

Parricide as Self-Defense

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In the 1970s courts started recognizing self-defense as a legal defense for women who kill to protect themselves from brutal partners.¹ This defense, however, has not been extended to battered children who kill their parents to protect themselves from abuse.² The problems of child abuse and parricide³ have existed for a long time⁴ but only recently has either received much attention.⁵ This article will examine the link between child abuse and parricide, compare the battered child who kills with the battered woman who kills, and advocate a self-defense defense for abused children who commit parricide to prevent further abuse.

Section I presents an overview of the incidence of child abuse and parricide. Section II discusses how the relationship between parricide and child abuse has been virtually ignored by the legal community. Section III proposes a self-defense theory for parricide cases and analyzes the three reported parricide cases. Section IV profiles the typical child who commits parricide; it also answers some objections to the defense by showing that criminal law theories of punishment are not furthered by convicting children who commit parricide to protect themselves from abuse and that the self-defense rationale is met in such cases.

I. Incidence of Child Abuse and Children's Responses

The startlingly high rate of child abuse is well-documented.⁶ Estimates suggest that over one million abusive incidents occur in

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1. Gregory W. Morris, *The Kids Next Door: Sons and Daughters Who Kill Their Parents* 154 (1985).

2. *Id.*

3. The murder of a parent by his or her child.

4. See *Mortimore v. State*, 24 Wyo. 452, 161 P. 766 (1916); Mildred Daley Pagelow, *Family Violence* 148-56 (1984); Edmund Pearson, *The Trial of Lizzie Borden* (1937).

5. Pagelow, *supra* note 4, at 156-63. For a discussion of the child welfare movement, see *id.* at 207-08.

6. See, e.g., Morris, *supra* note 1, at 21; Pagelow, *supra* note 4, at 49-53.

the United States every year.⁷ How do abused children react to or cope with years of abuse? Most endure it.⁸ Tragically, some of these children who stay and take the abuse resort to violence as a problem-solving mechanism.⁹ After witnessing the use of violence by their parent or parents to solve problems, quiet dissent, or release tension, abused children sometimes learn to use violence in their own dealings with others.¹⁰ Other children who stay and endure abuse become withdrawn and use fantasy and denial to cope with the problem.¹¹ "Recent reports suggest that severely abused children may employ defenses of denial and fantasy to such an extent that multiple personalities or psychosis results."¹²

While most abused children stay and withstand the violence, many run away from home.¹³ One source reports that more than one million adolescents run away each year.¹⁴ "Most of these kids did not flee warm, loving families. . . . The reason we have run-aways is because we have a lot of abused kids who are trying to escape a violent environment."¹⁵

This article focuses on the small number of abused children who neither endure the abuse nor run away. The children in this

7. Morris, *supra* note 1, at 165; Anne Johnson, *Parents Who Fail To Protect*, 5 *Law & Inequality* 359, 360 n.12 (1987) (citing John E. B. Meyers, *The Legal Response to Child Abuse: In the Best Interests of Children?*, 24 *J. Fam. L.* 149, 169-70 (1985)). See also Pagelow, *supra* note 4, at 37-68 (discussion of estimated extent of child abuse).

8. Lois Timnick, *Fatal Means for Children to End Abuse*, *L.A. Times*, Aug. 31, 1986, § 2, at 3, col. 1.

9. Paul Mones, *The Relationship Between Child Abuse and Parricide: An Overview*, in *Unhappy Families* 35 (Eli H. Newberger & Richard Bourne eds. 1985); Timnick, *supra* note 8, at 3. For a discussion of the parallels of child maltreatment and juvenile delinquency, see Ronald Flowers, *Children and Criminality: The Child as Victim and Perpetrator* (1986). Even when children are not directly assaulted, *witnessing* abuse has a negative effect on them. Substantial evidence reveals striking correlations between spousal abuse and various forms of violent offenses committed by juveniles who witnessed such abuse. Gail Goodman & Mindy Rosenberg, *The Child Witness to Family Violence: Clinical and Legal Considerations*, in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* 97, 99-102 (Daniel Jay Sonkin ed. 1987).

10. Mones, *supra* note 9, at 35; Timnick, *supra* note 8, at 3.

11. Mones, *supra* note 9, at 35; Timnick, *supra* note 8, at 3. See also Nat'l L.J., Oct. 5, 1987, at 6.

12. Goodman & Rosenberg, *supra* note 9, at 103 (citing J. Fagan & P. McMahon, *Incipient Multiple Personality in Children: Four Cases*, 172 *J. Nervous & Mental Disease* 26-36 (1984)).

13. Timnick, *supra* note 8, at 3.

14. Telephone interview with Don Griffin, Associate Director of the National Network of Runaways & Youth Services (Dec. 9, 1988).

15. Morris *supra* note 1, at 154. Accord Pagelow, *supra* note 4, at 372. See also Timnick, *supra* note 8, at 3, where one commentator estimates that the majority of "missing children" are in fact children fleeing abuse and that the majority of run-aways in shelters left home to escape abuse.

group end the abuse by killing the abuser.¹⁶ Each year about 400 parricides occur in the United States.¹⁷ Though accounting for only about two percent of all homicides in the United States each year, this is not an insignificant statistic. Indeed, parricides and their headlined reports are increasing.¹⁸ Starting with the *Richard Jahnke* case¹⁹ in 1984 and continuing to the *Cheryl Pierson* case²⁰ in 1987, nationwide reporting of parricide cases has pushed parricide into the public eye. The questions being raised are many and broad: Why do some children kill their parents? Are most parricides precipitated by child abuse? What is the profile of a child who commits parricide? Why has the relationship between parricide and child abuse been virtually ignored by the legal community? Can parricide as a reaction to child abuse be justified as an act of self-defense? The following sections will try to answer these questions.

II. Lack of Attention by the Legal Community

Despite the attention parricide has been receiving in newspapers, magazines, and medical/psychological journals, the relationship between parricide and child abuse is virtually unexplored in the legal community.²¹ It is unclear why legal commentators have not addressed this topic, particularly since parricide is not a recent phenomenon²² and is such a harrowing crime. In addition, the growing awareness of child abuse and the tremendous amount of attention given to recent battered women self-defense cases²³ point to the need for direction from the legal community in this emerging area of criminal law. There are possible explanations for this lack of awareness of any relationship between parricide and child abuse. They include an historical acceptance of a parent's right to "discipline" his or her child, a continuing presumption that parents do what is best for their children, the distastefulness of both child abuse and parricide, and the fact that parricides usually are not committed in the "typical" self-defense situation.

