



Address to
Catholic Educational Leadership
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The Hon Wayne Martin
Chief Justice of Western Australia

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Courts as a social barometer

Our courts provide a kind of social barometer, or perhaps more accurately a social health check on the health and well being of our community. The criminal side of the court's work provides a surrogate measure of law and order. The civil side of the court's work provides a surrogate measure of the extent of disputes within our community; that is, how well we are getting on with each other.

Together, the volume of work in the courts provides some measure of social cohesion; that is, the extent to which we, as a community are working and living happily together. It is also a very rough index of the extent to which we have respect for others, and share a mutual respect for the laws, values and moral codes which are the difference between a society on the one hand and anarchy on the other. Our courts also provide a surrogate measure for social justice because, unfortunately, the socially, financially and intellectually disadvantaged are grossly overrepresented in our courts, particularly our criminal courts. I will refer to the gross overrepresentation of indigenous people in our criminal justice system later in this address.

So, in a rather indirect way, our courts provide some measure of the health and well being of our community. And so, indirectly, our courts provide some measure of the extent to which our schools are shaping our kids for worthwhile membership of, and contribution to, that community. In a rough sense, we in the courts are filling in the report cards on you as educators. If the school system is successful in its objectives, we should be less busy in the courts. So let's test that hypothesis.

Changes in our way of life

When we come to assess where we are now, it is often helpful to look back and try and map where we have come from. Significant changes in our way of life have had a significant impact upon the extent of social cohesion within our community, as measured by such things as crime. When I was a kid I always knew where the key to our house was, it was rusted into the front door and never removed. Similarly, the car key could always be found in the ignition to the car. Our car was never stolen and our house was never broken into. You would not need to - you could simply walk in. We never had the slightest concern that either of these things would happen, and they never did.

Our family only had one car, and it was seldom used. People walked everywhere or caught public transport. In the course of perambulating or catching the trolley bus, people would interact. They would get to know each other and develop basic social skills. Shopping was all done locally at either the corner shop or the strip of neighbourhood shops. People got to meet each other regularly and developed trust and mutual respect. The local shopkeepers - the butcher, the greengrocer, the newsagent - knew everybody by name and were important points of distribution of information about the goings on in a cohesive community. Some index of the trust that ensued might be provided by the fact that at the age of three, I was sent to kindergarten on a bus, unaccompanied four days a week! My mum used to put me on the bus, tell the bus driver where I was to get off and that was that. I suspect if you tried that these days somebody would call the Department for Child Protection. Even teenagers today are so sheltered from public interaction that they are ferried to and from school in massive vehicles with DVD screens so that they do not have to talk to each other or their parents.

This real sense of community which pervaded my childhood was nourished and reinforced by weekly church going. Rates of church attendance were much higher than they are now, and a lot of social activity revolved around the church. The focus of that social activity was fellowship - it was positive and wholesome.

I do not mean to suggest that there was no crime. One of the more vivid recollections of my childhood is the effect which the string of murders committed by Eric Edgar Cooke had upon the sense of trust and confidence within our community. I suspect those notorious crimes went a long way towards shattering our sense of innocence and made us much less trusting of each other. The innocence, naïveté and trust which we lost in the early 1960s have never been recovered – but, of course, we cannot blame Mr Cooke for that.

There weren't many drugs, hotel opening times were much more restricted than they are now and access to pornography was very limited. There was no television in my early childhood and, of course, no computers, DVDs or mobile phones. Access to the world was primarily through books augmented by radio. I can remember as a child sitting up at night to listen to radio broadcasts of our cricketers playing in England, or the Wimbledon finals.

Because there were no electronic distractions, our family would sit at the dinner table every night and discuss topical issues. I am sure this enhanced vocabulary, processes of logical thought and expression.

Today

Every adult has his or her own car and life is dominated by electronic screens, TV; computer; mobile phones/Blackberry; and game screens.

Conversation has been replaced by emails and SMS.

Personal contact and interaction is minimised. People drive to work in a steel cocoon - often on their own. Even if there is more than one person in the car, the radio, CD, DVD or mobile phone will reduce the risk of social interaction. Most of the talking will be done by the GPS system! At work, people will send an email to the person who is in the next office rather than get up and talk to them. Texting has replaced telephone conversation and given rise to a whole new system of shorthand.

Our home lives are dominated by television and computers. Family interaction is often curtailed by these devices. Instead of sitting around the dinner table and discussing topical issues, in many homes meals are consumed in front of a TV screen and family interaction is limited. After the meal, those who are not watching TV will go off to their personal computers.

Over the same period church attendance has steadily declined. If there are large gatherings of members of our community on the weekend, they are usually at sporting events. There are smaller gatherings throughout the suburbs centred on children's sport, which is significant at fostering a sense of community. However, it must be remembered that these events are primarily competitive and tend to encourage rivalry - the fellowship has a distinctly tribal connotation.

