

**WOMEN WHO KILL THEIR CHILDREN: CASE STUDY AND  
CONCLUSIONS CONCERNING THE DIFFERENCES IN THE FALL  
FROM MATERNAL GRACE BY KHOUA HER AND ANDREA YATES**

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I. INTRODUCTION

The disparate treatment of white, middle-class women and poor women of color in the criminal justice system and contemporary popular discourse has been well documented.<sup>1</sup> However, less attention has been given to how this harsher treatment of poor women of color manifests itself in the media coverage of cases of infanticide. This paper aims to begin to fill this gap in the literature by exploring the roles of race and culture, class, marital status, and biology in the media's treatment of two infanticidal women, Khoua Her and Andrea Yates. On September 3, 1998, in St. Paul, Minnesota, Khoua Her, a Hmong immigrant who had been living in the United States for several years,<sup>2</sup> strangled her six children and attempted suicide before calling 911 to report the incident.<sup>3</sup> At the time of the strangling, Her was a twenty-four-year-old working mother estranged from her husband.<sup>4</sup> She was ultimately sentenced to fifty years imprisonment under the terms of a plea bargain that required her to plead guilty to six counts of intentional second-degree murder for the killing of her children.<sup>5</sup> On June 20, 2001, in Clear Lake, Texas, Yates, a thirty-six-year-old white, middle-class, fundamentalist Christian homemaker in a traditional marriage, drowned her five children in the bath tub before calling 911 and her husband to report her actions. On August 8, 2001, Yates pleaded not guilty by reason of insanity to two

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1. See generally Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 555 (arguing that the failure of black single mothers to comply with categories imposed by a racist, sexist, and class-based society results in their condemnation); Dorothy E. Roberts, *Motherhood and Crime*, 79 IOWA L. REV. 95, 105-109 (1993) (arguing that race and gender structure the interpretation of the severity of maternal crime and the nature of sentences received) [hereinafter Roberts, *Motherhood*]; Anna L. Tsing, *Monster Stories: Women Charged With Perinatal Endangerment*, in UNCERTAIN TERMS: NEGOTIATING GENDER IN AMERICAN CULTURE 282 (Faye Ginsburg & Anna L. Tsing eds., 1990) (outlining how the approach of courts to mothers who have endangered newborns during unassisted births, varies according to their race or class).

2. Her had been in the United States since 1988. See Lourdes Medrano Leslie & Curt Brown, *Mother: Killing Kids Saved Them From Suffering*, STAR TRIB. (Minneapolis-St. Paul), Jan. 9, 1999, at 1A [hereinafter *Mother: Killing Kids*].

3. *Id.*

4. *Id.*

5. *Mother Gets Fifty Years for Killing Six Children*, TIMES-PICAYUNE (New Orleans), Dec. 1, 1998, at A8.

charges of capital murder for the deaths of two of her sons and her daughter.<sup>6</sup> To support the insanity plea, Yates's lawyers claimed that she was suffering from postpartum depression at the time of the murders.<sup>7</sup> She was determined competent to stand trial,<sup>8</sup> and on March 12, 2002 was found guilty of the two capital murder charges.<sup>9</sup> Three days later, on March 15, the jury deliberated for approximately 35 minutes before recommending a sentence of life in prison instead of the death penalty,<sup>10</sup> and Yates was formally sentenced on March 18, 2002.<sup>11</sup> Yates will be eligible for parole in 2041,<sup>12</sup> and her lawyers have submitted notice of appeal.<sup>13</sup> Both the reduction in penalty and the lodging of the appeal are indicative of a general belief that Yates deserves some degree of leniency in the punishment of her crimes.

Apart from the formal legal process, both women's acts have been subject to a precursory "trial by media." This article will trace the different explanatory narratives that emerge in these media trials, with some brief analysis of the post-verdict media treatment to which Yates has been subject. Part II will discuss what constitutes "valued motherhood" in this discourse, and trace the respective "worth" of the mothering done by Her and Yates as it is presented in the media accounts of their crimes. Part III will outline the deployment of images of "mad" and "bad" mothers in infanticide cases, and describe how the image of a "mad" mother is more readily mobilized by the media to explain the actions of white mothers who kill, than those of poor women of color. Finally, Part IV will consider the social, legal, and political functions served by labeling white women "mad" and women of color "bad" in the treatment of infanticidal women. In undertaking such an analysis, this article follows the line of a number of postmodern accounts of motherhood and crime which highlight how society generally delivers more punitive treatment to those women who do not meet the ideal norms of motherhood, including poor women of color.<sup>14</sup> However, by fo-

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6. Note that Yates drowned all five of her children; however "one of the counts lists Noah and John as two victims killed during the commission of the same crime, to qualify for capital punishment. The second count lists the death of Mary as a child under age six. By not listing all of the children in a single count, prosecutors avoid the possibility that an acquittal could void all of the charges." Pam Easton, *Mom Found Fit for Trial in Drownings*, CHI. TRIB., Sept. 23, 2001, at 19.

7. *Therapist: Texas Mom Not Ready for Trial*, NEWSDAY, Sept. 20, 2001, at A30.

8. Easton, *supra* note 6; Bruce Nichols, *Yates Found Competent for Trial*, DALLAS MORNING NEWS, Sept. 23, 2001, at 42A [hereinafter Nichols, *Yates Found Competent*].

9. Bill Bickel, *Andrea Yates*, at <http://crime.about.com/library/blfiles/blandreayates.htm> (last visited Oct. 6, 2002).

10. Carol Christian, *Jury Gives Yates Life Term with No Parole for Forty Years*, HOUS. CHRON., Mar. 16, 2002, available at <http://www.chron.com/cs/CDA/story.hts/special/drownings/1298197> (last visited Oct. 6, 2002).

11. *Yates Family Points Fingers* (Mar. 18, 2002), at <http://www.cbsnews.com/stories/2002/03/14/national/main503693.shtml> (last visited Oct. 6, 2002).

12. *Id.*

13. Lisa Teachey, *Lawyers Submit Notice of Appeal in Yates's Murder Conviction Case*, HOUS. CHRON., Apr. 4, 2002, available at <http://www.chron.com/cs/CDA/story.hts/special/drownings/1339777> (last visited Sept. 26, 2002).

14. See ALLISON MORRIS, *WOMEN, CRIME AND CRIMINAL JUSTICE* 92 (1987) (noting the extrajudicial comments of Scottish judges which indicate that women who are not good mothers are more likely to be sent to prison than those considered to be appropriately performing the maternal role); ANNE WORRALL, *OFFENDING WOMEN: FEMALE LAWBREAKERS AND THE CRIMINAL JUSTICE SYSTEM* 88

cusing on how this pattern of treatment plays out in the media in the context of infanticide, where technically *all* of the offenders have drastically failed to meet the ideal maternal myth because they have killed their children and therefore theoretically should *all* be subject to similar levels of punitive treatment because they are equally “bad,” it is hoped that the race/culture/class bases for disparate treatment will be brought into even sharper relief.

## II. THE MYTH OF MOTHERHOOD

### A. Some Moms Are Better Than Others

It is axiomatic that when a mother kills her child(ren) she offends societal myths of maternal grace and “mother love.”<sup>15</sup> This inability to reconcile infanticide with images of motherhood is a common theme of newspaper coverage of infanticidal women.<sup>16</sup> Such comments tend to associate motherhood with love (“loving mothers don’t take the lives of their own children”)<sup>17</sup> and acts with inherent character (“Ms. Yates’s act was not a mere variant of maternal behavior; she was nature’s aberration”)<sup>18</sup> with unquestioning ease. The result of these two elisions is that the act of killing one’s child is considered so antithetical to the behavioral norms of motherhood as to justify the “demotion” of status from “mother” to the prematernal state of “woman.” For example, one newspaper reader in arguing that Yates should never be released prefaced his comments with a reference to Yates as “[t]he woman (not a ‘mother,’ by my reckoning)[.]”<sup>19</sup>

However, the fall from maternal grace is not the same for all infanticidal mothers. This disparate treatment of women in infanticide cases has been well noted.<sup>20</sup> The disparate treatment has been primarily attributed to whether the mother is classified as “mad” (resulting in more lenient treatment) or “bad” (resulting in harsher treatment).<sup>21</sup> However, it is necessary to go back a step in this

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(1990) (noting the greater dispensability of women who do not meet the ideal norms of motherhood); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1436 (1991) (noting that “society is much more willing to condone the punishment of poor women of color who fail to meet the middle-class ideal of motherhood”) [hereinafter Roberts, *Punishing Drug Addicts*].

15. Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 43 (1996).

16. See Todd Lighty & Jeremy Manier, *Society Faces the Unfathomable: Experts Find Women Are Killing Their Children More Often Than Thought*, CHI. TRIB., Mar. 9, 1999, at 1.

17. Mike Tolson, *Unequal Justice: Criminal Punishment Widely Disparate in Maternal Filicide Cases Such as Yates*, HOUS. CHRON., Sept. 10, 2001, at 1.

18. Sally Satel, *The Newest Feminist Icon—A Killer Mom*, WALL ST. J., Sept. 11, 2001, at A26.

19. M. Hawkins, *Outlook, Viewpoints*, HOUS. CHRON., Sept. 2, 2001, at 3.

20. See Tolson, *supra* note 17 (stating, “Among women who kill their children for no apparent reason, what really distinguishes one case from another is not the way they did it but the way they are treated by the criminal justice system”). See also Brenda Barton, *When Murdering Hands Rock the Cradle: An Overview of America’s Incoherent Treatment of Infanticidal Mothers*, 51 SMU L. REV. 591, 606 (1998). See generally Norman J. Finkel et al., *Commonsense Judgments of Infanticide: Murder, Manslaughter, Madness or Miscellaneous?*, 6 PSYCHOL. PUB. POL’Y & L. 1113 (2000); Karin Lewicki, *Can You Forgive Her?: Legal Ambivalence Toward Infanticide*, 8 S. CAL. INTERDISC. L.J. 683 (1999).

