

The Darker Side of Motherhood: Abortion and Infanticide in South Australia

1870-1910

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In the present day when contraceptives are readily available and abortion is legal, much of the stress associated with unwanted pregnancy has been alleviated. Moreover, to have an infant out of wedlock is no longer a social stigma and social welfare support systems have been created to aid unsupported women to raise their infants with dignity.

In Adelaide at the turn of the century the situation was rather different. Matters relating to reproduction were often an ordeal that were very much part of women's common experience. For many women unwanted pregnancy was an issue that had to be confronted secretly, alone, or with trusted friends or relations. How women dealt with unwanted pregnancy was so secret that it is not possible to know to what extent abortion or infanticide occurred. What is apparent, however, is that despite the risks, legal and medical, women went to extreme lengths to avoid motherhood. The reason we know that such practices did occur at all is that some women did get caught. Their cases not only reached the courtrooms but were sensationally reported in the newspapers of the day. The study that follows focuses on events surrounding four cases in South Australia between 1870 and 1910.

In earlier times where contraception had failed (if used at all), abortion was seen simply as another form of birth control. The existence of folk remedies used to cure the 'suppression of the menses' in the first few weeks of pregnancy suggests that abortion and contraception were viewed as analogous practices. When menstruation had not been restored by this method, the more drastic measure of intervention by instruments, by the woman herself or by an abortionist, was the next resort. Abortion was the next logical step in a series of options that women could use for ridding themselves of an unwanted pregnancy. Following a failed abortion, the only other options open to women wishing to rid themselves of an unwanted child were infanticide or baby-farming.¹ 'For many working-class women, abortion was the easiest, cheapest, and in many cases the only available method of birth control, and was accepted as part of everyday life'.² Further, in spite of it being dangerous to health³ and illegal, abortion was part of a female subculture and 'was not seen as a sin'.⁴ Angus McLaren states that 'the problem is that we know very little of the extent of

the practice'.⁵ 'Quantifiers, moreover, are put off by the difficulty, if not impossibility, of establishing the incidence of acts which were illegal and therefore hidden from public scrutiny'.⁶

In Adelaide, it was almost impossible to find out the extent of the practice. Writing of another Australian colony, Judith Allen claims the 'New South Wales Coroners' registers suggest that deaths due to criminal abortion were far higher and that many such cases were inaccurately grouped under "Accidents of Pregnancy", "Septicaemia", and "Haemorrhage" in the official statistics, simply because the verdict returned was open or ambiguous'.⁷ South Australian evidence suggests a similar situation. In Adelaide the *Coroner's Report Book* from 1879 lists such cases of death as: 'Sarah Jane Oxley, 35 years, died of internal haemorrhage, 29.12.1879'; 'Elizabeth Filling, 20 years, taken to Royal Adelaide Hospital, died of abdomen pains – cause of death, peritonitis, 16.3.1884'; 'Rose Lynch, 22 years, died of abdomen pains, "intestinal rupture" – was servant, – interviewed young man whom she was keeping company, 29.9.1884'. It is rare to find any reference to abortion between 1879 and 1889. The only reference that specifically lists abortion as being the cause of death is that of Sarah White, 29 years, who died after taking a drug, 'bitter-apple' (colocynth), to procure an abortion (14 December 1879). At the inquest it was stated that her efforts had been unaided by others.⁸

Insights into events surrounding abortions are sometimes revealed when unsuccessful attempts resulted in permanent maiming, critical illness or death, and thus involved doctors and subsequently the police. Evidence of unsuccessful abortions which led to inquests, police investigations and criminal proceedings can be found in records of the police department starting from around the 1890s in South Australia. These cases in no way give an indication of the prevalence of the practice. In England, abortion became a statutory offence in 1803⁹ and the law was further tightened up in 1861 in *The Offences Against the Person Act*.¹⁰ In South Australia the practice represented a felony and, whether the convicted person was a woman attempting her own abortion or an abortionist, it could result in a conviction of up to fourteen years, and not less than three years, with hard labour. Anyone supplying poison or any other noxious substance or instrument committed a misdemeanour and was liable to imprisonment not exceeding three years with hard labour. Writing of reproduction – related crime in New South Wales, Allen states 'during the 1880s and 1890s the majority of indictments were for infanticide or concealment of birth. From

the early twentieth century more cases involved abortionists.¹¹ This experience mirrored that of South Australia, but it should be pointed out that the increase of reported abortion cases appears to have started as early as the 1890s in Adelaide.¹² In the *Prisoners Sentenced Book* of the Supreme Court of South Australia, as in New South Wales, more abortionists were charged after 1900 but convictions were still, nevertheless, scarce. From 1909 until 1930, according to this source, only eleven people were ever convicted in South Australia for administering drugs, or using instruments to attempt to procure an abortion.¹³ Sentences ranged from six months to five years with hard labour. However, what cannot be established easily is how many other abortionists may have been convicted of manslaughter. The *Prisoners Sentenced Book* does not record any other evidence relating to the 'manslaughter' conviction.

Allen writes of New South Wales that official statistics for death due to criminal abortion did not begin until 1905¹⁴ and this could be one reason why in South Australia reliable statistics are almost impossible to find. She also states: 'statistically few deaths in the maternal mortality statistics for the period were attributed to criminal abortion. It seems clear that the policy was to ascribe a woman's death only where an abortionist was named, identified or admitted to be involved by the dying woman'.¹⁵

Abortion did not require a husband or lover's co-operation. Its adoption sometimes reflected a woman's concern for the welfare of her family, where it was likely to suffer with an extra mouth to feed. Both these aspects of the practice emerge in the following cases. They also reveal much about abortionists and their business operations in Adelaide and the difficulty of convicting an abortionist. Many, clearly, had lucrative businesses, though well known to the police.

