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“[N]ot a story to pass on”<sup>1</sup>:  
Constructing Mothers Who Kill

Susan Ayres\*

We die. That may be the meaning of life. But we do language.  
That may be the measure of our lives.

— Toni Morrison<sup>2</sup>

Two days before Mother’s Day, on May 9, 2003 Deanna LaJune Laney bashed in the brains of her two young sons, and caused serious injuries to her toddler.<sup>3</sup> She called 911 and told the dispatcher that she “had to” kill her children because “God had told her to.”<sup>4</sup> Her neighbors and friends were incredulous because they considered Laney “a wonderful mom,” and a “devout Christian woman who home schooled her children and seemed absorbed in their lives.”<sup>5</sup>

Our impulse on hearing about Laney’s murders “is that someone just can’t be in their right mind to have done something like this.”<sup>6</sup> And yet instances of infanticide may be shockingly more common than we expect. Some studies find that “nearly one infant is killed every day” in the United

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1. TONI MORRISON, *BELOVED* 274-75 (1987).

2. Toni Morrison, *Nobel Lecture 1993* in TONI MORRISON: CRITICAL AND THEORETICAL APPROACHES 271 (Nancy Peterson ed., 1997).

3. Anne Belli Gesalman, *Andrea Yates Redux*, NEWSWEEK WEB EXCLUSIVE, May 17, 2003, available at 2003 WL 11863494.

4. *Id.*

5. *Id.*

6. *Larry King Live* (CNN television broadcast, May 12, 2003), available at <http://www.cnn.com/TRANSCRIPTS/0305/12/wbr.00.html>.

States; however, due to problematic reporting and ascertainment of the cause of death, the number of infanticides may be “double that number.”<sup>7</sup> Nevertheless, we label a mother who kills her children — especially a mother like Laney, who seems to be a terrific mom — as “other,” as different and as crazy. We fail to view her actions with “other love,” to listen to her as a speaking subject.

Incidents of infanticide such as the Laney story fill us with horror — they are stories not to be passed on, to paraphrase Toni Morrison.<sup>8</sup> And yet they are stories that insidiously lodge themselves in our collective consciousness.<sup>9</sup> Our responses to infanticide and our attempts to understand infanticide are intertwined with our perceptions of motherhood. This article examines how social institutions have constructed motherhood and how that construction impedes our reaction to infanticides.

Toni Morrison has said in her Nobel acceptance speech, “We die. That may be the meaning of life. But we do language. That may be the measure of our lives.”<sup>10</sup> How we “do language” in judicial decisions about infanticide can perhaps be compared to and informed by fiction such as Toni Morrison’s *Beloved*.<sup>11</sup>

*Beloved* provides a fictional account of the life of a historical woman, a slave who escaped to freedom and then attempted to kill all four of her children, successfully killing one when her master came to claim her under the Fugitive Slave Act.<sup>12</sup> In addition to telling a story about infanticide, which not only the typical reader but also characters in the novel find impossible to understand, *Beloved* is a story about the spectrum of love — from hate to smothering affection. The novel suggests that understanding infanticide depends upon a notion of outlaw justice that is grounded in a mother’s private ethics.<sup>13</sup> The mother’s action becomes comprehensible, if

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7. Mary Overpeck, *Epidemiology of Infanticide*, in *INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON WOMEN WHO KILL* 19, 19 (Margaret G. Spinelli ed., 2003).

8. See MORRISON, *supra* note 1.

9. For instance, in response to a Houston infanticide, Dr. J. Ray Hays, a psychiatry professor, commented: “It’s probably in our mind the worst thing that could happen, the worst tragedy.” T.J. Milling, *Science Seeks Roots of Infanticide, Rare Psychosis May Play a Role in Some Slayings*, HOUS. CHRON., Oct. 15, 1995, at 37A, available at 1995 WL 9409134. The article further states, “These maternal attacks on the very young seem to run counter to the very foundations of human nature and one of its most sacred relationships.” *Id.*

10. Morrison, *supra* note 2.

11. Another contemporary novel which explores infanticide and postpartum depression is Renate Dorrestein’s *HEART OF STONE* (Hester Velmans trans., Penguin Books 1998). See also, Lori Saint-Martin, *Infanticide, Suicide, Matricide, and Mother-Daughter Love: Suzanne Jacob’s L’obéissance and Ying Chen’s L’ingratitude*, 169 *Canadian Literature* 60 (2001) (analyzing two Québec novels involving infanticide).

12. MORRISON, *supra* note 1, *passim*.

13. See MARIA ARISTODEMOU, *LAW AND LITERATURE: JOURNEYS FROM HER TO ETERNITY* 225 (2000) (arguing that “[t]he discourse of motherhood may crucially provide the beginnings of a new ethics, an ethics that, by starting from a mother’s love for the strangest and most intimate of others, undermines the notion of the individual as separate, self-

at all, only through “love for the other,” through Morrison’s use of legal narrative which helps readers to begin to understand the other.<sup>14</sup> We view the infanticidal mother as “other” as a result of our binary, hierarchized thinking. “Love for the other” can take place when we refuse to label the infanticidal mother as “other,” when we privilege the “other,” and begin to hear pieces of her story from her view, when we allow her to be a speaking subject.<sup>15</sup> Before examining the novel, Part I of this article compares the plot of *Beloved* with *Modern Medea*, the nonfiction account of the slave mother who committed infanticide and who served as the inspiration for Morrison’s main character.<sup>16</sup> Part II explores ways in which law constructs definitions of motherhood, especially of mothers who kill their children — by specularizing women, by silencing women, and by labeling mothers who kill their children as either “bad or mad.” Part III then examines the historical and fictional reaction to infanticide in both *Beloved* and *Modern Medea* in order to show how discourse constructs motherhood and how difficult it is to respond to infanticide with love for the other. Both the historical and fictional communities ostracized the slave mother as “other” and refused to understand the circumstances or motivation for the murder. Part III weaves together the narrative threads Morrison uses to help the reader overcome the community’s bias and to understand the mother’s murder. Although the reader may not condone the mother’s action, the reader of *Beloved* may be able to see her not as “other,” but with “other love” as a speaking subject, and thus perceive the circumstances that led to the infanticide.

Part IV of this article is a selected sampling of Texas judicial decisions and news reports of cases of infanticide by Texas mothers from 1899 to the present, and Part V analyzes trial and media responses to the infanticides by Andrea Yates, a Houston mother who drowned her five children. Both Parts IV and V examine how juridico-legal discourse constructs mothers who kill their children. Finally, this article concludes by arguing that legal

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interested, and uniquely self-sufficient.”).

14. This article is especially indebted to the earlier analysis of *Beloved* by Marie Ashe, who demonstrates how a “careful reading of *Beloved* can assist those . . . engaged in the legal representation of ‘bad mothers’ to new understandings of our clients and of our own work,” Marie Ashe, *The “Bad Mother” in Law and Literature: A Problem of Representation*, 43 HASTINGS L.J. 1017, 1018 (1992); and by Elizabeth Tobin, who reads *Beloved* against several legal decisions and argues that “the truth of legal disputes involving mothers is not likely to be recognized in the legal system until attorneys and judges explore the ambiguities of the maternal experience as expressed from the mother’s perspective.” Elizabeth Tobin, *Imagining the Mother’s Text: Toni Morrison’s Beloved and Contemporary Law*, 16 HARV. WOMEN’S L.J. 233, 237 (1993).

15. HÉLÈNE CIXOUS, *Sorties: Out and Out: Attacks/Ways Out/Forays*, in *THE NEWLY BORN WOMAN* 71 (Besty Wing trans. 1993). See *infra* for discussion of “other love” that describes a relationship not based on hierarchical views of one as different and “other.”

16. STEVEN WEISENBURGER, *MODERN MEDEA: A FAMILY STORY OF SLAVERY AND CHILD-MURDER FROM THE OLD SOUTH* (1998).

narratives of infanticide could benefit by striving to fully hear and record the accused mother's tale not as "other," but with "other love," to understand the complexity of a mother's experience.

## I. "ONCE UPON A TIME": MARGARET GARNER CREATED AS SETHE

Toni Morrison wrote *Beloved* after she read an 1856 newspaper account published in the *National Anti-slavery Standard*, "A Visit to the Slave Mother Who Killed Her Child," which gives the bare details about Margaret Garner's escape from slavery and murder of her 2-year-old daughter when "slave-hunters" arrived to reclaim her.<sup>17</sup> Morrison has stated in an interview that she "did not do much research on Margaret Garner other than the obvious stuff, because I wanted to invent her life."<sup>18</sup> In telling the story, Morrison wanted to show "the way in which women are so vulnerable to displacing themselves, into something other than themselves."<sup>19</sup> Therefore, before summarizing *Beloved*, it is important to review the Garner story, to see the differences between fact and invention, and consequently, to understand what Morrison means when she says "my story, my invention, is much, much happier than what really happened."<sup>20</sup>

### A. MODERN MEDEA

Steven Weisenburger's book *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South* recounts the Garner story in detail. Although earlier published accounts exist,<sup>21</sup> *Modern Medea* provides many more details in a "fascinating" and "brilliant"<sup>22</sup> story of Margaret Garner, a slave at Maplewood Plantation in Kentucky. In 1849, when Margaret (then 16 years old) married Robert Garner (then 15 years old and a slave from a nearby plantation owned by James Marshall), they

17. Marilyn Sanders Mobley, *A Different Remembering: Memory, History and Meaning in Toni Morrison's Beloved*, in TONI MORRISON 189, 190 (Harold Bloom ed., 1990); article reproduced in Angelita Reyes, *Using History as Artifact to Situate Beloved's Unknown Woman: Margaret Garner* in APPROACHES TO TEACHING THE NOVELS OF TONI MORRISON 77, 84 (Nellie Y. McKay and Kathryn Earle, eds., 1997).

18. Marsha Darling, *In the Realm of Responsibility: A Conversation with Toni Morrison*, in CONVERSATIONS WITH TONI MORRISON 246, 248 (Danielle Taylor-Guthrie ed., 1994).

19. Gail Caldwell, *Author Toni Morrison Discusses Her Latest Novel Beloved*, in CONVERSATIONS WITH TONI MORRISON, 239, 241 (Danielle Taylor-Guthrie ed., 1994).

20. Darling, *supra* note 18, at 251.

21. See, e.g., LEVI COFFIN, REMINISCENCES OF LEVI COFFIN, THE REPUTED PRESIDENT OF THE UNDERGROUND RAILROAD, 557 (2d ed. 1880).

22. WEISENBURGER, *supra* note 16, at jacket cover; see also Marilyn Mobley McKenzie, *Remembering Rebellion*, THE WOMEN'S REV. OF BOOKS, May 1999, at 6 (book review) (noting that the work takes the reader "deep into the historical, legal and political recesses of story"); John M. Coski, *Historian Expands Tale of Recaptured Slaves*, RICH. TIMES DISPATCH, Jan. 10, 1999, at F4 (book review) (Weisenburger's book "remind[s] us that history can be as dramatic and provocative as fiction.").

were expecting their first child.<sup>23</sup> That same year, when the owner of Maplewood, John Pollard Gaines, became governor of Oregon, he sold the plantation and eleven slaves including Margaret, to his brother, Archibald Gaines — a melancholy and mean-spirited man, who often threatened to sell the slaves.<sup>24</sup>

In 1856 Margaret Garner escaped to Ohio along with her four children (also slaves of Archibald Gaines), her husband Robert Garner, and his parents, Simon and Mary (also slaves of James Marshall).<sup>25</sup> In the escape, Robert drove a sleigh eighteen miles to Covington, where the family walked across the frozen Ohio River to the Cincinnati house of Margaret's cousin Elijah Kite, who had contacted the Underground Railroad.<sup>26</sup> The Garners arrived at Kite's house at about five in the morning; Kite met with Levi Coffin, an Underground Railroad organizer, who told him to remove the family immediately, but by the time Kite returned, United States marshals already had the house under surveillance.<sup>27</sup>

The Garners were trailed by Archibald Gaines and James Marshall's son Thomas, who had discovered the escape several hours after the Garners had left and who arrived at the U.S. marshals' offices at about six or seven in the morning.<sup>28</sup> After the commissioner issued a warrant, the deputy and officers attempted to arrest the Garners.<sup>29</sup> During the arrest, Robert repeatedly fired a gun he had taken with him, and when the officers entered, they discovered that the throat of 2-and-a-half-year-old Mary had been cut, that the two older boys, Tom and Sam, had also been cut, and were hiding under the bed, and that the mother was hitting 9-month-old Cilla with a shovel.<sup>30</sup> Mary was the only child Margaret had killed, and a witness watched as Archibald "appear[ed] on the front porch of the house carrying little Mary's body and sobbing uncontrollably over her corpse."<sup>31</sup> Archibald had to be restrained from taking Mary home on horseback.<sup>32</sup>

Archibald's unusual reaction to Mary's death can perhaps be explained by his probable paternity. According to the 1850 census, Margaret's first child, Thomas, was black, so Weisenburger concludes that Robert was probably the baby's father.<sup>33</sup> Margaret was described by Levi Coffin as "a mulatto, about five feet high, showing one-fourth or one-third white

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23. WEISENBURGER, *supra* note 16, at 34.

24. *Id.* at 34, 42, 44.

25. *Id.* at 5; *see also* COFFIN, *supra* note 21, at 557-58.

26. *Id.* at 5, 55; *see also* COFFIN, *supra* note 21, at 558.

27. *Id.* at 62-64; *see also* COFFIN, *supra* note 21, at 559.

28. WEISENBURGER, *supra* note 16, at 64.

29. *Id.* at 64-67.

30. *Id.* at 72-73.

31. *Id.* at 75.

32. *Id.* at 75-76.

33. *Id.* at 44-47. Weisenburger points out that Archibald's behavior, "the extremity of his grieving, and especially his clinging to the corpse, suggested then and now a still dearer relation to the little girl" beyond that of master. *Id.* at 75-76.

blood.”<sup>34</sup> Census reports and newspaper accounts do not list Margaret’s three subsequent children as black — the 1852 census describes Samuel as mulatto; the 1856 newspaper accounts describe Mary as “almost white” and Cilla as “bright mulatto” (i.e., light).<sup>35</sup> In 1856 when the Garners escaped, Margaret was again several months pregnant.<sup>36</sup>

While there is no evidence whether the “nature of their [Margaret and Archibald’s] relationship” was rape or consensual sex, Margaret’s actions suggest negative inferences about her circumstances after John Pollard Gaines sold the plantation.<sup>37</sup> Additionally, when she did finally escape, she ended up killing the child with the lightest skin color. Coffin describes the child as “almost white, a little girl of rare beauty.”<sup>38</sup> Although the coroner’s inquest failed to determine which adult had killed Mary, later Margaret confessed, saying “that her determination was to have killed all the children and then destroy herself rather than return to slavery,” and complaining “of cruel treatment on the part of their master,” who was “the cause of their attempt to escape.”<sup>39</sup>

Margaret was tried under the Fugitive Slave Law in federal court, and was indicted, but never tried, by the Ohio state court for murder.<sup>40</sup> John Jolliffe, her abolitionist lawyer, who had argued almost every Ohio slave case, asserted the First Amendment defense that Christians didn’t have to obey the Fugitive Slave Law.<sup>41</sup> He also argued that because Margaret had visited Ohio (free soil) as a child, she was automatically free.<sup>42</sup> Moreover, Jolliffe used the murder charge against Margaret as a strategy to slow down the federal case — thus, he obtained a writ of habeas corpus from a Cincinnati probate judge to release the Garners from federal custody so that Margaret could be charged for murder.<sup>43</sup> Jolliffe stated that “the fugitives

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34. COFFIN, *supra* note 21, at 562.

35. WEISENBURGER, *supra* note 16, at 44. Weisenburger concludes that it is likely Archibald was the father of Samuel, Mary, and Cilla. Robert was probably not the father because he “had been on lengthy and distant hiring-out until just a month before the Garners fled,” and because Archibald was also “the only adult white male on Maplewood throughout these years.” *Id.* at 44-48. Moreover, the birth of each of Elizabeth Gaines’ children was several months before Margaret’s. *Id.* at 47. Thus, when Elizabeth was pregnant, Archibald’s sexual outlet could very well have been Margaret. *Id.* at 47-48. Indeed, after the abolitionist, Lucy Stone, interviewed Margaret in jail, Stone made a speech insinuating that Archibald was the father of the children. She boldly told a packed courtroom that “[t]he faded faces of the negro children tell too plainly to what degradation the female slaves submit. Rather than give her little daughter to that life, she killed it.” *Id.* at 48, 173.

36. *Id.* at 48. The 1860 census listing of a female mulatto is probably Margaret’s fifth child.

37. *Id.* Under Archibald, Margaret “had withstood six years of greater uncertainty and harsher treatment than she had formerly known.” *Id.*

38. COFFIN, *supra* note 21, at 563.

39. WEISENBURGER, *supra* note 16, at 76, 89.

40. *Id.* at 111-12, 150.

41. *Id.* at 100-01.

42. *Id.* at 103.

43. *Id.* at 80.

have all assured me that they will *go singing to the gallows* rather than be returned to slavery.”<sup>44</sup>

Typically, fugitive slave trials were summary proceedings that lasted only several days, but Margaret’s lasted two weeks.<sup>45</sup> When the commissioner handed down his decision after four weeks of deliberation, the Garners were in custody in the county jail, and the sheriff initially refused to turn them over.<sup>46</sup> The commissioner’s decision concluded that the prior temporary visits to Ohio did not free Margaret — the same result that the Supreme Court reached a year later in *Dred Scott*, which had been argued before the Supreme Court during Margaret’s trial — and that the fugitive slave laws were a question of property.<sup>47</sup>

After the commissioner’s Fugitive Slave decision, a United States district judge denied the state’s authority to try Margaret for murder on the basis that “a state process for murder [did not take] . . . precedence over a federal fugitive slave warrant.”<sup>48</sup> Then, while the Garners were on a steamboat to Gaines’s brother’s plantation in Arkansas, judges in two courts issued significant orders.<sup>49</sup> First, a judge of the Ohio Court of Common Pleas ruled that the federal marshals should have turned over the prisoners to county officials; second, an Ohio probate court judge ruled that the fugitive slave laws were unconstitutional and held the federal marshal in contempt.<sup>50</sup> Unfortunately, however, while en route to Arkansas, the steamboat crashed and Margaret jumped overboard with the ten-month-old baby, Priscilla, who drowned.<sup>51</sup>

After this latest tragedy, Archibald Gaines brought Margaret back at the request of the Kentucky governor, and Gaines put her in jail in Kentucky for about a week before he took her back to Maplewood Plantation, put her in another jail, and finally on another steamboat back south — all an elaborate “shell game” to hide her from the Ohio officials

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44. COFFIN, *supra* note 21, at 561.

45. The defendant could not testify; rather, the witnesses merely identified the fugitives and claimed bondage. WEISENBURGER, *supra* note 16, at 111-12. Margaret’s trial was an exception in several respects. The commissioner excluded blacks from the courtroom, and because of threats of a race riot or abolitionist rescue, ordered four weeks of deputy protection at the cost of \$800 a day. *Id.* at 110, 116, 153. Moreover, the trial was unusual in that Margaret was allowed to testify that she had been in Cincinnati before — this was possibly the only time a slave had been allowed to testify in a fugitive slave case. *Id.* at 163-64.

46. *Id.* at 182. Eventually, the sheriff released the prisoners because he had only several dozen county officers to back him up, as opposed to the federal government, which had 800 men waiting to enforce the decision. *Id.* at 195.

47. *Id.* at 189-90, 162. *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

48. WEISENBURGER, *supra* note 16, at 194.

49. *Id.* at 209, 230.

50. *Id.*

51. *Id.* at 223-25. The cook who saved Margaret claimed she was happy that her baby had drowned. *Id.* at 225.



who were trying to retrieve her.<sup>52</sup> Eventually she was sold from the Gaines's Arkansas plantation to a 600-acre cotton farm plantation in Mississippi and died of typhoid in 1858.<sup>53</sup>

Margaret's travails inspired two nineteenth century novels (both ghost stories): *Liberty or Death!* by Hattia M'Keehan, and *Chattanooga* by Jolliffe, her abolitionist lawyer.<sup>54</sup> Interestingly, however, after Reconstruction Margaret Garner disappeared from history and memory for a hundred years until *Beloved* was published in 1987.<sup>55</sup>

## B. BELOVED

Morrison purposefully did not research the details of Margaret Garner's story because, as noted above, she wanted to "invent" Margaret's story.<sup>56</sup> The novel begins in Cincinnati in 1873 at the house of Sethe and her daughter Denver, the daughter born during Sethe's escape from Sweet Home.<sup>57</sup> Unlike Margaret, who escaped with her husband and in-laws, Sethe escaped alone, having sent her children ahead of her.<sup>58</sup> Sethe's husband Halle, one of the Sweet Home men and the father of all her children, planned to escape with her, but didn't because he went insane after he saw Sethe assaulted.<sup>59</sup>

Morrison's postmodern novel about Sethe is a circular telling of the "rememories" of Sethe and Paul D, another former slave from Sweet Home who shows up on her doorstep in Cincinnati.<sup>60</sup> While they carry traumatic memories of their lives as slaves, their memories are juxtaposed with the "shameless beauty" of Sweet Home.<sup>61</sup> The original owner, Mr. Garner, ran Sweet Home as an enlightened despot, who "disallowed" beatings and bragged that his male slaves were "men," unlike the other owners' male slaves, who were just "boys."<sup>62</sup> However, after Mr. Garner died, Mrs. Garner developed a huge "lump in her neck the size of a sweet potato," and sold the farm to her brother-in-law.<sup>63</sup> Like Margaret Garner's plantation, the ownership of Sweet Home changed from the "high principles" of the original owner to the brutal principles of his brother, known as

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52. *Id.* at 232-43.

53. *Id.* at 244-45, 277-78.

54. *Id.* at 92, 271. *Chattanooga* was published in 1858, and *Liberty or Death* in 1856. *Liberty or Death* made Margaret very fair, and "[t]his revision . . . becomes crucial because [the novel] plays out themes of rape and miscegenation that few, excepting Lucy Stone, had been willing to name;" the racy novel was printed at least seven times. *Id.* at 271-72. See *infra* at Part III.A. (for more information about Lucy Stone's speech).

55. WEISENBURGER, *supra* note 16, at 8-10.

56. See *supra* note 18.

57. MORRISON, *supra* note 1, at 3.

58. *Id.* at 8, 76-85, 90-94.

59. *Id.* at 16-17, 23, 68-70.

60. *Id.* at 36.

61. *Id.*

62. *Id.* at 10, 197.

63. *Id.* at 9.

Schoolteacher.<sup>64</sup> The following sections discuss the three parts of the difficult-to-summarize novel and address the question: Who is Beloved?

1. "124 was spiteful."<sup>65</sup>

Morrison's writing is poetic and multivocal. Part One, which comprises almost half of the novel, begins with the arrival of Paul D, and includes the arrival of a young girl who calls herself "Beloved."<sup>66</sup> The novel opens with the cryptic sentence "124 was spiteful,"<sup>67</sup> shorthand for Sethe's house (124 Bluestone Road) being haunted by a spiteful baby ghost, Beloved. Part One also tells the story of Sethe's assault by Schoolteacher's nephews who stole her milk, a traumatic event that leaves her emotionally as well as physically scarred.<sup>68</sup> As Sethe tells Paul D:

"After I left you, those boys came in there and took my milk. That's what they came in there for. Held me down and took it. I told Mrs. Garner on em. She had that lump and couldn't speak but her eyes rolled out tears. Them boys found out I told on em. Schoolteacher made one open up my back, and when it closed it made a tree. It grows there still."

"They used cowhide on you?"

"And they took my milk."

"They beat you and you was pregnant?"

"And they took my milk!"<sup>69</sup>

The tree on her back is a web of scars that Amy, a runaway white girl who delivers Denver on the banks of the Ohio River, describes as a "chokecherry tree . . . . What God have in mind, I wonder."<sup>70</sup> When Sethe and Paul D stand in the kitchen he sees the tree as "the decorative work of an ironsmith too passionate for display."<sup>71</sup> But after Paul D and Sethe have sex, and feel "resentful of one another" and "sorry and too shy," Paul D

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64. *Id.* at 10, 36-37.

