

Mothers Who Kill: An Overview of America's Psychological and Legal Perspectives on Infanticide

Sylwia Prendable Niczewska*

Department of Forensic Mental Health Counseling, John Jay College of Criminal Justice, New York, USA

ABSTRACT

Filicide has become one of the most controversial and misinterpreted phenomena of the last decade. The act of killing one's child seems very unthinkable to many, as it might be impossible to understand why a mother would kill her own child. This type of reaction is very often observed when neonaticide (the killing of a child within the first twenty-four hours of life), infanticide (the killing of a child within the first twelve months of life) or filicide (the killing of an older child) takes place. The crime of filicide, unfortunately, is more common than the society might think. Sadly, it is also a very big issue in the United States, as we happen to rank high on the list of countries whose caretakers kill their children. The mothers who engage in the act of killing their children very often suffer from mental disorders such as the postpartum disorder which very often results from childbirth. The criminal justice system in the United States seems to be very inequitable and punitive towards those mothers. Very often, a mother who due to her mental illness kills her child is charged with murder and might be convicted to years in prison. The only defense that a filicidal mother could be offered is an insanity plea, which could be done on the basis of the woman suffering from the postpartum disorder at the time of the crime. In the United States, insanity is defined by one of two rules adopted by states that recognize insanity defense: M'Naghten Rule or Model Penal Code (ALI), with one exception of New Hampshire, which still follows the Durham Rule. However, since the not guilty by the reason of insanity (NGRI) plea is very difficult to prove and because the Diagnostic and Statistical Manual (DSM-V) does not officially recognize the postpartum disorder as a mental illness, these mothers are very often destined for a lifetime of suffering.

Keywords: Filicide; Infanticide; Neonaticide; Center for Disease Control and Prevention (CDC)

INTRODUCTION

According to data from the U.S. Department of Health and Human Services (USDHHS), one child per day is killed before his or her first birthday and four children die every day due to neglect and abuse [1,2]. Whereas the society tends to believe that majority these children are killed by strangers, it has been showed that only three percent of children murdered are actually killed by outsiders [3]. Unfortunate enough, majority of child murder is committed by their relatives. What is even more interesting is the fact that the research shows that children who are the most common victims of filicide are babies under the age of one year old. The National Child Abuse and Neglect Data System (NCANDS) states that for the year of 2013, "children younger than 1 year accounted for 46.5 percent of fatalities; children younger than 3 years accounted for almost three-fourths (73.9 percent) of fatalities" [4] whereas many child protective agencies agree on those numbers, majority of them

also understands that the collected by them research on filicide in general, is limited. The numbers become very murky when looking at infant death statistics. In particular, it is very hard to say how many infants' fatalities take place every year and who exactly the perpetrator is. However, the Center for Disease Control and Prevention (CDC) reports that "the chances of being murdered are greater on the day of birth than at any other point in a person's life" [3] and suggests that nearly 82.6 percent of infant homicide occurred on the day of birth.

LITERATURE REVIEW

In order to determine the reasons for child homicide committed by their caretakers, many scholars proposed a general classification system based on the motive, risk factors or circumstances of the filicide. Phillip Resnick [5], a mental health professional, who coined the term infanticide and separated it into filicide and neonaticide,

Correspondence to: Sylwia Prendable Niczewska, Department of Forensic Mental Health Counseling, John Jay College of Criminal Justice, New York, USA, Tel: +7184061506, E-mail: sniczewska@lagcc.cuny.edu