The four abortion cases that follow are the first to be recorded in the Police Department's Special Lists after the 1890s (index files to police material are held by State Records South Australia). There is enough material surrounding each case to illustrate the problems of abortion cases, e.g. the problem of convicting abortionists, the social attitudes relating to unmarried motherhood, and the fact that the four cases involved women who were married and unmarried, women who were poor and in comfortable circumstances. They demonstrate that, despite the legal and medical risks, women were prepared to go to extreme lengths to avoid motherhood. The material for these four cases comes from the Police Department records and the

newspapers.¹⁶

In 1893 Clara Atkinson, already mother of eight, sought the services of Madam Harper of No. 4, North Terrace. In her statement to the police, Atkinson stated: 'I knew I was pregnant. As we were in poor circumstances and have eight children, I did not want more. I had often heard people talking about Madam Harper on North Terrace preventing children, so unknown to my husband, I paid her a visit at her house on North Terrace'.¹⁷

Atkinson only had ten shillings on her and was told that an 'operation' would cost one guinea. Harper had said that because Atkinson had an honest face she would do the 'operation' then, and gave her three weeks to pay the remaining eleven shillings.

The first attempt did not work. Harper had used a long piece of wire of a reddish colour and had inserted it into Atkinson for a period of twenty minutes. Six days later when there was still no 'miscarriage', she returned to Harper for another attempt. She was told to come back the next day as there was only one instrument and that was already in use. The next day, before the operation was performed, Harper said 'I must get the instrument, it is in a patient now, but I will take it out for you, she can have it again after'. The next day, 25 November, Atkinson aborted but as the days went by she began to suffer from severe haemorrhaging and pain. She still had not told her husband of her abortion but sent for her mother, whom she did tell. The mother, fearing that her daughter was very ill, sent for a Dr Lawrence. He was informed that Atkinson had had a miscarriage, and he and Mr Atkinson were only told otherwise when it was realised she was critically ill. Lawrence performed a curette of the womb on 8 December to remove all placenta debris, the cause of blood poisoning, and this saved Atkinson's life. On 10 December Lawrence reported the case to the police. In the conclusion of her statement to the police, Atkinson said: 'I am not pregnant now. I had no idea I was doing wrong in trying to stop more children coming as we could not feed more'.¹⁸

It is clear that Harper was an exceedingly popular abortionist. She performed as many as five operations' per morning for a guinea a time.¹⁹ Her business was not confined to Adelaide. She revealed to Atkinson her imminent visit to Broken Hill where she was to collect £40 owing to her. From their enquiries, the police established that Harper would be difficult to convict. To begin with Harper's husband was Dr Brierley Fairburn, a registered medical practitioner.²⁰ What is

clear, however, is that a Dr Brierley figures often in abortion cases, and was known to have collaborated with Harper on several occasions.²¹ It was established that Harper always conducted her 'operations' behind locked doors, with no witnesses. Hence she ensured there was never any corroborative evidence available. The woman having the abortion could not be a witness for she was an accomplice and a conspirator.²² Even if she made a statement like Atkinson did, the police could not base a case on her evidence. In a case in 1923 the problem of using an accomplice was further raised in court:

it has long been a rule of practice at Common Law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice, and in the discretion of the judge to advise them not to convict upon such evidence. This rule of practice has become virtually equivalent to a rule of law.²³

The police could not expect to get any convicting evidence from Harper's servant either, for she was indebted to Harper for services rendered professionally. Atkinson had stated in her evidence that there was in existence an instrument and a book in which patient's names were registered. The police were not prepared to take the risk of searching Harper's house for the instrument and book, and the Chief Secretary writes:

It seems hopeless without running the risk of an action against the police to get possession of the book. If that risk is taken I should have some hope of going to the jury and getting a conviction notwithstanding the direction of the judge as to accomplices criteria. The judge cannot withdraw the evidence of the accomplice from the jury.²⁴

As far as can be ascertained, the case never came before the courts.

Atkinson was one of the lucky ones, but Jessie Burnett Cass was not. In February 1897, Cass, a single woman of nearly twenty years of Port Pirie, died from blood poisoning as a result of an abortion. She had travelled to Adelaide with the full support of her lover who was prepared to pay for the treatment she would receive at the hands of an abortionist. Madam Hillier advertised in the papers as a herbalist,²⁵ as well as advertising that she provided full board at fifteen shillings per week. She gave electric baths and massages and also ran a business supplying 'preventatives' and pills against the conception and birth of children. Cass stayed ten days at Hillier's who told her that her pregnancy was 'too far gone' for any pills to do any good. Nevertheless, she would try for a few days for a fee of six pounds to see if her herbal treatment would work. In the event, it failed.

Cass wrote several letters to her lover whilst in Adelaide and they are a testament to the emotional trauma experienced by a single pregnant woman and what she was prepared to suffer to escape the stigma of unmarried motherhood. Most of the four letters were published in the *South Australian Register* during the inquest. When it was realised herbal treatment had failed Cass wrote: '... it will be better for me to go under the operation ... at once, than to have the child, though there is the doctor's and nurses expenses Saying nothing of the disgrace on both sides ... I will stand any amount of pain if only I get well, as it will be nothing to the agonies of the mind ...'²⁶ Shortly after, she wrote again: 'The only thing, darling, that grieves me to think that you have to stand all the expense when I am to blame equally as much as you. Oh Ern, it makes my heart ache even to think of it, but as it is your wish, dear, and that you think so much of me, I will bear it ...'²⁷

