The MAGISTRATES' COURT of VICTORIA

170 Years of "THE PEOPLE'S COURT"[1]

From its origins in 1838 as a crude court of petty sessions, the Magistrates' Court of Victoria has since heard hundreds of thousands of cases. The MCV has produced this first-time exhibition to commemorate highlights of the Court's fascinating history.

"A Drunken, Worthless Set"

Captain William Lonsdale

In 1836, the Governor of New South Wales, Sir Richard Bourke appointed Captain William Lonsdale to be the Badgering Port Phillip colony's inaugural Police Magistrate.

Captain Lonsdale's task was to bring order to a mostly male populace, described as a "drunken, worthless set and a complete pest to the place".[2] With one law book to guide him, and a daily flood of cases which he often had to hear and judge alone, Lonsdale nevertheless calmly set about his duties, brooking "no trifles to interfere with his equanimity, no cases to ruffle his habitual serenity".[3]

In a wattle-and-daub office (right) near where Southern Cross Station is now located, the first case was heard in October 1836 against Thomas Brown, an escaped convict from Van Diemen's Land.

First Melbourne police court 1837

Many early settlers were charged with drunkenness and being absent from masters' premises without leave. Convicts were punished by a number of lashes, usually 25 for drunkenness and 50 for more serious offences (such as this example from the Melbourne Court Register 1836–1838, right).[4]

On 17 July 1838, Melbourne was formally gazetted for the sittings of the Court of Petty Sessions and so began the Magistrates' Court of Victoria, although it did not sit regularly until the following year. A separate Court of Requests, constituted soon after, heard civil claims up to ten pounds.[5]

In 1840, Captain Lonsdale relinquished office to take up appointment as Sub-Treasurer, and was replaced by James Simpson JP (formerly Police Magistrate at Campbelltown in Van Diemen's Land).

The Port Phillip District Aboriginal Protectorate was established in 1838, charged with safeguarding Koories, promoting Christian values and education and maintaining conflict with the European settlers. Five Koori constables were recruited in 1839 to aid the Assistant Protectors. A later incarnation of the Native Police Corps patrolled the Victorian goldfields, before disbanding in the 1850s.[6]

Right: William Strutt, Aboriginal troopers, Melbourne police, with English corporal, 1865. Reproduced with the permission of the Victorian Parliamentary Library.

Police Magistrates were government officials originally responsible for supervising police in their district. Described as a combination of "thief catcher and judge",[7] Police Magistrates were able to set up at locations including tents and hotels, whenever and wherever required. Their role in supervising police ended with the establishment of the Victorian Police Force in 1853, although it was not until 1948 that the title was changed to Stipendiary Magistrate.

Right: Alfred Stephen Strutt, who achieved success in 1851 when he was sent in search of Burke and Wills, and who in 1860 was appointed Police Magistrate at Dimboola.

The Lure of Gold

On 5 August 1850, legislation was introduced into the British Parliament providing for the separation of the Port Phillip District from New South Wales. The colony was named Victoria after the British queen.

A year later, consecutive gold discoveries were made at Anderson's Creek (near Warrandyte), Clunes and Buninyong (near Ballarat), and the rush for gold was on.

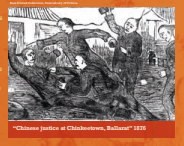
Over the next decade, Victoria's population increased by 600,000. A contemporary observer exclaimed, "There is no denying that crime has already reached a height which is awful. The vast mass of rude fellows who flock here from all quarters of the world and then get extraordinary sums of money ... all are in a sort of temporary exile – the servants of mammon, that they may spend 'gold earnings at home'".[8]

Group of diggers, 1858 by Antoine Fauchery, from the Fauchery-Daintree Album.

The gold rush generated an increasing need for regional townships, public works and the force of the law. Aside from court cases relating to debauchery and theft on the goldfields, there were numerous cases of workers seeking a court order for their wages to be paid. Petty sessions courts were also frequently used for debt collection. Goldfields police were authorised to collect taxes, and were paid on the proceeds of fines – leading to widespread corruption and rebellion from the diggers. Superintendent David Anderson reputedly burned the tents of suspected tax evaders, and was dismissed but not before boasting that he had collected £15,000 in fines and bribes.[9]

Unlike other newly-arrived prospectors, Chinese immigrants came in organised groups.[10]

Resentment of Chinese miners' practice of sending gold back to China culminated in the Victorian Government's punitive Chinese Residence Licence (an exorbitant tax the Chinese were made to pay in addition to their miners' licences, and which many could not afford). In 1860, the Fryerstown court of petty sessions heard a total of 1,139 cases. In 1863, after the Act requiring the Chinese to have a Residence Licence was repealed, the number of cases at Fryerstown fell to 341.[11]



"Chinese justice at Chinkestown, Ballarat" 1856

Keeping the Peace

During and after the gold rush period, miscellaneous cases ranged from liquor licence applications to illegal mining, the unlawful occupation of crown land, cutting firewood without a permit, "being found in a common gaming house", offensive language in a public place, petty theft, drunk and disorderly conduct, early forms of intervention orders, lunacy, and traffic offences involving horses, drays and bicycles.[12]

Above: Australian Court House (built in 1850). Court houses were an important embodiment of towns' authority and respectability.

