would knock him down and, seizing him by the hair, bump his head on the floor’.¹⁶⁴ Willie’s sudden absence was explained by the news that, despite his mental impairment and ‘dirty habits’, Willie had been ‘adopted’ by a woman in Invercargill.¹⁶⁵ Esther Wallace corroborated Margaret’s evidence, confirming that she had been told to take all the children with her ‘into the bush’ on the days in question, and ‘only the one that disappeared was left behind in the house on each occasion’.¹⁶⁶ She also disclosed the information that she had found clothing belonging to the missing children after their alleged adoptions. One of those items, she claimed, was Willie Phelan’s new velvet suit.¹⁶⁷

In Lynley Hood’s account of the life and trial of Minnie Dean, the Scottish-born grandmother appears as a casualty of a society in moral panic and a hostile police force motivated by ‘suspicion and loathing’.¹⁶⁸ Hood argues persuasively that no systematic pattern of infanticide took place at the Winton baby farm; rather, she

¹⁶¹ Ibid.

¹⁶² ‘The Winton Baby Farming Case’, *Press* (Canterbury), 11 June 1895, p. 5.

¹⁶³ Ibid. Court records showed that Minnie Dean had petitioned Willie Phelan’s birth mother for further maintenance costs as the child was ‘an imbecile’. Willie’s mother claimed that he had been born with ‘water on the brain’ and was not expected to live beyond seven years (Hood, p. 155).

¹⁶⁴ ‘The Winton Baby Farming Case’, *Press* (Canterbury), 11 June 1895, p. 5

¹⁶⁵ Ibid. In a statement written before her execution, Minnie admitted to physically disciplining the children. Of Margaret’s allegations regarding Willie Phelan she wrote, ‘[i]f I got in a temper and punished the child severely sometimes on account of his dirty habits I allowed no one else to lift a hand to him’. In the same statement she admitted that the exhumed body was that of Willie Phelan. Minnie claimed that he had drowned accidentally and had been secretly buried in order to avoid the coronial investigation (Ken Catran, *Hanlon: A Casebook* (Wellington: Pitman Publishing, 1985), p. 168).

¹⁶⁶ ‘The Winton Child Murders: Trial of Minnie Dean Sentenced to Death’, *Otago Daily Times*, 9 July 1895, p. 3.

¹⁶⁷ ‘The Winton Baby Farming Case’, *Press* (Canterbury), 11 June 1895, p. 5.

¹⁶⁸ Hood, p. 105.

contends that the fate of the missing children was most likely death due to accident, misadventure or manslaughter.¹⁶⁹ Less convincingly, she portrays the murder accused as an inconsistent, but ‘kindly’ and ‘eccentric’ foster mother, who invented stories about the disappearances of children in her care out of ‘sheer soft-heartedness’ towards their remaining adopted siblings.¹⁷⁰ In her reading of the eye-witness testimonies of Margaret Cameron and Esther Wallace, Hood suggests that the girls’ detailed accounts of the children’s disappearances may have been the result of police ‘prompting’, confusion, and ‘reconstructed memories’.¹⁷¹ On the other hand, the positive testimony of neighbours who described Minnie Dean as ‘well-meaning, kind-hearted and loving’ carries much weight in Hood’s account and its credibility is accepted at face value.¹⁷² My own evidence from child homicide trials throughout New Zealand at this time suggests that such neighbourly ‘support’ was often forthcoming in cases of fatal abuse or neglect, though for a variety of different reasons. I argue that its presence, while relevant, simply adds another interpretative layer to the narratives of representation surrounding the case. Hood’s biographical reconstruction has itself opened the way for further reinterpretations of Minnie Dean’s character and crimes in folk songs, films and novelistic treatments.¹⁷³ The public unveiling of a memorial on Charles and Minnie Dean’s previously unmarked grave in 2009, which included a

¹⁶⁹ Ken Catran makes a similar case in his chapter on the Minnie Dean trial (Catran, pp. 26-52). Both authors rely heavily on Hanlon’s case for the defence as well as the statements written by Minnie Dean before her execution.

¹⁷⁰ Hood, pp. 93, 160 and 161. Ultimately determining motive and personality, as Carolyn Conley suggests, can only ever be an ‘act of speculation’, which depends ‘as much on the observer’s assumptions about human nature as the killer’s actual incentive at the time’ (Conley, *Certain Other Countries*, p. 2).

¹⁷¹ Hood, p. 159. Catran also suggests that the girls’ testimony shows evidence of ‘careful coaching’ though does not substantiate that claim. He further suggests that Margaret Cameron’s evidence may have been prompted by the threat of being charged as an accomplice (Catran, pp. 32-33).

¹⁷² Hood, pp. 91 and 158.

¹⁷³ See for instance Helen Henderson, ‘The Ballad of Minnie Dean’, performed by ‘Run the Cutter’ (CD, *Passing Time*, Invercargill, N.Z. 2000) <folksong.org.nz/minniedean/index.html> (accessed 4 April 2012); ‘Minnie Dean’, Documentary. Dir. by Marylyn Hayes and Brendon Fairbairn, retrieved online from <<http://www.youtube.com/watch?v=-pobXNCcQNU>> (accessed 4 April 2012); Sasha de Bazin, *The Day She Cradled Me* (Auckland: Random House, 2012).

public ‘offer of forgiveness’, demonstrates that the layering of narratives and re-inscription of meaning is a fluid and on-going process.¹⁷⁴

Clearly, however, in 1895, at the time of her trial for murder in the Invercargill Supreme Court, public understandings of the character of Minnie Dean were sharply focused on the negative. The Crown used witness testimony to suggest that Minnie was a criminal baby farmer whose actions included the systematic murder of infants, acquired under the guise of ‘adoption’. The press responded to the allegations with enthusiasm suggesting further that the accused woman’s activities represented only the tip of a baby-farming iceberg. The *Wanganui Herald* proclaimed that the case:

[T]hrows a lurid and baleful light upon the wholesale system of child-murder that is going on in the colony and elsewhere. ... It is impossible to come to any other conclusion but that there is more child-murder going on at present among the civilised European population of Australasia than there ever was among the aboriginal inhabitants.¹⁷⁵

In defence of the charge of murder on Dorothy Edith Carter, Mr Hanlon proposed that the baby had been accidentally overdosed with laudanum in an effort to have her sleep throughout the train journey.¹⁷⁶ Indeed, Hanlon’s masterly closing address led the *Otago Daily Times* to report that ‘many’ in the courtroom ‘were inclined to think it not unlikely that a verdict of manslaughter would be returned’.¹⁷⁷ However the judge, Justice Williams, in a lengthy and unashamedly

¹⁷⁴ ‘Minnie Dean: Offer of Forgiveness’, *Otago Daily Times*, retrieved online from <<http://www.odt.co.nz/the-regions/southland/42806/minnie-dean-offer-forgiveness>> (accessed 19 April 2012).

¹⁷⁵ ‘The Slaughter of the Innocents’, *Wanganui Herald*, August 9, 1895, p. 2.

¹⁷⁶ *R v Dean* (Digest of Cases 1861-1902) 19 Gazette Law Reports at 373-374. Witnesses confirmed that the infant had been particularly distressed and noisy in the hours before boarding the train. In Minnie Dean’s last statement she wrote, ‘I have always given laudanum to children to keep them quiet when travelling. I could not do without it for a crying child is such an annoyance to other passengers, and there would be comments and questions asked that I was not disposed to answer’.

¹⁷⁷ ‘The Winton Child Murders’, *Otago Daily Times*, 9 July 1895, p. 2. No defence witnesses were called and Minnie Dean was not given the chance to speak in her own defence. In accordance with the Criminal Code 1893 a defence counsel could call witnesses or address the jury himself, but could not do both. Moreover, as Mrs Dean would not (or could not) supply names or verifiable proof as to the missing children’s whereabouts, she was in no position to take the witness stand in her own defence (Hood, pp. 173-174).

partial summing up, expressly warned the jury against returning a verdict of manslaughter. He told them: ‘It seems to me such a verdict would indicate a weak-kneed compromise. ... the real honest issue in this case is whether the accused is guilty of intentionally killing the child, or is innocent altogether’.¹⁷⁸

On 21 June 1895, Minnie Dean was found guilty of murder and sentenced to death. A Court of Appeal hearing that centred on the admissibility of the evidence of Margaret Cameron and Esther Wallis was unsuccessful.¹⁷⁹ At the hearing, appeal judges expressly measured the case against that of Sydney baby farmers John and Sarah Makin – an act that further served to merge the details of the two cases in the popular mind.¹⁸⁰ Justice Denniston upheld the guilty verdict, insisting that the contested evidence had been clearly ‘relevant and admissible’.¹⁸¹ It showed, he said, that children had been ‘received under similar false pretence of benevolent adoption’, that they had, ‘disappear[ed] suddenly on the same pretext as this child was removed’, and that they had been ‘drugged like this child immediately before disappearance’.¹⁸² Such evidence established that there had been ‘a systematic receipt and disposal of other children’ and confirmed that the motives of the accused woman ‘were not philanthropic and benevolent but sordid and mercenary’.¹⁸³

Minnie Dean was hanged at the Invercargill gaol on 12 August 1895, four months after her arrest. The eyewitness report from the scene of her execution was covered extensively in the country’s newspapers and it still provides chilling reading. However, any disquiet engendered by the scene of a forty-eight-year-old

¹⁷⁸ ‘The Winton Child Murders’, *Otago Daily Times*, 9 July 1895, p. 2.

¹⁷⁹ The contested evidence included the details surrounding the death of Eva Hornsby as well as the girls’ testimony on the body of Willie Phelan and the missing children. Hanlon held that this evidence was irrelevant and prejudicial to the case in question (*R v Dean* (1895) NZLR (CA) at 274).

¹⁸⁰ *R v Dean* (1895) NZLR (CA) at 272. The motif of the hatpin is an example of the conflation of details between the two cases. Minnie Dean was popularly believed to have used a hatpin as a murder weapon. However, it was the child victims in the Sydney case who were said to have been ‘deprived of life by puncturing the heart with a thin sharp instrument or driving some instrument into the spinal cord’. The discovery of ‘a number of bonnet pins’ in the garden of one of the vacated houses of the Makin’s was thought to have ‘confirmed’ the theory (*Southland Times*, 14 November 1892).

¹⁸¹ *R v Dean* (1895) NZLR (CA) at 285.

¹⁸² *R v Dean* (1895) NZLR (CA) at 287.

¹⁸³ *R v Dean* (1895) NZLR (CA) at 285.

grandmother going to her death on the gallows was firmly countered by assurances that justice had been done. The *Ashburton Guardian* declared that:

[I]t is well that in such cases as that of Minnie Dean public feeling should be inexorable in its stern determination to put down the crime for which this woman has suffered. ... She denied to the last that her intention was to slay the children whose bodies were found on her premises. What her intention really was need not now trouble the public mind. The miserable sums she received for the upbringing [sic] of children she “adopted” were terribly suspicious of a sinister object in regard to the future of her charges, and as in too many cases it had come to light that that future was an unconsecrated grave in the back yard, there was nothing left for the Court to say but that the woman who alone knew of those graves was a murderess.¹⁸⁴

Furthermore, a stark distinction between the natural and ‘unnatural’ mother was invoked to reassure ‘the public mind’ that the baby farmer should never be an object to be pitied:

The Dean case shows that the rottenness [of baby farming] is not wholly confined to the great metropolis. It is dreadful to contemplate the miserable tales of neglect, pain, and misery. Mothers with the natural maternal instinct, who cherish and watch over their darling offspring, and make it a study to relieve the slightest approach to pain, must read those miserable tales with feelings of anger and disgust.¹⁸⁵

Similarly, the *Wanganui Herald* reminded its readers of ‘the rapidity with which the victims of other people’s sins came and disappeared at the Dean baby farm’ and assured them that ‘there cannot be a doubt’ that ‘the woman was a cold blooded murderess of the worst type’.¹⁸⁶ The *Southland Times* claimed resolutely that ‘no prisoner ever had a fairer trial than Minnie Dean’.¹⁸⁷ While Minnie was

¹⁸⁴ ‘The Winton Murders’, *Ashburton Guardian*, August 14 1895, p. 2.

¹⁸⁵ *Ibid.*

¹⁸⁶ ‘The Slaughter of the Innocents’, *Wanganui Herald*, August 9 1895, p. 2.

¹⁸⁷ *Southland Times*, 24 June 1895, cited in Hood, p. 186.

never tried on the deaths of the other children, the *Times* writer nevertheless affirmed that ‘the poor babe for whose foul murder the woman Dean has been sentenced to the extreme penalty of the law is only one among many victims’. He declared that the missing children had been ‘put ... out of the way with cold-blooded atrocity’. In a final flourish he enlisted biblical support, concluding that:

The words of the psalmist, when speaking of a certain class of wicked people, have been exemplified: “Privily, in their lurking dens, do they murder the innocent”.¹⁸⁸

Perhaps the most extreme response, however, was published by the *New Zealand Graphic*, which attempted to reposition the idea of death by hanging as a soft option. ‘One wishes’ the writer says, ‘that there were some punishment twice as terrible as death for a monster capable of such crime. Hanging is too severe a punishment for some murders. But for such murders as these, it is a perfectly inadequate punishment’.¹⁸⁹

For Charles Dean, the Magistrate’s pledge that he leave the court ‘without a stain on his character’, appears to have been honoured. Like Daniel Flanagan, whose wife and daughter were found guilty of child murder by a Christchurch jury in 1891, Charles Dean was relegated to the background of events and quickly forgotten.¹⁹⁰ That Charles was wholly unaware of what was believed to have been the systematic murder of infants taking place at the Larches was accepted with remarkable ease. No attempt appears to have been made to link Charles to the activities of his wife, even though he was known to have shared his home with the adopted children and his daily routine included working, eating and sleeping alongside them.¹⁹¹ Rather than being acknowledged as an adoptive father and family member (or viewed as an accomplice in crime) he was most readily

¹⁸⁸ *Southland Times*, 24 June 1895, cited in Hood, p. 185.

¹⁸⁹ *NZ Graphic*, 22 June 1895, cited in Hood, p. 192.

¹⁹⁰ Indeed, even in his wife’s lengthy last statement written in the days before her execution, Charles is referred to only in the briefest passing mention. (See Chapter Two for the case against Sarah and Anna Flanagan).

¹⁹¹ At the 1891 inquest into the death of Bertha Currie, Minnie Dean testified to the living arrangements of the ten children then in their care. She deposed that ‘three of the children slept in her bed and four others in small boxes in her room. Two slept with Mr Dean in the lean-to, and one with her adopted daughter Maggie Cameron, in the kitchen (‘The Winton Baby Farmer’, *North Otago Times*, 21 May 1895, p. 1).

imagined as an unwitting onlooker. This is particularly interesting considering the proximity of the Dean case to that of Sydney baby farmers, the Makins. Despite John Makin being found to have played a leading part in the murder of infants in this earlier case, it appears that the familiar stereotype of the baby farmer as a solitary, elderly female prevailed. The narrative strength of this stereotype ensured that the personification of ‘murderous monster’ was reserved for Charles Dean’s wife alone.¹⁹²

Such imaginings, as Margaret Arnot indicates, ‘did not occur in a vacuum’.¹⁹³ They took place in the context of wider anxieties about illegitimacy, child-care and infant mortality that had forced the introduction of the Infant Life Protection Act 1893. While Minnie Dean’s conviction and execution focused public opprobrium, it could not provide a solution to the complex and firmly entrenched set of problems surrounding the care of un-parented or unwanted infants. However, the trial had highlighted the ineffectual nature of the act as it stood. In its wake, tighter legislative control over foster and adoptive homes was called for, and the Government responded the following year with a raft of amendments.

The Infant Life Protection Act 1896 introduced greater controls over the registration of paid child carers and increased the age limit of children to be registered to four years. As well, the powers of inspection into foster and adoptive homes were increased.¹⁹⁴ Applicants were now required to apply for registration through the Commissioner of Police and to produce character references ‘from three householders’ testifying to their ‘fitness’ as foster parents.¹⁹⁵ The problems associated with the overcrowding of infants were also addressed. Under the new legislation, the number of infants who could be taken in to nurse depended on the available floor space of a house, with fifty square feet being the minimum requirement. The *Otago Daily Times* explained the new rules in this way:

It is enacted that the number of children to be taken by any person shall be limited in proportion to the size of the house. For instance a house

¹⁹² Charles Dean died in a house fire at Winton in 1908, aged seventy three. He is buried with his wife in a shared gravesite in the Winton cemetery

¹⁹³ Arnot, p. 280.

¹⁹⁴ *Statutes of New Zealand*, 1896, No. 23, Infant Life Protection Act, pp. 52-58.

¹⁹⁵ *Statutes*, ILP Act 1896, section 6(5), p. 43 and section 7, p. 54.

with an available floor area of 50 sq ft ... is eligible for the reception of only one infant. The progression goes on until the floor area of 350 square feet, together with an outdoor area of at least 400 sq ft, warrants the reception of six infants.¹⁹⁶

The *Canterbury Star* lauded the revised act as timely and commendable and claimed that its provisions would put an end to criminal baby farming. However, it reminded its readers of their public duty to remain vigilant:

Down to the year 1893 there was absolutely free trade in baby farming in New Zealand. Now, the safety of infants boarded out is stringently provided for. The day of the professional baby farmer with murderous designs, or capable of murderous neglect, is gone. What was formerly nobody's business is now a matter of ... enforcing a plain and concise law. The introduction of this law will be hailed with general satisfaction, and any help that the public, by their watchfulness, may be able to give the police will be repaid in the consciousness that they have performed a benevolent and humanitarian action.¹⁹⁷

For the police, charged with monitoring families under the new laws, the paperwork alone must have appeared daunting. No less than ten separate forms listed under the ILP Act were required to be signed by 'infant-home keepers' and collated and processed by the local police or police matrons.¹⁹⁸ Nevertheless, at least in some areas, police appear to have approached their duties with earnest endeavour. In 1900, the Commissioner of Police posted the following circular in the annual *Police Gazette*, stipulating that inspectors report on the presence of any sick or ailing infants in care and monitor their medical treatment:

¹⁹⁶ 'Thursday, February 4', *Otago Daily Times*, 4 February 1897, p. 2.

¹⁹⁷ 'Public Opinion', *Star* (Canterbury), 6 February 1897, p. 7.

¹⁹⁸ 'List of Police Returns and Forms', *New Zealand Police Gazette*, 1900, p. 110.

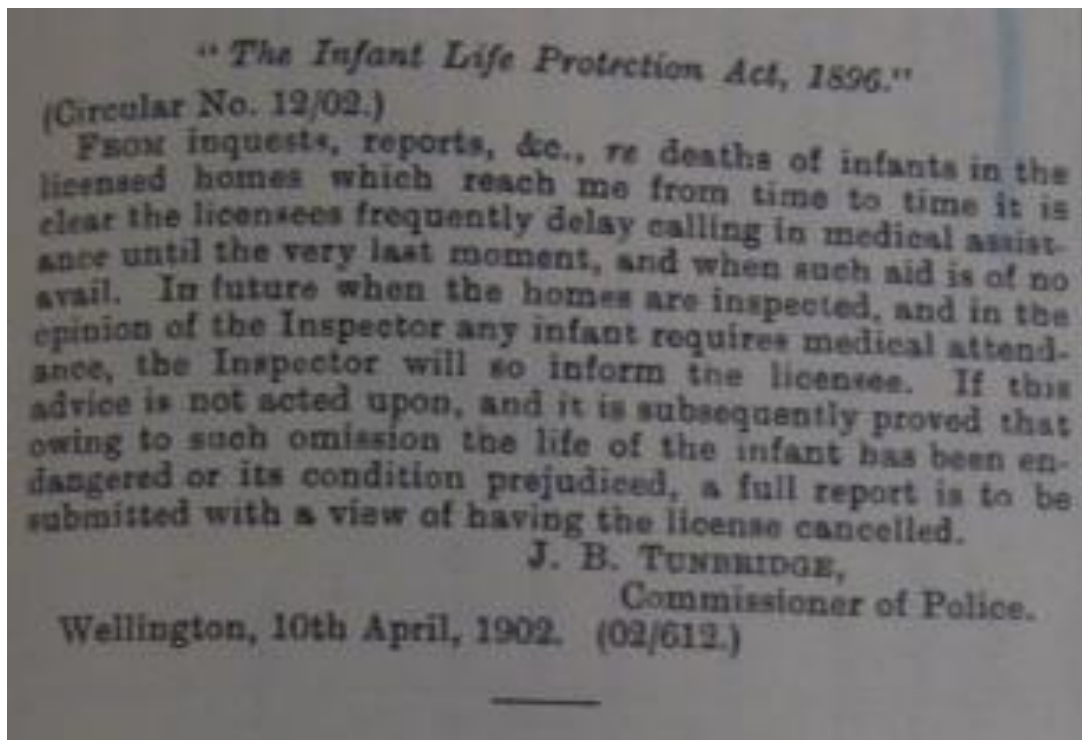


Figure 17: New Zealand Police Gazette (1900), p. 7.