Cass had the operation and a nine inch catheter 'the length of three hat pins' was left in her for three days. Two days later she travelled back to Port Pirie and died soon afterwards. In this case the police demonstrated considerable determination in trying to obtain a conviction. There is some confusion as to which doctor actually performed the operation, for in the evidence in both the newspaper accounts and the Police Department records, a Dr Brierley and a Dr Napier are both mentioned. Of Brierley, the police wrote 'that a strong counsel must be engaged to conduct the case for the Crown for it offered the opportunity of breaking up one of the most notorious combinations of reputed abortionists and he [Brierley] was sure to be well defended.'²⁸ It was shown that Brierley, although a duly qualified practitioner, had not practised as an ordinary medical man but had for years been reputed to be a professional abortionist. He was for a time associated with Madam Harper, and had been implicated in an abortion case in 1893 with her, where the client had died.²⁹ After the inquest in this case, Harper was committed for trial but was acquitted by the Supreme Court. It was further said of Brierley that he was not socially regarded as a respectable member of the medical profession but rather as an outcast, and his associates were considered to be of the shady class.³⁰ Again, the police did not manage to make a conviction.

In 1905 a twenty-one year old single woman, Winnie Goater, went missing from her home in King William Street South, Adelaide. She was living with her mother and with her mother's domestic servant. Missing from 18 September 1905, the first clues establishing her fate were discovered on 30 September. Her mother, it was

revealed, suspected that her daughter was pregnant and she knew of the young man she was seeing. He was traced on 30 September and brought to the detective's office to be questioned. After he was 'treated to some pretty straight talk which seemed to frighten him', he confessed that he thought she might have visited a particular house in Parkside. The house belonged to a 'Dr' Francis Sheridan³¹ who, after much questioning by the police, made a statement that brought to light the tragic event surrounding Goater's effort to terminate an unwanted pregnancy.

Goater suffered the most tragic and lonely death. Sheridan repeated that she had come to him on 17 September, asking for a certain operation. When he would not perform it, she fell into a fit. Although Sheridan denied the charges, it was apparent that she had had an abortion at some stage and fell into a comatose state from which she never recovered. Sheridan phoned a Dr Coombe³² in Hindmarsh the day after the 'fit'. Sheridan revealed to Coombe that he was not qualified, and so therefore could not give a certificate of death. In Coombe's statement to the police, he recorded that he 'was surprised to find that [Sheridan] was not a legally qualified practitioner'.³³ When it looked like Goater was not likely to recover, Sheridan needed the services of someone who could give a death certificate which would not be questioned.

Goater lay in a comatose state in Sheridan's house from 17 September until 25 September. When she died, Coombe wrote out the death certificate, cause being acute nephritis – uramia miscarriage.³⁴ Coombe then asked an undertaker from Bowden to remove the body on 26 September. On his way back to Bowden, the undertaker, his horse and trap and the coffin was seen by a constable to stop at the Terminus Hotel from 11 p.m. and was still there until 2.30a.m. The constable said to the undertaker that 'he better get away home'. The undertaker had replied: 'I have a body of a case of typhoid fever on board now. I got it at the Parkside Asylum. We must drink whiskey to kill the germs of typhoid'.³⁵

Following the police investigations, the body of Goater was exhumed and reinterred in the West Cemetery. An account of the inquest was written by the Sub Inspector of Detectives, Priest, to the Commissioner of Police: 'That Winifred Goater came to her death at Parkside, that Frederick John Sheridan and William MacDonald (Winnie Goater's lover) on the 13th Day of September, 1905, feloniously, wilfully and of malice aforethought did kill and murder the said Winifred Goater. Sheridan and MacDonald who were present were committed for trial.'³⁶ At the inquest, the professional relationship between Coombe and 'Dr'

Sheridan could not be established, especially since Coombe had claimed that he did not know that Sheridan was unqualified. It was stated that either Coombe had made an error of judgement in giving the death certificate when he should rightfully have reported the death to the Coroner, or he had something to hide. It was further stated in the medical evidence that Goater had died due to a haemorrhage after a miscarriage. Moreover, it could not be established what role Goater's lover, William MacDonald, had had in the case. Although Sheridan was committed for trial, there is no further evidence to confirm that the case reached the Supreme Court.

A year later, Sheridan was sentenced to ten years imprisonment for the manslaughter of Adelaide Ray. According to the *Register*, Sheridan had twice appeared before the Courts in like circumstances.³⁷ He was to be convicted and sentenced to a further two and a half years imprisonment in 1929 for procuring an abortion. Sheridan's 'career' stretched over a long period of twenty-five years. He was convicted twice but figured in four cases. One can only speculate as to how many successful abortions he may have performed.

In the 1906 case, the woman who died after one of his abortions was neither a single woman nor a poor married woman, but according to the *Register* had been in comfortable circumstances and respectably connected.³⁸ The newspaper continued: 'there was no apparent reason for her seeking to evade the joy of motherhood and become an accessory in crime to the sacrifice of her own life and another.'³⁹ The *Register* also voiced its opinion that the woman having the abortion was just as guilty of the capital offence as the abortionist, because the victim was small and voiceless.⁴⁰ Ray died whilst the abortion was being performed. Sheridan realised that he would almost certainly receive a severe sentence for the crime and decided he had to leave Adelaide as quickly as possible though he only had three pounds in the world. In a hasty letter to one of his friends he asked for help and requested he

keep mum, for old times sake, and round up the boys and see if they will help me to get away. Money is all I want. You came to me nearly a year ago with offered assistance, which I did not require then, but now the case is widely different Give the letter to anyone of the boys who has sympathy for me.⁴¹

Sheridan was arrested before he could escape, when the body of Ray was seen by a visitor to his home and reported to the police.

From these four cases, it is clear that there was a ring of abortionists existing in Adelaide which the police knew of and which provided some with a good living.

