

*MURDEROUS MADONNA: FEMININITY, VIOLENCE, AND
THE MYTH OF POSTPARTUM MENTAL DISORDER IN
CASES OF MATERNAL INFANTICIDE AND FILICIDE*

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INTRODUCTION

*“The sweetest sounds to mortals given
Are heard in Mother, Home, and Heaven.”
—William Goldsmith Brown*

On June 27, 2001, Rusty Yates gently placed baby blankets inside the coffins that held each of his five lifeless children.¹ Just days earlier, his wife, Andrea Yates, had drowned all of their children in a bathtub in the family’s suburban Texas home.² Andrea Yates has since become the modern day poster child for maternal killings, which are commonly classified as either infanticide (the killing of an infant) or filicide (the killing of a child over the age of one).³ Yates’s acts, and the legal saga⁴ that followed, spawned extensive media coverage,⁵ popular discussion, and even an episode of *Law & Order: Criminal Intent*.⁶ By the time police led Yates from her home that day, she had already become “the Medea’ of Houston ... the stuff of which myths were made.”⁷ Although few cases of infanticide and filicide receive the attention that Yates’s did, such acts occur

1. SUZANNE O’MALLEY, “ARE YOU THERE ALONE?” THE UNSPEAKABLE CRIME OF ANDREA YATES 73 (2004).

2. *Id.* at 12-21.

3. LITA LINZER SCHWARTZ & NATALIE K. ISSER, CHILD HOMICIDE: PARENTS WHO KILL 2 (2007).

4. In March of 2002, during her first trial, a Texas jury found Yates guilty. The Texas Court of Appeals overturned the original verdict due to the materially false testimony of a psychiatrist who testified on behalf of the prosecution. In a second trial, Yates again entered not guilty pleas, and on July 26, 2006, the jury found Yates not guilty by reason of insanity and committed her to a Texas mental hospital. *See Yates v. Texas*, 171 S.W.3d 215, 218-20 (Tex. Crim. App. 2005).

5. O’MALLEY, *supra* note 1, at 213 (stating that Yates received “maximum news saturation” throughout her trials). The author covered Yates’s story for media sources including *O, The Oprah Magazine*, *New York Times Magazine*, *Salon.com*, and *Dateline NBC*. *Id.* at xiii.

6. *Law & Order Criminal Intent: Magnificat* (NBC television broadcast Nov. 11, 2004). This episode was loosely based upon Yates’s case and follows the plight of a woman who attempts to kill her four sons while under the influence of severe postpartum depression. For further discussion of the episode, see *infra* note 90 and accompanying text.

7. O’MALLEY, *supra* note 1, at 12.

with great frequency in the United States and abroad.⁸ Every day, some women choose to stab, drown, burn, beat, smother, or strangle the infants and children who depend upon them for survival.⁹ Such actions fly in the face of traditional conceptions of motherhood, yet women who kill their children receive consistently light penalties for their crimes.¹⁰

Maternal killings are treated as a lesser offense than general homicide in the United States and are trivialized to an even greater extent in places like England and Canada, where Infanticide Acts automatically mitigate sanctions for mothers who kill.¹¹ The same good-natured jurisprudence does not extend to homicidal fathers. When men murder their children, they receive far harsher penalties than their female counterparts.¹² Cases involving maternal infanticide and filicide reveal a dangerous leniency toward female defendants and a general desire to explain away female aggression.

In the wake of Yates's case, the use of postpartum psychosis as a legal defense in cases of maternal infanticide and filicide has received considerable attention. Postpartum psychosis refers to a rare and serious mental disorder thought to occur after childbirth in some women.¹³ Since the 1980s, American courts have allowed women suffering from the disorder to raise the insanity defense. Postpartum psychosis played a pivotal role in Yates's case, as defense attorneys argued that the disorder caused Yates to kill her

8. See, e.g., SCHWARTZ & ISSER, *supra* note 3, at 132 ("According to National Vital Statistics Reports, thousands of children under the age of [fourteen] are the victims of homicide every year." (citation omitted)).

9. Some studies suggest that at least one infant is killed each day in the United States; however, maternal infanticides remain among the most underreported and least well documented deaths in the United States. Mary Overpeck, *Epidemiology of Infanticide, in INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON WOMEN WHO KILL* 19 (Margaret G. Spinelli ed., 2003).

10. See *infra* notes 66-68 and accompanying text.

11. See Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 8 DEPAUL J. HEALTH CARE L. 3, 6 (2004) ("Ironically, in both historical and contemporary societies, the tendency to treat infanticide as less heinous than other forms of murder seldom is acknowledged, let alone explained.")

12. See *infra* notes 66-68 and accompanying text.

13. See *Research on Postpartum Depression at the National Institute of Mental Health: Hearing Before the Comm. on Energy and Commerce, Subcomm. on Health*, 110th Cong. (2007) (statement of Dr. Catherine Roca, Chief, Woman's Program, National Institute of Health).

children.¹⁴ The jury ultimately agreed, and Yates received a verdict of not guilty by reason of insanity.¹⁵ A number of other mothers have been found not guilty on similar grounds.¹⁶

Despite the rare nature of postpartum psychosis, recent discussion tends erroneously to conflate all maternal killings with the disorder.¹⁷ Everyone from Congress¹⁸ to Oprah Winfrey¹⁹ to the National Organization for Women (NOW)²⁰ to the lay authors of newspaper editorials²¹ has found something to say about the

14. See O'MALLEY, *supra* note 1, at 138.

15. *Yates Found Not Guilty By Reason of Insanity*, SEATTLE TIMES, July 27, 2006, at A1.

16. See *infra* text accompanying notes 176-82.

17. See, e.g., April J. Walker, *Application of the Insanity Defense to Postpartum Disorder-Driven Infanticide in the United States: A Look Toward the Enactment of an Infanticide Act*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 197, 197 (2006) ("Over the past few years, the phenomenon of mothers who kill their children has occurred with great frequency These mothers are often suffering from postpartum disorders brought on by hormonal changes associated with childbirth.") (footnotes omitted); Jessica Butterfield, Comment, *Blue Mourning: Postpartum Psychosis and the Criminal Insanity Defense, Waking to the Reality of Women Who Kill Their Children* 39 J. MARSHALL L. REV. 515, 517 (2006) ("What common thread ties these women to one another? They were all suffering from postpartum psychosis when they committed their unspeakable acts—when they killed their children."); Oprah.com, *Postpartum Psychosis*, http://web.archive.org/web/20011107000529/www.oprah.com/tows/coming/tows_come_main.jhtml (last visited Oct. 18, 2008) ("What would cause a new mother to kill her own baby or herself? A tragic illness we're just learning about: postpartum psychosis.").

18. Recent legislation seeks to increase federal funding and activities relating to women with postpartum mental disorders. On January 4, 2007, Representative Bobby L. Rush (D-IL) introduced the Melanie Blocker-Stokes Postpartum Depression Research and Care Act, H.R. 20, 110th Cong. (2007), which would require the Director of the National Institute of Mental Health to expand research and services relating to postpartum depression and psychosis. On May 11, 2007, Senator Robert Menendez (D-N.J.) introduced the "Mother's Act," aimed at providing mandatory postpartum mental disorder screening, education, and other services to women. Mom's Opportunity to Access Health, Education, Research, and Support for Postpartum Depression Act, S. 1375, 110th Cong. (2007). The bills have since been repackaged as The Melanie Blocker-Stokes MOTHERS Act and introduced as part of the Advancing America's Priorities Act, S. 3297, 110th Cong. (2008).

19. See *The Oprah Winfrey Show: When a Mother Secretly Thinks About Killing Her Children* (CBS Television broadcast July 11, 2005); see also Oprah.com, *Postpartum Psychosis*, http://web.archive.org/web/20011107000529/www.oprah.com/tows/coming/tows_come_main.jhtml (last visited Oct. 18, 2008).

20. See Press Release, National Organization for Women, Tragedy Focuses Attention on Postpartum Psychosis (Sept. 6, 2001), available at <http://www.now.org/press/04-01/09-06.html> ("The National Organization for Women is speaking out on the Andrea Yates case to call attention to the need for better response by the medical community, law enforcement and the judiciary to the problem of postpartum depression and psychosis.").

21. See, e.g., Rick Casey, Op-Ed., *Mad Moms, Insane Law*, HOUSTON CHRON., Dec. 19, 2004, at B1 (arguing for a change in the Texas insanity standard for women suffering from

disorder. Postpartum psychosis has also arisen in recent legal scholarship. Many scholars argue that the postpartum psychosis defense, along with other postpartum mental disorder defenses, should apply even more expansively to protect violent mothers from undue punishment. Some argue for changes in current laws, such as the development of a gender-specific insanity standard that caters to the intricacies of postpartum psychosis.²² Others support the enactment of an American Infanticide Act, which would automatically mitigate sanctions for mothers who kill.²³ Canada and England have already passed such laws.²⁴

This Note argues that recent proposals are both unnecessary and misplaced, as they reflect outdated misconceptions about female violence. Existing gender-neutral insanity standards have proven effective in accommodating women with postpartum psychiatric disorders and should not be changed.²⁵ A significant number of

the effects of postpartum psychosis).