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was also the first one to suggest a classification of the crime based on the perceived motive. Other classifications concentrated on the source of the motive or the circumstances of the killing. Adequately, none of the classifications were adopted as the official standard to be accepted and followed, but all of them seemed to agree on these five categories: 1) neonaticide (the killing of an unwanted child), 2) mental illness (women who kill their children as an effect of suffering from a mental breakdown), 3) postpartum psychosis (women who kill their children due to a psychotic episode caused by a hormonal imbalance after childbirth), 4) altruism or “mercy killing” (mothers who believe that their child’s death is in his or her best interest), and 5) accidental infanticide (child’s death is caused by either neglect, abuse or both) [6-8]. Further classifications of the crime of filicide focused on circumstances in which women did not necessarily were the perpetrator but they were still arrested for participating in the murder of their child or for failing to protect the child from those who wanted to harm them. These circumstances might include mothers whose abusive partners killed their children [6]. Regardless of the motive of the mother who committed the crime of infanticide, in the United States, women who killed their children are prosecuted under homicide statutes [8]. In cases where the reason for infanticide was the woman’s mental illness, these mothers’ legal defense is almost always dependent on the plea of insanity and the compassion of the jurisdiction whereas there might be many different characteristics of mothers who kill their children, this paper will concentrate on mothers who due to affective denial, mental illness and postpartum disorder were not able to provide the nurturing and safe environment for their babies. Specifically, the issue of mothers who kill their children within twelve months of giving birth as a result of either affective denial, mental disorders or postpartum disorder. Their personal stories will be presented with the legal outcomes of their actions in order to show how inconsistent, complicated and unjust the criminal process is when it comes to infanticide in the United States. While other countries, such as England, Canada or Romania, have standardized statutes governing the crime of infanticide, the United States still does not seem to understand the importance of developing a law that would guide American judges and juries.

Neonaticide

Neonaticide is recognized as the killing of a child within the first twenty-four hours of life through “exposure starvation, strangulation, smothering, poisoning, abandonment, or the use of a lethal weapon” [3]. Women who happen to kill their children using one of the above listed methods are found to be suffering from ‘neonaticide syndrome,’ a condition where the mother does not plan the death of the child in advance but she does not at the same time recognize that she is pregnant [9]. Neonaticide is the only form of filicide whose participants share common characteristics. Studies have documented that neonaticide is committed mostly by very young females who are single, live with their parents or caretakers and in majority of cases deny having sexual intercourse and therefore being pregnant [10]. In majority of cases, mothers who commit the crime of neonaticide lead an isolated lifestyle and give birth in settings other than a hospital. As a matter of fact, research shows that over 95 percent of newborns killed during the first twenty four hours were not born in hospitals, but places such as private bathrooms, public restrooms, parks and hotels [3]. It has also been accepted that those mothers have trouble in coping

with the social stress factors that are associated with having a child, but only a small percentage of them suffers from a mental illness during the time of neonaticide.

As stated above, majority of the mothers who engage in the crime of neonaticide show symptoms of denial. During his study involving neonaticidal mothers [11], discovered that those mothers engage in three different types of pregnancy denial. The first one involves the feelings of uncertainty of being pregnant and wishful thinking of it not really happening, the second one includes denial where the young mother represses any thoughts related to pregnancy, and third, is called the deliberate deception or affective denial, and it involves mothers who do everything to cover-up their pregnancies [11]. Whereas all of the clinical types of denial of pregnancy are very serious and, in many cases lead to the death of the newborn, affective denial was found to be the most controversial. A woman engages in affective denial when she realizes that she might be pregnant but she does everything in her power to hide the pregnancy. She spends majority of her pregnancy pretending that she is not pregnant and ignoring the emotional and physical changes that are happening to her body. The woman becomes so occupied and busy with hiding the pregnancy that it becomes a part of her and does not allow the women to decide what is going to happen after the baby is born. As a matter of fact, many women who engage in affective denial believe that since they were able to deceive everyone around them, the baby might not even be real. As a result, when the baby is born, and especially if the woman is alone, the first response of the mother is to get rid of it. Such decision seems to be the only “logical” one to a person who spent the last nine months convincing everyone that she is not pregnant.

