

A LESSER SPECIES OF HOMICIDE

DEATH, DRIVERS AND THE LAW

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Introduction

Law, ‘accidents’ and the ‘road toll’

A chance interaction with one Western Australian police officer was a pivotal moment that, in conjunction with a sequence of events, culminated in the research that led to this book. In December 2003, in the course of an interview with Senior Constable Andrew Ward, I casually remarked, ‘but it was an accident’. Senior Constable Ward gently, but firmly corrected me – ‘there ain’t no such thing as an accident. Someone or something is always at fault’. His observation struck a resounding chord. No such thing as an accident? Until that instant I was not aware of how wedded I was to the notion, even when I *knew* someone or something was at fault. I could not recall the point at which I had taken my accident vows.

I began to reflect on the changes in driving culture in my lifetime. In the 1970s and ’80s, at least in *my* 1970s and ’80s, it was common for men to drive home drunk after a night at a dinner party, their wives in the passenger seat, their children sleeping in the back in their pyjamas. The primary goal was to get home without being caught by police. It was a treat to sit on

my father's lap as a child, a treat frowned upon by my mother, and steer the car while Dad managed the gears and brakes. Despite all the warnings, when my friends and I obtained our licences it was common to speed and, sometimes, drink and drive. The Victorian Transport Accident Commission's inaugural 1989 campaign slogan, which later went national – 'If you drink and drive you're a bloody idiot' – inspired a counter slogan of bravado and machismo. Campaign stickers on cars and a boyfriend's share house fridge were doctored with a telling disclaimer – 'If you drink then drive you're a bloody idiot, But if you make it home you're a bloody legend!'¹ In the goal of making it home, the harm one might do along the way did not register. The distortion of the campaign message gained such popularity that, thirty years later, it is still possible to buy merchandise that bears the doctored slogan.

Once we got our licences we sang along in our cars, wind in our hair, stereos blaring, perhaps going a little too fast. The Triffids' 'Wide Open Road' was a singalong, driving favourite.² Another song emblematic of love lost, loneliness and the road, Cold Chisel's 'Flame Trees', assumed anthemic proportions.³ Our driving songs were not only about broken hearts. The big blue sky, the open road, and the unfettered freedom the vehicle ostensibly offered loomed large in our national psyche, particularly in the Australian masculine psyche. The late Bon Scott could still be heard roaring his vision, 'Highway to Hell', over the radio.⁴ Perhaps if you were an AC/DC devotee you might have also sung along to a more melancholy, bluesy Bon repeatedly crooning that he was going to 'Ride On'⁵ as a means to deal with his loneliness and self-destructive behaviour.

Songs from other lands that shared our great love affair with the highway and the vehicle also featured in our driving mix cassette tapes. Predictably, we sang along to themes of lust and love – the call of 'Radar Love' could compel a man to drive all night.⁶ Driving was also love gone wrong – The Cars' ballad 'Drive' famously exemplified the theme.⁷ It was also a ticket to

existential freedom and escape, surrendering fully to the inevitable, whether that be ecstatic joy, the unknown, death or suicide – The Smiths’ ‘There is a Light That Never Goes Out’ was rewound and played again.⁸ On self-annihilation, Kiss’ ‘Detroit Rock City’ hit the theme right on the head.⁹ The song told the tale of a speeding, heedless drunk driver, on his way to a gig at midnight, music blaring, doing 95 mph. The protagonist died in a collision with an oncoming truck. While the song might have been held as a cautionary tale, its parable was long lost in its rock-anthem popularity. As in Australia, other recurrent dominant driving themes prevailed.

