

The ACT prison, a de facto Mental Institution?

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Presented in Canberra on 12 June 2008
at a forum conducted by Christians for an Ethical Society

Introduction

It is difficult in this kind of forum to think of something interesting to say because Gary has said it all and you could say, "Me, too," and sit down. There are some differences that I'd like to tease out from the kind of approach that he has enunciated and suggest that there are things that are a bit more complex that we need to think about. I think that the whole issue of crime and mental health is a very complex one and, if you do not recognize that complexity, you run into the problem of treating the whole of the criminal justice system in an inappropriate way. I think it is true – and the statistics are clear, that the vast majority of people who come into contact with the criminal justice system have some kind of mental impairment or mental challenge. That is important to recognize and, in a respectful, civilized society, to do something about it.

The fact is that, in the new prison that we are going to be building not so far from here, one of the important imperatives for that prison is to provide prisoners with health services and some other services but, in particular, health services which are at least equal to the services which they can expect in the community. That is important for a number of reasons; first of all because that is a human right. We have a Human Rights Act and we recognize and respect that. Secondly, because that is a mark of the way in which we, as a civilized society, treat those people whom the community will enforce in the deprivation of liberty by exerting the coercive power, the force of the state to deprive them of that liberty. In doing that, we need to be very careful that we do not become oppressive, that we do not degrade, that we treat them as human beings.

Criminal justice vs mental health systems

Having said, that, however, it is important for us to recognize the distinction between the criminal justice system and the mental health system. The criminal justice system is not a stalking horse for compulsory treatment, for example. We need to make sure that we are clearly making the distinction between what we do in the criminal justice system and what we do in the mental health system. Ron Cahill can and may wish to talk about the regime of dealing with people with mental health problems who need, for instance, involuntary treatment. That is a different regime from the regime we talk about when we are dealing with the criminal justice system. We need to be clear about the two systems and how we approach them separately.

One of the challenges for the criminal justice system is that, ultimately, it always comes too late. We always deal with people in the criminal justice system too late. That is one of the reasons why I have been so enthusiastic about issues such as anti-poverty week, about early intervention, because the real key to most of the problems that judicial officers and prosecutors and defence counsel see when they come into the criminal justice system are

issues that have been generated by the circumstances of people's situation well before they come to the criminal justice system and well before the criminal justice system has an opportunity to intervene. What we find is that the intervention that can come at the level of the criminal justice system is often a band-aid and an attempt to do, ineffectively, what should be done, effectively, much earlier in the lives and the life journey of people that we meet.

The second problem is that the criminal justice system, despite complaints that many in it would have, is actually over-emphasized and over-profiled in our community. We are lucky in the ACT that we do not have the shock jocks, except those of you who are unfortunate enough to have to listen to some of them when they are piped in from Sydney. We do not have a tabloid press which demands higher sentences for the sake of higher sentences as a knee-jerk reaction to some of the quite tragic and depressing things that we see from time to time in the criminal justice system.

The criminal justice system is used as the default system

Nevertheless, I do say that the criminal justice system has too high a profile because the criminal justice system is used as the default system, as the last opportunity, not because everything else has failed but because everything else has not been tried. Much of the real challenge for our community is to recognize that the criminal justice system is not simply the last resort because most of the first resorts have not been tried in the community. We throw up our hands and, when disaster strikes and problems occur, we say, "Well, there is nothing for it but the criminal justice system."

We do not have, for example, a very successful diversion process for those people who need to be diverted out of the criminal justice system into, for example, a mental health system. There are some mechanisms and, therefore, the community can sit back and say, "Well, if the Magistrates Court wants to, for a minor trivial offence, take no further action and refer it off to the mental health system, it can do that". That is a fairly limited area of opportunity. Certainly, referring it into an under-resourced, overstretched mental health system will usually produce no substantial or significant results. At the end of the day, the criminal justice system is left to pick up the pieces and deal with the problems.

Having said that, however, it is also important to recognize that, despite the statistics that Gary has quite accurately stated, there are differences between what we would want to do through a mental health process and what we would want to do through a criminal justice system. The fact is, that there are people who are bad in the community and whether they have mental health problems or not is not necessarily connected with their badness. Let me give you an example and there are examples which you can tease out to see, I hope, the point that I am making.