16. Timnick, *supra* note 8, at 3.

17. Nancy Blodgett, *Self-Defense: Parricide Defendants Cite Sexual Abuse as Justification*, A.B.A. J., June 1, 1987, at 36, 37; Marcia Chambers, *Children Citing Self-Defense in Murder of Parents*, N.Y. Times, Oct. 12, 1986, § 1, at 38, col. 1, Timnick, *supra* note 8, at 3.

18. See Morris, *supra* note 1, at 152; Mones, *supra* note 9, at 32.

19. *Jahnke v. State*, 682 P.2d 991 (Wyo. 1984). *Jahnke* was the first parricide case to receive wide attention.

20. Nat'l L.J., Oct. 5, 1987, at 6.

21. Morris, *supra* note 1, at 23, 147, 153; Mones, *supra* note 9, at 31, 35, 36, 38.

22. See *supra* p. 87.

23. *State v. Kelly*, 478 A.2d 364, 380 (N.J. 1984).

Historically children were viewed as the property of their parents.²⁴ "Discipline" was a family matter and parents had nearly unlimited discretion.²⁵ While in the past century there has been an increased interest in and a movement towards protecting children's rights,²⁶ the presumption that the parent-child relationship is a confidential one still survives. This presumption includes the parents' license to raise their children without state interference.²⁷

Ideally parents act in their children's best interests. Tragically for the one million-plus abused children in this country, the ideal is not reality. The historical acceptance of children as property and the continuing presumption that parents ensure their children's safety and well-being may serve to cloak child abuse.²⁸ Perhaps they have prevented legal scholars from acknowledging the self-defense possibility in parricide cases.

The legal community appears reluctant to address these distressing issues for another reason.²⁹ Child abuse is a very disturbing subject and most people would rather not acknowledge it. In addition, parricide is an especially shocking crime.³⁰ Many people, including defense attorneys, are simply unable to believe that a child could be so abused that murdering his or her parent is the only option.³¹ Yet, the number of children killed and maimed by abuse is staggering³² and suggests that self-defense sometimes could have been used to prevent the harm.

Finally, perhaps self-defense is not used more often in parricide cases because parricides in self-defense do not fit the classic self-defense situation. Clearly self-defense would be asserted if the child killed in immediate reaction to imminent abuse, for example, if a child killed his or her father who was beating him or her with a baseball bat. Unfortunately, most parricides appear to be premeditated murder because the child strikes when the abuser

24. Pagelow, *supra* note 4, at 148-56.

25. *Id.*

26. *Id.* at 156-63.

27. 1 Wayne LaFare & Austin Scott, *Substantive Criminal Law* § 5.6(a) (1986).

28. Flowers, *supra* note 9, at 12 (stating that the presumption that parents are acting in their children's best interests gives way only when extreme abuse is shown).

29. Morris, *supra* note 1, at 153-54.

30. Gerald Lubenow, *When Kids Kill their Parents*, Newsweek, June 27, 1983, at 35; Mones, *supra* note 9, at 31.

31. Morris, *supra* note 1, at 153, 159, 165.

32. Morris, *supra* note 1, at 165-66 (citing FBI statistics that place the number of children killed by their parents at 500-600 per year and the National Association for the Prevention of Child Abuse "estimates that 5000 children are murdered annually by their parents but the deaths are concealed").

is vulnerable. In the classic parricide situation, the imminent danger is more subtle and is only perceptible to an abused child.

Whatever the reason for the lack of attention given to the use of self-defense in parricide cases, the relationship between child abuse and parricide has been in the legal closet for too long. The legal community must acknowledge that the problem of child abuse exists, recognize that parricide exists, realize that there is an amazingly high correlation between the two,³³ and understand that parricide can be justified as self-defense. Parricides too often are portrayed as evidence of increasingly violent youth.³⁴ As distressing as the idea of parricide is, equally disturbing is the extent and duration of abuse these children have suffered. Homicide is a crime, but so is child abuse. Abused children who commit parricide are presented as criminals, yet surely they are victims first.³⁵

III. Parricide in Self-Defense

Recently some defense attorneys have sought to exculpate abused children who commit parricide by advancing a self-defense theory.³⁶ The theory is based on the one employed in battered-women-who-kill self-defense cases.³⁷ "Even though self-defense is being raised more often both by abused children who kill a parent and by battered women who kill their mates,"³⁸ the defense remains difficult to establish.³⁹ Most children accused of killing their parents are convicted,⁴⁰ often after pleading guilty to manslaughter.⁴¹ Thus, only three battered children self-defense cases have reached the appellate level.⁴²

A. *The Elements of Self-Defense*

Homicide is justifiable as self-defense if the homicidal act was caused by a reasonable belief that the actor was in imminent dan-

33. See *supra* note 21 and accompanying text.

34. Morris, *supra* note 1, at 151-53; Mones, *supra* note 9, at 31.

35. Mones, *supra* note 9, at 38.

36. Blodgett, *supra* note 17, at 36.

37. See generally Elizabeth Bochnak, Case Preparation and Development in Women's Self-Defense Cases: Theory and Practice (1981).

38. Blodgett, *supra* note 17, at 37.

39. *Id.*

40. *Id.*

41. Morris, *supra* note 1, at 153-54 (quoting Paul Mones who states that many times lawyers induce their clients to accept a plea bargain because either they do not see the abuse and realize its worth as part of a self-defense theory or they do not want to deal with it).

42. The three reported cases are *People v. Cruickshank*, 105 A.D.2d 325, 484 N.Y.S.2d 328 (1985); *State v. Holden*, No. 49566, slip op. (Ohio Ct. App. Sept. 26, 1985); *Jahnke v. State*, 682 P.2d 991 (Wyo. 1984).

ger of unlawful death or serious bodily harm, that the use of force was necessary to repel the attack, and that the amount of force used was reasonable.⁴³ "It is only just that one who is unlawfully attacked by another. . . should be able to take reasonable steps to defend himself from physical harm."⁴⁴ Self-defense is a complete defense to homicide and the defendant is not guilty of any crime if the fact-finder determines that the defendant was reasonable in his or her belief about the imminence of the danger and the necessity for deadly force.⁴⁵ Most states apply an objective standard of reasonableness and view the issue from what a reasonable person would do in like circumstances.⁴⁶ A minority position applies a subjective standard of reasonableness and only requires an honest belief in the need for self-defense.⁴⁷

The difficulty in applying self-defense to a parricide case is determining reasonableness: whether the child reasonably believed he or she was in imminent danger and whether he or she reasonably believed deadly force was necessary.⁴⁸ In determining the reasonableness of the child's beliefs, knowledge of the abuse factor is critical to gain an understanding of the child's perception of his or her need to use self-defense. The use of evidence of an abusive relationship shows the reasonableness of an abuse victim's deadly attack on the abuser and is premised on the idea that a homicide *in response to abuse* is understandable to jurors, and therefore reasonable as self-defense.⁴⁹ Thus, it is vital that jurors are informed of the child's experiences as an abuse victim.

