INTRODUCTION

Any attempt to isolate a common theme that unifies this issue must be a failure. Instead, I take pride in presenting a number of very strong articles which demonstrate just how broad current issues in criminology are.

Stanley Yeo's article on "Native Criminal Jurisdiction" is a fitting place to begin. It goes to the question of the basis of the criminal law which is to apply in this country. He suggests that aboriginal customary law should be recognised in the criminal arena. Alternatively, it should be re-established by statute, if, as appears probable, it has been extinguished by executive or legislative action since white settlement. This article therefore extends the debate, that originated with the decision in *Mabo v State of Queensland* (1992) 175 CLR 1, into a new area.

Richard Harding has contributed a review essay which focuses on the book "Towards a Critical Victimology" by Ezzat Fattah. In commenting on the book, which contains virtually no Australian material, Harding provides this context. Harding concludes that much the same kind of overreach of the victimisation "industry" has occurred in this country as in North America. Concern for the victim has gone too far and is distorting debates about the social impact of the criminal law.

Sandra Egger accepted our invitation to write a reply to Harding's article. In this reply she suggests that Harding has painted with too broad a brush, a concern about and interest in victim's issues is not the exclusive preserve of the right wing. Egger demonstrates that victim oriented research has had a positive impact. More specifically, she comes to the defence of feminist research and politics, particularly in the context of domestic violence.

It says something about the rhetoric of victimisation that there was a temptation to try to present everything else in this issue in its terms. I resisted this temptation on the basis that it would distort the significance of some of the material but the comments by David Brown which suggests a dialogue between prisoners and victims and by David Fraser on genital mutilation clearly should be understood within the context of the debate about victimisation. Brown supports the call made by the Criminal Justice Network upon victims groups to support a comprehensive reform package. This package is designed to overhaul the principles of sentencing, reduce the emphasis on imprisonment, and increase aid to victims. Fraser queries the drive to criminalise Female Genital Mutilation and asks whether it is inspired by concern for the victim or is an expression of cultural imperialism.

The article by Dorne Boniface examines the social attitudes that led to the special limitations placed on prosecution of carnal knowledge offences by the legislation enacted in New South Wales in 1910. In so doing, she has provided an article that makes a valuable contribution to the feminist criticism of all laws governing sexual assault. The attitudes that Boniface discovers impact on other legislation as well as that passed in 1910. They prevail over a great length of time and still find expression today, as she explains.

In an article on "Monitoring Deaths in Custody", David McDonald of the Australian Institute of Criminology discusses the definition of death in custody. Problems were encountered in arriving at an agreed definition which would apply across the nation. Particularly

contentious was the proposal to include in the definition situations where the death occurred in a police incident but where the deceased was not under police control. Incidentally, the comment by Lou Schetzer suggests that the plan by the Victorian police to use capsicum gas should be opposed as an inappropriate response to the occurrence of death in such situations.

In her article Terese Henning discusses the question of whether it is essential that the individual in custody should know they are being detained before common law rights arise. A decision of the Tasmanian Supreme Court in *Sammak v The Queen*, Tasmanian Unreported Judgement No 33/1993, qualified the rights of the accused in detention by holding that, as the accused did not know of the detention, the decision in *Williams v The Queen* did not apply. It may be noted that the *Crimes (Detention after Arrest) Bill* was introduced into the New South Wales legislature in April 1994. This bill, if adopted, will clarify some of the rights of the police to conduct interrogation. Despite suggestions in the popular press, it does not widen police powers of arrest.

The New South Wales legislature, on the instigation of John Hatton (Independent), took the step in May 1994 of setting up a Royal Commission to investigate corruption. It was suggested in the course of the debate that the Independent Commission Against Corruption was ineffective, perhaps because it had suffered "capture". Margaret Allars' article suggests that the Commission had also been disastrously weakened as a result of the decision in *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125. The ICAC itself may be dead but the Allars' article will remain relevant to the powers of other tribunals. The central question is whether they are limited to applying objective standards. Allars' suggests that tribunals should not be so limited. Paul Walton's comment on the issues that arise when the introduction of pay television is considered also raises questions about the proper ambit of regulation.

The second comment contributed by David Brown appears by way of a requiem. It relates to the abolition of the unsworn statement which was accomplished by the New South Wales Legislature in May. New South Wales was the last Australian jurisdiction to give all accused the right to make an unsworn statement. I consider it a sad sign that society is not willing to give an accused who is threatened with a lengthy period of imprisonment an opportunity to say a few words without having to face the rigours of cross-examination. It is worth pausing to mark the passing of this right.

The final article in this issue was contributed by David Lanham. Lanham considers the relationship that should obtain between legal and medical authority when the question is whether artificial feeding should be withdrawn. Under what circumstances will a decision not to feed be culpable? Who should make the decision, the treating physician or a court? Discussion of these questions returns the issue to a discussion of system issues which is where this issue commenced.

This is a strong issue with many high points of interest. I have enjoyed editing it and am sure you will enjoy reading it. In closing this editorial I would like to thank the production staff who have worked on this issue and in particular I thank Fiona Wright of the Institute of Criminology for her strong support.

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