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ARTICLE

Sexualizing the Killing of Women: The Rise of the "Rough Sex" Defence in Anglo-American Jurisdictions

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Abstract
In this article I consider the increasing use of the "rough sex" defence by men who kill women in trials of murder. In demonstrating the prevalence of this defence I examine the defence tactics of pleading accident and traducing the character of the dead by invoking the excuse that the deceased consented to the acts which contributed to her death. I examine the impact of this defence strategy on jury determination and return of convictions for unlawful manslaughter rather than murder. The notion that women in these situations have contributed to their own demise is a redolent oeuvre in pornography but also has roots in psychoanalysis and medicine. Stereotypes of women's sexuality as defined by men continue to inform contemporary thinking skewing male violence against women as an outcome that women desire. Legal attempts to reform the law are examined and challenges to the representation of women in popular culture are called for.

Keywords rough sex, pornography, strangulation, homicide, misogyny

INTRODUCTION

In 1993 Diana Russell published *Making Violence Sexy*, a collection of writings by feminists on pornography who all shared a concern with violence and sexual violence against women and the prevailing public and media narrative that perpetuated myths and stereotypes about women's complicity in violence against them. A central concern was with pornography's depiction of sexual violence against women which depicted women as deserving of the violence against them or willingly participating in and initiating their own violation. As Russell (1993) said, violence against women was sexualized. Dworkin (1989) and Catharine MacKinnon (1996) have argued that such representations provide the scripts for men's sexual violence against women. As Luce Irigaray (1986:25) argues, woman is an "obliging prop for the enactment of men's

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fantasies". These scripts both within and outside pornography are now more widely accessible where scenes are acted out and real abuse filmed online iterating condonation and encouragement of male violence against women, camouflaging "violence" as the "sex" that women want.

FROM PERVERSION TO NORMALIZATION

Perversions of the Sexual Instinct

It is particularly disturbing that violence against women, even when it results in death, is now being positioned as something which she consents to. Such an odious idea was once only found in extreme violent pornography and so-called "snuff" videos and considered as a dangerous perversion. There is now a "rough sex" culture, and like "rape culture", with what some men want positioned as something women want too. For some, sexual violence against women is defended as an expression of sexual liberalism.

In the nineteenth and early twentieth century such acts of violence were considered perversions. Richard von Krafft-Ebing, a German psychiatrist and author of *Psychopathia Sexualis* (Krafft-Ebing 1901) was concerned with sexual deviance, including sadism, lust murder, flagellation, and the injury of women, which he regarded as perversions of the sexual instinct. Iwan Bloch, a German psychiatrist and author of *The Sexual Life of our Time* (Bloch 1908) recognized misogyny in the works of Schopenhauer (1931) and Strindberg (1887 [2012]) and considered the "witch craze" an ancient misogyny and condemned the glorification of sexual perversions (Bloch 1908:663). Havelock Ellis, an English physician, who studied human sexuality, similarly regarded the use of violence by men against women in the sexual encounter as perversions and acts of sadism (Ellis 1928). As Dworkin noted, Ellis maintained "the primary part of the female in courtship is the playful, yet serious, assumption of the role of a hunted animal who lures on the pursuer, not with the object of escaping, but with the object of being finally caught" (Dworkin 1989:148). The words "sadism" and "sadist" are derived in reference to the self-styled Marquis de Sade's works of "fiction". De Sade was incarcerated in various prisons and a mental institution for about 32 years of his life until he died in 1814. Bloch (1908), writing on the Marquis de Sade's book *120 Days of Sodom* (first published in 1785) in which strangulation and extreme sexual violence against women was featured, considered de Sade as the "advocate of modern misogyny". Yet de Sade's writings have been extolled, then and now, as libertine novels. Michel Onfray (cited in Lichfield 2014) said, "it is intellectually bizarre to make Sade a hero ... Even according to his most hero-worshipping biographers, this man was a sexual delinquent." Dworkin (1989) regarded de Sade as the exemplary woman-hating pornographer. It is therefore concerning that these "perversions" are being perpetrated against women and played out in theatrical mode in the contemporary courtroom in many jurisdictions where men are on trial for killing women and where dead women's characters are being traduced whilst they are being held complicit in their own demise. Some of these assumptions concerning the sexual predilections of female victim/complainants have their origins in nineteenth- and twentieth-century psychoanalysis, and such theorizations have had a significant impact on forensic psychology, criminal investigation and courtroom argument up until the present.

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The Masochism Chronicles

During the nineteenth century the view that women enjoy sexual violence was echoed in medical, psychological and the newly emerging psychoanalytical literature. Such representations of women were to have an influence on the management of criminal cases, shaping police investigation, infecting evidence, and influencing conviction and sentencing. Concerning allegations of rape, medical jurisprudists contended that rape could only be proven if there were signs of violence on the victim, especially on the genitals, and as late as the 1960s in America, Masters and Johnson (1966:122) said there was evidence that conception could only follow consent, thus defeating many rape allegations. Psychoanalysis lent its support to the notion that allegations of sexual assault made by women against men were mere fantasies and nineteenth-century physicians, especially gynaecologists, subscribed to the myth that allegations of sexual assault were false (Edwards 1981:100–14). Routh (1886), addressing the British Gynaecological Society in 1886, said "sexual assault allegations made by women arose from a perverted sexual instinct". Such beliefs seeped into the handling of sexual assault cases. The police surgeon to Birmingham police in England, Lawson Tait (1894), said that of 100 reported cases of rape, he advised prosecution in only six. Hans Gross (2011), the Austrian psychologist who wrote *Criminal Psychology: A Manual for Judges, Practitioners, and Students*, maintained that women who brought such allegations were liars.

The psychoanalytic tradition in the works of Sigmund Freud (1933 [1967]) and Helene Deutsch (1944) theorized that women fantasize about being raped. Freud, writing in *New Introductory Lectures*, developed his thesis that masochism is truly female (Freud 1933 [1967]:149). This thesis emerged in his earlier writing, for example: "And you will scarcely have failed to notice that sadism has a more intimate relation with masculinity and masochism with femininity", and in describing women said "the unconscious need for punishment and of neurotic self-injury" and "being pinioned, bound, beaten painfully, whipped, in some way mishandled, forced to obey unconditionally, defiled, degraded" (Freud 1974:258). Later, Helene Deutsch (1944) in her scholarship *The Psychology of Women* further endorsed classical psychoanalysis. She maintained that the sexual act was originally an act of violence and that women secretly desire to be raped and violated. "It is precisely rape fantasies that often have such irresistible verisimilitude that even the most experienced judges are misled in trials of innocent men accused of rape by hysterical women" (Deutsch 1944:265). Psychoanalysis and forensic psychology also influenced courtroom trials through legal argument. In America, Dean John Wigmore, American lawyer and scholar, warned judges to be wary of imaginary accounts of rape brought by an unchaste female mentality (Wigmore, McNaughton, and Chadbourn 1940:459–60). Francis Camps (1962), the British forensic pathologist, reiterated this rape myth doubting women's veracity, as did Dame Josephine Barnes (1967) when President of the British Medical Society in 1967, and David Napley (1974), President of the Law Society of England and Wales in 1976 (Edwards 1981:159–60).

