

normally find long-term detention of refugee claimants. Not only do refugees who come to Australia suffer terrible persecution in their home countries, they suffer the added persecution of a long and perilous journey, long-term detention in isolated locations like Port Headland and a strong possibility of deportation. Not only does this shame the Commonwealth Government, but it should shame all Australians, who have allowed this massive injustice to continue, without speaking out or taking action to end it. If the Federal Government had a *humane* policy on refugee detention, David Kang would *not* be behind bars, Australia Day would not have been spoiled and the Prince would have had an uninterrupted and peaceful visit.

The question is not why do people like David Kang attack symbols of repressive government policies, but rather *why such attacks do not occur more often?* The general public is outraged by real or attempted attacks or assassinations on public figures, but where is that sense of outrage at the injustices and killings that go on every day, like the continuing deaths in custody, still disproportionately affecting Aboriginal people? Hardly a word of protest is raised, and it is left by and large to the Aboriginal community and a few brave supporters to condemn such deaths. Similarly, who speaks for the hundreds of refugees behind bars in this country? A small number of overstretched refugee advocacy groups, a few academics, some churches, and immigrant groups who are frequently the victims of endemic racism. It is no wonder that governments can conveniently ignore the plight of refugees and Aboriginal people, who make up some of the most disadvantaged people in our society.

And so we should not blame David Kang for lashing out symbolically against the Prince, but rather the Commonwealth Government for the inhumane refugee detention policy he was seeking to condemn. What kind of a democracy do we live in which forces those of its citizens who are full of compassion, altruism and justice to *get arrested* and face possible death in order to draw attention to the plight of *others*? Why is it that more and more people worldwide are forced to take *illegal* action because of the inflexibility of government and its unwillingness to change?

But such illegal acts may even be countenanced by our criminal justice system, in special circumstances. The common law defence of necessity can be used by an accused person where he or she is forced to break the law to avoid even more serious consequences. The defence has been relied on by countless political activists in the United States who have been criminally prosecuted, mostly for acts of civil disobedience connected with the nuclear or peace issue, and some have been acquitted. In the 1980s I used the defence on several occasions to defend political activists protesting the importation of uranium from Namibia, contrary to UN Resolutions, and the demolition of apartments to make way for multi-million dollar condominiums. In only one case, however, did it succeed. A woman had campaigned ceaselessly to stop pesticide spraying in her neighbourhood. She had circulated petitions, written letters, garnered the support of the council, and yet the spraying continued. And so one day she simply laid down in front of the spray truck, and was swiftly arrested. A brave judge in suburban Montreal agreed that she had done everything possible to stop the harm, and that the potential danger was much greater to society than holding up a spray truck for a few hours, and thus she was acquitted.

The defence is, understandably, *extremely* difficult to succeed with, since we are constantly reminded the spectre of anarchy and mass lawlessness lurks around the corner, if the door were to be opened too far. As one judge in New South Wales ruled, 'public policy has required a sparing use of the defence'. But it is an extremely powerful instrument because it allows, in a limited number of circumstances, citizens to 'take the law into their own hands' for the good of society while avoiding the hardship of a criminal record. It is thus in furtherance of *participatory* democracy, because it encourages people *themselves* to be active participants in the democratic process by taking action to correct social problems. In David Kang's case he had done everything possible to bring an end to long-term refugee detention (as did human rights organisations and the international community). He acted sincerely and in good faith, and he seized the stage in order to avoid a greater evil, namely the continued injustice of hundreds of refugee claimants wasting their lives behind bars. It must be kept in mind that only a starting pistol was used. He never intended to cause physical harm to the Prince, but only to engage in a symbolically-charged act of political theatre.

The only honourable action in David Kang's case is to immediately release him and all the refugee claimants in detention, and for the Federal Government to make urgent and sweeping changes to its refugee detention policy.

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## LAW AND ART

### *A vivid picture of injustice*

**ANIA WILCZYNSKI discusses an artist in residency program at Macquarie Law School.**

*These paintings are not intended to please in the traditional expectation of objects designed to aesthetically delight the senses . . . The first concern was to use the language of the visual image to give expression to the understanding of a fundamental and disturbing feature of the human condition*

*David Boyd*<sup>1</sup>

Artist David Boyd has always had a passionate commitment to issues of social justice. He once said that he decides what to paint about by 'work[ing] up anger on a particular issue'.<sup>2</sup> His earliest work as a painter was a series on Australian explorers in the late 1950s, followed by 'The Tasmanians' series based on the dispossession and genocide of the Tasmanian Aborigines. Another series painted in the mid 1960s examined the power and authority of the Church and State.

