ISSUES IN

Crime Morality & Justice

edited by Paul R. Wilson

Issues in Crime, Morality and Justice

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Issues in Crime, Morality and Justice

Foreword

This collection reproduces and updates some of the major reports published during the first few years of the Trends and Issues in Crime and Criminal Justice series. The series, begun in July 1986, has attracted considerable media and public attention because it deals with contemporary crime and justice issues in an intelligent and comprehensible manner.

In editing the series I was especially keen to ensure that the reports documented the most recent information available on the state of crime in Australia. However, a second aim was to identify emerging issues in crime and criminal justice and to explore the crucial dimensions of these issues. As we approach the end of the twentieth century, it is apparent that all Australians must drastically revise their general outlook on some crime and punishment matters so that they are more in line with social, economic and demographic trends.

The series, in other words, was not only designed to provide authoritative information on the state of crime in Australia, but also to stimulate community interest in contemporary crime problems. Given the media attention the series has received, I believe it has succeeded in both aims.

In the first section of this collection we begin by comparing the crime rate in Australia with that of fourteen other countries. A multinational survey enables such a comparison to be made with some degree of accuracy. The survey findings reveal that Australia has crime rates which are much more comparable to those of North America than Europe and that for some offences—burglary, sexual incidents, assaults and motor vehicle thefts—Australia has a disturbingly high rate in comparison with most other countries. Our murder rate, fortunately, has been relatively stable over the last two decades and is currently five times lower than the United States of America.

John Walker and Monika Henderson suggest that survey results should not be used to generate unnecessary fear about crime. Rising crime figures are due, in part at least, to a short-term trend in population growth and to changes in society which have increased the opportunity for crime. Hysterical calls for more police or harsher punishments are simply not the way to deal with these demographic and social changes.

In the second section of this book, the role of the police and prisons in Australian society is assessed. The cost of police services now exceeds $2,000 million per year. Not unexpectedly, police expenditures have increased significantly over the past few years. However, Australia's current fiscal crisis makes it most unlikely that this increase will continue and police executives will be forced to employ their resources more imaginatively and efficiently. And, as Bruce Swanton points out in his discussion on community attitudes towards the police, there are grounds for believing that the police can improve their image in the eyes of the public even though that image is currently at a higher level than some of the more pessimistic social commentators assume.

Imprisonment has always occupied a special place in Australian history. As a nation we imprison considerably more people than is necessary, as John Walker's report on the use of imprisonment in Australia makes clear. Only about one in ten inmates are likely to remain in custody for a year or more and fewer than one in six prisoners are violent offenders. As most inmates are either convicted for property offences or for driving breaches there are clearly grounds for the wider use of non-custodial sentences.

However, about 5 per cent of the total prison population are serious offenders who are serving indeterminate life sentences. What 'life' means, though, varies enormously, both between and within the different states. Ivan Potas argues that, in many cases, the use of the term 'life' is 'nothing more than a sham designed to mislead a gullible public'. Potas, however, argues that flexibility in imposing maximum prison sentences has to be

shown. Prison regimes that offer no hope to inmates of ever being released are a recipe for riots and institutional conflict.

The third section of our collection deals with contemporary issues. The chapter on capital punishment raises the perennial debate about the effectiveness of the ultimate penalty, argues that capital punishment is an archaic and unproductive response to our crime problems, and that the available evidence strongly points to its ineffectiveness as a general deterrent.

It has been argued that corporate crime causes more social harm than what is often referred to as 'street crime'. As an example, Australia has suffered incalculable damage in terms of its international reputation as a result of the actions of corporate criminals. Indeed, no thinking Australian can doubt that fraudulent behaviour is commonplace in our society and that such deceptive and predatory economic behaviour was the hallmark of much of this nation's entrepreneurial activity during the 1980s. Fortunately, Australian Federal and state governments are beginning to take the problems of white-collar crime seriously as outlined in the chapter on entrepreneurial crime. The creation of the Australian Securities Commission and an up-grading of law enforcement efforts generally in this area may help to curb the growth of corporate crime and the economic and social damage caused by those who illegally manipulate our financial systems.

Two other contentious areas dealt with relate to the relationship between sexually explicit media material and crime, and the link between alcohol and crime. If anything, the writers of these two chapters suggest the connection between pornography and crime has been over-dramatised but that the relationship between alcohol and crime has been unrealistically downplayed.

Though statistically rare, serial killing creates enormous fear in the community. It may well be that, following American trends, repeat murders will grow as the gulf between socioeconomic groups becomes more apparent and the marginalisation of some sections of society increases. The last report in this section looks at serial killers and surveys some of the new techniques that law enforcement agencies are using to cope with the tracking and identification of such murderers.

In the final section, three issues that juxtapose moral issues with questions relating to the criminal law are looked at. The British jurist, Patrick Devlin, asserted that in a number of crimes the prime function of the law is to enforce a moral position. Partly in reaction to Devlin's argument, H.L.A. Hart, a leading legal philosopher, argued the opposite and suggested that it was not the job of the criminal law to enforce moral principles (*See* N. Morris & G. Hawkins 1970, *An Honest Politician's Guide to Crime Control*, Chicago, Chicago University Press, for a discussion on the Hart-Devlin debate and the role of criminal law).

Increasingly, Hart's views are accepted in Australian states—at least in the area of homosexuality. Most jurisdictions in this country now, thankfully, accept that private and consensual sexual acts should not constitute a criminal offence. Although Hart's views are increasingly applied in relation to sexual behaviour, they are applicable to the area of gambling. Australia has always been a nation of gamblers. The advent of casinos and poker machines has recently increased our propensity to gamble, although there have been negative aspects associated with both illegal and legal gambling. The need for regular and routine monitoring of gambling policies is critical in order to reduce the social casualties that arise in one of Australia's favourite pastimes.

This book ends with a discussion of a biomedical issue that has criminal implications. How can human organs be legally procured in a situation where demand far outstrips supply? At present, 2,000 Australians are waiting for a kidney transplant although only 500 transplants are performed each year. Within this environment the pressures for exploitative and/or criminal practices are immense. New public policies are required in order to reduce the opportunities for criminal exploitation and to boost the supply of human organs for legitimate medical purposes.

These, then, are the issues we deal with in this, the first book summarising some of the Australian Institute of Criminology's published Trends and Issues reports. I hope this collection informs readers about relevant crime and criminal justice matters, and stimulates them to delve into other issues dealt with in the Trends and Issues series.

Professor Paul R. Wilson
1992

Section 1: Overview of Crime in Australia

A Comparison of Crime in Australia and Other Countries

JOHN WALKER, PAUL R. WILSON, DUNCAN CHAPPELL, AND DON WEATHERBURN

An Overview

- How does Australia compare with other countries in terms of crime and offending? Are we more likely or less likely to become a victim of a crime than people who live in other countries?
- How do Australians feel about their police? Are police in Australia more respected or less respected than their counterparts overseas? Do Australians get the services they need from their police?
- Is their anything about the way of life in Australia which makes us particularly vulnerable to crime, or does our supposedly free and easy lifestyle reduce the impact of crime?
- Do Australians take appropriate preventative measures to avoid or deter criminals?
- How do our opinions on sentencing compare with those of people overseas?

During 1989, over two thousand Australians took part in a survey designed to answer these and other questions about crime. At the same time, similar sized samples of the population of ten other countries and three major administrative units of the United Kingdom were being asked identical questions. Questions asked in the survey included details of incidents occurring to respondents over the previous five years, and their responses to them, including degree of satisfaction with police efforts.

Surveys of people's experience of crime offer an alternative view of crime levels to that based on statistics kept by the police. It is extremely difficult to compare police figures from one country to another as different police jurisdictions often use diverse methods of recording and defining particular offences. Though 'victim surveys', as they are called, are far from foolproof, they at least allow researchers to estimate the risk of crime for citizens in particular countries as well as the views of people regarding crime and sentencing matters.

So how did Australia emerge from these comparisons? Unhappily, the report concludes that Australian rates of crime are in some respects very high compared with most other comparable countries. Australia is ranked third highest of the fourteen countries in overall victimisation, behind the other two non-European countries, the USA and Canada. In assaults involving force, in the less serious types of sexual incidents, in burglary and in motor vehicle thefts, Australia ranked highest of all countries surveyed. Only in such categories as motorcycle or bicycle theft, and pickpocketing did we fail to finish in the top half of the list.

It is perhaps surprising, then, to find also that Australians appear to be very much happier with the efforts of their police forces than residents in most other countries in the survey. Almost eighty per cent of victims of crime expressed satisfaction with the police response to their problem, and around three quarters of all respondents thought the police were doing a reasonable job controlling crime in their neighbourhood.

This apparent paradox is not easily explained. There is evidence that some aspects of the Australian lifestyle may actually be responsible for our high crime rates. For example, we may make ourselves easy targets for burglars with our detached houses in big, impersonal cities. Both these features are found to be associated with high burglary rates. Likewise, it can be thought we make life easy for car thieves by insisting on driving to work—leaving the car parked all day unattended. Ironically, however, those countries which choose public transport for their journeys to work have much higher rates of pick-pocketing than we do—there are different opportunities to commit crime associated with different lifestyles. Other features of Australian society appear to be associated with high risks of crime, but the in-depth analysis of the data needed to confirm these suspicions has not yet been completed.

The report concludes, for example, that big city dwellers are over fifty per cent more likely to be victimised than those who live in towns of under 10,000 people. Australia is, of course, one of the

most highly urbanised nations of all, and this single feature appears to explain half of the difference between the risk of crime in Australia and elsewhere. Other factors likely to adversely affect our risk of victimisation include our demography, our high living standards, and our high labour participation rates, especially for women. Most intriguing of all, however, is that the report shows that the risk of all major categories of crime clearly decreases the further a country is from the equator—possibly because a colder climate imposes an informal curfew on both offenders and potential victims alike, reducing the frequency with which people leave the comforts of home and reducing the opportunities for a range of criminal activities. In all these respects, Australia would probably stand out as a 'high risk' country.

Despite the risks, Australians do not appear to be unduly fearful of the risks of violent crime, by international standards. Their most common fear was of being burgled, which, as the responses showed, was supported by the relatively high incidence of these crimes in Australia.

There are some clear lessons in these comparisons, in the need for continued and improved crime prevention activities in Australia. But the figures should not necessarily be cause for alarm at our position vis-a-vis other countries—rather they should be used to identify the special needs of a country such as ours, in terms of crime prevention, policing and the criminal justice system in general.

The Survey

This is the first time an attempt has been made to conduct parallel surveys of crime in several countries. It fills a long-felt need for genuinely comparable estimates of crime and patterns of victimisation in different countries. Researchers have principally wanted to test theories about the social causes of crime by means of cross-national comparisons. Policy makers have principally wanted to understand better their national crime problems by putting these in an international perspective. Comparisons based on numbers of offences recorded by police have presented severe difficulties, not least of which are caused by differences in offence classifications, counting rules, and the frequencies with which offences are actually brought to the notice of police.

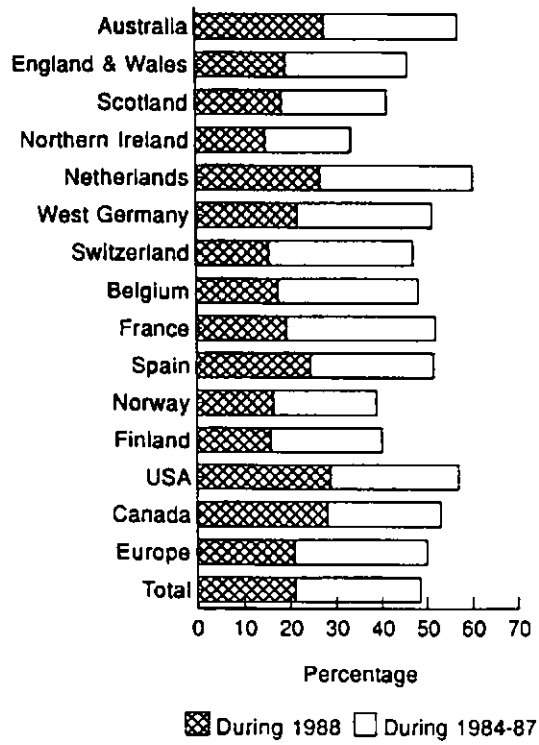
Crime victim surveys of one form or another have been developed in many countries in recent years, as a means of estimating the 'true' level of crime, the extent and nature of offences which are never reported to police, and the distribution of risks across different sections of the community. This particular survey, was first proposed to a meeting of local and regional authorities of the Council of Europe in 1987, but the idea of extending it to other, non-European, countries was readily accepted by the coordinators of the surveys. Eventually, Australia, through the support of the Australian Institute of Criminology and the New South Wales Bureau of Crime Statistics

and Research, joined Belgium, Canada, England and Wales, West Germany, Finland, France, The Netherlands, Northern Ireland, Norway, Scotland, Spain, Switzerland and the USA in the venture. (Local surveys were also conducted in regions of Poland, Japan and Indonesia, but in each case the sample was not drawn from the whole population, and would therefore be unrepresentative.)

Each survey was based on a sample of the population and, for cost reasons, was conducted by telephone. Both these features may clearly limit the degree to which the survey responses adequately represent the actual level of crime in each country. However, great care was taken to ensure that, as far as possible , fair comparisons between nations could be made from the results.

Figure 1

Overall Victimisation Rates for all crimes. Percentages of respondents who were victims of any crime in 1988 and over five years, by country



The offences about which people were asked included:

- thefts of cars, motor cycles and pushbikes;
- thefts from, and damage to cars;
- burglary and attempted burglary;

- robbery;
- thefts of personal property;
- sexual assaults and offensive behaviour;
- other assaults and threats.

Respondents who had been victimised were asked for details of when, where and how the incident happened, its material consequences, whether the police were involved (and if not, why not), and satisfaction with the police response and any victim assistance given. Questions were also asked relating to fear of crime, general satisfaction with local policing, crime prevention behaviour, and attitudes to sentencing.

The Results in More Detail

Crime in Australia, compared to other countries

Table 1 shows estimates of the percentages of the sampled population aged 16 or over in each country who had been victimised at least once during 1988.

Australia is ranked third highest of the fourteen countries in terms of overall victimisation, behind the other two non-European countries, the USA and Canada. In assaults involving force, sexual incidents, burglary and motor vehicle thefts, Australia ranked highest of all countries surveyed. Only in such categories as motorcycle or bicycle theft, and pickpocketing did we fail to finish in the top half of the list.

The risk of having a car stolen in 1988 was equal highest with France (2.3 per cent of respondents), even after taking Australia's high rate of car-ownership into account. Also, 6.9 per cent of Australian respondents said they had things stolen from their cars during 1988 (for example, luggage, radios, car mirrors), and 8.7 per cent had them damaged in some way.

Burglary affected 4.4 per cent of Australian respondents during 1988 compared with 3.8 per cent in the USA and 3.0 per cent in Canada. European rates of burglary were only around half the Australian figure. These figures appear to be related to the percentage of detached houses, which is very high (85 per cent) in Australia.

Australia ranked equal second with Spain for its frequency of non-violent thefts on 5 per cent, with Canada (5.4 per cent) in the unenviable top-spot. These crimes consisted of thefts of personal items such as purses, jewellery or shopping while at work, school or in some public place. Interestingly, though, Australians were at very low risk of pickpocketing.

