



Mission impossible: upholding successfully a charge of infanticide in the Albanian legal practice

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Received: 21 Sep 2013

Accepted: 16 Feb 2014

Published: 18 Feb 2014

J Med Ethics Hist Med, 2014, 7:4

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Abstract

Infanticide is a horrendous crime universally condemned from all ethical, juridical and moral standpoints. However, legislation on infanticide foresees mitigating circumstances for infanticidal mothers, with sentences by far disproportionate to the severity of the crime. The main justification for this abstaining from severe punishments has been the so-called post puerperal psychosis, whose diagnostic criteria and existence are still very confusing. Psychiatric experts and even jurors show excessive feelings of empathy toward defendant mothers, and fair verdicts under this setting and with this judicial tradition are questionable. Albanian courts have in some cases even denied defendant mothers the unwilling albeit necessary psychiatric treatment, thus exposing them to recidivism and to other social difficulties. Upholding the charge of infanticide in an Albanian court is hereby an impossible enterprise, with high chances for defendants to achieve acquittal on mental insanity grounds. Through describing three cases of infanticide and filicide in recent years of Albanian judicial proceedings, authors raise the concern formulated from other sources regarding the excessive empathy surrounding infanticidal mothers, a deleterious obstacle toward achieving justice.

Keywords: *infanticide, maternal psychopathology, legal issues, postpartum depression*

Introduction

Infanticide has been a standing concern for legal professionals, medical teams and the society in general. The killing of a child by one of his biological parents has been a widely discussed subject, from the philosophical, legal, medical, psychological and sociological points of view.

The overall societal point of standing towards infanticide has been a shortcut in between mental health problems and the act itself; when perpetrated by the biological mother, infanticide is mostly associated with postpartum depression (1). Sources make a substantial difference between the neonaticide (killing of a newborn less than one month old), infanticide (murder during the first year of life) and filicide in general (2).

Connecting indiscriminately a filicide or an infanticide with parental psychopathology leads nowhere; in fact, there are authors clearly stating that mental illness in the majority of cases is not a feature of filicide (3). The accidental or non-purposeful settings surrounding an unlucky event have been investigated as well, with Münchhausen syndrome by proxy being among causative factors (4). We have previously reported an unusual case of infanticide following an overzealous cardiac massage and here the maternal psychopathology was found present (5).

In all cases, cultural background and ethnic differences might play a role toward a continuum, starting with child maltreatment and eventually ending in fatally; hereby the sex of the victim seems to be a significant parameter as well (6, 7). Due also to methodological and registration biases, it seems very difficult to offer precise figures regarding the worldwide prevalence of child maltreatment or infanticide (8). Some sources have performed a methodological scrutiny of selected historical periods trying to find out a time trend in the overall prevalence of infanticide, with conclusions suggesting infanticide to have been widespread in classical times (9).

Punishing murder proportionally to the severity of this crime has been argued for centuries. The modern society obviously cares very much about the preservation of life, and this has been extended to the criminal law as well (10).

Case series

Three cases of infanticide tried in three different Albanian courts during the period 2010-2012 were followed by the public and mass media with an impressive zeal. The mainstream of all processes, however, was the acquittal of the mother (infanticidal in two cases) or a mitigated sentence, and the acquittal of the father (infanticidal in the third case). All reasons of acquittal were related to mental health problems or 'disorders', with only

one parent out of three undergoing thereafter unwilling psychiatric treatment in a criminal psychiatric facility.

Case one: A mentally unstable mother caused cardiac contusion and thereafter a violent cardiac death to her child (5). The mother had never been treated by psychiatrists before; however, a psychiatric expertise commissioned by the state prosecutor was performed thereafter that confirmed a slight mental retardation. This was sufficient to mitigate the sentence and to drop the charge for murder. She was sentenced to twelve years for manslaughter, one third of which was almost immediately pardoned through a general amnesty. The reason why she received such a sentence was that the child at the moment of death was 18 months in age, and thus she was not prosecuted and charged for infanticide, but rather conforming to the general homicide penal law.

Case two: A neonaticide happening in a district hospital was never tried by the city court. The prosecution office of the city commissioned an expertise and the psychiatrist suggested that the mother was suffering from postpartum psychosis. The mother, however, had never had a psychiatric anamnesis or been treated for such disorders. The prosecution office closed the file immediately thereafter, and the case was never sent to court. Due to such a decision, the mother was never put under (unwilling) psychiatric treatment.

Case three: A neonaticide happening in the capital of the country (Tirana) shocked the public when the father threw the neonate from the window of the fourth floor of the maternity ward. The neonate was pronounced dead immediately thereafter and the father was put into custody. Although he had a negative psychiatric history, an expertise was duly commissioned. He was confined to a criminal psychiatric facility and had to undergo unwilling treatment, but was declared by the court as not guilty due to mental insanity. With the Albanian law foreseeing a revision of all unwilling psychiatric treatments within one year after a competent trial has decided upon the application of such a measure, the chances of him being put unto ambulatory treatment (or no treatment at all), and being released, remain high.

Discussion

Infanticide is a punishable crime according to all penal laws in force, and culturally speaking, it is an unacceptable and abhorrent act. Nevertheless, selecting progeny through refraining from rearing unhealthy children is unfortunately an unacceptable advice that Plato gave more than two millennia before (11). This might explain, to some extent, why in the ancient Greco-Roman times, a father

was allowed to kill his own child without legal repercussions (12).

