

## **A Brief History of Infanticide and the Law**

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Submitted to Samuel Bard, M.D., president[,] and the trustees and professors of the College of Physicians and Surgeons of the University of the State of New York:

The science of Medical Jurisprudence, of which the subject of the following Dissertation (Infanticide) form[s] an important branch, lays claim to the attention of every one who feels any concern in the pure administration of justice. To the Physician, it recommends itself consideration even still more interesting. . . . In most criminal trials for poisoning, drowning, infanticide etc., the testimony of the Medical witness must necessarily in a great measure decide the fate of the accused. It cannot, therefore[,] but be obvious how useful and even indispensably necessary it is for him to possess an intimate acquaintance with a branch of knowledge whose object it is to supply him with the means for forming just inductions and correct decisions whenever he may be called into a court of justice or before a coroner's inquest.

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Infanticide is not a random, unpredictable crime. Instead, a quick survey of history reveals that it is deeply embedded in and responsive to the societies in which it occurs. The crime of infanticide, or child murder in the first year of life, is committed by mothers who cannot parent their child under the circumstances dictated by their unique position in place and time. The factors in such circumstances vary from poverty to stigma to dowry, but the extent to which infanticide is a reflection of the norms governing motherhood is a constant that links these seemingly disparate acts.

One seeking to make sense of the persistence of infanticide in contemporary society would do well to understand the manner in which cultural norms have shaped this crime throughout history. This same history also reveals the seemingly inconsistent and even incoherent manner in which societies have responded to infanticide. However, as a result of viewing together both the persistence and consistency of infanticide and the societal responses to it, we are afforded a perspective that permits us to reconcile the act of infanticide with the body of laws that govern infanticide in societies throughout the contemporary world.

Toward that end, I provide here a brief chronological review of the sociocultural imperatives underlying the crime of infanticide in various cultures. The aim is not to provide a comprehensive record of the crime of infanticide, but rather to illustrate the intricate relationship between a society's construction of parenthood and mothering and its experience of infanticide. Special attention is paid to the manner in which distinct societies have understood, rationalized, and punished infanticide.

## Infanticide in Ancient Cultures

Although little is known about actual infanticidal practices in ancient cultures, such as which parents killed their children and under what circumstances, archeological evidence suggests that infant sacrifice was commonplace among early people, particularly insofar as it enabled them to control population growth and to minimize the strain placed on society by sickly newborns (Langer 1974; Moseley 1986).

Records from the Babylonian and Chaldean civilizations, dating from approximately 4000 to 2000 B.C., constitute the earliest written historical references to infanticide. But perhaps the richest historical records of infanticide in ancient cultures emanate from ancient Greece and Rome. It seems clear that infanticide was widely practiced in these societies, with the reasons used to justify these actions ranging from population control to eugenics to illegitimacy. Ancient Greco-Roman literature rou-

tinely refers to the exposure of unwanted newborns. Exposure helped to prevent overpopulation, and, because those exposed often were either sickly or disabled, the practice was viewed as eugenic in nature (Moseley 1986). Under Roman law, infanticide became less of a civic virtue or imperative than it was a private matter. Fathers were given the absolute legal authority to govern all matters falling within their "domestic" purview (Moseley 1986).

Infanticide also was common to non-Western ancient cultures. For example, female infanticide was a common practice in early Muslim and pre-Islamic culture in seventh-century Arabia. Scholars attribute this to the status of women as "property" in that society (Chaudhry 1997). In addition, some speculate that in order to spare a female child a life of misery, mothers frequently disposed of their female babies (Chaudhry 1997).

The advent of Islamic rule called for the abolition of female infanticide. Nonetheless, there is little reason to believe that call was heeded. Over the ensuing centuries, the traditional Indian dowry system, requiring that a woman's family make a sizeable gift to the groom's family upon marriage, constituted a powerful incentive to avoid having female offspring (Chaudhry 1997). Despite efforts to reform or even abolish the dowry system, it is entrenched in Indian culture. As such, even today, the birth of a daughter automatically triggers the pressure of saving a suitable dowry. If a family cannot provide a suitable dowry, it risks social ostracism. Among poor rural families, the persistence of female infanticide and sex-selective abortions of healthy female fetuses is attributable to this fear (Bumiller 1990).

