

Ambivalence Toward Mothers Who Kill: An Examination of 45 U.S. Cases of Maternal Neonaticide

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Public opinion about neonaticide (the killing of a newborn within the first 24 hours of life) has varied across time and cultures. Some nations have passed legislation on behalf of maternal offenders with the assumption that childbirth, a time of unique biological change, may lead to mental disturbance. The United States, however, makes no such distinction; offenders are prosecuted under general homicide laws. Nevertheless, U.S. courts often consider a mother's emotional and physical condition prior to and during delivery. This study includes 44 female offenders and 45 infant deaths and highlights society's ambivalence toward neonaticide offenders. The authors suggest that this ambivalence may be attributed to: (1) the perception that an offender's emotional and physical turmoil during the birth and homicide reduces her culpability; (2) the sentiment that neonaticide offenders are more "redeemable" than other offenders; and (3) the uncertainty about the personhood of a fetus or newborn. Copyright © 2010 John Wiley & Sons, Ltd.

The topic [motherhood] was safe only so long as people took the centuries-old view of self-sacrificing motherhood for granted. This view rested on mankind's assumption that women were designed by nature to be mothers and that they instinctively want to rear every baby they bear (Hrady, 1999, p.4).

Neonaticide refers to the killing of a newborn within the first 24 hours of life by a biological parent. To distinguish it from the killing of older children, forensic psychiatrist Phillip J. Resnick coined the term 'neonaticide',¹ to represent a subgroup of his larger filicide classification system (Resnick, 1969). Since then, a number of researchers have presented their own filicide models which classify homicides according to the mother's motivation (McKee, 2006; Oberman et al., 2001). Although differences exist among the various classification systems, neonaticide has been consistently

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¹ Prior to the 1970s, the homicide of an infant less than 24 hours old was commonly referred to as 'infanticide'; hence, throughout this article, infanticide and neonaticide may be used interchangeably.

reported as its own homicide category, because the motive, circumstances of the killing, and psychosocial background of neonaticide offenders are different from infanticide or filicide cases (Drescher-Burke, Krall, & Penick, 2004). In almost all neonaticide cases, the mother is the perpetrator; fathers are rarely known to commit neonaticide (Resnick, 1970). Fathers do not have the same access to newborns as mothers, and the unique stressors associated with this crime do not necessarily apply to men (Koenen & Thompson, 2008; Resnick, 1970). Though it is not a new phenomenon, public opinion about neonaticide has varied across time and cultures, and the legal ramifications of neonaticide are inconsistent at best (Mendlowicz, Jean-Louise, Gekker, & Rapaport, 1999).

HISTORY

Neonaticide occurred in ancient civilizations such as Mesopotamia, Greece, and Rome, and among the Vikings, Irish Celts, Gauls, and Phoenicians. Illegitimacy, male preference, physical disabilities, population control, eugenics, religious beliefs, and poverty were all used to defend these occurrences (Meyer, Oberman, White, & Rone, 2001). Only in relatively modern times has neonaticide been considered a crime worthy of a murder charge (Dobson & Sales, 2000). In France (1556) and in England (1623), legislation established the death sentence as punishment for killing a newborn and reversed the traditional presumption of the mother's innocence. The mother was required to prove that the child was stillborn and not a victim of murder. As a result, the number of women prosecuted in England and France increased (Mendlowicz, Rapaport, Mecler, Golshan, & Moraes, 1998).

In 1647, however, Russia became the first government to enact a law reducing the violation of killing of an infant from general murder to a lesser charge (Oberman, 1996). In the early 1700s, other countries seemed to favor reduced culpability for mothers (Dobson & Sales, 2000). Public opinion seemed to shift, and the crime was attributed to the shame of a single mother or her presumed derangement caused by childbirth (Mendlowicz et al., 1998). In the 1900s, prosecutors in England found that judges and juries were hesitant to convict these mothers under common homicide laws (Dobson & Sales, 2000). English judges and juries often recommended less severe sentences for child homicide cases wherein the mother was the perpetrator, often assuaged by an offender's shame of illegitimacy, poverty, or desertion by family and/or the child's father. Sentences included diets of bread and water for 1 year, 15-year penance terms, and public whippings (Brockington, 1996; Kumar & Marks, 1992). Execution was uncommon and more likely to be given to those women who failed to conform to traditional expectations of sexuality, respectability, domesticity, and motherhood (Ballinger, 2000; Kirkwood, 2003).

The sentiment that infanticide cases were unique and separate from other child homicides was formalized by the English Parliament in the 1922 Infanticide Act. This Act provided a partial explanation for infanticide offenders and assumed that they suffered from puerperal (postpartum) psychosis,² the most severe form of mental disorder associated with childbirth (Oberman, 1996).

² Puerperal psychosis is an abrupt onset of severe psychiatric disturbance that occurs shortly following birth. It is estimated to occur in one to two women per 1000 deliveries (Chaudron & Pies, 2003).

In 1938, a modified Infanticide Act replaced the 1922 version and expanded the age of the victim from a newborn child to a child less than 12 months old. Lactation was added as a medical basis for such mental disturbance, most likely due to the exhaustion and hormone fluctuations that may accompany nursing. The Act gave formal legal recognition to the common belief that a woman who has given birth may have an altered and disturbed mental state for up to a year following the delivery of the child (Spinelli, 2003). Eventually, lactational insanity was discredited, although public sympathy toward maternal offenders continued and a firm foundation was laid for the adoption of a biological explanation for infanticide (Friedman & Resnick, 2007; Spinelli, 2003). Other countries also established similar legislation based on the assumption that childbirth is a time of unique biological change and peak prevalence for mental illness (Spinelli, 2001).³

Conversely, the American legal system adopted a very different legal response to neonaticide (Dobson & Sales, 2000; Kumar & Marks, 1992; Resnick, 1970). Although other countries have identified special provisions for these offenders based on the causal relationship between pregnancy, childbirth, and subsequent maternal mental illness, the United States prosecutes neonaticide offenders under general homicide laws (Dobson & Sales, 2000; Kumar & Marks, 1992; Resnick, 1970). American medical and legal experts do not agree on the nature of postpartum mental disorders and their capacity to cause neonaticide (Spinelli, 2003). Thus, prosecutors have charged women with a variety of crimes, including murder in the first, second, or third degree, manslaughter, gross abuse of a corpse, and concealment of death (Schwartz & Isser, 2001). Even so, U.S. juries and judges still take into account the stresses of a mother during her postpartum period, as evidenced in previous legal outcome studies (Kaye, Borenstein, & Donnelly, 1990).