B. Meeting the Elements

There are strong similarities between abused women who kill

43. LaFave & Scott, *supra* note 27, § 5.7.

44. *Id.* § 5.7(a).

45. *Id.*

46. *Id.* § 5.7(b).

47. *Id.* See also Model Penal Code, § 3.04(1) (1985). Regardless of which standard of reasonableness is used, the abuse factor would be relevant to reasonableness. If a subjective standard is used, the abuse would be relevant to the child's own belief in the need for deadly force. If an objective standard is applied, the abuse would be relevant to whether the belief in the need for deadly force was reasonable under the circumstances. Cf. Note, *The Battered Wife's Dilemma: To Kill Or To Be Killed*, 32 Hastings L.J. 895, 919-20 (1981) (wife battering relevant on question of reasonableness whether objective or subjective standard of reasonableness is applied in self-defense case).

48. Cf. Charles Ewing, *Battered Women Who Kill* 47 (1987) (difficulty in battered women self-defense cases is establishing reasonableness of fear of danger and reasonableness of belief in need for deadly force); Note, *supra* note 47, at 920.

49. *Jahnke v. State*, 682 P.2d 991, 1012-44 (Wyo. 1984) (Rose, J., dissenting).

their tormentors and abused children who commit parricide.⁵⁰ Since battered women and children who respond with deadly force are so similar,⁵¹ the use of the Battered Woman Syndrome⁵² as part of a self-defense argument for a woman who kills her batterer is a suitable framework for a parricide defense.⁵³

Battered women who kill their abusers, like children who kill their abusive parents,⁵⁴ usually have no prior criminal convictions, have very low recidivism rates, and in general, do not pose a threat to the rest of society.⁵⁵ They have suffered ongoing abuse, have received little help from society, and have few options.⁵⁶ In addition, many are more suicidal than homicidal.

The Battered Woman Syndrome is defined as "a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives."⁵⁷ Dr. Lenore Walker has identified three stages in an abusive relationship.⁵⁸ Phase one of the battering cycle is the "tension-building stage," during which the battering male engages in minor battering incidents and verbal abuse. In this stage the woman attempts to be as placating and passive as possible to avoid more serious violence.⁵⁹

Phase two is the "acute battering incident" which occurs when the tensions that have built up in stage one are released.⁶⁰ This stage is characterized by the severe and uncontrolled nature of the abuse.⁶¹ The trigger for the acute battering incident is usually some event in the batterer's life, but, sometimes the woman, consciously or unconsciously, provokes the batterer to trigger the inevitable severe incident in order to get it over with and reach

50. *State v. Holden*, No. 49566 (Ohio Ct. App. Sept. 26, 1985). See also *Jahnke*, 682 P.2d at 996; *Morris*, *supra* note 1, at 7, 150; *Mones*, *supra* note 9, at 37.

51. *Mones*, *supra* note 9, at 37.

52. See *infra* text accompanying notes 57-69.

53. *Mones*, *supra* note 9, at 38.

54. For a profile of a battered child who kills the abuser see *infra* p. 104.

55. *Battered Women and Criminal Justice: A Report of the Committee on Domestic Violence and Incarcerated Women* 3-4 (1987); *Mones*, *supra* note 9, at 15. See also *Ewing*, *supra* note 48, at 23-40 (discussing battered women who kill as a subset of battered women); *Lenore Walker, The Battered Woman Syndrome* 40-44 (1984).

56. *Walker*, *supra* note 55, at 40-44.

57. *State v. Kelly*, 97 N.J. 178, 193, 478 A.2d 364, 371 (1984) (citing *Lenore Walker, The Battered Woman*, at xv (1979)).

58. Dr. Walker has termed this phenomenon the "cycle theory of violence." *Lenore Walker, The Battered Woman* 55-70 (1979).

59. *Kelly*, 97 N.J. at 193, 478 A.2d at 371 (citing *Walker*, *supra* note 58, at 56-59).

60. *Id.* (citing *Walker*, *supra* note 58, at 59).

61. *Walker*, *supra* note 58, at 59.

phase three.⁶²

Phase three is characterized by "extreme contrition and loving behavior" on the part of the battering male.⁶³ During this period of calm the batterer pleads for forgiveness and promises never to batter again. He also may promise to seek professional help in order to reform himself.⁶⁴ The affection and contrition of the man fade and the cycle starts again.⁶⁵ As the cycle is repeated over and over, the abuse in stage two escalates.⁶⁶

The cycle of abuse has psychological effects on the battered woman including learned helplessness, depression, isolation, false hope that the batterer will change, low self-esteem, belief in the omnipotence of the batterer and futility of action, guilt, and belief that leaving will provoke a more violent response.⁶⁷ The psychological impacts are compounded by external social and economic factors such as lack of financial resources, sex-role stereotypes, societal and familial pressures to remain in the relationship, inadequate responses from the police and courts, and lack of safe alternatives for the battered woman and her children.⁶⁸ This combination of psychological, social, and economic factors prevent battered women from leaving the abusive relationship.⁶⁹

The evidence of the Battered Woman Syndrome is used as part of a self-defense theory in cases when women have killed their abusive partners. In practice, an expert witness describes the syndrome, testifies that the defendant suffered from it, and ex-

62. *State v. Kelly*, 97 N.J. 178, 193, 478 A.2d 364, 371 (1984) (citing Walker, *supra* note 58, at 59-65). A battered woman has no control over whether she will be abused, but by triggering the event she feels she has some control over when and why the incident occurs. Walker, *supra* note 58, at 60.

63. *Kelly*, 97 N.J. at 193-94, 478 A.2d at 371 (citing Walker, *supra* note 58, at 65).

64. *Id.* at 194, 478 A.2d at 371 (citing Walker, *supra* note 58, at 65-70).

