

# **WE GET THE CRIME WE DESERVE: EXPLORING THE DISCONNECT IN 'LAW AND ORDER' POLITICS<sup>1</sup>**

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## **Abstract**

Every dollar that Australian governments spend on keeping people in the criminal justice system is potentially a dollar that could have been spent on initiatives that have been shown to stem the flow of potential offenders and re-offenders. These initiatives include employment incentives, community capacity-building, drug treatments, post-release services, therapeutic courts and intervention for 'at risk' individuals and their families. Intriguingly, governments do spend significant amounts of money on these sorts of programs, but they seem reluctant to advertise the fact that they are assisting those whom many would class as 'the undeserving'. This is an odd and expensive political disconnect. This paper explores a number of fallacies that persist in popular thinking that have the effect of widening this disconnect. It offers a number of paths forward for justice policy-makers and social planners in order to address the malaise.

## **I INTRODUCTION**

So-called 'law and order' issues are important for governments and voters alike. Indeed, governments and opposition parties are quick to assert that their policies, not those of their opponents, will make the streets safer for citizens, and send a clear message to those who would commit crimes (assuming that they are listening) that 'enough is enough.' Typically the assertions are centred upon more punitive measures. Parliamentarians who are not perceived to be 'tough on crime' are told by their minders that they are sure to be denounced as being

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<sup>1</sup> This paper has been developed from a presentation made by the author in Townsville on 24 May 2011 as the JCU School of Arts and Social Science 2011 Criminology Public Lecture.

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'soft on crime', and that that will jeopardise their electoral chances. At the same time, we now know a great deal more about society, crime and its prevention than we did a generation ago. There are some clear paths that need to be taken, but our governments seem to be reluctant to debate them, let alone opt for them. This disconnect does a disservice to us all. It leads to poor government resource allocation and potential wastage of public moneys. These issues are not new, but they persist, seemingly impervious to academic challenge.<sup>2</sup> What will it take to turn the situation around?

## II FALLACIES

This paper will explore six fallacies that, arguably, continue to cloud the debate. It will then make nine suggestions about how best to move from here, policy-wise

### *A Fallacy 1: The causes of crime are straightforward*

The causes of crime are not straightforward. They are multifaceted. True, there are many crimes that are perpetrated by isolated, dysfunctional and malevolent individuals,<sup>3</sup> but these individuals are isolated, dysfunctional and malevolent for a reason. The research reveals that there is a strong correlation between crime and substance abuse, generational unemployment, mental illness, child neglect, family breakdown and poverty. Each of these factors is, in turn, rooted in the social conditions in which we live. It would be useful to look at two examples; one, sex offending and the other, drug-induced offending.

Almost all male sex offenders have been abused as children. A study reported in 1994 by its authors Freda Briggs, Russell Hawkins and Mary Williams<sup>4</sup> found that 82 out of 84 convicted child molesters imprisoned in NSW, Western Australian, and South Australian prisons had been abused by multiple offenders during their childhood.

<sup>2</sup> For example, D Weatherburn, *Law and Order in Australia: Rhetoric and Reality* (2004); R Hogg and D Brown, *Rethinking Law and Order* (1998); J Pratt, *Penal Populism* (2007) have all challenged populist ideas on law and order issues.

<sup>3</sup> This is a view typically depicted in popular media.

<sup>4</sup> F Briggs, R Hawkins, and M Williams, *A comparison of the early childhood and family experiences of incarcerated, convicted male child molesters and men who were sexually abused in childhood and have no convictions for sexual offences against children*. Report to the Australian Criminology Research Council (1994).

The data on police detainees testing positive to a drug has been collected by the Drug Use Monitoring in Australia (DUMA) project for over a decade. In 2009, across all DUMA sites, over half of adult male detainees tested positive to some form of illicit drug. Fifty-six per cent of adult male detainees charged with a violent offence as their most serious offence tested positive to some form of drug, compared with sixty-eight per cent of those charged with property offences.<sup>5</sup>

These data tell us something about our responsibility as a society to address the specific conditions in which offending persists and thrives. The elimination of child abuse should be a national priority. In addition, we should be putting resources into programs that build resilience in individuals that makes them less likely to fall prey to the drugs that mask their pain.