65. One of my favorite assignments in teaching *BELOVED* is to have students look at the poetic first sentence of many of the chapters, such as "124 was spiteful" *Id.* at 3; "A fully dressed woman walked out of the water" *Id.* at 50; "Rainwater held on to pine needles for dear life and Beloved could not take her eyes off Sethe" *Id.* at 57; "She moved him" *Id.* at 114; "124 was loud" *Id.* at 169; "His coming is the reverse route of his going" *Id.* at 263; "There is a loneliness that can be rocked" *Id.* at 274.

66. *Id.* at 50-53. The next section of this article discusses the character, Beloved.

67. *Id.* at 3. Each part of the novel begins with a sentence "124 was." *See infra.*

68. *Id.* at 16-17.

69. *Id.*

70. *Id.* at 79.

71. *Id.* at 17.

thinks of the tree as a "wrought-iron maze," "[n]ot a tree . . . . Maybe shaped like one, but nothing like any tree he knew because trees were inviting; things you could trust and be near."<sup>72</sup>

Part One also tells about the traumatic events in Paul D's life that have caused him to put his heart in a "tobacco tin" in his chest, including the time Schoolteacher forced a bit in his mouth for trying to escape.<sup>73</sup> Then, after Paul D was sold and tried to kill the new master, he was sent to a chain gang in Georgia, where guards raped and sodomized the prisoners.<sup>74</sup> As a result of his traumas, Paul D's heart is imprisoned in his symbolic tobacco tin until Beloved seduces him and breaks the rusted seams of the tin.<sup>75</sup>

Part One describes Sethe's escape, the birth of Denver, and the twenty-eight days of freedom, before the murder, when Sethe could love her children and wake up and decide what to do with her life.<sup>76</sup> Unlike Margaret, who was captured the morning of her escape, Sethe and her four children live with her mother-in-law, Baby Suggs "holy," a self-taught preacher, for a month before the slave catchers arrive. In celebration of Sethe's arrival, Baby Suggs has a community feast for ninety people, but the celebration reaches such extravagance that the community disapproves and then neglects to warn the family of the arrival of the slave catchers described apocalyptically as four horsemen.<sup>77</sup>

When Sethe saw the slave catchers coming, she killed the crawling baby (as yet unnamed in the novel), but was then restrained from killing Denver or the boys.<sup>78</sup> Narrated from the viewpoint of Schoolteacher, the scene is described as follows:

Inside, two boys bled in the sawdust and dirt at the feet of a nigger woman holding a blood-soaked child [Beloved] to her chest with one hand and an infant [Denver] by the heels in the other. She did not look at them; she simply swung the baby toward the wall planks, missed and tried to connect a second time, when out of nowhere — in the ticking time the men spent staring at what there was to stare at — the old nigger boy [Stamp Paid], still mewling, ran through the door behind them and snatched the baby from the

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72. *Id.* at 20-21.

73. *Id.* at 68-73.

74. *Id.* at 71-72, 106-08; See Pamela E. Barnett, *Figurations of Rape and the Supernatural in Beloved*, 112 PMLA 418, 419 (May 1997) (arguing that the repressed trauma of rape haunts the characters and manifests itself in Beloved's appearance, and listing the many other incidents of rape in the novel).

75. MORRISON, *supra* note 1, at 117; see also *infra*, Part I.C.

76. MORRISON, *supra* note 1, at 95.

77. *Id.* at 135-38, 148.

78. *Id.* at 148-49.

arch of its mother's swing.<sup>79</sup>

Schoolteacher's callous response to the infanticide is to leave empty-handed, because "there was nothing to claim."<sup>80</sup> Schoolteacher blamed "the nephew who'd overbeat her and made her cut and run. Schoolteacher had chastised that nephew, telling him to think — just think — what would his own horse do if you beat it beyond the point of education."<sup>81</sup>

Whereas Margaret was never tried for the murder, Sethe apparently served a jail term for the murder of the baby.<sup>82</sup> At the end of Part One, Paul D learns that Sethe murdered her child and he leaves her.<sup>83</sup>

2. "124 was loud."<sup>84</sup>

Part Two of *Beloved* develops the interaction between Sethe, Denver, and Beloved, who have isolated themselves from the community. This part begins with the sentence "124 was loud,"<sup>85</sup> which is an allusion to the energy brewing between Sethe and Beloved. Sethe joyfully realizes that Beloved is her child returned from the dead,<sup>86</sup> and much of this part adds more memories of Sethe's life at Sweet Home, such as the traumatic memory of Schoolteacher's graphing of her human and animal characteristics.<sup>87</sup> Part Two also contains musings of Sethe's justification for killing the baby — to put her in a safe place.<sup>88</sup> She incorrectly thinks Beloved will understand her action.<sup>89</sup>

Likewise, in this part, a man named Stamp Paid explains to Paul D that he received his name when he handed his wife over for his master's son's sexual gratification, and then renamed himself Stamp Paid for his obligations paid.<sup>90</sup> Stamp Paid now tries to correct the mistake he realizes he made in telling Paul D about the murder.<sup>91</sup> Thus, he makes several trips to Sethe's house, but never sees her because he cannot bring himself to knock on Sethe's door since he has always just entered without knocking.

79. *Id.* at 149.

80. *Id.*

81. *Id.*

82. *Id.* at 42, 104, 183.

83. *Id.* at 165.

84. *Id.* at 169.

85. *Id.*

86. *Id.* at 175-76.

87. *Id.* at 193. Sethe overhears Schoolteacher ordering his pupils, "No, no. That's not the way. I told you to put her human characteristics on the left; her animal ones on the right. And don't forget to line them up." *Id.* Schoolteacher was likely a believer in the theory of polygenesis, that blacks and whites were completely different species, and was characterizing the features of Sethe in order to demonstrate differences to his students. WEISENBURGER, *supra* note 16, at 265-66.

88. *Id.* at 200.

89. *Id.* at 183-84.

90. *Id.* at 232-33.

91. *Id.* at 170.

Now he cannot enter without knocking, either.<sup>92</sup> Each time he goes to the house, he hears a loud roaring, symbolic of Beloved's brewing anger threatening to erupt against Sethe.<sup>93</sup> So, Stamp Paid never helps Sethe directly, but he does manage to apologize to Paul D and to bring him back into the community.<sup>94</sup> As a result, the community learns from Paul D about the strange arrival of Beloved — from nowhere — and that “she scares [Paul D] the most.”<sup>95</sup>

3. “124 was quiet.”<sup>96</sup>

Part Three, the shortest part of the novel, focuses on the struggle between Sethe, who is physically and emotionally shrinking, and Beloved, who is growing. This part opens with the sentence “124 was quiet.”<sup>97</sup> The house's energy has become overwhelmed by Beloved's ravenous hunger and irrepressible anger. Sethe tries to make Beloved understand why she had to kill her. She fears that Beloved will leave before she can make her realize that whites could “dirty you” and that Sethe chose not to let whites dirty her children.<sup>98</sup> Indeed, Sethe's “plan was to take us all to the other side where my own ma'am is.”<sup>99</sup> However, Beloved refuses to accept Sethe's justification, and begins to control the house with her anger and her demands for sweets.<sup>100</sup> Beloved and Sethe exclude Denver, who finally realizes that if she doesn't get help, her mother will die.<sup>101</sup>

Denver goes out into the community and finds a job working the night shift for the Bodwins, the abolitionist sister and brother who had donated the house to Baby Suggs and who defended Sethe in her murder trial.<sup>102</sup> Through Denver, the black community learns that Beloved has come back in the flesh to “whip[ ] Sethe.” Ella, one of the most outspoken women, convinces the other women to rescue Sethe because “[w]hatever Sethe had done, Ella didn't like the idea of past errors taking possession of the present.”<sup>103</sup>

The rescue parallels the scene in Part One when the slave catchers first come for Sethe. This time, Bodwin approaches on horseback to take Denver to work; however, Denver is busy looking in the opposite direction

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92. *Id.* at 172-73.

93. *Id.* at 169, 172.

94. *Id.* at 230-35.

95. *Id.* at 234.

96. *Id.*

97. *Id.* at 239.

98. *Id.* at 241-42, 251.

99. *Id.* at 203; *see also, Id.* at 241 (Sethe indicates “her plan was always that they would all be together on the other side, forever. Beloved wasn't interested.”).

100. *Id.* at 242-43.

101. *Id.* at 243.

102. *Id.* at 253-55.

103. *Id.* at 255-57.

at the thirty women coming down the road and doesn't see Bodwin.<sup>104</sup> Sethe and Beloved hear the women's singing, which to Sethe sounds like "where the voices of women searched for the right combination, the key, the code, the sound that broke the back of words . . . . It broke over Sethe and she trembled like the baptized in its wash."<sup>105</sup> When Sethe sees Bodwin, however, she believes he is the slave catcher who has returned, and tries to kill him.<sup>106</sup> As the women stop Sethe, Beloved, who is naked and hugely pregnant,<sup>107</sup> disappears into thin air.<sup>108</sup>

After this, Paul D returns to care for Sethe. She has taken to bed, like Baby Suggs after "the Misery" (the murder),<sup>109</sup> in order to "ponder[ ] color."<sup>110</sup> Sethe tells Paul D she is sad because her "best thing" left; Paul D tells her, "You your best thing, Sethe. You are."<sup>111</sup> Sethe's last words are "Me? Me?"<sup>112</sup> so, like many postmodern novels, the story doesn't end with closure, but is open-ended. This ending question, however, is significant in the construction of identity and motherhood. As Morrison has commented in an interview, "[Sethe] can consider the possibility of an individual pride, of a real self which says 'you're your best thing.' Just to begin to think of herself as a proper name — she's always thought of herself as a mother, as her role."<sup>113</sup>

The final two-page epilogue of the novel lyrically comments on the story in the voice of the omniscient narrator. "It was not a story to pass on" is repeated as a refrain.<sup>114</sup> The ending announces: "They forgot her like a bad dream"; and, "In the place where long grass opens, the girl who waited to be loved and cry shame erupts into her separate parts, to make it easy for the chewing laughter to swallow her all away."<sup>115</sup> While Beloved literally disappeared before their eyes, the memories of her will likewise disappear. Despite "their" forgetting, Morrison wants us to remember and ponder the story. As she has said, "the whole point is to have those characters . . .

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104. *Id.* at 257.

105. *Id.* at 261.

106. *Id.* at 261-62. Morrison's description of this scene is so elusive as to be almost incomprehensible.

107. Although her pregnancy might be viewed symbolically, Morrison has stated that Beloved is really pregnant, and the pregnancy is the result of her seduction of Paul D. Darling, *supra* note 18, at 249. Morrison admits that "Nobody likes that part. I know that a couple of people to whom I have said what I just said to you, said 'I don't want to know that,' so I thought, 'okay.' But there is a moment somewhere in time in which that's what you have to know. That is, ghosts or spirits are real and I don't mean [just a thought]." *Id.*

108. MORRISON, *supra* note 1, at 261-62.

109. *Id.* at 177.

110. *Id.* at 271-72. Baby Suggs goes to bed because "she knew death was anything but forgetfulness, [so] she used the little energy left her for pondering color." *Id.* at 4.

111. *Id.* at 272-73.

112. *Id.*

113. Darling, *supra* note 18, at 251.

114. *Id.* at 274-75.

115. *Id.* at 274.

move off the page and inhabit the imagination of whoever has opened herself or himself to them. I don't want to write books that you can close . . . and walk on off and read another one right away."<sup>116</sup> The reader's responsibility is to "shape it and figure it out. It's not over just because it stops. It lingers and it's passed on."<sup>117</sup> The novel ends with the single-word paragraph: "Beloved."<sup>118</sup>

### C. WHO IS BELOVED?

What do we make of the character Beloved? Interestingly, like the two nineteenth century novels based on Margaret Garner's story, *Beloved* is also a ghost story.<sup>119</sup> Morrison explains that she chose a ghost because "I got to a point where in asking myself who could judge Sethe adequately, since I couldn't, and nobody else that knew her could, really, I felt the only person who could judge her would be the daughter she killed. And from there Beloved inserted herself into the text."<sup>120</sup>

Morrison's style has been compared to the magical realism of South American writer Gabriel Garcia Marquez.<sup>121</sup> Indeed, not far into a novel such as *Beloved* does the reader accept the inevitability of surreal events, such as the "pool of red and undulating light"<sup>122</sup> through which Paul D steps, and other signs of a ghostly presence. The inevitability of a ghost is confirmed by Baby Suggs, who didn't want to move merely because the house was haunted, since "Not a house in the country ain't packed to its rafters with some dead Negro's grief."<sup>123</sup> This statement reflects Morrison's belief that ghosts are everywhere, as she said in an interview: "As a child, everybody knew there were ghosts . . . You didn't put your hand under the bed when you slept at night. It's that place that you go to [in *Beloved*], right away . . . a shared human response to the world."<sup>124</sup>

Assuming the belief in ghosts is shared, not everyone reacts the same way. For instance, Paul D fights the baby ghost the first evening he arrives when the room begins shaking and "pitching":

"God damn it! Hush up!" Paul D was shouting, falling, reaching for anchor. "Leave the place alone! Get the hell out!" A table rushed toward him and he grabbed its leg. Somehow he managed to stand at an angle and, holding the table by two legs, he bashed it about, wrecking everything, screaming back at the screaming

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116. Darling, *supra* note 18, at 253.

117. *Id.*

118. *Id.* at 275.

119. MORRISON, *supra* note 1, at 274.

120. Darling, *supra* note 18, at 248.

121. Denise Heinze, *Toni Morrison in 143* DICTIONARY OF LITERARY BIOGRAPHY, AMERICAN NOVELISTS SINCE WORLD WAR II, THIRD SERIES 171-187 (Gale Group 1994).

122. MORRISON, *supra* note 1, at 8.

123. *Id.* at 5, 8-9.

124. Caldwell, *supra* note 19, at 242.

house. "You want to fight, come on! God damn it! She got enough without you. She got enough!"<sup>125</sup>

Afterwards, when the house is quiet, Denver "miserably" realizes that the baby ghost "was gone."<sup>126</sup> A short time later, she sees a ghostly image of a young woman "holding its arm around her mother's waist," and tells her mother about it, saying, "Well, I think the baby got plans."<sup>127</sup> Not surprisingly, when Beloved appears, Denver is the first to realize that she is the embodiment of the baby ghost. Her understanding is implicit when she tells Sethe that Here Boy, the dog who had been attacked by the baby ghost, "won't be back" now that Beloved has come.<sup>128</sup>

Although there are many indications that the grown woman who shows up and calls herself Beloved is the baby ghost, Sethe and Paul D ignore the signs. For instance, when she first shows up at Sethe's doorstep, Beloved appears as a young woman out of nowhere, who had "new skin, lineless and smooth," and who appears to have cholera because she cannot stay awake, drinks copious amounts of water, and has a "low and rough voice."<sup>129</sup> But Denver denies that she is sick, assumes Beloved is her sister, and nurses her through her transition from the other side, going so far as to hide Beloved's incontinence.<sup>130</sup> Like a baby, Beloved craves sugar, her breath "was exactly like new milk," she chokes on food, and "she behaved like a two-year-old."<sup>131</sup> Like a supernatural being, however, she is unnaturally strong, she can disappear and reappear, she almost strangles Sethe with invisible fingers, and her palms have no lines.<sup>132</sup> When Denver asks, "What's it like over there, where you were before," Beloved tells her: "Dark . . . I'm small in that place. I'm like this here [curled up] . . . Hot. Nothing to breathe down there and no room to move in . . . A lot of people

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125. MORRISON, *supra* note 1, at 18.

126. *Id.* at 19.

127. *Id.* at 29, 35-37.

128. MORRISON, *supra* note 1, at 12, 55. The baby ghost's attack upon Here Boy had been more than just spiteful: "when the baby spirit picked up Here Boy and slammed him into the wall hard enough to break two of his legs and dislocate his eye, so hard he went into convulsions and chewed up his tongue, [her mother] . . . had taken a hammer, knocked the dog unconscious, wiped away the blood and saliva, pushed his eye back in his head and set his leg bones. He recovered, mute and off-balance, more because of his untrustworthy eye than his bent legs, and winter, summer, drizzle or dry, nothing could persuade him to enter the house again." *Id.* at 12.

129. *Id.* at 50-55.

130. *Id.* at 54-55.

131. *Id.* at 55, 67, 98; *see also*, Jean Wyatt, *Giving Body to the Word: The Maternal Symbolic in Toni Morrison's Beloved*, 108 PMLA 474, 481 (May 1993) (discussing the connection between Beloved and Sethe as a "preoedipal understanding that the mother is an extension of the self.").

132. MORRISON, *supra* note 1, at 56, 122-23 (she disappears in the cold house); *Id.* at 264 (she disappears in the last scene of the novel); *Id.* at 96, 101 (she strangles Sethe); *Id.* at 254 (the Bodwin's housekeeper realizes that Beloved is supernatural because she has no lines in her hands).



is down there. Some is dead.”<sup>133</sup>

Beloved's desire for Sethe is all-consuming, and she begs Sethe for stories about her past, such as the time she asks, “Where your diamonds?” which prompts Sethe to tell her about the time Mrs. Garner gave her “a pair of crystal earrings” as a wedding present.<sup>134</sup> However, despite her desire for Sethe, Beloved seduces Paul D. The chapter describing her seduction begins with the sentence, “She moved him,” and goes on to describe how Beloved literally moves Paul D out of the house — little by little he inexplicably stops sleeping with Sethe, and sleeps first in the rocker, then in Baby Suggs's room, then in the storeroom, then the cold house.<sup>135</sup> Finally Paul D “realized the moving was involuntary. He wasn't being nervous; he was being prevented,” and he waits for Beloved to show up in the cold house.<sup>136</sup> When she finally does, Paul D tells her to leave, but she insists, “You have to touch me. On the inside part. And you have to call me my name.”<sup>137</sup> After she seduces him, his tobacco tin splits open and he cries out, “Red heart. Red heart. Red heart.”<sup>138</sup> Thus her seduction may be viewed as a rape that allows him to “overcome his numbing defense mechanisms . . . [and to] confront[ ] the pain that he has locked away.”<sup>139</sup>

Although Paul D feels shame, he realizes that since he was “[a] grown man fixed by a girl,” it was possible that “the girl was not a girl, but something in disguise.”<sup>140</sup> Sethe, on the other hand, doesn't recognize that Beloved is supernatural until more than half-way through the novel, when Beloved hums the nursery song Sethe made up, the song that “[n]obody knows . . . but me and my children.”<sup>141</sup> Although Sethe is delighted to have her daughter back, soon she and Beloved become locked in an emotional combat in which Beloved “invent[s] desire” and slowly starves and overpowers Sethe.<sup>142</sup>

After Beloved disappears into thin air during the community exorcism led by Ella, Paul D asks Denver, “You think she sure 'nough your sister?” and Denver responds, “At times. At times I think she was — more.”<sup>143</sup> In explaining the different levels Beloved symbolizes, Morrison has said,

She is a spirit on one hand, literally she is what Sethe thinks she is, her child returned to her from the dead . . . . She is also another kind of dead which is not spiritual but flesh, which is, a survivor

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133. *Id.* at 75.

134. *Id.* at 57-59.

135. *Id.* at 114-16.

136. *Id.* at 116.

137. *Id.* at 117.

138. *Id.* His heart is in a tobacco tin because of his past traumas. *See supra* at Part I.B.1.

139. Barnett, *supra* note 74, at 423.

140. MORRISON, *supra* note 1, at 127.

141. *Id.* at 176.

142. *Id.* at 240-43.

143. *Id.* at 266.

from the true, factual slave ship. She speaks the language, a traumatized language, of her own experience, which blends beautifully in her questions and answers, her preoccupations, with the desires of Denver and Sethe. So that when they say “What was it like over there?” they may mean — they do mean — “What was it like being dead?” She tells them what it was like being where she was on that ship as a child. Both things are possible, and there’s evidence in the text so that both things could be approached, because the language of both experiences — death and the Middle Passage — is the same. Her yearning would be the same, the love and yearning for the face that was going to smile at her.<sup>144</sup>

So, according to Morrison, *Beloved* symbolizes not only the dead child, but also the Middle passage.<sup>145</sup> Another reader, Pamela Barnett, has interpreted *Beloved* as “a succubus, a female demon and nightmare figure that sexually assaults male sleepers and drains them of semen,” which Morrison employs in the novel in order “to represent the effects of institutionalized rape under slavery.”<sup>146</sup> For all the rich symbolism *Beloved* suggests, she also represents the subject of infanticide, and gives the reader an opportunity and model to view Sethe’s incomprehensible act with “other love.”

## II. CONSTRUCTION OF MOTHERHOOD AND OF INFANTICIDE

Legal discourse shapes definitions not merely of laws, but also of institutions, including the institution of motherhood.<sup>147</sup> Much has been written about the legal construction of motherhood.<sup>148</sup> For instance, Dorothy Roberts notes that while “[m]otherhood has very different meanings in different contexts of race, class, sexual orientation, and so on,” motherhood is constructed by “both racist and patriarchal ideology.”<sup>149</sup>

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144. Darling, *supra* note 18, at 247.

145. See Wyatt, *supra* note 131, at 479-80; Ashe, *supra* note 14, at 1034.

146. Barnett, *supra* note 74, at 418-19.

147. See Tobin, *supra* note 14, at 233-34; cf. Susan Ayres, *Coming Out: Decision-Making in State and Federal Sodomy Cases*, 62 ALB. L. REV. 355 (1998) (examining how legal decisions construct the “straight mind”); cf. Jason A. Gillmer, *Suing for Freedom: Interracial Sex, Slave Law, and Racial Identity in the Post-Revolutionary and Antebellum South*, 82 N.C.L. Rev. (forthcoming Jan. 2004) (noting, through an analysis of mixed-race slaves’ suits for freedom, how the law shaped the stories and the stories shaped the law).

148. See e.g., Carol Sangar, *M Is for the Many Things*, 1 S. CAL. REV. L. & WOMEN’S STUD. 15, 36 (1992) (“We breath[e] in a kind of background purity when it comes to mothers.”).

149. Dorothy Roberts, *The Unrealized Power of Mother*, 5 COLUM. J. GENDER & L. 141, 147, 149 (1995).

Martha Fineman has also written extensively about the construction of motherhood, and how “[m]ale norms and male understandings fashioned legal definitions of what constituted a family, what was good mothering, who had claims and access to children as well as to jobs and education, and, ultimately, how legal institutions functioned to give or deny redress for alleged (and defined) harms.”<sup>150</sup> This article furthers this feminist project by exploring three ways in which legal decisions construct notions of motherhood in the context of infanticide—by specularizing women, by silencing women, and by labeling mothers who kill as either “bad” or “mad”<sup>151</sup> — and proposes an alternative approach to viewing these cases with “other love.” Subsequent parts of this article examine specific cases of Texas infanticides to explore how legal discourse shapes notions of mothering.

#### A. LEGAL CONSTRUCTION OF MOTHERHOOD

Legal discourse shapes motherhood in several ways. First, law specularizes women. To specularize means to see as “the other,” to deny a subjectivity to “woman,” and rather, to see “woman” as the reflection of the male ego. As the French philosopher Luce Irigaray argues, “all of western discourse and culture displays the structure of specularization, in which the male projects his own ego on to the world, which then becomes a mirror which enables him to see his own reflection wherever he looks.”<sup>152</sup> This specularization is one effect of “the ways in which patriarchal systems of representation always submit women to models and images defined by and for men . . . [W]omen are seen as variations or versions of masculinity . . . two sexual symmetries . . . are reduced to one (the male), which takes it upon itself to adequately represent the other.”<sup>153</sup> As Sheila Duncan states in her analysis of prostitution and rape cases, “The universal legal subject is the male subject. The subject which the law constructs is the male subject. There is no female subject in the text of the criminal law. The woman appears only as the mirror to male subjectivity.”<sup>154</sup>

In terms of motherhood, patriarchal representations “require that women appear to be completely devoted to their children and inhibit

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150. Martha A. Fineman, *Preface* to *MOTHERS IN LAW: FEMINIST THEORY AND THE LEGAL REGULATION OF MOTHERHOOD* ix, x (Martha Albertson Fineman & Isabel Karpin, eds. 1995).

151. CHERYL MEYER & MICHELLE OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO THE “PROM MOM”* 69 (2001); see also Ashe, *supra* note 14, at 1018-19.

