

Homicide categorisation

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Murderer?





Murderer?





Murderers?





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Murderers?



Can the classification in Australia appropriately reflect degrees of culpability?

General homicide offences in Australia (pre 2008)

- East:
 - Murder
 - Manslaughter
- West:
 - Wilful Murder
 - Murder
 - Manslaughter

How did WA get 3 tiers?

Griffith:

It has occurred to me that the simplest distinction, and that which best indicates the different views actually taken by the ordinary mind of different cases of homicide, is between wilful murder—that is to say, intentional killing, and murder—that is to say, killing, which though unintentional, is done under such circumstances as to warrant the infliction of the last penalty

An Explanatory Letter to the Honourable Attorney-General, 1897, xii



English Law Commission (2005, 2006)

- First Degree Murder
- Second Degree Murder
- Manslaughter



Why 3 Tiers?

- Ladder Principle
- Subjectivity Principle
- Correspondence Principle
- Principle of fair labelling



Principle of Fair Labelling

- Allows differentiation and description
- Stems from censoring function of criminal law
- “Labels help us make moral sense of the world”
- Labels perform communicative function
 - offender
 - victim
 - operators within justice system/ outside justice system
 - society



Why is fair labelling important?

- Important for offender
 - Label = “moral and legal record, as a testimony to the precise way in which the defendant failed in her of his basic duties as a citizen.” (Horder 1994)
 - Ensures proportionate sentencing
 - Ensures appropriate stigmatisation
- Important for victim
 - Victim deserves to have suffering “reflected by an offence of appropriate seriousness” (Chalmers and Leverick 2008)



- Important for society

- Communicates and confirms society's core values

- “A criminal provision is better able to communicate the boundaries of socially acceptable behaviour if it packages crimes in morally significant ways.” (Wilson 2007)

- Strengthens confidence in justice system

- Mitchell's study “strongly suggests that ordinary people agree with the principle of fair labelling, at least in relation to homicide, that the nature and magnitude of the wrongdoing should be reflected in the recognition of distinct offence categories” ELC

ELC: Labels should not be used to cover such a broad range of conduct that, as it were, their currency becomes debased, and the label becomes unfair or lacking in proper meaning.

Reasons for abolition of WM in WA

- Sentencing
- Complication of trials
- Moral equivalence
- Consistency

Alternative approach

- Reserve higher category of murder for especially heinous killings
- Mental element vs other aggravating factors, eg.:
 - multiple victims,
 - Cruel or degrading method,
 - especially vulnerable victim,
 - racist motivation, sexual motivation



- German Criminal Code:
 - §211(2) A murderer is a person who kills:
due to lust for killing, in order to satisfy sexual desires, due to greed or otherwise base motives, cruelly or deviously or with means dangerous to the public, or in order to enable or to cover up another crime.
- Problems:
 - Controversial
 - Increase complexity
- Aggravating factors already used

Conclusion

Three degrees of homicide can better reflect the varied circumstances of killing and degrees of culpability.