

Women Who Kill: Lack of Intent and Diminished Responsibility as the Other 'Defences' to Spousal Homicide

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Introduction

This paper examines the application of the partial defence of substantial impairment by abnormality of mind (formerly diminished responsibility) and reliance on the lack of the necessary intent for murder in cases where women kill their male partners. Previous research has demonstrated that a history of domestic violence typically provides the context for cases where women kill their male partners (Bacon & Lansdowne 1982:71; Edwards 1996:372; Polk & Ranson 1991:23; Wallace 1986:97). The ability of the criminal justice system to accommodate this reality has been extensively critiqued in relation to the defences of provocation and self-defence (see Bradfield 1998; Eastal & Currie 1998; Hubble 1997, 1999; Leader-Elliott 1993; Stubbs & Tolmie 1994, 1995, 1998, 1999; Tarrant 1990; Tolmie 1991). However, provocation and self-defence are not the only defences to murder relied upon in the context of intimate homicide, and this paper will consider the extent of reliance on these 'other' defences. This will involve an investigation of cases in which a woman was convicted of manslaughter based on lack of intent or diminished responsibility in the New South Wales Supreme Court between 1985 and 2000.

The primary aim of my study was to investigate the application of the defences of substantial impairment/ diminished responsibility and lack of intent to women who kill their violent partners, rather than to compare the treatment of female offenders to the treatment of male offenders.¹ However, to highlight the gender difference in the disposition of homicide cases, I have included a comparison of the 'success rate' of the various defences for women in contrast to men. It is important that my argument should not be understood to be that women should be treated the same as male offenders. Rather, my argument is that the circumstances in which women kill their male partners should be more appropriately recognised by the legal system.²

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1 Daly has signalled caution to those who argue for a gender-neutral 'equal treatment' as a means to improve women's situations as women may end up treated as badly as men (Daly 1994).

In the first section of this paper, I seek to contextualise the actions of women who kill their partners by highlighting the incidence and gendered nature of spousal homicide, and the circumstances in which men and women kill in the context of spousal homicide. Next, I outline the methodology of this research study, and detail the legal outcome of the spousal homicide cases identified in my study. Finally, I examine in detail the application of substantial impairment/ diminished responsibility and lack of intent to women who kill their partners, and offer a feminist critique of those defences. I argue that lack of intent appears to be used as a 'de facto' defence of domestic violence, and I consider the implications of this construction of women who kill their partners.

In many cases, the nature of the act causing death would seem to enable an inference to be drawn that the accused had the requisite intent for murder. Instead, a finding of lack of intent is maintained by viewing the act of the accused as resulting from the highly charged emotional situation in which the killing occurred, rather than any intention on the part of the accused to harm the deceased. This construction of the killing relies on stereotyped notions of femininity and the pathologisation of women's responses to and experiences of domestic violence.

The concerning aspect of the construction of the killing endorsed in the lack of intent cases is that the focus on the woman's lack of agency diverts attention from the alternative 'rational' account of the woman's conduct. Although this argument may bear similarities to arguments advanced in the backlash against women who use violence, it is important that my argument is not misconstrued. This paper is not an endorsement of the view advanced by those who would argue that stereotyped construction of female offenders means that women are 'getting away with murder' (see Pearson 1997; Pearson 1998). My argument is the opposite - that women are not being acquitted. My concern is that the distortion of experience and actions necessitated by the subversion of the rationality and agency operates to preclude any consideration of the 'rational' defence of self-defence.

Contextualising Spousal Homicides

In Australia, homicides between sexual intimates/partners account for approximately one fifth of all homicides (Mouzos 2000:115). A comprehensive analysis of homicide incidents in Australia during the 7 years from 1 July 1989 – 30 June 1996 by Carcach and James (1998) found that, where the offender was known, 416 of the 2024 homicide incidents involved homicide between current or former spouses (legal and defacto). This means on average, 68 homicides occur each year where both the victim and offender are current or former spouses (legal and defacto). This amounts to nearly three killings every fortnight.

Homicide (as with violence generally) is gendered, and the judicial treatment of women who kill their male partners needs to be positioned within the fundamental masculinity of homicide. Men are more likely to kill and to be killed, and women are more likely to be the victim of homicide than an offender (see Mouzos 1999). In the small number of cases when women do kill, the victim is usually a family member (Mouzos 2000:127). In the context of spousal homicide, the woman is most at risk. As Mouzos (2000:116) notes, '[s]tudy after study has confirmed ... that women are most at risk of homicide victimisation by an intimate partner'. The Australian Institute of Criminology (AIC) homicide research found male offenders killed their female partner in 77.4% of homicides between current or former spouses (married or de facto) (Carcach & James 1998:2). In contrast, women killed their male partners in 22.6% of homicides between current or former spouses (married or de facto) (Carcach & James 1998:2).

2 For a recent consideration of the issue of equality (sameness and difference) in the context of women who kill their male partners see Chan (2001).

The gendered nature of spousal homicide extends beyond the frequency with which men and women kill. There are clear gendered divisions in the circumstances/ motivation for the killings. Men kill their female partners when they challenge the man's authority, leave (actual or threatened), or form a new relationship (actual or suspected) (McDonald 1993:126-127; Polk & Ranson 1991:21; Wallace 1986:99). In contrast, possession rarely motivates women to kill their male partners (see Polk & Ranson 1991:22). The motivation for the killing is predominantly self-preservation (Polk & Ranson 1991:23). The typical scenario where women kill their male partner is that the killing follows a history of physical abuse by her male partner (Easteal 1993:74-75; Mouzos 2000:131; Polk 1994:146; Wallace 1986:97).

Feminist literature addressing the issue of women who kill their partners has highlighted the difficulties that battered women encounter in seeking to have the reality of their situation accommodated within legal categories. Women who kill their abusive partner 'encounter ... a court system that ignores or misunderstands their actions and motivations' (Chan 2001:3). In view of the rarity of women who kill, instead of treatment based upon a proper evaluation of the circumstances, their treatment within the legal system rests on long standing myths and stereotypes about women and their criminality (Chan 2001:22). Previous research has indicated that the treatment of women by the criminal justice system is dependent on their 'domesticity' – their positioning as wife and mother (Allen 1987a; Allen 1987b; Eaton 1986; Fox 2000a; Fox 2000b; Hedderman & Gelsthorpe 1997).³ The argument is that a woman's treatment within the criminal justice system is largely dependent on the extent to which a female offender fits within 'traditional notions of femininity and a conservative family ideology' (Fox 2000b:331; Nicolson 2000). As Nicolson (1995:188) comments, '[t]he notion of domesticity requires women to be good and caring mothers, loyal and supportive wives, competent housewives'. If a woman can be constructed as a 'normal' woman ('maternal, nurturing and loyal') (Keenan 2000:31; Naffine 1987) then this serves to undermine her dangerousness and her criminality. If a woman is a 'normal' woman, then she is not viewed as a 'criminal', as 'crime is a masculine characteristic, rather than a feminine one' (Keenan 2000:31-32).

