

Sentencing land Indigenous Peoples



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Sentencing and Indigenous Peoples

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Proceedings of Roundtable on Sentencing and Indigenous Peoples
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Proceedings of Roundtable on Sentencing and Indigenous Peoples

convened by the
Australian Institute of Criminology and the
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on 31 October 1997, and hosted by the
Aboriginal and Islander Study Centre,
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Chairperson: Mr Jim Harvey

edited by Rick Sarre and Digby Wilson



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Foreword

The Roundtable on Sentencing and Indigenous Peoples was developed from the need to review sentencing practices in relation to Indigenous people, and in particular to revisit the processes which led to Indigenous people being incarcerated at a much higher rate than non-Indigenous people.

The Report of the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations, including “imprisonment ought to be the consideration of last resort” (Recommendation 92). However, little has changed concerning sentencing practices, and consequently, the rate of custodial deaths is still high. During the seven-year period from 1990-91 to 1997-98, 88 Indigenous people died in institutional custody (Dalton 1998).

The participants at the Roundtable reviewed many issues surrounding the role of sentencing and Indigenous offenders. These papers discuss the adequacy of consideration being given to non-custodial sentences; the place of customary law in sentencing; the need for better coordination of services to Indigenous peoples; and the training of professionals in the criminal justice system in cross-culture communication. In addition, the senior Fulbright Scholar at the Faculty of Aboriginal and Islander Studies at the University of South Australia, Sam L. Myers Jr, gave an account of the African American experience in relation to the role of improved employment opportunities in reducing crime.

Apart from the formal papers, several participants offered commentary and these are included at the end of some papers, adding to our knowledge of Indigenous affairs.

Armed with this knowledge, it is hoped that policy makers can assist in the process of reconciliation by formulating policies which help to make sentencing practices more effective, and also which help to reduce the number of Indigenous people in custody.

Adam Graycar
Director, Australian Institute of Criminology
August 1998

Reference:

Dalton, V. (1998), *Australian Deaths in Custody and Custody Related Police Operations, 1997-98*, Australian Institute of Criminology, Canberra, <http://www.aic.gov.au>

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From the Editors

In this book of proceedings, readers will find a series of formal presentations from a number of invited contributors together with short commentaries and summarised presentations from other participants, all focussing on the subject of sentencing and Indigenous Australians.

The monograph also reproduces a wealth of literature (through a reproduction of selected abstracts collected by the Australian Institute of Criminology) for further research into the area.

It is hoped that this monograph may provide some further information and become a stimulus to keep this serious topic in the forefront of political debate in Australia.

Rick Sarre
Digby Wilson
University of South Australia
July 1998



1

Bibliography on Sentencing and Indigenous Peoples: Commentary on a literature search

JANE MUGFORD

Contents of the Bibliography

The focus of this Roundtable is on setting research agendas for the future. To this end, the bibliography and abstracts found at Appendix 1 of this monograph attempt to cover the research literature. However, they also cover key policy reports of the recent era, most notably the reports of the *Royal Commission into Aboriginal Deaths in Custody*. Such reports are significant indicators of research that has been conducted, since research both contributes to, and flows from, these policy documents.

The bibliographic entries have been abstracted from the Australian Institute of Criminology's criminological database, CINCH, and *Criminal Justice Abstracts*. No date parameters were imposed on the search of *Criminal Justice Abstracts*; the CINCH search was limited to material published during or after 1982.¹ The majority of entries include abstracts, and they are ordered according to the year of publication (descending order, starting with the most recent entries). Bibliographic references in brackets in this chapter are found in Appendix 1.

In reviewing the items listed in these searches, several themes and patterns emerge. Not surprisingly, most of the Australian

material focuses on issues arising in relation to the Royal Commission into Aboriginal Deaths in Custody. The over-representation of Indigenous people in custody was a key focus of the Commission, as is clear from perusing the literature during the decade from about the mid-1980s onwards. This bibliography excludes items focusing entirely on over-representation issues, but includes items where sentencing or diversion issues are discussed in the context of over-representation.

The bibliography contains many items on keeping offenders out of prison and recidivism issues, on the use of diversionary or other non-custodial sentencing options, and on the use of traditional justice or customary law options. There is a strong focus on intervention with youth, through the use of various juvenile justice options. There are some informative items from overseas, especially Canada. Several further items discuss the underlying issues which explain the disproportionate involvement of Indigenous people in the criminal justice system.

Very few items focus on the sentencing process or on court decision-making processes in relation to Indigenous offenders. However, there are entries on sentencing disparity, several statistical reviews which include information on sentencing outcomes and penalties, and several items which focus on analysis of transcripts for specific court cases, as well as a few items on racial bias in the courts.

¹ Owing to space constraints, mainly bibliographic extracts since 1990 are included in this monograph. Full extracts 1982-89 are available from the editors.

There is relatively little that focuses on women, and such material as exists looks more at issues surrounding women in prison than on sentencing issues for women. However, the bibliography includes a few items that address sentencing issues and judicial processes in relation to women in general, and to Indigenous women specifically. A sub-theme relates to Indigenous women as victims (for example, of domestic violence or sexual assault) and refers to the dangers of further victimising these women in court because of a lack of understanding about their particular cultural and social circumstances.

What follows is a selection of key themes that emerge from the literature cited in the bibliography.

Sentencing Issues and the Royal Commission

In its inquiry into Aboriginal deaths in custody, the Royal Commission under Commissioner Muirhead took the view that it should investigate not only how the deaths occurred, but why they occurred. Thus, it was determined that the Royal Commission should include in its terms of reference a range of underlying issues, including social, cultural and legal factors which appeared to contribute to disproportionate Aboriginal arrest, detention and imprisonment.

Among the factors considered by the Royal Commission were court practices in relation to the imposition of custodial sentences. Its concern was with the following issues:

- Is imprisonment seen as a last resort?
- Are alternatives such as community service orders realistically available to Aboriginal people?
- Are such alternatives appropriate to Aboriginal communities, and do they set unrealistic expectations that lead, ultimately, to an increase in the incidence of offenders being placed in custody?
- Are legal aid services available and adequately funded?
- Are legal processes comprehensible to Aboriginal people?

- Do legal officers and the judiciary know enough about Aboriginal culture to be able to fix more effective penalties and impose more workable conditions on the release of offenders, which do not unwittingly encourage further offences?

In its National Report (see 1991/8, Appendix 1) attention was paid to reducing the numbers in custody through diversion from police custody and the use of imprisonment as a last resort. The former included recommendations in relation to decriminalisation of certain offences including public drunkenness, improved and culturally relevant use of community policing, increased use of community-based options and cautioning as alternatives to arrest, and changes to bail provisions and procedures. Recommendations in relation to the use of imprisonment as a last resort included consideration of the introduction of legislation to permit criminal records to be expunged after a lapse of time in order to remove references to past convictions, that offenders might perform community service work by pursuing personal development courses, that sentencing authorities consult with discrete or remote Aboriginal communities in order to establish the general range of sentences that is appropriate, that Aboriginal legal services should be adequately funded and the wide role that they fulfil should be acknowledged, and that a range of appropriate non-custodial sentencing options should be available and capable of implementation in practice. Home detention was particularly recommended as an option both for sentencing and as a means of early release (though the advantages of returning Aboriginal offenders to their communities — see 1993/15 — is offset by a concern by some Indigenous communities that offenders should be separated from their families in an attempt to break the criminal cycle — see 1996/2). The use of community service orders, probation and parole, and the use of fines were all given limited endorsement, as long as the use of these alternatives neither disadvantaged Aboriginal offenders in relation to other opportunities nor placed them disproportionately at risk of further imprisonment for defaulting.

Response to the Royal Commission Report

Governments have formally monitored the implementation of recommendations of the Royal Commission (for example, see 1994/15) and researchers have assessed the degree and nature of any changes which might have occurred. A recent evaluation (see 1997/1) revealed the following:

- **Expunging criminal records.** Recidivism levels for Aboriginal Australians are high, and criminal records therefore have serious consequences for Aboriginal people. In most jurisdictions the recommendation in favour of legislation to expunge criminal records after a set period of time, especially for juveniles, has not been taken seriously.
- **Cross-cultural training.** Aboriginal people frequently experience the court system as racially biased and ignorant of their cultures, leading to the assumption that the system is loaded against them. Most jurisdictions have embarked upon cross-cultural training of judicial and other criminal justice officers. Much of the initial resistance to such training has been overcome but concern remains about the lack of cultural awareness among magistrates and the judiciary. Evaluation of the effectiveness of cross-cultural training remains to be done.
- **Phasing Out JPs.** There has been a particular concern about biased responses among Justices of the Peace (JPs) and their relative failure to use non-custodial sentencing options. The Commission's recommendation to phase out the use of JPs has only been partly implemented. A move towards the greater use of Indigenous people in the community court at the local level (for example, a project at Kowanyama in Queensland) has been limited by the limited implementation of the criminal records expungement legislation, in that many Indigenous people are precluded from participation because of their prior record. (See also earlier literature on the development of an Aboriginal JP Scheme in WA — 1985/2 and 1985/3, plus 1985/12 which describes a magis-

trates court model, a JP court model and an Aboriginal community court model.)

- **Use of Interpreters.** Many Indigenous people feel confused and intimidated by the courts, and Royal Commission recommendations included training and services to ensure the availability and use of interpreters (see 1991/17). There has been a general failure to implement these recommendations, with judicial officers continuing to make assessments concerning bilingual and bicultural competency in a way which disadvantages Indigenous people. This links back to the need for increased cross-cultural training.
- **Aboriginal Legal Services.** Recommendations acknowledged the broad law reform role of Aboriginal Legal Services as well as their responsibilities in representing and advising Indigenous people. Aboriginal Legal Services have fulfilled both of these roles in so far as it has been possible with inadequate funding.

The Use of Customary Law

The use or otherwise of customary law has been a key issue in the literature (see 1987/6). The 1986 Australian Law Reform Commission (ALRC) Report on Aboriginal Customary Laws (see 1986/8 and 1986/1, 1987/1 and 1992/6) recommended that regard should be given, so far as they are relevant, to the customary laws of Aboriginal communities in determining sentence. This approach was explicitly supported by Western Australia (see 1991/1).

It was argued that the use of customary law would support rather than undermine traditional laws and authority structures, and lead to an improvement in the quality of justice for Indigenous people. Arguments against it involved concerns that such recognition could lead to endorsement of unacceptable punishments that cannot be tolerated by the general legal system and might lead to discrimination against Indigenous women as well as to violations of other basic rights. Complexities requiring resolution include defining what is "Aboriginal" and what is "customary" for the purposes of implementing a customary law

alternative, and addressing the question of how far customary law should be taken (see 1994/10).

While there were good reasons for action in relation to the use of customary laws, such action does not appear to have eventuated. Several reasons for inaction have been posited, including the possible threat that federal legislation might pose to State and Territory governments, a concern that it might set a precedent for dealing with the laws of immigrant communities within Australia, and the fact that it might cut across broader issues of Aboriginal self-determination and the rights of Aboriginal communities to determine their own priorities between recognition and other matters. However, it has been argued that the bottom line may be a lack of political will to make real efforts at reconciliation with Aboriginal people (see 1993/7).

In practice, the use of customary law occasionally occurs with the explicit support of the courts. Judicial argument has suggested that this is a matter of acknowledging that which will take place regardless of what the court might think about it, and also of acknowledging that Aboriginal tribal law should have a special place within the judicial system, unlike the cultures and laws of other minority groups (see 1994/12).

Aboriginality as a Sentencing Factor

The accepted principle is that Aboriginal offenders are sentenced according to the same rules as everybody else. However, it has been argued that there are sentencing differences between Aboriginal and non-Aboriginal offenders because of factors such as judicial racism and lack of cross-cultural awareness. There is also the argument that sentencing differences should occur, especially in relation to the need to take into account the operation of customary law (see 1994/11).

Bias in the sentencing process can occur at both pre-sentencing and sentencing phases, which involves the work of probation officers (who write pre-sentence reports — see 1993/14) as well as magistrates and judges who may practise what has been called “paternalistic racism” (see 1992/9; also 1991/14). It is debatable whether available research and statistics support this position. While

over-representation of Indigenous people in the criminal justice system is an undisputed fact (see 1995/3; also 1990/9), recent data show that the relative degree of over-representation occurs at the policing level rather than during court decision-making (see 1997/1). In support of this finding there is research which suggests that the courts do take into account various social, economic and other disadvantages related to an offender’s membership of an Aboriginal community (see 1994/3).

Focus on Juveniles

There is a concern to reduce the involvement of Indigenous youth in the criminal justice system through preventing their initial entry into the system and by dealing with their cases more effectively where they are already in the system. Evidence shows that police are less likely to caution Indigenous offenders compared with non-Indigenous offenders, thus channelling more Indigenous offenders into the court process. In relation to sentencing Indigenous juveniles, a NSW study shows that they have a greater chance than non-Indigenous juveniles of being sent to an institution (see 1996/1 and 1993/6).

However, there appear to be legislative differences between Australian jurisdictions which are likely to cause different effects on the numbers of juveniles being sentenced to institutions. In Queensland, for example, the *Juvenile Justice Act 1992* (see 1995/5 and 1995/15) acknowledges the vulnerability of children in dealing with authority figures in the criminal justice system, and highlights the particular vulnerability of Indigenous children in this regard. The Act further requires that prison be used as a last resort. In contrast, the *Crime (Serious and Repeat Offenders) Sentencing Act 1992* in Western Australia (see 1992/10) imposes harsh minimum sentences for repeat offences that could result in increases both in the prison population and Aboriginal over-representation. The Act was targeted mainly, though not exclusively, at young offenders who steal cars and drive them dangerously.

New Directions in Sentencing Options and Alternatives for Indigenous Offenders

There are several Australian examples of “good practice” in sentencing and administering justice. Among them are the operation of the magistrate’s court in the Pitjantjatjara Lands (see 1990/6) and the development of community justice groups in Kowanyama and Palm Island, Queensland (see 1997/1). The success of all of these projects has derived from the central involvement of, and input from, local Indigenous communities.

The most successful initiatives both here and overseas have developed collaborative mechanisms for dealing with problems of justice and social control which is consistent with Aboriginal law and cultural practices as well as utilising aspects of the Anglo-Australian legal system. This includes Kowanyama and Palm Island. Recent overseas literature discusses the concept of restorative justice in this context, and describes the use of “sentencing circles” and “family group conferences” (see 1995/6 and 1996/5) within Indigenous communities. Such schemes promise a quality of justice that is not available through the more formal justice mechanisms of the state.

Evaluation

As noted above, there has been a failure to implement adequately and effectively many of the recommendations of the Royal Commission, particularly in relation to the central recommendation on the need for negotiation and self-determination in relation to the design and delivery of criminal justice services.

There are also inadequate mechanisms for monitoring and evaluating any effects of implementing the recommendations of the Royal Commission. In relation to sentencing and court processes, one recent evaluation report (see 1997/1) argues that “... there is scarce knowledge on the manner in which Indigenous people are processed through the court system”. The non-availability of suitable statistical data is a key (though not the only) issue. For example, in Queensland it has only been possible to identify court appearances by

Aboriginal and Torres Strait Islander children since 1993 (*Children, Crime and Justice in Queensland*, Criminal Justice Commission Research Paper Series, Vol 2, No 2). At the national level there continues to be a need for better statistical information in relation to Indigenous people. With this in mind, the National Centre for Crime and Justice Statistics has recently announced that it will be giving “... greater priority to the development and implementation of national standards for indigenous identification in the crime, courts and corrective services statistical collections” (*Crime and Justice Statistics*, Issue 3, October 1997).

COMMENTARY

Q1: Can you comment about the absence of data and analysis regarding female Aboriginal offenders. Why is there a lack of data?

JM: The importance of bringing both State and national figures together to provide comparative research was only recently realised. The data, however, involve different jurisdictions and different systems. The Crime Centre in Melbourne is looking at issues involving both Indigenous and non-Indigenous figures, including domestic violence, which should provide better statistics.

Q2: What were your impressions on how the Justice Department's changes were being received?

JM: They have been well received but the question of resources is another issue. We need people to run the changes in the way in which they were intended. There have been difficulties in having a police officer in the Departments and making the changes. Evaluations have not been as good as they should be.

(Response from Tauto Sansbury)

TS: There is a further problem in not having enough Aboriginal involvement. Funding for the changes has not been going towards Aboriginal community involvement but to government departments who really do not have to account as much for the spending of the money. There is a problem of lack of coordination and indeed lack of respect for Aboriginal organisations by government departments who are supposed to be talking with those organisations but are not. Palm Island was identified as a "best practice" situation. Non-Indigenous authorities have not adopted the recommendations. In dealing with juvenile justice, Aboriginal youth have a problem with having to plead guilty whether you have committed an offence or not before going before a panel and with police conducting family conferences. In general, the criminal justice system is not "user-friendly" for Aboriginal people. The option of community service should be the first option for many people rather than paying a fine or having property seized.

Q3: In regard to the National Centre and collection of data, will they provide an evaluation measuring the effectiveness of programs currently running? At the Ministerial Summit one of the Ministers claimed the program was no longer needed. If that is to become best practice, will actual best practice be included in the research?

JM: The Centre does monitor data collected but does not evaluate programs or suggest best practice.



2

Sentencing in Customary Australia: An overview of the issues

RICK SARRE

Indigenous people are far more likely than non-Indigenous people to be drawn to the attention of police and taken into custody. The presence of Indigenous peoples in the criminal courts is disproportionately high. Indigenous people are vastly over-represented in prisons. That these facts have major implications for the numbers of Aboriginal deaths in custody, as well as broader implications for Australian social, economic, welfare and health policies, is not in dispute. What is a matter of some conjecture is the remedy for the malaise. There is a need for research that would examine, and perhaps implicate as a cause of the problem, current patterns of sentencing of Indigenous Australians. This paper reviews one idea alone: the potential for differential sentencing — along “customary” lines — to act as a means of addressing the current concerns.

In 1991 the Report of the Royal Commission into Aboriginal Deaths in Custody was published. One of the findings of the Report was simple and unequivocal. “The first strategy to reducing the number of deaths in custody”, wrote Royal Commissioner Elliott Johnston QC, “is to reduce the number of Aboriginal people coming into custody in the first place” (Royal Commission 1991, p. 133). Sadly, the position described by the Royal Commission Report has hardly changed in the six years since it

was published.¹ The Final Report made 339 recommendations concentrating principally on the underlying reasons that brought Aboriginal Australians to the attention of police. The Report sought reforms regarding, amongst other things, police training, court and prison practices, government facilities and counselling services. In relation to sentencing practices, little was said, other than that imprisonment ought to be the consideration of last resort (recommendation 92). Yet, despite a commitment of governments to endorse and implement the recommendations of the Royal Commission, little has changed in relation to the interface of Aboriginal Australians and the justice system. Little has changed specifically in relation to

¹ The number of Indigenous people in prison continues to increase in Australian communities. Indigenous Australians are still approximately 14 times more likely than non-Indigenous Australians to be in prison Australia-wide (Walker 1994, p. 13). There would appear to be no significant difference between adult and juvenile figures (Wundersitz et al. 1990). In South Australia as at June 30 1997 there were 151 Aboriginal men and 19 Aboriginal women in SA prisons, being 10.7% of the male prison population and 20.6% of the female prison population. When reviewing the daily average for the first half of 1997 these percentages climb to 16.9% and 28% respectively.

sentencing practices, and, as a corollary, the rate of custodial deaths has not fallen.²

The issue under discussion in this paper is the role of sentencing and in particular the persistence of the custodial sentence for Indigenous offenders in Australian courts today. Can a solution to the problems identified in the Royal Commission Report be found in reforming sentencing practices? Could these reforms target custodial sentences as anathema to Indigenous offenders? Probably not. Simple solutions are invariably laced with difficulties. What criteria does one use in order to sentence justly, for example, an Aboriginal defendant who has pleaded guilty or been found guilty of a serious crime? On the one hand, recognition needs to be given to the problems faced by Aboriginal Australians caught in a culture clash between ancient mores and colonial laws (Behrendt 1998). On the other hand, considerations of community safety (and the victim's suffering) ought to be given importance too. Then again, there are arguments that there is an obligation under international law to recognise customary rights (Cassidy 1993). By the same token one might argue that there ought to be formal equality before the law.³ In the end, it is very difficult for one sentence to meet multiple expectations.

The choice, for the purpose of this paper, is between custodial and non-custodial

sentences. The argument often put to policy-makers is that there ought to be a renewed affirmation, on the part of sentencing authorities, to avoid custodial sentences as a matter of policy. But there are problems with such an approach. For while it appears that there is little evidence that simply applying non-custodial options would make any difference to offence rates and recidivism rates,⁴ there may be a community backlash (Indigenous as well as non-Indigenous) if there were to be any perception that Aboriginal offenders were on the receiving end of legally mandated leniency. What, then, is the answer for policy-makers who wish to take seriously the opportunity to bring about reform in this area?

At the very least it is arguable that policy-makers ought to consider the challenge offered by the Australian Law Reform Commission (ALRC) over a decade ago and explore the opportunities for "customary" sentencing in certain jurisdictions and forums. It is possible that there would be a greater likelihood of more appropriate and just outcomes for all Australians, Indigenous and non-Indigenous, if customary law were to be embraced in greater measure in Australia (Sarre 1997a, pp. 61-2; 1997b, p. 546). This is certainly not the first time this suggestion has been explored (for example, McCorquodale, 1984: 254ff; McRae et al. 1997, pp. 376 ff), nor is it a suggestion without its vehement opponents (for example, Raffaele 1994). But the Royal Commission Report made strong reference to the notion⁵ and it is the author's view that it is an idea worth pursuing, given the abject failure of the implementation of other recommendations of the Royal Commission to stem the tide of custodial deaths and recidivism rates identified by them. The Royal Commission made this recommendation:

That in the case of discrete or remote communities sentencing authorities consult

² There are an average of 10.5 Aboriginal deaths in custody annually, the same as the average during the period covered by the Royal Commission (Howlett & McDonald 1994, p. 13). While Indigenous people account for approximately 1.2% of the Australian population, they still make up more than 8% of custodial deaths. From June 1996 to June 1997, however, there were no Aboriginal deaths in custody in SA (source: Royal Commission News: ALRM and AJAC RCIADC Independent Monitoring Newsletter, July/August 1997 # 43/44).