That the matter of medical attendance of sick infants warranted police attention strongly suggests that there was substance to the belief that fatal and criminal negligence was occurring in some foster and adoptive situations. However, despite the precedents set by the trial and execution of Minnie Dean, in the coroner's courts and the courts of law the meanings surrounding these baby-farming deaths remained fluid and complex.

The Changing Face of the Baby Farmer, 1900 - 1925

A concerted push towards the private fostering of children took place in the early twentieth century.¹⁹⁹ Where most children dependant on the state had previously been institutionalised in orphanages and industrial schools, an increasing focus on child welfare and the idealisation of the family environment put a new emphasis on the 'boarding-out' of such children in private homes.²⁰⁰ Such a move

¹⁹⁹ Dalley, *Family Matters*, p. 45.

²⁰⁰ *Ibid.*

necessitated the reconstruction of attitudes, understandings and social meanings around the fostering of children for pecuniary gain. The beginnings of this discursive shift can be determined in the language of the courts and within the government departments closely involved in child welfare. In the popular media, however, the powerful traditional tropes and motifs associated with criminal baby farming proved harder to erode.

The character of the criminal baby farmer continued to materialise as a popular bogey in a range of settings. Gilbert and Sullivan's popular operatic farce 'H.M.S. Pinafore', in which the female protagonist sings of her notorious past as a baby farmer, was staged in theatres and amateur dramatic halls across New Zealand.²⁰¹ In 1902, the Anderson Dramatic Company staged the play "The Ladder of Life" to popular acclaim.²⁰² Advertising its season at the Theatre Royal in New Plymouth, the *Taranaki Herald* 'heartily' recommended it 'to those who like melodrama, and like it strong'. The plotline was said to include 'more villainy to the square inch than the average man would get into their lives'. Of particular mention was the 'clever low comedy work put in by Miss Helen Fergus (as Mother Flint, a baby farmer), and Mr George Coates, as her "usband"'.²⁰³ Similarly, melodramatic events were played out in the theatre of the court when Mary Ann Guy was tried for the manslaughter of an infant in her care. By this time, however, the judicial response to deaths in foster care appears to have undergone some changes.

²⁰¹ Advertisements for performances of H.M.S Pinafore include: 'Theatre Royal', *Auckland Star*, 6 January 1881, p. 2; 'H.M.S. Pinafore', *Auckland Star*, 6 August 1885, p. 2; 'Behind the Scenes at H.M.S. Pinafore', *Observer* (Auckland), 11 May 1912, p. 19; 'H.M.S. Pinafore', *Evening Post* (Wellington), 31 October 1914, p. 4.

²⁰² 'Anderson Dramatic Company', *Taranaki Herald*, 4 July 1902, p. 2.

²⁰³ *Ibid.*



MARY ANN GUY.

Figure 18: 'Grievous Graveyard Guy', *NZ Truth*, 8 Dec. 1906, p. 4.

A courtroom sketch of the veiled Mary Ann Guy appeared in the *NZ Truth* under the headline 'Grievous Graveyard Guy: Foul Baby Farmer Fixed'.

Mrs Guy faced the Wellington Magistrates Court in 1906 on two charges: the first involved the manslaughter of baby Nellie Bullott Smith; the second was in reference to having made a false statement concerning the death of another infant under her care.²⁰⁴ On questioning, Mary Ann admitted to the paid fostering of 'five children from 2 months to 5 years' at her unregistered premises at Island Bay.²⁰⁵ An inquest into the death of baby Smith had found the infant had died 'primarily' from 'neglect and want of food'. Importantly though, the post-mortem on the 'terribly emaciated' body had also uncovered traces of opium, 'which had partly paralysed the nerves of the stomach'.²⁰⁶ Unlike Minnie Dean, whose poisoning of Dorothy Carter seven years earlier was viewed as premeditated murder, Mary Ann Guy's actions, in administering laudanum to a starving infant, were perceived as misadventure. The reaction of the Wellington Magistrate to the

²⁰⁴ Ibid.

²⁰⁵ Her license had previously been withdrawn after she was charged with taking in more children than was permitted under the Infant Life Protection Act 1896 (*NZ Truth*, 8 December 1906, p. 4).

²⁰⁶ Ibid.

evidence before him also appears surprisingly measured. Finding Mrs Guy guilty on both charges, he nonetheless admitted that:

Had this been the first case of its kind with which she had been connected he might feel inclined to take a more merciful view of the case. He was, however, afraid that this was not the first infant she had had in her charge that had been neglected.²⁰⁷

Taking into consideration her ‘great age’, he passed a sentence of three years imprisonment for the manslaughter of Nellie Bullott Smith and a further six months (to be run concurrently) on the second charge.²⁰⁸ Journalistic reporting on the trial, however, was more inclined to present Mrs Guy’s actions as calculatingly murderous. The *NZ Truth* was unashamedly melodramatic. Under the headline ‘Grievous Graveyard Guy: Foul Baby-Farmer Fixed’, the *Truth* reporter described the sixty-two year old as a ‘harridan’ and a ‘weazened old hag’.²⁰⁹ The reporter claimed that ‘what stood out prominently was that the child, an illegitimate, had been slowly and deliberately starved to death’.²¹⁰

In spite of the rhetoric of the media reporting, this case signals a judicial return to an understanding of fatal child neglect as something less than murder, even when those deaths occurred in the context of paid fostering. The following year, in 1907, Auckland ‘nursing home keeper’ Charlotte Evans was charged with manslaughter after failing to supply sufficient nourishment and medical attention to an infant in her charge. Coincidentally, the coroner’s jury investigating the death of Charlotte Evans’ foster child was called on to investigate the death of another baby on the same day. Eliza Davies was similarly charged after a medical witness testified that her adopted infant had died through “‘want of proper nourishment” or “‘practically starvation””.²¹¹ The men of the jury expressed alarm over both cases, claiming that they showed that ‘the law for the protection of infant life was being systematically evaded’ with ‘children being got off the books

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ ‘Alleged Starved Infants’, *Colonist* (Nelson), 22 February 1907, p. 4.

of the homes to prevent enquiries being made'.²¹² Charlotte Evans was nevertheless acquitted of the charge of manslaughter by a Supreme Court jury and allowed to retain her license.²¹³ Eliza Davies was acquitted of manslaughter even 'before the case for the defence was concluded', with Justice Denniston exclaiming that 'it was impossible to find that death was due to starvation as alleged'.²¹⁴ Nevertheless, harking back to the familiar narratives, he deemed it expedient to declare that:

The system of adopting infants in response to advertisements offering a small premium should be made absolutely illegal, because under such circumstances it was to the interest of a person taking a child that the sooner it died the better.²¹⁵

In fact, the Adoption of Children Amendment Act 1906 had, in the previous year, made the payment of adoption premiums illegal without the express approval of the court.²¹⁶ However, few magistrates would have expected an adoption to go through without defrayment of costs to the adoptive family.²¹⁷ While the pejorative label of 'baby farmer' was heard less often in the courtroom, the judge's comment suggests that the belief in its criminal substructure remained.

Certainly, reporters for the *NZ Truth* retained the conviction that a criminal element in the fostering industry was alive and well. In its report on a Christchurch trial, a *Truth* reporter declared: 'Baby farming is a thriving industry despite the repressive attitude of the legislature, and only a very small proportion of females who take in and do for the illegitimate kid and the legitimate youngster who is in the way, are licensed under act'.²¹⁸ Moreover, it alleged that much of the criminal activity was taking place under the very noses of police:

²¹² 'Sequel to Sensational Case', *Thames Star*, 21 February 1907, p. 2.

²¹³ 'Supreme Court', *Auckland Star*, 28 May 1907, p. 3.

²¹⁴ 'Supreme Court' *Taranaki Herald*, June 13 1907, p. 2.

²¹⁵ *Ibid.*

²¹⁶ *Statutes of New Zealand*, 1906, No. 37, Adoption of Children Amendment Act, pp. 108-111.

²¹⁷ The Report of the Secretary for Education for 1911 records that around half of the adoptions of infants under six months old involved the sanctioned payment of a premium ('Infant Life Protection', *AJHR* (1911), E-4, p. 21).

²¹⁸ 'Maritana's Encumbrance: A Costly Kidlet', *NZ Truth*, 26 January 1907, p. 6.

Baby farming is carried on very largely in Christchurch. ... Frequent – all too frequent – advertisements in the newspapers bear this out. ... [B]ut it is only now and again that the police bump against a case.²¹⁹

Several months later, the *NZ Truth* was again arguing the point, insisting that: ‘the law as it at present stands is a disgrace to any progressive community’.²²⁰ It went on:

[T]he general laxity and looseness of the law governing baby-farms leaves loop-holes open for infant murder on an alarming scale. . . . [T]he law regarding registration of birth is such that infants can be brought into this world and speedily sent out again without anybody, excepting the murderous monster, the farmer, being aware of the wickedness of affairs. . . . If “baby-farms” are to be allowed to exist as slow-murder homes for infants, then those too often hard-faced and still more hard-hearted females who run them must be kept under such surveillance that there shall be no possibility of “accidents” happening.²²¹

Cases like that of Mary Ann Guy, Charlotte Evans and Eliza Davies may have been at the forefront of the writer’s mind when he referred to such accidents and concluded that: ‘So long as the law remains as it is, so long as the police hands are tied as they are, so long then will there be a danger of an increase in our infantile mortality’.²²²

While these alarmist reports appear to have been limited to the *NZ Truth*, they were not published purely as sensationalism. Rather, they followed the ‘vanguard’ of women’s and welfare groups who considered the saving of infants a matter of national priority and were publically critical of the governmental push towards

²¹⁹ Ibid.

²²⁰ ‘Baby Farm Legislation’, *NZ Truth*, 24 August 1907, p. 4.

²²¹ Ibid.

²²² Ibid. Newspapers at the time were also reporting horrific details from the trial of Perth baby farmer Alice Mitchell. Thirty-two of the thirty-five infants that had been in her care were found to have died from starvation. Alice Mitchell was charged with manslaughter and sentenced to five years imprisonment (‘The Perth Baby Farming Case’, *Poverty Bay Herald*, 29 April 1907, p. 4).

private fostering.²²³ The Infant Life Act 1907, enacted as a response to a national campaign headed by the Society for the Protection of Women and Children and the newly formed Plunket Society, transferred the responsibility for overseeing foster homes from the Police to the Education Department.²²⁴ The move was lauded by commentators, who now held the view that it was ‘ignorance’ rather than crime that constituted ‘the chief danger against which these little ones require[d] protection’.²²⁵ Nevertheless, in an effort to curb the taking in of infants in the poorest of homes, the new legislation included the rule that ‘no person in receipt of Charitable Aid’ could obtain a license as a foster parent.²²⁶

Other amendments included the provision that infants under one year of age were to be ‘visited’ at least once every two months.²²⁷ The work of police matrons, who had inspected foster homes under the old act, was superseded by the appointment of female District Agents in each of the four main centres.²²⁸ These four women were tasked with carrying out regular visits and inspections and enforcing the new rules and regulations.²²⁹ Importantly, the 1907 act regulated the exchange of fees and cash payments between birth families and foster parents, with all monies to be directed through the intermediary of the Ministerial Secretary.²³⁰ With this provision, the cash nexus that had previously caused such alarm and had allowed

²²³ Dalley, p. 46.

²²⁴ *Statutes of New Zealand*, 1907, No. 42, Infant Life Protection Act, pp. 177-182. This national campaign was part of a wider British crusade in which all children came to be viewed as national assets. Lynda Bryder points out that the concern over infant life in New Zealand, as elsewhere, was just as likely to be couched in terms of fears about the future of the white race. She quotes a member of the legislative council who claimed that, ‘[t]he real reason for our solicitude is not murdered babes. It is that population, which is decreasing, [and] is indispensable to national safety and national progress. We must have soldiers and workers, or our prosperity will be imperilled and our industry will decay’ (Linda Bryder, *A Voice for Mothers: The Plunket Society and Infant Welfare, 1907-2000* (Auckland: Auckland University Press, 2003), p. 2). For more on this ‘crusade’ see Phillipa Mein Smith, ‘Blood, Birth, Babies, Bodies’, *Australian Feminist Studies*, 17:39 (2002), pp. 305-323.

²²⁵ ‘Infant Life Protection’, *Evening Post* (Wellington), 13 November 1907, p. 6.

²²⁶ ‘Infant Life Protection’, *Press* (Canterbury), 21 December 1907, p. 9.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ Bryder, p. 7.

²³⁰ *Statutes of New Zealand*, 1907, No. 42, Infant Life Protection Act, (section 9(1)), p. 180. Lump sum adoption payments were also managed by the Board and paid to foster families in regular instalments. Any breach of the act was now liable for a fine ‘not exceeding £50’ or six months imprisonment.

for the characterisation of the fostered child as a farmed commodity was effectively removed.

The records generated by the workings of Infant Life Protection legislation demonstrate that registered foster homes were numerous in the urban centres.²³¹ The numbers of registered carers continued to grow with the increased promotion and acceptance of the system.²³² Bronwyn Dalley calculates that around four hundred infants and children were fostered in registered private homes in 1902.²³³ By 1911 the report of the Secretary for Education regarding the supervision of fostered children estimated that 1183 children had been registered, with 469 of these being under one year old.²³⁴ The volumes of record books which record details of the lives and deaths of fostered infants in private homes show that for many families, boarding out was a temporary arrangement, which ensured that children were cared for until birth parents were in positions to care for them themselves.²³⁵ The records also provide further evidence for the notion of a chain of industry in which babies and young children passed through several hands with money being exchanged at every point. The Auckland Register of Particulars of Infants and Foster Homes, for instance, describes a network of female carers among whom children were moved with surprising frequency.²³⁶ The Registers of Death, which catalogue the names and ages of children alongside the name of their foster mothers, also briefly note the apparent cause of death.²³⁷ However,

²³¹ Infant Life Protection Records include Registers of Deaths (CW 10/7, Archives New Zealand, Wellington), Registers of Particulars of Infants and Foster Homes 1909-1916 (BAAA 1958, 1/c – 2/b, Archives New Zealand, Auckland); Report Books 1908-1916 (BAAA 1962, 1a, Archives of New Zealand, Auckland); and Infant Life Protection – Criticisms (CW W1043, 40/8/14, Archives New Zealand, Wellington).

²³² By 1903, larger orphanages and children's homes such as the Roman Catholic St Vincent de Paul Orphanage in Dunedin were being praised for 'boarding out all of the babies' into private foster care (Dalley, p. 51).

²³³ Dalley, p. 45.

²³⁴ 'Infant Life Protection', *AJHR* (1911), Vol. 3, E-4, p. 21. This probably reflects the increased numbers of foster families registering as private homes rather than a simple increase in the numbers of children in care.

²³⁵ Infant Life Protection Files, BAAA 1958, 1/c, Registers of Particulars of Infants and Foster Homes 1909-1916, Archives New Zealand, Auckland.

²³⁶ *Ibid.*

²³⁷ See figure 6:5, Infant Life Protection Files, CW 10/7, Infant Life Protection Deaths - Register of Deaths (1908-1909), Archives New Zealand, Wellington.

nothing of the details that might provide these sad occurrences with context and meaning are included here.²³⁸

No.	Name of Infant	Age at Death	In Custody of	Date of Death	Cause of Death	Verdict as to Cause	Remarks
11	Clinch, Herbert L.	2 mths	Mrs E. Ash Kingland Auckland	12. 3. 08.	Dysentery	No	
12	Wardell, Albert E.	3 mths	Mrs S. A. Wilson Puraco St. Onehunga	12. 3. 08.	Meningitis	No	
13	Tison, Edward J.	11 wks	Mrs S. Bourne Russell St. Auckland	15. 3. 08.	Diarrhoea	No	Died in Local Hospital
14	Foster, William J.	2 mths	Mrs Wm. G. Ludlow Wynyard St. Brookport, Auld.	12. 4. 08.	Cataract of the lungs & heart failure.	No	Very delicate child.
15	Campbell, Isabel L.	8 1/2 mths	Mrs M. Sullivan Chapel St. Auckland.	17. 4. 08.	Brain irritation	No	
16	Deloyne, Lionel F.	2 mths	Mrs M. R. Ellis George St. New Brighton Ch.	25. 4. 08.	Meningitis Enteritis & diarrhoea	No	
17	Brown, Susan Ely	12 yrs	Mrs E. Brown 95 Cathedral Rd. St Albans Church.	6. 5. 08.	Subacute meningitis	Inquest held	
18	Armstrong, Charles W.	3 mths	Mrs M. H. M. Grahame St. Andrew St. Wakarusa, Auld.	21. 5. 08.	Diphtheria & heart failure	No	Died in Auckland Hospital.
19	Brown, Eric J. G.	1 yr	Mrs Linda Parkins Richmond Church.	25. 6. 08.	Laceration of the brain.	Unknown Cause	
	Garrett, Frank	4 wks	Mrs A. S. Cotton Arthur St. Onehunga	5. 8. 08.	Tuberculosis	No	

Figure 19: Infant Life Protection Files, CW 10/7, Infant Life Protection Deaths - Register of Deaths (1908-1909), Archives New Zealand, Wellington.

The number of infant deaths recorded in the registers appears modest, and indeed those charged with overseeing the system measured their success by the relatively small and ever decreasing mortality rate.²³⁹ Between 1908 and 1915, the mortality rate of babies in registered foster homes fell from 2.56 per cent to 0.98 per cent –

²³⁸ For example, entry number 19 records the death of an illegitimate child named Eric Brown who died from ‘laceration of the brain’ while in the Christchurch home of Mrs Linda Parkins. The verdict on the death of the one year old is registered simply as ‘unknown cause’. The reporting of the coroner’s inquest in local papers, however, reveals that ‘serious violence’ was involved. Backed by the ‘lady officers appointed under the [ILP] Act’, Mrs Parkins faced few questions over the death of the child in her care. In this case it was accepted that one of the other five children in the house must have caused the fatal brain injury to baby Eric, as Mrs Parkins was believed to be a ‘kind and capable’ foster mother who simply ‘had too many children to look after’ (*Otago Witness*, 1 July 1908, p. 89).

²³⁹ Dalley, p. 5.

an impressive achievement given that the infant death rate in all forms of institutional care reached over five per cent during the same period.²⁴⁰

In 1908, an Infants Act was introduced which consolidated all enactments relating to the adoption or fostering of infants under six years of age.²⁴¹ The ever increasing tightening of provisions necessitated a workload that was thought, by some, to be beyond the capacity of already overextended staff. These commentators recognised the inevitability of children slipping through the cracks of such a system.²⁴² Conferences called by the Canterbury Children's Aid Society and the Women's Christian Temperance Union identified a range of problems, from the lack of 'suitable' homes for the youngest infants to the difficulties of 'adequate' inspection.²⁴³ However, the reports filed by the Secretary for Education stressed the success of the boarding out system and the fine work carried out by its District Agents in Auckland, Wellington, Christchurch and Dunedin.²⁴⁴ For their part, the agents were said to 'speak in high terms of the manner in which foster-parents, as a rule, treat the children'. On becoming acquainted with the system, the District Agent for Auckland, Sarah Jackson, wrote to the Secretary in 1909 to apprise him of her change in attitude on the fostering of infants. The letter below nevertheless records her 'strong views' on what she once considered to be an 'inhuman practice':

²⁴⁰ Ibid. In 1910 the death rate for infants in foster homes was estimated at 2.19, while the rate of infant deaths in orphanages and other institutions was recorded at 8.81 per cent ('Infant Life Protection', *AJHR* (1911), Vol. 3, E-4, p. 19). However, even these institutional rates appear impressive when compared with some early twentieth-century Australian figures. For example in 1902 death rates at Sydney's Waitara Foundling Home were admitted to be almost 88 per cent (Jan Kociumbas, 'Azaria's Antecedents: Stereotyping Infanticide in Late Nineteenth-Century Australia', *Gender and History*, 13: 1 (April 2001), p. 149).

