An Inconvenient Truth: Recognizing Andrea Yates Was A Victim of Spousal Abuse: She Killed Her Children To Save Her Life

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AN INCONVENIENT TRUTH: RECOGNIZING ANDREA YATES WAS A VICTIM OF SPOUSE ABUSE: SHE KILLED HER CHILDREN TO SAVE HER LIFE*

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I. INTRODUCTION

This country experienced one of the most horrific crimes it had ever seen when on June 20, 2001, police revealed Andrea Pia Yates had killed her five young children, all under the age of ten, by methodically drowning them one by one in the bathtub.\(^1\) We were stunned to learn how she placed four of her children in bed, leaving the oldest child, floating in the bathtub in the same water where she had drowned her other children.\(^2\) On March 15, 2002, Ms. Yates was convicted of murdering her children and sentenced to life in prison even though the defense asserted she was mentally ill at the time of the killings.\(^3\) Nearly three years after her conviction, however, the Texas Court of Criminal Appeals reversed the guilty verdict, finding false though mistaken testimony by prosecution’s expert prejudiced the jury,\(^4\) despite statements from members of the

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* I was a Consulting Expert for the prosecution in *State v. Yates*. I was, moreover, the only legal academic to assist in the first trial. With few exceptions I observed the trial in its entirety. And while the focus of the defense was on Ms. Yates’ being mental illness, I have consistently argued that Andrea Yates was a victim of psychological and sexual abuse. She killed her children to escape that abuse.

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1 *See Lisa Sweetingham, Prosecutors: Andrea Yates Knew Right from Wrong When She Drowned Five Children, [http://www.courttv.com/trials/yates/062606_opening_ctv.html](http://www.courttv.com/trials/yates/062606_opening_ctv.html) (last visited June 27, 2006). In her opening statement, Prosecutor Kaylynn Williford stated that Ms. Yates “pinned each child to the bottom of the tub until they (sic) were dead and then laid their lifeless bodies side by side” in her and Rusty Yates’ bed before calling 911. *Id.*

2 **SUSAN O’MALLEY, “ARE YOU THERE ALONE?: THE UNSPEAKABLE CRIME OF ANDREA YATES,” 15-20 [hereinafter “ARE YOU THERE ALONE?”] (Simon & Schuster 2004) (detailing Ms. Yates’ confession to drowning the children and the order in which Ms. Yates drowned them, including that she left Noah floating in the bathtub after she drowned him). *Id.* at 19-20.

3 *Id.* at 205-11.

4 *Yates v. State*, 2005 Tex. App. LEXIS 81 (Tex. Ct. App. 2005). During the trial, ten psychiatrists and two psychologists testified. The prosecutor’s sole psychiatric expert, Dr. Park Deitz, interviewed Ms. Yates and concluded that although psychotic, she knew what she was doing was wrong. *Id.* at 8. Dr. Deitz opined that since Ms. Yates knew her thoughts were coming from Satan, she must have known they were wrong. Moreover, if she believed she was saving the children, she would have shared her plans with others rather than hide them. She would also have sought to protect them. *Id.* In reality, however, it was not until cross-examination that defense counsel questioned Dr. Deitz about his work with a television series, Law & Order, and whether an episode on which he had been a consultant addressed postpartum depression or women’s mental health. *Id.* Dr. Deitz incorrectly answered that there was an episode that aired shortly before Ms. Yates killed her children wherein a women with postpartum depression drowned her children in her bathtub and was found insane. *Id.* at 8-9. The court of appeals also focused on the state’s use of Dr. Deitz’s testimony both during cross-examination of a defense expert witness as well as in its closing argument to support its holding that there was a reasonable likelihood “that Dr. Deitz’s testimony might have prejudiced the jury against Ms. Yates, and as a result, the trial court abused its discretion in refusing to grant a mistrial.” *Id.* at 19-20. *See also,* Scott Gold, *Yates Cases Turns on Trial Error: The Murder Convictions against a Texas Woman Who Confessed to Drowning Her Children Are Thrown Out Because of False Testimony*, THE NATION, Jan 7, 2005, at A1. As Gold notes, the appellate court concluded that there was a reasonable likelihood that
jury that they knew their job was to determine whether Ms. Yates knew her actions were wrong. They concluded she did.\(^5\) Upon retrial, the jury found Ms. Yates not guilty by reason of insanity,\(^6\) sentencing her indefinitely to a mental health facility.\(^7\) The defense’s soul focus was Ms. Yates’ mental state prior to and at the time she killed her children. The defense did not consider that there could be any other explanation for why a woman, a devoted mother, would commit such a heinous crime. The entire defense depended upon the jury’s believing Ms. Yates was severely, mentally ill and therefore worthy of sympathy and ultimately worthy of having jurors and society excuse her behavior.

That Andrea Yates killed her children is unquestionable, yet the motive for doing so is not so simple.\(^8\) Recognizing the complexity of Andrea Yates’ actions, one scholar, relying on Toni Morrison’s *Beloved*, theorized Ms. Yates loved her children and may have killed them ultimately

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\(^{5}\) O’MALLEY, supra note 2, at 217.


\(^{8}\) See Susan Hatters Friedman & Phillip J. Resnick, *Thinking of Murder: Considerations for Prevention, Psychiatric Times*, Sept.1, 2006 at 9. Friedman and Resnick indicate a number of motives for maternal infanticide. First, altruistic filicide occurs where a mother kills her child out of love, believing that death is in the child’s best interest. Here, a “psychotic mother believes that she is saving her child from a fate worse than death or when a suicidal mother does not want to leave her child to face the uncaring world that she sees through her depressed eyes.” *Id.* A second theory, acutely psychotic filicide, occurs where a mother suffers a psychotic or delirious episode and kills her child without a rational motive. Third, a mother might kill her child by fatal maltreatment even though she does not intend for death to occur. Rather, it is the result of “cumulative child abuse, neglect, or Munchausen syndrome by proxy.” *Id.* Fourth, unwanted-child filicide occurs where the child is viewed as a hindrance or burden. *Id.* Fifth, although a rare occurrence, spousal-revenge filicide occurs when a mother kills her child for the specific purpose of emotionally winding the child’s father. *Id.* An often mentioned example from Greek Mythology is Media who killed her children to get revenge against her husband, Jason. *Id.* See O’MALLEY, supra note 2, at 157. O’Malley notes that during trial Dr. Resnick testified that Ms. Yates did not kill the children to get spousal revenge; nor did he find that the children were abused or unwanted. Instead, he concluded that the killings were altruistic: rather than let the children spend eternity in hell, she took their lives so that they would be happy through all eternity. *Id.* But as I will argue below, as a victim of domestic abuse, her motive for killing the children may have been both for revenge against Mr. Yates and because she viewed her children as a burden that kept her from escaping an abusive and oppressive marriage.
to save them.\footnote{See Susan Ayers, “[N]ot a Story to Pass on: Constructing Mothers Who Kill, 15 HASTINGS WOMEN’S L. J. 39, 101 (2004) (noting that while in jail awaiting trial, Ms. Yates told her psychiatrist that she killed her children as an act of mercy so that they could go to heaven and be safe with God). Id.} Other writers attempting to offer a reasoned explanation as to why Andrea Yates killed her children described her as a “traitor,” likening her to Judas Iscariot, “who, motivated by evil and selfishness, betrayed the innocent.”\footnote{See Barbara Barnett, Perfect Mother or Artist of Obscenity? Narrative and Myth in a Qualitative Analysis of Press Coverage of the Andrea Yates Murders, 29 J Communication Inquiry 9, 15-16 (2005). Barnett indicates that in examining the articles written about Andrea Yates, the traitor theme also included those who believed she looked and acted like us, but was not one of us. Instead, she was characterized as a pretender who donned different identities to deceive those closest to her. Id. Moreover, Barnett notes that others viewed Ms. Yates as a traitor because she portrayed herself outwardly as a superior mother who loved and devoted herself to her kids when in reality she was a killer. Id.} However, the vast majority of commentators and scholars who have written about Yates case have concluded that she was driven to do so by her severe mental illness.\footnote{E.g. See generally April J. Walker, Application of the Insanity Defense to Postpartum Disorder-Driven Infanticide in the United States: A Look Toward the Enactment of an Infanticide Act, 6 RRGC 197, 207 (2006). Walker details the treatment Ms. Yates received for postpartum depression as well as the psychiatrists and psychologists who testified at trial, concluding that Ms. Yates was mentally ill at the time she killed the children and did not know “right from wrong, was incapable of knowing that what she did was wrong, or believed that her acts were right.” Id. at 209; Butterfield, supra note 4, at 537. Butterfield argues that Ms. Yates killed her children as a result of postpartum mental illness and that she suffered at the hands of a legal system unable to understand her plight. Id. Moreover, she argues that a verdict of guilty has a devastating impact on mentally ill women who kill because it gives the judge the discretion to impose the same sentence on the woman who kills her children as it would on a defendant who is guilty but not insane. Id. at 530; Ronald S. Honberg, Symposium: The Death Penalty and Mental Illness: The Injustice of Imposing Death Sentences on People with Severe Mental Illness, 54 CATH. U. L. REV. 1153, 1166 (2005). Honberg, while not directly arguing that Andrea Yates was mentally ill or that her mental illness led her to kill her children, nonetheless implicitly accepts this premise as accurate. He asserts that we can not expect a jury faced with such complex and difficult issues of insanity to understand when psychological experts are not able to do so; Michelle R. Prejean, Comment, Texas Made This Mad Woman Sane, 42 HOUS. L. REV. 1487, 1507-1509, (2006). Prejean examines the insanity defense in Texas and its application in the Andrea Yates and Deanna Laney cases. She concludes that while the prosecution through its expert was able to convince a jury that Ms. Yates understood what she was doing when she killed her children, placing her outside of the protection of the M’Naghten rule, Andrea Yates was clearly suffering from post-partum psychosis and should not have been convicted; Ellen Byers, Mentally Ill Criminal offenders and the Strict Liability Effect: Is There Hope for a Just Jurisprudence in an Era of Responsibility/Consequences Talk?, 57 ARK. L. REV. 447, 458-460 (2004). Byers argues that the type of delusion experienced by one who is psychotic dictates whether the defense of insanity is available to one who kills. She places Andrea Yates in the category of delusion that occurs as a result of mental disorder when the “actor believes that a supernatural being such as Satan or God is observing minute details of her life, judging, speaking to, threatening, and commanding her to act.” She asserts that one’s consciousness is consumed by an overpowering presence, judgments and commands of the higher power. As a result, the actor often kills to pacify or defy the supernatural force. She asserts that Andrea Yates’ delusions began seven years before she killed all of her children when she heard Satan telling her to pick up a knife and stab her new born son Noah. She believed that Satan was in her and that she was not raising the children well. Byers notes, however, given the prominence of Satan in Ms. Yates’ delusions, she could not argue that she believed that she was acting morally and knew that God would condemn her. Nevertheless, Ms. Yates believed she was saving her children; Christopher Slobogin, The Integrationist Alternative to the Insanity Defense: Reflections on the Exculpatory Scope of Mental Illness in the Wake of the Andrea Yates Trial, 30 AM. J. CRIM. L. 315, 336 (2003). The author focuses on the affirmative defense in Texas and current movement to have the M’Naghten test changed based on the decision in the Yates case. He argues that while it is undisputed that Ms. Yates had a long history of mental illness, the current law made it nearly impossible to justify a not guilty verdict; Sharon Lamb, Symposium: Responsibility and Blame: Psychological and Legal Perspectives: The Psychology of Condemnation: Underlying Emotions and Their Symbolic Expression Condemning and Shame, 68 BROOKLYN L. REV. 929, 947 (2003). Lamb, in addressing our need to condemn others as a means of distinguishing ourselves from those who have committed heinous crimes, argues that Rusty Yates was
more than one child. Consistent with this conclusion, there have been assertions that the number and types of anti-depressant and anti-psychotic drugs Andrea Yates was taking were responsible, at least in part, for the condition which lead her to kill her children. Moreover, experts assert Ms. Yates suffered from post-partum psychosis, an extremely rare condition. Ms. Yates explains the killing by stating that the children were not growing well, and she did not hold responsible for Andrea Yates’s killing of the couples’ children even though Mr. Yates failed to recognize the potential danger she posed to the children due to her mental illness; Jessie Manchester, Comment, Beyond Accommodation: Reconstructing the Insanity Defense to Provide and Adequate Remedy for Postpartum Psychotic Women, 93 J. CRIM. LAW & CRIMINOLOGY 713, 713, 747, (2003) [hereinafter Beyond Accommodation]. Manchester argues that despite the obvious signs of postpartum psychosis, Ms. Yates received life in prison. She concludes that by maintaining the M’Naghten test for the mentally ill, female offenders would often fail. As a result, she proposes that both the state and federal system adopt a broader scope for insanity: Kimberly Fisher, To Save Her Children’s Souls: Theoretical Perspectives on Andrea Yates and Postpartum—Related Infanticide, 25 T. JEFFERSON L. REV. 599, 599-600, 606-608 (2003). Fisher notes that doctors diagnosed Ms. Yates with postpartum psychosis well before she killed her children. Her depression first became apparent with the birth of her first child and worsened with each subsequent pregnancy. She argues that while postpartum depression has been used as a defense for women who kill their children, the results have been radically different. She concludes that “Like the medical community, the American legal system cannot decide how to handle postpartum psychosis;” Christie March, The Conflicted Treatment of Postpartum Psychosis under Criminal Law, 32 WM. MITCHELL L. REV. 243, 257-263 (2005). March points to mental illness as the basis for Ms. Yates killing her children. As a result, she suggests a number of solutions for how the courts should treat women who suffer from postpartum psychosis at the time of the killing. She concludes that due the special circumstances surrounding postpartum psychosis, courts should use a hybrid approach, requiring lighter sentencing provisions and a treatment that accomplishes both retribution and rehabilitation while preventing such defendants from falling through the system.