I had to consider, when I was Director of Public Prosecutions, the prosecution of a man who was in the closed ward at Canberra Hospital because he was assaulting the staff there. He was in the closed ward by definition because he had a severe mental illness. First of all, there is the issue of safety. What do we do about people who risk the integrity of the staff who are there? Do we just say, "Well, these people have mental health problems and there's nothing we can do about it except try to treat their mental health problems." You have got to tease that out even further.

The staff would say – and, of course, the staff have got an interest in it, so you have got to take it carefully with what they would say – they would say that they can identify that there is a level of consciousness about the assaults that this man was alleged to have committed. For example, he would only bash nurses who were female. He would not bash the male nurses and he would only do it when someone had said “no” to him. So there is a level there of consciousness about the activities that he is engaged in that I think you can identify as an issue that needs not just a mental health response but perhaps a criminal justice response to recognize that we should not simply assume that people have no free will, have no opportunity to take responsibility for their own actions, have no need to be held accountable for what they do.

Now that is not to be inconsistent with Gary’s first point which, I think, is critical if only and too late. That is, that everyone who goes into the criminal justice system, at least to the level of incarceration, is entitled to and should have proper mental health assessment and treatment flowing from that proper mental health assessment.

I come back, if you like, to the title of this session, “Is our prison going to be a mental health institution?” At one level, it obviously is because large numbers of the people who are in the prison will be people with mental health impairment – some significant, some not significant. Many will have depression. Depression we now know is a mental health issue. It is not simply what my mother used to say, “Pull up your socks and get on with it.” We now know that there are serious issues of mental health that need to be addressed in relation to depression. By the same token, who of us, unless institutionalized, will not be depressed if our liberty is taken away, our privacy is inevitably invaded and our opportunity to live in a free society has been substantially constrained? That’s an inevitable concomitant of what happens when the criminal justice system intervenes in our lives. Yet that may not be, by itself – in fact I would say, is not by itself – a justification for not invoking the need for some criminal justice intervention.

Can mental health problems be cured?

Gary mentioned the issue of cure and we know that a cure is a very problematic issue in relation to mental health. In the same way (and perhaps I should accept his definition that addiction is a mental health issue), we know that, for the most part, addictions are not curable but they are manageable. You can manage an addiction, often only after extensive and long and difficult challenge and fight and huge effort. In the same way, there are many mental health conditions which cannot be or cannot easily be cured and can only be responded to by management. Again, we should not see, notwithstanding my support for the need for assessment and then intervention in relation to mental health issues in our prisons – we should not somehow transform our prisons into being, suddenly, the cure-alls for those who enter in.

We need to recognize that the need for mental health treatment in our prisons flows as much from the human right to receive treatment, at least to the same level as in the community in general, while one is incarcerated and not necessarily as the answer to the behavioural and other problems, some of which will be generated by and resolved by the management or the cure of the mental health issue but, often as not, directed towards issues of free will and accountability and personal responsibility, as well.

I think it is important to recognize that, while as Christians, as those who are concerned about the prisons and recognize the Gospel imperative to relate to those prisons in a compassionate

and careful way, nevertheless to recognize that those prisons are still criminal justice institutions and they should not be converted into hospitals or quasi-hospitals because, at the end of the day, that will revert to the cycle of incarceration of those who have mental health issues, instead of recognizing that those who have mental health issues are not necessarily criminals and need to be treated as people with mental health issues and not just as criminals. You can see how there is a huge degree of complexity in this issue and the need for compassion is not necessarily all to be resolved in one way by simply changing the status or the approach or the attitude that you have.

The difficulty of diagnosis

One of the things that I thought may be interesting is to leave you with some thoughts from some actual examples. I was reading a case from about fifteen years ago. I just want to leave you with some of the facts that the court hears and deals with and let you ponder on what you should do and how you should do in responding to this case in our community. This was a case that was reported so names are not important but I will call the offender Kurt. On the 18th November, Kurt called upon the deceased at her home in Carlton and, in due course, invited her to have dinner with him at his flat.

