



THE AUSTRALIAN NATIONAL UNIVERSITY

International Conference on Homicide
Holiday Inn, Surfers Paradise QLD, 3-5 December 2008

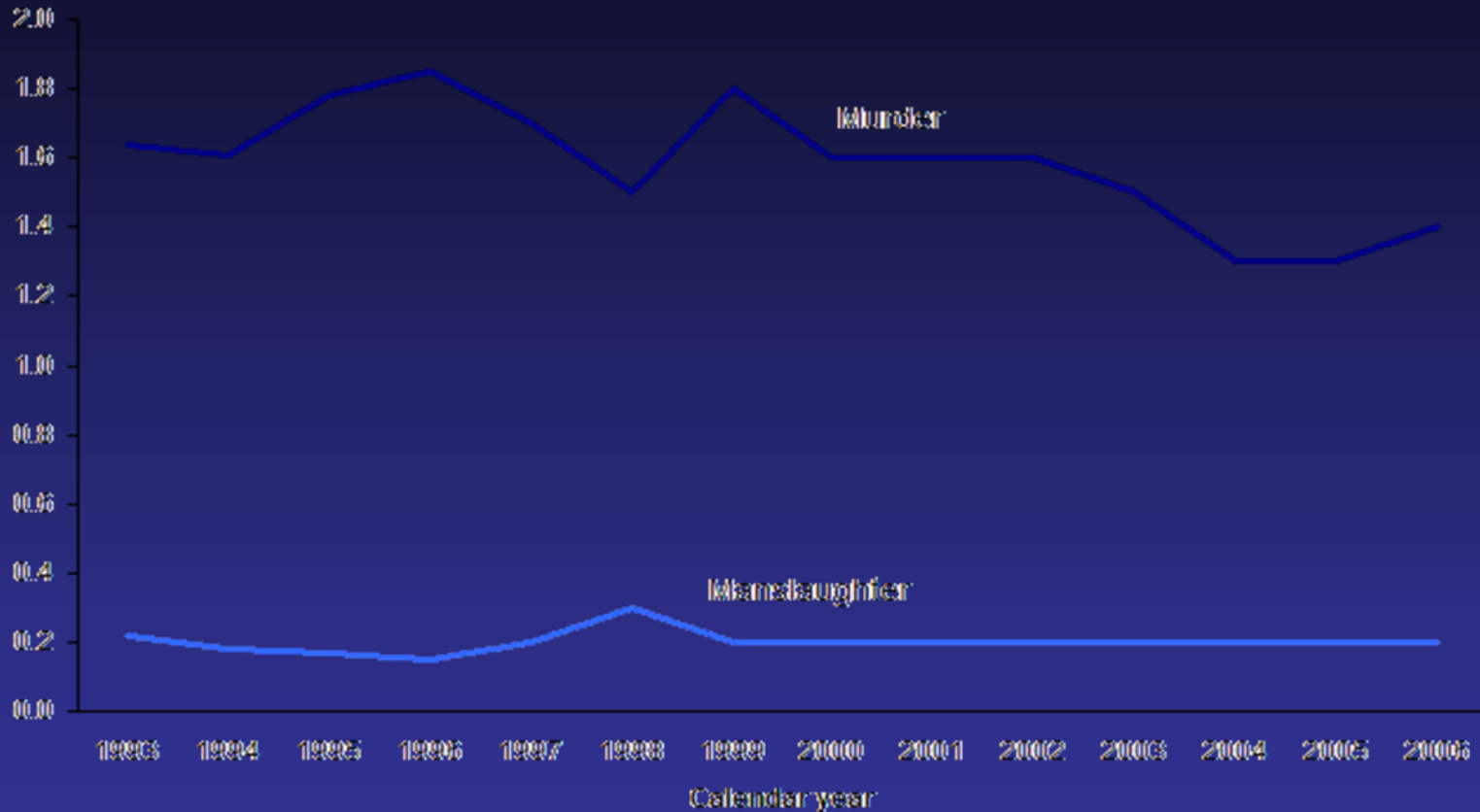
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KILLING BY POSTCODE?