21. See Oberman, *supra* note 15, at 42-49; Ania Wilczynski, *Images of Women Who Kill Their Infants: The Mad and the Bad*, 2 WOMEN & CRIM. JUST. 71, 73 (1991).

analysis, and ask whether the “mad” or “bad” account of criminal mothers is mobilized more readily with respect to some mothers than others, in order to more closely examine the role of the media in mobilizing these images. A useful starting point for this exercise is a general recognition that not all criminal mothers are subject to the same treatment by the criminal justice system or media. Instead, more punitive treatment is delivered to those women who do not meet the ideal norms of “motherhood.”<sup>22</sup>

This disparate coverage and treatment of criminal mothers stems from the fact that the concept of “motherhood” is neither innocuous nor universal, but pretends to be both. Motherhood is not innocuous, as it is given meaning by the core features of patriarchal ideology.<sup>23</sup> It is not universal, because there are essentially three main variables which determine the value that attaches to motherhood: race,<sup>24</sup> class,<sup>25</sup> and the role that the father has in relation to both the child(ren) and mother.<sup>26</sup> The variables of race and class intersect in such a way that the ideal norms of motherhood come to reflect the mothering done by white, middle-class women.<sup>27</sup> This ideological privileging divides mothers into essentially two camps: the “Good Mothers” (white middle-class women) and “out-group” mothers (women of color, poor women, lesbian women) who cannot by definition be Good Mothers, and can, at best, hope to be Good Black Mothers or Good Asian Mothers.<sup>28</sup> Single mothers have also been described as belonging in the less-valued group.<sup>29</sup>

Another measure of motherhood that is related to the variable of race and culture, but is less often discussed, is religion. Generally, in Western culture, a Christian mother will have a higher claim to motherhood than a non-Christian mother because the former is more readily seen as embodying the “Christian” virtues of benevolence, forgiveness, and tolerance—virtues that are also perceived to be the hallmarks of good mothering. However, the extent to which religion determines the value of motherhood is ultimately mediated by considerations of race and culture. For example, in popular discourse the Christian identity of an immigrant woman of color does not automatically make her as

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22. See generally Roberts, *Motherhood*, *supra* note 1; Roberts, *Punishing Drug Addicts*, *supra* note 14.

23. Martha Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 289-90 (1991) [hereinafter Fineman, *Images of Mothers*]. See generally Martha Fineman, *The Neutered Mother*, 46 U. MIAMI L. REV. 653, 662 (1992) (discussing how patriarchy shapes the family context and the role of the mother within this context).

24. Roberts, *Motherhood*, *supra* note 1, at 105 (stating that “societal concepts of race and class determine the meaning of maternal selflessness”).

25. *Id.*

26. ADRIENNE RICH, *OF WOMAN BORN* 42 (1976) (describing how “[m]otherhood is ‘sacred’ so long as its offspring are ‘legitimate’—that is, as long as the child bears the name of a father who legally controls the mother”) [hereinafter Rich, *Of Women Born*].

27. Roberts, *Motherhood*, *supra* note 1, at 105.

28. Lisa C. Ikemoto, *The Code of Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of Law*, 53 OHIO ST. L.J. 1205, 1305 (1992).

29. ADRIENNE RICH, *Motherhood in Bondage*, in *ON LIES, SECRETS, AND SILENCE: SELECTED PROSE, 1966-1978* 195, 196 (1979) (describing how unmarried, welfare, and lesbian mothers are not valued by society) [hereinafter Rich, *Motherhood in Bondage*].

“good” a mother as a white Christian woman.<sup>30</sup> This is because the immigrant mother is more susceptible to arguments about how Christian she really is, that is, the extent to which her exposure to Christianity has successfully civilized her and eradicated her “otherness.”<sup>31</sup>

Finally, the societal value placed on motherhood also depends on the relationship of the father with the mother and child.<sup>32</sup> This third variable functions such that value only attaches to motherhood if there is a father who enjoys legal control over mother and child.<sup>33</sup> This version of motherhood emphasizes paternal presence and control. Therefore, in this version, single mothers have less entitlement to motherhood than their married counterparts.<sup>34</sup>

The permutations of these variables in relation to this present case study are clear. In popular discourse, Andrea Yates as a white, middle-class mother with a supportive husband enjoys a higher moral claim to motherhood than Khoua Her, an immigrant mother with an estranged husband. The factors that support these differential claims were made explicit in the media portrayals of these two women and will be discussed below.

## B. Her vs. Yates in the Motherhood Stakes

From the perspective of media reports, Her “fails” on all of the indicia of good motherhood: she is a racial and cultural other, she is poor, and she is a single mother. In relation to the first characteristic, Her’s life story is one that is told in the media through the lens of culture and “otherness.” Media accounts make it patently clear that Her was not originally from the United States. Her’s outsider status is reinforced through the numerous references to the fact that she was a Hmong immigrant, who had spent eight years in the Ban Vinai refugee camp in Thailand prior to coming to the United States.<sup>35</sup> The repeated descriptions of Her’s experience in this refugee camp also have an alien and primitive quality that is designed to set her apart from the Western world which she now inhabits. For example, reports refer to her repeated rapes (Her’s own lawyer comments that “[s]he was tortured her whole life. . . . She was treated worse than you would treat an animal or a slave”) and her forced child marriage (in this camp she met her husband, Hang, whom she was “forced” to marry at a young age).<sup>36</sup>

Much is also made of the fact that Her’s first pregnancy was at age thirteen; for example, Deu Yang, a parenting nurse, is quoted as saying, “My first impres-

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30. This theme was the subject of discussions and e-mail correspondence with Professor Ratna Kapur during Fall Semester, 2002, while I was a student in the Feminist Legal Theory class taught by Professor Kapur at New York University School of Law.

31. *Id.*

32. Fineman, *Images of Mothers*, *supra* note 23, at 289-90.

33. RICH, *Of Women Born*, *supra* note 26, at 42.

34. See RICH, *Motherhood in Bondage*, *supra* note 29 (regarding society’s view of unmarried mothers); Fineman, *Images of Mothers*, *supra* note 23, at 285-89 (discussing how single mothers are viewed as “pathological” creatures).

35. *Mother: Killing Kids*, *supra* note 2; Mitchell Zuckoff, *Community Left Grieving at Death of Six Children*, BOSTON GLOBE, Sept. 6, 1998, at A1.

36. *Id.*

sion when I saw her was: Wow, she's so young and she has a baby already."<sup>37</sup> It was also stated that Her "became pregnant at age 12, and by 19 she had six children."<sup>38</sup> A number of articles effectively defined Her by this status as a young mother: "the 24-year-old-woman, a mother since she was 13[.]"<sup>39</sup> Combined with reference to her large number of children (six),<sup>40</sup> these allusions draw implicitly on the stereotype of women of color as lacking control over their sexuality and "wantonly" having a succession of children.<sup>41</sup> The fact that Her continued to have children at such a young age while in the United States is implicitly presented as further evidence of her outsider status; her experience of living in Western culture has not sufficiently civilized her to conform to its birthing and marital practices. The following letter to the editor expresses disconcert with the fact that Hmong culture continued to be pervasive in Her's life, despite her presence in the United States:

Is culture always good? A 13-year-old girl marries an 18-year-old boy. She has her first child before they come to the United States. Once here she has five more children. This girl was pregnant virtually every year that she was a teenager.... In Minnesota it is against the law to have sex with a child under the age of 16, even if the child consents to the act. You can't marry a child under the age of 16. . . . We are told this marriage pattern is part of Hmong culture. Well, slavery was once part of U.S. culture, female genital mutilation is part of several cultures and child marriage with many children is part of many cultures. Just because something is a part of a culture does not mean it is good or acceptable. Cultural sensitivity should not include something clearly wrong. No teenager should have to spend her teen years bearing and caring for children.<sup>42</sup>

The fact that Her (like Yates), by being a Christian, *did* act consistently with one important aspect of majoritarian culture in the United States, was insufficient to overcome her position as an outsider. In fact, Her's Christian identity was scarcely reported in the media.<sup>43</sup> When religion was discussed, the reference was to Her's detriment. For example, the prosecutor stated to the media: "I know that she did this for religious reasons.... But to me, that doesn't have anything to do with mental state. If you have a mental state where you can't control yourself without some medication, we treat that differently from someone who decides to do something for religious reasons."<sup>44</sup> Moreover, the prosecutor's assertion that Her acted with religious motivation is surprising because it is not based

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37. Nurse Deu Yang visited the couple's apartment to teach parenting skills as part of a health education program; see Lourdes Medrano Leslie & Curt Brown, *A Young Mother Accused of Murder*, STAR TRIB. (Minneapolis-St. Paul), Nov. 15, 1998, at 1A [hereinafter *A Young Mother*].

38. *Mother Who Killed Her Children Gets Fifty Years*, MILWAUKEE J. SENTINEL, Jan. 9, 1999, at 4.

39. Zuckoff, *supra* note 35.

40. *Mother, Twenty-Four, Accused of Killing Six Kids Was No Stranger to Police*, HOUS. CHRON., Sept. 5, 1998, at 14 [hereinafter *Mother, Twenty-Four, Accused*] (stating, "When her babies started to arrive, they came almost every year").

41. Charles L. Briggs & Clara Mantini-Briggs, *Bad Mothers and the Threat to Civil Society: Race, Cultural Reasoning, and the Institutionalization of Social Inequality in a Venezuelan Infanticide Trial*, 25 LAW & SOC. INQUIRY 299, 337 (2000).

42. Rebecca Korn, *Letters from Readers*, STAR TRIB. (Minneapolis-St. Paul), Sept. 10, 1998, at 24A.

43. For example, only one article made reference to Her's Christianity, quoting a co-worker's description of Her as "a very strong Christian." Zuckoff, *supra* note 35.