22. See, e.g., Brian D. Shannon, *The Time Is Right to Revise the Texas Insanity Defense: An Essay*, 39 TEX. TECH L. REV. 67, 69 (2006) (arguing that the Texas insanity standard is ineffectively narrow and relying for support primarily upon the fact that “in the Yates case, the verdict of not guilty by reason of insanity was not returned until after two trials and more than five years following the underlying tragic deaths”); Michele Connell, Note, *The Postpartum Psychosis Defense and Feminism: More or Less Justice for Women?* 53 CASE W. RES. L. REV. 143, 162 (2002) (“A different legal insanity standard for a mother who kills her child is an appropriate solution to meet the demands of equality and justice.”); John Dent, Comment, *Postpartum Psychosis and the Insanity Defense*, 1989 U. CHI. LEGAL F. 355, 367-68 (suggesting that the required standard of proof should be lowered in cases involving the insanity defense and women who kill their children under the alleged effects of postpartum psychosis); Jessie Manchester, Comment, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. & CRIMINOLOGY 713, 718 (2003) (“[T]he failure of United States jurisdictions to adopt an insanity test that incorporates postpartum psychotic women reflects the criminal justice system’s perpetual inability to accommodate female criminal offenders.”); Michelle R. Prejean, Comment, *Texas Law Made This Mad Woman Sane*, 42 HOUS. L. REV. 1487, 1501 (2006) (“Although postpartum psychosis could be a defense in and of itself, a better solution is to rework the insanity defense so that it provides adequate remedies for women with postpartum psychosis.”).

23. See, e.g., Walker, *supra* note 17, at 220 (2006) (“Irrespective of the individual state’s insanity defense statute, each state should move toward enacting a separate infanticide statute based on the defense of postpartum psychosis.”); Butterfield, *supra* note 17, at 518 (proposing that “the United States look to international wisdom and, in the years to come, develop and adopt a statute specific to infanticide committed by mothers suffering from postpartum mental disorders”).

24. Infanticide Act, 1938, 2 Geo. 6, c. 36, § 1(1) (Eng.); R.S.C. 1985, ch. C-46, § 233 (Can.).

25. See *infra* text accompanying notes 169-75.

female defendants, including Yates, have successfully raised postpartum psychosis as a legal defense, even in jurisdictions that apply the most stringent insanity standards.²⁶ Similar defenses have not been applied to fathers who kill their children.²⁷

The states have no need to enact an Infanticide Act or other gender-specific laws. Although some evidence of disparate results exists in cases involving postpartum psychosis,²⁸ a gender-specific approach will not ensure a more equitable outcome. Any disparity stems not from inadequacies in available laws or the insanity standard itself, but from a dangerous societal ambivalence toward mothers who kill. Feminist theorists argue that violent women occupy an ambiguous position, as they disrupt and challenge cultural ideals concerning femininity.²⁹ Violence remains a masculine realm, and female aggression is deemed the rare result of mental disorder.³⁰ Consequently, American laws already reflect a number of misconceptions about women and violence.³¹ There is no need to promote further leniency toward female offenders.

Part I of this Note will explore the extent to which cultural values concerning femininity have influenced the societal response to infanticide and filicide. This section will provide an overview of feminist legal theory and its relation to cases involving mothers who kill. Part I will also address the role that traditional notions of femininity played in Yates's trials. Lastly, this section will describe the ways in which the American legal system has already incorporated popular misconceptions about female violence into its jurisprudence.

26. See *infra* notes 176-82 and accompanying text.

27. See *infra* notes 66-68, 199-201 and accompanying text.

28. Some have argued that current insanity standards create disparate outcomes for female defendants suffering from postpartum psychosis. See, e.g., Connell, *supra* note 22, at 144 ("The wide range of verdicts in similar cases indicates society's and the legal system's ambivalence about postpartum psychosis as a criminal defense.").

29. See, e.g., HILARY NERONI, *THE VIOLENT WOMAN: FEMININITY, NARRATIVE, AND VIOLENCE IN CONTEMPORARY AMERICAN CINEMA* 59 (2005) ("[F]emale violence doesn't fit conveniently into our ideas of the feminine, and, because of this, it has a disruptive and traumatic impact, as reactions to violent women in history bear out.").

30. See PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN AND THE MYTH OF INNOCENCE* 7 (1997) ("The sole explanation offered up by criminologists for violence committed by women is that it is involuntary, the rare result of provocation or mental illness").

31. See *infra* Part I.E.

Part II will outline the reasons why the states should avoid adopting an Infanticide Act. By critiquing existing Infanticide Acts in both England and Canada, this section will demonstrate that such statutes are not only premised upon the faulty presumption that all maternal killings result from the hormonal side effects of childbirth, but also reflect the misplaced belief that women should be treated lightly for violent crimes.

Part III will argue that American jurisdictions should not develop gender-specific insanity standards for women suffering from postpartum psychosis because: (a) current gender-neutral insanity standards have proven effective in accommodating women who suffer from postpartum psychosis; (b) the use of a gender-specific standard promotes dangerous leniency toward female defendants; and (c) a gender-specific standard would embrace and perpetuate false ideas about women and violence. This section will address the reasons for disparate results in some cases and outline the risks inherent in changing the insanity standard to a gender-specific model.

If American laws further cater to misplaced beliefs about femininity and violence, women will remain imprisoned in a system that deprives them of any real agency or power. A legal system that embraces such beliefs fails to treat the real causes of female violence and denies the value of the victims of female violence.

I. POSTPARTUM PSYCHOSIS AND CULTURAL VALUES CONCERNING FEMININITY

A. Feminist Legal Theory and Mothers Who Kill

Feminist legal theory provides an alternative means of viewing mothers who kill and the responses their acts elicit. In general, feminist legal theory functions as a metanarrative to mainstream legal theory by critiquing and examining its theoretical models and constructs.³² Scholars who embrace feminist legal theory seek to

32. BELINDA MORRISSEY, *WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY* 20 (2003). Feminist legal theory and practice fall into three primary phases: the first phase, beginning in the 1960s, was empirical feminism; the second phase, beginning in the 1980s, was standpoint feminism; the third and more recent phase is that of postmodern feminism,

identify ways in which the law has contributed to female subordination and modify legal approaches to gender issues. Feminist legal theory is therefore both reactive and reformative.³³

Feminist legal theorists have long recognized that both the media and legal system treat male and female murderers differently. In general, violence does not comport with societal conceptions of femininity.³⁴ Criminologists attempt to explain away the acts of violent women as the “rare result of provocation or mental illness.”³⁵ This explanation, however, relies upon the faulty conception that women are inherently passive—that “half the population of the globe consist[s] of saintly stoics who never succum[b] to fury, frustration, or greed.”³⁶ Such notions are unrealistic and outdated.

Although the myth of female passivity is “one of the most abiding myths of our time,” it is not grounded in reality.³⁷ To the contrary, women commit a number of violent crimes, and they do so with disturbing frequency. Unlike male violence, female violence often occurs within the confines of the home. The victims of female violence are most often spouses, children, and other family members. For instance, statistics indicate that:

Women commit the majority of child homicides in the United States, a greater share of physical child abuse, an equal rate of sibling violence and assaults on the elderly, about a quarter of child sexual abuse, an overwhelming share of the killings of newborns, and a fair preponderance of spousal assaults.³⁸

Despite this reality, violence remains a uniquely “male” behavior.³⁹

which has been influenced by the work of Foucault and Derrida. *See id.* at 20-21.

33. *Id.* at 20 (“Much of this work is reformative of particular laws and legal principles. It is also reactive, responding to developments in the discourse of law.”).

34. NERONI, *supra* note 29, at 59.

35. *Id.*

36. *Id.*

37. PEARSON, *supra* note 30, at 7.

38. *Id.*

39. *See id.* (“Violence is still universally considered to be the province of the male. Violence is masculine. Men are the cause of it, and women and children the ones who suffer.”).

Although male murderers are recognized, and even glorified in some cases,⁴⁰ women remain within the constraints of a limited good girl/bad girl dichotomy. The discussion of violent women often focuses heavily on what it means to be female, and the criminal act in question fades into the background.⁴¹ Ideological fantasy, rooted in the good girl/bad girl dichotomy, works to mold violent women “back into what a woman should be.”⁴² A woman therefore behaves violently only as the result of external forces beyond her control (“madness”) or because she is simply not a true woman (“badness”). Although “mad” women remain “morally ‘pure’” and otherwise conform to “traditional gender roles and notions of femininity,” this is not true of “bad” women.⁴³ “Bad” women usually have not conformed to societal standards; as a result of their deviance, they are inherently unwomanly. Stereotypes preserve traditional definitions of femininity by either stripping all agency from “mad” women who commit violent acts or removing “bad” women from the female realm. In this way, ideological fantasy allows notions of female passivity and nonviolence to persist.

Mothers who kill their own children present an even more troubling challenge to cultural ideals concerning femininity. If murderous females occupy an ambiguous place in the Western symbolic system, women who kill their own young upset the very foundation of the system. In patriarchal societies, femininity remains linked with the ideal of virtuous motherhood.⁴⁴ Perhaps the most common trope is that of the “Mother-Woman ... deified by the Catholic Madonna,” which has its roots in the basic constructs of Western society.⁴⁵ The concept of a “unique mother-child bond” has

40. MORRISSEY, *supra* note 32, at 17 (“[W]hen a man kills he can expect that his crime will be both imaginable and possibly even seen as human. Indeed, male crime in all forums, from the fictional to the factual, is frequently articulated, debated, portrayed, glorified, even fantasized.”).

41. NERONI, *supra* note 29, at 60 (“The public discussion surrounding so many cases of violent women, both past and present, seems to be less about justice or the act in question than about what it is to be a woman”).

42. *Id.* at 62.

43. CHERYL L. MEYER & MICHELLE OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN* 69-70 (2001).

44. PHYLLIS CHESLER, *WOMEN AND MADNESS* 83 (2005) (“In patriarchal culture, Mother-Women ... are as removed from (hetero) sexual pleasure as are Daughter-Women.”).