To cope with the swelling number of offences and disputes requiring resolution, 235 courts of petty sessions were established during the latter half of the 19th and into the 20th century.

The Court of Petty Sessions also had jurisdiction over families, hearing cases of failure to pay maintenance to deserted wives and domestic assault charges, mostly brought by wives against husbands. Maintenance cases sometimes resulted in inadequate court orders.[13] With not enough money for a family's upkeep, children in this situation were removed to the Department for Neglected Children, a syndrome reportedly exacerbated during the gold rush years.[14]

By the beginning of the 20th century, public drunkenness comprised more than half the charges before courts of petty sessions, while other society concerns included illegal gambling and Chinese opium dens (the latter outlawed in 1908).[15]

The deterrent effect of punishment, in respect of many offences, notably drunkenness, vagrancy and petty larcenies was observed in 1908 "to be almost negligible".[16]

Vagrancy laws during this period were an indiscriminate means of targeting those perceived as a public nuisance, shiftless, sexually improper or without visible means of support. "Vagrants" might be prostitutes, known criminals, "juvenile delinquents", or simply elderly, mentally ill or poor. Between 1888 and 1901, the Melbourne Court of Petty Sessions heard approximately 9800 vagrancy cases.[17]

In a Chinese opium den, 1896

Woman drinking (circa 1920). Image courtesy of the State Library of South Australia, SLSA: B 43922/223

The Old City Court

In 1884, the Melbourne Court of Petty Sessions moved into the recent Supreme Court building on the corner of Russell and La Trobe Streets.

Known as "the City Court", the original building was demolished in 1910. In its stead, a neo-Gothic building (pictured right) was constructed and officially opened on 20 January 1914.

Above: Justices of the Peace (JPs) at the City Court, 1914 opening. To the absence of a police magistrate, the JPs were empowered to hear petty cases and preside over the newly appointed cabinet closed courts, often on a retainer for political support – This system was abolished in 1966.

Traditionally, the Court dispatched big lists of hearings, often by lunchtime, and dealt with its civil and criminal caseload by fines, probation and bonds.[18]

Late and sentencing were simplist. Among numerous colourful characters from the City Court days during the 1920s – 30s were Senior Magistrate Daniel Berryman whose nickname was "Five a minute Berryman" because of the speed with which he made orders in undefended debt cases; and Police Magistrate Charles Rogers who called for order, saying "I must have decorum". The constable on duty shouted "Duck Onan, Dick Onan". He then announced "No appearance, your worship".[19]

Despite the male staff shortage in wartime, not all welcomed the proposal of replacement female clerks, as this excerpt from a 1941 letter to the Clerks' of Court Chronicle editor attests:

> **"I can hardly conceive of any legitimate pursuit which could provide innocent girls with such a rotten environment – no matter to what length a male staff may go to shield them from it."[20]**

Above: Plan for Courts c. 1906, by the Civil Construction Branch of the Public Works Department for Royal Consent.

Despite the male staff shortage in wartime, not all welcomed the proposal of replacement female clerks, as this excerpt from a 1941 letter to the Clerks' of Court Chronicle editor attests:

> **"I can hardly conceive of any legitimate pursuit which could provide innocent girls with such a rotten environment – no matter to what length a male staff may go to shield them from it."[20]**

Centralising Jurisdictions

From the mid 20th century, a number of important changes were made to magistrates' recruitment and powers and the Court's scope and direction. These are summarised in the following timeline.