The contemporary feminist analysis of women who kill their abusive partners has sought to highlight the diversity of women's experiences, and has challenged that dichotomous construction of women according to gendered stereotypes alone. The construction of women in terms of 'appropriate' femininity is based not only on gendered stereotypes, but also on assumptions based on race and ethnicity (Carlen 2000:76). Previous Australian studies have investigated the intersection of race and gender in cases where women have killed their male partner. Stubbs and Tolmie (1995) have examined the intersectionality of race and gender in the context of Aboriginal women who have killed their violent partners and Tolmie (1997) has analysed the intersectionality framework in the context of Pacific-Asian immigrant and refugee women. Both studies highlighted that the convergence of gender and race meant that significant barriers existed to prevent these women accessing alternatives to end the violence (other than the use of violence). However, the authors noted that there has been a corresponding failure to acknowledge the uniqueness of the women's circumstances in their construction within the legal system.

3 It is noted that this paper does not provide an exhaustive overview and critique of criminological theories that have linked female offending with their psychology. Neither does it provide an exhaustive account of feminist criminology's engagement with the 'violent female'. For a more detailed recent overview see Chan (2001).

Overview of cases

This study is primarily a critical analysis of the written comments made by judges in passing sentence and in appeal cases in intimate homicides in the New South Wales Supreme Court between 1985 - 2000. In my research, I identified 32 cases in the New South Wales Supreme Court between 1985 - 2000 in which a female offender was convicted of a homicide offence in respect of the death of her spouse. In the same period, I identified 72 cases in the New South Wales Supreme Court where men were convicted of a homicide offence in respect of the death their female partner.

The cases were identified from two different sources. The first was the Sentencing Information System (SIS) which forms part of the Judicial Information Research System (JIRS).⁴ All murder and manslaughter cases listed on the SIS during the period 1990 - August 1998 were identified. It was not possible to search for offender/ victim relationship using the SIS, so the next step was to manually examine the sentencing comments identified by the SIS search. This enabled an identification of spousal homicide cases. I have characterised homicides between spouses - legal or de facto; current or former - as spousal homicide.

These cases were supplemented by the decisions of the New South Wales Supreme Court and the New South Wales Court of Criminal Appeal, involving appeals against conviction and/or sentence and written comments made by judges in passing sentence in cases of spousal homicide. This sample was sourced from reported decisions and unreported decisions for the periods 1985 - 1989 and August 1998 - 2000 using standard electronic databases⁵. While this sample cannot purport to be exhaustive, it does include all relevant cases found by using the above sources.

This study aimed to evaluate the disposition of cases, in particular the division between different categories of manslaughter. A limitation of the research method adopted is that it precludes an identification of cases in which the offender died at any point before sentence, or cases in which the accused was acquitted or successfully appealed and a new trial was ordered and the outcome of the new trial was unknown.⁶ However, previous Australian research suggests that few women are acquitted in respect of killing their male partners. In Eastaale's (1993:115) study of homicides between adult sexual intimates in Victoria and New South Wales between 1988 - 1990, it was found that 65% of women were convicted of manslaughter, 15% were found not guilty, 5% were convicted of murder and no bill was filed in 15% of cases. Similarly, Eastaale (1993:115) found few men were acquitted (5%). Eastaale's study (1993:115) found that convictions for men who kill their female partners appears to be divided fairly evenly between murder and manslaughter (41% murder, 43% manslaughter).

4 SIS is 'a computerised statistical and legal database designed to assist judicial officers in achieving consistency of approach in sentencing offenders' (Donnelly et al, 1995: 10).

5 These additional periods were selected to provide a larger sample.

6 In my research, in the relevant period in New South Wales, 3 cases were identified in which a female offender was acquitted in respect of the killing of her male partner (*Hickey, Lock, Terare*). These were not obtained by utilising any systematic process, and cannot be taken to be exhaustive.

The legal outcome of the 104 cases identified in my research is provided in Table 1. Except for three cases involving male offenders, all the defendants (including those ultimately convicted of manslaughter) were initially charged with murder. The findings of my research are broadly consistent with earlier studies (see Easta 1993:115; Donnelly, et al 1995:45-46; Chan 2001:53), that is, women were most likely to convicted of manslaughter in respect of killing their partner (91%). However, in contrast to Chan’s (2001:53) English research which found that men were more likely to be convicted of manslaughter than murder (64% manslaughter, 36% murder), I found that men were more likely to be convicted of murder.

Table 1: Conviction for homicide offence by sex

	Male		Female	
	[n]	%	[n]	%
Murder	38	53	3	9
Manslaughter	31	43	29	91
Other cases	3 ^a	4	—	—
Total	72	100	32	100

a. *Cheatham, Ritter, Rudkowsky*. In these cases, the accused’s appeal against his murder conviction was upheld. The outcome of the retrial was unknown.

There were 29 women and 31 men convicted of manslaughter, and Table 2 shows the basis for the manslaughter conviction in these cases, that is provocation, lack of intent or substantial impairment/ diminished responsibility. I have classified the cases according to the category of manslaughter that formed the predominate basis of the sentence imposed by the sentencing judge. In total, male offenders successfully relied on provocation in 29% of cases, lack of intent in 32% of cases and diminished responsibility in 39% of cases. Female offenders successfully relied on provocation in 38% of cases, lack of intent in 55% of cases and diminished responsibility in 7% of cases.

Table 2: Basis of manslaughter conviction of defendant by sex

	Male		Female	
	[N]	%	[N]	%
Provocation - plea	5	16	8	28
Provocation - trial	4	13	3	10
Intent - plea	5	16	15	52
Intent - trial	5	16	1	3
Substantial Impairment/ Diminished responsibility - plea	10	32	1	3
Substantial Impairment/ Diminished responsibility- trial	2	7	1	3

These findings differ from previous research conducted in Australia and in England in two significant ways. First, it appears that diminished responsibility was not the defence of choice for women charged with murder in respect of the killing of their partner. This finding is contrary to the findings of Chan's study in England (2001:53) which found that diminished responsibility was the defence successfully relied on most frequently for female offenders who were convicted of manslaughter (43%) in respect of killing their spouse. Chan (2001:53) found that female offenders successfully relied on provocation in 29% of cases and no intent to kill in 24% of manslaughter cases. In England, other research supports the finding that female offenders charged in relation to a spousal killing frequently rely on the defence of diminished responsibility to reduce murder to manslaughter (see Lloyd 1995:90; Wells 1994:267-268). Similarly, earlier Australian research conducted by Bacon and Lansdowne (1982:89) concerning women who were imprisoned in New South Wales between July 1979 and March 1980 for homicide offences in respect of killing their husbands or boyfriends found more extensive reliance by women on the defence of diminished responsibility.

