Compare the *Community Protection Act* with the *Violent Offenders Bill* before Parliament at the moment.

The *Violent Offenders Bill* broadens the previous proposal which was aimed solely at keeping Webb in prison. If the legislation is applied on a wider scale, it would enable the prison term of people with personality disorders to be extended by three years and possibly longer — if they are deemed potentially dangerous to the community.

It is unjust to have made adjustments and exceptions to the principle for one individual, imprisoning him for his personality and for a crime he has yet to commit. But to apply it on a wider scale would be *wrong*; it would be wrong for a democratic and humane society.

If the Bill were to be passed, 'we would have busloads waiting outside Pentridge',[6] thus opening the doors for capital punishment to be considered and reintroduced into Australia. Not as a means of punishment, but because our gaols would be overcrowded with people who have 'personality disorders' and who are believed to be 'dangerous'.

If the Bill is passed it would result in a shift of powers to certain officials. The question raised from this is: who has the right, the power and the delegated authority to send an individual to prison for a crime which has yet to be committed and to predict and identify the dangerousness of other individuals? The answer is simply 'you cannot predict dangerousness . . . it is a psychological impossibility to predict dangerousness'.[7] Thus being sent to or kept in prison is an unjustified action.

The danger of exploitation of law in the future will be an absolute certainty if the Bill is passed. We only have to look at the situations in China and Chile, etc. to see and understand the consequences of such actions and of such authority being allocated — the abuses of this power. The Bill not only erodes human rights, but will place a huge social and economic cost on the community. It will further destroy the fundamental principles that bind together a society. The principle which we have all been brought up to believe and honour is that *Justice* demands the equality of treatment for all before the law; this no longer applies, if the Bill is passed.

With the Bill come too many exceptions to the principles; the outcome could be a human being locked up in prison because society has made a mistake in wrongly predicting her/him to be dangerous. It must be questionable whether punishment for such reasons can be justified.

Has justice been done by these pieces of legislation?

This legislation has divided the legal profession and society. I have come to two conclusions. One side of the argument argues that we may not believe in the injustice or morality of these pieces of legislation, but the law is necessary; it is necessary to protect society against such 'dangerous' and 'violent' individuals. It is a choice between keeping Webb and others, who are diagnosed as having a personality disorder and considered a danger to the community, in prison after their sentences have expired or allowing them freedom and interaction with the community again. The risk, some believe, is too high. Therefore these individuals are subjected to what may be a life sentence. What hope is there for these 'prisoners'? Surely the 'involuntary treatment of people with anti-social personality disorders would be destructive rather than constructive'?[8]

The other side argues: how can justice be done if we keep individuals in prison because we consider or 'predict' them to be a danger to the community? In applying the *Community Protection Act* to Webb, we have already shattered and destroyed the principles of our justice system. The *Violent Offenders Bill* will only further assist in the deterioration of a humane and just society.

I believe Webb committed his crime and now has done his time. Times have changed and people do too. If the Government isn't willing to release him into society, at least allow him the opportunity to be rehabilitated; surely there are places other than gaol that can assist in this process. Recent reports have shown that he has displayed good behaviour, thus I believe his release should be considered. This man deserves a second chance to start again.

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VAGRANCY

Tudor times in Tasmania

ROLAND BROWNE discusses the crime of vagrancy as it exists in Tasmania.

On 10 February 1992 a 17-year-old youth was arrested in the centre of Hobart and charged with vagrancy. He appeared in the Hobart Magistrate's Court and was released on bail to appear the next day. When the matter was again mentioned in the

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Magistrate's Court on 11 February 1992 police tendered no evidence and the complaint was dismissed.

No explanation was given by the police for their decision not to proceed with the charge. However, one major factor was that the young man was a ward of the state. It would be difficult for the police to prove him to have had 'insufficient lawful means of support' when the *Child Welfare Act* 1962 holds the Director of Community Services responsible for his welfare.

Why vagrancy remains a summary offence is a mystery in itself. The Western Australian equivalent was considered by the High Court in *Zanetti v Hill* (1962) 108 CLR 433, where Dixon CJ commented: 'This description of legislation is traceable back to Tudor times'. Further, in a classic understatement he said: 'it is obvious that to transfer the application of such provisions from rural England in Tudor times and later, to the very different conditions of city life in Perth and give it a just and respectable operation must involve many difficulties'.

In Tasmania the maximum penalty for vagrancy is six months imprisonment; this is clearly a penalty against the impoverished. Further, people charged with vagrancy have the onus cast on them to prove that they have sufficient lawful means of support.

It is time that vagrancy laws in Tasmania were repealed. Given the existence of government and church welfare agencies, the arrest of a person on the grounds of homelessness is tantamount to cracking a nut with a sledgehammer. If our government believes that the destitute and the homeless need to be taken into custody for their own protection, more constructive avenues should be found to achieve this goal.

Roland Browne

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