
CRIMINAL JUSTICE AT THE CAPE OF GOOD HOPE IN THE SEVENTEENTH CENTURY: NARRATIVES OF INFANTICIDE AND SUICIDE

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1 Introduction

The encounters of women with the law at the Cape of Good Hope in the seventeenth century were often a result of conduct instigated by desperation. Theirs are stories of, among others, suicide, infanticide, prostitution, theft and neglect of their children. The underlying reason for these acts of desperation was the fact that women were narrowly stereotyped as chattels, whether they were slaves, freed or free women.¹

Unlike males and unlike white females, women of colour were regarded as a means to further the (economic) interests of the Company. The indigenous Khoikhoi² women who could in terms of Batavian law not be enslaved, as well as the slaves from Africa, the Indies and Madagascar, were confronted with the additional confusion of acculturation.³ On the one hand there was a drive to “civilise” all who were not from European descent and to convert them to Christianity.⁴ On the other hand, production of children by whatever means was encouraged by the Dutch authorities. In the light of the fact that a very small percentage of Dutch East India Company employees were accompanied by

1 Also some settler women turned to crime and prostitution in the face of adverse circumstances. Barbara Geems and Tryntjie Verwey made their living from prostitution and Mayken Thielman Hendrickz was banned to Mauritius for her criminal activities.

2 Wells “Eva’s men: Gender and power in the establishment of the Cape of Good Hope” 1998 (38) *Journal of African History* 417 n 1 is of the opinion that “Khoena” (people) is the better term to refer to the pastoralists who lived in the close vicinity of the Cape settlement, since this is a gender neutral term as opposed to “Khoikhoi” which means “men of men”. Elphick *Khoikhoi and the Founding of White South Africa* (1985) 46 points out that these tribes sometimes referred to themselves as “Khoena” while “Khoikhoi” was the preferred term used for rulers. This is of course consistent with the patriarchal system prevalent among these people. See also Boonzaier, Berens, Malherbe & Smith *The Cape Herders. A History of the Khoikhoi of Southern Africa* (1996) 1-2 for a linguistic analysis of the different appellations. They point out that these people would have referred to themselves by their clan names, Cochoqua, Goringhaiqua, Gorachoqua and so on. The term generally employed by historians and lawyers alike is “Khoikhoi”. This term will be used in this article.

3 Heese “Identiteitsprobleme gedurende die 17de eeu” 1979 (1) *Kronos* 27 28 31. The same applied to the San. The children of Khoikhoi mothers, whether of mixed race or not, could however become slaves: Percival *An Account of the Cape of Good Hope* (1804 1969 reprint) 291.

4 This drive to civilise the indigenous communities persisted through colonial history, irrespective of the colonial power in charge.

their wives, the slave and Khoikhoi women were indispensable in the quest to enlarge the settler population. This enterprise went so far that in 1665 a cash incentive was given to female slaves who bore children for the Company.⁵ Of course, female slaves also provided brides for the Company employees and free burghers. The condition was that they convert to Christianity and be manumitted.⁶ But it was not only Company slaves who were encouraged to produce offspring. In private households female slaves were put at the disposal of house guests, often against their will.⁷

Liaisons with Khoikhoi women, by contrast, were rare in the seventeenth century, since they were still subject to the strict discipline of their communities. It is only those who were destitute who became prostitutes, but they were still vastly outnumbered by slaves in the sex trade.⁸ Still, the first mixed marriage occurred between a Khoikhoi girl, Krotoa, better known as Eva, and Pieter van Meerhoff, a company employee from Denmark.⁹

Commissioner Goske, who visited the settlement in 1671, was aghast at the immorality of the Cape community. At the time at least sixty percent of the slave children were of mixed race. He attempted to regulate moral behaviour through legislation, but to no avail.¹⁰ In 1678, and again in 1681, the first Cape *placaeten* which forbade Company employees and free burghers from having

5 References to this type of manipulation of slaves for reproduction abound in the slave narratives of the Americas. See generally Fishman "Slave women, resistance and criminality: A prelude to future accommodation" 1995 (1) *Women & Criminal Justice* 35 44ff. Shell *Children of Bondage. A Social History of the Slave Society at the Cape of Good Hope, 1652-1838* (2001) 312 points out that in the seventeenth-century Batavian slur female slaves were called "naaimandjies" referring both to their function as seamstresses and breeders.

6 Spilhaus *The First South Africans and the Laws which Governed Them* (1949) 127ff; McKinnon *A Tapestry of Lives. Cape Women of the 17th Century* (2004) 71ff; Molsbergen *Hottentoten, Slaven en Blanken in Compagniestijd in Zuid-Afrika* (1913) 9; Hattersley "Slavery at the Cape, 1652-1838" in Newton, Bennians & Walker (eds) *The Cambridge History of the British Empire Vol VIII: South Africa, Rhodesia and the Protectorates* (1936) 262-263.

7 Zaal "Facilitating segregation or integration? Roman law and the population policies of the Dutch East India Company 1602-1798" 1996 (2) *Fundamina* 156 163; McKinnon (n 6) 79; Percival (n 3) 291ff; Spilhaus (n 6) 47; Shell (n 5) 315ff.

8 For an historical exposition of prostitution in the early Cape see McKinnon (n 6) 95ff; Wildenboer "Turning tricks: A brief history of the regulation and prohibition of prostitution in South Africa" 2003 (3) *Stellenbosch LR* 319.

9 Elphick & Shell "Intergroup relations: Khoikhoi, settlers, slaves and free blacks, 1652-1795" in Elphick & Giliomee (eds) *The Shaping of South African Society 1652-1840* (1992) 184 194-195.

10 At this point three earlier cases before the *Raad van Justitie* are worth mentioning. They appear in the list of 463 cases heard from 1652 to 1672 (and published by Böeseken *Uit die Raad van Justisie 1652-1672* (1986)). In 1666, Willem Cornelisz was found guilty of living with Van Riebeeck's slave and fined; also in 1666 Hendrick Coertz received corporal punishment and was banned to three years on Robben Island for sleeping with a slave (in 1668 he was again punished for the same offence); and in 1667 a soldier, Hans Christoffel Snyman, received corporal punishment and was sent to Robben Island for two years for leaving his post and having intercourse with a black woman.

intercourse with female slaves were promulgated. These *placaeten* were reissued in later years.¹¹ Nevertheless, miscegenation continued and the Company turned a blind eye to the flourishing sex trade in the slave lodge and outside.¹²

The most notorious of the stories of desperation ensuing from the patriarchal domination of the settler administration is that of the already mentioned Eva. Her acts of child neglect, prostitution, theft and many other misdemeanours ultimately led to her sad demise on Robben Island.¹³ However, in this article the judicial response to the “criminal” actions of two lesser known females will be discussed. The one allegedly committed infanticide, the other suicide. What is striking about the male narratives in the historic records about these cases is the complete denial of these two women as human beings, the negation of their emotional state and the dispassionate disregard of the circumstances that compelled them to commit the crimes for which they were punished. For both their class (slave and servant respectively) and race (Indian and Khoikhoi respectively) compounded their already inferior status as women. Their crimes could be directly linked to the Company’s policy of encouraging sexual intercourse to increase the settler numbers at the Cape.