44. Tolson, *supra* note 17.

on her own explanations for the actions. Her's repeated explanation was that she killed the children out of love:<sup>45</sup> "I loved my children the most.... If I died, then nobody will love my children."<sup>46</sup> While altruistic murder-suicide may be given cultural content<sup>47</sup> or religio-cultural content in some situations, there is no real suggestion that this was the legal strategy of Her and her lawyers. In light of this, the prosecutor's unfounded resort to religious explanations may be implicitly founded on an assumption that the actions of women like Her cannot be based on autonomous decisions, but are instead referable to the binding forces of religion and culture of which they are victims.<sup>48</sup>

Her's cultural otherness and difference were also reinforced by the few reports that exoticized Her as an Asian woman. For example, one report described Her's 911 call in the following terms: "Khoua Her wore a traditional silk gown, her *black hair flowing* over its blood-red hues, as she dialed 911 to report that she had just killed her three sons and three daughters. To her *elegant appare l . . .* [she] . . . added a gruesome accessory, a length of cord wrapped around her own neck"<sup>49</sup> (emphasis added). This exoticization is inconsistent with the more numerous references to the fact that Her was a poor mother whose poverty and seemingly listless existence were primarily conveyed through the description of her home: a "beige stucco apartment" in the McDonough Homes housing project.<sup>50</sup>

The relationship of Her's husband vis-à-vis Her and their children also diminished her claims to valued motherhood. Her was a single mother,<sup>51</sup> a pathological<sup>52</sup> creature in popular discourse. Although the children were "legitimate" in the sense that they bore her husband's name, under the patriarchal model of motherhood, Her lessened her status as "mother" when she consciously prevented her husband from controlling her (for example, on June 9, 1998, Her had "an order of protection issued against Tou Hang, prohibiting contact for one year")<sup>53</sup> and the children. This act of gaining custody of the children prevented Hang from "holding their children hostage" to ensure Her's vulnerability.<sup>54</sup> The notion that the killing of the children is a proprietorial wrong against the father

45. Lourdes Medrano Leslie & Curt Brown, *Mother Guilty of Choking Six*, STAR TRIB. (Minneapolis-St. Paul), Dec. 1, 1998, at 1A [hereinafter *Mother Guilty*].

46. *Id.*

47. See, e.g., Leti Volpp, *(Mis)identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57, 84-91 (1994) (discussing *People v. Helen Wu*, 286 Cal. Rptr. 868 (Cal. Ct. App. 1991)).

48. Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1187 (2001).

49. Zuckoff, *supra* note 35. See also Heron Marquez Estrada, *St. Paul Mother Charged with Murder of Six Children*, STAR TRIB. (Minneapolis-St. Paul), Sept. 9, 1998, at 1A (in which Sheila Hoff, among the first people on the scene, described in her report that Her was wearing a "red ceremonial type dress").

50. Jon Jeter, *In Disintegration of a Marriage, Six Children Are Strangled*, WASH. POST, Sept. 6, 1998, at A2.

51. See, e.g., Chris Graves et al., *A Father's Pain*, STAR TRIB. (Minneapolis-St. Paul), Sept. 5, 1998, at 1A [hereinafter *Graves, A Father's Pain*]; Mitchell Zuckoff, *Mother Charged in Killings*, BOSTON GLOBE, Sept. 9, 1998, at A4.

52. Fineman, *Images of Mothers*, *supra* note 23, at 285-289.

53. *A Young Mother*, *supra* note 37.

54. Roberts, *Motherhood*, *supra* note 1, at 102.

and therefore deserving of severe punishment is encapsulated in Hang's statement: "She killed all six of *my* children and I would like to ask: Does the law of this country say only 50 years for killing six people?"<sup>55</sup>

In addition, the comments of other Hmong mothers in the story (Her's mother, Pla Vang, and Her's mother-in-law, Pang Yang) rather than illuminating how the virtues of motherhood are not culturally determined, are presented by the media in such a way as to highlight Her's failure to be sufficiently "motherly" even within the perception of her own culture. This failure is illuminated by Her's mother's contrasting display of the virtues of devoted and supportive motherhood: "in my heart, I would think she does not have the capacity to kill her children, but the child is mine, so I still love her."<sup>56</sup> Pang Yang, the children's paternal grandmother, similarly expresses appropriate maternal forgiveness, patience, and wisdom when she states that "I have a lot of anger that all my grandchildren are dead, but I also have a lot of love for her. . . . But it is clear, she did not love herself."<sup>57</sup>

The media's construction of Yates as a more valued mother is striking in contrast. The fact that Yates is a white mother is notable in its omission from reports on the killings. Further, the references to Yates's former profession as a nurse,<sup>58</sup> and accounts of how she cared for her father in his final stages of illness,<sup>59</sup> suggest that she possesses the requisite "caring" qualifications for motherhood. The fact that Yates and her husband are fundamentalist Christians<sup>60</sup> further suggests that there is some religious foundation for Yates's possession of these virtues of patience, selflessness, and benevolence. Moreover, the fact that Yates is a *fundamentalist* Christian suggests that she is a particularly devoted and righteous Christian, in contrast to Her, whose cultural influences may have thwarted the full civilizing effect of the Christian message.

These "caring" qualities are presented as manifesting themselves in Yates's attention to the educational welfare of her children, as in the description of Yates as a "devoted, home-schooling mother."<sup>61</sup> The home-schooling is not the only way in which Yates is portrayed as being central to her children's lives and their home environment. The description of Yates as a homemaker, and the fact that she and her husband are recent occupants of a "new house"<sup>62</sup> (as distinct from the public housing project inhabited by Her) give the impression that Yates's sense of self is very much constituted by the performance of maternal and housekeeping duties in a pleasant home. Interestingly, in contrast to Her, the fact that Yates and her husband planned to have "as many babies as nature will

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55. *Mother Guilty*, *supra* note 45.

56. *Id.*

57. *Id.*

58. *E.g.*, Julie Cart, *Houston Mother Ruled Competent to Stand Trial*, L.A. TIMES, Sept. 23, 2001, at A34; *Therapist: Texas Mom Not Ready For Trial*, *supra* note 7.

59. Margery Eagan, *Yates Shatters Maternal Myth of Competence*, BOSTON HERALD, Sept. 11, 2001, at 4.

60. *See, e.g.*, Kathleen Parker, *Don't Give Dads the Brush-Off*, CHI. TRIB., Aug. 22, 2001, at 23.

61. Description by Russell Yates, in Lee Hancock, *In a House of Death, Husband Sorts Out Life*, DALLAS MORNING NEWS, Aug. 30, 2001, at 1A.

62. Jim Yardley, *Medical Records Tell a Story of Mother's Deep Depression*, ORLANDO SENTINEL, Sept. 9, 2001, at A4.

allow”<sup>63</sup> was portrayed negatively in the media, not because it represented reckless birth practices per se, but because of the potential danger that further births posed to Yates in light of her psychotic depression.<sup>64</sup>

However, it is primarily through her husband that Yates’s experience of motherhood acquires its value. The paternal presence in this family structure is clearly omnipotent. In some accounts, Yates’s identity is considered solely in relation to her status as a married woman: “Mrs. Yates, the wife of a NASA engineer[.]”<sup>65</sup> The plethoric references to the fact that Russell Yates is a “NASA computer engineer”<sup>66</sup> further the impression that this is an economically sound, respectable, middle-class family. Moreover, Russell Yates has on numerous occasions expressly conferred “Good Mother” status on his wife. In the immediate aftermath of the events, he publicly stated, “She loved our kids. Anybody that knew her knew that.”<sup>67</sup> This avowed support continues to be the “most important thing” for Russell Yates.<sup>68</sup> In addition, the fact that Russell Yates continues to refer to the children as “our” children (for example, the website he established, [www.yateskids.org](http://www.yateskids.org), is dedicated to “honor[ing] the memory of *our* children, Noah, John, Paul, Luke, and Mary, who died tragically on June 20, 2001[.]”<sup>69</sup> (emphasis added) means that the line of parentage between Yates and the children remains intact in the eyes of the father and subsequently those privy to his message. The inclusion of family Christmas photos from 1996 until the present on the website reinforces this notion of a well-parented, intimately connected, nuclear family.<sup>70</sup>

This discussion of media reports tends to provide further evidence for what we already have seen: poor immigrants and women of color (such as Her) are considered “lesser” mothers than white, middle-class mothers (such as Yates). The punitive treatment of Her is consistent with postmodern accounts of motherhood and crime, which describe how the failure of women like Her to meet the purportedly universal standard of motherhood results in harsher treatment because American society is more willing to condemn these “dispensable”<sup>71</sup> women.<sup>72</sup> In effect, the “double jeopardy” (in breaking both the criminal law and societal expectations)<sup>73</sup> to which women offenders are subject, becomes a “triple jeopardy” for poor women of color because their precrime status already constitutes an inherent offense to societal norms.

63. Laura Parker, ‘Psychotic,’ *But Is Andrea Yates Legally Insane?*, USA TODAY, Sept. 11, 2001, at A1.

64. See, e.g., *id.* (quoting Yates’s psychiatrist as saying, “Patient and husband plan to have as many babies as nature will allow! This will surely guarantee further psychotic depression.”).

65. Bruce Nichols, *High-Profile Doctor Hired by Yates Prosecutors*, DALLAS MORNING NEWS, Oct. 31, 2001, at 19A [hereinafter Nichols, *High-Profile Doctor*].

66. E.g., Cart, *supra* note 58; Michelle McCalope, *Doctor: Texas Mother Saw ‘Satan,’* WASH. POST, Sept. 20, 2001, at A28; *Therapist: Texas Mom Not Ready For Trial*, *supra* note 7.

67. *Texas Woman Faces Capital Murder Charges in Children’s Drowning Deaths*, at <http://www8.cnn.com/SPECIALS/2001/yates/stories/overview.html> (last visited Sept. 27, 2002).