A CRITICAL COMMENTARY ON THE
REMARKABLE VARIATION OF HOMICIDE
OFFENCES ACROSS AUSTRALIAN
JURISDICTIONS

AUSTRALIAN HOMICIDE RATES



- Murder and manslaughter, rate per 100,000 persons, 1993-2006
- Source: <http://www.aic.gov.au/research/homicide/stats/>

HOMICIDE COURT OUTCOMES

- For crime generally approx. 90% charged persons plead guilty
- For homicide the rate is closer to 50%, with far fewer pleading guilty to murder though a substantial number charged with murder plead guilty to manslaughter and such pleas may be accepted by the prosecution
- Where there is a not guilty plea, not all cases proceed to trial e.g. may not get past committal stage or prosecution may discontinue
- Ability to prove murder / manslaughter in contested proceedings is partly affected by how the offence is legislatively framed
- Sentences imposed are partly affected by the range / options available

HOMICIDE BY JURISDICTION



- **SOME DIFFERENCES IN HOMICIDE OFFENCES**
- Murder is statutorily defined in most states but manslaughter is mostly defined by reference to common law
- Intent to kill or to inflict serious injury / GBH suffices for murder in most states but not in ACT or Cth law
- Constructive or 'felony' murder exists in some form in most of the States but not in ACT or Cth law
- Provocation is a defence in most states but no longer in Tasmania and Victoria
- Murder is punishable by life imprisonment but manslaughter varies from 20 years to life

HOMICIDE BY JURISDICTION



- **QUEENSLAND**
 - Approximately 50 - 60 murders per year (ABS)
 - Approximately 10 manslaughters per year (ABS)
 - Both murder and manslaughter punishable by life imprisonment
 - Defences include provocation (partial), diminished responsibility (partial), insanity and self-defence

HOMICIDE BY JURISDICTION



- QUEENSLAND – MURDER OFFENCE
- *s302 Criminal Code (Qld)*

- Actus reus
 - Unlawfully killing another

- Mens rea
 - Intention to cause death or GBH to that person or another
 - Done in prosecution of unlawful purpose likely to endanger life
 - Done with intent to inflict GBH for the commission of crime
 - Done by administering stupefying drug or suffocating

HOMICIDE BY JURISDICTION



- QUEENSLAND – MANSLAUGHTER OFFENCE
- s303 *Criminal Code* (Qld)

- Actus reus
 - Unlawfully killing another

- Mens rea
 - Unlawful killing not constituting murder
 - e.g. causing death by criminal negligence or killing as a result of unlawful act

HOMICIDE BY JURISDICTION



■ NEW SOUTH WALES

- Approximately 80 - 100 murders per year (ABS)
- Approximately 10 - 15 manslaughters per year (ABS)
- Murder punishable by life imprisonment
- Manslaughter punishable by 25 years
- Defences include provocation (partial), diminished responsibility (partial), insanity and self-defence

HOMICIDE BY JURISDICTION



- NEW SOUTH WALES – MURDER OFFENCE
- *s18 Crimes Act 1900 (NSW)*

- Actus reus
 - Act or omission causing death charged

- Mens rea
 - Reckless indifference to human life
 - Intent to kill
 - Intent to inflict GBH
 - Constructive murder (e.g. causing death while committing 25 year offence)

HOMICIDE BY JURISDICTION



- NEW SOUTH WALES – MANSLAUGHTER OFFENCE
- *s18 Crimes Act 1900 (NSW)*

- Actus reus
 - Act or omission causing death charged

- Mens rea
 - Any other punishable homicide
 - e.g. causing death by criminal negligence or killing as a result of unlawful act

HOMICIDE BY JURISDICTION



- **AUSTRALIAN CAPITAL TERRITORY**
 - Approximately 0 - 3 murders per year (ABS)
 - Approximately 0 - 3 manslaughters per year (ABS)
 - 10 years since last murder conviction not overturned on appeal – disproportionate ratio of manslaughters
 - Murder punishable by life imprisonment
 - Manslaughter punishable by 20 years (26 years if aggravated offence against pregnant woman)
 - Industrial manslaughter punishable by 20 years
 - Defences include provocation (partial), diminished responsibility (partial), insanity and self-defence

