

Murdering Mothers?

Representations of Mothers Who Kill Their Children in
Theatre and Law

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ABSTRACT

This interdisciplinary thesis examines the representation of women who kill their children in theatre and law using a feminist maternal theoretical lens. Focalizing this examination is in the use of scholarship from Canadian criminal law and legal history from the discipline of Law, feminist maternal theory from the discipline of Gender and Women's Studies, and classical tragedy from the discipline of Classical Studies. The primary goal of this thesis is to show how the oppression of and attitudes towards mothers who kill their children have remained yet taken different forms within the patriarchal structure of society over time. For case studies this thesis uses Kate Mulvany and Ann-Louise Sarks' 2012 adaptation of Euripides' *Medea* and the 2011 Ontario court case *R v. L.B.*. This thesis concludes that the invisible father and the overvaluation of childhood innocence are the patriarchal parenting components that continue to oppress mothers. This thesis recommends that change would be brought about through public policy and feminist advocacy on the issues of meaningful and equal access to childcare, closing the gendered wage gap, and the encouragement and normalization of fathers taking parental leave.

I dedicate this thesis to my parents, Bruce and Merle Ames,
for instilling in me the values of *yiddishkeit* and an inquiring mind.

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Introduction

Interdisciplinary Studies is the practice of having disparate disciplines inform one another to bring about new pathways to answering questions. This interdisciplinary thesis brings together maternal theory from the discipline of Gender, Sexuality, and Women's studies, Canadian criminal law and legal history from the discipline of Law, and classical tragedy from the discipline of Classical Studies. The question I pursue through these disciplines is how women who kill their children are represented in theatre and law using a maternal feminist theoretical lens.

The taboo against mothers harming their children is enduring. This project focuses on seeing what attitudes have changed and what have remained the same. This research demonstrates that patriarchy has been the enduring system in the oppression of women. Patriarchal oppression has taken many forms and has shifted to shape the dominant social values and attitudes of the time. This thesis evaluates the predominant values shaping representation of mothers who kill their children in theatre and law in the twenty-first century using as case studies Kate Mulvany and Ann-Louise Sarks' 2012 adaptation of Euripides' *Medea* and the Ontario court case *R v. L.B.* This interdisciplinary thesis aims at deconstructing and challenging the normative stereotypes that reify the tropes of mothers accused and convicted of killing their children. By doing so, this thesis has identified the invisible father and the overvaluation of childhood innocence as key components of patriarchal intensive motherhood that continue to oppress mothers.

This thesis has four sections. The first section is a literature review of maternal theoretical scholarship and provides the theoretical feminist framework for the overall

thesis. The question I pursue using a feminist maternal theoretical lens is how the institution of motherhood is shaped by the dominant patriarchal values of its time. This is followed by the legal literature review and outlines the history of the infanticide section of the *Canadian Criminal Code* (The Code). The legal literature review also includes a survey of recent Canadian scholarship on the infanticide section and recommendations for reform. The legal literature review is followed by my analysis of *R v. L.B.* and examines the ‘invisible father’ in L.B.’s case, and asks whether a mother who was denied innocence in her own childhood can be expected to foster that innocence in her own children. This thesis continues with a review of classical studies literature, beginning with a history of Jason and Medea’s relationship and continues with the importance of oaths in classical antiquity. The classical studies review focuses on the role of the male guardian and the rigid practices surrounding ancient Athenian marriage and divorce. The classical studies literature review closes with interrogating the role of children in ancient Athens to contextualize the focalization of Jason and Medea in Euripides’ *Medea* against Ann-Louise Sarks and Kate Mulvany’s adaptation where the story is told through the eyes of the sons. The classical studies review is followed by an analysis of Ann-Louise Sarks and Kate Mulvany’s adaptation of *Medea*. This section interrogates the invisibility of Jason as a character and examines how the play frames the telling of the story through the eyes of Jason and Medea’s ‘innocent’ sons.

With respect to methodology, the literature selection process for this thesis was focused on strengthening the interdisciplinarity of the topic. It was important that the literature was filtered through the lens of feminist maternal theory. Therefore, I selected

feminist maternal texts that addressed how women's lives have been impacted through a patriarchal socially constructed role of motherhood. I specifically resisted the postpartum medical model of analyzing women's oppression post-birth and sought the less detectable and subtler areas of oppression through the patriarchal structuring of the nuclear family. From this first principle the rest of the literature was selected. For the legal literature review, I focused on literature that clearly showed the legislative history of the eventual infanticide section in The Code. There was a significant amount of literature. Therefore, I chose literature that showed how women's lives were directly impacted by the legislative decisions made in response to the issue of mother's killing their children, using dominant patriarchal attitudes towards the status of women and value of children to suit the legislative response. As for the Classical Studies literature selection, it was important for me to demonstrate that Euripides' version of the Jason and Medea myth was also shaped by the dominant patriarchal socially constructed values regarding social life and family. Therefore, I selected literature showing how Euripides' version may have been impacted by attitudes and values regarding the status and value of children and the significance of oath making and breaking in fifth century Athens. This was in order to further demonstrate how Kate Mulvany and Ann-Louise Sarks' adaptation was similarly impacted by the dominant values surrounding women and children when the play was written.

My methodology for selecting case studies was to primarily choose a play and legal case that were written within the same five to ten year time period in order to demonstrate consistent cultural and legal attitudes. From there, the selection process was

based on how the pieces stood out to me in terms of their exceptionality. I ultimately selected *R v. L.B.* given the two charges laid against the mother separated by four years with the first occurring when L.B. was a legal minor. This added a layer of oppression not present in the other cases I had considered. Additionally, L.B.'s case stood out because while the young mother killed two of her children she also kept her two other children alive, adding another layer of complexity to her case. In selecting an adaptation of Euripides' *Medea*, I was struck by Kate Mulvany and Ann-Louise Sarks' adaptation because it was told from the perspective of Jason and Medea's children. This was an innovation I had yet to see. I was also struck by the fact the play was inspired by an Australian case where the father killed his daughter while his other children were witness to the act. I was interested in how a play inspired by the acts of a father resulted in Jason as the father character being completely written out of the adaptation. Mulvany and Sarks' adaptation was significantly different than Euripides' version yet still fell prey to the patriarchal narratives and norms surrounding twenty-first century parenting and attitudes towards the value and status of children. Taken together, these case studies provided a rich foundation to interrogate the representation of mothers who kill their children in theatre and law and led to the analysis of the overvaluation of children and the invisible father.

This thesis operates under the limitations of race, geography, class, heterosexuality, and gender. Given this thesis is focused on a play and court case where the parents are heterosexual couples, this review limits itself to the study of infanticide as it appears between cisgender male and cisgender female heterosexual partnerships. While

infanticide is not confined to a single economic class, this thesis limits itself to examining infanticide as it appears within the houses and communities of lower economic status.

With respect to race and geography, research demonstrates that women of racial minorities who have killed their children in the United States and Canada face different socio-economic issues based on their racial identities. Therefore, the research and analysis based in the United States is not directly applicable in the Canadian socio-economic and legal context.¹ The legal history of this thesis is also limited to the jurisdiction of England and Canada. The Classical Studies literature review is limited in that it does not examine or make comparisons between translations of Euripides' *Medea* and relies on James Moorwood's translation of the play.² The review also does not engage in the robust discussion on the status of women in Classical Athens. Authors such as Sarah Pomeroy, Marilyn Katz, and A.W. Gomme have theorized about status and provide rich analysis for comparative review.³ This review and overall thesis recognizes patriarchy as the persistent and underlying oppression that continue to affect women's 'status'.

¹ (1) Park, Hijin. 'Race, Nation and Citizenship in 'Mothers Who Kill Their Children': The Case of Rie Fuji'. *Criminalized Mothers, Criminalizing Mothering*, eds. Joanne Minaker and Bryan Hogveen, Demeter Press, 2015, pp. 164. (2) Ladd-Taylor, Molly. 'Mother Worship/Mother Blame: Politics and Welfare in an Uncertain Age'. *Journal of the Association on Research and Mothering*. 6.1 (2004): 7-15.

² Euripides. "Medea and Other Plays", trans. James Morwood. Oxford: Oxford University Press, 1997.

³ (1) Pomeroy, Sarah B. *Goddesses, Whores, Wives and Slaves: Women in Classical Antiquity*. New York: Schocken Books, 1975. (2) Gomme, A.W. 'The Position of WOMen in Athens in the Fifth and Fourth Centuries'. *Classical Philology*. Vol. 20, No. 1., 1925. P. 1-25. (3) Katz, Marilyn. 'Ideology and 'The Status of Women' in Ancient Greece'. *History and Theory*. Vol. 31. No. 4., 1992, 70-97.

Chapter One: Maternal Theory Literature Review

Introduction

Maternal theory has a continuing history rich with analysis. The roots of maternal theory begin with authors who found it necessary to document and theorize the rich reality and diversity of motherhood. Motherhood theorists and philosophers wrote of the dual ends of the emotional spectrum of mothering. They wrote of both the deep joy motherhood brings in addition to the feeling of frustration and ambivalence. Many mothers are able to experience feelings of ambivalence towards their children and negotiate those thoughts and feelings. For some mothers, this ambivalence and frustration can put them at risk for harming or killing their children. This review will examine the socio-economic circumstances that shape the lives of women who kill their children. As we will see, a mother does not need extraordinary circumstances to kill her children. The ordinary experience of motherhood is extraordinary enough.

This review will have five sections. The first will focus on the theoretical distinctions between patriarchal motherhood and the potential for empowered feminist mothering practices. This section will also complicate the notions of Sara Ruddick's theories on 'preservation' and examine how binaries can arise in maternal theory when conducting comparisons between groups of mothers. This review will then examine the socially constructed value of childhood innocence as it appears in society and explore how it appears within patriarchal mothering practices. The fourth section will discuss teen motherhood and examine the theory on how trauma can impact a teenage woman's

decision to enter into pregnancy and motherhood at a young age. To close, this review will survey prevailing authors who have analyzed mothers who kill their children and push against the enduring models of classification for mothers who kill their children. The purpose of this review is to provide the necessary maternal theoretical framework by which to filter through Ann-Louise Sarks and Kate Mulvany's adaptation of Euripides *Medea* and the legal case of *R v. L.B.*⁴

This review is operating under the limitations of race, geography, class, heteronormativity, and gender. Given that this thesis is focused on plays and court cases within which the parents are cisgender heterosexual couples, this review limits itself to the study of infanticide as it appears within cisgender heterosexual couples. While infanticide is not confined to a single class, it is found that infanticide predominantly occurs in houses and communities of lower economic status. In regards to race, research demonstrates that women of racial minorities who have killed their children in the United States and Canada face different socio-economic issues based on their racial identities. Therefore, the research and analysis based in the United States is not entirely applicable in the Canadian socio-economic and legal context.

The Institution of Motherhood and Feminist Mothering

For a problem to be solved it must first be identified. In her ovarian work *Of Women Born: Motherhood as Experience and Institution*,⁵ Adrienne Rich identifies the patriarchal institution in which motherhood has developed and creates the space for

⁴ R. v. L.B., 2011 ONCA 153

⁵ Rich, Adrienne. *Of Woman Born: Motherhood as Experience and Institution*. New York: W.W. Norton & Company, 1986.

critical feminist discussion about the construction of motherhood as a function of oppression that serves patriarchy. Rich defines patriarchy as: “a familial-social, ideological, political system in which men-by force, direct pressure, or through ritual, tradition, law and language, customs, etiquette, education, and the division of labour, determine what part women shall play, and in which the female is everywhere subsumed by the male” (57). Defining patriarchy as such, Rich helps defines patriarchy as a social construct where motherhood is an integral part of that construct. Rich also writes that: “at the core of patriarchy is the individual family unit which originated with the idea of property and the desire to see one’s property transmitted to one’s biological descendants” (60). As we will see with Euripides’ *Medea*, this fundamental aspect of family, ownership, and the transmission of property through children is a core aspect of patriarchy that has survived and flourished since Athenian times, perhaps even longer. Rich’s work gives readers the ability to think of motherhood as a social construct of patriarchy and not as a given.

Adrienne Rich introduces the institution of motherhood in *Of Woman Born*: “...the institution of motherhood is not the ‘human condition’ any more than rape, prostitution, and slavery are” (33). Rich gives the patriarchal institution of motherhood definable qualities and thereby it becomes an entity and a construction that can be critiqued: “[p]atriarchy could not survive without motherhood and heterosexuality in their institutional forms; therefore they have to be treated as axioms, as ‘nature’ itself, not open to question” (Rich 43). Rich saw the institution of motherhood as an important component of patriarchy. Motherhood removed from patriarchy would destabilize the

system as a whole. Therefore, there exists

[t]wo meanings of motherhood, one superimposed on the other: the *potential* relationship of any woman to her powers of reproduction-and to children; and the *institution*-which aims at ensuring that that potential-and all women-shall remain under male control

Rich 13, emphasis in original

This distinction allowed for women to consider liberation from institutional motherhood.

In the third chapter 'Kingdom of the Fathers', Rich explains the role of power and ownership in the patriarchal familial structure. Andrea O'Reilly builds upon Rich's theory in her book *Rocking the Cradle: Thoughts on Motherhood, Feminism and the Possibility of Empowered Mothering*.⁶ O'Reilly builds upon Rich's fundamental distinction between the 'potential' and 'institution' that exists surrounding motherhood and takes it one step further by writing

[t]he term motherhood refers to the patriarchal institution of motherhood which is male-defined and controlled and is deeply oppressive to women, while the word mothering refers to women's experiences of mothering which are female-defined and centered and potentially empowering to women...[i]n other words, while motherhood, as an institution, is a male-defined site of oppression, women's own experiences of mothering can nonetheless be a source of power

O'Reilly 11

While Rich frames the problem existing within patriarchal motherhood, Andrea O'Reilly builds upon and strengthens Rich's theory by developing the language now used to explain for that problem.

⁶ O'Reilly, Andrea. *Rocking the Cradle: Thoughts on Motherhood, Feminism and the Possibility of Empowered Mothering*. Toronto: Demeter Press, 2006.

Shari L. Thurer introduces the concept of the socially constructed image of the mother in her book *The Myths of Motherhood* and how that image evolves over time.⁷ According to Thurer, motherhood is shaped by the culture in which it is being performed (Thurer 334). Thurer's work is an important contribution to maternal theory because it created the space to consider motherhood as a changing entity and not a constant to be taken for granted: "[t]he good mother is reinvented as each age or society defines her anew, in its own terms, according to its own mythology" (Thurer 334). As we will see in the analysis of the plays covered in this thesis, the cultural perceptions of what constitutes a 'good' mother, and by extension what constitutes a 'good' wife, changes over time. This has an impact on the construction of the image of the mother and wife role, and how the audience perceives and receives that image. Thurer's analysis acknowledges society's role in shaping the image of the 'good' mother and provides the space to see motherhood as something that is constructed, and not as a given.

Sara Ruddick was the first to approach maternal theory as a philosophical exercise in her ground breaking *Maternal Thinking: Towards a Politics of Peace*.⁸ Ruddick's work is fundamental to maternal theory because she was the first to untie motherhood from the female body, positing that either gender can do the work of mothering. Ruddick also approached her work from the mother's point of view, not the child's.

In her book, Ruddick interrogates the thinking that drives the development and growth of a child. Maternal thinking, the thoughts that drives the development of

⁷ Thurer, Shari L. 'The Myths of Motherhood'. *Maternal Theory: Essential Readings*, ed. Andrea O'Reilly, Demeter Press, 2007, pp. 331.

⁸ Ruddick, Sara. *Maternal Thinking: Towards A Politics of Peace*. New York: Ballantine Books, 1989.

children, constitutes 'maternal labour'. Previously, maternal thinking was an invisible labour. Ruddick brought the all-consuming labour of maternal thinking into the realm of words.

Ruddick assesses maternal labour as constituting three focuses of child rearing in mother work. For a mother to be partaking in 'mother work' they must be focused on three particular 'demands' regarding their children. These include 'preservation', 'fostering growth', and 'social acceptability'. Beginning with 'fostering growth', Ruddick writes that this principle demands that mothers help their children develop their own personal skills to the best of their abilities (83). Fostering a child's personal growth takes a lot of time, care, patience, and attention. Therefore, a mother who fosters the growth of her child is engaging in maternal thinking. 'Social acceptability' demands that mothers use their maternal thinking to help their children mould towards to the socially dominant and acceptable norms shaped by society in which they are being raised (110). Raising a child according to social constructivist norms of acceptability requires an enormous amount of self-reflection. This constitutes for Ruddick a significant amount of labour demanded on mothers. Last, the demand of 'preservation' requires that children need protection. The complex feelings of ambivalence, frustration, and impatience all require mothers to assess and manage their thoughts and actions (Ruddick 69-71). These three demands are dynamic processes that require a difficult network of physical and emotional labour in mother work.

Ruddick's analysis clarifies the parameters of thought behind mother work and is a critical contribution to maternal theory. At times Ruddick's prose is difficult to read due

to the philosophical nature of her work. However, altogether the author provides a solid foundation upon which to begin determining the seemingly limitless boundaries of the work that drives maternal thought.

At first glance, the mother work associated with a child's innocence seemingly falls under the 'demands' of 'social acceptability' and 'fostering growth'. However, when a mother transgresses her child's innocence there exists a violation of all three 'demands'. Ruddick's analysis is helpful for understanding the mothers who do intentionally or unintentionally participate in maternal thinking, but is limited in trying to understand when mothers transgress all of these demands. Are these women no longer mothers? In the analysis section of this thesis, I will expand on Ruddick's theories by asking how the transgression of innocence interacts with the demands of mother work, and what happens when a mother's own innocence becomes interrupted in her own childhood.

Patrice DiQuinzio's chapter "Mothering Without Norms? Empirical Realities and Normative Conceptualizations of Mothering" helps contextualize mothers that seem erased from Ruddick's analysis. DiQuinzio's chapter is a critical comparative analysis between Ruddick's *Maternal Thinking: Towards A Politics of Peace* and the work of Nancy Sheper-Hughes' field and written work on the women living in the Brazilian shantytown Alto do Cruzeiro.⁹ DiQuinzio summarizes Scheper-Hughes' work, describing how the people living in Alto do Cruzeiro live in such extreme poverty that the mothers only allow 'strong' and 'willing' infants survive their infancy. DiQuinzio explains the

⁹ Scheper-Hughes, Nancy. *Death Without Weeping: The Violence of Everyday Life in Brazil*. Berkeley : University of California Press, 1992.

fraught emotional tension that arises from these extreme economic circumstances. The Alto Do Cruzeiro mothers engage in a “benign maternal neglect in order to minimize the pain and suffering of infants who ‘want to die’ or who are ‘meant to die’ as well as to spare these mothers the pain and grief of losing their children” (107). It is difficult to imagine that maternal neglect could be described as ‘benign’ when confronted with the reality that it is meant to allow the infants to die. However, DiQuinzio contextualizes how Scheper-Hughs’ found that the mothers of the ‘doomed’ infants learned to ‘let go’ of their personal pain in order to help nurture the surviving children (107). DiQuinzio explains that Ruddick seemingly claims that universality of maternal thought while Scheper-Hughs combats that universality with the extreme conditions faced by the Alto do Cruzeiro women.

DiQuinzio explains how Scheper-Hughs’ thoughtful but simplistic understanding of Ruddick’s philosophy continues to reinforce the binary in maternal thinking (108). This binary in maternal thinking involves an internal hierarchy within the field of maternal thinking that fails to take into account the complexity of all motherhood. As we will see with Adrienne Rich’s last chapter in *Of Woman Born*, all women are placed on a spectrum regarding the danger of harming their children. While that spectrum is individual, it is also universal given the conditions individual mothers face determined by universally applied patriarchal motherhood. Scheper-Hughs posits that Ruddick’s three pillars of maternal thinking of preservation, fostering growth, and training for social acceptability can only be used by mothers in specific socio-economic circumstances and cannot apply to women like the ones in Alto do Cruzeiro, ultimately rejecting the

universality of Ruddick's work (DiQuinzio 108). However, for the women of Alto do Cruzeiro, the exposure of their children is can be seen as a form of preservation. It preserves the lives of the remaining children and allows them to be fostered. It preserves the lives of the exposed children, keeping them from living lives marred by poverty and the medical neglect they cannot receive due to their economic circumstances. DiQuinzio writes that Scheper-Hughs' work ultimately reinforces the binary in found in maternal thinking and fails to complicate Ruddick's work (108). This thesis finds that women in socio-economic political circumstances far 'better' than the women in Alto do Cruzeiro may also kill their children out of a sense of preservation, as we will see in the analysis of L.B.'s legal case. However, women like L.B. are also situated in a socio-legal context where they face criminal consequences for their actions. These legal 'consequences' contextualize their actions much differently than the women of Alto do Cruzeiro. DiQuinzio's critical comparative analysis does the difficult task of removing the binary from Ruddick's analysis and acts as a warning against reinforcing the binaries in maternal thinking (106). The analysis section of this thesis will build on DiQuinzio's work to further complicate Ruddick's theories on the pillars of maternal thinking with the goal of helping to destabilize binaries in maternal thinking.

If motherhood is socially and culturally constructed, in addition to not requiring an essential tie to a woman's biology, then we come to the conclusion that the practice or work of mothering can be done by any person. The emphasis of drawing this conclusion is on the terms 'work' or 'practice'. Mothering and all the associated labour involved in the caring for children is labour that requires an enormous amount of time, energy, and

thought. This leads us to the second section of this review in which we will discuss the labour of mother work and how it appears in relation to the preservation of innocence in children.

Innocence in Children: A Social Value, A Maternal Labour

This section will be an examination of the preservation of childhood innocence as a social construction. The first section will review philosophers who have examined how innocence appears in society and will follow with Sharon Hays' theories on the rise of intensive motherhood.¹⁰ This review will specifically focus on the three notions of a child's innocence that warrants the labour of intensive mothering. These three notions are the belief that there are no bad children, children's wide-eyed wonder, and the unconditional love that children give. These socially constructed notions of childhood innocence constrain mother work into a tight box of expectations bolstered by the social constructions of the preservation of innocence in children. The review on Hays' literature will close with an examination of the 'invisible father', and how the father role manifests in intensive motherhood.

Innocence and Value, Innocence as Virtue

In order to further understand innocence in children as a socially constructed value we must first understand innocence as it appears in our culture as a whole. In her article, "The Innocence of Victimhood Versus the 'Innocence of Becoming': Nietzsche, 9/11, and the 'Falling Man'", Joanne Faulkner skilfully dissects innocence and agency in

¹⁰ Hays, Sharon. *The Cultural Contradictions of Motherhood*. New Haven: Yale University Press, 1996.

relation to victimhood. In this article, Faulkner outlines the Judeo-Christian concept of innocence as it originates from the biblical context.¹¹ It is from this context where the social concept of innocence is derived and subsequently disseminated.