The second difference was in the significant proportion of women who were found guilty of manslaughter on the grounds of lack of intent. In previous research, lack of intent has not been identified as the predominant basis for a manslaughter conviction for women who kill their partners. In Australia, the academic critique of the treatment of women who kill their violent partners has been principally concerned with the defences of self-defence and provocation. However, in view of the significant proportion of women who were convicted of manslaughter in respect of the killing of their violent partner on the ground of lack of intent, it is interesting to consider the judicial construction of lack of intent in these cases.

Substantial Impairment by Abnormality of Mind⁷

The defence of 'substantial impairment by abnormality of mind', which operates in New South Wales, is governed by section 23A *Crimes Act* 1900 (NSW).⁸ It provides a partial defence to murder. Although having the requisite intent for murder, an accused may be found guilty of manslaughter if the accused is able to establish that:

1. at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and;
2. the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.

It has been argued in English literature that the tendency of the criminal justice system to construct criminal women in terms of pathology and abnormality means that diminished responsibility is the defence most closely associated with female offenders, especially women who kill (see Bridgeman & Millns 1998:677; Chan 2001; Edwards 1996:400; Lacey 1998:202; McColgan 1993, 2000; Nicolson 1995:204; O'Donovan 1991:299; Young 1993:785). The association of battered women who kill and the defence of diminished

7 Formerly Diminished Responsibility - *Crimes Act* 1900 (NSW) Section 23A.

8 This defence was introduced by the *Crimes Amendment (Diminished Responsibility) Act* 1997. It replaced the defence of diminished responsibility which had required that the accused establish three requirements: 1. that he/she was suffering from an abnormality of mind; 2. the abnormality arose from an underlying condition; 3. the abnormality substantially impaired his/her responsibility for the act or omission causing death.

responsibility appears as a dominant theme in the English critique of the criminal justice system's response to battered women who kill. In this context, the strategy has been to argue provocation is a more appropriate plea for most battered women, as the diminished responsibility is suggestive of abnormality and mental illness (Chan 2001:105-106; McColgan 2000:140).

In view of this literature, I was surprised to find that in NSW there were only two cases of women for whom manslaughter was based on the defence of substantial impairment/diminished responsibility. Further, in both cases, the women had not been subjected to physical abuse by their male partners. Rather, they killed in circumstances of separation or breakdown in the relationship with the deceased - circumstances where men have traditionally been successful in their reliance on the defence of provocation (see Howe 1994, 1997, 1999; Edwards 1996; Leader-Elliott 1997).

The greater reliance in NSW on the apparently 'rhetorical' defences of provocation (39%) and lack of the necessary intent for murder (54%) may suggest that the women who kill their violent partners have successfully escaped the pathologising of their response to male violence. In my view, this argument (unfortunately) is not borne out by reality. In NSW, in recent years at least, the 'helpless', 'emotional' and 'irrational' female offender, the woman whose mental capacities have been 'unable to cope' with the years of violence, has found resonance within the framework of the lack of intent or the provocation defence. These defences have been 'psychologised'.

In 1982, NSW introduced statutory amendments to the defence of provocation which have made it a more flexible defence. The law was amended partly as a response to the inadequacy of the defence in cases where women killed their abusive partners, and removed the requirement of suddenness, recognised cumulative provocation, and removed the need for an isolated trigger incident (*Crimes (Homicide) Amendment Act 1982* (NSW) s23; Tolmie 1991:63). These amendments have facilitated greater utilisation of the defence of provocation for battered women who kill in 'non-traditional' provocation situations (e.g. *Morabito*).

In contrast, legal developments in England have not been as extensive. Reliance by battered women on the defence of provocation in England has been aided by judicial recognition of cumulative provocation and 'slow-burn' loss of self-control (Chan 2001:118-121, 156-159). However, the continued existence of the requirement of suddenness (abrupt and explosive) means that the loss of self-control must ultimately meet the male standard of suddenness and as such 'since the battered woman's final action is often devoid of frenzy and passion, women fail to meet the standard required of the reactive response' (Edwards 1996:395). In England, the more extensive reliance on diminished responsibility may reflect the notion that diminished responsibility is used as a 'plea of last resort given the doctrinal limitations of provocation and self-defence' (Chan 2001:105).

Despite a greater reliance on provocation in NSW, there has been no corresponding shift from viewing battered women's actions as abnormal and irrational to a framework of normality and rationality. Provocation is supposed to be a 'rational' defence (what the ordinary person could do), but as Henning has observed, in cases of women relying on provocation there has been a 'tendency to de-emphasise provocation or subsume it into the psychological explanation given for the offence' (Henning 1995:311).⁹ An example is *Spencer*, where the accused's manslaughter conviction for killing her abusive husband was accepted by the prosecution on the basis of the provocation offered by her husband - taunting and physical violence that extended over a long period of time. However, in sentencing, the focus of judicial inquiry was placed on the accused's emotional fragility and

vulnerable personality as providing explanations for her extreme stress reaction. The sentencing judge considered that the evidence of the 'fragile nature of the prisoner's mental state' was relevant as it raised the possibility of diminished responsibility, 'whether or not the defence ... existed in a legal sense' (at 12). The frequent references to her (abnormal) mental state means that her claim to 'rational' provocation appears tenuous.

In Australia, the psychologisation of provocation finds resonance in the reception of expert evidence of 'battered woman syndrome' (BWS). The use of BWS evidence was a strategy directed towards assisting women access the 'rational' defences of provocation and self-defence (Stubbs & Tolmie 1994). Despite its laudable aim of making 'domestic violence visible as serious violence ... and to provide a context in which the reasonableness of the woman's actions may be fairly assessed' (Seuffert 1997:295), BWS evidence has been extensively criticised.¹⁰ The 'syndromisation' of a battered woman's responses to domestic violence renders her experiences explicable only in terms of abnormal psychology. In the process, as Comack (1993:51) argues, 'the woman is transformed into a passive victim of her own dysfunctional personality'.

As explored below, the 'psychologising' of women's violent responses to domestic violence is also evident in the context of lack of intent, where the stereotype of the 'passive' female offender has served to deny the agency and intentionality of the conduct of women who kill their violent partners.