Table 1

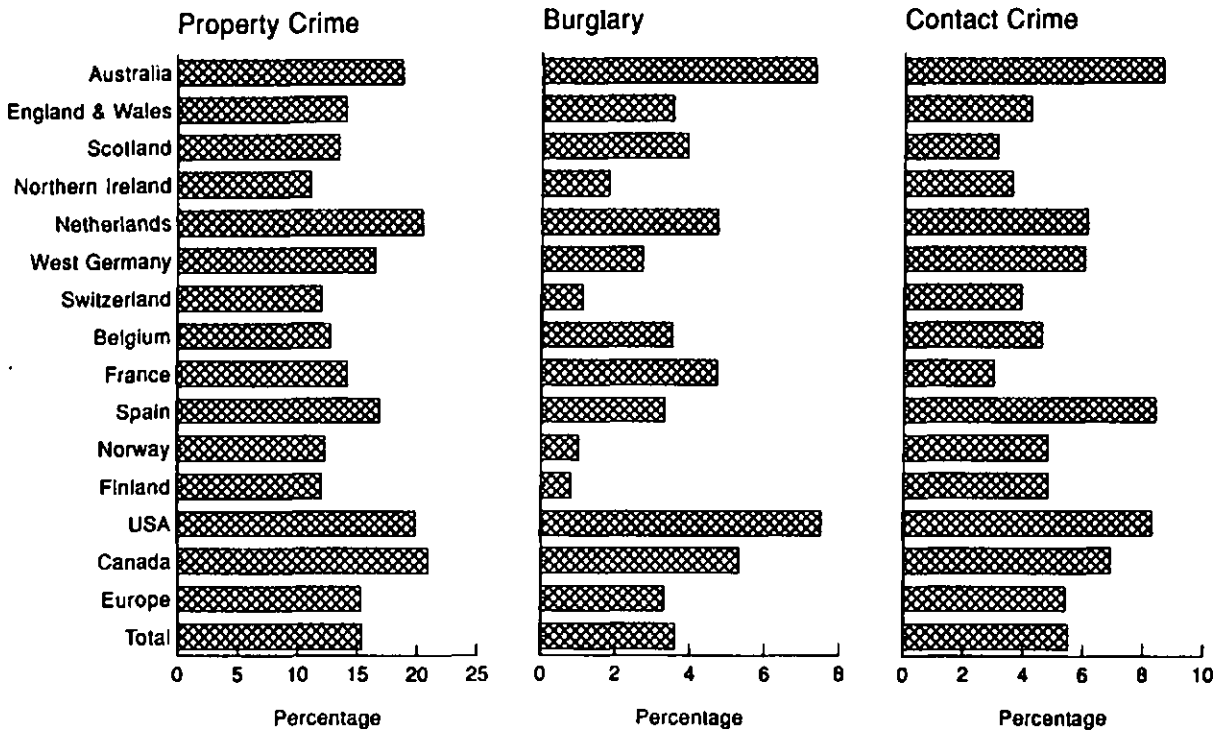
Percentage of Sample Victimised by at least one Type of Crime in 1988, by country and offence type

	Australia	England & Wales	Scotland	Northern Ireland	Nether-lands	West Germany	Switzer-land	Belgium	France	Spain	Norway	Finland	USA	Canada	Europe[1]	Total[2]
Theft of car	2.3	1.8	0.8	1.6	0.3	0.4	0.0	0.8	2.3	1.3	1.1	0.4	2.1	0.8	1.3	1.2
Theft from car	6.9	5.6	5.3	4.0	5.3	4.7	1.9	2.7	6.0	9.9	2.8	2.7	9.3	7.2	5.8	5.3
Car vandalism	8.7	6.8	6.5	4.5	8.2	8.7	4.1	6.6	6.5	6.3	4.6	4.0	8.9	9.8	7.0	6.7
Theft of motorcycle[3]	0.2	0.0	0.3	0.2	0.4	0.2	1.2	0.3	0.6	0.8	0.3	0.0	0.2	0.3	0.4	0.4
Theft of bicycle	1.9	1.0	1.0	1.6	7.6	3.3	3.2	2.7	1.4	1.0	2.8	3.1	3.1	3.4	2.2	2.6
Burglary with entry	4.4	2.1	2.0	1.1	2.4	1.3	1.0	2.3	2.4	1.7	0.8	0.6	3.8	3.0	1.8	2.1
Attempted burglary	3.8	1.7	2.1	0.9	2.6	1.8	0.2	2.3	2.3	1.9	0.4	0.4	5.4	2.7	1.9	2.0
Robbery	0.9	0.7	0.5	0.5	0.9	0.8	0.5	1.0	0.4	2.8	0.5	0.8	1.9	1.1	1.0	0.9
Personal theft	5.0	3.1	2.6	2.2	4.5	3.9	4.5	4.0	3.6	5.0	3.2	4.3	4.5	5.4	3.9	4.0
— pickpocketing	1.1	1.5	1.0	0.9	1.9	1.5	1.7	1.6	2.0	2.8	0.5	1.5	1.3	1.3	1.8	1.5
Sexual incidents[4]	7.3	1.2	1.2	1.8	2.6	2.8	1.6	1.3	1.2	2.4	2.1	0.6	4.5	4.0	1.9	2.5
— sexual assault	1.6	0.1	0.7	0.5	0.5	1.5	0.0	0.6	0.5	0.7	0.6	0.2	2.3	1.7	0.7	0.8
Assault/threat	5.2	1.9	1.8	1.8	3.4	3.1	1.2	2.0	2.0	3.0	3.0	2.9	5.4	4.0	2.5	2.9
— with force	3.0	0.6	1.0	1.1	2.0	1.5	0.9	0.7	1.2	1.2	1.4	2.0	2.3	1.5	1.2	1.5
All crimes[5]	27.8	19.4	18.6	15.0	26.8	21.9	15.6	17.7	19.4	24.6	16.5	15.9	28.8	28.1	20.9	21.1

1 European totals have been calculated by weighting individual country results by population size.
2 Total figure treats each country as of equal statistical importance, with assumed sample of 2000.
3 'Motorcycles' include mopeds and scooters.
4 Asked of women only.
5 Percentage of sample victimised by a least one crime of any type.

Figure 2

Victimisation Rates for Burglary, Other Property Crime and 'Contact' Crimes in 1988, by Country



Notes:
Property crime: theft of cars, motorcycles, bicycles, theft from cars; car vandalism; non-contact personal thefts.
Burglary: including attempts
Contact crime: pickpocketing; robbery, sexual incidents; assaults/threats.

Australia also had very high rates of sexual incidents, including sexual assaults, even when other factors, such as the high female labour participation rate and our high propensity to go out in the evenings, are taken into account. The researchers suggest that an additional factor may be differences in willingness to talk about such incidents. Issues such as sexual harassment have been the subject of heated debate in some countries in recent years, but are still taboo subjects in others.

It is relevant to note that 80.1 per cent of all sexual incidents were for 'offensive behaviour' (grabbing, touching) while 7.8 per cent were for rape or attempted rape and 11.3 per cent for indecent assault. Of all sexual incidents, 92.4 per cent were not reported to the police. Half the respondents who failed to report any sexual incident to the authorities said that they did not do so because the incident was not serious enough or because they would 'solve it themselves'.

The survey results also revealed that a much smaller proportion of incidents of a sexual nature are described as actual 'assaults' by Australian respondents in comparison with those surveyed in other countries. This result tends to support the view that sexual incidents are understated in other countries by current Australian standards.

Our reaction to crime

Reporting Crime

At first sight these are frightening results. In several of these types of crime, in particular sexual incidents, Australia appears to have higher rates even than the USA. Previous analyses, based on police statistics of crime reported, have concluded that the general level of Australian crime is much lower than that of America, although higher than comparable European states.

Table 2 helps explain the phenomenon. In terms of the percentage of incidents reported to police, Australia ranks only twelfth out of the sixteen countries. Basically, this could be either because Australians have so little confidence in the police that they frequently prefer not to ask for their assistance, or because a large proportion of offences are of such minor nature that they are not worth reporting.

For example, around two thirds of incidents of assault were not reported to police, mostly because they were 'not serious enough', or the victims 'solved it themselves', or believed that it was 'inappropriate for police'. Fewer than ten per cent of sexual incidents were reported to police in Australia—round about average—and the reasons for non-reporting were largely similar to those for other assaults. Australians were not more likely than average to avoid reporting incidents because of fear or dislike of the police.

Satisfaction with Police

Police in Australia actually appear to be more popular with the communities they serve than their counterparts overseas. All correspondents who reported incidents to police in 1988 were asked whether they were satisfied with the way the police dealt with their problem. Australia ranked first with almost 80 per cent of respondents satisfied, compared with an average across all countries surveyed of around 66 per cent.

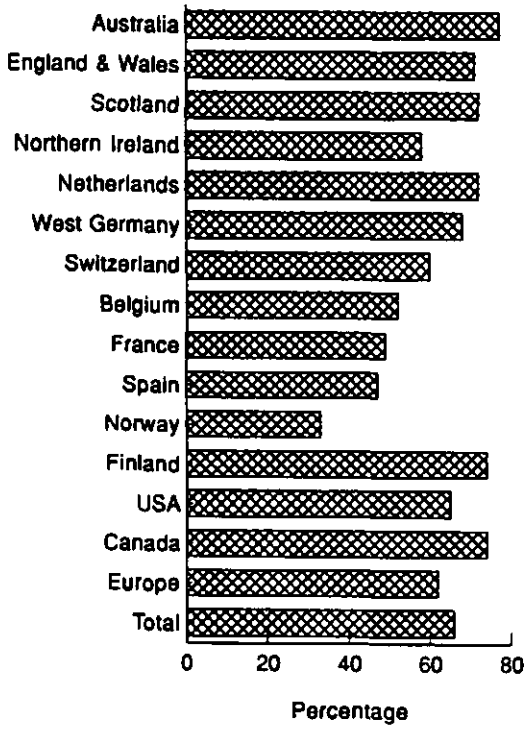
Table 2

Percentages of Incidents reported to police in 1988, by country and offence type

	Australia	England & Wales	Scotland	Northern Ireland	Nether-lands	West Germany	Switzer-land	Belgium	France	Spain	Norway	Finland	USA	Canada	Europe	Total
Theft of car	91.3	100.0	100.0	96.9	100.0	95.7	—	88.2	97.1	76.9	81.8	100.0	97.6	82.4	94.6	93.2
Theft from car	57.6	72.6	79.4	50.0	74.3	79.4	73.7	75.0	71.1	34.0	67.9	71.4	54.6	61.1	63.6	62.2
Car vandalism	27.3	33.1	51.5	31.5	35.4	39.7	46.3	34.8	48.5	20.3	34.8	36.6	49.2	44.8	37.2	38.6
Theft of motorcycle	100.0	100.0	66.7	100.0	100.0	90.0	100.0	100.0	88.9	41.2	66.7	—	100.0	100.0	76.9	85.4
Theft of bicycle	74.4	70.0	65.0	45.2	59.6	66.9	87.5	60.7	28.6	23.8	50.0	56.3	62.3	60.6	57.6	60.5
Burglary with entry	79.5	88.1	92.7	63.6	93.6	75.0	80.0	72.3	75.0	28.6	75.0	33.3	78.9	80.6	73.5	76.9
Robbery	55.6	71.4	54.5	80.0	64.7	54.5	60.0	33.3	83.3	22.4	60.0	12.5	59.5	56.5	45.0	49.0
Personal theft	45.0	55.6	43.4	20.9	41.6	36.1	46.7	43.9	48.1	46.1	25.9	43.2	38.9	29.2	44.8	40.7
Sexual incidents	5.4	8.3	41.7	10.5	19.2	8.8	0.0	14.3	0.0	4.0	9.1	0.0	12.8	9.3	8.1	9.9
Sexual/threat	35.6	47.4	33.3	50.0	31.3	14.3	25.0	19.0	53.3	24.2	26.7	10.0	34.3	31.7	29.9	30.7
All crimes	46.9	58.8	62.3	45.8	52.6	47.9	58.7	48.6	60.2	31.5	42.6	41.8	52.1	48.3	50.0	49.6

Figure 3

Percentage of Victims Satisfied with Treatment by Police



In more general terms, Australian police also appeared to receive relatively high community support. All respondents, whether victims or not, were asked 'Taking everything into account, how good do you think the police in your area are at controlling crime. Do you think they are doing a good job or not?' Australia, in this case, ranked third behind Canada and the USA, still scoring over seventy per cent compared to an average of around sixty-six. As in many of the countries polled, young people were the most likely to be critical of police.

Crime Prevention Measures

Fear of crime induces people to take precautions including fitting burglar alarms, taking out insurance policies, or avoiding going out alone after dark. To provide information about fear of violent crime in public places, respondents were asked if they had to avoid certain areas after dark and if they go out with companions to avoid crime. Australia was quite close to average in these questions. As elsewhere, women and people who live in large cities were more likely to take precautions. The high incidence rates measured for violent crimes in Australia did not seem to translate into high levels of fear of violence.

On the other hand, burglary in Australia does not seem to worry people. A question was asked 'What would you say are the chances that over the next twelve months someone will try to

break into your home? Forty-four per cent of Australian respondents thought that this was 'likely' or 'very likely'—ranking third behind West Germany and Switzerland. Despite this, Australians are moderately, not exceptionally, high users of such precautions as burglar alarms, caretakers and insurance. The fact that Australia has a very high percentage of people living in large cities, and our preference for detached houses, which appear to be comparatively easy targets for burglars, appears more than likely to explain both Australia's high rate of burglary and Australians' reactions to it.

Attitudes to Sentencing

Respondents were asked which of five types of sentence they thought most appropriate for 'a twenty-one year old man found guilty of burglary for the second time. This time he stole a colour TV'. Table 3 shows the principal results of this question.

Contrary to conventional wisdom, imprisonment is not the public's preferred sentence for a recidivist burglar, in Australia as in most other countries. Community service is seen as most appropriate by almost half of all respondents. Less than ten per cent opted for a fine, Just over one in three Australian respondents would send the offender to prison.

Table 3

Percentage in favour of a fine, a prison sentence or community service for a recidivist burglar

	Fine	Prison	Community Service
Australia	8.5	35.6	45.7
England & Wales	11.4	38.2	37.5
Scotland	14.4	39.0	33.5
Northern Ireland	9.0	45.4	30.2
Netherlands	9.2	25.6	46.0
West Germany	8.8	13.0	60.0
Switzerland	11.6	8.6	56.7
Belgium	13.2	25.5	37.7
France	10.3	12.8	53.0
Spain	23.4	27.0	23.4
Norway	23.0	13.8	47.0
Finland	18.9	15.0	36.8
USA	8.2	52.7	29.6
Canada	10.7	32.5	39.2
Europe	12.7	22.2	45.2
Total	12.9	27.5	41.2

Comparison with actual imprisonment rates in these countries showed that public opinion in each country was broadly in line with actual sentences. Respondents from countries with high imprisonment rates tended to support prison as the best option. Whether this means that the courts in each country are actually expressing the wishes of the public, or that the public is conditioned by its knowledge of what the courts actually do, is impossible to decide from this study.

Who is at risk

As Table 4 shows, men are marginally more at risk than women, except in 'contact crimes'. Even here, however, men are more at risk of violence than are women, particularly of robbery. Because only women were asked about sexual incidents, women appear to be at greater overall risk than men. These results confirm the findings of the National Committee on Violence.

In addition, those aged 16-24 years were at least three times more at risk than those aged over 65 years. Because of Australia's post-war baby-boom and high levels of immigration, we have a particularly high proportion of our population in this younger age group. The fact that so many of us crowd into large cities also predisposes us to crime. Those living in towns of less than 50,000 people had lower risks of crime than those living in the capital cities.

Employed people are more at risk than the unemployed. Women in the labour force were particularly at risk, however. Those in higher income groups were at greater risk than the less well-off.

Opportunity is an important feature of criminal offending. Clearly, communities with high levels of vehicle ownership are more at risk of crime involving theft of, or from, vehicles or damage to them. Vehicles left unattended in public places are particularly at risk, so Australia's high car-ownership and our tendency to use private cars for journeys to work, rather than public transport, probably combine to explain in part, at least, our high rates of motor vehicle theft.

On the other hand, this tendency of ours to drive to work could help to explain our comparatively low rates of pickpocketing, since public transport offers considerable opportunities for such crimes.

People who frequently go out at night for recreational purposes are more at risk, in all categories of offence. This could be because they were more exposed to crimes committed in public places, such as pubs or public transport, but also because they were more frequently leaving their cars and houses unattended. Our climate, which for most of the year gives us pleasant evenings and longer hours of daylight, is likely to be particularly culpable in this respect, increasing the range of opportunities for all manner of crimes (*see* Table 5.)

Most intriguing of all, however, is the discovery that countries with colder climates have lower levels of all types of crime than countries nearer the equator. The most significant statistical effects of this sort were found in burglary and sexual incidents, in which over half of the statistical variation between countries can be explained by the countries' distance from the

equator (*see* Figure 4). The most likely explanation for this appears to be that cold or wet weather acts as an informal curfew, keeping both offenders and potential victims at home, thereby reducing the opportunities for crime. Most burglaries, for example, take place while the occupants are away. Most sexual incidents take place away from the victim's home.