These are not new themes. Theorists have been exploring for decades the links between social disadvantage and crime. There is a growing inventory of compellingly argued works that detail the social destruction and criminality wrought by inequality. By way of illustration, Richard Wilkinson and Kate Pickett<sup>6</sup> argue that removal of economic impediments to citizens feeling valued (impediments such as low wages, low social security benefits and low public spending on housing and education, for example) would allow a flourishing of human potential which will serve to drive down crime rates. There is good evidence, according to Elliott Currie, too, of a direct link between child abuse and violent crime,<sup>7</sup> and between school failure and crime.<sup>8</sup> In addition, David Garland is of the view that the fact of crime serves to reinforce the power of the state to employ social and economic policies that punish the poor and justify a strong disciplinary approach to offending.<sup>9</sup> In other words, the state

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<sup>5</sup> Australian Institute of Criminology, *Australian Crime: Facts and Figures 2010* (2011) Chapter 4, Figure 63, Figure 65.

<sup>6</sup> R Wilkinson and K Pickett *The Spirit Level: Why Greater Equality Makes Societies Stronger* (2009).

<sup>7</sup> E Currie *The Roots of Danger: Violent Crime in Global Perspective* (2008).

<sup>8</sup> E Currie, *Crime and Punishment in America; Why the Solutions to America's Most Stubborn Social Crisis Have Not Worked - and What Will* (1998).

<sup>9</sup> D Garland, *The Culture of Control* (2001) at 101. For a recent reflection upon Garland's thesis refer to D Brown 'The Global Financial Crisis: Neoliberalism, Social democracy and Criminology' in M Bosworth and C Hoyle (eds) *What is Criminology?* (2011).

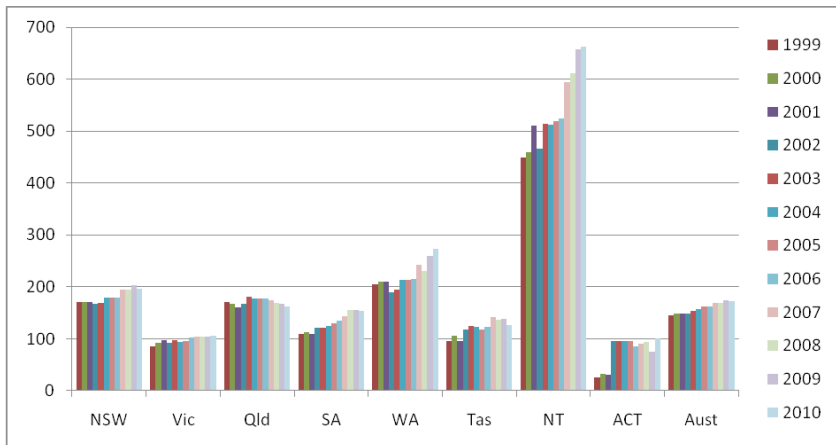
has to overcome, on this view, a natural tendency to punish rather than protect.

This is an area where social policy meets crime causation head on. Detecting the causes of crime is not an exact science. Anyone who suggests that it could be embraced by an easy 'fix, is on shaky ground indeed.

### *B Fallacy 2: Prisons have a deterrent effect*

Our faith in this fallacy is borne out by the steadily rising Australian imprisonment rate, currently 165 per 100,000 population.<sup>10</sup> As illustrated by Figure 1, South Australia, Western Australia and the Northern Territory have seen significant rises in imprisonment rates over the last decade. By contrast, the Queensland rate is declining. The Victorian rate remains steady, and has been significantly lower than other comparable States for well over a decade.

**Figure 1** Imprisonment rates by Australian States and Territories 1999-2010.



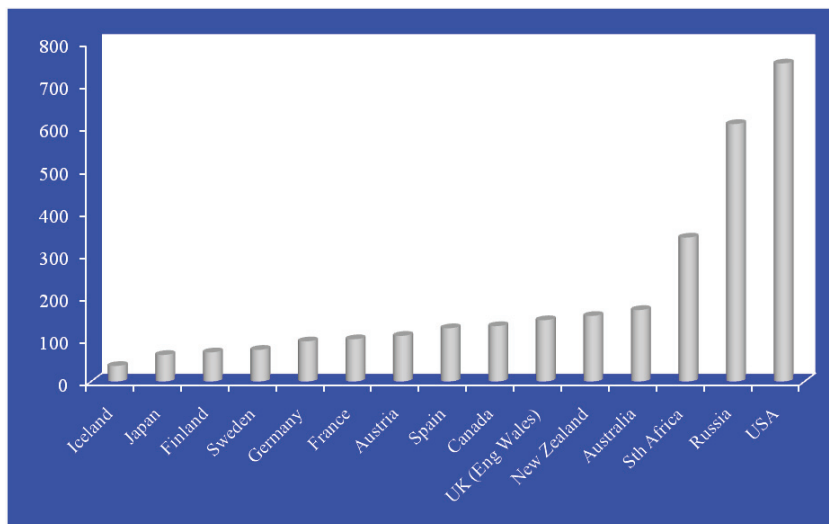
**Source:** Australian Bureau of Statistics Cat. 4517.0 *Prisoners in Australia*.

