

**“This sinister business in babies”¹ ~ Infanticide, the
Perils of Baby-farming Scandals and Infant Life
Protection Legislation, South Africa, 1890-1930**

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¹ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do’, by a Special Correspondent. *Rand Daily Mail*, Friday, 29th October 1909; National Archives Repository [hereafter TAB], Secretary to the Law Department [Hereafter LD], 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910.

This paper finds at its core four separate but overlapping themes: baby-farming, illegitimacy, infanticide,² and infant life protection legislation. Here as elsewhere, for much of the late nineteenth and early twentieth centuries the implied link between baby-farming and infanticide was that baby-farming was considered to be “infanticide by neglect,”³ “infanticide for hire”⁴ or a “veiled form of infanticide.”⁵ In the minds of the authorities and some social commentators, baby-farming was also implicitly linked to illegitimacy and to a myriad of other associations relating to racial stereotypes and racial degeneration. The growing fears – whether imagined or not – that illegitimacy and baby-farming presented to the colonial and Union states developed into agitation for changes to legislation relating to infant life protection. This paper attempts to delineate why baby-farming compounded anxieties relating to illegitimacy and high infant mortality rates in South Africa and whether the motivations for passing the Infant Life Protection Act (1907; 1909; and the 1913 Children’s Protection Act) can be rooted in these concerns. It is imperative to note, however, that these concerns and anxieties did not exist separately from racial and class structures and prejudices that operated in South Africa at the time. In addition, the paper also discusses some of the regulations these Acts established for processes of adoption and foster care, but in the same vein interrogates changing societal attitudes towards adoption, family formation and composition; the emergence of mothercraft as

² By the turn of the twentieth century, the term infanticide applied to the killing, neglect, or abuse of newborn babies, however, ‘concealment of birth’ is the intent to deliberately conceal a stillbirth or the death of a newborn by failing to report its birth to the respective authorities.

³ Tony Ward. ‘Legislating for Human Nature: Legal Responses to Infanticide, 1860-1938,’ in Mark Jackson (ed.) *Infanticide – Historical Perspectives on Child Murder and Concealment, 1550-2000*. (Aldershot: Ashgate, 2002), 249-269.

⁴ Ruth Ellen Homrighaus. ‘Baby Farming: The Care of Illegitimate Children in England, 1860-1943.’ Unpublished Dissertation (PhD-History), University of North Carolina, 2003.

⁵ Annie Besant. *The Law of Population: Its Consequences, and Its Bearing upon Human Conduct and Morals*. (London: Freethought Publishing, 1877), 22.

a social science; and developments in foster care, health services and child welfare societies in the early Union years. Some of the derivative discourses discussed in this paper include the emergence of social theories of race, class and gender, as well as notions of biological determinism, scientific racism and eugenics in the first part of the twentieth century and the role that the professional medical fraternity played in advancing these debates in South Africa.

“It’s a libel on the word mother”⁶ - Baby-Farming Practices and
the Question of Illegitimacy

The term baby-farming⁷ became popular in nineteenth century Britain and it referred to the care and raising of babies in exchange for money. Mothers who could not or did not want to raise their own children placed them in the care of ‘foster homes’ or ‘maternity homes’ together with monetary compensation. However, these ‘baby-farm houses’ became notorious for allegedly wilfully neglecting and murdering infants, apparently so as to increase their profit margins. Many baby-farms also accepted infants without any questions and the social problematic of illegitimacy became closely connected to these houses. Baby-farms became an easily accessible option for a mother who wished to put her child ‘out to nurse,’ and according to some, certain mothers chose this option in the knowledge that her child would be neglected. For much of the late nineteenth and early twentieth centuries, the image of the baby-farmer as opportunistic and deceitful was a stereotype that prevailed in many parts of

⁶ ‘Revolted Incident,’ in *The Mercury*, 6th June 1891.

⁷ There is no consistency as to the hyphenation of ‘baby-farming,’ ‘baby-farmer,’ or ‘baby-farm.’ While some authors use the non-hyphenated form, or have simply conjoined the words, the hyphenated form is retained here, as it appears in the sources.

the British Empire.⁸ According to Ruth Ellen Homrighaus “baby-farmers aroused fear and anger in equal measures.” More recently some feminist historians Homrighaus, Meg Arnot, and Shurlee Swain have also seen baby-farmers as individuals who committed calculated and premeditated crimes and who had made “a rational choice to benefit from infant deaths.”⁹ However, the use of the word baby-farmer conflated the criminality of ‘wilful murderers’ with the honest and hard labour of sincere foster mothers and carried the insinuation that paid wet-nursing, orphanages, maternity homes, foster homes, – whether registered or not – or uncertified adoptions inevitably equated to baby-farming.

Long before the atrocities of baby-farmers posed any real challenge to the colonial states – by way of the alarmingly high death rates of white infants while in foster care

⁸ During this time period the *British Medical Journal* [hereafter *BMJ*] reported prolifically on baby-farming practices in England and the Empire at large. It was in 1867 that the *BMJ* first published an article on a case of baby-farming. When the mother of a seven month old infant was questioned regarding the death of her child whilst under the care of a wet nurse, she stated that shortly after the birth of the child she was unable to suckle the baby and as a result “put it out to the care of a nurse.” However, after careful investigation, the District Coroner found that the mother of the child had had four children previously, all of whom had died while under the care of wet nurses, implying that that the mother purposefully gave up her children to wet nurses in the knowledge that they would be neglected until they died. ‘Baby-Farming,’ in *The British Medical Journal*, 355, October 19, 1867, 343. See also ‘The Massacre of The Innocents,’ in *The British Medical Journal* 1, 2195, January 24, 1903, 221-222; Ruth Ellen Homrighaus. ‘Wolves in Women’s Clothing: Baby-Farming and the British Medical Journal, 1860-1872,’ in *Journal of Family History*, 26:3, 2001, 350-372; Shurlee Swain. ‘Toward a Social Geography of Baby Farming,’ in *History of the Family*, 10:2, 2005, 151-159; Shurlee Swain. ‘Infanticide, Savagery and Civilization: The Australian Experience,’ in Brigitte H. Bechtold and Donna Cooper Graves (eds.) *Killing Infants: Studies in the Worldwide Practice of Infanticide*. (Lampeter: Edwin Mellen Press, 2006), 85-105; M. L. Arnot. ‘Infant Death, Child Care, and the State: The Baby-farming Scandal and the First Infant Life Protection Legislation of 1872,’ in *Continuity and Change*, 9, 1994, 271-311; Daniel Grey. ‘More Ignorant and Stupid Than Wilfully Cruel’: Homicide Trials and ‘Baby-Farming’ in England and Wales in the Wake of the Children Act 1908,’ in *Crimes and Misdemeanours*, 3:2, 2009, 60-77; Benjamin Waugh. ‘Baby-Farming,’ in *Contemporary Review*, 57, 1890, 700-714.

⁹ Homrighaus. ‘Baby Farming: The Care of Illegitimate Children in England, 1860- 1943,’ 5.