Joanne Faulkner distinguishes between the two states of being Adam and Eve experienced before and after ‘the fall’. Prior to the fall: “we find the most paradigmatic articulation of innocence, as a period of bliss, calm, and repose before a fall that will irrevocably mark humanity thereafter. It is in fact this fall that *gives* us our humanity”, writes Faulkner, (Faulkner 72). Sin, for Faulkner, gave Adam and Eve the ability to fully come into their humanity.

Faulkner emphasizes the negative implications of remaining innocent prior to the fall. The innocent always has the *potential* for acquiring knowledge, as did Adam and Eve by committing original sin: “the (Judeo-Christian) political community thus ambiguously values most highly that which it must damage in order to come into its own”, (73, Faulkner). Faulkner challenges seeing Adam and Eve’s expulsion from Eden as a ‘loss’ and reorients it as a ‘gain’ of their knowledge. The strength of Faulkner’s argument is the identification of this shift in knowledge acquisition. The potential for acquiring knowledge and pursuit thereof that turns innocence into knowledge, or an innocent into a functioning and contributing member of society.

¹¹ Faulkner, Joanne. ‘The Innocence of Victimhood Versus the ‘Innocence of Becoming’: Nietzsche, 9/11, and the ‘Falling Man’. *Journal of Nietzsche Studies*. 35-36 (2008): 67-85.

In her article, “Innocence”, Elizabeth Wolgast questions the moral high ground of innocence as a virtue.¹² Wolgast interrogates innocence as it manifests in the common person. Wolgast ultimately subverts the common social value of innocence and begins by calling into question the value society places on innocence as a moral value: “innocence seems easily the best and most desirable, for it means the complete absence of error and regret and the anxieties...just as something clean is better than something soiled, (Wolgast 297). Although critical of innocence as a value, Wolgast recognizes the social pull towards it.

Wolgast is also careful to point out that innocence rarely, if ever, lasts to adulthood. For Wolgast, the value of innocence lies in its reflective experience: “unfortunately most of us lose our moral innocence before we even recognize its value”, (Wolgast 297). Innocence appreciates in value over time by virtue of the fact that, once lost, it cannot be regained, and: “for such reason its irretrievable loss and the defect it signifies are things to regret profoundly, (Wolgast 297). Wolgast helps to clarify that people need to sacrifice our innocence in order to become better people, and we regret this sacrifice due to the high value misplaced on innocence.

Innocence is more than simply a state of being. It is, in Wolgast’s terms: “the simple form of an enviable condition of character, one for others to wonder at, even revere, to wish for and protect”, (Wolgast 298). However, ‘wishing for’ this ‘condition of character’ is misguided. Once on the other side of innocence, once a person has

¹² Wolgast, Elizabeth. ‘Innocence’. *Philosophy*. 68.265 (1993): 297-307.

transgressed, reflected, moved past their mistake, and come through as a wiser and more knowledgeable person, innocence is no longer truly an enviable state:

“being an innocent disqualifies one from moral understanding, and as understanding is a condition of virtue, being an innocent is a disqualification of virtue”, (Wolgast 305).

Innocence cannot be a virtue, for it requires a lack of what virtue requires, namely ‘understanding’.

This then begs the question as to why innocence is held in such highly sought after value? Norvin Richards writes in his article ‘Innocence’ how regret and longing both play a large role in elevating the status of innocence as a value.¹³ When people do overcome their innocence, usually within the eventual and long time period between childhood, adolescence, and adulthood, a person tends to romanticize their former innocent state (Richards 157). The responsibility that comes with transcending innocence is a burden quite heavy to bear, and it people have become naturally inclined to regress and to wish for a simpler time. Norvin Richards writes in his article “Innocence” that: “we are usually surprised when we encounter innocence in an adult, and we have mixed feelings about it”, (Richards 157). Then, when adults experience innocence in others or the loss thereof, they reflect on their own former innocence and consider how their current position is much better: “[w]hen someone’s innocence is genuine and has been costly, we are free to *regret* that he was so innocent. We could wish for his own sake that he were more sophisticated, so that others would not have taken advantage of him as they did” (Richards 166). Innocence becomes a trait that needs to be overcome, regretted in

¹³ Richards, Norvin. ‘Innocence’. *American Philosophical Quarterly*. 31.2 (1994): 157-167.

others once transgressed, and perversely valued in children. This is the complex dynamic under which innocence operates within society and human interaction.

These authors argue how innocence appears in larger society. Why is the preservation of innocence in children such a socially driven value in the practice of motherhood? Maternal theorists and sociologist Sharon Hays explain the value of innocence in children. This analysis helps explain why Kate Mulvany and Ann-Louise Sarks' adaptation of *Medea* resonated so deeply with audiences. It helps explain Sarks was compelled to write specifically about the loss of childhood innocence and how that innocence was 'stolen' by adults.

Intensive Motherhood and the Preservation of Innocence in Children

Sharon Hays explores in her book *The Cultural Contradictions of Motherhood* the dichotomy between capitalism and what she terms 'intensive mothering'. Hays writes that

...the model of intensive mothering tells us that children are innocent and priceless, that their rearing should be carried out primarily by individual mothers and it should be centered on children's needs, with methods that are informed by experts, labor intensive, and costly
Hays, 27

Hays writes that intensive mothering is an 'ideology' undertaken by mothers and society as a whole and manifests itself in a number of insidious ways.¹⁴

¹⁴ Due to the fact that intensive mothering requires the overwhelming privileges of time and money, intensive mothering largely finds itself situated in middle and upper class mothering. Intensive mothering can take much more insidious forms in mothers situated in the lower socio economic spectrum who make sacrifices far beyond their means in order to satisfy 'good' mothering principles set out by intensive mothering.

The preservation of innocence in children is the cultural value that assigns them protection. How did that role of protector become the sole responsibility of the mother? Hays outlines in her second chapter how, historically, children were largely economic assets within the family structure. Sent to work in the family trade as young as five or six to add economic value to the family as soon as they were physically able. The shift in ideology occurred slowly over time when, in the nineteenth century, religion began slipping away and secularism began taking root. The child was: “no longer a sinful creature in danger of burning in hell, the child was celebrated as an innocent and pure being who promised to redeem the world”, (Hays, 32). Here came the reversal of the previous model. Now the mother acts in the best interest of the child. This shift in the role of the child in relation to the parent is what Hays isolates as the catalyst for intensive mothering.

Hays outlines how the protection of childhood innocence is assigned to the mother and how it is socially constructed. Hays writes that it begins with the image of the ‘perfect mother’: “the image of an appropriate mother is one of an unselfish nurturer. And the ideology of the ‘sacred child’ is one that measures a child’s innocence and purity by the child’s distance from the corrupt outside world” (Hays 167). This symbiotic relationship is then further reinforced with a number of messages directed from the outside world to the mother.

Hay’s analysis is limited by her lack of analysis on race and class within intensive mothering. Writing of race and class analysis within intensive motherhood can be found in the recent publication on intensive mothering: Ennis, Linda Ross., *Intensive Mothering: The Cultural Contradictions of Motherhood*. Toronto: Demeter Press, 2015

Hays outlines three notions of a child's innocence. These three notions; their giving of unconditional love, their wide-eyed wonder, and the belief that there are no bad children (Hays 122-3) are all socially constructed messages broadcast at mothers. These messages bolster the belief that children need, and even more so, deserve, the overwhelming efforts bestowed upon them prescribed by intensive mothering.

Intensive Motherhood and the Invisible Father

The 'invisible father' is also a crucial component in intensive motherhood. The 'invisible father' plays a role in both L.B.'s legal case and Jason's physical and verbal invisibility impacts the emotional tone of Sarkis and Mulvany's adaptation of Euripides' play. The 'invisible father' is a cornerstone of patriarchal intensive motherhood and deeply impacts both the protection and violation of childhood innocence at the hands of overwhelmed, overworked mothers.

In her article 'Nothing in Between': Modern Cases of Infanticide', Julie Wheelwright examines mothers who bear their pregnancies in secret and give birth alone¹⁵ Wheelwright's article is concerned with the law's response towards mothers who kill their children. However, Wheelwright asks a question for which maternal theory has answered and which this thesis is very concerned with interrogating further. Wheelwright asks of the fathers in infanticide and neonaticide cases

there is no discussion about the father's attitude about the pregnancy....there is no analysis of the psychological state of her partner who colludes in the process. Similarly, contemporary research on neonaticide focuses on the mother

¹⁵ Wheelwright, Julie. 'Nothing in Between: Modern Cases of Infanticide'. *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, ed. Mark Jackson, Ashgate, 2002, pp. 270.

and tends to neglect the dynamic between the couple. The father appear to be an unimportant factor in understanding the mother's condition

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Wheelwright begins to ask a very important question regarding fathers in infanticide cases. Where are the fathers and they and how do they fit into the equation? As we will see, fathers are rendered invisible within the patriarchal parenting paradigm. Sharon Hays writes how this appears in the day-to-day relationship of childrearing within intensive motherhood. This thesis will explore how this manifests within infanticide cases and in Kate Mulvany and Ann-Louise Sarkis' adaptation of Euripides' *Medea*. While Wheelwright's article was written through a legal lens, it is significant to place it within a maternal theoretical context to see how maternal theory begins to answer the question.

In the fifth chapter of her book, Hays elaborates on interviews she conducted with mothers about their individual responsibilities in parenting. Altogether, Hays found that women 'choose' to download the overwhelming majority of parenting onto themselves. The interviews reveal that women justify their major parenting role by rendering the father incompetent. Mothers 'choose' to do the laundry, pick up groceries, take their children to doctors appointments, play with their children in the park, among other activities, with the belief that fathers are incapable of conducting this work with the proper rigorousness that intensive motherhood demands. In many cases, fathers are incompetent because they do not engage in mother work the same way women do

[b]eing 'on top of it', according to mothers, requires more than knowing how to dress the kid and clean up after the kids. It means understanding the proper techniques in raising a child. In other words, at times it's not that men don't watch the children or suitably attend to the children's physical requirements but that they just don't use the right methods to foster the children's development

Echoing language from Ruddick, Hays explains that intensive motherhood renders fathers invisible because they do not engage in parenting the way mothers do. Hays explains that this ‘over engagement’ by mothers has more to do than simply believing mothers are ‘better’ parents than fathers.

The ‘invisible father’ is a phenomenon that happens in intensive motherhood due to the perceived status of motherhood and the financial security provided by their partner in a heteronormative context. This is especially true for L.B., a teenaged mother. As we will see, the judge commended L.B’s husbands many times for being committed to their jobs and earning money to support their families. Hays argues that

...in the context of a society that has limited women’s access to prestige, mother’s special competence in raising kids provides them with a position of honor within the household. Finally, one needs to recognize that some of these women may fear that their marriages will be threatened if they refuse to do the larger share of the domestic chores. And more women are well aware that in cases of divorce it is usually mothers who end up with the primary financial responsibility for the kids. To maintain their sanity and their financial security, therefore, it is not surprising that many women search for ways to live with any resentment they feel regarding child-rearing inequities

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As we will see in the next section, this analysis closely follows Deborah L. Byrd’s theory regarding why teenage females perceive motherhood to come with social status. Many women do find comfort and honour in the role of motherhood. However, this comfort and status is only bestowed onto mothers if they are doing the majority of parenting.

Therefore, fathers must be rendered incompetent thereby making them invisible. L.B. could no longer cope with motherhood in addition to two absent, invisible husbands. Medea fought against the notion of being the sole-caretaker, even though it broke her

heart enormously onstage. Hay's analysis is helpful because it helps explain why intensive motherhood necessitates the invisibility of fathers. In addition, it explains why mothers are perceived to 'take on' more than they 'have to' in the face of financial security and honour in a heterosexual partnership.

As previously argued with the analysis of innocence as it appears in society as a whole, a person's innocence must be protected and then transgressed in order to become a person with knowledge. If a mother is the person in the position of primary caregiving in a child's development then she is the steward of that child's experience through innocence. What happens when a child whose innocence was not protected becomes a mother? This will be further explored in the analysis section of this thesis. In order to further understand that analysis as it applies to L.B., it is important to understand the following theory on women who become teenage mothers.

Teen Moms and The Impact of Childhood Trauma

There exists an extraordinary amount of social stigma against mothers who have children in their teenaged or early twenties.¹⁶ In her chapter 'Young Mothers: Age-Old Problems of Sexism, Racism, Classism, Family Dysfunction and Violence', Deborah L. Byrd explores the intersections that most affect teenage mothers.¹⁷ A section in Byrd's chapter examines the ignored risk factors contributing to teenage motherhood. This

¹⁶ Cf. Reimer, Vanessa. "Because You Had Me as a Teen" Neoliberalism and the 'Problem' of Teen Pregnancy'. *The Mother Blame Game*, eds. Vanessa Reimer and Sarah Sahagian, 2015, pp. 105.

¹⁷ Byrd, Deborah L. 'Young Mothers and the Age-Old Problems of Sexism, Racism, Classism, Family Dysfunctions and Violence'. *Mothers, Mothering and Motherhood Across Cultural Differences*, ed. Andrea O'Reilly, 2014, pp. 487.

section best explains and helps us understand why teenage females like L.B. often enter motherhood at a young age.

Byrd identifies two risk factors most often ignored in the prevalence of teenaged motherhood. The first is in poverty and: “the belief-often realistic-that one probably will struggle to rise out of poverty...becoming and succeeding as a mother can provide a young female with a great sense of pride and accomplishment” (Byrd 490). The second risk factor of teenaged motherhood is experiencing severe childhood abuse which can be a contributing factor to teenaged motherhood, regardless of socio-economic status, separate from the first risk of poverty (Byrd 490-1). Byrd elaborates on how experiencing severe childhood trauma or child abuse can lead emotional vulnerability, neediness, and the craving of attention, nurturance, and unconditional love never received as a child (491). Severe childhood trauma can also lead to experiencing abuse, rape, and controlling men as normal: “[i]f a male is doting upon them...these traumatized teens are less likely than young females with higher self-esteem to say ‘no’ to sexual advances or to sex unaccompanied by birth control” (491). Byrd does not define trauma. However, the examples Byrd provides range from intergenerational domestic violence, psychological abuse, sexual abuse, early violent death of loved ones, and being raised by someone with substance abuse or mental illness (490-1). Byrd closes by arguing that teenaged motherhood is the ‘inevitable consequence’ when society does not recognize the impact that poverty, abuse, and mental illness have on women.

Byrd’s contribution is important because it contextualizes teen motherhood as potentially being a result of childhood trauma. This childhood trauma can also be

contextualized as ‘interrupted innocence’ or ‘childhood innocence that was not preserved’. Byrd’s analysis helps challenge: “the widespread assumption that teen motherhood is responsible for-as opposed to *a result and symptom of* – a complex system of social, political and economic inequities (Byrd 494). Byrd’s analysis also contextualizes how the interruption of childhood innocence, in the form of trauma, can draw a clear and straight path to teenaged motherhood. The possibility for empowered mothering in the teenaged years certainly exists. However, the continuing cycles of intergenerational trauma make it difficult to imagine the possibility of empowered mothering on a large scale when produced under such oppressive circumstances. This is important to understand when reading L.B.’s case and will be useful for the analysis of her case.

Classifying Mothers Who Kill

Many authors have attempted to classify and categorize different types and methods of mothers who kill their children.¹⁸ It is important to examine how academics classify mothers who kill their children within the context of maternal theory because their methods shed light on how motherhood impacts policy recommendations and legislative decision-making. As we will see, even the most sensitive feminist framework, such as Oberman and Meyer’s, neglects to consider the complexities of motherhood. This has negative implications for future activism and overall understanding of mothers who kill their children.

¹⁸ Cf. (1) McKee, Geoffrey R. *Why Mothers Kill: A Forensic Psychologist’s Casebook*. New York: Oxford University Press, 2006. (2) Resnick, Phillip J. ‘Murder of the Newborn: A Psychiatric Review of Neonaticide’. *American Journal of Psychiatry*. 126.10 (1970): 1414-1420.

Michelle Oberman and Cheryl L. Meyers authored two books on mothers who kill their children through a sympathetic feminist lens. Published in 2001, *Mothers Who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the 'Prom Mom'* is a dense reading that covers a number of important topics when considering mothers who kill their children.¹⁹ Oberman and Meyers' book categorized five different 'types' of child murder at the hands of mothers, drawing lines in the sand to demarcate 'types' and to explain for why not all child murders are the same. The authors explain why each 'type' requires its own separate strategies for prevention, management, and interventions. In 2008, Oberman and Meyers published a second book titled *When Mothers Kill: Interviews From Prison*, where the authors chronicle interviews of incarcerated mothers jailed for killing their children and additionally provide some further analysis on their research.²⁰ Read together, both books provide a full spectrum analysis of mothers who kill their children through a sympathetic feminist lens. It must be stressed that Oberman and Meyer's work strictly focuses on data gathered from within the United States. Therefore their recommendations for prevention strategies are deeply limited for application for Canada. However, their research has strong implications and ramifications for understanding research on classifying mothers who kill their children.

In their fourth chapter titled 'Maternal Neglect' Oberman and Meyers examine mothers who kill their children due to 'neglect'. Oberman and Meyer divide the category of 'maternal neglect' into two sub-categories. Overall, child death resulting from

¹⁹ Oberman, Michelle, and Cheryl L. Meyer, et al. *Mothers Who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the 'Prom Mom'*. New York: New York University Press, 2001.

²⁰ Oberman, Michelle, and Cheryl L. Meyer. *When Mothers Kill: Interviews from Prison*. New York: New York University Press, 2008.

maternal ‘neglect’ is defined by the authors as not having been ‘purposely’ intended but due to one of two subcategories (2001 101). The first is neglect-omission, where: “mothers failed to attend to the basic needs of their children, such as adequate nutrition or a safe environment with proper supervision” (2001 98). This subcategory is further broken down into six methods of killing by neglect-omission discovered in their study.²¹ The second, and most important for our purposes, is what Oberman and Meyer term ‘neglect-commission’, where: “mothers were irresponsible in their reaction to a child’s behaviour and their actions brought about the death of the child” (2001 101). This subcategory is then further broken down into two methods, ‘direct’ and ‘indirect’. ‘Direct’ is narrowly defined by a physical action taken by the mother directly onto her baby, shaking, drowning, and throwing are all examples provided by the authors. ‘Indirect’ is also narrowly defined, and is described as death by suffocation in secondary reaction to the mother’s primary action of placing a bag over the infant’s head, or stuffing the infant’s mouth with material. As we will explore in the analysis section, ‘indirect’ neglect was the method used by L.B. to suffocate her two infants.

In their chapter titled ‘Purposeful Killing’, Oberman and Meyer explore the category of mothers who kill their children within the dichotomy between ‘madness’ and ‘badness’. Oberman and Meyer define each component of ‘mad’ versus ‘bad’. For ‘mad’ mothers, the authors outline that these women are normally confined to typical feminine ideals and gender roles, and that: “their crimes are considered irrational, uncontrollable

²¹ The six methods are: fire, automobile suffocation, bathtub drowning, layover suffocation, nutrition, inattention to safety needs

acts, usually the direct result of mental illness” (2001 69). However, ‘bad’ women are portrayed as the yang to the yin of the ‘mad’ mother, the complete opposite. ‘Bad’ mothers are painted as: “cold, callous, evil mothers who have often been neglectful of their children or their domestic responsibilities” (2001 70). The ‘bad mother’ is marked by claims of a mother’s sexual promiscuity and the perceived lack of social responsibility for her children. These thresholds are set by social standards. Both categories of women are psychiatrized. Oberman and Meyer write that they found the dichotomy ‘meaningless’ (2001 70). However, rather than engaging with the dichotomy to push back against it, Oberman and Meyer perpetuate the spirit of the dichotomy within their category of ‘purposeful killing’ by making mental illness the contributing factor in purposeful killings, rather than a symptom of a much larger category. Altogether, this section bears the unfortunate hallmarks of mental illness driving analysis, rather than the life circumstances which lead to potential mental health issues.

Oberman and Meyer provide a sympathetic lens and framework in approaching to understand the classification of mothers who kill their children. However, I find that categorizing mothers who kill their children by method is unhelpful for two reasons. First, Oberman and Meyers fail to explain for those mothers who fit into multiple categories, such as the case with L.B.. L.B. fits into ‘maternal neglect’, within the sub-category of ‘indirect’ killing. L.B. also fits into the ‘denial of pregnancy’ category due to her status as being uneducated, young in age, and in the low-income. However, L.B. did not in fact deny her pregnancy, but embraced it until it became unbearable for her. L.B. straddles multiple categories, which renders a classification system redundant.

The redundancy in in categorization systems are mothers who kill their children is striking within the context of Adrienne Rich's last chapter in her book *Of Woman Born*.

Rich writes

[w]hat women, in the solitary confinement of a life at home enclosed with young children, or in the struggle to mother them while providing for them single-handedly, or in the conflict of weighing her own personhood against the dogma that says she is a mother, first, last, and always-what woman has not dreamed of 'going over the edge,' of simply letting go, relinquishing what is termed her sanity, so that she can be taken care of for once, or can simply find a way to take care of herself?

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These words appear at the end *Of Woman Born* and serve as a last reminder that mothers who kill their children vary in 'degree' not 'kind'. Every mother exists on the spectrum within danger of killing their children and that spectrum is created by the conditions of patriarchal motherhood. It is still important to analyze and appreciate the role categorization systems such as the one put forth by Oberman and Meyers have on how we view mothers who kill their children. However, as long as the conditions of patriarchal motherhood exist, categorization systems will continue to dominate, divide, misunderstand, and misrepresent mothers who kill their children. Therefore, the role of categorization systems must be understood and resisted within the greater context of patriarchal motherhood.

Conclusion

Maternal theory has demonstrated how the construct of patriarchal motherhood is deeply damaging to women and the family. There exists the patriarchal institution of motherhood and the potential for empowered mothering. Intensive motherhood is the

currently the predominant socially constructed form of parenting and imposes, among other impositions, that mothers be the protectors of their children's innocence. This socially constructed and enforced protection makes mothers responsible for their child's moral development. This responsibility also narrows the role of parenting on the shoulders of mothers, rendering fathers largely invisible. This creates extraordinary pressures for mothers. This also forces us to ask what happens when a mother whose innocence was not protected becomes a mother? As we have seen with young females who experience childhood trauma, young females 'choose' young motherhood because of the perceived honour and prestige that come with motherhood and the perceived notion of unconditional love children provide. However, the continuing cycles of intergenerational trauma continue given the patriarchal conditions that dominate these women's lives. These conditions can lead to infanticide, such as in L.B.'s case that we will explore further in the analysis portion of this thesis.

As we will explore in the analysis sections of this thesis, patriarchal motherhood breeds frustration and the inability to manage. What sets apart the women who kill their children from those who do not, are minute details. Thin slivers of circumstance that separate very few women from the whole. Mothers who kill their children are seen as outliers, divergent women. Society sees them this way because it allows them to 'other' these mothers and to give them someone to blame from within the larger context of oppression. This is why the classification models of mothers who commit infanticide are no longer useful. In reality, mothers who kill their children are the cautionary tales of

patriarchal motherhood, and what bears questioning is not why some mothers kill their children, but how most mothers resist doing so.