Compared with other countries' rates in 2006,<sup>11</sup> the Australian imprisonment rate is well ahead of Scandinavia and Western Europe, and ahead of England and Wales, Canada and New Zealand. Figure 2 sets out the available data.

<sup>10</sup> Australian Bureau of Statistics Cat. 4517.0 *Prisoners in Australia* (2010).

<sup>11</sup> The latest reliable data internationally, from countries prepared to report.

**Figure 2** Rates of imprisonment per 100,000 population: selected nations, 2007.



**Source:** M Aebi and N Delgrande, *Council of Europe Annual Penal Statistics 2006* (2007) and Australian Bureau of Statistics *4517.0 Prisoners in Australia* (2008).

Prisons are not inherently wrong. We do need them. Fewer crimes are committed while potential criminals are behind bars. But there are costs associated with over-using prisons. Prisoners, with very few exceptions, will all be released at some time, and there is much research to suggest that the prison experience will have made little difference to the ex-felons' offending patterns. More than half of the prisoners in Australian jails today have previously had at least one prior term of imprisonment.<sup>12</sup>

A study published in 2010 by the NSW Bureau of Crime Statistics and Research (BOCSAR) bears this out. The researchers reported the results of their tracking of the criminal careers of people convicted of assault, pairing those who had been imprisoned with those who had not. They were matched on prior record and prior imprisonment and whether bail had been refused. They found that those imprisoned for assault were more likely to re-offend. This was the case even after various factors not used for matching purposes had been controlled for statistically.<sup>13</sup>

<sup>12</sup> Australian Institute of Criminology, *Australian Crime: Facts and Figures 2010* (2011).

<sup>13</sup> D Weatherburn, 'The Effect of Prison on Adult Re-offending', (2010) 143 *Crime and Justice Bulletin* 1.

Another BOCSAR study looked at 2,650 pairs of convicted offenders with no prior prison sentence. The pairs were between those who received a prison term and those who had received a suspended sentence for a variety of offences, where all other variables were matched. The researchers then compared their offending for the next 1100 days. Those sent to prison were likely to re-offend earlier than those who were not.<sup>14</sup>

### *C Fallacy 3: Prisons are worth the dollars we spend on them*

There is a very high price for locking people away. According to the latest Report on Government Services,<sup>15</sup> some \$78,000 was spent on each prisoner in Australia in 2009-10. If one includes capital costs and payroll tax, the figure is over \$100,000 per prisoner per year, or \$2.7 billion annually.

Certainly that expenditure reduces the mobility of thousands of potential crime-breakers, but it is a short term panacea. For prisons drive a wedge between families, ruin an inmate's employment prospects, and exacerbate the mental illnesses, educational deficiencies and drug dependencies that are found in all prison populations and that dominate prisoner data profiles.

The policy implications for governments are clear: governments can reduce the supply of potential offenders by reducing levels of economic stress in the community, preventing geographic concentrations of poverty and introducing programs designed to prevent social and economic stress from disrupting parenting processes.<sup>16</sup> Policy-makers need to weigh the costs of these programs against the dollars that could be spent (with longer term outcomes) on mental health and rehabilitation services for offenders, post-release support, employment support, Indigenous community capacity-building and care for 'at risk' groups. Each of these activities has been shown to turn current offenders away from crime and to reduce the potential supply of future offenders.<sup>17</sup>

<sup>14</sup> R Lulham, D Weatherburn and L Bartels, 'The Recidivism of Offenders Given Suspended Sentences: A comparison with full-time imprisonment' (2009) 136 *Crime and Justice Bulletin* 1.

<sup>15</sup> Productivity Commission, *Report on Government Services* (2011).

<sup>16</sup> D Weatherburn and B Lind, *Social and Economic Stress, Child Neglect and Juvenile Delinquency* (1997); D Weatherburn and B Lind, 'Poverty, Parenting, Peers and Crime-Prone Neighbourhoods', (1998) 85 *Trends and Issues in Crime and Criminal Justice* 1.