– the conceptualisation of this stereotype already definitely occupied a place in popular culture by the 1890s.¹⁰ While baby-farming was not a specific crime under which someone could be arraigned for child neglect or abuse, towards the end of the nineteenth century revelations about baby-farming practices in South Africa became more frequent fanning the idea that this was a menace for the colonial states to regulate. One case that drew public attention occurred in Natal, in June 1891 when *The Mercury* reported about an incident at the Durban Station where an African woman had been found suckling a white baby. Alexander Finlayson, who had reported the incident to the Editor of *The Mercury*, thought that this was very suspicious and when he asked the woman about the child, she initially insisted that the baby was in fact hers. Being further interrogated by Finlayson, however, she revealed “ten sovereigns and bundle of clothes,” which had been given to her by

¹⁰ With regards to the notoriety attached to baby-farming, some recognition should be given to local theatre companies such as the Theatre Royal for the productions they showcased that made deliberate and blatant social commentary on the practice of baby-farming. In 1879, for instance when the Theatre Royale in Pietermaritzburg advertised the staging of the production ‘Nurse Chickweed – or hints on Baby-farming,’ it was perplexingly described as a “screaming farce.” A year later in February 1880, the Theatre Royale presented a performance of the H.M.S Pinafore Musical. According to the review by *The Natal Witness*, one of the more popular songs of the Gilbert and Sullivan musical, ‘A Many Years Ago,’ was sung by the female protagonist, Buttercup, about her former life as a baby-farmer:

Buttercup:
Hold! Ere upon your loss
You lay much stress,
A long-concealed crime
I would confess!
A many years ago,
When I was young and charming,
As some of you may know,
I practised baby-farming.
Chorus:
Now this is most alarming!
When she was young and charming,
She practised baby-farming,
A many years ago.

The Natal Witness, 6 February 1879 and 19 February 1880.

“someone from the Berea,” together with the baby.¹¹ Appalled by the situation, the Editor lambasted the police for not “interfering in cases of baby-farming,” which he referred to as “one of those terrible indecencies of life that will crop up.” He further condemned the mother of the child asking: “Think of the little one, what its habits will be, what it may become, what its shame? What a wretch of a mother to have – it’s a libel on the word mother.”¹²

Correspondence found in the Colonial Secretary’s Office files, between the Attorney General, Michael Henry Gallwey, and the Clerk of the Peace during that same month of June reveals that the mother in question was believed to be a Miss Moye. They had been alerted to this by a certain R. Jameson, from Bellair who had read of the case in *The Mercury*. In a letter dated 6th of June to the Colonial Secretary, Jameson said he hoped that the government had initiated an investigation into the matter, as he strongly believed that “the European child cannot surely be allowed to be brought up in barbarism” and that as “no one [was] interfering to prevent such a dreadful scandal the mere publication of which in the English papers, is certain to be fraught with mischief, unless we are able to deny it, or state that the child had been rescued.”¹³

Proceeding with the investigation, Finlayson was summoned to the Umlazi Magistrate to give a deposition as to what had transpired between himself and the ‘native girl’ at the Union Railway Station. After reviewing this deposition and the reports of the

¹¹ ‘Revolting Incident,’ in *The Mercury*, 6th June 1891. See Appendix of Prinisha Badassy. A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal, 1860-1935. Unpublished Thesis (PhD), University of KwaZulu-Natal, 2011, for unabridged version of the article.

¹² ‘Revolting Incident,’ in *The Mercury*, 6th June 1891.

¹³ Pietermaritzburg Archives Repository [hereafter PAR], Colonial Secretary’s Office [hereafter CSO], 1299, 1891/3018, R. Jameson. Calls attention to a paragraph in *The Mercury* relative to an alleged case of baby farming, 1891.

Natal Police, the Resident Magistrate at Umlazi, A. E. Titren, discontinued the investigation stating that he “declined to consider or deal with the bastard as a destitute child,” and consequentially no further action was necessary.¹⁴ In a letter responding to Jameson’s request and the outcome of the investigation, the Colonial Secretary stated that the only evidence his department could gather in relation to the matter was that “in January of 1891 a European woman gave birth to an illegitimate child, which was subsequently placed in charge of a native woman to nurse.” The Colonial Secretary added that if in fact this was the same case on which *The Mercury* had reported, then he “could find no breach of the law and the facts of the case did not require the action of the government.”¹⁵

“Infant life protection” would later – in the years just before the unification of South Africa – become a priority for the colonial governments, but when cases of baby-farming surfaced in the 1890s, there was no distinct law in place by which perpetrators could be tried. On June 13th 1891, *The Mercury* again reported on the baby-farming incident and besides addressing the problem of the lack of legislation on this matter, the article also provides provocative insight into white opinion about the implications of baby-farming across race. It said:

I had a note last week about the deplorably sad treatment of a little child by its inhuman mother in relegating it to the care of a kafir woman who now has it at her kraal beyond Isipingo. I have since heard more details, and I find that in order to protect herself, the kafir woman, who received £5 for the baby-farming business, for it is little else, reported the matter to Segt. Hunt, who informed the Magistrate.

¹⁴ PAR, CSO, 1299, 1891/3018, R. Jameson. Calls attention to a paragraph in *The Mercury* relative to an alleged case of baby farming, 1891.

¹⁵ PAR, CSO, 1299, 1891/3018, R. Jameson. Calls attention to a paragraph in *The Mercury* relative to an alleged case of baby farming, 1891.

Capt. Lucas ordered the police to find out, if possible, the names of both the father and mother. In this the Sergeant succeeded, and the kafir was permitted to take the child to her kraal, the mother of the poor infant saying she did not want it. Needless to say it was an illegitimate ... Whether the parents have since registered the child I do not know, but this I do know, that it is a pity some means cannot be found of dealing with such inhuman wretches.

The construction of moral discourses on the threats to “civilisation” in Natal at the time, as the article suggests, resonated with imperial and metropolitan discourses which cast Africans as immoral and ‘primitive,’ and also associated the degeneration of middle class British morality and respectability with increasing interaction with African incivility. The article concludes with: “Think for a moment how such a child will be brought up amongst kaffirs, what a life it will lead, what a raw, untutored white savage it will be. Of course the offence to civilisation does not come under the head of slavery; but it is a little short.”¹⁶ While this can be easily identified as popular racist sentiment, at a more intrinsic level it is also a reflection of the then developing social eugenics discourse in South Africa. In many ways, these views of the threats to civilisation in a South African colonial context can be seen as a precursor to discourses on eugenics, race determinism and heredity fears which emerged in a more strongly coherent form in the early years of the twentieth century.¹⁷ Moreover, in South Africa these discourses influenced debates around infant mortality and what would be viewed as “good mothercraft.” The comments in the article in *The Mercury* also hint

¹⁶ *The Mercury*, 13th June 1891. See Appendix in Badassy. ‘A Severed Umbilicus,’ for unabridged version of the article.

¹⁷ For more on the rise of the eugenics movement in South Africa see Saul Dubow. ‘Chapter 4 – Biological Determinism and the Development of Eugenics,’ in *Scientific Racism in Modern South Africa*. (Cambridge: Cambridge University Press, 1995), 120-165 and Susanne Klausen. ‘“For the Sake of the Race”: Eugenic Discourses of Feeblemindedness and Motherhood in the *South African Medical Record*, 1903-1926,’ in *Journal of Southern African Studies*, 23:1, March 1997, 27-50.

at the hidden dangers that baby-farming posed specifically to the welfare of *white* children and it was this concern that incited the anxieties of the colonial state.