Chapter Two: Legal Literature Review

Introduction

The infanticide law has a long and complicated history within the British and Canadian criminal law. Indeed, the legal history dates back to England before Canada gained independence from its colonial parent country. It is important to understand the legal history of this now controversial, contested section in the Canadian Criminal Code to appreciate the prevailing attitudes towards mother's accused of killing their infants. Why was the gender specific crime of killing newborn infants included within the rubric of the infanticide section of the Code? As we will discover, the crime of infanticide was created by the legal system in response to a number of forces. The roots of the infanticide section lay in rural England with the offence of concealment of birth as its predecessor. By tracing the 'concealment' law one can see how the legal system created laws to fill in gaps and holes that the homicide law and its relevant sentence of capital punishment could not fulfill when a mother was accused of killing her child.

This literature will examine the roots of the Canadian infanticide section. Beginning in rural Britain the infanticide section and its relevant sibling law of concealment will be traced through the agricultural fields of sixteenth century England through the legislatures of both countries. This review will continue with the British historian Seaborne Davies and Canadian legal historian Constance Backhouse who

interrogate the curious paradox and contradictory motivations of legislators in their texts. In the third section, Nigel Walker traces the fifty-year journey of the infanticide section as it battled its way through the British legislature. The last section will be a review of Canadian legal scholars and feminist advocates who have challenged the history and development of the infanticide section and make recommendations for reform or specific criticisms of the law in their own way. Altogether, the history and criticisms of the law demonstrate the patriarchal antecedents of the section. Missing from the discussion is the correlation between changes in conviction patterns as they relate to changes in dominant values surrounding motherhood. Therefore, the analysis section of this overall thesis seeks to fill that gap.

Anglo (Canadian) Legal Legacies (i): (Some) Murdering Mothers

Peter C. Hoffer and N.E.H. Hull cover the English history that led to criminalizing the concealment of the body of an infant killed by its mother.²² Fewer than two hundred pages contain the social, political, economic, and religious foundations for the creation of The Poor Laws²³ that created the precedence of the concealment law. Hoffer and Hull's book is divided into two sections. The first covers the broader strokes of the history of the act of child killing, examining the creation of the law of concealment as a function of legal administration of the courts, the rise of Puritanism and sexual policing of the King's court. The second part of the book studies child killing from the perspective of mothers, Hoffer and Hull's ability to weave together the seemingly

²² Hoffer, Peter Charles, and N.E.H. Hull. *Murdering Mothers: Infanticide in England and New England 1558-1803*. 1st ed. New York: New York University Press, 1981. Print.

²³ 18 Eliz. I, c. 3 (1576); 7 James I, c. 4, (1609)

separate contributing factors of child killing into a clear, brief, and straightforward text makes this book invaluable.

According to Hoffer and Hull, the rise of Puritanism contributed to making the concealment of an infant's birth and subsequent murder a crime. Indeed, communities had been turning a blind eye to the concealment of murdered infants prior to the creation of these laws. Why the sudden concern? The answer they suggest is not so much based in a concern of criminal activity, but the policing and surveillance of people's behaviour deemed inappropriate by the church. The nature of 'concealing' behaviour caused religious panic and moral anxiety: "...ministers believed that sin could not be hidden from an omniscient God; the attempt to conceal it was proof of an ungenerate spirit" (Hoffer and Hull 11). This is tied to the religious policing of women's sexuality and the Church's commitment to confining sex between heterosexual married couples. After all, the overwhelming majority of dead infants and children were deemed bastards, children born out of wedlock (Hoffer and Hull 83-4). The rising suspicion surrounding infant and child deaths was less about the sanctity and value of a child's life, but the high moral and religious value placed on heterosexual marriage and the production of children within a union sanctioned by the Church.

Hoffer and Hull argue that the Poor Laws of 1576 ushered in an unprecedented age of neighbourly mistrust in rural England. The Poor Laws created a system where the fathers of bastard children were to provide financial support to the infant's mother with the goal of alleviating the strain on the social services of the church (Hoffer and Hull 15). In order to locate the father someone had to divulge his name. This resulted in an

unbearable emotional burden for the mothers forced to testify regarding paternity (15). There was an extraordinary amount of social anxiety surrounding the confirmation of a baby's paternity and the clergy, midwives, and now the law had a role in the surveillance of childbirth.

Hoffer and Hull demonstrate how the value placed on the family unit and patriarchal notions surrounding unwed motherhood played an integral role in the formation of the concealment laws. The practice of childbirth surveillance was in order to locate the paternity of a child. This indicates the high value placed on women's sexual morality. During their formation, the legislation concerning bastard children, abortion, and concealment were all tightly wound together. It was conceptually difficult to separate the social anxiety of unknown paternity and concealing the birth of a 'legitimate' child. While the social anxiety regarding paternity has very slightly loosened in recent years, it is crucial to see how the notions of patriarchal ownership over children has its roots in these two laws.

The Paradox: Law's 'Mercy' Toward (Some) 'Murdering Mothers'

In his important article 'Child Killing in English Law,' Seaborne Davies outlines the complex legal history of child killing in British law in the period leading up to the creation of the 1922 Infanticide Act (U.K).²⁴ Davies' article is the first to underscore the underlying patriarchal notions that influenced the creation of the infanticide section. Davies text highlights how male judges and juries refused sentence women to be punished capitally in a twisted sense of 'merciful' justice. Davies was aware how the

²⁴ Davies, D Seaborne. 'Child Killing in English Law'. *The Modern Law Review* 1.4 (1938): 269-287. Web.

subject of the courts inability to secure convictions for mothers accused of killing their children was a matter of maintaining the pride of a justice system run and comprised by men.

It is possible for Davies to have analyzed this period in British legislative history devoid of critically analyzing the underlying patriarchal notions under which the infanticide law came to be. Conversely, the argument could be made that one cannot untie the analysis of the infanticide law from its roots in patriarchy at all. As we will later see, the Law Reform Commission of Canada's analysis of separating the infanticide law from the legislative intent and its patriarchal roots, ultimately making a recommendation that would have vastly undermined the expressed intended purpose of the law. Therefore, it is important to appreciate that that Davies grasped how patriarchal systems manipulate notions of justice to fit their ideologies.

Davies begins in the 1866 with the Report of the Capital Punishment Commission. The Commission's members are a measure of their authority.²⁵ Indeed, one of the outcomes of this Commission was the partnership of John Bright, Russell Gurney, and FitzJames Stephen who proposed the bill to codify the homicide law and: "[t]he grounds for the rejection of that Bill by a Selected Committee of 1874 stimulated Stephen to prepare the Draft Bill Criminal Code of 1878" (Davies, 217). Overall, the members of this Committee were in a position to institute the reform necessary and create change.²⁶

²⁵ *Supra* at footnote 42

²⁶ The history and legislative outcome of the Capital Punishment Commission 1864-1866 is also laid out by Nigel Walker in his article, 'Crime and Insanity in England' at pages 128-132. Walker's article parallels much of the information outlined in Davies' article, and in some way in

The homicide law did not adequately address certain issues in the pursuit of both convicting mothers who killed their children and the appropriate sentencing. According to Davies, when an infant's body was discovered one of the most important questions was whether or not the child had been born alive or if it was a stillbirth. To begin to answer this question, Davies cites Fitzjames Stephen who in turn comments on Edward Coke's analysis of homicide

[t]he line must be drawn either at the point at which the foetus begins to live, or at the point at which it begins to have a life independent of its mother's life, or at the point when it has completely proceeded into the world from its mothers body. It is almost equally obvious that for the purposes of defining homicide the last of these three periods is the one which it is most convenient to choose
Davies, 205

Stephen's reasoning for demarcating the crime of infanticide at the point when an infant has been thoroughly expelled from its mothers body is that it separates infanticide from abortion. At that point, abortion law dictated that a miscarriage had to be procured to constitute an abortion, therefore the fetus still needed to maintain a dependent biological relationship to the mother.²⁷ Stephen's distinction drew the line in the sand between the killing of a child and an abortion.

Stephen's argument ignited much debate. Proving that a child was born alive became more important than proving it had been killed at all. Separate breathing between the mother and fetus, in addition to the severance of the umbilical cord, became the two points of contention in childbirth. Davies outlines the debates that arose between

more forceful in arguing the underlying patriarchal attitudes of the judges and parliamentarians. However, Davies' article provides a much more straightforward reading on how the infanticide law came to be within the British legal system, whereas Walker's article focuses on the influence of psychiatry on British law. Walker's article will be reviewed later in this paper.

²⁷ *Supra* at footnote 42

Parliament and legal commentators (206-208), and while the quotes from the debates are of historic interest, Davies highlights the main issue with regards to dated physiology when he writes: “[w]e shall see later that when great dissatisfaction arose with the law of murder, full advantage was taken of these uncertainties to avoid it” (208). For Davies, the question became less about grounding the law in science and established theory, but circumventing the shaky law with tricky legal manoeuvres.

Lawmakers decided that witnesses needed to be present at childbirths to fill the gap of evidence and proof. In England, that gap would not be filled in the same way Canadian lawmakers filled the hole in the law. Davies writes that if a woman who was pregnant failed to obtain assistance in childbirth and the infant died as a result of her neglect at any time from the beginning of her childbirth to when the infant was born, then she was subject to a criminal offense (210). However, writes Davies, this section was a revision in the Draft Criminal Code of 1878 but ultimately: “[t]he Code never became law [in England] and no similar provision has been enacted” (210).

Meanwhile in Canada, lawmakers and judges were dealing with the application of the law in cases where mothers were accused of killing their children or concealing their dead bodies. Constance Backhouse²⁸ documents how British law was applied in Canada in the nineteenth century. Altogether, Backhouse provides a legal historical analysis within a feminist framework to help understand how the infanticide prohibition came into effect as a result of the misapplication of the law of concealment of birth.

²⁸ Backhouse, Constance. *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada*. Toronto, Ont., Canada: Published for the Osgoode Society for Canadian Legal History & Women’s Press, 1991. Print.

Backhouse provides a feminist analysis of the history of infanticide in contrast to authors that preceded her work. Backhouse tells the story of when the body of an infant was discovered by children playing on the shores of Nanaimo, B.C. An investigation to find the mother led to a woman named Ana Balo, who had recently been pregnant according to a neighbour and: “without this tip, suspicion might never have centered on Ana Balo, (Backhouse, 126). This recalls Hoffer and Hull’s analysis of the culture of neighbourly distrust and community members divulging suspicions of criminal activity to authorities even though the Finnish community of Nanaimo was “tight knit”, (Backhouse, 126). After a lengthy medical examination, the coroner could not conclude whether the infant had been born alive or if it was a stillbirth (Backhouse 131-2) and Balo was charged with concealment. Balo intended to plead guilty, and the sixpence coin tied to a piece of string around the infant’s neck found to belong to Balo would have supported to a conviction. His Lordship Judge Drake sentenced Balo to an imprisonment sentence of twenty-four hours (Backhouse 135).

In direct contrast to Seaborne Davies, Backhouse’s history of infanticide in Canada provides a new dimension to the history of the law with the inclusion of narrative. While Davies’ history is useful for tracking how the laws principles develop in reaction to patriarchal ideals within the legal system, Backhouse’s history is invaluable in seeing how law impacted cases in relation and reaction to women’s lived experiences. Backhouse thoughtfully explains how women both fell prey to the patriarchal society in which they lived and benefitted from the patriarchal sympathy of the judges and juries.

In spite of all the work the legislatures did to secure convictions for women Backhouse theorizes that judges were willing to temper the harshness of the law in light of the facts in order to demonstrate a distorted sense of patriarchal compassion. Backhouse cites three reasons. The first reason for sympathy lay in male privilege. The all-male bench misunderstood the mother's desperation as acts of honour: "impressed by the courage and resourcefulness that the women exhibited as they struggled to hold their lives together" (Backhouse, 136). The all-male justice system's judgment was clouded by the fates that these women would have known if they had not killed their children. However, these fates were set up directly, or indirectly, by the very men freeing them from conviction. It was a curious paradox.

The second reason for patriarchal compassion cited by Backhouse is closely related to the first. The courts recognized that when faced with an unwanted child, women really and truly had no other options:²⁹ "child welfare agencies, which might have provided facilities for unwanted children, were still in their infancy" (Backhouse 137). The lack of options for the placement of unwanted children, coupled with the fact that abortion was still illegal, meant that women had extremely finite options for managing unwanted pregnancies.

The third reason for the patriarchal compassion suggested by Backhouse is the low value and status of infants in this time period. This argument echoes Davies and Nigel Walker. Backhouse writes that: "infant death was omnipresent, and there was a

²⁹ Strong-Boag, Veronica. *Finding Families, Finding Ourselves-English Canada Encounters: Adoption from the Nineteenth Century to the 1990s*. Toronto: Oxford University Press Canada, 2006.

certain sense of inevitability over its commonness...the death of infants would have been almost beneath notice”, (Backhouse, 136-7). Nigel Walker quotes FitzJames Stephen, who was: “bold enough to hint that less than harm was done by such homicides than in other cases: ‘you cannot estimate the loss to the child itself, you know nothing about it at all’”, (Walker 128). Poor and unmarried, these women shared positions in society so low, that their infants were also considered no value: “these were children the courts could afford to ignore”, (137 Backhouse). Therefore, the lenient sentence acted as a type of exchange between the courts and the women in the position of being on trial. This will be an important theory in the future when considering the role in protecting innocence in children and the concept of the sacred child.

While previous authors have located similar reasons for the leniency of the court on conviction rates, Backhouse appears to have been the first author to bring all of the reasons together into a fully developed argument. Backhouse raised the historical analysis of mothers who kill their children away from simply a legal response to a crime into the realm of viewing the legal system as a part of the patriarchal structure of society. Therefore, it is important to appreciate Backhouse’s contribution to telling the stories of these women and the impact of the laws during this time in Canadian history.

Anglo Canadian Legal Legacies (ii): The Path to Infanticide

As we saw with Hoffer and Hull’s history, the history of the Poor Laws date back to the middle of the sixteenth century and laid the groundwork for the surveillance of women’s childbirth. Moving ahead, in the eighteenth century the concealment of birth

provision still prevails and maintains a firm grip on the monitoring of women leading up to childbirth and closely thereafter. The 1861 Offences Against the Person Act read

[i]f any woman is delivered of a child, every person who by any secret disposition of the dead body of the said child, whether such child died before, at or after its birth, endeavors to conceal the birth thereof is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than the penitentiary, for any term less than two years, with or without hard labour: Provided that if any person tried for murder of any child, be acquitted thereof, it shall be lawful for the jury, by whose verdict such person is acquitted, to find, in case it so appears in evidence, that the child had been recently born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavor to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of birth

24 & 25 Vict c 100 s. 60

A number of items are addressed within this section. The section provides that if a person is acquitted of murder, it is still open to a jury to find her guilty of concealment in order to secure some kind of conviction. Thus marks the starting point of the state surveillance of childbirth to secure convictions in child death. Yet certain qualifiers in this section are curious. What legal matter was it of the courts if a mother gave birth to a stillborn child and concealed its birth? By taking a closer look at the section, we will see why all of these elements were necessary to bring about convictions for mothers who were accused of killing their children.

The British Capital Punishment Commission of 1864-66 laid the groundwork for legislative change in the British courts and over a period of time, one bill evolved and passed through the hands of five separate members of parliament over precisely fifty years before The Infanticide Act of 1922 was passed in British Parliament.

Nigel Walker traces the evolution of the Act in his book *Crime and Insanity in England*.³⁰ For Walker, the history of The Infanticide Act of 1922 (U.K) began in 1872 with the introduction of Russell Gurney's Homicide Bill (129). This Bill was dropped and in 1879 Gurney reintroduced another version of the Bill that provides that a mother convicted of killing her child would be guilty of manslaughter and not murder if she was found to be: "deprived of the power of self-control by any disease or state of mind or body produced by bearing the child whose death is caused" (129). Gurney's second Bill also failed, but it demonstrates a legislative attempt to tie a mother killing her child to the notion of a 'disturbed mind' after childbirth.

Several more attempts were made to enact a new law and it took fifty years before a law to directly addressing the killing of an infant by its mother came to pass in Britain. In 1922, Mr. Arthur Henderson, the Secretary of the Labour Party, brought forth an amended version of a bill that Lord Alverstone tried to introduce in 1909 but failed due to: "a sheer lack of parliamentary time" (Walker 130). Henderson's Bill instructed the jury to sentence the mother, whereas previous Bill's gave the judge discretion in sentencing (Walker, 130). Other particularities of the Bill were also protested (Walker, 130). Therefore, Lord Birkenhead intervened to provide an amendment to the Bill that would help narrow its scope.

Walker outlines that Birkenhead's amendments were to address two specific points. The amendment, included in Walker's text, read

[w]here a woman unlawfully by any direct means intentionally causes the death of her *newly born* child, but at the time...had not fully recovered from the effect of

³⁰ Walker, Nigel. *Crime and Insanity in England*. 1st ed. Edinburgh: University Press. 1968. Print.

giving birth to such child, and by reason thereof the balance of her mind was disturbed...

130 emphasis in original

First, the amendments were intended to limit the scope to whom the Bill could be applied and the language pertaining to the mental element of the law was meant to address that narrowing of scope. That language gives way to an enormous amount of legal complexity. Walker writes that Birkenhead aimed at writing a phrase that would require the courts to interpret it themselves, Walker questions: “whether [Birkenhead] appreciated that he had unobtrusively simplified the legal relationship between disease of the mind and *actus reus*” (Walker 130). The last objective Birkenhead had was to give a range of sentencing choices to judges. Effectively, this law would allow for reduced sentencing for the mother in question and she could not be sentenced for murder, but for either infanticide or manslaughter (Walker 130). Altogether, these amendments proved agreeable to Parliament and in 1922 the Bill was finally passed.

In a fifty year time span, what eventually became the United Kingdom’s Infanticide Act evolved from a proposed Homicide Bill, to a private member’s Bill, two separate versions of the Children Bill, and finally amended to the form in which Parliament agreed it should pass. The Infanticide Act of 1922 read as follows

[w]here a women by an willful act or omission causes the death of her newly-born, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was disturbed, she shall, notwithstanding that the circumstances were such that but for this Act the offense would have amounted to murder, be guilty of a felony, to wit infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child³¹

³¹ *Infanticide Act 1922* (U.K) 12 & 13 Geo. V, c. 18

The second part of the Act instructed the jury on sentencing and read as follows

[w]here upon the trial of a woman for murder of her newly-born child, the jury are of opinion that she by any willful act or omission caused its death, but that at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and that by reason thereof the balance of her mind was then disturbed, the effect jury may, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, return in lieu thereof a verdict of infanticide³²

Altogether, the law and its corresponding sentencing instructions fulfill both of the objectives outlined by Birkenhead's amendments, and finally gave way to the reduced, but more easily achieved, sentence for mothers charged with killing their children. Walker's final question to Birkenhead still remains, however, when he asks: "would he have been so quick to claim credit for drafting this clause if he had foreseen quite how restrictive the courts' interpretation would be?" (130). As we will see, the mental element included in Birkenhead's amendment to the Act would continue to plague the courts and lawmakers until today.

Infanticide was introduced as a separate offence in 1948 into the Canadian Criminal Code. The infanticide section of the Code read as follows

204. [a] female person commits infanticide when by a willful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed³³

The infanticide section maintained much of the language contained in the United Kingdom's Infanticide Act of 1922, with a significant change, or rather, omission.

³² *Infanticide Act 1922* (U.K) 12 & 13 Geo. V, c. 18

³³ *Criminal Code*, S.C. 1953-54, c. 51

Where the 1922 Act specifically instructed to use this sentence in the context of a charge for murder or manslaughter, the Canadian section did not provide such instruction. Additionally, the section committed the same initial mistake of the 1922 Act by not defining the age in the term ‘newly born’. This was amended in 1954 to reflect that the child in question had to be under the age of twelve months with a separate definition to define the term ‘newly born’.³⁴ The infanticide section, and its definition for ‘newly born’ remains the same in current legislation.³⁵

The Paradox/Contradiction: The Law's 'Mercy' Reconsidered

The infanticide section came into review in 1984 with the Law Reform Commission of Canada’s (LRCC) working paper on homicide.³⁶ The LRCC has a complex history in Canada and is reviewed by Gavin Murphy in his report *Law Report Agencies*.³⁷

Ultimately, the LRCC made the recommendation to strike the infanticide section from the homicide rubric of the Code. This fit in with their more general recommendation to erase the differentiation between ‘culpable’ and ‘non-culpable’ homicide,³⁸ and to reinforce differentiations between ‘intentional’ homicides and ‘reckless’ homicides with varying degrees and corresponding minimum and maximum sentencing

³⁴ Criminal Code, RSC 1985, c C-46, s 2 (27) <<http://canlii.ca/t/52hd3#sec2>> retrieved on 2016-01-11

³⁵ *Ibid.*

³⁶ Law Reform Commission of Canada. *Homicide*. (Working Paper #33) (Ottawa: Law Reform Commission of Canada, 1984). Web. Dec 21, 2015.

³⁷ Murphy, Gavin. *Law Reform Agencies*. Ottawa: Department of Justice of Canada, 2004. Web. Dec 21, 2015.

³⁸ LRCC, supra note 32 at 85

recommendations. These recommendations fall under the more general category of establishing a ‘diminished responsibility’ category within *The Code*.

The LRCC’s recommendations were intended to restructure entire homicide provision, so it is difficult to analyze their recommendations for the infanticide law without taking into account their broader recommendation. These changes affected the infanticide section with the recommendation that: “[t]here should be two degrees of ‘intentional’ homicide, and the second degree offence should carry merely a maximum penalty of life imprisonment” (LRCC 78). This would allow, in the terms of the LRCC report: “greater flexibility, to better tailor justice to the individual case, and to rid the law of complex rules on provocation and infanticide” (LRCC 77). While this recommendation may have been made with the intention to clarifying the homicide provision as a whole in the Code, history has shown that when there is ‘great flexibility’ there also remains a lack of direction. This lack of direction then results in ambiguous laws that are guided by socially driven values that do not align with prudent legislating.

The infanticide section is not perfect. However, history shows that it provided a legal mechanism by which to secure convictions for women accused of killing their children for a lesser offence with a reduced sentence. Historians have demonstrated this need. Why did the LRCC seemingly ignore this history? The LRCC was uniquely positioned to consult with scholars in the academic community and members of the legal profession who understood and appreciated the purpose of the infanticide section and its long history and, according the Gavin Murphy, the mandate of the LRCC was to consult

widely.³⁹ However, the acknowledgments page of *Working Paper #33* suggests that the LRCC did not consult beyond a very narrow group of experts over their ten years of research.⁴⁰ Perhaps if the LRCC had done so, their recommendation would have been different.

