# *Feminisms, Self-Defence, and Battered Women: A Response to Hubble's 'Straw Feminist'*

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In a recent article published in *Current Issues in Criminal Justice* Gail Hubble (1997) has taken to task 'feminist scholars' who have worked on the issue of defending battered women who have been charged with the murder of their perpetrators. She argues first, that there is a tendency for some feminists to presume that all battered women who kill a violent partner do so in self-defence. Secondly, she criticises the fact that some feminist scholars want to make self-defence available to battered women, who often kill in non-confrontational settings, by divorcing the concept of imminence from necessity. She suggests that this may transform the defence of self-defence to an unacceptable degree and attract potentially undesirable results. Thirdly, she suggests that work in this area is deterministic and may not be sufficiently responsive to human agency. Finally, she raises the need for feminist work concerning the battered women syndrome to engage with the diversity of women's experiences. We wish to respond to Hubble's arguments with respect to each of these issues.

## A 'presumptive approach to self-defence'

Hubble cautions against what she calls a 'presumptive approach to self-defence'. This is the:

> ...tendency...for some feminist writers to *presume* that battered women employ lethal force for a lawful purpose, and to gloss over evidence to the contrary (Hubble 1997:116).

She comments that:

> While many feminist scholars would understandably like to concentrate on validating the battered woman's lethal response as objectively necessary, we must not be hostile to the reality that battered women kill for a variety of reasons, not all of which can be readily analysed under the rubric of self-defence (Hubble 1997:116).

Hubble is clearly sounding a legitimate cautionary note, and is careful to accuse only 'some' feminists of the mistake she warns against, nonetheless her article suggests that she has misconceived the agenda of most of the feminist scholars who have written in this area.

The issue is not that women who have been battered should automatically be understood to have acted in self-defence *because they are battered women.* To promote such an understanding, as has been pointed out on many occasions, would be to essentialise the experiences of battered women. As Wilson J commented in *R v Lavallee*:

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> Obviously the fact that the appellant was a battered woman does not entitle her to an acquittal. Battered women may well kill their partners other than in self defence. The focus is not on who the woman is, but on what she did (p 126).

Similarly L'Heureux-Dube J commented in *R v Malott* that:

> The legal inquiry into the moral culpability of a woman who is, for instance, claiming self-defence must focus on the reasonableness of her actions in the context of her personal experiences, and her experiences as a woman, not on her status as a battered woman and her entitlement to claim that she is suffering from 'battered woman syndrome' (p134) .

Rather than insisting that battered women always kill their perpetrators in self-defence, 'feminist' work in this area (to the degree to which one can talk of feminism as a monolithic entity) has sought to broaden the array of legal defences available to women in such circumstances (Schneider 1986). The goal has been to ensure that the range of available criminal law defences accurately and realistically reflect the diversity of women's life experiences. Traditionally these defences have been shaped by male judges and lawyers with respect to the overwhelming majority of male defendants. The defences have thus tended to reflect the life circumstances in which men are likely to experience threats to their lives, or to suffer a temporary loss of reason and/or self control. They have also tended to reflect the kinds of ways in which men typically respond to such threats or manifest such a lack of control.

In NSW in 1982 major reforms were undertaken in respect of the defence of provocation. These reforms, which were partly in response to concerns that battered women who killed their perpetrators were being denied equal access to the defence, made provocation more readily available in the circumstances frequently faced by such women (NSW Task Force on Domestic Violence 1981; *Crimes Homicide Amendment Act* 1982 (NSW); *Van Den Hoek*). No equivalent reforms were made in respect of self-defence, even though that defence is clearly of crucial relevance in such a context. In so far as it is possible to tell from reported cases, the consequence of law reform concerning provocation seems to have been that battered women who were charged with a homicide offence typically were squeezed into the category of provocation (or diminished responsibility or insanity) – even in cases in which their circumstances appeared to fit more readily into self-defence (Stubbs and Tolmie 1994). This pattern has not been confined to NSW and feminist scholars working in a range of locations have therefore tended to focus on reshaping self-defence precisely because that defence has been relevant and yet so conspicuously unavailable to women facing the kinds of circumstances that these women do (Rathus, 1995; Schneider 1980; Schneider 1986; Crocker 1985; Sheehy 1994; Self Defence Review 1997).