³ It must be said in relation to this argument that it stands on shaky grounds. This is because there is no guarantee that equality talk in theory brings equality in fact. As the High Court has stated: "[F]ormal equality before the law is an engine of oppression destructive of human dignity if the law entrenches inequalities in the political, economic, social, cultural or any other field of public life" (per *Brennan J in Gerhardy v Brown (1985) 57 ALR 472 at 516*). Merely calling for "equality" ignores the fact that not all people start from the same bases. For example, is it "equal" to apply vagrancy laws "equally" knowing that only the poor will be affected?

⁴ Roeger (1994) found that there is no difference in recidivism rates of those imprisoned with those given non-custodial community service orders.

⁵ Recommendations 104 and 219. Refer South Australia (1994, p. 107).

with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should, in appropriate circumstances, relate to sentences in individual cases (Royal Commission 1991, Recommendation 104).

The South Australian response has been to state that “these are matters of government policy on sentencing guidelines” (South Australia 1994, p.107) and thus recommendation 104 has been implemented satisfactorily, according to the government.

In February 1977, the ALRC was appointed to determine whether it would be desirable to apply Aboriginal customary law to Australian Aboriginal people, either generally or in particular areas. Its report entitled *The Recognition of Aboriginal Customary Laws* was released no fewer than nine years later⁶ (ALRC 1986). The ALRC recommended that the recognition of traditional Aboriginal laws regarding punishment, “would be a contribution towards making the legal system more relevant, accessible and understandable to Aboriginal people” (ALRC 1986, pp. 42-8).

In 1992, the Commonwealth, in seeking to implement the Royal Commission Report, requested preparation of a further report which outlined the Commonwealth government’s progress on the recognition of customary law, a task undertaken by the

States as well. The Commonwealth report (Office of Indigenous Affairs 1994) concluded that there had been no implementation of comprehensive customary law legislation due to the complexity of the issues and the fragmented nature of government in Australia. Two more years passed. Then on 3 November 1994, the matter was reviewed by the Ministers whose portfolios covered this area. Federal and State Attorneys-General and Ministers for Aboriginal Affairs met (separately) in Melbourne on that day to lay the groundwork for further work in each jurisdiction towards formal or informal recognition of customary law. Little, however, has been achieved since that time.

That same year, at a conference in Darwin, the issue was raised in a keynote address:

Recognition must be given ... to the existence (and survival) of customary law. As indigenous cultures are organic (rather than static), customary law may exist (albeit in an evolved/evolving format) in contemporary communities, as well as in their more traditionally orientated counterparts. As Australian society examines socially just ways of dealing with its Indigenous peoples, and as Aboriginal and Torres Strait Islander peoples continue to demand the right of more culturally appropriate responses, the importance of customary law cannot be underestimated (Social Justice Commissioner 1995, p. 31).

In order to examine the strength of that claim, it is necessary to re-visit briefly the history of the recognition of customary law in Australia generally.

A Brief History of Customary Law in Australia: Official denial

It is appropriate to remind ourselves of the legal landscape upon which the customary law issue is debated today. The official position is premised upon the reception of English law into the Australian colonies post-1788. One can conclude unequivocally that colonisers of the Australian continent had little regard for Indigenous systems of law (Sarre 1996a, p. 195; 1996b). To speak of Indigenous

⁶ It was 900 pages long, and the nine year period was the longest in the Commission’s history. Similarly the Northern Territory Legislative Assembly Committee on Constitutional Development (Northern Territory, 1992) has undertaken a similar exercise in order to shape the laws of the Northern Territory as it approaches statehood. In the final analysis, both the ALRC 1986: 42-48, and the CCD remained cautious about any wholesale embracing of customary systems, recommending a careful and incremental approach to any such recognition (see Evatt 1988: 9). The ALRC Report did commend courts in the NT for judicial notice of customary law as a substantive defence and, as happens more frequently, for acknowledging it in mitigation of penalty (see also McLaughlin 1996, p. 6).

systems of law at all would have challenged the view of the social anthropologists and international jurists of the day that Antipodean “natives” had no system of law of their own and, indeed, should have been grateful for the “superior” and “noble” colonists who brought with them civilised legal systems.⁷ Colonisation was, on this theory, the preferred option for civilisation.

Thus the issue of customary law did not occupy the minds of legal theorists in the first two hundred years of Australian colonial history. Indeed, it was not possible, said the Supreme Court of New South Wales in *R v Wedge* [1976] 1 NSWLR 355, for example, for Australia to have two sets of criminal laws. Aboriginal defendants, the court confirmed, were subject to the law of New South Wales whether or not both victim and offender were Aboriginal people and whether or not they were to be subject to traditional law as well. The *Wedge* case confirmed some older legal precedents. In *R v Neddy Monkey* [1861] VLR (L) 40 the court determined, in a matter that turned on the marital status of the defendant and the chief prosecution witness, that it would not compromise the general rules of evidence in order to take judicial notice of “vague rites and ceremonies” (at 41). Furthermore, in *R v Cobby* (1883) 4 NSWLR 355, the Supreme Court of New South Wales determined that they would not and could not recognise a marriage of “these aborigines, who have no laws of which we can have cognisance” (at 356). For almost two hundred years, then, the Australian courts did not recognise any form of customary law at all. If there were calls for it to be implemented into the Australian criminal (or civil) justice system, they were ignored, forgotten or

denied because a declaration of its existence would have frustrated the establishment and development of an Anglo-Australian legal system.

Shifts in attitudes to the recognition of customary law

By 1971, however, there began to appear signs that things could change. A number of court decisions began to cast doubt on the accepted approach to “native” law. In one such case, the landmark land rights decision, *Milirrpum v Nabalco Pty Ltd and the Commonwealth* (1971) 17 FLR 141, Justice Blackburn of the Northern Territory Supreme Court noted, *obiter*, that there had been a system of law in existence in Australian Aboriginal societies in 1788. The evidence showed, he asserted,

... a subtle and elaborate system highly adapted to the country in which the people led their lives, which provided a stable order of society and was remarkably free from the vagaries of personal whim or influence. If ever a system could be called “a government of laws and not of men” it is that shown in the evidence before me (at 267).

But the judge was restricted to following the precedent that Australia at “settlement” was *terra nullius*, and thus the claim ultimately failed. The *Milirrpum* decision, however, was overturned when the *Mabo* case (1992) 107 ALR 1, which recognised that a system of “native title” to land existed in Australia, came before the High Court. There followed some speculation that the High Court judges were signalling the start of a broader recognition of Indigenous legal systems (Sarre 1994, p. 99). The momentum stalled somewhat following a High Court hearing⁸ in December 1994 when Chief Justice Mason dismissed one Denis Walker’s appeal against his conviction on assault and resisting arrest charges (*Walker v New South Wales* (1994) 69 ALJR 111). Walker had claimed that he could not be guilty of a crime of assault

⁷The international European jurist, Vattel, wrote thirty years before the First Fleet arrived in the colony of New South Wales: “But now that the human race has multiplied so greatly, it could not subsist if every people wished to live after that fashion [as hunters and gatherers]. Those who still pursue this idle mode of life occupy more land than they would have need of under a system of honest labor, and they may not complain if other more industrious Nations, too confined at home, should come and occupy part of their lands’ ... [W]hen the Nations of Europe ... come upon lands which the savages have no special need of, and are making no present and continuous use of, they may lawfully take possession of them and establish colonies in them ... (Vattel 1758, pp. 38, 85).

⁸ Albeit a chamber application rather than a court decision.

because he was not accountable under Commonwealth or State criminal law. A member of the Noonucal people, Walker claimed that Australian parliaments did not have the power to make laws for Aboriginal Australians without their consent. Chief Justice Mason disagreed, maintaining that the concept of justice demanded that the same conduct receive the same legal response regardless of the race of the person charged with an offence.

The rule extends not only to all persons ordinarily resident within the country, but also to foreigners temporarily visiting. And just as all persons in the country enjoy the benefits of domestic laws from which they are not expressly excluded, so also must they accept the burdens those laws impose (at 113).

Customary criminal law, said the former Chief Justice, had been extinguished by general criminal statutes.

Moreover, in *R v Warren* [1996] ACL Rep 130 SA 53, three Dieri men appealed against their convictions for assault in a case arising out of a “pay-back”-style attack on another man. They maintained that the payback assault was required by customary law. They claimed duress as a defence. Their appeal was dismissed. Duress, said the court, was only available in circumstances where their view of customary law meant that their wills had been overborne by its threat of serious harm against them. In the circumstances, the court was not satisfied that the assaults were motivated by the threats associated with refusing to carry out the payback.

These cases are not authorities, however, for the proposition that no court will recognise customary criminal law. The position is simply that recognition must, of legal necessity, be piecemeal and on a case by case basis.

The idea of customary sentencing

The impetus provided by the case of an Aboriginal man, Sydney Williams, in South Australia begins the story of the potential recognition of customary sentencing in this State.⁹ Williams (reported in *R v Williams* (1976) 14 SASR 1) came before Justice Wells in the

Supreme Court of South Australia in 1976. The court heard evidence that a taunt (in relation to customary secrets) by a woman with whom Williams (a Pitjantjatjara man) had been drinking had led to her death at the hands of the accused. Williams was convicted of manslaughter. The provocation of the woman was sufficient to reduce murder to the lesser crime, said the court. Wells J decided not to sentence Williams to imprisonment if he agreed to submit himself to the customary penalties meted out by Aboriginal elders or those acting at their behest. Wells J thus “suspended” a two-year custodial sentence on the proviso that the prisoner return to his tribal lands for customary punishment. The sentencing judge later gave his reasons in correspondence with the Law Reform Commission published a decade later.

The fact was that he had very little English; it would have been impossible for him to have communicated with the staff of the prison or with any fellow prisoners, or to have related to them in any way... To condemn a tribal Aborigine to such a fate was something which I wished, if possible, to avoid. The question of punishment by the tribe was barely alluded to, as I recall it, in the Court and certainly no mention was made of what it was the tribal elders had in mind to do (quoted in Cunneen & Libesman 1995, p. 79).

Williams was later speared through the thighs as required by the elders.

That case was decided in 1976. The advances on that position in the last two decades have been slow and piecemeal. A review of the cases (most of them unreported) since the publication of the ALRC Report provides little scope for optimism. In the Supreme Court of the Northern Territory in

⁹There is another case in 1974 but its reference to race in sentencing is oblique. In *R v Kiltie* (1974) 9 SASR 452 the South Australian Supreme Court (Bray CJ dissenting) inferred that the possibility of a customary punishment cannot be a mitigating feature in sentencing. Furthermore, McCorquodale (1984, p. 271) discusses the humanitarian nature of some judges in sentencing, concluding that there is “some judicial endeavour to accommodate ... differences”, whereupon he discusses the flexible approach especially in the NT from the 1950s.

the cases of *Mamarika v Svikart* (unreported, Martin CJ, 23 December 1993) and *Lloyd Joshua v Thomson and Svikart* (unreported, Kearney J, 27 May 1994), the court acknowledged the special Groote Eylandt sentencing regime with its emphasis on community service orders and self-imposed ceilings on sentencing in communities with strong local customary structures. Yet in *Wanambi v Thompson* (unreported, Kearney J, 29 July 1994), the court applied a narrow and strict interpretation of the people for whom such guidelines applied.

In *Ashley v Materna* (unreported, Bailey J, 21 August 1997) the Northern Territory Supreme Court rejected the idea that a sentence for an aggravated assault be reduced on the basis that the assailant was acting in accordance with the customary principle that a brother must punish a sister whose husband swore in her presence. Recognition of an entitlement to assault a blameless person would necessarily be rejected by both general society and all reasonable persons, said the court, whether or not they were from traditional Aboriginal backgrounds.¹⁰ In *R v Stephen Jungarrayi Barnes* (unreported, Bailey J, 3 October 1997), the court refused an application by the offender to be released on bail to be subjected to “pay-back” on the basis that the judge was not satisfied that traditional punishment practice would be lawful.¹¹ Barnes, who had been found guilty of the manslaughter of his nephew during a fight in March 1996, was later released upon a sentence of “spearing and beating” by Mildren J who explained that he was not approving of the practice, but rather “because it is not right that a person should be punished twice, both by his own community and by the courts.”¹²

The possibilities for customary sentencing remain alive, but in practice there is little found in mainstream judicial practice.

The courts continue to struggle with the idea of customary sentencing in the absence of clear policy and judicial guidelines.¹³ The ALRC recommended that, where possible, customary law and practice should be recognised where it does not offend general law and where justice is best served thereby. But there has been little evidence of widespread acceptance of that principle, essentially, one suspects, because it usually raises more questions than it solves.

Certainly there have been a number of reasons advanced for the recognition of some customary law, specifically in the sentencing process. The most significant of those is to bring about safer and less violent communities, given anecdotal evidence that many “customary” communities employ what might be described as “restorative” models of justice, and have very low levels of violence and criminality generally (Sarre 1998).

There are, however, a number of reasons put forward to suggest that policy-makers should move cautiously in this area and not be too hasty to advance this process without serious thought and widespread consultation (Sarre 1997a, pp. 61-2). Indeed, the Commonwealth Attorney-General’s Department has serious reservations about the specific recognition of customary laws or practices (Office of Indigenous Affairs 1994,

¹⁰ *Australian Legal Monthly Digest*, 17 September 1997, no. 5143.

¹¹ Reported in the *Adelaide Advertiser* 4 October 1997, p. 9, “Aborigine wants to be speared”.

¹² Reported in the *Adelaide Advertiser*, 4 December 1997, “Culprit ‘happy’ with payback”.

¹³ An exception is in Queensland where the *Penalties and Sentences Act 1992* and the *Aboriginal and Torres Strait Islander and Remote Communities (Justices Initiatives) Amendment Act 1997* provide a regime that is currently under review; refer (1996) 87 ACR 574). A more recent high profile exception was the acquittal of Northern Land Council Chairman, Mr Galarrwuy Yunupingu of assault and damages charges in February 1998 arising out of an altercation he had had with a photographer in Arnhem Land in April 1997. The magistrate found that the defendant had exercised his right as an Aboriginal person on native land to seize the film for fear the photographs would steal the spirits of the children. The Northern Territory Government branded the judgment a “sick joke”, with the Chief Minister Shane Stone threatening to introduce legislation that would have the effect of quashing tribal law. In the days following the acquittal, Garrawurra elders spoke with the Prime Minister John Howard asking that the Federal Government consider legislating to guarantee the coexistence of the two legal codes.

pp. 13-14).¹⁴ For example, there will be some circumstances where sentencing in accordance with customary law may offend other human rights and the laws based upon those rights (Cox 1994, p. 51). Could not such a punishment be in defiance of the international rules forbidding torture or inhuman punishment as found in Articles 21 and 22 of the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (in force in Australia since 7 September 1989)? What if customary law allowed men to suffer possible death as a result of “pay-back” punishment? If customary law permits capital punishment or other cruel punishments, it could never be adopted (McLaughlin 1996, p. 8). What if there is opposition to close analysis of customary practices? How can one preserve cultural confidentiality (McRae et al. 1997, p. 133)? What if there is no evidence that the person to be sentenced still observes traditional practices (Nader 1985, p. 16)? The list of problematic issues is a long list indeed.

Conclusion

While it is, therefore, legally possible that a judge may sentence an offender in accordance with customary practice, if, in all the circumstances, the judge determines that such an outcome serves the administration of justice, for the reasons advanced above it is unlikely that customary sentences will be resurrected as a right, enshrined in the criminal law. Even in 1986, the Australian Law Reform Commission did not advocate a system where customary laws operated to the exclusion of the general law, nor did they suggest codification of customary law.

Perhaps the best approach is to adopt guidelines suggested by the Royal Commission (Recommendation 104) that where there are Indigenous communities which are essentially self-policing, where sentencing options are capable of being formalised along customary lines and where

Australia’s obligations internationally are not compromised, policy-makers should allow local jurisdictions to employ customary options. But, as is evident from the foregoing, the road ahead for the adventurous policy maker is not easy to chart. There will be some difficulty in convincing judicial officers that theirs can be a role of social engineer (McCorquodale 1984, p. 274). The real challenge will be to establish a groundswell of creativity to tease out the interplay of “lore” and “law” and the accommodation of two systems underpinned often by dissimilar values and beliefs.

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¹⁴This is probably in view of the rarity of Commonwealth criminal cases in which customary law is a factor, the adequacy of current provisions and the difficulties of reconciling the recognition with current criminal law policy.

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COMMENTARY

Q1: With the Native Title Decision and the recognition of customary law, will there be a challenge where a person could suggest that customary law did survive *terra nullius*, that Australia upon non-Indigenous settlement, had no law?

RS: It would certainly be worth the challenge. The *Walker Case* which I referred to was merely a chamber application before a single High Court judge and thus does not create a precedent. Walker, who was an Aboriginal activist, took part in a demonstration in Sydney and claimed he couldn't be arrested because of customary law. The case was dismissed. Chief Justice Mason indicated that customary law only survives if there is a connection to land. If there is to be a challenge to the applicability of non-land law (for example, criminal law, family law, civil law), it will need to come from an Aboriginal community where there has been little or no outside influence in the last 200 years and where the people are essentially self-governing.

Q2: Do you have a response to the Young Offenders Act (SA)?

RS: The law was changed in 1994 in South Australia and the idea of family group conferences was introduced in relation to certain juvenile offending. One flaw in the process is that the alleged offender must admit guilt to be dealt with in a conference. That is a major problem for Aboriginal Legal Rights Movement who consistently endeavour to have young Aboriginal people plead *not* guilty if they are in fact innocent or wish to contest the manner of their arrest or mitigating circumstances. The system in respect of young offenders needs to be more flexible in relation to Aboriginal young people, and there needs to be further evaluation of the follow-up to successful group conferences. We need to monitor the consistency of the outcomes too.

(Response from Colin Bourke)

CB: There is a difficulty in the use of some words and the values ascribed to them. Consistency, for example, is appropriate for whom? Justice, what is it? These words are used from a non-Aboriginal viewpoint and that is a problem when sentencing Indigenous people. You cannot apply non-Aboriginal values expecting them to be acceptable to Aboriginal people.



3

Addressing Systemic Issues

within the Criminal Justice System: A Diary of State Aboriginal Affairs

CEILIA DIVAKARAN-BROWN AND
SHARRON WILLIAMS

Since the handing down of the Muirhead Interim Report on the Royal Commission into Aboriginal Deaths in Custody in 1988, State Aboriginal Affairs has been the agency with the carriage of responsibility for monitoring efforts of State Government agencies in the implementation of the 339 recommendations found in the final report. There is serious concern in respect to the Commonwealth's five year commitment of funding towards initiatives arising out of the Royal Commission which comes to a close at the end of this financial year and the future commitment of criminal justice system agencies to maintain a vigilance in respect to initiatives that would reduce the risks associated with Aboriginal incarceration and the overall over-representation of Aboriginal people in the criminal justice system.

On reflection, the experience of monitoring and reporting agency efforts over the last nine years shows there is clear evidence that whilst agencies may present reliable data on social reform in Departmental Instructions, protocols, guidelines, Standing Orders, legislative reform and general procedural change, the chasm between policy and practice remains. Aboriginal people remain the most sentenced subgroup of Australian society. The challenge for us is therefore to uphold the spirit and intent of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It is in this that change can be sustainable and the over-

representation of Aboriginal people in the criminal justice system addressed.

In undertaking its monitoring task, State Aboriginal Affairs has maintained a focus on identifying systemic issues within the criminal justice system and through the facility of research and evaluation has been able to highlight the imperfections that disadvantage the Aboriginal offender before the courts.

This paper outlines the monitoring mechanisms and research commissioned by State Aboriginal Affairs. Many of the research findings have provided sound advice to service providers in agencies such as the police, corrections and courts about appropriate approaches in dealing with Aboriginal people who come in contact with them.

Ministerial Summit on Aboriginal Deaths in Custody

In fulfilment of an election promise, the Commonwealth Government convened a Ministerial Summit on Aboriginal Deaths in Custody in Canberra in July 1997 to mark the end of a five-year funding commitment towards implementations of the recommendations of the Royal Commission. In the lead up to the Summit, ATSIC supported the National Aboriginal Justice Advocacy Committee (NAJAC) to conduct widespread community consultations around Australia to ascertain Aboriginal peoples views on the implementa-

tion of these recommendations. Additionally, there were a series of officials meetings in Canberra by State government agencies representing the police, corrections, Attorneys-General and Aboriginal Affairs. In South Australia, State Aboriginal Affairs had carriage of coordinating State Government's efforts in this respect.

Recommendations from the Indigenous Summit arranged by NAJAC were tabled before the Ministerial Summit, together with individual jurisdictional submissions. The significant message from the Ministerial Summit was for criminal justice agencies to begin focussing on the underlying issues that bring Aboriginal people into contact with the criminal justice system and produce Aboriginal over-representation. This reflects the strong sentiment of Aboriginal Australia as highlighted in NAJAC's submission. Ministers also agreed to develop strategic plans to address such matters as customary law and law reform in partnership with Indigenous people.

The Aboriginal Justice Inter-Departmental Committee (AJIDC) has given an undertaking to the State's Aboriginal Justice Advocacy Committee that it would use its Working Groups as a vehicle to address recommendations arising out of the Indigenous Summit.

Monitoring Mechanisms

AJIDC comprises representatives from twelve government agencies and the Aboriginal Justice Advocacy Committee. Agencies represented include Correctional Services, Police, Courts, Attorney General's, Family & Community Services, Office of Status of Women, Police Complaints Authority, State Coroner, Aboriginal Education, DETAFE, Magistrate's Court, Premier & Cabinet and State Aboriginal Affairs. The AJIDC meets at least four times a year and the Minister of Aboriginal Affairs is in attendance.

The AJIDC has five Working Groups, each of which has a primary focus on broad areas described in the Royal Commission report, that is, Policing Issues Working Group, Custodial Health Working Group, Juvenile Justice Working Group, Non-Custodial Sentencing Options Working Group and Anangu Pitjantjatjara Lands Working Group.

These groups continue to maintain the process of implementing the recommendations. The AJIDC and the working groups concept is unique in Australia.

