AN ACT OF RESISTENCE: RECONCEPTUALIZING ANDREA YATES' KILLING OF HER CHILDREN

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I. INTRODUCTION

This country experienced one 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 the prosecution’s expert prejudiced the jury,\(^4\) despite statements from members of the jury

\(^{1}\) See Lisa Sweetingham, Prosecutors: Andrea Yates Knew Right from Wrong When She Drowned Five Children, COURTTV.COM, 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? (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, 171 S. W. 3d 215 (Tex. App.—Houston [1st Dist.] 2005, pet. ref’d). 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

\(^*\) 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 mentally ill, I have consistently argued that Andrea Yates was a victim of psychological and sexual abuse. She killed her children to escape that abuse.

\(^{**}\) Professor of South Texas College of Law; Godwin Pappas Research Professor, (2003-2008); LL. M, Harvard Law School, (1992); J. D., University of Baltimore, 1984; B. A., Towson University, (1981). I would like to thank Associate Dean Helen Jenkins for her encouragement and support as I finished the article; I also thank my colleagues who attended my presentation of this piece at a faculty colloquia. Their suggestions were invaluable. I also thank my friend and Senior Research Assistant Peter Nguyen who has worked tirelessly with me to finish this article. His energy and work ethic are incomparable. I also thank Kenyata Matthew, Meggie Makeska and Julie Michek for all of their hard work. I also thank Mary Beth Cameron. I would be remiss in my duty if I did not thank Librarian Jessica Alexander who is always willing to hunt down a difficult source. If there is a way, she will find it. Finally, I thank my mother Goldie Dickerson who, even now, continues to encourage me to do my best, think broadly and to strive to make a contribution.

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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 sole 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, a television series, Law & Order, and whether an episode on which he had been a consultant addressed postpartum depression or women’s mental health. \(^\text{Id.}\) Dr. Deitz incorrectly answered that there was an episode that aired shortly before Ms. Yates killed her children wherein a woman with postpartum depression drowned her children in her bathtub and was found insane. \(^\text{Id.}\) 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.” \(^\text{Id.}\) 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 the false testimony from prosecution expert Park Deitz, indicating three weeks before the murders, Ms. Yates had seen an episode of Law & Order where a woman drowned her children, could have affected the jury’s judgment and ultimately the substantial rights of Ms. Yates. \(^\text{Id.}\) See Jessica Butterfield, Comment, Blue Mourning: Post Partum Psychosis and the Criminal Insanity Defense, Waking to the Reality of Women Who Kill Their Children, 39 J. MARSHALL L. REV. 515, 537 n. 66 (2006) [hereinafter Blue Mourning: Post Partum Psychosis and the Criminal Insanity Defense]. Butterfield argues that the “crux” of Dr. Deitz’s testimony centered on Ms. Yates’ watching an episode of Law & Order. \(^\text{Id.}\) In reality, however, the crux of Dr. Deitz’s testimony was the extensive interviews with Ms. Yates and that those interviews helped Dr. Deitz formulate his opinion that Ms. Yates understood her actions— that what she was doing was wrong when she killed the children. But see Ruth Rendon & Andrew Tilgman, False Testimony Cited: Appeals Court Rejects Conviction of Yates; Prosecutor Will Ask for a Rehearing in Case of Woman Who Drowned Her Children in Tub, HOUS. CHRON., Jan. 7, 2005, at A1. After the appellate court’s decision, Dr. Deitz released a statement indicating a statement he never believed, nor had he ever stated that he thought Law & Order or any other television program gave Ms. Yates the idea to kill her children. Rather, Dr. Deitz stated he believed and testified that she killed her children due to a psychotic mental illness but she “knew drowning the children was wrong, knew God would not approve, and knew society would disapprove.” \(^\text{Id.}\)

\(^5\) 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.” \(^\text{Id.}\) 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.” \(^\text{Id.}\) Fourth, unwanted-child filicide occurs where the child is viewed as a hindrance or burden. \(^\text{Id.}\) Fifth, although a rare occurrence, spousal-revenge filicide occurs when a mother kills her child for the specific purpose of
relying on Toni Morrison’s *Beloved*, theorized Ms. Yates loved her children and may have killed them ultimately to save them.\(^9\) 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.”\(^10\) However, the vast majority of commentators and scholars who have written about the case have concluded that she was driven to do so by her severe mental illness.\(^11\)

emotionally wounding 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.

\(^9\) 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).

\(^10\) 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.*

\(^11\) 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 HOU.S. 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
This conclusion is not without some merit, particularly since she killed 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 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 Slobogetin, 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 not held 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.


13 See O’Malley, supra note 2. O’Malley indicates that at some time during her treatment, doctors prescribed antidepressants and antipsychotic drugs to Ms. Yates. It appears these drugs were only mildly effectively and did little for her depression. See also Drug Warning Too Late for Andrea Yates; Medical Experts Blast FDA Over New Antidepressant Warning, U. S. NEWSWIRE, Jul. 10, 2006 (arguing that the FDA failed to properly warn patients and their doctors about the risks of homicidal thoughts in taking Effexor XR, an antidepressant Andrea Yates was taking when she drowned her five children, indicating that even though the occurrences are rare, even one occurrence can have tragic consequences). But See Mary Ann Roser, Psychiatrists, Doctors Square Off on Drug, THE AUSTIN STATEMENTS, Jul. 11, 2006, at A01 (noting that psychiatrists believed that Effexor XR, the drug Andrea Yates was taking when she drowned her children, did not deserve the notoriety it received, asserting that it is no more dangerous than any other antidepressant, meaning that it required no greater monitoring than any other drug in its class).
rare condition.\textsuperscript{14} Ms. Yates explains the killing by stating that the children were not growing well,\textsuperscript{15} and she did 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 that the retrial of Andrea Yates occurred more than two years ago with a confirmation of mental illness as the precipitating cause of the killings, one might question why I and other scholars continue to critically analyze her case. This question is particularly poignant for those having a stake in Andrea Yates’ being mentally ill. They can not fathom 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

\textsuperscript{14} See Manchester, supra note 11, at 718-21 (noting that there are three categories of postpartum illness women may suffer after child birth. One category, “postpartum blues,” occurs most frequently and affects 25% to 85% of women. It occurs within two weeks after child birth and is characterized by symptoms such as mood swings, anxiety, and loss of appetite. A second category of postpartum illness, postpartum depression is a clinical depression which occurs during the weeks and months after a woman has given birth. It arises in 5% to 20% of women who may experience fatigue, loss of appetite and lost of enjoyment of pleasurable activities, excessive guilt, and suicidal thoughts. The most severe form of postpartum illness is postpartum psychosis. It occurs in about 0.2% of childbearing women who experience psychotic episodes, resulting in hallucinations or delusions, severe depression, and thought disorders. It arises approximately two weeks after child birth and usually requires hospitalization.) See also March, supra note 11, at 248-50 (noting that while there are three categories of postpartum illness, the Diagnostic and Statistical Manuel of Mental Disorders-Fourth Edition (DSM-IV) does not distinguish postpartum psychosis as a separate mental disorder. Rather it is included within the category of general mood disorders and does not separate psychosis from other psychotic disorders).

