Single Women and the Law:
Crime and Legislative Change in Colonial South Australia, 1836-1880

By

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Abstract

Due to its status as the only successfully non-penal Australian colony, South Australia is often regarded as having been relatively crime-free compared to its penal counterparts. South Australian founders credited this apparent absence of crime not only to an absence of convicts, but with the relative balance between the numbers of male and female immigrants. Women were considered to be not only less prone to crime than men, but as a 'moralising' influence on colonial society, with their own passive femininity seen to temper the stereotypically violent masculinity of the Australian colonial frontier. Such assumptions framed women as experiencing crime only as the passive victims of male violence, rather than as active perpetrators of crime; however, this thesis argues that these stereotypes are incorrect, and that the experiences of single women in South Australian courtrooms, on both sides of the law, can shed necessary light on the experiences of South Australian women both within and outside of the colonial courtroom.

This thesis primarily utilises newspaper court reports which were published between 1836-1880 in order to highlight the ways in which the intersecting themes of gender, class, race, and marital status influenced the outcomes of court cases involving unmarried women as both perpetrators and victims of crime. This argument is presented across seven chapters—with one chapter providing context for specifically South Australian experiences of colonisation, followed by six thematic chapters which focus crimes relating to significant aspects of single women's lives. These themes are: marriage, work, motherhood, pregnancy, and consensual and non-consensual sex. Through a consideration of these themes, this thesis demonstrates the bias which was directed towards unmarried women in South Australian courtrooms, on both sides of the law, and assesses the extent to which this courtroom bias reflected broader colonial opinions.

Declaration

I certify that this thesis does not incorporate without acknowledgement any material previously submitted for a degree or diploma in any university and that the research within will not be submitted for any other future degree or diploma without the permission of Flinders University.

To the best of my knowledge and belief, this thesis does not contain any material previously published or written by another person except where due reference is made in the text.

Signed by Jade Hastings

Date: 10/06/2022

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Introduction

In 1847 the *Adelaide Observer* published an article written by John Stephens, author of *History of South Australia,* which noted that 'South Australia has never been a penal colony; the ratio of crime is consequently small, and criminality is without excuse'.[1] This quote highlights two of the key components of South Australian colonial propaganda: the alleged superior morality of South Australian colonists and colonisation methods, and the apparent absence of crime or immorality in comparison to the existing penal colonies.[2] After the colonial period and Australian Federation, South Australia continued to be portrayed as somewhat separate and distinct from the other Australian States and Territories—particularly regarding the rights of women. South Australia was the first Australian colony to give women the right to vote and stand for parliament and, less than a century later, the first to legalise abortion.[3] These rights granted to women in the late-nineteenth and twentieth centuries are undoubtedly an important facet of South Australian history; however, this thesis argues that the legal status and experiences of single women in the earliest decades of South Australian colonisation reveals a history that is both more comprehensive and more critical of South Australia's historical reputation for a comparative absence of sexism and criminality. .

The legal rights of South Australian women were highly contingent on their class and marital status, and the courtroom experiences of women who fell outside of the socially mandated middle-class ideals of respectability reveal a clear social and legal prejudice which persisted throughout the first decades of colonisation. South Australia's later recognition as a frontrunner of women's rights and feminist legislative reform is not indicative of an increased regard for women in colonial society—especially in the case of working-class and non-white

[1] 'Address to the Starving or Suffering Millions of Great Britain and Ireland', *Adelaide Observer*, 26 June 1847, p.4.

[2] For specific details of these beliefs, see chapter 1. For secondary research on the distinctiveness of South Australian colonialism, see: D Pike, *Paradise of Dissent: South Australia 1829-1857*, Longmans, Green and Co: Melbourne, 1957; D Whitelock, *Adelaide 1836-1976: A History of Difference*, University of Queensland Press: St Lucia, 1977; RM Gibbs, *Under the Burning Sun: A History of Colonial South Australia, 1836-1900*, Peacock Publications: Adelaide, 2013.

[3] For a selection of research on legislative change pertaining to women's rights in South Australia, see: H Jones, *In Her Own Name: A History of Women in South Australia from 1836*. Wakefield Press: Kent Town, 1994; P Grimshaw, 'Reading the silences: Suffrage activists and race in nineteenth-century settler societies', in P Grimshaw, K Holmes and M Lake, *Women's Rights and Human Rights: International Historical Perspectives*, Palgrave: Hampshire, 2001, pp.31-48; C Parker, *Abortion, Homosexuality and the Slippery Slope: Legislating 'Moral' Behaviour in South Australia* (PhD Thesis), University of Adelaide, 2013; C Parker, 'A parliament's right to choose: Abortion law reform in South Australia', *History Australia*, vol.11, no.2, 201, pp.60-79; M Heath and EA Mulligan, 'Abortion in the shadow of the criminal law: The case of South Australia', *Adelaide Law Review*, vol.37, 2016, pp.41-68; D George, *Mary Lee: The Life and Times of a 'Turbulent Anarchist' and Her Battle for Woman's Rights*, Wakefield Press: Adelaide, 2018.

women. Consequently, the experiences of single women with South Australian law and legal proceedings in the colonial period leading up to 1880 reveals the precarity of unmarried women's social and legal status, and safety, which was clearly reflected in the outcomes of court cases involving single women as both perpetrators and victims of crime.

This thesis illuminates both the letter and the practice of colonial South Australian law. In his article on the legislative regulation of sexuality in South Australia and New South Wales, Richard Phillips argues that 'South Australian legislators sometimes refused to follow party lines or legislative precedents, whether set in other Australian colonies or the Imperial Parliament'.[4] Consequently, this thesis considers the reasons behind relevant legislative changes in colonial South Australia—comparing those which were encouraged throughout the Empire and those which were triggered by uniquely South Australian circumstances. It considers the extent to which court verdicts reflected official legislation, compared to unwritten societal norms. Furthermore, it considers how these unwritten norms contributed to low convictions rates for serious felony offences such as rape and infanticide, compared to high conviction rates for non-violent offences like breach of promise of marriage and wage and contract disputes.

In order to provide a comprehensive analysis of women's experiences with the law in colonial South Australia, this thesis examines case studies of crimes involving women which were brought before the colonial courts between 1836 and 1880. Furthermore, it considers the ways in which colonial laws—particularly those relating to crimes which were often perpetrated by, or committed against, women—changed over time. In particular, this thesis focuses on those laws which were amended, introduced, and repealed in response to public concern and social issues which directly influenced the lives of colonial women: including marriage, work, sex, and pregnancy/motherhood. By considering these questions, this thesis seeks to use crime and court proceedings to evaluate the status of single women in colonial South Australia, and the ways in which different groups of women were perceived (both socially and legally) over time. Predominantly utilising court cases involving unmarried women (as both plaintiffs and defendants), this thesis demonstrates that there was a clear differentiation between the treatment of married and unmarried women, and between women

[4] R Phillips, 'Imperialism and the regulation of sexuality: colonial legislation on contagious diseases and ages of consent', *Journal of Historical Geography*, vol.28, no.3, 2002, p.347.

and men, in colonial law and court proceedings. This thesis also considers the extent to which South Australian laws were influenced by legal changes in Britain and the surrounding Australian colonies. This consideration seeks to assess the differences between those legal changes which were triggered by outside influences, and those—including convict prevention laws, the allowance for women to sue for sexual slander, and the early abolition of the death penalty for rape—which were implemented in response to specifically South Australian concerns.

A woman's presence in the early colonial courts, as plaintiff, defendant, or witness, was a subversion of women's expected role. According to Allen, the acts of committing or reporting a crime introduced colonial Australian white women to a public sphere that was otherwise exclusively reserved for men.[5] She suggests that women who committed crimes were regarded as deviating from 'natural or normal womanhood'.[6]This led to the perception of criminal women as 'unnatural'—casting a clear distinction between them and the 'respectable', passive feminine ideal.

By committing or reporting a crime, particularly (but not exclusively) one involving sex, a woman subjected her morality, social respectability, and her all-important chastity to public dispute and gossip. This risk could often be circumvented by middle-class women, who often had the familial and financial support to avoid turning to crime to support themselves, and to avoid seeking legal and financial recompense for non-violent crimes (such as seduction and breach of promise) committed against them. This ability of middle-class white women to avoid legal proceedings further enforced the idea of crime as something which was committed by and against working-class and non-white women, leading to a culture of victim-blaming which portrayed them as non-respectable, often hyper-sexualised, naturally prone towards criminality and as undeserving of justice for crimes committed against them.

The marginalising perception of women in colonial courtrooms was further compounded by colonial perceptions of crime as an almost exclusively male action. Women

[5] J Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*. Oxford University Press: Melbourne, 1990, p.11.
[6] Ibid. For this discussion in the South Australian context, see: C Nance, 'Women, public morality and prostitution in early South Australia.' *Push from the Bush*, no.3, 1979, pp.33-43.

were expected to encounter crime as passive victims of masculine criminals, not as active participants in illegal activity, reinforcing the perception of woman criminals as unfeminine. In Jenny Coleman's research on representations of female criminals in the late-Victorian and Edwardian press, she notes that media depictions of women who were victimised by fraud 'reinforced…dominant constructions of women as weak and passive', while women who committed acts of fraud 'set up competing and contradictory constructions of womanhood'.[7] This marginalising conception of criminal women was strengthened when the woman in question was unmarried, and therefore failing in two of the key components of middle-class female respectability—morality and marriage.

In colonial society, a woman's respectability was intrinsically linked with her marital status, and spinsterhood was considered to encourage immorality.[8] As Kirsten McKenzie asserts, for most of the nineteenth century, the British colonial ideal of femininity was 'exemplified in the chaste wife and devoted mother, [who] was represented as the moral centre of civilised society', and women who became involved in crime—particularly crimes involving pre-marital sex and illegitimate children—did not suit this ideal.[9] This thesis argues that women who became involved in colonial criminal proceedings—by their own choice or through social or financial necessity—did so in direct, if often unintentional, contention of colonial ideals which painted women as passive actors in their own lives. Women who testified in the colonial courts as both perpetrators and victims knew that they would be subjected to the gossip and ridicule of colonial society yet, for various reasons, they did it. In a time and place where a woman's economic and social position in society was determined by her marriage potential, risking legal and social ridicule in public court could limit marriage options, impacting her perceived usefulness to colonial society. As a result, examining the social and financial factors which encouraged unmarried women to become involved in colonial court cases can shed light on the social and legal status of women in colonial South Australia—particularly those women who were otherwise absent from the official written record of the time.

[7] J Coleman, 'Incorrigible offenders: Media representations of female habitual criminals in the late Victorian and Edwardian press', *Media History*, vol.22, no.2, 2016, p.154.
[8] K Alford, *Production or Reproduction: An Economic History of Women in Australia, 1788-1850*. Oxford University Press: Melbourne, 1984, p.29.
[9] K McKenzie, *Scandal in the Colonies: Sydney & Cape Town, 1820-1850.* Melbourne University Press: Carlton, 2004, p.105.

Scope

This thesis considers the experiences of South Australian women, with some cases from other Australian colonies, Britain, and other areas of the Empire considered for comparative purposes. The reason for this focus on South Australia is because it is frequently overlooked, or under-analysed, in colonial Australian historiography. Most research published on women in colonial Australia has focused on New South Wales and/or Van Diemen's Land—even those studies which claim in their title to consider Australia as a whole.[10] While New South Wales and Van Diemen's Land both have a rich history, the social and legal experiences of people living in these colonies did not always mirror those of the later-established colonies of Port Phillip, Swan River, South Australia, and Queensland. Some of the most obvious examples of differentiations between Australian colonies include: Victoria's gold rush; the use of Van Diemen's Land as a maximum security prison for re-offending convicts; the failed attempt to make Swan River the first convict-free settlement; and the widescale implementation of 'blackbirding' in New South Wales and Queensland. These major variations, combined with numerous subtler social and legal differences, demonstrates the importance of researching each Australian colony as an independent historical entity, rather than as part of a cohesive national unit which did not exist prior to Federation in 1901.

From its creation, South Australian authorities sought to differentiate their colony from the existing penal colonies. While they were not always successful, and there are many similarities between colonial authorities' goals in South Australia and other colonies in the

[10] For examples of this, see Allen, *Sex and Secrets*; EC Casella, '"A woman doesn't represent business here": negotiating femininity in nineteenth-century colonial Australia', *The Written and the Wrought: Complementary Sources in Historical Archaeology. Essays in Honour of James Deetz, Kroeber Anthropological Society Papers*, no.79, 1995, pp.33-43; C Twomey, 'Courting men: mothers, magistrates and welfare in the Australian colonies', *Women's History Review*, vol.8, no.2, 1999, pp.231-246; J Kociumbas, 'Azaria's antecedents: stereotyping infanticide in late-nineteenth century Australia', *Gender and History*, vol.13, no.1, 2001, pp.138-160; L Featherstone, 'Becoming a baby? The foetus in late-nineteenth century Australia', *Australian Feminist Studies*, vol.23, no.58, 2008, pp.451-465; P Russell, *Savage or Civilised? Manners in Colonial Australia*, Sydney: University of New South Wales Press, 2010; A Kaladelfos, 'The "condemned criminals": sexual violence, race, and manliness in colonial Australia', *Women's History Review*, vol.21, no.5, 2012, pp.697-714; A Kaladelfos, 'The politics of punishment: Rape and the death penalty in colonial Australia, 1841-1901'. *History Australia*, vol.9, no.1, 2012, pp.155-175; L Rushen, 'Marriage options for immigrant women in colonial Australia in the 1830s', *Journal of Australian Colonial History*, vol.16, 2014, pp.111-126; L Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier', in R Mason (ed.), *Legacies of Violence: Rendering the Unspeakable Past in Modern Australia*, Berghahn Books: New York, 2017, pp.33-52, all of which claim in the title to be 'Australian' histories, but none of which mention South Australian experiences.

British Empire, this foundation of presumed difference, and moral superiority, makes South Australia a vital case study for understanding the history of crime and legal change in nineteenth century Australia. Yet differences in South Australia's colonisation methods have often been exaggerated in both primary records and contemporary (South Australian) histories, presented as evidence of the colony's supposed superior and separate history. While there have been specifically-South Australian studies conducted in recent decades which deepen historical understanding of colonial specificity, none of this research has provided a comprehensive analysis of women's involvement in colonial court proceedings—a gap in South Australian historiography which this thesis seeks to fill.[11]

Much of the primary source material available on colonial South Australia, including government records, official despatches, diaries, biographies, and media sources, was created by men and often mention women only in reference to their husbands—with female-created archival sources produced almost exclusively by independently wealthy white women or the wives of elite male colonists.[12] According to Nicola Goc, this absence of first-hand women's perspectives has led to a perception of colonial women as 'hardworking but silent and submissive to their fathers, husbands and sons who were credited with creating a nation built on "mateship"'.[13] Women's relative absence in first-hand historical records, or their presence only in connection to their husbands, means that without in-depth historical research, their experiences will continue to be overlooked. This thesis contends that court proceedings are a means of illuminating the experiences of an otherwise overlooked category of single women, with court reports published in colonial newspapers highlighting the experiences and voices of everyday women who are otherwise absent from the archives. In South Australia these

[11] For contemporary (twenty-first century) research on colonial South Australia, see: S Piddock, '"An irregular and inconvenient pile of buildings": The Destitute Asylum of Adelaide, South Australia and the English workhouse', *International Journal of Historical Archaeology*, vol.5, no.1, 2001, pp.73-95; S Scheidlich-Day, 'From "Angel in the House" to "Angel in the Bush": The impact of Victorian notions of femininity on colonial South Australia', in K Darian-Smith, P Grimshaw, K Lindsey, and S Mcintyre (eds), *Exploring the British World: Identity, Cultural Production, Institutions*, RMIT Publishing: Melbourne, 2004, pp.365-372; M Steiner, *Servants Depots in Colonial South Australia*. Wakefield Press: Kent Town, 2009; S Piddock, 'To each a space: class, classification, and gender in colonial South Australian institutions', *Historical Archaeology*, vol.45, no.3, 2011, pp.89-105; R Foster, '"His Majesty's most gracious and benevolent intentions": South Australia's Foundation, the Idea of "Difference", and Aboriginal Rights', *Journal of Australian Colonial History*, vol.15, 2013, pp.105-120; Gibbs, *Under the Burning Sun*; Parker, *Abortion, Homosexuality and the Slippery Slope*; G Robinson, 'The Salt Creek murders: violence and resilience in early South Australian settlement', *Journal of the Historical Society of South Australia*, no.43, 2015, pp.53-68; P Sendziuk and R Foster. *A History of South Australia*, Cambridge University Press: Port Melbourne, 2018.

[12] Whitelock, *Adelaide from Colony to Jubilee*, p.176.

[13] N Goc, *Women, Infanticide and the Press, 1822-1922: News Narratives in England and Australia*. Ashgate Publishing Limited: Surrey, 2013, p.126.

proceedings come in two forms: cases presented to the Magistrate's Court (also known as the Police Court or Court of Petty Sessions), which was overseen by a magistrate and did not require the presence of a jury; and cases presented to the Supreme Court, which tried felony crimes requiring the involvement of both a jury and a judge.

The reason for this thesis' specific focus on single women is because, according to colonial ideals, marriage was the only respectable long-term occupation for women.[14] Katrina Alford believes that 'single women of virtually whatever rank were seen as socially and morally inferior to married women, and as somewhat of a threat to decency and social order'.[15] As a result of such assumptions, married women, deserted wives, and widows were often automatically perceived as more socially respectable than single women, and thus less prone to criminality. This thesis seeks to expose the ideas which painted unmarried women—particularly working-class and non-white women—as more prone to criminality and less deserving of legal sympathy or justice than their more 'respectable' counterparts. This perspective is reflected in the over-representation of single women in policing and prosecution statistics, which this thesis contends is not reflective of single women's increased propensity for criminality, but rather of social and legal stereotypes of marriage and social respectability. These stereotypes led married women's involvement in crime—particularly crimes relating to sex and pregnancy—to be overlooked and under-policed.

For the purpose of this study, the term 'single women' applies to women of marriageable age (over 12) who were unmarried at the time of their appearance in the colonial court system. Some cases involving widows, deserted wives, and married women are also discussed for comparative purposes, but they are not the focus of this study. In this thesis, the term 'single women' also applies to all Aboriginal women who were not married in a sanctified, and legally recognised, British ceremony. The reason for this choice is because the primary source material makes it clear that British colonisers did not recognise the legitimacy of traditional Indigenous marriages, meaning that married Aboriginal women were not afforded the same level of assumed social and moral respectability as married white women.

[14] A Simmonds, '"Promises and pie-crusts were made to be broke": breach of promise of marriage and the regulation of courtship in early colonial Australia.' *Australian Feminist Law Journal*, vol.23, no.1, 2005, p.100.
[15] Alford, *Production or Reproduction*, p.9.

Single women, particularly working-class women, are the most absent from South Australia's historical record, not even mentioned in vague relation to their husbands as middle-class married women often were. In her book *Blue China: Single Female Migration to Colonial Australia*, Jan Gothard writes that 'women who did not marry or did not have children leave fewest traces in obvious places; and without descendants they are seldom the quarry for eager family historians'.[16] This lack of primary literature is not, however, indicative of an absence or lack of importance. Single women were very much present in colonial life, and the relatively equal gender balance evident in South Australia means that they were always noticeably, if not always publicly, present.

Single female domestic servants consistently made up one of the largest percentages of British immigrants arriving in South Australia throughout the nineteenth century.[17] Robin Haines notes that single women made up 34 per cent of the total number of assisted immigrants arriving in South Australia in 1855, falling to 12 per cent in 1857 before rising to 31 and 26 per cent in 1859 and1860, with an average of 23.5 per cent across this six-year period.[18] This is a significant proportion, considering that government assisted immigrants encompassed 66 per cent of the total 186,054 British arrivals to South Australia between 1836 and 1900.[19] Using the average of 23.5 per cent mentioned above, an estimated 43,723 single women arrived in South Australia over that 64 year period. Despite high marriage rates for newly arrived women, the consistently high number of single women arriving in the colony and constant demand for domestic servants meant that unmarried women always made up a significant portion of the colonial population.[20] By focusing on single women—both those who were not yet married and those who never married— and by focusing on the traditionally masculine field of crime, this thesis seeks to consider the role of women in South

[16] J Gothard, *Blue China: Single Female Migration to Colonial Australia*. Melbourne University Press: Melbourne, 2001, p.207.
[17] Jones, *In Her Own Name*, p.55; BW Higman, *Domestic Service in Australia*, Melbourne University Press: Carlton South, 2002, p.86-87.
[18] RF Haines, *Nineteenth Century Government Assisted Immigrants from the United Kingdom to Australia: Schemes, Regulations and Arrivals, 1831-1900 and Some Vital Statistics 1834-1860*, Flinders University: Adelaide, 1995, p.144.
[19] Haines, *Nineteenth Century Government Assisted Immigrants from the United Kingdom to Australia*, p.54.
[20] For documents discussing the high marriage rates of single female immigrants in mid-nineteenth century South Australia, see: 'The Commissioners Circular and Colonization', *South Australian*, 25 February 1848, p.2; *Immigration Agent's Report for the Quarter ended 31st March, 1850*, 14 April 1850, p.1, CO13/68, Australian Joint Copying Project [AJCP], National Library of Australia [NLA]: Canberra, p.228; *Immigration Agent's Report for Quarter ending September 1857*, 1 October 1857, p.2, CO13/96, AJCP, NLA: Canberra, p.197.

Australia not as the passive wives and dutiful mothers of colonial men, but as active and independent participants in colonial life.

The scope of this thesis ends in 1880 because of the significant social and legal changes which occurred in the early-1880s—triggered by the emerging movement for women's suffrage in England and the British settler colonies including Australia, New Zealand, Canada and the United States—make it impossible to compare subsequent court cases with cases from the earlier colonial period. While there are numerous instances of small-scale legislative change during the first decades of colonisation, the period from 1880 onwards saw a number of significant legislative changes relating to single women's involvement in crime, as both perpetrators and victims, within a relatively short period of time.[21] Most notably, the passing of the *Criminal Law Consolidation Amendment Act* in 1885 introduced significant changes to laws regarding sexual consent, including: raising the age of consent from 12 to 16; recognising coercive, and not just physically-forced, sex as a form of sexual assault; provisions for the recognition of sexual assaults committed against mentally ill adult women who were incapable of consent; and the specific prohibition of sex between girls under the age of 18 and anyone in a position of authority over them, including legal guardians and schoolteachers.[22] New laws impacting the rights of married women also reflected changing cultural attitudes around coverture and custody, including the 1884 *Married Women's Property Act* allowing married women to retain property purchased in their own name both before and after marriage, and the *Infants Custody Act* allowing divorced and separated women to petition the court for custody of children under the age of 16.[23] These legislative changes in the 1880s demonstrate significant social and legal changes in South Australian women's rights, casting a clear delineation between the final two decades of the nineteenth century and the first 44 years of colonisation.

[21]Further changes included the 1881 repeal of the *Convicts Prevention Act*, which mandated penalties for escaped and former convicts entering South Australia from the former penal colonies and had been in place in various forms since 1839; the 1882 legislation allowing defendants in criminal trials to give evidence in court—a practice which had been banned since the beginning of colonisation; the 1884 passing of the *Married Women's Property Act* allowing married women to retain property purchased in their own name both before and after marriage, and the *Infants Custody Act* allowing divorced and separated women to petition the court for custody of children under the age of 16, rather than all (legitimate) children over the age of 5 being the legal property of their fathers.

[22] *Criminal Law Consolidation Amendment Act 1885* (SA).

[23] Prior to these laws married women's property, even property purchased prior to their marriage, became the legal property of their husband upon marriage, and all (legitimate) children over the age of five were the legal property of their fathers—with mothers unable to sue for custody in case of a legal separation or divorce.

Literature Review

For the purposes of clarity, this literature review is divided into three sections. The first section considers histories of South Australia, encompassing comprehensive studies of specifically South Australian colonial history and demonstrating how and why this historiography leaves room for the research presented in this thesis; the second examines research conducted on gender and class in the nineteenth century, focusing on research on the treatment of working-class women in colonial Australia, suggesting the potential of class perceptions to influence the outcome of colonial court cases; and the third section considers histories of women and crime, laying the groundwork for a more comprehensive study of this field within the context of South Australian history. There are some overlaps in genre, with some works encompassing two or more of these themes, though an attempt has been made to be as comprehensive as possible.

South Australian Histories

South Australia's unique origins have attracted the attention of numerous historians interested in examining, and sometimes glorifying, South Australia's 'difference' from other British colonies. Derek Whitelock's 1977 history of Adelaide from 1836 to 1976, aptly titled *A History of Difference*, republished in 1985 as *Adelaide from Colony to Jubilee: A Sense of Difference*, aimed to explain how and why South Australia was 'pleasantly, distinctively different from the rest of Australia'.[24] This framing continued into the twenty-first century. In his 2013 book *Under the Burning Sun*, Ronald Gibbs wrote that 'a sense of difference from the other Australian colonies prevailed from the very beginning' of colonisation, a belief which was largely founded and maintained by the absence of convict transportation.[25] The overall impression gained from these types of texts is that, while the colonisation of South Australia was not without its flaws it was, in *comparison* with other Australian colonies, a moral and humanitarian success.

Contrasting this belief in South Australia's supposed 'superiority' is the view presented in Douglas Pike's iconic 1957 book, *Paradise of Dissent*. In this work, Pike

[24] Whitelock, *Adelaide 1836-1976*, p.xi.
[25] Gibbs, *Under the Burning Sun*, p.vii.

evaluates the successes and failures of South Australian colonisation and recognises throughout the ways in which South Australian colonists sought (successfully or otherwise) to differentiate themselves from the neighbouring penal colonies.[26] He concludes, as do other South Australian histories, that one of the primary goals both during and after colonisation was 'to avoid homogeneity with the rest of the continent'.[27] However, he also notes that South Australian colonists' insistence on their colony's 'social distinction' was and is a 'myth' that has nonetheless lingered long past Federation.[28] In line with Pike's assessment, and similar sentiments expressed by Paul Sendziuk and Robert Foster in their 2018 book *A History of South Australia*, this thesis aims to acknowledge the ways in which South Australian experiences of colonisation differed from those in the existing penal colonies, whilst illustrating that these differences did not necessarily create a more moral or humanitarian society than previous methods of colonisation.[29]

Further evaluating the idea of 'difference' in South Australian history is Foster's 2013 article on 'South Australia's Foundation, the Idea of "Difference" and Aboriginal Rights', which argues that South Australia's claims of difference were largely a façade intended to demonstrate superiority over the penal colonies and trivialise and mythologise South Australian frontier violence.[30] Foster argues that, South Australia's acknowledgement of Aboriginal rights in the Letters Patent and by early Governors' speeches went largely ignored by most colonists and, although these acknowledgements laid the foundation for twentieth century advocates of Aboriginal rights, they did not necessarily lead to a less physically or culturally violent process of colonisation.[31] It must be noted here that this thesis draws from the work of Penny Edmonds and others who suggest that the term 'frontier' should apply to

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[26] Pike, *Paradise of Dissent*.
[27] Ibid, p.495. See also: S Arthure, F Breen, S James, and D Lonergan (eds), *Irish South Australia: New Histories and Insights*, Wakefield Press: Adelaide, 2019, p.xiv; MW Rofe, 'The city of corpses? Contested urban identity and the stigma of crime in Adelaide, South Australia', *Landscape Research*, vol.41, no.8, 2016, p.966-967; Sendziuk and Foster, *A History of South Australia*, p.1-17; Gibbs, *Under the Burning Sun*, p.vii
[28] Pike, *Paradise of Dissent*, p.497.
[29] Sendziuk and Foster, *A History of South Australia*.
[30] Foster, '"His Majesty's most gracious and benevolent intentions"', pp.105-120. See also Pike, *Paradise of Dissent* and Sendziuk and Foster, *A History of South Australia*.
[31] Foster, '"His Majesty's most gracious and benevolent intentions"'. For research on frontier violence in colonial South Australia specifically, see: F Gale, 'Roles revisited: The women of southern South Australia', in P Brock (ed.), *Women, Rites and Sites: Aboriginal Women's Cultural Knowledge*, Sydney: Allen & Unwin, 1989; R Foster and P Mühlhäusler, 'Native tongue, captive voice. The representation of the Aboriginal "voice" in colonial South Australia', *Language and Communication*, vol.16, no.1, 1996; A Nettelbeck, 'Mythologising frontier: Narrative versions of the Rufus River conflict, 1841-1899', *Journal of Australian Studies*, vol.23, no.61, 1999, pp.75-82; Nettelbeck, 'Colonial protection and the intimacies of Indigenous governance', pp.32-47; J Lyndon, *Imperial Emotions: The Politics of Empathy Across the British Empire*, Cambridge University Press: Cambridge, 2019, pp.51-76.

all areas of contact between Aboriginal people and European colonists rather than the more traditional emphasis on pastoralists and 'the bush or borderlands'.[32] As such, frontier violence is not only applicable to physical conflict in rural 'contact zones', but to the broader social and cultural violence inflicted by Australian colonialism on Aboriginal communities.[33] In this thesis, this violence is most clearly reflected in cases involving the exploitation of Aboriginal domestic servants, the removal of Aboriginal children for assimilation to white 'civilisation', and the sexual mistreatment and violence enacted upon Aboriginal women by white colonisers.

These comprehensive histories of South Australia share another commonality: overlooking women's presence before the suffrage movement of the early 1880s. For example, in Gibbs' over-600-page book on South Australian history from 1836 to 1900, only 14 pages, under the section 'female immigrants and their work' are dedicated to women's role on colonial South Australia.[34] Outside this section, the only women named were the wives and daughters of well-known male colonists. Even in the 'female immigrants and their work' section, Gibbs makes no references to individual women's experiences. Earlier histories of South Australia, such as those compiled by Whitelock and Pike, similarly overlooked women's presence in the colony, often referring to women only in the abstract sense and in relation to women's suffrage, with references to specific women reserved for high-profile figures such as Caroline Chisholm and Catherine Helen Spence.

Sendziuk and Foster's 2018 book falls into a similar pattern, mentioning by name only the most publicly visible (middle-class) women and otherwise referring to women only in the broad sense when discussing the colony's gender balance, frontier violence against Indigenous women, and the mass-desertion of wives and children by men flocking to

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[32] P Edmonds, 'The intimate, urbanising frontier: Native camps and settler colonialism's violent array of spaces around early Melbourne', in T Banivanua Mar and P Edmonds (eds), *Making Settler Colonial Space: Perspectives on Race, Place and Identity*, Palgrave Macmillan: New York, 2010, p.130-131.
[33] For a selection of research on frontier violence (both physical and cultural) in colonial Australia see M Tonkinson, 'Sisterhood or Aboriginal servitude? Black women and white women on the Australian frontier', *Aboriginal History*, vol.12, 1988, pp.27-40; K Smits, 'John Stuart Mill on the Antipodes: Settler Violence Against Indigenous Peoples and the Legitimacy of Colonial Rule', *Australian Journal of Politics and History*, vol.54, no.1, 2008, pp.1-15; A Nettelbeck, 'Colonial protection and the intimacies of Indigenous governance', *History Australia*, vol.14, no.1, 2017, pp.32-47; RN Price, 'The psychology of colonial violence', in P Dwyer and A Nettelbeck (eds), *Violence, Colonialism and Empire in the Colonial World*, London: Palgrave Macmillan, 2018, pp.25-52; H van Rijswijk, '#MeToo Under Colonialism: Conceptualizing Responsibility for Sexual Violence in Australia', *Journal of Perpetrator Research*, vol.3, no.1, 2020, pp.29-41; Edmonds, 'The intimate, urbanising frontier', p.130-131.
[34] Gibbs, *Under the Burning Sun*, p.369-383.

Victoria's goldfields in the early 1850s.[35] These studies do not deliberately or maliciously ignore the presence of women in colonial South Australia, rather, they fall into the same habit as many comprehensive histories of focussing on those who are most frequently mentioned in the historical record—in this context, middle-class white men. Conversely working-class and non-white women's, relative absence from the historical record means that they are frequently excluded (consciously or otherwise) from such histories. This absence of women in supposedly comprehensive studies of South Australia demonstrates the dichotomy between 'South Australian history' and 'women's history' which is present in South Australian historiography, highlighting the need for a more thorough consideration of previously excluded women's experiences and a closer examination of gender relations within the colony.

The only comprehensive study which considers the experiences of women in colonial South Australia specifically is Helen Jones' 1994 book *In Her Own Name: A History of Women in South Australia from 1836*.[36] Like the male-dominated histories mentioned above, Jones considers South Australian women's experiences to be 'distinctive' from those of women in the other colonies—'distinguished by pioneering changes in laws relating to women', implying that these pioneering changes were a result of a more progressive colonial society.[37] Jones' work focuses explicitly on the social and political implications of women's emancipation in South Australia, with a particular interest in the feminist political movements

[35] Sendziuk and Foster, *A History of South Australia*.

[36] Jones, *In Her Own Name*. For more 'specific' histories of women in colonial South Australia, see: C Nance, 'Women in colonial South Australia', *Tradition*, 1978, pp.14-18; Nance, Women, public morality and prostitution', pp.33-43; P Sumerling, *Infanticide, Baby-Farming and Abortion in South Australia 1870-1910* (Honours Thesis), University of Adelaide, 1983; A White, 'The servant's wages: Malacky Martin and the Salt Creek murder', *Journal of the Historical Society of South Australia*, no.23, 1995, pp.36-50; Scheidlich-Day, 'From "Angel in the House" to "Angel in the Bush"', pp.365-372; M Geyer, *Behind the Wall: The Women of the Destitute Asylum Adelaide, 1852-1918*. Wakefield Press: Kent Town, 2008; Steiner, *Servants Depots in Colonial South Australia*. Wakefield Press: Kent Town, 2009; R Hoffmann, 'Illegitimacy in colonial South Australia', *Journal of Friends of Lutheran Archives*, vol.20, 2010, pp.63-67; Piddock, 'To each a space', pp.89-105; Parker, *Abortion, Homosexuality and the Slippery Slope*; Robinson, 'The Salt Creek murders', pp.53-68.

[37] Jones, *In Her Own Name*, p.xi. For broader 'Australian' women's histories see Alford, *Production or Reproduction?*; A Summers, *Damned Whores and God's Police*, 2nd ed., Ringwood: Penguin Books, 1994; P Grimshaw, S Janson, and M Quartly (eds), *Freedom Bound I: Documents on Women in Colonial Australia*, Sydney: Allen & Unwin, 1995; S Swain and R Howe, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia*, Cambridge University Press: Cambridge; A Woolacott, 'The meanings of protection: women in colonial and colonizing Australia', *Journal of Women's History*, vol.14, no.4, 2003, pp.213-221; M Lake, 'Women's and gender history in Australia: A transformative practice', *Journal of Woman's History*, vol.25, no.4, 2013; For broad histories of women which mention specifically South Australian examples, see Jan Gothard's works, *Blue China*; and 'Wives or workers? Single British female migration to colonial Australia.' In P Sharpe (ed.) *Women, Gender and Labour Migration: Historical and Global Perspectives*, Routledge: Oxon, 2002, pp.145-162.

of the late-nineteenth and twentieth centuries. *In Her Own Name* also includes a chapter on women's experiences in and outside of marriage in the nineteenth century, including during the early decades of colonisation. However, the 'outside of marriage' section of Jones' book refers almost exclusively to marriage delays, wife desertion, divorce, and widowhood, rather than the experiences of women prior to marriage and outside of their relationships with men.[38]

Jones does recognise that court proceedings for prostitution, infanticide, and child abandonment were statistically more likely to involve single women than married women; however, her focus on women's legal emancipation means that she considers these issues only as preludes to the law reforms they triggered.[39] This perspective overlooks the individual, and varied, reasons that single women became involved in such crimes, providing no consideration of the social and financial imperatives which drove working-class and non-white women to become involved in South Australian court proceedings as both perpetrators and victims of crime. Such perspectives also place the emphasis on law reform and legislative change (the aspects of crime governed exclusively by middle-class white men), rather than on the individual women's relationships with colonial law. It is this gap in the literature which this thesis seeks to fill.

Crime as a specific field of study has been overlooked in South Australian histories, with no comprehensive studies (either male or female centric) of crime in the colony. This thesis argues that the lack of convict transportation and emphasis on middle-class respectability did not correspond with an absence of criminal activity, and the current absence of research on crime in the colony serves only to reinforce the perception of the colony as relatively 'crime free'. The only research acknowledging the presence of criminality in colonial South Australia focuses on specific avenues of crime, such as Christopher Nance's two articles on prostitution, published in 1978 and 1979, Patricia Sumerling's 1983 Honours thesis on infanticide, baby-farming and abortion, and Clare Parker's 2013 PhD thesis on abortion and homosexuality.[40] While these works are relevant and necessary, combined they only analyse three specific case studies brought prior to 1880, otherwise considering crime in

[38] Jones, *In Her Own Name*, p.1-28.
[39] Ibid.
[40] Nance, 'Women in colonial South Australia', pp.14-18; Nance, 'Women, public morality and prostitution', pp.33-43; Sumerling, *Infanticide, Baby-Farming and Abortion in South Australia*; Parker, *Abortion, Homosexuality and the Slippery Slope*.

the form of law reform and legislative change, or focusing on case studies from the twentieth century. This highlights the need for a more comprehensive study of women's experiences with crime and the law in colonial South Australia—utilising the wealth of case studies available in newspaper court reports to situate individual women's experiences as both perpetrators and victims of crime within a broader understanding of the social and legal perception of single women in colonial South Australia.

Gender and Class in the Nineteenth Century

It would be impossible to examine crimes involving single women in colonial South Australia without understanding the condition of women's employment in the colony, and thus the potential economic imperatives behind committing or reporting a crime. For this reason, this thesis examines the experiences of single women not only in relation to their marital status and criminality, but also in relation to gender and class. Many of the women who appeared before the colonial courts participated in the colonial economy, predominantly as domestic servants, meaning that their experiences with middle-class court authorities cannot be truly understood without first understanding the inherent classism of colonial law and court rulings.

According to Joan Scott's 1991 article 'The Evidence of Experience', when one facet of identity is examined in greater detail than others, the 'other subjects are subsumed by it', meaning that *all* facets of a woman's identity—be it gender, class, race, or marital status—must be considered in order to understand her experiences with colonial law and court proceedings.[41] It would be reductive to presume that single women's experiences with the law were influenced only by their gender or marital status when working-class and non-white women experienced colonial life very differently to middle-class white women. This thesis argues the importance of understanding that single women's experiences in colonial South Australian courts were not only influenced by their marital status, gender, *or* class, but by a combination of all three in conjunction with other factors, including race and ethnicity, chastity, employment status, and reputation.

[41] J Scott, 'The Evidence of Experience.' *Critical Inquiry*, vol.17, no.4, 1991, p.785.

There exists an abundance of scholarship on perceptions of class, and its relationship with gender, in the nineteenth century—both for Britain and for the Australian colonies. Some of the key texts in this field include Alford's 1984 book *Production or Reproduction* and Linda Young's 2003 book *Middle-Class Culture in the Nineteenth Century*, both of which emphasise the lack of historical and scholarly regard for women's productive (paid) labour, as opposed to their (unpaid) labour as wives and mothers.[42] Alford argues that the nineteenth-century emphasis on women's reproductive labour led modern historians to trivialise Australian women's participation in productive labour as 'economically and industrially unimportant', while Young suggests that the emerging culture of 'gentility' in the late-eighteenth and early-nineteenth centuries emphasised the 'moral value' of the feminine ideal of idleness and leisure supported by a husband's wages.[43]

When considering class in the specifically South Australian context, Mary Geyer's 2008 book and Susan Piddock's 2011 article, both considering women's experiences in the Adelaide Destitute Asylum, provide excellent insight into colonial perceptions of 'pauperism'.[44] Geyer's book is largely descriptive, commissioned by the South Australian Migration Museum in response to numerous visitors and family historians eager to learn about those who had passed through the Asylum.[45] However, Geyer also examines the expectations placed on women in colonial South Australia, and considers how and why 'pauper' women were both incidentally and deliberately disadvantaged (particularly in comparison with middle-class men) in the colonial context.[46]

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[42] Alford, *Production or Reproduction*; L Young, *Middle-Class Culture in the Nineteenth Century: America, Australia and Britain*, Springer: New York, 2012. See also: GS Frost, *Promises Broken: Courtship, Class, and Gender in Victorian England*, University of Virginia Press: Charlottesville, 1995; V Haskins, 'On the doorstep: Aboriginal domestic service as a "contact zone"', *Australian Feminist Studies*, vol.16, no.4, 2001, pp.13-25; Piddock, '"An irregular and inconvenient pile of buildings"', pp.73-95; DW Elliot, 'Convict servants and middle-class mistresses', *Literature Interpretation Theory*, vol.16, no.2, 2005, pp.163-187; A Phipps, 'Rape and respectability: Ideas about sexual violence and social class', *Sociology*, vol.43, no.4, 2009, pp.667-683; Piddock, 'To each a space', pp.89-105

[43] Alford, *Production or Reproduction*, p.1.

[44] Geyer, *Behind the Wall*; Piddock, 'To each a space', pp.89-105. See also: Piddock, '"An irregular and inconvenient pile of buildings', and Steiner, *Servants Depots*. See also: B Dickey, 'Why were there no poor laws in Australia?', *Journal of Policy History*, vol.4, no.2, pp.111-133.

[45] Geyer, *Behind the Wall*, p.8.

[46] Ibid, p.13-14. Throughout this thesis, the terms 'pauper' and 'pauperism' will be referenced in inverted commas as, while 'pauper' is a period-appropriate descriptor for people who experiences destitution or were in the habitual receipt of parish or government relief, it is also a weighted term with historically negative connotations which frequently described pauperism as an inherent character flaw of the lower classes, rather than an unavoidable financial misfortune (see: A O'Brien, 'Pauperism revisited', *Australian Historical Studies*, vol.42, no.2, 2011, pp.212-229).

Piddock examines 'the role of classification, gender, and social class in the lives of patients in colonial South Australian institutions', arguing that these intersecting identities were used by the middle-class white men in charge of such institutions as a method of classifying and physically and morally separating their inmates.[47] Piddock also argues in a 2001 article that South Australian institutions were heavily shaped by English Poor Law Workhouses, despite the colony never officially adopting the Workhouse model.[48] Considering the treatment of women in institutions such as the Destitute Asylum—as well as the Lunatic Asylum, Servants Depots, Industrial Schools, and Female Refuges—sheds necessary light on the perceptions of working-class and 'pauper' women in the colonial sphere, particularly when considering the criteria which led to different women being granted or refused government assistance.

Much of the existing research on unmarried colonial women focuses on single mothers—specifically working-class mothers, who often appeared in the legal and administrative record for being unable to financially support themselves and their children. Influential in this field is Shurlee Swain's 2005 article on domestic service and illegitimacy in colonial Australia.[49] Swain argues that the perception of illegitimate children being overwhelmingly born to female domestic servants stemmed from class-based stereotypes of working-class sexuality and fears surrounding the social and financial 'problem' of unmarried working-class mothers, rather than any real statistical over-representation.[50]

Domestic service was the predominant form of female employment in nineteenth century Australia. The most comprehensive research available on this subject is Barry Higman's 2002 book, *Domestic Service in Australia*, which argues that domestic service can be used to critique other aspects of Australian women's history, including gender inequality in the workforce.[51] Higman also argues that while domestic service was one of the most

[47] Piddock, 'To each a space', p.89.
[48] Piddock, '"An irregular and inconvenient pile of buildings"', pp.73-95.
[49] S Swain, 'Maids and mothers: domestic servants and illegitimacy in 19th-century Australia', *The History of the Family*, vol.10, no.4, 2005, pp.461-471. For further research on perceptions and experiences of single motherhood and illegitimacy in the 19th century, see: G Reekie, *Measuring Immorality: Social Inquiry and the Problem of Illegitimacy*. Cambridge University Press: Cambridge, 1998; LF Cody, 'The politics of illegitimacy in an age of reform: Women, reproduction, and political economy in England's New Poor Law of 1834', *Journal of Women's History*, vol.11, no.4, 2000, pp.131-156; T Evans, 'The meanings and experiences of single mothers in nineteenth-century Sydney, Australia', *Annales de Démographie Historique*, no.27, 2014, pp.73-96; G Frost, *Illegitimacy in English Law and Society, 1860-1930*, Manchester University Press: Manchester, 2016.
[50] Swain, 'Maids and mothers', pp.461-471.
[51] Higman, *Domestic Service in Australia*.

consistently in-demand forms of employment in the Australian colonies, female domestic servants faced physical, emotional, and financial mistreatment at the hands of their employers, as well as being consistently denied legal protection for their rights as workers.[52] Outside of Higman's comprehensive study, there have been numerous more specific works published on the experiences of domestic servants in the Australian colonies, including: Swain's 2005 article mentioned above; Victoria Haskins' 2013 article on white women's involvement in the sexual abuse of Aboriginal domestic servants on the colonial frontier; and Fae Dussart's, Shirleene Robinson's, and Higman's chapters in Haskins and Claire Lowrie's 2015 book *Colonization and Domestic Service*.[53] All of these works include analyses of specific case studies demonstrating the mistreatment of female domestic servants at the hands of their employers and the broader power imbalance servants and employers in the colonial sphere.

Within the context of colonial South Australia, Marie Steiner's 2009 book discusses the creation of Servants Depots following the 'excessive' immigration of female domestic servants to South Australia in 1855-56.[54] Steiner argues that the creation, and organisation, of these depots 'reveals much about the paternalism, social and industrial attitudes, and particularly the condition of women' in mid-nineteenth century South Australia.[55] Steiner's research demonstrates how historians of colonial South Australia can utilise the archive—in the case of this thesis, newspaper court reports—to gain insights which can then be applied to the broader context of gender relations in colonial South Australia.

[52] Higman, *Domestic Service in Australia*.
[53] Swain, 'Maids and mothers', pp.461-471; V Haskins, '"Down in the gully and just outside the garden walk": White women and the sexual abuse of Aboriginal women on a colonial Australian frontier'. *History Australia*, vol.10, no.1, 2013, pp.11-34; F Dussart, '"Strictly legal means": Assault, abuse and the limits of acceptable behaviour in the servant-employer relationship in metropole and colony 1850-1890', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, pp.169-187; S Robinson, '"Always a good demand": Aboriginal child domestic servants in nineteenth- and early twentieth-century Australia', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, pp.113-128; BW Higman, 'An historical perspective: colonial continuities in the global geography of domestic service', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, pp.35-54.
[54] Steiner, *Servants Depots in Colonial South Australia*.
[55] Ibid, p.vii.

Women and Crime

This thesis' comprehensive examination of women's involvement in South Australian criminal proceedings highlights dominant colonial ideas on gender in the nineteenth century. In her iconic 1986 article 'Gender, a Useful Category of Historical Analysis', Joan Scott suggests that 'sex-related differences between bodies are continually summoned as testimony to social relations and phenomena that have nothing to do with sexuality'.[56] This idea can be applied to legal proceedings in colonial South Australia, where the evidence presented in cases involving women consistently differed from the evidence presented in cases involving male plaintiffs and defendants—most notably the frequent references to female sexuality even in cases which did not involve sex. She also declares that historical research has often relegated women to the private domestic sphere, frequently overlooking their presence in the 'masculine' public sphere, arguing that acknowledging and examining the experiences of women is necessary in all fields of history—even those which have traditionally been labelled as exclusively masculine.[57] Consequently, acknowledging women's involvement in crime in colonial South Australia is useful not only for understanding individual women's experiences with the law, but for shedding light on the complex power dynamics of the colonial courtroom, where women—usually working-class women—were judged exclusively by middle-class white men.

Kirsten McKenzie's 2004 book *Scandal in the Colonies* provides an excellent analysis of cases of 'scandalous' criminal activity which was publicly exposed in Sydney and Cape Town between 1820 and 1850, including incest, defamation, seduction, breach of promise, and sexual misconduct—all of which are similarly analysed in this thesis. Perhaps the most interesting aspect of McKenzie's research is her analysis of the ways in which gossip and rumours of 'scandal', both in court and in the wider community, could affect the lives of everyday colonists. In McKenzie's words, 'the story of scandal in the colonies allows us to trace the connection between the large politics of the state and the small politics of private life that made up the relations of colonial power'.[58] Within the context of this thesis, such analysis is useful in understanding how and why the threat of social ruin—with the ability to

[56] Scott, 'Gender, a useful category of historical analysis', p.1069.
[57] Ibid, p.1053-1075.
[58] McKenzie, *Scandal in the Colonies*, p.5.

trigger real financial and reputational repercussions—frequently persuaded single women to both commit and report crimes in colonial South Australia.

Considering women's involvement in crime and the law allows for an in-depth analysis of perceptions of single women in colonial South Australia. This perspective is particularly significant because, in the nineteenth century, crime was understood to be almost exclusively committed by men. In her iconic feminist history of crimes involving women, Judith Allen stated that the study of Australian crime had been largely 'man-centric' and encouraged historians to focus on women's less frequent, but still important, experiences as both perpetrators and victims of crime.[59] *Sex and Secrets: Crimes Involving Australian Women Since 1880* is perhaps the best-known study of women and crime in Australian historiography. Allen's primary argument is that the treatment of sex as socially, and sometimes legally, illicit in late-nineteenth and twentieth century Australia encouraged 'all parties to the secrets of sex' to maintain silence on the topic, while simultaneously leading to an 'unprecedented regulation and surveillance of sexuality by various agents'.[60] She suggests that the secretive nature of sex not only influenced women's everyday lives, but also affected the outcomes of court cases, with women regularly encouraged—directly by the indirect witnessing of other women's experiences—to remain silent about sexual mistreatment.

Despite basing her work on police and court records, however, Allen argues that *Sex and Secrets* 'is neither a work of crime history nor of criminology', but rather a study on the relationship between sex and power (and men and women) and the ways in which this relationship is reflected in the criminalisation of certain acts.[61] In contrast, this thesis is as a history of crime. It utilises evidence from colonial court proceedings to consider not only how patriarchal (sexual) power was enforced by law; however, it also examines how other societal factors—such as marital status, class, race, and complicated South Australian understandings of morality and respectability—could, alongside perceptions of female chastity, influence colonial law and the outcomes of individual court cases.

Australian historiography also includes studies of more niche, specific areas of crime. This field includes Alecia Simmonds' two articles: '"Promises and Pie-Crusts were Made to

[59] Allen, *Sex and Secrets*, p.12.
[60] Ibid, p.2.
[61] Ibid, p.12

be Broke"', which was published in 2005 and uses breach of promise case studies from colonial New South Wales and Van Diemen's Land to understand women's expected role in nineteenth century courtship practices; and her 2016 article, 'Gay Lotharios and Innocent Eves', which examines breach of promise and child maintenance cases from the Australian colonies.[62] Simmonds argues that the right to sue for breach of promise placed women in a real position of power in the colonial legal system, a position which was usually exclusively reserved for men, examining how charges such as breach of promise demonstrate the social and legal importance of 'sanctified and legitimate heterosexual unions' as the foundation of British colonial society.[63] Simmonds also notes, but does not elaborate, that South Australia was the only colony where most of the breach of promise charges were brought by women with illegitimate children—a statement which this thesis seeks to explore and explain, as Simmonds' articles only consider one South Australian case study. Furthermore, this thesis considers how South Australian authorities' persistent encouragement of marriage for women influenced the outcomes of marriage-related charges in the colony—a question examined in chapter 2 of this thesis.

The other field of crime research which has attracted significant attention from researchers of colonial Australia is that of sexual violence. Such histories are of vital importance not only within the historical context but in contemporary Australian society, a fact demonstrated by the amount of relatively recent research conducted in this field. Key works include: Kim Stevenson's 2000 article arguing that stereotypes surrounding the binary of the 'ideal' or 'deserving' rape victim in mid-nineteenth century Britain were not based in fact or experience but rooted in Victorian sexism, serving only to discredit rape complainants and create a traumatic complaint and prosecution process;[64] Alison Phipps' 2009 article considering the ways in which class informed women's experiences of sexual violence in historical and contemporary Britain, arguing that 'sexual violence may be experienced and perceived differently in different classed communities';[65] and Andy Kaladelfos' 2012 consideration of rape and the death penalty in colonial Australia, and the white colonial propaganda surrounding rape trials and capital punishment reform in the colonies (excluding

[62] Simmonds, '"Promises and pie-crusts were made to be broke"', pp.99-120.; A Simmonds, 'Gay Lotharios and innocent Eves: child maintenance, masculinities and the action for breach of promise of marriage in colonial Australia.' *Law in Context*, vol.34, no.1, 2016, pp.58-75.
[63] Simmonds, 'Gay Lotharios and innocent Eves', p.111.
[64] K Stevenson, 'Unequivocal victims: The historical roots of the mystification of the female complainant in rape cases', *Feminist Legal Studies*, vol.8, no.3, 2000, pp.343-366.
[65] Phipps, 'Rape and respectability', p.668.

South Australia).[66] These works examine the strict criteria which past and present rape complainants had to meet for their allegations to be taken seriously by colonial police and court officials. This thesis seeks to enhance these analyses by considering the case study of South Australia as notably less concerned with the crime of rape than the neighbouring colonies—being the only Australian colony which never executed a man for rape—demonstrating a clear and unexamined difference between considerations of sexual violence in South Australia and the other Australian colonies.

The field of Australian sexual violence research also includes several studies on sexual violence against Aboriginal women. This area of research is all the more vital for its near-invisibility in the historical legal record. This invisibility resulted, in the words of Hannah Robert, from colonial stereotypes which dissociated Aboriginal women from colonial understandings of womanhood and femininity—instead characterising them as either animals or commodities using descriptors which always carried an 'overwhelmingly sexual meaning'.[67] Such stereotypes allowed for, and even encouraged, sexual exploitation and violence on the Australian frontier.

This field of research includes Myrna Tonkinson's 1988 article on the often-overlooked relationship between white women and Aboriginal women on the Australian frontier, and the complicity of white women in the systematic sexual abuse of Aboriginal women on and around rural mission stations.[68] Tonkinson explores the mythology of 'equal' relationships between white and Aboriginal women and argues that the alleged inherent superiority of whiteness meant that even those Aboriginal women who conformed with the exacting standards of white British 'civilisation' were never perceived as white women's equals.[69] This idea of Aboriginal women's social and legal segregation recurs throughout research on Australian colonialism, with similar ideas expressed in Larissa Behrent's 2000 article considering Australian Aboriginal women's historical representation as a 'sexual and legal "other"' and Honni van Rijswijk's 2020 article '#MeToo Under Colonialism', which considers the ways in which British colonialism and colonial institutions have not only

[66] Kaladelfos, 'The politics of punishment', pp.155-175.
[67] H Robert, 'Disciplining the female Aboriginal body: Inter-racial sex and the pretence of separation', *Australian Feminist Studies*, vol.16, no.34, 2001, p.74.
[68] Tonkinson, 'Sisterhood or Aboriginal servitude?', pp.27-40.
[69] Ibid.

ignored, but encouraged historical and contemporary sexual violence against Australian Aboriginal women.[70]

These works provide key insight into the racialized sexual violence enacted upon Aboriginal women during the colonial period, including the justifications which colonial authorities and perpetrators of sexual violence used to trivialise assaults committed against Aboriginal women. Both Behrendt and van Rijswijk argue that sexual violence against Indigenous women is not only a product, but a tool, of colonialism which has served to socially and legally delegitimise Aboriginal men and women.[71] This idea has informed key arguments in this thesis, particularly in chapter 7, and assisted with the analysis of primary sources for instances of rape and sexual violence committed against Aboriginal women which were never officially reported or charged. Simultaneously, these works have highlighted the necessity for such research in the specifically South Australian context, where colonial authorities' early claims of benevolence towards Aboriginal peoples served to mask the extent of the violence committed.

As indicated above, there is a rich body of research on women and crime in the nineteenth century which this thesis has drawn from; however, reading this work it becomes apparent that the history of women's experiences as both perpetrators and victims of crime focuses heavily on 'scandalous' crimes—particularly those involving sex and romantic relationships. While such crimes are undoubtedly significant, and considered in-depth in this thesis, they do not allow for a complete understanding of single women's involvement with colonial law. Crimes such as breach of contract and wage disputes, theft, assault, and non-sexual slander were less scandalous than those involving sex and romance, and drew less attention from colonial newspapers whose main priority was entertainment. However, these crimes were very much present in colonial South Australia, shedding light on single women as active participants in the colonial workforce, and not simply as sexual and romantic partners for colonial men.

[70] L Behrendt, 'Consent in a (neo)colonial society: Aboriginal women as sexual and legal "other"', *Australian Feminist Studies*, vol.15, no.3, 2000, pp.353-367; van Rijswijk, '#MeToo Under Colonialism', pp.29-41. See also: Gale, 'Roles revisited', 1989; L Behrendt, 'Law stories and life stories: Aboriginal women, the law and Australian society', *Australian Feminist Studies*, vol.20, no.47, 2005, pp.245-254; Haskins, '"Down in the gully and just outside the garden walk"', pp.11-34

[71] Behrendt, 'Consent in a (neo)colonial society'.

Women's labour was often presented as a temporary stop-gap before marriage; however, the consistently high number of domestic servants arriving to work in South Australia throughout the nineteenth century demonstrates that researching female employment is just as crucial in understanding women's role in the colonial sphere as the oft-researched fields of marriage and motherhood. Colonial women, particularly working-class women, did not only exist, as historical and contemporary records frequently suggest, as wives and mothers—but as active and integral participants in the colonial economy. With this knowledge in mind, this thesis argues that, in order to provide as comprehensive an understanding of women's involvement with the law in colonial South Australia as possible, it is necessary to consider their involvement in all forms of criminality—both the scandalous and the mundane. Using case studies of sensationalised charges such as breach of promise, infanticide, and sexual violence in conjunction with every-day charges such as contract disputes and child maintenance, this thesis argues that, while the reasons for women's presence in the colonial courtroom (as both plaintiffs and defendants) varied, they were frequently borne of the same desire for social and financial safety.

Methodology

Archival records written by, or about, single women are rare for this period; however, it is possible to use the sources which are available to examine the experiences of single women and the ways that they were perceived throughout the colonial period. For this purpose, June Purvis' article, 'Using Primary Sources When Researching Women's History from a Feminist Perspective', provides an important guideline for creating feminist histories which challenge 'the stereotypical representation of women as mainly wives and mothers who are supportive towards, and supported by, their menfolk'.[72] She writes that primary sources can assist with this goal by 'finding the hidden subjective voices and experiences of women so that their own words can speak to us, even though they may be mediated through the discourses of the day'.[73] This mode of research is useful in understanding the role of women in colonial South Australia as it was viewed in the colonial discourse.

[72] J Purvis, 'Using primary sources when researching women's history from a feminist perspective.' *Women's History Review*, vol.1, no.2, 1992, p.274.
[73] Ibid.

Purvis outlines two methods of primary source analysis: descriptive and perspective. Descriptive analysis involves viewing the author as a witness to the people, events and places outlined in their source, while perspective analysis examines how a particular source represents the perspectives of the author's social category in society.[74] As the majority of primary sources utilised in this thesis were not written by, or even specifically for, women, the perspective analysis method is the most useful. Perspective analysis reflects the attitudes that court officials and the media had towards single women in colonial South Australia, and this thesis argues that these attitudes reflected the wider stance of the colony. According to Purvis, in Victorian England text sources often reflected the views of the middle and upper classes of society, particularly men.[75] It is reasonable to assume that South Australia, the 'most British' of all British colonies, and the only non-penal Australian colony, mirrored this perspective. This method of perspective analysis allows research to bypass the lack of early colonial sources produced by and for women and use the sources which are available to provide a comprehensive analysis of single women's involvement with the law in colonial South Australia.

This thesis bases its analysis on official documents and media commentary. Official texts are useful for analysing women's expected role in colonial society. Documents such as crime reports, government despatches, and reports from the Police Commissioner, Immigration Agent, Protector of Aborigines, and Destitute Board demonstrate the ways that single women were perceived in colonial society, both in the ways they are *mentioned* and the ways they are *excluded* from certain discourses.[76] This exclusion of women from colonial crime discourse, as both perpetrators and victims, demonstrates the lack of consideration which colonial authorities gave to the social and financial issues that triggered women's participation in, or vulnerability to, crime.

Primary sources that were produced by single women involved in criminal proceedings are rare; however, their absence does not preclude a study of single women and crime in colonial South Australia. Even when researching subjects with abundant personal primary sources, Scott cautions against prioritising the 'experience' of individual subjects

[74] Purvis, 'Using primary sources', p.276
[75] Ibid, p.278.
[76] Ibid, p.279. Reports from the Immigration Agent, Police Commissioner, and Protector of Aborigines were written by the respective authorities and dispatched to the South Australian Governor, and then forwarded to England to keep the mother country appraised of colonial goings-on.

over the ideological system that created those experiences.[77] She determines that personal experience alone is not a suitable category for historical analysis, but that the interpretation of those experiences can assist in understanding how and why different social categories were formed in any given period.[78] When using gender as a method for historical analysis, Scott believes it is necessary to ask the following questions:

> What is the relationship between laws about women and the power of the state? Why (and since when) have women been invisible as historical subjects, when we know they participated in the great and small events of human history? … How have social institutions incorporated gender into their assumptions and organisations?[79]

These ideas demonstrate the importance of not only understanding *how* single women's experiences with criminal proceedings differed from those of men and married women, but of examining *why* these differences existed in the first place, a consideration which forms a key component of the argument of this thesis.

The most useful type of primary source for this thesis is newspaper court reports. According to Purvis, newspaper sources are useful for understanding the experiences of working-class women, who 'often left few personal texts', with Goc suggesting that, for such women, newspaper records are 'the only surviving written texts that offer a narrative of a lived experience'.[80] When researching rape trials in colonial Australia, Jill Bavin-Mizzi discovered that newspaper reports were often the only surviving records of colonial Supreme Courts, with official court records and transcripts often destroyed soon after a verdict was reached.[81] Similarly, when researching infanticide in nineteenth century Ireland, James Kelly determined that newspaper reports were 'a more consistent source of information than the fragmentary archive of the state.[82] This was clearly the case in South Australia, with the state archives only containing an index of Supreme Court cases, listing only the name, date, and verdict of criminal trials, and no record books at all for the colonial Magistrate's Courts.

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[77] Scott, 'Evidence as Experience,' p.777.
[78] Ibid, p.797.
[79] Scott, 'Gender, a useful category of historical analysis,' p.1074.
[80] Purvis, 'Using primary sources', p.286; Goc, *Women, Infanticide and the Press*, p.174
[81] J Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia*, Sydney: UNSW Press, 1995, p.19.
[82] J Kelly, '"An Unnatural Crime": Infanticide in early nineteenth-century Ireland'. *Irish Economic and Social History*, vol.46, no.1, 2019, p.68.

Fortunately for researchers, newspaper court reports were based on original court transcripts and often provide a detailed record of testimony—though with clear editorial intervention in cases of scandal or high public interest.[83] Using newspaper reports, researchers can distinguish the voices of single women in a way which is not available outside of the diaries of individual (usually middle-class) women. In her 2016 article on media representations of female criminals in colonial New Zealand, Jenny Coleman wrote that newspaper court reports are vitally important to historians of nineteenth century crime, because it was during this period that 'the newspaper press played an increasingly complex role in the ways in which female criminals were constructed in the popular imagination'.[84] These reports are therefore integral not only in discovering the details of specific court cases, but also in highlighting the ways that female criminals and victims of crime were portrayed in the media and perceived in the wider colonial community.

Even obvious exaggeration or biased commentary on behalf of newspaper editors can be useful in determining the kinds of crimes which the colonial media and, by extension, colonial authorities, believed were the most morally serious as well as the most 'entertaining'. This thesis uses media records to determine the types of crimes which, during different periods of colonisation, attracted the greatest levels of public and media interest, assessing the extent to which this interest was reflective of wider social and political concerns of the time. It must be noted here that, despite attempting to be as comprehensive and inclusive as possible, most of the case studies considered in this thesis involved working-class white women, as the demographic of women who most frequently appeared before the colonial courts.

The racism evident in South Australian colonialism led to a clear under-policing and under-reporting of crimes committed against Aboriginal women—leaving very few official court cases brought by or against Aboriginal women during the colonial period. In order to gain some sense of the crimes committed against individual Aboriginal women, as well as broader colonial perceptions of Aboriginal criminality, this thesis has sought records from other colonial sources, including reports of the Protector of Aborigines and missionary records. While such sources are invariably tainted by racism and colonialist propaganda, and

[83] Sumerling, *Infanticide, Baby-Farming and Abortion in South Australia*, p.2; Swain and Howe, *Single Mothers and their Children*, p.8; Bavin-Mizzi, *Ravished*, p.19.
[84] Coleman, 'Incorrigible offenders', p.145.

are therefore not reflective of the true prevalence of crimes which involved or victimised Aboriginal women, they highlight white colonial constructions of Aboriginal femininity and the assumed place of Aboriginal women in colonial law and society. Consequently, such sources can shed light on exactly how and why colonial officials chose to overlook or ignore crimes committed against Aboriginal women and assist with the understanding that an under-representation of certain groups in colonial crime and court statistics does not always correspond to a lack of criminal activity, but rather a selective policing and prosecution process which privileged middle-class white colonists.

In order to glean as much as possible from colonial newspaper reports, this thesis utilised various search parameters in online newspaper archives to uncover as many case studies for as many varieties of crime as possible.[85] While it is unlikely that these cases encompass every crime committed by, or perpetrated against, colonial South Australian single women, a strong effort has been made to be as comprehensive as possible. Using these case studies, this thesis traces trends in policing and prosecution of different crimes over time to determine, as accurately as possible, conviction statistics for crimes involving single women, on both sides of the law. Simultaneously, this thesis also uses individual case studies to determine the types of evidence which were considered most reliable in court, analysing why certain cases ended in convictions or acquittals while others received the opposite verdict. It is impossible to determine the number of crimes involving single women that went un-reported in colonial South Australia; however, by comparing cases that ruled in favour of women with those that ruled against them, this thesis determines whether acquittals relied on the convincing argument of the opposing side, or on the morality, and therefore trustworthiness, of the woman involved.

[85] These search parameters included variations of the phrase "single woman + crime/court" as well as searches for individual forms of female-dominated (as both perpetrators and victims) crimes, including marriage-related crimes such as breach of promise of marriage and seduction, infanticide and abortion, rape and sexual assault, and prostitution related charges such as drunkenness, indecent language/behaviour, vagrancy, and owning/residing in a brothel. These search parameters also included wider opinions of single women in colonial South Australia, outside of court reports, including protests against single female immigrants, opinions on working-class women/female criminals/victims of sexual violence/unmarried pregnant women and illegitimate children, opinion pieces on controversial charges such as breach of promise and infanticide/concealment of birth, and opinions on government assistance (or the lack thereof) for single women who faced social and financial hardship in the colony.

Thesis Outline

The chapters of this thesis are organised thematically according to the key aspects of South Australian single women's lives which most often related to crime: relationships and marriage, employment, pregnancy and motherhood, and sex. The exception to this is chapter 1, which provides the context necessary to understand the components of South Australia's colonisation which influenced the perceptions of single women and therefore inevitably informed the outcomes of colonial court cases from the beginning of colonisation.

The first theme, discussed in chapter 2, is 'marriage'. As this thesis primarily examines the experiences of single women, understanding the emphasis placed on respectable, middle-class marriage in Britain and colonial South Australia, and the prejudice which was consequently directed towards unmarried (especially working-class) women, is key to understanding every court case discussed in this thesis. The case studies examined in this chapter relate directly to the ideal of marriage, including those relating to the segregation and mistreatment of single women on board immigrant ships bound for South Australia, as well as charges of slander and breach of promise of marriage brought in the colonial courts.

Chapter 3 focuses on 'work', and crimes which related to single women's participation in the colonial economy. This chapter examines the experiences of female employees, particularly domestic servants, in colonial South Australia. It considers a number of different employer-employee court cases, ranging from minor matters falling under the purview of the *Masters and Servants Acts*, such as wage disputes and breaches of contract, to instances of larceny by a servant and acts of physical and sexual violence committed by employers against their female servants.

Chapters 4 and 5 consider charges relating to motherhood and pregnancy, examining crimes related to the raising of illegitimate children and unwanted pre-marital pregnancy respectively. Chapter 4 examines the social and institutional stigma surrounding pre-marital pregnancy in colonial South Australia, and the heavy influence which the 1834 British New Poor Law had on perceptions of unmarried mothers and illegitimate children in the colony. It examines court cases of maintenance and seduction, which were most often brought by unmarried women with illegitimate children. Similarly, chapter 5 considers case studies of abortion, concealment of birth and infanticide—crimes which were predominantly attributed

to Aboriginal women and single working-class women. This chapter also assesses how these crimes, committed by apparently 'unnatural' mothers were used to enforce British 'civilisation' upon colonised peoples, to reinforce class distinctions between middle-and working-class women, and to justify the removal of children from parents who did not raise their children under British ideals of white, middle-class respectability.

Chapters 6 and 7 are also linked, considering crimes relating to sex. Both chapters consider the stigma associated with (women's) pre-marital sex in the nineteenth century, and the frequent use of women's sexual histories as legal evidence. Chapter 6 focuses on apparently consensual sex and charges of seduction. It also considers prostitution-related charges such as solicitation, indecent behaviour, drunkenness, and vagrancy, and the ways that the policing of prostitution in the colony evolved over time. Chapter 7 follows on from this by considering the prevalence and policing of sexual violence in colonial South Australia. This chapter examines case studies of rape, assault with intent to rape, and indecent assault, and assesses the ways that sexual violence, and selective policing and prosecution, was utilised as a tool of British colonialism.

Overall, this thesis provides a comprehensive analysis of single women's involvement in crime in colonial South Australia. It considers the ways that relevant legislation was introduced, updated, and repealed over time, arguing that specific pieces of legislation—particularly those relating to convict prevention, the early abolition of the death penalty and introduction of incest and sexual slander law—were reflective of uniquely South Australian concerns. Concurrently, this thesis compares colonial legislation with court cases involving single women as both plaintiffs and defendants to assess the types of crime which court authorities were inclined to deal with particularly harshly or leniently. This thesis argues that many of the verdicts passed in the colonial courts demonstrate a near-consistent preference for convicting single women accused of criminality while acquitting or downgrading charges which were brought by single women. Finally, this thesis assesses the outcomes of individual court cases, arguing that the different facets of women's lives—including gender, marital status, class, race, and age—encouraged colonial judges and juries to pass verdicts of conviction or acquittal, with a clear and consistent favouritism of middle-class white men and women of English origins. This favouritism led to a clear under-policing and under-reporting of crimes involving single women as both perpetrators and victims; however, despite the incompleteness of the historical record, this thesis argues that research of single women's

involvement with the law in colonial South Australia can shed light not only on the lives of the women involved, but also contribute to contemporary historical understandings of South Australian colonisation.

Chapter 1:
"Context"

In May 1855 the *Adelaide Observer* claimed the 'flattering unction that there are few parts of Her Majesty's dominions where life and property are more secure than in South Australia'.[1] While this article acknowledged the existence of crime in South Australia, to some extent, it rejoiced that the colony was largely free of the 'social disturbances' usually associated with colonialism, and that its 'criminal calendar' compared very favourably with that of Victoria in particular.[2] Similar arguments touting the social and moral superiority of South Australia over other Australian colonies—and even Britain—were common throughout the early decades of colonisation, with allegations of superiority including South Australia's landscape and climate as well as morality.[3] Even the colony's Aboriginal peoples were labelled as 'superior…in appearance and intelligence' to the Aboriginal peoples of New South Wales and Van Diemen's Land.[4] While this rhetoric of social and moral superiority was clearest in the earliest years of colonisation, this chapter argues that South Australian colonists and colonial authorities' belief in their colony's inherent superiority persisted throughout colonisation—affecting the perception of all who, through facets including class, race, and marital status, did not fit this role of superior middle-class respectability.

The South Australian legal system provides crucial insight into the wider expectations placed upon single women in colonial South Australia; however, it is impossible to understand the relationship between colonial court proceedings and wider opinions on single women without first understanding the circumstances facing women in South Australia in the nineteenth century. This chapter provides context for South Australian colonial authorities' unique perspective on the separate subjects of crime and women, and the ways that the 'fully

[1] 'The Police Commissioner's Report', *Adelaide Observer*, 5 May 1855, p.6.
[2] Ibid.
[3] For examples of this, see: 'Education in South Australia', *South Australian Gazette and Colonial Register*, 18 June 1836, p.5; 'South Australian Investment', *South Australian Gazette and Colonial Register*, 11 August 1838, p.4; 'Colonization and South Australia', *South Australian Record and Australasian Chronicle*, 21 March 1840, p.2; 'Legislative Council', *South Australian Register*, 25 September 1852, p.3; 'Penal Discipline', *South Australian Register*, 15 September 1854, p.3; 'The Police Commissioner's Report', *Adelaide Observer*, 5 May 1855, p.6; 'Female Immigrants', *Adelaide Times*, 6 April 1858, p.2; 'Convict Colonies', *Bunyip*, 17 June 1871, p.3; 'The Victorian Yearbook', *Kapunda Herald and Northern Intelligencer*, 13 November 1877, p.2.
[4] 'Original Correspondence', *South Australian Record*, 11 November 1837, p.6. See also: 'Latest Intelligence', *South Australian Record*, 8 November 1837, p.11; 'Original Correspondence', *South Australian Gazette and Colonial Register*, 10 March 1838, p.3; 'Six Months in South Australia', *South Australian Register*, 22 June 1839, p.3.

gendered and race-based process' of Australian colonisation contributed to these perceptions of female perpetrators and victims of crime.[5] This chapter explains the significance of the belief, promoted from the colony's inception, that South Australia was the most moral British colony and charts attempts made by colonial authorities to prevent criminal activity from taking root. It also outlines the strict expectations for South Australian women to conform to middle-class stereotypes of femininity—arguing that, South Australia's 'differences', both real and imagined, did not result in the paradise of middle-class respectability that colonial authorities so desired.[6]

South Australia's sense of 'difference' has been a popular subject for historians of Australian colonialism. The implementation of Wakefield's theory of systematic colonisation, the refusal to participate in convict transportation, and the gender balance have all been cited as evidence of the colony's apparent uniqueness. Derek Whitelock, in his 1977 book titled *Adelaide 1836-1876: A History of Difference*, epitomises this perspective, writing that 'from the outset, South Australia was to be a pure moral contrast to the rum and convictism of the eastern Australian colonies and the fecklessness of the surviving Swan River settlers…a "happy Utopia" of free religious conscience, progress, and profit'.[7] Even twenty-first century scholars such as Ronald Gibbs, who question the basis of these colonial claims of difference and superiority, tend to accept the overarching framework—emphasising in their research the planning and political policies by which South Australia set itself apart from the other colonies.[8]

Historical approaches highlighting South Australia's distinctiveness are inherently flawed, because they assume that the colony's differences were inherent from its inception. In contrast, this chapter argues that South Australia's 'difference' is something which was

[5] M Lake, 'Women's and gender history in Australia: A transformative practice', *Journal of Woman's History*, vol.25, no.4, 2013, p.196.
[6] It must be noted that the feminine ideals dictated by the concept of 'middle-class respectability' did not necessarily preclude working-class women from the moniker, but rather required women of all classes to conform to stereotypically middle-class ideals of chastity, modesty, and passivity in order to be perceived as respectable. Such ideas contributed to notions of the 'respectable' versus 'disreputable' working-classes and the differentiation between the 'deserving' and 'undeserving' poor—concepts which are discussed throughout the course of this thesis.
[7] D Whitelock, *Adelaide 1836-1976: A History of Difference*, University of Queensland Press: St Lucia, 1977, p.4. See also: D Pike, *Paradise of Dissent: South Australia 1829-1857*, Longmans, Green and Co: Melbourne, 1957, p.3; H Jones, *In Her Own Name: A History of Women in South Australia from 1836*, Wakefield Press: Kent Town, 1994.
[8] RM Gibbs, *Under the Burning Sun: A History of Colonial South Australia, 1836-1900*, Peacock Publications: Adelaide, 2013, p.609.

deliberately cultivated and persistently encouraged throughout colonisation, rather than an inevitable product of Wakefield's anti-convict systematic colonisation plan. Furthermore, this chapter proposes that many of South Australia's 'differences', including the early pledge of equality between white settlers and Aboriginal peoples and colonial authorities' reluctance to acknowledge the presence of crime and immorality, are not born out by the historical record. Rather, they were part of a broad agenda intended to maintain a sense of moral superiority over the neighbouring penal colonies. Looking past this carefully constructed façade, this thesis utilises the example of single women's involvement in crime to understand how, why, and when differences emerged between South Australia, other Australian colonies, and Britain. This chapter considers convict prevention legislation, the recognition of Aboriginal people in the Letters Patent, and numerous media and government sources attesting to South Australia's alleged superiority, to demonstrate that these 'differences' were largely surface-level and did not create a more noticeably moral or equitable colony.

This chapter outlines the events leading to the establishment of South Australia as a British colony in 1836 and the ideologies behind its unique (at the time) creation.[9] The 'different' aspects of South Australian colonisation were a product of the 1820s and 30s, a period of increasing protests against convict transportation and the treatment of Australian Aboriginal peoples by British colonisers.[10] These social concerns led to both voluntary and involuntary clauses in South Australia's colonisation documents which have long been used as evidence of distinction; however, this assertion of social and moral superiority served only to shield the problematic aspects of South Australian colonisation, rather than acknowledging that South Australian colonisation methods were just as problematic as those of the penal colonies. This chapter considers the different components of South Australian colonisation, considering why the colony's 'founders' made certain choices and suggesting that, for much of the nineteenth century, their hopes for the colony differed from those of British authorities. Finally, this chapter argues that nineteenth century assumptions of crime as predominantly perpetrated by men, combined with South Australian assumptions of superior morality, led to

[9] For works discussing the establishment of South Australia as a British colony, see: J Archer, 'Wakefield's theory of "systematic colonisation"', *National Library of Australia News*, vol.13, no.9, 2003, pp.4-7; T Ballantyne, 'Remaking the empire from Newgate: Wakefield's *A Letter from Sydney*', in A Burton and I Hofmeyr (eds), *Ten Books that Shaped the British Empire: Creating an Imperial Commons*, Duke University Press: Durham, 2014, pp.29-49; A Woollacott, *Settler Society in the Australian Colonies: Self-Government and Imperial Culture*, Oxford: Oxford University Press, 2015; P Sendzuik and R Foster, *A History of South Australia*, Cambridge University Press: Cambridge, 2018

[10] See R Foster, '"His Majesty's most gracious and benevolent intentions": South Australia's Foundation, the Idea of "Difference", and Aboriginal Rights', *Journal of Australian Colonial History*, vol.15, 2013, pp.105-120

a marked under-policing and underreporting of crimes involving women (as both perpetrators and victims) which persisted throughout the nineteenth century.

South Australian Colonialism

The *South Australia Act*, or *Foundation Act*, was passed by British Parliament on the 15 August 1834 after the presentation of the *Bill to Erect South Australia into a British Province, and to Provide for the Colonization and Government Thereof* on July 29 of the same year. The South Australia Bill labelled the proposed land as being

> That part of *Australia* which lies between the Meridians of the one hundred and thirty-second and one hundred and forty-first degrees of East Longitude, and between the *Southern* Ocean and the Tropic of *Capricorn*, together with the Islands adjacent thereto.[11]

According to the Bill, the abovementioned location consisted only of 'waste and unoccupied Lands, which are supposed to be fit for the purposes of colonization'.[12] This assessment ignores British knowledge of Aboriginal populations already living on the land slated for their new colony as well as modern archaeological assessments suggesting that Aboriginal peoples have lived in the region now known as South Australia for upwards of 45,000 years; however, this assessment does align with previous British colonisation projects which frequently ignored existing Indigenous rights to land and resources.[13]

South Australia was the first British colony to be settled using Edward Gibbon Wakefield's theory of systematic colonisation, which proposed that money from the sale of 'waste-lands' should be used to partially, or fully, fund the passage of desirable immigrants who would otherwise choose to migrate to closer, and cheaper, destinations such as the United States or Canada.[14] According to Wakefield, the most desirable such settlers were young married couples without children.[15] Wakefield believed that children were an

[11] *A Bill to Erect South Australia into a British Province, and to Provide for the Colonization and Government Thereof*, 29 July 1834, CO13/2, Australian Joint Copying Project [AJCP], National Library of Australia [NLA]: Canberra, p.320.
[12] Ibid.
[13] G Hamm et al, 'Cultural innovation and megafauna interaction in the early settlement of arid Australia', *Nature*, vol.539, 2016, p.281; K Ravilious, 'The first Australians', *Archaeology*, vol.70, no.4, 2017, pp.49-53.
[14] Archer, 'Wakefield's theory of "systematic colonisation"', p.4.
[15] EG Wakefield, *A Letter from Sydney and Other Writings on Colonization*, p.249.

encumbrance because they could not to repay the cost of their passage by entering the workforce immediately upon their arrival.[16] In contrast, newly-married couples without children were 'easily attracted…by high wages and better prospects' and they were likely to begin having children quickly after their arrival, growing the colonial population at no additional cost to the immigration fund.[17] If a suitable number of married couples could not be found, immigration officials were encouraged to find single men and women of marriageable age in the hope that they would marry and begin having children soon after their arrival.

According to Joanne Archer, systematic colonisation was intended to be mutually beneficial, serving 'as a "safety-valve" for Britain's redundant population while also providing much sought after labourers' to the colonies.[18] Wakefield's scheme aimed to assist wealthy landowners and capitalists by ensuring a steady supply of labour, while simultaneously offering working-class labourers an opportunity to elevate their social and financial status by taking advantage of higher colonial wages. The First Annual Report of the South Australian Colonization Commissioners, published in 1836, claimed that labourers who received assisted passage to South Australia would quickly become landowners themselves, while the profits from their land purchases would defray the cost of passage for new labourers to take their place.[19] In 1838 Wakefield himself alleged that, 'if they were industrious and prudent', servants and labourers would be able to own their own land and employ their own servants within only a few years of their arrival.[20]

In his 1838 publication *The New British Province of South Australia*, Wakefield disparaged Spanish exploitation of Native Americans in the settlement of Hispaniola, rightfully likening it to slavery.[21] Earlier, in *A Letter from Sydney*, Wakefield despaired that every successful European colony in Africa, North and South America, and Australia, had succeeded only through exploitative unpaid labour, including slavery, convict transportation, and the manipulation and exploitation of Indigenous populations.[22] Wakefield's suggested

[16] Wakefield, *A Letter from Sydney*, p.247-249.
[17] Ibid, p.250-252.
[18] Archer, 'Wakefield's theory of "systematic colonisation"', p.4.
[19] *First Annual Report of the Colonization Commissioners of South Australia*, p.23, 28 July 1836, CO13/4, AJCP, NLA: Canberra, p.352.
[20] EG Wakefield, *The New British Province of South Australia*, 2nd ed., London: C. Knight, 1838, p.116.
[21] Ibid, p.172.
[22] Wakefield, *A Letter from Sydney*, p.162.

solution to colonial labour shortages was to encourage the immigration of Chinese labourers, who he claimed frequently made 'offers to the masters of English ships to bind themselves to labour, without wages, during three days in the week, for a term of years, in return for a free passage to any British settlement'.[23] He also claimed there were an abundance of Pacific Islanders who would 'rejoice' at the opportunity to labour in Australia 'if we did but offer them free passage and plenty to eat', and suggested that the 'poorest class' of Indian citizens would also choose to 'labour and enjoy in Australasia, rather than…die of misery near their own temples'.[24] These encouragements to induce immigration from the poorest classes of overpopulated (colonised) countries demonstrates that Wakefield was not opposed to exploitative labour, only to the specific kinds of exploitative labour which were publicly unpopular in Britain.

It did not take long before South Australia engaged in exploitative labour practices, evident in its increasing dependence on Aboriginal labour in the mid-nineteenth century. According to Angela Woollacott, colonists took advantage of the legal grey-zone occupied by Aboriginal labourers, who were often convinced to work for food and material goods rather than the cash wages mandated for white workers.[25] For example, in 1859 well-known South Australian missionary George Taplin recorded in his diary his frustration over a group of young Aboriginal men refusing to deliver a boat full of fish from Point MacLeay to Goolwa without pay.[26] Taplin refused their demands, complaining that pay was unnecessary because the entire 'tribe reaps the benefit' of selling fish in Goolwa, and lamented that 'three hundred weight of fish were spoiled because of this obstinacy', ignoring his own obstinacy in refusing to offer payment for these men's services.[27]

South Australian authorities also worked to avoid Wakefield's assumed worst-case scenario—an overabundance of working-class labourers and servants with no masters to work for—which he blamed for the failure of the free settlement of Swan River (modern-day Perth). The ready availability of cheap land in Swan River allowed labourers to quickly become landowners themselves, leaving a shortage of labourers willing to work the land of

[23] Wakefield, *A Letter from Sydney*, p.98.
[24] Ibid, p.92.
[25] Woollacott, *Settler Society in the Australian Colonies*, p.48.
[26] G Taplin, *Copy of Diary of the Rev. Geo. Taplin of Pt. McLeay: vol 1, from April 4, 1859 to August 1, 1865*, State Library of South Australia, 1958, p.40.
[27] Ibid. Further examples of exploitative labour practices in colonial South Australia are discussed in chapter 3.

wealthy colonists.[28] Without a labouring class there were not enough workers willing or able to clear the large swathes of purchased land for farming, leaving little option for landowners, wealthy or otherwise, to turn their land to profit. In such a scenario, Wakefield reported that colonists were condemned 'to a state of poverty and barbarism', a prediction proved prophetic in 1849 when the Swan River colony turned to convict transportation to solve its continuing labour and population problems.[29]

South Australia and Convict Transportation

South Australian colonial authorities' primary concern was that distance from the mother country and proximity to penal colonies and Aboriginal peoples would cause their superior colony to become corrupted by immorality and vice. According to Woollacott, colonial authorities hoped that replacing convict transportation with entirely free immigration would 'raise their standards of civilization' compared to the existing penal colonies.[30] Paul Sendziuk and Robert Foster support this idea, suggesting that South Australian authorities believed their '"no convict" principle' would 'protect the colony's respectability and freedoms'.[31] This suggestion is supported within the colonial context by the 1836 Colonization Commissioners' Report, which stated that refusing to participate in convict transportation and encouraging the emigration of free labourers would protect South Australian colonists from 'the enormous evils which result from the immorality and profligacy unavoidable in a penal settlement'.[32]

South Australian colonial authorities wanted to avoid association with the 'convict stain' which was discouraging respectable immigrants from travelling to Australia over other parts of the Empire. According to Woollacott, one of the primary goals of Wakefield's systematic colonisation theory was 'to make the convict system redundant'.[33] Anti-convict sentiment, growing alongside increasing protests against slavery, triggered by Evangelical and moral shifts in Britain, was used to encourage respectable emigrants to select South Australia over other destinations in the British Empire. In his 1839 publication, titled *An*

[28] Wakefield, *The New British Province of South Australia*, p.92.
[29] Wakefield, *A Letter from Sydney*, p.129.
[30] Woollacott, *Settler Society in the Australian Colonies*, p.39-40.
[31] Sendziuk and Foster, *A History of South Australia*, p.37.
[32] *First Annual Report of the Colonization Commissioners*, p.352.
[33] Woollacott, *Settler Society in the Australian Colonies*, p.40.

Authentic and Impartial History of the Rise and Progress…of South Australia, 'intending immigrant' and newspaper editor John Stephens expressed his relief that South Australia was not 'doomed to the contamination and curse of being a penal colony, like New South Wales and Van Diemen's Land'.[34] Stephens claimed that New South Wales in particular was populated with many of 'the most demoralised men on the face of the earth', making it an undesirable destination for a respectable immigrant such as himself.[35] Stephens' work was propaganda commissioned by George Fife Angas to advertise South Australia; however, his work is significant for highlighting the kinds of colonists that South Australian authorities wished to attract and the way they wanted their colony to be represented to the rest of the world.

Despite refusing to participate in convict transportation from Britain, South Australian authorities were constantly afraid that convicts from the neighbouring penal colonies would attempt to escape their sentences by fleeing overland to South Australia. The Legislative Council acted on these concerns quickly, with the first *Convicts Prevention Act* passed in 1839. This Act simply declared that anyone living in South Australia who was discovered to have an outstanding warrant in New South Wales or Van Diemen's Land would be tried and immediately transported back to the place where the warrant was issued to serve out the rest of their sentence.[36] This initial Act enforced colonial authorities' insistence that convicts were not welcome in South Australia, though it focused more on removing them from the colony as quickly as possible than enacting legal punishment.

By mid-century concerns over convicts escaping to South Australia had grown, leading to a desire for harsher penalties which culminated in the introduction of the *Convicted Felons Act* in 1852. Though it provided no statistics, and the Police Commissioner's reports for 1850 and 1851 made no mention of convicts illegally entering the colony, this Act insisted that it had become increasingly common for 'convicted felons, or other persons undergoing sentences of transportation for offences against the laws' to escape to South Australia, insisting that this practice must be swiftly discouraged 'for the peace and good

[34] J Stephens, *Land of Promise: Being an Authentic and Impartial History of the Rise and Progress of the New British Province of South Australia,* London: Smith, Elder, and Co., 1839, p.3.
[35] D Whitelock, *Adelaide from Colony to Jubilee: A Sense of Difference*, Savvas Publishing: Adelaide, 1985, p.46.
[36] *Convicts Prevention Act 1838* (SA), pp.1-3.

order of the community'.[37] The Act mandated that convicts discovered in South Australia now faced additional, and immediate, imprisonment in South Australia before being extradited to face charges in their original colony, with male convicts facing up to three years of 'being imprisoned and worked in irons', and female convicts facing two years hard labour.[38] Amendments to the *Convicted Felons Act* in 1857 mandated that no person from Western Australia, the only colony still participating in convict transportation, could land in South Australia without presenting documents attesting to their legal freedom.[39] These Acts considered testimony from a respectable colonist to be sufficient evidence for a warrant to be issued—it was then up to the accused to provide convincing evidence of their innocence.[40]

South Australia was the first British colony to ban convicts from crossing its border, and its anti-convict legislation created a precedent for other colonies, with Victoria and New Zealand both passing legislation to prevent entry to any British or Australian convicts, Victoria in 1852 and New Zealand in 1867. Both colonies' legislation bore clear similarities to South Australia's, though there were some small differences. New Zealand simply banned entry to anyone currently under sentence in Britain or Australia, requiring them to leave New Zealand within 14 days or face a prison sentence of no more than three years for men and one year for women.[41] Victoria's Act also only banned those currently serving, or about to be serving, a criminal sentence, but was only intended to be in force for two years; however, it was followed by the 1854 *Influx of Criminals Prevention Act*, which banned entry to any non-Victorian who had ever been convicted of a 'capital or transportable felony' under British law, and required those who were convicted to leave the colony within seven days or face up to one (female) or three (male) years hard labour.[42]

Victoria's 1854 Act was also intended to be temporary, with a clause stating that it would be in place for one year unless renewed at the next meeting of the Legislative Council.[43] It was renewed at this stage but expired again in 1856 and was not renewed.[44] The temporary nature of Victoria's convict prevention legislation demonstrates that these laws

[37] *Convicts Prevention Act 1852* (SA), p.57.
[38] Ibid, p.58.
[39] *Convicts Prevention Act 1857* (SA), p.2.
[40] Ibid, p.3.
[41] *Convtcts Prevention Act 1867* (NZ).
[42] *An Act to facilitate the apprehension and prevent the introduction into the Colony of Victoria of Offenders illegally at large 1852* (Vic); *Influx of Criminals Prevention Act 1854* (Vic), p.5.
[43] *Influx of Criminals Prevention Act 1854* (Vic), p.8.
[44] *Influx of Criminals Prevention Act 1856* (Vic).

were not intended to be permanent. Rather, they were initiated in direct response to 'the continual influx of runaway convicts from Van Diemen's Land' seeking to make their fortune in Victoria's Gold Rush, which spanned from 1851 to the late-1860s.[45] Outside of this, Victorian authorities held no real concern over the arrival of current and former convicts in their colony, demonstrating that such attitudes were confined to South Australia.