In addition, as already alluded to, at the beginning of the twentieth century, high infant mortality rates and the implicit link to illegitimacy as a corresponding factor, would help to fuel state fears of a burgeoning poor white community across the region, what would soon be the Union of South Africa. These fears were especially heightened in the post-South African War context, with increased economic hardships for whites; increased urbanisation and the high influx of single white women to the towns; increased vulnerability; as well as the increased prevalence of vagrancy, prostitution and miscegenation. In Natal, while the problem of poor whiteism was not as stark as in the Cape or the Transvaal, intra-racial concerns *vis-à-vis* the British and Afrikaner divide was particularly pronounced.

In the Transvaal, similar worries about baby-farming as in Natal plagued the authorities. In 1905, a Mr Showers, the Commissioner of the Transvaal Town Police, wrote to the Attorney General of Pretoria, Mr Burns-Begg, asking about legislation in relation to maternity homes and baby-farms. In his letter he questioned if there were any laws in existence in that Colony and beyond. His letter went on to say:

They have started a Maternity home here and there are some baby-farms and one case has been reported in which the lady running the Maternity Home thinks that a baby has been made away with. We are enquiring into the case. An oldish woman took a young half-witted woman to the Maternity Home: a child was born. The young woman was taken to Pretoria and the oldish woman took the child towards Krugersdorp. We have not found the child yet. We ought to have regulations or there may be trouble.¹⁸

¹⁸ TAB, LD, 1086, AG2390/05, Baby Farms and Maternity Homes, 1905.

In response, Burns-Begg wrote: “So far as I am aware there are no laws whatever dealing with Baby-farms or Maternity Homes. If you think the former are on the increase I should be glad to hear what steps you would suggest should be taken to deal with this evil.”¹⁹ Similar agitations for adequate legislation were echoed by the Public Health Department in the Cape Colony. Following a report in the *Cape Times* which revealed that the practice of baby-farming was widespread, Dr Alfred Jasper Anderson, the Medical Officer of Health for Cape Town (from 1901 to 1923) lobbied for legislation which would protect infant life, as he was “convinced that baby-farming was the main reason for illegitimate deaths,” referring to the wilful murder of illegitimate infants.²⁰

In Natal, in 1907, the periodical *Mosquito and African Sketch*,²¹ ran a controversial editorial commenting on baby-farming in Natal.

The Paris Scandals, where hundreds of infants are supposed to have been destroyed at a maternity home fill us with horror. But I am told on the same undoubted authority that I have quoted before, that something very similar goes on in Durban. I alluded to the baby-farming as a disgrace and a danger, but the information that has come to me since the question was first mooted points to much worse. I mean professional procuring of abortion and worse. My authority tells me that the deaths of infants in Durban certified as from mal-nutrition and the like by duly qualified medical men is quite above the normal, and there is grave suspicion that all is not in order. The whole system of death enquiry by the magistrate is unsatisfactory. It is quite likely that in ninety cases in a hundred the magistrate comes to a correct decision

¹⁹ TAB, LD, 1086, AG2390/05, Baby Farms and Maternity Homes, 1905.

²⁰ Sandra Burman and Margaret Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ in *Journal of Southern African Studies*, 17:3, 1991, 394; and Elizabeth van Heyningen. ‘Public Health and Society in Cape Town.’ Unpublished Thesis (PhD), University of Cape Town, 1989, 463.

²¹ *The Mosquito and African Sketch* was a weekly publication circulated in Durban between 1905 and 1907.

but it is in the ten that the want of publicity prevents evidence coming forward that might have thrown a quite different light on the affair. I am speaking now, however, principally of cases where a duly certificated practitioner is concerned, and we all know the trades' unionism of the profession. Attack a doctor and all the other doctors will come like a hive of bees buzzing round the rash outsider. I suppose more crimes have been committed behind a doctor's certificate than without one, and yet it is almost hopeless to think of going behind the certificate of the duly qualified practitioner regularly attending a patient.²²

The allegations made in this article against the illegal procuring of abortion – as well as the manner in which cases of infanticide were suppressed by the medical fraternity – were corroborated by Stacey Grimaldi, a Sergeant, who at the time headed the Criminal Investigating Department in Durban. On the 13th of May 1907, in a deposition delivered at the Durban Magistrate's Office, Grimaldi asserted that he had “reason to believe that certain crimes and offences [were] committed in Durban,” and that the Editor of *The Mosquito and African Sketch*, W.J. Mirrlees, could supply incriminating evidence.²³ The only response to these allegations from the medical fraternity of Durban was contained to a letter from Dr. P. Murison, Honorary Secretary of the Public Health Department at the time. His letter was rather aloof and evasive in tone and its purpose was simply to inform the Editor of *The Mosquito and African Sketch* that “the identity of his informant was no secret to the members of the medical professional” and that “their feelings towards him are sympathetic rather

²² ‘Editorial, Notes and Comments,’ in *The Mosquito and African Sketch*. Vol. 2, No. 26. 3 January 1907. See also PAR, Attorney General's Office [hereafter AGO], I/8/116, 167A/1907, Paris Scandals. 3 January 1907.

²³ PAR, AGO, I/8/116, 167A/1907, Paris Scandals. 3 January 1907. Deposition of Stacey Grimaldi, 13 May 1907.

than hostile ... knowing as they do all the circumstances connected with the matter.”²⁴ Dr. Murison’s cryptic conclusion to his letter leaves many questions unanswered and the archival source reveals that the case was left unresolved.

Nevertheless, the extract from the periodical and Dr Murison’s letter are valuable in themselves for disclosing much about the medical fraternity in Durban. That doctors shared some degree of camaraderie is not surprising but Mirrlees’ editorial implicitly implicated doctors in not only performing illegal abortions but possibly also falsifying death certificates. The latter remains questionable since this still remains a subject for historical enquiry but on the subject of abortion, as Helen Bradford has stated in her authoritative article on abortion in South Africa ‘Herbs, Knives and Plastic: 150 Years of Abortion in South Africa’ (1991) doctors “...wary of risking criminal prosecution, professional ruin and social ostracism,” often performed abortions under the guise of induced miscarriages or with the use of abortifacients such as ‘Widow Welch’s female pills.’²⁵ During this time period, reasons for the early termination of a pregnancy (whether the individual understood the act in terms of present day definitions of abortion – i.e. that a foetus is considered as a human being from the moment of conception – or not, and thus comparable to infanticide) were often closely associated with illegitimacy or unwanted pregnancies.

It can be argued to some extent that by the turn of the twentieth century, in the absence of reliable and accessible contraception – and in addition to social and

²⁴ PAR, AGO, I/8/116, 167A/1907, Paris Scandals. 3 January 1907. Deposition of Stacey Grimaldi, 13 May 1907, Letter from Dr P. Murison, MOH and Honorary Secretary, Public Health Department, 2 May 1907.