Like our parents, we too sang along to Steppenwolf’s ‘Born to be Wild’¹⁰ – not the strongest road safety message. From a handful of random overseas examples, many that graced our nostalgic cassette tapes – ZZ Top’s ‘Arrested for Driving While Blind’, Sammy Hagar’s ‘I Can’t Drive 55’, Eagles’ ‘Take it Easy’, Metallica’s ‘Fuel’, Jackson Browne’s ‘Running on Empty’, The Doobie Brothers’ ‘Rockin’ Down the Highway’, Van Halen’s ‘Panama’, Meat Loaf’s ‘Bat Out of Hell’ and Mötley Crüe’s ‘Kickstart My Heart’ – it was clear that, right across the spectrum, driving was entwined with a particular kind of masculine freedom, in addition to rebellion, risk and, often, sex.¹¹ Women were sometimes invited along for the ride, but it was often difficult to separate the woman from the machinery or the action of driving it. Sexual intercourse and reckless, fast driving became figuratively interchangeable – Deep Purple’s ‘Highway Star’, Led Zeppelin’s ‘Trampled Underfoot’ and Prince’s ‘Little Red Corvette’ being prime examples.¹² On the other hand, some men professed their love for their car above any romantic or sexual relationship, Queen’s ‘I’m in Love with My Car’ being a standout example.¹³ Driving was also firmly bound with the quest for emancipation. More than fifteen years after its release, we too sang along to Springsteen’s ‘Born to Run’,¹⁴ a young man’s entreaty to his girlfriend to escape a town in decline and a future devoid of hope. Liberation, autonomy, desire and the promise of enduring love were all enmeshed with the vehicle, at

once instrument of both freedom and death. In the 1970s, vehicular metaphors seemed to be a preoccupation of Springsteen's, with 'Thunder Road' and 'Racing in the Street' reiterating the theme of men's quest for freedom via the open road.¹⁵ Like the majority of cases brought before the courts, these were all principally masculine narratives.

Back on Australian shores, songs of male emancipation poured forth from our radios. In the late 1980s, Jimmy Barnes, like countless others, would offer up the quintessential working class hero's quest for freedom in *Freight Train Heart's* 'Driving Wheels', a song capitalising on the archetypal Australian male, the solitude of the road and, in this instance, his truck.¹⁶ For Barnes' handsome, muscular young truckie, it was the 'rhythm of the highway, as he rolls on down, and city lights as they fade from sight', which 'drives the man behind the driving wheels'. Country music played on the radio and his engine roared 'like a shooting star across a desert sky'. Apparently, if the truckie had a home, it was 'out on the blue horizon', because 'heaven only knows, there's still a rebel in his soul'.¹⁷ Said rebellious truck driver also left motel rooms and broken hearts behind in favour of the highway. As much as I might have fantasised as a teenager, I was not leaving any broken hearts behind, particularly in a truck with a 'Rage with a Raunchy Lady sticker' on the rear window, a sticker I trust many West Australian readers will recall. I was more your 'Magic Happens' sticker kind of girl, with beach shells and feathers spread across the dashboard of my first car, a Mini. As a teenager, I regret to confess, I did like to put my foot down. In that respect, it was altogether possible that I too could have left a trail of broken hearts behind, albeit of an altogether different variety.

Many years later, when I had shed the magic and the Mini, I could not shed Senior Constable Ward's observation. In contrast to the highway anthems, I began to consider the dark side of the motor vehicle, the human cost and 'accidents'. It was not that the costs had failed to cross my mind before, it was just that I had probably considered the so-called 'road toll' part of what Roger

Browning once called ‘a low grade war that nobody cares much for’,¹⁸ had I considered it at all. I had certainly not given much thought to ‘accidents’ as a form of crime. Statistics and road safety campaigns seemed to breed apathy and detachment. After that chance interaction with Senior Constable Ward, I became alert to issues that were seemingly ubiquitous but, in spite of the relentless efforts of road safety campaigners, I had failed to see them. Irrespective of the fact that I drove every day, the issues apparently had little, if anything, to do with me. I had failed to absorb the unwitting truth of Gary Numan’s synthesised, metallic, catchy assertion that ‘nothing seems right in cars’.¹⁹ Indeed, nothing did. I noted our driving passions and culture on one hand and, on the other, roadsides littered with memorials to the dead.

I can only liken the revelation to the purchase of a new car. Once you set your heart on a particular model, suddenly that model seems to be everywhere. After that interaction with Senior Constable Ward, the issues seemed to be everywhere I turned. They were front-page news. People brought before the courts on driving-causing-death and manslaughter charges; stricken, bereaved loved ones outraged by sentences; ‘road toll’ statistics published after every Easter long weekend and Christmas; booze buses, random breath tests, double-demerit points on public holidays; and everywhere the persistent use of the term ‘accident’. It was a term frequently accompanied by ‘tragedy’. It was *tragic* that a young man killed his girlfriend or his mates. When I began this research back in 2008, the term *crime* was often speciously absent.