Traditional Chinese culture also reveals a long history of female infanticide. Female children have long been regarded as less valuable, as Confucian doctrine does not permit women to carry on the family's name or otherwise honor the family's ancestors (Lee 1997). As such, daughters from both poor and rich families are vulnerable to infanticide (Kellum 1974; Langer 1974; Lee 1998; Moseley 1986; Trexler 1973).

This traditional limit on women's value was compounded by the Chinese adoption, during the Qing dynasty of the eighteenth and nineteenth centuries, of the practice of giving a dowry to the groom's family upon the marriage of a daughter. This practice, at first confined to the wealthy classes, served to enhance the preference for sons among wealthy families and caused a shocking increase in female infanticide among the dynastic families. Over time, it spread so extensively that estimates suggest a full 10% of daughters born into Qing dynasty families were killed at birth. As in India, the practice of female infanticide continues in contemporary China. In 1979, China implemented a policy of one child per family in an effort to stem rapid population growth. This policy triggered a dra-

matic rise in the abandonment and infanticide of baby girls as well as a rise in the abortion of female fetuses (Greenhalgh and Li 1995). The customs favoring sons are so deeply entrenched that female infanticide persists, in spite of the Chinese government's attempt to reform the underlying cultural norms and laws thought to contribute to son preference (Mathew 1997).

## Infanticide in Medieval Judeo-Christian Society

In 318 A.D., when the Roman Empire converted to Christianity, Constantine declared an end to *patria potens*, the absolute right of the father over his children, and infanticide was declared to be a crime. Yet, all indications are that infanticide remained commonplace throughout early Christian society (Langer 1974; Moseley 1986). Vital records, kept by churches throughout Europe during the Middle Ages, show ample evidence of sex-selective infanticide. Additional evidence of the prevalence of infanticide emerges from occasional references to the crime in medieval handbooks of penance. These describe the sin of overlying a child (i.e., lying on top of the child and suffocating him or her); this sin is included in a list of the venial or minor sins, such as failing to be a good samaritan or quarreling with one's wife (Kellum 1974). From the ninth to the fifteenth century, the standard penance for overlying was 3 years, with 1 of these on bread and water, compared with 5 years, with 3 on bread and water, for the accidental killing of an adult. Scholars consider this casual mention and lenient treatment of infanticide to be evidence of its relatively commonplace nature (Moseley 1986).

Infanticide in early Judeo-Christian Europe was associated with the familiar factors of poverty and scarce familial resources. In addition, Christianity brought with it a new set of pressures that encouraged infanticide. Specifically, the Catholic Church's profound religious and cultural hostility to nonmarital sex and childbearing became an additional factor associated with infanticide. The Catholic Church dictated that a child born to an unmarried woman was to be deemed "illegitimate" (Deuteronomy 23:2). As a result of the church's condemnation of nonmarital sexual relations, medieval society virtually disregarded the illegitimate child. Illegitimate children were "deprived . . . of the ordinary rights of man" (Satava 1996). But it was not only the children who were stigmatized by illegitimacy. Unmarried mothers suffered considerable social approbation for bearing a child out of wedlock, regardless of how they came to be impregnated (Mendlowicz et al. 1998).

Sixteenth- and seventeenth-century European society penalized sexual offenses such as bastardy and fornication. The penalties for these crimes were particularly harsh in England. For example, in 1576 Parliament passed a "poor law" that punished impoverished parents of bastard children. These laws punished, through public whipping and/or imprisonment, mothers who refused to identify the men who fathered their illegitimate children (Hoffer and Hull 1981).

Fear of punishment under these laws created an obvious incentive to conceal a sexual affair as well as a resulting pregnancy. This incentive was particularly intense for unmarried women whose jobs were jeopardized as a result of a pregnancy. For example, the commonplace nature of sexual harassment against women employed as domestic servants fostered a perverse and tragic link between sexuality, pregnancy, and infanticide. (Kellett 1992).

The link between illegitimacy and infanticide during this era in European society was so widely acknowledged that, to a large extent, infanticide was considered a crime committed exclusively by unmarried women. In fact, the earliest criminal laws pertaining to infanticide refer solely to the crime of "bastardy infanticide"—infanticide committed by an unmarried woman (An Act to Prevent the Destroying and Murthering of Bastard Children 1623). The punishment for this crime ranged from burial alive to drowning and decapitation (Moseley 1986). Interestingly, during the witchcraft inquisition, the crime of infanticide was widely attributed to witches, and the gruesome punishments meted out to supposed witches also were received by those convicted of infanticide (Trexler 1973). Because of the law's focus on "bastardy," married women generally were not convicted of infanticide (Moseley 1986).

