The Thomas Kelly case: why a ‘one-punch law’ is not the answer

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Abstract
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While Loveridge was in fact sentenced to a total of six years for Kelly’s manslaughter and seven years and two months when the other assaults committed the same night were included, the punishment still didn’t seem like it had fit the crime. A sense that the system had failed a grieving family has ignited a debate over whether a “one-punch law” should be enacted in NSW.

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The Conversation

The Thomas Kelly case: why a 'one-punch law' is not the answer

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Last July, Sydney teenager Thomas Kelly was king-hit and killed by Kieran Loveridge in a senseless act of alcohol-fuelled violence. When Loveridge pleaded guilty to manslaughter in September, expectations were high that he would receive a hefty prison term. However, the sentence of four years minimum jail – handed down last Friday – sparked immediate outrage.

While Loveridge was in fact sentenced to a total of six years for Kelly’s manslaughter and seven years and two months when the other assaults committed the same night were included, the punishment still didn’t seem like it had fit the crime. A sense that the system had failed a grieving family has ignited a debate over whether a “one-punch law” should be enacted in NSW.

What is a one-punch law?

One-punch laws have been enacted in Western Australia (in 2008) and the Northern Territory (in 2012). On both occasions, it followed intense media coverage of tragic killings of young men in circumstances very similar to the death of Thomas Kelly.

One-punch laws provide that where a person assaults another and that person dies as a result, the person is guilty of the offence of “unlawful assault causing death” and is liable to imprisonment for up to 10 years in WA and 16 years in the NT.

The offence is regarded as filling a gap – a gap that exists in the parts of Australia where manslaughter is defined in a way that means it will usually not apply in one-punch death situations because of the operation of the defence of “accident”. In law, an accident is a result that was not intended by the perpetrator and not reasonably foreseeable by an ordinary person.

Will it lead to appropriate punishment?

The short answer is no. The desire for a fair punishment for the killer by Kelly’s family is understandable. But the history of one-punch laws in other parts of Australia suggests that they are unlikely to bring victims' families the “justice” they crave.

If a perpetrator of a one-punch killing is charged with manslaughter in Western Australia, the jury must be satisfied beyond reasonable doubt that the death from the one punch was reasonably foreseeable. This is a very high threshold and often not satisfied. It has led to significant disappointments for families who have lost loved ones to one-punch killings, with juries returning not guilty verdicts for manslaughter.
In other words, one-punch laws have been seen as necessary in WA and the NT, not because manslaughter is viewed as too light, but because manslaughter is not available.

There is no defence of “accident” in NSW, and manslaughter laws are defined differently in the state, with a lower threshold. More to the point, one-punch killings in NSW have resulted in convictions for manslaughter – like that of Loveridge.

However, Loveridge’s sentence was well below the maximum of 25 years. And herein lies the real controversy – the length of sentences for manslaughter. So, why introduce a special one-punch law that has a maximum sentence lower than that for manslaughter? Further, anyone who thinks mandatory sentencing is the way to guarantee a hefty sentence only need read NSW attorney-general Greg Smith’s “case against” to know why that’s not the solution.

Smith rightly identifies four key fallacies of mandatory minimums: they have not led to a reduction in crime globally; they reduce incentives to plead guilty; people go to prison for longer; and that they are discriminatory and don’t consider the individual circumstances of an offence.

Even where one-punch laws have been introduced, the sentences handed down are often – just like manslaughter in NSW – well below the maximum. For example, there has been no sentence in Western Australia above five years, with most being around two or three years. These sentences are lower than those for similar manslaughter convictions in NSW, and certainly less than the six years given to Loveridge.

**Unintended consequences**

The other important issue here is that once a law is made it can have unintended results. In Western Australia, the majority of convictions for one-punch killings have been against men who have killed their partners or ex-partners – and in circumstances where there has been a history of violence and abuse. These were not the types of matters contemplated when the one-punch laws were drafted.

One woman, Saori Jones, was killed by a punch to her head that knocked her off her feet, leaving her unconscious in front of her two children. The partner pleaded guilty to the one-punch crime and was sentenced to five years with a non-parole period of three year.

The horrific facts of this case prompted a petition for amendment to the one punch law. “Saori’s law” was the result, with an (ultimately unsuccessful) bill introduced into the WA state parliament in 2012 to increase the maximum penalty for one-punch domestic violence killings to 20 years. As noted above, the maximum for manslaughter in NSW is already 25 years.

**What’s the lesson here?**

The NSW parliament responded to the death of Thomas Kelly last year with a multi-faceted and nuanced response to alcohol-related violence.
The NSW state government shouldn’t undo the good work now by responding to the sentence handed down to Loveridge – which the Director of Public Prosecutions may yet appeal – with an ad hoc, knee-jerk offence that may further disappoint families of one-punch crimes and unintentionally impact seriously on the area of domestic homicides.

*Julia Quilter does not work for, consult to, own shares in or receive funding from any company or organisation that would benefit from this article, and has no relevant affiliations.*