

Book review on Stephen Gray's Criminal Laws - Northern Territory

Criminal Laws - Northern Territory
by Stephen Gray
The Federation Press

Stephen Gray provides an in-depth look at a much ignored and misunderstood creature, the Northern Territory's Criminal Code in his latest book, *Criminal Laws – Northern Territory*. Having received his legal training in the NT, this writer was dissatisfied with the offerings of various other writers as their emphasis focussed on the criminal codes of Queensland and Western Australia (upon which the NT has based its own code). Though one of the smaller jurisdictions in the Commonwealth, the Territory provides a significant number of cases to the appellate courts and High Court and as such was always deserving of at least some mention in an academic offering. Stephen Gray has done so in his own inimitable style.

Gray outlines the introduction of the customary law practised by the present indigenous population to one degree or another. He points to the conflicts between the two systems and how disadvantaged the Aboriginal people have been to have faced the British legal system, created in a culture that was foreign and confusing, initially in a language that was incomprehensible. Though attempts have been made to make the legal system (and other governmental schemes) accessible through programs such as the Aboriginal Interpreter Service, Gray points out that more is needed in order that the general Aboriginal population can effectively access the protection of the present-day legal system. Gray also makes poignant observations of the rates of incarceration of Aborigines compared to non-indigenous Australians. One could infer that the disadvantages of poverty, lack of education, substance abuse and the dispossession of entire communities from their homelands have played a tremendous role in the underlying causes of the exploding prison

populations for Aborigines. His analysis, not without merit, tended to focus on issues related to the criminal justice system but seemed to argue that rates of incarceration could be addressed from a legislative perspective. The situation seems to have recently become slightly more difficult with the impending demise of the Aboriginal and Torres Strait Islander Commission. Considering the number of Australia's indigenous population who endure poverty, high rates of child mortality, a life expectancy far below that of non-Aborigines, substance abuse and domestic and other types of violence, it would seem that Mr Gray's concerns will only be exacerbated by the future de-funding of ATSIC.

This reviewer was hoping for a more thorough analysis of the subject of recognition of customary law. As topical as the subject is now, the role of customary law plays a critical role in the lives of many Aborigines and the influence of things such as promised marriages and traditional pay-back raise tricky questions in light of Australia's international obligations. The approval by courts (and general community) of both activities would seem to clearly fly in the face of those obligations. Mr Gray's reference to the fairly recent prohibition of whipping as a judicial punishment in 1974 seemed to imply that contemporary views of what is or isn't an acceptable sentencing alternative are not too far removed from the customary practice of spearing or the use of *nulla nullas*. The comment seemed out of place though it was not inferred as approving of the practice, merely the acknowledgment of similar views of punishment held by both cultures.

In Chapter 4 (the most interesting in this reviewer's opinion), there was discussion concerning the *ex officio* indictment and the various legislative and judicial remedies for preventing the *ex officio* from being used in an abusive manner. It seems to be fairly well accepted that the potential for abuse is ever present but the judiciary seems ready and able to regulate its

injudicious use. The use of the *ex officio* has truly come into its own in respect of the new section 43 Fitness to Plead legislation as the courts previously had little power to deal with criminal defendants found unfit to plead. The Northern Territory is still awaiting the mental health system answers to the questions that arise when defendants (usually persons who are alleged to have committed violent or dangerous offences) are found to be unfit to plead. It is without doubt that the courts currently face a lack of suitable sentencing options in relation to those persons who are not necessarily suitable for the mainstream prison system or in some instances require intensive mental health supervision.

Under the new legislation, defendants who are unfit to plead but found guilty, may be dealt with by the court and this may include imprisonment if suitable facilities are not available. As a safeguard, these prisoners are subject to periodic evaluations. With the prevalence of petrol sniffing (and other substance abuse) and its associated long term consequences, it is anticipated that as a result of such behaviours, there will be an increasing number of persons who will suffer health consequences that include brain damage. In certain instances this resultant damage renders some individuals incapable to controlling violent and at times murderous outbursts and in extreme cases, are rendered so damaged as to be unfit to plead in criminal proceedings. Will these persons be condemned to what amounts to an indeterminate sentence or will the government step in and create a satisfactory alternative? It is necessary for these prisoners to receive adequate care and treatment yet at the same time the government needs to ensure that such care provides the requisite protection to the rest of society from those individuals who are deemed to be a continuing threat. As with many other questions these belong not to the realm of the law but, directly or

continued page 18...

