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Michelle Oberman

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JUDGING VANESSA: NORM SETTING AND DEVIANCE IN THE LAW OF MOTHERHOOD

MICHELLE OBERMAN*

ABSTRACT

This article, by an author who has devoted over a decade to the study of women whom the law deems "bad" mothers, undertakes a more probing consideration of what truly separates the deviant mother from the "good" mother. In this article, she exposes the flaws in a binary classification of mothers as either "good" or "bad." She accomplishes this task by juxtaposing the stories, both legal and personal, of Vanessa, a woman whom society has judged to be a "bad" mother, and the author, a mother most in society would view as "good." In the end, the author not only offers alternative explanations for the death of Vanessa’s child, but also a broader moral lens through which to judge Vanessa and perhaps mothers in general.

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* Professor of Law, Santa Clara University School of Law. J.D., University of Michigan Law School; M.P.H., University of Michigan School of Public Health; B.A., Cornell University. My heartfelt thanks for the courage, inspiration, and support I received from old friends and new: Susan Ayres, Katharine Baker, Vinka Jackson, Brad Joondeph, Mike Newdow, Marylen Oberman, Ticien Sassoubre, Stephanie Wildman, the participants at Emory University’s 2006 Feminist Legal Theory Workshop on Storytelling and the participants of the William & Mary Journal of Women and the Law’s 2008 Symposium. Perhaps even more thanks are due to my research assistant, Tony Zand (Santa Clara Law, class of 2009), to Ellen Platt (reference librarian extraordinaire), to Heather Willis (Senior Articles Editor, William & Mary Journal of Women and the Law, William & Mary School of Law, class of 2009), and to Dean Donald Polden for helping me to turn this collection of thoughts and emotions into an article.
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INTRODUCTION

For over 15 years, I have been thinking, reading, and writing about “bad” mothers: pregnant addicts, mothers who disobey their doctors’ orders, and mothers who kill. Most of my professional writing is devoted to telling the stories of perhaps the most deviant among these women: mothers who kill their children. Most of it tells only a partial truth at best. Even when I succeed in telling their stories, I do not talk about what they mean to me, as a woman, and particularly as a mother. Instead, I write in the voice of an academic, a lawyer who sits at a distance from her subject and is thereby able to relate a sequence of events in an objective and logical manner. I accept the law’s endeavor to draw a bright line between good mothers and bad and I use their life stories as object lessons in arguments about where that line should be drawn.

The fuller truth is that their stories mean something to me as a mother and as a woman. When these supposedly deviant mothers speak about the emotional terrain of their daily lives, the longings, the joys, and even the worries they describe feel familiar to me. I walk much of the same ground everyday. Indeed, of all the astonishing things I have learned about and from mothers who have killed their

2. Michelle Oberman, Mothers and Doctors’ Orders: Unmasking the Doctor’s Fiduciary Role in Maternal-Fetal Conflicts, 94 Nw. U. L. Rev. 451 (2000); see Oberman, supra note 1, at 505-06.
children, perhaps the most astonishing is this: like almost every other mother I know, they describe their children as the most important things in their lives.\(^6\)

When the law tells or listens to stories, this fuller truth is submerged. Of course, at some fundamental level the law, and in particular the criminal law, must focus on the dissimilarities. By drawing bright lines between what is normal and what is deviant, the law puts us all on notice about what is to be expected of us.\(^6\) Professor Kai Erickson’s 1966 book, *Wayward Puritans*, described this norm-setting function of the law with regard to Puritan society in early America.\(^7\) He postulated that one can learn an enormous amount about a given society or institution by studying those it deems deviant: “[d]eviant forms of behavior, by marking the outer edges of group life, give the inner structure its special character and thus supply the framework within which the people of the group develop an orderly sense of their own cultural identity.”\(^8\) In this way the law also helps us to establish our identity; it embodies our self-definition.\(^9\) Taking a page from Professor Erickson’s book, this essay explores the purported dichotomy between deviant and normal mothers, both as it is set by the law and perhaps more importantly as it is internalized as a cultural norm.

In this essay, I trace the line that links me, a mother who (at least ostensibly) the law would deem “good,” to a woman I will call Vanessa, whom the law has deemed to be a “bad” mother.\(^10\) I met Vanessa in the course of researching my book, *When Mothers Kill*, co-authored with Professor Cheryl L. Meyer.\(^11\) Vanessa’s life story was not particularly different from that of other filicidal mothers I interviewed.\(^12\) Like them, she described a life that was rife with deviance from the legal and cultural standards that inform my own life.

In retelling her story here, I endeavor to expose more than just the ways in which our lives differ. In the end, the lines that connect

\(^5\) See, e.g., OBERMAN & MEYER, WHEN MOTHERS KILL, *supra* note 3, at 78.
\(^7\) See generally id.
\(^8\) Id. at 13.
\(^9\) See id. at 4-13.
\(^10\) In order to protect her privacy and to honor the confidentiality I promised her during our interviews, I have changed not only Vanessa’s name, but also certain details of her story that might reveal her identity. In addition, I have changed the names of those whom I interviewed for this article, including her lawyers and the Ohio officials who were involved in her case. In many instances, conversations with Vanessa, Ohio officials, and doctors will be in quotes. These quotes reflect my notes and recollections from many hours of conversations and should not be construed as verbatim transcriptions.
\(^12\) See id.
my life and my experiences as a mother to Vanessa’s are as powerful as are the law’s bright lines that separate us. The law’s dichotomy may be necessary for reasons of expedience, but that does not make it a truth. In the end, Vanessa and I, a purported deviant and a purported conformist, are both “creatures of the same culture, inventions of the same imagination.”

In Part I, I begin Vanessa’s story with the official story. This is the story of her identification and condemnation as deviant, and it is largely based on public information. Anyone could tell this part of her story without ever meeting Vanessa. It yields some bright lines that help to demarcate the law of motherhood, at least in its de jure sense.

The more complicated picture of the norms and laws governing motherhood emerges in Parts II and III of this article, in which I retell the stories Vanessa told my co-author and me when we asked her to talk to us about her life. As is always the case with stories, what I heard was shaped by who I am. Some details Vanessa told me struck me as surprising and even shocking. Others seemed remarkably familiar. Often, I found myself wondering what I would have done had I been in her shoes. In short, the latter parts of the essay reflect my attempt to tell Vanessa’s story as I heard it, through the lens of my own experience, and in so doing, to expose the blurry edges and the hidden mythology that sustains the law’s line between “good” mother and “bad.”

