

The Provocation Trigger of Adultery

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Excuse for the husband killing his wife's lover in the form of the partial defence of provocation was set following the *Mawgridge's* case in 1707. This meant the husband could be found guilty of manslaughter rather than murder. In 1810, another precedent was set, where the adulterous wife's killing could follow a sentence of manslaughter rather than murder. This entry investigates the shaping of adultery as a defence to murder under the partial defence of provocation.

Keywords: homicide ; defence ; adultery ; provocation ; criminal law

1. Introduction

The history of the provocation defence, a partial defence to murder, has its roots in the 1671 Maddy's case ^[1], involving a husband's reaction to his wife's adultery. In this landmark case, John Maddy, without prior intent to kill, fatally confronted his wife's lover. This trial paved the way for a legal precedent, allowing reduced culpability in murder cases provoked by adultery, which was further solidified in the 1706 Mawgridge's case ^[2].

The legal landscape saw a significant shift in 1810 with the Richard Griffin case. A husband was initially indicted for murder for killing his wife; however, he was later sentenced for manslaughter. For the first time, the murder of an unfaithful wife attracted a reduction in culpability.

Sir Matthew Hale's writings classified homicide offences, providing insights into the complexity of the provocation defence. The historical context reveals the societal condemnation of adultery and the shift from ecclesiastical to secular jurisdiction in dealing with such cases.

The history of the provocation defence intertwines with evolving societal norms, gender dynamics, and the interplay of morality and the law, offering a fascinating glimpse into how the legal system adapted to changing attitudes over time.

2. The History of the Partial Defence to Murder: Provocation

The phrase commonly used in murder cases involving adultery, "because there is no greater provocation," was initially used in the earliest recorded criminal case of a murder resulting from the in-flagrante discovery of a wife's adultery. In the 1671 trial of John Maddy, it was noted that Mr Maddy did not harbour prior intent to kill his wife's lover. Consequently, the jury could decide whether Maddy should be convicted of manslaughter instead of murder, and they chose the former. This decision, where the judge allowed this choice for the jury, set a precedent.

At first glance, the Maddy's case seems straightforward because the absence of intent meant that the killing could not be classified as murder. Sir Matthew Hale explained that this act would be considered manslaughter, not murder when it involved "the voluntary killing of another without any expressed or implied malice,"^[3] meaning it lacked deliberate intention to harm. Hale categorised homicide offences into voluntary, involuntary, and mixed. The second category involved killings as unfortunate consequences of specific actions, while the third category encompassed actions taken for self-preservation, leading to the accidental death of the threatening person and, as a result, reduced culpability. Purely voluntary homicide included both murder and manslaughter. Manslaughter was an unlawful act but lacked intent and required a sudden response to provocation, devoid of premeditation. Hale specifically categorised killing an adulterer as manslaughter when "A commits adultery with B, the wife of C, who comes up and takes them in the very act and, with a staff, kills the adulterer."^[4] However, Hale did not explain or reference other texts to justify the creation of a specific defence for adultery.

Determining a connection between the Maddy's case and Hale's writings is challenging. While Hale's text was published in 1736, it was likely written before his death in 1676 ^[5]. Even if it were written before the Maddy's case in 1671, it would have been a private document, and there's no evidence to suggest that the judges in the Maddy's case referred to Hale's

work. Similarly, there's no indication that Hale might have been influenced by the Maddy's case. It's possible that both Hale and the judges in the Maddy's case reflected a common societal perspective on adultery ^[6]. A few years earlier, adulterous women and their lovers could face the death penalty ^[7].

The law that briefly made adultery punishable by death in England was the 1650 Act for Suppressing the Detestable Sins of Incest, Adultery, and Fornication. Although it did not survive after the Restoration, it reflects the strong views during the Puritan period of the Republican Commonwealth ^[8]. The significance of this short-lived legislation lies in the criminalisation of adultery and the shift of jurisdiction from the Church to secular courts. This served as a deterrent against more liberal views advocated by groups like the Ranters ^[9].

Adultery remained a prominent social issue, with public discussions in publications like the Athenian Mercury during the 1690s. The discussions were often guided by Christian values, emphasising the sinfulness of adultery ^[10].

The public discussion on adultery also extended to Parliament. In 1699, a Bill was proposed for fining and imprisoning those engaged in adultery and fornication. Although the Bill did not pass, the proposal indicated a need to codify existing practices. During the 1660s, 1670s, and 1680s, prosecutions for adultery were carried out under the common law of misdemeanour ^[11].

