

Abortion and Infanticide in Western Canada 1874 to 1916: A Criminal Case Study

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Recent historical writing on the subject of abortion in Canada has put a positive light on the practice of terminating the lives of the unborn. Angus McLaren, in an article in the *Canadian Historical Review* entitled "Birth Control and Abortion in Canada, 1870-1920,"¹ says that in the late nineteenth and early twentieth centuries abortion in Canada was used mostly by married women as a second line of defence, (the first line being birth control) to limit the size of their families. A smaller number of unmarried women sought abortions, some of them disappointed when marriage prospects disappeared with pregnancy, and others more in the feminist spirit, choosing career over marriage and parenthood. Various methods to secure this end were available from traditional home remedies such as hot baths and violent exercise to abortifacient drugs advertised and sold at least in some parts of Canada. Those disappointed with results from these methods turned to unlicensed and licensed medical practitioners who performed surgical abortions. Much of the evidence used to support this view of abortion in Canada is drawn from reports concerning Toronto alone. With regard to the situation in western Canada a similar theme is present in a recently published history. Elaine Leslau Silverman, in an oral history of Alberta women, 1880 to 1930, presents hearsay evidence to support her contention that

contraception and abortion were a major, and sometimes, subversive way for women to assert, even if only to themselves in a whisper, that they had selves that might exist apart from their generative function.²

¹ Angus McLaren, "Birth Control and Abortion in Canada, 1870-1920," *Canadian Historical Review*, September, 1978.

² Elaine Leslau Silverman, *The Last Best West: Women on the Alberta Frontier, 1880-1930* (Montreal: Eden Press, 1984), p. 59.

This paper will present evidence of attempts by men and women to dispose of unwanted babies in the prairie west between 1874 and 1916. It deals with abortion and also with infanticide which in numbers was almost as significant a form of terminating human life, a fact so far ignored by the authors referred to above. In my view, there is nothing noble in these accounts but there is much pathos and sordidness. The cases of abortion and infanticide studied here were not bold assertions by women of a spirit of liberation. Instead, acting out of desperation and often ignorance, people rid themselves of children whose presence was an embarrassment and whose nurturing was perceived to be too great a burden. This taking of human life the law would not permit, even if the police and the courts were often inclined to compassion for the plight of the perpetrators.

A word of caution about the evidence presented: I drew from several sources as complete a list as possible of charges laid against individuals for crimes related to abortion and infanticide between 1874 and 1916 by the (Royal) North-West Mounted Police in their jurisdiction on the prairies. Through this period the (R) NWMP was the principal police force, but other municipal forces and provincial law enforcement agencies slowly evolved and may have handled other cases which are not dealt with here.

Some background on the history and organization of the Mounted Police on the prairies may be helpful. In 1874 the Canadian government sent the 300-man North-West Mounted Police force west to assert control over the vast hinterland recently acquired from the Hudson's Bay Company known as the North-West Territories. Arriving in the vanguard of settlement the Force was expected to prevent the violent conflict between settlers and Indians which had characterized the frontier experience in the United States. The area of the western prairie, approximating the present provinces of Alberta and Saskatchewan, was separated into several divisions and fortified headquarters were built in each one. For the most part the NWMP was successful in meeting its objectives in pacifying the native peoples. The American whiskey trade which had demoralized the Indians was terminated. Treaties were signed and tribes settled on reserves of land. Even Chief Sitting Bull and the Sioux, fresh from the annihilation of Custer and his men at Little Big Horn, were accommodated for several years in Canada by the Mounted Police. To some extent the NWMP must share in responsibility for the failure in government policy which preceded the North-West Rebellion. However, a case could be made that the Mounted Police prevented spread of the Indian uprising beyond Big Bear and Poundmaker's Crees through their good relations with the other tribes.

In any case, the end of the rebellion and the completion of the Canadian Pacific Railway ushered in a new era for the Mounted Police. A trickle of white immigration to the west became a stream and then a river. Originally, it was intended that the NWMP would be replaced by local law enforcement

agencies as settlement occurred. But new settlers were reluctant to assume this burden and demanded that the organized and efficient Mounted Police protect them. Even when the provinces of Alberta and Saskatchewan gained autonomy in 1905, they contracted the (after 1904 Royal) North-West Mounted Police to perform provincial police services. This lasted until 1916 when, stretched thin by security duties related to the war, the force gave up its contracts, and Alberta and Saskatchewan formed their own provincial police forces.³ So it is fair to say that in the period 1890 to 1916 the Mounted Police was the principal police force in the west and that its primary duty was combatting crime.

Great was the variety and the volume of crime handled by the police. In 1905 the Mounted Police laid 4,647 charges in 70 different categories of offences against the Criminal Code, various federal acts and provincial and territorial ordinances. They obtained 3,767 convictions.⁴ The amount of criminal work in the previous few years had increased considerably; for example, the number of convictions in 1900 was 936.⁵ In 1905, aside from charges related to drunkenness, the most frequently investigated cases were assault (573) and theft (560). There were 23 cases of homicide or attempted homicide in 1905. The statistical high for criminal cases during the period 1874-1916 was in 1914, when the RNWMP laid 16,212 charges and obtained 13,701 convictions. There were 54 cases of homicide or attempted homicide that year.⁶

The purpose of these statistics is to establish that investigation of abortions, infanticides and related crimes was a statistically insignificant part of the duties of the Mounted Police. In the entire period under examination the Mounted Police only investigated 48 cases involving abortion or suspected abortion.⁷ Out of these cases only 30 are known to have resulted

³ As a matter of federal government policy, incorporated towns and cities in the NorthWest Territories were to organize their own police services and were not to be policed by the NWMP. However, by 1905, there were 21 incorporated towns and five incorporated cities and a total of only 47 municipal policemen. The largest police force was at Calgary, numbering six men.