I. THE OFFICIAL STORY OF VANESSA’S TRANSGRESSION

At noon, on a Wednesday morning in early April 1994, paramedics responded to a 911 call Vanessa placed from her cousin’s apartment in Akron, Ohio where she had been caring for her three children, ages one, two, and five, as well as her cousin’s two children, both under the age of five. The emergency medical technicians found her two-year-old daughter, Danielle, lying on the floor amidst a nest of blankets in the room where all but the youngest child had been sleeping. Danielle’s body was stiff and unresponsive. They took her to a hospital where she was declared dead. When doctors removed her pink polka dot nightshirt they discovered burns, raw and pus-filled, on her buttocks, thighs, and genitals. The skin had been seared away. A cloth had been wrapped around her right thigh, under her diaper.

Dr. Norman Weeks, the forensic pathologist who served as White County’s coroner, performed the autopsy. On Friday April 8, two

13. ERIKSON, supra note 6, at 21.
14. Newspaper article on file with author. Again, names of the officials involved in Danielle’s death have been changed to protect Vanessa’s privacy. Any sources that might reveal Vanessa’s identity are on file with the author.
days after she died, Dr. Weeks told reporters Danielle died of an infection brought on by severe scalding. "It appeared she was forced into a tub of scalding water days ago; there were severe burns over the lower half of her body," the papers reported. Initially, Vanessa was not charged with a crime. The state proceeded to investigate Danielle's death though, and two months later, in early June 1994, Dr. Weeks spoke with reporters about the case once again: "Initially I suspected that Danielle Johnson died of an infection resulting from severe scalding," he said, "but after analysis of tissue samples, and after reviewing the case of Tamika Johnson, Danielle's older sibling, I've concluded that Danielle died of cardiorespiratory arrest due to asphyxia caused by manual strangulation."

It turned out that just four months before Danielle's death Vanessa had served thirty days in the county jail on a charge of misdemeanor child abuse. The court records were sealed, as they always are in juvenile court, to protect the privacy of children whose families are caught up in the abuse and neglect system. However, Dr. Weeks reviewed the files and told reporters Vanessa had hurt her eldest child Tamika, breaking her arm and then failing to take her to the hospital.

When Tamika's injury was discovered, the Ohio Child Services Board (CSB) took custody of her three daughters and placed them with foster families. CSB preferred to keep siblings together and to place them with family members if possible. But when there were no real family alternatives, as in Vanessa's case, the children had to be separated and placed with strangers.

The family was reunited in March, three months later, over the objections of the CSB. According to Monica Frank, the general counsel for the CSB, it was not unusual for a caseworker to oppose reunification at that time.

"Sometimes a woman will complete everything that the court specified in her plan, but you just have a gut feeling that it's not going to be any better."

"What sort of 'gut feeling'?' I asked her.

"She'll have gone to all five parenting classes and dropped clean urine, but she wasn’t paying attention in class. Or she’ll have found a job, but maybe at a fast food place, where you know she won’t last once a kid gets sick or something."

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15. Newspaper article on file with author.
16. Newspaper article on file with author.
17. Telephone Interview with Monica Frank (pseudonym), General Counsel, Ohio State Child Protective Services Department (Fall 2007).
18. Id.
19. Id.
20. Id.
"You see, the judge back then was a real due process guy," she continued. "He felt like, if a mother did everything the court asked her to do, then you had to give back her kids. It wasn't enough to say, 'I have a gut feeling this isn't going to work.' 'Where's the evidence?' he'd say."

In March 1994, having completed her parenting class and complied with the terms of her sentence, Vanessa got her girls back. A month later, Danielle was found dead.

Vanessa’s trial was quick, the news coverage merciless. The state’s murder case against Vanessa rested entirely on Dr. Weeks’s strangulation finding. The state never gave a motive for strangulation. Dr. Weeks testified he found “fine linear abrasions” on Danielle’s neck, leading him to conclude that “the killer had placed a linear, smooth object around the victim’s throat and applied pressure in a non-violent manner.”21 His word provided “sufficient circumstantial evidence,” according to the trial judge as well as to the judges on appeal, to permit the jury to find that Vanessa had murdered her daughter.22

Vanessa’s expert challenged Dr. Weeks’s strangulation theory. He did not find any “fine linear abrasions” on Danielle’s neck, although he agreed that Danielle died of asphyxia. His believed that Danielle stopped breathing for some other reason. The pattern of burst blood vessels in her brain was consistent with suffocation. It is also common in cases of cocaine overdose. By the time he reviewed the case, though, it was too late to run toxicology screens on Danielle’s blood.

Judge Marianne Riley was unequivocal when she sentenced Vanessa to twenty-one years to life in October 1994.23

“Danielle suffered for most of her life,” she said, when announcing her verdict in the White County Courthouse. “She suffered from the hands of an abusive mother. Quite frankly, I have difficulty using the word ‘mother’ to refer to you, because you are the opposite of whatever God intended a mother to be.”

“That’s only your judgment,” Vanessa replied.

II. VANESSA’S STORY: HER DEVIANCE AND WHAT I MAKE OF IT

When I met Vanessa, she was thirty-one and living in the Ohio Women’s Reformatory.24 It was January 2006. I had read her rap
sheet before our meeting. I had seen her mug shot; her green eye shadow was matched to her prison smock, her hair straightened, then curled and slicked like a high school yearbook portrait. Vanessa had already served twelve years of a twenty-one-year-to-life sentence.

My co-author, Cheryl Meyer, and I waited for her in a dull yellow cinder block office with brick-red colored linoleum floors. Our pale faces were illuminated by the winter sun, which filtered in through a high, barred window, too small for a woman's body. When the radiator let off its periodic steam, it drowned out the drone of the overhead lights and softened the clanking of keys and metal doors in the hallway. There was no escaping the air, which was thick with ammonia.

When the guards brought Vanessa in, I was surprised by how beautiful she was. I had expected to meet an African-American woman broken by the long years in this dark place. Instead, she sat straight in her chair, holding a folded tissue in her lap, and wearing shiny pink lipstick.