<sup>17</sup> Australian Catholic Bishops Conference, *Building Bridges, Not Walls:*

Incarceration is also discriminatory and inequitable. This is particularly borne out by the high rate of imprisonment of Indigenous Australians. In so far as adults are concerned, there is a twelve times over-representation in Australia of Aboriginal persons in prison. Two per cent of the population is Indigenous and twenty-four per cent of the prison population is Indigenous. The juvenile position is just as lamentable. Although only five per cent of young Australians identify as Aboriginal and Torres Strait Islanders, almost sixty per cent of young people currently in detention are Indigenous. Moreover, there is recent evidence that imprisonment does not have an obvious dividend of crime reduction in Indigenous communities.<sup>18</sup>

In summary, governments need to be very cautious before using the building of prisons as a way of highlighting their track record on crime prevention. The evidence just does not bear it out, and the dollars involved are significant.

#### *D Fallacy 4: Criminal justice policy-making is easy*

Criminal justice policy-making is not easy. Policy-makers must weigh up the evidence, take advice from a range of often conflicting sources and then prioritise the budgets. That is never an easy task. Some examples are needed here. A successful crime prevention initiative to get crime off the streets may simply displace crime to another part of town. Enclave or 'gated' housing communities that provide secure environments for the wealthy may, at the same time, weaken the idea of a shared community ethos. Liberalisation of drug laws has reduced pressure on law enforcement and has threatened black markets, but drug trafficking is not waning.<sup>19</sup> Passing laws to prohibit cyber-bullying sounds like a great idea, but the laws may simply draw into the criminal justice 'net' foolish young people who would be far better off remaining outside of the justice system altogether. Giving Indigenous communities the right to control the policing that occurs in their domain is a policy that has

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*Prisons and the Justice System*, Social Justice Statement 2011-2012, 1-15.

<sup>18</sup> Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2008-09* (2011).

<sup>19</sup> Indeed the benefits of legalisation as a long term strategy are not immediately evident.

worked in some places but not others.<sup>20</sup> The list could go on.<sup>21</sup>

Simply stated, criminal justice policy-making is complicated. The best justice ministers are those who accept that what is required is a carefully crafted balancing act. Short, one line slogans around election time such as 'enough is enough' and 'zero tolerance' are not uncommon. They are counter-productive to the task at hand.

*E Fallacy 5: The legal system is an impediment to responding appropriately and effectively to crime*

Lawyers (especially defence counsel) are often vilified for allowing too many criminals to 'get away' with crime. This is an over-statement. The work of psychologist Tom Tyler<sup>22</sup> shows that the key variable for people's obedience to the law is whether the justice system is seen to be applying procedural justice, that is, if the legal system is deemed fair and not arbitrary. Miscarriages of justice destroy public confidence. Any political system that says that only those who behave properly have rights is a totalitarian system. Lawyers are essential players in challenging unfairness and caprice. They assist people to access their rights.

The society that should be feted is one where everyone's rights are equal before the law regardless of what they have done. Lawyers take an oath to uphold this principle. This is not an idle comment. Recently, a senior South Australian minister mocked the views of a particular lawyer on the basis that that lawyer had acted for a motorcycle gang member.<sup>23</sup> The comment displayed an abject ignorance of the role of legal counsel. Lawyers play a crucial role in this. Their value cannot be over-stated.

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<sup>20</sup> A Vivian and R McCausland, 'Why Do Some Aboriginal Communities Have Lower Crime Rates Than Others? A Pilot Study', (2010) 43(2), *Australian and New Zealand Journal of Criminology* 301-332.

<sup>21</sup> R Sarre, 'Criminal Justice Policy', in J Summers, D Woodward and A Parkin, (eds) *Government Politics Power and Policy* (7<sup>th</sup> ed, 2002), Chapter 26, 527-542.

<sup>22</sup> T Tyler, *Why People Obey the Law* (2006).

<sup>23</sup> 'SA Premier, minister, in the gun for attacking lawyers' by D Ryan, *INDAILY*, 24 May 2011.



*F Fallacy 6: The media provide a reliable source of information about crime and criminal behaviour*

The causal relationship between the reporting of crime and how we think about crime is difficult to trace definitively.<sup>24</sup> There are two schools of thought on the subject generally. The first is the idea that we are shaped and led by the media to a certain opinion which they espouse. The argument is that the media establish and control the ‘law and order’ dialogue. Since they have the power to focus on certain issues, define ‘deviance’, and suggest ‘appropriate’ solutions, for example, harsher punishments, then their power is great indeed.

The other school of thought suggests that individuals are not easily swayed by the media, but rather seek out material from many sources that will confirm their prejudices and support their status. The only sin of the media, on this view, is that they are constantly reinforcing previously held attitudes rather than challenging them. The public are not seen as being merely a malleable and passive audience but active participants in the process.