Moreover, they had become disrespectful to Rusty Yates’ mother. They called her names, and would not obey Ms. Yates. Id. at 150. She explained that while vacationing with their spiritual mentors, the Woronieckis, they complained that Noah, John and Paul behaved poorly. Moreover, they had become disrespectful to Rusty Yates’ mother. They called her names, and would not obey Ms. Yates. Id. at 151. See also Timothy Roche, The Yates Odyssey: Andrea Yates Wanted Lots of Kids and a Solid
not want them to be taken over by Satan.\textsuperscript{16} She believed she was not a good mother and she was not raising the children well, particularly in light of her religious beliefs.\textsuperscript{17}

Given all of the focus on Andrea Yates’ mental state, it seems nearly impossible for those who had a stake in Andrea Yates’ being mentally ill to consider that there might be another, equally plausible motive for her decision to kill her children.\textsuperscript{18} As one scholar notes, although women are not typically prone to violence, they are responsible for killing their children in numbers nearly equal to those of fathers who kill their children.\textsuperscript{19} Moreover, nearly fifty percent of these women are found to be mentally ill, a rate much higher than in other crimes.\textsuperscript{20} The writer concludes, “It makes sense that there would be a much higher frequency of insanity in filicide than in other crimes because if not insane, how could a mother murder her own children?”\textsuperscript{21} Consistent with this sentiment another writer posits, “For a mother to kill her babies so goes against nature that she should be assumed to be doing something out of insanity unless there is evidence that she had some other motive.”\textsuperscript{22} Moreover, as one scholar powerfully notes, Andrea Yates was a dutiful mother. To this end, “The enormity of [her] crime defies the explanation that a sane woman chafing under the demands of motherhood would resolve her unhappiness by slaughtering her children.”\textsuperscript{23} The writer concludes that the prosecution’s banal explanation of the motive for the killings “could not withstand the comfort-giving polysyllogism that the defense [strove] to evoke in the jury: [Andrea] loved her children. [Therefore] [Andrea] would not harm them. [Therefore] she must have been crazy.”\textsuperscript{24}

Unquestionably, Andrea Yates was mentally ill. There is, however, evidence of another motive for her killing her children. But the truth seems simply too inconvenient to consider for those who had and continue to have a stake in Andrea Yates’ being found mentally ill. Indeed it was

\textsuperscript{17}See Elizabeth Rapaport, \textit{Special Feature: Women as Perpetrators of Crime: Mad Women and Desperate Girls: Infanticide and Child Murder in Law and Myth}, 33 \textit{Fordham Urb. L. J.} 527, 559 and n. 213 (2006) [hereinafter \textit{Women as Perpetrators of Crime}]; Salecl, supra note 16, at 2472 (indicating that while in jail, she told the doctors that she could not quiet the belief that she was a bad mother).
\textsuperscript{18}I had been asked to serve as an expert for a number of media outlets including CNN. Shortly after the end of the trial, I appeared on a national news show where I indicated I believed Rusty Yates should have been prosecuted for failing to protect his children and that Ms. Yates may not have killed her children due to her mental illness. I received a number of emails indicting that my comments should not have been made and that they removed the focus from mental illness, which had gained national attention through the Yates case. One email was mildly threatening. The writer states that rather than being divisive and blaming Rusty Yates and trying to remove the focus from Andrea Yates’ mental illness, I needed to be careful about the comments I made. The writer apparently suffered from some form of mental illness indicating this was the first time national attention had been brought to the issue.
\textsuperscript{20}Id.
\textsuperscript{21}Id.
\textsuperscript{22}\textit{See} Casey, \textit{supra} note12.
\textsuperscript{23}\textit{See} Rapaport, \textit{supra} note17, at 563.
\textsuperscript{24}Id. at 563-64.
and continues to be inexpedient for those who needed to bring national attention to post partum depression and psychosis and mental illness as a general notion to consider any other reason but insanity for a mother’s killing five children.\textsuperscript{25} Those having no such agenda simply cannot fathom that a mother would kill her children due to a dark heart rather than a darkness of mind beyond her control. Yet in this article I directly argue that Andrea Yates was a victim of domestic violence, and that this was an underlying motive for her killing her children. While this argument is unpopular and perhaps divisive, it is nonetheless warranted given the circumstances surrounding Andrea Yates’ life and the death of five children. This article does not claim that Rusty Yates physically abused Andrea. There is no evidence of this. I argue, however, Rusty Yates both sexually and psychologically abused Andrea Yates, and that this abuse was responsible, at least in part, for the death of their children. I argue while it is terrifying to think a mother would kill her children to escape her abuser, such a possibility should be neither ignored nor dismissed.

In Part II of this article, I lay the foundation to support my argument that Mr. Yates abused Ms. Yates. I begin with an historical look at the common law’s definition of marriage. At common law, a husband was required to provide support for his wife. A wife also had a corresponding duty to provide services to her husband. Scholars have paid a great deal of attention to these marital obligations, yet there appears to be a dearth of scholarly writing addressing the common law’s requirement that each spouse support the other emotionally. As I discuss in greater detail below, however, such a duty did exist. The common law did not specifically include the duty of emotional support in its definition of marriage, but it did recognize that the marriage relationship included the duty of emotional support. The common law acknowledged a husband’s right to emotional support by permitting a husband to sue for loss of consortium\textsuperscript{26} for third party injury

\textsuperscript{25} See Leigh Hopper, \textit{Psychiatrist Contrast ‘Baby Blues,’ Psychosis, Houston Chronicle}, July 30, 2006, available at \url{http://www.chron.com/disp/story.mpl/special/drowning/4081588.html}. When asked his thoughts about Ms. Yates’ being found not guilty by reason of insanity in the retrial, Houston psychiatrist Stuart Yudofsky stated that when Ms. Yates was initially found guilty of murder, he believed her acts were no different from one having a heart attack or stroke while driving a car and inadvertently, based on medical illness, killing her child or another person’s child. Comparing Ms. Yates with people who have “sick hearts,” Yudofsky concluded that Ms. Yates obviously had a “broken brain.” Moreover, he believed that by allowing Andrea Yates to be labeled a criminal was not an indictment of her, but an indictment of society for allowing it to happen. \textit{Id}.

In addition, both before and after the trial, the media contacted me on a number of occasions to serve as a consultant on the \textit{Yates} case. After an interview I had given to a national media outlet, I received a number of emails, primarily from people alleging they suffered from mental illness. One email was particularly alarming, suggesting that my comments about the case were attempting to drawing attention away from the issues of mental illness and that I needed to be careful with my comments. While I did not retain the emails, I did inform my associate dean and law school security about the email’s contents. Moreover, at least one prosecutor, Kaylynn Williford, received death threats for being part of a team that prosecuted what many believed was a severely mentally ill woman.

The day following the trial, I wrote an Editorial indicating that while we found some relief in knowing that Ms. Yates’ mental illness played a critical role in her killing five children and how mental health experts had done much to shed light on the importance of understanding and properly treating mental illness, I also believed that there was evidence that Rusty Yates both psychologically and sexually abused Andrea Yates. While a number of newspapers received the Editorial and thought it was powerful, not one was willing to publish it. Domestic abuse was for them no more than a collateral issue. The more compelling story for most media outlets was the state’s conviction of a severely mentally ill woman and her potentially spending the rest of her life in prison.

\textsuperscript{26} Loss of consortium is a compensable loss benefits that one spouse is entitled to receive from the other; these include companionship, cooperation, aid, affection, and sexual relations. \textit{Blansit v. Hyatt Corp. of Delaware}, 874 F.2d 1015, at 1018 (5th Cir. 1989) (holding that one of the elements to loss of consortium includes loss of the right of performance and material services).
to his wife. The law also recognized a wife’s right to emotional support by permitting a wife to obtain a divorce based upon her husband’s mental cruelty. The law’s official acceptance of this fact meant some private behavior taking place during the course of the marriage had serious public consequences.

The duties of support and services continue to persist, but they have undergone a number of changes. These changes have prompted some scholars to call for their complete abrogation, particularly in light of the modern marital relationship and other intimate relationships that do not include marriage. Logically, then, there would be no need to expand the formal definition of marriage to include emotional support. Yet this call to end these marital duties in their current application does not address Rusty Yates’ failure to fully support his wife and the consequences for the failure to do so. As a result, I do not address the propriety of these doctrines; nor do I address the need to reformulate them to accommodate the changing needs of society. Instead, in this article I argue for expanding the definition marriage to specifically include emotional support, particularly given the devastating impact of emotional and psychological abuse have on their victims.

In Part III I argue Rusty abused Andrea Yates. We are most comfortable with the notion that a woman has been the victim of domestic violence where she has been physically battered by a spouse or intimate partner. In this article I return the focus to the broader definition of domestic abuse. Specifically, I argue we must accept the definition of domestic violence to clearly include both psychological and sexual abuse. Accordingly, I argue Rusty both psychologically and sexually abused Andrea. As I argue in greater detail below, Rusty Yates’ traditional view of family and his isolation of Ms. Yates clearly demonstrate his power and control over her as well as his disregard for her, permitting the argument that she was clearly a victim of spousal abuse. In addition, I argue he sexually abused her through out the course of the marriage. If Andrea Yates were as mentally debilitated as Rusty claimed her to be after but only after the death of their children, Andrea could not have knowingly and voluntarily given consent to having ongoing sexual relations with him. Indeed had a person in such as her doctor, who was in a position of trust, had sexual relations with her under these circumstanced, we would, without hesitation, acknowledge Andrea had been sexually assaulted. More powerfully, however, I argue that Andrea knowingly withheld consent from Rusty to engage in sexual relations. She argued with him, telling him she did not want to have sexual relations because of the threat to her

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27 See e.g. Twila L. Perry, The “Essentials of Marriage”: Reconsidering the Duty of Support and Services, 15 YALE J. L. & FEMINISM 1 (2003). Perry argues that the duty of services should be eliminated and that the duty of support should be redefined to reflect the realities of modern intimate relationships. Id. at 33-34 and 37-43. See also Elizabeth A. Heaney, Pennsylvania’s Doctrine of Necessities: An Anachronism Demanding Abolishment, 101 DICK. L. REV. 233, 254-259 (1996), [hereinafter Pennsylvania’s Doctrine of Necessities] (stating that Pennsylvania courts have determined that abolishing the duty of support also commonly called the doctrine of necessities is consistent with the Equal Rights Amendment as well as “the changing social condition and mores of our society.”). Indeed, she asserts, these courts believe that the doctrine is an “ancient relic of a bygone year.”). Id. at 254-55.

28 After a presentation of this article where three family/marital property scholars were present, each indicated that although I was advocating an expanded definition of marriage, the law seemed to be narrowing the definition. One scholar suggested that I abandon the argument to give my article more credibility. I have concluded that failing to address emotional abuse as part of an expanded definition of marriage would diminish the article’s power.

29 See Mary Alice Cleve, Comment, Is There Liability For a “Stinger in the Tongue”? Psychological Spousal Abuse Defined, 3 WIDENER J. PUB. L. 895, 897-98 (1994) [hereinafter Psychological Abuse]. Cleve notes that while society recognizes physical abuse, psychological abuse has been largely ignored.
children. By forcing her to engage in sexual relations under these circumstances, he engaged in spousal rape.

In Part IV I confront the prevailing view, that Ms. Yates killed her children due to mental illness. I dismantle this argument and ask that we consider Andrea Yates may have killed her children to escape the life she did not want. There was clearly power disequilibrium between Rusty and Andrea Yates. Killing the children may have been Ms. Yates’ means of equalizing the relationship and freeing herself from her oppression. In making this argument I draw a parallel with Kate Chopin’s *The Awakening* where Chopin depicts Edna who chose to escape the oppression her children represented by taking her own life. And while, unlike Edna, Andrea Yates did not choose to take her own life to gain freedom from Rusty and the children, she chose to escape the by killing her children.

In part V, I conclude by arguing that the killing of five children is deviant and worthy of punishment. However, by using this analytical framework to provide an explanation for Andrea Yates’ behavior, of necessity, requires us to reconsider how we view women in abusive relationships. More critically, it forces us to focus on abused women with children who experience such overwhelming oppression and abuse that they believe they have no other option but to kill their children to free themselves from the abuse.

II. EXAMINING MARITAL DUTIES: AN EXPLORATION

A. Marital Duties at Common Law

As part of the marriage ceremony for many couples, there is a public promise to “love and honor one another, remain[ing] steadfast, ‘for better or for worse,’ ‘for richer for poorer,’ ‘in sickness and in health,’” until death requires them to part. In short, marriage is essentially a contractual relationship because the parties mutually owe legally enforceable rights and duties to each other. Couples likely have a clear understanding of the basic expectations of marriage, including that they will live together, have no sexual relationships outside the marriage and become economically interdependent. There is also an implicit promise that the parties will emotionally support one another. Beyond these social expectations, however, they often have no real grasp of what the law requires. As one study revealed, although couples who intended to marry were aware of divorce statistics and the social implications were they to divorce, they were naïve as to the expectations in their own marriages, and what might occur were their

30 See Perry, supra note 27, at 2.
31 See Stanley v. Illinois, 405 U. S. 645, 663 (1972) (Burger, J., dissenting) (holding that marriage is akin to a contractual relationship since the husband and wife have legally enforceable rights and duties one owes the other as well as their children). But see Katherine B. Silbaugh, *Marriage Contracts in the Family Economy*, 93 Nw. U. L. Rev. 65, 113 (1998) (arguing that the case for describing marriage as a strong form of contract is very weak as there are substantial restrictions on what spouses are permitted to do to alter the legal consequences of marriage).
32 See Perry, supra, note 27, at 1-2.
33 Id. at 2-3 and accompanying n. 4. Perry notes that every state in the country requires that couples who seek to marry first obtain a marriage license. This license permits the state to both authorize and register the marriage. As a result, “The Couple’s relationship… becomes subject to the state regulation with respect to legal duties and responsibilities the spouse are deemed to owe each other during the marriage and that they may be held to in the event of a divorce.” Id.
marriage to end in divorce.\textsuperscript{34} Notwithstanding many married couples’ lack of understanding about their marital duties, such duties do exist. The common law, in fact, imposed duties for both the husband and wife which I will address briefly below.

1. The Husband’s Common Law Duty of Support

The husband’s duty to support his wife and the wife’s duty to render services to her husband are two of the most ancient common law concepts. These duties were considered part of the “essentials incidents” of marriage which could not be altered by premarital agreements.\textsuperscript{35} The husband and wife were legally deemed one. This meant that upon marriage, their identities became one wherein the husband’s identity supplanted the wife’s.\textsuperscript{36} The result of this merger of identities was that the husband and wife became responsible for certain essentials of marriage which were defined according to gender. The husband had a duty to support his wife financially\textsuperscript{38} while the wife had a reciprocal duty to provide domestic services for her husband.\textsuperscript{39} As a practical matter, this meant “the husband had the responsibility to support his wife financially, and the wife had a duty to provide her husband with domestic services.”\textsuperscript{40}

A husband’s common law duty of support required the husband to provide his wife with the necessities of life, including the cost of necessities provided to his wife by third parties.\textsuperscript{41} There

\textsuperscript{34}Id. at 3 and accompanying notes.
\textsuperscript{35}\textit{Maynard v. Hill}, 125 U. S. 190 (1888). And see Silbaugh, supra note 31, at 83 (indicating Restatement of Contracts Section 190 states that contracts that seek to alter the “essential incidents” of marriage were unenforceable. Comment a of the section indicating that “there is a public interest in the relationship, and particularly in such matters as support and child custody, that makes it inappropriate to subject it to modification by the parties”).
\textsuperscript{36}See 41 A. M. Jur. 2d Husband and Wife sec. 2 (1995); Heaney, supra note 27, at n. 29 (indicating “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage.” (quoting William Blackstone)). Heaney further notes that the doctrine of necessities arose as a direct result of the common law Doctrine of Coverture, where the wife lost the right to control, manage or transfer her property by ordinary conveyance as well as the right to contract or sue or be sued in her own name. The doctrine of necessities was the courts’ recognition that after marriage, women had limited economic potential. \textit{Id. at} 237-38.
\textsuperscript{37}Perry, supra note 28, at 8-10. Perry states that entrenched in the law is the ideal that marriage involves some essential elements and duties, some regarded as so important that courts hold that a marriage entered into without them is invalid. Moreover, a couple could not waive or alter these elements by private agreement. Although the list of essentials is not finite, the law of annulments provides some insight into what the law considers to be indispensable requirements for marriage. For example, both concealed impotency and misrepresentations as to pregnancy go to the heart of the marriage and would be grounds for annulment.
\textsuperscript{38}See Note, Litigation Between Husband and Wife, 79 Harv. L. Rev. 1650, 1663 (1966) (noting that courts as well as the common law regarded the husband’s obligation to support his wife as an “incident” of marriage even where the parties contracted to the contrary before the marriage). See also Motley v. Motley, 120 S. E. 2d 422 (1961).
\textsuperscript{40}See Perry, supra note 27, at 10-11(noting that the division of labor was part of the “cult of domesticity” and “sphere ideologies” that reflected the belief that wife’s proper role was limited to taking care of the home).
\textsuperscript{41}See 41 A. M. Jur. 2d Husband and Wife s 2 (1995); Jay M. Zitter, Annotation, Necessity in Action Against Husband for Necessities Furnished Wife, of Proving Husband’s Failure to Provide Necessities, 19 A.L.R. 4th 432, 434 (1983). See also Heaney, supra note 27, at 235-36. Heaney indicates that “A husband is under a legal duty to support his wife and children, and where he neglects his duty, one who supplies necessities for their support may recover their
was no such corresponding obligation for the wife. Under the doctrine of necessities, where a husband neglected to provide for his wife, he was directly responsible to a merchant who sold goods to his wife or child based on an implied contract theory. The merchant could collect from the husband what was due only if he was able to prove the items purchased were necessities; the husband and wife were still living together at the time of the purchase; and that he relied upon the husband’s credit at the time of the purchase. This doctrine was critical for women at common law, particularly since they had, in essence, forfeited their legal existence upon marriage--including their right to control property they had acquired prior to marriage--preventing them from contracting on their own behalf for food, clothing or medical needs. Even with the enactment of the Married Women’s Property Act which was designed to enforce her common right to support.