68. Hancock, *supra* note 61.

69. Russell Yates, *Yates Kids Home Page*, at <http://www.yateskids.org> (last visited Oct. 6, 2002).

70. See, *Id.*

71. Roberts, *Motherhood*, *supra* note 1, at 105-106.

72. Worrall, *supra* note 14, at 88; Roberts, *Punishing Drug Addicts*, *supra* note 14, at 1436.

73. VIRGINIA B. MORRIS, DOUBLE JEOPARDY: WOMEN WHO KILL IN VICTORIAN FICTION 8-9 (1990).

But what this paper has not yet addressed is how “Good Mothers,” like Yates, manage to receive more lenient media treatment in *infanticide* cases; it would appear that by the very act of killing their children they have caused the greatest offense to the maternal myth possible, and certainly an offense greater than merely being poor or a person of color. Indeed, where does a higher moral claim to motherhood take a mother who kills her child? Surely, white, middle-class mothers who kill their children are more disruptive to the myth of motherhood of which they are the “poster girls” than “out-group” mothers of whom society had lower expectations anyway. Should not this gross insider betrayal warrant the full wrath of the community, media, and the law? The reason why this does not result is that punishment is subsidiary to the greater goal of maintaining the status quo myth of white, middle-class motherhood. The third section of this paper identifies how the two legal and social narratives of explanation for infanticide (that a mother was “mad” or “bad”) are differentially employed in order to preserve this myth and also identifies other functions served by this differential application of the labels of “mad” and “bad.” However, first it is necessary to outline how the concepts of “mad” and “bad” mothers are deployed in infanticide cases. This paper will explore specifically how this dichotomy was set up in the pretrial media treatment of Her and Yates and in the coverage after the guilty verdict was rendered in the Yates trial.

### III. MAD MOTHERS, BAD MOTHERS, AND INFANTICIDE

#### A. What it Means to be Labeled Either “Mad” or “Bad”

There is a general pattern of “leniency” with respect to infanticidal mothers.<sup>74</sup> However, within this general pattern of leniency, there are palpable differences in sentencing outcomes, depending on whether the defendant is classified as a “mad” or “bad” mother.<sup>75</sup> This bifurcation is a manifestation of the general tendency to categorize criminal women as either afflicted by their hormones or by evil.<sup>76</sup> Although invocation of “madness” as an explanation for infanticide does not guarantee exoneration,<sup>77</sup> on the whole women who are perceived as being pathological are punished less severely than those who are deemed “evil.”<sup>78</sup> The definition of the latter type of mother appears to be met if a mother is “depraved,” that is, “ruthless, selfish, cold, callous, neglectful of [her] children or domestic responsibilities, violent or promiscuous.”<sup>79</sup>

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74. Oberman, *supra* note 15, at 42.

75. *Id.* at 43.

76. Wilczynski, *supra* note 21, at 74.

77. For example, one study indicates that in the past five years, over twenty women facing infanticide charges have introduced evidence alleging that they were suffering from postpartum depression or postpartum psychosis. Of these twenty women, about half of the women have been acquitted, one quarter have received sentences ranging from eight to twenty years in prison to life in prison, and one quarter have received light sentences, even probation. Gail Diane Cox, *Postpartum Defense: No Sure Thing*, NAT'L L.J., Dec. 5, 1988, at 3.

78. See, e.g., Oberman, *supra* note 15, at 43; Wilczynski, *supra* note 21, at 74.

79. Wilczynski, *supra* note 21, at 74.

However, the categories of “mad” and “bad” are not immutable.<sup>80</sup> The concept of madness is capable of multiple meanings in at least two senses. First, the concept of madness with respect to infanticidal women varies according to different jurisdictions. A number of countries have specific infanticide statutes or provisions which vary in the extent to which they create a presumptive link between childbirth and insanity.<sup>81</sup> For example, the English Infanticide Act of 1938 creates<sup>82</sup> this link by providing that:

Where a woman by any willful act or omission causes the death of her child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, she . . . shall be guilty. . . of . . . infanticide.<sup>83</sup>

This approach has been critiqued as “inappropriately broad.”<sup>84</sup> At the other end of the spectrum lies the “myopic American position.”<sup>85</sup> This approach requires that women assert and prove mental illness,<sup>86</sup> most commonly<sup>87</sup> under the *M’Naghten* rule of insanity, which determines whether defendants knew and understood the nature and quality of their acts, and if they did know, whether they knew what they were doing was wrong.<sup>88</sup> “Postpartum disorders” is the umbrella heading for the mental illness<sup>89</sup> drawn upon by infanticidal mothers who rely on the insanity defense. However, not all postpartum disorders suffi-

80. Oberman, *supra* note 15, at 47.

81. *Id.* at 17-19 (“At a minimum, infanticide [statutes] refer . . . to mothers who kill infants to whom they have given birth. Aside from this fact, however, the laws vary in breadth and leniency.”).

82. Judith A. Osborne, *The Crime of Infanticide: Throwing Out the Baby With the Bathwater*, 6 CAN. J. FAM. L. 47, 55 (1987).

83. English Infanticide Act of 1938, 1 & 2 Geo. 6, c. 36, § 1(1). *See also* R. Kumar & Maureen Marks, *Infanticide and the Law in England and Wales*, in *POSTPARTUM PSYCHIATRIC ILLNESS: A PICTURE PUZZLE* 258, 269 (James A. Hamilton & Patricia N. Harberger eds., 1992) (stating, “The infanticide law assumes a link between childbirth and lactation . . . and disturbance of balance of mind, but it does not require proof of any physiological basis for either the offence or the occurrence of illness.”).

84. Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL’Y & L. 1098, 1100 (2000).

85. *Id.*

86. *Id.* at 1099.

87. *See, for example,* Amy L. Nelson, *Postpartum Psychosis: A New Defense?*, 95 DICK. L. REV. 625, 636-646 (1991), for an outline of the different tests of insanity (the *M’Naghten* rule of insanity; the “irresistible impulse” test; American Law Institute’s (ALI) Model Penal Code test; “product” or *Durham* test; the federal statutory definition test; and the guilty but not mentally ill verdict) and an analysis of how postpartum psychosis fares under each test.

88. *M’Naghten’s Case*, 8 Eng. Rep. 718, 722 (1843). For unsuccessful use of the *M’Naghten* test, see references to *Clark v. State*, 588 P.2d 1027 (Nev. 1979) and *Commonwealth v. Reilly* 549 A.2d 503 (Pa. 1988) in Barton, *supra* note 20, at 598.

89. In 1994, the American Psychiatric Association recognized postpartum onset as a mental condition, stating that “[i]nfanticide is most often associated with postpartum psychotic episodes that are characterized by command hallucinations to kill the infant or delusions that the infant is possessed, but it can also occur in severe postpartum mood episodes without such specific delusions or hallucinations.” AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 422 (4th ed. text revision 2000).

ciently affect cognitive function so as to support an insanity plea.<sup>90</sup> Of the three classes of postpartum disorder, postpartum depression, or “baby blues,”<sup>91</sup> severe postpartum depression,<sup>92</sup> and postpartum psychosis,<sup>93</sup> technically only the symptoms of postpartum psychosis would support a *M’Naghten* finding of insanity.<sup>94</sup> The plea has been successful, for example, where the mother reports hearing voices telling her that her child is the devil<sup>95</sup> or the disassociation from the act is so great that the mother testifies that “she had seen two hands which she did not recognize holding pillows over the newborns’ faces.”<sup>96</sup>

However, mention of these textbook cases should not obscure the fact that the exculpatory label of “madness” is applied in situations where women are not necessarily legally insane, or even in situations where insanity has not been formally pleaded.<sup>97</sup> This is the second sense in which it can be said that the category of madness does not have a fixed meaning. It has been argued that the con-

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90. Laura E. Reece, *Mothers Who Kill: Postpartum Disorders and Criminal Infanticide*, 38 UCLA L. REV. 699, 741 (1991).

91. Although estimates of the percentage of women affected by the “baby blues” vary somewhat, it is generally accepted that between 50% and 80% of women suffer this temporary mild depression within a few days after childbirth. See, e.g., Barton, *supra* note 20, at 602 (describing it as “a mild depression and anxiety condition” which more than two thirds of women experience within four to five days following childbirth); Dobson & Sales, *supra* note 84, at 1104 (placing the figure of women who have this experience at 25% to 85%, noting that it begins within a few days of childbirth and can last from a “few hours to a few days”); Nelson, *supra* note 87, at 626 (characterizing the “baby blues” as a slight temporary condition which 50% to 80% of women experience within three to fifteen days of childbirth, and which “clear[s] up in a few hours or days”); Reece, *supra* note 90, at 711 (describing it as a temporary condition affecting 50% to 80% of women).

92. Postpartum depression is a more serious, potentially less temporary, condition that is experienced by a lower percentage of women (approximately 10%). See, e.g., Nelson, *supra* note 87, at 626 (stating that eight to twelve percent of women experience this condition, which can last “several months” and “tend[s] to appear after the twentieth day postpartum”); Reece, *supra* note 90, at 712 (estimating that 10-20% of women experience this). See generally description in Dobson & Sales, *supra* note 84, at 1105 (providing a thorough discussion of postpartum depression).

93. It is generally estimated that only one in one thousand new mothers suffering from postpartum depression develops this psychosis, which is characterized by symptoms such as delusions, hallucinations, agitation, and sleep deprivation, among others. See, e.g., Deborah K. Dimino, *Postpartum Depression: A Defense for Mothers Who Kill Their Infants*, 30 SANTA CLARA L. REV. 231, 233 (1990); Dobson & Sales, *supra* note 84, at 1106 (describing the condition as one that affects “approximately 0.2% of childbearing women”); Nelson, *supra* note 87, at 626-27 (stating that one in every thousand women suffer the symptoms described, such as delusions); Oberman, *supra* note 15, at 33 (putting the figure of women who suffer at one to two new mothers in every thousand).

94. See, e.g., Reece, *supra* note 90, at 740-741 (noting that a woman who experiences postpartum depression but not a postpartum psychotic reaction may not qualify for an insanity defense under a statute with only a cognitive prong).

