A ONE MAN DANGEROUS OFFENDERS STATUTE — THE COMMUNITY PROTECTION ACT 1990 (VIC.)

BY DAVID WOOD*

1. *Introduction*

In April this year an extraordinary piece of legislation, the Community Protection Act 1990 (Vic.),[1] passed through both Houses of the Victorian Parliament, and received royal assent. The Act is not, as its name might suggest, a general measure to provide for the protective sentencing or the preventive detention of persons deemed to be dangerous. Despite the broad sweep of its title, the Act is concerned with protecting the community from threats emanating from only one source, and that is a particular individual, namely Garry Ian David (also known as Garry Ian Webb). A more appropriate title would be the Garry David Act, and no doubt the Act will come to be known as that.

It is surely a bizarre state of affairs when a government considers it is necessary to introduce a Bill which enables one particular named individual to be detained. Who is Garry David, and how did he gain the dubious distinction of having an Act passed that applies solely to him? This paper sets out the background to the Community Protection Act and briefly summarizes it. It then discusses some important issues raised by the Act, and finally considers alternative solutions to the problem raised by David.

2. *Background*[2]

David came from an unstable family background. His father spent most of his life in prisons or psychiatric institutions. His mother was an alcoholic. David was placed in an orphanage when he was five. His criminal career started at twelve after a number of escapes from the orphanage. He was placed then in the Turana Boys' Home. In 1972, at eighteen, he was considered too uncontrollable for the Home and was transferred to Pentridge. When released from prison in 1980, he stole a car and rifle, and drove to the Mornington Peninsula with the express intention of killing as many police officers as he possibly could. He could not find an attended police station, so he went into a pizza parlour and smashed a

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1 No. 10 of 1990.

2 This account draws on the Attorney General's Second Reading Speech, and the ensuing debate in the Legislative Assembly, in particular the contributions of Robert MacLellan, the shadow Attorney-General, and of Robert Cooper, the Member for Mornington, and on reports in the *Age* (Melbourne). To that extent, it provides an 'official' view. Many of the factual claims, in particular those contained in police reports, are hotly disputed by David's supporters. They cast serious doubts on the way in which police obtained evidence, and hold that they deliberately set out to create a 'moral panic' regarding David.

bottle against a wall to attract attention. The proprietor's wife came out to investigate. David shot her, rendering her a paraplegic. He then lay in wait for the police. Two policemen attended from the Mornington police station. He shot at them, severely injuring one and just missing the other. Police returned fire and wounded David in the legs. He was charged with, and convicted of, two counts of attempted murder.

He received a sentence of fourteen years imprisonment. Because of remissions, this sentence expired on February 3, 1990. At the time of the introduction of the Bill, he was on remand for threatening to kill under section 20 of the Crimes Act 1958 (Vic.).

On January 9, 1990, David was certified under section 16 of the Mental Health Act 1986 (Vic.) as a security patient, and detained in J Ward at Aradale Hospital, Ararat. He appealed against this certification to the Mental Health Review Board which, after a lengthy hearing, reserved its decision. At the time of the introduction of the Bill, there was a good chance of this appeal succeeding. Four psychiatrists had earlier judged him as suffering from an antisocial personality disorder (ASPD) (in common parlance, psychopathy or sociopathy) but not mentally ill, a necessary condition to being classified as a security patient.[3]

The Bill seems to have been introduced because of the Victorian Government's fear that, not only would his appeal to the Mental Health Review Board succeed, but he might also be granted bail pending his trial for threatening to kill. (One criticism of the Government's action was that although the former was a distinct possibility, the latter was highly unlikely. On the other hand, there was the further possibility of David being acquitted.) Given that there is no dangerous offenders legislation in Victoria under which he could be detained, the only other alternative was the *ad hoc* legislative measure it proposed.