It is difficult to determine which school of thought prevails today. There is probably some truth in both. That is, for the most part, we are led to certain conclusions that may or may not be warranted because we are presented with a view that has been passed through a powerful media filter. However, at the same time, we may be usually quite discerning consumers.

What we *do* know is that much reporting of crime and especially violent crime is unsatisfactory if only for its tendency to paint a misleading picture of the prevalence of violence, the source of aggressive and anti-social conduct, the vulnerability of its victims, and the effectiveness of punishment. The media often make violence look more prevalent than it is, present the causes of crime as isolated individuals, make Australians look as though all are equally at risk, and present prison as the sole effective punishment option for sentencers when punishing wrong-doers.<sup>25</sup> Each of these ‘axioms’ is highly contestable, if not fallacious.

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<sup>24</sup> M Israel and R Sarre, ‘Defining, Reporting and Recording Crime’, in R Sarre and J Tomaino, (eds) *Considering Crime and Justice: Realities and Responses* (2000) Chapter 1, 1-29.

<sup>25</sup> K Earle, R Sarre and J Tomaino, ‘Introduction: The Criminal Justice Process’ in R Sarre and J Tomaino, (eds) *Key Issues in Criminal Justice* (2004), Chapter 1, 1-21.

### III NINE STEPS THAT ARE REQUIRED TO CHANGE THE CURRENT MINDSET

#### *A Step 1. Encourage responsible Opposition spokespersons*

We need Opposition spokespersons who will open up a debate rather than be B1 to the government's B2.<sup>26</sup> Debate leads to understanding which leads to alternatives and options being considered, which drives informed policy development. Sadly, however, for the most part governments and oppositions do not usually disagree on justice policy. By way of example, when the *Serious and Organised Crime (Control) Bill 2007 (SA)* was being debated in May 2008, the Opposition's criticism had little to do with the challenge the legislation posed to fundamental civil liberties of suspects and their associates, or the possibility of alienating those who might provide the police with information. The effect of the law was to create 'guilt by association.'<sup>27</sup> The Opposition spokesperson's sole criticism, however, was that the government had been "dragging its feet" on the legislation. There was no criticism of the legislation itself. Given that civil libertarians, along with the Law Society of South Australia and the South Australian Bar Council, had made wide-ranging attacks on the Bill, one might have expected a more considered and critical appraisal of the Bill by the Opposition.

A notable exception to this however can be seen in the published opinions of Gregory Smith MP (now the Attorney-General and Minister for Justice in the New South Wales Parliament.) When he was in the NSW Liberal Party Opposition in 2009 he had this to say on the subject of justice policies:

Our recidivism rates are far too high and this harsh line that we have been taking, with the Government almost proud of the size of the prisons, and proud to build more, in my opinion, shows a lack of care for people in prisons, their families and the community generally, because it is short-sighted.<sup>28</sup>

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<sup>26</sup> With apologies to ABC's *Bananas in Pyjamas*.

<sup>27</sup> A Schloenhardt, 'Battling the Bikies: South Australia's Serious and Organised Crime (Control) Bill 2007' (2008) 30(3) *Law Society Bulletin* 8.

<sup>28</sup> 'Truce on hardline sentencing' by Andrew West, Sydney Morning Herald, January 8, 2009, page 2, <<http://www.smh.com.au/news/national/truce-on-hardline-sentencing/2009/01/07/1231004105755.html>> accessed 18/10/11.

In responding, UNSW criminal law professor David Brown offered the following by way of response to Mr Smith's rallying cry.

Once [former Labor Premier Bob] Carr let the law-and-order genie out of the bottle, it became standard political competition to posture over who was toughest on crime, setting up a dynamic that no-one, up to now, has had the courage to end. If Greg Smith can get the genie back in the bottle, negotiate an end to the auction and secure a bipartisan approach, so that each side gives up on scoring cheap political points ... and looks to researched policies that reduce crime, recidivism and imprisonment, then he will be making one of the greatest contributions to justice and real community safety this state has seen.<sup>29</sup>

These are wise words indeed.