Another explanation for the demise of substantial impairment/ diminished responsibility in cases where women kill their male partner might simply be that the defence is 'out of favour' and no longer fits philosophically and politically in neoliberal societies where 'rational choice' is one of the key discourses.¹¹ There is no doubt that the defence of diminished responsibility fits uneasily with concepts of individual responsibility as it occupies a 'contradictory middle ground between responsibility and non-responsibility' (Fraser 1991:115). However, in the context of spousal homicide in New South Wales, there is evidence that diminished responsibility is still utilised. It is the defence successfully relied on most frequently by male offenders (39%). Reliance on substantial impairment/ diminished responsibility in these cases provides support for Edward's (1996:400) observation that a different (male) account of diminished responsibility can be found 'just below the surface of the popular stereotype' of diminished responsibility as a 'female' defence.

Lack of Intent for murder

The law governing the mental (fault) element for murder is laid down by section 18(1)(a) of the *Crimes Act 1900* (NSW), which provides that the requisite intent for murder is an intent to kill or an intent to cause grievous bodily harm or reckless indifference to human life. Criminal responsibility for murder is dependent on the existence of a 'guilty mind' – the requisite mental state (*mens rea*) for murder - at the time of the act causing death. The

9 Henning (1995: 313) observed that 'in spite of the fact that the defence of provocation relied upon by the offenders left it open to the court to view these offenders as ordinary, normal people pushed beyond the limits of their self control and responding as an ordinary human being would in the circumstances, the readiness to psychologise the women's conduct reemerged'.

10 In this paper, I will not traverse the same arguments that have frequently and cogently been advanced by other scholars in their critique of BWS evidence. Although the feminist literature is diverse, three main criticisms of BWS can be identified: the 'syndromisation' of women's experiences; its failure to challenge the existing stereotypes of women; and the creation of a new stereotype (Stubbs & Tolmie, 1994, 1999).

11 I am indebted to an anonymous reviewer for pointing out the possibility of this argument.

fault requirement for murder is subjective which means that it must be established that 'the accused possessed the requisite state of mind' (Bronitt & McSherry 2001:173). If the accused does not have the necessary mental element to constitute murder at the time of killing the deceased, the accused may nonetheless be found guilty of a crime – manslaughter.

As discussed above, in my research, the lack of the requisite mental state for murder was the most frequent basis for a manslaughter conviction for women who killed their male partners (54%). The analysis of lack of intent cases presents difficulties due to the need to determine the accused's subjective state of mind at the time of the killing drawing inferences from the circumstances of the case (*Peters* at 93 per Kirby J; *Shepherd* at 580 per Dawson J). In the absence of contrary evidence, the accused's actions and words ('the external features of the accused's conduct' (Hunter & Bargen 1991:126) are taken to be indicative of the accused's state of mind. In some cases, the act of the accused 'may be so strong as to compel an inference of what his intent was, no matter what he may say about it afterwards' (*Parker* at 648 per Windeyer J). For example, 'a loaded gun directed at the victim's heart and discharged at point blank range indicates that the accused *intended* to kill the victim' (Hunter & Bargen 1991:126). Similarly, a knife used to slit the deceased's throat shows that the accused had a murderous intent (see *Parsons* at 31 per Brooking JA).

In many of the cases where female offenders killed their male partners, the construction of intention (and the accused and the killing) was ambiguous. The nature of the act causing death ('the stark facts of the killing' (*Parsons* at 30 per Brooking JA)) would seem to enable the inference to be drawn that the accused had the requisite intent to kill (or recklessness as to that result) or at least intended to cause grievous bodily harm. In cases where women successfully relied on lack of intent manslaughter in respect of the killing of their male partner, the acts causing death were as follows:

- in ten of the sixteen cases the woman stabbed her partner in the chest, the knife penetrating the heart or lungs, including one case where the accused stabbed the deceased five times
- in three cases the women shot their husband at close range
- in one case, the accused tied cord and tape around her husband's neck and pulled the cord until he stopped moving.

Although we need to determine the accused's subjective state of mind, 'if the "immediate consequence" of the appellant's act ... was "obvious and inevitable", the doing of that act ordinarily "imports an intention to produce the consequences"' (*Cutter* at 168 per Kirby J). The obvious and inevitable consequence of a knife to the upper region of the chest would be death or serious injury. Our common sense understanding would suggest that a person who fired a gun at close range or stabbed a person in the chest would have at least intended to kill the victim (or was reckless as to that result) or at the very least intended to cause serious injury to the victim. Yet, in all these cases, it was accepted that the woman did not have the intent to kill (or recklessness as to death) or the intent to cause serious injury to the deceased. The link between the act and intent is disavowed (Allen 1987a:43). So what is happening?

My reading of these cases suggests that lack of intent was being used as a defacto defence of 'domestic violence'. In 14 out of the 16 lack of intent cases in the study where women killed their male partner, there was a history of male violence and/or an actual or impending assault by the man as the precipitating event.¹² In 14 out of those 16 cases, the woman's plea of guilty to manslaughter was accepted. There is no legal defence of 'domestic violence', so the deceased's violence does not directly provide grounds for

reduced culpability. Instead, the violence is appropriated to explain the emotional state of the accused at the time of the killing. It has been accepted that emotional turmoil and anger are factors relevant to the issue of whether the accused had the requisite intention for murder (*Cutter* at 156 per Brennan CJ and Dawson J). The impact of the history of violence on the accused's psychological/emotional state, together with the accused's fear or anger before the killing, are used to explain the finding of lack of intent.

The accused's claim that she did not mean to kill the deceased is often supported by the presentation of the killing as an impulsive act, taking place in the context of either a verbal argument or a physical confrontation. The intentional nature of the accused's action is subverted by viewing the act of the accused that caused death as resulting from the highly charged emotional situation in which the killing took place, rather than from any intention on the part of the accused to seriously harm the deceased. For example in *Britten*, the accused had stabbed her husband in the chest and the knife penetrated the heart. The accused 'claim[ed] that this was done without any real intent and in a reflex way' (at 4). In support of the accused, the psychiatrist concluded that:

I do not believe Mrs Britten deliberately set out to kill her husband. I think it was something that happened in the course of one of their fights. I think the fight, at the time it occurred, was typical of those which had occurred over many years, a fight which left Mrs Britten humiliated and angry, with feelings of helplessness. There was a build-up of rage which translated itself into the act of stabbing her husband. The act led to his death (at 17).

Although the accused may not have set out to kill her husband – the crucial issue remains what was her intention at the time that she stabbed him? The climax of the killing is presented by means of the juxtaposition of two seemingly irreconcilable findings: that the accused did not intend to kill her husband or cause him grievous bodily harm and her act of stabbing her husband in anger and rage.