²⁴¹ *Statutes of New Zealand*, 1908, No. 86, Infants Act, pp. 831- 844.

²⁴² Social reformer, C.W. Cunningham wrote to the editor of the *Canterbury Press* to complain that 'the work of inspection, owing to the enormously heavier duties demanded of the officials, is not being adequately accomplished' ('Infant Life Protection', *Press*, 8 February 1907, p. 2).

²⁴³ Dalley, p. 46.

²⁴⁴ 'Protection of Infant Life', *Hawera and Normanby Star*, 14 November 1910, p. 4.

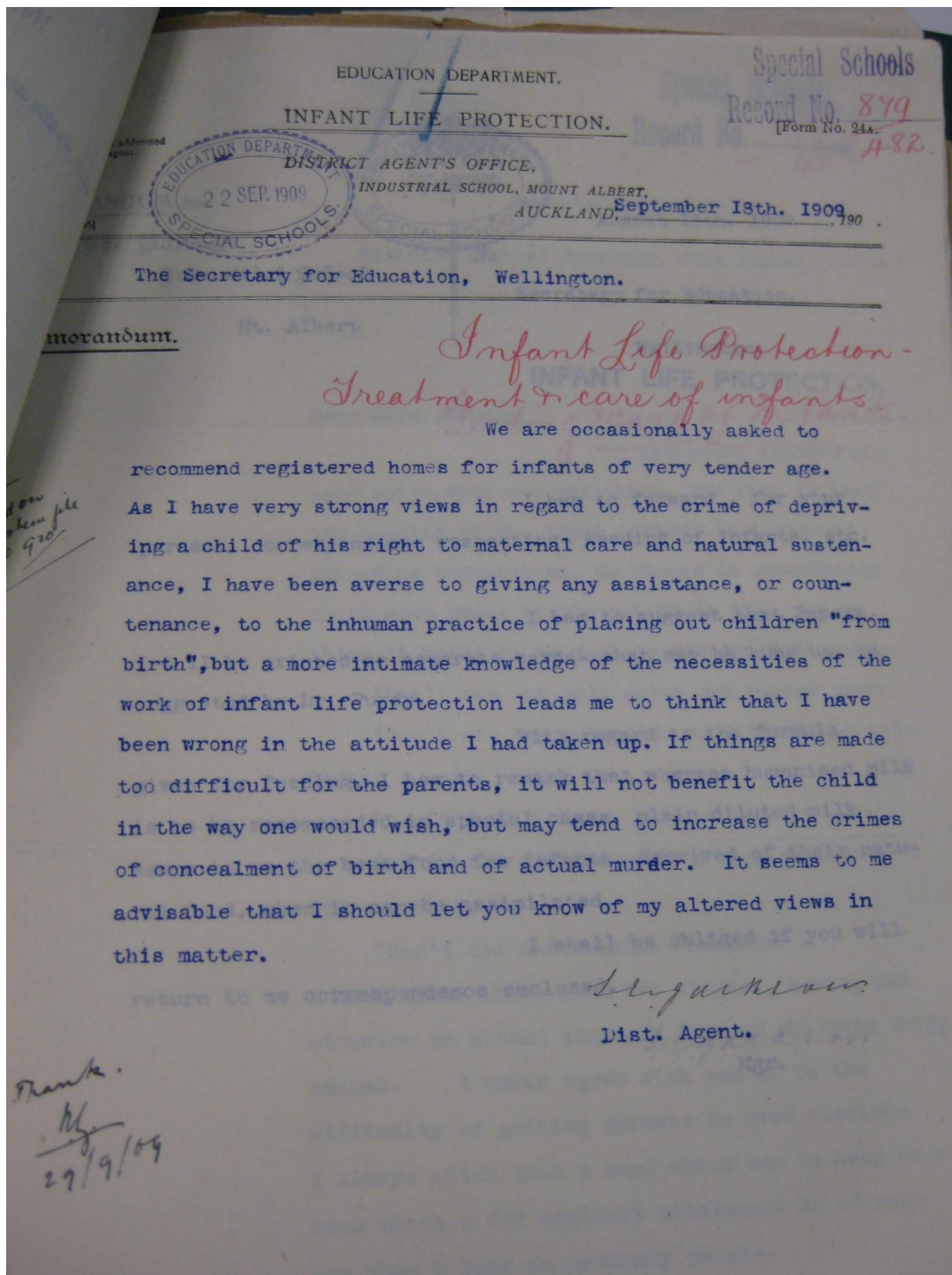


Figure 20: Changing attitudes regarding the fostering of infants are illustrated here in a letter written by Auckland District Agent Sarah Jackson to the Secretary for Education (Infant Life Protection Files, CW W1043, 40/8/14, Criticisms (1909), Archives New Zealand, Wellington).

District Agent Ella Dick, who supervised the welfare of fostered and adopted children in the Wellington area, demonstrated a stronger faith in the system and in the women on whose nurturing skills it relied. She spoke generously of ‘homes with good kindly women’ who ‘treat the children as their own’, where children grow up ‘among the green fields and in the free open life of the country’.²⁴⁵ She said ‘I think that the babies who are cared for in our licensed homes get, on the whole, a good start in life’. However, her next comment signalled an awareness that the problem of criminal baby farming might not yet have been erased. ‘The serious question’, she asked, ‘is what becomes of all the illegitimate babies who never come under the control of the Infants Act?’²⁴⁶

By 1916 the number of registered children in private homes and institutions had reached four thousand.²⁴⁷ That year, the maximum number of children in each private foster home was capped at five.²⁴⁸ Such a move indicates that cases of overcrowding in inadequate conditions continued to arise and cause concern. In these years, as Dalley contends, ‘a slew of health and welfare initiatives’ were targeted towards the welfare of infants and children in New Zealand.²⁴⁹ Institutions, said to be ‘overflowing’ with children, were closed down or pared back as the practices of boarding out and adoption were further promulgated and extended.²⁵⁰ In this atmosphere, foster mothers such as Mrs Mills, who is illustrated below, could proudly display the assortment of infants in their care without fear of disapproval.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Dalley, p. 65.

²⁴⁸ Dalley, p. 49. The introduction of the Child Welfare Act 1925 established the creation of a Child Welfare Branch and provided for the appointment of Child Welfare Officers who were responsible for the maintenance and control of children under the care of the state.

²⁴⁹ Dalley, p. 67.

²⁵⁰ On the criticisms of state run orphanages see Margaret Tennant, *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen and Unwin, 1989), pp. 129-133.



Figure 21: Mrs Mills and an older daughter pose with fostered infants at a Dunedin Baby Demonstration in 1917. Mrs Mills' fostering operation, which might once have been looked on as a 'nefarious trade', could now be viewed in a more benevolent light.²⁵¹

By the 1920s foster and adoptive mothers were no longer regarded, as Benjamin Waugh had famously once characterised them, as 'drink-ruined monthly nurses, loafing labourers' wives and blind old tax gatherers'.²⁵² Correspondingly, the fear that the lives of unwanted, illegitimate infants were being systematically exploited for pecuniary gain had largely abated. Nevertheless, the narrative threads of the 'baby-farming evil' continued to weave into the discourse of child murder trials. The unearthing of an infant's body in the sand at Wellington's Lyall Bay in 1923 led to the discovery of an operation that was possibly as close to the concept of criminal baby farming as any tried in a New Zealand court; however, the details of the trial against 'health specialists' Daniel and Martha Cooper did not follow expected narrative conventions. Those following the trial instead relied on alternative stories in their effort to extract meaning from disturbing events.

²⁵¹ Image reproduced with the permission of National Archives, New Zealand (ref: CW 1, 40/25/22).

²⁵² Homrighaus, 'Baby Farming', p. 166.

Police had, for some time, been suspicious of activities at the Cooper's 'rest cure home' that they ran from their country home at Newlands. A health clinic kept by Daniel Cooper in Lambton Quay was also under suspicion, as it was rumoured to be a front for Daniel's work as an abortionist.²⁵³ While investigating the identity of the infant found at Lyall Bay, police were given a tip off – an anonymous note that implicated Daniel Cooper in the mystery.²⁵⁴ While police were quickly able to discount Cooper in connection with the Lyall Bay case, the evidence enabled them to formally investigate his business activities. A search of the Lambton Quay offices uncovered documentary evidence that enabled police to charge Daniel with ten counts of performing an illegal operation. However, investigations also turned up evidence that Daniel offered further services to the unhappily pregnant women who came to his clinic. It was established that for a fifty-pound fee the Coopers offered 'rest cure' facilities at their own home where women could receive medical care during their pregnancy and throughout the lying-in period. Also included was the promise that an adoptive home would be organised for the newly born child.

Lily Lister gave birth to a male child at the rest cure home at Newlands, but took the unusual step of asking for her son eight days after its birth.²⁵⁵ The Coopers could neither produce the infant nor give a satisfactory account of its whereabouts, and with Daniel already facing criminal charges, police were asked to investigate further. They responded by excavating the nineteen-acre block at Newlands and uncovered remains, though not of the male child that they had been expecting. The body found was that of a newly born female infant.²⁵⁶

The *NZ Truth* broke news of the unearthing of the body under the headline: 'A Gruesome Discovery: Fears of a "Baby Farm" Near Johnsonville. One Child

²⁵³ Jamie Mackay, 'Cooper, Daniel Richard – Biography', *DNZB*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/4c33/1>> (accessed on 19 May 2009).

²⁵⁴ Fran Tyler, 'The Newlands Baby Farm Murders', retrieved online from < www.crime.co.nz/c-files.aspx?ID=4880> (accessed 7 May 2012). The Coopers' activities were, in fact, found to be unconnected with the body uncovered at Lyall Bay.

²⁵⁵ 'A Gruesome Discovery', *NZ Truth*, 6 January 1923, p. 6.

²⁵⁶ *Ibid.*

Disappears – Another Infant’s Body Unearthed’.²⁵⁷ The report suggested provocatively that:

[I]t is not possible to make assertions, nor yet to contradict assertions made, that the accused, either together or singly were engaged in THE HORRIBLE PRACTICE OF BABY-FARMING akin to that carried on by Minnie Dean at Winton, Southland, nearly thirty years ago.²⁵⁸

Nevertheless, the strength of neighbourhood rumour was such that the paper proposed that: ‘it may be that other bodies are yet to be found, for it is common talk among the residents of the district that suspicions are entertained regarding the movements of certain people’.²⁵⁹ Indeed, before the case went to trial, the bodies of two more newly born infants were exhumed in the police search at Newlands.²⁶⁰

Throughout the subsequent murder trial the press were zealous in their reporting of events. The *Evening Post* declared the Wellington Supreme Court trial as one ‘which will probably go down as the most sensational in the history of New Zealand’.²⁶¹ However, the sensation lay more in the revelations of sexual intrigue and scandal than in the farming and murder of children. The Coopers were Seventh-Day Adventists, although Daniel, who was reported to be ‘a very religious man’, had been excluded from the church over a past sexual ‘indiscretion’.²⁶² Witness testimony brought details to light of an ‘extraordinary’ three-way relationship between Daniel, his wife, and their young ‘houseguest’, Beatrice Beadle. Miss Beadle admitted to having been Daniel’s ‘mistress’ for the past three years and having given birth to two infants by him.²⁶³ She further testified that Daniel and Martha Cooper had arranged for both babies to be

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ *R v Cooper* (Digest of Cases 1898-1928) 36 Gazette Law Reports (AA) at 417

²⁶¹ ‘On Trial for Life’, *Evening Post* (Wellington), 14 May 1923, p. 8.

²⁶² Mackay, *DBNZ*. It was alleged that Daniel had fostered a sexual relationship with a fifteen-year-old patient soon after his marriage to Martha.

²⁶³ ‘Death Pays All Debts’, *NZ Truth*, 26 May 1923, p. 7.

adopted, though the couple were not willing or able to verify the whereabouts of those infants in court.²⁶⁴

As revelations of the private lives of the Coopers proceeded, Martha Cooper was quickly relegated to the role of victim. Martha's lawyer, Mr Wilford, delivered a spirited defence of his client as a woman 'completely dominated by her husband'.²⁶⁵ This, he said, was evidenced by the fact she had agreed to 'take up a secondary position to Beadle in the household at Newlands'. The 'only possible explanation' for this 'extraordinary conduct', he suggested, was that 'Cooper had obtained his ascendancy over her' through the use of 'mesmerism'. He claimed that 'under the evil eye of her husband', Mrs Cooper was 'simply an automaton whose will power was nil'.²⁶⁶ Rather than a mercenary 'farmer' of infants, Martha ('by the dominion of her husband's will') was presented passively as 'a woman sinned against rather than sinning'.²⁶⁷ Mr Wilford's defence rested largely on presenting Daniel Cooper as a controlling force, and showed some obsession with the idea that Cooper was practising hypnotism over the women within his sphere of influence. Mr Wilford posed a string of related questions to the young women cross-examined in the witness box. The *Otago Daily Times* reported one such exchange:

Mr Wilford: Cooper is a very soft-voiced man, is he not? – Yes.

Is he a mesmerist? – I don't know.

Has he ever had you under his influence? – No.

Is there any singularity to you in his eyes? – Not that I'm aware of.²⁶⁸

The women were repeatedly asked if they recalled any unobtrusively placed objects of a 'brilliant lustre' which might draw the attention, such as a 'shiny disc', or a highly polished spoon, while they were in the presence of Daniel Cooper.²⁶⁹ Despite the fact that these women all appeared perplexed by the line of

²⁶⁴ Mackay, *DBNZ*.

²⁶⁵ 'Cooper Guilty', *Hawera and Normanby Star*, 22 May 1923, p. 7.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ 'Foul Deeds Will Rise: The Massacre of the Innocents', *NZ Truth*, 19 May 1923, p. 5.

²⁶⁹ *Ibid.*

questioning, Mr Wilford's method, in shaping the perception of the accused as a wily and dangerous man, was effective. While witnesses described Daniel Cooper as a small, quiet spoken and even 'kindly' man who carried out his 'services' to women in the conviction that he was supported by biblical scripture, the image of the accused presented in the print media was more akin to that of Mr Wilford's construction. *NZ Truth* described Daniel as having a 'hard-dial' with 'dark piercing eyes set far back in his head and a mouth like a seam in a saddle flap'.²⁷⁰ It was a face, it was claimed, that reflected a man who had 'grown inflexible and hard from his youth'.²⁷¹ At the same time the press described mannerisms that had the effect of portraying the accused as sly and womanly, such as 'his nervous trick of rubbing his hands together' and his tendency to 'break down' and cry 'bitterly' throughout the judicial proceedings.²⁷² Taken together the impressions presented a sketch of a man of unpredictable and untrustworthy character.

Daniel Cooper was found guilty of murder and hanged at the Terrace Gaol on June 16, 1923.²⁷³ His short confession, written in the hours before his execution and published in the *NZ Truth*, prompted a final interpretation of the accused as a man of despotic power. Likening him to the biblical King Herod, under whose instructions a multitude of baby boys were supposedly slaughtered in the original 'massacre of the innocents', the *Truth* dubbed Daniel Cooper "Herod the Horrible".²⁷⁴ Other headlines took up the theme, one declaring "Foul Deeds will Rise: The Massacre of the Innocents".²⁷⁵ In these stories, with Daniel Cooper as the shady protagonist, the defining narratives centred on the power and control that the accused man had over the women around him and the unwanted infants who were surplus to his stratagems.

In real terms, the activities that took place on the farm at Newlands appear to have come closer to a criminal baby farming system than any other case identified

²⁷⁰ 'Cooper's Confession: "Herod the Horrible"', *NZ Truth*, 23 June 1923, p. 5.

²⁷¹ *Ibid.*

²⁷² 'The Baby Farming Case', *NZ Truth*, 24 February 1923, p. 6.

²⁷³ Mackay, *DBNZ*. Martha Cooper was acquitted of murder and all other charges against her were dropped. Martha remarried and lived in relative obscurity in Dunedin. She died in Christchurch in 1975.

²⁷⁴ *Ibid.*

²⁷⁵ 'Foul Deeds will Rise: The Massacre of the Innocents', *NZ Truth*, 19 May 1923, p. 5.

in this chapter. The Solicitor General, in summarising the case for the Court of Appeal, pointed out that Daniel Cooper himself used the words ‘system’ and ‘business’ when referring to his practice of receiving and relocating infants.²⁷⁶ However, the familiar tropes of filth-laden baby farming ‘dens’ and mercenary old women had little relevance here. Such images were not afforded significance despite the press’ early attempts to link the activities of Daniel and Martha Cooper with those of the archetypal figure of Minnie Dean. The tropes and motifs of baby farming, which foregrounded child victims and their relationship to those responsible for their deaths, held little explanatory power for those attempting to decipher meaning and motive in the Cooper case. Instead narratives of male tyranny and sexual deviancy, and female disempowerment, were brought to the fore.

Conclusion

This chapter has described how, in the late nineteenth-century, the issue of child homicide became a focus of public and governmental concern through the medium of the criminal baby farmer. The system of paid fostering of un-parented white infants, which had grown out of gender and economic inequality, provided a mutually beneficial solution to otherwise intractable problems of childcare. However, the cases revealed in this chapter demonstrate that serious incidences of child cruelty and fatal neglect occurred in private foster homes, just as it did in other homes and among other families. That infants had a commodity value was a point that foster and adoptive parents recognised. Some undoubtedly made financial gain their priority, despite having little to offer the children they professed to care for. Though there is no clear evidence available to suggest a network of systematic child murder in New Zealand baby farms, it is evident that some children were certainly kept without sufficient food, clothing, shelter, warmth and medical attention to sustain their lives.

When such abuses were uncovered within the child fostering system, popular attention shifted easily from the contentious figure of the infanticidal single

²⁷⁶ *R v Cooper* (1923) NZLR (CA) at 1239.

mother, to the foster mother with murderous intent. The victims of both groups of women shared a similar profile; however, in terms of the understandings of their acts, these two groups were situated at opposing ends of the spectrum. Unlike the infanticidal mother, the criminal baby farmer engendered strong feelings of hatred and disgust that worked to distil a multitude of complex issues into a simple and recognisable framework. The cash nexus was central to this perception: the commodification of the infant, as Arnot contends, enabled a ‘separation of the issue of infanticide from the murky and charged realm of maternal affection’.²⁷⁷ However, these ideas themselves emerged from older stories. The cultural representation of the criminal baby farmer was firmly embedded in the familiar narratives of folklore. The figure of the child-killing old woman was a well-rehearsed motif that facilitated the demonisation of older women who were implicated in the deaths of other people’s babies. Men featured only in the periphery of such stories, if they appeared at all. As a corollary, the male partners of these women were often overlooked as contemporaries attempted to interpret the meanings behind child deaths in foster care.

The representation of women such as Myra Smith, Minnie Dean and Daisy Stickley in the print media followed a script that was commonly understood throughout Britain and its Australasian colonies. These women were looked on as the epitome of depravity and wickedness. Minnie Dean became the archetype of the child murderer. Found guilty of the murder of one child but hanged as a serial murderer, she came to encapsulate a set of beliefs about the murder of children, which, to use Josephine McDonagh’s phrase, was ‘suspended in the shadowy domain of the cultural imaginary’.²⁷⁸ The demonisation of these women uncovers much about gender representation and relations, and the power of narrative. However, this chapter has suggested that the process of demonisation was uneven and prone to discursive ruptures. In the coroners’ courts and the courts of law, female baby farmers could be afforded a wide degree of consideration. Only one of these foster mothers was charged and found guilty of murder. This might suggest that alternative discourses were at work in which those accused could be

²⁷⁷ Arnot, p. 298.

