



Law and Order Issues in the 21<sup>st</sup> Century  
Friday, 18 April 2008, 9.45 am, Banco Court

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**The Hon Paul de Jersey AC  
Chief Justice of Queensland**

**Introduction**

I congratulate the Queensland Law Society on its initiative in convening this important conference. I also express gratitude for the endorsements of the Queensland Police Service, the Bar Association of Queensland, the Law Council of Australia, and LawAsia – the Law Association for Asia and the Pacific.

The program deals with a wide range of practical concerns, and the speakers are conspicuously well qualified, by experience and expertise, to offer enlightenment and challenge. I express my own thanks to the speakers, and especially if I may, to the Minister for Police and Corrective Services and Sport, the Honourable Judy Spence.

The Forum's topic, 'Law and Order Issues in the 21<sup>st</sup> Century', rightly presupposes that at this time in human history, our criminal justice systems face unique challenges. As societal norms evolve, we are forced to ask not only why certain criminal acts are occurring more frequently, but also, whether the mechanisms that are in place to confront them are having the desired effect.

**Changing Norms**

To identify and understand these challenges it is necessary to reflect on some movements in attitudes and approaches over the last decades of the 20<sup>th</sup> century. Those decades witnessed profound social change. One of them is, I believe, greatly significant to the Forum topic. Traditional family units loosened. With that, the conservative, disciplined approach to life which characterised, say, life in the middle of the last century, tended to liberalise. Children came to lack the continual care and guidance of parents regularly at



home. Also, more people were tending to live alone. Perhaps consequentially in some degree, general levels of respect within the community were diminishing.

As well as the lessening influence of the family unit as a force for community stability and order, the period also witnessed a downside of economic development. The prosperity of society saw an ever-increasing gap between the well-off and the financially underprivileged. Young males particularly, especially the unskilled and under-educated, in frustration over their plight, turned to various forms of self-destructive behaviour, and violence towards others.

Related to that prosperity was an increasing materialism in our culture. An obsession with celebrity was fed by intrigue over the fame and wealth of people different from ourselves, whose lives appeared continuously glamorous. That preoccupation with supposed glamour reflected not only a retreat from stability, but a general repositioning of values.

### **New Challenges**

For an apparently ever growing coterie, those values came first to tolerate, but soon to embrace, the so-called 'recreational' drug culture. And that in turn, for more than a few, generated dependence on drugs of diabolical consequence, methylamphetamines currently featuring. The apparently broad availability of deleterious drugs, notwithstanding the conscientious efforts of the police service and the courts, became – in not so recent years, and remains, a matter for deep concern. The liberal, drug tolerant culture in turn spawned its own species of serious crime, characterised by deception, revenge and violence, often severe.

Otherwise beneficial technological development also threw up new opportunities for potential offending. The misuse of the Internet became a prime example, exemplified by the sexual exploitation of children and 'identity theft'. The sexual abuse of children now shamefully accounts for a large proportion of the criminal cases which come before our State's criminal court of comprehensive jurisdiction, the District Court, and the Court of Appeal.



As the availability of natural resources, water for example, decreases, we can expect consequent crime. I have heard anecdotally of the theft of neighbours' water – unsurprisingly when the neighbour is absent. I fear that with more people, the constraining consideration has become 'what can I get away with', rather than 'what honestly should I do or refrain from doing'.

Changing attitudes to the care and treatment of the mentally ill led to the transfer of many from traditional institutional situations into the general community. Absent comprehensive outpatient care, some of those people resorted to criminal activity. The community is challenged to acknowledge that the right response is rehabilitation and proper treatment, rather than punishment as such.

### **New Responses**

Ultimately, the difficulty lies in ensuring that the criminal justice system responds to these developments by implementing solutions that are sensitive to the complexity of these new challenges. In some ways, there has been radical remodelling. The legislatures, for example, have in some instances readjusted mechanisms once considered sacrosanct and unalterable, like the onus of proof and the principle of double jeopardy; legislatures have considered that vulnerable witnesses, like children, should not have to give their incriminating evidence in the presence of the alleged offender, such as the allegedly predatory father; parliaments have authorised the summary confiscation of personal property, where it may be identified with the proceeds of criminal activity; parliaments have facilitated the indefinite detention of especially serious offenders following upon the expiration of a term of finite imprisonment, where considered necessary for the protection of the community; terrorism crime has militated very different approaches to police investigations.

Those have been quite dramatic steps, controversial when taken, and still so in some quarters, and beyond question, steps which in 1950 would have been beyond sensible contemplation: they are now considered necessary, by responsible legislatures, in order to meet the particular challenges of contemporary life.



There is no doubt these lateral or creative responses to particular challenges, borne of the repositioning of society as we came into this century, will continue. There is a lot of analytical commentary about their justification.

One of the more reassuring of the responses concerns a focus on the rehabilitation of offenders. Reasonable members of the community recognize this as a sensible attempt to address the reason for criminal offending. We have also come to recognize that responses to criminal offending need not necessarily be uniform throughout a jurisdiction, especially a vast and diverse jurisdiction like Queensland. Accordingly, in North Queensland for example, we see indigenous community justice groups assisting courts to maximally informed responses.