R. C. Macleod, *The NWMP and Law Enforcement, 1873-1905* (Toronto: University of Toronto Press, 1976), pp. 50, 178.

A. F. J. Artibise, *Prairie Urban Development, 1870-1930*, Canadian Historical Association Booklet No. 34 (Ottawa, 1981), pp. 33-35.

⁴ Canada, Sessional Papers, *Annual Report of the Commissioner of the Royal North-West Mounted Police*, 1905, pp. 7-9 (Hereafter referred to as *Mounted Police Annual Report*).

⁵ *Mounted Police Annual Report*, 1900, p. 4.

⁶ *Ibid*, 1914, pp. 10-18.

⁷ Figures for abortion and infanticide and other crimes were derived from information on cases found in: *Mounted Police Annual Reports*; Record Group (RG) 18, RCMP records at the Public Archives of Canada; western Canadian newspapers.

in convictions for any crimes. Regarding infanticide, 39 cases were investigated, resulting in 20 convictions obtained. There will be more analysis of these figures later in the paper, but initially they indicate that abortion and infanticide were not major problems in prairie society. This must be asserted with reservation because one cannot deduce the number of unreported cases of any crime from the number of reported cases. This might be used to support the argument of those who believe that there was a successful underground conspiracy of women to promote and abet abortion in this period. However, the ignorance and desperation displayed by those caught in the act belies the assertion that the general populace was well informed on abortion. Certainly the fact that cases of infanticide were almost as common as cases of abortion indicates that abortive techniques and assistance were unavailable to these women. It must be noted, too, that, as far as we know, no abortion or infanticide cases came to the attention of police in the early days of the west. Whether this is a comment on the closed nature of native society or on the commitment by the Mounted Police of its resources to more pressing security problems is not known. But as white settlers increased, so did the number of police investigations into cases of abortion and infanticide. Of the 48 suspected abortions and 39 suspected infanticides, the Force investigated six abortions and five infanticides between 1874 and 1900 and 42 abortions and 34 infanticides between 1901 and 1916.

Under the Criminal Code of Canada passed by Parliament in 1892, there were two ways in which a person accused of being involved with an abortion could be charged, either for attempting to procure a miscarriage or for supplying a drug or an instrument intended for use to procure a miscarriage. If police failed to produce convincing evidence against a practitioner of this crime, they could charge him or her with the more minor offence of practicing medicine without a licence. This paper will examine cases investigated under each one of these categories. For abortion the most serious charge which could be levelled was attempting to procure a miscarriage. Chapter 23, Section 272 of the Canadian Criminal Code for 1892 made liable for life imprisonment anyone who attempted to procure a miscarriage on a woman through drug or instrument whether she was pregnant or only believed to have been pregnant. Section 273 of the same act made the pregnant woman liable to seven years in prison who herself attempted, or permitted others to attempt to procure an abortion through drugs or instruments whether the woman was pregnant or only believed to have been pregnant.⁸

⁸ Canada, *Sessional Papers*, 1892, "An Act Respecting the Criminal Code," 55-56 V.

During the period 1874 to 1916, 44 persons were charged with one or the other of these offences and at least 16 persons were convicted. Of the remainder, 20 charges were either withdrawn by police, dismissed by the court at some point in the judicial process, or terminated by the acquittal of the accused. In eight other charges the outcome of the case is unknown. Not counting the last eight cases, this represents a conviction rate of 44.44%. For the period 1901 to 1916, when the Mounted Police presented and analyzed crime statistics in their annual reports, the conviction rate of 44% for abortion does not stand up well to overall conviction rates of 75% and 85% routinely reported. However, it must be remembered that overall conviction rates cover hundreds of cases like vagrancy and drunkenness, for which conviction was a virtual certainty. Calculating the conviction rate for homicide or attempted homicide for the years 1901 to 1916, for cases in which the outcome is recorded, the conviction rate is 44.06%, almost precisely the same as for abortion.

There were also lesser charges which could be pressed in cases where abortion was suspected. Chapter 29, Section 274 of the Canadian Criminal Code, made a person liable for 2 years in prison who unlawfully provided a drug or instrument to be used to procure the miscarriage of a woman whether or not she was pregnant in fact.⁹ There were 17 of such cases recorded by the Mounted Police for this period, in which the outcome of 15 is known, 10 convictions and five dismissed, withdrawn or acquitted. This represented a conviction rate of 66.66%. Also, suspected abortionists were on four occasions charged with practicing medicine without a licence and all were convicted and paid fines of from \$25.00 to \$100.00.