State Aboriginal Affairs is responsible for preparing an Annual Implementation Report to Parliament on the Royal Commission into Aboriginal Deaths in Custody. The 1994/95 South Australian Government report which focussed on systemic issues and a thematic approach marked a significant departure in the style of reporting in that previously reports across all jurisdictions followed a sanitised format of reporting against recommendations in the context of whether they were partially implemented, fully implemented or not implemented. This approach was welcomed by the Social Justice Commissioner in his report on Indigenous Deaths in Custody 1996.

Research Studies

The following summarises the research work commissioned by State Aboriginal Affairs or undertaken jointly with other agencies in the criminal justice system.

Barriers to alternatives to custody

Despite strong expressions for greater use of non-custodial sentencing options for Aboriginal offenders, their use by courts remains limited. This research study examined the barriers to such alternatives being implemented and discovered that certain systemic issues required scrutiny. They include:

- Asking Correctional Services to review the operation of Community Service Orders (CSOs) to identify reforms which would support opportunities for counselling/rehabilitation services in conjunction with CSO obligations;
- Promoting awareness within the judiciary, magistrates and defence counsel on the scope and details of alternatives;
- Developing strategies for effectively involving Aboriginal people in local community organisations;
- Encouraging Correctional Services to pilot a variation to its typical conditions for Home Detention;
- Ensuring sustained funding support is provided for alternative programs to

enable reliance on non-custodial sentencing options.

Evaluation of Aboriginal Police Aides Scheme

Aboriginal Police Aides were formally introduced in urban and regional centres in South Australia in January 1990. However, the first recruitment of Aboriginal Police Aides was installed in 1986 on the Anangu Pitjantjatjara Lands. The role of these personnel has been to improve police-public relations, but more specifically police-Aboriginal relations and all aspects of policing. There has been a hope that Aboriginal police aides would assist in diffusing potential arrest situations working alongside non-Aboriginal Police officers but there has been strong evidence that this is not necessarily occurring at a rate expected.

On the Pitjantjatjara Lands, the dual responsibility of the Aboriginal police aide — one to the white law and the other to the Aboriginal law — has been described as a “transcultural dilemma” that such personnel struggle with. This issue has similar consequences for the Aboriginal Police Aide in urban and regional centres, undertaking the roles of community role model and to maintain a presence in law enforcement.

A review of the Aboriginal Police Aide identified that the scheme is well received both from within SA Police (SAPOL) and the Aboriginal community. Two management issues which require addressing include ensuring the specialist role of the police aide is retained and to review the low rank of these personnel. Low rank reduces their influence in the culture of policing and therefore local Aboriginal communities’ ability to identify policing priorities which affect their communities.

Evaluation of the Aboriginal Visitors Scheme

The Royal Commission recommended the introduction of a cell visitors scheme as a means of providing comfort and support to Aboriginal people in police detention. In South Australia this scheme was established in 1989 and today there are seven country centres and six metropolitan police stations that provide

Aboriginal Visitors. The program is funded by State Aboriginal Affairs and hosted by the Aboriginal Legal Rights Movement. Aboriginal Visitors are voluntary workers paid an honorary remuneration to visit Aboriginal detainees at any time of the day or night in police cells to ensure their general safety and well being. Importantly, the Aboriginal Visitors Scheme assists police in their duty of care to detainees and relies on a significant degree of goodwill and commitment from the Aboriginal community.

The program has recently been evaluated, in view of changes in auspicing arrangements due to ATSIC cuts and the demise of many Aboriginal community organisations that have been host organisations to the Scheme. Further, the review was to examine management and administrative issues as well as the role of the Visitor which far exceeds the expectations one could place on voluntary personnel.

Evaluation has confirmed the importance of maintaining of the Scheme, although it is recognised that the volunteer-based response model is unable to meet the demands placed on the service and should be replaced by a salaried, regular and response service model. Police officers have long recognised the benefit derived in respect to the calming effect Aboriginal Visitors have on agitated detainees, thus facilitating their duty of care responsibility. Deaths in police custody have been essentially eliminated in recent years.

Aboriginal Remand Rates

South Australia has the highest Aboriginal remand rate in the country. Aboriginal defendants appear most at risk of receiving custodial remands. It is postulated that this may be related to a history of previous convictions and the issue of having “no fixed abode”. State Aboriginal Affairs has been involved in a Remand Rates Task Group, convened by the Courts Administration Authority.

Some of the tasks associated with this group include:

- examination of Aboriginal experience of remand in custody;
- survey of Magistrates’ views on bail;
- case studies of long, short-term remands

- survey of police prosecutors' and solicitors' views.

Failure to Appear—An Approach to Explaining Aboriginal Non-Attendance at Court

This preliminary study aimed at discovering the reasons why Aboriginal offenders fail to attend their first court appearances at a selected Magistrate's Court. A student on an internship program with State Aboriginal Affairs undertook the work. Findings indicate that the observed non-attendance is a complex and important issue, not necessarily the consequence of individual circumstances but rather it reflects a pattern of behaviour that determines the nature of Aboriginal relations with the Australian legal system as a whole. This pattern of behaviour has emerged as a consequence of wide-ranging, historically based social and cultural experiences including perceived institutional racism within the legal system. It has been suggested that the interpretation and recommendations relating to institutional racism embodied in the Royal Commission is inadequate and suggests an alternate approach which involves the analysis

of the legal system and its overall impact on attitudes and behaviour of Aboriginal people.

Aboriginal People and Juries

The question posed in this research study is whether the jury matters in respect to the sentencing outcome for an Aboriginal defendant. The study was primarily based on a literature review. The report highlights the under-representation of Indigenous peoples and other ethnic groups in several common law countries, which is in conflict with the theories that are used to support the practice of jury selection. The mismatch between the levels of participation of Aboriginal people as defendants and as jurors is a dangerous state of affairs. Very few Aboriginal people are selected for jury duty. There is some evidence that Aboriginal jurors are weeded out by counsel through the use of challenges in court and this process needs to be reviewed. The size of the Aboriginal population also reduces the opportunity for Aboriginal participation on juries and a different system of jury selection is suggested. Finally, research concludes that the composition of the jury does matter and that there is a need to adopt measures to combat the ethnic bias in jury selection.

COMMENTARY

(Response from Richard Young)

RY: Review of the Visitor Scheme was to remove responsibility from Aboriginal Legal Rights. When the scheme was reviewed and evaluated it was determined that there were insufficient resources. There should be continuity of programs and review each five years, not each twelve months. Comment made about a reduction in crime is simply not true in Aboriginal communities whatever might be the true position across the board. From the Department of Correctional Services own figures, the rates of Aboriginal incarceration are increasing, in particular Aboriginal women now constitute 47% of the female prison population in South Australia. The concept of jury make-up is also a real problem for Aboriginal people. If Aborigines are on the jury panel it is difficult for them to convict because of consequences which might follow from other Aboriginal people.

(Response Frank McAvaney)

FMc: The differing working conditions of police and police-aides across the State needs to be taken into account, particularly looking at urban and Pitjantjatjara based aides. In traditional areas the responsibility and role is very different. Effectiveness is far greater there rather than in urban areas. Aides do not work in some areas because of differing conditions and SAPOL is looking at bettering and resolving the system in relation to Police Aides.

Formal presentation by Alwyn McKenzie

ATSIC is playing an important role in implementing and monitoring the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Implementation takes place in a number of ways including youth bail houses, employment programs and services, alternative training, and other projects aimed at diversionary activities for young Aboriginal people. Projects were approved by Regional Councils and were funded by them.

In addition, law and justice programs were implemented. An office of the Aboriginal Legal Rights Movement was established at Murray Bridge and the Port Augusta Office of ALRM was substantially upgraded. ATSIC funded projects were monitored and reported on by State Office and a yearly report was produced for 1996-97 with a five yearly report to be published shortly.

A very significant issue is the current cut to the ATSIC budget of \$400 million which has caused reduction of ATSIC funded programs. Programs such as family counselling and Youth Bail Houses which provided an alternative to custodial detention have been cut. If funding cuts continue then further programs will face the axe. Legal aid services need to keep up the fight for Aboriginal people. They must feel recognised by the general Australian population. On a more positive note negotiations continue in relation to the implementation of the recommendations of the Royal Commission. Negotiations using existing networks and discussions with State Government departments concerning initiatives relating to incarceration will continue with ATSIC providing additional information and funding a number of pilot projects.

The position of *terra nullius*, the stolen generation, racism and past practices have all been reasons for disproportionate Aboriginal incarceration rates. Organisations do their best to try to overcome the disadvantages which Aboriginal people face but much more support from Government and other organisations will be necessary for Aboriginal people to feel "right". ATSIC Regional Councils are a key area and must be self-managed and self-determined. They should be given more power and the ability to expand rather than contract their programs for Aboriginal people.

(Comment by Tauto Sansbury)

TS: The problem with the current structure is that the present government has forced huge decreases in budgets and programs and the effectiveness of those programs. \$470 000 000 has been cut from the budget. Even the reporting role to ATSIC relating to deaths in custody will end. ATSIC is being diminished to the point of being non-existent, being unable to make policy decisions and having little effect in the community. If the budget is not reinstated ATSIC will not be able to survive let alone provide adequate services and play a key role. The cuts have caused unemployment, uncertainty, domestic violence and other trauma in Aboriginal communities.



4

A Multi-Agency Resocialisation Program *to reduce the Incarceration and Recidivism Rates of Indigenous Peoples*

RICHARD YOUNG

In December 1992, the Council of Australian Governments (COAG) in Perth, endorsed the recognition of the need to:

- have a national commitment to improve outcomes in the delivery of programs and services for Indigenous peoples;
- redress the underlying and fundamental causes of Aboriginal and Torres Strait Islander inequality and disadvantage including those identified by the Royal Commission into Aboriginal Deaths in Custody.

The COAG National Commitment also extended to:

- implement effective coordination in the formulation of policies, and the planning, management and provision of them to Indigenous peoples by governments;
- achieve more effective and efficient delivery of services;
- remove unnecessary duplication;
- allow better application of available funds;
- provide increased clarity with respect to the roles and responsibilities of the various spheres of government;
- maintain greater demarcation of policy, operational and financial responsibilities.

Senator John Herron stated, in his address to the 9th Annual Joe and Enid Lyons Memorial Lecture to the Australian National University (ANU) on 15 November 1996:

We have breathed a new life into the National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal and Torres Strait Islanders Among other things it provides for bilateral agreements between the Commonwealth and State/Territory Government specifying the responsibilities of each tier of government, identifying funding arrangements and providing a framework for the planning and delivery of services and programmes.

Accountability is an essential part of Senator Herron's platform and whilst most Aboriginal people and organisations have been calling for this to occur for many years, the infrastructure and systems have not been in place for this to be realised and/or achieved. Senator Herron also stated:

Increasingly, with strong encouragement from me, ATSIC is concentrating on the quality of the end product rather than the identity of the supplier. It is doing so by increasing the use of competitive tendering, where possible, so that the cost of delivery comes down and the certainty and quality of delivery goes up.

At the Ministerial Summit on Indigenous Deaths in Custody in July 1997, Commonwealth, State and Territory Ministers, together with Indigenous representatives, agreed to a resolution that called for:

- better coordination and delivery of services;
- the development of strategic plans and multilateral agreements.

Ministers acknowledged that:

- addressing the underlying issues is fundamental to the achievement of any real, long-term solutions to the issues of Indigenous incarceration and deaths in custody.

Ministers also recognised that:

- it will take the combined efforts of Commonwealth, State and Territory Governments and Indigenous peoples to effectively address Indigenous over-representation.

Background

At present, services to Indigenous peoples are provided by a diverse range of bodies/organisations which receive separate funding and which are able to determine their own policies, directions, operational plans and financial management. There appears to be no coordinated control and subsequently the end-users of the services are required to approach each organisation individually.

Difficulties in financial control and responsibility are created when funding is provided direct to other government/semi-government bodies. These funds are incorporated within the general revenue programs and expenditure is not separately recorded and accounted for. It is possible that this lack of direct coordinated control can result in funds not being used for the purposes for which they were provided.

The management of funds provided for the aid and assistance of Indigenous peoples who are “at risk” of offending and consequent imprisonment is fractured, with the end users being unable to access the services required at any one location.

Funding cuts at Federal and State levels have had an impact on the availability and delivery of services. The current political environment is one of uncertainty within the public sector and within the Indigenous community due to the Native Title Amendment Bill 1997; the Wik High Court decision, and the ATSIC Act Review. These

significant events will have enormous implications across the country for years to come.

Discussion

It appears that the goodwill and commitment made by COAG in 1992 has not been implemented in the manner which was intended, as there appears to be a significant lack of effective coordination of policy, operation and financial management. In many instances the current system does not provide an opportunity for Indigenous communities to have a direct voice in the level and effectiveness of the services being provided for them. There is a clear need for the establishment of an appropriate structure to ensure that services are being provided in a timely and effective manner. There is also the need for cost efficient use of resources throughout the delivery of services to Indigenous people and their families.

Following discussions with Aboriginal offenders it is evident that Community, State and Federal service providers are either over-servicing or under-servicing Aboriginal offenders. Limited communications, unsatisfactory timing and financial insecurity are contributing towards disassociated services and subsequently the needs of Aboriginal offenders are not being fulfilled.

The need for a collaborative effort at Community, State and Federal levels had been discussed and supported recently at the Aboriginal Deaths In Custody Summit in Canberra, at the Adelaide Community Meeting concerning the high number of deaths occurring in the Community, and in Western Australia where a model is currently being developed.

APOSS are supportive of the collaborative concept as experience reflects that an imbalance of services, untimely and unsatisfactory services all contribute to the cycles of addiction, recidivism and poverty. Community/State/Federal organisations, individuals, families and communities need to be encouraged to accept responsibility and accountability to break these cycles.

From an “Organisational” perspective, the Multi-Agency Resocialisation Program proposes to:

- identify appropriate stakeholders;
- encourage stakeholder participation in the development of a “collaborative” model;
- encourage stakeholders to conduct an analysis of their current services to identify strengths, weaknesses and gaps;
- develop Multi-Disciplinary Case Management and Assessment Teams;
- encourage stakeholders to commit to the same vision, objective and outcome through the adoption of service agreements.

APOSS are currently “encouraging” responsibility of individuals/families through the development of their Case-Management model, referred to as the Lifestyle Enhancement Plan (LEP). This plan proposes to address holistic issues such as drug and alcohol, accommodation, employment and training, health and education which are critical areas that have been identified by the RCIADIC and reinforced by our constituents.

It is important to note that given the current political climate stakeholders within

the Aboriginal industry will be placed in a more accountable environment.

Conclusion: Reduce Tomorrow’s Statistics; Take Action Today

The table below shows independent issues that would need to be addressed as part of the resocialisation process.

The sobering projections about the future of incarceration rates underscore the need for strong, immediate, well-planned, and decisive action to intervene early with efforts to prevent more youth from following in the footsteps of many of their older brothers and sisters, parents and peers. At the same time, it is imperative that we effectively respond to that small percentage of offenders who repeatedly offend within the community and who account for the vast majority of serious and violent acts. If we fail to respond to their needs, the potential costs to society in human lives and productivity will be an onerous and tragic burden to future generations.

In taking action, States/Local Governments and communities have a variety of

MULTI-AGENCY RESOCIALISATION PLAN FOR ABORIGINAL PRISONERS

Prison & Prisoner Component	Family Component	Community Component	Government Component
Rehabilitation Programs Case Management Sociological Awareness Programs Lifestyle Enhancement Plan Prisoner Assessment Committee Probation/Parole Home Detention Family Functional Program Immigration Program Prisoner Assessment Committee Public Service Association	Criminogenic/Demographic Factors Reintegrative skills/programs Case Management Support Networks/Groups DCS Awareness Parole conditions etc Rehabilitation Programs Lifestyle Enhancement Plan Commitment to change Commitment to crime prevention Commitment to redress addictions	Intensive Aftercare Program Public Outreach Campaign Multi-Disciplinary Assessment Teams Integrative Support Systems/Structures Service Agreements/Protocols Rehabilitation Programs Training and Technical Assistance After hour community based programs Provide employment, training and mentoring opportunities for youth Crime Prevention training Encourage families to contribute to the safety of their community ATSIC Regional Councils to review their Regional plans Strengthen family capabilities to supervise and nurture positive development of their children	Multi-Disciplinary Centres Innovative approaches to research and evaluation Integrative Programs and Services Service Agreements/Protocols/Memorandums Establish and support family based community centres that integrate services Rehabilitation Programs Review Policies and Procedures Commit training and technical assistance Assist in the development of local plans Coordinate and disseminate information about crime prevention strategies Strengthen family capabilities to supervise and nurture positive development of their children Employment strategies that address the disadvantages faced by released offenders List resources and best practices of crime prevention programs and provide training and technical assistance for the implementation of such programs

choices that are both critical and difficult. The pooling of resources must be made available for a broad spectrum of effective prevention programs, including family strengthening and after school programs, child care for low-income working families, community policing efforts, summer recreation and job opportunities for low-income youth. Within a well coordinated framework, local communities will be able to function more confidently and build on this commitment

toward a safer, healthier, and more functional environment that will contribute to the development, and well-being of community members.

We have the opportunity now, with a newly elected government, a reasonably assured number of community based services and government funded programs, to make the difference. The buck stops with us.

COMMENTARY

(Comment by Tauto Sansbury)

TS: An inter-departmental committee was to be established and to be comprised of Chief Executive Officers to discuss and effect action in relation to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. That Committee has been watered down in the sense that the CEOs do not attend the meetings, neither do they offer input or advice. There is, therefore, a lot of talk but no outcomes and no performance indicators on the meetings or on the matters discussed. Prisoners are found to have T.B. which is not picked up by screening processes. Small drug offenders are sent to prison and come out heroin addicts. There are no rehabilitation programs to keep people out of prison. A report has been presented regarding whether the recommendations of the Royal Commission have been implemented. Some have, some haven't and some have been "half-implemented". How can you have a half-implemented recommendation?

RY: Remands are a problem in certain cases. I know of a particular Aboriginal person who has been on remand for 18 months, within four walls, and allowed one hour of daily exercise. There has been adjournment after adjournment. Persons picked up on weekends do not see a Field Officer until Monday but even then the Field Officers have difficulty gaining access to their clients. There is a problem with the process and clients plead guilty just to get out of the remand centre. A peer support scheme is to be established to let people who are facing court know that some support is there. There need to be more Field Officers. There is a need to talk to the prisoners because they know what happens and they can tell you how to keep others out of gaol.



5

Communication Issues

COLIN BOURKE

Recent archaeological evidence suggests that Aboriginal people inhabited the continent now known as Australia for at least 60 000 years before the arrival of Europeans in 1788. During their occupation of the continent, Aboriginal people have adapted to many profound changes in the climate, vegetation and landscape. Some 18 000 years ago the last Ice Age ended and the seas rose. The rising of the waters reduced the land surface by one-seventh. Tasmania and New Guinea were separated from the mainland and the continent assumed the shape it has today. This rising of the waters is probably the most significant change in the Australian environment that humans have had to live through. Some 10 000 years ago, Aboriginal people living in the western district of Victoria witnessed many volcanic disturbances which were probably audible within a radius of some 200 miles. Aboriginal people in other parts of Australia also witnessed profound geophysical changes. Life in pre-European Australia was not static and naturally there were many cultural changes which also involved changes in values.

It is generally accepted that at least 300 000 Aboriginal people were living in Australia in 1788. Professor Noel Butlin (1993) has suggested that the figure may well have been 3 million. Aboriginal people were organised loosely into some 500 groups with their own language, culture, values and social mores. Each group actually consisted of small, fairly independent sub-group families which

developed ways of life to meet their needs and to cope with the physical environment of the territory/area which they occupied.

These groups lived within their own well-defined area and developed close dependent relationships which were maintained through a kinship system. Every member of a group had an affiliation with every person in his or her group, although not all were close blood relatives. Being related involved using the correct term to address people and also meant following a prescribed form of behaviour or protocol.

In every kinship relationship, there existed obligations and responsibilities based on the value systems of that cultural group. One of the basic values that Aboriginal people had has been described as "caring and sharing". Prior to 1788 Aboriginal people had an economic system in which everyone was profitably employed. It was similar in some ways to the present socialist models in other parts of the world but it differed in that the sharing of the products of economic activity was based on kinship rules which ensured that all were entitled to a share. Traditionally, Aboriginal people traded extensively across the continent in commodities such as pearl shell, stone axes, and pitjuri. Aboriginal life produced people who were independent and capable of a wide variety of activities. Traditionally, Aboriginal people were not restricted to a particular occupation as are members of non-Aboriginal society. Some were superior in particular aspects of life but

each individual was a generalist in that they could paint, track, make tools, hunt, and take part in all aspects of life.

Land, of course, was the basis of Aboriginal life, and the many spiritual ceremonies were aimed at maintaining the land and its environment including natural physical features and the flora and fauna.

The Arrival of Europeans

The arrival of Europeans in Australia had rapid and disastrous effects upon the Indigenous people. Newcomers took the traditional land by force when required and they also carried diseases to which Aboriginal people had no immunity. Conflict soon arose. Two value systems clashed. Early European settlers were ethnocentric and intent upon improving their financial situation. Aboriginal people were a hindrance because their values were different. They were not interested in the European economic system, work habits and way of life which they probably saw as inferior to their own. Few of the European settlers tried to understand or show compassion toward the people whom they dispossessed.

European occupation shattered the network of social and spiritual organisation, including the values which Aboriginal people had so carefully maintained. Aboriginal people lost their land and their heritage. Their value systems, economic and spiritual lives were destroyed. They were introduced to the fringe of a monetary economy; the pattern of their life was so disturbed that traditional Aboriginal culture, lifestyle and organisation disintegrated. Traditional values were placed under enormous pressure.

In all parts of Australia, Aboriginal people were confined to reserves or missions, ostensibly established to protect Aboriginal people but effectively managed to keep them from the public view. Four or five generations of some Aboriginal families were subjected to policies of assimilation and integration and never knew the meaning of freedom. They were born, grew up and died as inmates of institutions, the result being deeply and bitterly etched psychological scars which affect today the Aboriginal view of the world. Assimilation meant that Aboriginal people were to adopt the values and attitudes of non-

Aboriginal people. This policy was debilitating and has deeply affected the present generation of Aboriginal people.