1903	– First wave of regional court closures, owing to declining rural population and building usage
1939	– Victorian Parliament jettisoned the name "Court of Petty Sessions" in favour of "Magistrates' Court".
1973	– Introduction of the *Family Law Act* (including no-fault divorce) – maintenance cases transferred to the Family Court of Australia
1981	– 50 more regional and city courts closed
1986	– Magistrates' Court civil jurisdiction increased to $20,000 – increasing number of cases transferred from the County Court
1986	– The *Courts Amendment Act* (1986) removed the word "stipendiary" from the title of magistrate
1987	– *Crimes (Family Violence) Act* (1987) proclaimed. Within three years, over 10,000 intervention orders were made by the Magistrates' Court[21]
1988	– Victoria's first Night Court commenced at Prahran Magistrates' Court
1989	– The Magistrates' Court Act (1989) passed by the Victorian Parliament
1990	– Magistrates took over the functions of the Crimes Compensation Tribunal [21] (now the Victims of Crime Assistance Tribunal or VOCAT, whose magistrates are known as "tribunal members")
1990	– Committal mention court began operation in Melbourne; 36 regional and five Melbourne court houses closed, the last being the Prahran Magistrates' Court in 1990 – prompting an outcry from local and legal communities (pictured)
1991	– Magistrates' Court civil jurisdiction increased to $40,000
1994	– Opening of new Melbourne Magistrates' Court, corner of William and Lonsdale Streets
2004	– Magistrates no longer addressed as "Your Worship" but "Your Honour"
2005	– Court's civil jurisdiction increased from $40,000 to $100,000
2005	– The Family Violence Court Division (FVCD) commenced sitting at the Magistrates' Court's Heidelberg and Ballarat venues
2007	– The Neighbourhood Justice Centre opened in Collingwood

Changes to the magistracy

Magistrates and were roughly 30% of all lawyers in the Australian court system and were traditionally appointed from the ranks of seasoned clerks of courts. Unlike judicial officers in higher courts, many magistrates communicate much more directly and informally with those seeing their day in court.[22]

In 1979, the Magistrates' Court Act was amended so that only qualified lawyers could become magistrates.[23]

A further regulatory milestone occurred in 1986, when then-Attorney General Jan Kennon appointed eleven barristers to the Bench including the first three women to become magistrates: Margaret Rizkalla, Linda Dessau and Sally Brown.[24]

Above: Sally Brown, one of the first three female Magistrates in 1986.

Deputy Chief and Chief Magistrate followed in 1982 and 1985. He retired from the Bench in 1999.[25]

Journalist Katherine Enslen recalled: "I came to appreciate the Dickensian mould in the old Russell Street court, with its dark wood-carvings, its parade of drunks, vagrants, shoplifters and traffic offenders, and the witty asides from ... Darcy Dugan, whose manner made the court an easier place to be".[26]

(Craig Abbott/Courtesy of The Age)

Above: In 1979, Lorraine Elston was the first woman to be appointed to the court. (Peter Hughes/Australian Women's Weekly)

John Milton "Darcy" Dugan AO

One of the Court's best-known and most widely respected Chief Magistrates, John "Darcy" Dugan began his career as a clerk of courts in 1955. He rose to become Inspecting Clerk of Courts, was appointed Special Magistrate of the Children's Court in 1960, and in 1973 became a Stipendiary Magistrate. Successive appointments to Deputy Chief and Chief Magistrate followed in 1982 and 1985.

Registrars: the Court's "heart and soul"

Registrars (formerly clerks of court) are most people's first contact with the Magistrates' Court. The closure of many regional court venues resulted in registrars' relocation to bigger courts where their duties were more specialised. Rural communities mourned the loss of a respected servant; the Bank of course, according to retired registrar Leo Foster, "was often referred to as 'the poor man's solicitor' and his knowledge of the Acts, rules and regulations was greatly valued."

The job occasionally had its hazards. Scot Leo, "in May 1963 (when a clerk at the Supreme Court), I witnessed a triple murder. Three innocent men were shot in the head before the gunman fired at the complainant in his case. At this time, he was four metres away as I saw him take aim at me. I am unable to explain why he passed before running down the court corridor in the opposite direction".[27]

Chief Magistrate Ian Gray, Chief Magistrate (2008)

Chief Magistrate Ian Gray comments: "Today's Magistrates' Court is responsive to the needs of an increasingly culturally diverse community. The Court will continue to develop problem-solving sentencing and therapeutic jurisprudence and will expand the use of integrated support services in pre-sentence and sentencing decisions. Above all it will remain a court of justice for the people."

The New Face of Justice

Turning Problems into Solutions

During the 1990s, nationwide prisoner numbers burgeoned owing to increased drug and alcohol abuse and decentralisationalism policies which released mentally ill and disabled people into the community.[28] Many offenders and victims had to be surrounded in custody until they were assessed.

Recognising that the law can be therapeutic as well as punitive, the Court developed numerous interventions and rehabilitative programs to support bail and sentencing decisions.