In a signed record of interview, he said that, after they had had dinner, the deceased began to scream for no apparent reason and, in order to keep her quiet, he put some masking tape over her mouth and obtained a pair of handcuffs. He said that he did not handcuff her at that stage and that she ripped the masking tape off and began screaming again. He assembled his cross bow and entered the bedroom, where the deceased was lying on the bed, and shot her through the heart with an arrow. After the shooting, he removed her clothing and had sexual intercourse with her. He said that the deceased was not then dead and tried to resist the sexual intercourse but he rolled her over and handcuffed her. He said that he then packed some clothing and left the flat. He went to his parents home in Chadstone where he stole two .22 rifles and the following day, he travelled by train to Ouyen, where he was arrested and charged with murder and convicted.

The court had a number of psychiatric reports and I will just read some extracts:

“Kurt was described as hyperactive from an early stage. He has a chronic history of poor relationships with his mother, his siblings and with his peer group. He has always shown a tendency to relate better to younger children. In late 1979, Kurt forced two girls, aged two and a half and five, to undress and then undressed himself. He was referred to the South-Eastern Clinic for assessment. Other behaviours noticed at that time were stealing, compulsive eating, unpredictable violent outbursts towards his younger brothers, lack of organisational skills and facial tics. Shortly after, his mother made a premeditated attempt to kill him to save the world from him. As a result of this, he went to a mental health institution and she was admitted to a hospital for psychiatric assessment.

To avoid involvement with the courts, the family arranged for Kurt to return to America, where he had been born, and to stay with his grandparents. He continued to demonstrate similar behaviour difficulties and was finally admitted to a child psychiatric centre following discovery of plans to kill his grandmother and aunt. A diagnosis was then made of behaviour and characterological disorder. He returned to Australia in 1981 and continued to cause concern, being suspended from school for injuring another child. In this context, further psychiatric help was sought. He was admitted to a psychiatric centre, where he was thought to be suffering from a borderline psychosis. Two weeks after admission to hospital, he

committed the offence which led to his admission under the compulsory provisions of the Mental Health Act.”

Another psychiatrist wrote, “ From the psychiatric point of view, therefore, I would regard this man as suffering a serious psychiatric illness which, in my view, goes beyond the mere description of a personality disturbance or psychopathy. There is little doubt, in my view, that this man requires long-term and continuing psychiatric treatment and supervision. The prognosis for his condition is extremely poor.”

A third psychiatrist said, “I can say, at the moment, that I think he is markedly paranoid. I do not think it clearly falls into the category of psychotic but I think it gets very close to it. In other words I think, perhaps, a paranoid personality disorder would be a much better term than simply saying a paranoid psychosis. There is no specific treatment for him at all. Any treatment that is cogitated is purely symptomatic. If he becomes excited or highly paranoid, there would be appropriate medication for it. There is no ongoing treatment for the condition as I perceive it at the moment. The history is an ongoing one and one gets the impression of not getting any better, if anything, perhaps getting worse.”

Now, that’s dramatic. That’s not the kind of example that we see, daily, in the courts but it seems to me that it highlights some of the real issues. If you can imagine someone committing the acts that this man did, then, the immediate reaction was he’s sick – and he is sick. The psychiatrists are unclear about what, if any, treatment will be valid and of assistance. In fact, one psychiatrist said there is no treatment, you can only address some of the symptoms.

At one level, compassion would say this man is committing heinous acts because of his psychological and psychiatric condition, and we ought to address that, but there are also criminal justice issues that need to be addressed at the same time. It is not easy, it is very complex and we do not, I believe, do justice to people by simply assuming that all you need to do is lock them up in a prison, give them lots of psychiatric assistance and that solves the problem. It is much more complicated than that. We would do wrong if we made our prison a psychiatric institution. By the same token, we cannot simply sit back and say, “That’s the end of the problem” because what Gary says is absolutely right, we need to ensure that all the people who get into the prison have all the psychiatric assistance and treatment that they are entitled to deserve as members of our community, a status they do not forfeit by coming into the criminal justice system.