Table 4

Victimisation rates for three categories[1] of crime, by different groups of the population—14 countries combined

	Property Crime	Burglary	Contact Crime	Any Crime
	% victimised once or more			
Gender				
Male	16.7	3.7	5.1	22.0
Female	14.2	3.6	6.0	20.3
Total	15.4	3.6	5.5	21.1
Age				
16-34	21.1	4.5	8.9	28.9
35-54	16.7	3.9	4.3	22.0
55+	6.5	2.3	2.5	10.1
Household income[2]				
Below average	11.7	3.5	5.4	17.6
Above average	19.8	3.9	5.9	25.6
Not stated	13.5	3.2	4.8	18.6
Size of Place of residence				
<10,000	12.5	2.5	4.0	16.7
10,000-50,000	15.1	3.3	5.3	20.8
>50,000	19.7	5.2	7.7	27.5
Not stated	13.3	3.6	5.1	18.5

Notes:

1 *Property crime*: theft of cars, motorcycles, bicycles, theft from cars; car vandalism; non-contact personal thefts.
Burglary: including attempts
Contact crime: pickpocketing; robbery; sexual incidents; assaults/threats.

2 Respondents were asked first whether or not their total household income after deductions was above or below a given figure (set in the questionnaire at the median level for the country). They were then asked whether it was above or below the upper or lower quartile figure (as appropriate). Quartile figures were set independently in each country on the basis of national income data.

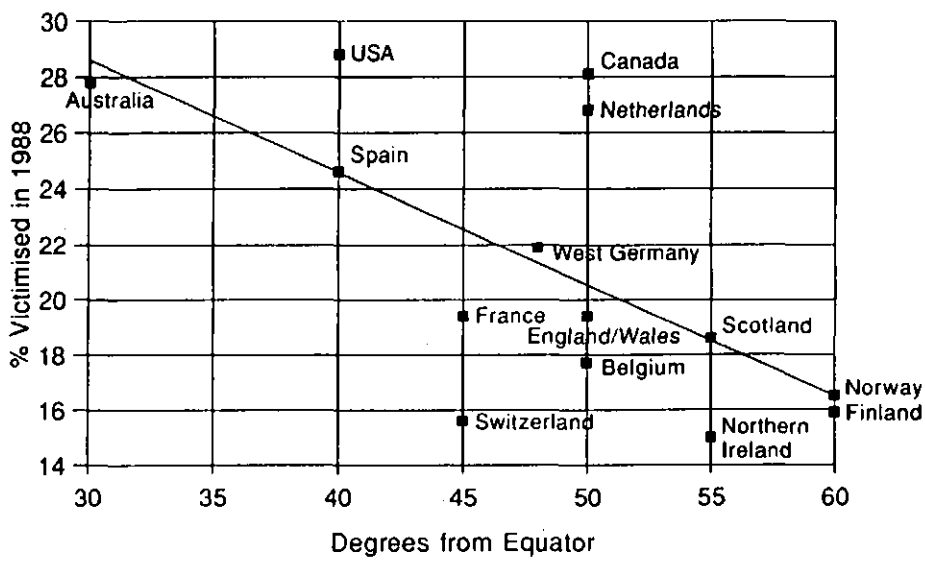
Table 5

Frequency of outdoor evening activities and 1988 victimisation rates —14 countries combined

	Almost Daily	At Least Once Week	At Least Once Month	Less	Never
			% victimised		
Theft of Car	1.8	1.3	1.2	0.7	0.7
Theft from car	7.9	6.4	4.8	3.9	2.6
Car vandalism	10.4	7.7	6.3	5.5	2.9
Theft of motorcycle	0.6	0.4	0.4	0.4	0.1
Theft of bicycle	3.7	3.2	2.3	2.3	0.9
Burglary with entry	2.8	2.2	1.9	1.6	1.8
Attempted burglary	2.8	2.2	2.1	1.7	1.2
Robbery	1.7	1.0	0.7	0.6	0.9
Personal theft	7.7	4.8	3.0	2.4	2.4
Sexual incidents	2.6	1.6	1.0	0.8	0.2
Assault/threat	6.7	3.4	2.1	1.9	1.3
Total	50.5	36.0	26.7	23.3	16.4

Figure 4

Percentages of Respondents Victimised, by Latitude of Country



% Victims = 40.7 - 0.4 * Latitude (R-squared=0.42)

Summary and Conclusions

Australia is a relatively high risk country as far as crime is concerned as this cross-national survey indicates. Happily, we are not in the same league as the USA, but we do appear to have higher crime rates than most European countries. In terms of serious crimes, Australia does not differ substantially from most other countries surveyed. We do appear, however, to have higher rates of relatively minor incidents than most other countries. Our lifestyles appear to create opportunities which predispose us to much of this minor crime.

Among the elements of the Australian way of life which determine how much crime we have to put up with are:

- we live in large impersonal cities, with few of the informal social safeguards which are available in smaller communities; we compound this by living in houses separated from neighbours by large gardens which actually make a burglar's job easier;
- we travel to work across the city by car, leaving behind us residential suburbs with little protection against opportunist burglars, and leaving our cars and their contents in public places all day at the mercy of joy-riders, vandals and professional thieves;
- our long hours of daylight and pleasant evenings tempt us to enjoy outdoor recreational activities in public places, including pubs and sports clubs, again leaving the home with little protection other than perhaps the odd light left on, and subjecting ourselves to risk of all sorts of misfortunes.

Many of the incidents that affect us are so minor that we do not bother to report them to the police. When we do call in the police we are generally satisfied with their efforts to assist us. This survey also confirms previous surveys conducted by the Australian Institute of Criminology in finding that we are not exceptionally punitive in our attitudes to offenders.

Although the recent growth in the private security industry, and the continuing spread of the Neighbourhood Watch concept, suggests that many Australians are adopting greater precautionary measures because of their concern about crime, we suspect that the majority will continue to live an outgoing lifestyle. Efforts to reduce the levels of violence through better education and family support and measures to reduce alcohol consumption, as proposed by the National Committee on Violence, clearly need to be maintained, however. At least, at this point in time, it does not appear that our fear of crime and the actual crime rate should fundamentally affect the way we live.

There is a considerable amount of research still to be performed on the data derived from this survey, and it is likely that the results will shed even more light on the nature and extent of crime in Australia, compared with other countries.

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Understanding Crime Trends in Australia

JOHN WALKER & MONIKA HENDERSON

- Why is crime always increasing?
- Is Australia heading towards the sort of crime levels we used to only read about in other countries?
- What can be done about it?

One of the most commonly asked questions about crime is 'Why is crime always increasing?'. Certainly when we consider the rise in the number of crimes reported to police, there has been a dramatic increase. Reported crimes for Australia have risen by almost two-thirds, from 845,923 in 1980-81 to 1.41 million in 1988-89 (Mukherjee & Dagger 1990).

This rising level of reported crime has provoked reactions at many levels of society. Individuals react by showing increasing levels of fear and concern for their safety. A survey in Adelaide in 1985 found that 35 per cent of people in that city felt unsafe walking alone at night in their neighbourhood (Australian Bureau of Statistics 1986). Only three years later a similar question resulted in 42 per cent of Adelaide residents saying they felt unsafe in the streets at night (Frank Small & Associates Pty Ltd 1988). Some individuals react by taking more strenuous efforts to protect themselves: self-defence classes for women are becoming increasingly popular. The apparent growth in the home security industry in recent years also exemplifies the rise in individuals' crime prevention efforts. Other measures, such as the proliferation of weapons in some countries (ostensibly for personal safety and home security), are arguably counterproductive in preventing violence.

Community groups react by persuading governments to take stronger measures against crime. The 15 years between 1973-74

and 1987-88 have seen a 59 per cent increase in the number of uniformed police officers in Australian police departments (Mukherjee & Dagger 1990). This continues into the 1990s, as shown by the New South Wales Government commitment to employ a further 1600 police (New South Wales Police Service 1989-90). State governments in recent years have also responded to calls for increased police coercive powers through new laws allowing the compulsory taking of blood samples and fingerprints (by force if necessary) and empowering police to direct persons to 'move-on' (as in recent ACT legislation). In some states, perceived pressure on governments to 'get tougher' in sentencing has resulted in increased prison terms served in an effort to deter criminals (for example, Queensland's 1985 increases in maximum penalties; NSW amendments to parole entitlements). Costly new prisons have been built to house the increase in prisoners, in spite of strenuous efforts to provide appropriate alternatives to imprisonment for a range of less serious offences. In view of the rather frightening trends in crime statistics, these appear to be perfectly reasonable community and government reactions.

But research conducted in Australia and overseas suggests that, although worrying, these rising crime figures may be due to a short-term trend in population growth, together with some familiar changes in society. If the changes were properly understood by governments, the media and members of the public, there would not appear to be the need for the draconian solutions that some people have suggested. Furthermore, the research conclusions argue that by placing greater demands on police, courts and prisons, at the expense of alternative strategies, we may be perpetuating the myth of ever-increasing crime.

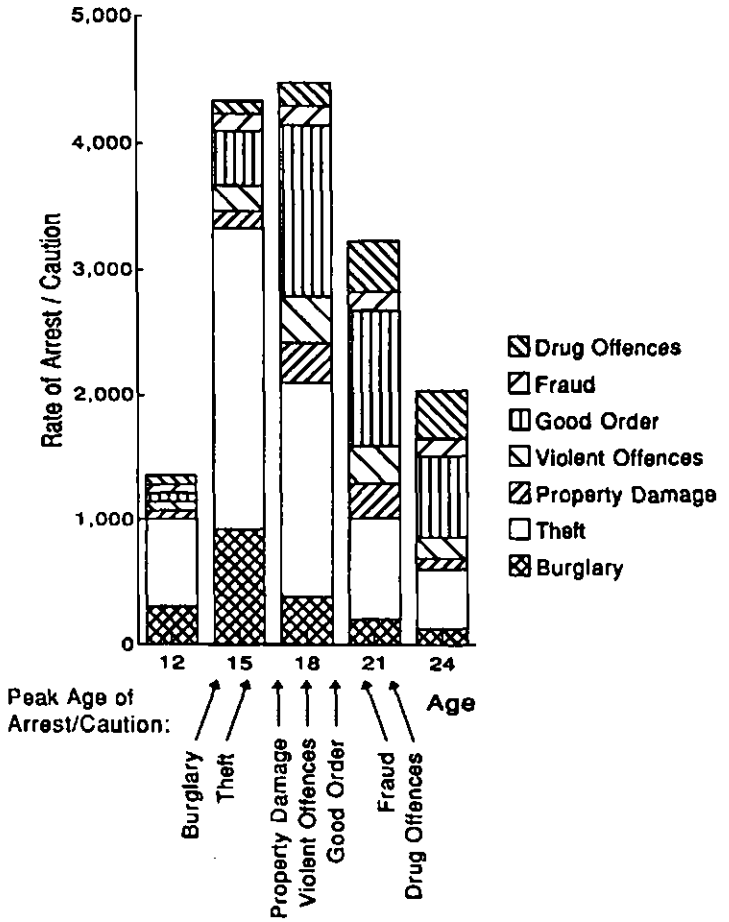
The Three Main Suspects

Demography

It is no surprise to most law enforcement personnel that the majority of non-traffic related offences are committed by the young. However, it may surprise the community to learn just how young. As Figure 1 shows, the peak age of arrest or caution for property offenders in Australia is only about 15 years. Violent offences peak at around 18 years of age. After the age of 21, even driving offences, which vastly outnumber other offences, begin to fall. This pattern is not at all unique to Australia. Equivalent figures for England and Wales confirm the pattern. Their peak ages of conviction/caution in 1986 were: theft 15 years; burglary 15 years; criminal damage 18 years; violent offences 18 years; fraud and forgery 20 years; drugs 20 years (Barclay 1990), and similar patterns have been found in many different times and cultures (Hirschi & Gottfredson 1983).

Figure 1

Comparative Rates of Arrest/Caution for Non-Traffic Offences Persons aged 12, 15, 18, 21 and 24 years (per 100,000 per annum)



Source: These data are interpolated from the statistics contained in Walker, J. 1985a.

Analysis of general population data shows that in 1971 there were 465,153 15 and 16-year-old Australians; their numbers peaked in 1987 to 579,854—an increase of 25 per cent. In 1989, their numbers declined to 544,021 and will continue to decline for some years. This is a direct result of the large post-war baby-boom and immigration in the late 1940s and early 1950s—the so-called 'baby-boom echo'. It is interesting to note the relationship between these population trends and crime. For example, Australia-wide, the number of reported larceny offences increased dramatically until 1986-87, when numbers remained stable for a year, and are now starting to decline. Similarly, the number of reported burglaries in Australia increased steadily until 1984-85 when Neighbourhood Watch schemes were introduced in Victoria and New South Wales. After a two-year decline, the national figures resumed an upward trend, but at a lesser rate. In Victoria,

however, the last two years have shown a declining trend. It is reasonable to assume that the introduction of Neighbourhood Watch affected the reported trends by raising expectations in the community: this appears to be confirmed since the percentages of burglaries reported to police increased from about 70 per cent in 1983 (Australian Bureau of Statistics 1985) to almost 80 per cent in 1988 (van Dijk et al. 1990). So, bearing in mind this change in reporting practices, it appears that both burglary and larceny trends may be greatly influenced by the numbers of 15-16 year-olds in the community.

As these juveniles get older, a certain proportion will continue in their criminal careers. However, as they age, their pattern of offending also changes (*see* Figure 1). This results in peaks in arrest and caution figures for these offences as the group of offenders goes through their mid-teens. Firstly, they tend to restrict their activities to burglary and other theft categories such as shop-stealing. More serious offences, involving violence, peak a few years later, as the teenagers experiment with alcohol, cars and sex. Later still, driving and job-related offences peak, as they adopt adult lifestyles. Then, as the baby-boomer echoes generation grows out of their teenage years, most will grow out of crime, particularly the types of crime which most alarm the community, like violence and burglary, and the trends in crime statistics will tend to be reversed.

It should not be surprising that the demographic effects are so clearly seen each year in the crime figures. High rates of crime in particular regions of Australia, such as the Northern Territory and many of the outer suburbs of our capital cities are clearly related to their high proportions of adolescents; high crime rates amongst the Aboriginal population are also partly explained by their high proportion of young people. There are many other visible consequences of the baby-boom echo in other areas. For example, the booms and busts of the housing industries over the same period are related to trends in family formation. We are also familiar with the enormous pressure on our primary schools during the early 1970s, which shifted to the secondary school system as these children grew older. Now, many primary schools have too few children, while the secondary system seems also to have reached, or just passed, its peak. Our universities currently shoulder the burden—together with the unemployment queues.

Opportunity—the Careless Generation

Other societal factors tremendously amplify the criminogenic effect of demographic change by providing greater opportunities for crime. During the past two decades, for example, it has become the norm for both parents to work: the proportion of working-age women who go out to work increased from 36 per cent in the 1960s and 1970s to 52 per cent in 1990 (personal communication 1990, Department of Employment, Education and Training). Town planning policies of the 1970s simultaneously ensured that residential areas were carefully separated from commerce and industry. The net effect of these two societal trends is that whole residential suburbs are now deserted for much of the working day, creating a vast range of 'job opportunities' for burglars. Arguably, our schools timetable,

which is still arranged as if mother is at home all day and allows children home a full two hours before their parents leave work, compounds this problem. Ample opportunities are provided, as in the recent ACT example where two youngsters allegedly burgled and then set fire to an unattended home during the day, causing $130,000 of damage. Furthermore, the separation of jobs from residential areas, which we found so attractive when we flocked to the new suburbs, ensures that we all drive to work each day, leaving our cars and their contents unsupervised in city car parks all day—creating ample job opportunities for car thieves too. Finally, when we are all back home from work, we leave our commercial and industrial areas totally deserted overnight, because no longer do we allow business people or caretakers to live on the premises—more job opportunities for criminals.