Besides the fact that neonaticide could be defined as an outcome of a denial, research shows that neonaticide could also be separated into two types. Active neonaticide takes place when a newborn died as a result of violence, and passive neonaticide is defined as negligence that causes the infant to die [3]. Amanda Anderson from Minnesota and Stephanie Wernick from New York are two examples of young mothers who engaged in active neonaticide which resulted in the death of the newborn children. Amanda concealed her pregnancy from her family and friends and when the time came, she delivered the baby in the bathroom of her family home, strangled the baby and placed it in a dirty clothes hamper. Amanda pled guilty to an unintentional second - degree murder and the state of Minnesota sentenced her to 7 years in prison [12]. Stephanie’s story is very similar considering the fact that she also used violence to kill her newborn. Stephanie was also able to conceal her pregnancy and she delivered her baby in a dormitory bathroom. After the baby started crying, she stuffed his mouth with toilet paper, wrapped him in a garbage bag and threw away in trash. Even though Stephanie was found to have suffered from a psychotic episode during the time of the killing, the state of New York found her guilty of manslaughter and sentenced to 4 years in prison [13].

The two cases representing passive denial happened to catch the attention of not only the media but also clinical and forensic psychologists. Cases of Melissa Drexler and a couple - Amy Grossberg and Brian Peterson, are very often used as prime examples of neonaticide. Nicknamed the “Prom Mom,” Melissa was already in labor when she arrived to her prom [6]. She gave birth in a toilet of her school’s bathroom. It is not known whether the baby

drowned due to Melissa's negligence to acknowledge his existence, but the newborn was later found in one of the stalls wrapped in a plastic bag. Melissa pled guilty to aggravated manslaughter and was sentenced by the state of New Jersey to fifteen years in prison. She was later released on parole after only three years in prison. Amy and Brian managed to hide their pregnancy from both their families and friends. They rented a motel room, where Amy gave birth to a boy. They claimed that the baby was stillborn and placed it in an outside dumpster [6]. It took Amy two years to plea guilty to the killing of her son. The state of Delaware sentenced Amy for two and a half years of prison and Brian to two years. Both Melissa and Amy denied the reality of their pregnancies and failed to protect their babies by pretending that they were not real, but due to the fact that their trials took place in two different jurisdictions, they received two rather divergent verdicts.

Mental illness and infanticide

Juries and judges may be sympathetic toward the neonaticide defendant for a number of reasons, such as young age, poor decision-making or denial. In contrast, when a mother kills her child after the first day of its life, there seems to be little reason to expect a similar response. Research shows that the horror of infanticide seems to grow as the victim's age increases [5,14]. Thus, there is a strong temptation to look at the killings of infants after the first twenty-four hours of life as ordinary murders and to distinguish neonaticide alone as uniquely problematic.

Mental illness has been identified as the number one risk factor for committing a filicide. The vast majority of these women kill their children as a result of suffering an acute psychosis. While the victims of neonaticide are children younger than one day old, mentally ill women were found to engage in the killings of a child older than one year old [14]. Whereas mothers who commit neonaticide are found to share many similarities when it comes to the factors leading to the killing of the child, in case of infanticide pinpointing a motive can be difficult. Mentally ill women who engage in the crime of infanticide are found to be most likely older, married or in a stable relationships and use methods that involve violence when killing their children. Another, very interesting fact about females who due to their mental illness kill their children is that they are less likely, compared to the rest of filicidal mothers, to attempt to conceal the crime [15]. These women were also found to be subject to hallucinations and delusions that in many cases involved voices telling them to sacrifice their children. It has been shown that schizophrenia, acute paranoia and manic depression are the three most common risk factors for killing a child [9]. Studies that concentrated specifically on examining the influence of mental illness on mothers who committed infanticide found that, compared with mentally stable women who have killed their children, psychotic women were more likely to kill multiple victims and to attempt suicide at the time of the filicide [7]. Study conducted by McKee and Shea concluded that 75% of filicidal mothers were found to have psychiatric symptoms prior to the child's death [16]. Moreover, nearly half of that number had seen a psychiatrist and 25% of them received inpatient treatment.