The following examples of specialist courts offer a holistic problem-solving approach focused on the circumstances underlying a person's offending.

The Drug Court

An offender in the Drug Court (located in Dandenong) is generally sentenced to a two-year Drug Treatment Order (DTO). Participants in DTOs receive a suspended sentence, while they undertake treatment and rehabilitation, which may include the provision of housing services, education and employment programs, and psychiatric care. They are required to avoid offending and regularly report to the Drug Court or community corrections officers.

"The atmosphere in these courts is firm, kindly and, often, warm; the tone is conversational. Jail is the big stick kept as the last resort to coax the offender into getting help."[29]

Above: This Koori Court Sentencing Circle ceremony was conducted by Chief Magistrate Ian Gray, while all participants, including victims and supporters, stayed around an oval table.

Koori Courts

Following a recommendation from the Royal Commission into Aboriginal Deaths in Custody, numerous Koori Courts for adults and children have been established throughout Victoria since 2002.

Ceremonial dress at Koori Courts reflects community

To be heard in a Koori Court, offenders must plead guilty and have committed an offence that comes under the Magistrates' Court jurisdiction. Sex-related offences are excluded, as are some family violence offences. Although primarily a place of sentencing, the Koori Court operates under a restorative justice model, which brings together victims, offenders and community members to collectively resolve the impact of an offence, and to chart a path for the future.

Specialist services and programs include the Criminal Justice Diversion Program, Court Integrated Services Program, C.R.E.D.I.T. (Court Referral and Evaluation for Drug Intervention and Treatment), an Aboriginal Liaison Officer, Disability Co-ordinator, Juvenile Justice Central Court Unit and Mental Health Court Liaison.

The Criminal Justice Diversion Program (CJDP)

The CJDP commenced in Broadmeadows in 1997, and is now deployed Victoria-wide. It applies to those who admit their offence, generally first offenders, and entails reparation made to victims, counselling and rehabilitation, voluntary work and donations towards local community projects.

A 2007 evaluation revealed that less than 7% re-offended within 12 months of exiting the program.[30]

Specialist Family Violence Service and Family Violence Court Division

In 2005, the Specialist Family Violence Service (SFVS) was funded with the aim of simplifying access to justice and improving the safety of family violence victims.

At the Family Violence Court Division, there are specially-equipped registries and registrars, workers to support intervention order applicants and defendants, additional legal services from Victoria Legal Aid and Community Legal Centres, dedicated prosecutors and additional security officers. A Family Violence Court Registrar coordinates these services at the court.

Ceremonial dress at Koori Courts reflects community

Looking Ahead

The Magistrates' Court in the 21st century is almost unrecognisable from the court established to impose order on an unruly colony 170 years ago. The court of the future will involve improved technology and customer service, combining to make justice in the Magistrates' Court both more accessible and efficient. Our court buildings will be more user-friendly. We will better inform the community and listen to the needs of court users, so that all Victorians, regardless of background, can navigate the court process.

Chief Magistrate Ian Gray, Chief Magistrate (2008)

In 2008, the Magistrates' Court of Victoria sits at 53 locations and comprises the following jurisdictions:

- Criminal – cases from summary matters to serious indictable offences
- Civil – disputes up to $100,000
- Crimes Family Violence and Bailiing – determines applications for intervention orders
- Infringements Court – for efficient processing of matters commenced by way of Infringement Notice
- Victims of Crimes Assistance Tribunal – determines applications for compensation by victims of crime. There is a VOCAT registry at each venue of the Magistrates' Court.

The Court also distributes money via the Magistrates' Court Fund to not-for-profit charitable organisations, and is involved in a number of community initiatives including the Oasis Soccer project (pictured).

From scribbles to software

The Court's computerisation in the late 1980s replaced hand-written or typed registers. The taking of statements or written evidence was originally done in long hand, followed by shorthand writers, stenotype operators, manually operated tape machines and finally real-time recording.[31]

In 1988, Courtlink – a computerised system for the provision and storage of court records – was introduced. Despite teething issues, Nicholas Papas (Chief Magistrate from November 2003 – April 2006) recalls:

"The court registry was immediately and accurately updated after each hearing and could be searched from any court registry. The Victorian justice system is the beneficiary of the extraordinary vision and hard work of those who introduced and developed Courtlink."[32]

A precursor of remote witness video link technology (above), "Intercourt" was also trialed during this period, linking the Melbourne Magistrates' Court with the Melbourne Remand Centre for hearing bail applications.

Routine motor vehicle offences, low serious street and by-law offences which attract on the spot fines, have been processed electronically since 1987.

References

WHERE'S YOUR LICENCE?