FROM "RAPE CULTURE" TO "ROUGH SEX CULTURE"

Susan Brownmiller (1975) coined the term "rape culture" to describe the ready acceptance of myths about women and rape – that women invented the allegation, that they asked to be raped, that they desired rape which allowed men to use

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violence with impunity to terrorize, to control and to dominate. Brownmiller (1975) details the systematic raping of women in peace and in every war ever fought, from the First World War, the Second World War, to the raping of Vietnamese women by American soldiers, the rape of Bengali women by Pakistani soldiers, the rape of Jewish women in the Warsaw ghetto, and the rape of women in Borodayevska, in Berezovska, Smolensk, Lvov and Borrosov. "This mass rape was routinely dismissed as little more than what happens in war like 'collateral damage', an expected and natural even if unintended consequence. As one American soldier described it – rape was a pretty 'SOP' (standard operating procedure)." The "rough sex culture" promoted its attendant myths that women are masochistic and desire to be hurt and humiliated. Dworkin railed against these representations and then, as now, such imagery is on record covers, book covers, advertisements, calendars, in the beauty industry, in woman-hating films and in pornography.

Such representations of degradation and humiliation and women's pleasure in sexual violence against them are the central oeuvres in pornographic representation. Dworkin dedicated her research writing and her very life to contesting this maligned representation of women. When interviewed for *Omnibus* in 1991 in describing the central motif of pornographic representation she said, "it doesn't matter what you do to a woman, she will like it" (Dworkin 1991 5:23). Not only in pornography, but also outside it, sexual violence and women's pleasure in sexual violence have been the central defining motif of women which has served to exonerate men's conduct and camouflage male brutality and violence. Acts of sexual violence have been defined from a male point of view and the language has neutralized the harm to her. The terms used by men – "rough sex", "rape play" and "sex games" – have been colonized by them, exonerating and neutralizing their responsibility for acts of sexual violence and murder, becoming stylized vocabularies of motive (see Taylor's earlier work on vocabularies of motive in Taylor 1972).

The narrative of sexual violence against women has been played out in the media, in film, and is a creeping narrative in popular culture. *American Psycho*, by Brett Easton Ellis (1991), added to the "literary" and cinematic representation of male sexual violence towards women and their destruction and objectification. Its publishing story began when Simon and Schuster gave Ellis a $300,000 advance. The editor saw "no major problems". Just before publication a sample chapter shown to the editorial staff – including the details of a starving live rat stuffed into a woman's vagina and details of a woman's tortured and mutilated breasts wired, exploded and burned – caused such shock that the company made a decision not to publish (Edwards 1991).

More recently *Fifty Shades of Grey* by James (2011) exploited the idea that women enjoyed "rough sex", yet the sequel to the trilogy has sold over 150 million copies. In March 2020, the magazine *Cosmopolitan* published an article entitled "Behold: Cosmo's 85 Best Sex Tips Ever", adding to this continual nadir of construction of women's sexuality to serve men. Tip no. 74 detailed what can be achieved by "gagging" (Cosmopolitan 2020). (This article is now removed from any web searches.) This particular magazine item was published only two months after the conviction in New Zealand of Jesse Kempson[1] on 22 November 2019 for the sexual murder by strangulation and choking of Grace Millane, a British backpacker (discussed below in the "Murder Dossier" section), a case which received worldwide

[1] *Kempson v. R* [2020] NZCA 656.

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publicity (see also Breslaw, Hsieh, and Varina 2022). These tropes are continued in the present with greater presence and ubiquity as Keene (2022:53) and Vera-Gray et al. (2021) have found in their content analysis of popular pornographic websites. Vera-Gray et al.'s analysis (ethical approval granted), for example, found a prevalence of pornographic material in the entire data corpus that they examined featuring child sexual abuse in so-called teen schoolgirl porn (Vera-Gray et al. 2021:1253), and father/daughter and stepfather/stepdaughter porn (Vera-Gray et al. 2021:1250) being the most common content. They found too that violent behaviours such as choking, gagging, slapping, punching, raping, forced anal penetration, degradation and objectification (Vera-Gray et al. 2021:1252) characterize porn found on mainstream sites. They determined that mainstream pornography sites are probably hosting unlawful material for distribution or download (Vera-Gray et al. 2021:1255) and that active measures to combat mainstream pornography depicting sexual violence are urgently required (Vera-Gray et al. 2021:1257).

Pornographers and paperback publishers of "cheap" books have resisted the causal and correlative findings concerning the impact that pornographic representation of women has on crimes against them. Instead, defenders of this kind of "woman hating" invoke freedom of speech arguments as protective insurance for their lucrative empires. Dorchen Liedholt, one of the founders of Women against Pornography, as evidence of the link, cited the 1967 US Commission on Pornography in which over 100 psychiatrists attested to such a link as did Donnerstein and Malamuth's (1984) research (Duberman 2020:133) and as did the 1986 US Meese Commission on Pornography (Meese Commission 1986). Regarding the publication of *Juliette* (de Sade 1991), Random Century issued a press statement defending de Sade:

> His works are considered by many academics and students of history, literature and philosophy to address serious issues of personal liberty and freedom of expression . . . . Random Century, Arrow's parent company, abhors censorship and believes members of the public should be free to make their own decisions about what they buy and read from the rich and varied legacy of literature. (Edwards 1991)

As for *American Psycho*, Picador (Pan), who finally published this book, sought to draw a distinction between the book and its subject matter, " . . . it is a book about terrible things, but it is not a terrible book".

Of course, it would not be academically objective to leave this section without referencing the claim made especially by those who wish to promote such representations that such representation is only fantasy and should be defended as part of a sexually liberalist culture. These several philosophical positions have been explored and critiqued in the writings of Georges Bataille (1985) and Michel Foucault (1976), for example. Angela Carter (1979), in her critique of de Sade, explores how these narratives are culturally determined and how a male-dominated society produces a pornography of universal female acquiescence. BDSM (bondage, discipline, sadism, masochism) practices considered peccadillos throughout the nineteenth and twentieth centuries (see Marcus 1969) are now being positioned by some as sexual lifestyle choices. Anne McClintock (1993) points out that these practices are both theatre and part of the social subculture of fetishism. A report in 1990

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conducted by the Kinsey Institute found that 5–10% of the US population "engages in sadomasochism for sexual pleasure on at least an occasional basis, with most incidents being either mild to stage activities involving no real pain or violence" (Reinisch and Beasley 1990:162–3). However, the existence of real harm has not always been eschewed. For example, British legislators were willing to concede that a causal relationship existed between viewing violent material and committing violent crime when in 1993 two boys, Thomson and Venables,[2] themselves minors aged 10 and 11 years, killed four-year-old James Bulger. It was surmised that they had watched *Child's Play 3*, as some details of the killing seemed to have imitated scenes from the film (Sutter 2000). In 1994, the Criminal Justice and Public Order Act in an amendment to section 4 of the Video Recordings Act 1984 introduced "harm" as an essential consideration for film assessors when certifying films for general release, requiring assessors to have:

> special regard (among the other relevant factors) to any harm that may be caused to potential viewers or, through their behaviour, to society by the manner in which the work deals with – (a) criminal behaviour; (b) illegal drugs; (c) violent behaviour or incidents; (d) horrific behaviour or incidents; or (e) human sexual activity.

