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**SOME COMMUNITY PROBLEMS
FROM A COURT'S PERSPECTIVE**

By
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INTRODUCTION

This talk was given by Mr Dennis Barritt on 13 March 1991 at the State Library in Darwin, as one of the Library's series of "Under the Banyan Tree" lunchtime entertainments.

Mr Barritt is currently Stipendiary Magistrate at Alice Springs, and is no stranger to controversy. As Alice Springs Coroner it fell to him to conduct the inquest into the multiple-fatality resulting from the hot air ballooning accident a couple of years ago, and also the Azaria Chamberlain inquest.

He does not hesitate to express views which might prove unpopular, but these are views about which he feels strongly, and his comments force us to face squarely the social problems of the day, rather than smother them with soft words, or cover them up with "band aid". This talk exemplifies this, and we see through the eyes of a magistrate the folly which alcohol abuse causes. Mr Barritt's solution certainly is thought-provoking.

Some Community Problems from a Court's Perspective

by

Dennis Barritt

Some years ago when delivering her Boyer Lecture Dame Roma Mitchell spoke of the discretionary powers possessed by police constables, who, holding an independent office under the Crown, possessed a discretion enabling them to prosecute. This discretion of course had to be exercised honestly. It appeared to her that this quite lawful exercise of the prerogative of that office would become extinct because, under modern methods of policing, less use, if indeed any use, was being made of it. There may be many other rights and duties to which we are entitled or responsible for that will disappear unless their exercise prevents extinction.

Judicial officers, that is judges and magistrates, are said to have independence from both the Executive and the Parliamentary arms of government in the exercise of their judicial function. However, is this a function of any worth to modern communities when it too appears likely to disappear because the right to the independence is never, or rarely, exercised? The average well informed citizen might feel that there are less than a dozen or so judicial officers in Australia prepared to speak out in public on problems of social importance coming to their attention, or belief, through knowledge of the community which they acquire in their function as judicial officers.

Courts, even those presided over by magistrates, have very wide jurisdictions. Consequently their presiding officers ought to have an excellent opportunity to gain a wide and sound knowledge of almost every facet of human endeavour within the society in which their respective courts function. Many courts however appear to plod along from day to day applying judicial band-aids to social ills, akin to cancer, constantly displayed within its portals. No effort appears to be made to initiate any action that may cure the ailments. Thus many social problems confronting our society today, or likely to confront it tomorrow, remain unidentified and unknown to the community at large. Clearly thoughts of communicating to the public the activities, conduct and purposes for which courts exist, and communicating those subjects, warts and all, would leave many judicial officers gasping.

Well into the nineteenth century courts rarely sat without a wide representation of the public being present to report back to the community at large the events of the day. By local contacts the events coming before the courts became known widely within the community. As importantly, each community became aware of the qualities and idiosyncrasies of the presiding judicial officers. Under that system the community was relatively well informed of all the social problems confronting their community, even when the main social problem could be the judicial officers themselves. Today members of

the public rarely attend courts unless they are summoned to be there, or appear in the less pleasant role of defendants. The media's function to inform the public has serious economic limitations. It is little wonder that the public today have little knowledge of the real purpose of courts and, more importantly, the state of their society as portrayed in cases coming before such courts.

Were the public better informed it may be courts, both in their conduct and results, would be subjected to far greater public scrutiny than they are at present. It is my strong belief that this would be excellent for our society. The activities of courts need great public scrutiny, and the social problems identified in the proceedings before those courts require greater public appreciation and action. The media often appears loath to criticise courts for any reason on the basis that the court cannot reply. I believe courts have, or can make, adequate opportunities to respond to unjustified criticism - justified criticism would in most cases be welcome and, at any time, deserved.

Dicey in his study of the Westminster system of government identified the separation of powers and claimed this was the fundamental basis of democracy. Political scientists accept that that definition was not accurate, the judicial power must be separate, but there is, or can be, considerable interchange between Parliament and the executive arms of government. However, all agree there must be total independence of the judiciary. Such scientists identify as essential to democratic government the need for the government to be capable of being changed by the will of the people expressed during an open and free election. Whilst all other governments in Australia have demonstrated this latter quality, Territorians have not. If conservative governments prove to be entrenched in the Territory a large section of the population will remain permanently dis-enfranchised. Despite the seeming unquenchable optimism, or political ignorance, of opposition political parties, government change appears unlikely whilst social conditions such as law and order and land rights et cetera can be called upon so easily to divide popular thought by recourse to emotions and security. Considerable effort is needed to educate all sections of the Territory's population into an understanding and appreciation of each other's position.