152. MARGARET WHITFORD, *LUCE IRIGARAY* 34 (1991). Irigaray’s theory plays off Lacan’s description of the mirror stage of development, in which the infant’s ego, or “I,” is an identification with the image of itself which it sees reflected in a mirror. *Id.*

153. *Id.*

154. Sheila Duncan, *The Mirror Tells its Tale: Constructions of Gender in Criminal Law*, in *FEMINIST PERSPECTIVES ON THE FOUNDATIONAL SUBJECTS OF LAW*, 173, 177-78 (Anne Bottomley, ed., Cavendish Publ. 1996).

viewing the mother multi-dimensionally and as an individual separate from her child.”<sup>155</sup> The specularized ideal mother

embodies an unrealistic and oppressive standard . . . “[m]others are expected to perform a series of visible and non-visible tasks, all of which are never-ending. Mothers are not allowed to fail any of these obligations. The ideal of motherhood is sacred; it exposes all mothers as imperfect.” The “good mother” is expected to sacrifice herself for the greater good of her family by nurturing, caring, and taking responsibility for children and home. Within the nuclear family, it is still considered natural that mothers have a special bond with their children while fathers remain distant. “Mothers’ love is unconditional and nurturing; fathers’ love is earned.”<sup>156</sup>

A similar observation can be made about the construction of mothers who commit infanticide, as demonstrated below, in which legal systems specularize women who kill their children by projecting a masculine view upon the facts of the case.

A second and corollary problem regarding the construction of motherhood is that social institutions, including law, silence women.<sup>157</sup> In terms of motherhood, patriarchal systems ignore women’s experience and construct versions of “motherhood” and “infanticide” by “us[ing] disempowering language.”<sup>158</sup> Law silences “the complexity of women’s lives as mothers” and posits women as “the other, the object of the male gaze, the subject of the discussion, not the speaker.”<sup>159</sup> Specifically,

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155. Annette Ruth Appell, *Virtual Mothers and the Meaning of Parenthood*, 34 U. MICH. J.L. REFORM 683, 782-83 (2001). See also Caroline Rogus, Note, *Conflating Women’s Biological and Sociological Roles: The Ideal of Motherhood, Equal Protection, and the Implications of the Nguyen v. INS Opinion*, 5 U. PA. J. CONST. L. 803 (2003) (examining the United State Supreme Court’s stereotypical image of women in *Nguyen v. INS*) and arguing that “[w]hen we as a society presume that women who become biological mothers will immediately transform into nurturers and caretakers, we give women little choice but to function within society’s gender-biased paradigm of parenthood.” *Id.* at 818-19, 830; April Cherry, *Nurturing in the Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood*, 10 TEX. J. WOMEN & L. 83, 98-103 (2001) (describing characteristics of the “cult of womanhood”).

156. Linda J. Panko, *Legal Backlash: The Expanding Liability of Women Who Fail to Protect Their Children from Their Male Partner’s Abuse*, 6 HASTINGS WOMEN’S L.J. 67, 75 (1995) (footnotes omitted).

157. See e.g., Susan Ayres, *Incest in “A Thousand Acres”: Cheap Trick or Feminist Revision?* 11 TEX. J. OF WOMEN & L. 131, 143, 149-51 (2001). Mary Becker points out that oftentimes it is women themselves who maintain this silence for various emotional and socio-legal reasons. Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S. CAL. L. & WOMEN’S STUD. 133, 162-65 (1992). My point is that patriarchal specularization represses women’s experience as mothers, and that women should not keep this silence. See *infra* Part II B.

158. Tobin, *supra* note 14, at 233-34.

159. *Id.* at 234-35 (quoting Heilbrun & Resnik); see also Ashe, *supra* note 14, at 1021-22 (discussing how lawyers may silence their clients who are mothers).

“aspects of motherhood that legal definitions miss or ignore . . . [include] the law’s insistence on the separability and self-sufficiency of the subject [which] cannot satisfactorily account for the mother-child bond.”<sup>160</sup>

Likewise, law fails to reflect the complexity of motherhood as “neither a natural source of women’s power nor an inherently or entirely oppressive occupation.”<sup>161</sup> By identifying women with mothering, society “excuses others from responsibility.”<sup>162</sup> Mothers may be silent, especially about the difficulties of caring for children and of their bonds with children, because “they may quite reasonably fear that were they to express fully their pain and the intensity of their feelings for, and identity with children, they would be viewed as hysterical, overinvolved, and unfit.”<sup>163</sup>

Race is another silenced factor that shapes constructions of motherhood because the image of the idealized mother is based on “white American middle class.”<sup>164</sup> As Dorothy Roberts persuasively argues, “[t]he cherished icon of the mother nurturing her child is also imbued with racial imagery. Black mothers’ bonds with their children have been marked by brutal disruption, beginning with the slave auction where family members were sold to different masters and continuing in the disproportionate state removal of Black children to foster care.”<sup>165</sup> And even today, society views Black mothers as “outside the class labeled ‘ideal mothers.’”<sup>166</sup>

Additionally, the importance of the mother’s unspoken injuries cannot be dismissed. Based on her experience representing many women, Marie Ashe concludes: “I believe that the injuries inflicted upon children are directly related to injuries suffered by their mothers (and fathers) in their lives. I hold this belief because everything I have seen in my practice has supported it and nothing has contradicted it.”<sup>167</sup> Legal decisions about infanticide more often than not silence the mother’s story by suppressing the complexities of motherhood and by failing to consider the mother’s race, socio-economic status, education, or other relevant factors.

The third problem is that in cases of infanticide, law tends to construct

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160. ARISTODEMOU, *supra* note 13, at 224. *But see* Evelyn Nakano Glenn, *Social Constructions of Mothering: A Thematic Overview*, in *MOTHERING: IDEOLOGY, EXPERIENCE, AND AGENCY* 1, 13 (Evelyn Nakano Glenn et. al. eds., 1994) (arguing against treating mother and child as a single entity).

161. Roberts, *supra* note 149, at 143.

162. Glenn, *supra* note 160, at 13.

163. *See* Becker, *supra* note 155, at 162.

164. Glenn, *supra* note 160, at 3; *see also* Rogus, *supra* note 155, at 818.

165. Roberts, *supra* note 149, at 146

166. *Id.*; Adrian Katherine Wing and Laura Weselmann, *Transcending Traditional Notions of Mothering: The Need for Critical Race Feminist Praxis*, 3 *J. GENDER RACE & JUST.* 257, 273 (1999).

167. Marie Ashe, *Postmodernism, Legal Ethics, and Representation of “Bad Mothers,”* in *MOTHERS IN LAW: FEMINIST THEORY AND THE LEGAL REGULATION OF MOTHERHOOD* 142, 158-59 (Martha Albertson Fineman & Isabel Karpin, eds. 1995).

the mother as “mad or bad”<sup>168</sup> because no good or sane mother would kill her child.<sup>169</sup> In contrast, the father who kills his child is not similarly judged, and is seen “sometimes as [acting] within [his] ‘rights’ . . . a right connected to the responsibilities of paternity and the expectations of violence associated with the patriarchy.”<sup>170</sup> Murder of a child by a mother is seen as “a social transgression of extreme proportions . . . . In killing her child, the infanticidal mother directly challenges male authority, and the male-dominant family structure.”<sup>171</sup> So the mother who kills her child is seen as “deficient, dangerous, and evil” and “whose neglectful, abusive, reckless, or even murderous behaviors threaten or destroy her children.”<sup>172</sup> This view of “mad or bad” mothers has “force[d] the mother’s experience into binary oppositions — indifferent/obsessive, narcissistic/self-sacrificing, overprotective/dutiful.”<sup>173</sup>

## B. OTHER LOVE

Although law constructs motherhood in these three ways, this article argues for an alternative. Rather than ground expectations of motherhood in a universal experience, law should be open to an array of individual experiences. If the mother is given the opportunity to articulate her experience, then listeners (families, the public, law enforcement) will have a way to respond to the mother not as the “mad or bad” other, but as a

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168. MEYER & OBERMAN, *supra* note 151, at 69. See also, Panko, *supra* note 156, at 74-75 (examining how “the male-legal system holds women to a male-defined standard of ‘good mother’ conduct” in failure-to-protect laws).

169. See, e.g., *Horrifying Yates Saga Presents Unsatisfying Legal Options*, ASHVILLE CITIZEN-TIMES, Mar. 7, 2002 at 6 (unsigned editorial), available at 2002 WL 21100237 (“There’s much argument about whether Yates is insane. Of course she is. She chased down her children and wrestled them to their death beside the floating bodies of siblings. The woman committed the highest crime, filicide.”); Kathleen Parker, *Who’s Insane*, GRAND RAPIDS PR., Aug. 17, 2001, at A7, available at 2001 WL 25383865 (“Any mother who systematically chases down and drowns her own children, including a gangly 7-year-old boy and a helpless 6-month-old girl, is clearly out of her mind.”)

170. Susan Sage Heinzelman, “*Going Somewhere*”: *Maternal Infanticide and the Ethics of Judgment*, in LITERATURE AND LEGAL PROBLEM SOLVING: LAW AND LITERATURE AS ETHICAL DISCOURSE 73, 74 (Paul J. Heald ed., 1998). According to statistics for Texas, homicides of sons are committed by fathers in 54.7% of the cases, and by mothers in 45.3% of the cases; homicides of daughters are committed by fathers in 49.3% of the cases, and by mothers in 50.7% of the cases. These statistics do not break down the ages of the children. See JAMES ALAN FOX, INTER-UNIVERSITY CONSORTIUM FOR POLITICAL AND SOCIAL RESEARCH, UNIFORM CRIME REPORTS [UNITED STATES], SUPPLEMENTARY HOMICIDE REPORTS, 1976-1999, PART I: VICTIM DATA, <http://www.icpsr.umich.edu/cgi/SDA12/hsda3>. Moreover, national statistics for infanticides of children under age five from 1976-2000 reveal that 31% were killed by fathers and 30% were killed by mothers. See U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS: HOMICIDE TRENDS IN THE U.S. (INFANTICIDE), <http://www.ojp.usdoj.gov/bjs/homicide/children.htm>.

171. Karin Lewicki, *Can You Forgive Her?: Legal Ambivalence Toward Infanticide*, 8 S. CAL. INTERDISC. L.J. 683, 685 (1999).

172. See Ashe, *supra* note 14, at 1019-20; Marie Ashe and Naomi R. Cahn, *Child Abuse: A Problem For Feminist Theory*, 2 TEX. J. WOMEN & L. 75, 80-81 (1993).

173. Tobin, *supra* note 14, at 236.

speaking subject.<sup>174</sup> Listeners can respond to an array of individual experience stories of mothering with “other love.”

“Other love” contrasts with what usually happens when one is classified as “other,” as one separate and different, as one lesser than, and usually despised. The French philosopher Hélène Cixous explains the concept of the “other” as follows: “What is the ‘Other?’ . . . in History . . . what is called ‘other’ is . . . the other in a hierarchically organized relationship in which the same is what rules, names, defines and assigns ‘its’ other.”<sup>175</sup> In short, the dominant “same” (generally the universal, patriarchal position) exists in a hierarchical relationship with the “other.” As an alternative to the hierarchical relationship of the “same” and “other,” Cixous proposes “other love” as an exchange in which one is able “[t]o love, to watch-think-see the other in the other, to despecularize, to unhoard.”<sup>176</sup> Listening to another with “other love” becomes possible once we acknowledge Emmanuel Levinas’s belief that our selfhood is “the responsibility for the Other, being-for-the other.”<sup>177</sup> In fact, acknowledging this makes it impossible “to stand apart, to separate oneself from the suffering or the cruelty of others.”<sup>178</sup> As discussed above, however, all too often law echoes the dominant patriarchy, which does not give recognition to, does not hear the other because it “coercively maintains antiquated, totalizing, overarching images of women that reflect beliefs and assumptions within society.”<sup>179</sup>

An example of patriarchal thinking is the argument that in cases of infanticide society ought to place the blame squarely on the mothers, rather than shift blame to other factors and thus “reduce the accountability of young mothers committing this horrific crime.”<sup>180</sup> The refusal to consider

174. Tobin argues that “the *truth* of legal disputes involving mothers is not likely to be recognized in the legal system until attorneys and judges explore the ambiguities of the maternal experience as expressed from the mother’s perspective” (emphasis in original). *Id.* at 237. I generally agree, but disagree with Tobin’s emphasis on “*truth*” because I question whether there is an objective truth out there.

175. CIXOUS, *supra* note 15, at 71; see also Ashe, *supra* note 167, at 147-48.

176. HELENE CIXOUS, LAUGH 264 (Elaine Marks & Isabelle de Courtivron eds. 1981).

177. Emmanuel Levinas, *Ethics and Infinity: Conversations with Phillippe Nemo* 52 (Richard A. Cohen trans., 1985). See also, Ayres, *supra* note 147, at 395-96 (discussing Levinas’s ethics of alterity).

178. Heinzelman, *supra* note 170, at 79.

179. Fineman, *supra* note 150, at xii.

180. Lynne Marie Kohm and Thomas Scott Liverman, *Prom Mom Killers: The Impact of Blame Shift and Distorted Statistics on Punishment for Neonaticide*, 9 WM. AND MARY J. WOMEN & L. 43, 49 (2002). The authors define feminist “blame shifting” as “following a similar pattern”: “It starts the blame shifting with a broad-brush stroke by including all of society, and the ‘patriarchal system’ that is in place. Then, it narrows the focus to the oppressive nature of motherhood, and the lack of gratitude all mothers receive for their efforts as mothers. Finally, the task is often to reduce the generalities to a specific party who should shoulder more of the blame than the mother. This ‘scapegoat’ is often times the father of the children, or someone who has exerted influence over the mother. . . . Additionally, the lack of quality medical and mental health care is a common target of

“other factors” perpetuates antiquated concepts. Without other love, stories are repressed, voices are suppressed — especially the stories and voices of women and minorities. As Oberman notes, “We know relatively little about actual women who have killed their children.”<sup>181</sup>

As the next part of this article argues, it is difficult to hear accounts of infanticide, much less to hear them as potential tales of love. Our stereotyped response to the “mad or bad” mother is to either blame her for her unnatural agency or to pity her “for her victimization, for her utter lack of choice.”<sup>182</sup> Seldom is our response based on a contextualized account by a speaking subject. Morrison provides this contextualized and multi-vocal account in her novel, which can serve as a model for our responses.

To read “Sethe’s murder of Beloved [as] tak[ing] place out of a love that is not guided by rationality but is singular, unique, and unrepeatable” has the effect of “explod[ing] the language of the law which insists on singular, fixed, and precise meanings.”<sup>183</sup> Such a reading can challenge constructions of motherhood and of infanticide because “once you have heard another’s story, you cannot return to the judgments produced by ignorance of that narrative.”<sup>184</sup> And more practically, perhaps, as Marie Ashe argues, our response to literature such as *Beloved* can provide a model for lawyers struggling to represent “‘bad mother’ clients.”<sup>185</sup> By listening to mother’s painful stories, Elizabeth Tobin hopes that “we can change the law so it acknowledges [these] experiences.”<sup>186</sup> Before considering legal constructions and responses to Texas cases of infanticide, the next part of this article will consider responses to the infanticides of Margaret Garner and Sethe.

### III. REACTIONS TO INFANTICIDE IN *BELOVED* AND *MODERN MEDEA*

As Maria Aristodemou and other readers have pointedly remarked, “[i]n the gallery of western literature there are few figures more powerful

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blame.” *Id.* at 61-62. What the authors label blame shifting I see as part of an attempt to understand how society and legal discourse constructs motherhood. I am not arguing that mothers should be relieved of blame.

181. Michelle Oberman, *Understanding Infanticide in Context: Mothers Who Kill, 1870-1930 and Today*, 92 J. CRIM. L. & CRIMINOLOGY 707, 736 (2002).

182. Ashe and Cahn, *supra* note 172, at 84.

183. ARISTODEMOU, *supra* note 13, at 226; *see also* Ashe, *supra* note 14, at 1035.

184. Heinzelman, *supra* note 170, at 79.

185. Ashe, *supra* note 14, at 1017, 1022. *See also* Cynthia M. Dennis, *Expanding Students’ Views of the Dilemmas of Womanhood and Motherhood Through Individual Client Representation*, 46 HOW. L.J. 269, 290 (2003) (in describing how her clinic students fail to empathize with low-income mothers, she notes that “[t]hey do not necessarily see the person beyond the legal problem”).

186. Tobin, *supra* note 14, at 272-73.



and terrifying than that of the mother who kills her children.”<sup>187</sup> Morrison’s tale of a murderous mother is powerful and terrifying to both the reader and to Sethe’s community, to Schoolteacher and the white community, to Sethe’s family and friends, and to Beloved. This section examines fictional reactions to Sethe’s murder, real reactions to Margaret’s murder, and critical reactions to Sethe’s murder in order to show how difficult it is to respond to infanticide with love for the (m)other.

Whereas the historical pro-slavery activists and the abolitionists co-opted Garner’s actions to further their own goals, the characters in *Beloved* project their own motivations to explain Sethe’s murder. All failed to understand the circumstances from the mother’s perspective. Both the critical reactions to *Beloved* as well as Morrison’s own comments show a way to respond to the infanticide with love for the other, and the next part of this article discusses the difficulties of responding to “real” cases of infanticide in the same way — with love for the (m)other.

#### A. HISTORICAL REACTION IN *MODERN MEDEA*

Although we really do not know how the black community reacted to Margaret Garner’s infanticide, we do know how the legal community and political community responded. In general, Margaret’s act was viewed sympathetically by the abolitionists as evidence of the horrors of slavery, while her act was viewed unsympathetically by the proslavery faction as evidence that slaves were subhuman.<sup>188</sup> For instance, the rousing courtroom speech of the famous abolitionist, Lucy Stone, included the following points:

Who that knows the depths of a mother’s love does not estimate the sacrifice she had made? If she had a right to deliver her child, she had a right to deliver herself, so help me Heaven! . . . The faded faces of the negro children tell too plainly to what degradation the female slaves submit. Rather than give her little daughter to that life, she killed it.<sup>189</sup>

Other abolitionist writers and newspapers mythologized Margaret’s act in poems and essays “[depicting] her infanticide as a cultural icon, whose power to figure political and social agendas and tensions did not require being true to specific, complex facts,” but rather, “[s]uch icons of the all-loving parent — a type of female Abraham, knife upraised over her sacrificial child . . . were intended to strike the familiar chord of a transcending and even a healing horror.”<sup>190</sup>

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187. ARISTODEMOU, *supra* note 13, at 222. See also *supra* text accompanying note 8.

188. WEISENBURGER, *supra* note 16, at 5-6.

189. *Id.* at 172-73; see also COFFIN, *supra* note 21, at 564-56.

190. WEISENBURGER, *supra* note 16, at 247. Weisenburger describes the idealized

Proslavery accounts and references to Margaret, on the other hand, blamed “the ‘disorganizing, law-breaking, meddling abolitionist fanatics’ who . . . tempted Margaret away from Maplewood *intending* to make of her a public sacrifice.”<sup>191</sup> Also, some proslavery authors’ reliance on ideas of polygenesis<sup>192</sup> compelled them to explain Margaret’s act of killing her child, which they labeled unnatural because they viewed blacks as too simple-minded to carry out such an act, and expected black mothers to have “an absolute, instinctual protectiveness over their children.”<sup>193</sup> Consequently, proslavery writers either blamed the abolitionists for Margaret’s act, or else they pointed to the observation that Margaret herself was not pure, but was a mulatto, in which case her “unnatural crime was quite possible, as indeed any unnatural vice or crime is always possible in the mixed element.”<sup>194</sup>

Because Margaret became an icon, her actual circumstances were forgotten and she “practically disappeared from written history.”<sup>195</sup> *Modern Medea* theorizes that actually, Margaret had “a tangled skein of motives: despairing desires to ‘save’ her children, urges for violent backlash against the master who had probably made her his concubine and who might in turn victimize little Mary, and a destructive spite for her children’s whiteness that was in every sense Massa’s ‘property,’ his ‘right,’”<sup>196</sup> as well as “signs that she was motivated by sexual abuse.”<sup>197</sup> However, nineteenth-century society failed to acknowledge these motives, but relied on stereotypical notions of a slave mother.

#### B. COMMUNITY REACTION IN *BELOVED*

The white community in *Beloved* mirrors the historical reaction recorded in *Modern Medea*. White abolitionists in *Beloved* “managed to turn infanticide and the cry of savagery around, and build a further case for abolishing slavery.”<sup>198</sup> In contrast, those in favor of slavery viewed Sethe’s act as “testimony to the results of a little so-called freedom imposed on people who needed every care and guidance in the world to keep them from

abolitionist texts as “formulat[ing] a set of absolute equivalences: Death=Liberty=Divine. Thus they attempt to spirit ethical judgment away from the contingent, historical realities of enslaved people and into a domain of absolutes. Try as they may, however, these icons are still freighted with contradictions and tend to treat slave mothers’ actions and motives as being wholly enigmatic.” *Id.* at 256. See also, COFFIN, *supra* note 21, at 562.

191. WEISENBURGER, *supra* note 16, at 264.

192. Polygenesis was the theory that all of mankind did not descend from Adam, but saw “whites and blacks not as alternate varieties of man but as wholly different *species*.” *Id.* at 266. See also, *supra* at Part I.B.2 (Schoolteacher in *Beloved* probably believed in polygenesis).

193. WEISENBURGER, *supra* note 16, at 266.

194. *Id.* at 267.

195. *Id.* at 258.

196. *Id.*

197. *Id.* at 262.

198. *Id.* at 260.

the cannibal life they preferred.”<sup>199</sup> Schoolteacher asserted the polygenesis theory that Sethe was no different from an animal — “see what happened when you overbeat creatures God had given you the responsibility of . . . you just can’t mishandle creatures and expect success.”<sup>200</sup>

Although the reaction of the white community in *Beloved* mimics history, Morrison presents more complex responses to Sethe’s actions than exist in the historical record. In fact, we have little record of how the black community reacted to Margaret’s act — Morrison invents this in *Beloved*. Specifically, although Sethe sees her actions as resulting from love, her family and community do not. Ella, for instance, wants nothing to do with Sethe after the murder, and tells Stamp Paid, “I ain’t got no friends take a handsaw to their own children.”<sup>201</sup> Ella categorically rejects Sethe’s action as wrong even though after Ella had been raped by “the lowest yet,” she let her own baby, “a hairy white thing,” die by refusing to nurse it.<sup>202</sup> Thus, based on her own experience, Ella “understood Sethe’s rage in the shed twenty years ago, but not her reaction to it, which Ella thought was prideful, misdirected, and Sethe herself too complicated.”<sup>203</sup>

Stamp Paid explains another motivation to Paul D, proposing that Sethe acted out of revenge in an attempt to “to out-hurt the hurter.”<sup>204</sup> Perhaps Stamp Paid sees Sethe’s murder as revenge, projecting the desire for revenge based on a projection of his own desire for revenge when his master had sexually co-opted his wife — Stamp Paid wanted to kill both his master and his own wife, but instead approached the mistress and made an allusion to her husband’s infidelity.<sup>205</sup> Ironically, neither Ella nor Stamp Paid can understand Sethe’s actions because they specularize her as other, as a vengeful mother-killer. None of the characters can understand that kind of love.

Even Paul D, Sethe’s lover, fails to demonstrate other love, but also specularizes her. Paul D confronts Sethe and insinuates that she acted like an animal because she doesn’t fit his ideal of motherhood:

“What you did was wrong, Sethe.”

“I should have gone on back there? Taken my babies back there?”

“There could have been a way. Some other way.”

“What way?”

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199. *Id.* at 151.

200. *Id.* at 150.

201. MORRISON, *supra* note 1, at 187.

202. *Id.* at 256.

203. *Id.*

204. *Id.* at 234.

205. *Id.* at 232-33.