The 1970s and 1980s also saw a major change in our shopping centres. Two decades ago, most of our shopping would have been done in small owner-operated businesses in which carefully laid out shelves of goods would have been watched over by an eagle-eyed proprietor. Now most of our shopping is done in vast supermarkets with comparatively little security, and not surprisingly, shop-stealing offences have increased. Computer technology has ironically compounded the problem by making many of our expensive household electronic goods smaller and more portable.

Perversely, however, in an area which really matters—youth employment—we have moved in exactly the other direction. Since 1975, in order to remove perceived wage-discrimination against young people, Commonwealth governments have amended legislation covering juvenile wage rates, with the effect that juvenile wages have been increased. Many employers, however, have reacted by selecting the older and more experienced of applicants. In 1990, therefore, in contrast to the 1975 situation and despite government attempts to limit overall unemployment levels in Australia, unemployment is now much more concentrated amongst school-leaver age-groups—precisely the age groups who are most liable to turn to crime out of idleness and boredom. The unemployment rate amongst 15-19 year olds increased by 3.6 per cent between 1975 and 1990: 50 per cent more than the increase in the overall unemployment rate in spite of a growing tendency of young people to delay their entry into the workforce by staying on longer at school (personal communication 1990, Department of Employment, Education and Training).

Furthermore, as a consequence of the increasing use of the 'user pays' principle, many of the educational and recreational facilities which used to be provided free of charge or at very low rates, such as after-school activities, public libraries and swimming pools, are now obliged to recover costs from users, which makes them far less attractive to parents already burdened with the high costs of raising teenage children.

The last two decades, therefore, have seen a variety of massive job-creation schemes for offenders, combined with a significant relative decline in legitimate job and recreational opportunities for juveniles.

The Community, Media and Governments' Reactions to Reported Crime Statistics

The reactions of the community, media and government also shape crime trends, mainly through affecting perceptions about crime that in turn amplify reported crime statistics. For example, media dramatisation of high profile violent crimes and increased media attention given to violent crime generally leads to a community perception that violent crime is 'out of control'. This perception lowers the threshold of sensitivity to violence so that there is a greater likelihood of the public reporting minor violent crimes that might previously have gone unreported (for example physical bullying; a punch-up at the local pub). In addition, in response to these community concerns, police may be more likely to deal with borderline cases as serious assault rather than minor assault, or may charge with minor assault rather than proceed with a discretionary warning. In this way, feedback processes amplify real crime trends through community and police reactions.

In some cases, the community has chosen to encourage the reporting of crimes to police—for example in the cases of sexual assault and domestic violence—so that the statistics of crime increase. Bashing your wife when your football team loses is no longer acceptable behaviour, yet more of these crimes are probably reported than in days gone by, giving the impression that it is more prevalent.

Similarly, judicial and government responses to certain crimes can have a self-fulfilling prophecy effect. For example, in response to apparent community concerns about the rise in child sexual assault, courts may react by handing out more severe penalties, as both a deterrent to other would-be offenders, and also to indicate abhorrence of such crimes 'in the eyes of the community'. Over time, these longer prison sentences result in more prisoners held on any single day in prison for such offences. Researchers examining prison trends over time identify a growth in prisoner numbers for this offence, mistakenly arguing its increasing prevalence in the community. The community calls for stronger measures to be taken. Courts hand out longer sentences, and so on.

Assembling the Jigsaw Puzzle

Phase 1: Early Teens—the Wave of Property Crimes

Figure 2 shows how demographic and societal changes have combined with some of the 'logical' community responses to them. For example, between 1980 and 1985, as the baby-boomer echoes reached their early teens they caused a rapid rise in the figures for property offences such as burglaries and shop-lifting. Public reaction to this, influenced by the usual 'shock-horror' treatment by the media, resulted in great concern to 'do something about it'. This concern was echoed by police spokespersons, who quite correctly said that they were virtually powerless to do anything about it. (Crimes in unpopulated residential areas or unsupervised shops are rarely solved, owing to the lack of

witnesses.) Nevertheless, public pressure will have some effect on even the tightest political purse-strings. Funding was found in every jurisdiction for increased police resources, and changes were made to police operations or sentencing legislation in an attempt to catch or deter the offenders. For example, it was in this period that the Neighbourhood Watch movements were established in Australia to assist police in combating property crime. The nature and extent of those additional resources or sentencing changes depended upon the political colour of those in government in each jurisdiction; however, one almost inevitable result of greater police resources and community involvement is that there is an increase in public confidence in the police: more people think it worthwhile reporting offences if they think the police can do something about it (Australian Bureau of Statistics 1985).

Again this will inflate the figures of crime reports, reinforcing the cycle of cause and effect created by the initial increase in crime figures. Circular chains of causation like these are called self-reinforcing 'feedback loops', to use some appropriate jargon from the world of electronics. They are not at all uncommon in society at large (Forrester 1969), but very commonly misinterpreted.

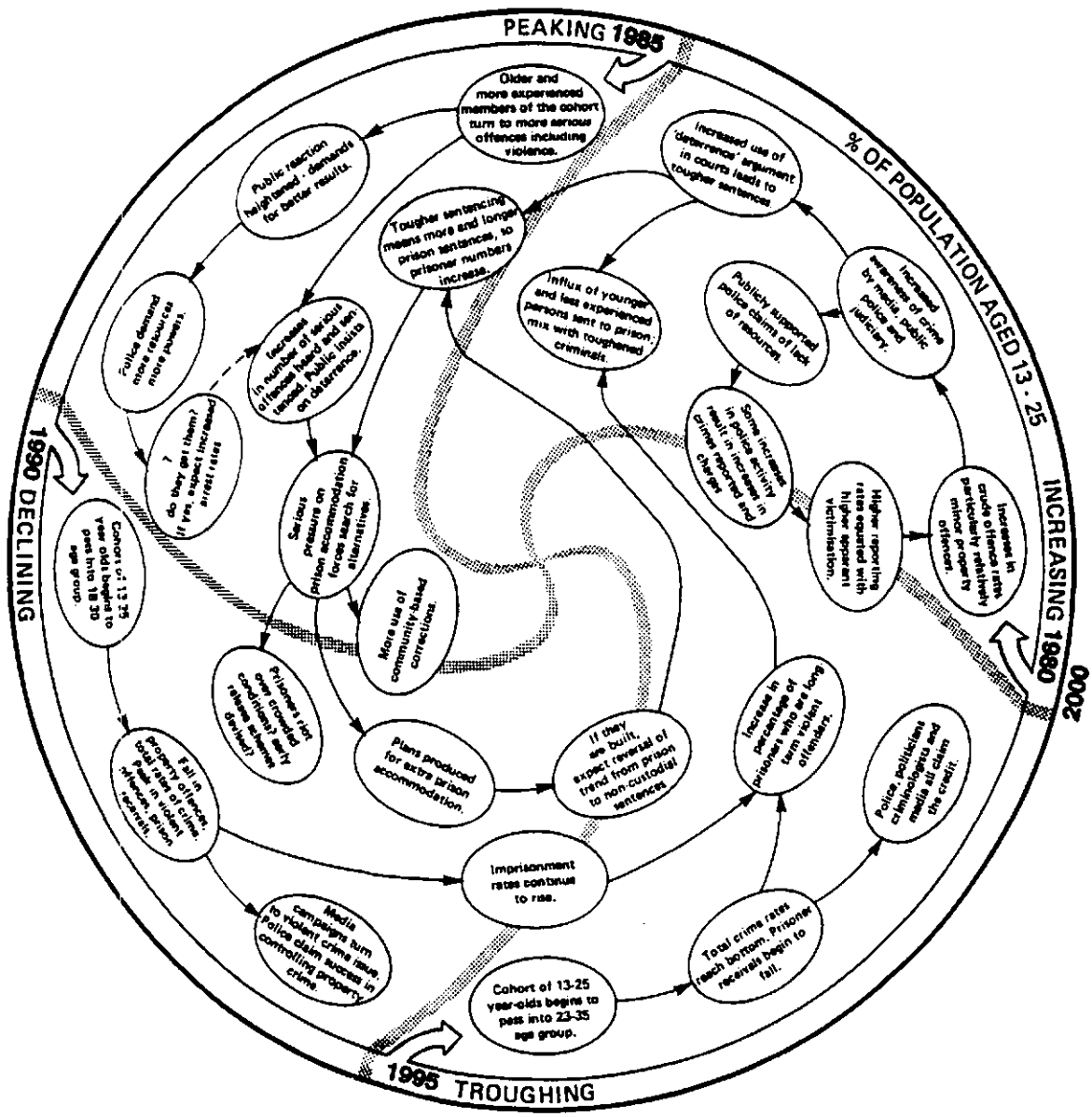
Phase 2: Late Teens—the Wave of Violence

A few years later, the older members of this cohort are reaching their late teens, when they are quite suddenly expected to behave as adults. This includes being allowed to drive, to drink alcohol in pubs and night clubs, to try to earn a living independently and last but not least, to choose their own partners and friends. Some, inevitably, are ill-prepared for these activities. Many fail to find satisfying employment—particularly when jobs are scarce. Many are unaware of the degree of self-control required to handle motor cars, or alcohol or drugs, safely and properly. Most difficult of all, many fail to treat other people with respect, and this often leads to violence. Simultaneously, the criminal justice system begins to treat them as serious criminal rather than as juvenile welfare cases, which further inflates crime trend statistics, and fills the courts and the prisons, in another feedback loop.

The types of crimes which older teenagers commit are frequently alcohol-related and often classified as 'violent', although typically the violence is directed at others of the same age or at the figures of authority—usually police—who are responsible for maintaining order. For example, reported serious assault rates have shown dramatic increases in at least the two largest jurisdictions over recent years. Analysis of police statistics shows that one of the major contributors to this trend has been violence in and around discos, pubs and clubs (Ministry for Police and Emergency Services and Victoria Police 1989; New South Wales Bureau of Crime Statistics and Research 1988), exacerbated by crowding, limited facilities and poor crowd control techniques.

Figure 2

The Jigsaw Puzzle



Source: Walker, J. 1985b.

The increase in violent offences reported to police is accompanied by the presence of young people in the streets around meeting places. This feature of city life is significant in people's perceptions of crime in their neighbourhood (Skogan & Maxfield 1981; van Dijk et al. 1990). Fear of violent crime, whether

it is a justified fear or not, is a powerful stimulant to community groups and activists and, in recent years, there has been considerable pressure on governments to devote more resources to combat violent crime and to punish offenders more severely. Politicians, naturally, want to be seen to be doing something, and, unfortunately, the automatic 'law and order' reaction is often simpler than the lengthy process of setting up constructive counter-crime preventive measures.

Phases 3 and 4: The Ebbtide and the Crystal Ball

If most of this picture looks familiar as we enter the 1990s, the remaining part of the cycle is not, because today we stand at the beginning of Phase 3. The large cohort from the baby-boom echo is beginning to enter its twenties, when they expect to find jobs, settle down with a family and a mortgage, and become fine upstanding citizens. They are already well beyond the peak ages for burglary and theft, so these offences are declining. Soon, even the wave of violence is likely to subside (Victoria's recently announced crime statistics for 1989-90 already show reductions in both property and violent crime rates for the first time in 15 years). Those involved in crime prevention and penal policies no doubt deserve some of the credit for these 'successes', but the consequences of some of the tough penal policies adopted during Phase 2 will continue to haunt us. Prisoner numbers will remain high as offenders serve out their long sentences, and taxpayers may regret their enthusiasm for such lengthy and costly sentences. As the 1988 Thatcher government Green Paper put it, 'overcrowded prisons are emphatically not schools of citizenship', and there is much evidence to suggest that the use of imprisonment is actually counter-productive in many cases, resulting in alienated prisoners returning to more serious crime after their release.

More subtle changes will occur in the crime statistics: while overall violence will decline, domestic violence is liable to increase as the baby-boomer echoes pair off; while total property crime declines, employee crime and credit card frauds may increase as the population wave goes through its working life. Remember also that this generation about to enter the workforce is, by and large, a computer-literate one, and their crimes at work and in business may often be computer assisted. Our crystal ball cannot tell exactly how technological and related societal changes will determine crime trends, but these appear to be some of the most likely areas of change.

Finally, in Phase 4, the largest demographic groups in the Australian population are those over 30 and those under 12 years—the two groups with the lowest crime rates. It will be a golden, but brief period of low crime—a prelude to another demographically inspired cycle of crime and reaction, commencing around the year 2000.

Alternative Strategies for Crime Control

It is often difficult to know which crime control strategies have been successful and which have failed. Perhaps at least part of our difficulty is that we fail to acknowledge the complexities of the 'crime-model'. It is a mistake, for example, to think that strategies such as Neighbourhood Watch are working only if reported crime statistics show a fall. Equally, it is not necessarily proof of success if the statistics show a fall—the problem may simply have 'moved on'. Some successful strategies even increase crime figures, as appears to have occurred in the cases of drink driving, domestic violence and sexual assaults, because of increased reporting and detection of such crimes.

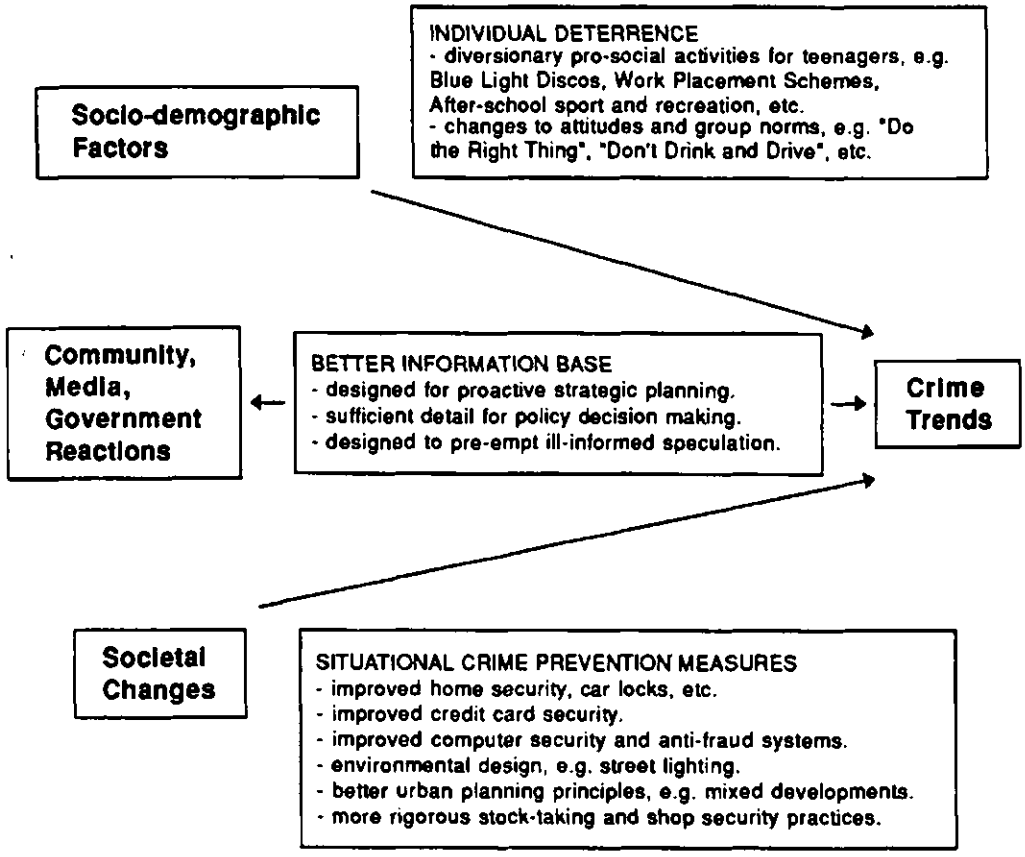
In today's highly mobile society, the strategy of reacting to every individual incident and imposing stiff sentences on those offenders who are caught can be ineffective and costly. Many alternatives invoke the 'prevention better than cure' principle. Some Australian police forces, for example, are already adopting the 'Problem Oriented Policing' approach, which involves the systematic analysis of patterns of incidents, and the development of actions required to solve the underlying problems which precipitate them.

