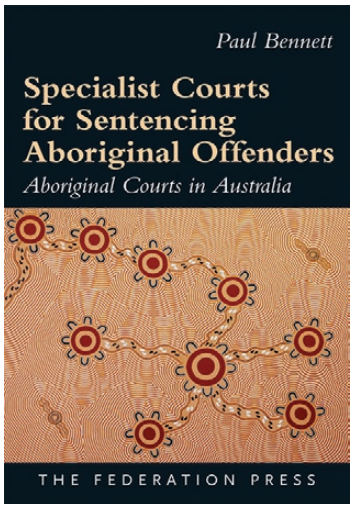
BOOK REVIEW:
SPECIALIST COURTS FOR SENTENCING ABORIGINAL OFFENDERS: ABORIGINAL COURTS IN AUSTRALIA

by Paul Bennett
Federation Press, 2016



Reviewed by Julian R Murphy

It is an uncertain time for Aboriginal sentencing courts in Australia.[1] By way of definition, an Aboriginal sentencing court is:

> [A] hybrid, combining elements of the mainstream criminal court with informality, direct communication between the participants, a 'conversational' sentencing process and, most importantly, the involvement of Aboriginal community members.[2]

Over 50 Aboriginal sentencing courts have opened around Australia since their nascence in the late 1990s, and they have a foothold in most Australian states and territories. Yet as we mark the 25th anniversary of the Royal Commission into Aboriginal Deaths in Custody, Aboriginal incarceration rates continue to soar and there is a sense that the current approaches are not achieving what they set out to do, namely, reduce incarceration rates. Prominent criminologists[3] have doubted the capacity of Aboriginal sentencing courts to combat reoffending, and such courts have been abolished in the Northern Territory[4] and Queensland (although the current Queensland Labor government is committed to their reintroduction).[5]

It is against this background that one must read Paul Bennett's recent book, *Specialist Courts for Sentencing Aboriginal Offenders: Aboriginal Courts in Australia*. Bennett has, in a sense, set himself the task of making the case for the continued operation and expansion of these courts. He fulfils his brief admirably, crafting a book that is part history, part compendious literature review and part observational study.

Before being appointed a magistrate in 2007, Bennett worked for 20 years in Aboriginal and non-Aboriginal legal aid organisations in South Australia, including a six-year stint as criminal practice manager at the Aboriginal Legal Rights Movement. Now, as a magistrate, Bennett presides over all manner of courts including, relevantly, the Port Adelaide and Murray Bridge Nunga (Aboriginal sentencing) Courts. Bennett's wealth of experience in the criminal justice system pervades this book and gives it an authority that a purely academic study could not command.

The first half of the book is devoted to an introductory overview of Aboriginal sentencing courts: what they are, what they aim to achieve, how they have developed since their inception in 1999, and how they differ across various Australian jurisdictions. While there is nothing particularly groundbreaking in this part of the book, it is nevertheless valuable for its collation and synthesis of the available research, both qualitative and quantitative, on Aboriginal sentencing courts and their history. Particularly useful are the comparisons between the courts from the various Australian jurisdictions. Bennett's efforts in this regard ensure that this book will be a first port of call for anyone wanting to understand the role that Aboriginal sentencing courts play in our legal landscape.

The second half of the book canvasses the theoretical underpinnings of Aboriginal sentencing courts and examines the critiques that have been levelled at such courts by the public and people within the criminal justice system. As Bennett identifies, Aboriginal sentencing courts have been justified on the basis that they best achieve individualised justice for the parties involved and thus are more likely to motivate change in the offender and the community. Unfortunately individualised justice sometimes looks, to outsiders, like special treatment or, worse still, a 'soft option'.[6] Bennett engages with this argument of preferential treatment, and dispatches it comprehensively.

If there is one blind spot in Bennett's otherwise comprehensive study of Aboriginal sentencing courts, it is the relative lack of attention afforded to non-sentencing proceedings. As one writer on Aboriginal courts has noted 'the whole story is bigger than the sentence'.[7] By largely restricting his discussion to Aboriginal *sentencing* courts, Bennett misses an opportunity to argue for an extension of these same practices to other dimensions of the criminal justice system, including witness assistance, domestic violence order proceedings, diversion and parole hearings.

Nevertheless, Bennett's book is an important contribution to the debate regarding Aboriginal incarceration rates, and it comes at a pivotal moment. The book should be read not just by lawyers, social workers, interpreters, researchers and other practitioners working or interested in this field; it should be read and heeded by policy-makers and politicians. The jury is still out, Bennett candidly concedes, on whether Aboriginal sentencing courts reduce recidivism rates; however, that does not detract from the way such courts meaningfully involve offenders, victims and the community more generally in what is otherwise a foreign legal system.

From 2014 to 2015 Julian R Murphy worked as a criminal defence lawyer at the North Australian Aboriginal Justice Agency in Katherine, Northern Territory. He is currently a judge's associate.

1 The term 'Aboriginal' is used in its adjectival sense throughout Bennett's book and this review, and is intended to refer to all of Australia's first peoples, including Torres Strait Islander peoples.

2 Paul Bennett, *Specialist Courts for Sentencing Aboriginal Offenders: Aboriginal Courts in Australia* (Federation Press, 2016) 4.

3 See, eg, Don Weatherburn, *Arresting Incarceration: Pathways out of Indigenous Imprisonment* (Aboriginal Studies Press, 2014) 101.

4 For a discussion of Aboriginal sentencing courts in the Northern Territory, see Thalia Anthony and Will Crawford, 'Northern Territory Sentencing Mechanisms: An Order for Substantive Equality' (2013) *Australian Indigenous Law Review* 79.

5 Australasian Lawyer, 'First Murri Court Opens in Rockhampton', *Australasian Lawyer* (online), 14 April 2016 <http://www.australasianlawyer.com.au/news/first-murri-court-opens-in-rockhampton-214516.aspx>.

6 See, eg, the discussion in Jewel Topsfield and Marc Moncrief, 'Tough Justice or Soft Touch in Koori Court?' *The Age* (online), 4 September 2004 <http://www.theage.com.au/articles/2004/09/03/1093939133358.html>.

7 Philip James Kirke, 'A place of the law: an architectural perspective on indigenous courts' (Paper presented at AIJA Indigenous Courts Conference, Mildura, 4–7 September 2007) 8.

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