“You got two feet, Sethe, not four.”<sup>206</sup>

Paul D accuses her of acting like an animal, based on a projection of his own animal instincts, as he later realizes: “How fast he had moved from his shame to hers. From his cold-house secret [of having sex with Beloved] straight to her too-thick love.”<sup>207</sup>

The characters fail to view Sethe with other love, but project what they want to see.<sup>208</sup> They specularize her by imposing their own stories on her action. Sethe’s surviving daughter, Denver, says, “I love my mother but I know she killed one of her own daughters, and tender as she is with me, I’m scared of her because of it.”<sup>209</sup> Consequently, Denver is terrified of the outside world because she is “afraid the thing that happened that made it all right for my mother to kill my sister could happen again.”<sup>210</sup> Denver, who was born out of slavery and lived isolated at 124, has no knowledge or experience of what can dirty you. Rather, she, like the other characters, specularizes Sethe as “other,” as a monstrous mother who killed her baby.<sup>211</sup>

#### C. THE MOTHER’S EXPLANATION: SETHE’S “TOO THICK” LOVE AND FEMININE ETHICS

Rather than see Sethe as other, we can try to see the infanticide through Sethe’s eyes, as an action based on “thick love.”<sup>212</sup> Morrison, in an interview given after she wrote the novel, refused to condone the murder; she said “although it was the right thing to do Sethe had no right to do it.”<sup>213</sup> Morrison’s view is echoed in the novel by Baby Suggs, who “could not approve or condemn Sethe’s rough choice” because “[t]hey came in her yard anyway.”<sup>214</sup> Even if, as readers, we cannot condone Sethe’s action, perhaps we can apply the concept of “other love” to imagine the horrific circumstances that prodded Sethe to kill “her best thing.”

The usefulness of this approach is both that it can possibly make us better lawyers, as Ashe and others have argued,<sup>215</sup> but also that it can make

206. *Id.* at 164-65 (emphasis added).

207. *Id.* at 165.

208. See Ashe, *supra* note 14, at 1026 (analyzing how other characters “nam[e] her act as ‘bad’”).

209. MORRISON, *supra* note 1, at 205.

210. *Id.*

211. For instance, even her own children “made up die-witch! stories with proven ways of killing her dead.” *Id.* at 19.

212. *Id.* at 165.

213. ARISTODEMOU, *supra* note 13, at 226 (quoting Danille Taylor-Guthrie, ed., CONVERSATIONS WITH TONI MORRISON, 272 (U. Miss. Pr, 1994)); see also Ashe, *supra* note 14, at 1036 (“*Beloved* reminds us that there is no ‘last word’ by which we can dismiss the ‘bad mother’ — whether that word be ‘unfit,’ ‘evil,’ ‘unnatural,’ or ‘insane’”).

214. ARISTODEMOU, *supra* note 13, at 180.

215. Ashe, *supra* note 14, at 1036-37 (noting that “Sethe truly embodies the bad mother as speaking subject”).

us better humans, capable of hearing the characters' repressed stories of slavery. As Morrison has commented:

no one speaks, no one tells the story about himself or herself unless forced. They don't want to talk, they don't want to remember, they don't want to say it, because they're afraid of it — which is human. But when they do say it, and hear it, and look at it, and share it, they are not only one, they're two, and three, and four . . . The collective sharing of that information heals the individual — and the collective.<sup>216</sup>

Thus, in listening to stories of infanticide, do we allow the mother to tell her story, or do we read the objective facts and try to label the infanticide based on idealizing views of mothering? In her discussion about the construction of mothering, Evelyn Nakano Glenn warns that relying on “universals that characterize mothers and mothering is probably fruitless.”<sup>217</sup> For instance, the purportedly universal idea that mothering involves preserving life has to be qualified, such as for Christian Scientist parents who refuse medical treatment for a child who later dies: “Here we see that people in nonextreme circumstances can both cherish their children and assert priorities that may take precedence over preserving their lives.”<sup>218</sup> Morrison shows us a similar result in *Beloved's* extreme circumstances. She also shows that although categories of infanticide may be useful for grouping motivations and circumstances of infanticide, even with such categories, we may well fail to acknowledge the mother's story.

In *Beloved*, the mother's story is one of “thick love.” Indeed, the very title and the novel's epigraph frame the topic of love. The epigraph, from the book of Romans, states: “I will call them my people, which were not my people; and her beloved, which was not beloved.”<sup>219</sup> Like the epigraph, the novel circles around the tension of “beloved, which was not beloved.” Was the murdered baby loved or not? Did Sethe kill her out of motherly love or irrational animal instincts — or is this binary choice an oversimplification?

Sethe's murdered baby, whose given name is never revealed in the novel, is called “Beloved” after the only words Sethe heard the preacher say at the funeral.<sup>220</sup> The preacher's traditional address of “Dearly Beloved” is heard by Sethe as an address to her dead baby, perhaps because it was Sethe's “thick love” that motivated the murder when Schoolteacher,

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216. Darling, *supra* note 18, at 248.

217. Glenn, *supra* note 160, at 25.

218. *Id.* at 25-26.

219. *Romans* 9:25. The passage is an allusion to the book of Hosea, and refers to God's election of Israel as a chosen people.

220. MORRISON, *supra* note 1, at 5.

her master, appeared to reclaim her.<sup>221</sup>

As she explains to her lover, Paul D, when he finally hears the story of the murder and judges “[her] love [as] too thick”:

“Too thick?” she said . . . “Love is or it ain’t. Thin love ain’t love at all.”

“Yeah. It didn’t work, did it? Did it work?” he asked.

“It worked,” she said.”

. . .

“They ain’t at Sweet Home. Schoolteacher ain’t got em.”

“Maybe there’s worse.”

“It ain’t my job to know what’s worse. It’s my job to know what is and to keep them away from what I know is terrible. I did that.”<sup>222</sup>

Sethe’s motivation was to keep her children away from the evils of slavery, especially the horrors of rape, because “[f]or Sethe, being brutally overworked, maimed, or killed is subordinate to the overarching horror of being raped and ‘dirtied’ by whites.”<sup>223</sup> The other characters judge Sethe’s love for her children as too much, as inappropriate. Paul D, for instance, thinks her love is “very risky. For a used-to-be-slave woman to love anything that much was dangerous, especially if it was her children she had settled on to love.”<sup>224</sup> And Ella says, “If anybody was to ask me I’d say, ‘Don’t love nothing.’”<sup>225</sup> Their views reflect the reality of mothering in a time of slavery when children were often separated from their mothers, as Sethe herself had been.<sup>226</sup>

Sethe rejects this reality of mother’s love. In contrast, Sethe’s “thick love” defines the mother in terms of her children.<sup>227</sup> For instance, when she

221. See Ashe, *supra* note 14, at 1026 (“Sethe consistently characterized the murder as ‘good’ — as an act of love’ — for the daughter on whose tombstone she had engraved . . . the single word: ‘Beloved’”).

222. MORRISON, *supra* note 1, at 164-65.

223. Barnett, *supra* note 74, at 419. Indeed, Barnett argues that “Morrison revises the conventional slave narrative by insisting on the primacy of sexual assault over other experiences of brutality.” *Id.* at 420.

224. MORRISON, *supra* note 1, at 45.

225. *Id.* at 92.

226. *Id.* at 62 (Nan, who watched the young children, pointed out which woman was Sethe’s mother and told Sethe that her mother had been repeatedly raped: “‘She threw them all away but you . . . You she gave the name of the black man. She put her arms around him’”); (Baby Suggs loses all of her children except Halle and learns the cruel lesson that “nobody stopped playing checkers just because the pieces included her children.”) *Id.* at 23.

227. ARISTODEMOU, *supra* note 13, at 224.

runs to Ohio and finally collapses, she says, "I believe this baby's ma'am is gonna die."<sup>228</sup> The love that blurs the boundary between mother and child is shared by Beloved, who displays an infant's preoedipal and "preverbal child's dependence on the maternal face as a mirror of her own existence."<sup>229</sup> As depicted in the highly poetic and nonlinear chapter that merges the voices of Denver, Sethe, and Beloved, the voices of the three converge in the final stanzas:

Beloved

You are my sister

You are my daughter

You are my face; you are me

I have found you again; you have come back to me

You are my Beloved

You are mine

You are mine

You are mine.<sup>230</sup>

Denver describes this mutual blending between Sethe and Beloved: "Sometimes coming upon them making men and women cookies or tacking scraps of cloth on Baby Suggs's old quilt, it was difficult for Denver to tell who was who."<sup>231</sup> Similarly, Paul D thinks, "This here new Sethe didn't know where the world stopped and she began."<sup>232</sup>

Sethe's "thick love" shapes her ethics and "permit[s] Sethe to exercise life-or-death rights over the children she conceived as 'parts of her.'"<sup>233</sup> Because Beloved is "mine," Sethe takes her life rather than let Schoolteacher have her. The idea of "mine," of possession and blending between mother and child reflects "of course what the slave owners said. In the larger social order, it reflects the disregard of the other as subject, the

228. MORRISON, *supra* note 1, at 31.

229. Wyatt, *supra* note 131, at 480.

230. MORRISON, *supra* note 1, at 216. *See also* Wyatt, *supra* note 131, at 481.

231. *Id.* at 241.

232. *Id.* at 164.

233. Wyatt, *supra* note 131, at 482 (quoting MORRISON, *supra* note 1, at 163.). *See also*, Tobin, *supra* note 14, at 241 ("Sethe's murder of her own child becomes an act of struggle over language. It represents a process of renaming — of herself as mother and of her child as a human being and not as property owned by another").

appropriation of the other to one's own desires, leads to violence."<sup>234</sup> Sethe tells Paul D that she will never run again because "it cost too much!"<sup>235</sup> Even though she admits the cost, presumably she would do the same thing again to protect her children from Schoolteacher.

While Sethe can admit to Paul D that it cost too much, she can't admit what she actually did. Sethe's explanation to Paul D circles around the incident, "[c]ircling, circling, now she was gnawing something else instead of getting to the point,"<sup>236</sup> by explaining the "selfish pleasure [she] never had before" such as the freedom to sew a baby dress.<sup>237</sup> She tells Paul D, "I couldn't let all that go back to where it was, and I couldn't let her nor any of em live under schoolteacher. That was out."<sup>238</sup> Wyatt describes the narrative as "dramatiz[ing] the problems of Sethe's maternal subjectivity, which is so embedded in her children that it both allows her to take the life of one of them and precludes putting that act into words."<sup>239</sup> Although Sethe can't tell Paul D what happened, the narrator explains that "the truth was simple":

[S]he was squatting in the garden and when she saw them coming and recognized schoolteacher's hat, she heard wings. Little hummingbirds stuck their needle beaks right through her headcloth into her hair and beat their wings. And if she thought anything, it was No. No. Nono. Nonono. Simple. She just flew. Collected every bit of life she had made, all the parts of her that were precious and fine and beautiful, and carried, pushed, dragged them through the veil, out, away, over there where no one could hurt them. Over there. Outside this place, where they would be safe.<sup>240</sup>

Sethe cannot fully explain to Paul D why she killed Beloved; however, she later tries to explain her reasons to Beloved, who rejects her reasons: "Beloved accused her of leaving her behind . . . . She said when she cried there was no one. That dead men lay on top of her. That she had nothing to eat. Ghosts without skin stuck their fingers in her and said beloved in the dark and bitch in the light."<sup>241</sup>

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234. Wyatt, *supra* note 131, at 482. This view also reflects the contemporary debate in family law over whether children are property. See Barbara Katz Rothman, *Beyond Mothers and Fathers: Ideology in a Patriarchal Society*, in *MOTHERING: IDEOLOGY, EXPERIENCE, AND AGENCY*, *supra* note 158, at 150; Barbara Bennett Woodhouse, *The Dark Side of Family Privacy*, 67 *GEO. WASH. L. REV.* 1247, 1258 (1999); Barbara Bennett Woodhouse, *Of Babies, Bonding, and Burning Buildings: Discerning Parenthood in Irrational Action*, 81 *VA. L. REV.* 2493, 2500-1 (1995).

235. MORRISON, *supra* note 1, at 15.

236. *Id.* at 162.

237. *Id.* at 163.

238. *Id.*

239. Wyatt, *supra* note 131, at 476.

240. MORRISON, *supra* note 1, at 163.

241. *Id.* at 241.



Morrison's fictionalized account of the historical Margaret Garner gives the reader an opportunity to view the mother with "other love." Although we have suppositions, we have no historical record of Margaret Garner's motivation to kill her child. Morrison imagines a motivation, and in so doing, "dismantles notions of 'natural' motherhood and illustrates that presumptions and stereotypes about race, gender, and class construct societal roles for mothers."<sup>242</sup> She allows us to imagine an ethic that possibly could have motivated a mother to kill her child. As Morrison has stated, "[t]he vitality of language lies in its ability to limn the actual, imagined, and possible lives of its speakers, readers, writers. Although its poise is sometimes in displacing experience, it is not a substitute for it. It arcs toward the place where meaning may lie."<sup>243</sup> We should not, of course, confuse fiction with reality. However, as the next part of this article argues, we should listen to and elicit contemporary stories of infanticide with "love for the other."

#### IV. TEXAS CASES OF INFANTICIDE: "JURIES ARE JUST NOT SYMPATHETIC WITH MOTHERS WHO KILL THEIR CHILDREN IN THIS STATE."<sup>244</sup>

Reported Texas cases of infanticide go back to the end of the nineteenth century. These judicial decisions along with news articles provide a glimpse at how the media and courts have responded to mothers who have killed their children. In other words, decisions and news reports demonstrate how juridico-legal discourse constructs mothers. While judicial decisions, unlike literature, usually do not explicitly pass moral judgment on these mothers, media reports tend to be more normative. Thus, reading both media accounts and legal decisions provides evidence of how discourse specularizes, silences, and labels mothers who kill.

This article discusses a selected sampling of judicial decisions and media reports concerning seventeen cases of infanticide.<sup>245</sup> Although some

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242. Tobin, *supra* note 14, at 241.

243. Morrison, *supra* note 2, at 270.

244. T.J. Milling, *supra* note 9 (quoting Dr. J. Ray Hays, Professor of Psychiatry at University of Texas Medical Branch); see also David B. Caruso, *Punishments Getting Tougher for Mothers Who Kill Their Children*, HOUS. CHRON., May 24, 2003, at 4A, available at 2003 WL 3261801 ("Legal experts say prosecutors are getting tougher with mothers who kill" and Victor L. Streib, a law professor at Ohio Northern University says these mothers "are now more likely to be sentenced to death.").

245. This article excludes cases of Munchausen Syndrome by Proxy. See, e.g., *United States v. Martinez*, 274 F.3d 897 (5th Cir. 2001); *Reid v. State*, 964 S.W.2d 723 (Tex. App.—Amarillo, 1998). Moreover, this article excludes or merely notes several other Texas cases that lack sufficient information to support an analysis. For instance, *Torres v. State*, 976 S.W.2d 345 (Tex. App.—Corpus Christi, 1998), is omitted because it focuses on the insanity defense, an issue outside the scope of this article. One especially well-publicized

sociologists have based studies of infanticides on medical examiner reports,<sup>246</sup> infanticides are seriously underreported.<sup>247</sup> Thus, due to problems in reporting, the methodology of this article is to chronologically review Texas judicial decisions and media accounts of infanticides. For practical reasons, this article does not consider trial transcripts, which are difficult to access for very old cases and which tend to be very expensive to copy for capital murder cases.<sup>248</sup> Although an analysis which relies on judicial decisions and media accounts has limitations, it has the advantage of illustrating ways in which legal discourse objectifies mothers. The purpose of this chronological review is to examine how the legal system perpetuates patriarchal constructions of motherhood. These Texas decisions are categorized as either neonaticides (death within the baby's first twenty-four hours) or infanticides (death after the baby's first twenty-four hours). Infanticides are further categorized based on the four categories developed in the book authored by Cheryl Meyer and Michelle Oberman, *Mothers Who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the "Prom Mom."*<sup>249</sup>

Neonaticide cases generally involve a young mother who has been isolated from her family, who suffers from financial insecurity, and who suffers from some fear such as being kicked out of the house by angry parents.<sup>250</sup> In neonaticides some mothers are not even charged for murder, and of those who are, the penalties vary significantly.<sup>251</sup> Although society views these cases with horror, Meyer and Oberman view them as "comprehensible" given the mother's circumstances and fears.<sup>252</sup>

Infanticide cases vary greatly, characteristic patterns include the

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case this article omits is that of Darlie Lynn Routier, who received a sentence of death by lethal injection for the 1996 murders of her 5- and 6-year-old sons. *Routier v. State*, 112 S.W.3d 554, reh'g denied Sept. 20, 2003. (Tex. Crim. App. 2003). Routier's appeal did not challenge the sufficiency of the evidence, but rather, focused on problems with the accuracy of the trial record. Her conviction was affirmed.

246. See, e.g., Martha Smithey, *Maternal Infanticide and Modern Motherhood*, 13 WOMEN & CRIM. JUSTICE 65, 68-70 (2001).

247. Overpeck, *supra* note 7, at 19-20; MEYER & OBERMAN, *supra* note 151, at 34-36; Michelle Oberman, *Mothers Who Kill: Coming to Terms With Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 21-22 (1996).

248. For instance, the Andrea Yates transcript needed for her appeal cost about \$105,000. See Rick Casey, *Fee Madness: Dietz Got \$105K*, HOUS. CHRON., Sept. 24, 2003, at 21A, available at 2003 WL 574445243. An example of an analysis that uses a trial transcript to consider the "bad versus mad" mother narrative is found in Heinzelman's essay. See Heinzelman, *supra* note 170, at 83-88 (discussing the essentializing narratives produced by both the prosecution and the defense in the murder trial of Susan Bienek, which prevented the jury from hearing the mother's "specific identity and story").

249. See MEYER & OBERMAN, *supra* note 151, at 36-38.

250. Oberman, *supra* note 181, at 709-10; See also Norman J. Finkel et al., *Commonsense Judgments of Infanticide Murder, Manslaughter, Madness, or Miscellaneous*, 6 PSYCHOL. PUB. POL'Y & L. 1113, 1131-32 (2000).

251. Oberman, *supra* note 181, at 711.

252. *Id.* at 712.

following: the mother is generally young, single or in a bad marriage; is isolated from family; is not well-educated; and may suffer from either chemical dependency or mental illness.<sup>253</sup> Infanticides may be viewed in four categories described by Meyer and Oberman: (1) deaths stemming from child abuse; (2) deaths caused by maternal neglect; (3) deaths resulting from purposeful killing; or, (4) deaths involving mothers acting with their partners (or failing to stop their partners).<sup>254</sup>

In cases of infanticide, the mother is usually charged with murder, although the sentences vary greatly.<sup>255</sup> A mother viewed as "bad" usually receives a more severe sentence than a mother viewed as "mad."<sup>256</sup> Overall, however, recent juries seem to be showing less leniency than did juries in nineteenth- and twentieth-century cases of infanticide.<sup>257</sup> In fact, studies of cases of infanticide over the past 450 years indicate "that community sentiment changes across the span, resembling a roller coaster — moving from a lenient-to-moderate period to a severe period, then changing to a very lenient period, which continues well into this century."<sup>258</sup>

After examining Texas cases of neonaticide and infanticide, the next section of this article discusses the recent trial of Andrea Yates, whose life sentence is currently on appeal.

#### 1. RED V. STATE — NEONATICIDE OF ILLEGITIMATE CHILD — ASSISTANCE OR COERCION FROM A PARTNER

In the 1899 case of *Red v. State*,<sup>259</sup> the defendant, John Red, was the father charged with murder of an infant; however, because John was tried as a principal, the decision may also be read for its comments about the infant's mother, Epsy Keith. After John's first judgment was remanded (for error in the jury charge), he was again tried, found guilty of first degree murder, and given a life sentence, which was affirmed on the legal theory that John either killed the baby or was an accomplice.<sup>260</sup> Thus, this analysis considers both decisions.

Epsy testified at the trial that she and the father had an "illicit"

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253. *Id.* at 712-13.

254. MEYER & OBERMAN, *supra* note 151, at 36-38. Although other categories have been used to discuss infanticide, the categories found in Meyer and Oberman are well-researched and comprehensive. See, e.g., Janet Ford, Note, *Susan Smith and Other Homicidal Mothers — In Search of the Punishment That Fits the Crime*, 3 CARDOZO WOMEN'S L.J. 521, 524-28 (1996).

255. Finkel, *supra* note 250, at 1131, 1133.

256. Oberman, *supra* note 181, at 714.

257. Finkel, *supra* note 250, at 1133. See also, *supra* text accompanying note 242.

258. *Id.* at 1115. This roller coaster phenomenon may help explain time gaps in the cases discussed below.

259. *Red v. State*, 53 S.W. 618 (Tex. Crim. App. 1899), reh'g denied, 54 S.W. 770 (Tex. Crim. App. 1900).

260. *Id.*

relationship, and that when the child was born the father “immediately took the child from the room where it was born . . . while it was still living and crying, and that she did not see the child again.”<sup>261</sup> Later, Epsy said, John told her that he had buried the child “near the path leading to the spring under the large, double oak tree.”<sup>262</sup> Epsy explained the statements that she had made to the contrary before trial — that the baby was born dead — as having been made because “she was afraid John Red, who had threatened her, would kill her.”<sup>263</sup> John testified, on the other hand, that the child was born alive, that Epsy was the one who had “killed the child” by suffocating it with her hand, and that Epsy had then asked him to bury the baby.<sup>264</sup>

How has law constructed Epsy Keith? It is true that the dominant conception of motherhood at the end of the nineteenth century was very different from both “the indifference toward infants in previous centuries, or the more recent focus — almost obsession with children today.”<sup>265</sup> And it is also the case that society’s treatment of illegitimate babies was different from today’s. Before World War II, an illegitimate baby was labeled a “child of sin” and was undesirable because “the biology of illegitimacy stamped the baby permanently with marks of mental and moral deficiency.”<sup>266</sup> The mother of an illegitimate child was expected to raise it.

However, even if we consider the historical context, the decisions strikingly specularized Epsy as a woman who had had an illicit affair, as a narcissistic bad mother who may have killed her child. Though she apparently was not tried, she was deeply implicated in John’s trial. The decisions, which say nothing about her race, imply that John was African-American from the following confession by John, which included the statements that Epsy was the one who

“killed it, and told me to go and bury it;” that he didn’t want to do that, as he was afraid that the white folks would get after him; that Epsy said, if the white folks get after him, that she would give him the money to leave the country on; and that she did give him the money to leave on; and that he took the child and buried it.<sup>267</sup>

While we may try to read between the lines, the reported cases have silenced Epsy Keith’s story and have objectified her as a vessel: the mother

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261. *Red v. State*, 47 S.W. 1003 (Tex. Crim. App. 1898).

262. *Id.*

263. *Id.*

264. *Id.* at 619.

265. JANE SWIGART, *THE MYTH OF THE BAD MOTHER: THE EMOTIONAL REALITIES OF MOTHERING* 9 (1991).

266. Rickie Solinger, *Race and “Value”: Black and White Illegitimate Babies, 1945-1965*, in *MOTHERING: IDEOLOGY, EXPERIENCE AND AGENCY* 287, 288 (Evelyn Nakano Glenn et. al. eds., 1994). It was after World War II that white illegitimate babies became desirable for adoption, giving white mothers more options. *Id.* at 289-92.

267. *Red*, 53 S.W. at 618-619.

of a buried infant, the illicit lover of a criminal defendant, and a woman who may have been abused or threatened by her lover.

## 2. JONES V. STATE — NEONATICIDE BY A “MAD” MOTHER

The next reported Texas neonaticide occurred in the 1930s, in the case of Thelma Lee Jones, convicted and sentenced to life in Tyler County for killing her newborn baby.<sup>268</sup> Thelma Lee made a confession, in which she stated that she had given birth to a baby boy at her grandmother's house, and had then killed the baby because “I was unable to take care of it.”<sup>269</sup> She also said that “[she] did not bury it very deep, because [she] did not know how.”<sup>270</sup> At her trial, she did not testify, but her lawyer raised the issue of her sanity.<sup>271</sup> In reviewing her appeal, the appellate court reversed and remanded her conviction because of a problem in the indictment, a failure of evidence to corroborate her confession, and the failure of proof of her sanity.<sup>272</sup> No reported case shows whether she was subsequently retried.

Reading between the lines of this case, again there is much we do not know, such as Thelma Lee's race, marital status, age, and whether she lived with her grandmother or just delivered the baby at her grandmother's house. Quite possibly, Thelma Lee killed the infant because it was illegitimate, and because she was in denial of her pregnancy. As Meyer and Oberman indicate, neonaticide is “a remarkably widespread phenomenon,” generally “committed in the face of intense emotions such as shock, shame, guilt and fear” by a teenager who has hidden her pregnancy.<sup>273</sup> In this case, the court's opinion does not specularize Thelma Lee as much as it completely silences her. It is true that she did not testify herself, but the silencing effect is actually produced by the decision's failure to summarize the testimony of other witnesses, except the physician's opinion that the skull fracture would have been sufficient to kill the baby, the testimony of another woman in her grandmother's house at the time (it is unclear if the woman, Elizabeth Franklin, was a relation) that the baby was born alive, and the indication that other defense witnesses “expressed the opinion that she did not know right from wrong.”<sup>274</sup> Since the appeal did not concern the sufficiency of the evidence, the court had no legal need to review facts about Thelma Lee's circumstances. The effect, however, is that her story has been silenced. There is no decision on record after this one that would add to the facts.