An important point to be made at this juncture is that the focus of police attention in pursuing cases of abortion was on the person performing the abortion. It was not usual in abortion cases investigated by the Mounted Police to charge the woman having the abortion even though she was criminally liable. In the cases researched here, where the outcomes are known, none of the women who had abortions were convicted of any crime. The intent of the police was clearly to stop the work of those performing abortions and punish them for their crimes. Implicit in this process was the clear perception that women were victims when social circumstances persuaded them to turn to abortionists.

The difficulties of bringing an abortionist to justice in the frontier west were considerable. The case of Professor Andrew Campbell, alias Dr. Lovingheart of Calgary, is a good example. Lovingheart was not a medical doctor, despite his self-bestowed title, and, although he was a man of property, various exploits made him notorious within the community. In 1892, the Mounted Police arrested Lovingheart for neglecting to provide for

⁹ *Ibid.*

the welfare of a young employee who had run into bad weather on his way to purchase coal at Knee Hill mine 50 miles from Calgary and had died from starvation and exposure. Lovingheart was acquitted by Mounted Police Justice-of-the-Peace, Inspector A. R. Cuthbert, as the evidence indicated that the employee was irresponsible.¹⁰ A few months later Lovingheart was in trouble again, this time charged with procuring an abortion.

The Calgary police suspected Lovingheart of being an abortionist and in early 1893 put him under surveillance. On April 15, the town police arrested him on a charge of aborting the fetus of one Maggie Stevenson by administering a noxious substance. The *Calgary Herald* reported that Lovingheart was quite overwhelmed by his situation, weeping incessantly in his cell for hours.¹¹ His situation soon brightened, when his able attorney, Senator James A. Lougheed, had him moved from the unsanitary town jail to the more habitable Mounted Police guardroom. Meanwhile, the police case disappeared when Maggie Stevenson skipped town. Lovingheart was released on bail on April 19. The case was revived on May 2, 1893 when the Mounted Police located Maggie Stevenson at Langden about to board a train out of the North-West Territories. Lovingheart was returned to custody only briefly, however, as Stevenson refused to identify him as the abortionist.¹²

Abortion on the western frontier was most graphically explored in the case of Fred Gibbs in 1894, in which Dr. Lovingheart's name once more appeared. Gibbs was arrested by the Mounted Police in Calgary on May 28, 1894, charged with administering a noxious drug to a young girl named Ida Morton in an attempt to procure a miscarriage. At the trial in July, a sordid story unfolded of Gibbs' family life. The common law wife of Mr. Gibbs, Alice Morton, had many years before left her legal husband and arranged for her little daughter to be raised by relatives in a respectable manner. Alice then led what was described in the press as a wild life, under assumed names, before taking up with Gibbs. Having achieved a degree of stability, Alice brought her daughter Ida to Calgary in 1890 to live in her house, where Gibbs posed as a boarder. Not long after the girl turned 16 years old she was seduced by her mother's lover. Gibbs forced the girl into a continuing sexual relationship, apparently through fear and guilt, which was kept secret from her mother. Finally, early in 1894 the girl became pregnant. Gibbs then obtained a bottle of noxious liquid, which he said he got from Dr. Lovingheart to precipitate an abortion. He poured the first dose and forced

¹⁰ *Mounted Police Annual Report; Calgary Herald*, November 21, 22 and 25, 1892.

¹¹ *Calgary Herald*, April 19, [1893]

¹² RG 18, Vol. 75, File 127-1893, Insp. A. R. Cuthbert's Monthly Report from Calgary, April, 1893; *Mounted Police Annual Report*, 1893, p. 200; *Calgary Herald*, May 3, 1893; *Edmonton Bulletin*, May 8, 1893.

Ida to take the potion daily. He told her that if a miscarriage did not occur, Dr. Lovingheart had agreed to perform an abortion by operation for \$ 50.00. However, mother got suspicious and daughter confessed her shame. The Mounted Police were called in and Staff Sergeant Brooke ordered a chemical analysis of the contents of the bottle. It was found to contain, in part, cantharides, which was believed to cause miscarriages. Gibbs was arrested. Gibbs was represented by a well-known lawyer, J. P. Nolan, yet curiously little defence was offered at his trial. The defence attorney did not call any witnesses, and in addressing the jury, Judge Rouleau made much of the fact that Dr. Lovingheart was not called to the stand. The jury took less than an hour to find Gibbs guilty. Before sentencing, Gibbs made a long rambling statement claiming that the girl had wanted the abortion and that he had supplied her with what he thought was a harmless substance to prevent her from achieving her end through drastic means. In sentencing Gibbs, Judge Rouleau referred to the case as one of the most unpleasant he had presided over in 17 years on the bench. He commented that he had heard that abortion had become too common in Calgary and he intended to make an example of every case which came before him. Gibbs received nine years and six months in penitentiary for the abortion charge and six months additional for stealing a watch.¹³

As for Dr. Lovingheart, he managed to stay one step ahead of serious trouble with the law. On May 4, 1894 he was charged with practicing medicine without a licence. He appeared before Inspector Frank Harper the next day and was fined \$25.00 and costs. He appealed the decision but lost. Later that fall he was again charged with attempting to procure an abortion and appeared before Judge Scott on November 23 and won an acquittal.¹⁴ Dr. Lovingheart, alias Professor Campbell, left Calgary in a malodorous fashion in 1895. He apparently persuaded the parents of a 14-year-old girl to allow her to accompany him and his wife on a trip to the United States. When the trip was extended beyond the anticipated period, the parents contacted Calgary police. The girl had been allowed to write to her parents, so she was known to be in Washington, D.C. Chief English contacted the police in that city, who found the party in the back room of an isolated tenement. The girl told a lurid tale of Lovingheart's alternate threats to skin her alive and promises to buy her expensive presents, accompanied by frequent attempts to kiss her. She was returned to her parents but there is no record of charges laid against Lovingheart. The *Calgary Herald* commented obliquely "the

¹³ *Mounted Police Annual Report*, 1894, p. 231; *Calgary Herald*, July 6 and 10, 1894.