Illegal drugs are now common throughout our community. There is a clear and obvious correlation between drug abuse and crime. Surveys have shown that more than half the people at East Perth Lockup test positive for illegal drugs. Almost all the rest are drunk. There is virtually nobody in East Perth Lockup who is not either drunk or stoned or sometimes both.

Alcohol is now freely available at almost all times of the day or night. Pornography is potentially in every home that has a computer, via the internet.

The social barometer

So what has been happening in our courts, what is the social barometer telling us about the health and well being of our community? What effect have these social trends had upon the social cohesion of our community?

The diagnosis is not good. Using the number of judges as an index of the volume of work in our courts, when I started at law school in 1970, there were seven Supreme Court judges and no District Court or Family Court. Today, there are 21 judges of the Supreme Court, 27 judges of the District Court, and five judges in the Family Court. So, from seven superior court judges in 1970, we have gone to 53 in 2008. That increase over 38 years is to be compared to the previous 70 years, in which the number of superior court judges went from three to seven.

Although I do not have the exact figures, it is likely that our population doubled between 1970 and 2008, but over the same period the number of superior court judges increased by more than 700%.

At the time I was admitted to practise law in the mid-1970s, there were about 400 lawyers practising in Western Australia. There are now about 4,000. Now as you might expect, I am quite fond of lawyers - most of my good friends are lawyers and my wife is a lawyer. But not even the most ardent supporter of the legal profession would contend that a ten-fold increase in the size of the legal profession servicing a community in a healthy sign. Not many social commentators pondering the constituent elements of a healthy vibrant community would proffer the view that 'what this community needs are more lawyers'!

Imprisonment rates

Nor is any healthier view derived from looking at our prison population. The rate of imprisonment per head of population has doubled over the last 20 years in Western Australia. Tragically, over the same period, the rate of Aboriginal imprisonment has trebled.

I will try to give you some index of the significance of the overrepresentation of Aboriginal people in our criminal justice system with some figures. The general rate of imprisonment in Western

Australia is about 240 per 100,000. That is the highest rate of imprisonment of any Australian state. Only the Northern Territory has a higher rate of imprisonment. It is more than double the rate of imprisonment in Victoria.

But if you break those figures down into Aboriginal and non-Aboriginal prisoners, the rate of Aboriginal imprisonment is about 3,900 per 100,000, and the rate of non-Aboriginal imprisonment about 120 per 100,000. So the rate of Aboriginal imprisonment is about 27 times that of non-Aboriginal imprisonment.

What that means in practical terms is that tonight, about one in 16 adult Aboriginal men in Western Australia will spend tonight in prison. About 40% of our prison population is made up of Aboriginal people, compared to about 3.5% of the general population. And while the overall imprisonment rate in the Northern Territory is higher than in Western Australia, because of the higher proportion of Aboriginal people in the Northern Territory, the rate of imprisonment per head of Aboriginal population in Western Australia is about double that of the Northern Territory.

And if you take juveniles as a portent of the future, the picture becomes even gloomier. I will give some more statistics in relation to juvenile crime a bit later, but for the moment it is sufficient to note that Aboriginal kids make up about 75% of the populations of each of our two juvenile detention facilities; at Rangeview and Banksia Hill.

Civil litigation

Our community does not look any healthier if you look at civil litigation as opposed to criminal work. There has been a veritable explosion in civil litigation over the years, largely following the American model. If anything goes wrong in our community today, there is a tendency for people to go straight to their lawyer and demand redress through the courts. No attempt is made to sort things out by agreement or conciliation.

As a result of the explosion in liability litigation, insurance costs have become so prohibitive that many community activities have been curtailed. Even relatively innocuous activities like pony rides and gymkhanas have been forced to cease operation because the cost of insurance has been prohibitive.

In the medical area, professional indemnity insurance for some practitioners has been so expensive that doctors have declined to practice particular types of medicine. This has been most notable in obstetrics, where the cost of insurance has been so great that a number of general practitioners have declined to do obstetric work. This has had profound social consequences in country areas, particularly the more remote areas, where often women have had to leave their husbands and families to move to a regional centre towards the end of their term, so that they can be near a practitioner who is willing to deliver their baby.

The explosion in litigation has also influenced medical practices. Because of the risk of being sued, doctors have become risk averse in the way in which they practice medicine. The rate of babies born by caesarean section has increased dramatically over the same period that claims against obstetricians has increased. I am not qualified to comment on whether the increasing use of caesarean section is a good thing or a bad thing, from a medical perspective, but I do worry when clinical practice appears to be influenced by the law, rather than by medicine.

Crime rates

There is a general impression that crime is rife in our community and steadily increasing each and every year. While the crime rate is certainly higher than when I was a child, in most areas of crime, the general impression is quite wrong.