\textsuperscript{15} See O’MALLEY, supra note 2, at 150-51. In her interview with Dr. Resnick, Ms. Yates indicated that the children were not developing right, “in an academic [and] righteous sense.” 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 Family Life but Lost It All One Murderous Morning. As Her Trial Begins, the Defense Will Try to Prove She is Insane. But That begs the Question: Could the Tragedy Have Been Averted?, TIME, Jan. 28, 2002, at 50; Carol Christian & Lisa Teachey, Yates Believed Children Doomed, HOUS. CHRON., Mar. 6, 2002, available at http://www.chron.com.cs./CAD/printstory.ht.special/drowing/1268306 (last visited Apr. 5, 2006).


\textsuperscript{17} See Elizabeth Rapaport, Special Feature: Women as Perpetrators of Crime: Mad Women and Desperate Girls: Infanticide and Child Murder in Law and Myth, 33 FORDHAM URB. L. J. 527, 559 and n.213 (2006) [hereinafter 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.
of fathers who kill their children. Moreover, nearly fifty percent of these women are found to be mentally ill, a rate much higher than in other crimes. 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?” 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.” 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 women chafing under the demands of motherhood would resolve her unhappiness by slaughtering her children.” 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.”

Unquestionably, Andrea Yates was mentally ill. There is, however, evidence of another powerful reason she might have killed her children. Yet considering a different motive continues to be inexpedient for those who saw this case as an opportunity to bring national attention to postpartum depression and psychosis, and mental illness as a general notion, to consider any reason other than insanity for a mother’s killing five children. Even those without any such agenda simply cannot fathom that a mother would kill her

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19 See Sheri L. Bienstock, Mothers Who Kill Their Children and Postpartum Depression, 32 S.W.U.L. REV. 451, 452 (2003). But see Heather Leigh Stangle, Note, Murderous Madonna: Femininity, Violence, and the Myth of Postpartum Mental Disorder in Cases of Maternal Infanticide and Filicide, 50 WILLIAM AND MARY L. REV. 699, 706 (indicating that although the myth female passivity persist, it is not grounded in reality. In reality, women commit a number of crimes and commit them with disturbing frequency. Moreover, unlike male violence, female violence often takes place in the home, their victims being their children spouses, and other family members).

20 Id.

21 Id.

22 Casey, supra note 12.

23 Rapaport, supra note17, at 563.

24 Id. at 563-64.

25 See Leigh Hopper, Psychiatrist Contrast ‘Baby Blues,’ Psychosis, HOU. CHRON., July 30, 2006, available at 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. Id.

In addition, 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.
children due to a dark heart rather than a darkness of mind beyond her control. Nevertheless, 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. More specifically, I argue that Andrea Yates may have killed her children as an act of resistance in response to an oppressive system that had permitted her to be devalued during her marriage. While this argument is shocking and likely divisive, it is nonetheless warranted given the circumstances surrounding Andrea Yates’ life and the death of five children. I do not argue that Rusty Yates physically abused Andrea. I argue, however, that 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. While it is terrifying to think a mother would kill her children as an act of resistance to escape her abuser, such a possibility should be neither ignored nor dismissed.

I begin the argument regarding Andrea’s killing as an act of resistance by deconstructing the definition of domestic abuse. To this end, I argue in Part II that Rusty psychologically 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 that the definition of domestic violence clearly includes psychological abuse. As I analyze in greater detail below, Rusty Yates’ traditional view of family and his isolation of Ms. Yates resulted in his subverting her will. In addition, his disregard for her mental well-being as well as persistent criticism and lack of support for her permits the argument that he psychologically abused her.

I consider in Part III, whether Rusty subjected Andrea to marital rape throughout their marriage. If Andrea Yates were as mentally debilitated as Rusty claimed her to be—but only after the death of their children—Andrea could not have knowingly and voluntarily given consent to having on-going sexual relations with him. Undoubtedly, had any other person in a position of trust had sexual relations with Andrea under these circumstances, we would immediately acknowledge she had been raped by one who stood in a fiduciary relationship with her. It is no less powerful an argument where the perpetrator is one’s spouse, particularly given Rusty’s assertions that Andrea was severely mentally ill. More powerfully, however, I argue that Andrea purposefully withheld consent to sexual relations with Rusty. Andrea understood concretely her doctor’s admonition about her being a threat to herself and her children were she to have another child. Consequently, she refused intercourse with Rusty to avert the tragic consequence that ultimately occurred. By forcing Andrea to have sex when she had expressly refused, Rusty engaged in spousal rape.

I confront the prevailing view that Ms. Yates killed her children due to mental illness in Part IV. Although many note that Ms. Yates was a loving mother, this is in no way indicative of her desire to be a mother. She likely loved her children, but she also may have viewed them as the tool Mr. Yates used to oppress her during the marriage. To this end, I dismantle the argument that Andrea’s mental illness was the precipitating cause for the death of the children. Instead, we must consider that Andrea Yates may have killed

26 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). Cleve notes that while society recognizes physical abuse, psychological abuse has been largely ignored.
her children as an act of resistance to escape an oppressive marriage that had subjected her to ongoing psychological and sexual abuse. Resistance theory requires some active behavior. It also requires opposition that in some way challenges, even subverts, an existing system. Andrea likely understood that Rusty would continue to destabilize her life, forcing her to have children she knew represented a danger to her. She chose resistance rather than continue to endure it.

There was undeniable power disequilibrium between Rusty and Andrea Yates. Killing her children may have empowered Ms. Yates, permitting her to engage in an act of resistance to escape an abusive and oppressive relationship. In making this argument I briefly draw parallels with Kate Chopin’s *The Awakening*, where Chopin depicts Edna who also chose to resist by taking her own life to escape marital oppression. And while, unlike Edna, Andrea Yates did not choose to take her own life, she chose to resist by killing her children.

In part V I conclude by arguing that the killing of five children is deviant and worthy of punishment. However, employing a resistance theory as an 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 escape.

II. 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 for women at the hands of a spouse or intimate partner. These writings 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

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28 For purposes of this article, I use psychological and emotional abuse interchangeably.
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 wound” another. 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 women the right to criminal or civil remedies. Due, in part, to the efforts of the women’s movement, domestic violence first gained recognition as a serious problem in the 1970’s. 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.