65. *Id.* (citing Walker, *supra* note 58, at 65-70).

66. Ewing, *supra* note 48, at 51. See also Walker, *supra* note 55, at 97, 103; Comment, *Self-Defense: Battered Woman Syndrome on Trial*, 20 Cal. W.L. Rev. 485, 486-87 (1984).

67. *State v. Kelly*, 97 N.J. 178, 195-96, 478 A.2d 364, 372 (1984); Jean Bunyak, *Battered Women Who Kill: Civil Liability and the Admissibility of Battered Woman's Syndrome Testimony*, 4 Law & Inequality 603, 614 (1986); Ewing, *supra* note 48, at 52.

68. *Kelly*, 97 N.J. at 195-96, 478 A.2d at 372; Ewing, *supra* note 48, at 52; Comment, *supra* note 66, at 488-89; Comment, *The Battered Women's Syndrome Defense*, 34 U. Kan. L. Rev. 337, 343-47 (1985).

69. *Kelly*, 97 N.J. at 195-96, 478 A.2d at 372. This combination also gives the battered woman a finely tuned perception of the batterer (i.e. she becomes able to tell if the batterer will use "unusual"—more severe than in the past—force or violence). *Id.* at 196-97, 207, 378 A.2d at 372-73, 378; Bochnak, *supra* note 37, at 45; Ewing, *supra* note 48, at 52; Bunyak, *supra* note 67, at 612-15; Comment, *supra* note 68, at 352. For a discussion of this phenomenon in connection with battered children, see *infra* p. 98.

plains how her status as a battered woman affected her perceptions and behavior at the time of the killing.⁷⁰ The Battered Woman Syndrome is used to show the reasonableness of her belief in the need for deadly force to protect herself from immediate harm and to bolster her credibility.⁷¹ Courts do admit Battered Woman Syndrome testimony for its relevancy both to the immediacy of the danger element of self-defense and to the reasonableness of the amount of force used element of self-defense.⁷²

*State v. Kelly*⁷³ is a case illustrative of the battered woman self-defense. The *Kelly* court held that expert testimony about the Battered Woman Syndrome was relevant to a self-defense claim to show the "honesty and reasonableness of the defendant's belief that deadly force was necessary to protect her against death or serious bodily harm."⁷⁴

In *Kelly*, the defendant had stabbed her husband with a scissors, was indicted for murder, and asserted that her action was in self-defense.⁷⁵ The defense called an expert to testify about the Battered Woman Syndrome to help establish her self-defense claim.⁷⁶ The trial court ruled that such testimony was inadmissible, apparently believing that the testimony was offered as conclusive evidence that the defendant's perception *was* reasonable.⁷⁷ The appellate court found that the expert testimony was relevant, *not* to justify the defendant's perception, but to show the jury that her belief was honest and reasonable.⁷⁸ The court stated, "The difficulty with the expert testimony is that it sounds as if an expert is giving knowledge to a jury about something the jury knows as well as anyone else, namely, the reasonableness of a person's fear of imminent serious danger."⁷⁹ The court said that this testimony is actually intended to illuminate an area where the common

70. Ewing, *supra* note 48, at 51-53.

71. *Kelly*, 97 N.J. at 197-207, 478 A.2d at 375-78; Ewing, *supra* note 48, at 51-53; Note, *supra* note 47, at 920-30. See Comment, *supra* note 68, at 361; Annotation, *Admissibility of Expert or Opinion Testimony on Battered Wife or Battered Woman Syndrome*, 18 A.L.R.4th 1153 (1982).

72. See, e.g., *Hawthorne v. State*, 408 So. 2d 801 (Fla. Dist. Ct. App. 1982); *Smith v. State*, 247 Ga. 612, 277 S.E.2d 678 (1981); *People v. Minnis*, 118 Ill. App. 3d 345, 455 N.E.2d 209 (1983); *State v. Anaya*, 438 A.2d 892 (Me. 1981); *State v. Kelly*, 102 Wash. 2d 188, 685 P.2d 564 (1984); *State v. Allery*, 101 Wash. 2d 591, 682 P.2d 312 (1984). But see *Ibn-Tamas v. United States*, 455 A.2d 893 (D.C. 1983); *State v. Thomas*, 66 Ohio St. 2d 518, 423 N.E.2d 137 (1981).

73. 97 N.J. 178, 478 A.2d 364 (1984).

74. *Id.* at 187, 478 A.2d at 368.

75. *Id.* at 187-88, 478 A.2d at 368.

76. *Id.* at 188, 478 A.2d at 368.

77. *Id.*

78. *Id.* at 201, 205, 478 A.2d at 375, 377.

79. *Id.* at 206, 478 A.2d at 378.

knowledge of the jury may be wrong and may lead to incorrect conclusions.⁸⁰ Finally, the court stated that an expert's knowledge enables the jurors to disregard their prior conclusions as being common myths,⁸¹ rather than common knowledge, and to conclude that the defendant's fear for her life was indeed objectively reasonable.⁸²

The court decided that the jury could have found that the defendant met the elements of a self-defense claim when aided by Battered Woman Syndrome testimony⁸³ and reversed and remanded for retrial.⁸⁴ This decision thus means that a battered woman can establish self-defense as a legal defense. In order for this defense to be successful, the defendant must present evidence of a regular pattern of abuse, the defendant's claim that the abuser made a new and different covert or overt threat which caused her to believe she might be killed, and expert testimony on the Battered Woman Syndrome. This reasoning should be extended and applied to parricide self-defense cases.⁸⁵

C. *Battered Children and Self-Defense: Abuse-Oriented Strategy*

Allowing parricide to be justified as self-defense will not create a right for children to kill because of past mistreatment; it simply recognizes that an abused child can rationally and reasonably find it impossible to survive without killing. It is a call for equal and individualized treatment under the law.⁸⁶

A description of the Battered Person Syndrome⁸⁷ and the history of child abuse are relevant to show the reasonableness of both the belief in the immediacy of the danger and the belief in the need for deadly force. In addition, the size and strength differences of the child and the abusing adult and social factors also affect the reasonableness of the child's beliefs.

80. *Id.*

81. For example, battered women are free to leave the abusive relationship; battered women are masochistic; since battered women stay in the relationship, the abuse cannot be that bad. *Id.* at 192, 478 A.2d at 370.

82. *State v. Kelly*, 97 N.J. 178, 206, 478 A.2d 364, 378 (1984).

