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Homicide in England and Wales

Sally Ramage

Introduction

Murder rates according to the United Nations, shows that England and Wales have favourably low murder rates. A decade ago, England and Wales featured as the 13th best country with low murder rates.¹ Currently, the UK Home Office website states that England and Wales is the eighth lowest murder rate country.² One reason for the alleged improvement may be due to more domestic violence prosecutions in the courts. Although in many cases of domestic violence, the complainant withdraws their complaint, today the case can continue if the Crown Prosecution Service ('CPS') decides that it should. This article concentrates on the least murderous countries in the world, ie, with the lowest murder rates. It will not compare England and Wales with high murder rate countries such as South Africa which still has the highest murder rate in the world or Venezuela which has a shameful 32 murders per 100,000 of the population.

United Nations Data: Homicide

Homicides (decade ago) Country	Per 100,000 of Population	Status
Luxembourg	0.4	1 st
Japan	0.5	2 nd
Singapore	0.5	2 nd
Morocco	0.5	2 nd
Hong Kong	0.6	3 rd
Austria	0.7	4 th
Egypt	0.7	4 th

¹ See table above, extracted by the writer from the United Nations data.

² In 2004 the UK passed the Domestic Violence, Crime and Victims Act. In 2006 the UK Safeguarding Vulnerable Groups Act 2006 (SVGA) in complying with the European Convention of Children's Rights 1996, Article 4 which obliges state parties to take all appropriate legislative and other measures for the implementation of the rights recognized in the Convention. The UK Crime and Security Act 2010 passed further measures re the SVGA.

Fiji	0.7	4 th
United Arab Emirates	0.7	4 th
Qatar	0.8	5 th
Norway	0.8	5 th
Micronesia	0.9	6 th
Palau	0.9	6 th
Bahrain	1.0	7 th
Iceland	1.0	7 th
Germany	1.0	7 th
Greece	1.0	7 th
Tonga	1.0	7 th
Vanuatu	1.0	7 th
Ireland	1.1	8 th
Bermuda	1.1	8 th
Denmark	1.1	8 th
Samoa	1.1	8 th
Syria	1.2	9 th
Italy	1.2	9 th
Jordan	1.2	9 th
Spain	1.2	9 th
Sweden	1.2	9 th
Australia	1.3	10 th
Algeria	1.4	11 th
Andorra	1.4	11 th
Brunei	1.4	11 th

Kuwait	1.4	11 th
Netherlands	1.4	11 th
Portugal	1.4	11 th
Serbia	1.4	11 th
New Zealand	1.5	12 th
Canada	1.5	12 th
Slovenia	1.5	12 th
Solomon Islands	1.5	12 th
England & Wales	1.6	13 th
France	1.6	13 th
Malta	1.7	14 th
Tunisia	1.7	14 th
Malta	1.7	14 th
Poland	1.7	14 th
Bosnia Herzegovina	1.8	15 th
Cyprus	1.8	15 th
Marshall Islands	1.8	15 th

Unsatisfactory 13th place in the world

England and Wales, a sophisticated developed country, has nothing to be proud of in its position in the table above and research has established that one main factor that has caused this British position is murder due to domestic violence. In 2004, the UK passed the Domestic Violence Act ('DVCVA'). Section 5 of the DVCVA created the criminal offence of causing or allowing the death of a child or vulnerable adult. This offence is committed where a child or vulnerable adult dies as a result of an unlawful act of a person who was a member of the same household as the deceased and who

had frequent contact with him or her. The defendant must either have caused the death, or should have been aware that the deceased was at significant risk of serious harm and failed to take reasonable steps to prevent that harm. This offence was introduced to resolve the problem that arose when it cannot be shown which member of the household caused the death and all members of the household will be liable for such a death.³ It was the National Society for the Protection of Cruelty to Children ('NSPCC') which actively and fiercely lobbied for this law.⁴ The section 5 offence carries a maximum sentence, on indictment and conviction, of 14 years imprisonment, an unlimited fine, or both.⁵ Since 2004, the UK government passed the 2006 Safeguarding Vulnerable Groups Act ('SVGA'). The SVGA complies partly, and somewhat tardily, with the European Convention on Children's Rights 1996, article 4 of which obliges state parties to take all appropriate legislative and other measures for the implementation of the rights recognized in the Convention. Then in 2010, the UK Crime and Security Act adjusted the SVGA and introduced statutorily, court procedures, orders and injunctions aimed at keeping a violent partner out of the family home.