It is a mistake, however, to think that the police, the courts and the prisons should or could shoulder the entire burden of crime prevention and control. For example, this paper has argued that, whereas previous generations took care not to leave property unattended, today we often choose, in effect, to pay the criminal justice system and the insurance industries to look after it for us. Alternative strategies might involve reversing this trend by making changes to the way we plan or populate residential and business areas to encourage cooperative surveillance or changes to working arrangements to allow more of us to work at home.

Much of the crime prevention emphasis to date has been on situational crime prevention factors such as improved home security. (The Australian Institute of Criminology has published a range of reports relating to different crime prevention issues: *see* list at the end of this paper). Less attention seems to have been focussed on what can be done to make an individual turn from crime. However, these 'individual deterrent' factors may have as much if not more potential for impact on future crime trends (*see* Figure 3). The data in Figure 1 clearly show how much crime could be prevented if people were 'turned off' at an early age. Yet another consequence of modern lifestyles is that we spend less time with our growing children than previous generations. Recidivism research (and operational experience of many criminal justice system practitioners) suggests that the age at which the individual commenced criminal offending is a critical factor in determining the extent of the criminal career (Barnett et al. 1987; Hirschi & Gottfredson 1983). Some countries, particularly in Europe, have taxation and other incentives to encourage parents to spend more time with their children, and perhaps there are benefits in this approach in terms of crime reduction.

Figure 3

Factors influencing Crime Trends



In this context, it is interesting to note the trend in recent decades for much of the responsibility for training in moral and ethical standards of behaviour to be transferred from parents, churches, schools and other, mainly voluntary, community organisations to law enforcement agencies. This is evidenced by the need for (and popularity of) the 'Police in Schools' and 'Blue Light Discos' programs both in Australia and elsewhere. While the police are to be commended for their initiatives, these programs have become necessary because modern lifestyles make it difficult for communities to attend to such needs themselves. Responsible parents are not helped, either, when subsidies are withdrawn from local authority services such as libraries and swimming pools. Children who cannot afford to pay wander around shopping centres instead. Ratepayers still end up footing the bill, but the money is spent on cleaning up graffiti and other forms of vandalism instead of on maintaining a public facility.

Young people may also have difficulty in recognising the bounds of good behaviour because of the ambivalence they see all around them. They see speed limits which are only observed by a tiny minority of adults; employees who consider the office

stationery cupboard as the provider of their private and home needs; adult smokers who do not regard a discarded cigarette butt as litter and a potential bush fire; blatant violence being applauded and approvingly replayed by adult sports commentators and film-makers, and so on. In recent years, the educative powers of the media have been used increasingly to promote community-minded attitudes ('Do the right thing'; 'Don't drink and drive'), and perhaps there is scope for even greater use of this technique.

There is no single 'best solution' to the crime problem. Effective strategies need to be targeted at prevention and ideally be based on a holistic approach that incorporates situational crime prevention strategies as well as individual deterrent programs. And we need to plan these strategies to take account not only of prevailing crime trends but also to counter emerging ones. As an additional bonus, the resources to establish and maintain such strategies are not necessarily large. The best and most innovative programs make use of existing and often underutilised community resources and services.

Conclusion

The ideas in this paper should not be taken to imply that apparently rising crime trends can be viewed with no concern. What should take place is a balanced consideration of the various reasons underlying such trends (and what they mean for future trends), which allows a more reasoned consideration of appropriate policy responses to the problem, particularly where alternative ways of allocating resources to prevention and intervention may result in a better rate of return for the increasingly rare criminal justice system dollar.

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Section 2: Police and Prisons

Efficiency and Effectiveness in Australian Policing

PETER N. GRABOSKY

Claims from both sides of politics, and from police themselves, that law enforcement resources are insufficient to cope with demand for police services, have become a familiar refrain. This level of discourse neglects the question of how improvements in administration and management may in themselves lead to increases in effectiveness, thus obviating the need for additional resources. The public, and their elected representatives, remain generally incapable of asking hard questions about efficiencies and priorities in law enforcement.

Public concern over statistics of reported crime is often used to support claims for increased police resources and power. Less immediately apparent both to the public and to their elected representatives are two considerations, discussed in more detail below, which bear significantly upon the police role as traditionally conceived. First, a significant proportion of police resources is devoted to tasks quite unrelated to the prevention of crime and the apprehension of offenders. Second, crime is the product of many factors, most of which are beyond the ability of the police to influence.

A hard analytical look at the economics of policing would address a number of issues. Are the products of police subject to increasing, decreasing or constant returns to scale? Some analysts suggest that in policing, as in other public services, costs tend to grow in geometric proportions to benefits (Panzarella 1984, p. 120). An initial increase in funding tends to be targeted at the easiest problem; further funding is devoted to objectives increasingly more difficult to attain. Is there an optimal level of police expenditure, beyond which costs would increasingly exceed benefits (Pyle 1983)? To state the issue in concrete terms, consider that one additional patrol car, fully manned, on a twenty-

four hour basis, would cost almost $300,000 per year[1]. Would the population of any state or territory of Australia receive $300,000 worth of additional services by adding one patrol car? Precisely what would they receive?

Central to the discussion which follows are three questions: Just what contribution would an incremental increase in police resources achieve? Can better deployment of existing resources obviate the need for increased resources? Can a modification in police operations reduce crime without increasing costs? The questions are more than idle speculation, for a mere 10 per cent increase in police expenditures Australia-wide would cost taxpayers some $200 million per year.

Concepts

Effectiveness in policing is the extent to which the police department is accomplishing its purpose.

Efficiency reflects the relative unit cost at which the police agency is undertaking its activities.

Whilst the ideal police department is both efficient and effective, the two conditions are by no means inextricably linked. An operation may be effective, but still inefficient; consider a successful criminal investigation, which results in the arrest of the offender, but which could have been achieved in as timely and as thorough a manner with half as many detectives as were in fact employed. Conversely, an activity may be efficient, without being effective. An increase in traffic enforcement activity may be reflected in a greater number of tickets written, and a corresponding reduction in the unit cost of issuing a traffic citation. To achieve such an increase necessitates a concentration on relatively minor moving violations, at the expense of drink-driving charges, which entail more time-consuming procedures. The overall objective in question, a reduction of death, injury and property damage, may not be achieved despite significantly increased efficiency in traffic enforcement.

Productivity, on the other hand, refers to the output, or degree of effectiveness, obtained by a police agency for a given amount of resource investment, or input (Hatry 1975). Unfortunately, productivity in policing is easier to conceptualise than to measure, for the ultimate ends of policing often resist

1 This estimate is based on the following assumptions:
- continuous patrol by two officers;
- a total of ten officers is required in order that two be deployed on a continuous basis;
- salary of $26,000 per year per officer;
- 200,000 vehicle km driven per year;
- 10 cents per km vehicle operating costs.

N.B. No allowance made for:
- recruitment, training, or administrative support;
- vehicle purchase cost.

quantification. An ideal measure of crime prevention productivity would entail the number of offences prevented by police activity divided by the cost of police crime prevention operations. Because events that have not occurred are exceedingly difficult, if not impossible, to measure, hard indicators of police productivity, at least concerning crime prevention, remain elusive. One can, however, devise systematic estimates of the impact of marginal changes in police operations. Certain research techniques, discussed below, can thus permit some assessment of police productivity.

Table 1

Australia: state police forces
Total police budget
1978-79 to 1987-88 (in $ million rounded)

	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88
Actual Police $	563	662	802	918	1051	1129	1245	1431	1553	1705
Constant Police $	676	728	802	835	862	847	896	973	963	971

Based on 1980 Consumer Price Index
Source: Hudzik 1988.
Note: Data pertain to six state police forces only.

Cost-benefit analysis addresses whether a particular activity represents a worthwhile use of resources, by comparing the monetary consequences. The systematic assessment of costs and benefits is relatively unfamiliar terrain in the criminal justice system. One explanation for this is the difficulty of quantifying both the costs and the benefits of a particular activity. As Hudzik (1988) notes, program budgeting methods, which might permit systematic cost analysis, have yet to be implemented fully by Australian police agencies. Quantification of benefits, on the other hand, is complicated by the intangible nature of much crime-related phenomena. For example, it should be easy enough to determine the cost of doubling police patrols in a particular area. Much more difficult is the task of estimating the number of crimes prevented by, and determining the incremental gain in feelings of public security which result from, the increased patrols. Most difficult of all is assigning a monetary value to these outcomes, so that they may be weighed against costs entailed.

Cost-effectiveness analysis determines how a particular objective can be attained at least cost. It differs from cost-benefit analysis in that cost-effectiveness analysis does not ask whether the activity is worth doing in the first place. Nor does it entail the monetary quantification of the activity's effects. It may well be more economical for police to proceed against nude sunbathers by

summons rather than by arrest. The wisdom of proceeding against nude sunbathers at all is an important question, but one not amenable to cost-effectiveness analysis.

Cost-effectiveness analysis can, however, provide a basis for strategic planning. Assume that a given activity results in 85 per cent of an objective being attained at a cost of $500,000. An additional investment of $250,000 would produce a further 10 per cent of the objective. Thus, 95 per cent of the objective can be attained at a cost of $750,000. Managers must decide whether to invest the additional $250,000 in the given activity, or alternatively, in activities aimed at other objectives.

Those involved in the formulation and implementation of police policy should also be sensitive to the concept of opportunity cost. Briefly stated, opportunity costs are the actions and outcomes foregone when one course of action is selected in preference to another. Resources devoted to the arrest and prosecution of public inebriates or of persons engaged in consensual homosexual activity could otherwise be allocated to the arrest and prosecution of domestic violence offenders. Efforts directed at suppressing the supply of cannabis could otherwise target more harmful substances such as heroin. The identification and weighing of opportunity costs are integral to strategic decision making.

Police and Crime

Crimes vary in terms of their accessibility to police operations. Most serious crimes, including murder, robbery and rape, are rarely if ever encountered by police on patrol. A great deal of crime occurs in private, beyond the preventive reach of any patrol activity. A significant proportion of sexual assault, for example, is committed in non-public settings by persons known to the victim. Although much police work is grounded in the assumption that the threat of detection and ultimate arrest will deter prospective wrongdoers, many criminals act on impulse, without attempting a rational circulation of the risk of apprehension and the value of ill-gotten gains.

Crime, moreover, results from a variety of other factors, some of which are entirely beyond the ability of police to control. Economic conditions, social and demographic influences, and such environmental considerations as the availability and intensity of street lighting are but some of these.

Moreover, the processes by which police resources impinge upon the incidence of crime are often overlooked. It is not merely the availability of additional police resources, but how these resources are used, which determine the nature and extent of their impact on crime. Overall strategies, management techniques, and resource allocation decisions may facilitate or inhibit the attainment of crime related goals. The assumption of a direct relationship between police personnel strength and a reduction in the crime rate is thus a gross oversimplification. Additional

resources per se do not necessarily make a difference. Resources may be managed and deployed in such a way that they might make a difference. And the potential effects of additional resources may be diminished or neutralised by external factors.

Police Performance

Because of the multifaceted nature and the inherent limitations of policing in Australia, there neither exists nor can there exist a single measure of police performance. Rather, it is appropriate to select from a variety of measures those which focus upon that specific element of police activity one wishes to evaluate.

Police performance may be conveniently analysed at two stages (Whitaker 1984). The first concerns the processes by which resources are translated into operations—how, precisely, police spend the funds which they have been granted. If, for example, one's crime control strategy is to maximise visible police presence, one must determine what forms of organisation, management tools and procedures are most conducive to getting more patrols on the street. The obvious focus of this analysis is efficiency.

The second stage of performance assessment concerns the impact which police organisation and deployment have on what it is police are seeking to achieve. Can more police patrols and faster response time lead to fewer household burglaries, safer streets and less public fear of crime? The focus here is on effectiveness.

Human Resource Management

Since approximately 90 per cent of contemporary police expenditures relate to personnel, a basic question facing police executives is whether they are getting the most out of the personnel they have. The costs of training and maintaining a sworn police officer are considerable; the extent to which uniformed personnel are underutilised may reveal substantial potential savings. In this respect, the access of senior police to management information systems which provide reliable data on manpower needs and personnel allocation is an important step towards more efficient use of these human resources. A variety of measures reflect the degree to which personnel resources are efficiently deployed.

It has long been observed that a number of duties still performed by some police officers—from typing to courier work to sweeping floors—could as effectively be performed by some civilian personnel, at less cost. Such reliance upon civilian staff would then free trained police officers to perform those duties which they are uniquely qualified to perform. Although Australian police agencies have sought to reallocate extraneous

duties to public service personnel, these initiatives have met with some resistance from police associations.

Measuring the Impact of Police Operations: Crime Statistics

The argument most often used to justify increases in police resources is the increase in the rate of reported crime. Implicit in this argument is the understanding that an increase in police personnel, or powers, or financial resources will reduce the crime rate to some extent, whether by deterring potential offenders, or by incapacitating those who do offend.

As noted above, there is a variety of social forces, quite independent of police activity, which affect the incidence of crime. The relative influence of policing amidst these other factors is unknown. The police mission, moreover, is extremely diverse. It is thus by no means certain that an increase in police resources will automatically bring about a decrease in crime.

Measurement of police activity should be undertaken with great caution. Statistics are often imprecise and ambiguous. Analysts should be sensitive to what a particular measure is, and is not revealing. One of the classic pitfalls of police performance analysis is the tendency to use crime statistics to measure effectiveness. It has become increasingly evident that in Australia, as elsewhere, crime statistics are a very imperfect reflection of the true rate of crime. Many factors intervene between the commission of a crime and its transformation into a crime statistic (Black 1980). Not all crimes committed come to the attention of the police. Some, including the more skilfully executed frauds, are never detected. Consensual transactions, including activities involving illicit drugs, tend to come to light as the result of proactive policing. That is, the more police assigned to a particular area, the more offences those police will detect. Statistics which purport to reflect these and other offences which lack aggrieved victims tell us more about police resource allocation than they do about the target criminal activity. Because of the ambiguities inherent in crime statistics, some commentators have called for their publication and interpretation by an independent bureau.

Victims of more conventional forms of crime such as assault and theft may, for a number of reasons, be disinclined to report offences to police. Such reasons may include the victim's perception that the matter was too trivial, that the police could not or would not be of much assistance, or that further pursuit of the matter would entail unnecessary stress and discomfort (Australian Bureau of Statistics 1986, pp. 49-67). A British Home Office study suggests that the more accessible the police, the greater the tendency of a citizen to report an offence. That is, more widespread telephone ownership and greater police manpower lessen the inconvenience of contacting the police and thereby facilitate citizen reporting (Clarke & Hough 1984, pp. 2-3). Thus, ironically, an increase in the rate of reported crime can as easily be

interpreted as indicative of police effectiveness as it could be regarded as cause for alarm.

Economists use the term 'production function' to describe the relationship of resources to objectives. Conventional wisdom assumes the relationship between police manpower and the crime rate to be negative—that is, an increase in police resources will produce a decrease in the incidence of crime, and a decrease in police manpower will result in an increasing crime rate. Whether this proposition is true or not, it is accepted as an act of faith by members of the public and publicly embraced by police themselves.

Table 2

Australia: state police forces
Total sworn police officers (in thousands)
1978-79 to 1987-88

	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88
Total	27.1	27.8	28.6	29.1	29.8	30.1	31.3	32.9	33.4	34.5
% Annual Increase		2.6	2.9	1.7	2.4	1.0	4.0	5.1	1.5	3.3

Source: Hudzik 1988
Note: Data pertain to six state police forces only

Less thought has been given to the contours of this assumed production function. A perfectly linear relationship would mean that crime will decrease in direct proportion to the increase in police manpower; that is, a 25 per cent increase in police manpower would produce a 25 per cent decrease in crime. Alternatively, the relationship could reflect diminishing returns, where the impact of each additional police officer is less and less, or economies of scale, where the impact is greater and greater.

The nature of this production function, indeed, whether it exists at all, has yet to be accorded systematic research in Australia.

Operations, Research, Evaluation and Expenditure Control

Improvements in efficiency, effectiveness, and productivity of policing do not occur spontaneously, but rather through systematic analysis and the application of modern management principles. These include strategic planning, the setting of priorities and systematic monitoring of operations. This section will review some of the approaches which have been heralded as contributing to police performance.

There are a number of questions which have the potential of contributing to productivity. Again, it is useful to distinguish between the two stages specified above—resource utilisation and ultimate impact.

