



Critical reflections on homicide prosecutions of battered women

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Introduction



Questions that frame this work :

- ❖ The impact of the legal recognition, and entry into public discourse, of the construct 'battered women syndrome
- ❖ How are battered women homicide defendants dealt with by the Australian courts?
- ❖ How does the legal system respond to differently situated battered women, and especially to Indigenous women who are so over-represented as victims and offenders?

Questions that frame this work



- ❖ What has been the outcome of feminist activism and lobbying related to battered women?
- ❖ And a perennial dilemma for feminist scholars, and for critical criminologists - the contradictions of engaging with law, and the criminal justice system, to respond to women's victimisation and subordination.

Morbidity & mortality



- ❖ 2003-04 Hospitalisation rates for assault
- ❖ Indigenous women - 31 times higher than non-Indigenous women;
- ❖ Indigenous men - 7 times higher than for non-Indigenous men
- .
- ❖ Death rates due to assault
- ❖ Indigenous women - 6 to 16 times higher than corresponding age specific rates for non-Indigenous women,
- ❖ Indigenous men - 10 to 18 times higher for as compared with non-Indigenous men

Intimate Partner Homicides



- ❖ 45% Indigenous homicides attributed to 'domestic altercations'
- ❖ 23.7 Non-Indigenous homicides attributed to 'domestic altercations'
- ❖ Indigenous homicides with female offender (approximately 20%)
- ❖ non-Indigenous homicides with female offender (approximately 10%),
- ❖ in almost three-quarters of homicides committed by Indigenous women the victim was a male intimate partner
- ❖ in 44 % of homicides committed by non-Indigenous women the victim was a male intimate partner.



- ❖ one consequence of the conflation of agency and choice is that
- '[f]or women, appreciation of their limited range of actual or perceived choices leads to typification of themselves as less rational rather than of their acts as less culpable' (Hudson, 2002, p 43).

Imprisonment rates



Over the decade to 2003, imprisonment rates for women in Australia increased by:

- ❖ 110 percent (and by 45% for men) but by 343 percent for Indigenous women (HREOC 2004, p15):
- ❖ the number of Indigenous women incarcerated for **homicide offences** increased by more than 100 percent

2000-2007 Women's IPV homicide cases



- ❖ N = 25
- ❖ Indigenous women (n=10) 100% pleaded guilty (n=9) or found guilty (n=1)
- ❖ Non-Indigenous women (n=15) 67% pleaded guilty (n=7) or found guilty (n=3); 33% acquitted (n=5)

Transforming lives into cases



- ❖ 'legal characterisations 'transform the lives of victims into cases, taking away from the stories the meaning behind their circumstances and unique identities'. This is both a 'process of objectification and subjection' and also a normalising process, erasing complexities and contradictions in favour of a clear, black-or-white story'.

(Rosemary Hunter 2006 at p40, citing Bumiller, K 1988, *The civil rights society: the social construction of victims* John Hopkins U Press).

R v Burke (2000)



- ❖ [her] personal history reveals a history of unrelenting tribulation and harshness which is most difficult for most people to comprehend. She is a person who has existed in **socially deprived circumstances**... consigned to a **lifestyle of poverty, deprivation and entrenched alcohol abuse** in an atmosphere where she is the subject of violence and conditioned to violence as a social response (*R v Burke* (2000) para 43).
- ❖ ... the evidence persuades me, that the conditions personal to her of alcoholism, emotional disturbance and intellectual impairment and the deprived lifestyle in which she has been involved are such as to set a context for **conditioning her to react in the way in which she did under whatever the emotional stimulus she suffered that night** (para 44).



Conclusion

- ❖ 'it is not possible simply to reject or accept engagement with law; we cannot have a single position but must both engage and critique....The argument is essentially that we can and should be working to achieve change along at least two fronts, one 'internal' to law and accepting (however conditionally) its power to define and redefine; the second from a position of scepticism and critique of law.'

Margaret Davies, *Legal Theory and Law Reform*, (2003) 28 *Alt Law J* 168 at 169;