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See Joan M. Krauskopf & Rhonda C. Thomas, Partnership Marriage: The Solution to an Ineffective and Inequitable Law of Support, 35 Ohio L. J. 558, 569-77 (1974). Krauskopf & Thomas indicate that in addition to the doctrine of necessities, there are three other rights third parties could enforce against a husband who failed to support his wife. Family Expense Statutes, often passed in conjunction with the Married Women’s Property Acts, were designed to allow creditors to attach a wife’s property as payment for family debts when a husband no longer had control over the wife’s property. Id. at 571-72. A majority of states also enacted Poor laws or family responsibility, statute which were designed to require certain people to support relatives, thereby preventing such persons from being a financial burden on public funds. Id. at 572-73. Finally, nearly every jurisdiction enacted criminal non-support laws making it a criminal offense for a husband not to support his wife. These laws did not provide a wife with a remedy for enforcing her common right to support. Id. at 569-77.

42 See Perry, supra note 27, at 12. And see Monrad G. Paulsen, Support Rights and Duties Between Husband and Wife, 9 Vand. L. Rev. 709, 711 (1956) (indicating that if a husband took money from his wife to pay household bills or provide for her support, he was obligated to repay it). See also Note, The Unnecessary Doctrine of Necessities, 82 Mich. L. Rev. 1767, 1772 (1984) [hereinafter Note].

43 See Debra S. Betteridge, Note, Inequality in Marital Liabilities: The Need for Equal Protection When Modifying the Necessities Doctrine, 17 U. Mich. J. L. Rev. 43, 43 n. 1 (1983) (indicating that the common law defined the doctrine of necessities to include only those items required to sustain one’s self, such as food, drink, clothing and shelter). Id. But see Heaney, supra note 27, at 237 (indicating that a number of states expanded the definition of necessities to include “all things necessary and suitable according to the husband’s ‘rank, position, fortune, earning capacity and mode of living’”). Id.


45 See Note, supra note 44, at 1773 n 17. See also Heaney, supra note 27, at 236 n. 17 (indicating that the doctrine also applied if the wife was separated from her husband without any fault of her own. Moreover, the cohabitation requirement was important to prevent the husband from being treated unfairly if his wife abandoned the marriage. The argument was that if the wife deserted the marriage, she destroyed the contractual quid pro quo that served as the underpinning of the relationship).

46 See Heaney, supra note 27, at 237-38 (indicating that under the Doctrine of Coverture, a married woman lost both her substantive and procedural rights, meaning the she lost the right to control her property. Instead, her husband became sole owner of her property. Moreover, she lost the right to sue or be sued unless she was joined with her husband) Id.

47 See Perry, supra note 27, at 11-12 and n. 37. See also HOMER CLARK, DOMESTIC RELATIONS 286-88 (2d ed. 1988) (describing married women’s common law duties). But see Solemnization of Matrimony, The Book of Common Prayer, in Carl E. Schneider & Margaret F. Brinig, AN INVITATION TO FAMILY LAW: PRINCIPLES, PROCESS AND PERSPECTIVES 294 (2d ed. 2000) (indicating that the doctrine of necessities was of limited usefulness because the wife had to convince the merchant to extend credit to her. She further indicates that the merchant’s hesitation stemmed from the law’s refusal to make a husband pay where it was later determined that the item the wife received was not a necessity or that the husband had already provided it). Id.; HOMER CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 447-48 (2d ed. 1988) (indicating that the doctrine of necessities has been settled with so many judge-made limitations that while it once may have been an effective means of supporting wives and children, it is now of little benefit). Id.
eliminate the common injustices arising from Coverture, including the inequity of women’s inability to control their own property,\(^{49}\) it did nothing to relieve a husband of his duty to support his wife.\(^{50}\)

One the most powerful aspects of the support obligations was that the husband defined and controlled its parameters, and the wife could not enforce the duty if he did not provide support to her or even society’s satisfaction.\(^{51}\) As a result, although he was required to provide his wife with some measure of support, courts were unwilling to enter into the marriage relationship to determine the quality of the support provided.\(^{52}\) As one commentator indicates, the rules of support reflect “a conception of how an ideal married couple would share their lives.”\(^{53}\) In *McGuire v. McGuire*,\(^{54}\) for example, Ms. McGuire sought to use the court to compel her husband to provide her with suitable maintenance and support. She alleged he had treated her with extreme cruelty; even with all of his wealth, he provided her with no indoor flushing toilet or working furnace.\(^{55}\) He provided her with little money, if any, and they lived in near isolation.\(^{56}\) He refused to pay for her trips to visit her daughter.\(^{57}\) The trial court held in Ms. McGuire’s favor. And while Mr. McGuire complied with the court’s order, he also appealed the ruling, arguing, in part, that the decision violated his fundamental and constitutional rights.\(^{58}\) The Nebraska Supreme Court sided with Charles McGuire, holding no court, including an equity court, had the right to determine what was amounted to suitable support. This was a private family matter, and as long as the parties were living together, the husband was fulfilling his duty of support. The court concluded, “Public policy requires such a holding.”\(^{59}\) Ironically had Mr. McGuire wrongfully separated from Ms. McGuire and refused to provide proper support for her, the court would have used its equitable jurisdiction to order support to prevent a wrong without a remedy.\(^{60}\)

2. The Wife’s Common Law Duty to Render Services to Her Husband

Commensurate with the husband’s duty of support, a wife was required to provide services to her husband. This obligation included domestic services, consortium\(^{61}\) and child care.\(^{62}\) Indeed,


\(^{50}\) See Heaney, *supra* note 27, at 238.


\(^{52}\) See Blanche Crozier, *Marital Support*, 15 B. U. L. REV. 28, 34 (1935) (indicating that the nature of the support was in the husband’s discretion).


\(^{55}\) See HENDRIK HARTOG, MAN AND WIFE IN AMERICA: A HISTORY 7 (2000).

\(^{56}\) Id. at 7 and accompanying n. 1.

\(^{57}\) Id. at 342.

\(^{58}\) Id. at 342.

\(^{59}\) See supra note 55, at 9-10.

\(^{60}\) See supra note 26.

\(^{61}\) See Heaney, *supra* note 27, at 234; Perry, *supra* note 27, at 10 and accompanying n. 31; *Note, supra* note 44, at 1772.
case law often designated this obligation as the wife’s “duty to contribute to the family.” Nor could the duty be altered by contract between husband and wife, primarily because any agreement the husband made with his wife regarding her duty to provide services was unenforceable as the wife’s promise lacked consideration. She could not bargain with an obligation she already owed through the marriage; she had a pre-existing duty to provide services. Moreover, courts held that permitting the alteration of such duties would violate public policy. The duty to render services was described as “difficult and exhausting” work, notwithstanding one’s economic status. What is clear, however, is that the husband had no right to enforce the obligation, and he had no legal remedy if his wife chose not to perform her services.

Even if a husband could not enforce his right to services, he was still entitled to it. To bolster his entitlement to such services, the common law permitted a husband to sue a third party who injured his wife for loss of consortium when such injuries prevented her from fulfilling her service obligation. Initially the early common law recognized only the master’s right to bring an action for loss of consortium when a servant was injured. The rationale was that where the servant was injured as a result of a tort, his master suffered the loss of his services in addition to any personal injury the servant suffered.

Like the servant, the wife was viewed as her husband’s inferior. And if an inferior were harmed, the husband was permitted to sue for the loss of her services. The common law eventually expanded the husband’s recovery for loss of consortium to include damages for “loss of sexual attentions, society, and affection, as well as for medical expenditures made on the wife’s behalf.” The common law did not, however, provide a corresponding remedy for the wife. The husband’s claim for loss of consortium developed as an expansion of his right to his wife’s services. Since the husband owed no duty of services to his wife, she had no claim for loss of services were he to suffer injury. This was the case even where the husband’s injury resulted in loss of familial support.

3. Common Law Treatment of a Spouse’s Duty of Emotional Support

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63 See Note, supra note 44, at 1772.
64 Hillger, supra note 39, at 1396-1405.
65 Silbaugh, supra note 31.
66 Id. and notes accompanying text.
67 Id. at 81-83.
68 Id. at 83.
69 See HARTOG, supra note 55, at 299.
70 See W. PAGE KEETON, PROSSER AND KEETON ON TORTS 931 (5th ed. 2001).
71 Id.
72 Id. See also DAN B. DOBBS, THE LAW OF TORTS 842 (2000) (indicating that a master could also recover for loss of services if his servant was enticed away by another).
73 HARTOG, supra note 55, at 299.
74 Id.
75 KEETON, supra note 70, at 931.
76 Id.
77 Id.
While the common law did not specifically address a spouse’s right of emotional support, the right was clearly part of the “intangibles” of the marriage relationship. This argument finds support in the right, initially only in the husband, to bring a claim for loss of consortium. This claim was an attempt to “quantify intangible family relationships.”78 One writer notes that the common law later expanded the claim, characterizing it as a “species of emotional harm” because it addressed injuries to one’s emotional well-being.79 More importantly, however, this expansion permitted a husband to gain the right to recover for intangibles such as companionship, comfort, and sexual services.80 Arguably, the right to companionship was an acknowledgement that when his wife suffered harm, the husband suffered emotional harm, a condition expected from an injury to a spouse. It was also the recognition that the husband had loss the emotional support of his wife.

A wife did not initially have the right to bring a claim for loss of consortium for injury to her husband. The law’s failure to support such a claim in the wife for a third party injury to her husband did not mean the law did not recognize her right to successfully bring a claim directly against her husband for violation of her emotional well-being. She did have a claim against him for failing to support her emotionally, resulting in her severe emotional distress. By statute most jurisdictions recognized a wife’s right to emotional support by recognizing a woman’s ability to obtain a divorce based on a husband’s “extreme cruelty.”81 It was almost universally accepted that for a wife to have a valid claim for divorce under this theory, her husband must have inflicted some physical cruelty, either directly or indirectly.82 Actual violence, however, was not necessary to constitute cruelty. The great weight of authority permitted a wife to seek a divorce on the ground of mental cruelty.83 As one scholar noted, “When the mental suffering is so great that it preys upon the mind and undermines the health though suffering is caused by words and conduct, unaccompanied by any act of physical violence, the result is bodily harm and hence such conduct constitutes legal cruelty.”84 Unlike earlier decisions, courts began to recognize that a wife might prove legal cruelty by demonstrating a husband’s “systematic abuse, humiliating insults and annoyances, causing mental suffering and consequent ill health”85 just as if he had committed acts of physical violence.

The law acknowledged that a husband, by engaging in such conduct, could eventually destroy his wife’s health and even her life.86 If the law were to ignore such cruelty and deny a wife the right

78 See MARSHALL S. SHAPO, PRINCIPLES OF TORT LAW 422 (2003).
79 DOBBS, supra note 72, at 841.
81 JOSEPH W. MADDEN, HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS 268 (1931). Madden indicates that the statutes use different expressions, but all had substantially the same meaning. For example, while most jurisdictions used the term “extreme cruelty,” others used “repeated cruelty,” “cruel or abusive treatment,” “cruel and inhuman treatment, whether practiced by using violence or other means,” or “cruel treatment, outrages, or excesses, so as to render their living together insupportable.” Id. Other statutes defined “extreme cruelty” to include “the infliction of grievous bodily injury or grievous mental suffering” or behavior that threatened to “injure health or endanger reason.” Id. See also ROGER W. COOLEY, HANDBOOK ON THE LAW OF PERSONS AND DOMESTIC RELATIONS 192-197 (2d ed. 1909).
82 COOLEY, supra note 81, at 193.
83 MADDEN, supra note 81, 271.
84 Id.
85 Id.
86 Id.
to divorce after suffering such intolerable psychological abuse, a husband could mentally brutalize his wife and receive indemnity from the law’s refusal to protect her under these circumstances. More importantly, however, a wife’s right to a divorce based on mental cruelty demonstrated the emotional support was an integral component of a marriage relationship. It was deemed to be essential to marital harmony. The husband’s failure to provide what the law deemed acceptable emotional support signaled not only the weakening of the marital relationship, but also its dissolution. Critically, it demonstrated the law’s recognition of a husband’s need accept some consequences for psychologically abusing his wife.

B. Modern Treatment of Spousal Responsibilities

1. a. The Doctrines of Support

Until the 1960’s, the husband’s duty of support and the wife’s duty of services were said to be reciprocal. A husband did not have to provide services, nor was a wife burdened by the support obligated. Since the late 1960’s, however, a number of constitutional and statutory changes as well as the women’s rights movement and changes in the women’s economic position have lead to the change in support obligations between husbands and wives. At present, most states’ statutory amendments require the duty of support to apply equally to both spouses, in accordance with their individual abilities. For example, the Uniform Marriage and Divorce Act provides that in a divorce proceeding or suit for legal separation, a court may award maintenance to either spouse, considering each spouses’ needs and resources. Moreover, in states with constitutional provisions forbidding the restriction or deprivation of one’s rights due to one’s gender, courts have held that the duty of support could not be imposed solely on a husband as permitting such rules to stand amounts to discrimination based on sex. Relying on previous cases invalidating state statutes due to their gender bias, the United States Supreme Court, in Orr v. Orr, held that a state statute authorizing alimony only for wives violates the Equal Protection Clause of the Fourteenth Amendment.

Significantly, while the duty of support is now gender-neutral in its application, some states continue to hold that this duty is an interspousal obligation imposed by law which cannot be altered by contract. In these jurisdictions the duty of support is still viewed as an essential incident of marriage. Since 1970, however, many states have addressed whether the financial support obligation as it relates to alimony in the event of a divorce can be altered by contract.

87 Id.
88 See CLARK, supra note 47, at 423-24.
89 Id. at 425.
90 Id. and notes accompanying text.
91 Id. at note 15 and accompanying text.
92 Id. at note 16 and accompanying text.
93 Id.
94 Id.
95 Id. See CLARK, supra note 47, at 426. Clark notes that the duty of support must rest equally on both husbands and wives as a contrary finding would “preserve [women’s] former subordinate status in the legal definition of family…. “ Id.
96 See Silbaugh, supra note 31, at 85. Silbaugh indicates that in those states refuse to enforce premarital agreements seeking to alter the support obligation by limiting alimony awards, the rationale continues to be that spouses have a pre-existing duty of support. Id.
These states have upheld their enforceability. These modern decisions have avoided the determination of whether financial support continues to be an essential incident of marriage. Rather, courts have decided these cases based on public policy.

The doctrine of necessities also continues to find strong support in the law, particularly where those relying on the doctrine are third party medical providers. In addition, cases have held that the doctrine applies to expenses for a spouse’s legal defense. Family expense statutes also generally provide that family expenses, including the education of children, are the responsibility of both spouses, and both are jointly and severely liable for such expenses. Similarly, every state imposes criminal remedies for non-support of a spouse.

b. The Doctrine of Services

Like the duty of support, the duty of services now applies equally to both spouses. Unlike the duty of support, however, courts continue to view a spouse’s services as one of the essential incidents of marriage. Nearly all modern cases appear to hold service obligations to be a non-negotiable component of marriage. Modern courts also assert that there is a moral aspect to services, a position the law does not take regarding the doctrine of support. Yet as long as spouses are explicit about their intent to make agreements legally binding, courts will uphold contracts for work performed in a family business that exceeds the normal expectation of services within the home.