²⁵ Helen Bradford. ‘Herbs, Knives and Plastic: 150 Years of Abortion in South Africa,’ in Teresa Mead and Mark Walker (eds.) *Science, Medicine and Cultural Imperialism*. (New York: St. Martins Press, 1991), 128.

religious pressures, and unemployability – women who wished to terminate unpropitious pregnancies resorted to infanticide after failed abortions or due to inaccessible means of procuring an abortion. Indeed, there were at that time very few options such as foster care – or even including baby-farms – available to mothers, or prospective mothers, who sought reprieve from the responsibilities of raising an illegitimate or unwanted child. There were a few orphanages and children’s homes in Natal, but it is difficult to accurately say if these were open to all children of all races or religions.²⁶ Furthermore, another reason for the predicament that these women faced emanated from the lack of adequate child adoption legislation which was connected to the social stigma attached to adoption during this time period. With this in mind, the next section of the paper maps the development of Infant Life Protection legislation in South Africa, which included procedural guidelines pertaining to adoption and foster care, and also examines how anxieties about high illegitimacy and infant mortality rates prompted legislative change.

| **“The perils of child life”²⁷ – Infant mortality and Infant Life Protection Legislation**

Agitation for legislation and concerns about illegitimacy and infant mortality rates in the first decade of the twentieth century was also prevalent beyond South Africa’s borders. Similar sentiments could be heard echoing in Britain and its other dominions

²⁶ Notably the St Cross Orphanage in Pietermaritzburg and St John’s Orphanage on the Berea.

²⁷ PAR, Minister of Justice and Public Works [hereafter MJPW], 135, MJ82/1907, Reverend A. Hall Durban: May a deputation from the Durban Christian Ministers Association wait upon the Minister of Justice when next in Durban with reference to the better protection of infants, 1907.

as well.²⁸ For instance, in 1903, Acting Colonial Secretary of Jamaica, T.L. Roxburgh, wrote to C.J. Smythe, the Colonial Secretary of Natal, enquiring about the situation regarding illegitimate children in the Natal Colony. He reported that 64 per cent of the births in Jamaica were illegitimate and he enquired as to whether a similar situation existed in Natal. He added "... that the true source of improvement in this matter must be a higher moral tone among the people and a healthier public opinion, [and] it [was] also felt that it may be possible to assist towards a better state of things by means of legislation."²⁹ A Commission had been appointed in Jamaica to review the Registration of Births, Deaths and Marriages laws but it was decided that a proper conclusion could only be reached if information from other colonies could be solicited. It was hoped that a review of the existing Registration laws in Jamaica would necessitate an amendment that would "give children of parents who may marry after the birth of such children the position and rights of off-spring lawfully begotten", and increase "the facilities for the registration of the paternity of children

²⁸ In the case of the Cape Colony for instance, *The Natal Witness* reported that illegitimacy appeared to be very prevalent among the Dutch communities. *The Natal Witness*, 1 May 1880. In 1904 the Principal Under Secretary of Pietermaritzburg wrote to his counterpart in Sydney enquiring about the infant birth and mortality rates. See PAR, CSO, 1761, 1904/4274, Principal Under Secretary, Pietermaritzburg. Letter to Principal Under Secretary, Sydney, asking to be supplied with a copy of the Report (with evidence) of the Committee appointed to enquire into the decrease of the birth rate and mortality among infants, 1904. See also, Vertrees C. Malherbe. 'Illegitimacy and Family Formation in Colonial Cape Town, to c. 1850,' in *Journal of Social History*, 39:4, 2006, 1153-1176; Vertrees C. Malherbe. 'Born into Bastardy: The Out-of-Wedlock Child in Early Victorian Cape Town,' in *Journal of Family History*, 32:1, January 2007, 21-44; and Sandra Burman and Patricia van der Spuy. 'The Illegitimate and the Illegal in a South African City: The Effects of Apartheid on Births out of Wedlock,' in *Journal of Social History*, 29:3, Spring 1996, 612-635; and Burman and Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939.'

²⁹ It should be noted that Acting Colonial Secretary of Jamaica, T. L. Roxburgh did not distinguish by race when he referred to the "population" or the "people." PAR, CSO, 1741, 1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

not lawfully begotten”³⁰ thereby making it inclusive of children conceived and born ex-nuptially and therefore reducing the number of children legally designated as being illegitimate.

Some of the questions put forward by the Jamaican Colonial Secretary’s Office required statistics of the number of illegitimate births to the proportion of the population; whether there was a period when this rate was “excessively high”; or whether these had improved over time, meaning if the rate of illegitimate births had decreased, and whether this improvement could have been attributed to provisions made to a law governing the Registration of Births. The questionnaire also touched on marriage registrations and the existence of laws relating to the legitimisation of illegitimate children whose parents subsequently married. At that time in Natal, under Law 16 of 1867 “all births” had to be registered: in fact however this excluded Africans and Indians, who came under “Native Law” and Indian Immigration Law respectively. Thus, in his reply Smythe reported that of the 3 483 births that had been registered in 1902, only 46 were illegitimate and noted that this referred only to the children of “European marriages” and those of the handful of Africans that were married by Christian rites. While these figures suggest that only 1.32 per cent were illegitimate births, this did not include the illegitimate births by white women that were never registered, or those of the vast majority of Natal’s population – non-Christian Africans, Indians and Coloureds. Smythe also commented that, under the Common Law of the Natal Colony, illegitimate children became legitimate by the subsequent marriage of their parents and that in his view there was no urgency to the

³⁰ PAR, CSO, 1741, 1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

question of illegitimacy in the Colony at the time. He added that the then current legislation had “proved to be satisfactory” and needed no revision.³¹

It is unclear as to which specific law Smythe was referring to in this letter, but it is most likely the he was meaning Act 5 of 1902 – Law for the Registration of Marriages, Births and Deaths within the Colony of Natal – which also accounted for the capturing of data for Africans who were married under Christian rites. Some years later, in 1906, Dr Ernest Hill, Chief Health Officer in Natal from 1901 to 1911, lobbied a bill to include those Africans who were married by Native Law, but the Colonial Secretary did not support this amendment.³² Accordingly Smythe did admit that no proper statistics existed for the registrations of births of the children of Africans married by customary law. He did, however, alert Roxborough that there existed a law which “prohibited illicit co-habitation” between African men and women as a measure of preventing illegitimacy. Section 277 of Law 19, 1891 made this punishable as a criminal offence.

In 1908, Dr Hill, in his capacity as Chief Health Officer, received a similar enquiry from the District Health Officer of the Department of Public Health in New Zealand, Dr Pardy, with the purpose of obtaining information about any system that was in

³¹ PAR, CSO, 1741, 1903/8300, Acting Colonial Secretary, Jamaica. Circular Letter with regard to the Birth of Illegitimate Children, 1903.

