

BOOK REVIEW

KERRY KING, A LESSER SPECIES OF HOMICIDE: DEATH, DRIVERS AND THE LAW (UNIVERSITY OF WESTERN AUSTRALIA PRESS, 2020)

RICK SARRE*

I recall overhearing a conversation during which a correspondent questioned why the core strategic focus for the local police was not just public security and criminal justice prosecutions, but road safety as well. “I would have thought they’d have enough on their hands without having to have responsibility for traffic management” was the comment. Kerry King’s book puts paid to the idea that somehow road safety is unrelated to crime and community safety. It is, she argues, appropriately a matter for police and the entire criminal justice system’s keen attention.

Semantics are key here, too. Dr. King argues throughout that the term “road toll” is wrong because, while it calculates lives lost, it does not fairly reflect that many of those who perish on our roads are the toll of a driver, not the road. The victims were not killed by accident, but by the negligent acts or omissions of human agents, and their criminal behaviour. The term “road toll,” says the author, obscures human agency.

This is an important observation, an argument made cogently in the pages of this significant and unique tome. A road death is too often placed into the category of a misfortune. That is, it was not *real* crime, nor *real* violence. As late as 1990 in *The Queen v Stebbings*, an appeal court judge in the Supreme Court of Western Australia (WA) reiterated the view that the driver who killed two people in a car that he had collided with at speed was not “in the ordinary sense of the word, a criminal.”¹ It is the author’s conclusion that that misperception needs to be challenged. Criminology can play its part in meeting that challenge.

Road death losses are indeed horrendous. The World Health Organization estimated in 2018 that, around the world, some 1.35 million people died on roads. Road traffic accidents and the fatal injuries arising therefrom are,

* University of South Australia.

¹ (1990) 4 *Western Australian Reports* 538 at 546 per Kennedy J.

according to the WHO, the leading cause of death for 5-29 year olds worldwide, and the eighth leading cause of death across all age groups. On average, half of the victims are pedestrians, cyclists or motorcyclists. No fewer than 1,194 people died on Australian roads in 2019, well down from the recent peak of 1,603 in 2007 (and the appalling 3,679 in 1973), but always unacceptable. The question pursued by this book is how these deaths should be responded to by criminal justice processes.

Dr. King merges a strong legal analysis with an historical and political narrative. She describes the book as “an historico-legal study of responses to deaths occasioned by the use of motor vehicles.” She delves into the minutiae of the cases that have come before the courts (almost exclusively Western Australian courts) between 1946 and 2018. Prior to 1946, drivers causing death in WA could only be charged with manslaughter, and a successful prosecution was virtually impossible. In 1946, the WA Criminal Code was amended to add to its list of indictable crimes the offence of negligent driving causing death.

Dr. King notes that the prosecutorial response, however, was not strong. Despite the almost 6,500 people who had died on WA roads between 1946 and 1973, only an estimated 319 people were charged with a criminal offence. Cars had “inexplicably left the road,” “got out of control” and “became unmanageable.” If a matter did get to trial, guilty verdicts were rare. Indeed, in order to be convicted for killing a pedestrian, or cyclist, the driver’s degree of negligence had to be utterly exceptional.

Tragically, road fatalities in WA reached a record number (358) in 1973. Legislators reacted accordingly. In 1974, an amendment was made to WA law. A new homicide offence “dangerous driving causing death” was created. The offence was shifted out of the Code and into the Road Traffic Act. (At the same time responsibility for policing all matters associated with traffic was given to a new Road Traffic Authority, a short-lived experiment that was abandoned in 1981 when such policing reverted to WA Police).

Surprisingly, the 1974 amendments, which included a range of new drink driving offences, were not easy for reformers to prosecute. There are some wonderfully quaint references in the book to parliamentarians expressing their concerns (in opposing change) that the new laws would turn WA into a “police state.” Indeed, said one legislative councillor, parliamentarians were “more than capable” of managing their vehicles with blood alcohol concentrations of more than 0.08%. Moreover, the view was expressed by another member of the

Legislative Council that men should not have to suffer the “embarrassment and humiliation” of being pulled over by police to supply a sample of their breath in front of their wives and children.