According to bereaved loved ones, the law was an ass, a veritable donkey, a criticism which reverberates across the research of grassroots organisations, psychology and public health scholarship. A grievance recurrent across that literature, a grievance that appears to have no regard for national borders, is that surviving loved ones are invariably deeply dismayed by what they perceive to be lenient penalties and the simultaneous socio-legal characterisation of the offence that precipitated their loved one’s death as something less than criminal.²⁰ I wondered, in the nexus

between law and society, was this alleged donkey up against some peculiar difficulties.

In its *Faces behind the figures*, the World Health Organization (WHO), in conjunction with the Association for Safe International Road Travel (ASIRT), drew attention to these perceived injustices.²¹ Contributors expressed anger about high rates of acquittal and paltry sentences. Closer to home, one of Lauren Breen's interviewees, a West Australian victim support worker, noted that families felt 'aggrieved' by sentencing outcomes. Surviving loved ones claimed that those convicted of other forms of homicide 'would almost certainly and invariably suffer a penalty of imprisonment', but in the case of road crashes, non-custodial sentences were common.²² In 1995, the European Federation of Road Traffic Victims observed that the foremost frustration of survey respondents concerned criminal proceedings – 89 per cent of families of those killed claimed justice was not done. A further 75 per cent said that charges were unfair, meaning minor.²³

More than twenty years later, newspapers continue to report the same grievance. A double-paged spread in the *West Australian* in late March 2017 saw Wayne Pemberton initially call for a minimum ten-year custodial term under the banner of a proposed 'Charlotte's law'. His daughter Charlotte was killed in 2015.²⁴ The speeding driver responsible for Charlotte's death was given a head sentence of four years and three months, with a non-parole period of just over two years. He was not licensed to drive a motorbike.²⁵ Wayne and Jackie Pemberton were 'gutted' that the State would not appeal against the sentence.²⁶ Premier Mark McGowan and Police Minister Michelle Roberts told the media the sentence was 'completely out of kilter' with community expectations.²⁷ It was *not*, however, out of kilter with sentencing trends. By contrast, the Tasmanian Sentencing Advisory Council recently described the public's response to perceived lenient penalties as 'punitive', and indicated that such misguided responses were linked with 'myths and misconceptions about crime and justice'.²⁸ To put the public's apparently misguided, punitive response in perspective,

the community were outraged when 24-year-old Sarah Paino was killed by a 16-year-old male. He was driving a stolen vehicle at speeds of up to 110 km/h with his headlights off in downtown, inner city Hobart. He ran a red light. Some time before the crash, he had been involved in a high-speed police chase. Paramedics were able to keep Sarah alive long enough to deliver her baby. She left behind two children and a husband. The driver was sentenced to five years' imprisonment. Public outrage turned around the fact that he was made eligible for parole after two-and-a-half years.²⁹ The Sentencing Advisory Council claimed that public disquiet about sentences for drivers was indicative of a misplaced expectation that the punishment should reflect the tragedy of the loss of human life, rather than the culpability of the conduct. Arguably, in the instance of Sarah Paino's death, the level of fault in the manner of the driving was particularly high.

Notwithstanding, weren't loved ones typically aggrieved by sentences, or, in the case of 'road deaths', did they have a legitimate point? When a death was occasioned by the use of a motor vehicle, *was* it treated as a much lesser species of homicide? On the face of it, it appeared so. Vehicular homicide seemed to be a species apart. Bar the most aberrant circumstances, typically involving a stolen vehicle, a high-speed chase, and a drunken, disqualified driver on methamphetamines, the whole issue seemed to suffer the characterisation of not being *real* crime or *real* violence, albeit of the unintended or recklessly indifferent variety. The not *real* crime characterisation has, in fact, a long history dating back to the early twentieth century.³⁰ Clearly, this was a form of unlawful killing slow to capture the public's imagination, unlike murders, serial killings and even one-punch deaths, never mind the greater social costs involved. Vehicular homicide seemed to be just part of the banal, daily parade. However, in the time that has elapsed since Senior Constable Ward's remarks, its status as a crime appears to have increased.

