

Dean Wells MP - Ideas and action

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Liberty

In 1992 it was unusual for Bills to have preambles, and even more unusual for Ministers to write them themselves. However Wells insisted that the Penalties and Sentencing Act should have one, and himself provided the contents to Parliamentary Counsel drafting the Bill. It read:

Whereas –

Society is entitled to protect itself and its members from harm.

The criminal law and the power of courts to impose sentences on offenders represent important ways in which society protects itself and its members from harm.

Society may limit the liberty of members of society only to prevent harm to itself or other members of society.

Preamble, Penalties and Sentences Act 1992

This preamble amounts to a statement by Parliament that governments have no right to interfere in the self regarding activities of their citizens. Effectively here Wells got the Queensland Parliament to sign up to the legal philosophy of John Stuart Mills' essay "On Liberty". A preamble is a statement of principle, an aspirational statement, so it is arguable whether all our laws avoid trespassing upon individual liberty to the extent to which the preamble

aspires. What is clear though is that in Westminster legislative history, this is an unusually clear and powerful articulation of the principle of liberty. On the other hand, by making harm to society the criterion for state intervention, the preamble provides a philosophical basis for serious and sustained interventions in the lives of those who actually seek to harm society. So the Bill contained many provisions to keep harmless offenders out of prison, and new dangerous offenders' provisions to keep the dangerous ones in jail indefinitely if the circumstances required it. This is pure textbook Utilitarian political philosophy in action.

Speeches made by Ministers on the second reading of a Bill can be looked at by Courts when they are interpreting an Act of Parliament. Knowing this Wells included the following words in his speech.

This Bill is not based on the idea of retribution..... This Bill is based on the idea of protecting society from harm. Notions such as proportionality, which are derived from the philosophy of retributivism, are not part of this Bill. The criteria on which Courts can expect to be addressed are contained in clause 9. Those criteria are derived from the rational utilitarian philosophy of protecting society and its members from harm - the philosophy which is contained within the preamble of the Bill.

Queensland Parliamentary Debates 1992

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