The UK Parliament was also willing to legislate against "extreme violence pornography" by introducing section 63 of the 2008 Criminal Justice and Immigration Act following a campaign led by the mother of Jane Longhurst who was murdered by strangulation and asphyxiation by Graham Coutts who had a long-established interest in sexual violence and strangulation (*R v. Coutts*).[3] At his trial in 2006, the prosecution submitted and the defence conceded that "strangulation pornography" had played a significant role in Coutts's method of killing. Coutts also had a history of non-fatal strangulation (NFS) of former partners, although no policy discussion was initiated (at that time) on NFS or on the dangerousness of this method of assault and killing for women as a particular group.

KILLING WOMEN

Men Who Kill Female Intimate Partners

The prevalence of the gendered specificity of strangulation, choking, suffocation and asphyxiation as a killing method in intimate partner homicide of females in England and Wales has been charted by Edwards since the 1980s, finding that such was the killing method in an average of 26.5% of cases over a 42-year period, demonstrating that strangulation is a red flag with a high lethality potential (Edwards and Douglas 2021:89).

Whilst in the past men may have introduced into their pleadings of "not guilty" to murder evidence that the victim provoked the killing because of actual or imagined infidelity or a myriad of other reasons, i.e. questioned his decision making,

[2] *R v. Secretary of State for the Home Department ex parte Venables* [1998] AC 407; *The Times*, Times Law Report 13 June 1997.

[3] *R v. Coutts* [2006] UKHL 39.

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disagreed with him, etc., to disavow intention (Edwards 1987), especially in the more recent cases, the "rough sex" defence is also attempted at trial. Yardley's (2021:1841) research, which tracked cases reported in newspapers and case law data, found that in a sample of 1,611 cases, between March 2001 and March 2019 where female intimate partners had died, "rough sex" was introduced in 43 cases as part of the defence to a charge of murder. With reference to my own research, strangulation and asphyxiation are more preponderant as a cause of death in the so-called "rough sex" cases. However, there are additional cases where laceration to the vagina and beatings claimed by the defendant to be initiated or consented to by the victim have resulted in death (discussed below).

It is to be noted that it is only men who have been charged and convicted of "rough sex" homicide against women and that no man has died from "rough sex" committed by a woman and no woman who has been charged with killing an intimate male partner has relied on "rough sex" as a defence.

Killing Women Who Wanted It

Misogyny narratives frame women in a way that excuses male violence. In recent years the killing of women by strangulation, suffocation and choking or other acts of physical violence has been framed by defendants, and upon their instruction to their defence team, as something to which the deceased has consented. The language of the perpetrator redefines his brutality and sadism as "sex", not violence, and as "rough", not brutal. As Duberman with reference to Dworkin writes "the idea that women like to be hurt are male assumptions about women's lives" (Duberman 2020:135). These two words "rough sex" should be resisted, just as "child pornography", in hiding the reality of child abuse, was resisted for the oxymoron it is. George Steiner (1967:100–1), talking about the power of language, said that "lies and sadism can be embodied in the marrow of language" and although he was speaking specifically about the holocaust, lies and sadism are embodied in the language of the descriptor of "rough sex". Relevant here is the sub-discipline of semiotics which examines the way language acts as a sign for reading and interpreting text and reality. As Steven Poole (2006) has argued, names are not neutral but carry a cargo of meanings and determine the way that debates are framed. He calls such terms "unspeak" to refer to a mode of speech that persuades by stealth (Poole 2006:3). It is of course men who, here, are persuading by stealth. As Dworkin recognized, it is men who have the power to name (Dworkin 1989:17).

TRADUCING THE CHARACTER OF THE VICTIM

In trials of homicide, the accused's propensity to strangle is frequently camouflaged by defence accusations of the deceased's sexual character which are impossible to refute as the dead cannot speak. Whilst the so-called "rape shield" restriction on admissibility of character evidence of the complainant operates in cases where charges are brought under sexual offences legislation (Carline and Easteal 2014; McGlynn 2017), where charges are of violent assault or death no similar shield operates, thus allowing defendants to adduce evidence that the complainant had previously engaged in "rough sex" or that her sexual preference indicates that she enjoyed

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it. There is considerable evidence in many jurisdictions, especially in defence strategies, in rape trials of such tactical arguments.

In England in 2020, Andy Anokye[4] was convicted of 21 counts of rape (section 1(1) of the Sexual Offences Act (SOA) 2003), five counts of false imprisonment, two counts of assault by penetration (section 2(1) of the SOA) and two counts of assault (section 47 of the Offences Against the Person Act 1861) in relation to four victims whom he imprisoned, coerced and subjected to rape and violence. Prosecution evidence adduced that he waterboarded his victims, used weapons, threatened and subjected them to other forms of sadism, including putting bleach on one victim's face, telling another she would be shot and to another putting her hand in water, and, bringing an electric toaster nearby, threatening her with electrocution. One victim was made to lie in a cold bath with a gun to her head and feared she was going to die. Another victim said of him that he was "sadistic" and "got off on people crying". A laptop found at his home after his arrest discovered searches for "dacryphilia" which describes sexual arousal from another's fear. In his defence Anokye said that such acts were all "rape games" and "part of the sex I have". Blaming his victims, he said of one, "she was a willing and enthusiastic participant in my sex games/role play" and said to another victim "some of the best sex we've ever had was when I am raping you". Anokye's initial sentence of 24 years was increased to 30 years after a referral by the Attorney General to the Court of Appeal under the "unduly lenient sentencing scheme". Dworkinian analysis demonstrates how Anokye's own accounts of his conduct mirror her argument that men get sexual pleasure from domination (see the *Omnibus* film; Dworkin 1991 35:20) and that "orgasm is tied to inequality" (Dworkin 1991 34:38). However, men are not only raping and terrorizing sexual partners, but killing them and claiming that death is an accident and that she consented to the violence and initiated it.

"It's Become Open Season on Women": Traducing the Character of the Dead

The father of the deceased Jennifer Levin when commenting on defence counsel tactics said, "It's become open season on women" (see the "Manslaughter Dossier" section below). Western courtrooms hear "rough sex" narratives with increasing regularity as part of the defendant's denial of murder and intent to kill where women are killed following strangulation and suffocation. Death also follows in some cases where there is violence to the rectum and vagina of the deceased. In both scenarios defendants claim that it is a sex game that went wrong and a game in which the deceased had willingly participated. Such violent deaths and spurious allegations have turned courtrooms into theatres of pornography where dead women are framed as complicit, and their characters are traduced. In courtrooms in Canada, the United States, United Kingdom, New Zealand, Australia and Switzerland such cases have been widely reported and it is to some of these cases in these jurisdictions (albeit that it is not limited to these jurisdictions) that I now turn, recognizing at the same time that the "rough sex" defence has become a global male excuse for violent and lethal assault on women. In many cases men who

[4]*R v. Anokye* 2020 (unreported). See Andrea (2021). See also, Attorney General's Office and The Rt Hon Michael Ellis KC MP (2021).

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murder women in this way have been convicted of involuntary manslaughter or criminally negligent homicide (otherwise known as gross negligence manslaughter) rather than murder. This dossier considers only a few of the many reported cases to demonstrate some of the features commonly shared by this defence strategy.