45. *See id.* at 83-84 (suggesting that “Mary symbolizes power achieved through receptivity, compassion, and a uterus”).

come and gone throughout history, but it resurged with great force in the eighteenth and nineteenth centuries.⁴⁶ From this period onward, women began “to symbolize the nurturant safety of the home.”⁴⁷ They became endowed with “attributes of softness and sentimentality,” which have remained a vital part of the feminine ideal.⁴⁸ As divisions between men and women in the workforce became more pronounced, sharper divisions between male and female character attributes followed.⁴⁹ These divisions still exist, and cultural definitions of femininity remain linked with “female” attributes.

As such, crimes like Yates’s prove entirely antithetical to the cultural understandings of femininity and motherhood in a patriarchal society.⁵⁰ Mothers nurture; they do not destroy. The need to explain away the actions of violent mothers therefore proves even stronger than that of other violent women.⁵¹ The suggestion that a mother, “the gate keeper to your soul, the nurturer of your mind and body would ever purposely harm you” is often unfathomable.⁵² To believe that a mother could harm her own children “would alter the natural order in the world in the same way the moon changes the tides.”⁵³ As the author of a Houston newspaper editorial opined following Yates’s trial: “For a mother to kill her babies so goes against nature that she should be assumed to be doing it out of insanity unless there is evidence that she had some other motive.”⁵⁴ Traditional definitions of motherhood leave no room for the possibility of violence. As a result, “legal and media narratives of murders committed by women indicate these acts are ...

46. See PEARSON, *supra* note 30, at 75 (explaining that, in the eighteenth and nineteenth centuries, “a division of labor between the sexes intensified in the shift from an agrarian to an industrial society”).

47. *Id.*

48. *Id.*

49. *Id.* (“As labor divisions grew starker, so did the character attributes of gender.”).

50. See Connell, *supra* note 22, at 144.

51. MORRISSEY, *supra* note 32, at 166 (arguing that mothers who kill remind all members of society of their “initial vulnerability and dependence on the whims and caprices of the women who care for them”).

52. Stuart S. Gordon, *Mothers Who Kill Their Children*, 6 *BUFF. WOMEN’S L.J.* 86, 86 (1998).

53. *Id.*

54. Casey, *supra* note 21.

traumatic for heteropatriarchal societies.”⁵⁵ Legal and media discourses therefore attempt to “narrate, understand, and resolve” such acts in a manner that reduces their traumatic impact.⁵⁶

B. The Insanity Defense and Female Offenders

The insanity defense serves as one means by which violent women are legally pathologized and endowed with false passivity. The availability of the insanity defense to criminal defendants reflects the primary justification for punishment in American jurisdictions: “that offenders have made a voluntary choice to break the law.”⁵⁷ A defendant’s degree of culpability lessens when she fails to act of her own volition; the need for punishment, at least in a retributive sense, diminishes. The general willingness to apply the defense to women who kill their children points to pervasive myths of female nonviolence at work in the law. In the United States, the criminal justice system “is firmly rooted in the concept of individual free will,” and the system relies heavily upon the assumption that individuals should be held responsible for their own actions.⁵⁸ Myths of female passivity are so pervasive and encompassing that they eliminate concerns about free will and criminal accountability from the discussion of many female offenders.

When women kill, judges and juries often fall prey to the “strong tendency to view these crimes as arising out of external circumstances, and therefore to resist equating these homicides with murder.”⁵⁹ The insanity defense caters to this tendency, which stems from the subconscious need to reduce the violent woman’s traumatic impact. The insanity defense enables female violence to coexist comfortably with traditional notions of femininity. It also promotes empathy toward violent women, whose aberrance becomes a result of external factors rather than conscious choice. It is worth

55. MORRISSEY, *supra* note 32, at 2 (“For the fear of women, of their power to generate life and take it away, runs deep in male dominated societies.”).

56. *Id.*

57. Matthew Jones, *Overcoming the Myth of Free Will in Criminal Law: The True Impact of the Genetic Revolution*, 52 DUKE L.J. 1031, 1031 (2003). Jones goes on to note that traditional justifications for punishment include deterrence, retribution, incapacitation, and rehabilitation. *Id.* at 1037-38.

58. *Id.* at 1033.

59. Oberman, *supra* note 11, at 6.

noting that women who commit violent acts, and the lawyers who defend them, “have no stake in correcting our impression of innocence,” as their successful use of the insanity defense allows women to escape guilty sentences and harsh criminal penalties.⁶⁰

The current approach to female violence has a number of serious implications. The denial of female aggression both “reinforce[s] the notion that female violence is unreal” and “preserv[es] ideas of female oppression.”⁶¹ In deeming violent women, especially mothers, “mad,” the law transforms female perpetrators into helpless victims.⁶² Although their male counterparts are often recognized as active aggressors, violent women emerge in media and legal portrayals as “passive and rather deranged little robots who imperil themselves on cue.”⁶³

Such depictions have detrimental effects on the overall status of women in society. A number of feminist legal theorists argue that the tendency to deny female aggression prevents women from gaining full equality and citizenship in their communities⁶⁴ as female defendants “remain locked in the male autonomy/female passivity model which comprehends the actions of both genders unsatisfactorily and incompletely.”⁶⁵ The denial of female aggression also poses problems from a criminal responsibility perspective, as women escape liability and punishment for actions that men do not. Statistics reveal that men receive consistently harsher criminal penalties than their female counterparts.⁶⁶ Women are particularly

60. *Id.* at 54.

61. MORRISSEY, *supra* note 32, at 7, 25.

62. Mental disorders appear to have definite links with societal conceptions of gender. See, e.g., CHESLER, *supra* note 44, at 116 (“Perhaps what we consider ‘madness,’ whether it appears in women or men, is either the acting out of the devalued female role or the total or partial rejection of one’s sex-role stereotype.”).

63. PEARSON, *supra* note 30, at 23.

64. See MORRISSEY, *supra* note 32, at 21 (“[U]nless women can be considered to possess full human (as opposed to mythic) agency, responsibility and culpability for their crimes ... they continue to lack complete citizenship in their communities.” (citations omitted)).

65. *Id.* at 168.

66. PEARSON, *supra* note 30, at 61 (“In 1987, twenty-two out of every one hundred persons arrested for ‘serious crimes’ in the United States were women. Yet only ten out of one hundred persons convicted for serious crimes were women, and five out of one hundred persons imprisoned for those crimes were women. In 1986, 48 percent of New York women convicted of homicide actually went to prison, whereas 77 percent of men did. By 1991, a Phoenix, Arizona, study of 2,500 felony offenders found that men were twice as likely as women to be incarcerated, and women were significantly more likely than men to plead

unlikely to receive the death penalty for their violent acts.⁶⁷ Studies also suggest that men are as much as 11 percent more likely than women to be incarcerated for violent offenses.⁶⁸

C. Dangerous Impact of the Denial of Female Violence on the Justice System

When the legal system caters to outdated stereotypes about femininity, it does more than perpetuate false ideas about women and violence; it overlooks the value of the infants and children women kill.⁶⁹ At its worst, the denial of female aggression allows the entire criminal justice system to turn a blind eye on women who deserve punishment and victims who need protection. The disturbing saga of the Tinning family offers just one example.

Over the course of fourteen years, Marybeth Tinning, a New York mother, killed eight of her nine children without any intervention from the criminal justice system.⁷⁰ Even after three of her children died, no one suspected foul play from the quiet woman. Instead, people “pitied and admired Marybeth,” as three more of her children died over the following years.⁷¹ No one believed that a mother could kill her own children. Even the children’s pediatricians “were stalwart in their support of her.”⁷² But when a criminal investigation finally began after the death of Tinning’s ninth child, she confessed to killing three of her children.⁷³

guilty to a reduced charge, across all offense categories.”).

67. *Id.* (“Of 103 women sentenced to death in the United States since 1977, one has been executed; 47 remain on death row; the remainder were transferred out.”).

68. *Id.* at 62.

69. *See id.* at 89 (suggesting that infants “are perceived, on some level, as mere extensions of women—owned by them” and that society is more likely to condemn a woman who kills an older child, as “[t]he child, as opposed to the baby, is the most cherished of all potential victims in our society”). This raises important questions about the general status of infant rights in other areas including abortion and infant euthanasia. *See, e.g.*, Philip Montague, *Infant Rights and the Morality of Infanticide*, 23 *NOÛS* 63 (1989) (“Discussions of infanticide typically center, therefore, on the idea that possessing certain properties is necessarily correlated with having a right to life....”).

70. *See* PEARSON, *supra* note 30, at 92-102.

71. *Id.* at 96.

72. *Id.*

73. *Id.* at 94.

In a similar Australian case, a woman killed each of her four children over a period of several years, and authorities failed to investigate any of the first three deaths as a potential homicide.⁷⁴ They accepted the mother's word that each of the children had suffered from sudden infant death syndrome (SIDS), when in reality she had planned and orchestrated their murders. Only when the woman's husband discovered her secret diary did anyone suspect that she could have committed such unthinkable acts.⁷⁵ Indeed, society seems implicitly to "permit a maternal sphere of influence over our youngest citizens," even when such influence lends itself to vast tragedy.⁷⁶

D. Issues of Femininity and Violence in Yates's Trials

Yates's trials provide a powerful example of the extent to which cultural values concerning femininity have influenced the societal response to maternal killings. The trials ultimately turned on traditional notions of femininity, motherhood, and violence. Prosecutors argued that Yates acted of her own volition and recognized the nature of her actions.⁷⁷ Yates's defense counsel, on the other hand, repeatedly drew upon normative female roles in order to strip Yates of agency and invoke the jury's sympathy. George Parnham, Yates's defense attorney, tapped into the jury's disbelief that a mother could act violently, asserting that it should be assumed she acted out of insanity. During his opening statement, Parnham asked the jury: "How does a mother who has given birth, who has nurtured, who has protected, and who has loved the five children that she brought into this world, interrupt their lives?"⁷⁸ The answer to this question, according to Parnham, is that she could not have done so *unless she was psychotic*.⁷⁹

74. See Michele Mandel, *Murder in the Nursery*, TORONTO SUN, May 23, 2003, at 20.

75. *Id.*

76. PEARSON, *supra* note 30, at 89.

77. O'MALLEY, *supra* note 1, at 204 ("Andrea Yates took that control over her life that day. She ... wasn't doing this ... except for motivation only she knows Andrea Yates is responsible. She knew it was wrong.")