Very often, child infanticide committed in the context of mental illness is motivated by secondary motives, such as ending the child's suffering or protecting him from future misery [14]. The stories of Andrea Pia Yates who drowned her five children in a

bathtub and Lashaun Harris, who threw her three children into the San Francisco Bay are two out of many examples of the crime of infanticide that was an outcome of a mental illness. In both cases, the mothers heard voices telling them that the only way to "save" their children from the agony of this life is to "sacrifice" them [1]. Whereas both of the women were found to suffer from schizophrenia and other mood disorders including postpartum depression, the verdicts of their initial trials were very different.

The story of Andrea Yates and her struggle to convince the jury that she truly was insane when killing her children became an inspiration and hope for a statute that would someday govern the issue of infanticide in the United States. Andrea Yates had a long history of mental illness that started years before giving birth to her five children [17]. Her case was very controversial, because in addition to her mental illness, Andrea Yates also suffered from a severe form of postpartum psychosis. She was reported to suffer from severe depression and admitted to a psychiatric hospital due to a number of attempted suicides. Andrea started hearing voices right after the birth of her first child and was reported to suffer from psychotic episodes almost every time after giving birth. Andrea's psychiatrist, Dr. Starbranch warned Andrea and her husband that having children would only worsen her mental state [1]. After the birth of her fifth child, Andrea became catatonic, unresponsive and delusional. Only three months after the birth of her youngest child, Andrea drowned her five children in a bathtub saying that the devil commended her to kill them. During the trial, Andrea pled insanity, however the state of Texas charged her with a capital murder and sentenced to life in prison [18]. She was pronounced to be sane at the time of the murder based on the opinion that Andrea must've known that her actions were wrong because they were given to her by the devil. It took Andrea's defense lawyers over three years and a number of trials to convince the jury that Ms. Andrea Yates was indeed insane during the killing of her children.

The case of Lashuan Harris, twenty-three year old mother of three who suffered from schizophrenia and drowned her three children by throwing them into the San Francisco Bay in California, is in many ways similar to the story of Andrea Yates. Lashuan had a long record of hospitalizations and treatments for mental illness. Her last hospitalization took place only two weeks prior to the killing of her children [19]. During one of the interviews by homicide inspector, when asked why she killed her children, Lashuan stated that she heard voices telling her to give her babies to God as a "living sacrifice" or else everyone was going to die [3]. Ms. Harris pleaded not guilty by reason of insanity (NGRI) and the court agreed. The jury found Lashuan insane and stated that the reason why she did not know that her actions were wrong was because they were carried out by the will of God. Whereas the state of California decided that Ms. Harris could not know what she was doing was wrong because God told her to do it, Andrea Yates had to know that her actions were wrong, because they were the outcome of the devil's will, therefore Texas pronounced her guilty of murder. The prosecution's expert believed that Ms. Yates was aware of the wrongfulness of the act, whereas the defense's expert stated that although she was aware of the legal wrongfulness, she had an overriding moral justification for her actions.

Postpartum psychosis and infanticide

In the United States postpartum depression affects 10-22%

of adult women within the first year after the birth of the child [2]. Postpartum depression is one of three types of Postpartum Mood Disorders. The other two include postpartum blues and postpartum psychosis. It has been estimated that approximately 25% to 85% of mothers experience postpartum blues every year. Whereas postpartum blues include symptoms such as irritability, crying, mood swings, anxiety and disorientation, they last only for few weeks and do not have a major effect on the mother's mental state. Postpartum depression, on the other hand, was found in a much smaller number of women, but its symptoms are much more severe. Postpartum depression was defined as "clinical depression occurring during the weeks and months following childbirth" [3]. Among the symptoms of postpartum depression, mothers could experience sleep disturbance, fatigue, loss of interest in things that they used to enjoy, absence of feelings for the baby, excessive guilt, and suicidal thoughts [8]. Many females who suffer from this illness feel overwhelmed with their role as a mother and might experience thoughts of wanting to get rid of the child. One of the primary markers of postpartum psychosis is delusional fantasies related to the newborn. Most women report auditory hallucinations, in which voices urge them to kill the child. Postpartum psychosis is only found in a very small number of childbearing females, and in most cases, it is an outcome of not treated postpartum depression. Research shows that there is no clear explanation to the cause of postpartum disorders but it has a lot to do with the hormonal imbalance in the mother's brain after childbirth [20]. Whereas, mothers who suffer from postpartum depression experience thoughts of hurting or discarding of their children, psychotic mothers were found to act on these thoughts. Studies show that 4% of mothers who suffer from postpartum psychosis kill their babies [8].