A large goal of the criminal justice process is to strike a right balance among a number of different considerations, and one which will be accepted following reasonable assessment in the community. The criticism that the system fails to strike the appropriate balance between defendant and victim will persist. That is a challenge which confronts courts in particular. It arises sometimes in the exercise of the discretion whether inculpatory evidence unlawfully obtained should be admitted. It always arises in the sentencing process.

Defendants must be treated fairly and in accordance with the law. But we must never overlook the result of criminal activity, which is the contravention of the rights and liberties of any victim. The ultimate challenge for the criminal justice system is to ensure that the balance is properly struck, because the public confidence, on which the authority of this inherently fragile process depends, assumes the balance is being maintained.

Maintaining that confidence can be difficult when the retributive urge within the community speaks in strident tones. Sometimes that is a consequence of incomplete media reporting. Sometimes it results from primary judge error, which fortunately can however be corrected on appeal. With some, it is explained by an ingrained and unremitting intolerance of infraction. Some otherwise compassionate human beings even in this developed society



cling, for example, to a view that the death penalty can rightly and appropriately be ordained and administered by human hands. But strive we must, and it is reassuring to recognize what I perceive, and that is that the public does recognize rehabilitation as an important objective in sentencing, for its obvious utility.

In Queensland, the Drug Court, which has counterparts elsewhere in the nation, is a good example of recent developments in that area. They have been set up with the deliberate aim of rehabilitating offenders whose drug use is seen as the root cause of their criminal behaviour. Recent research conducted by the Australian Institute of Criminology demonstrates the promise of these programs. Amongst those who successfully completed the Drug Court programs, re-offending declined by 80 percent when compared with the offending patterns in the 12 months prior to their drug court participation.<sup>1</sup> They also committed fewer offences when compared with the figures for those prisoners released from prisons who had not undertaken such programs.<sup>2</sup> There is also enhancement going on in our probation and parole service, and that is providing judicial officers with reasonable assurance that performance under community-based orders will be properly monitored. I am pleased that the Director-General of Corrective Services, Mr Frank Rockett, is to participate at the Forum. He brings experience, skill and commitment to our discussion.

We have all noticed the erosion of some of our personal freedoms over recent decades. I offer a few examples.

There are now few public areas of this city of Brisbane in which we can walk without our movement being recorded by CCTV. The global threat of terrorism means that we are subject to normally quite intrusive scrutiny before boarding an aircraft. Locally, we may be subject to RBT while driving the car. (And at a more humble level, we are all inconvenienced by 'speed bumps' because some of us drive too fast.) State-wide, our Government has been constrained to remove the right of some of our citizens to procure

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<sup>1</sup> Jason Payne, *The Queensland Drug Court: a recidivism study of the first 100 graduates*. Australian Institute of Criminology: Research and Public Policy Series No.83, p.72

<sup>2</sup> Jason Payne, *The Queensland Drug Court: a recidivism study of the first 100 graduates*. Australian Institute of Criminology: Research and Public Policy Series No.83, p.73



alcohol in certain areas of the State. On the international stage, our use of the Internet may be tracked continuously. So may our location at any time. If we are tempted into crime, police investigators may be authorised to bug our houses and cars, and even watch our private hours on video.

Life in the early part of the 21<sup>st</sup> century is limited in ways we would not have contemplated half a century ago. Yet we have come to accept them as valid restrictions, because seen as necessary to bolster our fundamental security, which is, to put it bluntly, security against the depredations of others.

In a sense, the right to be treated with decency and respect, and lawfully, is even more fundamental than, say, freedom of speech, freedom of religion, freedom of movement. The law defines what we may not do without trespassing into the inner sanctum of our fellow citizens', shall we say, 'castle'. To intrude beyond that outer, legislatively defined barrier, amounts to an affront of cardinal significance. Hence the understandable outrage of any victim of serious criminal offending. The basic minimum protection guaranteed to that person has been violated. Being cast into the category of victims of criminal conduct is certainly a profound affront. It is a natural, given response to think this only happens to others. But we are all inevitably at risk. While practising at the bar, I was myself the victim of an assault occasioning bodily harm, en route home, when walking at night from my chambers to my motor vehicle.

Our greatest challenge is to secure an acceptable balance between upholding the position of the innocent victim, and securing fair treatment of the alleged offender. The nature of some contemporary offending means we have had to modify our approach to penalty, working one hopes more creatively to a therapeutic solution. But that must not leave the victim feeling ignored or forgotten. Part of the answer, I believe, rests in comprehensively explaining why we do what we do. Those explanations are, as we know, routinely given, but not necessarily reported or transmitted.

As we embark on a consideration of a collection of practical concerns arising from the matrix I have endeavoured to uncover briefly this morning, it is my pleasure now formally



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to open the 2008 Law and Order Forum. In doing so, I express my confidence that the outcome will be worthwhile: difficult to measure, I concede, but inevitably worthwhile, I suggest, allowing for the depth of intellect, experience and expertise our convenor has been able to attract.

**Acknowledgment**

I was assisted in preparing some of these remarks by views expressed by P N Grabosky, Deputy Director, Australian Institute of Criminology, in a paper entitled 'Criminal Control in the 21<sup>st</sup> Century'.