As the Attorney-General pointed out in his second reading speech:

> [David's] conduct in prison has also involved almost continuous acts of violence, including starting fires and assaulting police, prison officers and prisoners. He has also threatened various kinds of violence, including threats to commit multiple murders, particularly of police, prison officers, staff and people treating him.[4]

A Bureau of Criminal Intelligence Report prepared in September 1989 lists thirty-eight assaults by David on prison officers, police and prisoners between 1972 and 1989. The incidents included shooting, stabbing, threatening an officer with a metal hook and standing over other prisoners. According to the Report, David mutilated himself seventy seven times between 1978 and 1989. His stated ambitions included being the first in Australia to kill a Prime Minister or Premier, and to be Australia's worst mass murderer: 'I want to butcher, torture and kill

[3] Strictly, the prisoner must 'appear' to be mentally ill (paragraph 16(1)(b), sub-paragraph 16(2)(a)(i)). Note that David could not be detained alternatively as an involuntary patient under section 8 of the Act, as ASPD sufferers are explicitly excluded from this provision, unless they independently appear to be mentally ill (paragraph 8(1)(a)). Under paragraph 8(2)(l) a person is not to be considered to be mentally ill by reason only of his having an antisocial personality. There is a further question of whether the phrase '[having] an antisocial personality' is to be interpreted as '[suffering from] an antisocial personality disorder', or more broadly. See Law Reform Commission of Victoria, *The Concept of Mental Illness in the Mental Health Act* 1986 (Report No. 31; April 1990).

[4] Transcript, p. 4.

hundreds and if possible thousands'.[5] In a letter to Prisoners' Action Group spokesman, Mr Jeff Lapidos he said: 'Russell St., Hoddle St., Walsh St., all of these will be chicken shit to what is soon to come, but my targets will be more selective, more or less.'[6]

The Victorian Government's determination to keep David incarcerated was not questioned in either House. Despite vociferous objections, Opposition members in the end supported the Bill. The shadow Attorney-General, Robert Maclellan, described the Bill as 'one of the most obnoxious Bills that has ever been introduced into Parliament'.[7] Nevertheless, as he pointed out, it was 'probably almost unanimously held around Parliament' that David 'is nowhere near being ready to go free into our community'.[8]

3. *The Act*

The Act is brief, containing only sixteen sections. The purposes of the Act, as stated in section 1, are:

> (a) to provide for the safety of members of the public and the care or treatment and the management of Garry David, a person who has been convicted of attempted murder and other offences and is, or has been, in a psychiatric in-patient service; and
> (b) to provide for proceedings to be instituted in the Supreme Court for an Order for the detention of Garry David.

Paragraph (a) is as misleading as the title to the Act. The Act has nothing to do with the protection of the community in general. It is only concerned with 'the safety of members of the public' insofar as this is assumed to be threatened by one particular person, namely David. This rather extravagantly described purpose reads as an exercise in public relations or window-dressing, rather than providing an accurate indication of the contents of the Act. The reference to the 'care and treatment' of David suggests that the Act is more concerned with his rehabilitation, than protecting the public from him. Only the term 'management' leaves open the possibility that the real object is incapacitation.

It is paragraph (b) that makes clear what the Act really does, namely, to establish a procedure for detaining David. The crucial section is section 8. This enables the Supreme Court to order that Garry David be placed in preventive detention. Under sub-section 8(1), the Supreme Court must be satisfied — but only on the balance of probabilities — that, first, David is a serious risk to the safety of any member of the public and, secondly, that he is likely to commit an act of personal violence to another person. If the Supreme Court orders that Garry David be placed in preventive detention, it must specify whether that is a psychiatric in-patient service (in which case, under section 10, he is deemed a security patient under the Mental Health Act 1986), a prison (in which case he is deemed a prisoner under the Corrections Act 1986), or another institution of

5 *Age* (Melbourne), 14 April 1990.
6 *Ibid.*
7 Victoria, *Daily Hansard* (proof edition), Legislative Assembly, 10 April 1990, 11.
8 *Ibid.* 15.

detention.[9] It must also specify a period of detention up to a maximum of six months.[10] Under section 11, David is to be provided with standards of care or treatment that are at least equal to those provided to other detainees in the institution in which he is detained.

Under section 4, an Order that David be placed in preventive detention can only be issued if an application is made by the Minister. The application may be made *ex parte*.[11] Section 9 gives the Court the power to extend, vary or revoke the Order, but again, only on the application of the Minister. Under section 12, David cannot be discharged or released from preventive detention except in accordance with an order of the Supreme Court.

Section 7 concerns the hearing of an application for an Order. The Court is not bound by rules and practice as to evidence, except as otherwise provided in the Act.[12] It can arrange for examination of David by doctors, psychiatrists and psychologists, and consult a wide range of records, reports and other documents. As the Explanatory Memorandum to the Bill puts it, this section

> allows the Court to be fully informed as to all matters that are relevant to the application and any order sought and facilitates the Court's function by giving the Court the widest possible power to receive and obtain evidence without being restricted by the rules of practice as to evidence[13] and allows the reception into evidence of reports, records and documents of all kinds that might bear upon the application.[14]

To rule out the possibility of David being free pending the hearing of the application, section 6 gives the Supreme Court the power to make an interim order detaining David. Similarly, to prevent David being free during the hearing of the application, section 5 provides for David to be detained (or continue to be detained) in a prison or psychiatric in-patient service (as the case may be) immediately on the filing by the Minister of the application and until its determination.