Even though the listed above disorders were found to be very prevalent and dangerous, the American Psychiatric Association (APA) does not officially distinguish them as a scientifically valid disorder. The Diagnostic and Statistical Manual of Mental Disorders, recognizes the link between postpartum mental disorder and infanticide in the context of delusion, but they are not treated as separate classifications [21]. This posts a serious issue when it comes to the presumption of insanity in criminal cases of infanticide. In order to claim insanity using the postpartum disorder, the defense has to give two types of evidence: a documented diagnosis of the mental illness and the evidence that the mother suffered from it during the killing [18]. The lack of specific diagnosis of postpartum disorder in the DSM V makes it almost impossible for the defense to prove that the mother was mentally insane during the crime. Recent cases have helped spread the message on how defective most states' insanity tests are when used in conjunction with postpartum depression. The two legal cases worth mentioning when it comes to insanity defense in situations when the mothers suffered from postpartum disorder are *People vs. Massip* and *Illinois vs. Sims* [22,23].

By definition, postpartum psychosis is brief in duration and, even if untreated, symptoms virtually always disappear within several months of onset. Therefore, by the time of her trial, the mother might no longer be psychotic. This was the case of Sheryl Lynn Massip whose defense found it very difficult to prove that she killed her baby due to hallucinations caused by a severe case of postpartum psychosis. Sheryl was first found sane and not psychotic during the

time of the offense even though her psychiatrists showed records of her suffering from hallucinations, suicidal thoughts, and severe depression shortly after the birth of her son [8]. It was shared in the courtroom that Sheryl did seek mental treatment short after she started hearing voices and seeing things. Unfortunately, she was diagnosed with mental breakdown and was sent home. Sheryl told the court that she ran over her three month-old baby with a car because she heard voices telling her that her child was the devil and her job was to save both him and the rest of humanity from going to hell [3]. The baby died as a result of the injuries caused by Sheryl Lynn. The state of California, where Sheryl was trialed, rejected her defense of not guilty by reason of insanity and convicted her of second-degree murder. Two months later, the judge decided to reduce her charge and subsequently Sheryl was charged of voluntary manslaughter and sentenced for one year of outpatient treatment. Sheryl's verdict was very controversial, because this was the first time that the state of California used postpartum depression in support of insanity defense.

Research shows that in many cases, mothers who commit infanticide as an outcome of postpartum psychosis do not know that they have the option of insanity defense. This was a case of Paula Sims who on two different occasions drowned her two baby girls only few days after their birth. The state of Illinois charged Sims with a first-degree murder and sentences her to life in prison. Ironically, while in prison, Paula learned about postpartum psychosis and the option of insanity defense. Paula was able to petition for a new trial during which she was showed to have suffered from postpartum disorder during both of the killings. However, due to lack of medical records indicating her illness, the court did not change the initial verdict. It is very important to mention here that both Ms. Massip and Ms. Sims pled insanity defense and both suffered from postpartum disorders, yet received two completely different verdicts. This is just an example of how due to the lack of a statute guarding a crime of infanticide, different states tend to follow different rules leading to many discrepancies in verdicts and legal procedures. Whereas California was able to recognize under the M'Naghten rule that Ms. Massip was indeed insane during the time of the murder, the state of Illinois, which follows the Model Penal Code, did not support Paula Sims's insanity defense.