UK Family Court: Practice Directions in domestic violence prosecutions

In the UK, domestic violence is being taken seriously in recent years and although in many cases of domestic violence, the complainant withdraws their complaint, the prosecution can now continue if the Crown Prosecution Service ('CPS') decides that it should. Most cases of domestic violence appear only in the Magistrates Courts where 'the bench' of three magistrates decide the case, giving reasons for those decisions, albeit based on a text-book answer. If the case is strongly defended and goes to the Crown Court, it is decided by a jury, and no reasons are given for their decision. However, in cases involving children where there had been allegations of domestic violence, a fact-finding hearing has to be conducted. That exercise cannot be curtailed. The Family Court has issued practice directions on the matter. The judge must conduct a fact-finding hearing and it was only if, at the conclusion of that hearing, he found as a fact that the children were in no way at risk or that for some other reason contact should take place that he could make an order for contact. He had to hear all the evidence. There was no equivalent of 'no case to answer' in cases involving children and he could not simply say that he had heard one side and not thought much of it. While the judge was the ultimate arbiter of fact, the hearing had to be fair, and the judge had to give the parties the opportunity to make submissions. Moreover, the judge must not prejudge the issue where an officer from the public body, the 'Children and Family Court Advisory Support Service' ('CAFCASS') is involved and given provisional views pending the outcome of the fact-finding hearing. The judge must hear all the evidence. In cases involving children everything

³ The term '*significant risk*' in this offence, has been defined to be one of '*serious physical harm*' but sadly, the term '*serious physical harm*' is not defined and so what must be shown is that the defendant failed to take such steps as could reasonably be expected to be taken to protect the victim from the risk.

⁴ The NSPCC's 2003 report (titled *which of you did it?*) revealed that each week, two or three infants in the United Kingdom suffer serious injury or death when in the care of adults who ought to have been protecting them. This report followed the NSPCC 1999 report which alleged that its findings were that around one million children in the UK were impoverished, injured and abused.

⁵ This section 5 DVCVA offence was used to prosecute the case of *R v Uzma Khan, Nazia Naureen and Majid Hussain* [2009] EWCA Crim 2. Sabia Rani was murdered by her husband, and the court found that her husband and his failed to protect her in the face of repeated violence.

has to be done in court and had to be on the record. There must not be private discussions between the judge and counsel.⁶

Domestic violence murder

Murder and manslaughter remain the principal offences under the UK's Offences against the Person Act 1861. Domestic violence murder and manslaughter has been shown to have a strong link with mental illness. This is supported by research findings.⁷ Domestic violence, often leading to murder, occurs in many cases because people with psychiatric disorders who are not being treated, or, if their mental illness has been clinically established, they are not receiving adequate treatment or refuse treatment. The stigma encountered by persons with psychiatric disorders has been proven to lower their self-esteem and to contribute to disrupted family relationships, adversely affecting their ability to function normally in society, to obtain adequate accommodation, jobs, etc- a catch 22 situation- erupting in domestic violence and often murder.⁸

Domestic violence leading to the murder of children

The world's media has reported on the distressing cases of child abuse and murder in England and Wales, many of which cases are domestic violence offences resulting in deaths and serious injuries, the most recent about 'Baby Peter' who died of horrendous injuries. On November 11, 2008, Baby Peter's mother, her boyfriend and a lodger were convicted at London's Old Bailey Court of causing or allowing his death.⁹ The facts in Baby Peter's case are that a total of twenty two injuries were inflicted on the baby who died. As to the background of those adults prosecuted, both Baby Peter's mother and her boyfriend were children in the care system and the boyfriend was of a low IQ and known to the authorities for animal cruelty. The baby's maternal grandmother was also known to the authorities for drugs and alcohol abuse. A similar case to Baby Peter's was the case of *R v Abid Ikram and Sumaira Parveen*¹⁰ in which the two defendants had been charged with counts of murder and causing or allowing the death of a 16-month-old child contrary to the Domestic Violence, Crime and Victims Act 2004 s.5. The facts of this case state that a post mortem examination found the toddler to have numerous bruises and abrasions as well as a broken leg and a laceration behind the knee. Baby Talha had been placed in foster care after his father left him alone at home in March 2006, but was allowed to return to Ikram in June of that year. Within two months the baby was dead.