South Australian authorities' fear of convicts did not wane as colonisation progressed, or even as convict transportation was slowly outlawed across the continent. In 1864, the *Convicted Felons Act* was repealed entirely, replaced with a new *Convicts Prevention Act*. This Act still mandated the same punishment for convicts who entered South Australia whilst serving their sentence, with the addition of refusing entrance to any freed convict whose sentence had been expired for less than three years. It also introduced a requirement for all ships arriving from Western Australia to be searched by the Water Police before the passengers could disembark, and instituted fines of up to £500, or a prison term of up to 12 months, for anyone discovered smuggling convicts into the colony.[46] The *Convicts Prevention Act* was amended twice in 1865, and again in 1879 and 1881, and it was not officially repealed until the 1934 *Statute Law Revision Act*.[47] The extreme measures to which South Australian authorities went to prevent convicts from entering their colony, in place until well after Federation, demonstrate the effort these authorities were willing to expend to avoid association with the 'convict stain'. They also demonstrate just how serious colonial authorities were about maintaining South Australia's reputation of moral superiority over the penal colonies throughout the course of colonisation.

Despite refusing to participate in convict transportation and enacting extensive legislation to prohibit convicts from entering the colony, convicts were never truly absent from South Australia. In her book *Settler Society in the Australian Colonies*, Woollacott referenced the diary of South Australian settler Eliza Mahoney, who noted her father's employment of a number of former convicts from the eastern colonies in the early 1840s, contradicting the 'mythology of South Australia as free of the convict taint'.[48] Also, while

[45] *An Act to facilitate the apprehension and prevent the introduction into the Colony of Victoria of Offenders illegally at large 1852* (Vic), p.1; see also: 'To-morrow's Meeting', *The Courier*, 17 November 1852, p.2; 'The Convicts Prevention Act', *The Argus*, 14 September 1853, p.4.
[46] *Convicts Prevention Act 1864* (SA), p.275.
[47] *Statute Law Revision Act 1934* (SA).
[48] Woollacott, *Settler Society in the Australian Colonies*, p.46.

convicts were never received into the colony, South Australia did participate in convict transportation by utilising it as a punishment for their own criminals, with a small number of court verdicts discussed in this thesis mandating a sentence of transportation. In the words of Pike: 'although South Australians were unwilling to receive the sweepings of Britain's gaols, they were not averse to disposing of their own unwanted prisoners to the neighbouring penal colonies'.[49] Though Pike does not consider any specific case studies, he does note that, from 1836 until the official cessation of the practice in 1851, approximately 200 convicts were transported from South Australia to Van Diemen's Land, including those who were repatriated after fleeing to South Australia to escape their sentence.[50] There is no clear indication of whether, upon the end of their sentence, these convicts were allowed to return to South Australia, or if they were required to submit to the three-year waiting period mandated in the 1864 *Convicts Prevention Act*.

Aboriginal-Settler Relations in Colonial South Australia

Aside from refusing to participate in convict transportation, one of the most well-known differences between South Australia and other Australian colonies is the recognition of Aboriginal land rights in the Letters Patent. At the time in which the South Australia Company was seeking approval to establish a new colony, British authorities were becoming increasingly concerned with Indigenous-settler relations. They had recently received reports from Governor George Arthur detailing the impact of colonial violence in Van Diemen's Land and including a recommendation that further colonial efforts should involve a treaty between British colonisers and existing Aboriginal occupants of the land.[51] While Arthur's recommendation of a treaty was never realised in any Australian colonial effort, his report did cause the Colonial Office to refuse approval for the South Australia Company's colony until they made a plan to ensure Aboriginal peoples' welfare during colonisation.[52] Consequently, while the 1834 South Australia Bill had made no mention of Aboriginal people, the Letters Patent issued on the 19th of February 1836 mandated that the settlement of South Australia should not:

[49] Pike, *Paradise of Dissent*, p.295.
[50] Ibid.
[51] Sendziuk and Foster, *A History of South Australia*, p.15.
[52] Foster, '"His Majesty's most gracious and benevolent intentions"', p.108.

> Affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any Lands therein actually occupied or enjoyed by such Natives.[53]

Despite this concession, the Letters Patent reiterated the false claim that the land claimed for the settlement of South Australia consisted only of 'waste and unoccupied Lands', leaving plenty of leeway for colonists to remove Aboriginal peoples from any land they wished to occupy for themselves. South Australia's on-paper recognition of Aboriginal rights is frequently touted as evidence of the colony's 'difference' and superiority; however, the actions of British colonisers after their arrival in South Australia did not match the promises recorded in the Letters Patent.

In his proclamation speech on the 28 December 1836, Governor John Hindmarsh stated his intentions to extend 'the same protection to the NATIVE POPULATION as to the rest of His Majesty's Subjects, and…to punish with exemplary severity, all sets of violence or injustice…against the NATIVES'.[54] As mentioned above, although it was forced by British authorities, the inclusion of Aboriginal people in the Letters Patent, alongside spoken promises from Hindmarsh and his successor George Gawler, promised a 'more liberal approach to Aboriginal rights and protection' than had been experienced in the earlier colonies.[55] In Whitelock's opinion, though Indigenous-settler relations in South Australia were certainly heavily balanced in the colonists' favour, and reliant on Aboriginal peoples' willingness to conform to British cultural ideals, South Australia's founders 'made comparatively strenuous efforts to treat the natives better than had their counterparts in the other Australian colonies'.[56]

Unfortunately, this 'more liberal approach' to Indigenous-settler relations did not translate to increased respect for the existing owners of South Australian land, and the 1836 Colonization Commissioners' Report made it clear that colonisers were prepared to act violently against Aboriginal people—particularly the Kaurna people living on the plains

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[53] *Letters Patent Erecting and Establishing the Province of South Australia and Erecting its Boundaries*, 19 February 1836, GRG2/64, Governor's Office, State Records of South Australia [SRSA]: Adelaide.
[54] *Proclamation by His Excellency John HINDMARSH, Knight of the Hanoverian Guelphic Order, Governor-and-Commander-in-Chief of His Majesty's Province of South Australia*, 28 December 1836, CO13/6, AJCP, NLA: Canberra, p.8.
[55] Foster, '"His Majesty's most gracious and benevolent intentions", p.106-107.
[56] Whitelock, *Adelaide 1836-1976*, p.56.

which colonial surveyors had selected as the main settlement. The Commissioners wrote that, while the Aboriginal people they had encountered were 'feeble' and 'inoffensive…when treated with kindness', they had ensured that the first fleet included 'a small military force' and ample weaponry 'in case of necessity'.[57] Furthermore, Whitelock reports that South Australia, like most British colonies, followed the tradition of appointing 'distinguished military men' capable of 'subduing savages, safeguarding settlers, and carrying out Government orders' as Governors until as recently as the 1970s.[58]

Despite early assurances of a positive, peaceful relationship with South Australia's Indigenous population, Foster asserts that it only took 'a few years' for Indigenous-settler relations to descend into the 'familiar cycle of violence, resistance and retaliation that almost inevitably accompanied European intrusion into Aboriginal lands'.[59] According to Whitelock, despite the apparent good intentions of colonial leaders such as Gouger, most South Australian colonisers viewed Aboriginal people as nothing more than 'shiftless, benighted heathens'.[60] This claim is supported by Penny Russell, who believes that early promises to establish a reciprocal relationship with Aboriginal communities were 'repeatedly erased by the [settlers'] lust for land' which inevitably led to the, often violent and always traumatising, dispossession of Aboriginal people from their land.[61] Furthermore, Whitelock suggests that, when it became clear that 'Aborigines would not work as servants in a way satisfactory to Englishmen, then they became a problem. They should be herded onto reserves, dressed in old clothes, and converted to passive Christianity. Or they should be gotten rid of, like pests'.[62]

Katherine Smits' work on settler violence in colonial South Australia explores the influence of Jeremy Bentham, a well-known British philosopher and member of Wakefield's South Australian Colonization Society.[63] Bentham supported Wakefield's colonisation plan until his death in 1832, despite having published extensively on the evils of imperialism. In the 1790s, Bentham publicly spoke out against French and Spanish imperialism in the belief

[57] *First Annual Report of the Colonization Commissioners*, p.353.
[58] Whitelock, *Adelaide 1836-1976*, p.5.
[59] Foster, '"His Majesty's most gracious and benevolent intentions", p.109.
[60] Whitelock, *Adelaide 1836-1976*, p.16.
[61] P Russell, *Savage or Civilised? Manners in Colonial Australia*, Sydney: University of New South Wales Press, 2010, p.22.
[62] Whitelock, *Adelaide 1836-1976*, p.16.
[63] K Smits, 'John Stuart Mill on the Antipodes: Settler Violence Against Indigenous Peoples and the Legitimacy of Colonial Rule', *Australian Journal of Politics and History*, vol.54, no.1, 2008, p.4.

that, in Smit's words, 'colonial administration, however well-intentioned, was fatally susceptible to corruption and brutalization'.[64] Whether Bentham acknowledged it or not, this statement was just as true for South Australia as it was for earlier colonial endeavours. According to Foster, from the first arrival of British settlers in South Australia colonists regarded the provisions for Aboriginal rights detailed in the Letters Patent as nothing more than 'bothersome interventions', and the plan to negotiate with Aboriginal communities for land was 'totally ignored once settlement was underway'.[65] In his collaborative work with Peter Mühlhäusler, Foster further suggests that the Aboriginal voice in South Australia was 'constructed as inferior…what Aboriginal people had to say was deemed to be largely irrelevant', and their wants and needs were ignored by the majority of British colonists.[66]

Rather than the collaboration and mutual respect outlined in the Letters Patent and Hindmarsh's proclamation speech, early settler interactions with Aboriginal peoples were frequently patronising and focused towards persuading Indigenous South Australians to conform to British ideas of civilisation and Christianity. On the 1 November 1838, Governor George Gawler gave a speech addressing approximately 200 Aboriginal people in a park near Government House. Later transcribed in the *South Australian Gazette and Colonial Register*, his speech consisted of the following:

> Black men—
> We wish to make you happy. But you cannot be happy unless you imitate good white men. Build huts, wear clothes, work and be useful.
> Above all things you cannot be happy unless you love God who made heaven and earth and men and all things.
> Love white men. Love other tribes of black men. Do not quarrel together. Tell other tribes to love white men, and to build good huts and wear clothes. Learn to speak English.
> If any white men injure you, tell the Protector and he will do you justice.[67]

This speech further proves that peaceful relations between British colonists and Aboriginal peoples relied entirely on Aboriginal people's willingness to conform and assimilate with British culture and beliefs. This idea is supported by Russell, who suggests that colonists

[64] Smits, 'John Stuart Mill on the Antipodes, p.4.
[65] Foster, '"His Majesty's most gracious and benevolent intentions", p.108.
[66] R Foster and P Mühlhäusler, 'Native tongue, captive voice. The representation of the Aboriginal "voice" in colonial South Australia', *Language and Communication*, vol.16, no.1, 1996, p.1.
[67] 'The Natives', *South Australian Gazette and Colonial Register*, 3 November 1838, p.4.

across Australia used their near-blind conviction that British customs and beliefs represented the peak of human civilisation to 'justif[y] their acts of dispossession' towards Aboriginal communities.[68] With no intention of meeting in the middle, colonial authorities made overtures of civility and friendship in language (both verbal and physical) which, without the appropriate cultural context, Indigenous Australians could not hope to understand—even with the use of a translator.[69] As a result, when their expectations were inevitably misunderstood and relationships between colonisers and Aboriginal peoples deteriorated, colonial authorities were eager to place the blame on '"savage" ignorance', rather than recognising the flaws in their own methods of communication.[70]

One of the most horrific examples of South Australian colonists' ignorance leading to disaster for Indigenous peoples was the Rufus River Massacre in August 1841 which resulted in the deaths of at least 30 Maraura men, women, and children.[71] While technically occurring on the other side of the New South Wales border, the Rufus River Massacre was predominantly perpetuated by South Australian authorities, and therefore deserves to be attributed to this colony. The massacre was the culmination of recent conflicts on the South Australia-New South Wales border which had resulted in the dispersal of several thousand sheep and cattle.[72] While no loss of life or serious injury to any white settlers was recorded during these initial conflicts, at least one Maraura man had been killed, and between six and eight others were shot.[73]

What ultimately ended in massacre began as a peacekeeping mission led by the South Australian Protector of Aborigines Matthew Moorhouse, intending to resolve the recent conflicts without further violence. According to Richard Price, negotiations between Moorhouse's group and the Maraura people devolved into violence after the 'whites interpreted certain moves by a group of Aborigines as threatening and were unable to understand what was being said by their parlaying group'.[74] More than 21 years after the fact,

[68] Russell, *Savage or Civilised?*, p.20.
[69] Ibid, p.20-21.
[70] Ibid, p.20.
[71] A Nettelbeck, 'Colonial protection and the intimacies of Indigenous governance', *History Australia*, vol.14, no.1, 2017, p.37-38.
[72] A Nettelbeck, 'Mythologising frontier: Narrative versions of the Rufus River conflict, 1841-1899', *Journal of Australian Studies*, vol.23, no.61, 1999, p.76-77.
[73] Ibid.
[74] RN Price, 'The psychology of colonial violence', in P Dwyer and A Nettelbeck (eds), *Violence, Colonialism and Empire in the Colonial World*, London: Palgrave Macmillan, 2018, p.34.

George Taplin recorded the events of the massacre in his diary as they were reported to him by Alexander Tolmer, who had been sub-inspector of police at the time and later acted as Police Commissioner from 1852-53. Tolmer reported that their party came upon hundreds of Aboriginal warriors threatening a group of overland merchants. After refusing to surrender, these warriors allegedly released a 'shower of spears', forcing the Europeans to respond with gunfire and leading to 'the defeat of the Rufus blacks'.[75] This testimony directly contradicted Matthew Moorhouse's testimony at the inquest into the massacre conducted by the Bench of Magistrates in September 1841, which clearly stated that no spears had been thrown prior to the overlanders and his own party opening fire.[76] According to Jane Lydon, there is a clear discrepancy between representations of the Rufus River Massacre immediately after the fact, and those published in the following decades.[77] Lydon references John Wrathall Bull's well-known book *Early Experiences of Life in South Australia*, which painted the massacre as a 'celebrated colonial success'—a perspective which became the 'template for later histories'.[78]

Despite Moorhouse's confession that the colonists had shot first, the inquest determined that 'the conduct of Mr Moorhouse and his party was justifiable, and…unavoidable' and that they should be 'praise[d]…for the great forbearance' they had shown under the circumstances.[79] This conclusion was supported by magistrate and renowned South Australian explorer Edward John Eyre, who agreed that the conflict was unavoidable, but worried that the 'example made' by the massacre 'was not yet sufficient' to ease the violence of Indigenous-settler relations.[80] The Rufus River Massacre and its aftermath demonstrate that the benevolent intentions outlined in their foundational documents did not encourage South Australian authorities to punish British colonists who instigated frontier violence.

Gawler's swearing-in speech in October 1838 was telling of the way that South Australian colonists intended to treat and negotiate with Aboriginal people. Addressing the attending colonists, Gawler lamented at the 'state of ignorance' which these 'poor creatures'

[75] Price, 'The psychology of colonial violence', p.34.
[76] 'Inquiry into the circumstances attending the death of a number of natives on the Murray', *South Australian Register*, 25 September 1841, p.4-5.
[77] J Lydon, 'Colonial "blind spots": Images of Australian frontier conflict', *Journal of Australian Studies*, vol.42, no.4, 2018, p.420.
[78] Ibid.
[79] 'Inquiry into the circumstances attending the death of a number of natives on the Murray', *South Australian Register*, 25 September 1841, p.4.
[80] Ibid.

were in, and implored settlers to bear with Aboriginal peoples' ignorance of British civilisation in the same way that they would bear with 'the ignorance of children'.[81] Before this section of his speech, Gawler had addressed the Aboriginal attendees of his swearing-in by insisting that Aboriginal people and British colonisers could 'be happy together' if they only learned to 'love the Queen of Great Britain and all the people of Great Britain' and learned to read the Bible and to fear God.[82] The echoes of this speech are present in Indigenous-settler relations throughout the first decades of colonisation, where failings in diplomacy were invariably blamed on Aboriginal peoples' ignorance and unwillingness to conform to British ideas of civilisation, rather than South Australian colonisers' failure to follow the guidelines set out in their own Letters Patent.

South Australian Perceptions of Indigenous Criminality

British settler ideas of Aboriginal peoples' propensity for criminality can best be summed up by the 1863 Police Commissioner's Report to the Colonial Secretary, where the Commissioner, Colonel Peter Warburton, wrote:

> These savages could not be made to understand our Laws whatever pains we might take to teach them—they know none other than that by which their own conduct is regulated; the Majesty of our laws is nothing in their eyes—they will not yield to the covenants of the Law whilst they have the least power of resistance, and every instance of successful resistance only incites them to further acts of violence …[83]

Warburton's statement does not provide any context for colonial attempts to 'teach' British law to South Australian Aboriginal peoples; however, one example of such teaching was recorded in George Taplin's diary in October 1859, with Taplin writing that he had done everything in his power to assist Police Trooper Drout in his search for an Aboriginal man from Lake Albert accused of manslaughter, because he believed that it was 'important that nothing should occur to lessen the fear of prison felt by the blacks'.[84] This statement suggests

[81] 'Installation of His Excellency Governor Gawler', *South Australian Gazette and Colonial Register*, 20 October 1838, p.2.
[82] Ibid.
[83] *Police Commissioner to Colonial Secretary*, GRG 5/2/1863/306, State Records of South Australia: Adelaide, quoted in R Foster, '"His Majesty's most gracious and benevolent intentions", p.110.
[84] Taplin, *Copy of Diary of the Rev. Geo. Taplin*, p.27.

that British colonisers attempts to 'teach' their laws were not focussed on cultural sharing and education, but on fear and forced conformity to British law and, by extension, British culture.

Another example of this is the 1851 murder of an Aboriginal man, allegedly committed by four other Aboriginal men—with neither the victim of the alleged perpetrators named in the report—in Guichen Bay. The four alleged perpetrators were acquitted due to insufficient evidence; however, Moorhouse's report of the case recorded his hope that the experience of being arrested would teach the men 'that they must not murder one another any more than white people'.[85] Moorhouse justified this hope after hearing that the four men had allegedly bragged about the murder to other settlers and, when told they would be arrested, questioned: 'why will the Police come and take us, we have not killed a white fellow'.[86] He also promised that, on his next visit to the area, he would inform the local Indigenous communities that they were 'equally liable to punishment, for murdering one of themselves, as for taking the life of a white man'.[87] This report demonstrates colonial authorities eagerness to enforce British law on Aboriginal people. It also shows colonial authorities' preference for punishment as a form of cultural education—further demonstrating the colonial propensity to blame Aboriginal people's misunderstandings of British law on incivility and cultural ignorance rather than the ineffective communication of colonial authorities.

There were some attempts to disseminate British law to Aboriginal peoples through peaceful communication, usually following the creation of new British settlements. In such cases, colonial representatives were dispatched to inform Aboriginal communities of how they were expected to interact with colonists. One such example is recorded in the *Reports on Aborigines* for March 1852, which recorded that Sub-Protector Mason had travelled to the towns of Finniss, Currency Creek, and Encounter Bay to warn the Aboriginal communities in those regions 'against misconducting themselves towards the settlers, particularly unprotected females'.[35] This example supports the assumptions of the four Aboriginal men from Guichen Bay that colonial authorities were only concerned with crimes committed against white

[85] *Report of Protector of Aborigines for the Quarter Ended June 30 1851*, 21 July 1851, CO13/73, AJCP, NLA: Canberra, p.345.
[86] Ibid.
[87] Ibid.

settlers—with no evidence that Mason informed those Aboriginal communities of any of the other colonial laws they were expected to follow.

While convicts from neighbouring colonies posed an external threat to South Australia's 'crime-free' status, colonial authorities were also concerned with the apparent internal threat posed by Aboriginal people. Hindmarsh's 1836 Proclamation insisted that Aboriginal people in South Australia would be 'considered as much under the Safeguard of the law as the Colonists themselves, and equally entitled to the privileges of British Subjects'.[88] However, British settlers believed that Aboriginal people were uneducated and uncivilised, and that they were therefore more prone to criminality than respectable white colonists. This attitude was reflected in South Australian legislative acts.

For example, prior to 1844, Aboriginal people were excluded from testifying in South Australian courts because they were a 'barbarous and uncivilized people, destitute of the knowledge of God and of any fixed belief in religion, or in a future state of rewards and punishment'.[89] It offered no exceptions for Aboriginal people who had converted to Christianity, suggesting that the regulation was based in racist ideology rather than religious belief. The exclusion of Aboriginal evidence was rescinded by the 1844 *Aborigine's Evidence Act* which allowed Indigenous people to testify in court without swearing a religious oath, so long as they demonstrated an understanding that false testimony was a crime.[90] However, the Act also mandated that the 'degree of weight and credibility' of an Aboriginal person's evidence was to be determined by the judge and jury, and that no person could be convicted of any crime based on the sole testimony of an Aboriginal person.[91] In 1846 the *Aborigine's Evidence Act* was amended to specify that conviction based solely on an Aboriginal person's evidence was only forbidden in cases with a maximum penalty of death or transportation.[92] These Acts were repealed by the *Aboriginal Witnesses Act* of 1848, which legalised convictions made on the uncorroborated testimony of an Aboriginal witness, though the credibility of evidence remained at the discretion of court authorities.[93]

[88] *Proclamation of His Majesty's Province of South Australia*, CO13/6, p.8.
[89] *Aborigines' Evidence Act 1844* (SA), p.1.
[90] Ibid, p.2.
[91] Ibid, p.3.
[92] *Aborigine's Evidence Act 1846* (SA).
[93] *Aboriginal Witnesses Act 1848* (SA), p.4.

In addition to laws relating to Aboriginal evidence, the 1843 *Ordinance to Regulate Trials by Jury in South Australia* mandated that no person who was not a 'natural born British subject' could be permitted to serve on South Australian juries.[94] This ordinance gave exception in cases where any 'alien' committed to trial could request a jury half-composed of a 'competent number of aliens'.[95] As the term alien applies to persons hailing from a foreign country, it could not be applied to Indigenous South Australians, who had occupied the land well in advance of British settlers. These laws forbidding Indigenous testimony, and those which withheld from Aboriginal people the right to be sentenced by a jury of their peers, served to re-enforce white settler authority over Aboriginal peoples and communities throughout the colonial period.

Women in the Nineteenth Century

The British colonisation of South Australia was not conducted in a vacuum, uninfluenced by the popular ideas of the time. It is impossible to understand the ways that women were perceived in colonial South Australia without first understanding popular nineteenth century stereotypes of gender and class. During this period, European ideas of gender, class, race, morality, and respectability were portrayed by powerful Empires as being the peak of human civilisation, enforced not only in their countries of origin, but in every place which fell under the jurisdiction of a European Empire. These beliefs of white European superiority were inherently racist. According to Woollacott, 'in white settler colonies, there have been specific regimes in which whiteness itself accrued legislative, regulatory, and cultural substance', meaning that perceptions of white European superiority were slowly and often subtly incorporated into settler colonial law, forming the foundation of white colonial identity.[96]

For the British Empire such practices were most evident in the colonisation of Australia, India, Canada and New Zealand. Woollacott further notes that mid-nineteenth century concepts of whiteness were utilised by white colonisers to 'shore up a system of continuing racial hierarchy and repression' following the abolition of slavery.[97] Furthermore,

[94] *Aboriginal Witnesses Act 1848* (SA), p.3; *Juries Act (no.12) 1843* (SA), p.2.
[95] *Juries Act (no.12) 1843*, p.11.
[96] A Woollacott, 'Whiteness and "the imperial turn"', in L Boucher, J Carey and K Ellinghaus (eds), *Re-Orienting Whiteness*, Palgrave Macmillan: New York, 2009, p.23.
[97] Ibid, p.26

she suggests that these social and legal concepts of whiteness were frequently utilised by colonisers to differentiate between white and non-white women, with popular nineteenth century perceptions of feminine 'virtue' becoming 'synonymous with whiteness in a continuing subordination of black women'.[98] This demonstrates that perceptions of female virtue and chastity were not only a gendered, but also race-based process constructed by white colonisers as a method of dictating which women were and were not deserving of social and legal respect.

Understandings of women's role in colonial society were also heavily influenced by class, and social and legal perceptions of working-class women differed greatly from perceptions of their middle-class counterparts.[99] In the colonial courtroom, and in wider colonial society, these perceptions were heightened in cases involving single women. According to Katrina Alford, unfavourable opinions of single women in colonial Australia, particularly those directed towards newly-arrived immigrants, were not a result of individual women's behaviour, but were explicitly derived from 'a combination of their unmarried and working class status'.[100] Furthermore, in her research on the regulation of the female body through nineteenth century infanticide charges, Annie Cossins suggests that debates surrounding the criminality of 'young, unmarried and working-class' women created some of the most 'explosive moral discourse' of the period.[101] An article published in the *South Australian Chronicle and Weekly Mail* in 1880—republished from the London *Globe*—cited a direct correlation between singlehood and crime, suggesting that single women were more than twice as likely to become involved in crime as married women.[102] The article also claimed that the disparity between the criminality of single and married women was even greater than that between single and married men, suggesting that for every 100 married women who committed a crime there were a corresponding 240 single female criminals, while for male criminals the disparity was only 100-170.[103]

[98] Woollacott, 'Whiteness and "the imperial turn"', p.26.
[99] For discussions of anti-working-class sentiments in nineteenth century law, see: J Kimber, '"A nuisance to the community": policing the vagrant woman', *Journal of Australian Studies*, vol.34, no.3, 2010, p.276.
[100] K Alford, Production or Reproduction? An Economic History of Women in Australia, 1788-1850. Oxford University Press: Melbourne, 1984, p.118.
[101] A Cossins, *Female Criminality: Infanticide, Moral Panics and the Female Body*, Palgrave Macmillan: London, 2015, p.2.
[102] 'Country Telegrams', *South Australian Chronicle and Weekly Mail*, 29 May 1880, p.7.
[103] Ibid.

In the nineteenth century, as in many periods throughout history, popular opinion labelled women as inferior to men in most aspects of personality and physical and intellectual capability. This consideration is effectively summarised by Patricia Grimshaw, Susan Janson, and Marian Quartly, who wrote that, for much of the nineteenth century, 'the theory of democracy—that all men were equal because all had equal powers of reason—was assumed to exclude women, on the grounds that they were naturally irrational'.[104] Such claims were reiterated by doctors and religious and political figures throughout Europe and effectively excluded most women from participating in many aspects of public life.

Nineteenth century considerations of femininity were very contradictory. As mentioned above, women were portrayed as more gentle, moral, and naturally inclined towards passivity compared to men's natural inclination towards action and violence. Grimshaw et. al suggest that reports made by doctors and clergymen propagated the belief that 'women's ability to bear children kept them both less rational and more spiritual than men, closer to nature and to God'.[105] However, women who did not suit these stereotypes of passive femininity were often presented as temptresses enticing innocent men to sin. According to Nicola Goc, a woman's 'obedience and virtue was only sustained by "vigilant suppression of her unruly drives"', suggesting that women were naturally prone to incivility and immorality, and that they could only squash these urges with constant strength of will and contradicting the idea that women were naturally weak-willed and unsuited to public life.[106] Though these contradictions seem clear in hindsight, they were rarely acknowledged in colonial sources. As will be discussed throughout this thesis, these stereotypes of femininity and womanhood were also used to differentiate between the women who were and were not deserving of justice or mercy in the colonial courtroom.

Moral 'Superiority' of South Australia

Using Wakefield's theory of systematic colonisation, South Australian colonial authorities intended to create a predominantly middle-class society which was unencumbered

[104] P Grimshaw, S Janson, and M Quartly (eds), *Freedom Bound I: Documents on Women in Colonial Australia*, Sydney: Allen & Unwin, 1995, p.36-37.
[105] P Grimshaw, M Lake, A McGrath & M Quartly, *Creating a Nation*. Penguin Books Australia Ltd: Ringwood, 1994, p.91.
[106] N Goc, *Women, Infanticide and the Press, 1822-1922: News Narratives in England and Australia*. Ashgate Publishing Limited: Surrey, 2013, p.21.

by the poverty, crime, and pollution which plagued the over-populated motherland.[107] According to Woollacott, middle-class settlers were also relieved at the prospect of having 'no sneering aristocracy above them', allowing for a greater level of social improvement than was possible in Britain.[108] Unfortunately for the less affluent settlers, this idealised vision of South Australia was so fiercely protected and promoted that colonial authorities were often unwilling to acknowledge the existence of social issues when they inevitably emerged. According to Mary Geyer, colonial authorities avoided addressing growing levels of poverty and destitution in the 1860s and 70s by clinging to the founders' ideals that 'there would not be any need to provide for paupers because poverty would not exist' in the so-called paradise of South Australia.[109]

According to Whitelock, this sense of superiority was not confined to South Australia's founders and colonial authorities but is something which was expressed and bragged about by everyday colonists. By the late 1850s, he suggests, South Australian colonisers had 'formed a defensive and self-satisfied front…against the inferiorities of the rest of Australia'.[110] This idea is supported by Pike, who suggests that one of South Australian colonists' primary goals, from the beginning of colonisation until after Federation, 'was to avoid homogeneity with the rest of the continent', and their 'most precious distinction [was] the "no convict rule"'.[111] Pike's assertion is supported by an article published in the London-based *South Australian Gazette and Colonial Register* in June 1836. This article noted the fear and jealousy expressed by the existing penal colonies at the prospect of sharing their border with a wholly free colony 'possessing a moral atmosphere altogether untainted' which would, if successful, render the penal colonies nothing more than 'a provincial appendage to a younger, but a more free, vigorous…sister'.[112] This further demonstrates the perceived correlation between a lack of convict transportation and the alleged moral superiority of South Australia over previously established British colonies.

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[107] Goc, *Women, Infanticide and the Press*, p.25.
[108] Woollacott, *Settler Society in the Australian Colonies*, p.43.
[109] Geyer, *Behind the Wall*, p.25.
[110] Whitelock, *Adelaide 1836-1976*, p.77.
[111] Pike, *Paradise of Dissent*, p.495-496.
[112] 'Opposition to the Colony', *South Australian Gazette and Colonial Register*, 18 June 1836, p.8. See also: 'Education in South Australia', *South Australian Gazette and Colonial Register*, 18 June 1836, p.5; 'Infamous Attempt to Introduce Convicts into this Colony', *Adelaide Observer*, 6 September 1845, p.4; 'Swan River Convicts', *South Australian Register*, 31 July 1857, p.2; 'Exclusion of Convicts', *Adelaide Observer*, 16 July 1864, p.6; 'Our Prosperous State', *Chronicle*, 4 January 1913, p.26.

Balancing the Genders

From its establishment in 1836, South Australian colonists carried lofty ideals that their colony would become the most successful replica of British middle-class society in the Empire. According to Summers, South Australia's founders believed women would play a key role in 'restructuring' colonial society, believing that the relative absence of women was largely responsible for the dissolute reputation of the Eastern penal colonies.[113] Similarly, Wakefield believed that balancing the number of male and female settlers would 'develop the social cohesion necessary for the smooth evolution of the colony'.[114] By achieving this gender balance, South Australian colonists believed that their new colony would be 'self-sustaining, prosperous and virtuous'.[115]

Of the Australian colonies, South Australia had the most success in achieving a relative gender balance in the early years of colonisation. According to Sendziuk and Foster, by 1846 around 43 percent of South Australia's 25,000 European settlers were women, and by 1871 this proportion had increased to 48.7 per cent in a total population of 185,626 colonists.[116] In contrast, the percentage of women in New South Wales, Port Philip, and Van Diemen's Land in 1841 were 33.7, 29.5, and 31 respectively.[117] The gender balance in these colonies remained disparate in 1851, with women comprising 43.9 per cent, 40.3 per cent, and 36.6 per cent of these respective colonial populations. In South Australia, Christopher Nance suggests that, in addition to Wakefield's aim of natural population growth though childbirth, colonial authorities believed that a balanced gender ratio (with 'a woman for each man') would render disreputable sexual activity, namely prostitution, unnecessary.[118]

According to Whitelock, South Australia's founders wanted nothing to do with the 'hunt for women or the more dubious aspects of mateship' that they had witnessed in the other Australian colonies.[119] In this context, 'mateship' refers to the prevalence of

[113] A Summers, *Damned Whores and God's Police*, 2nd ed., Ringwood: Penguin Books, 1994, p.342-344.
[114] Ibid, p.344.
[115] M Geyer, *Behind the Wall: The Women of the Destitute Asylum Adelaide, 1852-1918* 2nd ed. Kent Town: Wakefield Press, 2008, p.25.
[116] Sendziuk and Foster, *A History of South Australia*, p.37, 66 and 69.
[117] W Vamplew (ed.), *Australians, Historical Statistics*, Fairfax, Syme and Weldon Associates: Broadway (NSW), 1987, p.27-28.
[118] C Nance, 'Women, public morality and prostitution in early South Australia', *Push from the Bush*, no.3, 1979, p.38.
[119] Whitelock, *Adelaide from Colony to Jubilee*, p.168.

homosexuality on the remote frontiers of the Eastern colonies, and in the gender-imbalanced convict settlements. It also relates to South Australian authorities' desire to prevent relations between European men and Aboriginal women, which were common on other colonial frontiers.[120] This point was reiterated in Governor Gawler's swearing-in speech, where he implored the male colonists in attendance to 'refrain from improper intercourse with [Aboriginal] women'.[121] These concerns primarily related to the potential for illegitimate, mixed-race children, rather than with the always imbalanced and often exploitative or forced relationships between white men and Aboriginal women.[122]

In addition to ensuring a balance of the sexes, South Australian immigration officials also insisted that prospective immigrants prove their respectability before being granted assisted passage. According to the 1848 *Notice on Free Emigration to Australia*, all applicants were required to be 'of good moral character, and well recommended for sobriety'.[123] The 1852 *Regulations for the Selection of Emigrants and Conditions on which Passages are Granted* took this one step further by insisting that assisted emigrants should be 'sober, industrious, and of general good character', requiring all applicants to submit 'decisive certificates' attesting to this.[124] These certificates included proof of former employment and character references from their employer and the minister of their parish.[125]

These strict character requirements aimed to ensure that South Australia's land fund was not wasted on 'paupers'. South Australian authorities frequently insisted that their colony would not accept 'pauper' immigrants, particularly those who had ever sought relief in a Poor Law Workhouse. Prejudice surrounding such immigrants— particularly Irish people and single women—and their apparent propensity for crime, influenced the way that they were received in the colony. Female immigrants who arrived from Poor Law workhouses faced harsh criticism and prejudice upon their arrival in the colony, attitudes which were fuelled by

[120] G Blyton and J Ramsland, 'Mixed-race unions and Indigenous demography in the Hunter Valley of New South Wales, 1788-1850', *Journal of the Royal Australian Historical Society*, vol.98, no.1, 2012, p.125.
[121] 'Installation of His Excellency Governor Gawler', *South Australian Gazette and Colonial Register*, 20 October 1838, p.2.
[122] For a more detailed discussion of relationships, both consensual and non-consensual, between white men and Aboriginal women, see chapters 6 ad 7.
[123] *Notice on Free Emigration to Australia*, February 1848, CO13/61, AJCP, NLA: Canberra, p.261.
[124] *Regulations for the Selection of Emigrants and Conditions on Which Passages are Granted*, May 1852, CO13/79, AJCP, NLA: Canberra, p.221.
[125] *First Annual Report of the Colonization Commissioners*, p.354.

the colonial media.[126] Taking this rejection of 'pauperism' even further, the 1848 *Notice on Free Emigration* mandated that 'persons in the habitual receipt of parish relief' were not eligible to receive an assisted passage to either South Australia or New South Wales.[127] As prospective immigrants who relied on financial aid could not afford to pay their own passage, this mandate would have prevented poor or unemployed people from emigrating to the colony. South Australian authorities hoped that such regulations would help to maintain their reputation as a primarily middle-class, and therefore respectable, colony.

The arrival of the *Roman Emperor* in Port Adelaide in 1848, with a passenger list composed primarily of orphaned girls from Irish workhouses, triggered a firestorm of complaints in the colonial media. One article published in the *Adelaide Observer* referred to the 219 girls as 'objects' and complained that they had, 'almost without a single exception', succumbed to the 'temptations' of colonial life (prostitution).[128] In 1850, Matthew Moorhouse, who simultaneously held the positions of Orphan Protector and Protector of Aborigines, composed a despatch titled *Return of Females Known to be Living as Prostitutes in or About Adelaide.* This document named 96 women, including 17 who had arrived on the *Roman Emperor*.[129] Seventeen women out of a total 219 could hardly be considered as 'without a single exception', demonstrating the hyperbolic language utilised frequently in colonial newspapers.[130] Such language served to reinforce the common assumption that unmarried poor women without 'natural protectors' were more prone to crime and immorality than the 'respectable' middle-class women who were so often presented as the South Australian norm.

Debates surrounding the immigration of unmarried Irish women were common, particularly during the influx of unmarried female immigrants in 1848-50 and 1855-56. These debates were largely triggered by the prevalence of 'pauperism' in mid-nineteenth century Ireland, which was incompatible with South Australian authorities' desire for a

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[126] See J Hastings, 'The "wrong kind" of immigrant: How existing prejudice on class, gender and ethnicity affected the reception of female Irish Famine orphans in South Australia under the Earl Grey Scheme', in S Arthure, F Breen, S James and D Lonergan (eds), *Irish South Australia: New Histories and Insights*, Wakefield Press: Adelaide, 2019, pp.131-142.
[127] *Notice on Free Emigration to Australia*, CO13/61, p.261.
[128] 'Workhouse Orphan Deportation', *Adelaide Observer*, 28 October 1848, p.3; 'Orphan Immigrants.' *South Australian Register*, 28th October 1848, 4.
[129] *Return of Females Known to be Living as Prostitutes in or About Adelaide*, 30 September 1850, CO13/70, AJCP, NLA: Canberra, pp.135-137
[130] For further discussion on South Australian colonial newspapers' utilisation of hyperbole, see chapter 4.

predominantly middle-class colony; however, they were also influenced by anti-Catholic sentiment. In June 1855, an article published in the *South Australian Register* lamented the recent practice of sending mostly Irish Catholic single women to a colony where most of the single men identified as Protestant.[131] Rather than mitigate the imbalance between male and female settlers, this article worried that an influx of Irish Catholic women, who were 'unsuitable in habits, education, and religion for the men with whom they are to unite', would 'immeasurably' increase the problem.[132] It assumed that Protestant men would not marry Catholic women, and that the colony would instead be burdened with a population of single women who could not fulfill their primary role of marriage and motherhood.

Ensuring that prospective immigrants were the 'right sort' for South Australia did not end in the Emigration Depots of Britain. Regulations on board immigrant ships aimed to ensure that immigrants, particularly single women, did not fall into dissolute habits during the long journey to the Australian colonies. The movements of single women on board immigrant vessels were strictly regulated by the Captain, Surgeon-Superintendent, and Matron. According to Jan Gothard, 'single women had virtually no private space on board the ship'.[133] Most of their time was spent in their bunk, which was separated from the single men's compartment by the married families' compartments, and it was locked from the outside—demonstrating a level of authoritative control which was not exerted over other adult immigrants.[134] In 1855 the Immigration Agent, Henry Duncan, even called for a unique lock and key, unlike any other on the ship, to be installed in the single women's compartment. He demanded that, if the single women were 'to be locked up at night' it should be done 'really and effectually'.[135] Aside from their compartment, single women were only permitted to go to the sickroom, or to spend allocated recreation time on the deck in an area that was segregated from the rest of the passengers, including their families.[136]

Colonial authorities feared that a failure to isolate single women on board immigrant ships would lead to their being corrupted by other passengers or members of the crew.

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[131] 'Colonial Statistics', *South Australian Register*, 4 June 1855, p.2.
[132] Ibid.
[133] J Gothard, *Blue China: Single Female Migration to Colonial Australia*. Melbourne University Press: Melbourne, 2001, p.117.
[134] 'Immigration Report', *Adelaide Times*, 3rd February 1855, p.2. See also, M Kleinig, '"We shall always bear a kind remembrance of them": The shipboard organisation of single assisted female immigrants from the British Isles to South Australia, 1870s to 1930', *Journal of the Historical Society of South Australia*, no.37, 2009, p.43.
[135] 'Immigration Report', *Adelaide Times*, 3rd February 1855, p.2.
[136] Gothard, *Blue China*, p.117.

Gothard writes that, in most instances, these regulations were intended to prevent women from being morally and, though it often went unsaid, sexually corrupted by the male officers, crewmembers and emigrants and, in some instances, to prevent 'respectable' single women from being enticed into prostitution by 'disreputable, usually older, women'.[137] The Immigration Agent's Report for June 1849 cited concerns about single women's conduct on immigrant vessels and suggested that a space should be allocated for the solitary confinement of unruly females, to be used in 'extreme cases' of female misbehaviour.[138] Such strict policing of single women's movements on board immigrant ships was costly, though Gothard suggests that colonial authorities considered the price to be small compared to the financial and moral cost of 'introducing women "tainted" by immorality' into their morally superior colony.[139] These regulations also demonstrate that, despite the stereotype of women as paragons of morality, colonial authorities believed that this morality could only be maintained through the constant supervision of 'protectors'.

Women in South Australia

The idealisation of women played an important role in the narrative of South Australia's alleged superiority. According to Alford, colonists were adamant about the moral superiority of their colony, and this attitude affected the way that South Australian women were perceived within and promoted outside of the colony.[140] She suggests that South Australian women were described as 'female colonizers and ladies, rather than merely as female immigrants and women'.[141] For example: when Thomas Horton James, a merchant, writer, and respected early colonist of New South Wales, visited South Australia in 1838, he commented that there was a 'freshness and gentility about the females of South Australia', which contrasted 'very favourably with the rubbish of Sydney'.[142] He claimed that 'a person coming from the eastern colonies could not fail to be struck by the superior ruddiness, simplicity and purity of the South Australian damsels'.[143] This assessment is supported by the

[137] Gothard, *Blue China*, p.129-130.
[138] *Immigration Report for the Quarter Ending 30th June 1849*, 9 July 1849, CO13/63, AJCP, NLA: Canberra, p.124.
[139] Gothard, *Blue China*, p.143.
[140] Alford, *Production or Reproduction*, p.115.
[141] Ibid.
[142] TH James, *Six Months in South Australia: With Some Account of Port Philip and Portland Bay in Australia Felix; with Advice to Emigrants, to which is Added a Monthly Calendar of Gardening and Agriculture Adapted to the Climate and Seasons*, London: J. Cross, 1838, p.37-38.
[143] Whitelock, *Adelaide from Colony to Jubilee*, p.45-46.

minutes of an Oddfellows meeting in Karinga in 1859, where one of the meeting chairs, Dr Meredith, raised the question: 'what would our adopted land be without [women's] softening and civilising influence?'.[144]

The perception of South Australian women as superior to their counterparts in Britain and the other colonies was never as prevalent as more general assertions of South Australian moral superiority; however, there is evidence that the idea was irregularly reiterated into the later-nineteenth century. For example, in an article discussing rising rates of alcoholism amongst middle-and upper-class English women in 1872, the editors of the *South Australian Register* wrote with relief that 'it speaks well for the women of South Australia that so few of them have been led into an inordinate love of alcoholic stimulants' despite the colonies having 'much stronger' temptations to alcoholism than England—specifically frequent hot weather.[145] Further, in 1873, an anonymous letter in the *South Australian Register* called for respectable women to assist their 'fallen' sisters, claiming that whenever a cry for benevolence was heard, South Australian women had 'always been ready to respond in an equal if not surpassing degree to any other community'.[146]

The common nineteenth century idea that white women could improve the morality of colonial society simply by existing in the colonies has been discussed extensively by historians: Summers suggested that colonial authorities believed the presence of women in similar numbers to men would ensure that 'no man would have an excuse for dissolute habits';[147] Eleanor Casella wrote that female colonists were expected to 'guard …against the immoralities of the public male sphere';[148] Nance reported that colonial women were portrayed as 'agents of good manners, moral behaviour, religion and culture';[149] and Woollacott referenced Wakefield's belief that a balanced proportion of male and female settlers would 'raise the social standards of the colonies'.[150] These ideas were not confined to South Australia, with Claire Lowrie reporting that British imperial rhetoric created and enforced the stereotype that 'white women's supposedly innate maternal influence would

[144] 'Kooringa', *South Australian Advertiser*, 21 September 1859, p.3.
[145] 'Alcohol as Medicine', *South Australian Register*, 22 April 1872, p.4.
[146] 'A Plea for the Fallen', *South Australian Register*, 25 September 1873, p.7.
[147] Summers, *Damned Whores and God's Police*, p.344.
[148] EC Casella, '"A woman doesn't represent business here": negotiating femininity in nineteenth-century colonial Australia', *The Written and the Wrought: Complementary Sources in Historical Archaeology. Essays in Honour of James Deetz, Kroeber Anthropological Society Papers*, no.79, 1995, p.33.
[149] Nance, 'Women, public morality and prostitution', p.33.
[150] Woollacott, *Settler Society in the Australian Colonies*, p.41.

"civilise" white colonial men and "native" others…across India, Africa, Asia, and the Pacific'.[151] This demonstrates that perceptions of white women as possessing superior morality were not unique to colonial South Australia. Rather, they were deliberately cultivated by British colonial authorities as a method of propagating and legitimising British Imperial rule.

Crime Rates in Colonial South Australia

According to Alford, South Australian officials used the colony's balanced sex-ratio and convict-free status to proclaim 'not only that the colony was morally superior, but also that its people were relatively crime free'.[152] However, it is unclear whether South Australian settlers were any less prone to crime than their counterparts in the penal colonies. Some historians have suggested that South Australian authorities may have condoned the under-policing of certain crimes in order to deny those crimes' existence. For example, Nance proposed that the South Australian colonial government was reluctant to acknowledge the presence of prostitution or drunkenness in the colony because acknowledging the issue meant they would have to be seen to do something about it.[153] In the face of rising rates of prostitution and public drunkenness in the mid-nineteenth century, Nance suggests that the South Australian government 'did what governments have generally tended to do elsewhere: they continued to turn a blind eye so long as the citizens concerned remained orderly and so long as they did not disturb the outward harmony of the community'.[154] This suggestion is supported by the fact that prostitution was not mentioned in South Australian legislation until the 1844 *Police Act*, which mandated up to one month's imprisonment for women convicted of soliciting in a public place.[155] This lack of legislative acknowledgement for prostitution suggests either that colonial authorities did not believe that prostitution existed in their morally superior settlement, or that they wished to avoid acknowledging its existence in order to maintain that public façade of superior morality.

[151] C Lowrie, '"A frivolous prosecution": Allegations of physical and sexual abuse of domestic servants and the defence of colonial patriarchy in Darwin and Singapore, 1880s-1930s', in P Edmonds and A Nettlebeck (eds), *Intimacies of Violence in the Settler Colony: Economies of Dispossession Around the Pacific Rim*, Palgrave Macmillan: London, 2018, p.256.
[152] Alford, *Production or Reproduction*, p.22.
[153] Nance, 'Women, public morality and prostitution', p.41.
[154] Ibid.
[155] *Police Act 1844* (SA), p.8.

Colonial authorities could not ignore the presence of crime in South Australia for long. In the Police Commissioner's Report for September 1850, Acting Police Commissioner Alexander Tolmer lamented a recent increase in crime; however, in true South Australian fashion, he attributed this increase to 'the constant arrival of immigrants, not only from England, but from the neighbouring colonies; many of the latter being noted bad characters'.[156] In February 1851, Commissioner George Dashwood reported an increase in felony offences as well as 'a long list of crimes of a very deep dye', including four counts of murder, two of rape, and six of assault.[157] He acknowledged that this was an unusually high average crime rate for such a small population, but felt confident in asserting that 'the absolute perpetrators of the greatest part of this mass of crime are confined to a very limited number'.[158] He supported this claim by suggesting that, whenever these groups of career criminals were arrested in large enough numbers, crime in the colony all but ceased until they were released, or unless 'some fresh arrivals from the other colonies' arrived to cause trouble.[159] This insistence that crime was not a widespread issue, and that the vast majority of crimes were perpetrated by new arrivals or career criminals, suggests that colonial policing practices were influenced by the perception of South Australia as relatively crime-free. This further suggests that the published crime statistics for South Australia during this period may not be entirely accurate, with policing clearly focused on 'career criminals' and inter-colonial arrivals rather than established colonists.

When it comes to female offenders, South Australia's crime statistics become even more difficult to assess. Arrest statistics consistently listed women as making up less than 20 per cent of police apprehensions. For example, the following is a random sample of South Australian quarterly arrest reports by gender: March 1849, 15 women and 327 men arrested (4.4 per cent); December 1854, 130 women arrested compared to 591 men (18 per cent); March 1867, 122 female offenders compared to 761 male offenders (13.8 per cent); December 1869, 158 women arrested compared to 955 men (14.2 per cent); June 1875, 164 women and 866 men (15.9 per cent); June 1880, 857 female versus 4,307 male apprehensions

[156] *Police Commissioner's Report for the Quarter ended 30th September 1850*, 14 October 1850, CO13/70, AJCP, NLA: Canberra, p.42.
[157] *Police Commissioner's Report, Quarter Ended June 30, 1851*, 1 July 1851, CO13/73, AJCP, NLA: Canberra, p.392.
[158] Ibid.
[159] Ibid.

(16.6 per cent).[160] The vast majority of these arrests were for prostitution-related offences which, as mentioned previously and supported by the work of Christopher Nance, were critically under-policed due to colonial authorities' insistence that their gender-balanced, morally superior colony would not suffer from high rates of prostitution.[161] This denial is not unique to prostitution, with Nance suggesting that the colonial government often ignored the presence of non-felony crimes—particularly 'moral' crimes such as drunkenness and prostitution-related offences—because acknowledging these crimes would have required them to find a solution.[162] This ignorance of female-dominated crimes suggests that colonial crime statistics are not representative of the number of offences which were actually committed.

Female-dominated crimes were also overlooked due to the nineteenth century perceptions of passive femininity which suggested that women were less prone to criminality than men. According to Allen, this overlooking of female-dominated crimes was not uncommon, but a result of a gendered view of criminality.[163] She suggests that for much of the nineteenth and twentieth centuries crime was viewed as inherently masculine, and therefore something which respectable, feminine, 'normal' women would naturally avoid'.[164] This idea was clearly present in colonial South Australia, with an article published in the *South Australian* in 1849 claiming that crime was, by its very nature, masculine.[165]

Crime statistics are also insufficient for understanding the numbers of women who were victimised by crime in colonial South Australia, with many women never reporting the crimes committed against them. In an article discussing the whipping of three young women on board the immigrant ship *Ramilies* in 1849, an incident which was never brought to court, the *South Australian Gazette and Mining Journal* wrote that 'there are indignities which many would rather suffer than make public'.[166] Similarly, in 1863 the *South Australian*

[160] *The South Australian Government Gazette*, no.20, 10 May 1849, p.217; *The South Australian Government Gazette*, no.8, 22 February 1855, p.161; *The South Australian Government Gazette*, no.25, 6 June 1867, p.526; *The South Australian Government Gazette*, 31 March 1870, p.343; *South Australian Government Gazette*, no.41, 30 September 1875, p.1810-1811; *South Australian Government Gazette*, no.36, 2 September 1880, p.869-870.
[161] Nance, 'Women, public morality and prostitution', p.41.
[162] Ibid. This idea is expanded on in chapter 6.
[163] Allen, *Sex and Secrets*, p.11.
[164] Ibid.
[165] 'Crimes and Criminals.' *South Australian*, 2 October 1849, p.4.
[166] 'Flogging of Females on Board the "Ramilies"', *South Australian*, 27 April 1849, p.2.

Advertiser reported that many honest colonists would 'rather suffer in silence than run the risks connected with an appeal to the law', which was easily manipulated by dishonest testimony.[167] As is discussed in the following chapters, women were reluctant to report crimes committed against them for a variety of reasons, including shame, fear of the reporting process, disbelief that their charge would be successful, and inability to afford legal counsel.[168] While the extent of these unreported crimes can never be understood, by highlighting those crimes which were reported, this thesis hopes to convey the reasons some women had for committing and reporting crimes in colonial South Australia and, concurrently, the reasons other women had for refusing to report similar crimes.

Conclusion

The information presented in this chapter demonstrates the extent to which South Australian colonial authorities internalised and replicated a sense of their own difference from other Australian colonies in the nineteenth century. This information sets the groundwork for an in-depth analysis of the role of single women in crime and court proceedings in colonial South Australia; however, it also demonstrates that the colony's supposed distinctiveness was not as strong as colonial authorities and contemporary historians have frequently suggested. It is clear from the wealth of evidence present in government reports and dispatches that colonial authorities, media, and even regular colonists believed in their colony's moral superiority. This attitude carried over to perceptions of South Australian women and encouraged reports of their supposed superiority to other colonies' women. As arguments presented further in this thesis will present, such perceptions worked to the detriment of those women who did not fit this ideal of white, middle-class femininity and respectability.

In addition to influencing perceptions of women, the insistence on South Australia's social and moral superiority also influenced the way that crime was considered and policed in

[167] 'The Crime of Perjury', *The South Australian Advertiser*, 13 April 1863, p.2.
[168] These ideas are discussed further in the six thematic chapters of this thesis. For works which discuss women's historical reluctance to report crimes committed against them, see: F Gale, 'Roles revisited: The women of southern South Australia', in P Brock (ed.), *Women, Rites and Sites: Aboriginal Women's Cultural Knowledge*, Sydney: Allen & Unwin, 1989, np; Allen, *Sex and Secrets*, p.9; W Larcombe, 'Cautionary tales and telling anxieties: The story of the false complainant', *Australian Feminist Law Journal*, vol.16, no.1, p.95 and 97; A Cossins, 'Saints, sluts and sexual assault: Rethinking the relationship between sex, race and gender', *Social and Legal Studies*, vol.12, no.1, 2003, pp.77-103; K McKenzie, *Scandal in the Colonies: Sydney & Cape Town, 1820-1850.* Melbourne University Press: Carlton, 2004, p.94.

the colony. Frequent amendments to convict prevention legislation demonstrate the extent to which colonial authorities feared their colony would be tainted by the 'convict stain' of New South Wales, Van Diemen's Land and, later, Western Australia. Similarly, strict policing of Indigenous communities and unsolicited warnings pre-empting 'misconduct' towards white settlers shows colonial authorities' fear of Aboriginal people's supposedly inherent criminality. So-called 'uncivilised persons'—including both Aboriginal people and convicts, were rhetorically blamed for the majority of the colony's crime and portrayed as an existential threat to the social fabric of the colony. Likewise, the under-policing of crimes which were predominantly perpetrated by women, and the under-conviction of crimes which predominantly victimised women, highlights the nineteenth century perception of crime as primarily masculine behaviour which was undertaken specifically by working-class and non-white men and primarily against women of their own social class.

The strict desire to keep crime and immorality from taking root in South Australia and the belief that most crime was committed by outside sources, alongside the idea that the presence of women in equal numbers to men would limit crime, influenced colonial policing and lawmaking. As the following chapters demonstrate, South Australian authorities' reluctance to admit the presence of undesirable social issues including crime, female sexuality, and 'pauperism' inevitably affected the outcome of colonial court proceedings and influenced perceptions of women who became involved in the South Australian legal system, on both sides of the law.

Chapter 2:
"Marriage"

Throughout the nineteenth century, legally sanctified marriage was promoted as one of the primary foundations of civilized English, and British colonial, society.[1] This chapter considers the moral and financial importance of marriage in colonial South Australia, both for individuals and for the colony. The primary argument of this chapter is that the emphasis placed on marriage in colonial South Australia, particularly for women, was reflected in the ways that unmarried women were perceived in colonial court cases, with single women's sexual and romantic relationships (both real and exaggerated) frequently used as evidence in colonial court cases. It also argues that evolving perceptions of the importance of marriage for colonial South Australian women influenced not only legislative changes, but the outcomes of individual court cases on the colony, specifically cases of breach of promise of marriage and slander, which were directly related to single women's marriage prospects.

Using charges of breach of promise and slander brought by single women in colonial South Australia, this chapter considers the widespread use of gossip and rumours as evidence in marriage-related court cases. It discusses the extent to which gossip, particularly rumours relating to chastity, could affect the reputation and social standing of women in colonial South Australia, and highlights the usefulness of breach of promise and slander charges in disproving malicious rumours and restoring women's damaged reputations. The case studies presented in this chapter demonstrate the extent to which rumours and gossip, particularly those pertaining to the alleged sex lives of single women, were regarded as legitimate forms of evidence in the colonial courtroom. Such rumours were able to influence not only the outcomes of individual court cases but the everyday lives of South Australian women, leaving some women no option but to seek legal redress to restore a reputation damaged by slanderous rumours or a broken promise of marriage. This chapter also provides a brief consideration of crimes committed against single women on board immigrant ships which

[1] For examples of this argument see K Alford, *Production or Reproduction? An Economic History of Women in Australia, 1788-1850*. Oxford University Press: Melbourne, 1984, p.39; AL Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Durham: Duke University Press, 1995, p.34; K McKenzie, *Scandal in the Colonies: Sydney & Cape Town, 1820-1850.* Melbourne University Press: Carlton, 2004, p.91; A Simmonds, '"Promises and pie-crusts were made to be broke": breach of promise of marriage and the regulation of courtship in early colonial Australia.' *Australian Feminist Law Journal*, vol.23, no.1, 2005, p.103-104.

were heard after their arrival in South Australia, considering the ways in which such actions set the scene for the wider treatment of single women in the colony.[2]

There have been no specific studies of marriage-related crime in colonial South Australia, though there has been work conducted in this field for other Australian colonies and elsewhere in the British Empire, the most recent of which is Jessica Lake's 2021 article on sexual slander charges in nineteenth century Victoria and New York.[3] Within the context of charges relating specifically to marriage, the most prolific works are Alecia Simmonds' two articles, published in 2005 and 2016, examining breach of promise and maintenance charges brought in colonial Australia.[4] In these works, Simmonds argues that charges such as breach of promise of marriage were utilised to regulate romance and intimacy and enforce traditionally established gender roles by punishing men and women who breached these roles. Women were punished for any unfeminine (usually unchaste) actions which forced their fiancée to break the engagement to avoid the reputational damage associated with marrying an unchaste woman, while men were punished for breaking a promise of marriage without cause and thereby causing permanent damage to the reputation of an otherwise respectable woman.[5]

In her 2016 article, Simmonds remarked that South Australia provided 'an interesting deviation from the other colonies' because, from 1862, South Australian women were able to bring charges of breach of promise before local courts, requiring only a Magistrate, rather

[2] For the most comprehensive research available on the treatment of single women on immigrant ships bound for Australia see Jan Gothard's works: 'Space, authority and the female immigrant afloat', *Australian Historical Studies*, vol.29, no.112, 1999, pp.96-115; *Blue China: Single Female Migration to Colonial Australia*. Melbourne University Press: Melbourne, 2001; and 'Wives or workers? Single British female migration to colonial Australia.' In P Sharpe (ed.) *Women, Gender and Labour Migration: Historical and Global Perspectives*, Routledge: Oxon, 2002, pp.145-162.

[3] J Lake, 'Protecting "injured female innocence" or furthering "the rights of women?" The sexual slander of women in New York and Victoria (1808-1887)', *Women's History Review*, 2021, p.1-25.

[4] A Simmonds, '"Promises and pie-crusts were made to be broke": breach of promise of marriage and the regulation of courtship in early colonial Australia.' *Australian Feminist Law Journal*, vol.23, no.1, 2005, pp.99-120; A Simmonds, 'Gay Lotharios and innocent Eves: child maintenance, masculinities and the action for breach of promise of marriage in colonial Australia.' *Law in Context*, vol.34, no.1, 2016, pp.58-75. See also RJ Coombe, '"The most disgusting, disgraceful and iniquitous proceeding in our law": the action for breach of promise of marriage in nineteenth-century Ontario', *The University of Toronto Law Journal*, vol.38, no.1, 1988, pp.64-108; GS Frost, *Promises Broken: Courtship, Class, and Gender in Victorian England*, University of Virginia Press: Charlottesville, 1995; SL Steinbach, 'The melodramatic contract', *Nineteenth Century Studies*, vol.14, 2000, pp.1-34; McKenzie, *Scandal in the Colonies*, 2004; K Barclay, 'Emotions, the law and the press in Britain: seduction and breach of promise suits, 1780-1830'. *Journal for Eighteenth Century Studies*, vol.39, no.2, 2016, pp.267-284.

[5] Simmonds, '"Promises and pie-crusts were made to be broke"', p.101; Simmonds, 'Gay Lotharios and innocent Eves', p.61.

than to the District Court or Supreme Court, which required a Judge and/or Jury.[6] This decision was followed by a marked increase in breach of promise charges in colonial South Australia, with 31 of the 36 breach of promise charges considered in this chapter brought after 1862 [see Appendix 1]. Simmonds credits South Australia's permittance for such charges to be heard by Magistrates Courts with the unusually high number of breach of promise charges brought in the colony's comparatively small population—almost as many total charges as Victoria, which had almost 400,000 more citizens in the 1860s.[7] Despite noting this, Simmonds' articles consider only one South Australian case study between them, demonstrating a clear demand for further research in this field.

Considering this current gap in the literature, this chapter considers the components of South Australian colonisation which socially and legally encouraged so many breach of promise charges, with a particular focus on South Australian colonial authorities' persistent encouragement of marriage, particularly for women, throughout the period considered in this thesis. This chapter demonstrates that this emphasis on marriage as the ultimate goal for respectable South Australian women contributed to high conviction rates for breach of promise as court authorities sought to punish incorrigible male 'seducers' whose ungentlemanly behaviour damaged the reputations of otherwise respectable women. This reputational damage, if left undisputed, had clear social and financial repercussions for colonial women—forcing them to enter the colonial courtroom to legally vindicate their impugned character and restore their social standing.

Marriage in Colonial Australia

As discussed in chapter one, marriage was a crucially important propaganda tool for the British Empire, particularly in settler-colonies such as Australia. In the words of Katrina Alford, 'marriage was regarded as a means by which the colonists would acquire virtuous and industrious habits', with Kirsten McKenzie further suggesting that 'marriage was the means by which the disruptive force of human sexuality was controlled in a civilised society'.[8] South Australia, with its relatively balanced gender-ratio and utopian middle-class ideals, was particularly supportive of this idea. In 1844, the *Adelaide Observer* published an article

[6] Simmonds, 'Gay Lotharios and innocent Eves', p.66.
[7] Ibid.
[8] Alford, *Production or Reproduction?*, p.9; McKenzie, *Scandal in the Colonies*, p.91.

which referred to matrimony as 'the most powerful moral agent in the universe', describing marriage as 'the most important social contract into which human beings can enter'.[9] While this article touted marriage as beneficial for both men and women, it noted that the act of marriage triggered 'a little more extensive transformation of character' in women than in men, though it did not explain why.[10]

In her work on breach of promise of marriage cases in colonial Australia, Simmonds described the two kinds of love which existed in the eyes of the colonial authorities: conjugal and courtly. She described conjugal love as being that which was legitimised in the eyes of British law through religious (preferably Christian) marriages.[11] Conjugal love was 'imbued with normative conceptions of English civility and civilisation', making it an excellent tool for reinforcing British rule on colonial populations and for delegitimising non-British and non-white marriage and (traditionally working-class) defacto relationships.[12]

In contrast, courtly love was representative of pre-marital and de facto relationships, particularly those involving non-marital sex. According to Simmonds, Australian colonial authorities often associated courtly love with 'the perceived sexual and emotional excesses of the working classes and Aboriginal peoples', demonstrating the clear class and race-based discrimination which motivated imperial marriage propaganda.[13] Such discrimination was common throughout Australia in the nineteenth century, with Shurlee Swain and Renate Howe recording that British law in colonial Victoria refused to recognise the 'customary patterns of marriage and parenting' in the Koori population unless the marriage was legitimised in a religious ceremony under British law.[14] Despite insistence of the superiority and inherent morality of British marriage, Aboriginal couples who were married in British religious ceremonies were not afforded the same level of respect as married white couples.

For example, in September 1867, the Mount Gambier *Border Watch* reported on a Christian marriage ceremony between two Aboriginal people, named as Jim Crow and Annie,

[9] 'Marriage', *Adelaide Observer*, 16 March 1844, p.3.
[10] Ibid.
[11] Simmonds, '"Promises and pie-crusts were made to be broke"', p.103-104.
[12] Ibid.
[13] Ibid.
[14] S Swain and R Howe, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia*, Cambridge University Press: Cambridge, 1995, p.30.

which the newspaper described as 'that rare and interesting ceremony'.[15] The article also provided an account of the wedding reception, and remarked that 'to see the way in which Mrs Crow did the honours of the table, one would almost think she had moved in civilised society', simultaneously demonstrating the inherent colonial assumption that Aboriginal women were less civilised than white women, while reinforcing the idea of marriage as a supposedly civilising action.[16] This report therefore labelled Mrs Crow as superior to Aboriginal women married in a traditional Indigenous ceremony, but also undermined her enough to demonstrate that she still was not the social equal of married white women.

The refusal of the dominant middle-class to recognise non-conjugal relationships was also reflected in opinions of (traditionally working-class) de facto relationships. In his work on divorce in colonial Australia, Henry Finlay suggests that women in nineteenth century England who were 'living in what we today should describe as a de facto relationship' were often labelled as prostitutes, despite being otherwise monogamous.[17] Furthermore, according to Deborah Oxley, it was common during this time for working-class men and women to marry in 'informal', non-religious, ceremonies in front of close family and friends.[18] Though not uncommon, such marriages were looked down upon by the middle- and upper-classes, who 'valued church marriages and certification', regarding de facto marriages as 'informal and immoral'.[19] Finlay further suggests that middle-class ideals dismissed de facto relationships as illegitimate because they struggled to recognise the respectability of any form of 'male-female symbiosis' outside of formal marriage.[20] This is likely because, without legally-recognised marriage, women in de facto relationships retained their right to their own wages as well any property registered or purchased in their name, a right which was not afforded to married women in South Australia until 1884.

Though Australian ideas of conjugal love originated from British middle-class ideals, contemporary historians suggest that such ideals were promoted with even greater zeal in the colonies than the mother country. According to Alford, in Australia 'legal marriage "took

[15] 'Marriage in High Life', *Border Watch*, 4 September 1867, p.4.
[16] Ibid.
[17] H Finlay, 'Lawmaking in the shadow of the empire: divorce in colonial Australia.' *Journal of Family History*, vol.24, no.1, 1999, p.79.
[18] D Oxley, *Convict Maids: The Forced Migration of Women to Australia*, Cambridge: Cambridge University Press, 1996, p.217-218.
[19] Ibid, p.218.
[20] Finlay, 'Lawmaking in the shadow of the empire', p.97.

off" as the predominant custom, for both sexes, from the 1840s'.[21] On average, Alford records that the proportion of married women to single women was much higher in Australia in the mid-nineteenth century than it was in Britain.[22] There are no statistics comparing the proportion of married and unmarried colonists living in colonial South Australia; however, Wray Vamplew's *Australian's, Historical Statistics*, shows that the percentage of Australian women who never married fluctuated between 7 per cent and 17 per cent between 1841 to 1882.[23] These statistics demonstrate that more than 80 per cent of colonial Australian women married at least once in their lifetime. Low wages and limited employment opportunities meant that it was incredibly difficult for single women without familial wealth to gain financial independence and, consequently, the most effective way for most women to obtain financial security was through marriage.

The reality of single women's financial dependence was known to South Australian authorities. In her 1991 article on orphan schools in colonial Australia, Diane Snow wrote that high rates of single female immigration throughout the nineteenth century caused colonial authorities to stress 'the desirability of marriage for women, so that men, and not the government, would provide for them'.[24] According to Alford, such encouragements, combined with unsustainable employment opportunities, led many Australian women to view marriage and motherhood not as a romantic choice, but as a career path to be embarked upon from a young age.[25] This idea is further supported by Kirsten McKenzie, who suggests that limited opportunities for 'independent economic action' meant that, for many Australian women, 'being accepted as a respectable wife and mother could be a financial necessity'.[26] These examples demonstrate the class bias present in colonial encouragements of marriage, and the ways in which financial inducements were used to encourage working-class women to enter legally sanctified marriages, rather than remaining single or entering into a de facto relationship or non-legal marriage as was common in England.

[21] Alford, *Production or Reproduction*, p.32.
[22] Ibid, p.25.
[23] W Vamplew (ed.), *Australians, Historical Statistics*, Fairfax, Syme and Weldon Associates: Broadway (NSW), 1987, p.55.
[24] D Snow, 'Family policy and orphan schools in early colonial Australia.' *The Journal of Interdisciplinary History*, vol.22, no.2, 1991, p.272.
[25] Alford, *Production or Reproduction*, p.32.
[26] McKenzie, *Scandal in the Colonies*, p.91.

In other areas of the Empire, including Britain, Canada, and the United States, Judith Allen suggests that increased opportunities for women to access education, training and employment meant that a 'culture of spinsterhood' — a population of women who remained permanently single—could develop there in a way that was impossible in Australia at the time, where permanent spinsterhood was only feasible for independently wealthy women.[27] This idea is supported by Snow, who asserts that permanently single women were 'few and far between' in the colonial context, with Catherine Helen Spence being the most recognisable South Australian example.[28] Spence's well-known book *Clara Morrison*, published in 1854, encouraged readers to understand that Australian women were not solely useful as wives. Spence's novel was an early indication of commentary that would inform the Suffrage movement of the 1880s and 90s; however, marriage maintained not only its social importance for the colony, but its financial importance for women, throughout the nineteenth century.

Marriage and Immigration

As mentioned in the previous chapter, South Australian immigration authorities' preferred immigrants were young (English) married couples. This preference reflected nineteenth century ideals which considered respectable families, legally recognised through marriage, to be the foundation of a successful colonial society. Simmonds suggests that legitimized relationships (marriages sanctified by a recognised Western religion) were intended to regulate sexual activity, which was seen as 'central to the cultivation of white, civilized bodies as sexually distinct from their racial Other'.[29] This was particularly important on the colonial frontier, where the most important goal was cementing British 'civilisation'. From this perspective, colonists' participation in their respective familial roles—those of husband, wife, mother, father, son, and daughter—served, however unwittingly, to perpetuate the link between traditional middle-class gender and familial roles and 'civilisation'.

[27] J Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*. Oxford University Press: Melbourne, 1990, p.4.
[28] Snow, 'Family policy and orphan schools', p.269-270.
[29] Simmonds, '"Promises and pie-crusts were made to be broke"', p.107-108.

The emphasis on marriage and traditional gender roles did not diminish as colonisation progressed. The 1851 South Australian *Labour Office Report* stated that the colony did not want female immigrants 'who know nothing of housework, and the proper duties of a family…because, a man…wants a wife who can manage indoors, while he is doing the business of the farm'.[30] This example supports Alford's suggestion that colonial Australia's comparatively high marriage rates and emphasis on traditional family did not occur naturally, but were 'strongly aided and abetted by successive colonial governments…to play a dominant role in fostering desirable social habits and customs'.[31]

However, the emphasis on marriage also worked against other needs identified by colonial authorities, with high marriage rates for women affecting colonial labour demands—particularly the demand for domestic service, work which was overwhelmingly undertaken by unmarried women. In 1848, the *South Australian* complained that the 'facility with which respectable single women get married in the colony' had led to a severe shortage of domestic servants as women left their employment to fulfil domestic duties in their own homes.[32] Similarly, in 1850 South Australia's Immigration Agent, Charles Brewer, complained that 'female domestic servants are always in demand, so many of them getting married after they have been a short time in the colony'.[33] As a consequence of high turnover rates for domestic servants, Jan Gothard reports that female domestic servants were the most frequent recipients of assisted passage to Australia throughout the nineteenth century. In the case of South Australia, she writes that 'single women were offered substantial levels of assistance from…[the] 1850s to 1883'.[34]

As detailed in the introduction, on average single women comprised approximately 23.5 per cent of all assisted immigrants arriving in South Australia in the mid-nineteenth century. According to the immigration statistics compiled by Robin Haines in 1995, 66 per cent of the 186,054 British immigrants who arrived in South Australia between 1836 and

[30] *Labor Office Report*, 1 July 1851, CO13/73, Australian Joint Copying Project [AJCP], National Library of Australia [NLA]: Canberra, p.282.
[31] Alford, *Production or Reproduction?*, p.39.
[32] 'The Commissioners Circular and Colonization', *South Australian*, 25 February 1848, p.2.
[33] *Immigration Agent's Report for the Quarter Ended 31st March 1850*, 14 April 1850, CO13/68, AJCP, NLA: Canberra, p.228.
[34] Gothard, *Blue China*, p.3 and p.29-30.

1900 were assisted in some form.[35] Based on the 23.5 per cent average mentioned above, approximately 43,723 of those assisted immigrants were single women. These statistics do not encompass single women who were born in South Australia, or who arrived overland from neighbouring colonies; however, they do demonstrates that, while marriage was strictly promoted in colonial South Australia, with many women marrying soon after their arrival in the colony, high immigration rates meant that there was never a shortage of unmarried women in the colony, even discounting those women who were born in South Australia, meaning that encouragements for marriage never truly diminished.

On the Ship

The emphasis on marriage in colonial South Australia meant that, while single women were in constant demand as immigrants and domestic servants, colonial authorities never forgot that the primary goal for these women was to eventually enter into a respectable marriage. As a result, colonial authorities worked stringently to ensure that those women who arrived in South Australia were of a suitable class to become the future wives and mothers of the colony. Of course, these efforts were directed almost entirely towards assisted emigrants whose passage to the colony was defrayed by the Land Fund. Little attention was paid to those colonists who could afford to pay their own passage. Attempts to ensure that the women selected for assisted emigration to South Australia were of the 'right sort' were undertaken in Britain, with emigration criteria throughout the nineteenth century requiring character references from respectable British people and with single mothers specifically prohibited from assisted passage;[36] however, colonial authorities also considered it to be of crucial importance that those women who were selected did not lose any of their respectability during the long journey from Britain to Australia.

According to Gothard, immigration authorities in both Australia and Britain viewed emigration vessels as a 'moral jungle', with single women's chastity and respectability facing multiple threats from male officers, crew-members and passengers, and sometimes even from

[35] RF Haines, *Nineteenth Century Government Assisted Immigrants from the United Kingdom to Australia: Schemes, Regulations and Arrivals 1831-1900 and Some Vital Statistics 1834-1860*, Flinders University: Adelaide, 1995, p.54.
[36] *Regulations for the Selection of Emigrants and Conditions on which Passages are Granted*, May 1852, CO13/79, AJCP, NLA: Canberra, p.221.

other women.[37] Ideally, in order to 'protect' single women from such threats, immigration authorities wanted these women to travel with a family member, close family friend, or a respectable married couple from the same geographical region.[38] However, in cases where this was not possible, strictly enforced regulations were enacted to ensure these women's protection.

The 1848 *Notice on Free Emigration*, applicable to all emigrants applying for assisted passage from Britain to South Australia and New South Wales, specified that 'the preservation of good order, as well as the comfort of the people', was kept in mind when deciding on the layout of the ship.[39] In this context, 'preservation of good order' was the socially respectable terminology for the prevention of sex between unmarried immigrants, particularly between single women and male crew members, during the course of the voyage. In his Report for September 1856, South Australian Immigration Agent Henry Duncan wrote that 'much of the efficiency and good conduct of the of the single females sent here as domestic servants depend on their careful management and discipline on board' the ship.[40] This comment likened single women, the majority of whom were aged between 18 and 35, to children who could not be trusted to behave themselves without strict supervision.

As a consequence of such fears, British emigration vessels were composed of three distinct living-areas for passengers, comprising a section for married couples and young children (with each family in separate rooms), as well as two separate compartments for single men and women which were to be placed 'at opposite ends of the ship', with the married couples compartments in between.[41] According to Gothard, single women were kept separate from other immigrants for most of the voyage, though kinder matrons would sometimes allow family members to visit their female relatives in the single women's compartment.[42] As mentioned in chapter one, the single women's compartment was also locked from the outside at night time to prevent anyone from leaving or entering, though it would not have kept out anyone who held one of the keys, including the matron and the ship's captain (and surgeon superintendent?).

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[37] Gothard, *Blue China*, p.129-130.
[38] Alford, *Production or Reproduction*, p.104.
[39] *Notice on Free Emigration to Australia*, February 1848, CO13/61, AJCP, NLA: Canberra, p.261.
[40] *Immigration Agent's Report for the Quarter Ended 30th September 1856*, 1 October 1856, CO13/93, AJCP, NLA: Canberra, p.512.
[41] *Notice on Free Emigration to Australia*, CO13/61, p.261.
[42] Gothard, *Blue China*, p.118.

The strict supervision of single women during the journey to South Australia was intended for their protection; however, it could have the opposite effect when those in charge of their protection sought to take advantage of their power. In April 1849, the *South Australian* published an article describing an incident which took place on board the immigrant ship *Ramilies*. The article reported that four Irish women, named as Catherine Morgan, Phoebe Spooner, Jane Downey, and Margaret Mack, all aged between seventeen and eighteen, had been flogged by the Surgeon Superintendent during the journey.[43] According to witness statements from other immigrants, the girls' backs were 'scored with wails of red and blue as large as the finger, and one was bleeding'.[44] None of these women reported the incident to colonial authorities, with the story leaked to colonial media by other passengers, but in February 1850 the *Adelaide Observer* wrote that the Colonial Land and Emigration Commission had conducted an inquiry, though only the ship's Captain and Surgeon Superintendent were questioned, with no statements taken from passengers and no medical examination conducted on the alleged victims. Based on the Captain and Surgeon Superintendent's report, 'which never alluded to the flogging', the Commissioners concluded that it had never happened.[45] This decision, made by the 'noodle-headed Emigration Commissioners', was met with disdain by the colonial media, the editors of the *Adelaide Observer* labelled as an 'insult to the press of Adelaide'.[46] Despite media backlash, the case received no further attention. In a similar incident, Gothard reported that the captain of the *Royal Albert* was 'accused of kicking four young Irish women' in 1855, though this time no reports were published in the colonial media.[47]

These examples demonstrate that shipboard authorities were able to easily abuse their power over single women in their care, and that these women were clearly reluctant to lodge official complaints with colonial authorities. One exception to this was the testimony of Caroline Arnold, who was one of a large group of immigrants who made official complaints against officers on board the barque *Indian* in September 1849. Miss Arnold complained that the second mate and the steward of the ship had entered the single women's apartment and taken 'liberties' with a number of the girls there and that, when she complained of this to the ship's captain, he threatened to confine her for the duration of the journey if she pursued her

[43] 'Flogging Females on Board the "Ramilies"', *South Australian*, 27 April 1849, p.2.
[44] Ibid.
[45] 'Military Colonists', *Adelaide Observer*, 9 February 1850, p.2.
[46] Ibid.
[47] Gothard, *Blue China*, p.132.

complaint.[48] In a letter submitted to the court and published in the *Adelaide Observer*, Arnold wrote that, as a consequence of her complaints, members of the crew had attempted to dump buckets of water on her, and 'she firmly believed' that 'had they have dared…they would have thrown me overboard, such was their malice towards me'.[49] She also accused the ship's surgeon of failing to provide proper care for her when she was ill, and concluded her letter with despair at the treatment she faced at the hands of 'those who should have protected me'.[50]

Caroline Arnold's statement was supported by many of the other immigrants who travelled on the *Indian*, alongside a number of other complaints and a petition signed by 97 passengers calling for punishment against the Captain, Surgeon Superintendent, and other officers of the ship.[51] When these complaints reached Governor Young, he mandated that the *Indian*'s officers would have their gratuities for the voyage withheld.[52] Caroline Arnold did not bring her complaints to the colonial court for personal compensation; however, her written testimony for the inquest received a lot of positive attention in the colonial media. In July 1850 the *South Australian* reported that members of the London Stock Exchange had raised £80 for the now-married Miss Arnold, in 'acknowledgement of her courage in exposing the outrages committed on the female immigrants' of the *Indian*.[53] No such offer was ever made to other single women who were mistreated on board immigrant vessels, suggesting that the Stock Exchange's 'reward' for Miss Arnold was dependent on her status as a 'respectable' middle-class English woman, as opposed to a working-class Irish woman.

Single Women in Colonial South Australia

South Australian media was filled with apparent concern for the welfare of single women on board emigrant ships.[54] However, this concern stemmed less from genuine care for

[48] 'Public Meeting of Emigrants by the Barque "Indian"', *Adelaide Observer*, 1 September 1849, p.1.
[49] 'Treatment of Passengers on Board the Barque "Indian"', *Adelaide Observer*, 15 September 1849, p.1-2.
[50] Ibid, p.2.
[51] 'The Barque "Indian"', *South Australian Register*, 3 October 1849, p.1.
[52] 'Government Gazette the Barque "Indian"', *Adelaide Times*, 29 October 1849, p.4.
[53] 'English News', *South Australian*, 30 July 1850, p.4.
[54] For examples of this see 'St Patrick's Society', *South Australian Register*, 3 May 1850, p.4; 'Council Paper', *South Australian Register*, 3 April 1856, p.3; 'The Morality of Melbourne', *South Australian Register*, 26 January 1858, p.3; 'Female Immigrants', *Adelaide Times*, 6 April 1858, p.2; 'Anglo-Australian Topics', *South Australian Register*, 26 September 1862, p.4; 'Appendix. Parliamentary Summary', *South Australian Register*, 26 July 1864, p.6; 'Work and Wages', *The Express and Telegraph*, 12 February 1867, p.3; 'The Servant's Home', *South Australian Register*, 11 January 1870, p.7.

single women's safety and comfort than from the fear that women who were deprived of 'protection' on the ship would arrive in South Australia socially unsuitable for settlement in the (self-titled) most respectable Australian colony. According to Grimshaw et al., Australian colonists were 'hostile' towards many of the single women who immigrated in the mid-nineteenth century.[55] Single women were rumoured to be more easily tempted to immorality than their married counterparts, and an article published in the *South Australian Register* in 1862 alleged that unemployed single women were 'ready prey' for amoral men and women to entice into crime and prostitution.[56] This statement closely reflects fears, mentioned above, that single women on immigrant ships were similarly vulnerable to manipulation by other unscrupulous immigrants, simultaneously portraying single women as a threat to the morality of colonial society and as victims of the manipulations of other immoral individuals.

In general, Alford suggests the negative opinions of single women had very little to do with their individual conduct, but were derived more explicitly from disdain levelled at 'a combination of their unmarried and working class status'.[57] This idea is further supported by Grimshaw et al., who suggest that colonists' hostility towards newly arrived single female immigrants was based 'mostly on simple prejudice against women immigrating independently, without the "protection" of a husband or father'.[58] These attitudes were inherently classed, as being able to travel with friends and family was a luxury afforded only to those who were already married or who could afford to pay the cost of their own passage. This idea is supported by Gothard, who suggests that a significant portion of single female assisted immigrants chose to emigrate after the loss of 'one or both parents'.[59] Unmarried assisted emigrants could only apply for their own assisted passage, and could not request to be accompanied by a friend or family member, meaning that many unmarried working-class women made the journey to Australia alone not by choice, but by necessity.

In 1851, South Australian immigration authorities offered to defray part of the immigration costs for the 'relations and friends' of existing colonists who were willing to cover the rest of the cost themselves, even in cases where those friends or family members

[55] P Grimshaw, M Lake, A McGrath & M Quartly, *Creating a Nation*. Penguin Books Australia Ltd: Ringwood, 1994, p.87.
[56] 'Anglo-Australian Topics', *South Australian Register*, 26 September 1862, p.4.
[57] Alford, *Production or Reproduction*, p.118.
[58] Grimshaw et al, *Creating a Nation*, p.87.
[59] Gothard, *Blue China*, p.7.

'may, from age or from extent of family, be ineligible for free passage under the regulations of the Emigration Commissioners'.[60] Such offers were common in colonial Australia, with Gothard reporting that single women were often the initiators of such 'chain immigration', applying for assisted passage as domestic servants and then nominating their friends and family members for assisted passage after their arrival in the colonies. However, when single women began to take advantage of this offer in South Australia, Immigration Agent Dr Handasyde Duncan, complained that he was frequently discovering 'very elderly-looking people' amongst disembarking immigrants, whom he suspected would soon become reliant on government assistance as they were too old to work.[61] Duncan complained that these elderly people were nearly always nominated immigrants and that 'in by far the majority of cases, they have been sent for by their daughters...in many cases, single girls in service', and described the practice as 'an evil' which, while 'not very numerous…may increase'.[62] This demonstrated the dichotomy between colonial authorities' fear of the social and moral repercussions of single women immigrating to the colony alone, and their fear of the supposed financial burden which these women's elderly parents would impose upon colonial funds.

Marriage and Class in South Australia

South Australian authorities wanted their colony to be seen as a beacon of middle-class respectability, and they saw legitimized marriages as one of the most effective methods of achieving this. According to Liz Rushen, the gender imbalance in New South Wales and Van Diemen's Land in the early nineteenth century caused 'a laxity in morals' which was 'expressed in low-marriage and high-illegitimacy rates'.[63] As mentioned in chapter 1, South Australia prided itself on its moral superiority over the existing penal colonies, with an article published in the *Adelaide Times* in 1858 noting the 'high and proud position' which their colony held, 'from a moral point of view', over the neighbouring colonies. The point was made that the relative gender balance in South Australia meant that no woman should have

[60] South Australian *Blue Book* of 1851, 7 May 1852, CO13/77, AJCP, NLA: Canberra, p.163.
[61] *Immigration Agent's Report for the Quarter Ended 30th September 1857,* 1 October 1857, CO13/96, AJCP, NLA: Canberra, p.197.
[62] Ibid.
[63] L Rushen, 'Marriage options for immigrant women in colonial Australia in the 1830s'. *Journal of Australian Colonial History,* vol.16, 2014, p.111.

any reason to fall to vice and immorality and no man should have any reason to seek the services of such women.[64]

In line with this, Alford suggests that colonial authorities' encouragement of marriage amongst the 'lower orders' of society was intended to instil in them a 'respect for the values and institutions of the dominant classes'.[65] By encouraging working-class colonists to marry, colonial authorities were demonstrating that middle-class values were the basis of the ideal colonial lifestyle, and something which all respectable colonists should strive to conform to. Alford believes that, because marriage was so heavily encouraged by the ruling classes of colonial society, working-class settlers may have viewed it as a 'class-based institution', causing them to become 'indifferent or averse to it'.[66] While this may have been true in some cases, and even more-so in the eastern penal settlements where middle-class ideals were less stringently enforced, South Australian authorities offered other inducements to encourage working-class colonists to marry.

As mentioned previously, the greatest incentive for working-class women to marry was financial stability. Marriage was financially beneficial both for women and for a colony which did not want to allocate more resources than necessary to facilitate the support of destitute settlers. In order to effectively encourage marriage for working women, women's wages were kept deliberately low to foster an economic dependence on men, whether it be a husband, father, brother, or other male relative. According to Grimshaw, Janson and Quartly, Caroline Chisholm, a well-known proponent of single women's welfare in New South Wales, actually 'advocated low wages for women servants so that they would not be discouraged from marrying'.[67]

Women were also able to use marriage to prematurely end some indenture and apprenticeship contracts. For example, the *Destitute Persons Relief Act* of 1866 mandated that neglected children in South Australia would be housed in the industrial school, where they could be entered into an apprenticeship of up to seven years, which they were required by law to complete even after turning sixteen—the age at which the Industrial School ceased

[64] 'Female Immigrants', *Adelaide Times*, 6 April 1858, p.2.
[65] Alford, *Production or Reproduction*, p.29.
[66] Ibid, p.38.
[67] P Grimshaw, S Janson, and M Quartly (eds), *Freedom Bound I: Documents on Women in Colonial Australia*, Sydney: Allen & Unwin, 1995, p.43.

to be responsible for their welfare.[68] However, this Act also included a clause allowing female apprentices to 'cease and determine' their apprenticeships upon either their marriage or their nineteenth birthday, no matter how much time was left on their contract.[69] The industrial school allowed no such concessions for male apprentices. With such rules in place, it is reasonable to assume that some single women chose to marry in order to end an employment contract or apprenticeship in a such a way that their employer could not sue them for loss of labour. As breach of contract was a very serious offence in the colony, and employment contracts were notoriously difficult for employees to break prematurely, this example demonstrates the extent to which colonial authorities were willing to go to induce working-class women to marry.

While social and financial inducements were the most popular methods of encouraging marriage in the colony, other, slightly stranger, tactics were also trialled throughout the nineteenth century. For example, in 1880, the *Northern Argus* in Clare re-published an article from the *London Globe* which claimed that marriage was 'the best assurance against death, sickness, crime, and suicide'.[70] Obviously ignoring the possibility of non-marital sex, the report claimed that celibacy (through lack of marriage or the death of a spouse) aged men by more than 20 years, with the effect on widowed women being 'still more deplorable'.[71] The same article declared that, for every 100 married women who committed a crime, there were 240 single female criminals.[72] By suggesting that failure to marry could cause premature death or lead to a life of crime, this article utilised scare-tactics to persuade people to marry for their own physical and social wellbeing. This article also reflects common opinion of the time that single women were more prone to criminality than their married counterparts. The publication of this article in 1880 further demonstrates that the use of married/single as a signifier of respectability for women was present in the colony for the duration of the period covered in this thesis.

[68] *Destitute Persons Relief Act 1866* (SA), p.103.
[69] Ibid.
[70] 'Miscellaneous', *Northern Argus*, 11 June 1880, p.3.
[71] Ibid.
[72] Ibid.

Breach of Promise of Marriage

The court proceedings which most clearly reflect the importance of marriage in the colonial sphere are those of breach of promise of marriage. Throughout the British Empire, marriage was, in many respects, a private affair. Once a relationship between a man and a woman was legally sanctified, husbands and wives (though mostly husbands) were largely free to conduct their relationship any way they pleased within the walls of their own home, without interference from the government. However, actions taken between a couple prior to their marriage were often conducted in public and were therefore open to public debate, and were eligible to be used as evidence in court. As discussed previously, marriage was heavily encouraged by colonial authorities, and failure to marry could have severe social and financial repercussions not only for individual women, but for their families and, to a lesser extent, for the colony. This idea is supported by Simmonds, who suggests that, 'in a world where marriage was women's only respectable vocation' a broken engagement carried the prospect of 'real economic and social loss'.[73]

In order to discourage male colonists from making and breaking promises of marriage on a whim, South Australian law allowed women to sue for breach of promise in order to recover any social or financial loss experienced at the loss of marriage. Legally, men could also sue for breach of promise;; however, such cases were very uncommon.[74] There is only evidence of one such case brought in colonial South Australia, that of Carolan v. Farrelly in 1869, though the charge was withdrawn before it came before the court.[75] This rarity was not exclusive to South Australia, with McKenzie noting only two cases brought in Sydney and Cape Town between 1820 and 1850, and Rosemary Coombe discovering no such cases brought in Ontario throughout the nineteenth century—though Ginger Frost suggests that breach of promise charges with male plaintiffs were quite common, and successful, in the eighteenth century.[76] Breach of promise cases provided single women with an opportunity to sue for the loss of the income they expected to receive upon their marriage, as well as the

[73] Simmonds, 'Gay Lotharios and innocent Eves', p.60.
[74] This rarity of male-brought breach of promise charges was common throughout the British Empire, with McKenzie's research on Sydney and Cape Town discovering that men brought breach of promise actions 'very rarely': McKenzie, *Scandal in the Colonies*, p.110.
[75] 'Civil Causes', *Evening Journal*, 10 June 1869, p.3; 'In Banco', *The South Australian Advertiser*, 1 March 1870, p.3.
[76] McKenzie, *Scandal in the Colonies*, p.105; Coombe, '"The most disgusting, disgraceful and iniquitous proceeding in our law"', p.64; Frost, *Promises Broken*, p.16.

superior social status awarded to married women in colonial society. In the first breach of promise case brought in South Australia, in 1855, Justice Boothby stated that the act of marriage involved both a social and a legal 'advancement in life, particularly in the case of women'.[77] Therefore, a broken promise of marriage and the consequent 'depravation' of this advancement, was liable for legal repercussions.[78]

For many women, social norms dictated that, upon becoming engaged, they should leave their employment in anticipation of their upcoming financial dependence. Additionally, becoming engaged often made women feel secure enough in their relationship to engage in pre-marital sex, on the assumption that their upcoming marriage would soon legitimise their sexual relationship. For both of these reasons, McKenzie argues, 'a broken engagement', especially in conjunction with 'sullied sexual purity' threatened to damage a woman's most important commodity in the colonial market—her reputation.[79] For example, in the 1862 case of Honoria Scanlan v. James Shannon, Justice Boothby stated that broken promises of marriage were more injurious to women than men, because 'marriage was…the only mode by which a woman could attain advancement in life'.[80] He requested that the Jury take this into account, as well as the fact that Shannon's seduction of Scanlan had left her with an illegitimate child and had therefore, 'to a great extent, destroyed her hope of settlement by marriage with any other man'.[81] The Jury ruled in favour of Scanlan and awarded her £40 damages.