Unravelling all the connections between the herbalists, abortionists, chemists,⁴² nurses and doctors is difficult, but it appears there was some kind of network operating. Part of the difficulty was that aliases were used and some of the cases being investigated by the police were suddenly stopped. Gaps in the evidence, for example that concerning Brierley, obscure the nature of his relationship with Harper. Was he her husband or not? Was he also a barrister as the police files state? What is beyond doubt is that some women who felt this need for abortions knew where to go and were prepared to run the risks, both physical and legal.

Unlike New South Wales, no medical practitioners were charged with abortion related crimes in South Australia within this period.⁴³ However, the folk-lore of medical practice suggests doctors may have performed a curette of the uterus to secure an abortion for a patient in the days when abortion, as such, was illegal. The actual medical procedure of dilatation and curettage, commonly known as a curette, only became routine during the 1890s, when antiseptic techniques made safer the formerly dangerous procedure. The increasingly routine use of the curette would undoubtedly have made it safer for doctors to become involved in abortion, though it was still considered a difficult operation which some doctors of the day found alarming.⁴⁴

In 1890, Dr E.W. Way founded a special gynaecological department for the Diseases of Women at the Royal Adelaide Hospital, and he led the way in many new and later well-recognised surgical procedures.⁴⁵ In 1880 and 1881 the number of gynaecological operations performed in the hospital had totalled only twelve. But of those twelve, only one suggests that an abortion-related operation was performed. It was on a nineteen year old woman, for 'retained menses'. However, by 1894 medical procedure in this field had changed dramatically, as a result of technical advances in surgery. Out of a total of eighty-four such operations in 1894 in the Royal Adelaide Hospital's *Operations Register*, seventy-four were for 'curette of uterus'.⁴⁶ The operation was performed on girls as young as sixteen. Four were specifically listed as curette of uterus after abortion. Two died after curette of uterus, one of them as a result of septic peritonitis; one had a curette to remove a dead foetus and fourteen had the operation for endometritis (inflammation of the womb). One of the causes for this disorder is the presence of retained placenta or a foreign body.⁴⁷

This is not to suggest that the three very eminent doctors at the Royal Adelaide Hospital, Way, Hamilton, and Stirling, were abortionists, but it is possible that as a result of abortions outside the hospital, doctors within the confines of a hospital were

using improved techniques to make good the work of incompetent abortionists. The Sydney *Bulletin* indicated an increase of abortion in Sydney as a result of the passing of the New South Wales Children's Protection Act of 1892:

this may merely prove that more care is given to prevent detection, and that the further-reaching evil of abortion is more prevalent now than formerly; now it is the abortionist who waxes fat, and the hospitals are crowded with the victims of their malpractice ... and ... the hospital authorities are forced by circumstances to become accessories after the fact, because both of the urgency of the cases and the impossibility of gaining conviction in 999 cases out of a thousand, they are to grin and bear it.⁴⁸

In South Australia the Destitute Person's Act of 1881 was as effective as the New South Wales 1892 Children's Protection Act for it introduced legislation that required the registration of foster-mothers designed to protect against infanticide and baby-farming. Although police records of abortion increased after this time, there is no evidence to suggest that the police prosecuted more abortionists or that police policy regarding abortion was changed.⁴⁹ Harper was never convicted, yet she was well known to the police.⁵⁰ Crude estimates suggest she could perform a minimum of 1,200 abortions per year whilst Sheridan's career spanned a period of twenty-five years. There were only two abortionists whose activities were exposed and became known to the police. If one were to assume there were others, then the meagre total of only eleven convictions from 1908 to 1930 cannot be taken as any indication of the extent of the practice.

For those women intent on avoiding motherhood, but for whom attempted abortion had failed, been left too late or was seen as too dangerous, there was an alternative – infanticide. It is to this alternative, this paper now turns.

Infanticide 'is the murder of a newborn child committed by the parents or with their consent – a practice that stands apart both as to its origin and its associations from the killing of another man's child, which is simple murder.'⁵¹

It has served to eliminate motherless infants, multiple births, and illegitimate and deformed children; to space children, to regulate future adult sex ratios; and to adjust family and community size to food responses, subsistence patterns of the society, or nomadic conditions.⁵²

'It has been employed on every continent in every type of culture from the primitive to the highly civilised.'⁵³

With the spread of Judaeo-Christianity and its commandment against killing, attitudes changed, making infanticide not only a crime but one with severe penalties attached to it. Despite the heavy penalties, infanticide was believed to have

flourished until the late nineteenth century in both Europe and Australia.⁵⁴ The act of infanticide might be disguised in many forms and its detection was often difficult. Infants' blood was rarely spilled. Instead choking, suffocation, drowning, deliberate neglect and starvation were more generally resorted to.

In Australia, infant mortality figures showed that many infants died of illnesses which we today would not recognise as fatal. Diagnosis of cause of death such as 'teething', 'atrophy', 'debility', 'convulsions' and 'premature births' were commonplace. Henry Heylyn Hayter, the Government Statistician of Victoria, who had never resided in South Australia, first noticed South Australia's excessive infant mortality rate whilst compiling the *Victorian Year-Book 1876-7*. In a paper presented to the Philosophical Society of Adelaide, he wrote that he hoped he would be excused for bringing to notice a matter which he saw as vitally important. He had noticed that in a three year period to the end of 1875 the causes of half the infant deaths were 'in the highest degree indefinite'.⁵⁵ He hoped, by bringing the matter to notice of the members of the Society, to prompt some action, 'which might result in wiping out altogether, or, at any rate, in reducing the utmost degree of faintness the one dark shadow which at present partially obscures the brightness which should spread over the whole of the fair surface of their promising and interesting colony'.⁵⁶ Indefinite causes, to which Hayter referred, appeared as the top six causes of death and accounted for 1,708 out of 3,641 reported infant deaths.⁵⁷ Rarely were infant deaths questioned. It was accepted that the survival rate for children was low and, because life to the Victorians was cheap, it can be suggested that unwanted infants were at the greatest risk. Mothers of such Unwanted infants could take advantage of this situation and, when such cases did come before the Coroner, infants dying 'through want of breast-milk'⁵⁸ could well have been the result of deliberate deprivation. At the worst a mother, such as Emily Edges, may have been censured by the Coroner in October, 1885, her illegitimate infant having died of 'marasmus – death accelerated through improper nourishment – censure of mother of child';⁵⁹ and 'death of infant female, died of suffocation – 3 weeks, no evidence to warrant manslaughter but mother to be severely censured';⁶⁰ 'illegitimate male child of Amelia Bergin, overloyed (mother fond of child)'.⁶¹ Cases such as these were frequent. Coroners' reports sometimes expressed unease in such cases, adding that the vagueness of diagnosis could have been infanticide by starvation, deliberate neglect and suffocation. Whilst these infants' deaths did not attract much attention by the police, proven infanticide did.