It is not entirely clear why the duty to provide services, particularly non-monetary services, is deemed to be unalterable. As one scholar suggests, the answer lies in public policy, some bearing no connection to the protection of the marital relationship. However, while courts

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97 Id. See also Robert Roy, Annotation, Modern Status of Views as to Validity of Premarital Agreements Contemplating Divorce and Separation, 53 A. L. R. 4th 222[a] 1987.
98 Id. at 85-86. Silbaugh argues since courts are presently willing to enforce agreements limiting the support obligation in the event of a divorce, financial support is no longer considered one of the essential legal incidents of marriage. Instead, courts seem to view of it as merely a financial issue. Id. at 86.
99 Id. at 14-15.
100 Id. at 14-15.
101 Id. See also Silbaugh, supra note 31, at 86.
102 Id. at 88. See also supra, sec. II A. (2).
103 Id. at 88-90. For example, Silbaugh notes that courts have refused to enforce agreements which they fear might interfere with the free exercise of religion, are inconsistent with policies protecting the welfare of children, or deny either spouse access to the courts. Id.
seem to indicate that the alteration of monetary duties such as alimony is ill-advised even if permissible, service obligations like household duties cannot be the subject of negotiation.\textsuperscript{111}

A striking example of the court’s refusal to permit a married couple to alter the requirement of non-monetary services can be found in \textit{Borelli v. Brusseau}.\textsuperscript{112} In this case, Michael and Hildegard Borelli had been married for nine years, during which time Michael was hospitalized three times due to heart problems.\textsuperscript{113} After suffering a debilitating stroke, Mr. Borelli entered into an agreement with Mrs. Borelli promising he would leave her certain property of his substantial estate\textsuperscript{114} in exchange for her caring for him at home instead of sending him to a nursing facility.\textsuperscript{115} Mrs. Borelli fulfilled her end of the agreement, personally caring for her husband at home until his death.\textsuperscript{116} Mr. Borelli did not keep his part of the bargain, however. Instead, he left most of his property to his daughter from a previous marriage.\textsuperscript{117} When Mrs. Borelli sued for specific performance of the contract, the court denied its enforcement, holding that caring for her ill spouse was a pre-existing duty. As such, it could not serve as consideration for the contract.\textsuperscript{118}

The court, without drawing a clear distinction between support and services, concluded that support has been defined broadly to encompass sympathy, confidence and fidelity as well as the obligation to provide protective supervision and nursing services without compensation.\textsuperscript{119} As a result, the duty to provide nursing services was a non-delegable duty, arising as a result of the marital relationship. The \textit{Borelli} opinion appears to treat the doctrine of support and services as interchangeable. The holding is consistent with modern jurisprudence which continues to treat non-monetary services as unalterable. As one scholar notes, this type of service is difficult to characterize. “It alone is priceless.”\textsuperscript{120}

2. Present Recognition of the Need for Emotional support During the Marriage

While the early common law denied a wife the right to recover for loss of consortium, in most jurisdictions recovery for loss of consortium now extends equally to both spouses, permitting a wife to sue for the loss of her husband’s services.\textsuperscript{121} With the expansion of the right to services, courts also implicitly redefined the definition of marriage. As the court noted in \textit{Hitaffer v. Argonne}, consortium “also includes love, affection, and companionship, sexual relations…all welded into a conceptualistic unity.”\textsuperscript{122} It is the law’s recognition of “the complex yet

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\textsuperscript{111} Id. at 86.
\textsuperscript{112} 16 Cal. Rptr. 2d 16 (Cal. Ct. App. 1993). For a detailed discussion of the decision in \textit{Borelli}, see Hillger, \textit{supra} note 39.
\textsuperscript{113} Id., 16 Cal. Rptr. 2d at 17.
\textsuperscript{114} Id. For a detailed list of the assets in dispute and a corresponding estimate of the estate’s value, see Hillger, \textit{supra} note 39, at n. 197 and 202.
\textsuperscript{115} Borelli, 16 Cal. Rptr. 2d at 17-18. Mrs. Borelli agreed, even though doctors did not recommend this arrangement, despite its requirement that she provide twenty-four hour care.
\textsuperscript{116} Id. at 18.
\textsuperscript{117} Id.
\textsuperscript{118} Id. at 20. See also Hillger, \textit{supra} note 39, at 1416; Perry, \textit{supra} note 27, at 18-19.
\textsuperscript{119} Borelli, 16 Cal. Rptr. 2d at 18; Hillger, \textit{supra} note 39, at 1418, 1419-21 and notes accompanying text.
\textsuperscript{120} See Silbaugh, \textit{supra} note 31, at 89.
\textsuperscript{121} \textit{Hitaffer v. Argonne}, 183 F. 2d 811 (D. C. Cir. 1950); HARTOG, \textit{supra} note 55, at 299.
\textsuperscript{122} \textit{Hitaffer}, 183 F. 2d at 811, HARTOG, \textit{supra} note 55.
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Arguably, in defining marriage as a “conceptualistic unity,” the court implicitly recognizes that the very nature of the marriage relationship imposes upon the husband and wife a duty to support one another emotionally. It is a desirable component of marriage. It is equal to monetary support in securing a family’s well-being. It is critical to cooperative equilibrium in a marriage.

Notwithstanding the significance of emotional support, one scholar concludes that defining emotional support as a legal obligation appears problematic. The argument is that where one spouse is unhappy with the emotional support the other spouse is providing, the only viable remedies would be marriage counseling or divorce in extreme cases, as courts cannot and are unwilling to order “specific performance of a duty to be a gentle, caring and supportive spouse.” The implicit argument is that regulation of the marital relationship should be governed by social norms rather than form legal enforcement. This argument seems to minimize the essential nature of emotional support in marriage. In fact, the law presently and effectively regulates other familial relationships such as the duties parents owe their children. More importantly, the assertion ignores that the law presently provides a number of remedies for the failure of emotional support in the context of domestic violence. The problem, however, is that the law seems to treat the right to emotional support inextricably tied to physical abuse. Yet since we recognize emotional abuse in other contexts, we ought to be willing to accept that women suffer emotional abuse at the hands of their intimate partners apart from any physical abuse they might suffer.

C. Conceptualizing Emotional Support in Terms of a Non-Monetary Fiduciary Duty

We tend to view emotional support in the context of marriage as an unspoken expectation. It is part of the covenant couples make to each other when they take their vows. It is their solemn promise we make because of our love for the other. We believe this part of marriage must remain unregulated to permit the relationship to develop through each spouse’s willingness to make herself vulnerable, emotionally and otherwise, to the other. Yet when we consider emotional support in the marital context, we do not tend to consider it an integral part of the marriage relationship. In this section I argue that emotional support is critical to marriage as an egalitarian institution.

As a general notion, “[a] fiduciary is a person who undertakes to act in the best interest of another person.” In the marital context, a fiduciary duty arose in the context of marital assets

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123 Id.
124 See Silbaugh, supra note 31, at 92.
125 Perry, supra note 27, at 43.
126 Id.
128 Id.
130 See Austin W. Scott, The Fiduciary Principle, 37 Cal. L. Rev. 539, 540 (1949); Alexandria Streich, Spousal Fiduciaries in the Marital Partnership: Marriage Means Business but the Sharks Do Not Have a Code of Conduct, 34 Idaho L. Rev. 367, 371 (1997) [hereinafter Spousal Fiduciaries in the Marital Relationship]. Streich indicates that Fiduciary relationships arise in the context of business relationships or where one is a trustee. Id. at 71-72. Such relationships also exist where one is in a confidential relationship, arising due to the relationship between the
where husbands’ exclusive management and control over marital assets permitted them to easily defraud their wives by hiding or disposing of marital assets.\textsuperscript{131} Male management of assets has been remedied, first by the courts’ imposing a fiduciary duty upon husbands and then by legislative enactment.\textsuperscript{132}

Many commentators and scholars who have written about the fiduciary duty between spouses speak of it in largely monetary terms. The tendency is to focus on the tangible marital property when the parties seek divorce.\textsuperscript{133} This approach is disquieting due to its tendency to ignore that a spouses’ acting as a fiduciary extends beyond community assets. Rather it includes the intangibles such as emotional support and concern for the other’s well being. There are benefits to being married, some of them monetary. But there is something unique about the communal nature of marriage, including its intimacy, caring and commitment that are crucial to its success.\textsuperscript{134}

Professors Carolyn J. Frantz and Hanoch Dagan indicate, a self-centered approach, where one spouse seeks to achieve only his individual needs will not be successful.\textsuperscript{135} They argue further that for one to obtain the unique goods of a marriage, what is good for one spouse must affect what is good for the other.\textsuperscript{136} And when spouses in a marital community engage in collective projects including child rearing and broader familial relationships it produces an intense bond leading to closeness, interdependence and mutual trust.\textsuperscript{137} More powerfully, Frantz and Dagan argue, “Marriage as an egalitarian liberal community demands that spouses look beyond their own narrow self-interests.”\textsuperscript{138} But it does not require that one negate one’s self. Rather, while altruistic care of the other plays an important role in the meaning of marriage, it does not and should not imply self-sacrifice. It is anathema to true altruism.\textsuperscript{139}

Considering the argument of spouse as fiduciary, I argue that Rusty Yates owed Andrea Yates a duty of emotional and psychological support to by virtue of his marriage to her. He failed her in this regard. While Mr. Yates argued has regularly asserted Andrea’s severe mental illness as a justification for the death of their children, his behavior toward her belies his actual belief in the severity of her condition. Indeed, if Andrea labored under on-going severe mental illness, his

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\textsuperscript{131} Streich, supra note 130, at 376.  \textit{See also} Russelyn S. Carsns, \textit{Management and Control of Community Property: Sex Discrimination in California Law}, 6 U. C. DAVIS L. REV. 383, 386-87 (1973) (indicating that a husband could squander, mismanage or dispose of the community property regardless of whether it benefited the marital community or simply himself).
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\textsuperscript{132} Streich, supra note 130, at 376-77.
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\textsuperscript{133} \textit{See generally e.g.}, Julia Halloran McLaughlin, \textit{Should Marital Rights be Inalienable? Preserving the Marital Ante}, 82 NEB. L. REV. 460 (2003).
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\textsuperscript{135} Id.
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\textsuperscript{136} Id.
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\textsuperscript{137} Id. and text accompanying note 22.
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\textsuperscript{138} Id. at 84-85.
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\textsuperscript{139} Id. (citing JEAN HAMILTON, SELFLESSNESS AND THE LOSS OF SELF, IN ALTRUISM 135, 161 (Ellen Frankel Paul et. al. eds., 1993)).
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indifference to her condition demonstrates his willingness to put his interest above his wife’s, no matter the cost to her. This can clearly be seen in his forcing her to have another child knowing there was at least a possibility that she might become severely mentally ill, rendering her a threat to herself, and, more critically her children. It is clear that Rusty provided monetary support as well as food and shelter, the tangibles. However, he neglected to provide the intangibles which were critical to Ms. Yates’ well being and that of the Yates children. He breached his fiduciary duty to her by psychologically and sexually abusing her. As I argue below, Rusty’s abuse of Andrea was responsible, in part, for the death of their children.

III. CONSIDERING THE POSSIBILITY: RUSTY YATES ABUSED ANDREA YATES

Even after Andrea Yates’ second trial where the jury found that Ms. Yates killed her children while insane, many continue to wonder whether another motive lead her to kill her children. In this section I offer another motive. I directly consider whether Andrea Yates was a victim of domestic abuse. I begin by looking at the broader definition of domestic violence and its inclusion of both psychological and sexual abuse. Rightly, the primary focus of commentators and scholars has been physical abuse of women at the hands of a spouse or intimate partner. These writing also address psychological abuse that often accompanies physical battering. I argue, however, that the complexities of domestic abuse require a greater focus on psychological (emotional) and sexual abuse and the devastating impact these types of abuse have on their victims. Within the context of the more comprehensive definition of domestic abuse, I argue Rusty Yates psychologically and sexually abused Ms. Yates. While this argument seems to some to be without merit, there is support for this conclusion which I offer below.

A. Returning the Focus to the Definition of Domestic Abuse

The Center for Disease Control and Prevention (CDC) National Center for Injury Prevention and Control defines domestic violence to include the “actual or threatened physical or sexual violence or psychological or emotional abuse” by a current spouse or former spouse, boyfriend, girlfriend, or dating partner. The United States Department of Justice’s Office of Violence Against Women (OVW) further defines domestic violence as a “pattern of abusive behavior in any relationship that is used by one partner to gain or maintain control over another intimate partner.” These actions include economic isolation and behaviors that “intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or

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140 See Infra § IV D.
141 See Infra § IV C.
142 For purposes of this article, I use psychological and emotional abuse interchangeably.
Commentators and scholars have often focused on the physical abuse inflicted by a husband against his wife or intimate partner. This is the proper focal point, particularly since, historically, spousal abuse was treated as a private family matter, denying its victims the right to criminal or civil remedies.\textsuperscript{147} Due, in part, to the efforts of the women’s movement\textsuperscript{148} domestic violence first gained recognition as a serious problem in the 1970’s.\textsuperscript{149} The statistics detailing the number of women who die or sustain serious bodily injury each year at the hands of an intimate partner serve as a powerful reminder that domestic abuse in the form of physical violence continues to be a serious societal problem.\textsuperscript{150}

B. Understanding the Impact of Psychological Abuse in Cases of Domestic Violence

Women suffer abuse daily at the hands of a spouse or intimate partner. What is problematic, however, is that we tend to overlook that domestic violence’s multi-faceted definition includes psychological and emotional abuse and that this kind of mistreatment can be even more damaging than physical abuse.\textsuperscript{151} Clinical psychologist Dr. Lenora Walker, the first to define the battered women syndrome (BWS),\textsuperscript{152} recognized for women who have been battered, it was the psychological abuse, not the physical abuse, that caused the most pain.\textsuperscript{153} Concluding psychological abuse is difficult to quantify, however, Dr. Walker chose to concentrate strictly on physical abuse.\textsuperscript{154} Her decision to adopt this approach to emotional abuse has not occurred in a vacuum. As a community, law enforcement has concluded that psychological abuse, unaccompanied by physical violence, does not provide its victims with a remedy against their perpetrators. Specifically, in adopting its policies on domestic violence in 2004, the National District Attorneys Association concluded that although both psychological and emotional abuses qualify as domestic violence, these acts are not punishable as crimes.\textsuperscript{155} Critically, women who suffer non-physical abuse rarely seek assistance unless it is accompanied by physical harm.

