

**SUPREME AND FEDERAL COURT JUDGES CONFERENCE
OPENING SPEECH BY
HER EXCELLENCY PROFESSOR THE HONOURABLE KATE WARNER AC
GOVERNOR OF TASMANIA
HOTEL GRAND CHANCELLOR, HOBART
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Good morning and thank you for inviting me to open the 2019 Supreme and Federal Court Judges Conference; I extend a very warm welcome to judges from all around Australia and New Zealand to Hobart.

I begin by paying my respects to the traditional and original owners of this land—the Mouheneener people. I acknowledge the contemporary Tasmanian Aboriginal community, who have survived invasion and dispossession, and continue to maintain their identity, culture and Indigenous rights.

Reading through your program I can see that you have a stimulating three days ahead with a wide range of topics: law reform, human rights, cultural diversity, judicial mentoring, judicial wellness; some international issues: reflections on the International Criminal Court from Tim McCormack; some torture from Dr Alice Edwards (I mention those two by name because they are former students of mine at the University of Tasmania) and, to give the program some interdisciplinarity, presentations from Dr Greg Lehman, Aboriginal Research Fellow at our University, on visual representation of Tasmanian Aborigines in colonial art (which reminds me to suggest you visit the Tasmanian Museum and Art Gallery across the road).

And you have speech pathologist Rosie Martin, who is passionate about literacy and addressing the fact that some 44% of Australians have below-proficiency level literacy, making them vulnerable to unemployment and social exclusion. I am guessing she will tell you about her program, Chatter Matters, which improves prisoners communicating and literacy skills.

Congratulations for registering for this conference – the importance of busy judges taking the time out to attend conferences, to listen and be stimulated by new ideas and to interact with colleagues from around the country is so valuable.

While you are in our beautiful little city I do hope that you have time to enjoy some sightseeing in and beyond Hobart and to absorb some of the old and some of the new. I know that you will be visiting Mona, for something of each. For more of the old and the new, I would like to suggest that you take a short stroll across to MAQ1 to see the ‘Footsteps to Freedom Sculptures’, created by Irish sculptor Rowan Gillespie and installed in October 2017.

Rowan Gillespie is well-known for his Famine Sculpture in Dublin and his Migrant Sculpture in Toronto. The Footsteps to Freedom Sculpture, consisting of a child, two women convicts, and a convict woman with a baby in her arms, honours and remembers the lives of the many convict women and children who disembarked on Hunter Island at the very spot where the sculptures are installed. The stone steps still lie under the raised wharf. Each of the figures is modelled on a descendant of a female convict.

Some 12,500 convict women and 2,500 children of their children were transported from Britain and Ireland to Van Diemen's Land between 1803 and 1853.

Where did they go when they stepped ashore? At first they were assigned directly to settlers. In Governor Sorell's time (1817-24), he boarded the ship with a list of people of people who wanted servants. The surgeon-superintendent matched women to the list and they were delivered by constables. Those unassigned because they were described as of 'bad character' by the surgeon-superintendent, or who were breast-feeding, went straight to the first female factory in Murray Street.

The first female factory was cramped and conditions were awful. In 1828 Governor Arthur opened a new female factory at Cascades and until 1843 this is where newly disembarked female convicts went, walking up Macquarie Street and the Hobart Rivulet to Cascades, to await assignment.

It is nice walk from the city centre to the Cascades Female Factory, taking the Hobart Rivulet walking path. The site is managed by the Port Arthur Historic Site Management Authority authority and, as you will learn if you go there, it was not only where convict women awaited assignment, it was a place of secondary punishment (as was Port Arthur for men – convicts did not go directly to Port Arthur). So assigned servants who committed offences or who were insubordinate, were returned to the Factory to serve time in crime class. Pregnant women were also returned to the factory, and after weaning the baby, served time in crime class as punishment for becoming pregnant.

What happened to the babies and children? After weaning, babies were taken from their mothers and moved to a convict nursery where children were kept until they were two or three. If they survived, and many did not, they were taken to an orphanage – from 1833 to the Queen's Orphan School at New Town, purpose-built by Governor Arthur and designed by one of our notable colonial architects, John Lee Archer. He also designed Parliament House, the Treasury Buildings in Murray Street, and the Ordinance Stores on Castray Esplanade, opposite the IMAS building, and around from Salamanca Place.

Many of the children died at the Orphan School, but if they survived they were apprenticed at ages 12-14 unless their mother received a ticket of leave and was able to resume their care earlier.

A new project, 'Behind the Shadows', will link these three sites, MAQ1, the Cascades Female Factory and the Orphan Schools with two sculptures of women at Cascades, and two of children at the Orphan Schools.

With my interest in criminology and sentencing, I am fascinated by transportation as a punishment. I could elaborate about the probation system which operated from 1839 to 1853 in Van Diemen's Land (by 1840 transportation to New South Wales had ceased). Transportation was essential to the flourishing of our country. Without it, the settlement would have failed. In many ways it was a successful way of re-integrating offenders into the community. And it was clearly more successful than corporal punishment or imprisonment.

As Professor John Braithwaite of ANU explains, transportation is historically significant and has been neglected in the contemporary sociology of punishment, and particularly by scholars such as Foucault. Transportation was an exclusionary move (exile of the criminal classes to the other side of the world) which transformed into an inclusionary one, with the convicts and their families becoming reintegrated into respectable society. Braithwaite argues that theories of exclusion and inclusion are a more fruitful topic of exploration than the divide between corporal punishment and imprisonment in the sociology of punishment.

As Braithwaite points out, 'by the end of the nineteenth century Australia was a low crime society and perhaps as prosperous and egalitarian as any society in the world, certainly in terms of worker's wages, which were higher than in the US or Britain.'¹ And Tasmania was one of the most serene places on earth. Ex-convicts and their descendants permeated all levels of society, becoming premiers, professors and war heroes, even judges, as well as countless farmers, labourers, tradespeople, teachers, nurses, mothers and fathers, indistinguishable from people without convict origins.²

He argues that the mutually reinforcing policies of reintegration (for example a system which allowed a ticket of leave after portion of a sentence and freedom to work etc and led in many cases to inclusion in respectable society) and procedural justice towards the convict majority (for example masters of convicts were required to have corporal punishment of assigned servants authorised by a court) allowed for this.

¹ John Braithwaite, 'Crime in a Convict Republic' (2001) 64 *Modern Law Review* 11 at 49.

² Alison Alexander, *Tasmania's Convicts: How Felons Built a Free Society*, 2010, 8.

This is not to say that transportation was a good thing. Many convicts were treated appallingly harshly, many died before they even arrived in Australia. And ‘the more fundamental evil’, in John Braithwaite’s words, was that ‘the crimes of the convicted were expiated through the theft of an entire continent from its rightful owners, mass murder of Aboriginal people, destruction and partial decimation of a splendid tapestry of cultures’.³

So transportation leaves a lot to ponder and it is not without relevance today when we think of how to respond to offenders. Does it suggest that we should focus more on avoiding the stigma of a criminal record and giving more attention to reintegrating offenders into society?

On that note, I declare your conference open.

Thank you.

³ Braithwaite, n 1, 19.