¹⁴ *Mounted Police Annual Report*, 1894, pp. 230, 233.

doings of the ‘Professor’ while a resident here are well-known to the citizens of Calgary.”¹⁵

After Lovingheart parted the scene, no backstreet abortionist of the same notoriety came to the attention of the Mounted Police for some time. In fact, no record has been found of any Mounted Police investigations into abortions between 1895 and 1904. After that, abortion cases became an annual occurrence. In May, 1910 a man in southern Alberta identified as Dr. Tucker was prosecuted at the behest of the Medical Association of Alberta for furnishing medicine without being registered as a medical practitioner. Upon conviction, he was fined \$100.00. A month later a man by the same name in the same area was charged with giving drugs to procure an abortion, but it does not appear that this legal action succeeded in conviction.¹⁶ In other cases abortions were performed by people who did not pretend to a conventional medical education.

In 1909, one of only two married women discovered in the Mounted Police reports to have sought abortions almost died from the experience. At the request of Mrs. Freeman, at or near Paynton, Saskatchewan, Isabel Tetrault performed the abortion operation but peritonitis set in. A medical doctor was called, who had to perform a second operation to save her life. Isabel Tetrault was tried and convicted on the abortion charge and sentenced to three years in Edmonton Penitentiary. Ironically, Isabel’s uncle Amédée Tetrault, with whom she lived, was convicted of a brutal murder and sentenced to death a month after his niece went to jail.

A husband and wife team practicing folk medicine in Rosthern, Saskatchewan were suspected of criminal activities in 1909. A married woman had gone to their home in March, 1909 and submitted to an operation “resembling abortion” which resulted in her death from blood poisoning. The corpse was then secretly buried in a cemetery nearby. Information on this reached police two months later and the body was exhumed and an inquest held. The coroner’s jury found that the woman had died, following a probable abortion operation, due to the negligence of the folk-medical practitioners. The couple was tried in December, 1909 on charges of abortion and manslaughter. The judge charged the jury very strongly against the accused but the jury returned a verdict of not guilty. Thereafter, however, the police kept an eye on the pair and, in February, 1910, the woman was convicted of impersonating a doctor and fined \$ 50.00. Her husband was fined \$ 50.00 for a similar offence in September, 1910.¹⁷

Mounted Police surveillance of another suspected abortionist, Joseph Pritchard of Wapella, Saskatchewan, was rewarded in 1913. In 1912 a

¹⁵ *Calgary Herald*, March 15, 1895.

¹⁶ RG 18, Vol. 2354, Crime Registers, Macleod District, pp. 16, 24, 32.

¹⁷ *Mounted Police Annual Reports*, 1909, p. 115; 1910, p. 101.

Sergeant Joyce heard a story that Pritchard had performed an abortion on a servant girl who had had sexual relations with her employer, a wealthy farmer. The Mounted Policeman had no concrete evidence in this case but he kept track of Pritchard's activities and on June 12, 1913, armed with a search warrant, he visited Pritchard, found his abortion instruments and charged him with two counts of procuring an abortion. Pritchard was found guilty and sentenced to four years in prison. After conviction Pritchard admitted to performing an abortion on the servant girl in 1912 and her employer was charged with procuring someone to perform an abortion. The outcome of this case is unknown.¹⁸

A notorious case of abortion in Red Deer Hill, Saskatchewan, resulted in the death of both mother and baby. Gladys Read, a 16-year-old girl, was driving a wagon home from her brother's place on the night of December 1, 1914, when she met a neighbour, Frank Inkster, on the road. He accepted her offer of a ride and then forced her to drive off the main road and raped her. Inkster promised Gladys that if she got pregnant he would marry her. This offer Gladys spurned, but by January, 1915, she knew that she was pregnant and she told Inkster. His solution was to obtain medicine to stimulate an abortion.

Inkster approached a doctor in Prince Albert wanting some medicine for his wife who, he said, was suffering from irregular and painful menstruations. The doctor wrote out a prescription for some capsules and a liquid. As Inkster was leaving the office he asked the doctor if the prescription was safe for a young girl whose period had not come on. The doctor's exact reply is not known but apparently he reassured Inkster in some way on this point. Gladys Read took the drugs for about a week but fell ill early in March. Her mother rushed her by sleigh to Victoria Hospital in Prince Albert. There Gladys made a statement to Police concerning the entire matter. The doctors found that a miscarriage had occurred, the fetus being expelled from the womb. However, the afterbirth had remained in the womb and septic infection had set in. The doctors tried to remove the poisonous tissue from the uterus but their efforts were unsuccessful and Gladys died on March 19, 1915.