Whilst there are now examples of battered women who have killed in the context of domestic violence successfully raising self-defence (*R v Kontinnen*; *R v Hickey*) it is still the case that there are many instances of women who seem to fall within the substance of self-defence either being convicted of manslaughter on the basis of provocation or plea bargaining a manslaughter charge. It seems apposite at this point to quote from one of these cases, *Bradley*, in which a woman who was charged with murder was convicted of manslaughter on the basis of provocation. It is a case involving a set of facts that at face value appear to raise a strong case for self-defence. This is because the accused faced an extreme and escalating threat to her life and the well-being of her family. She had made numerous unsuccessful attempts to escape the deceased's violence, arriving at the subjective belief that there was no way, other than taking his life, in which she could make herself or her sons safe. We would argue that reasonable grounds for that belief can be demonstrated by her prior experiences in attempting to escape the violence. It is also a case in which the accused couched her reasons for the drastic action she took in terms of self-defence. It is a rare de-

cision in the sense that an extensive history of the extreme violence she faced, which spanned over two decades, was both presented in court and canvassed in detail by the judge in his sentencing remarks. We quote at length from the judgement because this case is unreported and a summary of the facts may fail to accurately convey their flavour:

> ...It appears that the early years of the marriage were stormy but you were not subjected to any physical, as distinct from psychological, abuse until the third year of your marriage when you told your husband that you wished for a divorce. On that occasion, apart from being beaten with fists and a stick, you had a box of matches forced into your vagina accompanied by the threat to set them alight.
>
> In the following days the deceased cut your hair and poured tea on it believing that it would remove dye from it. He also placed nine-tenths of your clothes in the bath before covering them with battery acid.
>
> This was the first of many occasions that he told you that you would always belong to him and that wherever you went he would find you.
>
> In the years that followed you were consistently subjected to assaults, often unpredictable in advance, in which you sustained bruising to your body and black eyes. This frequent conduct was punctuated by episodes of more bizarre violence. I will mention some of these to provide the flavour of your relationship...
>
> In 1971 at Mount Clear after you accidentally damaged the door of your husband's vehicle he drove that vehicle after you through the bush in an endeavour to run you over. You eluded him but he later attempted to strike you with a tomahawk.
>
> About this time there was an incident where your husband attempted to shoot you with a spear gun.
>
> In Daylesford in about 1974 you were forced to drink your husband's urine and made to lick your own menstrual blood off the floor. It was during this period you were made to sit on a couch while the deceased fired shots over your head.
>
> The evidence indicates that your husband was almost pathologically jealous and, at Christmas 1978 this jealousy erupted resulting in the destruction of Christmas presents given to you by your mother and, as the violence escalated, an incident occurred where your husband tied your hands to some cupboard doors and scrubbed your vagina with a hairbrush.
>
> In 1983, when your husband came out from one of the periods he spent in prison, he attacked you with a chain shattering your right arm. The treatment necessitated the insertion of a plate in your arm.
>
> In 1984 the family moved to Queensland. It was there that your husband used a whip which he had made in Pentridge to assault you if you declined to provide him with oral sex. It was also during the period in Queensland that you discovered that your husband was committing incest and, following your reporting the matter to the police, he received a two year gaol sentence. On his release from gaol he threatened to kill you and on finding your unit in Main Beach he smashed the furniture and destroyed your belongings...In effecting a beating on you he smashed your false teeth.
>
> This was not the first or the last occasion upon which he smashed your teeth. This apparently being a device, along with blackening your eyes, to so embarrass you that you would not go out in public or so that other men would not find you attractive.
>
> Whilst your husband had been in prison in Queensland you obtained a divorce. However, consistent with his prior assertions, James Bradley made it clear to you that the piece of paper meant nothing to him. In fact you attempted to escape the relationship on at least eight occasions. On some five occasions you sought sanctuary in women's refuges. The history of your relationship reveals that he would always find you and by a combination of threats to you and the harassment of those who sheltered you compel you to return to him.