Legal outcomes studies

Previous research of neonaticide cases has highlighted variability in conviction and sentencing, as well as society's preference for leniency (Spinelli, 2001). In Resnick's (1970) examination of documented neonaticide offenses occurring from 1751 to 1968, he noted that for no other crime is there such a low rate of conviction, and even those convicted often receive minimal prison sentences or probation. Additionally, research has shown that juries often report that neonaticide offenders' personality and behavior were not consistent with their expectations of murderers (Gummersbach, 1938).

In a 1993 study of neonaticide cases in England and Wales, Marks and Kumar found that mothers who killed their newly delivered children have a greater than 50% chance of not being indicted for the offense. Of the 45 mothers suspected of neonaticide, 29 were not indicted. If the mother was indicted, she was likely to be convicted under the Infanticide Act and to have received a probation sentence. Specifically, of those indicted, 11 were charged with the reduced offense of infanticide, and five with murder (with the lesser included offense of infanticide) (Marks & Kumar, 1993). The final verdicts of those cases were one acquittal, 14 infanticides, and one manslaughter; all 15 mothers convicted received probation. Marks and Kumar (1993) also observed that

³ These countries included Australia, Austria, Brazil, Canada, Colombia, Finland, Germany, Greece, Hong Kong, India, Italy, Japan, Korea, New Zealand, Norway, the Philippines, Sweden, Switzerland, Turkey, and the United Kingdom (Friedman & Resnick, 2007).

mothers who kill younger children receive more lenient punishment than do those who kill older children.

A 1996 study by Oberman, which analyzed the legal outcomes of 42 neonaticide cases occurring in the U.S., reflected great variability in charges and sentencing amongst the offenders. The charges ranged from the misdemeanor charge of unlawful disposal of a body to felony first-degree murder. Twenty-nine of the 42 offenders (69%) were charged with murder. Oberman (1996) noted that there was a tendency toward more severe charges if the newborn was mutilated in any way. Because of limited information, the sample was much smaller when analyzing sentencing. In the 17 cases in which information was available, sentences ranged from therapy and parenting classes to incarceration for over 30 years. Furthermore, the lack of appeals in these cases suggests that the sentences are relatively lenient (Oberman, 1996).

Mendlowicz et al. (1999) studied the legal outcomes of 53 neonaticide cases occurring in Rio de Janeiro, Brazil. Specifically analyzing the dispositions and sentencing of those offenders convicted before and after 1940. Prior to 1940, the Brazilian penal code stated that the mother who killed her newborn would be indicted for infanticide if she had been driven solely by the need of "preserving her honor" (Mendlowicz et al., 1999, p. 741). However, after 1940 the Brazilian law defined infanticide as resulting from "the influence of puerperal state" (p. 741). Mendlowicz et al. (1999) found that the change in legal definitions resulted in differential dispositions. Court proceeding information was available in 52 cases and, among those, only nine (17.3%) resulted in convictions. The four offenders convicted prior to 1940 were more likely to go to prison, whereas five offenders convicted after 1940 received probation. However, the authors noted that this was most likely due to a change in the Brazilian criminal code that automatically granted probation to first-time offenders sentenced to less than 2 years in prison (Mendlowicz et al., 1999).

Explanations

Because women commit far fewer violent crimes than men, female offenders are perceived to be out of place when they do appear in the criminal justice system (Wilczynski, 1991; Worrall, 1981). Their behavior is viewed as abnormal and in need of special explanation. In order to articulate what is perceived as inexplicable, female criminals are thought to be irrational and pathological, e.g., suffering from mental illness, menstruation, poor socialization, domestic pressures, or a broken home (Wilczynski, 1991). As a result, societies tend to place mothers who kill their children into one of two categories: 'mad' or 'bad'. Unfortunately, this oversimplifies rather than explains the crime (Couglin, 1994).

Huckerby (2003) further explores these two dichotomous groups and reports that sentence outcome is often dependent on whether a mother is classified as mad (afflicted by hormones) or bad (afflicted by evil). Huckerby (2003) described the bad mother as depraved; specifically, that she is, "ruthless, selfish, cold, callous, neglectful of her children or domestic responsibilities, violent or promiscuous" (as cited in Wilczynski, 1991, p. 78). Labeling a mother as mad or bad allows a community to distance itself from the offender. The murder is then viewed as isolated and contained, and the offender can be more readily helped through medication and therapeutic treatment (Couglin, 1994). According to Huckerby (2003), this categorization is necessary in order to preserve the white, middle-class ideal of motherhood, because neonaticide offenses present threats to that perception. In contrast, some have proposed that

neonaticide offenders are neither mad nor bad, but sad, thereby rationalizing the stereotype of the unwed adolescent girl who feels she cannot confide in her religious family (Kaye *et al.*, 1990; Pearson, 1976; Sadoff, 1995). Thus, she and her newborn are perceived to be victims of overwhelming stress (Ward, 1999).