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268. *Jones v. State*, 104 S.W.2d 42, 43 (Tex. Crim. App. 1937).

269. *Id.*

270. *Id.*

271. *Id.* One of Thelma Lee's attorneys, Clyde E. Smith, later became a justice of the Texas Supreme Court.

272. *Id.*

273. MEYER & OBERMAN, *supra* note 151, at 41-44.

274. *Jones*, 104 S.W.2d at 43.

Moreover, this decision indicates that of the “mad” or “bad” dichotomy, Thelma Lee was labeled a “mad” mother, insane at the time she killed her baby, through testimony “that she did not know right from wrong.”<sup>275</sup> And even though the case was remanded to permit a new trial and allow proof of her sanity, the decision hints at unexamined complexities. For example, her confession statements that she was unable to take care of the baby and she did not know how to dig a deep grave suggest that she may have been very young or mentally incompetent; and the fact that none of the other women in the house did anything to save the baby raises unanswered questions, too.<sup>276</sup> The decision’s silence leaves unexplored gaps in her story and thereby encourages our specularizing her as mad and incompetent.

### 3. MOFFETT V. STATE — ASSISTANCE OR COERCION FROM A PARTNER

In the 1948 Texas case of *Moffett v. State*, the court reversed Ruby Moffett’s murder conviction and five-year sentence for the murder of her 3-year-old daughter born out of wedlock when Ruby was 16.<sup>277</sup> The court determined that the evidence had been insufficient to show that Ruby was a principal to the murder; rather, the evidence indicated that the man Ruby lived with, Freddie Kenner, had beaten the child to death while she “may have stood idly by.”<sup>278</sup>

Ruby’s written statement described Freddie as her husband, but the decision silences important facts about their marital status (describing Ruby and Freddie as “living in the same house”) and about whether Freddie was the child’s father (although her statement describes the child as “my baby”).<sup>279</sup> Ruby indicated that she was present when Freddie gave “the baby [a] severe whipping [ ],” and that he “told [her] several times that [her] baby would be better off if it were dead. He said the child acted silly.”<sup>280</sup> The facts follow the general pattern in the passive category of assistance or coercion from a partner: a mother younger than 23 (Ruby was 19); greater risk to the child when the partner is not the father; and death during an attempt to discipline.<sup>281</sup>

While the decision labels Ruby a “Negro,” and unwed mother, it also specularizes her as a “bad” mother, due to her failure to turn in Freddie for

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275. Although research indicates that “mental illness is unusual in neonaticides,” both this case and *Pitts v. State* involved mental illness. MEYER & OBERMAN, *supra* note 151, at 43.

276. That none of the women did anything is consistent with the observation that unwanted pregnancies “might lead both a young woman and those around her to collaborate in the denial of a pregnancy.” MEYER & OBERMAN, *supra* note 151, at 57.

277. *Moffett v. State*, 207 S.W.2d 384 (Tex. Crim. App. 1948).

278. *Id.* at 385.

279. *Id.* at 384-88.

280. *Id.* at 385.

281. MEYER & OBERMAN, *supra* note 151, at 159-60.

"brutally beat[ing]" the baby.<sup>282</sup> Her conviction, although reversed on appeal, shows a bias against the mother, an expectation that she should have been able to prevent the death and a desire to hold her responsible even if she was not present.<sup>283</sup> The decision states: "That appellant failed to give the alarm and also failed to tell of Kenner's assault upon this helpless child is evident, and such conduct upon her part, while *contrary to the accepted standard of motherly love*, nevertheless . . . does not . . . constitut[e] one a principal."<sup>284</sup> Although the outline of Ruby's story might appear clear to us (Freddie beat the baby and she was afraid to tell the authorities because he might beat her also),<sup>285</sup> the decision nonetheless specularizes her as a bad mother in terms that categorically ignore her circumstances and rely on the universal ideal that good mothers always protect their children.<sup>286</sup> The decision implicitly follows the stereotype that African-American mothers, especially single mothers, are bad.<sup>287</sup> The decision leaves out what Ashe describes as the "contextualized examination [which] can often disclose fairly readily the reasons why a mother may not have intervened to prevent abuse of a child by her boyfriend or husband. Such an examination may disclose, for example, that the mother was being abused herself; that she feared further abuse; that she had a history of prior unsuccessful attempts at intervention; or that she did not fully understand what was occurring."<sup>288</sup>

#### 4. MARTINEZ V. STATE — MATERNAL NEGLECT

The 1973 appellate court decision relating to the murder conviction of Irene Martinez, a woman who had killed her 9-month-old daughter, provides more information than found in earlier cases about the circumstances surrounding the infanticide. Irene had two young children on whom she had basically walked out. She moved away from her apartment in San Antonio to a friend's home and told her friend that her aunt was going to take care of her children.<sup>289</sup> Her aunt testified that she and Irene had not made any such arrangements.<sup>290</sup> Five days after Irene moved out, the children were found locked in the house, and the baby had

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282. *Moffet*, 207 S.W.2d at 385.

283. See MEYER & OBERMAN, *supra* note 151, at 161.

284. *Moffet*, 207 S.W.2d at 385 (emphasis added).

285. Domestic violence is common in these cases of assistance or coercion from a partner. MEYER & OBERMAN, *supra* note 151, at 147, 159.

286. "Society generally holds mothers, rather than fathers, responsible for their children's safety and well-being"; "women are held responsible for their children's deaths, even though intervention may still result in their own death." MEYER & OBERMAN, *supra* note 151, at 148, 157-58, 163.

287. See *infra*, text accompanying note 300.

288. Ashe, *supra* note 167, at 109.

289. *Martinez v. State*, 498 S.W.2d 938, 939 (Tex. Crim. App. 1973).

290. *Id.*

died of starvation and dehydration.<sup>291</sup>

Irene's ten-year sentence was overturned on appeal because her oral statement to the police officer had not been reduced to writing and was tainted.<sup>292</sup> The decision indicates that on the way to the police station, Irene told a police officer that her husband was away fighting in the Vietnam War, that "[she and her husband] did not love each other anymore," and that the "hundred and thirty dollars a month [her husband sent] was not enough to feed her children with; that she associated them with her husband and that she wanted to get rid of them."<sup>293</sup>

Even though Irene testified at trial, the decision silences her story and specularizes her as a bad mother. For instance, the decision generalizes by stating, "The record contains much evidence of neglect by appellant of the children, and of appellant's lack of interest in their welfare."<sup>294</sup> However, the decision does not recount specific instances of neglect, but rather, portrays her as a selfish and neglectful mother, a bad mother. Her conviction was based on the legal theory that she deliberately intended to cause the baby's death by neglecting to feed the baby.<sup>295</sup> The facts recited in the decision indicate that she moved out of the house to a friend's house — we don't know if this was a boyfriend or girlfriend.<sup>296</sup> She left her children — one a nine-month-old, the other an unstated age — behind, and apparently locked the door when she left. She said she'd made arrangements with her aunt, who would take care of the children, but the aunt testified that there were no arrangements.<sup>297</sup> One of the children died of starvation and dehydration.<sup>298</sup> While the court focuses on these tragic facts, it objectifies Irene and neglects to reveal her story. For instance, we do not know her race, whether she was employed, whether she had any childcare assistance. We don't know whether she was at her wit's end because she couldn't make it on the \$130 a month she received from her husband.<sup>299</sup> We don't know her circumstances but are left with a picture of a bad mother; whereas patterns in cases of maternal neglect show that "seemingly loving and caring mothers kill their children through neglect" because of their "societal disempowerment and exceedingly limited number of unearned advantages and opportunities."<sup>300</sup>

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291. *Id.*

292. *Id.* at 941-42.

293. *Id.* at 940.

294. *Id.* at 939.

295. *Id.* at 942.

296. *Id.* at 939.

297. *Id.*

298. *Id.*

299. *Id.* at 940. Generally, cases of maternal neglect involve young single mothers who are poor. See MEYER & OBERMAN, *supra* note 151, at 103, 108-09.

300. *Id.* at 103.



## 5. SUFF V. STATE — ASSISTANCE OR COERCION FROM A PARTNER

In the case of Teryl Rose Suff, both Teryl and her husband William were convicted for the 1973 murder of their 2-month-old daughter, who had been severely abused.<sup>301</sup> On appeal, William's conviction was affirmed, but Teryl's conviction was reversed because there was insufficient evidence that she had injured the baby.<sup>302</sup> The facts here reflect a modern version of the 1948 *Moffett* case discussed above.

Teryl Suff was married to a violent man who abused their children. Both the dead baby and an almost 2-year-old son had been previously abused,<sup>303</sup> and when a friend asked Teryl whether she was afraid to leave the children with her husband, she said that "her husband would never do it intentionally, but only in a fit of temper."<sup>304</sup> Ironically, the father was "a trained paramedic ambulance driver whose specialty was pediatrics."<sup>305</sup> Teryl testified that the baby had vomited the night before she died, and also that when her other son was 3 months old, he was hospitalized for injuries "resulting from a cradle that rocked."<sup>306</sup>

The trial record showed that on the morning the baby died, Teryl fed her and changed her diaper before she went to work at eight in the morning.<sup>307</sup> Then her husband called her around noon to tell her something had happened to the baby.<sup>308</sup> "Teryl . . . ran home immediately and went into hysterics. She broke into [her] next-door [neighbor's] apartment and called an ambulance."<sup>309</sup> The only evidence tending to establish her guilt was that on the morning of the murder she was not her normal "bright and talkative self" according to the friend with whom she carpooled.<sup>310</sup>

Although the Court of Criminal Appeals reversed her conviction, the decision nevertheless specularized Teryl as a bad mother. It explicitly stated that "we do not doubt that this evidence as well as the entire record establish[es] that *Teryl Suff was, to understate the matter, a poor mother.*"<sup>311</sup> And later, the decision commented, "We cannot bring ourselves, in spite of the gravity of the offense and *the revulsion with which it fills us*, to uphold a verdict supported only by innuendo bolstered by moral outrage."<sup>312</sup> The moral outrage is that of patriarchal discourse — that a baby died; that the mother did not sufficiently protect the two-month-

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301. *Suff v. State*, 531 S.W.2d 814, 815 (Tex. Crim. App. 1976).

302. *Id.* at 815, 818.

303. He had "a broken arm and 13 broken ribs in the process of healing." *Id.* at 816.

304. *Id.* at 816.

305. *Id.* at 816, n.2.

306. *Id.* at 816.

307. *Id.* at 815.

308. *Id.*

309. *Id.*

310. *Id.* at 815-817.

311. *Id.* at 816 (emphasis added).

312. *Id.* at 818 (emphasis added).

old from the baby's father; and that the mother "and her husband went swimming while the child was in intensive care."<sup>313</sup>

The discourse silences Teryl's story. We know that she fed and changed the baby before she went to work that morning, and that when she got home she became hysterical. We don't know her race, her socio-economic status, her level of education. Nor do we know whether William also abused Teryl — similar to the case of Ruby Moffett, discussed above. Aside from the decision's conclusion about her mothering skills, nothing suggests that she was not a loving and devoted mother whose husband was extremely abusive. Again, even though the Court of Criminal Appeals reversed her conviction, the discourse silences, specularizes, and labels her story. The decision judges Teryl a "poor mother" based on the societal norm that mothers are responsible for their children's well-being, even if the mother was not present during the abuse resulting in the child's death.<sup>314</sup>

#### 6. HARRINGTON V. STATE — MATERNAL NEGLECT THROUGH OMISSION

In the 1977 case of *Harrington v. State*, both Denelle and her husband Gary were tried and convicted for the murder of their 2-year-old daughter who died of starvation.<sup>315</sup> Both convictions and life sentences were affirmed.<sup>316</sup> The case tragically reveals that Denelle and Gary had an older son, who was taken away by his paternal grandparents when he became malnourished and suffered a skull fracture.<sup>317</sup> Although Denelle became pregnant after this, "she said it was strictly an accident. She said she did not want another baby and was unhappy about it."<sup>318</sup> The baby girl was apparently kept mainly in her crib, in a room containing "healthy and well fed" rabbits.<sup>319</sup> A neighbor said that although she had never seen photographs of the baby, she had seen photographs of the pets, and that at Christmas, the parents "hung Christmas stockings for themselves, their dog, cat, bird, and rabbit, but they had no stocking or presents for their baby girl."<sup>320</sup>

When officers investigated the death, they found the baby in a room filled with animal and human excrement.<sup>321</sup> Neighbors testified that Denelle didn't like to show the baby, and that she would leave the baby

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313. *Id.* at 816.

314. MEYER & OBERMAN, *supra* note 151, at 158.

315. *Harrington v. State*, 547 S.W.2d 621 (Tex. Crim. App. 1977) (Gary); *Harrington v. State*, 547 S.W.2d 616 (1977) (Denelle).

316. *Harrington*, 547 S.W.2d at 621; *Harrington*, 547 S.W. 2d at 616.

317. *Harrington*, 547 S.W.2d at 618-19.

318. *Id.* at 619.

319. *Id.* at 618.

320. *Harrington*, 547 S.W.2d at 623.

321. *Id.* at 623.

alone for eight or nine hours at a time.<sup>322</sup> The day of the baby's death, Denelle gave the baby "a bottle early in the morning then did not check on her until 10:30 p.m., at which time the child was dead."<sup>323</sup>

The decision casts Denelle as a "bad" mother — in part by her own admission. She gave police a statement that "she was a 'bad mother' and just did not like small children."<sup>324</sup> Denelle also told a neighbor that "she was not going to try to feed" the baby because she had rejected food by spitting it out, and Denelle told her neighbor that "she wasn't going to let it make a monkey — maybe not monkey — but something, out of her . . ."<sup>325</sup> The ironic specularization the decision gives is that in an apartment full of well-fed pets, Denelle was worried about being made a "monkey," and chose rather, to let her baby starve.

The decision labels Denelle a bad mother, and in this instance, it appears to have been her trial strategy to label herself a bad mother in order to show that she didn't intentionally kill the baby. While the decision silences her circumstances — though giving the child's race (white), and indicating the parents' preference for animals over children — it also reinscribes patriarchal notions of mothering seen above in the *Suff* case. For instance, Denelle's husband claimed that he should not have been tried as a principal.<sup>326</sup> The father's argument seems to have been that Denelle was the primary caretaker (even if she was a bad mother), and so, he was off the hook. The appellate court rejected this argument, reasoning "[e]ven if appellant's wife normally took care of the child, it would strain logic to say that he never saw his infant daughter in their two bedroom apartment."<sup>327</sup> But, while the court rejected his argument, it placed primary emphasis on the mother's responsibility and did not similarly label her husband a "bad father."

#### 7. LOTT V. STATE — ASSISTANCE OR COERCION FROM A PARTNER

In the 1985 Texas case of Eva Lott, the mother's forty-five year sentence was upheld in another case of maternal neglect by failure to prevent a boyfriend's abuse of a child.<sup>328</sup> In her statement, Eva "denied that she inflicted any bruises, abrasions, or injuries to the child."<sup>329</sup> The decision summarizes the evidence as follows:

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322. *Id.* at 618.

323. *Harrington*, 547 S.W.2d at 618.

324. *Id.*

325. *Id.*

326. *Id.* at 623.

327. *Id.* at 625.

328. Among the child's many injuries were burns, a stab wound, loose lower teeth, a skull fracture, and injuries to his scrotum, anus, and rectum. *Lott v. State*, 686 S.W.2d 304, 306 (Tex. App.—Houston [1st Dist.] 1985), *aff'd*, 770 S.W.2d 570 (Tex. Crim. App. 1986).

329. *Lott*, 686 S.W.2d at 308.

[Eva] knew the child was being abused over an extended period of time, and that it was Barber [her boyfriend] who was beating her child. However, because she was dependent on the drugs Barber supplied, she did not leave and did not provide proper medical care or protection for her child. The record also shows that the facial injury that resulted in a subdural hematoma was plainly visible, and that the child's other injuries would be visible to any person bathing the child. Additionally, there was testimony that the appellant was at the apartment with the child the day before and on the day of his death.<sup>330</sup>

Eva was convicted of murder for her failure to provide medical care and protection.<sup>331</sup> The decision silences Eva by omitting such determinable facts as her race, age (a juvenile perhaps, since she was taken to the Juvenile Division for questioning),<sup>332</sup> or the age of her son, Tommy. Beyond that, it provides no information about her experiences and motivations — other than that she was drug-dependant.

While the circumstances parallel most cases in the passive category of assistance from a partner by consisting of mothers who are involved with abusive, violent male partners unrelated to the child, and who live in poverty,<sup>333</sup> the facts of Tommy's abuse and death were so horrible as to forestall much sympathy from the court about Eva's circumstances (other than her drug addiction) that resulted in her son's death. Thus, the court silenced her story and specularized her as a bad mother, premising its judgment on the assumption discussed above in the *Suff* and *Harrington* cases, that a mother has primary responsibility for her child's safety and well-being, and that she may be held responsible for the child's death even

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330. *Id.* at 309.

331. *Id.* at 305. In a case decided several years later, *Patterson v. State*, 46 S.W.3d 294, 299 (Tex. App.—Ft. Worth 2001), the mother's conviction of injury to a child by omission was reversed; the court rendered judgment for the lesser included offense of reckless injury to a child by omission, resulting in serious bodily injury. Schwana Patterson's live-in boyfriend had abused her 11-year-old daughter, then kidnapped and murdered her daughter and attempted to murder her 9-year-old son. *Id.* at 298-99. Schwana's conviction was reversed because the court held that there was insufficient evidence that Schwana "knew with reasonable certainty that intervention during the kidnapping would have prevented the children's injuries." *Id.* at 303. On retrial to determine punishment, Patterson was sentenced to eight years' confinement. *Patterson v. State*, 101 S.W.3d 150 (Tex. App.—Ft. Worth 2003). In an interview after her first trial, she stated, "I can honestly say in some ways I blame myself. . . . In hindsight, I ask myself if there was anything I could have done. I feel responsible because I'm the one who got involved with Bobby Woods. I'm the one who brought him into the home." Bill Hanna, *Mother Relives Child's Slaying*, FT. WORTH STAR-TELEGRAM, Oct. 29, 1998, at 1A, available at 1998 WL 14934916. The boyfriend was subsequently convicted of attempted capital murder and sentenced to life in prison. *Woods v. State*, 14 S.W.2d 445, 447 (Tex. App.—Ft. Worth 2000).

332. *Lott*, 686 S.W.2d at 306.

333. MEYER & OBERMAN, *supra* note 151, at 159.

if the mother was absent or if "intervention may result in [the mother's] own death."<sup>334</sup> This view is reflected in the statement by a Tarrant County prosecutor regarding a later case of injury to a child by omission:

They'll say that they were in fear, that they couldn't do anything to stop it . . . But part of it is that [their] relationship with that man is more important than their child. I think they see their kids as an inconvenience. They'll be all excited when they're pregnant and getting attention, but when that child is born and starts cramping their lifestyle . . . then that child becomes an inconvenience.<sup>335</sup>

Such views illustrate the dominant and patriarchal discourse which specularizes and labels women involved with abusive partners who kill their children. In contrast, Eva's specularization is rejected by the dissent to the Texas Court of Criminal Appeals decision affirming Eva's judgment. Judge Teague's dissent stated:

A[n] unemotional mother in Russia might be liable to a full custodial warrantless arrest merely because she has been told her child is dead and makes no outcry, but in this state no unemotional mother should ever be liable to a full custodial warrantless arrest without more than the fact that she acknowledges that she is the mother of a child that has been declared dead and in response thereto fails to show any emotion.<sup>336</sup>

As the majority of these decisions demonstrate, however, legal discourse more typically than not specularizes mothers who kill their children. Justice Teague's dissent provides the exception.

#### 8. PITTS V. STATE — PURPOSEFUL KILLING

Leanne Marie Pitts's conviction and sixty-three year sentence for the 1985 murder of her 8-day-old son was initially reversed by the Houston Court of Appeals, but then affirmed by the Texas Court of Criminal Appeals.<sup>337</sup> Although the decisions suppress her story and label her a mad mother, the decisions can be contrasted with media accounts, which reveal

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334. *Id.* at 163.

335. Selwyn Crawford, *Expert Says Illness Impairs Moms Who Kill*, DALLAS MORNING NEWS, June 9, 1997, at 17A, available at 1997 WL 2676214, (quoting David Montague's remarks about Schwana Patterson). Montague was also quoted as commenting about another case, "We're in trial for the death of their [Jay and Linda Hill] 12-year-old son, and all they can do is make goo-goo eyes at each other." *Id.*

336. Quoted in R. G. Ratcliffe, *Split Court Upholds Lott Conviction*, HOUS. CHRON., Nov. 20, 1986, at 1A, available at 1986 WL 5129653.

337. *Pitts v. State*, 712 S.W.2d 563 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1986), *rev'd*, 758 S.W.2d 757 (Tex. Crim. App. 1988) (en banc).

more of her story.

The judicial decisions provide bare details about Leanne's circumstances. She became pregnant when she was 19, married the baby's father, but then, because of "marital difficulties . . . returned to live with her parents."<sup>338</sup> Eight days after her son was born, "she waited until her parents had left the house. She then took the child into the kitchen, sat on the floor, and placed her hand over Michael's mouth and nose until he was dead."<sup>339</sup> The testimony was in "dispute [about] whether she then attempted to shoot herself with her father's gun."<sup>340</sup> After she suffocated the infant, she called the constable.<sup>341</sup> At trial, the state produced evidence that she had laughed in telling another prisoner how she killed her son.<sup>342</sup>

Since her attorney "did not file notice of a defense of not guilty by reason of insanity ten days prior to the beginning of the trial as required by law,"<sup>343</sup> information about her mental state is largely excluded from the legal decisions. However, as the media reports below indicate, Leanne, and likely her parents, believed she was insane at the time. The decision of the court of appeals includes her psychologist's testimony that Leanne was suffering from a "brief reactive *psychosis*," due to her "intense stress brought about by her pregnancy, her relationships with her husband and family, the delivery of the child, and feelings of depression and lack of control over her life."<sup>344</sup> The psychologist testified that in killing the baby, Leanne "perceive[ed] the child to be, not an independent human being, but an extension of herself and subject to her will to commit suicide."<sup>345</sup>

The judicial decisions obscure Leanne's life story by giving minimal details of a teenage pregnancy and bad marriage. The media articles provide more information. For instance, one article transcribes her conversation with the constable's office as follows:

"I've killed my baby."

"You what?" clerk Connie Greiner asked.

"I've killed my baby."

. . . "How did you kill your baby?"

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338. *Pitts*, 712 S.W.2d at 564.

339. *Id.*

340. *Id.*

341. *Id.*

342. *Id.*

343. Christy Drennan, *Mom's Plea for Aid Before Killing Was Rejected, Witness Says*, HOUS. CHRON., Aug. 8, 1985, at 1A, available at 1985 WL 3671054.

344. *Pitts*, 712 S.W.2d at 565.

345. *Id.* at 566. The court of appeals rejected her contention that the trial court improperly excluded this testimony during the guilt state of trial because it was "not offered to establish insanity," and held that it was admissible only during the punishment stage. *Id.*

Pitts: "I suffocated him."

Greiner: "Was he crying a lot?"