Strangulation, Choking, Suffocation and Asphyxiation

The Murder Dossier

A conviction for murder requires proof of intention to kill and even where there is little basis for advancing the argument that the deceased consented, such arguments allow the defence to put such considerations in the mind of the jury. In the following two cases the defendants' accounts of accident and no intention to kill were not believed.

Perhaps the most widely publicized case is the killing of Grace Millane by strangulation and asphyxiation, in New Zealand, by Jesse Kempson (*Kempson v. R*)[5] on 2 December 2018. Kempson met Millane on a Tinder date and that same evening killed her. It was the prosecution's case that the act of strangulation lasted several minutes. It is difficult to establish with certainty the duration of the strangulation, whilst bruising to the neck and injury to the hyoid cartilage indicates considerable force, the lack of corroborative injury cannot be taken to mean that no force was used or that the strangulation was transitory. After killing her, Kempson buried her body in the woods. In his defence he said he had no intention to kill and that her death was an accident and that they had engaged in "rough sex" to which she had consented. The prosecution adduced evidence of Kempson's interest in violent pornography and strangulation under the bad character provisions. The defence was then granted leave to adduce sexual history evidence of the deceased including from her former boyfriend, a previous sexual partner and men she had never met but connected with on dating sites. Kempson was convicted of murder (Edwards and Gledhill 2021). After the trial, the presiding judge, Justice Simon Moore, responding to public criticism of defending counsel's tactics, said that the defence case was "entirely proper" and that counsel are required to put the defence case whatever that may be (Hurley 2019). Kempson was subsequently sentenced to serve a minimum of 18 years in prison.

In England and Wales in *R v. Bailey*[6] in a renewed application against a conviction for murder, the conviction for murder was upheld. The defendant met the deceased in a nightclub earlier in the evening of her death. When interviewed under caution, he admitted that he had killed the deceased in his bedroom. His account was that they had engaged in consensual vaginal and anal intercourse. He claimed that during consensual "rough sex" (at her request) he had put his hands around her neck and squeezed with moderate force for a minute or two. He accepted that he might also have put his hand over her mouth (paragraph 8). "A Home Office forensic scientist concluded that the likely cause of death was significantly forceful compression of the neck, and/or occlusion of the airways. There was evidence that a sustained and forceful compression of the neck was applied for at least 15 to 30 seconds" (paragraph 7). She had suffered injuries to her neck and mouth and a bone

[5]Above note 1.

[6]*R v. Bailey* [2019] EWCA Crim 2502.

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fracture near the base of her tongue (BBC News 2018). An application to introduce sexual history evidence to support the defence submission that she expressed an interest in "rough sex" was refused by the presiding judge. On appeal, the ground for appeal related to webcam footage recovered from the deceased's computer. This showed her performing various sex acts on web camera including using a sex toy on herself. The Court of Appeal held that this was immaterial and that the trial had ruled correctly that the material had no real relevance to the issues in the case. Bailey was handed down a life sentence with the recommendation that he must serve a minimum of 29 years. He has 171 previous convictions. The trial judge "ruled that the killing was a murder involving sadistic conduct" (BBC News 2018).

In Switzerland in 2021, Marc Schätzle[7] was charged with "intentional homicide" concerning the death of Anna Reed. He claimed that her death was the result of an "erotic game gone wrong". Strangling her with a towel during sex he said: "Then I pressed on it with my hands, as we had done a hundred times before. Suddenly she stopped moving, her tongue was sticking out. I tried to resuscitate her." A post-mortem examination confirmed she died from suffocation or asphyxiation. The judge said Schätzle's defence that Ms Reed's death was the result of a sex game that "ended badly" was "convenient". He said: "The woman was killed with an intentional act. A death from strangulation is not instantaneous: whoever causes it has time to see what is happening, sees the victim suffocate but does not stop." The *Evening Standard* reported that during his trial (note that, in Switzerland trial by jury was abolished five years ago) Schätzle said, "Anna loved it when I choked her" (Williams 2021a). Prosecutor Petra Alexakis told the court how Schätzle had no money, his bank had blocked his credit card and he had the equivalent of £163.41 in his pocket and that he stole Ms Reed's credit card hours before killing her and hid it in a ceiling panel in the hotel lift only to be discovered five months later. Ms Reed was comparatively wealthy, and the prosecutor said: "In February, 12,000 Swiss francs (£9,500) came out of her account. The following month it was 37,000 (£29,200) and by April it was 13,000 (£10,200). In all that time Schätzle's account showed a spend of just 45 Swiss francs (£35)" (Williams 2021a). He was convicted of intentional homicide and sentenced to 18 years. Under Swiss law, Article 111 of the Swiss Penal Code states: "Intentional homicide. Any person who kills a person intentionally but without fulfilling the special requirement of the following articles shall be liable to a custodial sentence of not less than five years."[8]

Turning to the jurisdiction in Tasmania, Australia, in *Boughey v. The Queen*[9] on appeal to the High Court of Australia, the deceased died as a result of manual strangulation referred to as the "carotid artery technique". Death was caused by manual pressure which the defendant had applied to the deceased's carotid arteries during sexual activity. A post-mortem examination of the deceased disclosed substantial bruising of the neck. In giving evidence at trial, the defendant stated that this was a technique which they had previously used on each other to heighten sexual

[7]Marc Schätzle (unreported). See Williams (2021b) and Steinbuch (2021).

[8]I am grateful to Dr Nora Scheidegger at the Institut für Strafrecht und Kriminologie in Bern for this reference to Swiss law.

[9]*Boughey v. The Queen* [1986] 161 CLR 10FC, [1986] LRC (Crim) 742.

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pleasure. Boughey (a qualified medical practitioner) in his police statement said, "What happened was I fell asleep with Begum, when I woke up I wanted Begum to become responsive, I put each of my thumbs to her carotid arteries and pressed, there was no immediate reaction, so I pressed harder." He admitted he pressed the carotid arteries for quite some time and said, "I just wanted her to become more assertive." When asked whether he intended to kill her? He said, "I don't really know, I remember thinking of Miriam and that's about all." (Miriam was another partner.) At the trial, the applicant again changed his account of how the deceased came to die. His conviction for murder was upheld (Brennan J. dissenting).

The Manslaughter Dossier

The difficulty in proving intention to kill in these cases will probably result in an acquittal on a murder charge and invariably a conviction for involuntary manslaughter (unlawful act) or, in some cases, a conviction for gross negligence manslaughter. In England and Wales, Sam Pybus (*R v. Pybus*)[10] the defendant, who strangled the deceased, said the deceased's death was an accident and that she had consented to "rough sex", described by the Court of Appeal as "erotic asphyxiation" (paragraph 18). Pybus said "that the sex they shared was rough and that he used to dominate her but that she encouraged and enjoyed erotic asphyxiation" (paragraph 21). He claimed to have no memory of what had happened on the night leading to her death, saying that he had "come to, wearing only boxer shorts to find the deceased naked and unresponsive on the bed" (BBC News 2021b). In Pybus's favour, the first expert could not establish the cause of death and the second said it was probably manual strangulation although no corroborative signs were found, adding that pressure would have been applied to the neck for at least tens of seconds but possibly minutes. The prosecution accepted a plea of unlawful manslaughter. Pybus was sentenced to six years' imprisonment reduced to four years and eight months (a discount for a guilty plea of unlawful manslaughter). An appeal against the sentence made by the Attorney General was rejected by the Court of Appeal who did not find the sentence handed down by the trial judge to be "unduly lenient" and said the case raised "no novel point of law".