Another serious flaw, and one I would naturally consider a most serious flaw, in the constitutional powers of the Northern Territory is the independence of the judiciary. When I was appointed to my present office I was subject to the normal judicial right of removal from that office. That is I could only be removed from office by resolution of the Legislative Assembly on the ground of proved misbehaviour or incapacity. That right of tenure played a significant part in my decision to leave the Victorian Bar and move with my wife and five children to the Northern Territory. The law was changed in 1981 to enable the executive arm of the government to request the Administrator to remove from office any magistrate for a number of reasons, the general one being if

he was "for any reason unsuited to the performance of his duty". I wonder how many highly qualified lawyers have since that amendment turned their backs on seeking such a judicial office in the Northern Territory. Magistrates decide over ninety percent of cases coming before all courts in the Northern Territory. Does John or Mabel Citizen stand equal before the Court when a prosecution is laid by the Government or a Government Agency? One thing is sure and that is, when you walk away from this building today and observe a policeman or a parking attendant, you can guarantee he or she has greater security of tenure to his or her office than the magistrate.

The Magna Carta, the forerunner of our modern trial by jury, was wrought from King John in 1215 by the noblemen of England to ensure that, in the likely event of one of them being impeached for treason, they could enjoy trial by their peers, the other noblemen. When the clergy were forbidden to participate in trial by ordeal another method of criminal trials had to be found. This led to trial by jury for commoners. Today the concept involves two differing rights, those associated with the government trying its citizens in such a manner, and those of the citizen to have his or her guilt or innocence determined by a jury.

It appears to me that in the Territory we tend to overlook the right of the community to have trial by jury. There appears to be no difficulty in the Territory in the police bringing persons to justice for a wide range, and number, of homicides. That is not enough, to be just; justice must function in the interest of the community as well as for accused persons. Does the present practices of plea bargaining between representatives of the Attorney General and the representative of the accused person suit the genuine needs of the community? Criminal trials in Central Australia can now be considered a rarity, are we in the process of eliminating trial by jury for all but the ill-represented?

The Australian public are presented almost daily with complaints about how some of our forebears mistreated Aborigines. The subject of the treatment of Aborigines has become a matter of great importance, particularly if you wish to attract attention in the local media, and there is no ready-made green, or conservation, issue readily available.

Far from breaking down the walls of racial prejudice, much of this publicity presently being presented through the media to the public creates, and engrains, prejudice. As in warfare, truth is often the first victim in the debate over racism. It is almost impossible in our community for honest debate to publicly take place on any Aboriginal issue. The person who levels any criticism at the waste, lack of accountability, health issues, education problems or anti-social conduct of Aborigines is vehemently proclaimed a racist unless some white Australian is claimed to be the sole cause of the problem. Yet it is said that we live in a democracy and possess the right of freedom of speech. The right to free speech may become extinct unless it is exercised.

Throughout the Territory we have dedicated white Australians working in Aboriginal communities as nurses, teachers, policemen and in many other positions including community advisers. Their labours have not been some recent adaptation. Luthern missionaries came to Central Australia over 100 years ago. Others were earlier in the Top End.

Today one never hears through the media a good word to be said for those missionaries who usually devoted the whole of their lives to tending the physical needs and protecting groups of Aborigines. Indeed all we hear is the scorn of claimed intellectuals heaped upon those people who gave their lives so generously. Intellectuals they may be, sages they'll never be.

I generally have never heard the stories of the nurses, the school teachers, the community advisers et cetera portrayed in a meaningful manner in the media. Is it because, Aboriginal lands being closed to the public, they are out of sight and consequently out of mind? From my observations of those people I consider them to be the true present day Territorian heroes, though their names will never appear in any honours list. The public appear to be only told of negatives when Aborigines are mentioned.

We must appreciate that the media generally looks upon racial prejudice as good copy. If a traveller is seeking access to the media to publicise a venture of his own, and he is media wise, he will mention conservation, sex, police brutality, racial prejudice or one of the other known media perennials; editors and sub-editors appear to love such persons.