## Infanticide and British Legal History: A Case Study in Ambivalence

An overview of British legal history for the 300 years between 1623 and 1922 provides a vivid illustration of that society's ambivalence in responding to the crime of infanticide. In 1623, Parliament passed a law making it a capital offense to conceal the birth of an illegitimate child—whether still- or liveborn—by a secret disposition of its body (Hoffer and Hull 1981). This law essentially reversed the presumption of innocence, requiring that unless a defendant could produce an eyewitness to testify that the baby was stillborn, the jury must find that she murdered the child (Oberman 1996). Obviously, few women could meet this test, as it is hard to imagine that a woman inclined to hide her illegitimate preg-

nancy would choose to have someone witness the birth. Nonetheless, given the high infant mortality rates of that era, it is inevitable that the law had the effect of condemning to die a large number of women who had attempted to conceal their pregnancies and then either miscarried or gave birth to stillborn fetuses (Backhouse 1984).

In its first years of operation, this law generated a tremendously high number of convictions. Indeed, two historians of the era suggest a 225% increase in the rates of infanticide indictments in the 28 years following its passage (Hoffer and Hull 1981). Nonetheless, there is no evidence to suggest that the law had any deterrent effect on the crime of infanticide. Instead, after several decades of enforcement of the Jacobean law, juries began refusing to convict these women by adopting several widely accepted defenses to the crime (e.g., a woman could defend herself by showing she had linen for the baby, which was taken to mean that she wanted it to survive) (Hoffer and Hull 1981). As a result, by the early 1700s, British conviction rates for infanticide reverted to the relatively low rates seen in the early 1600s, prior to the law's passage (Hoffer and Hull 1981).

Finally, in 1830, Parliament passed a new infanticide statute requiring that the prosecution in an infanticide case prove that the baby had been born alive (43 Geo ch 5853 [Eng 1803]). In the event that the state could not prove this, the woman received a maximum sentence of 2 years for the crime of concealing the birth of an illegitimate child. If convicted of infanticide, however, the woman was sentenced to death. As a result, this lesser offense became the overwhelming preference of juries in infanticide trials, and "courts regularly returned verdicts of not guilty despite overwhelming evidence to the contrary" (Backhouse 1984).

## Twentieth-Century Responses to Infanticide: The Medical Model

Until the start of the twentieth century, societal responses to infanticide indicate that it generally was viewed as a crime committed by desperate and/or immoral women. The twentieth century introduced a dramatic new perspective on the crime—that of illness (see Chapter 3: "Postpartum Disorders"). Two late-nineteenth-century French psychiatrists, Jean-Etienne Esquirol and Victor Louis Marcé, first posited the notion that there might be a causal relationship between pregnancy, childbirth, and subsequent maternal mental illness (Mendlowicz et al. 1998). Others quickly adopted their research, and almost immediately people around the world began to associate infanticide with mental illness. Nowhere was this vi-

sion more powerfully embraced than in England, where the infanticide statutes of 1922 and 1938, taking into account the impact of pregnancy and birth on the mother's mental status, recognized infanticide as a distinct form of homicide.

The British Infanticide Act of 1922 (amended and expanded in 1938) requires that mothers who can show that they suffered from a postpartum mental "disturbance" be charged with manslaughter rather than murder (Infanticide Act 1938) (see Chapter 10: "Infanticide in Britain"). As this is relatively easy to demonstrate, the vast majority of women convicted of infanticide receive sentences associated with manslaughter, most commonly probation, and are required to undergo counseling rather than to serve time in prison (N. Walker 1968).

The British statute has been replicated in slightly varying forms in at least 22 nations around the world (Oberman 1996). Many nations have statutes specific to infanticide; all but one of these make infanticide a less severe crime than ordinary homicide (Oberman 1996).

Americans have been far less sanguine with regard to the adoption of a medical model for understanding infanticide. To date, there are no statutes (federal or state) governing infanticide. Nor do American medical experts agree about the nature of postpartum mental disorders and their capacity to cause infanticide (American Psychiatric Association 1994). The result is that U.S. law governing infanticide is remarkably inconsistent. The only "medical" explanation for infanticide on which medical experts in the United States and around the world agree is the relatively rare disorder known as *postpartum psychosis*. Postpartum psychosis is characterized by a dramatic break with reality, accompanied by hallucinations or delusions (see Chapter 3). Women who kill their infants during an episode of postpartum psychosis tend to manifest these symptoms at an extreme level.