We began by asking her what she thought, looking back on her crime. "I take responsibility for her death," she said, "because I thought I was doing the right thing but I wasn't."

Her story came out in pieces. Like gazing through binoculars, I am still trying to see it in focus, to back far enough away from it so that the small circular frames form one big picture. The blurriness persists, I think, because it is hard to get things in focus when you are also in the picture.

In this part, I try to share the sense I have made of Vanessa's story by locating myself in it, as one who heard her and responded to her. In so doing, I trace the lines that connect and divide us. Sometimes they are lines drawn by the law, as in the line between guilt and innocence. Other times, they are social or cultural lines, as in the norms governing moral and immoral actions, good and bad mothers, rich and poor people, black and white people, young girls and older women. One thing is apparent: Vanessa's transgressions, her deviance from legal and social norms, began long before her daughter Danielle's death.

A. From Childhood to Motherhood

When a woman has a baby, even if the woman is only a girl herself, her moral and legal status changes. Indeed, once she becomes pregnant, most states will deem her "mature" and permit her to make

25. See Meyer & Oberman, Prom Mom, supra note 3, at 162-64 (noting that both society and the justice system have unrealistic expectations of mothers).
medical decisions for herself and her fetus. The law governing motherhood is unusual in that it is the status of becoming a mother, rather than a chronological age, that marks the legal transformation of a minor girl into a legal adult. Of course, there is no empirical evidence suggesting that the act of having a baby, let alone of having sex, transforms a girl into a woman. Indeed, statutory rape laws represent the law's conclusion that many underage youth are incapable of consenting to sex, and therefore it is against the law to have sexual contact with them. Like most of the filicidal women I have studied, Vanessa's journey into motherhood began when she was still a girl and, technically speaking, the victim of a crime: underage sexual intercourse. But like all women, before she became a mother, Vanessa was a child.

1. Vanessa Becomes a Mother

Vanessa's mother was young — only fifteen years old — when Vanessa was born. Vanessa never mentioned her biological father except to say that all her other siblings had a different father. The man she called Frank was her mother's common-law husband, who fathered Vanessa's four younger brothers and sisters.

By the time Vanessa was nine, she found herself raising her younger siblings.

26. Many states have laws governing the status of pregnant minors. See, e.g., 750 ILL. COMP. STAT. ANN. 30/3-2 (West 1999) (defining "mature minor"). Professor Kimberly Mutcherson's thorough exploration of the rights of adolescents in the health care setting notes that:

[pregnancy is one area in which the emergent needs of an adolescent trump concern about parental rights and adolescent incompetence. Recognizing the serious issues inherent in a decision to carry a pregnancy to term and become a mother and the reluctance of some young women to talk about these issues with parents, laws in twenty-eight states and the District of Columbia confer limited adult status on pregnant young women. In these states, a healthcare provider treating a pregnant adolescent who wishes to carry her child to term is legally bound to provide prenatal care to that young woman as though she has obtained the age of majority.


27. This transformation from youth in need of legal protection into a fully responsible legal citizen happens throughout the law, but typically not until age eighteen. For instance, at age eighteen, no matter how immature a youth might be she becomes liable for contracts she signs or for crimes she commits. WAYNE R. LAFAVE, CRIMINAL LAW § 9.6 (4th ed., student ed. 2003); JOSEPH M. PERILLO, CALAMARI AND PERILLO ON CONTRACTS § 8.2 (5th ed. 2003).

28. See MEYER & OBERMAN, PROM MOM, supra note 3, at 104 (noting adolescent mothers that were still in the process of forming their own identity when they became parents).


30. OHIO REV. CODE ANN. § 2907.04 (West 2008).
"They were like my own kids," she said.

"Frank and my Mama are addicts. It took us kids a long time to figure out what was going on with them using drugs. Once we figured it out, it was my job to make sure no one else knew," she said. "Make it normal. Don't complain or call attention to problems."

Vanessa paused, unfolded and refolded her tissue. Then she looked down and added, "Maybe that was a problem for me, as a mother. I didn't notice problems with my kids because I wanted to keep things seeming normal."

She shifted in her seat and looked me in the eye. I nodded at her to go on. "When I was little," she said, "it was either the switch or the extension cord. It was Mama, not Frank, who whupped me, because Frank wasn't my daddy. But I was the oldest, so I was the one who got in most trouble."

I must have looked surprised at her matter-of-fact description of being beaten, because she quickly added, "I only got hit when I deserved it. Like when Mama was sleeping in the afternoon, sometimes we would all sneak out. But I didn't get whupped much, because I was scared of the extension cord."

"Mostly," she explained, "I kept the little kids fed and tried to stop them from breaking the sink or setting the basement on fire." Vanessa glanced up and smiled, almost wistfully. "Sometimes that didn't go too well. Like the time I melted my Mama's curling iron onto my doll's head when I tried to curl its hair."

When Vanessa was fourteen years old, she got pregnant. She knew she was pregnant, but she did not tell anybody about it. The father was one of her classmates.

"The guy was always in school with me. We knew each other since kindergarten. I was scared to death but I didn't believe in abortions. I told him about it when I was four months. I never talked to him again."

As she recalled it, Vanessa was not happy about being pregnant. "At first I thought, 'I gotta get rid of this.' I tried monkey bars, getting into fights, but she hung in there. Granny is a straight church lady. She suspected it. I didn't say anything."

Vanessa went into labor at her grandmother's house, where she and her family were celebrating her mother's thirtieth birthday. Her aunt found her in the bathroom, her contractions coming sharp and fast, and brought her to the hospital, where she delivered a premature but otherwise healthy baby girl. She named her Tamika, and she brought her home to live with her siblings and her parents in a small apartment in a poor Akron neighborhood.
2. Reflecting on Vanessa’s Road into Motherhood

In thinking back on the norms that informed my childhood, and those of the community in which I am raising my daughters, it seems to me Vanessa’s deviance began when she became a mother at fourteen. To be sure, some of my classmates were having sex with boys when they were fourteen; girls got pregnant, then as now. But most did not keep their babies. Even those who dreamed of becoming mothers did not want that part of their dream to happen at fourteen, when they were just figuring out who they would be as girls and as women. In my community, having a child at fourteen would have been devastating. As she told her story, it became clear that pregnancy and motherhood at fourteen felt normal, or perhaps simply inevitable to Vanessa.