In 1870 Mary Partington of Port Lincoln was a widow, 28 years old and mother of six children whose ages were between three and fourteen years. She lived in a house that was built of sheoak logs and plaster and kept her family together by 'nursing and washing'.⁶² A neighbour who lived forty yards away had accused her of being 'in the family way' in June of that year, which Partington had denied. A neighbour in October noticed she was no longer 'stout' and reported her suspicions to the police. She was arrested on a charge of concealment of birth after she had admitted to giving birth. She said the child had been born prematurely, that she had buried it in the sandhills but had not committed murder.

The case is particularly interesting for she was found guilty of murder and given the death penalty but with a strong recommendation to mercy on account of her children. In the 1870s the Newspapers of Adelaide gave full descriptive accounts of inquests and trials. This case was no exception and the trial was well detailed. Primitive forensic methods to investigate the infant's death were used and illustrated interesting issues relating to the legal definition of infanticide. Tests were used to determine whether the infant had, in fact, ever breathed at all. If not, she could be charged with concealment of birth but not with murder. The evidence suggested that, because the lungs of the infant were fully inflated and floated in water, the infant had breathed, though it remained possible the infant could have died during the process of birth itself. One of the problems of criminal law was, and still remains, the question of what constitutes a 'live birth'. Moreover, 'live birth' in the legal sense may differ from a medical definition.⁶³

In medical words, respiratory action of the child whether initiated partly within or wholly without the maternal parts is taken to be indicative of live birth, but this is not the legal view, for as a matter of law what happens before birth cannot indicate the position after birth. What the law requires is life after birth, not before birth. This difference between legal and medical terminology is capable of giving rise to misunderstanding when medical evidence is given In court.⁶⁴

If Partington attempted to kill the infant before the process was over, it was not murder in the eyes of the law (although the birth may have been 'live' medically). Legally the infant had to have had a separate existence from its mother before it could be considered live. This was difficult to prove. According to the *South Australian Register*, in Partington's case the law was that if 'after the child was fully born, however short the interval might be, its life was taken wilfully and maliciously, the person committing the act was guilty of murder. But they must satisfy

themselves that the child was fully born; and this was not proved by the fact of the child having respired.’⁶⁵ The infant had bruising around the head which could have been the result of the birth process or an accidental fall, or violence, but it was impossible to determine which was the actual cause.

In South Australian law there was no charge for infanticide, only murder, and so juries were very reluctant to convict any mother of the murder of her infant because the charge automatically meant the death penalty. In South Australia no mother was ever hanged for the crime but the penalties for the two cases with which this paper is concerned were commuted to life imprisonment (fourteen years) with hard labour.

William Glanville says of the English situation:

not for many years – not since 1899 in England – has there been any question of a capital sentence being carried out, so that it became nothing more than a devilish kind of jest, though, the unhappy woman herself might not realise that the working of the law was kindlier than its professions. This fact, together with the frequent refusal of juries to convict mothers of the murder of their children, prompted in England a widespread desire for change in the law.⁶⁶

In the Partington case, the Adelaide jury followed the medical evidence supplied by a Dr Stedman, that there had been a ‘live birth’ medically speaking, when perhaps concealment of birth, the original charge, would have been more than just in the face of inadequate evidence.

In convicting Partington of murder, another social problem was created; her six children were all admitted into the Destitute Asylum.⁶⁷ When Partington was struggling to make a living to keep herself and her children together, it is interesting to reflect about her position within the community where she lived and her relationship with other women. Although it is assumed married women did help each other out in times of confinement, especially in rural areas where doctors were scarce, it is obvious in Partington's case that she was for some reason socially isolated and therefore vulnerable. The question arises, how did sexually active widows fit into a small community? Were they outside of the pale, like single girls, or were there any exceptions made for widows with children? For Partington, it rather looked as though she had been ostracised because of her neighbour's disapproval of the liaison she may have had. The judge made her position explicit when sentencing her: ‘Mary Partington, you have been found guilty of the wilful murder of your illegitimate child.’⁶⁸

As for her guilt over the death of her infant, the judge also stated ‘that the jury

could not have found the prisoner guilty of any less offence except concealment of birth, because a verdict of manslaughter he should not have felt justified receiving.’⁶⁹ Partington’s case demonstrated the confusion which existed between medical and legal definitions of live birth, and its implications for a charge of murder.

The number of known murders of newborn infants found around the city of Adelaide was at the most between six to twelve infants a year. The *Coroner’s Report Book* shows that 1884 appeared to be the worst year. Only one or two women a year were ever caught in relation to suspicious infant deaths, and they were generally charged with the lesser crime of concealment of birth which carried a maximum sentence of three years. Of the total charged, half were acquitted.⁷⁰ Using the *Prisoners Sentenced Book* between 1878 and 1914, only fifteen people were sentenced for concealment of birth in this period. Two years was the longest sentence given, whilst three months was the average sentence.

