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# Law and order aka crime and punishment

By Rosemary Jacob

**Does the punishment fit the crime – and the ‘criminal’?**

**What purpose lies behind committing a person to prison?**

For as long as I can remember the debate has raged, inconclusively, as to the purpose of sending a convicted person to prison.

Clearly, in some instances an individual is committed to prison for more than one reason – for example, as punishment as well as to protect society. This applies most particularly to those who are convicted of committing a violent crime causing serious harm or death. It can also, for example, apply to those who are involved in dealing in dangerous drugs where, again, there is at least the potential for causing serious harm. But in sentencing an individual to a term of imprisonment, what consideration is given to the way in which that person will behave when he (or she) reaches the end of the prison term? Surely this is where the question of rehabilitation is of prime importance as a function of the prison system, and this aspect is relevant however long the term of imprisonment.

It sometimes seems that the only education offered to many prisoners is to allow them to use the contact with other prisoners to enable them, when they are released, to be more effective or versatile when committing a crime or possibly more skilled at evading detection. Ignorance of the law is never a viable excuse for committing a crime, and yet the increasing complexity of the current legislation makes it difficult to impossible for the average person to be adequately informed.

Should not an essential first task for

prison authorities be to ensure that prisoners are helped to understand how and why they have offended, and assist them to develop strategies for avoiding further offences where relevant?

In addition, as far as the Indigenous population of the Northern Territory is concerned, there are many facets of their customary law and its operation which are in conflict with the laws imposed on them by legislation.

White man’s law regards property ownership as an individual right, whereas this concept is very different to that of communal property in Aboriginal law. What steps are taken at an early stage in education to ensure that these distinctions are truly understood? That is but one issue – another is the time lag in our system between committing an offence and being punished for it. In customary law, this time interval is mercifully short, and consequently there is a clearer connection between the nature of the offence and the punishment.

**Why do politicians prefer to build bigger prisons rather than take steps to prevent crime?**

There seems to be a vocal element in the population which persuades politicians that there are more votes to be gained by punishing people who have committed a crime than in taking steps to lower the crime rate. There is also a strong opposition to any suggestion that the ‘rights’ of any individual might be threatened. Frequently, there are complaints made at the ‘soft’ sentences handed out by magistrates to young offenders, such comments usually being made without any real information about the background and details of the



*Rosemary Jacob*

specific case. Magistrates are probably more aware than the average person of the ill-effects of sending a young person to an institution where mixing with other offenders is more likely than not to lead to further offending. Unfortunately, however, the magistrates are also acutely aware of the inadequacy of parental supervision prior to offending.

With the exception of the small minority of people who seem to be genetically predisposed to anti-social behaviour, there are far too many children who end up as anti-social adults because of the way they are treated at home. Abuse may be overtly physical or sexual, or may more subtly result from neglect. Most children misbehave with varying frequency at different stages of development, but it is how that misbehaviour is handled which will determine whether the child develops into a sufficiently socialised adult. One disadvantage of some human rights legislation is that it is capable of being interpreted in a way which is ultimately to the disadvantage of the child.

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## Law and order aka crime and punishment...cont.

Any intervention by government authorities in the parents' role is often opposed on the grounds of the parents' rights, and yet there is scant attention paid to the child's rights.

There are two obvious occupations for which no formal training is a requirement – one is politics and the other is parenting. In light of the level of child abuse which is known to occur, and taking account of the indications that what is reported is only a fraction of what actually occurs, some sort of early intervention is surely urgently required – more urgently than is a bigger prison. If parents were required to attend a community health centre at regular intervals through a child's early years – and if failure to attend resulted in a home visit – then at least some abuse could be detected at an early enough stage for remedial action to be taken. After all – the child has a paramount right to be properly looked after, and if the parents cannot or will not ensure that this occurs, then the authorities should step in sooner rather than later.

### Who bears the cost?

We are often told how much it costs to keep a person in prison.

How many people compare this with the amount of assistance that is given to, for example, people who, through no fault of their own, are required to exist on social security allowances? Admittedly, the Federal authorities pay the latter, so maybe comparison is unfair, but it is still food for thought. How much money is wasted on maintaining people in prison who could, in many cases, be living under suitable restrictions in the community and covering their own costs?

Another issue in relation to costs, is the legal costs involved in defending charges in Court. If the person charged is eligible for legal aid, this is not an issue, but for others, particularly if the matter is finally heard in the Supreme Court, the expense can be considerable. This is in itself an aspect of 'punishment' which is not necessarily taken into account in sentencing. And what if there is a miscarriage of justice and the person is wrongly found guilty and the matter goes to appeal? Again, there will be considerable costs involved in this process and there does not appear to be an opportunity in criminal law for adequate recovery of costs.