HOMICIDE BY JURISDICTION



- AUSTRALIAN CAPITAL TERRITORY – MURDER OFFENCE
- *s12 Crimes Act 1900 (ACT)*

- Actus reus
 - Causing the death of a person

- Mens rea
 - Intention to cause death
 - Reckless indifference to probability of causing death

HOMICIDE BY JURISDICTION



- AUSTRALIAN CAPITAL TERRITORY – MANSLAUGHTER OFFENCE
- *s15 Crimes Act 1900 (ACT)*

- Actus reus
 - Causing the death of a person

- Mens rea
 - Unlawful homicide that is not murder
 - e.g. causing death by criminal negligence or killing as a result of unlawful act

ILLUSTRATIVE CASES

- **CONWAY (1997 / 1998) AND (2002 / 2005 / 2008) HILLIER CASES**
 - In 1997 AFP officer and his girlfriend hired two others to kill his estranged wife with a heroin injection after family court proceedings
 - In the ACT Supreme Court all four were convicted of murder and sentenced to lengthy prison terms including 24 years for Conway
 - This was a domestic homicide and reportedly the last successful murder conviction in the ACT not overturned on appeal
 - Subsequent Hillier case also involving domestic homicide after custody battle resulted in a murder conviction but this was overturned on appeal in ACT Court of Appeal though that was then reversed in High Court (2007) and re-heard, and a new trial awaits
- *Conway v The Queen* [2002] 209 CLR 203; *Hillier v The Queen* [2005] ACTCA 48; *R v Hillier* [2007] HCA 13; *Hillier v The Queen* [2008] ACTCA 3

ILLUSTRATIVE CASES

- **ACT LAWS STUDENTS' CASE (1997 / 1999)**
 - 25 year-old ANU law student, assisted by another ANU law student, used Rohypnol and heroin to fatally inject her boyfriend as part of a plan
 - Principal offender was charged with murder and co-accused was charged with conspiracy to murder / manslaughter
 - Principal was convicted of manslaughter on basis of diminished responsibility and sentenced to 10 years with four years non-parole, later completed Masters in Criminology at Sydney University
 - Co-accused was acquitted and later admitted to ACT Supreme Court
 - *R v Singh* [1999] ACTSC 66 (24 June 1999); *R v Rao* [1999] ACTSC 132
 - H Garner, *Joe Cinque's Consolation* (2004)

ILLUSTRATIVE CASES

- **ACT LATHAM POST OFFICE KILLING (2003 / 2004)**
 - 21 year-old man used knife to hold up post office in attempt to obtain money to buy heroin
 - 72 year-old male customer intervened and was fatally stabbed
 - Store owner was also stabbed but survived
 - Offender was charged with murder but pleaded guilty to manslaughter and inflicting GBH
 - Sentenced to 12 years with 7 years non-parole
- Had this occurred in NSW or elsewhere the facts would arguably fall within the definition of constructive murder
- G Urbas "Getting away with manslaughter in the ACT" (*Canberra Times*)

ILLUSTRATIVE CASES

- **ACT CHAPMAN HOME MURDER (2005 / 2008)**
 - 23 year-old man fatally stabbed his mother in her home with a kitchen knife inflicting 57 wounds
 - Accused suffered from mental condition but not sufficient to raise a defence to murder if the evidence supported the crime
 - Charged with murder and elected trial by judge alone
 - Higgins CJ found no intent to kill but that he had been “extraordinarily negligent” in not realising the knife was being lethally deployed
 - Sentenced for manslaughter to 5 years with 22 months to serve
- Had this occurred in NSW or elsewhere the facts would arguably fall within the definition of murder (intent to inflict serious harm / GBH)
- *R v Porritt* [2008] ACTSC 33 ; [2008] ACTSC 71

CONCLUSION

- Does this variation in homicide laws matter?
- Yes, it arguably affects results and also undermines:-
 - transparency of the legal system
 - confidence in the courts
 - consistency of punishment
 - clarity of denunciation
 - proper recognition of the harm done to victims