²⁷⁸ Josephine McDonagh, *Child Murder and British Culture, 1720-1900* (Cambridge: Cambridge University Press, 2003), p. 13.

viewed as older, working class women struggling to cope with the exigencies of their own and other women's lives. It may also be indicative of the murky understandings around the wilful or passive neglect of infants and the blurring of boundaries between 'non-action' and culpable murder.

The figure of the murderous foster mother was able to concentrate public attention in a way that the infanticidal single mother could not. The legislative changes that resulted from these focused concerns moved and expanded with wider shifts in the perception of paid childcare in the twentieth century. Infant life protection legislation afforded the state the power to monitor the terms under which working class families could foster other people's children for money. While this power was administered unevenly and possessed a limited reach, it nevertheless created barriers to criminality and affected the quality of life of infants in paid childcare. Once fostered children became 'children of the state' their life chances and standards of care were, in general terms, greatly improved. By the end of the period under investigation, foster mothers had ceased to be accused of farming babies and the state had shifted focus from the prevention of infant murder to the education of all those in a mothering role in the ideologies of 'mothercraft'.²⁷⁹ In this environment the infanticidal actions of Daniel Cooper were not so easily defined, despite attempts to link his crimes with those of the archetypal figure of baby farming - Minnie Dean. Instead, public understandings of the activities of Daniel and Martha Cooper were embedded in alternative narratives, centred on the ever-germane themes of sexual deviancy and male power and control. By this time it seems that the tropes and motifs of the criminal baby farmer belonged more to the realms of folklore than in the courts of law.

²⁷⁹ Mein Smith, p. 311.

Conclusion

If you enter a Supreme Court, what do you behold? A gentleman presiding, and members of the Bar, dressed in their wigs and gowns, like so many actors on the stage – simply a burlesque.

Criminal Code Bill (second reading), 1893, *New Zealand Parliamentary Debates*, 81, p. 595.

The above words, extracted from a late nineteenth-century debate on the codification of criminal law, demonstrate that contemporary observers of crime were sensitive to the theatrical nature of the courtroom and understood the law's role in shaping and disseminating the criminal 'story'. This thesis rests on similar understandings of late nineteenth and early twentieth-century coroners' courts and the courts of law as theatres or arenas for the dramatic staging of exceptional events. Within these sites, stories can be seen to have been composed, contested, layered, and reconfigured through a selective process of evaluating or weighing for 'truth'. This study has been particularly concerned to explore the spaces between the (ultimately unknowable) act, the process of telling and the meanings thereby derived. The exploration of these spaces has revealed a nexus of ideas that worked to shape judicial understandings and popular imaginings of homicidal crime and its perpetrators. Among them, myths and fantasies gleaned from the tropes of folkloric, literary and theatrical narratives can be clearly discerned. This thesis argues that the wide currency of these narratives within the cultural imaginary offered courtroom actors and their audiences a common device for persuasion, explication and validation. Their entry into courtroom discourse further strengthened recognisable cultural narratives, investing them with a great deal of explanatory power.

Storytelling has been crucial to the methodological process of this thesis, which itself takes the form of a narrative with its analytical subjects positioned as central characters in the story of child murder. The case studies discussed throughout this thesis all represent fragments of complex and multifaceted stories, which have been subjected to further reframing and reconstruction through my own retelling.

This concluding chapter rounds off the thesis narrative by synthesising the key points and essential findings of this study, and suggesting its implications for the present.

The law is neither ahistorical nor entirely autonomous, as Jim Phillips reminds us.¹ It does not stand apart from society, but is contingent and ‘shaped by circumstances and context’.² The case trials examined throughout this study demonstrate the place of culturally determined ideologies in the judicial understandings of criminal incidents. While legislation was codified and procedures increasingly regularized throughout the period under investigation, the outcomes of specific trials were contingent on the particular understandings of individual judges and juries. Moreover, the circuit of the Supreme Court took in cities and towns that were comprised of small, often tightly-knitted communities, where members of the jury often had knowledge of, or were personally acquainted with, the accused and their families. In this way, rumour and neighbourhood ‘knowledge’ could feed into the framing of events. The findings of this study affirm Phillips’ view of a porous and malleable legal system and suggest that the ways that child murder and its perpetrators were imagined by judges, juries and observers depended above all on ‘who told what stories how, and with what effect’.³

I contend that child murder in nineteenth and early twentieth-century New Zealand was understood by contemporaries to be a crime perpetrated by mothers. The rhetoric circulating around child deaths by violence or neglect focused concern on two distinct groups of women – young, unmarried mothers, and older foster mothers. The familiar narratives of the infanticidal single mother and the neglectful or mercenary baby farmer grew out of both the real and the imaginary landscapes of nineteenth and early twentieth-century New Zealand. Regular newspaper coverage of infanticidal crime committed by women within these groups, both locally and overseas, presented them as subjects for public discourse. Arguably, the ways that people collectively imagined these women influenced the

¹ Jim Phillips, ‘Why Legal History Matters’, *Victoria University of Wellington Law Review*, 41 (2010), p. 295.

² Phillips, p. 315.

³ Sarah Maza, ‘Stories in History: Cultural Narratives in Recent Works in European History’, *The American Historical Review*, 101:5 (December, 1996), p. 1502.

treatment of defendants within the criminal justice system and in turn shaped political and legal process. Historians show that the Western preoccupation with mothers who murder effectively reduced the crime of child homicide into comprehensible, manageable elements and obscured the complex social problems that gave rise to it. In this thesis I have been concerned to uncover what this might mean for those accused of this crime who fell outside of the recognisable paradigm. Non-maternal child killers, including fathers and other family members, as well as the very small number of strangers tried for the murder of unrelated children, actively challenged the view that the crime of child homicide related only to transgressing women and unwanted illegitimate infants. The murders of legitimate infants, older children and those living in middle class families also necessitated a broadening of the ways that the relationships between child victims and their killers could be conceived.

In adopting this wider framework, it has been possible to trace what Ann Louise Shapiro has referred to as ‘the deeply patterned activity of legal story-telling’ about maternal perpetrators of infanticidal crime, and measure it against the stories told about others similarly charged.⁴ The findings of this thesis suggest that while gender influenced homicide trials in myriad ways, its impact was not clear-cut, or as significant as might be expected in terms of contemporary understandings and trial outcomes. In court, ultimately, most paternal child killers were treated much like their female counterparts. Young, unmarried fathers were afforded leniency when called to account for the suspicious deaths of their newly born illegitimate offspring, and the mitigating factor of temporary madness was relied on to explain fatal violence perpetrated by apparently loving fathers against their older children. However, the responses of nineteenth and early twentieth-century judges and juries did not always correspond to the dominant discourses surrounding the killing of children by their parents. The criminal actions of some men, and some women, prompted entirely different sets of responses and, in these cases, the perpetrators were met by the full weight of the law. The presence of such divergent readings and unexpected outcomes demonstrates Shapiro’s

⁴ Ann Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-Siècle Paris* (Stanford, California: Stanford University Press, 1996), p. 50.

contention that ‘not all stories commanded equal authority’.⁵ In the face of stronger, competing narratives, judicial and popular sympathy for accused men and women could turn easily to condemnation.

By combining quantitative techniques in the analysis of all cases with careful and detailed readings of individual cases, this thesis exposes trends and patterns that might not have been evident using only one methodological technique. My dataset of individuals implicated in the suspicious death of a child demonstrates that while the laws regarding child welfare were being debated from the 1880s, and increasingly tightened throughout the twentieth century, there was no significant change in the conviction rate or sentencing patterns for child homicides in New Zealand between 1870 and 1925. Only seven (or 11.8 per cent) of the fifty-nine parents or family members tried for the murder of a child were convicted in this fifty-five year period, and these convictions were distributed in an even spread throughout the period of study.⁶

Newborn infants remained the most at-risk group, and concealment of birth, rather than murder, continued to be the most common charge for those implicated in suspicious infant deaths. The figures suggest that the short gaol terms served by women convicted on charges of concealment in the nineteenth century were largely replaced in the twentieth century with sentences of reformatory care in reform homes or refuges. Legal findings of insanity increased slightly in the twentieth century and were most common in cases of sudden and extreme parental violence towards older children. A tendency towards harsher sentencing was identified in incidents involving perpetrators from ethnic minorities. However, the small numbers of Māori defendants included in this dataset appear to have experienced European law in uneven ways. Only three incidents between 1870 and 1925 involved killers who were ‘strangers’, unknown to their child victims; all three were men who were executed for their crimes.

The structure of this thesis presents a thematic sequence reflecting the primary representations of homicidal crime against children. Chapter One unpacks and examines the discourse surrounding the figure of the unwillingly pregnant woman

⁵ Shapiro, p. 8.

⁶ One or two convictions for child murder took place in each decade except the 1910s, where no convictions were recorded.

who kills her newborn illegitimate infant. The image of seduced, innocent 'girls' driven to murder their unwanted babies out of shame and desperation was readily understood by nineteenth and early twentieth-century observers of criminal trials in Britain and throughout its colonies. Despite the social censure of unmarried motherhood, and the deep disapproval of 'fallen women' and their illegitimate offspring, diverse forms of writing, including that published in popular novels and poems and staged in theatres, provided one-dimensional and sympathetic representations of women who resorted to the crime of neonaticide. The rhetorical device of melodrama was deployed consciously in these literary treatments presenting female protagonists and their desperate acts in stylised form in order to elicit pity and encourage heightened emotion.

This sympathetic narrative, which reappears in remarkably similar forms in nineteenth and early twentieth-century medical and psychiatric texts, also permeated the language of supreme court trials, exciting the interest and compassion of jurors and contemporary observers. The framing of this particular group of murdering mothers relied for its focus on the shame and despair suffered by women forced into threatening situations not of their choosing, and suggested that women who destroyed their infants at birth were themselves passive victims. Such a view necessitated that the blame for their 'unnatural' acts, as well as their original lapses in virtue, be deflected elsewhere. This came to rest on the unknown fathers of unwanted children, who were imagined to have used and discarded naïve young women, leaving them to face the consequences of male sexual license. These men were popularly represented as 'profligate seducers' and cowardly, unprincipled 'villains'. Fathers of illegitimate children who lived with their mothers, or were cared for outside of their family homes, were made by law to support their offspring; however, as frustrated commentators observed, little could be done in a legal sense to make men liable for the murderous acts of the women they apparently 'betrayed' or 'abandoned'. This chapter contends that the absence of these men in court worked to positively support the sympathetic narratives surrounding the female accused. When a woman faced charges alone, the space that the real flesh-and-blood father might have filled could be inhabited by a symbolic figure emanating from the cultural imaginary.

The findings of this thesis suggest that while cultural narratives portrayed women accused of murdering or concealing the birth of their illegitimate infants as desperate innocents betrayed by selfish and cowardly male partners, the realities were likely to have been rooted in deeper and more complex sets of circumstances. The vast majority of mothers faced with unwanted pregnancies during this period found ways to survive, often utilising the networks of support offered by families and communities, church-run charities and benevolent groups. The sexual partners of these women (who were most often men of similar age, class and background to their female partners) responded in a variety of ways to an unwanted pregnancy, and in many instances either legitimised the child's status through marriage, or supported mother and child financially. My evidence suggests further that women charged with neonaticide offences often became active agents in their own survival through the court system. Although their choices were constrained, they were able to effect change by their self-presentation, often positioning their acts firmly within the frame of representation best understood by juries and onlookers to ensure for themselves a sympathetic hearing.

In investigating the particular circumstances of young women employed in the domestic services, Chapter One suggests some practical reasons why this group of women featured so significantly in statistical figures for neonaticidal crime. Stories of naïve housemaids seduced and abandoned by their higher-class employers, while not unheard of in New Zealand court trials for newborn child murder, cannot be relied on to account for the large numbers of young domestic servants brought before the courts on this charge. The unpacking of evidence from coroners' reports and case trials confirms that isolation from family and friends compounded with severe constraints on privacy and leisure time, acted to ensure that the deaths of babies born to domestic servants were discovered and publicly exposed. While the lives of widows and deserted wives were less structured or controlled, they were no less vulnerable to the shame and financial adversity that an illegitimate pregnancy could bring. This chapter demonstrates that older women in such positions, who were charged with having murdered or concealed the birth of their newborn infants, often attempted to situate themselves into the same narrative framework of seduction and desperation used to mitigate the acts of their younger, unmarried female counterparts. The examination of judicial and

popular discourse surrounding these incidents uncovers the same tropes and motifs of passive and pitiable victimhood, and demonstrates that, in most cases, these women were successfully accommodated within the structures of the dominant sympathetic narrative. The crime of newborn child murder was met with ambivalence from communities, politicians, legal officials and the popular press. However, a new focus on child welfare, which began in the last decade of the century and gathered momentum in the twentieth century, saw the emergence of individuals and agencies who strongly advocated for the illegitimate infant. Their voices resurface throughout the subsequent chapters of this thesis.

The cultural narratives surrounding the suspicious deaths of illegitimate newborn infants, as broadly outlined in Chapter One, are considered from a more focused perspective in Chapter Two. This chapter follows the discourses of popular understanding regarding maternal neonaticidal crime into the courtroom to uncover the ways that they were utilised and further shaped by judicial process. Only one of the 169 women charged with murdering their newly born illegitimate infant between 1870 and 1925 was found guilty on that charge. In many instances these cases were decided purely by the evidence, or lack thereof. A large number of trials for newborn child murder represented fundamentally ‘weak’ cases due to a lack of hard evidence. The standards required by law to ‘prove’ a case of murder, when the only witness to the act was the accused herself, played a vital role in the extraordinarily high rates of acquittal for defendants of this crime.

However, the resort to a formulaic pattern of sentencing, even in cases where evidence of culpable homicide was strong, suggests that the rules and standards of legal process were utilised in deliberate ways by lawyers, judges and juries in their efforts to obtain acquittals. Juries of this period understood that a conviction on a charge of murder could be followed by the carrying out of the death penalty, and were clearly mindful of the power and gravity of their position. Defence lawyers and sympathetic juries were able to turn the exacting rules and standards of law to their advantage, often relying on the virtual impossibility of either establishing legal proof of live birth, or of determining a wilful intent to kill, in order to promote ambiguity and establish ‘reasonable doubt’. In this way, most incidents involving the suspicious deaths of illegitimate newborns proceeded through the courts under the charge of ‘concealment of birth’ – a charge that

better ensured conviction and punishment, yet, avoided the deeply unsettling prospect of the state-sanctioned hanging of a young woman.

Despite the prominence of the sympathetic narrative, this thesis demonstrates that the courtroom operated as a site for the composing and re-telling of competing interpretive accounts. Not every case of illegitimate newborn child murder was viewed through a filter of paternalistic understanding and compassion for the accused. Chapter Two reveals that mitigating narratives could be disregarded entirely by courtroom officials and observers of trials. Historians have suggested a range of possible determinants leading to uncharacteristic verdicts in the murder trials of nineteenth and early twentieth-century women, including the significance of age and respectability or ‘character’. The evidence presented in this thesis, by contrast, suggests that these factors carried little weight in determining the outcomes of neonaticidal crime. The New Zealand courts did not appear to treat older women or those known to have been alcoholic or of ‘disreputable habits’, any more harshly than those who were younger and from ‘respectable’ backgrounds. Nevertheless, as Chapter Two shows, the actions of a very few murdering mothers were not to be understood in compassionate terms. The reasons that these women suffered condemnation when others around them garnered sympathy and understanding can be hypothesised; however, as I contend throughout this thesis, the real answers to these questions are ultimately unreachable.

I maintain that the sympathetic narrative of seduction and abandonment belonged to a moral and ethical domain that rendered neonaticidal crime committed by unmarried mothers as comprehensible and ultimately excusable, and thereby was employed in specific ways in the courtroom and in the print media. While mothers who killed their unwanted illegitimate infants could be seen as having acted in an understandable (and even rational) manner, the homicide of an older, legitimate child posed a stronger challenge to those invested with the task of comprehending a murder event. In Chapter Three, the deaths of Pākehā children caused by violent or neglectful parents within ‘nuclear’ family contexts are brought into focus. Extremes of poverty, poor housing, records of poor mental health, and high rates of alcoholism among working class Pākehā families were recognised by contemporaries as problems to be investigated during the period of this study.

Nevertheless, the evidence produced in this chapter suggests that the family home continued to be disregarded as a primary locus of physical danger for children.

The first New Zealand law designed specifically to safeguard children from bodily harm was introduced in 1890 in response to the introduction of similar laws in England and Australia, rather than as a consequence of local initiatives for legislative action in that area. Indeed, as Chapter Three shows, the implementation of provisions under the Children's Protection Act 1890 took place with a great measure of vacillation and inconsistency as contemporaries struggled to negotiate the state's entry into the private lives and homes of Pākehā families, and the tensions between notions of parental control and parental abuse. In spite of the work of child protection agencies, the physical welfare of children in their own homes was an issue that remained heavily veiled into the twentieth century. I suggest that the cohort of child victims most compromised by this situation were very young infants who were entirely dependent on their parents for their day-to-day survival. Coroners' reports catalogued in the Wellington branch of Archives New Zealand, that register the deaths of young infants, do not always make a clear case for having declared their deaths 'accidental' or 'natural' in origin. There are clearly dangers and difficulties involved in inferring that some of these verdicts may have masked incidents of parental negligence or mistreatment when supporting evidence is scant; however, I maintain that the absence of some criminal practices in the official records need not compel the researcher to assume their absence in society.

The examination of trials held against biological mothers accused of causing the violent or neglectful deaths of their children has underscored the power of cultural narratives about the sanctity of the mothering role during the period of investigation. The case trials presented in Chapter Three did little to challenge the belief that all mothers possessed a natural and intrinsic capacity to nurture and protect their children. Rather, the acts of violence and fatal neglect carried out by biological mothers tended to be framed as the unwitting or unconscious actions of women without agency. These women were viewed as victims of circumstance who were compelled to act against their maternal natures due to exigencies of poverty, marital disharmony, alcoholic addiction, or the capriciousness of their own biology. Quantitative patterning shows that biological parents who killed

legitimate children were more likely to be considered insane than any other accused killers of children. In the case of mothers, the concept of reproductive insanity provided a readily accessible explanation for otherwise inexplicable homicidal actions. Although, as this chapter shows, the mitigating defences of biologically-driven (and therefore temporary) forms of madness, such as puerperal or lactational insanity, might be utilised or otherwise disregarded depending on the proclivities of individual judges and juries. The scholarly argument that holds that the criminal behaviour of nineteenth-century women was constructed within a bio-medicalised framework, is challenged by the findings of this thesis. While Chapter Three demonstrates that the concept of ‘madness’ was used in the understanding of some homicide incidents committed by biological mothers, I argue here that the link between women’s violent crime and insanity has been overstated. The examination of my statistical data for evidence of patterning suggests that findings of insanity on charges of child homicide were not greatly influenced by gender. Insanity, whether biologically driven or otherwise, was one among a broad range of mitigating variables employed in the defence of both men and women accused of violent, homicidal acts. Indeed, the cultural narratives that framed some infanticidal women as ‘mad’ or ‘sad’ appear in similar forms, and occur statistically more frequently, in the composure of men’s stories of child murder.

By contrast, notions of insanity, as well as the tropes and motifs of passive victimhood, were found to be notably absent in the discourse surrounding the trials of stepmothers accused of cruelty and neglect. The textual evidence explored in Chapter Three replicates the primary imaginative structures around which the figure of the stepmother was traditionally understood. These cases presented observers with recognisable moral tales of ‘good’ versus ‘evil’. This framing of criminal events provided justification for the condemnation of the accused and invited public entry into the ‘voyeuristic, transgressive pleasures of the criminal story’.⁷ Indeed, the trials against stepmothers considered in this chapter caused public outrage and were viewed as sensational community events. I contend that the ways that these women were understood within society and in

⁷ Bronwyn Dalley, ‘Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-Century New Zealand’, *The Gendered Kiwi* (Auckland: Auckland University Press, 1999), p. 68.

the courtroom, were effectively constricted by familiar tropes that negatively stigmatised the role of stepmother. In turn, the trials themselves provided observers with further ‘proof’ of the dangers such women might pose to children in their charge.

