

THE TREATMENT OF WOMEN WHO
KILL THEIR VIOLENT MALE
PARTNERS WITHIN THE
AUSTRALIAN CRIMINAL JUSTICE
SYSTEM

By

Rebecca Bradfield, BA/LLB (Hons)

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STATEMENTS

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of the candidate's knowledge and belief no material previously published or written by another person except where due acknowledgment is made in the text of the thesis.

Signature W. Bradford Cole

Date 11 July, 2002

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ABSTRACT

My thesis examines the treatment of women who kill their violent male partners within the Australian criminal justice system.

The primary aim of my study is to examine the circumstances in which women kill their violent partners and to explore the ability of the criminal law to have proper regard to these circumstances. The interaction between the criminal law and battered women who kill their violent partners is a topical issue that has generated substantial interest and debate in many western countries.

My thesis provides an empirical study detailing the legal outcome and circumstances of the killing in the 76 cases identified where women have killed their male partner. In the context of these findings, I examine reliance on the various defences to murder (diminished responsibility, provocation, lack of the requisite intent for murder, self-defence, insanity and automatism). The argument advanced is that the current approach of the Australian criminal justice system to battered women who kill reveals sympathy for their situation, but a failure to adequately consider whether these circumstances provide the basis for self-defence.

I examine the procedural rules that interact with the substantive law of self-defence to constrain a battered woman's ability to convey the reality of her experience of violence to the fact-finder. In facilitating reliance on self-defence, I propose a shift in the current evidentiary approach to battered women who kill from the 'battered woman syndrome' framework to the reception of social framework evidence in its own right.

My thesis also includes a consideration of the judicial approach in sentencing women who kill their violent partners. My analysis suggests that there is sympathy for the woman's situation, however there is not an adequate recognition of the mitigatory impact of a history of violence. The dominant judicial approach to mitigation appears to be premised according to principles of 'mercy' and 'sympathy' for women who can position themselves as the 'appropriate victim'.

Although focusing on the Australian criminal justice system, my thesis has potential application beyond this context.

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