The Current Situation

Aboriginal Australians see themselves as a unique component of Australian society. They have a different view of Australia from that held by non-Aboriginal people. While they may live within the geographic confines of a community or region, they do not necessarily have a sense of belonging to that community or region. The situations Aboriginal people face in education, employment, health, housing, legal services and all aspects of daily life, support this view.

Aboriginal people are a distinct group. While some may be regarded by non-Aboriginal people as being of similar ancestry to their own, few people of Aboriginal descent choose to pass as white. Instead they identify with their relatives whose skin colour and physical characteristics make them a visible and identifiable minority. Aboriginal people in most parts of Australia have not been free or able to control their own affairs either as individuals or as communities. This has produced a dependency syndrome among many Aboriginal people in respect to decision making.

For individuals to function effectively in any society they must have self-confidence. A person's self confidence is vitally important to his or her performance in society. Aboriginal people are held in low regard by the majority of society. Research by Lippmann (1973) indicates that minority groups throughout the world expect to fail, are made to feel inferior and act in a passive, helpless manner.

Aboriginal people are regarded unfavourably by the majority of Australians. Discrimination by race is a potent factor which can cause people to act in such a manner as to ensure they are discriminated against. Where non-Aboriginal acceptance is offered, it is often conditional upon the Aboriginal people "coming up to our standard".

Professional Communication

Interaction between community, clients and professionals is strongly dependent on com-

munication. Where the groups are from different cultures, communication becomes more difficult. Cross-cultural communication involves understanding words and actions of people from differing backgrounds. It is becoming more widely recognised that a good deal of misunderstanding between members of different racial groups is due to people interpreting the words and actions of others in terms of their own understanding and assuming that these are shared.

Many Australians exhibit insensitivity and lack an understanding of cultures different to their own. This may be because of their relatively short history of 200 years upon which to build traditions, beliefs and knowledge.

Culture has been defined as “the knowledge people use to generate and interpret social behaviour” (Spradley & McCurdy 1972). It includes knowledge, belief, art, morals, laws, customs and beliefs.

Most Australians including those with professional qualifications have had little personal exposure to the original Australians, the Aboriginal people and Torres Strait Islanders. Nor have they learnt much about Indigenous cultures during their education.

Increased cultural sensitivity should be a priority if other Australians are to better understand Aboriginal people and Torres Strait Islanders. Hopefully this will increase appreciation of diversity and encourage further examination of how communication with clients of different races can be improved by those seeking to do business with them. One cannot generalise about any racial group, but by pointing out certain common features of particular groups it might help increase awareness and understanding. However, individual differences *within* groups can be as great as those *between* groups.

Culture has two dimensions: a cognitive system and a system of shared meanings. Cultural symbols come from the culture into which a person is born. They are subject to change from external sources. No culture is static. Consequently, cross-cultural situations must be fluid. Shared meanings involve communication.

Communication is a *two-way* process: it involves *transmitting and receiving*. When two cultures are involved further dimensions are

added. The message transmitted from one culture may have a different meaning after crossing over the barrier of translation/interpretation and being received in another cultural context.

In Australia, communication between professionals and their clients is usually carried out using English with its patterns and socio-linguistic conventions. It may appear to an English-speaking professional that an Aboriginal client speaks and understands English well, in reality this may not be true. Often Aboriginal people have difficulty in comprehending what the professional wants of them because it is not conveyed in a way they understand. Sometimes consultation and communication breakdown may have its roots in the socio-linguistic differences in the rules and conventions which structure the discourse patterns in the respective languages.

Many Aboriginal people who do not speak an Aboriginal language use Aboriginal English in their homes, and use “standard” English as their second language.

Culture and language

When first contact is made with a client it is accepted practice among English speakers to ask the client’s name. A professional consultant may have little success with this strategy as he/she may be breaking some Aboriginal rules of protocol. Personal names are not used as freely among Aboriginal people with traditional backgrounds as they are among non-Aboriginal people and in some cases avoidance relationships may prohibit speaking the name in the presence of certain people. Nor is direct questioning regarded as proper. Professionals who are aware will seek such information from a third party when communicating with Aboriginal people.

Language in Aboriginal cultures largely fulfils a social function. For Aboriginal people the formation and maintenance of relationships is paramount and they will use English in this context when relating with English speakers. Professional English is largely depersonalised but an impersonal debate form does not exist in Aboriginal languages. Aboriginal people often use words in English in the same way as they would express themselves in their own language.

Factual writing, as undertaken by professionals, is designed to explore the world, focus on how things get done and what things are like. It is different from the English narrative form which is used to entertain. In Aboriginal cultures traditional stories serve to explain as well as to entertain and are often explanations of natural phenomena.

Many professions have specialised language which may have no equivalent in an Aboriginal language — contract, caveat, writ, witness and international conventions are examples. The use of professional terminology can confuse the client.

There is often a communication breakdown between Aboriginal people and English-speaking professionals. The conventions of conversation and language patterns vary between cultures. These may be inadvertently broken when Aboriginal people and non-Aboriginal people interact through English. Consultation requires an awareness of this. Professional language and concepts can be outside the understanding of clients.

Professionals may not only have language and conceptual problems when dealing with Aboriginal people. Their comparative affluence, their status, surroundings and value systems may be quite intimidating to Aboriginal clients. Dress, education level, attitudes, expectations and values highlight the difference in backgrounds.

Cultural Values

Aboriginal values reflect all that has happened in the past. They evolved over thousands of years of traditional life and two centuries of colonialism. Aboriginal people, to varying degrees, still live their lives in terms of caring, sharing and love of, and obligations to, the land. Aboriginal history, culture and spiritual beliefs teach the history of Aboriginal Australia and form the basis of our being. From experience of living in this land a philosophy has developed which differs from that of the European tradition. It is not a speculative philosophy but one based on the permanence of the land.

Aboriginal philosophy, or worldview, is connected to our environment through strong spiritual and emotional ties with the earth, our mother. With this philosophy and time scale

individual life takes on much less importance than it does within European cultures. This has a bearing on our sense of history which is based on the group and its continuity rather than on individuals. Harmony with the natural world is stressed, rather than the approach of “man controlling nature” which has characterised European notions of progress.

The creative period in Aboriginal life is commonly called “the Dreaming” in English. It is not, however, a vague reflection of the world but is instead a reality. Professor Stanner (1979) coined the term, and it cannot be fully understood within the western concept of linear time from past to present to future. The Dreaming in Aboriginal terms is both present and past and suggests a concept of time which is more circular and gradual than the western linear conceptualisation.

Aboriginal thought and spiritual essence were derived from the land. All things were tied to the land. In contrast to western thought, Aboriginal thought does not demarcate so precisely between past and present, material and spiritual, animal and man, sacred and non-sacred. Life developments did not depend entirely on human or other species; they were seen as contributors to the system.

Aboriginal people believed that the ancestral spirits formed the earth from a shapeless mass, and created humans, the animals and plants, sometimes in combination, during the Dreaming. The Spirit Beings appeared as kangaroo men, shark men, mulga seed women, and so on. The stories of each group reflected the flora and fauna of the environment. When they emerged from the formless substance they moved over the surface of the earth, performing the everyday activities of the humans and other species they would represent. As they travelled they made tracks and their artefacts and activities were transformed into rocks, waterholes, caves, sandhills and other environmental phenomena Edwards (1988, p. 13).

The Dreaming highlights the significance of land in Aboriginal thought. It also stresses the interconnectedness of all life. Consultants with Western thought patterns stress the dichotomies between past and present, material and spiritual, and believe that

humans are connected with history and not the cosmos, while Eliade (1973, p. 1) believes Aboriginal people feel indissolubly connected to the cosmos and cosmic rhythms.

There are cultural differences which must be understood before meaningful communication can proceed between Aboriginal and non-Aboriginal people. The sense of words can be lost when they are translated into European terms of reference. Aboriginal terms of reference are those which belong to the land and the people. They grow out of our experience of the land and remain so despite the relatively recent advent of colonialism and the very different terms of reference introduced by the colonisers. Aboriginal terms of reference, expressed in English, include:

- the earth is our mother
- preserve and conserve
- share and care
- each other's keeper accountability
- group based society
- decision making by consensus
- harmony between people and between people and the land
- knowledge to be sought, acquired, given and used properly
- other traditions as a base of handing on knowledge.

The above terms of reference are distinctive and the antithesis of those embedded in many European type organisations. Many professionals are familiar with norms such as:

- exploitative of natural resources
- hierarchical and authoritarian
- competitive
- individualistic
- remote from clients
- knowledge is power
- institutionalisation.

Cultural considerations

The Family

The extended family plays a much greater role in Aboriginal life than for most non-Aboriginal people. There is a strong sense of shared responsibility and great reliance on family

members. Obligations to the family are strong throughout life. Similarly, the sense of family/group ownership rather than individual ownership is prevalent as is an emphasis on commonly held virtues such as tolerance, compassion and generosity.

In this context "the family" includes an extensive range of relatives. Cousins are regarded as brothers and sisters. Indeed, it is quite accepted for children to be brought up by aunts and uncles or grandparents. They may be effectively "adopted" by these close relatives or just live with them for a time. In so far as children are "owned", it is by the family not just by the parents, and the whole family is therefore responsible for them.

Family responsibilities will often override other commitments and can lead to broken appointments which people from other backgrounds would ensure they kept. It is a question of priorities.

Western society is generally much more individualistic; any emphasis on, and obligations to, the family tend to be limited to close family members.

Interviews

Aboriginal family members may feel closely involved in the problem the client has and may come to the interview with the client. They may even feel entitled to decide what to do for the client or may merely be there to provide the client with support. Traditionally women deal with women's problems. If an Aboriginal woman visits a male professional she may bring a close male relative with her to do the talking and decision making on her behalf.

Names

Changing names and being known by more than one, is not unusual among Aboriginal people. This can be confusing to Europeans who seldom change names apart from by marriage. To find out a client's surname a sensible first step is to ask for the family name. To merely ask "What is your name" may be responded to by giving a familiar name or nickname, which may be different from the one stated on a birth certificate. Most Aboriginal people from traditional backgrounds have Aboriginal names and often have European

given names as well. It is important to get the names correct to avoid later confusion. Aliases and honorary names may also have to be considered. In some communities people with the same given name as someone who has died may assume a given name which actually translates into “no name” to that group. Every effort should be made to pronounce names properly. This is important for all clients as it is profoundly basic to good manners everywhere, but a particular sign of respect in cultures which value respect highly.

Time Orientation

Very few traditionally oriented Aboriginal people have the non-Aboriginal preoccupation with time. The anthropologist, Stanner, did not ever find any Aboriginal word for time as an abstract concept and he even believed a sense of history was alien to Aboriginal people. Most Aboriginal towns and settlements do not have public clocks. Time on the former Aboriginal reserves or missions was often indicated by a bell or siren which sounded at set times to mark the beginning and end of certain periods for example lunch break. Time indication in such places is still usually set by daily recurring events such as after lunch, after school, sunset. Clock-time is becoming more meaningful to such people but some still experience difficulty with the large numbers being in the morning and the smaller numbers in the afternoon. Some Aboriginal families have a lifestyle in which traditionally there has been little emphasis on timekeeping. Watches and clocks were unknown in pre-European Australia.

Eye Contact

The use of the eyes is another area where cultural differences exist. Non-Aboriginal people believe that meeting someone’s gaze is a sign of sincerity and honesty which can maximise rapport. To some traditional Aboriginal people, direct eye contact is considered disrespectful. It is polite to look slightly to one side on the floor or upwards to the ceiling. Meeting someone’s eyes may be done in times of confrontation and reprimand. Indeed, in Chinese cultures historically pictures were hung around the neck so that the other person had something to look at below the face, the

picture being related to the standing of the person in society. However, there are Aboriginal people who do not behave as above, but are familiar with the European way of doing things.

The Pause

When talking to someone for whom English is a second language, professionals should realise that it is likely that the client may need time to frame an answer. They should not leap to an assumption that the client has not understood.

Questioning

The manner in which questions are phrased can be critical to the whole success of cross-cultural communication. This applies even more so to people for whom English is a second language. Specifically, some types of questions should be avoided:

- Double-barrelled questions, that is, questions that require two answers: “*Did you see him talking to the contractor or anyone else?*” would be better asked as two separate questions to be sure that the correct answer is given.
- Questions with an either/or choice in them: “*Can you come on Monday or Tuesday?*” A fluent English speaker will know that the question asks for a choice and will tell you what their preference is. For a person who speaks English as a second language, “yes” may seem like a correct response.

Negative Questions

These are extremely common in English and have no equivalent in many Aboriginal languages. They are a common source of misunderstanding. Examples include: “*You’ll do it won’t you?*”; “*You saw him do it didn’t you?*”; “*You didn’t understand him did you?*”

These could be answered in a completely opposite fashion by a fluent English speaker and a person who is not fluent in English: “*You didn’t understand him did you?*” would be answered by a fluent English speaker with “no” meaning “no, I didn’t understand him”, whereas an Aboriginal person might answer “yes”, meaning “yes, I didn’t understand

him". "You can't come tomorrow?" Aborigine: "No" I can't come; "Yes" I agree with you I can't come. This problem is easily avoided by not using negative questions: "Can you come tomorrow?", or "Did you understand him?", are unambiguous ways of asking "You can come tomorrow can't you?", or "You didn't understand him did you?".

Affirmation

Sometimes an Aboriginal person will say "yes" immediately after a question is asked, showing that they understand the question, not that "yes" is the answer. It is wise not to rush in assuming that "yes" is the answer, but rather to pause and see if any qualification follows, indicating the "yes" is just a reflex to being asked a question.

Written Versus Oral

Aboriginal people have a strong oral tradition. The combination of that tradition and the uneasiness which many people have with written English may make written communication difficult. Professionals should not assume because they are familiar with the written word an Aboriginal client will be also. Answering correspondence can often prove difficult.

Shyness

Just as some professionals have a reputation for confidence and assertiveness, Aboriginal people have a reputation for shyness. It may be inappropriate to expect Aboriginal people to put themselves forward or assert themselves and it may be considered a sign of lack of respect for them to do so. This is not however to be confused with a lack of self-esteem.

Occasionally an Aboriginal person may exhibit behaviour which makes communication difficult. It is characterised by extreme non-communicativeness verbally, looking down or away or withdrawing.

Such behaviour can be caused by:

- Fear — of the unknown and being inexperienced in the area with which they are trying to deal,
- Shame — one of the most powerful personal emotions felt by Aboriginal people is that of 'shame'. It is not the

same as shame experienced by non-Aboriginal people and is difficult to describe succinctly, but embarrassment, disgrace and humiliation are some of the emotions involved.

- A feeling of injustice.
The common denominator is a feeling of being disadvantaged. It is a behaviour over which the person has little control. It is a retreat from social contact. It is not associated with any particular personality type.

Professional Considerations

The training of professionals to deal effectively with Aboriginal people has received a great deal of attention in recent years. The Royal Commission Report into Aboriginal Deaths in Custody Muirhead (1988) has recognised that for many Aboriginal people:

- contact with people in authority, especially police officers, is likely to produce conflict and tension. Through fear and reticence they do not assert their rights when confronted with white people holding positions of power and authority;
- if they speak out they will be labelled 'troublemakers' and their interests will be ignored.

The Royal Commission stated that "At the heart of this problem is the gulf created by history, culture, social status, and power which separates Aboriginal people from those exercising authority". The Commissioner also states that "racist attitudes are endemic in Australian society and evidence ... suggests that such attitudes may be found to exist in the whole range of institutions with which Aboriginal people come into contact".

Conclusion

The underlying assumption of this paper is that the professional is from a non-Aboriginal background. It is acknowledged that there are Aboriginal professionals, but the most likely cross-cultural consultation will be between a non-Aboriginal professional — for example in the criminal justice system police, courts officers, judges and lawyers — and an Aboriginal person or Torres Strait Islander community member.

The tertiary education of professional people has been and still is mainly concerned with technical competence. For most tertiary institutions cross-cultural issues and communication are not part of the educational diet of aspiring professionals. Professionals need greater awareness of cultural differences and should examine the manner in which they communicate with clients from races other than their own.

An understanding of aspects of their culture, by professionals, will improve communication for most groups. It is important that professionals approach people from different cultural backgrounds with a warm, supportive, open minded, non-judgmental approach. However, stereotyping on the basis of race, is as inappropriate as it is on the basis of sex, age or socioeconomic group.

The range of awareness that Aboriginal people have of how to best communicate with a non-Aboriginal person is quite extensive. The professional's awareness of cultural

differences including languages, values and customs, will assist both the professional and clients to improve communication. It is vital that cross-cultural communication is looked at in all its aspects and not restricted exclusively to language.

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COMMENTARY

Q1: Do juveniles understand what they have done is wrong, and, given the professional language used, do their parents understand? Has it contributed to offenders breaching parole, for example?

CB: There should also be consultation with the Aboriginal community. There are difficulties in applying the same penalty to all people. Penalties may impact differently. It depends on the individual and on others. If you send a person to gaol, their family may lose their home or everything. The impact may be huge. If the person does not have a family it may not have a great effect.

Formal presentation by Tauto Sansbury

Implementation of the Royal Commission's recommendations have been hindered by insufficient funding and, more importantly, the allocating of funding without much Aboriginal involvement. There has also been a lack of respect and support for Aboriginal organisations. The Aboriginal Justice Advisory Committee (AJAC) was set up to monitor the recommendations of the Royal Commission in each State and Territory. Some States do not even have an Aboriginal Justice Advisory Committee.

On figures provided by the outgoing Social Justice Commissioner, Mick Dodson, projections indicate that by the year 2001 (the year for reconciliation) there will be an increase of 15% in the number of juvenile Aboriginal people in detention. By the year 2011 that number will increase by 44%. Crime for Aboriginal people is not reducing in this State. Incarceration rates are rising. Aboriginal women comprise 47% of the South Australian female prison population.

In respect of the juvenile justice system, cautioning has had a major effect on Aboriginal youth who have to plead guilty before being taken before a family conference. There is an incentive to plead guilty whether you are guilty or not. The legal system generally is not "user-friendly" to Aboriginal people in this country. Aboriginal people have a problem with police conducting family conferences with juveniles.

To understand Aboriginal people you have to understand where they are coming from. That involves understanding what has happened in the past and how that has had such a major impact on Aboriginal people. The mission system, life being regulated by the bell etc is all part of this.

Aboriginal people sit around this and many other tables and talk and make a report. We have been reported, investigated and reviewed. Every government department knows exactly what the problem is. None of them, however, is willing to put up their hand to say "this is how we will do it." Senator Herron's idea was "let's fix up the problem and make every person in this country equal". He then takes away something like \$700 million from us. Is that equal? They have closed down "best practices" that have stopped kids from going into gaols. The suicide of Aboriginal kids is also "off the planet" yet governments choose to ignore it.

Legislative change is also bound to affect us. The suggested policy of "three strikes and you're in", the increase in penalties from 12 years to life imprisonment for certain property offences, the suggested indemnification of police officers involved in shootings and bashings in the course of police duty are all before the parliaments.

A Ministerial Summit was called to consider Aboriginal Deaths in Custody. What must be done in relation to the Ministerial Summit is the development of strategic plans to obtain funding so that effective programs can be run for Aboriginal people. There are no courts on Saturday in South Australia. Friday arrests therefore wait until the following Monday. That has a major impact on the locking up of Aboriginal people. Information is supposed to be provided concerning the right to make a telephone call to a magistrate 24 hours a day. That information is frequently not provided by the police to an arrested person where police have decided to refuse bail. There is a great lack of information passed on to Aboriginal people.

In relation to Legal Services, the Aboriginal Legal Rights Movement presently has a budget of some \$4 million to represent Aboriginal people throughout the State. In 1994-95 it represented, in call out, 1269 people. In 1995-96 that figure had risen to 1712.

How can you have reconciliation when it normally requires there having been a relationship which has broken down? There never has been a relationship with the Aboriginal people of Australia. It would be a fine thing if it could be achieved and if it is going to happen by the year 2001, then there had better not have been the projected increase, by 15%, of Aboriginal juveniles in custody.

COMMENTARY cont.

(Response by Digby Wilson)

DS: Progress would be made if an effort were made to encompass the rights and wrongs done to Aboriginal people in sentencing. There should be more social worker type inputs into the criminal courts' activities. If 60 people need advice, one is not able to represent each one adequately because of the system. The system works on the goodwill of police officers and magistrates. We need to look at the system itself and how it deals with individuals' problems to achieve the result that is required. We need to have the system meeting the needs of the people, not the other way around.

Formal presentation by Frank McAvaney

I want to give you a police prosecutor's view of the court process, in particular in the Pitjantjatjara lands and also to talk of the role of the Police Aides in traditional lands.

In discussions with Magistrate Chris Vass the difficulties of travel and logistics were explored but even an arrangement by which the Prosecutor would fly on the Magistrate's aircraft was vetoed as it may have given rise to a perception of unfairness unless the lawyer representing the clients was also present on the aircraft.

I have been told that the Police Aides on the lands do a magnificent job. They have to, because they are the only police there. In the times I have been there I have suffered from culture shock. I am also aware that the vast majority of matters being prosecuted are not really mainstream criminal offences, since they are health issues. Almost every offence involves alcohol or petrol sniffing.

Under the *Public Intoxication Act*, drunkenness of itself is no longer an offence. It is a health problem. However, in the short term, until appropriate resources are made available, the police will have to continue to have the responsibility of picking the victims of drunkenness up, driving them home or to a drying out centre or to the police cells. Appropriate resources have not been made available and the vast majority of people are still being placed in the cells. Substance abuse offenders end up at substance abuse centres but that is not the case for traditional Aboriginal people who sniff petrol. A large number of charges relating to domestic violence and some alcohol related matters are withdrawn because at trial, the witnesses do not appear in some cases, neither does the defendant.

We have a number of Police Aides who could be utilised as Special Justices and others who are suitable to become prosecutors where minor offences are concerned. There needs to be consultation with the judiciary and corrections to enable implementation of some of these suggestions.



