

# WORDS FROM THE PRESIDENT



*His Honour, Judge R.W. Grubb*

In South Australia, of recent times, there has been a flurry of renewed interest and debate on the age-old topic of crime and punishment. Judging by the letters published in the press and from public comments made by some judges and many citizens, there seems to be a consensus, at least among the vocal minority, that the Courts, at all levels, have become too soft and that the only proper solution for Society's present malaise is longer and longer terms of imprisonment.

Personally, I find this view curious, to say the least. It seems to me that the factor most vital to the health of the criminal law is restraint. This is a theme developed in the Report (published in 1976) of the Canadian Law Reform Commission. Another theme in that Report, which I endorse, is that, like Canada, we have too much criminal law. I agree, too, and that very strongly, with the assertion that the formality, solemnity and drama of a public criminal trial, before Judge and Jury, should be reserved for only the most serious cases. It should always be remembered that not all instances of the same crime are equally serious. I repeat the example given in the Canadian Report. "A thug's attack on an elderly woman is far worse than the face slap a girl may give her boyfriend, though both constitute assaults in law."

In my experience and to my certain knowledge, far too many trivial cases are tried before Judge and Jury. This is an area of the criminal law calling out for restraint. Next, we should be concerned to exercise restraint in the extent, the scope and the complexity of our criminal law.

As far as penalties are concerned, the greatest restraint should be directed to imprisonment. This should always be the punishment of last resort. Here I take issue with those who publicly clamour for longer and longer terms of imprisonment; for harsher and harsher mandatory penalties.

Certainly, crime must be shown not to pay. Apart from the enormous cost it imposes upon Society and its doubtful value as an act of deterrence or retribution, imprisonment imposes little cost on the recidivist, who must be overcome by feelings of *deja vu* every time the doors clang shut behind him. After a brief deprivation of liberty, he is then free to enjoy the fruits of his crime.

Undoubtedly, the use of the suspended sentence and the practice of regarding actual imprisonment as being the punishment of last resort, does and will allow more scope for other types of penalties — if they are made available to the Courts.

On penalty which should be more widely available and more widely used and one which I suggest should not be subject to any form of limitation, as far as enforcement is concerned, is the restitution order. Here again, I echo the Canadian Report. To compel offenders to make restitution to their victims is one of the most fruitful types of punishment. It brings home to the offender the wrong he has done to his victim, it meets the needs of the victim, and it satisfies society's sense of justice and the desire we all have, to see that the offender does not profit at the expense of his victim's suffering. Restitution has a vital place in any decent system of criminal justice; but I make the point, that where and whenever possible, it must be the criminal who pays, not society. Compensation should be paid to victims of crime. In my view this should not be limited, as it is now, only to compensation for personal injury; it should include compensation for property damage. What I do say is that the liability must always remain with the criminal; that society should compensate, perhaps in the first instance, but ultimately only when it is not possible to recover from the criminal. I will be most interested to see what comes of the recent suggestions for the establishment of

a Victims of Crime Compensation Fund by imposing imposts in fines in some circumstances and in others by paying a percentage of monies recovered by way of fines into the Fund.

Equally vital, as the Canadian Report makes clear, is a second kind of reparation. Society, as well as the victim, has a claim to reparation — a claim not satisfied by "payment in the hard coinage of imprisonment." That claim is better met by more creative penalties, like community service orders, compelling the offender to do something positive to make up for the wrong he has done society.

These thoughts and comments were prompted by a large part of the articles featured in this issue of "Forum", as well as by the recent announcement by the Honourable the Attorney-General of South Australia that legislation will be brought

before Parliament which will give the Courts in this State greater facility to make orders for restitution, as well as new powers to make community service orders and orders for periodic and week-end detention. The Victorian and Tasmanian examples are to be examined. We will await this legislation with great interest.

The more effective our criminal law; the more it is attuned to today's needs, not so much in what it proscribes, but in what it allows the Courts to prescribe, when making the punishment fit the crime as well as the criminal, the closer will we come to being able to show that we do have concern for the victims of crime and the more effectively will we be able to demonstrate that crime does not pay.

Roy Grubb

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