Kohm and Liverman (2002) proposed that blame-shifting, the transfer of responsibility from the mother to some other source, has an impact on the punishment of neonaticide offenders. Flavin (2009) proposed that society should consider its role in neonaticides instead of laying the entire blame on the neonaticide offender. Blame-shifting can also be directed at an offender's poverty and diminished mental capacity, as well as the moral climate, abortion rights, and medical/mental health systems. In some cases, blame-shifting can distract from the severity of a mother's psychopathology, resulting in limited access to mental health treatment and social services (Kohm & Liverman, 2002). She then leaves the criminal justice system while still in her childbearing years with no improvement in her psychological well-being (Kohm & Liverman, 2002; Spinelli, 2004).

The view that neonaticide cases are remarkable, aberrant, and distinct from other child homicides may result from society's uncertainty as to when a fetus or newborn gains a measure of personhood. Personhood, which has both a moral and legal component, is generally regarded as the initial standard of establishing one's value and worth (Gross, 2002). For many, birth is the event that affords a newborn personhood. Still, the federal and state criminal justice systems have passed legislation that recognizes the unborn as victims when injured or killed. Consequently, this obscures the question of who counts, morally and legally, in the United States.

Retribution

Perlin (2003) reported that neonaticidal women are overcharged as a statement to the public but are under-convicted because of societal assumptions that they are "insane" (Perlin, 2003, p. 8) or "crazy" (Oberman, 1996, p.81). Perlin (2003) further explains that society may take pity on an offender or use rationalization and denial to explain a mother's homicidal actions. Yet the requirement of any criminal justice system is to determine an offender's level of criminal responsibility and to deliver punishment proportionate to the crime (Spinelli, 2004). The U.S. has been criticized for not passing legislation specifically addressing the murder of newborns and infants. Consequently, this type of offender is cast as atypical, which prevents the criminal justice system from recognizing patterns among these cases, as well how the legal outcome may be linked to social expectations of mothers (Oberman, 2003). Specific neonaticide laws would also limit variability in sentencing. Despite the lack of legislation, the U.S. was ranked fourth in a 1994 study highlighting the infanticide rates of 21 developed countries (Briggs & Cutright, 1994). This indicates that the more serious charge/conviction of murder, even with this legislative gap, is not an effective deterrent (Briggs & Cutright, 1994).

Schwartz and Isser (2001) suggest that judges should consider all of the circumstances surrounding a neonaticide, such as the offender's fear and ignorance, when determining sentencing. Because long prison sentences will likely have negative impacts on an offender's fragile mental health, some researchers have theorized that therapeutic, rather than criminal, rehabilitation would provide these offenders with tools to avoid future criminality (Drescher-Burke, Krall, & Penick, 2004; Schwartz & Isser, 2001).

Prevention

Though well-intentioned, neonaticide prevention programs in the U.S. have not been met with overwhelming success (Drescher-Burke, Krall, & Penick, 2004). Many states have passed legislation, often called 'safe haven laws', which allow a mother an anonymous and legal way to relinquish her newborn (Mendlowicz et al., 1999). However, some argue that safe haven legislation lessens society's responsibility by providing a quick and inexpensive alternative to murder that satisfies the incentive to fund more effective educational and prevention initiatives (Lusk, 2001).

Furthermore, little is known about the social characteristics of women who abandon their babies, and a woman's reasons for choosing safe abandonment over murder are unclear. Safe haven laws require a level of rationality often missing in neonaticide offenders (Willenbacher, 2004). Meyer et al. (2001) have argued that neonaticide offenders are not able to remain calm enough to consider dropping off the newborn at a designated safe place, because they give birth and murder the newborn in a state of panic and fear.

Other scholars have advocated a system of anonymous childbirth and instant adoption similar to that used by the French (Bonnett, 1993). Established in 1941, the French decree allows a pregnant woman to enter any public hospital without having to disclose her name or other personal information. After giving birth, she is not charged for her hospital expenses and can then legally abandon the baby (Koenen & Thompson, 2008). Reportedly, the practice has been successful: France reports that an average of 600 women give birth secretly each year (Lefaucheur, 2004). Nevertheless, the practice has also been met with controversy. Over the last decade there has been much debate over a woman's rights to an anonymous birth versus the child's right to know his/her parentage (Lefaucheur, 2004).

Neonaticide incidence and prevalence

Neonaticide is considered to have a low prevalence rate but a high level of concealed criminality, and is therefore under-reported in many countries, including the U.S. (Putkonen, Collander, Weizmann-Henelius, & Eronen, 2007). England and Wales have reported that neonaticides constitute about one-quarter of all infant homicides (children less than 1 year) (Marks & Kumar, 1993). Meyer et al. (2001) estimated that 150–300 cases of neonaticide occur each year in the United States. A 2003 North Carolina study reported that from 1985 to 2000, infants were killed or abandoned by a parent (most often the mother) at a rate of 2.1 per 100,000 reported deaths per year (Herman-Giddens, Smith, Mittal, Carlson, & Butts, 2003). Although these authors have attempted to estimate the rate of occurrence of neonaticide, they all acknowledge that these are likely underestimates.

The covert nature of neonaticide makes estimations problematic for a variety of reasons. Upon delivery, the disposal of a newborn is relatively easy and, as a result, difficult to attribute to any one person. This is most often due to the newborn being disposed like refuse, often placed in a bag(s) and put in a trash container. In addition, neonaticide offenders often display physical resiliency by engaging in routine activities immediately following the birth, including returning to work/class or engaging in recreational activities. This lack of observable postpartum recovery can preclude

someone as a potential suspect (Beyer, Mack, & Shelton, 2008). Pathological examinations of the newborn may result in non-specific findings; the cases may be classified under different charges, or they may be altogether lost in statistics because of inadequate proof and pre-trial plea bargains (Herman-Giddens *et al.*, 2003). Typically only those cases that involve medical complications, unsophisticated crime scenes, or obvious body disposal efforts come to the attention of law enforcement or medical professionals (Beyer *et al.*, 2008).