The fourth chapter of this thesis turns to the figure of the murderous father in order to explore the ways that these men were imagined by public and judicial observers of homicidal crimes. Although little research has been undertaken into the roles and expectations of Pākehā fatherhood in nineteenth and early twentieth-century New Zealand, the rich primary source material uncovered in this thesis reveals that while some men were implicated in the deaths of their children, many others played positive and nurturing roles in their children’s lives, as attentive fathers to their own legitimate and illegitimate offspring, or in the roles of stepfather or foster parent. Unlike the notion of ideal motherhood, which was increasingly defined and circumscribed throughout the period, fatherhood appears to have prompted a more ambiguous set of understandings. A clearer picture of the place of ‘the father’ in New Zealand history requires deeper analysis than the framework of this thesis has allowed. I anticipate that further focused historical research in this area will help to illuminate studies such as my own that seek a more holistic understanding of New Zealand’s social and family relations.

While the stereotypical figures of murdering mothers as depicted in folklore, literature and theatre held important and familiar places in the cultural imaginary, the child-killing father was seldom characterised in narrative form. Moreover, the violent actions of fathers towards their children had no place in the official discourses on masculine criminal violence that increasingly circulated within Western nations through the nineteenth century. I propose that the omission of the crime of paternal child homicide from popular narrative and in official debates on male criminality helped to cement an understanding of child murder as a women’s crime. Without a recognisable cultural framework in which to situate them, paternal child murders tended to be read in ways that were more contingent on the specific contexts in which they were committed. However the range of interpretive strategies appears to have remained linked to a narrow set of alternative narrative forms.

The case trials considered in Chapter Four suggest that most fathers held to account for the deaths of their infant children could expect an empathetic hearing from the all-male juries who considered their crimes. In some incidences empathetic juries overlooked or disregarded incriminating evidence that might have been investigated further, preferring to acquit, or to convict the accused on a lesser charge such as manslaughter or concealment of birth. As with women similarly charged, contemporaries best understood the violent murders of older children by their fathers as crimes emanating from a disordered mind. Despite the exacting rules surrounding the insanity plea in New Zealand law, external pressures such as debt, poverty and marital disharmony were successfully used to explain homicidal insanity among fathers, in much the same way as internal, biological factors were used to explain and mitigate murders perpetrated by mothers.

For the most part, the decision as to whether a father was found guilty of murder or declared insane appeared to rest on the persuasive power of defence counsel and judge, as well as the sympathy of the jury. When trials for child murder involved aspects of what might be considered 'deviant' sexuality, however, the tropes and motifs of melodramatic convention came sharply into play, severely constraining the ways that the accused might be imagined. The storying of homicide trials into melodramatic tales of defenceless and defiled young women, and dangerous, unprincipled men, helped to shape them into simple moral events which required predictable, expected endings. In this way the hanging of men such as William Woodgate could be viewed as a necessary step towards the resolution of larger problems surrounding masculine violence, aberrant sexuality and 'depravity'.

In Chapter Five these ideas are considered further in trials where narratives of race were introduced into the discursive web of child murder. The close reading of the trial of Anthony Noble reveals the mutually constitutive nature of fictive representation and scientific and legal understandings. Gothic notions of race combined with the discourses of ethnology and science to construct a rigid understanding of this particular murder event as an act of unbridled sexual savagery. The strength of these mutually validating narratives offered a reading of events that obscured any alternative interpretation. The trial story with its

uncomplicated plot-lines of savagery contained and silenced, and the triumph of colonial justice and punishment, further shaped the motif of the ‘dark stranger’ and helped to cement its place in the imaginative landscape. The storying of trials involving Māori defendants drew similarly on gothic notions of the violent unpredictability of the racialised other to extract meaning from disturbing occurrences. Within this framework defendants could be presented in an easily identifiable, stylised fashion that inhibited cross-cultural understandings.

The effects of discourses of race and ethnicity in establishing coherence and meaning are considered further in Chapter Five in relation to Pākehā women in Anglo-Chinese marriages or partnerships, who were charged with causing the deaths of their children. Here, notions of racial pollution and degeneracy can be seen braiding throughout these trial stories and playing their part in shaping public and judicial perceptions of defendants and their acts. The analysis of narratives of race in the trials considered throughout this chapter reveals that, in spite of jurisprudential objectives and claims regarding the impartiality of the law, fictive and ‘scientific’ imaginings about race performed significant cultural work, constricting, persuading, and moulding judicial understandings of criminal events.

In its final chapter, this thesis turns to the most familiar figure associated with child murder in New Zealand’s historical landscape – the criminal baby farmer. As this thesis shows, the young single mother who apparently killed her newborn child out of desperation and shame, while a subject of concern throughout the period of study, was unable to focus public attention as completely as the figure of the murderous foster mother. The victims of both groups of women shared a similar profile, however, it was foster mothers, imagined in the guise of criminal baby farmers, who came to be defined as an urgent threat to societal values. The sensationalised trials of men and women accused of the murders of other people’s ‘unwanted’ babies, which took place with some regularity in Britain and Australia throughout the nineteenth century, raised alarm in New Zealand about the welfare of Pākehā children in paid private care. The discovery of large and small-scale private fostering operations in New Zealand towns and cities prompted parliamentary debate and activated significant changes in legal and social policy.

The textual evidence uncovered in Chapter Six reveals the significance of gender in the popular understanding of baby farming. Court trials and coronial hearings

show that foster and adoptive homes were often headed by married couples; however, when suspicious child deaths were investigated, accusations of fatal neglect or violence were directed almost exclusively at the foster mother. The nature of these women was presented in a stylised form that was well rehearsed in Britain and its colonies. With its roots in traditional European folklore, the stereotypical figure of the child-killing old woman had strong currency, and was effortlessly appropriated into nineteenth-century murder trials involving fostered or adopted infants. My analysis of the discourses evident in the trial of Minnie Dean demonstrates that the distinct cultural narratives surrounding criminal baby farming played a clear role in shaping and colouring the defendant's character and the criminal acts for which she was charged. While convicted and executed for the murder of one child, Minnie Dean was appropriated into collective memory as a serial murderer and mercenary farmer of children. Absorbing aspects of fantasy and myth over time, the story of Minnie Dean came to be shaped by a generation of New Zealanders into a well-recognised chapter of South Island folklore.

Despite the potency of narratives that offered a view of paid foster mothers as mercenary killers or inhuman fiends, criminal trials involving other so-called baby-farming deaths investigated throughout the period of study reveal an interplay of competing discourses that were subject to change over time. Court and coronial records demonstrate a more muted response towards infant deaths in paid private care that were brought about 'indirectly' through starvation and neglect. The official investigations of these deaths were subject to less rigid interpretation than those incidents where evidence pointed to smothering, poisoning or other forms of violence. Consequently, female defendants accused of fatal neglect could be perceived as careless or ignorant rather than deviously murderous. Within this frame, the slow deaths of the infants in their care were regarded more with resignation than horror. The shifting concerns and attitudes of the early twentieth century regarding the welfare of children and the roles of family and state further complicated the reading of child deaths in private foster homes, diffusing the explanatory power of traditional narratives. This final chapter argues that tightening legislation, the removal of the 'cash nexus' and increasing state surveillance into foster and adoptive homes positively influenced popular understandings regarding the private care of children. However, the

familiar tropes and motifs of criminal baby farming continued to be invoked within the discourse of child homicide crime well into the twentieth century.

This exploration of past incidents of homicidal crime exposes the highly constructed nature of the discourses in which such crimes were surrounded and embedded. Within the gaps between lived events and their ‘official’ or popular narration lay a multiplicity of accounts and interpretations competing for credibility and authority. This thesis contends that the criminal stories that emerged from the suspicious deaths of children relied heavily on the persuasive power of narratives derived from the cultural imaginary. While having to operate within the interests and standards of the judicial system these narratives can be observed in full play, actively shaping meaning and marking expected outcomes.

This study maintains further that these findings have important implications for the present. The close examination of our cultural stories about the murderous ‘other’ may be crucial to a clearer understanding of current debates on child abuse fatalities and the anxieties that surround these incidents. In a recent study on New Zealand media representations of child abuse in the twenty-first century, Raema Merchant has offered some fascinating insights into present constructions of the ‘typical’ child murderer. Among them is a suggestion which links the rapid increase in media interest in fatal child abuse from the early 1990s, to the release of Alan Duff’s seminal novel *Once Were Warriors*.⁸ Duff’s novel, published in 1990, and its hugely successful film adaptation released in 1994, graphically depict the Māori family home as a locus for violence and abuse, and present the Māori father as its primary source.⁹ As Merchant shows, the filmic representation of the abusive Māori family coincided with a barrage of ethnically focused journalistic reporting on fatal child abuse incidents. Indeed, examination of reported incidents of abuse between 1991 and 2000 revealed that Māori children were statistically more likely to be reported as victims of family related homicide than non-Māori.¹⁰ The findings of my own study support the notion that both real

⁸ Raema Merchant, ‘Who Are Abusing Our Children: An exploratory study on reflections on child abuse by media commentators’ (MSocSci thesis, Massey University, Albany, 2010), p. 1

⁹ Alan Duff, *Once Were Warriors* (Auckland: Tandem Press, 1990); *Once Were Warriors*, Motion Picture. Dir. by Lee Tamahori, Communicado, Auckland, 1994.

¹⁰ Mike Doolan, ‘Child Death by Homicide: An Examination of incidence in New Zealand 1991-2000’, *Te Awatea Review*, (August 2004), pp. 9-10.

and imagined stories form a bi-directional relationship to perform specific cultural work, mutually reinforcing ideas and beliefs to construct criminal identities. My research has demonstrated how the sustained focus on a particular ‘type’ of offender creates entrenched beliefs which can produce misconception and distort our capacity for understanding. I suggest that the news media have an important role to play in the telling of today’s ‘stories’ about child homicide, and that its writers must be mindful of the power of the stories they construct. The disproportionate coverage given to cases of abuse in Māori families, as revealed in Merchant’s study, suggests a need for journalists to consider their role in closer and more careful ways.

This thesis represents the first full-length study bringing historical perspective to the issue of child homicide in New Zealand. As such, it has taken a comprehensive approach, attempting to display the mosaic of ways by which the murder of New Zealand children was imagined in the late nineteenth and early twentieth-centuries. Yet, in many ways this study has been limited by its broad focus. As historians, we ‘deal with gaps as well as links’, as Joy Damousi says; ‘each story we tell excludes narratives at the same time as it includes them’.¹¹ I acknowledge the many gaps and exclusions in this study, as well as important debates and points that have been only superficially addressed. There is much more to be said for instance about children’s experiences of abuse and violence within families. This difficult area of study deserves the attention of historical researchers committed to working from a child-centred perspective. The roles played by individual coroners and judges, and by the women and men in benevolent and reform groups who concerned themselves with the physical welfare of New Zealand children, also await further focused study. The language of religion and spiritual belief has not been immediately discernible in the discourse analysed in this project; however, there is much scope for more careful research in this area. Likewise, regional variations in homicide incidences and trial outcomes have not been apparent. A more focused regional or comparative approach may reveal the expected nuances that have been overlooked in this study in regards to regional difference and variations between the rural and urban divide.

¹¹ Joy Damousi, ‘History Matters: The Politics of Injury and Grief in Australian History’, *Australian Historical Studies*, 33:118 (2002), p. 101.

A clearer understanding of changing trends over time will be possible through the undertaking of quantitative and qualitative research into the child homicide record of the later twentieth century. In opening up new historiographical discussions it is hoped that this thesis will allow for a deeper understanding of issues regarding the physical welfare of children in our past and a more nuanced awareness of how we 'imagine' child homicide crime in the present.

Bibliography

This bibliography is set out under the following headings:

Primary Sources:

1. Coronial Reports, Criminal and Legal Files, Law Reports
2. Acts
3. Other Official Publications
4. Newspapers
5. Journals
6. Books
7. Films and Songs

Secondary Sources:

1. Books
2. Book Chapters
3. Journal Articles
4. Unpublished Papers and Reports
5. Unpublished Theses
6. Online Sources

Primary Sources:

1. Coronial Reports, Criminal and Legal Files, Law Reports

Coronial Inquests

Coronial Inquest: D.Jnr Donovan, J46Cor 1893/645 (micro U 5400), Archives New Zealand, Wellington

Coronial Inquest: Dorothy Gwendoline Drake, J46Cor 1893/645 (micro U 5400), Archives New Zealand, Wellington

Coronial Inquest: Lily Dean, J46Cor 1902/456-829 (micro U 5426), Archives New Zealand, Wellington

Coronial Inquest: Mona Caroline Rebecca Deighton, J46Cor 1900/203 (micro U 5400), Archives New Zealand, Wellington

Coronial Inquest: Two Infants of Susannah Wainwright, J46Cor 1904/942 (micro U 5400), Archives New Zealand, Wellington

Criminal Files

(Dunedin)

Criminal Files, DAAC 21218 D437/908, *R v Witting*, Judge's Notes of Proceedings – Circuit Courts, Invercargill and Lawrence Criminal Cases (Judge H.S. Chapman) (1872-5), Archives New Zealand, Dunedin

Criminal Files, DAAC D256 267 File 15, Margaret Collins, 1875, Archives New Zealand, Dunedin

Criminal Files, DAAC D256 291 File 10, Joseph Valentine 1888, Archives New Zealand, Dunedin

Criminal Files, DAAC D256, file 442ae, Supreme Court Dunedin – Indictments – Stuart Cecil Harland and Heatherbelle Harland 1922, Archives New Zealand, Dunedin

(Wellington)

Criminal Files, J 22:4/8, Records Relating to Murders – Anthony Noble for Murder of Mary Jane Mullaumby (Hokitika), 1871, Archives New Zealand, Wellington

Criminal Files, P-1, 279/1883/1079, Wanganui Child Murder Case – Phoebe Veitch – Accused of Murdering Her Daughter Phoebe (1883) Archives New Zealand, Wellington

Criminal Files, JC-N7:1, Supreme Court Depositions – Gifford, May – Concealment of Birth and Death of her Child (Nelson), 1901, Archives New Zealand, Wellington

R v Annie Bates, Hokitika, Richmond J., 13 January 1870, Concealment of birth, 'Christopher William Richmond Judge's Notes', Vol. 3 (1868-1870), MSS R532, J.C. Beaglehole Room, Victoria University of Wellington

R v Anthony Noble (1868) New Zealand's Lost Cases Project, retrieved online from
<<http://www.victoria.ac.nz/law/nzlostcases/CaseDetails.aspx?casenumber=01374>> (accessed 14 September 2011)

R v Simon Cedeno, (1871) New Zealand's Lost Cases Project,
<<http://www.victoria.ac.nz/law/nzlostcases/CaseDetails.aspx?casenumber=00337>> (accessed 14 September 2011)

Infant Life Protection Act Records (ILP)

(Auckland)

ILP Files, BAAA 1958, 1/c – 2/b, Registers of Particulars of Infants and Foster Homes (1909-1916), Archives New Zealand, Auckland

ILP Files, BAAA 1962:1a, Report Books (1908-1916), Archives New Zealand, Auckland

(Wellington)

ILP Files, CW, ACC W1043, Criticisms (1907), Archives New Zealand, Wellington

ILP Files, CW W1043, 40/8/28, Feeding and Care of Infants (1907-1928), Archives New Zealand, Wellington.

ILP Files, CW 10/7, Infant Life Protection Deaths - Register of Deaths (1908-1909), Archives New Zealand, Wellington

The Gazette Law Reports (Gaz LR)

R v Brown (Digest of Cases 1898-1928) 13 Gaz LR (CA) 409

R v Cooper (Digest of Cases 1898-1928) 36 Gaz LR (AA) 415-17

R v Dean (Digest of Cases 1861-1902) 19 Gaz LR, 373-74

R v Drake (1902) 5 Gaz LR (CA) 145-49

R v Fong Chong and Clara Fong Chong (1888) 6 Gaz LR (CA) 375-80

R v Holden (Digest of Cases 1903-1923) 94 Gaz LR, 425

R v O'Connor (Digest of Cases 1861-1902) 5 Gaz LR (SC) 395.

New Zealand Law Reports (NZLR)

R v Brown (1911) 31 NZLR (CA) 225-34

R v Cooper (1923) NZLR (CA) 1237-48

R v Dean (1895) NZLR (CA) 272-90

R v. Deighton (1900) 18 NZLR (SC) 891-96

R v Drake (1902) 12 NZLR (CA) 478-88

R v Fong Chong (1888) 6 NZLR (CA) 374-81

R v Holden (1920) NZLR (CA) 458-61

R v O'Connor (1887) 6 NZLR (SC) 197

R v P (1991) 2 NZLR (CA) 116

English Law Reports

R v Williams (1871) 11 Cox's C.C. 684 (EWQB) (7th edn, Vol. 1) 778

2. Acts

Statutes of New Zealand, 1867, No. 14, Neglected and Criminal Children's Act

Statutes of New Zealand, 1867, No. 5, Offences against the Person Act

Statutes of New Zealand, 1868, No. 20, Offences against the Person Amendment Act

Statutes of New Zealand, 1875, No. 89, Employment of Females and Others Act

Statutes of New Zealand, 1877, No. 21, Education Act

Statutes of New Zealand, 1881, No. 9, Adoption of Children Act

Statutes of New Zealand, 1890, No. 21, Children's Protection Act

Statutes of New Zealand, 1891, No. 32, Factories Act

Statutes of New Zealand, 1893, No. 56, Criminal Code Act

Statutes of New Zealand, 1893, No. 35, Infant Life Protection Act

Statutes of New Zealand, 1896, No. 23, Infant Life Protection Act

Statutes of New Zealand, 1906, No. 37, Adoption of Children Amendment Act

Statutes of New Zealand, 1907, No. 42, Infant Life Protection Act

Statutes of New Zealand, 1907, No. 13, Tohunga Suppression Act

Statutes of New Zealand, 1908, No. 30, Coroners Act

Statutes of New Zealand, 1908, No. 32, Crimes Act

Statutes of New Zealand, 1908, No. 86, Infants Act

Statutes of New Zealand, 1909, No. 30, Reformatory Institutions Act

3. Other Official Publications

Appendices to the Journals of the House of Representatives (AJHR)

‘Annual Report on Hospitals and Charitable Aid Boards’, *AJHR* (1900), H-22

‘Annual Report on Hospitals and Charitable Institutions’, *AJHR* (1892), H-3

‘Annual Report on the Police Force of the Colony’, *AJHR* (1893), H-26

‘Annual Report on the Police Force of the Colony’, *AJHR*, (1894), H-14

‘Annual Report on the Police Force of the Colony’, *AJHR* (1903), Vol. 3, H-I

‘Illegitimacy’, *AJHR* (1906), Vol. 3, H-31

‘Infant Life Protection’, *AJHR* (1906), Vol. 3, H-3I

‘Infant Life Protection’, *AJHR* (1911), Vol. 3, E-4

‘Reports of District Health Officers, Etc’, *AJHR* (1903), Vol. 3, H-31

New Zealand Official Year Book (NZOYB)

‘Illegitimacy’, *NZOYB 1910*, 330-31

‘Infantile Mortality’, *NZOYB 1910*, 356-59

‘Infant-Life Protection’, *NZOYB 1910*, 360-39

‘Inquests’, *NZOYB 1910*, 400

‘Illegitimacy’, *NZOYB 1920*, 25-41

‘Infantile Mortality’, *NZOYB 1920*, 42-3

‘Orphanages and Other Children’s Homes’, *NZOYB 1920*, 62

New Zealand Parliamentary Debates (NZPD)

