



The Judicial Implications of Necrophilia

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Author's contribution

The sole author designed, analyzed and interpreted and prepared the manuscript.

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ABSTRACT

In many countries there are no laws that address the necessary legalities about necrophilia. This legal incapacity hinders states to prosecute individuals who are caught having sex with dead bodies. As a result necrophilic sex acts are not illegal. The lethargy of the law in regard to some states or countries to protect the dead is deplored in this study. A mind-shift is eventually contrived in *State v Ryan*. It is only in response to this case that some states start to promulgate legislation *in re* the criminalization of necrophilic acts. People who perform necrophilia, not only adds to the sorrow of grieving family members, but also infringes other cultural norms. The research emphasizes therefore that it is long overdue that action be taken to criminalize necrophilia in general.

Keywords: Necrophilia; criminalize; sexual inadequacy; dead; corpse.

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1. INTRODUCTION

The scantiness of material on necrophilia can be the result of a stoppage of interest in research on the subject for a considerable of time. Bouregda asserts that after a stalemate of decades, necrophilia was heralded by Krafft-Ebbings' *Psychopathia sexualis* [1]¹ Necrophilic acts are performed by persons of both genders.

On the other hand, societies dictate that the dead to be treated with dignity and respect.

Necrophilia, as the sexual attraction to corpses, is also termed *thanatophilia* or *necrolagnia*. Necrophilia is also classified as a paraphilia. Necrophilia has its origin in the Greek words: νεκρός (nekros, "dead") and φιλία (philia, "love") (<http://en.wikipedia.org/wiki/Necrophilia> accessed on 2012/09/12). Necrophilia is the sexual contact with dead bodies, an erotic attraction to corpses [2]. Randolph Ochsman views necrophilia as sexual attraction to corpses. It is a psycho-sexual disorder [3].

Necrophilia connotes the offender's failure to engage with a consenting partner [4].

Justice Russell of the Court of Criminal Appeals of Tennessee describes necrophilia in the 1973 case of *Locke v State* 501 SW 2d 826 (1973) as "the most loathsome, degrading and vile sexual activity imaginable."

Necrophilia was practiced in Ancient Egypt as adumbrates in the work of Herodotus, the historian. He alleges that the entombment of the bodies of beautiful women have been delay before submission to embalmers [5]. This serves as a precaution and as deterrent to embalmers who want to violate corpses [6].

It was believed that an unmarried woman's soul would not find peace. A marriage ceremony was therefore solemnized among the *Kachin* of *Myanmar* for a virgin who has died. This implies intercourse with a dead body [2].

¹ A Case Report of Necrophilia – A Psychopathological View 280-284: According to Bouregda et al., Rosman and Resnick identify three subgroups within the necrophilia typology, namely necrophilic homicide, regular necrophilia and necrophilic fantasy. Necrophilic homicide is defined by the act of murder to obtain a corpse for sexual purposes. Regular necrophilia is found in those who use pre-existing dead bodies for sexual purposes and necrophilic fantasy is described as the act of fantasizing about sexual actions with dead bodies with the absence of any real sexual activity with corpses: 280

Necrophilia connotes to communication with the dead.

2. RESEARCH PURPOSE

The paper aims to serve as a harbinger for the cultivation of the unexploited concept or phenomenon termed as necrophilia. Although necrophilia was practised as late as in Ancient Egypt, there remained a dearth in research on the topic.

This study proposes to actuate researchers to engage on this novel concept within and on the Africa continent, thereby enriching the legal realm.

The findings in this research have larger import. The article has broader theoretical significance in the field of study.

The research mainly envisaged a theoretical study. An empirical study will not be possible during this time frame, due to the underdeveloped status necrophilia enjoy. The whole Africa continent and in particular Botswana has not comprehend this novel phenomenon either in the medical or the legal fraternity. The Penal Code (Chapter 08:01) of Botswana does not even mention necrophilia. The data therefore obtained is to muster attention from courts and society at large. The study is thus about the aggregation of literary resources. The article present a strong, current and relevant theoretical or conceptual framework within which the inquiry is located. The methodology presents an innovative and systematic attempt to address the research question and the writings are universal in nature.