It is likely that most of the focus has been on physical abuse because it fits the definition of a crime with precisely defined parameters.\textsuperscript{156} It is seen as a crime against society which a
prosecutor can prove beyond a reasonable doubt by showing the victim’s bruises, broken bones, medical records and other evidence to prove the abuse.\textsuperscript{157} Whether by statute or judicial interpretation of the law, an abuser has clear notice that the behavior for which he has been charged convicted and punished is a crime.\textsuperscript{158}

Psychological abuse is more problematic, however. In the context of domestic violence, the duty not to harm others psychologically has not had the same history as physical abuse.\textsuperscript{159} As such, society remains “uncomfortable with creating any sort of societal duty to ensure that someone else is free from mental duress or psychological abuse.”\textsuperscript{160} Psychological abuse is not subject to objective verifiability beyond a reasonable doubt as there are no visible signs of injury. The result is that the criminal justice system does not consider psychological abuse an actionable crime.\textsuperscript{161} But is should be. As one writer notes:

Unlike physical abuse, where the damage involves broken bones or bruises, the psychologically abused victim does not wear scars the world can see. Yet, a person in a psychologically abusive relationship is abused. Psychological abuse destroys the victim’s self-worth and inhibits the victim’s ability to cope with society. These effects are just as damaging as physical abuse…. In a marriage relationship, psychological abuse can be even more disturbing. It enters the marriage quietly—unnoticed.\textsuperscript{162}

When one considers the definition of emotional and psychological abuse, clearly an abuser has the power to severely harm his victim. The U. S. Department of Justice’s OVW defines emotional abuse as “Undermining an individual’s sense of self-worth …or self-esteem…[including], but not limited to constant criticism, diminishing one’s abilities, name-calling, or damaging one’s relationship with one’s children.”\textsuperscript{163} Like physical abuse, there is a pattern of behavior with the potential to mentally damage, even scar permanently, its victim. Yet since the scars cannot be seen with the eye, we treat the injuries as though they do not exist. The OVW further defines psychological abuse as behavior “Causing fear by intimidation…and forcing isolation from [one’s] family, friends, school [or] work.”\textsuperscript{164} Even recent cases have recognized the devastating impact psychological abuse can have on its victims. For example in \textit{State v. Durall}, the court recognized the husband’s control and isolation of his wife as psychological abuse.\textsuperscript{165} And in addressing whether a women was a victim of domestic violence,
the court in *Hernandez v. Ashcroft*, held extreme cruelty provides a way to evaluate whether an individual has suffered psychological abuse that constitutes domestic violence.\footnote{Hernandez v. Ashcroft, 345 F. 3d 824, 824 ( 9th Cir. 2003 ).} It is within this context I argue below that Rusty Yates mentally abused Andrea Yates.

**C. Rusty Yates and Andrea Yates: A Tale of Emotional and Psychological Abuse**

Much has been written about Ms. Yates’ mental illness as the precipitating cause of her killing her children,\footnote{See supra note 11.} but relatively little attention has been given to Rusty Yates’ role in contributing to Ms. Yates’ mental deterioration and the role this played in the death of five innocent children. As one commentator asks, since two juries have been asked to decide to what degree Ms. Yates was responsible for her behavior, why hasn’t a jury been asked to consider Rusty Yates’ culpability in the death of his children?\footnote{See Opinion, THE BISMARCK TRIBUNE, Aug. 2, 2006, at 10a. See also Your Turn: Focus: Andrea Yates, San Antonio Express-News, at 4H.} This is a reasonable inquiry, particularly given circumstances that could lead one to believe during their marriage, Rusty Yates engaged in ongoing mental abuse of Ms. Yates.

Recent studies find there are some clear indicators of psychological abuse. One such indicator is one spouses’ social isolation and control of the other. In a 2004 study, Jill Messing and John Heeren considered women who killed their children in the context of domestic violence.\footnote{Jill Theresa Messing & John W. Heeren, Another Side of Multiple Murder: Women Killer in the Domestic Context, in 8 HOMICIDE STUDIES 123, 151-52 (2004).} They found that one’s status as a stay-at-home mother is likely to result in social isolation from adult relationships.\footnote{Id. at 151.} It is a pervasive presence in women who kill their children.\footnote{Id. at 130.} Messing and Heeren further indicate that this social factor others, including gender inequality, lead to an environment in which women are under psychological and physical threat.\footnote{Id.} These women, enduring isolation and lacking social support, believe they have no other option but to kill their children.\footnote{Id.}

Messing and Heeren’s study lends strong support to the argument that Rusty Yates psychologically and emotionally abused Ms. Yates. It is not mere conjecture or speculation. Rather, he systematically isolated and controlled her during their marriage, completely disregarding her as his wife, and as a person who was entitled to dignity and respect. More importantly he denied her the right to contribute as an intellectual being. It is possible Rusty believed his behavior toward Andrea demonstrated care and concern for her and their children. Yet by his manipulation, neglect and disrespect of her, he consistently demonstrated a complete disregard for her well-being. Moreover, one can strongly argue his behavior was a major contributing factor in the demise of Andrea and ultimately their five children.
As I previously argued, one of the characteristics of an abusive marriage is one spouse’s control of the other. In the case of Andrea and Rusty Yates, Rusty controlled every aspect of his family’s life even their spiritual well-being. To illustrate, rather than following traditional religious teachings, Rusty found fault with organized religion after being influenced by the teachings of Michael Woroniecki, a traveling preacher he met while in college. He in turn imposed his religious beliefs upon Andrea who had been raised Catholic. It does not appear that she had a choice as to what spiritual message she would follow. Rusty made that decision for her. Rusty’s relationship with Woroniecki brought Andrea into contact with him. Indeed, much has been made about the alleged influence Woroniecki had on the Yates family, and particularly Andrea Yates. In fact a number of people blamed him for Andrea’s unraveling mental state.

One could not miss, however, that if Rusty had not introduced Andrea to the Woronieckis, Michael would not have had the opportunity to indoctrinate Andrea, as many have claimed, causing her obsession with his teachings. While there is some disagreement as to the extent of Woroniecki’s influence over Andrea, undoubtedly Woroniecki was one of the few people who observed the Yates’ relationship prior to and during the marriage. He is also one of the few people who warned Rusty not to marry Andrea—or anyone—if he did not have the ability to unselfishly enter a marriage relationship.

From the beginning of Rusty’s marriage to Andrea, Woroniecki saw Rusty as a workaholic who would willingly sacrifice his family for his job at NASA. He observed Andrea’s desperate loneliness during the marriage, that “she had responsibility for all [of their] children” without any help from Rusty. He concluded, “She did not know how to handle it.” It also appears that Andrea confided in Woroniecki about her relationship with Rusty. She wanted to know what she should do when her husband would not follow the lord and have a relationship with her. Woroniecki responded, “If Rusty could have just said ‘I love you….I’m sorry for blowing it with you honey.’… If Rusty could have just said, ‘Michael, I need help….I don’t know how to love her like I should. I am such a selfish and proud man. What do I do?”

Woroniecki indicated, however, that Rusty’s arrogance prevented him from asking for help. Rusty believed everything was under control even when things were spinning out of control.

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174 O’MALLEY, supra note 2, at 28-29.
175 See Deborah W. Denno, Who is Andrea Yates? A Short Story About Insanity?, 10 DUKE J. GENDER L. AND POLICY 1, 78 note 89 and accompanying text.
176 Id. Denno notes that Rusty Yates states he is certain that Andrea’s illness rather than the Woronieckis’ teachings caused Andrea’s delusions. He does believe, however, that Andrea suffered delusions she would not have had were she never introduced to the Woronieckis. Ironically, Rusty never appears to take responsibility for introducing his wife to the very people whom he claims contributed to her mental delusions.
177 It is worth noting that even after Russell Yates decided that he would no longer follow the teachings of Michael Woroniecki, Andrea was clearly, by this time, emotionally tied to the Woronieckis and their teachings because she did not receive emotional support from her husband.
178 See O’MALLEY, supra note 2, at 29-30.
179 O’MALLEY, supra note 2, at 31.
180 Id.
181 Id.
182 Id. at 98. It is not clear from the context of the quote whether Ms. Yates is asking about Rusty’s relationship with God or with her. But based upon the response, it appears that Andrea asked about Rusty’s failure to have a relationship with her.
183 Id.
Ultimately, Woroniecki and his wife had seen Andrea full of hope, but they believed Rusty had robbed her of her hope.\footnote{184}{*Id.* at 99.}

By implication, then, Woroniecki believes Andrea’s killing her children had more to do with the desire to punish Rusty for his marginalization of Andrea and for his robbing her of her hopes and dreams. He powerfully concludes that Andrea’s killing her children had nothing to do with religious delusions. Rather, Andrea’s motive for killing her babies was revenge.\footnote{185}{*Id.* at 97.} To support his claim, he reveals Andrea’s repeated discussions with him about her deep and intense hatred for Rusty, pleading with Woroniecki to tell her how to learn to live with a man she despised.\footnote{186}{*Id.*} In revealing these conversations, Woroniecki permits us to see that even for Andrea, there was contradiction between her public and private life. She spoke publicly about his being a good man, but privately she despised him as one who had regard for only himself.\footnote{187}{*Id.* at 87-88.}

One might be inclined to be dismissive of any insight Woroniecki provides into why Andrea killed her children, particularly given his radical religious rhetoric and unconventional living.\footnote{188}{*Id.* at 87-88.} He might appear incredulous because he allegedly sold Rusty the unsafe bus Rusty and his family used as their home for nearly two years.\footnote{189}{*Id.*} Some blame Woroniecki for indoctrinating Andrea with his religious beliefs and driving her over the edge by reinforcing her failure as a mother.\footnote{190}{*Denno,* supra note 175, at 78, note 89.} Recognizing Woroniecki’s observations as the ramblings of a mad minister or as one trying to absolve himself of liability would be a mistake, however. His statements indicate Rusty controlled everything around him, including Andrea, and that he subjected Andrea to ongoing psychological and emotional abuse.

If Woroniecki’s description of Rusty’s treatment of Andrea were the only word on the matter, it would be easy to ignore. It would also be easier to view Rusty as a victim who had little to do with the death of his children, further supporting that Andrea killed her children due to mental illness. But when one wades through all that has been reported about Woroniecki to determine who he is or is not, his statements maintain an air of truth. More importantly, there is independent information to support Woroniecki’s observations, lending credence to my argument as to Rusty’s control and disregard of Andrea as a woman and as a person.

\footnote{184}{*Id.* at 99.}
\footnote{185}{*Id.* at 97.}
\footnote{186}{*Id.*}
\footnote{187}{*Id.* at 87-88.} O’Malley writes that during Andrea Yates’ interview with psychiatrist Lucy Puryear, Dr. Puryear asked whether Andrea had told anyone about her thoughts of harming the children. She stated she told Rusty. She then began to defend Rusty indicating, “He was a good husband and wanted to help….I told him I was overwhelmed….He tried to make things better. He bought a house because the house had gotten to be….pretty…crowded.”\footnote{188}{*Id.*} O’Malley asserts that Woroniecki’s rhetoric, “his theology of salvation,” does not differ substantially from Roman Catholicism. Where it diverges is in Woroniecki’s belief that God gave a ransom for all men, the saved seemed to include only eight people: Woroniecki and his wife and children.\footnote{189}{*Id.*} O’Malley indicates that there might have been a breakdown in the relationship because the bus Woroniecki sold to Rusty Yates was unsafe. In addition to safety code violations and a leaking roof, the bus had faulty wiring, presenting a safety hazard to his children.\footnote{190}{*Denno,* supra note 175, at 78, note 89.} Denno indicates that Dr. Puryear, a psychiatrist for the defense, argues while Andrea Yates would have suffered mental illness even if she had not met Michael Woronieckis, she would not have drowned her children.
If one considers Andrea’s life before her marriage to Rusty and prior to the birth of their first son Noah, Andrea Yates worked as a post-opt nurse for M. D. Anderson Cancer Center. She lived a full, self-actualized life, with or without mental illness. After Noah’s birth, she became a stay-at-home mother with little contact with others outside of her husband and children.\(^{191}\) She began to live a life of isolation devoid of freedom, a life starkly different from the one she had known prior to marry Rusty. Her best friend, Debbie Holmes, indicates she was the only friend permitted to visit Andrea.\(^{192}\) Andrea’s family appears to have had little direct contact with Andrea and Rusty, particularly as it related to their visiting the Yates home.\(^{193}\) Even more compelling evidence of Rusty’s control and isolation of Andrea is his decision to move his family consisting of two small children from their suburban home to a 38 foot trailer and later into a 350 square foot customized bus. He made this decision to accommodate his desire to advance his career by taking a project with NASA, requiring him to move his family to Florida.\(^{194}\) He attempts to convince others that Andrea had a choice as he made these and other decisions in consultation with her.\(^{195}\) Evidenced by his ongoing disregard of her, it is more likely that he sought her opinion only after he made the decision, particularly given the consequences of such a move required her to move away from her father, whom she loved. By making the decision to move without a prior discussion with Andrea, he reinforced her subordinate status, confirming Rusty’s perception of her not as an equal, but as one who considered his own needs in the marriage as paramount.\(^{196}\) Even after the project concluded, Rusty decided not to return to his home; he wanted to “travel light.”\(^{197}\) He could not see that this plan resulted in further isolation of Andrea who was left to raise four small children without assistance from him or any support from her family. Critically, it does not appear that he took time to determine whether his wife, who had miscarried while living in the trailer, might need psychological help.\(^{198}\) It was only after her “breakdown” he concluded—without medical training—Andrea had suffered postpartum depression rather than a more grave mental illness.\(^{199}\) Andrea’s social worker noted Rusty’s “controlling”\(^{200}\) behavior. She was so concerned about the family’s living on a bus with four children that she contacted Houston’s Child Protective Services Abuse and Neglect Hotline.\(^{201}\)

\(^{191}\) See Roche, supra note 15, at 45. It is not clear whether Andrea chose to be a stay-at-home mother or whether, due to Rusty’s traditional beliefs and the influence of Michael Woroniecki, Rusty made that decision for the family.

\(^{192}\) Id. at 48.

\(^{193}\) Id at 46.

\(^{194}\) Id.

\(^{195}\) Id. See also Denno, supra note 175, at 28. As Denno points out, Rusty claims to have purchased the bus because Andrea and Noah preferred the bus to the 38 foot trailer where they were then living. This was not a choice, however. She was not given the option of leaving the trailer to live in a regular home. Rather, given the choice between two evils, she chose the lesser of them.

\(^{196}\) Id. Roche indicates that even during their preparation for the move into the bus, Andrea focused on saving photos and her wedding dress. Rusty, however, focused on himself. He stored his tools and workout gear.

\(^{197}\) Id. at 46.

\(^{198}\) Id.

\(^{199}\) Id at 47.

\(^{200}\) Id.

\(^{201}\) See O’Malley, supra note 2, at 36. Ms. Yates’ social worker, Norma Tauriac, also expressed concern that Russell Yates did not see the impropriety of teaching a 3 ½ child to use a power drill. After referring the matter to Child Protective Services (CPS), however, Tauriac received a letter from a supervisor stating that because the situation did not appear to involve the occurrence or substantial risk or abuse or neglect, there were no further plans to investigate.
After the death of his children, Rusty attempted to present a public image of a man who cared deeply for his mentally ill wife. Yet his private treatment of Andrea contradicted this portrayal. If one considers Rusty’s behavior toward Andrea during one of her first hospitalizations, it is clear Rusty had little regard for her well-being, particularly if it interfered with his personal agenda. Indeed, it lends credence to Michael Woroniecki’s belief that Rusty had stolen Andrea’s voice from her. For example, even though Andrea appeared to be making progress in family therapy, Rusty pressured her into seeking discharge from the treatment program, claiming she had reached 90 to 95 percent normalcy. Andrea described herself as having reached only 70-75 percent normalcy. The therapist confirmed Andrea’s assessment of her condition, writing in her notes that Andrea’s stress level would continue to remain high because in addition to their plan to home-school their children, the couple planned to have more children. What is even more revealing is Andrea’s attendance in group therapy without Rusty. Andrea found the support she had not received from Rusty. The group encouraged Andrea to assert herself with Rusty. Her response was illuminating. She told the group that although she wanted to communicate with Rusty, when he was home he turned on the television. Prior to her breakdown, Rusty treated her as if she were insignificant. He created an oppressive atmosphere, daily confirming for Andrea her relative insignificance. He verified her inability to contribute anything worthy of Rusty’s consideration. More importantly, when being discharged from outpatient care, Andrea told her therapy group that she was sorry she had to leave them because they supported her. There was and unmistakable implication: Rusty did not and had not been supporting her. She realized what it meant to receive emotional support, yet until she attended group therapy, she had not verbalized its conspicuous absence from her marriage to Rusty. Arguably, this was one of the first times during her marriage Andrea experienced a genuine ethic of care and support. She felt “safe.”