### *B Step 2. Fund research more generously*

Researchers regularly provide high quality recommendations and evaluations for governments. There are some very good examples of well structured research findings that have provided information for policy advisers on a range of subjects. These findings include the effectiveness of community-based programs and 'community' policing, drug diversionary initiatives, community corrections, non-custodial sentencing options such as home detention, diversionary courts (Nunga, Murri and Koori Courts, for example, along with Mental Health courts, and Domestic Violence courts in South Australia),<sup>30</sup> rehabilitation programs (such as anger management programs), family 'conferencing' schemes, integrated crime prevention at the local level, and victim assistance programs, to name but a few. The work of 'desistance' theorists reviewing a prisoner's cognition just prior to his or her release is providing some support for the view that prisoners are capable of being agents of their own change.<sup>31</sup> Administrative alternatives to the criminal courts have been shown to be efficient and effective without losing essential transparency.<sup>32</sup> In other words, there is no shortage of

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<sup>29</sup> Ibid

<sup>30</sup> K Daly and E Marchetti, 'Innovative Justice Processes' in M Marmo, W de Lint and D Palmer (eds), *Crime and Justice: A Guide to Criminology* (4<sup>th</sup> ed, 2011).

<sup>31</sup> T LeBel, R Burnett, S Maruna and S Bushway, 'The "Chicken and Egg" of Subjective and Social Factors in Desistance from Crime', (2008) 5 *European Journal of Criminology* 131.

<sup>32</sup> R Sarre, 'Alternatives to the Criminal Courts: Some considerations of civil and administrative options in the process of legal regulation', (2001) 11

evidence that good research can bring about important policy changes if there is the political will.<sup>33</sup>

Ultimately, the task for us all is to find ways to reassure our political leaders that they can commission research and embrace informed recommendations which are creative and innovative without imperilling their own political futures. Academics have a role to play in providing that re-assurance.<sup>34</sup>

### *C Step 3. Challenge the assumption of punitiveness*

The research evidence is clear that, when given the right information, the population is not as punitive or vindictive as our political leaders might think or fear. In a pioneering study conducted three decades ago in Canada by Tony Doob and Julian Roberts,<sup>35</sup> volunteers were asked to consider a sentence given to an offender convicted of manslaughter on the basis of a brief news report; 85 per cent said it was too lenient. But when participants were then given all of the information that was available to the judge, only 15 per cent said it was too lenient. In fact, 45 per cent now said it was too tough. These findings have been corroborated by studies done in 2008 in Victoria by the Sentencing Advisory Council.<sup>36</sup> When asked a simple abstract question, people indicated that, in their view, the sentences were too lenient. But when given more information about the crime and about the offender, people's levels of punitiveness dropped dramatically. The researchers concluded that, when given more information, people are willing to accept alternatives to imprisonment, and victims of crime are no more punitive than others.<sup>37</sup>

In another Australian study, Austin Lovegrove surveyed employees in 32 workplaces in Victoria, asking them to suggest criminal sentences

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*Caribbean Law Review* 25.

<sup>33</sup> R Sarre, 'Contemporary Comment: The importance of political will in the imprisonment debate,' (2009) 21 *Current Issues in Criminal Justice*, 154.

<sup>34</sup> A Graycar, 'Public Policy: Core Business and By-Products' (2006) *Public Administration Today* 6.

<sup>35</sup> A Doob and J Roberts, *An Analysis of the Public's View of Sentencing* A report to the Department of Justice, Ottawa, Canada (1983).

<sup>36</sup> Sentencing Advisory Council, *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing Report* (2008).

<sup>37</sup> See further K Gelb and the Sentencing Advisory Council, *Predictors of Punitiveness: Community Views in Victoria* (2011) and K Gelb and the Sentencing Advisory Council, *Predictors of Confidence: Community Views in Victoria* (2011)

across a range of cases. In three of four cases the median sentence imposed by the participants was less than the one handed down by the judge. His conclusion was that citizens who are fully informed about sentencing are likely to be relatively content with sentences generally.<sup>38</sup> In other words, a politician does not need to pander to vindictiveness and vengeance in order to win votes. People should be constantly reminded that the images of crime that dominate our popular media are based more upon fiction than fact.<sup>39</sup>

*D Step 4. Drive home the argument that a  
safe community is one that is built on trust,  
equality of opportunity and social capital*

It is undeniable that in our prisons we find principally those who are economically marginalised and facing labour market uncertainty, and who live under the influence of drugs, poor education or mental illness.<sup>40</sup> Broken people commit enormous amounts of crime, and it behoves us not to break them further but rather to break the cycle, before their children and their grandchildren begin on the path of offending. The best option for policy-makers is to support the most marginalised among us by improving accommodation support and offering employment opportunities.<sup>41</sup>

When they are released, inmates find that many of their problems have been compounded. Prison makes little difference to our safety in these cases, for safety is compromised once angry and frustrated men are freed. As a priority, governments should be providing meaningful work in correctional facilities, and funding a full suite of rehabilitation programmes and health services, particularly mental health. There is

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<sup>38</sup> A Lovegrove, 'Public Opinion, Sentencing and Lenience: An Empirical Study Involving Judges Consulting the Community' (2007) 9 *Criminal Law Review* 769.