This study heralded the notion that empirical research on necrophilia is very difficult to carry out due to several practical impediments. It is therefore evidentiary that the dearth of scientific papers on necrophilia is largely attributable to its extreme rarity. The research confirms that ordinary behavioural science research methods are not easy to be employed.

Necrophilia is not categorized under the same banner as sexual offences. Its identification for research purposes becomes thus even more difficult. The research stresses that officials engaging in the evaluation of sexual offenders be caveat to the fact that the latter's renditions are often incomplete and inaccurate. With their inaccurate testimonies, sexual offenders will

probably deny, minimize or rationalize their anti-social behaviour.

3. PRESENT-DAY INTERPRETATION OF NECROPHILIA

In the case of *Othie Lee West v State of Mississippi* 553 So. 2d 8 (1989), an altercation ensued between Othie Lee West and Mary Ann Brim, who was living in the same apartment complex. In the evening before the sun had set, a number of neighbourhood children were congregated in a playground near the apartment building. They witnessed an argument between West and Brim. As the children watched, West ran to his upstairs apartment using the exterior stairway. He soon returned with a revolver in his hand. As Brim looked out her door, West forced his way into the apartment, closing the door behind him. Gunfire and a scream followed moments later.

Officer Charlie Hedgepeth of the Jackson Police Department was patrolling nearby when he received a radio dispatch reporting that shots had been fired at the Lincoln Garden Apartments. He responded to the call and was assisted by Theodore Lee (husband of Brim) which arrived at the same time as Officer Hedgepeth.

Hedgepeth and Lee entered the apartment and found Brim's body lying on the living room floor, clothed only in a blouse, which had been pulled up revealing her breasts and single bullet wound to the chest. Her slacks and panties were found next to the body. Brim had apparently been sexually assaulted.

The criminal prosecution charged West with capital murder citing as the underlying felony that West had committed the crime of sexually battery against Brim. Two months later he was convicted of capital murder and sentenced to death. On December 4, 1985 the Court found reversible error in the proceedings, vacated West's conviction and sentence and remanded for a new trial (at pp, 682, 690).

The legal question in this case, is whether West intended to murder Brim in order to have sex with her dead body. To establish the felony underlying the capital murder charge, the prosecution relied on sexual battery statute which reads: "A person is guilty of sexual battery if he or she engages in sexual penetration with another person without his or her consent."

The *Mississippi Code Ann.*, section 97-3-95 (Supp. 1980) states that if a person is dead, she is no longer a "person" for purposes of the statute and there can be no sexual battery. It is at this junction that the Court heard of psychiatric testimony, which concerned a psychosexual disorder. The prosecution elicited testimony for an expert witness on the subject of necrophilia. Experts identify this psychosexual disorder in the inclination of individuals who seek or enjoy sex with persons that they believe to be or who are dead. On the question posed to the expert witness, why someone would want to perform necrophilia, the expert answer that it is about control. Sexual gratification is achieved by absolute control.

It transpired from the case that West suffered from necrophilia. It is evident from his depraved motivation for shooting Brim prior to sexually assaulted her. West's legal counsel argued that the crime of sexual battery could not be established and that West should stand acquitted of the charge of capital murder, subject to retrial only for murder. West's lawyer predicates that the evidence shows beyond doubt that Brim was dead prior to the sexual assault and accordingly, that she was not a "person" upon whom sexual battery could be committed.

Counsel for West argues that Brim was not alive at the time of the sexual assault. Without sexual assault, West's offense is not capital murder and he is thus ineligible for the death penalty.