On 19 February 2020, in Canada, David Miller[11] was convicted of "second-degree murder" (equates to manslaughter (unlawful act) in England and Wales) for killing his girlfriend Debra Novacluse in 2016. She was beaten about her head and suffered severe trauma to her neck from strangulation fracturing the cricoid cartilage. The pathologist said she had not seen this degree of injury before, even though she had conducted over 2,000 autopsies. Miller in his defence claimed that she liked "rough sex" including "throttling". After he was arrested, he told police that her death was the result of accidental asphyxiation. Supreme Court Justice Marguerite Church (Potestio 2021) was left to determine a period of parole ineligibility, the minimum being 10 years and the maximum being 25 years.

In the United States the "rough sex" defence was authoritatively discussed by George Buzash (1989) who examined the cases of Dennis Bulloch, Joseph Porto

[10] *R v. Pybus* [2021] EWCA Crim 1787.

[11] *R v. Miller* (unreported). See The Economist (2020).

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and Robert Chambers. Bulloch (*State v. Bulloch*)[12] was convicted of the manslaughter of his wife whom he had strangled and choked:

> The state's evidence showed that on May 6, 1986 appellant and his wife participated in an episode of sexual bondage involving the use of duct tape. Mrs. Bulloch suffocated as a result of the bondage. Appellant, in a fit of panic, moved her body to the garage and placed it between their two automobiles, a Buick and a Honda. He covered his wife's body with an afghan [the name of a particular kind of coat worn at that time], gathered up her diary, some tape and tape spools, and placed it all in a bag. He used the bag to start a fire in the back seat of the Buick.[13]

He said her death was an accident and that she had consented to sexual bondage (Buzash 1989:559). His wife's body was discovered in the charred remains of the Bulloch garage which he admitted he had set alight. She was discovered bound with electrical tape to a rocking chair and there were rags stuffed in her mouth (Harris 1991). He was convicted of manslaughter and sentenced to seven years' imprisonment.

Robert Chambers, in 1986 killed Jennifer Levin, he alleged, "accidentally" during what he claimed was a "rough sex" session in which he strangled her. Chambers originally denied any involvement but later pleaded guilty to manslaughter. The defence wanted to introduce into evidence her diaries to support their argument that she had consented to strangulation and that it was conduct she initiated (Buzash 1989:558). As Acland (1991:140) points out "only Chamber's version – an elaborately conceived tale of his own molestation at the hand of Levin – is available". In considering admissibility the judge examined the diaries which he considered were not material and ruled against admissibility. Media accounts continued to present her as a willing "victim", describing her as a "sexual tigress" (Acland 1991:145) "initiating sexual advances and suggesting a bondage game" (Acland 1991:144). Her body was reduced to "a body without history, a generic icon of sexual fantasy" (Acland 1991:145). The defence in its closing arguments said, "it was Jennifer who was pursuing Robert for sex … [t]hat's why we wound up with this terrible tragedy" (Kunen 1988). Levin's father held a press conference to protest such defence tactics and said, "It's become open season on women."

The Gross Negligence Manslaughter Dossier

For a finding of gross negligence manslaughter (GNM) or criminally negligent manslaughter in all jurisdictions noted herein there must be a duty of care and a breach of that duty, by the defendant to the victim and a serious and obvious risk of harm to the victim by an act or omission. In England and Wales in 2021, Warren Coulton[14] was charged with killing the deceased who died following suffocation. She had been tied up and had a sock put in her mouth which may have been taped up. The defendant, having drank large quantities of alcohol, fell asleep. Coulton claimed that the

[12]*State v. Bulloch* (1992) 838 S.W.2d 510.

[13]*State of Missouri, Plaintiff-Respondent, v. Dennis N. Bulloch*, February 13, 1990. Motion for Rehearing and/or Transfer to Supreme Court Denied March 14, 1990. Application to Transfer Denied April 17, 1990.

[14]*R v. Coulton* 2021 (unreported), Mold Crown Court, 28 April–5 May 2021, Wales. See BBC News (2021a).

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deceased had consented to "rough sex". Coulton brought along to the holiday lodge where the couple spent the evening what he called sex toys: including ties, red tape, white tape, and gloves, for bondage sessions. Footage from their stay was later found on their Sony camcorder. It showed Ms Wright wearing a red catsuit, with her hands tied behind her back and "dancing". Prosecuting counsel said one clip featured the deceased saying she didn't want a hood to be put on her during the game because it scared her. Counsel added: "Chillingly, in the light of what was to happen [later that night] the defendant [Coulton] can be heard to say, 'You can't breathe and you can't move – just how I like it'" (Powell 2021). The prosecution, concerned that a jury verdict of murder or manslaughter might not be found, accepted a plea of gross negligence manslaughter. The judge said: "You were negligent and grossly so." Coulton was sentenced to six years' imprisonment.

In 1986 Joseph Porto[15] killed his girlfriend Kathleen Holland by strangulation. He evaded a murder conviction by claiming that Holland's death had resulted from sexual practices to which Holland had not only consented, but which she had demanded of Porto. Porto was charged with second-degree murder after he confessed in writing and on videotape to strangling Miss Holland on 27 September 1986, when she tried to end their nine-month relationship.[16] Porto received a sentence of four years for criminally negligent homicide serving only 30 months (Buzash 1989; Lacayo 1988).

Sexual Violence and Other Causes of Death

Manslaughter Briefs

In Scotland in 2004, Niall Duncan McDonald, in *McDonald v. Her Majesty's Advocate*[17] claimed that the deceased consented to "rough sex". The victim died of strangulation and trauma to the recto-sigmoid junction. A conviction for culpable homicide was returned (Edwards 2020). Culpable homicide under Scots law amounts to an offence of causing the death of another person without planning or intending to.

In Canada, Bradley Barton (*R v. Barton*)[18] was convicted of manslaughter following a new trial in February 2021 (Russell and Snowden 2021). This followed an earlier trial which resulted in an acquittal trial and an appeal by the Crown. Cindy Gladue died of haemorrhaging on 22 June 2011 following a tear of 11 cm which ran almost the full length of the vaginal wall. The 2015 trial opened with Gladue being described as a prostitute. Barton in his defence said the injury was caused when he inserted his hand into her vagina and that she had consented to "rough sex" and that her death was an accident. Barton said he went to sleep, and the following morning found that Gladue had bled to death in the bathtub. The Crown argued that he had placed her in the bathtub. The Crown's case was that the injury was caused by a knife and in demonstrating this introduced, in evidence, on screen the deceased's vaginal tissue. Objections were raised to the way in which the deceased was traduced, objectified, dehumanized and specimenized. Gladue's blood

[15]Joseph Porto (unreported). See Mary Anne (2010).
[16]See New York Times (1988).
[17]*McDonald v. Her Majesty's Advocate* [2004] SCCR 161.
[18]*R v. Barton* [2019] 2 SCR 579, part [23].

