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Crime and Punishment in Australia

Abstract

The words of Kristofferson's song echoed from the transistor radio and floated through the cells bars of the police lockup at Yarrabah - a small Aboriginal settlement nestled in the tropical green hills across the bay from Cairns in North Queensland. The complex, which includes three cells and a compound is made of concrete, bars and steel mesh, has no shortage of clients; and for the five young men, arrested the night before for drunkenness, freedom is just another word. For them, life on the other side of the cell bars offered little in the way of real freedom. For, as there was no escape from inside the four walls, their world outside presented them with a different set of bars, locks and constraints. Paradoxically, their only key to escapism was alcoholism, and it in turn put them back behind the real bars. In an ironic sequel, the only release from despondency of their cell life, was cell death - perhaps the ultimate freedom.

Crime and Punishment in Australia

Freedom's just another word for nothing left to lose
nothing ain't worth nothing but it's free.

The words of Kristofferson's song echoed from the transistor radio and floated through the cells bars of the police lockup at Yarrabah – a small Aboriginal settlement nestled in the tropical green hills across the bay from Cairns in North Queensland. The complex, which includes three cells and a compound is made of concrete, bars and steel mesh, has no shortage of clients; and for the five young men, arrested the night before for drunkenness, freedom is just another word. For them, life on the other side of the cell bars offered little in the way of real freedom. For, as there was no escape from inside the four walls, their world outside presented them with a different set of bars, locks and constraints. Paradoxically, their only key to escapism was alcoholism, and it in turn put them back behind the real bars. In an ironic sequel, the only release from despondency of their cell life, was cell death – perhaps the ultimate freedom.

Black deaths at the Yarrabah jail like many others in the small Aboriginal settlements, and in the towns and cities around Australia, had become a new social phenomenon of the eighties. As the death roll increased and the issue grew, it became permeated with politics and passion. Some Aboriginals wanted revenge, others reform and others recognition of the root causes ... but they all wanted justice.

Since between 1980 and 1987 available evidence indicated that at least 100 Aboriginals had died in the custody of Australian police or prison authorities. It is a year since the Federal Government established a Royal Commission to inquire into the Aboriginal Deaths in custody issue. The Commission, chaired by former Chief Justice of the Northern Territory, Mr Justice Muirhead QC was set up following urgent pleas by Aboriginal organisations and individuals. During the eight months preceding the commencement of the royal Commission in November 1987, sixteen Aboriginals had died in custody or in jails and prisons around Australia. In

his opening remarks, Justice Muirhead acknowledged the daunting task which the inquiry presented, but said that it stemmed from a sad and continuing history over the past few years. He said that the rates of these tragedies had accelerated in 1987.

The terms of reference establishing Justice Muirhead's Commission directed him to inquire into deaths in Australia since January 1980, of Aboriginal and Torres Strait Islanders ... while in police custody, in prison or any other place of detention. The Commission would also examine any subsequent actions concerning those deaths, including the conduct of coronial and police inquiries, as well as things which were not done, but ought to have been done. Justice Muirhead is assisted by two counsels – Mr Geoff Eames and Mr Bob Bellear – each has had extensive experience with Aborigines and the law.

In the past year, the Commission of Inquiry has visited most States and the Northern Territory taking evidence from individual Aborigines, organisations, police, jail and court officers, as well as government department officials and medical staff. Many relatives of cell death victims also presented evidence before the Inquiry. At the hearings, Aborigines questioned the ruling of suicide by various coroners, and the Aboriginal Committee to defend Black Rights said that only two of the 106 cell deaths were from natural causes. The committee said that it was aware of cases where death was caused by negligence on the part of jail authorities. In some instances the committee suspected foul play. Most of the deaths had occurred by hanging and in all but three cases involved males. Fifty eight of them had occurred in custody while being held in police lock-ups or watch-houses – while 32 had died in prisons. The most common offence for their being detained was alcohol related, including drunkenness, disorderly conduct and fighting while drunk.

The Australian Institute of Criminology in Canberra – a long time monitor of Aboriginal crime and imprisonment – issued figures which indicated that the Aboriginal prison ratio was worsening. Criminologist with the Institute, Mr David Biles said that Aborigines were over represented in Australia's prisons and jails and the rise was disappointing. According to the Institute's surveys, Aborigines made up 14.5% of Australia's prison population. This is compared to their 1.3% representation in the overall population. If the statistics were black and white then Justice Muirhead

pressed the mathematical point home, when he converted black cell death figures into white deaths. In June this year, at an International Congress on Criminal Law, he told participants that the total amount of black deaths since 1980, on a comparative basis was equivalent to 7400 whites. Mr Biles posed the question that although government authorities spent some \$800 million a year on Aboriginal programs, including health, housing and legal aid, the rise in prison ratios for Aboriginals was a cause for concern.

As the inquiry continued, claims and counter claims emerged – with allegations of police brutality and evidence of inconsistency, as well as negligence and lack of understanding by prison authorities. There were also claims of psychotic depression and guilt complexes amongst the prisoners, as well as the obvious nexus between Aboriginals, alcohol, crime and jail – that vicious cycle which seemed to question the very fundamentals of Crime and Punishment. Even as the inquiry progressed, news came of yet another Aboriginal death or attempted hangings in various detention centres around the country. With something like 107 deaths being the latest tally, Justice Muirhead's Inquiry was in danger of bogging down and failing to meet the December 1988 deadline given for him to report to the Federal Government.

In April 1988, the Federal Minister for Justice, Senator Tate, announced the appointment of three additional Commissioners: Mr E.F. Johnston QC, Mrs Lewis Wyvill QC and The Hon Hal Wooten QC with the responsibility to conduct investigations in various States. The Commission's time of reporting was also extended with the three new commissioners required to report by June 1989 and playing a co-ordinating role, Justice Muirhead would present his final report by December 1989.

But as the Inquiry continued, among the unfolding series of evidence were rays of hope which offered a chance to improve the situation, if not provide an ultimate solution. In Western Australia, a new Aboriginal visitor scheme to check police lock-up and handling procedures is to be introduced as a first-ever plan to stem cell deaths. Aboriginal visitors will be able to observe, interact with and provide care and companionship for prisoners.

Other proposals contained in a set of draft guidelines, included the requirement for prison officials to account for their actions as part of the process in determining whether death in custody could have been avoided. Another recommendation is that all detention centres be equipped with readily available resuscitation facilities and that staff be fully trained in

mouth to mouth resuscitation and cardio-pulmonary massage techniques. Some states were also looking at on-the-spot summons schemes which would obviate the necessity to detain Aboriginals (and others) for minor drink related offences. But again came the question of Crime and Punishment ... when to detain and for what crime? Criminologist David Biles said that the most important principle in deaths in custody was that the very use of custody as a process should be kept to the lowest possible level that is consistent with the safety and well being of the general community. He said that judges and magistrates should be encouraged to impose prison sentences only as a last resort.

The Royal Commission continued ... more towns, more names, more evidence, and as it prepared to enter its most recent stage of hearings – another death, another attempted suicide. Commenting on progress so far, Mr Justice Muirhead said that discussions with Aborigines had given him a clearer perspective as to what are the overview questions, which go to the underlying issues of the deaths. He hoped that a comprehensive advisory structure would be established to allow Aboriginals on a national and regional basis to assist the Commission. Justice Muirhead believed that the Commission's foremost responsibility was to endeavour, by its recommendations, to prevent these terrible deaths in the future. If sufficient progress was not forthcoming Justice Muirhead said that tensions would be increased, and there would be a perpetuation of antagonisms, fears and griefs.