78. Transcript of Opening Statements in Andrea Yates Trial, CNN.com, Feb. 18, 2002, <http://transcripts.cnn.com/TRANSCRIPTS/0202/18/se.02.html>.

79. *See id.*

The jury later heard evidence of what the defense believed really drove Yates to kill her children: the woman's "mental disease and or defect."⁸⁰ The defense team hoped to prove to the jury that "[b]ut for the psychosis, she would never have considered, much less acted upon, any thought to take the lives of the children she bore into this world and dearly loved as their mother."⁸¹ Yates's attorneys appealed aptly to the temptation to disbelieve and explain away female violence—especially that as heinous as Yates's. Their theory relied heavily upon the traumatic impact of a violent mother's actions.

Yates appears as a highly sympathetic character, even as a victim of sorts, in other media and academic portrayals. Calls for sympathy and support for Yates occur with far greater frequency than any recognition of the reality that Yates's children faced in their final moments. In fact, many commentaries simply ignore the gruesome details of the murders. There is little discussion of the fact that even the smallest of the children ran, struggled, and fought back as their mother pushed them facedown into the water and held their heads until they could no longer breathe, until their little lungs literally exploded in their chests.⁸² Likewise, few reports make any mention of what Rusty Yates must have experienced in the hours that he spent waiting outside his home on the afternoon of his children's murders, unable to enter or see his own children.⁸³

Instead, many people call for encouragement and support of Yates. The murders are portrayed as a tragedy "for Yates herself," considering that "she will always carry the emotional burden of having killed her five children."⁸⁴ One author writes: "We can only imagine her torment once the psychiatric medications she now must take began flooding the synapses of her brain and she realized the

80. *Id.*

81. Paul Duggan, *Mental Illness Is Focus of Yates Jury Selection*, WASH. POST, Jan. 11, 2002, at A3 (quoting George Parnham).

82. See O'MALLEY, *supra* note 1, at 15-20.

83. See *id.* at 7 ("Yates got up off the ground and, in his pain, grabbed a plastic yard chair and threw it at nothing in particular. Then he fell to the ground again and coiled into a fetal position, still screaming.").

84. Phillip J. Resnick, *The 2006 Friedman & Gilbert Criminal Justice Forum: The Andrea Yates Case: Insanity on Trial*, 55 CLEV. ST. L. REV. 147, 155 (2007).

full consequences of her actions.”⁸⁵ A woman who kills her children apparently “suffer[s] tremendously. Maybe not as much as her children suffered. Maybe as much.”⁸⁶ Even Yates’s own husband ultimately viewed her as a victim, worthy of society’s pity: “The way I look at Andrea is as a child that I’ve lost custody of to a mother [the penal system] I don’t like or trust.”⁸⁷ A woman who kills her own child gains the jury’s sympathy on some level because she has already lost, in the eyes of many, her “most valuable possession.”⁸⁸

When madness and sickness enter the picture, mothers who kill become even more sympathetic. This troubled jurisprudence is reflected in the responses of juries, who “frequently cry when delivering verdicts in infanticide cases ... regardless whether their decision is innocence or guilt.”⁸⁹ In the *Law & Order* episode based upon Yates’s case, characters echo similar sentiments for the fictional mother who attempts to kill her four sons. One character empathizes with the woman, stating that: “packing and moving after a C-section with a newborn, that must have been torture.”⁹⁰ The response to Yates’s case provides evidence of the tendency to victimize women and deny their violent actions. The states have no need to craft laws that will further cater to the tendency to view violent women in highly sympathetic terms.

E. The Institutionalization of Female Passivity and Nonviolence in American Law

The American legal system has already incorporated misconceptions about women and violence into its jurisprudence in many ways. A number of laws seek to protect women from men, and special legal defenses allow women to escape liability for their own violent actions. Congress enacted the Violence Against Women Act

85. Janet Boivin, *Show Your Support*, NURSE.COM, Feb. 11, 2008, <http://include.nurse.com/apps/pbcs.dll/article?AID=/20080211/IL02/80206040>.

86. Gordon, *supra* note 52, at 103.

87. O’MALLEY, *supra* note 1, at 247.

88. PEARSON, *supra* note 30, at 89.

89. *Id.*

90. *Law & Order Criminal Intent: Magnificat* (NBC television broadcast Nov. 11, 2004). In the episode, the District Attorney also states: “You’re talking about a mother planning a murder so heinous it is incomprehensible. Mothers don’t just go into a homicidal spiral. The grand jury will want to know why.” *Id.*

(VAWA) in 1994, which provides, in part, a federal civil rights cause of action for crimes of violence motivated by gender.⁹¹ In 2005, a man attempted to apply for a grant to fund a program that provides homes for male victims of spousal abuse, but his request was denied by the VAWA Office.⁹² He received a letter stating that his proposal had been rejected because it “focused on serving men who are victims of domestic violence.”⁹³ In response to criticism, Senator Biden, the lawmaker who sponsored VAWA, maintained strenuously that the law applies to both sexes.⁹⁴ Department of Justice guidelines for grants under the Act tell a different story: “To reflect Congress’s focus on violence against women ... states must fund *only* programs that focus on violence against women.”⁹⁵ This view of VAWA reflects the misguided belief that women are always victims and men are always perpetrators of violent crimes.

Criminal statutes also reflect disparate ideas about male and female violence. For instance, laws relating to domestic abuse reflect the notion that men kill as the result of anger and women only do so as the result of fear and despair.⁹⁶ A specific legal defense, based on Battered Woman Syndrome encompasses this notion. The defense allows women to escape punishment for acts of domestic violence⁹⁷ and applies to a woman who kills her male partner after a lengthy period of cyclical abuse, during which she becomes unable to take rational steps to remove herself from the

91. See 42 U.S.C. § 13981 (2000).

92. Jesse Chaderdon, *Biden pressed to make abuse bill gender neutral*, HOCKESSIN COMMUNITY NEWS, June 2, 2005, at 8, available at http://www.mediaradar.org/docs/BidenOnGenderNeutralVAWA_HCN_06.02.05.pdf.

93. *Id.*

94. *See id.*

95. *Id.* (quoting Department of Justice guidelines) (emphasis added). Even though states may fund only programs focusing on violence against women, the guidelines go on to state that “programs must provide to a similarly situated male victim in need.” *Id.*; see also RESPECTING ACCURACY IN DOMESTIC ABUSE REPORTING (RADAR), VAWA PROGRAMS DISCRIMINATE AGAINST MALE VICTIMS (2007), available at <http://www.mediaradar.org/docs/RADARreport-VAWA-Discriminates-Against-Males.pdf> (suggesting that “[d]iscrimination [against men] begins at the highest levels—the federal and state governments”).

96. Caroline Forell, *Gender Equality, Social Values and Provocation Law in the United States, Canada and Australia*, 14 AM. U. J. GENDER SOC. POL’Y & L. 27, 28 (2006) (“Men who commit domestic homicide by killing intimate or former intimate partners often do so out of jealousy, possessiveness and rage—in the heat of passion. Women who commit domestic homicide often kill out of fear and despair—they kill their batterers.”).

97. See LENORE E.A. WALKER, THE BATTERED WOMAN SYNDROME 202-03 (2d ed. 2000).

situation.⁹⁸ Much like the postpartum psychosis defense, the battered woman's defense labels female murder "the irrational product of a mental health disorder."⁹⁹

The defense may also reflect a construction of marriage as a "hierarchical relationship," in which women are subordinated and men have "the authority to govern both themselves and their irresponsible wives."¹⁰⁰ The criminal law generally requires that men resist the pressures that would otherwise drive them to commit crimes, including the behavior of a spouse.¹⁰¹ The law constructs women, on the other hand, as "incapable of choosing lawful conduct when faced with unlawful influence from their spouses."¹⁰² In addition, the criminal justice system offers no special gender-specific protections for men. The battered woman defense and postpartum psychosis defense are the products of a system that tends to reject and explain away female violence.

In addition to the above defenses, other criminal statutes explicitly deny the possibility of certain types of female violence.¹⁰³ For instance, the majority of rape statutes in American jurisdictions traditionally incorporated gender-specific language, criminalizing only acts of sexual violence committed by men. In the past few years, many states have begun to adopt gender-neutral statutes. This is not the case in every jurisdiction, however, and a number of states still adhere to traditional definitions. Maryland, for instance, continues to define rape as forceful vaginal intercourse.¹⁰⁴ As such laws reveal, current jurisprudence has already institutionalized myths of female non-violence in a number of ways. In the wake of

98. See, e.g., *State v. Kelly*, 478 A.2d 364, 371-73 (N.J. 1984) ("The cyclical nature of battering behavior helps explain why more women simply do not leave their abusers.").

99. Anne M. Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 5 (1994) (quotations omitted) ("[T]he criminal law has been content to excuse women for criminal misconduct on the ground that they cannot be expected to ... resist the influence exerted by their husbands. No similar excuse has ever been afforded to men.").