<sup>39</sup> For a general discussion of the way that crime is depicted in the media generally see G Coventry and S Moston, 'Crime and the Media' in M Marmo, W de Lint and D Palmer (eds), *Crime and Justice: A Guide to Criminology* (4<sup>th</sup> ed 2011).

<sup>40</sup> N Niarchos, 'The State of Prisons in South Australia: A Systemic Failure' (2008) 30 (1) *Law Society Bulletin* 14 (Part 1), 30 (2), 24 (Part 2), 30 (3), 12 (Part 3).

<sup>41</sup> Australian Catholic Bishops Conference, *Building Bridges, Not Walls: Prisons and the Justice System*, Social Justice Statement 2011-2012, 1-15, at 8.

evidence of good programming in rehabilitative settings within prisons. Legislation in every state needs to be reviewed to assist in this process.<sup>42</sup> Prison funding can be a vote winner if the dividends for crime control are clearly explained.

*E Step 5. Re-think the awkward Australian constitutional structure*

Australia has a constitutional federal structure that is not conducive to sound justice policy-implementation. The fact that most criminal justice agencies are State-based frustrates national policy-making. The laws protecting children from neglect and abuse provide a vivid example of the problem. Child protection-related legislation across Australia is inconsistent and differs considerably depending upon the State or Territory under review. Whether it be child abuse, neglect, harm, children in need of protection, children at risk or where a child has suffered maltreatment, there are different legislative requirements across the country regarding mandatory reporting. For example, in Western Australia there are few professions who must report, whilst in Northern Territory all carers are deemed to be mandatory reporters. Across Australia there are different legislative requirements relating to the screening of people seeking employment that involves the supervision of young people. There are inconsistencies in the setting of the age of adulthood. These inconsistencies present dilemmas for national organisations or employers or police who operate across borders. They frustrate statistical collections, too, as comparable data are very difficult to collect if definitions alter.

Between 1986 and 1990 all States, except for Western Australia,<sup>43</sup> referred the custody, maintenance, and access of ex-nuptial children to the Commonwealth except for child welfare matters. This is an inexplicable and unsatisfactory exception. Australia needs a referral of powers in relation to child welfare, protection and abuse in the same way that powers have been referred for children in every other aspect of family law.

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<sup>42</sup> K Heseltine, A Day and R Sarre, 'Prison-Based Correctional Offender Rehabilitation Programs: The 2009 National Picture in Australia' (2011) 12 *Research and Public Policy Series* 1.

<sup>43</sup> Western Australia has not referred any powers, since it has its own specialist Family Court.

*F Step 6. Sharpen our focus on the limits and strengths of police*

Police are essential and are consistently held in high regard in this country.<sup>44</sup> We have known for a long time, and police have long realised, that the greater crime deterrent is not the threat of punishment but the certainty of apprehension. In a recent article, American researchers Steven Durlauf and Daniel Nagin<sup>45</sup> examined research that was designed to check probationers' compliance with requirements to remain free of drugs. They concluded that shifting funds from imprisonment to policing could be effective in reducing both crime and imprisonment because increasing the severity of sentences is not as important to crime prevention as increasing police capacity to detect crime. That does not necessarily mean that we need more police. In the census years 1996 to 2006 the Australian population grew 12 per cent. Police numbers grew 14 per cent over the same period.<sup>46</sup>

*G Step 7. Do not discount the options available  
in the private sector*

Private sector personnel are no longer simply watchmen engaged in crime prevention. They are now involved in a vast array of policing responsibilities on a daily basis, adding to, taking from, and complementing the traditional tasks undertaken by public police. These roles include not only surveillance, investigation, crowd control, prison escorts, court security, guarding and patrolling, but also proactive crime prevention, risk management and assessment, weapons training, crime scene examination, assistance with forensic evidence-gathering, information technology advice, hi-tech systems development and communications support. There are very few tasks undertaken by police that cannot be assumed, cheaper but no less competently, by the private sector.<sup>47</sup> There persist some thorny issues around the laws required to provide empowerment and immunities for specific personnel, especially

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<sup>44</sup> Productivity Commission, *Report on Government Services* (2011), Chapter 6, Figure 6.9.

<sup>45</sup> S Durlauf and D Nagin, 'Imprisonment and Crime: can both be reduced?' (2011) 11 *Criminology and Public Policy* 9.