The potential of research for improving police performance is great, but only if that research is designed and conducted properly. A great deal of discourse on policing has an evangelistic quality about it. Police research should be undertaken not to justify strategic choices and resource commitments which have already been made, but rather to inform the process of decision making. Research in the genre of the patrol analyses conducted by the Victoria Police (1980) are illustrative.

Evaluation

Police operations should be subject to rigorous repeated evaluation in order to assess their efficiency and effectiveness. Police should conduct carefully controlled experiments in order to assess the relative efficiency and effectiveness of alternative deployment strategies.

One type of research which might usefully inform resource allocation decisions is marginal utility analysis. This enables executives to identify the effects of incremental changes to resource levels of existing units. It poses the basic questions: What would occur if a given unit were reduced in strength by a specified number of officers? Can staffing levels in function X be reduced without any sacrifice in efficiency or effectiveness? An extensive program of marginal utility analysis would provide managers with a sent of optimum allocation levels across an entire department.

One of the more notable examples of this type of research was the Kansas City Preventive Patrol Experiment (Kelling et al. 1974). This research involved the systematic analysis of fifteen patrol sectors (or 'beats') over the period of one year. Beats were randomly assigned to one of three categories. In five of the beats, the number of marked patrol cars was trebled. In another five beats, preventive patrol was eliminated entirely, with police presence occurring only in response to calls for service. In the remaining five beats, normal patrol levels were maintained. The experimental treatments had no apparent effect on the incidence of crime (as measured by surveys as well as official crime reports). Nor were there any significant differences in citizens' reported fear of crime or attitudes towards police.

By contrast, a subsequent evaluation of foot patrols introduced in another jurisdiction revealed a reduction in citizens' fear of crime, but no apparent impact on the actual incidence of crime (Police Foundation 1981).

Another example of operations analysis involved a survey of detective and investigation practices in many different jurisdictions in the United States. It found that the most important factor determining whether a case will be solved is the

information provided by the victim or a witness to the police officer first responding to the call for service. Most detectives' time was spent on cases unlikely to be solved and detectives accounted for only a small portion of arrests. In those cases which were solved, most detectives' time was spent on post-arrest processing rather than on pre-arrest investigation (Greenwood et al. 1975). Work study analyses of this kind can distinguish between fruitless activities and those with actual productive payoff.

The traditional disinclination of police to make arrests in cases of domestic assault was based upon the assumption that violence between spouses was essentially a private matter, as opposed to 'real crime', and that police intervention would accomplish little. It is also regarded as potentially dangerous for the police officer. But analyses have shown that police intervention can have a deterrent effect on domestic assault. The Minneapolis Police Department conducted an experiment which randomly assigned one of three intervention strategies to cases of common assault by one spouse against another. The strategies included arrest; an order to the suspect to leave the premises for eight hours; and advice, which included informal mediation in some cases. Arrested suspects were significantly less likely to engage in subsequent acts of violence than were those suspects assigned the other intervention strategies (Sherman & Berk 1984).

It has long been assumed that the sooner police arrive at the scene of a reported crime, the more likely they are to apprehend the offender. Response time, therefore, has been regarded by some as indicative of police effectiveness. Research, however, suggests that other factors may confound what has become received wisdom. Not all crimes are susceptible to the impact of a timely police response. Many are not discovered until some time after their occurrence, when the suspect has already left the scene. Moreover, not all victims notify the police immediately when they become aware that a crime has been committed. Thus, the potential impact of police response time is largely dependent upon the timeliness of victim reporting. Only in a small proportion of calls for service will improved response time further law enforcement goals (Spelman & Brown 1981).

Research findings from overseas are not necessarily generalisable to the Australian setting. But the existence of rigorously designed and well executed studies which suggest that some of the conventional assumptions underlying very expensive law enforcement strategies may well be false certainly invites closer scrutiny of Australian practices. Conversely, those studies which identify successful innovations in policing do not necessarily guarantee that such innovations will succeed if and when they are introduced in Australia. But they do merit the attention of police executives.

Conclusion

Australians can no longer afford the luxury of being able to base public spending on faith alone. No public sector agency should be able to command an increase in resources unless it can demonstrate that its current allocation is being used efficiently, and that its resources are targeted at specific, measurable objectives in a logical manner. 'Professional judgement' alone is no longer an acceptable justification for the expenditure of millions of dollars. The public and their elected representatives are entitled to know just what these millions of dollars may be expected to purchase. Police must now demonstrate that the resources and authority provided to them are used productively.

The keys to efficiency in policing are improved management training, access to more timely cost and expenditure information, continuing decentralisation of police administration, and the requirement that any request for additional powers or resources be accompanied by detailed and thorough justification. Throwing new money at old problems may be politically expedient, but it is unlikely to result in a cost-effective contribution to public safety. Simple increases in resources are no guarantee of improved performance. The indiscriminate investment of additional resources in traditional strategies, themselves never subject to critical scrutiny, can only be a recipe for waste. More imaginative use of existing resources, based on systematic operations analysis, and experimentation with new organisational arrangements and new operating procedures may be a more effective alternative to increased investment in conventional practices. It is essential for police executives to determine how resources are transformed into police activities, and how these activities impact on their targets. The basic questions are: What strategies do work? and At what price? Research and experimentation with new approaches to manpower allocation, new models of organisation, and new technologies can provide a least some answers.

Police should be no less accountable than any other public sector agency. Law enforcement executives, public officials and members of the public in general should learn to ask the right questions regarding police resources and their allocation. The expenditure of hundreds of millions of dollars on law enforcement should be grounded in systematic analysis, not in habit or reflex.

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Public Perspectives on Police

BRUCE SWANTON AND PAUL R. WILSON

Police agencies and their employees are an important element in the means used by modern societies to protect themselves against crime and disorder. Other agencies and their officers—private security personnel and government officials—also play a part in the process of social control; but it is police who deal most consistently with the public day by day.

Police officers exercise formidable authority, such as the discretion to use deadly force, to arrest and detain persons and to regulate peoples' behaviour in public areas such as streets and places of entertainment. In addition to such coercive power, police officers service crime victims, enforce laws, investigate crimes, maintain public order and advise communities concerning crime prevention. This wide and sometimes intrusive presence is maintained at substantial financial cost to the various treasuries.

This combination of coercive authority, intrusiveness (sometimes welcome and sometimes resented, according to circumstances) and cost make it imperative that police performance be rigorously assessed. One powerful form of assessment is the consumer poll in which factors such as public respect, client satisfaction and perceptions of honesty, conduct and such like matters are quantitatively surveyed.

Each state of the Commonwealth possesses its own police body, and the Australian Institute of Criminology sponsored a public poll of those six agencies. There are significant differences of style, structure and function between them but they all perform similar basic functions of community policing, law enforcement, order maintenance, criminal investigation and traffic regulation. Thus, while subtle differences exist these common functions are sufficient to make inter-agency surveys viable.

Some 2,475 persons aged 14 years and over were interviewed in all states: NSW (771), Victoria (614), Queensland (317), Western Australia (286), South Australia (294) and Tasmania (132). An array of questions were asked, including those discussed here.

The attitudes and perceptions canvassed below relate especially to police conduct, respect for police, and police performance.

Police Conduct

Three items included in the survey were directed at police conduct, an important issue given media hyperbole.

Public perceptions of police honesty

The question posed was:

> Do you think the police are: (1) more honest than most people, (2) about the same as most people, (3) less honest than most people, or (4) no opinion?

Responses are shown by state at Table 1. The principal conclusion to be drawn from these data is that in all states more than three-quarters of respondents assessed the collective honesty of their police as being at about the same level as their respective communities generally. There were no great differences between states in this view.

This finding is of particular interest as the probity of some agencies has been severely questioned at times whereas others have suffered relatively few allegations of malpractice. On this evidence, the impact of royal commissions and other inquiries into allegations of police malpractice on public perceptions of police honesty appear negligible in the longer term. On the other hand, distinctions may be made between corporate malpractice and the collective behaviour of officers. Further research is necessary in order to gain better understanding of the factors involved.

Table 1

Police Honesty

Responses	NSW %	Vic. %	Qld %	WA %	SA %	Tas. %
More honest than most	8.8	11.0	5.6	9.3	12.0	7.2
About the same as most	79.8	80.1	79.2	83.9	79.0	79.5
Less honest than most	7.6	5.4	9.9	3.8	4.6	9.6
No opinion /answer	3.7	3.5	5.3	3.0	4.4	3.7

Source: McNair Monitor

No significant variation occurred within the various demographic sub-groups surveyed with regard to this item. It was noticed, though, perceptions of honesty generally increased with age. The single age group exception to this generalisation is the under 20s which, surprisingly perhaps, rated police honesty similarly to the over 60s group. American research demonstrates a similar result and female responses were similar to those of males.

Misconduct

The question posed was:

> Have you, or a close relative or friend, personally experienced any of the following: (1) undue use of force by police; (2) corruption/malpractice by police; (3) wrongful arrest; (4) false accusation by police; (5) harassment by police.

Responses are shown by state at Table 2.

Table 2

Personal Knowledge or Experience of Police Misconduct (percentages)

State		Response: Undue Force	Mal-practice	Wrongful Arrest	False Accu-sations	Harass-ment
NSW	Yes	12.1	8.0	8.0	15.5	13.9
	No	85.7	89.3	90.2	82.5	83.7
Vic.	Yes	15.5	9.2	9.6	15.5	18.0
	No	81.6	87.3	86.2	80.9	77.7
Qld	Yes	17.5	11.5	10.8	18.7	19.3
	No	81.6	86.4	88.7	80.5	80.2
WA	Yes	13.1	7.5	5.4	10.7	12.4
	No	84.8	89.1	90.7	86.8	85.9
SA	Yes	14.0	9.8	9.4	17.7	16.4
	No	86.0	90.2	90.5	82.1	82.0
Tas.	Yes	15.1	5.6	8.4	14.0	18.1
	No	84.9	94.4	90.8	85.1	81.1

Source: McNair Monitor

Principal conclusions to be drawn from these data include:

- Western Australia respondents, in aggregate, appeared least likely to experience police misconduct, while Queensland respondents seemed most likely to experience it.
- New South Wales, Victoria, South Australia and Tasmania generally ranged between the two extremes; although it is noticeable Victoria respondents scored relatively highly with

regard to experiences of wrongful arrest and undue force by police and South Australia with regard to malpractice and false accusations.

More generally:

- Younger people, that is, under 20s and 20-29 year olds, generally claimed greater experience or personal knowledge of police misconduct than older persons. Given the generally greater negative contacts between police officers and citizens within these age groups, such a finding is not surprising and, indeed, some perceptions of 'misconduct' may be the result of resentment at restraints placed on youthful exuberance.

  The relationship apparent between age and claimed experiences/personal knowledge of police misconduct is consistent with findings in which greater respect for police was found among older respondents.

- An association is evident between the number of times persons were stopped by police in the proceeding 12 months and their perceptions of police misconduct.

Public respect for police

The question posed was:

> Considering everything about the way the police do their job, would you say that you have: (1) great respect for police; (2) little respect for police; (3) mixed feelings about them; (4) no opinion; or (5) don't know?

Responses are tabulated by state at Table 3. It will be seen from these figures that:

- Police of South Australia (66.6 per cent) Victoria (63.4 per cent) and Western Australia (60.3) per cent) were accorded 'greatest respect'.
- Police agencies of Queensland (51.3 per cent), Tasmania (41.8 per cent) and New South Wales (40.5 per cent) were most subject to 'mixed feelings'.

Table 3

Public Respect for Police

Responses	NSW %	Vic. %	Qld %	WA %	SA %	Tas. %	Australia 1969	Australia 1987
Great respect	50.8	63.4	37.8	60.3	66.6	56.0	64.0	54.6
Little respect	4.1	5.3	7.8	3.7	4.5	1.3	2.0	5.0
Mixed feelings	40.5	29.0	51.3	34.4	27.5	41.8	29.0	37.3
No opinion /answer	4.5	2.2	3.0	1.6	1.5	0.9	5.0	3.3

Source: McNair Monitor (1987); Chappell & Wilson (1969)

These findings are similar to those of a survey conducted a decade ago and a still earlier one conducted by Chappell and Wilson in 1969. In that survey, South Australian police achieved most public respect and Queensland achieved least. In general, the police of South Australia received most respect over the 20-year period while Queensland remained at the lowest level. Although the Fitzgerald Royal Commission had been appointed to inquire into alleged police improprieties in Queensland just prior to the survey, the consistently low rating of Queensland police over two decades indicates the level of public respect for police in that state was not significantly influenced by recent events.

'Great respect' for police fell considerably in aggregate over the period 1969-87, while 'mixed feelings' grew. This phenomenon is not confined to Australia. In terms of differences between the various sub-groups surveyed in July 1987 it was found:

- Females (57.5 per cent) accorded slightly greater respect to police than males (51.6 per cent) and, that respect increased generally with age.

  Conservatism strongly associates with advancing age but the association noted here between females and age suggests vulnerability to criminal victimisation may be a critical factor in determining respect for police.

- Consistent with past surveys, the present study demonstrated an inverse relationship between socioeconomic status (SES) and respect for police. People of higher SES were generally more likely to be stopped by police (*see* Figure 1). This fact may in part account for the lower respect expressed by this group. This finding possesses clear implications for traffic law enforcement practices and policies.

Discrimination

The question posed was:

> . . . do you believe that the police in your area generally discriminate against: (1) poor people; (2) young people; (3) Aboriginals; (4) migrants; (5) unemployed; (6) people with criminal records; (7) protesters; (8) homosexuals; (9) motorcyclists; (10) women.

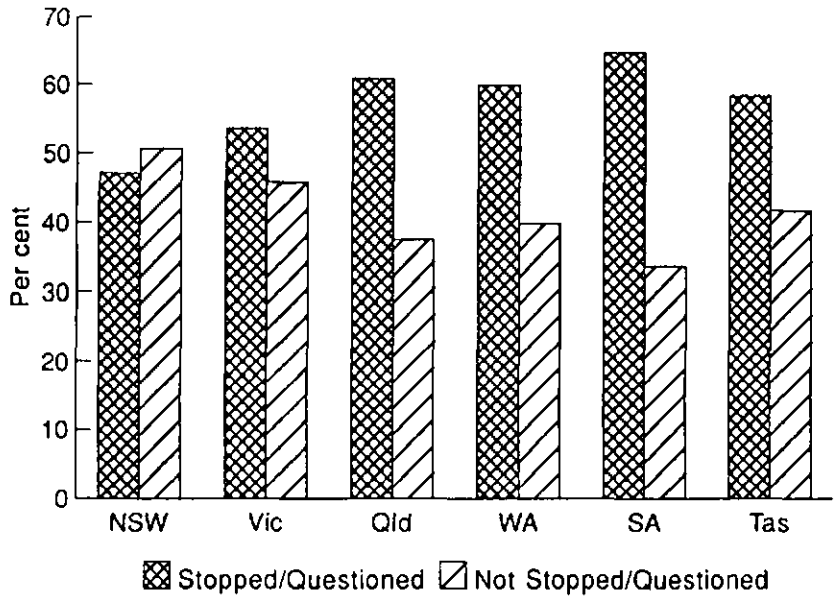
Responses are shown by state at Table 4. It will be seen from the Table generally that:

- With the single exception of Tasmanian respondents' perceptions of police discrimination concerning convicted persons, a majority in all states disagreed that police discriminate against the various sub-groups listed.

- The two groups perceived as being most discriminated against by police overall were the young and convicted persons. However, if the criterion of perceived discrimination (30 percentage points average) is reduced by 10 percentage points (that is, 20 percentage points average), the number of groups perceived as substantially discriminated against increases by four, that is Aboriginals, unemployed, protesters and motorcyclists.
- The four nominated groups perceived as being least discriminated against by police overall were the poor, migrants, women and homosexuals.
- Victoria Police were seen as being least discriminatory overall and Queensland Police as most discriminatory. New South Wales, South Australia, and Western Australia and Tasmania Police ranged between the two extremes.