Therefore, the reduction in culpability for killing a wife's lover in the Maddy's case in 1671 reflected prevailing social attitudes. The public, influenced by reformist movements during the 1690s, actively contributed to the condemnation of sexual vice.

The criminalisation of adultery never materialised into legislation. However, the Mawgridge's case in 1706 set the precedent in common law having adultery as an admissible provocative trigger to murder. This defence was only available for the husband killing the wife's lover; Blackstone further confirmed this principle in 1768 ^[12].

3. The Trigger of the Adulterous Wife

On September 8th, 1810, the London Morning Chronicle reported that the jury in Richard Griffin's trial, after nearly seven hours of deliberation, delivered a manslaughter verdict. This case is notable as it marks the first instance where a husband was indicted for murder but sentenced for manslaughter after killing his unfaithful wife ^[13].

Judge Baron Wood clarified that Griffin had no right to take the law into his own hands, even if he was upset by his wife's infidelity. Nevertheless, the judge instructed the jury to determine whether Griffin killed his wife for revenge or if it was an unfortunate outcome of an impulse during their argument. For slashing his wife's throat with a razor and causing her death, Griffin received a one-shilling fine and one year's imprisonment in Newgate ^[14].

At first glance, the outcome of the Griffin case appears unremarkable. The issue, however, lies in Griffin's statements to the prison's watchhouse-keeper and the constable at the scene. Griffin expressed contentment about the act. He also repeatedly mentioned that his wife's infidelity was the reason for his actions ^[15]. Given this context, Griffin's sentence was unusual. Reducing the husband's culpability for killing his adulterous wife was not the usual practice in English legal tradition. The defence of provocation, as seen in the Mawgridge's case, allowed for admissible provocative triggers, including adultery, only when the victim was the lover. The wife's killing in similar circumstances would typically attract a sentence of murder ^[16].

The reluctance to criminalise the killing of adulterous wives is evident in the writings of individuals like Eden, who regretted that such killings were not lawful. Some proposed Bills aimed to address this issue ^[17]. However, these efforts faced opposing views in Parliament. On the one hand, some Lords show concerns about not attributing fault to the male lover and the punishment falling solely on the adulteress. Some even argued that the punishment would not deter irrational and emotional women. On the other hand, those supporting criminalisation suggested that this will remind the wife of her marital and societal duty ^[18].

The law on partial defences to murder was revised with the Coroners and Justice Act 2009. This repealed the common law defence of provocation and replaced it with the defence of 'loss of control' ^[19]. The Act specifically eliminated the common law practice of the excuse of infidelity as a defence to the killing: 'the fact that a thing done or said constituted sexual infidelity is to be disregarded' ^[20]. However, during the report stage of the Bill, the House of Lords was not unanimous in its feelings on whether the upcoming legislation should expressly rule out 'sexual infidelity' as a defence. Those favouring this explicit exclusion contended that 'committing a homicide in response to sexual infidelity is, well into the twenty-first century, not a justifiable basis for' reducing one's guilt. Those against the exclusion felt that the courts would come across cases that may need some level of discretion in assessing culpability in these cases ^[21].

Despite the new law, the courts have found a way to exercise discretion. In 2012, Mr Clinton was charged with murder for killing his adulterous wife ^[22]. Following the Coroners and Justice exclusion of infidelity as a defence, the trial judge withdrew the loss of control defence from the jury. However, the Court of Appeal disagreed with this decision, holding that the exclusion created cannot and does not eradicate the fact that, on occasions, sexual infidelity and loss of control are linked, often with the one followed immediately by the other. The Court of Appeal's reasoning was that they take infidelity not as a qualifying trigger but as part of a context in which Mr Clinton was severely wronged.

4. Conclusion

The history of the provocation defence in murder cases is a fascinating journey through time, reflecting the interplay of legal, societal, and gender dynamics. It began with the 1671 Maddy's case, where a husband's reaction set a precedent for murder provoked by adultery. The killing of the wife's lover would attract a sentence of manslaughter and not murder. In 1810, the Richard Griffin case marked a pivotal moment, challenging traditional views as it involved a husband indicted for murder but, by the choosing of the jury, he was sentenced for manslaughter after killing his unfaithful wife.

The history of the provocation defence is a testament to the evolving attitudes towards morality and the law, offering insights into how the legal system adapted to changing societal norms over time. It underscores the deeply ingrained gender biases that shaped legal decisions and the broader discourse of masculinity in society. Ultimately, the history of the provocation defence serves as a reminder of the ever-evolving nature of the legal system and its continual adaptation to changing attitudes, values, and societal perspectives.

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