4. CONNECTION BETWEEN NECROPHILIA AND SEXUAL MURDERS

Necrophilia espouses an offender and a docile partner. The offender wants in the words of Krafft-Ebing "the life-less condition of the victim]... a human form absolutely without will... capable of absolute subjugation, without the possibility of resistance" Stein et al. [7] exert on the strength of this citation that the offender of necrophilic acts needs a docile partner with whom he can have sex with. It can be derived that necrophilia does not necessarily denotes sexual homicide.

Necrophilia, in addition to sexual murders, connotes to the further demolition of the dead body of the victim. Necrophilic acts are an expansion of the victim's destruction or annihilation.

The offender may also seeks to offend the *mores* of society [7].

5. STATUS OF HUMAN BODY

Legislatures in several, states intended “person” in, for example, rape statutes to mean a living human being. This notion can be premised upon the basis that indignities inflicted upon a corpse are distinguishable from those inflicted upon the living.

As such necrophilia is labelled as abuse to a deceased person. It pertains to the notion that consent was not obtained. As such necrophilia evokes disrespect form both the victim and society at large.

Several groups or individuals have remonstrated for the legalization of necrophilia. According to their contort version, necrophiliacs are also entitled to enjoy themselves sexually as do living people [8].

A “corpse” is the body of a dead person [6]. A corpse lack resistance and is therefore the ideal target for sexual gratification [6]. Because of its lack to parry attacks such as necrophilia and its impaired *sui generis* condition in re the operation of the law, the dead body is rendered a quasi-subject before the law. The impugned *sui generis* status of a corpse enables however, a living person to act on the formers behalf and the corpse is even guaranteed *locus standi* in courts [6]. The living person or a body of persons who perpetuate the persona of a corpse are his/her next of kin or the state [6]. These deliberations or sentiments are concisely bundled in F. H. Steve’s work, *Mortuary Law* (2005) wherein the quasi-status of the dead body is spelled out: “It is not property in the commercial sense, but the law does provide a bundle of rights to the next of kin in relation to that body. The survivor is given the right to take the body for purposes of disposition, to allow body parts to be used within the confines of the law, to exclude others from possession of the body, and to dispose of the body. This bundle of rights renders the dead body the quasi-property of the surviving family member” [6].

As *quod pro quo* for the living acting in the stead of the corpse, the latter becomes property and responsibility of the former. Only the living is afford legal status under human laws [6]. A necrophilic act performed by the living on a dead body renders thus the former liable under state law for the imposition of necessary sanctions.

Other state law, as will be heralded now in this research does not accord punitive sanction necrophilia.

Some states, in order to foster protection for the dead body, resort to transform the dead body into property. This legal maneuvering affords the dead body quasi-subject status. It (the dead body) can be owned by someone [6].

Some attempts were contrived by certain states to elevate the status of the dead body. The approach was mustered by the question, whether necrophilia would be constituted as a crime against nature. If this question is answered in the affirmative, then it connotes that “mankind” also include dead bodies. It is due to this approach or analysis that some states attempted to equate a charge of necrophilia with the one of rape. But this isonomy would dismally fails as a distinction between a living body and the dead was enforced by the legislation of most states. The *Penal Code* defines rape is “as act of sexual intercourse accomplished with a person... against [the] person’s will” [2]. In adumbration of the notion of whether a dead body is a person, *People v Kelly* enlightened us or solved the problem [9] [3].

It is stated by the California Supreme Court that rape requires a live victim. In the absence of a living body, there can be no rape, nor attempted rape.

Some states accords that necrophilia (as can be seen in *Othie Lee West v State of Mississippi* (*supra*) can serves as an aggravating circumstances in murder.

6. PROFILE OF A NECROPHILE

A psychoanalytic explanations for necrophilia is furnished in *West v State* 553 So.2d 8(1989), Mississippi Supreme Court), where a psychiatrist has testified that a necrophiliac is an individual who seek or enjoy sex with persons that he or she believe to be or who are dead [4].

Necrophiliacs have poor self-esteem and are fearful of rejection by women. He therefore yearns to engage in sexual intercourse with a dead body (<http://www.deathreference.com/Me-Nu/Necrophilia.html> accessed on 2012/09/13).