Figure 1

Public Stopped/Questioned by Police



Source: McNair Monitor

Tasmania Police were, nevertheless, perceived as being most discriminatory with regard to four of the six groups seen overall as being most discriminated against, that is young persons, convicted persons, unemployed and motorcyclists. Conversely, Tasmania Police were rated as being least discriminatory with

regard to Aboriginals and protesters. This latter observation is possibly partly explained by an assumed lower profile of these two groups in Tasmania. No other agency was perceived in terms of such extremes.

Table 4

Perception of Police Discrimination

	NSW		Vic.		Qld		WA		SA		Tas.	
	agree	disagree	agree	disagree	agree	disagree	agree	disagree	agree	disagree	agree	disagree
Sub-group	%	%	%	%	%	%	%	%	%	%	%	%
Poor	9.5	72.0	8.5	70.5	8.5	73.8	7.4	78.3	9.3	74.9	6.6	83.4
Young	29.8	55.3	24.5	57.8	27.7	56.3	27.6	61.0	34.0	54.1	36.2	55.9
Aboriginals	19.6	51.1	12.7	76.3	25.6	54.5	26.5	51.2	22.6	54.7	12.0	67.0
Migrants	11.2	65.0	17.6	64.5	11.2	65.1	6.9	74.5	17.8	68.6	5.1	78.8
Unemployed	20.6	57.9	17.1	60.5	21.4	59.0	13.6	71.5	20.3	64.4	24.8	66.2
Convicted persons	44.0	30.5	35.3	32.7	47.7	28.4	43.0	34.0	38.0	38.0	50.8	33.1
Protesters	21.8	52.3	19.8	49.4	34.1	40.3	17.5	61.2	20.0	57.8	15.3	63.2
Homosexuals	19.2	44.8	13.1	40.9	19.8	40.4	16.6	50.7	18.7	47.8	12.5	56.3
Motorcyclists	26.4	54.0	13.5	57.5	27.1	54.1	16.7	67.6	19.3	63.6	30.4	55.3
Women	6.7	74.9	2.9	74.4	9.0	72.7	2.6	84.1	7.4	78.0	7.0	81.9

Source: McNair Monitor

More particularly:

- Agreement that police discriminate against the young was highest in Tasmania (36.2 per cent) and South Australia (34.0 per cent). Least agreement occurred in Victoria (24.5 per cent). New South Wales (29.8 per cent), Queensland (27.7 per cent), and Western Australia Police (27.6 per cent) were closest to the average.
- Tasmanian respondents agreed most strongly (50.8 per cent) that police in their state discriminate against persons possessing criminal convictions. Least agreement was evident in respect of South Australia (38.0 per cent) and Victoria (35.3 per cent). Queensland (47.7 per cent), New South Wales (44.0 per cent) and Western Australia (43.0 per cent) fell between the two extremes.

Police Performance

There are many measures of police performance, client satisfaction being but one of them. One question was asked concerning respondents' experience of police officers in terms of politeness and helpfulness. Another question probed public satisfaction with police efforts in respect to a range of responsibilities.

Politeness/ helpfulness of police

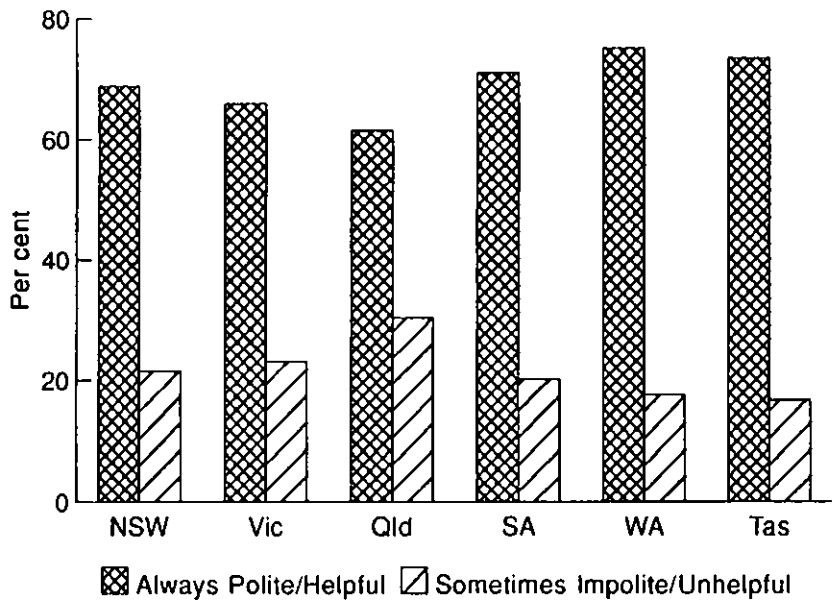
The question asked was:

> Have you, personally, always found the police polite and helpful, or have the police sometimes been impolite and unhelpful to you?

Responses are shown by state at Figure 2.

Figure 2

Politeness/Helpfulness of Police



Source: McNair Monitor

It will be seen from the Figure that:

- Considerable divergence exist between states with a range of 14.2 percentage points regarding 'always polite/helpful' responses and 13.7 percentage points concerning sometimes impolite/unhelpful.
- Western Australia Police (75.4 per cent), South Australia Police (70.8 per cent) and Tasmania Police (68.4 per cent) received greatest acknowledgment for politeness and helpfulness while Queensland Police (31.0 per cent), Victoria Police (24.6 per cent) and New South Wales Police (22.5 per cent) rated highest on 'sometimes impolite/unhelpful' responses.

More generally:

- Females (71.3 per cent) found police officers significantly more polite than did males (62.3 per cent).
- Increasing age correlated closely and positively with heightened perceptions of police politeness/helpfulness, consistent with previous findings.

Generally speaking, females and the elderly pose less of a direct threat to police authority. Both groups are generally less aggressive than younger males and have greater self-perceptions of vulnerability. Also, they tend generally to be more polite than younger males. These assumptions suggest police are more likely to perceive females and the elderly in positive terms and are accordingly more polite to them. In short, politeness breeds politeness.

Public satisfaction with police performance

The question posed was:

> How satisfied are you with police efforts in: (1) dealing with mugging and street crime; (2) catching burglars; (3) educating school children about law and order; (4) dealing with organised crime; (5) preventing crime in your neighbourhood; (6) dealing with crimes like gambling and prostitution; (7) getting to know the community; (8) investigating business fraud; (9) dealing with drink driving; (10) coping with marches and demonstrations; and (11) dealing with drug offences. Response options offered were: (1) very satisfied; (2) satisfied; (3) unsatisfied; (4) very unsatisfied or (5) no opinion?

This question produced numerous responses but only major findings are presented here:

- Respondents in all states expressed themselves as more satisfied than dissatisfied with police efforts in dealing with muggings and street crime, although there were considerable differences between states. South Australia Police (71.9 per cent), by far, was accorded the highest satisfaction level on this item, followed by Queensland Police (66.7 per cent) and Western Australia (65.6 per cent). The apparent inconsistency to the response relating to Queensland in this instance and general public respect for police in that state calls for further inquiry. New South Wales Police (36.6 per cent) scored greatest dissatisfaction, followed by Tasmania Police (25.9 per cent) and Victoria Police (25.1 per cent)
- In all states, more respondents expressed themselves satisfied than dissatisfied with police efforts in apprehending burglars, despite large differences between states. Tasmania Police (69.6 per cent), South Australia (68.3 per cent) and Western Australia Police (64.4 per cent) warranted greatest satisfaction in this regard. New South Wales Police (42.5 per cent),

Queensland Police (35.8 per cent) and Victoria Police (35.3 per cent) recorded most dissatisfaction.

This finding appears incongruous given the limited success achieved by all police agencies in apprehending burglars and other breakers. One explanation is that respondents in fact appreciated the difficulties faced by police and were satisfied with achieved results. Alternatively, the response may be interpreted as broad public satisfaction with police responses to burglary calls rather than clean up rates.

- Dissatisfaction outweighed satisfaction with regard to how police dealt with organised crime in New South Wales and Queensland. However, satisfaction exceeded dissatisfaction in Victoria, South Australia and Tasmania. Opinion was divided in Western Australia. These data raise the possibilities of the gap between public expectations of police and the latter's ability to deal satisfactorily with such complex areas of criminality.
- With regard to police efforts in dealing with matters such as prostitution and gambling, greatest public dissatisfaction was apparent in the cases of New South Wales Police (47.1 per cent) and Queensland Police (57.0 per cent). Greatest satisfaction was registered in the cases of Victoria Police (48.0 per cent), South Australia (58.3 per cent) and Tasmania Police (52.7 per cent). Again, wide differences of opinion occurred between states.

Conclusion

Surveys such as the one reported here provide useful although gross measures of public perceptions of police over time. For example, a substantial decline in public respect for police occurred over the last two decades, although perceptions of police honesty remained largely unchanged. General reductions in respect for police has also been noted in other countries as well. Short-term fluctuations doubtless occur in the wake of royal commissions and instances of high profile police officers being sentenced to imprisonment, and so caution needs to be exercised in interpreting survey findings.

It is clear, however, that all police agencies possess strengths and weaknesses in terms of how the public perceive them, and it is equally apparent the public in some jurisdictions believe they are better served than do the public of some other states.

Public perceptions of police honesty are a critical measure of police image and it is cause for concern generally when citizens see law enforcement personnel as being no more honest than themselves. Although the association between image and reality is a matter for speculation, the legitimacy and credibility of police institutions is greatly dependent upon communities seeing their police as honest and principled. The nucleus of an argument for

local police agencies, more sensitive to local sentiment, inheres in this proposition.

One of the most positive findings of the survey was that officers generally were considered to be both polite and helpful, although substantial differences existed between states. The finding is remarkable when one considers that many interactions between police and public involve coercion in one form or another. However, reaction was less favourable when specific areas of police functions were queried. Handling of organised and victimless crime was generally not highly thought of although street crime generally was considered to be well handled. Ironically, in several states, police handling of burglary crime was considered satisfactory—quite against the statistical evidence on clean-up rates.

The difficult and highly subjective topic of social discrimination revealed that perceptions of police relations overall with youth, the unemployed and motorcyclists were discriminatory; but, the category of persons overall considered most discriminated against was that of persons possessing criminal convictions. On the other hand, little discrimination was perceived in respect of Aboriginals, the poor, migrants, protesters and women. Of course, if detailed surveys of these particular groups were conducted it might be that police would be seen as being more discriminatory than a general survey such as this indicates.

These comments warrant a word of caution in that generalised surveys of this kind take little or no account of localised police and public relations and, thus, while useful in aggregate, may not always accurately reflect public opinion in particular localities.

Police officers and administrators will find cause for both satisfaction and concern in these findings. There is clearly a basic acceptance of the police institution within all states and considerable goodwill and appreciation of police efforts. However, there are areas where police can substantially improve their performance and public image. If police wish to argue successfully for higher pay and better conditions, then a sustained effort must be made to improve their public image. It is in the interest of the community that such efforts are made: because good police public relations forms the basis for successful crime prevention and detection.

References

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Prison Sentences in Australia: Estimates of the Characteristics of Offenders Sentenced to Prison in 1987-88

JOHN WALKER

- What sentence lengths are actually served by persons sent to prisons in Australia?
- Do these sentence lengths differ markedly from state to state?
- Do violent offenders in Australia get their 'just deserts'?
- Do male and female offenders serve similar terms in prison for similar offences?
- How many Aboriginals are given prison sentences each year, and what sorts of offences have they committed?
- How many offenders sent to prison have already served previous terms in prison under sentence?
- How many young offenders under 20 years of age are sent to prison, and how long do they actually serve?

These are all fundamental questions if one is interested in the fairness of the Australian system of justice or in the management of our prison systems, but, surprisingly, not one of these questions can be answered.

The reason for this is the lack of appropriate published data. Some states' court statistics are informative in terms of sentence

lengths handed down by the courts, but these usually relate to the overall duration of a court order, including the time spent on parole after release from prison. They do not take into account the remissions and other forms of early release a prisoner might expect. The move towards 'truth in sentencing', which is currently under way in several states, will considerably improve this situation, but courts and governments at present are rarely fully aware of the actual times served by offenders. Prison administrations, which have the information readily available, do not find such detailed information necessary for prison management.

This report is an attempt to rectify that situation and to show how questions such as those posed above can be addressed by the use of prison statistics.

The Analogy of Stocks and Flows

As they stand, published prison statistics cannot generally answer these types of questions, because details such as age, Aboriginality, offence-type and sentence length are only available for those in prison at a point in time (that is, the 'stock' of prisoners to use a useful analogy from the business world)—namely 30 June each year when the annual census of prisoners is held.

The questions posed above all relate to 'flows' of sentenced offenders from the courts to prisons, that is, the numbers of persons sent to prison over a given period of time, say one month or one year. The census data are highly misleading if used to analyse sentence lengths or the characteristics of people sent to prison. However, much research is based, inappropriately, on census data simply for lack of any alternative source of information.

The danger results from the fact that prisons 'hoard' long-term prisoners, so that they are greatly over-represented in any snapshot of prisoner characteristics.

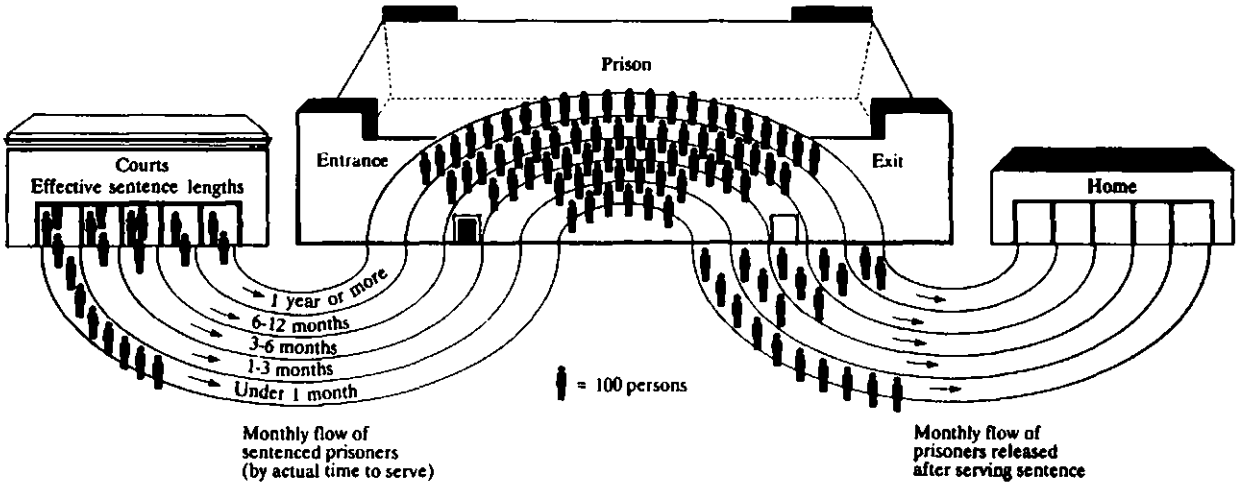
The fact that prisons are full of violent offenders is a consequence of their being given the longest sentences—not that they are the predominant type of offender in society, or even that they are the majority of persons sent to prison.

It is very easy to forget this point. One is reminded of the headline in a Melbourne newspaper (*The Sun News-Pictorial* 22 December 1986) over an article containing the fact that Victoria's prison population has a high percentage of prisoners convicted of murder. Although the true reason for this is Victoria's comparatively low usage of prison for lesser offences, the headline screamed 'Top of the Murder List': perhaps eye-catching journalism, but a totally inaccurate description of the facts, and potentially a very dangerous piece of misinformation. Once pointed out, the journalist's mistake looks like an elementary schoolboy howler, but the frequency with which such mistakes

are committed shows that it is not easy to comprehend how 'stocks' and 'flows' of prisoners can be so different in composition.

Figure 1

Prisons 'hoard' long-term prisoners!



Trying to identify the nature of societal processes by studying the composition of the stock of prisoners at a point in time is equivalent to trying to estimate the size and composition of a family's weekly grocery bill by looking at the contents of the pantry. On the pantry shelves one will find an abundance of those health foods which are rarely bought because nobody ever eats them. Yet the packets of potato chips which fill up the weekly shopping trolley disappear as soon as they arrive and are seen only fleetingly on the pantry shelves. The observer of the pantry would quite wrongly imagine the weekly shopping trolley to be filled with health foods, with only a very occasional packet of potato chips.