Further Reading

Simon Rogers, 'Global homicide', *Guardian*, 13 October 2009.

⁶ See also the case of *Re Z: children* [2009] EWCA Civ which represents good practice and precedent.

⁷ See the research of Wahl, 1999.

⁸ See the research findings of Yesavage, 1982; Taylor, 1985; Smith, 1989; Bartels et al., 1991; Link et al., 1992; Modestin and Ammann, 1996; Kasper et al., 1997; Swanson et al., 1997; Swartz et al., 1998; Taylor et al., 1998; Arango et al., 1999.

⁹ The murderers were charged under section 5 of the Domestic Violence, Crime and Victims Act ('DVCVA') 2004. Baby Peter's mother installed her new boyfriend into the home. The boyfriend began to abuse Baby Peter when he was barely nine months old and continued to abuse the baby for nine months until the child finally died in his bloodstained cot.

¹⁰ [2008] EWCA Crim 586.

The inadequacies of the European Arrest Warrant: its application to Assange

Sally Ramage

Julian Assange criticised the European legal system and claimed he was being "dragged to an uncertain destiny" last night after a judge ruled that he must return to Sweden to face allegations of rape and sexual assault. Assange is being sought for questioning in Sweden on rape and coercion allegations stemming from sexual relations he had with two women in that country last August. One woman has claimed that Assange pinned her down to have sex with her and intentionally tore a condom he wore. The second woman claims that he had sex with her while she was initially asleep, failing to wear a condom despite repeated requests for him to do so. Assange has disputed their claims.

The WikiLeaks founder is accused of sexually assaulting one woman and raping another during a week-long visit to Stockholm in August. A European arrest warrant was issued in December and Mr Assange has fought extradition since handing himself in to the Metropolitan Police in December.

But at Belmarsh Magistrates' Court, the senior district judge Howard Riddle, who presided over the 39-year-old Australian's three-day extradition hearing earlier this month, ruled that he must return to Sweden to face prosecutors there. His lawyers argued that Assange would not get a fair trial in Sweden, since rape trials in that country are sometimes held behind closed doors. They have also argued that Assange could somehow find himself extradited to the United States, where, they theorize, he could face execution for leaking secrets.

Mr Assange's legal team announced that they would be appealing. Outside court, Mr Assange once again spoke out against what he and his supporters see as a baseless allegation. He attacked the European arrest warrant system and described the procedure which could see him extradited as 'nonsense'.

He said:

'It cannot be the case that simply filling out two pages with someone's name and a suspicion, not a charge, can lead to their extradition without any consideration of the charges against them. To take someone from the UK, from their supporters, from their relatives and thrust them into a foreign land where they do not speak the language... is a very grave trend and such matters deserve more than a two-page form filled out by a member of the bureaucracy. Because European nations co-operate with each other and are trying to form a better union does not mean that they are all the same. It does not mean that police, prosecutors or bureaucrats can be or could be the coercive power to drag people off to an uncertain destiny.'

His lawyer, Mark Stephens, described the judgment as an example of 'tick box justice'. Throughout his hearing earlier this month, Mr Assange's legal team had used

various arguments in an attempt to justify why he should not be sent to Sweden. They claimed that the prosecutor there was unauthorised to sign the arrest warrant, that he would not receive a fair trial and that the Swedish authorities could have interviewed him before he left the country.

The final point was undermined by Mr Assange's Swedish lawyer, who admitted that the prosecutor, Marianne Ny, had tried on several occasions to arrange an interview but had been unable to contact the WikiLeaks founder. Bjorn Hurtig left this crucial detail out of his original witness statement. Justice Riddle noted that Mr Hurtig was an unreliable witness and he rejected the defence's claims. He said he was satisfied that Mr Assange was wanted for prosecution, not merely questioning as the defence claimed.

Mr Assange has lodged an appeal within the seven days in which to lodge such an appeal at the High Court and even if he loses this appeal, he can appeal to the Supreme Court on a point of law and later to the European Court of Human Rights in Brussels.