Altruism, or "mercy killing" and infanticide

In addition to mothers whose disorders are rather easy to identify, there has been many women who committed infanticide as an outcome of some emotionally stressful events in their lives. Dr. Laura Miller, a psychiatrist, believes that many of the women who cannot explain the reasons for which they killed their children had probably suffered from "affective disorders with postpartum onset" [9]. Moreover, the nature of these disorders was found to be more of sociological and economic background and influenced by the environment in which the mothers live rather than a specific physiological factor. Very often these disorders might be triggered by emotional, physical or sexual abuse that the mother was subjected to either as a child or right before the killing. In many cases, lack of education, finances or no help in raising the child might also lead a mother to commit filicide. Of course, it would not be scientific to state that lack of education or financial stability or even abusive childhood leads to having no other choice but the kill your child.

However, there have been many cases in which mothers who fit the above descriptions saw no other alternative but to kill their child.

It is important to mention that the victims of altruism are usually older children. The crime of altruism is very often addressed to as “mercy killing” due to the notion that the mother killed her offspring because she believed that the child was better off dead than living [3]. Research on children who died as an outcome of “mercy killing” shows that the majority of this particular form of filicide was committed by mothers who were planning on committing suicide. The woman (in most cases) might believe that the world is too cruel for the child to live in without a mother. In many cases, the mother kills her child in order to relieve him from some kind of suffering that she believes her child is experiencing (this takes place in cases where the child’s disability, either real or imagined, is found unbearable by the mother) [24]. As a matter of fact it is estimated that 35% of mothers who committed the crime of altruism were found to be suicidal [3].

This was the case of Tysann Celestian who suffocated her three-year-old daughter by giving her a sleeping pill and placing a pillow over her face. After killing her daughter, Tysann tried committing suicide by first taking rat poison and then cutting her wrists. During a police questioning, the mother confessed that she wanted to kill herself and didn’t want her daughter to grow up without her. Another case of a “mercy killing” was reported in New Mexico, where Tiffany Toribio suffocated her three-year-old son and buried him in a sand. Tiffany and her son have been reported to be homeless and sleeping on the street. When asked why did she kill her son, Tiffany stated that she didn’t want her son to have as difficult life as she had with nobody caring about him. Both, Tysann Celestian and Tiffany Toribio plead guilty to murder and were sentenced to years in prison.

In the case of altruism or “mercy killing,” mothers who kill their children in this manner are usually convicted of first- or second-degree murder charges and sentenced to years in prison. This classification of mothers who engage in filicide by “mercy killing” has been met with a lot of controversy and criticism. Whereas, psychologists look at the killing of a child that was caused by either mother’s wish to be no longer alive or her inability to take care of her child, as an outcome of social and environmental factors, the law looks at it from the perspective of one’s selfishness and even neglect or abuse.

Infanticide and criminal law outside of the U.S.

Whereas the circumstances surrounding neonaticide are very similar, infanticide is not that easy to explain or define. Many cases of infanticide seem to be very different from each other, very often driven by different risk factors or motives. According to the definition of infanticide, the crime is understood as an act of killing of an infant, however it does not specify the exact age limit. Moreover, when speaking of filicide, should we be taking into consideration the circumstances of the killing, the child’s age or the motives of the mother? Even though the crime of infanticide is still hard to define, research shows that 29 countries already came out with statutes governing it. Majority of these nations treat the crime of infanticide as less severe than an ordinary homicide, and penalize it with sentences that may vary from few months in mental treatment to no more than 10 years in prison [9]. England

was one of the first countries to recognize circumstances resulting in infanticide and to establish specific laws that provide some level of understanding for mothers who killed their children, especially when the main factor is postpartum psychosis. According to the Infanticide Act of 1938, mothers who can show that they suffered from postpartum psychosis during the time of the killing are in most cases charged with manslaughter, and are mandated for treatment rather than being sent to prison [25]. This law applies to mothers who can prove, with the help of a psychiatrist or psychologist, that at the time of the killing they were experiencing mental imbalances caused by the birth of the child [1].