Consider Sheryl Massip, a California woman who was convicted of killing her 6-week-old son. At her 1987 murder trial, the prosecution proved that she threw her son into oncoming traffic, picked him up, and carried him to her garage, where she hit him over the head with a blunt object and then killed him by running him over with her car (Lichtblau 1990). As is typical of other cases of postpartum psychosis-related infanticide, Massip continued to display severely disordered thinking after she killed her child. She told investigators that a black object with orange hair and white gloves, who "wasn't really a person," had kidnapped the baby (Lichtblau 1990).

Postpartum psychosis presents unique problems for the criminal justice system because it is brief in duration and because, even if the condition is untreated, symptoms may disappear within several months of

onset (O'Hara 1987). For example, by the time of her trial, Massip was no longer psychotic. Nonetheless, the jury was troubled by the notion that she could simply go free, after having killed her son. It therefore convicted Massip of second-degree murder and sentenced her to prison. Two months later, the judge overturned the verdict, acquitting Massip on the grounds that she was insane at the time of the murder. Because she was no longer insane, the judge allowed Massip to go free ("A Mother Tells Why She Killed Her Son" 1994).

### Contemporary Responses to Infanticide in the United States

Despite the medical community's growing acceptance of postpartum psychosis, it is clear that this disorder explains only a very small minority of the infanticides that occur annually in the United States and elsewhere. Indeed, when one examines the body of contemporary cases involving mothers who kill their children, it is evident that none of the excuses of generations past—poverty, stigma, disability, or mental illness—fully explain the persistence of infanticide. Some speculate that the only women who commit infanticide are those who are either insane or simply evil.

For example, Linda Chavez, president of a Washington-based think tank, refers to women who commit infanticide as "monster-women" and suggests that welfare policy may be linked to infanticide (Chavez 1995). In support of her point, she quoted then U.S. Representative Newt Gingrich, who asserted in response to a particularly gruesome murder case that "[w]elfare policy has created 'a drug addicted underclass with no sense of humanity, no sense of civilization and no sense of the rules of life'" (Chavez 1995). Contrast these remarks with those of psychiatrist Park Elliott Dietz, who theorizes that "[n]o amount of stress alone can account for women killing their children. . . . It doesn't come from who you hang out with, what your opportunities in life are or how much money you have. It comes from something being wrong with the person" (quoted in Smith 1991).

My research, which involved culling and sorting hundreds of contemporary accounts of infanticide from the media and legal databases, suggests that neither of these explanations adequately accounts for the persistence of infanticide (Meyer and Oberman 2001). Instead, one finds five broad categories of contemporary infanticide cases (Table 1-1), all of which are responsive to the societal construction of and constraints on mothering.

Table 1-1. Contemporary typology for infanticide/filicide

Type of infanticide	Maternal characteristics	Other characteristics
Neonaticide	Young or immature Emotionally isolated from partner Limited potential for economic independence	Pregnancy concealed or denied No prenatal care Unattended birth
Assisted/coerced	Limited economic independence Limited social support Psychological profile: "battered woman"	Violent and/or abusive male partner
Neglect-related	Limited economic means Burdened with parenting Overwhelmed by economic obligations Inattentive or distracted parenting	Completely accidental death
Abuse-related		Chronic child abuse Lack of parental impulse control Death unintentional Especially high risk for abuse at mealtimes and bedtimes
Mental illness-related	Acute: postpartum-onset depression or psychosis Socially isolated Alone with the baby Guilt over inability to cope Chronic: schizophrenia; lifelong depression and psychosis Socially isolated Incapable of parenting without assistance	High expectations of mother's capacity to parent Child protection agency errors often a major factor Placing children with ill mothers Suicidal women: may be trying to protect their children by taking them with them "to heaven"

### Neonaticide

*Neonaticide*, or the killing of one's offspring within the first 24 hours of life, is a crime that typically involves young women who determine, correctly or not, that they would be completely cut off from their social support network were they to disclose their pregnancies. Subsequent psychiatric evaluation of these girls reveals that many suffer from severe dissociative states associated with a history of early abuse and chaotic family life (Spinelli 2001). For various reasons, including religion, culture, money, ambivalence, and immaturity, these girls are unable or unwilling to pursue the alternatives of abortion or adoption. Denial of their pregnancy is so profound that, day after day, they ignore the impending birth of their child.