2 The administration of justice

The administration of justice in the early days of the Cape settlement was primitive.¹⁴ The Commander – later Governor – and his Council acted as the central authority and were also in charge of law and order. Initially their court was similar to the council of a ship¹⁵ and their main source of law was the

11 Elphick & Shell (n 9) 194; Spilhaus (n 6) 130ff; Molsbergen (n 6) 7-8.

12 McKinnon (n 6) 13 81; Elphick & Shell (n 9) 194ff.

13 There is circumstantial evidence that Eva and Van Riebeeck had an intimate relationship but any actual evidence to this effect is carefully concealed in the Company journals. It has also been suggested that she may have been raped by Van Riebeeck: see Abrahams “Was Eva raped? An exercise in speculative history” 1996 (23) *Kronos* 20. She was for an indefinite period confined to the notorious black hole in the Castle by fiscal Crudorp and later sent – without trial – to Robben Island where she died. Upham “Zara” 2001 (4) *Capensis* 26 33; Wells (n 2) 42ff.

14 Regarding the earliest administration of justice at the Cape, see generally the following sources: Theal *Chronicles of Commanders* (1882) 230- 231; Botha *A Brief Guide to the Various Classes of Documents in the Cape Archives for the Period 1652-1806* (1918) 31ff; Visagie *Regspiegeling en Reg aan die Kaap van 1652 tot 1795* (1969) 40-48; Böeseken “The Company and its subjects” in Muller (ed) *Five Hundred Years. A History of South Africa* (1975) 63 63-65; Böeseken *Uit die Raad van Justisie* (n 10) ix-xiv; Hahlo & Kahn *The South African Legal System and its Background* (1968) 536-541; Van Zyl *Geskiedenis van die Romeins-Hollandse Reg* (1983) 428ff.

15 A settlement such as that at the Cape was regarded as similar to a single ship (as opposed to a fleet). A ship’s council was responsible for law and order on board the ship.

artickul brief which regulated the service of the employees of the Company engaged in overseas duties.¹⁶ In 1685, a restructuring took place and a separate *Raad van Politie* and *Raad van Justitie* were established. At first the Governor was in charge of the *Raad van Justitie*, but his second-in-command, the *secunde*, later took over from him. Nevertheless, all the sentences of the *Raad van Justitie* still had to be confirmed by the Governor. Appeals lay to the Governor-General-in-Council in Batavia.

The procedure in the *Raad van Justitie* was regulated by the Dutch ordinances of criminal and civil procedure of Philip II, respectively of 1570 and 1580. Proceedings took place behind closed doors. Torture was resorted to in order to extract confessions, especially in cases where there was the possibility of capital punishment since the death sentence could not be passed if the perpetrator had not confessed to her crime. Sentences were severe, but still in line with practices in Europe.¹⁷

Not all cases were heard by the full bench¹⁸ of the *Raad van Justitie*. Commissioners were appointed to attempt to settle disputes expeditiously and to prevent the cases from being taken to the full bench. These Commissioners were responsible for the inquests in cases of murder, suicide and wounding.¹⁹ If a perpetrator of a crime was caught red-handed, she could be arrested immediately and the court was asked to confirm the arrest within 24 hours. The fiscal then put his "claim and demand" before the court, as well as the written evidence, attested to by the Commissioners. The fiscal asked for a specific punishment for the accused in his claim. The accused did not have the opportunity to confront the witnesses and if the accused was merely suspected of being guilty, she was put to torture until she confessed.

16 The officers of the expedition that was to establish a refreshment station at the Cape were instructed on 25 March 1651 by the Dutch East India Company to maintain law and order in terms of the *artickul brief*: "Ende opdat onder't volck goede ordre gehouden mach werden sijn deselve beeedicht op den generalen artickul brief ... waer naer sij haer dan sullen hebben te reguleeren" See Leibbrandt *Precis of the Archives of the Cape of Good Hope. Letters and Documents Received 1649-1662 Part I* (1898) 31. See also Visagie (n 14) 25-27 38. Böeseken *Uit die Raad van Justisie* (n 10) ix-x indicates that the *artickul brief* of 2 March 1634 was the one applicable when Van Riebeeck arrived at the Cape.

17 Worden *Slavery in Dutch South Africa* (1985) 117; Hahlo & Kahn *The Union of South Africa. The Development of its Laws and Constitution* (1960) 202-203; Botha *A Brief Guide* (n 14) 34 36; Burchell & Hunt *South African Criminal Law and Procedure Vol I* (1983) 30.

18 From 1656 it consisted of the Commander, five members and a secretary. Where a free burgher was involved in a case, another free burgher sat as a member of the court. See Botha *A Brief Guide* (n 14) 31; Visagie (n 14) 43-44.

19 See, eg, the archival record of the sentence of the *Raad van Justitie* CA: CJ 780 Sentence no 112 at 335 where reference is made to Susanna of Bengal's "confessie voor gecommiteerdes gedaan".

The fiscal,²⁰ a subordinate official, was in charge of prosecutions.²¹ From 1688 he became independent of the Governor and Council and was solely responsible to the *Here XVII*²² in Holland. He exercised considerable power – even the Governor was subject to his supervision²³ – and played an extremely important role in the administration of justice.

The *Raad van Justitie* only started recording the reasons for its decisions early in the nineteenth century. Until that time, there was no indication of the substantive law the court applied.²⁴ In the period covered by the two cases under discussion, 1669 to 1671, the applicable law and the reasons for the decisions therefore have to be deduced from the reasoning of the fiscal. In 1671, legal sources were for the first time quoted by the fiscal, Crudorp, who prosecuted the second of the two cases.

