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Sentencing Developments in the United States in 2022: The Start of Reversing the War on Drugs? – *Mirko Bagaric*

There have been considerable changes to the United States sentencing law and practice in recent years. These slowed in 2021, with a change of President and the ongoing pandemic. The rate of change increased only slightly in 2022, possibly to a continuation of an escalation in the rate of crime. The key criminal justice trend in the United States was a softening of the “war on drugs”. This and other key sentencing developments in 2022 are examined in this article. 280

Murder and Mandatory Life in New South Wales: The Puzzling Application of s 61 of the Crimes (Sentencing Procedure) Act – *John Anderson and Hannah Williams*

Section 61(1) of the Crimes (Sentencing Procedure) Act 1999 (NSW), which makes life imprisonment for murder mandatory in certain circumstances, has caused significant controversy and confusion since its inception in New South Wales (NSW) over two decades ago. Most recently, the NSW Court of Criminal Appeal considered the approach to the application of s 61 in *Rogerson v The Queen*; *McNamara v The Queen* and confirmed that a differential form of two-stage approach is correct despite the established general instinctive synthesis approach to sentencing. Although a more consistent approach in practice may result from this interpretation, it is arguable that, apart from being inconsistent with the instinctive synthesis approach, it will likely perpetuate injustice. There remains a lack of clear discriminating relevant criteria for the threshold imposition of a life sentence as opposed to the alternative of a determinate sentence making it difficult, if not impossible, to ensure that a life sentence for murder is imposed fairly, equitably and proportionately. Ultimately it is contended that a logical step towards curing these deficiencies is to repeal s 61 followed by a full re-consideration of the availability of, and relevant factors for imposing, the sentence of life imprisonment in New South Wales. 289

Criminal Responsibility: Older but No Wiser – *Dr Andrew Hemming*

This article is a rejoinder to an article entitled “Will Australia Raise the Minimum Age of Criminal Responsibility?” and an editorial entitled “A New Architecture for Youth Justice” both published in the Criminal Law Journal in 2019 and 2022 respectively, in which Professor Thomas Crofts and editor Phillip Boulten endorsed previous calls for an increase in the minimum age of criminal responsibility (MACR) in Australia to a minimum of 12 years of age and preferably 14 years of age. By contrast, the author supports the retention of *doli incapax* for children aged between 10 and 13 years of age to address the small number of children who represent a threat to public safety, and argues that the neuroscience relied upon by proponents of raising the MACR is dated. The author contends that simply raising the MACR does not address the complex societal factors underlying offending by children. 301

Legislation Note – Matthew Goode

Substantive legislative policy is commonly debated and analysed. Not so policy about legislative technique. There are at least three general principles that can be discerned. The first is the policy of legislative discrimination: that is, criminal offences should be framed so that the criteria for liability reflect rational indicators of the reason for the offence. The second is an indicator of bad legislation: that is, fake exceptionalism. The problem here is the idea that the reason for legislating a criminal offence is a criterion that is said to reflect a special interest to be protected when that interest is, in fact and policy, not exceptional at all. A third principle is just a statement: legislating only to “send a message” is a bad reason for legislating. Few criminals read the criminal statute book in advance. Some read the financial ones. 316

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