Andrea told others about Rusty’s continued disregard for her. She confided in her best friend, for example, how controlling and manipulative Rusty was. She also described him as belittling and critical of her. She relayed to her friend that when she trimmed Russell’s hair, her hands trembled because he belittled her for every mistake. These are clear indications of emotional and psychological abuse. Even more telling, while Russell Yates presented an image of himself as someone who emotionally supported and assisted Andrea in caring for their children, the image was not consistent with the reality of their daily lives. Armed with the knowledge of her severe mental illness, his selfishness did not permit him to see that Andrea, even prior to the break down, was overwhelmed and depressed. He believed that they each had roles to fulfill, and she was not doing her job well. He voiced his dissatisfaction with her performance. At trial, Debbie Holmes testified that while Andrea was hospitalized, Russell

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202 See Denno, supra note 175, at 66, Append. 1.
203 Id.
204 Id.
205 Id.
206 Id. at 67.
207 See Roche, supra note 15, at 48.
208 Id.
209 Id. at 47. See also O’Malley, supra note 2, at 86-88. During her interview with Psychiatrist Lucy Puryear while at the Harris County Jail, Andrea indicated that while she was living on the bus, it was crowded and she was under a lot of stress. She relayed that on one particularly bad morning, she called Rusty to come. She was crying and worried. She believed she was having a nervous break down. Id.
complained about his inability to comprehend why Andrea could not keep up with taking care of and home-schooling the children, particularly since one of their neighbors had nine children and was handling the responsibility well. He stated “She has nine kids and teaches her kids tee-ball, and she does just fine. I don’t see why Andrea is having so much trouble.” If he were willing to make disparaging comments about his wife’s failures to her best friend, it is likely he did not refrain from directly criticizing Andrea about what he believed were her weaknesses and ultimate failures as a wife and mother. Equally alarming is his refusal to take Andrea’s mental illness seriously. In a television interview, Brian Kennedy, Andrea’s brother, indicated when he accompanied Rusty to admit Andrea to a mental health facility, he tried to have a discussion with Rusty about people who suffer with depression. Rusty indicated that Brian was wasting his time. Rather, he indicated that all people with depression need is a swift kick in the pants. If he believed people laboring with depression or other psychological maladies are not worthy of consideration, he would have done relatively little to support a wife whom he believed to be mentally weak.

No where is the public-private dichotomy more evident then in Rusty Yates’ decision to have another child with someone whom he believed to be severely, mentally ill. Rusty stated he would not have had more children with Andrea had he been warned that doing so would render Andrea psychotic and present a threat to their children. Moreover, he claims while Andrea’s psychiatrist, Dr. Starbranch, specifically indicted some women who become psychotic pose a threat to their children, she never specifically warned him that Andrea was psychotic or that she was a danger to their children. Were one to accept Rusty’s assertions as true, they can only be explained, at best, in terms of Rusty’s willful blindness. At worst, they demonstrate a complete disregard for the life of his wife and ultimately his children. Even in light of what Rusty characterizes as Dr. Starbranch’s general admonition about having other children, both Rusty and Andrea had been warned that were she to have another child, her mental illness would return and that it would be more severe. Although he alleges he was not warned about the threat to his children, he was fully aware of the threat to Andrea. Notwithstanding this knowledge, both Andrea and Rusty stopped using birth control. As I argue below, it is possible Andrea did not believe she had any other option. He again substituted his own judgment for sound medical advice to obtain what he wanted: another child. He sought to explain this otherwise irrational decision by stating he and Andrea could seek early intervention because they could easily recognize the symptoms were they to return. He concluded, even though Luke’s birth may have triggered Andrea’s mental illness, Luke’s birth was worth the trade for Andrea’s mental stability. Rusty describes the decision in the following manner:

212 See http://www.yatescase.org/. (Last visited March 10, 2008). In his blog, Rusty explains that while Dr Starbranch told him and Andrea that Andrea should not have more children because she could again become ill, she did not explain that Andrea was psychotic and that she could potentially harm her children. He alleges that Dr. Starbranch withheld critical information from him.
213 Id.
214 Roche, supra note 15, at 48.
215 Id.
216 Id.
217 Id.
Suppose you could receive a beautiful new car in exchange for enduring the flu for two weeks. Would you do it? A child is much more valuable than a car. Also two weeks with the flu is worse than we expected. We have no idea that having another child could lead to such tragedy. To us, it was a good trade.218

Rusty’s analogy is misguided and, indeed, frightening on a number of levels. First, it is difficult to fathom how Rusty believes Andrea’s potentially suffering severe and irreparable mental illness is comparable to one’s suffering with the flu, even an unexpectedly severe flu. Second, given the enormity of the possible consequences, it is even more incredulous to see how an arguably intelligent man could not see the stark incongruence between the prospect of obtaining a new car and the sacrifices necessary for the birth of a child, particularly given the potentially life-threatening consequences child birth presented to both Andrea and their children. Third, Rusty uses the term “we” as if Andrea were a full and equal participant in the decision to have another child. Many observed Rusty’s controlling and selfish behavior, making it likely that he would give little regard to Andrea’s objections. To Rusty, Andrea was no more than property that he could manipulate in the manner he chose. The relationship was clearly one of power disequilibrium. She could not have had an equal voice in deciding whether she were willing to trade progress toward full mental stability for the probability of slipping into a mental abyss from which it were possible that she would not escape.

Fourth, Rusty had a duty to support Andrea mentally and emotionally. He failed her. He indicated that after successfully receiving treatment from Dr. Starbrach, Andrea was “back to normal.”219 Even he were correct, he did not give her the opportunity to live with her new-found “stability” before impregnating her and returning her to a state which lead, in part, to the death of her children. Fifth, and most importantly, Rusty was not talking about trading his own mental well being for the chance to have other children. Not even when discussing the sacrifice for a new vehicle does he place himself in the position of the one being “sacrificed.” He is the one who decides the value of the sacrifice; he decides the sacrifice must be made; he receives the benefit. In the case of his wife, he decided her self-worth and mentally stability were at best secondary; there was a price for which he was willing to sell for Andrea’s mental well-being, as long he got the desired result. He was not risking his own well-being. When asked why she wanted another child, Andrea responded, “Rusty wanted the baby. Rusty cares only about himself.”220 Nowhere is his need to control everyone and everything more evident then here. He substituted his own judgment for that of trained mental health professions just as he had done so many times before. He wanted more children, notwithstanding the significant threat to Ms. Yates and their existing children. Indeed, his desire for more children did not compel him to care for and protect his children from his wife, who was, in his estimation, a serious threat, if only to herself.

218 See http://yatescase.org/.
219 Id.
220 Roche, supra note 15, at 48.
Arguably, one of Rusty’s last emotionally abusive acts substantially contributed to the death of five children. While Rusty publically embraced the doctor’s diagnosis that Andrea was laboring under severe mental illness, it did not prevent him from criticizing her performance as a mother and attempting to force her to assume duties she may have been incapable of performing. It is also possible she did not desire to continue to assume her duties as wife and mother. His consistently voicing his disapproval of Andrea fits squarely within the definition of psychological abuse. And because he did not fully subscribe to what he now claims to be the diagnosis and corresponding treatment of Andrea that would have prevented her from killing their children—if Andrea Yates was as mentally incapacitated as he claimed her to be—he substituted his own judgment for that of Dr. Saeed, Andrea’s doctor. Dr. Saeed specifically instructed Rusty not to leave Andrea alone with the children. Instead of heeding this warning, however, he decided to leave Andrea alone with the children one hour in the morning and one hour in the evening so that she did not become completely dependant on him and his mother for what he decided were her maternal responsibilities.

By Rusty’s admission subsequent to the killings, Andrea was a threat to herself. Given this acknowledgement—if Rusty believed it—he should have realized that Andrea required help to perform her daily activities. Her inability to take care of her basic needs as well as those of her children, particularly after giving birth to her last child, presented an obvious threat to both herself and her children. Logically, then, she could not take care of five children, and the children were too young to care for themselves. Had Rusty emotionally supported Andrea rather than demonstrating private distain for those suffering mental illness and depression, he would have permitted her to receive proper treatment and would not have insisted upon continuing to have children with a woman who appeared to retreated into a mental abyss with ever child. Rusty’s decision to ignore Dr. Saeed’s advice gave Andrea the opportunity to kill her children. But as I argue below, whether or not Andrea was mentally ill, she wanted to kill her children. Not only did he fail to protect the woman whom he claimed to be mentally debilitated, but he failed to protect his children.

D. Rusty Yates Sexually Abused Andrea Yates during Their Marriage

With regard to sex, a husband [was] immune from prosecution for raping his wife. It [was] reasonable in many marital situations to assume actual consent to intercourse, but the husband’s immunity [applied] even if it [was] clear that the wife explicitly refused. Her husband’s immunity might in such cases be said to rest upon her irrevocable consent at the time of marriage. It is doubtful, however, that such irrevocable consent [was] anticipated by wives, and certain special circumstances, for example sickness, would in any event justify refusal. The absolute privilege therefore appears as an imposed term of the marital bargain, and it [was] difficult to see what social purpose could [have been] served by this requirement; indeed it seems offensive that anyone’s rights in this regard should [have

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222 SUZY SPENCER, BREAKING POINT, 300 (St. Martin’s Paperbacks 2002). Spencer writes that Rusty announced at a family gathering the weekend before the drowning that he had decided to leave Andrea home with the children so that she would begin to take care of her maternal duties.
“Marital rape is a form of violence where the husband asserts his power and control over his wife.” For some it is difficult to accept any argument suggesting Rusty Yates may have sexually abused Andrea Yates. Yet this argument might be easier to conceptualize if one removes from consideration the need for evidence of a physical battering in order to come to terms with the reality that a husband can rape his wife. Commentators have identified three categories of spousal rape, the most common form, force only rape, is largely motivated by the need for power over one’s victim. As I argue below, Rusty sexually abused Andrea during the marriage, damaging her emotionally and psychologically. While I do not argue in this article for Rusty Yates’ prosecution, I do intend to provide another motive Andrea Yates’ killing the children.

1. A Brief History

As a matter of history, a husband could not be prosecuted for raping his wife. Such freedom from prosecution at common law was based on the definition of rape which exempted husbands from criminal liability. The initial justification for this entitlement was rooted in an unsupported extrajudicial statement by Sir Matthew Hale, a British jurist, who declared without authority, “but the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract.”

Many courts criticized Hale’s pronouncement as to a husband’s license to rape his wife, indicating a marital rape exemption was not implied in the common law. However, Hale’s statement has been accepted as the foundation for spousal immunity in the United States. In 1857 the Supreme Judicial Court of Massachusetts, in Commonwealth v. Fogerty, recognized for the first time in United States the existence of a spousal rape exemption, finding that “evidence of marriage to the victim could be a defense to rape.” Moreover, Hale’s
unsubstantiated comments sparked a number of other common law theories in support of a marital rape exemption including implied consent, marital contract, property rights and marital unity.

Although the common law justifications, in theory, no longer apply, present-day defenders of the exemption cite a number of reasons for continuing spousal immunity. One such argument, that marital rape is not as serious as other types of rape, asserts that the damage to one’s wife is less severe than damage caused to victims of non-marital rape. As one writer notes, there is significant evidence to suggest that marital rape can be more traumatic than other forms of rape. A victim of spousal rape powerfully states:

[When a stranger does it, he does not know me, I don’t know him. He is not doing it to me as a person, personally. With your husband, it becomes personal. You say, this man knows me. He knows my feelings. He knows me intimately, and then to do this to me-it is such a personal abuse.]

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234 Morgan Lee Woolley, Marital Rape: A Unique Blend of Domestic Violence and Non-Marital Rape Issues, 18 Hastings Women’s L. J. 269, 277 (2007) [hereinafter Marital Rape] (indicating that the argument underlying consent as a justification for a marital rape exemption is the notion that a wife’s marriage vows provided perpetual consent to her husband’s sexual demands, further noting that consent is likely the most popular justification for the spousal rape exemption).

235 Siegel, Marital Rape Exemption, supra note 227, at 354-55 (noting that this argument arose from Hale’s note of marriage as a contract whose terms included a wife’s irrevocable consent to have sex with her husband whenever he wished).

236 Id. at 356-57. Siegel indicates this exemption was based on the notion that a husband owned his wife as chattel. Since a husband could not steal what he already owned, he was no more capable of raping his wife than stealing his own property. Moreover, she notes, since women were regarded as property, the common law did not treat rape as a crime against women. Rather, it was treated as a violation of a man’s property interest.

237 Id. at 357. According to Blackstone a wife’s identity merged into her husband’s, thereby making husband and wife one. The wife’s very being was suspended or incorporated into the Husband’s. This became known as the doctrine of marital unities, making it a legal impossibility for a husband to rape his wife since he could not rape himself. See also Woolley, supra note 234, at 276. Woolley states the common law theory of marital unity, also viewed the wife as acting in concert with her husband, denying the wife no separate rights apart from her husband. Since the doctrine of coverture gave husbands and legal control over their wives including the right to defend themselves in court, it was unlikely a husband would “go to court on behalf of his wife to allege he had raped her.” Id.

238 Siegel, Marital Rape Exemption, supra note 227, at 358. Siegel examines a number of reasons generally given for continuing the marital rape exemption including problems of proving rape, fear of increased false accusations and the existence of other remedies. She concludes that none these proffers are sufficient to justify maintaining such exemptions.

239 Id. at 358-59. See also Michael G. Hilf, Marital Privacy and Spousal Rape, 16 New Eng. L. Rev. 31, 41 (1980). Hilf indicates that to some extent, a married person has a lesser expectation of personal autonomy. As a result, the affront to one’s personal autonomy is less instances of spousal rape than in other types of rape. Moreover, Hilf asserts the harm in spousal rape is less severe than harm caused in non-spousal rape, indicating that “While a married person’s interest in bodily integrity is not inconsiderable, a balance must be struck between the individual’s interest in private autonomy and the public policy favoring spousal immunity.” Id.