The British statute, addressed by many as the model statute on infanticide, has been replicated in at least 22 nations around the world [9]. According to the Criminal Code of Canada (1948), infanticide is defined as an indictable offense and it is punished by no more than five years in prison [18]. Australia defines the crime of infanticide under Section 22A(1) of Criminal Act 1900, and includes infant murder as one committed on a child ages from birth to 10 years old, with a maximum of 3 years in prison [26]. In general, infanticide has been treated as a separate category of homicide and punished accordingly in majority of the countries that came out with laws governing it.

Legal perspectives on infanticide in the U.S.

In the United States, due to the shortcomings of the law and psychiatry, cases concerning the issue of neonaticide and infanticide very often result in incarcerations of women who truly were mentally ill during the killing of their child [3]. Moreover, there is a huge disagreement between the medical experts about the nature of postpartum psychosis and its connection to infanticide. As a result, to this day the U.S. has no statutes governing the crime of infanticide and the laws that are used for legal proceedings of mothers who committed infanticide are remarkably inconsistent. In the United States, to prosecute a woman as guilty of murdering a child, the prosecution has to prove that the mother did physically kill the child (*actus rea*) and that she was aware that her actions were wrong (*mens rea*) [18]. Whereas the *actus rea* is not that hard to prove, the *mens rea* in many cases, might be rather difficult to demonstrate.

The only form of defense that a suffering from a postpartum psychosis mother could apply for is insanity defense. Taking an insanity defense emphasizes that the mother is not guilty by the reason of insanity (NGRI), and therefore not fully responsible for the crime. The NGRI plea varies significantly from state to state, with some states going so far as to abolish it. All states that allow this plea require the defendant to be mentally ill. This mental illness must then cause the defendant to not be aware of the wrongfulness of the act. This can refer to legal wrongfulness, moral wrongfulness, or both. However, research shows that to be pronounced NGRI is extremely difficult and rather unachievable. 2010 study shows that in general, only 1 out of 1,000 felony cases involved NGRI pleas, and only 25 percent of those cases were actually successful [25].

The United States defines insanity using two different rules: M’Naghten or the Model Penal Code (ALI). Whereas, these are the two official insanity defense rules that are recognized by the majority of the states, New Hampshire is the only state that still uses Durham Rule [27]. Under the M’Naghten rule, the defendant

must clearly prove that he or she did not know that the act was wrong; hence this test has been known as the “right or wrong test” [28]. The other test is the ALI test, which provides that a person “is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law” [3]. Among the 46 states that retain an insanity defense, 25 states follow the M’Naghten Rule and 21 states are in favor of the Model Penal Code rule. It is important to note that there are four states that to this day do not recognize insanity as a form of defense. In states: Idaho, Kansas, Montana and Utah, if a mother due to postpartum psychosis kills her child, she does not have the options of using insanity defense. As a matter of fact, these four states are not only against the insanity defense but they are also in favor of the death penalty, which means that a mentally ill mother who kills her child might be sentenced to die.

DISCUSSION AND CONCLUSION

It seems that classifying infanticide according to the mental health status of the mother would make the most sense and be the most just. However, we have to take into consideration that almost every mother who engages in infanticide would most likely blame it on a mental illness or disability. Deciding the faith of a person who committed a crime of neonaticide or infanticide solely by determining whether or not the offender was mentally insane during the act of the killing might seem problematic and as noted above, it is not always so easy to prove. However, with so many cases of maternal filicide happening on daily basis in the United States, our country should take a more serious stand on this issue. Using insanity defense as the only form of defense for the mother who killed their children as an outcome of mental illness has been proved time and time again to be insufficient and unjust. I believe that Americans should follow the steps the countries that recognized the importance of having a set statute for the crime of infanticide. This would be the only way to enable mothers who suffered from postpartum psychosis or were touched by any other severe mental illness to have the right to present evidence supporting their acute illness rather than be forced to claim insanity. Taking into consideration the level of education, research and resources that our society praises ourselves on, it is time to move away from the coarse-grained tools of insanity defense and develop a sophisticated understanding of mental illness and a statute that would justly represent it.

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