95. *People v. Massip*, 271 Cal. Rptr. 868, 869 (Cal. Ct. App. 1990), *review granted and opinion superseded by* 798 P.2d 1212 (Cal. Ct. App. 1990). On the day that Massip ran over her child with the car, she heard voices telling her that her son was the devil. Debra Cassens Moss, *Postpartum Psychosis Defense*, A.B.A. J., Aug. 1, 1988, at 22. The jury found Massip guilty of second-degree murder, however, quite unusually, the trial judge intervened by finding that Massip suffered from postpartum psychosis and that she was therefore not guilty by reason of insanity. *Massip*, 271 Cal. Rptr. at 869.

96. This is what reportedly occurred in the case of Ann Green. Ann Green was found not guilty by reason of insanity of killing two of her newborns and attempting to kill a third, and was committed to a state mental hospital for psychiatric evaluations as an outpatient. *People v. Green*, No. 1273-86 (N.Y. Sup. Ct. Sept. 30, 1988).

97. Oberman, *supra* note 15, at 43-44.

cept and scope of madness in infanticide cases is deliberately nebulous, so that judges, juries, and the media can selectively draw upon it to provide leniency for women whom they believe deserve sympathetic treatment.<sup>98</sup> One New York study of the insanity defense found that:

[W]hile from psychiatric reports, it is apparent that some of these mothers were grossly insane at the time of the infanticidal acts (e.g., believed child was turning into evil beings), there are others whose primary difficulty seemed to be one of personal inadequacy and, more specifically, an inadequacy in the wife-mother-homemaker roles, with resulting stress. Basically, it is our belief that society, in its desire to preserve an illusion of “mother love,” is hesitant to carefully scrutinize the mother-child relationship and recognize realistically that the most reasonable target for a mother’s frustration and anger is her child. Instead, to preserve our illusions about “mother love,” we categorize women who murder their children as “insane.”<sup>99</sup>

However, clearly not all women who murder their children are categorized as insane. Instead, the symptoms of feelings of inadequacy in the maternal role can be construed as insane reactions to the stress of motherhood in the case of some women, but as simply “bad” mothering in the case of others. Given the malleability of the notions of “mad” and “bad” mothers and the importance that attaches to these categories in terms of sentencing outcomes, the media’s pretrial perspective on why an infanticidal mother struggled with the maternal role becomes very important.

#### B. Her and Yates—(Not) Coping with Motherhood

Her was clearly under pressure in performing the simultaneous roles of mother, worker, provider, and homemaker. One newspaper report states that a review of police and court records and dozens of interviews with friends and relatives “portray[s] a young woman so depressed and burdened by financial and emotional pressures that she could no longer cope.”<sup>100</sup> A similar, oft-cited observation was that made by Mai Xiong, the friend of Her’s boyfriend, who shared that Her “regretted marrying so young” and “was depressed over the amount of responsibility she had.”<sup>101</sup> Her herself confirmed this in the statement made at her sentencing: “There was too much I can’t handle . . . I had six kids. I was a single mom with no one to turn to . . . I am not a bad person.”<sup>102</sup>

However, this depression and anxiety with respect to the performance of the maternal role were not construed as a pathological condition, warranting more lenient treatment. In the media they were instead linked to Her’s own immaturity and selfishness. For example, Mai Xiong provided the impetus for this link when she stated: “She basically missed out on all her teen-age years. She wanted to have fun.”<sup>103</sup> The constant references to Her having a “new” boy-

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98. *Id.* at 47.

99. *Id.* at 43 (quoting Henry J. Steadman et al., *The Use of the Insanity Defense*, in A REPORT TO GOV. HUGH L. CAREY ON THE INSANITY DEFENSE IN NEW YORK, 37, 68-69 (1978)).

100. *A Young Mother*, *supra* note 37.

101. *Mom, Twenty-Four, Held in Deaths of Six Kids*, DENV. POST, Sept. 5, 1998, at A11.

102. *Mother: Killing Kids*, *supra* note 2.

103. *Mother, Twenty-Four, Accused*, *supra* note 40.

friend,<sup>104</sup> who may have lived with her and the children,<sup>105</sup> implicitly reinforced the notion that Her was exercising the frivolous sexuality that had been denied to her by virtue of her culturally mandated early marriage.

Her was also apparently penalized for trying to retain power in her home, rather than remaining weak and overawed by her maternal role.<sup>106</sup> Rather than being construed as a means of providing for her children, the fact that Her had a job as a telemarketer was seen as another way in which she failed to spend time with her children. For example, Hang reportedly “accused his wife of neglecting the children by coming home late from work.”<sup>107</sup> Her’s work commitments were also portrayed as requiring the delegation of the performance of her maternal duties, not only through the hiring of a babysitter,<sup>108</sup> but also through reliance on her estranged husband. This failure of Her to autonomously perform her household duties was reported in the following terms: “According to Tou Hang and a neighbor of the family, for much of the marriage, Hang had watched the kids—walked them to the school bus, made meals and bathed them—while his wife worked in an office.”<sup>109</sup>

Likewise, Her’s absence from the home<sup>110</sup> seems to be one of the major “charges” leveled against her in the media. Again, Hang is the source of indicting reports about Her “coming home late from work” and “running away [from home] repeatedly.”<sup>111</sup> Also published was Hang’s recollection of another incident when “he brought police to Her’s townhouse late one night after he found the children alone while their mother was at a party” and discovered that “10-year-old Koua Eai was cooking an overly salty dinner for his five younger siblings.”<sup>112</sup> Her therefore was also presented as someone who endangered the physical health of her children. A number of newspaper reports repeated verbatim the observations of Christopher Yang, a twenty-seven-year-old neighbor, who stated that Her did not seem to supervise the kids closely.<sup>113</sup> Yang’s ultimate and well-aired assessment of Her’s mothering skills was that she seemed like “someone who was not really taking care of her kids.”<sup>114</sup>

Her’s children had been subject to the surveillance of social services. “[S]ocial workers talked with Her about the dangers of leaving her children alone” and “wrote letters to both parents underscoring mandatory school atten-

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104. Chris Graves, *Thousands Pay Respect to Slain Children*, STAR TRIB. (Minneapolis-St. Paul), Sept. 13, 1998, at 3B; *Mother, Twenty-Four, Accused*, *supra* note 40; *Mom, Twenty-Four, Held in Deaths of Six Kids*, *supra* note 101.

105. Jeter, *supra* note 50.

106. See Roberts, *Motherhood*, *supra* note 1, at 117 (describing the way courts more harshly penalize “mothers who struggle to retain power in their homes”).

107. *A Young Mother*, *supra* note 37.

108. *Id.*

109. Graves, *A Father’s Pain*, *supra* note 51.

110. Neighbors reportedly stated that Her “sometimes left the home without her children.” Jeter, *supra* note 50.

111. *A Young Mother*, *supra* note 37.

112. *Id.*

113. See, e.g., *Mother, Twenty-Four, Accused*, *supra* note 40.

114. *Id.*

dance” after one of her sons skipped school.<sup>115</sup> However, the county documents ultimately indicate that the situation was not considered sufficiently serious as to warrant intervention: “Child protection services were determined not to be needed,”<sup>116</sup> and a social worker confirmed that “the kids. . .always seemed well nourished and there were never any signs like bruises.”<sup>117</sup> Despite this evidence, the perception that Her had maltreated her children lingered, and may have been a reason why Her’s altruistic murder-suicide explanation<sup>118</sup> was neither fully accepted nor widely canvassed.

Yates was also by all accounts an overwhelmed mother. One report described Yates as “feeling isolated, incompetent and overwhelmed.”<sup>119</sup> Another recorded Yates’s statement to police that “she had considered killing her children for months because she thought she was a bad mother and that they were ‘hopelessly damaged.’”<sup>120</sup> Another article undertook a review of evidence (“medical records—written observations from doctors, psychiatrists, nurses and social workers during and after her hospitalizations since 1999”) to conclude that these “portray a shy woman bereft of self-esteem, overwhelmed by raising her five children with little help, yet unable to admit her frustrations or ask for help.”<sup>121</sup>

However, this is where the similarities in the narratives of the mothering of Yates and Her end. In most of the discourse both before and after the verdict, Yates’s feelings of inadequacy in respect of motherhood have been attributed to biological abnormality. Yates pleaded not guilty by reason of insanity to two charges of capital murder for the deaths of sons Noah and John, and daughter Mary. Some polls were interpreted as indicating that “more people view Andrea Yates as psychologically disturbed rather than hopelessly evil,”<sup>122</sup> and one legal commentator, speaking for the American public, proclaimed, “I imagine it’s hard to find somebody who would say that she was sane at the time of the offense. . . . It’s just got insanity stamped on it in big, bold letters.”<sup>123</sup> Yates has been described as suffering from what is alternatively described as “severe postpartum depression,”<sup>124</sup> “a psychotic form of postpartum depression,”<sup>125</sup> or “a virulent form of postpartum depression”<sup>126</sup> that began after the birth of her fourth child in February 1999 and worsened after the birth of her fifth. This portrayal has come from essentially three sources: her family (particularly her husband),

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115. *A Young Mother*, *supra* note 37.

116. *Id.*

117. *Id.*

118. *Mother: Killing Kids*, *supra* note 2.

119. Eagan, *supra* note 59.

120. Nichols, *High-Profile Doctor*, *supra* note 65.

121. Yardley, *supra* note 62.

122. Lisa Teachey, *Most in Poll Prefer Prison to Death for Andrea Yates*, HOUS. CHRON., Nov. 14, 2001, at 23 (quoting lawyer Brian Wice).

123. Nichols, *High-Profile Doctor*, *supra* note 65 (quoting “veteran defense lawyer” Dick DeGuerin).

124. *Killer Mother Suffered Satanic Visions*, SCOTSMAN, Sept. 21, 2001, at 8.

125. Cart, *supra* note 58.

126. *Therapist: Texas Mom Not Ready For Trial*, *supra* note 7.

support coalitions (particularly the National Organization of Women (NOW)), and the media.