83. *Id.* at 204-05, 478 A.2d at 377.

84. *Id.* at 187, 478 A.2d 368.

85. Mones, *supra* note 9, at 38.

86. Gail Rodwan, *The Defense of Those Who Defend Themselves*, 65 Mich. B.J. 64 (1986).

87. The term "Battered Person Syndrome" is used rather than "Battered Child Syndrome" throughout this article because "Battered Child Syndrome" is a medical term of art describing the physical symptoms of a child who has been abused. Samuel Radbill, *Children in a World of Violence: A History of Child Abuse*, in *The Battered Child* 17 (3d ed. C. Henry Kempe & Ray E. Helfer eds. 1980).

In a parricide case, expert testimony about the Battered Person Syndrome⁸⁸ should be admitted because it meets the standards for admission of expert testimony.⁸⁹ As in the battered women self-defense cases, evidence of a Battered Person Syndrome is useful to bolster the defendant's credibility,⁹⁰ it explains why someone stays in an abusive relationship,⁹¹ and it shows that an abused person's perceptions about the imminence of danger are reasonable in a situation which would not seem dangerous to a nonabused person.⁹²

What do years of abuse do to a child? The Battered Person Syndrome explains how abuse results in cumulative terror. An abused child is in constant danger of battering. She or he may have no control over when, why, or how the battering will occur;⁹³ she or he only knows for certain that it will occur. Every time the cycle of violence is repeated, the second stage violence is more severe and the third stage calmness is shorter.⁹⁴ Surely constant danger of being subjected to bodily harm—which keeps escalating—constitutes imminent danger.⁹⁵

In addition to explaining how a battered person is always in imminent danger, the Battered Person Syndrome also reveals how a battered person takes on a special perception: she or he knows what the abuser is like and, although she or he cannot predict an attack, she or he does know the usual character of the attack situa-

88. There is no reason to distinguish the term "Battered Woman Syndrome" from "Battered Person Syndrome" because battered women share the same psychological characteristics as battered children. This article uses the terms synonymously. See *supra* notes 50-52 and accompanying text.

89. The criteria for admission of expert testimony are set forth in *United States v. Dias*, 376 A.2d 827, 832 (D.C.), *cert. denied*, 434 U.S. 973 (1977). The three criteria are as follows:

(1) the intended testimony must cover matter beyond the ken of the average juror; (2) the expert must be sufficiently knowledgeable that his opinion will probably aid the trier of fact in their search for the truth; and (3) expert testimony is inadmissible if the nature of the subject matter is such that it does not permit a reasonable opinion to be asserted even by an expert.

Id. (citing McCormick on Evidence, § 13, at 29-31 (2d ed. 1972)). See also Bunyak, *supra* note 67, at 622-27.

90. In this regard, the Syndrome shows the jurors that flight is not a possibility and that the abuse really is severe enough that killing becomes logical and necessary to escape death. Cf. *State v. Kelly*, 97 N.J. 178, 201-02, 478 A.2d 364, 375 (1984).

91. See *Jahnke v. State*, 682 P.2d 991, 1027 (Wyo. 1984).

92. *Id.* at 1025 (Rose, J., dissenting).

93. For a discussion of the stages of the Battered Woman Syndrome, see *supra* notes 58-66 and accompanying text.

94. Ewing, *supra* note 48, at 51.

95. Cf. the Model Penal Code where the test for immediacy is loosened to require simply an honest belief. Model Penal Code, § 3.04 (1985). See also *State v. Kelly*, 97 N.J. 178, 201, 478 A.2d 364, 375 (1981).

tion.⁹⁶ The abuse pattern has become ritualistic, and even though the severity of the abuse may change, the ritual does not.⁹⁷ An abuser can change the usual attack pattern almost imperceptibly and the child will notice it; if something out of the ordinary happens, the child will pick up the cue and will know whether a new threat is real and potentially lethal.⁹⁸ This special perception can show why the child kills this time and never did before. The abused child has received some kind of threat from the abuser which is completely new to the abusive relationship and she or he kills to avoid having the threat carried out.⁹⁹

Not only does the Battered Person Syndrome show that an abuse victim is constantly in immediate danger and that an abuse victim has a keen awareness of the abuser's ritual of abuse, it also explains why someone stays in an abusive relationship.¹⁰⁰ A natural question of jurors is why didn't the abuse victim simply leave the abusive situation?¹⁰¹ As the Battered Person Syndrome demonstrates, it is not easy to leave. As with Battered Woman Syndrome, the loving nature of the abuser during stage three gives the child false hope that the abuser will reform and the abuse will end. Thus, the cycle of abuse binds the child to the abusive relationship. The child grows up being abused and perceives the violence as normal, not realizing it is something from which she or he should escape. Often the child sees the abuser as omnipotent, believing that any resistance, including flight, is futile.¹⁰²

The history of abuse causes constant danger and also changes the child's entire outlook.¹⁰³ An abused child has a skewed view of the world. The law should treat a person as he or she is found and consider individual circumstances.¹⁰⁴ The abuse the child suffered must be taken into account in parricide cases. The standard of reasonableness for a self-defense defense must be what is rea-

96. Cf. *id.*; Comment, *supra* note 68, at 351-52.

97. See Comment, *supra* note 68, at 351-52.

98. Cf. *Kelly*, 97 N.J. at 207, 478 A.2d at 378.

99. Cf. *id.*; Comment, *supra* note 68, at 352 (citing Walker, *supra* note 55, at 40).

100. *Jahnke v. State*, 682 P.2d 991, 1032 (Wyo. 1984) (Rose, J., dissenting).

101. *State v. Kelly*, 97 N.J. 178, 205, 478 A.2d 364, 377 (1984).

102. In addition to these psychological factors explaining why a person stays in an abusive situation, there are numerous external social and economic factors which also serve to bind the person to an abusive family relationship. See *infra* p. 100.

103. *Jahnke*, 682 P.2d at 1030-31 (Rose, J., dissenting).