Human trafficking for prostitution

Sally Ramage

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol) is an international guideline established by the United Nations Convention against Transnational Organized Crime. The Trafficking Protocol is one of three Protocols adopted to supplement the Convention. It was estimated then, that some two million women and children were held in sexual bondage. The year 2003 saw the first conference about the actual traffickers- look at the actors that create the demand for sex trafficking victims. This Chicago conference was entitled 'Demand dynamics: the forces of demand in global sex trafficking'. Pornography not only feeds the demand of its consumers, it stimulates further and greater demand. Feminists attack pornography as exploitative and oppressive of women, treating them as objects of male control and Andrea Dworkin and Catharine MacKinnon attacked pornography as a form of violence against women which violates their civil rights. There is another section of society which argues that the traditional liberal ideal of free expression protects pornography from legal prohibition as a prophylactic against efforts to control expression that might in the future threaten more valuable forms of speech. Others argue that pornography was not in fact harmful, but liberating, freeing women to embrace and express their sexuality.

Pornography

What is pornography? It has been defined by Diana Russell as material that combines sex and/or the exposure of genitals with abuse or degradation in a manner that appears to endorse, condone, or encourage such behaviour. However, this definition rejects the obscenity standard which focuses upon the material's appeal to prurience – the shameful or morbid interest in nudity, sex or excretion, though it keeps the communicative function of the material. Russell's operative concern is the harmful

qualities of the material as it affects the viewer and she distinguishes pornography and arts, addressing the sensual and the sexual, which she labels as 'Erotica' which refers to sexually suggestive or arousing material that is free of sexism, racism, and homophobia, and respectful of all human beings and animals portrayed. This definition focuses exclusively upon harm to the viewer. However, whilst one can imagine written or audio materials that would qualify as erotica, in the current cultural environment it is possible to create sexually explicit visual, and audio-visual works that will not fall prey to an exploitative tendency in the viewer. In this definition, harm may not be in the intended message but in the nature of its use and abuse.

The United Nations gave us a definition of pornography. The Declaration provides a definition of gender-based abuse:

'Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.

Article 2 of the Declaration identifies three areas in which violence commonly takes place:

'Physical, sexual and psychological violence that occurs in the family, including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation; physical, sexual and psychological violence that occurs within the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution; physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.'

Prostitution, pornography and sex trafficking

Effective strategies to eliminate trafficking necessarily involve addressing the multiple factors that contribute to trafficking in women. At its core, trafficking is a result of women's unequal economic status. Of the world's poor, large portions are women. The number of women living in poverty has also increased disproportionately to the number of men. However, the problem of international sex trafficking cannot be isolated to one region of the world that can be readily policed or monitored. It involves issues relating to recruitment and transport in any one region in the world, and also, the global demand which drives the industry. Women's lower economic status is worse in countries undergoing economic transition. All of the countries in Central and Eastern Europe and the Commonwealth of Independent States are experiencing dramatic economic and political transitions as they have moved from centralized economies to free market systems. While there is tremendous variation in how individual countries in this region have experienced the transition, women have been negatively impacted by high unemployment rates and the loss of social programs that existed in the past. For many women in post-Soviet countries, the transition has meant they are less economically independent than they were previously.

Pornography is a major industry, generating billions of dollars for many multinational corporations. The economic system supports this exploitation. Moreover, research indicates that pornography harms both the user and the persons used in its creation. It is not clear whether or not this is causative of sexual violence

or merely symptomatic of one predisposed to violence. However, for this group, exposure to pornography cannot be defined as harmless, and research which fails to attend to the vulnerabilities of the male audience merely masks these harms caused by pornography among a larger group who may not manifest in measurable ways. Of course, there is an interconnection between pornography and prostitution/sex trafficking and the particular harms caused to those involved: women working as prostitutes and the male prostitute users. In particular, among the more interesting findings of this research, Farley points out the strong influence of pornography on prostitution: it serves as a marketing tool for those who promote prostitution; it provides an additional method of exploitation of the women involved in prostitution; and it normalises prostitution and other sexual behaviour, defining acceptable and expected sexual behaviour. Gay male pornography challenges the argument that efforts to restrict pornography inevitably grow out of patriarchal, heterosexual bias or bigotry. Few defend the explicit sexual use and abuse of children in films or pictures. It can be argued that similar objections should arise in connection with a major segment within the larger realm of pornography (including such mainstream forms as Hustler and Playboy) which promotes pseudo-child pornography. There is a broad range of abusive pseudo-child pornography; she articulates a general theoretical framework of how this type of pornography contributes to the actual exploitation and sexual abuse of children. Pseudo-child porn not only implicitly endorses child abuse; it encourages the viewer to eroticise children.