During a similar case, brought in 1865 in Port Augusta, Mary Thomas charged Augustus Size with breach of promise after a lengthy courtship period, during which she bore him a child, ended with his breaking the engagement, circulating rumours that her child had been fathered by another man, and beating her with a horsewhip when she visited his house to ask him to follow through on the marriage.[82] Both the illegitimate child and the rumours spread by Size had, according to Thomas' lawyer, made it forever impossible to pursue her dream of becoming mistress of her own school, for which she had already received a

[77] 'Law and Criminal Courts', *South Australian Register*, 13 September 1855, p.3.
[78] Ibid.
[79] McKenzie, *Scandal in the Colonies*, p.110.
[80] Ibid.
[81] Ibid.
[82] 'Law and Criminal Courts', *The South Australian Advertiser*, 21 September 1865, p.3.

government grant.[83] The jury in this case was clearly sympathetic to Thomas' plight, awarding her £175 in damages.

In cases such as Scanlan v. Shannon and Thomas v. Size, where broken promises of marriage included pre-marital seduction leading to illegitimate children, women could sue for breach of promise in addition to, or completely in place of, child maintenance. According to Steinbach, breach of promise was one of the only female-led actions in which the verdict was not almost totally reliant on a woman's chastity, writing that 'the suit encompassed contractual and romantic notions of marriage in ways that allowed women who seemed sincerely in love to triumph without being of perfect virginity or virtue'.[84] In her research on breach of promise cases in colonial Australia, Simmonds discovered that, contrary to every other Australian colony during this period, 'more women with illegitimate children sued [for breach of promise] in South Australia than women without children'.[85] Of the breach of promise cases considered in this chapter, only 16 of a total 36 mentioned illegitimate children; however, Simmonds' research extends to 1900 and therefore includes cases outside the scope of this thesis. It must also be noted that newspapers did not always report courtroom proceedings to their full extent, especially if the case was not considered scandalous enough to draw public interest, so it is possible that some of the charges considered in this chapter were not reported in enough detail to include mentions of children. While maintenance charges were very difficult to prove, as is discussed in chapter 5, breach of promise was comparatively simple to establish, with only one of the cases considered in this chapter ruling against the plaintiff—and that case only because she was too young to bring a charge on her own behalf.[86]

Successful breach of promise charges were also much more financially lucrative than maintenance payments. In South Australia, the 1841 *Insolvent Debtors Act*, mandated that a breach of promise of marriage was an action which was considered to cause 'malicious injury'.[87] If found guilty, the man could not escape payment by declaring bankruptcy as with many other misdemeanour charges—the debt remained until it was paid or the guilty party

[83] 'Law and Criminal Courts', *The South Australian Advertiser*, 21 September 1865, p.3.
[84] Steinbach, 'The melodramatic contract', p.10.
[85] Simmonds, 'Gay Lotharios and innocent Eves', p.66.
[86] 'Local Courts', *South Australian Register*, 24 May 1877, p.3.
[87] *Insolvent Debtors Act 1841* (SA), p.12.

was sent to prison.[88] South Australian laws regarding the payment of breach of promise damages did not change between 1841 and 1880, with court-mandated damages required to be paid within two years of the court's ruling, or the convicted person faced a prison sentence.[89]

The laws surrounding breach of promise may seem more extreme than simply breaking a promise of marriage should warrant; however, nineteenth century lawmakers and court authorities did not perceive broken promises of marriage to be a simple case of an individual's hurt feelings. Particularly within the colonial context, marriage was seen to serve a crucial social role in curbing sexual immorality and 'civilising' working-class, non-British, and non-white citizens of British colonial rule. In consideration of this perspective, Simmonds argued that breach of promise cases allowed British law to step in 'as a representative of, and safeguard for, Western civilisation'.[90] This likely explains why there is no evidence of a breach of promise charge ever being brought by an Aboriginal woman in colonial South Australia, as British law had little interest in safeguarding the marriage prospects of non-white women, with Aboriginal women either unaware of their ability to sue for breach of promise or sure that such charges were reserved for white women.

In a period where female sexuality was punished and male sexuality was largely ignored, Simmonds also suggests that breach of promise cases were intended, to some extent, to act 'as a restraint on male sexual entitlement'.[91] From this perspective, breach of promise law appeared to recognize that a promise of marriage was an often-effective method of encouraging otherwise chaste and sexually cautious women to participate in pre-marital sex. Consequently, if the practice of promising marriage to coerce sex was allowed to take place unchecked then the colonies may find themselves overwhelmed with illegitimate children and single women with sullied sexual reputations. In South Australia, where women were touted as socially and morally superior to their Eastern counterparts, this would have been a serious concern. This concern was one which evidently lingered well beyond the colonial period, as breach of promise laws were not officially abolished in South Australia until 1971.[92] It is important to note here that South Australia is the only Australian State to officially abolish

[88] Simmonds, 'Gay Lotharios and innocent Eves', p.64.
[89] *Insolvent Debtors Act 1841* (SA), p.12.
[90] Simmonds, '"Promises and pie-crusts were made to be broke"', p.107.
[91] Simmonds, 'Gay Lotharios and innocent Eves', p.64.
[92] *Breach of Promise of Marriage Abolition Act 1971* (SA).

breach of promise of marriage law on a state level, with breach of promise law abolished in every other State by the 1961 Federal *Marriage Act*.[93]

The importance placed on marriage in colonial society meant that there were few acceptable reasons that a respectable man could offer to justify breaking a promise of marriage. Most of these justifications related to the perceived chastity of his fiancée and, as a result, when the defence presented no evidence calling the plaintiff's chastity into question, their case became significantly weaker. In one such case, 24-year-old Emily Barron sued 62-year-old Charles Gooch for promising marriage and then leaving for England without her. Barron testified that she had turned down offers of employment on the basis of her engagement, and produced multiple respectable witnesses testifying to her good character and chastity.

Unable to impugn Barron's chastity, Gooch's lawyer argued that his client should not be culpable for the breach because Barron was 'of an age that she ought to have had sense enough to know better than to attract this old gentleman into a matrimonial engagement'.[94] This accusation did not consider that, at 62, Gooch was also 'of an age' to understand the consequences of promising, and failing, to marry a much younger woman. This statement also ignores the prevalence of age differences in nineteenth century relationships, with Allen suggesting that such age discrepancies lent a 'father/daughter dynamic' to many colonial marriages.[95] Barron and Gooch's partnership may not have appeared too strange in a society familiar with 'father/daughter' marriage dynamics; however, while age discrepancies were not uncommon in nineteenth century marriages, Katie Barclay notes that breach of promise suits where there was 'a significant age difference or class disparity' between the plaintiff and defendant, both of which were the case in Barron v. Gooch, were often viewed with some level of humour in British courtrooms.[96] It is possible that, by raising the age difference in this instance, Gooch's lawyer hoped to discredit Barron's case by presenting her hopes of marriage to Gooch as inherently unrealistic, no matter what promises Gooch may have made.

[93] *Marriage Act 1861* (SA).
[94] 'Law and Criminal Courts', *Evening Journal*, September 14, 1869, p.2.
[95] Allen, *Sex and Secrets*, p.4.
[96] Barclay, 'Emotions, the law and the press in Britain', p.274.

Gooch's lawyer also argued that the consequences of his broken promise were not serious enough for Barron to require damages, suggesting that 'the publicity of the court case would be likely to bring crowds of suitors…and lead to her being solaced by marrying a man of suitable age'.[97] To counteract this argument, Barron's lawyer argued that the broken engagement had 'left her with the sneers of the world pointed at her'—as proverbial damaged-goods in the marriage market, claiming that Barron had 'lost one engagement and will not get another'.[98] While this claim may seem extreme in the context of twenty-first century relationships, it was not unfounded within the context of the nineteenth century. In her research on 'scandal' in British colonies, McKenzie suggests that a broken engagement could cause irrevocable damage to a woman's reputation, even when her own behaviour was not at fault.[99] In the case of Barron v. Gooch, the Jury agreed that Barron was the aggrieved party and awarded her £250 in damages.

Many women who sued for breach of promise of marriage were attempting to restore an already damaged reputation. Whether the breach was brought to court or not, social etiquette demanded that men provided a reason for breaking an engagement, and the most effective justification was that their fiancé had been unfaithful. According to Simmonds, the most common defence in breach of promise cases was that 'you had discovered your lover was of "bad character"', with an almost 'exclusive focus on female chastity'.[100] Men had to prove, beyond a doubt, that they had broken the engagement as a direct result of their partner's 'immoral conduct' and not through any fault in their own character.[101] As a result, many women found themselves entering court not only to seek redress for the financial losses resulting from a breach of promise, but also for the social losses resulting from their fiancé's justification for the broken engagement.

Engagements were not always explicitly and publicly announced. As a result, breach of promise cases allowed gossip and conjecture to be entered as evidence of a couple's engagement, or lack thereof. Breach of promise court cases therefore gained a reputation for being entertaining, attracting keen interest from courtroom spectators and newspaper editors

[97] 'Law and Criminal Courts', *Evening Journal*, September 14, 1869, p.2.
[98] Ibid.
[99] McKenzie, *Scandal in the Colonies*, p.110.
[100] Simmonds, 'Gay Lotharios and innocent Eves', p.63.
[101] Ibid, p.65.

alike.[102] This is evident in South Australian newspapers' reporting of numerous British breach of promise cases well before the first South Australian case was brought in 1855.[103] Furthermore, in 1866, an article in Mount Gambier's *Border Watch* noted that breach of promise cases 'always prove fascinating to the general public'.[104] In her research on breach of promise cases in late-eighteenth and early-nineteenth century Britain, Barclay reports that, by the nineteenth century, the sensationalisation of breach of promise charges in British newspapers had begun to 'sit dangerously on the boundary between tragedy and comedy'.[105] Barclay elaborates on this point, writing that while breach of promise suits 'had real and important implications for the lives of those engaged in them, numerous accounts of breach of promise trials noted that the gallery laughed during evidence'.[106] In the 1878 case of Amelia Goldsworthy v. John Sampson the *Wallaroo Times* reported that one of the letters presented as evidence 'caused considerable amusement in the Court', with particular reference to 'a number of hieroglyphics in the form of crosses…which the plaintiff said meant "kisses"'.[107]

The entertainment factor of breach of promise charges did lead some court and media authorities to view such actions as somewhat farcical. Writing on breach of promise suits in nineteenth century Ontario, Coombe noted that breach of promise law became increasingly controversial from the mid-nineteenth century as an action which was frequently abused for personal gain.[108] This growing judicial dislike of breach of promise was evident in defence lawyer Mr Fisher's response to Evans v. Tuxford in 1855—the first breach of promise charge brought in South Australia. Fisher complained that this action had 'interrupted such a

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[102] Coombe, '"The most disgusting, disgraceful and iniquitous proceeding in our law"', p.64; Barclay, 'Emotions, the law and the press in Britain', p.274.
[103] For a small selection of these cases, see: 'Frailties of the Fair', *South Australian Register*, 8 July 1843, p.4; 'English News', *Adelaide Observer*, 25 May 1844, p.7; 'Legal Facts and Decisions', *South Australian Register*, 13 August 1845, p.3; 'Breaches of Promise of Marriage', *South Australian Register*, 22 October 1845, p.4; 'The Value of a Widower', *South Australian Register*, 9 September 1846, p.4; 'Breach of Promise of Marriage', *South Australian Register*, 16 February 1848, p.4; 'English News Resumed', *Adelaide Times*, 2 March 1854, p.3;
[104] 'Adelaide', *Border Watch*, 22 September 1866, p.3.
[105] Barclay, 'Emotions, the law and the press in Britain', p.274.
[106] Barclay, 'Emotions, the law and the press in Britain', p.274.
[107] 'Local Court—Kadina', *The Wallaroo Times and Mining Journal*, 9 November 1878, p.2. For further 'humorous' responses to South Australian breach of promise cases see: 'Breach of Promise of Marriage', *South Australian*, 9 October 1846, p.7; 'Breach of Promise of Marriage', *The Wallaroo Times and Mining Journal*, 16 June 1866, p.3; 'Breach of Promise of Marriage', *Bunyip*, 9 January 1874, p.4; 'A Curious Breach of Promise', *Border Watch*, 5 November 1879, p.2; 'Talk of the Wags', *Bunyip*, 15 September 1866, p.2; 'Extraordinary Breach of Promise Case', *Evening Journal*, 15 September 1880, p.3.
[108] Coombe, 'Breach of promise of marriage in nineteenth-century Ontario', p.67-68.

satisfactory state of things', being South Australia's not previously having its 'majesty of justice disturbed by such actions'.[109]

Much of the evidence presented in this thesis demonstrates that rumours and gossip which were accepted as evidence in colonial courts frequently worked in favour of middle-class white men; however, breach of promise trials deviate from the norm in this respect, with verdicts often skewed in favour of the female plaintiff. Contrary to other cases involving single women, which will be discussed throughout this thesis, Simmonds reports that breach of promise cases 'almost always' ruled in favour of the woman.[110] Rather than placing the onus of proof on the plaintiff, breach of promise cases instead required the defendant to prove that his breaking of the engagement was justified.[111] As evidenced in Barron vs. Gooch, it was very difficult for defendant's to justify a breach of promise if they could not provide evidence of improper behaviour, usually infidelity, on behalf of their fiancé. As a result, allegations of infidelity and sexual misconduct were the primary method of defence used by men accused of breaking a promise of marriage.

In 1870, Mary Humphry sued Patrick Kelly for failing to follow through on multiple promises of marriage made throughout their seven-year relationship. Though the case was tried in Melbourne, their relationship began in South Australia, where both Humphry and Kelly had lived for some 20 years. According to the newspaper report, which took up almost a whole page in Gawler's *Bunyip*, 43-year-old Kelly represented himself as a widower when he made his first promise of marriage to the then 18-year-old Humphry, and convinced her to travel with him to Melbourne for the marriage.[112] After their arrival in Melbourne, Kelly revealed that his wife was alive, though apparently deathly ill, and promised Humphry that if his wife did not die soon he would seek a divorce, even if he had to apply directly to the Pope to get one.[113] Humphry reported that she had remained with Kelly even after discovering his deception because she had already been 'seduced' by him and worried that she would be disgraced if she returned home unmarried.[114] Between 1866 and 1870, Humphry lived with Kelly in Sydney, Melbourne and Hobart, often under the alias of Mrs Kelly, and gave birth to

[109] 'Law and Criminal Courts', *South Australian Register*, 13 September 1855, p.3.
[110] Simmonds, 'Gay Lotharios and innocent Eves', p.74. This point was also iterated in Steinbach, 'The melodramatic contract', p.1.
[111] Ibid, p.65.
[112] 'The Kelly & Humphry Case', *Bunyip*, 12 September 1870, p.4.
[113] Ibid.
[114] Ibid.

two of his children. Kelly initially paid Humphry £5 a month in child maintenance, which then dropped to £3 before he stopped paying altogether until a Police Court order in June 1870 forced him to pay 7s. 6d. per week.[115] Kelly had also reportedly promised to settle Humphry with £1000 early on in their relationship if they could not marry, though he never followed through on this promise.[116] Humphry's testimony was supported by her parents and one of her sisters.

To counter Humphry's accusations, Kelly testified that he had never promised to marry her and that she knew his wife was alive when they first began their relationship.[117] He did not deny their sexual relationship nor his paternity to her first child; however, he argued that the second child could not be his because he 'never went near her for more than thirteen months' before the child was born.[118] The Jury apparently placed more credence in Humphry's testimony, because they awarded her the full £1000 damages requested, an amount which, the *South Australian Register* reported, 'occasioned some surprise among the spectators'.[119] This case is certainly an extreme example—the next highest damages awarded for a breach of promise case examined within the scope of this thesis were laid at £250—however, this example demonstrates just how lucrative breach of promise cases could be for single women whose circumstances fit the criteria of the colonial courts.

The high damages awarded in Humphry v. Kelly likely stemmed more from a desire to punish Patrick Kelly for carrying on such a public, and lengthy, extra-marital affair than from any real pity for Humphry's circumstances. This idea is supported by Simmonds' suggestion that colonial authorities were concerned that 'dissoluble private marital vows', never legitimised in the eyes of the law, would lead to 'uncontained sexuality that left physical traces in bastard children, ruined women and destitute single mothers'.[120] This reiterates the fear of de facto relationships mentioned earlier, demonstrating that these fears, still clearly present in 1870, were not fleeting, but persisted well into the nineteenth century.

[115] 'The Kelly & Humphry Case', *Bunyip*, 12 September 1870, p.4; 'The Case of Humphry v. Kelly', *South Australian Register*, 9 November 1870, p.5.
[116] 'The Kelly & Humphry Case', *Bunyip*, 12 September 1870, p.4.
[117] Ibid.
[118] Ibid.
[119] 'The Case of Humphry v. Kelly', *South Australian Register*, 9 November 1870, p.5.
[120] Simmonds, 'Gay Lotharios and innocent Eves', p.67.

It must also be noted that the damages awarded in South Australian breach of promise cases were very reliant on the social class and reputation of the female plaintiff. In the 1868 case of Fanny Coote v.George Tynan, Coote's lawyer urged the jury to remember that 'in these cases…Courts were the protective guardians of the middle classes'.[121] He further encouraged the jury to award Coote the full damages requested (£100) because, while for a 'worthless' woman in the same situation '£10 might do', Coote 'was far more sinned against than sinning…the victim of deliberate seduction under the solemn promise [of marriage]', and was therefore deserving of full damages.[122] Similarly, the 1879 case of 'pleasing and accomplished' schoolteacher Sarah Ann Bellinger v. 'ignorant, and ill-favoured, and drunken' Neil MacDonald, the jury awarded £350 damages for the 'cruel wrong' which MacDonald had wrought by impugning Bellinger's chastity during his defence.[123]

This tendency of court authorities to express more verbal and financial sympathy in breach of promise charges involving middle-class women, similar to the sympathy expressed in the case of Caroline Arnold discussed above, further demonstrates court authorities' clear sympathy for mistreated (pretty, young) middle-class white women. According to critics of breach of promise law, this sympathy unfairly skewed verdicts in favour of the female plaintiff. For example, an article published in the *Adelaide Observer* in 1879 complained that most breach of promise cases focused more on inciting sympathy in the judge and jury than in proving pecuniary loss.[124] Furthermore, the article complained that

> if the plaintiff be young and beautiful and…better still, if she possess the accomplishment of melting into tears at the right moment, only the most flinty hearted of Jurymen can consider the case dispassionately and unmoved. It is not fair play…beauty in distress is too much for them.[125]

This fear was evident in the case of Bellinger v. MacDonald mentioned above, when MacDonald's lawyer cautioned the jury against being swayed by 'the smiles of a pretty woman'.[126] Breach of promise defendants' concern over courtroom sympathy for the plaintiff must have been enhanced by the 1870 amendment to the colony's law of evidence, allowing

[121] 'Law Courts', *Southern Argus*, 24 October 1868, p.3.
[122] Ibid.
[123] 'The Breach of Promise Case', *Border Watch*, 1 November 1879, p.2. See also: 'Mount Gambier Circuit Court', *Border Watch*, 29 October 1879, p.3.
[124] 'Abolition of Breach of Promise Actions', *Adelaide Observer*, 19 July 1879, p.13.
[125] Ibid.
[126] 'The Breach of Promise Case', *Border Watch*, 1 November 1879, p.2.

plaintiffs and defendants to take the stand in breach of promise trials.[127] This amendment allowing women to give evidence of their own feelings over a broken engagement may explain why there were more charges of breach of promise brought between 1870 and 1880 (19) than in the 34 years prior, which only saw 17 charges [see Appendix 1].

Despite the evidence against him, Patrick Kelly clearly believed his punishment to be unnecessarily harsh. In April 1871 he sent a letter to *The Argus* confirming that he had paid the court-mandated £1000, an amount which he stated was 'a pretty tidy slice of luck for Mary Humphry [sic] to fall into', implying that Humphry had obtained those damages through sheer luck and thereby minimizing his own culpability in the case.[128] He also despaired at the fact that he was still required to pay maintenance for Humphry's eldest child and called on the editors of *The Argus* to understand that, 'if any sympathy should be imported into this case, it is I who am the persecuted and well-plucked victim'.[129] Through this statement, Kelly showed that he did not believe his behaviour warranted punishment, and perpetuated the popular stereotype that women made false allegations against innocent men for their own financial gain. This stereotype was also mobilised in the 1877 case of Annie Richardson v. William Pappin, when Pappin's lawyer argued that there was no breach of promise because Pappin had never intended to marry Richardson (by whom he had an illegitimate child), only planning to keep her as a mistress while he was engaged to a 'respectable woman' whom he had since married, and that Richardson's accusation 'was simply an attempt to extort money'.[130]

Though Kelly received little sympathy for his supposed plight, breach of promise cases were not always devoid of sympathy for male defendants, even in cases which ended in a conviction. As with charges of maintenance and sexual assault, discussed in following chapters, many male colonists and colonial authorities were concerned that vindictive women would bring false charges of breach of promise in order to coerce innocent men out of their money or into an unwanted marriage. An example of this is evident in the settlement made in the Hood v. Shorney case when, after Shorney was found guilty but before the Jury decided on damages, Justice Boothby cautioned the Jury to make sure that the damages they did

[127] *Evidence Act 1870* (SA), pp.31-32.
[128] 'Humphrey v. Kelly', *The Argus*, 3 April 1871, p. 5.
[129] Ibid.
[130] 'Supreme Court—Civil Sittings', *Adelaide Observer*, 14 July 1877, p.4.

award were not 'vindictive' and should be the perfect amount to compensate Hood without encouraging other women to make financially-motivated breach of promise accusations.[131] Furthermore, in 1879, editors of the *Adelaide Observer* claimed that breach of promise charges were rarely brought against 'the coarse and unfeeling', but those sensitive and high minded men who were unwilling to cast aspersions on their former fiancé's character in their own defence.[132] In contrast, the case studies in this chapter, and throughout this thesis, suggest the opposite—that defendants in colonial court cases had little problem in lambasting women's characters both in court and in the wider colonial community.

The existence of breach of promise of marriage law in South Australia past its abolition in the other Australian states and territories—and the consistent ruling in favour of female plaintiffs—demonstrates the importance of marriage for South Australian women, which persisted throughout—and well past—the colonial period. Despite growing protests in the 1870s, juries and court authorities continued to express sympathy for female breach of promise 'victims' (particularly for pretty, young, middle-class women)—making breach of promise the most consistently successful female-brought charge considered in this thesis.

Slander

Another legal action which demonstrates South Australian authorities' serious treatment of behaviour which threatened women's marriage prospects is the action for slander. Slander charges allowed women to seek recourse for rumours and gossip which negatively affected reputation in the colonial community. In mid-nineteenth century South Australia, slander law was based on the British model, which defined slander as the spreading of false information which had negative repercussions for the victim's employment or financial stability. English law also allowed women to sue for sexual slander—slander which impugned chastity and consequently caused social and emotional distress, but had little to no financial consequences; however, such charges were only able to be heard in the British ecclesiastical courts, a court system which was not transferred to the rest of the British Empire, leaving women outside of the mother country unable to sue for defamation which did

[131] 'Law and Police Courts', *Adelaide Times*, 23 September 1856, p.3.
[132] 'Abolition of Breach of Promise Actions', *Adelaide Observer*, 19 July 1879, p.13.

not cause purely financial consequences. Even in England, the ecclesiastical courts' jurisdiction in defamation and sexual slander suits was rescinded in 1855.[133]

In the context of this thesis, the clearest such slander charge is the 1864 charge of Miss Pocock/Peacock against her former employers, Mr and Mrs Bath, for whom she had previously worked on and off for thirteen years, most recently leaving due to a pay dispute with Mrs Bath.[134] Pocock's current employer, Mr Symonds, asked the Bath's for a character reference before leaving Pocock to care for his children alone. In response, Mrs Bath told him that Pocock was 'dirty in her habits, impudent and saucy in her speech, and unfit to have the management of children'. On the basis of this reference, Symonds terminated Pocock's employment, followed immediately by an offer of re-employment from the defendants.[135] Upon discovering this, Symonds told Pocock that he had only fired her on Mrs Bath's recommendation, leading her to bring a charge of slander.[136] The Baths' lawyer tried to argue that there had been no malice in his clients' actions and that the case should therefore be declared a nonsuit. However, it is difficult to argue that defaming a former servant's character so she would become available to work again is not malicious. After testimony from four previous employers attesting to Pocock's good character Stipendiary Magistrate (SM) JW Macdonald agreed there was 'proof, though slight, of malice', and ruled in Pocock's favour, awarding £15 of the £30 she had sued for.[137]

The most scandalous slander charge considered in this thesis was undoubtedly the case of Lucy Inskip v. Mrs Mary Swailes in April 1856. Inskip charged Swailes with instigating a rumour that she had given birth to a child, borne from an incestuous relationship with her brother, which she had later murdered.[138] This rumour was pervasive, spreading throughout the community of Unley until it reached the ears of Inskip's fiancée John Hearn, causing him to break their engagement. The rumour was allegedly the inspiration for a salacious article published in the *Adelaide Observer* titled 'An Ugly Rumour', which detailed the 'strange birth and still stranger disappearance of a child' whose parents were reportedly

[133] SM Waddams, *Sexual Slander in Nineteenth Century England: Defamation in the Ecclesiastical Courts, 1815-1855*, University of Toronto Press: Toronto, 2000.
[134] 'Law and Criminal Courts', *South Australian Weekly Chronicle*, 8 April 1865, p.2.
[135] 'Law and Criminal Courts', *The Adelaide Express*, 8 April 1865, p.3.
[136] 'Local Courts', *Adelaide Observer*, 8 April 1865, p.2.
[137] Ibid; 'Law and Criminal Courts', *The Adelaide Express*, 8 April 1865, p.3.
[138] 'Law and Criminal Courts', *South Australian Register*, 8 April 1856, p.3.

brother and sister.[139] Swailes' lawyer argued that Inskip had not 'sustained any great loss' by the breaking of an engagement with Hearne, who was a widowed gardener with children from his previous marriage, implying that Inskip did not deserve compensation because she would have received little financial gain from the marriage, and therefore had lost nothing by its cancellation.[140] However, after several witnesses were called to trace the spread of the rumour, and attest to Inskip's character and lack of pregnancy, Inskip was awarded £300 in damages.[141]

Only a week later, Swailes returned to court to contest this verdict, arguing that judicial bias from Justice Benjamin Boothby had 'led the jury to consider pain of mind, exposure, and a variety of things independent of the…breaking off of the marriage', which was the primary damages alleged.[142] At this time, slander could only be awarded in cases which caused clear financial damages, though for unemployed women these damages could be extended to include the loss of an expected husband's financial support. Justices Boothby and Cooper argued that the emotional damage could not be ignored as it had led to the broken engagement; however, based on the law of the time, Swailes' lawyer successfully argued that the damages for a broken engagement should be based on 'the intended husband's position and property', not on emotional distress, and Swailes was awarded a retrial.[143]

The second trial of Inskip v. Swailes was not even referred to the jury. Justice Cooper stated that, while he believed the originator of the gossip should be 'severely punished', he was not convinced that this originator was Swailes who he suspected of simply repeating gossip she had heard from someone else.[144] He suggested that, as the accusations against Lucy Inskip and her brother had been satisfactorily disproved, and because 'vindication of character' was the principal objective of a slander trial, damages need not be awarded. He instead required Swailes to 'state her conviction that the report was false…and express regret' for her part in perpetuating the rumour, though he did not believe her motives to be

[139] 'District of East Torrens', *Adelaide Observer,* 12 January 1856, p.8.
[140] 'Law and Criminal Courts', *South Australian Register,* 8 April 1856, p.3.
[141] Ibid.
[142] 'Law and Criminal Courts', *South Australian Register,* 15 April 1856, p.3.
[143] Ibid.
[144] 'Law and Criminal Courts', *South Australian Register,* 8 April 1856, p.3.

malicious.[145] The charge was consequently dismissed without damages, and Inskip was even required to pay her own court costs.[146]

The arguments that, because Inskip's ex-fiancé was not wealthy, she had only suffered emotionally, and not financially, from the breaking of her engagement, demonstrated not only that colonial courts did not perceive women's emotional distress as important, but also that working-class or destitute women were not deserving of the same level of financial compensation as wealthier women, or women who were engaged to wealthier men. For Inskip, the only positive outcome of this charge was that, with the rumours of her incestuous pregnancy disproved, Hearne agreed to renew their engagement. Marriage records published in the *South Australian Register* show that Miss Lucy Inskip and Mr John Hearn were married on the 5th of November 1856.[147]

A similar case, that of Elizabeth Bell v. Joseph Allen, was heard in 1862 with a remarkably similar outcome. Bell charged Allen with impugning her chastity to the extent that she had lost an offer of marriage from a man named Frederick Dighton.[148] Dighton swore in court that he did not believe the rumours and that he would happily marry Bell if her name was cleared of the slander—a promise which was supported by his having paid for Bell's lawyer—but that he could not do so while her reputation was currently so sullied.[149] The jury ruled that, as Dighton's affections for Bell had clearly not diminished and he had stated his intention to marry her if the rumours of her chastity were proven false, they could not convict Allen on the grounds that he had cost Bell an offer of marriage, and were unable to charge him for emotional distress; however Chief Justice Richard Hanson ruled that, regardless of the jury's verdict, it was clear that any slander was untrue and that Bell's good character remained 'untouched'.[150] Like Inskip and Hearn, Bell and Dighton married soon after the conclusion of their slander charge.[151] The willingness of Hearn and Dighton to continue with their promise of marriage after their respective fiancés' reputations were restored suggests that these charges of slander were used in the place of breach of promise charges, which were

[145] 'Law and Criminal Courts', *South Australian Register*, 25 June 1856, p.3.
[146] Ibid.
[147] 'Family Notices', *South Australian Register*, 6 November 1856, p.2.
[148] 'Law and Criminal Courts', *South Australian Register*, 9 September 1862, p.3.
[149] Ibid; 'Law and Criminal Courts', *The South Australian Advertiser*, 9 September 1862, p.3.
[150] Ibid.
[151] 'Family Notices', *South Australian Register*, 4 December 1862, p.2.

brought against men who were unwilling to continue with the engagement no matter the reputation of their fiancé.

Following judicial displeasure with the specifics of slander law as it related to gossip relating to women's chastity, as in the cases of Inskip and Bell, Lake notes that another sub-section of slander law—sexual slander—emerged in the nineteenth century.[152] Discussion on such a law began in the United States in the early-nineteenth century, calling for women to be allowed to sue for slander which caused emotional, and not just financial, distress.[153] Prior to these changes, Lake noted multiple charges of slander in the United States and colonial Victoria in which, as in the cases of Inskip and Bell, women's testimony of emotional distress, broken engagements, and even divorce, were all reluctantly dismissed by judges and juries who could only pass a slander conviction based on evidence of 'special damages' relating to loss of income or employment.[154]

While Victoria's updates to their slander law in 1887 were based heavily on New York's 1871 *Slander of Women Act,* Lake suggests that South Australia's own updated slander laws, the first such law passed in an Australian colony, in 1865 occurred much more 'organically', probably as a result of public backlash to the case of renowned vocalist Mary Wishart v. rival vocalist Catherine Peryman.[155] This 1865 law, entitled *An Act to Amend the Law of Slander*, mandated that 'words spoken and published of any woman imputing to her a want of chastity shall be and shall be deemed to be slander', granting sexual slander as equally damaging as slander which affected a person's business or finances.[156]

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[152] Lake, 'Protecting "injured female innocence" or furthering "the rights of women?"', p.1.
[153] Ibid. See also AJ King, 'Constructing gender: sexual slander in nineteenth-century America', *Law and History*, vol.13, no.1, 1995, pp.63-110; LR Pruitt, '"On the chastity of women all property in the world depends": injury from sexual slander in the nineteenth century', *Indiana Law Journal*, vol.78, no.3, 2003, pp.965-1018.
[154] Lake, 'Protecting "injured female innocence" or furthering "the rights of women?"', pp.1-25
[155] Ibid, p.4. Lake discussed the connection between South Australia's *Act to Amend the Law of Slander* and Wishart v. Peryman in her 2021 paper presented to the AHA Conference, titled 'Sex, Speech & Social Status: Women's Struggles for Self-definition via Slander Law in 19th Century South Australia'. As Wishart was a widow, her case cannot be discussed in detail in this thesis. In short, the recently widowed Mary Wishart sued Catherine Perryman for spreading gossip which grossly impugned her chastity. Wishart accused Perryman of instigating the rumours to impact Wishart's career and cause her to be disinvited to future public concerts, leaving room for Perryman to take her place. The case was dismissed because the consequences of the slander had affected Wishart's work and, at this time, charges of sexual slander did not apply to financial loss, but were required to prove 'special damages' such as a broken promise of marriage. For a selection of reports on this case see 'Local Court—Adelaide', *The South Australian Advertiser*, 5 June 1863, p.3; 'Wishart v. Peryman. To the Editor', *South Australian Weekly Chronicle*, 13 June 1863, p.5; 'House of Assembly', *South Australian Register*, 1 October 1863, p.3.
[156] *Slander Act 1865* (SA).

Following this update to the colony's slander laws, the only slander charges brought by single women in South Australia prior to 1880 were charges of sexual slander. For example, in 1872, Ann Mephan brought a case of slander against Mrs Sarah Gilmer and her husband for 'statements reflecting upon her chastity…which injured her character'.[157] The details of the slander were not provided; however, the Gilmers were accused of attempting to ruin the reputation of Mephan and her unnamed male employer, so it is reasonable to assume they had insinuated Mephan and her employer were in a sexual relationship. It is also likely that Mephan's employer was a respectable member of the colonial community, because SM Henry Downer expressed his regrets that 'the damages were not laid at a somewhat higher figure' than £15, despite no evidence that any slander case involving a single woman was ever awarded more than £15 in colonial South Australia.[158]

It must, however, be noted that the verdict in Mephan v. Gilmer seemed less concerned with Mephan's loss of reputation or Mrs Gilmer's rumour-mongering than with the actions of Mr Gilmer, who was originally involved only because of a husband's legal liability for the actions of his wife. For example, in an 1870 slander case between Mrs Kendle and Mrs Warne, Mr Warne was called to pay the damages because, 'according to the law…the husband was responsible for the actions of the wife'.[159] In the case of Mephan v. Gilmer most of the newspaper coverage was comprised not of the details of the case, but of Downer's censure of Mr Gilmer's manhood. Downer stated that:

> If it had stopped with her [Mrs Gilmer] and her mother, some pity might have been felt for Mr. Gilmer, for it was well known that when women got tittle-tattling together they were not very careful about what they said. But Mr. Gilmer himself assisted in the calumny, and did not deserve a spark of pity for the part he took. He had aided in persecuting the unfortunate girl…but could not prove the truth of what he insinuated to her discredit.[160]

Downer continued on to say that Mr Gilmer 'had not the manliness to seek to ascertain the correctness of the charges' and that he therefore 'deserved the contempt of every honest and upright man'.[161] This suggests that Mrs Gilmer's gossiping was considered normal and

[157] 'Law and Criminal Courts', *Evening Journal*, 24 July 1872, p.2.
[158] Ibid.
[159] 'Local Courts', *Adelaide Observer*, 23 July 1870, p.7.
[160] Ibid.
[161] Ibid.

somewhat acceptable, while her husband's complicity was considered unmanly and wrong. This example demonstrates the severity with which men could be punished for failing to uphold ideals of colonial manhood, and the extent to which men could not control their wives' behaviour became financially, and sometimes socially, responsible for any negative circumstances which arose as a result. This emphasises the criticisms also evident in breach of promise charges for men who deliberately impugned the sexual reputations of unmarried women, thereby depriving that woman of marriage prospects and consequently depriving another man of a respectable wife.

Conclusion

The cases and their contexts presented in this chapter demonstrate the importance placed on marriage in colonial South Australia. The significance of legally sanctified, preferably Christian, marriages in British colonial society meant that marriage was not only an institution entered into by a husband and wife, but an integral component of South Australian colonialism. High marriage rates reflected colonial authorities' greatest goal—the successful establishment of a 'respectable' middle-class colony. This goal is further reflected in breach of promise of marriage verdicts, which persistently ruled in favour of female plaintiffs throughout colonisation—demonstrating that South Australian colonial authorities' social and legal encouragement of marriage for women remained consistent throughout the period considered in this thesis.

Attitudes towards marriage in colonial South Australia influenced the ways that single women were regarded in the colony, particularly those single women who had only recently arrived in Adelaide unaccompanied by a 'protector'. The regulations put in place to facilitate the 'protection' of unaccompanied single women onboard immigrant ships were invariably abused by some officers and crewmembers—powerful men awarded authority over vulnerable women in the name of 'protection'. Case studies such as the whipping of Irish women on board the *Ramilies*, and Caroline Arnold's testimony against officers on the *Indian* demonstrate that the very regulations which were intended to 'protect' single women on board emigrant vessels had the potential to place them in harm's way when those in power sought to abuse their authority. The lack of serious repercussions for the authorities involved in these cases, and the preferential treatment of Arnold over more severely mistreated women, further demonstrates that such protections reflected a class bias which favoured

middle-class English women over their working-class and non-English (especially Irish) counterparts.

Conversely, laws regarding breach of promise of marriage are one of the only instances of the law favouring the testimony of single women in colonial South Australia, with other female-brought charges such as those relating to illegitimate children and sexual violence having much higher rates of acquittal.[162] Though the breach of promise cases which were the most financially successful were those which included the testimony of one or more respectable male colonist who was unrelated to the plaintiff, such cases uniquely and consistently favoured single women in a way that is not evident in any of the other female-brought charges for this period. Evidence presented in breach of promise cases, and the ways in which informal evidence such as gossip and rumours influenced the outcome of a case, demonstrate a desire not only to redress the social and financial loss associated with a broken promise of marriage, but a desire to punish those men who publicly ruined an otherwise respectable woman's most marketable quality—her marriageability.

The emphasis on marriageability and female marriage prospects in the colonial South Australian context is not only socially, but legally, clear. The existence of breach of promise law in South Australia past the 1861 Federal abolition of the charge, and the implementation of sexual slander law before the other colonies in 1865, demonstrates South Australian colonial authorities' investment in women's marriageability, to the extent that they believed any threat to a woman's marriage prospects should be punished by law—though the cases considered in this chapter demonstrate that this belief (and the consequent financial reward) was strongest in cases involving pretty, young, middle-class white women. The outcomes of the cases considered in this chapter support the idea, presented in the next chapter, that women in colonial South Australia were more valued for their marriageability than for their productive labour.

[162] See chapters 4 and 7.

Chapter 3:
"Work"

In an 1864 court case, Justice Benjamin Boothby claimed that 'there was no part of the world…where female servants were more kindly treated' than in South Australia.[1] If this were true, the lives of female servants elsewhere in the nineteenth century must have been quite poor. There was a constant demand for female labour in the colony; however, outside of domestic service, there were few 'respectable' methods for single women to earn an independent income. This chapter argues that working women, particularly domestic servants faced a high risk of mistreatment at the hands of their employers, with one-sided employment contracts and employer-favouring legislation and courtroom authorities stacking servant-employer charges in favour of the employer. This chapter also argues that the legal favouritism extended to middle-class employers led to a dangerous power imbalance between female servants and their employers and considers the employment conditions for single women in colonial South Australia, including wages and availability of work, and the ways that legal and social inequality placed employees at a clear disadvantage in the colonial courtroom.

The experiences of female domestic servants were long overlooked in Australian historiography. In her 2005 article on illegitimacy in nineteenth century Australia, Shurlee Swain noted that 'in Australian historiography, domestic servants are noted primarily for their absence'.[2] This claim is also supported by Jan Gothard's 2001 chapter on single female migration to Australia, which suggests that the 'unique experiences' of working-class immigrant women, particularly domestic servants, has 'been very largely ignored' in contemporary Australian histories, with many historians focusing on convict women or wealthy middle-class women such as Caroline Chisholm.[3] The most comprehensive histories of Australian domestic service are: Barry Higman's 2002 book, which argues that—as the most common form of paid employment for colonial women—domestic service was integral in enforcing colonial ideals of domestic femininity; and Victoria Haskins' and Claire

[1] 'Law and Criminal Courts', *The South Australian Advertiser*, 7 December 1864, p.3.
[2] S Swain, 'Maids and mothers: domestic servants and illegitimacy in 19th-century Australia', *The History of the Family*, vol.10, no.4, 2005, p.464.
[3] J Gothard, 'Wives or workers? Single British female migration to colonial Australia', in P Sharpe (ed.), *Women, Gender and Labour Migration: Historical and Global Perspectives*, London: Routledge, 2001, p.9.

Lowrie's 2015 edited work *Colonization and Domestic Service*, which argues that domestic service was and continues to be clearly entwined with the practice of colonisation.[4] Even with these works, there remain gaps in historians' understandings of women's experiences in the colonial workforce and their relationships with their employers—specifically how this relationship was perceived in the colonial courtroom and how stereotypes of female servants, and working-class women more generally, influenced the outcome of employer-employee legal disputes. This chapter considers employer-employee relationships specifically from the perspective of crime—examining both the social and legal power imbalances between female servants and their employers in colonial South Australia.

This chapter also considers legislative distinctions outlined in South Australian *Masters and Servants Acts* and the ways that the colony's emphasis on middle-class respectability and superiority contributed to a courtroom bias which consistently privileged the testimony of middle-class employers over their working-class servants—a privilege that was evident not only in wage and contract disputes, but also in charges of physical and sexual violence. This chapter is the only thematic chapter in this thesis which considers single women's experiences outside of sexual and romantic relationships with men; however, the evidence presented in this chapter supports arguments presented throughout this thesis that stereotypes of working-class women's hyper-sexuality and inherent propensity towards crime and vice had a clear impact on court cases involving these women—even those which, on the surface, had nothing to do with sex or marriage.

South Australia provides a particularly interesting case study for this research because the majority of historical accounts of crimes committed by and against female servants in colonial Australia focus on convict women.[5] While South Australia never participated in

[4] BW Higman, *Domestic Service in Australia*. Melbourne University Press: Carlton, 2002; VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015. See also: V Haskins, 'On the doorstep: Aboriginal domestic service as a "contact zone"', *Australian Feminist Studies*, vol.16, no.4, 2001, pp.13-25; M Steiner, *Servants Depots in Colonial South Australia*. Wakefield Press: Kent Town, 2009; V Haskins, '"Down in the gully and just outside the garden walk": White women and the sexual abuse of Aboriginal women on a colonial Australian frontier'. *History Australia*, vol.10, no.1, 2013, pp.11-34.

[5] See D Oxley, 'Convict Women', in S Nicholas (ed), *Convict Workers: Reinterpreting Australia's Past*, Cambridge University Press: Cambridge, 1988, pp.85-97; J Damousi, *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia*, Cambridge University Press: Cambridge, 1997; EC Casella, '"Doing trade": a sexual economy of nineteenth-century Australian female convict prisons', *World Archaeology*, vol.32, no.2, 2000, pp.209-221; DW Elliot, 'Convict servants and middle-class mistresses', *Literature Interpretation Theory*, vol.16, no.2, 2005, pp.163-187; S Craig, 'Women, crime and the experience of servitude in colonial America and Australia, *Limina*, vol.19, 2013, pp.1-10.

convict transportation, this chapter argues that colonial authorities' consistent enforcement of middle-class ideals negatively influenced perceptions of working-class women in both the colonial courtroom and in wider colonial society. Consequently, this chapter's examination of court cases brought between single women and their employers highlights the power imbalances between masters and servants using the lens of crime and legal proceedings. According to Higman, most disputes between domestic servants and their employers probably never made it to the courtroom, but those which did 'provide valuable clues to the changing boundaries of appropriate behaviour' between servants and employers.[6] In South Australia, these 'changing boundaries' are most evident in early *Masters and Servants* legislation, which was frequently updated in the first decade of colonisation before stabilising in the late-1840s.

As *Masters and Servants* legislation stabilised—solidifying the legal rights of servants and employers (however imbalanced)—the number of workplace disputes brought before the colonial courts grew. This increase in wage and contract disputes was evident from the 1850s, though the vast majority of the *Masters and Servants* disputes considered in this chapter (29 of 34) were brought in the 1860s and 70s. This suggests that female servants became more confident in suing their employers, or absconding from their service, over time. The only servant-employer charge which did not increase over time was physical assault of a servant—suggesting that servants' confidence in defying their employers increased as the potential for physical retribution decreased. Despite this increased confidence, the conviction statistics in this chapter demonstrate that colonial legislation and court verdicts consistently favoured middle-class employers over their servants.

Fae Dussart asserts that servants in the British Empire were able to use courtrooms 'as a space in which to publicly contest the limits of their employer's authority'.[7] This was certainly evident in some cases; however, the cases considered in this chapter suggest that the opposite was true in South Australia—with employers frequently using the colonial courts to legally punish their servants for small infractions and personal slights which could have been easily solved outside of court. This chapter argues that the emphasis on middle-class ideals in

[6] Higman, *Domestic Service in Australia*, p.251.
[7] F Dussart, '"Strictly legal means": Assault, abuse and the limits of acceptable behaviour in the servant-employer relationship in metropole and colony 1850-1890', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, p.154.

colonial South Australia negatively influenced perceptions of female servants, compounding the already overt power imbalance which existed between female servants and their employers in Britain. This chapter is primarily dedicated to analysing servant-employer legal disputes, from the relatively minor offences of breach of contract and wage disputes to the more serious crimes of larceny by a servant and physical and sexual assault of a servant. The final portion of this chapter examines the case of Ann Mara v. William Popham—the most controversial employer-employee dispute in the colony's history. The outcomes of these cases, as well as the contrasting penalties for servants and employers in *Masters and Servants* legislation all demonstrate that the balance of power in servant-employer court cases remained firmly in the hands of the employer; however, fear of this power imbalance did not always stop women from bringing charges, or committing offences, against their employers.

Class in Colonial South Australia

South Australia's 'founders' intended their colony to be a paragon of middle-class respectability, though the 'father of South Australia', Edward Gibbon Wakefield, acknowledged that the colony would also need a strong working-class population in order to function properly.[8] Despite this acknowledgement, colonial immigration authorities insisted that they would only accept 'respectable' working-class settlers, being those who conformed with and aspired to middle-class ideals of respectability. According to Linda Young, working-class respectability was defined by 'productive work', which 'separated the respectable working class from the rough, the petty criminals and casual labourers'.[9] This idea is supported by the 1848 *Notice on Free Emigration* to South Australia and New South Wales, which mandated that, because assisted emigration was funded by the colonies and not Britain, it should not be used 'for the purpose of relief to persons in [Britain], but to supply the colonists with the particular description of labourers of which they stand most in need'.[10] The *Notice* further insisted that any 'persons in the habitual relief of parish relief' were ineligible for assisted passage.[11] No person who relied on parish funds for survival could

[8] EG Wakefield, *The New British Province of South Australia*, 2nd ed., London: C. Knight, 1838, p.92-94. For further discussion on this point, see chapter 1.
[9] L Young, *Middle-Class Culture in the Nineteenth Century: America, Australia and Britain*, Springer: New York, 2012, p.58.
[10] *Notice on Free Emigration to Australia*, February 1848, CO13/61, Australian Joint Copying Project [AJCP], National Library of Australia [NLA]: Canberra, p.261.
[11] Ibid. This exclusion only applied to prospective emigrants applying for assisted passage for themselves and/or their families, it did not prevent the emigration of 'pauper' emigrants whose passage costs were defrayed by

afford the cost of emigration. Consequently, this policy demonstrates a clear intention to bar the British 'pauper' classes from migrating to South Australia and reinforced the colony's long-lasting belief that 'pauperism' was an irredeemable character defect rather than an often unavoidable financial misfortune.

In South Australia, more so than any other British colony, colonial authorities fought to deny, though not prevent, 'pauperism' out of fear that it would taint their colony's reputation of moral superiority. According to Susan Piddock, South Australian authorities 'felt very strongly about denying the existence of a "pauper" class in their colony and this influenced…all debates about provisions for the poor'.[12] As a result of this denial, Piddock reports, there were no 'charitable institutions such as hospitals and orphanages, or even philanthropic societies', all of which were common in Britain and New South Wales, in South Australia until the Adelaide Destitute Asylum was established in 1849—thirteen years after first settlement.[13] Prior to this point, assistance for destitute settlers was controlled by the Emigration Agent and focused on the Colonization Commissioners' 1836 promise that any assisted immigrant who could not find work upon their arrival 'would be employed at reduced wages on government works'—a promise which became impossible to keep as many government works ceased when the colony descended into bankruptcy in the early 1840s.[14] According to Higman, it is in societies such as colonial South Australia—where 'a substantial middle class coexists with significant inequality'—where domestic service frequently emerges as a key employment demographic.[15]

Demand for Domestic Service

Domestic service was the most common, and often only, paid employment available to working-class women in colonial South Australia. According to Higman, the exclusion of women and ethnic and racial minorities, all of whom were considered 'not good enough to be

other means or those who emigrated under separate schemes such as the mass-emigration of female Irish Famine orphans under the Earl Grey Scheme discussed in chapter 1.

[12] S Piddock, '"An irregular and inconvenient pile of buildings": The Destitute Asylum of Adelaide, South Australia and the English workhouse', *International Journal of Historical Archaeology*, vol.5, no.1, 2001, p.84.

[13] Ibid, p.79. See also: B Dickey, 'Why were there no poor laws in Australia?', *Journal of Policy History*, vol.4, no.2, p.127.

[14] Dickey, 'Why were there no poor laws in Australia?', p.126.

[15] BW Higman, 'An historical perspective: colonial continuities in the global geography of domestic service', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, p.33-34.

employed in the real economy', from most avenues of paid employment meant that these demographics were often shoehorned into positions of domestic service.[16] Dussart suggests that 'the ability to employ servants' was one of the key markers of status throughout the British Empire—a distinction which further separated working-class women from the respectable ideal.[17] In a colony that placed so much emphasis on middle-class 'respectability', many middle-class, and middle-class-aspiring, colonists viewed domestic servants as a household necessity.

This selective-hiring of servants, mostly single women, began before immigrant ships even left England. According to Gothard, working-class women who were untrained in domestic service were 'neither wanted nor needed in the colonies'. [18] In an 1851 report from the South Australian Labour Office, Chairman William Giles sought to forbid the immigration of women who were unqualified to fill the roles expected of them in the colony, claiming that the types of colonists most likely to be unemployed were 'those *who never ought to have come*'.[19] He wrote that:

> Women…who know nothing of housework, and the proper duties of a family, are very unfit to be sent here…Needle-women, ladies' maids, dressmakers, upper nurses, genteel housekeepers, and all highly-educated *poor women*, have very little chance here to get on…*all* have to work, *and work hard*, because seventeen out of every twenty farmers work upon their own land, and do the work mainly *themselves*—and what can these do with fine ladies for wives and helpers.[20]

It is very clear from this report that colonial authorities were only interested in working-class women who could and would work in domestic service, before marrying a labourer of their own class and supporting him with their unpaid domestic labour.

Employing a domestic servant to complete household duties—which in working-class families were undertaken by wives, mothers, and daughters—was an indication of financial stability. In a colony like South Australia, which encouraged colonists to strive for middle-

[16] Higman, *Domestic Service in Australia*, p.68.
[17] Dussart, '"Strictly legal means"', p.157.
[18] Gothard, 'Wives or workers', p.154.
[19] *Labor Office Report*, 1 July 1851, CO13/73, AJCP, NLA: Canberra, p.282.
[20] Ibid.

class ideals, domestic servants were in constant demand, making female domestic servants one of the most encouraged migrant groups in South Australian history. Between 1836 and 1840, two-thirds of female assisted immigrants arriving in South Australia were domestic servants;[21] throughout the 1850s, domestic servants consistently made up approximately 40 per cent of the total number of assisted immigrants arriving in South Australia, making them 'by far the largest occupational contingent';[22] and, according to Robin Haines' statistics on government-assisted immigrants from Britain to Australia, from 1854 to 1860 domestic servants made up a massive 86 per cent of all female assisted immigrants arriving in South Australia—totalling 7,281 arrivals over this six-year period.[23] In addition to this, Helen Jones suggests that, by 1872, single female domestic servants 'remained one of only three categories of emigrants given assisted passages', with 'the official policy of importing domestic servants' continuing until 1883.[24]

Criticism

If female domestic servants were one of the most in-demand classes of immigrant in the first decades of colonisation, they were also one of the most criticised. As Gothard points out, female servants in South Australia were often referred to in one of two ways: either as 'prospective wives', or as 'inefficient workers or prostitutes'.[25] According to Young, negative stereotypes of female servants evolved from stereotypes of female convicts, 'whose morality was definitionally suspect and whose social origins did not ready them for middle-class standards of service'.[26] Although South Australia never participated in convict transportation, colonial authorities and newspapers consistently perpetuated similar stereotypes for domestic servants, particularly those who had recently arrived in the colony.

[21] Higman, *Domestic Service in Australia*, p.86.
[22] Ibid, p.87.
[23] RF Haines, *Nineteenth Century Government Assisted Immigrants from the United Kingdom to Australia: Schemes, Regulations and Arrivals, 1831-1900 and Some Vital Statistics 1834-1860*, Flinders University: Adelaide, 1995, p.115. Haines notes that this estimate is not 100% accurate, with a small number of shipping lists missing for this period.
[24] H Jones, *In Her Own Name: A History of Women in South Australia from 1836*, Kent Town: Wakefield Press, 1986, p.55.
[25] Gothard, 'Wives or workers', p.150.
[26] Young, *Middle-Class Culture in the Nineteenth Century*, p.56.

In the South Australian context, the most important criteria for domestic servants working in middle-class households was a reputation for moral decency.[27] According to Gothard, many colonists believed that 'domestic skill could be learned or acquired in the colonies', but that 'morality, once lost, was beyond recall'. [28] Such perspectives were compounded by middle-class prejudice which portrayed working-class women as inherently prone to immorality, forcing them to constantly prove their respectability—a task which became increasingly difficult when it was their word against their middle-class employer's. This class prejudice was further intensified for non-white, or even non-English, domestic servants.

Throughout the nineteenth century, domestic servants were far more likely to be immigrants than Australian-born, and they were most often recruited from minority groups which were afforded the 'lowest status' in colonial society: from the Irish, to non-English speaking immigrants, to Aboriginal people.[29] In his 2007 research on global experiences of domestic service Jose Moya suggests that, throughout the British Empire and former North American colonies, these minority groups which were statistically over-represented in domestic service faced severe 'ethnic and class discrimination', with prejudice against Irish servants reaching particularly 'high levels of racialisation' despite the whiteness of their skin.[30] South Australia was not immune to such prejudices, which reached their peak during the mass-immigration of Irish domestic servants in 1854-55.

In the mid-1850s, South Australian immigration authorities began subsidizing the emigration of more single women to fill the colony's demand for domestic servants. To colonial authorities' consternation however, the majority of these women were Irish—with more than 5000 unmarried Irish women arriving in the colony between 1854 and 1855.[31] According to the *Sixteenth General Report* of the Colonial Land and Emigration Commissioners [CLEC], the reason for this mass-immigration of Irish women was the lack of

[27] J Gothard, *Blue China: Single Female Migration to Colonial Australia*. Melbourne University Press: Melbourne, 2001, p.34
[28] Ibid.
[29] Higman, *Domestic Service in Australia,* p.68.
[30] JC Moya, 'Domestic service in a global perspective: gender, migration, and ethnic niches', *Journal of Ethnic and Migration Studies,* vol.33, no.4, 2007, p.571.
[31] Haines, *Government Assisted Immigrants from the United Kingdom to Australia*, p.143.

'any adequate number of English single women' willing to emigrate.[32] In contrast, Ireland was supposedly home to 'large numbers of women...anxious to emigrate, who are used to farm work, and though not so tidy or instructed as might be wished, have been frequently described as ready to learn, and of remarkably good moral character'.[33] This description suggests that these Irish women were extremely suitable for South Australia's domestic service needs—not necessarily skilled, but respectable and willing to learn; however, colonial authorities and media sources were sceptical at best.

In November 1855, an article published in the *South Australian Register* reported that the Irish women who had arrived in the colony were 'of the lowest class of society', lamenting the possibility of such women becoming 'the mothers of succeeding generations' of South Australian settlers.[34] Following this, the *Register* also published a list of 'special instructions' drafted by the South Australian Legislative Council to the CLEC complaining of the prevalence of Irish women over English and Scottish immigrants, alleging that six of the eight immigrant vessels which had arrived in the colony during that quarter contained an unsatisfying number of 'unsuitable' (i.e. Irish) single women.[35] These complaints ignored the fact that English women had outnumbered Irish women by more than two-to-one in the five years preceding, and would continue to outnumber them for at least the following five years.[36] Though anti-Irish sentiment in the mid-1850s is the best recorded prejudice against female servants in colonial South Australia, it is important to understand that all female domestic servants were exposed to some level of discrimination in the colony as a result of their gender and class-status, and/or their race or ethnicity.

This bias against non-English domestic servants continued throughout colonisation, and it is indisputable that the most mistreated domestic servants in colonial Australia were Indigenous women. Aboriginal women were employed, in the loosest sense of the word, as servants in white-settler households throughout the nineteenth and twentieth centuries, usually in 'frontier and pastoral regions'.[37] Colonial authorities hoped that, by removing

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[32] Emigration Commission, *Sixteenth General Report of the Emigration Commissioners*, London: George E. Eyre and William Spottiswoode, 7 April 1856, p.19, ProQuest UK Parliamentary Papers, https://parlipapers-proquest-com.ezproxy.flinders.edu.au/parlipapers/docview/t70.d75.1856-032313?accountid=10910
[33] Ibid.
[34] 'Legislative Council', *South Australian Register*, 16 November 1855, p.2.
[35] 'Immigration', *South Australian Register*, 20 November 1855, p.3.
[36] Haines, *Government Assisted Immigrants from the United Kingdom to Australia*, p.143.
[37] A Woolacott, 'The meanings of protection: women in colonial and colonizing Australia', *Journal of Women's History*, vol.14, no.4, 2003, p.218.

young Aboriginal women from their own people and teaching them to perform 'civilised' domestic duties, these women could be forcibly assimilated into British society; however, there was never a corresponding expectation that these women be treated with the same respect as their white counterparts. This idea is supported by Haskins' description of Aboriginal domestic service as a 'contact zone' where assimilation was the ultimate goal.[38] This goal is clear in the 1844 proposal of the *Aborigines Orphans Bill* in the South Australian Legislative Council. This Bill called for orphaned or abandoned Aboriginal children to be 'raised' by the Protector of Aborigines, away from their extended family, in the hope they would 'become attached to [British] customs and habits, and thus, gradually, the whole race might be influenced by their example'.[39] Governor George Grey showed his support of the Bill, citing first-hand evidence that such practices were 'the best means of civilizing the natives' by telling the Council of an Aboriginal girl in his service 'who acted quite as well as a European servant'. [40]

The *Aborigines Orphans Bill* was passed on the 28th of August 1844, under the title of the *Aboriginal Orphans Act*. Under this Act orphaned Aboriginal children, or those whose parents provided 'consent', were bound to an apprenticeship with a white master until they turned twenty-one (the maximum enforceable apprenticeship age for white children was 19).[41] According to Shirleene Robinson, the indenture of young Aboriginal girls as domestic servants acted as a method of colonisation 'by preparing them to assume positions as menial workers, who were ranked lowly on the hierarchy of settler society'.[42] By the latter half of the nineteenth century Australian colonial authorities were shifting their attention from importing domestic servants from those bearing the 'lowest status' within British society to coercing young Aboriginal workers in a new form of subjugated labour which persisted throughout the twentieth century. In her chapter on the abuse faced by Aboriginal and Chinese servants in the late-nineteenth and early-twentieth centuries, Claire Lowrie reports that these women made many accusations of brutality against white masters who 'acted like, in effect, slave owners'.[43]

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[38] Haskins, 'Aboriginal domestic service as a "contact zone"', pp.13-25.
[39] 'Legislative Council', *Southern Australian*, 23 August 1844, p.3.
[40] Ibid.
[41] *Aboriginal Orphans Act 1844* (SA), p.1.
[42] S Robinson, '"Always a good demand": Aboriginal child domestic servants in nineteenth- and early twentieth-century Australia', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, p.98.
[43] C Lowrie, '"A frivolous prosecution": Allegations of physical and sexual abuse of domestic servants and the defence of colonial patriarchy in Darwin and Singapore, 1880s-1930s', in P. Edmonds and A. Nettelbeck (eds),

As mentioned in chapter 2, white girls apprenticed through the Industrial School were allowed to end their apprenticeship upon their marriage or their nineteenth birthday; no such provision was granted to Aboriginal women.[44] This supports Robinson's idea that, while the children of white working-class and 'pauper' settlers were subjected to 'policies of reform' via institutions such as the Industrial School, 'children of Indigenous populations were even more vulnerable to these practices', with Aboriginal children 'defined as a "problem population"' almost from the beginning of Australian colonisation.[45] While white girls who left work for marriage were praised, Indigenous women who returned to their communities and married an Aboriginal man were widely criticised. One example of this is "Mary", the above-mentioned servant of Governor Grey who, upon coming of age, reportedly 'threw aside' her clothing, became a 'wanderer in the woods', and married an Aboriginal man named Peri Waringa (alias "Jemmy").[46] By making the choice to leave British society, "Mary" went from being celebrated as 'proof of the possibility, not only to civilize, but christianize [sic] the natives' to 'an argument on the other side of the question'.[47] This example demonstrates that the coercion of Aboriginal girls into domestic service was not intended to benefit the girls themselves, but to assimilate them into British 'civilisation'—an intention which reflected popular colonial ideas that conformity to British civilisation was the only method of 'saving' Aboriginal people from their own allegedly barbarous cultural practices and inevitable (as presumed by colonial 'scientists') extinction.

There is little evidence of employers bringing charges against Aboriginal women servants during the period covered in this thesis—and no evidence of an Aboriginal woman ever bringing a charge against a white employer during this same period. One of the only examples of an Aboriginal servant girl testifying in an employer-employee dispute was in 1849 when, after successfully proving her status as 'a competent witness', Maraton (also known as "Mary") gave evidence against her fellow servant, married woman Maria Hinch, who was charged with stealing from their employer, Thomas Croome.[48] Another example is the charge against an Aboriginal woman named Diana for attempting to poison her employer

Intimacies of Violence in the Settler Colony: Economies of Dispossession Around the Pacific Rim, London: Palgrave Macmillan, 2018, p.262.

[44] *Destitute Persons Relief Act 1866* (SA), p.103.

[45] Lowrie, '"A frivolous prosecution"', p.99.

[46] 'Law and Police Courts', *South Australian Register*, 22 April 1846, p.3.

[47] 'South Australian Church Society', *South Australian Register*, 9 January 1851, p.3.

[48] 'Police Court', *Adelaide Observer*, 3 March 1849, p.3; 'Police Court', *South Australian*, 27 February 1849, p.3.

and his family with strychnine in 1858.[49] This charge was unsuccessful, with the court believing that another Aboriginal woman named Jenny may have been responsible, and the jury reprimanding Diana's employer for having poison so easily accessible in his home.[50] Aside from these two examples, the vast majority of case studies examined in this chapter took place between working-class white women and the middle-class (also white) men and women who employed them.

Breach of Contract

Breaches of contract were the most common employer-employee dispute in colonial South Australia. Most breach of contract cases were very similar and were assumed by reporters to be equally boring in the eyes of colonists, with such cases rarely the subject of detailed newspaper reports. As many breach of contract cases were so similar, this chapter will only discuss specific details of the cases which are most representative of specific types of master/servant disputes. Employment contracts did not have to be written, and verbal agreements were considered binding in court; however, Higman suggests 'it was in the interest of the master to operate without evidence of a contract, since its terms could then be disputed in court', while servants benefitted from the clarity of a written contract.[51] Disputes over verbal contracts were more likely to rule in favour of the employer as their word was afforded more weight in court.

For example, in 1850, Maria Fitzpatrick sued her employer G.A. Ludwig for thirteen weeks' unpaid wages after prematurely ending her contract when Ludwig threatened to beat her with a horsewhip for forgetting to clean a window.[52] Fitzpatrick insisted that her and Ludwig's verbal employment agreement allowed either of them to end the contract without notice—a claim which Ludwig denied.[53] Despite Fitzpatrick's insistence, and no evidence to support Ludwig's denial, the presiding judge claimed it was imperative that a master not be 'deprived of his servant's services in a moment' and that, 'if a servant is assaulted, or otherwise ill-treated' she should bring her case to court to have her employment contract

[49] 'Supreme Court—Criminal Sittings', *The South Australian Advertiser*, 1 December 1858, p.3.
[50] Ibid.
[51] Higman, *Domestic Service in Australia*, p.175.
[52] 'Resident Magistrate's Court', *South Australian Gazette and Mining Journal*, 14 February 1850, p.3.
[53] Ibid.

legally broken.[54] This statement suggests that the judge viewed Ludwig's loss of Fitzpatrick's service as more important than Fitzpatrick's physical safety, and demonstrates the clear empathy between court authorities and other members of the servant-employing class. Because Fitzpatrick had not given a week's notice of her leaving, the judge ruled that Ludwig could withhold a month's wages she had sued for.[55] This was a disproportionate ruling for this period, with no other case in this chapter requiring a servant to forfeit more than one week's wages for failing to give notice.

Table 1: Maximum Penalties Under South Australian *Masters and Servants Acts*		
Year	**For Masters**	**For Servants**
1837	Cancellation of employment agreement, up to 12 months wages in damages, and a fine between 50s. and £20	Up to 6 months imprisonment and forfeiture of wages, in whole or part
1841	Up to 3 months wages in damages, fine of up to £20	Forfeit up to 3 months' wages, up to 60 days' imprisonment, and/or a maximum fine of 1 month's wages
1847	Up to 6 months wages in damages	Forfeiture of wages in whole or part, of up to 3 months in the House of Correction
1863	Up to 6 months wages in damages	Forfeiture of wages in whole or part, or up to 3 months in gaol
1878	Renumeration of wages in whole or part, and/or a fine of up to £20	Abatement of wages in whole or part, or up to 3 months in gaol

Compounding courtroom bias, South Australian legislation was much harsher on servants than employers. Employer-employee disputes were legislated by the *Masters and Servants Acts*, which were amended many times throughout colonisation [see Table 1]. The first *Masters and Servants Act*, enacted in 1837, mandated a maximum penalty of 'six months solitary confinement and forfeiture of wages (in whole or part)' for a servant who refused to, or absconded from, work.[56] According to Helen Jones, this first Act was widely 'disavowed as being too strict'.[57] As a consequence, the 1841 Act mandated a penalty of no more than three months' forfeited wages (one month if the absence was the result of a

[54] 'Resident Magistrate's Court', *South Australian Gazette and Mining Journal*, 14 February 1850, p.3.
[55] Ibid.
[56] *Masters and Servants Act 1837* (SA), p.2.
[57] Jones, *In Her Own Name*, p.51.

misunderstanding) or up to 60 days imprisonment.[58] The penalty was increased again in 1847, with absconding servants facing up to three months in the House of Correction or 'abating the whole or any part' of their wages. [59] This penalty was reiterated in the 1863 amendments and the 1878 *Masters and Servants Act*, which was the last such legislation enacted in colonial South Australia.[60] No *Masters and Servants Act* ever mandated gaol time for employers who breached contract terms.

This chapter considers 35 wage and contract disputes involving single female servants. Eighteen of these cases were brought by female servants, following one of three outcomes: seven cases ruled in the servant's favour—awarding the exact amount of wages asked for; nine cases ruled in the servant's favour, but with reduced damages; and two cases were dismissed completely. Of the 17 cases brought by employers, 11 awarded damages to the employer (usually in the form of forfeited wages), one was withdrawn, two were dismissed, and three ended in a gaol sentence. It is unlikely that these were the only breach of contract cases involving single women in South Australia during the 44 years examined in this thesis; however, these cases cover the variety of outcomes which could result from breach of contract and wage disputes. As discussed below, the outcomes of colonial contract and wage disputes demonstrate a clear and consistent favouritism for employers over their female servants throughout the colonial period—a favouritism which is best reflected in the different maximum penalties offered for masters and servants who breached the Acts, mandating fines for masters and prison sentences for servants.

In her 2001 book on single female immigration to Australia, Gothard wrote that, 'from 1840, the possibility of imprisonment for women under the Masters and Servants Act had been gradually written out…in all colonies except Western Australia'.[61] She claimed that the only woman imprisoned under the South Australian Act was Mary Watkins, and that public outcry, intervention from her employers, and her father's willingness to pay damages ensured that she spent less than a day in gaol.[62] Contradicting Gothard's claim, however, is proprietor of the Port Hotel, H.C. Ford's, charge of desertion and drunkenness against his

[58] *Masters and Servants Act 1841* (SA), p.2.
[59] *Masters and Servants Amendment Act 1847* (SA), p.2.
[60] The 1878 *Masters and Servants Act* was the last legislation of its kind passed in South Australia; however, it was not officially repealed until 1972, with South Australia being the first of the Australian colonies to do so.
[61] Gothard, *Blue China*, p.196.
[62] Ibid, p.196-197.

cook Jane Ramsay in 1863, for which Ramsay was sentenced to one month in gaol.[63] Similarly, and also in 1863, Maria Conolly was sentenced to 1 months' imprisonment for drunken misconduct while in the employ of Johannes Schirmer.[64] In the case of Ford v. Ramsay, Ford's lawyer specifically asked for Ramsay to be imprisoned 'as a warning' to other servants—an attitude which was clearly though inexplicably specific to 1863, with Ramsay and Conolly the only female servants other than Mary Watkins who were imprisoned for misconduct or breach of conduct.[65] The decision to imprison Ramsay as a 'warning' to other servants highlights a hypocrisy in South Australian courts, as no court authority ever suggested that an employer who mistreated their servant should be made an example of, even in cases of extreme mistreatment. Additionally, there is no evidence of any public or media outcry at either Ramsay or Conolly's imprisonment as there was with Watkins, suggesting either that public concern over the imprisonment of female servants had waned, or that the addition of the disreputable consumption of alcohol turned public opinion against them.

Though *Masters and Servants* legislation existed almost from the beginning of British colonisation in South Australia, legal wage and contract disputes between single women and their employers were not common in the first decade of settlement. The first example of a *Masters and Servants* dispute involving a single woman in the colony is T.C. Bray's 1846 charge of desertion against Mary Watkins, mentioned above. Watkins had been engaged by the Brays' as soon as she arrived in the colony; however, her friends had given her 'a very bad account of the place', causing her to break the agreement.[66] As a result, Watkins was found guilty of 'dishonesty' and sentenced to one week's imprisonment, a decision which caused her father to promise to 'pay any amount sooner than his daughter should lose her character by going to prison'.[67]

The earliest example of a single woman charging her employer with breach of contract was Lydia Stern's successful lawsuit against Reverend Samuel Allom for £2 5s. 6d. wages owed to her in 1854, almost ten years after Bray v. Watkins.[68] It must be noted that both of these cases are outliers, with the vast majority of South Australian breach of contract

[63] 'Police Court—Port Adelaide', *The South Australian Advertiser*, 27 March 1863, p.3.
[64] 'Police Courts', *Adelaide Observer*, 11 July 1863, p.4.
[65] 'Police Court—Port Adelaide', *The South Australian Advertiser*, 27 March 1863, p.3.
[66] 'Law and Police Courts', *Adelaide Observer*, 16 May 1846, p.3.
[67] Ibid.
[68] 'Civil Side', *South Australian Free Press*, 11 March 1854, p.2.

cases brought in the mid-to-late-1870s. In his research on domestic service in Australia, Higman discovered that breach of contract cases became far less common after the 1870s, demonstrating that, in this respect, South Australian proceedings reflected those in the neighbouring colonies—though Higman did not account for this periodisation.[69]

Another potential reason for the dearth of employer-employee court cases in the early decades of South Australian settlement is the exclusion of female servants from the 1847 *Masters and Servants Act*, which specified "Masters" as encompassing both male and female employers, but defined "Servants" only as 'Agricultural and other Labourers, and Workmen, Shepherds, Stockmen, Artizans, Miners, and other Male Servants'.[70] According to both Jones and Gothard, this exclusion was intended to prevent women from being imprisoned under the Act, after the widespread outcry following the imprisonment Mary Watkins in 1846—which the *Adelaide Observer* described as a 'disgrace to any civilized country'.[71] No matter colonial authorities' intentions, however, women's exclusion from the Act left female servants with no legal grounds on which to sue their employers for unpaid wages, leaving them entirely 'dependent on the whim[s] of the[ir] employer for payment of wages'.[72] This exclusion wasn't rectified until 1849, when an amendment extended the Act to 'include all female as well as male servants'.[73]

Contract and wage disputes from this period show employers' very clear sense of entitlement, expecting servants to acquiesce to their every demand even outside the requirements of their contracts. For example, in 1854 Mercy Henly sued Mr and Mrs Hayes for £2 8s. unpaid wages. Henly deposed that she had worked five Sundays in a row, despite her employment contract allowing her to take every second Sunday off work—causing her to go out on the next Sunday despite Mrs Hayes' warning that 'if she did go out on that day she would not be allowed to return'.[74] Upon Henly's return that evening she was forbidden from entering the house and the Hayes' withheld that month's wages, forcing Henly to bring the case to court, where the judge reprimanded her for leaving without notice and only required

[69] Higman, *Domestic Service in Australia*, p.253.
[70] *Masters and Servants Act 1847*, p.8.
[71] Jones, *In Her Own Name*, p.52; Gothard, *Blue China*, p.197; 'Law and Police Courts', *Adelaide Observer*, 16 May 1846, p.3.
[72] Higman, *Domestic Service in Australia*, p.175.
[73] *Masters and Servants Amendment Act 1849* (SA), p.2.
[74] 'Police Court—Adelaide', *Adelaide Times*, 8 February 1854, p.4.

the Hayes' to pay half of the wages owed—despite having been the first to breach their contract terms.[75]

In another instance, William King admitted to withholding £1 10s. from his servant Ada Bayly in the hope that forcing her to bring the dispute to court would cause her 'some little trouble' after she had spoken to his wife with a level of rudeness which he believed was 'uncalled for, and had, he felt certain, never been equalled or surpassed by servants to their mistresses'.[76] The court ruled in favour of Bayly, though King was not reprimanded for wasting the court's time simply to punish his former servant for a perceived slight. If a servant had come to court to seek petty revenge on their master, the scenario would likely have ended very differently.

Employers accused of withholding wages were usually ordered to pay their servants at least some of the money owed, with only three of the wage disputes considered in this chapter dismissed entirely. However, underpaid servants were rarely awarded additional damages, and their employer rarely had to cover their court fees. Ten of the seventeen servants charged with absconding from service were also required to pay their employers' court costs, while only six of the eighteen employers charged with under-paying their employees were required to do the same. This means that, despite the disparity in their incomes, employers were almost twice as likely to have their court fees covered than servants. Employers also faced significantly lower penalties for breaching employment agreements, with Higman reporting that employers who breached *Masters and Servants* regulations were only 'subject to civil penalties' such as fines and renumerated wages, while servants faced prison sentences for the same offences.[77]

In addition to being subject to lighter punishments, employers' testimony was also afforded more credibility in court. For example, in August 1871 Jane Chenhalls sued J. Claude for failing to follow through on an offer of employment. Her charge was dismissed because there was no written contract, nor sufficient evidence to prove a verbal agreement; however, in September of the same year Chenhalls successfully sued Claude for the cost of a

[75] 'Police Court—Adelaide', *Adelaide Times*, 8 February 1854, p.4.
[76] 'Law Courts', *The South Australian Advertiser*, 22 May 1875, p.3.
[77] Higman, *Domestic Service in Australia*, p.175.

sewing machine of hers 'which had been detained', presumably in his home.[78] The court ruled in Chenhall's favour and ordered Claude to pay the cost of the sewing machine.[79] This ruling is strange in the context of Chenhall's original charge, as it is unclear why Chenhall's possessions would be in Claude's home if she was not living there. This case supports the suggestion made earlier, that verbal contracts worked heavily in favour of the employer, whom the court was inclined to award the benefit of the doubt.

In counterpoint to Chenhalls v. Claude is the charge of R.C. Mitton against Ellen Lloyd, in the same year, for 'neglecting to enter' his wife's service as agreed, instead returning to her previous employer and leaving the Mittons' without a servant.[80] The agreement between Mitton and Lloyd was also verbal and, as with the previous case, the court ruled in favour of the employer. Before passing the verdict for 5s. and costs, Police Magistrate Beddome warned Lloyd that failing to adhere to an employment agreement could carry a sentence of three months' imprisonment, a punishment which was not enforceable on employers.[81] The 1863 *Masters and Servants Act,* which was in effect at this time, did not specify a penalty for those who rescinded offers of employment prior to the agreed date as Claude had. The 1863 Act did, however, threaten a fine of up to £20 for any person who 'unlawfully' employed a servant 'already employed or under contract to serve any other person', though there is no evidence of this charge being brought against Lloyd's former employers—suggesting that Mitton only sought to punish Lloyd, rather than recover any pecuniary loss.[82]

Reflecting this idea, Higman suggests that servant-employer court cases were often based more on 'inter-personal relations…than…simple failure to perform work'.[83] Just as some servants were accused of bringing charges against their employers for revenge or monetary gain, so too did some employers bring their servants to court as a method of punishing unsatisfactory, though not illegal, behaviour. One such example is the charge of absconding brought by Duncan Moodie against his servant Mary Skinner in February 1875, for which Skinner was fined 10s. and ordered to pay £1 7s. court costs.[84] Though other examples

[78] 'Local Courts' *South Australian Register*, 18 August 1871, p.3; 'Local Courts', *South Australian Register*, 28 September 1871, p.3.
[79] Ibid.
[80] 'Law and Criminal Courts', *Evening Journal*, 22 December 1871, p.2.
[81] Ibid.
[82] *Masters and Servants Act 1863*, p.32.
[83] Higman, *Domestic Service in Australia*, p.255.
[84] 'Police Court—Adelaide', *The Express and Telegraph*, 23 February 1875, p.2.

discussed in this chapter demonstrate that such an infraction was grounds for dismissal, Moodie kept Skinner in his employ only to charge her with absconding again in December 1876, February 1878, and June 1878.[85] If Moodie were truly unhappy with Skinner's behaviour he could have terminated her employment with no repercussions; however, he instead brought her repeatedly to court to publicly punish her whilst refusing to end her contract. Cases such as this, and many others discussed in this section, demonstrate the effectiveness with which employers were able to utilise the *Masters and Servants Acts* for their own gain, and as a method of legally, and publicly, punishing their employees for seemingly petty disputes which should not have required the intervention of the court.

Larceny by a Servant

In the nineteenth century, one of the most serious crimes a servant could commit against their employer was theft. Next to breaches of contract, theft was the most common charge levied against single female domestic servants by their employers, with this chapter considering 16 such charges [see Appendix 2]. The primary reason that larceny by a servant was treated so seriously, Higman explains, is because live-in servants were seen as 'the first line of defence against burglars'—a belief which saw servants trusted as 'protectors… [of] family treasure', rather than threats.[86] In 1849, South Australian Police Commissioner George Dashwood actually condemned settlers who left their houses completely empty of people, suggesting that the absence of a home's occupants served as an 'inducement' for thieves and rendered 'the exertions of the police for the *prevention* of crime almost useless'.[87] This criticism encouraged colonists to have someone in their homes at all times and, with much of middle-class respectability relying on public outings and social visits, colonists would have preferred this role to be filled by a live-in servant than a family member. Supporting this idea is Higman's reference to a Hobart settler named Mary Morton Allport, who recorded that some of her friends had turned down a dinner invitation because '"they [had] no servants, and dare not leave the house"' lest they become the victims of thieves.[88] This practice contrasted with British norms at the time, where Firth suggests that most servants returning to their own

[85] 'Law and Criminal Courts', *South Australian Register*, 29 December 1876, p.3.
[86] Higman, *Domestic Service in Australia*, p.253-254.
[87] *Report of Police Commissioner, for Quarter Ended June 30, 1849*, 30 July 1849, p.5, CO13/63, AJCP, NLA: Canberra, p.259.
[88] Higman, *Domestic Service in Australia*, p.254.

homes on completion of their daily duties, with live-in domestics generally only employed in 'high-status households'.[89]

This portrayal of servants as safeguards for the home meant that servants who broke this trust were treated harshly. In the 1864 case of Warr v. Dodd, discussed later, Justice Boothby claimed that 'theft by a servant was a much graver offence than by another person', because it was a servant's 'special duty' to protect their master's property.[90] Stealing that property was therefore, he declared, 'a most grave breach of trust'.[91] Comparatively, refusal to pay a servant's wages was not, at this time, considered to be theft, no matter how much was owed or how little justification the employed had to withhold wages.

In colonial South Australia the seriousness of theft by a servant was not an unspoken rule, but something which was legally enforced. The 1859 *Larceny Act* mandated that larceny by a servant was a felony offence with a maximum penalty of eight years imprisonment with hard labour or solitary confinement.[92] This punishment was reiterated in the 1876 *Criminal Law Consolidation Act*, marking larceny by a servant as distinct from regular larceny for most of the period covered in this thesis.[93] There is no evidence to suggest that a female servant ever received this full sentence; however, the severity of this penalty demonstrates how seriously colonial authorities perceived this crime. Despite the risk associated with thieving from an employer, larceny by a servant was a relatively common crime in colonial South Australia, with 42 such cases convicted in the Supreme Court of South Australia between 1850 and 1856, only 22 fewer than regular larceny.[94]

Though larceny by a servant was generally lambasted, not all servants who stole from their employers were treated the same, and there were a variety of factors which saw some servants treated with more or less lenience than their peers. Unsurprisingly, those with previous convictions were more likely to receive harsh penalties than first offenders. This is evident when comparing the 1875 case of Elizabeth Strauss, convicted of stealing £4 14s.

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[89] JF Field, 'Domestic service, gender, and wages in rural England, c.1700-1860', *Economic History Review*, vol.66, no.1, 2013, p.267.
[90] 'Law and Criminal Courts', *The South Australian Advertiser*, 7 December 1864, p.3.
[91] Ibid.
[92] *Larceny Act 1859* (SA), p.35.
[93] *Criminal Law Consolidation Act 1876* (SA), p.39.
[94] 'Comparative return of the number of offenders convicted in the Supreme Court of criminal jurisdiction in South Australia during the years 1850, to 1856, inclusive', in *Statistics of South Australia, for 1856*, 15 October 1857, no.25, p.20, CO13/96, AJCP, NLA: Canberra, p.94.

worth of belongings from her employer Robert Evans, with the 1876 case of Agnes Sinclair, convicted of stealing 16s. 6d. of clothing and drapery from her employer Alfred Hammond.[95] Strauss pled guilty and was sentenced to three months hard labour, while Sinclair was sentenced to six months hard labour. [96] Though items stolen by Sinclair were worth significantly less than those stolen by Strauss, this was Sinclair's third conviction, with newspaper records showing she had been sentenced to two months hard labour for the same crime in both 1873 and 1874.[97]

Colonial authorities sometimes assumed that female servants were repeat offenders based on nothing more than arbitrary speculation. For example, in 1855, Catherine Johnson was indicted for stealing a brooch from her employer John Ramsay, and various other items and approximately £4 in cash from her fellow servant Jesse Stewart.[98] Johnson had been in South Australia for five months, and in his summary of the case Justice Boothby lamented the apparent prevalence of young immigrants turning to crime shortly after their arrival in the colony, claiming that it showed ingratitude towards 'the community to which they were so deeply indebted'.[99] Despite Johnson's denials, Boothby was convinced that this was not her first offence, and accused her of 'repeating here what she had practised in England'.[100] He sentenced Johnson to two years' hard labour despite having no proof that this was not her first offence. Contrasting this is the 1865 case of Rosa Shiels, who was convicted of stealing £34 from John Robertson (not her employer) and received only one year's hard labour.

The outcome of Ramsay v. Johnson was not an isolated occurrence. In 1864, Eliza Warr was also sentenced to two years hard labour for stealing a £20 bank note from her former employer, Thomas Dodd. Though he had brought her to court for the theft, Dodd asked Boothby to show lenience towards Warr because he had had 'previously found her an honest and good servant'.[101] Boothby was not swayed, pointing out that Warr had only been in the colony for nine months and reiterating his point from Ramsay v. Johnson that it was

[95] 'Police Court—Adelaide', *The Express and Telegraph*, 13 October 1875, p.2; 'Law and Criminal Courts', *Evening Journal*, 20 March 1876, p.2.
[96] Ibid.
[97] 'Police Court—Adelaide', *South Australian Chronicle and Weekly Mail*, 25 March 1876, p.10; ''Law and Criminal Courts', *Evening Journal*, 6 May 1873, p.2; 'Police Court—Adelaide', *The South Australian Advertiser*, 16 April 1874, p.3.
[98] 'Law and Police Courts', *Adelaide Times*, 28 May 1855, p.3.
[99] 'Supreme Court—Criminal Side', *Adelaide Observer*, 2 June 1855, p.3.
[100] Ibid.
[101] 'Law and Criminal Courts', *The South Australian Advertiser*, 7 December 1864, p.3.

'his duty to give severe punishment' to colonists who turned to crime so quickly after their arrival.[102] As with Johnson, Boothby believed that Warr's actions in South Australia suggested a history of unconvicted criminality in England and wanted her case to serve as 'a warning to all other servants newly arrived in the colony'—despite the unlikelihood of newly arrived servants having any knowledge of court cases tried before their arrival—sentencing her to two years' hard labour.[103]

The 1875 case of Annie White suggests that this practice of higher sentences for servants who had been in the colony for a short period of time may have been exclusive to Boothby or was an idea which diminished in importance as concerns over Britain using the colonies as a dumping ground for their worst citizens waned. White was charged with stealing various crockery items (valued at £3 5s.) from her employer Clara Lindrum.[104] She had only been in South Australia for a few days before she was arrested, and she had only been in the Lindrum's employ for 24 hours.[105] Despite the precedent set in the Johnson and Warr cases, White was only sentenced to two months imprisonment.[106]

Comparisons such as this demonstrate the fickle nature of the colonial courtroom, where different defendants often received vastly different sentences for seemingly identical crimes. For example, in 1859 Sarah Ann Wright was convicted of stealing a wedding ring (valued at £1) from her employer Margaret Diamond. Wright claimed to have found the ring in the garden shed and, not knowing who it belonged to, put it in her pocket for safe keeping and forgot about it.[107] In a very similar case brought in 1876, Ellen Roach was accused of stealing a gold ring (valued at £5) from her employer William Begg.[108] Roach left Begg's employ after only two days and when police confronted her about the ring she claimed to have found it on the floor and forgotten to return it before she left.[109] Both Wright and Roach pleaded not-guilty to theft, and the only noticeable difference in the records of their trials was the fact that Roach was reported as 'crying bitterly in court'. [110] It would be reasonable to assume that, between these two cases, Roach would receive the harsher penalty as the ring

[102] 'Law and Criminal Courts', *The South Australian Advertiser*, 7 December 1864, p.3.
[103] Ibid.
[104] 'Police Court—Adelaide', *The Express and Telegraph*, 31 December 1875, p.2.
[105] 'General News', *The Express and Telegraph*, 31 December 1875, p.2.
[106] 'Police Court—Adelaide', *The Express and Telegraph*, 31 December 1875, p.2.
[107] 'Police Court—Adelaide', *The South Australian Advertiser*, 19 October 1859, p.3.
[108] 'Police Court—Port Adelaide', *The South Australian Advertiser*, 25 April 1876, p.6.
[109] Ibid.
[110] Ibid.

she was accused of stealing was more expensive and she had absconded from her service without notice. However, Roach was simply warned to watch her future behaviour and 'imprisoned until the rising of the court', while Wright was sentenced to three weeks solitary confinement in addition to the two months she had already spent in gaol, having not been offered bail before the trial.[111] The different verdicts in these two cases demonstrate that there was no real criteria for convicting cases of larceny by a servant, with the final verdict dependent on the whims of that day's judge and jury.

Physical Assault of a Servant

The homes of their employers were not always safe for female servants. They were not only expected to act as the 'first line of defence' against home-intruders, but were also frequently exposed, more so than perhaps any other demographic of white settler, to verbal, physical and sexual violence at the hands of their employers. In her recounting of oral histories from the southern regions of South Australia, Fay Gale wrote that many Aboriginal women who were engaged in service in white households in the early 1900s 'became little more than slaves'.[112] Many worked long hours and suffered horrific physical and sexual abuse which went largely unreported and unpunished.[113] It is likely that Aboriginal women who worked as domestic servants in the nineteenth century faced similar, and probably worse, treatment while working in white households. The rarity of court cases brought by female Aboriginal servants in colonial South Australia, discussed below, makes the extent of their mistreatment difficult to assess, though this chapter utilises the available newspaper court reports to highlight the small number of court cases which included the evidence of Aboriginal servants.

While the most common court proceedings brought against female domestic servants were largely material—relating to either wages or property—charges brought against employers were typically of a more violent nature. According to the 1859 *Personal Offences Act*, employers who physically assaulted a servant to the extent of endangering life or causing permanent injury were guilty of a misdemeanour and faced a maximum sentence of three

[111] 'Police Court—Port Adelaide', *The South Australian Advertiser*, 25 April 1876, p.6; 'Law and Criminal Courts', *The South Australian Advertiser*, 6 December 1859, p.3.
[112] F Gale, 'Roles revisited: The women of southern South Australia', in P Brock (ed.), *Women, Rites and Sites: Aboriginal Women's Cultural Knowledge*, Sydney: Allen & Unwin, 1989, np.
[113] Ibid.

years imprisonment with or without hard labour.[114] This penalty was reiterated in the 1876 *Criminal Law Consolidation Act*.[115] This punishment seems paltry when considering that the same Acts labelled larceny by a servant as a felony with a maximum sentence of eight years imprisonment.[116] It seems even less effective when considering that, of the eight cases of (non-sexual) physical violence considered in this chapter [see Table 2], the only case which ended with a verdict harsher than a small fine was the death penalty received by Malachi Martin for murdering Jane MacManamin. Aside from this, the harshest penalty imposed for assaulting a female servant was a £3 fine levied on Herbert Leater for hitting his servant Anne Norrie in the back with a hot frying pan.[117]

Table 2: Assault Against a (Single) Female Servant in South Australia, 1836-1880

Year	Plaintiff	Defendant	Charge	Verdict
1846	Mary Ann Chisdale	Philip Lee	Pushed, struck and shook her violently	Fined £1
1852	Harriet Harris	James Ferdinand Schmidt	Hit, kicked, and threatened to break her neck	Fined £1
1855	Mary Smith	Daniel Fisher	Pushed from the house and assaulted	Fined 5s.
1856	Miss Biggens	Mr Victor	Struck during a 'scuffle'	Fined 5s.
1857	Julia Cassidy	Mary Dickenson	Hit over head with candlestick	Dismissed
1858	Anne Norrie	Herbert Leater	Hit in the back with a hot frying pan	Fined £3
1862	Jane MacManamin	Malachi Martin	Murder (beaten to death)	Death penalty
1875	Margaret Wallace	Mary Wells	Slapped in the face	Fined 1s.