The Charter of 1602,²⁵ in terms of which the Dutch East India Company obtained the sole mandate to trade in the East Indies, made no mention of the law that had to be applied in the territories under the Company's control. The *artickul briewe* and instructions from the Estates General, the only institution with legislative authority over the territories under Company control, likewise did not provide any guideline in this regard. The first indication of an attempt to determine a policy regarding the applicable law in these territories is to be found in an instruction of August 1621 to the Governor-General of India, Coen, and his council.²⁶ This instruction was rather vague, indicating the law of Holland²⁷ as the principal legal system, and Roman law as the secondary legal system where the laws of Holland did not provide sufficient guidance.²⁸ The first reference to the law that applied at the Cape was to the law of the East

20 See generally Visagie (n 14) 46ff. The first fiscal who had received legal training, was De Neijn. See Theal (n 14) 174-178; Böeseken "The Company" (n 14) 63ff; Böeseken *Uit die Raad van Justisie* (n 10) x-xii; Sleigh *Eilande* (2002) 384ff; *Dictionary of South African Biography* Vol II 180. He and the Admiral and Commissioner, Aerenhout van Overbeke, were both educated in Leyden and were advocates of the *Hof van Holland*. They became good friends and drinking companions and were equally unpopular at the Cape.

21 In terms of the Ordinance of 1570.

22 The directors of the Dutch East India Company.

23 Spilhaus (n 6) 2; Botha *A Brief Guide* (n 14) 33; Hahlo & Kahn *The Union of South Africa* (n 17) 200-201.

24 De Beer "The law of slavery: The predicament of the slave community at the Cape" 1996 (2) *Fundamina* 223 229; Visagie (n 14) 70 77.

25 This Charter was first granted in 1602, but successively renewed until 1796.

26 See Visagie (n 14) 29. This instruction of the *Here VII* was *ultra vires*, since they had no authority to determine the law applicable in the territories of the Dutch East Indies.

27 Which might have been *Aasdoms-* or *Schependomsrecht*.

28 This reminds of the similar use of Roman law in the 16th-century homologation process under Philip the Fair in the Netherlands. In his legislative enactments, too, reference was explicitly made to the "written" Roman law to be applied in matters not covered by the statute.

Indies and was contained in an instruction of February 1657 to the first free burghers.²⁹

The available sources of law at the Cape were initially those contained in the library of Roelof de Man, secretary of the *Raad van Politie* in 1654.³⁰ Among his books were works of Damhouder³¹ as well as a text of the *Corpus Iuris Civilis*. Böeseke points out that although these books must have been available to the other members of the *Raad*, there were no references to these or any other academic works until the time of Crudorp and subsequently, of course, the legally qualified De Nejin.³²

3 Excursus: stories of success

Before turning to the narratives of despair, it serves to remember that one must guard against the stereotypical portrayal of all women in the early settlement as debased, desperate pawns in a patriarchal society. By way of a brief introductory excursion, then, and to put the lives of the women of the early Cape in perspective, the other side of the story has to be recounted. There are several instances of astounding achievement by females in the earliest years of the Dutch administration of the Cape.³³ These women played an important role in shaping the early settler community. Their stories are significant because they achieved so much in spite of their challenged status. These stories were further not limited to women of certain races or social standing and included those of slaves and Khoikhoi.

Again, Eva will be taken as example of a woman who not only experienced the lowest ebb of human existence,³⁴ but who also achieved amazing feats, both

29 Visagie (n 14) 65ff.

30 He died in 1663.

31 Literature on criminal law in the Netherlands reached its zenith in the 17th and 18th centuries. Damhouder, a 16th-century Roman-Dutch writer (who plagiarised the work of an earlier author, Wielant) was the most important criminal lawyer of his time and exerted an enormous influence on later jurists. Important 17th-century authors were Matthaeus II, Groenewegen, Van Leeuwen, Huber, and Voet. See Burchell & Hunt (n 17) 23ff.

32 Böeseke *Uit die Raad van Justisie* (n 10) xiv; Visagie (n 14) 76.

33 See, eg, Malan "Chattels or colonists? 'Freeblack' women and their households" 1998/1999 (25) *Kronos* 50 for evidence of this "other side" of the story.

34 Other success stories are those of the freed slaves Angela van Bengale and Maria Everts: see Hattingh "Kaapse notariële stukke waarin slawe van vryburgers en amptenare vermeld word (1658-1730)" 1988 (14) *Kronos* 43 51; McKinnon (n 6) 71ff. The story of Grootte Cathrijn, convict, slave, Christian, wife and slave owner, likewise evidences the ability to move beyond designated gender roles in the patriarchal settler community. For a detailed exposition of her life, see Upham "In hevigen woede ..." 1997 (3) *Capensis* 8.

among the Dutch settlers and among her own Khoikhoi people. Eva's story debunks the stereotypical portrait of indigenous African women as subordinate, inferior creatures in their own societies. While the literature portraying Eva as the helpless victim of cultural clashes and colonial exploitation abounds, little has been written on her early achievements. Wells makes an important contribution to the existing literature on Eva and provides some balance in the construction of her life.³⁵ She demonstrates how Eva manipulated various gender roles. She was the trusted interpreter (and concubine?) of Van Riebeeck,³⁶ safe intermediary between her own people and the settlers, personal agent of Chief Oedaso, and the wife of Company employee Pieter van Meerhoff.

Another success story is that of the widowed Catharina Uistings, a German settler who arrived at the Cape in 1662 at the age of 21. She died at the age of 66, a wealthy land owner, with 12 slaves, 120 sheep and other livestock, a substantial income from her farming activities, and having become an indispensable role player in the agriculture-based economy of the early Cape. Her life was not all plain sailing. She married several times at the Cape, lost most of the initial land that she and her second husband (Ras) had acquired and developed, and became one of the first victims of forced removals. Her "town" house was among those demolished in 1676 because they were built too close to the walls of the Castle. The compensation for the loss of her property was a license to sell sugar and locally-brewed beer. When she was widowed for a fourth time and left with no income to provide for her children, she was given a Company grant for impoverished widows: a monthly ration of rice. Her circumstances changed when Governor Van der Stel granted her land at the foot of the Steenberg mountains where she built a house and started farming in 1677. She did not have the security of any title deed on the farm, since women could at the time not legally own land, but nevertheless single-handedly built up a flourishing farm. She married for the fifth and last time in 1680. In 1688 she was at last given the title deed to her farm.³⁷

35 Wells (n 2) 417ff.

36 Elphick (n 2) 107-110.

37 Steenberg, the luxury golf estate and hotel development at the Cape, is situated on her farm, Swaanewiede. See McKinnon (n 6) 101-110.