> In 1984 you travelled to Perth with the idea that the remoteness of the location would provide you with protection from him. However, on the basis of a comment you had made about the local weather in a letter to your sons, whom you had left behind when you fled the relationship, the deceased, after making inquiries through the Bureau of Meteorology, established that you must have been residing in the Perth area. He set off from Queensland the next day in pursuit of you and ultimately you were found.
>
> On that occasion he gave you a bullet as a present and, thereafter, took you to an isolated bush area where he had rigged up a two-man tent. You and the boys were made to reside in this isolated area for three months during which time you were subjected to beatings with such things as sticks and fan belts.
>
> Later you lived in such areas as Kwinana and a more settled period ensued without any extreme violence. At that time James Bradley told you that if you behaved yourself and gave him no trouble life would be wonderful. You understood that to mean that you must do anything he wanted and you endeavoured to do so.
>
> After the deceased had obtained an adjournment of criminal charges pending against him in Western Australia the family returned to Victoria. This was about 1990.
>
> The family lived in Claretown for about 18 months. Whilst there you were falsely accused of hiding a letter from a non-existent boyfriend. Your denials were met with a sustained beating and that evening the deceased attacked you in the laundry. The attack culminated in his pushing your head under the water in the laundry trough, apparently in an endeavour to drown you. Your earlier screams had, however, attracted the attention of your son Scott, and the assault was terminated.
>
> In about late 1991 the family moved to Bungaree. Prior to that time there were a number of other incidents which are difficult to place in time and location. These involved you being struck in the face with a gun butt, being threatened with guns, being attacked with a wheel brace, being struck on the knees with a monkey wrench, having lighted cigarettes applied to your legs, having knives thrown at you and having the accused use a teaspoon to procure the abortion of a child he did not believe was his. The accused would constantly throw food you had prepared at you or the walls and on a number of occasions destroyed your personal possessions...(*Bradley*:142-146 ).

In this case the Crown expressly acknowledged that 'in reality' the accused was 'a prisoner of the deceased for 25 years'. The judge goes on to describe the incidents leading up to the accused shooting the deceased. The deceased's increasingly bizarre, controlling and violent behaviour in the weeks leading up to the shooting, the accused's overwhelming fear for her own life and that of her two sons, her extreme emotional and physical dehabilitation (including the loss of two and a quarter stone over the previous year), and finally the fact that the accused bought bullets, told the police that she intended to kill the deceased to end her life of torment if she could find the courage and means to do so, and then shot him the next day.

Elsewhere we have identified other cases which we believe may be consistent with a finding of self-defence where either self-defence was not argued, or the court rejected it (Stubbs and Tolmie 1994). The difficulty women have faced in having courts understand their behaviour as self-defence has been well documented (Sheehy, Stubbs and Tolmie 1992). Such difficulty has resulted in ongoing lobbying for law reform in a range of countries and a governmental review in Canada of both decided cases involving women who were convicted for killing abusive men and the content of the law on self-defence (Self Defence Review 1997).

The focus of much feminist effort on the defence of self-defence is not a reflection of the failure to recognise that women who kill an abusive partner may do so in a range of contexts, including those which do not properly constitute self-defence. Rather the focus on

self-defence reflects the widespread view that while other defences to homicide (such as provocation and diminished responsibility) have been available to women, it still remains difficult for women to mount a successful self-defence case unless their behaviour accords with a traditionally more male pattern of behaviour.

## The link between 'imminence' and 'necessity'

A successful case of self-defence is one in which the accused can establish that she 'believed on reasonable grounds that it was necessary in self-defence to do what she did' (*Zecevic*). Hubble asks, 'Are there any limitations – implicit or explicit – which circumscribe the scope of necessity and, if so, is it desirable that these limitations be retained?' (Hubble 1997:116). She goes on to argue that the concept of 'imminence' still informs the notion of when it is 'necessary' to act in self-defence because it will be difficult to argue that defensive force was necessary in the circumstances if the violence being resisted was not imminent. Thus, according to Hubble:

> Seen in this way, the underlying notion of imminence, which adds temporal dimension to the idea of necessity, denies the defence to those who employ self help as a solution to violence. If the women had time to call the police before being attacked, the jury is likely to regard lethal retaliation as the woman unnecessarily taking the law into her own hands (Hubble 1997:118).