METHOD

For the purpose of this research, neonaticide was operationally defined as the killing of one's biological newborn infant less than 24 hours after birth. Forty-four female offenders and 45 related infant deaths were examined in this study. One offender killed two infants in separate incidents shortly after their births. The cases in this sample occurred from 1992 to 2006. Given that there is no national repository for these offenses, the offenders were identified through various sources such as the FBI's internal Automated Case Support (ACS) database, the FBI's Violent Criminal Apprehension Program (ViCAP), FBI National Academy graduates, LexisNexis, internet searches and other public-source searches. Cases occurred in 18 states: Alabama, Arizona, California, Delaware, Florida, Georgia, Kansas, Kentucky, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Texas, Virginia, Washington, and Wisconsin.

Neonaticide inclusion criteria entailed the following: (1) female offenders who killed their biological children within the first 24 hours of birth, and (2) those charged with a crime related to the offense (e.g., ranging from improper disposal of human remains to first-degree murder). Upon identifying offenders who met inclusion criteria, trained researchers assigned to the FBI's National Center for the Analysis of Violent Crime (NCAVC) requested available detailed case records from prosecutors' and medical examiners' offices, as well as local, state, and federal law enforcement agencies. Requested documents included police investigative, psychological, and autopsy reports, as well as medical and offense records. Police interviews with the offender and family members, court transcripts, and sentencing information were also collected. These requests for case materials were made through telephone calls, letters, and/or travel to the law enforcement agencies. Thereafter, follow-up calls were made to law enforcement agencies requesting additional information as needed.

Materials and procedure

Data collected from case records were extracted from the files and recorded onto a 232-question protocol that was developed by the NCAVC and peer-reviewed by the NCAVC's external Research Advisory Board (RAB). The RAB comprises 15 nationally and internationally recognized researchers, scholars, and practitioners, who assist the NCAVC in conducting academically and scientifically rigorous research. The primary protocol is divided into three main areas: offender background, victimology, and offense information. Offender's background information includes demographics, as well as educational, marital, employment, medical, mental health (prior to, during, and

after the offense), and criminal histories. The offense section includes information such as the date, time and location of the offense, precipitating factors, weapon used, cause of death, body disposal and recovery, immediate post-offense behavior, arrest, case disposition, and sentencing information. The victimology section is a summary of demographics, family structure, and environment. A victim addendum of 114 questions, which replicates the victimology and offense section, is completed in cases involving multiple victims. Therefore, multiple victims are captured but offenders are not counted more than once in the database.

Inter-rater reliability was established and any conflicting questions were reviewed by the primary coder. The completed protocols were then entered into the Statistical Program for the Social Sciences (SPSS 17.0) for analysis. Descriptive and frequency statistics were generated for various offender, victim, and offense characteristics.

RESULTS

Offender characteristics

Age and race

The mean age of the 44 female offenders was 20.91 years with a standard deviation of 6.6. The mode was 18 years, with a range 12–42 years. Thirteen (29.5%) offenders were 17 years of age or younger; an additional 17 offenders (38.6%) were between 18 and 21 years of age. Twenty-two (50%) offenders were Caucasian, 11 (25%) were Hispanic, seven (15.9%) were African-American, two (4.5%) were Asian and two (4.5%) were Native-American.

Socioeconomic status (SES) at time of offense

The offender's SES was determined by the interpretation of observable variables within investigative reports, such as the offender's residence and surrounding area, means of income, and occupation. Fifteen (34%) offenders were considered lower class, of whom six were receiving public assistance. Thirteen (29.5%) were considered middle class, 11 (25%) were lower-middle class, two (4.5%) were upper-middle class, and two (4.5%) were upper class.⁴

Occupational status

Twenty-one (48%) offenders were students at the time of the offense. Sixteen (36%) offenders were employed and six (14%) were unemployed. One offender was collecting disability.

Household living arrangements

Forty-two (95.4%) offenders lived with someone else at the time of the offense. Twenty-seven (64%) offenders were living with their parents when they committed

⁴ For one offender, SES could not be determined.

their offense. Of those offenders living with their parents, 20 (74%) also lived with other people in their parent's home. They included siblings (17), other relatives (three), biological children (two) and a friend (one). Eighteen (42.8%) offenders were not living with their parents at the time of the offense. Instead, they lived with a variety of other people to include biological children (six), husband (four), other relatives (four), friends (four), siblings (three), and boyfriend (one).

Criminal history

A criminal history record check was performed on all 44 offenders by the FBI's Criminal Justice Information System (CJIS). The results were coded using the National Incident-Based Reporting System (NIBRS). Ten (22.7%) offenders had a criminal arrest history prior to the neonaticide and collectively were charged with 26 offenses. The number of offenses per offender ranged from two to six, with the majority (60%) of offenders committing one to two offenses. The 26 offenses included: other B offenses (seven) (i.e., disturbance, false identification, harassment, removal proceedings, resisting arrest, and violation of court order), assault (four), larceny/theft (four), burglary (three), drug-related (two), disorderly conduct (two), robbery (one), stolen property (one), and runaway (one).

Criminal Justice Information System information also revealed that three (6.8%) offenders had been arrested for crimes after the neonaticide offense. These three offenders were arrested for a total of five charges: assault (one), failure to appear (one), larceny (one), non-violent family offense (one), and violation of parole (one).

Obstetric history

Twelve (27%) offenders had other living biological children at the time of the offense. Seventeen (38.6%) offenders had previously been pregnant, although not all resulted in live births. Four offenders had an abortion and one miscarried prior to the offense.