4 Infanticide: Susanna van Bengale³⁸

Susanna³⁹ of Bengal was a slave. She was the first female convict banished in slavery to the Cape by the Dutch East India Company. She arrived there with one ear amputated as punishment for her previous criminal activities.⁴⁰ Not much is known about her earlier life and the exact reason for this punishment of disfiguration – which was not exceptional at the time – but the letter from the Indian Council, dated 17 December 1657, that accompanied her mentioned that she had been exiled for her “thieving propensities”.⁴¹ Although she was to have been exiled to Robben Island, she was retained to work in the Company gardens.⁴² It appears from the archival records that she had two children of mixed race at the Cape. Both were baptised and their baptisms registered in the Company’s record of baptisms that commenced in 1665.⁴³

Together with other female slaves and their children, she and her baby, Elsje (and presumably her young son Andries too) occupied one large room in the slave lodge. In December 1669, “lying stiff and stinking with small-pox”⁴⁴ she allegedly attempted to strangle her baby girl.⁴⁵ She had no milk to suckle her starving infant and, being an outcast within the female slave community, the other slave women refused to help her. Given her poor living conditions, the inability to care for her baby, and her illness, it is not surprising that she was driven to an act of such utter desperation.⁴⁶

38 On the earliest recorded case of infanticide at the Cape, see Upham “Consecrations to God” 2001 (3) *Capensis* 14; McKinnon (n 6) 79ff; Moodie *The Record or a Series of Official Papers Relative to the Condition and Treatment of the Native Tribes in South Africa* (1960) 313. See Ross *Beyond the Pale* (1994) 192ff for a discussion of the status of Moodie’s work in South African historiography.

39 There seems to be some confusion regarding her name. The Batavian authorities referred to her as “Maria van Bengale”: Leibbrandt *Precis of the Archives of the Cape of Good Hope. Letters and Documents Received 1649-1662* Part II 57. Upham “Consecrations” (n 38) 15-16.

40 She was nick-named *Eenoer* (One Ear): see CA: CJ 2952 *Confessiën en Interrogatoriën van’t jaer 1654 tot 1673* 269; CA: CJ 780 Sentence no 112 333.

41 Leibbrandt *Letters and Documents Received* Part II (n 39) 56-57.

42 CA: CJ 780 Sentence no 112 333.

43 Upham “Consecrations” (n 38) 7. The author relates (17-21) the interesting circumstances of the baptism of Susanna’s son which forced the *Raad van Politie* to pass a resolution regarding the baptism of the children of heathen slaves. See also Spilhaus (n 6) 124.

44 Leibbrandt *Precis of the Archives of the Cape of Good Hope. Journal 1662-1670* (1901) 308.

45 “haer jonghe zuygelingh (sijnde een mestiza) [child of mixed race] ... met 3 stercke doecken om den hals binden te[ver] worgen” CA: CJ 1 (Deel 2) 1668-1673 514.

46 Prosecutions for the theft of food by slaves are frequently mentioned in the records of the *Raad van Justitie*. Just how desperate the position of the slaves was, is evidenced by the frequency of slave suicide, “the most tragic form of slave response ... to the slave condition”. The court records rarely reveal any motivation for such acts. See Worden (n 17) 134-136.

Notwithstanding the fact that the other slave women refused to save the baby from starvation, they wrenched her from the hands of her mother when they thought that Susanna was strangling her. Elsie died eight days after the incident – in agony – from a ruptured gall bladder. It was only after her death, on 11 December 1669, that the *Raad van Justitie* ordered that Susanna “be placed in confinement in order to be punished according to her deserts”.⁴⁷

While it is probable that Susanna’s actions was born from pure desperation, it has to be borne in mind that she came from a culture where female infanticide had commonly been practised since times immemorial. In those communities or castes where the custom was adhered to, a distinction was drawn between murder and infanticide. Infant daughters were dispensable and were often killed not only for religious but also for financial and political reasons. During the British occupation of India in the late eighteenth century, *Regulation XXI* of the *Bengal Code* was promulgated which recognised the distinction between infanticide and murder, but nonetheless forbade infanticide on punishment of death.⁴⁸ Having come from Bengal as an adult, it is feasible that Susanna’s cultural heritage may to some extent have impacted on her actions.

Susanna was prosecuted by fiscal Cornelius de Cretser.⁴⁹ There is no evidence that De Cretser had any legal training or knowledge of the law.⁵⁰ The Court disallowed Susanna’s first testimony that she had pressed some rags over the child’s mouth to stop her wailing. In line with the practice of that time, as explained earlier, Susanna was put to torture to confess to the crime of infanticide so that she could be sentenced to death.⁵¹

The subsequent hearing turned on the evidence of the slave women who witnessed the incident. Whether slaves should have been allowed to give evidence at all has been questioned by some historians.⁵² The issue of what

47 Leibbrandt *Journal 1662-1670* (n 44) 308.

48 In 1830, a *Female Infanticide Act* was promulgated by the colonial authority. For a detailed exposition of this phenomenon of female infanticide, see Sen “The savage family. Colonialism and female infanticide in nineteenth-century India” 2002 (14) *Journal of Women’s History* 53ff.

49 CA: CJ 2952 *Confessiën en Interrogatoriën van’t jaer 1654 tot 1673* 269.

50 He arrived at the Cape in 1661 and occupied varied offices. Among others he was employed as scribe, diarist, dispenser and bookkeeper of the garrison, as merchant and as *secunde*. In 1666 he became secretary of the *Raad van Politie* and *Raad van Justitie*. He was later appointed as fiscal: see Böeseken *Dagregister en Briewe van Zacharias Wagenaer 1662-1666* (1973) 117 and *Uit die Raad van Justisie* (n 10) xi; *Dictionary of South African Biography* Vol IV 110-11.