240 Id. at 359.

Due to the deep and severe nature of spousal rape, women who experience this form of abuse suffer severe and long-term psychological consequences.\textsuperscript{242} As one study reports, victims of spousal rape tend to suffer trauma longer than do other victims.\textsuperscript{243} Moreover, Professor Michelle Anderson concludes, wife-rape “often evokes a powerful sense of betrayal, deep disillusionment, and total isolation….\textsuperscript{244}” It is a deeply personal abuse.\textsuperscript{245}

Other states and supporters of the spousal rape exemption believe there should be no criminal sanctions because immunity protects the sanctity of marriage.\textsuperscript{246} They argue criminalizing marital rape destroys any opportunities for reconciliation, violates marital privacy\textsuperscript{247} and introduces unwanted antagonism into the marriage.\textsuperscript{248} This constituency makes cultural assumptions “that marriage is always harmonious, that husbands and wives are of one mind within the relationship, and that reconciliation is a possibility even after one spouse has raped the other.”\textsuperscript{249} This argument ignores the possibility that a marriage cannot be salvaged under these circumstances. As the Supreme Court of Virginia held in \textit{Weishaupt v. Commonwealth}\textsuperscript{250}:

It is hard to imagine how charging a husband with the violent crime of rape can be more disruptive of a marriage than the violent act itself. Moreover, if the marriage has already deteriorated to the point where intercourse must be commanded at the price of violence we doubt that there is anything left to reconcile.\textsuperscript{251}

As to marital privacy, just as a husband cannot invoke this argument to justify spousal abuse, he cannot rely upon it to provide an acceptable reason in support of spousal rape.\textsuperscript{252}

Nearly every state has enacted some form of marital rape legislation. Though these statutes in no way provide compete or adequate protection for women who suffer sexual abuse at the hands of a spouse, by providing some criminal punishment, they do recognize that married women can and do experience sexual violence at the hands of their spouse. More importantly, these statutes

\begin{itemize}
\item \textsuperscript{242} See Woolley, \textit{Marital Rape, supra} note 234, at 274.
\item \textsuperscript{243} \textit{Id.; Siegel, Marital Rape Exemption, supra} note 227, at 359.
\item \textsuperscript{244} See Michelle Anderson, \textit{Marital Immunity, Intimate Relationships, and Improper References: A New Law on Sexual Offenses by Intimates}, 54 Hastings L. J. 1465, 1512 (2003).
\item \textsuperscript{245} See Harless, \textit{The Impact of Domestic Violence Law on Marital Rape Victims, supra} note 224, at 308-309.
\item \textsuperscript{246} Siegel, \textit{Marital Rape Exemption, supra} note 227, at 359.
\item \textsuperscript{247} \textit{Id.} at 362.
\item \textsuperscript{248} See Leah Riggins, \textit{Book Review: Criminalizing Marital Rape in Indonesia Against Women in Asian Societies. Edited by Lenore and Linda Rae Bennett, 24 B. C. Third World L. J. 421, 430 (2004).}
\item \textsuperscript{249} \textit{Id.} at 429.
\item \textsuperscript{250} \textit{Weishaupt v. Commonwealth, 315 S. E. 2d 847 (Va. 1984).}
\item \textsuperscript{251} \textit{Id.} at 855.
\item \textsuperscript{252} Siegel, \textit{Marital Rape Exemption, supra} note 227 at 363 n. 87 (citing \textit{People v. Liberta} where the court indicated “just as a husband cannot invoke a right of marital privacy to escape liability for beating his wife, he cannot justifiably rape his wife under the guise of a right of privacy.”). But see Harless, \textit{The Impact of Domestic Violence Law on Marital Rape Victims, supra} note 224, at 314-15. Harless argues that while judges turned to notions of privacy to justify wife-beating, such discussions were not necessary to justify spousal sexual abuse. It was not a crime. \textit{Id.} Further, while the movement to end domestic violence gained momentum in the twentieth century, the discourse on marital rape did not make such progress. In mapping the legal progress toward abolishing the marital rape exemption, Harless notes that by 1991, only two states had compete marital rape exemptions.
\end{itemize}
recognize a spouse’s right to seek legal redress, even if the punishment is not equal to what one would receive if the perpetrator of the sexual assault were not a spouse.253

2. Contextualizing Rusty Yates’ Sexual abuse of Andrea Yates

Even if one were to view with skepticism my arguments as to Rusty’s psychologically and emotionally abuse of Andrea, one must more seriously consider that Rusty sexually abused her. It is not a stretch to argue that Andrea was the victim of sexual abuse during the marriage. This is a particularly compelling argument if Rusty believed, as he has often stated since the death of his children, that she was unable to care for herself or her children. At some point during the marriage, her doctors diagnosed her with serious mental illness. Rusty publically acknowledges this, again after the death of his children. Yet prior to their death, he continued to have sexual relations with Andrea with the goal of producing as many children as God would permit.254 Knowing the great potential cost to Andrea, he insisted upon having a fifth child. But he did not want girls—not until he had the basketball team he wanted.255 This seemingly innocuous comment demonstrates his need for control. It made clear his lack of regard for women and their lack of value to him apart from his needs. It was not until after what he perceived to be Ms. Yates’ undeniable physical and mental deterioration that Rusty concluded it was not prudent to have any more children.256

a. Andrea Yates was unable to give consent

The argument as to Rusty’s sexual abuse of Andrea can be made clear by the following example:

Suppose Andrea Yates were confined to a mental institution for severe mental illness. Consider that she was non-responsive and described as “psychotic.” Supposed her care and treatment were entrusted the hospital staff. Suppose further that during the time of her confinement in this serious mental condition, she had been assigned to doctor X’s care. One evening, Dr. X goes into Ms. Yates’ room to check on her, see she has progressed little from her psychotic state and decides to have sexual relations with her, in that condition while she was unable to give consent. Under this circumstance we would be horrified, leading us to angrily cry out that Ms Yates had been raped by one in a position of trust. Moreover, we could readily see the Dr. X’s breach of his fiduciary duty to Ms. Yates.

If we can see Dr. X’s having sex with Andrea in her mental state with her consent, we should be able see that the same argument applies to Rusty Yates. If we accept Rusty’s pronouncements after her wife’s arrest, that she was severely mentally ill, then we must be wiling to acknowledge that he knew Andrea was laboring under a weakened mental state, even if he did not know the extent of her condition as he alleged. His continuing to have sexual relations with her,

Harless, *The Impact of Domestic Violence Law on Marital Rape Victims*, supra note 224, at 318-331(providing a detailed discussion of the varying state efforts to repeal spousal immunity for rape).


‘See Denno, *supra* note 175, at 74 and accompanying note 93 ( 2003) (testimony of Michael Stephens, Harris County Deputy Sheriff indicating heard Andrea Yates tell psychiatrist Melisa Ferguson she killed Mary because Rusty did not want girls).”

Id.
particularly with the goal of having more children is no different from the doctor who sexually takes advantage of a mentally ill patient confined to a mental institution. In either case, the victim is unable to give consent.

Rusty Yates has consistently argued that Ms. Yates was too mentally weak to resist the devil, describing her as “innocent” in the death of her children.\textsuperscript{257} Ironically, it is unclear why he was unwilling to see that if her mental debilitation prevented her from controlling her own behavior as he contends, it is likely she could have been capable of freely exercising control over her sexual destination. As a result his continuing to have a sexual relationship with her without her consent, Rusty engaged in acts of sexual abuse.

\begin{itemize}
  \item[b.] Andrea Yates knowingly withheld consent to sex with Rusty Yates
\end{itemize}

Rusty’s statements to the media after the death of his children about the severity of Andrea’s mental illness prior her drowning them permits the argument that Rusty committed spousal rape because he Andrea was too ill to give consent. A more powerful argument emerges, however. Andrea Yates understood with clarity what her doctor indicated was likely to occur were she to have another child. The result was her purposeful refusal to have sexual relations with Rusty. His failure to respect her decision under these circumstances is spousal rape.

This is not mere speculation. After her arrest, Andrea relayed to her to jail psychiatrist Dr. Melissa Ferguson that prior to becoming pregnant with Mary, she argued with Rusty about not wanting to have sex due to her fear of becoming pregnant again. She reminded him of Dr. Starbranch’s admonition that she might harm the children.\textsuperscript{258} Rusty’s response was one of defiance and control. He stated the Lord had told them to go forth and multiply. And though he previously had been critical of Andrea’s inability to care for the children, he told her she was a good mother, that she could handle more children.\textsuperscript{259} There is no evidence of Andrea’s willfully relenting. Instead, her argument with Rusty belies this. The implication, then, is that used the force necessary to gain Andrea’s compliance, supporting my argument of spousal rape.

Rusty’s forcing Andrea to have another child demonstrates his subversion of her will. If Rusty believed Andrea to be severely mentally ill as he has stated, it also demonstrates his consistently undermining her progression toward stable mental health. More importantly, it lends validity to my argument as his purposeful denial of Andrea’s right to determine her own reproductive destiny, notwithstanding the potential consequence for Andrea or the children. As I argue below, Andrea Yates’ mental illness was not the catalyst for her decision to kill the children. Instead, the confluence of Rusty’s psychological and sexual abuse made clear for her the need to escape. In order to break free of the life Rusty had created for her—one she did not desire—she had to kill the children.

\textsuperscript{257} Id. at 44-45.
\textsuperscript{258} Id.
\textsuperscript{259} Id.
IV. ANDREA YATES: ANOTHER REASON TO KILL

As Andrea Yates’ second trial concluded with what many believe is the proper verdict, one might question why I as well as other scholars and commentators continue to critically analyze her case, particularly giving its ability to evoke such strong, sometimes overwhelming, emotion. It causes us to revisit one of the most painful events in this country’s recent history. It inevitably forces some to recall their own emotional burden and pain when they have already retreated to place of comfort, having convinced themselves that the drowning of five children is an anomaly, something that deviates from the norm. We find relief in believing the killings are not likely to recur because these killings occurred at the hands of a severely mentally ill mother who thought she was saving her children. We conclude that since Ms. Yates was a good mother prior to killing her children, she somehow became deranged and pathetically weak, and, therefore, must be viewed with sympathy.  

Our comfort should be only momentary, however. We can not ignore the possible motive for Ms. Yates’ motive for killing the children was not due to mental illness, but because it was for her, an exercise of power she had lost during the marriage, a chance for freedom from the oppression and abuse she was forced to endure for so many years at the hands of Rusty Yates. It was also her escape from her children, who represented the substance of her oppression. In this section I consider whether Ms. Yates’ killing her children was an expression of resistance to this oppression, and, ultimately, her decision to definitively and completely free herself from it.

A. Understanding Women Who Kill Their Children: General Considerations

Mothers abuse and sometimes kill their children. The reasons for doing so are varied and often complex. Society moves quickly to blame mothers and punish them harshly for failing to protect their children from abuse, even when they are, themselves, victims of abuse. We attempt to characterize mothers’ abusive behavior simplistically, placing women neatly into boxes. We describe them as either “mad” and therefore worthy of pity or “bad” and “worthy of punishment. We reason, only “mad” or “bad” mothers could harm their children. Included in this category of “mad mothers” are women who kill or harm their children while suffering from postpartum depression. For these women the U. S. criminal justice system has been accommodating, providing a partial defense in cases of postpartum mental disorders. Yet as Cheryl Meyers and Michelle Oberman indicate, “Regardless of the extent to which U. S. medical

263 See MEYER & OBERMAN, supra note 261, at 69.
264 Id.
265 Id. at 13.
experts and judges are accepting of postpartum psychosis as a disorder and a defense to homicide charges, it is evident that this diagnosis simply does not apply to a vast majority of cases of mothers who kill their children. More importantly, they indicate when one carefully analyzes the hundreds of such cases for similarities and differences, it becomes clear that “neither mental illness nor the excuses of generations past (poverty, illegitimacy, and the like) fully explain the persistence of infanticide in the twenty-first century.” What Meyers and Oberman discovered, however, is that infanticide is a crime of desperation. Clearly, one’s desperation can manifest itself in a myriad of ways. I argue Andrea Yates killed her children in an act of desperation. Critically, I contend her desperation gave rise to her exercise of power to free herself from an oppressive relationship she could no longer endure. In so arguing, I do not intend to convey that Andrea Yates experienced Walker’s cycle of violence causing her to “snap.” Rather, her act was far more powerful. It was a purposeful assertion of autonomy. It was an act of clear and final resolution.

1. Abused mothers abuse their children

Much has been written about mothers who abuse their children, yet the legal system must give more attention to abused mothers who abuse their children. Social scientists have long understood the connection between domestic violence perpetrated against mothers and mothers’ resulting aggression against their children. Studies demonstrate abused women are far more likely to abuse their children than are women who have not experienced abuse. In the context of mother-child violence, social scientists conceptualize domestic abuse in terms of co-occurrence violence. Research has determined, moreover, that there are a number of models of co-occurrence violence. One such model, sequential perpetrators, involves a husband’s abuse of his wife, resulting in the wife’s abuse of her children. An explanation offered for mother-child abuse is “spillover” “wherein domestic violence, most often defined as husband-to-wife aggression, spills over and increases the likelihood of parental violence, usually defined as mother-to-child aggression.” And while there is considerable speculation and little

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266 Id.
267 Id.
268 Id.
269 See LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 45-46 (1989); Moore, supra note 147, at 312.
270 See infra pp. 38-46.
272 Roberts, supra notes 260, at 126 and accompanying notes 156-157.
273 See Jouriles et al, supra note 271, at 223, 228.
274 Id. at 228 (indicating that Appel and Holden’s review of the literature addressing co-occurrence and child abuse revealed the proposal of different patterns of co-occurrence, four of which are sole perpetrator, sequential perpetrator, duel perpetrator, and marital violence.)
275 Id. at 228.
276 Id. at 229. Jouriles indicates that several conceptualizations of the spillover hypothesis have been offered in the literature. Citing a 2003 study by Margolin & Gordis, the authors indicate that the negative affect and arousal generated by husband-to-wife violence spills over from parent to child, increasing the likelihood of parental attacks on the children. Id. Margolins & Gordis further indicate that mothers intentionally direct aggression toward their children to end their misbehavior, intending to protect them or the mother from more serious attack by the husband. Id.
empirical support to explain the increase in the prevalence of child abuse in families engaged in domestic violence, social scientists find “there is a positive correlation between the frequency of domestic violence and parental aggression toward children.”

2. Conceptualizing the threat abused women pose to their children

Mothers who experience abuse can clearly represent a threat to their children. They find themselves in an untenable position because they experience duel oppression. They are subordinated and devalued by a spouse or intimate partner. But the immediate source of their oppression is their children who may be the chains that keep them from fleeing an abusive relationship. As Professor Dorothy Roberts indicates, “If children are the chains that keep women from freedom, it is not surprising that mothers strike at those chains.” She powerfully argues that women who abuse their children participate in a profound contradiction: “Children make them vulnerable, yet these children give them a degree of power.”

As I have argued, Andrea Yates was psychologically and sexually abused. While studies typically focus on the impact of a husband’s physical battering of his wife, the findings are no less powerful when made in the context of psychological and sexual abuse where the scares from them run deep and do not quickly subside.

Roberts argues, moreover, when women believe the oppressive aspects of motherhood are biological and therefore inevitable, it inhibits their criticism of and opposition to the political source of their oppression. To support this point she relies on examples of peasant rebellion in Europe and South East Asia. As Roberts indicates, historically whether people passively endured hunger or resisted depended on how they perceived the source of the food shortage. If they believed it was due to natural disaster, they were willing to endure it. Yet if they believed the ruling-class caused or perpetuated the hunger, they rioted. Similarly, Roberts argues, if women believed nature rather than human agency was responsible for the oppression they felt as mothers, they were more likely to internalize their opposition to expectations accompanying motherhood.

Similarly, had Andrea believed the source of the oppression she experienced derived from nature, she may have continued to endure it. But she understood its source was not a consequence of nature. She knew with clarity its origin was her treatment at the hands of Rusty Yates. His traditional view of marriage meant he was the provider. He provided the tangibles—food, clothing and shelter—for his family. He did not provide the intangibles—emotional and psychological support. He did not contribute to the care and nurturing of his children, nor did he

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277 Id. at 227-28.
278 Roberts, supra note 260, at 126.
279 Id.
280 Id., (citing Akil Amar, Roberts asserts that women who abuse their children participate in a form of slavery. Further, she argues that women’s abuse of children is very different from men’s abuse of women due to the power disequilibrium).
281 Id. and notes accompanying text.
282 Id.
283 Id.
284 Id.
have to. It was Andrea’s responsibility to care for her home and children, a job at which Rusty believed, in many respects, she was failing.

Rusty criticized her parenting skills, making it clear to her that she was failing miserably, particularly when compared with her neighbor who had more children and who Rusty believed was doing a better job. Without his assistance, Andrea home schooled her children in an environment devoid of adult stimulation, further contributing to her isolation and oppression. And not withstanding his public support of Andrea after the death of their children, he believed her psychological condition was a weakness worthy of a “kick in the pants” to motivate her—or anyone suffering with mental illness for that matter—rather than a serious medical condition, as he later pronounced before the media, requiring doctors to do more to help her. Moreover, he defiantly refused to follow doctor’s advice to refrain from having more children due to the potentially irreparable harm to Andrea. He simply did not have patience for her mental weakness and its inconvenience to him. Andrea understood concretely the meaning of his forcing her to have another child: He was willing to risk her permanent loss self—that he did not value her life. He treated her as human currency to obtain what he wanted. Indeed, Michael Woroniecki described Rusty’s treatment of Andrea as “sinister,” indicating that “Rusty wanted to silence her while at the same time using her as a slave to take care of the kids.”