Typically, a knife thrust in anger and rage into the chest and penetrating the heart would be suggestive of a murderous intent. However, it appears that intention can be a slippery concept. The accused's reason for acting (built up rage and anger) can be variously constructed as 'intent' (no intent to harm) or 'motive' (providing a possible reason to want to harm the deceased and so supporting a finding of intent) depending on the merits of the case (Lacey & Wells 1998:42-43). The conduct of the deceased (both on the night of the killing and during the relationship) was seen in this case to have had such an impact on the accused's emotions as to impugn any notion that the accused had acted with a blameworthy intent.

In the case of lack of intent, the description of the killing is moulded around the impact of external events on the emotional state of the female offender thus rebutting the inference 'that she had murdered the deceased' (*Bogunovich* at 460). In *Bogunovich*, the history of the relationship between the accused and the deceased is recounted, detailing the deceased's 'persistent and violent physical attacks' upon the accused and his 'revolting sexual attacks upon her'. These facts are powerful, for as the trial judge observed, the 'bald facts [of the killing] unassociated with any knowledge of the past relationship between the deceased and the prisoner would of course justify the conclusion that she had murdered the deceased' (*Bogunovich* at 460). The history of violence caused the accused to suffer from severe

12 On the facts available, there was a history of violence in 14 of the 16 cases: *Kennedy* (2000), *Kennedy*, (1998), *Moore*, *Owen*, *Varagnolo*, *Woolsey*, *Britten*, *Hona*, *Coupe*, *Bobach*, *Broadrick*, *Bogunovich Roberts*, *Manning*. On the accused's evidence an assault (actual or feared) precipitated the killing in 13 of the 16 cases: *Kennedy*, *Woolsey*, *Owen*, *Varagnolo*, *Moore*, *Coupe*, *Bobach*, *Broadrick*, *Manning*, *Bogunovich*, *Hona*, *Edwards*, *Roberts*.

depression and from a 'severe level of chronic psychological stress'. It was her emotional/psychological state that accounts for the lack of intent. In developing this account, the narrative was anchored by pervasive gendered stereotypes that construct violent female offenders as lacking agency and rationality.

Despite the pivotal nature of the accused's state of mind at the time of the fatal act, reference to the accused's state of mind is often noticeably absent in the account provided of women who kill their partners and successfully rely on lack of intent. There may be complete silence on the issue (e.g. *Hona*) or it may be accepted that the accused obtained the weapon with some other (less blameworthy) intent, for example an intention to scare (e.g. *Varagnolo*, *Woolsey*, *Bogunovich*, *Broadrick*, *Coupe*, *Manning*), and then that intent is implicitly imputed to the act that caused death. Instead of making a link between the accused's behaviour and her state of mind at the time of the killing, the accused's 'behaviour and inner experiences [are] ... documented in parallel, but any connection between the two is discounted or denied' (Allen 1987:43). The separation of the accused's actions from concepts of intentionality, agency and rationality is sustained by pervasive stereotypes of femininity.

In *Woolsey*, the accused stabbed her husband in the course of a verbal argument during which he had assaulted her. Her plea of guilty to manslaughter was accepted. The accused obtained a knife "just to scare him". However, she proceeded to stab the deceased in the chest with the knife, its blade ... penetrating his heart' (at 4). The evidence was that 'immediately prior to her performing the action which resulted in the knife penetrating his body, he dared her to stab him' (at 5). The trial judge accepted that 'it was not her intention to use the knife either to kill or to cause grievous bodily harm to the deceased, but to scare him' (at 6). The emotional state of the accused - her intention to scare - accounted for the accused's action in picking up the knife. However, there is silence as to the accused's state of mind at the time of the act causing death - as she stabbed her husband in the chest.

Instead of a focus on the accused's state of mind at the time of the act causing death, the accused's vulnerability and mental weakness are at the forefront of the account of the killing. In particular, the focus is placed on her 'battered woman syndrome'. The references to the accused's (deficient) emotional state, to her 'learned helplessness', her 'very limited emotional and personality resources' operate to obscure the intentionality of the accused's conduct evidenced by the deliberate act of getting the knife, pointing it at her husband and stabbing. The explanatory effect of the accused's emotional state and the impact of the external circumstances on her internal, emotional condition are taken to explain the 'absence' of blameworthy intent.

In *Woolsey*, the focus on her psychological deficiencies means that action inconsistent with an inability to act, passivity and helplessness are ignored or downplayed. The psychiatrist noted that as a sufferer of BWS '[t]here is a profound incapacity to act decisively to protect themselves or their children'. However, I would suggest that the act of stabbing the deceased in the heart following his violence to her son and herself is a fairly decisive act in self-protection and in the protection of her children. A psychologist expressed the view that she 'has very limited emotional and personality resources to assist her in coping with life and thus would not be able to cope with prolonged stress very well'. However, such a finding belies her ability to care for her two mentally disabled children (aged seventeen and eighteen) and her four year old daughter in a house that she shared with an unemployed, alcoholic, and violent spouse. The mismatch between the judicially accepted version of the battered woman and the 'real' woman means that an accused must be made into the image of the incapable, unreasoning and irrational woman - her experiences stretched and strained - so that in the end the 'perfect match' is made.

Further, the severance of the link between the actions of the accused and her 'inner experience' is made by virtue of the fact that the accused cannot remember the details of the actual act causing death. As Allen observes, in cases of 'retrospective amnesia' there is 'a disruption of the subsequent recounting of a relationship between behaviour and intentionality' (Allen 1987:43). In nine of the sixteen lack of intent cases identified in my research, the accused was suffering retrospective amnesia. In eight of these nine cases the accused's act of stabbing caused the death of her male partner (*Kennedy, Kennedy, Owen, Edwards, Varagnolo, Britten, Broadrick, Bogunovich*), and although the accused may have remembered the circumstances surrounding the death of her male partner, she was unclear as to how the knife came to be inserted into the deceased's body. In the remaining case, the accused shot her partner in the chest at close range (*Roberts*). In all nine cases, the prosecution accepted the plea of guilty to manslaughter on the basis of lack of intent and the trial judge was placed in the unenviable position of having to determine the factual basis of the plea in order to impose sentence.¹³

In the absence of direct evidence, the determination of the accused's state of mind - and even the precise manner in which death was caused - is the product of speculative reconstruction. In *Varagnolo*, the accused stabbed her violent defacto husband. The husband had been abusive over an extended period in the hours that preceded his death, and had assaulted the accused and their young daughter. The tension of the scene was palpable. As he had assaulted the child, the accused 'picked up a knife and told him "not to hit my kids again like that"' (at 20). He let the child go and came towards the accused. He confronted her and she put the knife down. He stole cigarettes from her pockets and she picked the knife up again. Her recollection was not good after taking the knife in her hand for the second time. As the narrative unfolds, there is a sense of uncontrollability and even the judge observed 'in light of his [the deceased's] behaviour over the years, his death had an inevitability about it' (at 15).