B. Understanding the General 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. Clinical psychologist Dr. Lenora Walker, the first to define the battered women syndrome (BWS), recognized for women who have been battered, it was the psychological abuse, not the physical abuse, which caused the most pain. Concluding psychological abuse is difficult to quantify, however,

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33 Shelby A. D. Moore, Battered Woman Syndrome: Selling the Shadow to Support the Substance, 38 Howard L. J. 297, 312 (1994).
34 See Flamme, supra note 32, at 575; Mangum, supra note 32, at 593.
35 SURVEY, supra note 31.
36 See CDC’s Demonstration Projects Preventing Intimate Partner Violence, (noting popular studies indicate that nearly 25% of women have experienced violence at the hands of an intimate partner during their lifetime and that more than 1.5 million women were physically or sexually assaulted by an intimate partner in 2006).
37 See Cleve, supra note 26, at 916.
39 Id. See also Cleve, supra note 26, at 916.
Dr. Walker chose to concentrate strictly on physical abuse.\textsuperscript{40} 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{41} Critically, women who suffer non-physical abuse rarely seek assistance unless it is accompanied by physical harm, perhaps because the messages they receive cause them to realize their claims of psychological abuse will not be taken seriously.

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{42} 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{43} 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{44}

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{45} 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{46} 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{47} But it 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 relation-ship 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{48}

\textsuperscript{40} Id.
\textsuperscript{41} Nat’l District Attorneys Association’s Policy Position on Domestic Violence, supra note 29, at 2, & n.3.
\textsuperscript{42} See Cleve, supra note 26, at 903.
\textsuperscript{43} Id.
\textsuperscript{44} Id. at 903-04.
\textsuperscript{45} Id. Cleve argues that the recognition of the power of the mind is a relatively recent development.
\textsuperscript{46} Id.
\textsuperscript{47} Id.
\textsuperscript{48} Id. at 898. See also Jane Braden-Maguire, Janet Sigal & Carrol S. Perrino, Battered Women Who Kill: Variables Simulated Jurors’ Verdicts, 20 J. Fam. Violence 403, 403 (2005) (citing a study by Sackett & Saunders that found emotional abuse such as belittling and ignoring a spouse contributed to both depression and low self-esteem in battered women).
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.” 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.” Even recent cases have recognized the devastating impact psychological abuse can have on its victims. For example in State v. Durall, the court recognized that the husband’s control and isolation of his wife was psychological abuse. And in addressing whether a woman 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. Moreover, engaging in a combination of behaviors, the perpetrator of psychological abuse typically targets his victim and gradually erodes her positive sense of self. The abuser’s acts include jokes about the victim’s faults or habits, targeted and repeated insults, ignoring the victim’s feelings and withholding approval. It is within this context I argue below that Rusty Yates mentally abused Andrea Yates.

C. Rusty Emotionally and Psychologically Abused Andrea Yates

Much has been written about Ms. Yates’ mental illness as the precipitating cause of her killing her children, 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? This is a reasonable inquiry, particularly given circumstances that could lead one to believe that 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 spouse’s 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. They found that women who killed their children were more likely to have been in a long-term relationship and that the abuse was often chronic and severe. They also found that the abuser typically controlled the victim’s access to social support and kept her isolated from friends, family, and work. These findings support the idea that psychological abuse can have a devastating impact on a victim’s life, leading to feelings of hopelessness and despair that can ultimately result in violence.

50 Id.
51 State v. Durall, No. 47928-8-I, 2003 WL 21000996, at__ (Wash. Ct App. May 5, 2003). Here, Mr. Durall’s jealousy led him to kill Ms. Durall. The court noted that his controlling behavior and extreme jealousy were exhibited in his refusal to permit her to open a separate banking, seizing her individual credit card, monitoring her phone calls and e-mails, and tracking her every movement. The court found this evidence established a pattern of psychological abuse.
52 Hernandez v. Ashcroft, 345 F. 3d 824, 824 (9th Cir. 2003).
54 See supra note 11.
55 See Opinion, Author, Op-Ed., The BISMARCK TRIB., Aug. 2, 2006, at 10a; See also Your Turn: Focus: Andrea Yates, SAN ANTONIO EXPRESS-NEWS, at 4H.
domestic violence.\textsuperscript{56} They found that one’s status as a stay-at-home mother is likely to result in social isolation from adult relationships.\textsuperscript{57} It is a pervasive presence in women who kill their children.\textsuperscript{58} Messing and Heeren further indicate that isolation as well as other social factors including gender inequality, lead to an environment in which women are under psychological and physical threat.\textsuperscript{59} These women, enduring isolation and lacking social support, believe they have no other option but to kill their children.\textsuperscript{60}

Messing and Heeren’s study lends strong support to the argument that Rusty Yates psychologically and emotionally abused Ms. Yates. It is not 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 marginalization 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.\textsuperscript{61} 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 many blame him for Andrea’s unraveling mental state.\textsuperscript{62} 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.\textsuperscript{63} There is some disagreement as to the extent of Woroniecki’s influence over Andrea. Undoubtedly Woroniecki was one of the few people who

\textsuperscript{57} \textit{Id.} at 151.
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} \textit{Id.} at 130.
\textsuperscript{60} \textit{Id.}
\textsuperscript{61} O’MALLEY, \textit{supra} note 2, at 28-29.
\textsuperscript{63} \textit{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.

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.
observed the Yates’ relationship prior to and during the marriage. Moreover, he is likely the only person to warn Rusty not to marry Andrea—or anyone—if he did not have the ability to unselfishly enter a marriage relationship.\textsuperscript{64}

From the inception of Rusty’s marriage to Andrea, Woroniecki saw Rusty as a workaholic who would willingly sacrifice his family for his job at NASA.\textsuperscript{65} He observed Andrea’s desperate loneliness during the marriage, that “she had responsibility for all [of their] children” without any help from Rusty.\textsuperscript{66} He concluded, “She did not know how to handle it.”\textsuperscript{67} 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 God and have a relationship with her.\textsuperscript{68} 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?’”\textsuperscript{69} 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.\textsuperscript{70} Ultimately, Woroniecki and his wife had seen Andrea full of hope, but they believed Rusty had robbed her of her hope.\textsuperscript{71}

By implication, then, Woroniecki believes Andrea’s killing her children had more to do with the desire to punish Rusty for his destroying her self-esteem by robbing her of hope. He concludes that Andrea’s killing her children had nothing to do with religious delusions. Rather, Andrea’s motive for killing her babies was revenge.\textsuperscript{72} 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.\textsuperscript{73} In revealing theses conversations, Woroniecki permits us to see that even for Andrea, there were irreconcilable contradictions between her public and private life. She spoke publicly about his being a good man, but privately she despised him because he was responsible for damaging her psychological and emotional wellbeing.\textsuperscript{74}

