

# William & Mary Journal of Race, Gender, and Social Justice

---

Volume 14 (2007-2008)  
Issue 1 *William & Mary Journal of Women and  
the Law*

---

Article 3

October 2007

## Who is to Shame? Narratives of Neonaticide

Susan Ayres  
sayres@law.tamu.edu

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Juvenile Law Commons](#), and the [Social Control, Law, Crime, and Deviance Commons](#)

---

### Repository Citation

Susan Ayres, *Who is to Shame? Narratives of Neonaticide*, 14 Wm. & Mary J. Women & L. 55 (2007), <https://scholarship.law.wm.edu/wmjowl/vol14/iss1/3>

Copyright c 2007 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.  
<https://scholarship.law.wm.edu/wmjowl>

# WHO IS TO SHAME? NARRATIVES OF NEONATICIDE

SUSAN AYRES\*

## ABSTRACT

In seventeenth-century England, single women who killed their newborns were believed to have acted to hide their shame. They were prosecuted under the 1624 Concealment Law and punished by death. This harsh response eventually evolved into a more humane and sympathetic one, as shown by the increasing number of acquittals in the late eighteenth century and by the sharp drop of prosecutions in the late nineteenth century. Then, in 1922, England passed the Infanticide Act, amended in 1938, which provided that a mother who killed her child would be prosecuted for manslaughter, not murder. Today, the great majority of women prosecuted under the English Infanticide Act do not serve prison sentences, but instead, receive counseling.

This article considers why attitudes and laws about newborn child murder, or neonaticide, have not similarly evolved in America. Typically, when Americans hear news of a “dumpster baby,” we view it as part of a growing epidemic, and rush to judge the mother harshly. Our responses are shaped by emotional reactions of shame, disgust, and anxiety about teen sexuality and motherhood. Curiously, these reactions are similar to those of seventeenth-century England, and as this article argues, will not change until society makes an effort to understand the causes of neonaticide and to deal with its complexities. Literary works provide a great opportunity — through the use of several narrative strategies — to slow society’s rush to judge such mothers. This article examines the narratives found in George Eliot’s *Adam Bede*, Jodi Picoult’s *Plain Truth*, and John Pielmeier’s *Agnes of God*. These works offer insight into the complex and contradictory motives of women who kill newborns, and thus provide a model for judgments that are more humane and authentic, judgments that give recognition to a story we typically would rather suppress.

---

\* Professor of Law, Texas Wesleyan University School of Law. Thanks to participants at the 2006 Feminism and Legal Theory Project Workshop and the 2007 Rights, Ethics, Law and Literature International Colloquium for suggestions and comments on an earlier draft of this paper. I am also grateful to Texas Wesleyan University School of Law for funding support, to the suggestions of my colleague Jason Gillmer, to the research assistance of Rebecca Eaton, Sarah Gilliland, Kara Squier, Marc La Morte, Kimberly Gilkinson, and Renea Overstreet, and to the reference assistance of Anna Teller and Stephanie Marshall. I am also indebted to Catherine Murphy for her careful reading and editing of this article.

## INTRODUCTION

## I. DISGUST AND SHAME

A. *Disgust*B. *Shame*

1. *Shame as a Catalyst for Legal Reform in Seventeenth- to Nineteenth-Century England*
2. *Shame in Contemporary America*

## II. ANXIETY ABOUT THE TEEN MOTHER

## III. LITERARY CONSTRUCTIONS

A. *Summaries of the Literary Works*

1. *Adam Bede*
2. *Plain Truth*
3. *Agnes of God*

B. *Literary Constructions of the "Unwed Servant" and of the "Holy Girl"*C. *Rural Narratives as Naturalizing and Silencing Neonaticides*

1. *Rural Narrative as a Response to Harsh Medical Reform*
2. *Examples of the Rural Narrative*

D. *Counter-Narratives*

## CONCLUSION

## INTRODUCTION

In January of 2006, a fifteen-year-old freshman high school student in Bergenfield, New Jersey, delivered her baby at home and put him in a canvas bag that she left in the trash outside a nearby deli.<sup>1</sup> After police found the baby, they charged the girl, who had been hospitalized for vaginal bleeding, with attempted murder and child endangerment.<sup>2</sup> Because she was a juvenile, her name was not released and the judge placed a gag order on the case.<sup>3</sup> Several letters to the editor expressed anger and disgust over the incident.<sup>4</sup> One letter exclaimed:

---

1. Barbara Williams & Eric Hsu, *Abandoned Newborn Still 'Critical'; Teen Mom Hospitalized, May Face Charges*, THE RECORD (Bergenfield, N.J.), Jan. 9, 2006, at L01.

2. *Id.*; see also Eunnie Park, *Opening Family Channels; Teen Tragedy Galvanizes a Week of Events in Bergenfield*, THE RECORD (Bergenfield, N.J.), Mar. 29, 2006, at L01.

3. See Park, *supra* note 2. This case exemplifies some of the obstacles encountered in researching neonaticide cases. When young mothers are involved, names are often withheld and gag orders entered. See also CHERYL L. MEYER & MICHELLE OBERMAN ET AL., *MOTHERS WHO KILL THEIR CHILDREN: UNDERSTANDING THE ACTS OF MOMS FROM SUSAN SMITH TO THE "PROM MOM"* 46 (2001) [hereinafter MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*].

4. See *infra* notes 5-6 and accompanying text.

If I hear about one more baby being dumped in a garbage can,  
I will lose my mind.

The as-yet-unnamed 15-year-old who committed this unspeakable act . . . made me sad, angry and frustrated. Does she or anyone else think that an infant is a piece of garbage to be disposed of as expediently as possible so that the mother can then just carry on with her life as if nothing happened?<sup>5</sup>

Another writer claimed that “[m]y stomach turns each time I read a new story of a child left to die by a child-mother who has no clue what is happening.”<sup>6</sup> This writer criticized the lack of sex education and education about alternatives, such as adoption and legalized abandonment, stating “Safe Haven is a semi-remedy to a huge issue in our too-glib, too-sexual, too-carefree society.”<sup>7</sup> These opinions typify societal responses, such as that voiced by syndicated columnist Jacquielynn Floyd at the death of a three-month-old:

Ignorant, vicious people injure and even kill their own children. They beat them to death; they torture them; they seal them in trash bags and hide them in garbage bins. It’s true that some species of animals sometimes blow a mental circuit and slaughter their own young, but only humans are so cruel and inventive.<sup>8</sup>

This columnist believes the problem is not only that people are “[i]gnorant [and] vicious,” but also that “Americans have not been embarrassed about having extramarital sex since Eisenhower was in the White House.”<sup>9</sup> She claims that “[s]ex and pregnancy and having babies ought to be a lot less casual.”<sup>10</sup>

These emotional views are not uncommon in cases of infanticide, which is defined as the killing of a child,<sup>11</sup> and in cases of neonaticide,

---

5. Melinda Thompson, Opinion, *THE RECORD* (Bergenfield, N.J.), Jan. 22, 2006, at O02.

6. Sandra Steuer Cohen, Opinion, *THE RECORD* (Bergenfield, N.J.), Jan. 22, 2006, at O02.

7. *Id.*

8. Jacquielynn Floyd, *Anger Is Overdue in Infant Killings*, *THE DALLAS MORNING NEWS*, Feb. 24, 2004, at 1B.

9. *Id.*

10. *Id.*

11. “Infanticide” does not have a consistent meaning, but is sometimes used to describe the killing of a child up to a year old, as in the British Infanticide Act, and sometimes to describe the killing of a child up to ten years old. Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 *AM. CRIM. L. REV.* 1, 19, 31 (1996) [hereinafter Oberman, *Mothers Who Kill*]. Mark Jackson notes that the term “infanticide” was not routinely used until the nineteenth century, so he uses the term “new-born child murder” in his examination of eighteenth-century cases. See MARK JACKSON, *NEW-BORN CHILD MURDER: WOMEN, ILLEGITIMACY, AND THE COURTS IN EIGHTEENTH-CENTURY ENGLAND* 6-7 (1996) [hereinafter JACKSON, *NEW-BORN CHILD MURDER*].

which is defined as the killing of a newborn within the first twenty-four hours,<sup>12</sup> although some researchers extend neonaticide to the first four days.<sup>13</sup> While social responses, such as these editorials, reflect emotional and irrational outbursts, similar puzzled reactions to the problem of infanticide and neonaticide appear in scholarly pieces. For instance, William Langer, a Harvard Professor Emeritus of History, wrote the following: "Only since the Second World War has the contraceptive pill, the intrauterine devices, and the legalization of abortion removed all valid excuses for unwanted pregnancy or infanticide. To the extent that these problems still exist, at least in Western society, they are due primarily to carelessness, ignorance, or indifference."<sup>14</sup>

Today, views about moral decline and ignorance inspire abstinence-only sex education and society's collective disgust with, and shaming of, unwed girls and women who kill their newborns. These views also reflect a refusal to consider the social and psychological circumstances that might impact a woman's actions in concealing her pregnancy and killing her newborn. Many believe that neonaticidal mothers often face so much fear and shame during their pregnancy that they deny the pregnancy, and, when the baby is born, smother or otherwise kill the baby in a dissociative state.<sup>15</sup> Prosecutors then press for

---

12. Phillip J. Resnick, *Murder of the Newborn: A Psychiatric Review of Neonaticide*, 126 AM. J. PSYCHIATRY 1414, 1414 (1970).

13. E.g., Susan Hatters Friedman, Sarah McCue Horwitz & Phillip J. Resnick, *Child Murder by Mothers: A Critical Analysis of the Current State of Knowledge and a Research Agenda*, 162 AM. J. PSYCHIATRY 1578, 1580 (2005). This article primarily focuses on cases and narratives involving newborns killed within the first twenty-four hours. Perhaps, however, the term "neonaticide" should include killings up to the first week of life to make the definition consistent with the accepted medical definition of "early neonatal death." See F. GARY CUNNINGHAM, PAUL C. MACDONALD, NORMAN F. GRANT, KENNETH J. LEVENO, LARRY C. GILSTRAP III, GARY D.V. HANKINS & STEVEN L. CLARK, WILLIAMS OBSTETRICS 2 (20th ed. 1996) ("Early neonatal death refers to death of a live-born infant during the first 7 days after birth. Late neonatal death refers to death after 7 but before 29 days.").

14. William L. Langer, *Infanticide: A Historical Survey*, 1 HIST. CHILDHOOD Q. 353, 362 (1974); see also Lynne Marie Kohm & Thomas Scott Liverman, *Prom Mom Killers: The Impact of Blame Shift and Distorted Statistics on Punishment for Neonaticide*, 9 WM. & MARY J. WOMEN & L. 43, 64 (2002) ("There are vast attempts to blame everyone for what [infanticidal mothers] did except the mother who delivered the baby in the toilet and trashed it in the garbage when the child was impossible to flush away."); Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753, 758 (2006).

The need for anonymous abandonment in 2006 puzzles and disturbs. After all, subsistence levels in the United States are satisfactory, contraception is generally available, and abortion is legal. Single motherhood is less stigmatized, and the institutions of adoption and foster care are well established. How is it then that against a menu of medical, social, and legal alternatives, concealed pregnancy and infanticide have made such a comeback?

*Id.*

15. See, e.g., Margaret G. Spinelli, *Neonaticide: A Systematic Investigation of 17 Cases*,

retribution, but resolve many cases by plea bargains.<sup>16</sup> In the few cases that are tried, juries may either compassionately view the mother as a confused teenager or as a hardened criminal.<sup>17</sup>

Not much has changed in the past four hundred years — at least not in the way society reacts to mothers who kill their infants. The Jacobean law of 1624 (hereinafter “Concealment Law”) criminalized the concealment of the death of an infant by a single mother, who was presumed to have killed her infant in order “to avoid [her] shame.”<sup>18</sup> Many young women were tried and executed under the 1624 Concealment Law,<sup>19</sup> which was not reformed until 1803.<sup>20</sup> At that time, English Parliament removed the presumption of murder and treated all cases of newborn child killing as common law murder.<sup>21</sup> If the prosecution could not prove murder, concealment remained a lesser offense.<sup>22</sup> In 1828, the Offenses Against the Person Act extended the 1803 law to married women,<sup>23</sup> and in 1834, the Poor Laws were reformed to make it more difficult for a single mother to prove paternity, in effect, putting the burden of support on the single mother.<sup>24</sup> According to many, this reform resulted in an increase in child murder cases.<sup>25</sup>

American colonies and states generally adopted the English approach to prosecuting infanticide as murder or concealment.<sup>26</sup> The American states, however, did not adopt England’s twentieth-century reforms, most significantly, the Infanticide Act of 1922.<sup>27</sup> Amended in

---

in *INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL* 105, 108-11 (Margaret G. Spinelli ed., 2003) [hereinafter Spinelli, *Neonaticide*].

16. See Oberman, *Mothers Who Kill*, *supra* note 11, at 21 n.80, 26.

17. Many commentators have discussed the ambivalent treatment of neonaticides. See, e.g., Michael L. Perlin, “*She Breaks Just Like a Little Girl*”: *Neonaticide, the Insanity Defense, and the Irrelevance of “Ordinary Common Sense,”* 10 WM. & MARY J. WOMEN & L. 1, 10-13 (2003).

18. JACKSON, *NEW-BORN CHILD MURDER*, *supra* note 11, at 32 (quoting “An Act to prevent the Destroying and Murthering of Bastard Children,” 1623, 21 Jam. 1 ch. 27 (Eng.)).

19. See JACKSON, *NEW-BORN CHILD MURDER*, *supra* note 11, at 13-15, 36.

20. *Id.* at 170.

21. *Id.* at 170-71.

22. *Id.* at 172.

23. Mark Jackson, *The Trial of Harriet Vooght: Continuity and Change in the History of Infanticide*, in *INFANTICIDE: HISTORICAL PERSPECTIVES ON CHILD MURDER AND CONCEALMENT, 1550-2000*, at 1, 7 (Mark Jackson ed., 2002) [hereinafter Jackson, *The Trial of Harriet Vooght*].

24. Josephine McDonagh, *Infanticide and the Boundaries of Culture from Hume to Arnold*, in *INVENTING MATERNITY* 215, 224 (Susan C. Greenfield & Carol Barash eds., 1999).

25. See, e.g., *id.* (“With some justification, critics of the law saw it as an incitement to infanticide.”).

26. See Jackson, *The Trial of Harriet Vooght*, *supra* note 23, at 2, 7.

27. See Michelle Oberman, *A Brief History of Infanticide and the Law*, in *INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL*, *supra* note 15, at 3, 9 [hereinafter Oberman, *A Brief History*].

1938, the Act treated infanticide of children one year old and younger as manslaughter (not murder).<sup>28</sup> Since the time of the Infanticide Act, mothers in England who kill their children under the age of one are presumed to be acting under the stress of postpartum hormonal imbalance;<sup>29</sup> most do not serve any prison time, but instead, are given psychological counseling and perhaps a sentence of community service.<sup>30</sup> Even though twenty-two countries have followed the English approach to treating infanticide as a lesser form of murder,<sup>31</sup> America still does not.<sup>32</sup>

Recent cases indicate that American society has not advanced in its understanding or dealing with neonaticide.<sup>33</sup> Media reports share the same anxieties and ambivalence found since 1624.<sup>34</sup> One forensic psychologist commented, "I don't think American society is getting closure on this kind of a case . . . . If we keep sensationalizing the crime and then sweeping it under the rug, nothing will change. We haven't figured out why this happens, how to prevent it and how to punish it humanely."<sup>35</sup>

In an effort to understand why "American society is [not] getting closure,"<sup>36</sup> this Article examines narratives surrounding neonaticide

28. *Id.*

29. *See id.*; see also Tony Ward, *Legislating for Human Nature: Legal Responses to Infanticide, 1860-1938*, in *INFANTICIDE: HISTORICAL PERSPECTIVES ON CHILD MURDER AND CONCEALMENT, 1550-2000*, *supra* note 23, at 249, 267-68.

30. *See Oberman, A Brief History*, *supra* note 27, at 9. In a survey of forty-nine women convicted under the Infanticide Act from 1989-2000, "only two were jailed; the rest were given probation, supervision or hospital orders." Maxine Frith, *Scrap Outdated Infanticide Law, Say Judges*, INDEP. (U.K.), May 4, 2005, at 8, available at 2005 WLNR 6965330. Interestingly, not all of Great Britain follows this approach. *See* Judith Duffy, *A Newborn Baby Is Found Dead in a Pond. Another Was Dumped in a Park. So Who Are the Mothers and Why Are They Abandoning Their Own Children?*, SUNDAY HERALD (Scot.), Sept. 11, 2005, at 15, available at 2005 WLNR 14345860. Wales has enacted the Infanticide Act, but Scotland has not. *Id.* Even though Scotland treats infanticide under regular homicide legislation, very few cases are tried. *Id.*

31. Oberman, *A Brief History*, *supra* note 27, at 9; *see also* Oberman, *Mothers Who Kill*, *supra* note 11, at 18 n.68 (listing the following countries and regions as having infanticide acts: Austria, Columbia, Finland, Greece, India, Italy, Korea, New Zealand, the Phillippines, Turkey, New South Wales, Western Australia, Tasmania).

32. *See* MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 58-59 (explaining that in America, the legal response to neonaticide varies widely — some mothers are not charged and some receive heavy sentences).

33. Michelle Oberman observes that "conditions present in 1580 and 1880 remain prevalent today." Oberman, *Mothers Who Kill*, *supra* note 11, at 90; *see also* Jackson, *The Trial of Harriet Vooght*, *supra* note 23, at 2-5 (noting historical consistency of neonaticide cases).

34. *See, e.g.*, Marie McCullough, *High-Profile Newborn Killing Prompts Search for Motives: Experts Say Debate Hasn't Ended Crime*, THE DALLAS MORNING NEWS, Apr. 26, 1998, at 14A, available at 1998 WLNR 7442090.

35. *Id.* (quoting comments of Barbara Kirwin).

36. *Id.*

as reflected in news reports and literary works. These literary works provide insight conducive to a more empathetic understanding of neonaticide.