Turning to the remaining provisions, section 2 states that the Act comes into operation on the day it receives royal assent, section 3 identifies Garry David, the sole person to be subjected to the Act. Section 13 provides for temporary release from detention in the case of medical necessity. Section 14 provides for David's custodian to report to the Minister at any time or as the Minister requests, and in any case, every six months.[15] Section 15 sets out certain particulars concerning David and his detention that the report is to contain.

9 What are these institutions? As the shadow Attorney-General pointed out, '[h]onourable members have not been told what the 'some other places of detention' are, but I am sure they will be interesting institutions'. He suggests that the provision is there because 'the government anticipates that a general detention of dangerous persons Bill will be passed within the next twelve months'. Victoria *Daily Hansard* (proof edition) Legislative Assembly, 10 April 1990, 18.

10 Community Protection Act 1990 (Vic.), s. 8(2).

11 *Ibid.* s. 4(2).

12 *Ibid.* s. 7(1)(a).

13 Note that s. 7(1)(a) was amended so that instead of the Supreme Court not being 'bound by rules or practice as to evidence', it is 'except as otherwise provided in this Act . . . bound by rules and practice as to evidence'.

14 Or as Maclellan put the point in debate, the Act 'will allow the desk of some poor, unsuspecting Supreme Court judge to have piled upon it every piece of evidence such as medical and police records, Adult Parole Board records, prison records, Mental Health Review Board transcripts and anything with either a prejudicial view of or to the advantage of the accused.' Victoria *Daily Hansard*, (proof edition) Legislative Assembly, 10 April 1990, 10.

15 Which is the maximum length of an Order under s. 8(2).

Section 16 is a sunset clause, which provides that the Act expires on the anniversary of its receiving royal assent. As the Order can only be in force six months at a time, there can be only one effective renewal for a further six months.

4. *Some Issues*

To start with, a number of crucial terms in the Act are extremely vague. What is meant by the 'safety of any member of the public' under paragraph 8(1)(a), and by an 'act of personal violence to another person' under paragraph 8(1)(b)? Given that both paragraphs must be satisfied, it appears that the latter paragraph has the effect of narrowing the former paragraph rather than adding an independent criterion. That is, the only threats to the 'safety of any member of the public' contemplated by the Act are those emanating from 'act[s] of personal violence'.[16] But how violent must an act be to come under this paragraph? What is the threshold of violence envisaged? What does the qualifier 'personal' add? How can violence 'to' a person be anything other than personal?

The terms 'serious risk' in paragraph (a) and 'likely' in paragraph (b) compound the problem. These are probabilistic terms. The Supreme Court is, therefore, to be satisfied on the balance of probabilities not that certain states of affairs will exist or events will occur, but that there is a certain probability that such will be the case — on the one hand, that David is a 'serious risk' to the safety of a member of the public, and on the other hand, that it is 'likely' that he will commit an act of personal violence to another person.

Secondly, how will the types of evidence referred to in section 7 on which such probabilistic judgments be made themselves be assessed? Predictions of future violent conduct are notoriously unreliable. The Court is given no guidance as to how to proceed. There is no reason to suppose that judges are any better at making such predictions than psychiatrists and statisticians. Indeed, there is every reason to suppose that they will be worse, owing to their lack of experience.[17] Again, the clear assumption is that the evidence in favour of granting a detention order will be so overwhelming that there will be no need to subject it to detailed examination and assessment.[18]

Thirdly, the Act runs counter to one of the principles generally included within the rule of law. Whatever else this notion may involve,[19] it requires that laws be of general application, that individuals be subjected to the same law. David is patently to be subjected to a different law, a law that explicitly applies only to

16 For a discussion of the concept of dangerousness — a broader view of possible threats to the safety of members of the community — see Floud, J. and Young, W. *Dangerousness and Criminal Justice* (1981), Chapter 1, '"Dangerousness" in Social Perspective'.