³² For more on Dr Hill’s role in petitioning for change and improvement to the registration of births, deaths and marriages see Marcia Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ in *Journal of Natal and Zulu History*, 24 & 25, 2006-2007, 135-163; and Julie Parle. ‘Chapter Five: Death in Black and White-Race, Suicide and the Colonial State,’ in *States of Mind – Searching for Mental Health in Natal and Zululand, 1868-1918*. (Pietermaritzburg: University of KwaZulu-Natal Press, 2007), 225-226.

place in the Colony in relation to the protection of infants.³³ His letter stated that New Zealand had recently passed the ‘The Infant Life Protection Act,’ and he enquired if a similar Act existed in Natal. While no law existed in Natal at the time, under the banner of “Infant Life Protection”, offenders in this regard could be charged with the crime of “child-abuse;” “refusing and neglecting to provide sufficient and proper food, clothing, comforts” to a child under the age of thirteen; or “dangerously exposing a new-born child.”³⁴ However, these laws did not extend to protect children who were adopted or in foster care. Dr Pardy further enquired as to whether the Health Officer could supply him with any pamphlets issued by the Health Department pertaining to the care of infants. He also questioned if there was any system of registering maternity homes, and any special record of the birth of illegitimate children. On the 22nd of February, Dr Hill replied as follows:

With regard to the subject matter of your letter of 14th January, we really are doing nothing in this Colony in the way of protection of infant life, up to the present. In point of fact, as of course you are aware, the white population is relatively small (it has never exceeded

³³ PAR, Department of Public Health [hereafter DPH], 30, DPH84/1908, District Health Officer Auckland New Zealand asks for information of any system in vogue in Natal regarding the protection of infants, 1908. For more on New Zealand’s 1907 Infant Protection Act see, Bronwyn Dalley. ‘Chapter One – Control, Reformation and Protection: The Basis of Child Welfare,’ in *Family Matters: Child Welfare in Twentieth-Century New Zealand*. (Auckland: Auckland University Press, 1998), 21-63.

³⁴ For instance, PAR, AGO, I/8/11, 22A/1869, John Bird, Resident Magistrate, Pietermaritzburg: Forwarding Depositions in the case of Kate Baatjes for Child Abuse, 1869; PAR, Registrar, Supreme Court [hereafter RSC], 1/1/42, 8/1888, Supreme Court Criminal Cases. Regina versus Annie, also known as Nomuka. Charged with Wrongfully, Unlawfully And Dangerously Exposing a Newborn Child, 1888. According to the court transcript Annie had abandoned her new-born male child in Prince Street, Pietermaritzburg, “in a hole or furrow in the ground under an iron fence, without protection of defence or the mean of sustenance.” She pleaded guilty and was sentenced to one year imprisonment with hard labour. See also, PAR, RSC, 1/1/51, 3/1894. Supreme Court Criminal Cases. Regina vs Edward James Pithey and Johanna Hertwig, ‘Ill-using a child of tender years while under their care and charge, and refusing and neglecting to provide sufficient and proper food, clothing, comforts, and care for the same, to the injury of the child’s health, and contrary to their duty towards such child, 1894.

95.000, and is now rather less than it was in 1904) and until quite recently, since depression has got a real grip of the country, it has been a prosperous and well-to-do community, and on that account there has been little or no necessity, for any legislation in this matter. Necessity, however, seems now to be arising, and recently a society for the protection of infants, has been formed in the town of Durban, but I have not yet received sufficient information, to admit of my forming a basis for my recommendations, in regard legislative measures.³⁵

Besides taking into consideration the condition of only the “white population,” Dr Hill recognised that adequate measures concerning the protection of infants needed to be instituted in Natal. As Chief Health Officer of Natal, Dr Hill was dedicated and committed to ensuring a system of public health that did not pander to the demands of capitalist barons, as was the case in Natal, prior to his appointment. He fervently believed that a good public health system protected all individuals and that Indians and Africans were also deserving of receiving proper medical care. To this end, Dr Hill actively lobbied for universal registration of births, deaths and marriages, and he argued that “vital” and “reliable statistics” such as these was of “great value,” for the country to ‘move forward.’³⁶ He also believed that comparative mortality rates between Africans, Indians and whites in the colony were important indicators of the “disparities in wealth and social conditions,” between these groups and would assist in the better administration of public health apropos, improving sanitary conditions, “industrial pollution and unhealthy housing.”³⁷

³⁵ PAR, DPH, 30, DPH84/1908, District Health Officer Auckland New Zealand asks for information of any system in vogue in Natal regarding the protection of infants, 1908.

³⁶ Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ 159-160.

³⁷ Wright. ‘Public Health among the Lineaments of the Colonial State in Natal, 1901-1910,’ 160-162.

Later that year, in 1908, the Transvaal Colony published a report – the Indigency Commission of 1906 to 1908 – to show that the high rate of illegitimate children was a serious concern for the state.³⁸ In the context of post-South African War, the period described as the reconstruction administration, the priorities of the colonial administrations was to restore an “efficient colonial state capable of mediating the relationships between the different social sectors and economic interests at play in the Colony.”³⁹ The main concern for the Transvaal government, however, was focused on the rise of poor whiteism and indigency which was seen as a result of the various effects of poverty, economic depression, increasing urbanisation, competition for employment, and “moral perversion through illicit alcohol trafficking and prostitution.” The behaviour of poor whites in the cities was regarded as a red flag by the authorities as a signifier of racial degeneration. Inter-racial relationships between white women and African, Chinese and Indian men further intensified the states’ concerns for poor whites. In the hopes of alleviating the problem of poor white destitution, a Commission was appointed to investigate the “squalid, unhealthy and demoralising poor white settlements,” and to suggest ways of preventing the “perpetuation of indigency and crime.”⁴⁰ One aspect the Commission focused on was the high rate of illegitimate infant mortality and the implied association to infanticide.

³⁸ TAB, AMPT PUBS, Transvaal Colonial Publications [hereafter TKP], 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908, Presented to both Houses of Parliament by Command of His Excellence the Governor. Pretoria: Government Printing and Stationery Office, 1908. This Commission was primarily concerned with the plight of poor Whites in the Transvaal, the causes thereof, and some ways of alleviating this poverty.

³⁹ Lis Lange. *White, Poor, and Angry: White Working Class Families in Johannesburg – Race and Representation*. (Aldershot: Ashgate Publishing, 2003), 65.

⁴⁰ TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

Chapter Six of the Indigency Commission Report stated that the evidence compiled showed that while the birth of illegitimate children was common in the urban centres of the Transvaal, it was also not uncommon in the country districts, where, in addition, children in foster care were 'better looked after' than in the towns.⁴¹ When the Undenominational Children's Home of Johannesburg was investigated, a representative had stated that: "It is really terrible. It is more serious almost than in any other place. We are constantly having applications to take illegitimate babies."⁴² The Commission argued that illegitimacy affected the question of indigency in two ways. It said that, in the first place, illegitimate children were often neglected during their early years and grew up uneducated and physically and morally "weak." Secondly, it claimed, without any close or known relatives, illegitimate children became poor whites or were drawn into the "criminal classes." The report also stated that the death rate among illegitimate children was "notoriously high."