She had sex with a boy she had known for years. They did not use contraception. This was not surprising. Studies on patterns in contraception usage point to a number of factors associated with those who fail to use contraception, in spite of the fact that they do not want to become pregnant. In my world, just like in Vanessa’s world, it can be difficult to interrupt the “romantic script” of sex by raising a concern about avoiding pregnancy.

When she realized she was pregnant, Vanessa wanted to “get rid of it,” but indirectly, by falling or hurting herself. She saw herself as someone to whom things happened, rather than as someone who

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31. Studies demonstrate a correlation between the age of first intercourse and the rate of contraception use, such that forty-five percent of females under age sixteen do not use contraception at first intercourse. See Guttmacher Institute, In Brief: Facts on Contraceptive Use (2008), available at http://www.guttmacher.org/pubs/fb_contr_use.pdf. According to a comprehensive survey by the Guttmacher Institute, “women’s ability to avoid unintended pregnancy is related to” basic factors such as “demographic and socioeconomic background,” and access to health care. Guttmacher Institute, In Brief: Improving Contraceptive Use in the United States 2 (2008), available at http://www.guttmacher.org/pubs/2008/05/09/ImprovingContraceptiveUse.pdf. In addition, contraception use is dependent upon:

- characteristics of their sexual partnerships, their STD concerns and risks,
- and their experiences with and attitudes toward pregnancy and contraception.

Although unintended pregnancy occurs among women of all backgrounds, levels are highest among women who are low-income, have not completed high school, [and] are members of racial or ethnic minority groups.

Id.

32. Kathleen McKinney, The Sociological Approach to Human Sexuality, in Alternative Approaches to the Study of Sexual Behavior 103, 108 (Donn Erwin Byrne et. al. eds., 1986). Although it is dated, Kristin Luker’s interviews with women who were asked about why they became pregnant when they did not want to have a child reveals the powerful force of our society’s sexual script. See Kristin Luker, Taking Chances: Abortion and the Decision Not to Contracept 49-51 (1975) (demonstrating the extent to which many women fear that raising the issue of contraception will be an unwelcome, unromantic interruption of a sexual interlude).
made things happen. Bringing on a miscarriage was acceptable to her, whereas choosing to have an abortion was out of the question. Rather than formulating a plan or asking others for help or advice, Vanessa waited passively for someone to notice her.

I could not imagine responding as she did to an unwanted pregnancy — not at age fourteen — nor at any time in my life. Then, as now, I live with a powerful, if mythological, sense of control over my body and my future. At fourteen, even without knowing it consciously, I was on a path that would take me to college, and afterwards, to a career and a foothold in the middle class. Becoming a mother at fourteen would have undone those unarticulated plans. Even if I had been paralyzed with fear and shame upon becoming pregnant, someone else, someone who had as deep an investment as I did in my future, would have taken me in hand.

But Vanessa was not unusual in her response to her pregnancy. Indeed, every year in the United States and elsewhere around the world, there are hundreds of girls who do just what she did: wait and see what happens.33 They move through the months of their pregnancies alone; they deliver their babies in silence, typically in the bathrooms of the homes they share with their families.34 Many of their babies die in childbirth and the girls are charged with homicide.35 Vanessa was lucky in that she went into labor while at the home of adults who were sufficiently aware of her to notice her absence and to take her to the hospital. Had she been any more alone, her baby might have drowned in the toilet, or been left to die while Vanessa cleaned up after herself in an effort to keep things “seeming normal.”

Vanessa told the story of her becoming a mother as if it were something that chose her, rather than something she chose. In listening to her story, and trying to imagine how lonely she must have been, working to raise her younger siblings in a family in which none of the adults cared enough to notice that she was pregnant, it seemed to me that she might have been more than a little ambivalent about

33. See OBERMAN & MEYER, WHEN MOTHERS KILL, supra note 3, app. B at 151-55 (describing the phenomenon of neonaticide as well as the denial and lack of planning which accompanies it).
34. Id. at 154.
35. Id. at 154-55. For two Ohio cases involving teenagers who were convicted of neonaticide, see State v. Iacona, 752 N.E.2d 937, 941-44, 960 (Ohio 2001), affirming an involuntary manslaughter conviction, and State v. Hopfer, 679 N.E.2d 321, 328-29 (Ohio Ct. App. 1996), affirming convictions for murder and gross abuse of a corpse. For a broader discussion of the phenomenon of neonaticide and the law, see OBERMAN & MEYER, WHEN MOTHERS KILL, supra note 3, app. B at 151-56. For a discussion of the manner in which the criminal justice system treats these cases, see Oberman, Mothers Who Kill, supra note 3.
the pregnancy. Some part of her probably wanted a baby. There were too few other routes to pleasure in her life, too few reasons to delay the path that must have seemed most likely to bring her pride and love. Vanessa's journey into motherhood happened much earlier in her life than my own journey, but in the end, I think we both took the journey for a similar reason. Despite the work and sacrifice inherent in raising children, there is nothing in life that comes close to the pleasure one might feel in receiving a child's love.

B. A Mother's Job

Every day, babies are born, and one or two days later they are sent home with their mothers. It is an unremarkable event even for those who see birth as miraculous. The knowledge and skill demanded of mothers is assumed to be latent, ubiquitous, perhaps inborn with the species. Good hospitals might have a solicitous nurse on the newborn floor who stops by to ensure the new mother knows how to feed, burp, and bathe her baby, how to clean the site where the umbilical cord was cut, and even how to close a diaper quickly so the baby will not pee on her. Many hospitals have informational channels on the televisions, interspersing helpful hints on diapering with advertisements for a particular brand of baby food or soap.

After my first baby was born, I was too tired to focus on the television. I gratefully let the nurse diaper and swaddle my daughter, and I lay with her on our hospital bed in the wan sunlight of early morning until time began to move. When we got home and she refused to nurse, I wept for hours. My breasts swelled with milk and became hard. They hurt so much I forgot how to feel any other pain or

36. At least one investigator has endeavored to measure the relative impact of teenage versus delayed child-bearing among poor women in the United States. Arline T. Geronimus, On Teenage Childbearing and Neonatal Mortality in the United States, 13 POPULATION & DEV. REV. 245 (1987). The study's controversial findings suggested that delaying childbearing did not necessarily correlate with improved status in terms of maternal health, nor did it necessarily provide the offspring of the "older" mothers with an advantage over those born to teenage mothers. Id. at 248-50.