The book contains a wealth of information on cases decided in WA, and a litany of scenarios emerging from them including the circumstances of the crash, the police investigation, the charges before the court, and the sentence if there was a finding of guilt or an admission of culpability. These stories drive the book’s narrative. There is a full analysis of the so-called “Jess’s Law” (arising out of the death of 10-year-old Jess Meehan killed in 2003 by a drunk driver) that made inebriation (a blood alcohol reading of more than 0.15%) a causative element of death absent any proof of other culpable factors and regardless of all other potentially ameliorating factors. Dr. King also recites the circumstances that led to the passage of “Charlotte’s Law” in 2015 that made speed and lack of a driver’s licence circumstances of “aggravation” and hence made the offending driver (in this case a motorcycle rider) potentially liable to a maximum term of imprisonment of 20 years.

The book also closely examines the new offence of careless driving occasioning death. Dr. King firmly believes, given the often reckless and violent behaviour of culpable drivers who cause death and serious injuries, that the charges laid, and sentences imposed, over the past century have manifestly fallen short of appropriate. She concludes that, even today, processes of law regarding deaths at the wheel are “detrimental to efforts to elevate the seriousness of the wrong, the duty of care of all drivers, and the offence’s criminal status.”

The detail that has gone into amassing and compiling the data for this study is nothing short of amazing. From a lawyer’s perspective, the list of precedents arising out of road traffic offence sentencing is particularly valuable. There are 100 pages of appendices that list Supreme Court verdicts and dispositions arising from dangerous driving charges from 1946 to 1981, and analyses of trial outcomes to 2018. A large proportion of these were compiled manually by the author from newspapers and the registers and record books that were relied upon by administrators and researchers long before the electronic age found its way to the courts.

As mentioned, this is very much a book of historical and political interest, but its contemporaneity will also appeal to present-day criminal lawyers who are interested in the finer points of current prosecutorial requirements, defences, and interpretations of legislative enactments by the Supreme Court of Western

Australia and the High Court. While it takes the reader down the path of sentencing trends it does not, and nor is this its purpose, delve into the aims of sentencing. Nor does the author pretend to offer any evidence of deterrence arising from the reforms that emerged from the WA parliament, including an easier path for prosecutors, and guidelines for judges regarding more punitive outcomes.

Dr. King has chosen WA as the focus of her enquiry, but there is no suggestion that its legislative, judicial, and dispositive histories have not occurred elsewhere in likewise fashion. To that extent, the book will be of interest to those keen on road traffic law, practice, and reform in any Australian jurisdiction.

It is not a criticism of the book for me to mention in passing two infamous road death cases elsewhere in Australia in the last two decades, both made more notorious by the interest of the producers of the ABC's *Australian Story* television program. Neither receives treatment in the book. The first is the hit and run death of cyclist Ian Humphrey whose bike was struck by a vehicle driven by an inebriated barrister and former police prosecutor Eugene McGee on 30 November 2003 just north of the Barossa Valley. When the South Australian government deemed the legal outcome from the first trial inadequate, it convened what was referred to as the Kapunda Road Royal Commission in 2005 to work through how the public expectations arising from the death of Mr Humphrey could be better satisfied by the policing and judicial processes.²

The second is the (again) hit and run death of cyclist Mark Pearson whose bike was struck by a truck driven by Geoffrey Sleba on ANZAC day 2014 near Toowoomba. The circumstances and legal consequences of this killing are well documented by the ABC too and should be of interest to those looking to reform the Queensland Criminal Code about its rules regarding dangerous driving causing death.³

I mention these cases not to suggest that they should have been included in Dr. King's treatise, but simply to illustrate that this field of inquiry is one that is of great public interest yet one that is laced with political and legal conundrums. To that end, I do encourage the author to produce and publish some short and sharp papers that emerge from the book in order to take readers who may be less

² The Road to Nowhere 6 February 2012 The Eugene McGee case:

<https://www.abc.net.au/austory/road-to-nowhere---part-one/9170470>

³ The Only Witness 17 February 2020 The Geoffrey Sleba case: <https://www.abc.net.au/austory/the-only-witness---pt-1/11951088>.

inclined to wade through over 400 pages of legal examinations and explanations to the heart of her concerns: how best to bring some semblance of justice to victims' families and bring safety to our communities when drivers and their driving go horribly wrong.