17 The obvious alternative would be put this matter in the hands of the Mental Health Review Board, but it seems that the Government's view was that MHRB was not to be 'trusted'. As pointed out below, the legislation puts the Supreme Court in an invidious position.

18 A further problem is raised by the fact that the Supreme Court may 'arrange' for David to be examined by a doctor, psychiatrist or psychologist. Obvious civil liberties issues are raised by the question of whether he must submit to such examinations.

19 And it is prone to manipulation by conservative lawyers and political thinkers who use it to attack the welfare state and the broad discretionary powers such a state involves. See Walker, G. de Q. *The Rule of Law* (1988), and the Review by Sampford, C., (1989) 17 M.U.L.R. 179.

him. Someone else identical with him in all relevant respects (even those who present a far greater threat to the community) escapes the ambit of the Community Protection Act for no other reason than that that person is simply not Garry David. As Maclellan put it, David 'is to be condemned, not by a process of law but by a process that must be compared with the historical Bills of attainder'.[20]

The specific nature of the legislation also appears to infringe the doctrine of the separation of powers. Implicit in this doctrine is the requirement that the laws which legislatures pass are general in nature — it is for legislatures to pass general laws, and for courts to determine particular cases under them. But the Community Protection Act sets up a procedure that is to be applied only to one person.

A more honest approach would have been to give the Minister the power directly to detain David — to have detention by executive decree. (In the popular press, the Act seems to have been interpreted this way.) After all, it is not envisaged that an application for an Order to detain David would be refused. The Government's approach to the problem indicates that if it were in any doubt about this, it would have given the Minister the power.

As it is, the Government gets the best of both worlds. It escapes the charge that the Minister is acting as a judge in detaining David by executive decree; and it is able to pass ultimate responsibility for the continued detention of David onto the courts. In course of debate in the Legislative Assembly, the former Leader of the National Party, Mr Ross-Edwards said that his party 'is not prepared to accept the responsibility of Garry David being set free', and that, '[a]s an individual I am not prepared to have it on my conscience what he might do if he is released'.[21] Other members obviously thought the same, though they were not prepared to be so frank. However, the same politicians who were not prepared to shoulder the ultimate responsibility themselves, were quite prepared to pass this onto the Supreme Court. Presumably, Mr Ross-Edwards, and those who thought like him, were quite prepared for a Supreme Court judge to have on *his* conscience 'what [David] might do if he is released'.

The legislation puts the Supreme Court in an invidious position. It would take a brave Supreme Court judge to find that the case for placing David in preventive detention had not been made out. If he so found, he would be frustrating the sole purpose of the Act, which is, after all, to enable this particular person to be detained. If, on the other hand, as is expected, he issues the order, it will be difficult for him to escape appearing that he is simply doing the Government's bidding. The procedure is general in nature, but will only be used once.[22] Given

[20] Victoria *Daily Hansard* (proof edition) Legislative Assembly, 10 April 1990, 10. This is not literally accurate, as the Act itself does not declare David to be guilty of any crime. However, it is similar in principle, or indeed worse, for it enables him to be detained without any finding of guilt. An interesting comparison is with the two Ceylonese Acts held invalid by the Privy Council in *Liyange v. R.* [1967] 1 A.C. 259 on the grounds that, being directed 'to the trial of particular prisoners charged with particular offences on a particular occasion', they 'involved a usurpation and infringement by the legislature of judicial power inconsistent with the written Constitution of Ceylon . . .' (Headnote, at 620.) The Acts in question were designed to secure the conviction, and enhance the punishment of, participants in an unsuccessful coup d'etat. See Marshall, G. *Constitutional Theory* (1971) 120-3.

[21] Victoria *Daily Hansard* (proof edition) Legislative Assembly, 10 April 1990, 22.

[22] Strictly, possibly twice, since the Act lasts for one year, and the maximum period of a detention order is six months.

that the outcome is not seriously in doubt, the Act creates only the appearance of procedural fairness.