Accomplice/secondary offender

In four (9%) of the 45 cases, someone helped the offender to plan, carry out, and/or cover up the offense. Specifically, one case involved the offender's parents and sister, two cases involved the offender's boyfriend and one involved the offender's cousin. In the cases involving an offender's boyfriend and cousin, the accomplices were charged and convicted of manslaughter. Their prison terms ranged from 2 to 8 years. In two of these three cases, the offender received more prison time than the accomplice.

Birth setting and dynamics

Thirty-seven (84%) offenders gave birth in their residence, most commonly in a bathroom (57.8%). Six (13.6%) offenders gave birth in a motel or hotel room. Nineteen (45.2%) offenders gave birth directly into a toilet and five (11.3%) gave birth while in the shower/tub. Forty-one offenders (93.1%) gave birth alone; three (6.8%) were

assisted by their boyfriend (two) and a cousin (one). In 33 (73.3%) of the cases, an unsuspecting adult or child was in close proximity (most often in the next room) to the offender during the birth and homicide.

Victim characteristics

Age, gender, and race

Because neonaticides comprise the entire sample, the age of all 45 victims was less than 1 day. Males accounted for 25 (55.6%) of the victims; females for 20 (44.4%). Twenty-one (46.7%) victims were Caucasian, 10 (22.2%) were Hispanic, seven (15.6%) were bi-racial, four (8.9%) were African-American, two (4.4%) were Asian, and one (2.2%) was Native American.

Cause of death (COD)

Cause of death was coded based on a medical examiners' autopsy report. Of the known causes of death ($n = 39$), asphyxiation was observed in 21 cases (53.8%). In two cases (5.1%), the death was due to blunt force trauma; in two cases (5.1%), the victim died as a result of stabbing; and in two (5.1%), the cause of death was coded as "other" and included exsanguinations and neonatal physical abuse/neglect. In one case, the COD was due to exposure. In 11 (28.2%) of the cases, multiple causes of death were found: asphyxiation, exposure, other (to include exsanguinations, abandonment and starvation), and blunt force trauma were the most commonly occurring CODs found within the multiple causes category. For six cases (13.3%), the cause of death was undetermined.

Body recovery

Of the 45 cases, the date of body recovery was determined in 44 cases. Among those 44, the number of days between the day of the offense and body recovery ranged from less than 1 day to 3.6 years. Twenty-nine (65.9%) victims were recovered within 24 hours and with an additional six (13.6%) recovered within the first week.

Motive

Classification of motive was determined through a standardized process based on several sources of case file information, including circumstances surrounding the homicide, medical histories, psychological and social histories, and crime scene and autopsy findings.⁵ The NCAVC's Motive Classification System captures motive in addition to various features of the crime. Possible motives for neonaticide included altruism, revenge, unwanted due to personal gain, unwanted due to financial gain, or

⁵ The Motive Classification System was created internally by the NCAVC in co-ordination with the NCAVC's Research Advisory Board.

unwanted due to momentary gain. Based on this classification system, the primary motive in all 45 cases was that the child was undesirable or unwanted for personal gain, be it for convenience, removal of burden, shame of sexual activity outside of marriage, and/or hindrance to future educational and career goals.

Factors influencing motive per offenders' self-report

During the investigation and after the offense, various risk factors, environmental circumstances, and stressors were reported by the offender or family members/close associates in all but five cases. Self-report information was available in 40 of the 45 cases. In 15 of the cases (35%), the offender reported that the fear and shame of having engaged in pre-marital sex was a factor in keeping the pregnancy and birth hidden from others. In seven cases (18%), the offender believed her parents would be upset with her. Within those seven cases, the researchers were unable to pinpoint the exact reason why offenders believed their parents would be upset with them, although it is assumed that it was due to the stigma of illegitimacy as well as their participation in pre-marital sex (as they were all young and unmarried). In five cases (11%), the offender reported that the recent break-up with the victim's biological father was an influencing factor in why the child was not wanted. For three offenders (7%), the baby would have been a hindrance to her future goals such as college or career. In three cases (7%), the offender was unsure of the paternity of the victim due to her multiple sexual relationships. In two cases (4%), the offender reported that her financial difficulties would have prevented her from taking care of the child. In two cases (4%), the pregnancy was the result of an extramarital affair. In one case, the offender had used illegal drugs throughout the pregnancy, and feared that if her drug use was revealed she would lose custody of her other living biological children. For one offender, the pregnancy and birth were not revealed because her husband had specifically told her he did not want any more children. And in one case, the offender reported that the child was not wanted because the child's father was not the preferred sexual partner.

Mental illness and substance-use features⁶

Criteria for coding mental illness required documentation of a formal diagnosis.⁷ For 33 offenders there was no information in the case file to suggest a psychological diagnosis. For 11 offenders, investigative reports and/or psychological evaluations indicated a diagnosis of mental illness at the time of the offense. In seven of the 11 cases, a written evaluation from a licensed psychologist (three) or psychiatrist (four) was obtained and reviewed. In the remaining four cases, the diagnosis was included in investigative reports. Disorders were not mutually exclusive and included depression (seven), dissociative disorder (three), anxiety (two), dissociative identity disorder (two), mild mental retardation (two), adjustment disorder (one), and learning disability (one). One offender was found to be psychotic at the time of offense. None of the offenders were

⁶ The offender's mental health status and/or substance use at the time of the offense were not considered to be a motivation for the homicide, but rather a feature related to the offender.

⁷ *Diagnostic and Statistical Manual of Mental Disorders*, 4th edn, Text Revision (DSM-IV-TR) published by the American Psychiatric Association (2000) was used to determine diagnosis.

diagnosed specifically with postpartum depression.⁸ The number of disorders per offender ranged from one to four, with the majority of offenders (63.6%) diagnosed with one disorder. In four cases (9%), the offender was under the influence of alcohol and/or drugs at the time of offense.