One might be inclined to dismiss any insight Woroniecki provides into why Andrea killed her children, particularly given his radical religious rhetoric and unconventional living that are alleged, in part, to have contributed to her demise.\textsuperscript{75} He might appear

\textsuperscript{64} See O’MALLEY, supra note 2, at 29-30.
\textsuperscript{65} Id. at 31.
\textsuperscript{66} Id.
\textsuperscript{67} Id.
\textsuperscript{68} 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.
\textsuperscript{69} Id.
\textsuperscript{70} Id.
\textsuperscript{71} Id. at 99.
\textsuperscript{72} Id. at 97.
\textsuperscript{73} Id.
\textsuperscript{74} 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.” Id.
\textsuperscript{75} Id. O’Malley asserts that Woroniecki’s rhetoric, “his theology of salvation,” does not differ substantially from Roman Catholicism. Where it diverges, however, is that while Woroniecki believes that God gave a ransom for all men, the saved seemed to include only eight people: Woroniecki and his wife and children.
incredulous, particularly given his alleged sale of an unsafe bus that Rusty used as his family’s home for nearly two years.\textsuperscript{76} Some blame Woroniecki for indoctrinating Andrea with his religious beliefs and driving her over the edge by reinforcing her failure as a mother.\textsuperscript{77} Dismissing 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 on-going psychological and emotional abuse.

If Woroniecki’s depiction of Rusty’s treatment of Andrea were the only evidence available, 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.

Andrea’s life was considerably different before her marriage to Rusty and prior to the birth of their first son Noah. Andrea 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.\textsuperscript{78} She began to live a life of isolation devoid of freedom, a life starkly different from the one she had known prior to marrying Rusty. Her best friend, Debbie Holmes, indicates she was the only friend permitted to visit Andrea.\textsuperscript{79} Andrea’s family appears to have had little direct contact with Andrea and Rusty, particularly as it related to their visiting the Yates home.\textsuperscript{80} 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.\textsuperscript{81} He attempted to convince others that Andrea had a choice as he made these and other decisions in consultation with her.\textsuperscript{82} Due to his ongoing disregard of her, it is more likely

\textsuperscript{76} 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. \textit{Id.} She concluded that Rusty might have believed that since Rusty could not trust Woroniecki to sell him a bus, he could not trust him with his family’s spiritual well being.

\textsuperscript{77} Denno, \textit{supra} note 62, at 78 n.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 Woroniecki, she would not have drowned her children.

\textsuperscript{78} See Roche, \textit{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.

\textsuperscript{79} \textit{Id.} at 48.

\textsuperscript{80} \textit{Id.} at 46.

\textsuperscript{81} \textit{Id.}

\textsuperscript{82} Id. See also Denno, \textit{supra} note 62, 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 or choosing a house similar to the one she had lived in prior to Rusty’s decision to move to Florida. Rather, given the choice between evils, she chose the lesser of the two.
that he sought her opinion only after he made the decision, particularly given the consequences 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.\footnote{See Roche, supra note 15, at 46. 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.} Even after the project concluded, Rusty decided not to return to his home; he wanted to “travel light.”\footnote{Id.} 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.\footnote{Id.} It was only after her “breakdown” he concluded—without medical training—Andrea had suffered postpartum depression rather than a more grave mental illness.\footnote{Id. at 47.} Andrea’s social worker noted Rusty’s “controlling”\footnote{Id.} 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.\footnote{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 year old 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 of 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. For example, while 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.\footnote{See Denno, supra note 62, at 66, App. 1.} Andrea described herself as having reached only 70-75 percent normalcy.\footnote{Id.} 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.\footnote{Id.} Even more revealing is Andrea’s attendance in group therapy without Rusty. Andrea found the support she had not received from her marriage. 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.\footnote{Id.} Prior to her “break down,” Rusty treated her as insignificant. He created an oppressive
atmosphere, daily confirming for Andrea her relative insignificance. He confirmed her inability to contribute anything worthy of his consideration. More importantly, when being discharged from out-patient care, Andrea told her therapy group that she was sorry she had to leave them because they supported her.\textsuperscript{93} There was an 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. For example, she confided in Debbie Holmes about Rusty’s control and manipulation of her.\textsuperscript{94} She also described him as belittling and critical of her. She relayed that when she trimmed Rusty’s hair, her hands trembled because he belittled her for making mistakes.\textsuperscript{95} These are clear indications of emotional and psychological abuse. Even more telling, while Rusty 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.\textsuperscript{96} 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 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.”\textsuperscript{97} 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.\textsuperscript{98} If he believed people laboring with depression or other psychological maladies were not worthy of consideration, he would have done relatively little to support a wife whom he believed to be mentally weak.

\begin{footnotes}
\item[93] Id. at 67.
\item[94] See Roche, supra note 15, at 48.
\item[95] Id.
\item[96] Id. at 47. See also O’Malley, supra note 2, at 86-88. During her interview with psychiatrist Lucy Puryear 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.
\item[98] Interview by Larry King with Karin Kennedy and Brain Kennedy and Rusty Yates, Larry King Live (CNN television broadcast, Encore Presentation Jan. 16, 2005).
\end{footnotes}
No where is the public-private dichotomy more evident than in Rusty Yates’ decision to have another child with someone whom he allegedly 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.\textsuperscript{99} 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.\textsuperscript{100} 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 non-specific 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.\textsuperscript{101} Although he contends he was not warned about the threat to his children, he was undoubtedly aware of the threat having another child posed to Andrea. Notwithstanding this knowledge, both Andrea and Rusty stopped using birth control.\textsuperscript{102} As I argue below, it is possible Andrea did not believe she had any other option. Rusty again substituted his own judgment for sound medical advice to obtain what he wanted: enough children to form a baseball team. 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.\textsuperscript{103} 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.\textsuperscript{104} Rusty describes the decision in the following manner:

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.\textsuperscript{105}

Rusty’s analogy is misguided and, indeed, frightening for a number of reasons. First, it is difficult to fathom how Rusty believes Andrea’s suffering potentially 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 probable consequences, it is even more incredulous to see how an arguably intelligent man could not see the stark

\textsuperscript{99} See Rusty Yates, FAQ: Why Did You Keep Having Children?, \textit{YATES CASE}, Dec. 7, 2007, \url{http://www.yatescase.org/} 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.

\textsuperscript{100} Id.

\textsuperscript{101} Id., supra note 15, at 48.

\textsuperscript{102} Id.

\textsuperscript{103} Id.

\textsuperscript{104} Id.

