

Intended and merely foreseen consequences: The psychology of the 'cause or allow' offence. A short report for the Socio-Legal Community on ESRC Grant RES-000-22-3114. *Socio-legal Newsletter, Spring Issue, 2012.*

Michelle Cowley (Principal Investigator), University of Oxford, UK

The purpose of this grant was to investigate the role that the psychology of intent and foresee-ability plays in people's everyday psychological constructs of guilt and responsibility in child injury and infanticide cases, under the premises of Section 5, Domestic Violence, Crime, & Victims Act (2004). The case of Rebecca Lewis, who came to light and shocked the public because of her inaction, and thus guilt of familial homicide under Section 5, by allowing her baby son Aaron Gilbert to be killed by her partner's abuse, prompted this large scale study. Familial Homicide, more commonly known as the 'cause or allow' offence is a relatively new offence in the United Kingdom (Section 5, Domestic Violence, Crime, & Victims Act 2004), in which both caregivers can be prosecuted for a child's death even if one caused the death while the counterpart allowed it by not intervening. Rebecca Lewis' inaction in this case was deemed to have allowed baby Aaron's death, and thus by law she equally caused the outcome of her child's death in conjunction with her abusive partner. This project identified that this law could be difficult for everyday jurors to consider, because psychologically 'cause' and 'allow' have different psychological meanings when the outcome is the same for both by law, even though the actions or the intention behind those actions are so divergent. For Rebecca Lewis there was no evidence of intent to harm, rather what she claimed to be a misplaced hope that her partner's behaviour would improve.

Three questionnaire-survey studies were designed to measure the public's guilt, responsibility, and intuitive sentencing attributions using a quantitative-qualitative mixed method, to identify where individuals might diverge from legal prescriptions for scenarios in which a woman in Rebecca Lewis' situation might be more or less psychologically culpable. The three studies demonstrated that the psychological reality of how people reason about intent behind actions or inactions, or ascribe an ability to foresee consequences from the woman's perspective in the scenario, does not correspond neatly to the legal logic defined by the 'cause or allow' offence under Section 5. Overall the findings showed that a better understanding of how anticipating outcomes that could have reasonably been foreseen, could provide a critical intersection for examining responsibility, punishment, and appropriate balanced intervention or adjudication in child protection, in the context of the 'cause or allow' offence. The main findings of the grant are summarized here and the resulting E-Policy Report and grant outputs are highlighted at the end of this report.

Study 1: *Intentional Actions and Inactions:* This study found that the presence or absence of intent in a legal scenario in a 'cause or allow' case predicted the extent of the public's intuitive sentencing of the defendant when the defendant was the mother's partner. Regardless of whether the mother acted or did not act, if he had intended to cause harm then he was sentenced more harshly. Moreover, intentional allowers of harm by inaction, or non-intervention attempts are punished more when discovered, than allowers who have no intent to harm. **Study 2: *Intentions and Concordant and Discordant Outcomes:*** Regardless of whether the outcome matched the defendant's intent, that is, when the intent to cause a negative or harmful outcome in fact led to a negative outcome as opposed to a positive one, judgments of guilt and sentencing punishments were harsher. However, guilt and sentencing were found to not be necessarily psychologically the same. Defendants contributing to accidental injuries, whether positive or negative outcomes occur, are judged the least guilty in comparison to intentional and unintentional positive and negative outcomes in the absence of accidental contribution, but they are sentenced relatively harsher than when there is no intent or accidental contribution for positive outcomes. The defendant receiving the harshest judgments for guilt and sentencing, was the defendant that intended harm when in fact a positive outcome resulted. In other words, intent trumps outcome for guilt and sentencing, especially when thwarted. **Study 3: *Witness Foresight and Reasonable Prevention:*** This study focused on the allowers and her gender relative to a male causer, and how harshly people judged her in accordance with how much abuse she had witnessed, or how much foreknowledge she had relative to being aware of his propensity for abuse. In terms of finding her not guilty of causing, but guilty of allowing, participants opted for guilty of allowing, or doubt 79% of the time, and innocent 21% of the time. This finding was reasonably consistent across all conditions regardless of whether she had in fact eye-witnessed abuse or not, or whether she knew he had a prior conviction or not, or whether there was evidence against her at all. These

results and an interdisciplinary discussion about foresight and the law are now available in the E-Policy Report 'Foresight and Reasonable Prevention in Child Protection Contexts: The public's perspective', Spring 2012.

ESRC E-policy Report: Cowley, M., Beckett, C., Esam, B., Pote, A., Wall, L., & West, P. (2011). 'Foresight and Reasonable Prevention in Child Protection Contexts: The public's perspective'. *ESRC e-policy Focus Report 2011*. Available online, Spring 2012.

Further outputs of ESRC Grant RES-000-22-3114:

Cowley, M. (full draft in process). The psychology of witness foresight in preventative intervention: How the public perceive vulnerable adult and child cases. Journal article in preparation.

Cowley, M., et al. ESRC Foresight Workshop (http://www.law.ox.ac.uk/conferences/csle_foresight/index.php)

Cowley, M. (2011). Foresight, Children, & the Law. HSE (Health Service Executive) Nurse Training, Dept. of Risk Management, Our Lady of Lourdes Hospital, Drogheda.

Cowley, M. (2010). Lenses of Evidence: How juries reason about evidence. KBW King's Bench Chambers legal practice guest speaker. Ashmolean Museum/ Worcester College, Oxford.