Legal outcome

The offender pled guilty to an offense less than the original charge in 24 (54.5%) of the cases, most often to second-degree murder or voluntary manslaughter. Thirteen (29.5%) were found guilty at trial by a judge or jury, and six (13.6%) pled guilty to the original charge. In one case the charge was dismissed.

Not guilty by reason of insanity

Three offenders (6.8%) attempted a “not guilty by reason of insanity” (NGRI) defense; however, all were subsequently withdrawn. Consequently, two of these offenders were found guilty at trial and one pled to a lesser charge.

Neonaticide sentencing

Sentences in this study’s population were considerably varied. One of the 44 offenders received the death penalty, which was subsequently overturned. That offender was later sentenced to life in prison. One offender received house arrest. Three (6.8%) offenders (aged 15–16) were sentenced to a juvenile facility. Ten offenders (22.7%) received a sentence of probation only. When the probation time was known, it ranged from 1 to 11 years. When sentence type and offender age were compared, results revealed that all of the offenders who received probation were 20 years of age or younger, with the exception of a 31-year-old offender who also had a diagnosis of mental retardation.

Twenty-eight (63.6%) of the 44 offenders received a sentence resulting in some type of incarceration (excluding juvenile facilities and house arrest), ranging from 9 months to 25 years in prison. Of those 28 offenders, the average prison sentence received was 8.8 years. Table 1 summarizes the characteristics of the 28 offenders who were incarcerated. The population was divided into two groups, those who received 5 years or less ($n=14$) and those who received sentences greater than 5 years ($n=14$). Offenders who received longer sentences were more likely to be minorities ($\chi^2=5.32, p=.021$), to have living biological children at the time of the offense ($\chi^2=3.13, p<.077$), to be married/widowed ($\chi^2=2.72, p<.099$), to accept a plea bargain ($\chi^2=3.676, p<.055$), and to have male victims ($\chi^2=5.99, p<.014$). Those who received lesser sentences were more likely to be students ($\chi^2=3.48, p<.062$) and to be living with their parents at the time of the offense ($\chi^2=5.073, p<.024$).

⁸ Postpartum depression onset specifier is 4 weeks post-delivery (DSM-IV-TR).

Table 1. Offender characteristics versus prison terms

Offender variable	Prison terms		Total	χ^2
	≤ 5 years	> 5 years		
Race				5.32*
Non-minority	10	5	15	
Minority	3	10	13	
Total	13	15	28	
Living biological children				3.13**
Yes	2	7	9	
No	11	8	19	
Total	13	15	28	
Marital status				2.72**
Married/widowed	1	5	6	
Single	12	10	22	
Total	13	15	28	
Student				3.48**
Yes	7	3	10	
No	6	12	18	
Total	13	15	28	
Plea bargain				3.676**
Yes	7	13	20	
No	6	2	8	
Total	13	15	28	
Living with parents				5.07*
Yes	9	4	13	
No	4	11	15	
Total	13	15	28	
Age				1.45 <i>ns</i>
Under 21	9	7	16	
21 and over	4	8	12	
Total	13	15	28	
Criminal history				1.26 <i>ns</i>
Yes	4	2	6	
No	9	13	22	
Total	13	15	28	
Gender of child (victim)				5.99*
Male	3	10	13	
Female	11	5	16	
Total	14	15	29	
Traumatic death				0.01 <i>ns</i>
Yes	2	2	4	
No	12	13	25	
Total	14	15	29	

Note: the variation in sample size is due to an offender having two victims.

* $p < .05$, ** $p < .10$.

Infanticide and filicide sentencing

The prison sentences of the 28 neonaticide offenders were compared with the FBI's unpublished sample of maternal infanticide and filicide offenders. Analyses revealed that the infanticide and filicide offender sample when combined ($n = 76$) received an average prison term of 17.75 years, compared with the 8.8 years given to neonaticide offenders [$F(1, 103) = 7.287, p \leq .008$]. The authors also separated the data even further into filicide, infanticide, and neonaticide prison terms. The mean prison time for

filicide offenders was 21.2 years ($SD = 18$) and 11.3 years ($SD = 12.3$) for infanticide offenders, as compared with 8.8 years ($SD = 7.5$) given to neonaticide offenders [$F(2, 103) = 7.874, p < .001$].

Additionally, sentencing mothers who killed older children to probation occurred with less frequency. Only 5% of the infanticide and filicide offenders received probation compared with 22% of neonaticide offenders ($\chi^2 = 12.336, p < .001$). When separated further, analysis revealed that fewer than 1% of the filicide offenders and 11% of the infanticide offenders received probation-only sentences.

DISCUSSION

Historically, society has responded inconsistently to neonaticide, which may be attributed to the widespread assumption that mothers are inherently harmless and unobjectionable (Oberman, 2003; Wilczynski, 1991). The analyses of the cases included in this study reflect that even in the absence of U.S. infanticide legislation and modernization in both the medical and mental health fields, society continues to be ambivalent with regard to maternal neonaticide offenders. The authors suggest that this ambivalence may be attributed to several socially-constructed factors.

First, mothers who kill their newborns may be perceived as less culpable by the criminal justice system and thus are often treated sympathetically and granted a reduced sentence. Although mothers who kill their newborns are less likely to have diagnosed psychiatric problems compared with mothers who kill older children (Craig, 2004; Dobson & Sales, 2000; Resnick, 1970), a neonaticide offender's emotional and physical turmoil during the birth and homicide are frequently offered as mitigating factors. Within this sample, many offenders described psychological and emotional pressures from giving birth alone and without medical assistance, as well as shame associated with their pre-marital sexual relations and the illegitimacy of their unborn child (Mendlowicz et al., 1998; Resnick, 1969). The overwhelming majority of offenders in this sample gave birth alone and in a non-medical setting, most commonly in their residence. In addition, many were concerned about detection during the delivery, since there were others present in the residence at the time of the birth and homicide. Often, the offender was concerned that if the pregnancy became known, a secret about her would be revealed (e.g., pre-marital sex, affair, unknown paternity, multiple sexual partners, and drug use).