[114] *Personal Offences Act 1859*, p.97.
[115] *Criminal Law Consolidation Act 1876*, p.8.
[116] Ibid, p.39.
[117] 'Local Courts', *South Australian Register*, 13 March 1858, p.3.

The murder of Jane MacManamin by Malachi Martin in 1862 was, by far, the most serious charge brought against an employer on behalf of a female servant in colonial South Australia. This case is also the most thoroughly researched case study in this chapter, being the subject of articles published by Ann White and Gary Robinson in 1995 and 2015 respectively.[118] Jane MacManamin had been working at the Salt Creek Inn, current proprietors Malachi and Catherine Martin, for several years before disappearing under mysterious circumstances in April 1862. When nearby residents questioned MacManamin's whereabouts Martin gave conflicting statements which aroused some suspicion and, according to an article in the *South Australian Register*, the discovery of MacManamin's body three months later 'excited serious suspicion'.[119] Her body was discovered by an Aboriginal man named Itawanie (alias "Jockey"), partially buried in a wombat hole approximately half a mile from the Salt Creek Inn.[120] After a lengthy investigation, Martin, was convicted of her murder and sentenced to die by hanging at the Adelaide Gaol on the 24th of December 1862.[121] A German man named William Wilsen, who claimed to have been engaged to MacManamin, was charged as an accessory after the fact and sentenced to four years hard labour.[122]

For the purposes of this thesis, the severity of Martin's sentence is not the most significant aspect of this case. The criteria of the 1859 *Personal Offences Act* discussed earlier shows that, if Martin's assault of MacManamin had resulted in grievous bodily harm rather than death, no matter his intent, he would have faced a maximum sentence of three years imprisonment instead of the death penalty.[123] Therefore, this chapter argues that the death sentence passed on Martin did not result from concern over the welfare of female servants living with violent employers, but rather from the idealisation of murdered women. This idealisation is evident in the way that MacManamin was posthumously portrayed in

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[118] A White, 'The servant's wages: Malacky Martin and the Salt Creek murder', *Journal of the Historical Society of South Australia*, no.23, 1995, pp.36-50; G Robinson, 'The Salt Creek murders: violence and resilience in early South Australian settlement', *Journal of the Historical Society of South Australia*, no.43, 2015, pp.53-68.
[119] 'Murder at the Salt Creek', *South Australian Register*, 4 June 1862, p.2. During the course of the investigation of MacManamin's disappearance, the police officer in charge of the case also renewed his suspicion that Martin was responsible for the disappearance and murder of the previous proprietor of the Salt Creek Inn, William Robinson in May 1856. Martin had allegedly been having an affair with Robinson's wife Catherine, whom he later married.
[120] White, 'The servant's wages', p.42.
[121] 'Execution of Malachi Martin for the Murder at Salt Creek', *South Australian Register*, 26 December 1862, p.2.
[122] 'Law and Criminal Courts, *South Australian Register*, 4 December 1862, p.3.
[123] *Personal Offences Act 1859*, p.97.

court and the colonial media—in a manner far kinder than the portrayal of any living female servant who came before the colonial courts. No media sources printed a single negative word about MacManamin, and Martin's lawyer never attempted to impugn her character to justify his violence, despite this being the most popular legal justification for assaulting a servant at this time. Almost 70 years later, in 1931, a Renmark newspaper published a sensationalised article on the murder which did not refer to MacManamin by name, but which described her as 'a dark-haired English girl of rare beauty, and above reproach'.[124] In contrast, newspaper reports of MacManamin's murder trial described her as a 35-years-old Irish woman.[125] Various witness statements also reported that she was missing some teeth, had greying hair, large hands and feet, and teeth which 'projected in a peculiar manner from the under jaw'.[126] None of these reports align with this posthumous remembrance of MacManamin, suggesting that the colonial media was inclined to direct more empathy towards McManamin after her death, when she could not benefit from it, than towards living female servants who were at risk of mistreatment.

Figure 1: Headstone of Jane MacManamin's grave

Epitaph reading:
IN MEMOREY [sic] OF JANE MACMANMIN BRUTALLY MURDERED BY MALACHI MARTIN ON THE 1-2-1862 AT SALT CREEK AGED 29 YEARS FOREVER REST IN PEACE[127]

[124] 'The Murder at Salt Creek', *Murray Pioneer and Australian River Record*, p.7.
[125] 'The Murder at the Salt Creek', *South Australian Register*, 6 June 1862, p.2.
[126] 'The Murder at Salt Creek', *Adelaide Observer*, 7 June 1862, p.8; 'Supreme Court—Criminal Side', *Adelaide Observer*, 6 December 1862, p.3.
[127] Flinders Ranges Research, *Lone Graves*, 'Woods Well Lone Grave', https://www.southaustralianhistory.com.au/woodswell.htm. Reproduced with permission.

Though there is no evidence of other cases of outright murder, assaults of female domestic servants were relatively common in colonial South Australia, though most of these charges were brought in the 1850s—with only two of the eight cases considered in this chapter brought after 1860, suggesting that the practice of physically punishing female servants reduced over time. The cases which were brought demonstrate that the colonial court did not consider servant-assault as a crime deserving of harsh punishment. This is likely due to South Australia's close emulation of Britain, where Dussart suggests that 'an employer's right to "discipline" and "chastise"' their servants was 'legally endorsed' in court, if not enshrined in law.[128] In 1857, Julia Cassidy charged her employer Mary Dickenson with hitting her over the head with a candlestick, causing a 'very evident' wound.[129] Dickenson counter-argued that she found Cassidy sitting on the knee of Mr Bunn, with whom Dickenson had been living 'as man and wife' for two and a half years, and 'doing what the commonest girl in Adelaide would do', implying that the position was sexual.[130]

This fear of a husband, or in this case *de facto* partner, conducting an affair with a female servant was common in the nineteenth century, with Higman suggesting that 'not all servants resisted the sexual advances of employers', with some likely using such relationships to encourage gifts or improve their station through marriage.[131] In her research on domestic service and illegitimacy in nineteenth century Australia, Swain discovered that some female servants successfully disrupted the marital relationship between male employers and their wives—'displac[ing] their mistresses' to become the lady of the house.[132] Fear of such an occurrence was clearly present in Dickenson's mind, with her testimony implying that Bunn was the passive recipient of Cassidy's seduction. This was a common opinion expressed when relationships between married employers and female servants were exposed, with Higman suggesting that the servant was 'consistently constructed as harlot, the cause of all the trouble', while male employers were often relieved of all blame.[133] This portrayal contrasts sharply with breach of promise charges mentioned in chapter two, and seduction charges discussed in chapters four and six, where the male 'seducer' was blamed for the sexual relationship which emerged between himself and the female complainant. This

[128] Dussart, '"Strictly legal means"', p.158.
[129] 'Law and Police Courts', *Adelaide Times*, 5 August 1857, p.3.
[130] Ibid.
[131] Higman, *Domestic Service in Australia*, p.249.
[132] Swain, 'Maids and mothers', p.465.
[133] Higman, *Domestic Service in Australia*, p.248.

contrast further demonstrates the distinction which South Australian courts made between charges involving servants and employers and those involving single women and those who held no legal authority over them.

Though consensual relationships between male employers and female servants did exist, Cassidy insisted that she had not been sitting on Bunn's lap willingly—claiming that he had pulled her down against her will.[134] She also noted two previous occasions where Bunn had to be 'pulled from under her bed' after she found him hiding there without her consent.[135] Cassidy's description of Bunn's unwanted advances were common for female servants at this time, with Higman alleging that domestic servants faced many forms of sexual harassment from male employers, servants and houseguests, including unwanted physical contact.[136] He also suggests that some male employers 'entered the rooms and beds of their servants, uninvited', as Cassidy had accused Bunn of doing.[137] When it came time for the final hearing for this case Cassidy did not appear, and her charge was consequently dismissed. [138] It is difficult to determine how this case would have ended, with the potential for convincing arguments on both sides; however, considering the verdicts in other cases of servant-assault discussed below, it is unlikely that the court would have ruled in Cassidy's favour.

Sometimes, evidence of the physical assault of a female servant emerged in unrelated court cases, such as in the four previously mentioned cases of absconding brought by Duncan Moodie against his servant Mary Skinner. Moodie and Skinner's frequent disputes came to a head in July 1878, when Moodie charged Skinner with absconding for the fourth time. In defence, Skinner testified that Moodie had beaten her 'with a twisted Italian cane…half as thick as [her] wrist' and ordered his wife to cut off Skinner's hair while he held her down.[139] Two days later, he also 'struck her with a stick…and…kicked her three or four times', causing her to flee for her safety.[140] Moodie did not deny Skinner's accusations, instead attempting to justify his actions by claiming that Skinner's mother had given him permission to 'do anything to keep the girl off the streets'.[141]

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[134] 'Law and Police Courts', *Adelaide Times*, 5 August 1857, p.3.
[135] Ibid.
[136] Higman, *Domestic Service in Australia*, p.250.
[137] Ibid.
[138] 'Local Courts', *Adelaide Observer*, 15 August 1857, p.4.
[139] 'Law Courts', *The Express and Telegraph*, 13 July 1878, p.2; 'Police Courts', *Adelaide Observer*, 20 July 1878, p.3
[140] Law Courts', *The Express and Telegraph*, 13 July 1878, p.2.
[141] Ibid.

Moodie's argument was not baseless, with Dussart alleging that it was common for British employers to be entrusted with 'regulating' their servants' behaviour.[142] Unfortunately for servants there was no legal definition of what constituted fair 'regulation' and courts often struggled to differentiate between what they considered to be 'legitimate physical punishment and offensive violence'.[143] This decision was not especially difficult in Moodie v. Skinner, with medical testimony describing 'very considerable bruises' which would have caused Skinner 'very considerable pain'.[144] With Skinner's mother also denying ever giving Moodie permission to beat her daughter, the court ruled that Skinner's departure was justified and the charge was dismissed.[145] There is no evidence that Skinner ever counter-charged Moodie for assault, despite the clear evidence which would have supported such a charge.

Not following through on charges, or refusing to press charges in the first place, was characteristic of female servants who were mistreated by their employers. According to Higman, evidence of employers physically and sexually assaulting their employees in colonial Australia is largely 'anecdotal' because most of it 'was hidden or denied or defined away' before the servant could even consider reporting it to the police.[146] This issue was not unique to cases of physical assault, being even more prevalent in cases of sexual abuse.

Sexual Assault

According to Swain, popular opinion in the nineteenth century painted female servants as 'loose and…sexually available'.[147] Quoting William Langer, Swain suggests that many upper-class men believed they were '"entitled to the favours of pretty girls of the lower classes"', with the most accessible being the servants who lived and worked in their homes.[148] Servants employed in households without a female mistress were especially vulnerable, as some male employers seemingly 'regarded sex as part of the employment contract'.[149] Such men, suggests Deborah Oxley, 'having seduced or raped' their servants

[142] Dussart, '"Strictly legal means"', p.158.
[143] Ibid.
[144] 'Police Courts', *Adelaide Observer*, 20 July 1878, p.3
[145] Ibid; 'Law Courts', *The Express and Telegraph*, 13 July 1878, p.2.
[146] Higman, *Domestic Service in Australia*, p.250.
[147] Swain, 'Maids and mothers', p.463.
[148] Ibid.
[149] Ibid, p.465.

were then able to take advantages of class biases to 'condemn her as a whore', placing all of the blame for the sex—consensual or otherwise—on the inherent immorality and uncontrolled sexuality of working-class women.[150] Furthermore, servants who were subjected to such treatment had little recourse by which to flee the homes of abusive masters without being sued for absconding and with no assurance that they could find another position without a reference from their previous employer.

The sexual mistreatment of servants also often took place in the employer's home, and without any impartial witnesses or physical evidence of rape female servants had no chance of proving a charge even if they were willing to risk accusing their employer in court. Many colonists and colonial authorities turned a blind eye to, or actively participated in, the sexual harassment and exploitation of female servants and, though contemporary research agrees that domestic servants experienced high rates of sexual violence, this chapter only uncovered seven charges of rape or sexual assault brought by female servants against their employers in colonial South Australia [see Table 3]. This number must barely scratch the surface of many servants' lived experiences.

According to Higman, 'brutality and rape were often linked and formed a type of "class oppression"' in colonial society.[151] This issue only worsened in the twentieth century as white women transitioned into other forms of employment and the ranks of domestic service were largely filled by Aboriginal women. Public acknowledgement of the sexual mistreatment of Aboriginal domestic servants hardly existed until around the mid-twentieth century, though there is plenty of contemporary evidence which attests to its prevalence.[152] The earliest public movement to prevent the sexual abuse of Aboriginal domestic servants in South Australia was the 1920s' 'Women Protector' campaign led by the South Australian Women's Non-Party Association.[153] However, this campaign was mostly concerned with the 'reproduction of illegitimate mixed-descent children' which resulted from white male employers' rape of

[150] Oxley, 'Convict Women', p.86.
[151] Higman, *Domestic Service in Australia*, p.250-251.
[152] Ibid, p.251. See also: Gale, 'Roles revisited', np; Haskins, 'Aboriginal domestic service as a "contact zone"', pp.13-25; S Robinson, '"We do not want one who is too old": Aboriginal child domestic servants in late 19th and early 20th century Queensland', *Aboriginal History*, vol.27, 2003, pp.162-182; V Haskins, '"Down in the gully and just outside the garden walk": White women and the sexual abuse of Aboriginal women on a colonial Australian frontier'. *History Australia*, vol.10, no.1, 2013, pp.11-34.
[153] V Haskins, 'From the centre to the city: Modernity, mobility and mixed-descent Aboriginal domestic workers from central Australia', *Women's History Review*, vol.18, no.1, 2009, p.158.

their Aboriginal servants, rather than the welfare of the women themselves.[154] The campaign also ignored other forms of abuse which Aboriginal servants experienced, including non-sexual violence from white female employers.

Table 3: Sexual Assault of an Unmarried Servant in South Australia, 1836-1880				
Year	**Plaintiff**	**Defendant**	**Charge**	**Verdict**
1849	Victoria Hulbert	James Magarey	Indecent assault	12 months' imprisonment
1856	Ann Mara	William Popham	Rape	Dismissed
1865	Emma Germain	Joseph Window	Indecent assault	1 month's imprisonment
1866	Keziah Morris	Arthur Hill Hibbart	Rape	Dismissed
1869	Agnes Blewer	William Stephen Murray	Indecent assault	12 months' imprisonment
1870	Annie Pollack	Mr Barrowmann	Indecent assault	Dismissed
1878	Eliza Jane Parsons	George William Owen	Indecent assault	Dismissed

Female servants' reluctance to report mistreatment at the hands of their employers makes it difficult to assess how their experiences of sexual violence differed from those of other colonial women. [155] However, Higman suggest that 'youth and isolation' left unmarried live-in domestic servants significantly more vulnerable to such assaults than their married counterparts, or than wealthy or self-employed women.[156] This vulnerability did not stem—as colonial authorities and media often asserted—from female servants' promiscuous behaviour, but from class divisions and the resulting power imbalance between female domestic servants

[154] Haskins, 'From the centre to the city', p.158.
[155] Higman, *Domestic Service in Australia*, p.249.
[156] Ibid.

and their male employers. According to Judith Allen, settlers only became genuinely concerned with the 'seduction' of female servants when it resulted in servant-committed crimes such as 'infanticide, criminal abortion or prostitution'.[157] This suggests that colonial authorities were more concerned with the social repercussions of sexual assault than with the physical and emotional toll exacted from the victims—a suggestion which is clearly supported by the case studies presented in this chapter.

In 1870, Annie Pollack charged her employer Mr. Barrowman with indecent assault. Pollack testified that, when Barrowman's wife was out for the day he made her an 'indecent proposal', which she refused.[158] She claimed that he continued to behave inappropriately, putting his arm around her waist, kissing her without her consent, and taking 'liberties with her'.[159] Furthermore, she claimed that Barrowman forced his way into her room in the early hours of the morning, despite her having barricaded her door, and sexually assaulted her before she escaped to a nearby property to report the assault.[160] Barrowman's lawyer argued that Pollack's story was not credible because she did not leave immediately after the first assault—despite the precedent set in Fitzpatrick v. Ludwig that servants' fear for their physical safety was not sufficient justification to abscond from service. Barrowman's lawyer further suggested that Pollack's complaint was simply revenge for Barrowman turning her out of the house for spending too much time at the sheep-shearer's hut and 'laying herself open to be called a common prostitute'.[161] Justice Wearing agreed that Pollack's testimony was unreliable, and the jury returned a verdict of not guilty.

Sexual assault allegations were not only made by adult servants—there are multiple instances of charges being brought on the behalf of teenaged and young girls. Such cases resulted in the only three instances of employers receiving gaol sentences for assaulting their female servants in colonial South Australia. These cases were: 11-year-old Victoria Hulbert v. James Magarey for multiple counts of indecent assault in 1849, with Hulbert's wife admitting that this was the third such accusation made against her husband by a young

[157] J Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*. Oxford University Press: Melbourne, 1990, p.2-3.
[158] 'Law and Criminal Courts', *Evening Journal*, 20 April 1870, p.2.
[159] Ibid.
[160] Ibid.
[161] Ibid.

servant girl—though there is no evidence of these other charges being brought to court;[162] the 1865 charge of 15-year-old Emma Germain against Joseph Window for sneaking into her room at night and attempting to take liberties with her;[163] and finally, 16-year-old Agnes Blewer's charge against proprietor of the White Heart Hotel, William Stephen Murray, for indecently assaulting her in a bedroom behind the hotel's bar;[164] These charges ended in prison sentences of 12 months, 1 month, and 12 months respectively.

Youth was not always sufficient to achieve a conviction in such cases—a claim which is supported by the 1866 rape accusation made by 13-year-old Keziah Morris against Arthur Hill Hibbart. There are no reports detailing the particulars of Morris's testimony, with an article in the *South Australian Register* simply stating that the evidence 'was of an unusually repulsive character'.[165] The defence made no attempts to deny that Hibbart and Morris had engaged in sex; however, they argued that the sex was consensual, citing Morris' return to Hibbart's service after making her initial complaint. Hibbart's lawyer also summoned a number of character witnesses who described Morris as a 'bold and forward' untrustworthy girl, while Hibbart was 'an affectionate father and a good husband' who 'held a good moral character in the neighbourhood'.[166] This evidence supports Swain's suggestion that narratives of seduction between female servants and their employers invariably painted the servant as a 'seductress…"likely to lead astray the male members of the household"', rather than inviting sympathy for 'young women exploited by their former masters'.[167]

Hibbart's lawyer offered no explanation as to why a man with such impressive character traits would have sex, consensual or otherwise, with his teenage servant. Against the counsel of Justice Boothby, and despite expressing 'disgust at his immoral conduct', the jury acquitted Hibbart.[168] Boothby detained Hibbart after the verdict, hoping that Morris would pursue a lesser charge of indecent assault; however, the Court of Appeals ordered his release on the grounds that, having already been acquitted of rape, he could not be convicted of a lesser charge by the same accuser.[169] This case sheds light on the judge's decision to

[162] 'Police Court', *South Australian Register*, 19 December 1849, p.4; 'Law and Police Courts', *South Australian Register*, 16 March 1850, p.3; 'Law and Police Courts', *Adelaide Observer*, 16 March 1850, p.4.
[163] 'Law and Criminal Courts', *Adelaide Observer*, 13 May 1865, p.3.
[164] 'Law Courts', *South Australian Chronicle and Weekly Mail*, 4 December 1869, p.7.
[165] 'Law and Criminal Courts', *South Australian Register*, 11 May 1866, p.2.
[166] 'Supreme Court—Criminal Sittings', *South Australian Weekly Chronicle*, 19 May 1866, p.6.
[167] Swain, 'Maids and mothers', p.463.
[168] 'Supreme Court—Criminal Sittings', *South Australian Weekly Chronicle*, 19 May 1866, p.6.
[169] 'Law Courts—Supreme Court', *The Adelaide Express*, 29 My 1866, p.3.

downgrade the charge in Magarey v. Hulbert. He was doubtlessly aware that juries were more willing to convict of lesser crimes and that, once a verdict was passed, the case could not be retried except on appeal.

Male employers who sexually assaulted their servants clearly received more lenient punishments, if they were even charged at all, than men who assaulted domestic servants outside of their place of employment. For example, in 1879 Margaret Semmons, servant of Dr Mayo, charged a 'a rough-looking fellow' named Charles Miller with indecently assaulting her while she was walking in a park in North Adelaide, causing her to fight so hard to escape that she broke her parasol.[170] Miller was found guilty and sentenced to two years hard labour, which the *Evening Journal* made sure to specify was the highest possible penalty for indecent assault at the time—showing that colonial courts and media were much more willing to believe female servants' reports of assault when they were made against a stranger, rather than their employer.[171]

The Case of Ann Mara

The most famous and controversial charge of rape brought by a servant against her employer in colonial South Australia was the case of Ann Mara v. Dr William Popham. This case occupied the colonial courts and media for several weeks in 1856 and 1857, and was also reported in Victoria, New South Wales, Van Diemen's Land and Western Australia.[172] In March 1857, the Melbourne *Age* wrote that there was virtually no other news from South Australia: 'the case of Ann Mara occupies the papers, almost exclusively'.[173] Issues arising during this trial were even brought as evidence against Justice Boothby when he was famously dismissed from his position as Supreme Court Justice in 1867.

At the time of the alleged rape, Ann Mara was the only female servant in the employ of Dr Popham and his wife. She deposed that Popham had followed her to her room, thrown her on the bed and assaulted her violently—during the course of which she fainted and awoke to

[170] 'Police Courts', *Adelaide Observer*, 1 February 1879, p.2.
[171] 'Law and Criminal Courts', *Evening Journal*, 21 March 1879, p.2.
[172] See 'South Australia', *The Age*, 9 March 1857, p.5; 'South Australia', *Illawarra Mercury*, 6 April 1857, p.3; 'South Australia', *The Courier*, 7 March 1857, p.2; and South Australia', *The Inquirer and Personal News*, 22 April 1857, p.2.
[173] 'South Australia', *The Age*, 9 March 1857, p.5.

find herself, in her own words, 'quite different to what [she] was before'.[174] Mara claimed that because she had passed out she was unable to scream for help, and that she did not feel comfortable immediately reporting the rape to the first woman she saw, as the only other woman on the property was Popham's wife.[175] She did report the rape to the first woman she saw after leaving the property two days later, who promptly encouraged her to see a doctor and lay a complaint with the police.[176] While medical evidence in rape trials has been proven by contemporary research to be frequently unreliable and useful only for discrediting rape survivors who do not bear serious physical injuries, the medical examiner in this case was certain that Mara's physical injuries had not resulted from a consensual sexual encounter.[177] Based on this evidence, the case was swiftly referred to the Supreme Court alongside Popham's countersuit against Mara for perjury and laying a false charge.

Until this point, the Mara v. Popham case was proceeding as expected; however, it quickly deviated from standard legal protocol when Justice Boothby demanded to hear the perjury charge before the rape charge, despite common practise dictating that cases be heard in the order which they were brought before the court.[178] This decision caused some confusion, both in the court and the newspapers, with one article wondering how a jury could fairly convict Mara of perjury before Popham had been officially acquitted of rape.[179] During the perjury trial, Popham's legal defence admitted that the medical evidence suggested Mara had been raped, but insisted that there 'was not a shadow' of evidence to implicate Popham in the crime—implying that Mara had been raped by someone else but had chosen to place the blame on Popham, possibly as a form of revenge or attempted extortion.[180] Popham's lawyer also argued the 'atrocity' of fixing 'a false charge on a married man…the father of a family', the same argument which was used so successfully in Morris v. Hibbart—appealing for the court to see Mara, and not Popham, as the villain.[181]

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[174] 'Police Court—Adelaide', *Adelaide Times*, 19 December 1856, p.3.
[175] 'Police Courts', *South Australian Register*, 19 December 1856, p.3.
[176] Ibid.
[177] 'Police Courts', *South Australian Register*, 19 December 1856, p.3. For research on the unreliability of medical evidence in rape trials, see: J Temkin, 'Prosecuting and defending rape: Perspectives from the bar', *Journal of Law and Society*, vol.27, no.2, 2000, p.224; L Ellison and VE Munroe, 'Turning mirrors into windows? Assessing the impact of (mock) juror education in rape trials', *British Journal of Criminology*, vol.49, 2009, pp.363-383; J Quilter, 'Rape trials, medical texts and the threat of female speech: The perverse female rape complainant', *Law Text Culture*, vol.19, 2016, p.239. For further discussion on the use of medical evidence (or the lack thereof) to discredit colonial South Australian rape complainants, see chapter 7.
[178] 'Law and Police Courts', *Adelaide Times*, 13 February 1857, p.3.
[179] 'Judicial Perversity', *South Australian Register*, 23 February 1857, p.2.
[180] 'Law and Criminal Courts', *South Australian Register*, 21 February 1857, p.3.
[181] 'Law and Police Courts', *Adelaide Times*, 21 February 1857, p.3.

The entire perjury trial was interspersed with comments by Boothby which demonstrated thinly disguised support for Popham and a clear, though unexplained, mistrust of Mara. When summing up the case, Boothby urged the jury to ignore Mara's lawyer's argument that she had no reason to bring a false charge against Popham, claiming that it was 'not necessary' to ascertain a specific motive because it was common for women to consent to sex in the moment, but 'repent the loss of character…the moment that her passion was gratified' and make a false charge of rape in order to save face.[182] This statement ignored the medical evidence of sexual violence, as well as Popham's own insistence that no intercourse, consensual or otherwise, had ever taken place between himself and Mara.[183] Boothby's argument of a regretted consensual sexual encounter was at odds with the evidence presented on both sides of the case, and was therefore clearly aimed at disparaging Mara's character and influencing the jury in Popham's favour. In this instance, his influence was ineffective and the jury returned a verdict of not guilty, causing the 'long pent-up feelings of a crowded Court to burst forth in different directions in sounds of approval', with two men consequently being charged with contempt of court.[184]

The Mara v. Popham rape trial began the next day, and despite the hype which had built up around the case, the trial lasted only a few hours. As the plaintiff, Mara's testimony was the first evidence heard. However, Boothby interrupted her mid-statement to reprimand her lawyer for pursuing the case against his direction and wasting everyone's time.[185] He asked the jurors a double-edged question: 'are you dissatisfied with this woman's evidence? Do you wish this case to go on?' and, when they responded in the negative, he labelled Mara a perjured woman, questioning how any 'intelligent jury' could have ruled otherwise.[186] Without hearing the rest of the evidence or calling for a verdict from the jury, Boothby declared Popham innocent and allowed him to leave court with his 'character unscathed', further claiming the case's dismissal was an act of mercy on his part to prevent Mara from perjuring herself further.[187] When some jurors argued that they had only wanted to move to the next witness, not to end the trial altogether, Boothby blamed them for the

[182] 'Law and Criminal Courts', *South Australian Register*, 21 February 1857, p.3.
[183] 'Law and Police Courts', *Adelaide Times*, 23 February1857, p.3.
[184] 'Law and Criminal Courts', *South Australian Register*, 21 February 1857, p.3.
[185] 'Law and Criminal Courts', *South Australian Register*, 23 February 1857, p.3.
[186] 'Law and Police Courts', *Adelaide Times*, 23 February 1857, p.3.
[187] 'Law and Criminal Courts', *South Australian Register*, 23 February 1857, p.3.

miscommunication and said it did not matter, as he would have dispensed with the case regardless of their wishes.[188]

The Mara v. Popham verdict triggered widespread outcry among South Australian settlers and media sources. The *Adelaide Observer* published an article labelling Boothby's intervention a 'judicial perversity', while another labelled Mara 'a woman victimized under the name of law' who had been 'grievously prejudiced' throughout the trial.[189] This case shows, perhaps better than any other, just how blatantly colonial authorities were able to favour wealthy male employers over their female servants. Boothby even faced some small support in the media, with an article in the *Adelaide Times* suggesting that, though he had acted impulsively, it was unlikely that a different verdict would have been passed if the trial had run its full course, as the charge rested solely on the 'testimony of Ann Mara'.[190] Despite this small support, the majority of media and public support was firmly against Boothby; however, this discontent was mostly directed towards his disparagement of the juries in both trials rather than his impartiality as a judge.[191]

Such concerns were renewed in later complaints against Boothby's conduct. For example, an 1866 letter from South Australian Attorney General James Boucaut detailing Boothby's past misconduct to Governor Dominick Daly, wrote that Boothby's description of Mara as a perjured woman 'not only reflected on the woman who had been acquitted…but was directly painful and offensive to the jury who had acquitted her'.[192] This emphasis on the feelings of the jury members—who experienced no long-term effects from Boothby's rebuke—shows that concern over Boothby's behaviour did not relate to his treatment of Mara, but to the apparent insult passed on these 'respectable' male jury members. This further demonstrates colonial courtrooms' protection of middle-class male sensibilities over the physical and mental wellbeing of female servants.[193]

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[188] 'Law and Criminal Courts', *South Australian Register*, 23 February 1857, p.3.
[189] 'Judicial Perversity', *Adelaide Observer*, 28 February 1857, p.6; 'The Case of Ann Mara', *Adelaide Observer*, 28 February 1857, p.6.
[190] 'The Acting Chief Justice', *Adelaide Times*, 2 April 1857, p.2.
[191] Two examples of this emphasis on the juries' feelings include: 'The Case of Ann Mara', *South Australian Register*, 23 February 1857, p.2; and 'Trial by Jury', *South Australian Register*, 25 February 1857, p.2.
[192] *South Australia: Proceedings of the Supreme Court*, 26 December 1866, GRG2/46, unit 2, item 8, State Records of South Australia: Adelaide.
[193] Women were not permitted to act as jurors in South Australia in any capacity until 1965, behind Queensland (1923) and Tasmania (1939).

In response to Boothby's actions in the Mara v. Popham trials, a 'public meeting of the citizens of Adelaide' was held at White's Rooms on King William Street to petition for Boothby's removal as Acting Chief Justice.[194] One man, Mr T. Hills, who claimed to have assisted Mara in obtaining legal counsel, despaired that people who brought cases before Boothby in the future may 'leave the court innocent of any offence, and yet be denounced by the Judge as a perjurer', as Mara was.[195] Additionally, less than a day after Popham's trial came to a premature end, the editors of the *South Australian Register* insisted that the outcomes of both cases highlighted the 'necessity of some judicial changes' in South Australia, and hoped that 'the case of Ann Mara will …contribute to bring about the alterations so long and so much needed'.[196] Despite acknowledging his unfair interventions in the judicial process, none of Boothby's critics ever called for Ann Mara's case to be retried with a less overtly biased judge, and the publicity surrounding the case quickly led Mara to leave the colony for Melbourne, where a man named John Clark reported she had found a respectable situation and since become married.[197]

Mara was not the only one whose reputation was affected by Boothby's cancellation of the trial. One newspaper article argued that Boothby's actions were also damaging to Popham because, without the official acquittal of a jury, his 'innocence' may continue to be questioned.[198] This prediction came true in October 1869—more than 12 years after the original trial—when Popham charged two editors of the *Gawler Times* with libel for publishing a poem insinuating that he was guilty of rape, alongside accusations of drunkenness and overcharging for his services as a medical practitioner.[199] Ironically, the Magistrate presiding over this case said that, while there was 'no doubt' that the poem constituted libel, 'he did not think it at all probable a jury would convict under the circumstances' and consequently dismissed the case.[200]

In contrast, aside from short-term public displeasure, Boothby faced no real repercussions for his blatant bias in the Ann Mara trials. It was not until Boothby's judicial biases began to impact more 'important' colonists, such as through his denial of the legitimacy of the 1857

[194] 'Trial by Jury', *South Australian Register*, 26 February 1857, p.3.
[195] Ibid.
[196] 'The Case of Ann Mara', *South Australian Register*, 23 February 1857, p.2.
[197] 'The Parliament and Mr Justice Boothby', *South Australian Register*, 6 August 1861, p.3.
[198] Ibid.
[199] 'Law and Criminal Courts', *Evening Journal*, 12 October 1869, p.2.
[200] 'Gawler Police Court', *Bunyip*, 30 October 1869, p.3.

Real Property Act, his refusal to acknowledge the appointment of Sir Richard Hanson as Chief Justice in 1861, and his continued refusal to recognise the validity of South Australian Parliament, that colonial authorities began to seriously pursue his removal. Similarly, aside from the *Gawler Times* article mentioned above, Popham never faced public scrutiny to the extent that he felt the need to leave the colony altogether. In contrast, the consequences of the Mara trials may have paved the road for female servants' reluctance to bring charges of rape against their employers, fearing similar treatment in the colonial courts. This chapter only uncovered two rape charges brought by single women against their employers—those of Ann Mara and Keziah Morris. The evidence presented in these cases, and the unfortunate outcomes for both women, likely served to further impress upon domestic servants the futility of reporting sexual violence at the hands of their employers.

Conclusion

The case studies considered in this chapter demonstrate a clear middle-class partiality in employer-employee court cases involving female domestic servants. This preference was also evident in colonial legislation, where successive *Masters and Servants Acts* mandated significantly harsher punishments for servants who committed crimes against their employers than for crimes committed by employers against their servants. This legislative disparity compounded the isolation of single female domestic servants, who often arrived in the colony without friends or family to support them and were quickly encouraged into live-in domestic service positions where their employer held all the social and legal power. Isolation left these women particularly vulnerable to mistreatment, while class prejudice prevented them from seeking legal recourse for this mistreatment; however, the noticeable increase of servant-employer charges brought in the latter-half of the nineteenth century, with 48 of the 65 cases considered in this chapter brought after 1860, suggests that female servants became more confident in charging their employers—and in committing theft or breaking the terms of their service—as time passed, and as the potential for physical 'correction' of their behaviour receded.

The outcomes of court cases between female domestic servants and their employers—from breach of contract, to larceny, assault, and rape—all demonstrate a clear favouritism of employers over employees in South Australian courtrooms. This favouritism was persistent, reflected in both *Masters and Servants* legislation and courtroom verdicts, with no noticeable

change in conviction trends for either masters or servants over time. Legislatively, the *Masters and Servants Acts* changed very little after the first decade of colonisation, persistently mandating fines and remuneration of wages for employers while allowing for the imprisonment of employees for similar crimes. In the courtroom, the exclusion of everyone other than middle-class white men from acting as judges, lawyers, and jurors meant that verdicts inevitably favoured middle-class white employers—with whom these court authorities could most easily empathise. These cases considered in this chapter show that, even when courts did rule in favour of female servants, they were often awarded fewer damages than their employers, and were more likely to be required to pay their employers' court costs than when the situation was reversed.

The unequal treatment of servants and employers in colonial courtrooms is clearest in the increased likelihood of imprisonment for servants for *Masters and Servants* disputes, with three female servants imprisoned for breach of contract and workplace misconduct during this period and no evidence of employers imprisoned for similar charges. Concurrently, servants who were convicted of stealing from their employers always received prison sentences, while employers who physically and sexually assaulted their servants were rarely imprisoned, or even convicted at all. The only exception to this was in cases of sexual assault against teenaged servants—for which three of the four accused employers were convicted and imprisoned—and the murder of Jane MacManamin by Malachi Martin. This inequality in sentencing emphasises the priority placed on the safety of South Australian middle-class colonists' material possessions over the physical and mental wellbeing of female servants. This lack of care for servants' health and wellbeing is further evidenced in this chapter's consideration of the Ann Mara trials, with Justice Boothby's ability to overrule the jury and declare Mara a perjured woman without any long-term repercussions clearly showing that there was no real government concern for courtroom bias against female domestic servants in colonial South Australia. Overall, the individual court cases and legislative changes considered in this chapter present clear evidence of middle-class preference in colonial South Australian courtrooms which was never more obvious than in cases brought between female domestic servants and their employers.

Chapter 4:
"Motherhood and Illegitimate Children"

Motherhood was the primary role for women in colonial South Australia. Throughout the British Empire, middle-class ideals dictated that white women should marry respectably and raise the next generation of white colonial children. This served the dual purpose of enforcing the 'civilised', patriarchal British society as ideal and increasing the white colonial population without the expense of immigration. While the procreation of white settlers was extremely desirable, it was supposed to be confined strictly to marriage. Unmarried women who became pregnant faced serious social, financial, and legal repercussions. They were the social pariahs of respectable white settler society, frequently portrayed as unchaste sinners whose marriage prospects—their most marketable attribute in colonial society—were all but destroyed. This chapter argues that women with illegitimate children faced social and legal barriers which were not experienced by single women without children, and considers how nineteenth century stereotypes of illegitimacy and non-marital pregnancy led to the mistreatment of unmarried mothers in colonial courtrooms, wider colonial society, and even at the hands of their own families.

The terms 'unmarried/unwed mother' and 'illegitimate child/ren' are used throughout this thesis to refer to those women and children who faced social and financial repercussions for their participation in ex-nuptial pregnancy and childbirth. This thesis acknowledges that distinctions between married/unmarried mothers and legitimate/illegitimate children have carried historically negative connotations which have been used to stigmatise single mothers and their children as a 'social problem' and to differentiate them from 'respectable' married mothers and their 'legitimate' children. This thesis uses the term 'illegitimate' to refer to children born outside of wedlock because the negative associations of the term accurately reflect nineteenth century attitudes towards non-marital pregnancy and childbirth. Also, as noted by Shurlee Swain and Renate Howe in their 1995 work on single motherhood and illegitimate children in Australia, even 'neutral' modern terminologies, such as 'ex nuptial' and 'single mother', serve to represent unmarried women and their children as separate from the alleged norm of marital pregnancy and childbirth.[1]

[1] S Swain and R Howe, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia*, Cambridge University Press: Cambridge, 1995, p.2-3.

Nineteenth century considerations of illegitimacy have been the focus of numerous historical studies.[2] In their 1995 work, mentioned above, Swain and Howe argue that attempts to understand the extent of illegitimacy in colonial Australia are 'hampered by the secrecy and shame with which, in modern European societies at least, single motherhood has been surrounded'.[3] Since Swain and Howe's research, there have been a number of studies highlighting the persistent stigma experienced by unmarried mothers in nineteenth and twentieth century Australia.[4] While the available research is extensive, there is currently no work which considers single motherhood from a South Australian perspective. The 'secrecy and shame' of illegitimacy was particularly felt in South Australia, where colonial authorities' fear of immorality often revealed itself in a desire to disguise or deny the presence of vice in any form. This chapter argues that this fear, felt throughout the British Empire, combined with South Australian authorities' continuous emphasis on marriage and refusal to assist the 'undeserving' poor, led to a noticeable mistreatment of unwed mothers in colonial courts and government institutions which made it very difficult for these women to gain support for themselves and their children.[5]

The most extensive analysis of illegitimacy in colonial South Australia is Mary Geyer's book *Behind the Wall*, which considers the treatment of women (including unwed mothers) in Adelaide's Destitute Asylum, and the humiliation and regulation experienced by destitute single mothers who sought aid from the Asylum.[6] Alongside Geyer's work is Susan Piddock's article 'An Irregular and Inconvenient Pile of Buildings', which compares the

[2] Key studies in this area include: Swain and Howe, *Single Mothers and their Children*; G Reekie, *Measuring Immorality: Social Inquiry and the Problem of Illegitimacy*. Cambridge University Press: Cambridge, 1998; LF Cody, 'The politics of illegitimacy in an age of reform: Women, reproduction, and political economy in England's New Poor Law of 1834', *Journal of Women's History*, vol.11, no.4, 2000, pp.131-156; G Frost, *Illegitimacy in English Law and Society, 1860-1930*, Manchester University Press: Manchester, 2016; B Leonardi, 'Motherhood, mother country, and migrant maternity', in B Leonardi (ed.), *Intersections of Gender, Class, and Race in the Long Nineteenth Century and Beyond*, Palgrave Macmillan: London, 2018, pp.17-40.
[3] Swain and Howe, *Single Mothers and their Children*, p.1-2.
[4] See: GA Carmichael, 'From floating brothels to suburban semirespectability: two centuries of nonmarital pregnancy in Australia', *Journal of Family History*, vol.21, no.3, 1996, pp.281-315; C Twomey, 'Courting men: mothers, magistrates and welfare in the Australian colonies', *Women's History Review*, vol.8, no.2, 1999, pp.231-246; S Swain, 'Maids and mothers: domestic service and illegitimacy in 19th-century Australia', *The History of the Family*, vol.10, no.4, 2005, pp.461-471; R Kippen and PA Gunn, 'Convict bastards, common-law unions, and shotgun weddings: premarital conceptions and ex-nuptial births in nineteenth-century Tasmania', *Journal of Family History*, vol.36, no.4, 2011, pp.387-403; T Evans, 'The meanings and experiences of single mothers in nineteenth-century Sydney, Australia', *Annales de Démographie Historique*, no.1, 2014, pp.73-96.
[5] For a detailed explanation on South Australian colonial authorities' encouragement of marriage for women, see chapter 2.
[6] M Geyer, *Behind the Wall: The Women of the Destitute Asylum Adelaide, 1852-1918* 2nd ed. Kent Town: Wakefield Press, 2008.

conditions of Adelaide's Destitute Asylum with those in the British Poor Law Workhouses during the same period, concluding that the British model of Poor Law relief heavily influenced the regulations of the Adelaide Asylum.[7] Both of these works argue that the treatment of women in the Destitute Asylum, particularly women who were viewed as 'unchaste', reflected a broader prejudice against unmarried mothers in the colonial sphere.[8] While these works are undoubtedly important to the understanding of illegitimacy in South Australia, they highlight a clear gap in the literature—with no research currently available on the lived experiences of single South Australian mothers outside of government institutions.[9]

In her 2005 article on domestic service and illegitimacy in colonial Australia, Shurlee Swain noted that 'the most visible single mothers were those who willingly or unwillingly came to the notice of public authorities either because they sought the help of charitable agencies or, if they were in more desperate straits, abandoned or murdered their infants'.[10] However, this chapter seeks to highlight the experiences of unmarried mothers who came before the colonial courts for less extreme reasons—bringing charges of child maintenance and seduction against the putative fathers of their illegitimate children in an attempt to gain financial support from sources other than government institutions or charitable organisations. There exists a wealth of information on maintenance and seduction trials in colonial newspapers, as well as published letters and opinion pieces which provide excellent insights into public and media opinions of illegitimacy, providing important context for the treatment of unwed mothers during this period. For this reason, maintenance charges are just as useful in understanding the experiences of single mothers in colonial South Australia as the 'scandalous' charges of infanticide and concealment of birth which were so often sensationalised in the colonial media but which do little to highlight the everyday social and financial struggles of women with illegitimate children. Also, maintenance charges were brought *by*, not *against*, single mothers—thereby shedding light on the reasons which brought unwed mothers to court of their own volition, rather than at the behest of colonial police.

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[7] S Piddock, '"An irregular and inconvenient pile of buildings": The Destitute Asylum of Adelaide, South Australia and the English Workhouse', International Journal of Historical Archaeology, vol.5, no.1, 2001, pp.73-95.
[8] Geyer, *Behind the Wall*, p.38-40; Piddock, '"An irregular and inconvenient pile of buildings"', p.87.
[9] For an informal discussion on considerations of pre-marital pregnancy in the German-Lutheran communities in colonial South Australia see the paper which accompanied Rachel Hoffman's 2010 History Week Workshop, later published in the non-peer-reviewed *Journal of Friends of Lutheran Archives*: R Hoffmann, 'Illegitimacy in colonial South Australia', *Journal of Friends of Lutheran Archives*, vol.20, 2010, pp.63-67.
[10] Swain, 'Maids and mothers, p.463.

This chapter argues that the experiences of unmarried mothers in the colonial court are integral to understanding wider colonial perceptions of illegitimacy and the ways these perceptions of illegitimacy were reflected in colonial law. It seeks to understand the dichotomy between colonial authorities' fear of the financial burden of illegitimate children compared to the numerous legal loopholes which allowed putative fathers to avoid financial responsibility for their illegitimate children. The analysis of child maintenance and seduction charges in this chapter highlights the ways that prejudice against illegitimacy and unmarried mothers permeated the colonial courtroom and influenced the level of sympathy (or lack thereof) afforded to women with illegitimate children both in court and in the wider colonial community.

The New Poor Law

Illegitimacy in South Australia cannot be understood without first considering the New Poor Law instituted in Britain in 1834, which Piddock suggests provided the 'precedent' for the Destitute Board's operation of the Adelaide Destitute Asylum.[11] The New Poor Law was a set of legal provisions for the relief of 'pauperism' in Britain which replaced the old Poor Law created in 1601. According to Daniel Grey, proponents of the New Poor Law sought to reduce government expenditure on 'pauperism' under the assumption that Britain's poverty was a direct result of 'laziness and a reluctance to work'.[12] This idea is supported by Cody, who claims that government officials believed the old Poor Law, which was originally intended to help only the most desperate and destitute, had been slowly extended 'to aid the "able-bodied" and even the morally "undeserving"'.[13] In particular, the New Poor Law marked unmarried mothers as overwhelmingly taking advantage of the system, abusing government funds and maintenance payments to improve their own financial standing with minimal personal effort. The 1834 Report of the Poor Law Commissioners alleged that the payments provided to unwed mothers meant that 'a single illegitimate child is seldom any expense [for the mother], and two or three are a source of positive profit', providing dozens of reports of women who had allegedly abused this system for financial gain or to force an

[11] Piddock, '"An irregular and inconvenient pile of buildings"', p.80.
[12] DJR Grey, '"No crime to kill a bastard-child": Stereotypes of infanticide in nineteenth-century England and Wales', in B Leonardi (ed.), *Intersections of Gender, Class, and Race in the Long Nineteenth Century and Beyond*, Palgrave Macmillan: London, 2018, p.48.
[13] Cody, 'The politics of illegitimacy in an age of reform', p.131.

unwilling man into marriage.[14] This concern led to the creation of the New Poor Law's infamous 'Bastardy' clause.

According to Nicola Goc, the population of England and Wales doubled between 1801 and 1851, rising from 9 to 18 million as a result of a rapidly decreasing infant mortality rate.[15] A by-product of this population boom was a notable increase in the number of illegitimate children surviving birth and infanthood to become a 'burden on parish relief', as more and more unmarried mothers sought financial aid to support children whose paternity could not be proven.[16] The most notable proponent for population control following this boom was influential British economist and demographer Reverend Thomas Malthus, who argued extensively for population control as a solution to all of society's problems, including food shortages, poor living conditions, sexual immorality, and barbarism in colonised populations.[17]

When assessing the need for Poor Law reform, Malthus proposed that, as the only confirmed parent, responsibility for British illegitimate children should be placed solely on their mothers—not putative fathers or the Poor Law system.[18] Prior to this point, Gail Reekie reports, illegitimate children in Britain were legally considered to be '*filius nulluis*, or "nobody's child"', meaning that no person, whether mother or father, was obligated to raise them.[19] Such children often became 'children of the parish' or, if the family was financially stable, relied on the support of relatives.[20] Reekie further alleges that Malthus, who was the biggest proponent of the Bastardy clause, believed that 'the poor imprudently produced too many babies who, when they grew up, lowered wages, exerted pressure on food supplies, drained the state of limited resources and thereby increased social unhappiness'.[21] From this perspective, illegitimate children were seen as a primary cause of 'pauperism' and non-

[14] *Poor Law Commissioners' Report of 1834*, Poor Law Commission, 20 February 1834, The Classical School of Political Economy Collection, Online Library of Liberty: Carmel (IN), p.168-176, https://oll.libertyfund.org/title/chadwick-poor-law-commissioners-report-of-1834.
[15] N Goc, *Women, Infanticide and the Press, 1822-1922: News Narratives in England and Australia*. Ashgate Publishing Limited: Surrey, 2013, p.3.
[16] Ibid.
[17] TR Malthus, *An Essay on the Principle of Population: A View of its Past and Present Effects on Human Happiness* (7th edition), Reeves and Turner: London, 1872.
[18] Goc, *Women, Infanticide and the Press*, p.3.
[19] Reekie, *Measuring Immorality*, p.23.
[20] Ibid.
[21] Ibid, p.50.

sustainable population growth in Britain, and the blame for their existence rested on the shoulders of their unchaste mothers.

According to Swain and Howe, the 1601 Poor Law offered both punishment and care for women who became pregnant outside of wedlock—refusing to assist in cases where relatives or putative fathers could afford to support them, but providing both shelter and punishment (including 'forcible removal, whipping and compulsory labour') for women with no one to provide for their support.[22] After more than 200 years in practice, the 1834 Poor Law Commissioners' report argued that the old Poor Law encouraged 'lewd life', doing nothing to discourage women from bearing illegitimate children.[23] As a result, the New Poor Law removed British women's right to sue the putative fathers of their illegitimate children for maintenance, forcing them to raise their children on their own wage or give them up to the workhouse.[24] The Poor Law Commissioners justified this decision by determining that children must be supported by their parents. As the mother's maternity was unquestionable, while the father's paternity could not be explicitly proved, the responsibility for supporting an illegitimate child was placed solely on the shoulders of their mother.[25] The Commissioners believed that removing financial aid for unwed mothers would significantly decrease the number of illegitimate children born in Britain, improving the moral and financial health of British society.[26]

The primary concern of many critics of the New Poor Law was that, if refused access to financial aid, unmarried mothers who could not support their children would turn to more desperate measures, including infanticide. According to Annie Cossins, social commentators in England believed that, while the New Poor Law was in place, 'child-murder would remain a fact of life'.[27] This idea was strictly refuted by the Poor Law Commissioners, who wrote that:

[22] Swain and Howe, *Single Mothers and their Children*, p.3.
[23] *Poor Law Commissioners' Report of 1834*, p.165.
[24] Swain and Howe, *Single Mothers and their Children*, p.3.
[25] *Poor Law Commissioners' Report of 1834*, p.346-347.
[26] Reekie, *Measuring Immorality*, p.51.
[27] A Cossins, *Female Criminality: Infanticide, Moral Panics and the Female Body*, Palgrave Macmillan: London, 2015, p.6.

> We do not believe that infanticide arises from any calculation as to expense. We believe that in no civilized country, and scarcely any barbarous country, has such a thing been heard of as a mother killing her own child in order to save the expense of feeding it.[28]

This demonstrates not only that the Poor Law Commissioners did not understand the desperation felt by people in true financial distress, but also the prevalence of the idea that child murder was confined to 'barbarous' peoples uneducated in the practices of British 'civilisation'.[29]

The New Poor Law was never directly transferred into any of the Australian colonies; however, in her research on Poor Law discourse and Indigenous people, Anne O'Brien reports that similar changes in destitute relief from benevolence and the alleviation of suffering to the perception of destitution as a punishment for vice emerged in New South Wales in the 1820s, becoming well-established in the colony's treatment of the destitute poor by the mid-1830s.[30] This demonstrates that the transition on opinions relating to 'paupers', and their right to financial aid, was evident not only in Britain, but in existing Australian colonies at the time of South Australia's colonisation—making it almost inevitable such attitudes would be transplanted into the colony. According to Brian Dickey, South Australian planners determined in 1835, before colonisation had even begun, that their colony would have no Poor Law provisions because they would accept no immigrants who would 'become a burden on the new community'.[31] This determination further demonstrates the idea, reiterated throughout this thesis, that South Australia was intended to be a colony unencumbered by 'pauperism' and destitution.

Motherhood and Illegitimacy in South Australia

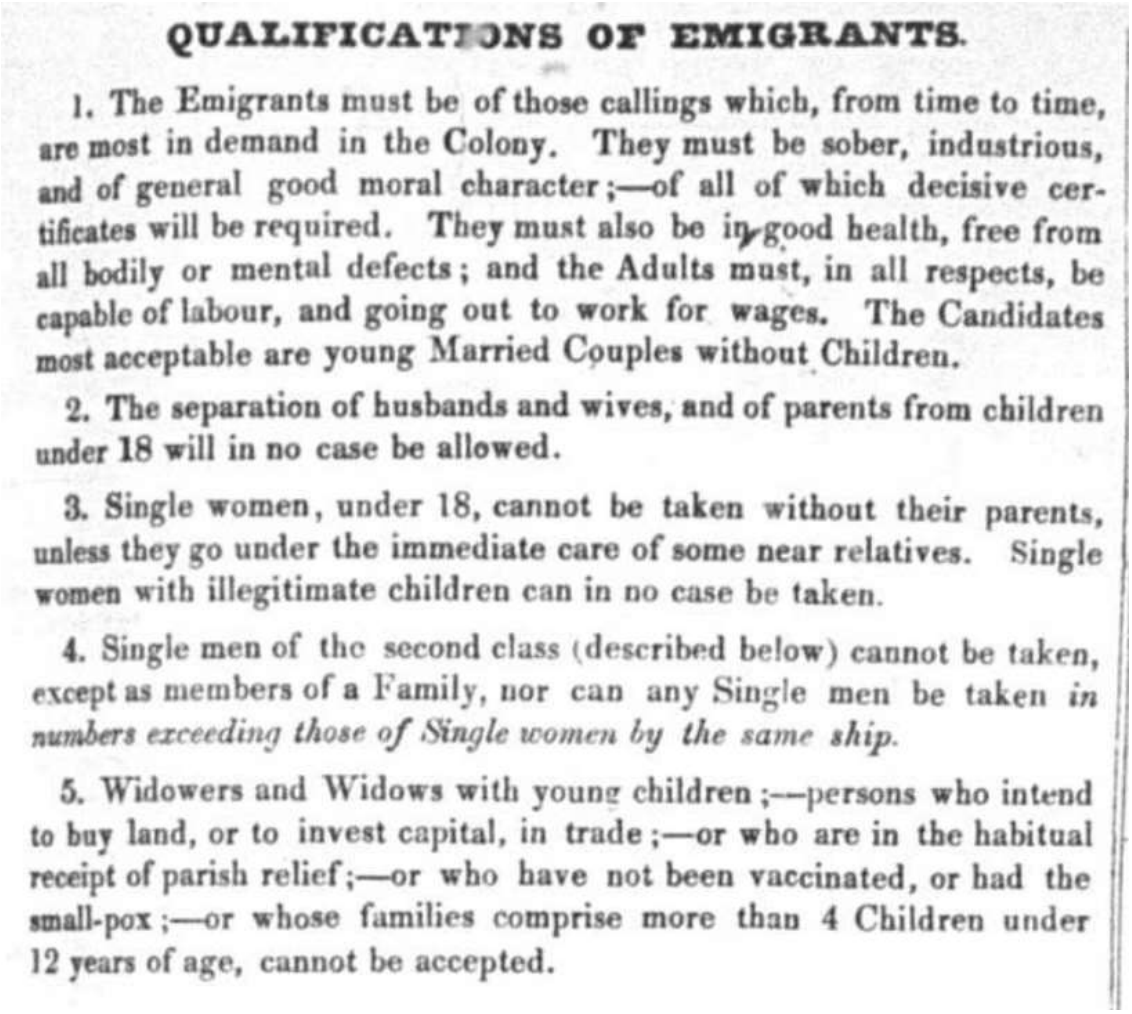
According to Swain and Howe, the British definition of illegitimacy which was transplanted to Australia was rooted in both Christianity and the 'very particular British experience of poor relief'. [32] Therefore, Australian ideas of illegitimacy had 'both a moral and an economic base' which simultaneously condemned non-marital pregnancy while

[28] *Poor Law Commissioners' Report of 1834*, p.351.
[29] The concept of infanticide as a tool for colonialism is discussed further in chapter 5.
[30] A O'Brien, '"Kitchen fragments and garden stuff": Poor Law discourse and Indigenous people in early colonial New South Wales', *Australian Historical Studies*, vol.39, no.2, 2008, p.154.
[31] B Dickey, 'Why were there no poor laws in Australia?', *Journal of Policy History*, vol.4, no.2, p.126.
[32] Swain and Howe, *Single Mothers and their Children*, p.3.

supporting the idea that many unmarried mothers were pitiable creatures deserving of (non-governmental) charity.[33] Geyer suggests that, in British and colonial society, 'it was not acceptable for women…to behave as sexual beings', whether they were married or not.[34] Sexuality was seen as inherently masculine, and something that wives performed only at the behest of their husbands and for the purpose of procreation. This implied that respectable unmarried women were sexually ignorant and that women who actively engaged in sex outside of marriage were unnatural women. As the nineteenth century progressed, illegitimacy became increasingly stigmatised in British society, with unmarried mothers frequently perceived as 'openly flouting the moral code', and therefore failing in their role as women.[35] This portrayal contrasts sharply with South Australian case studies of breach of promise and seduction, where unmarried women—even those with illegitimate children—were frequently portrayed as passive victims of incorrigible male 'seducers'. Strangely, there is a sharp contrast between the treatment of women in seduction and breach of promise charges compared to those in maintenance charges, a comparison which is discussed later in this chapter.

From the earliest decades of colonisation, South Australian authorities demonstrated a clear bias against unmarried mothers. The First Annual Report of the South Australian Colonization Commissioners in 1836 forbade the emigration of anyone of bad character, even as paid emigrants.[36] Though it was not explicitly stated in this document, having an illegitimate child certainly qualified as bad character during this period, with an article published in the *Devizes and Wiltshire Gazette* in England in 1836, suggesting that the mothers of illegitimate children should 'be put to work' as soon as possible in order to teach them that they would 'not derive benefits from their prostitution, at the expense of the virtuous and industrious'.[37] This statement not only equated any form of pre-marital sex with prostitution, but also reinforced the stereotype that unmarried mothers were sexually immoral.

[33] Swain and Howe, *Single Mothers and their Children*, p.3.
[34] Geyer, *Behind the Wall*, p.39.
[35] Swain and Howe, *Single Mothers and their Children*, p.10.
[36] *First Annual Report of the Colonization Commissioners of South Australia*, 28 July 1836, p.27-28, CO13/4, Australian Joint Copying Project [AJCP], National Library of Australia [NLA]: Canberra, p.354. As mentioned in chapter 1, prospective immigrants were required to prove their good character with written testimonies from their most recent employer and the minister of the parish in which they lived.
[37] 'The New Poor Law. Public Meeting at Penrith', *Devizes and Wiltshire Gazette*, 5 May 1836, p.3.



QUALIFICATIONS OF EMIGRANTS.

1. The Emigrants must be of those callings which, from time to time, are most in demand in the Colony. They must be sober, industrious, and of general good moral character;—of all of which decisive certificates will be required. They must also be in good health, free from all bodily or mental defects; and the Adults must, in all respects, be capable of labour, and going out to work for wages. The Candidates most acceptable are young Married Couples without Children.

2. The separation of husbands and wives, and of parents from children under 18 will in no case be allowed.

3. Single women, under 18, cannot be taken without their parents, unless they go under the immediate care of some near relatives. Single women with illegitimate children can in no case be taken.

4. Single men of the second class (described below) cannot be taken, except as members of a Family, nor can any Single men be taken *in numbers exceeding those of Single women by the same ship.*

5. Widowers and Widows with young children;—persons who intend to buy land, or to invest capital, in trade;—or who are in the habitual receipt of parish relief;—or who have not been vaccinated, or had the small-pox;—or whose families comprise more than 4 Children under 12 years of age, cannot be accepted.

Figure 2: Requirements for emigrants seeking assisted passage from Britain to South Australia

This regulation was reiterated in the1848 *Notice on Free Emigration to Australia* (South Australia and New South Wales), which forbade people who were not of 'good moral character' and those who were 'in the habitual receipt of parish relief' from applying for assisted passage.[38] With the New Poor Law only allowing women with illegitimate children to seek 'indoor' relief in Poor Law Workhouses—rather than offering maintenance or financial aid—this regulation would have prevented most unwed mothers from applying even without calling for their specific exclusion. By 1852, the *Regulations for the Selection of Emigrants* was even more explicit in its demands, specifically stating that 'single women with illegitimate children can in no case be taken' [see Figure 2].[39] This specificity, alongside the exclusion of immigrants who had been in 'habitual receipt of parish relief', likely stemmed from increasing concerns in the 1840s and 50s that English authorities were using

[38] *Notice on Free Emigration to Australia*, February 1848, CO13/61, AJCP, NLA: Canberra, p.261.
[39] *Regulations for the Selection of Emigrants and Conditions on which Passages are Granted*, May 1852, CO13/79, AJCP, NLA: Canberra, p.221.

the Australian colonies as a dumping-ground for the overcrowded Poor Law Workhouses. There were numerous concerns in the early 1850s that accepting 'pauper' immigrants into South Australia would have a negative effect on the social and moral composition of the colony as 'pauperism' was increasingly viewed as an inescapable and often inherent moral failing.[40] In December 1848, the *Adelaide Times* alleged that English Workhouses housed approximately 15,230 illegitimate children, born to 10,001 single mothers, with colonial authorities and media clearly concerned that British authorities would use the immigration fund to alleviate the financial strain of these overcrowded institutions.[41]

Illegitimacy in Colonial South Australia

Marriage was very strictly encouraged in colonial South Australia, even more so than in Britain. This is evidenced in the 1834 Report of the British Poor Law Commissioners, which stated that pre-marital pregnancy was not an appropriate basis for marriage because such marriages were not based in affection, but resulted from 'fear on one side, and vice on both', which would inevitably lead to 'domestic misery and vice'.[42] This quote demonstrates that the Commissioners were aware that only women feared the repercussions of pre-marital pregnancy, with few social or legal repercussions for men who fathered children out of wedlock. Despite this, the New Poor Law did not include any regulations for the punishment of the fathers of illegitimate children—only the mothers.

Marriage as a prelude to pregnancy was also a contentious issue in New South Wales at this time—specifically as it related to the children of convicts. In 1836 *The Sydney Herald* published an article arguing that convict men and women should not be encouraged to marry, despite 'wretched' convict women 'constantly bringing forth illegitimate children'.[43] In this instance, the *Herald* believed that any children born to convicts, married or otherwise, would inevitably become a burden on public funds. As marriage was seen to encourage childbirth, it should therefore be discouraged amongst convicts to prevent them having children.[44] In both of these examples, marriage was portrayed as promoting, rather than preventing, vice.

[40] See 'Advertising', *Adelaide Observer*, 20 September 1851, p.4; 'The South Australian Reform Association', *Adelaide Observer*, 4 October 1851, p.2; 'Assisted Immigration, and South Australian News as Imported', *South Australian Gazette and Mining Journal*, 14 August 1851, p.2.
[41] 'Gleanings from the Late English Newspapers', *Adelaide Times*, 18 December 1848, p.4.
[42] *Poor Law Commissioners' Report of 1834*, p.168 and 346.
[43] 'The Female Factory', *The Sydney Herald*, 22 September 1836, p.2.
[44] Ibid.

Discounting disdain for the children of convicts, however, Reekie suggests that most Australian colonial authorities encouraged couples who became pregnant outside of wedlock to marry—legitimising their child so the colony could avoid the negative reputation associated with high levels of illegitimacy.[45] This encouragement was not unique to South Australia, with one concerned citizen of Ballarat in 1871 proposing forced marriage between couples who became pregnant outside of wedlock.[46] However, South Australian colonial authorities' refusal to acknowledge vice in their colony, and their reluctance to provide financial assistance to unmarried mothers, highlights an experience of single motherhood which was different from—though not necessarily worse than—that of women in the neighbouring colonies.

South Australian colonial authorities frequently lambasted male 'seducers' for refusing to marry the women who became pregnant by them. For example, in 1851 Jemima Pierce sued James Croswell for maintenance and, when the court adjourned to allow Pierce's lawyer to call more witnesses, Stipendiary Magistrate Henry Wigley encouraged Croswell that 'perhaps in the meantime you'll get married' and the case could be disposed of.[47] In the 1862 breach of promise case between Honoria Scanlan and James Shannon—detailed in chapter 2—Scanlan's lawyer argued that Shannon's marriage to another woman had deprived Scanlan of the 'reparation' which he owed her after she became pregnant with his illegitimate child.[48] Similarly, during the 1865 breach of promise charge between Mary Thomas and Augustus Size, Thomas' lawyer argued that Size, having seduced Thomas under promise of marriage and caused her to become pregnant, 'was under a solemn obligation to marry' her, 'as any proper man would do'.[49] Failing in their obligation to marry the mothers of their illegitimate children, these men were fined £40 and £175 respectively.

In the first 20 years of colonisation, South Australian newspapers rarely mentioned illegitimacy except to report on a small number of maintenance charges or to comment on the apparently high proportion of illegitimate children in various European countries.[50] It was not

[45] Reekie, *Measuring Immorality*, p.25.
[46] 'Illegitimacy', *The Ballarat Star*, 22 August 1871, p.3.
[47] 'Law and Police Courts', *South Australian Register*, 5 February 1851, p.3.
[48] 'Law and Criminal Courts', *South Australian Register*, 19 March 1862, p.3.
[49] 'Law and Criminal Courts', *The South Australian Advertiser*, 21 September 1865, p.3.
[50] 'Population of St Petersburg', *South Australian Register*, 15 January 1848, p.4; 'British Gleanings', *South Australian Register*, 3 April 1850, p.4; 'Statistics of the French Population', *South Australian Register*, 2 October 1852, p.3.

until August 1856 that the first article despairing of the number of illegitimate children in South Australia was published. This article stated that the 'great number of illegitimate children' born in the colony demonstrated an 'existence of moral evils of a very serious character' and lamented that men who 'robbed women of their honour' through rape were punished, while those who did the same through seduction were left 'untouched'.[51] This implied that consensual seduction and rape were equally damaging crimes, and that the worst effect of rape was not physical and emotional trauma but broken chastity. This claim is supported by the conviction statistics for rape (27.5 per cent) and seduction (80 per cent) considered in this thesis, which demonstrate that men were significantly more likely to be punished for seduction than for rape.

When South Australian authorities and media sources did begin to acknowledge the presence of illegitimacy in noticeable numbers, they did so in a way which was similar to their acknowledgement of other social issues—particularly prostitution—during this time: with hyperbolic language and few real statistics to support their claims. For example, in 1867 an anonymous colonist named as F.E.D wrote to the *South Australian Advertiser* to complain of the dangers of alcohol, naming it as one of the key causes behind the 'swarms of illegitimate children' in Adelaide.[52] In 1880, an article arguing against the proposed establishment of a Foundling Hospital in Adelaide blamed many cases of illegitimacy on the increasing employment of women in public houses and the consequent 'increased conveniences for the meeting of the sexes and opportunities for making clandestine appointments'.[53]

Despite colonial authorities' insistence on South Australia's moral superiority, illegitimacy was not uncommon—though neither was it especially rampant. In the six months between January and June 1856, the Destitute Board of South Australia recorded 23 cases of unmarried pregnant women confined for childbirth in the Destitute Asylum—one more than married pregnant women.[54] Figure 3 shows a table published by the Board detailing the number of women and children awarded outdoor relief (which included food rations, rather than 'indoor' relief in the Destitute Asylum) in the second half of 1856, showing only two

[51] 'Women's Rights and Women's Wrongs', *Adelaide Times*, 4 August 1856, p.2.
[52] 'Our Social Sin', *The South Australian Advertiser*, 26 April 1867, p.3.
[53] 'The Foundling Hospital', *Evening Journal*, 27 August 1880, p.2.
[54] *Report of Destitute Board for the Half-Year ending June 1856*, July 1856, p.1, CO13/96, AJCP, NLA: Canberra, p.106.

unmarried mothers with six illegitimate children between them, compared to 52 widows with 170 children, and 44 married women also with 170 children between them.[55] These statistics demonstrate that illegitimacy was not infrequent in colonial South Australia; however, they also do not support the *Adelaide Times'* claims to 'a great number of illegitimate children' being born in, and supported by, the Destitute Asylum.[56] Quite the contrary, these statistics show that unmarried mothers were less of a 'burden' on colonial funds than married mothers whose husbands had deserted them or were unable to support them. Whether because unmarried mothers were less likely to seek, or were more likely to be refused, financial support—these statistics demonstrate that illegitimate children were not the disproportionate drain on public funds that the New Poor Law and media rhetoric had led to believe. Despite the relative disproportion of married and unmarried mothers seeking government support, unmarried mothers in South Australia were still subject to prejudices which closely reflected those experienced by their counterparts in England.

Description.	Cases.	Children.	Daily issue of rations.
Widows	52	170	77
Women whose husbands were unable to support their families through infirmity or sickness	25	94	43½
Women whose husbands were away at the diggings, confined in Gaol, or absconded—(See Appendix A)	19	76	29½
Miscellaneous—namely, blind and aged infirm, having no relative in the Colony able to contribute to their support	14	—	14
Females having illegitimate children	2	6	2
Totals	112	346	166

Figure 3: Table detailing the number of women and children awarded outdoor relief by the South Australian Destitute Board, December 1856.

[55] *Report of the Destitute Board, for the Half-Year Ended 31st December, 1856*, 13 January 1857, p.1, CO13/96, AJCP, NLA: Canberra, p.107.
[56] 'Women's Rights and Women's Wrongs', *Adelaide Times*, 4 August 1856, p.2.

Stigma

Unmarried mothers were the victims of prejudice throughout the British Empire for much of the nineteenth century (and beyond). During the early decades of British colonisation in Australia—particularly during the peak of convict transportation—Reekie reports that high rates of illegitimacy were taken as an indicator of a dangerously unruly and unsettled population'.[57] Illegitimate children, and by extension their mothers, were also seen as a burden on public funds. In 1837 the *Sydney Gazette and New South Wales Advertiser* printed a publication from James Mudie, former Sydney Magistrate, on 'The Felonry of N.S. Wales'. In this publication, Mudie wrote that between one and two hundred of the five to six hundred women in Sydney's Female Factory were the 'mothers of illegitimate children,—all maintained in great comfort and lazy idleness at the expense of the colonial public'.[58] Similar concerns were expressed in Van Diemen's Land as early as 1827, with an article in the *Hobart Town Gazette* hoping that the new Female Factory would include a nursery for the 'numerous…illegitimate children' so that their 'dissolute and unprincipled mothers' would no longer have an excuse to refuse labour.[59] Such comments framed unmarried mothers not as innocent victims of seduction (or, as was common for female convicts, victims of rape), but as lazy women who exploited public sympathy and used their children as an excuse to live off of government funds rather than working to support themselves. These accusations demonstrate that there was precedent for early concern over illegitimacy in the Australian colonies, though much of it was specific to convict women.

The non-existence of convictism in South Australia does not mean that the colony was immune to non-marital pregnancy, nor does it mean that South Australian women escaped the stigma associated with illegitimacy. According to Reekie, both British and Australian authorities 'linked illegitimacy explicitly to poor moral standards'.[60] In most cases, this link was unbreakable and tainted every woman who bore an illegitimate child—though it must be noted that this 'taint' was confined exclusively to working-class and 'pauper' women, with no clear reference to illegitimate children born to middle-class mothers in South Australian media or legislative debate. It is unlikely that this absence is because no

[57] Reekie, *Measuring Immorality*, p.35.
[58] 'The Felonry of N.S. Wales', *Sydney Gazette and New South Wales Advertiser*, 26 August 1837, p.3.
[59] 'Hobart-Town, Saturday June 9, 1827', *Hobart Town Gazette*, 9 June 1827, p.4.
[60] Reekie, *Measuring Immorality*, p.35.

middle-class women ever bore illegitimate children, but rather that single mothers whose families could afford to support them were less likely to rely on government assistance to survive, and therefore caused little public concern. Class-based assumptions of pre-marital pregnancy were also clearly based in stereotypes of working-class women as immoral and hyper-sexual. This idea is supported by Kociumbas who suggests that, in the urban centres of colonial Australia, 'working class women were especially likely to be…portrayed by the colonial media as "oversexed sirens" who "wantonly conceived" numerous illegitimate children whom they frequently killed or handed over to baby farmers with little evidence of regret'.[61]

Though stereotypes of unmarried mothers were overwhelmingly directed towards working-class women, there were clearly different 'levels' of unwed motherhood in colonial society, with each experiencing varying levels of disdain from colonists, colonial authorities, and media. In her research on Adelaide's Destitute Asylum, Piddock suggests that women who had one illegitimate pregnancy were often acknowledge as having made a foolish, but not unforgiveable, mistake.[62] In contrast, she alleges that women who were confined with their second, or subsequent, illegitimate child were widely considered to be 'immoral and classified as "prostitutes"', whether or not they had actually engaged in sex work. [63] Piddock's claim is supported by an 1880 article published in the *South Australian Register*, which recorded that the Adelaide Destitute Asylum's lying-in department was divided to ensure that 'cases of confirmed depravity' were kept separate from 'any young girls or women who may have fallen but once, and whom it may be possible to reclaim to paths of virtue'.[64]

According to Dorice Elliot, similar theories were used to separate convict women in female factories 'so that hardened offenders would not contaminate convicts who were more redeemable'.[65] When discussing the proposed establishment of a Foundling Hospital later in 1880, it was suggested that there should be some criteria for admission—including that 'the

[61] J Kociumbas, 'Azaria's antecedents: Stereotyping infanticide in late nineteenth-century Australia.' *Gender & History*, vol.13, no.1, 2001, p.139.
[62] Piddock, '"An irregular and inconvenient pile of buildings"', p.87.
[63] Ibid.
[64] 'Our System of Destitute Poor Relief.—No.2', *South Australian Register*, 14 January 1880, p.2.
[65] DW Elliot, 'Convict servants and middle-class mistresses', *Literature Interpretation Theory*, vol.16, no.2, 2005, p.174.

woman should only have erred with one man'.[66] Women who had borne more than one illegitimate child were frequently labelled as prostitutes who bore illegitimate children in a deliberate attempt to extort money or marriage, rather than as an accidental result of a one-time failing in chastity. This suggests that unmarried mothers could potentially redeem themselves in the eyes of colonial society, though Shurlee Swain notes that even these redeemed women could never truly escape the stigma associated with a pre-marital pregnancy, with their child acting as a 'millstone around her neck, a constant reminder of her sin and hence a deterrent against "falling" again'.[67] In contrast, women with more than one illegitimate child (particularly to different fathers) were largely given up as a lost cause.

Unfit Motherhood

The importance of motherhood in colonial South Australia meant that unmarried mothers who were seen as incapable of performing their maternal obligations (raising children to be productive members of white middle-class society) faced public vilification and legal punishment. The most frequent and severe accusations were directed towards sex workers and Aboriginal women. Aboriginal parents who refused to assimilate with colonial society were portrayed as intentionally raising their children to be uncivilised 'savages', while female sex workers were portrayed as raising their children (particularly their daughters) to follow a path of criminality and sexual deviancy. There were many instances of Aboriginal children and the children of white sex workers being forcibly removed from their mothers for—according to colonial authorities—their own good.[68] In their 2002 research on child-removal in late-nineteenth and early-twentieth century Australia and America, Victoria Haskins and Margaret Jacobs suggest that 'until very recently', historians had characterised this child removal 'as a well-intentioned, though ultimately misguided, alternative to warfare

[66] 'A Maternity and Foundling Hospital', *South Australian Chronicle and Weekly Mail*, 21 August 1880, p.5.
[67] Swain, 'Maids and mothers', p.465.
[68] For works discussing the frequent removal of Aboriginal children in nineteenth century Australia see: V Haskins and M Jacobs, 'Stolen generations and vanishing Indians: the removal of Indigenous children as a weapon of war in the United States and Australia, 1870-1940', in J Marten (ed.), *Children and War: A Historical Anthology*, New York University Press: New York, 2002, pp.227-241; MD Jacobs, 'Maternal colonialism: white women and Indigenous child removal in the American West and Australia, 1880-1940, *Western Historical Quarterly*, vol.36, no.4, 2005, pp.453-476; S Robinson and J Paten, 'The question of genocide and Indigenous child removal: the colonial Australian context', *Journal of Genocide Research*, vol.10, no.4, 2008, pp.501-518; A Haebich, 'Neoliberalism, settler colonialism and the history of Indigenous child removal in Australia', *Australian Indigenous Law Review*, vol.19, no.1, 2015, pp.20-31; S Swain and M Hillel, *Child, Nation, Race and Empire: Child Rescue Discourse, England, Canada and Australia, 1850-1915*, Manchester University Press: Manchester, 2017.

and violence against indigenous peoples'.[69] Whatever colonial authorities' intentions may have been, Haskins and Jacobs contend that child-removal was a form of warfare, an idea which is supported by Shurleen Robinson and Jessica Patten, and Anna Haebich, who all contest that Indigenous child-removal was an act of genocide.[70]

Concurrently, the removal of children from sex workers and other working-class or destitute families was a form of class warfare which prioritised middle-class education and child-rearing over any other form of parent/child relationship.[71] In 1856 the *Adelaide Times* published an article discussing the growing number of orphaned and abandoned children in the Australian colonies which specifically labelled these children as a problem of the working-class.[72] Discussing the removal of children from living parents, the *Times'* editors wrote that 'we are sure the working classes would see with gratification the existence of a legal authority to shield the unfortunate little children from the ruthless violence and cruel neglect of the drunken, idle, blasphemous'.[73] This statement assumed that these vices were exclusive to the working-class, and something to which middle-class parents could never subject their own children. The practice of child removal, from both Aboriginal and 'unfit' white mothers, was not exclusive to South Australia, but something which was practised in all Australian colonies to various extents throughout the nineteenth and twentieth centuries.

Despite an 1856 article in the *Adelaide Times* claiming that the colony had no 'pauper class' and no 'crime class', this denial had disappeared by the 1870s as colonial authorities became increasingly concerned with the welfare of 'pauper' children—afraid these children would inherit an inherent propensity for crime and vice from their disreputable parents.[74] During the 1870s, reports from colonial officials and media framed child removal as necessary for the social and physical health of the children; however, it more often appeared to be a punishment for their mothers. For example, the 1872 *Destitute Persons Act* declared that all children who were discovered to be living in a brothel, or with a 'known or reputed prostitute' were considered to be neglected children.[75] Neglected children could be taken,

[69] Haskins and Jacobs, 'Stolen generations and vanishing Indians', p.228.
[70] Ibid, pp.227-241; Robinson and Paten, 'The question of genocide and Indigenous child removal', pp.501-518; Haebich, 'The history of Indigenous child removal in Australia', pp.20-31.
[71] For works discussing the removal of white children from 'bad' mothers in Australia, see: Twomey, 'mothers, magistrates and welfare', pp.231-246; and Kociumbas, 'Azaria's antecedents', pp.138-160.
[72] 'Destitute Children', *Adelaide Times*, 9 October 1856, p.3.
[73] Ibid.
[74] Ibid.
[75] *Destitute Persons Relief and Industrial and Reformatory Schools Act 1872* (SA), p.114.

without their parents' permission, and detained in the Industrial School until they were sixteen, or until their parent/s proved they could maintain them.[76] However, this same Act prohibited known prostitutes from removing their children from the Industrial School, even when they had the financial means to maintain them.[77] The Act included no other restrictions on parents removing their children from the Industrial School—making no other mention of criminal history—except an assurance that they could afford to maintain them.

According to Dianne Snow, colonial authorities believed that the 'employment' opportunities available to unmarried women—predominantly marriage and domestic service—were sufficient enough that 'women who were not providing adequately for themselves or their children *were* irresponsible' and therefore deserving of having their children removed from their care.[78] This idea is supported by the 1876 case of Sarah Stanley, who sued her long-term (nine years) partner George Myles for maintenance of their two-year-old son. Myles did not deny paternity, but claimed that he would only support the child if he was awarded full custody because Stanley was a 'drunkard'.[79] As the boy was illegitimate, Magistrate John Varley could not legally award Myles custody without Stanley's consent, but he did refuse to award maintenance to Stanley on the grounds of her 'habits' and said that, if she wanted Myles to support her child, she would have to give him up.[80] This occurrence was uncommon, with far more putative fathers of illegitimate children refusing to acknowledge paternity than offering to raise their children.

In her research on colonial Victorian mothers' relationships with court and welfare authorities, Christina Twomey wrote that women who brought maintenance charges against the putative fathers of their illegitimate children could afterwards find themselves subject to increased police surveillance which, if enough evidence was gathered, could lead to the removal of their child/ren.[81] There is no evidence of this occurring in the case of Sarah Stanley; however, there are plenty of case studies that demonstrate South Australian colonial courts' willingness to remove children from the care of 'worthless' mothers.[82] In 1870, the

[76] *Destitute Persons Relief and Industrial and Reformatory Schools Act 1872* (SA), p.123.
[77] Ibid.
[78] D Snow, 'Family policy and orphan schools in early colonial Australia.' *The Journal of Interdisciplinary History*, vol.22, no.2, 1991, p.274.
[79] 'Magistrates' Court', *Kapunda Herald and Northern Intelligencer*, 19 September 1876, p.3.
[80] Ibid.
[81] Twomey, 'Mothers, magistrates and welfare', p.240.
[82] For individual examples, see: 'Police Court—Adelaide', *South Australian Chronicle and Weekly Mail*, 6 July 1872, p.14; 'Police Court—Port Adelaide', *South Australian Chronicle and Weekly Mail*, 29 March 1873, p.10

two greatest reasons for a child being admitted into the Magill Industrial School were 'father deserted, mother a drunkard, of abandoned habits, or otherwise unfit to manage children' (46 children), and 'father dead and mother destitute, worthless, or disqualified from supporting her offspring' (38 children).[83] There were also 23 children described as 'illegitimate, mother worthless', and 7 whose mothers were known prostitutes.[84] In total, of the 170 children listed in the report, 115 were listed as being admitted through direct fault of their mother (not including death), demonstrating the emphasis which colonial authorities placed on a mother's ability to support her children, both socially and financially.[85]

Aboriginal children whose parents were considered to be incapable, or unwilling, to care for them were not sent to the Industrial School with white children, but rather to Christian missions or a school run by the Protector of Aborigines. In South Australia, the practice of removing Aboriginal children from their parents 'for their own good' was implemented much earlier than that of removing poor white children. As early as 1841 an article published in the *Southern Australian* claimed that providing Aboriginal children with a British education, either on Christian missions or in specialised schools, was key to 'the civilization of the Aborigines of this continent'.[86] In a report from Archdeacon Mathew Hale's Aboriginal 'Training Institution' at Port Lincoln in 1851, Hale emphasised the importance of the Institution by writing that 'it keeps the children away from their parents, and so far prevents their being for the present savages'.[87] This statement clearly framed child-removal as beneficial for Aboriginal children, not because they were mistreated by their parents, but because their education at home was not enforcing their assimilation into white colonial society. This attitude further demonstrates colonial authorities' desire for as many colonial children as possible to be raised to conform to middle-class English ideals.

Further supporting this idea is an excerpt from missionary George Taplin's diary from September 1863 lamenting the practice of white fathers of illegitimate 'half caste' children leaving their children to be raised in 'savagery and barbarism' with their Aboriginal mother

[83] 'Destitution', *South Australian Register*, 26 August 1870, p.5.
[84] Ibid.
[85] Ibid.
[86] 'Sir George Gipps's Minutes on Governor Grey's Notes on the Aborigines of Australia', *Southern Australian*, 12 October 1841, p.3.
[87] South Australian *Blue Book* of 1851, 7 May 1852, CO13/77, AJCP, NLA: Canberra, p.158.

rather than removing them to ensure they would be 'trained up as whites'.[88] Previously, in 1861, Taplin had suggested that £5 be offered to every Aboriginal mother of a 'half caste' child to incentivise them to name the child's father, after which the child would become a 'protégé of the Government'.[89] This demonstrates the determination with which some colonists sought to remove children from Indigenous parents, going so far as to offer to *buy* these children to ensure they would be raised under the influence of white society. Taplin's framing of white fathers as having abandoned their mixed-race children implies that these children were all born from consensual relationships. In contrast, Myrna Tonkinson cautions that, while 'relationships of mutual affection and respect' between white men and Aboriginal women did exist in colonial Australia, such relationships were the 'exception', and most sexual and romantic contact between white men and Aboriginal women were violent or coercive.[90]

Child removal was not the only method utilised by colonial authorities to punish unfit mothers. In instances where police were unable to gather evidence to justify removing a child from their mother's care, South Australian legislation allowed courts to refuse financial aid to certain unmarried mothers. The clearest example of this is the clause instituted in the 1872 *Destitute Persons Relief Act* which mandated that charges of child maintenance must be dismissed 'if it shall be shown that, at the time such child was begotten, the mother was a common prostitute', under the assumption that she could not adequately determine the paternity of her child.[91] There is no evidence that this argument was successfully used in South Australia; however, most failed maintenance charges were not described in great detail in colonial newspapers, so it is impossible to state its failure with any certainty.

Government Support

Government support for unmarried mothers in colonial South Australia stemmed more from concerns about prostitution and infanticide than from any genuine care for the women themselves. Most unmarried women who became pregnant in colonial South Australia would

[88] G Taplin, *Copy of Diary of the Rev. Geo. Taplin of Pt. McLeay: vol 1, from April 4, 1859 to August 1, 1865*, State Library of South Australia, 1958, p.186.
[89] Ibid, p.103-104.
[90] M Tonkinson, 'Sisterhood or Aboriginal servitude? Black women and white women on the Australian frontier'. *Aboriginal History*, vol.12, 1988, p.32.
[91] *Destitute Persons Relief and Industrial and Reformatory Schools Act 1872* (SA), p.117.

have required some form of financial assistance—whether it be from their own families (if they had them), from charitable organisations, or from the colonial government. Low wages, limited employment opportunities for women, and the near impossibility for a female servant with an illegitimate child to gain employment as a live-in domestic servant meant that unmarried mothers had little means of supporting their children through their own labour.

As mentioned by Daniel Grey in his article on infanticide in nineteenth century Britain, even the most sympathetic employers 'were guaranteed to expect' their female servants to place their child in someone else's care before assuming their duties, meaning that unmarried mothers were forced to choose between working and caring for their own children.[92] In 1873 the *South Australian Register* published an article detailing the tragic murder-suicide of Elizabeth Kempt and her unnamed illegitimate daughter.[93] The *Register* noted that Kempt had long experienced financial difficulty as she refused to accept any employment which required her to part with her daughter. Consequently, she was 'a longer time than usual out of employment' and had sought assistance for a short time from the Catholic Female Refuge, though she refused to allow the Sisters in charge to place her daughter in the orphanage.[94] This case refutes colonial authorities' arguments that women with illegitimate children were 'unnatural mothers' who held no affection for their children. Rather, they were often desperate women faced with increasing hardship as they had to make the impossible choice between keeping their children and destitution.

The case of Elizabeth Kempt also supports Ginger Frost's assertion that 'illegitimacy was…a financial disaster' for nineteenth century women, compromising her 'already precarious ability to earn her living while increasing her expenses'.[95] The financial burden of illegitimate children meant that many unwed mothers, particularly those who could not prove paternity, had to seek financial support from the colonial government or otherwise turn to crime or prostitution as a means of support. The only government institution which took in unmarried pregnant women was the Adelaide Destitute Asylum, though this practice stemmed more from reluctant duty than benevolent charity. According to Mary Geyer, when the Destitute Board was first established in 1849 there was debate as to whether unmarried

[92] Grey, '"No crime to kill a bastard-child"', p.48.
[93] 'The Month's News', *South Australian Register*, 27 March 1873, p.5.
[94] Ibid.
[95] Frost, *Illegitimacy in English Law and Society*, p.49.

pregnant women were 'deserving' of assistance, with many believing that 'the "immorality" of these women cancelled out their claim to assistance'.[96] However, as no other organisation was prepared to care for these women in their confinement, and as many single female immigrants arrived in South Australia without family or friends to support them, the Destitute Board had no choice but to accept responsibility by admitting them into the Destitute Asylum for their confinement.[97]

It must be noted that this care was intended to last only for the duration of a woman's confinement. After giving birth, able-bodied single mothers were expected to leave the Destitute Asylum and support themselves through their own labour.[98] This encouragement of single mothers to leave the Destitute Asylum as soon as possible after their confinement, with no concern for how they would support themselves and their newborn child, demonstrates the little interest which the Board had in the welfare of these women and their children—only concerned with reducing their own culpability if these women were to die during childbirth from lack of medical intervention. Such attitudes, however inadvertently, punished unmarried pregnant women for the actions of their 'seducers'. Prior to the mandated establishment of Industrial Schools in 1866, there were few options for support for unmarried mothers who were refused assistance by the Destitute Board, and none which allowed them to remain with their children. This concern was far more serious for mothers with illegitimate children, as they were considered to have brought their poor circumstances upon themselves, with the Board far less likely to refuse relief—either indoor or outdoor (in the form of rations)—to destitute widows and deserted wives, whose inability to support their children was seen to be a direct result of their husband's absence.

From 1855 the Destitute Asylum included a lying-in ward to accommodate expectant mothers. This original lying-in ward consisted of eight beds in a small room (16 feet by 13 feet) attached to the women's quarters.[99] It is unclear how sufficient this space was, as in 1867 a committee from the Legislative Council suggested that a purpose-built lying-in ward should be added to the Asylum.[100] This suggestion was not addressed until the late 1870s,

[96] Geyer, *Behind the Wall*, p.39.
[97] Ibid.
[98] 'Destitute Board', *Adelaide Times*, 10 February 1857, p.3.
[99] 'Public Works.—No 3.', *South Australian Register*, 8 March 1855, p.3; 'Destitute Board', *South Australian Register*, 29 July 1856, p.2; 'The Destitute Establishment', *The Express and Telegraph*, 22 October 1867, p.2.
[100] Ibid.

when increasing public concern over the conditions in which destitute mothers, both married and single, gave birth led to the construction of a new Lying-In Home adjacent to the women's quarters of the Destitute Asylum on Kintore Avenue.[101] Construction was completed in 1878, with the new building boasting three wards capable of housing approximately 30 women.[102] The new Lying-In Home served two purposes: providing a purpose-built location for destitute women to give birth with the assistance of a midwife; and allowing for the more effective separation of unmarried pregnant women from their 'chaste' counterparts in the women's quarters. According to Swain and Howe, it was common practice in the nineteenth century for 'fallen' woman to be 'kept increasingly separate from her unsoiled sisters' in order to prevent the passing-on of immorality.[103] As mentioned earlier, this idea was treated with great seriousness in the Asylum, with unmarried pregnant women separated from other inmates, and sometimes each other, according to their level of perceived redeemability.

In cases where the Board did have to agree to assist unmarried pregnant women or single mothers, their assistance frequently doubled as punishment. For example, in 1856 the Board debated an application from short-term resident of the Destitute Asylum Mary Butler to leave her newly weaned infant in the care of the Asylum as she had obtained a domestic service position but could not take her baby with her.[104] Matthew Moorhouse argued that the Board had 'hitherto…fought shy of rearing illegitimate children', while Reverend Haining argued that it would be better for them to 'take the child than drive the mother into a worse course'.[105] The Board eventually agreed to support the child, under the provision that Butler would supplement their support with a portion of her wages (eventually agreed as 2s. of her 5s. weekly wage), despite some Board members arguing that this was an unreasonable expectation.[106] The idea that Butler could support herself on 3s. per week, while 2s. would only cover a portion of the support of an infant, does appear unreasonable.