38. See OBERMAN & MEYER, WHEN MOTHERS KILL, supra note 3, at 35.


joy. I cried out to my mother, who was sleeping two floors down in the basement with an intercom next to her pillow. I was thirty-five.

What did society expect from Vanessa when the nurses and doctors sent her home from the hospital?

1. Vanessa's Story

After Tamika was born, it was hard for Vanessa to find a routine that worked for her. She wanted to stay in school, but she needed money, so she starting working at McDonald's after school. But now there was a baby for her to care for, in addition to her four younger siblings. She moved back and forth between her grandmother's house and the house she shared with her mother, Frank (her mother's partner), and her siblings.

When Tamika was two, Vanessa met a boy she liked. They were both sixteen at the time and although she never referred to him by name when she spoke of him, they stayed together over the next four years. He became the father of her two younger children, the first of whom, Danielle, was born when Vanessa was seventeen.

After Danielle was born, Vanessa described with a sense of pride how she took control of her life. She registered for public assistance and moved into her own two-bedroom apartment in Akron's public housing projects. The school district provided her with a tutor and she was completing twelfth grade work, hoping to earn her high school diploma and get a license to work as a beautician. Although she continued seeing Danielle's father, Vanessa lived alone with her daughters. She lived off of her monthly public assistance payments and supplemented that income by selling crack cocaine.

Vanessa was unapologetic when she talked about her drug dealing.

"I sold dope because I wanted my girls to have extra, so that everyone wanted to be their friends," she said. "My kids were my personal doll babies. I wanted to make sure they were the prettiest girls around," she said. "I smoked weed and drank a bit, maybe every other day. I sold crack, but I didn't use it. It was like money where I lived; it was the power."

2. Reflecting on Crimes Committed in the Name of Mothering

By selling drugs, Vanessa became not only a social deviant, but a criminal. The laws of Ohio are unambiguous on this point.\textsuperscript{41}

\begin{footnote}
\textbf{41.} \textit{Ohio Rev. Code Ann.} \textsection{2925.11} (West 2006) (stating "[n]o person shall knowingly obtain, possess, or use a controlled substance").
\end{footnote}
cringed when I imagined her long days with her girls, interrupted by the slow traffic of addicts and petty drug dealers. Were they shaking and dirty? Did they treat Vanessa with respect? Did they touch her girls, or were the girls left alone in a back room? My images are informed by television. I have no idea what it really looked like.

One thing was clear though: Vanessa did not see her drug dealing as dirty or deviant — she saw it as her job. Public assistance was sufficient to provide Vanessa’s children with basic things: food, shelter, and clothing. But, like most parents, she also wanted her kids to have nice things. Having nice things, she felt, was one way to ensure that her children would be well-liked and accepted.

In this sense, Vanessa was not deviant in her decision to sell drugs in order to raise money. Not only did her status as a drug dealer buy her a certain amount of power — no small thing for a single woman in a dangerous neighborhood — but she also needed the money in order to buy nicer things for her kids. Her foray into drug dealing was not an abandonment of her children. Indeed, it was quite the opposite. Vanessa’s transgression lay in how far she was willing to go in the name of being a good mother.

In thinking about whether Vanessa’s drug dealing might not be so deviant after all, I am reminded of two stories. First, there is the proverbial case of the mother who steals a loaf of bread for her starving family. Whether in literature or in law, this story tends to serve as the paradigmatic example of why a system of punishment must account for relative moral blameworthiness in meting out punishment. Indeed, the parable calls into question the wisdom of a uniform rule of law, in that many would call the mother who steals the bread “good,” and perhaps label as “bad” the one who would sit idly by, starving along with her children rather than taking the bread.

The bread thief is the easy case, of course. At the other end of the maternal devotion spectrum is the case of Wanda Holloway, a Texas mother who attempted to hire a man to murder the mother of her daughter’s principal rival for the cheerleading squad. The ostensible story behind the case, in which Wanda initially was convicted of criminal solicitation of capital murder, is that football and cheerleading

42. Perhaps the most famous rendition of this parable is found in Victor Hugo’s Les Misérables, in which a father, Jean Valjean, steals the bread. VICTOR HUGO, LES MISERABLES 82-87 (Lee Farnstock & Norman McAfee eds., New Am. Libr. 1987) (1862). For a rich discussion of the intersection of criminal law, poverty, and moral blameworthiness invoking this story with a female thief, see Eyal Kimel, Welfare Fraud, Necessity, and Moral Judgment, 4 RUTGERS J.L. & PUB. POLY 766 (2007).


are so important in this Texas subculture that, for a parent like Wanda Holloway, born, raised, and now raising children in a poor Houston suburb, these “extra-curricular activities” represent a way out of poverty.\footnote{See \textit{Anne McDonald Maier, Mother Love, Deadly Love: The Texas Cheerleader Murder Plot} (1992).} Wanda Holloway resented the girl who, time and again, was chosen over her own daughter, and was determined to help her daughter by distracting her rival.\footnote{See \textit{id.}; Koidin, \textit{supra} note 43.}

Wanda Holloway’s alleged act is so crazy it is hard to reduce it to the status of a moral predicament from which one might glean a proverb. Surely, there were better avenues through which even a desperately poor mother might have advanced the prospects of her daughter’s future than by killing her daughter’s adversary’s mother. And yet, if her story is true, the impulse that informed her actions is similar to that of the bread thief and also to Vanessa’s: wanting to provide more for her daughter.

These cases, the bread thief and the cheerleader murderer, might be seen as opposite ends of a spectrum of mother-love and the criminal law. Together, they raise the question of how far should or must a mother go in attempting to protect and promote her children’s welfare. Both mothers are deviant, in that they break the law. And yet, few would call the bread thief mother deviant, whereas one can only hope most would view Wanda Holloway as such.