The review of the following authors and their scholarship on the infanticide section is not an exhaustive list of recent scholarship. The following papers were the ones most frequently consulted in writing this thesis because of their fresh perspective and criticism of the infanticide section. These work of these authors are the most useful in framing the current discussion of the infanticide section within the complicated and tumultuous history of the law. While the number of infanticide cases varies throughout the years, many circumstances contributing to a mother killing her child have remained the same. The following authors have provided a framework by which to see how the infanticide section affects mothers accused of killing their children over the past thirty years.

Scholarship on the Medical Aspect of the Infanticide Law

The medicalization of infanticide is a puzzling aspect of the law. As we have seen previously,⁴¹ the medical aspect of the infanticide law tying a woman's 'lactation' or being 'not fully recovered from the effects of giving birth to the child' to a 'disturbed mind' was entirely conceived by legislators. As Judith Osborne eloquently states: "[t]hese statutory provisions were enacted not to *recognize* legally the [medical] connection

³⁹ *ibid.* at 50

⁴⁰ *Supra* note 31 at page 1

⁴¹ *Supra* note 21 at page 129

between childbirth and infanticide, but to *create* it” (55).⁴² The following authors have focused on understanding the medical aspect of the infanticide law.

Kristen Johnson Kramar and William D. Watson critically engage with the medical aspect of the infanticide section in their article ‘Canadian Infanticide Legislation, 1948 and 1955: Reflections on the Medicalization/Autopoiesis Debate’.⁴³ Kramar and Watson’s article is a response to Tony Ward’s work on infanticide where he argues that the infanticide section invokes a retrofitted framework of psychiatry and imposes it on the section.⁴⁴ In their article Kramar and Watson that while Ward is correct in the broader strokes of his analysis of the infanticide section, that the section is not an example of legal and medical ‘autopoiesis’.⁴⁵ In plainer terms, Kramar and Watson argue that the infanticide section is not based in medical fact but simply the perspective of legislators.

Kramar and Watson offer an important academic analysis in the way we can view the infanticide section. The broad strokes of the authors’ arguments play to the important question regarding the ‘mental element’ of the infanticide section. We will see the argument subsequently taken up with the Women’s Legal Action Fund’s (LEAF)

⁴² Osborne, Judith A. ‘The Crime of Infanticide: Throwing Out the Baby with the Bathwater’. *Canadian Journal of Family Law*. 6.47 (1987): 47-59.

⁴³ Kramar, Kirsten Johnson and William D. Watson. ‘Canadian Infanticide Legislation, 1948 and 1955: Reflections on the Medicalization/Autopoiesis Debate’. *Canadian Journal of Sociology*. 33.2 (2008): 237-259. Web.

⁴⁴ Ward, Tony. ‘The Sad Subject of Infanticide: Law, Medicine and Child Murder 1860-1938’. *Social and Legal Studies*. 8.2 (1999): 163-80. A review of Ward’s article was not included as it is focused on the British infanticide legislation, whereas Kramar and Watson counter the application of Ward’s arguments to the Canadian legislation.

⁴⁵ Autopoiesis is a term introduced by Chilean biologists Humberto Maturana and Francisco Varela to explain the automatic and continuous self-regeneration of cells. More broadly, the term is also used to explain for systems that regenerate and reproduce themselves, and is popularly employed in the cognition and sociology community.

2016 memorandum.⁴⁶ Kramar and Watson do not make recommendations to reform the infanticide section in this article.⁴⁷

From another angle Sanjeev Anand questions how the medical aspect of the infanticide section in his article “Rationalizing Infanticide: A Medico-Legal Assessment of the *Criminal Code*’s Child Homicide Offence”.⁴⁸ Anand agrees with Kramar and Watson’s analysis when he writes that ‘medical science’ did not inform the wording of the section but the legislators (706, 715). However, Anand writes that: “these disturbances of the mind must be established to have been caused by giving birth to the child or by the effect of lactation consequent on the birth of the child”, (713). While the section is not based in medical fact, the law still requires that a mental disturbance be proven.

The third section of Anand’s article bears the most importance for the purpose of this review. Here the author argues that if the biological connection between childbirth and a range of mental illnesses occurring post childbirth could be proven, then on that merit alone the infanticide section would still have a place in The Code. The author presents a range of material that demonstrates that: “the principal contributors to postnatal mental illness seem to be associated with the stress of child rearing rather the biology of childbirth and/or lactation” (723). According to Anand, there exists no causal

⁴⁶ Women’s Legal Education and Action Fund (LEAF), Memorandum of Law and Argument (Factum), *R v. L.B.*, Ontario Court of Appeal, July 29, 2010.

⁴⁷ A self described feminist, Kramar does not make recommendations for reform of the infanticide law in her article with Watson nor in her book *Unwilling Mothers, Unwanted Babies: Infanticide in Canada*. Short of making a recommendation, Kramar’s last sentence in *Unwilling Mothers, Unwanted Babies: Infanticide in Canada* is that “[i]nfanticide cases will continue to come before the courts, and many will be best dealt with through the existing mitigation framework” (190).

⁴⁸ Anand, Sanjeev. ‘Rationalizing Infanticide: A Medico-Legal Assessment of the *Criminal Code*’s Child Homicide Offence’. *Alberta Law Review* 47.3 (2010): 705-728.

connection between a woman's biology post-childbirth and her mental state and, therefore, the section requires reform (723).

Anand closes his article by suggesting two reforms to the infanticide section of the Code. First, Anand recommends removing the gendered aspect of the section, which would allow for it to apply to fathers and adoptive parents accused of killing their children. Anand argues that if mental disturbance is not tied to a woman's essential biology and only in the stresses of child rearing, then this section should apply to all those who rear children (724). Anand then echoes the recommendations of the LRCC for repealing the infanticide section and instating a new defence of diminished responsibility that would: "lead to the equitable treatment of all offenders whose acts of homicide were precipitated, at least in part, by their mental illnesses" (725). Anand's arguments for his recommendations are compelling (727), however the author fails to recognize the prevailing feminist critique that the responsibility of child rearing is placed on the mother in patriarchal parenting.

Judith A. Osborne's article, 'The Crime of Infanticide: Throwing the Baby Out with the Bathwater', is a response to the LRCC's proposal for reform, The LRCC's recommendations were based on the Butler Report and advocated for reform based on diminished responsibility. The LRCC and the Butler Report's arguments are based on the fact that the medical model of the infanticide law is an "antiquated medical opinion concerning the effects of childbirth on women, and [is] unnecessary from a legal standpoint due to recent developments in the law on insanity" (Osborne 58). Osborne argues the Butler Report and the LRCC cannot claim the medical aspect of the infanticide

law is an “antiquated medical opinion” (58) if the legislators drafting the law knew that the science had no basis in the first place

[r]emoving infanticide from the law on the basis of outmoded medical knowledge ignores the fact that the medical rationale was never in vogue or scientifically established. It was simply more conventional, conservative and less contentious than the reasons for the courts’ lenient treatment of murdering mothers
Osborne 58

Osborne argues that legislators hid their patriarchal views in unsound medical terminology that would be more readily accepted by the public than admitting they preferred a more merciful approach when sentencing accused mothers.

Osborne’s analysis of the section powerfully demonstrates how the legislators exploited public opinion in order to bring about their desired outcomes. Osborne writes that: “[f]urther, the legislative connection between childbirth and mental disorder may now be so firmly fixed in the public consciousness that reduced liability for women who kill their children is virtually automatic”, (58). In my view, Osborne illustrates how the infanticide section exploited unfounded medicine in order to disguise legislators’ ‘conservative’ attitudes.

New Perspectives: Feminist Critiques and Advocacy

Feminist Advocates

Feminist analysis and advocacy in the area of the infanticide legislation began in 1984 with Elizabeth Sheehy’s background paper titled “Personal Autonomy and the Criminal Law: Emerging Issues for Women” on behalf of the Canadian Advisory Council on the Status of Women (CACSW). This report provided a new lens through which to see a new path for reforming the infanticide section and, as a whole, offered a new

framework by which to imagine what the author terms ‘women’s autonomy’ within the Canadian criminal justice system.⁴⁹ The paper meant to serve as a starting point to further research into the areas outlined by the author.

In her report, Sheehy outlined four different theoretical models on which to base the legal system in relation to gender. The recommendations are tailored to each theoretical paradigm. Sheehy provided thorough, succinct, and very clear options in matters relating to the female specific defenses of battered women’s syndrome, pre-menstrual syndrome, and post-partum depression (PPD). It is within the post-partum category that Sheehy tackled the infanticide section of the law.

Sheehy raised two concerns regarding the use of the infanticide section as a ‘special defense’. In context of the infanticide section’s history, Sheehy posed the same concern as the LRCC’s final recommendation, in that it may be better to judge women’s cases individually (Sheehy 47). As well, Sheehy underscores the harm the infanticide section does in reinforcing stereotypes linking women’s bodies to their psychology: “[r]esearch indicates that infanticide is related more closely to the economic and social conditions under which women live” (Sheehy 47) and that this: “serves to deflect attention away from other significant influences on this crime, such as poverty”, (Sheehy 47). Sheehy identified the risks the legal system takes in masking the true plight of mothers when it links their biology to their psychology.

Sheehy also addresses the LRCC’s recommendation for reform the infanticide section. Among the LRCC’s chief concerns regarding the application and scope of the

⁴⁹ Sheehy, Elizabeth. *Personal Autonomy and the Criminal Law: Emerging Issues for Women*. Ottawa: Canadian Advisory Council on the Status of Women (1987)

infanticide section were the small number of infanticide cases tried each year, leading to the argument that a specific section was no longer necessary. The number of cases may be low, writes Sheehy, however: “the conditions that produce this crimes, e.g., poverty, have not been eliminated by any means” (48). Furthermore, writes Sheehy, the actual number of cases, however low, is not a reasonable argument for why this law should not exist (48).

Sheehy provides two alternatives to the infanticide section. The first recommendation would reform the law to allow for: “proof of mental disturbance arising from either the physiological or other environmental stresses consequent upon birth” (Sheehy 48). This would highlight socio-economic factors as contributing to a mother’s post partum depression and to: “eliminating the ‘mad mother’ image” (Sheehy 48). The second and more optimal reform solution includes creating a general sweeping defence for post partum depression. This defence would not be specific to one crime but available for use in the case of all offences. Sheehy’s recommendations includes that the defense be gender-neutral and that: “its availability should be conditional upon a showing of post-partum depression linked to a major or solitary child-care role, extreme economic deprivation, and/or social disapprobation directed at the accused parent”, (48). This model of defense would then be available to either parent, and would help reduce the stereotyping that comes with motherhood and post partum depression.

The Women’s Legal Action and Education Fund (LEAF) has intervened twice in the courts to defend the use of the infanticide law in cases of two separately accused women. In 2010, LEAF was granted intervener status in L.B.’s case, the case we are

using as a case study. L.B. is an Ontario woman whom we only know by her initials due to her being underage at the time of her first charge. LEAF intervened in the courts, but this time before the Supreme Court of Canada in 2016 on behalf of M.K.B., involving an Alberta woman accused of killing two of her infants.

In 2010, LEAF appeared as an intervener before the Court of Appeal of Ontario to answer one question. In their Factum, the interveners argue that

the question is whether the Crown can effectively deny women access to the regime of reduced culpability and sentence under s. 233 of the *Criminal Code* by charging women who kill their newly born children with murder instead of infanticide in circumstances where the elements of infanticide are present...when the Crown proves murder, does infanticide remain an available verdict?

LEAF (2010) 2

As we have seen, the proper and appropriate application of the infanticide law in relation to murder has been long debated in scholarly literature. According to Isabel Grant.⁵⁰ This application of the infanticide law when the Crown proves murder is precisely the purpose of the infanticide law in order to protect from overcharging. Even still, the amount of literature available to the courts was not enough to have this question adequately answered by trial judges.

LEAF argued that to properly interpret the infanticide law it must be considered within the intent set out by Parliament when the law was created. Specifically, the infanticide law was intended by Parliament to provide a mitigating offence for mothers accused of killing their infants while recovering from childbirth or the effects of lactation (LEAF 2010 3). For the Crown to charge otherwise would be a ‘effective repeal’ of the

⁵⁰ Grant, Isabel. ‘Desperate Measures: Rationalizing the Crime of Infanticide’. *Canadian Criminal Law Review* 14 (2010): 253-271.

infanticide law by allowing: “the exercise of Crown charging discretion” (LEAF 2010 3). Again, with LEAF’s argument we see how the reasoning and discretion in the way the Crown charges accused mothers’ plays a very large role in how the infanticide law is further applied. LEAF further argues that when the elements of murder are present, infanticide must be made available as a verdict in keeping with the Parliamentary intent for the application of the law (2010 4). This argument is featured strongly in the literature previously covered by this reviewer.

Opponents of, and even some advocates for, the criminalization of infanticide as a direct offence argue that the conditions for sympathy that existed for accused mothers when Parliament introduced this law no longer exist.⁵¹ LEAF argued best for why not only those conditions remain, but why that argument holds no weight in the current legal discourse: “[s]ocial, economic, cultural, religious, psychological and other factors continue to work together to cause individual women to experience a disturbed mind following child-birth” (LEAF 2010 8). The argument that women have options in relation to abortion and contraception reinforces the widely held notion that just because the options may exist, women be able to avail themselves of those options. LEAF argued that equal access to abortion is indeed not available to every woman across Canada. Furthermore, LEAF argues, that even if abortion were legal, there remains cultural, religious, and social stigma against women who procure them.⁵²

⁵¹ Osborne and Grant both write that contraception and abortion are now available and therefore the conditions necessitating mothers killing their children no longer exist.

⁵² Supra note 45 at footnote 13

LEAF concluded their factum by recommending reform. They wrote that the law at present is ‘ambiguous’ and “may well not be the best way” (2010 24) to manage these types of cases. Removing mandatory minimums may be a first step in providing a more equitable legal framework for vulnerable mothers. This position, however appropriate to state, slightly undermined the valuable arguments made previously. However, LEAF contended that the purpose of their presence in court was to explain how to properly interpret the law and apply it with Parliament’s original intent.

LEAF’s 2016 intervention before the courts represents strong arguments against those who misunderstand and misinterpret the section. The contention that brought this factum before the SCC is in the approval of appeal by Justice Wakeling of the Alberta Court of Appeal wherein, LEAF argues, that

the Appellant is trying to mount a constitutional challenge to s. 233 in the absence of the ability to do so. LEAF submits that the test proposed by Justice Wakeling and the modified version advanced by the Appellant both overstep the bounds of the courts’ proper role in interpreting legislation, by inappropriately medicalizing and restricting the legal standard for infanticide
LEAF 2016, 8

LEAF argued against much of the traditional arguments levelled against the infanticide law we have seen reflected in previous literature. Kramar and Watson, together with Osborne have argued how the infanticide law is not representative of the medicalization of the law. Cunliffe⁵³, Sheehy, and Grant argue how the merits and demerits, but even more so, the necessity, of retaining the infanticide law as a defense for women which keeps in mind Parliament’s intent when creating the law. What we see reflected in the

⁵³ Cunliffe, Emma. ‘Infanticide: Legislative History and Current Questions’. *Crim. LQ* 55 (2009-2010): 94-119.

LEAF factum is the need for a feminist advocacy organization to stand before the Supreme Court of Canada to oppose the interpretations and analysis of a current Judge in the Alberta Court of Appeal that because of prevailing attitudes women no longer merit the protection of the infanticide law. This demonstrates that attitudes within the justice system have changed in favour of more punitive action to be taken against women accused of killing their infants.

Canadian Legal Scholars

Isabel Grant explored overcharging in her article ‘Desperate Measures: Rationalizing the Crime of Infanticide’.⁵⁴ Grant makes three arguments in her paper. Like Emma Cunliffe, to whose work I turn next, Grant argued that the infanticide section must be: “informed by the legislative intent” (257) under which it was created. Additionally, Grant argued the infanticide section must be interpreted to acknowledge the vulnerable socio-economic position in which the crime is committed. Finally, Grant argued that using infanticide as a defense to culpable homicide is unwise, but it may be the only way to reverse the trend of overcharging.

According to Grant, using the infanticide law as a defense puts accused mothers at a greater risk of incarceration because they will inevitably be forced to plead to the lesser charge of infanticide, such as the case with women charged with killing their abusive husbands (Grant 265). In order to circumvent this circumstance, Grant argued “the courts must be vigilant about only committing women to stand trial for infanticide where the

⁵⁴ Grant, Isabel. ‘Desperate Measures: Rationalizing the Crime of Infanticide’. *Canadian Criminal Law Review* 14 (2010): 253-271.

evidence supports that charge” (266). The evidence, for Grant, lay in the difference of included offences between infanticide and murder

[t]he difficult with interpreting infanticide relates to the nature of included offences. Most included offences are lacking some element contained in the more serious offence. For example, manslaughter, an included offence to murder, is murder *minus* the intent to kill. Infanticide, by contrast, is an included offence to murder which has all the elements of murder *plus* additional elements relating to the mental disturbance and the birth

Grant 262, emphasis in original

Grant writes that this seems paradoxical, because a crime as serious as murder is being proven while at the same time a lesser charge is being allowed. But for Grant, this is the entire purpose of the infanticide section, and furthermore: “where the elements of infanticide are present, the offence is infanticide *and not murder*” (262 emphasis in original). Grant successfully and clearly argues the complexity of the infanticide section while clarifying the legislative intent behind the wording of the law. Finally, Grant’s argument proves the redundancy of the Crown’s trend in charging mothers with harsher penalties. This is where the strength of Grant’s arguments lies.

Grant admitted that the current section is not the best route to manage infanticide cases. Preferring whole scale reform in the way of a diminished responsibility category and the abolishment of mandatory minimums, Grant recognized that those two possibilities are not currently available (271). In lieu of this, Grant recognized that the current law is best in the absence of the two previously stated items.

In her article, 'Infanticide: Legislative History and Current Questions' Emma Cunliffe analyzed the shift in sentencing and conviction patterns.⁵⁵ Cunliffe analysed data from twenty-seven cases that suggest a change in sentencing patterns starting in the year 2000

[o]f the 19 cases decided between 1954 and 2000, 13 accused were original charged with infanticide (one in combination with infanticide), two were charged with murder (both during the 1990's) and two charges were unknown, although the eventual verdict in both was guilty of manslaughter...[a]mong the eight cases in 200 and since, one accused was initially charged with infanticide, two with manslaughter and five with first or second degree murder
Cunliffe 107-8

According to Cunliffe, while the numbers are 'statistically low' , the shift in charging patterns after the year 2000 indicate a trend.

Of all the literature on the infanticide law, Cunliffe's articles best explain how establishing the mental component in the law creates a distinct separation from a murder charge. Cunliffe argues that the law

boils down to two requirements: (a) the accused's mind must be disordered as a result of giving birth or of lactation; and (b) the mental disturbance must coincide with the infanticidal act or omission, but need not cause it
Cunliffe 111

Therefore, a mother's mental state need not be what caused the death of her child, it only need to be present at the time her child died. Cunliffe cites Grant, Chunn, and Boyle in their assessment of the law where the mental element: "makes the difference between conviction and acquittal when the accused performs an act that is subjectively intended to quiet a baby" (116). More broadly, the *mens rea* of the offense is the test that separates

⁵⁵ Cunliffe, Emma. 'Infanticide: Legislative History and Current Questions'. *Crim. LQ* 55 (2009-2010): 94-119.

infanticide from murder and manslaughter (116). Cunliffe goes further by arguing that the infanticide law is better interpreted when it is seen to require the specific intent to “cause serious harm or recklessness as to whether death ensues from a particular act or omission” (116). This distinction helps further distinguish the *mens rea* required for infanticide. Without properly understanding and applying this distinction, prosecutors will continue to overcharge mothers with murder when they should be charged with infanticide.

While Cunliffe does not make a recommendation for reform, she notes in passing that the current infanticide law makes for a good placeholder to protect accused mothers until the introduction of a diminished responsibility scheme.

Conclusion

The history of concealment law and infanticide section demonstrates the patriarchal roots of these two related areas of crimes. The judicial sympathy for mother’s accused of killing their children resulted in the formation of laws that sidestepped the punitive sentence of capital punishment for short incarceration times appealing to their patriarchal sympathy. The legal system found that there was a need for a reduced sentence in order to secure convictions for women accused of killing their children. The infanticide and concealment laws provided the legal mechanism to do so. However, the history of these two laws reveals that the roots grounding these laws are extraordinarily banal patriarchal attitudes. Midwives were forced to pressure mothers in childbirth to reveal the paternity of the baby to satisfy the local churches. Neighbours were encouraged to betray the secrets of their neighbours and divulge information about one

another to satisfy the increasing nuclear family structure and breakdown of community caretaking. Male judges and juries did not want to send mothers to the gallows out of misplaced patriarchal sympathy. Heads of households took sexual advantage of vulnerable female servants and compelled the women into fear and silence because of the power imbalance. Pressure, fear, power, betrayal are all tactics used by the institution of patriarchy to turn male against female, human against human, in order to satisfy the end goal of power, domination, and oppression of man over woman and privileged over marginalized.

Since infanticide and concealment entered into our *Code* and scholars, lawyers, and law reformers have been grappling on how to amend the law in order to fit with our changing attitudes toward mothers who kill their children. There exists some meaningful recommendations on reform, and others are misguided given that they operate outside of a meaningful maternal feminist framework. The current infanticide section helps protect mothers who are accused of killing their children from facing extremely harsh mandatory sentences. However, the current trends indicate that the Crown sidesteps the infanticide section as a charge in favour of the harsher penalties of murder and manslaughter for women accused in these cases. Appeals in cases where mothers accused of killing their infants and are charged with sentences other than infanticide indicate that the infanticide section remains operational. Why is the Crown sidestepping the infanticide section for harsher penalties? The court of public opinion and the court of law are becoming

increasingly divided on how harsh to judge mothers accused of killing their children.⁵⁶

What accounts for this gap in attitudes? In the analysis we will explore the correlation between the change in motherhood practices and harsher attitudes towards mothers accused of killing their infants.

Using *R v. L.B.* as a case study, the legal analysis will conduct a very close reading of L.B., a mother charged with two counts of first degree murder in the killing of her two infant sons on two separate occasions. L.B.'s case is 'unique' given that she killed two of her infants on two separate occasions, one of them while L.B. was a minor. Additionally, L.B.'s actions against her sons went undetected. The young mother made the admission of guilt while under care at a mental health facility. It is possible that without this admission, L.B.'s actions against her sons may have ever been discovered. However, L.B.'s case is riddled with the hallmark signs of infanticide cases: lack of meaningful social support, invisible husband and father figures, the repetition of intergenerational violence, government surveillance, poverty, and a low level of education. Yet, L.B.'s case occurred at a time where the sentencing patterns for women accused of killing their children were gripped by harsher sentencing and then overturned on appeal, even though her case was subject to a publication ban because of her minor status and therefore not subject to media scrutiny. Overall, the analysis will ask what a maternal feminist reading of L.B.'s case can tell us about the Crown's changing trend in favouring harsher sentences in place of the infanticide charge as a reduced sentence.