Given the changes in driving culture in my own lifetime, I began to wonder how the law had evolved to deal with deaths

occasioned by the use of motor vehicles, when judgments about risk and culpable conduct by their very nature must hinge on society's shifting perceptions of the *quality* of that conduct. If the very small snapshots of evidence from other jurisdictions dating as far back as the early twentieth century were accurate, regarding want of prosecution of drivers, the staggering over-representation of vulnerable road users in fatality statistics, high rates of acquittal and egregious sentences,³¹ were these isolated examples or were they indicative of a more entrenched, systemic phenomena? Were the claims of living in a 'nanny state', driver vilification and punitive prosecution valid,³² or was it the case that drivers had been treated with 'reckless leniency'?³³ There was no diachronic study available to answer my questions.

To date, no longitudinal research has been undertaken on legal responses to deaths occasioned by the use of motor vehicles in Australia. While some of the secondary literature includes small snapshots of prosecution outcomes, there has been, as Australian commentators have noted, a dearth of investigation concerning the prosecution of deaths on the road over time.³⁴ In fact, regarding the frequent assertion that driving-causing-death offences were introduced because juries were reluctant to convict drivers of manslaughter, both the Law Reform Commission of Victoria and legal scholar Douglas Brown have noted that the proposition has never been empirically tested; a deficit that this book addresses.³⁵ Legal practitioner texts tend to dispassionately cover driving-causing-death and manslaughter charges in a handful of pages.³⁶ Various law reform commissions and sentencing advisory bodies have made some small contributions to the field.³⁷ Equally, analogous diachronic studies do not appear to have been undertaken in other countries – curious given the subject's daily relevance to all road users and the number of people killed to date.

Almost every book that touches on the motor vehicle includes a set of sobering fatality statistics. This is no exception. Yet, fatalities are often quickly abandoned following the introductory remarks or, alternatively, their repetition leads to what Cooter

and Luckin called a ‘statistical normalization’ of the carnage.³⁸ Dismantling that normalisation, particularly with respect to questions of criminal liability, has not been a significant aspect of discourse surrounding the motor vehicle, particularly historico-legal discourse. This book addresses that neglect.

Between 1925, when Australian authorities first began collating national fatality statistics, and the year 2000, official reports indicate that nearly 200,000 people died, or were killed on Australian roads.³⁹ By the end of 2018, more than 25,000 people had joined that bleak figure.⁴⁰ The addition of fatality statistics from the car’s introduction to Australia in 1896,⁴¹ were the numbers available, would elevate the official figures appreciably.⁴² Furthermore, there were considerable problems with the under-reporting of fatalities in the mid-twentieth century, cause for complaint by Commonwealth statisticians.⁴³ Of additional indication that the figures do not adequately represent the number of deaths, Northern Territory fatalities were not included in national statistics prior to 1962.⁴⁴ Moreover, the numbers represent only those who died within thirty days of the crash. Those who died after the thirtieth day have been excluded from the death count.⁴⁵

Worldwide, the extent of the carnage is alarming. In 1997, Nicholas Faith estimated that 25 million people had been killed since the first British fatality in 1896.⁴⁶ The World Health Organization described Faith’s estimate as conservative.⁴⁷ In 2004, WHO estimated global fatalities at 1.2 million people per year,⁴⁸ and by 2018 that estimate had jumped to 1.35 million.⁴⁹ Based on these collective figures, upwards of 50 million people have died or been *killed* on the roads. Globally, ‘road traffic injuries’, as WHO terms them, are the *leading* cause of death for 5–29 year olds and the eighth leading cause of death across all age groups.⁵⁰ Almost 60 per cent of those fatally injured are aged between fifteen and forty-four.⁵¹ On average, pedestrians, cyclists and motorcyclists represent around 50 per cent of all deaths.⁵² Males are overly represented in fatality statistics, at approximately 77 per cent.⁵³ They also dominate in terms of those brought before the courts.

