Child-Murder by Parents and Insanity

Phillip J. Resnick, M.D.

"The murder of one single child is made negligible by nothing, not even Hiroshima."

Pamela Hanford Johnson, "The Sleep of Reason"

I. Definition of Terms

Filicide refers to cases in which the killer is a parent of the victim.

Two distinct types of filicide are evident.

Filicide is operationally defined as the killing of a son or daughter older than 24 hours.

Neonaticide, is the killing of a newborn before this age.

Neonaticide is a separate entity, differing from filicide in the diagnoses, motives, and disposition of the murderer.

II. Postpartum Depression and Psychosis

Women are more likely to experience psychiatric illness after childbirth than at any other time in their life (Kendell et al, 1987).

In the month directly following child birth, women are 25 more times likely to become psychotic (Marks, 1996).

Postpartum depression affects between 10 and 22% of adult women before the infant's first birthday (Stowe et al., 2001).

Postpartum psychosis occurs in only one to two per 1000 births.

The risk of infanticide associated with untreated puerperal psychosis has been estimated to be as high as 4% (Altshuler et al., 1998; Cohen and Altshuler, 1997; Carter et al., 2001.)

The relapse rate for postpartum psychosis is close to 80% (Stowe et al, 2001; Altshuler et al., 1998; Cohen and

Altshuler, 1997; Nonacs and Cohen, 1998).

Mothers with postpartum depression are reluctant to share their upset emotions because they do not want others to think of them as a bad mother.

III. Characteristics of Neonaticide

The great bulk of neonaticides are committed simply because the child is not wanted due to the stigma of pregnancy out of wedlock.

Many girls feel ashamed of having engaged in sexual relations and are fearful that their pregnancies will disappoint and even humiliate their families.

Passivity is the single personality factor which most clearly separates women who commit neonaticide from those who obtain abortions.

Women who seek abortions are activists who recognize reality early and promptly attack the danger.

In contrast, women who commit neonaticide often deny that they are pregnant or assume that the child will be stillborn.

No advance preparations are made either for the care or the killing of the infant.

IV. Classification of Filicide by Motive

Classification of Filicides
by Apparent Motive

"Altruistic"	
Associated with suicide	38%
To relieve suffering	11
Acutely psychotic	21
Unwanted child	14
Fatal maltreatment	12
Spouse revenge	4
Total (N=131)	100%

V. Altruistic filicide

A. Associated with suicide.

These mothers see their children as an extension of themselves.

They do not want to leave a child motherless in a "cruel" world as seen through their depressed eyes.

B. Altruistic filicide to relieve victim suffering.

The suffering may be real or imagined.

These mothers may project their own unacceptable symptoms on to the child.

VI. "Acutely Psychotic" Filicide

This designation includes parents who killed under the influence of hallucinations, epilepsy, or delirium.

It does not include all of the psychotic child murders.

This is the weakest category because it contains those cases in which no comprehensible motive could be ascertained.

VII. "Unwanted Child" Filicide

These homicides were committed because the victim was not desired or was no longer wanted by the parent.

VIII. "Fatal Maltreatment" Filicide

A. These homicides are usually the result of a fatal "battered child syndrome."

Homicidal intent is lacking.

This is the most common cause of child homicide in the U.S.

B. Munchausen Syndrome by Proxy

Munchausen's disease by proxy, a syndrome where a caretaker causes illness in their child to gain attention, is a rare explanation for filicide (Lewis and Resnick, 1999).

IX. "Spouse Revenge" Filicide

This final category consists of parents who killed their offspring in a deliberate attempt to make their spouses suffer.

Proof or suspicion of infidelity is a common precipitant for spouse revenge filicide (Wilczynski, 1997).

X. History of Laws Regarding Infanticide

England passed Infanticide statutes in 1922 and 1938.

The law is premised on the belief that a woman who commits infanticide may do so because "the balance of her mind is disturbed by reason of her not having fully recovered from the effect of giving birth to the child" (Oberman, 1996)

Murder charges are reduced to manslaughter.

The 1922 Infanticide Act in England was restricted to "newly born" children in recognition of single women motivated by fear and a desire to conceal their birth.

The Infanticide Act of 1938 included children up til 12 months of age.

This was based on lactational insanity, now considered to have no medical basis.

In practice, women convicted of infanticide in England, do not show significant mental illness as technically required by the law (d'Orban, 1979).

As a result of the British Infanticide Act, women are more frequently placed on probation than imprisoned.