He kept on at her, calling her such things as a slut. He was very aggressive and she was upset and stressed out, and at that moment she thought he was going to kill her. He was standing up near her as if he wanted to fight her.

She said she picked up the knife because she had had enough of the way he treated her and she told him not to come near her; she did not want him near her. He started banging his chest really hard and saying 'Kill me, kill me.' She told him to back off. She said her hand started to tighten around the knife. 'I couldn't let go. I couldn't stop it.' He came forward and she said she could not stop it. She does not know how the knife went in (at 21).

The act of killing is ambiguous – the knife wavers in the space between the accused and the deceased. The accused does not stab him but he thrusts his chest onto the knife. It is held that she did not even deliberately stab the deceased (at 24-25). The evidentiary ambiguity is resolved in favour of a construction of the killing that endorses the image of the passive and inert woman, more acted upon than acting. The 'crime is rewritten as a mere event in nature, a natural disaster in whose devastation the offender has simply been swept away, without either volition or responsibility' (Allen 1987b:85).

13 Although it has been my aim to question the construction of intention in these cases, I am mindful of the difficulties faced by judges in reconstructing the events of homicide. In cases of pleas of guilty accepted by the prosecution, the judge is not obliged 'unquestionably, to accept fact ... which are presented by the prosecution and/or the accused'. But the judge is not entitled to 'proceed to sentence a person who has been guilty of a lesser charge upon acceptance of the version of the facts which would constitute the more serious offence not charged, or actually abandoned', *Chow* at 326 per Kirby J. See also *Olbrich* and *De Simoni*.

The focus on the accused's psychology assists in the construction of the accused as a person in need of 'treatment' rather than punishment (Allen 1987b; Allen 1987a). In *Varagnolo*, it was observed that the accused 'needs extensive therapy and support and counselling so that she can reconstruct and redirect her life' (26). The accused's presentation as a tragic figure makes her the appropriate subject for assistance and counselling to 'recover' from the crime. In this regard, there are references to the weighty self-punishment that the accused has inflicted on herself. It is noted that '[she] continues to suffer considerable psychological pain as a result of the death of the deceased' (at 32). She is presented as someone who is 'sick' rather than dangerous, and this reinforces the absence of a need for state punishment.

The persuasiveness of the account of the accused as a passive and harmless victim rests upon her construction in terms of her domesticity and her pathology. In *Varagnolo*, the accused was an Aboriginal woman, and this case usefully highlights the convergence of race and gendered stereotypes in the construction of the female offender. It appears that the accused's favourable treatment was dependent on her maintaining the standards of white, middle class femininity. The accused's housekeeping skills, the way she dressed, and ability as a mother were all the subject of favourable comment. The accused was described as 'a very good humble mother', 'a wonderful mother' (at 30). She was variously described as 'a very caring, gentle and involved mother' (at 9); a woman who 'keeps the home beautifully and ... loves the children' (at 28); 'a great mum [whose] ... children are always fed and well clothed' (28); a woman 'who seemed to be there for the children always' (at 28). Further, reference was made to her membership of a church and her religious involvement. The accused was portrayed as a woman who has succeeded in being a good mother against the odds. In spite of her partner's violence, her deprived circumstances, her BWS, '[s]he had made a valiant attempt to raise her children using whatever skills and resources she had at her disposal' (at 6).

The connection between the accused's ability to function in a difficult environment and her agency revealed by her 'coping' skills is obscured when discussion turns to her attempts to deal with her partner's violence. Despite detailed evidence showing the severity of the violence inflicted on the accused, the model of psychological dysfunction was used to explain her responses to her partner's violence. The accused was described as a woman with 'emotional shortcomings', as 'unassertive', and as a 'very quiet, passive, shy person'. The accused's behaviour was explained by reliance on evidence of BWS. This case supports the view expressed by Stubbs and Tolmie (1995:157) that weight is only given to the stories of Aboriginal women where they 'converged with the psychological discourse of dependency, passivity and inability. In turn, this psychological discourse fits best with a legal discourse emphasising victimisation'.¹⁴

Although difficult to verify, my view is that in some cases reliance on lack of intent was used to account for a manslaughter conviction in circumstances where the accused's circumstances called for a compassionate outcome, rather than a strictly legal one.¹⁵ It was used as a 'defacto' defence of domestic violence. There has been recognition by prosecutors and judges that women who kill in response to a history of domestic violence (physical and mental abuse) do not conform to the socially endorsed construct of the 'murderer'. In some sentencing comments, there is clearly sympathy for the difficult life that the accused has led

¹⁴ These comments are made by Stubbs and Tolmie in the context of their discussion of *Hickey*, where the accused was acquitted on the ground of self-defence based on BWS. However, in my view these comments are equally appropriate in cases where Aboriginal women are convicted of manslaughter in respect of killing their male partner

as a result of the deceased's physical and psychological abuse. However, while there has been judicial recognition of the battered woman's claim to sympathy, there has been a reluctance to recognise her actions as legitimate self-defence. As was recognised by one psychiatrist, 'at a reality level, based on the situation of the marriage, it could be said that she was acting out of self-preservation and self-protection at the time of provocation from her husband' (*Bogunovich* at 459). This perhaps typifies the confusion. The motive is self-preservation but its form is one that the law does not (or is not willing to) recognise. Yet the accused is not a 'murderer', so the conduct of the accused has to be shaped into a partial defence to murder - provocation or lack of intent.

Conclusion

In seeking a favourable outcome for battered women who kill, courts have placed the focus on the accused's status as a 'victim', while evidence of intentionality and responsibility have been downplayed. This strategy makes perfect sense due to the socially and legally endorsed construct of the female offender: she is either helpless and weak (the 'deserving victim') or she is condemned as a premeditated and 'cold-blooded' killer (Young 1993:807). As Tolmie (1997:615) has commented, 'the relevant standards of appropriate femininity privilege women who exhibit passive aspects of femininity over those who display rational agency, aggression and the deviousness of the pathological other' (see also Rollinson 2000).

My assertion that some cases may have been resolved according to compassionate (the defacto defence of domestic violence) rather than strictly legal principles may lend support to the view that the judicial system treats female offenders 'sympathetically' (see Pearson 1997, 1998). However, I would argue that for women who kill violent partners 'sympathy' may have been obtained at a significant cost. Women whose violent action is precipitated by their partner's violence and abuse have a rational explanation for their conduct (Henning 1995:316). For women who kill violent partners the cost of pleading guilty to manslaughter on the basis of lack of intent is that the reality of the motive of self-preservation is obscured and any opportunity to argue self-defence is lost. As Henning (1995:316) has argued 'by ignoring or de-emphasising or subsuming these [rational] explanations into a psychological explanation, the offenders themselves are silenced. Their view of their experiences and actions is, at best, redefined and, at worst, denied'.