100. *Id.* at 5-6.

101. See *id.* at 5.

102. *Id.* at 6.

103. See Paul J. Mirabile, Comment, *Rape Laws, Equal Protection, and Privacy Rights*, 54 TUL. L. REV. 456, 457 (1980) ("A typical state statute of long standing provides that 'rape' is the carnal knowledge of a female forcibly and against her will.").

104. MD. CODE ANN., CRIM. LAW §§ 3-303(a)(1), 3-304(a) (2007); see also Model Penal Code § 213.1 (1962).

the frenzy prompted by Yates's case, the temptation to further indulge such myths must be kept in check.

II. ARGUMENT AGAINST THE ENACTMENT OF AN AMERICAN INFANTICIDE ACT

In the years following Yates's high profile case, there has been discussion of the possible enactment of an American Infanticide Act.¹⁰⁵ An Infanticide Act would automatically mitigate sanctions for mothers who kill their children following childbirth. Although England and Canada have done so, American jurisdictions should not adopt a law that automatically mitigates sanctions for women who kill their children. A review of the British and Canadian Acts reveals that existing Infanticide Acts are premised upon the faulty presumption that all maternal killings result from the effects of childbirth and reflect the misplaced belief that women should be treated lightly for violent crimes.

A. Faulty Presumption that All Maternal Killings Result from the Effects of Childbirth

Although maternal infanticide and filicide have existed for centuries, they became highly medicalized at the start of the twentieth century.¹⁰⁶ At that time, two French psychiatrists "posited a causal relationship between pregnancy, childbirth, and subsequent maternal mental disorder."¹⁰⁷ Their research changed the way twentieth-century society viewed infanticide, and maternal killings have since become closely associated with mental illness.¹⁰⁸ England quickly passed statutes that classified infanticide as a "distinct form of homicide due to the impact of pregnancy and birth upon the mother's mental status."¹⁰⁹ The British Infanticide Act, first enacted

105. *See supra* note 23.

106. Maternal killings are not a new phenomenon. Infanticide and filicide have occurred for centuries in nearly every corner of the world. *See* MEYER & OBERMAN, *supra* note 43, at 1-10.

107. *Id.* at 11. England embraced this concept and "recognized infanticide as a distinct form of homicide due to the impact of pregnancy and birth upon the mother's mental status."
Id.

108. *Id.*

109. *Id.*

in 1922, mitigates the punishment attached to a manslaughter charge when a woman kills her child during the first year of its life.¹¹⁰ The Act operates upon the “presumption that women who kill their children within the first twelve months of life are ill”¹¹¹ and supports the assumption that hormones cause “*all* maternal aggression against infants.”¹¹² The Act accordingly instructs a jury to return a verdict of infanticide, rather than murder, when it finds that the lack of a full recovery from childbirth caused an imbalance in a woman’s mind.¹¹³ As such, the Act perpetuates the faulty presumption that all maternal killings result from hormonal imbalances or other uniquely female defects.

The Canadian Infanticide Act also provides broad protection for mothers who commit murder in the year following childbirth through a separate and lesser charge of infanticide.¹¹⁴ In Canada, a woman does not need to prove that her actions *resulted* from mental defect; she need only prove that she suffered from *some* type of general mental disturbance during the general period.¹¹⁵ The Canadian Act does not define the degree of disturbance necessary, nor does it require any formal diagnosis. Additionally, a woman need not prove that she suffered from a distinctly “postpartum” disorder.¹¹⁶ As is the case in England, a Canadian mother’s burden of proof is very low; her word is all that the law requires. The government, on the other hand, must prove beyond a reasonable doubt that a woman had fully recovered from childbirth at the time of the killing and that she did not act while under “the effects of giving birth.”¹¹⁷ As this burden is nearly impossible to meet,¹¹⁸ the Canadian Act effectively excuses all acts of maternal aggression during the first year following childbirth, regardless of whether they truly resulted from serious postpartum mental disorders.

110. Infanticide Act, 1938, 2 Geo. 6, c. 36, § 1(1) (Eng.).

111. Walker, *supra* note 17, at 204.

112. PEARSON, *supra* note 30, at 80.

113. Infanticide Act § 1(2); *see also* PEARSON, *supra* note 30, at 80.

114. *See* KIRSTEN JOHNSON KRAMER, UNWILLING MOTHERS, UNWANTED BABIES: INFANTICIDE IN CANADA 72 (2005).

115. *See* R.S.C. 1985, ch. C-46, § 233 (Can.).

116. *See* Walker, *supra* note 17, at 204.

117. *Id.* at 206.

118. *Id.*

There is little, if any, conclusive evidence that all maternal aggression in the year following childbirth results from hormonal imbalances. Indeed, the troubling reality is that “[r]esearch on maternal aggression is stunningly scant.”¹¹⁹ To date, a clear biological link does not exist between hormones and female violence.¹²⁰ In the United States, medical experts continue to disagree as to whether postpartum disorders actually cause women to harm their children.¹²¹ What remains absolutely clear, however, is that not all acts of infanticide and filicide can be explained by postpartum disorder.¹²² Even if hormonal disturbances account for some violent actions, this cannot be true of all cases of infanticide. The bulk of maternal killings occur for other unrelated reasons—many of which display some degree of rational intent.¹²³ Existing Infanticide Acts ignore this reality and universally excuse the murderous behavior of all criminal mothers. The Acts make no attempt to differentiate between individual cases of infanticide.¹²⁴ The blanket protection afforded by the two Acts renders nonexistent the possibility that a mother could premeditate and deliberately choose to kill her infant.

The history of infanticide and filicide reveals the erroneous underpinnings of the existing Acts. Women have committed crimes against their children since antiquity, and they have done so for a variety of reasons, many of which reveal clear and rational intent. For instance, rates of infanticide have often spiked as a result of societal pressures and stigmas. In the Middle Ages, many women killed their non-marital children to avoid the stigma attached to illegitimacy.¹²⁵ In China, during the Qing Dynasty of the eighteenth and nineteenth centuries, the preference for sons in wealthy families “caused a shocking increase in female infanticide among

119. PEARSON, *supra* note 30, at 79.

120. *See infra* note 140 and accompanying text.

121. *See infra* note 158.

122. *See* SCHWARTZ & ISSER, *supra* note 3, at 130 (“[T]here *are* cases in which postpartum disorder is not at the root of infanticide or filicide.”).

123. *See infra* notes 125-28 and accompanying text.

124. *See* MEYER & OBERMAN, *supra* note 43, at 17 (pointing out that many modern societies regard infanticide as a “uniform crime,” and treat it as “a manifestation of illness or as a manifestation of evil”).

125. *Id.* at 8-9 (“Common law protects legitimate children The nonmarital child was denied all these rights. As a result, they often became the victims of infanticide.”).

dynastic families.”¹²⁶ In early Muslim culture, the Muslim dowry system “constitute[d] a powerful explanation for the persistence of female infanticide.”¹²⁷ Women kill their children out of desperation, anger, and for a variety of other reasons. “Hormones” do not account for all of the acts of infanticide that have occurred throughout history, and they do not account for all of the violent crimes that continue to occur each day against infants and children.¹²⁸

The British and Canadian Acts also fail to differentiate between the various types of postpartum mental disorders. The Acts rely upon the presumption that any type of postpartum mental illness can result in murder. In reality, however, a number of different postpartum disorders exist. Only in the most severe cases are women unable to control their behavior. Postpartum psychosis, which occurs in one to four women per 1000, is the most serious and rare postpartum disorder.¹²⁹ Postpartum psychosis may result in delusions, hallucinations, and a loss of reality.¹³⁰ Only in rare instances, however, does postpartum psychosis render a woman unable to appreciate the difference between right and wrong.¹³¹ The more common type of postpartum disorder is postpartum depression, which occurs to some extent in 60 to 80 percent of new mothers in the weeks following delivery.¹³² A catch-all term, postpartum depression encompasses everything from the minor “baby blues” to a more severe form of depression, which may last up to two years after childbirth.¹³³

126. *Id.* at 6.

127. *Id.* at 5.

Before the Muslim invasion, a Hindu father commonly gave his new son-in-law a gift for the purpose of starting a new life with his daughter. When the Muslims invaded, a downturn in economic conditions increased the difficulty of finding a bridegroom Eventually, at least in India, dowry became a mechanism for extortion As a result, even in contemporary Indian culture, the birth of a daughter triggers the pressure of saving a suitable dowry Among poor rural families, the persistence of female infanticide is attributable to precisely this fear.

Id.

128. See MARGARET G. SPINELLI, *INFANTICIDE: PSYCHOLOGICAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL 10* (2003).

129. SCHWARTZ & ISSER, *supra* note 3, at 155.

130. *Id.*

131. *Id.*

132. *Id.* at 118.

133. *Id.*

Existing Infanticide Acts do not distinguish between women who suffer from severe forms of postpartum psychosis and those who have only the “baby blues” or some other form of depression with postpartum onset. The exact biological causes of postpartum disorders remain unknown, but postpartum depression usually stems from the same type of risk factors that prompt other forms of depression.¹³⁴ Although depression is a common disorder, there is little reason to think that depressed men and women in the general population would receive the same level of blanket protection if they kill under the alleged effects of the disorder. As such, Infanticide Acts clearly treat mothers differently by affording them special, although unnecessary, protections.