It is within this context that one must earnestly consider the impact of the deep scares Andrea likely suffered from the years of psychological and sexual abuse. It is plausible Ms. Yates never identified Rusty’s behavior as abusive. Yet this is improbable as she “despised” him; she privately voiced her “deep and intense hatred” for him. She wanted someone to tell her how to live with a man disdained. She regarded Rusty with utter hatred and disgust because his contribution to her life was its devaluation, making it appear worthless apart from his need to have her produce and take care of his children. She knew that Rusty had tried to treat her as otherwise invisible. She wanted to escape from this life. She needed to freedom from Rusty and the children.

B. Distinguishing Between Biological Mothers and the desire to Mother

Biology makes women mothers. Yet we must be careful to recognize the distinction between being a mother and desiring to “mother.” Ms. Yates has been described as a loving mother. This is likely true in many respects. In support of her commitment to mothering, writers often focus on her resignation from her position as an oncology nurse to become a stay at home

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285 Roche, supra note 15, at 45-50. Though he described her condition with empathy, he privately did not treat her empathetically.
286 See supra § III B.
287 See supra note 254.
288 O’MALLEY, supra note 2, at 97.
289 Id.
290 Id.
291 Id.
292 Id.
293 Huckerby, Women Who Kill Their Children: Case Study and Conclusions, supra note 261, at 153, 56-57. Huckerby argues that the media conferred the status of “good mother” upon Andrea Yates, a status that many women do not receive, because she was white and middle-class. More importantly, she was viewed more highly because she had she had a supposedly supportive husband who had control over her and the children. Id. at 153.
mother. She gave birth to five children in eight years. Moreover, she undertook the additional burden of home-schooling her children. Arguably, the children became her life. She was nearly completely responsible for their care, nurturing and development. The natural presumption, then, is that she desired to be a mother. This would be a strong argument if she could have mothered on her own terms. But she, like many women, did not own motherhood. As feminist scholar April L. Cherry argues, motherhood as an institution includes more than biology. It encompasses political and social dimensions. She further indicates that there is a core requirement of motherhood as a prerequisite for all socially acceptable female roles. For sometime, she notes, psychoanalysts and psychologists have believed that women have a maternal instinct. As a result, the failure to mother leaves women with unfulfilled lives because they have not satisfied their natural instinct to nurture. But as Adrienne Rich maintains, “Institutionalized motherhood demands of women maternal ‘instinct’ rather than intelligence, selflessness rather than self-realization, relation to others rather than creation of self.”

There is strong evidence to support Andrea did not become a mother or mother on her own terms. Given Rusty’s belief that a wife should submit to her husband, Andrea likely would have had no option other than to submit to Rusty. Rusty often spoke of having a large number of children, but Andrea did not mention wanting many children. As Professor Deborah W. Denno indicates, it is unclear to what extent Andrea’s pregnancies were based on a mutual decision between Andrea and Rusty or primarily attributable to Rusty’s desire for a large family. Denno continues, “A number of people, including Andrea’s mother and her friend Debbie Holmes, suggested Rusty was a dominating force in Yates family, including the decision to have babies.” It is also clear Rusty forced Andrea to become pregnant with their fifth child. According to Holmes, Andrea continually depicted Rusty as manipulative and controlling, asserting that Rusty had pushed her to have the fifth child. Terry Arnold, the owner of a home schooling bookstore testified during Ms. Yates’s first trial, offering her perception of Ms. Yates as a loving mother. However, she noticed how Andrea’s normal pleasantness quickly changed when asked about the prospect of having another child. Arnold believed she had hit a painful subject, noting “It was just sadness. I thought she was going to cry.” Andrea’s admission to Dr. Ferguson about having argued with Rusty over not wanting to become pregnant with another child supports the argument that Andrea, by virtue of her marriage to Rusty, had lost the right to

294 April L. Cherry, Nurturing the Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood, 10 Tex. J. Women & L. 83, 91 (2001). Cherry notes that since motherhood has been shaped and commodified by the prevailing patriarchal norms, women do not own motherhood. Id. at 91-93. Cherry argues that biological motherhood consists of all activities required to bring life to the unborn and physically sustain the newly born; in the political arena, she argues, the state or other male-controlled institutions such as law and medicine control women as mothers; social motherhood is generally understood as the work women are culturally required to perform as child-bearers. She indicates that many feminist theorists have convincingly argued that “the traditional view of motherhood is detrimental because it is...compulsory under patriarchy and as such contributes to women’s oppression.” Id. at 93.

295 Id. at 93-94.

296 Id. at 94 (citing ADRIENNE RICH, OF WOMEN BORN: MOTHERHOOD AS EXPERIENCE AND INSTITUTION 42 (1976).

297 See Denno, supra note 175, at. 28.

298 Id. at 28.

299 Id.

300 Id. at 32.

301 Id. at 74.

302 See Terri Langford, Doctor: Yates Knew Killing Was Wrong, DALLAS MORNING NEWS, Mar. 8, 2002, at 53A.
control when or whether to become a mother. It was not a right she had willingly relinquished. It was taken from her.

Amid Andrea’s struggle to regain her autonomy were the Yates children. In the context of her life as wife and mother, Andrea saw herself as trapped with no alternatives. Andrea wanted to escape her life of marginalization and oppression, but she could not gain true freedom if she left Rusty and took the children. If she left the children with Rusty, she would, in some way, continue to bear maternal responsibility for them. For Andrea, freedom was attainable only if she were permanently apart from them. And while she has been described as being a loving mother, it is possible that she wanted to escape from her children, particularly if they represented a life of oppression and confinement, a life she simply did not desire. Her children were the chains that kept her from freedom. By freedom, I do not mean she would be free from physical constraints. This is not likely given her acknowledgement that killing the children was wrong. She knew she would have to be punished. But she was willing to accept the confines of imprisonment. For her the trade was worth it.

C. Andrea Yates’ Awakening: A Motive to Kill

Andrea Yates’ motive for killing her children finds a strong parallel with Edna in Kate Chopin’s The Awakening. In this novel Chopin writes of Edna, a married woman with two small boys. Apart from her role as wife and mother, she had no individual identity. Her husband Leonce saw her as a valuable piece of property that could be damaged. Edna initially saw herself as a caged bird, confined by the role society had assigned her. Leonce constantly criticized her for what he believed was her habitual neglect of their children. He never observed Edna neglect her boys; rather, it was something he felt. Her responsibility was to look after the children. His was to provide for his family and protect them. There were clear roles for husband and wife, and she simply did not fulfill her role to his satisfaction.

Edna never embraced the role she had been given, however. She realized she had no desire to assume responsibility for her children, resulting in her experiencing a deep sense of oppression caused by a role society had foisted upon her and for which she was ill-equipped to handle. Even her boys understood this and did not run to her for comfort.

Nor was Edna the “mother-woman” she was supposed to be. Chopin described such women in exaggerated terms. “It is easy to know them, fluttering about with extended, protecting wings...”

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304 Id. at 73.
305 O’MALLEY, supra note 2, at 19-20.
307 Id.
309 SOLOMON, supra note 306, at 123.
310 Id.
311 Id.
312 Id. at XXVI, 6-7 and 19-20.
313 Id. at 8. Chopin wrote that if Edna’s sons were hurt while playing, they cleaned themselves off, wiped their tears and continued to play.
314 Id.
when any harm, real or imaginary, threatened their precious brood. They were women who idolized their children, worshiped their husbands, and esteemed it a holy privilege to efface themselves as individuals and grow wings as ministering angels.\(^{315}\)

Edna tried to explain to her friend Adele, the woman who epitomized “mother-woman,” that she was not willing to suppress herself for the sake of her children. She explained, “I would give up the essentials; I would give my money, I would give my life for my children; but I wouldn’t give myself.”\(^{316}\) She simply was not willing to suppress her own life to be the kind of woman needed by her husband and children.\(^{317}\)

As Edna began to awaken, to find her “voice,” she realized she was no longer one of her husband’s possessions; she would permit no one to “own” her.\(^{318}\) It had become clear that role as mother made it impossible for her to continue to develop as an autonomous human being.\(^{319}\) More critically, Edna realized it was neither her husband nor the other men in her life that kept her from freedom. Rather it was her children who were the shackles that imprisoned her and kept her bound to society’s expectation of her as dutiful “mother-woman.”\(^{320}\) Edna saw her children as “antagonists” who had overcome her; they had overpowered her “and sought to drag her into the soul’s slavery” for the rest of her life.\(^{321}\) But Edna knew how to escape them. In drowning herself, she gains her freedom by committing suicide.\(^{322}\) Arguably, her suicide is the ultimate act of self-determination.\(^{323}\) She chose not to live in a world where she would be judged not as a human being but upon her success or failure of mother.\(^{324}\)

Andrea Yates, like Edna, lived a life of oppression and invisibility apart from her success or failure in raising her children. Rusty used her as a slave to care for his children, otherwise silencing her. Similarly, she did not desire to be a mother.\(^{325}\) And like Edna she twice sought suicide as a way of freeing herself from the chains restraining her. Her last attempt to escape from a life she did not want led her to kill her children. It should not be lost on anyone that Ms. Yates’ efforts to gain her freedom did not include the children. Had Andrea successfully taken her own life, she would have been free the isolation, subordination and oppression her children represented. More revealing, however, is that after Ms. Yates drowned her children, she made no effort to take her own life as many mothers who altruistically kill their children do.\(^{326}\) The opportunity was available to her immediately after killing her first born, Noah; it was there

\(^{315}\) Id.
\(^{316}\) Id. at 51.
\(^{317}\) Id. at XXVI.
\(^{318}\) Id. 116.
\(^{319}\) DYER, supra note 308, at 27 (citing Peggy Skaggs).
\(^{320}\) SOLOMON, supra note 306, at 123.
\(^{321}\) Id.
\(^{322}\) Id. at 125.
\(^{323}\) DYER, supra note 308, at 100-117. Dyer notes that depending on how one views Edna’s suicide, it could be viewed as an act of power or an act of weakness.
\(^{324}\) Id., at 17.
\(^{325}\) See supra, § IV B.
\(^{326}\) See Susan Hatters Friedman, Debra R. Hrouda, Carol E. Holden, Stephen G. Noffsinger, and Philip J. Resnick, Filicide-Suicide: Common Factors in Parents Who Kill Their Children and Themselves, 33 J. AM. ACAD. PSYCHIATRY L. 496 (2005) (indicating the percentage of mothers who commit suicide after killing their children ranges from sixteen to 29 percent).
before calling Rusty; it was present before contacting the police. Yet she took none of these opportunities to end her life. It is plausible Ms. Yates did not attempt to commit suicide because killing the children resulted in a “relief of tension.”³²⁷ For her, the agency of her oppression had been eliminated. More likely, she killed them as an act of defiance and as a way of escape. When Andrea called Rusty at work on a previous occasion she asked him to come home. This last time she called him at work, she did not ask him to come home; she told him. She stated, “You need to come home. It’s time.”³²⁸ She further indicated she had hurt all of her children, that “she finally did it.”³²⁹ She had been contemplating her escape from oppression for some time. The act was complete.

One might reason Andrea’s failure to take her own life is benign behavior in the midst of chaos. I argue, however, that she acted with absolute clarity. By failing to even attempt to take her life, she made a powerful statement: She was taking back her life, from Rusty, from her children. Her failure to commit suicide powerfully signals her desire to live a life unconstrained by them. She was well aware of the price she might have to pay, but she was willing to pay it. One might argue Andrea Yates did not walk into freedom because she risked losing her life for taking the lives of her children. And since her retrial resulted in her being found not guilty by reason of insanity, she faces confinement for the remainder of her life. I contend Andrea understood this. She was willing to accept this risk. She was willing to lose her life to regain it.

Chopin initially uses the caged parrot as a metaphor to symbolize Edna’s lack of freedom and her duty to mimic the behavior of mother-women who accepted their role as well as their subordinate status. Yet as Edna begins to awaken, she refuses to be caged, to imitate those around her. Like a caged bird having gained its freedom, she had to learn how to fly again; she had to find her own voice in order to live and speak authentically.³³⁰ For Andrea Yates, the butterfly symbolized freedom. As Michael Woroniecki indicates when Andrea her children caught a caterpillar, she watched with excitement as it spun its cocoon and became a butterfly.³³¹ For Andrea, the butterfly symbolized the promise of the Bible, that anyone in Christ became a new creature.³³² But Woroniecki also observed that Andrea clung to the butterfly with such strength, revealing her desperation to escape the life she lived with Rusty and the children.³³³ He concluded, “She wanted to leave that life. It was not right. She was…miserable.”³³⁴ Andrea understood the butterfly was free. She was not, nor would she be free as long as her children were alive and depended on her for their well-being.

³²⁷ Id. Resnick indicates that after altruistic or acutely psychotic filicides, some parents do not kill their children do not compete the act of suicide because they experience a “relief of tension.”
³²⁸ O’MALLEY, supra note 2, at 1. Rusty indicated he had heard this voice only once before, not long after the birth of their fourth son Luke. She asked him to come home; this time she was telling him.
³²⁹ Id. at 7.
³³⁰ Dyer, supra note 308, at 33-36 (citing Michael Gilmore who describes the parrot as key to understanding Edna’s need to find her an authentic language.) Id. at 36.
³³¹ O’MALLEY, supra note 2, at 98.
³³² Id. And see Second Corinthians 5:17: “...If anyone is in Christ, he is a new creation; old things have passed away; behold all things have become new.”
³³³ Id.
³³⁴ Id.
V. CONCLUSION

The issues surrounding mental illness are multifaceted and complex. We need to see mental illness as a circumstance where one sinks into an abyss and while laboring in that state sometimes does the unthinkable. We can not fathom anything else. We see ourselves as powerless or perhaps too fragile to accept anything else. Indeed, it is this fragility that can allow nothing more. But we are required to accept that mental illness does not indicate powerlessness; nor does it mean that people commit heinous acts without clarity of thought. If we can accept this premise, that one can choose to commit horrific acts, then we must accept that Ms. Yates might have acted with clarity and resoluteness when she chose to kill all five of her children. Perhaps Ms. Yates killed her children to escape the oppression and abuse she suffered at the hands of her husband. Killing the children gave her the power she had lost at some point during her eleven year marriage to Rusty Yates. Without her children or husband to constrain her, she is free to live her life unfettered by the burdens they represented. Critically, however, upon retrial, she was found not guilty by reason of insanity, leaving the likelihood that after leaving a mental health facility, there would be no constraints on her life leaving her to live life on her own terms. Perhaps it is her awakening.

Throughout this article, I have written about Ms. Yates’ deteriorating mental state. Yet I do not view her in this way. To do so would permit too strongly the argument that her mental state rather than her defiance and striking at a system she could no longer support were the impetus for the killings. Mental illness is too easy an argument. It prevents us from “piercing the veil” to see who Andrea Yates might really be. More critically it permits us to ignore abused women who kill their children as a means of escaping oppression. As Dorothy Roberts indicates, the behavior is deviant and, at its core, frightening. But it is an argument we must be willing to consider. Otherwise we continue to leave abused women without hope, without a remedy, without an alternative means of escape. We leave them in a position to kill their children because they believe their children have, unwittingly become the tools of their oppression from who they must break free. Abused women should not be left in the position of believing that in order to live a life of value, one that is authentic, they must kill their children.