Dead newborn infants were found in places such as the Torrens, creeks, parklands, lanes, gardens, sandhills, beaches and earth closets. Death might be by strangulation, asphyxia, exposure and in several cases by throat-slashing. In the *Coroner’s Report Book* from 1879, where no one could be found responsible for the deaths of infants the verdict was wilfully murdered by person or persons unknown’. It is impossible to come to any conclusion as to whether mothers of these found murdered infants had had the support of lovers, husbands or friends, but the evidence does suggest that the women who got caught were those on their own; widows, deserted mothers and single women. These women were prone to detection simply because ‘of their isolation. Not only might they be physically weak after giving birth, but they were also emotionally and economically vulnerable. Hoffer and Hull make the suggestion that ‘for some women it might have appeared safer to have the child, after concealing the pregnancy, and then to perform a delayed abortion ... An unwed mother might have waited, in vain, for the father of her infant to marry her, until it was too late for an abortion.’⁷¹

In 1879, 23 year old Johanna Sullivan, domestic servant and wetnurse, was sentenced to death for the murder of her two week old illegitimate infant. whereas Partington’s case nine years earlier aroused little attention, the Sullivan infanticide case created a public outcry. Even though the evidence against Sullivan was conclusive, questions were asked as to why she had killed her infant and why she alone should

receive the blame. Mr John Darling, a member for the Destitute Board, 'had always felt that two should stand at the bar instead of one – that the father of the child, who had made no provision for his offspring of his sin and of the woman's folly – ought to stand alongside the woman'.⁷² In a letter to the *South Australian Register*, a reader signed J.H.B. wrote: 'that in this and similar instances the public are the real murderers'.⁷³

Another reader wrote that the morality of Adelaide was bad enough without welcoming back, with extended arms, the 'fallen'.⁷⁴ William Liston of Kapunda made an appeal in a letter to the editor for an alteration in the law regarding the penalty attached to infanticide. He felt it was mockery to pass a death sentence when it was certain that it was not going to be carried out.⁷⁵ He further suggested that it ought to be a criminal offence, punishable by imprisonment, for a man to neglect to make full provision for the sustenance and care (including medical attendance) of the mother and child for a term from twelve to eighteen months. The Sullivan case prompted Mr Darling of the Destitute Board, to raise in Parliament the possibility of establishing a foundling hospital so that the mothers of their offspring need not be cast into the street.⁷⁶ Liston, in his letter referred to above, backed Darling in a plea for such an institution to be established and felt that, whilst the establishment of such a place could encourage illegitimacy, it was a lesser evil than women resorting to child murder.⁷⁷

Alfred M. Cook of O'Connell Street, North Adelaide, was actively involved in campaigning on behalf of Sullivan and wrote in the *South Australian Register*;

I had taken the greatest amount of care, and in many instances made a house-to-house canvass, also visiting leading places of business; this the names on the list will verify ... I have the honour to inform the public that the Sullivan memorial has been signed by inhabitants of Glen Osmond, Glenelg, Port Glanville, Semaphore, North and South Adelaide etc., by over 2,000 persons irrespective of lists at Banks. It bears the signatures of the leading merchants, tradesmen, mechanics and others, and upwards of 150 ladies.⁷⁸

The *South Australian Register* itself was not particularly in sympathy with Sullivan, 'offering no defence for her barbarity', and did not consider fourteen years imprisonment to be 'too severe a punishment for the foul murder of which she is guilty'.⁷⁹ The newspaper also raised the issue that, having obtained a position as a wet-nurse, she then deliberately slew her own baby in order to take to her bosom the baby of another woman for wages.

The pleas for a foundling hospital as a way to prevent further murders of infants

became the topic of the day and an interesting poem found its way into the *South Australian Register*. Although it does not use Sullivan as the desperate mother, it does depict the agony of future mothers, driven to abandon their babies because there was no official place to receive them.⁸⁰ (See Appendix.)

The *South Australian Register* raised the question of Sullivan suffering from ‘temporary aberration of the mind’⁸¹ and one of the letters to the editor, signed by B.T. Finnis, believed there was a condition known to medical men as ‘puerperal mania’ which sometimes follows childbirth, when a hatred for the child seems suddenly to arise.⁸² ‘Puerperal mania’, or ‘post-partum depression’ as it is generally known, is not an uncommon condition experienced by women from the time of giving birth for up to three months. Under stress, the boundaries between the mother and infant can be blurred and uncertain. Only by understanding the relationship between the mother and child can the motive for infanticide be understood. The law courts of Australia in all states never took the condition surrounding childbirth into consideration when charging a mother with murder. Only as recently as 1961 did Queensland finally follow Scotland and England in accepting the concept of diminished responsibility as a ground for reducing what would otherwise be wilful murder or murder to manslaughter.⁸³

As early as 1864 the condition of ‘puerperal mania’ was obviously understood. A member of the medical profession quoted from an article in the *Sydney Morning Herald* stating that the editors of the newspaper were astonished when at an inquest the jury returned the following verdict that the woman Jones (mother of two) killed her infant while in a state of puerperal mania. She was committed for trial when able to be removed.

We [editors of the newspaper] can only express our astonishment that the jury should not have been aware of the complete irresponsibility of a woman labouring under this terrible complication of the puerperal state. To commit for trial the unfortunate victim of a frightful disease, and to place her meanwhile in the custody of a constable, savours more of the dark ages than the later half of the nineteenth century.⁸⁴

When Partington was sentenced for murder there was no discussion in the newspapers concerning her plight or what was to become of her large family. However, by the time of Sullivan’s case in 1879, the public was more interested in the social issues surrounding infanticide. The 1879 case could not be ignored for Sullivan would have been the first Adelaide woman, for many years, to be convicted of a capital

crime involving an infant. It is also possible to speculate that the hanging of Elizabeth Woolcock in 1873 for the murder of her violent husband was still fresh in people's memory. It was only after her execution that a letter of confession proved there were grounds of provocation. Had the jury been aware of this at the time of the trial, they may have commuted her penalty of death to one of life imprisonment. It could have been that some within the community wanted to make sure of all the facts surrounding Sullivan's case and that mercy be shown where possible.