‘Children’s Protection Bill’, 3 July 1890, *NZPD*, 97, 260-68

‘Baby Farming’, 30 Aug. 1893, *NZPD*, 81, 434

‘Infant Life Protection’, 1893, *NZPD*, 81, 234-35

‘Criminal Code Bill’, 4 Sept. 1893, *NZPD*, 81, 590-93

‘Infant Life Protection’, 28 Sept. 1893, *NZPD*, 82, 800

‘Adoption of Children’, 1904, *NZPD*, 129, 350-51

Statistics of New Zealand

Statistics of the Colony of New Zealand for the Year (1872-1924) ‘Part V – Law and Crime’

Statistics of the Colony of New Zealand for the Year 1872, ‘Part I, No. 5, Deaths of Males from Different Causes at Different Ages’ and Part II, No. 5A, Deaths of Females from Different Causes at Different Ages’

Statistics of the Colony of New Zealand for the Year 1880, ‘Part II – Population and Vital Statistics’, ix-xxii

Statistics of the Dominion of New Zealand for the Year 1911, ‘Occupations of Males who Died During the Year 1911’, 343

Other Official Sources

‘Criminal Code Bill’, *New Zealand Parliamentary Bills 1893*, Vol. 1, A-L, 36-7

Findlay, George, ‘Report on the Crimes Bill 1957’ (copy from the original) (Wellington: Justice Department, 1982)

New Zealand Police Gazette (Wellington: Govt. Printer) 1896 and 1900-1910

‘*R v. W.H. Woodgate*’, Reports of Cases Determined by the Court of Appeal of New Zealand, Vol. II, 1875-1877, edited by Alexander J. Johnston (1877), 321

4. Newspapers (all sourced from online repository Papers Past <<http://paperspast.natlib.govt.nz/cgi-bin/paperspast>>)

Ashburton Guardian (Canterbury, 1887-1921)

Auckland Star (Auckland, 1870-1925)

Bay of Plenty Times (Bay of Plenty, 1875-1920)

Bruce Herald (Otago, 1870-1905)

Bush Advocate (Hawke's Bay, 1888-1909)

Clutha Leader (Otago, 1874-1900)

Colonist (Nelson, 1870-1920)

Daily Southern Cross (Auckland, 1870-1876)
Daily Telegraph (Hawke's Bay, 1881-1901)
Evening Post (Wellington, 1870-1925)
Feilding Star (Manawatu-Wanganui, 1882-1920)
Grey River Argus (West Coast, 1870-1920)
Hawera & Normanby Star (Taranaki, 1880-1924)
Hawke's Bay Herald (Hawke's Bay, 1870-1900)
Inangahua Times (West Coast, 1877-1900)
Lyttelton Times (Canterbury, 1870-1866)
Manawatu Standard (Manawatu-Wanganui, 1883-1910)
Marlborough Express (Marlborough, 1870-1920)
Mataura Ensign (Otago, 1883-1900)
Nelson Evening Mail (Nelson, 1870-1909)
New Zealand Free Lance (Wellington, 1900-1909)
North Otago Times (Otago, 1870-1900)
NZ Truth (National, 1906-1925)
Observer (Auckland, 1880-1920)
Otago Daily Times (Otago, 1870-1900)
Otago Witness (Otago, 1870-1909)
Poverty Bay Herald (Gisborne, 1879-1920)
Press (Canterbury, 1870-1915)
Southland Times (Otago, 1870-1905)
Star (Canterbury, 1870-1909)
Taranaki Herald (Taranaki, 1870-1909)
Te Aroha News (Waikato, 1883-1889)
Thames Star (Waikato, 1874-1920)
Timaru Herald (Canterbury, 1870-1900)
Tuapeka Times (Otago, 1870-1909)
Waikato Times (Waikato, 1872-1892)
Wanganui Chronicle (Manawatu-Wanganui, 1874-1919)
Wanganui Herald (Manawatu-Wanganui, 1870-1909)
Wellington Independent (Wellington, 1845-1874)
West Coast Times (West Coast, 1870-1909)

5. Journals

British Medical Journal (BMJ)

Braxton Hicks, J.A., 'The Effects of Artificial Respiration on the Stillborn', *BMJ*, 2:2601 (1910), 1416-1418

Jones, Robert, 'Puerperal Insanity', *BMJ*, 1:646 (1902), 579-86 & 646-51

Macleod, M.D., 'An Address on Puerperal Insanity', *BMJ*, 2:1336 (1886), 239-42

Tyler Smith, W., 'Address on Infanticide and Excessive Infant Mortality', *BMJ*, 1:2125 (1867), 21- 25

Unknown Author, 'Report on the Baby-Farming System and Its Evils', *BMJ*, 1:489 (1896), 717

_____ 'Report on the Baby-Farming System and Its Evils', *BMJ*, 1:1838 (1896), 747-48

_____ 'The Hydrostatic Test of Stillbirth', *BMJ*, 2:2083 (1900), 1567

Lancet

Thompson, A.T., 'Lectures on Medical Jurisprudence, Lecture XIX: The Evidences of Infanticide', *Lancet*, 1 (1837), 688-93

Unknown Author, 'Baby Farming', *Lancet*, 161.4143 (1901), 250-52

_____ 'Signs of Live Birth', *Lancet* (2), 126:3229 (1885), 124-25

_____ 'The Hydrostatic Test', *Lancet* (2), 126:3229 (1885), 127

_____ 'Traffic in Children', *Lancet*, 157.4043 (1901), 569

Other Journals

Berdoe, Edward, 'Slum-Mothers and Death Clubs: A Vindication', *Nineteenth Century*, 29 (April 1891), 560-63

Hunter, William, 'On the Uncertainty of the Signs of Murder', *Medical Observations and Inquiries*, 6 (1784), 266-90

Maudsley, Henry, 'On the Physiology of the Mind', *Journal of Nervous and Mental Disease*, 5.1 (January 1878), 141-52

6. Books

- Boldrewood, Rolf, *War to the Knife (or Tangata Maori)* (London and New York: Macmillan, 1899)
- Caspar, Johann Ludwig, *A Handbook of the Practice of Forensic Medicine: Including the Biothanatology of Newborn-Children and the First Part of the Biological Division*, Vol. III (London: The New Sydenham Society, 1864)
- Cruise, Richard A., *Journal of a 10 Months Residence in New Zealand (1820)*, 2nd edn, edited by A.G. Bagnall (1974)
- Cummin, William, *The Proofs of Infanticide Considered: Including Dr Hunter's Tract on Child Murder: William Hunter, 'On the Uncertainty of the Signs of Murder' (First Published in 1784)* (London: Wilson and Son, 1836)
- De Bazin, Sasha, *The Day She Cradled Me* (Auckland: Random House, 2012)
- Duff, Alan, *Once Were Warriors* (Auckland: Tandem Press, 1990)
- Greenwood, James, *The Seven Curses of London* (Oxford: Basil Blackwell, 1981)
- Lee, John A, *Children of the Poor* (London: T. Weiner Laurie, 1934)
- Mactier, Susie, *Miranda Stanhope* (Auckland: Brett Printing, 1911)
- Marjoribanks, Alexander, *Travels in New Zealand* (London: Smith, Elder, 1846)
- Roberts, Vernon and G.T. Roberts, *Kohikohihinga: Reminiscences and Reflections of "Rapata" (Vernon Roberts)* (Whitcombe and Tombs Ltd, 1929)
- Russell, William Oldnall, *Russell on Crimes and Misdemeanours*, Vol. 3 (London: Stevens, 1865)
- Verne, Jules, *Among the Cannibals* (London: Ward, Lock and Tyler, 1876)

7. Films and Songs

- Henderson, Helen, 'The Ballad of Minnie Dean', Run the Cutter (CD, *Passing Time*, Invercargill, 2000) <folksong.org.nz/minniedean/index.html> [accessed 4 April 2012]
- 'Minnie Dean', Documentary. Dir. by Marylyn Hayes and Brendon Fairbairn <<http://www.youtube.com/watch?v=-pobXNCCQNU>> [accessed 4 April 2012]
- Once Were Warriors*, Motion Picture. Dir. by Lee Tamahori, Communicado, Auckland, 1994

Secondary Sources:

1. Books

- Abrams, Lynn, *The Orphan Country: Children of Scotland's Broken Homes from 1845 to the Present Day* (Edinburgh: John Donald, 1998)
- Adams, Francis Boyd, ed., *Criminal Law and Practice in New Zealand*, 2nd Edn (Wellington: Sweet & Maxwell, 1971)
- Adams, Peter, *Fatal Necessity: British Intervention in New Zealand, 1830-1847* (Auckland: Auckland University Press, 1977)
- Alder, Christine M. and Kenneth Polk, *Child Victims of Homicide* (Cambridge: Cambridge University Press, 2001)
- Allen, Judith, *Sex and Secrets: Crimes Involving Australian Women since 1880* (Melbourne: Oxford University Press, 1990)
- Anderson, Warwick, *The Cultivation of Whiteness: Science Health and Racial Destiny in Australia* (Melbourne: Melbourne University Press, 2002)
- Bartrip, Peter, *Mirror of Medicine: A History of the British Medical Journal* (New York: Oxford University Press, 1990)
- Behlmer, George K., *Child Abuse and Moral Reform in England, 1870-1908* (Stanford: Stanford University Press, 1982)
- Belich, James, *Paradise Reforged: A History of the New Zealanders, 1880-2000* (Auckland: Penguin, 2001)
- Broughton, Lynn and Helen Rogers, ed., *Gender and Fatherhood in the Nineteenth Century* (Hampshire and New York: Palgrave Macmillan, 2007)
- Bryder, Linda, *A Voice for Mothers: The Plunket Society and Infant Welfare, 1907-2000* (Auckland: Auckland University Press, 2003)
- Burke, Peter, ed., *New Perspectives on Historical Writing* (Cambridge: Polity Press, 1991)
- Busfield, Joan, *Men, Women and Madness: Understanding Gender and Mental Disorder* (London: Macmillan Press, 1996)
- Carnes, Mark C. and Clyde Griffen, eds, *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago and London: University of Chicago Press, 1990)
- Catran, Ken, *Hanlon: A Casebook* (Wellington: Pitman Publishing, 1985)
- Clark, Elizabeth A., *History, Theory, Text: Historians and the Linguistic Turn* (Cambridge, Massachusetts and London: Harvard University Press, 2004)

- Conley, Carolyn, *Certain Other Countries: Homicide, Gender, and National Identity in Late Nineteenth-Century England, Ireland, Scotland and Wales* (Columbus: Ohio University Press, 2007)
- Crawford, Patricia, *Parents of Poor Children in England, 1580-1800* (Oxford and New York: Oxford University Press, 2010)
- Daley, Caroline, *Girls and Women, Men and Boys: Gender in Taradale, 1886-1930* (Auckland: Auckland University Press, 1999)
- Dalley, Bronwyn, *Family Matters: Child Welfare in Twentieth-Century New Zealand* (Auckland: Auckland University Press, 1998)
- Davidoff, Leonore and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* Rev. edn (London and New York: Routledge, 2002) (Originally published 1987)
- Davidoff, Leonore, Megan Doolittle, Janet Fink and Katherine Holden, *The Family Story: Blood, Contract and Intimacy, 1830-1960, Women and Men in History* (London and New York: Longman, 1999)
- Davis, Natalie Zemon, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (London: Stanford University Press, 1988)
- Eldred-Grigg, Stevan, *Pleasures of the Flesh: Sex and Drugs in Colonial New Zealand, 1840-1915* (Wellington: A.H and A.W. Reed, 1984)
- Else, Anne, *A Question of Adoption: Closed Stranger Adoption in New Zealand, 1944-1974* (Wellington: Bridget Williams Books, 1991)
- Evans, Tanya, *"Unfortunate Objects": Lone Mothers in Eighteenth-Century London* (Hampshire and New York: Palgrave MacMillan, 2005)
- Fairburn, Miles, *Nearly out of Heart and Hope: The Puzzle of a Colonial Labourer's Diary* (Auckland: Auckland University Press, 1995)
- _____ *The Ideal Society and Its Enemies: The Foundations of Modern New Zealand Society, 1850-1900* (Auckland, 1989)
- Galloway Brown, Yvonne and Rona Ferguson, eds, *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400* (East Lothian: Tuckwell Press, 2002)
- Gluckman, Laurie, *Touching on Deaths: A Medical History of Early Auckland Based on the First 384 Inquests* (Auckland: doppelganger, 2000)
- Gordon, Linda, *Heroes of Their Own Lives: The Politics and History of Family Violence* (London: Virago Press, 1989)
- Gowing, Laura, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996)

- Guarnieri, Patrizia, *A Case of Child Murder: Law and Science in Nineteenth-Century Tuscany*. Translated by Claudia Miéville (Cambridge: Polity Press, 1993)
- Hendrick, Harry, *Child Welfare: England, 1872-1989* (London and New York: Routledge, 1994)
- Hill, Richard, *The Iron Hand in the Velvet Glove: The Modernisation of Policing in New Zealand, 1886-1917*, Vol. 3, *The History of Policing in New Zealand* (Wellington: Dunmore Press, 1995)
- Hoffer, Peter and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981)
- Hood, Lynley, *Minnie Dean: Her Life and Crimes* (Auckland: Penguin, 1994)
- Horn, Pamela, *The Victorian Town Child* (New York: New York University Press, 1997)
- Hufton, Olwen, *The Prospect before Her: A History of Women in Western Europe*, Vol. One, 1500-1800 (London: Harper Collins, 1997)
- Hunt, Lynn, ed., *The New Cultural History* (Berkeley: University of California Press, 1989)
- Iacovetta, Franca, and Wendy Mitchinson, eds, *On the Case: Explorations in Social History* (Toronto and London: University of Toronto Press, 1998)
- Ip, Manying, ed., *Unfolding History, Evolving Identity: The Chinese in New Zealand* (Auckland: Auckland University Press, 2003)
- Jackson, Mark, ed., *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (London: Ashgate, 2002)
- _____, *New Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth Century England* (Manchester: Manchester University Press, 1996)
- Kane, Penny, *Victorian Families in Fact and Fiction* (New York: St. Martin's Press, 1999)
- King, Michael, *Nga Iwi O Te Motu: 1000 Years of Māori History* (Auckland: Reed, 1997)
- Knelman, Judith, *Twisting in the Wind: The Murderess and the English Press* (Toronto: University of Toronto Press, 1998)
- Kramar, Kirsten Johnson, *Unwilling Mothers, Unwanted Babies: Infanticide in Canada* (Vancouver: UBC Press, 2005)
- Lange, Raeburn, *May the People Live: A History of Māori Health Development, 1900-1920* (Auckland: Auckland University Press, 1999)

- Lazar, Michelle M., ed., *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse* (Hampshire and New York: Palgrave Macmillan, 2005)
- Leps, Marie Christine, *Apprehending the Criminal: The Production of Deviance in Nineteenth-Century Discourse* (Durham and London: Duke University Press, 1992)
- Levene, Alysa, Samantha Williams and Thomas Nutt, eds, *Illegitimacy in Britain, 1700-1920* (Basingstoke, Hampshire: Palgrave MacMillan, 2005)
- Macdonald, Charlotte, *A Woman of Good Character: Single Women as Immigrant Settlers in Nineteenth-Century New Zealand* (Auckland: Allen and Unwin, 1990)
- Malchow, Howard L., *Gothic Images of Race in Nineteenth Century Britain* (California: Stanford University Press, 1996)
- Mangan, J. A. and James Walvin, eds, *Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800-1940* (New York: St. Martin's, 1987)
- Mangham, Andrew, *Violent Women and Sensation Fiction: Crime, Medicine and Victorian Popular Culture* (Hampshire and New York: Palgrave Macmillan, 2007)
- Marland, Hillary, *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain* (Hampshire and New York: Palgrave MacMillan, 2004)
- Martin, Bill, *Dunedin Gaol: A Community Prison since 1851* (Oamaru: Bill Martin, 1998)
- Maunder, Andrew and Grace Moore, ed., *Victorian Crime, Madness and Sensation* (Aldershot: Ashgate, 2004)
- McClintock, Anne, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995)
- McDonagh, Josephine, *Child Murder and British Culture, 1720-1900* (Cambridge: Cambridge University Press, 2003)
- McLaren, Angus, *The Trials of Masculinity: Policing Sexual Boundaries, 1880-1930* (Chicago: University of Chicago Press, 1997)
- Millen, Julia, *Colonial Tears and Sweat: The Working Class in Nineteenth-Century New Zealand* (Wellington: A.H. and A.W Reed, 1984)
- Mullen, Kevin, *Dangerous Strangers: Minority Newcomers and Criminal Violence in the Urban West, 1850-2000* (New York: Palgrave Macmillan, 2005)

- Munslow, Alun, *The Routledge Companion to Historical Studies* (London and New York: Routledge, 2000)
- Nelson, Claudia, *Invisible Men: Fatherhood in Victorian Periodicals, 1850-1910* (Athens and London: University of Georgia Press, 1995)
- Newbold, Greg, *Crime in New Zealand* (Palmerston North: Dunmore, 2000)
- Phillips, Jock, *A Man's Country: The Image of the Pakeha Male: A History*, Rev. edn (Auckland: Penguin, 1996) (Originally published 1987)
- Pool, Ian, Arunachalam Dharmalingam and Janet Sceats, *The New Zealand Family from 1840: A Demographic History* (Auckland: Auckland University Press, 2007)
- Pool, Ian, *Te Iwi Maori: A New Zealand Population Past, Present and Projected* (Auckland: Auckland University Press, 1991)
- Poovey, Mary, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (Chicago: University of Chicago Press, 1988)
- Porter, Frances, Charlotte Macdonald and Tui MacDonald, eds, *My Hand Will Write What My Heart Dictates: The Unsettled Lives of Women in Nineteenth-Century New Zealand as Revealed to Sisters, Family and Friends* (Auckland: Auckland University Press; Bridget Williams Books, 1996)
- Pratt, John, *Punishment in a Perfect Society: The New Zealand Penal System, 1840-1939* (Wellington: Victoria University Press, 1992)
- Rawle, John, *Minnie Dean: A Hundred Years of Memory* (Christchurch: Orca, 1997)
- Reekie, Gail, *Measuring Immorality: Social Inquiry and the Problem of Illegitimacy* (Cambridge: Cambridge University Press, 1998)
- Roper, Michael and John Tosh, eds, *Manful Assertions: Masculinities in Britain since 1800* (London: Routledge, 1991)
- Rose, Lionel, *The Erosion of Childhood: Child Oppression in Britain, 1860-1918* (London and New York: Routledge, 1991)
- _____ *The Massacre of the Innocents: Infanticide in Britain, 1800-1939* (London; Boston: Routledge and Kegan Paul, 1986)
- Scott, Dorothy, and Shurlee Swain, *Confronting Cruelty: Historical Perspectives on Child Protection in Australia* (Melbourne: Melbourne University Press, 2002)
- Scott, Joan, *Gender and the Politics of History* (New York: Columbia University Press, 1988)

- Shapiro, Ann-Louise, *Breaking the Codes: Female Criminality in Fin-De-Siècle Paris* (Stanford, California: Stanford University Press, 1996)
- Sharpe, J.A., *Crime in Early Modern England, 1550-1750* (London and New York: Longman, 1974)
- Showalter, Elaine, *The Female Malady: Women, Madness, and English Culture, 1830-1980* (New York: Penguin, 1985)
- Smart, Carol, *Feminism and the Power of Law* (London: Routledge, 1989)
- Smith, Linda Tuhiwai, *Decolonising Methodologies: Research and Indigenous Peoples* (Dunedin: University of Otago Press, 1999)
- Smith, Roger, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981)
- Spiller, Peter, Jeremy Finn and Richard Boast, eds, *A New Zealand Legal History*, 2nd edn, (Wellington: Brookers Ltd, 2001)
- Stearns, Peter, *Be a Man! Males in Modern Society* (New York: Holmes and Meier, 1979)
- Strange, Carolyn, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995)
- Strange, Julie Marie, *Death, Grief and Poverty in Britain, 1870-1914* (Cambridge: Cambridge University Press, 2005)
- Swain, Shurlee and Renate Howe, *Single Mothers and Their Children: Disposal, Punishment and Survival in Australia* (New York: Cambridge University Press, 1995)
- Tennant, Margaret, *Paupers and Providers: Charitable Aid in New Zealand* (Wellington: Allen and Unwin and Historical Branch, Dept. of Internal Affairs, 1989)
- Thorn, Jennifer, ed., *Writing British Infanticide: Child Murder, Gender, and Print, 1722-1859* (Newark: University of Delaware Press, 2003)
- Thorns, David and Charles Sedgewick, *Understanding Aotearoa/New Zealand: Historical Statistics* (Palmerston North: Dunmore Press, 1997)
- Tosh, John, *Manliness and Masculinities in Nineteenth-Century Britain, Women and Men in History* (Harlow: Pearson Longman, 2005)
- Twomey, Christina, *Deserted and Destitute: Motherhood, Wife Desertion and Colonial Welfare* (Melbourne: Australian Scholarly Publishing, 2002)
- Walkowitz, Judith R., *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago and London: University of Chicago Press, 1992)