In theory Hubble is incorrect in placing such an emphasis on the concept of imminence. To place an inflexible reliance on 'imminence' as the factor which distinguishes between self-help and self-defence is to elevate the concept back into a principle of law. This is contrary to the finding in *Zecevic*, a case in which the High Court held that 'imminence' of threat is only a guide, not a requirement, to be used in interpreting whether self-defence was really necessary on the facts. There also have been a number of cases where pre-emptive strikes (strikes in the absence of imminent harm) have been held to satisfy the criteria for self-defence (*Secretary; R v Hickey; R v Kontinnen;* and the New Zealand case of *R v Zhou)*. In practice however, Hubble may be correct in that imminence probably still remains a significant stumbling block to raising self-defence in many of these cases.

Hubble is also right in pointing out that a number of feminist scholars in the area have embraced the notion of separating imminence from necessity. We are among those who have argued that women who protect themselves by means of pre-emptive strikes should have their broader circumstances examined in order to determine whether their belief that they had no other realistic means of protecting themselves was based on reasonable grounds.

Hubble objects to this separation of imminence from necessity. She argues that the concept of imminence forces people confronting dangerous situations to choose lawful assistance over retaliatory violence. Thus if a battered woman has the *time* to call the police or otherwise seek 'lawful assistance', Hubble suggests that the threat is not 'imminent' and thus self-defence is not 'necessary'. To argue otherwise according to Hubble is to change the face of self-defence by opening the way to premeditated and retaliatory violence. In other words such a suggestion would leave:

> ...nothing in principle which would prevent a defendant from justifying a significantly premeditated act on the basis that lawful assistance would be unlikely to help (Hubble 1997:120).

Elsewhere we have justified separating the concept of 'imminence' from the concept of 'necessity' by drawing an analogy between a battered woman and her perpetrator and the

case of *Zanker v Vartokas*, in which a woman was trapped with her assailant in a car (Sheehy, Stubbs and Tolmie 1992). In that case the requirement of 'imminence' was relaxed for the purposes of the law of assault because there was no reasonable escape from the threat. Madame Justice Bertha Wilson in *Lavallee* drew a similar analogy between a battered woman and a hostage. Hubble rejects such analogies for similar reasons:

> The ability to call for police assistance is the primary factor which distinguishes the situation of many battered women who kill in non-confrontational settings and the hostage threatened by her captor with future harm or the woman trapped with her assailant in a speeding car. While the notion of *imminent fear* in the latter two examples employs an expanded notion of imminence it is not so expanded that it requires the woman to choose retaliatory violence over lawful assistance (Hubble 1997:121).

We have a number of objections to Hubble's argument about the link between 'imminence' and 'necessity'. Our first is that it depends on an assumption that the opportunity to leave the house or call the police will always be an effective way for a battered woman to deal with domestic violence. Only on the basis of such an assumption could one go on to argue that the *time* required to execute these actions draws a useful and effective distinction between cases of self-help and cases of self-defence.

We believe that such an assumption undermines the capacity for the law to respond adequately to the nature of domestic violence. There are numerous studies documenting the problems that targets of domestic violence have had in enlisting police protection (Stubbs and Powell 1989; Hatty 1989; Busch, Robertson, and Lapsley, 1992). Some women have had bitter experience of police and court intervention being totally ineffective in stopping their partner's violence (*Gilbert*; *Hickey*; *Zhou*; Busch et al. 1992). Women from non-dominant cultural groups may face particular difficulties in gaining access to legal protection (Women's Legal Resources Centre 1994; Dang and Alcorso 1990; Echevarria and Johar 1996; Cunneen and Stubbs 1997; Tolmie 1997). In addition, there is legal precedent in other contexts for not making the assumption that the police are effective in defusing a threat, but instead embarking on a realistic factual inquiry into whether or not that is the case. In *Hudson & Taylor* two young women were permitted to argue duress as a defence to a charge of perjury in respect of false evidence they gave in a criminal trial. The English Court of Appeal rejected the Crown's argument that if a person had the opportunity to seek police protection then a threat was not immediate because the accused was presented with an opportunity which was reasonably open to them to render the threat ineffective. The court held that this argument failed to distinguish between those cases where police protection would have been effective and those where it would not have been.