In previous work on infanticide, I have considered three ways in which society constructs mothers who kill their children: by viewing mothers as mad or bad; by silencing their stories; and by specularizing the mother to reflect patriarchal systems of representation.<sup>37</sup> Neonaticides are generally perceived as having been committed by young mothers,<sup>38</sup> and social constructions differ primarily because of anxiety about teen sexuality and motherhood. Thus, in considering how society constructs — and typically fails to understand, but rushes to judge — mothers who kill their newborns, this Article examines both social and literary narratives.<sup>39</sup>

Social narratives of disgust and shame often lead to simplistic or “quick judgments.”<sup>40</sup> Such quick judgments often involve a balance between the “wrongdoer in need of treatment and correction versus wrongdoer in need of punishment.”<sup>41</sup> When the wrongdoer is a mother who has killed her newborn, the pendulum often swings towards punishment.<sup>42</sup> This rush to judgment is slowed by narratives found in literary works, which “expose[] the reader to the complexity of the

37. Susan Ayres, “[N]ot a Story to Pass On”: *Constructing Mothers Who Kill*, 15 HASTINGS WOMEN’S L.J. 39, 41, 55-61 (2004) [hereinafter Ayres, “[N]ot a Story to Pass On”].

38. At least one study has found that the average age of mothers who kill their newborns is around nineteen. See MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 47. This is consistent with the social perception that neonaticides are committed by young women or girls. *Id.*

39. This Article does not provide an in-depth historical overview of neonaticide, but rather, focuses on contemporary views and constructions, especially in America. This article does, however, consider how contemporary views mirror those of eighteenth- and nineteenth-century England. For a comprehensive cultural study of infanticide in England, see JOSEPHINE McDONAGH, *CHILD MURDER AND BRITISH CULTURE, 1720-1900* (2003) [hereinafter McDONAGH, *CHILD MURDER*].

40. Amnon Reichman, *Law, Literature, and Empathy: Between Withholding and Reserving Judgment*, 56 J. LEGAL EDUC. 296, 304 (2006).

One of the basic components of human culture is the constantly exercised capacity for making judgments. We are quick to judge: we easily determine the reality presented before us, often without pausing to reflect whether what appears . . . as real is indeed real. . . . We tend to categorize people and behavior cursorily, and consequently decide how they should be treated.

*Id.*

41. MELANIE WILLIAMS, *EMPTY JUSTICE: ONE HUNDRED YEARS OF LAW, LITERATURE, AND PHILOSOPHY: EXISTENTIAL, FEMINIST, AND NORMATIVE PERSPECTIVES IN LITERARY JURISPRUDENCE* 133 (2002).

42. This appears to be the case today in America, although mothers are treated more leniently in countries that have infanticide laws, such as England and Wales. See *supra* note 30 and accompanying text. The different responses are shaped in part by the different legal approaches. As indicated above, England and Wales apply the Infanticide Act, which typically results in sentences of treatment, and America applies general homicide statutes, which result in sentences of punishment. *Id.*



human condition even by telling a simple story,"<sup>43</sup> and increase the reader's empathy and compassion for the characters.<sup>44</sup> Moreover, "[t]he reservation of judgment, a residue of the literary withholding of judgment, is liable to make the judgment hard and painful, yet at the same time much more authentic and complete."<sup>45</sup> Through the more complex narrative, literature provides what Winfried Fluck has described as "individual justice," whereby the reader gives the fictional character recognition and self-esteem.<sup>46</sup>

In describing the competing social and literary narratives surrounding neonaticide, Part One of this Article explores society's emotional responses to the perceived "epidemic of dumpster babies."<sup>47</sup> Commonly, a community (or nation) reacts to news of a neonaticide with anger and disgust.<sup>48</sup> The mother might be viewed as both "bad" and as a victim who has killed her newborn as a result of her shame. Rarely does society view mothers of newborns as "mad."<sup>49</sup> These

43. Reichman, *supra* note 40, at 305.

44. *Id.* Reichman argues that because we "reserve judgment" when we read a literary work, "we can focus on getting to know the innermost soul of the other, even if that other person is fictional, and on immersing ourselves in her story and experiencing her life from her viewpoint." *Id.* at 305, 307. In her response to Reichman's article, Martha Nussbaum agrees that "[i]t is the ability to surprise the (narrow) judge and to offer new worlds of experience that is one of literature's most important offerings." Martha Nussbaum, *Reply to Amnon Reichman*, 56 J. LEGAL EDUC. 320, 326 (2006). See also JAMES BOYD WHITE, *HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* 91 (1985) (discussing the characteristics of the "ideal reader," who is aware of the text's multiple "possibilities for perception and response, for judgment and feeling"); Winfried Fluck, *Fiction and Justice*, 34 NEW LITERARY HIST. 19, 25 (2003) (claiming that fiction possesses an "ability to articulate an interiority that cannot be represented in any other way").

45. Reichman, *supra* note 40, at 309. As the following discussion of literary narratives shows, there is a tension between viewing the mother as a passive victim and as a responsible agent. This tension itself slows our judgment by forcing us to contemplate a more complex story of mothers who kill newborns. See also Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, in *NARRATIVE AND THE LEGAL DISCOURSE: A READER IN STORYTELLING AND THE LAW* 289, 310-12 (David Ray Papke ed., 1991) (making a similar point in his argument for why oppressed groups should tell their stories and why majority groups should listen to those stories, Delgado asserts, "[s]tories humanize us" and force us to see reality through the eyes of others).

46. Fluck, *supra* note 44, at 26. Fiction can provide "justice on a symbolic level" by correcting a "lack of recognition" and failure to value a person. *Id.* at 22. Fluck disagrees with some of Nussbaum's views, but argues that "fiction's insistence on the legitimacy of individual claims for justice remains one of its most important moral functions. Fiction is designed to keep the claims of individual justice alive. It is the placeholder of a sense of justice that cannot be guaranteed or enforced by the law." *Id.* at 34-35.

47. Sanger, *supra* note 14, at 783 n.189, 786. The estimated number of neonaticides in the United States is 150 to 300 per year. MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 46. The estimated number of neonaticides in Britain is about thirty per year. Thea Jourdan, *The Ultimate Taboo*, THE SCOTSMAN, July 27, 1998, at 9, available at 1998 WLNR 2546345.

48. See *infra* note 58 and accompanying text.

49. See *infra* note 59 and accompanying text.

emotional reactions of disgust and shame, however, prevent contemporary American society from understanding other causes of neonaticide and from rationally evaluating whether we should reconsider the way we punish neonaticide.<sup>50</sup> The views held by American society are in contrast with the English practice of viewing infanticide (and neonaticide) as a result of postpartum mental disturbance for which the mother should receive treatment, and not punishment.<sup>51</sup>

Part Two considers the basis for society's emotional reaction of disgust and shame and argues that English society's anxiety about unwed servants in the eighteenth and nineteenth centuries parallels American society's anxiety about teen mothers and teen sex in the twentieth century.<sup>52</sup> Anxiety has shifted from concern about the "unwed servant" in earlier centuries, to twentieth-century concerns about "the girl next door" (someone we can sympathize with) or "the other girl" (someone we condemn as a welfare queen).<sup>53</sup>

Part Three contrasts social constructions with those found in the novels *Adam Bede* and *Plain Truth*,<sup>54</sup> and the play *Agnes of God*.<sup>55</sup> In addition to examining how these literary works portray young mothers who kill their newborns, this part also examines the effects a rural narrative has in not only silencing the mother's stories, but also in eliciting a sympathetic response from readers. Finally, Part Three considers the impact of a suppressed counter-narrative — that some mothers kill their newborns not because of their shame, but as a rejection of gender and social expectations.

Overall, this Article argues that works of literature serve an important role by counteracting emotional social constructions, and by providing society with a complex story of neonaticide — a story that can slow both our rush to shame and our tendency to judge the woman who kills her newborn, thereby providing "individual justice."<sup>56</sup>

50. See Reichman, *supra* note 40, at 309. See also discussion *infra* Part I.

51. This Article does not enter into the debate about whether America should enact an infanticide act, or what legal defenses, such as a neonaticide syndrome, should be allowed in prosecutions. Rather, this Article examines how social constructions have blocked an understanding of neonaticide, and how literature provides narrative strategies that can expand these blocked social constructions in order to provide neonaticidal mothers with "individual justice" as described above. See *supra* notes 40, 44-46 and accompanying text.

52. See discussion *infra* Part II.

53. See WANDA S. PILLOW, UNFIT SUBJECTS: EDUCATIONAL POLICY AND THE TEEN MOTHER 28-32 (2004) (describing social anxiety about "girl next door" versus "the other girl"). This contrasts with my research on infanticide in general, which discusses how the infanticidal mother is specularized through patriarchal expectations that women are natural and devoted mothers. See Ayres, "[N]ot a Story to Pass On," *supra* note 37, at 56-57.

54. GEORGE ELIOT, ADAM BEDE (Stephen Gill ed., Penguin Books 1980) (1859); JODI PICOULT, PLAIN TRUTH (2000).

55. JOHN PIELMEIER, AGNES OF GOD (1982).

56. See Fluck, *supra* notes 44, 46 and accompanying text (describing "individual justice"

## I. DISGUST AND SHAME

Because society views “mothers as the altruistic protectors of . . . children,”<sup>57</sup> when a mother kills her child, society views her as “mad” or “bad” and responds to the act with anger or disgust.<sup>58</sup> In comparison, when an unwed mother kills her *newborn*, society does not generally view her as “mad,” but instead claims she is either “bad,” or a victim who acted as a result of her shame.<sup>59</sup> So, in addition to a narrative of the bad mother who callously destroys her newborn, there is also a sympathetic narrative of pity for the mother who acts to hide her shame.<sup>60</sup> This construction of shame and of the sympathetic narrative is seen in seventeenth- to nineteenth-century England as well as today, and the construction implicates not just the young woman, but also society, who is to blame for the mother’s desperate act.

## A. Disgust

Many times, the social response to a baby’s murder is that of horror and disgust.<sup>61</sup> This is not a surprising reaction because disgust often arises, as Martha Nussbaum indicates, with “[b]loodiness and goriness,”<sup>62</sup> and the birth and death of a baby involves both blood and gore.<sup>63</sup> Disgust is also tied to pollution and contaminants,<sup>64</sup> and pregnancy and birth are often seen as disease, corruption (the after-birth for instance),<sup>65</sup> or pollution.<sup>66</sup> Moreover, if the newborn has been

---

found in literature).

57. Oberman, *Mothers Who Kill*, *supra* note 11, at 4.

58. See MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 69; LITA LINZER SCHWARTZ & NATALIE K. ISSER, *ENDANGERED CHILDREN: NEONATICIDE, INFANTICIDE, AND FILICIDE* 3 (2000); see also Marie Ashe, *The “Bad Mother,” in Law and Literature: A Problem of Representation*, 43 HASTINGS L.J. 1017, 1018-19 (1992).

59. Teenager mothers who kill their children are generally not viewed as “mad,” and according to studies, relatively few suffer from mental illness. See MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 55.

60. Josephine McDonagh, *Child-Murder Narratives in George Eliot’s Adam Bede: Embedded Histories and Fictional Representation*, 56 NINETEENTH-CENTURY LITERATURE 228, 247 (2001) [hereinafter McDonagh, *Child-Murder Narratives*].

61. See, e.g., Pamela D. Bridgewater, *Connectedness and Closeted Questions: The Use of History in Developing Feminist Legal Theory*, 11 WIS. WOMEN’S L.J. 351, 355 (1997) (noting typical feelings about infanticide — “of horror, confusion, and sympathy”).

62. MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 165 (2004) [hereinafter NUSSBAUM, *HIDING FROM HUMANITY*].

63. Oberman observes that “[a]t a visceral level, the horror of infanticide seems to grow as the victim’s age increases.” Oberman, *Mothers Who Kill*, *supra* note 11, at 30. A bloody newborn, however, might elicit a great deal of visceral horror and disgust. *Id.*

64. NUSSBAUM, *HIDING FROM HUMANITY*, *supra* note 62, at 83, 87-98.

65. See JACKSON, *NEW-BORN CHILD MURDER*, *supra* note 11, at 66-67 (describing the testimony of eighteenth-century witnesses in concealment trials, who referred to blood as

violently killed (i.e., stabbed or cut), as opposed to smothered, this raises society's level of anger and disgust.<sup>67</sup>

This emotional response is evidenced by a prosecutor's comment that he would never get the picture of the dead baby at the bottom of the dumpster out of his head.<sup>68</sup> The editorials quoted at the beginning of this Article also expressed disgust for acts of neonaticide.<sup>69</sup> Likewise, in the novel, *Plain Truth*, discussed below,<sup>70</sup> a seasoned criminal defense attorney is reluctant to defend an Amish girl accused of murdering her newborn partially because the attorney is so horrified by the act, but also because she had already judged the girl as guilty.<sup>71</sup> Even after she takes the case, the attorney is not comfortable with the idea that a mother could have killed her baby until she learns that psychological denial and dissociation typify neonaticide.<sup>72</sup> This is when the attorney realizes, "[a] passive involvement in the newborn's death — well that was something even I could forgive."<sup>73</sup> Eventually the attorney develops some sympathy,<sup>74</sup> but her reactions probably reflect those of a juror/person who is educated about the characteristics of neonaticide: sympathy mixed with disgust. Professionals, such as counselors, also express horror and disgust when faced with neonaticide.<sup>75</sup>

Nussbaum has argued that while anger might be a valid emotion to rely on as a basis for law, disgust and shame are not.<sup>76</sup> Constructing the neonaticidal mother as "bad" and viewing her acts with disgust

---

corruption and nastiness).

66. PILLOW, *supra* note 53, at 63 ("[D]ebates on the education of school-age mothers contain a common theme of contamination.").

67. See JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 92, 100-01 (discussing influence of marks of violence upon conviction).

68. Nancy H. McLaughlin, *Years Later, Phifer Talks of Regrets, Forgiveness; the Mother of a Baby Left in a Trash Bin Wants Greensboro to Know She's Sorry*, GREENSBORO NEWS & REC., Feb. 22, 2004, at A1, available at 2004 WLNR 20744677 [hereinafter McLaughlin, *Years Later*].

69. See *supra* notes 5-6 and accompanying text.

70. See *infra* section A.2.

71. PICOULT, *supra* note 54, at 33, 54.

72. *Id.* at 132.

73. *Id.* at 57.

74. *Id.* at 116.

75. In an article by a mental health counselor involved in a neonaticide case, the counselor comments, "[m]y experience in discussing neonaticide with colleagues or friends meets with mixed reactions, but usually horror and condemnation against the young mother." E. Christine Moll, *In Defense of TJ's Mother: Neonaticide and the Implications for Counselors*, 41 J. HUMANISTIC COUNSELING, EDUC. & DEV. 150, 155 (2002); see also *How Could Anyone Do That?: A Therapist's Struggle with Countertransference*, in INFANTICIDE: PSYCHOSOCIAL AND LEGAL PERSPECTIVES ON MOTHERS WHO KILL, *supra* note 15, at 201, 208 (describing initial antipathy in treating a neonaticidal mother).

76. NUSSBAUM, HIDING FROM HUMANITY, *supra* note 62, at 13-14.

makes her an "other," someone who is different and evil.<sup>77</sup> In earlier centuries, mothers who killed their newborns were often linked to, and treated like those accused of witchcraft.<sup>78</sup> This same type of vilification occasionally occurs today. For instance, Marianne Biancuzzo, a nineteen-year-old community college student in Arizona, gave birth to a baby in her bathroom.<sup>79</sup> The baby, which she believed was born dead, was shown to have been drowned in the toilet or suffocated.<sup>80</sup> Biancuzzo's younger brother found the baby in a coffee can under the bathroom sink before Biancuzzo could bury it.<sup>81</sup> Although she was charged with first degree murder, she received a jury verdict for negligent homicide and was sentenced to one year in jail with four years of probation.<sup>82</sup> After the trial, her attorney commented that the press unsuccessfully tried to vilify her — and one way it did so was by revealing that her journal entries expressed an interest in witchcraft and Satanism.<sup>83</sup>

### *B. Shame*

The construction of shame has its own problems. Nussbaum argues that like disgust, shame is an unreliable emotion on which to base legal responses because it involves stigmatizing subgroups (in this context, unwed mothers or teenagers), and this is unhealthy "in a society committed to equal respect among persons."<sup>84</sup>

#### *1. Shame as a Catalyst for Legal Reform in Seventeenth- to Nineteenth-Century England*

Unwed mothers who killed their newborns in seventeenth- to nineteenth-century England were viewed as acting to hide their

77. Ayres, "[N]ot a Story to Pass On," *supra* note 37, at 60-61. See also NUSSBAUM, HIDING FROM HUMANITY, *supra* note 62, at 167 ("We are urged to see that person as a monster, outside the boundaries of our moral universe.").

78. See Johanna Geyer-Kordesch, *Infanticide and the Erotic Plot: A Feminist Reading of Eighteenth-Century Crime*, in INFANTICIDE: HISTORICAL PERSPECTIVES ON CHILD MURDER AND CONCEALMENT, 1550-2000, *supra* note 23, at 93, 98-99.

79. *Police Say Woman Put Newborn in Coffee Can*, MOBILE REG., Nov. 12, 1997, at A6, available at 1997 WLNR 6214243.

80. *Id.*

81. *Arizona Mom Gets Year in Jail After Baby's Death; Teen's Newborn Drowned in Toilet at Parent's Home*, DALLAS MORNING NEWS, Dec. 31, 1998, at 40A, available at 1998 WLNR 7420278.

