

CRIMINAL LAW JOURNAL

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ARTICLES

When sentencing becomes a walk into the future with the offender: The Griffiths remand – compulsion in rehabilitation – *John Nicholson SC*

The present sentencing paradigm throughout Australia is one where the emphasis is upon punishment and retribution. Such a paradigm does not in all cases advance two primary aims of sentencing – the protection of the community, and jail as a sentence of last resort. This article postulates the Griffiths remand and its statutory successors are underutilised in sentencing because of conservative attitudinal issues of appellate courts, and suggests that the courts should consider further the efficacy of an extended remand as a mechanism of rehabilitation. 142

Sexual assault law reform in New South Wales: Issues of consent and objective fault – *Ian Dobinson and Lesley Townsley*

The purpose of this article is to assess the recent reforms to the *Crimes Act 1900* (NSW) in relation to sexual assault. Two of the main reasons for reform were to increase the reporting of sexual assault and to increase conviction rates. It is not possible to assess the impact of the reforms on these two factors; as such, the article focuses on the legal changes and their predictive impact upon the proof of liability for sexual assault offences. Specifically, it assesses the statutory definition of consent, the expansion of the circumstances whereby consent would be negated or vitiated, and the adoption of an objective fault element. The article also considers, where relevant, the current law on sexual assault in other Australian jurisdictions, as well the United Kingdom, New Zealand and Canada. 152

Brains, biology, and socio-economic disadvantage in sentencing: Implications for the politics of moral culpability – *Hayley Bennett and GA (Tony) Broe*

Sentencing continues to attract great public and political interest, and is one of the most complex and demanding tasks a judge may undertake. Whilst in previous decades a major focus of sentencing was based upon the rehabilitation model, the legislature and the courts have increasingly moved towards a model which holds the individual offender “personally responsible” and often wholly “morally culpable” for his or her actions, that is, distinguishing the individual from the contextual “risk factors” for crime, which include socioeconomic backgrounds of often profound disadvantage. This article will examine the concept of moral culpability as it relates to sentencing and to crime in general, looking at how the courts have approached moral culpability in drug addiction reviewed in greater detail. Whilst recognising the role of an offender as a proximate cause of crime, more distal causes associated with socioeconomic disadvantage are discussed. In addition, the

neurobiological detriment associated with the socioeconomic risk factors will be reviewed. Given that government policy and subsequent allocation of resources will determine who has access to the relevant State services, such as education and health care, this article will discuss the current concept of moral culpability as personal responsibility, and whether such a narrow concept is scientifically, intellectually, and even politically, respectable. 167

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Corrigendum

Please note an error in the case and comment on *Thomas v Mowbray* by Dr Greg Martin, published in Volume 32 No 2 of this Journal. On page 119, the sentence containing footnotes 33 and 34 should read: “Not least, it gives exceptional leeway to government in determining what matters related to defence, such that laws ostensibly aimed at combating terrorism – justified under a heightened state of alert – now legitimate – in the name of security – unprecedented levels of state intrusion, surveillance and secrecy.”

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 5. Austin, n 4, p 56.

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 7. Sheehy et al, n 6 at 221.

6 Internet references should be cited as follows:

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