The Acts also fail to take into account other extenuating circumstances, such as a woman’s knowledge that she might be at risk for postpartum psychosis.¹³⁵ A woman’s awareness of this risk would likely make her more culpable than another mother who has never experienced postpartum symptoms. Under the laws of some jurisdictions, a woman with prior knowledge of her condition might be held “liable for reckless homicide for her omission in taking steps to avoid a substantial and unjustifiable risk of which she was aware.”¹³⁶ Infanticide Acts ignore such differences and place all violent mothers in the same category. The Acts, therefore, fail to acknowledge the reality of postpartum disorders. In reality, women who experience the effects of postpartum psychosis after the birth of one child are at a very high risk for the same symptoms should they choose to give birth again.¹³⁷ For this reason, most doctors

134. *See id.* at 117 (stating that postpartum depression occurs as a result of factors including “depression generally, including genetic factors, a previous tendency to depression, adverse events, disturbed relationships, lack of support and social isolation” (quoting I. Brockington, *Diagnosis and Management of Postpartum Disorders: A Review*, 3 W. PSYCHIATRY 89, 91 (2004))).

135. Women who experience postpartum psychosis once are often at a high risk for the same symptoms if they give birth again. *See id.* at 118 (“The two factors most indicative of a woman’s risk for future postpartum depressive disorders are whether she suffered previously from a postpartum depressive disorder, and whether she suffered a previous depression related to pregnancy.”). This was the case with Andrea Yates, who experienced similar symptoms following the births of each of her children.

136. SCHWARTZ & ISSER, *supra* note 3, at 156.

137. *Id.* at 118 (citing C. Kelly, *The Legacy of Too Little, Too Late: The Inconsistent Treatment of Postpartum Psychosis as a Defense to Infanticide*, 19 J. CONTEMP. HEALTH L. & POL’Y 19, 254 (2002)) (“The two factors most indicative of a woman’s risk for future

strongly advise that women who experience the symptoms of postpartum psychosis do not become pregnant again. Such was the case for Andrea Yates.¹³⁸ The blanket protection granted to all violent mothers by existing Infanticide Acts, regardless of a woman's actual psychological condition or surrounding circumstances, reflects a belief that mothers should be treated leniently *simply because they are mothers*.

B. Misplaced Belief that Women Should Be Treated Lightly for Violent Crimes

The Infanticide Acts in both England and Canada accommodate “a collective sense that women should be treated lightly for certain crimes.”¹³⁹ The Acts are not premised upon any true biological data, as no link to postpartum hormones and female violence has been firmly established.¹⁴⁰ In this way, the Acts reflect a disturbing type of “myth-making by legislation.”¹⁴¹ Not surprisingly, a general leniency toward women who kill prompted the initial adoption of both Acts. In England and Canada, murder charges originally resulted in capital punishment, and juries had become unwilling to find a female defendant guilty when they knew that her sentence would require execution.¹⁴² As a result, the British Act eliminated the necessity of imposing murder sentences on female defendants; Canada's Act accomplished the same goal.¹⁴³

The Acts have had their intended effects. Women who kill an infant within the first year of its life receive minimal sentences in

postpartum depressive disorders are whether she suffered previously from a postpartum depressive disorder, and whether she suffered a previous depression related to pregnancy.”)

138. Resnick, *supra* note 84, at 148 (“In spite of contrary advice from her treating psychiatrist about the high rate of recurrence of postpartum depression, Mrs. Yates and her husband decided to have another baby.”).

139. PEARSON, *supra* note 30, at 91.

140. *See id.* at 80 (“The point of the Infanticide Act was not that British doctors had suddenly discovered a link between postpartum hormones and violent behavior. To this day that link hasn't been categorically established.”).

141. *Id.* at 91 (citing British criminologist Nigel Walker).

142. *See Walker, supra* note 17, at 206.

143. PEARSON, *supra* note 30, at 80 (“For instance, following five thousand coroner's inquests into child deaths ... in Britain in the mid-nineteenth century, only thirty-nine convictions for child murder resulted, and none of those women were executed.”).

both England and Canada.¹⁴⁴ The presumptions in favor of violent mothers and the high burden of proof placed on the government make the Acts difficult, if not impossible, to overcome. In Canada, for instance, a mother need not prove anything, but the Crown must prove “beyond a reasonable doubt that the mother was fully recovered from the effects of giving birth and that her mind was not disturbed by the effects of giving birth.”¹⁴⁵ In a recent case, a court recognized that the Crown’s burden is nearly impossible in light of the Infanticide Act.¹⁴⁶ Since the enactment of the Act in 1948, no Canadian mother has served a sentence longer than five years.¹⁴⁷ In England, the vast majority of women receive sentences for manslaughter, usually resulting in probation and counseling rather than prison sentences.¹⁴⁸

In reducing punishment for women who kill their children, the Infanticide Acts encompass a general belief that “the homicidal mother is more a threat to herself than to society.”¹⁴⁹ This reasoning devalues the men and children whose lives are changed irreversibly as a result of maternal infanticide. Although existing Infanticide Acts have affected the types of punishment women receive for their crimes, they have in no way helped to prevent infanticide from occurring in the first place. Infanticide continues to pose a significant problem. In England, for instance, infants younger than twelve months have the highest homicide victimization rate of any age group.¹⁵⁰ Due to high rates of underreporting of infant deaths, there is reason to believe that even more infants have become victims of homicide than current statistics suggest.¹⁵¹ In catering to violent women, Infanticide Acts have failed those who need protection the most.

144. See *infra* notes 147-48 and accompanying text.

145. Walker, *supra* note 17, at 206 (citing *The Queen v. Krystal Anna Coombs*, 2003 W.C.B.J. LEXIS 2646, at 49 (2003)).

146. *Id.* (citing *Coombs*, 2003 W.C.B.J. LEXIS at 34).

147. *Id.* at 205 (citing *Coombs*, 2003 W.C.B.J. LEXIS at 18-19).

148. See SPINELLI, *supra* note 128, at 9.

149. SCHWARTZ & ISSER, *supra* note 3, at 89.

150. Fiona Brookman & Jane Nolan, *The Dark Figure of Infanticide in England and Wales*, 21 J. INTERPERSONAL VIOLENCE 869, 869-70 (2006) (noting that children younger than one year of age are as many as three or four times more likely to fall victim to homicide than any other age group).

151. *Id.* at 870.

III. ARGUMENT AGAINST THE ADOPTION OF A GENDER-SPECIFIC INSANITY STANDARD

A. *Overview of Existing Insanity Standards*

Although the American legal system responded more slowly than its Canadian and British counterparts, it too has begun to embrace the medicalization of maternal killings.¹⁵² To date, no Infanticide Act or other relevant statutes exist in the United States. Since the 1980s, however, courts have permitted use of the insanity defense in cases involving mothers who suffer from the alleged effects of postpartum psychosis. Postpartum psychosis is considered a rare and serious mental condition, which occurs in approximately one to four out of every 1000 women who give birth.¹⁵³ Symptoms of the disorder include severe delusions, illogical thoughts and behavior, and possible suicidal or homicidal tendencies.¹⁵⁴ Female defendants must prove that, as a result of the disorder, they meet the requirements of the insanity defense in a given jurisdiction. Yates's saga brought national attention to the use of postpartum psychosis as a partial defense in cases of infanticide. Yates, who had been under psychiatric care since the birth of her fourth child in 1999,¹⁵⁵ pleaded not guilty to her children's murders by reason of insanity.¹⁵⁶

A number of scholars argue that current insanity standards, which are gender-neutral, fail to accommodate women suffering from postpartum psychosis.¹⁵⁷ They support the development of new gender-specific statutes, which would cater exclusively to mothers who kill their children. To the contrary, American jurisdictions should not develop gender-specific insanity standards, because: (a) current gender-neutral insanity standards have proven effective in accommodating women who suffer from postpartum psychosis; (b) the use of a gender-specific standard promotes dangerous leniency

152. Recently introduced legislation in both the House and Senate regarding postpartum mental disorder provides further evidence of this fact. *See supra* note 18.

153. Connell, *supra* note 22, at 146.

154. *See* MEYER & OBERMAN, *supra* note 43, at 77; *supra* notes 130-31 and accompanying text.

155. Resnick, *supra* note 84, at 148.

156. *See* Yates v. Texas, 171 S.W.3d 215 (Tx. Crim. App. 2005).

157. *See supra* note 22.

toward female defendants; and (c) a gender-specific standard would embrace and perpetuate false ideas about women and violence.

Even without clear mandates from the American psychiatric community,¹⁵⁸ current insanity standards have accommodated female defendants who claim to suffer from postpartum psychosis. The two modern formulations of the insanity defense in American jurisdictions are: (1) the *M'Naghten* test and (2) the Model Penal Code (MPC) or American Law Institute (ALI) test. Under the most stringent of these, the *M'Naghten* test, a defendant must show that she suffered from a mental disease or defect and that, as a result, she either (1) did not know the nature of the act she committed or (2) did not know it was wrong.¹⁵⁹ Under the MPC standard, a defendant proves insanity by meeting either prong of a two-prong test. This two-prong test dictates that a defendant must show that she “lack[ed] substantial capacity either to appreciate the criminality [wrongfulness] of [her] conduct or to conform [her] conduct to the requirements of the law,” as a result of mental disease or defect.¹⁶⁰

Critics of the *M'Naghten* test in cases of maternal infanticide and filicide argue that the nature of postpartum psychosis makes it difficult for a woman to meet the requirements of the test. Specifically, because a woman “may have varying degrees of sanity throughout the postpartum period,” determining whether she knew right from wrong at the time she committed the crime becomes a difficult task.¹⁶¹ Often, women who suffer from postpartum psychosis “get treated, the hormones dissipate and they are totally sane.”¹⁶² Critics suggest that by the time a woman appears before a jury, the insanity defense “[is] a hard sell, unless you really