As a result, Frank Inkster and the doctor were charged with manslaughter, procuring an abortion and supplying drugs to procure an abortion. Medical testimony at this trial was to the effect that the capsules taken by Gladys were made up of Apial, Ergatin, Oil of Savin and Aloin which were described as powerful uterine stimulants capable of causing a miscarriage. The liquid prescription was the drug Black How which served to stop bleeding and to act as a sedative. Two doctors testified that the capsules were a straight abortive prescription but, fortunately for the doctor

¹⁸ *Ibid*, 1913, p. 183; 1914, pp. 57-58.

being prosecuted, other doctors came forward to say that such a prescription might be given to a woman with menstrual problems if the patient were examined first. The doctor was found not guilty on all three charges by the jury, the verdicts described by the Mounted Police investigation as being for “reasons beyond comprehension.”¹⁹ Frank Inkster likewise was saved from the most serious consequences of his acts when, after debating for 27 hours, the jury would not agree on a verdict on the manslaughter charge. He was, however, found guilty on the two abortion charges and sentenced to five years in Prince Albert Penitentiary.²⁰

A man who frequently posed as a doctor was charged on two counts of abortion in March, 1916. G. J. Grant had been a medical student in his native England but had not attained a degree. He had set up practice in Nottingham, England in 1902 as a ladies’ specialist and was strongly suspected by local police of procuring abortions. In fact, one woman died in his office but he was not charged because an inquest found the cause of death to be a brain hemorrhage. In 1912 Grant, his wife, son and a young chambermaid, Marie Evans, immigrated to Canada, taking up residence on a rural property near Kantenville, Saskatchewan.

It was not long before police took notice of the new arrivals. There were two houses on the property, one for Grant’s wife and son and another for Grant, Marie Evans and assorted other women who lived with him from time to time. Grant represented himself as a doctor, using M. D. after his name, and was believed to be performing abortions on women in the district. Finally, in 1916 the Mounted Police arrested him. Two women, one of them his employee Marie Evans, testified that he had performed abortions on them. A search of Grant’s house turned up a number of drugs analyzed as abortifacient, a prescription pad, medical instruments suitable for performing abortions, erotic literature and Grant’s correspondence, which showed him to be a man obsessed by sex. Marie Evans testified at the trial that Grant was the father of the child whom he had aborted and that her pregnancy had been so far advanced when the operation took place that the aborted fetus bore quite human features. On April 4 at Weyburn, Grant was convicted on both counts of abortion and sentenced to four years in prison. He was also given an additional six months for sending an indecent letter through the mail. The Mounted Police were disappointed that the sentence was not more severe, particularly because, on his release from prison, he would likely return to his

¹⁹ RG 18, Volume 486, File 279-1915, April 26, 1915, Report by S/Sgt. Prince, Prince Albert

²⁰ *Ibid.*

wife, whom he had regularly abused physically and morally, and resume the torment.²¹

The abortifacient drugs mentioned in the Inkster and Grant cases raise another question concerning nineteenth and early twentieth century abortions. Abortifacient drugs were obviously available in western Canada, at least to doctors or pseudo-doctors. McLaren's article on abortion in Canada states that abortifacient drugs were widely advertised in newspapers using oblique references to restoring female regularity.²² A spot check of western newspapers for this period failed to confirm this contention. Advertisements did appear for pills and elixirs to help women with pain and distress during their menstrual cycles but these are more likely to have been harmless patent medicines than abortifacient drugs. One advertisement alone seemed to have some underlying message. In 1902, the *Calgary Herald* carried an advertisement for Doctor Pierce's Favorite Prescription which "establishes regularity, dries disagreeable drains, heals inflammation and ulceration and cures female weakness."²³ However, this notion was dispelled in another issue of the paper which advertised exactly the same product as a tonic for expectant mothers.²⁴ It appears that abortifacient drugs were not as easily available as some writers have contended.²⁵ This is confirmed to a degree by several cases of infanticide which occurred after women had unsuccessfully sought abortifacient drugs.

As mentioned above, the (R) NWMP laid charges in 39 cases of suspected infanticide, obtaining a total of 20 convictions for homicide, concealing a birth or neglecting to procure medical assistance. Murder or manslaughter in the death of a newborn infant was difficult to prove because it was necessary to establish that the infant had existence separate from the mother after birth.²⁶ Fifteen persons were charged with murder or manslaughter during this period with three convictions, 11 cases where charges were withdrawn or dismissed or acquittal won, and one case where the outcome is unknown. This is a conviction rate of 21.43%, which compares unfavourably with the overall conviction rate for homicide of 44.06% attained by the Mounted Police in the period 1901 to 1916. It was

²¹ RG 18, Volume 3270, File 1916-HQ-640-F-1.

²² McLaren, *op. cit.*, pp. 329-330.

²³ *Calgary Herald*, January 4, 1902, p. 4.

²⁴ *Ibid*, January 8, 1902, p. 4.

²⁵ The whole question of the role of drugs in inducing miscarriage in this era is still open to question. There is literature which states that nineteenth century medicine did not have effective abortifacient drugs except for women already prone to miscarriage. See James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800-1900* (Toronto: Oxford University Press, 1978), p. 276.