Recently in Melbourne I heard a foreign author speaking of the racial prejudice he encountered in a stop-over of a day or so in Alice Springs. A girl had told him that she was not racist, she knew lots of people of differing races, but of all the races she hated only Aborigines. The prominent author did not apparently ask for any reason she might have for holding that opinion, or even whether those sentiments applied to all Aborigines, or just to the ones within her personal acquaintance.

It must be stated that there are many people living in Alice Springs, and perhaps the Territory, who hold strong adverse opinions about Aborigines. However, when you question these people about the reason why they hold those opinions you will also invariably find that skin colour is never a concern. The almost universal complaint against Aborigines in Alice Springs is the drunken and disorderly conduct in the street and the crime rate of an unfortunately increasing percentage, but minority, of their number. The misconduct of this admittedly now sizable minority has adverse effects upon the self esteem and confidence of the well behaved majority. It is pleasing to note that today Aboriginal people, the main sufferers at the hands of this almost lawless minority, are increasingly trying to take effective action to regain the benefits of a peaceful society.

Today it cannot be said to be safe for a woman to walk through the streets of Alice Springs at night. Murders and rapes are by no means extraordinary events. It might justifiably be suggested that at night it is not safe either for a male to walk alone, particularly in the vicinity of the 'famed' Todd Street Mall. House and shop break-ins and thefts are a commonplace. Not to have had your motor car unlawfully used once, or damaged in an attempted theft, is an admission that you have not lived in the Alice for long. Parked bicycles have to be chained down. Have residents to endure this extraordinary high crime rate and show no reaction? Why do Australians at large, and all Aborigines in particular, believe that this sort of criminal conduct, almost exclusively confined to relatively small sections of the Aboriginal population, would not give rise to sentiments of mistrust and gravely harm racial relations?

We live as Territorians in arguably one of the most violent areas on the surface of this earth. If any Territorian were to die because of the actions of a political terrorist we would be alarmed and quick to demand appropriate action be taken by Parliament, the government of the day, the Courts and the police. However, daily we witness a carnage far greater in proportion to the terrorism occurring in Northern Ireland. In Central Australia, that is the area to the south of Dunmarra, the annual homicide rate exceeds that for the whole of Victoria in many of the years prior to 1951, and this amongst a population of less and 50 000 people.

As with the scourge of terrorism, so with community violence. You can catch individual offenders but the basic social causes will go on producing the same evil until those basic causes are identified and eliminated. The problems causing domestic violence in the Northern Territory amongst white and Aboriginal Australians are clearly identifiable, but getting the responsible governments, departments, agencies and people to co-operate with each other to even attempt to overcome aspects of the problem appears to be insurmountable.

Alcohol must be accepted at the outset as the main component giving rise to social disorder in our community. An incalculable price is paid in meeting the costs arising from alcohol's contribution to the road toll, the killings, the woundings and the domestic and social violence. The Alice Springs Hospital and, I am sure, the Royal Darwin Hospital and no doubt every other hospital and nursing clinic in the Territory are constantly treating injuries and diseases sustained as a result of the abuse of alcohol within our community. The staff at these places are constantly subjected to the drunken violence exerted upon them by drunken patients and their drunken erstwhile friends.

At the same time that this large percentage of our medical services are occupied in servicing the urgent needs of the consequences of this drunken debauchery, many would-be patients are being turned away from our hospitals to become places on waiting lists for surgery, or other medical attention, that, if and when beds become available, will enable them to regain their former healthy, normal life style.

The early founders of Australia, with their British Empire's attitude of conquest and greatly influenced by Darwin's theories of evolution of the species, looked, if at all, only for dissimilarities between themselves and the inhabitants of the new southern land. They lumped all Aborigines together, because they were black. They gave no thought to the possibility that here were a multitude of different races who have lived separately from each other for thousands of years. The similarity of the distribution of these people were akin to the states, principalities, counties et cetera of Europe. What consequence would it have been to a Walpiri, a Pintubi, or an Aranda that some strange looking people had landed in a place they called Sydney Cove, had they even known. In that same year would a Prussian have been concerned about a group of strange persons landing at Anzac Cove, as we know it today. However, it is more than likely the Prussian would have been shocked if some strange court two hundred years later was to declare the intruders to have ownership of the Prussian's land because he was not there or had not existed.

