

CRIMINAL LAW JOURNAL

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ARTICLES

Homicide, self-defence and the (inchoate) criminology of battered women – Marilyn McMahon

Law reform is increasingly underpinned by empirical research. This is clearly evident in contemporary reform of the laws of self-defence and homicide. These reforms have been motivated largely by concern for battered women who kill their abusive partners. An extensive body of empirical criminological research has been utilised to identify bias in the operation of the traditional law of homicide and self-defence and has been relied upon by many law reform bodies. This article identifies and evaluates the “implicit criminology” constituted by these empirical studies. Five matters that have formed the backdrop to contemporary reform are investigated: the origins of the law of murder; the operation of the law of self-defence; the historical utilisation of mental state defences by battered women; the circumstances in which battered women kill their abusers; and the trial as a key location for processing these offenders. It is argued that the implicit criminology that has driven reform of the law of homicide and self-defence is largely undeveloped or unsubstantiated. Despite the centrality of concern for battered defendants in much contemporary discussion in criminology and the criminal law, it appears that there is still substantial research to be done to clarify the circumstances in which victims of chronic violence kill their abusive partners, how these defendants experience the law and the availability of self-defence to them. What seems to have been established may be more complex, contingent and inchoate than previously acknowledged. 79

Staying focused on the big picture: Should Australia legislate for corporate manslaughter based on the United Kingdom model? – Des Taylor and Geraldine Mackenzie

This article examines the current position regarding corporate manslaughter primarily in the United Kingdom (with some comparison to the position in Australia) and aims to formulate answers to the following two questions: is the corporate manslaughter legislation enacted in the United Kingdom a success, and is the enactment of corporate manslaughter legislation in Australia warranted? Thereafter, taking into account the information discussed and conclusions reached as regards the initial two questions, the writers put forward their arguments as to the correct approach to be taken generally in relation to corporate manslaughter and the enactment of appropriate legislation. 99

Question trails in trials: Structured versus unstructured juror decision-making – *Tamsin Ede and Jane Goodman-Delahunty*

Question trails, a type of written decision-aid, have been proposed by law reformers to improve jury comprehension of judicial directions. This study evaluated two decision-aids in reducing jurors' cognitive load and increasing their comprehension. One hundred and eighty jury-eligible community participants aged 18-65+ years served as virtual jurors in an online dramatised criminal trial. Mock jurors were randomly allocated to one of three conditions: a question trail, a verbatim copy of standard judicial instructions, or no written instructions. After viewing the trial, they rendered a verdict, rating their cognitive load before and after the intervention, and completed a questionnaire. Pre- and post-decision cognitive load varied significantly between decision-aids. Cognitive load was significantly greater for convictions than acquittals. Question trails produced significantly higher scores on complex substantive comprehension than either standard form of instructions and better evidence recall than no written instructions. A copy of instructions significantly increased simple comprehension. An index of cognitive load and comprehension revealed question trails more effectively increased complex comprehension relative to directions delivered orally or accompanied by a written copy. Question trails appear promising as a strategy to enhance juror decision-making. 114

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