Racism, Sex Trafficking, Prostitution

No woman completely escapes the threat of sex trafficking, pornography or prostitution. One can identify a certain hierarchy of risk and exploitation. It starts with socio-economic class, with sex trafficking and prostitution drawing upon women and children of poorer means or circumstances being exploited to serve the interests of those possessing relatively more affluence, with the poorest being most at risk. Race or ethnicity heightens this risk. To the extent that pornography is accepted as liberating, that effect potentially spills over into the broader culture and as for all pornography, radicalised pornography objectifies its subjects. It is difficult to argue against pornography in present day's highly sexualised and individual rights culture. Sexualised expression is viewed as both liberating and as a right of the individual to consume as he or she wishes. In particular, today's youth live in a sexualised milieu with pop culture supporting the values of pornography.

Addressing the demand for sex trafficking

Challenging the prevalence and availability of pornography represents one avenue through which to address the problems of demand for sex trafficking. The use of pornography as a marketing tool for other forms of sexual exploitation may be subject to criminal sanction, yet there is a huge amount of dissemination through the internet. For example, Canada has a progressive reputation with respect to women's rights, including strong abortion rights, health care services, maternity leaves, job protection, and same-sex marriage, yet with regard to pornography and prostitution Canada has largely adopted attitudes similar to those in the United States, concerned that anti-pornography efforts may unfairly target the homosexual community. It has a strong movement to legalise prostitution as a form of voluntary sex. In determining the type of actions appropriate to remedy sex trafficking one has to overcome the range of diverse and antagonistic ideological perspectives within the general feminist

movement. As to those opposed to pornography and those supporting pornography, there is the concept of voluntary sex work.

The UK position

In 2001 it became a crime in English law for prostitutes to advertise their services even though prostitution itself is not criminal in the UK. Anyone who violates the advertising prohibition may be imprisoned for up to six months. Despite the prohibitions against advertising, prostitution as a business continues to thrive. If the point of advertising bans is thus to reduce this practice, then they have been a colossal failure. A business card that tells a potential John in London how to reach a sex worker is, of course, not a source of important health and safety information.

It can be said that a prostitute's interest in communicating about what she does and who she is, is a valid action. It acknowledges the right of the prostitute to a voice, the same right that the rest of us have. Once she can communicate freely about her job, the sex worker has an ability that she can use to protect herself from harm.

Conversely, to shut her up is to convey the message that her life and activities are unacceptable to the rest of us, her day-to-day existence a matter of shame and disgrace for the populace.

As a result of the advertising prohibition, the prostitute is taken out of the marketplace and she is vulnerable to abuse suffered at the hands of pimps and Johns.

To this effect, a public consultation was launched by the Honourable David Blunkett in July 2004, then Home Secretary. The aim was to look at ideas such as legalised red light areas or 'managed zones' to reduce the problems of streetwalking. However, nothing came of it because no action was taken at that time by the government. Then in 2006, the Home Office announced its prostitution strategy which included prevention and early intervention measures to stop individuals from becoming involved in prostitution. In 2007, the **government revealed that** up to 18,000 females, including girls as young as 14, were working in brothels across Britain after being smuggled into the country to meet the booming demand for prostitutes. In May 2008, posters produced by the Home Office were displayed in clubs and pubs warning men against paying for sex in brothels with exploited or trafficked women. Paying for sex with a woman 'controlled for another person's gain' is now a statutory offence in the UK as per the Crime and Security Act 2010.

Further Reading

Barry, K. (1995) *The Prostitution of Sexuality*. New York: NYU Press.

Minnesota Advocates of Human Rights, *Factors that Contribute to the Trafficking of Women*,

<http://www1.umn.edu/humanrts/svaw/trafficking/explore/3factors.htm>.

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