6

Improved Employment Reduces Crime:

Evidence from the African American Experience and Implications for Australia

SAMUEL L. MYERS JR.¹

American prison populations have soared. In 1970, fewer than 200 000 people were incarcerated in state and federal prisons in the United States. By 1996, more than a million people were incarcerated.² The move toward increasingly punitive sanctions and the resulting increase of people in prisons was a conscious policy move in response to ambiguous evidence of the effectiveness of rehabilitation policies and of employment policies to curb criminal activities. Because policy makers believed that virtually nothing worked to arrest violence and economically motivated deviance, they turned to the one policy that

made intuitive sense: incapacitation through imprisonment (Blumstein, Cohen & Nagin 1978, p. 314).

Before other nations go down this path, however, it is useful to review the record of research evidence upon which American policy makers concluded that employment policies do not work to reduce crime. This evidence reveals considerable optimism about the prospects of curbing criminal behaviour through improved employment opportunities, especially for blacks who experience persistent employment barriers. Indeed, some of the less optimistic evidence arises out of empirical evidence that fails to distinguish between the criminal careers of blacks, who often turn to crime out of desperation arising from blocked labour market opportunities, and whites, whose criminal paths follow more varied routes.

In this essay, I show that the economic model of crime and punishment provides the initial ambiguity about the policy impacts of employment on crime. In essence, the model and its variations suggest that the precise direction and magnitude of employment and wages on crime largely is an empirical issue. This conclusion spurred numerous empirical studies that appear on first glance to offer mixed results. What the literature shows, however, is that employment impacts hinge upon race issues: better wages reduce black crime but have only marginal impacts on white crime.

¹Roy Wilkins Professor of Human Relations and Social Justice, Humphrey Institute of Public Affairs, University of Minnesota. This paper was originally presented 31 October 1997, at the Whyalla Roundtable Meeting at the University of South Australia, Whyalla, South Australia while the author was a Senior Fulbright Scholar at the Faculty of Aborigine and Islander Studies, University of South Australia. Comments and inspiration were provided by Rick Sarre, Colin Bourke, and other Roundtable conference participants. Much of the literature review discussed in this essay is based on the author's National Institute of Justice (1980) monograph, *Employment Opportunities and Crime*. The U.S.-Australian Education Foundation and the Fulbright Foundation supported this research.

²U.S. Bureau of the Census, *Statistical Abstracts of the United States: 1996* (116th Edition) Washington, D.C., 1996.

Theoretical Framework

The seminal work in the economics of crime area is that of Nobel-laureate, Gary S. Becker, whose journal article, "Crime and punishment: An economic approach," launched a generation's worth of analysis and research on rational policy approaches to reducing crime.³ This work contends that the central determinants of the supply of criminal offences is the certainty and the severity of punishment. The work also compares the policy implications of pursuing enforcement strategies that increase the certainty of punishment over judicial or corrections strategies that increase the severity of punishment. The choice among these strategies, according to Becker's analysis, can be discerned unambiguously once information on offender preferences are known. That is, we can design effective and efficient crime control policies rationally by choosing optimal mixes of increases in the certainty and severity of punishment, which exhibit unambiguous deterrent effects.

Ehrlich (1973) expands on the Becker theory by investigating the potential criminal's optimal allocation of time to crime and work. Making choices in the face of uncertainty, the individual chooses to enter or not to enter criminal activity in the process of maximising his expected utility — an index of personal well-being and preferences — calculated for contingent states of the world. Because expected utility declines for increasing certainty or severity of punishment, optimal participation in crime declines for increasing punishment. The central results of

Becker and Ehrlich have not gone unchallenged.

Block and Heineke (1975) argued that the Becker-Ehrlich results are based on restrictive assumptions about the probability distributions for success or failure in criminal activity. In general, it is discovered that the effects of the certainty and severity of punishment on optimal participation in crime do not determine arbitrary success or failure distributions. Moreover, National Academy of Sciences studies have concluded the empirical tests of the Becker model, while appearing to support the theoretical results of the deterrent effectiveness of the certainty and severity of punishment, should be viewed with extreme caution due to the insufficient attention paid to the statistical problem of correctly identifying the model's direction of causation.

Furthermore, Brier and Fienberg (1980) in a careful review of all of the econometric tests of the Becker-Ehrlich model cite many problems of data reliability and inappropriate statistical techniques as rendering the majority of the favourable tests useless.

The choice-theoretic approach also predicts that employment affects participation in crime. In extremely simplified versions of the model, higher unemployment leads to lower expected returns to work and thereby increases the propensity to engage in crime. Better wages, higher income, and lower unemployment will have ambiguous effects on crime, however, in more general choice-theoretic models.

Another economic approach to crime similarly emphasises opportunities as well as environmental conditions. In this view, crimes are directly or indirectly determined by such economic factors as poverty or inequality or by the oppression of laws (Cloward & Ohlin 1960). Closely related is the set of hypotheses advanced by theorists of segmented labour markets relating crime to the feeling of hopelessness and uncertainty for the future.

Piore (1968) and other segmented labour market theorists point out that even though many public and private programs have made deliberate attempts to eliminate the more visible barriers to good and adequate jobs for ghetto workers through training and education, poverty, misery, and discontent appear to have increased rather than

³See Becker (1968). It is not an overstatement to assert that the paper influenced national crime policy. Either directly or indirectly Becker's research showing that increased certainty and severity of punishment represented an efficient means for reducing crime influenced policy makers orchestrating what was by the end of the 1970s a major reversal in policy away from rehabilitation towards punitive criminal justice policies. Becker's research and that of his (often Chicago-trained) students, for example, has been used to justify the reimposition of the death punishment; to eliminate parole; to standardise and lengthen prison sentences, especially for drug offences; and generally to promote criminal justice as opposed to employment and training alternatives to crime.

diminished. Illegal activity is seen as an alternative to the frustration of labour market failure. Institutionally determined decisions, such as police arresting a disproportionate number of ghetto blacks, conspire to label blacks as criminals independently of whatever choices they may make.

The most telling aspect of the theoretical literature on crime, particularly the choice-theoretic literature, is that the greater the realism of the models, the weaker the predictions become. Extensions of the models often render them impotent, as Blocke and Heineke contend:

We have shown that the results obtained by previous authors are valid only in special cases.[E]nforcement, punishment and the degree of certainty surrounding punishment were seen to have no qualitative supply implications under traditional preference restrictions (Blocke & Heineke 1975, p. 323).

This is their way of saying that when the crime model is expanded to look more like a model of choice between crime and work, the central conclusions about the putative effects of punishment vanish. But so do any hypothesized effects of returns to work. Just as the effects of increased wages on labour supply are ambiguous — some people will work more when their potential earnings increase, some people will work less and still earn as much or more for their efforts — it also follows that crime returns will have dual impacts on the rational decisions of criminals.

The result of the Blocke and Heineke concession is that the real policy issues rest upon empirical confirmation of any alleged impacts of punishment or labour market incentives on crime. They aptly contend:

[P]olicy prescriptions in this area, as in the tax incentive area, do not follow from theory but rather require empirical determination of relative magnitudes (Blocke & Heineke 1975, p. 314).

Another line of inquiry linking crime and employment comes from the literature on imprisonment as a social control mechanism. Thorsten Sellin (1976) argues that demands of the labour markets have traditionally shaped the penal system and that changes in that

system through time are more closely related to changing labour market structures than to evolving theories of punishment. In the early years of the nation, penitentiaries were designed to house criminals from the master class. Slaves were punished through beatings or execution. Following the Civil War, though, prisons served as a means of continuing slavery. With a system by penal servitude, private slavery would be replaced with public slavery. Within a decade after the Civil War, prison populations in the South shifted from being virtually all white to being disproportionately black. This literature proposes that the linkage between unemployment and crime works through imprisonment policies aimed at the incapacitation of the least wanted members of society (Darity et al. 1994). Thus, any attempt to demonstrate empirically a relationship between labour markets and crime would require an assessment of the relative position of the least well-off members of society.

Summary of the Debate about Wages, Employment and Crime

Researchers have repeatedly found that the labour market performance of ex-offenders is dismal (Cook 1975; Pownall 1971; Taggart 1972; Witte 1979; Freeman 1988). Former prisoners experience high levels of unemployment, receive low wages when they are employed, and face high turnover due to dismissals, quits, and layoffs. Some researchers have argued that these conditions exist because the ex-offenders' characteristics are predominantly those of low-skilled, disadvantaged workers. But is the dismal performance of ex-offenders in the labour market primarily due to their criminal record specifically or their disadvantaged status generally?

Phillip Cook (1975) has argued that the poor labour market performance of ex-offenders is due to their heavy endowment with characteristics associated with disadvantaged workers. They are young and non-white and hold unstable, low-paying jobs even before entering crime. While this situation may have *pushed* them into crime, having once been criminals intensifies the disadvantaged worker effect. If Cook is correct, then among ex-offenders with varying

previous employment experiences, the least disadvantaged should perform better. Disadvantage can be measured by not having held a job for any appreciable period, having worked a long stretch in a poorly paid, low-status, high-turnover job, or having little education. It is reasonable to expect that, after prison, these measures would be highly correlated with labour market failure.

On the other hand, if Cook is incorrect, varying post-prison unemployment experiences among ex-offenders should not be explained simply by differences in these measures of employment disadvantage but by measure of varying criminal records, whether or not employers discriminate against ex-offenders, and by characteristics that may reflect the degree to which the offender has been rehabilitated, such as a high degree of motivation, sincerity, desire for the job, and so forth.

Similarly, many studies have attempted to link unemployment and crime. They have raised the questions of direction of causation; potential aggregation bias; and the effect, if any, of employment on crime. Studies like those of Brenner (1976), Fleischer (1966), and Glaser and Rice (1959) finding strong evidence of a link between unemployment and crime can be faulted on all of these grounds. Gillipsie (1978) in a review of the early studies concludes that the aggregate data are at best suggestive of a link between economic variables and crime but cannot reveal how that link might be formed. Witte (1979), examining micro data sets in addition to the volumes of studies using aggregate data, shows greater scepticism. Witte thinks there probably is no direct connection between unemployment and crime. She suggests exercising extreme caution in drawing conclusions from evidence showing a significant relationship between employment and crime.

If there is some doubt about a general relationship between employment and crime, there is little doubt that specific interactions that involve both labour markets and the criminal justice system exist. Miller (1978) has estimated that nearly one-quarter of the labour force have criminal records. The existence of a criminal record has been shown

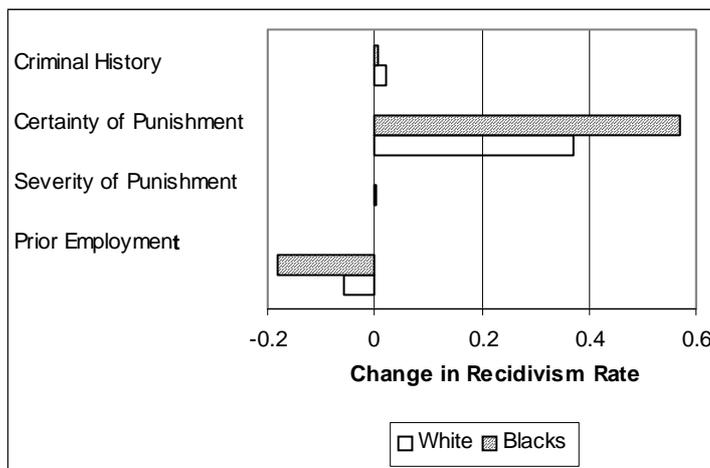
to restrict the type of occupation one can enter (Portney 1970), to increase the chances of dismissal from a job (Leonard 1967), and generally increase the likelihood that one will be unemployed (Leiberg 1978). The employment prospects of ex-offenders are bleak. Pownall (1971) reveals that released offenders have higher turnover rates, higher unemployment rates, and lower wages than the general population. Robert Taggart (1972) concludes that participation in illegal activity is linked to job market failure.

More recent evidence — mostly that which fails to account specifically for differences in the labour market structures faced by blacks — lends additional ambiguity to the debate. Viscusi (1986) using data with an over-representation of blacks, shows that economic incentives do affect crime rates. Grogger (1995) challenges these findings using questionable methods to control for “unobserved” attributes.

Evidence that better Wages reduce Crime

Findings that focus on blacks tend to find greater impacts of employment opportunities on crime than findings using largely white data sets. There are many possible explanations for the finding that improved employment opportunities tend to reduce crime more among blacks than whites. One that stands out concerns labour market discrimination. If employment discrimination causes many more blacks to enter crime than whites for largely economic reasons, then policies that improve labour market prospects might reduce black crime more than white crime simply because so many blacks may have turned to crime in the first place because of poor employment.

Figure 1 summarises the results of an analysis of recidivism among federal parolees in 1972. Although the data set is dated and results are based on research conducted more than a decade ago, the information is relevant because it reveals what was known at the time that criminal justice policies were chosen over labour market policies and because the data set was used to calibrate the sentencing guidelines that replaced parole when it was

Figure 1: *Effects of Employment vs. Punishment on Recidivism, Federal Paroles, United States, 1972*

abolished. The figure graphically shows the negligible impacts on post-prison crime of the severity of punishment — measured by time served before release from prison — and a sizeable perverse impact of the certainty of punishment — measured by the ratio of commitments to convictions. While criminal history has little impact on recidivism, employment history — captured by a variable indicating whether the offender had been employed more than four years before incarceration — had large disincentive effects on recidivism.⁴

Further evidence of employment's positive effect on reducing crime is found in an analysis of a post-prison employment program in Baltimore City (Myers 1983). The sample consisted of 432 hardcore, repeat property offenders. One-quarter received job-search assistance, one-quarter received cash subsidies equivalent to unemployment compensation, and one-quarter received neither. A last group received a combination of cash and job assistance. Follow-up information on monthly employment, earnings, and arrests was collected.⁵ Analysis

⁴See Myers 1983. The analysis controls for age, education, gender, marital status, alcohol and drug use, mental health, prison punishment, type of release, type of crime, and first-offender status.

⁵The sample consisted of males released from Maryland's state prisons to the Baltimore metropolitan area who had low financial resources, were repeat offenders, had no known history of alcohol or narcotic abuses, and had not been on work release for more than three months.

of the program concluded that employment helps to assure that ex-offenders remain out of the criminal justice system.

Looking at the monthly experiences of these released offenders, one can estimate survival probabilities as a function of the criminal justice sanctions, employment opportunities, and a host of demographic control factors. Survival in month T means that the offender was not rearrested from the time of release to that month. The certainty and severity of punishment generally have statistically insignificant impacts on survival probabilities. Wages had a remarkable impact. For every month after the first month after release from prison higher average weekly wages "raise the likelihood that an offender who succeeded in avoiding rearrest in previous months will again succeed in avoiding rearrest in that month: better wages reduce recidivism." (Myers 1983, p. 163).

Two interesting findings from that analysis are of note. One is that for both blacks and whites, employment in the first six-months out of prison highly influenced employment success in the second six months out of prison. For each hour worked in the first six months, nearly an extra half-hour of work is predicted in the second six months. The size of these positive influences of employment success out of prison diverges, however, between blacks and whites. For blacks — who dominate the sample — the

impact was more than twice the size of that for whites.⁶

A second interesting finding is that having a job arranged when the offender is released significantly increases the number of hours blacks work but leaves unaffected the number of hours that whites worked. This is true despite the fact blacks were less likely to have jobs arranged when they were released and ultimately worked fewer hours.

Implications for Australia

A US visitor to Australia is immediately struck by the similarities of the youth labour market to the situation in America in the 1950s. Llad Phillips and Harold Votey, long pioneers in the assessment of youth labour markets and the connection to crime, noted in a path-breaking article in 1992 that youth crime rose when youth employment opportunities disappeared. They wrote with their co-author, Darold Maxwell:

It is interesting to observe that while crime rates were skyrocketing for youth, unemployment rates for eighteen- to nineteen-year-old white males rose from a low of 7.0 percent in 1952 to a peak of 16.5 percent in 1958, and were still at 9.0 percent in 1967. For non-white males the situation was even worse. In 1952 their level of unemployment was 10.0 percent; it rose to a high of 27.2 percent in 1959 and recovered to a level of 20.1 percent in the prosperity year of 1967 (Phillips & Maxwell 1972, p. 493).

These adverse impacts of unemployment on youth crime parallel adverse impacts of labour force withdrawal on crime. These authors concluded that poor labour market opportunities for youth translate into increased criminal activities.

To reach these conclusions more than twenty-five years ago, Phillips et al. needed to use aggregated data on crimes available from

the Federal Bureau of Investigation's Uniform Crime Reports. These data do not actually provide information on *crimes* by youth. Instead, the compilation is on *arrests*. Thus, the evidence about the skyrocketing crime and unemployment among white and non-white males is really evidence about a skyrocketing pattern of arrests while crime increased. Put differently, poor employment opportunities may cause youth to turn to crime but these diminished labour market rewards also trigger policies that result in increased criminal justice sanctions. It seems worthy of further exploration to determine whether those sanctions were applied differentially between black and white youth in the 1950s and 1960s in the United States. Clearly, there is evidence that such differentials exist today. But the real relevance of looking at the nexus between race and arrest as an intervening factor when labour market opportunities diminish is to understand how policies on *blacks* may be deeply rooted in the distress faced by whites. In the 1950s, when young white males began to face greater barriers in finding employment, black males — who also faced significant employment barriers — were increasingly blamed for rapes, robberies and other violent crimes. Black arrests for serious crimes increased and, ultimately, public attention about white youth crime and employment could be transformed into what could be perceived as a *black crime* problem. The central point that it was an overall youth employment crisis, not necessarily a criminal justice problem, was largely missed and forgotten.

The legacy of racism in the criminal justice system due to slavery and its aftermath is also relevant. Blacks in America are disproportionately represented in the penal system. After the Civil War a loss of a whole class of workers in Southern agriculture mandated that the prison system — already evolving as a labour-market mechanism — supply public slaves where private involuntary servitude had been abandoned. During robust economic periods, black imprisonment has slowed; during economic downturns, black imprisonment has grown (Myers & Sabol 1986).

Australians can learn from this American lesson by recognising the current wave of youth crime and delinquency is, at its root, an

⁶To be precise, the impact is .447 for the combined sample of whites and blacks; it is .468 for blacks only, 2.6 times larger than the barely significant impact of .178 for whites.

economic and labour market problem. The lack of jobs faced by white youth in Australia runs the risk of being translated into harsher punitive sanctions aimed not at youth generally but at the scourges of society — be they immigrants or Aboriginal people or whoever is the Australian equivalent of African American males. By the time attention is focused on the plight of that pariah group — for example, the deaths in custody among Aboriginal males — understanding the labour market roots of the larger problem will have long vanished. Moreover, somewhat paradoxically, if they see a link at all between crime and employment, the public will perceive the larger issue of links between labour markets and crime as being the result of depressed economic conditions faced by the most criminal — as labeled by the criminal justice system. In Australia that would mean Aboriginal people, who are substantially more likely to be incarcerated than they are to be found in the general population. That deflection of attention away from the more systemic labour market distortions causing the youth employment crisis promises to obscure the potential for solving the crime problem through employment policies for Australian policy makers.

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CONCLUDING COMMENTARY

Adam Graycar:

We have been talking about sentencing, and the issue of over-representation. I would like to talk about **structures** and **processes** that will lead to positive **outcomes**.

The **structures** that are relevant to us now involve understanding culture and communication and the relationships that people have. The demography of Aboriginal Australia is a significant structural item and when combined with an understanding of lifestyle we have a set of structures that are likely to be risk-producing. We need to have a good knowledge of understandings and misunderstandings.

The **processes** to work our way through all of this involve understanding the relationship between health and crime, and programs to improve health which may well mitigate crime. By the same token, the processes by which customary law issues are examined and the influence (and in some cases declining literacy) of Elders has an impact. There are many programs that form part of our processes, programs in which APOSS is involved, programs supported by ATSIC and also the functioning of AJAC.

With regard to **outcomes**, we need to identify the flow from criminality to sentencing to over-representation to deaths in custody.

The greatest tragedy to face Australia is if we maintain the current incarceration rates, we will find our institutions will have an even greater number of Aboriginal juveniles than at present.

The AIC is releasing some information on homicide which shows homicide among Indigenous Australians is very high; certainly with Aboriginal people it is intra-ethnic. We have to look at issues of harm and lifestyle and crime, and crime that flows into harm.

Where is this Roundtable going to take us? How do we illustrate what we know? What are the important questions that need to be answered and how do we use those answers? A starting point could look something like this:

- Case studies: visibility, victimisation
- Causation, political motivation
- a Myers-style analysis of Indigenous incarceration and unemployment
- Aboriginal enterprises
- suspended sentences study.

To reduce tomorrow's statistics we need to take action today.



Appendix 1

Research Abstracts

COMPILED BY JANE MUGFORD
WITH THE ASSISTANCE OF THE
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INSTITUTE OF CRIMINOLOGY

1997/1

TI: Keeping Aboriginal and Torres Strait Islander people out of custody: an evaluation of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody

AU: Cunneen, Chris; McDonald, David
SO: Canberra: ATSIC.

1996/1

TI: Aboriginal over representation and discretionary decisions in the NSW juvenile justice system

AU: Luke, Garth; Cunneen, Chris
SO: *Australian Indigenous Law Reporter*, 1(1) Jan 1996; 95-98

AB: This study seeks to identify factors which may contribute to the over representation of young Aboriginal people in the juvenile justice system, and particularly the extent to which discretionary decision making by criminal justice agencies such as the police and courts affects Aboriginal young people. The report aims to provide a basis for the development of strategies to reduce the level of over representation of young Aboriginal people in the juvenile justice system. This article presents the executive summary of the report.

1996/2

TI: NT elders call for remote imprisonment
SO: *Security Australia*, 16(1) Feb 1996; 14

AB: Aboriginal elders from the Angurugu Community Government Council have requested that repeat offenders from Groote Eylandt not be sent to Berrimah prison despite recommendations to the contrary from the Royal Commission into Aboriginal Deaths in Custody. As there are a large number of Groote Eylanders already in jail, offenders would be imprisoned with family and friends which would reduce the deterrent factor of jail sentences.