### Education vs Punishment – is it better to prevent or

### to cure a problem?

It is recognised in health care circles that preventing health problems is more effective and economical than treating the problem after it arises. This is idealistic, as it overlooks the resistance of the individual to make changes in lifestyle which would be beneficial to health in the longer term, so it is not universally adopted as an approach. Exactly the same considerations apply to anti-social behaviour and its consequences.

If early intervention and effective education are seen as likely to prevent or at least reduce the level of criminal activity, why is this path not followed? Which costs more – in the long run? Is the length of time in office a significant factor in discouraging our politicians from making decisions which might be unpopular in the shorter term? We are being promised that a priority in the new, bigger prison will be rehabilitation. Do we really need the cost of this prison as a precursor to action to try to reduce the level of crime, or would it be more advantageous to spend that money in implementing strategies that would provide a more effective and preventative education?

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## Law Librarians to gather in Darwin

By Frieda Evans, Library Manager, Supreme Court Library

In September 2009, approximately 200 law librarians will gather in Darwin to celebrate their annual conference. It is the first time it has been held in Darwin and planning is well under way for the event. It is being organised jointly by the NT and SA Divisions of the Australian Law Librarians' Association (ALLA). We are currently working through a draft sponsorship package, choosing the conference satchel and the website is also being drawn up. The conference logo will be launched soon.

The 2009 ALLA Evolution Conference will be held at the Darwin Convention Centre, with two days of speaker presentations and a trade exhibition. Most of the delegates will be from the Australian states, with some from the UK, New Zealand and the Pacific Islands, although it is also hoped to attract some from our northern neighbours in Asia.

The theme of the conference is 'Evolution', which ties in with the 40th Anniversary of ALLA, the

growth of the organisation (informal group to ALLG to ALLA and how we will develop in the future) as well as the venue being Darwin and its link with Charles Darwin (150th anniversary of publication of the Origin of the Species in 2009 and 200th anniversary of Darwin's birth in 2009). Although we have quite a few speaker and topic ideas already (law in East Timor, the effects of the Intervention on Aboriginal Communities, NT being a territory, etc), we hope to have some speakers from Darwin,

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## Law Librarians to gather in Darwin...cont.

so if you have an idea for a presentation or know of someone who could give one please contact Frieda at the Courts Library on 8999 6585 or [frieda.evans@nt.gov.au](mailto:frieda.evans@nt.gov.au) to discuss your ideas. It is hoped to have some panel sessions as well as solo speakers.

Socially there will be a Welcome Drinks function, the Conference Dinner and Closing Drinks at the Convention Centre. On the Tuesday before the conference delegates will gather informally for BBQ at a beach-side venue.



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## Tell us the story of your PLT placement in country Australia

By The National Association of Community Legal Centres

The National Association of Community Legal Centres has a new Law Graduates for CLCs in Regional Australia project.

This project had been devised by NACLCLC to encourage law graduates to work in Regional, Rural or Remote (RRR) Community Legal Centres to satisfy their Professional Legal Training (PLT) work experience requirements. We are looking at law graduates living in RRR areas who are studying online and graduates doing their PLT elsewhere who have an interest in working in RRR areas.

The aim of the project is to promote regional CLCs as a career option to law graduates, and to aid recruitment and retention of lawyers in regional CLCs. In the short term, RRR CLCs will also have access to worker of value, aiding them to provide better services to the community. In addition, law graduates in RRR areas will have access to a more convenient, enriching and diverse experience by working in CLCs in RRR areas for their work placements.

Right now we want to hear the experiences from current PLT students who are completing or have completed their PLT placement in an RRR area. We also want to hear from lawyers who completed their PLT placement in an RRR area. Your experiences will help us develop ways to promote, support and enrich CLC placements in RRR areas.

If you would like to share your story

please contact the NACLCLC Project Officer, Rachna Muddagouni by email on: [rachna.muddagouni@gmail.com](mailto:rachna.muddagouni@gmail.com).

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## SFNT sponsored CDU law place

The Solicitor for the Northern Territory is pleased to support a full-time student studying a Bachelor of Law at Charles Darwin University commencing in 2009.

The Scholarship is available to an Indigenous person through a partnership agreement between Charles Darwin University and the Northern Territory Government.

The key benefits available to the scholarship holder include:

- A generous stipend of \$2,500 paid each semester for the

duration of undergraduate study; and

- paid, industry relevant work experience at SFNT of up to 12 weeks per year at an Administrative Officer Level 2 salary (\$40,126 per annum).

Further details about the Scholarship, including instructions for application, are available from the Charles Darwin University website at the following link: <http://www.cdu.edu.au/scholarships/undergrad.html>

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