82. *Id.*

83. Stephanie Innes, *Unlike Past, Authorities Going Slow with Inquiry*, ARIZ. DAILY STAR, Aug. 23, 2000, available at 2000 WLNR 4296614. Her attorney said that in this case, the attempt to vilify her backfired and created sympathy for her. *Id.*

84. NUSSBAUM, HIDING FROM HUMANITY, *supra* note 62, at 13-14, 336-37.

shame.<sup>85</sup> Whereas a *married* mother was thought to have killed her newborn because of a “phrenzy,” a *single* mother was generally thought to have killed her newborn because of her shame.<sup>86</sup> These single mothers were regarded as either “cruel and barbaric murderers” or “as modest and virtuous victims of circumstances beyond their control.”<sup>87</sup>

According to legal historian, Mark Jackson, reformers during the eighteenth century — especially medical reformers — consistently viewed single neonaticidal mothers more “humanely,” as modest women who were driven by the shame of losing their virtue.<sup>88</sup> For instance, in 1724, Dr. Bernard Mandeville wrote in *The Fable of the Bees* that

the Destruction of Bastard Infants . . . is almost unavoidable, especially in modest Women . . . [but that] Common Whores . . . hardly ever destroy their Children . . . not because they are less Cruel or more Virtuous, but because they have lost their Modesty to a greater degree, and the fear of Shame makes hardly any Impression upon them.<sup>89</sup>

Similarly, in 1783, Dr. William Hunter gave a lecture arguing for the humanitarian view that single women killed their babies because of their shame,<sup>90</sup> and that although they might also have considered suicide, they rejected that action because it “would infallibly lead to an inquiry, which would proclaim what they are so anxious to conceal.”<sup>91</sup> Such humanitarian views did not gain popularity until the late eighteenth century, when sympathy for the plight of single mothers rose,<sup>92</sup> and the public began to understand that “a woman’s attempts to conceal the birth of her bastard child ‘might proceed from the best causes, from real modesty and virtue.’”<sup>93</sup> Moreover, reformers pointed out that social pressure caused the single woman to conceal her pregnancy in the first place and thus, society was to

---

85. This was reflected in the 1624 Concealment Law, discussed above. *See supra* notes 18-19 and accompanying text.

86. JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 40.

87. *Id.* at 110.

88. *Id.* at 113. As discussed below, other medical reformers who did not take the “humane” view, argued that the infanticides were the result of urban decay and corruption and viewed mothers as monsters. *See infra* note 312 and accompanying text.

89. JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 113-14 (*quoting* Mandeville).

90. *Id.* at 115-16.

91. *Id.* (*quoting* Hunter).

92. *Id.* at 118.

93. *Id.* at 115.

blame for the problem: "that it was unjust to force a woman to conceal her child through shame and then hang her for doing so."<sup>94</sup>

Perhaps these humanitarian views contributed to the high rates of acquittal in the latter part of the eighteenth century.<sup>95</sup> Other possible explanations for the high acquittal rate include conflicts in medical testimony about whether the child was stillborn,<sup>96</sup> and a general reluctance to impose the death penalty.<sup>97</sup>

Although medical reformers espoused humanitarian views of neonaticidal mothers, conservative policy makers rejected reform attempts as undermining social order.<sup>98</sup> Thus, despite attempts to repeal the 1624 Concealment Law beginning in the 1770s,<sup>99</sup> it was not repealed until 1803,<sup>100</sup> and the repeal was motivated not by humanitarian concerns, but by conservative fears about the increasing numbers of illegitimate children burdening the local parishes, about moral laxity in general, and by a resistance to more lenient sentences.<sup>101</sup>

After reforms in the nineteenth century, which replaced the 1624 Concealment Law with a general murder statute,<sup>102</sup> mothers who killed newborns were increasingly viewed through the lens of a mad/bad dichotomy. Because Victorian mothers were seen as sexless, pure, and self-sacrificing, a married mother who killed her baby was either a monster or mad.<sup>103</sup> Single mothers, however, continued to be seen primarily through a seduction narrative.<sup>104</sup> Victorian women were perceived as pure and innocent, so if a single mother killed her baby, she was considered to have been motivated by shame.<sup>105</sup> "To perceive women as having willfully engaged in intercourse, as many undoubtedly did, would be to undermine existing ideals of female purity and innocence."<sup>106</sup> During the eighteenth century, murder convictions for infanticide and neonaticide decreased, but in the nineteenth century, an increasing number of mothers were punished for

---

94. See McDonagh, *Child-Murder Narratives*, *supra* note 60, at 240.

95. See JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 13.

96. *Id.* at 15. See also Jackson, *The Trial of Harriet Vooght*, *supra* note 23, at 11.

97. JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 13-34. Jackson points out that after 1757, there were no convictions in the northern district. *Id.*

98. See *id.* at 125-26, 168.

99. *Id.* at 168.

100. *Id.* at 168-69.

101. *Id.*

102. *Id.* at 170.

103. Deirdre Day-MacLeod, *I Couldn't Kill It Any Other Way: Infanticide in Nineteenth-Century Literature* 49-50 (1996) (unpublished Ph.D. dissertation, The City University of New York) (on file with author).

104. Laura Jeanne Brewer, "To Hide Their Shame": The Infanticide Discourse in Nineteenth-Century Britain 69 (May 1994) (unpublished Ph.D. dissertation, Cornell University) (on file with author).

105. *Id.* at 65, 69-70.

106. *Id.* at 70.

concealment.<sup>107</sup> By the late nineteenth century, prosecutions were rare, but there were occasional highly publicized cases.<sup>108</sup> More infanticidal mothers were seen as “mad,” and eventually this characterization resulted in the passage of the 1922 Infanticide Act, which treated these offenses as manslaughter, rather than as murder.<sup>109</sup>

## 2. Shame in Contemporary America

Today, although Madonna and other women in popular culture proudly challenge social norms by choosing single motherhood, society still stigmatizes unwed mothers. Both legal and medical reformers refer to the mother’s shame. As Meyer and Oberman observe, “[s]hame and guilt have frequently been cited as precursors to concealment of pregnancy,”<sup>110</sup> and media reports described neonaticidal girls as being “overwhelmed by feelings of shame, guilt, and fear.”<sup>111</sup> Researchers find that women who commit neonaticide have poor coping skills, dysfunctional or highly religious families, emotional isolation, and a conflicted pregnancy.<sup>112</sup> These different circumstances contribute to the vicious cycle of denying and concealing a pregnancy, laboring in secret, and killing the newborn.<sup>113</sup> Yet, even when a more complex picture is described, the snapshot reduces to shame: the young woman denied and concealed her pregnancy in the first place because of her shame.<sup>114</sup>

The sense of shame is tied to the construction of the unwed or teen mother. Just as in the past, when the virtuous, seduced maiden narrative competed with the sexual demon temptress narrative,<sup>115</sup> similar tensions exist today between the narrative of a confused young woman or a promiscuous whore. Naomi Wolf traces these modern tensions in her book, *Promiscuities*, and claims that “[w]omen can still be ‘ruined’ by having a sexual past to speak of, just as they were . . . in

---

107. Jackson, *The Trial of Harriet Vooght*, *supra* note 23, at 11.

108. *Id.*

109. See Oberman, *A Brief History*, *supra* note 27, at 8, 9; see also Ward, *supra* note 29, at 266-68 (discussing debates about whether mothers were insane or acting under irresistible impulse).

110. MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 44.

111. *Id.* at 49.

112. See, e.g., Spinelli, *Neonaticide*, *supra* note 15, at 108-09, 111-12.

113. See Oberman, *Mothers Who Kill*, *supra* note 11, at 24-25.

114. See *id.* at 71; MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 42-43. The recent emphasis on abstinence-only sex education relies on a message of shame. See J. Shoshanna Ehrlich, *From Age of Consent Laws to the “Silver Ring Thing”*: *The Regulation of Adolescent Female Sexuality*, 16 HEALTH MATRIX 151, 175 (2006).

115. See McDONAGH, *CHILD MURDER*, *supra* note 39, at 67; see also Geyer-Kordesch, *supra* note 78, at 110 (discussing the seduced maiden narrative of eighteenth-century novels).



the eighteenth and nineteenth centuries.”<sup>116</sup> Recently, abstinence-only sex education programs have focused on both shame and fear — the decision to engage in premarital sex is portrayed as harmful and shameful.<sup>117</sup>

Two recent neonaticide cases demonstrate these opposing narratives. Consuelo Camacho was a victim of sexual abuse by her stepfather.<sup>118</sup> After she gave birth to a son in the shower while the rest of the family was sleeping, she cut the umbilical cord, laid the baby on the shower floor, but then “confused and afraid, she plunged the scissors into the child repeatedly.”<sup>119</sup> She was an eighteen-year-old community college student described as a smart and driven young woman.<sup>120</sup> She claimed to have concealed her pregnancy because of what her parents would have thought about her.<sup>121</sup> When her boss asked if she was pregnant, she said that she had a tumor and was going to have surgery soon.<sup>122</sup> She had a slight build and told her friends and family that a medical problem caused her swollen stomach.<sup>123</sup> Although she has not yet been tried or sentenced, it is likely her plight will be seen sympathetically. Even the detective reportedly stated, “[w]e have a preconceived notion about what we’re going to find . . . [y]ou picture a monster, but then we were met with an articulate, educated young woman.”<sup>124</sup>

In contrast, another college student, Lisa Dawn Scott, did not elicit much sympathy — after pleading guilty, she was sentenced to a twelve year prison term for involuntary manslaughter.<sup>125</sup> The sentence range was three to fourteen years.<sup>126</sup> Lisa Dawn Scott was constructed

---

116. NAOMI WOLF, *PROMISCUITIES: THE SECRET STRUGGLE FOR WOMANHOOD* xxi (1997).

117. See Ehrlich, *supra* note 114, at 175. An example is the teaching method Ehrlich describes in which students peel petals off a rose and then are asked by the teacher “to look ahead to marriage and think about which rose they would like to be — the rose which has nothing left to give, the rose which has fully preserved who it is and what it has to offer, or the damaged, but still beautiful, rose.” *Id.* at 176; see also Sanger, *supra* note 14, at 816 (pointing out the ties between abstinence-only sex education and the “culture-of-life”).

118. Ben Goad, *Young Lives Cut Short; Painful Secrets; the Case of a San Bernardino County Teenager and the Son Who Nearly Died of Stab Wounds Follows a Profile Familiar to Experts*, THE PRESS-ENTERPRISE (Riverside, Cal.), May 7, 2006, at S06.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *People v. Scott*, 844 N.E.2d 429, 432 (Ill. App. Ct. 2006). She had been charged with first-degree murder and concealment of a homicide. Steve Silverman, *Woman Gets 12 Years in Infant’s Death; Newborn Was Found in Trash Bin*, PANTAGRAPH (Bloomington, Ill.), Sept. 25, 2004, at B1.

126. *Scott*, 844 N.E.2d at 434.

not as a victim, but as a callous and promiscuous bad mother.<sup>127</sup> Scott concealed her pregnancy, went to her boyfriend's trailer (he was not the baby's father and claimed not to know she was pregnant), delivered the full-term baby into the toilet while her boyfriend slept, then put the baby into a trash bag which she put in the dumpster.<sup>128</sup> She went to work later that morning and left that night for spring break in Florida, where her friends said they had no idea she had just had a baby or been pregnant, and that she "drank and 'partied' like everyone else."<sup>129</sup>

The trial judge who sentenced Scott was obviously not sympathetic, as shown by the findings of fact:

By [defendant's] behavior, this child, the most innocent and precious human being that could be imagined, is not with us . . . this child . . . was denied her right to live when it was so preventable. . . . [T]his was a full-term baby. The [c]ourt has before it a picture of this child. This is not a situation in which it is an early-term child and might be more a blob of tissue or something like that . . . .<sup>130</sup>

On the motion to reconsider the twelve year sentence, the trial court made the additional comment that the spring break trip to Florida showed the "almost blas[é], somewhat callous attitude about the whole matter."<sup>131</sup> Although Scott denied the pregnancy, and claimed not to have seen the baby breathe or move or to remember cutting the umbilical cord,<sup>132</sup> the trial court did not perceive her as a victim who tried to hide her shame, but as a bad/callous young woman whose recklessness caused the death of a "child [who] became a citizen of our community and of our country and had the right to live."<sup>133</sup> Scott's case, compared to Camacho's, shows the likely narrative when the shame narrative is rejected. Instead of being viewed as acting out of shame, the mother is viewed as bad and is harshly punished.

Society's role in shaming mothers into killing their newborns also appears in discussions about reform. Just as some nineteenth-century English reformers blamed society for causing neonaticide,<sup>134</sup> so do

---

127. Silverman, *supra* note 125.

128. Scott, 844 N.E.2d at 431-32.

129. *Id.* at 432.

130. *Id.* at 433.

131. *Id.* at 433-34.

132. *Id.* at 431.

133. *Id.* at 433.

134. See *supra* note 94 and accompanying text.

contemporary reformers in America.<sup>135</sup> For instance, Oberman makes the following observation:

Thus, despite the patterned nature of these circumstances, each case generates the same tired dialogue regarding the defendant's culpability and the merit and utility of punishment. Society becomes trapped in this ongoing dialogue and, therefore, never comes to grips with the role played by families and communities in contributing to these infants' deaths.<sup>136</sup>

Perhaps this sense of societal blame manifests in the wildly inconsistent sentences for neonaticides,<sup>137</sup> in recent arguments for a neonaticide syndrome,<sup>138</sup> and in the relatively recent enactment of Baby Moses or Safe Haven Laws,<sup>139</sup> which legalize abandonment of newborns.<sup>140</sup> Since the enactment of these Safe Haven Laws in the past ten years, almost all media accounts of neonaticide refer to safe havens, as well as to statistics regarding legal abandonments,<sup>141</sup> in a sense trying to assuage society's concern that it is to blame for the mother's actions by showing that mothers had well-established alternatives.

## II. ANXIETY ABOUT THE TEEN MOTHER

The 1624 Concealment Law targeted single women who were usually unmarried servants,<sup>142</sup> because parishes did not want the financial burden of illegitimate children,<sup>143</sup> and subsequently kept servants under strict surveillance for signs of pregnancy.<sup>144</sup> As Jackson notes, "[a]t the local level, evidence that an unmarried woman was

---

135. See, e.g., Oberman, *Mothers Who Kill*, *supra* note 11, at 52 (pointing to "circumstances latent in society that contribute to and perpetuate this crime").

136. *Id.* at 52. Oberman concluded "[w]e must change the law that isolates and blames only the mothers for this terrible crime. We must begin to identify the myriad ways in which our society tolerates and perpetuates infanticidal situations." *Id.* at 90.

137. See Oberman, *A Brief History*, *supra* note 27, at 9; see also Beth E. Bookwalter, Note, *Throwing the Bath Water Out with the Baby: Wrongful Exclusion of Expert Testimony on Neonaticide Syndrome*, 78 B.U. L. Rev. 1185, 1194-97 (1998).

138. See, e.g., Judith E. Macfarlane, Note, *Neonaticide and the "Ethos of Maternity": Traditional Criminal Law Defenses and the Novel Syndrome*, 5 CARDOZO WOMEN'S L.J. 175, 216-21 (1998).

139. Sanger, *supra* note 14, at 756 n.19.

140. *Id.* at 753.

141. See Lisa Black, *Experts Debate Merits of Safe-Haven Laws*, CHI. TRIB., Aug. 9, 2006, available at 2006 WLNR 14001442; Geoff McKee, *A Mother's Deadly, Preventable Secret*, BALTIMORE SUN, Aug. 19, 2007, at 15A, available at 2007 WLNR 16163637.

142. See Jackson, *The Trial of Harriet Vooght*, *supra* note 23, at 9; JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 40, 62.

143. JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 64.

144. *Id.* at 61-65.

pregnant aroused anxieties about illicit sex, unmarried motherhood, illegitimacy, and the poor rates.”<sup>145</sup> Due to this local surveillance, there were more prosecutions in villages than in towns and cities.<sup>146</sup>

In contemporary America, while there is not much local surveillance over the bodies of single girls or woman for signs of pregnancy, anxiety about unwed/teen mothers has resulted in shifting constructions from the problem of the unwed servant to the problem of the unwed teen.<sup>147</sup> Pairing the concepts of teen and mother creates a social conflict.<sup>148</sup> As the anthropologist, Sarah Blaffer Hrdy, writes: “No matter how or why she happened to conceive so young, there is a general (and reasonable) perception that girls in their early teens make poor mothers.”<sup>149</sup> This social anxiety is tied to the regulation of sexuality and concerns about financial responsibility often based on racial stereotypes.<sup>150</sup>

Wanda Pillow traces this shift in focus from the unwed woman to the unwed teen in her book, *Unfit Subjects*.<sup>151</sup> Beginning in the 1880s, when homes for unwed mothers were established, “unwed mothers were recharacterized from wanton vixen to ‘fallen women,’ females who found themselves in dire circumstances, often for reasons beyond their control or due to their own mistaken judgment of a male.”<sup>152</sup> Around the 1940s, black unwed mothers began to be seen as a moral problem, and unlike white unwed mothers, as “not treatable” because they were “wanton breeders,” i.e., “their problems of unwed pregnancy were inherent and instilled in their culture and community.”<sup>153</sup> These racialized views resulted in segregated homes for unwed mothers (especially in the south) that continued to exist until the 1970s when the social focus shifted to the problem of *teen* pregnancy.<sup>154</sup> Ironically, the focus of teen pregnancy emerged at a time when teen birth

145. *Id.* at 61.

146. See Jackson, *The Trial of Harriet Vooght*, *supra* note 23, at 52. See also Deborah A. Symonds, *Reconstructing Rural Infanticide in Eighteenth-Century Scotland*, 10 J. WOMEN'S HIST., Summer 1998, at 63, 66 (“Between 1661 and 1821, at least 347 women were investigated on complaints of infanticide . . . . Most of these women were villagers.”) [hereinafter Symonds, *Reconstructing*].

147. Pat Smith, *Pregnant with Meaning: Teen Mothers and the Politics of Inclusive Schooling*, 23 Bri. J. Soc. Educ. 497, 497-98 (2002) (book review).

148. *Id.* at 497-99.

149. SARAH BLAFFER HRDY, *MOTHER NATURE: MATERNAL INSTINCTS AND HOW THEY SHAPE THE HUMAN SPECIES* 190 (1999). The “reasonableness” of this perception has been challenged, as indicated below. See *infra* notes 171 and 176 and accompanying text.