1996/3

TI: Adult court records, 1 January 31 December 1994

AU: University of Western Australia Crime Research Centre; Ferrante, A M; Loh, N S N
SO: In: *Crime and justice statistics for Western Australia: 1994* / University of Western Australia. Crime Research Centre. Nedlands, WA: The Centre, 1996; 56-72. graph, table

SE: University of Western Australia. Crime Research Centre. Statistical report

AB: The information presented relates to supreme and district court criminal cases heard in Western Australia in 1994, and includes tables and graphs as well as descriptive analysis. The data for courts are reported for all charges and for distinct persons. Analysis of this data relates to the gender and race of defendants, type of plea, offence group, trial outcome and type of penalty.

1996/4

TI: Children's Court and Children's (Suspended Proceedings) Panel appearances, 1 January 31 December 1994
 AU: University of Western Australia Crime Research Centre; Ferrante, A M; Loh, N S N
 SO: In: *Crime and justice statistics for Western Australia: 1994* / University of Western Australia. Crime Research Centre. Nedlands, WA: The Centre, 1996; 73-92. graph, table
 SE: University of Western Australia. Crime Research Centre. Statistical report
 AB: This chapter provides tables, graphs and descriptive analysis of statistical data relating to juvenile court and Children's Panel appearances in Western Australia during 1994. Details are presented for both distinct persons (by most serious offence) and for all counts of charges or offences. Information is provided on trends in juvenile convictions; the characteristics of defendants (eg gender, race, age); the major offence committed; penalties; convictions; and juvenile detention.

1996/5

TI: World criminal justice
 AU: Griffiths, Curt Taylor (ed)
 JN: *International Journal of Comparative and Applied Criminal Justice*, 20, (2), pp. 195-355.
 AB: A special issue of the journal contains 10 previously unpublished papers on the increasing involvement of the community in the administration of justice, and the development of new models for responding to crime.

Curt Taylor Griffiths examines restorative justice initiatives in Canadian Aboriginal communities. Gord Richardson et al. describe the Restorative Resolutions Project in Manitoba, CAN. Nobuho Tomita explores the role of the community at various stages of the criminal justice system. Evelyn Zellerer addresses criminal justice responses to violence against women. Martin Wright considers developments in reparative justice in England. Cyndi Banks details the devolution of justice in Papua New Guinea, emphasising the roles of village courts and the probation service. Finn Breinholt Larsen traces the origins and evolution of Greenland's criminal code and criminal justice system. Barry Stuart explains circle sentencing in Canada. Gordon Bazemore and Martha Schiff critique both traditional approaches to community corrections and the new "get tough" approaches, and outline an alternative restorative justice model. Ogbonnaya Oko Elechi describes the

"Afikpo (Ehugbo)" Nigerian model of conflict resolution.

1996/6

TI: Modern applications of traditional sanctions
 AU: Lund, Dennis W
 JN: *International Journal of Offender Therapy and Comparative Criminology*, 40, (4), pp. 347-353.
 AB: Five case examples of traditional sanctions are presented, as practiced in primitive times and in recent cases involving Cheyenne Indians, Alaskan Natives and Micronesian Islanders.

Traditional sanctions exhibit similarities to current "intermediate" penalties such as restitution, intensive supervision, house arrest, halfway in house placement and weekend jail imprisonment.

1996/7

TI: A brief overview of quantitative criminology in Australasia: 1981-1995
 AU: Homel, Ross
 JN: *Journal of Quantitative Criminology*, 12, (4), pp. 297-313.
 AB: A study examines quantitative research in criminology, particularly sophisticated mathematical studies, conducted in New Zealand and Australia since 1981. Five topical areas identified by Farrington (1996) were applied to a sample of 129 articles published between 1981 and 1995 in the *Australian and New Zealand Journal of Criminology*.

Findings revealed little change in the types of research conducted. Studies of court process and correctional issues accounted for two thirds of all published papers. The proportionate numbers of simple versus sophisticated articles published remained constant over the 15 year period. Quantitative criminological research was strong in the areas of: drugs, alcohol and crime; indigenous peoples and the criminal justice system; police, diversion and regulatory law enforcement; modelling of recidivism; and sentencing. Researchers who are not criminologists conducted the most sophisticated quantitative research, the volume of which is not likely to increase significantly over the next few years. Currently, Australia and New Zealand produce a considerable amount of high quality quantitative research in criminology. A slow growth in the popularity of experimental studies and longitudinal designs is predicted, and crime prevention will probably emerge as an area of

quantitative strength. Australasian criminology, long concerned with practical solutions to social problems, will likely continue to emphasise pragmatic policy oriented research.

1996/8

TI: Restorative justice practice among indigenous peoples

AU: Pratt, John; Yazzie, Robert; Griffiths, Curt Taylor, et. al.

BK: *Restorative Justice: International Perspectives*, edited by Burt Galaway and Joe Hudson, Monsey, NY and Amsterdam, NETH: Criminal Justice Press and Kugler Publications: pp. 137-226.

AB: Section II of the anthology includes 5 papers on restorative justice practices among indigenous peoples in Canada, New Zealand and the U.S.

John Pratt reports that traditional Maori restorative justice practices are being restored, to some extent, by the use of family group conferences in New Zealand. Robert Yazzie and James W. Zion explain the operation of the Navajo Peacemaker Courts, established in 1982, in which respected community leaders preside over a traditional tribal approach to resolving disputes. Curt Taylor Griffiths and Ron Hamilton review several restorative justice programs operating in Native reserves and in an urban context. According to Barry Stuart, circle sentencing, currently practiced in many northern Canadian communities, involves community meetings to address family and community circumstances that constitute the underlying causes of crime. Marianne O. Nielsen compares the operations of the Navajo Peacemaker Courts and the Youth Justice Committees of Alberta, Canada.

1995/1

TI: *Accountability for criminal justice: selected essays*

AU: Stenning, Philip C (eds.)

PB: Toronto, CAN: University of Toronto Press
PD: 530p.

AB: A collection of 18 previously unpublished essays surveys developments in the past 15 years in the area of accountability for criminal justice in English speaking countries with common law traditions.

Following an introduction by Editor Philip C. Stenning, the chapters are: "Accountability in

Social Systems: A Psychological Perspective" by Philip Tetlock; "Accountability in the Ministry of the Solicitor General of Canada" by Stenning; "Antinomies of Accountability in Policing" by Robert Reiner; "Getting Serious about Police Brutality" by David Bayley; ". . .The Role of Public Complaints Procedures in Police Accountability" by Andrew Goldsmith; "The News Media and Accountability in Criminal Justice" by Richard V. Ericson; "Security Services, Constitutional Structure, and Varieties of Accountability in Canada and Australia" by Laurence Lustgarten; ". . .Parliament's Five Year Review of the CSIS Act..." by Stuart Farson; "Accountability for Corporate Crime" by Frank Pearce; "Alternative Accountabilities: Examples from Securities Regulation" by Mary Condon; "Canadian Public Inquiries and Accountability" by Kent Roach; "The Office of Attorney General New Levels of Public Expectations and Accountability" by John LL.J. Edwards; "Prosecutorial Accountability in Canada" by Don Stuart; "Judicial Accountability in Canada" by Ian Greene; "Achieving Accountability in Sentencing" by Anthony J. Doob and Jean Paul Brodeur; "Accountability and Justice in the English Prison System" by Rod Morgan and Mike Maguire; "Accountability and the National Parole Board" by Allan Manson; and "Prospects for Accountability in the Canadian Aboriginal Justice Systems" by Roger F. McDonnell.

1995/2

TI: Alternatives to imprisonment in Kenya

AU: Vyas, Yash

JN: *Criminal Law Forum*, 6, (1), pp. 73-102.

AB: A review examines alternatives to incarceration currently used in Kenya, and suggests promising directions for reform.

Despite the wide range of sentencing and non custodial alternatives available in Kenya, the use of prison remains overwhelmingly popular, even in cases where such alternatives would be more economical and beneficial to the community. Traditional incarceration does not serve the objectives of community integration and victim and social reparation. Settlement, restitution and similar approaches should become routine for minor offences. Alternative sanctions would produce considerable savings and alleviate pressures on the criminal justice system. To derive the greatest benefits from the alternatives, indigenous traditions of community based dispute resolution should be integrated into the statutory structure.

1995/3

TI: *Aboriginal contact with the criminal justice system and the impact of the Royal Commission into Aboriginal Deaths in Custody*

AU: Harding, Richard W; Broadhurst, Roderic; Ferrante, Anna, et. al.

PB: Sydney, AUS: Hawkins Press

PD: 144p.

AB: A review examines the interactions of aboriginal groups with the criminal justice system of Western Australia. Data are collected and/or cited from police, court and correctional records; other national data; and surveys of police lockups.

Results confirm excessive contacts of aborigines with all stages of the criminal justice system. There was an extraordinarily high level of intra racial personal victimisation among aborigines, along with a high prevalence of spousal abuse and family violence against children. Possible reasons for these trends include dispossession, alienation and socioeconomic disadvantage. Despite falling arrest levels in general, the comparative risk of Aborigine arrests has increased. Thus, the benefit of such new diversionary practices as cautioning has not been equally applied. Similarly, there is an apparent reluctance to release aborigines on bail once they are arrested. The likelihood of rearrest is also much higher for aborigines, which probably influences police relations. Once in the court system, aborigine offenders tend to receive custodial dispositions more frequently. While the incarceration of aborigines is excessive, the higher courts tend to impose shorter prison sentences on aborigines than similar non aboriginal offenders. However, aborigines have a higher probability of reincarceration than other offenders. The courts are more willing to impose community based corrections on non aborigines, although some changes have been noted. Aborigines in community corrections have higher breach rates than other offenders.

The recommendations of the Royal Commission into Aboriginal Deaths in Custody should be re evaluated at a national conference, which should produce a coherent set of national priorities.

1995/4

TI: Introduction to the special issue

AU: Mukherjee, Satyanshu

SO: *Journal of Quantitative Criminology*, Special issue 'Quantitative research and criminal policy

in Australia' / edited by Satyanshu Mukherjee, 11(3) Sept 1995; 223-230. bibl, table

AB: The editor of this special issue on quantitative research and criminal policy in Australia provides an overview of various concurrent criminal justice systems operating in Australia. Major policy issues in the area of criminal justice are discussed, including the cost of crime to the community; Aboriginal over-representation; violence against women, and sentencing and custody. A section on trends in criminological research introduces each of the five articles in the issue. The individual articles are separately indexed.

1995/5

TI: *Children, crime and justice in Queensland*

AU: O'Connor, Ian; Stenzel, Tracey;

Queensland Criminal Justice Commission

SO: Brisbane: The Commission, 1995. 20p. bibl, graph, table

SE: Criminal justice research paper series. Research notes; v 2 no. 2

AB: This paper identifies the key features of the juvenile justice system in Queensland. It examines the extent and characteristics of the involvement of juveniles in crime in Queensland, as revealed through police crime statistics. It identifies which children appear in court and for what offences, and examines the courts' formal responses to offending by children. It also covers changes which have occurred since the implementation of the Juvenile Justice Act and the over-representation of Aboriginal and Torres Strait Islander children.

1995/6

TI: Altering course: new directions in criminal justice: sentencing circles and family group conferences

AU: LaPrairie, Carol

SO: *Australian and New Zealand Journal of Criminology*, special supplementary issue 'Crime, criminology and public policy' / edited by David Dixon, 1995; 78-99. bibl

AB: This paper examines sentencing circles (Canadian) and family group conferences (Australian) and discusses briefly some victim responses to these new initiatives. It concludes by arguing that sentencing circles and family group conferences will have to prove themselves before declaring success in redressing concerns with the mainstream criminal justice system upon which

the restorative justice movement is based, while, at the same time, recognising the merit in exploring new approaches. Bargaen's commentary on this article is separately indexed.

1995/7

TI: A critical view of conferencing
AU: Bargaen, Jenny
SO: *Australian and New Zealand Journal of Criminology*, special supplementary issue 'Crime, criminology and public policy' / edited by David Dixon, 1995; 100-103. bibl
AB: Bargaen contributes a commentary on LaPrairie's paper in which she critically addresses current developments in restorative justice. She notes that LaPrairie suggests indigenous people have played an important part in the development of sentencing circles in Canada. Bargaen explains that developments in family conferencing in Australia have only oblique implications for Aboriginal communities. As a result of discriminatory operation of Australian criminal justice, Bargaen believes that few young Aboriginal offenders will receive the benefit of this process. She also comments on the different models of conferencing.

1995/8

TI: Questioning 'evidence' in R v An Aboriginal Youth
AU: Pringle, Karen
SO: *Aboriginal Law Bulletin*, 3(74) June 1995; 16-18
AB: The Queensland Court of Appeal recently handed down its decision on the appeals by an Aboriginal youth against his conviction for manslaughter and the appeal by the Attorney General against the youth's sentence. This article describes the Court's findings, focusing on the youth's appeal, particularly in relation to weaknesses in the identification evidence; the admissibility of that evidence; the conduct of the police officers at the interview; the youth's disadvantaged background; and whether the youth's actions caused Tiernan's death. Both appeals were unsuccessful.

1995/9

TI: Trends in juvenile crime and justice, 1990-1992
AU: Broadhurst, Roderic; Ferrante, Anna
SO: In: *Repeat juvenile offenders: the failure of*

selective incapacitation in Western Australia. 2nd ed / edited by Richard W Harding. Nedlands, WA: Crime Research Centre, University of Western Australia, 1995; 79-95. bibl, graph, table
SE: University of Western Australia. Crime Research Centre. Research report; no. 10
AB: Underpinning the Western Australian legislative package of 1992 was the perception of a juvenile crime wave. This chapter sets out and discusses crime trends in Western Australia over the period 1990-92 to determine whether these perceptions were justified. Based on official records, it discusses the demographic features of juvenile offenders; offence characteristics; convictions and apprehensions; sentencing outcomes and penalties; interstate comparisons; recidivism; and cautioning and diversion.

1995/10

TI: *The overrepresentation of indigenous people in custody in Australia*
AU: Walker, John; McDonald, David
SO: Canberra: Australian Institute of Criminology, 1995. 6p. bibl, graph, table
SE: Trends and issues in crime and criminal justice; no. 47
AB: The rates of Aboriginal and Torres Strait Islander incarceration are compared with those of non indigenous people in juvenile institutions, police lockups and adult prisons. The authors explore the principal reasons for the high levels of imprisonment for indigenous people by linking these statistics with data on offence type, sentencing, and employment and educational background. They also use demographic projections to forecast the number of indigenous people in prison by 2011.

1995/11

TI: *Perceptions of justice: issues in indigenous and community empowerment*
AU: Hazlehurst, Kayleen M ed
SO: Sydney: Avebury, c1995. xxii, 281p. bibl, graph, table
AB: This collection of essays addresses the criminal justice problems experienced by indigenous peoples in Canada, Australia and New Zealand, and issues related to their empowerment. Topics discussed include: juvenile justice legislation; the experience of indigenous women; sentencing disparity; family group conferencing; urban policing and Aboriginal social health; law and order politics;

and cross cultural theories of Aboriginal criminality. Selected chapters are separately indexed.

1995/12

TI: Race, gender, and the sentencing process in a New Zealand District Court

AU: Deane, Heather

SO: In: *Perceptions of justice: issues in indigenous and community empowerment* / edited by Kayleen M Hazlehurst. Sydney: Avebury, c1995; 95-118. bibl, graph, table

AB: Deane reports on a study which investigated whether the race and gender of defendants is related to sentencing independently of other variables. Issues raised in relevant overseas literature were considered in relation to sentencing in one New Zealand district court. The study included analysis of offence and demographic variables, pre sentence reports, and remand status immediately prior to sentence. While there was no evidence of discrimination between Maori and Pakeha, there was some evidence that women may have been treated more leniently.

1995/13

TI: Domestic violence

AU: Randall, Melissa

SO: *Aboriginal Law Bulletin*, 3(72) Feb 1995; 3-6. bibl, ill

AB: Randall examines how judicial statements and attitudes in the area of domestic violence have been instrumental in perpetuating racist and sexist stereotypes which marginalise Aboriginal women. She discusses a number of community initiatives which may provide an alternative answer. (This issue of the *Aboriginal Law Bulletin* is a combined edition with the *Alternative Law Journal*, 20(1) Feb 1995)

1995/14

TI: Domestic violence

AU: Randall, Melissa

SO: *Alternative Law Journal*, 20(1) Feb 1995; 3-6. bibl, ill

AB: Randall examines how judicial statements and attitudes in the area of domestic violence have been instrumental in perpetuating racist and sexist stereotypes which marginalise Aboriginal women. She discusses a number of community initiatives which may provide an alternative answer. (This issue of the *Alternative Law Journal* is a combined edition with the

Aboriginal Law Bulletin, 3(72) Feb 1995)

1995/15

TI: Juvenile justice

AU: West, Andrew

SO: *Queensland Lawyer*, 15(4) Feb 1995; 123-126

AB: West discusses Queensland's Juvenile Justice Act, looking at its principal objectives and general principles of juvenile justice. He then examines two aspects of the sentencing process: pre sentence reports and the role of parents in the sentencing process.

1995/16

TI: Court puts the boot in

AU: Laurie, Victoria

SO: *Bulletin*, 116(5961) Mar 14 1995; 38. ill

AB: The West Australian Premier, Richard Court, announced a new 'get tough' tool for tackling youth crime detention camps. The military style camps would offer young repeat offenders and hardened criminals a period of tough discipline in exchange for a reduced sentence. Concerns have been expressed at the decision to mix juvenile and adult offenders. The Deaths in Custody watch committee maintains that the detention camp concept and many parts of the young offenders legislation are in breach of the Royal Commission into Aboriginal Deaths in Custody's findings.

1994/1

TI: Aboriginal customary law: recognition?

AU: McGuire, Frederick

SO: In: *First annual report / Queensland Children's Court* (McGuire, Frederick, President). Brisbane: The Court, 1994; 161-176

AB: This chapter reports on a 1981 hearing to the Australian Law Reform Commission in connection with an inquiry into the recognition of Aboriginal customary law. McGuire advocates a rationalisation of the existing systems of administering justice to Aborigines and suggests there should be created a position designated 'Aboriginal Assistant to the Court'. He suggests the presence in Court of an Aboriginal assistant will be tangible evidence to the Aboriginal people of their own kin participating in the judicial processes of the law.

1994/2

TI: WA amendments will increase juvenile custodial numbers

SO: *Deaths in Custody Newsletter*, Feb 1994; {1 2}
AB: The Western Australia's Criminal Procedure Amendment Act will affect juvenile access to bail, the obligations of parents and juvenile sentencing. This article is highly critical of Bail Act amendments which significantly reduce the rights of juveniles to bail. It says there is scope for a number of abuses, and is concerned about bail conditions relating to parents and guardians, alleged 'serious offences' and homelessness.

1994/3

TI: Aboriginals and the criminal justice system
AU: O'Neill, Nick; Handley, Robin
SO: In: *Retreat from injustice: human rights in Australian law* / Nick O'Neill and Robin Handley. Annandale, NSW: Federation Press, 1994; 409-422. bibl
AB: The authors illustrate how the introduced criminal justice system has been used by many to oppress Aborigines. They argue that the way the criminal justice system is administered is a major manifestation of the rest of society's prejudice, particularly the treatment of Aborigines by police and corrective services officers. Issues discussed include: street offences; the Redfern raids; the killing of David Gundy; deaths in custody; Percy Neal's political agitation; language problems; guidelines on the interrogation of Aboriginal suspects; criminal liability; and sentencing.

1994/4

TI: R v Robyn Bella Kina
AU: Pringle, Karen L
SO: *Aboriginal Law Bulletin*, 3(67) Apr 1994; 14-5
AB: Pringle outlines the case of an Aboriginal woman, Robyn Bella Kina, who fatally stabbed her de facto husband and was found guilty of murder and sentenced to life imprisonment. Kina's case was referred to the Court of Appeal on the grounds that she did not receive a fair trial by reason of misunderstandings in communication with her lawyers. Pringle states that this case typifies the many difficulties faced by Aboriginal people in the legal system and the need for more culturally appropriate treatment.

1994/5

TI: *Alcohol as a sentencing factor: a survey of attitudes of judicial officers*
AU: Potas, Ivan; Spears, Donna
SO: Sydney: Judicial Commission of New South Wales, {1994}. iv, 76p. bibl, graph, table
SE: Judicial Commission of New South Wales. Monograph series; no. 8
AB: The authors discuss the main principles that apply to the sentencing of violent offenders who commit offences while under the influence of alcohol. They then summarise the findings of a survey of the opinions of judges and magistrates concerning the impact of various aggravating and mitigating factors on the sentences awarded to violent offenders.

1994/6

TI: The effectiveness of criminal justice sanctions for Aboriginal offenders
AU: Roeger, L S
SO: *Australian and New Zealand Journal of Criminology*, 27(3) Dec 1994; 264-281. bibl, graph, table
AB: One of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was the call to understand the effectiveness of non custodial orders for Aboriginal offenders. In this study researchers compared the recidivism rates of Aboriginal offenders sentenced to imprisonment with those who were placed on community based orders. Factors such as age, number of prior convictions, previous imprisonment, possession of a juvenile record and education level were all associated with recidivism. Taking these factors into account, the researchers found there were no differences in recidivism rates between the two groups.

1994/7

TI: Home detention in North Queensland and Aboriginal inmates: equality or discrimination?
AU: Moyle, Paul
SO: *Socio Legal Bulletin*, no. 11 Summer 1993/1994; 28-36. bibl, table
AB: Moyle reviews the profile of home detention in North Queensland with particular reference to Aboriginal participation rates. The policy and legislation underlying home detention is described within the themes of family, work and relationships. Adaptations by the northern regional Queensland Corrective Services Commission are discussed and evaluated in view of these themes.

1994/8

TI: West side saga: juvenile justice in Western Australia
 AU: Hall, Stephen
 SO: *Aboriginal Law Bulletin*, 3(68) June 1994; 21-22. bibl
 AB: Hall discusses changes which have been made in the area of juvenile justice in Western Australia in recent years. He suggests that not all the changes have been positive, nor have they been in the best interests of young people and the wider community.

1994/9

TI: Whose identity crisis?
 AU: Boyle, Shawn
 SO: *Polemic*, 5(1) 1994; 5-9. ill
 AB: Boyle discusses Operation Sweep, a campaign to enforce a de facto curfew on young people found on the streets of Perth and Fremantle at night. He also cites a range of legislation and practices which illustrate the Western Australian government's inconsistent treatment of youths as adults. Changes to the juvenile justice system which impose harsh controls are sending confusing messages to Western Australian youth.