\textsuperscript{105} See Yates, supra note 99.
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 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.”¹⁰⁶ Even if correct, Rusty was unwilling to give her the opportunity to live with her new-found “stability” before impregnating her and returning her to a state which led, 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 Andrea’s case, he decided her self-worth and mentally stability were at best secondary; there was a price for which he was willing to sell 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.”¹⁰⁷ By coercion, he subverted her will about not wanting to engage in intercourse to avoid the risk of having another child. Nowhere is his need for control more evident then here. He substituted his own judgment for that of trained mental health professionals 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.

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, in his estimation, had been incapable of performing. Perhaps she simply 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.¹⁰⁸ And because he did not fully accept 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

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¹⁰⁶ Id.
¹⁰⁷ Roche, supra note 15, at 48.
¹⁰⁸ See Christina L., 1995 WL 788196, at __.
not to leave Andrea alone with their children. Instead, he left Andrea alone with five young 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 were decidedly 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 knew Andrea required assistance to perform daily activities. She could not take care of her own basic needs, particularly after Mary’s birth. Logically, then, she could not care for five children. She was an obvious threat to both herself and her children. Rusty psychologically and emotionally abused Andrea. His private disdain for those suffering mental illness and depression prevented him from seeing that Andrea’s oppression, whether private or systemic, made her a threat to her children. Had he emotionally supported her, he would not have continued to have children with a woman who appeared to have retreated into a mental abyss with every child. Rusty’s decision to ignore Dr. Saeed’s advice gave Andrea the opportunity 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. But as I argue below, whether or not mentally ill, Andrea’s killing her children was purposeful. It was an act of resistance.

III. RUSTY YATES SEXUALLY ABUSED ANDREA YATES DURING THEIR MARRIAGE

Marital rape is a type of violence where a husband asserts his power and control over his wife. Historically a man, by virtue of marriage, was immune from claims of marital rape. As one commentator indicates, “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 difficult to accept any argument suggesting Rusty Yates raped 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 violence:

\[\text{Reference Notes:}\]


110 *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.


112 *See Note, Litigation Between Husband and Wife*, 79 HARV. L. REV. 1650, 1663 (1966). The writer further indicates, “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 [have been] unknowingly, and even unwillingly, diminished. *See also* Coddington, *Rape of a Wife*, 96 J.P.R. 199 (1932) (suggesting even that even when the law did not generally recognize a wife’s claim for martial rape, in some extreme cases the husband’s claim for immunity might disappear).
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 raped Andrea during the marriage, damaging her emotionally and psychologically. While I do not argue in this article for Rusty Yates’ prosecution, I do argue that Andrea Yates’ other motive killing the children derives from her being psychologically and sexually abused by Rusty Yates. Andrea killed the children as an act of resistance.

A. 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, “[b]ut 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. The court found 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.

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113 Harless, supra note 111, at 309. Harless indicates that commentators categorize marital rape into three categories: battering rape, which involves forced sex combined with physical beatings; obsessive rape, which arises where an intimate partner uses forces to effectuate strange, perverse sexual interests; and force only rape, “where the husband uses only as much force as is necessary to coerce his wife into sexual activity.” Id. at 307.
114 Id. As the Yates case implicates neither physical abuse nor perverse sexual interests, this section focuses only on spousal rape involving no other physical abuse.
116 Id.
118 Siegel, Marital Rape Exemption, supra note 115, at 354.
119 Id.
121 Id.
122 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) (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).
123 Id. 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).
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 powerfully states, however, 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:

[W]hen 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.

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

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124 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.

125 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 122, 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 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.

126 Id.; Siegel, supra note 115, 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 of these proffers are sufficient to justify maintaining such exemptions.

129 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 burdensome in 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.

130 See Harless, supra note 111, at 308 & n.24.

131 See Woolley, supra note 122, at 274.


133 See Harless, supra note 111, at 308-309.
Other states and supporters of the spousal rape exemption believe there should be no criminal sanctions because immunity protects the sanctity of marriage. They argue criminalizing marital rape destroys any opportunities for reconciliation, violates marital privacy and introduces unwanted antagonism into the marriage. Proponents also make 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.” This argument ignores the possibility that a marriage cannot be salvaged under these circumstances. As the Supreme Court of Virginia held in *Weishaupt v. Commonwealth*:

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.

As to marital privacy, just as a husband cannot invoke this argument to justify physically abusing his spouse, he cannot rely upon it to provide an acceptable reason in support of spousal rape.

Nearly every state has enacted some form of marital rape legislation. Though these statutes in no way provide complete 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 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 a non-intimate or a stranger.

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134 Siegel, supra note 115, at 359.
135 Id. at 362.
137 Id. at 429.
139 Id. at 855.
140 Siegel, supra note 115, at 363 n.87 (citing 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.” 474 N. E. 2d 567 (N.Y. 1984)). But see Harless, supra note 111, 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. 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.
141 Harless, supra note 111, at 318-31 (providing a detailed discussion of the varying state efforts to repeal spousal immunity for rape).
B. Contextualizing Rusty Yates’ Sexual Abuse of Andrea Yates

Even if one skeptically views my arguments as to Rusty’s psychological and emotional 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 only after the death of his children, that she was unable to care for herself or her 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.\footnote{Interview by Larry King with David Smith & Rusty Yates, (transcript on file at http://edition.cnn.com/TRANSCRIPTS/0403/29/lkl.00.html). (CNN television broadcast Mar. 29, 2004).} Even while acknowledging the great potential cost to Andrea, he wanted her to produce enough boys for a basketball team before he would consider having a girl.\footnote{See Denno, supra note 62, at 74 & n.93 (2003) (testimony of Michael Stephens, Harris County Deputy Sheriff, indicating he heard Andrea Yates tell psychiatrist Melisa Ferguson she killed Mary because Rusty did not want girls).} This seemingly innocuous comment demonstrates his need for control as well as his lack of regard for women. 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.\footnote{Id.}

1. Andrea Yates was unable to give consent

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

Suppose Andrea Yates were confined to a mental institution for severe mental illness. Consider that she was non-responsive and described as “psychotic.” Suppose her care and treatment were entrusted to the hospital staff. Further, during the time of her confinement in this serious mental condition, Dr. X becomes her treating physician developing a relationship of trust with her. He is no longer a stranger to Ms. Yates. One evening, Dr. X goes into Ms. Yates’ room to check on her, sees 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 argue that Ms. Yates had been raped by one in a position of trust. Moreover, we could assert that Dr. X had a fiduciary duty to Ms. Yates, a duty he breached by raping her while she was entrusted to his care.

If we can see Dr. X raped Andrea by having sex with her in a weakened mental state and, therefore, without her consent, we should be able see that the same argument is applicable to Rusty Yates’ treatment of Andrea. If we accept Rusty’s pronouncements after his wife’s arrest, that she was severely mentally ill, then we must be willing to acknowledge Rusty 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, particularly with the goal of having more children, is no different from
the doctor who sexually violates a mentally ill patient confined to a mental institution. In neither case is the victim able to give valid consent.