Further complicating neonaticide cases is the common dynamic of dissociation that offenders report experiencing. Within this sample, some offenders described dissociative-like experiences, including the inability to remember details, blacking out, and/or viewing themselves outside of their bodies. Dissociation is thought to be a therapeutic coping mechanism in that it provides an escape from physical pain and fear, as well as allowing the offender to view the trauma as happening to someone else or to a depersonalized self (Putnam, 1989). To counter this argument, various researchers analyzing the childbirth experience in the general population report that many women experience a loss of time and missing pieces in their memory along with anxiety, panic, and feelings of being out of control (Reynolds, 1997; Waldenstrom et al., 1996). If these symptoms occur under normal birthing circumstances, one might conclude that it is no surprise that these experiences occur when a women is giving birth secretly and without assistance. Surprisingly, none of the offenders within this sample were found not guilty

by reason of insanity.⁹ This suggests that an overwhelming majority of the offenders in this sample did not meet the legal requirements for impaired judgment, irrationality or lack of free will, despite their emotional and physical turmoil. Nevertheless, the criminal justice system may view the combination of various factors to include giving birth alone in a non-medical setting, desire for secrecy, and dissociation as extenuating circumstances and thus view the offender as less culpable.

A second factor contributing to social ambivalence is that neonaticide offenders may appear to be more redeemable compared with other familial or non-familial perpetrators of child homicide. The authors of this study observed a significant correlation ($\rho = -0.696$, $p < .001$) (strong relationship) between an offender's perceived redemptive qualities and the type of sentence she received (probation versus a sentence of 5 years or more). The more redemptive qualities the offender possessed, the lesser the sentence she received. The variables chosen to determine these redemptive qualities were an offender's age (20 years or younger), occupational status, prior criminal history, prior pregnancies, and household living arrangements. The authors chose these variables because they best captured the dynamics of an offender who is typically young, unfamiliar with pregnancy, new to the criminal justice system and in a dependent status (e.g., living with parents, unemployed and a student).

Analyses revealed all of the offenders who received probation were 20 years of age or younger, with the exception of a 31-year-old offender who had mental retardation. In addition, 90% lived with their parents, had never been pregnant before, and had no prior criminal history. Eighty percent were students at the time of the offense. The authors theorize that the criminal justice system may decline to sentence these offenders to prison because (1) they can be more readily helped through therapeutic treatment, (2) the murder is viewed as an isolated and unfortunate event, and (3) the offender is unlikely to recommit neonaticide due to the unique nature of the crime (Meyer *et al.*, 2001).¹⁰

Furthermore, the authors not only observed common offender characteristics within the probation category, but analyses also revealed trends within the prison group.¹¹ At first glance, it might be assumed that lighter sentences were given to younger offenders and harsher sentences were given to older offenders. However, further examination of this population showed that offender age was not statistically significant with regard to prison time. Therefore, age alone did not influence an offender's prison term. Offender age, however, when combined with other significant variables, may affect sentencing outcomes. For example, those who received lighter prison sentences (5 years or less) were typically students and were living with their parents at the time of the offense, thus inferring a more youthful offender. Greater hope of rehabilitation may be the rationalization behind a shorter prison sentence for these young offenders. Furthermore, blame-shifting may have a greater influence in cases involving youthful and dependent offenders, because society feels more responsible for children and, to a lesser degree, teenagers and young adults (Kohm & Liverman, 2002). Specifically, some researchers have suggested that society tolerates and perpetuates neonaticide by ignoring adolescent sexuality and should recognize the precarious state of neonaticide

⁹ Three offenders (6.8%) attempted this defense unsuccessfully.

¹⁰ It should be noted that in this current study only one offender killed a second newborn shortly after giving birth.

¹¹ To perform the chi-square analysis, the authors divided the prison sample ($n = 28$) into two equal groups of 14 offenders each.

offenders to ensure that sex is without coercion, and pregnancies are planned and supported (Flavin, 2009; Oberman, 1996). Within this study, blame-shifting was observed in several cases with particular focus on an offender's upbringing, her parents, or society at large.

By contrast, offenders who received longer prison sentences (more than 5 years) were more likely to have biological children and be married, thus inferring an older offender.¹² The authors theorize that society may sentence a certain type of offender more harshly because she does not conform to traditional expectations of motherhood (Ballinger, 2000; Kirkwood, 2003). The criminal justice system may believe she should be ready, willing, and able to parent a child despite becoming pregnant unexpectedly. In addition, the various motivations for neonaticide such as shame of pre-marital sexual activity, illegitimacy, hindrance to future goals, and financial difficulties may not be as easily accepted when the offenders are older, already mothers, and independent of their parents.

Finally, disparate legal outcomes of charges against neonaticide offenders may be attributed to society's uncertainty about the moral and legal personhood of a fetus or newborn. At first glance, fetal status is not identical to newborn status. Society commonly accepts that one's birth establishes individuality, both morally and legally (Gross, 2002). Moral personhood affords a measure of respect for one's life and interests and is based on criteria independent of the law (Gross, 2002). Legal personhood establishes and protects a variety of rights through judicial statutes (Gross, 2002). Yet the establishment of personhood is further complicated because the interests of a mother and fetus are intertwined. Furthermore, federal and state judicial systems provide differing legislation for situations in which the interests of the mother and fetus separate (Arkansas Criminal Code, 1999; Code of Kansas, 2007).