51 CA: CJ 2952 *Confessiën en Interrogatoriën van’t jaer 1654 tot 1673* 269-270.

52 Slaves could not give evidence in Roman law except in a few exceptional cases and then only under torture. Buckland *A Text-book of Roman Law from August to Justinian*

law governed slavery at the Cape has been the subject of much academic discourse. The writings predominantly deal with law that regulated the slave condition and not with the law that regulated the day-to-day lives of slaves. Since slavery did not exist in the Netherlands, a new slave law had to be developed locally. It was only natural to fall back on Roman law, which was the subsidiary law in the Netherlands. In addition, local Cape *placaeten*, special proclamations of the Government of Batavia, and the Statutes of India were applied.⁵³ The decrees and ordinances that regulated the daily lives of the slaves were mostly issued in the eighteenth century.⁵⁴ It appears that slaves who committed crimes that were not related to the master-servant relationship were subject to the jurisdiction of the ordinary courts and to the same law that applied to free persons.⁵⁵ It is therefore not surprising that the slaves' evidence was admitted, especially in view of the fact that Susanna's case occurred less than two decades after Van Riebeeck had set foot on African soil. The legal order at that stage was still truly underdeveloped, and it is to be expected that a fiscal with no legal training would not have been aware of the Roman-law prohibition on the admissibility of evidence by slaves.⁵⁶

In Susanna's case the prosecution never entertained the idea that the baby's gall bladder might have ruptured in the struggle to "save" the child from her mother, or that the rupture might have resulted from the organ having been diseased (which may, in turn, have been the reason for the baby's constant crying).⁵⁷

Interestingly, one of the surgeons who assisted with the autopsy on Susanna's deceased infant on 8 December 1669 also performed the autopsy two years later on the accused in the second case, Sara.⁵⁸ It has been opined⁵⁹ that the surgeons who performed the autopsy on Elsje, had preconceived ideas about

revised edition by Stein (1966) 637.

53 Botha "Slavery at the Cape" 1933 (50) *SALJ* 4; Visagie (n 14) 88ff; Visser "The role of Roman law in the punishment of slaves at the Cape of Good Hope under Dutch rule" in Ankum, Cannata, Feenstra, Le Roy, Spruit & Weimar (eds) *Mélanges Felix Wubbe* (1993) 525 529ff; De Beer (n 24) 226ff.

54 Visagie (n 14) 89; Visser (n 53) 530.

55 Botha "Slavery at the Cape" (n 53) 8 10; Worden (n 17) 114ff; Visser (n 53) 537.

56 In accordance with Roman law, slaves were, of course, allowed to testify against their masters where the master's excessive punishment of the slave was at issue: Buckland (n 52) 64; Visser (n 53) 532. The position later evolved to allow slaves to give evidence if it could be corroborated: see Worden (n 17) 116.

57 McKinnon (n 6) 80; Böeseke *Slaves and Free Blacks at the Cape 1658-1700* (1977) 31.

58 Further, Coon, who was a member of the court that had tried Susanna, was also a member of the three-man court that tried Sara for her suicide: see Upham "Zara" (n 13) 33.

59 Upham "Consecrations" (n 38) 25.

the cause of death and had accepted the version of the events presented by the other slaves, namely that Susanna had attempted to strangle the child. Their verdict was that the child had died of strangulation. Importantly one of them, Walrandt, was the following year banished to Robben Island for malpractice.⁶⁰ The fact that Susanna was tortured to confess at least proves that the fiscal believed that she was guilty and had sought the death penalty.⁶¹

The fiscal requested the *Raad van Justitie* that “als een god [ver]geetene moordadige varcken” (as a god-forsaken murderous pig),⁶² she be placed in confinement in order to be punished. The sentence suggested by the fiscal was that “de borsten met gloeiende tangen van’t lijft geruckt sijnde” (her breasts be gauged off by hot irons) and that she then “tot asche sal [ver]bran’t werden” (be burnt to ashes).⁶³ The *Raad van Justitie* found that her actions were against all divine and man-made laws.⁶⁴ They did not impose the brutal punishment requested by De Cretser, but in stead ordered an equally cruel punishment: that she be sewn in a sack and drowned as an example and deterrence to others.⁶⁵ In this way, then, on 13 December 1669, the sad life of Susanna of Bengal came to an end.

Punishment as cruel as this for perpetrators of infanticide was not common in the Netherlands at the time. Cases that went to trial in the seventeenth century largely involved servants. These women seem to have been treated differently because of their notoriously loose morals. However, maid-servants were mostly victims of sexual exploitation by their employers and those of superior status, not unlike females of colour at the Cape.⁶⁶ Concealment of any consequent pregnancies and births that followed on such exploitation came in the form of abortion and infanticide. During the period from 1680 to 1811, only 24 reported cases of infanticide reached the *schepenen* (magistrates’) court in Amsterdam.

60 See Böeseken *Uit die Raad van Justisie* (n 10) 291-319 for the record of this case.

61 CA: CJ 2952 *Confessiën en Interrogatoriën van’t jaer 1654 tot 1673*.

62 Also in the case of *De Cretser, fiscael v Adriaen Jansz Vosch* 21 June 1666, was the perpetrator (an axe murderer) referred to as a “Godvergeten mensch”: see Böeseken *Uit die Raad van Justisie* (n 10) 165.

63 CA: CJ 1 (Deel 2) 1668-1673 514.

64 CA: CJ 780 Sentence no 112 334. Similarly, in the case referred to in n 62, the court found that the conduct of the accused had been against “goddelijcke en wereltlijcke wetten”.

65 See CA: CJ 780 Sentence no 112 336; the Journal entries on 11-13 December 1669: Leibbrandt *Journal 1662-1670* (n 44) 308. Upham “Consecrations” (n 38) 23-24 points out various inaccuracies in Böeseken’s rendition of Susanna’s story in *Slaves and Free Blacks* (n 57) 31.

66 Schama *The Embarrassment of Riches, an Interpretation of Dutch Culture in the Golden Age* (1988) 459. Faber “Infanticide, especially in eighteenth-century Amsterdam; with references to Van der Keessel” 1976 *Acta Juridica* 253 259 is of the opinion that according to the court records, if the perpetrators may be believed, very few of the

In 22 of these cases the perpetrators were maid-servants. The death sentence was passed in only two of the cases: both the women involved were executed by garroting, the one in 1711, the other in 1788. In eighteen of the cases there were extenuating circumstances and no death sentence. The women involved in them received sentences of exhibition on the gallows, whipping and long-term imprisonment in the *spinhuis*. In only two instances was torture applied to extricate confessions.⁶⁷

Could Susanna's race have had an influence on the punishment meted out by the court? The answer may well be in the affirmative. The court certainly did not take the legal position in the Netherlands at the time into account nor did it consider whether there had been any special circumstances. In any event, almost half a century would pass before the first white female was executed at the Cape in 1714. She was Maria Mouton who had murdered her abusive husband with the assistance of two slaves.⁶⁸

Cases of infanticide infrequently went to trial at the Cape. One reason may be that abortion was known and commonly practised among slaves and Khoikhoi. It may also be the racial or ethnic inferiority of the perpetrators or the victims that informed the preference of committing only certain mothers to trial.⁶⁹ The case of Florida may serve as an example.⁷⁰ Florida was a newly-born Khoikhoi child who was saved by settler women from being buried alive with her deceased mother. Although the authorities were well aware of the attempted infanticide, as is evident from the entry in the Company Journal on 24 January 1669,⁷¹ and the *Notules* of the Cape Church Council,⁷² the Khoikhoi women who attempted to bury the child were never prosecuted. The child was placed in the custody of a settler family on condition that she be brought up as a

victims were fathered by the mother's employer.