150. PILLOW, *supra* note 53, at 27-28.

151. See generally PILLOW, *supra* note 53.

152. *Id.* at 20.

153. *Id.* at 20, 24.

154. *Id.* at 26; see also Ehrlich, *supra* note 114, at 161 (tracing history of pregnant teen crisis).

rates were at their lowest (from the late 1960s to the 1980s),<sup>155</sup> but the teen population was at its highest and adolescence was defined as a separate stage of development.<sup>156</sup>

Pillow describes how society first viewed the teen sympathetically as "the girl next door," and then unsympathetically as "the other girl."<sup>157</sup> In the 1970s, the pregnant teen was viewed as the "girl next door," who could be helped by social policies.<sup>158</sup> During this time, the public was sympathetic to the white unwed teen mother, who was "constructed as a young woman who had made a mistake."<sup>159</sup> Pillow describes how social policies such as increased access to birth control and Title IX were enacted during this period.<sup>160</sup>

By the mid-1980s, however, social concern shifted from "the girl next door" to the "other girl."<sup>161</sup> The "other girl" discourse viewed teen pregnancy as the problem of the black unwed mother,<sup>162</sup> a social construction tied to the decline of the family and "as a social ill, linked with poverty, immorality, and promiscuity."<sup>163</sup> Pillow notes that just as the problem of teen pregnancy in the 1970s was viewed as an epidemic,<sup>164</sup> the problem of the black unwed mother was viewed as an epidemic in the 1980s — even though birth rate statistics did not support this comparison.<sup>165</sup>

Additionally, during the 1980s, society began to monitor the pregnancy rates of Latinas (which were increasing while pregnancy

155. PILLOW, *supra* note 53, at 26.

156. *Id.* at 26-27; see also Helen Wilson & Annette Huntington, *Deviant (M)others: The Construction of Teenage Motherhood in Contemporary Discourse*, 35 J. SOC. POL'Y 59, 60 (2005) (beginning in the late 1800s, adolescence was seen as a separate life stage).

157. PILLOW, *supra* note 53, at 28-29.

158. *Id.*

159. *Id.* at 31.

160. *Id.* at 31-32. See also Ehrlich, *supra* note 114, at 163.

161. PILLOW, *supra* note 53, at 34-35.

162. *Id.* at 35.

163. *Id.* at 34; see also Barbara Omolade, "Making Sense": Notes for Studying Black Teen Mothers, in *MOTHERS IN LAW: FEMINIST THEORY AND THE LEGAL REGULATION OF MOTHERHOOD* 270, 270-71 (Martha Albertson Fineman & Isabel Karpin eds., 1995); Chris Bonell, *Why Is Teenage Pregnancy Conceptualized as a Social Problem? A Review of Quantitative Research from the USA and UK*, 6 CULTURE, HEALTH & SEXUALITY 255, 265-67; Martha Albertson Fineman, *Intimacy Outside of the Natural Family: The Limits of Privacy*, 23 CONN. L. REV. 955, 959-60 (1991); Dorothy E. Roberts, *The Unrealized Power of Mother*, 5 COLUM. J. GENDER & L. 141, 146-49 (1995) (book review) (examining construction of Black mothers as outside the class labeled ideal mothers).

164. PILLOW, *supra* note 53, at 27.

165. *Id.* at 35; see also Wilson & Huntington, *supra* note 156, at 62 (making similar observations about the construction of teen mothers in America, New Zealand, and the United Kingdom, and concluding that the social construction of the problem teen is based on "discourses of welfare dependency and social exclusion, the ideological foundation of which is masked by its mediation through scientific literature").

rates for white teens and African American teens were decreasing).<sup>166</sup> The focus on Latinas' pregnancy rates stemmed from a social concern (by white policy makers) that Latina/o minorities would become the majority in a "browning of America."<sup>167</sup> More recently, legal writers have criticized mainstream reproductive rights groups for failing to meet the needs of Latinas.<sup>168</sup>

Even though teen pregnancy rates in America dropped between 1990 and 2000,<sup>169</sup> America still has the highest teen birth rate of industrialized nations.<sup>170</sup> Interestingly, some researchers have criticized the notion that teens make bad mothers. For example, researchers Helen Wilson and Annette Huntington point out that in the past, society viewed the teenage years as the "optimal time physiologically for childbirth."<sup>171</sup> They note that today, the reverse is true,<sup>172</sup> and that social studies and scientific studies "invariably position[] [teenage motherhood] as a social or public health problem."<sup>173</sup> Wilson and Huntington argue, however, that teen mothers may be "vilified because they are seen to be actively choosing an alternative path to their middle-class peers, one that does not satisfy contemporary governmental objectives."<sup>174</sup> Moreover, Wilson and Huntington assert that many of the scientific studies have methodological shortcomings,<sup>175</sup> and researchers have failed to take into account qualitative accounts of teen motherhood, which are typically more positive than quantitative accounts:

In contrast to the bleakness which typifies the findings of the quantitative science, young mothers in these interview studies see themselves as making a success of their lives in a variety of

---

166. PILLOW, *supra* note 53, at 36.

167. *Id.*; see also Nina Perales, *Cultural Stereotype and the Legal Response to Pregnant Teens*, in MOTHER TROUBLES: RETHINKING CONTEMPORARY MATERNAL DILEMMAS 81, 87 (Julia E. Hanigberg & Sara Ruddick eds., 1999) (describing cultural stereotypes about Latina girls making good mothers at a young age). According to Pillow, the white policy makers' concerns do not seem to be so much about the decline of the family as the "browning of America." PILLOW, *supra* note 53, at 36-37.

168. See generally Angela Hooton, *A Broader Vision of the Reproductive Rights Movement: Fusing Mainstream and Latina Feminism*, 13 AM. U. J. GENDER SOC. POL'Y & L. 59 (2005).

169. Frank Jossi, *Sharp Decline in Teen Pregnancy Prompts Researchers to Ponder What Works: Contraception and Abstinence May Be the Key*, 40 CONTEMP. SEXUALITY, Sept. 2005, at 1, 1.

170. *Id.* The teen birth rate in the U.S. is 43 teens per 1000; in the U.K., it is 31 per 1000 (the U.K. has the second highest teen birth rate). *Id.* Japan has the lowest teen birth rate of 5 teens per 1000. *Id.*

171. Wilson & Huntington, *supra* note 156, at 61.

172. *Id.*

173. *Id.* at 62.

174. *Id.* at 69.

175. *Id.* at 63.

ways. For example, according to participants, having a baby provoked positive life changes such as getting off drugs and alcohol, reconnecting with their families, improved self-esteem, and/or a sense of direction and purpose. Countering the view that teenagers are ill prepared for parenthood, interview studies found that most young women were proud to be parents, keen to be good parents and found motherhood enjoyable and/or satisfying.<sup>176</sup>

Thus, the social construction of teen pregnancy as a problem perhaps misconstrues teens' actual experience of motherhood, and similar to England's concern about unwed servants in earlier centuries,<sup>177</sup> seems to be driven by economic and moral concerns.<sup>178</sup>

Media reports describing young women who commit neonaticide reflect the social anxiety over pregnant teens and use both images of the teen mother. She is sometimes portrayed sympathetically as "the girl next door" (the young college student or honors high school student) and at other times is judged harshly as "the other girl" (the immigrant or the promiscuous college student).<sup>179</sup>

The depiction of the teen mother as either "the girl next door" or "the other girl," may influence criminal sentences. For instance, in a review of thirty-seven cases between 1990-1999, Meyer and Oberman claim that media reports focus on affluent white girls because society views neonaticide committed by them as shocking, and "[t]his implies that neonaticide is somehow understandable, if not excusable, when committed by poorer, more desperate women, or for that matter, a woman of color."<sup>180</sup> An example of this socio-economic sentiment can be seen in the comments of the trial judge in the case of Amy Ellwood, a young New York woman who wanted to make her baby's birth look like a miscarriage:<sup>181</sup> "You are . . . an intelligent, overindulged and privileged child of two educated, upper-middle-class parents, not some lonely, undereducated, underprivileged, abandoned teenage mother alone somewhere in a dirty room."<sup>182</sup>

176. *Id.* at 65 (citations omitted).

177. *See infra* notes 143-47 and accompanying text.

178. *See* Barbara Omolade, *supra* note 163, at 271, 285. Social scientists have constructed black teen mothers as a "social problem" by suppressing personal stories and experiences. *Id.* Omolade provides examples of personal stories to make her argument that "subjectivity and specific language need therefore to be at the center of all our inquiries." *Id.*

179. Many media accounts do not indicate the race of the mother or abandoned baby.

180. MEYER & OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN*, *supra* note 3, at 47; *see also* Elizabeth Rapaport, *Mad Women and Desperate Girls: Infanticide and Child Murder in Law and Myth*, 33 *FORDHAM URB. L.J.* 527, 538 n.64 (2006) (providing examples of public captivation with middle class teens who commit neonaticide).

181. PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN & THE MYTH OF INNOCENCE* 64, 72 (1997).

182. *Id.* at 91. The judge also "lectured Ellwood's parents for failing to intervene when

This case and others suggest that when affluent girls commit neonaticide, the public sentiment is that they should be harshly punished because they had alternatives. While race and socioeconomic status undoubtedly influence sentences for neonaticide, other factors, such as whether there are signs of violence upon the body or whether the mothers try to “dupe the public into pitying them for a lost or kidnapped baby,” also cause harsher sentencing.<sup>183</sup>

### III. LITERARY CONSTRUCTIONS

Although contemporary reactions to neonaticide show the same strong level of disgust and anger as in previous times, literary works on neonaticide and infanticide proliferated in the Romantic and Victorian eras compared to today. Perhaps Romantic and Victorian authors were keener to write about the problem because they viewed themselves as moral scribes and teachers, whereas contemporary authors do not.<sup>184</sup>

Romantic and Victorian works on neonaticide include William Wordsworth’s poem, “The Thorn”; George Eliot’s novel, *Adam Bede*; Elizabeth Gaskell’s novel, *Ruth*; Walter Scott’s novel, *The Heart of Mid-Lothian*; Johann Wolfgang von Goethe’s *Faust*; Frances Trollope’s *Jessie Phillips*; Elizabeth Barrett Browning’s dramatic monologue, “The Runaway Slave at Pilgrim’s Point”; and Harriet Beecher Stowe’s *Uncle Tom’s Cabin*.<sup>185</sup> I doubt this is an all-inclusive list of Romantic

---

they knew she was pregnant.” *Id.* at 90.

183. See PEARSON, *supra* note 181, at 73 (citing a detective who distinguished overt acts of aggression such as stuffing toilet paper down a baby’s throat from more passive acts such as putting the baby in a garbage bag and throwing it in the trash); *id.* at 88-89 (claiming that women who “dupe” the public receive longer sentences); see also JACKSON, NEW-BORN CHILD MURDER, *supra* note 11, at 100-01, 140-41, 144-45 (noting that evidence of violence could influence conviction, whereas the lack of evidence of violence could influence acquittals in the eighteenth century; however, during the latter part of the century, juries were reluctant to convict women even when there was obvious proof of murder); Perlin, *supra* note 17, at 20-21 (describing the public’s feeling of anger at being duped by Susan Smith).

184. See Thomas W. Laqueur, *Bodies, Details, and the Humanitarian Narrative*, in THE NEW CULTURAL HISTORY 176, 180 (Lynn Hunt ed., 1989) (claiming that the rise of the novel empowered authors to wield more authority because authors “den[ie]d their own mode of production as mere fictions” (quoting a critic of the era)).

185. WILLIAM WORDSWORTH, *The Thorn*, in THE COMPLETE POETICAL WORKS OF WORDSWORTH 74 (Andrew J. George ed., Riverside Press 1932) (1904); ELIOT, *supra* note 54; ELIZABETH CLEGHORN GASKELL, *RUTH* (1855); WALTER SCOTT, *THE HEART OF MID-LOTHIAN* (David Hewitt & Alison Lumsden eds., Edinburgh University Press 2004) (1818); JOHANN WOLFGANG VON GOETHE, *FAUST: A TRAGEDY* (Bayard Taylor trans., 1899); FRANCES MILTON TROLLOPE & JESSIE PHILLIPS: *A TALE OF THE PRESENT DAY* (1844); ELIZABETH BARRETT BROWNING, *The Runaway Slave at Pilgrim’s Point*, in THE COMPLETE POETICAL WORKS OF ELIZABETH BARRETT BROWNING 191 (1900); HARRIET BEECHER STOWE, *UNCLE TOM’S CABIN* (1900). For criticism and references to other works, see, e.g., JILL L. MATUS,



and Victorian works that focus on neonaticide, and certainly many other novels contain a neonaticide tangential to the main plot.<sup>186</sup>

In comparison, relatively few contemporary literary works depict neonaticide as a thematic focus.<sup>187</sup> In addition to the two analyzed here — Jodi Picoult's 2000 novel, *Plain Truth*, which was made into a Lifetime television movie, and John Pielmeier's 1978 play, *Agnes of God*, which was produced on Broadway and made into a film — a third contemporary work is the novel *Baby's Breath*, in which a

---

UNSTABLE BODIES: VICTORIAN REPRESENTATIONS OF SEXUALITY AND MATERNITY (1995); McDONAGH, CHILD MURDER, *supra* note 39; WRITING BRITISH INFANTICIDE: CHILD-MURDER, GENDER, AND PRINT, 1722-1859 (Jennifer Thorn ed., 2003).

186. See Catherine R. Hancock, "It Was Bone of Her Bone, and Flesh of Her Flesh, and She Had Killed It": Three Versions of Destructive Maternity in Victorian Fiction, 15 LITERATURE INTERPRETATION THEORY 299, 299 (2004) (discussing *Adam Bede* and two other lesser known novels about infanticide, *A Manchester Shirtmaker* by Margaret Harkness and *Mrs. Keith's Crime* by Lucy Clifford). See also the 1892 play HER STEP-DAUGHTER by Gabriela Preissova that inspired the opera JENUFA, by the Moravian composer, Leos Janacek in 1903 and revised in 1908. Graeme Jenkins, *Moments of Truth*, PLAYBILL (Dallas Opera), Nov. 2004, at 12, 14 (playbill on file with author). The opera involves a young woman who becomes pregnant, is spurned by her lover, and leaves the village to have her child. After the baby is born, Jenufa's stepmother kills the baby in order to cover the shame of illegitimacy and make it easier for Jenufa to marry the brother of her ex-lover, who has spurned her. See also SCHWARTZ & ISSER, *supra* note 58, at 9-10 (providing synopsis of opera).

187. The list of contemporary works would be larger if it included infanticide, which is found in the following: TONI MORRISON, BELOVED (1987) (telling the story of a nineteenth-century infanticide by a runaway slave); RENATE DORRESTEIN, A HEART OF STONE (Hester Velmans trans., 2000) (1998) (describing a woman's postpartum suicide and killing of her family). Moreover, Laura Dawkins has analyzed several works written during the Harlem Renaissance in which mothers killed their children to save them from the world. Laura Dawkins, *From Madonna to Medea: Maternal Infanticide in African American Women's Literature of the Harlem Renaissance*, 15 LITERATURE INTERPRETATION THEORY 223, 223 (2004) (analyzing Angelina Weld Grimke's short story, *The Closing Door*, Georgia Douglas Johnson's play, *Safe*, and Shirley Graham's play, *It's Morning*). Lori Saint-Martin has analyzed the Quebec novel, L'OBEISSANCE, by Suzanne Jacob, about a mother who orders her eight-year-old daughter to drown herself in the river. Lori Saint-Martin, *Infanticide, Suicide, Matricide, and Mother-Daughter Love: Suzanne Jacob's L'obéissance and Ying Chen's L'ingratitude*, 169 CANADIAN LITERATURE 60, 61 (2001). Schwartz & Isser also discuss the opening of Maxine Hong Kingston's 1989 novel, *Woman Warrior*, which includes a tale about the narrator's aunt, No-Name, who disgraces her family by having an illegitimate child and then drowns herself and the baby. See SCHWARTZ & ISSER, *supra* note 58, at 15. They also discuss a 1901 play, *Alan's Wife*, by Florence Bell and Elizabeth Robins, in which a mother kills her handicapped child. The killing is described as an act of love, based on the mother's fear "that if and when she is unable to care for the child, he will be placed in harm's way." *Id.* at 15. Finally, there are also a handful of contemporary poems about infanticide including SEAMUS HEANEY, *Limbo*, in WINTERING OUT (1972) (analyzed by Susan Sage Heinzelman, "Going Somewhere": Maternal Infanticide and the Ethics of Judgment, in LITERATURE AND LEGAL PROBLEM SOLVING: LAW AND LITERATURE AS ETHICAL DISCOURSE 73, 89-92 (Paul J. Heald ed., 1998)) and NIKKI GIOVANNI, *Susan Smith*, in QUILTING THE BLACK-EYED PEA: POEMS AND NOT QUITE POEMS 80-81 (2002).

Berkeley college student conceals her pregnancy and leaves her newborn in the trash receptacle of a subway station restroom.<sup>188</sup>

The lack of contemporary works about neonaticide perhaps reflects society's suppressed response by considering neonaticide an epidemic and yet denying its existence. Michelle Oberman has observed that even though neonaticides share similarities, society acts shocked every time — "[w]e just don't want to know what we know."<sup>189</sup>

Interestingly, contemporary works about neonaticide do not mirror social constructions about teen mothers. Rather than depict the mothers as "the other girl" or "the girl next door," *Plain Truth* and *Agnes of God* depict the mothers as "the holy girl."<sup>190</sup> Both *Plain Truth* and *Agnes of God*, as well as *Adam Bede*, narrate a rural account of neonaticide.<sup>191</sup> These rural narratives silence the mothers and also naturalize their acts, thus making the mothers' actions more sympathetic. Contemporary works also attempt to elicit sympathy by injecting modern psychology to help explain the mothers' motives and actions.<sup>192</sup> These works, however, complicate our understanding by narrating an agentic account of mothers who kill newborns. In these narratives, mothers are portrayed not as victims, but as responsible agents who reject gendered expectations and norms. As discussed in the Introduction, the value of literary works is precisely this ability to provide a more complex story of neonaticide, one which slows readers' judgment and elicits readers' compassion and empathy.<sup>193</sup> Before discussing these various literary constructions, a summary of the works must be considered.