Vehicular homicide is predominantly a male crime, although women are now joining the ranks in increasing numbers. WHO anticipated that worldwide, by 2030, ‘road traffic injury’ will be the fifth leading cause of death.⁵⁴

While statistics play a crucial role in attempts to capture and monitor trends, the enormous amount of quantitative data does not reflect the emotional toll on victims, their families and loved ones.⁵⁵ As early as 1935, American freelance writer Joseph Furnas noted that the trouble with the aggregate expression of ‘road deaths’ was detachment – ‘figures exclude the pain and horror of savage mutilation – which means they leave out the point’.⁵⁶ He compassionately observed that ‘each shattered man, woman or child’ who made up the tally of last year’s fatalities died a very ‘personal death’.⁵⁷ Furnas’ observation is a recurrent one. In his reflections on the difficulties involved in making effective road safety campaigns that might penetrate the hearts and minds of the driving public, Australian advertising executive and media personality Todd Sampson accurately noted in 2008, ‘when one person dies it’s a tragedy, but if thousands die it just becomes statistics’.⁵⁸

Statistics have their downsides. Not only does the aggregate statistical representation of deaths on the road tend to breed indifference, it also shuts down important questions. Linguistic subterfuges such as ‘road death’ and ‘road toll’ homogenise all deaths on the road as equal based on a shared highway and vehicle. That equivalence is not typically applied to other deaths where criminal liability might be at stake. Critically, many decedents represented in the ‘road toll’ are not tolls of the road at all – they are in fact the toll of drivers. In many instances, they are also victims of crime. The point is, not all deaths on the road are the same. On the roads, *some* people endanger and kill others. Questions of causation, agency and liability are three of homogeny’s foremost casualties. As Robert Davis rightly emphasised, people feel it important to distinguish between ‘those hurting’ from ‘those who get hurt’.⁵⁹ Tellingly, according to the 1946 Commonwealth Year

book, the year in which this book's trial analyses commences, ninety Australian deaths were reported as 'homicides', whereas 1,206 were classified as 'automobile accidents'.⁶⁰ In cases where an individual is at fault for another's death, the distinction between the two categories is one to be questioned.

It follows too that the 'road toll' also obscures human agency. The widespread use of phrases such as 'road traffic death', as though the road and traffic collectively precipitate mortality, is another mechanism by which human agency is obscured. The Victorian Transport Accident Commission's compelling campaign, 'Pictures of You', challenged the persistent use of such phrases. Significantly, rather than use actors, the television advertisement featured bereaved loved ones.⁶¹ During the course of the piece, two short messages were flashed against a black background, made poignant by an almost thirty-second interval of close-up shots of individuals, some crying. The first statement – 'Speeding drivers are the biggest killers on our roads' – was followed by an interval of visible sorrow and the corollary – 'This is why you're photographed when you speed'. Identical language underscored the message at the conclusion, where twelve photographs of decedents were consecutively shown with their name, age and year they were 'killed'. Some legal scholars eschew characterisations of the conduct as 'killing', preferring to describe drivers as 'causers of death'.⁶² To some degree, 'causer of death' devalues perceptions of the harm on the grounds that the harm was unintended, a long-term impediment to vehicular homicide's status as a crime. Drivers may not *intend* to harm anyone in particular, but often demonstrate callous indifference to all other road users and the possible, and often likely, consequences of their conduct.

In Australia, vehicular manslaughter sits at the bottom of the fault hierarchy of intention, knowledge and recklessness, as criminal negligence. Intention's stronghold on the apex of criminality is generally considered uncontroversial. Yet, reckless indifference to the lives and safety of others, particularly when in charge of a dangerous object in a public thoroughfare, arguably

represents a challenge to received notions of blameworthiness. David Luria has argued that the prosecution of some drivers for ‘depraved heart’ murder in the United States,⁶³ or murder based in subjective knowledge of danger, is appropriate in that recklessness demonstrates such disregard for human life as to be on a par with murder. Although malice may not be intentional, it might be implied by unmitigated indifference.⁶⁴ Stanley Yeo observed that recklessness’ status as more culpable than negligence is regarded in some quarters as controversial, simplistic and an untenable ‘adherence to a subjectivist theory of fault’.⁶⁵ In 1991, the Law Reform Commission of Victoria suggested that, for the most part, drivers should be charged with reckless murder and involuntary manslaughter, rather than alternative, lesser offences such as culpable driving.⁶⁶ Apart from Germany, where drivers engaged in illegal drag-racing have been found guilty of murder, such arguments have fallen on deaf ears.⁶⁷ In Australia, ‘alternative’ driving-causing-death offences dominate the prosecution landscape.