67 Faber (n 66) 255ff; Schama (n 66) 459-521; Upham "Consecrations" (n 38) 28; Van der Spuy "Infanticide, slavery and the politics of reproduction at the Cape Colony, South Africa, in the 1820's" in Jackson (ed) *Infanticide. Historical Perspectives on Child Murder and Concealment, 1550-2000* (2002) 128-132-133.

68 Heese "Kriminele sake: Hofuitsprake aan die Kaap, 1700-1750" 1987 (12) *Kronos* 33-38.

69 De Kock *Those in Bondage* (1950) 185ff (see also Shell (n 5) 314; Van der Spuy (n 67) 131ff) quotes the following excerpt from a letter of a certain RB Fisher addressed to William Wilberforce (member of the British Parliament) regarding slave infanticides, shortly after the first British occupation of the Cape in 1795: "The murder of infants ... generally passes by unregarded; and I have instanced the report made to me by an officer of very respectable character in the 93rd regiment, of having himself seen the bodies of no less than thirteen infants lying exposed on the beach and no enquiry made...!" The Governor's response to the enquiry that followed on this letter was that Mr Fisher's were gross and unfounded allegations and that the cases that had occurred, had been impartially prosecuted.

70 See Upham "Florida" 2001 (2) *Capensis* 5ff for the story of Florida's short life.

71 Leibbrandt *Journal 1662-1670* (n 44) 265-566.

Christian and remained in the service of the family until she married. She was duly baptised but died soon afterwards. The records do not reveal the cause of her death and there was never an enquiry into the death.

5 Suicide: Sara

Sara⁷³ was a Khoikhoi girl, a servant for wages, who practised concubinage with various Europeans, grew up in a settler home, spoke Portuguese and Dutch, attended Christian services, and who, on 18 December 1671, committed suicide at the age of 24. The report of the autopsy confirmed her death by suffocation, but the records are silent on the reason for her suicide.

In his argument before the *Raad van Justitie*, the fiscal went to great lengths to argue that Sara had relinquished the “heathenish or savage Hottentot mode of life” and was thus subject to Dutch law. The court accepted the fiscal’s argument that “this animal (bestie)” (that is, Sara) had transgressed that law and posthumously imposed degrading punishment on her which would also serve as a purification from her diabolical deed which had defiled the Dutch property where she had killed herself:

It is upon these grounds claimed and concluded by the fiscal that the said dead body, according to the usages and customs of the United Netherlands, and general practise (ingevoer) of the Roman law, be drawn out of the house, below the threshold of the door, dragged along the street to the gallows, and there hanged upon a gibbet as carrion for fowls, and the property of which she died possessed confiscated, for the payment, therefrom, of the costs and dues of justice.⁷⁴

Sara’s case forced the Company to decide, for the first time, which legal order should deal with a crime committed by a “detrribalized” Khoikhoi. This could be regarded as the earliest case in South African legal history where a court took recognition, albeit indirectly, of the existence of legal pluralism. Two issues had to be decided and they were dealt with together: which court had criminal

72 Upham “Florida” (n 70) 11.

73 See generally regarding the suicide and trial of Sara: Moodie (n 38) 315-316; Elphick (n 2) 184; De Kock (n 69) 184-185; Schrire *Digging through Darkness. Chronicles of an Archaeologist* (1995) 67-68; Ross (n 38) 169ff; Zaal (n 7) 172.

74 This is a translation of the original court record by Donald Moodie. He was Colonial Secretary for Natal, and translated the original archival records from the earliest time of the Cape settlement until 1838, by order of Sir Benjamin D’Urban.

jurisdiction and which law was applicable. The fiscal pointed out that as the act had been committed “in our *territorium*”, the *Raad van Justitie* had jurisdiction,⁷⁵ and that because of Sara’s “lifestyle” – these days a familiar connecting factor in the internal conflict of laws⁷⁶ – the law of nations and civil law had to be applied.

Until that time the policy of the Dutch authorities had been that the Khoikhoi’s independence should be honoured and that their own legal system should be maintained.⁷⁷ This was similar to the British policy that the laws of a conquered territory would remain in force until altered by the conqueror. The fact that the Company maintained the legal systems of the indigenous populations should not be regarded as the recognition of their laws and thus as the first emergence of state-law pluralism in South Africa.⁷⁸ There was no regulation of the laws of the indigenes, neither was their law incorporated into the Company’s (quite primitive) legal order. This was rather, arguably, one of the first instances of imposing “Western” criminal law on the indigenous population, or on certain sections of the indigenous population.⁷⁹

Sara’s was indeed the first criminal case in which both victim and perpetrator were of Khoikhoi origin and subjected to the law of the Company. It was only in the eighteenth century that the *Raad van Justitie* would again deal with criminal cases in which both perpetrators and victims were indigenes. Before Sara’s case, it was customary to send indigenous perpetrators who had been captured back to their chiefs to be punished. The Company itself rarely punished Khoikhoi criminals, and if it did, that occurred only with the general agreement of the perpetrator’s chief.⁸⁰ The indigenous communities and the Dutch administration shared roughly similar sentiments when it came to the

75 This is consistent with the general principle prevailing in South African law that courts exercise jurisdiction with regard to offences committed within their territory. Geldenhuys & Joubert *Criminal Procedure Handbook* (2001) 33ff.

76 See Bennett “The conflict of laws” in Bekker, Labuschagne & Vorster *Introduction to Legal Pluralism in South Africa* (2002) 29-30.

77 This was the same policy that was followed with regard to their Asian settlements. Van Riebeeck was under instructions from the *Here XVII* that only in exceptional cases of provocation could Khoikhoi be enslaved, enchained and banished to Batavia: Leibbrandt *Letters and Documents* Part I (n 16) 228-231. It was only when the indigenous communities and their institutions had completely disintegrated, that the Dutch administration took over legal ordering. See generally Ross (n 38) 167ff; Elphick (n 2) 181ff; Theal (n 14) 207.