Twenty two nations limit the filicidal mother's culpability to the crime of infanticide, reducing murder to manslaughter (Meyer and Oberman, 2001).

Most of the countries that have specific laws on infanticide follow the British model and pertain to any infant killed by its mother within the first 12 months of life (Oberman, 1996).

American states have not adopted this model.

Some feminist groups criticize the Infanticide Acts for pathologizing childbirth.

XI. Response of the Criminal Justice System to Infanticide

Women who commit crimes are dichotomized into "good" and "bad," "madonnas" and "whores" (Heidensohn, 1985).

The stereotype of mothers is that they are supposed to act always in a loving, warm, selfless, and protective manner toward their children (Pagelow, 1984).

XII. General Principles of the Insanity Defense

A. Components of Insanity

Mental illness

Wrongfulness

Ability to refrain

B. McNaughtan test:

"To establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it that he did not know he was doing what was wrong... [and] whether the accused at the time of doing the act knew the difference between right and wrong...in respect to the very act with which he is charged."

Types of Wrongfulness

The illegality standard: The accused lack criminal responsibility if, as a result of a psychiatric disorder, they lacked the capacity to know that their acts violated the law;

Example: Delusional self-defense toward teenage child vs. delusional belief the child was evil.

The subjective moral standard: The accused lack criminal responsibility if, as a result of a psychiatric disorder, they personally believed they were morally justified in their behavior even though they may have known that their acts were illegal and/or contrary to public standards of morality;

Example: Altristic filicide associated with intended suicide.

The objective moral standard: The accused lack criminal responsibility if, as a result of a psychiatric disorder, they did not know that society considers their acts to be wrong (i.e. to know that their acts were contrary to public standards of morality).

Example: A mother kills a child at the command of God as a sacrafice to save human kind.

C. Evidence of knowledge of wrongfulness:

1. Efforts to avoid detection

Wearing gloves during a crime

Waiting until the cover of darkness

Taking the victim to an isolated place

Wearing a mask or disguise

Concealment of a weapon on the way to a crime

Falsifying documents (passport or gun permit)

Giving a false name

Threatening to kill witnesses if they go to the police

Giving a false alibi

2. Disposing of evidence

Wiping off fingerprints

Washing off blood

Discarding of a murder weapon

Burying a murder victim secretly

Destroying incriminating documents

3. Efforts to avoid apprehension

Fleeing from the crime scene

Fleeing from the police

Lying to the police

4. Statement by the defendant that he knew the act was wrong
at the time of the crime

5. Notifying the police that a crime was committed

6. Expression of remorse or guilt immediately after the crime

7. Rational alternative motive

8. Absence of delusions and hallucinations suggesting the crime was the right thing to do (negative evidence).

D. Assessment of ability to refrain:

1. Ability to defer versus refrain.

2. Ability to refrain from general versus specific instructions.

3. Ability to refrain due to mental illness versus concomitant intoxication or rage.

4. Magnitude, likelihood, and imminence of consequences for not obeying.

5. If the defendant was delusional, did he have alternative choices to address his problem.

For example, could he have gone to the police instead of shooting his imagined persecutor?

XIII. Insanity Defense in Filicide

A. Altruistic filicide

1. Extended suicide-filicide

Severe depression, even without psychotic features may distort thinking so that a mother believes her children will be better off in heaven with her.

In these cases, it is usually clear that the mother knows the nature and quality of her act and that

killing is legally wrong.

However, the mother often believes she is doing what is morally right for her child.

Jury instructions vary on the meaning of wrongfulness.

Some explicitly include moral wrongfulness.

Some do not specify either way; it is then left to the collective conscience of the jury.

If the insanity test is phrased "lacked substantial capacity" to understand the wrongfulness, that may give sufficient flexibility to support insanity in spite of the fact that the defendant knew intellectually the legal wrongfulness of her act.

The wording "appreciate" rather than "know" wrongfulness also may encompass a mother who believes what she is doing is morally right.

This would qualify her for not guilty by reason of insanity (NGRI).

2. Filicide to relieve suffering

The suffering may be real -- This is euthansia. It is not due to mental disease and would not qualify for insanity.

The perception of a child suffering may be due to a delusion by the parent.

The perceived suffering may be based upon a false belief that the child is possessed by Satan, being forced into white slavery, or being tortured by imaginary demons.

Cacodemonomania is a delusion of being possessed by a demon.