Questioning the worth of a child under the law, Damme has impressively reached the conclusion that verdicts have almost not changed in a seven hundred year time lapse, from the pardoning of Joanna le Vagh in 1284, charged with the murder of her daughter (13). In fact, infanticide laws generally foresee mitigating and reduced penalties for mothers, based on the principle that “the balance of the mind (of an infanticidal mother) is disturbed by reason of her not having fully recovered from the effect of giving birth to the child” (14).

On the other hand, the drama of infanticide relies on the fact that medical evaluation overwhelmingly bypasses legal evaluation, and a ‘strange’ doctrine on infanticide has been postulated (15). The profile of an infanticidal mother has been sketched from a ‘manifest madness’ (15). A thorough and detailed description of all medical hypotheses raised and tested in relation to infanticide would be out of the scope of this paper; however, some hypotheses actually are clearly devaluated, although they have been under consideration for decennia. Such is probably the case of the so-called ‘lactational insanity’, actually considered as non-scientifically founded (16).

From a sociological and medical point of view, infanticide is a complex issue needing careful analysis. This criminal act is particular because one of the biological parents, mainly the mother, commits it, and also because the victim is completely innocuous to the perpetrator, and therefore the act is premeditated and apparently purposeless. Due to these peculiarities, instead of reinforcing legal measures toward its prevention, verdicts and penal codes have not changed almost at all during the past centuries, thus conceding mothers mitigated sentences or even acquittal.

The Albanian penal code still considers infanticide a felony, albeit with sentences foreseeing prison terms not longer than two years (17). Hereby we are coming close to downgrading it to a criminal act, if we consider that misdemeanour is sentenced with a maximum of one year prison term. Nevertheless, the Albanian penal code is uncertain about the time frame of charging the crime as a minor offense. To quote the code verbatim, infanticide is a situation of the ‘*mother killing her infant immediately after birth*’; However, the code does not clarify what the definition of *immediately* is, an omission which is creating serious problems for prosecutors, as well as helping attorneys to find unfair ways for mitigating the circumstances of defendant mothers. The whole judicial process of murder will therefore turn out to be framed via a reduced charge of minor offense, and will end up in a disproportionate sentence,

whose accomplishment is not merely the decision of a single district judge.

These mitigating circumstances and sentences are also supported through empathic psychiatric expertises, and this is an issue raised by authors questioning the professional positioning of a psychiatrist vis-à-vis the infanticidal mother (18). Distinguishing mentally unstable mothers from ‘killer mothers’ is an important diagnostic and legal step, particularly in countries with much more orthodox penal codes, like the US, where a ‘killer mother’ will face the death penalty. Such a distinction is not simple, since DSM-IV offers no formal diagnostic criteria for the postpartum psychosis, a condition leading to a disparate treatment under the law (19). It is therefore understandable that even jurors will not be immune from such a questionable empathy with infanticidal mothers, with biases in juror decision-making depending on whether the victim is disabled or non-disabled (20).

Turning to the roots of the phenomenon, it is necessary to perform a thorough medical, sociological and psychological analysis of each separate case, taking into account the cultural and economic background of the wrongdoing mother. Authors have identified a variety of psychosocial stressors driving mothers to infanticidal behavior. The most important of these factors seem to be lack of marital support, economic difficulties, family stress, and unrealistic expectations from motherhood (21).

Once a traditional fertility regulation method, nowadays infanticide as such is encountered very rarely, and almost exclusively in remote and underdeveloped rural areas (22). Sex of the progeny is an ominous predictive factor, with girls eliminated much more frequently, mainly in strong patriarchal societies (23). Albanian society remains largely a patriarchal one, albeit we possess no comprehensive data regarding the sex of murdered infants to suggest that gender is a significant determining factor for the victims’ selection.

The critical line which separates abortion from infanticide is another ethically and morally discussed frontier line (24). From a semantic point of view, approximations in between abortion and infanticide are frequently made. The risks of indifferently accepting abortion as morally permissible might lead to an extension of such an indifference to justification (although contextual) of infanticide (25). The issue is by no means a very simple one, but legally mitigating the circumstances of infanticidal mothers or dropping respective charges is not an option. Moreover, the excessive empathy of psychiatrists acting as forensic experts in trials of infanticide, and routinely diagnosing postpartum psychosis in defendant mothers is certainly not a viable and logical option.

Although written almost 130 years before, the rhetorical question and the eloquent answer that Nietzsche gave to his moral dilemma still remain valid: “Where are your biggest threats? In the compassion...” (26). In his theory of compassion Nietzsche has been considered as closer to inverting Platonic metaphysics, but here it seems that his theory still falls within the magic circle of thoughts two millennia after Plato’s writings (27). In an attempt to make peace with these moral dilemmas, other philosophers have become almost as uncertain as the jurors trying these cases. Michael Tooley has gone so far to assume that an entity lacking a ‘consciousness of itself...’ might not have a right to life (28).

Conclusion

Too much leniency shown by judicial courts is an apparent phenomenon when infanticidal mothers are charged for their wrongdoings. Uncertain and inaccurate terminologies such as those adopted by the Albanian penal code, with artifactual concepts

related to the ‘immediacy’ of the killing after birth, need to be corrected. Such ‘immediacy’ is a fluid time concept, leaving plenty of interpretative ways. The legal terminology, especially the one used in law codes, has to be precise and unambiguous. Extreme caution is needed as well in cases when the infanticidal parent, mainly the mother, presents no previous psychiatric history. Overestimating the severity of the adaptive psychological changes that follow the birth of a child, to the scale of a psychosis, might be an over diagnosis. This over diagnosis will almost certainly grant an insanity defence to the parent.

Attempts to legitimate infanticide have found little space in Albania. However, the courts and the general public are unfortunately still reluctant to treat this act as a mere crime, with the obvious complicity of the medical staff caring for infanticidal parents.

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