Rusty Yates has consistently argued that Ms. Yates was too mentally weak to resist the devil, describing here as “innocent” in the death of her children. He argued that her mental debilitation led her to kill her children. If he understood this in the context of the death of his children, it is unclear why he could not see that this same incapacitation prevented her from consenting to sexual relations with him. Rather, it is unlikely she was capable of freely exercising control over her sexual destination. By continuing to have sex with her without her consent, Rusty engaged in acts of spousal rape of Andrea.

2. Andrea Yates Knowingly Withheld Consent to Sexual Relations with Rusty

Given Rusty’s characterization of Andrea’s condition, Andrea was unlikely unable to 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 forcing her to have sexual relations under these circumstances is spousal rape.

This is not mere speculation. After her arrest, Andrea relayed to her 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 again becoming pregnant. She reminded him of Dr. Starbranch’s admonition that she might harm the children. Rusty’s response was one of defiance and manipulation. He stated God 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. There is no evidence of Andrea’s willingly relenting. Instead, her argument with Rusty belies this. The implication, then, is that he used the force necessary to gain Andrea’s compliance, resulting in 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 legitimacy to my argument as to his purposeful denial of Andrea’s right to determine her own reproductive destiny, notwithstanding the potential consequences 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 definitively break free from the life Rusty had created for her—one she did not desire—she had to kill the children.

IV. ANDREA YATES: KILLING AS AN ACT OF RESISTANCE TO ESCAPE OPPRESSION

As Andrea Yates’ second trial concluded with what many believe is the proper verdict, we are comfortable with the notion that the door has been forever closed on one

145 Id. at 44-45.
146 Id.
147 Id.
of the most painful events in this country’s recent history. Having retreated into a place psychological comfort, we are convinced that drowning five children is an anomaly. It is not likely to recur because the deaths resulted from the acts 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.148

Our comfort should be only momentary, however. We cannot ignore the possible motive for Ms. Yates’ 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 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.149 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.150 We 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.151 We reason, only “mad” or “bad” mothers could harm their children.152 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.153 Yet as Cheryl Meyers and Michelle Oberman indicate, “Regardless of the extent to which U.S. medical 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.”154 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)

151 See Meyer & Oberman, supra note 149, at 69.
152 Id.
153 Id. at 13.
154 Id.
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 escape an oppressive system that held her, like so many other abused women captive. To be clear, 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 resistance.

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 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.”

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155 Id.
156 Id.
157 See LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 45-46 (1989); Moore, supra note 33, at 312.
158 See infra pp. 27-31.
160 Roberts, supra notes 148, at 126 & n.156-57.
161 See Jouriles et al., supra note 159, at 223, 228.
162 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).
163 Id. at 228.
164 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. Margolis & 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.
165 Id. at 227-28.
2. Conceptualizing the threat abused women pose to their children

Mothers who experience abuse can clearly represent a threat to their children. Finding themselves in an untenable position, they experience dual 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.” 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 readily 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. In support of this, she relies on examples of peasant rebellion in Europe and South East Asia. Historically, whether people passively endured hunger or resisted depended 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 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

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166 Roberts, supra note 148, at 126.
167 Id.
168 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.
169 Id.
170 Id.
171 Id.
172 Id.
the death of their children, he believed her psychological condition was a weakness\textsuperscript{173} worthy of a “kick in the pants”\textsuperscript{174} to motivate her—or anyone suffering with mental illness for that matter—rather than a serious medical condition, requiring doctors to do more to help her, as he later pronounced before the media.\textsuperscript{175} Moreover, he defiantly refused to follow doctor’s advice to refrain from having more children due to the potentially irreparable harm to Andrea. She understood concretely the meaning of his forcing her to have another child: he was willing to risk her permanent loss of self. 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,”\textsuperscript{176} indicating “Rusty wanted to silence her while at the same time using her as a slave to take care of the kids.”\textsuperscript{177}

It is within this context that one must earnestly consider the impact of the deep scars Andrea likely suffered from the years of psychological and sexual abuse. It is improbable that Andrea did not recognize the abuse as she “despised”\textsuperscript{178} Rusty, privately voicing her “deep and intense hatred” for him.\textsuperscript{179} She wanted someone to tell her how to live with a man she disdained.\textsuperscript{180} He had devalued her life, making it appear worthless apart from her having and caring for their children. As Rusty treated her as otherwise invisible, she killed her children to regain her voice and, ultimately, her freedom.

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.\textsuperscript{181} This is likely true in many respects. There is no evidence of her having previously abused them. 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 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.\textsuperscript{182} As feminist scholar April L. Cherry argues, motherhood as an

\textsuperscript{173} Roche, supra note 15, at 45-50. Though he described her condition with empathy, he privately treated her with near distain.
\textsuperscript{174} See supra Part II. B.
\textsuperscript{175} See supra note 142.
\textsuperscript{176} O’MALLEY, supra note 2, at 97.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{181} Huckerby, supra note 149, 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.
\textsuperscript{182} 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
institution includes more than biology. It encompasses political and social dimensions.\textsuperscript{183} 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.\textsuperscript{184} 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.”\textsuperscript{185}

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.\textsuperscript{186} 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.\textsuperscript{187} Denno continues, “A number of people, including Andrea’s mother and her friend Debbie Holmes, suggested Rusty was a dominating force in the Yates family, including the decision to have babies.”\textsuperscript{188} 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.\textsuperscript{189} 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.\textsuperscript{190} Arnold believed she had hit a painful subject, noting “It was just sadness. I thought she was going to cry.”\textsuperscript{191} 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 control when or whether to become a mother. It was not a right she had willingly relinquished. It was taken from her.

motherhood has been shaped and commodified by the prevailing patriarchal norms, women do not own motherhood. \textit{Id.}

\textsuperscript{183} \textit{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.” \textit{Id.} at 93.

\textsuperscript{184} \textit{Id.} at 93-94.

\textsuperscript{185} \textit{Id.} at 94 (citing Adrienne Rich, \textit{Of Women Born: Motherhood as Experience and Institution} 42 (1976)).

\textsuperscript{186} See Denno, \textit{supra} note 62, at. 28.

\textsuperscript{187} \textit{Id.} at 28.

\textsuperscript{188} \textit{Id.}

\textsuperscript{189} \textit{Id.} at 32.

\textsuperscript{190} \textit{Id.} at 74.