But for most people, Sullivan had committed a crime against womankind. Not only had she committed the sin of giving birth to an infant out of wedlock, but had then slain it. The society in which she lived in was, not surprisingly, shocked that a woman could resort to such a barbaric crime in respectable Adelaide. At the same time, consciences were raised to the fact that society had not until then considered the plight of woman and the causes of such predicaments.

Appendix

Written during the trial of Johanna Sullivan, and composed as a plea for a Foundling Hospital. It appeared in the *South Australian Register*, 26 Aug. 1879.

Out in the lamp-lit street
With the babe of shame at her breast,
A wild-eyed woman with hurrying feet
Walked on in a strange unrest;
On, past passage and lane,
On, past terrace and square,
Her white face wet with the following rain,
And the wind in her loosened hair.

Behind her a father's curse,
A curse and a close-shut door;
Madness at work in her soul or worse;
And God knows what! before.
Not in the whole world wide
One friend to whom to turn,

No one to counsel! and help and guide,
But plenty to scorn and spurn.

Only a servant girl!
There are dozens to fill her place;
And virtue coldly its lip will curl
At the story of her disgrace.
“Twas no ones fault but her own”
Whether true or false that be,
Shall the punishment fall on the girl alone,
And the sin of the man go free.

Oh with the lips apart,
With a long and shuddering sub,
Is it strange that this failed creature's heart
For her child of shame should throb?
'Tis the only love now left.
Yet the thought her soul alarms
That t'were better she were by death bereft.
Of the burden in her arms.

She stops, and in anguish wild,
With many a pitiful tear,
She stoops, and lovingly lays her child,
Asleep on a doorstep near.
One look – what a look, alas!
And she flies, with a broken prayer
That soon some good, kind woman may pass.
And find her baby there.

¹ Baby-farming is an ambiguous term used to describe a form of foster care. In England and Europe it was used to describe a business operation where unwanted newly-born infants (before registration) were handed over to a 'nurse' for a lump sum. Originally it was meant to be a service provided for working-class, often single women, who had no choice but to put their infants into care in order to be able to work.

² P. Knight, 'Women and Abortion in Victorian and Edwardian England', *History Workshop*, no. 4, 1977, p.67; A. McLaren, *Birth Control in Nineteenth-Century England* (London, 1978), p.245.

³ L. Gordon, *Woman's Body, Woman's Right: Birth Control in America* (Ringwood, 1977), p.52. Gordon states 'today more women die in childbirth than from abortions'.

⁴ *Ibid*, p.52.

⁵ McLaren, *op.cit.*, p.231.

⁶ *Ibid*.

⁷ J. Allen, 'Octavius Beale Re-considered: Infanticide, Baby-Farming and Abortion in New South Wales 1880-1939', in Sydney Labour Group, *What Rough Beast*, (Sydney, 1982), p.117.

⁸ Coroner's Reports from 1879, State records South Australia [SRSA].

⁹ McLaren, *op. cit.*, p.31.

¹⁰ Knight, *op.cit.*, p.57.

¹¹ Allen, *op.cit.*, p.121.

¹² See the Special Lists of the Police Department, SRSA

¹³ In the case involving Harper, the accused was doing as many as five abortions in a morning. Over a period of a year this would work out at over a thousand, and Harper was not the only abortionist in Adelaide.

¹⁴ Allen, *op.cit.*, p.116. Until 1907 there does not appear to be any formal statistics for criminal abortion. The section on Crime and Law in the annual statistics to be found in the South Australian Parliamentary Papers shows that it appears under Felonies; 'offences against the person'.

¹⁵ *Ibid.*, p.116.

¹⁶ The total of convictions after 1900 recorded in the *Prisoners Sentenced Book* has not been followed up. It would be possible to find records of trials in the newspapers around the date of conviction. It has not been possible to ascertain whether the eleven cases appear in the special lists of the Police Department records but they all happened after the conviction of Francis Sheridan in 1906.

¹⁷ Police Department GRG5/2/1082/8 Jan. 1894. SRSA.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

²⁰ His name appears in 1892, p.945, of Sands and McDougall's *South Australian Directory* as a registered medical practitioner. On another occasion he was described as a barrister.

²¹ Police Department, GRG5/2/ 160/25 Feb. 1897.

²² *Ibid.*, see also GRG5/2/579/5 Nov. 1909 where it was suggested that to use an accomplice as a witness a 'Governor's Pardon will have to be procured for their protection'.

²³ *Australian Digest*, Sydney, vol. 5, p.872.

²⁴ Police Department, GRG5/2/1082/1894.

²⁵ Herbalists came under police scrutiny from time to time when it was suspected they were selling abortifacients. On two occasions a Mrs Beecham was suspected of being involved in abortions: see GRG5/453/1899, GRG5/237/1902. Acting on information in 1894 that couple were travelling via Aldinga, Victor Harbor, Yankalilla, Goolwa and Strathalbyn selling abortifacients, the police mounted a huge investigation to track the couple down. The outcome revealed the couple were selling an all cure but harmless tonic-'Sea Foam', GRG5/2/782/1894.

²⁶ *South Australian Register*, 2 Mar. 1897.

²⁷ *Ibid*.

²⁸ Police Department, GRG5/2/160/23. Feb. 1897.

