

The Registrar of Probate, Mr Andrew Dickson, said the decision had implications for about 30 cases a year. Previously, people would have been advised that they would not be able to inherit property, because of the public policy that a person could not profit from his or her crime.

He said that following Mr Justice Coldrey's landmark decision, all cases where the issue arose would be referred to the court for a decision on their merits.

Prue Innes is a Melbourne journalist.

LEGAL STUDIES

The Garry Webb case

NATALIE TRUONG is a Year 11 student at a Melbourne secondary college. Her teacher sent in this report to illustrate the calibre of work produced by first year VCE Legal Studies students.

'The balance between personal freedom and the public welfare is always delicate in a society. On one hand, there is a natural concern for the welfare of the general public and on the other there is a concern for the rights and civil liberties of an individual'.¹ A particular law/legislation that protects one person's interest may lead to another person being adversely affected.

Describe the purpose of the *Community Protection Act 1990* (Vic)

When passing the *Community Protection Act 1990* (Vic.), the

Victorian Government delegated the authority to the Victorian Supreme Court to order the extended detention of Webb* for a further six months after his sentence expired: 'providing the necessary care, treatment and management of Webb'.² Webb was convicted of attempted murder, charged with threatening and attacking prisoners, prison staff and hospital staff and has inflicted horrendous mutilation acts on himself. The media featured Webb as a dangerous man and this contributed to the degree to which the community perceived him as a threat and hence the Act was also passed to provide for the safety of members of the public against such an individual.

The Act was passed hurriedly as Webb's prison sentence expired and he was due for release in February-April 1990. The Act which came into force to keep Webb in prison has a sunset clause. This means the Act is only valid for 12 months. In April 1991, when the Act was to expire, the Government pushed for the *Community Protection (Amendment) Act* to be passed. This extended the life of the Act till the year 1994.

I think the sanctions imposed on Webb are 'a sad indictment of both our Governmental and prison systems'.³ The Government argues that 'Webb was/is a mentally disturbed man',⁴ and yet they have sent him to prison and are willing to take extraordinary steps to keep him there. If he is a disturbed man, then surely he needs rehabilitation, rather than punishment. Imprisonment involves the isolation of the individual from the realities of a social life, which can hardly be said to assist in the rehabilitation process. Thus, I believe, the sanction constitutes an intolerable invasion of liberty and privacy, for the law to try to punish an individual for their personality and actions that have yet to be committed.

*Webb: Garry Webb, also known as Garry David.

For further discussion on this case see (1990) 15 LSB 114-117.

What comment can you make about the legal principles which are affected by this legislation?

The legal principles which are relevant to this case are:

- a) The presumption of innocence — whereby a person accused of committing a crime is presumed innocent until proven by the prosecution in a court of law to be guilty.
- b) Due process of law — whereby every member of society is given fair and open trial by a judge and jury.

The fundamental principle of our criminal justice system is the presumption of innocence; this has been shattered by the enforcement of the *Community Protection Act* to keep Webb in prison. The Government is prepared to risk the civil liberties of an individual 'on the basis of the idea that you can predict if somebody is going to be dangerous'.⁵ This indeterminate sentencing violates our justice system which in theory believes you are innocent until proven guilty, but in this case an individual is presumed guilty before he has committed the crime.

An equivalent expression for justice is 'fairness', and fairness is what we expect from the law, where an accused person is confronted by his/her accusers and is given a fair trial by that 'due process of law'. Webb has been deprived of this justice, because the *Community Protection Act* does not allow for a 'proper' trial (natural justice).

Regardless of how strongly I feel about the release of Webb, I still believe the legal principles are the foundation of our criminal justice system and of a just society. The legislation abuses a fundamental human right, and is capable of leading to the sort of injustice to an individual which cannot be tolerated in a humane society. How can people be expected to place their confidence and trust in these principles if the law-making bodies of our society fail to honour these themselves?

BRIEFS

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'?

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.

References

1. O'Brien, Anzarut Carew, *Introducing Law*, Macmillan Australia, 1990, p.5.
2. *Community Protection Act 1990* (Vic.).
3. TAFE Off-Campus Production Kit, 'Garry David and the Community Protection Act', RMIT Ltd, 1991, Radio National Law Report, Transcript, Ron Merkel, p.11.
4. TAFE Kit, above, *Hansard Debates*, p.1.
5. TAFE Kit, above, *Law Report*, Transcript, Andrew Dodd, p. 15.
6. TAFE Kit, above, Video, Ron Merkel.
7. TAFE Kit, above, *Law Report*, Transcript, Dean Wells, p. 14.
8. TAFE Kit, above, Background Notes, p.6.

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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