²⁶ Canada, *Sessional Papers*, 1892, "An Act Respecting the Criminal Code," 55-56 V., Chapter 29, Section 219.

easier for police and prosecution to prove concealment of birth, a crime under Chapter 29, Section 240 of the 1892 Canadian Criminal Code, for disposing “of the dead body of any child in any manner with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth.”²⁷ There were 30 persons charged with this crime with 16 convicted, 13 charges withdrawn, dismissed or acquitted, one outcome unknown. This is a conviction rate of 55.17%. More rarely, the Mounted Police charged persons with neglecting to procure proper medical assistance when a death of a newborn occurred.²⁸ There were five such charges laid with one conviction, three withdrawn, terminated or acquitted, and one outcome unknown.

Only one person was convicted of murder for infanticide in this period. Jesse Hammond murdered his newborn child of whom his sister-in-law was the mother. Hammond and his wife and her sister lived together on a farm near Wynyard, Saskatchewan. He and his sister-in-law established a sexual relationship which brought forth a child on August 22, 1911. Hammond abandoned the child on a pile of straw outdoors where it eventually died. On November 6, 1912, the two parented a second child, which was also disposed of. When Hammond was arrested in 1913, he made prosecution easy by confessing his misdeeds. Proving separate existence was no problem and Hammond was convicted of murder by judge and jury and sentenced to be hanged on August 14, 1913. The Minister of Justice was not entirely satisfied with the conduct of the trial and ordered a new trial for September, 1913, which, however, resulted in the same verdict and sentence. On December 13, 1913, just four days before he was to be hanged, Hammond’s sentence was commuted by Order-in-Council to life imprisonment.²⁹

A much more complicated case was the 1913 trial of three people for the murder of a newborn child in Eyebrow, Saskatchewan. Mrs. Maude Greenman was a well-to-do widow with five children living on a farm with her parents, Mr. and Mrs. Austin Foy. She became pregnant by her hired man, Patrick Kelly, an unreliable character whom the police considered may have been “half crazy,”³⁰ Mrs. Greenman tried unsuccessfully to persuade Kelly to get some abortifacient medicine for her from a drug store in Moose Jaw. Kelly, meanwhile, sued Mrs. Greenman for unpaid wages and also had her charged with breach of promise to marry him. However, in the midst of litigation Kelly stole an overcoat and was sent to jail.

²⁷ *Ibid*, Section 240.

²⁸ *Ibid*, Section 239.

²⁹ Mounted Police Annual Report, 1913, pp. 177-178; Department of Justice records, Public Archives of Canada, RG 13, C1, Volume 1483.

³⁰ RG 18, Vol. 3247, File HQ-681-F-11, August 30, 1913, Report from Moose Jaw Subdistrict to Officer Commanding, Regina District.

On March 25, 1913, Mrs. Greenman gave birth to a baby girl, assisted by a trained nurse, Mrs. Jane Caldwell. The event took place during the night and Mrs. Greenman was most anxious lest her other children and some visiting relatives hear the infant's cries, as they did not know that she had been pregnant. At the behest of the mother the nurse administered chloroform and laudanum to the infant to keep her quiet but without effect. After consultation with her parents, Maude Greenman pleaded with Jane Caldwell to get rid of her child for her. Reluctantly, Caldwell complied and, accompanied by Mr. Foy, she carried the child in freezing weather to an unheated meathouse on the property and placed her in a box on the floor. She checked her several times during the day until she was sure she was dead and then she buried her in the chicken coop.

This homicide came to the attention of the Mounted Police in a bizarre way. When Patrick Kelly was released from jail, he visited Maude Greenman on June 4, 1913, and threatened her with a revolver. She called for help over the rural telephone and brought forth the local Justice-of-thePeace and two other men in an automobile who chased Kelly, fleeing the scene in a buggy. Kelly fired some shots to ward off his pursuers, but they caught him. Just before being subdued Kelly pointed the revolver at the J. P.'s head and pulled the trigger. Luckily the hammer struck a defective cartridge. Kelly was charged with pulling the trigger of a firearm with intent. In the subsequent investigation, he told police how Maude Greenman had killed their child. A few days later Jane Caldwell and Austin Foy were arrested and charged with murder and Maude Greenman with conspiracy to commit murder. All were tried separately.

The stories of the three accused supported the main facts of the case but put a different complexion on each individual's responsibility for the crime. Maude Greenman denied that she was a party to the murder, contending that Jane Caldwell had been solely responsible. Caldwell confessed to her part in the crime but implicated Greenman and Foy as accomplices. A Dr. Snow, a former employer of Jane Caldwell, put an unusual medical angle on the affair. He claimed that Mrs. Caldwell suffered from a disease of the head and throat which affected her mind at times. Furthermore, he stated that Mrs. Caldwell was menstruating at the time of the offence, which clouded her judgment. Austin Foy claimed that when he helped put the baby in the meathouse he thought that she was already dead.³¹ At the trials held at Moose Jaw in November, 1913, Maude Greenman and Jane Caldwell were found guilty of reduced charges of manslaughter and sentenced to ten years each in the penitentiary at Edmonton. Austin Foy was acquitted. Patrick Kelly was

³¹ RG 18, Vol. 3247, File HQ-681-F-11, Criminal Case file-Greenman, Caldwell, Foy; Regina, *The Morning Leader*, June 14 and 18, 1913; *Regina Daily Standard*, June 14, 16 and 18, 1913.