Indeed, the possibility of constitutional challenge is interesting to note. The doctrine of parliamentary sovereignty has recently been attacked, some judges expressing reservations about whether an Act of Parliament is valid irrespective of its content. For instance, Sir Robin Cooke, President of the New Zealand Court of Appeal, has provided a modern restatement of the Lord Coke view that 'when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such Act to be void'.[23] In *Fraser v. State Services Commission* he suggested that 'it is arguable that some common law rights may go so deep that even Parliament cannot be accepted by the Courts to have destroyed them'.[24] He has expressed similar sentiments in other cases.[25]

In *B.L.F. v. Minister for Industrial Relations*, the New South Wales Chief Justice, Sir Laurence Street, referring to both Coke and Cooke, likewise appealed to a doctrine of fundamental rights. However, he felt forced to admit that, since this doctrine has never actually been applied to invalidate a statute, and indeed was authoritatively rejected by Lord Reid in *British Railways Board v. Picken*,[26] it

> do[es] not provide a safe, independent basis for invalidating legislation that is otherwise within the constitutional authority of Parliament.[27]

The High Court, however, has not felt itself so restrained. In *Union Steamship Company of Australia Ltd v. King*,[28] it deliberately chose to leave the issue open — Lord Reid's 'firm' rejection of the doctrine notwithstanding — thereby inviting a challenge on fundamental rights grounds. In the circumstances of that case, the Court said that it 'need not explore' the question of whether the exercise of a State Parliament's legislative power 'is subject to some restraints by reference to rights deeply rooted in our democratic system of government and the common law.'[29] The present Act certainly offers the High Court the opportunity to explore this issue further, were such a challenge to be brought.

5. *Possible Solutions*

Given that the highly unsatisfactory nature of the solution adopted by the Victorian Government in Garry David's case, how can similar cases — of persons who are highly dangerous as a result of suffering from ASDP[30] — be dealt with in future? There are four main options.[31]

23 *Dr. Bonham's Case*, (1610) 8 Co Rep 107a, 118a; 77 E.R. 638, 652.

24 [1984] 1 N.Z.L.R. 116, 121.

25 *New Zealand Drivers' Association v. New Zealand Road Carriers* [1982] 1 N.Z.L.R. 374, 390; *Taylor v. New Zealand Poultry Board* [1984] 1 N.Z.L.R. 394, 398.

26 [1974] A.C. 765, 782. Lord Reid stated that since 1688 any idea of questioning 'the general supremacy of Parliament' has 'become obsolete'.

27 (1986) 7 N.S.W.L.R. 372, 387.

28 (1988) 62 A.L.J.R. 645.

29 *Ibid.* 648.

30 Note that it is a widely held misconception that all ASPD sufferers are dangerous. See, for example, *Sentencing: Victorian Sentencing Committee Report* (The Starke Report), Vol. 2, para. 10.4.35 (1988).

31 One option which has been suggested in David's case is not canvassed below because it applies only to a specific class of dangerous offenders, namely those who have made threats to kill. The suggestion concerns the substantive criminal law, and involves modifying (where necessary) existing

First, those deemed dangerous as a result of suffering from ASPD could be dealt with in the mental health system, by broadening the concept of mental illness to cover ASPD, and hence enabling them to be detained under the Mental Health Act. The option has immediate appeal. How can it be denied that someone like David is mentally ill? Many will agree with Mr Justice Vincent, when he said in evidence to the Social Development Committee of the Victorian Parliament:

> I have great difficulty coming to terms with the concept that if somebody cuts his ears off and slices parts of his penis off, tries to burn himself with petrol and wants to shoot people, he is not mentally ill. It seems to me that any definition of the role of psychiatric medicine that seems to exclude this extraordinary section of significant mental disturbance is itself crazy.[32]

The Victorian Law Reform Commission favours broadening the concept of mental illness. In a report tabled in Parliament on April 12, 1990,[33] the Commission recommended amending the Mental Health Act to include anti-social personality disorders as mental illnesses covered by the involuntary detention provisions of the Act.

The simple objection to this proposal is that, according to modern psychiatry, ASPD is not mental illness, and one cannot turn it into such by legislative fiat. ASPD sufferers do not experience psychoses, or major acute psychiatric episodes. They do not suffer from thought disorders, such as of delusions or hallucinations, or affective disturbances such as depression or manic episodes. They do not respond to drugs or other forms of treatment. Their need is rather for care. They are no more mentally ill than are the intellectually disabled.