⁵⁶ Ames, Kaley M. 'From The Court of Law to the Court of Public Opinion: The Role of Mother Blame in Canadian Infanticide Cases'. *Mother Blame Game*. eds. Sarah Sahagian and Vanessa Reimer. Toronto: Demeter Press, 2015

Chapter Three: Legal Case Study- *R v. LB*

Introduction

In 2008, a woman only known to us as L.B., was charged in Guelph, Ontario with two counts of first degree murder in the deaths of her infant sons. L.B. was seventeen years old when the first homicide was alleged to have occurred, and twenty-one years old at the time of the second. L.B.'s name was protected from publication by section 110 of the Youth Criminal Justice Act (YCJA)⁵⁷ because she was a youth as defined by the YCJA at the time of the first death and alleged offense. The trial judge acquitted L.B. of both charges of murder, and charged her of infanticide. In 2011, the Crown appealed the decision and sought a new trial on the original murder charges, arguing that the trial judge had made an error in instructing the jury on how the infanticide law operates as a partial defense. Ultimately, the Ontario Court of Appeal upheld the trial judge's decision and L.B.'s infanticide charges were upheld.

L.B.'s case legally, and in terms of cultural significance, raises a number of questions in relation to both the preservation of innocence in children and the role of the infanticide law in the Canadian Criminal Code as a partial defense. The facts of L.B.'s early life presented through court documents challenges us to ask whether L.B. was permitted the innocence in her childhood that would have afforded her the ability to foster that value in her children. Culturally, L.B. was never afforded the innocence deemed her 'right' by socially constructed values. L.B.'s innocence was interrupted at an

⁵⁷ Youth Criminal Justice Act, SC 2002, c 1

early age when the Children's Aid Society apprehended L.B. because her own parents' discord. This interruption of innocence continued throughout L.B.'s childhood and her early life was punctuated by trauma and the continuing cycle of intergenerational violence. Can society expect a mother to nurture innocence in her children if her innocence was never protected when she was a child?

Legally, L.B.'s case was significant in that the function and mechanics of the infanticide law. L.B.'s case challenged how the infanticide section is used as a partial defense for mothers who kill their children. This came to be clarified at the appeals level. The infanticide law was also put into a modern legal context during a time when Crown attorneys are attempting to convict mothers who kill their children with much more punitive charges. The changing trend in convictions is in direct correlation with the rise of intensive motherhood. The correlation between the two suggests that the more responsible society makes mothers of their children, the more criminally responsible society holds mothers when children are affected. This is even more pronounced when mothers are the ones to harm their children. Therefore, it is significant that the infanticide section was upheld in L.B.'s case where she was accused of killing not one, but two, of her children. L.B.'s case justifies the legal imperative for having a reduced sentence available for mothers in these cases.

As it relates to the transgression of L.B.'s childhood innocence, there are a number of points both legally and culturally to consider. Legally, when it came time for L.B.'s trial, the young woman was considered a 'youth' according to Canadian legal standards given that at the time of the first murder she was under the age of eighteen, the

legal age for an adult to be criminally prosecuted in Canada. L.B. occupies the liminal legal space between being a child and adult, which poses a curious consequence in the way she is viewed through a cultural lens. L.B. was also a teen mother, where she occupied what is considered a very culturally deviant position for teenage girls as seen with Deb Byrd's theories.⁵⁸ As we saw in the maternal theory section, only small slivers of circumstance separate mothers who kill their children from those who refrain from doing so. L.B.'s life demonstrates that thin sliver of circumstance.

L.B.'s Life as Presented Through Court Documents

Court documents reveal a set of dates that paint a picture of L.B.'s life. The documents do not reveal certain dates, such as L.B.'s exact date of birth. However, we do know that L.B. was fifteen years old when she moved in with her first boyfriend, D.D in 1998. Therefore, we can roughly calculate that L.B. was born in 1983, although that cannot be entirely verified given that the exact month she was born is not expressed in the documents. The same types of calculations have been made by me with respect to other dates, such as the dates of when Alexander and Cameron, were killed. The timeline reveals important details about L.B.'s life. These details are important in considering L.B.'s life through a sympathetic feminist maternal theoretical framework that does not appear to have been used to view L.B.'s life during her case. The outcome of L.B.'s case is the 'best' the young mother could have hoped for within the current structure of the criminal culpability thresholds faced by mother's accused of killing their children. The infanticide section protected L.B. from the harsher sentences within the homicide rubric

⁵⁸ *Cf.* at page 18-20

of *The Code*. However, the dates of this timeline and the outcome of L.B.'s life invites us to consider the L.B.'s life as a complete picture and not as a snapshot told through the action she took against her two sons.

The early years of L.B.'s life are characterized as being extremely bleak but is also a life belonging to many Canadians. Born to unnamed parents, it is noted that L.B.'s mother was nineteen years old when L.B. was born. L.B.'s mother repeated the cycle of intergenerational abuse with her daughter and physically abused L.B. when she was young. It is mentioned that L.B.'s mother was an alcoholic. No mention is made of L.B.'s father, other than that both parents neglected their daughter to the point of necessitating the Children's Aid Society to take L.B. into their custody as a ward for three months as an infant (2011, 8).

In the spring of 1998, when L.B. was sixteen and D.D was seventeen, they moved in together. L.B. had expressed the desire to have a baby and became pregnant (2011, 8). On August 12, 1998 L.B. gave birth to a baby boy named Alexander. Forty-eight days later L.B. smothered Alexander while he was sleeping in his crib. Initially, the death was ruled as Sudden Infant Death Syndrome (SIDS) (2008, 2). L.B. and D.D. separated shortly after Alexander's death.

In March 2001, eighteen-year old L.B. married her new boyfriend, K.B. As we will discuss in the next section, K.B. was D.D.'s mother's ex-boyfriend. K.B. and L.B. were married in March. L.B. gave birth to her son Kodie two months later, in May. These dates suggest that if L.B. gave birth to Kodie at full term that she and K.B. were engaged in a sexual relationship in August of 2010, if not earlier. This is an important detail to

highlight in relation to the overall timeline and the short time period in which this relationship took place. This also demonstrates that K.B. and L.B. married two months before she gave birth.

In September 22, 2002 L.B. gave birth to a third son named Cameron. L.B. took Cameron to the hospital on November, and again on December 1, 2002 when he was treated for dehydration. The night of the second hospital visit, sixty-nine days after his birthday, L.B. smothered Cameron. The authorities again initially classified the death as Sudden Unexplained Deaths Syndrome (SUDS).

In January of 2004 L.B. gave birth to her first daughter, Kayla. In Christmas of the same year, L.B. told a friend the difficulty she was having raising her kids. L.B.'s friend suggested she may be depressed and to consult doctors. Shortly after, L.B. was admitted to Homewood Mental Health Centre in Guelph. It is at Homewood that L.B. wrote of smothering her two sons and made admission of her actions to doctors and her second husband, K.B.

Invisible Fathers: The Overlooked Aspect of the Patriarchal Parenting Paradigm

From reading the play and L.B.'s case, we see that both literally in the case of the play, and factually from the court case, the father's are completely absent or invisible from these family dynamics and yet play a huge part in the outcomes of these stories. While it is possible to analyze the role of the mothers in isolation in relation to L.B. and Medea, as Julie Wheelwright argues in her article, the cause and effect of their

partnerships demonstrate the constraints of the mother role.⁵⁹ Sharon Hays examined how the patriarchal paradigm of parenting affects parents in both roles of mother and father.⁶⁰ As we will see, however, the consequences of the patriarchal parenting paradigm within intensive motherhood absolve fathers of their hand in these roles. Fathers have only a narrow and largely fiduciary role to play as their patriarchal role dictates, whereas mothers overwhelmingly bear the negative consequences in this paradigm given the extraordinary pressures and overwhelming responsibility placed on the mother role to preserve, protect, nurture, and altogether raise their children.⁶¹

Given the narrow roles for both fathers and mothers within the patriarchal parenting paradigm, one that negatively affects mothers in a criminal context, the characterizations of L.B.'s husbands will be interrogated in order to gain a better understanding of how the Canadian legal system considers the role of fathers in infanticide cases. This analysis takes into consideration that this characterization is filtered through the lens of judges and itself has its own bias. This bias will be interrogated.

L.B.'s first husband, D.D., was also a teenager when they married and became parents to Alexander. Little is said about D.D. in the court documents, and if we are to learn anything from what is said about L.B.'s first husband it would be that he considered L.B. a 'neat freak', he was also a teenager, and he worked many hours to support his family. Herold J. found that D.D. had other motivations for earning money as well:

⁵⁹ *Cf.* at page 16

⁶⁰ *Cf.* at page 17-18

⁶¹ *Cf.* at page 16-18

“D.D., the teenage father of A.J.D., was away from the home a considerable amount after A.J.D.’s birth. Much of his absence was attributed to his commendable desire to work long hours to provide needed financial support and some of it to outings ‘with the boys’” (41, Herold). D.D.’s desire to work long hours and save money for nights ‘out with the boys’ suggests that D.D. was interested in providing the financial support required of his position as father but not the emotional support traditionally expected and required in a partnership. Herold J.’s commentary suggests that D.D. knew he was fulfilling his end of the partnership by financially providing for his family. After Alexander’s death D.D. and L.B. separate, and nothing more is revealed.

The court documents show that L.B.’s second husband, K.B., was the former common law partner of D.D.’s mother, L.B.’s first husband. This was mentioned in the facts of the case based on evidence, buried deep in the document. This fact was deemed relevant to of this case because it meant that L.B. was in the ‘unique position’ of being observed closely by K.B. throughout all four of her pregnancies.⁶² K.B. was found by Herold J. to be: “ a hard worker and a dedicated spouse and parent. Both during the time of Ms. B’s pregnancy and postpartum period with A.J.D. and her pregnancy and postpartum periods with her other children, Mr. B was caring, helpful and solicitous” (p. 42). While the age difference between K.B. and L.B. is not known, and no assumption can be made, there is an enormous amount of questioning that must be done about the

⁶² ‘One of the witnesses who was uniquely positioned to observe Ms. B at the relevant times was her present husband and father of her last three children, K.B.. During the time of her pregnancy with A.J.D. and in the postpartum period thereafter, K.B. was residing in a common-law relationship with D.D.’s mother (D.D. was A.J.D.’s father). For several months prior to A.J.D.’s birth and thereafter, Ms. B and D.D. and K.B. and T.D. resided in adjacent apartments in a small home on [...]Street in Guelph’

relationship dynamic regarding the people involved. These facts beg us to question how this relationship could have been deemed appropriate and flourish.

It is known that L.B. and D.D. were teenagers when they became a couple and parents. K.B. and D.D.'s mother were already living in a common-law partnership. They all lived in the same house, in separate apartments. Herold J. mentions that K.B. was supportive of L.B. throughout her pregnancies, even through her first pregnancy with D.D.'s child. Whether as a concerned step-father in-law, or as her future husband, this raises questions regarding the emotional stability of a family dynamic that is mired in inter-familial sexual relationships. While L.B. was certainly the one who killed both of her children, this family dynamic reinforces that L.B. was not nestled in a family dynamic where, large scale, her best interests were being taken care of in a meaningful way.

As with D.D., Herold J. commends K.B. on providing the normative male components of partnership. K.B. is characterized as being financially supportive, 'helpful', 'solicitous'. While K.B. is not to blame for L.B. smothering Cameron, his frequent absence, also remarked by Herold J., suggests that while the smothering happened in deep social isolation, it did not happen in isolation of the fact that L.B. begged K.B. to stay home from work that day because she was desperate

Ms. B begged K.B. to stay home on the day that she killed C.D.B.. She knew when she was doing so that she had formed the intent to kill him and she was begging for some help from K.B. without telling him why. Understandably, K.B. had to go to work to protect his very tenuous employment situation
R. v. L.B., 2011 ONCA 153

While Herold J. dismisses L.B.'s begging K.B. to stay home for the 'understandable' reason that K.B. had to protect his precarious employment situation, in the face of a smothered child, is it all that understandable? This narrative within the legal context begs us to appreciate the role the infanticide law continues to play within the homicide rubric of the Canadian Criminal Code in this 'modern context'.

The purpose of the analysis of K.B.'s characterization is not to shift the blame from L.B. onto K.B., nor onto the opinions and descriptions of K.B. and L.B. made by Herold J. Rather, this analysis is intended to examine and question the role of absolution in homicide cases. What is the purpose of raising K.B.'s ability to surveil his former step-daughter in-law and then wife, if L.B. only goes on to smother her son? Is this highlight how determined L.B. was in smothering her children? Given L.B. begged her husband to stay home from work, this indicates that L.B. was indeed crying out for help, for support. If anything, then K.B. equally failed to properly engage with his wife and meet her needs. This is not to say K.B. should be held responsible at the criminal level. But if K.B. was in an employment situation that he could not stay home to support his wife and the result was a smothered child, then this surely begs the questioning of the very real effects precarious employment have on Canadian families in addition to the lack of meaningful government supported childcare and family leave provisions.

As it intersects with patriarchal motherhood, the father role only leaves room for fathers like D.D. and K.B. to provide minimal emotional support and a stable income. Therefore, when Herold J. determines that K.B. was a dutiful husband because he chose, or was compelled to go to, work over his wife's cries for help, invoking the image of

patriarchal parenting roles, that K.B. did indeed to everything he was meant to do. K.B. fulfilled his role within patriarchal parenting. This challenges us to question the constrained role of fathers within the paradigm of patriarchal parenthood and the pressure that constrained role puts on mothers within the paradigm.

Childhood Trauma and the ‘Glory’ of Motherhood

In doing this research for this thesis I was plagued by the question why L.B. killed the two of her four children. Why did Alexander and Cameron die, why did Kayla and Kodie live? The court documents available did not ask or try to answer the question. This analysis does not seek to answer the question, but only to put forward a possibility through a feminist lens that was absent in the law’s analysis in L.B.’s case. The possibility put forward in this thesis does not negate the criminal culpability of L.B. within the confines of *The Code*, rather, it contextualizes it. Indeed, as we have seen, the infanticide section finds a mother guilty of homicide whenever she faces the court if she has been found to have killed their child. The only question is the form. L.B. is still culpable within the meaning of *The Code*. This possibility helps contextualize L.B.’s homicides within the framework of maternal theory, the traumas she experienced as a child, pregnancy at a young age, and the lack of meaningful support she received in raising her children. Most of all, this position considers all of this information in relation to the days of L.B. gave birth to her children, and the days in which she killed them.

A close study and analysis of these dates reveals a number of things. It reveals that L.B. experienced an extraordinary amount of trauma at a very young age. This trauma was also the result of intergenerational abuse and violence. Due to severe neglect

L.B. was apprehended as ward of the Children's Aid Society and made a Crown Ward. In addition to the abuse suffered at the hands of her alcoholic mother are striking examples of how L.B.'s innocence was not fostered, and were perhaps not even a thought. These are the facts we learn of through court documents, there are perhaps more that go unmentioned. This suggests that the preservation of childhood innocence is only afforded to those of a higher socio-economic status and that children raised in more tenuous socio-economic circumstances are more likely to have their innocence 'naturally' transgressed through the circumstances of their overall surroundings, and the intervention of the state.

Informed by Deborah L. Byrd's theories on childhood trauma as contributing to teenage pregnancy I argue that these facts shed light on why L.B. found herself a mother at sixteen. The court documents also reveal that motherhood was not what it 'seemed to be' for L.B., and that she much preferred pregnancy to actual motherhood.⁶³ Herold J.'s statement is consistent with what we know about young women who embark motherhood. A perceived elevated status that accompanies the imminence of motherhood during pregnancy that ultimately becomes interrupted when the innocence of 'not knowing' the realities of motherhood intersects with the realities of mother work.

Alexander was smothered on September 29, 1998. Cameron was born September 22, 2002. What these dates chiefly reveal is that L.B. gave birth to Cameron within a week of the four-year anniversary of Alexander's death. The fact that Cameron was born

⁶³ "Some of the motivations which Ms. B herself expressed for killing the children were that she couldn't handle them, that being a mother was not what she thought it was going to be (pregnancies always thrilled her), that the children took attention away from her and that things would be better for all of them (not only the children she was killing but also herself) after the children were gone"

almost exactly four years to the day that Alexander was smothered is not noted in the court documents. When faced with the question as to why L.B. smothered Alexander, aged forty-eight days, and Cameron, aged sixty-nine days, given what was learned about L.B.'s life in relation to maternal theory, we can begin to draw some inferences. L.B. appears to have romanticized motherhood but soon discovered she enjoyed pregnancy much more than maternal labour. When motherhood became to overwhelming in the face of an invisible husband and the demands of mother work, it is possibly that is when L.B. decided to smother Alexander. But L.B. and D.D. separated, and with a new partner she thought perhaps motherhood was again possible and manageable. After having Kodie, it would seem that L.B. had motherhood under control. However, after Cameron things became more strained. Cameron was a 'difficult' child, needing hospital visits.

Taking all these facts together, we must consider L.B.'s life as she faced life with baby Cameron. L.B. was sixty-nine days post-partum, newborn Cameron needed to go to the hospital, coupled with the trauma of giving birth to a son four years after smothering her first, having to take care of a newborn in addition to a seventeenth month old Kodie with little social support from her husband, in addition to living the daily trauma perpetuated by her childhood. The facts are exhausting to bear. Herold J. characterizes Cameron's homicide as an act that: "would appear to defy the odds" (2008, 2). Indeed, it would 'appear' to defy the odds. But when we take a closer look, it would seem that the odds were exactly as they appeared to be: stacked against L.B. and her children. When considering that only slivers of circumstance that separate mothers who kill their infants from those who refrain doing so, it is compelling to consider that L.B. has been both

mothers. L.B. killed two of her infants, but she also refrained from killing her other infants. Putting these facts together may help explain why she killed Alexander and Cameron, and the events of her childhood and subsequent births triggering both of instances of smothering, L.B. kept two other infants alive. There is no evidence that L.B. ever physically or emotionally abused her children outside of the separate events of smothering Alexander and Cameron. It is entirely reasonable to conclude that L.B. never harmed her infants if it had not been raised in the court documents to establish a pattern of abuse. L.B. entered into Homewood in the Christmas of 2004 after disclosing to a friend she was having difficulty coping. L.B.'s friend recommended she go see a community health nurse. The community health nurse suggested L.B. enter into treatment at Homewood Mental Health Center. Perhaps Kodie and Kayla remaining alive, L.B. raising them until she no longer found it tenable and entered Homewood that Christmas of 2004, perhaps that was what defied the odds.

Preservation and Restraint: 'Guilt' in Current Infanticide Cases

Each infanticide case is unique. In looking for infanticide cases to research for this thesis I found that L.B.'s case stood out. Chiefly, L.B.'s case stands out because two homicides were committed spaced many years apart with surviving children. While one cannot make a statement about what 'normal' infanticide cases contain, this fact presented an interesting departure from other cases observed in the research for this thesis. That L.B. committed two homicides and 'allowed' her other children to 'survive' is a sobering realization. Indeed, L.B. killed two of her children. She also kept two other children alive.

Further, Alexander and Cameron's homicides came to light because of the mother's own admission while under psychiatric care. It is very possible that without this admission Alexander and Cameron's death would never have come under criminal suspicion. Indeed, the homicides had been found by the authorities were as a result of SIDS and SUDS. The entire court case and issue of regarding the level of criminal culpability to which L.B. was subject only emerged because the mother herself made it so. L.B. could have kept this secret her entire life. Whether L.B.'s admission of her actions came as a relief to her is not made known. We can infer from her admission of her actions while under the psychiatric care of Homewood Mental Health is that she felt safe and ready to do so in that setting. Whether L.B. knew she would be subject to criminal prosecution upon doing so is also not made known.

Until this point we have seen L.B.'s personal life as it intersects with maternal theory and the impact of trauma on her life that led the young mother to the commission of homicide against two of her four children. L.B.'s journey through the criminal justice system in Canada is one quite different than the ones we saw historically in the legal literature review. Historically, single women who concealed their pregnancies were presumed to have killed their infants when the bodies were found. Laws were developed in order to find these single women culpable of wilful murder. Some of these mothers were 'fortunate' to encounter sympathetic judges and juries who legislated 'lesser charges' for these mothers here later, the lesser statutory offence of infanticide was introduced. Currently, very few homicide cases are captured within the narrow range of

the infanticide section. These mothers encounter the criminal justice system differently than their historical counterparts. What has changed and why?

As explored in the maternal theory literature review, women who kill their children cannot be categorized.⁶⁴ All mothers exist on a spectrum of harming their infants, and these mothers are distinguished by type not kind on the spectrum. The same parallel can be made when considering the level of criminal culpability for mother's accused of killing their infants in Canada. We saw with the development of the infanticide section, mothers accused of killing their infants are always charged criminally. The question is with what charge to assign the mothers.⁶⁵ Do their actions fit within the framework set out by the infanticide section, or are they culpable above and beyond the charge of infanticide? As we saw in the legal scholarship, this has been a very difficult question to answer but the consensus has been the same. The consensus suggests that the infanticide section is a special defence that provides a mitigating framework protecting mothers who have killed their infants from serving harsher sentences. This was the express purpose of the infanticide section. Yet, why does the Crown continue to side step this mitigating framework in favour of more serious offences and harsher sentences?

The practice of charging mothers with murder and manslaughter corresponds with the narrowed view held of mothers under intensive motherhood. The infanticide section was created in order to secure convictions for mothers accused of killing their infants. What conditions have changed to account for this rift in conviction patterns? Fathers remain invisible within the framework of patriarchal parenting paradigm. Jason removed

⁶⁴ *Cf.* at page 20-24

⁶⁵ *Supra note 45*, p. 50. LEAF 51 52

himself from his children and thus his protection of them when he betrayed their mother. As we will see in Kate Mulvany and Ann-Louise Sarks' adaptation, Jason is also absent and invisible from the play that he neither appears onstage or offstage. Jason is not made into a character. As for L.B.'s case, her husbands D.D. and K.B. were rendered invisible by the financial role outlined by their patriarchal duties by focusing their attentions on their earning potential and job security. Yet the judge celebrated them for fulfilling that role. As we have seen, the invisible father role has remained a consistent presence.

What has changed is the value children hold within the framework and with it the corresponding responsibilities that come with protecting the value of children within the framework of intensive motherhood. A mother's single sole duty is to devote her time, energy, money, and rely on expert sources in order to raise her child. Mothers' accused of killing their infants represent the absolute transgression of those values set out by the patriarchal motherhood practice of our time. Therefore, perhaps in the name of formal equality, the Crown is responding to what it sees as justice set out by social values and predominant cultural practices. Yet, time and again the appeals courts overturn even the most reviled of cases and uphold the infanticide section as a reduced charge for these accused mothers.⁶⁶ Organizations such as LEAF intervene on behalf of women, stating the importance of this reduced charge until a better law can be written to properly represent the true circumstances and plight of women. As we have seen with L.B., while she must be held criminally responsible for the homicides of her two sons at her own hands, who is held responsible for putting her in that position in the first place?