Less than a month later, the editors of the *South Australian Register* published an article on the problem which illegitimate children could pose to the colony. They argued that the

[101] Geyer, *Behind the Wall*, p.48.
[102] Ibid.
[103] Swain and Howe, *Single Mothers and their Children*, p.10.
[104] 'Destitute Board', *South Australian Register*, 12 August 1856, p.2.
[105] Ibid.
[106] Ibid.

practice of women forfeiting a portion of their wages to keep their illegitimate children in the Destitute Asylum was open to manipulation.[107] The editors of the *Register* were concerned that it was only single mothers' 'own maternal feelings' (apparently lacking in the case of illegitimate children) which prevented them from absconding and defaulting on their payments—ironically, a practice which was common in men who were tasked with paying maintenance for their illegitimate children.[108]

The non-culpability of fathers for the support of their illegitimate children was a hotly contested topic in colonial South Australia. In 1880, a person named as H. Dixon wrote to the editors of the *South Australian Register*, discussing the proposed Foundling Hospital. In their letter, Dixon asked: 'why should the State or private charity or the mother be burdened with the expense of bringing up illegitimate children, while the father by exercising a little cunning is able to shirk all responsibility?'.[109] The proposed Foundling Hospital was also opposed by colonists who believed that providing government assistance to unmarried pregnant women, single mothers, and illegitimate children would only encourage unscrupulous women to become pregnant outside of wedlock in order to access this aid.[110] According to Swain, similar arguments were voiced against proposed Foundling Hospitals across Australia, and they were persistent enough that no Foundling Hospital was ever established in the colonies.[111]

With limited options for support, many single mothers had no option but to seek assistance from the Destitute Board. Consequently, the minutes of the Board's meetings are filled with refused applications from women with illegitimate children. In such instances, illegitimacy trumped marital status, with the Board rejecting applications from single women, widows, and deserted wives with illegitimate children.[112] In contrast, widows and deserted

[107] 'The Destitute Board', *South Australian Register*, 2 September 1856, p.2.
[108] Ibid.
[109] 'The Foundling Hospital', *South Australian Register*, 20 August 1880, p.7.
[110] 'The Foundling Hospital', *Evening Journal*, 27 August 1880, p.2; 'Foundling and Maternity Hospital', *South Australian Register*, 10 December 1880, p.5; 'Foundling Hospital', *Gawler Standard*, 25 September 1880, p.3.
[111] S Swain, 'Infanticide, savagery and civilization: The Australian experience'. In BH Bechtold and DC Graves (eds), *Killing Infants: Studies in the Worldwide Practice of Infanticide*, Lewiston: The Edwin Mellen Press, 2006, p.100.
[112] For examples of this see: 'Destitute Board', *Adelaide Observer*, 16 July 1859, p.8; 'Destitute Board', *The South Australian Advertiser*, 22 September 1860, p.2; 'Destitute Board', *South Australian Weekly Chronicle*, 20 October 1860, p.2; 'Destitute Board', *South Australian Weekly Chronicle*, 1 February 1862, p.7; 'Destitute Board', *South Australian Register*, 1 August 1862, p.3; 'Destitute Board', *South Australian Weekly Chronicle*, 5 February 1879, p.7.

wives without illegitimate children were rarely refused.[113] The majority of these rejections were made on the grounds that illegitimate children and their mothers should be supported by the child's putative father, rather than the colonial government.[114] It was only in cases where the putative father was unwilling, or unable, to provide financial support that women with illegitimate children were granted support from the Destitute Board. One example of this is the 1858 case of Lachlan White who, having proved that the father of her three illegitimate children was out of work, and therefore unable to pay his usual maintenance, was granted two rations for one week.[115] Similarly, in 1862 Ann Clark was granted one weekly ration for one month for herself and her three illegitimate children while the board determined whether all of her children's fathers had really departed the colony.[116]

When the father of an illegitimate child remained in the colony, the Destitute Board always attempted to force him to support the child before providing assistance themselves. For example, when Ann Kavanagh applied for assistance for herself and her six-week-old illegitimate child, allegedly fathered by her former employer William Schneider, in 1856 the Board referred her back to Schneider's employment, offering no consideration for her safety in returning to the home of a man who had already refused to support her during her pregnancy.[117] This case was, however, an outlier, with the Board usually seeking to force the putative fathers of illegitimate children to provide monetary support—not employment.

Maintenance

Maintenance was the most common, and least rewarding, charge brought against the fathers of illegitimate children in colonial South Australia. They were reported with much less detail and dramatic commentary than cases of seduction and breach of promise, which the colonial media clearly considered to be more 'entertaining'. While seduction charges

[113] For examples where women with illegitimate children were refused while women with legitimate children were accepted, see: 'Destitute Board', *The South Australian Advertiser*, 21 September 1858, p.2; 'Destitute Board', *The South Australian Advertiser*, 13 July 1858, p.3; 'Destitute Board', *The South Australian Advertiser*, 3 May 1859, p.3; 'Destitute Board', *South Australian Register*, 27 June 1863, p.3.
[114] For examples of women with illegitimate children asked about the status of the child's putative father before being granted/refused relief, see: 'Destitute Board', *South Australian Register*, 12 August 1856, p.2; 'Destitute Board', *The South Australian Advertiser*, 13 July 1858, p.3; 'Destitute Board', *South Australian Weekly Chronicle*, 11 September 1858, p.5; 'Destitute Board', *The South Australian Advertiser*, 3 May 1859, p.3; 'Destitute Board', *South Australian Weekly Chronicle*, 16 August 1862, p.7.
[115] 'Destitute Board', *The South Australian Advertiser*, 21 September 1858, p.2.
[116] 'Destitute Board', *South Australian Weekly Chronicle*, 16 August 1862, p.7.
[117] Ibid.

involved scandalous details of seduction and romantic intrigue, maintenance cases only sought to prove paternity. South Australian law prevented women from bringing their own maintenance charges, requiring the charge to be brought on their behalf by a ratepayer (property owner)—often a member of the Destitute Board. Charges could be instigated by married women against husbands who had deserted them and their children; however, most colonial South Australian cases involved unmarried women with illegitimate children. In her work on domestic service and illegitimacy in colonial Australia, Swain writes that the majority of illegitimate children were born to female servants under 25, and Frost asserts that the 'limited earning power' of these women (from low wages and insufficient employment opportunities) 'doomed them to poverty'.[118] The reason why these women are over-represented in maintenance trials is, according to Alecia Simmonds, because working-class women *needed* financial support to raise illegitimate children: 'recoiling in the glare of the public was not a luxury they could afford'.[119] This was especially the case in the Australian colonies, where many young servant women had immigrated alone, and therefore had no family to contribute to their support.

It is likely that, for every maintenance charge which was brought before the colonial courts there were multiple cases which were never brought, or which were settled outside of court. An article published in the *South Australian Register* in 1879 suggested that many single women who bore children outside of wedlock were 'too ignorant, too poor, or too considerate to their betrayers' to bring a maintenance charge.[120] Furthermore, Frost asserts that both men and women had 'incentives to settle the matter privately', with neither wanting the details of their intimacy to be made public. [121] The success of such agreements varied, as there was no way for women to enforce payment without a court order (and sometimes even with one). For example, in 1859, Margaret Childs sued her former employer, Mr Hunter, for refusing to pay her the 5s. per week they had agreed upon for the support of their illegitimate child.[122] During this time, the child 'became very ill and died', as Childs was 'totally destitute' and could not afford sufficient medical care.[123] One of the presiding Magistrates, R.M. Newland, labelled this 'one of the most heartless and disgraceful affairs ever brought

[118] Swain, 'Maids and mothers, p.462; Frost, *Illegitimacy in English Law and Society*, p.118.
[119] A Simmonds, 'Gay Lotharios and innocent Eves: child maintenance, masculinities and the action for breach of promise of marriage in colonial Australia.' Law in Context, vol.34, no.1, 2016, p.65.
[120] 'The Case of Johanna Sullivan', *South Australian Register*, 22 August 1879, p.5.
[121] Frost, *Illegitimacy in English Law and Society*, p.114.
[122] 'Local Court—Port Elliot', *The South Australian Advertiser*, 6 June 1859, p.3.
[123] Ibid.

before the Court'; however, Hunter faced no real repercussions for his negligence other than being required to pay the five weeks maintenance which he had defaulted on.[124] This case demonstrates just how important maintenance payments and other forms of financial support were for unmarried mothers in colonial South Australia, sometimes meaning the difference between life and death.

In her work on child maintenance and breach of promise charges in colonial Australia, Simmonds asserted that 'single mothers found it difficult to win maintenance' charges for three main reasons:

> First, establishing paternity was an arduous task. Secondly, a maintenance order was only enforceable in the colony in which it was made, which meant that men could with ease escape their obligations through slipping across colony borders. Thirdly, proceedings to make putative fathers liable could not be instituted until after the birth of the child.[125]

In the specifically South Australian context, this assessment is supported by Geyer, who suggests that most men charged with the paternity of an illegitimate child 'simply denied a connection with the pregnant woman, claimed she was a prostitute, or vanished'.[126] In 1871 William Rundle denied paternity of Mary Ann Simmonds' illegitimate child, calling witnesses to attest to her character—'which was anything but flattering'—and proving that 'she was not "pure as virgin snow"', causing the charge to be dismissed.[127] Simmonds successfully appealed this verdict three months later, much to the disdain of court officials who 'expressed the regret of the Bench at the case being brought forward a second time', particularly as 'they had arrived at the conclusion that [Rundle] was the father…and they were sorry to feel obliged to give a different decision to the other Magistrates'.[128] Court officials in this case expressed more regret at disagreeing with the incorrect decision of a previous court than they did at the prospect that this decision had forced a woman to maintain her child alone for three months longer than she should have.

[124] 'Local Court—Port Elliot', *The South Australian Advertiser*, 6 June 1859, p.3.
[125] Simmonds, 'Gay Lotharios and innocent Eves', p.70.
[126] Geyer, *Behind the Wall*, p.39.
[127] 'Magistrate's Court, Mt Barker', *Southern Argus*, 9 June 1871, p.3.
[128] 'Law Courts', *Southern Argus*, 8 September 1871, p.3.

Part of the reason behind harsh laws relating to unwed mothers in the nineteenth century was the stereotype that single women frequently brought false maintenance charges against wealthy men in the hope of improving their own financial standing—an idea which was specifically stated in the 1834 New Poor Law.[129] In 1880, an article discussing the proposed Foundling Hospital reminded readers that 'there are bad, designing women and girls, who will swear away a man's reputation, property, or life to serve a purpose'—that purpose being financial gain.[130] This ignored the fact that many of the cases considered in this chapter suggest the opposite—that men were willing to swear away a woman's reputation in order to avoid acknowledging their illegitimate children. In the case of Elizabeth Heyes v. Edwin Stocker in 1874, Stocker claimed Hayes could not prove her child's paternity because she had engaged in improper intercourse with too many men to know which was the father.[131] He also summoned his brother Charles and a man named Thomas Croft, who both testified to having also slept with Hayes, claiming they were only a small portion of a much larger group.[132] Fortunately for Heyes, Stipendiary Magistrate John Shepherdson stated that he 'did not attach much importance to the evidence of those who had so unblushingly come forward and confessed their own depravity', suggesting that he believed Stocker's witnesses had been too brazen for their testimony to be truthful, and the court ruled in her favour. Unfortunately for Heyes, Stocker refused to pay the agreed amount, and had seemingly absconded from the colony by November of the same year.[133]

According to Frost, the fear of women's false testimony in maintenance trials lingered throughout the nineteenth century, severely impacting unmarried mothers' ability to sue for child maintenance.[134] Similar mistrust of single women's testimony was evident in many other charges, particularly those of rape and sexual violence, which were discouraged from being substantiated solely on the evidence of the complainant, but were frequently dismissed on the unsubstantiated testimony of the defendant.[135] This practice of believing male defendants over female plaintiffs may be why so few maintenance charges were brought against wealthy men—not because they never fathered illegitimate children, but because women were afraid of being accused of opportunism. For example, when Mary Baker

[129] Grey, '"No crime to kill a bastard-child"', p.48.
[130] 'A Maternity and Foundling Hospital', *South Australian Chronicle and Weekly Mail*, 21 August 1880, p.5.
[131] 'Police Court—Port Wallaroo', *The Wallaroo Times and Mining Journal*, 22 April 1874, p.2.
[132] Ibid.
[133] 'Wallaroo Police Court', *The Wallaroo Times and Mining Journal*, 7 November 1874, p.3.
[134] Frost, *Illegitimacy in English Law and Society*, p.117.
[135] For further details of this practice, see chapter 7.

charged her former employer William Beck with being the father of her illegitimate child in 1849, Beck claimed that Baker had only brought the charge in an attempt to 'extort money' from him.[136] Furthermore, in 1879 H. Hussey appealed a maintenance charge awarded to Rebecca Ross, arguing that she had not provided sufficient evidence to allege his paternity. Special Magistrate Henry Downer agreed, stating that maintenance law was specifically intended to 'protect men from the trumped-up charges of women', and quashing the original verdict.[137]

In 1880, H. Dixon's letter to the editors of the *Register* claimed that actions for maintenance were 'all but worthless', as the evidence required to prove the paternity of an illegitimate child was so extensive as to be almost impossible.[138] This was not necessarily true. The case studies examined in this chapter show that proving the paternity of an illegitimate child's putative father to the extent that a judge would award maintenance was, while certainly difficult, not impossible. Of the 91 maintenance charges considered for this chapter, 56 (61.5 per cent) were at least nominally successful [see Appendix 3]. The relative success of maintenance charges was assisted by the fact that colonial authorities encouraged them in the hope that illegitimate children would be maintained by their fathers, rather than by government funds.[139] This assistance, usually from a member of the Destitute Board, was invaluable to South Australian women, being legally unable to bring their own maintenance charges. Collaboration with single mothers could also benefit the Destitute Board more directly. For example, in 1865 the Destitute Board charged Richard O'Laughlin with failing to maintain his two illegitimate children by Bridget Rabbit, causing the Board to expend £7 10s. for her support.[140]

While South Australia, and indeed all Australian colonies, did not follow in Britain's footsteps by disallowing maintenance claims altogether, colonial law did prohibit maintenance charges which were substantiated solely on the testimony of an illegitimate child's mother. In 1874, Rose Langton's maintenance charge against Edward Lane was

[136] 'Resident Magistrate's Court', *South Australian Register*, 27 June 1849, p.3.
[137] 'Law Courts', *The South Australian Advertiser*, 21 August 1879, p.6.
[138] 'The Foundling Hospital', *South Australian Register*, 20 August 1880, p.7.
[139] Frost, *Illegitimacy in English Law and Society*, p.120.
[140] 'Local Courts', *South Australian Register*, 20 November 1865, p.3. For other maintenance charges brought by members of the Destitute Board, see: 'Police Courts', *South Australian Register*, 27 November 1862, p.3; 'Police Courts', *South Australian Register*, 22 January 1863, p.2; 'Police Courts', *Adelaide Observer*, 3 September 1864, p.4; 'Police Court—Adelaide', *The Adelaide Express*, 4 November 1864, p.2.

dismissed because she could not provide any witnesses to support her testimony of Lane being her child's father.[141] Frost claims that requirement of witnesses in maintenance charges was instituted by British authorities under the assumption that women often lied in legal charges involving sex—either to preserve their own social standing or to achieve some social or financial gain.[142] This clause was specifically instituted in South Australia through the 1866 *Destitute Persons Relief Act*, which stated that 'no man shall be taken to be the father of any illegitimate child upon the oath of the mother alone'.[143] This Act was quoted in the 1868 maintenance trial of Philippa Glanville v. Octivell Warren, which was dismissed from lack of corroborative testimony.[144] The clause was reiterated in the 1872 Act, which stated that a woman's testimony needed to be substantiated by some other corroborative evidence or witness testimony attesting to the child's paternity—evidence which many women were unable to present.[145] Evidence of this practice is clear in the 1874 case of Ellen Keynes v. John O'Hara, where Special Magistrate John Varley complained that 'better evidence might have been produced', before reluctantly dismissing the charge.[146] Similarly, in 1875 Frances Osborne's own lawyer ended her charge by submitting that 'it was useless his taking up the time of the Court, as there was no corroborative evidence' to support her charge.[147]

The real difficulty in maintenance charges lay in ensuring that a child's putative father actually made the payments which were legally demanded of him. The *Destitute Persons Relief Act* of 1866 allowed a Justice to serve a warrant for any father who 'deserts his children, whether illegitimate or born in wedlock, or leaves them without adequate means of support'.[148] However, as mentioned previously, maintenance charges were only enforceable in the colony in which they were brought, meaning that men could abscond to a different colony safe in the knowledge that their legal obligation ended at the border. Colonial authorities were apparently aware of this trend as, in 1871 James McDonald was required to find two sureties to offer £10 each to be forfeited if he failed to pay 5s. maintenance to Mary Carrail every week for two years, after he 'stated his intention of leaving the colony'.[149] Such assurances were rare, however. When Thomas le Brand stated his intention to leave South

[141] 'Police Court—Adelaide', *The Express and Telegraph*, 2 September 1874, p.2.
[142] Frost, *Illegitimacy in English Law and Society*, p.113-114.
[143] *Destitute Persons Relief Act 1866* (SA), p.94.
[144] 'Local Court—Kadina', *The Wallaroo Times and Mining Journal*, 8 April 1868, p.5.
[145] *Destitute Persons Relief and Industrial and Reformatory Schools Act 1872* (SA) p.117.
[146] 'Magistrates' Court', *Kapunda Herald and Northern Intelligencer*, 27 February 1874, p.3.
[147] 'Law Courts', *The Express and Telegraph*, 16 August 1875, p.2.
[148] *Destitute Persons Relief Act 1866* (SA), p.93.
[149] 'Law and Criminal Courts', *Evening Journal*, 27 April 1871, p.2.

Australia after being ordered to pay 7s. per week to Mary Malone in 1878, no such order was made.[150]

In some cases, men preferred to take a prison sentence rather than pay maintenance. For example, in 1870 Charles Smith elected to spend three months in prison rather than pay the arrears, and 4s. weekly stipend, he owed to Charlotte Haradine.[151] While a prison sentence did punish men who refused to comply with maintenance orders, they offered little relief to single mothers experiencing financial hardship, as the time served waived the father's obligation to pay the arrears owed, emphasising punishment of a child's putative father over ensuring that the child and their mother were appropriately cared for. The case of Childs v. Hunter mentioned earlier demonstrates that only a few missed maintenance payments could mean the difference between life and death for a destitute child.

Even when maintenance charges were successful, and paid on time, the amount awarded was rarely enough to cover the financial demands associated with raising a child. According to Frost, this was deliberate. While government authorities were keen to place the financial burden of illegitimate children on putative fathers, rather than footing the bill themselves, they did not want maintenance payments to be so high that an 'unmarried mother should…escape her responsibilities altogether'.[152] This practice was clearly evident in colonial South Australia, where the median maintenance payments mandated between 1836 and 1880 was only 4s. 6d. per week.

The insufficiency of maintenance damages was clear in the case of Baker v. Beck mentioned above. Baker's lawyer requested 10s. per week, but deferred to the greater experience of the Judge, who joked that 'he really knew nothing about such things' to audible laughter.[153] Despite his self-professed ignorance on the subject, the Judge thought it would be appropriate to award a smaller amount and require Baker to 'go to service, and devote part of her wages to support the child' with the expectation that 'it would teach her to take care of herself for the future', and ruled that Beck should pay 4s. per week.[154] The judge offered no consideration of the possibility that forcing Beck to pay more maintenance might teach him

[150] 'Police Courts', *Adelaide Observer*, 19 October 1878, p.6.
[151] 'Wallaroo Times', *The Wallaroo Times and Mining Journal*, 27 April 1870, p.2.
[152] Frost, *Illegitimacy in English Law and Society*, p.111.
[153] 'Resident Magistrate's Court', *South Australian Register*, 4 July 1849, p.4.
[154] Ibid.

not to impregnate and abandon his female servants. Furthermore, this ruling ignored, either wilfully or through ignorance, the fact that it was almost impossible for women with illegitimate children to gain domestic service positions, meaning that Baker would need to pay someone to care for her child while she worked. This case also demonstrates that maintenance payments were not necessarily decided on the financial means of the putative father, for if Beck were wealthy enough to employ servants, he could likely have afforded more than 4s. per week.

The difficulties associated with maintenance charges encouraged many women to pursue charges of seduction and breach of promise in order to secure a one-off lump-sum payment which the defendant was forced to pay up-front or risk bankruptcy. [155] This option was actively encouraged in Britain, with the 1834 Poor Law Commissioners' report specifying that, though they were prohibiting unmarried women from suing for maintenance, they still encouraged women and their families to pursue charges of breach of promise and seduction.[156] Successful charges of breach of promise or seduction could also be used as useful evidence in proving paternity in maintenance trials, as the relationship between the plaintiff and defendant had already been proven in court. For example, in 1877 Annie Richardson was awarded 12s. a week for maintenance of her illegitimate daughter by Joseph Pappin (one of the highest amounts considered in this chapter), based on her successful breach of promise charge, for which she had been awarded £150 two months earlier.[157]

This is likely because, having been convicted of breach of promise, Pappin had proven himself to be an untrustworthy man deserving of punishment—a common opinion of men who broke engagements with otherwise respectable women—while Richardson's engagement in pre-marital sex only under the promise of marriage was seen as more forgivable than women who engaged in sex without coercion.[158] Because proof of a romantic relationship was often used as proof of paternity, men who were found guilty of breach of promise or seduction were more susceptible to being charged with being the putative father of that woman's illegitimate child. This was especially the case for seduction charges, which could only be brought on the behalf of women with illegitimate children.

[155] Simmonds, 'Gay Lotharios and innocent Eves', p.64.
[156] *Poor Law Commissioners' Report of 1834*, p.351.
[157] 'Law and Criminal Courts', *Evening Journal*, 21 September 1877, p.2; 'Supreme Court—Civil Sittings', *Adelaide Observer*, 14 July 1877, p.4.
[158] For further analysis of breach of promise cases brought in colonial South Australia, see chapter 2.

Seduction

Seduction was first mentioned in South Australian law in the 1841 *Insolvent Debtors Act*, which stated that financial damages could be demanded for the seduction of someone's daughter or servant.[159] In Scotland, women were allowed to lay their own seduction charges; however, the Australian colonies followed England's example by forbidding women from bringing such charges on their own behalf as compensation for their own lost employment during pregnancy. As a consequence, an action for seduction could only be brought by the parents or employer of the seduced woman and it was they, not the woman herself, who were compensated.[160] According to Simmonds, seduction charges in nineteenth century Australia were intended to compensate 'the father of a [single] woman under 21 for loss of service on account of her pregnancy'.[161] In cases where the seduced woman had no living father, the charge could also be brought by her mother. Such cases were uncommon, with only 2 of the 15 seduction charges considered in this thesis brought by a woman's mother; however, Susannah Swaile's 1877 charge against James McCulloch for seducing her daughter Louisa was the most successful seduction charge considered in this thesis, awarding the plaintiff £350 in damages.[162] By placing the father at the forefront of most seduction cases, South Australian law reinforced the idea of unmarried women as the figurative (not substantiated in law) 'property' of their fathers, with their unpaid labour being integral to the successful running of the family unit.[163]

Seduction charges privileged women with families in the colony over those without, with the charge only able to be brought by a parent for the loss of their daughter's (unpaid) labour during her pregnancy. This privilege of women with parents over those without was likely carried over from Britain, with the 1834 Poor Law Commissioners' report stating that, by placing the sole responsibility for illegitimate children on their mothers, they hoped that single women's parents would be induced to support them financially.[164] This was an impossible expectation for many unmarried mothers in South Australia, a large portion of

[159] *Insolvent Debtor's Act 1841* (SA), p.12.
[160] K Barclay, 'Emotions, the law and the press in Britain: seduction and breach of promise suits, 1780-1830'. *Journal for Eighteenth Century Studies*, vol.39, no.2., 2016, p.269.; *Insolvent Debtors Act*, 1841, no.1, p.12.
[161] Simmonds, 'Gay Lotharios and innocent Eves', p.67.
[162] 'Law Courts', *The Express and Telegraph*, 12 April 1877, p.1.
[163] For a consideration of seduction charges as they related to colonial understandings of consent and female sexuality, see chapter 6.
[164] *Poor Law Commissioners' Report of 1834*, p.349.

whom had immigrated alone with no family to provide support or bring a charge of seduction on their behalf. High numbers of female domestic servants immigrating to South Australia throughout the course of colonisation meant that this remained the case for most of the nineteenth century.

In 1877, Sophia Bawhey's parents sued Thomas O'Brien for her seduction and pregnancy, during which she had almost died, requiring the (expensive) attendance of three medical men.[165] O'Brien made little effort to argue that he has not the father of Bawhey's child, resting the majority of his defence on the argument that Bawhey had been employed by his wife at the time she of the seduction, and that her parents were therefore not eligible to sue for the loss of her labour.[166] The Bawhey's counter-argued that Sophia had never been formally employed by the O'Brien's—only providing casual assistance as a favour while they searched for a new servant. When summing up the case, Stipendiary Magistrate Henry Downer told the jury that the only decision they needed to make was on the 'question of service or no service', as O'Brien had not denied the intercourse and had already been commanded to pay 12s. per week to support the child.[167] The jury ruled in favour of the Bawheys', awarding £50 in damages.[168]

Parents who were awarded damages for their daughter's seduction were in no way obligated to use those funds for the care of their daughter and grandchild. For example, in November 1854, Jonathan Powell charged Robert Jaques for the seduction of his daughter Sarah Mary Powell, for which he was awarded £150 in damages.[169] Less than three years later, in March 1857, Sarah Powell applied to the Destitute Asylum for relief as her father had turned her out of his home after he had discovered she was pregnant with her second illegitimate child. The Destitute Board also turned her away, and she was arrested for vagrancy less than a week later after being discovered sleeping in an empty outhouse in the rain.[170] The Destitute Board was consequently forced to admit Powell for her confinement, as her father still refused to maintain her. When the Board took Powell's father to court to sue for her support, he claimed that he had too many children and could not afford to care for

[165] 'Local Court—Adelaide', *The South Australian Advertiser*, 24 December 1877, p.6.
[166] Ibid.
[167] Ibid; 'Police Court—Adelaide', *The Express and Telegraph*, 12 October 1877, p.2.
[168] 'Local Court—Adelaide', *The South Australian Advertiser*, 24 December 1877, p.6.
[169] 'Law and Police Courts', *Adelaide Times*, 14 November 1854, p.3.
[170] 'Destitute Board', *Adelaide Observer*, 28 March 1857, p.7; 'Police Courts', *South Australian Register*, 31 March 1857, p.3; 'Destitute Board', *Adelaide Observer*, 4 April 1857, p.3.

her—despite having received £150 for her seduction less than three years ago (a fact which was not mentioned in court). The court ruled that Powell would remain in the Asylum and her father would pay 7s. per week towards her maintenance.[171]

In June 1857 the Destitute Board assisted Powell in bringing a maintenance charge (at which her father gave evidence) against William Bolt, the putative father of her second child, for which she was awarded 7s. per week to replace the money paid by her father.[172] By August 1858, Bolt was already before the court for refusing to make his mandated payments, and he requested that his payments be reduced to 5s. as he could not afford more. At a (seemingly sarcastic) suggestion from the Judge, Bolt indicated that he would be willing to care for the child himself rather than paying maintenance to Powell, which Powell agreed to.[173] However, Bolt clearly rescinded upon this agreement (possibly after realising that it cost far more than 5s. per week to care for a child), because he came before the court once again at the end of that same month for refusing to pay Powell maintenance, which was subsequently reduced to 6s. per week.[174] The different charges brought by and against Sarah Powell show the stigma that burdened unmarried mothers in nineteenth century South Australia. They also show that suing for maintenance was not necessarily, as British and colonial authorities asserted, a viable or sustainable method of financial advancement, and that suing for seduction was not always a viable alternative.

Seduction charges were a double-edged sword for unmarried mothers. On one hand, the damages were significantly higher than maintenance payments, and had to be paid up-front, while on the other hand, these payments were only intended to compensate the woman's father (and sometimes mother, in the case of widows). Between 1852 and 1857, the South Australian Immigration Agent's reports recorded the average annual wage for a female domestic servant in the colony as being between £16 to £25.[175] The two seduction charges brought during this period were awarded £150 and £100 respectively—more than four times greater than the annual wage of a female servant—suggesting that, despite the assertions

[171] 'Law and Police Courts', *Adelaide Times*, 7 April 1857, p.2.
[172] 'Police Court—Adelaide', *Adelaide Times*, 30 June 1857, p.3; 'Police Courts', *South Australian Register*, 1 July 1857, p.3.
[173] 'Local Courts', *South Australian Register*, 7 August 1858, p.3.
[174] 'Police Courts', *South Australian Register*, 20 August 1858, p.3.
[175] *Immigration Agent's Report for the Quarter ended September 30 1852*, 30 September 1852, p.1, CO13/78, AJCP, NLA: Canberra, p.203; *Immigration Agent's Report for the Quarter ended 31st December 1856*, 6 January 1857, p.2, CO13/95, AJCP, NLA: Canberra, p.92; *Immigration Agent's Report for the quarter ended 31st March 1857*, 1 April 1857, p. 2, CO13/95, AJCP, NLA: Canberra, p.140.

made in Bawhey v. O'Brien, these damages were not intended solely to compensate for lost labour, but rather to compensate 'a woman and her family for the social ruin that was the consequence of [pre-marital sex]'.[176]

This suggestion that seduction charges were intended for the recovery of social—rather than financial—loss is evident in the fact that seduction damages compensated parents for a much higher sum than they would have lost through the absence of their daughter's labour. Even if parents had been forced to hire a servant to replace their daughter's labour during her pregnancy, the average amount of damages awarded across the seduction charges considered in this thesis was approximately £78—more than three years' wages for the average female servant.

In the Powell v Jacques seduction charge mentioned above, Powell's lawyer claimed that the legal description of seduction charges was a 'fiction', and that they were really intended to compensate the seduced girl for 'her innocence corrupted, her confidence betrayed, and her reputation ruined'.[177] This shows that seduction damages were really intended to place a pecuniary value on young, unmarried women's sexual 'purity', sullied forever by a pre-marital pregnancy. This prioritization of parents' shame of having an unchaste child over the repercussions for their seduced daughter—whose social standing and future marriage prospects had suffered permanent damage—demonstrates the lack of empathy with which colonial and court authorities regarded unmarried women's emotional and financial wellbeing.

Conclusion

The argument in this chapter has demonstrated the clear and consistent stigma associated with single motherhood in colonial South Australia. Though the New Poor Law was never transferred into the colony directly, its influence is present in government and media discussions of the 'problem' of illegitimacy and the alleged immorality of unwed mothers. In South Australia, where marriage was strictly encouraged throughout the

[176] 'Law and Criminal Courts', *South Australian Register*, 14 November 1854, p.2; 'Supreme Court—Civil Side', *Adelaide Observer*, 13 September 1856, p.4.K McKenzie, Scandal in the Colonies: Sydney & Cape Town, 1820-1850. Melbourne University Press: Carlton, 2004, p.99.
[177] 'Law and Criminal Courts', *South Australian Register*, 14 November 1854, p.2.

nineteenth century, such prejudices were present in colonial authorities' minds from the very beginning of colonisation. Colonial authorities initially sought to deny or disguise the presence of illegitimacy and its associated vices from fear of tainting their colony's reputation of social and moral superiority; however, by the mid-nineteenth century the issue had become impossible to hide, and the 1860s and 70s saw the creation of multiple forms of legislation regulating illegitimate children and their mothers. This period also saw the creation of South Australia's first Industrial Schools, as colonial authorities sought to avoid the emergence of an established crime or 'pauper' class which they assumed would result from 'unfit' mothers raising their children to pursue a life of crime and vice. This concern over unmarried mothers, and their ability to raise their children according to English middle-class ideals, remained a contentious issue for the rest of the colonial period.

This chapter demonstrated that unmarried women with illegitimate children faced numerous social and legal barriers in colonial society which were not experienced by married women, or by single women without children. These barriers evolved throughout the colonial period to include: stereotypes surrounding the perceived immorality of women who became pregnant outside of marriage; the reluctance of the Destitute Board to provide financial assistance to destitute mothers with illegitimate children; single mothers' difficulty in gaining a live-in domestic service position; increased likelihood of their children being removed to the Industrial School; and the difficulty they faced in proving the paternity of putative fathers and ensuring consistent maintenance payments, even with a court order. These barriers were clearly constructed from class and race-based biases, with the most severe hardships faced by Aboriginal women and poor white women and little reference to, or concern over, illegitimate children born to middle-class white women.

The prejudice surrounding illegitimacy in Britain and colonial Australia was very gendered. Despite South Australian authorities' concern about the morality of the colony, and criticism of male 'seducers' in colonial media, the social and financial hardships experienced by unwed mothers were largely avoided by their children's fathers—even those whose paternity was proven in court. Maintenance charges were a long and arduous process for unmarried women, with the fight often continuing long after the initial case was concluded and with men able to escape responsibility by leaving the colony. Seduction charges were hardly better, with women forced to publicly recount the details of their sexual misconduct with no guarantee that the damages awarded would be used to support them or their children.

The lengths which some women went to avoid being associated with the stigma of single motherhood—including murdering their newborn infants—are discussed in the next chapter.

Chapter 5:
"Unwanted Pregnancy"

An article titled 'Infanticide', published in the *Adelaide Observer* in 1862, claimed that 'the destruction of an infant's life, even if that infant be illegitimate, is as heinous an offence as the murder of an adult'.[1] This lambasting of the crime of infanticide—and related charges such as manslaughter and concealment of birth—was relatively common in South Australian colonial media, and the perception of infanticide as a 'heinous' crime was reflected in colonial legislation, carrying the maximum penalty of death by hanging for the duration of the nineteenth century. However, this chapter shows that no one was ever executed for infanticide in South Australia, or in any Australian colony except Van Diemen's Land and, despite strict legislative mandates and media criticism, women charged with crimes relating to unwanted pregnancy—including infanticide, concealment of birth, and abortion—were treated with comparative lenience in colonial South Australia.

While there exists a body of literature on infanticide in nineteenth century Australia, the scholarship on infanticide in the pre-1880 colonial period has focussed heavily on stereotypes of infanticide in Indigenous communities—stereotypes which were based in frequent but largely unsubstantiated reports of infanticide in 'uncivilised' societies used to justify British colonial rule over Indigenous populations. Key research in this field includes Marguerita Stephens' 2009 book chapter considering the 'facts' circulated by British colonial authorities, determining that imperial stereotypes of Aboriginal peoples as culturally predisposed to infanticide were based on British assumptions of the savagery and barbarism of colonised peoples and rarely substantiated by actual proof.[2] Similar arguments are also expressed in Shurlee Swain's 2006 article on 'savagery' and infanticide in colonial Australia, while Satadru Sen's 2002 article on infanticide in nineteenth century India provides context for the British Empire's history of utilising rumours of infanticide to justify the (often violent) enforcement of British rule over colonised peoples.[3]

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[1] 'Infanticide', *Adelaide Observer*, 3 September 1864, p.6.
[2] M Stephens, 'A word of evidence: Shared tales about infanticide and "others not us" in colonial Victoria'. In J Carey and C McLisky (eds), *Creating White Australia*, Sydney: Sydney University Press, 2009, pp.175-194.
[3] S Swain, 'Infanticide, savagery and civilization: The Australian experience', in BH Bechtold and DC Graves (eds), *Killing Infants: Studies in the Worldwide Practice of Infanticide*, Lewiston: The Edwin Mellen Press, 2006, pp.85-105; S Sen, 'The savage family: Colonialism and female infanticide in nineteenth-century India'. *Journal of Women's History*, vol.14, no.3, 2002, pp.53-79. For further works on infanticide as a tool of British colonial propaganda, see: DJR Grey, 'Gender, religion, and infanticide in colonial India, 1870-1906', *Victorian*

While such sources are certainly useful in determining colonial ideas of infanticide and infanticidal mothers, all of the infanticide-related charges considered in this chapter were brought against white women. Most research on infanticide charges against white women in colonial Australia, such as Judith Allen's *Sex and Secrets* and Lyn Finch and Jon Stratton's 'The Australian Working Class and the Practise of Abortion', has considered case studies from the late-nineteenth and twentieth centuries—outside of the scope of this thesis.[4] As a consequence, and because South Australian attitudes and laws relating to infanticide were heavily influenced by British laws and ideals, it is also necessary to consider key research on infanticide in Britain during nineteenth century. Key works on this subject are Nicola Goc's 2013 book *Women, Infanticide and the Press*, which argues that nineteenth century British newspapers influenced public opinion both for and against infanticidal women, and James Kelly's 2019 article arguing that the increase in infanticide charges in early-nineteenth century Ireland were a direct result of dwindling aid, and increasing stigma, directed towards unmarried pregnant women.[5] These works provide excellent context for research on infanticide in colonial South Australia, where newspaper reports invariably played a role in colonial perceptions (including both pity and condemnation) of infanticidal women.

The subject of abortion and infanticide has attracted more interest from scholars of South Australian history than any of the other crimes considered in this thesis. A PhD and an Honours thesis have been produced on subjects adjacent to those discussed in this chapter. First, Patricia Sumerling's 1983 Honours thesis, *Infanticide, Baby-Farming and Abortion in South Australia 1870-1910*, considers reproduction-related crimes in the late nineteenth and early twentieth centuries—though only two infanticide charges are referred to in any detail.[6]

Review, vol.32, no.2, 2011, pp.107-120; M Stephens, 'Infanticide at Port Phillip: Protector William Thomas and the witnessing of unseen things', *Aboriginal History*, vol.38, 2014, pp.109-130; DJR Grey, 'Creating the "problem Hindu": Sati, thuggee and female infanticide in India, 1800-60', in de Groot, J and S Morgan (eds), *Sex, Gender and the Sacred: Reconfiguring Religion in Gender History*, Blackwell Publishing Ltd: Chichester, 2014, pp.104-116; DJR Grey, '"It is impossible to judge the extent to which the crime is prevalent": infanticide and the law in India, 1870-1926, *Women's History Review*, 2020, pp.1-19; P Murthy, 'Making the private public: witnessing female infanticide in nineteenth-century Kathiawar', *Gender and History*, 2021, pp.1-17.

[4] J Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*. Oxford University Press: Melbourne, 1990; L Finch and J Stratton, 'The Australian working class and the practice of abortion 1880-1939', *Journal of Australian Studies*, vol.12, no.23, 1988, pp.45-64. See also: J Kociumbas, 'Azaria's antecedents: Stereotyping infanticide in late nineteenth-century Australia', *Gender & History*, vol.13, no.1, 2001, pp.138-160; G Rychner, 'Murderess or madwoman?: Margaret Heffernan, infanticide and insanity in colonial Victoria', *Lilith: A Feminist History Journal*, vol.23, 2017, pp.91-104.

[5] N Goc, *Women, Infanticide and the Press, 1822-1922: News Narratives in England and Australia*. Ashgate Publishing Limited: Surrey, 2013; J Kelly, '"An Unnatural Crime": Infanticide in early nineteenth-century Ireland'. *Irish Economic and Social History*, vol.46, no.1, 2019, pp.66-110.

[6] P Sumerling, *Infanticide, Baby-Farming and Abortion in South Australia 1870-1910* (Honours Thesis), University of Adelaide, 1983.

Sumerling concluded that, in cases of reproduction-related crime, 'South Australia mirrors New South Wales', which the information presented in this chapter suggests was not necessarily the case.[7] South Australian colonists, media, and colonial authorities' beliefs in their colony's distinctiveness and superiority led to a culture of denial which painted infanticide and abortion as moral anomalies far more common in the former penal colonies than in their own. These beliefs also contributed to the stereotype of infanticide as overwhelmingly committed by inherently criminalised and sexualised unmarried domestic servants, though this chapter argues that the over-representation of domestic servants in infanticide charges resulted more from the constant supervision which these women were subjected to, rather than any class-based propensity for infanticide.

Second, Clare Parker's 2013 PhD thesis on the legislation of morality in South Australia includes a brief discussion of colonial abortion law; however, Parker primarily focuses on abortion charges from the early twentieth century, mentioning nineteenth century charges only for their comparative scarcity.[8] This chapter seeks to test and expand upon Parker's claim in order to understand why abortion was so infrequently prosecuted in colonial South Australia and analyse the extent to which this legal lenience was reflective of popular nineteenth century opinions regarding the legal personhood, or lack thereof, of the unborn foetus. It also expands upon Goc's work on media influence to explore the difference in media portrayals of women who committed infanticide and those who sought abortions—a comparison which is not considered in Goc's book. The analysis in this chapter considers the extent to which these differences in media opinion were reflective of the legislative lenience towards the crime of abortion compared to the crime of post-birth infanticide.

In order to accomplish this goal, this chapter considers four case studies of abortion, seven of concealment of birth, and sixteen of infanticide and attempted infanticide brought against single women in colonial South Australia—assessing how and why individual cases ended in convictions and acquittals. This thesis has regularly reiterated the emphasis placed on morality and middle-class respectability, and the specific emphasis placed on marriage and motherhood for women, in colonial South Australia; however, this chapter argues that these ideals were often overridden by a kind of paternalistic pity when unmarried (white)

[7] Sumerling, *Infanticide, Baby-Farming and Abortion*.
[8] C Parker, *Abortion, Homosexuality and the Slippery Slope: Legislating 'Moral' Behaviour in South Australia* (PhD Thesis), University of Adelaide, 2013.

mothers came before the colonial courts accused of murdering their newborn infants. Combined with the perception of infanticidal white women as driven by temporary insanity and pity for women who were 'seduced' and abandoned by unscrupulous men, this chapter notes a lenience in sentencing for infanticide-related crimes which was not evident in other female-dominated crimes considered in this thesis.

Abortion

Abortion, or attempting to bring about a miscarriage, was not a common charge in colonial South Australia. Research for this chapter only discovered five abortion charges brought in the colony between 1836 and 1880, four which were brought by or on the behalf of single women, and all brought between white-British plaintiffs and defendants. This may be because, when performed correctly, abortion left little noticeable physical trace, which made distinguishing between spontaneous and induced miscarriage difficult. Many nineteenth century abortion charges, in Australia and elsewhere in the Empire, were only discovered because the woman died—usually from sepsis resulting from an incorrectly performed, or violently non-consensual, physical abortion—with abortions that did not threaten the life of the mother going largely unrecognised. This reflects a focus in nineteenth century abortion law on the life and wellbeing of the mother, rather than the wellbeing of the foetus which was popularised in the late-nineteenth and twentieth century.[9]

This was the case in the 1879 Coroner's Inquest into the death of a widow named Sarah White, who died of blood poisoning after taking medication to produce a miscarriage.[10] Mary Ann Bignell and Mary Ann Clayton, who were charged under the 1876 *Criminal Offences Act* with providing White with the medication and therefore aiding and abetting in the procurement of a miscarriage, were acquitted on the grounds that they were unaware of her intention to use the medication to procure abortion.[11] This was the only official case of abortion resulting in death, and the only abortion charge involving a married woman, brought in South Australia in the pre-1880 colonial period, though this dearth of abortion charges reflects a lack of reporting rather than an infrequency of abortion. According to Sumerling,

[9] E Millar, 'Feminism, foetocentrism, and the politics of abortion choice in 1970s Australia', in S Stettner, K Ackerman, K. Burnett, and T Hay (eds), *Transcending Borders: Abortion in the Past and Present*, Palgrave Macmillan: London, 2017, pp.121-136.
[10] 'Death After Abortion', *South Australian Register*, 19 December 1879, p.3.
[11] Ibid.

many instances of women—particularly married women—dying from suspected abortions were (deliberately or otherwise) recorded as accidental deaths resulting from natural complications of pregnancy or miscarriage.[12]

Judith Allen found that women who attempted abortion in the nineteenth century 'usually tried medicinal or herbal substances first'.[13] If taken properly, such medicines carried far fewer health risks than physical abortions so, unless a credible witness made a complaint, there was no way for colonial authorities to trace abortion. In many cases, the only witnesses were the woman seeking the abortion and the person providing her with the medication—both of whom had a vested interest in keeping the secret. This idea is supported by Parker, who writes that 'certain key elements' of abortion-related offences remained the same in South Australia throughout the nineteenth century, and those elements were 'a consistently low rate of prosecution and a lower rate of convictions'.[14] Sumerling suggests that cases of suspected and attempted abortion were not regularly policed in South Australia until the 1890s, when concerns about the growth of Australia's white population led to increased policing of white women's reproductive behaviour.[15]

The few cases of abortion which did come before the colonial courts can shed light on the ways that South Australian women sought to terminate unwanted pregnancies, as well as colonial perceptions of this crime. In her book on women's experiences in Adelaide's Destitute Asylum, Mary Geyer suggested that insufficient employment opportunities and low wages, coupled with the 'social stigma' and financial burden associated with raising an illegitimate child, would have 'driven an unknown number of women to illegal abortionists or to murder their new-born children'.[16] This statement is somewhat misleading, in that there was no such thing as a legal abortionist in nineteenth century Australia, and it was the

[12] Sumerling, *Infanticide, Baby-Farming and Abortion*, p.13.
[13] Allen, *Sex and Secrets*, p.38.
[14] Parker, *Abortion, Homosexuality and the Slippery Slope*, p.26.
[15] Sumerling, *Infanticide, Baby-Farming and Abortion*, p.14. For research on late-nineteenth and twentieth century South Australian abortion law, see: B Baird, 'Abortion in South Australia before 1970: an oral history project', *Lilith: A Feminist History Journal*, vol.7, 1991, pp.113-127; E Millar, '"Too many": anxious white nationalism and the biopolitics of abortion', *Australian Feminist Studies*, vol.30, no.83, 2015, pp.82-98; C Parker, 'Female complaints and certain events: silencing abortion discourse', *Lilith: A Feminist History Journal*, vol.19, 2013, pp.32-45; M Heath and E Mulligan, 'Abortion in the shadow of the criminal law: The case of South Australia', *Adelaide Law Review*, vol.37, 2016, pp.41-68.
[16] M Geyer, *Behind the Wall: The Women of the Destitute Asylum Adelaide, 1852-1918*. Wakefield Press: Kent Town, 2008, p.44.

'abortionists', rather than the women who sought their services, who faced legal consequences if their actions were brought to light.

According to Featherstone, the 1861 *Offences Against the Person Act* was the first British law allowing women to be charged with procuring their own abortion—prior to this point, women could not be charged for seeking an abortion.[17] In the 1866 trial of Edward Charles Smith for administering abortive drugs to Mary Laurie, the presiding Crown Solicitor stated that 'there was no such offence as a woman taking drugs to procure abortion'.[18] This statement in 1866 demonstrates that South Australia was slow to adopt Britain's 1861 update to abortion law—a rare occurrence, with changes in British law often triggering a corresponding change in South Australian law.[19] At the establishment of the colony (as with all other Australian colonies[20]), South Australia adopted all of Britain's laws—including the 1837 *Offences Against the Person Act* which mandated a maximum sentence of between three years imprisonment and transportation for life for persons convicted of assisting, or forcing, a woman to procure a miscarriage.[21] This Act followed the 1803 Lord Ellenborough's Act which made abortion illegal under British common law, with convicted persons (not including the pregnant woman) facing the death penalty.[22]

The first direct mention of abortion in South Australian legislation came in the 1859 *Personal Offences Act*, which specified that the crime was only chargeable upon the person who provided the means for procuring a miscarriage.[23] This law was not amended until the 1876 *Criminal Offences Act*, which mandated for the first time that women could be charged for seeking an abortion—facing a minimum sentence of three years hard labour.[24] As South Australian authorities were usually swift to adopt British legislative changes throughout the colonial period, their failure to do so in this instance—taking 15 years to follow Britain's

[17] L Featherstone, 'Becoming a baby? The foetus in late-nineteenth century Australia', *Australian Feminist Studies*, vol.23, no.58, 2008, p.453.
[18] 'Law Courts', *The Adelaide Express*, 9 May 1866, p.3.
[19] For example, South Australia repealed the death penalty for rape in 1845 after the British repeal in 1841 (for elaboration on this repeal, see chapter 7); SA also legalised divorce in 1858 following the British laws of 1857.
[20] C de Costa, 'Abortion law, abortion realities', *James Cook University Law Review*, vol.15, 2008, p.9.
[21] J Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, Cambridge University Press: Cambridge, 1988, p.26-27.
[22] Ibid, p.12-25.
[23] *Offences Against the Person Act 1859* (SA), p.100.
[24] *Criminal Offences Act 1876* (SA), p.15.

lead—suggests that they had little interest in truly criminalising abortion at this time.[25] This reluctance, evident in low policing and low conviction rates if not in law, stemmed from the nineteenth century emphasis on preserving maternal life. In her research on perceptions of the foetus in late-nineteenth century Australia, Lisa Featherstone suggests that predominantly Catholic countries—such as Italy—emphasised the preservation of the unbaptised foetus over the life of the baptised mother, while protestant countries like Britain emphasised 'maternal safety' until the emergence of the anti-abortion movement in the last decades of the nineteenth century.[26]

The social and legal lenience towards women who sought abortions in early colonial South Australia is evident in the fact that none of the women considered in this chapter ever denied their intention to procure abortion—suggesting they may have known there were no serious legal consequences for their doing so. However, the fact that these women did not deny taking abortive drugs does not mean that the decision was always their own. There are multiple examples of women testifying to taking abortion medication at the direction of their 'seducers'. For example, in 1876 Augusta Degenhardt's mother sued John Henry Veale for providing her daughter with numerous medications which were intended to induce abortion, and also of having done so with a previous pregnancy in 1874.[27] The medications worked in 1874 but were unsuccessful in 1876, with Degenhardt delivered of a healthy male child though she herself became very ill and was consequently unable to testify in court.[28]

Allegations of men pressuring unmarried women to terminate pregnancies were most frequently present not in direct charges of procuring abortion, but in other charges relating to pre-marital pregnancy and illegitimate children such as breach of promise and seduction. For example, in the 1877 breach of promise charge of Mary Ann Lewis v. Mr Perrin, Lewis claimed Perrin had asked her to procure an abortion to maintain the secrecy of their sexual relationship and that, when she refused to do so, he broke their engagement.[29] Also in 1877, Hannah Maria Morgan called for evidence from Dr Doeneau of Two Wells, who testified that the William Wilson—the putative father of her illegitimate child—had approached him for

[25] Research for this thesis did not uncover any abortion-specific legislation in any other Australian colony prior to Federation, suggesting that other Australian colonies followed British abortion law.
[26] Featherstone, 'Becoming a baby?', p.457.
[27] 'Law Courts, *The Express and Telegraph*, 8 December 1876, p.2.
[28] 'Summary of News', *Border Watch*, 30 December 1876, p.3.
[29] 'Local Courts', *Adelaide Observer*, 26 May 1877, p.10.

abortion-inducing medication because 'he had got himself into a little bit of a fix with his servant girl'.[30] Morgan successfully used this evidence to prove Wilson's paternity, with the court ordering him to pay 9s. per week in maintenance.[31]

It is evident that some men were not willing to take no for an answer when illegitimate pregnancies threatened to expose their own sins. The 1834 report of the British Poor Law Commissioners directly speculated that most attempts at abortion by single women were instigated by the child's father.[32] In the South Australian context, the clearest example of this is the 1863 charge against Dr Thomas Graham for 'feloniously and illegally trying to bring about a miscarriage on the person of his servant, Eliza Thomas'.[33] Thomas made the complaint herself, alleging that she had become pregnant by Graham (who was already married with a child) and that, six or seven weeks into her pregnancy, he forced her down on her bed and inserted an object into her body with the intention of terminating the pregnancy.[34] Thomas left Graham's service two weeks later and laid information against him soon afterwards as she had since been plagued with physical pain.[35]

Thomas' testimony was corroborated by two medical practitioners, Dr Clindeling and Mr Wehl, who testified that there were 'considerable lacerations' to Thomas' vagina and damage to the neck of her womb—injuries which they did not believe she could have inflicted upon herself.[36] In defense, Graham claimed that he was not the father of Thomas' child, and suggested that her injuries were caused by an attempted drug-induced abortion—despite the unlikelihood of a medicinal abortion causing vaginal lacerations. According to the report in the Mt Gambier *Border Watch*, Judge Gwynne's summing-up speech in this case 'clearly point[ed] to the guilt of the prisoner'; however, the jury returned a verdict of not guilty.[37] The jury's decision to acquit Graham shows South Australian courts' reluctance to convict of abortion—even against the advice of judges and medical witnesses. Of the four abortion charges considered in this chapter, only one ended in a conviction [see Table 4].

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[30] 'Police Court—Port Adelaide', *The South Australian Advertiser*, 16 January 1877, p.3.
[31] Ibid.
[32] *Poor Law Commissioners' Report of 1834*, Poor Law Commission, 20 February 1834, The Classical School of Political Economy Collection, Online Library of Liberty: Carmel (IN), p.168-176, https://oll.libertyfund.org/title/chadwick-poor-law-commissioners-report-of-1834.
[33] 'Abortion', *Border Watch*, 30 October 1863, p.2.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.

Table 4: Procuring Abortion for a Single Woman in South Australia, 1836-1880			
Year	**Plaintiff**	**'Victim'**	**Verdict**
1863	Dr Thomas Graham	Eliza Thomas	Acquitted
1866	Edward Charles Smith	Mary Laurie	7 years hard labour
1876	John Henry Veale	Augusta Degenhardt	Acquitted
1878	John Wisdom	Catherine Smith	Dismissed

While abortion was illegal from the beginning of colonisation, there seems to have been little social and legal concern for the crime for much of the nineteenth century. This relative lack of concern was, according to Featherstone, a result of prevailing nineteenth century perceptions of 'quickening', and not conception, as the 'defining point of pregnancy'.[38] Quickening is the point in a pregnancy (around three to four months) where the foetus begins to move in a way that is discernible to its mother and, prior to the emergence of the anti-abortion movement, it was commonly accepted that abortions committed before this point were not a criminal act of murder.[39] Prior to modern medical instruments quickening could only be detected by the pregnant person, which gave colonial women some leeway in seeking post-quickening abortions with little risk of detection.

Legally, the lenience towards pre-quickening abortions was rescinded in Britain in 1838; however, public perceptions of quickening as the true beginning of pregnancy lingered, contributing to the lack of abortion charges brought in the colonial period. Even Lord Ellenborough's harsh 1803 Act differentiated between pre-and post-quickening abortions—naming the first a misdemeanour and the second a felony—which John Keown attributes to the popular belief that pre-quickening abortions 'did not destroy a human being'.[40] This idea was clearly present in South Australia—most notably in the 1869 charge against an Aboriginal man named Neepeelte (alias "Billy") for spearing married white woman Sarah Swanbury and consequently killing her unborn child.[41] In this charge, the only consideration was given to Neepeelte's intention to harm Swanbury, with the death of her child portrayed

[38] L Featherstone, 'Becoming a baby?', p.452-453.
[39] Ibid.
[40] Keown, *Abortion, Doctors and the Law*, p.18-19.
[41] 'Law Courts', *The South Australian Advertiser*, 12 February 1869, p.3.

as an upsetting consequence for its mother rather than a crime in itself, and Neepeelte was convicted of 'wounding with intent to inflict grievous bodily harm'.[42]

In the case of Sarah White, mentioned earlier, an article in the *South Australian Register* criticised the acquittal of the women who had provided White with the abortive medication—stating that, in cases of attempted abortion which resulted in the death of the mother, 'the accomplices…are guilty of a greater crime than the unfortunate woman whom they assist'.[43] This opinion clearly positioned White's life as more important than the life of her unborn child, reinforcing Featherstone's assertion that colonial Australian opinions valued the safety of a pregnant woman over the life of her unborn child. Further evidence of South Australian belief that abortion did not constitute murder is clear in William Ramsay Smith's public lecture—given before the South Australian Justices' Association in 1906—where he stated that 'an unborn child in its mother's womb cannot be the subject of felonious killing', and that any statements to the contrary were 'a blot upon legal medicine'.[44] Smith's statement, as a medical professional, demonstrates that arguments against the legal and medical personhood of unborn children persisted in South Australia well after the 1876 law change. According to Sumerling, it was not until the onset of economic depression and subsequent decline in the birth-rate for white families in the 1880s and 90s that South Australian authorities began to truly encourage legal punishment for abortion, in the hope that penalising abortion would increase the white Australian population.[45]

Of the cases brought in pre-1880 colonial South Australia, the only one which resulted in a conviction was that of Edward Charles Smith, who was sentenced to seven years hard labour for attempting to procure an abortion for Mary Laurie by providing her with multiple prescriptions for medication that ultimately failed to induce a miscarriage.[46] When looking at the statistics of abortion charges in South Australia, it appears strange that three of the four accused should be acquitted without charge while the other received such a harsh sentence. This was also noted by Parker, who briefly mentioned Smith's trial in her thesis noting that, at a time when abortion charges were barely present in the colonial court, 'Smith's

[42] 'Law and Criminal Courts', *South Australian Register*, 12 February 1869, p.3.
[43] 'The Inquest on Sarah White', *South Australian Register*, 19 December 1879, p.4.
[44] WR Smith, *The Medico-Legal Aspects of Infanticide and Concealment of Birth: An Address Delivered before the Justices Association of South Australia, on December 13, 1906* (held in the State Library of South Australia). R.M. Osborne: Adelaide, 1907, p.1-2.
[45] Sumerling, *Infanticide, Baby-Farming and Abortion*, p.11.
[46] 'Law Courts', *The Adelaide Express*, 10 May 1866, p.3.

prosecution was certainly unusual', though the dearth of cases means 'it is difficult to place [this] one case into any context'.[47] However, reading the details of Smith's trial reveals that, while he was practising medicine in South Australia at the time of his conviction in 1866, he had originally arrived in Australia as a convict, transported to Western Australia. This detail is not noted by Parker; however, placing Smith's harsh conviction makes perfect sense when situated within the context of South Australia's strict anti-convict sentiment.[48]

In a period when South Australian authorities were afraid that ex-convicts would tarnish their colony with their propensity for criminality, Smith's convict past certainly prompted the severity of his conviction.[49] Before handing down his verdict, Justice Boothby said that 'the evidence of [Smith's] servitude in Western Australia accounted for his not following the medical profession in an open and honourable manner' and that, if he were allowed to remain free, 'he would still probably pursue his wicked courses'.[50] Smith was imprisoned at Yatala Labour Prison (known then as "The Stockade"), where he appeared as a witness in an inquest for a fellow prisoner's death in 1869.[51] This case demonstrates that, even in charges brought within South Australia, colonial authorities viewed abortion as a crime that was primarily perpetrated by unscrupulous settlers from the penal colonies.

Despite the small number of abortion charges brought before South Australian courts, the colony's newspapers were publishing reports of abortion charges brought in other areas of the Empire—predominantly Victoria and New South Wales, but also New Zealand and Canada—as early as 1859.[52] The privileging of reports of abortion charges over other events in those colonies demonstrates that the South Australian media believed abortion cases to be entertaining news, even before the first charge was brought in their own colony in 1863. It also subtly reinforced the idea that such unsavoury crimes were the purview of other, amoral, colonies who could not escape their penal past. Consequently, policing abortion simply was

[47] Parker, *Abortion, Homosexuality and the Slippery Slope*, p.27.
[48] 'Law Courts', *The Adelaide Express*, 10 May 1866, p.3.
[49] For elaboration on this point, see chapter 1.
[50] 'Law Courts', *South Australian Weekly Chronicle*, 12 May 1866, p.7.
[51] 'Inquest at the Stockade', *Evening Journal*, 11 January 1869, p.3.
[52] Some examples include: 'Victoria', *The South Australian Advertiser*, 1 October 1858, p.2; 'Telegraphic Despatches', *Adelaide Observer*, 11 June 1859, p.1; 'Victoria', *South Australian Register*, 20 June 1859, p.3; 'Local Intelligence', *Border Watch*, 31 March 1866, p.2; 'Colonial Telegrams', *The South Australian Advertiser*, 16 October 1873, p.2; 'Canada', *South Australian Register*, 12 June 1875, p.5; 'Colonial Telegrams', *The Express and Telegraph*, 29 January 1879, p.2; and 'General News', *The Express and Telegraph*, 17 March 1879, p.2.

not viewed as a priority for South Australian police and court authorities. According to Allen, it was not until the early-twentieth century that abortion began to overtake infanticide as the most legally-concerning 'solution' which Australian women were adopting to terminate unwanted pregnancies.[53] For most of the nineteenth century, South Australian authorities were much more concerned with policing and prosecuting infanticide than abortion.

Infanticide as Colonial Propaganda

Reports of infanticide, both factual and sensationalised, were utilised as a propaganda tool from the very early stages of British colonialism. According to Stephens, British authorities had been using infanticide as 'a marker of "barbarism" since at least the 1780s', during the beginning of British control in India.[54] This idea is supported by Sen, who claims that infanticide (specifically against female children) in India was represented by British colonisers as 'decisively separated from infanticide in Europe', with culpability lying not with a single, mentally unstable perpetrator, but with 'the social group to which the perpetrator belonged'.[55] This distinction between constructions of infanticide in Britain and other white European communities, and infanticide in colonised, non-white communities, served to perpetuate Imperial ideas of barbarism and savagery—portraying colonised peoples as more violent and less affectionate than 'civilised' European parents. These representations which began to circulate in British India in the late-eighteenth century were transplanted to Australia almost from the beginning of colonisation, with Stephens alleging that rumours of infanticide amongst the Aboriginal population of Port Phillip reached new heights in the 1830s, just as South Australia was being conceptualised.[56]

In her research on infanticide in colonial Tasmania, Goc argued that—unlike in Britain—newspaper reports of infanticide in colonial Australia were rarely 'part of a broader political discourse', except in the case of 'infanticide in the aboriginal [sic] population'.[57] This suggests that the presence of Aboriginal peoples in the Australian colonies influenced perceptions of infanticide in a way that was not evident in the mother country. South Australian colonists cited a link between infanticide and 'uncivilised' Aboriginal populations

[53] Allen, *Sex and Secrets,* p.38.
[54] Stephens, 'A word of evidence', p.181.
[55] Sen, 'The savage family', p.56.
[56] Stephens, 'Protector William Thomas and the witnessing of unseen things', , pp.109-130.
[57] Goc, *Women, Infanticide and the Press,* p.95.

as early as 1841, when an article published in the *Southern Australian* celebrated British 'civilising' efforts for ensuring that 'when infanticide is now practiced [by Indigenous women], it is committed in secret, and with a dread of detection'.[58] There is little evidence of complaints against Aboriginal people practising ritual infanticide prior to this point, which calls into question—were these reports based in fact, or were they falsified as a method of proving the 'success' of British civilising missions? A follow-up article to the one mentioned above further claimed that the prevalence of infanticide in Australian Indigenous communities had caused a severe decline in their populations even before the arrival of British colonisers.[59] This message served as a justification for British colonisation—blaming Indigenous population decline on an apparently pre-existing propensity for infanticide to disguise the devastating impact of European diseases, dispossession, and violence.

In 1846, when arguing that British laws in South Australia should only be extended to Aboriginal people in cases of outright murder between Indigenous people and white settlers, the editors of the *South Australian Gazette and Colonial Register* suggested that a stricter legal control should be enacted to prevent the murder of Aboriginal infants by their mothers.[60] The article cited no evidence to prove the apparent prevalence of child-murder in Aboriginal communities, simply claiming that 'there is not a native woman who will attempt to deny the crime of infanticide'.[61] This phrasing framed the lack of secrecy and shame as the primary concern, rather than the actual perpetuation of infanticide. In her article on infanticide in Port Phillip, Stephens wrote that stereotypes of infanticide by Aboriginal women were founded solely on racial stereotypes and unreliable testimony from rival Indigenous communities who sought to portray their rivals in a negative light.[62] While it is certain that some Aboriginal parents would have murdered their children—as has occurred in every civilisation throughout history—there is no evidence to suggest that infanticide was any more common amongst South Australian Aboriginal people than anywhere else in the world.

In 1848, the *South Australian Register* published two lectures given by Reverend A. Morrison in Melbourne, where he claimed that the crimes of infanticide and cannibalism

[58] 'The Best Means of Promoting the Civilization and Christianization of the Native Inhabitants of South Australia [First Notice]', *Southern Australian*, 9 February 1841, p.3.
[59] 'The Best Means of Promoting the Civilization and Christianization of the Native Inhabitants of South Australia [Third Notice]', *Southern Australian*, 16 February 1841, p.3.
[60] 'Administration of Justice', *South Australian Gazette and Colonial Register*, 28 November 1846, p.2.
[61] Ibid.
[62] Stephens, 'Protector William Thomas and the witnessing of unseen things', p.109.

were intrinsically linked with 'barbarous' peoples, and the only hope of their being destroyed was by 'the teaching of the Gospel' to non-Christian peoples.[63] This claim further reinforces the idea that rumours of infanticide amongst Indigenous populations were not so much based in fact as they were tools to legitimise British colonialism and the spread of Christianity. In South Australia, well-known missionary George Taplin first recorded his assumptions of infanticide amongst the Indigenous populations of Port MacLeay in February 1860, when he reported that 'most of the young women have borne children, but have not got them now. I cannot decide in what way it is practised'.[64] Taplin's eagerness to attribute the high mortality rate of Aboriginal babies to infanticide demonstrates a preconceived assumption of infanticide in Indigenous communities, ignoring the much more likely possibility of starvation and disease as a cause of infant mortality in colonised populations. Perspectives such as this blamed Indigenous population decline on the 'uncivilised' culture of Aboriginal peoples, rather than acknowledging the devastating and continuing effects of colonisation.

Syphilis was one of the biggest causes of death of Aboriginal infants in colonial Australia. The disease was brought to Australia by European colonists, and widespread sexual violence and exploitation on the colonial frontier ensured that it travelled swiftly through the Indigenous population. According to Stephens, in early-nineteenth century Victoria the Assistant Protector of Aborigines William Thomas recorded numerous cases of syphilis in the colony's Aboriginal population.[65] Syphilis affects fertility in adults, and children born to infected mothers were significantly less likely to survive infanthood—with Stephens suggesting that many Aboriginal babies born with the disease survived less than a month.[66]

In 1858, Reverend Edmund Miller visited the Poonindie Mission and wrote that Mr Hammond, who was in charge of the Mission, had declared there was not the 'slightest indication of syphilis' or other venereal disease among the Aboriginal residents.[67] Responding to this claim in June 1859, an anonymous person naming themselves GOOLWA contested that syphilis was not only present in South Australian Aboriginal communities, but

[63] 'Colonial Literature', *South Australian Register*, 18 November 1848, p.4.
[64] G Taplin, *Copy of Diary of the Rev. Geo. Taplin of Pt. McLeay: vol 1, from April 4, 1859 to August 1, 1865*, State Library of South Australia, 1958, p.60.
[65] Stephens, 'A word of evidence', p.187.
[66] Ibid, p.190.
[67] 'Poonindie', *Adelaide Times*, 24 February 1858, p.3.

that it was likely the cause of high numbers of 'early deaths in the rising generation'.[68] GOOLWA also countered a popular argument that syphilis had not been brought to Australia by Europeans, but had been 'prevalent amongst all savages…observed in all savage tribes since discovered'.[69] This argument was utilised to reinforce the perception of Aboriginal peoples—and all colonised populations—as highly sexualised and therefore inherently immoral; however, GOOLWA noted that, as older Aboriginal people were generally in 'robust health', it was unlikely that the disease had existed in Australia prior to European colonisation.[70] In 1860, the South Australian Legislative Council acknowledged syphilis as a contributing factor in Indigenous population decline; however, syphilis was the third item on a list of 6. This list was topped by 'infanticide, to a limited extent', and also included Indigenous coming-of-age rites, alcoholism, promiscuity, and an imbalance in the sexes.[71] The items on this list further demonstrate colonial authorities' desire to blame Indigenous population decline on Indigenous peoples themselves, rather than acknowledging the role of colonial violence and imported disease.

Australia was not the only British colony that promoted allegations of infanticide against Indigenous women. In 1864, the *South Australian Register* published an abbreviation of a lecture given by Reverend Samuel Ironside—a Christian Missionary who worked extensively with Maori communities in New Zealand. In his speech, Ironside claimed that, prior to British colonization, Maori women frequently murdered their female infants 'so that they should not suffer the hardships of married life, as it was customary for the men to remain idle, while the women did the meanest and most laborious drudgery'.[72] This claim not only reinforced the idea of Indigenous women as uncaring mothers—inherently inferior to respectable white mothers—but also promoted the stereotype that Indigenous men were lazy and abusive. In India, these stereotypes led to sympathy for Indian women who were convicted of infanticide, with Sen suggesting that 'Native society—and native men were blamed for driving women to an act that was understood, and partially forgiven, as "madness"'.[73]

[68] 'The Poonindie Institution', *South Australian Register*, 13 June 1859, p.3.
[69] 'The Best Means of Promoting the Civilization and Christianization of the Native Inhabitants of South Australia [First Notice]', *Southern Australian*, 9 February 1841, p.3.
[70] 'The Poonindie Institution', *South Australian Register*, 13 June 1859, p.3.
[71] 'Parliamentary Paper', *South Australian Register*, 31 October 1860, p.3.
[72] 'New Zealand and its Aborigines', *South Australian Register*, 21 May 1864, p.2.
[73] Sen, 'The savage family', p.61.

This tool of colonialism was clearly utilised in the South Australian context, and is most evident in the multiple reports published by colonial missionary George Taplin. In 1867 Taplin used infanticide to defend the necessity of his Christian Mission in Port Macleay, claiming that 'infanticide prevailed' among the Indigenous population prior to his arrival, but that it had since 'stopped altogether'.[74] In her research on infanticide in colonial Victoria, Stephens referenced an 1874 report made by Taplin, where he claimed a Ngarrindjeri woman had told him that, prior to European colonisation, Aboriginal women had frequently murdered their infants for a variety of reasons, including: physical deformity; an inability (or disinclination) to carry more than one child; and a refusal to raise illegitimate or mixed-race children.[75] In his recounting of his conversation with this unnamed, but 'intelligent', Aboriginal woman, Taplin alleged that she believed that, 'if the Europeans had waited a few more years they would have found the country without inhabitants'—the entire continent's population wiped out by rampant child-murder.[76] Though his certainty in the cruelty, and frequency, of infanticide in Indigenous communities was unshakeable, Taplin could only name one instance where he had personally witnessed the alleged murder of an Aboriginal child, despite working as a missionary from 1858 to 1873.[77]

Taplin was not the only missionary to express such opinions. According to nineteenth century journalist and anthropologist Daisy Bates, cannibalism was practised extensively by Aboriginal peoples throughout Central and Western Australia, sometimes in combination with infanticide. She alleged that, when living in the tiny town of Ooldea in South Australia in the 1920s, she followed a pregnant Aboriginal woman named Nyan-ngauera who she believed to be in labour, and later discovered the bones of her newborn baby buried in the ashes of an old fire, alleging that it had been cooked and eaten by Nyan-ngauera and her daughter.[78] Bates framed this tale as evidence of the savagery, and non-existent maternal instinct, of Aboriginal women; however, she herself displayed no compassion for this allegedly murdered baby, taking the bones for herself and later sending them to be displayed in the Adelaide Museum.[79] Bates 'donated' Aboriginal human remains to the South Australian Museum on multiple occasions; however, in 1930 a museum curator discovered

[74] 'Point Macleay', *South Australian Register*, 11 April 1867, p.2.
[75] Stephens, 'A word of evidence', p.180.
[76] Ibid.
[77] Ibid.
[78] D Bates, *The Passing of the Aborigines: A Lifetime Spent Among the Natives of Australia*, John Murray: London, 1938, p.196.
[79] Ibid.

that one of these skeletons (given the time, perhaps that of Nyan-ngauera's alleged child) were 'undoubtedly those of a domestic cat'.[80]

According to Swain, rumours of infanticide in Aboriginal communities were 'cited simultaneously as evidence of the savagery of Aboriginal peoples and an explanation of their subsequent decline. Colonization thus became a humanitarian project, even as it was complicit in the destruction of the very people it set out to save'.[81] Britain clearly benefitted from rumours of infanticide in Indigenous communities, which casts suspicion on the legitimacy of reports made by people such as Taplin and Bates, both of who's jobs depended on the assumption that Aboriginal people needed their help to assimilate with British, Christian 'civilisation'.

The numerous rumours of Aboriginal women's natural propensity towards infanticide did not translate to the courtroom—with no evidence of any Aboriginal being charged with infanticide in colonial South Australia. Stephens claims rumours of Indigenous infanticide were, instead, used in much more insidious ways—namely to enable the 'rescue' of Aboriginal children from their parents to be raised in British institutions.[82] In this way, rumours of infanticide further framed colonisation as a legitimate humanitarian process—'protecting' colonised communities from their own uncivilised practices. It was not only colonial authorities who used stereotypes of infanticide to justify child removal. In the Port Phillip district in March 1840, Stephens reports that a group of European men accused of abducting young Aboriginal girls claimed they had only done so to prevent these girls becoming 'victim[s] to the tomahawk of the unfeeling savage', implying that their actions had been guided by empathy, rather than opportunism.[83]

A letter from Taplin to the editors of the *South Australian Register* in April 1867 highlights a similar case in the South Australian context. Taplin sought to dispute the *Register's* claim that his Point Macleay Mission was not having a positive impact by telling the story of a 'half-caste' Aboriginal woman named Hannah who was taken into the house of a white fisherman and his wife, where he reported that 'the training she received there was in

[80] B Reece, *Daisy Bates: Grand Dame of the Desert*, National Library of Australia: Canberra, 2007, p.88.
[81] Swain, 'Infanticide, savagery and civilization', p.85.
[82] Stephens, 'Protector William Thomas and the witnessing of unseen things', p.110.
[83] Stephens, 'A word of evidence', p.184.

vice, and not in virtue'.[84] Taplin's recounting of this tale implies that Hannah was trained, with her own consent, to become a prostitute; however, he also mentioned that Hannah was 10-years-old when she was 'adopted' by this couple, and 12 when she left—meaning that any sexual activity which she was subjected to during that period was statutory rape, even by the standards of colonial law, which placed the age of consent at 12. It is unclear if Taplin discovered Hannah's adoptive parents' mistreatment after the fact or was always aware of it. However, his complaints over Hannah returning to her 'black friends' after being subjected to sexual abuse at the hands of white colonists suggests, intentionally or otherwise, that he would rather Aboriginal children live in abusive white households than their own communities.

Rumours of Aboriginal women's apparent propensity for infanticide served not only to legitimise British colonial rule, but also to legitimise individual missionaries' efforts to 'civilise' Aboriginal peoples. In the words of Shurlee Swain: 'there are no neutral accounts of Aboriginal infanticide', and therefore, with no real evidence to support the reports, these claims must be taken with a grain of salt.[85] Despite this lack of evidence, claims of Indigenous women's propensity towards infanticide were popular, and persisted well into the twentieth century. In his book on infanticide and abortion, published in 1983, Michael Tooley wrote that infanticide 'was almost universally practiced in Australia among the Aborigines, where a woman might be punished for rearing too many children'.[86] Tooley expands this claim to include Indigenous populations in Melanesia, Polynesia, New Zealand and some areas in North and South America, as well as in China and India. [87] It is certainly no coincidence that all of these populations had also been, at one time or another, invaded and subjugated by British or other white European powers.

As with his colonial counterparts, Tooley provides no specific case studies or other credible evidence to support his claim, with most 'evidence' of infanticide in Indigenous populations based in hearsay and biased testimony from colonising authorities. Tooley is not alone in his opinions—as recently as December 2021 William Rubenstein (former chair of history at Deakin University) published an article in right wing political journal *Quadrant*

[84] 'Point Macleay', *South Australian Register*, 11 April 1867, p.2.
[85] Swain, 'Infanticide, savagery and civilization', p.89.
[86] M Tooley, *Abortion and Infanticide*, Clarendon Press: Oxford, 1983, p.315.
[87] Ibid.

perpetuating the insistence by British colonisers that infanticide 'was practiced widely, and perhaps ubiquitously, among Australian Aborigines before the coming of Europeans and the imposition of Western values'—a conclusion which he bases solely on the broad reports (no eye-witness accounts) of white colonisers.[88] Such evidence is purely circumstantial, and there were no official charges of infanticide levied against any South Australian Aboriginal women during the period covered in this thesis. In contrast, research for this chapter uncovered multiple specific case studies attesting to the prevalence of infanticide amongst the colony's European population during this same period.

Concealment of Birth

The most common infanticide-related conviction in colonial South Australia was concealment of birth: a charge utilised when a newborn infant died under unusual circumstances, but the jury was uncertain whether the death was deliberate murder or maternal ignorance. In her chapter on infanticide in colonial Victoria, Swain suggests that colonial juries preferred to convict women of concealment of birth, reluctant to convict of the more severe charge of 'wilful murder' which carried the threat of execution.[89] In this manner, concealment of birth was to infanticide charges as indecent assault was to rape charges—a lesser punishment for a crime which colonial and court authorities did not believe to be deserving of such harsh penalties (death or imprisonment for life).[90]

Concealment of birth existed in a strange space in colonial South Australian law. It was intended to punish women who failed to register the birth of their child—alive or dead; however, stillborn babies were not required to be registered under South Australian law, meaning that concealing the birth of a stillborn child, or burying them outside of an official cemetery, was not technically illegal.[91] Despite this, the 1859 *Offences Against the Person Act* mandated that 'it shall not be necessary to prove whether the child died before, at, or after birth' in order to convict a woman of concealment of birth.[92] In contrast, Kathy Laster reports

[88] W Rubenstein, 'Infanticide in Traditional Aboriginal Society', *Quadrant*, vol.65, no.12, p.80.
[89] Swain, 'Infanticide, savagery and civilization', p.95.
[90] Colonial South Australian prosecution practices for rape and indecent assault are discussed in chapter 7.
[91] Smith, *The Medico-Legal Aspects of Infanticide and Concealment of Birth*, p.20.
[92] *Offences Against the Person Act 1859* (SA), p.100.

that concealment of birth law in Victoria was not extended to encompass stillborn children until the ruling in R v. Donahue in 1914.[93]

According to Emma Milne, concealment of birth was created by British lawmakers who were concerned that unmarried pregnant women were 'getting away with the murder of their illegitimate infants' because courts could not prove if the child had died before or after birth.[94] Like abortion, concealment of birth was first enshrined in British law in 1803;[95] however, unlike abortion, only the child's mother could be convicted of concealment of birth, with no provisions to charge anyone found to have assisted her in the concealment.[96] This loophole remained in South Australia until 1876, when the *Criminal Offences Act* amended concealment of birth law to include 'every person' who assisted the mother in the concealment.[97]

Though in many cases the line between concealment of birth and infanticide were blurred, there were instances in which women concealed the birth of infants who were genuinely stillborn. Jan Kociumbas cautions against assuming that all concealed births were the result of wilful murder, claiming that there is 'evidence that the medieval notion that the stillborn brought ill-omen remained current' in the nineteenth century—with superstitious parents believing that unbaptised stillborn infants should therefore 'be disposed of quickly and at night'.[98] Additionally, registering a child's birth meant that parents were consequently required to provide them with an official burial, which poorer colonists could not afford. In her assessment of similar practices in early-twentieth century New South Wales, Allen referenced police reports stating that it was common for 'stillborn' children to be illegally interred in backyards, or even placed together in the same coffin as other stillborn babies in order to circumvent the 7s. 6d. burial fee required by cemeteries.[99]

In the West Terrace Cemetery—the first public cemetery established in Adelaide, in 1837—burial plots were supposed to be pre-purchased and leased for a sum of three pence

[93] K Laster, 'Infanticide: a litmus test for feminist criminological theory', *Australia and New Zealand Journal of Criminology*, vol.22, 1989, p.153.
[94] E Milne, 'Concealment of birth: time to repeal a 200-year-old "convenient stopgap"?, *Feminist Legal Studies*, vol.27, 2019, p.147.
[95] Ibid, p.140.
[96] *Offences Against the Person Act 1859* (SA), p.100.
[97] *Criminal Offences Act 1876* (SA), p.15.
[98] Kociumbas, 'Azaria's antecedents', p.151.
[99] Allen, *Sex and Secrets*, p.69.

per foot (maximum 18 feet) per year, for 99 years.[100] Newspaper articles published in 1839 and 1854 advertised that those who were unwilling, or unable, to pay the yearly fee could be buried in the cemetery for 10s., on top of the regular burial fees, and under the provision that they were only allowed 'an unornamented erect stone or board, with a small one at the feet' to be used as a grave marker.[101] This fee did not include the cost of the coffin, or a clergyman to preside over the funeral, and in 1874 a public meeting was called in Adelaide to protest the excessive cost of funerals and burials in the city.[102] Swain agrees that there must have been instances of infant corpses being recovered where the cause of death was not deliberate infanticide, but the body had been incorrectly disposed of because the baby's parents were unwilling or unable to pay the cost of a legal burial.[103] In June 1857, the Destitute Board agreed to pay the cemetery fees for a destitute child in Kooringa, which amounted to 12s. 6d.[104] These costly burial fees would have been out of reach for many unmarried pregnant women in the colony, and those seeking to disguise their pregnancy would have been unlikely to risk exposure by approaching funeral workers for an official burial.

Concealment of birth was only possible in cases where it was proved that the baby had not survived long after birth, and where medical testimony did not indicate deliberate and wilful murder. For example, in the 1862 charge of infanticide against Annie Hooper medical examinations reported that Hooper's child did not display any of the usual evidence of strangulation, possibly dying of haemorrhage caused by an untied umbilical cord.[105] Summing up the case at the coroner's inquest, the Coroner said that it was not uncommon for first-time mothers to inadvertently neglect the 'duty which should be paid to a newborn infant' (such as tying-off the umbilical cord) and therefore inadvertently cause the death of their baby.[106] In such cases, the court could not prove that death had been intentional, encouraging juries to convict for concealment of birth. Unfortunately for Hooper, at her Supreme Court trial the medical examiner changed his statement to say that he believed the cause of death had been strangulation.[107] Upon this evidence, as well as testimony that this

[100] 'Advertising', *Southern Australian*, 4 September 1839, p.4; 'The West Terrace Cemetery', *South Australian Register*, 15 November 1854, p.3.
[101] Ibid.
[102] 'Funeral Reform', *The Express and Telegraph*, 22 September 1874, p.3.
[103] Swain, 'Infanticide, savagery and civilization', p.94.
[104] 'Destitute Board', *South Australian Register*, 16 June 1857, p.3.
[105] 'Charge of Infanticide—Inquest at the Hospital', *South Australian Weekly Chronicle*, 1 February 1862, p.3.
[106] Ibid.
[107] 'Law and Criminal Courts', *South Australian Register*, 12 February 1862, p.3.

was Hooper's second child and she therefore should have known to tie the umbilical cord, the jury found her guilty of manslaughter and she was sentenced to four years hard labour.[108]

The fact that concealment of birth did not always equate to infanticide provided a kind of loophole for women accused of murdering their newborn infants, with many claiming that their baby had been stillborn or had died quickly of natural causes in the hope of receiving a more lenient sentence. This argument was regularly used by live-in domestic servants, who often claimed they only concealed their pregnancy and resulting stillbirth in fear that disclosing their pregnancy would cost them their job. In his work on Australian domestic service, Barry Higman wrote that 'unmarried domestics with "illegitimate" children frequently found it hard to get live-in positions'.[109] The lack of employment opportunities for single mothers in colonial South Australia meant that live-in domestic servants had a vested interest in concealing their pregnancy and discretely disposing of their child lest they be forced out of work. This fear is reflected in the charge against Annie Hooper mentioned above, with Hooper claiming that she had been too afraid to inform her mistress of her pregnancy.[110]

In 1859 Hannah Tetley similarly claimed that she had only concealed her baby's body in the water closet of her employer's home because she was afraid she would lose her job if her master and mistress discovered that she had been delivered of a child.[111] According to Kelly's study of Irish infanticides, 'disposal of the body in the privy' was very common amongst domestic servants who committed infanticide, with outside toilets being 'one of the first locations that suspecting employers and family members chose to investigate'.[112] Tetley was initially successful in concealing her child's birth, but her luck was short-lived as colonial police questioned her in suspicion of being the mother of a baby recently discovered drowned in the River Torrens—its body later discovered near the Adelaide Railway Station.[113] Police accused Tetley of being this child's mother, causing her to produce her own baby's corpse to prove her innocence of the other charge. During his testimony, Police Corporal Everdell acknowledged that, had Tetley been the mother of the child discovered in the Torrens he

[108] 'Law and Criminal Courts', *South Australian Register*, 12 February 1862, p.3.
[109] BW Higman, *Domestic Service in Australia.* Melbourne University Press: Carlton, 2002, p.261.
[110] 'Charge of Infanticide—Inquest at the Hospital', *South Australian Weekly Chronicle*, 1 February 1862, p.3.
[111] 'Another Supposed Case of Infanticide', *The South Australian Advertiser*, 28 April 1859, p.3.
[112] Kelly, '"An Unnatural Crime"', p.71.
[113] 'Another Supposed Case of Infanticide', *The South Australian Advertiser*, 28 April 1859, p.3.

would have ‘arrested her for wilful murder and not concealment of birth’, but the body of her own child did not prove murder.[114]

Tetley’s misfortune continued. At the Coroner’s Inquest the jury determined that her child was stillborn, a verdict supported by the coroner Dr Woodford; however, Woodford stated that it did not matter that her child had ‘never lived’, because her decision to conceal its birth, knowing that ‘concealment of the birth of an infant was a great offence’, was ‘unjustifiable’.[115] When the case was referred to the Supreme Court, Justice Gwynne stated his intention to make an example of Tetley because there had recently been ‘so many attempts at concealment’ and he wished to discourage other women from following in her footsteps.[116] He sentenced her to 18 months hard labour—a sentence 11 months harsher than any other concealment of birth charge considered in this thesis. In contrast, in 1855 Jane Shepherd was charged with concealment of birth after her newborn child was discovered buried outside the water-closet at the Police Barracks. Unlike the findings in Tetley’s trial, the coroner ruled that Shepherd’s child had been born alive, though he ruled the death to be accidental, and at the corresponding Supreme Court trial Shepherd was sentenced to 9 months hard labour.[117] Of the six other charges of concealment of birth heard in the colony, brought between 1868-1876, the next-harshest penalty was six months hard labour [see Table 5].

Table 5: Single Women Charged with Concealment of Birth in South Australia, 1836-1880

Year	Plaintiff	Verdict
1855	Jane Shepherd	9 months hard labour
1859	Hannah Tetley	18 months hard labour
1868	Maria Domschke	6 months imprisonment
1874	Catherine Jenkins	6 months imprisonment
1874	Sarah Ballard	4 months imprisonment
1874	Isabella Stott	Acquitted
1876	Elizabeth Harris	Acquitted
1876	Lavinia Cox	3 months imprisonment

[114] ‘Another Supposed Case of Infanticide’, *The South Australian Advertiser*, 28 April 1859, p.3.
[115] Ibid.
[116] ‘Law and Criminal Courts’, *The South Australian Advertiser*, 25 May 1859, p.3.
[117] ‘Coroner’s Inquest at Port Lincoln’, *Adelaide Times*, 18 September 1855, p.2.

Infanticide in South Australia

Women whose newborn infants died under suspicious circumstances, through unintentional maternal neglect or direct violence, were tried for infanticide—the only capital offence in colonial South Australia which was applied solely to women. The specific wording of South Australia's criminal code did not specify infanticide as a woman's crime; however, every charge considered in this chapter was brought against the mother of the infant. This was not unique to South Australia, with both Laster and Gordon Carmichael reporting that most infanticide charges in late-nineteenth and early-twentieth century Victoria were committed by the child's mother, or at her behest.[118] In her research on homicide trials involving women in nineteenth century England, Mary Beth Wasserlein Emmerichs noted that most homicide charges brought against women between 1845 and 1900 were for the murder of their own children, while Elaine Farrell reports that 84 per cent of Irish infanticide charges for that same period were brought against single women.[119] Farrell noted that high rate of women charged with infanticide does not mean that men did not participate in child-murder, but simply that they were not named.[120] This idea is supported by the cases considered in this chapter, with only 1 of the 23 charges of infanticide and concealment of birth mentioning the child's father.

Infanticide was described as a problem from the very beginning of Australian colonisation. Fears of child-murder were directed first towards Aboriginal women, then convict women, and finally female domestic servants. According to Allen, the focus of infanticide—and other related charges—on these demographics of women constructed infanticide-related crimes as 'the aberrations of a handful of "wicked women"'.[121] This idea is supported by Annie Cossins' study on infanticide in Victorian Britain, which suggests that sensationalised media reports of infanticidal women were used to 'educate' the wider British public about 'the depravity of the working classes in general and morally debased women in

[118] Laster, 'Infanticide', pp.151-166; GA Carmichael, 'From floating brothels to suburban semirespectability: two centuries of nonmarital pregnancy in Australia', *Journal of Family History*, vol.21, no.3, 1996, p.293.
[119] MB Wasserlein Emmerichs, 'Trials of women for homicide in nineteenth-century England', *Women and Criminal Justice*, vol.5, no.1, 1993, p.100; EF Farrell, '"The fellow said it was not harm and only tricks": the role of the father in suspected cases of infanticide in Ireland, 1850-1900', *Journal of Social History*, vol.45, no.4, 2012, p.990.
[120] Farrell, 'the role of the father in suspected cases of infanticide', p.991.
[121] Allen, *Sex and Secrets*, p.31.

particular'.[122] Such campaigns, she suggests, were intended to encourage self-regulation for women, by causing them to fear the consequences of a failure to conform to feminine ideals.[123] They also reinforced the perception of infanticide as a primarily working-class crime by portraying infanticidal women as sexually immoral—a description which was almost exclusively applied to working-class servant women.

As with other crimes involving illegitimate children, infanticide was at the peak of British authorities' concern at the time in which South Australia was established. Prior to the New Poor Law, discussed in chapter 4, the existence of infanticide in white British households was recognised but was not considered a cause for national concern. It was seen as a last resort of the truly desperate and mentally ill, or as a cultural failing of the barbarous Indigenous peoples of the Empire's colonies. However, as concerns over the financial burden of illegitimate children grew, so too did the rates of infanticide reported in British media. According to Goc, it did not take long before 'Malthus's belief that…no woman would harm her child for economic considerations, proved to be a fallacy', and opponents to the New Poor Law cited increased rates of infanticide as one of the many consequences of these too-harsh punishments for poor unwed mothers.[124] According to Kelly, the fact that the harsh legal punishments were not enough to prevent infanticide suggests that, for many women, the 'social and economic forces' driving them to murder their babies were stronger than fear of the law.[125]

There is no doubt that infanticide was portrayed in the colonial media as a class-based crime. Women who were accused of infanticide were criticized as unfit or uncaring mothers who murdered their children to preserve their own social standing, rather than desperate women who could not afford to support themselves and their children on a single woman's income. While there was widespread pity for these women, there were also some loud voices who, according to Hunt, viewed infanticidal women as 'ruthless creatures for whom pregnancies and murders were simply calculations intended to promote their economic rise'.[126]

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[122] A Cossins, *Female Criminality: Infanticide, Moral Panics and the Female Body*, Palgrave Macmillan: London, 2015, p.3.
[123] Ibid, p.4.
[124] Goc, *Women, Infanticide and the Press*, p.4.
[125] Kelly, '"An Unnatural Crime"', p.67.
[126] A Hunt, 'Calculations and concealments: Infanticide in mid-nineteenth century Britain', *Victorian Literature and Culture*, vol.34, 2006, p.73.

The understanding of infanticide in terms of class in both Britain and the Australian colonies is supported by Goc, who suggests that infanticidal women were 'overwhelmingly' reported as working-class—'more specifically servant class'—with media reports of infanticide appealing to middle-and upper-class interests in the 'servant problem'.[127] These stereotypes reinforced middle-class assumptions of the hyper-sexualised working-class woman and reminded employers of the 'dangers of the sexual impropriety' of domestic servants.[128] These 'reminders' likely contributed to the high rate at which employers reported their servants to colonial police on charges of suspected infanticide and concealment of birth. According to Goc, in Tasmania these assumptions were primarily directed towards convict women, while other research on colonial Australian infanticide suggests that free working-class women bore the brunt of charges.[129] Without the presence of convict women to act as easy targets, South Australian newspapers blamed much of the colony's infanticide on female domestic servants—though it is likely that these women were only over-represented in *reported* cases of infanticide, rather than being the only perpetrators of this crime.