1994/10

TI: Violent justice
 AU: Zdenkowski, George
 SO: *Bulletin*, 116(5913) Mar 29 1994; 46
 AB: Some courts are taking tribal law into account when handing down sentences

1994/11

TI: Contemporary sentencing issues
 AU: Zdenkowski, George
 SO: In: *The Australian criminal justice system: the mid-1990s* / edited by Duncan Chappell and Paul Wilson. 4th ed. Sydney: Butterworths, 1994; 171-212
 AB: This chapter reviews a number of important sentencing developments in Australia over the last decade. It considers some of the important themes which have recently affected the Australian sentencing scene, such as the development of sentencing discounts, plea bargaining, improving the quality and fairness of decision making, the severity of punishment, and sentencing reform. It is recommended that there should be: a reduction in the use of

imprisonment: a corresponding increase in the use of non custodial penalties; and the legislative regulation of judicial discretion.

1994/12

TI: White law, black lore
 AU: Jamrozik, Wanda
 SO: *Independent Monthly*, 5(10) May 1994; 37-38

1994/13

TI: The effectiveness of criminal justice sanctions for Aboriginal offenders
 AU: Roeger, LS
 JN: *Australian and New Zealand Journal of Criminology*, 27, (3), pp. 264-281.
 AB: A study of recidivism among 442 Aboriginal offenders compares the rates of those sentenced to imprisonment with the rates among those receiving community based sanctions. Three and a half year follow up data were collected from the records of the South Australian Department of Correctional Services and the South Australian Police Department.

Factors found to be associated with recidivism (defined as sentenced to imprisonment) were age, number of prior convictions, previous imprisonment, possession of a juvenile record and educational level. After controlling for these variables, no differences in recidivism emerged between the 2 groups. The relationship between recidivism rates and diversion from custody is discussed.

1994/14

TI: *The Australian criminal justice system: the mid 1990s*
 AU: Chappell, Duncan; Wilson, Paul
 PB: Sydney, AUS: Butterworths
 PD: 328p.
 AB: A collection of 15 previously unpublished articles provides a broad overview of the current state of the Australian criminal justice process.
 The papers are: "Trends in Crime and Criminal Justice" by John Walker; "Violence: Patterns of Crime" by Rick Sarre; "Aboriginal Offending: Patterns and Causes" by Robyn Lincoln and Paul Wilson; "Ethnicity and Crime" by Patricia Easteal; "Organising Crime: Towards a Research Regulatory Approach to Organised Crime" by Phil Dickie; "Illicit Drug Use in Australia: Trends, Policies and Options" by Toni Makkai et al.; "Women and the Criminal Justice

System” by Christine Alder; “Environmental Offences: Australian Responses” by Jennifer Norberry; “Contemporary Sentencing Issues” by George Zdenkowski; “Community Crime Prevention: A National Perspective” by Adam Sutton; “Trends in Juvenile Justice” by Ngaire Naffine and Joy Wundersitz; “Corporate Crime” by Roman Tomasic; “Breaking the Crime Control Nexus: Market Models of Corruption and Opportunity” by Mark Findlay; “Neo Liberal Crime Control Political Agendas and the Future of Crime Prevention in Australia” by Pat O’Malley; and “Criminal Justice Reform in Australia” by Kenneth Polk.

1994/15

TI: Recognition of Aboriginal customary law
AU: Australia Department of the Prime Minister and Cabinet
SO: In: *Three years on: implementation of the Commonwealth Government responses to the recommendations of the Royal Commission into Aboriginal Deaths in Custody: annual report 1993 94*. Vol 1: Overview reports / Australia. Aboriginal and Torres Strait Islander Commission. Royal Commission Government Response Monitoring Unit. {Canberra}: The Unit, 1994; 147-178
AB: In 1986, the Australian Law Reform Commission (ALRC) issued a report on the recognition of Aboriginal customary laws. This chapter documents the approach Commonwealth agencies have taken to the ALRC recommendations, in accordance with the instructions of the Royal Commission into Aboriginal Deaths in Custody. It discusses the criminal law and sentencing; evidence and procedure; marriage, children and family property; local justice mechanisms; and traditional hunting, fishing and gathering rights.

1994/16

TI: Bloody justice
AU: Foster, David
SO: *Independent Monthly*, 5(10) May 1994; 30-36
AB: The author investigates the grey area that lies between white and black justice in the Northern Territory, where tribal ‘payback’ has always been condoned (unofficially) by white officials

1993/1

TI: Aboriginal homicide: customary law defences or customary lawyers’ defences?
AU: Eames, Geoffrey M
SO: In: Homicide: patterns, prevention and control: proceedings of a conference held 12 14 May 1992 / edited by Heather Strang and Sally Anne Gerull. Canberra: Australian Institute of Criminology, 1993; 149 165. bibl
SE: Conference proceedings (Australian Institute of Criminology); no. 17
AB: Eames examines some aspects of the legal system’s treatment of Aborigines charged with murder, illustrating the confusion in the approach adopted to date. He highlights issues arising from two cases involving Aboriginal homicide provocation and the ordinary (Aboriginal) person test; sentencing issues; and the role of expert witnesses. He emphasises that it will be important to reconcile the competing interests of male and female Aborigines before attempting to ensure that the courts take into account Aboriginal customs and experience.

1993/2

TI: Discussion {of pre sentence reports for female offenders}
AU: Wilkie, Meredith
SO: In: *Sentencing women: pre sentence reports and constructions of female offenders* / Meredith Wilkie. Nedlands, WA: Crime Research Centre, University of Western Australia, 1993; 81-87. table
SE: University of Western Australia. Crime Research Centre. Research report; no. 9
AB: The most significant finding of this Western Australian study is that females are much more likely than males to be the subjects of unfavourable pre sentence reports (PSRs). Wilkie highlights the following themes: the different construction of female offenders, depending on their offence; the reasons for the unfavourable appraisal of female offenders; sentencing factors; the tendency to categorise female offenders as needing treatment; judges’ misconceptions of probation supervision; the extent of bias in PSRs; and the need for reform. Appendices following this discussion provide statistical information on the characteristics of the survey sample, the sentencing outcomes and the PSR evaluations.

1993/3

TI: Sentencing in the higher criminal courts

AU: Wilkie, Meredith
 SO: In: *Sentencing women: pre sentence reports and constructions of female offenders* / Meredith Wilkie. Nedlands, WA: Crime Research Centre, University of Western Australia, 1993; 1-7. table
 SE: University of Western Australia. Crime Research Centre. Research report; no. 9
 AB: Wilkie highlights a number of key questions in this introductory discussion. She addresses the objectives of sentencing; limits on judges' sentencing discretion; the sentencing hearing; information used to make the sentencing decision (including the pre sentence report); the uses made of the information; and sentencing choices (good behaviour bonds, fines, probation, community service orders and imprisonment). A table indicates race and gender disparities in sentencing outcomes.

1993/4

TI: Trends in juvenile crime and justice, 1990-1992
 AU: Broadhurst, Roderic; Ferrante, Anna
 SO: In: *Repeat juvenile offenders: the failure of selective incapacitation in Western Australia* / edited by Richard W Harding. Nedlands, WA: Crime Research Centre, University of Western Australia, 1993; 79-95. bibl, graph, table
 SE: University of Western Australia. Crime Research Centre. Research report; no. 10
 AB: Underpinning the Western Australian legislative package of 1992 was the perception of a juvenile crime wave. This chapter sets out and discusses crime trends in Western Australia over the period 1990-92 to determine whether these perceptions were justified. Based on official records, it discusses the demographic features of juvenile offenders; offence characteristics; convictions and apprehensions; sentencing outcomes and penalties; interstate comparisons; recidivism; and cautioning and diversion.

1993/5

TI: First HIV positive Aborigine dies in custody: coronial inquest into the death of David Jason Barry
 AU: Bendall, Anthony
 SO: *HIV/AIDS Legal Link*, 4(1) Mar 1993; 10
 AB: Barry, a 17-year-old Aboriginal boy who was HIV positive, was an inmate of Lotus Glen Correctional Centre who was found hanging in his cell. The main factors which contributed to his death were: the fact he had AIDS;

isolation; his sentence; inadequacy of family support; and termination of HIV counselling. The Coroner's recommendations for similar cases in the future include support groups; availability of counselling; and AIDS education for correctional staff.

1993/6

TI: Aboriginal and criminal justice issues in the wake of the Royal Commission
 AU: Cunneen, Chris
 SO: *Law Society Journal* (Law Society of NSW), 31(5) June 1993; 52-54. table
 AB: This paper reviews some of the evidence of discriminatory treatment of Aboriginal people by the criminal justice system. Cunneen concentrates on the question of NSW law enforcement practices in relation to juveniles, police custody and imprisonment.

1993/7

TI: Recognition of Aboriginal customary law
 AU: McKenzie, John
 SO: *Law Society Journal* (Law Society of NSW), 31(5) June 1993; 37-40. bibl
 AB: McKenzie outlines the major areas of the customary law which were recommended for recognition by the Australian Law Reform Commission. These cover recognition of traditional marriage; traditional distribution of property; Aboriginal child custody; implications for criminal law; sentencing of Aboriginal offenders; and traditional hunting and fishing rights.

1993/8

TI: Juvenile offending in Aurukun: a response and overview
 AU: Carter, Allan John
 SO: In: *Aboriginal justice issues: proceedings of a conference held 23-25 June 1992* / edited by Sandra McKillop. Canberra: Australian Institute of Criminology, 1993; 103-116. bibl, table
 SE: Conference proceedings (Australian Institute of Criminology); no. 21
 AB: This paper outlines the response taken by the Division of Protective Services and Juvenile Justice to twelve juvenile offenders involved in a riot at the remote township of Aurukun. Carter examines the factors contributing to offending among Aboriginal youth in the area, and the strategies devised through consultation between

the community and the Division to alleviate problems and ensure justice for the juvenile offenders.

1993/9

TI: The phantom of deterrence: the Crime (Serious and Repeat Offenders) Sentencing Act
AU: Broadhurst, Roderic; Loh, Nini
SO: *Australian and New Zealand Journal of Criminology*, 26(3) Dec 1993; 251-271. bibl

1993/10

TI: Aboriginal hearing loss and the criminal justice system
AU: Howard, Damien; Quinn, Sue; Blokland, Jenny; Flynn, Martin
SO: *Aboriginal Law Bulletin*, 3(65) Dec 1993; 9-11. bibl

1993/11

TI: Aborigines and the criminal justice system: women and children first
AU: Paxman, Marina
SO: *Alternative Law Journal*, 18(4) Aug 1993; 153-157. bibl
AB: The author, representing the National Committee to Defend Black Rights, argues that the Royal Commission into Aboriginal Deaths in Custody has made little difference to institutionalised discrimination against Aboriginal Australians, especially women and children. This article is based on a paper distributed at the UN Working Group on Indigenous Populations meetings in Geneva and Brazil in 1992

1993/12

TI: Abolish children's courts? Juveniles, justice and sentencing
AU: Freiberg, Arie
SO: *Current Issues in Criminal Justice*, 4(3) Mar 1993; 240-261

1993/13

TI: Juvenile justice: compromise in New South Wales
AU: Cunneen, Chris
SO: *Alternative Law Journal*, 18(4) Aug 1993; 186

1993/14

TI: Pre sentence reports and ATISs
AU: Ozols, Eddie
SO: *Contrasts*, 3(1) June 1993; 3-7. bibl

1993/15

TI: Home detention to reduce imprisonment and deaths: impact on short sentence prisoners
SO: *Koori Mail*, no. 48 Apr 7 1993; 1

1993/16

TI: Spare the rod? New laws, old visions
AU: O'Connor, Ian
SO: *Alternative Law Journal*, 18(1) Feb 1993; 8-11, 30. bibl
AB: Not 'back to the future' but 'forward to the past' for juvenile justice in Queensland. An evaluation of the likely impact of juvenile justice legislation passed by the Queensland Parliament during 1992

1993/17

TI: The phantom of deterrence: the Crime (Serious and Repeat Offenders) Sentencing Act
AU: Broadhurst, Roderic; Loh, Nini
JN: *Australian and New Zealand Journal of Criminology*, 26, (3), pp. 251-271.
AB: A study analyses the deterrent effects of Western Australia's Crime (Serious and Repeat Offenders) Sentencing Act 1992, which increased penalties for "high risk" juvenile offenders. Data were drawn from official court and police sources.

A decline in officially recorded car theft and juvenile convictions had begun prior to the introduction of the legislation. Significant correlations were found between reports of stolen vehicles and arrests for car theft (especially Aboriginal juvenile arrests), but not for police high speed pursuits or arrests of persistent offenders and reports of stolen vehicles. This suggests that targeting "hard core" juvenile offenders had, at best, modest and temporary effects on vehicle theft. Although a short lived sharp decline in relevant crimes occurred around the time the law was passed, other factors such as changes in policing (introduction of cautioning, formation of a special motor vehicle task force, stricter guidelines on pursuits) are more compelling explanations than the deterrent effects of the law.

1993/18

TI: Aboriginal people and the courts
 AU: Fraser, Lionel
 SO: In: *Aboriginal justice issues: proceedings of a conference held 23 25 June 1992* / edited by Sandra McKillop. Canberra: Australian Institute of Criminology, 1993; 135-138
 SE: Conference proceedings (Australian Institute of Criminology); no. 21
 AB: Fraser puts forward a proposal for the creation of a position of Aboriginal Assistant to the Court. Assistants would be present in all trials of Aboriginal people, would be of Aboriginal origin, and would be chosen by a committee from the region. Fraser also discusses the need to address the whole concept of the legal aid system in Queensland in relation to Aboriginal representation.

1992/1

TI: Courts {Recommendations 96 97, 99 100, 104, 108}
 AU: Australia Royal Commission into Aboriginal Deaths in Custody
 SO: In: *Aboriginal deaths in custody: response by Governments to the Royal Commission. Vol 1* / Australia. Royal Commission into Aboriginal Deaths in Custody. Canberra: AGPS, c1992; 349-359, 363-369, 382-386, 394-395
 AB: The Royal Commission into Aboriginal Deaths in Custody made several recommendations regarding the treatment of indigenous people in courts. Government responses regarding these recommendations are outlined. They cover: cross cultural training of court personnel; language and interpreter issues; recruitment of Aborigines as court staff and interpreters; community consultation regarding appropriate sentences in remote communities; and providing adequate resources for the instruction and preparation of cases, particularly in remote areas.

1992/2

TI: Imprisonment as a last resort, including community service orders {Recommendations 92-95, 98, 101-103, 109-121}
 AU: Australia Royal Commission into Aboriginal Deaths in Custody
 SO: In: *Aboriginal deaths in custody: response by Governments to the Royal Commission. Vol 1* / Australia. Royal Commission into Aboriginal Deaths in Custody. Canberra: AGPS, c1992; 332-348, 360-362, 370-381, 396-447

AB: These Royal Commission recommendations and Government responses concern non custodial penalties. Discussion covers: law reform; the review of non custodial sentencing options; the funding, planning and implementation of non custodial sentencing programs; the operation of community service orders (CSOs); dealing with breaches; the use of Justices of Peace; advising sentencing authorities on the effectiveness of non custodial options; evaluating the effectiveness of prerelease and post release support schemes; home detention; probation and parole issues; and dealing with fine defaults.

1992/3

TI: The role and perception of identity for Aboriginal clients in community corrections: a perspective from working with Aboriginal and Islander clients in Rockhampton, Queensland
 AU: Hornagold, Margaret
 SO: In: The role of employment, education and training for offenders in the criminal justice systems: proceedings of a conference 9th 12th February 1992, Perth, Western Australia / edited by Peter Sirr. Northbridge, WA: Outcare, c1992; 281-289
 AB: The question of identity for Aboriginal people in the criminal justice system is examined. Hornagold explores the sentence management and community based corrections concepts. Recommendations and alternatives, especially in regard to the role that employment, education and training bodies play in the identification process, are considered.

1992/4

TI: The role of employment, education and training for offenders in the criminal justice systems: proceedings of a conference 9th 12th February 1992, Perth, Western Australia {Cover title: The way out : the role of employment, education and training for offenders in the criminal justice systems}
 AU: Sirr, Peter ed
 SO: Northbridge, WA: Outcare, c1992. 391p. bibl, diagr, graph, table
 AB: This conference deals with the problems of how to help people once they are in custody. The papers examine ways to help people come out of the prison system as more productive and law abiding citizens, through the use of appropriate employment, education and training practices.

They also examine discrimination, sentencing options, women prisoners and Aborigines.

1992/5

TI: Prison sentences in Australia : estimates of the characteristics of offenders sentenced to prison in 1987 88

AU: Walker, John

SO: In: *Issues in crime, morality and justice* / edited by P R Wilson. Canberra: Australian Institute of Criminology, 1992; 57-71. bibl, diagr, table

AB: Australia lacks comprehensive information on the numbers and characteristics of prisoners, and details on the sentences they serve. Walker shows how estimates can be obtained from careful analysis of existing data. (Previously published as *Trends and Issues in Crime and Criminal Justice*; no. 20, 1989)

1992/6

TI: The recognition of Aboriginal customary laws: an overview

AU: Crawford, James

SO: In: *Aboriginal perspectives on criminal justice* / edited by Chris Cunneen. Sydney: Institute of Criminology, Sydney University Law School, 1992; 53-75. bibl

SE: Institute of Criminology monograph series; no. 1

AB: The Australian Law Reform Commission produced a report in 1986 on the recognition of Aboriginal customary laws in the Australia legal system. Crawford summarises the Commission's approach to issues underlying the debate on the use of customary laws, and outlines the Commission's recommendations. According to Crawford the Federal Government has done nothing to implement any part of the report, and he suggests some reasons why.

1992/7

TI: Sentencing and community based options for the care and management of young offenders

AU: New South Wales Legislative Council Standing Committee on Social Issues

SO: In: *Juvenile justice in New South Wales* / New South Wales. Legislative Council. Standing Committee on Social Issues. Sydney: the Committee, 1992; 103-150

SE: Standing Committee on Social Issues report; no. 4

1992/8

TI: Juvenile justice in New South Wales

AU: New South Wales Parliament Legislative Council Standing Committee on Social Issues

SO: Sydney: the Committee, 1992. xliii, 204p. bibl

SE: Standing Committee on Social Issues report; no. 4

1992/9

TI: Judicial racism

AU: Cunneen, Chris

SO: *Aboriginal Law Bulletin*, 2(58) Oct 1992; 9-11. bibl

1992/10

TI: Ways out of the abyss: reflections on punishment in Western Australia

AU: Ashworth, Andrew

SO: *University of Western Australia Law Review*, 22(2) Dec 1992; 257-271. bibl

1992/11

TI: North Queensland Aborigines and criminal justice in the courts

AU: Baker, Clifton

SO: *University of Queensland Law Journal*, 17(1) 1992; 57-75. bibl

1992/12

TI: WA's draconian new juvenile offender sentencing laws

AU: Wilkie, Meredith

SO: *Aboriginal Law Bulletin*, 2(55) Apr 1992; 15-17. bibl

1992/13

TI: The Battle over juvenile penalties

SO: *Impact*, 22(1) Feb 1992; 6. ill

1992/14

TI: *NSW sexual assault committee report*

AU: New South Wales Sexual Assault Committee; Carmody, Moira; Smyth, Maggie; Byrnes, Lynette

SO: Haymarket, NSW: New South Wales Women's Coordination Unit, 1992. 104p. table

1992/15

TI: Children's court
 AU: Huntsman, Michelle
 SO: *Polemic*, 3(1) 1992; 19-21. ill
 AB: Discusses the effect of the closing of Minda and Royalston's Children's Courts on the children's courts system

1992/16

TI: Crime (Serious and Repeat Offenders) Sentencing Act 1992: a human rights perspective
 AU: Wilkie, Meredith
 SO: *University of Western Australia Law Review*, 22(1) July 1992; 187-196
 AB: Concludes that Western Australia's new Sentencing Act is in grave breach of Australia's human rights obligations as they apply to children and young offenders

1992/17

TI: The excessive scale of imprisonment in Western Australia: the systematic causes and some proposed solutions
 AU: Harding, Richard W
 SO: *University of Western Australia Law Review*, 22(1) July 1992; 72-93
 AB: Examines the high level of incarceration in Western Australia, especially within the Aboriginal population. This is attributed to the wide acceptance of the 'custodial free lunch' and the general reluctance of the lower courts to utilize community based correction orders when sentencing. The solution advocated is a cap on the state's custodial population

1992/18

TI: Tough laws for hard core politicians
 AU: White, Rob
 SO: *Alternative Law Journal*, 17(2) Apr 1992; 58-60
 AB: WA's new juvenile offenders legislation is both dangerous and unjust

1992/19

TI: Commentary on the Report of the Aboriginals and the Law Mission, International Commission of Jurists, Australian Section
 AU: Cunneen, Chris
 SO: *Australian and New Zealand Journal of Criminology*, 25(2) July 1992; 186-191

1992/20

TI: In defiance of human rights
 AU: Auty, Kate; Toussaint, Sandy
 SO: *Alternative Law Journal*, 17(1) Feb 1992; 44-45
 AB: Looks critically at new sentencing and criminal law legislation in Western Australia

1992/21

TI: Youth crime backlash
 AU: Laurie, Victoria
 SO: *Bulletin*, 113(5810) Mar 10 1992; 24. ill
 AB: The legal fraternity in Western Australia is launching a bid to dump controversial new anti juvenile legislation

1992/22

TI: *A survey of the administration of justice respecting the Intuit of northern Quebec*
 AU: Jette, Corinne
 ST: Aboriginal Peoples Collection APC 5 CA
 PB: Ottawa, CAN: Solicitor General Canada, Corrections Branch
 PD: 55p.
 AB: A study examines the administration and delivery of justice to the Intuit people of northern Quebec, CAN. Focusing on the Kuujuaq of the Ungava Bay Region, and the Kuujuarapik of the Hudson Bay Region, topics include: crimes committed and charges; contributing factors; case processing between charge and appearances; guilty pleas; sentencing and disposition; and programs and services. Separate sections describe Intuit offenders incarcerated in federal prisons; and present recommendations.