Pitts: "No. I've got mental problems."<sup>346</sup>

The news articles flesh out these "mental problems." Specifically, when she was eight-and-a-half-months pregnant she was out of control and talking about killing herself, so she contacted Mental Health/Mental Retardation (MHMR); however, MHMR did not admit her, but referred her to another agency.<sup>347</sup> Her father testified that during this time, she was very depressed and that, "She was in a very bad condition, crying, sobbing, acting like she didn't have any control over herself."<sup>348</sup>

Ten years after her conviction, Leanne gave another interview from prison in which she described her actions as driven by madness.<sup>349</sup> She said,

"I told Michael it was time to go home . . . I made sure that his clothes were on right, and I sat down with him, and I held him. I held him on my lap just like you would bounce a child on your knee. I had no idea what it was going to be like, what it was going to look like . . . I held my hand, I held . . . I held him with both of my hands, and I just held him like I was hugging him, and I just . . . I cried. I said it's time to go home, and then he didn't move any more."<sup>350</sup>

In her 1995 interview she described the postpartum depression/psychosis as a "constant[ ] . . . dark presence," "'like a flock of birds moving, shifting,' and she felt like she could not get clean."<sup>351</sup> Her view of the baby was that he was "an extension of herself: 'I don't think I ever really saw him as a separate human. I have some memories of holding him, feeling a lot of love for him, but they were very brief. It was like he was a corpse. It was like I was with a corpse already. He was like a part of me that had already died.'"<sup>352</sup>

The news articles give other details of her life that might have accounted for her mental instability. For instance, in her interview ten years after her trial, she said that she had met her husband Tracy Pitts when she was 17, and when she moved in with him, "It was a druggie lifestyle,"

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346. Christy Drennan, "I've Killed My Baby," *Jurors Hear on Recording of Phone Call*, HOUS. CHRON., Aug. 7, 1985, at 1A, available at 1985 WL 3670994.

347. Drennan, *supra* note 343.

348. *Id.*

349. T.J. Milling, *Science Seeks Roots of Infanticide, Woman Recounts Killing Her 8-Day-Old Son*, HOUS. CHRON., Oct. 15, 1995, at 37A, available at 1995 WL 9409135.

350. *Id.*

351. Milling, *supra* note 349.

352. *Id.*

of which “[h]er parents did not approve.”<sup>353</sup> At her trial, her parents testified about “the heartbreak and shame they felt from having their daughter pregnant and unmarried.”<sup>354</sup> Her mother did not approve of her relationship and “implored [her] not to date” him, and had “told her if she wanted to go she could, but don’t come back home.”<sup>355</sup> When Leanne became pregnant, her mother urged her to get an abortion, and when Leanne rejected that idea, her mother urged her to give the baby up for adoption.<sup>356</sup> Although Leanne agreed to give up the baby, she changed her mind after he was born. However, after she returned to her parents’ home, she felt she was too much of a burden on her parents and decided to kill both her baby and herself.<sup>357</sup>

While Leanne’s story contains characteristics listed in the “purposeful killing” category, in most respects it is more aligned with the neonaticide category. It is consistent with the purposeful category in that more than half involved attempted or successful suicide by the mother.<sup>358</sup> Also, most mothers, while not legally insane, “suffer[ed] from disorders such as depression, anxiety, and psychosis.”<sup>359</sup> Unlike most purposeful killers, however, Leanne was not known as a devoted and loving mother, and there were not multiple deaths.<sup>360</sup> Rather, as in most neonaticides, Leanne had been in denial about her pregnancy, and after the baby was born, had felt shame about her situation.<sup>361</sup> Moreover, mental illness, such as Leanne’s, is also common in neonaticides.<sup>362</sup> Further, mothers who commit neonaticide generally do not act with premeditation, “but rather act . . . in the face of intense emotion such as shock, shame, guilt, and fear.”<sup>363</sup>

Thus, although a combination of the judicial decisions and media accounts provide enough information to consider Leanne’s act in light of the characteristic patterns of neonaticide, and to view her act with “other love,” the judicial system failed to show compassion in imposing a sixty-three-year sentence. The decisions and media reports specularize her as “mad” although it is unlikely she was “mad” enough to have been able to prove she was insane, and the court excluded psychiatric evidence as “irrelevant to the issue of guilt.”<sup>364</sup>

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353. *Id.*

354. Drennan, *supra* note 346.

355. *Id.*

356. *Id.*

357. *Id.*

358. MEYER & OBERMAN, *supra* note 151, at 86, 93.

359. *Id.* at 93.

360. *Id.* at 86, 89.

361. *Id.* at 43.

362. *Id.* at 55 (Thirty percent had a preexisting mental illness.)

363. *Id.* at 43.

364. *Pitts*, 712 S.W.2d at 565-66 (excluded psychiatric testimony of a “brief reactive psychosis” in which she was “under intense stress brought about by her pregnancy, her relationships with her husband and family, the delivery of the child, and feelings of



## 9. JUANA LEIJA — PURPOSEFUL KILLING

Juana Leija received ten years probation when she pleaded no contest to charges of murder and attempted murder arising out of the 1986 drowning deaths of two of her seven children. News articles describing the event report that Juana endured a pathetic existence and that many, including the judge, placed primary responsibility upon her husband, Jose, who for years had physically, emotionally, and sexually abused her.<sup>365</sup> Although there is no judicial decision reviewing Juana's case, the media reports provide much information about the circumstances that resulted in the infanticides. Thus, unlike most other Texas infanticides, we can view Juana's story with something approaching "other love."

When Juana was 14 years old, she felt she had to marry Jose after he raped her and threatened to ruin her reputation.<sup>366</sup> They moved from Mexico to Houston, and Jose began beating Juana soon after the birth of their first child, Esther, who was mildly retarded; unfortunately, the violence escalated over the years.<sup>367</sup> Neighbors warned that they would call the police on more than one occasion when Jose threatened Juana in the street with a pistol and beat her in public.<sup>368</sup> During this time Jose continued to force himself on Juana, and she bore seven children as a result.<sup>369</sup> Juana later said that the abuse made her want to die, but she kept going because she loved her children.<sup>370</sup> At times she disappeared and didn't know where she was.<sup>371</sup> Her husband filed a missing person's report on her at least once.<sup>372</sup> When she finally tried to leave her husband, the Salvation Army evicted her after a week because her children were causing problems.<sup>373</sup> Juana said in an interview that when she could not obtain help from friends or family she lost hope and saw "no way out."<sup>374</sup> She decided that her best option was to kill herself and her children with an overdose of sleeping pills so that none of them would suffer any longer, but she was

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depression and lack of control over her life"; moreover, she "perceive[ed] the child to be, not an independent human being, but an extension of herself and subject to her will to commit suicide").

365. John Makeig, *Juana Leija Pleads No Contest, Gets 10-Year Probation*, HOUS. CHRON., June 18, 1987, at 1, available at 1987 WL 5654322; Lori Rodriguez, *Juana Leija Gets 10 Years Probation, 'I Never Wanted to Marry Jose Luis'*, HOUS. CHRON., June 19, 1987, at 1, available at 1987 WL 5654550.

366. Maureen Balleza, *'I Don't Feel Culpable,' Jose Leija Says*, HOUS. CHRON., June 20, 1987, at 1, available at 1987 WL 5654675.

367. Rodriguez, *supra* note 365.

368. *Id.*

369. *Id.*

370. Rosanna Ruiz, *Woman Who Threw Children in Bayou is Mending Her Life*, HOUS. CHRON., July 4, 2001, at 29A.

371. Susan Warren & Rad Sallee, *'Why Didn't We All Die?' Asks Mother When Told Child Dead*, HOUS. CHRON., April 20, 1986, at 1, available at 1986 WL 5088096.

372. *Id.*

373. Rodriguez, *supra* note 365.

374. *Id.*

unable to carry out this plan, and was also unsuccessful in her attempt to hang herself.<sup>375</sup>

Overcome with despair from food deprivation and beatings, Juana, who was 29, told her 9-year-old daughter, Eloisa, of her plan to drown the children, and enlisted her help in calming her siblings.<sup>376</sup> With all seven of her children, she boarded a bus to Buffalo Bayou in downtown Houston.<sup>377</sup> Her 5-year-old (also named Juana) jumped into the deep water after being scolded for throwing the baby's shoes into the water.<sup>378</sup> Juana (the mother) then heard voices telling her to throw all of the children in the water.<sup>379</sup> She threw in 1-year-old Elvira, then 6-year-old Judas, 4-year-old Esperanza, and 3-year-old Rosa.<sup>380</sup> When she tried to throw in Eloisa, Eloisa was able to escape to the police station across the street.<sup>381</sup> Bystanders heard the children and were able to rescue four of them, but Juana and Judas died despite the rescue efforts.<sup>382</sup>

Juana told police that she chased Eloisa to the police station because her plan had fallen apart and she wanted police help.<sup>383</sup> In her statement that day she said, "I wanted to end my life and the lives of my children because I knew that sooner or later my husband was going to kill me, and I didn't want my children to stay with him or someone else that was going to mistreat them."<sup>384</sup> She felt that her children were better off dead than living with their abusive father.<sup>385</sup>

As in other characteristic purposeful killings, there was a strong bond between Juana and her children, which even the assistant district attorney acknowledged.<sup>386</sup> Also as in other characteristic purposeful killings, multiple children were involved, the mother had mental problems, attempted suicide, and was an immigrant.<sup>387</sup>

Media reports did not specularize Juana as "bad," nor as merely "mad." Rather than suppress her story, the reports — especially the interview fifteen years later — tell of both her madness and of her abusive husband. Thus, the reports provide information that allows us to approach the infanticides with "other love." The reports and the judge's evaluation of her case cast her decision to throw her children into the bayou as a

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375. *Id.*; Ruiz, *supra* note 370.

376. John Makeig, *Juana Leija Gets 10 Years Probation, Documents Show Tragic Family Life*, HOUS. CHRON., June 19, 1987, at 1, available at 1987 WL 5654551.

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*; Warren & Sallee, *supra* note 371.

381. Makeig, *supra* note 376.

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. *Id.*

387. See MEYER & OBERMAN, *supra* note 151, at 86-93.

mothering decision based on desperation and love.<sup>388</sup> Juana told a reporter in 2001 that she had finally been able to forgive herself for throwing her children in Buffalo Bayou in 1987.<sup>389</sup> She had divorced her husband a year after the drownings, and has maintained contact with her two oldest daughters and grandchildren.<sup>390</sup> Juana said that mental illness (she is bipolar) and her husband's abuse caused her to commit the crime.<sup>391</sup> However, she emphasized that she loved her children and tried to end their lives because she didn't want to leave them with her husband after she killed herself.<sup>392</sup> Juana pleaded that she and mothers like Andrea Yates deserve compassion: "I just pray they may understand that when a mother does this kind of stuff it is not because we don't love our children."<sup>393</sup>

#### 10. SCOTT V. STATE — PURPOSEFUL KILLING

In the 1987 Texas case of Brenda Ann Scott's murder of her 2-year-old son, the decision silences her story and labels her a bad mother.<sup>394</sup> Brenda's 25 year sentence was reversed by the Dallas Court of Appeals in an unpublished decision, but later affirmed by the Texas Court of Criminal Appeals in an interesting decision about the corpus delicti.<sup>395</sup>

The tale began when Brenda's neighbor found her sitting and crying outside her burning apartment with her oldest child.<sup>396</sup> The neighbor was unable to rescue Brenda's 2-year-old son Russell due to the wildly burning fire in the child's room.<sup>397</sup> The Fire Department found the child's charred body in his crib; an investigation found that the fire burned most intensely near the crib, and that the fire could not have been accidental.<sup>398</sup> When the medical examiner's report concluded that the baby most likely died before

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388. Heinzelman provides information about the strategies used by Juana's defense attorney, Dick De Guerin, one of the most prominent defense attorneys in Texas, who took her case at the request of prominent Hispanic leaders in Houston. See Heinzelman, *supra* note 170, at 94. De Guerin "situated [her] particular tragedy within a larger cultural narrative through the figure of La Llorona," a Mexican mythic figure who is ghostly and associated with murder of her children due to "sexual and familial betrayal." *Id.* at 95. While De Guerin's narrative incorporating La Llorona was not reported by the media, the media reports discussed above pieced together a complex narrative which allowed her story to be listened to with "other love."

389. Ruiz, *supra* note 370.

390. *Id.* The younger surviving children were later adopted. Even today, Eloisa continues to blame her mother for many of her problems; "Sometimes she thinks I don't love her." *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. Scott v. State, 732 S.W.2d 354 (Tex. Crim. App. 1987) (en banc).

395. On remand, the Dallas Court of Appeals found the evidence sufficient and affirmed. Scott v. State, No. 05-84-00109-CR (Tex. App.—Dallas (5th Dist.) Aug. 31, 1987), available at [http://www.5thcoa.courts.state.tx.us/cgi-bin/as\\_web.exe?c05\\_89.ask+D+20824382](http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?c05_89.ask+D+20824382).

396. Scott, 732 S.W.2d at 354.

397. *Id.* at 355.

398. *Id.*

the fire and had suffered multiple bone fractures, Brenda was charged with beating her child with her fists and killing him,<sup>399</sup> then setting his crib on fire to conceal the evidence.<sup>400</sup>

Descriptions of Brenda in both cases are confined to evaluations of her relationship with her children and her husband. Many people were suspicious and critical of her. The apartment manager reported that Brenda frequently screamed profanities at her younger, and now deceased son.<sup>401</sup> Babysitters reported that Brenda had mentally and physically abused her younger son.<sup>402</sup> Brenda's friend, Mrs. Parks, told the court that Brenda was "distant" and that she often screamed at her younger child.<sup>403</sup> Mrs. Parks further testified that Brenda frequently told her younger son that he would make her kill him.<sup>404</sup> One babysitter stated that that Brenda treated her younger child differently from her older child, and reported that on one hot Dallas day Brenda locked her younger son in the car for nearly an hour.<sup>405</sup> Both Parks and the babysitter had contacted Child Protective Services. The CPS social worker's report revealed only that Brenda did not interact with her younger son and that he was withdrawn and had some scars and bruises.<sup>406</sup>

Brenda's husband was allegedly violent and abusive towards her, but usually not towards the children.<sup>407</sup> The court of appeals found on remand that because the husband was at work at the time of the fire, and that any physical injury of the child by him had involved only possible slapping or shoving, he was not likely involved in the murder.<sup>408</sup> The court implicitly concluded that Brenda's history of belligerence and violence toward her son made her more likely to have caused the death. Thus it reduced her reality to that of a "bad mother" and ignored the impact her husband's abuse had upon her. Although some facts, such as Brenda's lack of devotion towards Russell,<sup>409</sup> indicate differences from characteristic patterns of purposeful killings, other facts indicate that she was living in a highly stressful domestic violence situation. Her sister, mother, and sister-in-law testified that her husband was a violent alcoholic who abused

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399. *Court Overturns Mother's Murder Conviction in Son's Death*, DALLAS MORN. NEWS, Jan. 25, 1986, at 37A, available at 1986 WL 4303599.

400. *Scott*, 732 S.W.2d at 357. About 37% of purposeful killing involve death by fire, or setting fire after causing death. MEYER & OBERMAN, *supra* note 151, at 87.

401. *Scott*, 732 S.W.2d at 355.

402. *Scott*, No. 05-84-00109-CR, at [http://www.5thcoa.courts.state.tx.us/cgi-bin/as\\_web.exe?c05\\_89.ask+D+20824382](http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?c05_89.ask+D+20824382).

403. *Scott*, 732 S.W.2d at 355.

404. *Id.* at 356.

405. *Id.*

406. *Id.*

407. *Scott*, No. 05-84-00109-CR, at [http://www.5thcoa.courts.state.tx.us/cgi-bin/as\\_web.exe?c05\\_89.ask+D+20824382](http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?c05_89.ask+D+20824382).

408. *Id.*

409. MEYER & OBERMAN, *supra* note 151, at 89.

Brenda and the children.<sup>410</sup> It is not being argued here that Brenda was without blame, but rather that the judicial discourse constructed her as a "bad mother" and, like most courts deciding such cases, silenced her story.

#### 11. KIMBERLY LYNETTE HARRIS — PURPOSEFUL KILLING

In *Harris v. State*, Texas' Fourteenth Court of Appeals affirmed the conviction of Kimberly Harris, who had received a fifty-year sentence for the 1993 death of her 23 month old daughter, Brittany.<sup>411</sup> On the night of the murder, Kimberly, then 23, told her own mother that she was going to the store alone.<sup>412</sup> Upon her return, Kimberly and her mother reported Kimberly's child missing.<sup>413</sup> Police officers involved with the search were suspicious of Kimberly's "unnatural calmness."<sup>414</sup> Two days later Kimberly took her boyfriend to Brays Bayou where she wondered out loud "What if she were in the bayou?" and after police discovered Brittany's blanket, a police helicopter found the child's body a half-mile away.<sup>415</sup> Police reported that Kimberly behaved as if she was crying violently, but she produced no tears.<sup>416</sup> Initially Kimberly implicated a taxi cab driver named "Obie," but she later changed her statement and confessed that she had abandoned the toddler at the bayou where the child had drowned.<sup>417</sup> Kimberly told police she "just wanted her to have a better life."<sup>418</sup>

At trial, Kimberly raised the insanity defense. Her attorneys reportedly told jurors that it was obvious that a mother "who would do [this] must be crazy."<sup>419</sup> Likewise, Kimberly's mother testified that Kimberly loved her daughter "more than life itself" and that if Kimberly had caused the death she must have been "stone crazy."<sup>420</sup> Defense experts testified that Kimberly was psychotic at the relevant time,<sup>421</sup> and that she was profoundly depressed due to a recent abortion, rejection by her daughter's father, and money problems.<sup>422</sup> Moreover, Kimberly had a borderline I.Q. of fifty-seven.<sup>423</sup> However, the jury rejected her insanity defense. The prosecution's expert stated that it was possible that Kimberly was psychotic at the time of the offense, but that she might be lying, and her confession to

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410. *Scott*, 732 S.W.2d at 354, 357.

411. *Harris v. State*, No. 14-94-01127-CR, available at 1997 WL 445803, at \*10 (Tex. App.—Houston (1st Dist.) Aug. 7, 1997) (not designated for publication).

412. *Id.* at \*1.

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. Jennifer Liebrum, *Mom Killed Baby Daughter, Jury Says*, HOUS. CHRON., Aug. 25, 1994, at 21A, available at 1994 WL 4211122.

419. *Id.*

420. *Harris*, 1997 WL 445803, at \*3.

421. *Id.*

422. Liebrum, *supra* note 418.

423. *Id.*

the police indicated that she acted with knowledge of right and wrong.<sup>424</sup> The defense experts also agreed that their evaluations would have been different if she had lied to them about her ability to remember the incident.<sup>425</sup>

The judicial discourse and media accounts cast Kimberly as a “mad or bad” mother based on her dishonesty and on her selfishness in sacrificing her daughter to clear the way for a renewed relationship with the child’s father, who had spurned her.<sup>426</sup> Even the judge who imposed the fifty-year prison sentence labeled her as a bad mother when he told her, “there can be no justice in this case.”<sup>427</sup> Similarly, one of her friends in acknowledging Kimberly’s troubles said, “Don’t matter . . . nothing so bad it would excuse this.”<sup>428</sup> Thus, even the friend we might expect to be sympathetic to Kimberly’s circumstances labeled her a “bad mother.” Media and legal discourse completely failed to view her story with other love.

## 12. MARCIE MOON — NEONATICIDE

Marcie Moon was convicted for the capital murder of her newborn daughter in 1994, and sentenced to life in prison.<sup>429</sup> Both the media and court decision silence her story by offering little detail concerning the facts of the case other than to state how she suffocated her daughter.<sup>430</sup> Moreover, news articles specularize her as a bad mother by describing the infanticide as an attempt to save her relationship with her husband.<sup>431</sup> Unlike most other mothers who commit neonaticide, Marcie was not a teenager, but was 25.<sup>432</sup> She and her husband had had another child together, but at the time they were separated and Marcie hoped they could reconcile, although her husband later testified that “their marriage was tumultuous . . . [and] that he did not trust his wife and that she was not a good mother.”<sup>433</sup> As is typical of other neonaticides, Marcie was in denial of her pregnancy because it was not her husband’s child and that circumstance had apparently thwarted reconciliation attempts.<sup>434</sup> Although she had considered adoption and abortion, she pursued neither alternative,

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424. *Harris*, 1997 WL 445803, at \*4.

425. *Id.*

426. Liebrum, *supra* note 418; Jennifer Liebrum, *Mother, 25 Sentenced to 50 Years, Claimed Insanity in Toddler’s Death*, HOUS. CHRON., Aug. 30, 1994, at 14A, available at 1994 WL 4203070.

427. Liebrum, *supra* note 418.

428. S.K. Bardwell, *Mother of Girl Charged with Murder*, HOUS. CHRON., Apr. 16, 1993, at 25A, available at 1993 WL 9547639.

429. *Moon v. State*, No. 01-95-01265-CR, available at 1997 WL 403115, at \* 1 (Tex. App. — Houston (14th Dist.) July 17, 1997) (not designated for publication).

430. *Id.* at \*2.

431. Jennifer Liebrum, *Mother’s Tale: Kill Her Baby or Lose Mate*, HOUS. CHRON., Oct. 6, 1995, at 34A, available at 1995 WL 9407639.

432. Meyer & Oberman, *supra* note 151, at 43.

433. Liebrum, *supra* note 431.

434. *Id.*

but delivered the baby and then smothered it in her apartment bathroom.<sup>435</sup>

At the trial Marcie testified that she had to choose between her husband and her child, and that she desperately desired to reconcile with him.<sup>436</sup> Marcie described cradling the baby and smothering it under towels shortly after birth because she “freaked” and “wanted him [the husband] back so bad.”<sup>437</sup>

Like many other neonaticides, Marcie's story has been silenced, and she has been labeled a “bad” mother, who made a bad “choice” of killing her baby over her husband.<sup>438</sup> Tried for capital murder, she was found guilty and given a life sentence.<sup>439</sup> Neither the judicial decision affirming the judgment nor the news article provides much more than the bare details of Marcie's story.

### 13. DIANA LUMBRERA — PURPOSEFUL KILLING

Five of Diana Lumbrera's children and a niece died while in her care between 1975 and 1984 in the small panhandle town of Bovina, Texas.<sup>440</sup> As each child died, Diana “cried and often fainted with grief.”<sup>441</sup> She was considered a devoted mother,<sup>442</sup> and neighbors and relatives said only that they could not imagine that she would ever hurt her children.<sup>443</sup> When doctors ruled the deaths natural, Texas law enforcement officials initially ignored the series of deaths.<sup>444</sup> However, when Diana moved to Kansas and was convicted in Kansas in 1992 for smothering her sixth child, the Texas cases were reopened.<sup>445</sup> The 1995 Kansas case, *State v. Lumbrera*, was Diana's second appeal to the Kansas Supreme Court.<sup>446</sup> Between the first and second Kansas trials she pled nolo contendere to two murders in Texas.<sup>447</sup> Diana received two life sentences for the deaths of two of her children in Texas (the rest of the charges were dropped).<sup>448</sup> Kansas

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435. *Id.*

436. *Id.*

437. *Id.*

438. *Id.*

439. *Moon*, 1997 WL 403115, at \*1.

440. Roy Bragg, *PANHANDLE MYSTERY, Mom's Frightening Legacy: 6 Children and 6 Tiny Caskets*, HOUS. CHRON., May 13, 1990, at 1, available at 1990 WL 2983185; Chip Brown, *Family, Friends Defend Mother Accused of Killing Six Children*, HOUS. CHRON., Dec. 13, 1990, at 4, available at 1990 WL 2978919.

441. Brown, *supra* note 440.

442. *Id.*

443. *Id.*

444. Bragg, *supra* note 440. Originally medical records listed the causes of death of the children as strangulation due to asphyxiation, choking, acute congenital heart disease, and blood poisoning.

445. *State v. Lumbrera*, 845 P.2d 609 (Kan. 1992); *With Latest Charge, Mom Now Linked to Deaths of 5 Children*, HOUS. CHRON., Jan. 22, 1991, at 16A, available at 1991 WL 3898780.

446. *State v. Lumbrera*, 891 P.2d 1096 (Kan. 1995).

447. *Lumbrera*, 891 P.2d at 1102.