- Weaver, John C., *A Sadly Troubled History: The Meanings of Suicide in the Modern Age* (Montreal and London: McGill-Queens University Press, 2009)
- Weeks, Jeffrey, *Sex, Politics and Society: The Regulation of Sexuality since 1800*, second edition (London and New York: Longman, 1989)
- White, Hayden, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore and London: John Hopkins University Press, 1987)
- _____ *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore and London: John Hopkins University Press, 1978)
- Wiener, Martin J., *An Empire on Trial: Race, Murder, and Justice under British Rule* (Cambridge: Cambridge University Press, 2009)
- _____ *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004)
- _____ *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990)
- Wood, Pamela, *Filth, Dirt and Decay: A New World Arcadia* (Auckland: Auckland University Press, 2005)
- Zedner, Lucia, *Women, Crime, and Custody in Victorian England* (Oxford: Clarendon Press, 1991)
- Zelizer, Viviana, *Pricing the Priceless Child: The Changing Social Value of Children* (New York: Basic Books, 1985)

2. Book Chapters

- Abrams, Lynn, 'From Demon to Victim: The Infanticidal Mother in Shetland, 1699-1899', in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, edited by Yvonne Galloway Brown and Rona Ferguson (East Lothian: Tuckwell Press, 2002)
- Allen, Judith 'Octavius Beale Reconsidered: Infanticide, Babyfarming and Abortion in NSW 1880-1939', in *What Rough Beast? The State and Social Order in Australia*, edited by Sydney Labour History Group (Sydney: Allen and Unwin, 1982)
- Andrews, Jonathon, 'The Boundaries of Her Majesty's Pleasure: Discharging Child-Murderers from Broadmoor and Perth Criminal Lunatic Department, c.1860-1920', in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (London: Ashgate, 2002)

- Arnot, Margaret, and Cornelia Osborne, 'Why Gender and Crime? Aspects of an International Debate', in *Gender and Crime in Modern Europe*, edited by Margaret Arnot and Cornelia Osborne (London: U.C.L. Press Limited, 1999)
- Arnot, Margaret, 'Understanding Women Committing Newborn Child Murder in Victorian England', in *Everyday Violence in Britain, 1850-1950: Gender and Class*, edited by Shani D'Cruze (Harlow: Pearson Education Limited, 2000)
- Bartrip, Peter, 'The British Medical Journal: A Retrospect', in *Medical Journals and Medical Knowledge*, edited by W.F. Bynum, Stephen Lock and Roy Porter (London: Routledge, 1992)
- Bentley, David, 'She-Butchers, Baby-Droppers, Baby-Sweaters, and Baby-Farmers', in *Criminal Conversations: Victorian Crimes, Social Panic, and Moral Outrage*, edited by Judith Rowbotham and Kim Stevenson (Columbus: Ohio State University Press, 2005)
- Berry, Laura C., 'Confession and Profession: Adam Bede, Infanticide and the New Coroner', in *Writing British Infanticide: Child Murder, Gender, and Print, 1722-1859*, edited by Jennifer Thorn (Newark: University of Delaware Press, 2003)
- Bluglass, Robert, 'Infanticide and Filicide', in *Principles and Practice of Forensic Psychiatry*, edited by Robert Bluglass and Paul Bowden (Edinburgh and New York: Churchill Livingstone, 1990)
- Brookes, Barbara, Annabel Cooper and Robin Law, 'National Manhood: Te Akarana Maori Association and the Work of Maori Women on Chinese Market Gardens in Late 1920s New Zealand', in *Rethinking the Racial Moment: Essays on the Colonial Encounter*, edited by Alison Holland and Barbara Brookes (Newcastle: Cambridge Scholars Publishing, 2011)
- Brookes, Barbara, 'Women and Madness: A Case-Study of the Seacliff Asylum 1890-1920', in *Women in History 2: Essays on European Women in New Zealand*, edited by Barbara Brookes, Charlotte Macdonald, Margaret Tennant (Wellington: Allen and Unwin, 1992)
- Cooper, Annabel and Marian Horan, 'Down and out on the Flat: The Gendering of Poverty', in *Sites of Gender: Women, Men and Modernity in Southern Dunedin 1890-1939*, edited by Annabel Cooper, Barbara Brookes and Robin Law (Auckland: Auckland University Press, 2003)
- Cooper, Annabel, Erik Olssen, Kirsten Thomlinson and Robin Law, 'The Landscape of Gender Politics: Place, People and Two Mobilisations', in *Sites of Gender: Women, Men and Modernity in Southern Dunedin, 1890-1939* edited by Annabel Cooper, Barbara Brookes and Robin Law (Auckland: Auckland University Press, 2003)
- Dalley, Bronwyn, 'Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-Century New Zealand', in *The Gendered Kiwi*, edited by

Caroline Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999)

‘Deep and Dark Secrets: Government Responses to Child Abuse’, in *Past Judgement: Social Policy in New Zealand History*, edited by Bronwyn Dalley and Margaret Tennant (Dunedin: University of Otago Press, 2004)

‘The Cultural Remains of Elsie Walker’, in *Fragments: New Zealand Social & Cultural History*, edited by Bronwyn Dalley and Bronwyn Labrum (Auckland: Auckland University Press, 2000)

Davies, Suzanne, ‘Captives of Their Bodies’, in *Sex, Power and Justice: Historical Perspectives in Law in Australia*, edited by Diane Kirkby (Melbourne: Oxford University Press, 1995)

Finn, Jeremy, ‘Codification of the Criminal Law: The Australasian Parliamentary Experience’, in *Crime and Empire 1840-1940*, edited by Barry Godfrey and Graeme Dunstall (Devon: Willan Publishing, 2005)

‘Colonial Government, Colonial Courts and the New Zealand Experience’, in *A New Zealand Legal History*, edited by Jeremy Finn and Richard Boast Peter Spiller, second edition (Wellington: Brookers Ltd, 2001)

Garton, Stephen, ‘Bad or Mad? Developments in Incarceration in NSW, 1880-1920’, in *What Rough Beast? The State and Social Order in Australian History*, edited by S.L.H. Group (Sydney: Allen and Unwin, 1982)

Gregory, Melissa Valiska, ‘“Most Revolting Murder by a Father”: The Violent Rhetoric of Paternal Child-Murder in the Times (London), 1826-1849’, in *Writing British Infanticide: Child-Murder, Gender, and Print, 1722-1859*, edited by Jennifer Thorn (Newark, London: University of Delaware Press, 2003)

Griswold, Robert, ‘Divorce and the Legal Redefinition of Victorian Manhood’, in *Meanings for Manhood: Constructions of Masculinity*, edited by Mark C. Carnes and Clyde Griffin (Chicago and London: University of Chicago Press, 1990)

Jackson, Mark, ‘The Trial of Harriet Vooght: Continuity and Change in the History of Infanticide’, in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002)

Kilday, Anne-Marie, ‘Maternal Monsters: Murdering Mothers in South-West Scotland, 1750-1815’, in *Twisted Sisters: Women, Crime and Deviance in Scotland since 1400*, edited by Yvonne Galloway Brown and Rona Ferguson (East Lothian: Tuckwell Press, 2002)

Kramer, Lloyd, ‘Literature, Criticism, and Historical Imagination: The Literary Challenge of Hayden White and Dominick Lacapra’, in *The New Cultural*

- History*, edited by Lynn Hunt (California: University of California Press, 1989)
- Labrum, Bronwyn, 'The Changing Meanings and Practices of Welfare 1840s – 1990s', in *The New Oxford History of New Zealand*, edited by Giselle Byrnes (Melbourne and Auckland: Auckland University Press, 2009)
- Laqueur, Thomas, 'Bodies, Details, and the Humanitarian Narrative', in *The New Cultural History*, edited by Lynn Hunt (Berkeley: University of California Press, 1989)
- Levene, Alysa, 'The Mortality Penalty of Illegitimate Children: Foundlings and Poor Children in Eighteenth-Century England', in *Illegitimacy in Britain, 1700-1920*, edited by Alysa Levene, Samantha Williams and Thomas Nutt (Basingstoke, Hampshire: Palgrave Macmillan, 2005)
- Lévesque, Andrée, 'Prescribers and Rebels: Attitudes to European Women's Sexuality in New Zealand, 1860-1916', in *Women in History: Essays on European Women in New Zealand*, edited by Barbara Brookes, Charlotte Macdonald, Margaret Tennant (Wellington: Allen and Unwin, 1986)
- Marland, Hilary, 'Getting Away with Murder? Puerperal Insanity, Infanticide and the Defence Plea', in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (London: Ashgate, 2002)
- _____, 'Languages and Landscapes of Emotion: Motherhood and Puerperal Insanity in the Nineteenth Century', in *Medicine, Emotion and Diseases, 1700-1950*, edited by Fay Bound Alberti (Basingstoke: Palgrave Macmillan, 2006)
- Marsh, Margaret, 'Suburban Men and Masculine Domesticity 1870-1915', in *Meanings for Manhood: Constructions of Masculinity*, edited by Mark C. Carnes and Clyde Griffin (Chicago and London: University of Chicago Press, 1990)
- McCarthy, Angela, 'Migration and Ethnic Identities in the Nineteenth Century', in *The New Oxford History of New Zealand* edited by Giselle Byrnes (Melbourne and Auckland: Oxford University Press, 2009)
- McLaren, Angus, 'Males, Migrants and Murder in British Columbia 1900-1923', in *On the Case: Explorations in Social History*, edited by Franca Iacovetta and Wendy Mitchinson (Toronto and London: University of Toronto Press, 1998)
- Olssen, Erik and Andrée Lévesque, 'Towards a History of the European Family in New Zealand', in *Families in New Zealand Society*, edited by Peggy G. Koopman-Boyden (Wellington: Methuen, 1978)
- Olssen, Erik, 'Families and the Gendering of European New Zealand in the Colonial Period 1840-1880', in *The Gendered Kiwi*, edited by Caroline

- Daley and Deborah Montgomerie (Auckland: Auckland University Press, 1999)
- Quinn, Cath, 'Images and Impulses: Representations of Puerperal Insanity and Infanticide in Late Victorian England', in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002)
- Reid, Alice, 'The Influences on the Health and Mortality of Illegitimate Children in Derbyshire, 1917-1922', in *Illegitimacy in Britain, 1700-1920*, edited by Alysa Levene, Samantha Williams and Thomas Nutt (Basingstoke, Hampshire: Palgrave Macmillan, 2005)
- Rice, Geoffrey, 'Public Health in Christchurch 1875-1910', in *A Healthy Country: Essays on the Social History of Medicine in New Zealand*, edited by Linda Bryder (Wellington: Bridget Williams, 1991)
- Scott, Joan, 'Gender as a Useful Category of Historical Analysis', in *Culture Society and Sexuality: A Reader*, edited by Richard Parker and Peter Aggleton (London and New York: Routledge, 2007)
- Seuffert, Nan, 'Jurisdiction and Nation Building: Tall Tales in Nineteenth Century Aotearoa/New Zealand', in *Jurisprudence of Jurisdiction*, edited by Shaun McVeigh (Oxon: Routledge Cavendish, 2007)
- Smart, Carol, 'Disruptive Bodies and Unruly Sex: The Regulation of Reproduction and Sexuality in the Nineteenth Century', in *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality*, edited by Carol Smart (London and New York: Routledge, 1992)
- Strange, Carolyn, 'Stories of Their Lives: The Historian and the Capital Case File', in *On the Case: Explorations in Social History*, edited by Franca Iacovetta and Wendy Mitchinson (Toronto and London: University of Toronto Press, 1998)
- Tennant, Margaret, "'Brazen-Faced Beggars of the Female Sex": Women and the Charitable Aid System, 1880-1920', in *Women in History: Essays on European Women in New Zealand*, edited by Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington: Allen and Unwin, 1986)
- _____ "'Magdalens and Moral Imbeciles": Women's Homes in Nineteenth Century New Zealand', in *Women in History 2*, edited by Barbara Brookes, Charlotte Macdonald and Margaret Tennant (Wellington: Bridget Williams Books, 1992)
- _____ 'The Decay of Home Life? The Home in Early Welfare Discourses', in *At Home in New Zealand: History, Houses, People*, edited by Barbara Brookes (Wellington: Bridget Williams Books, 2000)
- Wanhalla, Angela, 'Family, Community and Gender', in *The New Oxford History of New Zealand*, edited by Giselle Byrnes (Melbourne and Auckland: Auckland University Press, 2009)

Ward, Tony, 'Legislating for Human Nature: Legal Responses to Infanticide, 1860-1938', in *Infanticide – Historical Perspectives on Child Murder and Concealment, 1550-2000*, edited by Mark Jackson (Aldershot: Ashgate, 2002)

Wohl, Anthony S., 'Sex and the Single Room: Incest among the Victorian Working Classes', in *The Victorian Family: Structure and Stresses*, edited by Anthony S. Wohl (London: Croom Helm, 1978)

3. Journal Articles

Abrams, Lynn, 'Families of the Imagination: Myths of Scottish Family Life in Scottish Child Welfare Policy', *Scottish Tradition*, 27 (2002), 42-59

_____, "'There Was Nobody Like My Daddy": Fathers, the Family and the Marginalisation of Men in Modern Scotland', *Scottish Historical Review*, 78.2 (1999), 219-42

Adler, Jeffrey, 'Halting the Slaughter of the Innocents: The Civilizing Process and the Surge in Violence in Turn of the Century Chicago', *Social Science History*, 25 (2001), 29-52

_____, "'My Mother-in-Law Is to Blame, but I'll Walk on Her Neck Yet": Homicide in Late Nineteenth Century Chicago', *Journal of Social History*, 31.2 (1997), 253-76

Ainsley, Jill Newton, "'Some Mysterious Agency": Women, Violent Crime, and the Insanity Acquittal in the Victorian Courtroom', *Canadian Journal of History*, 35 (April 2000), 37-55

Alder, Christine M. and Kenneth Polk, 'Masculinity and Child Homicide', *British Journal of Criminology*, 36.3 (1996), 396-411

Allen, Judith, 'Men Interminably in Crisis? Historians on Masculinity, Sexual Boundaries, and Manhood', *Radical History Review* 82 (2002), 191-207

Anderson, Amanda, 'The Temptations of Aggrandized Agency: Feminist Histories and the Horizon of Modernity', *Victorian Studies*, 43.1 (2000), 43-65

Arnot, M.L., 'Infant Death, Child Care and the State: The Baby Farming Scandal and the First Infant Life Protection Legislation of 1872', *Continuity and Change*, 9.2 (1994), 271-312

Backhouse, Constance, 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada', *The University of Toronto Law Journal*, 34.4 (1984), 447-78

- Bagnall, Kate, 'Rewriting the History of Chinese Families in Nineteenth-Century Australia', *Australian Historical Studies*, 42.1 (2011), 62-77
- Ballara, Angela, "'I Riro It E Hoko": Problems in Cross-Cultural Historical Scholarship', *New Zealand Journal of History*, 34.1 (2000), 20-33
- Bannister, Matthew, 'Kiwi Blokes: Recontextualising White New Zealand Masculinities in a Global Setting', *Genders Online Journal*, 42 (2005) <http://www.genders.org/g42/g42_bannister.txt> [accessed 13 June 2011]
- Barry, Lorelle and Catharine Coleborne, 'Insanity and Ethnicity in New Zealand: Maori Encounters with the Auckland Mental Hospital, 1860 – 1900', *History of Psychiatry*, 22.3 (2011), 285-301
- Behlmer, George, 'Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England', *Journal of the History of Medicine and Allied Sciences*, 34 (1979), 303-427
- Bennett, James, 'Maori as Honorary Members of the White Tribe', *Journal of Imperial and Commonwealth History*, 29 (2001), 33-54
- Bock, Gisela, 'Women's History and Gender History: Aspects of an International Debate', *Gender and History*, 1.1 (1989), 7-30
- Broder, Sherri, 'Child Care or Child Neglect? Baby Farming in Late-Nineteenth-Century Philadelphia', *Gender in Society*, 2.2 (1988), 128-48
- Canning, Kathleen, 'Feminist History after the Linguistic Turn: Historicising Discourse and Experience', *Signs*, 19.2 (1994), 368-404
- Caron, Simone, "'Killed by Its Mother": Infanticide in Providence County, Rhode Island, 1870-1938', *Journal of Social History*, 44.1 (2010), 213-37
- D'Orban, P.T., 'Women Who Kill Their Children', *British Journal of Psychiatry*, 134 (1979), 560-71
- Dalley, Bronwyn, 'Prisons Without Men: The Development of a Separate Women's Prison in New Zealand', *New Zealand Journal of History*, 27.1 (1993), 37-60
- Damme, Catherine, 'Infanticide: The Worth of an Infant under Law', *Medical History*, 22 (1978), 1-24
- Damousi, Joy, 'History Matters: The Politics of Injury and Grief in Australian History', *Australian Historical Studies*, 33.118 (2002), 100-12
- Dean, Peter John, 'Child Homicide and Infanticide in New Zealand', *International Journal of Law and Psychiatry* 7.4 (2004), 339-48
- Donovan, James M., 'Justice Unblind: The Juries and the Criminal Classes in France, 1825-1914', *Journal of Social History*, 15.1 (1981), 89-107

- Doolan, Mike, 'Child Death by Homicide: An Examination of Incidence in New Zealand 1991-2000', *Te Awatea Review*, 2.1 (August 2004), 6-10
- Emmerichs, Mary Beth Wasserlein, 'Getting Away with Murder: Homicide and the Coroners in Nineteenth-Century London', *Social Science History*, 25.1 (2001), 93-100
- _____'Trials of Women for Homicide in Nineteenth Century England', *Women and Criminal Justice*, 5 (1993), 99-109
- Fairburn, Miles and Stephen Haslett 'Violent Crime in Old and New Societies: A Case Study Based on New Zealand 1853-1940', *Journal of Social History* 20.1 (1986), 89-126
- Findlay, Rosie, "'More Deadly Than the Male?'" Mothers and Infanticide in Nineteenth Century Britain', *Cycnos*, 23.2 (2006)
<<http://revel.unice.fr/cycnos/document.html?id=763>> [accessed 24 June 2009]
- Finn, Jeremy, 'John James Meikle and the Problem of the Wrongly Convicted: An Enquiry into the History of Criminal Appeals in New Zealand', *Victoria University of Wellington Law Review*, 41 (2010), 519-54
- _____'The Legal Environment of Salmond's Time', *Victoria University of Wellington Law Review*, 38 (2008), 689-718
- Finn, Jeremy and Charlotte Wilson, "'Not Having the Fear of God before Her Eyes": Enforcement of the Criminal Law in the Supreme Court in Canterbury 1852-1872', *Canterbury Law Review*, 11 (2005), 150-82
- Forbes, T. R., 'Deadly Parents: Child Homicide in Eighteenth and Nineteenth-Century England', *Journal of the History of Medicine and Allied Sciences*, 41 (1986), 175-99
- Frost, Ginger, "'The Black Lamb of the Black Sheep": Illegitimacy in the English Working Class', *Journal of Social History*, 37.2 (2003), 293-322
- Gillis, John R., 'Servants, Sexual Relations, and the Risks of Illegitimacy in London, 1801-1900', *Feminist Studies*, 5.1 (1979), 142-73
- Ginzburg, Carlo, 'Checking the Evidence: The Judge and the Historian', *Critical Inquiry* 18 (1991), 79-92
- Gluckman, L.K., 'Abortion in the Nineteenth Century Maori: A Historical and Ethnopsychiatric Review', *New Zealand Medical Journal*, 93 (1981), 384-86
- Goc, Nicola, 'Medea in the Courtroom and on the Stage in Nineteenth-Century London', *Australasian Journal of Victorian Studies* 14.1 (2009), 30-45
- Goldsmith, Michael, 'Are Blondes a Racial Category? Exploring 'Connexions'', *CNZS Bulletin of New Zealand Studies*, 1 (2008), 93-113