Historically, that the fatal consequences were unintended had a tremendous impact in shoring up vehicular homicide’s disputed status as a real and very serious crime, the residual notion of ‘accident’ presenting its own peculiar set of difficulties. In 1946, Western Australia’s Royal Automobile Club (RAC) endeavoured to re-educate its members that, ‘accidents don’t happen, they are caused’.⁶⁸ In 1960, Professor Lewis told the Commonwealth Senate Select Committee of Inquiry into Road Safety that ‘civilised society had never really faced the problem of road injury and fatality and deplored the use of the word “accident” with its connotation of inevitability’.⁶⁹ From the 1970s, there were widespread calls from the medical profession to abandon the term altogether and growing recognition of its dubious implications.⁷⁰ Thankfully, ‘accident’ has increasingly fallen out of use in investigatory contexts. In 1994, the Western Australian Police unit responsible for investigating fatal crashes was renamed ‘Major Crash Investigation’,⁷¹ in contrast to the once ‘Fatal Accident Squad’ and the ‘Major Accident Inquiry Section’. In 2004, almost half a century after Professor

Lewis' frustrated observations, the World Health Organization declared a preference for the word 'crash' in that it denoted amenability to investigation and corrective, preventative action.⁷² Notwithstanding, the notion of the 'accident' still holds some currency – the idiom has been almost unshakeable.

The cultural neutralisation of crashes as 'accidents' displaces causation and prevention in favour of random inexplicability, absolving drivers as victims of chance rather than, in some instances, perpetrators of varying degrees of fault. 'Accident' implies the absence of foreseeable risk, situating deaths as the result of bad luck, in turn neutralising human agency. Far from being neutral or fixed, the characterisation 'accident' is 'historically contingent',⁷³ bound by shifting socio-legal judgments about what constitutes risk, causation and liability. Over time, the enduring notion of the 'accident' presented a significant hurdle for prosecutors who were at pains to displace the belief that, simply because the consequence was unintended, did not mean it was neither foreseeable nor culpable. Court participants grappled with the point at which they would be persuaded from the belief that to err is human, and shift to grade that error criminal.

Public health scholars and psychologists have complained that 'road deaths' have been primarily treated as a legal issue rather than a public health issue,⁷⁴ a complaint which seems to be without substance. Arguably, for the most part, 'road deaths' have been characterised as a *road safety* issue. Yet, deaths on the road cannot be solely rationalised as a preventative safety matter requiring better funding, better research, better roads and better cars. It is a 'seductive' proposition that deaths can be circumvented by design, while simultaneously circumnavigating drivers' core values and behaviours.⁷⁵ As Ball-Rokeach and others have similarly noted, the best-engineered transport system cannot achieve its full potential if existing socio-cultural forces function to the contrary. Neither can the policing of traffic offences if 'the informal driving subculture' works to 'undermine formal driving rules and regulations'.⁷⁶ Importantly, 90 to 95 per cent of crashes are

attributed to human error.⁷⁷ This book examines *degrees* of human error, the construction of offences to target those degrees, and traces the points and extent to which, over time, the judiciary and community have labelled those degrees culpable.

It is perplexing too that said critics complain of undue emphasis on legal responses. Simultaneously they bemoan the fact that unsatisfactory investigative processes and legal outcomes have the adverse effect of diminishing society's perception of the seriousness of vehicular homicide, devalue the lives of people killed, and compound the minimisation of the public health emergency that injuries and fatalities represent.⁷⁸ If, in fact, unsatisfactory legal outcomes are further augmenting the minimisation of the crisis, then exploring how and why these outcomes occur is imperative.