104. Compare this idea with the "thin-skull rule" from Torts which requires that one must take the victim as he or she is found. See W. Page Keeton, Prosser and Keeton on the Law of Torts 292 (1984).

sonable to an abuse victim.¹⁰⁵

The child's fear of harm will increase over time proportionately to the increasing severity of the abuse. As the violence cycle is repeated and each successive stage two is worse, the abused child becomes more apprehensive. Finally, she or he reaches the point where the fear of being *killed* becomes unbearable and she or he will kill to survive.¹⁰⁶ Thus, a situation which might not seem dangerous to a nonabused person might rationally and reasonably be perceived as such to an abused child.¹⁰⁷

Another factor that bears on the reasonableness of the defendant's beliefs in the need for deadly force and the imminence of danger is the difference in size and strength between the child and the abuser.¹⁰⁸ It is important to realize that an unarmed adult (particularly a male) can cause severe damage—even death—to a child.¹⁰⁹

"The relative size and strength of the accused and deceased are proper considerations in determining whether there was reasonable apprehension of danger and whether the slayer used more force than was necessary to defend himself against the threatened danger."¹¹⁰ Thus, if an overpowering abuser implicitly or explicitly threatens a small, vulnerable child, it is quite reasonable for that child to see the threat as imminent danger of severe bodily harm or death—particularly when the child has experienced the abuser's rage in the past and knows that the harm increases with each subsequent attack. If one is helpless to thwart such an attack by physically overpowering the abuser, resort to deadly force is justifiable self-defense.

A child's position in society also sheds light on the reasonableness of an abused child's belief in the need for self-defense. Far too often an abuse victim receives ineffective assistance or no assistance at all. If the abuse is detected and/or reported, it still

105. See generally *Jahnke v. State*, 682 P.2d 991, 1011-44 (Wyo. 1984) (Rose, J., dissenting).

106. See *Morris*, *supra* note 1, at 165 (citing estimate that 5000 children die annually from child abuse). When one considers how many children die annually from abuse, an abused child's fear of imminent danger is clearly legitimate.

107. But see *Jahnke*, 682 P.2d at 1006.

108. *Id.* at 1024 (Rose, J., dissenting).

109. Typically children who commit parricide are within the age range of 15-18; however, they are still often physically smaller and remain vulnerable to deadly injury at the abuser's hands. *Morris*, *supra* note 1, at 165. But size alone is not totally determinative of vulnerability: "Learned helplessness" also prevents one from realizing that there are options available and ways to help oneself. Walker, *supra* note 58, at 42-54.

110. Note, *supra* note 47, at 924 (citing 40 Am. Jur. 2d, Homicide §§ 159, 291 (1968); *People v. Collins*, 189 Cal. App. 2d 575, 589-90, 11 Cal. Rptr. 504, 514 (1961)).

can persist unchecked because outside agents do not effectively aid the abuse victim.¹¹¹ Police and courts are loath to intervene in family disputes and fear intervention will disrupt family units.¹¹² Also, the nonabusing parent is often also abused by the batterer and is too afraid to intervene.¹¹³

Not only does the child continue to suffer because of inadequate responses from external actors, but she or he is also in a position of relative powerlessness. A child is very dependent on home life emotionally and financially.¹¹⁴ It is not easy to sever blood ties and flee one's family, even if there is abuse in the family.¹¹⁵ In addition, it is very hard for a child to make his or her own way in the world. Where can an abused child go? There are virtually no shelters for abused children,¹¹⁶ and most of these children have no job skills or are too young to seek legitimate employment to support themselves.

As with women who kill their battering partners, parricide committed in reaction to child abuse can be seen as self-preservation and therefore justifiable as self-defense. Courts should recognize a self-defense defense for children who commit parricide in response to abuse.

D. *The Parricide Cases*

Richard Jahnke, 16, shot and killed his father in November 1982.¹¹⁷ He had been the victim of physical abuse since he was two.¹¹⁸ His father had also sexually abused Richard's younger sister and beat his mother repeatedly.¹¹⁹ Richard reported the abuse to his ROTC instructor and to the sheriff but neither took any action.¹²⁰

On the night of the homicide, Richard received a severe beating from his father. According to Richard, his father told him he was a "shit" and said "I'm going to get rid of you, you bastard."¹²¹ Richard felt he had to take action to "protect his sister who was

111. *Jahnke v. State*, 682 P.2d 991, 1019, 1021-23 (Wyo. 1984) (Rose, J., dissenting); *id.* at 1044 (Cardine, J., dissenting).

112. Johnson, *supra* note 7, at 362-63; Pagelow, *supra* note 4, at 354.

113. Johnson, *supra* note 7, at 380 (discussing reasons a nonabusing parent may fail to protect).

114. Mones, *supra* note 9, at 36-37. Some abused children do run away and find their new life equally harrowing. See Pagelow, *supra* note 4, at 356-58, 372.

115. Mones, *supra* note 9, at 36-37.

116. *Jahnke v. State*, 682 P.2d 991, 1011 (Wyo. 1984) (Rose, J., dissenting).

117. *Id.*

118. *Id.* at 1015 (Rose, J., dissenting).

119. *Id.* at 1018-19, 1020-21 (Rose, J., dissenting).

120. *Id.* at 1027 (Rose, J., dissenting).

121. *Id.* at 1015 (Rose, J., dissenting).

hysterical when the mother and father left for dinner."¹²² Believing he had nowhere and no one to turn to for help, Richard, after positioning a number of weapons throughout the house as "backup," lay in wait in the garage armed with a 12 gauge shotgun.¹²³ When the Jahnkes returned from dinner, Mr. Jahnke got out of the car and "stomped" toward the garage.¹²⁴ As his father approached the garage door, Richard, who knew that when his father "stomped" he was angry and likely to beat someone, shot and killed him.¹²⁵

At the trial, Richard's attorney tried to show how the lifelong abuse supported his theory of self-defense.¹²⁶ The judge refused to admit testimony from a forensic psychiatrist¹²⁷ and Richard was found guilty of voluntary manslaughter and sentenced to five to fifteen years.¹²⁸ On appeal, the Wyoming Supreme Court held that the expert testimony intended to support Richard's self-defense theory was inadmissible. The court deemed it irrelevant because it said there was no showing of a self-defense situation,¹²⁹ and therefore there was no reason to decide the reasonableness element of self-defense.¹³⁰ In addition, the court emphasized the defense attorney's failure to make a sufficient offer of proof on whether the testimony was relevant to reasonableness.¹³¹

The Wyoming court narrowly construed a self-defense situation to only those instances where the circumstances show an actual confrontation or threat of assault *at the time* of the killing.¹³² This view is contrary to the view that self-defense is available if a person reasonably believes self-defense is necessary.¹³³

In the ordinary self-defense situation involving an actual assault, the jury can easily judge reasonableness because they can understand the perception of the accused at the moment of crisis.¹³⁴ In the unusual self-defense case, such as the parricide situa-

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 993.