- Graham, Jeanine, 'Child Employment in New Zealand', *New Zealand Journal of History*, 21:1 (1987), 62-78
- Gray, Sheila Hafter, 'Insanity Defence: Historical Development and Contemporary Relevance', *Criminal Legal Review*, 10.2 (Spring 1972), 559-87
- Grey, Daniel, 'More Ignorant and Stupid than Wilfully Cruel': Homicide Trials and 'Baby-Farming' in England and Wales in the Wake of the Children Act 1908', *Crimes and Misdemeanours*, 3.2 (2009), 60-77
- Harris, Ruth, 'Melodrama, Hysteria and Feminine Crimes of Passion in the Fin-De-Siècle', *History Workshop*, 25 (1988), 31-63
- Hendrick, Harry, 'Children and Childhood', *Refresh*, 15 (Autumn 1992)
<<http://www.ehs.org.uk/ehs/refresh/assets/Hendrick15a.pdf>> [accessed 6 December 2010]
- Higginbotham, Ann, 'Sin of the Age: Infanticide and Illegitimacy in Victorian London', *Victorian Studies*, 32.3 (1989), 319-37
- Hogan, Ashley, "'I Never Noticed She Was Dirty': Fatherhood and the Death of Charlotte Duffy in Late-Nineteenth-Century Victoria", *Journal of Family History*, 24.3 (1999), 305-16
- Homrighaus, Ruth Ellen, "'Wolves in Women's Clothing': Baby-Farming and the British Medical Journal, 1860-1872", *Journal of Family History*, 26 (2001), 350-72
- Hunt, Aeron, 'Calculations and Concealments: Infanticide in Mid-Nineteenth Century Britain', *Victorian Literature and Culture*, 34 (2006), 71-94
- Hunter, Rosemary, 'Australian Legal Histories in Context', *Law and History Review*, 21.3 (2003), 607-14
- Hunton, R.B., 'Maori Abortion Practices in Pre and Early European New Zealand', *New Zealand Medical Journal*, 86 (1977), 567-79
- Keating, Ann Louise, 'Interrogating "Whiteness", (De)Constructing Race', *College English*, 57.8 (1995), 901-18
- Kilday, Anne-Marie and Katherine D. Watson, 'Infanticide, Religion and Community in the British Isles, 1720-1920: Introduction', *Family and Community History*, 11.2 (November 2008), 84-93
- King, Edmund G.C., 'Towards a Prehistory of the Gothic Mode in Nineteenth-Century New Zealand Writing', *Journal of New Zealand Literature*, 28.2 (2010), 35-57
- Kociumbas, Jan, 'Azaria's Antecedents: Stereotyping Infanticide in Late Nineteenth-Century Australia', *Gender and History*, 13.1 (2001), 138-60

- Kramar, K.J. and W.D. Watson, 'The Insanities of Reproduction: Medico-Legal Knowledge and the Development of Infanticide Law', *Social and Legal Studies*, 15.2 (2006), 237-55
- Krueger, Christine L, 'Literary Defenses and Medical Prosecutions: Representing Infanticide in Nineteenth-Century Britain', *Victorian Studies*, 40.2 (1997), 271-94
- Lambie, Ian, 'Mothers Who Kill: The Crime of Infanticide', *International Journal of Law and Psychiatry*, 24 (2001), 71-80
- Macdonald, Charlotte, 'Crime and Punishment in New Zealand, 1840-1913: A Gendered History', *New Zealand Journal of History*, 23 1 (1989), 5-21
- Maclean, Sally, 'Child Cruelty or Reasonable Punishment? A Case Study of the Operation of the Law and the Courts 1883-1903', *New Zealand Journal of History*, 40.1 (2006), 7-24
- Marland, Hilary, 'Disappointment and Desolation: Women, Doctors and Interpretations of Puerperal Insanity in the Nineteenth Century', *History of Psychiatry*, 14.3 (2003), 303-20
- Maza, Sarah, 'Stories in History: Cultural Narratives in Recent Works in European History', *The American Historical Review*, 101.5 (1996), 1493-515
- Mein Smith, Philpa, 'Blood, Birth, Babies, Bodies', *Australian Feminist Studies*, 17.39 (2002), 305-23
- _____ 'Infant Welfare Services and Infant Mortality: A Historian's View', *Australian Economic Review*, 24.1 (1991), 22-34
- _____ 'Truby King in Australia: A Revisionist View of Infant Mortality', *New Zealand Journal of History*, 22.1 (1988), 23-43
- Moffat, Kirstine, 'Five Imperial Adventures in the Waikato', *Journal of New Zealand Literature*, 29.2, Special Issue, Writing the Waikato (2011), 37-65
- Moloughney, Brian and John Stenhouse, "'Drug-Besotted, Sin-Begotten Fiends of Filth": New Zealanders and the Oriental Other 1850-1920', *New Zealand Journal of History*, 33.1 (1999), 43-64
- Oberman, Michelle, 'Understanding Infanticide in Context: Mothers Who Kill, 1870-1930 and Today', *The Journal of Criminal Law and Criminology*, 92.3-4 (2002), 707-37
- O'Donovan, Katherine, 'The Medicalisation of Infanticide', *Criminal Law Review* (1984), 259- 64
- Paterson, Lachy, 'Government, Church and Māori Responses to Mākutu (Sorcery) in New Zealand in the Nineteenth and Early Twentieth Centuries', *Cultural and Social History*, 8 (2011), 175-94

- Paterson, Lachy, 'Māori "Conversion" to the Rule of Law and Nineteenth-Century Imperial Loyalties', *Journal of Religious History*, 32.2 (June 2008), 216-33
- Phillips, Jim, 'Why Legal History Matters', *Victoria University of Wellington Law Review*, 41 (2010), 293-316.
- Prior, Pauline M., 'Murder and Madness: Gender and the Insanity Defense in Nineteenth-Century Ireland', *New Hibernia Review*, 9.4 (2005), 19-36
- Rattigan, Cliona, "'Done to Death by Father or Relatives": Irish Families and Infanticide Cases, 1922-1950', *History of the Family*, 13.4 (2008), 370-83
- _____, "'I Thought from Her Appearance That She Was in the Family Way": Detecting Infanticide Cases in Ireland, 1900-1921', *Family and Community History*, 11.2 (November 2008), 134-51
- Resnick, Phillip J., 'Murder of the Newborn: A Psychiatric Review of Infanticide', *American Journal of Psychiatry*, 126.10 (1970), 1414-20
- Robinson, Jan, 'Canterbury's Rowdy Women: Whores, Madonnas and Female Criminality', *New Zealand Women's Studies Journal* 1.1 (1984), 6-25
- Sauer, R., 'Infanticide and Abortion in Nineteenth-Century Britain', *Population Studies*, 32.1 (1978), 81-93
- Scott, Joan W., 'Review: Heroes of Their Lives: The Politics and History of Family Violence by Linda Gordon', *Signs*, 15.4 (Summer 1990), 848-52
- _____, 'The Evidence of the Experience', in *Critical Inquiry*, 17:4 (1991), 773-97.
- Seaborne Davies, D., 'Child-Killing in English Law', *Modern Law Review*, 1.3 (1937), 203-23.
- _____, 'Child-Killing in English Law, Part II', *Modern Law Review*, 1.4 (1938), 269-87
- Simpson, Megan, 'The Action for Breach of Promise of Marriage in Early Colonial New Zealand: "Fitzgerald V Clifford" (1846)', *Victoria University of Wellington Law Review*, 41 (2010), 473-91
- Spooner, Emma, "'The Mind Is Thoroughly Unhinged": Reading the Auckland Asylum Archive, New Zealand, 1900-1910', *Health and History*, 7.2 (2005), 56-79
- Stephens, Mamari, 'Return to the Tohunga Suppression Act 1907', *Victoria University of Wellington Law Review*, 32 (2001), 437-62
- Stevens, Emily, Thelma Patrick and Rita Pickler, 'A History of Infant Feeding', *Journal of Perinatal Education*, 18.2 (2009), 32-39

- Sussex, Lucy, 'Portrait of a Murderer in Mixed Media: Cultural Attitudes, Infanticide and the Representation of Frances Knorr', *Australian Feminist Law Journal*, 4 (1995), 39-54
- Swain, Shurlee, 'Maids and Mothers: Domestic Servants and Illegitimacy in 19th Century Australia', *The History of the Family*, 10.4 (2005), 461-71
- _____ 'The Concealment of Birth in Nineteenth Century Victoria', *Lilith*, 5 (1988), 139-47
- _____ 'Toward a Social Geography of Baby Farming', *History of the Family*, 10 (2005), 151-59
- Thearle, John M. and Helen Gregory, 'Child Abuse in Nineteenth Century Queensland', *Child Abuse and Neglect*, 12.1 (1988), 91-101
- Tosh, John, 'What Should Historians Do with Masculinity? Reflections on Nineteenth-Century Britain', *History Workshop Journal*, 38 (1994), 179-202
- Valverde, Mariana, 'As If Subjects Existed: Analysing Social Discourses', *Canadian Review of Sociology and Anthropology*, 28.2 (1991), 173-87
- Valverde, Mariana, et al, 'On the Case: Explorations in Social History: A Roundtable Discussion', *The Canadian Historical Review*, 81.2 (2000), 226-92
- Ward, Tony, 'Law, Common Sense and the Authority of Science: Expert Witnesses and Criminal Insanity in England, c 1840-1940', *Social and Legal Studies*, 6.3 (1997), 343-62
- _____ 'The Sad Subject of Infanticide: Law, Medicine and Child Murder, 1860-1938', *Social and Legal Studies*, 8.2 (1999), 163-80
- Watson, Katherine D., 'Religion, Community and the Infanticidal Mother: Evidence from 1840s Rural Wiltshire', *Family and Community History*, 11.2 (2008), 84-99
- Wheeler, Kenneth, 'Infanticide in Nineteenth Century Ohio', *Journal of Social History*, 31 (1993), 407-18
- Wiener, Martin J, 'Judges V. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England', *Law and History Review*, 17.3 (1999), 467-506
- _____ 'Murder and the Modern British Historian', *Albion: A Quarterly Journal Concerned with British Studies*, 36.1 (2004), 1-11
- _____ 'Treating "Historical" Sources as Literary Texts: Literary Historicism and Modern British History', *The Journal of Modern History*, 70 (1998), 619-38

Wilczynski, Ania, 'Images of Women Who Kill Their Infants: The Mad and the Bad', *Women and Criminal Justice*, 2.2 (1991), 71-88

Wilson, Dean, 'Community and Gender in Victorian Auckland', *New Zealand Journal of History*, 30.1 (1996), 24-42

Zedner, Lucia, 'Women, Crime and Penal Responses: A Historical Account', *Crime and Justice*, 14 (1991), 307-62

4. Unpublished Papers and Reports

Bergin, P., 'The Crime of Infanticide: A Case for Its Abolition in New South Wales', (Australian National University, Faculty of Law, 2004)

Duncanson, Mavis, Don Smith and Emma Davies, 'Death and Serious Injury from Assault in Children Aged under Five Years in Aotearoa New Zealand: A Review of International Literature and Recent Findings' (Wellington: The Children's Commissioner, June 2009)

Eichelbaum, Thomas, 'The New Zealand Court Structure, Past Present and Future', *The Harkness Henry Lecture* (University of Waikato, 1993)

Findlay, George, 'Report on the Crimes Bill 1957' (Auckland: Justice Department, 1959)

Mahuika, Nepia, "'This Horrid Practice: The Cannibalizing of Māori and Iwi History', Keynote Lecture, *NZHA Conference: Centre and Periphery* (Massey University, Palmerston North, November 2009)

The Law Commission, Preliminary Paper (28), *Criminal Prosecution: A Discussion Paper* (Wellington: The Law Commission, 1997)

UNICEF, 'A League Table of Child Maltreatment Deaths in Rich Nations', *Innocenti Report Card*, 5 (Florence: Innocenti Research Centre, September 2003)

5. Unpublished Theses

Anderson, Duncan, "'Armed with Power for Preventing the Spread of Infectious Disease": The Making of the Public Health Act 1872 and Its Implementation in Auckland Province, 1870-1876' (MSocSci dissertation, University of Waikato, 2002)

Bradshaw, A, 'The Colonial Medea: A Study of Indictments of Women for Serious Violence in the Christchurch Supreme Court 1900-1968' (MA thesis, University of Canterbury, 1999)

- Burke, Lorelle, “‘The Voices Caused Him to Become Porangi’”: Māori Patients in the Auckland Lunatic Asylum, 1860-1900’ (MA thesis, University of Waikato, 2006)
- Grey, Daniel, ‘Discourses of Infanticide in England 1880 – 1922’ (PhD thesis, Roehampton University, 2008)
- Heine, Jessica, ‘Colonial Anxieties and the Construction of Identities: The Employment of Maori Women in Chinese Market Gardens, Auckland, 1929’ (MA thesis, University of Waikato, 2006)
- Homrighaus, Ruth Ellen, ‘Baby Farming: The Care of Illegitimate Children in England, 1860-1943’ (PhD thesis, 2003) (revised edition, History Tools, 2010)
- Kean, Fiona, ‘Illegitimacy, Maintenance and Agency: Unmarried Mothers and Putative Fathers in Auckland, 1900-1910’ (MA thesis, University of Waikato, 2002)
- Merchant, Raema, ‘Who Are Abusing Our Children: An Exploratory Study on Reflections on Child Abuse by Media Commentators’ (MSocSci thesis, Massey University, 2010)
- Powell, Debra, “‘It Was Hard to Die Frae Hame’”: Death, Grief and Mourning among Nineteenth-Century Scottish Migrants to New Zealand’ (MA thesis, University of Waikato, 2007)
- Robinson, Jan, “‘Of Diverse Persons, Men, Women and Whores’”: Women and Crime in Nineteenth Century Canterbury’ (MA thesis, University of Canterbury 1983)
- Schumacher, C, ‘Why Did So Many Babies Die? Infant Mortality Dunedin 1900-1920’ (Research essay, University of Otago, 1999)
- Sumerling, Patricia, ‘Infanticide, Baby-Farming and Abortion in South Australia 1870-1910’ (BA (Hons) dissertation, University of Adelaide, 1983)
- Tennant, Margaret, ‘Women and Welfare: The Response of Three New Zealand Women to Social Problems of the Period 1890-1910’ (BA (Hons) dissertation, Massey University, 1974)
- Wallace, Shirley, ‘The Mortality of Orphaned, Illegitimate and Abandoned Children from Colonial New Zealand Times’ (MA thesis, University of Auckland, 2011)
- Wood, Claire, “‘Bastardy Made Easy’”? Unmarried Mothers and Illegitimate Children on Charitable Aid, 1890-1910’ (BA (Hons) dissertation, University of Otago, 1990)

6. Online Sources

Online Dictionaries

Te Aka Māori-English, English-Māori Dictionary

<<http://www.maoridictionary.co.nz/>> [accessed 2 February 2012]

Brown, Bernard, 'Edwards, Worley Bassett – Biography', *Dictionary of New Zealand Biography (DNZB)*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/3e2/1>> [accessed 5 April 2011]

Butterworth, Susan, 'Herdman, Alexander Lawrence – Biography', *DNZB*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/3h18/1>> [accessed 5 April 2011]

David Hamer, 'Stout, Robert – Biography', *DNZB*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/2s48/1>> [accessed 2 February 2011]

Erlam, H.D., 'Philson, Thomas Moore – Biography', *DNZB*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/2p16/1>> [accessed 8 August 2012]

Laster, Kathy, 'Knorr, Frances Lydia Alice (Minnie) (1867–1894)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University <<http://adb.anu.edu.au/biography/knorr-frances-lydia-alice-minnie-13030/text23559>> [accessed 3 April 2012]

Mackay, Jamie, 'Cooper, Daniel Richard – Biography', *DBNZ*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/4c33/1>> [accessed 19 May 2009]

Radi, Heather, 'Makin, Sarah Jane (1845–1918)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University <<http://adb.anu.edu.au/biography/makin-sarah-jane-13271/text23651>> [accessed 3 April 2012]

Strachan, S.R., 'Hocken, Thomas Morland – Biography', *DNZB*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.TeAra.govt.nz/en/biographies/2h39/1>> [accessed 8 August 2012]

Tennant, Margaret, 'McGregor, Duncan – Biography', *DNZB*, Te Ara - the Encyclopedia of New Zealand, updated 1-Sep-10 <<http://www.teara.govt.nz/en/biographies/2m7/1>> [accessed 10 May 2012]

Other Online Sources

- Badassay, Prinisha, 'This Sinister Business in Babies: Infanticide, the Perils of Baby Farming Scandals and Infant Life Protection Legislation, South Africa, 1890-1930' (*WISH*, Wits Institute for Social and Economic Research, 2012) <wiser.wits.ac.za/system/files/seminar/Badassy2012.pdf> [accessed 14 April 2012]
- Editorial, 'Another Dead Baby – So What Can We Do?', *Nelson Mail* [online] (18 January 2012) <<http://www.stuff.co.nz/nelson-mail/opinion/6275575/Another-dead-baby-so-what-can-we-do>> [accessed 20 January 2012]
- Haller, Dorothy L., *Bastardy and Baby Farming in Victorian England* (updated 1990) <<http://www.loyno.edu/~history/journal/1989-0/haller.htm>> [accessed 4 May 2009]
- Kiro, Cindy, 'Ngā Mātua – Māori Parenting - Abuse and Discipline', *Te Ara - the Encyclopedia of New Zealand* <<http://www.TeAra.govt.nz/en/nga-matua-Māori-parenting/4>> [accessed 21 December 2011]
- Ng, James, 'Chinese Settlement in New Zealand' <<http://www.stevenyoung.co.nz/The-Chinese-in-New-Zealand/History-of-Chinese-in-NewZealand/Chinese-settlement-in-NZ-past-and-present.html>> [accessed 1 November 2011]
- Norris, Winifred, 'Linwood Refuge: Benevolent Institutions', *Fragments of history: hospitals: tuberculosis and benevolent institutions and miscellaneous* (Christchurch: The North Canterbury Hospital Board:, 1942) <<http://christchurchcitylibraries.com/Heritage/Digitised/Norris-1942/>> [accessed 22 June 2010]
- Pepperell, Susan, 'Ethnic Label Attached to Child Abuse' <<http://www.stuff.co.nz/national/5132346/Ethnic-label-attached-to-child-abuse>> [accessed 1 December 2011]
- Renwick, Charlotte, 'The Child Abuse Epidemic: Protecting Our Children' (online report) <<http://policyprojects.ac.nz/charlotterenwick/the-child-abuse-epidemic/>> [accessed 28 February 2012]
- Shum, Lynette, 'Remembering Haining Street: With Both Eyes Open' <<http://www.stevenyoung.co.nz/The-Chinese-in-New-Zealand/Current-Historical-Research/REMEMBERING-HAINING-STREET-With-both-eyes-open.html>> [accessed 1 November 2011]
- Smith, A.T.H., 'New Zealand Criminal Procedure' <www.law.cam.ac.uk/faculty-resources/10006372> [accessed 5 April 2011]
- Tyler, Fran, 'The Newlands Baby Farm Murders' <www.crime.co.nz/c-files.aspx?ID=4880> [accessed 7 May 2012]