In the immediate aftermath of the killings, Russell Yates stated that his wife was suffering from postpartum depression,<sup>127</sup> concluding that “[o]ne side of me blames her because she did it, but the other side says that she didn’t because that wasn’t her. . . . She wasn’t in her right frame of mind.”<sup>128</sup> Her wider family also confirmed that she had been treated off and on for severe depression<sup>129</sup> over a two-year period before the deaths. In the section of his website explaining Andrea Yates’s defense fund, Russell Yates reiterates the role of biology in his wife’s crimes by stating that “[a]ny funds received in excess of what’s required to defend Andrea will be donated to causes for women’s mental health issues, particularly postpartum depression and psychosis.”<sup>130</sup> The verdict in the Yates trial has neither altered Russell Yates’s conviction that his wife was a victim of her biology nor curbed his public expression of this conviction. Instead, in Russell Yates’s perception, the verdict has created another source of victimhood for Andrea Yates: “She’s the victim here not only of the medical community but also the justice system.”<sup>131</sup>

NOW has also been particularly instrumental in this portrayal, by characterizing Yates’s experience as an issue concerning the quality of mental health care for women.<sup>132</sup> One commentator went so far as to describe this feminist support of Yates as an attempt to use her as “a poster child for postpartum depression awareness.”<sup>133</sup> However, the loose sense in which “mad” can be employed and the intermingling of biological and social catalysts for infanticidal action<sup>134</sup> became evident when Diana Lynn-Barnes of the Center for Postpartum Health stated that: “Women are mad as hell and they are not going to take it anymore. There’s a vast amount of compassion for Andrea Yates because . . . they can see how one could go down this road. She’s a victim of a culture that says women come last.”<sup>135</sup> NOW’s insistence on the biological determinants of Yates’s actions also has continued unabated. For example, the day after the guilty verdict, NOW President Kim Gandy expressed NOW’s concern regarding the verdict and “its implications for the one in 1,000 new mothers who will suf-

127. Matt Curry, *Pain Abounds When Murder is All in the Family*, L.A. TIMES, Sept. 30, 2001, at A26.

128. *Texas Woman Faces Capital Murder Charges in Children’s Drowning Deaths*, *supra* note 67.

129. Neil Davis, *Yates a Victim of Our Bloodthirsty Society*, DAILY TEXAN, Aug. 31, 2001, available at [http://tspweb02.tsp.utexas.edu/webarchive/08-31-01/2001083104\\_s02\\_Yates.html](http://tspweb02.tsp.utexas.edu/webarchive/08-31-01/2001083104_s02_Yates.html) (last visited Oct. 6, 2002).

130. <http://www.yateskids.org/defense-fund.html> (last visited Oct. 6, 2002).

131. *Yates Controversies Continue* (March 16, 2002), at <http://www.cbsnews.com/stories/2002/03/18/national/main503915.shtml> (last visited Oct. 6, 2002).

132. Paul Duggan, *NOW Rallies to Mother’s Defense; Group Says Woman Needs Help, Not Prison, in Drowning of Five Children*, WASH. POST, Sept. 3, 2001, at A3.

133. *Stop Defending Mass Murderer*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Sept. 8, 2001, at 16A.

134. See Reece, *supra* note 90, at 712-13 (noting that medical researchers are unsure whether the symptoms of postpartum disorders are biological or psychological). See also Bernadette McSherry, *The Return of the Raging Hormones Theory: Premenstrual Syndrome, Postpartum Disorders and Criminal Responsibility*, 15 SYDNEY L. REV. 292, 295 (1993) (stating that postpartum disorders can not be solely attributed to “raging hormones,” but rather appear to be a combination of external and perhaps internal stressors).

135. Satel, *supra* note 18.

fer from postpartum psychosis.”<sup>136</sup> After the jury chose a life sentence rather than the death penalty for Yates, Gandy again expressed her view that Yates is mentally ill: “we are particularly concerned when the state pursues the execution of a person who was obviously mentally ill at the time of the crime. While we believe that Andrea Yates belongs in a mental health facility rather than prison, we do thank the jury for sparing her life.”<sup>137</sup> This expression of thanks to the jury and relief at the sentencing outcome further reflect that the jury did not act as punitively as they might have done in determining Yates’s sentence.

Finally, the media has not only been instrumental in airing the views of Russell Yates and NOW, but it has also indulged in sensationalist references to Yates’s two attempted postpartum-depression-induced suicides (one particularly gruesome one in which Yates “scratched at her throat with a steak knife in search of the carotid artery” and an earlier attempt, in which she ingested 40 to 50 pills of her father’s Alzheimer’s medicine),<sup>138</sup> and Yates’s Satanic visions.<sup>139</sup> Notably, the reference to Satanic visions has not been construed as evidence of religious reasons for Yates’s acts (as we might expect with respect to Her if she had experienced such delusions), but rather as further evidence of Yates’s psychotic state.<sup>140</sup> In the aftermath of the verdict in the Yates trial, the media has continued to reinforce this perception of Yates as a victim of her biology, for example, by questioning the reliability of the testimony of a key prosecution witness, forensic psychiatrist Park Dietz.<sup>141</sup> However, interestingly, the media has also sought to supplement the primary biological account of Yates’s acts with nonmedical reasons for why the act of killing her children was not really Yates’s own. These post-verdict attempts to redistribute responsibility for the crime can be seen, for example, in the media attention to Yates’s Christian minister as a figure responsible for wielding control over her<sup>142</sup> and through the increased calls for investigations into the culpability of Russell Yates.<sup>143</sup>

In order to fully understand why the media more readily mobilizes narratives based on “madness” with respect to white infanticidal mothers, it is necessary to consider the functions that are served by attempting to label women, such as Yates, victims of their biology. The corollary of this analysis is to con-

136. Kim Gandy, *Yates Verdict Can Serve As Warning To Prevent Future Tragedies*, at <http://www.now.org/press/03-02/03-13a.html> (last visited Sept. 27, 2002).

137. *Society Must Learn Important Lessons from Andrea Yates Case*, at <http://www.now.org/press/03-02/03-15.html> (Mar. 15, 2002).

138. Parker, *supra* note 60.

139. Cart, *supra* note 58; Pam Easton, *Jury Says Yates Fit to Stand Trial*, SAN ANTONIO EXPRESS-NEWS, Sept. 23, 2001, at 5B; *Killer Mother Suffered Satanic Visions*, *supra* note 124; Nichols, *Yates Found Competent*, *supra* note 8; *Therapist: Texas Mom Not Ready For Trial*, *supra* note 7.

140. See, e.g., Nichols, *High-Profile Doctor*, *supra* note 65; *Therapist: Texas Mom Not Ready For Trial*, *supra* note 7.

141. Timothy Roche, *Andrea Yates: More to the Story*, at <http://www.time.com/time/nation/printout/0,8816,218445,00.html> (last visited Apr. 29, 2002).

142. “*Going to Hell*”: *Yates’ Spiritual Adviser Vehemently Warned Followers About Satan* (Mar. 26, 2002), at [http://abcnews.go.com/sections/GMA/GoodMorningAmerica/-GMA030226Yates\\_preacher.html](http://abcnews.go.com/sections/GMA/GoodMorningAmerica/-GMA030226Yates_preacher.html) (last visited Oct. 6, 2002).

143. Kim Ode, *Russell Yates is Also Accountable for this Tragedy*, STAR TRIB. (Minneapolis-St. Paul), Mar. 24, 2002, available at <http://www.startribune.com/stories/859/2115821.html> (last visited Apr. 29, 2002).

sider the results of labeling poor women of color and immigrants as “bad” mothers.

#### IV. WHY WHITE MOTHERS ARE “MAD” AND NON-WHITE MOTHERS ARE “BAD”— FUNCTIONS OF DIFFERENT EXCULPATORY VOCABULARY

##### A. Preserving the Maternal Myth

A vocabulary of motive which categorizes white infanticidal mothers as “mad” is necessary to preserve the white, middle-class myth of motherhood. First, as mentioned above, killings by white, middle-class mothers present the greatest threat to the maternal myth. The “repair kit” of exculpatory mechanisms must therefore be more persuasive and absolute with respect to a white, middle-class mother precisely because it is her criminal acts that represent the greatest danger to the coherence of the myth that she seems to represent. In this respect, a biological explanation is desirable because it locates the source of criminal motive solely in the individual woman<sup>144</sup> and prevents her acts from having wider significance. Rather than the acts being the byproduct of an insidious cult of motherhood, they are characterized as isolated and contained incidents that can be easily altered<sup>145</sup> through medication and therapeutic treatment. This focus on the subjective personal characteristics of the infanticidal mother, as opposed to an objective consideration of the act in the abstract, is a feature of defenses, such as insanity, which attempt to provide an excuse for criminal acts rather than a justification.<sup>146</sup>

Second, the categorization of a woman as “mad” preserves the patriarchal perception of marriage, which is central to the ideal of motherhood (discussed earlier). Labeling a mother “mad” means that the husband can be cast in a role where he can continue to legitimately offer support to her without appearing to betray the memory of his children or condone the act. The husband can therefore become “father-like” in caring for his sick wife. This reinscribes the notion that the wife should be dependent on her husband; suggests that the ideal family form is indefatigable; and implies that the family should not be subject to the influence of a law which could potentially hold the woman criminally responsible and therefore remove her from the purview of her rightful controller. In this sense, Russell Yates’s pronouncement that his wife is suffering from postpartum depression, and his unwavering support for her, suggests that the public and the law have less scope to be judgmental of Yates’s acts (the implication being “if he can forgive her, then why shouldn’t we”), and seems to valorize the model of a family which has a supportive father at its head. In direct contrast, when Her’s *estranged* husband explicitly stated that Her was not insane, saying “I think she

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144. Anne M. Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 57 (1994).

145. *But see* Tsing, *supra* note 1, at 295 (discussing how women of color cannot be altered because “they are identified not as educable products of a defective maturation, but as outside of middle class, ‘normal’ values”). *See generally* Richard A. Cloward & Frances F. Piven, *Hidden Protest: The Channeling of Female Innovation and Resistance*, 4 SIGNS 651, 668 (1979) (noting that the identification of a problem as a biological one, as opposed to one of social power structures, quells resistance).