This classism in infanticide cases was compounded by the fact that the judges and juries presiding over colonial trials were all members of the servant-employing classes, with limited capability to empathise with the lived experiences of working-class women. According to Goc, it was frequently the case in infanticide trials that 'the woman charged with killing her baby soon after giving birth finds herself alone to be judged in the most patriarchal of environments, the nineteenth and early twentieth-century courtroom where she is surrounded by educated men whose discourses control her fate'.[130] This statement could be applied to any charge involving working-class women in colonial Australia, as both plaintiffs and defendants.

The case studies considered in this chapter suggest that it was common for defendants in infanticide cases to have no legal representation, or to not be able to choose their own legal representation—which was not true of the other crimes considered in this thesis. In the charge against Norah Flynne for attempted infanticide in 1864, Flynne's lawyer Mr Cooper had only

[127] Goc, *Women, Infanticide and the Press*, p.14.
[128] Ibid.
[129] Ibid. For research discussing infanticide by working-class women in colonial Australia, see: Carmichael, 'From floating brothels to suburban semirespectability', p.293; Kociumbas, 'Azaria's antecedents', p.139; Laster, 'Infanticide', p.156; A Gardiner, 'Can historical infanticide investigations help us understand embodied experiences of the past?', *Australian Feminist Studies*, 2021, p.3.
[130] Goc, *Women, Infanticide and the Press*, p.171.

agreed to defend her 'on the spur of the moment'—on the same day as her trial took place—as there was no one else available.[131] Cooper was not even present in the courtroom when the judge read his opening statement, coming in late from other work. Likewise, in her 1867 infanticide trial, Margaret Brown was unable to attend the coroner's inquest (the investigation which determined whether a suspicious death should be referred to the Supreme Court) because it took place the day after she had given birth. A police constable informed her that she could request legal counsel to attend the inquest in her stead, but she replied that 'she had no money to do so'.[132] These cases demonstrate the severe disadvantage which women accused of infanticide were placed at in the colonial courtroom—in a charge where the plaintiff was not a fellow colonist, but the colonial government.

According to Sen, British women who were convicted of infanticide were subjected to 'a double damnation…once for becoming pregnant outside of marriage, and again for killing her child.[133] Sumerling claims that Victorian prejudice against unmarried mothers was so severe that, for many women, bearing a child outside of wedlock 'had to be avoided at all costs'—even if that cost meant murdering their newborn child.[134] In the South Australian context, this idea is supported by the 1874 conviction of Catherine Jenkins for concealment of birth. Summing up the case, Justice Wearing noted that, before the death of her child, Jenkins had 'first been guilty of a moral offence' in having become pregnant outside of wedlock.[135] Such statements framed infanticidal women as inherently immoral—suggesting that pre-marital sex, a lack of maternal feeling, and a consequent propensity for child-murder were interlinked. These beliefs were reinforced in the 1863 charge against Margaret Casey, with the judge presiding over the case stating that:

> In ordinary cases, and with children born in wedlock, the voice of nature was strong, and the mother's instincts led her to do everything for the preservation of the child. But in cases of illegitimacy it was different, and a crime might be committed to save the shame.[136]

Statements such as this—repeated frequently in colonial courts and newspapers—outwardly advocated sympathy for unmarried infanticidal women; however, they also reinforced the

[131] 'Law and Criminal Courts', *South Australian Register*, 13 August 1864, p.3.
[132] 'Coroners' Inquests', *South Australian Register*, 7 June 1867, p.3.
[133] Sen, 'The savage family', p.61.
[134] Sumerling, *Infanticide, Baby-Farming and Abortion*, p.1.
[135] 'Law Courts', *The South Australian Advertiser*, 11 June 1874, p.3.
[136] 'Circuit Court', *Border Watch*, 1 May 1863, p.2.

popular nineteenth century stereotype that single women were significantly more likely to murder their babies (to preserve their own reputation) than married women.[137] In 1864, the editors of the *South Australian Register* suggested that 'among a certain class of persons very lax notions prevail as to the relative value of legitimate and illegitimate children'—further implicating working-class women as the instigators of infanticide.[138] Responding to such perspectives, Allen suggests that lenient sentencing in many infanticide cases actually helped to perpetuate stereotypes of unnatural motherhood because harsh sentences invariably drew more public scrutiny which may have drawn attention to the real causes of infanticide—namely sexual violence and gender inequality.[139]

The reluctance to convict infanticidal women of wilful murder may have been influenced by reactions to the execution of convict woman Mary McLauchlan in Van Diemen's Land in 1830. According to Goc's extensive analysis of this case, McLauchlan had no legal representation and was tried before a seven-man military jury—two members of which were close associates of her former master and suspected 'seducer', Charles Nairne.[140] She was quickly found guilty and sentenced to be hanged, and her body dissected, the next morning.[141] As the first woman to be executed in Tasmania, McLauchlan's case attracted considerable interest. However, this interest only came after her sentence was carried out and a number of newspaper reports indirectly named Nairne (so as to avoid a libel charge) as having orchestrated McLauchlan's death to save his own reputation.[142] These rumours reportedly damaged Nairne's his reputation and his marriage, and he fled Hobart for Victoria less than a year after McLauchlan's death.[143]

Though McLauchlan's case was tried six years before South Australian colonisation began, colonial authorities were likely aware of the very public repercussions of McLauchlan's execution for both her 'seducer' and the reputation of the Tasmanian legal

[137] For some references to infanticidal women as 'unnatural' mothers in South Australian newspapers, see: 'Infanticide at a Premium', *South Australian Register*, 25 September 1841, p.3; 'Coroner's Inquest', *Adelaide Times*, 31 August 1850, p.1; 'The Remainder of the Session', *Adelaide Observer*, 9 January 1858, p.6; 'Infanticide', *Adelaide Observer*, 3 September 1864, p.6; 'Law Courts', *South Australian Chronicle and Weekly Mail*, 23 October 1869, p.13; 'Baby-Farming', *The Irish Harp and Farmer's Herald*, 25 April 1873, p.4; 'Law and Criminal Courts', *South Australian Register*, 23 March 1875, p.3.
[138] 'Infanticide', *South Australian Register*, 30 August 1864, p.2.
[139] Allen, *Sex and Secrets*, p.31.
[140] Goc, *Women, Infanticide and the Press*, p.105.
[141] Ibid.
[142] Ibid, p.115.
[143] Ibid, p.116.

system. She would become the only Australian woman ever executed for infanticide. It is possible that a pattern of reduced sentences for infanticide charges reflected an eagerness of other colonial authorities to avoid similar repercussions. In 1869 an article published in the *South Australian Advertiser* argued that it was pointless for colonial legislation to list death as the maximum penalty for infanticide when, if the sentence was ever passed, it would be immediately commuted on the recommendation of the judge.[144] This claim proved prophetic.

The only instance of any woman being convicted of the wilful murder of her newborn child in colonial South Australia was the 1879 case of Johanna Sullivan. When passing down Sullivan's sentence, Chief Justice Samuel Way noted his intention to recommend mercy to Governor William Jervois.[145] Despite this assurance, Johanna Sullivan's conviction was followed by a flurry of protests in the South Australian media.[146] One commentor, William Liston, argued that these protests were pointless because Sullivan's commutation was a certainty—expressing a firm belief that 'public opinion is against the infliction of the death penalty in cases of infanticide by the mother, and…very properly so'.[147] In response to public concern and Justice Way's recommendation, Governor Jervois commuted Sullivan's sentence to 14 years' hard labour, though a letter from Boyle Travers Finnis (first Premier of South Australia) published in the *South Australian Advertiser* in 1887 noted that Sullivan was released from prison after serving less than seven years of her sentence.[148]

Of the seven single women convicted of infanticide during in the pre-1880 colonial period, only Johanna Sullivan was convicted of wilful murder. Of the six other cases, five were convicted of manslaughter and one of aggravated assault leading to death, while a further six women were acquitted or had their charges withdrawn by the court [see Table 6]. Three other women were charged with attempted infanticide—with their child surviving—leading to a further two convictions and one acquittal. These statistics demonstrate that

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[144] 'The Advertiser', *The South Australian Advertiser*, 9 June 1869, p.2.
[145] 'Law and Criminal Courts', *Evening Journal*, 20 August 1879, p.3.
[146] See 'The Girl Sullivan', *Evening Journal*, 21 August 1879, p.3; 'The Child-Murder Case', *Evening Journal*, 22 August 1879, p.3; 'Telegraphic Express', *The Areas' Express*, 23 August 1879, p.2; 'Johanna Sullivan', *Kapunda Herald*, 26 August 1879, p.2; 'The Case of Johanna Sullivan', *Evening Journal*, 28 August 1879, p.2; 'To the Editor', *Evening Journal*, 28 August 1879, p.2; 'Our Adelaide Letter', *Gawler Standard*, 30 August 1879, p.3; 'Items of Intelligence', *The Illustrated Adelaide News*, 1 September 1879, p.2; 'News of the Month', *The South Australian Advertiser*, 6 September 1879, p.7.
[147] 'The Case of Johanna Sullivan', *Evening Journal*, 28 August 1879, p.2.
[148] 'The Recent Murder Cases', *Evening Journal*, 2 September 1879, p.2; 'The Case of Johanna Sullivan', *The South Australian Advertiser*, 15 June 1887, p.5.

colonial courts were prone to lenience towards single women accused of infanticide, preferring to charge for the lesser crimes of manslaughter and concealment of birth than for wilful murder. Regarding the case of Johanna Sullivan, the only noticeable difference from other infanticide charges was that her child was not killed immediately after birth. Sullivan and her baby were seen by multiple witnesses travelling on a train to Glenelg, where her child's body was later discovered on the beach.[149] This evidence made it difficult for Sullivan's lawyer to argue temporary insanity or ignorance in caring for a newly born child—the two most common infanticide defences.

Table 6: Single Women Charged with Infanticide in South Australia, 1836-1880

Year	Plaintiff	Charge	Verdict
1850	Mary O'Brien	Infanticide	Ignored
1858	Honora Keating	Aggravated assault	1 year's imprisonment
1859	Bridget Kilmartin	Manslaughter	4 years hard labour
1862	Annie Hooper	Manslaughter	4 years hard labour
1862	Winifred Lennon	Manslaughter	4 years hard labour
1863	Margaret Casey	Manslaughter	5 years hard labour
1863	Emily Roberts	Infanticide	Acquitted
1864	Norah Flynne	Attempted infanticide	7 years hard labour
1864	Honora Burke	Attempted infanticide	Acquitted
1867	Margaret Brown	Manslaughter	Acquitted
1868	Lucy Jane Virgo	Infanticide	Acquitted
1870	Fanny Dumbleton	Infanticide	Withdrawn
1871	Elizabeth Little	Infanticide	Acquitted
1872	Christina McGillivray	Manslaughter	2 years hard labour
1875	Winnifred Banks	Attempted infanticide	6 months imprisonment
1879	Johanna Sullivan	Wilful murder	Death (commuted to 14 years hard labour)

According to Swain, Australian colonial media often represented infanticidal women as 'temporarily insane' and 'victims of faithless lovers' fearing the social stigma associated with

[149] 'Law and Criminal Courts', *South Australian Register*, 20 August 1879, p.3.

bearing a child out of wedlock.[150] This kind of language painted women accused of infanticide as pitiable, murdering their child only after being abandoned by a heartless 'seducer'. In the 1868 trial of Maria Domschke for concealment of birth, the judge said that:

> it was very often that a young woman in her position was not so much a sinner as sinned against. It was not herself only that had been guilty of the offence, but her seducer also, who would have to answer to a higher Judge for his sharing in it.[151]

Similarly, in 1864, Norah Flynne's lawyer, Mr Cooper, directly implicated Flynne's unnamed seducer in the attempted murder of her newborn son. He suggested that she could not have tied a cord around the child's neck and buried him in the manure pit on her own, as witnesses found her weak and insensible—in no fit state to climb into the manure pit and bury her baby.[152] Cooper suggested that Flynne must have been assisted by someone else, very likely her baby's unnamed father. No further evidence or witnesses were called to support this theory, and Flynne's never named her baby's father in court.

These two cases show that colonial courts acknowledged the complicity of male 'seducers' in unmarried women's decision to kill their newborn children—either by suggesting they had directly coerced the infanticide, or that they had indirectly encouraged the crime by refusing to marry or financially support their child's mother. However, despite this acknowledgement, the fathers of murdered illegitimate children were almost never named in infanticide charges. This absence is not unique to South Australia, with Kelly and Farrell both noting that fathers in Irish infanticide charges were similarly absent.[153] Of the 15 infanticide and attempted infanticide charges considered in this chapter, only the 1872 case of Christina McGillivray included the name and testimony of her child's father—James Callaghan. Callaghan did not deny paternity of McGillivray's illegitimate child, and testified that he had stayed with her in her employer's barn for the majority of her labour, until he had to leave for work.[154] The court determined that, after Callaghan left, McGillivray successfully delivered a female child who died from strangulation—sentencing her to two years hard

[150] Swain, 'Infanticide, savagery and civilization', p.96.
[151] 'Law and Criminal Courts', *Adelaide Observer*, 5 December 1868, p.5.
[152] 'Law and Criminal Courts', *South Australian Register*, 13 August 1864, p.3.
[153] Kelly, '"An Unnatural Crime"', p.72; Farrell, 'The role of the father in suspected cases of infanticide in Ireland', pp.990-1004.
[154] 'Infanticide', *Border Watch*, 13 January 1872, p.2.

labour for manslaughter.[155] Despite frequent arguments that many single women were coerced to commit infanticide by their 'seducers', there was not a single suggestion during McGillivray's trial that Callaghan may have encouraged, or been involved in, their daughter's death. This absence is likely because Callaghan did not fit the stereotype of the heartless, abandoning seducer—having acknowledged his paternity and promised to support McGillivray and their child.

Unlike abortion, the physical evidence of infanticide was not easily disguised. While most medicinal abortions left few physical traces, it was difficult for women accused of infanticide to disguise having recently given birth. Women who were suspected of infanticide were often reported to police by witnesses who discovered large amounts of blood consistent with childbirth on the floor, bedding, or clothing of the accused. It is therefore no coincidence that a significant portion of infanticide defendants were live-in domestic servants who were reported to the police by their employers. Furthermore, Kelly suggests that infanticide was more likely to be discovered in cases where the bodies were disposed of in a 'hurried manner'.[156] This would have been the case for many live-in domestic servants, who rushed to dispose of their child's body before it could be discovered by their employers. It is likely that cases of infanticide which were committed by married women with the support of their husbands or unmarried women with the support of parents, friends, or partners were less likely to be discovered, as they had the time and assistance necessary to dispose of their children with more care and efficiency—decreasing their chances of discovery. This idea is supported by Sumerling, who suggests that women without support networks often resorted to 'more desperate acts' to dispose of their newborn children, increasing the likelihood of discovery.[157]

Punishing Infanticide

Legally, infanticide was a crime which was regarded very seriously in colonial South Australia. However, this legislative seriousness was not reflected in the often-lenient treatment of infanticidal women in colonial courtrooms—a lenience which did not feature in other female-dominated crimes discussed in this thesis. This reluctance was not unique to

[155] 'Mount Gambier Circuit Court', *Border Watch*, 20 April 1872, p.3.
[156] Kelly, '"An Unnatural Crime"', p.71.
[157] Sumerling, *Infanticide, Baby-Farming and Abortion*, p.2.

South Australia, but something which was evident in infanticide charges throughout the British Empire.[158] In fact, juries were so reluctant to convict women of murdering their infants that in 1866 the British Royal Commission on Capital Punishment recommended Parliament replace the maximum penalty for infanticide (death) with life imprisonment—in the hope that this would lead to a higher conviction rate.[159] This suggestion was not followed. Juries' reluctance to pass sentences which could result in the defendant's death meant that most infanticide charges were downgraded to concealment of birth or manslaughter. A similar reluctance to convict-as-charged was seen in male-dominated rape and sexual assault charges discussed in chapter 7. This demonstrates that colonial juries did not believe the crime of infanticide was deserving of the death penalty; however, unlike with rape, this courtroom lenience did not lead to the abolition of the death penalty for infanticide—though no South Australian woman was ever executed for this crime.[160]

This reluctance to convict for murder and risk imposing the death penalty led to reduced sentencing even in cases where the infanticide appeared deliberate. For example, in 1863 Margaret Casey was convicted of manslaughter in the Mt Gambier Circuit Court for accidentally causing the death of her newborn female child. Casey's employers, suspecting that she was ill, had called for a doctor. While waiting with her, Casey's mistress Mrs Long allegedly heard a child cry several times, but could find no sign of a baby.[161] When Dr Whel eventually arrived to examine Casey, she denied having had a child, but eventually produced her baby—whom Whel suspected had been smothered to death in her bedsheets.[162] When summing up the case, Judge Hanson reminded the jury that cases of infanticide were dissimilar to those of ordinary murder, because newborn babies often died accidentally from the ignorance or neglect of inexperienced mothers, rather than a deliberate intent to kill. He claimed that, in such cases, juries should be wary of returning a guilty verdict 'unless the evidence [of murder] was very strong'.[163] This caution worked in Casey's favour, as she was convicted of manslaughter rather than wilful murder and sentenced to five years hard labour.

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[158] Kelly, '"An Unnatural Crime"', p.73.
[159] DJR Grey, '"No crime to kill a bastard-child": Stereotypes of infanticide in nineteenth-century England and Wales', in B Leonardi (ed.), *Intersections of Gender, Class, and Race in the Long Nineteenth Century and Beyond*, Palgrave Macmillan: London, 2018, p.47.
[160] In South Australia, the death penalty for infanticide was not rescinded until the death penalty was abolished for all crimes in 1976.
[161] 'Law and Criminal Courts', *South Australian Advertiser*, 1 May 1863, p.3.
[162] 'Circuit Court', *Border Watch*, 1 May 1863, p.2.
[163] Ibid.

Due to the popular framing of infanticide as a crime predominantly perpetrated by uncivilised non-white peoples, British authorities needed an explanation for instances where the crime was committed in their own civilised society. As a result, infanticidal white women were frequently framed as mentally unstable—murdering their children due to temporary insanity triggered by childbirth. In her 1986 Honours thesis on Infanticide in late-nineteenth and early-twentieth century Victoria, Barbara Burton suggested that the idealisation of motherhood in nineteenth century British society meant that infanticide was seen as 'so unnatural an act as to be evidence of mental imbalance'.[164] One example of this perspective in South Australia was the 1874 infanticide charge against Sarah Ballard. Witness testimony reported that Ballard had been found in her own yard by a neighbour—insensible and near-catatonic—covered in dirt and blood.[165] Upon questioning, Ballard admitted that she had given birth and, believing her baby to be stillborn, she had buried it in the backyard. Ballard's lawyer also provided the court with evidence that she was 'a person of weak intellect', and a petition signed by 40 residents of Goolwa testifying to her good character.[166] As a result, Ballard's charge was downgraded from infanticide to concealment of birth, for which she received the relatively lenient sentence of four months imprisonment.[167]

Similarly, in 1871 Elizabeth Little was acquitted of murdering her newborn female child, despite medical evidence claiming that death had been caused by a blow to the head. Little's lawyer, Mr Way, convincingly argued that she had not expected to give birth, but had unexpectedly entered into labour while on the toilet—experiencing the trauma of childbirth alone.[168] He suggested that the baby had fallen into the toilet and, not hearing a cry, Little presumed it was born dead and did not inform anyone of the birth until her baby's body was discovered by her employer.[169] Way suggested that 'the mental and bodily agony' which Little had endured from the unexpected birth had affected her mental state, citing witness testimony that she had tried to open a door which she herself had previously locked as evidence that she was not in her right mind.[170] Little was acquitted of infanticide—a verdict

[164] B Burton, *"Bad" Mothers? Infant Killing in Victoria 1885-1914* (Honours Thesis), University of Melbourne, 1986, p.20.
[165] 'Law and Criminal Courts', *Evening Journal*, 29 September 1874, p.2; 'Law Courts', *South Australian Chronicle and Weekly Mail*, 14 November 1874, p.1.
[166] 'Law and Criminal Courts', *South Australian Register*, 13 November 1874, p.3.
[167] 'Law Courts', *South Australian Chronicle and Weekly Mail*, 14 November 1874, p.1.
[168] 'Law and Criminal Courts', *Adelaide Observer*, 19 August 1871, p.4.
[169] Ibid.
[170] Ibid.

which triggered applause among witnesses—demonstrating the extent to which defence lawyers could weaponise the insanity plea in infanticide charges.[171]

Allegations of temporary insanity were popular in nineteenth century infanticide trials—both in South Australia and across the wider British Empire—as Western medicine increasingly acknowledged the existence of puerperal mania (known today as postpartum or postnatal psychosis).[172] Puerperal insanity was and is a recognised medical condition, with symptoms including severe and often prolonged depression, mania, self-harm, and attempts at suicide and/or child murder;[173] however, there were numerous cases of infanticide defences (in South Australia and elsewhere) which argued temporary insanity with effects which seemingly only lasted for a few days or even hours after childbirth. These arguments of temporary insanity leading to infanticide were applied exclusively white women and, according to Grey, assisted in denying that there were any 'parallels between the killing of young children at home and similar homicides in the colonies', with the former stemming from temporary insanity and the latter a result of cultural barbarism.[174] Burton agrees that this somewhat romanticised portrayal of infanticidal white women as 'victims' of insanity was deliberate—serving to deny the very real social and financial imperatives of infanticide, particularly for single women.[175]

Grey suggests that this stereotyping of post-childbirth insanity was so influential that it led to mitigated sentences for infanticidal white women even in cases which did not fit

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[171] 'Law and Criminal Courts', *Adelaide Observer*, 19 August 1871, p.4.
[172] For a small selection of nineteenth century research on puerperal mania, see: JM Winn, 'On the treatment of puerperal mania', *Journal of Psychological Medicine and Mental Pathology*, vol.8, no.30, 1855, pp.309-313, PubMed Central [PMC], US National Library of Medicine [USNLM]: Bethesda (MD), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4962106/; JB Tuke, 'Cases illustrative of the insanity of pregnancy, puerperal mania, and insanity of lactation', *Edinburgh Medical Journal*, vol.12, no.12, 1867, pp.1083-1101, PMC, USNLM: Bethesda, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5308353/; TM Madden, 'On puerperal mania', *The British and Foreign Medico-Chirurgical Review*, vol.48, no.96, 1871, pp.477-495, PMC, USNLM: Bethesda, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5156753/;
[173] H Marland, 'Disappointment and desolation: Women, doctors, and interpretations of puerperal insanity in the nineteenth century', *History of Psychiatry*, vol.14, no.3, 2005, p.306. For other recent research on puerperal mania in the nineteenth century, see: C Quinn, 'Images and impulses: Representations of puerperal insanity in late Victorian England', in M Jackson (ed.), *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, Routledge: London, 2002, pp.193-215; H Marland, *Dangerous Motherhood: Insanity and Motherhood in Victorian Britain*, Palgrave Macmillan: New York, 2004 (chapter 6 discusses the link between puerperal insanity and infanticide); A Wallis, 'Unnatural womanhood: Moral treatment, puerperal insanity and the female patients at the Fremantle Lunatic Asylum, 1858-1908', *Lilith: A Feminist History Journal*, vol.26, 2020, pp.171-195.
[174] Grey, '"No crime to kill a bastard-child"', p.43.
[175] Burton, *"Bad" Mothers*, p.20-21.

'either legal or medical definitions of insanity'.[176] A very clear example of this occurring in the South Australian context is the charge of attempted murder brought against 19-year-old Winnifred Banks' in the Adelaide Destitute Asylum in 1875. Multiple witnesses testified to seeing Banks mistreat her 7-week-old son Hymen, before attempting to strangle him to death. When arrested, Banks allegedly told police '"I meant to kill the child; I had my reasons for doing it"', and when questioned in court she stated that '"I have not the means to keep the child, and I won't"'.[177] Despite Banks' own confession—and medical evidence alleging that she 'only pretended to be insane'—the presiding judge and the Acting Crown Solicitor ruled that Banks had 'acted in a fit of ill-temper, with no evidence of any 'malicious attempt to murder'.[178] Consequently, the charge was downgraded to common assault and Banks was sentenced to only 6 months imprisonment.[179] This lenience despite Banks' confession of her intent to murder her son demonstrates the refusal of colonial authorities to comprehend that a white woman would attempt to murder her child for any reason other than insanity.

Conclusion

It is clear that infanticide was one of the most controversial crimes in colonial South Australia. Colonists and colonial authorities were often torn between a disdain for 'unnatural mothers' who harmed their children and the recognition that single working-class mothers had very few options to support themselves and their children. This acknowledgement was only extended to white women, with colonial propaganda and reports from Christian missionaries commonly depicting Aboriginal women as naturally lacking in maternal feeling—eager to murder their infants in alignment with 'barbaric' cultural practices or for their own personal convenience. These stereotypes served a clear purpose for colonial authorities: to demonstrate the necessity of civilising 'missions', to disguise the culpability of colonisation in Indigenous population decline, and to justify the removal of Aboriginal children from their parents.

The relative disinterest of colonial law enforcement and court authorities in the crime of abortion—compared to the strict disapproval of infanticide and concealment of birth—

[176] Grey, '"No crime to kill a bastard-child"', p.43.
[177] 'Police Court—Adelaide', *The Express and Telegraph*, 14 April 1875, p.2.
[178] 'Law Courts', *The Express and Telegraph*, 17 June 1875, p.2.
[179] Ibid.

shows a sharp contrast between care for unborn and recently-born (even stillborn) children. Evolding nineteenth century perceptions of foetal 'life' led to cultural confusion as the law recognised pre-quickening abortion as a crime while the cultural belief that the death of an unborn child was not murder lingered. Fear of abortion was further dwarfed by the prevailing fear of infanticide throughout the British Empire for much of the nineteenth century, with infanticide clearly framed as the more 'unnatural' crime—therefore deserving greater attention from police and court authorities.

Despite persistent fear of the consequences of infanticide, and harsh punishments mandated in colonial legislation, the outcomes of case studies considered in this chapter demonstrate that court authorities were frequently inclined to demonstrate lenience towards white women charged with infanticide. This lenience was a clear result of pity directed towards unfortunate victims of seduction abandoned by unscrupulous, usually unnamed, men—as well as the assumption that white women only harmed their children as a result of temporary insanity. Although this pity served to protect women convicted of infanticide from execution, it also refused to understand or acknowledge the social and financial factors which drove many women to murder their children—allowing these issues to persist nearly unchecked for the duration of the colonial period.

Chapter 6:
"Consensual Sex"

Chastity was *the* most important trait for a respectable woman in the nineteenth century. The emphasis on chastity and sexual purity was based on the popular ideal that respectable women should only engage in sex after marriage, and only with their husbands. According to Ann Summers, in colonial Australia the ideal wife was a virgin before marriage, because 'husbands wanted their property to be untainted and they wanted a guarantee that they had fathered the children they were obliged to provide for'.[1] This chapter argues that the emphasis on chastity—and the consequences for failed chastity—were especially prevalent in South Australia, where colonial authorities' determination to create a respectable, middle-class settlement free from vice depended heavily on the respectability and morality of female colonists. According to Ronald Gibbs, South Australia's founders 'regarded women's roles as good wives and mothers to be essential in South Australia's development'.[2] As discussed in the previous chapters, unchaste women were often perceived as unsuitable wives and mothers.

There have been relatively few studies conducted on female chastity in colonial South Australia. Christopher Nance's articles, 'Women in Colonial South Australia' and 'Women, Public Morality and Prostitution in Early South Australia', published in 1978 and 1979 respectively, provide an excellent insight into the particulars of prostitution in the colony, arguing that the emphasis on female chastity in the colony created a strange dichotomy in the policing of prostitution, with colonial authorities simultaneously seeking to condemn and deny the presence of prostitution and other forms of vice in their morally superior settlement.[3]

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[1] A Summers, *Damned Whores and God's Police*, 2nd ed., Ringwood: Penguin Books, 1994, p.342.
[2] RM Gibbs, *Under the Burning Sun: A History of Colonial Australia, 1836-1900*. Peacock Publications: Adelaide, 2013, p.369.
[3] C Nance, 'Women in colonial South Australia', *Tradition*, 1978, pp.14-18; C Nance, 'Women, public morality and prostitution in early South Australia.' *Push from the Bush*, no.3, 1979, pp.33-43. For broader discussions of sexual immorality in colonial Australia, see J Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*. Oxford University Press: Melbourne, 1990; J Damousi, *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia*, Cambridge University Press: Cambridge, 1997; EC Casella, '"Doing trade": a sexual economy of nineteenth-century Australian female convict prisons', *World Archaeology*, vol.32, no.2, 2000, pp.209-221; R Phillips, 'Imperialism and the regulation of sexuality: colonial legislation on contagious diseases and ages of consent', *Journal of Historical Geography*, vol.28, no.3, 2002, pp.339-362.

It must be noted here that this chapter uses the terms 'prostitution' and 'sex work' interchangeably.[4] According to Melissa Hope Ditmore, sex work is a broad term which encompasses multiple forms of sexual services, of which prostitution (the direct exchange of sex for money) is only one.[5] Prostitution is also a highly criminalised term which has been historically utilised to marginalise sex workers and exclude prostitutes from so-called 'respectable' society, even in regions such as colonial South Australia where prostitution itself was not illegal.[6] However, Ditmore also notes that 'sex work' is a modern term and it is 'anachronistic' to avoid the term 'prostitution' when describing people who 'traded sex before the term *sex work* was coined'—particularly when, in the context of this thesis, 'prostitution' was the term used in all colonial records.[7] Consequently, this thesis utilises both terms to simultaneously highlight historical perspectives and respect the presence of prostitutes/sex workers as active participants in the colonial economy.

This chapter builds upon Nance's above-mentioned work by considering not only the early denial of female vice and prostitution in colonial South Australia, but also examining the significant increase in policing and conviction for prostitution-related charges following protests by the South Australian Evangelical Alliance in the mid-1870s. This movement criticised police and the colonial government for ignoring the 'problem' of prostitution and related vice, led to increased media awareness of the prevalence of prostitution in Adelaide and, according to the statistics presented in this chapter, led to a significant rise in prostitution-related convictions from the mid-1870s.

Similarly informative is Katie Barclay's 2016 article on seduction and breach of promise charges brought in Britain between 1780-1830.[8] Barclay's research provides a more recent analysis of British perceptions of female chastity, arguing that nineteenth century newspaper court reports played a significant role in the public perception of 'scandalous' sexual

[4] For research on the different connotations of the terms "prostitution" and "sex work", and the ways that language has been utilised to discredit and criminalise women who engage in transactive sex, see: E Bernstein, 'What's wrong with prostitution? What's right with sex work? Comparing markets in female sexual labour', *Hastings Women's Law Journal*, vol.10, 1999, pp.91-117; LE Sanchez, 'The global e-rotic subject, the ban, and the prostitute-free zone: sex work and the theory of differential exclusion', *Environment and Planning D: Society and Space*, vol.22, 2004, pp.861-883; Van der Meulen, E, EM Durisin, and V Love (eds), *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, UBC Press: Vancouver, 2013, p.2-3.
[5] MH Ditmore, *Prostitution and Sex Work*, Greenwood: Santa Barbra, 2011, p.xviii.
[6] Sanchez, 'Sex work and the theory of differential exclusion', pp.861-883.
[7] Ibid.
[8] K Barclay, 'Emotions, the law and the press in Britain: seduction and breach of promise suits, 1780-1830'. *Journal for Eighteenth Century Studies*, vol.39, no.2., 2016, pp.267-284.

behaviour—an influence which was similarly present in colonial South Australia.[9] As Barclay considers the period immediately before South Australian colonisation, the case studies help to shed light on the level of influence that established British opinions of female chastity and male 'seducers' exerted in colonial South Australia. Utilising this background, this chapter argues that South Australia's insistence on moral superiority and emphasis on marriage for women was reflected in courtroom prejudice which frequently ruled against 'unchaste' women as both perpetrators and victims of crime.

This chapter also considers the ways in which women's sexual reputation affected their social status, which invariably influenced courtroom perceptions. It utilises case studies of seduction and prostitution-related offences, analysing conviction statistics for just over 500 prostitution-related convictions against single women in the pre-1880 colonial period—including charges of drunkenness, indecent language/behaviour, vagrancy, soliciting, and owning or residing in a brothel. Furthermore, this chapter examines the difference in perception of women whose sexual misconduct was seen as a one-time mistake, as opposed to those who were seen as pursuing vice as a permanent course of life. In contrast, men's sexual history was almost never raised and had a negligible effect on their reputation—so long as they focused their amorous attention on women of 'loose character' and did not compromise the chastity of 'pure' women.

The importance of chastity in colonial South Australia meant that women whose chastity was called into question had to choose between one of three options: 1. Prove that the accusations against their chastity were false; 2. Prove (through a charge of seduction or breach of promise) that they had been unwittingly manipulated into sex by a disreputable man; or 3. Find a way to deal with the stigma—and consequent social isolation—directed towards women of 'loose character'. This chapter argues that women (particularly working-class women) who chose—or were forced into—the third option were frequently described as prostitutes, whether the sex they had participated in was transactional or not. This chapter contends that, no matter the circumstances of these women's original sexual transgression, the exposure and resulting social consequences of their sexual misconduct left many women few options for survival aside from prostitution, which only exposed them to further social

[9] Barclay, 'Emotions, the law and the press in Britain, pp.267-284.

and legal criticism, particularly during the peak of public and government concern over vice in the mid-1870s.

Chastity and 'Respectability'

In the Australian context, emphases on female chastity stemmed from British middle-class ideals describing respectable women as 'the embodiment of sexual virtue and morality'.[10] As discussed throughout this thesis, South Australian colonial authorities strove to emulate British middle-class ideals wherever possible. As a result, Christopher Nance suggests that the stereotypical South Australian woman was portrayed as sexually ignorant in her youth, and chaste, moral and committed to religion in adulthood.[11] This idea was reiterated by Mary Geyer in 2008, when she wrote that respectable colonial women were expected to be completely 'removed from the desires of the flesh'.[12]

Stereotypes of female 'virtue', or chastity, affected the way that women were perceived throughout the British Empire. According to Barclay, 'female virtue became the mark of British superiority' and civilization, validating British male authority as the 'protectors' of virtuous women.[13] As the British Empire grew—and as colonialism became the favoured method of expansion—this idea extended to 'British men's, and later British women's, ability to protect "native" women from the seeming "uncivilised" practices of their own cultures'.[14] Barclay suggests that these attitudes did not prioritise the genuine wellbeing of colonised women, but rather served as one of many justifications for British imperialism.[15]

Ideals of femininity and chastity did not only differentiate between white British women and non-white and colonized women, but also between middle-and working-class women. This was particularly potent in South Australia, where notions of middle-class respectability were specifically outlined in Wakefield's theory of systematic colonisation and encouraged from the outset of colonisation. Alison Phipps suggests that these ideas of respectability have

[10] A Simmonds, '"Promises and pie-crusts were made to be broke": breach of promise of marriage and the regulation of courtship in early colonial Australia.' *Australian Feminist Law Journal*, vol.23, no.1, 2005, p.101.
[11] Nance, 'Women in colonial South Australia', p.15.
[12] M Geyer, *Behind the Wall: The Women of the Destitute Asylum Adelaide, 1852-1918* 2nd ed. Kent Town: Wakefield Press, 2008, p.39.
[13] Barclay, 'Emotions, the law and the press in Britain', p.277.
[14] Ibid.
[15] Ibid.

historically been used as 'a sign of difference between women', enabling middle-and upper-class women to exert authority over working-class and 'pauper' women.[16] In South Australia, this was especially apparent in the encouragement of 'respectable' women to visit 'fallen' women in the Female Refuge. Middle-class ideals of chastity and respectability also meant that certain women were more likely to be taken at their word by colonial authorities, while others were considered prone to dishonesty based on their appearance, language, sexual history, and class status. These stereotypes permeated British and British colonial society and were used to justify male control as a method of 'protecting' women from vice and crime.

Protecting Female Chastity

The correlation between female chastity and middle-class respectability meant that South Australian colonial authorities sought to ensure that the women who settled in their colony were paragons of sexual virtue. This was especially important for single women who emigrated alone, as both British and colonial authorities viewed immigrant ships as 'moral jungles' where even the most virtuous single women could be persuaded to a life of sin.[17] Single women's chastity was threatened from multiple angles—by male officers, crew-members and passengers, and sometimes even other women recruiting for prostitution.[18] In order to combat these threats and ensure that single women arrived in South Australia as virtuous as they departed from Britain a series of regulations were implemented which aimed to 'protect' single women travelling on emigrant vessels. Ideally, immigration authorities wanted a single woman to travel with her family, a close family friend, or a respectable married couple from the same geographical region.[19] However, for cases where this was not possible, a series of regulations were implemented for the 'protection' of single women travelling alone.

In his Report for September 1856, Immigration Agent Henry Duncan wrote that 'much of the efficiency and good conduct of the single females sent here as domestic servants

[16] Barclay, 'Emotions, the law and the press in Britain, p.277.
[17] J Gothard, *Blue China: Single Female Migration to Colonial Australia*. Melbourne University Press: Melbourne, 2001, p.129-130.
[18] Ibid.
[19] K Alford, *Production or Reproduction? An Economic History of Women in Australia, 1788-1850*. Oxford University Press: Melbourne, 1984, p.104.

depend on their careful management and discipline on board' emigrant ships.[20] This comment likened single women, the majority of whom were aged between 18 and 35, to children who could not be trusted to behave without strict supervision. The 1848 *Notice on Free Emigration*, applicable to every person applying for assisted passage to South Australia and New South Wales, specified that 'the preservation of good order, as well as the comfort of the people', was kept in mind when deciding on the layout of the ship.[21] 'Preservation of good order' was the socially respectable terminology for the prevention of sex between unmarried immigrants, particularly between single women and male crew members. In consequence of this, all British emigration vessels required that 'the married couples and the young children occupy separate berths in the middle of the vessel…while the single men and the single women are placed in distinct compartments set apart for them at opposite ends of the ship'.[22] As mentioned in chapter one, the single women's compartment was also locked from the outside at night to prevent anyone from leaving or entering—though it would not keep out any of the ship's officers who held a key.

British and colonial media was filled with apparent concern for the welfare of single women on immigrant ships. However, this concern stemmed less from genuine care for single women's safety and comfort than from the fear that women who were deprived of 'protection' would arrive in South Australia socially unsuitable to settle in the colony. According to Grimshaw et al., Australian colonists were 'hostile' towards many of the single women who immigrated in the mid-nineteenth century.[23] Single women were rumoured to be more easily tempted to immorality than their married counterparts, with an 1862 article published in the *South Australian Register* alleging that unemployed single women were 'ready prey' for amoral men and women to entice into prostitution and crime.[24]

After their arrival in the colony, 'unprotected' single women who had not already arranged employment were housed in the Immigration Depot or—when single female immigration peaked in the mid-1850s—in one of the many servants' depots located

[20] *Immigration Agent's Report for the Quarter Ended 30th September 1856*, 1 October 1856, CO13/93, Australian Joint Copying Project, National Library of Australia: Canberra, p.512
[21] *Notice on Free Emigration to Australia*, February 1848, CO13/61, AJCP, NLA: Canberra, p.261.
[22] Ibid.
[23] P Grimshaw, M Lake, A McGrath & M Quartly, *Creating a Nation*. Penguin Books Australia Ltd: Ringwood, 1994, p.87.
[24] 'Anglo-Australian Topics', *South Australian Register*, 26 September 1862, p.4.

throughout the colony.[25] Single women who were unable to work due to illness, injury, or pregnancy were housed in the Hospital or the Adelaide Destitute Asylum. These government homes were all established to prevent 'pauperism' in the colony, but also as a form of government protection and control of unmarried women. The catch of these homes was that they were only intended to assist single women of virtuous character. Sex workers, women of 'loose character', and unmarried women with illegitimate children were frequently refused admittance except in the direst of medical circumstances.[26] These sexualised admission criteria did not only apply to white institutions, but also to Aboriginal missions. For example, an 1852 report on the Native Mission at Port Lincoln recorded that some Aboriginal women had been forced to leave 'because they had mingled with white men', which the missionaries believed had made them 'so corrupted' that their presence placed other female residents at risk.[27]

It would be impossible to list every rejected application to the Destitute Asylum, but following are two of the most blatant examples. First, in 1856 a resident of Cox Creek wrote to the Destitute Board claiming that a Mrs Serle, who had applied for assistance, 'was not deserving of relief, as she was a bad character'.[28] This statement was apparently confirmed by members of the Board and Serle was denied assistance.[29] Second, in 1857 the Destitute Board refused to admit 16-year-old Alice Polkinghorne of Noarlunga—despite a letter of recommendation signed by more than a dozen colonists speaking to her good character and deservedness of assistance—on the grounds that it would set 'a dangerous precedent to admit single females with infants into the Asylum'.[30] This reluctance to admit unmarried mothers into the Destitute Asylum stemmed from fear that these unchaste women would be a negative influence on their 'chaste' counterparts, who sought relief from the Asylum for more socially respectable reasons.[31]

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[25] For information on these depots, see M Steiner, *Servants Depots in Colonial South Australia*, Wakefield Press: Kent Town, 2009.
[26] See 'The Destitute Asylum', *Adelaide Observer*, 29 February 1868, p.12. The Destitute Board required all applicants to character references to attest to their respectability, except in cases of extreme urgency such as illness, injury, or confinement.
[27] 'Church of England Society', *South Australian Gazette and Mining Journal*, 10 January 1852, p.3.
[28] 'Destitute Board', *Adelaide Times*, 2 September 1856, p.3.
[29] Ibid.
[30] 'Destitute Board', *Adelaide Observer*, 28 March 1857, p.7.
[31] For elaboration on the admittance criteria for single mothers seeking assistance in Adelaide's Destitute Asylum, see chapter 5.

In 1856, a woman named Bridget Hay (alias Mary Thomas) was found lying outside the Destitute Asylum at night, clearly having been refused admittance. Rather than acknowledging her need for aid, police brought Hay to court and charged her with being a 'common prostitute' and sleeping outside, for which she was sentenced to one month in gaol.[32] Despite these strict entry criteria, an article published in the *Adelaide Times* in 1857 complained that the Destitute Asylum allowed 'women so depraved that they can be tolerated in no ward of the Hospital…to live in close contact with persons of respectable manners and decent characters'.[33] In her research on mid-nineteenth century Irish orphan immigration to Australia, Kay Caball suggested that many middle-class men believed that 'female immorality was contagious to other women'.[34] This idea that unchaste behaviour could be easily transmitted from woman to woman was prevalent in the nineteenth century, and is something which South Australian colonial authorities genuinely feared. Bridget Hay's case also demonstrates that colonial authorities preferred to sentence unchaste destitute women to prison rather than provide them with financial assistance or admit them to institutions where they may 'corrupt' other—morally deserving—destitute women. This attitude ignores the fact that, for many nineteenth century women, destitution was the *cause* of vice, rather than the effect.

In order to avoid admitting unchaste women into government houses and risking their contamination of respectable poor women, a group of influential male colonists and religious leaders gathered in 1856 to propose the establishment of a charitable Female Refuge, for the rehabilitation of 'fallen women' back into respectable society. The Refuge was officially proposed by Augustus Short, Bishop of Adelaide, who claimed that—after meeting a 'fallen' woman and hearing her story—he came to believe that 'there might be persons of that class deserving of commiseration and assistance'.[35] This statement from Short clearly delineates the popular nineteenth century belief that 'fallen' women's social and financial struggles were the result of their own poor choices and an inherent propensity for vice and immorality.

In their meeting, Short and the other attendees decided that the Female Refuge would be open to all women of the Christian faith, of any denomination. It would be run by Governor

[32] 'Police Courts', *South Australian Register*, 21 March 1856, p.3.
[33] 'A Case of Gross Mismanagement', *Adelaide Times*, 17 February 1857, p.2.
[34] KM Caball, *The Kerry Girls: Emigration and the Earl Grey Scheme*, The History Press Ireland: Dublin, 2014, p.95.
[35] 'South Australian Female Refuge', *South Australian Register*, 5 August 1856, p.3.

Richard MacDonnell as President, Bishop Short as Vice-President, and a committee of twelve other respectable male colonists who would be re-elected annually—as well as any religious leader who wished to lend his support, with religious education being mandatory for all inmates.[36] Many of the committee members pledged to donate between £25 and £50 each for the establishment of the Refuge—an amount far in excess of the average annual wage for female servants, which was alleged to be between £16 and £25 in 1865.[37] If this money had been donated directly to women in need, it is likely that many could have used it to improve their situations without further assistance; however, the emphasis on religious education suggests that the Refuge was intended to provide its residents with moral instruction rather than financial support.

The Female Refuge was entirely reliant on private donations and received no public funding, despite Governor MacDonnell being President of the committee. An article published in the *South Australian Register* in 1864 noted that this was unique to South Australia, with similar institutions in Victoria and New South Wales receiving state funding in addition to private donations.[38] This refusal to provide government funding for the Refuge—despite MacDonnell's involvement demonstrating that the colonial government perceived the necessity of such an institution—speaks to the South Australian Government's adamant refusal to acknowledge immorality and vice in the colony.

This refusal to allocate government funding for the rehabilitation of destitute 'fallen' women also reflected the popular British governmental belief—discussed in chapters 4 and 5—that 'pauperism' was frequently the result of laziness and a refusal to work, rather than a genuine and unavoidable need for financial aid. In the 1856 meeting to establish the Female Refuge, Governor MacDonnell was adamant that it would be funded only by charitable donations—stating that 'the less the State endeavours to relieve destitution the more people will exert themselves to retrieve their position and escape by their own labour from the evils of destitution'.[39] This idea persisted for much of the nineteenth century; however, its proponents never considered that many 'known prostitutes' were trying to do exactly that—relieving themselves from destitution by their own labour, rather than begging for

[36] 'South Australian Female Refuge', *South Australian Register*, 5 August 1856, p.3.
[37] *Immigration Agent's Report for the Quarter ended 31st December 1856*, 6 January 1857, CO13/95, AJCP, NLA: Canberra, p.92.
[38] 'South Australian Female Refuge', *South Australian Register*, 18 May 1864, p.3.
[39] 'South Australian Female Refuge', *South Australian Register*, 5 August 1856, p.3.

government aid. Specifically referring to the creation of a Female Refuge, MacDonnell further explained that, 'although as Governor I might not think the time come for State interference, I see, as an individual, no reason why private charity may not usefully intervene'.[40] This demonstrates that, while colonial authorities were aware of numerous colonial women requiring assistance and financial aid, they were eager to downplay the issue and place the responsibility of a solution on private organisations and charity rather than instituting widespread social and legislative change.

The people in charge of 'protecting' unmarried women, in both privately funded institutions like the Female Refuge and in Government-funded institutions such as the Destitute Asylum, were given near-total authority over these already vulnerable women. Unfortunately, this authority was open to abuse. For example, in 1855 Matthew Moorhouse (Protector of Aborigines and Superintendent of the Female Immigration Depot) was accused of shoving a woman named Margaret Fay to the ground and threatening her with physical violence after she refused to move her belongings to make way for new inmates—after which Fay was removed from the Asylum and Moorhouse faced no repercussions.[41]

In a letter published in the *South Australian Register* in June 1870, five 'professed prostitutes' wrote that they refused to seek assistance from the Female Refuge because the regulations there were 'so strictly carried out that the female mind abhors the very thought'. [42] They also insisted that they would 'sooner starve' than apply to enter the Destitute Asylum'.[43] This was a common complaint, with frequent reports of overcrowding and unhygienic conditions. In 1868 it was reported that dormitories in the Asylum could contain between six and thirty beds at a time, and in 1870 *The South Australian Advertiser* reported that overcrowding was common and prevented 'any attempts at industrial pursuits by the inmates'.[44] Able-bodied women housed in the Destitute Asylum were also required to complete sewing and other tasks for the Asylum without pay.[45]

[40] 'South Australian Female Refuge', *South Australian Register*, 5 August 1856, p.3.
[41] 'The Recent Disturbance at the Immigration Depot', *Adelaide Times*, 13 September 1855, p.2.
[42] 'The Social Evil', *South Australian Register*, 25 June 1870, p.3.
[43] Ibid.
[44] 'The Destitute Asylum', *Adelaide Observer*, 29 February 1868, p.12; 'The Advertiser', *The South Australian Advertiser*, 12 March 1870, p.2.
[45] 'The Destitute Asylum', *Adelaide Observer*, 29 February 1868, p.12.

There are no detailed descriptions of conditions in the South Australian Female Refuge; however, an article published in the *South Australian Register* in 1856 claimed that similar institutions in England—like female factories in the penal colonies—required inmates to cut their hair, wear a uniform, give up many personal freedoms, and submit themselves to constant surveillance.[46] There is no evidence that residents of the Female Refuge had to cut their hair or wear a specific uniform; however, they were required to attend twice-daily religious instruction, to support the maintenance of the Refuge with their (unpaid) labour, and were forbidden from writing any correspondence without permission or from leaving the Refuge without an escort.[47] This loss of freedom and constant surveillance by a matron and religious leaders would have discouraged many women from seeking assistance from the Refuge.

A Catholic Female Refuge, separate from the existing Refuge and run primarily by the nuns of the Order of the Sisters of St Joseph, was established in 1868.[48] This Refuge was different to the existing Refuge because the nuns' volunteer work in the community meant they were able to directly recruit women who were being released from prison and the Hospital—encouraging them to enter the Refuge rather than falling back in with old associates. These methods were used to recruit 11 of the Refuge's first 24 inmates.[49] An article published in the *South Australian Advertiser* in July 1868 stated that these early successes of the Catholic Refuge were 'entirely owing to the Sisters, whose patience, charity, and forbearance…gives them an influence which no other agency could command'.[50] This popularity in the press and wider colonial community made the Sisters very unpopular with the all-male administration of the South Australian Catholic Church. In early 1872, Bishop Laurence Sheil, with the support of at least 11 of the colony's Catholic Priests, closed a number of the Sisters' schools and excommunicated their Superioress Mary MacKillop (who later became Australia's first recognised Catholic Saint) for insubordination after she refused to step-down as Superioress and allow the Sisters to be overseen by their respective local priests. However, on his deathbed a few months later, Sheil rescinded his order and MacKillop and the Order of St Joseph were permitted to return to the Catholic Church.[51]

[46] 'The Proposed Female Refuge', *South Australian Register*, 30 July 1856, p.2.
[47] 'The South Australian Refuge for Females', *Adelaide Times*, 5 August 1856, p.3.
[48] 'Roman Catholic Orphanage and Refuge', *South Australian Register*, 22 January 1868, p.3.
[49] 'Topics of the Day', *The South Australian Advertiser*, 15 July 1868, p.2.
[50] Ibid.
[51] 'Death of Bishop Shiel', *Evening Journal*, 1 March 1872, p.2.

After Shiels' death in 1872, the Catholic Refuge fell under the superintendence of Father Horan—who held a personal grudge against the Sisters of St Joseph and was one of the Priests who petitioned Sheils to disband their Order—who publicly discredited the Sisters and threatened to replace them with matrons.[52] Horan claimed that the Sisters were too uneducated to teach children, and that the Order of St Joseph was filled with 'hollowness and rottenness'.[53] He lamented their lower-class backgrounds and lack of education, comparing them to the 'refined and cultivated…by birth and education' ladies in charge of the Magdalene Asylums in Ireland—notorious for their abusive treatment of inmates—who undertook specialised training to work in the Asylums.[54] However, this dissatisfaction lay only with Horan and his supporters, with the vast majority of commentary on the Catholic Refuge praising the Sisters' running of the Refuge.[55] In 1870, for example, Justice of the Peace and—according to Eric Richards' entry in the Australian Dictionary of Biography—'known…pessimist' Samuel Tomkinson credited the Sisters of St Joseph's work as responsible for the Adelaide Gaol's record low number of female inmates: 13.[56]

Under Horan's Superintendence, the running of the Refuge became so disorganised that the number of residents fell from 21 in May 1871 to only 8 by April 1872.[57] Perhaps unsurprisingly, Father Horan's complaints about the Sisters of St Joseph were swiftly followed by two anonymous letters published in the *Protestant Advocate* in 1872, which accused the Sisters of, among other things, 'sacrilege, blasphemy, unchastity, attempt at murder and arson'.[58] As a result of these allegations, Ellen Henrietta Woods (alias Sister Mary Mathilde) brought a charge of libel against the newspaper's editor, James Heath Lewis, for publishing these letters without confirming their veracity.[59] Lewis called Father Horan

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[52] 'The Catholic Female Refuge', *The Irish Harp and Farmers' Herald*, 6 April 1872, p.5. Horan allegedly held a grudge against the Sisters of St Joseph after they reported his friend Father Patrick Keating of Kapunda for sexually abusing multiple members of his congregation in 1870, causing him to be deported from South Australia and returned to his native Ireland.
[53] 'Father Horan and the Irish Harp', *Kapunda Herald and Northern Intelligencer*, 26 March 1872, p.3.
[54] 'Sermon Delivered by Father Horan, O.S.F, on Palm Sunday, March 24', *The Irish Harp and Farmer's Herald*, 30 March 1872, p.2.
[55] For examples of this praise, see: 'Topics of the Day', *The South Australian Advertiser*, 15 July 1868, p.2; 'Catholic Female Refuge', *The South Australian Advertiser*, 9 March 1869, p.2; 'H.M Jail: To the Editor', *Evening Journal*, 26 August 1870, p.3; 'The Week's News', *Adelaide Observer*, 6 May 1871.
[56] E Richards, 'Tomkinson, Samuel (1816-1900)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University: Canberra, https://adb.anu.edu.au/biography/tomkinson-samuel-4729/text7847, published first in hardcopy 1976, accessed online 28 September 2021; 'H.M Jail: To the Editor', *Evening Journal*, 26 August 1870, p.3.
[57] 'Telegraphic Summary for Europe', *Evening Journal*, 20 May 1871, p.3. 'The Catholic Female Refuge', *The Irish Harp and Farmers' Herald*, 6 April 1872, p.5.
[58] 'Law Courts', *The Express and Telegraph*, 6 June 1872, p.2.
[59] Ibid.

and two other Catholic ministers to support his case; however, they failed to respond to five separate subpoenas and the Court ruled that their testimony was unnecessary—fining Lewis £50 and sentencing him to six months imprisonment.[60] It is likely that Horan encouraged, or even wrote, these letters—having publicly described the Sisters of St Joseph as 'a virulent cancer on the bosom of Catholicism in South Australia' after Mary MacKillop's reinstatement to the Church in 1872.[61]

The treatment of the Sisters of St Joseph demonstrates how little colonial and religious authorities in South Australia wanted women, particularly uneducated women, to be involved with assisting and educating other women in need. At the establishment of the original Female Refuge in 1856 it was declared that—while that the Refuge would be managed by an all-male committee, and the compulsory religious education would be conducted by male ministers—the day-to-day management of the Refuge would be conducted by a Matron and small 'Visiting Committee of Ladies'.[62] In 1865 this Ladies Committee was referred to as a 'Committee of sympathy and advice', and it is clear that this was the largest role colonial authorities wanted women to play in the Refuge's running.[63] When women such as the Sisters of St Joseph became more involved than the simple supervisory role performed by matrons—when they sought to actively educate and rehabilitate other women—they were lambasted by men as being unfit for the role. It is clear, therefore, that colonial authorities did not intend institutions like the Refuges to genuinely improve the status of 'fallen' women, but only to give an outward appearance of care for women's welfare while avoiding implementing any real social change.

Female Chastity and 'Social Ruin'

The emphasis placed on female chastity in the nineteenth century meant that women who did not adhere to strict sexual purity requirements risked serious social consequences. In her book on legal 'scandals' in mid-nineteenth century Sydney and Cape Town, Kirsten McKenzie wrote that 'a respectable woman's sexual reputation was as much a commodity as

[60] 'Law and Criminal Courts', *Evening Journal*, 7 June 1872, p.3.
[61] 'Sermon Delivered by Father Horan, O.S.F, on Palm Sunday, March 24', *The Irish Harm and Farmer's Herald*, 30 March 1872, p.2.
[62] 'South Australian Female Refuge', *South Australian Register*, 5 August 1856, p.3.
[63] 'South Australian Female Refuge', *Adelaide Observer*, 15 April 1865, p.3.

a merchant's good name and credit'.[64] She referenced the comments of a Sydney barrister in 1832, who stated that 'a seduced woman was "no longer worth anything—worth less even than nothing"'.[65] This claim supported nineteenth century ideals that women's greatest 'worth' was in their value as future marriage partners for men. Unchaste women were not considered valuable in the colonial marriage market, hence this assertion that they were functionally worthless.[66]

This social criticism of women who engaged in pre-marital sex, and other traditionally masculine activities such as alcohol consumption, is evident in an 1856 article published in the *Adelaide Times* which alleged that 'crime in man, and vice in women, are avenged by the law…but in society they are never forgotten'.[67] This statement demonstrates the difficulty which women faced in making the decision to bring sex-related charges before the colonial court—having to weigh up the financial benefit of monetary damages with the social risk of the public exposure of their sex life. The discrimination experienced by unchaste women in their communities, in the courtroom, and in the colonial media ensured that their sexual misconduct would never be forgotten. In contrast, this article suggested that male 'vice' was only condemnable when it broke colonial law, with few social repercussions for men who were known to engage in pre-marital sex.

According to Alecia Simmonds, women whose pre-marital sex lives were publicly exposed 'suffered scorn' in colonial society—scorn which was not always confined to the woman herself, but which could affect the social standing of her entire extended family.[68] However, women and their families could regain some social status by claiming that they had been manipulated by an incorrigible male seducer. One of the most effective methods for accomplishing this by bringing a charge of seduction.

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[64] K McKenzie, *Scandal in the Colonies: Sydney & Cape Town, 1820-1850.* Melbourne University Press: Carlton, 2004, p.90.
[65] Ibid.
[66] For further information on ideals surrounding marriage in colonial South Australia, see chapter 2.
[67] 'Home for Homeless Women', *Adelaide Times*, 25 August 1856, p.2.
[68] A Simmonds, 'Gay Lotharios and innocent Eves: child maintenance, masculinities and the action for breach of promise of marriage in colonial Australia.' *Law in Context*, vol.34, no.1, 2016, p.73.

Seduction

The importance of female chastity in colonial South Australia is evidenced in the numerous laws intended to protect women's sexual reputations. Though these charges all had different legal descriptions—including breach of promise, sexual slander, and seduction—they were often used interchangeably in colonial courtrooms. For example, maintenance charges forced putative fathers of illegitimate children to pay a weekly stipend towards their care; however, such mandates were difficult to enforce and the defendant in such cases could easily escape payment by denying paternity of the child or leaving the colony.[69] For this reason, many single mothers chose to pursue charges of seduction or breach of promise as an alternative to maintenance, as both mandated a lump-sum payment of damages rather than a weekly stipend. Breach of promise of marriage was the most efficient of these charges because women could to bring the charge on their own behalf and, in cases involving pre-marital pregnancy, did not have to prove the paternity of their child in order to achieve a conviction.[70]

According to McKenzie, complainants in breach of promise and seduction charges 'had to prove loss'. [71] Breach of Promise was the more desirable charge because the plaintiff did not have to admit to pre-marital sex or have an illegitimate child—only prove that their partner had rescinded a promise of marriage without good reason.[72] In contrast, seduction charges related to financial loss resulting from pre-marital pregnancy, which means that plaintiffs had to admit to pre-marital sex. The primary goal of seduction charges was then to prove that the blame for the seduced woman's actions rested in the hands of the dishonest and predatory defendant, rather than her own sexual immorality.

Overall, the most effective method of avoiding the social ruin associated with seduction and pre-marital sex was to keep such affairs secret. According to Allen, 'the modern notion of sexual intimacy is predicated upon secrecy—others do not see and know. The acts and relations are hidden'.[73] Under this understanding, women were very unlikely to bring actions

[69] For more information on maintenance charges in colonial South Australia, see chapter 4.
[70] For more information on breach of promise of marriage charges in colonial South Australia, see chapter 2.
[71] McKenzie, *Scandal in the Colonies*, p.95.
[72] For examples of successful South Australian breach of promise charges which did not mention pre-marital sex, see the cases of Evans v. Tuxford, Barron v. Gooch, Coot v. Tynan, and Bellinger v. MacDonald, discussed in chapter 2.
[73] Allen, *Sex and Secrets*, p.1.

for seduction if the sexual relationship had not already been made public through an illegitimate pregnancy or community gossip. This charge was intended for women whose sexual misdeeds had already been exposed.

When considered from this perspective, it is clear that suing for seduction was utilised as a method of reducing a woman's culpability in pre-marital sex and thus reducing the judgement of her fellow colonists. Seduction charges reduced a woman's sexual agency by placing the blame for pre-marital sex entirely on a male 'seducer', without whose wiles the otherwise respectable, sexually naïve young woman would never have succumbed to her own sexual desires. One example of this is the 1856 seduction charge brought by Ephraim Ryles against his long-time friend and neighbour, Joseph Welsh, for the seduction of Ryles' daughter Margaret. When summing up the charge, Justice Boothby pointed out that, as Welsh was a trusted family friend, Margaret would have permitted from him 'advances without suspicion which she would not suffer from a stranger'.[74] He proposed that, as a result of this trust, 'she might not suspect…until too late that his apparently friendly approaches had a criminal tendency'. [75] This implied that, by the time Margaret realised Welsh had a sexual interest in her, their relationship may have progressed too far for her to feel confident in refusing his sexual advances. This demonstrates an awareness that women sometimes consented to sexual activity only because they believed they were not allowed to say 'no'—and colonial courts often failed to recognise the difference between coercion and consent.[76]

According to Sharon Block, in eighteenth century Britain and America the increasing popularity of novels and stories which utilised 'seduction' as a central theme served to blur the line between consensual pre-marital sex and coerced, non-consensual, and sometimes violent sexual acts—all of which fell under the same umbrella of 'sexual immoralities'.[77] Such literature framed women's denial of men's sexual advances as only a token resistance, intended to disguise their true desire and encourage men to forcefully 'persuade' their sexual compliance.[78] These ideas permeated British and colonial society, with the case studies

[74] 'Supreme Court—Civil Side', *Adelaide Observer*, 13 September 1856, p.4.
[75] Ibid.
[76] See A Kaladelfos, 'Uncovering a hidden offence: Social and legal histories of familial sexual abuse', in A Piper and A Stevenson (eds), Gender Violence in Australia: Historical Perspectives, Monash University Publishing: Melbourne, 2019, p.66. For further discussion of understandings of consent in colonial South Australia, see chapter 7.
[77] S Block, *Rape and Sexual Power in Early America*, University of North Carolina Press: Chapel Hill, 2006, p.17-18.
[78] Ibid, p.21.

considered in this thesis demonstrating that verbal refusal alone was never considered sufficient evidence of non-consent.[79]

It is probable that some of the seduction charges discussed in this chapter were the result of rape, or at least of questionable consent. For example, 15-year-old Eliza Welshford's father sued her older sister's husband for seduction in 1861 after Eliza gave birth to a child allegedly conceived when she was only 13 years old—one year past the legal age of consent.[80] As is elaborated upon in the next chapter, rape charges where the plaintiff did not immediately report her assault were never successful in colonial South Australia. For this reason, women who became pregnant as a result of sexual violence were much more likely to receive recompense for seduction than for rape. With this in mind, it is likely that some women chose to bring charges of seduction against their rapists in the hope of receiving some compensation, rather than exposing themselves to the reputational risk associated with bringing a rape charge.

Though the evidence presented in some seduction cases suggests rape rather than consensual intercourse, in this chapter any question of consent between the 'seducer' and 'seduced' will be set aside because consent was not the primary concern of any of these cases, and it is therefore impossible to differentiate between seduction charges resulting from consensual sex and those resulting from rape. When a seduction plaintiff's consent to the was called into question in a charge in 1863, Justice Boothby claimed that consent 'did not matter a straw' in passing a verdict for seduction.[81] This consideration of consent as irrelevant in seduction charges means that it is impossible to differentiate between charges which resulted from an illegitimate child born from rape or from genuinely consensual sex.

According to Barclay, the most successful seduction charges conformed to the narrative of 'a young, innocent female soiled by a calculating lover, who deprived her of her physical, and/or…emotional chastity by having her fall in love with him, but ultimately not marrying her'.[82] It is unclear how effective this compensation was at addressing the social

[79] The different criteria required to prove rape and non-consent to sexual advances in colonial South Australian courtrooms is discussed further in chapter 7.
[80] 'Civil Sittings', *South Australian Weekly Chronicle*, 15 June 1861, p.3.
[81] 'Law and Criminal Courts', *South Australian Register*, 26 May 1863, p.2. This case, Haldane v McEwen, is discussed in more detail in chapter 7.
[82] Barclay, 'Emotions, the law and the press in Britain', p.269-270.

repercussions of seduction, with Justice Boothby claiming in 1856 that 'no amount of money could restore [a] girl's purity and good fame'—nor could it compensate her family for the 'anguish' and 'reproach' which they suffered through the 'misconduct' of her seducer.[83] This suggests that Boothby did not believe 'seduced' women could regain their previous social standing, and that it was this permanent reputational damage which seduction damages were intended to compensate—not for the woman herself, but for her family, on whom she would now likely forever remain a burden.

It must be noted that the seduction cases discussed in this chapter were all brought between working-class plaintiffs and defendants. This does not mean that middle-class and wealthy women never engaged in pre-or extra-marital sex, only that the families of such women chose not to bring such cases before the court. The reasons for this were likely twofold: wealthy families did not rely on their daughters' unpaid labour to the same extent as working-class families; and they could afford to forsake financial compensation to avoid exposing their daughter's seduction for the whole colony to witness. In an article from the *Australian* re-published in the *South Australian Register* in 1846, the author claimed that 'seduction is not confined to low life, nor yet to middle life, but extends to the highest circles'.[84] This shows that there was an awareness in the Australian colonies that wealthy men and women engaged in pre-marital sex; however, this awareness does not translate to representation in the colonial courts. Some middle-class and wealthy men likely avoided charges of seduction by providing monetary settlement outside of court. Furthermore, the outcomes of cases considered throughout this thesis demonstrate that colonial juries were unlikely to rule against a respectable middle-class man in favour of a working-class family—rendering seduction charges against such men somewhat futile.

Seduction charges were most successful when the plaintiff's family could prove financial loss, rather than social ruin. For example, in the case of Ryles v. Welsh, mentioned above, Boothby argued that the loss experienced by the girl's family did not only stem from the loss of service due to her pregnancy, but also in the fact that her seduction had greatly reduced her marriage prospects, meaning that she 'might now remain for life a [financial] burden' on her parents and married siblings.[85] Taking this into consideration, the jury awarded Ephraim

[83] 'Supreme Court—Civil Side', *Adelaide Observer*, 13 September 1856, p.4.
[84] 'From the Australian, 18th April', *South Australian Register*, 6 June 1846, p.3.
[85] 'Supreme Court—Civil Side', *Adelaide Observer*, 13 September 1856, p.4.

Ryles £100 in damages. Another example of the importance of financial loss in seduction cases was in 1869, when Sophia Bawhey's father sued T. O'Brien for the loss of service and medical bills resulting from her pregnancy.[86] Though O'Brien and his mother produced witnesses who identified a Mr Smith as Bawhey's 'seducer', Bawhey's father was awarded £50 in damages.[87] O'Brien appealed this decision twice, but both appeals were unsuccessful.

Table 7: Actions for Seduction Brought on the Behalf of Single Women in Colonial South Australia, 1836-1880[88]

Year	'Seduced' Woman	Seducer	Verdict
1854	Sarah Mary Powell	Robert Jacques	Damages: £150
1856	Margaret Ryles	Joseph Welsh	Damages: £100
1861	Eliza Welshford	Joseph Allen	Damages: £100
1863	Miss Hanrahan	Mr Johns	Damages: £5
1866	Miss Plumb	Edward Evans	Damages: £70
1867	Sarah Ann Bowey	John Blue	Damages: £50
1868	Annie Steer	Richard Latter	Damages: £100
1869	Jane Stokes	Thomas Hill	Nonsuit
1871	Miss Klingebiel	C. Henschke	Damages: £29
1872	Agnes Wallage	Crossman	Acquitted
1874	Minna Linter	William Hooper	Damages: £30
1877	Louisa Swaile	James McCulloch	Damages: £350
1877	Sophia Bawhey	T. O'Brien	Damages: £50
1880	Agnes Tanner	Absolom Howe	Damages: £60

Though seduction charges in colonial South Australia were few compared to other sex-related charges, they appear to have been taken quite seriously in colonial society. In 1869, a colonist under the alias 'No Talker' wrote to the *South Australian Register* to suggest that the colony should adopt a law recently passed in Canada which mandated that any man found guilty of seducing an unmarried woman of 'previous chaste character' faced up to two years

[86] 'Local Court—Adelaide', *South Australian Advertiser*, 24 December 1877, p.6.
[87] Ibid.
[88] Where possible here, the title 'plaintiff' refers to the 'seduced' woman on whose behalf the charges were brought, rather than the name of the parent who brought the charge.

imprisonment.[89] According to 'No Talker', such a law 'would be an everlasting good' and reduce the number of women who were 'led astray' as a result of the social repercussions of their seduction.[90] Further evidence of the seriousness with which seduction charges were viewed in colonial South Australia is the fact that twelve of the fourteen seduction cases (86 per cent) considered in this thesis ruled in favour of the plaintiff [see Table 7], making seduction the second-most-successful charge considered in this thesis—behind breach of promise.

The language used to describe male 'seducers' in seduction charges was often more accusatory than the language used to describe men who were convicted of sexual violence. This language was evident in colonial newspapers—not only in court reports, but in letters from colonists and records of government bodies including the Legislative Council and the Destitute Board. For example, in 1862, Sunday School teacher Edward Shipway's seduction and consequent impregnation of the 'very young' daughter of Mr C.D. Myrick was described as an action of 'disgusting profligacy', while an 1854 case labelled the defendant a 'heartless' man who had '[set] at naught the obligations of morality'.[91] In the 1866 meeting of the Committee for the South Australian Female Refuge, Reverend Millard claimed that 'there was no villany [sic] out of hell equal to that of taking away the virtue of an innocent woman'.[92] These extreme opinions suggest that male authorities considered the act of convincing a chaste woman to engage in pre-marital sex to be a worse crime than physically forcing a woman—especially an unchaste woman—to have sex.

Actions for seduction were clearly only useful for women with previously unsullied sexual reputations. If the defence could present any evidence of a woman's previous sexual misconduct, or evidence that she had encouraged the attentions of her seducer, bringing an action for seduction might only serve to further damage her reputation. According to Allen, 'cultural factors such as double standards of sexual morality could mean that in some contexts women or girls had nothing to gain and everything to lose by disclosure of their sexual contact with particular men'.[93] If a woman was uncertain that the evidence would

[89] 'Seduction', *South Australian Register*, 5 October 1869, p.3.
[90] Ibid.
[91] 'Colonial News', *Border Watch*, 27 June 1862, p.4; 'Law and Criminal Courts', *South Australian Register*, 14 November 1854, p.2.
[92] 'South Australian Female Refuge', *South Australian Register*, 30 May 1866, p.3.
[93] Allen, *Sex and Secrets*, p.2.

prove that she had been tricked or manipulated into consenting to pre-marital sex, she was more likely to bring no charge at all than risk further reputational damage by exposing her sexual history in court. Women who admitted to pre-marital sex without proving manipulation by a disreputable man were frequently accused of being nothing more than common prostitutes, regardless of whether the sex had been transactional.

'Fallen' Women

The primary reason behind nineteenth century laws regulating consensual sex was the severe social repercussions for women who were discovered to have consented to sex outside of marriage. The concept of the 'fallen woman' was not invented in the nineteenth century; however, it was the period in which the stereotype reached its peak. According to Linda Nochlin, the idea of the 'fallen' woman was defined by 'any sort of sexual activity on the part of women out of wedlock, whether or not for gain'. [94] This definition suggests that nineteenth century Western society viewed women who engaged in pre-marital sex as prostitutes, whether the sex was transactional or simply for pleasure.

The idea of sexually 'falling' applied solely to women. Though there was widespread criticism directed towards men who seduced women without marrying them, they faced no long-term repercussions and were not exposed to the same level of social isolation and criticism directed towards their female partners or victims. In 1870 an anonymous letter from 'A Woman' was submitted to the *South Australian Register* questioning why so much criticism was directed towards fallen women when the men who 'support[ed] them in their lives of sin' were often respectable 'husbands and fathers, members of Churches…allowed into pure and happy homes, [and] lauded at our public meetings'.[95] Why were these men, who were just as steeped in vice and sin, allowed to carry on happily with their lives while the women they paid for sex were so often denied the comfortable homes and families that these men took for granted? It was simply accepted that unchaste women faced barriers to marriage, family, churches, and community respect which unchaste men did not.

[94] L Nochlin, 'Lost and found: Once more the fallen woman.' *The Art Bulletin*, vol.60, no.1, 1978, p.139.
[95] 'The Female Refuge', *South Australian Register*, 21 May 1870, p.5.

The term ‘fallen woman’ did not apply exclusively to ‘known prostitutes’ but could be equally applied to any women who engaged in non-marital sex. According to Barclay, women who engaged in consensual pre-marital sex under any circumstances were seen as having ‘corrupted’ their chastity, compromising their chances at marriage and, most importantly, losing their ‘innocence’.[96] She suggests that, even when women claimed to have been manipulated by an incorrigible seducer, the confession of pre-marital sex under any circumstance ‘made them at least partially culpable in their “downfall”’, severely limiting public sympathy.[97] Discussing the South Australian Female Refuge in 1866, Reverend James Jeffries lamented that, ‘when an unfortunate female yielded to the base solicitations of a scoundrel, society said there was…no hope for her, but she must go on in the course of vice’.[98] He suggested that colonial society should, slowly, work towards changing this attitude; not to show more compassion for seduced women, but to direct equal disgust towards their male seducers.[99] This was a common suggestion in discussions of fallen women, but there is no evidence of any attempts to put these suggestions into practice. When John Darling proposed the establishment of a Maternity and Foundling Hospital before the South Australian Legislative Assembly in 1880, he protested the ‘social injustice’ which saw male seducers welcomed in colonial society with open arms while the women they seduced were ‘shunned as something hopelessly and irrecoverably vile and abandoned’.[100] In response, the editors of the *South Australian Chronicle and Weekly Mail*, which reported the speech, wrote that this complaint was frequently made, but there was no indication it would result in a ‘healthier public sentiment’ any time soon.[101]

Nineteenth century colonial society was aware that many women did not ‘fall’ by choice. According to Nochlin, by this time it was a readily accepted fact that ‘a woman might fall as much through need as through greed’. [102] Insufficient employment opportunities and low wages meant that many women turned to prostitution out of economic necessity, rather than an inherent lack of virtue. In her chapter on representations of seduction in eighteenth and nineteenth century English popular culture, Anna Clark references Mary Wollstonecraft’s unfinished novel, *Maria, or the Wrongs of Woman*, which was posthumously published by

[96] Barclay, ‘Emotions, the law and the press in Britain’, p.270.
[97] Ibid.
[98] ‘South Australian Female Refuge’, *South Australian Register*, 30 May 1866, p.3.
[99] Ibid.
[100] ‘A Maternity and Foundling Hospital’, *South Australian Chronicle and Weekly Mail*, 21 August 1880, p.5.
[101] Ibid.
[102] Nochlin, ‘Lost and found’, p.141.

her husband in 1798. One of Wollstonecraft's protagonists, Jemima, was forced to turn to prostitution when her mistress turned her out after discovering she had been raped by her master and become pregnant.[103] Jemima later reported to the book's narrator Maria that she 'had not even the pleasure of being enticed into vice', having only turned to prostitution as a last resort.[104] Clark writes that seduction was a very popular subject for fictional literature in the eighteenth century, but noted that Wollstonecraft was one of the only authors of such fiction who 'never confused consensual sex with rape'.[105] This is an important distinction not only legally, but socially. Acknowledging that some women were not consensually 'seduced' by manipulative men, but rather physically forced or threatened into sex would mean acknowledging that these women had no culpability in their own 'downfall' when social rejection forced them to turn to prostitution as their only method of survival.

Frustratingly, the acknowledgement that fallen women did not always 'fall' of their own volition did not increase support for female sex workers. Nochlin suggests that, at best, the acknowledgement of 'fallen' women's desperation led to a sense of patronising pity—'the protectiveness of a superior being for an inferior one'. [106] However, this sense of pity or protectiveness rarely, if ever, lead to real social or legal change. According to Barclay, while pity was considered the correct emotional response to tales of seduction and prostitution, it regularly fell short of becoming true compassion.[107] For example, in 1850 an article in the *South Australian Register* suggested that, 'independent of moral grounds', it was in the 'self-interest' of the colony to offer some protection for newly-arrived single women so any woman who succumbed to 'the seducers' arts' would be solely responsible for her own fall, and respectable colonists' consciences could remain clear.[108] Court records and media reports show that, despite outward expressions of pity, colonial authorities showed little interest in instituting real change. In the first meeting for the Female Refuge in 1856, Governor MacDonnell said that 'I feel that there can be no greater claim on the sympathies of man than the claim of poor women degraded and reduced by the misconduct and selfishness of man', right before refusing government support for the endeavour.[109]

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[103] M Wollstonecraft, *Maria, or the Wrongs of Woman*, Oxford: Oxford University Press, 1980, p.109, quoted in A Clark, 'The politics of seduction in English popular culture, 1748-1848', in J Radford (ed.), *Routledge Revivals: The Progress of Romance (1986): The Politics of Popular Fiction*, London: Routledge, 2016, p.51.
[104] Ibid.
[105] Clark, 'The politics of seduction', p.51.
[106] Nochlin, 'Lost and found', p.152.
[107] Barclay, 'Emotions, the law and the press in Britain, p.271-272.
[108] 'Immigration Protection Societies', *South Australian Register*, 11 February 1850, p.3.
[109] 'South Australian Female Refuge', *South Australian Register*, 5 August 1856, p.3.

These powerful men demonstrated little empathy, even after coming face to face with fallen women. In a later meeting for the Female Refuge in 1861, Reverend Harcus claimed to have visited similar institutions in England, leading him to discover that the 'great majority' of fallen women were not unfortunate victims of circumstance, but 'guilty and criminal' women who 'should be made to know that their conduct was wicked and reprehensible' and a direct 'crime against God'.[110] Harcus was not only a committee member for the Female Refuge—he was also a member of the editorial team of the *South Australian Register* between 1862 and 1867 before moving to the *South Australian Advertiser*, where he worked until his death in 1876.[111] He also served as a Justice of the Peace from 1871 to 1876.[112] Harcus' simultaneous presence in these religious, media, and judicial fields demonstrates how easily 'respectable' male colonists were able to imbue the colony with their own beliefs, and how difficult it would have been for fallen women to fight rumours spread by such men.

According to Barclay, when it was 'divested of contempt', pity for fallen women was used 'to inspire people to help'.[113] However, the case studies presented in this chapter demonstrate that this 'help' fell short of instituting real social and legal change to support 'fallen' women and provide them with legitimate methods of support outside of sex work—with Female Refuges only open to women who voluntarily sought their assistance. For example, in 1859 18-year-old Elizabeth Lloyd was convicted of stealing £4 from James Hart while he slept in the brothel in which she resided. When sentencing Lloyd, Justice Boothby said her youth inspired him towards lenience, hoping to give her 'a chance to regain her character' by sentencing her to 12-months imprisonment in order to separate her from her 'present acquaintances'.[114] Boothby hoped that, when Lloyd was released from prison, 'some kind person…would take her by the hand and enable her to avoid a relapse into her old unfortunate courses'.[115] The report published in the *Register* made sure to note that Boothby was 'deeply affected' by this case and 'paused more than once' during his address to the court, while Lloyd 'wept bitterly'.[116] This case shows that colonial law and courts focused on punishment for unchaste women—preferring to further risk their character with a harsh

[110] 'South Australian Female Refuge', *Adelaide Observer*, 27 April 1861, p.7.
[111] 'The Late Mr W. Harcus, J.P.', *South Australian Register*, 11 August 1876, p.4.
[112] Ibid.
[113] Barclay, 'Emotions, the law and the press in Britain', p.272.
[114] 'Law and Criminal Courts', *South Australian Register*, 10 August 1859, p.3.
[115] Ibid.
[116] Ibid.

prison sentence than offer education or financial support to help break the cycle of destitution and criminality.

In 1874, a letter published in the *Express and Telegraph* indirectly contradicted Boothby's decision, lamenting that young women's prolonged exposure to 'hardened criminals' in prison only served to 'root out the last remains of self-respect they possess…converting shame and remorse into that desperate indifference which it is most difficult to impress and to overcome'.[117] This suggested that it was much more difficult to rehabilitate fallen women who had been to prison than those who had not. Unfortunately for most women convicted in colonial courts, prison was the only option. This was demonstrated in an 1857 meeting of the Destitute Board, where the Board members specified that they would only accept women of 'bad character' into the Asylum if they were recommended by the Colonial Surgeon, and never if they were sent by the police.[118] This refusal to assist destitute women with criminal convictions, combined with colonial law's emphasis on legal punishment for working-class women who committed an offence, shows how difficult it was for convicted women to break the cycle of criminality—with few options but to return to crime to support themselves.

Prostitution in Colonial South Australia

Despite colonial authorities' insistence on the superiority of South Australian women and their settlers' near-imperviousness to crime, the colony was not immune to immorality. The insistence that South Australian women conform to largely impossible ideals of purity, chastity and virtue prohibited women from many avenues of paid employment. Ironically, those employment opportunities which were available for women—primarily domestic service—often placed them at increased risk of sexual harassment and assault meaning that, in some cases, the only real benefit to domestic service over prostitution was social acceptance.[119]

According to Dianne Snow, the constraints placed on '"legitimate" avenues of [women's] employment' meant that some women came to consider prostitution as 'the most viable form

[117] 'Criminal Women', *The Express and Telegraph*, 25 September 1874, p.2.
[118] 'Destitute Board', *Adelaide Times*, 17 February 1857, p.3.
[119] For more information on sexual violence in domestic service, see chapter 3.

of work available to them'.[120] Even when women were able to obtain a domestic service position, the wages they received were often only enough to provide for their immediate support, preventing them from supporting illegitimate children, setting money aside for the future, or even living outside of their employers' home. In her book on women in Adelaide's Destitute Asylum, Geyer claims that female domestic servants' wages did not allow them to 'accumulate assets', meaning that women who lost their jobs or were incapacitated by illness or injury could not maintain themselves, often falling into poverty.[121] Unmarried women who became too old to work faced a similar fate, and in 1855 a newspaper report of drunk and disorderly charges mentioned an old woman who had been forced to turn to prostitution after the death of her husband—suggesting that elderly widows without familial support were not any better off.[122] The difficulty that unmarried women faced in supporting themselves on a single woman's income meant it was not uncommon for working-class women to supplement their income with transactive sex.

According to Nochlin, European powers had begun to acknowledge the 'sheer, desperate need' which drove many women to prostitution by the nineteenth century. [123] In mid-nineteenth century England, she claims there was significant debate surrounding 'economic determinants of prostitution', namely the 'pitifully low' wages which many women received for their work. [124] Despite this growing recognition, colonial authorities frequently argued that South Australian women's wages were much improved over those in England, questioning why women turned to prostitution when domestic wages were regarded as more than enough to maintain them until marriage. In a public meeting for the Female Refuge in May 1864, Reverend Harcus claimed that high wage rates in the colony meant that no South Australian woman could 'plead the necessity which poverty induced as an excuse for leading a life of crime'.[125] In contrast, an argument was raised in a public meeting on assisted emigration in 1861 that, although South Australian women's wages were higher than England's, the cost of clothing and other necessities was four times higher—demonstrating that higher wages did not necessarily translate to greater financial security.[126] Harcus'

[120] D Snow, 'Family policy and orphan schools in early colonial Australia.' The Journal of Interdisciplinary History, vol.22, no.2, 1991, p.275.
[121] Geyer, *Behind the Wall*, p.14.
[122] 'Police Courts', *South Australian Register*, 16 January 1855, p.3.
[123] Nochlin, 'Lost and found', p.143.
[124] Ibid.
[125] 'South Australian Female Refuge', *South Australian Register*, 18 May 1864, p.3.
[126] 'Immigration—Public Meeting', *South Australian Register*, 2 July 1861, p.3.

argument also ignored the fact that the concentration of employment opportunities for women in colonial South Australia was in live-in domestic service—work which was impossible for women with illegitimate children, mental or physical disabilities, or unfavourable character references.

In 1870 the *South Australian Register* published a letter written by six 'professed prostitutes', single women Alice Marshall, Annie Connor, Rose Hyrdess and Margaret Cockling, married woman Mrs James Coughlan, and widow Margaret McFie—four of whom had apparently been charged with loitering for the purposes of prostitution the day before the letter was published.[127] These women were writing in response to a report of a recent meeting of the Adelaide Evangelical Alliance which had called for a stricter enforcement of the anti-prostitution laws laid out in the 1869-70 *Police Act*. In their letter, these women accused English emigration agents of lying about the demand for female employment in South Australia and called for the establishment of manufactories so that women could gain 'constant and honourable employment' rather than turning to prostitution to avoid starvation.[128]

In response to this letter, the editors of the *Register* (where Harcus had been employed) acknowledged the validity of their concerns, but concluded that 'nothing whatever can justify their continuing their abominable traffic in the public streets, to the disgust and annoyance of all decently conducted people'.[129] This demonstrates a lack of care to understand *why* women turned to prostitution and implied that potential starvation was not a good enough reason to compromise virtue. The personal insults directed towards these women by the editors of the *Register*—who expressed gratitude towards the colonial police for arresting and charging these women—show why many of the people who wrote to colonial newspapers did so under a pseudonym. Furthermore, these comments from the *Register's* editors demonstrate that, while they were happy to publish these women's letter for public entertainment, they wanted to ensure that their readers knew they had no sympathy for sex workers, no matter their justification for 'falling'.

[127] 'The Social Evil', *South Australian Register*, 25 June 1870, p.3.
[128] Ibid.
[129] Ibid.

Policing Prostitution

No laws prohibiting prostitution were ever passed in South Australia. It was a delicate balance for police and legal officials to be seen to be protecting the wider settlement from the threat of prostitution without explicitly acknowledging that sex work had any real or necessary presence in their colony. The closest the colonial government came to legally prohibiting prostitution was in the 1863 *Police Act*, which mandated that 'any common prostitute or street-walker who shall solicit, importune, or accost any person or persons for the purpose of prostitution in any public street, road, thoroughfare, or place' was guilty of a misdemeanour and liable to be fined up to £2.[130] This Act made no attempt to ban prostitution altogether, only to prevent prostitutes from soliciting customers in public. It essentially sought to protect the sensibilities of 'respectable' colonists by forcing sex workers to keep their work 'out of sight, out of mind'.

Another explanation for low rates of policing prostitution is that it was simply too difficult an offence to try and eradicate completely. Police could not charge women for soliciting sex in a private residence without complaints from neighbours, meaning they could only arrest prostitutes who were obviously advertising their services in public.[131] In 1872, South Australian Police Commissioner George Hamilton complained that it was difficult for police because sex workers did not 'commit such acts in the presence of constables', making themselves scarce any time a police officer appeared.[132] As a result of this, he claimed that police were dependent on 'the evidence of citizens as eye witnesses to secure convictions' for public solicitation, which he complained many citizens were reluctant to do—apparently too embarrassed to become involved in court cases relating to prostitution, even as complainants.[133]

Though prostitution was never illegal in South Australia, female sex workers were consistently looked down upon as inferior—experiencing frequent discrimination at the hands of police and court authorities. According to Nance, though prostitutes could not be arrested

[130] *Police Act 1863* (SA), p.82.
[131] Male sex workers who exchanged sex with other men could be arrested whether they solicited sex in public or not, as the act of homosexual sex (public or private) was illegal in South Australia until the passing of the *Criminal Law (Sexual Offences) Amendment Act* of 1975.
[132] *Despatch from South Australian Police Commissioner George Hamilton*, 1872, GRG5/2, Correspondence Files—Police Commissioner's Office, Unit 39, File 442/1872, document 1, p.1-2.
[133] Ibid.

for the simple act of exchanging sex for money, they could be arrested for any behaviour which caused a 'public nuisance'.[134] This legal distinction led to women being punished for other crimes in lieu of prostitution, including public solicitation, residing in a brothel, indecent language and behaviour, and public drunkenness. There was a clear crackdown on these crimes from 1871, suggesting that police were focusing more attention on 'crimes of morality' such as prostitution and drunkenness [see Table 8]. The case studies examined for this chapter show that, between 1836 and 1870, only nine single women were convicted of prostitution-related crimes. In comparison, 21 single women were convicted in 1871 alone, with this number increasing to 67 in 1872, 103 in 1873, and 115 in 1874. These statistics suggest that police and court officials were using these misdemeanour offences as a method of circumnavigating the law to arrest and punish known prostitutes. This practice was not unique to South Australia, with Allen estimating that 83 per cent of police charges brought against women in late-nineteenth century New South Wales were prostitution-related.[135]

Table 8: Charges Relating to Prostitution in Colonial South Australia (Single Women)

Year	Indecent language	Indecent behaviour	Drunkenness	Soliciting	Residing in a brothel	Vagrancy	Total
Pre-1870	1	4	2	1	1	0	9
1871	15	1	0	7	0	0	23
1872	38	8	1	15	0	5	67
1873	47	9	2	31	10	4	103
1874	58	19	21	9	4	4	115
1875	40	12	22	17	1	3	95
1876	28	4	32	20	6	6	96
Total	**227**	**57**	**80**	**100**	**22**	**22**	**508**

[134] Nance, 'Women, public morality and prostitution', *Push from the Bush*, p.36.
[135] Allen, *Sex and Secrets*, p.21-22.

South Australian law allowed for increased sentencing for those who committed the same misdemeanour offence multiple times—an allowance which affected many 'known prostitutes'. For example, the 1869-70 *Police Act* mandated that anyone who was convicted of drunkenness more than three times, or of public solicitation, residing in a brothel, soliciting alms, living in an Indigenous encampment (as a non-Indigenous person), or being without 'visible lawful means of support' was considered an 'idle and disorderly person' and faced up to two months imprisonment with hard labour.[136] Anyone who was convicted of a subsequent offence was then considered to be a 'rogue and vagabond', facing a maximum sentence of three years hard labour.[137] Following this, repeat offenders were charged as an 'incorrigible rogue', facing up to twelve months hard labour.[138]

Allen suggests that police deliberately focused their attention on a small number of 'known' prostitutes—targeting the same women and charging them with multiple offences until they were sent to prison and therefore removed from public life.[139] One South Australian example of this is Eliza Hogan, who was charged with 15 separate prostitution-related charges between July 1872 and October 1875—including five counts of indecent language, one of indecent behaviour, two of being an idle and disorderly person, three of loitering, two of soliciting, and two of aiding and abetting in the running of a brothel.[140] The penalties for these crimes included fines of 10s. and 40s., and gaol sentences of between one month and, finally, one year hard labour.