Sydney to Cape Town: the evolution of the World Congress cont...

By then it was clear that the momentum could only be carried forward by the continuation of World Congresses on a regular basis. Not only were we encouraged by the results of the first two Congresses but also by the growing body of international support for its aims and objectives amongst the legal profession and related professions worldwide. The enormity of the task of preparing such World Congresses meant though that they could not be held any earlier than each four years. Subsequently, another very successful Congress was held in Bath, England in September 2001.

In the intervening years leading up to each Congress and subsequent thereto the work continues in securing international support for the aims and objectives of the World Congress in addressing human rights abuses of children. The World Congress has been successful in securing support at a Governmental level from the Australian, New Zealand, Canadian, United Kingdom and Irish Governments. Support has also flowed from numerous other individuals, foundations and

organisations from around the world, including the United Nations and its various agencies.

As stated, the second Congress in San Francisco attracted the very public support of the First Lady, Hillary Rodham Clinton. For the third Congress, the patron was H.E. Mary Robinson, United Nations Human Rights Commissioner and Former President of the Republic of Ireland.

Palpable benefits were also achieved at the second and third Congresses including:

- * The drafting and promotion of voluntary codes of conduct for multinational corporations employing children in their manufacturing operations off shore;
- * The building of two schools in Central America;
- * The establishment of the International Children's Rights Protection Network (now Children's Rights International) using voluntary advocates to embrace specific cases or general causes for disadvantaged or abused children;

- * The receipt of "report cards" on the performance of the world's nations in seeking to implement the resolutions of the World Congress; and
- * The successful continuation of a drive to get as many nations of the world as possible to pass laws mirroring Australia's child sex tourism laws in imposing criminal sanctions for the abuse and exploitation of children committed extra-territorially.

The planning for the fourth Congress is already underway and is to be held in Cape Town, South Africa from 20 – 23 March 2005.

The World Congress is now a truly international event recognised as one of the most significant events on the world calendar in promoting the protection of children. The World Congress has received a United Nations Award for services to the family. As its work continues, many new and energetic people, too numerous to mention, have asked to be involved to increase the reach and effectiveness of the World Congress. Its future seems assured and hence the hope of achieving beneficial change for many of the world's children, attainable.

For further information, please visit our website www.lawrights.asn.au

To be placed on the mailing list, contact:

Gail Fowler, Project Manager
Capital Conferences
PO Box 253
Church Point
NSW Australia 2015
Tel: +61 2 9999 6577
Fax: +61 2 9999 6733
Email: gail.fowler@capcon.com.au

The congress is held under the auspices of the Board of the World Congress on Family Law and Children's Rights Inc.①

Book review on Stephen Gray's Criminal Laws - Northern Territory cont...

indirectly, affect its administration.

This work has been long awaited. In light of various other writers and publishers ignoring the unique Territory system, it was a courageous attempt at exposing the inner workings of the NT's criminal laws and Mr Gray has done so in a concise manner whilst maintaining a broad view of the criminal laws of the NT. University students will appreciate this book as it appears to be an invaluable resource for the study of the criminal law. As a practitioner, I have enjoyed reading Mr Gray's work as it was well laid

out and informative. Mr Gray referred to the anticipated decision in the appeal of the *DPP Reference No 1* [2002] NTCCA 11 where the High Court is to decide if *McMaster* (1994) 4 NTLR 92 is to remain the authority for rape cases in the Territory. The implications of this decision (one way or the other) should have huge ramifications for the prosecution of rape and this reviewer looks forward to Mr Gray's analysis of that decision.

.. **Juan Alberto Dominguez, Jr.,
Office of the Director of Public Prosecutions** ①