The truth was there to be found, if sought. If properly tested the Australian Aborigine has equivalent levels of intelligence to white Australians. Originally, whichever race he belonged to, he was proud, independent and defended his lands against all intruders as his forebears had done for countless years. He had no need to write, yet he learnt and passed on to the next generation a rich and full culture. What he had no use for there was no need for. The intruders saw no wheel, lever or gunpowder and thought him backward. However, the intruder had copied these inventions, not discovered them.

Politicians, the bureaucracy, and many Aboriginal descendents of past Aboriginal races will attempt today to lump all these people under the one group as Aborigines. We are still today helping to destroy these peoples' self esteem by referring to them as just Aborigines when their self esteem attaches to the fact that they are Walpiri, Aranda, Pintubi et cetera. In my observation I feel the projects that are now showing the most chances of success are those organised on a tribal or race basis rather than on general Aboriginal lines. We should come to realize that the term Aboriginal as we use it is generally a reference to a multicultural group of differing people.

Unless we recognise and treat people living in their tribal or semi-tribal lifestyles as being groups of separate peoples we will in time be doing them further injustice. We are about to see a new bureaucracy set up to deal with all Aborigines. The echelons of that bureaucracy will relatively quickly become staffed by people of part or different Aboriginal descent. The full blood tribal and semi-tribal Aborigines, who today are educationally unqualified to fill those positions, may soon awake to find even stranger people than white Australians governing their needs. When his children eventually become educationally qualified their needed positions will have long since been filled.

For the politician, grouping all Aborigines together makes a lot of electoral sense. If grouped together regular Ministerial statements can publicise seemingly generous allocations of funds. Such statements have considerable electoral value in electorates in the larger population centres, their value reduces in electorates that appreciate the inadequacy of the funds involved or the impractical nature of the proposed project. Politicians should realise that whilst electoral value attends the funding of projects, every failed project tends to destroy the recipient's self esteem.

I have always considered that there exists no inherent differences between any Aboriginal person and myself. We are of course each subject in many ways to the training we have received and the environment in which we have lived. Nonetheless we are each a human being encouraged by success in life and devastated by failure. As I learn the backgrounds of individual Aborigines brought before me as a Magistrate in court or as a Coroner in the morgue I have come to know some of their culture, and I see very little failure. Most have not been given an opportunity to enable them to fail at anything.

Many Aboriginal parents fear education and refuse to encourage their children to attend school. Irregular but high absenteeism ensures that those attending school are retarded in their learning whilst teachers attempt to bring others up to their standard. Lack of parental guidance after school often leaves children bored and ready inductees into the petrol sniffing groups.

As the child grows older initiation will make him a man whilst he is yet but a child. This step will generally all but end his formal education. That step will also enable him to embark into groups drinking alcohol.

He will not learn to consume alcohol at rates and in quantities that he can control. His introduction to alcohol will be in the 'binge' syndrome. From a good physique at twenty he will degenerate quickly in his thirties, at forty most of his vital organs will be gravely affected by over consumption of alcohol. He is likely, almost certain, to die many, many years before his time, because of the alcohol he has consumed.

That death will take place because of drunken violence, either public or domestic, by driving or being a passenger in a vehicle driven by a drunk, or by plain alcoholism. And at five years of age he would have been the nicest kid you could ever have met.

We look back with horror at the people who used the Martini Henry rifle against the Aborigines, at those who poisoned the water holes, at those contract killers from Queensland who shot out much of the Barkly. But, to be honest, they were men of their times, uneducated, living in harsh and unrelenting conditions.

Not so us. We see evidence in our streets every day and night of what is going on. You and I can trace the ages of Aboriginal man I have described in the street any time you wish to look and think. When you think about it remember that it is our taxes, authorised by our Members of Parliament, that are almost solely the clear cause of this devastating consumption of alcohol.

In apparent answer to one of my suggestions that 80% of social security benefits should be directly dedicated to the purchase of food and clothing, a Commonwealth Minister in Canberra was reported as stating the government was not about making second class citizens. He has only to get out of his Canberra cloister-like environment and look around to appreciate that our money converted to V.B., XXXX, Emu and Coolibah are being used far more effectively than the rifle and poison of former years to make, not second class Australians, but former Australians. Why should we remain silent observers of this government financed holocaust?