448. *Mother Serving Life in Texas Convicted of Smothering Son*, HOUS. CHRON., Apr. 25,

prosecutors used these Texas convictions as well as testimony by experts involved in the Texas cases in the new Kansas trial.<sup>449</sup> The evidence supported the theory that the children had died from asphyxiation probably due to suffocation.<sup>450</sup>

Little is known about Diana. She dropped out of school in the seventh grade and was married twice.<sup>451</sup> Although Diana did not contest her convictions in the Texas cases, she claimed the children had been killed by a curse.<sup>452</sup> A friend of Diana's told reporters that Diana believed in "brujas," a type of Hispanic witch who can place spells or curses on people.<sup>453</sup> Diana told her friend that Diana's mother-in-law had put a curse on her that had damned all of her children to death.<sup>454</sup> Evidence indicated, however, that she smothered each of her children, probably for the purpose of obtaining life insurance benefits.<sup>455</sup> Media accounts summarize trial testimony regarding her financial difficulties,<sup>456</sup> including various lies she fabricated to loan officers, such as her need for money in order to pay for her son's leukemia treatments.<sup>457</sup> Her defense attorney stated in his closing argument that "In a way, we are driven to a modern-day version of a witch hunt. . . . It's comforting to believe we've found a monster in our midst. It's much harder to face the fact our children are fragile and they die and we can't accept it."<sup>458</sup>

While the legal discourse in the Kansas decisions uses more neutral language than earlier cases, the Kansas decisions continue to specularize and silence the mother's story. For example, the second Kansas appellate decision states that "the concept that a mother would intentionally kill her own young child is so repugnant that such a theory places a heavy burden on the state."<sup>459</sup> This view ignores Diana's reality and dismisses facts about her personal life and financial circumstances that might have allowed us to view her infanticides with "other love." Rather, the discourse supports the conclusion alluded to by her own attorney that Diana was "a monster."

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1993, at 1A, available at 1993 WL 9549483.

449. *Lumbrera*, 891 P.2d at 1102-03.

450. *Id.* at 1104.

451. Bragg, *supra* note 440.

452. Brown, *supra* note 440.

453. *Id.*

454. *Id.*

455. *Lumbrera*, 891 P.2d at 1103.

456. Roy Bragg, *Mom Convicted in Son's Death, Jury Rules Lumbrera Killed Boy to Get \$5,000 Insurance*, HOUS. CHRON., Oct. 3, 1990, at 1A, available at 1990 WL 6619793.

457. Roy Bragg, *Witnesses: Alleged Child-Killer Lumbrera Fabricated Tragic Tale*, HOUS. CHRON., Sept. 27, 1990, at 36A, available at 1990 WL 2966628.

458. Bragg, *supra* note 456.

459. *Lumbrera*, 891 P.2d at 1103.



## 14. FRANCES NEWTON — PURPOSEFUL KILLING

In an unpublished opinion, the Texas Court of Criminal Appeals affirmed Frances Newton's capital murder conviction.<sup>460</sup> Frances, whose death penalty is pending for the 1987 fatal shooting of her husband, Adrian, and two children, Alton (7 years old) and Farah (21 months old) was described by reporters as "soft spoken" and "like a choir member."<sup>461</sup> Frances, who was 22, married Adrian when she was only 14, and her marriage suffered from her husband's adultery and drug involvement.<sup>462</sup> She admitted that after catching him in bed with a woman the previous year she might have said she would kill him if she found out he was cheating again.<sup>463</sup> However she denied knowing about her husband's most recent infidelity, and stated that she had reconciled with her husband on the day of the murders, and had agreed on that day to end her own two-month-long affair with Jeffrey Frelow.<sup>464</sup>

Nevertheless, her conviction was upheld on review of the sufficiency of the evidence. Trial testimony by the brother and mistress of the husband placed Frances at the scene of the crime minutes before it occurred.<sup>465</sup> Moreover, an insurance agent told the court that Frances had purchased \$100,000 in life insurance on her husband and daughter three weeks prior to the murders.<sup>466</sup> In addition, Jeffrey Frelow testified that he began an affair with Frances two months before the murders, that the murder weapon belonged to his cousin, and that Frances had had access to the gun in his apartment.<sup>467</sup> A ballistics expert established that the gun Frances had abandoned was the murder weapon, and an expert for the State testified that nitrites found on the dress Frances claimed to have worn that night were likely from gunpowder residue.<sup>468</sup>

Frances was at the time of her sentencing in 1992 the only Texas mother guilty of infanticide sentenced to execution by lethal injection.<sup>469</sup> After Frances's conviction, Darlie Routier was also sentenced to death by lethal injection. Even though Frances testified (and provided an alternative version of events that occurred on the evening of the murders), the decision frames her as cold-blooded bad mother: "A more cold-blooded, calculated

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460. *Newton v. State*, No. 70770, 1992 WL 175742 (Tex. Crim. App. Jun. 17, 1992) (not designated for publication).

461. John Makeig, *Wife Admits Hiding Gun, Denies Killing Mate, Two Children*, HOUS. CHRON., Oct. 22, 1988, at 26A, available at 1988 WL 6351042; see also John Makeig, *Jury Gives Newton Death in Slayings of Her Family*, HOUS. CHRON., Oct. 26, 1988, at 17A, available at WL 6328689.

462. *Id.*

463. *Newton*, 1992 WL 175742, at \* 3.

464. *Id.* at \*3.

465. *Id.* at \*1-\*2.

466. *Id.* at \*2.

467. *Id.* at \*1.

468. *Id.* at \*2.

469. Makeig, *Jury Gives Newton Death in Slayings of Her Family*, *supra* note 461.

act of violence is difficult to imagine.”<sup>470</sup>

Media accounts provide some pieces of Frances’s story unmentioned by the judicial opinion. For instance, Francis married and had a child when she was 14. Maternal age at the time of birth is a high risk factor for infanticide<sup>471</sup> and psychologists recognize that having children at such a young age prevents young women from developing a strong sense of self.<sup>472</sup> Moreover other stresses included her husband’s affairs throughout their marriage and his cocaine abuse.<sup>473</sup> However, neither the judicial decision nor the media reports describe her relationship with her children. Nor do they indicate whether Frances suffered any emotional distress as a result of her husband’s multiple affairs and cocaine addiction. Apparently, several months before the murders, she began an affair with her old boyfriend, and several weeks before the killings, took out life insurance policies on her family. However, we don’t know what ultimately caused her to murder her children. The judicial decision and media reports prevent us from viewing Frances’s acts with “other love,” from “understand[ing] her acts as a response to the societal construction of and constraints upon mothering.”<sup>474</sup>

#### 15. CLAUDETTE KIBBLE — PURPOSEFUL KILLING

After each of three children died, Claudette Kibble, who was 14 when her first child died, claimed the child died of a seizure.<sup>475</sup> Upon the death of her third child prosecutors tried to charge her, but the coroner was unable to provide a medical explanation for the deaths.<sup>476</sup> However, officials realized that the children’s seizure disorders were based purely on Claudette’s own reports, and Child Protective Services (“CPS”) therefore began documenting her fifth child’s health when he was born.<sup>477</sup> In 1994 when her fifth child was hospitalized because he quit breathing, CPS investigated.<sup>478</sup> Finally, Claudette’s mother turned her in when she

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470. *Newton*, 1992 WL 175742, at \*17. A defense attorney stated, “The dead kids got us the penalty. The jury felt killing them was inexcusable.” The prosecution had offered her a life sentence for a guilty plea, but “she wouldn’t have pled for her life or 20 years or anything. She wouldn’t have said she killed her children for even 10 days in County Jail.” Makeig, *Jury Gives Newton Death in Slayings of Her Family*, *supra* note 461.

471. Overpeck, *supra* note 7, at 24-25.

472. MEYER & OBERMAN, *supra* note 151, at 104.

473. Makeig, *Jury Gives Newton Death in Slayings of Her Family*, *supra* note 461.

474. MEYER & OBERMAN, *supra* note 151, at 13.

475. Jennifer Liebrum, *Mom’s Plea to Killing Two of Her Kids: Guilty, Another Child Recovered from Injuries*, HOUS. CHRON., May 7, 1996, at 22A, available at 1996 WL 5597022.

476. Stephanie Asin, *Kid’s Death Get Mother 3 Life Terms, Woman Covered Up Crimes for Nine Years*, HOUS. CHRON., Jan. 15, 1997, at 19A, available at 1997 WL 6535024.

477. *Id.*

478. S.K. Bardwell, *Mom Admits Killing 3 Children, Confession Confirms Suspicions of Authorities*, HOUS. CHRON., Sept. 22, 1995, at 1A, available at 1995 WL 9405270.

confessed to the murders in 1995, nine years after the first child died.<sup>479</sup> Although she was not charged for the murder of her first child, because she was too young to be tried as an adult when she committed the crime,<sup>480</sup> she was charged for the others. She pled guilty and received three consecutive life sentences for murdering two of her five children and attempting to murder a third.<sup>481</sup>

Claudette told police she had not meant to do it when she drowned her first child in 1986 and her second in 1988.<sup>482</sup> She suffocated her third child in 1990 and tried to kill her fourth in 1994.<sup>483</sup> One child, a 7-year old daughter, was never harmed and the other surviving son, Wright, was taken into Child Protective Services custody.<sup>484</sup>

Most of Claudette's vague history comes from statements by her defense attorney that when she was 13 she was kidnapped and raped, that she had an I.Q. of ninety-two, and that she had psychological problems and heard voices that motivated her to kill her children.<sup>485</sup> Her mother has remained silent about factors in Claudette's life. Although Claudette "mentioned some things" that may have motivated her, the police department refused to detail her confession.<sup>486</sup> Since Claudette pled guilty, we cannot learn more about Claudette's circumstances from reading a judicial decision. We cannot view her murders with "other love" because media reports insinuate she was a bad mother or "mad" as a result of her low I.Q. and her abduction and rape when she was 13.

#### 16. TINA CORNELIUS — PURPOSEFUL KILLING

Tina Cornelius pled guilty and received two sixty-year sentences for the 1999 killings of her 2-year-old son, Dominick, and her 3-year-old daughter, Amanda.<sup>487</sup> Tina's children were discovered lying in a creek bed in late April 1999 and were identified by day care workers.<sup>488</sup>

Although police thought Tina might have been killed as well, she was found days later in Corpus Christi.<sup>489</sup> There, she had met a man at a carnival and told him that she did not know whether her children were alive

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479. Asin, *supra* note 476.

480. Liebrum, *supra* note 475.

481. Asin, *supra* note 476.

482. John Makeig, *Court Hears Details of Three Boys' Slayings*, HOUS. CHRON., Sept. 26, 1995, at 13A, available at 1995 WL 9405727.

483. *Id.*

484. Asin, *supra* note 476.

485. *Id.*

486. Bardwell, *supra* note 478.

487. David Hafetz, *Mother Admits Killing Children, Tina Marie Cornelius Pleads Guilty to Injury to a Child, Avoiding a Possible Death Sentence*, AUSTIN AMER.-STATESMEN, Feb. 9, 2000, at A1, available at 2000 WL 7328962.

488. *Indictment for Mom in Tots' Deaths, Prosecution May Go for the Death Penalty*, HOUS. CHRON., June 30, 1999, at 24A, available at 1999 WL 3998461.

489. *Mom Dropped Kids Off Cliff, Police Say*, HOUS. CHRON., Jan. 13, 2000, at 31A, available at 2000 WL 4274765.

because her boyfriend had taken them.<sup>490</sup> However, a man in Austin said that when he met her shortly after the deaths “she told him that her children had died after falling off a cliff while with one of the children’s fathers.”<sup>491</sup> Once apprehended, she told varying stories to police, but eventually said that her life had spun out of control and that she had killed her children in desperation.<sup>492</sup> She said she was emotionally drained and tired of struggling to make money.<sup>493</sup> Tina herself was 23 at the time she dropped her children off a cliff, and she had been married twice.<sup>494</sup> About a year and a half before, she had moved from Arizona to get away from her children’s two fathers, who offered no support, and she lived in Austin with her mother and sister.<sup>495</sup> She worked at various jobs, including waiting tables and topless dancing, and she attended auto mechanic classes.<sup>496</sup> She began abusing drugs and alcohol, and on the afternoon she killed the children she felt “lost” when she picked them up from day care.<sup>497</sup> When the two children were “misbehaving” in the car she ended up dropping them in the creek.<sup>498</sup>

Tina claimed, “I started feeling I had no right to be a mom when I can’t even take care of my own life.”<sup>499</sup> She described driving to the cliff, where she told her daughter she loved her, and dropped her off.<sup>500</sup> She said she realized then that she had made a mistake, but she picked her son up and dropped him, too.<sup>501</sup> Although there is no judicial decision since Tina pled guilty, media accounts indicate that the prosecutor’s office and the media labeled her a “bad mother.” The prosecutor explicitly stated, “*She is an evil person who needs to be locked up, and what she did was truly unspeakable.*”<sup>502</sup> Thus, Tina was specularized as a bad mother, a topless dancer, selfish and “out of control.”<sup>503</sup>

#### 17. NIRMALA KATTA — PURPOSEFUL KILLING

In late March 1996, Nirmala Katta, who was 28, shot and killed her husband Ashok and their three children before setting their house on fire and killing herself.<sup>504</sup> The children were 6 (Anil), 4 (Jonathan) and 3

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490. Christian Davenport, *Grand Jury to Hear Evidence Against Dead Children’s Mom*, AUSTIN. AMER.-STATESMEN, May 18, 1999, at B1, available at 1999 WL 7412897.

491. *Id.*

492. Hafetz, *supra* note 487.

493. *Id.*

494. *Id.*

495. *Id.*

496. Davenport, *supra* note 490.

497. Hafetz, *supra* note 487.

498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.* (emphasis added).

503. Hafetz, *supra* note 487.

504. *Woman Who Killed Family, Self Bought Gun Days Earlier*, DALLAS MORN. NEWS,

(Jessica) — all died of gunshot wounds except Jessica, who suffocated.<sup>505</sup> The family lived in a suburb of Houston, and neighbors described the family as happy and friendly; they often saw Ashok playing in the yard with his children.<sup>506</sup> One neighbor described the deaths as “unthinkable” and neighbors initially assumed there had been a burglary.<sup>507</sup>

News articles, especially one lengthy feature article, provide a great deal of insight into Nirmala's life. She immigrated to the United States from India in 1990 after an arranged marriage with her husband Ashok.<sup>508</sup> Nirmala hoped she would find a better life in America, but what she found was an abusive and cheating husband.<sup>509</sup> Ashok had already been scheduled for arraignment on wife-beating charges when the murders occurred.<sup>510</sup> Her relatives conceded that her husband beat her regularly and she often had bruises.<sup>511</sup> They also acknowledged that Nirmala told them more than once that she considered killing her family.<sup>512</sup> Nirmala's husband had a long history of affairs and was already married to an American woman (Deborah) and had a child when he married Nirmala.<sup>513</sup> Although he and Deborah divorced before he went to India to marry Nirmala, when he returned to America he lived with Deborah until Nirmala arrived.<sup>514</sup> Ashok continued to see Deborah and their daughter even after Nirmala arrived with their son.<sup>515</sup> Neither woman knew about the other child; nor did they know he had been married before he married Deborah.<sup>516</sup> Over time, he had a series of girlfriends, and had a child with one.<sup>517</sup> Ashok's last girlfriend, a 19-year-old, encouraged him in letters to leave his wife and get an apartment.<sup>518</sup> And, indeed, a key to a new apartment and a new lease were discovered in the house after the murders.<sup>519</sup>

Nirmala came from a traditional Indian family and culture that rejected

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Mar. 27, 1996, at 18A, available at 1996 WL 2111216.

505. Patti Muck, *5 Found Slain in Torched House, Stafford Police Say Mother Had Threatened Lives of Family*, HOUS. CHRON., Mar. 23, 1996, at 1A, available at 1996 WL 5588616.

506. *Id.*

507. *Id.*

508. Mike Tolson, *WHEN HOPE DIES. They Appeared To Be the Model Immigrant Family. She Was a Typical Devoted Mother. But Beneath Nirmala Katta's Smiles Lay Tears of Pain. One Day in March She Put an End to It.*, HOUS. CHRON., Jul. 7, 1996, at 1A, available at 1996 WL 5608031.

509. Muck, *supra* note 505.

510. *Id.*

511. Tolson, *supra* note 508.

512. *Id.*

513. *Id.*

514. *Id.* Both Deborah and Nirmala got pregnant and had children a month apart.

515. *Id.*

516. *Id.*

517. *Id.*

518. *Id.*

519. *Id.*

divorce and shunned those who could not make their marriages work.<sup>520</sup> Because of this, she adamantly refused divorce, although she considered moving back to India at times.<sup>521</sup> However, her parents did not want her to move home even though she wrote letters to her parents telling them that Ashok beat her and the children, that he locked the children in their rooms, and that she was “ready to die” and had bought a gun to kill her entire family.<sup>522</sup> The facts indicate that Nirmala weighed her choice for a considerable period of time. She returned one gun and then tried to buy another gun two months before the murders, but never returned to pick up the selected pistol after the mandatory seven-day waiting period.<sup>523</sup> Shortly before the murders she made a successful attempt to buy a gun, spoke with an attorney to try to drop the charges against Ashok, and wrote a note indicating that she wanted the contents of her safe deposit box sent to her family in India.<sup>524</sup>

Her story illustrates a typical characteristic of the “purposeful killing” category not seen in many other Texas cases: she was an immigrant with dire cultural problems.<sup>525</sup> Although one news article provides a cultural context for the tragic killings and suicide,<sup>526</sup> the detectives’ initial reactions specularized Nirmala. As one detective said, “How could she do it? It’s unthinkable for a woman to do that, to kill her offspring and then light them on fire. But of course we don’t know the whole story.”<sup>527</sup> Another investigator said, “She may have shot him because of anger. As far as the children, some people do these things because they don’t want to leave them behind. It’s hard to say. It’s hard to get in somebody’s mind.”<sup>528</sup> Even Ashok’s brother considered Nirmala crazy.<sup>529</sup> The one lengthy news article provides more of Nirmala’s story through letters she wrote to her father as well as evidence of Ashok’s many affairs, abuse, and threats to leave her.<sup>530</sup> Additionally, it provides the cultural context for Nirmala’s act—she was isolated without any close friends and was away from her family. She did not have the option of divorcing Ashok, as that would have ruined her family’s name, and would have humiliated her parents and left

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520. *Id.*

521. *Id.*

522. *Id.*

523. *Id.*

524. *Id.*

525. MEYER & OBERMAN, *supra* note 151, at 90. It also shares other characteristic patterns such as suicide, multiple deaths and failed relationship. *Id.* at 86-88. Juana Leija was also an immigrant. See Ruiz, *supra* note 370.

526. Tolson, *supra* note 508.

527. *Id.*

528. *Autopsies Confirm Woman Shot Family Stafford Police Study Apparent Murder-Suicide-Arson*, DALLAS MORN. NEWS, Mar. 25, 1996, at 22A, available at 1996 WL 2110906.

529. Tolson, *supra* note 508.

530. *Id.*

her an outcast.<sup>531</sup> One Indian view of marriage is “that the first decade of marriage is the worst.”<sup>532</sup> Nirmala was trapped, and, as the reporter concludes, “turning on her children was her final act of maternal responsibility. She would not allow them to grow up stained by scandal.”<sup>533</sup> Thus, although the voice of Nirmala — i.e., her telling of the story — is not heard directly, the one lengthy feature article which contextualizes her story provides a rare example of recounting infanticide without specularizing and labeling the mother as mad or bad. And like the community responding to Sethe’s act, we cannot condone Nirmala’s act. Perhaps we can view it, however, with “other love” as a “final act of maternal responsibility.”<sup>534</sup>

## V. A CONTEMPORARY TALE: HOUSTON MOTHER DROWNS HER FIVE CHILDREN

Both the media and the legal process continue to construct motherhood and stories of infanticide without listening to mothers’ stories. This is true in the recent case of Andrea Yates, convicted in March 2002 of two capital murder charges and given a life term with no parole. Although her case is currently on appeal, no briefs have yet been filed, so this analysis of Andrea’s story relies primarily on news accounts of her trial, letters to the editor, and other publications.

According to Andrea’s chilling confession, on June 20, 2001, she was 36 years old, had been married to Russell (“Rusty”) Yates for eight years, and had five children — from the ages of 7 years old to 6 months old.<sup>535</sup> After she fed the children breakfast, she filled the bathtub with water and drowned each child.<sup>536</sup> She laid them in bed, put their heads on a pillow, and tucked a blanket around them.<sup>537</sup> She put the baby’s head on one of her brother’s shoulders.<sup>538</sup> She left only the last one she drowned — the one who was the oldest and presumably the heaviest to carry — floating in the bathtub.<sup>539</sup> Then she called 911 (saying only that she needed a police officer), and called Rusty at work (NASA) and told him “It’s time” and to come home.<sup>540</sup> She considered drowning the children an act of mercy, she

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531. *Id.*

532. *Id.*

533. *Id.*

534. *Id.*

535. *Transcript of Andrea Yates’ Police Interview*, HOUS. CHRON., Feb. 22, 2002, at 34A, available at 2002 WL 3243514.

536. *Id.*

537. Timothy Roche, *The Yates Odyssey*, TIME, Jan. 28, 2002, 42, 50, available at 2002 WL 8385623.

538. *Id.*

539. *Id.*

540. *Id.* at 42.

told the psychiatrist in jail.<sup>541</sup> She said, "After I kill them, they would go up to heaven and be with God and be safe."<sup>542</sup>

Andrea suffered from postpartum psychosis. After the birth of her first son in 1994, she had a hallucination that Satan told her to stab someone.<sup>543</sup> Several years later, living in a 350-square-foot bus with four young boys, Andrea became depressed and hysterical and attempted suicide by overdosing on antidepressant medicine.<sup>544</sup> During another episode of depression, she tried to slit her own throat with a kitchen knife.<sup>545</sup> Around this time she was again having hallucinations, but this time they were more bloody.<sup>546</sup> Andrea made some recovery when she was given the antipsychotic drug, Haldol. In November of 2000 she had a fifth child, and after that she was hospitalized for depression twice before she drowned the children.<sup>547</sup>

Instructed on Texas law, the jury determined that Andrea had not been legally insane at the time of the killings, because, even if she was suffering from postpartum psychosis, she still knew right from wrong.<sup>548</sup> During opening statements, the prosecutor admitted that Andrea was mentally ill when she drowned the children,<sup>549</sup> and during her trial, doctors reached inconsistent conclusions regarding whether she was psychotic. Dr. Saeed, who had treated her and discharged her before the drownings, testified that he didn't believe she was psychotic before June 20.<sup>550</sup> However, a doctor

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541. *Id.* at 50.

542. Lisa Teachey, *DA Releases Video of Yates Talking About Drownings*, HOUS. CHRON., June 15, 2002, at A1, available at 2002 WL 3270713.

543. Roche, *supra* note 537 at 42, 45.

544. *Id.* at 46.

545. *Id.* at 47.

546. *Id.* at 47-48.

547. Lisa Teachey, *Jury Gives Yates Life Term With No Parole for 40 Years, Russell Yates Lashes Out, Medical Community, Legal System Come Under Fire*, HOUS. CHRON., Mar. 16, 2002, at 1A, available at 2002 WL 3249590.

548. Analyzing the limitations of the insanity defense is outside the scope of this article, but is an important task and one ripe for critique. See, e.g., Christine Michalopoulos, Note, *Filling in the Holes of the Insanity Defense: The Andrea Yates Case and the Need for a New Prong*, 10 VA. J. SOC. POL'Y & L. 383 (2003); Sheri L. Bienstock, *Mothers Who Kill Their Children and Postpartum Psychosis*, 32 SW. U.L. REV. 451 (2003); Michele Connell, Note, *The Post Partum Psychosis Defense and Feminism: More or Less Justice for Women?* 53 CASE W. RES. L. REV. 143 (2002); Connie Huang, *It's a Hormonal Thing: Premenstrual Syndrome and Postpartum Psychosis as Criminal Defenses*, 11 S. CAL. REV. L. & WOMEN'S STUD. 345 (2002). Studies have demonstrated that "citizens are highly suspicious of insanity claims [in infanticide trials] and the percentage of actual acquittals on grounds of 'not guilty by reason of insanity' (NGRI) is low. Moreover, even with an NGRI verdict, a lengthy incarceration typically follows." Norman J. Finkel et al. "Commonsense Judgments of Infanticide Murder, Manslaughter, Madness, or Miscellaneous?" 6 PSYCHOL. PUB. POL'Y AND L. 1113, 1120 (2000).

549. Carol Christian, *YATES TRIAL, Opening Rounds are Fired, Discovery of Children's Bodies Described*, HOUS. CHRON., Feb. 19, 2002, at 1A, available at 2002 WL 3242649.