Vanessa’s drug dealing belongs somewhere along the spectrum stretching between these two cases. She is not like the bread thief, in that she committed her crime every day. It seems unlikely that we would feel the same empathy for the bread thief if she entered the bakery every day and took the bread she needed to feed her family. We would quickly begin to question whether there was not some other way she could get money to buy the bread. We can forgive the bread thief her transgression because it was rare. If it was routine, even if she was helping her children, her acts would harm the baker, his family, and even society as a whole.

Vanessa also was not like the bread thief because she probably used the money she earned from selling drugs for herself as well. By her own account, she was running a household business and pursuing a better life for herself and her kids, not merely selling drugs to save her daughters from starvation. But let us be clear about Vanessa’s career alternatives. She was a single mother attempting to finish high school while raising her children and living at best on the maximum amount of government aid provided in that year to poor families with
dependents.\textsuperscript{47} With luck, she might have found a job paying minimum wage, which would have earned her an annual salary of $8,840.\textsuperscript{48} The federal poverty level in 1994 was $14,800 for a family of four.\textsuperscript{49} Furthermore, working would have complicated her life. She would have lost the monthly government assistance she received, including the housing, and out of her minimum wage income she would have had to pay someone to watch her children while she was at work.

Nor does Vanessa's choice of drug dealing as a way of supplementing her income mark her as exceedingly deviant. Although it is not as morally innocent as the theft of a single loaf of bread, it seems even less akin to the attempted murder of a child's rival. There is a thriving, if underground, market in illegal drugs.\textsuperscript{50} The law forbids participation in this market, yet many have noted its continuous presence in American society, and in most contemporary human societies, in spite of the law.\textsuperscript{51} Indeed, well-respected public health experts and politicians routinely argue that the harm done by drugs would be significantly reduced were they to be legalized and treated as we treat other substances known to be hazardous to our health such as alcohol and tobacco.\textsuperscript{52}

When I try to situate myself on this spectrum, wondering whether and how much I would be inhibited by the law were I to sense that it somehow stood between me and my children's welfare, the line between Vanessa, Wanda Holloway, and me grows long and I realize the luxury of my relative wealth and how it contributes to my sense

\textsuperscript{47} Vanessa, at the time she started dealing and before the birth of her last child, was the only adult in a family of three. The maximum annual cash allowance for a family of three receiving welfare at the time was $4,092. ATHENS COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, OHIO'S POOREST CHILDREN: IT IS TIME FOR THE OTHER SHOE TO DROP ON WELFARE REFORM, http://www.ohiocathconf.com/I/PO/OWF%202005.pdf (last visited Jan. 9, 2008).

\textsuperscript{48} Id.


\textsuperscript{52} See JAMES B. BAKALAR & Lester Grinspoon, DRUG CONTROL IN A FREE SOCIETY 130-53 (1984) (arguing that the legal distinction between alcohol and illegal drugs is illogical); GEORGETTE BENNETT, CRIMEWARS 230 (1987) (arguing that humans are rational and can make informed choices, so drugs should be treated like caffeine, alcohol, and other legal substances); STEVEN B. DUKE & Albert C. Gross, AMERICA'S LONGEST WAR xvi-xvii (1993) (stating we spend more on "licit drugs, alcohol and tobacco" than illicit drugs, and that most of our serious social problems are directly related to the war against drug distribution and use).
of being a good mother. As a mother with a well-paying, secure job and a partner, it is hard to imagine needing to break the law in order to protect or promote my children. I do not need to be deviant on their behalf.

The norms around deviance and societal definitions of "good" and "bad" mothers are not all linked to class status, though. Money is just one easy way to imagine we can help our children. In order to think through Vanessa’s drug dealing and Wanda Holloway’s attempted murder, one must consider the maternal impulse, or imperative, to help one’s children. From this perspective, the line the law draws between good mothers and bad seems almost irrelevant, and I can recognize and situate myself on the same spectrum of longing to make life smooth and easy for my children. If I am honest, though, the impulse is more complex and less pure than that. I want to do well by them because at some level, my children are a reflection on me.

I remember being the mother of a six-month-old in Chicago, when the thaw finally came and it was warm enough to go to the neighborhood park. I stood with the other mothers, pushing our babies on the swings and sipping coffee. We eyed each others’ babies like scientists, taking their measure by heart, to be laid out next to our guilty worries about how our own babies were doing and whether their minor failings marked us as bad moms. If my baby’s shirt was dirty or I had not managed to get her out of her pajamas that morning because I was too impatient to get outside to breathe the spring air, if my baby would not stop crying, even after I lifted her out of the swing, it was not only my baby they would judge to be deviant. It was me. My baby’s well-being was a reflection on me as a mother.

As the spectrum between deviant and conformist widens, suddenly I can place myself along it. Like Vanessa and like Wanda Holloway, I am susceptible to the desire to be seen as better, somehow, by virtue of the lovely children I have raised. The boundary between mothers and children is blurry, and it is not only the law that would stand in judgment of mothers who miss the mark in promoting what is deemed to be best for their children. That being said, in the end it is the law — the omnipresent and omnipotent power of the state — that draws the bright line separating Vanessa from me.

III. LOVE, DISCIPLINE AND THE STATE

The law’s brightest line between deviant and conformist mother is found in the doctrine of Parens Patriae. Among the oldest of
common law principles, this doctrine situates the state as the ultimate parent of all children, with the power to protect the vulnerable by taking them from parents who fail to act in what the state deems to be their children's best interests. Few would dispute the importance of empowering the state to intervene in order to save children whose families threaten their well-being. Indeed, listening to Vanessa's story of her own childhood at times infuriated me because of the state's failure to keep its obligation to protect her from harm.

Although she described her childhood as "normal, not poor or beaten down," by the age of nine, she was left alone while her parents were consistently intoxicated or otherwise absent. She became the primary caretaker for her four younger siblings. Even without the occasional, severe beatings she endured, such abandonment constituted child neglect, and should have obligated the state to find a safer place for her to grow up. Instead, the state lurked ominously in the background of her life, an amorphous entity that Vanessa came to fear. She knew the state could rip apart her family if anyone found out that things were not "normal."

Vanessa did not resent the state for failing to protect her from her family, but instead saw the state as a menace that she and her family were lucky to have avoided. Vanessa's sense of vulnerability to state child protection officials, both as a child and as an adult, demonstrates yet another way in which an individual's assessment of a normal or even a good mother might diverge from the law's classification of deviant and conformist mothers. It also helps to explain the seemingly bizarre way in which Vanessa responded to her daughters' injuries.

