WOMEN WHO KILL THEIR ABUSIVE PARTNERS: FROM SAMENESS TO GENDER CONSTRUCTION

ABSTRACT. Since the early 1990s there has been a plethora of academic commentary on the criminal law’s treatment of women who kill their abusive partners. More recently, the debate has been re-opened due to the Law Commission’s proposals on Partial Defences to Murder. This article aims to critically analyse the approach adopted by the academic commentary and to place in within a feminist theory framework. In addition the article argues that the work of queer theorist Judith Butler enables the analysis of the law’s treatment to be developed further.

KEY WORDS: Women who Kill, abused women, murder, manslaughter, feminist theory, Judith Butler

INTRODUCTION

During the 1990s two cases involving women who killed their partners received significant attention from the media. Sara Thornton and Kiranjit Ahluwalia were, initially, convicted for murdering their partners after suffering from years of physical, sexual and psychological abuse. The law’s response to such cases has once again been brought in to the public arena due to the Law Commission’s recent proposals relating to Partial Defences to Murder. Overwhelming, it has been argued that women who kill their abusive partners suffer a terrible injustice when compared to the law’s response to men who kill their partners. Whereas Sara and Kiranjit (and many other women) were convicted of murder (at first instance), their male coun-

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* Law Lecturer, Liverpool John Moores University. I would like to thank Dr Jamie Murray and Dr Lorie Charlesworth for their help and support in the writing of this article.

1 R v Thornton [1992] 1 All ER 306; R v Thornton (No.2) [1996] 2 Cr App R 108
2 R v Ahluwalia [1993] 96 Cr App R 133
3 On retrial both Sara and Kiranjit were conviction for manslaughter on the grounds of diminished responsibility.
4 The Law Commission Partial Defences to Murder (Law Com No. 290) [HMSO; London; 2004]
5 See for example the cases discussed on the Justice for Women Website: www.jfw.org.uk
terparts have overwhelmingly been convicted of manslaughter on the grounds of provocation. The aim of this article is to critically analyse how the law, and the arguments forwarded by commentators, has progressed over the decade since the trials of Sara and Kiranjit and to suggest how the debate may be developed further. In particular this article will assess the contribution which can be made by adopting a queer theory perspective in relation to the law’s treatment of women who kill their abusive partners.

**Murder**

Murder is a Common Law offence, and was defined by Coke as the "unlawful killing of any reasonable creature in rerum natural under the [Queen’s] peace, with malice aforethought." The term malice aforethought signifies the necessary mental element, which has been defined to require either an intention to kill or an intention to cause grievous bodily harm. The crime of murder is considered, from a legal perspective, to be the most heinous crime, and carries a mandatory life sentence. In contrast to murder, a conviction for the less serious offence of manslaughter recognises that the killing was committed either without the requisite mens rea or in certain mitigating circumstances. Moreover, with a manslaughter conviction, a judge has discretion in relation to the sentence passed. Therefore a person found guilty of manslaughter could be sentenced to anything from a conditional discharge to a life sentence, enabling the judge to take into account the specifics of each individual case.

Generally women kill less than men. During 1999/2000 211 men and only 21 women were convicted of homicide. Statistics also illustrate that significantly more women are killed by a current or former partner (92), as compared to men (27). Research also indicates that men who kill are more likely to receive a conviction for murder than a woman. Overall, for 1999/2000 54% of men received a murder conviction as opposed to 38% of women. However, research conducted in the 1990s indicated that, in relation to domestic homicide, women

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6 Coke, 3 Inst. 47  
7 R v Moloney [1985] AC 905  
8 Homicide includes murder, voluntary and involuntary manslaughter and infanticide.  
9 All statistics are taken from the Criminal Statistics for England and Wales – Statistics relating to Crime and Criminal Proceedings for the Year 1999 [The Stationery Office; December 2000] Chapter 4