



jurors to refuse to find Breedon guilty of robbery. Although it seems that some form of protest was contemplated there was no indication from the interview if this particular scenario was discussed.

In its report on contempt,⁹ the ALRC states that one of the justifications for ensuring secrecy of jury deliberations is the need to maintain the function of juries as rectifiers of the law. 'It has long been acknowledged that juries infuse an important lay element into the operation of the criminal law by sometimes allowing their dislike of particular criminal laws to influence them into bringing in a verdict of "not guilty" when the evidence suggests otherwise'.¹⁰

While it may be true that some juries operate in this fashion, is it really desirable? In the case of the NT *Criminal Code* the felony-murder rule is an enactment of a popularly¹¹ elected government. Although it is unlikely that individual electors are aware of the provisions of the Code, it is contrary to our system of democracy for 12 randomly selected people to have the power to reverse a decision of Parliament. If juries are to act as society's conscience in criminal trials there must be limits to the scope of that conscience. At present those limits stem from the fact that juries are judges of factual issues only. In this sense the Breedon verdict can be seen as a vindication of the jury system.

Insofar as the broadcast showed that jurors will follow a trial judge's directions in cases where those directions are inconsistent with personal

views as to the moral guilt of the accused, it was both useful and informative. Indeed, if there is to be a wholesale review of the jury system it is a shame that there is not more of this information available. Clearly, before serious research on the role of juries in criminal trials can occur the law relating to disclosure of jury deliberations needs to be clarified.¹²

References

1. Much of the available evidence on how juries behave comes from press interviews with jurors: see generally ALRC Report 35, Contempt, 1987, pp.209-10.
2. Northern Territory Criminal Code, s.164.
3. Transcript of interview between Peter Hughes and alleged juror on ABC radio, September 1991.
4. *ibid.*
5. Fisse, B., Howard's Criminal Law, 5th edn, Law Book Company, Sydney, pp.70-71.
6. Transcript of interview between Peter Hughes and alleged juror on ABC radio September 1991.
7. *ibid.*
8. NT Criminal Code, s.368.
9. ALRC Report 35, Contempt, 1987.
10. *ibid.*, p.207.
11. Popular in the sense of elected by the people!
12. The broadcast was prefaced with the statement that although the alleged juror had contacted the ABC shortly after the conviction, 'for legal reasons' the broadcast had been delayed. Presumably, the ABC had legal advice that broadcasting of jury deliberations after the verdict but prior to the passing of sentence places the trial judge in an invidious position and could possibly be seen as a contempt of court: see generally ALRC Report 35 Contempt, 1987, pp.203-217.

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JUVENILE CRIME

In defiance of human rights

Kate Auty and Sandy Toussaint look critically at new sentencing and criminal law legislation in Western Australia.

It's sad out here. Everybody hates everyone else . . . At some places, the police just push you all the time. They just keep pushing you. It's like they're saying 'we've got you . . . we don't give a shit . . . you've got what's coming to you' . . .

Extracted from submission provided by young Aboriginal man to the Royal Commission into Aboriginal Deaths in Custody.¹

On 7 February 1992, the *Crime (Serious and Repeat Offenders) Sentencing Bill* and the *Criminal Law Amendment Bill* passed through both Houses of Parliament in Western Australia and became legislation. It was apparent to all but the most uninformed, that such legislation was directly aimed at Aboriginal people, especially juveniles, who continue to be grossly over-represented in police and prison custodial settings.

Most members of the Government and the Opposition (apart from two independents) supported passage of the legislation, clearly demonstrating their contempt for human rights generally and Aboriginal human rights in particular. Passage of that legislation was undertaken in defiance of some internal Labor Party opposition, of human rights conventions and of widespread judicial opinion.