A. Vanessa Finally Meets the State

Vanessa said she sometimes "whupped" her children when they needed to be disciplined. She explained that she did not hit them with an extension cord or a switch the way her mother had hit her. They were too young. Instead, she used a belt. That was how Tamika got hurt, she told us.

"Tamika was sassing me by saying she was going to tell her father that my boyfriend was beating on me and the other kids," she said.

Vanessa yelled at her. Tamika sassed her. Vanessa "whupped her," and Tamika fell down the steps. Her arm broke when she hit the wall. Vanessa did not take her to the hospital.

55. See id.
56. OHIO REV. CODE ANN. §§ 2151.01, .03 (West 2006).
“You see,” she said, “I knew how, after Department of Child Services calls, they nine times out of ten take your kids.”

Instead, she went to the library and read a book about how to set broken bones. She came home and set Tamika’s arm, apparently doing a good enough job that doctors did not need to reset it when Tamika’s paternal grandmother, who sometimes looked after Tamika on weekends, eventually brought her in to the emergency room.

B. The Map of Motherhood

In my life, both as child and as mother, the state offered bountiful resources: safe streets at night, good schools during the day, buses, hospitals, and parks. It kept the war far away. When I became a mother, it never occurred to me to see a risk in taking my infant to the doctor to see why she was not gaining weight.

The terrain in which Vanessa lived was mined, though, and she spent much of her energy navigating around those mines, trying to avoid triggering the state’s interest in her family’s life. Consider Tamika’s threat to tell her father about Vanessa’s boyfriend hitting her and the other girls. Vanessa knew that if Tamika told her father, the State would come into her home, investigate her, and perhaps take her children away to live with others. She knew the foster care system well enough to know that children were not necessarily protected when the state assumed custody of them. Honestly, though, I doubt she was worrying about the poor quality of foster care services when she hit Tamika to keep her from telling others about the violence she was enduring. I think she was worried about the state taking away her children. It was as plain and simple for her as I think it would have been for me: she could not imagine bearing the

57. For decades the U.S. foster care system has come under fire for its failure to meet the basic needs of its wards. Failings range from placing children in abusive situations to literally losing children within the system by neglecting to track them after their placement. See, e.g., B.H. v. Ryder, 856 F. Supp. 1285 (N.D. Ill. 1994) (bringing a class action suit “against [the] Director of [the] Illinois Department of Children and Family Services (DCFS) under § 1983 on behalf of all abused and neglected children who come into custody of DCFS...” and alleging that while in DCFS custody they... experience[d] serious detriment to their physical, mental and emotional development because of... inadequate care”); see also Dana Canedy, Children Suffer as Florida Agency Struggles, N.Y. TIMES, Jul. 1, 2002, available at http://query.nytimes.com/gst/fullpage.html?res=9D07E3D81F3EF932A3575C0A9649C8B63&scp=1&sq=Dana%20Canedy, %20Children%20Suffer&st=cse (noting a four-year-old Florida girl was missing from the foster care system fifteen months before any official noticed her absence and further detailing the “terrible condition” of the Florida Department of Children and Families). For a broader study from the relevant time frame for Vanessa’s story, see THOMAS P. MCDONALD ET. AL., INSTITUTE FOR RESEARCH ON POVERTY, IRP SPECIAL REPORT NO. 57, ASSESSING THE LONG-TERM EFFECTS OF FOSTER CARE: A RESEARCH SYNTHESIS (1993).
pain of losing her girls. Perhaps it was even worse, because Vanessa became a mother when she was only a girl; her entire identity was bound up in mothering.

And so Vanessa did not take Tamika to the hospital because the hospital did not look like a resource; on her map of motherhood, it looked like a danger zone. She eventually lost custody anyway. And when I try to reconcile the state’s definition of deviant and conformist mothers with Vanessa’s sense of what constituted good mothering, it seems to me all but inevitable that she would have fallen afoul of the law. It was only a question of whether and when the state took note of her.

C. Danielle’s Death

Vanessa’s story about Danielle’s death began with the story of how Danielle got burned. The time-line is vague and seemed to me to have been concocted to fit a defense that never materialized. But some key facts are clear. For three cold April days before her two-year-old’s death, Vanessa, then nineteen, was staying in her cousin’s apartment caring for her cousin’s two small children in addition to her own three daughters. All were under age six.

Vanessa claimed Danielle was burned when Tamika tried to give her a bath. The pattern of Danielle’s burns plainly suggests someone dunked her in a tub of scalding water. The prosecution never asked how Danielle got burned. They saw Vanessa as an abuser, one who had broken her first child’s arm, and then strangled her two-year-old. The burns seemed to them to be part of a pattern of abuse.

I resisted their story line. Vanessa did not strike me as a mother who would intentionally harm her children. Wanting an alternative explanation, I called pediatric burn experts at the University of Chicago and at the Children’s Hospital of Milwaukee. The first thing Dr. Tracey Koogler said after I recited the bare facts was, “This sounds like a classic potty-training burn.” I was stunned. I had not mentioned to her that Vanessa’s story to me about the day Danielle died began: “It was a morning of potty-training Danielle.”

“The dunk,” Dr. Koogler said, matter-of-factly. “It happens when the kids soil themselves, again, and the parent needs to bathe them, again, and they run the water, maybe just a little too hot.” She sighed and I could almost hear her shaking her head. “They want to clean the child, of course, but they’re also a little pissed off, and they want to punish the child, too.” Dr. Koogler’s voice was almost compassionate

58. Telephone Interview with Dr. Tracey Koogler, Pediatric Burn Expert, University of Chicago (Dec. 7, 2007).
when she spoke about the dunking problem. I was less sympathetic and that was before I saw internet photographs of children with burns like Danielle’s. The intentionality of placing one’s baby in a scalding bath shocked and revolted me.

Dr. Koogler explained that it was not quite the deliberate act I imagined. Instead, it was a momentary impulse, one that might be familiar, albeit checked, by other parents.