146. Coughlin, *supra* note 144, at 13.

is not crazy. . . . When she's mad, she could not control herself,"<sup>147</sup> and was critical rather than supportive of Her, the media and the state were given virtual carte blanche to step in and exercise the punitive control which he himself had abdicated by virtue of Her being a "bad" mother.<sup>148</sup>

## B. Surveillance Rather than Support

The preceding discussion indicates that the invocation of explanations of madness for white, middle-class mothers and badness for poor women of color operates to increase the surveillance of both groups, even though often the type of surveillance may differ. As discussed above, because white, middle-class women are more readily presented as victims of their inherent biological processes,<sup>149</sup> they are denied the possibility of autonomous decision making and looking after themselves. Instead, they are subject to increased surveillance, preferably by husbands or mental institutions or, less preferably, by judicial control.<sup>150</sup> The media preference for the former in the case of Yates is evident in one article entitled "Fathers recruited in the fight against postpartum depression," which quotes the founder of a postpartum support group at Advocate Lutheran General Hospital in Park Ridge as stating "[d]ads have got to step up and take charge."<sup>151</sup>

Minority women of color also face increased surveillance, this time more by the state and the criminal justice system,<sup>152</sup> because the problem is perceived as stemming from the individual or collective failure of the minority culture to which she belongs.<sup>153</sup> In Her's case, her actions were attributed to cultural factors in two ways. First, Her's killing of her children was construed as indicative<sup>154</sup> of

147. Curt Brown & Lourdes Medrano Leslie, *Mother of Six Fit to Stand Trial*, STAR TRIB. (Minneapolis-St. Paul), Nov. 14, 1998, at 1B.

148. See generally Coughlin, *supra* note 144, at 47 (discussing how traditionally law intervened more in the lives of unmarried women than married women in order to provide the supervision expected from the absent husband).

149. The corollary of being seen as a victim of biology is the perception that "women are more susceptible than men to being helpless, crazy and biddable." PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN AND THE MYTH OF INNOCENCE* 56 (1997).

150. See generally Roberts, *Motherhood*, *supra* note 1, at 106 (stating that there is an assumption that white middle-class mothers are more responsive to nonjudicial social controls "than other groups of mothers").

151. Mary Beth Sammons, *Dads' Healing Touch: Fathers Recruited in the Fight Against Postpartum Depression*, CHI. TRIB., Oct. 21, 2001, at 1.

152. Note also that a third possible surveillor is the elders within the culture. See, e.g., Joy Powell, *Help Is Nearby*, STAR. TRIB (Minneapolis-St. Paul), Dec. 7, 2000, at 1B (noting that Hmong culture incorporates kind mediation and guidance from clan elders).

153. Briggs & Mantini-Briggs, *supra* note 41, at 306 (noting the irony of the fact that although culture-based defense strategies resist the imposition of Western norms, these arguments actually extend the capacity of the criminal justice system to surveil and regulate indigenous groups). See generally Tsing, *supra* note 1, at 295 (noting that while the death of a white, middle-class mother's child is construed as an isolated event, the same event with respect to a poor woman of color justifies continual surveillance of her reproductive life); Roberts, *Motherhood*, *supra* note 1, at 124 (noting that this government supervision of poor and minority women is undertaken through child welfare agencies).

154. See generally Volpp, *supra* note 48, at 1187 (describing how incidents of violence in minority communities or the Third World are seen as indicative of those cultures).

the general problems of integration faced by the Hmong community.<sup>155</sup> This attribution ranged from careful comments: “While no one here suggests that the family’s ethnic background or distinct culture is in any way responsible for the killings, many here say that the tensions in the family might have been heightened by problems within the growing Hmong community in the Twin Cities;”<sup>156</sup> to the more explicit: “The shocking case of a young Hmong mother who called St. Paul police Sept. 3 to report that she had killed her six children, ages 5 to 11, casts light on the deep social problems among this largely unknown group.”<sup>157</sup> Secondly, Her’s actions were more explicitly located in the problems of women within the Hmong community.<sup>158</sup> This idea that gender subordination is an inherent part of Hmong culture is evident in one article which states that America could be seen as a “strange land” because women “are not universally expected to defer to their husbands,”<sup>159</sup> in contrast to Her’s own “ethnic group’s tradition [which] stresses obedience to one’s husband[.]”<sup>160</sup>

This focus on culture and gender ignores the noncultural, structural determinants of Her’s experience. This in turn results in less incentive to implement systemic support structures for minority women.<sup>161</sup> At the same time, this portrayal of gender subordination as an inherent part of Hmong culture also limits the extent to which it can be advocated that support structures for *all* women are

155. See generally Daniela Deane, *Promised Land Yields Bitter Fruit for Some*, USA TODAY, Oct. 7, 1998, at 10A (quoting William Yang, executive director of the Hmong-American Partnership, a St. Paul-based, nonprofit organization as stating that “[i]t’s a mess. . . . We Hmong are just not ready to be in America. Our bodies are here, but our minds aren’t”); Kirsten Scharnberg, *Surviving Culture Shock*, BALTIMORE SUN, Mar. 8, 1999, at 22A (describing how this difficulty of integration is something also felt by Minnesotans); Kimberly Hayes Taylor, *Hmong Leaders Meet to Ponder Impact, Reasons for St. Paul Children’s Death*, STAR TRIB. (Minneapolis-St. Paul), Sept. 14, 1998, at 6B (referring to a “culture clash”). This focus on the difficulty of integration necessarily involved the establishment of an essentialist binary which juxtaposed “American culture” with that of the Hmong. The oppositions were laid out in the following terms: communitarianism versus individualism (for example, one article described Her’s arrival in America in the following terms: “In America, she landed in a place that emphasizes the rights of the individual over that of the group and places a premium on independence.” Rosalind Bentley & H.J. Cummins, *Poverty, Despair, Illness Often Found in Mothers Who Kill*, STAR TRIB. (Minneapolis-St. Paul), Sept. 5, 1998 at 18A), and agrarian versus industrialist (it was reported that while having a large number of children may be of benefit in an agrarian family it could “drag down a poor family in America’s cities,” Jeter, *supra* note 50).

156. Jeter, *supra* note 50.

157. Deane, *supra* note 155.

158. See, e.g., Kirsten Scharnberg, *supra* note 155. Note that the resistance to seeing the incident as culturally representative came from the community itself. For example, one article reports Hmong leaders saying that Her’s crime was an isolated case that had tarnished the image of their family-oriented society: “This is a terrible tragedy, but it is the first time anything like this has happened in the 20 years we have been in this country. It is so sad, but it is important to remember that this was a murder, not a Hmong murder, and unfortunately murders happen every day in this country.” *Mother Guilty*, *supra* note 45 (quoting Ying Vang, executive director of the Lao Family Community of Minnesota).

159. Jeter, *supra* note 50.

160. Rosalind Bentley & H.J. Cummins, *Poverty, Despair, Illness Often Found in Mothers Who Kill*, STAR TRIB. (Minneapolis-St. Paul), Sept. 5, 1998, at 18A.

161. For example, Lina Jau, a grants analyst for the Minnesota Center for Crime Victim Services, states that shelters for battered women do not adequately cater to the needs of Hmong women. Jean Hopfensperger, *Task Force Outlines Campaign for Asian Community*, STAR TRIB. (Minneapolis-St. Paul), Jan. 15, 1999, at 3B.

necessary because it diverts scrutiny from the discriminatory practices inherent in America's treatment of women.<sup>162</sup> Such blindness to the position of women in American society is evident in the following depiction of Hmong women as somewhat primitive creatures who have difficulty mastering certain skills which are essential to their civilizing process: "We teach women basic survival skills here. . . how to use electrical appliances, what household products are used for. We help them understand the mail that comes through the door. Most of the [Hmong] women are still struggling after almost 20 years in this country."<sup>163</sup> The irony of the fact that it is household tasks in which these women are perceived to need to be skilled to survive in this liberated, American society seems to be lost in the commentary.

### C. Increased Likelihood of More Lenient Treatment for White Moms

The link between bad mothering and culture/race has more insidious and immediate consequences for poor women of color. If minority women's infanticidal acts are defined as being determined by culture rather than biology, the minority woman theoretically faces two choices. The first is to find the solution to her situation within herself before the problem occurs (for example, one reader helpfully suggests that "[a]fter all, Her could have chosen to leave those children alone, walk out and have a cigarette").<sup>164</sup> It is clear that this "self-help" option is not a tenable one at all—the need for systemic support structures cannot be replaced by arguments based on women's agency, particularly when such cultural arguments do not permit women such agency in the first place.<sup>165</sup> This same self-help option is less frequently invoked for white infanticidal women because they are seen as helpless victims of their own biology. The second possibility, which applies more frequently, is that the woman is dealt with punitively and dismissively after the event. This situation is evident in the comments of the judge at the end of Her's hearing: "This is a tragedy, a real tragedy. . . . Send her away."<sup>166</sup>

This more punitive treatment of poor women of color occurs, as mentioned earlier, because they are more often denied the opportunity to avail themselves of the exculpatory label of "madness" that more readily attaches to white mothers. There are a number of reasons why white women are more able to take advantage of the label of "madness" to secure more lenient treatment.<sup>167</sup> The first is that white, middle-class women effectively have a head start; poor women of color are already perceived as "bad" mothers before they even commit a crime.

162. Volpp, *supra* note 48, at 1212.

163. Deane, *supra* note 155 (quoting Ly Vang, a Hmong refugee and director of the Association for the Advancement of Hmong Women).

164. Toufong Vang, *Letters From Readers*, STAR TRIB. (Minneapolis-St. Paul), Sept. 10, 1998, at 24A.

165. Volpp, *supra* note 48, at 1211.

166. *Mother: Killing Kids*, *supra* note 2.