158. To date, postpartum psychiatric illness has not been wholly embraced by the American medical community. Medical experts do not “agree about the nature of postpartum mental disorders and their capacity to cause infanticide.” MEYER & OBERMAN, *supra* note 43, at 11. The current American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), which serves as the main authority on mental illnesses, does not include postpartum psychosis as a specific disorder. *Id.*

159. See RICHARD MORAN, KNOWING RIGHT FROM WRONG: THE INSANITY DEFENSE OF DANIEL MCNAUGHTAN 1-2 (1981).

160. MODEL PENAL CODE § 4.01(1) (1962).

161. Connell, *supra* note 22, at 148.

162. David Williams, *Postpartum Psychosis: A Difficult Defense*, CNN.com, Aug. 8, 2001, <http://archives.cnn.com/2001/LAW/06/28/postpartum.defense> (quoting Michelle Oberman).

understand the process of postpartum psychosis.”¹⁶³ In addition, because medical experts fail to agree on the nature and causes of postpartum psychoses, expert testimony may prove unreliable¹⁶⁴

The MPC standard enjoys greater support from proponents of the postpartum psychosis defense. Unlike the *M’Naghten* test, the MPC formulation does not require “total incapacity.”¹⁶⁵ Furthermore, under this test, “the ability to intellectually ‘know’ that conduct is wrong is conjoined with an understanding of the moral and legal significance of the conduct.”¹⁶⁶ The MPC test is generally regarded as a more favorable one for mothers who kill, “because the ‘substantial capacity’ language recognizes that impairment can come in varying degrees.”¹⁶⁷ Although there are few available decisions from cases involving postpartum psychosis in jurisdictions that have adopted this standard, it is possible that a more flexible standard may result in more successful insanity pleas for women who suffer from the alleged effects of postpartum psychosis;¹⁶⁸ however, most of the recent high profile cases involving criminal mothers have occurred in jurisdictions that use the more stringent *M’Naghten* standard. Even in these jurisdictions, women have successfully raised the defense in cases of infanticide and filicide.

B. Effectiveness of the Current Gender-Neutral Standard

A number of women, including Yates, have successfully pleaded not guilty in jurisdictions such as Texas, which uses a variant of the strict *M’Naghten* standard.¹⁶⁹ Yates, who possessed a rich history of psychiatric troubles, seemed a likely candidate for the postpartum psychosis defense.¹⁷⁰ Many scholars rely heavily on the

163. *Id.*

164. Connell, *supra* note 22, at 148.

165. *Id.* at 149.

166. *Id.* at 150.

167. *Id.* at 149.

168. *Id.* at 150.

169. TEX. PENAL CODE ANN. § 8.01(a) (2003) (“It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.”).

170. Yates underwent numerous periods of psychiatric hospitalizations following the births of her children. Prior to her children’s murder on June 21, 2001, Yates allegedly thought that television commercials for candy were referring directly to her. She believed that one commercial was saying she was a “fat pig” and that she

outcome of Yates's first trial to support their arguments that current insanity standards are inadequate when applied to female defendants suffering from postpartum psychosis.¹⁷¹ In March of 2002, during her first trial, a Texas jury rejected the defense and found Yates guilty of her children's murders.¹⁷² The Texas Court of Appeals, however, overturned the original verdict due to the materially false testimony of a psychiatrist who testified on behalf of the prosecution.¹⁷³ In her second trial,¹⁷⁴ Yates again entered not guilty pleas, and on July 26, 2006, the second jury found Yates not guilty by reason of insanity and committed her to a Texas mental hospital.¹⁷⁵ Like Yates, mothers in a number of other recent cases have successfully raised insanity defenses.

Texas has seen a number of high profile cases of infanticide and filicide, including Yates's, in recent years. Women have successfully raised the postpartum psychosis defense in each of the cases. Deanna Laney stoned her two young sons to death and wounded a third in May 2003 in New Chapel Hill, Texas.¹⁷⁶ She allegedly believed that God had commanded she do so.¹⁷⁷ A Texas jury found Laney not guilty by reason of insanity, despite the fact that she had no history of mental illness.¹⁷⁸ The jury believed that she had acted under the influence of postpartum psychosis and that she did not know the nature of her acts. In 2003, Plano housewife Lisa Diaz attempted to kill herself and succeeded in killing her two children,

gave her children too much candy. She had a delusional belief since 1999 that television cameras were placed throughout her home to monitor the quality of her mothering.

Resnick, *supra* note 84, at 148.

171. See, e.g., Connell, *supra* note 22, at 143-44; Prejean, *supra* note 22, at 1508-09.

172. O'MALLEY, *supra* note 1, at 212.

173. Yates v. Texas, 171 S.W.3d 215 (Tx. Crim. App. 2005).

174. Other important differences also existed between the two juries. For instance, "[t]he jury that delivered the guilty verdict was death-qualified; all prospects unwilling to impose the death penalty are automatically eliminated in a Texas capital murder case, substantially skewing the jury toward conviction and away from a 'not guilty by reason of insanity' verdict, according to some legal experts." O'MALLEY, *supra* note 1, at 216.

175. *Id.*

176. See John Springer, *Jury Accepts Insanity Defense for Mother Who Killed Sons*, CNN.com, Apr. 5, 2004, <http://www.cnn.com/2004/LAW/04/05/laney/>.

177. *Id.*

178. *Id.*

claiming that she wanted to dispel evil spirits from their bodies.¹⁷⁹ A jury also found Diaz not guilty by reason of insanity.¹⁸⁰ In another instance, in 2004, Dena Schlosser cut off her baby daughter's arms.¹⁸¹ The eleven-month-old later died in the hospital, and the case "ended just as most Texas cases involving mentally ill mothers who kill their children," with a verdict of not guilty by reason of insanity.¹⁸² These mothers prevailed in proving, under the Texas statute, both that they suffered from postpartum psychosis and that they did not know that their acts were wrong.

The findings in each of the Texas cases reveal that even the most stringent insanity standards can fully accommodate defendants who act under the influence of postpartum psychosis. Statistics show that a woman's chances of successfully raising the insanity defense in a case of maternal infanticide or filicide are actually far better than those of the general criminal defendant.¹⁸³ More specifically, the insanity defense "has been estimated to be successful in less than 0.1 [percent] (1 in 1000) of all criminal trials."¹⁸⁴ In cases of maternal filicide, however, "studies have found insanity to be a frequent verdict compared with the 0.1 [percent] standard in other criminal trials."¹⁸⁵ In a 1979 study, 27 percent of maternal filicide defendants were acquitted on grounds of insanity.¹⁸⁶ In a 1990 study, 15.4 percent of maternal filicide cases resulted in a decision that the mother was legally insane.¹⁸⁷ In 1998, 65 percent

179. Tiara M. Ellis & Jennifer Emily, *Child Killer To Leave Hospital*, DALLAS MORNING NEWS, Nov. 10, 2006, at 1A.

180. *Id.*

181. See Jennifer Emily, *Schlosser Case Ends With Insanity Ruling*, DALLAS MORNING NEWS, Apr. 8, 2006, at 1A.

182. *Id.*

183. See, e.g., Henry J. Steadman et al., *The Use of the Insanity Defense*, in REPORT TO GOV. HUGH L. CAREY ON THE INSANITY DEFENSE IN NEW YORK 68-69 (1978) (stating that there is a general unwillingness to carefully analyze a mother's actions in cases in which she kills her children and that juries often assume a woman was in fact insane when she did so).

184. GEOFFREY R. MCKEE, *WHY MOTHERS KILL: A FORENSIC PSYCHOLOGIST'S CASEBOOK* 20 (2006) (citing G. MELTON ET AL., *PSYCHOLOGICAL EVALUATIONS FOR THE COURTS* (2d ed. 1997), and H. Turner & N. Ornstein, *Distinguishing the Wicked from the Mentally Ill*, 3 CAL. LAW. 40-45 (1983)).

185. *Id.*

186. *Id.* (citing P. d'Orban, *Women Who Kill Their Children*, 134 BRIT. J. PSYCHIATRY 560-71 (1979)).

187. *Id.* (citing D. Bourget & J.M.W. Bradford, *Homicidal Parents*, 35 CANADIAN J. PSYCHIATRY 233-37 (1990)).

of the filicidal mothers in a studied sample had been adjudicated as not guilty by reason of insanity.¹⁸⁸ In a study of over three hundred women who committed neonaticide, not a single woman spent more than one night in jail.¹⁸⁹ The reality is that many “observers sense the desperation that drives a woman to neonaticide. Prosecutors sometimes don't prosecute; juries rarely convict; those found guilty almost never go to jail.”¹⁹⁰ Both judges and juries succumb to the strong inclination to view cases of infanticide and filicide as oddities that result from rare and external circumstances. In light of such factors, current insanity standards have proven effective for women who kill their children under the alleged influence of postpartum psychosis. The standards may actually better accommodate women suffering from postpartum psychosis than they do most criminal defendants with mental disorders.

*C. Gender-Specific Standards Promote Dangerous Leniency
Toward Female Defendants, Especially Mothers*

Changing the insanity standard unnecessarily to a gender-specific one threatens to continue a trend of “chivalry justice” based upon women’s perceived passivity.¹⁹¹ The insanity defense already serves as one means by which violent women are legally pathologized, and the use of postpartum psychosis as a partial defense raises important questions about legal approaches to female violence. The failure to apply a similar defense to male defendants provides further proof of the discrepancies that exist in current laws.

Substantial evidence has existed for some time that fathers experience significant psychological symptoms following the birth of a child. They experience, for instance, the symptoms of postpartum depression at rates similar to their female counterparts.¹⁹² A recent study by the American Psychological Association (APA)

188. *Id.* (citing G.R. McKee & S.J. Shea, *Maternal Filicide: A Cross-National Comparison*, 54 J. CLINICAL PSYCHOL. 679-87 (1998)).

