

INFANTICIDE*

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Infanticide is a unique offence. The law decrees that the possession of a certain state of mind at the time that a recently delivered mother kills her child is sufficient to reduce her criminal responsibility for her actions. The law does not require evidence of a direct connection between the state of mind and the killing, and the consequences are not defined. She is to be dealt with as if she were guilty of the offence of manslaughter.

The Butler Committee on Mentally Abnormal Offenders (1) considered the future of this special offence as part of its general review of the law relating to 'insanity' and diminished responsibility, and made recommendations which would make continuation of the offence of infanticide unnecessary. The Criminal Law Revision Committee (2), which has the continuing task of reviewing various aspects of the law, is now considering offences against the person and is giving its attention to the future of the Infanticide Act, 1938.

The College recently constituted a Working Party to prepare comments for the Criminal Law Revision Committee and to give its opinion on

- (i) the medical principles underlying the offence of infanticide;
- (ii) any general thoughts there may be on the advantage or otherwise of there being a separate offence of infanticide.

Background

● Since the eighteenth century or earlier the courts have taken an increasingly merciful view of a mother convicted of murdering her child while it was under, or not much over, the age of twelve months. By the time of the Capital Punishment Commission of 1864-6 it was 'established practice' for the Home Office to advise the commutation of the death penalty. The judges then considered that there should be a special category of crime to encompass such cases, to reflect the prevailing attitudes towards it and to avoid the objectionable necessity of pronouncing the death sentence on mothers convicted of murder. Subsequently several attempts were made to change the law, but it was not until 1922 that the first Infanticide Act was passed. This restricted cases within the scope of the Act to *newly born* children. However, the courts continued to take a decreasingly punitive attitude to mothers who killed their children during a longer period following birth than this, and attempts were made to widen the scope of the Act.

The eventual result was the Infanticide Act 1938.

Sec. 1(1) of this provides, 'Where a woman by any wilful act or omission causes the death of her child under the age of 12 months, but at the time of the act of omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder she shall be guilty of an offence, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.'

The medical principles underlying the Act are

- (i) that childbirth is associated with physical (including hormonal) disturbance which may be the cause of mental illness;
- (ii) that lactation may be associated with mental illness;
- (iii) that the recently born child is likely to be the victim and that the mother will have recovered within twelve months.

Psychiatric illness following childbirth

There are few adequate epidemiological studies of the incidence of mental disorders in relation to child-bearing. Reports suggest that it is within the range of 1 to 6.8 per 1000 live births. Pugh *et al* (3) demonstrated that there is an increased admission rate to psychiatric wards for psychotic illness during the first three months post-partum, although a slighter increase continues up to nine months. Pitt (4), in an extensive review of the literature, concluded that after three months post-partum mental illness has a less direct relationship to childbirth and is increasingly related to other factors, including the difficulties of adjusting to the care of a new baby.

Although puerperal psychosis is thought to be associated with a hormonal imbalance following pregnancy, there is little hard evidence to support the theories that have been put forward, and some have regarded psychological and social factors as

* This paper is derived from the report to the Criminal Law Revision Committee which was produced by a Working Party of the College and approved by the Executive and Finance Committee. The members of the Working Party were: Dr R. S. Bluglass (Chairman), Drs A. C. Fairburn, J. Hamilton, P. G. McGrath, P. d'Orbán, and B. Pitt.

equally or even more important. d'Orbán (5) reviewed maternal filicides admitted to Holloway Prison between 1970–75 and found that there were 23 infanticide cases. Only two were associated with psychosis. Ten were cases of battering linked to other social and personality difficulties. Ten were neonaticides (the death occurring within 24 hours), related to unwanted pregnancy, rejection or concealment. The remaining case occurred as an act of revenge against the spouse (the 'Medea syndrome'). McGrath (6), who has studied cases of maternal filicide admitted to Broadmoor Hospital, considers child-killing as a result of puerperal psychoses uncommon (about 5 cases per annum in England and Wales). My experience in the West Midlands is similar.

There is little or no evidence to support a specific relationship between lactation and mental disorder (referred to as 'lactational insanity' during the early part of the century).

Operation of the Infanticide Act

Walker (7) reviewed the sentences awarded by the courts to women found guilty of infanticide between 1923 and 1927 and from 1946 to 1965, and the Criminal Law Revision Committee has reviewed the sentences from 1969 to 1974. Most mothers have been placed on probation (usually with a requirement of treatment) or have been made the subject of a Mental Health Act Order (usually to a local psychiatric hospital). A minority (of the average of 14 cases annually) were sent to prison (0–2 cases per year), and a small number were conditionally discharged.

Should infanticide remain as a separate offence?

Infanticide is an offence which has a number of unique features. Firstly, it is sufficient for the defence simply to demonstrate that at the time the balance of the woman's mind was disturbed by the birth or subsequent lactation, without it being necessary to prove that the killing was the *result* of the disturbance. Secondly, as a result of the finding of infanticide there is no special verdict (such as acquittal, for instance) but the woman is dealt with as if she were guilty of manslaughter, thus allowing the judge total flexibility in sentencing from life imprisonment to an absolute discharge. Thirdly, the Act only applies to the last-born child, and the killing of any other would be dealt with on a manslaughter charge. (She can, in the case of a double killing, be charged with infanticide and manslaughter at the same time.)

