

"A Night for Lawyers: Inside Pentridge"

Edited speech by Justice John Coldrey in aid of the Brosnan Centre, on 2 April 1998

AS will shortly become obvious, my appearance here this evening has nothing whatsoever to do with the Melbourne International Comedy Festival.

When I was asked to speak by Mick O'Brien I wondered, why me? Could it be, I thought in my paranoid way, that research had revealed that at any one time I had more clients in Pentridge than any other member of the Criminal Bar? Of course not. If that had been the case, the honour would probably have gone to my mate Frank Vincent. I mention him solely because I know he is not here to defend himself. Rumour has it that his Honour's loyalty to clients was so great that he obtained the position of Chairman of the Parole Board so he could look after them when they were eventually released. Mind you, not all the prisoners he has had to deal with have been grateful and his Honour has received some interesting mail. One letter commenced "Dear Maggot" and concluded "Yours sincerely". But the item that really impressed him was a Christmas card with a beautiful illustration on the front together with the words "Jesus Loves You", which, when opened, continued: "Personally I think you're an arsehole". Well that's enough publicity for him.

My own first memory of Pentridge was as a young student. I had come to witness a play performed by the prisoners entitled "The Caine Mutiny Court Martial". This was based on a book by Herman Wouk, (I throw that in on the off-chance that there are any literary people here.) The leading role was brilliantly played by John Bryan Kerr, an inmate who had been convicted of the murder of a young woman on a bayside beach: see *R. v. Kerr* (No.1) (1951) V.L.R. 211 and *R. v. Kerr* (No.2) (1951) V.L.R. 23. I must cure myself of this habit. I've been writing too many judgments recently.

At the end of the evening, in my excitement at meeting the cast, I lost the



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plastic pass I had been issued. I can still remember a huge warder, being appraised of this information, calling out to a colleague: "Make that one more for breakfast".

My next recollection of Pentridge was as a barrister. It was of a young prisoner emerging from the prison bakery with his arms full of steaming freshly baked bread rolls, calling out to me as he passed: "I'm bloody glad I pleaded guilty".

But prisons are not, of course, happy places. One of my early clients, after assaulting a fellow inmate, had been transferred to the notorious H Division. There prisoners were permitted to speak only when spoken to, and their initial activity was working on a rock pile to produce road screenings.

Those who behaved themselves were fortunate enough to graduate to brush making or, better still, assembling electrical components.

In an endeavour to get out of H Division my client had driven a three-inch darning needle into his right eye. Fortunately doctors at the Eye and Ear Hospital managed to save his sight. It was shortly after this case, in December

1972, that Ken Jenkinson, Q.C., (as he then was) was appointed to conduct an inquiry which included prisoners' complaints about treatment in 'H' Division. I understand that he was invited to try the rock breaking. He managed to get the sledge hammer above his head but when it hit the rock it slewed off at right angles taking him with it. The warder in charge remarked encouragingly: "You improve with practice you know".

In his report of September 1973 Mr Jenkinson found that a number of prisoners were habitually subjected to ill-treatment by the unlawful violence of several prison officers in H Division.

Some years later another H Division inmate said to me, with attempted black humour: "Everyone in prison does it hard in their own way. The terrible thing about H Division is hearing the men crying at night. I've had to change my mattress three times in the last month — they grow mildew from the dampness."

On many occasions in my early days at the Bar I sat in court whilst Judge Stafford, who might be described as a heavy teetotaler, intoned: "The path to Pentridge lies through the door of the public house". A colleague on the County Court Bench, Judge Gamble, was renowned for his great enthusiasm for all things alcoholic. On one occasion he said to Judge Stafford: "Stafford, we have something very much in common".

"What do you mean?" queried a horrified Stafford. To which Gamble responded: "We are neither of us, moderate men." As some of you will have discerned, that little snippet has a very tenuous link to this evening's subject, but I rather liked it. (Having seen your reaction I can't understand why.)