The campaign that resulted in the introduction of this legislation has largely evolved from historical and

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problematic Aboriginal/police relations, and sensational and biased media coverage concerning high speed car chases in Western Australia. The Equal Opportunity Commission's 1989 Review of Police Practices in Western Australia, and recent reports of the Western Australian and National Royal Commission into Aboriginal Deaths in Custody (RCIADIC), observed that there was an urgent need to address the relationship between Aboriginal people and police, and the influence of the media on Aboriginal/non-Aboriginal relations.²

A submission to the RCIADIC from the Police Union in Western Australia is revealing for the insights it provides concerning police views of Australia's indigenous population. For example, material in the submission asserts that Aboriginal people have a greater 'propensity to commit offences' and that they suffer from a 'lack of morals'. It is also contended that:

Creation of services for exclusive use by Aboriginals, such as the Aboriginal Legal Service and the Aboriginal Health Service, has had a detrimental effect on Police-Aboriginal Relations. In many instances there has been a downturn in attitude to law and order as set by community standards due to the creation of the ALS, as it has introduced an expectancy of acquittal into Aboriginal offenders. *This has led to insolence for authority mainly in the younger people which is now visible in the development of hatred for those vested with the task of law enforcement.* [our emphasis]³

While the matter of Aboriginal/police relations is complicated by a number of features that are dealt with in the reports produced by the RCIADIC, these comments give some indication of the extent of the conflict and misunderstanding which exists between Aboriginal people and 'those vested with the task of law enforcement'. So what does the State Labor Government do to address 'policing' problems? It imposes stiffer penalties which have been condemned both inside and outside Western Australia (e.g. by the Aboriginal Legal Service,

the Human Rights Commission, the Federal Attorney-General, the Aboriginal and Torres Strait Islander Commission, the West Australian Law Society, the Western Australian Council of Social Service).

The legislation, which allows for penalties of up to 14 years imprisonment for grievous bodily harm and 20 years for culpable driving, contradicts every recent juvenile justice sentencing initiative in what might loosely be called civilised nations.

Australia is a signatory to the United Nations Convention on the Rights of the Child. Article 3 states that the best interests of the child shall be the 'primary' consideration in actions taken by courts of law. Article 40 refers to the desirability of promoting 'reintegration' and a 'constructive role in society' for children. Children should be 'dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence'. Australia is also a signatory to the International Covenant on Civil and Political Rights which proscribes the imposition of 'cruel and inhuman or degrading' punishment. The sort of penalties envisaged by the Western Australian legislation are clearly cruel and inhuman. It is not a guarantee of human rights to say, as Premier Lawrence does, that this is only a part of the (ubiquitous) 'package'.

When Dr Lawrence was both Premier of Western Australia and acting as Minister for Aboriginal Affairs, her Government superficially endorsed the inquiries of the RCIADIC.⁴ It is clear, however, that the Lawrence Government now obviously resiles from any commitment to implementation of the Commissioner's recommendations.⁵ For example, Recommendation 62 states that:

[G]overnments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems.

In addition, Recommendation 95 states that:

[I]n jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment, the factors relevant to such incidence be identified and, in conjunction with Aboriginal community organisations, programmes be designed to reduce that incidence of offending.

If the Government were honest with the public about issues such as these, perhaps they would like to advise what steps have been taken in respect of implementation of Recommendations 62 and 95?

Thirty-two of the total 99 Aboriginal deaths in custody investigated by the RCIADIC occurred in Western Australia. Most of those who died began their involvement with the criminal justice system in the Children's Court at a time when, as individual reports of those who died in custody stress, 'cruel and inhuman punishment' was imposed by the State on far too many Aboriginal people. The Government in Western Australia's hysterical and uninformed response to the issue of 'juvenile crime' is, in reality, the de facto reintroduction of the death penalty.

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References

1. Dodson, P., Regional Report of Inquiry into Underlying Issues into Aboriginal Deaths in Custody in Western Australia Vols. 1-2, Government Printers, 1991.
2. *ibid*; Johnston, E., 1991 National Report of Inquiry into Underlying Issues into Aboriginal Deaths in Custody. Vols. 1-5. Government Printers, 1991.
3. Dodson *op. cit.* provides relevant extracts from the Police Union Submission to the RCIADIC.
4. See Dodson *op. cit.* regarding various difficulties faced by the Commission in relation to inquiries to government.
5. Johnston 1991 provides details concerning the 339 recommendations put forward to government by the RCIADIC.