\textsuperscript{191} See Terri Langford, \textit{Doctor: Yates Knew Killing Was Wrong}, DALLAS MORNING NEWS, Mar. 8, 2002, at 53A.
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 without alternatives. Andrea wanted to escape her life of marginalization and oppression, but she could not gain true freedom were she to leave Rusty and take 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 detached 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. RESISTANCE THEORY AND ITS APPLICATION TO ANDREA YATES

1. Denial of Criminal Mother’s Agency is a Denial of the Power of Purposeful Resistance

Andrea Yates’ taking the lives of her children has been characterized in a number of ways. Most prominently, however, it has been presented and accepted as a killing that occurred while Andrea labored under postpartum psychosis. There were increasing calls for sympathy, even as facts began to emerge about the manner in which she killed her children. Like other women who kill, Andrea’s behavior has been conceptualized in terms of a “good girl versus bad girl.” One commentator notes that this dichotomy works to “mold violent women back into what a woman should be.” She argues further that by viewing woman as “mad,” we stereotypically attribute their behavior to forces beyond their control, leaving them morally “pure” women who maintain “traditional gender roles and notions of femininity.” Ms. Yates and women like her are stripped of all agency. They are the model of feminine passivity. By contrast, we strip “bad” women of all notions of femininity, treating them as deviant and inherently “unwomanly.”

Women who kill do not always kill due to external circumstances devoid of their own agency. Actors in the criminal justice system, including judges and juries, seem to

192 Id. at 73. Denno supra note 62, at 73.
193 O'MALLEY, supra note 2, at 19-20.
194 See Stangle, supra note 19, at 712-14(indicating that since the successful use of the postpartum psychosis defense in the Yates case, many scholars argue these sorts of defenses should be expanded to protect to violent mothers from punishment).
195 Id. at, 713 (noting that there were significant call for sympathy and pity even when it was revealed that the children ran and struggled as Ms. Yates pushed and held their heads under water until their lungs exploded in their chest).
196 Id. at 710-11.
197 Id. at 707.
198 Id.
199 Id. at 707.
200 Id.
adhere to this notion in order to treat such women with sympathy.\textsuperscript{201} As a result, the law reinforces the ideal of female oppression and transforms female perpetrators into helpless victims.\textsuperscript{202} Despite this view of female offenders, we must be clear that women sometimes act purposefully. Indeed, they may act out of opposition to an oppressive system. In this section, I argue that Ms. Yates’ killing was a decisive act of defiance in response to the oppression suffered for so many years at the hands of Rusty Yates.

2. Finding a Unified Definition of “Resistance”

Understanding resistance theory is no small accomplishment. It is often difficult to determine when one is acting in rebellion to an oppressive system and when one’s deviant behavior is simply the result of not having a broader spectrum of choices.\textsuperscript{203} Indeed, scholars have used the term to describe a wide variety of actions and behaviors at all levels of human social life, whether individual, collective or institutional.\textsuperscript{204} The problem with these variations is that there is little consensus as to the definition of resistance.\textsuperscript{205} This is evidenced by the identification of at least seven distinct types of oppositional behavior which differ in a number of ways, including who must identify the behavior as defiance and whether one’s resistance can be unintended.\textsuperscript{206} What is clear, however, is that virtually all definitions of resistance have two core elements. First, it must include some broadly conceived action.\textsuperscript{207} This means that resistance is not a quality of an actor, nor is it a state of being. Instead, it “involves some active behavior, whether verbal, cognitive, or physical.”\textsuperscript{208} A second common element is a sense of opposition. This envisions behavior that, among others, “counters, contradicts, rejects, challenges, socially changes, subverts, damages or disrupts.”\textsuperscript{209}

\textsuperscript{201} Id. at 709-10.
\textsuperscript{202} Moore, supra note 33, at 322-36.
\textsuperscript{203} See Elizabeth M. Schneider, Hearing Women Not Being Heard: On Carol Gilligan’s Getting Civilized and the Complexity of Voice, 63 FORDHAM L. REV. 33, 37 & n.27 (1994).
\textsuperscript{204} See, e.g., David C. Brotherton, Beyond Social Reproduction: Bringing Resistance back in Gang Theory, 12 THEORETICAL CRIMINOLOGY 55, 67(2008) (arguing, for example, that gang members engage in a range of political protests, disseminating concepts and ideas that openly critique present power relations; demonstrate self-organization that reflects histories and community of struggle and memory); Regina Austin, “The Black Community,” Its Lawbreakers, and a Politics of Identification, 65 CAL. L. REV. 1769, 1778 (1992), (arguing that members of the black community who live as lawbreakers are resisting the dominant culture because they refuse to “surrender to the stranglehold of material deprivation and social constraints.”); Trevor Gardner II, The Political Delinquent: Crime, Deviance, and Resistance in Black America, 20 HARV. BLACKLETTER L. J. 141, 141-42 (2004) (asserting that “elements of political resistance, inherent in the African American culture after years of struggle against racism, may manifest in the realm of street-level crime, particularly when the black community finds itself decentralized in the face of pervasive social ills.”); Roberts, supra note 148, at 138 (arguing that a feminist construct based on identification with criminal mothers “must recognize the damage criminal mothers inflict on children, while criticizing society’s constructing of mothers and celebrating mothers’ positive resistance.”).
\textsuperscript{206} Id. at 544-47. See also, Brotherton, supra note 204, at 59.
\textsuperscript{207} Hollander et. al., supra note 205, at 538.
\textsuperscript{208} Id.
\textsuperscript{209} Id.
Two additional elements which appear to be central to the discussion and which lie at the heart of many disagreements in determining what constitutes resistance are recognition and intent. There appears to be consensus that both political mobilization and “everyday acts” may constitute acts of resistance. Yet for these acts to receive recognition as resistance, social scientists believe these acts must be visible, meaning that it must be recognized by others. This requirement does not consider that some overtly oppositional acts are, of necessity, deliberately hidden. Hollander and Einwohner, for example, rely on work by Rochat and Modigliani indicating that French villagers, who hid Jews during the Holocaust, demonstrated explicit acts of opposition that had to remain invisible to authorities. Moreover, there are observable acts which the “powerful” do not recognize as resistance. In some measure, recognition depends on the goals of the resisters.

Equally unsettled is whether the actor must be aware that she is resisting some exercise power or and whether she intends to do so. While some social scientists believe intent is an indispensible component of resistance which is difficult to uncover, others believe resistance may exist even without intent. However unsettled the definition or scope of resistance theory, particularly as it relates to the necessity of the intent element, it does not alter the argument that Andrea Yates killed her children as an act of resistance to escape an oppressive system. Indeed, by killing her children, Andrea Yates subverted a system that had silenced her and rendered her invisible.