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alcohol level was four times the legal limit at the time of death (340 mg) and the prosecution queried whether she had the capacity to consent (Razack 2016:303). Barton's defence team argued that since the "fisting" of itself was not unlawful (this reasoning also mirrors the case in the United Kingdom of *R v. Slingsby*;[19] see the "No Charges Brought Dossier" section below), Barton was acquitted (Razack 2016). An appeal by the State[20] was won on the ground of several errors of law, in particular that sexual history evidence of Gladue should not have been admitted. For example, the Crown referred to the deceased as a prostitute and explained that she and the accused struck up a working relationship on the night before her death. In addition, the Crown contended that there were judicial failures in giving jury directions in that the court should have followed the "section 276 regime" and held a pre-trial hearing under section 276 of the Criminal Code of Canada, which would determine whether or not Gladue and Barton's mutual history and sexual histories could properly be admitted as evidence. The appeal court concurred with these grounds and the Supreme Court in a majority judgement ordered a new trial limiting it to unlawful act manslaughter. The dissenting judgement considered that a new trial should have proceeded with a charge of murder. Barton was finally convicted of manslaughter. A pathologist who had performed more than 6,000 autopsies during his career testified he had never seen a fatal blunt-force injury to the vagina like the one that killed Cindy Gladue (Johnston 2021). At a sentencing hearing Barton was sentenced to twelve and a half years in prison.[21]

The Gross Negligence Briefs

Whilst strangulation/suffocation/choking and gagging characterize the sexual homicide cases where "rough sex" is alleged by the defence, "rough sex" has also been alleged in cases where women are beaten to death and violently sexually assaulted. In the case of *R v. Broadhurst*[22] in England, the defendant John Broadhurst was tried for the murder of Natalie Connolly who died following a combination of the alcohol level in her blood (acute alcohol intoxication) and 40 separate physical injuries and resultant blood loss. Physical injuries included bruising to the head, blow-out fracture to the left eye socket, internal bleeding and tissue haemorrhaging on the bottom and lower back and arterial and venous vaginal haemorrhage caused by the insertion and/or the removal of a spray bottle of carpet cleaner which caused lacerations of the vagina. In his defence Broadhurst said that the deceased derived sexual satisfaction from being assaulted in this way. Given that the defence intended to (a) challenge the prosecution charge of murder and disavow intent to kill and (b) to challenge the prosecution case that Broadhurst had caused many of the injuries that led to death and (c) to challenge the prosecutions submissions on causation contending that

[19]*R v. Slingsby* [1995] Crim LR 570.

[20]"The Alberta Court of Appeal allowed the Crown's appeal, and ordered a new trial." See "Case Summary: *R. v. Barton* (2017, 2019)." LEAF, Retrieved 23 March 2023 (https://www.leaf.ca/case_summary/r-v-barton-2017-2019/#:~:text=The%20Alberta%20Court%20of%20Appeal%20allowed%20the%20Crown%E2%80%99s,judicial%20error%20and%20discrimination%20in%20the%20trial%20process).

[21]Sentencing Hearing, 28–30 June 2021, paragraph 129. Retrieved 23 March 2023 (https://cal.albertacourts.ca/docs/default-source/qb/judgments/r-v-barton-2021-abqb-603—reasons-for-decision.pdf?sfvrsn=8f384e83_5).

[22]*R v. Broadhurst* [2019] EWCA Crim 2026.

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several causes had resulted in death, the prosecution accepted a plea to GNM. In this case there was evidence that Broadhurst knew she was bleeding profusely, knew that she lay semi-naked at the bottom of the stairs, but nevertheless went upstairs to bed and must have known or ought to have known that she was in need of urgent medical attention. He found her dead the following morning and reported to a 999 (emergency services) operator that she was "as dead as a dodo". Sentenced to three years and eight months in prison, Broadhurst appealed the sentence. The appeal was dismissed. He served 22 months, being released after serving half his sentence, which is the procedure regarding fixed-term sentences (see *R v. John Broadhurst* sentencing remarks).[23] Since this case there have been several others where women have died, and the defendants have relied upon claiming that she consented to what he alleges was "rough sex" and accidentally died.

No Charges Brought Dossier

In the United Kingdom, as elsewhere in Anglo-American and Australian jurisdictions where there is no unlawful act, there is no crime, and so the prosecution may decide not to bring any charges. Where charges are brought, a judge may direct an acquittal. In *R v. Slingsby*,[24] a "judge directed acquittal" followed where the judge held that a charge of unlawful act manslaughter could not be sustained, since no injury was intended or foreseen and no crime had been committed where the victim consented to all the acts of which none were in themselves unlawful. The judge withdrew constructive manslaughter from the jury, and the Crown responded by offering no evidence. Slingsby claimed that sexual intercourse, anal sex and the penetration of the deceased's vagina and rectum with his hand ("fisting") were consensual, described by the judge as "vigorous sexual activity". The deceased died of septicaemia from cuts caused by a signet ring on his hand. Infliction of bodily harm is unlawful, even if the victim consents (*R v. Boyea*).[25]

In all these cases cited, which are obfuscated by mythologies about what women want, there is evidence of "plea bargaining" where the prosecution gauges and assesses the likely impact of defence submissions of the deceased's consent to "rough sex" and the credibility of the defendant and his plea of accident on jury determination and therefore accept defence pleas on lesser charges.

COMBATING THE "ROUGH SEX" CULTURE OF MISOGYNY IN LAW AND LIFE

Three areas at least require immediate reform. First, there is a need to criminalize NFS because of its lethality potential; second, to exclude or at least limit the "rough sex" arguments; and third, to contest and challenge the increasing sex stereotyping and sexualization of violence against women in popular cultural representation. The latter two proposals are subject to fair trial and freedom of speech objections.

[23]*R v. John Broadhurst*, Sentencing Remarks, 17 December 2018, retrieved 23 March 2023 (https://www.judiciary.uk/wp-content/uploads/2018/12/broadhurst-sentencing-remarks.pdf).

[24]Above note 19.

[25]*R v. Boyea* [1992] Crim LR 574.

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NFS, Choking, Suffocation and Asphyxiation Criminalized

In most US and Australian states, New Zealand and Canada, NFS has been criminalized since 2021. The introduction of the Domestic Abuse Act 2021 criminalizes NFS in the United Kingdom. Across all jurisdictions and between States, definitions vary, including "choke", "asphyxiate" and "suffocate". There is variation also regarding the evidence required as proof of NFS. Evidence of "impeding breathing" seems commonly agreed as sufficient evidence, albeit with differing interpretations. Since 2015, most states and territories in Australia have introduced specific NFS offences and "choke", "suffocate" and "strangle" are included in all the NFS offences except for Western Australia which does not include the term "choke". For example, in the Australian Capital Territory in the case of *R v. Green (No 3)*[26] the judge ruled that "the relevant element is constituted by the stopping of the breath". The fact that she felt dizzy was not sufficient. This resulted in a wider statutory revision (Bettinson 2022; Edwards and Douglas 2021). However, the offence is limited in the four states (Northern Territory, New South Wales, Queensland and South Australia) where the offence requires that the prosecution prove the victim did not consent to the NFS. In the United States, Laughon, Glass, and Worrell (2009) note that by 2009, 13 states had laws regulating strangulation. Some statutes across jurisdictions are limited to family and intimate relationships.