When offering suggestions to the Transvaal Government on how best to alleviate this problem, the Indigency Commission emphasised that illegitimacy was an extremely difficult subject to deal with. It further stated that assistance to the mother, whether directly or by compelling the father to support his child and its mother, "may only encourage the evil." Dr Gilchrist, the District Surgeon of Fordsburg, stated that in his experience:

Ninety per cent of the cases where a girl got into trouble and someone adopted her baby for a lump sum down, or took it over for nothing, that girl went wrong again ... When the mother had to pay so much a month and the child was put under the supervision of a matron who

⁴¹ For more on the history of fostering in South Africa see, P. C. Henderson. 'Questions on Fostering: An Anthropologist's Perspective,' in Sandra Burman (ed.) *The Fate of the Child: Legal Decisions on Children in the New South Africa*. (Cape Town: Juta, 2003), 10-31.

⁴² TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

went regularly to see how it went on, the girl always kept straight! In many cases, for instance in domestic service, mothers cannot nurse the children themselves, and in consequence give them to coloured women to look after. Women adopt children for a lump sum down and in many cases do not even know the mother's name, and this is conducive to neglect and many deaths occur from ignorance and neglect, the guardian having little or no interest in the child.⁴³

In some instances, women were driven to place their children in foster care or baby-farms as a result of poverty and not necessarily because of callousness or vindictiveness. As many women needed to earn a living, and as many places of employment disallowed women bringing their children to work, they perhaps chose options that best suited their economic means. So, while some women could afford 'good' foster mothers and monthly payments, other women, according to Sandra Burman and Margaret Naude, had the option of getting "rid of the child permanently, by abandonment, murder or adoption."⁴⁴

Debates at this time about illegitimacy as well as the role of the public and the state's perceptions around issues of morality closely correlated to discourses on infanticide,⁴⁵ where the alleged motives or reasons given by the accused implied that the child was illegitimate, whether by moral, religious or cultural definitions.⁴⁶ Considering the burden to the state and the fears of racial degeneracy and 'pollution' it is not surprising that the Transvaal, Natal and Cape colonies started to develop a concern with the question of illegitimacy, particularly amongst their white subjects.

⁴³ TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908.

⁴⁴ Burman and Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896 -1939,' 392.

⁴⁵ Burman and Naude. 'Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,' 373-413.

⁴⁶ See 'Tabulated Case Summaries' in Appendix, in Badassy. 'A Severed Umbilicus.'

In dealing with the issue, the Indigency Commission in the Transvaal suggested that assistance should not be given “too freely to the white mother,” but that, rather, she should, as far as possible, “be encouraged to contribute to the support of her child.” At the same time, the Indigency Commission also recommended that an Infant Life Protection Act be passed, making it compulsory for persons who wished to take care of infants (whether illegitimate or not) to be registered. The need for such an Act, which was primarily concerned with the general welfare of (white) children, was emphasised by the District Surgeons of both Johannesburg and Pretoria. Further it was also recommend that the Act should appoint inspectors in accordance with the following suggestion made by the representatives of the Loyal Women’s Guild⁴⁷:

We think that it would be a good thing if either the Government or the municipality appointed an inspector, say a woman who is known to be decent and to understand these things thoroughly who would have access to all the back courts to look into bringing up and life of the infants in this town. I think there is great deal of infant mortality, especially amongst the class of women we are speaking of (mothers of illegitimate children), because they are not known about. We have found cases where natives are looking after these children.⁴⁸

⁴⁷ The Loyal Women’s Guild had been established during the South African War. It was founded on the principle of drawing “together the various races, sections and classes in a common community and to band women together for their mutual benefit.” For more on the origins of the Loyal Women’s Guild see Elizabeth van Heyningen and Pat Merrett. “The Healing Touch’: The Guild of Loyal Women of South Africa, 1900-1912,’ in *South African Historical Journal*, 47:1, 2002, 24-50; and Deborah Kirkwood. ‘Settler Wives in Southern Rhodesia: A Case Study,’ in Hilary Callan and Shirley Ardener (eds.) *The Incorporated Wife*. (London: Croom Helm, 1984), 159.

⁴⁸ TAB, AMPT PUBS, TKP, 183, Transvaal Blue Books, Unnumbered. Transvaal Indigency Commission. Report, 1906-1908, Presented to both Houses of Parliament by Command of His Excellence the Governor. Pretoria: Government Printing and Stationery Office, 1908.

In Natal, similar concerns of the Loyal Women's Guild were echoed by the Mother's Union and the Durban Christian Ministers' Association (DCMA).⁴⁹ In 1907 the DCMA requested a meeting with the Minister of Justice to discuss the "perils of child life" in the Colony and to suggest and support "certain proposals" for the better protection of infants by legislation.⁵⁰ In 1909, Ellen Blackmore, who at the time was the Secretary for the Maritzburg Mother's Union, wrote to Dr Hill in his capacity as Health Officer for Natal, asking certain questions about nursing, and more importantly, about the treatment and mortality of infants. Advocating better training and registration of midwives, Blackmore stated in her letter that she was concerned that the high rate of infant mortality in the Colony was due to the large number of untrained and uncertified midwives, which she "hoped there was some law against." She also wished to enquire if there was any fund or Society then present in Natal that provided nurses for the poor. With regards to the care of infants, she asked:

Does the Health Department give addresses or distribute pamphlets on matters of health in the Colony [and] is there any provision made by which very poor mothers with babies can get good pure milk cheaper than about 4/- an Imperial pint so many of them cannot afford that and

⁴⁹ Very little is known about the Maritzburg Mother's Union and the DCMA. On the DCMA, a section in a biography on a Baptist minister from Natal, G.W. Cross which notes that the DCMA consisted of ministers of the "non-conformist" and "free churches." Kathleen Edith Cross. *Ours is the Frontier: A Life of G. W. Cross, Baptist Pioneer*. (Pretoria: University of South Africa, 1986), 168. The National Automated Archival Information Retrieval System (NAAIRS) of the National Archives and Records Service of South Africa indicates that the DCMA was operational from the 1890s to 1910 and were active in lobbying for reform to marriage and gambling laws. PAR, CSO, 1390, 1894/1006, Honorary Secretary, Durban Christian Ministers Association. Forwards a Petition Respecting The Laws Of Gambling, 1894; and PAR, CSO, 1850, 1908/692, Hon Secretary Durban Christian Ministers' Association. Durban. Asks that copies of the proposed amendments to the Marriage Law of the Colony may be submitted to the Association for its consideration, 1908.

⁵⁰ PAR, MJPW, 135, MJ82/1907, Reverend A. Hall Durban: May a deputation from the Durban Christian Ministers Association wait upon the Minister of Justice when next in Durban with reference to the better protection of infants, 1907.

give the children stale, diluted, tinned milk with disastrous consequences?⁵¹

In reply to this Dr Hill answered that while there was no law which prevented the employment of untrained or unqualified midwives, Section 29 of Act 21 of 1899 made it compulsory for all midwives to obtain certificates of competence from the Colonial Secretary.⁵² Dr Hill was also not aware of any fund or society that provided nurses to the poor, except perhaps the Maritzburg Benevolent Society. He also wished to place on record that even though the Health Department did not make any provision for supplying pure milk at a cheaper rate, it did issue leaflets and pamphlets to mothers on such topics as the prevention of diseases. He ended his reply by declaring that the Health Department could have initiated many more reforms to decrease infant mortality rates, but that they were very dependent on the funds they received from Parliament.⁵³

Later that year, much to the satisfaction of the lobbyists, the Transvaal Colony passed the Infant Life Protection Aid Act – For the Better Protection of the Lives of Infant Children. In 1911, a year after Union, this Infant Life Protection Aid Act was adopted as a national Act.⁵⁴ When the *Rand Daily Mail* reported on this law, it stated that the Act was,

⁵¹ PAR, DPH, 32, DPH256/1909, Ellen Blackmore Secretary, Pietermaritzburg Mother's Union. Asks certain questions in respect to nursing, treatment and mortality of infants, 1909.