167. Note that there is a chance that this invocation of the language of victimhood (that is, being victims of biology) with respect to white infanticidal mothers can result in negative media treatment. For example, it can invite some commentators to question too easily whether the mother is more of a victim than the children she has killed. This is evident in the recommendation that people should "[s]pend time looking at the real victims, starting with those five little coffins in Texas." *Stop Defending Mass Murderer*, *supra* note 133.

Second, as discussed above, there are ulterior ideological motivations for attributing the infanticidal acts of white women to their biology and thereby keeping intact the ideal norms of motherhood. Thirdly, the emphasis on biology for white mothers, compared with the emphasis on race and culture in the portrayal of minority mothers, creates an “us versus them” narrative<sup>168</sup> in which it is easier to come down on the side of the hapless and helpless victim of her hormones. In other words, expressing empathy for a “mad” mother is less controversial than empathy for a mother of a different race/culture/class perceived to have killed her children because she could not get the task of mothering right. This disparity is evidenced by the fact that sentiments of “empathy” with Yates’s plight have been expressed far more frequently than they were in relation to Her. For example, in an interview with Good Morning America, Rosie O’Donnell expressed “overwhelming empathy” for Yates, stating that “[w]hen you’ve been on the edge you can understand what it’s like to go over.”<sup>169</sup>

The fact that it is easier to politicize medical issues, which are ostensibly applicable to all women, also means that the plight of white women is more likely to be taken up as a “cause” by political movements. This support from interest groups is evident in the fact that NOW justified their support of Yates<sup>170</sup> on the basis that this was a general women’s health issue. By becoming the “cause” of such movements, white, middle-class mothers like Yates are likely to be treated more leniently for their crimes due to the increased support and available resources. At the same time, this politicization also has exclusionary effects that operate to the detriment of minority women who kill their children. By definition, making one woman’s situation a “cause” or rendering the personal political necessarily demands generalization from the particular, individual experience of women to the common experience of womanhood.<sup>171</sup> However, making any one shared experience (in this case postpartum depression) the platform for action results in a denial of heterogeneity and a reductive notion of womanhood.<sup>172</sup> This essentialism becomes exclusionary, in the sense that women who cannot as easily lay claim to that experience (in this case poor women of color) risk not receiving the full extent of support extended to “mad moms.” This general exclusion of women of color from feminist agendas has been noted elsewhere.<sup>173</sup> In addition, the risk that certain women will be excluded from the

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168. Volpp, *supra* note 48, at 1186-87.

169. Michael Starr, *I Feel for Mom Who Killed Kids: Rosie Tells Sawyer How She Suffered*, N.Y. POST, Aug. 10, 2001, at 105.

170. For example, NOW formed the Andrea Pia Yates Support Coalition to help collect money for a legal defense fund, held a candlelight vigil on the eve of Yates’s competency hearing, and held an educational forum on postpartum mental illness the next day; see Duggan, *supra* note 132; Satel, *supra* note 18.

171. Renate Duelli-Klein, *How to Do What We Want to Do: Thoughts About Feminist Methodology*, in THEORIES OF WOMEN’S STUDIES 48, 54 (Gloria Bowles & Renate Duelli-Klein eds., 1983).

172. NGAIRE NAFFINE, FEMINISM AND CRIMINOLOGY 53 (1997). On the intersectional nature of women’s experience see generally, ELIZABETH V. SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT 165 (1988); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

173. Karin Wang, *Battered Asian American Women: Community Responses from the Battered Women’s Movement and the Asian American Community*, 3 ASIAN L.J. 151, 182-83 (1996). See generally Esther Ngan-Ling Chow, *The Feminist Movement: Where are All the Asian American Women?*, in FROM

selected “experience” increases when that experience is referable to medical criteria. For example, it has been observed that the conditions of “learned helplessness” and “cycle of violence” that constitute the Battered Woman Syndrome<sup>174</sup> operate to the detriment of those women who kill their abusers but have not conformed exactly to the behavioral model established.<sup>175</sup>

Finally, white, middle-class mothers are more likely to be able to show that they conform to the behavioral model as a matter of practicality. At a basic level, being able to afford diagnosis is a necessary step for a problem to be medicalized. As one editorial queried, “[s]ometimes I wonder if the reaction to this case would be different if Yates weren’t so well-educated, so affluent, so much like you and me and the mommy next door. *What if she were poor? Lacking the resources to get medical attention at all, let alone back-to-back hospital stays and more anti-psychotic drugs than we can keep track of?*”<sup>176</sup> (emphasis added). The absence of a “diagnosed history of depression”<sup>177</sup> (emphasis added) was damning for Her. This need for formal labels is evident in the one newspaper article which surmises that “[t]hough Her’s lawyers would have argued she suffered from a long period of untreated depression had the case gone to trial, her lack of an established psychiatric profile limited [the prosecutor’s] sympathy.”<sup>178</sup> The requirement of a formal diagnosis is likely to increase in the future. One recent study has concluded that jurors are becoming more skeptical of the scientific basis of madness claims.<sup>179</sup> This will mean a greater reliance on expert testimony,<sup>180</sup> which

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DIFFERENT SHORES: PERSPECTIVES ON RACE AND ETHNICITY IN AMERICA 184 (Ronald Takaki ed., 2d ed. 1994).

174. Battered Woman Syndrome was identified by Lenore Walker in order to “explain why the battered woman becomes a victim in the first place and how the process of victimization is perpetuated to the point of psychological paralysis.” LENORE WALKER, *THE BATTERED WOMAN* 43 (1979). See also Lenore Walker, *Battered Women and Learned Helplessness*, 2 *VICTIMOLOGY* 525, 526 (1977) (finding earlier explanations for abusive relationships incomplete and noting that “a combination of sociological and psychological variables account for the existence of the battered woman syndrome”). The elements of Battered Woman Syndrome are a “cycle of violence” (a predictable cyclical pattern of abuse consisting of three stages: tension building, the acute battering incident, and loving contrition) with which the woman becomes familiar and also dependent on, such that she develops a condition of “learned helplessness” in which she is unable to leave her abusive spouse. See LENORE WALKER, *TERRIFYING LOVE* 42-45 (1989); LENORE WALKER, *THE BATTERED WOMAN SYNDROME* 95-97 (1984).

175. The naming of the problem as a “syndrome” and the subsequent oversimplified perception by judges and juries of the conditions said to make up Battered Women’s Syndrome excludes a number of women from availing themselves of the defense. See David L. Faigman, *The Battered Women Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 *VA. L. REV.* 619, 644 (1986) (noting the danger of employing the word “syndrome” and “us[ing] one theoretical construct to describe all [abused] women); Christine Littleton, *Women’s Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 *U. CHI. LEGAL F.* 23 (1989). In addition, the medical criteria of Battered Woman Syndrome are often interpreted through cultural and social stereotypes, which can be particularly detrimental to poor women of color. See, e.g., Sharon Angela Allard, *Rethinking Battered Women’s Syndrome: A Black Feminist Perspective*, 1 *UCLA WOMEN’S L.J.* 191, 197 (1991) (suggesting that because black women are stereotyped as aggressive, their actions in defense against a batterer are more likely to be interpreted as motivated by revenge rather than fear).

176. Sherry Thomas, *Furor About Yates Rages On*, *HOUS. CHRON.*, Oct. 7, 2001, at 1.

177. See Tolson, *supra* note 17.

178. *Id.*

179. Finkel, *supra* note 20, at 1120.

180. Reece, *supra* note 90, at 744 (stating that the credibility of the expert on postpartum disorders is critical for three reasons: the uncertainty in the scientific community about postpartum depression

will have to be credible enough to overcome the fact that law and science are not necessarily aligned with respect to infanticide.<sup>181</sup> This phenomenon can be observed in relation to Yates's competency hearing, which was characterized as "three days of testimony that boiled down to a battle of experts."<sup>182</sup> As credible defense experts are not cheap, the availability of the insanity defense to poor women of color is likely to be severely circumscribed.

## V. CONCLUSION

A more complicated picture of infanticidal mothers emerges when attempts are made to analyze how the distinctions between white, middle-class women and poor women of color and between "mad" and "bad" mothers converge to structure the explanatory narratives for mothers who kill in the media. A comparative study of the media treatment of Her and Yates makes it clear that the general tendency to afford more lenient treatment to women who fit the middle-class ideal of motherhood, manifests itself in relation to infanticidal mothers, and results in the tendency to label white, married mothers "mad" and poor women of color "bad." This tendency is apparent even when these two groups of women describe essentially the same frustration and difficulties with the experience of motherhood. The fact that this pattern of disparate treatment persists in cases of infanticide is, at first blush, quite anomalous. If punishment of women offenders is measured by how much they deviate from the ideal norm of motherhood, then one would expect that by killing their children, the grossest violation of the maternal myth, any distinctions based on race, culture, and class which may have afforded different treatment would be obliterated in favor of harsh treatment across the board. The fact that this does not result, and that more lenient treatment is instead secured for white mothers through the invocation of biological discourse, only makes sense if one considers the functions that are served by invoking different types of explanations for different types of mothers. Specifically, the result of these different labels is the preservation of the ideal norms of motherhood and the substitution of surveillance (whether by husbands, medical institutions, prison or the state) for the implementation of far-reaching support structures for women having difficulty dealing with the pressures of motherhood. Finally, the lack of uniform media treatment evidences how particularly omnipotent ideas about race, culture, class, and marital status are in determining how painful the fall from motherhood is for women who kill their children.

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and postpartum psychosis; the skepticism of an emotional jury; and the rarity of occurrence of postpartum psychosis). See also Robyn Lansdowne, *Infanticide: Psychiatrists in the Plea Bargaining Process*, 16 MONASH U. L. REV. 41, 49 (1990) (stating that in the Australian context, psychiatric assessments in infanticide cases that have gone to trial have had an "enormous influence" on case outcomes).

181. Dobson & Sales, *supra* note 84, at 1109 (discussing the English Infanticide Act).

182. Nichols, *Yates Found Competent*, *supra* note 8.