We are not arguing that self-defence should be automatically available in all instances. We are simply arguing that if a woman does offer a defence of self-defence then her actual circumstances should be realistically appraised in order to determine whether she had reasonable grounds for her perception that her action was 'necessary in self-defence'. Part of that inquiry may require a court to ask whether the accused had a reasonable basis for perceiving that other lawful means of protection were *not* available to protect her or her children.

Our second, related, problem with Hubble's argument is that she appears to approach self-defence in the context of a violent domestic relationship as if the accused had sought to defend herself against a single, discrete violent act. The characterisation of domestic violence as comprising simply one or more discrete violent incidents appears in the assumption that lawful assistance in respect of a particular instance of violence will effectively defuse the threat a particular woman may face. A similar idea appears in Hubble's discussion of the 'duty to retreat'. The duty to retreat is the notion (since *Zecevic* it is no

longer a formal legal requirement in the law on self-defence) that a person facing a serious threat should retreat as far as possible before employing lethal self-help. Feminist scholars have struggled with what a duty to retreat might mean in the context of a violent relationship (Mahoney 1991; Mahoney 1992). Should a woman be blamed for failing to leave her relationship and, if she has not left, denied the right to protect herself against the violence that staying necessarily involves? What serious impediments might women face in leaving violent relationships? Hubble suggests that grappling with these issues might result in an unacceptable expansion of the concept of a duty to retreat:

> Whereas retreat was previously understood in the limited sense of leaving the house or seeking assistance, it now potentially encompasses setting up house elsewhere (Hubble 1997:119).

Clearly the duty to retreat as Hubble describes it is premised on the idea of the need to respond to a particular discrete instance of violence. Also Hubble's characterisation of the duty to retreat is not strictly accurate. As Wilson J says in *Lavallee*:

> ..traditional self-defence doctrine does not require a person to retreat from her home instead of defending herself...A man's home may be his castle but it is also the woman's home even if it seems to her more like a prison in the circumstances (p 124).

Our problem with Hubble's apparent assumption that domestic violence can be understood as a series of discrete violent acts is that it is based on a common misconception about the nature of domestic violence. Domestic violence encompasses a range of behaviours – only one of which is physical abuse. There is a model of such violence which suggests that the physical abuse serves to back up and reinforce a range of other tactics of power and control (Minnesota Program Development, Inc, Domestic Abuse Intervention Project, discussed in Seuffert 1994). Therefore the fact that a woman is not being physically abused at any point in time does not necessarily signal that she is free from abuse. It may simply mean that other tactics, such as emotional abuse, isolation, and/or economic abuse, are currently working to maintain the perpetrator's power and control over the woman who is the target of the violence (Leibrich et al 1995). The threat of physical violence may be something these women live with in the most intimate and private recesses of their lives on a daily and ongoing basis. Successfully negotiating a particular incident of physical violence by calling the police, leaving the room and or leaving the relationship at a particular point in time may not be the end of the matter (Mahoney 1991, Mahoney 1992, Wallace 1986:99). A woman may have done all of these things many times in respect of particular incidents of violence without ultimate relief from the threat that she lives with. In addition, these actions may have been instrumental in escalating the terror she lives with.