## A. Summaries of the Literary Works

### 1. Adam Bede

George Eliot's 1859 novel, *Adam Bede*, takes place in 1799 in the fictional village of Hayslope.<sup>194</sup> Eliot wrote *Adam Bede* after the legal reforms of 1803,<sup>195</sup> but the action occurs under the 1624 Concealment

---

188. LYNNE HUGO & ANNA TUTTLE VILLEGAS, *BABY'S BREATH* (2000). This Article does not analyze *Baby's Breath* because it is not as well known as *Plain Truth* or *Agnes of God*.

189. Karen R. Long, *Searching for Answers on Mothers Who Kill*, PLAIN DEALER (Cleveland), Apr. 5, 2003, available at 2003 WLNR 351278 (quoting Michelle Oberman).

190. See discussion *infra* Part III.B.

191. ELIOT, *supra* note 54; PICOULT, *supra* note 54; PIELMEIER, *supra* note 55.

192. See JACKSON, *NEW-BORN CHILD MURDER*, *supra* note 11, at 64.

193. See *supra* notes 44-46 and accompanying text.

194. ELIOT, *supra* note 54, at 49.

195. *Adam Bede* was first published in 1859. The 1803 reforms made infanticide common law murder. See *supra* notes 20-21 and accompanying text.

Law.<sup>196</sup> Eliot wrote in a letter that she had based the plot of *Adam Bede* on her Methodist aunt's experience: she "had visited a condemned criminal, a very ignorant girl who had murdered her child and refused to confess . . . she had stayed with her praying, through the night . . . and the poor creature at last broke out into tears and confessed her crime."<sup>197</sup>

Unlike the defendant described by Eliot's aunt, Hetty Sorrell was not ignorant but a beautiful, yet selfish and conniving seventeen-year-old orphan living with her paternal uncle.<sup>198</sup> Hetty worked as a dairy-maid and helped care for the children; however, she "often took the opportunity, when her aunt's back was turned, of looking at the pleasing reflection of herself."<sup>199</sup> Many men were under the sway of Hetty's beauty, including the carpenter, Adam Bede, and the young squire, Arthur Donnithorne.<sup>200</sup> Although Hetty's uncle had encouraged her to court Adam Bede, a man of her social station, Hetty foolishly believed that Arthur, a squire, would marry her because Arthur had secretly given her gifts and had seduced her.<sup>201</sup> Arthur continued his flirtation with Hetty until Adam discovered the couple embracing in the woods.<sup>202</sup> Adam accused Arthur of destroying Hetty's character "and bringing shame and trouble on her and her relations."<sup>203</sup> Arthur left the village to join the army.<sup>204</sup> Before long, Hetty was engaged to Adam Bede.<sup>205</sup>

Before Hetty married Adam, she realized she was pregnant and ran away to find Arthur under the pretext of visiting her cousin, Dinah.<sup>206</sup> The narrator describes Hetty as "a young blooming girl, not knowing where to turn for refuge from swift-advancing shame,"<sup>207</sup> hoping that "something would happen to set her free from her terror. . . . All the force of her nature had been concentrated on the one

---

196. ELIOT, *supra* note 54, at 49 (stating the year to be 1799). The 1624 Concealment Law provided that if a single mother concealed her pregnancy and her baby was later found dead, she was presumed to have killed the baby. See *supra* note 18 and accompanying text.

197. ELIOT, *supra* note 54, at 540. McDonagh cites other literary influences for *Adam Bede* including Scott's *Heart of Mid-Lothian*, Wordsworth's *The Thorn*, Goethe's *Faust*, Browning's *The Runaway Slave at Pilgrim's Point*, and *Medea*. See McDonagh, *Child-Murder Narratives*, *supra* note 60, at 229-31. Matus notes other contemporaneous cases in which mothers buried newborns alive. MATUS, *supra* note 185, at 168 (discussing the 1851 case of Maria Clarke and 1855 case of Elizabeth Lound).

198. ELIOT, *supra* note 54, at 127-32.

199. *Id.* at 117.

200. *Id.* at 127-31.

201. *Id.* at 141-46.

202. *Id.* at 347.

203. *Id.* at 344.

204. *Id.* at 511.

205. *Id.* at 385-86.

206. *Id.* at 416.

207. *Id.* at 410.

effort of concealment.”<sup>208</sup> When Hetty discovered that Arthur had left England for Ireland, she resolved to drown herself because “she could never endure that shame before her uncle and aunt . . . and everybody who knew her.”<sup>209</sup>

The rest of the story unfolds during her trial and confession to Dinah. After searching for Arthur, she eventually took lodging and delivered the baby, whose gender is never disclosed.<sup>210</sup> The next day, Hetty “had a strange look with her eyes”<sup>211</sup> as she wandered into the countryside, where a laborer noticed “her because she looked white and scared . . . [and] a bit crazy.”<sup>212</sup> Hetty confessed to Dinah that she despaired and “the thought came into my mind that I might get rid of it and go home again. The thought came all of a sudden . . . I longed so to be safe at home.”<sup>213</sup> She told Dinah, “I don’t know how I felt about the baby. I seemed to hate it — it was like a heavy weight hanging round my neck; and yet its crying went through me, and I daredn’t look at its little hands and face.”<sup>214</sup> Although the laborer who passed in the countryside heard “a strange cry,” he looked around but didn’t see anything until he returned later and “saw something odd and round and whitish lying on the ground under a nut-bush by the side of [him]. And [he] stooped down on hands and knees to pick it up. And [he] saw it was a little baby’s hand.”<sup>215</sup>

Hetty was arrested the next day when she had returned to the grave because she could not get the baby’s cries out of her head.<sup>216</sup> She told Dinah that she buried the crying baby because she “couldn’t kill it any other way.”<sup>217</sup>

At trial, Hetty was convicted even though she denied giving birth to the baby.<sup>218</sup> After the death sentence was read, Arthur galloped onto the scene at the last minute with a royal pardon.<sup>219</sup> Hetty’s sentence was commuted to transport, but she died on her return from America.<sup>220</sup>

---

208. *Id.* at 411.

209. *Id.* at 431, 426.

210. *Id.* at 477-80.

211. *Id.* at 478.

212. *Id.* at 479.

213. *Id.* at 498-99.

214. *Id.* at 499.

215. *Id.* at 480.

216. *Id.* at 480-81.

217. *Id.* at 499.

218. *Id.* at 474.

219. *Id.* at 507.

220. *Id.* at 515, 584.

## 2. Plain Truth

Jodi Picoult's best-selling novel, *Plain Truth*, published in 2000 and made into a Lifetime television movie in 2004, can be viewed as a modern version of *Adam Bede*. In *Plain Truth*, a seventeen-year-old Amish (or Plain) girl living in the rural community of Paradise, Pennsylvania, is accused of murdering her newborn.<sup>221</sup> The novel opens with Katie Fisher's secret delivery of her son in the calving pen of the barn:

She concentrated on the hides of the Holsteins until their black spots shimmied and swam. She sank her teeth into the rolled hem of her night-gown. There was a funnel of pressure, as if she were being turned inside out. . . .

It was over as suddenly as it had begun. And lying on the matted, stained hay between her legs was a baby.<sup>222</sup>

After she cut the baby's umbilical cord with the scissors used for calving, she gave the baby her pinkie to suck and prayed, "Lord . . . please make this go away."<sup>223</sup> She fell asleep, and when she awoke, the baby and the scissors were gone.<sup>224</sup> Several hours later, one of the dairy hands discovered a dead newborn baby under a blanket in the barn.<sup>225</sup> When the "English" detective arrived to investigate, Katie denied having had a baby, even as blood was running down her leg.<sup>226</sup> She was rushed to the local emergency room where it became clear that she had recently delivered.<sup>227</sup> Although Katie initially denied having had a baby,<sup>228</sup> and continued to deny it even when her milk came in,<sup>229</sup> she later admitted that she was pregnant after being interviewed by psychologists and psychiatrists several times.<sup>230</sup> Katie continued to deny killing the baby and claimed she remembered nothing after the baby's birth except waking up and finding the baby gone.<sup>231</sup>

Katie's mother, Sarah, and Katie's boyfriend, Samuel, also denied knowing that she was pregnant.<sup>232</sup> After Katie was formally charged

---

221. PICOULT, *supra* note 54, at 42-43.

222. *Id.* at 3.

223. *Id.* at 4.

224. *Id.* at 5.

225. *Id.* at 7.

226. *Id.* at 13.

227. *Id.* at 22, 27-28.

228. *Id.* at 13, 37, 38, 53-54.

229. *Id.* at 13, 22, 84.

230. *Id.* at 185.

231. *Id.* at 191-92, 201-02, 212, 236-37.

232. *Id.* at 29, 33-34, 107.

with murder, her cousin, Ellie, a burned out but successful criminal defense attorney, reluctantly agreed to defend Katie.<sup>233</sup> Like the cousins Hetty and Dinah in *Adam Bede*, Katie's salvation (her legal, not religious salvation) was her cousin Ellie, who came to live with the Fisher family on the Amish farm as a condition of Katie's bail.<sup>234</sup>

Like the loyal Adam Bede, Katie's Amish boyfriend, Samuel, was devoted to her, even when it became clear that he could not be the baby's father because they had never had sex.<sup>235</sup> For months after her murder charge, Katie denied knowing how she became pregnant.<sup>236</sup> But eventually she admitted to Ellie that she had fallen in love with Adam (a graduate student at the university her brother Jacob attended), that he was the baby's father, and that she would not have killed the baby because she wanted him once she saw him in her arms.<sup>237</sup>

*Plain Truth* differs from *Adam Bede* in its focus on twentieth-century medicine and psychology, especially the discussion by the forensic psychologist and psychiatrists who interview Katie and explain that most neonaticides are committed by girls who suffer from denial of their pregnancy and dissociation at the birth.<sup>238</sup> Thus, in defending Katie, Ellie first considered an insanity defense, and even though her experts agreed that she had a good chance of proving insanity because Katie likely dissociated at birth, Katie refused to plead insanity because she wanted "to make things right" and could not tell the court she killed the baby.<sup>239</sup>

Ellie therefore changed the plea to not guilty and attempted to find a medical explanation for the baby's death.<sup>240</sup> Fortunately for her defense, a pathologist found it likely that the baby died as a result of listeriosis, a bacteria caused from the unpasteurized dairy milk Katie

233. *Id.* at 43. Leda, Ellie's aunt, had been raised Amish, but left to marry a Mennonite, so she was placed under a permanent *bann*, i.e., she was forbidden to eat at the same table with the Amish, to drive them, or to transact a sale with them. *Id.* at 20.

234. *Id.* at 44-46.

235. *Id.* at 103, 107-09. While Amish teenagers court, and even have the opportunity to run wild before they are baptized (a time called "*Rumspringa*"), not many engage in sex. *Id.* at 136-37. When girls do have unexpected pregnancies before marriage, they suffer the *bann*, but afterwards, are forgiven and welcomed with their baby back into the community. *Id.* at 341; see also *DEVIL'S PLAYGROUND* (Wellspring 2002) (film documentary about *Rumspringa*).

236. PICOULT, *supra* note 54, at 196-99. Katie initially told a psychiatrist she was raped at a fraternity party, but the psychiatrist said she was clearly lying. *Id.* at 197.

237. *Id.* at 236-37. Katie ventured away from the farm to visit her brother Jacob in the city because her mother wanted reports about Jacob, who had been placed under the *bann* and rejected by their father, Aaron. *Id.* at 126-29.

238. *Id.* at 132, 192-93.

239. *Id.* at 237-38.

240. *Id.* at 243.

drank while pregnant.<sup>241</sup> At trial, Katie insisted on testifying, and confessed on cross examination that she killed the baby.<sup>242</sup> However, when Ellie confronted her on re-direct, Katie said she meant that she had killed the baby because she drank unpasteurized milk.<sup>243</sup>

The jury deliberated for three days before Katie accepted a plea bargain offer, and the judge sentenced her to one year of electronic monitoring, stating "I see no reason to shame the Amish community any more."<sup>244</sup> The novel ends with Ellie's discovery that Katie did not kill her baby after all.<sup>245</sup> This revelation is foreshadowed when Katie's mother tells Ellie "I do what I have to do" while she was wringing chickens' necks,<sup>246</sup> and when she made the secretly-pregnant Ellie chamomile tea for nausea, like she had for Katie.<sup>247</sup> Thus, in the final scene, when Sarah gave Ellie the missing scissors that had been used to cut the umbilical cord, Ellie realized that Sarah had killed and hid the newborn while Katie was asleep.<sup>248</sup>

### 3. Agnes of God

John Pielmeier's 1978 Pulitzer Prize-winning Broadway play, *Agnes of God*, which was subsequently produced as a film that was nominated for three Academy Awards, takes place primarily in a convent, where a dead infant was discovered in the room of Sister Agnes.<sup>249</sup> After Agnes was indicted for manslaughter, Dr. Livingstone, a court-appointed psychiatrist, interviewed Agnes to determine if she was legally insane.<sup>250</sup> This determination forms the basis of the play's action in which Mother Miriam initially tries to impede Dr. Livingstone's efforts because Mother Miriam believes Agnes would die in either a mental institution or prison.<sup>251</sup> Later, Mother Miriam

---

241. *Id.* at 253-55, 353-57.

242. *Id.* at 375.

243. *Id.* at 375-80.

244. *Id.* at 399-400. Before trial, Katie had rejected a ten-year plea bargain offer after she visited a prison and discovered that she could not survive in that environment. *Id.* at 256-60.

245. *Id.* at 404.

246. *Id.* at 303.

247. *Id.* at 311.

248. *Id.* at 404. Sarah killed the baby because she had already lost one child, Jacob, to the English world, and had lost her youngest child when she drowned skating — she told Ellie a mother would do anything to save a child. *Id.* Aside from the *bann*, Sarah was fearful of her husband's reaction. *Id.*

249. PIELMEIER, *supra* note 55, at 7-8.

250. *Id.* at 8.

251. *Id.* at 27. Mother Miriam first tries to impede Dr. Livingstone's efforts, but later, when Dr. Livingstone raises the possibility of acquittal because of legal innocence (insanity), Mother Miriam cooperates by telling Dr. Livingstone what she could remember about events that might have led to Agnes's pregnancy and by allowing Dr. Livingstone

tries to impede Dr. Livingstone because she believes that Agnes was an unconscious innocent whose baby really was a miracle.<sup>252</sup>

At first, Agnes denied having had a baby,<sup>253</sup> even though she had been “found unconscious . . . [and] suffering from excessive loss of blood” in her room where the baby was also discovered.<sup>254</sup> Mother Miriam told Dr. Livingstone that no one at the convent knew about Agnes’s pregnancy, because “(*shaking her habit*) She could have hidden a machine gun in here if she wanted.”<sup>255</sup> During initial interviews with Dr. Livingstone, Agnes denied the existence of the baby, and claimed that if there was a baby, it came from God.<sup>256</sup> Although Mother Miriam tried to explain that Agnes is “different . . . [s]he’s special . . . [s]he’s gifted. She’s blessed,”<sup>257</sup> Dr. Livingstone soon learned that Agnes suffered a hysteric repression of her pregnancy,<sup>258</sup> experienced stigmata,<sup>259</sup> and heard voices.<sup>260</sup> She also learned that Agnes’s mother had sexually abused her.<sup>261</sup> When she was hypnotized, Agnes revealed that there was another person in the room during the birth — Agnes claimed that other person was her dead mother.<sup>262</sup>

When Dr. Livingstone confronted Mother Miriam about the presence of another person during the labor and birth and accused her of killing the baby, Mother Miriam admitted she knew about the pregnancy, but that since it was too late to do anything to avoid scandal, she told Agnes not to reveal her condition.<sup>263</sup> Mother Miriam was initially present during the labor, but claimed she left Agnes alone to get help because “there was so much blood, [she] panicked.”<sup>264</sup> During the second hypnosis, Agnes admits that she strangled the newborn to “save her . . . [to] give her back to God.”<sup>265</sup> Agnes claims, however, that the baby’s father was God:

---

to hypnotize Agnes. *Id.* at 36, 51. Neither Mother Miriam nor Dr. Livingstone are professionally neutral — Dr. Livingstone’s sister joined a convent and died when she was not given proper medical treatment for acute appendicitis, and Mother Miriam is Agnes’s natural aunt, although she did not know Agnes as a child. *Id.* at 14, 44.

252. *Id.* at 59 (“she’s been touched by God”); *id.* at 61-62 (stating the miracle of Agnes’s pregnancy); *id.* at 73 (“I’ll never forgive you for what you’ve taken away”).

253. *Id.* at 17.

254. *Id.* at 7-8.

255. *Id.* at 10.

256. *Id.* at 17-18.

257. *Id.* at 12.

258. *Id.* at 62.

259. *Id.* at 25-26, 28, 61.

260. *Id.* at 20.

261. *Id.* at 41-42. Agnes’s mother told her that she was a mistake and was bad, told her not to have children, and burned her vagina with a cigarette. *Id.*

262. *Id.* at 57-58.

263. *Id.* at 66-67.

264. *Id.* at 67-68.

265. *Id.* at 73.



I stood in the window of my room every night for a week. And one night I heard the most beautiful voice imaginable. It came from the middle of the wheat field beyond my room, and when I looked I saw the moon shining down on Him. For six nights He sang to me. Songs I'd never heard. And on the seventh night He came to my room and opened His wings and lay on top of me. And all the while He sang.<sup>266</sup>

In the last act, Dr. Livingstone explains that Agnes later died in a hospital; apparently, she was acquitted on the basis of insanity.<sup>267</sup> The play does not resolve the mystery of how Agnes became pregnant or the tension between religious mystery and modern science:

DOCTOR: But how did it happen?