### Assisted/Coerced Infanticide

A second category of infanticide involves women who kill their infants or children in *conjunction with their male partners*. These cases predominantly involve women whose intimate partners are violent and abusive. Often, the women are themselves caught in the cycle of an abusive relationship and are unable to act to protect themselves or their children. Their behavior may be readily understood through the lens of research on battered women, which provides ample description of the fears that trap women in abusive relationships (L. E. Walker 1979).

### Neglect-Related Infanticide

A third category of infanticide cases involves mothers whose infants die as a result of *neglect* (Meyer and Oberman 2001). In these cases, the child's death is, for the most part, due to the mother's having been distracted. For example, many contemporary cases involve babies who die when their mothers are taking care of other tasks—tasks that frequently are also related to parenting. A common example is a baby who is left in the bathtub or in the care of a still-young older sibling while the mother is in the kitchen cooking.

It is critical to note the way in which the societal construction of motherhood shapes our response to these crimes. In the past, these deaths might have been viewed as tragic accidents. Today, they are homicides. Mothering has thus become more than simply a full-time job. According to the unwritten rules that govern the role of mother, one must be constantly vigilant, losing all thought of self-interest. Here again, it seems absurd to explain these women's actions by terming them either

insane or evil. Indeed, an attempt to do so eclipses important insights about the circumstances that give rise to these children's deaths.

The two remaining categories of infanticide—those related to *child abuse* and those growing out of *mental illness*—illustrate the devastating results of a system that relies on a single individual to parent under the unwritten rules that govern the role of mother. To be sure, some women can parent under extremely challenging circumstances, because their support networks and coping skills are sufficiently strong. Others, however, are not prepared for this task.

### Abuse-Related Infanticide

Another category of infanticide cases involves women whose abuse of their child leads to his or her death. Often these women abuse their children with some regularity, and the deaths of these children occur during efforts to discipline that go awry (Meyer and Oberman 2001). Although cases of chronic child abuse carry with them a unique horror, even among infanticide cases, it is important to note that there are regular, even predictable, patterns to these children's deaths. Indeed, epidemiologists have demonstrated the specific hours during each day when children are most at risk of death by homicide (Chew et al. 1999). These periods coincide with mealtimes and bedtimes, events that often are, even in stable, loving households, accompanied by stress, arguments, and the need to discipline (Chew et al. 1999). As such, one might temper the inclination to dismiss these mothers as simply evil and, instead, observe that women who kill their children in abuse-related infanticides are affected by the extraordinarily demanding tasks associated with child care. Seen from this angle, many of the abuse-related cases seem to involve mothers who lacked the impulse control of their peers, but the impulse that motivated these killings is surprisingly commonplace.

### Mental Illness-Related Infanticide

The final category of infanticide cases involves women with severe mental illness, whether acute or chronic, who clearly are not prepared for the task of mothering. A significant depressive or psychotic episode may render a woman unable to generate the continual flow of selfless compassion and patience that children demand. Likewise, a woman with a chronic mental impairment may be constitutionally incapable of meeting the demands of parenting in isolation, without external support. Tragically, there are numerous infanticide cases involving severely impaired women who were expected to care for their children, essentially alone ("Abandoned to Her Fate" 1995; "Report of the Independent Committee" 1993).

## Infanticidal Jurisprudence in the United States

Because the United States lacks a statute such as England's that treats infanticide cases alike on the basis of an explicit justification for mitigating the severity of this crime, each case tends to be viewed on its own merits. The result has been a tendency to treat each infanticide case as exceptional rather than to recognize the profound similarities that underlie the many contemporary infanticide cases. Often, the media seem to play a powerful role in dictating the defendant's blameworthiness and even in determining the resolution of these cases (Meyer and Oberman 2001).

The result is that U.S. infanticide jurisprudence is incoherent and often arbitrary. Sentences range wildly, with women convicted of substantially equivalent crimes, such as neonaticide, receiving sentences that vary from probation with counseling to life imprisonment (Oberman 1996). The fact that the United States lacks a statute to dictate an appropriate punishment for infanticide need not imply that we must tolerate this level of randomness in resolving these cases. Judges and juries faced with infanticide cases must take into consideration the extent to which a given individual is morally blameworthy.