550. Carol Christian, *Yates Lacked Signs of Psychosis, Doctor Testifies, Treatment During Two Hospitalizations Central to Trial*, HOUS. CHRON., Mar. 5, 2002, at A1, available at



called by the defense, Dr. George Ringholz, testified that she was psychotic and schizophrenic, and that she did not know her actions were wrong.<sup>551</sup> Likewise, Dr. Melissa Ferguson (who evaluated her in jail) and her former psychiatrist, Dr. Starbranch, both testified that she has “depression with psychotic features” with possible schizophrenia.<sup>552</sup>

On the other hand, the state’s expert witness, Dr. Park Dietz, rebutted the insanity defense by testifying that “he believed ‘with reasonable medical certainty’ that she knew her actions at the time of drowning each child were wrong in the eyes of the law, of society, and of God.”<sup>553</sup> Dr. Dietz testified that although Andrea told him “that she drowned the children to save them from burning in hell . . . [he] said some of her actions were inconsistent with that belief . . . [that] Yates did not do things that . . . he would have expected a loving mother to do if she believed she was saving her children from hell. ‘She doesn’t tell them they’ll be with Jesus or God,’ he said. ‘She doesn’t offer words of comfort.’”<sup>554</sup> Dr. Dietz’s testimony specularizes Andrea because his professional opinion is based on his view of “what a loving mother” would have done.

After rejecting her insanity defense, four jurors who were interviewed commented that Andrea’s “confession proved . . . that [she] was ‘thinking pretty clearly’ and that she ‘didn’t sound psychotic.’”<sup>555</sup> A third juror said that Andrea “went to bed the night before, and she decided that’s what she was going to do the next day.”<sup>556</sup> Another said that Andrea’s call to 911 right after the murders showed “‘she knew exactly what she was doing . . . [a]nd she knew it was wrong, or she would not have called the police.’”<sup>557</sup>

Because of all the media attention, we know much more about Andrea’s life and marriage than we do about almost any other Texas mother who has killed her children. But even with a plethora of information, the discourse surrounding a mother who has killed her children may objectify her — by silencing her, by specularizing her, and by labeling her as mad. The following discussion illustrates that this occurred

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2002 WL 3246594.

551. Carol Christian, *Doctor: Yates Illness Severe, Did Not Know Actions Wrong*, HOUS. CHRON., Feb. 27, 2002, at A1, available at 2002 WL 3244852.

552. *Id.*

553. Carol Christian, *Yates Knew Drownings Were Wrong, Expert Says*, HOUS. CHRON., Mar. 9, 2002, at 1A, available at 2002 WL 3247887. At trial, Dr. Dietz, who advises the producers of the television show *Law and Order*, stated that “shortly before Yates killed her children, *Law and Order* had aired an episode in which a mother drowned her children and was acquitted by reason of insanity”; however, after the jury found Yates guilty, Dietz apologized because he learned that the show “had not written, produced or aired such a show.” See Casey, *supra* note 248. The grand jury reopened the case to investigate Dietz’s mistake but declined to indict him. See Rick Casey, *Yates Shrink Nuts Over Show*, HOUS. CHRON., Sept. 21, 2003, at 35A, available at 2003 WL 57444469.

554. *Id.*

555. Teachey, *supra* note 547.

556. *Id.*

557. *Id.*

with regard to Andrea Yates.

#### A. SILENCING.

Andrea's husband, Rusty often spoke for her. A *Time* magazine article described him as "[a] well-intentioned husband, strong-willed yet seen as lacking empathy, who had the task of explaining his wife's mental condition to physicians as she lapsed into silence and catatonia."<sup>558</sup> For instance, during her hospitalization for attempted suicide in 1999, she told her psychiatrist very little, but Rusty told the social worker that "Andrea had 'lost her identity.' She relied on him for decisions" and that "Andrea had 'some guilt about showing anger.'"<sup>559</sup> Likewise, when she was hospitalized in 2001, Rusty "did all the talking."<sup>560</sup>

Was this because she was very private, as her high school friend said?<sup>561</sup> She never told Rusty about her several postpartum visions involving bloody knives.<sup>562</sup> After her arrest, Rusty told *Time* reporters "I know a few things about her . . . but I don't know a lot. I don't probe. I don't want to be nosy."<sup>563</sup> When her psychiatrist, Dr. Starbranch, treated her with Haldol after the birth of their fourth child, Rusty later said, "Within a day, Andrea . . . went from being completely catatonic to sitting on the couch with me in the visiting area. And we carried on just — what I refer to it as the best conversation we've ever had."<sup>564</sup> She "later . . . told him that the Haldol injection was a 'truth serum' — and that she hated how it caused her to lose control of herself."<sup>565</sup>

Rusty has been criticized by the media and by various healthcare workers as being too controlling.<sup>566</sup> Andrea's friend from her nursing days, Debbie Holmes, said "through the years, she heard Andrea describe her husband as controlling and manipulative."<sup>567</sup> Holmes testified at trial that she tried to talk to Andrea about having more children because Andrea seemed stressed, and when she asked Andrea whether Rusty was helping, Andrea stated, "You know how Rusty is."<sup>568</sup> Moreover, another family in group therapy at Deverouz with Andrea, described Rusty as "dominat[ing]

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558. Roche, *supra* note 537, at 44.

559. *Id.* at 47.

560. *Id.* at 48.

561. *Id.* at 45.

562. *Id.* at 45-46.

563. *Id.* at 46.

564. *60 Minutes* (CBS television broadcast, Dec. 9, 2001), available at 2001 WL 8033831.

565. Roche, *supra* note 537, at 47.

566. *Id.* Many letters to the editor condemned Rusty for his part in the tragedy. See, e.g., Kathleen Parker, *Finally the Monster Under the Bed Identified*, ORLANDO SENTINEL, Mar. 24, 2002, at G3, available at 2002 WL 3037617. ("As to culpability, Russell Yates' leaving his children with a demented, psychotic, suicidal woman is no different than leaving them alone with a loaded gun.")

567. Roche, *supra* note 537, at 48.

568. Carol Christian, *Witness Tracked Decline of Yates, Friend Testifies on Lack of Care*, HOUS. CHRON., Mar. 1, 2002, at 1A, available at 2002 WL 3246000.

the discussions when others tried to talk, and . . . answer[ing] questions the counselor asked his wife, who wouldn't nod her head."<sup>569</sup> Apparently, the jury also saw Rusty as controlling and in their deliberations they "placed some blame on [him]."<sup>570</sup> However, in jail, Andrea, who was delusional at the time, told Dr. Ferguson that although "her children were doomed . . . her husband, Russell Yates, [was] 'a righteous husband, a perfect husband.'"<sup>571</sup>

We likely do not know the whole story of Andrea Yates, but what the media and others describe as "controlling" very likely had the effect of silencing her psyche and desires. When Rusty encouraged her to go back to work part-time as a nurse, she replied that "[she was] a mother now."<sup>572</sup> She had been the valedictorian of her high school class, and had worked as a nurse for eight years before she married and had children. Of course, as one of her psychiatrists pointed out, she was either pregnant or breastfeeding most of the time after she married, so she had little opportunity, practically speaking, to think about going back to nursing. She had been a champion swimmer in high school and loved to sail.<sup>573</sup> Even though she began swimming again, "doing a furious 70 laps at dawn in the neighborhood pool" after her first bout of depression,<sup>574</sup> she did not really have time for herself because she was busy home-schooling children. The family had Bible study at home three nights a week, one night each week Rusty took one of the boys out for pizza, and one other night each week, called "Mommy's Night Out," Andrea took one of the children with her.<sup>575</sup> While we might imagine how these circumstances influenced Andrea's decision to drown her children, her perspectives and desires have been silenced.

#### B. SPECULARIZING.

Andrea has been specularized as a "good" mother who lost her mind. Even after her conviction, Rusty said he didn't blame her, and his aunt commented that "The trial hasn't changed our opinion toward Andrea at all," and the "family still believes Yates thought she was doing the right thing for her children."<sup>576</sup> Rusty reiterated this specularization in a 60

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569. Roche, *supra* note 537, at 48.

570. Lisa Teachey, *Jurors Say They Believed Yates Knew Right from Wrong*, HOUS. CHRON., Mar. 18, 2002, at 1A, available at 2002 WL 3249957.

571. Carol Christian & Lisa Teachey, *Yates Believed Children Doomed, Psychiatrist Says Mom Delusional, Fixated on Satan*, HOUS. CHRON., Feb. 23, 2002, at 1A, available at 2002 WL 3243867.

572. *60 Minutes*, *supra* note 564.

573. Roche, *supra* note 537, at 45.

574. Roche, *supra* note 537, at 47.

575. *Id.* at 48.

576. Carol Christian & Lisa Teachey, *Yates Found Guilty, Jury Takes 3 ½ Hours to Convict Mother in Children's Deaths*, HOUS. CHRON., Mar. 13, 2002, at 1A, available at 2002 WL 3248597.

*Minutes* interview in which he insisted, “She’s a terrific mother that loved the children. They’re always climbing up in her lap, and she’d read books to them and all just all kinds of stuff, and she loved them.”<sup>577</sup> He explained that she home-schooled the children, made costumes for them to act out medieval history, and cooked and cleaned the house.<sup>578</sup> Ed Bradley, the *60 Minutes* correspondent, commented, while looking at family pictures, “it looks like a normal, happy family.”<sup>579</sup> The interview specularized Andrea as a good mother and upright citizen when Rusty commented on how ridiculous it was for her to have group therapy for substance abuse at the last hospital she was in because “She never drinks. She never has smoked, any drugs, nothing, never even tried it, you know. And . . . she’s . . . the cleanest person in town.”<sup>580</sup>

The discourse surrounding Andrea’s trial specularized her as a terrific mother, the projection of the male ego.<sup>581</sup> Rusty was so enamored of this image that he ignored warning signs, such as her suicide attempts, and her act of filling the bathtub with water one morning two months before she drowned the children.<sup>582</sup> Ironically perhaps, since Andrea’s conviction Rusty has become an expert in postpartum depression and psychosis, but he did not listen when Andrea’s doctor warned them against having any more children. In the *60 Minutes* interview, Rusty responded to this concern by saying, “We looked at that [warning] and we said, you know, ‘Well this was a very difficult time,’ but then we said, ‘Well, would we rather have not had Luke?’ I mean, of course, we’d rather have Luke and have gone through that. What we were told was that there was a 50 percent chance that she would be depressed again if we had another child. And if she got depressed again, she would have the same symptoms . . . and that the same treatment that worked for her . . . would work again.”<sup>583</sup> One cannot help but wonder if Rusty’s “we” reflects Andrea’s desires, especially since when she got pregnant, Rusty said he wanted another boy for a basketball team.<sup>584</sup> Yet after the drownings, Andrea asked a psychiatrist why she couldn’t have sacrificed solely Mary: “I’m such a monster . . . I only had to

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577. *60 Minutes*, *supra* note 564.

578. *Id.* Rusty added that “When they studied horses, they read *Black Beauty* and went riding real ones. When they were learning about Indians, she crafted a cardboard diorama including pretend deerskin stretched across with twigs.” Roche, *supra* note 537, at 48.

579. *60 Minutes*, *supra* note 564.

580. *Id.*

581. For instance, columnist Ellen Goodman commented about the case that “The makings of a mommy case were everywhere. Perfect love, protection, nurturance are ‘natural.’ The failure to be the perfect mother to produce perfect children is proof of the devil.” *Madness as Mother’s Helper*, PITTSBURGH POST-GAZETTE, Mar. 6, 2002, at A9, available at 2002 WL 3799862.

582. *60 Minutes*, *supra* note 564. (Andrea had filled the bathtub in early May and “could not explain why she did it,” which motivated Rusty to take her back to her therapist).

583. *60 Minutes*, *supra* note 564.

584. Roche, *supra* note 537, at 48.

kill one. The baby would have been so easy. Rusty didn't want a girl; he wanted another boy for a basketball team."<sup>585</sup>

Rusty continued to project his gaze upon Andrea as the perfect mother despite her psychotic self-identification as a bad mother. For instance, in her confession she said that she had "been having these thoughts about hurting [her] children for up to two years" and that she "realized that it was time to be punished . . . [f]or not being a good mother."<sup>586</sup> She also said in her confession that she "realized [she] ha[d] not been a good mother to them" because "[t]hey weren't developing correctly" but were having "[b]ehavior" and "[l]earning problems."<sup>587</sup> Later she told doctors in jail that

she was a lousy mother. The death of her children, she said, was her punishment, not theirs. It was, she explained, a mother's final act of mercy . . . [and that] [o]nly her execution would rescue her from the evil inside her . . . from the clutches of Satan . . . She told the doctors she wanted her hair shaved so she could see the number 666 — the mark of the Antichrist — on her scalp. She also wanted her hair cropped in the shape of a crown, perhaps the kind the Bible says Jesus will give to those who have won salvation.<sup>588</sup>

Andrea saw herself as a "bad" mother.<sup>589</sup> Her husband, family, and the media specularized her as an ideal mother and failed to elicit her story with "other love." Her own account is partial and reductive. None of these constructions fairly represented Andrea's own subjectivity.

### C. "MAD OR BAD."

A third problem is that discourse about infanticides labels mothers who kill as mad or bad. In commenting about why the infanticides of Andrea Yates and Susan Smith received so much attention, Cheryl Meyer, a specialist in postpartum depression and psychosis, stated:

The one thing the women who made national news did have in common was that they seemed unlikely candidates to kill their children. They did not fit the stereotype of a woman who would kill her child. What is that unspoken stereotype? A woman who is

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585. Carol Christian, *Witness: Yates Kids Unconscious but Alive after Being Pulled from Tub*, HOUS. CHRON., Mar. 9, 2002, at <http://www.chron.com/cs/CDA/story.hts./special/drownings/12998482>.

586. *Transcript of Andrea Yates' Police Interview*, *supra* note 535.

587. *Id.*

588. Roche, *supra* note 537, at 50.

589. MEYER AND OBERMAN, *supra* note 151, at 89 (pointing out that in the category of purposeful killing, "one of the most distinctive features of these women's stories was their devotion toward their children. While it may seem like an oxymoron to describe women who kill their children as loving mothers, by all accounts that is exactly what most of them were.").

“mad” or insane, a woman who is “bad” or evil, a woman who is economically underprivileged or a woman of color. Andrea Yates in Texas confuses us and captures our attention. We don’t ask why she did it when a woman who fits our stereotype commits the crime of infanticide; we only ask why when white middle-class mothers kill their children.<sup>590</sup>

Although, as discussed above, examples of white middle-class mothers killing their children are not as rare as we would like to believe,<sup>591</sup> nevertheless, the mother who kills her child is reductively defined as “deficient, dangerous, and evil” and “whose neglectful, abusive, reckless, or even murderous behaviors threaten or destroy her children.”<sup>592</sup> Her subjectivity is difficult to unearth.

This stereotyping characterized the discourse about Andrea. She was specularized as a “good” mother, but her trial and news stories objectified her as both “mad” and “bad.” The seeming inconsistency between being a “good mother” and yet “mad” can be explained by her mental illness. Meyer points out that the one percent of mothers who suffer from postpartum psychosis are often described as “devoted mothers [who] cared for their children, loved to be with their children.”<sup>593</sup> Many of these women become obsessed with being “good mothers” because they “become very insecure about who they are and their parenting ability,” and when their obsession shifts to a delusion it sometimes becomes “even more severe . . . slipping over into psychosis.”<sup>594</sup>

While they may be specularized as ideal mothers, many, like Andrea Yates, talk about the “child being inadequate or tainted somehow by their bad mothering.”<sup>595</sup> Indeed, after Andrea was hospitalized and Rusty bought a house in Clear Lake, Andrea told him that “she felt she had ‘failed’ at the simple life in the bus.”<sup>596</sup> However, on the *60 Minutes* segment, Rusty said that she didn’t want to go back to her nursing career because being a mother was “her fulfillment. That’s where she got her fulfillment . . . in teaching the children and raising the children.”<sup>597</sup> At trial he testified that “the family had a traditional division of labor. ‘Man is the breadwinner, and woman is the homemaker.’”<sup>598</sup> After the trial, Andrea’s

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590. Cheryl M. Meyer, *Andrea Yates, The Mother Next Door, Women Who Kill Their Children Often Give Warnings, Says Cheryl L. Meyer, But the Severity of Postpartum Depression Is Too Often Discounted*, PITTSBURG POST-GAZETTE, July 1, 2001 (Editorial), available at 2001 WL 2206275.

591. See *supra*, text accompanying note \_\_\_\_.

592. See Ashe, *supra* note 14, at 1019-20.

593. *60 Minutes*, *supra* note 564.

594. *Id.*

595. *Id.*

596. Roche, *supra* note 537, at 47.

597. *60 Minutes*, *supra* note 564.

598. Christian, *supra* note 568.

mother told reporters that “after the birth of their fourth child [Rusty told her] that he had never changed a diaper.”<sup>599</sup> Thus, we don’t really know whether being a mother was her fulfillment or her duty — a duty to be a good parent that shifted from an obsession into a psychosis.

Nevertheless, as indicated above, media and the judicial system labeled her “mad,” until the jury rejected her insanity defense, and then labeled her “bad.” For instance, after Andrea was convicted of capital murder and given a life sentence, her next-door neighbor said, “They could not have come back with anything else . . . . If they had, it would have been open season on kids.”<sup>600</sup> Likewise, Kaylynn Williford, one of the prosecutors who tried Andrea, stated that “Mental illness is not a get-out-of-jail-free card.”<sup>601</sup> And when NOW defended Yates, columnist Mora Charen criticized the organization as having “a moral screw loose . . . isn’t there something repellent about expressing such sympathy for a woman who has methodically drowned her five children?”<sup>602</sup>

The way a story is told often shapes our responses. If the mother is given the opportunity to articulate her experiences, then listeners (families, the public, law enforcement) will have a way to respond to the mother not as the “mad or bad” other, but as a speaking subject.<sup>603</sup> Listeners can respond to stories of mothering with empathy. As difficult as it is to hear accounts of infanticide, it is much more difficult to hear them as tales of love. Even Yates’s psychiatrist, Dr. Lucy Puryear, who interviewed Andrea after the murders, stated “I spend a large part of my time trying to prevent what happened . . . .As a mother of four, I find it almost unimaginable to think about what happened.”<sup>604</sup> To consider Andrea Yates’s murder of her five children as taking place out of love can challenge constructions of motherhood and of infanticide. And more practically, perhaps, as Marie Ashe argues, literature such as *Beloved* can

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599. Carol Christian & Kristen Mack, *Yates Faces the End Alone, No Family Present at Her Sentencing*, HOUS. CHRON., Mar. 19, 2002, at 1A, available at 2002 WL 3250225.

600. Ruth Rendon, “*We Cannot Forget the Children, Jury’s Decision Fails to Surprise Neighborhood*,” HOUS. CHRON., Mar. 13, 2002, at 29A, available at 2002 WL 3248819.

601. Ann Hodges, *Little New in Yates Story on “American Justice,”* HOUS. CHRON., Jan. 15, 2003, at 8, available at 2003 WL 3230411. Ken Anderson, District Attorney in Williamson County, remarked that the Yates and Cornelius cases were “different from normal cases where a parent kills a child,” because they involved “an evil mindset beyond what most people can imagine.” Mike Tolson, *What Now for Andrea Yates? The Mother of Five Drowned Children Is Accused of a Horrifying Crime, But Most Such Cases Haven’t Led to a Death Sentence*, HOUS. CHRON., July 1, 2001, at 1A, available at 2001 WL 23611631.

602. Kohm and Liverman, *supra* note 180, at 64. See also, Sally Satel, *The Newest Feminist Icon—A Killer Mom*, WALL ST. J., Sept. 11, 2001, at A26, available at 2001 WL-WSJ 2875243. (“Turning Ms. Yates into a feminist cause is the kind of gimmickry we have come to expect from groups like NOW.”)

603. See Tobin, at *supra* note 14.

604. Carol Christian, *Yates’ Mom Asks Jurors for Mercy, Sentencing Could Be Decided Today*, HOUS. CHRON., Mar. 15, 2002, at 1A, available at 2002 WL 3249411.

provide some assistance for lawyers struggling to represent “‘bad mother’ clients.”<sup>605</sup>

## VI. CONCLUSION: IS LITERATURE A TOOL TO HELP US RENDER JUSTICE?

In her Nobel Lecture, Morrison stated that “[l]anguage can never ‘pin down’ slavery, genocide, war. Nor should it yearn for the arrogance to be able to do so. Its force, its felicity is in its reach toward the ineffable.”<sup>606</sup> In June 2001 when Andrea Yates drowned her children, I was pregnant with my third child, and during her trial in February 2002, I was so wrapped up with the care of an infant that I could not bear to read any news reports about infanticide. I consciously refused to follow news accounts of what I considered the ineffable — a mother’s murder of her five children.

As a feminist lawyer, however, I am frustrated that Andrea Yates’s story has been suppressed, that the media and legal discourse have constructed the tragedy with Andrea Yates as “other.” Is it possible for “attorneys and judges [to] explore the ambiguities of the maternal experience as expressed from the mother’s perspective”?<sup>607</sup> Can literature help attorneys and judges do this?<sup>608</sup> Even assuming that literature provides a model to listen to a mother’s story of infanticide with other love, to hear the complexity of her experience, how does a novel like *Beloved* help attorneys and judges render justice, especially in those instances in which “the underlying realities of mothers’ lives remain so private that their nature is not readily suggested by references to race or class . . . [or] sometimes hidden wounds are not fully recognized as related to gender

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605. Ashe, *supra* note 14, at 1022.

606. Tobin, *supra* note 14, at 270.

607. Tobin, *supra* note 14, at 237. In an article that argues that we should respond to stories such as that of Andrea Yates with compassion rather than disgust, Elizabeth Bangs cites letters to the editor that show compassion. For instance, one letter stated, “the more I read about Andrea Yates, the more convinced I became that she is hardly more monstrous than I am.” Elizabeth Bangs, *Disgust and the Drownings in Texas: The Law Must Tackle Emotion When Women Kill Their Children*, 12 UCLA L.J. 87, 105 (2001) (book review). Bangs gives several examples such as these of what she calls “an ability not to see Andrea Yates as an animalistic other, as disgusting.” *Id.*

608. Many scholars resoundingly argue that literature provides a useful tool for informing better legal analyses and decisionmaking. See, e.g., Richard Delgado and Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?* 69 TEX. L. REV. 1929 (1991); Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665 (1990) (arguing that “Narratives with evocative, rich details about subjective experiences can be used to persuade people — like judges — who have sufficient power to make a difference actually to do so for people—like children and women — who face persistent risks of violence at the hands of intimate fellow householders”).



either.”<sup>609</sup> One answer is provided by Oberman, who argues:

This is not to say that those who commit infanticide are blameless, but rather than, 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 will kill their children, and more importantly, how to mobilize all of our resources to prevent these needless deaths in the future.<sup>610</sup>

While these proposed changes are indeed necessary, this article argues that our construction of motherhood must be re-examined and that the presumptions and foundations constructing motherhood must be challenged and subverted in order to allow stories to be heard with compassion, with other love.

What a novel such as *Beloved* offers is an invitation to rethink the practicalities of the legal construction of motherhood. It offers one alternative to the dominant forms of telling a story of infanticide. The argument Marie Ashe and Naomi Cahn make regarding a “counter-narrative” in child abuse cases applies as well to infanticide:

the image of “bad mother” . . . discloses the barest outlines of a counter-narrative detailing the contextual realities of “bad mothers.” The fuller development of new narratives will require the commitment of all story-tellers to persistent inquiry and to persistent self-examination . . . . For example, social scientists, judges, and lawyers should recognize that the realities of the lives purportedly described or defined by social science always exceed the legal categories into which they are forced . . . . Raising the question “Who is speaking?” might similarly operate to expose the class, racial, gender, and other biases that often enjoy free play in the adjudication [of these matters].<sup>611</sup>

As lawyers and judges, we can strive to more fully develop this story, both in the representation of mothers accused of infanticide and in the words and facts selected to craft judicial decisions. Indeed, rather than specularize, silence, and label mothers as “mad or bad,” lawyers and judges should make every effort to give recognition to the “other” and should try both to represent and to judge mothers accused of infanticide with other love.

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609. Ashe, *supra* note 167, at 153.

610. Michelle Oberman, *A Brief History of Infanticide and the Law*, in *INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL* 3, 16 (Margaret G. Spinelli ed., 2003).

611. Marie Ashe and Naomi R. Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 *TEX. J. WOMEN & L.* 75, 111 (1993).