78 State-law pluralism prevails where European or Western law and traditional forms of law operate in a single society and are officially recognised and regulated by the State. See generally Griffiths “Legal pluralism in Botswana” 1998 *Journal of Legal Pluralism* 123 133.

79 At the time deep legal pluralism existed and different communities applied different legal systems irrespective of recognition by the prevailing political administration.

80 This happened for the first time in 1678: Ross (n 38) 169.

prevention of crime.⁸¹ The most serious crimes, such as stock theft, murder and other acts of violence, were seen in a serious light in both Khoikhoi and Dutch societies. As a result, conflict as regards punishment occurred infrequently.

The *Raad van Justitie*⁸² conceded that Sara had relinquished her traditional indigenous lifestyle, and that she had “transgressed against the laws of nature which are common to all created beings”. Further, in view of her Western lifestyle, she had acted against “the law of nations and the civil law”. She was thus subject to the usages and customs of the United Netherlands and to Roman law.⁸³

Some historians attribute special importance to the apparent indecision of the court whether Sara had transgressed natural law or civil law⁸⁴ or a mixture of the two.⁸⁵ It should be borne in mind that the early church fathers, specifically Augustinus, already regarded suicide as being a contravention of natural law; this was also one of the reasons why suicide was condemned in Canon law.⁸⁶ Further, natural law formed part of the European *ius commune* which prevailed in the Netherlands at the time. Moreover, Hugo de Groot, the father of natural law, wrote his *De Iure Belli ac Pacis* in 1625. This work, in particular, impacted tremendously on legal writing in the seventeenth century and later writers frequently used the principles of the law of nature as set out in it to test municipal law.⁸⁷ The acting fiscal, Crudorp,⁸⁸ who prosecuted Sara’s body, was the first person in that office to rely on the *Corpus Iuris Civilis* and some old Roman-Dutch authorities such as Damhouder and Groenewegen.⁸⁹ It was thus not surprising that he referred to natural law, the law of nations and civil law.

81 Elphick (n 2) 182ff; Ross (n 38) 168ff.

82 It consisted of three members only. This is not necessarily because the trial of a Khoikhoi female was not important enough to justify a full bench. The smaller court was in line with the practice that “gecommitteerdes” were responsible for the inquest in cases of suicide. Moreover, the trial took place at a time of political instability. The Cape was under provisional administration, following the death of Commander Hackius. See generally Upham “Zara” (n 13) 33ff for a description of the political circumstances that prevailed during that time.

83 Moodie (n 38) 316.

84 Lalu “Sara’s suicide: History and the representational limit” 2000 (26) *Kronos* 89–95 opines that the court was in fact unsure of the appropriate mechanism to deal with Sara’s suicide.

85 Ross (n 38) 170.

86 See Bosman “Vol-regt heeft niemand over zijn leven. De bestraffing van zelfmoord in Amsterdam, 1532-1795” 2005 (7) *Pro Memoria* 64–66 and the references to the *Corpus Iuris Canonici* and the *Decretum Gratiani*.

87 See generally Edwards *The History of South African Law. An Outline* (1996) 56; Hahlo and Kahn *The South African Legal System* (n 14) 551–552.

88 Crudorp acted as fiscal from March 1671. Böeseken *Uit die Raad van Justisie* (n 10) xii; *Dictionary of South African Biography* Vol III 188.

89 In his *Tractatus de Legibus Abrogatis* Groenewegen assigned a special place to

Significantly, Crudorp was outspokenly critical of extra-marital miscegenation and, in general, the loose morals that prevailed at the Cape. A reason for his attitude was that it was detrimental to the Company's economy in that the children of slaves, fathered by Europeans, could eventually demand their freedom.

The imposition of Western law in Sara's case fits into the paradigm of the dominance of the settler administration. The indigenes, their cultural institutions and their original claim to the land appropriated by the Company, were basically ignored. The ethos of settler primacy is confirmed by the reference in the court records to the fact that "this act was committed in our *territorium*"⁹⁰ and, as Lalu⁹¹ suggests, the multiple other uses of "our" in the records: "full use of our language", "our manners and mode of life", "concubinage with our or other German people", "enjoyed ... our protection", "enjoyed the good of our kind favor", and so on. The settlers were not unaware of the fact that they had dubious title to the land they had occupied. This is evidenced by the extract from a resolution of the *Raad van Politie* of 13 April 1672. By this resolution, the suggestion of Commissioner Van Overbeke was accepted that the Company should attempt to "enter into an agreement with the Hottentoots, – especially with those in whose land our residency has been ... whereby they should declare us to be the rightful and lawful possessors of this Cape District ... lawfully sold and ceded ... for a specific sum of money; in order thus more firmly to establish our masters in their right of property".⁹²

Sara's race and gender played a role in the sentence imposed on her corpse. Upham⁹³ ascribes motives of revenge and deterrence to the Company. There are indications that her case had not been properly investigated because she was a female of colour.⁹⁴ On 17 May 1673, for instance, the *Raad van Justitie* found that the suicide of a white soldier, Jan Elias Busch of Dorlach, was due to "temporary insanity" and that "the strictness of law was not desired". This finding was in line with Dutch usage at the time. He was thus properly buried and not prosecuted. The entry in the Company's Journal shows that, unlike Sara's case where only two witnesses were interrogated,⁹⁵ a considerable

Grotius.

90 Moodie (n 38) 316.

91 Lalu (n 84) 95.

92 It is quoted in Moodie (n 38) 317.

93 "Zara" (n 13) 35.