⁵² PAR, Natal Colonial Publications [hereafter NCP], 5/3/7, Acts of the Parliament of the Colony of Natal, 1899.

⁵³ PAR, DPH, 32, DPH256/1909, Ellen Blackmore Secretary, Pietermaritzburg Mother's Union. Asks certain questions in respect to nursing, treatment and mortality of infants, 1909.

⁵⁴ TAB, Governor of the Transvaal Colony [hereafter GOV], 1209, PS 53/56/09, Act No. 24 Of 1909 Better Protection Of The Lives Of Infant Children, 1909 and TAB, Colonial Secretary [hereafter CS], 1004, 21284, Infant Life Protection Act, Natal, 1911. In 1913, however, this Act together with the Cape Colony Act: Infant Life Protection Act, 1907, was consolidated to

... framed with the object of dealing with a question of vital importance, and one which needs immediate attention. For years past in Johannesburg, unscrupulous people have been actually making a living out of this sinister business in babies. The principal aim of the Act is, of course, to frustrate the nefarious dealing of those who are known to ply the trade, and also to make sure that when children are adopted they will, under Government supervisions, receive health and clean treatment.⁵⁵

This newspaper article also confirmed that baby-farming had existed in Johannesburg since the 1890s, apparently often existing under the guise of being described as an orphanage. But, as we have seen, prior to the passing of the Infant Life Protection Act in 1907 in the Cape and in 1909 in the Transvaal no procedural code existed by which the state could act on baby-farming, illegal adoptions or unregistered foster homes. According to the newspaper, rescuing children from these baby-farms had often been achieved by “benevolent individuals” who wished to save “unfortunate infants from bad surroundings.” It reported that on the Rand, at the head of this mission were a Mrs Kloppers and her assistant, Miss Malan.⁵⁶ It is not surprising that the primary concern for both Kloppers and Malan was the welfare of white children and, as a result of their “unostentatious work,” they were able to rescue many white babies from “the clutches of coolies, Malays and others,” who were allegedly “adopted for the purposes of gain and a certain future of evil.”⁵⁷ The newspaper’s commentary on this incident is laden with racist overtures and conformed to racial stereotypes and

become Act 25, The Children’s Protection Act 1913. This Act was later repealed by the Children’s Act 31 of 1937.

⁵⁵ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do’, by a Special Correspondent. *Rand Daily Mail*, Friday, 29th October 1909; TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910.

⁵⁶ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do’, by a Special Correspondent. *Rand Daily Mail*, Friday, 29th October 1909.

⁵⁷ ‘Baby-Farms on the Rand. Sinister Traffic - What the new Law will do.’

biased editorial styles in colonial newspapers that were either sympathetic or judgemental in nature, depending on the protagonist in question. This article is emblematic of this predilection, where the discourse of vulnerable children did not seem to cut across race prejudice, as the reportage focussed only on white infants.

Recounting their visits to one of these so-called orphanages, Miss Malan's statement reads as follows:

I visited a coloured woman in the Malay camp and found that she had in her charge a sweetly pretty child of five years. The little one's hair was golden, her complexion pink and white and she possessed wonderful blue eyes. I asked the woman to hand over the child: and she replied that she was willing to if she got a money recompense. I asked her what she wanted and she told me that she had received cash down with the child when she took it over. Further, she stated that if I gave her £100 I could take the handsome girl. I explained that that was impossible and she flew into a rage and blurted out: 'You want the child, do you? If you can give £100 I will hand it over. Do you think that I can't get £100 easily through her? She is very pretty and very nice, and when she is big, I will get £100 in no time through her.' I could do nothing further that day; but I had the child rescued later. Poverty had a great deal to do with the loose methods of parents parting with their own flesh and blood.⁵⁸

Miss Malan added that there were many instances where children had been handed over to Coloured women because their parents were simply at the point of starvation and when the child was raised by these Coloured women, they were "lost to the church and also to civilisation." Miss Malan also reported that there were some cases where women gave up their children because they have been deceived by "immoral" men who had abandoned these women. Of the new Act, she asserted that "in view of the evil[,] there is an opportunity for some good to be done."⁵⁹

⁵⁸ 'Baby-Farms on the Rand. Sinister Traffic - What the new Law will do.'

⁵⁹ 'Baby-Farms on the Rand. Sinister Traffic - What the new Law will do.'

The underlying motivation for the introduction of the Act in the Transvaal lay not only in the findings of the Indigency Commission of 1908, but also because of the high rates of infant mortality that were being reported by the Medical Health Officers of the different colonies at that time.⁶⁰ Evidence received before the Commission had stated that the death rate among illegitimate children was “abnormally high,” that baby-farming existed to a large scale, and that the baby-farmers of white children were in fact Coloured and ‘Coolie’ women. In the minds of medical professionals high illegitimate birth rates were linked to high infant mortality. The cause of these deaths was mainly due to ignorance, ill-treatment or neglect – either on the part of the mother who had very little knowledge of proper child rearing methods, or on the part of baby-farms acting as foster homes – and if a charge could be proffered under these circumstances, it was infanticide.

As mentioned, Dr Anderson, MOH of Cape Town, was influential in lobbying for legislation for the protection of children. For Cape Town he found that the “infant mortality rate for illegitimate children was much higher than the average for all infants in the city.”⁶¹ He also found that there were many “private houses” that took in illegitimate children to conceal their existence and in 1903 he reported that “there ha[d] been repeated deaths of young infants at several houses, and in one instance [he] counted five such deaths in one house, three of them being those of illegitimate

⁶⁰ On the Commission, Lord Selbourne, High Commissioner for South Africa and Governor of the Transvaal and Orange River colonies, noted “that the report is the most valuable and able one, and is the result of prolonged and careful investigation into the general, social, and industrial conditions of the country. It covers a wide field, and deals with the most fundamental difficulties which the South Africa Governments have to face.” TAB, GOV, 1179, 87/4/08, Transvaal Indigency Commission, 1908.

⁶¹ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ 393.

children.”⁶² In subsequent years, Dr Anderson prolifically reported on and made public the increasing prevalence of illegitimacy in the city. In their article ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ Sandra Burman and Margaret Naude put forward the argument that the passing of the Infant Life Protection Act in 1907 in the Cape Colony was, in large part due to Anderson’s efforts.⁶³ The Transvaal 1909 Act contained very similar provisions to those concerned in the Cape Colony Act and the introducers of this Act in the Transvaal were of the opinion that a law such as that in the Cape as well as the English Act (of 1908) “...was bound to minimise the evils which the Indigency Commission found to exist.”⁶⁴

One of the main features of the Transvaal Act was a penalty of £100 or six months imprisonment for any person who, “after adopting a child ill-treated it or failed to report to a Magistrate that the child was in his or her possession.” The Act also

⁶² Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ 394.