Killing the child may be perceived as morally right because it is the only way to protect the child from severe suffering or to save the soul of the child.

B. Acutely psychotic filicide

If the act is done during the course of an epileptic seizure

or delirium, the parent may not know the nature and quality of their act.

Filicide during a seizure may lead to an automatism defense since the act is not conscious or voluntary.

In assessing command hallucinations, the examiner must always consider malingering.

Command hallucinations are more likely to be obeyed if the voice is familiar and if there is a hallucination related delusion.

Responding to a command hallucination by God may be perceived as right.

In addition, the parent may feel unable to refrain because the command is from God.

A command hallucination from Satan to kill a child may not be perceived as right, but the parent may not feel able to refrain due to a belief in some severe consequences.

In assessing whether the parent could refrain, one would have to consider whether the defendant did disobey previous commands and the magnitude of harm the parent expected if she failed to obey.

C. Fatal maltreatment filicide

Parental abuse and neglect rarely involve a major mental disease.

The parent is more likely to have a personality disorder.

However, it is possible for single mother to be so depressed that she neglects the care of the child.

Although Munchausen syndrome by proxy is a factitious disorder, it is not likely to serve as a mental disease for purposes of an insanity defense.

Furthermore, the acts are conscious, voluntary, and there is no delusional distortion of reality.

D. Unwanted child filicide

There is ordinarily no basis for an NGRI defense.

E. Spouse revenge filicide

Although borderline personality and dependent personality disorder are common diagnoses, these do not qualify as diseases for purposes of insanity.

The motive is rational and not based on psychosis.

Careful examination is required if there are elements of both "spouse revenge" and "altruistic extended suicide" in a single case.

F. Neonaticide

Most neonaticides fit into the unwanted child category.

Major mental illness is infrequent.

If a woman conceals her pregnancy, delivers her baby alone, and disposes of the baby secretly, it creates a strong inference that she knew the nature, quality, and wrongfulness of her act.

On the other hand, if a woman is found with her baby in a toilet and she made no effort to conceal the birth, it lends credence to her having had an altered mental state.

The altered mental state may be due to dissociation, shock, or acute blood loss.

XIV. Empirical Data on the Insanity Defense in Filicide

Women who kill their children elicit more empathy by jurors in raising an insanity defense than other types of murderers (Perlin, 1994).

Nonetheless, an insanity defense based on postpartum depression is not often successful in the United States (Reuters, 2001; Meyer and Oberman, 2001.).

A. Insanity Studies of Filicide

1. A Michigan study examined 20 women who were recommended and subsequently adjudicated NGRI for murdering their children between 1976 and 1989 (Holden, Burland, and Lemmen, 1996).

They were compared to 8 women adjudicated criminally responsible during the same period.

Mothers in the NGRI group were significantly less likely to have other children who were not victims, significantly more likely to make a suicide attempt, and significantly more likely to have experienced hallucinations, command hallucinations, or delusions.

The majority were married, their victims tended not to be newborns, a number had multiple victims, the majority attempted suicide at the time of the offense, very few attempted to conceal their crime, and none committed the murder out of motives of unwanted child, fatal maltreatment, or spouse revenge.

2. In the total group of Finland mothers, 63% were regarded as not legally responsible for their act due to their insanity, 29% were not fully responsible and thus were given a reduced sentence, and only 6% were deemed legally responsible and given a full sentence (Haapasalo and Petäjä, 1999).

    Those found not legally responsible included 73% of the filicides and 40% of the neonaticides.

Successful insanity defenses in neonaticide are rare in the U.S.

XV. Conclusion

Each infanticide is tragic, not only for the infant, but also for the ongoing effect which the crime has on the life of the parent.

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Background for Videotape FV 11A (6 min)

Filicide Associated with Suicide

This defendant is a 25 year old married woman who is charged with the aggravated murder of her two children, three year old Julie, and her three week old son.

The defendant reported that she became depressed in the last month of her pregnancy. The depression was manifested by insomnia, anorexia, and weight loss.

After the birth of her baby she was unable to engage her son emotionally. The depression progressed so that she was barely able to complete the tasks necessary for child care.

She explains on the videotape her thinking at the time of the killing. She believed it would be best for her children to "rest in peace" with her after her suicide.

Please form an opinion on her sanity at the time of the act using the following test.

> Ohio Statute (1990)
>
> A person is "not guilty by reason of insanity" if he proves that at the time of the offense, he did not know, as a result of a severe mental disease or defect, the wrongfulness of his acts.