Problems of Proof

In all jurisdictions there are problems of proof, difficulty in proving intent and lack of physical evidence, although its ability to terrorize and control has been a long-time noted issue. For example, Ellen Pence, in the 1980s when working within the shelter movement in Duluth, Minnesota, discovered how coercion and strangulation was used by abusers to maintain control, and how their ability to use violence in turn created in the putative victim/survivor a fear for her physical and sexual safety (Pence 2009). In the United Kingdom in *R v. Charnock*,[27] where the defendant appealed against the conviction of rape and strangulation, the victim (AM) described the impact of strangulation:

> When examined, AM said that whilst being strangled she had developed tunnel vision, had seen flashing lights and spots in her vision, had buzzing in her ears, felt dizzy, and had difficulty breathing. She had ongoing pain in her neck and chest, tenderness to her Adam's apple and groin area. She had some difficulty remembering. Medical examination revealed bruising and an abrasion to her neck, bruising to her left temple, her lip, and her hip, abrasions on her right buttock and sternum, a swelling under her collar bone, and bleeding under her left eye. There was further bruising to her eye and arms which she attributed to the earlier incident. There were no injuries to her genitalia. Many of the injuries noted were consistent with her account of strangulation (paragraph 6).

[26] *R v. Green (No 3)* [2019] ACTSC 96; 344 FLR 324.
[27] *R v. Charnock* [2021] EWCA Crim 100.

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The applicant's case at trial, consistent with what he said in interview, was that the complainant had consented to "rough sex" at all times.

Section 70 of the Domestic Abuse Act 2021 in England and Wales creates a new offence of non-fatal strangulation or suffocation, inserted into Part 5 of the Serious Crime Act 2015 (section 75A):

75A Strangulation or suffocation

(1) A person ("A") commits an offence if—
  (a) A intentionally strangles another person ("B"), or
  (b) A does any other act to B that—
    (i) affects B's ability to breathe, and
    (ii) constitutes battery of B.

(2) It is a defence to an offence under this section for A to show that B consented to the strangulation or other act.

(3) But subsection (2) does not apply if—
  (a) B suffers serious harm as a result of the strangulation or other act, and
  (b) A either—
    (i) intended to cause B serious harm, or
    (ii) was reckless as to whether B would suffer serious harm.

(4) A is to be taken to have shown the fact mentioned in subsection (2) if—
  (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
  (b) the contrary is not proved beyond reasonable doubt.

Difficulties call for training of first responders in witness statements, especially as there may be no physically corroborative signs. Across all jurisdictions under-reporting is evident, resulting in a low uptake. As Kitsuse and Cicourel (1963:135, 137) noted:

> . . . *rates of deviant behavior* are produced by the *actions taken by persons in the social system* who define, classify and record certain behaviors as deviant. . . . What such statistics do reflect, however, are the specifically organizational contingencies which condition the application of specific statutes to actual conduct through the interpretations, decisions and actions of law enforcement personnel.

See also Pritchard et al. (2018) and Brady, Fansher, and Zedaker (2022).

No Consent to "Rough Sex"

The second area which requires reform relates to the use of the excuse that "she consented" in cases which result in serious violence and death. Buzash (1989) says this defence is a new twist on the "she asked for it" excuse. In reviewing the issue of consent and the common law principles, he says the victim agrees to a particular sexual behaviour, but not to death (Buzash 1989:563). In the United Kingdom,

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common law principles have evolved creating a precedent following the case of *R v. Brown*[28] where it was claimed that several men had consented to sadomasochism resulting in injury, establishing in law that a person cannot consent to injury which results in harm above something that is trifling and is more serious than section 39 of the Criminal Justice Act 1988 ("common assault and battery"). This compares with the US case of *Commonwealth v. Appleby*[29] and *State v. Collier*[30] where in both cases the court rejected the mitigating inference of the "rough sex" defence and imputations on the character of the victim.

Buzash (1989) suggests a strict liability approach to "rough sex" homicides which he says could be achieved through legislation. It is worth pointing out that the original UK proposals[31] for excluding the "rough sex" defence included new clauses, among them clause 4 ("No defence for consent to death") and clause 5 ("No defence for consent to injury"). New clause 6 proposed that the consent of the Director of Public Prosecutions would be required and the Crown Prosecution Service may not without the consent of the Director of Public Prosecutions, in respect of the death: "(a) charge a person with manslaughter or any other offence less than the charge of murder, or (b) accept a plea of guilty to manslaughter or any other lesser offence". New clause 7, in the case of death, includes the requirement to consult with the family of the deceased regarding charges. New clause 10 is worded:

> *Prohibition of reference to sexual history of the deceased in domestic homicide trials*—If at a trial a person is charged with an offence of homicide in which domestic abuse was involved, then—
>
> (a) no evidence may be adduced, and
> (b) no question may be asked in cross-examination, by or on behalf of any accused at the trial, about any sexual behaviour of the deceased.

Clause 11 provides anonymity for victims of domestic homicide. While sympathetic, the government minister said there were difficulties with the clauses in their present form, with the result that only NFS (section 70 and section 71) (no consent to serious harm) made it on to the statute. As Buzash (1989:584) notes:

> The "rough sex" defence benefits the defendant by raising two mitigating inferences in the minds of the jury. [Firstly] that the victim's consent to the sexual activity that resulted in the homicide should be seen as making the defendant less blameworthy for the offence. [Secondly] that because the homicide resulted in the inadvertent consequence of rough sexual activity the defendant lacked the intention to kill.

[28]*R v. Brown* [1994] 1 AC 212.

[29]*Commonwealth v. Appleby* (1980) 380 Mass. 296,402 N.E.2d 1051.

[30]*State v. Collier* (1985) 372 N.W.2d 303.

[31]Domestic Abuse Bill (Ninth sitting), 16 June 2020, columns 312–13, retrieved 23 March 2023 (https://hansard.parliament.uk/Commons/2020-06-16/debates/131971c0-0952-4c24-8f6c-3147495a3d8d/DomesticAbuseBill(NinthSitting)).

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The prosecution, he says, will have difficulty in refuting these inferences and in some cases defendants will take advantage of perjured reliance on this defence.

In England and Wales, section 71 of the Domestic Abuse Act 2021 criminalizes in statute the situation in common law:

71 Consent to serious harm for sexual gratification not a defence

(1) This section applies for the purposes of determining whether a person ("D") who inflicts serious harm on another person ("V") is guilty of a relevant offence.

(2) It is not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification . . .

(3) In this section—

"relevant offence" means an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861 ("the 1861 Act");
"serious harm" means—

(a) grievous bodily harm, within the meaning of section 18 of the 1861 Act,
(b) wounding, within the meaning of that section, or
(c) actual bodily harm, within the meaning of section 47 of the 1861 Act.

The defence of consent remains in cases of minor assault. Nothing can prevent the "rough sex" arguments from being made by the defence, to disavow the intention to kill. So, whilst a defendant may evade a conviction for murder, a finding of unlawful act manslaughter should, but does not always, follow, due to arguments of multiple causation and difficulty in establishing a single act of causation.