convicted at the same November sitting of the Alberta Supreme Court and sentenced to one year hard labour in prison.³²

Several charges of murder failed due to the necessity to prove that the child had enjoyed a separate existence. Such was the case when a newly born infant was found dead in a slough near Melville, Saskatchewan in 1913. A comb belonging to an unmarried 16-year-old Austrian girl was found near the body. Police investigation revealed that on the night previous to the discovery of the corpse the girl had taken ill at a dance at a home near the slough and left with her mother. Subsequently, medical examination indicated that the girl had recently given birth to a child. The girl and her mother were both charged with murder, but the case fell apart at the trial because the crown could not produce indisputable medical evidence that the child had enjoyed separate existence.³³The same verdict for exactly the same reason occurred in the case of a 20-year-old woman who gave birth to a child at Marquis, Saskatchewan in 1914. She had subsequently put the dead body in a suitcase, taken a train to Moose Jaw and checked the luggage into the parcel room at the train station. The story came to notice of the police when she sought attention from a local doctor.³⁴

One of the most heart-rending cases of infanticide during this period concerned Ernestine Labelle, a 14-year-old girl who went free due to the public perception of her as a victim rather than a criminal. Ernestine came from Wittenberg, Alberta, and entered St. Joseph's Convent in Red Deer as a boarding student in September, 1915. At the time of registration her father warned the sisters that she had missed several periods and had been ill. The sisters thought nothing of this because of the girl's age and because she was very well behaved. At 4 p.m. on February 25, 1916 Ernestine retired to the dormitory complaining of stomach pains. Between 2 and 4 a.m. on February 26, she gave birth to a daughter in the lavatory. At 8:30 a.m. a Sister Francis went to Ernestine's bed to see if she needed anything. She noticed blood stains on the floor and the bed clothes. The sister then went to the girl's locker to fetch a kimono for her and inside found the dead baby lying face down on the floor with a boot lace tied around her neck.

After Ernestine received medical attention she was charged with murder by the Mounted Police and kept in custody at Memorial Hospital in Red Deer. The girl gave a statement that her uncle Lionel had taken sexual advantage of her and made her pregnant. She also said that the baby had been born dead but "I was scared to leave him [*sic*] there to come alive so I

³² *Mounted Police Annual Report*, 1914, pp. 58-59.

³³ *Ibid*, 1913, pp. 24, 178.

³⁴ *Ibid*, 1914, p. 59.

tied the rope around his neck.”³⁵ An autopsy was held on the baby and the medical examiner reported he found the lungs inflated, indicating the baby had breathed after birth. In his opinion the cause of death was strangulation from the boot lace which had been wound tightly twice around the neck. At the conclusion of the girl’s trial in September, 1916, the judge in his address to the jury explained that it could bring in a verdict of murder or of concealment of birth. However, the jury found her not guilty on both counts. The judge would not comment on the murder verdict but felt compelled to say that he couldn’t agree with the decision on concealment of birth. Corporal Hanna of the Mounted Police explained to divisional headquarters that:

The verdict, which was undoubtedly a sympathetic one, was a popular one, as public feeling was very much in favour of the girl and against her uncle Lionel Labelle, who was the father of the child and the cause of getting her into trouble. It was felt that he, if anyone, should be the one to suffer.³⁶

Lionel Labelle was charged with carnal knowledge of a girl under 14 years of age on March 6, 1916, and tried at the same sitting of the Supreme Court as Ernestine in September. The results of that trial were not available to the writer.

As pointed out earlier, the police and the Crown had more success winning convictions on the charges of concealment of birth than of infanticide. However, there was a consequent trade-off in the severity of sentences awarded for this crime. Of the 16 convictions obtained, the sentences are known for eight cases. Two were for the maximum of two years, one for 23 months, two for six months, one for one month hard labour, one for one day in jail with a \$200 fine and one sentence was suspended. The heavier penalties are easily explained by the heinous nature of the offence but some of the lighter sentences seem strange.

In the case of the three more severe sentences, the circumstances indicated murder but the evidence was not strong enough to convict. All three cases involved illegitimate babies who were disposed of, in two cases by the mother and in one case by the common law husband of the mother with her complicity. The latter case is a good example of one where homicide could not be proven, yet the strongest punishment for a lesser charge was in order.

In 1916, Winnifred Van Sant, aged 28 years, a woman described by police as of low mentality, lived in a filthy shack near Peace River, Alberta.

³⁵ RG 18, Volume 3270, File HQ-678-K-1, Crime Report dated March 7, 1916.

³⁶ *Ibid*, Crime Report dated September 30, 1916.

She shared the accommodation with William Briggs, aged 55, recently released from the Mounted Police guardroom at Peace River where he had served time for theft. This arrangement was not a happy one for Winnifred, as Briggs frequently beat her. She also became pregnant, not by Briggs, but by the man who lived on a neighbouring farm with his wife and five children. Sometime in late 1916, Winnifred gave birth to a baby boy. Delivery was difficult, as the child was in the breech position, but despite Winnifred's pleas Briggs refused to summon help. After delivery, someone punctured the baby's head with a sharp object and buried it in a manure pile. In the next while, neighbours who had noticed Van Sant had been pregnant asked her about the baby but she denied that she had given birth. The Mounted Police were alerted, and upon visiting the place they located the corpse and elicited a confession from Van Sant.