Given that ASPD sufferers do not respond to treatment, placing them in mental institutions would not help, and would be potentially disadvantageous to other patients. ASPD sufferers tend to disrupt psychiatric hospitals at the cost of those who are acutely psychiatrically ill. It is clear why mental health workers do not want the mental health system to be responsible for such people. Locking them in a mental hospital would be no more appropriate than housing them with intellectually disabled persons.[34]

The second option is to deal with those ASPD sufferers who have an established track record of serious violent crime in the criminal justice system, by legislating to provide for special sentences, specifically designed to protect the community from such persons. This option tackles head on the issue of those who are dangerous but not mentally ill. However, there is no reason to suppose

threat to kill provisions, to enable a person to be convicted of such an offence even where the threat is of a general nature. There are obvious objections to this. But this measure could be coupled with tightening bail provisions, to prevent bail in the case of those charged with threatening to kill. The shadow Attorney-General argued for this solution in David's case: 'Why not today introduce an amendment to the Bail Act providing that people who are charged under Sections 20 [threats to kill] and 21 [threats to inflict serious injury] of the Crimes Act shall not be given bail unless their bail is approved by an order of a Supreme Court judge? It happens for murderers, so why not for those who are charged with the exotic offence of threatening to kill?' Victoria *Daily Hansard* (proof edition) Legislative Assembly, 10 April 1990, 11.

32 Quoted by Mr. Robert Cooper, Victoria *Daily Hansard* (proof edition) Legislative Assembly, 10 April 1990, 33.

33 *Supra* n. 3. Specifically, the Report recommends the insertion of a provision stating that 'sub-section 8(2)(l) does not prevent a person who is suffering only from anti-social personality disorder from being considered to be mentally ill'. Law Reform Commission of Victoria, 18.

34 While in Pentridge David was for a time housed with a group of intellectually disabled prisoners, who were easily manipulated by him. To state the obvious, the above two paragraphs hardly do justice to the complexity of the issues involved. See Law Reform Commission of Victoria, *op. cit.* and the references therein.

that the criminal justice system is any more appropriate than the mental health system. The main objection to protective sentences is that they are imposed on top of normal sentences not in virtue of what the offender has done in the past, but what he might do in the future. They are therefore inconsistent with the principle of just deserts.[35] Protective sentencing has been firmly rejected by the High Court as part of Australian common law.[36]

A third option is for some system of civil detention — a new form of detention that lies outside both the mental health and criminal justice systems. Given the objections to using these systems, the argument for some independent system, some 'third way', is strong. The aim of such civil detention institutions would be neither to punish nor treat, but to incapacitate. In theory, this could be done as humanely as possible, with a strong emphasis on care.[37] On the other hand, there are obvious dangers in introducing any new form of detention. The problem of predicting future violent behaviour with anything approaching an acceptable degree of accuracy remains a major stumbling block.[38]

The final option is simply to release dangerous ASDP sufferers (after they have served their normal sentences), and make the community bear the risk they present. This is not as rash as it might seem. The problem of ascertaining dangerousness has already been mentioned. This problem is seriously compounded by the social and political context in which judgments of dangerousness are often made. Considerable pressure is placed on those making such judgments to overpredict dangerousness — to be cautious and play safe, and detain a person 'just in case' of what he might do. The cost of getting things wrong is high, and those recommending release are held responsible.

6. *Conclusion*

No one is satisfied with the way the Garry David case was handled. It seems that the worst possible solution is the blatantly *ad hoc* legislation that the Victorian Government felt compelled to introduce. Despite the unprincipled nature of the Act, the Victorian Parliament was prepared to support it out of fear of the consequences. To them, the end justified the means.

However, all the general solutions canvassed in the previous section have serious drawbacks. Indeed, to end on a highly speculative note, there is a distinct possibility that the debate might come full circle, the idea of any general solution being rejected because of the lack of a satisfactory way of identifying 'dangerous' persons. If attempts to do so invariably result in over-classification, the best solution could well be, objectionable although it is, to resort to *ad hoc* legislation on the very rare occasions it is required.

[35] On the other hand, it is argued that such persons are not wholly innocent, and the public is entitled to 'redistribute the risks' of being victims of such persons. See Floud and Young, *op. cit.*

[36] *Veen v. The Queen* (1979) 143 C.L.R. 458; *Veen v. The Queen [No. 2]* (1988) 62 A.L.J.R. 224. See Fox, R. G. 'The Killings of Bobby Veen: The High Court on Proportion in Sentencing', (1988) 12 *Criminal Law Journal* 339.

[37] Consider suggestions for some sort of 'therapeutic community'. Victoria *Daily Hansard* (proof edition) Legislative Assembly, 10 April 1990, 18.

[38] The author provides a qualified defence of civil detention in 'Dangerous Offenders, and the Morality of Protective Sentencing', [1988] *Criminal Law Review* 424, and 'Dangerous Offenders and Civil Detention', (1989) 13 *Criminal Law Journal* 324.