

SEVENTH DAY ADVENTIST CHURCH OF AUSTRALIA

AVONDALE COLLEGE, COORANBONG

ANNUAL GRADUATION CEREMONY, 24 NOVEMBER 1985

THE CHAMBERLAIN CASE: LIFTING OUR SIGHTS



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The Hon. Justice M.D. Kirby, CMG*

LINDY - WHAT DO YOU THINK?

As I drove here for this ceremony, my eyes fell upon the newspaper banner headline - "Lindy - What Do You Think". This is, as I am sure you are aware, just the latest media contribution to a great national controversy. I refer, of course, to the conviction of Mrs. Lindy Chamberlain of the murder of her daughter Azaria in August, 1980. See Chamberlain v The Queen (1982) 6 A Crim R 385 (1983) 57 ALJR 356 (1984) 58 ALJR 133.

I want to put forward what you may think is a novel proposition. It is that, out of the trial and conviction of Mrs. Chamberlain - events which have so attracted the attention of the Australian community in the past five years - some good may yet come. Although it is often difficult to see good coming from painful events, my thesis is that it is important remain optimistic about the reform of the Australian legal system and confident about the generally quality of justice dispensed in the courts.

Amongst the possible benefits which I see as arising from the Chamberlain trial are four:

1. The attention by the Law Reform Commission to improvements in the law of evidence, used in our courts, particularly in relation to expert evidence.

2. The current work being done by the Law Reform Commission on the reform of contempt law, to deal with the problem of pre-trial prejudicial publicity.
3. The proposals of the Law Reform Commission on sentencing of offenders, designed to introduce more consistency and certainty into punishment of persons who are convicted of offences in Australia and
4. The public discussion about the strengths and weaknesses of the legal system which will, I believe, contribute to a "reformist approach" to the law and to the removal of complacency about the need constantly to modernise and improve the legal system.

A MULTIPLE TRAGEDY

One of the features of the Chamberlain case has been that it has attracted the attention of citizens in all parts of Australia. It has divided courts, the community and even families. In time it is my conviction that this might be seen as not necessarily a bad thing.

During my time as Chairman of the Law Reform Commission, over nearly ten years, I received letters from hundreds of citizens complaining about perceived injustices in the law. But no single case produced more letters than the Chamberlain case. Hundreds of good and thoughtful people wrote to me with comments about the trial. They offered suggestions for improvement of the legal system. Some of course wanted to firm up the resolve of the law, to defend the jury system and to uphold the authority of the courts. But most reflected agonising concern about

particular aspects of the Chamberlain trial - especially the pre-trial publicity and the use of expert testimony on blood, which expert evidence was placed before the jury. Numerous proposals for law reform were put forward. But the unique thing about the case was that the overwhelming majority of correspondents were not angry rebels against the Australian legal system. They were not criminals with a particular axe to grind. Most of them were not particularly even young. By no stretch of the imagination could they be called "radicals" and "trendies". These were letters from middle Australia. They were from people who were possibly thinking critically about their legal system, for the first time in their lives. A realisation that justice is human and therefore imperfect comes as a bracing shock to many citizens. But only good can come from the kind of realism about the legal system. If reflection on its defects promotes a determination to improve the law, some good will come from this tragic case.

I say that it is a "tragic case" because, whichever way one looks at the matter, it is a tragedy. If, as the jury and courts have found, Mrs. Chamberlain was guilty, it is a tragedy that a mother should be convicted of killing her child. If, as Mrs. Chamberlain and her husband contend, they are innocent, it is a tragedy that people should be wrongly convicted. A baby has disappeared presumed dead and that is a tragedy. A young mother is in jail. That too is a tragedy. Doubtless it is considerations like these that continue to concern politicians of all political persuasions including, no doubt, the Attorney-General for the Northern Territory. I say nothing on

what he should do. That is not my province and it is not my purpose today. But out of tragedy, good may come. That, after all, is a very typical Christian message. The idea of turning misfortune into redemption is a specially Christian view of the world. But can such a view be encouraged in respect of our community's response to the trial, conviction and imprisonment of Mrs. Chamberlain?

CONCERNS OF MIDDLE-CLASS CITIZENS

It is important and it seems to me for critics of the Chamberlain case to lift their sights from a single minded, and even obsessive, concern with the one case to a concern about the state of justice for all people.