²⁹ This case does not seem to be recorded in the Police Department's Special List. Reference to it may possibly be found by searching the newspapers.

³⁰ GRG5/2/160/25 Feb. 1897.

³¹ 'Dr' Sheridan was never registered to practice as a doctor-he does not appear in the *SA Directory*, the usual place to look.

³² Dr Coombe was a registered medical practitioner. See *SA Directory*, 1892, p.946.

³³ Police Department, GRG5/2/463/2 Oct. 1905.

³⁴ *Ibid*.

³⁵ *Ibid*.

³⁶ *Ibid.*

³⁷ *Register*, 12 Oct. 1905.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, 10 Oct. 1906.

⁴² An anonymous letter to the police revealed that a chemist shop belonging to William Talfer dispensed for Brierley and that a Jacob Bowden, a herbalist, shared premises with Brierley. See GRG5/2/699/1897.

⁴³ Allen writes: 'doctors involved in abortion would perform an inducement in their surgery, then send the woman to hospital, where they would be starting to miscarry when admitted' *op.cit.*, pp.117-8.

⁴⁴ P. Melish, 'Some Remarks on Abortion', *Australasian Medical Gazette*, 15 Oct., 1894. There is a conspicuous absence of medical journal articles on abortion during this period.

⁴⁵ M.C. Forster, *Progress in Obstetrics and Gynaecology in Australia* (Sydney, 1967), p.65.

⁴⁶ *Operations Register*, Royal Adelaide Hospital, 1893-98, GRG78/55, SRSA.

⁴⁷ Wynn, R.N.M., *Obstetrics and Gynaecology* (1974), p.113.

⁴⁸ *Bulletin* (Sydney), 20 Nov. 1897.

⁴⁹ Information from Rob Clyne, who is writing a history of the South Australian Police Force. His research to date reveals no change in police policy regarding the conviction of abortionists until 1896.

⁵⁰ As was Louisa Good, who was 'known as an abortionist for many years but never convicted': See GRG 5/579/1909.

⁵¹ D.L. Sills, in *International Encyclopaedia of the Social Sciences*, (New York, 1979), vol. 8, p.27.

⁵² A. Ross, in *International Encyclopaedia of Population* (New York, 1982), vol. 1, p.343.

⁵³ *Ibid.*

⁵⁴ 'Infanticide in the Antipodes', *Medical Times and Gazette*, 1863, vol.2, p.394; 'Infanticide in Australia', *The Lancet*, 1860, vol.1.2, p.394; G.L. Mullins, 'The Registration of Stillbirths and the Protection of Infants', in *Intercolonial Medical Congress of Australia, 3rd Session* (Sydney, 1892), p.600.

⁵⁵ H.H. Hayter, 'Infant Mortality in South Australia', in *Transactions of the Philosophical Society of Adelaide*, 2, 1878, p.69.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, pp. 72- 73.

⁵⁸ *Coroner's Report Book*, 16 Oct. 1887 and 3 July 1888.

⁵⁹ *Ibid.*, 27 Oct. 1885.

⁶⁰ *Ibid.*, 6 Aug. 1885.

⁶¹ *Ibid.*, 22 Dec. 1870.

⁶² *Ibid.*, 8 Dec. 1870.

⁶³ Further reading on this point may be found in C. Howard, *Australian Criminal Law*, (Melbourne, 2nd ed. 1970); 'Child Killing in English Law', *Modern Law Review*, vol. 1, Dec. 1937.

⁶⁴ G. Williams, *The Sanctity of Life* (London, 1956), p.22.

⁶⁵ *Register*, 8 Dec. 1870.

⁶⁶ Williams, *op.cit.*, p.35.

⁶⁷ After admittance to the Destitute Asylum, 29 Nov. 1870, one was sent to the Industrial School and one to the Reform School for stealing a piece of cheese from his employer's tent whilst a cattle minder. Eventually the older children were apprenticed out to homes around the state, including the boy sent to the Reform School, and the younger ones placed with foster mothers. See *Register of Admissions to the Destitute Asylum*, 1870-73.

⁶⁸ *Register*, 8 Dec. 1870.

⁶⁹ *Ibid.*

⁷⁰ More investigation is needed to establish the exact figures. One can get a rough idea using Parliamentary Papers, but caution is needed as some figures are counted twice where a case has been transferred from Magistrate's to Supreme Court. There is no easy way to establish all cases that came before the court, i.e. those who were acquitted. When the *Criminal Calendar* becomes available at the Supreme Court it should provide further figures.

⁷¹ P.C. Hoffer and N.E.W. Hull, *Murdering Mothers* (New York, 1981), p.155.

⁷² *Register*, 4 Aug. 1880.

⁷³ W. Ramsay Smith, 'The Medico-Legal Aspects of Infanticide and Concealment of Birth', *Honorary Magistrate*, Jan. 1907, p.131.

⁷⁴ *Ibid.*, p.133.

⁷⁵ G.L. Mullins, 'Registration of Still Births', *Australasian Medical Gazette*, 15 July 1894.

⁷⁶ *Adelaide Observer*, 4 Feb. 1882.

⁷⁷ *Coroner's Report Book*, 18 Jan. 1882.

⁷⁸ *Coroner's Report Book*, 18 Jan. 1882.

⁷⁹ *Parliamentary Papers. Second and Final Report of Commission Appointed to Report on the Destitute Act, 1881, together with Minutes of Proceedings, Evidence, and Appendices*, 1885, p.34 of Evidence.

⁸⁰ *Adelaide Bulletin and Lantern*, 23 Aug. 1879.

⁸¹ *Register*, 23 Aug. 1879.

⁸² *Ibid.*, 26 Aug. 1879.

⁸³ *Ibid.*, 28 Aug. 1879.

⁸⁴ *Parliamentary Debates*, 21 Aug. 1879.