For these reasons, rather than those suggested by Hubble, the analogy we have drawn between the fact situation in *Zanker v Vartokas* and battered women who are dealing with extreme and escalating violence in their intimate relationships is drawn loosely. It is an argument for an extension of principle rather than a strict factual parallel. In *Zanker v Vartokas* the target of the violence was a stranger to the perpetrator. She did not live with him. She did not share a history, finances, children or a bed with him at night. Thus it is more reasonable to assume that if she had managed to call the police, even if she had managed (as she did) to get out of the car she was in when he threatened her, then the threat was effectively defused.

Hubble's focus on the time needed to call for police assistance as the key factor which delimits self-help from self-defence is at odds with current literature and with legal interpretation in other ways. It clearly precludes responses against anticipated harm, for, in Hubble's formulation, if the violence isn't yet in progress surely there is the time to get

help? The Canadian *Self Defence Review* (1997) addressed this issue in the following manner:

> The Court [in *Lavallee*] disapproved of the stipulation, which in earlier cases had been read into the law of self defence, that the accused must have responded to an *imminent* danger. This requirement, in effect, meant that person could not raise self defence in a situation where he or she anticipated future harm and the victim's assault had to be in progress at the time of the accused's acts. As Dr Shane testified in *Lavallee*, there are often cycles in abusive relationships in which a period of tension would be followed by violence which, in turn, would be followed by a period of contrition. The cycle would then start over. Women in such relationships become sensitive to the revolution of this cycle and accordingly, can anticipate when they are likely to be victims of violent acts on the part of their mates. The perspective of the women in such relationships has been referred to as the 'battered woman syndrome.' Requiring women who could accurately anticipate when they were likely to be assaulted to wait until the assault was under way before they could defend themselves would, according to Wilson J., be 'tantamount to sentencing her to 'murder by instalment.' The real question is whether the accused's beliefs as to the jeopardy she was in and the need to use force were reasonable' (*Final Report* p 49).

At several points in her discussion of this issue Hubble comes close to minimising the violence that women who kill their violent partners might face in the circumstances in which they find themselves. One such instance is in her discussion of the duty to retreat. She comments that:

> As the common law is presently understood and applied, a perception (accurate or otherwise) that one is trapped within a relationship or particular domestic setting would not be enough, notwithstanding the risks that may accompany separation. As Catherine MacKinnon reminds us 'you don't exactly get to kill someone in the hope of improving your future life' (Hubble 1997:119).

It is vital to remember that we are discussing situations in which women's (and sometimes children's) lives and physical integrity are in grave danger. We are not talking about lifestyle choices but rather the capacity to avert threatened future serious harm. The case of *Bradley,* referred to above, provides one particularly brutal illustration of this point.

Finally, Hubble argues that a more liberal interpretation of self-defence might lead to undesirable consequences if it also became available to men. She says such an approach:

> ...would also apply in the context of violence perpetrated by men in the name of self-defence, potentially allowing an inquiry into the likely efficacy of lawful assistance whenever the defence is raised (Hubble 1997:120).

This is not an argument which troubles us. We do not see any reason why men accused of homicide should not have their behaviour judged with reference to a realistic assessment of their circumstances, as they had reasonable grounds for perceiving those circumstances to be.

## Determinism

Part of Hubble's expressed concern about further legal developments in this area relates to the issue of determinism. Hubble cautions that feminists might be troubled by any further shift away from conceptualising behaviour as a free moral choice made by the actor concerned and towards conceptualising behaviour as 'determined'. This is because such a shift may benefit violent men. She says that:

> ..the criminal justice system is unlikely to move any significant distance down the path of eschewing the model of individual autonomy and agency and if it did it might end up at a

> place many feminists would not want to go. The violence perpetrated by many male criminals may well be comprehensible when regard is had to their personal experiences of violence and the teachings of a patriarchal culture (Hubble 1997:122).

We have a number of responses to this argument. The first is that it may well be true that (some) men's criminality is comprehensible in the fashion that Hubble suggests, however comprehension does not result in an automatic legal defence. Violent behaviour will not result in an acquittal for the purposes of self-defence unless it is a consequence of the accused's honest belief on reasonable grounds that what they did was necessary in self-defence. Being informed by patriarchy is not a defence. Being in terror for one's life and defending oneself against an attack is.