Briggs and Van Sant were tried in Edmonton in January, 1917 for concealing and disposing of the body of a newly born child. The evidence in the case was strong so there was little question of acquittal. Yet pathologists found that while the baby's lungs had inflated, this was more probably due to gas absorbed from bacteria in the manure than to breathing. Thus they determined that the child had not had a separate existence. Judge Simmon, who presided without jury, told Briggs that the medical report had saved him from a charge of murder. Briggs was given two years in prison and Van Sant, who had been clearly dominated by Briggs, was given six months in jail. A pathetic footnote to this case was that after her trial Van Sant asked to serve her sentence at the Mounted Police guardroom at Macleod, where she had been held while awaiting trial. She declared that she had been happier there than at any time in the previous seven years.³⁷

In at least two of the lighter sentences given for concealment of birth, cultural attitudes toward the death of an infant seemed to have been taken into account. This was the case for a woman in Claresholm convicted in 1907 of concealing the birth of a child and of neglecting to obtain medical assistance. The body of her child had been found under the floor boards of her house. The woman was German by birth and separated from her husband. Chief Justice A. L. Sifton let her off with a suspended sentence, explaining that it was "a custom amongst people of this class, not to obtain assistance in such cases."³⁸ The outcome was similar with an Indian woman from the Crooked Lake agency convicted of concealment of birth in 1915. Vitalene Le Rat confessed to strangling her infant daughter, who had been fathered by her brother. She was charged with murder but the jury brought in a verdict of guilty only of concealment and she was sentenced to six months in jail. The Mounted Police were satisfied, Superintendent McGibbon

³⁷ RG 18, Volume 3272, File HQ-685-K-1, Criminal Case File.

³⁸ *Mounted Police Annual Report, 1907*, p. 51.

observing: “The fact of this woman being prosecuted for this serious offence will probably be a lesson to the Indians, who do not look upon the life of an infant as valuable.”³⁹ Only the bare facts are known about the conviction of a mixed blood girl of Cumberland House for concealing the birth, but it could be speculated that cultural reasons were also behind the imposition of only a one-month sentence.⁴⁰ Details are sketchy on the remaining case, the conviction of a man, J. Flack, for concealing the birth. This resulted in a sentence of one day in jail and a \$ 200 fine. The proceedings appear to have been poorly handled, from an inconclusive medical examination of the corpse to a strange sequence of charges, first against the father, then against the mother, his own stepchild, and then against the father again. Perhaps the light sentence was a reflection of some weakness in the case.⁴¹

Finally, of the five cases where charges were laid for neglecting to procure medical assistance in the birth of a child, the circumstances are known in only two. One of these was the case noted above of the German woman who was convicted of both concealing and neglecting and received a suspended sentence. In the other case, in late 1904 a woman living in Fort Macleod, whose marital status is unknown but who had a five-year-old girl living with her sister, became pregnant. She sought information on an abortifacient medicine from a friend without success. On July 22, 1905, she gave birth to the child on a secluded bank of the Old Man River not far from the Mounted Police barracks. Three days later the body was found on that spot and circumstantial evidence led the Mounted Police to the woman. She admitted that the child belonged to her. A coroner’s examination revealed that the child had breathed after birth and the jury’s verdict at the inquest was that the child died as a result of the neglect of the mother to secure medical treatment. A jury found the mother not guilty of this charge at the trial, perhaps out of sympathy for the woman’s plight.⁴²

Clearly, then, the reality of criminal abortion and infanticide in the prairie west during this period was a sad and sordid one. There is no sign of women asserting control of their generative functions as a step towards liberation. Nor is there a sign of any underground network of informed women and sympathetic men which operated outside the law helping women to escape the unreasonable demands of a male-dominated society that they bear unwanted children. Instead, where the circumstances are known, the

³⁹ *Ibid*, 1916, p. 37; RG 18, Vol. 3262, File HQ-681-F-8, Criminal Case File.

⁴⁰ RG 18, Volume 107, File 224-1895, Monthly Report for March from Superintendent G. B. Moffatt, Commanding, “F” Division, Prince Albert.

⁴¹ RG 18, Volume 126, File 2-1892, Monthly Report for October from Inspector J. Howe, Commanding Officer, “C” Division, Battleford.

⁴² *Macleod Gazette*, July 27, 1905 and November 16, 1905; RG 18, Volume 2453, Register of Cases – Macleod, 1904-1909.

cases which came to the attention of the Mounted Police were of people ridding themselves of the products of irregular relationships. At that time the law and society did not accept that the penalty for a conception of inconvenience was death to the fetus or to the infant. The police and the judicial system were conscientious in pursuing the criminal acts of abortion and infanticide. There was, however, a moderating factor in the bent of this pursuit. This was a recognition in individual cases that the mother was often a victim as well as the child, a fact that was reflected in leniency of treatment. Although there were occasional expressions of outrage by the judges, the policemen or the public at particularly cruel acts of abortion or infanticide, there was no sense of a moral urge for a crusade against such abuse. This is, I believe, because abortions and infanticides were isolated acts, seen as all too human failures, admittedly more common as the white population grew, but uncommon enough not to be any threat to social order on the prairies.

Acknowledgement

The author thanks Allison Phillips, a McGill University student, who assisted with the research for this paper in the summer of 1985.