94 Zaal (n 7) 172.

95 Moodie (n 38) 315.

effort had been made to determine the possible reason for his action.⁹⁶ It took more than three decades before sentences similar to that imposed on Sara were again imposed on deceased persons who had committed suicide. In 1704 and 1705, for instance, two slaves were sentenced to be dragged to the gallows and hung by the legs “to deter others”,⁹⁷ confirming the proposition that deterrence was the motive for the harsh sentences in (certain) cases of suicide. Again the records do not mention the reason for the 1704 suicide. However, the slave in the 1705 case had deserted and returned and seemingly committed suicide *ex conscientia criminis*. It was in line with Dutch law at that time that he received the severe punishment he did. In Amsterdam, suicide, except if committed *ex conscientia criminis*, was decriminalised during the latter part of the seventeenth century and the last conviction took place in 1668. It was only during the Batavian Revolution of 1795 that it was decriminalised also in cases where the act had been committed *ex conscientia criminis*.⁹⁸

The records are silent on the reasons for Sara’s suicide and the authorities appear not to have been too interested in why she had taken her own life. In fact, only a very superficial investigation had been instituted. Ten Rhyne, a physician and member of the Council of Justice of the Dutch East India Company in Batavia,⁹⁹ wrote on 30 July 1674 that he had met Sara and that she had committed suicide “in despair because a loose Dutchman, in order to have free enjoyment of her, promised her marriage but failed of his word”.¹⁰⁰ Although it is impossible that the author had met Sara, the reason he supplied for her suicide may well have been true.¹⁰¹ Another reason put forward is that she was “culturally challenged”.¹⁰²

96 Leibbrandt *Precis of the Archives of the Cape of Good Hope. Journal, 1671-1674 & 1676*. (1902) 133-134. Upham “Zara” (n 13) 16ff discusses also other examples of settlers who had committed suicide in the first decade of the eighteenth century but who were not prosecuted.

97 Leibbrandt *Precis of the Archives of the Cape of Good Hope. Journal, 1699-1732* (1896) 68 77.

98 Bosman (n 86) 73ff.

99 *Ampliss. Soc. Indiae Or. Medici & a consilii Justitiae*. This appears from the title page of an 1686 copy of his work which was written in Latin.

100 The original Dutch and Latin texts of Dapper (1668), Ten Rhyne (1686) and De Grevenbroek (1695) were translated into English by Schapera & Farrington and together with the original texts and comments included in their book *The Early Cape Hottentots* (1933). Ten Rhyne’s reference to Sara appears on 127.

101 He arrived at the Cape on the ship *Ternaten* only in October 1673, some two years after her death: Schapera & Farrington (n 100) 81. This inconsistency reflects badly on the accuracy of Ten Rhyne’s work. He relied heavily on his friend, Schreyer, who did the autopsy on Sara. Schapera & Farrington (n 100) 115. See Upham “Zara” (n 13) 30ff for an analysis of the autopsy.

102 Upham “Zara” (n 13) 14 27ff. He gives a detailed description of the social circumstances in which Sara lived and the people who impacted on her life.

The Roman-law rule that the despair or unbearable pain¹⁰³ of the person who commits suicide should be taken into account in meting out punishment was not generally applied in the United Netherlands. Damhouder, with whom Crudorp was acquainted, noted the discrepancy between local Dutch law, in which desperation was not an excuse, and Roman law, in which it was. Grotius opined that suicide was punishable, irrespective of the motive. Then again, Groenewegen, whose work was also known to the fiscal, in his comments on Grotius' *Inleidinge*, placed Grotius in perspective by adding that in accordance with the jurisprudence of the *Hof van Holland* and Roman law, suicide is punishable only if committed *ex conscientia criminis*.¹⁰⁴

The marginalisation of Khoikhoi woman, in life and in death, is continued in the entries in the Company Journal of 10 and 11 January 1672,¹⁰⁵ when the dishonoured body of Sara is matter-of-factly mentioned among other matters of interest:

[10 Jan] Discovered this morning that the fork on which the female Hottentoo had been hanged had been taken down and fallen over. Careful inquiry failed to discover the author. During the afternoon the mounted guard brought in five wanton Hottentoots ... charged with having attacked a certain burgher ...

[11 Jan] Towards evening, in order to carry out the sentence, the above-mentioned female Hottentoo was again lifted on the fork; whilst a shepherd reported that a tiger had again destroyed a sheep ...

6 Conclusion

In the early years of the Cape settlement, women, mostly of colour, were pawns in the economic enterprise of the Company. Their reproductive capacity was essential for the perpetuation of the system of slavery and for the continued existence and development of the settlement. Their sexual exploitation manifested in prostitution, concubinage and rape. While the Company could exploit female slaves for their labour and their bodies, Khoikhoi

103 *D 48 21 3 4: Si quis autem taedio vitae vel impatientia doloris alicuius vel alio modo vitam finierit, successorum habere divus Antoninus rescripsit* [in C 9 50 1]. Such a persons' property was thus not confiscated and their heirs could inherit.

104 See Bosman (n 86) 67ff for a general discussion of the development of the law in this regard.

105 Leibbrandt *Journal 1671-1674 & 1676* (n 96) 40 41.

women could not be forced to work, but were nevertheless sexually exploited. Their exploitation was often by their own communities. These adverse circumstances make the achievements of those who rose above their adversity all the more significant.

It is to be expected that the humanity of those women who were stereotyped as little more than breeders was sorely disregarded. When these women were driven to crime, they were severely punished and justice was not tempered by mercy. It appears that their race, gender and class informed the law's response to their actions. The archival records, which yield male colonial narratives only, portray them as animals (*bestie, moordadige varcken*), never taking into account the policies of the Company, both official and unofficial, which set the scene for their lives.

While it is not surprising that their existence of desperation should have driven them to criminality, more recent historiography paints an altogether different picture of strong women whose crimes were the ultimate sacrifices for themselves and their children.¹⁰⁶ In this paradigm, acts of infanticide, abortion, suicide, murder, theft and prostitution are interpreted as acts not of submissive desperation, but of proud resistance to exploitation.

In Susanna's case, the killing of her baby could have been an extreme form of overt criminal resistance against the slave condition. On the one hand, it may be argued that in view of her cultural heritage in which daughters were dispensable, this act had come more easily for her than for other women. On the other hand, however, it may be suggested that she had wanted to spare her child the misery of a life as female slave of colour, expressing "a higher form of love and clear understanding of the 'living death' that awaited children under slavery".¹⁰⁷ Ultimately, by killing her baby, she undermined the system that exploited her, so dealing the Company a double blow. She robbed them of two slaves, their bodies and their labour.

Likewise Sara's suicide may have been her revenge on the community that alienated her from her people, disregarded her cultural heritage, imposed on her their culture and law, and, ultimately, denied her a proper Khoikhoi

106 See the articles of Wells (n 2) and Fishman (n 5). See also Worden (n 17) 134ff.

107 Having conducted an extensive literature study, Fishman (n 5) 57 points out that there is consensus among academics that the most important reason for infanticide was that the mothers wanted to prevent their children growing up as slaves.

burial.¹⁰⁸ She had shunned everything “good” the settler community believed they had given her: their Christian religion, language, manners and mode of life, concubinage with their people, their protection and the good of their kind favour.

108 It may, of course, even (or also) have been revenge on her community of origin that had discarded her as a child.