Our second response is that Hubble's argument relies on a dichotomous construction of human behaviour as either governed by freewill or totally determined. In cases of of battered women who seek to argue self defence, this dichotomous construction of human behaviour is often evident in the difficulty courts seem to have in reconciling the victimisation of battered women with their acts of agency. A woman who exercises choices, albeit limited ones, in responding to the violence she has endured risks being seen as 'not victim enough' to warrant a claim of self-defence. The corollary is that the application of the label 'victim' risks promoting the perception that a woman was so determined by her victim status as to be incapable of exercising agency, and thus her resort to self-defence may be difficult to understand. The dichotomous construction of victim/agent is at odds with the lived experiences of many battered women who have been genuinely victimised, and yet have also simultaneously demonstrated considerable agency in adopting a range of strategies to deal the violence that they have been subjected to (Mahoney 1992; Mahoney 1994; Stubbs and Tolmie 1995).

Hubble argues that feminist analyses which attempt to locate women's choices within their larger structural/cultural circumstances are moving in the direction of arguing that women's choices are determined by such factors.

> While these analyses primarily aim to describe a context within which the battered woman's choices can be revealed as rational/reasonable, they are accompanied by an attempt to present that decision-making as constrained or determined by the broader social context (Hubble 1997:122).

We would argue that new constructions of self-defence which reflect women's experiences more readily than has occurred in the past need not rely on a greater resort to determinism. Just as the question is not one of whether such women are victims or agents, the issues to be decided in assessing a claim of self-defence should not be understood to require a choice between free will *or* determinism. Instead the task is how to move beyond that simple dichotomy to better understand the complex ways in which choice is shaped and constrained.

## Diversity

Hubble concludes her article by saying that;

> feminist scholars must remain open to the diversity of women's experiences and not attempt to ameliorate those differences in order to obtain a less differentiated and more politically useful portrait of womanhood. The time has come to respond to that diversity and to more fully explore legal alternatives other than self-defence for battered woman who kill their abusive partners (Hubble 1997:123).

With the greatest of respect we disagree with the tenor of this paragraph. We would argue that an engagement with the diversity of women's life experiences is an explicit part of 'feminist' work in this area. Working to challenge traditional assumptions about the content of self-defence is aimed at opening up an additional defence for women, that is additional to provocation or diminished responsibility, and to increase the range of options which women have in formulating a defence to homicide. It is not intended to be prescriptive nor to deny the applicability of other defences. In addition, we are among a number of feminist scholars who have cautioned against the adoption of battered women syndrome as a new stereotype against which women's behaviour is to be measured (Sheehy, Stubbs and Tolmie 1992). We have also argued that there is a danger that work done to promote the battered women syndrome may inadvertently reflect racial and class based assumptions which are to the detriment of women who do not come from dominant social positions (Stubbs and Tolmie 1995; Tolmie 1997). This remains the greatest challenge for scholarship which addresses diversity.

We would agree with Hubble that more needs to be done in considering the manner in which defences such as provocation or diminished responsibility are being used where women kill. Nothing in our focus on self-defence should be construed as down playing the ongoing potential for further feminist engagement with these topics.

## List of Cases

*R v Bradley* (unreported, Supreme Court of Victoria, 14 December 1994)

*Gilbert* (unreported, Supreme Court WA, 4 November 1993)

*R v Hickey* (unreported, Supreme Court NSW 14 April 1992)

*Hudson & Taylor* [1971] 2 QB 202

*R v Kontinnen* (unreported, SA Supreme Court 30 March 1992)

*R v Lavallee* (1990) 55 C.C.C. (3d) 97

*R v Malott* [1998] 1 S.C.R. 123

*R v Secretary* (unreported NT Court of Criminal Appeal, 2 April 1996)

*Van Den Hoek* (1987) 28 A Crim R 424

*Zanker v Vartokas* (1988) 34 A Crim R 11

*R v Zecevic* (1987) 71 ALR 641

*R v Zhou* (unreported, NZ High Court, 4 October 1993)

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