In self-defence, we are concerned with the accused's 'internal' state in order to determine if the accused believed that it was necessary to use fatal force. We must get inside her mind to understand the threat she perceived. In self-defence, the accused's 'internal' state is relevant as the accused must believe that it is necessary to use fatal force. But, in relying on self-defence, the accused's assertion is that her fear is rational - it is a direct response to a significant external threat, the violence of the deceased. This is significant, for as Littleton (1989:38-39) has observed fear can be 'irrational or rational. It can be incapacitating and dehumanising, but it can also be the necessary precondition of bravery (to be brave is to act in spite of fear, not in its absence)'. In self-defence, the accused's fear is a rational and reasonable emotion and her action to protect herself is seen as bravery rather than irrationality.

15 A concrete example can be found in the case of *Broadrick*, where the trial judge said that, '[n]one of these factors individually is very strong, but collectively they certainly justify the Crown's acceptance of that plea. I have formed the view that the prisoner simply did not form any intention to kill or to inflict grievous bodily harm or to act with a reckless indifference to life', at 7 per Hunt CJ. The accumulation of 'mitigating' circumstances minimised the blameworthiness of the accused, so that a murder conviction was not considered by the Crown (or the judge) to be warranted.

In contrast, the construction of the killing in terms of lack of intent means that the focus is placed solely on the 'internal' – the woman's highly aroused mental and/or emotional state. The violence of the deceased – the 'external' – is not relevant in the same way as it is in the defence of self-defence. The violence is not seen directly – it does not itself provide a rational and reasonable account of the killing (see Walker 1998:91). In lack of intent, there is no place to ask whether the accused's fear was reasonable or rational. The construction of the battered woman who kills her abusive partner in terms of her psychological responses alone has a silencing effect. The denial or subversion of the alternative and 'rational' account of the killing and the distortion of experience and actions may operate to preclude any proper consideration of the defence of self-defence. In subverting the intentionality of a woman's actions where she responds to her partner's violence, it becomes much more difficult to argue that the woman is acting in reasonable self-defence. The woman's reasonable fear of serious violence is lost in the account of her (abnormal) psychology and her impulsive response. How can you argue an honest and reasonable belief in the necessity of using fatal force at the time of stabbing or shooting your violent husband, if the construction of your actions and your state of mind serves to deny any intentionality or purposive and directed thought at that critical time?

Significant practical implications arise from urging women to argue that their action of killing their violent partner was an intentional and rational response to their partner's violence. Under the current 'de facto' defence arrangement, most women avoid the experience of a trial, and usually receive a relatively light sentence. Relying on self-defence in response to a murder charge is a risky strategy for battered women who kill, especially in jurisdictions with a mandatory life penalty for murder.¹⁶ Even in jurisdictions with discretionary sentencing for murder,¹⁷ the range of sentences imposed for murder tends to be greater than the range for manslaughter (see Donnelly et al 1995; Fox & Freiberg 1999).

In seeking to ameliorate some of the difficulties of relying on self-defence in response to a murder charge, a possible solution may be for the Crown to give serious consideration to allowing women to rely on self-defence in response to a charge of manslaughter, in cases where it would be willing to accept a plea to manslaughter (Ratushny 1997:174-180). This would remove some of the risks inherent in proceeding to trial for murder. However, this strategy does not address the difficulties associated with the trial process for battered women.¹⁸ Further, there may be a danger that such a recommendation could be misconstrued by prosecutors. In Canada, it appears that such a recommendation may have been 'read by prosecutors as a caution against accepting manslaughter pleas from battered women charged with murder' (Sheehy 2001). Sheehy (2001) indicates that prosecutors are now proceeding to trial for murder in cases where previously a plea to manslaughter would have been accepted.

16 Queensland (*Criminal Code* (Qld) s 305(1)); Western Australia (*Criminal Code* (WA) s 282); South Australia (*Criminal Law Consolidation Act* 1935 (SA) s 11); Northern Territory (*Criminal Code* (NT) s 164).

17 New South Wales (*Crimes Act* 1900 (NSW) 19A, *Crimes (Sentencing Procedure) Act* 1999 (NSW) s 21); Australian Capital Territory (*Crimes Act* 1900 (ACT) s 12(2), 442); Victoria (*Crimes Act* 1958 (Vic) s 3); Tasmania (*Criminal Code* (Tas) s 158).

18 Ratushny (1997: 160 – 161) has commented on the effect of long-term abuse on women's willingness and ability to testify in public and the impact of women's remorse such that they believe they deserve punishment.

Women who kill their violent partners challenge the traditional dichotomy of victim/offender and victim/agent, due to their positioning as both victim and offender/agent (Comack 1996:152; Mahoney 1994; Schneider 1992, 2000). The challenge remains for the law to recognise the diversity of the experiences of women who kill, and the connection between their offending behaviour and their victimisation in a way that is not dependent on the pathologising or psychologising of women's experiences (Comack 1996:152). There needs to be recognition of the complexity of women's experiences and that 'although women are capable of violent acts as gendered beings, that fact has to be understood socially and culturally' (Hekman 1990:140; see also Chan 2001:35-36). This recognition may open up the possibility of moving beyond entrenched dichotomies and stereotypes that characterise the judicial system's treatment of battered women who kill (Chan 2001:36). The solution may not be easy. However, women should not be unfairly denied the chance of an acquittal and should not be denied the chance to have their bravery recognised.

Appendix 1: Classification of manslaughter cases by gender

Provocation Plea

Male: *Button, Godwin* (initially charged with manslaughter), *Panozzo, Prasad, Wright*.

Female: *Chhay, Gardner, King, McIntrye, Simon, Spencer, Whalen, Young*.

Provocation Trial

Male: *Alexander, Foulstone, Khan, Low*.

Female: *Morabito, Simington and Saunders, Vandersee*.

Intent Plea

Male: *Donnelly, Harris, Nardoni* (initially charged with manslaughter), *Ryan, Westley*.

Female: *Bobach, Bogunovich, Britten, Broadrick, Edwards, Hona, Kennedy, Kennedy, Manning, Moore, Owen, Roberts, Varagnolo, Wang, Woolsey*.

Intent Trial

Male: *McMillian, Moore* (initially charged with manslaughter), *Nettles, Olig, Sherry*

Female: *Coupe*.

Substantial Impairment/Diminished Responsibility Plea

Male: *Bateman, Bourke, EJ, Jans, Kable, Kontaxakis, Laurie, McKellar, Shephard, Sokol*.