The central task of the criminal justice system in punishing infanticide cases is to ascertain the purposes to be served by punishing these women. There are three basic justifications for punishment: deterrence (both general and specific), retribution, and rehabilitation. *General deterrence* refers to the notion that punishing a given defendant will serve to deter others who might be contemplating committing the same crime. Given all that we know about the crime of infanticide, this rationale for punishment seems almost absurd. The mothers who commit infanticide seem relatively desperate, and there is little reason to believe that they spend time contemplating the potential consequences of their acts. Instead, infanticide seems for the most part to be a spontaneous crime, reflecting a loss of control rather than a cool-headed calculation.

*Specific deterrence* endorses the punishment of an individual who has committed a crime on the grounds that this will deter that individual from committing the same crime again in the future. When applied to certain categories of infanticide, this argument may have some merit. One might argue, for example, that the mother whose child is killed after prolonged abuse must be punished in order to ensure that she understands the limits the law places on disciplining children. On closer examination, though, specific deterrence has limited relevance to many of the other categories of infanticide. For instance, the woman with either acute

or chronic mental illness at the time she killed her child does not need the law to deter from killing again in the future. On the contrary, she is much more likely to need treatment for her condition.

The second major justification for punishment is *retribution*. This ancient rationale is predicated on society's right to punish one who unjustifiably harms another. Struck by the need to cry out against the deaths of these innocent children, it is obvious why society might be inclined to invoke this rationale in punishing infanticide. To the extent that retribution is justifiable, there must be clearly delineated lines of blame. This is precisely not the case with infanticide, though, as it so often seems difficult to allocate blame to a single individual. Instead, these cases often leave one with a sense that there might be more than one blameworthy party.

Consider the following case illustration, introduced earlier: In the weeks preceding her son's death, numerous others were aware of Sheryl Massip's deteriorating condition. Her lawyer noted that

[f]or two weeks, Sheryl Massip's family recognized something was wrong with her. Her husband . . . sent her away to her mother's home to spend a night, to get some rest, because they thought that would solve the problem. She came back, he sent her away again. On . . . the Monday before she killed her child, she came home from spending the night with her mother, and she went to the doctor and said, "Doctor, what's wrong with me? I'm hallucinating. I can't sleep. Something is wrong with me. Help me." He looked at her and said, "Oh, you're just suffering from baby blues," [and] gave her a couple of Mellarils. ("A Mother Tells Why She Killed Her Son" 1994)

There is no doubt that during her psychotic episode, Massip was incapable of caring for her son. Her family and her physician all were on notice that she was in crisis, and all attempted to comfort her. Nonetheless, none of them took the time to evaluate in a serious manner the gap between her present abilities and the caregiving tasks she was required to perform when left alone with her child. Had any one of these three people recognized her needs, they could readily have identified a course of action that would have saved her son's life.

The final justification for punishment is that it is necessary in order to *rehabilitate* the individual defendant. In view of the overcrowded and underfunded conditions that prevail in U.S. prisons, it is difficult for anyone to argue that a woman who commits infanticide is likely to be rehabilitated for society by virtue of incarceration. Indeed, the sort of treatment that these women are likely to need—mental health services, parenting classes, substance abuse treatment—are in particularly scarce supply in

women's prisons. A woman is much more likely to find these services outside of prison, and a judge can most certainly require a woman to obtain any or all of these services as a condition of probation. In essence, this is the British legal system's approach to punishment for this crime. Its experience of 80 years of using probation in lieu of incarceration suggests that probation is at least as effective at preventing or deterring infanticide as is incarceration, and it is considerably more efficient and cost-effective (Edwards 1986; Wilczynski 1991).

## Conclusion

In considering how society should best respond to a woman who has committed infanticide, the key question to ask is why we are punishing this woman and what we seek to gain by virtue of this punishment. At times, what we gain by punishing her may be no more than an opportunity to vent our rage at a life so needlessly lost. At those times, it is imperative to consider the underlying policies that have contributed to that lost life. This is not to say that those who commit infanticide are blameless, but rather that, as seen against the backdrop of the construction of motherhood, on some occasions this terrible crime may be all but inevitable. The task, then, in a civilized and compassionate society, is to determine how to deal justly with those who kill their children and, more importantly, how to mobilize all of our resources to prevent these needless deaths in the future.