⁶⁶ *R v. Katrina Effert*

Chapter Four: Classical Studies Literature Review

Introduction

Euripides' *Medea* is a curious story. By the time the play was performed in 431 B.C the myth was well known by the Greek people. Euripides's version of the play changed the ending of the myth where Medea kills her children. The ending of the play is seemingly triumphant for Medea with the mother riding away on the sun god's chariot with her children's bodies draped in the carriage. Jason is left crying and wailing for his children onstage, defeated by his wife. Euripides created an everlasting story that continues to preoccupy playwrights and audiences.

In 2012 playwright and actress Ann-Louise Sarks partnered with Kate Mulvany of Australia's ambitiously creative Belvoir Theatre to create an adaptation after Euripides' *Medea*. The play was an enormous success. Modern audiences remain familiar with Euripides' version of Jason and Medea's story. What made Mulvany and Sarks' version so creative? Mulvany and Sarks wrote a version of Euripides' *Medea* that also included a shocking twist. Mulvany and Sarks wrote a play where for the first time the audience witness the story of Jason and Medea unfold through the eyes of their two sons.

This literature review will provide the basis for understanding the patriarchal conditions in which Euripides' *Medea* was written and demonstrate through scholarship

of the play how the conditions remain. This literature review is concerned with how Jason and Medea are characterized within the play and academic scholarship thereof. In 431 B.C. Euripides' version of the myth focused on Jason and Medea's relationship and their positions relative to larger Greek society. In 2012, Kate Mulvany and Ann-Louise Sarks' adaptation after Euripides' *Medea* appeared onstage where the play is told through the eyes of Jason and Medea's children. This review will examine the context in which Euripides' version was written, while the analysis section will bring together this review and maternal theory to inform Mulvany and Sarks' adaptation after Euripides's *Medea*.

This review will open by examining Apollodorus' telling of Jason and Medea's meeting prior to the start of Euripides' play. The section following will examine the significance of oaths and the impact of oath keeping and oath breaking in ancient Athens. Oaths play a significant role in marriage, divorce, and the function of the male guardian over females in ancient Athenian law and practice. These subjects will also be examined in relation to Euripides' *Medea*. The final section will examine the role of children in Ancient Athens that will contextualize the focalization of Euripides' play against Kate Mulvany and Ann-Louise Sarks' adaptation.

This literature review is limited in that it does not examine or make comparisons between translations of Euripides' *Medea*. This thesis relies on James Moorwood's translation of Euripides' *Medea*. The review also does not engage in the robust discussion on the status of women in Classical Athens. As raised in the introduction, while authors such as Sarah Pomeroy, Marilyn Katz, and A.W. Gomme have engaged in the discussion regarding status and provide rich analysis for comparative review. This review and

overall thesis recognizes patriarchy as the persistent and underlying oppression that continue to affect women's 'status'.

The History of Jason and Medea

Medea's history can be traced in Apollodorus' *Library* (1.9.15-28).⁶⁷ While Apollodorus is by no means the only mythographer to write of the history between Jason and Medea, he offers both a concise and thorough history. Sir J.G Frazer notes in the introduction of his translation of *Library* that Apollodorus' version of events is especially useful simply because Apollodorus' version is clear and simple to follow. Robin Hard writes that Apollodorus is: "unpretentious to a fault" (viii).⁶⁸ Hard characterizes Apollodorus as an 'epitomist' and that although Apollodorus' work is simple, without flourish: "a lack of originality and scholarly and literary ambition are not necessarily defects of an epitomist; for the mediocrity of his aims prevents our author from ever standing in the way of his sources" (xxvii). In the case of myths, legends, and folk-tales where it is difficult to discern truth from fiction, Apollodorus was, "neither a philosopher nor a rhetorician, and therefore lay under no temptation either to recast his material's under the influence of theory or to embellish them for the sake of literary effect", (Frazer xviii). Apollodorus' *Library* provides a solid floor on which to base Medea's story.

Medea's story in Apollodorus' *Library* intersects with Jason's in Corinth, Medea's birthplace and Jason's final destination on his quest for the Golden Fleece. This mission began in Jason's hometown of Iolcos, where Pelias was both king and Jason's

⁶⁷ Ganz, Timothy. *Early Greek Myth*. Baltimore: The Johns Hopkins University Press, 1993.

⁶⁸ Apollodorus. *Library*. Trans. Sri J. G Frazer. Cambridge: Harvard University Press, 1921.

uncle. Driven by paranoia from an oracle, Pelias sent Jason on his mission to Colchis. It is useful to begin Jason and Medea's story in Jason's hometown of Iolcos because it gives a sense of Jason's origin, in addition to how his story unfolds in relation to Medea.

Jason hailed from the city of Iolcos where Pelias reigned as King. According to Apollodorus, Pelias received a prophecy from an oracle that dictated he would be overthrown by a man wearing one shoe, (Frazer, 95). Pelias planned a sacrifice to Poseidon and sent for Jason to attend from the countryside. On his way to the city, Jason lost a shoe in a river. Recalling the oracle, Pelias asked Jason what he would do if he was King and he knew one of his citizens were to murder him. Here, Apollodorus offers a rare editorial remark regarding Jason's reply: "Jason answered, whether at haphazard or instigated by the angry Hera in order that Medea should prove a curse to Pelias, who did not honour Hera", (Frazer, 95), that he would send this citizen to fetch the Golden Fleece. Pelias then charges Jason with this task, which Jason undertakes.

Jason sets out on his journey for the Golden Fleece with his shipmates, the Argonauts. Upon arriving at Colchis, Jason is tasked with yoking two bulls and sowing dragons teeth by the king Aeetes. No ordinary bulls, these two animals were wild and breathed fire. Apollodorus writes that

[w]hen Jason was at his wit's end about how he could yoke the bulls, Medea fell in love with him. Now Medea, the daughter of Aietes and Eideia, daughter of Oceanos, was a sorceress; and fearing Jason might be killed by the bulls, she offered, in secret from her father, to help him yoke the bulls and obtain the fleece, if he would swear to accept her as his wife and take her with him when he sailed back to Greece

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Much is contained about Medea in this short passage. We learn that Medea is a witch, a princess, and hails from a divine bloodline. Medea has 'passion' for Jason, not to be confused with love, and feared for his safety. Medea was also deft at making deals, offering her help to Jason in exchange for marriage and passage to Greece. It can be inferred that Medea was somehow unhappy in Colchis, for she was willing to forego her royal status in exchange for a new and unknown life with Jason, a man she only recently met. Perhaps Medea was seeking adventure, or this was the beginning of Medea being driven by her passions.

From here, Medea aids Jason in his tasks with a mixture of wit and magic. After retrieving the fleece herself, Medea flees to the ship with her brother, Apsyrtus and the rest of the Argonauts. The crew begins their journey away from Colchis in the night. When Aeetes, Medea's father, pursues the Argo and when Medea discovers that he is trailing after her, she murders her brother and deposits his body parts throughout the ocean. Knowing that her father would have to collect her brothers' limbs in order to provide a proper burial, Aeetes is slowed in his chase after his daughter and Medea is free to begin her new life with Jason.

From Colchis Jason and Medea fled to Iolkos. Jason saw an opportunity to regain his noble position in his homeland of Iolkos where he was heir to the throne. However upon arrival they discovered that Pelias, Jason's uncle, was in possession of the kingship. In a bid for the throne, Medea again helped her husband in his quest and devised a plan to kill Jason's uncle. Medea was successful in killing Pelias, however Jason did not ascend to the throne. Jason lost his position to ascend the throne when the citizens learned of

their king's death at the hand of his nephew. The citizens drove the shamed Medea and Jason out of the city. The pair were then banished from Iolkos and fled to Corinth where they settled. Jason killing his uncle is significant because it means that he lost his chance at royalty.

It is after this already long history of two people mutually benefitting from the others' deeds and behaviors that Jason and Medea begin their life in Corinth. It is ten years after Jason and Medea settled in Corinth that Euripides begins his play. During those ten years, Medea bore two sons for Jason, which by any ancient Greek standard meets and perhaps over reaches the expectation for a wife in bearing legitimate heirs, (Mastronarde 9, Easterling 184). The significance of Medea producing not one, but two, legitimate heirs for Jason is indicative of the fact that she fulfilled her wifely duty.

It is here that we learn Jason has forsaken his marriage to Medea and taken another wife. Medea, overtaken with grief confined herself to her room. The audience is told the terrible news by Medea's nurse who says: "Jason has betrayed his children and his mistress and beds down in a royal match. He has married the daughter of Creon who rules this land" (Euripides l. 18-20).⁶⁹ This marriage was no ordinary marriage. Jason would be marrying into royalty.

In order to understand why Jason came to marry the princess of Corinth, it is important to know the social expediency behind his betrothal. First, as we saw

⁶⁹ Euripides never gives the princess an actual name. Apollodorus refers to her as Glauce, (1.9.27-28), but for the purposes of this paper she will remain nameless to stay true to Euripides' version. The princess as a nameless entity underscores the political expediency of her marriage to Jason in addition to highlighting her use as a pawn. The unwillingness to name her in this paper serves as a reminder that, whether mythically fictitious or historical fact, how women were, and still are, nameless in the face of political and economic expediency all around the world.

previously, Jason lost his chance at royal status when he killed his uncle Pelias. By marrying the princess of Corinth, Jason would be regaining that royal status. Further, there is the cultural and legal structure of ancient Greek marriage in addition to the significance of the oath Jason and Medea swore to one another when they married. Altogether, these facts bring to light Medea's terrible anguish and the deep betrayal Jason bestowed onto her when she married the princess of Corinth. Double-crossed by her legal protector, Medea was completely alone. At this point, it is important to understand the significance of oaths and the role they play in Euripides' *Medea*, marriage and divorce laws and customs in ancient Athenian society.

Betrayal: Oaths, Guardians, and Divorce in Ancient Athens

The Significance of Oaths

Jason's betrayal of his marriage to Medea was not simply the breaking of his legal bond to his wife as her husband. In marrying the princess of Corinth, Jason broke an oath that he swore to Medea prior to their marriage. In Euripides' *Medea*, the specifics of the oath are not mentioned although it is alluded to in the play, and we the audience never actually hear the terms of the oath. The audience is left out of the details of the oath, yet know that the breaking of this oath has dramatic consequences. This is paralleled in Kate Mulvany and Ann-Louise Sarks' adaptation of Euripides' *Medea* where Leon hears some news through the door of his room and does not share what he heard with Jasper. While the ancient Athenian audience of Euripides' play did not know the contents of Jason's oath to Medea, they did know that the breaking of an oath brings dramatic and tragic

consequences. If we are to understand how deep Jason's betrayal to Medea runs, we must first learn the significance of oaths in Greek tragedy.

In her book published in 2012, *Performing Oaths in Greek Drama*, Judith Fletcher carefully teases out the particulars of oaths in Greek theatre. Fletcher uses the works of Euripides, Sophocles, and Aristophanes to demonstrate the significance of oaths in Greek theatre. Focusing closely on the issues of: "gender, language and authority in Greek drama" (Fletcher 14), the text analyzes ancient Greek drama and brings contemporary notions of power and gender to the topic of oaths, oath keeping, and the treachery of breaking oaths. By focusing on these topics, Fletcher weaves in familiar Classical theorists that focus on language and gender in order to bolster her arguments on oaths in ancient Greek tragedy, a topic that is highly gendered within the patriarchal social construction of ancient Greek culture and emphasizes the power of language that is normally reserved for men. Fletcher's text spans many playwrights and their works, yet every chapter in her book provides a new perspective and gives a new angle to considering the role oaths play within Greek drama. Fletcher devotes the sixth chapter to Euripides' treatment of oaths specifically with women, so the text is especially useful for the purposes of this paper. Altogether Fletcher's work provides a different framework for considering the issue of gender and language use within Greek drama within the context of oaths.

Fletcher's text is crucial to understanding Euripides' *Medea* for three particular reasons. These reasons give context to Jason and Medea's strife and externalize their struggle outside the sole concept of Medea's 'petty revenge'. First, the audience does not

know the oath sworn to Medea by Jason before the play begins and therefore it is difficult, particularly for modern audiences unaware of the fragility of oath keeping, to understand the terrible ramifications of oath breaking within the ancient Athenian social structure. Additionally, Fletcher's text brings to light the importance to the unheard oath Jason swore to Medea in relation to the strife the couple experiences during the play. It gives a larger and much weightier explanation for Jason and Medea's strife within the play due to the forces that occurred outside of the timeline of the play. Parenthetically, and perhaps most importantly, coupling these two reasons together gives way to the third. Fletcher's text theorizes what may have been contained within the oath based on the outcomes in the play, providing another layer to Jason and Medea's life. Fletcher's analysis of the oath provides a timeline before and beyond the confines of Euripides' work. Altogether, Fletcher gives voice to the invisible forces within the play. Invisible because they do not actually appear within the play in the form of lines spoken, and invisible because Fletcher gives the seemingly intangible nature of oaths tangible outlines that can be traced with outcomes within Euripides' tragic work.

Fletcher begins by outlining the elements that make up an oath. There are five parts to an oath and they are as follows, "1) the invitation or offer; 2) the invocation; 3) the verb of swearing 4) the body or actual promise; 5) the conditional curse", (Fletcher, 3). Fletcher also includes a number of, "non-linguistic accessories", (3) which accompany oaths but are not essential to the swearing and maintaining of an oath. Such 'accessories' include physical and verbal signifiers that seal the person who is making the oath to the oath keeper.

As previously mentioned, the oath between Jason and Medea happens before the play begins and its conditions are not outlined within it. Fletcher concludes that the oath sworn between them precluded Jason from taking another wife (183) and that

[t]heir contract was more than the type of lovers' oaths that can be exchanged in the heat of passion, and disregarded when the passion cools...[t]he original audience was probably left to make its own recreation of Jason's oath and to conclude, as we must also, that Medea made him swear some form of loyalty to her
Fletcher, 183-4

According to Fletcher, Medea and Jason's oath was not to be taken lightly by audiences. The 'loyalty' sworn by Jason to Medea is the crux of the oath and does not come in the form of their marriage that "was not the Greek practice", (Fletcher, 183). The exchange, however, was the magic and actions Medea performed in Jason's pursuit of the Golden Fleece and in exchange, Jason became Medea's protector. Here, Fletcher touches upon the role of the male protector, or *kyrios* in ancient Athens.

The most important aspect of Fletcher's research for the purposes of this paper is what follows when she remarks on the exchange of 'goods' between our two protagonists. This exchange corresponds to oath category number four, which is the body of the oath. Medea promised Jason to aid him in his adventures, she provided for him magic and counsel. In exchange, Jason gave Medea protection, became her *kyrios*, guardian, when she left Colchis and betrayed her own family to be with this new man and become his wife. This will be discussed further in the next section.

Another major highlight of Fletcher's text is the consequences of oath breaking. According to Fletcher: "[i]nscriptions of historical oaths make it very clear that the target

of oath-curses is the family of the perjurer, while a flourishing family line and prosperous household are the rewards in store for the oath-keeper”, (14). Then, we must consider what this means in terms of Jason and Medea’s relationship to one another in relation to the oath that they swore. If the consequence of breaking an oath was indeed the wiping out of the oath-breaker’s family, then according to that logic Medea and Jason’s children would indeed have to die. The anomaly, however, is that these oaths are rarely, if ever, sworn between husband and wife. The agreement of this oath by Jason on Medea’s initiation is technically Jason agreeing to the destruction of his own lineage if he decided to break it. This then begs the question, why did Jason break his oath to Medea? Fletcher’s text is also largely limited in regards with the discussion of that topic. The author cites a theory regarding intergenerational curses (Fletcher 183-4) and one that may have been triggered when Medea murdered her brother. The author of this paper does not seek to dispute this theory. This paper supports the theory that Jason broke his oath to Medea because he was searching to regain the noble status he lost when he married Medea before the play began. This theory does not necessarily preclude the Fletcher’s theory; it is parenthetical and sourced in social anxiety coupled with the fragility of Jason’s masculinity.

Guarded: The Role of the Kyrios

To know of women’s lives in ancient Athens is to understand the role of the *kyrios*, or male guardian, within the social and legal structure of the city. There is very little to no debate on the role of the *kyrios*. The role of the male guardian is very clearly laid out in legal documents from the time period and present in the theatre and

philosophy.⁷⁰ A woman's *kyrios* was a woman's representative. A woman faced inward, toward the home and to her family of birth and then her married family, while a man faced outward, toward the rest of Athens. As her legal representative, a woman's guardian was first her father and then her husband. Given that a woman may marry multiple times during her life, she was likely to experience guardianship under a number of men throughout her lifetime. The concept of a woman facing inward toward the home and her husband facing outward towards the city echoes throughout history. At times, this separation is legally and culturally distinct, as in ancient Athens. At other times, the separate spheres of men and women, of husband and wife, are more culturally regulated and pronounced in ways that are less legally apparent although legislation does play a role in separating women's rights from men's. As we will see, the Athenian social and legal structure of the *kyrios* reflects patriarchal values concerning 'ownership' of women and the transmission of property through children. Understanding the rigid social structure of ancient Greece in relation to Adrienne Rich's definitions of patriarchy, patriarchal motherhood, and the role of the father in her text *Of Woman Born* helps contextualize how the conditions of patriarchy have endured since the Classical era.

Roger Just outlines the definition of the *kyrios* in his book *Women In Athenian Life and Law*. First published in 1989, the creativity behind Just's work lies in his background in anthropology and the perspective he takes in talking about the lives of women in ancient Athens. The usefulness of Just's work lies in his relying on the most

⁷⁰ For further reading on the status of women in the classical era, refer to: (1) O'Neal, William J.. "The Status of Women in Ancient Athens". *International Social Science Review*. 68.3 (1993): 115-121. Web. (2) Wolff, Hans Julius. "Marriage Law and Family Organization in Ancient Athens: A Study on the Interrelation of Public and Private Law in the Greek City". *Traditio*. 2. (1944): 43-95. Web. (3).

widely used secondary sources, which lends to an authoritative approach to his writing. Historians on the subject have helped to erect notions of gender norms and normative ideals of women's lives in ancient Athens due to a reductive lens and poor historian-ship. Just is able to critique historians by shedding a new light on their evidence and cuts through the misguided misogyny of seeing history purely through the eyes of the men who lived it.

Roger Just provides a straightforward and clear definition as to the *kyrios*. As Just defines the term *kyrios* in his book *Women In Athenian Life and Law*, “[a]s an adjective the word ‘*kyrios*’ means literally ‘having power or authority over’, ‘capable’, ‘authorized’, ‘official’; as a substantive it means ‘master’, ‘controller’, ‘possessor’”, (Just, 26). As Just writes prior to giving the definition that the presence of a *kyrios* in the ancient Greek social structure defines a woman's status under the law, (Just, 26).⁷¹ A woman's *kyrios* dictated and managed her every legal affair.

Given that the role of a *kyrios* extended beyond the lines of legal representative for a woman, the classification and categorization of *kyrios* amongst authors is varied. It is useful to see where in their texts they discuss or define male guardianship, or in which context they discuss the topic in relation to Athenian women. Roger Just's definition of *kyrios* is defined specifically within legal terms how a woman relates to her male guardian. Indeed, the chapter in which the definition appears is titled ‘Legal Capabilities’. Sarah B. Pomeroy discuss the role of the role of the *kyrios* in the fourth chapter of her book *Goddesses, Whores, Wives, and Slaves* under a section titled ‘Dowry, Marriage, and

⁷¹ Just, Roger. *Women in Athenian Law and Life*. Routledge, 1989.

Divorce'. Pomeroy outlines which male of what relation or marriage status would be a woman's guardian throughout her life during circumstances of divorce or becoming a widow.

How is Pomeroy's framing of the *kyrios* any different to Just's? Roger Just outlined the role of the *kyrios* in legal terms, stating it as a matter of fact. However, Pomeroy examines the movement of women from the protection of one male to another through her life and humanizes the experience of being a woman legally requiring male guardianship. Prior to the paragraph describing the legal movement from one male to another in the case of becoming a widow or divorced, Pomeroy emphasizes that the 'whole purpose' of womanhood in ancient Athens was to marry and become a mother: "as a logical consequence of the woman's duty to Athens, marriage and motherhood were considered the primary goals of every female citizen", (62). The paragraph after describing the role of the *kyrios*, Pomeroy writes that: "[r]esponsible fathers in Classical Athens did not raise female babies unless they foresaw a proper marriage for them at maturity", (62). Pomeroy's argument regarding female infant exposure is problematic given that the author does not provide any fact to prove her assertions. However, the context in which both authors frame the role of the *kyrios* demonstrates the difference between writing through a feminist lens. In a purely legal anthropological framework such as Roger Just's, the *kyrios* is simply a legal role. From the perspective of a feminist classicist such as Sarah Pomeroy, poorly backed up as her assertion is, the role of the woman's guardian is a site of oppression for a woman in ancient Athens.

The way in which authors frame the issue of male guardianship is indeed very important to the way in which readers understand how the role of the *kyrios* comes under the purview of female control by males. It is not just an issue of male protection, but a continuance of male control that each woman in ancient Athens experienced from the day she is born.

Divorce in Athens: The Legality of Jason and Medea's Marriage

The cultural and legal structure surrounding ancient Greek marriage practices were for the purposes of maintaining the bloodlines of the family (Massey 1984 Blundell 1998 Garland 1998). While the domestic duties of a wife were also in the management of the household and the actual rearing of the children, (Blundell 1995) overwhelmingly the purpose of marriage and duty of a wife was to provide males heirs to continue the family dynasty. Therefore, if the purpose of marriage was to produce legitimate heirs and Jason and Medea's union bore two sons, we can reasonably conclude that Medea fulfilled her role as a wife.

However, the conversation surrounding divorce procedure in Athens raises a number of questions regarding the very legality of Jason and Medea's marriage. Louis Cohn-Haft writes in his article "Divorce in Classical Athens" that

Medea's position is not comparable to an Athenian wife and therefore provides us no genuine insight into Athenian divorce. Since she was not given in marriage by a father or brother, and indeed was not even a Hellene, in Athenian eyes the marriage to Jason was not a legal union; moreover, she had no family to whom she could be sent back and whose reaction to the dismissal of their relative has to be taken into consideration, as would normally have been the case in Athenian marriage
Cohn-Haft, 1

Cohn-Haft is certainly correct in a number of instances. Medea's marriage was not arranged by her father or brother and therefore was an entirely untraditional marriage in the Athenian sense. Additionally, this leaves her in the position of having no *kyrios* to protect her when Jason ultimately betrays her for the princess. Given that Medea murdered her brother and left her homeland, her position is not equivalent to an Athenian wife in legal terms. However, Cohn-Haft's argument is limited because it underestimates Medea's cultural position in Athens within the play.

Cohn-Haft makes a solid argument as to the legalities, or none legal status, of Jason and Medea's marriage. It must also be said that Cohn-Haft is arguing that ultimately, Jason and Medea's marriage is also a work of fiction. It is a story. It is unwise to use Jason and Medea's marriage as an example of the everyday realities of marriage and divorce in ancient Athens. While this is a work of fiction, it must be grounded in some sense of reality regarding the time and place in which it is written. While a work of fiction, Euripides' version of the myth is still rooted in a particular time and place. Therefore it is important to appreciate some of the legal constructs Euripides had to consider when writing his version of the myth.