127. *Id.*

128. *Id.* at 994-95. The sentence was commuted by the Wyoming governor. L.A. Times, Oct. 18, 1985, § 1, at 10, col. 3.

129. *Id.* at 1007, 1010.

130. *Id.*

131. *Id.* at 1007.

132. *Id.* at 1006. The court also misconstrued the self-defense theory. The court thought the theory was that abuse victims have a special defense exclusive of the traditional self-defense. *Id.* at 996.

133. LaFave & Scott, *supra* note 27, § 5.7(a).

134. Jahnke v. State, 682 P.2d 991, 1014 (Wyo. 1984) (Rose, J., dissenting).

tion, where there is no actual assault at the time of the homicide, the jury is not able to judge reasonableness in the same easy, common sense way. In these unusual cases, it is much more difficult for jurors to place themselves in the defendant's shoes and decide whether it was reasonable to believe that he or she would be killed or receive serious bodily harm unless he or she resorted to deadly force.¹³⁵ Therefore, testimony about the history of abuse; any new threats, actual or implied, by the abuser; the defendant's statement that he or she believed death was probable on this occasion; and the Battered Person Syndrome is necessary to allow the jury to determine if the defendant acted in self-defense.

In *People v. Cruickshank*,¹³⁶ Dawn Cruickshank, a 17-year-old girl, killed her father in the garage of her home.¹³⁷ Her parents were separated and the separation agreement allowed her father to visit her in the garage, but he could not enter the house.¹³⁸ Dawn had been sexually abused by her father for years,¹³⁹ and testimony about the abuse was admitted at trial.¹⁴⁰ She testified that she feared sexual abuse the night she killed her father.¹⁴¹ The judge instructed the jury that the murder would be justified if they found that she acted to prevent a rape.¹⁴² The jury and the appellate court were not convinced by the evidence of abuse that Dawn could have reasonably feared rape.¹⁴³ Dawn was convicted of first degree manslaughter and given a prison sentence of two to seven years.¹⁴⁴

The *Cruickshank* court did admit abuse evidence to show reasonableness and instructed the jury on justification; however, it seems likely that the jury's view of the reasonableness of her belief would have changed had they been given more information about the effects of abuse and the Battered Person Syndrome. Again, the abuse victim's world is not common knowledge with which a jury may fairly determine the reasonableness of the perception that deadly force was necessary for protection. How can a jury say no reasonable person in like circumstances would have ac-

135. *Id.* at 1016 (Rose, J., dissenting).

136. 105 A.D.2d 325, 484 N.Y.S.2d 328 (1985), *order aff'd by*, *People v. Dawn Maria C.*, 67 N.Y.2d 625, 490 N.E.2d 530, 499 N.Y.S.2d 663 (1986).

137. *Id.* at 326, 484 N.Y.S.2d at 331.

138. *Id.* at 327, 484 N.Y.S.2d at 331.

139. *Id.* at 328, 484 N.Y.S.2d at 332.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 332-33, 484 N.Y.S.2d at 335-36.

144. *Id.* at 328, 484 N.Y.S.2d at 332.

ted in the same way if they do not understand the cycle of violence and the true circumstances involved?

The final reported parricide case is *State v. Holden*.¹⁴⁵ On June 14, 1984, Gary Holden killed his father with an axe.¹⁴⁶ The trial court refused to allow a psychiatrist to testify regarding the Battered Person Syndrome.¹⁴⁷ The defendant said his self-defense theory required expert testimony to show the reasonableness of his belief.¹⁴⁸ The appellate court rejected this contention and held that the jury's determination could not be based on the "stereotype" of a "typical" battered child.¹⁴⁹

The appellate court's analysis focused on battered women self-defense cases. Relying on *State v. (Kathy) Thomas*,¹⁵⁰ the *Holden* court held that expert testimony on Battered Woman Syndrome was irrelevant and immaterial to a self-defense claim, was a subject within the jury's understanding, was not sufficiently developed to be expert testimony, and was too prejudicial.¹⁵¹

The court believed that the defense provided sufficient evidence of the abuse Gary suffered, exclusive of the expert testimony, to allow the jury to consider whether he had a bona fide belief of imminent danger or great bodily harm that would have justified his use of deadly force.¹⁵² The court would have allowed expert testimony based only on direct observations, rather than on "typical facts."¹⁵³

Here too, perhaps the jury would have been better able to place themselves in the defendant's position and see the reasonableness of his actions had they been allowed to hear testimony about the Battered Person Syndrome rather than simply isolated testimony of abuse. In light of the assertion that the Battered Person Syndrome is relevant to whether a defendant acted in self-defense, coupled with the growing acceptance of the Battered Person Syndrome among the scientific and legal communities, and the lack of understanding of jurors in this area, it seems that the basis for the *Holden* opinion [i.e. the *(Kathy) Thomas* opinion] needs to be reexamined.

145. No. 49566, slip op. (Ohio Ct. App. Sept. 26, 1985)

146. *Id.* at 2.

147. *Id.*

148. *Id.* at 3.

149. *Id.* at 3, 6.

150. 66 Ohio St. 2d 518, 423 N.E.2d 137 (1981).

151. *State v. Holden*, No. 49566, slip op. at 3 (Ohio Ct. App. Sept. 26, 1985).

152. *Id.* at 4.

153. *Id.* at 5, 6.

IV. Profile of a Child Who Commits Parricide and Answers to Some Objections

Child abuse and mental illness provoke most of the parricides committed in the United States, with child abuse being the primary cause.¹⁵⁴ Abused children who commit parricide to end abuse do not have the typical characteristics of juvenile delinquents.¹⁵⁵ Indeed, many resemble a suicidal profile more closely than a homicidal profile.¹⁵⁶

Children who commit parricide typically come from white, middle or upper-middle class families; are generally good students; usually have no history of delinquency or violent, assaultive behavior; and have suffered from a pattern of abuse.¹⁵⁷ Most feel trapped in an unescapable situation and develop a "concentration camp" mentality where they feel they have no options and cannot leave.¹⁵⁸ In addition, these children pose no threat to the rest of society and are manageable once the abusive parent has been killed.¹⁵⁹

Allowing a battered child who commits parricide to claim self-defense does not thwart the purposes of the criminal law. Convicting an abused child who kills to protect him or herself does not further the criminal law theories of punishment and the rationale underlying self-defense is met in such cases.¹⁶⁰ If the goal of punishment is seen as rehabilitation,¹⁶¹ convicting an abuse victim who ends the abuse with parricide will not further that goal. A child who commits parricide does not fit a criminal profile; once the

154. Morris, *supra* note 1, at 151, 293; Blodgett, *supra* note 17, at 36; Timnick, *supra* note 8, at 2. In parricide cases, the question becomes whether the abused child committed parricide because of a belief that she or he was in danger or whether the cumulative effect of abuse and resulting problems caused the child to lash out in a murderous rage. Morris, *supra* note 1, at 293; Timnick, *supra* note 8, at 2-3. This article deals with the former situation and advocates allowing a traditional self-defense claim by the parricide defendant.