Challenging Myths About Women

Finally, outside the law and within the law there is a need to challenge myths about women. Within the law there is a need for judicial guidance regarding admissibility of character evidence of the victim, and acceptance of plea. Judicial training is needed, to expose the fallacy of gendered stereotypes since they may inform the exercise of judicial discretion and adversely affect assessments of "weight" and "relevance and "probative value" of evidence. In some jurisdictions whilst sexual history evidence is inadmissible in cases of rape or sexual assault, in cases of murder, which is classed for purposes of evidence as a crime of violence, the fact that the defendant obtained sexual satisfaction or that his motive was sexual does not invoke the sexual history shield, so the character of the dead in these situations is frequently traduced by the defence. The jury, having heard the imputation about the past predilections of the deceased is an input that cannot be contested or set aside in jurors' minds. For example, in the Millane case, an expert called for the defence referred to American literature on the vagaries of sexual congress and "what women want". It is to be noted that no expert has been called in any of these cases to address the jury on male violence, control and force, male sadism or misogyny.

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Regarding sentencing, if Dworkin were to speak now, she would say that many acts of "rough sex" are acts of sadism; however, "sadism" as an aggravating factor, for example in England and Wales jurisdiction, can be an aggravating factor only with regard to sentencing in cases of murder, and is construed very narrowly. The statutory framework is found in sections 269 to 277 of the Criminal Justice Act 2003 (now the Sentencing Act 2020, sections 321 and 322 and schedule 21).

Part of the responsibility for the prevalence of the use of "rough sex" as a defence is pornography and the sexualized representations of women in whatever form collectively creating a climate wherein such violence is normalized. The arguments put by Dworkin 40 years ago remain unchanged while the situation has worsened. What is now produced and reproduced in mainstream media and online is far more explicit, and violent than the 1980s when Dworkin was writing. Pornographic and other representations depicting violence against women and sexual assaults on women continue to be represented as fantasy and by signifying and encoding the text with sexual meaning, through labelling, the violence or perversion within its content is legitimated as part of the domain of the "sexual" and continues to be considered as a question of freedom to speak and depict the erotic, as against the obscene or violent (MacKinnon 1982:531).

Pornography and other such representations of women, abused and raped, continue to keep women frightened. When *Irreversible*, a film with a nine-minute rape scene, was granted a certificate and shown in Cannes, 250 people walked out. The audience walked out too at the Edinburgh Film Festival and some fainted (Edwards 2002).

In the United Kingdom the Online Safety Bill[32] pledges to make the Internet a safer place and will prevent access to harmful material for children such as pornography-making online platforms. It may go some way to achieving this, but it will not be able to contest the tropes about women on pornography sites. In 1998, Andrea Dworkin told Susan Brownmiller, that with the Internet "things are rapidly getting worse than anyone could have imagined. I'm back to not knowing what to do" (Duberman 2020:268). We need the radicalism, direct action and confrontation tactics of Andrea Dworkin who said, "If you know what it is that needs to be torn down. Tear it down" (Dworkin 1991 43:49).

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TRANSLATED ABSTRACTS

Abstracto

En este artículo considero el uso cada vez mayor de la defensa del "sexo rudo" por parte de hombres que matan a mujeres en juicios por asesinato. Al demostrar la prevalencia de esta defensa, examino las tácticas de defensa de alegar accidente y presentar el carácter dela muerta invocando la excusa de que la difunta consintió en los actos que contribuyeron a su muerte. Examino el impacto de esta estrategia de defensa en la determinación del jurado y la devolución de condenas por homicidio ilegítimo en lugar de asesinato. La noción de que las mujeres en estas situaciones han contribuido a su propia muerte es una obra que recuerda a la pornografía, pero también tiene raíces en el psicoanálisis y la medicina. Los estereotipos de la sexualidad de la mujer tal como la definen los hombres continúan informando el pensamiento contemporáneo que sesga la violencia masculina contra las mujeres como un resultado que las mujeres desean. Se examinan los intentos legales de reformar la ley y se piden desafíos a la representación de las mujeres en la cultura popular.

Palabras clave sexo duro, pornografía, estrangulamiento, homicidio, misoginia

Abstrait

Dans cet article, j'examine l'utilisation croissante de la défense du «sexe brutal» par les hommes qui tuent des femmes lors de procès pour meurtre. En démontrant la prédominance de cette défense, j'examine la tactique de défense consistant à plaider l'accident et à dénigrer le caractère de la femme décédée en invoquant l'excuse qu'elle a consenti aux actes qui ont contribué à sa mort. J'examine l'impact de cette stratégie de défense sur la détermination du jury et le retour des condamnations pour homicide involontaire coupable plutôt que pour meurtre. L'idée que les femmes dans ces situations ont contribué à leur propre disparition est une œuvre évocatrice de la pornographie, mais a également des racines dans la psychanalyse et la médecine. Les stéréotypes de la sexualité des femmes telle que définie par les hommes continuent d'éclairer la pensée contemporaine en faisant de la violence masculine à l'égard des femmes un résultat souhaité par les femmes. Les tentatives légales de réforme de la loi sont examinées et les défis à la représentation des femmes dans la culture populaire sont appelés.

Mots-clés sexe brutal, pornographie, strangulation, homicide, misogynie

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抽象的
在这篇文章中，我考虑了在谋杀审判中杀害女性的男性越来越多地使用“粗暴性行为”辩护。
在展示这种辩护的普遍性时，我通过援引她同意导致她死亡的行为的借口，检查了为事故辩护和贬低死者性格的辩护策略。
我研究了这种辩护策略对陪审团决定和非法杀人而不是谋杀定罪返回的影响。 女性在这些情况下导致了她们自己的死亡，这种观点在色情作品中是一种令人陶醉的作品，但也有精神分析和医学的根源。 男性对女性性行为的刻板印象继续影响着当代思维，将男性对女性的暴力行为视为女性所希望的结果。 对改革法律的法律尝试进行了审查，并呼吁对女性在流行文化中的代表性提出挑战。

关键词： 粗暴性行为，色情，绞杀，凶杀，厌女症

خلاصة
أتناول في هذا المقال الاستخدام المتزايد للدفاع عن "الجنس العنيف" من قبل الرجال الذين يقتلون النساء في محاكمات القتل.
ولإثبات انتشار هذا الدفاع ، فإنني أتفحص الأساليب الدفاعية المتمثلة في الترافع بالحادث والتحايل على شخصية المرأة الميتة من خلال التذرع بحجة موافقتها على الأفعال التي أدت إلى وفاتها.
أقوم بدراسة تأثيرات استراتيجية الدفاع هذه على قرار هيئة المحلفين وإعادة الإدانات بالقتل غير القانوني بدلا من القتل العمد. إن الفكرة القائلة بأن النساء في هذه المواقف قد سامحن في زواجهن هو عامل مع في المواد الإباحية ولكن له أيضا جذور في التحليل النفسي والطب. تستمر القوالب النمطية للحياة الجنسية للمرأة كما حددها الرجال في إثراء التفكير المعاصر الذي يحرف عنف الذكور ضد المرأة كنتيجة تريدها النساء. يتم فحص المحاولات القانونية لإصلاح القانون والمطالبة بتحديات تمثيل المرأة في الثقافة الشعبية.

الكلمات المفتاحية: الجنس العنيف, الإباحية, الخنق, القتل, كراهية النساء

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