Cohn-Haft sees Jason and Medea's marriage and subsequent 'divorce' as a legal issue, whereas Judith Fletcher considers their marriage through the culturally important lens of oath taking and breaking. Cohn-Haft's argument is ultimately limited in that, if we take into account that Jason and Medea's marriage was never legal to begin with, why did he raise their union as an example of a 'non-divorce'? In other words, why would Cohn-Haft bring up Jason and Medea's 'marriage' at all? To be sure, Jason need not have

undergone the usual ‘procedure’ of sending Medea away back to her father’s home given that their marriage was not a marriage in the legal sense. However, there is significant evidence to support that Medea had indeed fulfilled her duties as a Greek ‘wife’, by providing two legitimate heirs for Jason, in addition to sharing his home for the past ten years. That is to say, while Medea was not legally Jason’s wife, she did share a role that was not simply parallel to, but fulfilled the role exactly that of, wife. It is correct for Cohn-Haft to raise the issue surrounding the legality of Jason and Medea’s actual marital status, but it is incorrect to suggest that the illegality of their union makes Jason’s betrayal any less deep. By juxtaposing Cohn-Haft’s argument with Fletcher’s understanding of oaths, we find that the fact that Jason and Medea’s marriage, while not purely legal, does not diminish the power of an oath. The ancient Athenian world was governed by a set of tangible laws that come with contracts, dowries, and a set of rules to follow. Yet, it also concurrently existed in a literary world filled with traditions of intangible oaths. These intangible oaths, and the breaking of them, had very real consequences for those involved. As we see, a legal marriage or not, Jason breaking his oath of protection to Medea has very real consequences on his life and the safety of his lineage. Jason’s oath to Medea fell within the realm of the legal understanding of an ancient Athenian marriage and the protections that came along with it. Therefore, it is important to understand the legal marriage alongside the ramifications of oath making and oath breaking.

Children as Property: the Purpose of Children in Ancient Athens

How are modern audiences and scholars to understand the relationship Jason and Medea had with their children? This is a difficult area to explore given the lack of personal writings from parents or their children on the subject of their feelings towards one another. Scholarship is forced to extrapolate information from the evidence that is available. Language, legal documents, and art are some of the more ubiquitous forms of evidence. What has largely been gleaned is the economic value children held for their parents. Children as a form of ‘property’ has continued to be a cornerstone to the advancement of patriarchy. As Mark Golden observed in his book *Children and Childhood in Classical Athens*, the word for ‘child’, *tokos*, also means ‘interest on loan or investment’ (80). Adrienne Rich so passionately wrote in *Of Woman Born* that the purpose of the family unit under patriarchy continues to be the transmission of property through a father’s descendants.⁷² The academic literature on the ancient Athenian family reflects that while children had their own lives and experiences the purpose of the family unit was to ensure the passing of property through biological kinship. Indeed, Roger Just’s chapter on family in his book *Women in Athenian Law and Life* is titled ‘Family and Property’. The two are inextricably tied in Ancient Athens.

Legal texts are one of the most accessible pieces of evidence available to help understand how these marriage ties and inheritances operate. Scholarship on Athenian legal texts help explain the technicalities of Athenian law and how greater society operated. However, it is difficult to locate in them the human motivations behind the laws and these works are largely limited to the very technical operations of Athenian law.

⁷² Cf. p. 5

Eva C. Keuls best explains how the Athenian laws shaped the motivating factors of Athenian marriage in her book *The Reign of the Phallus: Sexual Politics in Ancient Athens*.⁷³ Keuls locates the first motivation is to have sons in order to: “preserve the clan and to continue the cult of the ancestors and household divinities” (100). Keuls then sources Thucydides who asserted that men without children lacked authority in the social sphere because they did not have children to motivate their decision-making (100). Following those reasons, Keuls writes that a man was motivated to have children in order to keep money ‘in the family’, maintaining inheritance and property lines (102). This motivation to maintain inheritance lines accounts, for Keuls: “[t]he excessive concern over the legitimacy of children” (100). Last, Keuls closes by remarking that: “[a]n affectionate desire for children was probably furthest from his mind when an Athenian married” (100). Keuls’ text puts into context outside of legal jargon the purpose and motivating factors behind having children.

In ancient Athens the family structure was built around male children inheriting their father’s property and continuing the family’s cult and divinities. But what of their lives, how were they lived? Mark Golden’s book *Children and Childhood in Ancient Athens* is the only book on the subject.⁷⁴ Golden’s work focuses on the daily lives of Athenian children and focuses mainly on the relationship children had to their parents and other adults. The book is also concerned with the representation of children and childhood in through evidence of agency, archaeology, and imagery. Golden’s book is a

⁷³ Keuls, Eva C. *The Reign of the Phallus: Sexual Politics in Ancient Athens*. Berkeley: University of California Press, 1985.

⁷⁴ Golden, Mark. *Children and Childhood in Classical Athens*. Baltimore: Johns Hopkins University Press, 1990.

crucial contribution to classical scholarship and is a stepping-stone to uncovering the daily lives in ancient Athens.

Golden's chapter on the relationship parents had with their children can help shed light on attitudes parents had about the value of children. As seen with Keuls, children held an enormous amount of social and economic capital. However, did parents feel a form of affection towards their children, and vice versa? Golden begins by asking whether parents 'cared' when their children died (70). Golden asks this question in the face of the high infant mortality rate in ancient Athens: "how high we can only estimate" (71). The question regarding whether or not parents felt 'loss' at these deaths or the deaths of their children at any stage is Golden's question. It is interesting that Golden cites Nancy Scheper-Hughes' work with the women in Alto de Cruzeiro as evidence of reactions to child deaths in what he calls a: "high mortality infant population" (71).⁷⁵ Golden writes that Scheper-Hughes' work has shed light on how parents manage the grief with, in Scheper-Hughes' terms 'equanimity' and 'resignation' (71). Golden follows by writing that parents in ancient Athens likely managed their grief the same way. As we saw in the legal literature review with Constance Backhouse, the question regarding the 'value of loss' regarding infant death is a question asked throughout disciplines and has an impact on parenting norms and social values regarding infant life.⁷⁶

The ancient Athenians had a very structured way of managing their grief and relating to their parenting. Golden posits that this might explain why Athenian parental grief was less evident when their children died. According to Golden, parents believed

⁷⁵ *Cf.* at page 8

⁷⁶ *Cf.* at page 36

they raised their children according to the dominant practices of their time and therefore: “feel relatively little insecurity or guilt about their behaviour at any given stage of the process” (72). Golden follows by saying that the responsibility for the child’s death is spread out amongst caregivers outside of the two parents. Finally, Golden explains that grief is mitigated by a long and drawn out period of rigidly structured ceremonies and public grieving shared by the wider community (73). Therefore, the grieving is a shared experience and guilt is mitigated by the recognition that if a parent followed the prescription of ‘parenting’ and ‘child-rearing’ that they were not personally held accountable for their child’s death. The civic engagement in the grieving process also helped shift individual blame from the parents to a shared sense of grieving and emotional recovery. Golden’s work helps contextualize the question of the child-loss and parent-grieving process in a culture with such a high infant mortality rate.

While Golden’s work is useful, it is not without question. As we have seen in the maternal theory section, mothers are just beginning to vocalize the struggles of parenting. While there is no fault with the positions Golden has made on theorizing the question of ‘grief’, ‘caring’, and ‘loss’ in ancient Athens, it must be remembered that the more we learn about the ambivalence of parenting and the inner struggles of individual parents through the discipline of maternal theory, the more difficult it is to make sweeping positions about large populations of parents. However, Golden’s work is the best theory available to us at this point and it is possibly the best position in the face of lacking evidence sourced in the first person narrative from individual parents.

The main purpose of having children in ancient Athens, particularly male children, was for the transmission of property and maintenance of family lines. Therefore, we can draw some theories on the impact of Medea's murder of her children and how they would have impacted Jason, especially in the face of Medea losing her *kyrios* with Jason's betrayal. The murder of the children at Medea's hands would therefore have a massive impact on Jason, whereas keeping them alive with no father, and with no guardian to protect them, would have posed incredible dangers and vulnerabilities for themselves as well. Is it possible that Medea murdered her children to protect them? As we explored with Sara Ruddick in the maternal theory section, infanticide can be construed as a form of protection in the narrowly defined and oppressive conditions of patriarchal motherhood. The enduring conditions of patriarchal motherhood continue to exist. This will be explored in the analysis section of this thesis.

Conclusion

Scholarship on Euripides' *Medea* illustrates the patriarchal conditions of ancient Athenian society and the lens through which the audience may have viewed the play. Ancient Athens had overwhelming social, cultural, and legal anxiety around marriage, divorce, children, and property. Therefore, Euripides' play would have resonated with audiences as it portrayed a radical aberrant mother who challenged the rigidly constructed role of women in ancient Athenian society. Jason's betrayal in marrying another woman left Medea with no *kyrios* although she had fulfilled her duties towards him by bearing two sons during their ten-year marriage. Given the high value of male children for fathers within Athenian society, a play that depicted the ending of Jason and Medea's myth with

the mother killing their children would have presented as a remarkable shock to the audience. The value of the sons is placed in economic terms, not necessarily emotional or affection. Therefore, for Kate Mulvany and Ann-Louise Sarks *Medea* in 2012 to tell Jason and Medea's story through the eyes of their sons with such emotional weight placed on the innocence of the sons demonstrates a drastic sociocultural shift in how society values children.

Kate Mulvany and Ann-Louise Sarks' 2012 adaptation of Euripides' *Medea* was written with the specific goal of communicating the innocence of Jason and Medea's sons. The play is meant to convey the tenderness and the emotional fragility of childhood. The play's popularity demonstrates how successful it is at conveying this message. Therefore, there exists a shift in the cultural perception surrounding the value of children and the preservation of their innocence. What does Kate Mulvany and Ann-Louise Sarks' adaptation of Euripides *Medea* tell us about our current values regarding children and the responsibility mothers, and by extension fathers, have in taking care of them? The ancient Athenians valued children in terms of their economy and maintaining the lineage of the family. Children were able to stay largely invisible because they provided such a narrow purpose in ancient Athens. Conversely, children are currently regarded with high emotional and affectionate value to their parents beyond the economic investment made by their parents in raising them. This change in values represents a large sociocultural shift in the value of children. However, in both scenarios mothers are oppressed with the overwhelming responsibility of raising and being responsible for their children within the institution of patriarchal motherhood. Overall, the play's analysis section of this thesis

will ask what Kate Mulvany and Ann-Louise Sarks' adaptation of Euripides' *Medea* tells us about the changing attitudes towards children within the current framework of intensive motherhood.

Classical Studies Case Study: Kate Mulvany and Ann-Louise Sark's *Medea*

Introduction

In January 2009, Darcey Freeman's father drove part way over the West Gate Bridge in Melbourne, Australia and threw his daughter over the bridge. It was a homicide case that took Australia by storm and deeply traumatized the country, and the story gripped playwright and actress Ann-Louise Sarks. In 2012, Sarks pitched an adaptation of Euripides' *Medea* to Australia's Belvoir Downstairs Theatre where the story would be

told from the perspective of Jason and Medea's sons. In the introduction to the play's script Sarks wrote:

[w]hen I later learned that Darcey's brother Ben, then six years old, had said to his father, 'Go back and get her. Darcey can't swim', I was overwhelmed. There was something about the heartbreaking collision of his knowledge and his naivety that compelled me...[h]ow does a child see the world
Playlab

At the heart of this play, the driving force is the intersection between a child's knowledge and his naivety. From that heart the body of the play was born.

Anne-Louise Sarks and Kate Mulvany's version of *Medea* was wildly successful and won many awards. Part of the play's success was owed to the Belvoir Downstairs Theatre and the theatre's mandate, "if there is a common thread to the work that fits best in both of the Belvoir Theatres, it is a work that acknowledges the relationship between audience and performer", (Playlab). In descriptions and reviews of the play, it was clear that the production struck a chord within the audience.⁷⁷ In an online review of *Medea*, Lloyd Bradford Sykes writes that Mulvany: "cites the real tragedy of *Medea* is not a mere loss of innocence, but a theft of it by adults", (Lloyd Bradford Sykes). Childhood innocence not simply lost but 'stolen' by adults was what shocked audiences.

The analysis of Sarks and Mulvany's adaptation of *Medea* is driven by two issues as they intersect with intensive motherhood. The first is the examination of childhood innocence as it intersects with prevailing cultural values surrounding motherhood and

⁷⁷ "Medea". *Belvoir*. Picket Studio, n.d. Web. 23 Oct, 2014. (2) John McCallum. "Heinous Crime in Full View". *The Australian*. 16 Oct, 2012. Web. 23 Oct, 2014. (3) Rebecca Whitton. "Medea. Belvoir and ATYP". *Australian Stage*. 15 Oct, 2012. Web. 23 Oct. 2014. (4) Katherine Lyall-Watson. "208: Medea". *365 Plays*. 15 May, 2012. Web. 23 Oct. 2014. (5) Lloyd Bradford Sykes. "Review: Medea. Belvoir St. Sydney". *Crikey*. 18 Oct. 2012. Web. 23 Oct. 2014. (6) "Medea". *The Wheeler Centre: Books, Writing, Ideas*. n, d. Web. 23 Oct. 2014.

within the greater context of adaptations and how they are shaped by dominant cultural values. Questioning the ‘loss of innocence’ and the ‘theft of it by adults’ is a major point of contention in this analysis. Sarks’ conception of Ben Freeman’s ‘knowledge’ and ‘naivety’ will be interrogated. The interplay between the audience and the actors onstage will be examined in relation to knowledge possession and innocence. Additionally, the invisibility of the father figure and the absolution of his ‘guilt’ based on his sole role as financial provider for the patriarchal familial unit will be interrogated. Ultimately this analysis begs us to question the cultural value assigned to the preservation of childhood innocence, and to examine the significance of this being the first adaptation of Euripides’ *Medea* told from the perspective of the sons.

Ann-Louise Sarks and Kate Mulvany’s adaptation of Euripides’ *Medea* is a play rooted in ironies. This analysis will use Cleanth Brooks’ definition of irony found in Jonathan Lears’ book *A Case for Irony* where Brooks writes that irony is: “the most general term we have for the kind of qualification which the various elements in a context receive from the context” (180).⁷⁸ More simply, Brooks’ definition of irony is the juxtaposition and interaction of opposites with one another. Dramatic irony is also present in Sarks and Mulvany’s adaptation of *Medea*. Many times throughout the play the audience knows what is happening while the actors onstage do not. This dramatic irony creates the necessary tensions of suspense, discomfort, empathy, and sympathy required from a participating audience and fulfills the Downstairs Belvoir Theatre’s mandate of creating an audience actor relationship.

⁷⁸ Lears, Jonathan. *A Case for Irony*. Boston: Harvard University Press, 2011.

Summary of the Play

Kate Mulvany and Ann-Louise Sarks' adaptation of Euripides' *Medea* is bookended by death beginning with play dying and ending with physically dying. The play is divided into ten parts without an intermission. The stage is set to look like the interior of a room belonging to two young boys. There are no set changes and no accompanying music. As for costumes, the boys only fully change their clothes once. The lighting is minimal. The cast consists of Medea and her two sons, Leon and Jasper. Leon is the older brother and Jasper is the younger. The character ages of Leon and Jasper are not specified in the play. However, the actors playing Leon and Jasper are aged twelve and eleven, respectively. Medea only appears onstage three times. Altogether, this play relies on storytelling through the relationship between the actors onstage and their relationship with the audience.

The play opens with Leon and Jasper laying still, playing dead. It turns out the boys are 'playing dead' and the 'loser' of the game is the brother who moves first. Jasper is the first to move and fails at trying to prod his brother 'awake'. Jasper calls out for Medea but she does not come. Jasper discovers they are locked inside their room.

The second part devolves into exchanges between the young boys playing word and physical games. In the third part of the play Jasper tells his older brother he needs to use the washroom and wonders when they will be able to leave their room. Leon's response involves the nature of love and the reconciliation of parental strife. The exchange between the brothers underscores how limited children are in understanding intimate relationships. Jasper recounts his father's journey with the Argonauts while his

older brother corrects the gaps in his brother's memory regarding their parents meeting. This recounting fits in with Apollodorus' telling of Jason and Medea's history.⁷⁹ Suddenly the brothers hear a noise and cram their little ears against the door to try and make out the sounds. Leon fashions an earpiece from an empty glass and learns a piece of information the neither audience nor Jasper can hear. Leon screams in frustration and emotional agony, while Jasper joins in because younger siblings always copy their older siblings. Suddenly the door flings open and Medea enters looking dishevelled. The mother tells her sons to clean up their room and that they are going to live with their father. As quickly as Medea enters, she leaves.

The sixth part of the play begins with divergent reactions from the brothers at hearing Medea's news. Jasper is ecstatic while Leon is concerned with following Medea's orders and begins to tidy up their room. The brothers argue about whether their father's girlfriend likes them and the fight turns into Jasper teasing Leon. This yields terrible results for the younger brother. Leon uses his physical advantage against Jasper by rolling him into a sheet and tucking him underneath his bed. Leon declares that the bed is Jasper's space and the rest of the room belongs to Leon: "[s]tay in your own territory or you die" (l. 273). The seventh part of the play continues the sibling rivalry between the brothers. Jasper wriggles out from underneath the bed with a nosebleed and a tussle ensues over the possession of a yellow fleece sweater belonging to Jason. The sweater is meant to represent the Golden Fleece. A stunning display of negotiation skills on behalf of Jasper is met with an equally shocking display of subterfuge on behalf of

⁷⁹ Cf. 62

Leon who reneges on the terms of the deal and maintains possession of the sweater. Leon then doubles down on his betrayal, threatening to call upon the 'Shadow Monster' to visit Jasper if the younger brother tells their mother about the secret sweater. Leon retires triumphantly to his bed and listens to music. Jasper, terrified, looks around the room for the Shadow Monster. He crosses his legs. He needs to use the washroom.

The eighth part begins with the door flying open again and Medea walks into the room. Jasper screams, thinking it is the Shadow Monster. Medea puts a wrapped present on Jasper's bed. Jasper thinks the present is for him. Medea tells her disappointed son that the present is for his father's friend: "it's even better than being FOR you. It's FROM you" (l. 347-8). Medea tells her sons she is returning to her homeland. This is a departure from Euripides' version where Medea secures herself a future with Aegeus. Medea asks the boys to write a card to accompany the gift. Before Medea leaves their room the boys tell her she smells odd, like chemicals. Medea gestures to leave the room, but before doing so she looks back at her boys and delivers a speech on how much she loves them.

The ninth part begins with the boys practicing their sword fighting skills in preparation for seeing their father. Leon wins in another stunning display of deceit. Jasper skulks. While Leon goes to check on the status of the locked door. When Leon turns around he discovers his younger brother underneath his covers. Jasper has wet himself, no longer able to wait for the bathroom. Leon admonishes his brother, who dissolves into tears. Then, from the depths of vulnerability that exists only between siblings, Jasper whispers: "I'm so sick of being small...I'm the smallest person out of everyone I know"

(l. 496, 499). After more reassurance from Leon and a fresh, clean pair of pants, Jasper returns to better spirits. Leon offers Jasper a glow in the dark star to stick on their wall and names it 'Jasperellis Borealis'. In the only lighting change throughout the whole play, the lights dim to reveal many glow in the dark stars. Jasper asks his brother where he imagines himself to be when he stares up at the stars. Leon says he just imagines himself floating through space and time, that the powerlessness of being a speck is comforting. The boys sing softly to themselves and each other.

Medea enters their room with two glasses of lime cordial. The mother tells her sons that Jason is still coming to pick them up, but that his girlfriend is 'gone' and they are 'in a bit of trouble'. Medea orders the boys to get out of bed and leaves the room, re-entering with two suits, shoes and socks. Leon dresses himself while Medea dresses Jasper. The boys continue their animal game as they get dressed and Medea tidies their hair. Jasper says that he is tired. Medea tells him to lie down. The boys are confused; they thought Medea wanted them up and waiting for their father. Medea instructs them to all lie down and wait for Jason. Leon pulls out the yellow sweater, the Golden Fleece. Medea is shocked and asks where Leon got the sweater. The oldest son says Jason gave it to him, and asks if he can keep the sweater. Medea pauses, and says yes, and lies back on the bed with her boys after she instructs them to do so. Leon drops the Golden Fleece, which signifies the boys are dead. Medea continues speaking, not yet noticing her sons are gone, and ends by saying: "My beautiful sons of the daughter of the Sun. My ones. My loves." (736-9). Medea keeps holding on to her boys and lets out a silent scream.

Medea looks at the door, expectantly, holding onto her sons. The light dim until all that can be seen is glowing stars.

Adapted After: Similarities and Differences Between the Plays

The list of similarities between Euripides' version of the myth against Sarks and Mulvany's adaptation of Euripides is fairly short. Differences appear in the cast that have repercussions on the overall narrative of the play. Only three characters appear onstage in Mulvany and Sarks' adaptation. Leon, Jasper, and Medea come onstage. Medea and her sons in the play reference Jason and his girlfriend. Euripides' cast is larger and includes Medea's Nurse, the children's Tutor, Creon, and the Chorus. In both plays Jason's newly betrothed is not seen onstage, which is a similarity.

In Euripides' version of the myth, Aegeus plays a critical role. When Jason breaks his oath of marriage to Medea, he also leaves his former wife without a *kyrios*. When Medea happens upon Aegeus, they strike an oath. Medea promises to bear children for childless Aegeus. Aegeus promises to bring Medea under his protection and become her guardian in exchange. As noted above, only Medea and her two sons appear onstage in Mulvany and Sarks' adaptation of Euripides' play. Therefore, Aegeus does not appear onstage. This presents a significant departure from Euripides' play where within the ancient context Medea needed to secure a guardian. As brutal and terrifying as Euripides' ending of the myth is for the audience, with Medea flying above and away from the audience in her chariot with the boys' bodies draped in the back, the audience knows Medea is traveling to a place where she will receive protection. Among the many unnerving feelings left with the audience at the end of Mulvany and Sarks', the modern

context does not make Medea securing a guardian an issue. Additionally, it also leaves the audience with the distinct feeling that Medea is in a vulnerable position without ‘protection’ in the modern context.

The absence of these characters in Sarks and Mulvany’s adaptation creates drastically different outcomes for the play. The absence of Aegeus determines that Medea’s fate is open ended. The absence of Creon removes him as the source of conflict, at least to the knowledge of the audience. The nurse acts as a sympathetic character towards Medea and is a pseudo-narrator of Medea’s circumstances. The tutor (acts as a bridge? Between the boys and the rest of the play. He’s kind of a gossip). The absence of the chorus plays into conventions of modern, or simply non-ancient Greek, play.