Apart from the violence perpetrated by inmates upon each other, this prison has seen State-authorised violence. In 1957 William O'Meally, the State's longest serving prisoner, escaped with

another inmate through the main gate of Pentridge, wounding a prison officer with a revolver that had been smuggled into the prison. Apart from receiving long sentences, both were ordered to be flogged. These were the last floggings in Victoria. The last hanging in Victoria was, of course, that of Ronald Ryan, which occurred at 8 a.m. on 3 February 1967. Many of you will remember precisely what you were doing at the time this event occurred. I was driving in my battered FJ Holden to the Ringwood Court of Petty Sessions when the news of the execution came through. I felt sickened by the barbarity of the event. There was a public outcry over the Ryan hanging that led eventually to the abolition of capital punishment in Victoria.

Nothing I say should be taken as suggesting that prisons are not needed. Prisons have been described as a necessary evil, and so they are. But society has the right to protect itself from those who threaten the community at an individual or general level; and when the State becomes the agent of punishment for the individual victim, retribution will always be an element of the sentencing process.

It is perhaps trite to say that punishment should not involve harsh conditions of the type that existed in much of this prison for so many years. Nor should it involve the exposure of inmates to the risk of violence from their fellows. The essence of punishment by imprisonment is the deprivation of freedom. The loss of freedom to be with loved ones and friends; the loss of freedom to go shopping, or to the cinema, or to kick a football in the park; and the loss of freedom to do anything, on any day, which does not conform to the prison regime. That is what punishment is all about, and a sentence of 10 years to be served in the Sheraton Hotel is ultimately just as onerous as any sentence to be served behind bluestone walls.

An old client of mine put it this way: "The worst day on the outside is better than the best day on the inside".

There is an old French proverb: "If all were known, all would be forgiven". I became very fond of quoting this proverb when making a plea for leniency. On many occasions I obviously did not make enough known, because, judging by the sentences imposed on my clients, very little was forgiven.

The proverb, of course, is not true. But if all were known, much would be explained.

What has to be remembered is that such factors as poverty, unemployment, oppression and the lack of opportunity to achieve desired goals are the genesis of criminal activity. There is an inexorable link between the commission of crime and economic, social, and intellectual disadvantage.

We hear talk about "the war against crime". It is a meaningless phrase. It assumes a battle that can be won. But crime will always be with us, just so long as the social injustices that generate it are with us. Those injustices will not be solved by legislating for longer and longer prison sentences. Such a simplistic approach can never solve the complex social issues that face this society.

Of course, we can put prisoners out of circulation by warehousing them for longer periods of time. But one day, almost without exception, the people we lock up will return to our community. Even the economic rationalist may be brought to realise that the cost of operating prisons syphons off money which may better be used in tackling the problems that generate crime in the first place.

It is precisely because today's prisoners are tomorrow's neighbours, that we need to concentrate upon the reformation through rehabilitation of the inmates of our gaols. Apart from the provision of humane and accountable prisons, the need to develop and fund comprehensive educational and skills programs within our gaols should be a paramount objective. Even putting aside the moral imperative, enlightened self-interest demands no less of us. We need to be very clear indeed that the inmates of our prisons have a worth and value that is not to be measured on the basis of the profit per unit.

In an article in *The Bridge*, a magazine published by VACRO (the Victorian Association for the Care and Re-settlement of Offenders) Justice Vincent (there's that man again) stated:

The sad progression of deprived, abused or disadvantaged young people through grossly inadequate institutions from which they emerge without adequate educational or social skills but with a strong sense of alienation from society, has been a continuing aspect of our history.

Our prisons are over-crowded and, in spite of relatively recent efforts at improvement, are, for the most part, primitive and dehumanising.

There is still an enormous amount remain-

ing to be done in the establishment of prison industries and training schemes.

Our post-release support systems are appallingly inadequate; a state of affairs which must have some influence on the rate of recidivism.

Whilst the economic cost of any serious attempt to deal with these questions would be very substantial, I have no doubt that the economic and social costs of our failure to deal adequately with them have been, and will continue to be, massive indeed.

That was written a decade ago. No doubt we have come some distance since then, but there is still a long way to go. And we, as lawyers, should support initiatives for progressive reform.

As we are about to set off on our tour of this prison, I leave you with the words of Oscar Wilde, from his poem "The Ballad of Reading Gaol":

I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who lie in gaol
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.

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