² California Penal Code, Section 261(a)(2); 261(a)(6) and (7).

³ 1 Cal. 4th 495, 3 Cal. Rptr. 2d 677, 822 P.2d 385 (1992).

7. SEXUAL INADEQUACY

The primary motivation for murders is sexual gratification. A large number of sexual murderers who engaged in necrophilia seem to suffer from erectile dysfunction. Stein et al. [7] asserted how Bruno who suffered from erectile dysfunction could only engaged in sexual activity (partial erected penis) after he murdered his victim.

A following case study reflects the same issue as above. It is revealed in this case study that a high school student, who encounters an erection failure, strangled his victim after she commented: "Go home to your mother." It was only when the victim was dead that the student could be able to have an erection. The boy initially denied anal intercourse (revealed by the autopsy, which found semen in the rectum of the victim) because of embarrassment. He later admitted to the act of necrophilia after the murder. It is revealed that acts of necrophilia are engendered by the fact that the victim was no longer threatening towards the boy. At the time the victim was alive, the boy failed to have sex with the victim. The victim's subsequent mocking instilled feelings of inadequacy and anger towards the student. The victim's aggressive approach by confronting him with immaturity and inadequacy made him confused and helpless. After psychological testing, it was revealed that the boy referred to feelings of inadequacy, but does not have any preoccupation with violent conduct. He had no history of criminal behaviour prior to the murder and was liked well by his friends and teachers.

After leaving his factory job at midnight, Y went to a nightclub with his brother. He left the club at 3 a.m. and met a prostitute on a nearby street. Y took the prostitute back to his apartment. The prostitute came out of the bathroom, partially undressed and got in bed with Y. She has repetitively told the offender that sex had to be completed quickly because she had to meet someone at 5:30. She constantly looked at the clock by the television. They engaged in oral sex and then she got on top of him. Y rolled over and strangled her. Before the strangulation, he lost an erection or has half an erection.

Y had a long-standing obsessional idea that his penis is too small. This suggests a deficit in empathic capacity as well as difficulty in forming reciprocal and mature interpersonal relationships. Y was also suffering from strong feelings of low self-esteem. Y's inability to satisfy

the victim serves as a strong feeling of sexual inadequacy [7].

Both these examples illustrate that the offenders had feelings of sexual inadequacy and impotency [7].

Necrophiliac's are diagnosed with personality disorder. Engaging in this activity is sexually stimulating and part of the offender's perverse sexual-arousal pattern Stein et al. [7]. It is evident that all or most offenders expressed feelings of sexual inadequacy⁴. Sudden murders were precipitated by some sort of insult, for example, belittling rejection by a sexually provocative paramour or provocative hostile remarks. Sexual inadequacy involving rejection had triggered the attacks in the abovementioned case studies [7].

8. CRIMINAL LIABILITY FOR ACTS OF NECROPHILIA?

Some states have held that sexual intercourse with a corpse shall be prosecuted as rape or sodomy. This view is depressed in, for example, in Kentucky, where legislation entails that necrophilia is punishable as abuse of a corpse and not as rape [3]. This sentiment is shared by the California legislature as seen earlier in this study.

When two men broke into a mortuary and performed necrophilic acts, they were charged with burglary and not having sexual intercourse with the female corpses [3].

The California Health and Safety Code, section 7052 provides: "Every person who wilfully mutilates, disinters, or removes from the place of interment any human remains, without authority of law, is guilty of a felony." The term "wilfully mutilates" connotes damage done to a dead body during sexual intercourse.

The Health and Safety Code (of California) also fails to criminalize necrophilia [3].

The *California Penal Code*, section 642 attempts to offer protection for dead bodies. It is certainly not enough, because this section merely denotes

⁴Except sexual inadequacy, offenders also have ambivalent feelings and bad attitudes toward authority and a concomitant feeling of not being wanted, loved, recognized or appreciated. Most also showed a fear of failure and defeat, with accompanying resentment toward successful people.

to the removal of property from a dead body and not protection of the body itself. This section cannot be construed as a prohibition of committing sexual acts with corpses.

