

Book Review

A Lesser Species of Homicide. Death, Drivers and the Law

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ABSTRACT

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This work boldly examines decades of socio-legal history and re-situates developments in charging and sentencing practices in the broader societal context. Dr Kerry King systematically unpacks the trends around road deaths in Western Australia from 1946-2018, acting as a witness to evolutions in Australian car culture and socio-legal norms of driver responsibility. The central question the work seeks to answer is this: when death is occasioned by the use of a motor vehicle, is it treated as a *lesser species of homicide*? Are the concerns of aggrieved friends and family overlooked in charging and sentencing decisions, or are such concerns driven by a misplaced sense “that the punishment should reflect the tragedy of the loss of human life, rather than the culpability of the conduct”? (p. 7)

A Lesser Species of Homicide challenges the orthodox narratives of road safety propounded by some members of the public, of the legal profession and of Parliament in order to shine a light on the conduct of drivers and their legal reverberations. Discourses around road safety often focus in on the idea of “vision zero” – that is, designing the road network through scientific principles to make it safe to fail (crash) by changing dangerous network design (e.g. blackspot intersections), modifying road rules (e.g. reducing speed limits) or through targeted behavioural interventions (typically advertising campaigns). More generally, our conceptions of driving and the open road are often romanticised and linked to broader ideals of freedom and liberty. King begins with an introspective analysis of her own relationship to the road, and finds her vision obscured by cultural touchstones and the notion of an ‘accident.’ Accidents and road deaths always involve conscious human decisions and conceiving of them of accidents is, in King’s view, an often incorrect judgement as to the quality of that decision-making and the conduct that results.

What sets this book apart is the extensive empirical research into legislative developments and judicial decisions. In chronologically organised chapters, she elucidates her perspective on the culpability of drivers and the deaths that happen in their wake through evaluating and contextualising decades of cases. Her conclusions are so incisive that they seem inescapable: how could drivers, prosecutors, judges and legislators act in the way they did, seemingly disregarding the reckless or dangerous nature of conduct behind the wheel and applying much

reduced sanctions that might otherwise be applied. She identifies as particularly problematic the tendency to find conduct as deserving a more severe punishment when certain aggravating factors are present: stealing a car, for instance, or drink driving. While on first glance reasonable, these distinctions are used to create dichotomies that result in similar conduct being treated differently by an order of magnitude. King points to a concern that often-marginalised members of society find themselves injured by this framework that gives special protection to the ‘momentarily careless’ ‘ordinary person’ but demonises a criminal ‘other’ whose behaviour is deemed worthy of extraordinary punishment while both groups cause a similar amount of harm to society.

There are not many criticisms to be made of this superb work. Firstly, a more in-depth consideration of arguments of opponents to legal reform may have been warranted. While their words are reported with fidelity and at a certain length, her dismissal of their arguments may have been further reinforced by a more in-depth consideration of their points. Secondly, *A Lesser Species of Homicide* may also have benefited from a discussion of the, admittedly mostly recent, developments in the domain of roadside drug testing and the controversy over extent to which such tests truly reflect drivers’ impairment.¹ King’s insight into the contested policy area would have been highly illuminating.

Overall, in the opinion of the reviewer, *A Lesser Species of Homicide* is an extensive and detailed work that provides great insight into the social, cultural and legal history of road deaths and should be read. King’s arrangement and presentation of history is orderly and interesting – keep in mind, however, that there is an extensive and detailed coverage of many horrific crashes. This does not subtract from the work in any way, for it is essential to its purpose, but it can have an emotional impact. Finally, you should not expect to finish reading *A Lesser Species of Homicide*, and to immediately have at hand a program for reform. King identifies the missing or counterproductive outcomes from many reforms attempted in the past – instead only by “cementing understandings that the mismanagement of a vehicle is as dangerous or negligent as discharging a firearm in a public...” place even without the presence of aggravating factors and by completing a “wholesale revision of penalties across the entire spectrum of driving conduct...” can we envisage real change (pp. 272-3).

¹ Australian Broadcasting Corporation, ‘Retired Magistrate David Heilpern critical of NSW drug driving laws’, The Law Report (podcast) <<https://www.abc.net.au/radionational/programs/lawreport/david-heilpern-retires-nsw-drug-driving-laws/12312156>> (accessed 26 June 2020); Aidan Ricketts, ‘Roadside drug testing: Incoherent policy or uncertainty by design?’, (2018) 25 *Alternative Law Review* 1: 30-34.