However, Boyd is best known for his paintings on legal themes, beginning with the 'Trial' series in the early 1960s. His interest in the legal system was inspired by outrage at the injustice suffered by the earliest Australians. A stint as a clerk in a solicitor's office as a young man, a great-great-grandfather who was the first Chief Justice of Victoria, and a grandmother involved in penal reform and women's rights, also

provided some connections with and insight into the legal system.

David Boyd's paintings raise a number of powerful and disturbing issues concerning the law, and particularly the criminal justice system. In one of the paintings in the Trial series, 'The Tribunal' (1962), three solemn-faced, blank-eyed and bewigged judges hold a head between them, symbolising their control over the fate and life of the accused at trial. In one of the most pessimistic and disturbing of Boyd's paintings, 'They Prey on the Carcass of Despair and Malcontent' (1994), three lawyers with biting teeth and cruel and savage faces feed on a human carcass, represented by two legs and a formalised mask head. In some of the paintings, particularly the recent 'Clown in the Tree' series, he has presented a more sympathetic image of the legal system, with the lawyers and judges portrayed often appearing confused and child-like and in conflict over the roles they are required to carry out. For example, in 'Clown Comforting Judge' (1963), a clown with a death sentence black piece of cloth on his head caresses the face of a judge. According to Boyd, the message behind this is that:

... a compassionate and humane judge might be discomfited when obliged by law to impose a mandatory sentence that would put an individual behind bars or on the end of an executioner's rope.<sup>3</sup>

Not surprisingly, David Boyd's paintings have always inspired considerable controversy. As one commentary has put it,

Boyd's paintings became regular storm centres bringing forth enthusiastic praise and vicious abuse in about equal proportions.<sup>4</sup>

### David Boyd: Macquarie University Law School's artist-in-residence

In 1992 Macquarie University held a retrospective exhibition of David Boyd's work, spanning the years 1957 to 1992. At a social function held to thank him for donating one of the Trial paintings to the Law School, Boyd met the Head of the School, Gill Boehringer. This led to Boyd being invited to become an 'artist in residence'. Boyd accepted the invitation, since he perceived a similarity in his own philosophy towards the legal system and the critical approach adopted to the study of law at Macquarie. It is believed that this is the first 'artist-in-residency' program established at an Australian law school.

As part of his association with Macquarie, David Boyd was invited to discuss his paintings in a two-hour seminar of students in the Criminal Law and Procedure course in October 1994. In a previous class the students examined the large collection of Boyd's paintings on display in the university library and law school, and prepared questions to ask the artist. A booklet prepared by Boyd for the students, with explanatory notes on some of his major paintings, was also distributed.

The seminar was informal, with discussions about specific paintings leading to (at times very vigorous!) debate about the more general issues raised and Boyd's philosophies on the legal system. For example when asked by one student why many of the paintings used images of stones, monoliths and eyeless faces, Boyd explained that this was meant to depict the 'coldness' and the 'dehumanising impact' of being caught up in the legal process.



Many of the issues explored in the seminar had been previously raised in the Criminal Law and Procedure course, such as the role of the criminal justice system, the merits or otherwise of imprisonment, the role of judges in developing the law, and capital punishment. Although critical of the failures of the legal system, Boyd also sees some glimmers of hope. He regards the law as having a positive role to play in achieving social justice, and cites the High Court's *Mabo* decision on Aboriginal land rights as one positive example.

### Using art as a teaching tool

Paintings such as those by Boyd provide a useful teaching tool because they have a very powerful and immediate visual impact and neatly encapsulate a whole series of complex ideas about the legal system.

As with generations of art critics, the students had strong positive and negative reactions to the paintings and were sharply divided about whether they 'liked' the artist's work. As one student remarked:

[The paintings] provoke quite a response... There are... people who like them and there are people who dislike them... there are none sort of in the middle.

Regardless of whether they agreed with the themes explored in the paintings, it appeared that the majority of students found the seminar a useful experience which stimulated them to think about the issues raised. For example students later described the paintings and discussion as 'thought-provoking' and 'carrying a pretty powerful message'.

The arts have always been used as weapons for reform. Whilst Dickens exposed the injustices of the 19th-century legal system with words, Boyd uses paint to express his sense of outrage in the 20th century. For Boyd, the paintbrush is mightier than the sword.

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### References

1. Boyd was referring specifically to the Trial series of paintings when he made this comment.
2. Benko, N., *The Art of David Boyd*, Lidums Art Gallery, Adelaide, 1973.
3. Graduate School of Management, Macquarie University, *A 'Survey Retrospective' Exhibition 1957-1992 by David Boyd*, Graduate School of Management, North Ryde, 1992, p.xviii.
4. Graduate School of Management, above, p.i.