MOTHER: You'll never find the answer to everything, Doctor. One and one is two, yes, but that leads to four and then to eight and so on to infinity. The wonder of science is not in the answers it provides but in the questions it uncovers. For every miracle it finally explains, ten thousand more miracles come into being.

DOCTOR: I thought you didn't believe in miracles today?

MOTHER: But I *want* to believe. I want the *opportunity* to believe. I want the *choice* to believe.<sup>268</sup>

### *B. Literary Constructions of the "Unwed Servant" and of the "Holy Girl"*

In *Adam Bede*, Hetty, who has been seduced by Arthur, concealed her pregnancy and ultimately killed the baby because of her own shame and the shame it would bring her family. Hetty's story illustrates the conventional shame narrative of the seduced maiden: she is "the poor victim of lechery."<sup>269</sup> And while *Adam Bede* does not blame her for her actions, critics have noted Eliot's harsh treatment of Hetty as a selfish and nonmaternal figure.<sup>270</sup> Although others —

266. *Id.* at 74.

267. *Id.* at 75. In the film version, there is a courtroom scene in which, after hearing testimony, the court holds that Agnes was not responsible for her actions and orders her returned to the convent to be cared for with proper medical supervision. *AGNES OF GOD* (Columbia Pictures 1985).

268. PIELMEIER, *supra* note 55, at 62.

269. McDonagh, *Child-Murder Narratives*, *supra* note 60, at 248.

270. *Id.* at 247; Hancock, *supra* note 186, at 304 ("[S]he is decidedly anti-maternal long before she even becomes pregnant."); Miriam Jones, "The Usual Sad Catastrophe": From

especially her suitors — view her as maternal, Hetty is not.<sup>271</sup> She considers the cousin who is her charge as “little tiresome Totty, that was made such a pet of by everyone, and that Hetty could see no interest in at all.”<sup>272</sup> Totty is “the very nuisance of her life . . . a day-long plague.”<sup>273</sup> Hetty’s concealment of her pregnancy and killing of her newborn is perhaps not all that surprising given her view that she “would have been glad to hear that she should never see a child again; they were worse than the nasty little lambs that the shepherd was always bringing in to be taken special care of in lambing time; for the lambs *were* got rid of sooner or later.”<sup>274</sup>

Perhaps the modern reader extends some sympathy to her by believing Hetty is insane or hysterical at the time she buried the baby and by recognizing that “she has also felt [the baby as] an instinctual bond that she cannot sever.”<sup>275</sup> But it is likely that many readers view Hetty’s actions with ambivalence.<sup>276</sup> Although Hetty did not kill the baby in an especially vicious manner, she appeared fairly cold-blooded in burying the crying baby.<sup>277</sup> Hetty confessed to Dinah that she “seemed to hate” the baby, and considered it “a heavy weight hanging round [her] neck”<sup>278</sup> which she killed in order to preserve her reputation and that of her family.<sup>279</sup> It is not surprising that neither the

*the Street to the Parlor* in Adam Bede, 32 VICTORIAN LITERATURE & CULTURE 305, 322 (2004); MATUS, *supra* note 185, at 171-74 (discussing how Eliot prepares the reader not to be surprised when Hetty buries the baby).

271. MATUS, *supra* note 185, at 175-78.

272. ELIOT, *supra* note 54, at 186.

273. *Id.* at 200. See also Hancock, *supra* note 186, at 304.

274. ELIOT, *supra* note 54, at 200.

275. See MATUS, *supra* note 185, at 173 (“Eliot is careful to allow Hetty a minimal bond with her newborn infant” through “a magnetic pull to the place where she covered the baby in woodchips and turf and the unbearable resounding of the baby’s cries in her head.”).

276. Perhaps some readers extend sympathy, as Hancock suggests, because Hetty stated that she had hoped someone would find the baby. See Hancock, *supra* note 186, at 307 (“Eliot does attempt to humanize Hetty to a certain degree.”); see also Rosemary Gould, *The History of an Unnatural Act: Infanticide and Adam Bede*, 25 VICTORIAN LITERATURE & CULTURE 263, 270 (1997) (arguing that although the first part of the novel portrays Hetty unsympathetically, the second part of the novel portrays her sympathetically: “Dinah’s merciful care of Hetty brings about her transformation. The novel stirs up a desire that Hetty be punished . . . but then allows that punishment to protect the reader from a recognition of our vindictiveness because it turns our sympathy toward her.”); Mason Harris, 9 ENG. STUD. CAN., June 1983, at 177, 187 (claiming that Hetty acts with ambivalence “[b]y burying the child, but not completely, Hetty tries both to kill it and to let it live, and of course the result is death”).

277. Harris, *supra* note 276, at 187.

278. See Hancock, *supra* note 186, at 304-05.

279. Ironically, her family is more concerned about how she has shamed them and ruined her reputation than with Hetty’s emotional state during the criminal trial and sentencing. See *id.* at 306 (“Apparently Hetty’s uncle and surrogate father can accept her as a jilt, but not a murderess . . . Eliot makes it abundantly clear that the Poyser’s primary concern

jury nor most readers develop much sympathy for Hetty because Eliot does not present her sympathetically, but rather, "condemn[s] Hetty for her sexual desires" and lack of maternal instinct.<sup>280</sup> Ultimately, Eliot's purpose was not to raise our sympathy for Hetty; instead, she wrote as a moralist to warn of the unintended consequences of our actions,<sup>281</sup> and also to educate readers about needed social reforms of laws placing the burden of illegitimacy on single mothers.<sup>282</sup>

Whereas Victorian novels such as *Adam Bede* reflected social anxiety about the unwed servant who killed her infant, contemporary works often reject social narratives about the pregnant teen as either "the girl next door" or "the other girl."<sup>283</sup> In both *Plain Truth* and *Agnes of God*, the teen mother veers from contemporary social constructions, and might be described as "the holy girl" — the person we would least expect to commit neonaticide.<sup>284</sup> Katie, as an Amish

---

upon hearing the news of Hetty's crime is their reputation, and not their niece's well-being."). See also MATUS, *supra* note 185, at 174-75 ("The text suggests that Hetty's minimal capacity for relationship and rootedness is a primary factor in her failure as a mother; in contradiction it also supports current views of infanticide that emphasise the shame of being seduced and abandoned and the power of community scorn and ostracisation.").

280. McDonagh, *Child-Murder Narratives*, *supra* note 60, at 256; see also Jones, *supra* note 270, at 322-23 (noting Eliot's "condemnatory" tone and commenting, "what is the reader being told in *Adam Bede* about the infanticidal woman . . . ? She is limited, vain, unintelligent, venal, narcissistic, manipulative, lacking in spirituality, and exceptionally attractive physically.").

281. See Hancock, *supra* note 186, at 308 ("Hetty's story epitomizes one of the most dreaded fears of Victorian society. Her loss of sexual purity and lack of maternal feeling threaten the very foundations of Victorian culture.").

282. See McDonagh, *Child-Murder Narratives*, *supra* note 60, at 251-55 (noting that Eliot critiqued the harsh illegitimacy laws, including the 1624 statute and the anti-Poor Laws); Hancock, *supra* note 186, at 316 (noting that Eliot "exhibit[ed] a desire to heighten the reading public's awareness of environmental conditions present in Victorian England that encouraged child-killing").

283. An exception is *Baby's Breath*, which follows "the other girl" construction. Because the novel is not as well-known as either *Plain Truth* or *Agnes of God*, it is not a focus of this Article.

284. See PICOULT, *supra* note 54; PIELMEIER, *supra* note 55. But see HUGO & VILLEGAS, *supra* note 188. *Baby's Breath* portrays the neonaticidal mother a bit closer to the girl next door — she is the intelligent, nerdy girl who goes off to college, where she does not fit in with the popular co-eds, but is shunned and put on their "freshman fatties" list. By the time she becomes pregnant, her boyfriend has dropped her, and she has moved from the dorm to an apartment where her closest social contacts are with her middle-aged neighbor, Clara Edwards, and with her puppy, Coffee Bean. After she delivers her baby in a subway station restroom, she goes to a sleazy hotel in a questionable part of San Francisco, where a crack addict helps her. Altogether, Allie is not quite the typical "girl next door," despite her middle class upbringing/background (but by artist-parents) nor "the other girl." Allie is similar to many recent cases in which college girls at prestigious universities have killed their newborns, such as Jennifer Paluseo, a nineteen-year-old freshman at the University of Massachusetts, who was described as "an all-around good family girl" and an honors student in high school. Kevin Rothstein & Tamara Race, *Mother Charged in Baby's Death*; DA: *Plymouth Woman Left Body in Trash*, PATRIOT LEDGER (Quincy, Mass.), June

girl, is not “the girl next door” or “the other girl.” The county attorney is reluctant to prosecute because Katie is Amish,<sup>285</sup> but the detective comments, “[s]he looks like the girl next door. One who happens to read the Bible instead of V.C. Andrews.”<sup>286</sup> Throughout the novel, the Amish are described as “folks like you and me,”<sup>287</sup> but also as completely different.<sup>288</sup> Ultimately, Ellie bases her defense on the fact that Katie is *not* “the girl next door,” but an Amish girl, too Amish to murder,<sup>289</sup> because the Amish way is to submit and to turn the other cheek.<sup>290</sup> At one point during the trial preparation, Ellie emphasizes that Katie is an “Amish girl . . . not some self-absorbed mall-rat teen.”<sup>291</sup>

Likewise, Agnes, as a nun, has taken a vow of chastity, and is neither “the girl next door” nor “the other girl.” Because she lives in a convent, she is even farther removed from normal young adulthood than is Katie. Moreover, Agnes’s mother raised her away from society and did not even send her to elementary school.<sup>292</sup> Mother Miriam tries to tell Dr. Livingstone that Agnes is “different . . . [s]he’s special . . . [s]he’s gifted. She’s blessed.”<sup>293</sup> Agnes suffered from mental illness (a characteristic rarely documented in neonaticidal mothers) and was acquitted by reason of insanity.<sup>294</sup> The miraculous (and at least mysterious) nature of her seduction and the signs of stigmata on her hands,<sup>295</sup> truly make Agnes a “holy girl.”

Thus, while contemporary works attempt to educate readers about the characteristics of neonaticide, the best-selling works *Plain Truth* and *Agnes of God* do not portray mothers as the “girl next door” or “other girl.”<sup>296</sup> One might wonder whether the lack of

13, 2002, at 1, available at 2002 WLNR 11303140. She was charged with murder and pleaded guilty to involuntary manslaughter with a sentence of one year in jail and ten years probation. Fred Contrada, *Infanticide Cases Spur Legislation*, REPUBLICAN (Springfield, Mass.), May 3, 2004, at A01, available at 2004 WLNR 17981339.

285. PICOULT, *supra* note 54, at 39.

286. *Id.* at 40. The American writer, V.C. Andrews, wrote best-selling young adult novels that contained a gothic element in stories about orphans and dysfunctional families.

287. *Id.* at 51.

288. *Id.* at 61, 127.

289. *Id.* at 172.

290. *Id.* at 251-52.

291. *Id.* at 293.

292. PIELMEIER, *supra* note 55, at 21.

293. *Id.* at 12.

294. *Id.* at 75.

295. *Id.* at 25, 70, 74.

296. While *Plain Truth* is not technically about a mother who kills her newborn (because we learn on the last page that the infant’s grandmother was the guilty actor), the reader believes up until that point that the novel is about maternal neonaticide. PICOULT, *supra* note 54, at 404.

contemporary literature about neonaticide,<sup>297</sup> and contemporary literature's rejection of the typical social constructions of neonaticide reflect a widespread social repression of the issues surrounding neonaticide, which is ironically seen by many as an epidemic.<sup>298</sup>

One could argue that the literary representation of "the holy girl" is not the result of repression, but an attempt to disrupt social expectations by causing readers to be more empathetic and compassionate when they hear news reports of neonaticide. As discussed in the Introduction, literature can provide a complex story that allows readers to slow their rush to judgment and to view others with empathy and compassion.<sup>299</sup> By providing a sympathetic portrayal of "the holy girl," does *Plain Truth* or *Agnes of God* influence readers to respond sympathetically when they read a news account about a high school teen who delivered her baby in the school nurse's office and then smothered the baby, such as the sixteen-year-old Catholic school student at Cardinal Spellman High School in the Bronx?<sup>300</sup> Possibly; I suspect, however, that some readers might not view the Catholic High School student with compassion — even if they had read *Plain Truth* or *Agnes of God*.

As Maria Aristodemou points out, reading literature does not automatically make one a better, more moral, or more sympathetic person: "[C]laims about the 'liberating' or 'humanising' potential of literature cannot be assumed without inquiring into whether morality

---

297. The lack of adolescent literature about neonaticide should also be mentioned. Recent surveys of teen literature about pregnancy reveal no books about neonaticide. One scholar concluded that the teen books about pregnancy fail to accurately reflect realities about "choice, gender, and education." See Kristen M. Nichols, *Teen Pregnancy in Young Adult Literature* 64 (2005) (unpublished M.A. thesis, Iowa State University) (on file with Iowa State University Library); see also Diane Emge, *I'm Pregnant! Fear and Conception in Four Decades of Young Adult Literature*, 4 *YOUNG ADULT LIBRARY SERVS.* 22 (Winter 2006). Email correspondence with both Nichols and Emge affirm that there are no young adult books about neonaticide.

298. See, e.g., Floyd, *supra* note 8 ("These crimes are so wretchedly common."). For a discussion about seeming epidemics of abandoned babies, see Sanger, *supra* note 14, at 781-85. See also NUSSBAUM, *HIDING FROM HUMANITY*, *supra* note 62, at 250-61 (talking about "moral panics" about sex).

299. See *supra* notes 43-46 and accompanying text; see also Perlin, *supra* note 17, at 31; Ashe, *supra* note 58, at 1018, 1022; Ayres, "[N]ot a Story to Pass On," *supra* note 37, at 66-70. In this article I argued that Toni Morrison's *Beloved* "allows us to imagine an ethic that possibly could have motivated a mother to kill her child." *Id.* at 70.

300. See Larry Celona & Joe McGurk, *HS Bathroom-Birth Teen May Get Off Hook*, N.Y. POST, June, 26, 2003, at 16, available at 2003 WLNR 15026707. There are no news reports indicating the teen was charged (maybe there was a gag order entered), but her mother stated that they wanted to keep the incident private and that "[s]he's 16, she's staying in school, she's getting good grades. I don't know what the medical examiner said and we don't care." *Id.* The medical examiner ruled the death a homicide, but the news reports say that the teen was "unlikely to be charged." *Id.*

can be taught at all and, if so, how.”<sup>301</sup> Aristodemou argues that the focus should not be on the humanizing potential of literature, but on how literature reflects reality and how it “participates in making and shaping it, contributing to our sense of what is natural, common sense, and inevitable.”<sup>302</sup> By portraying Katie and Agnes sympathetically, *Plain Truth* and *Agnes of God* may not automatically make readers sympathetic to mothers who kill newborns, but these works do have the potential to transform and confront social views through the various narrative strategies they employ.<sup>303</sup>

### *C. Rural Narratives as Naturalizing and Silencing Neonaticide*

Today, most reported neonaticides take place in urban settings, and, like the 1850s, when Eliot wrote *Adam Bede*, society sporadically expresses concern with the epidemic of urban infanticides.<sup>304</sup> Eliot, however, chose to locate her novel in a rural setting, a narrative strategy which Christine Krueger has argued disrupts views of neonaticide as urban corruption and thus naturalizes the killings and makes them legally unspeakable.<sup>305</sup> This part of the article examines whether the same can be said of contemporary works *Plain Truth* and *Agnes of God*.

#### *1. Rural Narrative as a Response to Harsh Medical Reform*

One characteristic of Victorian novels about infanticide is the emphasis on landscape and the outdoors, combining nature with an unnatural act.<sup>306</sup> For instance, *Adam Bede* “cast[s] the unwed mother as a country girl; [the baby is] concealed in nature.”<sup>307</sup> Krueger argues that the effect of this rural narrative is to “maintain that infanticide should be set outside the realm of legal representation. Whereas the

---

301. MARIA ARISTODEMOU, *LAW AND LITERATURE: JOURNEYS FROM HER TO ETERNITY* 5 (2000).

302. *Id.* at 6; see WHITE, *supra* note 44, at 122-23, 126-27 (asserting that “the writer [is] a maker of his or her language,” “making meaning with words about the world,” and the meaning “is always shifting”).

303. MATUS, *supra* note 185, at 5; see also Delgado, *supra* note 45, at 311-12.

304. See McDonagh, *Child-Murder Narratives*, *supra* note 60, at 232-33. However, in the 1700s and early 1800s, most reports of baby killing occurred in the countryside, in part because neighbors kept unwed servants under surveillance for signs of pregnancy. See *supra* notes 142-46 and accompanying text.

305. Christine L. Krueger, *Literary Defenses and Medical Prosecutions: Representing Infanticide in Nineteenth-Century Britain*, 40 VICTORIAN STUD. 271, 279 (1997); see also McDONAGH, *CHILD MURDER*, *supra* note 39, at 70-72 (discussing the rural narratives found in Romantic and Victorian literature about infanticide).