As noted earlier the California Supreme Court does not regard a death body as a person. It connotes that the offender who performed necrophilia cannot be charged with. It is afforded that the offender has committed the minor crime of abuse of a corpse. It is evident that acts of necrophilia are punished as abuse of corpse and not rape.

In the Forest Lawn incident (supra), the individuals who engage in acts of necrophilia were only liable for incidental property crimes such as burglary and trespassing.

It is clear that this impunity would cause havoc in society eventually as the crime of necrophilia comes to the attention of the global community. More clear and specific statutes are needed in order to criminalize necrophilia. We can start with the Forest Lawn incident and the subsequent case of *State v Ryan* who serves as a blueprint for moving the legislature for criminalizing necrophilia. The research stresses the importance for policymakers and legislatures to heed this message.

A practical example for criminalization of necrophilia is endorsed by *State v Ryan* [10].⁵ The defendant had broken into a funeral home and has made sexual contact with several corpses. Necrophilia was not criminalized yet during the incident. Subsequent to his arrest, a law was enacted wherein necrophilia was rendered illegal. This research laud the circumstances surrounding the *State v Ryan*, but deplore the inertia of the legislature to step in and did the same as what happened in the *State v Ryan* case.

9. PUNISHMENT FOR ACTS OF NECROPHILIA

Necrophilia is being treated by some states in the US as felony and by others as misdemeanour. The sanction or penalty for abuse of a corpse was regarded as a misdemeanour and "that greater penalties seem plainly excessive in light of the fact that the harm involved is only an outrage to sensibility."

⁵ 899 P.2d 825 (Wash. Ct. App 1995).

In light of the punishment meted out to the perpetrators in the Forest Lawn case, it is evident that California treats necrophilia as a misdemeanour. Ochoa et al. determine that if necrophilia is a blatant psychosis, then the sanity of the defendant accused of engaging in acts of necrophilia should be taken into consideration when determining both guilt and an appropriate sentence. The reason for the Californian Forest Lawn case is that sexual intercourse with a dead body of a human being, however shocking it may be, had not been made a crime.

It was only after four months in 1996 that a bill was introduced in the Californian Assembly to criminalize acts of necrophilia. Necrophilia is now regarded as a felony and where punishment is not specified, the default punishment for felonies is imprisonment for 16 months or two or three years. It is asserted by Ochoa et al that it is inappropriate to provide a lesser punishment for necrophilia.

The break-in at Forest Lawn Memorial Park may have provided the Californian Legislature with an excellent opportunity to enact legislation outlawing necrophilia. Because society is generally outraged by the notion of sexual contact with dead bodies, the Legislature should take advantage of the opportunity before more individuals engage in the legal defilement of human remains [3].

10. LEGISLATION IN RE NECROPHILIA: IN RESPONSE TO THE STATE v RYAN

With regard to *State v Ryan* 899 P.2d 825 [10] the death stands not a change to be treated with the necessary dignity and respect. The assumption must be inculcated into the mind of the reader that the dead person has not yet ceased to live.

Violation of the respect afforded to corpses echoes disregard not only for the dead but also for the surviving families of the deceased. Treatment of the dead must be handled in the same way as per the unusual practices among the living.

11. CONCLUSION

This study deplores the impunity for acts of necrophilia and excites legislatures from the world over to engage in law-making processes in

which necrophilia is to be outlawed. The study extols the bravery of *State v Ryan* in which a blueprint has been initiated for the criminalization of necrophilia.

The study cannot stress enough the importance this message have for policy-makers and legislatures alike. They are to heed this call in all earnestly, because impunity for necrophilic acts will eventually cause havoc in the global community as when we will be faced by the consequences of this heinous act in time.

COMPETING INTERESTS

Author has declared that no competing interests exist.

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