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Sentencing – good, bad and indifferent – *John Nicholson SC*

Sentencing is meant to promote the Rule of Law. Numerous assumptions underpinning current sentencing practices are being questioned more and more. This article examines four assumptions by questioning their validity. Each of the examined assumptions plays a crucial role in underpinning the present punitive paradigm of sentencing. Consequences of continued adherence to a punitive paradigm approach to sentencing are being shown to include fostering recidivism and contributing to a spread of criminal conduct beyond the existing prison population. The thesis advanced is that a punitive paradigm in sentencing dilutes the effectiveness of sentencing as an aid to the Rule of Law.	205
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Clarifying the incomprehensible: South Australia’s mandatory minimum non-parole period scheme – *Patrick Leader-Elliott*

Since 2007, South Australian courts have been required to fix non-parole periods for homicide and some other serious offences against the person by reference to a statutorily prescribed minimum. The minimum may only be departed from where “special reasons” to do so exist. This article considers a number of questions about the interpretation of the South Australian prescribed non-parole period scheme which have led to conflicting judgments at the appellate level. In particular, it analyses the problematic nature of the “special reasons” provisions in the legislation which creates the scheme. It is concluded that the legislation in its current form is unworkable, both in terms of the ability of courts to apply it in a meaningful way, and also in terms of its capacity to produce just sentencing outcomes. The legislation should be significantly amended or repealed.	216
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“Just looking”: When does viewing online constitute possession? – *Jonathan Clough*

Digital technology has greatly facilitated the production and distribution of child pornography, and in many jurisdictions it is an offence to possess child pornography. However, concepts of possession which evolved in the context of tangible items may be difficult to apply to digital images. One such issue arises where a defendant views child pornography online but does not take active steps to download it. If such conduct does not constitute possession then it may be possible for a person to view child pornography with impunity. This article discusses the nature of possession in the criminal law, and its application to digital images. The specific issue of “viewing as possession” is introduced, followed by an analysis of authorities considering this issue. It is argued that although the act of viewing online does constitute possession, the difficulties associated with proving such cases necessitates the enactment of an offence of accessing child pornography.	233
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