306. Day-MacLeod, *supra* note 103, at 5.

307. Krueger, *supra* note 305, at 279.

law is associated with urban male institutions . . . infanticide is removed to the pastoral, feminine, private, and overwhelmingly, the natural realm. As such, it becomes literally unspeakable in legal discourse.”<sup>308</sup>

Krueger discusses how Victorian literary authors used this strategy to oppose the narrative of conservative medical reformers, who focused on “innocent babies and corrupt urban life.”<sup>309</sup> For instance, some nineteenth-century doctors, such as William Burke Ryan, painted a picture of an epidemic of infanticide occurring in cities:

In the quiet of the bedroom we raise the box-lid, and the skeletons are there. In the calm evening walk we see in the distance the suspicious-looking bundle, and the mangled infant is within. By the canal side, or in the water, we find the dead child. In the solitude of the wood we are horrified by the ghastly sight; and if we betake ourselves to the rapid rail in order to escape the pollution, we find at our journey's end that the mouldering remains of a murdered innocent have been our travelling companion; and that the odour from that unsuspected parcel truly indicates what may be found within.<sup>310</sup>

These medical reformers rejected the humanitarian view that infanticidal women were victims,<sup>311</sup> and instead, viewed infanticidal mothers as monsters who should be punished for willful murder.<sup>312</sup>

Cultural historians have traced these competing representations as a struggle by doctors for power, especially in local offices of the coroner.<sup>313</sup> This political struggle was especially apparent in Middlesex, England, where a medical doctor was appointed coroner.<sup>314</sup> In the 1860s, the coroner began returning huge numbers of murder verdicts for infanticide.<sup>315</sup> In 1867, he returned seventy-nine murder verdicts, which was more than half the total number of murder verdicts for all of England and Wales.<sup>316</sup> The coroner then accused the rest of the

308. *Id.* See also Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 232-33 (2006). Pruitt examines “rural rhetoric” in legal decisions and legislation. She observes that there is a “widespread judicial assumption — that rural areas are safe, or at least safer than urban ones.” *Id.* at 232.

309. Krueger, *supra* note 305, at 273.

310. George K. Behlmer, *Deadly Motherhood: Infanticide and Medical Opinion in Mid-Victorian England*, 34 J. HIST. MED. & ALLIED SCI. 403, 404 (1979) (quoting Ryan).

311. See *supra* Part I.B.1.

312. Krueger, *supra* note 305, at 275.

313. See, e.g., Hancock, *supra* note 186, at 301-02.

314. *Id.* at 302.

315. Krueger, *supra* note 305, at 284-85; see also McDONAGH, *CHILD MURDER*, *supra* note 39, at 123.

316. Krueger, *supra* note 305, at 285. The total number of murder verdicts in England

country of ignoring the epidemic and claimed by extrapolation that 16,000 infants were killed in London in 1866.<sup>317</sup> His investigation inspired other doctors and journalists to investigate, which eventually resulted in the exposure of baby farming as the cause of many infant deaths.<sup>318</sup>

Krueger views the role of literature in this medical struggle as providing an alternative narrative of a seduced and betrayed woman that judges and juries could sympathize with in order to acquit accused mothers: "[w]hereas benighted, unscientific judges . . . preferr[ed] to concentrate on the tragic stories of infanticidal mothers rather than the forensic evidence regarding their dead babies, the medical coroners of Middlesex would present the public with a brave new urban world where pastoral representations of infanticide could not apply."<sup>319</sup>

Victorian literature used several means to create an alternative sympathetic narrative: placing infanticidal mothers in a natural landscape, not allowing the mothers to tell their story, thus protecting their privacy, and using supernatural effects to thwart investigation of the murder.<sup>320</sup>

## 2. Examples of the Rural Narrative

Although *Plain Truth* and *Agnes of God* are contemporary novels, they share characteristics of *Adam Bede* by representing neonaticide in a rural setting and in a context reminiscent of the past — the simple life of the Amish and of the medieval convent.<sup>321</sup> Both Hetty in *Adam Bede* and Katie in *Plain Truth* are farm girls;<sup>322</sup> Arthur falls in love with Hetty while she sensually churns butter,<sup>323</sup> and Katie gives birth in the dairy.<sup>324</sup> Agnes, a nun, lives in a self-sufficient convent amidst

---

and Wales was 149 in 1867. *Id.*

317. *Id.*

318. See MCDONAGH, CHILD MURDER, *supra* note 39, at 125. In baby farming, a mother left her infant under the care of a "baby farmer," who often provided very poor nourishment and neglected the infant. *Id.* Baby farmers were eventually found responsible for many infanticides. *Id.*

319. Krueger, *supra* note 305, at 284.

320. *Id.* at 271-72. The supernatural in modern works does not prevent the reader from discovering facts about the killing as it does in the Victorian works, but interestingly, modern works also contain supernatural features. For example, in *Plain Truth*, Katie is haunted by her sister, Hannah, who drowned when she was seven. PICOULT, *supra* note 54, at 63-64. Moreover, Katie's lover, Adam, is a ghost hunter, who is studying for a doctorate in paranormal science. *Id.* at 82-83. Likewise, *Agnes of God* also has supernatural features, including the possible miracle of Agnes's pregnancy and the sign of the stigmata that appears twice on her hands. PIELMEIER, *supra* note 55, at 25-26, 70, 74.

321. PICOULT, *supra* note 54; PIELMEIER, *supra* note 55.

322. See generally ELIOT, *supra* note 54; PICOULT, *supra* note 54.

323. ELIOT, *supra* note 54, at 129-30, 146.

324. PICOULT, *supra* note 54, at 3.



fields and a hen house.<sup>325</sup> All three locales are removed from "urban corruption" and law.<sup>326</sup>

In *Adam Bede*, the rural beauty of Hayslope is contrasted with the urban dangers of the city.<sup>327</sup> *Plain Truth* also contrasts "plain" values with corrupt urban values and contains many passages describing the natural beauty of East Paradise, where the Amish community is located.<sup>328</sup> In fact, Ellie has intentionally retreated to rural Pennsylvania to visit her aunt after she has become burned out by her work as a criminal defense attorney.<sup>329</sup> While she has been very successful, her personal ethics are burdened by the victims of criminals she works to acquit.<sup>330</sup> She retreats to the country in order to replenish her soul and to rethink her values, which have become corrupt.<sup>331</sup> Throughout the novel, materialistic and urban values seem foolish when viewed through an Amish lens.<sup>332</sup>

Additionally, in both *Plain Truth* and *Agnes of God*, the lawyer, Ellie, and psychiatrist, Dr. Livingstone, are rejuvenated and healed through their visits to the rural landscapes. Ellie gets pregnant at age forty,<sup>333</sup> and Dr. Livingstone, who has stopped menstruating, begins to menstruate again.<sup>334</sup> Landscape is a healing and maternal realm,

325. This is the setting in the film production. See *AGNES OF GOD* (Columbia Pictures 1985). The play does not specify the setting, other than a mention of the wheat fields beyond Agnes's room. PIELMEIER, *supra* note 55, at 74.

326. Krueger, *supra* note 305, at 279.

327. See Hancock, *supra* note 186, at 304.

328. See, e.g., PICOULT, *supra* note 54, at 48.

The road to the Fisher farm ran parallel to a creek. . . . This world was a kaleidoscope of color: kelly green corn, red silos, and above it all, a sky as wide and as blue as a robin's egg. But what struck me the most was the smell, a mixture of notes as distinctive as any city perfume: the sweat of horses, honeysuckle, the rich tang of overturned earth.

*Id.* The narrator comments on the noisy city, stating "I'd be hard pressed to find a cow or chicken, much less sweet corn . . ." *Id.* at 62. She also provides a detailed description of the harvest and figures out the defense strategy while picking vegetables. *Id.* at 222, 251.

329. *Id.* at 16-20.

330. *Id.* at 14-15.

331. *Id.* at 15-16, 19.

332. One of Ellie's early observations during her stay in rural Pennsylvania is that "the Amish way was slow." *Id.* at 127. Jacob discusses the distinction between the Amish and the English: "[w]hen you're English, you make decisions. When you're Plain, you yield to a decision that's already been made. It's called *gelassenheit* — submitting to a higher authority." *Id.* at 171. And finally, Jacob asserts,

[p]eople think Plain folks are stupid, that they let the world walk all over them. But Plain folks — they're smart; they just don't know how to be selfish. They're not selfish enough to be greedy, or pushy, or proud. And they're certainly not selfish enough to kill another human being with intent.

*Id.* at 172.

333. *Id.* at 298.

334. PIELMEIER, *supra* note 55, at 65.

one which naturalizes infanticide by “render[ing] mothers as rural innocents inhabiting a sacrosanct natural space.”<sup>335</sup>

By naturalizing neonaticide, the works create sympathy for the mothers. All three mothers are portrayed as victims. Hetty is a victim of Arthur, who both his uncle and Adam believe should have known better than to seduce her.<sup>336</sup> Katie is likewise a victim of Adam, whom Ellie thinks should have known better than to seduce her because Katie’s values are so “Plain” that she would not be able to survive in the “English” world.<sup>337</sup> Finally, Agnes is a victim of her mother’s abuse, which has likely caused her mental illness and her inability to admit that the father of her child is anyone but God.<sup>338</sup>

In addition to naturalizing neonaticide, the rural narrative also makes the mother’s act “unspeakable in legal discourse,”<sup>339</sup> which Krueger sees as a strategy to protect the mother’s act by “insist[ing] on its private character.”<sup>340</sup> For instance, in *Adam Bede*, Hetty does not testify, but shrieks when convicted, and only confesses in private to her cousin Dinah afterward.<sup>341</sup> Krueger observes that in the novel, “the methods of legal interrogation have proven useless in discovering a crime steeped in the mysteries of nature and the female body.”<sup>342</sup>

Likewise, in both *Plain Truth* and *Agnes of God* the legal system fails to uncover the truth about the neonaticides. Despite probing by her lawyer and the psychiatrists, Katie does not confess or remember how her baby died.<sup>343</sup> Katie’s psychological denial makes it possible that she did indeed kill the baby, but Ellie’s skillful investigation reveals the medical possibility that the baby died naturally (ironically as a result of Katie’s drinking the natural and unpasteurized dairy milk).<sup>344</sup> Before the last page of the novel, when Katie’s mother is revealed to be the baby’s killer,<sup>345</sup> the reader and the legal system are left with a mystery. And even at the conclusion, the neonaticide is outside the legal realm and firmly located in a private and natural realm.<sup>346</sup>

335. Krueger, *supra* note 305, at 272.

336. ELIOT, *supra* note 54, at 344, 367.

337. PICOULT, *supra* note 54, at 305.

338. PIELMEIER, *supra* note 55, at 41-42, 71.

339. Krueger, *supra* note 305, at 279.

340. *Id.* at 271.

341. ELIOT, *supra* note 54, at 482, 497-500.

342. Krueger, *supra* note 305, at 280; *see also* Jones, *supra* note 270, at 321 (noting that Hetty’s story is silenced and told by others, except when she confesses to Dinah).

343. PICOULT, *supra* note 54, at 184, 190, 193-94, 201-02, 121, 236-37.

344. *Id.* at 253-55, 354-55.

345. *Id.* at 404.

346. *Id.* at 405.

Just as *Plain Truth* follows *Adam Bede* in making the neonaticide “unspeakable in legal discourse,”<sup>347</sup> Agnes’s confession does not occur in a legal setting, but in a therapeutic setting. Through hypnosis and several interviews, Dr. Livingstone discovers that Agnes suffered a hysteric repression of her pregnancy, that she had been sexually abused by her mother, and that she killed the baby:

AGNES: . . . I looked at it and thought, this is a mistake. But it’s my mistake, not Mummy’s. God’s mistake. I thought, I can save her. I can give her back to God.

DOCTOR: What did you do?

AGNES: I put her to sleep.

DOCTOR: How?

AGNES: I tied the cord around her neck, wrapped her in the bloody sheets, and stuffed her in the trash can.<sup>348</sup>

The confession forms the basis for Dr. Livingstone’s recommendation that Agnes was legally insane.<sup>349</sup> So, once again, the neonaticide is “unspeakable in legal discourse”<sup>350</sup> and remains located in a rural, natural, and therapeutic setting.

Applying Krueger’s argument about the positive effects of a rural narrative to *Plain Truth* and *Agnes of God*, both employ a rural narrative that allows juries to view neonaticidal mothers sympathetically and provides judges and juries a “cover story” of natural innocence and melodramatic seduction of young women accused of killing their newborns. On the other hand, the negative effects of a rural narrative include participation in the general cultural suppression of infanticide and neonaticide. Michelle Oberman observes that society acts shocked every time it hears about a mother who has killed her baby.<sup>351</sup> And although these works should educate readers and make them less shocked, the rural narrative of natural innocence corresponds with

---

347. Krueger, *supra* note 305, at 279.

348. PIELMEIER, *supra* note 55, at 73. Dr. Livingstone never discovers who impregnated or raped Agnes. Agnes claims it was God and Mother Miriam believes it was a miracle. *Id.* at 71, 62-63.

349. *Id.* at 27, 75.

350. Krueger, *supra* note 305, at 279. Even in the film version, when the last scene takes place in the courtroom, the neonaticide is excused based on Agnes’s mental illness. *AGNES OF GOD* (Columbia Pictures 1985).

351. Long, *supra* note 189 (quoting statements of Michelle Oberman).

society's denial that women can be aggressive, especially toward their newborns.<sup>352</sup>

#### *D. Counter-Narratives*

While the rural narrative portrays mothers sympathetically, it also silences the mother's story, which suppresses not only the story of neonaticide, but possibly also stories of domestic abuse, incest, or promiscuity.<sup>353</sup> Krueger asks what would be the result if these other stories or counter-narratives were told and wonders if the stories of abuse or incest might excuse or mitigate the mother's actions.<sup>354</sup>

Several scholars have argued that allowing women's stories to be told would provide more complexity to our understanding of the circumstances that motivated a mother to kill her child.<sup>355</sup> In cases of neonaticide, if the young woman's story is one of incest leading to denial of pregnancy and eventual madness,<sup>356</sup> or the story of childhood sexual abuse by her own mother (the story in *Agnes of God*),<sup>357</sup> perhaps we would have greater sympathy for the mother who kills her newborn. We might even see the mother's actions as a "'mothering' decision,"<sup>358</sup> such as Agnes's determination to give her daughter back to God.<sup>359</sup>

In contrast, if the counter-narrative concerns a promiscuous woman, a jury is not likely to be sympathetic when she kills her newborn. In such a situation, her defense attorney might want to silence her story in hopes that the jury and judge would fall back on a cover story of victimhood and natural innocence.<sup>360</sup> An example of these two

352. PEARSON, *supra* note 181, at 73 ("It is as if the killing of newborns and infants fails to compute."). Pearson also asserts "[t]he problem is that the response to the crime is so philosophically incoherent and laden with sentiment that the jurisprudence is ambivalent, uncertain of itself." *Id.* at 88.

353. See Krueger, *supra* note 305, at 288-90.

354. *Id.* at 290.

355. See PICOULT, *supra* note 54, at 251-52 (gaining insight into Katie's background and religious beliefs creates doubt in the reader's mind about whether she really killed her child).

356. This is the plot of Toni Morrison's novel, *The Bluest Eye*, which does not explicitly result in neonaticide because the premature baby is stillborn. TONI MORRISON, *THE BLUEST EYE* (Penguin Books 1994) (1970).

357. PIELMEIER, *supra* note 55.

358. See Oberman, *Mothers Who Kill*, *supra* note 11, at 737. Oberman describes the following infanticide as a "mothering" decision: "[n]ineteen-year-old Guinevere Garcia, for example, killed her two-year-old daughter rather than send her back to live with her uncle, who had repeatedly raped and molested both herself and her mother when they were children."

359. PIELMEIER, *supra* note 55, at 73.

360. See generally Deborah L. Thredy, *The Madness of a Seduced Woman: Gender, Law,*

narratives is discussed above in the cases of Camacho, in which the mother who had been sexually abused by her stepfather stabbed her newborn, and Scott, in which the mother put her newborn into a trash bag and then went on her planned spring break beach holiday.<sup>361</sup> However, a counter-narrative that might describe a truer understanding of some acts of neonaticide is that the mother has acted as a responsible "agent rather than [as a] passive victim."<sup>362</sup> In this counter-narrative, the mother has rejected gendered expectations and social conventions.<sup>363</sup> By dramatizing this counter-narrative, literature provides "individual justice" by giving the mother recognition and by correcting the possible misrecognition that she has suffered.<sup>364</sup>

Deborah Symonds discusses this counter-narrative in her observations about the shifting agricultural economy in the eighteenth century that caused a "new infanticide" in which some women acted out of class ambition or hopes for sexual romance and freedom in becoming pregnant.<sup>365</sup> During this agricultural revolution, there was "a newly visible cultural interest . . . [that] tied sex to romance, seduction, agency, and, ultimately, freedom."<sup>366</sup> Some women of this period who killed their newborns could have been hoping to wed, to find success, and to rise in the rural economy: "those women who acted on their own must have been either utterly desperate or had gotten a heady glimpse of themselves as individuals."<sup>367</sup>

Similarly, literary scholar Johanna Geyer-Kordesch has argued that the silence of mothers in literary works about infanticide can be seen as the active rejection of gendered expectations: "[t]o go to the gallows for child murder can be read as a negation of both choices [the erotic plot and the marriage plot] . . . . To kill a child is to pronounce a judgment on sexuality, passion, love and marriage as being poten-

---

and Literature, 6 TEX. J. WOMEN & LAW 1 (1996) (analyzing this dilemma in her discussion about the novel, *The Madness of a Seduced Maiden*, in which a seduced and then scorned woman kills her partner's new lover).

361. See *supra* notes 119-34 and accompanying text.

362. Margaret Sampson, *'The Woe that Was in Marriage': Some Recent Works on the History of Women, Marriage and the Family in Early Modern England and Europe*, 40 HIST. J. 811, 813 (1997) (book review); see also PEARSON, *supra* note 181, at 239-40.

363. See, e.g., PEARSON, *supra* note 181, at 239 ("[T]hese women rebelled against the relational universe in which their sex is expected to perpetually orbit.").

364. See Fluck, *supra* note 44, at 27-28; see also PEARSON, *supra* note 181, at 239-40.

365. Symonds, *Reconstructing*, *supra* note 146, at 64-66.

366. *Id.* at 65.