In the area of homicide, the rate per head of population has remained relatively steady, is lower than most other states of Australia, and down about 25% on where it was 10 years ago.

Home burglaries are down by one-third on the rate of 10 years ago and car thefts are about 50% less than they were 10 years ago. So, in areas of crime that have a significant impact upon us personally, there has been a significant decline in criminal behaviour.

The area where there has been an increase in reported crime is the area of assault; both ordinary assault and sexual assault. The figures in those areas show a modest increase; perhaps 10% or so, over the last 10 years.

Reported v Unreported Crime

The rate at which crimes are reported depends significantly upon the nature of the crime. So, in the case of homicides, it is reasonable to

assume that the rate of report is extremely high because of the significance which we properly address to the death of any member of our community. In the case of crimes like car theft, home burglary and property theft, it is also reasonable to conclude that the report rate is very high, because of the necessity to make a police report before claiming on insurance. In the case of assaults, the report rate is likely to be much lower because of the propensity of some victims of less serious assaults to simply get on with life, without being involved in police action or a court case. And in the case of sexual assaults, it is reasonable to infer that the report rate is very low, because of the stigma associated with that particular offence, and the fact that such offences are often committed by family members or friends, so that the repercussions of a report may be profound, and a number of other reasons.

The rate at which sexual assaults are reported can be increased significantly by the provision of improved support for victims, and in particular, the generation of a belief that a victim reporting such an assault will be protected by the authorities, and not stigmatised for something which is not their fault. This is, I think, one explanation for the significant increase in sexual assaults reported in the Kimberley, following the deployment of health workers, the provision of screening for sexual disease, and the creation of a permanent police presence in many Kimberley communities as a result of the Gordon Report. So, somewhat paradoxically, in the area of sexual assault, an increase in the number of assaults reported may be the positive consequence of improvement of services to victims of assault and community awareness, rather than a reflection of an increase in the total level of sexual assault within the community. A similar observation may be made in respect of domestic violence. An increase in the reported number of assaults in a family situation may be, in part, due to improvements in the support provided to victims of those assaults.

It is also worth observing that in areas of crime in which the report rate is relatively low, a small increase in the report rate can result in a significant increase in the total level of reported crime in the category. To give an example, if one assumes that only 25% of sexual assaults are reported to the authorities, and that rate increases to 30% as a result of the positive measures to which I have referred, in numerical terms that is an increment of 20% in the total level of sexual assaults reported.

Juvenile crime

As this is a conference of educators, I am sure you are interested in the current picture in relation to juvenile crime. Unfortunately, the picture is not pretty. The numbers of children coming before our courts has increased, both as a result of criminal offences and as a result of applications to have children placed in care and protection. The care and protection jurisdiction of the Children's Court has expanded dramatically over the last two or three years. While this may reflect a difference in attitude on the part of the Department for Child Protection, it is very hard to see the fact that more kids are seen to be in need of the care and protection of the state as a positive sign.

It is interesting to observe that there has been a significant increase in the number of applications to place children into care and protection over the same period that our state has undergone an economic boom of unprecedented proportions. That seems to me to reinforce the observations that many in the social welfare area have made, to the effect that the benefits of an economic boom are by no means uniformly spread across our community. In fact, a boom can increase the extent of the disadvantage to the already disadvantaged sectors of our community, both comparatively by reference to other members of the community, and also in absolute terms, by increasing the cost of living, particularly accommodation, and reducing the availability of accommodation. Perhaps paradoxically, the economic boom has had the effect of increasing the number of homeless people within our community. So the need to focus upon social justice is, if anything increased rather than decreased by a boom.

Returning then to juvenile crime, a recent report published by the Auditor General showed that there are a relatively small number of kids who occupy most of the time and resources of the juvenile justice system. Over 96% of our kids have little or no contact with that system, but at any given time there are about 1,000 core offenders who generate most of the work done in juvenile justice.

To put this number in some perspective, the 1,000 core offenders aged between 10 and 17 represent less than half a percent of the total population of kids of that age; which is about 225,000. However, 75% of that 1,000 core offenders are indigenous children and 55% of that 1,000 live in regional WA. So, when you take into account the fact that the indigenous population between 10 and 17 is about 11,000, if 750 of those

kids are amongst the 1,000 core offenders, we have obviously got a serious problem in relation to Aboriginal youth.

And it is not just a problem for those children, it is a problem for our community. The worst 250 of those 1,000 core offenders will cost the state about \$100 million between the ages of 10 and 17. For those of you who are good at maths, that's about \$400,000 per child. For the worst of those kids, the cost per child can exceed \$1 million. And these are direct costs - they do not count the indirect cost to community or family costs caused by juvenile offending.