“In the past five years or so,” she said, “pediatricians have campaigned to set water thermostats no higher than 104. But most people’s don’t go that low. Back then, it wasn’t unusual to find water heaters set at 130, or even 140.” Dr. Koogler paused, and then added, “Slum lords in tenements can be the worst. Sometimes they save money by heating their water on a timer,” she explained. “They set the water to boil between 3:00 A.M. and 9:00 A.M., say, and then turn off the heater for the rest of the day. So many of our burns are from morning baths in the slums, you just would not believe it.”

Dr. Andrea Winthrop, an expert from Milwaukee, agreed. She sent me a chart she uses in training seminars for pediatricians and others working to treat and prevent burn injuries. At 120 degrees, it would take only one second’s exposure to get second and third degree burns. At 130 degrees, only half a second.

So maybe Vanessa had burned Danielle, dunking her in scalding water on a morning of potty training, while taking care of five little kids. If she had done it herself, I imagine she would not have told me that part of her story. Because she loved Danielle, she would have been deeply ashamed of her failure to control the impulse to dunk her baby in the hot water. Perhaps she would have feared my judgment of her, assuming that I had never experienced a momentary urge to shake my baby, to slap my child, or to slam the door and walk away for awhile. Of course I have survived feelings like these; virtually all mothers I know have had them. But few admit to them. These impulses tread too close to the line between good and bad mother.

Regardless of whether it was Vanessa or her daughter Tamika who scalded Danielle in the bath, Vanessa would have been terrified to take Danielle to a doctor. She knew she would lose custody once again, and that this time, it could be for good.

I called Vanessa’s defense lawyers, wanting to know what they thought had happened. Both were still practicing in the White County area. Both remembered her case, even though it had been almost

59. Telephone interview with Dr. Andrea Winthrop, Pediatric Burn Expert, Children’s Hospital of Milwaukee (Dec. 12, 2007).
60. Chart on file with author.
61. Id.
62. Id.
fourteen years since the trial. "It was my first murder case," said Joan Barnes. "We went back to the apartment with an investigator and tried running the water. It came out of the tap at 150 degrees." 63

"The pictures of the burns were horrifying. The worst I've ever seen," said George Dean, Vanessa's senior defense lawyer. "I told Joan, my co-counsel, 'We have until the jury sees the pictures of the burns to talk to the jury. After they see pictures, they won't hear another word we say.'" 64

It seemed, for a moment, I was getting closer to understanding what had happened. Danielle was burned on the morning of the potty training, when they were staying at Vanessa's cousin's house, the day before she died. Maybe Vanessa did it, although one of the burn doctors said even Tamika could have dunked her. According to the trial experts, there was only an inch or two of water in the tub when Danielle was burned. At 150 degrees, or even 140, it would have taken only a fraction of a second to burn the skin off her small body. 65

I wondered how Vanessa could have kept Danielle comfortable and quiet after she'd been burned. Was she not screaming in pain? The burn doctors told me Danielle might have been burned so badly that she would have lost her nerve endings. The burn might not have hurt, especially if it was symmetrical and equally deep throughout. The only time Danielle might have been in pain was when the dressings were changed, they said, which would have been excruciating. Vanessa said she only changed the bandages once.

After she was burned, Danielle would have become dehydrated and lethargic. Dr. Koogler told me fluid loss begins almost immediately in a burn that covers twenty percent or more of a two-year-old's body. 66 Maybe Vanessa managed to coax Danielle into drinking something, but given the severity of her burns, it probably would not have been enough to save her from dehydration. Or maybe, with four other kids to tend to, including her baby, she did not notice Danielle was quiet. Maybe she was grateful for it.

Vanessa's boyfriend came over at midnight on the night Danielle died. He left again at 2:00 A.M. In court, he testified he had looked in on the kids and noticed Danielle was awake. He did not talk to her, or go into the room. He just closed the door and left. Vanessa did not ask where he was going. She fell asleep on the couch, and later went to bed in the room she was sharing with her baby. Her boyfriend returned the next morning at 10:00 A.M. He and Vanessa were watching

63. Telephone Interview with Joan Barnes, Esq. (pseudonym), (Nov. 13, 2007).
64. Telephone Interview with George Dean, Esq. (pseudonym), (Nov. 14, 2007).
65. See supra notes 60-62 and accompanying text.
66. Telephone Interview with Dr. Tracey Koogler, supra note 58.
television when one of her cousin's children came to tell her that Danielle would not wake up. You already know the end of the story.

CONCLUSION: VANESSA'S TRANSGRESSION AND THE MEASURE OF DEVIANCE

I keep coming back to Judge Riley's condemnation of Vanessa at sentencing: "Quite frankly, I have difficulty using the word 'mother' to refer to you, because you are the opposite of whatever God intended a mother to be."

I know enough about motherhood to understand the naïve folly in the judge's neat classification scheme. Vanessa plainly was right when she responded, "That's only your judgment." But what is my own judgment, as a purportedly nondeviant mother, of Vanessa?

Maybe because I am a lawyer my answer begins with a struggle over whether Vanessa really is guilty of the crime for which she was convicted. It is hard for me to accept the state's claim that Vanessa suffocated her daughter. If she did, then I would be tempted to agree with Judge Riley: she would be both legally and normatively deviant, a "bad" mother.

And yet, Danielle did not die from her burn wounds. She died from asphyxia. For some reason, in the middle of the night, she stopped breathing. The autopsy showed thousands of tiny burst blood vessels in her brain. Still, I resist the notion Vanessa purposely strangled Danielle. It does not square with what I know about her. I prefer other explanations: perhaps she tried medicating Danielle with cocaine and accidentally overdosed her; maybe Danielle was screaming in pain, or just crying and maybe Vanessa smothered her accidentally, trying to keep her quiet so she did not wake the other sleeping children.

Maybe it is the classification scheme itself that is the problem. Vanessa's guilt or innocence is less binary than the law would permit it to be. More importantly, if I remove my lawyer hat and speak as a mother, I realize that ascertaining the precise cause of Danielle's death becomes almost irrelevant to my judgment of Vanessa. Vanessa's story helps make evident the spectrum stretching from "good" mothers to "bad" ones. She is not the end point of the spectrum, though. Society has put her there as an exemplar. Her tale is a cautionary one, to be sure. But the caution extends to those who would judge her without first knowing the love and the fierceness that moved in her, and could be made to move in any one of us. Of one thing I am certain: The map of motherhood must have room for both of us.