## References

- Abandoned to her fate: neighbors, teachers, and the authorities all knew Elisa Izquierdo was being abused but somehow nobody managed to stop it. *Time*, December 11, 1995, p 32
- An act to prevent the destroying and murdering of bastard children, 21 James I, C27 (Eng), 1623
- American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition. Washington, DC, American Psychiatric Association, 1994
- Backhouse C: Desperate women and compassionate courts: infanticide in nineteenth century Canada. *University of Toronto Law Journal* 34:447-478, 1984
- Bumiller E: Vivid description of the persistence of female infanticide in contemporary India, in *May You Be the Mother of 1000 Sons: A Journey Among the Women of India*. New York, Fawcett Columbine, 1990, pp 104-124
- Chaudhry Z: The myth of misogyny. *Albany Law Review* 61:513, 1997

- Chavez L: The tragic story of Medea still lives. *The Denver Post*, December 3, 1995, E4
- Chew K, McCleary R, Lew M, et al: Epidemiology of child homicide: California, 1981-1990. *Homicide Studies* 2:78-85, 1999
- Edwards SM: Neither mad nor bad: the female violent offender reassessed. *Women's Studies International Forum* 9:79-87, 1986
- Greenhalgh S, Li J: Engendering reproductive policy and practice in peasant China: for a feminist demography of reproduction. *Signs* 20:601-641, 1995
- Hoffer PC, Hull NEH: *Murdering Mothers: Infanticide in England and New England, 1558-1803*. New York, New York University Press, 1981, p 13
- Infanticide Act, 2 Geo 6, ch 36 (Eng 1938)
- Kellett R: Infanticide and child destruction—the historical, legal and pathological aspects. *Forensic Science International* 53:1-28, 1992
- Kellum BA: Infanticide in England in the later middle ages. *History of Childhood Quarterly* 1:367-388, 1974
- Langer WL: Infanticide; a historical survey. *History of Childhood Quarterly* 1: 353-365, 1974
- Lee JA: Family law of the two Chinas. *Cardozo Journal of International Comparative Law* 5:217-247, 1997
- Lee J: 6.3 brides for seven brothers (one quarter of humanity: Malthusian mythology and Chinese reality 1700-2000). *The Economist*, December 19, 1998, pp 56-58
- Lichtblau E: Appeal argued in postpartum case. *Los Angeles Times*, May 24, 1990, B1
- Mathew P: Case note: Applicant A v. minister for immigration and ethnic affairs: the high court and "particular social groups": lessons for the future. *Melbourne University Law Review* 21:277-330, 1997
- Mendlowicz MV, Rapaport MH, Mecler K, et al: A case-control study on the socio-demographic characteristics of 52 neonaticidal mothers. *Int J Law Psychiatry* 52:209-218, 1998
- Meyer C, Oberman M: *Mothers Who Kill Their Children: Understanding the Acts of Moms From Susan Smith to the "Prom Mom."* New York, New York University Press, 2001
- Moseley KL: The history of infanticide in Western society. *Issues Law Med* 1:346-357, 1986
- A mother tells why she killed her son. *Larry King Live* (CNN television broadcast), L King interviewing M Grimes, criminal defense attorney for Sheryl Massip, November 17, 1994
- Oberman M: Mothers who kill: coming to terms with modern American infanticide. *American Criminal Law Review* 34:1-109, 1996
- O'Hara MW: Postpartum "blues," depression and psychosis: a review. *J Psychosom Obstet Gynaecol* 7:205-227, 1987
- Report of the independent committee to inquire into practices, processes, and proceedings in juvenile court as they relate to the Joseph Wallace cases, Cook County, Illinois, October 1, 1993



- Satava SE: Discrimination against the unacknowledged illegitimate child and the wrongful death statute. *Capital University Law Review* 25:933-991, 1996
- Smith L: Experts seek reasons behind irrational crime. *The Los Angeles Times*, October 15, 1991, A25
- Spinelli MG: A systematic investigation of 16 cases of neonaticide. *Am J Psychiatry* 158:811-813, 2001
- Stuart Bastard Neonaticide Act, 21 James I, c 27 (Eng 1624)
- Trexler R: Infanticide in Florence: new sources and first results. *History of Childhood Quarterly* 1:100-102, 1973
- Walker LE: *The Battered Woman*. New York, Harper & Row, 1979
- Walker N: *Crime and Insanity in England*, Vol 1. New York, Columbia University Press, 1968, pp 128-132
- Wilczynski A: Images of women who kill their infants: the "mad and the bad." *Women and Criminal Justice* 2:71-88, 1991

# INFANTICIDE

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