<sup>46</sup> T Prenzler, K Earle and R Sarre, 'Private security in Australia: trends and key characteristics', (2009) 374 *Trends and Issues in Crime and Criminal Justice* 1.

<sup>47</sup> T Prenzler and R Sarre, 'Private Police: Partners or Rivals?' in M Mitchell and J Casey (eds), *Police Leadership and Management in Australia*, (2007) 50-60.

where public and private personnel are working in the same jurisdiction and precincts, but these matters can be attended to by parliaments without too much difficulty.<sup>48</sup>

There are positive stories of diversified public private partnerships. They are set to continue into the future. Not only is it possible to use public/private police cooperation to deliver safe and comfortable environments but, arguably, such cooperation is now imperative.<sup>49</sup>

### *H Step 8. Trumpet the successes*

It is often the case that governments do not advertise the money that they spend on so-called 'social' crime prevention options lest they suffer at the polls. This is a tragic state of affairs for a so-called enlightened society.

An example can be found in the lead-up to the March 2003 NSW election. Results began to emerge from studies of family group conferences (an initiative that diverts young people away from court and into dialogue sessions with victims and police) that there had been reductions of some 15-20 per cent in juvenile re-offending across different offence types and that these reductions had occurred regardless of the gender, criminal history, age and Aboriginality of the offenders.<sup>50</sup> This was a success story that one could have expected to hear booming from the corridors of the ALP government of Bob Carr. The story spoke of crime prevention and placing young people in a better position to foster relationships with victims and support networks. But nothing was said about these studies in the weeks before the poll. 'Justice' announcements were confined to championing policies that spoke of more police on the streets and longer sentences for offenders. The government remained quiet because it was unsure about whether touting these social objectives loudly would jeopardise its political survival. They need not have been so timid. The most recent Survey of Social Attitudes indicates that the proportion of Australians who agree that stiffer sentences are needed in

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<sup>48</sup> R Sarre and T Prenzler, *The Law of Private Security in Australia* (2<sup>nd</sup> ed, 2009).

<sup>49</sup> R Sarre, 'The future of police cooperation: Police and private sector partnerships: trends and issues', in L-E Lauritz and M Ghazinour (eds) *Proceedings of the 2010 Nordic Police Research conference*, (2011), 183-195.

<sup>50</sup> G Luke and B Lind, 'Reducing Juvenile Crime' (2002) 69 *Crime and Justice Bulletin* 1.



order to fight crime is on the gradual decline, from a peak of 84.8 per cent in 1987 to 71.7 per cent in 2007.<sup>51</sup>

To that extent we, as citizens, have only ourselves to blame. We need to challenge more boldly ill-founded populism. We need to tell our representatives that they *can* build long term social investment into criminal justice policy-making without risking electoral backlash.

### *I Step 9: Encourage better journalism*

The difference between crime reporting which is educative and that which is misleading is found in the ability of the reporter to understand the issues. An editor does not send a science writer to do a story on sport, or a non-economist to report on the budget. The idea that ‘anyone can do a crime story’ has to change. Better training of journalists in statistics and evaluation techniques would improve the ability of reporters to be discerning in their reporting and not simply regurgitating the data that they have been fed from their various sources whose motives are not always sound.

## IV SUMMARY

The purpose of this paper was to outline the key issues confronting policy-makers when they are faced with the politicisation of crime. It calls upon governments to draw on good research and embrace the findings of quality evaluations of justice initiatives that have the potential to lower the crime rate and reduce the number of young people who enter the criminal justice system on a regular basis. Some choices and budget priorities are clearly better than others. We know that prisons are financially wasteful, disproportionately affect Indigenous Australians and other disadvantaged groups, drive a massive wedge into the social fabric and have limited impact on crime rates and re-offending. Yet we are relying on them to an increasing degree. At the same time we have the research that indicates where our dollars could be spent more wisely, on social initiatives, on prison rehabilitation and on programs that are aimed at preventing child abuse and neglect.

It should not be beyond the wit of modern societies generally (and ours in particular) to balance the strategies required to combat the scourge

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<sup>51</sup> L Roberts and D Indermaur, ‘What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes’ (2009) 101 *Research and Public Policy Series 1*.

of crime, to protect victims, to stop victimisation, and to stem the tide of young people that keep coming to the attention of police. That will not happen without well informed debates that are free from the politics of 'law and order'. Good policy-making does not happen by chance. It begins with every citizen becoming better informed and more involved. Once that happens, governments become more engaged too.



BOOK REVIEW

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