Allen alleges that the sex workers most targeted by police in late-nineteenth century New South Wales were Aboriginal and Chinese women, and women over 35-years of age.[141] There is no evidence of a similar practice in South Australia during the pre-1880 colonial

[136] *Police Act 1869-70* (SA), p.90-91.
[137] Ibid, p.91-92.
[138] Ibid, p.92-93.
[139] Allen, *Sex and Secrets*, p.25.
[140] 'Law and Criminal Court', *Evening Journal*, 3 July 1872, p.2; 'Police Court—Adelaide', *The Express and Telegraph*, 19 September 1872, p.3; 'Police Courts', *Evening Journal*, 21 December 1872, p.2; Police Court—Adelaide', *The Express and Telegraph*, 11 March 1873, p.2; 'Police Court—Adelaide', *The Express and Telegraph*, 25 March 1873, p.2; 'Law and Criminal Courts', *Evening Journal*, 6 November 1873, p.2; 'Police Courts', *South Australian Register*, 17 December 1873, p.3; 'Law Courts', *The Express and Telegraph*, 26 December 1873, p.2; 'Law Courts', *The Express and Telegraph*, 29 May 1874, p.2; 'Police Courts', *Evening Journal*, 20 July 1874, p.2; 'Police Court—Adelaide', *The Express and Telegraph*, 2 November 1874, p.2; 'Police Court—Adelaide', *The Express and Telegraph*, 14 November 1874, p.2; 'Police Court—Adelaide', *The Express and Telegraph*, 20 December 1874, p.2; 'Law Courts, *The Express and Telegraph*, 29 May 1875, p.2; 'Law Courts', *The Express and Telegraph*, 22 October 1875, p.2.
[141] Allen, *Sex and Secrets*, p.25.

period, with the vast majority of prostitution-related charges being brought against working-class white women; however, the language used to describe older prostitutes in newspaper court reports demonstrates a clear disdain which is largely absent from cases involving younger women. For example, in 1854 frequent-offender Mary Thomas (alias Bridget Hay)—indicted for bad behaviour in Hindley street—was described in the *Adelaide Times* as a 'disgusting looking old woman', while in 1855 Hanna Baker, who created a 'disturbance' in Gilles Arcade, was described as a 'repulsive old woman'.[142]

There were also very few instances of prostitution-related charges being brought against South Australian Aboriginal women before 1880. In an 1862 meeting of the Female Refuge, Reverend James Lyall lamented the fact that soliciting for prostitution was a sin which 'even the heathen do not practice'.[143] This comment referred to a conversation which Lyall allegedly had with an Aboriginal woman where she expressed 'surprise at seeing white women leading such degraded lives'.[144] This is not to say that colonial authorities did not believe that Aboriginal women engaged in transactional sex, as this was a stereotype which was very prevalent across Australia at this time. However, such allegations were much more common in rural 'contact zones' where Aboriginal women were suggested to exchange sex with white settlers for food and other material goods, either of their own volition or at their husband's behest.[145] In 1867, Christian missionary George Taplin wrote that it was 'no wonder that the [Aboriginal] girls have half-caste children, when drink is offered freely to their husbands to induce them to let their wives become prostitutes'.[146]

This statement contrasts with records in Taplin's diary from September 1860, where he recorded that Aboriginal men 'do not like the idea of allowing their wives to prostitute themselves to white men—they are ashamed of it'.[147] Similarly, in her 2016 chapter on sexual violence in frontier Brisbane, Libby Connors detailed numerous accounts of Aboriginal men

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[142] 'Police Court—Adelaide', *Adelaide Times*, 17 April 1854, p.4; 'Law and Police Courts', *Adelaide Times*, 12 April 1855, p.3.
[143] 'South Australian Female Refuge', *South Australian Register*, 15 April 1862, p.3.
[144] Ibid.
[145] For examples of this see: 'Law and Criminal Courts', *South Australian Register*, 11 May 1853, p.3; 'Point Macleay', *South Australian Register*, 11 April 1867, p.2; 'The Aborigines', *The Express and Telegraph*, 13 July 1867, p.3; L Behrendt, 'Consent in a (neo)colonial society: Aboriginal women as sexual and legal "other"'. *Australian Feminist Studies*, vol.15, no.3, 2000, p.354.
[146] 'Point Macleay', *South Australian Register*, 11 April 1867, p.2.
[147] G Taplin, *Copy of Diary of the Rev. Geo. Taplin of Pt. McLeay: vol 1, from April 4, 1859 to August 1, 1865*, State Library of South Australia, 1958, p.86.

seeking retribution against white men who had abducted and assaulted Aboriginal women, further suggesting that Aboriginal men were not eager to sell Aboriginal women into prostitution.[148] This demonstrates that the information missionaries dispensed publicly did not always align with the thoughts they recorded privately—supporting the idea that publicly accepted stereotypes of Aboriginal women were based on exaggerated, and even completely falsified, testimony from colonists who had a vested interest in perpetuating stereotypes of immorality and barbarism.[149] In contrast, most of the prostitution-related offences considered in this chapter were committed in the city of Adelaide—suggesting that police and colonial authorities had little care for prostitution in rural areas, which was less obviously conducted in the public eye.

Crimes Committed in Brothels

In writing, South Australian Police appeared very dedicated to the eradication of brothels in Adelaide. In his quarterly report for September 1850, Police Commissioner George Dashwood recorded his distress regarding a recent increase in brothels in Adelaide and assured British authorities that he had ordered his police 'to break up these establishments' and encourage the 'poor deluded girls' who worked there to find more respectable employment.[150] Later, the *Police Acts* of 1863 and 1869-70 permitted police to enter any dwelling suspected to be a 'house of ill-fame' and apprehend and charge the residents.[151] The Police Commissioner's Report for the first half of 1871 mentioned that the number of women arrested for soliciting had more than doubled between 1870 and 1871.[152] In response to this statistic, Commissioner George Hamilton was quoted as saying that he hoped 'by continued exertions in bringing offenders of this class before the Police Magistrate to entirely suppress the nuisance'.[153] This increased policing likely stemmed from insistent protests by Adelaide's Evangelical Alliance—formed in late 1869 for the purpose of encouraging 'the repression of

[148] L Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier', in R Mason (ed.), *Legacies of Violence: Rendering the Unspeakable Past in Modern Australia*, Berghahn Books: New York, 2017, pp.33-52.
[149] For an excellent discussion of colonial constructions and representations of Aboriginality which led to the creation of stereotypes and denigrations of culture and personhood which have harmed Aboriginal women from the beginning of colonisation to the present day, see L Conor, *Skin Deep: Settler Impressions of Aboriginal Women*, UWA Publishing: Perth, 2016.
[150] *Police Commissioner's Report for the Quarter ended 30th September 1850*, 14 October 1850, CO13/70, AJCP, NLA: Canberra, p.43.
[151] *Police Act 1863* (SA), p.95; *Police Act 1869-70* (SA), p.107.
[152] 'The Police Report', *Evening Journal*, 27 June 1871, p.2.
[153] Ibid.

open immorality in Adelaide'—which was responsible for a number of petitions to colonial government and letters to colonial newspapers decrying increasing rates of prostitution in the city—particularly the presence of 'known prostitutes' in public houses.[154] Evangelical protest groups were not unique to South Australia, with Anne O'Brien noting that the 'powerful evangelical movement' in Britain in the early nineteenth century was one of the biggest proponents for 'moral reform', rather than financial aid, as the best solution for 'pauperism'.[155] However, the number of newspaper reports published by or in reference to the South Australian Evangelical Alliance suggest that the movement was far more vocal in South Australia than the other Australian colonies.[156] Of these articles, 93 per cent were published in the 1870s (54 per cent in 1870 alone), suggesting that the movement was quickly pacified by the increased policing and prosecution of the mid-1870s.

In 1870, the Committee for the Female Refuge alleged that there were over 400 prostitutes working in Adelaide.[157] Research for this chapter only uncovered 23 cases of unmarried women convicted for prostitution-related offences in 1871 and the Police Commissioner's Report for the first half of 1871 only recorded 59 arrests for soliciting.[158] Even discounting prostitution-related charges brought against married women, which are not considered in this thesis, these statistics demonstrate a large discrepancy between the number of alleged prostitutes and the number of arrests made by police. This suggests that police were concerned with public offences—such as solicitation—which raised the ire of 'respectable' witnesses, while privately-owned brothels were allowed to operate in relative peace unless and until they drew complaints from respectable colonists.

This idea is supported by a letter from Police Commissioner Hamilton in May 1872. In response to a petition from Gouger Street residents regarding an alleged brothel, Hamilton

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[154] 'Repression of Open Immorality', *South Australian Chronicle and Weekly Mail*, 25 June 1870, p.6; For a small portion of newspaper articles published in relation to the Evangelical Alliance during this period see also: 'Evangelical Alliance', *South Australian Advertiser*, 11 May 1870, p.3; 'The Evangelical Alliance Special Conference', *Adelaide Observer*, 18 June 1870, p2; 'The Evangelical Alliance and the Social Evil', *South Australian Register*, 2 July 1870, p.6.

[155] A O'Brien, '"Kitchen fragments and garden stuff": Poor Law discourse and Indigenous people in early colonial New South Wales', *Australian Historical Studies*, vol.39, no.2, 2008, p.154-155.

[156] In *Trove* the search-term "evangelical alliance" returns more than 3,000 results for South Australia and only 2,000 for New South Wales and Victoria, with other Australian colonies returning less than 500 results each. When combining "evangelical alliance" with "prostitution", South Australia returns 129 results while the other colonies return a combined total of 40 results.

[157] 'Adelaide Female Refuge', *Adelaide Observer*, 28 May 1870, p.10.

[158] 'The Police Report', *Evening Journal*, 27 June 1871, p.2.

wrote that such cases must be brought to court by everyday citizens, because if the police were held responsible for bringing charges of brothel-keeping to court then they would be obliged to do so for every known brothel in Adelaide, not only those which triggered public complaints.[159] He wrote that:

> there are parts of the city where brothels are not considered a nuisance, and indeed where they are—if not cherished at least—considered a necessity; the effect the Police prosecutions would produce would be to keep these unfortunate women constantly shifting their residences and continually coming into neighbourhoods where they were not wanted, and no part of the city would be safe from such annoyances for the idea of eventually driving all the prostitutes out of Adelaide is too impracticable to be entertained:—they will not leave the city.[160]

He claimed he would be happy to render assistance to the residents of Gouger Street if they chose to bring their own charge against the brothel's residents, but his police would not gather evidence against them unprompted. This refusal suggests that Commissioner Hamilton's 1871 promise to 'entirely suppress' prostitution was largely intended to appease concerned colonists, namely the vocal Evangelical Alliance, and that he really intended to pursue charges relating to public disturbance, rather than eliminating prostitution altogether.

Just over two weeks later, 21 men who described themselves as 'ratepayers and owners of property on or near acres 384 and 401 Gouger Street Adelaide', wrote to Police Inspector Thomas Bee to complain again of a brothel at that location and request police assistance in prosecuting the twelve known residents, whose names the petitioners listed.[161] Inspector Bee echoed Hamilton's previous response: the petitioners would need to bring their complaint directly to the colonial courts.[162] This refusal of police to raid brothels unprompted was common in colonial South Australia. In 1851, Judge Crawford encouraged ordinary citizens of Adelaide to 'prefer an indictment before the Grand Jury' in cases where the police failed to take action against brothels, which he referred to as 'sinks of infamy'.[163] It is unlikely that the Gouger street petitioners chose to do this as, in a follow-up report in August 1872, Commissioner Hamilton wrote that he had assigned a Constable to patrol the area

[159] *Despatch from Commissioner Hamilton*, 7 May 1872, GRG5/2, unit 39, file 442/1872, document 1, p.1-2.
[160] Ibid, p.2-3.
[161] *Petition from ratepayers and owners of property on or near acres 384 and 401 Gouger Street Adelaide*, GRG5/2, unit 39, file 442/1872, document 4, State Records of South Australia [SRSA]: Adelaide.
[162] Ibid.
[163] 'Law and Police Courts—Supreme Court', *Adelaide Times*, 16 August 1851, p.2.

every night between 6 p.m. and 12 a.m., and that the patrolman reported the brothel as being 'much better conducted than most of its class'.[164] There is also no evidence that anyone was charged with owning or residing in a brothel in Adelaide in 1872, proving that many colonists were as reluctant to bring a charge against brothel owners as police were.

In general, colonial South Australian brothels appear to have been left largely to their own devices. In the Police Commissioners Report from September 1851, Commissioner George Dashwood wrote that, unless the government wanted to

> adopt some system of supervision similar to that in operation in…Europe, thereby openly acknowledging the necessity for the evil…it will be better to allow them to remain as they have hitherto been under the scrutinizing eye of the police, leaving it to the inhabitants of the immediate localities to take legal measures to remove them whenever they feel disposed to do so.[165]

According to Christopher Nance, the reason that South Australian authorities were reluctant to impose such a system is because doing so would mean acknowledging prostitution as an unavoidable—and even necessary—component of society, which 'they were not prepared to do'.[166] The refusal to criminalise prostitution in South Australia indicates that this denial persisted throughout the colonial, even during the insistent policing of prostitution in the mid-1870s. This further suggests that South Australian authorities were more interested hiding prostitution—showing lenience towards sex work conducted in private dwellings and punishing disreputable public behaviour—than they were in truly eradicating prostitution in the colony.

Conclusion

This chapter highlights the connection between chastity and a woman's worth in colonial society, demonstrating that failure to retain at least a façade of chastity could severely impact the way a woman was perceived and treated. Using case studies of seduction and prostitution-related charges, this chapter argues that South Australian women who were perceived as being unchaste, and consequently unfeminine, were frequently denied the

[164] *Despatch from Commissioner Hamilton*, 22 August 1872, GRG5/2, unit 39, file 442/1872, document 3.
[165] *Report of Commissioner of Police for the Quarter Ended September 30, 1851,* 17 October 1851, p.4, CO13/74, AJCP, NLA: Canberra, p.240.
[166] Nance, 'Women, public morality and prostitution', p.37.

assistance that was made available to ‘respectable’ destitute women in government houses such as the Destitute Asylum, Servants Depots and even Aboriginal Missions—out of fear that their sins were transmissible to other, more virtuous women.

One of the only methods available to salvage the reputation of a woman whose pre-marital sex life had been exposed to public view was to sue for seduction. Seduction charges were utilized—to varying levels of success—to remove women’s culpability in pre-marital sex and place the blame for their fall from virtue on a disreputable male ‘seducer’. Through this method, women (and their families) were able to regain some of the reputation they had lost when an illegitimate pregnancy exposed their sexual misconduct to the wider community. It is important to note, however, that the parental control of seduction charges left single women without parents in the colony with little legal recourse through which to recover a damaged sexual reputation.

Women who did not, or could not, blame their ‘fall’ on a specific incorrigible man had little protection from social stigma. Stereotypes of ‘fallen’ women portrayed female sex workers (both confirmed and assumed) as unfeminine, untrustworthy, and steeped in vice. The only thing preventing these women from outright legal persecution was colonial authorities’ reluctance to acknowledge that the ‘respectable’ free settlement of South Australia was just as susceptible to prostitution and vice as the mother country and eastern penal colonies. Despite prostitution never being criminalised in South Australia, police and court officials were able to legally punish female sex workers through other prostitution-related offences such as drunkenness, public solicitation, and indecent language and behaviour. While this method was rarely utilised in the early decades of colonisation, the mid-1870s saw a massive increase in prostitution-related charges as police sought to placate the brief but vocal complaints of the newly established Evangelical Alliance. Such punishments were ostensibly intended to force ‘known prostitutes’ to pursue a more respectable course of life; however, in reality they often served to further punish women in already dire financial straits with harsh fines and prison sentences.

The lack of any real empathy expressed by colonial authorities and institutions for the plight of ‘fallen’ women meant that the ‘solutions’ which colonial authorities presented were often performative at best. The establishment of Female Refuges in the mid-nineteenth century was promising, but the intervention of powerful male colonists emphasising control

and religious instruction over education and financial support. This meant that such institutions were limited in the assistance they were able to provide—with female-led groups like the Sisters of St Joseph facing harsh criticism from male religious authorities for their attempts to reform 'fallen' women through education. Meanwhile, 'known prostitutes' were excluded from non-religious government institutions such as the Destitute Asylum in all but the direst medical circumstances. In all, the emphasis on legal punishment for 'known prostitutes'—over education and financial aid—served only to maintain the cycle of criminality, with prostitutes and other unchaste women consistently and publicly persecuted in their communities and the colonial media. As the next chapter discusses, the persecution of unchaste women left them vulnerable to legal discrimination and sexual violence.

Chapter 7:
"Non-Consensual Sex"

A common argument in nineteenth century rape and sexual assault trials was that charges of sexual violence were 'easy to make and difficult to disprove'—and South Australia was no exception.[1] However, the cases examined in this chapter show that rape and sexual assault complainants had to provide evidence of physical violence, physical and verbal resistance, and a previously chaste reputation to prove their charge before the colonial courts while men who were accused of rape often only had to cast the slightest doubt upon their accuser's character in order to have their charge downgraded or dismissed entirely. As a result of such strict evidentiary requirements and the corresponding poor treatment in colonial courts, countless women throughout history chose to suffer in silence rather than seek justice for sexual violence. This chapter argues that colonial courts' fear of false rape complainants—and the more general belief that rape was not a crime deserving of severe punishment—contributed to a dearth of sexual violence charges which was not reflective of the actual rates of sexual violence in the community. This unwillingness, and inability, to make and substantiate charges of sexual violence was most evident for women in vulnerable groups—namely working-class and non-white women.

Alongside prostitution, sexual violence is one of the most well-researched crimes involving women in colonial Australia. In 1990, Judith Allen's iconic book *Sex and Secrets* became the first in a long line of studies on colonial Australian women's experiences of sexual violence.[2] Allen's work was followed by Jill Bavin-Mizzi's 1995 book *Ravished*, which examined cases of rape brought in late-nineteenth century Victoria, Queensland, and Western Australia, with both texts calling for more research on sexual violence against

[1] For examples of this argument made in South Australian courtrooms and media between 1836-1880, see: 'Supreme Court—Criminal Side', *Adelaide Observer*, 19 September 1846, p.5; 'Supreme Court', *South Australian*, 12 June 1849, p.2; 'Law and Criminal Courts', *South Australian Register*, 19 August 1854, p.3; Local Court—Adelaide', *Adelaide Times*, 6 March 1858, p.3; 'South Australian Parliament', *The South Australian Advertiser*, 18 May 1859, p.2; 'Gawler', *South Australian Register*, 12 September 1859, p.3; 'The Parliament', *South Australian Register*, 8 September 1866, p.3; 'Law and Criminal Courts', *Evening Journal*, 2 December 1869, p.3; 'The Rape Charge', *Bunyip*, 20 August 1870, p.4; 'The Public Works Enquiry' *Kapunda Herald and Northern Intelligencer*, 2 December 1870, p.2; 'Wallaroo Times', *Wallaroo Times and Mining Journal*, 1 July 1871, p.1; 'Offences Against Women and Children', *South Australian Register*, 15 October 1874, p.4; 'Grave Charge', *Kapunda Herald*, 12 August 1879, p.3; 'Serious Charge Against the Commissioner of Insolvency', *South Australian Register*, 5 November 1879, p.1.
[2] J Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880*, Oxford University Press: Melbourne, 1990.

women and children in colonial Australia.[3] More recent works include: Andy Kaladelfos' 2012 article arguing that persistent debates supporting the death penalty for rape did not reflect concern for the severity of the crime, but rather middle-class white colonists' fear of the sexual threat posed by working-class and Aboriginal men;[4] and Victoria Haskins' 2013 article arguing that, while cases of sexual violence against Aboriginal women rarely made it before the colonial court, the sexual assault and exploitation of Aboriginal women by white men was a common, and often accepted, aspect of Australian colonialism.[5] It must be noted that, while these works are all hugely relevant to understanding women's experiences of sexual violence in colonial Australia, none include South Australian case studies, demonstrating the necessity for research examining South Australian women's experiences with sexual violence and how they compared with those of women in the neighbouring colonies. As the first Australian colony to abolish the death penalty for rape (by 45 years), South Australia provides a crucial perspective on perceptions of sexual violence in colonial Australia.

It is important to read between the lines of colonial rape and sexual assault charges. The documentary evidence of such cases, including court records and newspaper reports, are invariably coloured by the masculine perspective from which they were written and

[3] J Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia*, Sydney: UNSW Press, 1995.
[4] A Kaladelfos, 'The politics of punishment: Rape and the death penalty in colonial Australia, 1841-1901'. *History Australia*, vol.9, no.1, 2012, pp.155-175. For further research on sexual violence in colonial Australia, see: D Walker, 'Youth on trial: the Mt Rennie Case', *Labour History*, no.50, 1987, pp.28-41; M Spongberg, 'Rape', in B Caine et.al (eds), *Australian Feminism: A Companion*, Oxford University Press: Oxford, 1988, pp.254-263; A Cossins, 'Saints, sluts and sexual assault: Rethinking the relationship between sex, race and gender', *Social and Legal Studies*, vol.12, no.1, 2003, pp.77-103; K Gleeson, 'From centenary to the Olympics, gang rape in Sydney', *Current Issues in Criminal Justice*, vol.16, no.2, 2005, pp.183-201; A Kaladelfos, 'The "condemned criminals": sexual violence, race, and manliness in colonial Australia', *Women's History Review*, vol.21, no.5, 2012, pp.697-714; A Kaladelfos, 'Uncovering a hidden offence: Social and legal histories of familial sexual abuse', in A Piper and A Stevenson (eds), *Gender Violence in Australia: Historical Perspectives*, Monash University Publishing: Melbourne, 2019, pp.63-77.
[5] V Haskins, '"Down in the gully and just outside the garden walk": White women and the sexual abuse of Aboriginal women on a colonial Australian frontier'. *History Australia*, vol.10, no.1, 2013, pp.11-34. For further research on Aboriginal women's experiences of sexual violence and coercion in (nineteenth century) colonial Australia, see: D Philips, 'Sex, race, violence and the criminal law in colonial Victoria: Anatomy of a rape case in 1888', *Labour History*, no.52, 1987, pp.30-49; M Tonkinson, 'Sisterhood or Aboriginal servitude? Black women and white women on the Australian frontier', *Aboriginal History*, vol.12, 1988, pp.27-40; L Behrendt, 'Consent in a (neo)colonial society: Aboriginal women as sexual and legal "other"', *Australian Feminist Studies*, vol.15, no.3, 2000, pp.353-367; L Behrendt, 'Law stories and life stories: Aboriginal women, the law and Australian society', *Australian Feminist Studies*, vol.20, no.47, 2005, pp.245-254; L Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier', in R Mason (ed.), *Legacies of Violence: Rendering the Unspeakable Past in Modern Australia*, Berghahn Books: New York, 2017, pp.33-52; L Conor, 'The "Drover's Boy" and Indigenous women's unthinkable consent', in A Piper and A Stevenson (eds), *Gender Violence in Australia: Historical Perspectives*, Monash University Publishing: Melbourne, 2019, pp.95-113; H vann Rjiswijk, '#MeToo under colonialism: Conceptualizing responsibility for sexual violence in Australia', *Journal of Perpetrator Research*, vol.3, no.1, 2020, pp.29-41.

interpreted. In her article on historical perceptions of female rape complainants, Kim Stevenson urges sexual violence researchers to remember that 'journalism, medicine and law' are the 'three primary institutions' responsible for the construction of stereotypes regarding the 'genuine' rape victim.[6] These stereotypes dictate who courts and wider society consider 'deserving' of justice for sexual violence and whose allegations should be dismissed, leaving them to suffer in silence. [7] These three institutions are also, Stevenson points out, some of the most important pillars in constructing and maintaining the Western patriarchal society.[8]

While women's voices are often stifled in official records, understanding who constructed these sources and why allows researchers to discover popular opinions on the perpetrators and victims of sexual violence and to assess the reasons why certain cases ended in convictions or acquittals—or were never brought at all. These records are also useful in tracing changes in opinions regarding sexual consent. This chapter highlights a small but noticeable increase in charges of sexual violence, and in the maximum penalty passed on those convicted of sexual violence, in the late-1870s compared to the earlier decades of colonisation. It argues that these changing attitudes were most noticeable in charges brought by girls and younger women, particularly against male relatives, as colonial authorities increasingly acknowledged the relationship between age and the ability to consent to sex.

Kaladelfos suggests that rhetoric surrounding the policing and prosecution of sexual violence in colonial Australia did not focus on fair trials and justice for victims, but 'held specific symbolic purposes'. [9] The purpose of this rhetoric was to dictate the kinds of women who were deserving of justice for sexual violence (virtuous white women), and the types of men who could be convicted of rape (working-class and non-white men).[10] This biased perspective served to convince 'respectable' middle-class white men that they could force sex upon working-class and non-white women with impunity, while convincing these same women to accept this violence as the norm. This idea is supported in Alison Phipps' article on class and sexual violence, which suggests that 'the threat of rape' has been historically useful to Western powers 'as a form of social control which limits women's freedom and causes

[6] K Stevenson, 'Unequivocal victims: The historical roots of the mystification of the female complainant in rape cases', *Feminist Legal Studies*, vol.8, no.3, 2000, p.354.
[7] Ibid.
[8] Ibid.
[9] Kaladelfos, 'The politics of punishment', p.166.
[10] Ibid.

them to look to men for protection'.[11] This idea is supported in this chapter, which demonstrates that sexual violence charges brought by single women without families in the colony were less likely to achieve a conviction than those brought by married women or single (white) women who lived with their parents or married siblings.

Kirsten McKenzie argues that 'the humiliation of being pronounced in public to be damaged goods' prevented many women from reporting sexual violence.[12] This idea is supported by Wendy Larcombe's article on the characteristics of the 'ideal' rape complainant, when she suggests that, in both colonial and contemporary Australia, rape charges which are 'legitimised within the criminal justice process…are a small and unrepresentative minority of sexual assaults'—with many more cases going unreported.[13] Both of these works note that the low number of reported and convicted rape charges was not reflective of the number of rapes committed, but rather of a reluctance of women to report sexual violence.[14] While rape consistently had one of the lowest conviction rates of any of the charges considered in this thesis, this chapter notes a slight but noticeable change in legislation relating to sexual violence and consent in the late-nineteenth century which was indicative of slowly shifting attitudes towards sexual consent reflected in the introduction of more expansive sexual consent laws in South Australia in the mid-1880s.[15]

In the South Australian context this lack of reporting, and lack of convictions in cases which were reported, created an illusion of the rarity of sexual violence—an illusion which was reinforced by colonial authorities' denial of its presence. Speaking in Parliament in 1866 on the proposal to institute flogging for men who were convicted of raping a child under 12, future Premier of South Australia Henry Strangways alleged that there had been no more than two or three 'real' charges of rape committed in the history of the colony.[16] This claim is reflected in the conviction statistics, despite 14 rape charges having been heard (and 11

[11] A Phipps, 'Rape and respectability: Ideas about sexual violence and social class'. *Sociology*, vol.43, no.4, 2009, p.668.
[12] K McKenzie, *Scandal in the Colonies: Sydney & Cape Town, 1820-1850.* Melbourne University Press: Carlton, 2004, p.94.
[13] Larcombe, 'The "ideal" victim', p.132.
[14] See also: Spongberg, 'Rape', p.254.
[15] The most notable such law is the 1885 *Criminal Law Consolidation Amendment Act* which raised the age of consent from 12 to 16, recognised emotional coercion and threats as a form of non-consent (not just physical violence), recognised the inability of some mentally ill adult women to consent to sex, and prohibited sex between women under the age of 18 with any man in a position of authority over them (including legal guardians and teachers).
[16] 'The Parliament', *South Australian Register*, 8 September 1866, p.3.

dismissed) in the Supreme Court by this time. While courtroom and governmental denial and the dearth of official charges make researching sexual violence difficult, this chapter argues that examining women's testimonies in cases of sexual violence which *were* brought is crucial to understanding attitudes towards rape, and rape victims and perpetrators in colonial South Australia. By considering charges of sexual violence, this chapter seeks to highlight the ways that a woman's class, race, marital status, and sexual reputation informed colonial understandings of sexual consent and influenced the outcome of sexual violence charges. It also highlights the reasons why women did and did not choose to report sexual violence and, conversely, the criteria courts used to pass a verdict of conviction or acquittal.

Perceptions of Plaintiffs and Defendants in Sexual Violence Charges

Women and men experienced the legal process very differently in colonial South Australia. It is crucial to understand that, throughout the nineteenth century, every court case heard in the colony was judged from an entirely male perspective.[17] Judges, lawyers, medical practitioners, and jurors were all male (and middle-class), and it was common for the only female perspective of a sexual violence charge to come from the plaintiff herself—facing a difficult challenge as judges frequently cautioned juries against convicting on the testimony of the prosecutrix alone. According to Allen, women who brought charges of sexual violence in the Australian colonies were expected to provide proof in the form of eyewitnesses, character witnesses attesting to her 'repute', and medical evidence proving physical violence and resistance.[18] Without this evidence, it was easy for the defence to argue that the plaintiff had made a false statement or, at the very least, that the police had arrested the wrong man.

Allen further argues that, 'no matter what their offence, women are "sexualized" in the system of criminal justice in ways that men are not'.[19] This was never more true than in cases of sexual violence. Although it was the male defendant's sexual behaviour which was on trial, the female plaintiff often bore the brunt of accusations relating to chastity and past sexual conduct. This idea is supported by Stevenson, who suggests that the only successful rape charges in mid-nineteenth century Britain were those brought by women who conformed absolutely to the ideal of the 'genuine "innocent victim"—virtuous, highly moral, and

[17] Stevenson, 'Unequivocal victims', p.346.
[18] Allen, *Sex and Secrets*, p.57.
[19] Ibid, p.12.

sexually submissive'.[20] In contrast, men who were accused of rape were often only required to demonstrate 'the appearance of fidelity and an acknowledged respectable reputation'.[21]

This emphasis on reputation is clear in the 1865 rape charge of Sarah Dart v. Edward Haskett, for which he was convicted of the lesser charge of assault with intent to commit rape. Despite Haskett's acknowledged guilt, almost 70 settlers signed petitions testifying to his previously 'unblemished character' in an attempt to mitigate his sentence.[22] This attempt must have been successful because, despite Justice Benjamin Boothby's statement that attempted rape was a serious offence that he felt obliged to deal with 'somewhat severely' to ensure that 'unprotected females in the country districts could not be molested with impunity', Haskett was only sentenced to one year's hard labour—half the maximum penalty for assault with intent at this time.[23] Further evidence of men's character influencing their sentencing is evident in the 1878 rape charge of Sarah Hiscock v. Adam Myrne, and the 1880 indecent assault charge of Bridget Cole v. Walter Bradley, in which both defendants' 'youth and good character' led to relatively lenient sentences of five years' hard labour and four months' hard labour respectively.[24]

This priority of men's good character over women's evidence in charges of sexual violence is further supported by McKenzie, who claims that nineteenth century colonial courts viewed women's bodies as 'guilty until proven innocent'.[25] This idea is supported by Stevenson's research on sexual violence in the mid-Victorian era, which suggests that, it often seemed that 'it is the victim herself who is on trial, not the defendant'.[26] In contrast, male defendants in trials of rape and sexual assault were often given the benefit of the doubt by all-male judges and juries. If the defence could raise even a small amount of doubt regarding the plaintiff's non-consent, courts believed it was best to rule in favour of the defendant rather than risking a false conviction.[27] In one instance—in the 1870 indecent assault charge of Emma Dewson v. George Hawke—the judge directed the jury that, 'if there

[20] Stevenson, 'Unequivocal victims', p.353-354.
[21] Ibid, p.354.
[22] 'Supreme Court—Criminal Sittings', *Adelaide Observer*, 26 August 1865, p.3.
[23] Ibid.
[24] 'Law and Criminal Courts', *South Australian Register*, 14 September 1878, p.2; 'Law Courts', *The South Australian Advertiser*, 11 December 1880, p.6; Law and Criminal Courts', *South Australian Register*, 11 December 1880, p.1.
[25] McKenzie, *Scandal in the Colonies*, p.105.
[26] Stevenson, 'Unequivocal victims', p.346.
[27] Ibid, p.364.

was any doubt in their minds…they would give the prisoner the benefit of it', and Hawke was acquitted.[28]

Further evidence of male defendants being given the 'benefit of the doubt' is evident in the 1841 rape trial of 12-year-old Eliza Lithel v. Aaron Brian. According to the court report published in the *South Australian Register,* 'it was very evident the crime had been committed'; however, Lithel's youth affected the depth of her testimony, causing the jury to question her reliability and dismiss the case under 'the technicalities of the law'. [29] In another instance in 1872, Thomas Lakeman confessed to police that he had forced himself on a young deaf woman named Jane Gall as she was travelling home by cart, claiming he had afterward offered to pay her father 'a few shillings as compensation'.[30] When the case was brought to court, Lakeman testified that 'as he had done the same thing to the girl before', he did not think she would object on this occasion, despite Gill's contrasting testimony that she had screamed and struck his face with a stone in self-defence.[31] Despite confessing to the crime, Lakeman's 'misunderstanding' of consent led to him being acquitted with a recommendation from Justice William Wearing 'to refrain in future from indulging in undue familiarities with young girls'.[32]

Arguments that men did not understand a woman's non-consent, or that a woman had inadvertently consented through some inappropriate (non-feminine) action, were very common in charges of sexual violence. Woman exposed their every move to public scrutiny simply by bringing a charge to the colonial court, where any small past indiscretion in the presence of a man could be used as evidence against her character. This idea is supported by Bavin-Mizzi, who suggests that defence counsels often used evidence such as '"street-walking" at night, and alcohol consumption' to discredit the plaintiff or justify the defendant's sexual violence.[33] Drunkenness in particular was often used as evidence of a woman's consent to sex, with the implication that she should not have lowered her inhibitions in the presence of the man if she did not expect sex to follow.

[28] 'Law Courts', *The Express and Telegraph,* 30 November 1870, p.3.
[29] 'Criminal Sessions', *South Australian Register,* 6 March 1841, p.3.
[30] 'Law and Criminal Courts', *South Australian Register,* 16 May 1872, p.3.
[31] Ibid.
[32] Ibid.
[33] Bavin-Mizzi, *Ravished,* p.60.

This perspective is evident in an English charge re-published in the *South Australian Register* in 1845, in which a man named William Temple was charged with supplying a 13-year-old girl with alcohol and, when she became insensible from intoxication, raping her.[34] Temple was acquitted on the grounds that there was no evidence that the intoxicated girl had physically resisted the assault, and because there 'was nothing to show that the girl took the liquor unwillingly'.[35] This example makes it clear that British courts perceived a woman's consent to drink alcohol as an equivalent to consent to sexual assault—demonstrating that South Australian courts' male-centric understandings of consent were transplanted from the mother country.

In contrast, men accused of sexual violence were frequently afforded lenience if they could blame their actions on the influence of alcohol.[36] For example, in an 1854 indecent assault charge brought by domestic servant Matilda Russell against married man William Gillick Justice Charles Cooper spoke at length about Gillick's reputation for 'honesty…and sobriety' and blamed his assault of Russell on intoxication.[37] The jury found Gillick guilty; however, he was only sentenced to three months hard labour, one of the shortest sentences for indecent assault for this period [see Appendix 4].[38] The effectiveness of drunkenness as an excuse for sexual violence is further evident in the rape charge brought by Elizabeth Asbury against an Aboriginal man named only as "Bobby" (discussed in more detail later). Asbury's lawyer requested that the jury ignore the numerous media speculations alleging that "Bobby" was drunk at the time of the alleged rape, claiming the accusations were false and had no bearing on the case, suggesting that Asbury's lawyer was aware of the previous success of drunkenness as a defence for sexual violence and wanted to avoid a similar outcome.[39]

In contrast to perceptions of female chastity, discussed later in this chapter, the sexual history of men accused of sexual violence was seen as totally irrelevant unless they had a previous conviction. A clear example of this is the dual rape charges brought against Norman McCoush: First, in 1870 McCoush was accused of raping Ann Maria Zeinert, a little girl

[34] 'An Indictment Quashed', *South Australian Register*, 5 November 1845, p.4.
[35] Ibid.
[36] For supporting research on alcohol as evidence of non-culpability in sexual violence committed in the Australian colonies, see: Philips, 'Sex, race, violence and the criminal law in colonial Victoria', p.43 and Bavin-Mizzi, *Ravished*, p.63-64.
[37] 'Law and Criminal Courts', *South Australian Register*, 24 August 1854, p.3
[38] Ibid.
[39] 'Law and Criminal Courts', *The Adelaide Express*, 21 February 1865, p.3.

under 10 years of age, a crime with a maximum penalty of life; however, after McCoush's parents testified with proof that he was only 13-years and 11-months old (one month too young to be legally convicted of rape) he was acquitted with a warning from Acting Chief Justice Gwynne that he would be eligible to be publicly whipped if he were found guilty of a similar offence in the future.[40]

In August 1871, the now reportedly 16-year-old McCoush was charged with raping 18-year-old Jemima Hay whilst escorting her home from his mother's house.[41] Hay did not have a 'favourable' reputation, having given birth to an illegitimate child three or four years previous; however, despite defence witnesses accusing Hay of making an opportunistic false charge, McCoush's previous charge led Justice Gwynne to believe he had a 'natural inclination' for rape—leading him to sentence McCoush to seven years hard labour.[42] The law preventing boys under the age of fourteen from being convicted of rape did not apply to all Australian colonies. For example, a 13-year-old boy named David Barnett was sentenced to death for raping 8-year-old Amelia Benjamin in Sydney in 1875.[43] Barnett's sentence was later commuted to 10 years' hard labour 'on the roads or other public works of the colony', but his conviction demonstrates that age limits on rape convictions varied throughout the colonies.[44]

Class, Race and Sexual Violence

In addition to gender-biases emphasising the trustworthiness of male defendants' testimony, class status influenced prejudice against plaintiffs in sexual violence charges. According to Alison Phipps, popular stereotypes of working-class women as less respectable, and more sexual, than their middle-and upper-class counterparts have 'been used to discredit working-class rape complainants' throughout history.[45] For example, in the 1875 indecent assault charge of married woman Sarah Dupree v. John Clarke, Justice Stow cautioned the

[40] 'Law Courts—Supreme Court', *The South Australian Advertiser*, 16 February 1870, p.3.
[41] 'Law and Criminal Courts', *Evening Journal*, 10 August 1871, p.2. There is a discrepancy in McCoush's reported age between his first and second trials which is not explained, but which suggests that his age was reported incorrectly in either the first or second trial. As McCoush's initial acquittal depended on him being under 14, it is very likely that he and his parents lied about his age to protect him from conviction.
[42] Ibid; 'Law and Criminal Courts', *Evening Journal*, 11 August 1871, p.2.
[43] 'Sentence of Death on a Boy for Rape', *The Maitland Mercury and Hunter River General Advertiser*, 20 February 1875, p.8.
[44] 'New South Wales Parliament', *The Sydney Morning Herald*, 1 March 1877, p.2.
[45] Phipps, 'Rape and respectability', p.669.

jury to ignore testimony detailing previous improper behaviour by Dupree. He reminded them that, being a fishwoman, Dupree 'would not perhaps indulge in much refinement, and what would be improper to many would be to her simply a joke'.[46] This statement demonstrates the classed nature of middle-class court authorities' understandings of acceptable feminine behaviour and reiterates their perception of working-class women as naturally more sexual, and more prone to vice and immorality, than their middle-class counterparts.

In New South Wales, much of the discussion of punishment surrounding white rapists focused on convicts and other naturally 'violent' men.[47] In South Australia the absence of convicts meant that working-class men bore the brunt of public fear regarding sexual violence. One of the only South Australian rape charges which saw the defendant convicted for the maximum possible penalty was Sarah Ann Mould v. James Norris in 1858. Mould alleged that Norris approached her in her employer's paddock, forced her down with her apron tied over her face, threatened to murder her, and raped her.[48] After escaping, Mould immediately informed her mistress of the assault and police arrested Norris at a nearby sheep-station.[49] Mould bore no physical evidence of violence; however, a medical examination conducted a few days later found that she was suffering from gonorrhoea, for which she had never previously showed symptoms.[50] Medical testimony alleged that Norris also had gonorrhoea, which one witness accused him of contracting 'by communication with the natives'.[51] Norris insisted on his innocence, but the jury did not even deliberate before returning a guilty verdict, sentencing him to penal servitude for life.[52]

The high rate of sexual violence against working-class women at the hands of their employers and other wealthy white men is well established in contemporary research; however, Kaladelfos asserts that, in colonial New South Wales, it was 'white men from disreputable backgrounds and Indigenous Australian men' who were portrayed as the biggest threats to (white) women's sexual purity.[53] This stereotype of the typical rapist influenced the

[46] 'Law and Criminal Courts', *Evening Journal*, 12 November 1875, p.3.
[47] Kaladelfos, 'The politics of punishment', p.167.
[48] 'Law and Criminal Courts', *South Australian Register*, 20 May 1858, p.2.
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Kaladelfos, 'The politics of punishment', p.159.

outcome of colonial rape charges. In charges involving perpetrators and victims of differing class and racial backgrounds, wealthy white perpetrators benefited from stereotypes that the violence they committed was less severe than that committed against working-class and non-white women by their own husbands or other men in their communities. According to Phipps, stereotypes classifying domestic and sexual violence as 'solely the preserve of working-class or unemployed men' has served only to 'allow middle-class men to engage in these behaviours with impunity', and with little risk of repercussions.[54] Such stereotypes were not only dangerous for working-class men, but also for working-class women who accused 'socially superior' men of sexual violence—particularly within the context of male employers and their female employees.[55] As Phipps writes: 'working-class cultures do not have a monopoly on sexual violence' and, despite white colonial propaganda, nor is it inherent to non-white cultures.[56] It must be noted that such assertions are only present in contemporary analysis, with no evidence that similar arguments were ever presented in colonial courtrooms.

According to Grimshaw et al., 'the belief that black men were customarily brutal to their women was widely promulgated', and this stereotype allowed white rapists to justify their physical and sexual mistreatment of Aboriginal women under the presumption that they 'were better off with cruel white men than their own husbands'.[57] Similarly, colonial stereotypes suggested that the alleged hyper-sexuality of Aboriginal women rendered them virtually incapable of non-consent.[58] As a result these lingering stereotypes, Janya McCalman et al. estimate that, in contemporary Australia, Aboriginal women are 12 times more likely to experience sexual assault than non-Indigenous women.[59] It is safe to presume that, in the unchecked racial violence of the Australia colonial frontier, this statistic was even higher. Furthermore, describing the racialisation of sexual violence in colonial Australia, Grimshaw, Lake, McGrath and Quartly suggest that, while women's chastity was always questioned in rape charges brought by white women against white men—particularly if she was of a lower social class than her accused rapist—rape charges brought by white women against non-white

[54] Phipps, 'Rape and respectability', p.669.
[55] For further elaboration on this subject as it pertains to colonial South Australia, see chapter 3.
[56] Phipps, 'Rape and respectability', p.669.
[57] P Grimshaw, M Lake, A McGrath & M Quartly, *Creating a Nation*. Penguin Books Australia Ltd: Ringwood, 1994, p.148.
[58] For a selection of research on this subject, see: Philips, 'Sex, race, violence and the criminal law in colonial Victoria', p.48; Bavin-Mizzi, *Ravished*, p.171; Behrendt, 'Consent in a (neo)colonial society', p.354; Conor, 'Indigenous women's unthinkable consent', p.109-112.
[59] J McCalman, F Bridge, M Whiteside, R Bainbridge, K Tsey, and C Jongen, 'Responding to Indigenous Australian sexual assault: A systematic review of the literature', *SAGE Open*, vol.4, no.1, 2014, p.1.

men frequently assumed non-consent due to the assumed hyper-sexuality and inherent violence of non-white men.[60]

One example of this is the 1865 rape charge of Asbury v. "Bobby" in Port Elliot, mentioned earlier. Asbury alleged that "Bobby" followed her home one night and, after ensuring that no witnesses were present, pushed her down and raped her.[61] Asbury's lawyer did not call for any medical evidence and her husband testified that she bore no signs of violence.[62] Despite the propensity of colonial courtrooms to dismiss rape complainants who had no physical injuries, none of the numerous media reports on this case questioned Asbury's chastity or reliability as a plaintiff.[63] Similarly, "Bobby's" lawyer did not attempt to disparage Asbury's character, despite character assassination being the most common defence in colonial rape trials, only arguing that the night had been too dark for Asbury to positively identify "Bobby" as her rapist.[64]

In any of the other cases discussed in this chapter, the fact that Asbury was walking alone at night, did not bear any physical signs of violence, and could not 'swear positively to ["Bobby's"] identity' would very likely have seen the case dismissed.[65] However, in this instance the jury did not even retire for deliberation before declaring "Bobby" guilty, leading him to be sentenced to 10 years' hard labour.[66] In response to this case the *South Australian Register* published an article suggesting that rapes committed in sparsely-populated rural areas should be considered a 'capital offence', and therefore eligible for the death penalty—despite the death penalty for rape being abolished 20 years earlier.[67] Though it is not stated outright, it is clear that when the editors of the *Register* called for rape in rural areas to be treated as a capital offence, they were really calling for the death of Aboriginal men who raped white women.

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[60] Grimshaw et al., *Creating a Nation*, p.148.
[61] 'Law and Criminal Courts', *The Adelaide Express*, 22 February 1865, p.3.
[62] 'Local Court—Port Elliot', *South Australian Weekly Chronicle*, 11 February 1865, p.4.
[63] For a selection of these newspaper reports, see: 'Local Court—Port Elliot', *The South Australian Advertiser*, 8 February 1865, p.3; 'Port Elliot: Tuesday January 31', *Adelaide Observer*, 11 February 1865, p.4; 'Law and Criminal Courts', *The Adelaide Express*, 21 February 1865, p.3; 'Law and Criminal Courts', *South Australian Register*, 22 February 1865, p.3; 'Sentences', *South Australian Weekly Chronicle*, 25 February 1865, p.5.
[64] 'Law and Criminal Courts', *The Adelaide Express*, 22 February 1865, p.3.
[65] 'Port Elliot', *South Australian Register*, 2 February 1865, p.3.
[66] 'Law and Criminal Courts', *The Adelaide Express*, 22 February 1865, p.3; 'Law and Criminal Courts', *The Adelaide Express*, 24 February 1865, p.3.
[67] 'Topics of the Day', *The South Australian Advertiser*, 3 February 1865, p.2; 'Frightful Outrage Near Port Elliot', *South Australian Register*, 2 February 1865, p.2.

Despite the suggestion of the *Register*, there is no evidence of an Aboriginal man ever being executed for rape in colonial South Australia. This may be because, according to Tonkinson, the desire of European colonisers to 'protect' white women from hyper-sexualised Black men did not result in the same level of extreme 'hysteria' in Australia as it did in other colonised spaces, such as the United States and Papua New Guinea, where the lynching of Black men without trials (or after acquittals) was common.[68] Of the case studies considered in this chapter, the vast majority were brought between white plaintiffs and defendants; however, the absence of Aboriginal people—particularly Aboriginal women—from colonial sexual violence charges does not mean that sexual violence did not occur.

Sexual Violence and Colonialism

Rape and sexual violence were a key tool for colonialism in Australia, as in every form of colonialism throughout history. According to Kaladelfos, a rhetoric of fear over the sexual 'threat' posed by Aboriginal men to white settler women was one of the many justifications for 'violent frontier expansion and Indigenous dispossession' in colonial Australia.[69] Concurrently, white male colonisers frequently enacted sexual violence upon Indigenous women with few legal consequences. According to Larissa Behrendt 'it is the legacy of colonialism…that the women of the conquered are assumed to become the property of the conquering'.[70] This experience was consistent in all forms of European imperialism during this period, with Myrna Tonkinson noting that Indigenous women were the targets of sexual violence in Spanish colonies in Central and South America, Portuguese colonies in Brazil, and British colonies around the world.[71] The British colonisation of Australia was no exception to this rule, with Behrendt suggesting that, 'just as the invading colonists saw Aboriginal land as theirs for the taking, so too they assumed they could do as they wished with Aboriginal women without…interference from British law'. [72] This idea is further supported by Tonkinson, who suggests it was a common feature of European colonisation for Indigenous women to be regarded as permanently 'available to…the male colonists'.[73] This construction of Aboriginal women as sexually accessible, and almost incapable or

[68] Tonkinson, 'Sisterhood or Aboriginal servitude', p.34.
[69] Kaladelfos, 'The politics of punishment', p.168.
[70] Behrendt, 'Consent in a (neo)colonial society', p.353.
[71] Tonkinson, 'Sisterhood or Aboriginal servitude?', p.31.
[72] Behrendt, 'Consent in a (neo)colonial society', p.353.
[73] Tonkinson, 'Sisterhood or Aboriginal servitude?', p.31.

undeserving of non-consent, meant that Aboriginal women who were victimised by sexual violence had little recourse with which to seek justice in colonial courts and most cases which were brought were unsuccessful.[74]

Despite the wilful ignorance regarding the sexual safety of Aboriginal women, Bavin-Mizzi points out that the presence of rape charges involving Aboriginal women, no matter how few, demonstrates an acknowledgement, however reluctant, that Aboriginal women were capable of non-consent.[75] In one South Australian case, reported in the *Adelaide Observer* but never brought to court, an unnamed Aboriginal woman from Encounter Bay charged a white whaler with kidnapping, assault, and rape; however, the charge was dismissed (despite physical and medical evidence) because the only witnesses were Aboriginal and therefore, at this time, forbidden from testifying in court.[76] In recompense for her suffering, the woman was provided with a new blanket and shirt, her own having being damaged during the assault.[77] The deliberate mishandling of this case highlights why many Aboriginal women chose not to initiate 'official' rape charges with colonial authorities—knowing that they were unlikely to receive justice. This idea is supported by Honni van Rjiswijk's article on the colonial roots of sexual violence against Aboriginal women, which suggests that increased state violence (social as well as physical) against Aboriginal women, compared to non-Indigenous women, has contributed to the 'understandable unwillingness of Indigenous women to access state services, including the police'—a reluctance which persists in contemporary Australia.[78]

Sexual violence on the frontier was often trivialised due to the portrayal of Aboriginal women as being more open to and enthusiastic about sex than white women. Throughout the nineteenth century, 'white women were thought to endure rather than enjoy sex, while Aboriginal women were seen as sexually uninhibited—indeed, uncontrolled'.[79] For example, in 1859 the diary of well-known South Australian missionary George Taplin recorded his concern over the difficulty he anticipated in providing religious education to Aboriginal people in Point Macleay, owing to 'the early age at which sexual intercourse takes place

[74] Behrendt, 'Consent in a (neo)colonial society', p.354.
[75] Bavin-Mizzi, *Ravished*, p.171.
[76] 'Encounter Bay District', *Adelaide Observer*, 4 July 1846, p.10.
[77] Ibid.
[78] vann Rjiswijk, '#MeToo under colonialism', p.34.
[79] Tonkinson, 'Sisterhood or Aboriginal servitude', p.33.

between the natives (12 years)'.[80] Despite Taplin's disdain, British law mandated 12 as the age of legal consent—demonstrating that his allegations, if correct, did not highlight a substantive difference between British and Indigenous sexual norms.

An article published in the *Kapunda Herald* in February 1880 claimed that South Australian Aboriginal people were one of the lowest forms of humanity, and that this was especially the case for Aboriginal women, who seemed 'beyond the power of civilization'.[81] This was apparently due to the fact that, no matter how early in life they were integrated with white 'civilization', Aboriginal women were particularly likely to 'burst through the bonds and restraints of civilization' and return 'naturally to the wild habits of their forefathers'.[82] Though this article discussed the apparent plight of Aboriginal South Australians in great detail, it offered no consideration that Aboriginal women's propensity to flee white settlements may have been a result of the frequent physical and sexual violence to which they were exposed at the hands of white settlers. According to Victoria Haskins, Aboriginal domestic servants' work in colonial households 'could, and often did, simultaneously entail sexual abuse as well as outright sexual slavery'.[83] With this in mind, it is unsurprising that some Aboriginal women elected to flee settler society altogether.

According to both Harris and Behrendt, violence against Aboriginal women in colonial Australia was frequent but rarely policed, highlighted by frequent and unpunished abductions of Aboriginal women by white men.[84] In the South Australian context, Aboriginal women were frequently abducted from Tasmania and mainland Australia to the sealing colony on Kangaroo Island to act as both labourers and 'wives'.[85] Kangaroo Island was colonised earlier than mainland South Australia, with a colony of male sealers occupying the island from around 1802. In 1819, Captain George Sutherland recorded his seven-month stay on the island, writing that the sealers were 'complete savages' who regularly ventured to the

[80] G Taplin, *Copy of Diary of the Rev. Geo. Taplin of Pt. McLeay: vol 1, from April 4, 1859 to August 1, 1865*, State Library of South Australia, 1958, p.4.
[81] 'Our Aboriginals', *Kapunda Herald*, 17 February 1880, p.2.
[82] Ibid. See also the case of "Mary", domestic servant of Governor Grey, discussed in Chapter 3.
[83] Haskins, 'White women and the sexual abuse of Aboriginal women on a colonial Australian frontier', p.16.
[84] J Harris, 'Hiding the bodies: The myth of the humane colonisation of Aboriginal Australia'. *Aboriginal History*, vol.27, 2003, p.95; Behrendt, 'Consent in a (neo)colonial society, p.353.
[85] L Russell, '"Dirty domestics and worse cooks": Aboriginal women's agency and domestic frontiers, Southern Australia, 1800-1850', *Frontiers: A Journal of Women's Studies*, vol28, no.1/2, 2007, p.27; R Taylor, *Unearthed: The Aboriginal Tasmanians of Kangaroo Island*, Wakefield Press: Kent Town, 2002, p.28-29.

mainland to abduct Aboriginal people, usually women, to keep 'in a state of slavery, cruelly beating them on every trifling occasion'.[86]

According to Brian Plomley and Kristen Ann Henley, the sealers living on Kangaroo Island were rumoured to have 'exhibited the greatest inhumanity towards the unfortunate native women who lived with them, who were no more than slaves forced to carry out every species of labour and who were punished without mercy for any infringement on the whims of their masters'.[87] Allegedly, the beginning of mainland South Australian colonisation 'put a stop to the worst activities of the sealers'; [88] however, a witness in a coroner's inquest into the death of Henry Wallen (unofficial 'Governor' of Kangaroo Island) in 1856 stated that Wallen had been living with two Aboriginal women on Kangaroo Island—one of whom was originally from the mainland and one from Van Diemen's Land—suggests that these abducted women did not, or could not, return to their original homes.[89] This is supported by Rebe Taylor, who wrote that many of the Aboriginal women abducted to Kangaroo Island 'never saw their homes again'.[90] However, Lynette Russell argues that, while it is important not to overstate these women's agency in their relationships with white sealers, the largely unregulated settlement of Kangaroo Island did allow these women limited opportunities to engage with culture and raise their children in ways which were strictly discouraged by colonial officials and missionaries in the main colonies.[91]

In their 2018 book *A History of South Australia*, Paul Sendziuk and Robert Foster wrote that immigrants in South Australia's first fleet 'may have been surprised when they discovered that a small population of sealers was living on [Kangaroo] island with their Aboriginal wives and children'.[92] Sendziuk and Foster acknowledge that these 'wives' were abducted from Van Diemen's Land and mainland Australia; however, they do not

[86] B Plomley and KA Henley, 'The sealers of Bass Strait and the Cape Barren Island community. [includes appendices consisting of brief biographies of men associated with sealing in Bass Strait and Kangaroo Island, and of Aboriginal women held in captivity by the sealers]', *Papers and Proceedings: Tasmanian Historical Research Association*, vol.37, no.2-3, 1990, p.49.
[87] Ibid, p.42.
[88] Ibid, p.50.
[89] 'Coroner's Inquest Upon the Earliest South Australian Settler', *Adelaide Observer*, 3 May 1856, p.3. For more information on Henry Wallen, see: Taylor, *Unearthed*, p.25-26 and Plomley and Henley, 'The sealers of Bass Strait and the Cape Barren Island community', p.51.
[90] Taylor, *Unearthed*, p.28.
[91] Russell, '"Dirty domestics and worse cooks"', p.27-28.
[92] P Sendziuk and R Foster, *A History of South Australia*, Cambridge University Press: Port Melbourne, 2018, p.20.

acknowledge the non-consent of the Aboriginal women in these 'marriages' or reference the physical and sexual abuse which many of these women were subjected to.[93] This perspective, in a modern history of South Australia, serves to further disguise and ignore the deliberate mistreatment of South Australian Aboriginal women at the hands of individual colonists and, through their inaction in the face of these abductions, colonial authorities. Similarly passive descriptions are evident in Ronald Gibbs' 2013 book *Under the Burning Sun*, which noted only that Kangaroo Island sealers 'lived with Aboriginal women, some from the Nauo tribe, who were brought to the island after raids on the mainland'.[94] The only histories of South Australia which accurately records the forced nature of these relationships are Russell and Taylor's works, discussed above, and Derek Whitelock's 1977 book which mentions Aboriginal women on Kangaroo Island as 'slaves' abducted from Tasmania.[95]

Even in instances where Aboriginal women did consent to sexual relationships with white men, Behrendt urges the importance of remembering that 'these relationships took place against a background of continual frontier and sexual violence'.[96] Under this imbalance of power, Aboriginal women's consent to sex and relationships with white men was not asked for, but 'perpetually assumed', or violently forced.[97] This assumption is present in the South Australian media as early as 1841, in the *Southern Australian's* publication of Governor George Grey's notes on 'civilizing' the colony's Aboriginal people. In these notes, Grey admitted concern that establishing Aboriginal missions in proximity to white settlements would expose the Aboriginal residents to 'temptations, which they may not be strong enough to withstand'.[98] As described by Grey, these temptations were alcohol for men and, for women, that they would be 'seduced' by the promises of white men.[99] Grey's phrasing suggests that these 'seductions' would be consensual; however, this assumption was belied by his proposal that a £5 fine for white men discovered to have seduced Aboriginal women— the same penalty levied on colonists who supplied alcohol to Indigenous people— as a

[93] Sendziuk and Foster, *A History of South Australia*, p.20.
[94] RM Gibbs, *Under the Burning Sun: A History of Colonial South Australia, 1836-1900*, Peacock Publications: Adelaide, 2013, p.25.
[95] Russell, '"Dirty domestics and worse cooks"', p.25; R Taylor, *Unearthed*; D Whitelock, *Adelaide 1836-1976: A History of Difference*, University of Queensland Press: St Lucia, 1977, p.15; Russell, '"Dirty domestics and worse cooks"', p.25.
[96] Behrendt, 'Consent in a (neo)colonial society', p.354.
[97] Ibid, p.355.
[98] 'Sir George Gipps' Minutes on Governor Grey's Notes on the Aborigines of Australia', *Southern Australian*, 12 October 1841, p.3.
[99] Ibid.

method of providing 'further protection to the women'.[100] The term 'protection' implies an awareness of the threat which white men posed to Aboriginal women, though this threat was not acknowledged outright.

In Kaladelfos' examination of 268 cases of sexual violence in the New South Wales Supreme Court between 1841 and 1901, only five were brought by, or on behalf of, Aboriginal women.[101] In Bavin Mizzi's research on rape charges brought in Victoria, Queensland and Western Australia between 1880 and 1900, only six of the 1300 cases she examined featured Indigenous plaintiffs.[102] Of the 106 case studies considered in this chapter, only three were brought on the behalf of Aboriginal women (none by the women directly), and none of those cases resulted in a conviction.

In South Australia, Aboriginal women who brought charges of rape and indecent assault or, more often, had charges brought on their behalf by the Aboriginal Protector or white missionaries, rarely followed the case through to completion. For example, in 1867, Sub-Protector Buttfield charged Thomas Allen with raping an Aboriginal woman named Wilpena Mary Ann in the Flinders Rangers town of Blinman.[103] The case was remanded to the Supreme Court, but Wilpena Mary Ann did not appear, with the Crown Prosecutor reporting that she 'had escaped from the custody of the police, and could not be found'.[104] This language, describing Wilpena as having 'escaped' from police, suggests that she was not a willing participant in the trial and that Buttfield brought rape without her consent to encourage her to seek legal recompense in the same way 'civilised' white women were expected to. The case returned to the Supreme Court in May 1868, and this time it was Allen who did not appear.[105] The court ruled that Allen's £100 bail was forfeited and a warrant was issued for his arrest, but on the 31st of August the Sherriff reported that he could not be found and there is no evidence that the case was ever completed.[106]

[100] 'Sir George Gipps' Minutes on Governor Grey's Notes on the Aborigines of Australia', *Southern Australian*, 12 October 1841, p.3.
[101] Kaladelfos, 'The politics of punishment', p.166.
[102] Bavin-Mizzi, *Ravished*, p.171.
[103] 'Country News', *The South Australian Advertiser*, 6 December 1867, p.2.
[104] 'Law Courts', *The Express and Telegraph*, 12 February 1868, p.2.
[105] 'Law Courts', *The Express and Telegraph*, 14 May 1868, p.3.
[106] 'Law and Criminal Courts', *South Australian Register*, 1 September 1868, p.3.

The two other cases of sexual violence brought on the behalf of Aboriginal women in colonial South Australia were resolved very quickly. First was the charge brought on the behalf of Kaonintye against Thomas Borthwick in Port Lincoln in 1851—dismissed because Kaonintye did not attend court.[107] It is worth noting that Borthwick had previously been fined £3 for chasing down a group of Aboriginal people, drunk and on horseback, forcing them to flee to the Police Court for safety.[108] The second charge was brought against Edward Gibbons in 1855 for raping a 'native girl of tender years' named Matilda (alias 'Printpurse') at Yorke's Peninsula, but the charge was dismissed due to insufficient evidence.[109]

Another possible reason for the few rape charges brought by Aboriginal women in colonial South Australia may be because sexual violence perpetrated against Aboriginal women was more likely to end in death than sexual violence committed against white women. According to John Harris, although such charges were often disguised and difficult to prove, it was not uncommon for white men on the frontier to murder Aboriginal women after raping them to avoid retribution from Aboriginal men.[110] Death from childbirth and venereal disease resulting from sexual abuse also disproportionately affected Aboriginal women.[111] The difficulty in proving, or even discovering, such atrocities, and the fact that these crimes were usually committed in sparsely populated rural 'contact-zones', means that there is very little evidence in the historical record, though there is no doubt that they occurred more frequently than they were reported.

Punishing Sexual Violence

The 1843 Legislative Council Proceedings, published in the *South Australian Register*, show that assault with intent to commit a rape was classified as a misdemeanour, while assault with intent to commit a robbery was considered to be a felony.[112] Other felonies included, but were not limited to, horse and sheep stealing, breaking and entering, and receiving stolen goods.[113] The maximum penalty received for assault with intent in the case

[107] 'The Criminal Sittings of the Supreme Court', *Adelaide Observer*, 29 November 1851, p.8.
[108] 'Official Reports', *South Australian Register*, 26 July 1851, p.3.
[109] 'Police Court—Adelaide', *Adelaide Times*, 30 January 1855, p.3; 'Police Courts', *South Australian Register*, 1 February 1855, p.2.
[110] Harris, 'Hiding the bodies', p.96.
[111] Ibid, p.94-96.
[112] 'Legislative Council Proceedings', *South Australian Register*, 11 October 1843, p.3.
[113] Ibid.

studies presented in this chapter was three years' hard labour. Conversely, in 1858 James Riley was sentenced to six years' penal servitude for *assisting* two other men with an assault with intent to rob.[114] The difference in perception of crimes which physically and emotionally harmed women compared to crimes which only risked material goods demonstrates the lack of importance colonial authorities gave women's safety in colonial South Australia. In comparison, legal repercussions for rape were relatively severe, with the 1859 *Personal Offences Act* mandating a minimum punishment of four years hard labour and a maximum sentence of life imprisonment for men convicted of rape. [115]

Harsh punishments for sexual violence punishments were only relevant in cases brought by white women, with an 1850 Report from the Protector of Aborigines recording that a farmer named William Sawyer had been fined £5 for sexually assaulting an Aboriginal girl named Paliana.[116] Later that same year, the Protector also noted that a shepherd from the Yorke Peninsula had been charged with feloniously assaulting an eight-year-old Aboriginal girl, but that he had fled and 'walked nearly two hundred miles before information [of the assault] reached the Police'. [117] It is unclear how the police discovered the distance this man had walked without apprehending him; however, this example demonstrates the role that race played in sexual violence allegations as, had this case involved a white child and an Aboriginal man, it is extremely likely the police would have hunted the man no matter how far he fled.

This idea is supported by Kaladelfos, who suggests that Australian lawmakers intended harsh punishments for sexual violence to 'protect the beacons of "civilisation"—virtuous white colonial women' from the sexual threat posed by convicts and Aboriginal men. [118] In reality, however, these laws were little more than a 'symbolic gesture…that did little to guarantee prosecution and conviction in cases of sexual violence'.[119] Kaladelfos further suggests that, though there was a clear 'political condemnation of rape' in all Australian colonies, 'conviction rates for sexual violence remained far lower than other violent

[114] 'Law and Criminal Courts', *South Australian Register*, 24 August 1858, p.3.
[115] *Person al Offences Act 1859* (SA), p.99-100.
[116] *Report of Protector of Aborigines for the Quarter ended June 30, 1850*, 9 July 1850, p.1, CO13/69, Australian Joint Copying Project [AJCP], National Library of Australia [NLA]: Canberra, p. 138.
[117] *Report of the Protector of Aborigines for the Quarter ended 30th September 1850*, 15 October 1850, p.1, CO13/70, AJCP, NLA: Canberra, p.46.
[118] Kaladelfos, 'The politics of punishment', p.175.
[119] Ibid.

crimes'.[120] Indeed, of the forty rape charges considered in this chapter, only eleven of the defendants were found guilty as charged [see Appendix 5]. This shows that while the crime of rape was reviled *in theory*, in practice judges and juries were reluctant to convict men of sexual violence based on the sole testimony of a woman.

Legally, rape was described as a terrible crime deserving of severe punishment; however, this legal acknowledgement of the severity of rape did little to influence the judgement of all-male juries, medical examiners, lawyers, and judges 'when faced with *women* calling out men's violence'. [121] According to Stevenson, the severity of the punishments for convicted rapists may well have contributed to colonial juries' reluctance to convict, even in cases where they believed the defendant was guilty. [122] In many cases, colonists simply did not believe that rape was a serious enough offence for perpetrators to deserve years, or life, in prison. Kaladelfos referenced Frederick Lee, a member of the 'Society for the Abolition of Capital Punishment', who was concerned at the prospect of an 'innocent man' being executed on the word of an 'abandoned woman' who made a false allegation to preserve her own social standing.[123] Such arguments were intended to prevent miscarriages of justice; however, Kaladelfos suggests that, in reality, it served only to limit women's 'ability to seek protection under the criminal justice system'. [124]

Similar arguments were referenced in the South Australian context. In July 1874, early colonist and pioneer William Burford published a pamphlet titled *Lecture on Capital Punishment: Viewed in its Social, Political, and Scriptural Aspects*. Citing British statistics, Burford alleged that jurors did not want the responsibility of ending a prisoner's life, frequently acquitting prisoners who may have been convicted if they were not facing the death penalty—making 'the chance of total freedom from punishment…greatest where it ought to be the least'.[125] Though the death penalty was abolished relatively early in South Australia, it is possible that juries felt a similar reluctance to convict defendants facing life in prison, which remained the maximum penalty for rape throughout the colonial period. It must also be noted that Burford acted as a character witness for 40-year-old David Edwards after

[120] Kaladelfos, 'The politics of punishment', p.165.
[121] Ibid.
[122] Stevenson, 'Unequivocal victims', p.354.
[123] Kaladelfos, 'The politics of punishment', p.163.
[124] Ibid, p.165.
[125] WH Burford, *Lecture on Capital Punishment: Viewed in its Social, Political, and Scriptural Aspects*, William Kyffin Thomas: Adelaide, 1874, p.9-10.

he was convicted of indecently assaulting 5-year-old Jeanette Thompson in Port Adelaide in 1869.[126] Edwards was sentenced to 18-months hard labour, and Acting Chief Justice Richard Hanson specifically stated that, without Burford's character reference, he would have passed a more severe sentence.[127] This suggests that Burford either did not have a problem with convicted criminals receiving a reduced sentence when capital punishment was not involved, or he did not believe that his own rhetoric applied to his 'respectable' friends.

The reluctance to convict serious charges is further proven by the conviction statistics in this chapter, which show that juries were far more likely to pass guilty verdicts in the less severe charges of assault with intent and indecent assault, or to downgrade to a lesser charge before convicting the perpetrator. Of the forty rape charges considered in this chapter, twenty-seven (67.5 per cent) ended in a verdict of not guilty [see Appendix 5]. In comparison, only fourteen of the thirty-six assault with intent charges (39 per cent) were dismissed, though a further ten (28 per cent) were downgraded to lesser offences, lowering the total number of convicted cases to only twelve (33 per cent) [see Appendix 6]. Comparatively, only six of the thirty indecent assault charges (20 per cent) were dismissed completely, and only three were convicted of the lesser charge of common assault [see Appendix 4]. According to Stevenson, the practice of convicting rape defendants of lesser charges was common throughout the British Empire.[128]

Stevenson also argues that nineteenth century media reports of sexual violence censored women's testimony, replacing specific details with 'euphemistic language' which 'disguised the precise nature of the assaults committed'. [129] In many cases, the plaintiff's testimony was omitted from the newspaper reports altogether. For example, in the 1856 rape charge of Sarah Salter v. John Johnson, the *Adelaide Times* wrote summarised four-and-a-half-hour trial simply by writing that 'most of the evidence [was] unfit for publication'.[130] In 1858, the medical testimony of Dr Reik in the case of Squires v. Johnson was also deemed unfit for publication, though the *Times* summarised his testimony by writing that 'he expressed a strong conviction that the prosecutrix had ceased to be a virgin long previously' to her

[126] 'Law and Criminal Courts', *Adelaide Observer*, 14 August 1869, p.6.
[127] Ibid.
[128] Stevenson, 'Unequivocal victims', p.349.
[129] Ibid, p.354.
[130] 'Law and Police Courts', *Adelaide Times*, 15 February 1856, p.3.

alleged rape.[131] Finally, in the 1880 rape charge of Elizabeth Garret v. Henry Garret (her father), the *Burra Record* wrote only that 'the particulars are of course unfit for publication and disclosed a shocking state of depravity', showing that this censorship persisted throughout the colonial period.[132] By censoring the details of female complainants' testimony, newspapers were able to control the narrative of sexual violence. According to Stevenson, this censorship claimed to 'protect public morals' from the details of distasteful crimes; however, it really served to 'desexualise' sexual violence and reinforce the perception of rape as 'seduction rather than forced sex'.[133]

This censorship was not confined to colonial newspapers: it was also present in the courtrooms themselves. In 1859, Caroline Wilmer brought a charge of assault with intent against an Aboriginal man named Bungillo (alias "Tommy"). Witnesses claimed that Bungillo was previously convicted of a similar crime, and Justice Boothby believed this proved he was a 'dangerous person'.[134] However, Boothby also believed that 'the details of such cases served no public good; and if they could be avoided it would be better', so he offered to reduce the charge from attempted rape to indecent assault.[135] Bungillo confessed to the reduced charge and, taking his previous conviction into account, he was sentenced to 18 months imprisonment. In addition censorship of sexual violence complainants, women spectators, and sometimes even witnesses, were frequently ordered to leave the courtroom during evidence. This was supposedly because the details of sexual violence charges were too disturbing for women to hear; however, all it really did was ensure that the details of such cases were only heard by men. This meant that the discourse surrounding sexual violence in colonial South Australia was always controlled by men, who were totally responsible for the details that reached the wider public through court reports, newspaper articles, and even community gossip.

Kaladelfos also asserts that most British settlers 'distrusted female morality' and thought that a woman's character 'should have a bearing on the penalty' of convicted sex offenders—even when they were proven guilty.[136] This belief suggests that colonists believed that sexual

[131] 'Law and Police Courts', *Adelaide Times*, 11 February 1858, p.3.
[132] 'Magistrates' Court Redruth', *Burra Record*, 30 January 1880, p.3.
[133] Stevenson, 'Unequivocal victims', p.355.
[134] 'Law and Criminal Courts', *South Australian Weekly Chronicle*, 13 August 1859, p.2.
[135] Ibid.
[136] Kaladelfos, 'The politics of punishment', p.156.

assaults committed against women of 'loose character' were less serious than those committed against more 'respectable' women. In the rape charge of married woman Helen Grant v. James Douglas in 1845—when the death penalty was still in place for rape—the presiding judge warned the jury that rape accusations 'will frequently place even an innocent man in danger of his life, from the difficulty of disproving the statement of the prosecutrix'.[137] This appears to have been the first rape charge brought before the South Australian Supreme Court, so this claim of the frequency of false rape accusations must have been carried over from Britain, rather than being based on South Australian experiences.

According to Stevenson, the idea that women easily brought false charges of rape 'out of spite, revenge or fantasy' was prevalent in the Victorian era, and has persisted almost unchanged into the twenty-first century.[138] Such myths are not founded fact and serve only to 'trivialise…rape', transferring blame 'from perpetrator to victim'.[139] There is evidence of some awareness of this fact in colonial Australia, with a statement from William Windeyer during a New South Wales Legislative Assembly meeting to discuss abolishing the death penalty for rape in 1879 arguing that, 'while some false charges of rape were made, many real offenders escaped'.[140] In the same debate, Thomas Hungerford argued that rape was a worse crime 'than even robbery or murder', and Archibald Jacob claimed arguments against the death penalty pitied the perpetrators of rape while 'the innocent victim was forgotten'.[141]

There is no evidence of any such arguments being raised in South Australia. When James Douglas—the first South Australian to be convicted of rape—was sentenced to death in 1845 a group of male colonists submitted a petition calling for this sentence to be commuted.[142] Their wish was granted five days later, with Douglas' sentence commuted to transportation for life.[143] Only three newspaper articles were published opposing this decision, and none of these argued that rape was a serious crime deserving of harsh punishment—only arguing that South Australian law mandated the death penalty for rape, that the death penalty was intended to protect women in rural areas, and that Douglas himself would prefer death over

[137] 'Supreme Court—Criminal Side', *South Australian*, 11 March 1845, p.2.
[138] Stevenson, 'Unequivocal victims', p.350.
[139] Ibid.
[140] 'The Sydney Morning Herald', *The Sydney Morning Herald*, 22 May 1879, p.4.
[141] Ibid.
[142] 'Capital Punishments', *South Australian Register*, 22 March 1845, p.3.
[143] 'The Convicted Felons', *South Australian*, 28 March 1845, p.3.

transportation.[144] None of these articles even mentioned Helen Grant's name. When the death penalty for rape was abolished four months later, no articles were published in opposition—a clear contrast to extensive media and governmental debates over the same decision in other Australian colonies.[145]

As mentioned earlier, one of the most common arguments raised in sexual violence trials was that such charges were 'easy to make, but difficult to disprove'. This phrase was common in British courts, and first appeared in South Australia as early as 1846 in the case of married woman Ann Emery v. Joseph Budd. The court record published in the *South Australian Register* wrote that it was 'customary for judges to warn juries' of the dangers of rape charges, and referenced prolific British judge Matthew Hale as stating that rape 'is an accusation easily to be made, and hard to prove, *and harder to be defended by the party accused*'.[146] This argument was reiterated throughout colonisation, with Allen suggesting that judges frequently advised juries that 'they need not, indeed should not, take seriously the uncorroborated testimony of the "prosecutrix"'. [147] This advice was supposed to discourage juries from making hasty decisions based on the testimony of the plaintiff alone; however, it often served to influence the jury in the opposite direction—providing sympathy for the poor defendant, victimised by the false accusations of a vengeful or opportunistic woman. This issue was compounded by the fact that juries were comprised entirely of middle-class men who naturally related to male defendants, while no one on the jury could truly empathise with the perspective of the female plaintiff.

The statistics presented in this chapter show that men who were accused of rape in colonial South Australia had little trouble disproving the charge. As mentioned previously, more than half of the rape and sexual assault charges considered in this chapter ended in acquittal or conviction for a lesser charge. The improbability of conviction for accused rapists is illustrated by the 1863 seduction case of Haldane v. McEwen. When this charge was brought before the Supreme Court, McEwan's lawyer insisted that the charge should be

[144] 'The Convicted Felons', *South Australian*, 28 March 1845, p.2; 'The Condemned Felons', *South Australian*, 28 March 1845, p.3; 'Local Intelligence', *Adelaide Observer*, 29 March 1845, p.5.
[145] Kaladelfos, 'The politics of punishment'. For examples of these arguments, see: 'Penal and Prison Discipline in Victoria', *The Argus*, 31 May 1871, p.7; 'The Mercury', *The Mercury*, 24 May 1875, p.2; 'The Sydney Morning Herald', *The Sydney Morning Herald*, 22 May 1879, p.4; 'Criminal Assaults on Women', *Moreton Mail*, 24 May 1889, p.8, 'Parliament', *The Australian Star*, 8 July 1896, p.2; 'Penal Commission', *The West Australian*, 26 June 1899, p.7.
[146] 'Law and Police Courts', *South Australian Register*, 19 September 1846, p.3.
[147] Allen, *Sex and Secrets*, p.57.

changed from seduction to rape as the evidence of Haldane's married daughter, Elizabeth Potts, suggested that the seduction had been 'committed by force and against [her] will'.[148] McEwan's lawyer argued at length with Justice Boothby and Justice Gwynne to convince them that Potts did not consent to the intercourse with his client and that the charge should be changed to one of rape.[149] The fact that McEwan's own lawyer fought for his client to be tried for rape, which carried a maximum sentence of life in prison, over seduction, which only mandated fiscal damages, demonstrates rape was a charge which was unlikely to end in conviction.[150]

The 'Genuine' Victim

British and British-colonial society bore very strict ideas about the kind of woman who could be 'genuinely' victimised by sexual violence. Stevenson argues that 'no other crime has attracted so many myths and stereotypical images as those associated with the 'genuine rape victim'.[151] As a result of these stereotypes, which relied heavily on ideas of female chastity, women who sought justice for sexual violence in colonial courts needed to prove their adherence to a very strict set of criteria.

According to Larcombe, rape charges which were most likely to achieve a guilty verdict were those which showed clear evidence of physical violence or threat with a weapon, those where the rapist was a stranger, and evidence that the victim fought against her assailant.[152] This is supported by Stevenson, who claims that rape complainants were unlikely to achieve a successful conviction without evidence of 'real physical violence and a correspondingly high level of physical resistance'.[153] In the Australian context, Allen outlines a strict criteria which rape victims needed to fill in order to prove their charge: 'Medical jurists demanded eye-witnesses, evidence of genital and general violence, and testimony as to the woman's character, repute, and her demeanour at the time and after the assault'.[154] Unfortunately for rape survivors both past and present, the majority of sexual assaults do not perfectly suit these criteria.

[148] 'Law and Criminal Courts', *South Australian Register*, 26 May 1863, p.2.
[149] Ibid.
[150] For more information on seduction charges in colonial South Australia, see chapters 4 and 6.
[151] Stevenson, 'Unequivocal victims', p.344.
[152] Larcombe, 'The "ideal" victim v successful rape complainants', p.132.
[153] Stevenson, 'Unequivocal victims', p.352.
[154] Allen, *Sex and Secrets*, p.57.

Discussing Victorian opinions on rape, Stevenson reports that 'genuine' rape victims were required to have fought their attackers 'and have the bruises to prove it'.[155] Women who bore no bruising, whether they reported being threatened with a weapon, being restrained, or passing out, had no concrete evidence to prove their non-consent. In the first rape charge brought by a single woman in colonial South Australia—the 1849 case of Rhoda Gregory v. Richard Williams—Williams' lawyer argued that victims of sexual violence must make their non-consent obvious by screaming and fighting against their rapist—simply saying 'no' was not enough. He argued that, without this violent resistance, his client could not have known that Gregory was not a consenting sexual partner and therefore, 'in the eye of the law, it would not amount to a rape'.[156] Fortunately for Gregory, numerous witness statements testifying to Williams' propensity for violence and bad temper convinced the jury of his guilt and he was sentenced to transportation for life.[157]

An example of a case which did not rule in the plaintiff's favour is the 1868 rape charge of 13-year-old Susannah Groves v. 16-year-old Walter Brooks. On paper, Groves appears to be the ideal 'genuine' rape victim: she screamed for help until Brooks covered her mouth; she told her parents of the assault and they filed a police report immediately; she was examined by a doctor, who testified in her favour; and Brooks admitted being with Groves on the night in question and raised no doubts regarding her chastity.[158] According to the *Adelaide Observer's* report, the only argument presented by Brooks' lawyer was a 'powerful speech' that, without any eyewitnesses, this was essentially a case of he-said-she-said and Groves' testimony 'should be received with considerable reserve'.[159] After retiring for over an hour the jury acquitted Brooks of all charges, to 'instantaneous manifestations of applause'.[160] According to Phipps, the primary method of decision-making for judges and juries in rape trials relied on comparing the plaintiff and defendant's reputations. [161] The Groves v. Brooks trial demonstrates that, in cases where juries were asked to compare the reputations of a man and woman of similar class backgrounds and social respectability, they were liable to support the man. The applause of spectators in the courtroom suggests that this opinion was not confined to court officials, but something which was prevalent in the wider settlement.

[155] Stevenson, 'Unequivocal victims', p.363.
[156] 'Law and Police Courts', *South Australian Register*, 12 September 1849, p.3.
[157] Ibid.
[158] 'Law and Criminal Courts—Supreme Court', *Adelaide Observer*, 15 February 1868, p.7.
[159] Ibid.
[160] Ibid.
[161] Phipps, 'Rape and respectability', p.674.

Cases where the plaintiff did not scream at a sufficient volume to be heard by any passers-by were frequently unsuccessful. For example, in the case of Ann Mara v. her employer William Popham (discussed in detail in chapter 3), medical evidence showed that Mara had definitely been the victim of a violent sexual encounter; however, her claim that Popham was the perpetrator was discredited by the fact that there were other people in the house at the time of the alleged rape, and none of them heard a struggle.[162] Mara's claim that she had passed out from shock was ignored and she was accused of blaming another man's sexual violence on Popham as a form of petty revenge.

Another reason why Mara's case—and the reports of many other women—was dismissed is because she did not report her assault to the first woman she saw (in this case, Popham's wife), instead waiting until she visited a close friend to disclose the rape. According to Stevenson, British (and, by extension, British colonial) courts relied heavily on the 'doctrine of recent complaint', an idea which emerged in the eighteenth century demanding that legitimate rape victims would immediately report their assault.[163] In May 1856, Margaret Doyle brought a charge of rape against her employer, John Knox; however, her charge was dismissed because she waited until the next day to report the assault and did not seek an immediate medical examination.[164] Another example is the two 1861 charges brought by Johanna Rehder against her son Thomas for raping, on separate occasions, his adult sisters Frederica Rehder and Matilda Harrison (married). There was no physical evidence of assault and both Frederica and Matilda only reported their assaults to each other, with Frederica claiming that she initially withheld the information because her mother 'had had so much trouble in her life'.[165] As a result of this delay in reporting both charges were dismissed, though the judge recommended that the sisters bring an action for indecent assault.

Incest

For much of South Australia's early history, incest was not a crime punishable by law. Incest first entered South Australian legislation with the passing of the 1858 *Matrimonial Causes Act*, listed as a reason by which women could seek a divorce from their husbands.[166]

[162] 'Law and Criminal Courts', *South Australian Register*, 23 February 1857, p.3.
[163] Stevenson, 'Unequivocal victims', p.362.
[164] 'Law and Police Courts', *Adelaide Times*, 24 May 1856, p.3.
[165] 'Local Courts', *Adelaide Observer*, 21 September 1861, p.4.
[166] *Matrimonial Causes Act 1858* (SA), p.182.

In this context, incest was defined as 'adultery committed by a husband with a woman with whom, if his wife were dead, he could not…lawfully contract marriage'.[167] It was not until the passing of the 1876 *Criminal Law Consolidation Act* that incest was made a crime on its own. [168] This Act defined incest as: 'any persons being related, either as parent and child, or brother and sister, who shall unlawfully intermarry with each other, or who shall commit fornication or adultery with each other'.[169] Any persons convicted of incest after this point were guilty of a felony and faced up to seven years hard labour.[170] South Australia was the first Australian colony to implement such a law, with incest not classified as a criminal offence in Queensland and Victoria until 1891, and Western Australia in 1892.[171] It is theoretically possible that, under this Act, South Australian women who brought charges of rape against male relatives could themselves face a jail sentence if the court ruled the sex to have been consensual; however, there is no evidence of this ever occurring.

Prior to this change in law, it was possible for charges of rape made against a male family member to be dismissed as consensual. One example of this is the 1870 rape charge of 19-year-old Elizabeth Ann Holmes v. her father William, who she accused of raping her while they were working in the fields of their family farm.[172] She also alleged that this was not the first time her father had raped her—having reported two previous rapes to her mother, though her mother never intervened.[173] Due to her mother's inaction, Elizabeth reported the third rape to a neighbour named Mrs Glen, who assisted her in bringing her charge.[174] However, because Elizabeth was of age and apparently physically capable of resisting her father's advances, the court declared there was not enough evidence of her non-consent and acquitted her father.[175]

It is likely that the introduction of incest law in 1876 was responsible for the increased number of rape charges brought by young women against their fathers in the late 1870s, as they became more confident that their charge would end in a conviction, for incest if not for

[167] *Matrimonial Causes Act 1858* (SA), p.182.
[168] *Criminal Law Consolidation Act 1876* (SA), p.14.
[169] Ibid. The Act made no mention of other familial relationships such as grandparents or aunts/uncles.
[170] Ibid.
[171] Bavin-Mizzi, *Ravished*, p.96. Incest was outlawed in 1924 in both New South Wales (*Crimes (Amendment) Act*) and Tasmania (*Criminal Code Act*).
[172] 'Law and Criminal Courts', *South Australian Register*, 19 May 1870, p.3.
[173] Ibid.
[174] Ibid.
[175] Ibid.

rape. This belief appears to have been warranted, with courts generally passing harsher sentences on men who were convicted of raping their daughters or stepdaughters.[176] Four of the seven rape charges instigated by single women in the South Australian Supreme Court between 1879 and 1880 were brought by teenage girls against their fathers, and three of these cases ruled in the plaintiff's favour [see Appendix 5]. In fact, of the rape charges considered in this chapter which ended in a verdict of guilty-as-charged, 45 per cent were brought against a father or stepfather. This demonstrates that, while the secondary literature suggests that charges of stranger-rape were the most likely to end in a conviction, South Australian courts also demonstrated a clear sympathy for women who were raped by their supposed 'protectors'.

Sexual Violence Against 'Known Prostitutes' and Women of 'Bad Character'

Sex workers in colonial South Australia were victimised by sexual violence more than any other group of white settler women. It is impossible to understand how many women who worked as prostitutes were the victims of rape and sexual assault during this period, with court statistics certainly not representative of reality; however, despite their increased vulnerability to sexual violence, sex workers were the least likely to achieve justice in the colonial court system. According to Kaladelfos, conservative colonists across Australia did not intend for rape laws to assist in 'the protection of "depraved" women, but for virtuous white women whose reputations would be ruined by sexual violence'.[177] Furthermore, as illustrated by Phipps, sex workers were portrayed as 'incapable of non-consent: [her] 'no' can never mean 'no', since she has already agreed to give sex away'. [178] This idea reflected the belief expressed in Squires v. Johnson, discussed later, that women who had already consented to pre-marital sex (without a promise of marriage) were incapable of rescinding that consent at a later date.

In cases involving sex workers, consent to exchange sex for money with one man seems to have translated to consent to provide sexual favours to any man, with or without payment or prior discussion. In an 1851 rape trial, Judge Crawford stated that even 'the commonest

[176] This heightened conviction rate for incestual sexual violence is also noted in Andy Kaladelfos' research on Australia-wide 'familial sexual offences' between 1869 and 1954; Kaladelfos, 'Uncovering a hidden offence', pp.63-77.
[177] Kaladelfos, 'The politics of punishment', p.163.
[178] Phipps, 'Rape and respectability', p.675.

prostitute that walks the street is protected by the law against violation'.[179] This statement was inaccurate, as it was very common for rape charges brought by sex workers to be dismissed with little argument. For example, in February 1875 two young men named Stephen Martin and Jabez Weir were acquitted of raping Elizabeth Leffler in Mt Gambier after 'it was proved that the prosecutrix was an immoral character'.[180] In this case, Martin and Weir did not have to deny forcing themselves on Leffler without her consent—only to prove that she had previously exchanged sex for money and was therefore incapable of refusing their advances. The outcome of this case, and others considered in this chapter, support Stevenson's claim that women who had a reputation for sexual immorality—particularly sex workers and Aboriginal women—were 'regarded as "public property"', and therefore, 'technically…they could not be raped'.[181]

Evidence supporting this argument is found in the 1860 charge of assault with intent brought by Margaret Hogan against John England. Hogan testified that she had attended the theatre with England and some friends before returning to their home to continue drinking and dancing.[182] Hogan testified that her head began aching in the early hours of the morning and she went to lay down, but was later awoken by England attempting to assault her, causing he to scream.[183] This portion of Hogan's testimony was supported by her housemate, Mary McLeod, who testified that she had been woken by Hogan's screams in the early morning, though she did not investigate the noise.[184] Testimony from the Colonial Surgeon claimed that Hogan bore no signs of physical violence, and further evidence declared that she was known to associate with women of bad character.[185] The report published in the *South Australian Register* acknowledged that Hogan provided other evidence to support her charge, but claimed that the details of this evidence were 'scarcely worth reading', with the Magistrates agreeing that because 'the alleged assault was committed in a brothel, and that…those within the house were prostitutes', it was unnecessary to refer the charge to the Supreme Court.[186]

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[179] 'Supreme Court', *Adelaide Times*, 13 August 1851, p.3.
[180] 'General News', *Border Watch*, 24 February 1875, p.4.
[181] Stevenson, 'Unequivocal victims', p.360.
[182] 'Police Courts', *South Australian Register*', 25 September 1860, p.2.
[183] Ibid.
[184] 'Police Court—Adelaide', *The South Australian Advertiser*, 22 September 1860, p.3.
[185] Ibid.
[186] 'Police Courts', *South Australian Register*', 25 September 1860, p.2; 'Police Court—Adelaide', *The South Australian Advertiser*, 25 September 1860, p.2.

The perception of 'known prostitutes' in colonial rape charges often aligned with perceptions of Aboriginal women in the same circumstances. Behrendt suggests that Aboriginal women living alongside white settler communities were often portrayed as 'cheap or free sexual partners…known to accept small rewards for sexual favours', with many colonists viewing them as no better than '"low-class" prostitutes'.[187] In 1872, an article published in the *Wallaroo Times and Mining Journal* responding to a recent complaint against local police agreed that 'it would be unpleasant for most persons…to be locked up with either an aboriginal [sic] or a drunken prostitute', as though the worst crime a person could commit was to exchange sex for money or simply to be Aboriginal.[188] Statements such as this, whether they were exaggerated for entertainment or based in real belief, contributed to the perception of both sex workers and Aboriginal women as being somehow inferior to respectable, middle-class white colonists.

Further inhibiting charges of sexual violence against 'known prostitutes' was Bavin-Mizzi's assertion that colonial judges and juries operated on the assumption that women who exchanged sex for payment 'were more concerned with money than they were with chastity'.[189] Under this assumption, complaints of sexual violence made by sex workers were often dismissed on the presumption that the sex had been transactional, and that the plaintiff's subsequent charge was brought out of a sense of spite or as revenge for non-or under-payment for her services. For example, the 1858 rape charge of Anne Thompkin v. Robert Wallace was dismissed after Thompkin was described as being 'weak in intellect and most lose in her habits', while in 1859 Catherine O'Dooley had not even finished presenting her evidence when the Magistrate ruled that the defence's evidence that she was a 'woman of the very lowest character' was sufficient to dismiss her charge.[190] Later, in 1877, Elizabeth Kirby (described as a 'half-caste') charged three young men, described as 'a boy…a youth…[and] a coloured man' with indecent assault.[191] Kirby's charge was dismissed after she admitted that she 'was not a respectable young woman, and it was proved that her character was anything but moral'.[192] These examples demonstrate that colonial courts did not perceive female sex workers as capable of non-consent, and further demonstrate the difficulty which women in

[187] Behrendt, 'Consent in a (neo)colonial society', p.354.
[188] 'The Wallaroo Times', *The Wallaroo Times and Mining Journal*, 24 December 1872, p.2.
[189] Bavin-Mizzi, *Ravished*, p.180.
[190] 'Law and Criminal Courts', *South Australian Weekly Chronicle*, 14 August 1858, p.2; 'Police Court—Adelaide', *The South Australian Advertiser*, 19 October 1859, p.3.
[191] 'Law and Criminal Courts', *Evening Journal*, 27 October 1877, p.2.
[192] Ibid.

colonial South Australia faced in substantiating charges of sexual violence throughout colonisation.