1992/23

TI: Conflict, care and control: the history of the British Columbia Corrections Branch, 1848-1988.
 AU: Doherty, Diana; Ekstedt, John W
 PB: Burnaby, CAN: Simon Fraser University
 PD: 269p., Appendix.
 AB: A review traces the history of the British Columbia, CAN Corrections Branch from 1848 to 1988. Topics describe sentencing programs resulting from the application of British common law; pre European systems for continuity and order within indigenous cultures; and key individuals or personalities who influenced specific events, or who provided leadership and direction within 5 eras: colonial (1829 1870);

punishment (1871 1949); rehabilitation (1950 1969); reintegration (1970 1978); and reparation (1979 1988).

1992/24

TI: *Australian prisoners 1991: results of the 1991 National Prison Census*

AU: Walker, John; Hallinan, Jennifer; Dagger, Dianne

ST: Distributed in North America by Criminal Justice Press, Monsey, NY

PB: Canberra, AUS: Australian Institute of Criminology

PD: 125p.

AB: The 1991 Australian National Prison Census collected data on the characteristics of 15,021 inmates in custody on June 30.

The total prison population increased by 715 (5%) during 1990 91, with New South Wales (+736) and South Australia (+111) leading the way. By contrast, the Queensland prison population fell by 202 inmates, due mainly to diversion of minor offenders to sentences served in the community. The proportion of Aboriginal inmates increased in most jurisdictions, and they were still 18 times more likely to be imprisoned than non Aborigines. There was no major change in the offences for which inmates were on remand or serving sentences.

1992/25

TI: *Canadian penology: advanced perspectives and research*

AU: McCormich, Kevin RE; Visano, Livy A (eds.)

PB: Toronto, CAN: Canadian Scholars' Press

PD: 460p.

AB: An anthology includes 15 previously published and unpublished empirical and theoretical studies of issues in Canadian penology. Chapter topics include: the parole pendulum; privatization in corrections; classifying dangerousness in prisons; regional variations in sentencing young offenders; a murder case processed through the Young Offenders Act; the use of detention for aboriginal offenders; the Employment and Skills Enhancement Program for prisoners; reforming reform institutions; the repressive nature of punishment in the 1980s; the future of confinement and electronic monitoring; corrections and community inaction; life sentences, prison conditions, and the politics of

punishment; shock incarceration and cultural sensibilities; trends in technology and control; and the Canadian implications of the criminalisation of dissent in the U.S.

1992/26

TI: Alternative custody, a way out of the juvenile justice system

AU: Hepburn, Mike

SO: In: *The role of employment, education and training for offenders in the criminal justice systems: proceedings of a conference 9th 12th February 1992, Perth, Western Australia* / edited by Peter SIRR. Northbridge, WA : *Outcare*, c1992; 105 118. bibl, table

AB: This paper describes the development of alternative custody programs in the pastoral and rural industry in Western Australia. The rationale behind these programs lies in the belief that the substitution of employment and a work skills environment for repeat offenders undergoing detention or community based sentences will reduce offending.

1991/1

TI: Aboriginals in the criminal justice system

AU: Western Australia Parliament Joint Select Committee on Parole; Halden, John Chairperson

SO: In: *Report of the Joint Select Committee on Parole* / Western Australia. Parliament. Joint Select Committee on Parole (Holden, John, Chairperson). {Perth : WA Parliament}, 1991; 100-121. bibl, table

AB: The Committee examines the history and social conditions of Aborigines in Western Australia, and highlights the over representation of Aborigines in all forms of custody. It makes recommendations about: sentencing practice; supervised community sentences; self determination; alcohol and substance abuse; and alternatives to imprisonment. Appendix A describes relevant programs in other states.

1991/2

TI: Declining Northern Territory prison population: how this was brought about by effective community based programs

AU: Owston, Doug

SO: In: *Keeping people out of prison: proceedings of a conference held 27-29 March 1990* / edited by Sandra McKillop. Canberra: Australian Institute of Criminology, 1991; 7-15. diagr, graph

SE: Conference proceedings (Australian Institute of Criminology); no. 11
 AB: The methods by which the Northern Territory has reduced its prison population are discussed in this paper. One of the major initiatives has been the Fine Default Diversionary Program, which gives fine defaulters the option to work off the fine through community service. Other improvements include reducing the number of prisoners held on remand; sentencing more prisoners to home detention, and developing an Aboriginal Community Justice Project which enables Aboriginal communities to deal with offenders through traditional means.

1991/3

TI: A profile of Aboriginal and Islander prisoners in North Queensland
 AU: Keast, Robyn
 SO: In: *Keeping people out of prison: proceedings of a conference held 27-29 March 1990* / edited by Sandra McKillop. Canberra: Australian Institute of Criminology, 1991; 243-251. table
 SE: Conference proceedings (Australian Institute of Criminology); no. 11
 AB: In October 1989 the Queensland Corrective Services Commission undertook a survey of Aboriginal and Islander inmates in North Queensland correctional centres. This paper briefly analyses the data collected, and makes recommendations regarding future sentencing alternatives and corrections programs for these offenders. Comparisons are drawn with Queensland prison statistics found in the Australian National Prison Census. The emphasis is on community based corrections for Aboriginal and Islander offenders, coupled with culturally relevant training programs and basic education.

1991/4

TI: Introduction {and} background {to Aboriginal justice programs in Western Australia report}
 AU: Wilkie, Meredith
 SO: In: *Aboriginal justice programs in Western Australia* / Meredith Wilkie. Nedlands, WA: Crime Research Centre, University of Western Australia, {1991}; 1-16. table
 PY: 1991
 SE: University of Western Australia. Crime Research Centre. Research report; no. 5
 AB: In this section the nature and extent of

Aboriginal involvement in the criminal justice system is examined. Statistical data which details Aboriginal involvement is briefly summarised. The question of the causes of Aboriginal over representation in the Western Australian criminal justice system is touched upon.

1991/5

TI: The Aboriginal community justice program
 AU: Keogh, Lyn
 SO: In: *Conference of Administrators of Corrections: selected papers, Brisbane, Queensland, November 1991* / compiled by Brooke Winters. {Brisbane: Queensland Corrective Services Commission, 1992}; 1-2
 AB: This paper discusses the Community Justice Program in terms of its possible application in Aboriginal communities. The concept of Aboriginal people being directly involved in remote area court processes is positively viewed by Northern Territory sentencing authorities. Aboriginal involvement in the courts will ensure Aboriginal culture is taken into account in sentencing, which should impact on the over representation of Aboriginal people in the criminal justice system.

1991/6

TI: Avoidance of custody
 AU: Australia Royal Commission into Aboriginal Deaths in Custody; O'Dea D J Commissioner
 SO: In: *Regional report of inquiry into individual deaths in custody in Western Australia. Vol 1* / Australia. Royal Commission into Aboriginal Deaths in Custody (O'Dea, D J, Commissioner). Canberra: AGPS, 1991; 296-407. graph, table
 AB: With regard to Western Australia, O'Dea examines how the level of over representation of Aborigines in custody may be reduced. He focuses on aspects of the criminal justice system which are particularly oppressive of Aborigines and which contribute to their over representation in police lockups and prisons. He identifies changes which should be made to policies and practices in relation to arrest, use of summons, warrants, bail, the legal system, and sentencing.

1991/7

TI: Criminal justice system: Aborigines and the state

AU: Australia Royal Commission into Aboriginal Deaths in Custody; Dodson, P L Commissioner
SO: In: *Regional report of inquiry into underlying issues in Western Australia*. Vol 1 / Australia. Royal Commission into Aboriginal Deaths in Custody (Dodson, P L, Commissioner). Canberra: AGPS, c1991; 86-323. graph, table
AB: The criminal justice system can be perceived as discriminatory in its dealings with Aborigines in Western Australia. Dodson provides a brief historical description and analysis of the system as it has impacted on Aborigines. He then considers in detail: the Aboriginal Legal Service; justices of the peace; magistrates; superior courts; juvenile justice; sentencing; bail; interpreters and cultural awareness; customary law; the police; prisons and the Department of Corrective Services; community release programs; the meal allowance scheme; and prison officers and welfare.

1991/8

TI: Imprisonment as a last resort
AU: Australia Royal Commission into Aboriginal Deaths in Custody; Johnston, Elliott Commissioner
SO: In: *National report*. Vol 3 / Australia. Royal Commission into Aboriginal Deaths in Custody (Johnston, Elliott, Commissioner). Canberra: AGPS, c1991; 59-130. bibl, table
AB: After considering statistics on Aboriginal rates of imprisonment, Johnston outlines the ways in which recidivism and prior arrest can adversely affect a person's chance of receiving a non custodial sentence. He explores aspects of the court process which disadvantage Aborigines and discusses how these could be reformed. He also examines the various non custodial sentencing options which are currently available, and describes how the issue of fine defaults substantially contributes to Aboriginal over representation.

1991/9

TI: Children and the criminal law
AU: Western Australia Department for Community Services Legislative Review Committee; Simpson, Terry Chairperson
SO: In: *Laws for people: the report of the Legislative Review / Western Australia*. Department for Community Services. Legislative

Review Committee (Simpson, Terry, Chairperson). {Perth: The Department}, 1991; 60-87

AB: The Committee examines the juvenile justice system in Western Australia. According to the Committee, the recent review and reform of the criminal justice system has resulted in a juvenile justice system which is separate from the child welfare system. Issues covered include: the problem of juvenile offending; prevention and services; diversion programs; children and the formal justice process; sentencing; and sentence administration.

1991/10

TI: Alternatives for young offenders
AU: Wilkie, Meredith
SO: In: *Aboriginal justice programs in Western Australia / Meredith Wilkie*. Nedlands, WA : Crime Research Centre, University of Western Australia, {1991}; 134-148. graph, table
SE: University of Western Australia. Crime Research Centre. Research report; no. 5
AB: This chapter considers the way in which the juvenile justice system deals with young offenders. Wilkie notes that diversion from the courts occurs mainly by way of Children's Panels but for those who are proceeded against in court, the Children's Court has a range of sentencing options. The nature of these options and the use made of them is described.

1991/11

TI: Community based corrections
AU: Wilkie, Meredith
SO: In: *Aboriginal justice programs in Western Australia / Meredith Wilkie*. Nedlands, WA : Crime Research Centre, University of Western Australia, {1991}; 161-170. table
SE: University of Western Australia. Crime Research Centre. Research report; no. 5
AB: This chapter is primarily concerned with alternatives to imprisonment for adult offenders, including probation and Community Service Orders, and Work and Development Orders. Wilkie notes that despite their massive over representation in the prisons, community sentencing options for Aborigines are under utilised. She expresses concern that the courts are unfairly differentiating between Aboriginal and other offenders.

1991/12

TI: *To bail or not to bail: a review of Queensland's bail law*

AU: Queensland Law Reform Commission

SO: Brisbane: The Commission, 1991. iii, 99p. bibl, table

SE: Queensland. Law Reform Commission.

Discussion paper; no. 35 ; QLRC WP 35

AB: The purpose of this paper is to review Queensland's Bail Act with a view to changing it. The paper seeks to explain present problems with bail, puts forward research findings relating to the problems with bail and sets out the Commission's tentative view.

1991/13

TI: *Report of Aboriginals and the law mission*

AU: International Commission of Jurists
Australian Section

SO: {Sydney: The Section, 1991}. 78, {10}p. ill

AB: This report provides details of the mission to northwest New South Wales to observe and report on the operation of the criminal justice system in relation to Aboriginal people. The report outlines the proceedings before the Bourke, Brewarrina and Walgett local courts, and examines issues such as police involvement, alcohol, domestic violence and young offenders. Recommendations are provided.

1991/14

TI: Sentencing Aboriginal people in South Australia

AU: Charles, Christopher

SO: *Adelaide Law Review*, 13(1) 1991; 90-96. bibl

1991/15

TI: Why amateur justice is tough in the bush

AU: Nixon, Clare

SO: *Bulletin*, 114(5819) May 12 1992; 52-53. port

AB: Looks at the situation for justices of the peace on courthouse duty, as their power to lock up offenders is blamed for the high numbers of Aborigines in jail

1991/16

TI: Aboriginal youth and the criminal justice system: the injustice of justice?/ by Fay Gale, Rebecca Bailey Harris and Joy Wundersitz

AU: Starke, J G

SO: *Australian Law Journal*, 65(1) Jan 1991; 65-66

1991/17

TI: *Access to interpreters in the Australian legal system: report*

AU: Australia Attorney General's Department

SO: Canberra: AGPS, 1991. 190p. table

1990/1

TI: The first report of the Criminal Law and Penal Methods Reform Committee of South Australia: status report: sentencing and corrections

AU: Criminal Law and Penal Methods Reform Committee of South Australia

SO: In: *The recommendations made by the Criminal Law and Penal Methods Reform Committee of South Australia: an account and an audit / Criminal Law and Penal Methods Reform Committee of South Australia*. {Adelaide : Attorney General's Department, 1990?}; 17p

AB: This report indicates the status of the Committee's recommendations concerning sentencing and corrections in South Australia. Specific issues addressed include: legislative sentencing; judicial sentencing; parole boards; pre sentence reports; alternative sentencing system; consecutive sentences; persistent recidivists; sexual offenders; mentally ill offenders; offences committed in prison; reciprocal arrangements; prison work; payment of prisoners; prison education; classification; legal status of prisoners; semi and non custodial sentences; dismissal without conviction; conditional discharge; suspended sentences; deferred sentences; fines; disqualification; periodic detention; pre release programs; home visits; corporal and capital punishment; compensation; aboriginal offenders; and public drunkenness.

1990/2

TI: A question of balance

AU: O'Brien, Angela

SO: *Vocal Voice*, 1(8) Mar 1990; 15, 17, 19, 21. ill

AB: O'Brien looks at two deaths in Brewarrina which have resulted in a deterioration in race relations in the town: Aboriginal Lloyd Boney who hanged himself in a police cell; and Brendan Hughes who was fatally stabbed by an Aboriginal man. She discusses the imbalance in the treatment of both these cases and the lenient sentence for Hughes' killer. She also describes the work of community health worker Pauline Hertslet, who believes that much of her race

relations work has been destroyed as a result of the treatment of these cases.

1990/3

TI: NSW Inc: more views of the shareholders
AU: New Wales Council for Civil Liberties
SO: *Legal Service Bulletin*, 15(6) Dec 1990; 279-280

1990/4

TI: Sentencing women to prison in Victoria: a research and political agenda
AU: Howe, Adrian
SO: In: *Feminism law and society* / edited by Judith Grbich. Bundoora, Vic: La Trobe University Press, 1990; 32-53. bibl; *Law In Context*, 8(2) 1990; 32-53
AB: *Feminism Law and Society* is a special issue of *Law In Context*

1990/5

TI: *Aboriginal youth and the criminal justice system*
AU: Gale, Fay; Bailey-Harris, Rebecca; Wundersitz, Joy
SO: Cambridge: Cambridge University Press, 1990. {xii}, 156p. bibl, table

1990/6

TI: Summary jurisdiction on Pitjantjatjara lands
AU: Nettheim, Garth
SO: *Aboriginal Law Bulletin*, 2(45) Aug 1990; 4-5. port

1990/7

TI: The criminal law relating to juveniles in Western Australia
AU: Sharrat, Steve
SO: *Aboriginal Law Bulletin*, 2(44) June 1990; 15-16. port

1990/8

TI: The recidivism of prisoners released for the first time: reconsidering the effectiveness question
AU: Broadhurst, RG; Maller, RA
JN: *Australian and New Zealand Journal of Criminology*, 23, (2), pp. 88-104.
AB: A study examines the recidivism of 16,381

prisoners released for the first time between June 30, 1975 and June 30, 1987 in Western Australia. Data were gathered from the Western Australian Department of Corrective Services. The follow up period was 12 years for prisoners released in 1975, 11 years for those released in 1976 and so on.

A declining trend in recidivism over the period 1975-1980 levelled off from 1981 to 1985. These trends were related to important alterations in the definitions of the law, particularly to the decriminalisation of drunkenness and the introduction of mandatory prison for repeat offences of drunk driving. About 4 out of every 5 male Aborigines returned to prison (9 out of every 10 under age 20), and over 2 out of every 5 non Aborigines (3 out of 5 of those under age 20). For females, recidivism was lower, but at least 2 of every 3 female Aborigines and 1 out of every 3 non Aboriginal females returned to prison. Factors associated with lower recidivism of non Aborigines similarly affected Aboriginal rates of recidivism (e.g., age, pre release program participation, employment, cash assistance and parole), but the effects were slight, and absolute numbers were too small to affect overall recidivism. Other factors such as offence, length of sentence and education did not relate to lower recidivism for Aboriginal prisoners.

1990/9

TI: The determination of sentencing
AU: Roberts, Julian V, et. al.
JN: *Canadian Journal of Criminology*, 32, (3), pp. 381-510.

AB: A special issue of the journal considers sentencing in Canada in the wake of the Report of the Canadian Sentencing Commission (1987), the work of the Canadian Law Reform Commission since 1985, and other initiatives.

Kim Campbell discusses the background of sentencing reform and describes 6 areas of proposed reform: the purposes and principles of sentencing; a sentencing and parole commission; code of procedure and evidence at the sentencing hearing; the imposition and collection of fines; the Criminal Code as it relates to fines; and intermediate sanctions.

Andrew von Hirsch explores the presuppositions and consequences of emphasising proportionality and desert in sentencing reform, and addresses some of the criticisms of the desert perspective recently advanced in Canada and the U.S.

Anthony N. Doob asserts that in order to reduce the use of imprisonment, Parliament must enact a coherent sentencing policy that endorses the use of community sanctions, and adopt a method of providing authoritative and unambiguous guidance on sentencing to judges.

Carol LaPrairie discusses the role of sentencing in contributing to the over representation of Aboriginal offenders in Canada's correctional institutions, and offers proposals for reform.

Alvaro P. Pires asserts the need to go beyond the theory of classical retributivism in order to articulate a new general theory of juridical intervention that legitimates reparation and strengthens a theory of minimal criminal law.

Irvin Waller examines the role of sentencing in making communities safe from crime and recognising the needs of crime victims. Not only must public safety be considered in sentencing, but judges should also make recommendations about action that to be taken by the community to prevent crime.

Marc Ouimet summarises recent research on public opinion and sentencing. The responses of the public and of criminal justice professionals are compared.

Renate M. Mohr explores sentencing reform from a feminist perspective. Although a just deserts rationale may be the solution to unwarranted disparity in a society where there is true equality, until that goal is attained we must continue to search for an approach that does more than treat unequals (gender, race, class) equally.

Fred E. Gibson discusses public, court and organisational influences over the past decade on Canada's National Parole Board.

Shereen Benzvy Miller and David P. Cole consider the problems inherent in dissociating sentencing and release decision making in the Canadian criminal justice system.

Jean Paul Brodeur examines the future of parole in Canada, and explores the rationale for discretionary release on parole. The current withering away of parole will eventually amount to the abolition of parole.

1987/1

TI: Aboriginal customary law: proposals for recognition
 AU: Crawford, James; Hennessy, Peter; Fisher, Mary
 SO: In: *Ivory scales: Black Australia and the law* /

edited by Kayleen M Hazlehurst. Kensington, NSW: New South Wales University Press in association with the Australian Institute of Criminology, c1987; 190-226. bibl

AB: The authors summarise the central issues and conclusions of the Australian Law Reform Commission's report on the recognition of Aboriginal customary laws. The report made comments and recommendations on a wide range of issues, including Aboriginal criminality, imprisonment and sentencing. A range of community justice mechanisms which could facilitate social control, dispute settlement, sentencing and offender rehabilitation are presented.

1987/6

TI: Sanctions
 AU: Williams, Nancy, M
 SO: In: *Two laws: managing disputes in a contemporary Aboriginal community*. Canberra: Australian Institute of Aboriginal Studies, 1987; 96-106

1986/1

TI: Cu'stoma/y (Customary)
 AU: Fisher, Mary; Hennessy, Peter
 SO: *Aboriginal Law Bulletin*, no. 21 Aug 1985; 5
 AB: The Australian Law Reform Commission's Report on the Recognition of Aboriginal Customary Laws was tabled in Federal Parliament on 12 June 1986. It was the largest and longest enquiry ever conducted by the Commission and is also the most extensive report into many aspects of the law which affect Aboriginal people. The Commission's recommendations cover such areas as marriage, custody, family property, the criminal law, sentencing, problems of evidence and procedure, local justice mechanisms for Aboriginal communities, and the recognition of traditional hunting, fishing and gathering rights

1986/8

TI: The Recognition of Aboriginal customary laws: vol. 1/2
 AU: Australia Law Reform Commission
 SO: Canberra: AGPS, 1986. 415p. bibl

1985/2

TI: Evaluation of the Aboriginal Justice of the Peace Scheme in Western Australia
 AU: Hoddinott, Annie
 SO: Research conducted under the auspices of the Western Australian Government, jointly

funded by the Criminology Research Council and the Western Australian Prisons Department
SE: Criminology Research Council grant; no. 5/84

AB: The title of the final report: That's 'Gardia' business: an evaluation of the Aboriginal Justice of the Peace Scheme in Western Australia

1985/3

TI: That's 'Gardia' business: an evaluation of the Aboriginal Justice of the Peace Scheme in Western Australia

AU: Hoddinott, Annie

SO: {Perth: A Hoddinott, 1985}. 75p. bibl, graph, table

SE: Criminology Research Council grant; no. 5/84

AB: Report on a research project jointly funded by the Criminology Research Council and the Western Australian Prisons Department. The title of the original project: Evaluation of the Aboriginal Justice of the Peace Scheme in Western Australia

1985/12

TI: Reflections on the Syddall/ Hoddinott Western Australian Aboriginal Justice of the Peace debate: a submission to the Australian Law Reform Commission

AU: Hazlehurs, Kayleen, M

SO: Canberra: Australian Institute of Criminology, 1985. 16p. bibl

Research and Public Policy Series No. 16

This report of the Roundtable on *Sentencing and Indigenous Peoples* convened by the Australian Institute of Criminology and the University of South Australia on 31 October 1997 is a timely review of sentencing practices as they relate to Indigenous offenders.

The papers cover key policy issues, such as alternatives to custodial sentences; the role of customary law in sentencing; the role of State Aboriginal Affairs; communication and employment issues.

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