367. *Id.* at 64-65; see also MATUS, *supra* note 185, at 164. Matus comments that in the 1800s, although the upper class viewed infanticide as a problem of the poor and working classes, "the Victorians avoided recognising that, across class, women were attempting to exercise choice and control over their reproductive capacities, both before and after the fact of pregnancy." *Id.*

tially dangerous and destructive.”<sup>368</sup> Whereas Geyer-Kordesch observes that most literary and social views in the eighteenth century condemned infanticide as the result of shame and loss of honor, rather than the rejection of the erotic plot,<sup>369</sup> some ballads portrayed infanticide heroically as a rejection of gendered expectations.<sup>370</sup> By rejecting expectations, the mother acted as a responsible agent, rather than a passive victim.<sup>371</sup> For instance, in the famous Scottish ballad, *Mary Hamilton*, the condemned mother acknowledges infanticide and accepts responsibility for the act, thus “confirm[ing] that courtship was seen as a ‘deadly and serious business.’”<sup>372</sup> Such ballads also confirmed women’s right to sexuality and presented infanticidal mothers as outlaws and “heroine[s], brave in being hunted down. This was a model for female emotions and someone to be proud of in the last resort.”<sup>373</sup> These ballads are distinguished from other literary works that sentimentalized saintly modesty and remorse and “served to telescope the falsely feminine.”<sup>374</sup>

Both *Adam Bede* and *Plain Truth* can be read as examples of the counter-narrative rejecting gendered and social expectations.<sup>375</sup> Eliot presents Hetty as a weak and selfish young woman who is acting on her sexual and class desires, thus rejecting conventional expect-

---

368. Geyer-Kordesch, *supra* note 78, at 103. The erotic plot is simply “female sexuality outside marriage.” *Id.* at 101.

369. *Id.* at 109. She describes typical novels of the time, such as Goethe’s *Faust* and Scott’s *Heart of Mid-Lothian*, as follows:

[T]heir heroines were the heady stuff of females fallen, but redeemed by remorse, whose errant men returned just too late . . . to construct a happy ending . . . . The audience was speedily confronted with the consequences of sin. Weakness was the character trait most applauded in women because it showed infanticide as an aberration from the feminine, not as its angry or confused rejection.

*Id.* at 110-11.

370. *Id.* at 127.

371. See *supra* notes 364-65 and accompanying text.

372. Geyer-Kordesch, *supra* note 78, at 112; see also DEBORAH A. SYMONDS, *WEEP NOT FOR ME: WOMEN, BALLADS, AND INFANTICIDE IN EARLY MODERN SCOTLAND* 233-35 (1997).

373. Geyer-Kordesch, *supra* note 78, at 127 (“We do not have to condone child murder, but we do have to understand the plot.”); see also FLUCK, *supra* note 44, at 27-28. (“[I]f a novel is skillfully crafted, we may even find ourselves on the side of a killer . . . . This is actually one of the strengths of fiction, because fiction can articulate aspects of individual experience that are erased by broad social classifications.”).

374. Geyer-Kordesch, *supra* note 78, at 127. An example Geyer-Kordesch gives of a sentimental novel is Sir Walter Scott’s *Heart of Mid-Lothian*. *Id.* at 111.

375. See generally ELIOT, *supra* note 54; PICOULT, *supra* note 54. It would be difficult to read *Agnes of God* for this counter-narrative, because Agnes suffers from mental illness and thus does not purposefully reject gender and social expectations such as her religious vows. See, e.g., Susan Ayres, *Newfound Religion: Mothers, God, and Infanticide*, 33 FORDHAM URB. L.J. 335, 348 (2006) (claiming that psychotic women who kill their children should not be seen as acting with “purposeful agency,” so their acts should not be viewed as subversive or empowering).

tations.<sup>376</sup> Even her name, "Hetty," can signal the "heady" nature Symonds describes of women hoping to rise in the rural economy.<sup>377</sup> Hetty dreams that she has a right to a sexual romance with Arthur and the possibility of becoming his wife,<sup>378</sup> but she is deluded, even though he clearly loves her.<sup>379</sup> The consequence of her rejection of the "gendered trajectory" is that she is shamed and shames her family — her uncle expresses no compassion toward her but blames her for disgracing the family.<sup>380</sup> Hetty's shame forces her to conceal her condition and leave her family.<sup>381</sup> Although the rural narrative silences her voice from the law, in her confession to Dinah, her authentic voice asserts that she covered the baby with "grass and chips," because she "couldn't [do] it any other way,"<sup>382</sup> and she rejected maternal expectations by failing to bond with the newborn.<sup>383</sup> Her actions showed that courtship was indeed deadly business.<sup>384</sup> This counter-narrative adds complexity to the story and demonstrates that "[t]o kill a child is to pronounce a judgment on sexuality, passion, love and marriage as being potentially dangerous and destructive."<sup>385</sup>

Similarly, *Plain Truth*, which contains a rural narrative that makes neonaticide unspeakable in law,<sup>386</sup> can also be read for the counter-narrative that questions gender and social expectations. Katie, like Hetty, fell in love with someone outside her social class — Adam, an "Englischer."<sup>387</sup> Even though Katie felt she had a right to her sexuality,<sup>388</sup> and that she "wanted" the baby,<sup>389</sup> the consequences of her act shamed her, her family, and the Amish community.<sup>390</sup> She was shamed because in making love with Adam, she sinned by

---

376. See generally ELIOT, *supra* note 54. See also Jones, *supra* note 270, at 318, 323 (commenting that Hetty is acting out of class ambition, but is viewed as having a "dangerous sexuality").

377. See Symonds, *Reconstructing*, *supra* note 146, at 64-65.

378. ELIOT, *supra* note 54, at 196-97.

379. See *id.* at 367. Adam tells her that Arthur would never marry her. Even though Arthur planned to end his relationship with her, he found it very difficult to do so. *Id.* at 359-61. After she is sentenced to death, Arthur obtains a royal pardon for her. *Id.* at 515.

380. *Id.* at 469.

381. *Id.* at 412-13, 431, 435.

382. *Id.* at 454.

383. *Id.* (stating she "hate[d] it"). Gould points out that *Adam Bede* was the first novel in which the accused infanticidal mother killed her newborn. Gould, *supra* note 276, at 271. In other novels, such as *The Heart of Mid-Lothian* and *Jessie Phillips*, the crime is "displaced onto some other, more easily villainous character." *Id.*

384. See Geyer-Kordesch, *supra* note 78, at 112.

385. *Id.* at 103.

386. See Krueger, *supra* note 305, at 279.

387. PICOUULT, *supra* note 54, at 77.

388. *Id.* at 121, 167-68.

389. *Id.* at 237.

390. *Id.* at 136.

“put[ting] herself first”<sup>391</sup> — thus going against the Amish way and expectations that she would marry Samuel.<sup>392</sup> But in rejecting expectations, Katie acted with an individual and authentic voice.

Perhaps the character who demonstrates an even greater departure from social and gender norms is Katie’s mother, Sarah. As in *Adam Bede*, the neonaticide in *Plain Truth* shows that courtship can be deadly business.<sup>393</sup> In this case, however, it was Sarah, who, in killing the newborn (her grandson), rejected social and gender expectations, because she did not want to lose Katie (her daughter) to the “English” world.<sup>394</sup> Even though the Amish community would welcome the baby after Katie had performed the *bann*,<sup>395</sup> Sarah knew the situation was impossible, because her husband would not welcome Katie or the baby.<sup>396</sup> So, Sarah rejected gendered expectations that she obey her husband.<sup>397</sup> Instead, she acted drastically by killing her grandchild.<sup>398</sup> Sarah’s authentic voice was not that of a dutiful wife but, ironically, that of a protective mother: “I did what I thought I had to do”; “a mother would do anything, if it meant saving her child.”<sup>399</sup>

This counternarrative adds a layer of complexity to our understanding of neonaticide. Rather than sympathize with mothers as victims or as mentally ill, this agentic narrative forces us to suspend judgment and dig deeper into a mother’s possible motivations to kill her newborn, thus giving the mother recognition.

### CONCLUSION

In January of 1997, a dead newborn was found in a park dumpster in Greensboro, North Carolina.<sup>400</sup> Horror and outrage swept across the community, which arranged a funeral attended by more

---

391. *Id.* at 205.

392. *Id.* at 119, 136. According to the novel, the Amish culture is about community, not individuality. *Id.* at 338.

393. See Geyer-Kordesch, *supra* note 78, at 112.

394. PICOULT, *supra* note 54, at 404.

395. *Id.* at 314.

396. *Id.* at 404. Katie’s father, Aaron, had disowned Jacob when he went to college because of his father’s own sense of failure — even though he would have been accepted back into the community if he had confessed and performed the *bann*. *Id.* at 313-15. Aaron, like Adam Bede, was rigid and judgmental. *Id.* at 231; ELIOT, *supra* note 54, at 97.

397. Sarah had previously subverted her husband’s rules by sending Katie to the “English” world to visit Jacob at college, PICOULT, *supra* note 54, at 24, 127, and had subverted the *bann* when Katie was forbidden to eat with the family by setting up a separate card table for Katie, which Sarah connected to the family table by placing a table cloth over the two tables. *Id.* at 168-69.

398. *Id.* at 404.

399. *Id.* at 403-04.

400. McLaughlin, *Years Later*, *supra* note 68.



than five hundred people.<sup>401</sup> Racquel Phifer, a nineteen-year-old high school drop-out, was eventually charged with first degree murder.<sup>402</sup> Phifer had concealed her pregnancy, telling only her boyfriend and a co-worker that she was pregnant; her co-worker called in a tip that led to Phifer's arrest.<sup>403</sup>

Phifer lived with her parents and younger brother, none of whom realized that she was pregnant.<sup>404</sup> Perhaps it was easy for her to conceal her pregnancy, because, when she became pregnant, she weighed close to two hundred pounds, and, during her pregnancy, she took diet pills and lost over one hundred pounds.<sup>405</sup> She clearly did not want her family to know she was pregnant because they were strict Jehovah's Witness members, and Phifer believed that her pregnancy would disgrace her family.<sup>406</sup> Moreover, Phifer's relationship with her mother, a fourth grade teacher, was difficult, to say the least.<sup>407</sup> Phifer both feared and hated her mother.<sup>408</sup> Phifer herself was conflicted about her pregnancy.<sup>409</sup> Even though she concealed her condition from others, she read books about pregnancy and called pregnancy crisis agencies, but, fearing that they wanted to take her baby, she did not seek further assistance.<sup>410</sup> She did not know what to do.<sup>411</sup> The father of the baby had graduated and moved back to Illinois; but when he asked her to move there, she refused.<sup>412</sup>

The day Phifer went into labor, she was alone.<sup>413</sup> She delivered the baby on the floor, and bathed and played with her.<sup>414</sup> She wrapped the baby in a clean white blanket and said in an interview seven years later that she had planned to hand the baby over to her mother, but

---

401. *Id.*

402. *Id.*

403. Paula Christian, *Surprise Bargain Ends Baby Jane Doe Trial*, GREENSBORO NEWS & REC., Aug. 26, 1997, at A1, available at 1997 WLNR 6519984 [hereinafter Christian, *Surprise Bargain*].

404. *Id.*

405. *Id.*

406. McLaughlin, *Years Later*, *supra* note 68. She also testified that she was afraid her mother would throw her out of the house if she discovered the pregnancy. Christian, *Surprise Bargain*, *supra* note 403.

407. Nancy H. McLaughlin, *Parents Beginning Life Without Baby, Daughter*, GREENSBORO NEWS & REC., Aug. 29, 1997, at A1, available at 1997 WLNR 6520726 (stating the mother was a fourth grade teacher) [hereinafter McLaughlin, *Parents Beginning Life*].

408. McLaughlin, *Years Later*, *supra* note 68 (stating her mother said she did not know how her daughter felt about her until the sentencing trial).

409. *Id.*

410. *Id.* She said that she had called some agencies asking for help in telling her parents, but "they said, 'We can send you somewhere.'"

411. *Id.*

412. *Id.*; see also McLaughlin, *Parents Beginning Life*, *supra* note 407.

413. McLaughlin, *Year Later*, *supra* note 68.

414. *Id.*

then her mother called from work, angry because Phifer was late picking her up.<sup>415</sup> Phifer panicked, and on the way to pick up her mother, put the baby in a park dumpster, telling the baby that she would return for her.<sup>416</sup> Phifer picked her mother up from work, fell asleep in the car while her mother ran errands, then went home and slept for sixteen hours.<sup>417</sup>

The community was outraged by the baby abandoned in a dumpster but directed its rage into communal healing by organizing a funeral for the unnamed baby.<sup>418</sup> Although Phifer was charged with first degree murder, she ultimately pled guilty to second degree murder,<sup>419</sup> and was sentenced to at least ten years in prison.<sup>420</sup> She did not raise an insanity defense but did present evidence that she suffered from dissociative amnesia and schizoaffective disorder.<sup>421</sup> At age eleven, she had been raped,<sup>422</sup> and since age sixteen, she had been depressed and suicidal.<sup>423</sup> She had flunked out of several grades at school, dropped out of high school when she was a sophomore, and had trouble keeping jobs.<sup>424</sup> Along with the prison sentence, the court ordered a mental evaluation and treatment.<sup>425</sup>

Phifer's case, typical of many neonaticides, can be viewed as exemplifying the narratives discussed in this Article and as demonstrating how America continues to treat neonaticide much the same way it was treated in England under the 1624 Concealment Law.<sup>426</sup> Like the city of Greensboro in Phifer's case, a community reacts with

415. *Id.*

416. *Id.* Phifer stated in an interview, "I actually thought of [the dumpster] as a baby sitter . . . I got in and out of it four times. There was no trash in it. I put her there and told her I would come back." *Id.*

417. *Id.*

418. *Id.* According to the woman who organized the funeral, "[s]aying it touched the community emotionally is not an overstatement . . . [the baby] had become a symbol for our community . . . I thought it was one of the most healing things our community has come together to do." See also Christian, *Surprise Bargain*, *supra* note 403 (explaining the baby was known as "Baby Jane Doe," but Phifer later named the baby Rivene Lea Anderson).

419. Christian, *Surprise Bargain*, *supra* note 403.

420. McLaughlin, *Years Later*, *supra* note 68. During this same time, Brian Peterson and Amy Grossberg, who together had concealed their baby and then killed it, received less than a two-year prison term. *Id.*

421. Paula Christian, *Phifer Sentenced to at Least 10 Years: Baby Jane Doe's Mother is Sentenced in the Death of Her Infant*, GREENSBORO NEWS & REC., Aug. 27, 1997, at A1, available at 1997 WLNR 6520220 [hereinafter Christian, *Phifer Sentenced*].

422. *Id.*

423. Christian, *Surprise Bargain*, *supra* note 403.

424. *Id.*

425. Christian, *Phifer Sentenced*, *supra* note 421.

426. There is no longer a mandatory death sentence as there was in 1624, but women who kill their children may be charged with capital crimes, as Phifer was, although the prosecutor elected not to seek the death penalty. See Christian, *Surprise Bargain*, *supra* note 403.

horror and disgust at news of a "dumpster baby," a reaction which is exacerbated by social anxiety about the problem of teen pregnancy. Although we view the problem as an epidemic, our anxieties about and suppression of the problem impede our efforts to understand the mother's motivation or to change the way we prevent or punish neonaticide.

Ironically, we may impose severe punishments on mothers who kill their infants, yet we continue to be surprised and horrified when we hear about an infant killed by "the girl next door," a girl like Phifer, who was described as "a young woman whose photograph looks shockingly familiar. Like somebody from your daughter's dance class, or the girl your neighbor's son took to the prom a couple of years back."<sup>427</sup> In an interview seven years after her arrest, Phifer stated that she wanted others to know her story so that they would tell someone if they were concealing a pregnancy: "[i]f you don't want to tell your parents, tell somebody . . . I would love to have (the public's) forgiveness. I would love to have their understanding. But I'm doing this [interview] so that anybody else going through this will tell somebody. I know that type of fear is unbearable."<sup>428</sup>

Generally, however, when a woman who has concealed her pregnancy delivers the baby, she has no resources, no assistance, and like Phifer, might panic and abandon the baby. Society, which has not figured out how to help women in this situation, reacts with horror, disgust, and shame, which Martha Nussbaum has argued are invalid emotions to rely on as a basis for law.<sup>429</sup> Then, when news of the current case dies down, we suppress the problem once again.

This Article has argued that one way to counteract our cultural suppression of neonaticide is through works of literature, such as *Adam Bede*, *Plain Truth*, and *Agnes of God*. Because they are *fiction*, we do not rush to judge the mothers; rather, we overcome initial disgust and shame to suspend judgment and to give the mother's story recognition. In the emotionally-laden context of dumpster babies and smothered newborns, literature offers "individual justice," in which we judge each mother's actions on a "case by case" basis.<sup>430</sup> Further-

---

427. Lorraine Ahearn, *Baby Jane Case Exposes a Host of Assumptions*, GREENSBORO NEWS & REC., Apr. 20, 1997, at B1, available at 1997 WLNR 6516693.

428. McLaughlin, *Years Later*, *supra* note 68.

429. See *supra* note 76 and accompanying text.

430. See Fluck, *supra* note 44, at 35. Fluck quotes Geoffrey Harpham's view of the postmodern theory of Jean Francois Lyotard that "[s]ince we cannot infer prescriptions from descriptions, the good from the true, value from fact, *ought* from *is*, then there are no true principles, and we must, Lyotard asserts . . . resign ourselves to a 'pagan' practice of judging 'without criteria' on a 'case by case' basis." *Id.* Fluck concludes that in Lyotard's reasoning, language cannot articulate the "victim's sense of wrong . . . only the sublime

more, “[i]maginative texts . . . can constitute a space in which shared anxieties and tensions are articulated and symbolically addressed.”<sup>431</sup> The narrative strategies this Article has reviewed that accomplish this task include: educating the reader about the characteristics and psychology of concealed pregnancies, disrupting social anxiety about the teen mother through a representation of “the holy girl,” naturalizing neonaticide through a rural narrative, and suggesting a counter-narrative of agency. In balancing the question of a wrongdoer’s need for treatment versus correction, literature offers a story brimming with complexity, one which makes our “judgment hard and painful, yet at the same time much more authentic and complete.”<sup>432</sup>

---

work of art can foreground this very fact and thus function as an articulation of the claims of the victim.” *Id.* (internal quotation marks omitted).

431. MATUS, *supra* note 185, at 7.

432. Reichman, *supra* note 40, at 309.