⁶³ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896-1939,’ 395.

⁶⁴ TAB, GOV, 1209, PS 53/56/09, Act No 24 Of 1909 Better Protection of the Lives of Infant Children, 1909. This “English Act” that the quotation makes reference to is the 1908 Children Act. This was based on the 1872 ‘Infants Protection Bill – to make better provision for the protection of infants entrusted to persons to be nursed or maintained for hire or reward’. However, there were some problems with the 1872 act, specifically with regards to baby-farming. For instance, the 1872 Act did not provide “for the complete registration and inspection of every house where any child is taken in, to be nursed by those who are not related to the child.” Furthermore, there were some institutions and nurseries that were exempt from inspection. The Special Purposes and Sanitary Committee of the Metropolitan Board also believed that the Act should mandate that only Medical Health Officers should be assigned to carry out inspections as they were in the best position to acquire information with respect to cases of baby-farming. ‘Baby-Farming in the North,’ in *The British Medical Journal*, 1 May 1880, and British Parliamentary Papers, 046866-1871, A Bill for the Better Protection of Infant Life. For more on this see also Grey. ‘More Ignorant and Stupid than Wilfully Cruel’: Homicide Trials and ‘Baby-Farming’ in England and Wales in the wake of the Children Act 1908.’

mandated that the age limit for adopting a child was before the child turned seven years of age and the future parents must have obtained a certificate from a Magistrate which showed that they were “fit and proper persons to have care of a child.”⁶⁵ Another important clause of the Act was that people who adopted a child had, at any time on demand, to hand over the child to their biological parents. The Act also stipulated that a magistrate could, without notice, order a medical examination of the adopted child and if the person who had care and custody over the child refused to allow or obstructed this examination, then that person would be guilty of contravening the Infant Life Protection Act. A very instrumental clause (which was most probably an attempt at curbing baby-farming activities) was that no insurance was allowed to be taken out on a child’s life by its adoptive parents. The Act also put in motion a procedure by which children could be adopted. For instance, those prospective parents who wished to adopt a child needed to advertise as such in a local newspaper, and a District Magistrate needed to be informed of the adoption within three days of finalising the process. Furthermore, if the address of the adoptive parents changed, or if the child was moved to a new location, or if the child or infant died, a Magistrate also needed to be notified.⁶⁶ These provisions were also mandated in the post-Union Act, the 1913 Childrens’ Protection Act.

However, high infant mortality rates continued to plague the state and medical fraternity well into the Union years. Reformulating adoption and foster care legalisation was only one avenue through which infant mortality rates could be

⁶⁵ TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910. The age limit for adoption changed to 16 with the passing of the 1923 Adoption of Children Act. For more on this history of adopting legislation in South Africa see, Sandra Ferreira. ‘The Origin of Adoption in South Africa,’ in *Fundamina*, 13:2, 2007, 1-10.

⁶⁶ TAB, LD, 1785, AG170/10, Infant Life Protection Aid Act 1909, 1910. In the Union years, it was only in 1923 that Act 25, the Adoption of Children Act was passed, which legalised adoption.

reduced, but this did not address the high number of infant deaths which resulted from improper and inadequate care such as unsanitary conditions, incorrect feeding methods, infectious diseases, or lack of appropriate medical attention. The 1913 Act was based on laws that already existed in the Transvaal, Natal, and Cape Colonies, but it was designed primarily with white children as the focus. In her article 'Class, Colour and Gender in Child Welfare in South Africa, 1902-1918,' published in 1990, Linda Chisholm argued that this Act further "entrenched the differential treatment of children in South Africa not only according to 'specific categories of need,' but also according to categories of class, colour and gender."

An integral aspect of the discourse concerning infant protection related to the role of mothers in proper and efficient child care. As in Britain and other parts of the empire, the solution to improving the overall health and lifespan of infants for ensuring racial superiority lay in the educating of mothers in child rearing. In this regard, debates around women's responsibility for the health of a nation persisted in the public domain.⁶⁷ There were various efforts, by the state, welfare organisation and the medical fraternity to inculcate an ideology of good mothercraft amongst working class whites and urban Africans, Indians and Coloureds. As a tool of social intervention, that Act transmitted many of the colonial preoccupations about race and class into the Union years. On a basic level, the Act attempted to protect children from cruelty, neglect, abuse and exploitation. On a much broader level, however, the 1913 Act resonated with discourses that originated in or about racial degeneration in urban areas which had surfaced during the first decade of the twentieth century in the Transvaal, Natal, and Cape Colonies.

⁶⁷ Klausen. 'For the Sake of the Race.'

Conclusion

During the time period covered in this paper, societal attitudes to and legal and social provisions for illegitimate children and unwed single mothers changed in relation to political, economic and medical contexts. In the opening years of the twentieth century, some poor, single or abandoned women, who could not and possibly did not want to raise a child, placed their children in the care of baby-farms where, for a substantial fee, and with a deceptive promise of being cared for, they were tragically neglected. Working within this framework then, illegitimate children were linked to baby-farms, which if media sources are to be trusted were notoriously known for practising a form of infanticide by neglect. This in turn added to the “problem of illegitimacy” of children for the authorities. In this manner illegitimacy became connected with significant concerns relating to infant life protection and child welfare. The ambit of child welfare, both medical and social, in South Africa particularly in the early Unions years, was concerned primarily with high rates of infant mortality in the urban centres and supposedly the effect that poor mothercraft had on this statistic. This is what Ann Stoler would identify as an imperial venture and campaign at “child saving and better parenting.”⁶⁸

During the 1920s and 1930s in South Africa, changing societal attitudes to single mothers and illegitimate children disaggregated some of the stigma attached to adoption and state run foster homes. It could be argued that for some desperate

⁶⁸ Ann Laura Stoler. ‘Matters of Intimacy as Matters of State: A Response,’ in *The Journal of American History*, 88:3, December 2001, 896.

women, who had considered that their only recourse after an illegitimate birth was a form of ‘infanticide by neglect’, now there were other possible options available to the prospective mother of an illegitimate child. Nonetheless, these of course were still dependent on her “social and economic circumstances,” and further compounded by her race and class designations.⁶⁹ Most significantly, however, this paper has illustrated how, over this time period, the legal and moral concerns with illegitimacy shifted focus from immorality on the part of the mother to the welfare of the child. These shifting attitudes also implied that instead of punishing the mothers of illegitimate children, the state and child welfare organisations opted to find means to ‘rescue’ and ‘rehabilitate’ these women through the establishment of child nurseries, clinics and “rescue homes,” and, although this straddled the fine line between contrition and retribution, it was hoped that these measures would deter women from repeating their ‘mistakes.’

⁶⁹ Burman and Naude. ‘Bearing a Bastard: The Social Consequences of Illegitimacy in Cape Town, 1896 -1939,’ 378.