189. See Steven Pinker, *Why They Kill Their Newborns*, N.Y. TIMES, Nov. 2, 1997, at SM52.

190. *Id.*

191. See PEARSON, *supra* note 30, at 62.

192. Glenn Collins, *Relationships; Fathers Get Postpartum Blues, Too*, N.Y. TIMES, Apr. 6, 1981, at B14.

indicates that one in ten men meet the standards for severe postpartum depression.¹⁹³ In addition, male depression may have “more negative effects” on children than that of women.¹⁹⁴ Some scientists believe that significant hormonal changes occur in men with the onset of parenthood, just as they do in women following childbirth.¹⁹⁵ Postpartum onset “exhaustion psychosis” has also been diagnosed in men with infants and young children.¹⁹⁶ Exhaustion psychosis may occur due to the stresses of parenthood and involves many of the symptoms of postpartum psychosis, including hallucinations, loss of reality, “wild rages,” and even violence.¹⁹⁷ Adoptive mothers have also suffered from the effects of exhaustion psychosis.¹⁹⁸ Such findings suggest that the hormonal surges and emotional problems associated with postpartum psychosis occur in fathers and non-biological mothers and are closely associated with the stresses and rigors of child-rearing. Thus, not only should the states maintain gender-neutral insanity standards, but the postpartum psychosis defense should apply equally to men and adoptive mothers.

Lawmakers, however, refuse to acknowledge the reality of postpartum psychosis and other related mental disorders; there has been no effort to apply a postpartum defense to men who kill their children. As a result, men consistently receive harsher penalties for their actions.¹⁹⁹ Few women who commit infanticide in the United States are convicted, and even fewer are incarcerated: “Of those who are even convicted, about two thirds avoid prison, and the rest receive an average of seven years.”²⁰⁰ The disparity is even greater

193. Charlene Laino, *Men Also Get Postpartum Depression*, WebMD Health News, May 6, 2008, <http://www.webmd.com/depression/postpartum-depression/news/20080506/men-also-get-postpartum-depression>; see also postpartummen.com, <http://www.postpartummen.com> (last visited Oct. 9, 2008).

194. Laino, *supra* note 193.

195. *Id.*

196. PEARSON, *supra* note 30, at 81 (“Recognized in both England and the United States, exhaustion psychosis refers, essentially, to being so tired that one can’t navigate the shoals of reality anymore.”).

197. *Id.*

198. *Id.* (“When sleep deprivation combines with the constant demands of a baby, a lack of support, and insecurity or resentment about parenting, a normally well-balanced person can come perilously close to violence. This is not just true of biological mothers.”).

199. See *supra* notes 66-68 and accompanying text.

200. PEARSON, *supra* note 30, at 89.

in other locations, where Infanticide Acts also influence sentencing. In England, between 1982 and 1989, fathers who killed their children were far more likely to receive charges of murder than manslaughter, and three times as many mothers as fathers were found to be mentally ill when they killed their children.²⁰¹

In addition, biological defenses do not exist for men in any other area of the law. The lack of specifically “male” legal defenses raises some interesting questions. The law strives to take gender into account when considering female crime, yet largely ignores gender when dealing with male defendants. Women receive special treatment for the biological realities that make them women. Men, on the other hand, receive no special treatment for their “male” dispositions. The reality is, however, that men may have a natural propensity for violence.²⁰² At a young age, boys begin to display aggression, although it may often reflect a “cultural practice” as much as any natural inclination.²⁰³ Likewise, evidence indicates that merely holding a gun causes men’s testosterone levels to rise, rendering them more prone to violent behavior.²⁰⁴ Why then, are men not afforded even *more* protections than women, given the fact that they may be biologically prone to violent acts? Why can they not, for instance, “rape and claim testosterone poisoning”?²⁰⁵ The law does not permit men to blame their acts on the nature of masculinity, even though testosterone is commonly associated with violence and aggression. The absence of male-oriented defenses indicates that laws catering to violent women stem from the desire to explain away female violence and not from any sophisticated assessments of culpability. Such laws promote a dangerous, unnecessary, and highly unfair breed of leniency toward women who kill.

201. *Id.*

202. *See id.* at 11 (“Visible aggression is a masculine display, which, many parents insist, shows up early in boys.”).

203. *Id.* at 12 (suggesting that the aggressive behavior of young boys reflects “posturing,” based upon cultural norms, and not necessarily a natural propensity toward violence).

204. Daniel J. DeNoon, *Guns Up Testosterone, Male Aggression*, WebMD Medical News, July 28, 2006, <http://www.webmd.com/news/20060728/guns-up-testosterone-male-aggression>.

205. *Postpartum Depression To Be Tested As a Defense, 2 North Jersey Moms Set to Blame Disorder*, THE RECORD, July 2, 2001, at A1.

D. Gender-Specific Standards Embrace and Perpetuate False Ideas About Women and Violence

A gender-specific model will further cater to the tendency to deny female aggression. Because this tendency already exists, and because women already receive lighter penalties for their crimes than men, there is no need to enact a gender-specific insanity standard. The desire to do so stems from a misplaced belief that only women who are insane or evil commit infanticide.²⁰⁶ This is simply not the case. Gender-specific insanity standards threaten to further perpetuate misconceptions about female violence. Just as the battered woman defense presupposes that women cannot resist certain types of pressure, a gender-specific postpartum psychosis defense presupposes that women are weak and ruled by their hormones. These assumptions are not grounded in reality, and mothers should not receive special treatment from the law.²⁰⁷

Fortunately, some countries have begun to recognize the misconceptions codified in their statutes. In 1997, the New South Wales Law Reform Commission met to make recommendations about the application of postpartum psychosis in Australian law and acknowledged several dangerous tendencies.²⁰⁸ For instance, the Commission found that women received “special treatment” due to the use of a gender-specific law and determined that the law was premised upon the faulty belief that women “are naturally susceptible to mental instability as a result of giving birth” and therefore “inherently unstable because of their biology.”²⁰⁹ As the commission further recognized, “[n]o other crime is excused on the basis of social or economic necessity or adversity alone.”²¹⁰ Permitting special treatment for women, based upon their biological makeup, “reinforces a view of women as especially weak and vulnerable because of their sex.”²¹¹ American jurisdictions should take heed of the same troubling issues and allow both women *and men* to raise

206. See SPINELLI, *supra* note 128, at 10.

207. *Id.* at 16 (opining that “seen against the backdrop of the construction of motherhood, on some occasions this terrible crime [infanticide] may be all but inevitable”).

208. See SCHWARTZ & ISSER, *supra* note 3, at 171.

209. *Id.*

210. *Id.*

211. *Id.* at 171-72.

the postpartum psychosis defense under gender-neutral insanity standards.

CONCLUSION

Cultural values concerning femininity pervade the American legal system and become particularly clear in cases involving mothers who kill their children. The treatment of women who commit infanticide and filicide in American jurisdictions raises critical questions about the legal system's treatment of violent women in general. To the extent that decisions concerning punishment reflect the collective conscience, punishment itself provides an opportunity to "reinforc[e] and regenerat[e] the shared values and normative conventions that sustain social solidarity."²¹² What a society chooses to punish reveals a great deal about what it deems most important. The denial of female aggression points to the troubling possibility that preserving myths of female passivity has become more important than protecting children and disciplining those women who commit heinous crimes. The adoption of another Infanticide Act or a gender-specific insanity standard will ensure that such myths persist.

To the extent that science and values, in addition to the law, shape the outcomes in cases involving mothers who kill, a comprehensive solution is the only one that will change the face of current law and thought. As Yates's case shows, current insanity standards can effectively accommodate women suffering from postpartum psychosis. Mothers who kill as a result of the disorder have proven far more successful than most criminal defendants in raising the insanity defense. Current gender-neutral insanity standards should not be changed. Existing defenses should also be applied more broadly, in order to allow men and adoptive mothers to raise the postpartum psychosis defense in certain cases.

The tendency to deny female aggression must cease, as it "radically impedes our ability to recognize dimensions of power that have nothing to do with formal structures of patriarchy."²¹³ Perhaps even more importantly, the denial of female aggression prevents

212. MARK COLVIN, *PENITENTIARIES, REFORMATORIES, AND CHAIN GANGS* 9 (1997).

213. PEARSON, *supra* note 30, at 243.

attempts to understand and prevent such acts in the future.²¹⁴ The troubling fact exists that women have committed murderous acts, often against their own families, since antiquity. The continuance of these acts in modern communities points to obvious problems that should be dealt with long before they ever reach a courtroom. The potential for prevention of infanticide is particularly great, as infanticide and filicide have clearly “identifiable precipitants, namely, pregnancy and childbirth.”²¹⁵

Responses to violent women reveal the stubborn assumption that men “are propelled into conquest by a surge of testosterone,” and women are a “homogenous species of nurturant souls.”²¹⁶ A legal system that embraces such outdated and incorrect beliefs fails to treat the real causes of female violence and denies the value of victims of female violence. The mythic mother poses a real threat to herself and her children. If American laws further cater to outdated ideas about femininity and violence, female defendants will remain imprisoned in a system that deprives them of all real agency and power. They will remain hidden behind the specter of myth and stereotype, doomed to play out violent tragedies and don masks of passivity and innocence. There is little justice in that, for the murderous Madonna or the children at her feet.

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214. *Id.* (“[T]he denial of women’s aggression profoundly undermines our attempt as a culture to understand violence, to trace its causes and to quell them.”).

215. SPINELLI, *supra* note 128, at 1553.

216. PEARSON, *supra* note 30, at 7.

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