The Butler Committee has reviewed the law relating to murder, manslaughter by reason of

diminished responsibility, and infanticide. It concluded that if the mandatory life sentence for murder were removed the provision for a plea of diminished responsibility would be unnecessary and so would the special offence of infanticide. A defence, in a murder case, of manslaughter by reason of 'extenuating circumstances' (such as mental disorder) would cover cases at present dealt with as manslaughter under Section 2 of the Homicide Act and as infanticide. The Working Party considered that should the law be altered along these lines the anomalies would be removed and there would be no need for a special offence of infanticide.

The Butler Committee's *second choice* for changing the law assumed that the mandatory life sentence for murder would remain. In that case, recommendations are made for redefining Section 2 of the Homicide Act so that the forms of mental disorder which would need to be present to reduce murder to manslaughter should be limited to those defined in Section 4 of the Mental Health Act 1959. The Butler Committee considered that it is unlikely that the Infanticide Act would have been passed if the defence of diminished responsibility had been recognized at the time, and that the diminished responsibility law could now cover all cases dealt with as infanticide.

The Working Party considered that a redefined Section 2 of the Homicide Act would be too restrictive and would exclude some cases now dealt with as infanticide. There would be a danger of diagnostic disputes which are not now necessary, and the Working Party would not be confident that all appropriate cases would be encompassed. The retention of a separate offence is therefore recommended.

Butler's *third choice*, if the mandatory sentence for murder is to remain, is to abolish Section 2 of the Homicide Act but give the judge discretion to make a medical disposal if evidence of mental disorder has been given. In such circumstances the Working Party considered that the offence of infanticide should continue.

Changes in the present infanticide law

Assuming the retention of the offence of infanticide, the Working Party considered that the present wording should be changed to reflect current medical thinking with regard to the relationship between psychiatric disorder and childbirth and the death of a child resulting from it. The present range of flexibility of interpretation and action in these cases should continue. A preferable form of wording of the Act would be as follows: ". . . the balance of her mind was disturbed by reasons relating to child bearing . . .".

This form of words would include cases resulting from the effects of psychological and environmental stress and incidental mental illness as well as cases resulting from true puerperal illness.

The killing of other children and the twelve months limit

It is considered that there is no evidence that only the last-born child is at risk, and the present law limiting infanticide to the death of the last-born is illogical and out of accord with the facts and with our experience. Other children of the mother are not uncommonly the victims. The Working Party therefore recommended an extension of the offence to cover the killing of any of the mother's children up to the age of 5 years. This would cover the great majority of victims. d'Orbán (4) found that only 9 of 109 victims of maternal filicide were over the age of 5 years, and McGrath (5) noted that the victims in his series had a mean age of 2.4 years. The Working Party considered that the restriction of the offence to twelve months following birth is arbitrary and is in a sense anomalous, but it is a credible period, again encompassing the majority of cases, and we would retain it.

Trial and sentencing

Although it was appreciated that a sympathetic view is taken by courts in almost all cases, this is a serious offence and should continue to be subject to the discipline of a Crown Court in the interest of the accused and her family as well as of the public. It is recommended that infanticide should remain an indictable offence.

The Working Party was impressed by the way that judges have sentenced in cases of infanticide and would not wish to suggest any restriction to their powers to sentence as appears appropriate.

Reporting

The Working Party's particular concern was to promote the rehabilitation of a mother and her family after a tragic event. It appears in keeping with the sympathetic approach usually taken and not contrary to the public interest to suggest that a restriction on reporting should be mandatory in these cases. In particular, this would be in the interest of surviving children and would avoid scapegoating.

Attempted infanticide

The Working Party felt that it would be consistent with other observations if it also recommended that it should be possible to charge a woman with attempted infanticide where death does not occur. This would avoid the need to charge her with attempted murder or manslaughter, would encourage help for the family

at risk and would keep such cases within the same conceptual framework as those convicted of infanticide.

The present law of infanticide is in general working effectively. Amendments have been recommended which it is believed would continue to encourage an approach which is flexible and unrestrictive although supportive and preventative with respect to the remaining family. There are areas which would benefit from further research, particularly the incidence of neonaticide, the effects of hormonal changes on mental state, the balance between hormonal changes, psychological and environmental changes, and the relationship of a failure of attachment and bonding to the development of mental illness.

Summary

1. If the Butler Committee's first suggestion to change the homicide law is implemented the infanticide law could be abolished.
2. Otherwise the Working Party recommends a change in the present wording of the Infanticide Act to read, 'Where a woman by any wilful act or omission within twelve months of childbirth causes the death of her child, being a child under the age of 5 years, but at the time of the act or omission was mentally disturbed by reasons relating to childbirth, then notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of infanticide'.
3. Infanticide should continue to be an indictable offence if the offence of murder continues to require a mandatory sentence.
4. There should be a mandatory restriction on reporting.
5. There should be provision for a charge of attempted infanticide.

References

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