Female: *Lalor*. It is noted that in *Gardner* the plea of guilty to manslaughter was based on provocation as well as diminished responsibility. In *Spencer*, the plea was accepted on the basis of provocation and the sentencing judge accepted that there was also the possibility of diminished responsibility. These cases have been grouped as provocation cases.

Substantial Impairment/Diminished Responsibility Trial

Male: *Bryant, Keceski*.

Female: *Troja*.

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Alexander (1995) 78 A Crim R 141; 24 February 1995 (Unreported, NSW CCA, Gleeson CJ, Meagher JA & Grove J).

Bateman [2000] NSWSC 867 (Barr J).

Bobach 11 November 1988 (Unreported, NSW SC, Lee CL at CL).

Bogunovich (1985) 16 A Crim R 456.

Bourke 20 September 1989 (Unreported, NSW CCA, Gleeson CJ, Carruthers & Campbell JJ).

Britten 26 March 1993 (Unreported, NSW SC, Finlay J).

Broadrick 31 August 1988 (Unreported, NSW SC, Hunt J).

Bryant [2000] NSWSC 245 (Dowd J).

Button 9 August 1993 (Unreported, NSW SC, Hunt CJ at CL).

Cheatham [2000] NSWCCA 282 (Spigelman CJ, James & Sperling JJ).

Chhay (1994) 72 A Crim R 1.

Chow (1992) 63 A Crim R 316.

Coupe 28 June 1990 (Unreported, NSW SC, Hunt J).

Cutter (1997) 94 A Crim R 168.

De Simoni (1981) 147 CLR 383.

Donnelly 10 October 1997 (Unreported, NSW SC, Hidden J).

Edwards 17 December 1996 (Unreported, NSW CCA, Gleeson CJ, James & Ireland JJ).

EJ 1 April 1997 (Unreported, NSW CCA, Cole JA, Dowd & Sperling JJ).

Foulstone 18 July 1990 (Unreported, NSW CCA, Hunt, Wood & Finlay JJ).

Gardner 27 March 1992 (Unreported, NSW SC, Wood J).

Godwin 22 August 1991 (Unreported, NSW SC, Finlay J).

Harris 7 March 1991 (Unreported, NSW SC, Abadee J).

Hickey 14 April 1992 (Unreported, NSW SC, Slattery AJ).

Hona 9 October 1992 (Unreported, NSW SC, Sully J).

Jans [2000] NSWSC 525 (Grove J).

Kable 1 August 1990 (Unreported, NSW SC, Hunt J).

Keceski. 10 August 1993 (Unreported, NSW CCA, Mahoney JA, Clarke JA & Finlay J).

Kennedy [2000] NSWSC 109 (Barr J).

Kennedy 20 June 1998 (Unreported, NSW SC, James J).

Khan (1996) 86 A Crim R 552.

King 13 August 1998 (Unreported, NSW SC, Studdert J).

Kontaxakis 30 October 1990 (Unreported, NSW SC, Enderby J).

Lalor 21 July 1995 (Unreported, NSW SC, Grove J).

Laurie 30 April 1992 (Unreported, NSW SC, Slattery AJ).

Lloyd [1967] 1 QB 175.

Lock (1997) 91 A Crim R 356.

Low 13 August 1991 (Unreported, NSW CCA, Lee CJ at CL, McInerney & Sharpe JJ).

Manning 15 April 1988 (Unreported, NSW CCA, Lee, Carruthers & Campbell JJ).

McIntrye 15 March 1996 (Unreported, NSW SC, McInerney J).

McKellar 25 March 1992 (Unreported, NSW SC, Wood J).

McMillan 17 December 1992 (Unreported, NSW SC, Slattery AJ).

Moore 16 June 1998 (Unreported, NSW CCA, Smart, Ireland & Dunford JJ).

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Morabito (1992) 62 A Crim R 82.

Nardoni [1999] NSWSC 1097 (Grove J).

Nettles 27 April 1993 (Unreported, NSW SC, Grove J).

Olbrich (1999) 199 CLR 272.

Olig [2000] NSWSC 1242 (Adams J).

Owen 5 June 1997 (Unreported, NSW CCA, Gleeson CJ, Stein & Bruce JJ).

Panozzo 25 March 1993 (Unreported, NSW CCA, Hunt CJ at CL, Carruthers & Ireland JJ).

Parker (1963) 111 CLR 610.

Parsons [2000] VSCA 15 (Brooking JA).

Peters (1998) 151 ALR 51.

Prasad (Unreported, NSW SC, 91/91/0099).

Ritter 31 August 1995 (Unreported, NSW CCA, Gleeson CJ, Handley JA & Hulme J).

Roberts 1 August 1989 (Unreported, NSW SC, Hunt J).

Rudkowsky 15 December 1992 (Unreported, NSW CCA, Gleeson CJ, Cripps & McInerney JJ).

Ryan 25 July 1991 (Unreported, NSW SC, Abadee J).

Shephard 15 July 1991 (Unreported, NSW CCA, Gleeson CJ, Lee CJ at CL & Allen J).

Shepherd (1990) 170 CLR 573.

Sherry [2000] NSWCCA (Sully J, Carruthers AJ & Smart AJ).

Simington and Saunders 4 November 1988 (Unreported, NSW SC, Loveday J).

Simon 21 July 1995 (Unreported, NSW SC, Bruce J).

Sokol 2 February 1989 (Unreported, NSW CCA, Lee CJ at CL, Wood & Mathews JJ).

Spencer 18 December 1992 (Unreported, NSW SC, Mathews J).

Terare 20 April 1995 (Unreported, NSW SC, Levine J).

Troja 16 July 1991 (Unreported, NSW CCA, Kirby P, Grove & Newman JJ).

Vandersee [2000] NSWSC 916 (James J).

Varagnolo 21 March 1996 (Unreported, NSW SC, McInerney J).

Wang [2000] NSWSC 447 (Adams J).

Westley 14 March 1997 (Unreported, NSW SC, Ireland J).

Whalen 5 April 1991 (Unreported, NSW CCA, Lee CJ at CL, Carruthers & Sharpe JJ).

Woolsey 19 August 1993 (Unreported, NSW SC, Newman J).

Wright (Unreported, NSW SC, 91/91/0029).

Young 20 May 1998 (unreported, NSW SC, Levine J).

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Crimes Act 1900 (NSW)

Crimes Amendment (Diminished Responsibility) Act 1997 (NSW)

Crimes (Homicide) Amendment Act 1982 (NSW)

Crimes (Sentencing Procedure) Act 1999 (NSW)

Crimes Act 1958 (Vic)

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