3. Reconceptualizing Andrea Yates’s Killings as Acts of Resistance

If we consider the core elements identified as comprising resistance theory, an undeniably powerful argument emerges: Andrea Yates engaged in an act of resistance, striking at the very foundations of the social constructs of marriage, motherhood and domestic abuse. The killing of five children fits squarely within the first requirement, that there be broadly conceived action, which envisions but does not require physical action. Apart from having children when Rusty demanded, Andrea was relatively insignificant to Rusty as a marital partner. In response, she chose to kill her children as

210 Id. at 539.
211 Id. at 540-41.
212 Id.
213 Id.
214 Id. Hollander and Einwohner indicate that overt acts such as humor, singing spirituals and “passing among gays and lesbians” are examples of opposition that more powerful oppressors do not recognize.
215 Id.
216 Id. at 542.
217 Id. Hollander and Einwohner found three distinct theories as to the intent requirement. First, some suggest one must have conscious intent to resist, the existence of which qualifies as resistance, regardless of the scope or outcome of the act. Id. Second, because intent is nearly impossible to access, one must have access to the actor’s internal state to confirm one’s intent to resist. Such information, however, may not be available. Id.
218 Id. at 543-44. A third group of writers assert that intent is not central to understanding an act as resistance. An actor may not recognize her act as resistance. Moreover, due to cultural differences, observers may not recognize intentional acts as resistance. Id.
219 See supra Part IV C. 2.
an act of defiance. She had a sense of opposition, meaning that she was consciously aware that killing her children would signal a rejection of a system that devalued her apart from her responsibility as a mother. Arguably, she may have taken one step in an effort to force society to realize it must change its unwillingness to protect mothers from private psychological and sexual abuse simply because it occurs within the context of a marriage.

Andrea’s actions were also intentional. Andrea had a number of options available to her, including divorcing Rusty and leaving him to raise their children or taking the children with her. She could have sought assistance from outside agencies. She could remain in the marriage. Instead she chose to take the lives of her children, fully aware of the dire private and public consequences. If one accepts that Andrea was consciously aware of the cost of her behavior as I contend, it logically follows, then, that she intended to resist Rusty’s exercise of power in the marriage that had held her captive without a cognizable means of escape. In making this argument I do not intend limit Ms. Yates’ actions to some private action that does not comprise greater social implications.

The failure to properly recognize an actor’s behavior as subversive does not prevent it from being an act of resistance. This is particularly important in the case of Andrea Yates. While Andrea likely intended to kill her children as an act of defiance, it has not been characterized as such. It has been largely overshadowed by defense trial strategy and a jury verdict, legally confirming that Ms. Yates killed her children while insane. Yet similar to the acts of French villagers who hid Jews during the Holocaust, our inability to recognize Andrea’s acts were in response to oppression does not negate the purposeful nature of the action.

Perhaps the determination of whether one’s action constitutes resistance can not be decided by a rudimentary analysis of uncertain elements. As Dorothy Roberts state, critical to pursuit of resistance theory is “to distinguish oppositional action that is truly subversive and liberatory from that which merely reproduces the oppressive status quo.” In other words, oppositional behavior must do more than suppress social contradictions while merging with them. Otherwise, it is no more than “accommodation and conformism.” Arguably, Andrea Yates’ killing her children goes beyond reproduction of the status quo. Indeed, it destabilizes a marital structure by exposing private sexual and psychological abuse. It forces the criminal justice system to reconsider its treatment of domestic abuse when its victims do not fit the mold of women who have been physically abused. Most critically, however, we must consider the damage such mothers inflict on their children.

D. 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 about Edna, a married woman with children who, apart from her role as wife and mother, had lost her individual identity. She saw herself as a caged bird, confined by the role society had assigned

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220 Roberts, supra note 148, at 138.
her.223 Her husband frequently criticized her for failing to properly fulfill her responsibility as a mother.224 His role was to provide for his family and protect them.225 Edna like Andrea did not fulfill her role to her husband’s 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.226 Nor was Edna the “mother-woman” she was supposed to be.227 Chopin described such women in exaggerated terms. “It is easy to know them, fluttering about with extended, protecting wings 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.”228 Rather, she stated, “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.”229 She simply was not willing to suppress her own life to be the kind of woman needed by her husband and children.230

As Edna began to awaken, to find her “voice,” she realized she was no longer one of her husband’s possessions; she would not permit anyone to “own” her.231 It had become clear that role as mother made it impossible for her to continue to develop as an autonomous human being.232 More critically, Edna saw her children as the shackles that imprisoned her and kept her bound to society’s expectation of her as dutiful “mother-woman.”233 She did not want to be bound to them for the rest of her life.234 She gained her freedom by committing suicide.235 Arguably, her suicide is the ultimate act of self-determination.236 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.237

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.238 And like Edna she twice sought suicide as a way of freeing herself from the confines of the chains that restrained her. Her last attempt to escape from a life of oppression led her to kill her children. It should not be lost on anyone that Ms. Yates’ efforts to gain her freedom did not include her children. Had Andrea successfully taken her own life, she

224 SOLOMON, supra note 224, at 123.
225 Id.
226 Id. at XXVI, 6-7, 19-20.
227 Id.
228 Id.
229 Id. at 51.
230 Id. at XXVI.
231 Id. at 116.
232 DYER, supra note 226, at 27 (citing Peggy Skaggs).
233 SOLOMON, supra note 224, at 123.
234 Id.
235 Id. at 125.
236 DYER, supra note 226, 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.
237 Id. at 17.
238 See supra, Part IV. B.
would have been free from the isolation, subordination and abuse of her marriage. 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. The opportunity was available to her immediately after killing her first born, Noah; it was there 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.” 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.” She further indicated she had hurt all of her children, that “she finally did it.”

One might reason Andrea’s failure to take her own life after killing her children 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. She powerfully signaled 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 lose her life to regain it.

Chopin initially uses the caged parrot as a metaphor to symbolize Edna’s lack of freedom and subordinate status. Yet as Edna begins to awaken, she refuses to be caged, to imitate those around her. Instead, she sought to find her own voice in order to live and speak authentically. Similarly, the butterfly symbolized freedom for Andrea. As Michael Woroniecki indicates, she clung to the butterfly with such strength, revealing her desperation to escape the life she lived with Rusty and the children. He concluded, “She wanted to leave that life….”

V. CONCLUSION

Mental illness is 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. Perhaps we see ourselves as

240 Id. Resnick indicates that after altruistic or acutely psychotic filicides, some parents who do not kill their children do not compete the act of suicide because they experience a “relief of tension.”
241 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.
242 Id. at 7.
243 Dyer, supra note 226, 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.
244 Id.
245 Id. Woroniecki indicated Andrea knew the life she was living was not right.
powerless or too fragile to accept anything else. Indeed, it is this fragility that prevents us from conceptualizing mental illness in a broader context where one is capable of acting with clarity. But we are required to accept that mental illness does not indicate powerlessness; nor does it mean that people commit heinous acts without lucidity 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 whom they escape. Abused women should not be left to believe that to live a life of value, one of authenticity and visibility, they must kill their children.