The Federal Unborn Victims of Violence Act (2004) recognizes the unborn as victims when they are injured or killed in a federally prosecuted jurisdiction. A total of 36 states have passed legislation allowing prosecutors to charge a person with homicide in certain cases when a fetus has been unlawfully killed (National Conference of State Legislatures, 2009). Abortion legislation may also have contributed to the complexity of establishing personhood. Although abortion is readily available and legal during the first and second trimesters, by the third trimester the American fetus has a measure of recognition and protection (Gross, 2002). This protection is unmatched by most developed nations (Gross, 2002). Currently, 40 states ban abortion for a viable fetus except to save the life of the mother (National Abortion and Reproduction Rights League, 2008).

The moral and legal question over personhood is further exemplified in various cases within this study. Issues surrounding gestational age and viability standards have affected how a judge or jury decides the fate of a neonaticide offender. Typical questions include the following. Was the newborn viable at birth? Did the lack of prenatal care lead to a premature birth and subsequently further vulnerability despite the offender's homicidal actions? Certain offenders within this sample highlight the legal and medical arguments surrounding the determination of whether a victim was born alive. For example, despite sound medical evidence of a live birth, sophisticated defense teams

¹² Offender race and victim gender also showed statistical significance related to prison sentence and the authors plan to explore this finding further. One possible explanation is that minorities are over-represented in comparison to the general population and there are slightly more male victims in this study.

have presented a variety of arguments for acquittal or reduced sentencing, which include the contention that because the victim was killed during delivery and partially *in utero*, the victim was not technically born, or the rationale that since the infant appeared stillborn to the offender, the case lacked premeditation and intent, thus reducing her culpability.

Questions surrounding personhood can also be evidenced by the relationship between the victim's age and an offender's legal outcome, with mothers who kill younger children receiving lighter prison sentences than those who kill older children (Oberman, 1996). The legal outcomes of the 44 neonaticide offenders in this current study were compared with the FBI's unpublished sample of maternal infanticide and filicide offenders. According to the results in this study, mothers who killed older children were less likely to be given a sentence of probation only, as revealed by performing chi-square analysis. Additionally, filicide offenders received nearly twice as much prison time as neonaticide offenders.

Oberman (1996) highlights the possible social dangers of giving clemency to mothers who kill younger children. These dangers include: (1) the assumption that society values the lives of adults more than the lives of children, (2) the threat to the integrity of the law because of widely varied legal outcomes, (3) a sexism that is the result of discrepancies between male and female accountability for illegal acts, and (4) the missed opportunity to research the remarkable similarities among neonaticide cases, because society does not acknowledge that it treats such cases differently.

In contrast to retribution, another response by society to this phenomenon has been in the creation of various prevention programs, commonly referred to as safe haven laws. Safe haven laws allow mothers in crisis to safely relinquish their babies at designated locations such as hospitals and fire departments. The mother may remain anonymous and is protected from prosecution. These laws appear to operate under society's presumption that women who commit neonaticide and women who take advantage of established prevention programs are relatively the same (Willenbacher, 2004). Despite the development of these prevention programs, however, it remains unclear within the literature whether a woman's reasons for choosing abandonment versus neonaticide are similar. In order for neonaticide prevention programs to be more successful, these programs must be marketed more effectively to those who are most likely to commit this type of offense. Based on our anecdotal analysis of the offenders within this study, the authors argue that in order for a mother to take advantage of her state's safe haven program, she must at least consider the child's well-being before her own. A common scenario within neonaticide cases involves an offender who is incapable of exercising this option because she has maintained secrecy throughout the pregnancy. In many instances, the delivery of the child occurs unexpectedly and with no prior planning. The mother must make a life-or-death decision within minutes of the birth. Taking advantage of safe haven laws, however, requires her to act deliberately: she must find a drop-off location or care for the infant until she is able to find a safe haven location. Neither of these options seems plausible for a mother of an unwanted, unplanned, and unacknowledged pregnancy.

This issue highlights an additional need to interview neonaticide offenders to determine their prior knowledge and perception of their state's safe haven laws and, if aware, their reasons for deciding to ignore them. In addition, these interviews may provide insight to improve community awareness and intervention efforts targeting women at risk for committing neonaticide.

CONCLUSION

The aim of this study was to: (1) examine the legal outcomes of neonaticide offenders, (2) identify potential variables which may be influencing conviction and sentencing, and (3) compare the U.S. legal response with that of other developed nations. As observed in this study, there is great variability in sentencing, yet in certain cases leniency is granted. Offender demographics (i.e., age, marital status, and other biological children) can have a tremendous influence on a mother's legal outcome. Society responds very differently to the young college student who kills her newborn than to the twenty-something married woman with other children who commits the same act. Additionally, we have revealed evidence that the criminal justice system takes into account the age of the child when determining sentencing. Women who kill their newborns, regardless of their demographics, often receive a lesser punishment than women who kill older infants or children. Future research should explore this trend in the hope of identifying the underlying rationale.

Despite the common occurrence of neonaticides throughout the history of the world, the U.S. has not yet reached a consensus on an appropriate legal response to this phenomenon. Our study provides an important first step in extending the limited field of research on this topic. However, a variety of questions, assumptions, and opinions will remain given that controversy is inevitable when homicide and motherhood converge. By recognizing the power and influence of centuries-old and often unrealistic ideals and viewpoints, we can move toward a legal response based on valid research and fact.

Limitations

There are several limitations to consider when discussing the current research. Given the low prevalence rate for this type of homicide, this sample size is consistent with or exceeds sample sizes of other previous studies. However, the relatively small sample size of the current study limits generalizability. The method of case collection was not random, although it is representative of operational cases. The majority of the cases were identified through law enforcement or media sources. Finally, the researchers were limited to the information obtained within the investigative case materials. Specifically, the case records provided limited medical and psychological information.

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