Although there are special features in the Chamberlain case that make it particularly poignant, I have been struck, both by the media coverage and by the letters I received, at the failure of most commentators to advance from a consideration of Mrs. Chamberlain's case, to a concern about the whole state of our law and of our justice system. The human mind searches for concrete examples. It likes to fasten upon particular cases. But a selfish concern only with the predicament of Mrs. Chamberlain, and an indifference to others who may have suffered similar tragedies is surely not morally justifiable. A concern that a particular case be set right, but an indifference to the improvement of the legal system to prevent perceived injustices recurring, is a shallow morality, deserving of condemnation for its superficiality. If we are concerned about Mrs. Chamberlain, and what are seen as faults leading to her conviction, it is our duty as citizens to address our attention to the improvement of

the legal system. It is our duty to become concerned about reform of the law. It is our responsibility to accept a civic concern to see that orderly improvement of the legal system is a normal and routine part of life in Australia. We must support institutions, such as law reform commissions, that are devoted to improvement of the law and its procedures. We must support politicians and political parties who devote some of their time to improvement of the law and who find the opportunity in the busy parliamentary calendar for law reform measures. We must not just sit back and leave it to others to improve the law. We must write to politicians, call public meetings and generally work the democratic system to make sure that we never lie still so long as defects in the law cause injustice. This is my disappointment about the Chamberlain case. It is that so many people who have concerned themselves, with perfect sincerity, in the predicament of Mrs. Chamberlain, exhibit no equal concern for the unknown Mrs. Chamberlains who may have similar grievances. In case of others, they may be old, and unattractive. They may have no church supporters family or others to look to. They may even have no friends. They may have criminal convictions. They may even be outcasts. But if they have suffered an injustice, it should be equally our concern. And we should be no less resolute in our endeavour to improve the legal system for them, than for Mrs. Chamberlain. If the Chamberlain case can agitate our community to a general dedication to law reform, some good will come of it.

Good does come from tragedies. Last week-end I attended the National AIDS Conference in Melbourne. It was hard to see any

good coming from the dreadful, cruel predicament of AIDS which is taking its terrible toll on young people who have so much to live for. But I reminded my audience, that out of the smallpox epidemic of 1881 in Sydney and the plague epidemic of 1900 came the Public Health Act of 1902. There also came the first efforts at slum clearance and improvement of housing for the working class. Improvements in public health have followed those earlier crises, because people turned tragedy and disadvantage into positive action. Thinking positively is another Christian virtue. It is particularly an American virtue. We can do with a healthy injection of it in Australia. If we think positively about the justice system, in the light of the Chamberlain case, there are improvements we can make. Indeed some of them are on the way.

LAW REFORMS PROPOSED

A number of projects of the Australian Law Reform Commission may be listed and were designed to improve the Australian legal system to deal with some of the defects that have been suggested by critics of the Chamberlain case:

- * One of the latest reports of the Australian Law Reform Commission deals with a major review of the law of evidence in Federal courts in Australia. It is hoped that it will be a model for State and Territory courts as well. Amongst improvements proposed are suggestions for improvement in the use of hearsay evidence and in the use of expert testimony before juries. One of the criticisms of the Chamberlain case related to the conflicting

evidence about blood found in a motor car belonging to the Chamberlains and the difficulty faced by the jury in resolving the conflicting expert testimony, including of one medical witness flown to Darwin from London. The law on expert evidence is much in need of reform.

* A second inquiry of the Law Reform Commission which is still current relates to improvements in the law of contempt of court. This law requires consideration of the balance to be struck between the right of free speech and of a free media, on the one hand, and the right, on the other, of a person accused of a criminal offence to have pre-trial publicity limited. Only in that way will that person have a fair trial before a jury, uncontaminated by publicity. This problem was faced by the Yorkshire Ripper. It was also faced by Mrs. Chamberlain. In her case there was the additional problem of the limited population of the Northern Territory, from which a jury could be drawn. This led to the change of venue from Alice Springs to Darwin. But many anxious people have asked whether it would really have been possible to secure a jury in Darwin which had not been exposed to the glare of publicity. A hundred journalists covered the Chamberlain trial. It had all the ingredients of a media sensation. How, in these circumstances was the right balance to be struck between free speech and fair trial?

* A third project of the Australian Law Reform Commission, concerning improvements in sentencing of offenders is also relevant. The need to ensure consistency in the punishment of offenders and to provide guidelines for judges to promote such consistency was put forward by the Law Reform Commission in 1980. Further work is still being done by the Commission on this subject. It can be expected that a major proposal for change in the system of punishment will be proposed in due course.

LIFTING OUR CONCERNS

But it is the fourth improvement that is the most important. So long as people think it is somebody else's responsibility, not theirs, injustice will be unattended or attended by a shrug of indifference. The modern Levites, crossing the street, will avoid the problem. (Luke 10, 32) I hope that out of the mobilisation of middle Australia, with its concern about, or attention to, the Chamberlain case, will come a continuing concern to improve our laws. A just society will settle for nothing less than continuing modernisation and reform of the law. Rights matter most when they are claimed by unpopular people or unpopular minorities. If we reflect upon this fact, we may yet turn the Chamberlain tragedy to some national advantage.

I hope that the graduates - even on this sunny day - will reflect upon the debt they owe, as educated citizens, to contribute to and assure a just legal system for our country. Celebrating God's love, nothing less is expected.