So leaving aside the indirect social costs of juvenile crime, in direct financial terms, there is a very strong incentive to take steps to reduce the level of juvenile crime, even if preventative measures cost a substantial amount. Any money invested in reducing the incidence of juvenile crime is likely to pay substantial dividends in terms of the cost of dealing with the consequences of that crime. And, of course, if a juvenile criminal graduates into an adult offender, as many of that 1,000 will, the cost to our community continues.

One of the pressing problems for the juvenile justice system in WA is the lack of safe places to put kids who are in trouble. That has had the result that more than half of the children in our juvenile detention facilities are there on remand rather than under sentence - because there is just nowhere else to put them. Often the children who have been detained on remand will not receive a custodial sentence. But where do they go then? Unfortunately, the answer seems to be, quite often, back to the unstable or dysfunctional home environment that has put them before the court in the first place. The President of the Children's Court, in conjunction with a number of agencies and the magistrates of that court are all working hard to do what can be done to reduce this 'revolving door' phenomenon in the juvenile justice system. But we have a long way to go.

Crime in WA

So where is all this leading and how is it relevant to leadership and education?

The path to relevance is by going back to look at the core factors associated with crime in Western Australia. There are essentially three key associations. They are substance abuse (both illegal drugs and alcohol), Aboriginality, and sexual abuse. Substance abuse and sexual abuse are clear indicators of social and community breakdown. They

often derive from social dislocation, lack of self esteem and poor relationships. Sexual abuse provides a clear indication of breakdown in moral standards and respect. And the tragic plight of Aboriginal people in this State raises serious issues of social justice.

The role of the courts

The drivers of criminal behaviour are to be found in fundamental aspects of our community, its ethos and culture, in our moral standards (or the lack of standards) and in the social disadvantage suffered by the Aboriginal members of our community. There is nothing a court can do at the time of imposing sentence to address those issues. They are systemic and fundamental and must be addressed at source. That is where the school system comes in.

But before I say a little more about the school system, I do not mean to suggest that courts could or should wash their hands of responsibility for addressing these issues. On the contrary, I am very enthusiastic about the expansion of what we call 'problem-oriented' courts. Those courts proceed on the fairly obvious basis that most crime is a symptom of an underlying cause, and that unless and until that underlying cause is identified and addressed, the criminal conduct is likely to continue. So, given that the role of the courts is to protect the community, the best way of protecting the community is to provide avenues through which the real causes of the criminal behaviour of a particular individual can be identified and addressed. Examples of these types of courts include the Drug Court, the Domestic Violence Court, and the Community Courts dealing with Aboriginal offenders. These courts proceed on the philosophy that a court appearance is an opportunity for a beneficial intervention aimed at changing patterns of criminal behaviour.

The importance of a religious education

I move now to the punch line for the Catholic education system. The point of my analogy to the courts as a measure or gauge of the health and well being of our community is that the application of that measure suggests that social cohesion and social justice are declining and social dislocation and dysfunction increasing. Of course, almost all members of our community have been through an education system somewhere, and the majority have been through the education system of this State. I have suggested that if we are to do anything meaningful about the drivers of criminal behaviour, and the factors which indicate social dysfunction and disadvantage, the most effective way of doing that is at source, rather

than after the event. And what better source than impressionable young kids.

Our schools have the opportunity, and I would say the obligation, to shape the culture and ethos of our community and to strongly influence the attitudes of the members of that community. Declining church attendance means that there are fewer opportunities for the infusion of spirituality and the ethics and culture that are part and parcel of religious adherence, and which are vital to the Catholic faith.

There is a great opportunity for church schools, the most numerous of which are, of course, the Catholic schools, to shape and influence the culture, ethics and attitudes of our community through the children who will become the adult members of that community in due course.

What that means to me is that school principals, school councils, teachers and parents, that is, the whole school community, must be resolute about our adherence to a religiously-based education. We must ensure that every opportunity is taken to infuse a religious and spiritual dimension into the educative process. Social cohesion and social justice must be integrated components of the entire educative experience, rather than special add-ons or matters to which attention is occasionally given. They must lie at the very heart, core and soul of the educative experience and must infuse each and every aspect of that experience.

I am convinced that an educative experience underpinned by religion, spirituality and the ethical and cultural values which underpin religion can only enhance social cohesion and social justice. At a more personal level, these values will enhance self esteem and respect for others, and provide a moral code or compass by which tomorrow's community members can chart their course through life. It seems to me that lack of self esteem and lack of respect for others, together with a lack of a moral code or compass, has contributed very significantly to the breakdown in social cohesion, to the deterioration of the sense of community that we see reflected in the cases that come before our courts every day.

As educators, you are much better equipped than I am to assess the ways in which these objectives can be carried forward in practice. I sincerely hope that you are successful in achieving these vital objectives. If you are, then I am hoping that the courts will have less and less to do, and that can only be a good sign for the health and well being of our community.