In contemporary scholarship, the longstanding not *real* crime impediment continues to be observed. Dr Claire Corbett of Brunel Law School noted that serious traffic offences are rarely conceptualised as 'real' crime, or offenders 'real' criminals.⁷⁹ Corbett observed many barriers to criminal status, including the normalisation of risk-taking and correlations to constructions of masculinity, difficulties around intentional harm versus indifference, and neoliberal ideology that fortifies car culture and society's dependence on the motor vehicle, while simultaneously buttressing the minimisation of 'traffic' offences.⁸⁰ For the most part, Corbett noted, deaths on the road have been positioned as a 'traffic' problem, rather than a *crime* problem.⁸¹ University of Leicester's Professor of Law, Sally Kyd (formerly Cunningham and Kyd-Cunningham) has complained of the neglect of car or traffic crime by legal scholars. Both Kyd and Corbett partly attribute this neglect to the flawed, yet pervasive idea that crimes involving vehicles are not *real* criminal offences, but rather are positioned as 'quasi crime', and are thus perceived less worthy of attention.⁸² Such landmark studies that have emerged from the UK tend to focus on a spectrum of offences including speeding, drink-driving, driving while under disqualification and vehicle theft, where homicide charges are but one of many chapters. The

scholarship is primarily concerned with the law as it stands at present.⁸³ This book complements that scholarship by examining the law's response to deaths occasioned by the use of motor vehicles over more than seventy years, right up to the present, and distinguishes itself in that alleged unlawful killings are its primary focus.

While this is a West Australian story, it is also a story of national and international import. As this book explores matters germane worldwide, its significance is far greater than its geography. The analysis has been limited to Western Australia, not only because of the sheer volume of cases involved, but because driving-causing-death offences vary subtly across Australia and internationally, although, where relevant, cross-jurisdictional observations are made. This book explores the way in which the Western Australian legislature, police, prosecutors and courts responded to deaths occasioned by the use of motor vehicles between 1946 and 2018. It concerns itself only with cases that have come before the courts. It is clear that, until most recently, a driver's conduct had to be *particularly* serious in order to be charged, although what constitutes *serious* has dramatically evolved over time. The year 1946 is taken as the starting point as a moment of major legislative change and 2018 heralded yet another. Much transpired in between.

The nexus of 'road death' and criminal liability has been a neglected subject, a subject that demands investigation as the principal site where socio-legal questions of causation, agency and liability are determined. As Davis once noted, legal discourse is the space where 'society articulates its assumptions about what kind of behaviour is permissible, and why, in the road environment'.⁸⁴ Accordingly, this book examines the development, construction and application of vehicular homicide offences over time, paying close attention to parliamentary debates, the emerging case law, judicial reasoning, verdicts and sentences, individual cases and the lives of the people contained therein. Given that the bereaved report that their loved ones' deaths and their grief are subject to a unique form of socio-legal minimisation, one hopes that in the

process of examining prosecution outcomes and paying attention to the lives of the people affected, the living are in part supported by valuing the dead,⁸⁵ albeit belatedly. The inclusion of individual stories in this book aims to retrieve lived experience from the margins of the 'road toll's' homogeneity. Still, the purpose is not simply to lament all lives lost, injuries sustained and hearts broken, although compassion does underpin the investigation. Importantly, this book does not hold that all deaths on the road should be the subject of criminal censure, although too few have been. Such a position would be punitive.

Importantly, this is not a book about the motor vehicle. It is not a book about road safety. Plenty of those have been written. It is an historico-legal study of responses to deaths *occasioned* by the use of motor vehicles. It explores how our weddedness to the machine, to speed, to constructions of masculinity, to drinking and driving, and to the notion of 'accident' intersected with the legal concepts of intention, negligence, dangerousness and, most recently, carelessness, to affect judgments about drivers' conduct. It provides a revealing, if not alarming, forensic examination of trends in sentencing over a seventy-year period. Criminal charges, if laid, are the locus where the core tensions of 'death' versus 'killing' converge. They are the contest between the 'toll of the road' versus 'toll of the driver', and 'accident' versus causation. This investigation goes beyond the repeated contention that the law is an ass – an altogether insufficient explanation – to examine the law in practice.