155. Marcia Chambers, *Child's Self Defense Growing in Murder Cases*, L.A. Daily J., Oct. 17, 1986, § 2, at p. 1, col. 3; Mones, *supra* note 9, at 36; Timnick, *supra* note 8, at 3. See *Jahnke v. State*, 682 P.2d 991, 1026 (Wyo. 1984) (Rose, J., dissenting).

156. *Jahnke*, 682 P.2d at 1026 (Rose, J., dissenting); Mones, *supra* note 9, at 36.

157. Chambers, *supra* note 155, at 1; Timnick, *supra* note 8, at 3. See *Jahnke*, 682 P.2d at 1015, 1026 (Rose, J., dissenting). See also *People v. Cruickshank*, 105 A.D.2d 325, 334, 484 N.Y.S.2d 328, 336-37 (1985).

158. Timnick, *supra* note 8, at 3. See *Jahnke*, 682 P.2d at 1022, 1023 (Rose, J., dissenting).

159. Mones, *supra* note 9, at 37.

160. Cf. *Cruickshank*, 105 A.D.2d at 335, 484 N.Y.S.2d at 337 (1985).

161. Under this theory, "punishment" is giving the convicted person appropriate treatment to rehabilitate him or her and return him or her to society so reformed that he or she will not commit further crimes. LaFave & Scott, *supra* note 27, at § 1.5(a)(3) (1986).

abuser has been killed, the child's criminal career has most likely ended.¹⁶² Rehabilitation is supposed to prevent recidivism,¹⁶³ but in the abused child self-defense case, there is generally no danger of recidivism.¹⁶⁴

If the goal of punishment is seen as incapacitation,¹⁶⁵ convicting an abuse victim who ends the abuse by slaying the abuser will not further the goal. The abused child who kills his or her abusive parent does not pose a threat to society at large. Once the abuse is ended and the child ceases to be an abused child in constant danger, he or she is unlikely to murder again.¹⁶⁶

Convicting the abused child will not aid the deterrence¹⁶⁷ goal of criminal punishment either. If one sees specific deterrence¹⁶⁸ as the goal of criminal punishment, convicting a child who commits parricide in self-defense will not advance that goal. Such a child is not a recidivist and does not need punishment to discourage him or her from committing another crime.

Even if one sees general deterrence¹⁶⁹ as the goal of criminal punishment, conviction will not further the goal. Other children will not start committing random, thoughtless parricides if a self-defense defense is allowed in the case of the abused child who perceives danger and moves to prevent it. The self-defense elements still have to be met; the history of abuse is simply to show the reasonableness of the abuse victim's beliefs. The defense is not a general license to kill parents for one time incidents; an ongoing abusive relation must be shown and the traditional self-defense elements must be met. In other words, the parricide must have been prompted by a reasonable belief that the child was in danger and deadly force was necessary to prevent it.

The final goal posited as a theory of criminal punishment is retribution.¹⁷⁰ Inherent in that goal is an idea that a person who

162. *People v. Cruickshank*, 105 A.D.2d 325, 334, 484 N.Y.S.2d 328, 336 (1985).

163. LaFave & Scott, *supra* note 27, § 1.5(a)(3).

164. Mones, *supra* note 9, at 37.

165. Under this theory, society seeks to protect itself from persons deemed dangerous because of past criminal conduct by isolating convicted criminals. LaFave & Scott, *supra* note 27, § 1.5(a)(2).

166. *Cruickshank*, 105 A.D.2d 325, 334, 484 N.Y.S.2d 328, 336 (1985).

167. The deterrence goal can be subdivided into general deterrence and specific deterrence. LaFave & Scott, *supra* note 27, §§ 1.5(a)(1), (4).

168. Under this theory, punishment aims to deter the particular criminal from committing further crimes by giving him or her such an unpleasant experience that he or she will not risk enduring it again. *Id.* § 1.5(a)(1).

169. Under this theory, punishing one criminal is supposed to deter others from committing crimes because they become aware of the unpleasantness that attaches to criminal conduct. *Id.* § 1.5(a)(4).

170. Under this theory, society punishes criminals because they are deserving of it since they caused others to suffer. *Id.* § 1.5(a)(6). While LaFave and Scott also

commits a crime should pay for it.¹⁷¹ In the abusive situation, however, a child who has endured years of suffering at the hands of a battering parent has already paid. As victims of abuse, they should not be made to suffer further punishment.

Our criminal justice system recognizes that one has the right to protect oneself from unlawful harm (or the threat of harm) at the hands of another.¹⁷² Child abuse is unlawful harm. Thus, allowing a child who commits parricide to protect him or herself from further, more severe abuse at the hands of the battering parent to justify the slaying as self-defense meets the rationale behind allowing self-defense. If child welfare agencies and the legal system fail to intervene and rescue the child from the abuser, the child who protects him or herself from further harm at the hands of the batterer should be seen as acting in self-defense.¹⁷³

V. Conclusion

Abused children who commit parricide are victims, not criminals. If the legal system does not allow a self-defense justification for their actions, they will be doubly victimized—once by the abuse and once by the system that is supposed to protect them. Until society better protects children from child abuse, children will be forced to strike out in order to protect themselves. Self-defense must be as available as a defense to parricide as it is for any other homicide.

list education as a theory of criminal punishment, they state that "the educational function of punishment is important as to crimes that are not generally known, often misunderstood, or inconsistent with current morality." *Id.* § 1.5(a)(5).

171. *Id.*

172. *Id.* § 5.7(a).

173. Some parricides can be justified as defense of others. Often a child will finally slay the abuser when the battering is inflicted on a younger sibling. See *Jahnke v. State*, 682 P.2d 991, 1015 (Wyo. 1984) (Rose, J., dissenting).