Euripides’ version of the myth places Creon as a source of conflict. It is because Creon banishes Medea that the mother is in a desperate need of a *kyrios*, without which she was with deep danger.⁸⁰ Aegeus fills this role when Medea secures her protection by promising to bear his children. The absence of these two male characters changes the narrative and structural components of the play.

In absence of these characters, similarities between Euripides’ *Medea* and the Playlab production still remain. The elements of Jason and Medea’s backstory appear in the recounting of their meeting by Leon in the fourth section of the play (l. 105-159). Leon recounts how the pair met while Jason was on the hunt for the Golden Fleece and Medea promised to help Jason retrieve it in exchange for marriage. Medea is still from a ‘faraway place’. Medea had conflict with her father and desperately wanted to leave

⁸⁰ Cf. 76-80

home. Poison is still used to attack Jason's girlfriend. Jason's girlfriend is still an anonymous figure, a nameless, faceless female body of conflict. The sons still die.

The biggest difference of all is that the story is told through the eyes of Jason and Medea's sons. In Euripides' version the sons barely appear onstage and are unnamed. The audience only hears them scream from offstage while they are being killed. Sarks and Mulvany's adaptation gives voice to Leon and Jasper. The adaptation brings the boys to life so the audience can watch them die. In the physical context of the boys' bedroom their life is given meaning. From this dramatic irony the play unfolds.

Sarks and Mulvany's adaptation of Euripides' *Medea* asks what it looks like when children are the focus of subject matter. Sharon Hays theorized how intensive motherhood places the entire focus of a mother's life on her children.⁸¹ Since the rise of intensive motherhood society has been and continues to be deeply invested in the well being of children. Therefore, in the age of intensive motherhood, it is unsurprising that two playwrights would be concerned with trying to see the myth of Jason and Medea told from the perspective of their sons. The most fundamental issue with this attempt is the inability to truly occupy the shoes of a child. This inability contributes to the irony of the overall play. It further contributes to the interplay between the audience and the children. Following Norvin Richards' understanding of knowledge and innocence, the audience has the knowledge the boys are going to die while the boys are unaware. This places the boys in the position of 'innocents', whereas the audience is in the possession of knowledge. The role of innocence in the play will be explored further. However, the

⁸¹ Cf. 14-16

theme of innocence flows from this starting point of knowledge possession vis a vis audience versus the children.

Cross Your Heart: Playing Dead and Death in the Play

Death is a strong theme that runs throughout the play. The dramatic irony of the death narrative device stirs deeply uncomfortable feelings in the audience. The play opens with Leon ‘playing dead’ with Jasper tasked with the duty of making his older brother move. The second part of the play continues with Jasper declaring he wants to ‘play die’ in his bed because it will be more comfortable (l. 25). This foreshadows the boys’ death at the end of the play when they die in Medea’s arms on one of the boys’ beds. This plot device firmly establishes tension and discomfort in the audience from the very beginning of the play and continues throughout.

In the final part of the play, Jasper begins playing a game with Leon. It is a naming game, reminiscent of Adam naming animals in the book of Genesis. One brother names an animal to which the other brother responds with an animal beginning with the last letter of the other brother’s previous pick. For example, one could say ‘owl’ to which the other might respond ‘lizard’. Jasper chooses ‘salamander’. Leon, less familiar with animals than his younger brother, asks if Jasper made the animal up. When Jasper says no, Leon replies: “[c]ross your heart and hope to die” (l. 682). This exchange happens while Medea is clothing her sons after she poisons them. Medea is preparing her sons for their death. This use of death firmly establishes irony within the play. Throughout these exchanges the audience is fully aware of the outcome of the play. The ironic use of death

is used to create tension, discomfort, and painful awareness of the boys' innocence for the audience members.

Death is used as an ironic narrative device twice more in the play when Leon threatens death on his younger brother. Within the context of an interpersonal relationship between two brothers these threats can be construed as Leon's domination over his younger brother, a touch of his potential dangerousness. Within the larger context of the overall play, these threats can be seen as the true lack of agency children possess. However, these death threats are overshadowed by the boys' eventual deaths at the end of the play. Forcing the audience to witness this childish charade of empty threats and sibling rivalry is the height of dramatic irony. The audience is aware of the outcome of the play and yet is forced to watch the boys play and have arguments. The audience is forced to watch the boys be children.

The talk of death in the play ends on a paradoxically uplifting note. Mulvany and Sarks embed a small message of comfort directed at the audience. This exchange happens when Medea is dressing the boys, after Jasper promises that the salamander is indeed a real animal. After a number of further animal exchanges, Leon declares 'mammoth', and Jasper replies that the mammoth is extinct: "[i]t doesn't matter! It doesn't matter if they're dead. They used to be alive. Their bones are still getting dug up. They were here. They existed. Didn't they mum?" Planting this line at the end of the play, Sarks demands for the boys to be remembered, that they existed, the same way as the mammoths bones remind us of their existence.

Jasper's certainty that life has meaning beyond death in the context of their impending death is made all the more sad when Jasper's innocence is considered. Jasper is certain that life has meaning beyond death. This certainty is a comfort to the audience. It reassures the audience that while the death of the brothers is a foregone conclusion, it is also not a stressful experience for the brothers, or at the very least it is not for Jasper. But for the lack of stress the brothers experience, the audience experiences it for them. In the terms of philosopher Norvin Richards, the audience is free to regret the innocence of the brothers regarding their impending doom because of their innocence and lack of knowledge regarding their own impending death. Therefore, there exists a tension within the audience regarding Jasper's sentiments about the mammoth bones. The audience is comforted by Jasper's beliefs about legacy and the endurance of life beyond death. The audience is also reminded that regardless of this positive attitude regarding their enduring legacy, the boys are still going to die. This tension creates an incredibly sad and overwhelming sense of helplessness and hopelessness for the audience.

The use of the death as a narrative device creates tension within the audience. This deep discomfort lies in the audience's knowledge of the ultimate ending of the play, but not how the characters are going to get there. This dramatic irony parallels the innocence of the boys and the audience's possession of knowledge.

Knowledge and Innocence

Ann-Louise Sarks and Kate Mulvany's adaptation is also deeply concerned with knowledge. Between the audience and the cast there is a knowledge hierarchy. Regarding the outcome of the play the audience possesses the most knowledge, following with

Medea, and then Leon and Jasper. However between Leon and Jasper there exists a varying degree of knowledge on a range of subjects. Leon has a more fully developed, yet still limited, degree of knowledge about his parent's tumultuous relationship. Conversely, Jasper is blithely unaware of his parent's marital strife but has a wild imagination and knows a broad range of animals. This juxtaposition makes for dynamic character development.

The hierarchy of knowledge has the audience at the top of that chain with knowing how the play is going to end. However, Mulvany and Sarks build in a scenario in which Leon learns a piece of information that is kept from the audience. In the fourth section of the play the boys hear a noise that they believe to be their father entering the house. Leon's expression, with his ear still against the glass, suddenly changes. Leon has gained a piece of information, some knowledge, which Jasper does not have. Jasper hears the muffled version of the noise that changed Leon's expression through the door. The boys hear Medea crying and cannot hear Jason. They wonder if their father has left without seeing them. Leon picks up Hercules, blindfolds the teddy bear, and pins him against the wall. The play notes instruct Leon to 'torture' the bear. Jasper picks up the glass and listens to their mother cry and says: "[w]ell, she's going to hurt herself if she keeps crying like that. Her throat. You know when you yell really loud your throat starts to hurt? That's what's going to happen to her" (l. 183-5). Jasper's misunderstanding of why Medea is screaming signifies his inability to process the physical manifestation of emotional strife. In reaction to what Leon heard, the older brother kills Hercules and lets out an anguished, frustrated scream. Jasper, wanting to join his brother, screams. The

brothers are screaming for different reasons. Leon is screaming because of what he heard, and Jasper joins in because little siblings always want to do what their older siblings do. The brothers scream together.

This scene places the audience in the position of Jasper while at the same time alienating the audience from the characters entirely. Just before reaching the middle point of the play, Mulvany and Sarks warn the audience against over identifying with the characters. For a play that seeks to see the world through children's eyes, it also forces the audience to remember that they cannot truly see the world through children's eyes once passing over the threshold of adulthood. In the same breath, the audience has occupied the position of Jasper, the ultimate innocent in the play because they, along with Jasper, also do not hear what Leon heard through the door. The audience is both themselves and Jasper. This scene encapsulates that breath.

Tension: Locked In

Mulvany and Sarks use the plot device of Jasper's incontinence to create a scenario where the audience is taken emotionally and physically hostage. Given that the play runs without an intermission, the audience is placed in Jasper's position throughout the play with no physical escape. Emotionally, Jasper's incontinence is used as a mechanism to build feelings of discomfort and unease. Jasper finally wets himself in the ninth part of the play. The boys begin to practice their sword fighting skills in preparation for seeing their father. Leon then tricks his younger brother for the second time in the play. Deviating from the fight sequence Jason taught them, Leon touches his sword against Jasper's back: "[t]he crowd on their feet, but none are so proud as Leon's father

Jason, who can only sit, his legs like jelly, with tears in his eyes, as he watches his first-born son claim glory” (l. 474-77). Leon is more concerned with impressing his invisible father, which will be discussed further in this analysis.

Leon goes to check on the door. It is still locked. Turning around, Leon see’s his brother lying down on the bed. Believing Jasper to be upset from losing the duel, Leon comforts his younger brother. Leon whispers from underneath his covers: “I wet my pants” (l. 482). Leon first takes the admonishing approach, saying: “[y]ou’ve got to learn to hold on to your fluids, Jasper. Honestly, you’re always dripping from one end or the other. It’s completely embarrassing” (l. 489-91). This reprimand dissolves Jasper into deep sadness and tears, allowing he and the audience the emotional release the physical release signifies.

Leon then turns to comfort Jasper: “Jasper, don’t cry. Jasp, it doesn’t matter. Jasper...” (l. 493-5). Then, from the depths of vulnerability that exists only between siblings, Jasper whispers: “I’m so sick of being small...I’m the smallest person out of everyone I know” (l. 496, 499). Leon then employs the position of the protective and reassuring older brother, telling Jasper that life is more than sword fights and Jasper has other important traits: “[l]ike the animal game. You know animals that I’ve never even heard of. Like narwhals. You’re so smart like that” (l. 505-6). Leon gets a change of clothes for his brother. This protectiveness signifies the responsibility Leon feels towards his younger brother and in turn makes the audience feel safe in the comfort of the brother’s relationship.

Jasper's insecurity continues. The younger brother remarks that he is not surprised Jason has not visited in a long time. Not even for his birthday. Leon ties his self worth to impressing Jason with displays of masculinity through dueling. Jasper ties his self worth to his father's absence. The two brothers have very different emotional responses to Jason's absence from their lives. Leon reassures his brother in their sibling relationship

[a]nd even if things aren't fine, you know what? The best thing about having a big brother is that big brothers have a responsibility to their little brothers to take care of the, always. Forever. So even when we're really old -- like, in our thirties -- I'll still take care of you. Because I'll always be your big brother. And so it's always, always my job to take care of you. Because I love you. And I love being your big brother
521-528

Leon's assurances are heart-warming for the audience, but they also act as a reminder that the brother's will not grow to be thirty years old while providing some comic relief. Yet this comic relief comes tinged with sadness and pity. The brothers do not see their death coming and so Leon will not be able to fulfill his promise in protecting and taking care of his brother. This tragic speech serves to remind the audience of inevitability and the endurance of love through the unknown.

After this speech, Leon gives Jasper a glow in the dark star for Jasper to fix onto the wall. Leon names it 'Jasperillis Borealis'. From the darkness, Jasper asks his brother where he imagines himself to be when he stares up at the stars. Leon gestures to turn off the lights, and the stage lights go out, revealing the galaxy of stars onstage. Jasper asks Leon whether he imagines himself on earth or another planet when he looks up at the stars. Whether Jasper is referring to these glow in the dark stars, or the real stars in the

sky is ambiguous. Leon replies: “[n]either. I think I’m just floating. Just floating through space and time” (l. 536-7). Leon continues by saying that everything is quiet and peaceful

[a]nd I just...give in to it all. Because it’s so much bigger than me. You know that, Jasper? You may think you’re really little, but really, we’re all really, really little. Even Dad. We’re just...specks. Specks of specks. And that may sound scary, but it’s not, really. It’s kind of comforting. We’re all tiny, all floating all...powerless. Yeah. That’s what it is. We’re completely powerless. To everything
541-551

Leon being to sing and song, softly. Jasper joins in.

This exchange happens closes the ninth part of the play and takes place just before Medea enters with the lime cordial poison. Mulvany and Sarks harness the boys’ innocence, their lack of knowledge, just before they are killed. This scene is deeply disturbing if seen purely through the eyes of the boys within the context of their imminent murder. However, it also pushes the audience to evaluate their own mortality. Leon says that not only they are small, but Jason is small as well. This brings the audience members to the same level as the boys, audience and cast occupy the same human existence. It forces the audience to question their own mortality and valuations of power. In the face of the unknown, can powerlessness actually be a comfort and not something to despair? In the position of the boys, innocent children, it is. Powerlessness is relief. As we saw with Norvin Richards, those who have transgressed innocence regret innocence in others, feeling superior for having come into a more fully developed sense of knowledge. However, Leon’s remark about powerlessness confuses the notion of power in the face of the large scale of the universe. In the face of inevitable death, or more broadly what cannot be controlled, what is power?

Invisible, Ever Present Jason

Jason never appears onstage yet is an omniscient presence throughout the play. This is a keen parallel to our legal case. L.B.'s husbands were praised by the judge for working hard to provide financially for their families and never admonished for contributing to L.B.'s isolation. L.B.'s husbands were not the ones to kill their sons and therefor not legally culpable. However, their invisibility contributed to the overall circumstances and needs to be appreciated within the context of intensive motherhood and the invisible husband. Jason does not physically appear in Ann-Louise Sarks and Kate Mulvany's play nor does he have an offstage speaking role. However, Jason's emotional presence is felt through Leon, Jasper, and Medea's words. This is consistent with Sharon Hays' theory on the role of the invisible father.

The overall invisibility of Jason further contributes to the cultural perception of fathers in the modern patriarchal parenting paradigm. Given that fathers are invisible, they are made less responsible for discipline and are not held as responsible for instilling their children with rules to follow. To children, fathers become the 'fun' parent while mothers become the ones who bark orders and remind children of their bedtimes and to brush their teeth. We see this reflected in Mulvany and Sarks' adaptation of Euripides' *Medea*.

In order to appreciate the significance of Jason's invisibility it is important to see how Medea interacts with the boys and how she fulfills her role as mother. Medea's first appearance onstage she gives the boys instructions to follow. Indeed, Medea's first words are: "[y]our father wants you to live with him. I love you both so much. This room is a

pigsty. So clean it up. Make it clean. For mummy. Please... (l. 189-195). This order could give the audience the impression that Medea is a particularly fastidious about neatness. However, the play notes say that Medea enters looking utterly disheveled in her appearance. Therefore, tasking the boys with cleaning up their room has nothing to do with Medea's particular personality. The command is one that every mother of twelve and eleven year old boys can identify. Further, if Medea were about to kill the boys, why would she be concerned with the cleanliness of their room? Perhaps Medea had not yet made up her mind about killing her sons. But what room of twelve and eleven year old boys is ever clean? A mother demanding that her two pre-pubescent sons clean up their room is a very banal, common command. It provides the sons with busy work while her and Jason continue to argue offstage. This interaction gives the impression that Medea is quite like any other mother.

In Medea's two other appearances onstage she is also giving her children instructions to follow. In the eighth part Medea comes onstage holding a wrapped present and asks the boys to write an accompanying note. The audience knows the present is for Jason's girlfriend and will have fatal consequences while the sons do not. The boys comply with her request after some reluctance. Medea comes back onstage in the tenth part with a litany of instructions. Medea commands the boys to drink the green cordial she brought for them, continuously commanding to 'keep drinking'. Medea then commands the boys get up from their bed and to get undressed. Following that, Medea demands her boys get dressed in the suits and shoes she brought for them in spite of their

hunger cries and complaints about being tired. Medea then directs her sons to lie down, even though she told them they were getting ready to see their father.

The exchanges between Medea and her sons paint a complex picture of their relationship. It is the picture of motherhood. Barking orders, half answers, confusing responses. They are the interactions of haggard mothers and demanding sons. What makes this situation different is the larger context within it takes place and this is what underscores the dramatic irony of the play in total. However, within the smaller context of each interaction, audience members can relate to the commands in isolation whether remembering their own mothers commanding them to clean their rooms as children or perhaps having told their children to do so while out to see this very play. Audience members may remember their own mothers instructing them to write thank you cards to aunts they do not know for birthday cheques swiftly deposited into college funds. The audience may remember their own mother dressing them in stiff suits for cousin's weddings while begging for a snack. However, within the larger context of the play these commands take on a sinister tone. Herein lies the dramatic irony of these commands and intensive motherhood.

Jason's invisibility almost goes unnoticed in the play given how much the boys talk about their father. The boys pile heaping admiration on Jason. The mounting tension over Jason's apparent imminent arrival creates a tense feeling of anticipation in the audience even though there is no cast member listed as playing Jason in the playbook. While Jason is invisible, he is also ever present. Jason is brought to life onstage by the words of his sons and their mother. What are those words and what do they represent

within the greater context of the play, intensive motherhood, and the patriarchal parenting paradigm?

Leon and Jasper first talk about their father in the fourth part of the play. Jasper is recounting Jason's adventures with the Argonauts and calls his father: "brave and handsome" (l. 112). The boys admire and respect their father for his displays of masculinity. While the boys know Medea had interpersonal issues with her father in her homeland. Leon tells Jasper that Medea hated where she lived and wanted Jason to marry her in exchange for helping him retrieve the Golden Fleece. When Jasper asks why, Leon simply replies: "[s]he didn't get on with her dad...[s]he was naughty...I reckon it was pretty bad" (l. 136, 138, 141). Knowing this information colours Leon and Jasper's perception of their mother. Conversely, they do know of Jason's indiscretions. Namely, that Jason killed his uncle in a bid for the throne. This disparity of knowledge about their parents' previous history creates an emotional imbalance.

From this exchange about Jason and Medea's meeting we learn that Leon and Jasper have a sense of innocence surrounding Jason and a lack of innocence about their mother. In the context of intensive motherhood where children spend more time with one parent than the other this can be an unintended result. When this happens there creates a discrepancy between how the children view parents and how they relate to one another. Given that the mother is the parent who spends the majority of time with children in intensive motherhood it affects the mother child relationship more than the father and child relationship. Therefore, the mother child relationship is more negatively affected. This is the resulting case with Medea and her sons.

Medea's adverse relationship with her homeland and father is information freely passed between mother and sons, as evidenced by the exchange in the eighth part. When Medea tells her sons they are going to live with their father and his new girlfriend, Leon asks where his mother is going to live. When Medea says she is going to go on a trip to her own home, Leon says: "[b]ut you hate your own home, Mum" (l. 363) and Leon remarks: "[g]randad's angry with you" (l. 364), to which Medea replies: "[e]veryone is" (l. 365). This is a free exchange of information and tells the audience the sons knew of Medea's family history prior to the beginning of the play. This release of tumultuous family history can be an indicator of poor boundaries on behalf of Medea with her sons. However, operating under oppressive patriarchal mothering conditions with likely little other social support it is possible to make the conjecture that Leon and Jasper were Medea's only confidants.

The scene after Jasper wets himself culminates in the audience knowing the impact of Jason's invisibility. As explored in the previous section, Jason's invisibility becomes tied to Jasper's sense of emotional security. This reveals the emotional impact of the invisible father within intensive motherhood on children. Given that neither Medea nor her sons make any negative implications about Jason, the sole fact of Jason's invisibility renders Jasper into a truly pathetic and deeply sad child. This sadness is the result of Jason's absence. The youngest son takes his father's absence as a sign of his father's unwillingness to love him. While this scene demonstrates the impact of the invisible father on children, Jasper and Leon are still left free from negative associations about Jason. Medea does not speak negatively about Jason, nor do the boys. Only Jason's

absence is felt. This allows the sons to experience a relationship with their father than is free from negative associations with his current or past conduct. This privilege is enjoyed by the invisible father in intensive motherhood and is reflected in the play.

Conclusion

The invisible father and the overvaluation of the protection of childhood innocence are functions of intensive motherhood within the oppressive patriarchal parenting paradigm of intensive motherhood. These two factors contribute to the negative representation of mothers who kill their children in theatre and law. This interdisciplinary thesis demonstrated how these two factors manifest within Kate Mulvany and Ann-Louise Sarks' adaptation of Euripides' *Medea* and the Ontario court case *R v. L.B.*.

Kate Mulvany and Ann-Louise Sark's *Medea* illustrates the overvaluation of the preservation of childhood innocence by being the first to tell the story of Euripides' *Medea* through the eyes of Jason and Medea's two sons. Sarks was inspired to write this play after hearing the news of a father killing his daughter by throwing her off a bridge and then went on to write a play where the father is not even an active character onstage.

This is a striking example of the continued erasure of the active father and the fatherhood role within cultural representations of mothers who kill their children. Mulvany and Sarks wrote the play with the expressed purpose of portraying the innocence of children in their darkest hour. The play is successful at achieving that vision. Yet, in light of what we know through maternal theory and the practice of preserving children's innocence within the patriarchal parenting paradigm of intensive motherhood, this begs the question regarding the centrality of children within the patriarchal parenting paradigm and discourse. More research needs to be done of how best to support mothers in their mothering so that their parenting is led from a place of empowerment.

The infanticide section's history and its contested position within *The Code* is evidence that mothers who kill their children are doing so out of extraordinary acts of ordinary desperation. These circumstances are established by patriarchal social values, and then women are forced to be held criminally responsible for their actions within a patriarchal legal framework. Legal scholarship on reform has suggested different frameworks by which to consider the infanticide section. In my view Elizabeth Sheehy has produced the most compelling case in the form of reform. However, until legislative change can be made, true and meaningful change can only be made when the conditions of motherhood are levelled through radical feminist mothering practices within individual homes and communities, coupled with meaningful government assistance in the form of a national childcare strategy and the end to tenuous employment for all genders.

Overall, this interdisciplinary research argues that the problem of the invisible father and overvaluation of childhood innocence would be alleviated, even eliminated,

with a three-pronged approach to socio-economic transformation through the meaningful reformation of childcare, the wage gap, and parental leave. When the care of children is freed from the intensive mothering model of patriarchal parenting, it no longer is the sole responsibility of the mother to preserve the innocence of her child. It becomes continuously negotiated through communal caretakers. Meaningful childcare choices can only come with the encouragement of fathers to take parental leave, giving mothers the choice to stay at home or return to work and giving more options of financial and job security for mothers. This change is dependent on fathers, indeed all men, to accept the reality of the wage gap between genders and races and acknowledge the financially intangible benefits of a lower wage. These three issues; affordable and accessible childcare, the closure of the wage gap, and the loosening of restrictions on parental leave are interdependent issues that can alleviate the stresses on mothers to bring about socio-economic change and encourage empowered motherhood by giving both parents meaningful choices in their parenting.

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