Rape and Sexual Assault

In 1845, adopting amendments in British legislation in 1841, it was mandated that convicted rapists would no longer face the death penalty in South Australia, but rather a maximum penalty of transportation for life.[193] In this instance, South Australia was unique in its decision to follow Britain's lead, with the death penalty for rape not abolished in the other colonies until between 40 and 110 years later.[194] South Australia's decision to abolish the death penalty for rape likely a simple emulation of British law, with British amendments generally adopted much faster in South Australia than the other Australian colonies; however, it is also possible that South Australia's non-penal history meant that colonists were less concerned with the sexual threat posed by disreputable convict men which was a frequent concern of the eastern penal colonies.

Research for this chapter only uncovered evidence of two unmarried women bringing charges of attempted rape (and none for rape or indecent assault) to the South Australian Supreme Court prior to this change in law: the 1841 case of Lithel v. Brian, discussed earlier; and the charge brought by Ann Spencer four months before that, in November 1841. Spencer's charge was more successful than Lithel's, with her attacker, Jessie Minney, being sentenced to twelve months' hard labour. It is likely that the reason for Spencer's success lay in the fact that her assault was witnessed, and interrupted, by a police constable whose testimony contradicted that of witnesses called in support of Minney—two of whom were consequently indicted for perjury.[195] Though impossible to claim with certainty, it is highly likely that, had this assault not been interrupted by such a reputable witness, Minney's false witnesses would have succeeded in discrediting Spencer's testimony. The outcome of this case raises questions about the number of other rape and sexual assault charges which may have been wrongly dismissed because of witnesses who lied to save the defendant from punishment.

[193] *Crimes Act 1845* (SA), p.3.
[194] The legislation abolishing the death penalty for rape in other Australian states is as follows: Tasmania, O*ffences Against the Person Act 1855*; Queensland, *Criminal Code Act 1899*; Western Australia, *Criminal Code Act 1902*; Victoria, *Crimes Act 1949*; and New South Wales, *Crimes (Amendment) Act 1995*.
[195] 'Criminal Sessions', *Adelaide Chronicle and South Australian Literary Record*, 11 November 1840, p.4.

According to Stevenson, the increasing emphasis placed on 'female respectability' in the mid-nineteenth century, and the subsequent stereotypes surrounding 'credible' rape victims, forced rape complainants to prove that their own behaviour leading up to the assault had been 'absolutely unimpeachable, and unequivocally that expected of a victim'. [196] This proposition is supported by Phipps, who explains that in colonial Australia the idea of sexual consent was irrevocably linked with respectability, meaning that women who did not meet colonial criteria for respectability—with an emphasis on working-class and non-white women—were 'thought to have permanent consent to sexual violation written into their behaviour'. [197]

Colonial ideas of consent also influenced charges of sexual violence brought between men and women in a (non-sexual) romantic or platonic relationship, with women who made allegations of rape against a stranger more likely to achieve a conviction than those who reported rape by someone they knew. According to Stevenson, 'patriarchal rape myths' in the Victorian era often portrayed rapists as 'strangers and deviants thereby diminishing the seriousness with which the public regards rape by men known to their victims'.[198] If the defendant in a rape trial could prove he had spent time alone with the plaintiff, including staying in her family's home or accompanying her on private walks, or that he and the plaintiff had previously engaged in consensual intercourse, the likelihood of a conviction decreased significantly. According to Bavin-Mizzi, it was approximately 20 per cent more likely for rape trials to rule in favour of the plaintiff in cases where the alleged rapist was a stranger or distant acquaintance.[199] One reason for this is that women were considered to have less motive for revenge or material gain against strangers than men they knew.

One example of a charge being dismissed due to the plaintiff's relationship with the defendant was the 1878 assault with intent charge of Charlotte Hoare v. Thomas.[200] Hoare and Charlton had reportedly been 'keeping company' for nine or ten months when Charlton asked Hoare to marry him. Hoare could not agree without her mother's blessing, and Charlton immediately attempted to force himself on her. [201] Hoare's screams attracted the attention of two witnesses, who testified that she was very distressed and 'in a fainting

[196] Stevenson, 'Unequivocal victims', p.349.
[197] Phipps, 'Rape and respectability', p.674.
[198] Stevenson, 'Unequivocal victims', p.349.
[199] Bavin-Mizzi, *Ravished*, p.57.
[200] 'Law and Criminal Courts', *Evening Journal*, 29 March 1878, p.3.
[201] Ibid.

condition' when they arrived on the scene.[202] According to the court report published in the *Evening Journal*, Charlton's lawyer 'humorously' described the assault 'as "a mere nocturnal flirtation"' and encouraged the jury to acquit his client, which they subsequently did.[203] In the eyes of the jury consent to courtship equated to consent to sex, and Charlton's actions did not constitute a crime.

According to Judith Allen, assumptions regarding the credibility of rape complainants made many Australian women fear a trial that often saw their own behaviour scrutinised more harshly than that of their alleged attacker.[204] One clear example of this is the 1877 case of Mary Smith v. Henry Jackson, a pharmacist who had frequently treated her for seizures. On the day in question, Smith alleged that Jackson had given her a different medication which made her feel ill, and then followed and raped her while she was too weak to fight back.[205] At the conclusion of her testimony Smith claimed that she had waited three weeks to report the rape because 'she felt too much ashamed of the effects of a disclosure to make any complaint'.[206] In the eyes of the court, this hesitance discredited her legitimacy and Jackson was acquitted of all charges. Smith's shame, and her fear of the reputational repercussions associated with a rape charge highlight why many women chose to never report their own experiences of sexual violence.

Women's legitimacy as victims of sexual violence was also influenced by their romantic and sexual history.[207] In the 1856 case of Sarah Salter v. John Johnson, Salter's rape charge was dismissed after witnesses claimed she had been on 'friendly terms' with Johnson prior to the alleged assault, and that she had been on 'very intimate terms' with another young man several months prior.[208] Similarly, in the 1858 case of Elizabeth Squires v. Robert Johnson, the judge requested medical evidence because if Squires 'had previously had connection with a man…he should certainly not, in such a case, allow it to go to the Jury'.[209] This request presumed that doctors could prove whether a rape victim had been a virgin prior to her assault; however, modern research has proved that such examinations, colloquially referred to

[202] 'Law and Criminal Courts', *Evening Journal,* 29 March 1878, p.3.
[203] Ibid.
[204] Allen, *Sex and Secrets*, p.9.
[205] 'Law and Criminal Courts', *Evening Journal,* 16 March 1877, p.2.
[206] Ibid.
[207] Phipps, 'Rape and respectability', p.674.
[208] 'Police Court—Adelaide', *Adelaide Times*, 15 January 1856, p.3; 'Police Courts', *South Australian Register*, 3 January 1856, p.4.
[209] 'Law and Police Courts', *Adelaide Times,* 11 February 1858, p.3.

as 'virginity testing', are notoriously inaccurate and damaging to women's mental health.[210] Additionally, the implication that Squires could not have been raped by Johnson if she had previously engaged in consensual sex with another man demonstrates colonial courts' propensity for discrediting and disregarding 'unchaste' victims of sexual violence. The idea that sexually active unmarried women could not be raped, or that their sexual history marked them as deserving of assault, was frighteningly common.

The doctor called to speculate on Squires' virginity claimed that 'she presented the appearance of a woman who had been married some time'.[211] On the basis of this evidence, Acting Chief Justice Boothby asked the jury if they believed Squires had been a virgin prior to the alleged rape.[212] The Foreman of the jury replied that they believed Johnson 'was guilty of the rape', but Boothby refused to allow them to decide on a verdict before answering his question—stating that if Squires had not been a virgin 'they ought to give the prisoner the benefit of the doubt and to discharge the evidence of the prosecutrix altogether'.[213] The jury stated their belief that Squires had been a virgin and retired to decide on a verdict; however, twenty minutes into their deliberation Boothby recalled the jury and insisted that they were bound to follow his direction and acquit Johnson, despite 11 of the 12 jury members believing him to be guilty.[214] Squires v. Johnson demonstrates the extent to which judicial bias could control the outcome of sexual violence charges in colonial South Australia, with Boothby facing no consequences for his interference in the judicial process.

Conclusion

The case studies considered in this chapter have demonstrated the contradictory understandings of consent and sexual violence in colonial South Australia, as well as the impossible criteria imposed on working-class and non-white women to prove not only that they had experienced sexual violence, but that their suffering was deserving of legal justice. Colonial law mandated strict punishments for convicted rapists; however, the criteria required

[210] Some research on modern 'virginity testing' includes: M Robatjazi et al., 'Virginity testing beyond a medical examination', *Global Journal of Health Science*, vol. 8, no. 7, 2016, pp.152; M Robatjazi et al. 'Virginity Testing: Then and Now', *International Journal of Medical Toxicology and Forensic Medicine*, vol.6, no.1, 2016, pp.36-43; and RM Olson and C García-Moreno, 'Virginity Testing: A Systematic Review', *Reproductive Health*, vol.14, no.61, 2017, pp.1-10.
[211] 'Law and Police Courts', *Adelaide Times*, 11 February 1858, p.3.
[212] Ibid.
[213] Ibid.
[214] Ibid.

to substantiate a charge of sexual violence meant that plaintiffs in such charges were frequently unsuccessful. This difficulty in achieving a conviction means that rape and sexual assault trials often served no purpose other than causing further emotional damage to the complainant, consequently discouraging other women from seeking justice for sexual violence in fear that they would be similarly discredited. Towards the end of the nineteenth century, changes in laws regarding incest increased conviction rates for fathers charged with sexually abusing their daughters; however, such charges were outliers, with convictions for sexual violence remaining otherwise improbable for the duration of the period considered in this thesis.

Bringing an action for rape was difficult for any woman in colonial South Australia; however, evidence collected from primary sources and contemporary research suggest that this difficult process became almost impossible when the complainant was a prostitute or an Aboriginal woman. Cases involving these women were nearly always dismissed without charge, due to popular nineteenth century rhetoric that these categories of women were incapable of non-consent. Even in cases which did not involve stereotypically hyper-sexualised classes of women, the sexual histories—both real and assumed—of female complainants were weaponised in colonial courtrooms in a way that male defendants were not—making it improbable for all but the most virtuous of middle-class white women to achieve a conviction.

South Australia may have been one of the worst Australian colonies for victims of sexual violence; not necessarily because there were more instances of rape and sexual assault than in other colonies, but because South Australian colonists, court officials, and colonial authorities showed very little sympathy for victims of sexual violence. Only 2 of the 40 rape charges considered in this chapter were convicted of the maximum penalty of the time, and South Australia was colony to immediately follow Britain's lead in abolishing the death penalty for rape—with none of the public or governmental debate which this change in law triggered in the other colonies. South Australian judges frequently warned juries against preferencing the female complainant's testimony over that of the male defendant; well-known colonists provided character references for convicted sex offenders; courtroom spectators applauded acquittals; and judges like Boothby acquitted accused rapists against the will of juries and before the entirety of the evidence had been presented. Combined with the early abolition of the death penalty, it is clear that South Australian colonial authorities did

not consider rape to be a serious crime deserving of an equally serious punishment. This attitude is best represented by the conviction statistics for rape being lower than any other charge considered in this thesis, supporting the overall argument that courts were noticeably less likely to convict charges brought *by* single women than those brought against them.

Conclusion

It is clear from the case studies considered in this thesis that South Australian single women were the victims of a marked prejudice both in the colonial courtroom and in the wider colonial community. Single women, particularly working-class and non-white women, were sexualised and criminalised in the colonial courts in ways that white middle-class married women were not. The case studies presented in this thesis demonstrate that single women who came before the colonial courts as both perpetrators and victims of crime faced prejudice which was directly related to their marital status and which repeatedly influenced the outcome of the cases in which they were involved. This prejudice most obviously revealed itself in the acceptance of single women's chastity and sexual history as credible evidence, the insistence that a damaged sexual reputation and/or marriage prospects was the worst consequence a woman could experience, the assumption that women frequently brought false charges for revenge or financial gain, and the insistence that testimony from a female victim was never sufficient evidence for a conviction.

The experiences of single women in South Australian courtrooms were reflective of the social marginalisation of unmarried women, specifically unmarried working-class women, in nineteenth century Britain and Australia. Strict social rules regulating single women's behaviour were evident in every aspect of their lives. These rules included, but were not limited to, the 'protection' of single women on board immigrant ships; the segregation of women of 'good' and 'bad' character in government institutions such as the Destitute Asylum; the strict supervision and control of women living in Female Refuges; and criticism of single women's alleged immorality in the colonial media, with a particular focus on newly arrived immigrants and domestic servants.

This thesis considered single women's experiences as perpetrators and victims of crimes pertaining to marriage, work, pregnancy and motherhood, and sex in colonial South Australia. It has supplemented existing research on South Australian colonial history by contesting the historical and contemporary perceptions of South Australia as distinctive from—and morally superior to—other Australian colonies, and by shedding light on the previously overlooked history of women in crime, on both sides of the law. Using the lens of

single women and crime, this thesis demonstrates that the apparently distinct aspects of South Australian colonisation, namely the refusal to participate in convict transportation and promises of peaceful treatment with existing Aboriginal peoples, did not create a non-violent or crime free process of colonisation.

Furthermore, South Australian 'founders' and colonial authorities' persistent emphasis on middle-class ideals of respectability negatively influenced perceptions of people who, through their gender, class, race, and ethnicity, were unable to conform to these ideals. Claims about South Australia's inherent difference and superiority only led authorities to deny and disguise the presence of immorality and vice—and its attendant suffering—in their colony. When colonial authorities did deign to acknowledge crime and vice it was quickly blamed on outside sources, including newly arrived (poorly selected) immigrants, escaped convicts from the neighbouring penal colonies, and Aboriginal people. This attitude invariably influenced policing and prosecution methods in the colony, focusing police attention on supposed 'career criminals' and recently arrived immigrants and overlooking crime committed by outwardly respectable middle-class colonists. Notably for this thesis, such policing frequently overlooked female-dominated crime, with South Australian women consistently making up less than 20 per cent of accused criminals throughout the colonial period—with most female convictions being for 'moral' offences relating to prostitution.

This thesis has shown that legally sanctified marriage was utilised not only as a tool of British imperialism in colonial South Australia, but also as a means for regulating female sexuality. The separation of unmarried women from unmarried men and married couples on board immigrant ships and the confinement of single women without family or employment in immigration depots upon their arrival were practised in the name of protecting single women's chastity. Similarly, the separation of colonists according to gender and social respectability in government institutions such as the Destitute Asylum was ostensibly intended to 'protect' vulnerable single women from sexual predators and recruiters for prostitution; however, case studies in this thesis including the whipping of four Irish women on board the *Ramilies*, the mistreatment of Caroline Arnold on the *Indian*, and the physical assault of Margaret Fay by Matthew Moorhouse all highlight instances of so-called 'protectors' abusing their authority to harm the single women under their protection. Upon

their arrival in the colony, working-class single women were encouraged by low wages and exploitative working conditions to seek marriage as soon as possible, thereby fulfilling Wakefield's goal of naturally, and respectably, increasing the colony's population.

While the encouragement of marriage in colonial South Australia was intended to regulate women, perpetuate British colonial ideals, and enforce ideas of South Australian superiority, it could also be used by women to seek legal and financial recompense for actions which threatened their marriage prospects. Laws recognising slander and breach of promise of marriage allowed women, in very specific situations, to weaponise the ideal of marriage to seek monetary compensation for imputations on their chastity and suitability as future wives. The introduction of sexual slander law in South Australia in 1865, before any other colony, demonstrated that the importance of marriage in colonial South Australia was viewed not only as a social issue, but a legal one as well. This legal importance was further evident in cases of breach of promise—the only woman-brought charge considered in this thesis that consistently ruled in favour of the female plaintiff.

Breach of promise charges could be very financially lucrative, with successful charges sometimes awarding hundreds or, in the 1870 case of Humphry v. Kelly, thousands of pounds in damages. While breach of promise cases had a high success rate (with 33 of the 36 charges in this thesis ruling in favour of the female plaintiff), such cases often focused on punishing male colonists for seducing and abandoning innocent, previously respectable, women, rather than on the social and financial loss experienced by individual women. This is demonstrated by the fact that the highest damages were awarded in cases brought by respectable (young, pretty) middle-class white women. The sympathy directed towards respectable, preferably middle-class, white women in colonial courts may have worked in favour of breach of promise plaintiffs, but it had little bearing on charges involving less respectable working-class women. This courtroom bias towards respectable middle-class plaintiffs and defendants is present in every charge considered in this thesis; however, it was most evident in charges brought between female servants and their employers.

As the only ‘respectable’ form of employment for working-class women in colonial South Australia, female domestic servants made up approximately 40 per cent of assisted immigrants and 86 percent of female assisted immigrants arriving throughout the colonial period. Despite the steady demand for domestic servants, newspaper reports and government despatches considered in this thesis showed that this demand was frequently accompanied by criticisms of servant women. This criticism, largely fuelled by the colonial media but also perpetuated by other colonial authorities, painted servant women as significantly more prone to immorality than middle-class and non-working women—stereotypes which, in the other Australian colonies, had been largely directed towards convict women. Disdainful stereotypes of female domestic servants and classism reinforced by colonial authorities’ insistence that colonists conform to middle-class ideals portrayed working-class and servant women as more prone to criminality and—most importantly—sexual immorality, than their middle-class counterparts.

In court cases between female servants and their employers, servants were further disadvantaged by the fact that judges, juries, and lawyers were all members of the servant-employing middle-class and therefore instinctively empathised with the perspective of middle-class employers—leading to a noticeable legal mistreatment of servants in favour of their employers. Employers were clearly aware that they were favoured in such cases, frequently suing their servants for disputes which could have been solved outside of the courtroom. The power imbalance between servants and employers was even more overt in cases of Aboriginal women employed in white households, where the intersections of class and race made these women extremely vulnerable to physical and sexual violence, with little trust that legal charges of mistreatment would be believed or pursued. While this thesis did not uncover any official charges of violence brought by Aboriginal women against their white employers, frequent instances of Aboriginal women fleeing white households suggest that their presence in those households was not always voluntary.

The casual mistreatment of female servants is most evident in the 15 charges of physical and sexual violence levied against employers. Only three of the seven sexual violence charges, all brought by girls under the age of 16, ended in convictions—and those for no more than 12 months imprisonment. While all eight charges of physical assault found

against the employer, seven of them only received small fines of between 1s. and £3, with the only outlier being the execution of Malachi Martin for the murder of Jane MacManamin. In combination with the 1859 *Personal Offences Act* and 1876 *Criminal Law Consolidation Act* which mandated a maximum penalty of only three years hard labour for an employer who assaulted their servant to the extent that the servant's life was endangered—while larceny by a servant was eligible for eight years hard labour—it is clear that colonial officials placed greater value on middle-class colonists' belongings than the physical safety of female servants, and that this profound inequality persisted throughout colonisation.

The legal imbalance between employers and employees was not only present in the courtroom but also in colonial legislation, with South Australian *Masters and Servants Acts* consistently favouring the rights of employers by mandating small fines and remuneration of unpaid wages for the financial, and sometimes physical, mistreatment of their female servants. Conversely, *Masters and Servants* legislation consistently mandated gaol sentences of between three and six months for servants who breached their employment contracts, and punishments of up to eight years for servants who stole from their employers. Compounding this imbalance was the deliberate exclusion of female servants from the 1847 *Masters and Servants Act* which prevented them from seeking legal recompense for employer mistreatment until the legislation was amended in 1849.

Even when the law did not prevent women from bringing legal charges, the complaint and prosecution process was arduous and even a successful charge could carry little reward. Women who bore children outside of wedlock faced significant social and legal stigma for failing to adhere to the narrow ideal that contained sexuality within marriage, and they were prevented from bringing their own maintenance charges to force financial support from their child's putative father—required instead to ask a landowner to bring the charge on their behalf. When maintenance charges did make it to court, they were difficult to prove—with 35 of the 91 cases in this thesis dismissed completely. Even when charges resulted in a conviction the damages were rarely sufficient to support a child, with the median amount awarded during this period averaging just 4s. 6d. per week. It was a simple matter for putative fathers to deny paternity by casting doubt on the plaintiff's chastity—with single mothers having to weigh the reputational risk of bringing a charge to court over the financial

necessity of providing for their child. This reputational risk was associated with every charge considered in this thesis and caused an unknown, but likely significant, number of women to suffer in silence rather than bring a charge to court.

Conversely, some women brought charges because their reputation had already been damaged and the only method for repairing this damage was to seek legal compensation. There were a variety of charges available to address reputational damage, including breach of promise, slander, and seduction. Seduction charges, which provided financial recompense to a single woman's parents in cases of pre-marital pregnancy, were used to reduce single women's culpability in cases of pre-marital pregnancy by placing the responsibility for their sexual misconduct on the shoulders of an incorrigible 'seducer'. While they could be lucrative—offering damages as high as £350—seduction charges clearly favoured women with their families in the colony. In the first decades of colonisation this criteria excluded a significant portion of single women, many of whom immigrated alone. There was also no guarantee that the damages awarded in seduction charges would be used for the support of the mother and her child, as was evidenced in the case of Sarah Mary Powell, who ended up destitute and homeless despite her father being awarded £150 compensation for her 'seduction'.

Women like Powell, who had no way of supporting themselves and their child/ren were forced to seek assistance from the Destitute Asylum, facing an arduous application process where the Destitute Board sought to force support from family members and putative fathers to avoid expending government funds. This reluctance to support single women with illegitimate children was not unique to South Australia but was present throughout the British Empire for the duration of the nineteenth century following the introduction of the *Bastardy Act* of the New Poor Law in Britain in 1834. This thesis has shown that, while the New Poor Law was never transferred directly to South Australia, its absence resulted more from colonial authorities' refusal to acknowledge the presence of pauperism than from any real governmental sympathy for unmarried mothers. As a group, single (working-class) mothers were frequently accused by colonial media of becoming deliberately pregnant, or of making false charges of paternity, in an attempt to strengthen their own financial status either through

maintenance payments or by financial aid from the government—accusations which were similarly levied on women who made accusations of sexual violence.

Colonial law insisted that—just as an illegitimate child's paternity could not be determined on the sole testimony of the mother—accusations of rape and sexual assault could not be substantiated on the word of the plaintiff alone. Examining the 106 charges of sexual violence considered in this thesis, it became apparent that the more serious a charge of sexual violence was, the less likely the court was to convict. While only 20 per cent of indecent assault cases were dismissed without charge, the dismissal statistics for assault with intent and rape were 42 per cent and 68 per cent respectively. When it came to the few case studies involving sexual violence against Aboriginal women, the conviction rate fell to zero.

Using these conviction statistics, this thesis has shown that colonial judges and juries were reluctant to convict men of charges with harsh maximum penalties—often preferring to convict of lesser charges if they chose to convict at all. Of the 40 charges of rape brought by South Australian single women between 1836 and 1880, only two received the maximum penalty of the time (transportation for life). James Douglas was sentenced to death for raping married woman Helen Grant in 1845; however, his sentence was swiftly commuted to transportation for life, making South Australia the only colony where no man was ever executed for rape. Additionally, South Australian authorities' decision to abolish the death penalty for rape more than 40 years before any other colony suggests that legislators were simply not interested in passing harsh penalties for sexual violence. This reluctance to convict highlights a broader issue revealed by the statistics detailed in this thesis, which is South Australian court authorities' propensity to acquit or downgrade charges brought by single women, and an equal propensity to convict with harsh penalties charges which were brought against them.

The verdicts passed in the cases considered in this thesis demonstrate that the harshest penalties were directed towards female servants who stole from their employers, women of 'loose character' or 'known prostitutes', and women who murdered their newborn babies. Infanticide and the lesser charge of concealment of birth triggered widespread public and

media outrage throughout the second half of the nineteenth century—an outrage which was not directed towards abortion, which appeared to be of little police or governmental concern until the later decades of the nineteenth century. In South Australia, as in the rest of the British Empire, this hysteria was heavily directed towards working-class women—particularly domestic servants—who made up the vast majority of infanticide defendants. This thesis argues, however, that the over-representation of domestic servants in infanticide charges likely resulted from the strict supervision that live-in domestic servants were subjected to by their employers, rather than the inherent failing in maternal instinct which colonial courts and media reports often suggested. Despite social and legal decrying of infanticide, colonial courts generally showed lenience towards women accused of infanticide—often choosing to convict of the lesser charges of concealment of birth or manslaughter due to the popular belief that 'civilised' white women only murdered their babies out of temporary, childbirth-induced, insanity. As with men accused of sexual violence, juries were reluctant to convict infanticidal women of a charge which could see them executed or imprisoned for life.

The perception of all infanticidal white women as suffering from temporary insanity was racially motivated, with accusations of infanticide against 'barbarous' Indigenous populations acting as an important tool to justify British colonialism. In the South Australian context, missionary diaries, sensationalist newspaper articles, and reports from the Protector of Aborigines all expressed 'concern' over the apparent prevalence of infanticide in Aboriginal communities, though they rarely offered any real evidence to support their claims. These unsubstantiated rumours of routine infanticide in Aboriginal communities—and in other colonised communities across the British Empire—were intended to highlight the apparent 'barbarism' and lack of parental feeling which British and colonial authorities insisted were inherent in Indigenous peoples. This alleged cultural practice of infanticide was also used to explain high infant mortality in Aboriginal communities—with the purpose of shifting the blame for Indigenous population decline away from European disease, dispossession, and murder.

Disdain for single working-class women was clearest in charges brought against female sex workers, who were confusingly portrayed both as pitiable victims of seduction

and manipulation and as active proponents of immorality and vice. For much of the nineteenth century, the presence of prostitutes in colonial South Australia was ignored or brushed over by colonial authorities as they sought to deny the presence of vice in the colony. Despite this outward denial, there were non-governmental organisations created with the intention of rehabilitating 'fallen' women and returning them to a more respectable course of life. Such organisations led to the creation of the colony's first Female Refuge in 1856 and the Catholic Female Refuge—under the supervision of the Sisters of St Joseph—in 1868. While these institutions were regularly praised in the colonial media, the letter published by five 'known prostitutes' in the *South Australian Register* in 1870 suggested that many sex workers were reluctant to submit themselves to the strict supervision and religious education mandated by these institutions.

Governmental denial of prostitution meant that it was never criminalised in colonial South Australia, though colonial legislation and policing practices allowed 'known prostitutes' to be arrested and charged on a number of prostitution-related charges—including drunkenness, indecent language or behaviour, public solicitation, vagrancy, and owning/residing in a brothel. Such charges were relatively infrequent until protests from the Evangelical Alliance in the mid-1870s pressured police and court authorities to increase the rate of arrests and convictions of 'known prostitutes' in Adelaide. The Evangelical movement hoped that increased policing of sex workers would improve the moral status of the colony, as nineteenth century perceptions of vice suggested that women's sexual misconduct was almost contagious—liable to contaminate otherwise respectable women if allowed to remain in close proximity. Such ideas led to known prostitutes and women with multiple illegitimate children being refused admittance to the Destitute Asylum or, in cases of dire need such as serious illness or oncoming labour, being kept strictly separated from their more respectable, or at least redeemable, counterparts.

These perceptions of sex workers, and hyper-sexualised working-class and Aboriginal women, led to clear legal discrimination—with the cases presented in this thesis demonstrating an increased likelihood of conviction for women with an unchaste reputation, and a correspondingly decreased likelihood of conviction in cases which were instigated by these women. The case studies presented in this thesis showed that female sex workers and

Aboriginal women who brought charges of sexual violence (including indecent assault, assault with intent, and rape) were consistently discredited in court due to their presumed hypersexuality. Colonial understandings of consent led court authorities to perceive women who had consented to sex in the past, especially with more than one man, as almost incapable of non-consent—and therefore undeserving of justice for any sexual violence which was perpetrated against them. Prejudice towards victims of sexual violence was not, however, confined to sex workers and Aboriginal women but was reflective of a wider reluctance to believe the word of women, especially working-class and non-white women, over respectable middle-class (often male) colonists. This reluctance is evident in every form of crime considered in this thesis, both those brought by and against single women—perhaps with the exception of infanticide, where the plaintiff was the colonial government rather than a fellow colonist—and it influenced the outcomes of court cases involving single women for the duration of the nineteenth century.

Overall, the evidence presented in this thesis has demonstrated that—despite colonial authorities' insistence that crime was an inherently masculine sphere—South Australian women were clearly present in colonial crime and court proceedings throughout the pre-1880 colonial period. This thesis considered 841 court cases (333 criminal trials and 508 prostitution-related convictions) brought by and against single women. Of the 281 cases which were brought by or on the behalf of single women, 154 ended in convictions, 91 were acquitted, 25 were downgraded to lesser charges, and 11 were withdrawn or nonsuited. Of the 52 charges brought against single women, 41 ended in convictions, 10 were acquitted, and 1 was withdrawn. The above statistics exclude the 508 prostitution related charges because—due to the high quantity and undetailed reporting of such charges—this thesis only considered those prostitution-related charges which ended in convictions. Again excluding prostitution, these statistics demonstrate that single women were far more likely to appear in colonial courts as plaintiffs than defendants, with only 15.6 per cent of cases involving single women as defendants—supporting the colonial crime statistics which suggest that women consistently made up less than 20 per cent of accused criminals. These statistics also support this thesis' overall argument that, when single women did appear before the colonial courts, they were far more likely (79 per cent) to be convicted of a crime than they were to achieve a conviction for crimes committed against them (55 per cent).

The information presented in this thesis has also demonstrated that South Australian colonial legislation was unsympathetic to single women. For multiple crimes which predominantly victimised unmarried women (including breach of promise, maintenance, seduction, and sexual violence) a charge could not be substantiated on the testimony of the plaintiff alone—a caveat which was not included in male-dominated charges. Some legislation, most notably the exclusion of women from the 1847 *Masters and Servants Act*, directly prevented women from seeking redress for crimes committed against them. This criterion was allegedly introduced after the widescale public outrage following the imprisonment of Mary Watkins in 1846, and it was never replicated in the *Masters and Servants* legislation of any other Australian colony—one of the first of multiple South Australian laws which were not reflected in other Australian colonies.

This thesis has examined numerous laws which emerged in colonial South Australia independent of other Australian colonies, and sometimes even from Britain. These laws include: numerous *Convict Prevention Acts*, instituted and regularly updated by South Australian authorities concerned about the potential increase in crime and immorality associated with convicts and the eastern penal colonies; the 1845 abolition of the death penalty, encouraged by a combination of the same decision in Britain in 1841 and the sentencing of James Douglas to death for rape in 1845; the 1865 *Act to Amend the Law of Slander*—triggered by the 1863 case of Wishart v. Perryman—which labelled sexual slander as equally damaging to women as slander affecting employment; and finally, the 1876 illegalisation of incest in South Australia which does not appear to have been prompted by any specific case, but which preceded other Australian (and British) incest law by 15 years.

These legal changes demonstrate that, while most South Australian legislation was carried over from England, there were instances in which it was created in response to purely South Australian concerns—concerns which were not reflected to the same extent in other colonies at the time. These laws show South Australia's persistent concern with both criminality and the protection of South Australian women from exposure to immorality. Convict prevention legislation—persisting well past the abolition of convict transportation in most Australian colonies—demonstrates South Australian authorities' consistent fear that their superior colony could be corrupted at any time from disreputable outside sources. This

fear was similarly reflected, though not enshrined in law, in frequent debates surrounding the suitability of immigrants—particularly single working-class women—for settlement in the colony out of fear that the 'wrong kind' of immigrants would corrupt the colony's moral standing.

Likewise, South Australian laws showed a clear though changing focus on female morality. First, the exclusion of women from the 1847 *Masters and Servants Act* sought to prevent the imprisonment of young female servants out of fear that proximity with other inmates would leave them further exposed to crime and immorality. Later, the legal recognition of sexual slander demonstrated colonial authorities' fear for the consequences of a sullied sexual reputation for women which damaged their chances for a respectable marriage—the only type of socially acceptable sexual or romantic relationship for colonial women. And finally, the outlawing of incest in 1876 demonstrates colonial authorities' continually evolving grasp of women's sexual vulnerability and the nuances of nineteenth century understandings of sexual consent. These understandings were further underlined by the changes to South Australian sexual consent law in the mid-1880s—occurring outside of the period examined in this thesis. The introduction of sexual slander and incest law was not, however, solely focused on the consequences of pre-marital sex (real or rumoured) for women, but also on the colonial authorities' desire to prevent any form of female sexual immorality and its associated vices—out of fear for the wider moral and reputational consequences for the colony.

Finally, this thesis argues that the outcomes of colonial court cases involving single women were significantly influenced by factors outside of these women's gender and marital status. Most notably, a woman's class, race, and age certainly influenced the outcome of a number of the charges considered in this thesis, with courts less likely to rule in favour of working-class, non-white, and older women than young (pretty), middle-class white women. This imbalance was especially noticeable in charges relating to romantic relationships, where colonial judges and lawyers frequently stated that working-class, older, or unchaste women had not suffered as many social or financial consequences from a broken engagement, damaged reputation, or pre-marital 'seduction' as a pretty, young middle-class woman who could socially elevate herself through marriage. Similarly, many of the crimes which

victimised women (crimes which were predominantly sexual in nature) were dismissed as being encouraged by the hyper-sexualisation of working-class and non-white women which coloured colonial understandings of consent for the duration of the nineteenth century. As this thesis has consistently demonstrated, these combined stereotypes contributed to both the high conviction for crimes which were perpetrated by single women, and the correspondingly high acquittal rate for crimes which victimised these same women.

While this thesis has sought to provide a comprehensive analysis of single women's involvement with crime in colonial South Australia, there remains plenty of room for further research on this subject. Some of the case studies considered in this thesis could benefit from a more in-depth analysis which was not possible within the broader focus of this work. For example, the case of Ann Mara begs further research, particularly as it pertains to judicial bias in the Australian colonies—with a particular focus on the unsolicited intervention of Justice Benjamin Boothby. Additionally, there is call for further investigation into the experiences of South Australian Aboriginal women, particularly in relation to their experiences with colonial law and policing. Finally, the rich pool of primary sources uncovered in this thesis—particularly the unknown number of court records published in colonial newspapers—calls for similar research to be conducted on single women's involvement with the law in the other Australian colonies—for there remains a wealth of untapped case studies which can only enrich historians' understandings of both women and crime in early colonial Australia. As this thesis has demonstrated, highlighting the experiences of women in the colonial sphere not only enriches, but enhances, our understandings of Australian colonial history.

APPENDIX 1			
Breach of Promise Charges Brought in Colonial South Australia, 1836-1880			
Year	**Plaintiff**	**Defendant**	**Verdict**
1855	Miss Evans	Walsingham Welston Tuxford	£200
1856	Margaret Smart Hood	George Shorney	£150
1857	Johanna H. Nitschke	E.W. Harndorf	Nonsuit
1859	Eliza Thorburne	Mr Oldroyd	£250
1862	Honoria Scanlan	James Shannon	£40
1863	Kitty McLeod	John McLeod	£25
1863	Mary Biggin	William Grossert	£10
1863	Margaret Sullivan	Mr O'Callaghan	£35
1865	Mary Martha Thomas	Augustus Size	£175
1866	Miss Plumb	Mr Evans	£70
1866	Miss Ryan	Mr Hagan	Nonsuit—retrial £20
1866	Herpst	Grummett	£100
1866	Anna Lambswood	Frederick W. Wood	£60
1867	Jane Clements	Thomas Henry Bastian	Nonsuit—retrial £100
1867	Margaret Comyns	Green	Dismissed (defendant too young)
1868	Fanny Coote	George Daniel Tynan	£100
1869	Emily Barron	Charles Gooch	£250
1870	Mary Brodie	James Robertson	£825
1870	Mary Humphrey	Patrick Kelley	£1000
1871	Bridget Riordan	Mr Grundy	£350
1872	Miss Lanyon	Mr Bawden	Withdrawn (married)
1873	Margaret Jones	George Heath	£50
1873	Mary Elizabeth Lane	Francis Rogers	£50
1875	Bridget Kelly	Patrick Butler	£50
1875	Mary Ann Ashby	J.E. Vinning	Dismissed (plaintiff not appearing)

1877	Mary Ann Lewis	Mr Perrin	Nonsuit (plaintiff too young)
1877	Annie Richardson	William James Pappin	£150
1877	Elizabeth Baker	George Denman	£50
1878	Amelia Goldsworthy	John Henry Sampson	£25
1879	Miss Smith	Mr Stear	£150
1879	Annie Caroline Carthy	Alfred Hillary Neale	£30
1879	Sarah Ann Bellinger	Neil MacDonald	£350
1880	Bertha Noak	Mr Falland	1s.
1880	Miss Noble	Mr Crawford	£20
1880	May Ann Dickson	John Pudney	£50
1880	Clara Howard	Edward Furze	£30

APPENDIX 2			
Larceny by a (Female) Servant in Colonial South Australia, 1836-1880			
Year	**Name**	**Value of stolen item/s**	**Verdict**
1853	Mary Connoly	19s.	6 months hard labour
1855	Catherine Johnson	£4	2 years hard labour
1859	Catherine Rafferty	£2 8s.	1 month solitary confinement
1859	Sarah Ann Wright	N/A	3 weeks solitary confinement (plus two months already served)
1864	Eliza Warr	£20	2 years hard labour
1865	Ellen Powell	12s. 6d.	12 months hard labour (2nd offence)
1865	Margaret Cloonar/Cleenan	£4 12s.	4 months imprisonment (3 months already served)
1871	Christina Morgan	£5	6 months hard labour
1873	Ellen Martin	3s. 3d.	14 days hard labour
1875	Annie White	£3 5s.	2 months imprisonment
1875	Jane Wyrmer	£1 14s.	3 months hard labour
1875	Elizabeth Strauss	£4 14s.	3 months hard labour
1875	Mary Kenear	£12	8 months hard labour
1876	Ellen Roach	£5	Dismissed
1876	Agnes Sinclair	16s. 6d.	6 months hard labour
1877	Alice Maud Holden	£9	1 year's hard labour

APPENDIX 3			
Maintenance Charges in Colonial South Australia (Single Women), 1836-1880			
Year	**Complainant**	**Defendant**	**Verdict**
1849	Mary Jane Bernard Baker	William Beck	4s. per week
1849	Mary Moonan	William Barry	Nonsuit
1851	Jane Hodge	Paul Roach	3s. 6d. per week
1851	Jemima Pearce	James Croswell	5s. per week
1851	Ellen Hill	Daniel Kavenagh	3s. per week
1851	Ann McGee	William Williamson	Dismissed (child died)
1857	Elizabeth Bradley	Joshua Hepworth	7s. per week
1857	Jane Randall	Daniel Roberts	4s. per week
1858	Sarah Powell	William Bolt	7s. per week
1858	Elizabeth Mitchell	Samuel Cohen	7s. per week
1859	Barbara Walters	T.M. Thwaites	6s. per week
1860	Bridget Power	John Liddy	7s. per week
1862	Sophia Adams	John Nankervis	6s. per week
1864	Johnson	Sparks	7s. per week
1864	Mary Stone	Charles Mudgen	7s. per week
1864	Harriet Hill	Henry Ward	7s. per week
1865	Caroline Bonney	James Oxford	Dismissed
1866	Jane Williams	Henry Crief	10s. per week
1866	Rosanna Waymeth	William Hodby	6s. per week
1867	Honora Kennedy	Martin Delany	Dismissed
1868	Mary Jane Eustace	James Matthews	Dismissed
1868	Caroline Vandelier	John Wayman	Dismissed (child died)
1868	Philippa Glanville	Octivell Warren	Dismissed
1868	Mary Ann Manuel	Mr Rule	Dismissed
1868	Emma Barrowes	John Dew	Dismissed
1869	Miss Kelly	Mr Murphy	4s. per week
1869	Eliza Penney	Joseph Ward	4s. per week
1869	Christina Eddy	James Wheelan	5s. per week
1869	Mary Ann Fryer	James Foulk	7s. per week

1869	Emma Hardymann	Martin Slattery	Dismissed
1869	Louisa Mail	William Bean	Dismissed
1869	Mary Ann Budd	Walter Ann Rutherford	Dismissed
1870	Charlotte Haradine	Charles Smith	4s. per week
1870	Mary Ann Dixon	William Hill	5s. per week
1871	Bridget McGrath	William Lee	Dismissed
1871	Mary Carrail	James McDonald	5s. per week
1872	Louisa Burford	William Hove	Dismissed
1872	Mary Anne Howell	William Aster Reynolds	5s. per week
1872	Ellen Freer	George Brown	5s. per week
1872	Joanna Dassel	Hugo Johnnes Christen	5s. per week
1873	Emma Jane Hubbert	Edward Henry Pinkstone	6s. per week
1873	Kate O'Brien	Charles Cameron Kingston	£1 per week
1873	Martha Reynolds	Henry King	7. 6d. per week
1874	Ellen Keynes	John O'Hara	Dismissed
1874	Hannah Gason	William Ware	5s. per week
1874	Elizabeth Hayes	Edwin Stocker	5s. per week
1874	Annie Lange	William Schultz	Dismissed
1874	Rose Langton	Edward Lane Jr	Dismissed
1875	Ann Willis	John McArdle	6s. per week
1875	Fanny Osborne	Otto Wagner	Dismissed
1875	Elizabeth Clark	Peter Jolly	Dismissed
1875	Elizabeth Jane Sweet	Robert Sanders	Dismissed
1876	Jane Davis	Stephen Haddy	Dismissed
1876	Mary Ann Thornton	Joseph Batty	6s. per week
1876	Bridget Green	John O'Shaugnessy	Dismissed
1876	Elizabeth Douglas	Richard Watson	10s. per week
1876	Lydia Zilm	Johann Frederick Dohnt	30s. per month
1876	Ellen Ockleford	Robert Steelee	7s. per week
1876	Sarah Jones	George Brighton	7s. 6d. per week
1876	Sarah Fitzgerald	Patrick Glenning	7s. per week
1876	Sarah Stanley	George Myles	Dismissed

1877	Nelly Wright	James Fergusson	5s. per week
1877	Hannah Maria Morgan	William Wilson	9s. per week
1877	Mary Harigan	Edward Roscorla	Dismissed
1877	Clara Bennett	Stephen Sloper	5s. per week
1877	Annie Richardson	William Joseph Pappin	12s. per week
1877	Sophia Bawhey	Thomas O'Brien	12s. per week
1877	Mary Gillard Hawker	George Larkwood	5s. per week
1877	Martha Shanton	Philip Thomas Tear	Dismissed
1877	Emily Eliza Schute	Timothy Carroll	8s. per week
1877	Ann Collins	J.H. Noble	Dismissed
1878	Charlotte Nunn	William Lapthorne	7s. 6d. per week
1878	Eliza Newcombe	William Dodd	5s. per week
1878	Minna Walmann	George Murray	10s. per week
1878	Rose Reaney	Daniel Cooke	7s. per week
1878	Mary Ellen Vivian	Joseph Fortune	7s. per week
1878	Bridget McLoghlen	James Foster	6s. per week
1878	Mary Ann Malone	Thomas George Le Brand	7s. per week
1879	Jane Bartholomew	Thomas Warden Jr	Dismissed
1879	Ann Galbraith	William Henry Bennett	Dismissed
1879	Julia Alice Ringwood	William Clarke	Dismissed
1879	Rebecca Ross	H. H. Hussey	Dismissed
1880	Susan Gilbert	Henry Staunton	Dismissed
1880	Caroline Hales	William B. Hales	Dismissed
1880	Ann Driscoll	George Page	Dismissed
1880	Agnes Tanner	Absalom Howe	10s. per week
1880	Elizabeth Jasper	Frank Rawlings	Dismissed
1880	Louisa Reed	Martin Considine	10s. per week
1880	Theresa Schroeder	Charles Day	10s. per week
1880	Elizabeth Hayes	Richard Williams	10s. per week
1880	Mary Rowe	Samuel Grivell	Dismissed

APPENDIX 4			
Indecent Assault Charges Brought by Single Women in Colonial SA (1836-1880)			
Year	**Plaintiff**	**Defendant**	**Verdict**
1854	Elizabeth Pailing (16)	George Sparks (44)	Downgraded to common assault—£25 fine and 6 months imprisonment
1854	Matilda Russell	William Gillick	3 months hard labour
1854	Maria Godwin Reid	John Gregory (14)	£20 fine and 3 months imprisonment (to be extended if fine went unpaid)
1855	Mary Ellen Riley	John Nurse	£5 fine and costs
1855	Sarah Dennis	George Limer	40s. fine and costs
1858	Isabella Sutherland	Henry Cole	£20 fine and imprisonment until the fine was paid (paid immediately)
1865	Emma Germain	Joseph Window	1 month imprisonment
1869	Agnes Blewer	William Stephen Murray	12 months imprisonment
1870	Annie Pollack	Mr Barrowman	Dismissed
1870	Emma Dewson	George Hawke	Dismissed
1871	Agnes Vetich	Joseph Bradbury	6 months imprisonment
1873	Alice Emily Hodgkins	George Toy	Settled outside of court
1875	Alice Maud Holden	William Duff	Downgraded to common assault—£2 fine and costs
1876	Jessie McLay	William Henry Huxham	6 months hard labour (plus five months in gaol awaiting trial)
1876	Ann Johnson	James Cantwell	3 months hard labour
1876	Maria Hoffmann (14)	Edward Hancock	1 year hard labour
1876	Mary Ellen Vivian	Joseph Fortune	No evidence of verdict—possibly settled outside of court because Vivian and Fortune later had a child together (evidence of maintenance trial and marriage in 1878)
1877	Maria Smith (13)	John Bromley	2 years imprisonment

1877	Elizabeth Kirby (‘a half-caste’)	Louis Pennington (‘a boy’), William Thomas (‘a youth’), and Joe Yates (‘a coloured man’)	Dismissed
1878	Mary Brethe	Edward Hancock	2 years imprisonment (previous offence in 1876)
1878	Louisa Gason	Thomas Goodwin	1 year imprisonment
1878	Mary Ann Blackwell	Nathaniel Brain	Withdrawn
1878	Eliza Jane Parsons	George William Owen	Dismissed
1879	Harriet Martin	Christian Kadow (as above)	6 months hard labour
1879	Martha Simmonds	Charles Miller	2 years hard labour
1879	Harriet Martin	Christian Kadow	6 months imprisonment
1879	Mary Cotter	Michael Curtin	Dismissed
1880	Ellen Voce	William McCarthy	Downgraded to common assault—£5 fine
1880	Julia Smith	James Kain	Settled outside of court
1880	Augusta Bermann	John Fahey	Dismissed

APPENDIX 5			
Rape Charges Brought by Single Women in Colonial South Australia (1836-1880)			
Year	**Plaintiff**	**Defendant**	**Verdict**
1849	Rhoda Gregory (16)	Richard Williams (step-father)	Transportation for life
1855	Matilda (alias "printpurse", 'a native woman')	Edward Gibbon	Dismissed
1856	Ann Mara	William Home Popham (employer)	Dismissed
1856	Sarah Salter	John Johnson	Dismissed
1856	Margaret Doyle	John Knox (employer)	Dismissed
1856	Honora Fennell	Harry Figg	Dismissed
1858	Elizabeth Squires	Robert Johnson	Dismissed
1858	Sarah Ann Mould	James Norris	Penal servitude for life
1858	Anne Thomkin	Robert Wallace	Dismissed
1859	Catherine O'Dooley	Thomas Boddington	Dismissed
1861	Frederica Rehder	Thomas William Henry Rehder (brother)	Dismissed
1861	Grace Uren (13)	James Bridgman	20 years hard labour
1864	Sophia Maria Green (12)	Edward Stockdale	Dismissed
1865	Sarah Dart	Edward Haskett	Downgraded to attempted rape—12 months hard labour
1866	Keziah Morris (13)	Arthur Hill Hibbart (employer)	Dismissed
1867	Wilpena Mary Ann (Aboriginal woman)	Thomas Allen	Dismissed
1868	Mary Siedel (14)	Ernest Niemann (step-father)	4 years hard labour
1868	Susannah Groves (13)	Walter Brooks (16)	Dismissed
1869	Mary Ann Bignell (13)	William Dunstall	Dismissed

1870	Elizabeth Ann Holmes (19)	William Holmes (father)	Dismissed
1871	Georgiana Millington (13)	Thomas Griffiths	Dismissed
1871	Jemima Hay	Norman McCoush (15)	7 years imprisonment
1872	Jane Gall	Thomas Lakeman	Dismissed
1873	Margaret Ellen Davies (15)	John Kelly (17)	~~Dismissed~~
1874	Comfort Weston (‘a cripple’)	James O’Donnell	8 years hard labour
1875	Emma Jane Miller (15)	John William Johnson (23)	Downgraded to attempted rape—12 months hard labour
1875	Elizabeth Leffler	Stephen Martin and Jabez Weir	Dismissed
1875	Margaret Nicholls (13)	Timothy Rouen (step-father)	Dismissed
1875	Margaret Power	Charles Petersen	Dismissed
1876	Annie Haire	Joseph Stone	Dismissed
1877	Mary Smith	Henry Jackson	Dismissed
1878	Sarah Hiscock (15)	Adam Myren (20)	5 years hard labour
1879	Eliza Jane Bowden (15)	John Bowden (father)	12 years hard labour and 25 lashes
1879	Mary Ann Foster (15)	Thomas Considine (30)	8 years hard labour
1880	Susan May (14)	Benjamin Mercer	Dismissed
1880	Catherine Bennett (16)	Joseph Burns	Dismissed
1880	Anne Johanna Christina Bowman (12)	John Henry Bowman (father)	7 years hard labour
1880	Elizabeth Garrett (15)	Henry Garrett (father)	7 years hard labour
1880	Ann Eliza Pickles (16)	Abraham Pickles (father)	Dismissed

APPENDIX 6			
Assault with Intent Charges Brought by Single Women in Colonial South Australia (1836-1880)			
Year	**Plaintiff**	**Defendant**	**Verdict**
1840	Ann Spencer	Jesse Minney	12 months hard labour
1841	Eliza Lithel (12)	Aaron Brian	Dismissed
1846	Martha Price	John Corney	12 months hard labour
1849	Elizabeth Ann Butler	John Shenston	Dismissed
1849	Sarah Brown (13-14)	Rhandan ("a Coolie")	Downgraded to common assault—2 months' imprisonment
1851	Bertha Herring	George Wassan	1 year hard labour
1851	Mary Ann Thompson	Thomas Richards	2 years hard labour
1851	Kaonintye ("a native woman")	Thomas Borthwick	Dismissed
1854	Mary Emma Evans (16)	Robert White England	England absconded from the colony and his guarantors were each required to forfeit £50 bail
1855	Matilda (Alias "Printpurse", "a native girl"	Edward Gibbons	Dismissed
1857	Mary Hunt	Thomas Woods	6 months imprisonment
1857	Ann Burton	John Sleigh	6 months penal servitude
1857	Emma Hutchins	Mark Tomlinson	Dismissed
1858	Mary Fulham	John Hannan and Daniel Bryce	5s. fine
1858	Elizabeth Baldwin (14)	James Phillips	Dismissed
1859	Caroline Combe	Thomas Ryan	Downgraded to aggravated assault—6 months hard labour
1859	Susan McMahon	John McPherson	Downgraded to indecent assault—2 months hard labour

1859	Caroline Wilmer	Bungillo (alias "Tommy")	Downgraded to indecent assault—18 months
1860	Margaret Hogan	John England	Dismissed
1861	Rosina Ann Pinkstone	George Howe	Downgraded to indecent assault—12 months hard labour
1863	Elizabeth Harding (15)	John McCuish (16)	Downgraded to indecent assault—6 months imprisonment (last three days in solitary confinement)
1863	Martha Williamson (14)	George Miller	Downgraded to indecent assault—4 months hard labour
1870	Emma Dewson (15)	George Hawke	Dismissed
1875	Bridget Owens	Richard Hosking	3 years hard labour
1875	Elizabeth Thoday	James Wenham	Downgraded to indecent assault—Dismissed
1877	Catherine Flynn	Henry McAuley	Dismissed
1877	Mary Lockier	John Heger	Dismissed
1878	Charlotte Hoare	Thomas Charlton	Dismissed
1878	Emily Murphy	Matthew Murray	Withdrawn
1879	Emma Henning	Christian Kadow	Dismissed
1879	Alice McCabe	George Davis	3 years imprisonment
1880	Emma Schemm	William Young ('a man of colour')	Downgraded to indecent assault—18 months hard labour
1880	Mary Klaffen/Klaffer	Michael O'Brien	Dismissed
1880	Bridget Cole	Walter Bradley	Downgraded to indecent assault—4 months hard labour
1880	Mary Klapper	Michael O'Brien	Dismissed
1880	Mary Jane Follet (12)	Alexander McGee (16)	1 month imprisonment

Bibliography

Primary Sources

Books and Pamphlets

Bates, D. *The Passing of the Aborigines: A Lifetime Spent Among the Natives of Australia*, John Murray: London, 1938.

Burford, WH. *Lecture on Capital Punishment: Viewed in its Social, Political, and Scriptural Aspects*, William Kyffin Thomas: Adelaide, 1874.

Grundy, EL. *Substance of the Speech of Mr Edward Lindley Grundy*, Platts: Adelaide, 1861.

Malthus, TR. *An Essay on the Principle of Population: A View of its Past and Present Effects on Human Happiness* (7th edition), Reeves and Turner: London, 1872.

James, TH. *Six Months in South Australia: With Some Account of Port Philip and Portland Bay in Australia Felix; with Advice to Emigrants, to which is Added a Monthly Calendar of Gardening and Agriculture Adapted to the Climate and Seasons*, London: J. Cross, 1838.

Smith, WR. *The Medico-Legal Aspects of Infanticide and Concealment of Birth: An Address Delivered before the Justices Association of South Australia, on December 13, 1906* (held in the State Library of South Australia). R.M. Osborne: Adelaide, 1907.

Stephens, J. *Land of Promise: Being an Authentic and Impartial History of the Rise and Progress of the New British Province of South Australia*, London: Smith, Elder, and Co., 1839.

Taplin, G. *Copy of Diary of the Rev. Geo. Taplin of Pt. McLeay: vol 1, from April 4, 1859 to August 1, 1865*, State Library of South Australia, 1958.

Wakefield, EG. *A Letter from Sydney: The Principal Town of Australasia*. J. Cross: London, 1829.

Wakefield, EG. *The New British Province of South Australia* (2nd ed.), C. Knight: London, 1838.

Archival Collections/Databases

Australian Dictionary of Biography, National Centre of Biography, Australian National University: Canberra, https://adb.anu.edu.au/.

Australian Joint Copying Project, South Australia: Original Correspondence, 1831-1900 (CO13), National Library of Australia [NLA]: Canberra, https://nla.gov.au/nla.obj-728202791.

PubMed Central (PMC), US National Library of Medicine: Bethesda (MD), https://www.ncbi.nlm.nih.gov/pmc/journals/2460/.

Classical School of Political Economy Collection (The), Online Library of Liberty: Carmel (IN), https://oll.libertyfund.org/title/chadwick-poor-law-commissioners-report-of-1834.

Command Papers, Emigration Department, ProQuest U.K. Parliamentary Papers, https://parlipapers.proquest.com/parlipapers

Correspondence Files ('PCO' Files)—Police Commissioner's Office (GRG5/2), State Records of South Australia [SRSA]: Adelaide.

Governor's Office (GRG2), SRSA: Adelaide.

Lone Graves in South Australia, Flinders Ranges Research, https://www.southaustralianhistory.com.au/lonegraves.htm

Newspapers & Gazettes, Trove, NLA: Canberra, https://trove.nla.gov.au/newspaper/.

South Australian Government Gazettes, South Australian Government Gazette Archive (1839-1899), AUSTLII: Sydney, http://www5.austlii.edu.au/au/other/sa_gazette/

South Australian Legal History Archive, Acts of the Parliament of South Australia 1837-2002, Flinders University: Adelaide, https://dspace.flinders.edu.au/dspace/handle/2328/1894

Newspapers

Adelaide Chronicle and South Australian Literary Record

Adelaide Express, The

Adelaide Observer

Adelaide Times, The

Area's Express, The

Argus, The

Australian Star, The

Ballarat Star, The

Border Watch

Bunyip

Burra Record

Chronicle

Devizes and Wiltshire Gazette

Evening Journal

Express and Telegraph, The

Gawler Standard

Hobart Town Gazette

Illustrates Adelaide News, The

Irish Harp and Farmer's Journal, The

Kapunda Herald

Kapunda Herald and Northern Intelligencer

Maitland Mercury and Hunter River General Advertiser, The

Mercury, The

Moreton Mail

Murray Pioneer and Australian River Record

South Australian Advertiser, The

South Australian Chronicle and Weekly Mail

South Australian Gazette and Colonial Register

South Australian Gazette and Mining Journal

South Australian Record and Australasian Chronicle

South Australian Register

South Australian Weekly Chronicle

Southern Argus

Southern Australian

Sydney Gazette and New South Wales Advertiser

Sydney Morning Herald, The

Wallaroo Times and Mining Journal, The

West Australian, The

Secondary Sources

Ailwood S, P Easteal, and J Kennedy, 'Law's indifference to women's experience of violence: colonial and contemporary Australia', *Women's Studies International Forum*, vol.35, no.2, 2012, pp.86-96.

Alford, K. *Production or Reproduction: An Economic History of Women in Australia, 1788-1850*. Oxford University Press: Melbourne, 1984.

Allen, J. *Sex and Secrets: Crimes Involving Australian Women Since 1880*. Oxford University Press: Melbourne, 1990.

Archer, J. 'Wakefield's theory of "systematic colonisation"', *National Library of Australia News*, vol.13, no.9, 2003, pp.4-7.

Arthure, S, F Breen, S James, and D Lonergan (eds), *Irish South Australia: New Histories and Insights*, Wakefield Press: Adelaide, 2019.

Baird, B. 'Abortion in South Australia before 1970: an oral history project', *Lilith: A Feminist History Journal*, vol.7, 1991, pp.113-127.

Ballantyne, T. 'Remaking the empire from Newgate: Wakefield's *A Letter from Sydney*', in A Burton and I Hofmeyr (eds), *Ten Books that Shaped the British Empire: Creating an Imperial Commons*, Duke University Press: Durham, 2014, pp.29-49.

Barclay, K. 'Emotions, the law and the press in Britain: seduction and breach of promise suits, 1780-1830'. *Journal for Eighteenth Century Studies*, vol.39, no.2., 2016, pp.267-284.

Bavin-Mizzi, J. *Ravished: Sexual Violence in Victorian Australia*, Sydney: UNSW Press, 1995.

Behrendt, L. 'Consent in a (neo)colonial society: Aboriginal women as sexual and legal "other"', *Australian Feminist Studies*, vol.15, no.3, 2000, pp.353-367.

Behrendt, L. 'Law stories and life stories: Aboriginal women, the law and Australian society', *Australian Feminist Studies*, vol.20, no.47, 2005, pp.245-254.

Bennett, JM. 'Feminism and history?', *Gender & History*, vol.1, no.3, 1989, pp.251-272.

Bennett, JM. *History Matters: Patriarchy and the Challenges of Feminism*, University of Pennsylvania Press: Philadelphia, 2006.

Bernstein, E. ‘What’s wrong with prostitution? What’s right with sex work? Comparing markets in female sexual labour’, *Hastings Women’s Law Journal*, vol.10, 1999, pp.91-117.

Bishop, C. *Minding Her Own Business: Colonial Businesswomen in Sydney*, NewSouth Publishing: Sydney, 2015.

Block, S. *Rape and Sexual Power in Early America*, University of North Carolina Press: Chapel Hill, 2006.

Blyton G, and J Ramsland, ‘Mixed-race unions and Indigenous demography in the Hunter Valley of New South Wales, 1788-1850’, *Journal of the Royal Australian Historical Society*, vol.98, no.1, 2012, pp.125-148.

Bock, G. ‘Women’s history and gender history: Aspects of an international debate’, *Gender & History*, vol.1, no.1, 1989, pp.7-30.

Butlin, NG. *Forming a Colonial Economy, Australia 1810-1850*. Cambridge University Press: Melbourne, 1994.

Burton, B. *“Bad” Mothers? Infant Killing in Victoria 1885-1914* (Honours Thesis), University of Melbourne, 1986.

Caball, KM. *The Kerry Girls: Emigration and the Earl Grey Scheme*, The History Press Ireland: Dublin, 2014.

Carmichael, GA. ‘From floating brothels to suburban semirespectability: two centuries of nonmarital pregnancy in Australia’, *Journal of Family History*, vol.21, no.3, 1996, pp.281-315.

Casella, EC. ‘“A woman doesn’t represent business here”: negotiating femininity in nineteenth-century colonial Australia’, *The Written and the Wrought: Complementary Sources in Historical Archaeology. Essays in Honour of James Deetz, Kroeber Anthropological Society Papers*, no.79, 1995, pp.33-43.

Casella, EC. ‘“Doing trade”: a sexual economy of nineteenth-century Australian female convict prisons’, *World Archaeology*, vol.32, no.2, 2000, pp.209-221.

Clark, A. ‘The politics of seduction in English popular culture, 1748-1848’, in J Radford (ed.), *Routledge Revivals: The Progress of Romance (1986): The Politics of Popular Fiction*, London: Routledge, 2016, pp.47-70.

Cody, LF. ‘The politics of illegitimacy in an age of reform: Women, reproduction, and political economy in England’s New Poor Law of 1834’, *Journal of Women’s History*, vol.11, no.4, 2000, pp.131-156.

Coleman, J. ‘Incorrigible offenders: Media representations of female habitual criminals in the late Victorian and Edwardian press’, *Media History*, vol.22, no.2, 2016, pp.143-158.

Conor, L. *Skin Deep: Settler Impressions of Aboriginal Women*, UWA Publishing: Perth, 2016.

Conor, L. ‘The “Drover’s Boy” and Indigenous women’s unthinkable consent’, in A Piper and A Stevenson (eds), *Gender Violence in Australia: Historical Perspectives*, Monash University Publishing: Melbourne, 2019, pp.95-113.

Coombe, RJ. ‘“The most disgusting, disgraceful and iniquitous proceeding in our law”: the action for breach of promise of marriage in nineteenth-century Ontario’, *The University of Toronto Law Journal*, vol.38, no.1, pp.64-108.

Connors, L. ‘Uncovering the shameful: sexual violence on an Australian colonial frontier’, in R Mason (ed.), *Legacies of Violence: Rendering the Unspeakable Past in Modern Australia*, Berghahn Books: New York, 2017, pp.33-52.

Cossins, A. *Female Criminality: Infanticide, Moral Panics and the Female Body*, Palgrave Macmillan: London, 2015.

Cossins, A. ‘Saints, sluts and sexual assault: Rethinking the relationship between sex, race and gender’, *Social and Legal Studies*, vol.12, no.1, 2003, pp.77-103.

Craig, S. ‘Women, crime and the experience of servitude in colonial America and Australia’, *Limina*, vol.19, 2013, pp.1-10.

Damousi, J. *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia*, Cambridge University Press: Cambridge, 1997.

de Costa, C. ‘Abortion law, abortion realities’, *James Cook University Law Review*, vol.15, 2008, pp.6-22.

Dickey, B. ‘Why were there no poor laws in Australia?’, *Journal of Policy History*, vol.4, no.2, pp.111-133.

Ditmore, MH. *Prostitution and Sex Work*, Greenwood: Santa Barbra, 2011.

Dussart, F. ‘“Strictly legal means”: Assault, abuse and the limits of acceptable behaviour in the servant-employer relationship in metropole and colony 1850-1890’, in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, pp.169-187.

Edmonds, P. ‘The intimate, urbanising frontier: Native camps and settler colonialism’s violent array of spaces around early Melbourne’, in T Banivanua Mar and P Edmonds (eds), *Making Settler Colonial Space: Perspectives on Race, Place and Identity*, Palgrave Macmillan: New York, 2010, pp.129-154.

Elliot DW. ‘Convict servants and middle-class mistresses’, *Literature Interpretation Theory*, vol.16, no.2, 2005, pp.163-187.

Ellison, L and VE Munroe, ‘Turning mirrors into windows? Assessing the impact of (mock) juror education in rape trials’, *British Journal of Criminology*, vol.49, 2009, pp.363-383.

Evans, T. ‘The meanings and experiences of single mothers in nineteenth-century Sydney, Australia’, *Annales de Démographie Historique*, no.27, 2014, pp.73-96.

Farrell, EF. ‘“The fellow said it was not harm and only tricks”: the role of the father in suspected cases of infanticide in Ireland, 1850-1900’, *Journal of Social History*, vol.45, no.4, 2012, pp.990-1004.

Featherstone, L. ‘Becoming a baby? The foetus in late-nineteenth century Australia’, *Australian Feminist Studies*, vol.23, no.58, 2008, pp.451-465.

Field, JF. ‘Domestic service, gender, and wages in rural England, c.1700-1860’, *Economic History Review*, vol.66, no.1, 2013, pp.249-272.

Finlay, H. ‘Lawmaking in the shadow of the empire: divorce in colonial Australia’, *Journal of Family History*, vol.24, no.1, 1999, pp.74-109.

Foster, R. '"His Majesty's most gracious and benevolent intentions": South Australia's Foundation, the Idea of "Difference", and Aboriginal Rights', *Journal of Australian Colonial History*, vol.15, 2013, pp.105-120.

Foster, R and P Mühlhäusler, 'Native tongue, captive voice. The representation of the Aboriginal "voice" in colonial South Australia', *Language and Communication*, vol.16, no.1, 1996, pp.1-16.

Frost, G. *Illegitimacy in English Law and Society, 1860-1930*, Manchester University Press: Manchester, 2016.

Frost, GS. *Promises Broken: Courtship, Class, and Gender in Victorian England*, University of Virginia Press: Charlottesville, 1995.

Gale, F. 'Roles revisited: The women of southern South Australia', in P Brock (ed.), *Women, Rites and Sites: Aboriginal Women's Cultural Knowledge*, Sydney: Allen & Unwin, 1989.

Gardiner, A. 'Can historical infanticide investigations help us understand embodied experiences of the past?', *Australian Feminist Studies*, 2021, pp.1-25.

George, D. *Mary Lee: The Life and Times of a 'Turbulent Anarchist' and Her Battle for Woman's Rights*, Wakefield Press: Adelaide, 2018.

Geyer, M. *Behind the Wall: The Women of the Destitute Asylum Adelaide, 1852-1918*. Wakefield Press: Kent Town, 2008.

Gibbs, RM. *Under the Burning Sun: A History of Colonial South Australia, 1836-1900*. Peacock Publications: Adelaide, 2013.

Gleeson, K. 'From centenary to the Olympics, gang rape in Sydney', *Current Issues in Criminal Justice*, vol.16, no.2, 2005, pp.183-201.

Goc, N. *Women, Infanticide and the Press, 1822-1922: News Narratives in England and Australia*. Ashgate Publishing Limited: Surrey, 2013.

Gordon, L. 'Response to Scott.' *Signs*, vol. 15, no.4, 1990, pp.852-853.

Gothard, J. *Blue China: Single Female Migration to Colonial Australia*. Melbourne University Press: Melbourne, 2001.

Gothard, J. ‘Wives or workers? Single British female migration to colonial Australia.’ In P Sharpe (ed.) *Women, Gender and Labour Migration: Historical and Global Perspectives*, Routledge: Oxon, 2001, pp.163-180.

Grey, G. ‘Creating the “problem Hindu”: Sati, thuggee and female infanticide in India, 1800-60’, in de Groot, J and S Morgan (eds), *Sex, Gender and the Sacred: Reconfiguring Religion in Gender History*, Blackwell Publishing Ltd: Chichester, 2014, pp.104-116.

Grey, DJR. ‘Gender, religion, and infanticide in colonial India, 1870-1906’, *Victorian Review*, vol.32, no.2, 2011, pp.107-120.

Grey, DJR. ‘“It is impossible to judge the extent to which the crime is prevalent”: infanticide and the law in India, 1870-1926, *Women’s History Review*, 2020, pp.1-19.

Grey, DJR. ‘“No crime to kill a bastard-child”: Stereotypes of infanticide in nineteenth-century England and Wales’, in B Leonardi (ed.), *Intersections of Gender, Class, and Race in the Long Nineteenth Century and Beyond*, Palgrave Macmillan: London, 2018, p.48.

Grimshaw, P. ‘Reading the silences: Suffrage activists and race in nineteenth-century settler societies’, in P Grimshaw, K Holmes and M Lake, *Women’s Rights and Human Rights: International Historical Perspectives*, Palgrave: Hampshire, 2001, pp.31-48.

Grimshaw, P, M Lake, A McGrath & M Quartly, *Creating a Nation*. Penguin Books Australia Ltd: Ringwood, 1994.

Grimshaw, P, S Janson, and M Quartly (eds), *Freedom Bound I: Documents on Women in Colonial Australia*, Sydney: Allen & Unwin, 1995.

Haebich, A. ‘Neoliberalism, settler colonialism and the history of Indigenous child removal in Australia’, *Australian Indigenous Law Review*, vol.19, no.1, 2015, pp.20-31.

Haines, R and J McDonald, ‘Skills, origins and literacy: A comparison of the bounty immigrants into New South Wales in 1841, with the convicts resident in the colony’, *Australian Economic History Review*, vol.42, no.2, 2002, pp.132-159.

Haines, RF. *Nineteenth Century Government Assisted Immigrants from the United Kingdom to Australia: Schemes, Regulations and Arrivals, 1831-1900 and Some Vital Statistics 1834-1860*, Flinders University: Adelaide, 1995.

Hamm G, P Mitchell, LJ Arnold, GJ Prideaux, D Questiaux, NA Spooner, VA Levchenko, EC Foley, TH Worthy, B Stephenson, V Coulthard, C Coulthard, S Wilton, and D Johnston, 'Cultural innovation and megafauna interaction in the early settlement of arid Australia', *Nature*, vol.539, 2016, pp.280-283.

Harris, J. 'Hiding the bodies: The myth of the humane colonisation of Aboriginal Australia', *Aboriginal History*, vol.27, 2003, pp.79-104.

Haskins, V. '"Down in the gully and just outside the garden walk": White women and the sexual abuse of Aboriginal women on a colonial Australian frontier', *History Australia*, vol.10, no.1, 2013, pp.11-34.

Haskins, V. 'From the centre to the city: Modernity, mobility and mixed-descent Aboriginal domestic workers from central Australia', *Women's History Review*, vol.18, no.1, 2009, pp.155-175.

Haskins, V. 'On the doorstep: Aboriginal domestic service as a "contact zone"', *Australian Feminist Studies*, vol.16, no.4, 2001, pp.13-25.

Haskins, V and M Jacobs, 'Stolen generations and vanishing Indians: the removal of Indigenous children as a weapon of war in the United States and Australia, 1870-1940', in J Marten (ed.), *Children and War: A Historical Anthology*, New York University Press: New York, 2002, pp.227-241.

Hastings, J. 'The "wrong kind" of immigrant: How existing prejudice on class, gender and ethnicity affected the reception of female Irish Famine orphans in South Australia under the Earl Grey Scheme', in S Arthure, F Breen, S James and D Lonergan (eds), *Irish South Australia: New Histories and Insights*, Wakefield Press: Adelaide, 2019, pp.131-142.

Heath, M and E Mulligan, 'Abortion in the shadow of the criminal law: The case of South Australia', *Adelaide Law Review*, vol.37, 2016, pp.41-68.

Higman, BW. 'An historical perspective: colonial continuities in the global geography of domestic service', in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, pp.35-54.

Higman, BW. *Domestic Service in Australia*, Melbourne University Press: Carlton South, 2002.

Hoffmann, R. 'Illegitimacy in colonial South Australia', *Journal of Friends of Lutheran Archives*, vol.20, 2010, pp.63-67.

Hufton, O. 'Women and violence in Early Modern Europe', In F Dieteren and E Kloek (eds), *Writing Women into History*, Historisch Seminarium van de Universiteit van Amsterdam: Amsterdam, 1990, pp.75-95.

Hunt, A. 'Calculations and concealments: Infanticide in mid-nineteenth century Britain', *Victorian Literature and Culture*, vol.34, no.1, 2006, pp.71-94.

Jacobs, MD. 'Maternal colonialism: white women and Indigenous child removal in the American West and Australia, 1880-1940, *Western Historical Quarterly*, vol.36, no.4, 2005, pp.453-476.

Jones, H. *In Her Own Name: A History of Women in South Australia from 1836*, Wakefield Press: Kent Town, 1994.

Kaladelfos, A. 'The "condemned criminals": sexual violence, race, and manliness in colonial Australia', *Women's History Review*, vol.21, no.5, 2012, pp.697-714.

Kaladelfos, A. 'The politics of punishment: Rape and the death penalty in colonial Australia, 1841-1901'. *History Australia*, vol.9, no.1, 2012, pp.155-175.

Kaladelfos, A. 'Uncovering a hidden offence: Social and legal histories of familial sexual abuse', in A Piper and A Stevenson (eds), *Gender Violence in Australia: Historical Perspectives*, Monash University Publishing: Melbourne, 2019, pp.63-77.

Keane, MV. *'Ourselves Alone'?: The Work of Single Women in South Australia, 1911-1961: The Institutions which They Shaped and which Shaped Them* (PhD Thesis), University of Adelaide, 2005.

Kelly, J. '"An Unnatural Crime": Infanticide in early nineteenth-century Ireland'. *Irish Economic and Social History*, vol.46, no.1, 2019, pp.66-110.

Keown, J. *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*, Cambridge University Press: Cambridge, 1988.

Kimber, J. '"A nuisance to the community": policing the vagrant woman', *Journal of Australian Studies*, vol.34, no.3, 2010, pp.275-293.

King, AJ. 'Constructing gender: sexual slander in nineteenth-century America', *Law and History*, vol.13, no.1, 1995, pp.63-110.

Kippen R and PA Gunn, 'Convict bastards, common-law unions, and shotgun weddings: premarital conceptions and ex-nuptial births in nineteenth-century Tasmania', *Journal of Family History*, vol.36, no.4, 2011, pp.387-403.

Kleinig, M. '"We shall always bear a kind remembrance of them": The shipboard organisation of single assisted female immigrants from the British Isles to South Australia, 1870s to 1930', *Journal of the Historical Society of South Australia*, no.37, 2009, pp.41-60.

Kociumbas, J. 'Azaria's antecedents: stereotyping infanticide in late-nineteenth century Australia', *Gender and History*, vol.13, no.1, 2001, pp.138-160.

Lake, J. 'Protecting "injured female innocence" or furthering "the rights of women?" The sexual slander of women in New York and Victoria (1808-1887)', *Women's History Review*, 2021, pp.1-25.

Lake, M. 'Women's and gender history in Australia: A transformative practice', *Journal of Woman's History*, vol.25, no.4, 2013, pp.190-211.

Larcombe, W. 'Cautionary tales and telling anxieties: The story of the false complainant', *Australian Feminist Law Journal*, vol.16, no.1, 2002, pp.95-108.

Larcombe, W. ‘The “ideal” victim v successful rape complainants: Not what you might expect’, *Feminist Legal Studies*, vol.10, no.2, 2002, pp.131-148.

Laster, K. ‘Infanticide: a litmus test for feminist criminological theory’, *Australia and New Zealand Journal of Criminology*, vol.22, 1989, pp.151-166.

Leonardi, B. ‘Motherhood, mother country, and migrant maternity’, in B Leonardi (ed.), *Intersections of Gender, Class, and Race in the Long Nineteenth Century and Beyond*, Palgrave Macmillan: London, 2018, pp.17-40.

Lowrie,C. ‘“A frivolous prosecution”: Allegations of physical and sexual abuse of domestic servants and the defence of colonial patriarchy in Darwin and Singapore, 1880s-1930s’, in P Edmonds and A Nettelbeck (eds), *Intimacies of Violence in the Settler Colony: Economies of Dispossession Around the Pacific Rim*, Palgrave Macmillan: London, 2018, pp.249-272.

Lydon, J. ‘Colonial “blind spots”: Images of Australian frontier conflict’, *Journal of Australian Studies*, vol.42, no.4, 2018, pp.409-427.

Lydon, J. *Imperial Emotions: The Politics of Empathy Across the British Empire*, Cambridge University Press: Cambridge, 2019.

Marland, H. *Dangerous Motherhood: Insanity and Motherhood in Victorian Britain*, Palgrave Macmillan: New York, 2004.

Marland, H. ‘Disappointment and desolation: women, doctors, and interpretations of puerperal insanity in the nineteenth century’, *History of Psychiatry*, vol.14, no.3, 2005, pp.303-320.

Mason, R. ‘Introduction: Rendering the legacies of the past’, in R Mason (ed), *Legacies of Violence: Rendering the Unspeakable Past in Modern Australia*, Berghahn Books: New York, 2016, pp.1-32.

McCalman J, F Bridge, M Whiteside, R Bainbridge, K Tsey, and C Jongen, 'Responding to Indigenous Australian sexual assault: A systematic review of the literature', *SAGE Open*, vol.4, no.1, 2014, pp.1-13.

McKenzie, K. *Scandal in the Colonies: Sydney & Cape Town, 1820-1850.* Melbourne University Press: Carlton, 2004.

Millar, E. 'Feminism, foetocentrism, and the politics of abortion choice in the 1970s Australia', in S Stettner, K Ackerman, K. Burnett, and T Hay (eds), *Transcending Borders: Abortion in the Past and Present*, Palgrave Macmillan: London, 2017, pp.121-136.

Millar, E. '"Too many": anxious white nationalism and the biopolitics of abortion', *Australian Feminist Studies*, vol.30, no.83, 2015, pp.82-98.

Milne, E. 'Concealment of birth: time to repeal a 200-year-old "convenient stopgap"?, *Feminist Legal Studies*, vol.27, 2019, pp.139-162.

Moya, JC. 'Domestic service in a global perspective: gender, migration, and ethnic niches', *Journal of Ethnic and Migration Studies*, vol.33, no.4, 2007, pp.559-579.

Murthy, P. 'Making the private public: witnessing female infanticide in nineteenth-century Kathiawar', *Gender and History*, 2021, pp.1-17.

Nance, C. 'Women in colonial South Australia', *Tradition*, 1978, pp.14-18.

Nance, C. 'Women, public morality and prostitution in early South Australia.' *Push from the Bush*, no.3, 1979, pp.33-43.

Nettelbeck, A. 'Colonial protection and the intimacies of Indigenous governance', *History Australia*, vol.14, no.1, 2017, pp.32-47.

Nettelbeck, A. 'Mythologising frontier: Narrative versions of the Rufus River conflict, 1841-1899', *Journal of Australian Studies*, vol.23, no.61, 1999, pp.75-82.

Nochlin, L. ‘Lost and found: Once more the fallen woman’, *The Art Bulletin*, vol.60, no.1, 1978, pp.139-153.

O’Brien, A. ‘“Kitchen fragments and garden stuff”: Poor Law discourse and Indigenous people in early colonial New South Wales’, *Australian Historical Studies*, vol.39, no.2, 2008, pp.150-166.

O’Brien, A. ‘Pauperism revisited’, *Australian Historical Studies*, vol.42, no.2, 2011, pp.212-229.

Olson RM and C García-Moreno, ‘Virginity Testing: A Systematic Review’, *Reproductive Health*, vol.14, no.61, 2017, pp.1-10.

Oxley, D. *Convict Maids: The Forced Migration of Women to Australia*, Cambridge: Cambridge University Press, 1996.

Oxley, D. ‘Convict Women’, in S Nicholas (ed), *Convict Workers: Reinterpreting Australia’s Past*, Cambridge University Press: Cambridge, 1988, pp.85-97.

Parker, C. ‘A parliament’s right to choose: Abortion law reform in South Australia’, *History Australia*, vol.11, no.2, 201, pp.60-79.

Parker, C. *Abortion, Homosexuality and the Slippery Slope: Legislating ‘Moral’ Behaviour in South Australia* (PhD Thesis), University of Adelaide, 2013.

Parker, C. ‘Female complaints and certain events: silencing abortion discourse’, *Lilith: A Feminist History Journal*, vol.19, 2013, pp.32-45.

Philips, D. ‘Sex, race, violence and the criminal law in colonial Victoria: Anatomy of a rape case in 1888’, *Labour History*, no.52, 1987, pp.30-49.

Phillips, R. ‘Imperialism and the regulation of sexuality: colonial legislation on contagious diseases and ages of consent’, *Journal of Historical Geography*, vol.28, no.3, 2002, pp.339-362.

Phipps, A. ‘Rape and respectability: Ideas about sexual violence and social class’, *Sociology*, vol.43, no.4, 2009, pp.667-683.

Piddock, S. ‘“An irregular and inconvenient pile of buildings”: The Destitute Asylum of Adelaide, South Australia and the English workhouse’, *International Journal of Historical Archaeology*, vol.5, no.1, 2001, pp.73-95.

Piddock, S. ‘To each a space: class, classification, and gender in colonial South Australian institutions’, *Historical Archaeology*, vol.45, no.3, 2011, pp.89-105.

Pike, D. *Paradise of Dissent: South Australia 1829-1857*, Longmans, Green and Co: Melbourne, 1957.

Plomley, B and KA Henley, ‘The sealers of Bass Strait and the Cape Barren Island community. [includes appendices consisting of brief biographies of men associated with sealing in Bass Strait and Kangaroo Island, and of Aboriginal women held in captivity by the sealers]’, *Papers and Proceedings: Tasmanian Historical Research Association*, vol.37, no.2-3, 1990, pp.37-127.

Price, RN. ‘The psychology of colonial violence’, in P Dwyer and A Nettelbeck (eds), *Violence, Colonialism and Empire in the Colonial World*, London: Palgrave Macmillan, 2018, pp.25-52.

Pruitt, LR. ‘“On the chastity of women all property in the world depends”: injury from sexual slander in the nineteenth century’, *Indiana Law Journal*, vol.78, no.3, 2003, pp.965-1018.

Purvis, J. ‘Using primary sources when researching women’s history from a feminist perspective.’ *Women’s History Review*, vol.1, no.2, 1992, pp.273-306.

Quilter, J. ‘Rape trials, medical texts and the threat of female speech: The perverse female rape complainant’, *Law Text Culture*, vol.19, 2016, pp.231-270.

Quinn, C. ‘Images and impulses: representations of puerperal insanity in late Victorian England’, in M Jackson (ed.), *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, Routledge: London, 2002, pp.193-215.

Ravilious, K. ‘The first Australians’, *Archaeology*, vol.70, no.4, 2017, pp.49-53.

Reece, B. *Daisy Bates: Grand Dame of the Desert*, National Library of Australia: Canberra, 2007.

Reekie, G. *Measuring Immorality: Social Inquiry and the Problem of Illegitimacy*. Cambridge University Press: Cambridge, 1998.

Robatjazi M, M Simbar, F Nahidi, J Gharehdaghi, M Emamhadi, AA Vedadhir, and H Alavimajd, ‘Virginity testing beyond a medical examination’, *Global Journal of Health Science*, vol. 8, no. 7, 2016, pp.152.

Robatjazi M, M Simbar, F Nahidi, J Gharehdaghi, M Emamhadi, AA Vedadhir, and H Alavimajd, ‘Virginity testing then and now’, *International Journal of Medical Toxicology and Forensic Medicine*, vol.6, no.1, 2016, pp.36-43.

Robert, H. ‘Disciplining the female Aboriginal body: Inter-racial sex and the pretence of separation’, *Australian Feminist Studies*, vol.16, no.34, 2001, pp.69-81.

Robinson, G. ‘The Salt Creek murders: violence and resilience in early South Australian settlement’, *Journal of the Historical Society of South Australia*, no.43, 2015, pp.53-68.

Robinson, S. ‘“Always a good demand”: Aboriginal child domestic servants in nineteenth- and early twentieth-century Australia’, in VK Haskins and C Lowrie (eds), *Colonization and Domestic Service: Historical and Contemporary Perspectives*, New York: Routledge, 2015, pp.113-128.

Robinson, S. '"We do not want one who is too old": Aboriginal child domestic servants in late 19th and early 20th century Queensland', *Aboriginal History*, vol.27, 2003, pp.162-182.

Robinson, S and J Paten, 'The question of genocide and Indigenous child removal: the colonial Australian context', *Journal of Genocide Research*, vol.10, no.4, 2008, pp.501-518.

Rofe, MW. 'The city of corpses? Contested urban identity and the stigma of crime in Adelaide, South Australia', *Landscape Research*, vol.41, no.8, 2016, pp.966-979.

Rubenstein, W. 'Infanticide in Traditional Aboriginal Society', *Quadrant*, vol.65, no.12, pp.80-82.

Rushen, L. 'Marriage options for immigrant women in colonial Australia in the 1830s', *Journal of Australian Colonial History*, vol.16, 2014, pp.111-126.

Russell, L. '"Dirty domestics and worse cooks": Aboriginal women's agency and domestic frontiers, Southern Australia, 1800-1850', *Frontiers: A Journal of Women's Studies*, vol28, no.1/2, 2007, pp.18-46.

Russell, P. *Savage or Civilised? Manners in Colonial Australia*, Sydney: University of New South Wales Press, 2010.

Rychner, G. 'Murderess or madwoman?: Margaret Heffernan, infanticide and insanity in colonial Victoria', *Lilith: A Feminist History Journal*, vol.23, 2017, pp.91-104.

Sanchez, LE. 'The global e-rotic subject, the ban, and the prostitute-free zone: sex work and the theory of differential exclusion', *Environment and Planning D: Society and Space*, vol.22, 2004, pp.861-883.

Scheidlich-Day, S. 'From "Angel in the House" to "Angel in the Bush": The impact of Victorian notions of femininity on colonial South Australia', in K Darian-Smith, P

Grimshaw, K Lindsey, and S Mcintyre (eds), *Exploring the British World: Identity, Cultural Production, Institutions*, RMIT Publishing: Melbourne, 2004, pp.365-372.

Scott, J. 'Gender, a useful category of historical analysis.' *The American History Review*, vol.91, no.5, 1986, pp.1053-1075.

Scott, J. 'The Evidence of Experience.' *Critical Inquiry*, vol.17, no.4, 1991, pp.773-797.

Sen, S. 'The savage family: Colonialism and female infanticide in nineteenth-century India'. *Journal of Women's History*, vol.14, no.3, 2002, pp.53-79.

Sendziuk P and R Foster. *A History of South Australia*, Cambridge University Press: Port Melbourne, 2018.

Simmonds, A. '"Promises and pie-crusts were made to be broke": breach of promise of marriage and the regulation of courtship in early colonial Australia', *Australian Feminist Law Journal*, vol.23, no.1, 2005, pp.99-120.

Simmonds, A. 'Gay Lotharios and innocent Eves: child maintenance, masculinities and the action for breach of promise of marriage in colonial Australia', *Law in Context*, vol.34, no.1, 2016, pp.58-75.

Smits, K. 'John Stuart Mill on the Antipodes: Settler Violence Against Indigenous Peoples and the Legitimacy of Colonial Rule', *Australian Journal of Politics and History*, vol.54, no.1, 2008, pp.1-15.

Snow, D. 'Family policy and orphan schools in early colonial Australia', *The Journal of Interdisciplinary History*, vol.22, no.2, 1991, pp.255-284.

Spongberg, M. 'Rape', in B Caine, M Gatens, E Grahame, J Larbalestier, S Watson and E Webby (eds), *Australian Feminism: A Companion*, Oxford University Press: Oxford, 1988, pp.254-263.

Steiner, M. *Servants Depots in Colonial South Australia*, Wakefield Press: Kent Town, 2009.

Steinbach, SL. 'The melodramatic contract: Breach of promise and the performance of virtue', *Nineteenth Century Studies*, vol.14, 2000, pp.1-34.

Stephens, M. 'A word of evidence: Shared tales about infanticide and "others not us" in colonial Victoria'. In J Carey and C McLisky (eds), *Creating White Australia*, Sydney: Sydney University Press, 2009, pp.175-194.

Stephens, M. 'Infanticide at Port Phillip: Protector William Thomas and the witnessing of unseen things', *Aboriginal History*, vol.38, 2014, pp.109-130.

Stevenson, K. 'Unequivocal victims: The historical roots of the mystification of the female complainant in rape cases', *Feminist Legal Studies*, vol.8, no.3, 2000, pp.343-366.

Stoler, AL. *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things*, Durham: Duke University Press, 1995.

Sumerling, P. *Infanticide, Baby-Farming and Abortion in South Australia 1870-1910* (Honours Thesis), University of Adelaide, 1983.

Summers, A. *Damned Whores and God's Police: The Updated Edition of the Classic Study of Women in Australian Society*, Penguin Books: London, 1994.

Swain, S. 'Maids and mothers: domestic servants and illegitimacy in 19th-century Australia', *The History of the Family*, vol.10, no.4, 2005, pp.461-471.

Swain, S. 'Infanticide, savagery and civilization: The Australian experience', In BH Bechtold and DC Graves (eds), *Killing Infants: Studies in the Worldwide Practice of Infanticide*, Lewiston: The Edwin Mellen Press, 2006, pp.85-105.

Swain, S and M Hillel, *Child, Nation, Race and Empire: Child Rescue Discourse, England, Canada and Australia, 1850-1915*, Manchester University Press: Manchester, 2017.

Swain, S and R Howe, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia*, Cambridge University Press: Cambridge, 1995.

Taylor, R. *Unearthed: The Aboriginal Tasmanians of Kangaroo Island*, Wakefield Press: Kent Town, 2002.

Temkin, J. 'Prosecuting and defending rape: Perspectives from the bar', *Journal of Law and Society*, vol.27, no.2, 2000, pp.219-248.

Tonkinson, M. 'Sisterhood or Aboriginal servitude? Black women and white women on the Australian frontier', *Aboriginal History*, vol.12, 1988, pp.27-40.

Tooley, M. *Abortion and Infanticide*, Clarendon Press: Oxford, 1983.

Twomey, C. 'Courting men: mothers, magistrates and welfare in the Australian colonies', *Women's History Review*, vol.8, no.2, 1999, pp.231-246.

Vamplew W. (ed.) *Australians, Historical Statistics*, Fairfax, Syme and Weldon Associates: Broadway (NSW), 1987.

Van der Meulen, E, EM Durisin, and V Love (eds), *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, UBC Press: Vancouver, 2013.

van Rijswijk, H. "#MeToo Under Colonialism: Conceptualizing Responsibility for Sexual Violence in Australia', *Journal of Perpetrator Research*, vol.3, no.1, 2020, pp.29-41.

Waddams, SM. *Sexual Slander in Nineteenth Century England: Defamation in the Ecclesiastical Courts, 1815-1855*, University of Toronto Press: Toronto, 2000.

Walker, D. 'Youth on trial: The Mt Rennie Case', *Labour History*, no.50, 1987, pp.28-41.

Wallis, A. 'Unnatural womanhood: Moral treatment, puerperal insanity and the female patients at the Fremantle Lunatic Asylum, 1858-1908', *Lilith: A Feminist History Journal*, vol.26, 2020, pp.171-195.

Wasserlein Emmerichs, MB. ‘Trials of women for homicide in nineteenth-century England’, *Women and Criminal Justice*, vol.5, no.1, 1993, pp.99-110.

White, A. ‘The servant’s wages: Malacky Martin and the Salt Creek murder’, *Journal of the Historical Society of South Australia*, no.23, 1995, pp.36-50.

Whitelock, D. *Adelaide 1836-1976: A History of Difference*, University of Queensland Press: St Lucia, 1977.

Whitelock, D. *Adelaide from Colony to Jubilee: A Sense of Difference*. Savvas Publishing: Adelaide, 1985.

Woolacott, A. *Settler Society in the Australian Colonies: Self-Government and Imperial Culture*, Oxford: Oxford University Press, 2015.

Woolacott, A. ‘The meanings of protection: women in colonial and colonizing Australia’, *Journal of Women’s History*, vol.14, no.4, 2003, pp.213-221.

Young, L. *Middle-Class Culture in the Nineteenth Century: America, Australia and Britain*, Springer: New York, 2012.