In similar fashion, the numbers of short-term prisoners received into prison are very large compared to their numbers in prison at any one time, while the numbers of long-termers received are low. The casual observer of the prison population would quite wrongly imagine that our courts are teeming with murderers, rapists and drug-traffickers, instead of the usual parade of traffic offenders, abusers of alcohol and petty thieves. This may indeed contribute to the public perception that society

itself is full of murderers, rapists and drug traffickers, when such crime actually accounts for only a tiny fraction of reported crime.

It is true of both prisons and pantries that, compared to the throughput, the contents on a given day significantly exaggerate the proportion of long-term residents and under-state the proportion of short-term residents. However, it is possible to combine data from the prison censuses with information on the numbers of monthly or annual receptions into prisons, to derive detailed estimates of the numbers of people sentenced to prison by the courts. Such estimates are subject to error, particularly in respect of those serving very short prison terms of a few days duration, but the degree of error is limited. Now that all jurisdictions provide all the most significant data items for the census, including Aboriginality, the production of estimates for Australia as a whole is possible.

Estimating Sentenced Prisoner Receptions for 1987-88

We know from published statistics (Biles 1976-1988; Walker 1989)[1] how many sentenced prisoners are received into Australia's prisons each year. The figure for 1 July 1987 to 30 June 1988 was 23,023. We do not know much more about them from published data other than in which jurisdiction they were in custody. We know from census data (Walker 1989), however, that 6,543 of them were still in prisons on 30 June 1988—census night. From this we can conclude with confidence that close to 16,480 of the 23,023 receptions in the 1987-88 year had served their time and been released. (The only exceptions would be those few who died in prison or who escaped and had not been recaptured.) All 16,480 must have served under one year in prison since reception.

We have full details of dates of reception and earliest date of release for those still in prison on census night—except those serving life or Governor's Pleasure sentences—and so it is possible to determine how long they will actually have served upon release. (Not the sentence handed down in court, but the actual time they serve.)

Those serving life imprisonment or Governor's Pleasure sentences can be assumed to follow the current average expectations for such sentences. According to Potas (1989), the average time actually served on life sentences is thirteen years. Governor's Pleasure sentences are a little more problematic, but comparatively few in number. The assumption is made here that prisoners serving Governor's Pleasure sentences for offences including violence would serve an average of five years, while those whose most serious offence was non-violent would serve three years.

The estimation procedure may best be explained as one involving simple probabilities. For example, an offender

[1] The figures used here are corrected for under-enumeration in the published Western Australian data.

sentenced to exactly one week's imprisonment during a given year has a probability of exactly 7/365.25 of being counted in the annual census of prisoners. This is because the census has seven chances in 365.25 of being held on a day when that particular prisoner is present (the average year having 365 and a quarter days). The census will therefore 'under-count' this group of prisoners, relative to the count of receptions. Prisoners counted by the census and serving one week will only be 7/365.25, or about 2 per cent of the total annual receptions of prisoners serving one week's imprisonment. On the other hand, by the same reasoning, prisoners serving exactly six months have a 50 per cent chance of being counted in the census.

If each of the 6,543 prisoners present at the time of the census, who had been sentenced during the previous twelve months, is seen as the outcome of such a probability, then a complete picture of prisoner receptions can be constructed.

One final assumption is then required in order to estimate the composition of those receptions, in terms of most serious offence, Aboriginality, age or any other prison census variable of interest. That is, we must assume that those who served a sentence of a given length, and who had already left prison at census date, have the same characteristics as those in that sentence-length category who are still in prison at the date of the census. Except during times of rapid changes in prison populations, this is not an unreasonable assumption.

Table 1 shows the basic estimates obtained by the method described above, by jurisdiction of imprisonment and time served. Note that, in this and other tables, minor discrepancies in totals are due to rounding.

Major Differences in Prison Sentences between States

Table 1 shows that the states vary tremendously in their use of imprisonment. Over a third of persons sent to prison in South Australia, and virtually half of those imprisoned in the Northern Territory, appear to spend less than a week in prison. By contrast, only an estimated 3 per cent of those imprisoned in New South Wales and Victoria serve under a week.

One possible explanation for this is that courts in South Australia and the Northern Territory are particularly lenient with offenders, compared with the other states. An equally plausible explanation is that courts in the other states choose not to imprison for less serious offences, and use instead the community-based alternatives to punish minor offenders. An example of this, which appears to be supported by published statistics, is the choice of alternatives for persons unable, or unwilling, to pay fines. Australian Prison Trends data show that fine-defaulters account for around half of all sentenced prisoners received in South Australia. By contrast, imprisonment for fine default has been virtually eliminated in New South Wales and Victoria in

recent years and has been replaced largely by community service orders.

At the other end of the scale, Table 1 shows that only about one in ten persons sent to prison in Australia actually serves one year or more. Whereas the data relating to shorter terms of imprisonment must be treated with caution because of the possible errors of estimate, those relating to prisoners serving one year or more are not subject to the same sort of error. They show that around one in seven persons sent to prison in New South Wales and Victoria serve one year or more, while the proportion is only about one in thirty in South Australia and the Northern Territory. Offenders were twice as likely to serve five years or more in Queensland compared to the national average.

Table 1

Estimated~ numbers of sentenced prisoners received during 1987-88, by jurisdiction* and time to serve in prison

Time to Serve	NSW	Vic.	Qld	WA	SA	Tas.	NT	Australia
Under 1 Week	143	74	734	649	1,476	75	608	3,759
1 week & under 1 Month	188	218	919	1,398	709	183	242	3,857
1 & under 3 Months	2,601	597	1,504	1,122	434	274	139	6,670
3 and under 6 Months	1,214	685	768	605	538	178	131	4,117
6 & under 12 Months	617	542	382	391	331	84	67	2,414
1 & under 2 Years	439	254	288	157	73	28	32	1,271
2 & under 3 Years	195	69	108	37	28	4	3	444
3 & under 5 Years	132	34	99	27	11	5	5	313
5 & under 10 Years	31	14	55	7	13	0	1	121
10 Years and over	17	7	14	15	3	0	0	56
Total Receptions	5,577	2,494	4,872	4,408	3,616	830	1,228	23,023

Notes:

~ I am indebted to Dr Mark Collins of the Australian Defence Force Academy for an analysis of the errors of estimate associated with this technique. The author will provide details on request.

* Note that all persons sentenced to prison in the Australian Capital Territory are held in New South Wales prisons.

Most Offenders Sent to Prison are Burglars, Thieves and Motorists!

From time to time, surveys of public opinion emerge with results which appear to show public disquiet over the leniency of sentences—particularly for offences involving violence. Because of the absence or misleading nature of sentencing statistics in most jurisdictions, this debate is often quite uninformed and the claims

made by the protagonists on either side are unable to be substantiated.

Tables 2 and 3 show estimates of receptions by most serious offence for which imprisoned and the average time actually served by offenders in each state. This is the sort of information which is required for proper debate. The West Australian Department of Corrections *Annual Report* does present a table of receptions by most serious offence. The estimates of Table 2 show remarkable concordance with their figures for 1987-88, particularly at the most serious end of the offence spectrum, showing the extent to which this form of estimate can be reliable.

Table 2 estimates that almost a third of offenders sent to prison in Australia are property offenders. Fewer than one in six are violent offenders. The second largest group of offenders are driving offenders, who make up around a quarter of all receptions.

Table 2

Estimated numbers of sentenced prisoners received during 1987-88, by jurisdiction and most serious offence

Offence	NSW	Vic.	Qld	WA*	SA	Tas.	NT	Australia
Murder	17	8	8	6 (5)	1	0	1	41
Other Homicide	98	33	42	14 (16)	10	4	6	207
Other Violence	881	267	597	483 (483)	259	66	123	2,677
Robbery/Extortion	269	102	105	56 (46)	48	11	1	591
Property Offences	2,336	1,015	1,446	1,326(1,058)	495	288	337	7,244
Justice/Security	179	301	267	636 (586)	684	127	77	2,270
Other Good Order	97	88	314	353 (437)	483	21	90	1,446
Possession Drugs	164	16	255	71 (97)	59	3	1	569
Trafficking Drugs	625	183	176	96 (141)	22	20	6	1,127
Motoring Offences	901	463	1,535	1,359(1,482)	1,413	290	578	6,538
Other	9	17	128	8 (57)	142	0	8	312
All Offences	5,577	2,494	4,872	4,408	3,616	830	1,228	23,023

* Parenthesised figures are actual counts of receptions, as published in the West Australian Department of Corrective Services *Annual Report*, 1987-88, Table 10.

The estimates suggest that almost half of all persons sentenced to prison in the Northern Territory were motoring offenders. Their average sentence was about two weeks. Offenders imprisoned for motoring offences represent less than half this proportion in New South Wales and Victoria, but it appears that they serve considerably longer than those in the Northern Territory—averaging just over two months in New South Wales and Victoria. This suggests that only the most serious driving offenders are sent to prison in those states, while lesser offenders are, presumably, fined or given supervision in the community. This is not necessarily to say that the courts in the

Northern Territory under-utilise the community-based options available, since they, in common with Tasmania, also have very high rates of community supervision for driving offences (Walker & Biles 1986). It may, however, suggest that more effective ways are necessary to deter Territorians from driving offences—perhaps the impounding of offenders' vehicles.

Table 3

Estimated average time served by sentenced prisoners received during 1987-88, by jurisdiction and most serious offence (months)

Offence	NSW	Vic.	Qld	WA	SA	Tas.	NT	Australia
Murder	143.9	119.1	156.2	152.9	156.2	0.0	10.2	140.2
Other Homicide	10.3	15.8	35.2	19.6	24.5	20.3	17.4	18.0
Other Violence	7.9	9.0	12.1	6.0	6.3	3.2	5.8	8.2
Robbery/Extortion	23.4	17.8	30.4	20.8	27.5	12.4	12.7	23.6
Property Offences	6.3	6.8	6.4	4.6	7.8	5.2	2.3	5.9
Justice/Security	4.7	7.7	2.2	3.2	3.2	1.7	6.8	3.9
Other Good Order	4.8	4.0	0.5	0.7	0.5	2.7	0.6	1.1
Possession Drugs	4.3	5.6	4.4	1.7	0.5	5.3	17.8	3.7
Trafficking Drugs	6.6	10.9	9.3	12.1	12.5	5.2	19.4	8.3
Motoring Offences	2.6	2.4	2.0	1.6	0.5	2.5	0.5	1.6
All Offences	7.2	7.4	6.0	3.9	3.0	3.7	2.1	5.3

South Australia stands out in that around one in eight offenders sentenced to prison are convicted of 'other good order' offences. These offences include offensive behaviour and drunkenness. The average times served by these offenders is two weeks or less. On the other hand, South Australia's proportion of property offenders is very low compared with other jurisdictions.

New South Wales appears to have very large numbers of drug traffickers, reflecting Sydney's status as the main international gateway to Australia.

A possible indication of the different sentencing styles of each jurisdiction is the variance in the proportion of offenders imprisoned for breaches of court orders, such as fines, probation, parole or maintenance orders. Some offenders who are initially given community-based orders will fail to comply with the orders and consequently are sent to prison. Thus South Australian estimates here include almost 20 per cent of prison receptions in the 'justice/security' category, in contrast to New South Wales at the other extreme with only 3 per cent. Many of these are likely to be fine defaulters, so this lends support to the explanation given earlier concerning the large proportion of short-termers in that state.

Period Served in Prison

The longest times served, as would be expected, are for the violent offences and for trafficking or manufacturing illegal drugs. The average time served for homicide, which includes the various degrees of manslaughter as well as murder, is three years. This will normally be followed by a period of parole supervision which may last for the rest of the offender's life, so it is rarely true to say that 'three years is all they got'. Convicted murderers, in fact, appear to serve on average between ten and twelve years in prison prior to parole or licence supervision. Other violent offenders, such as those convicted of rape or robbery serve an average of about two years in prison, while the average for other assaults is around three to six months. Drug trafficking, which may include relatively minor offenders as well as the well publicised major dealers, attracts an average of eight months in prison.

Overall, offenders imprisoned in the most populous states—New South Wales, Victoria and Queensland—serve average terms of over six months. Offenders in the other jurisdictions are likely to serve less than four, almost certainly because of the different rates of usage of alternatives to prison. Violent offenders in Tasmania and the Northern Territory appear to serve less than those in other states. However, this is a result of the small numbers of receptions for serious premeditated violence in those jurisdictions; almost all homicides, for example, were the result of culpable driving for which offenders serve on average about twelve months in prison.

In summary, a person convicted of murder is likely to serve over ten years in prison. Persons convicted of other violent offences will serve on average twelve months. Of those convicted of non-violent offences, property offenders serve on average six months, while errant motorists serve on average under two months. There are variations between the states, which appear to be related to the frequency with which certain types of offenders are convicted. It is up to the community to decide whether these prison terms are appropriate.

Women and the Young

Prisons have an ambiguous public image. On the one hand, it is argued that prison sentences are more successful deterrents and more appropriate punishments than other forms of sentencing, but it is also widely acknowledged that young offenders learn a lot more about crime from their fellow prisoners than they could ever learn outside prison walls. Also, it is argued that prison sentences are particularly inappropriate for most female offenders, since they are rarely dangers to the public and frequently have family commitments which suffer while the

offender is in prison. No statistics are published which address these issues, however.

Some analyses have been made using prison census data. For example, it is known that the Australian rate of imprisonment of persons under 20 years of age is only about half that of the United Kingdom (Walker et al. 1989). However, there continues to be concern over serious offending by juveniles—particularly when violence is used. Police statistics on arrests suggest that breaking and entering and robbery are typically young adults' offences. Numbers of offences in these categories have been increasing rapidly in recent years, leading to threats in some jurisdictions to introduce higher penalties.

Table 4 presents estimates of percentages of prison receptions for 1987-88, and the average times they serve, by age and sex of offender, and by most serious offence. Persons aged under 20 years account for just over 12 per cent of all offenders sent to prison. Those in the 20-24 years age group account for 28 per cent. Their proportions in the prison populations are about 9 per cent and 26 per cent respectively, and in the general populations, about 7 per cent and 11 per cent respectively. Thus, both groups are over-represented in prison receptions and in prison populations. The degree of over-representation is much higher in the 20-24 years age group.

Table 4

Sentenced prisoners received during 1987-88, by age and sex: estimated percentages and average times served by most serious offence—Australia

Offence	Percentages					Average Time Served (Months)				
	Under 20 Yrs	20-24 Years	25 Yrs & over	M	F	Under 20 Yrs	20-24 Years	25 Yrs & over	M	F
Murder	.1	.1	.2	.2	.1	156.2	145.0	140.9	145.3	100.1
Other Homicide	.5	1.0	.9	1.0	.6	22.2	13.5	19.9	17.8	19.6
Other Violence	10.0	11.9	11.9	12.8	3.6	6.9	6.5	9.3	8.4	3.2
Robbery/Extortion	2.1	3.5	2.3	2.8	1.4	16.1	20.4	27.3	23.7	21.0
Property Offences	45.6	40.7	23.8	31.9	27.0	4.8	5.8	6.8	6.2	4.5
Justice/Security	7.7	10.8	10.0	9.6	12.2	3.3	4.5	3.6	4.3	1.3
Other Good Order	.8	2.5	9.1	6.7	2.2	4.4	2.5	.9	1.1	1.4
Possession Drugs	2.6	1.9	2.8	2.7	1.4	2.0	2.2	4.5	3.6	5.0
Trafficking Drugs	.6	2.9	6.9	4.5	8.8	4.7	6.2	8.8	9.5	4.2
Motoring Offences	28.9	24.6	30.0	26.6	41.2	1.1	1.7	1.7	1.9	.2
All Offences	100.0	100.0	100.0	100.0	100.0	4.3	5.3	5.6	5.7	2.6

The data show also that those under 20 years of age serve shorter than average sentences. The average time served by prisoners under 20 years of age was just over four months. Older prisoners served, on average, almost six months. For both violent and property offenders, time served generally increased with age of offender, probably reflecting the prior records of the older

offenders as well as the 'should know better' feeling towards more mature adults.

Table 4 shows that young offenders are more likely to be property offenders. The more detailed figures underlying this summary table confirm that the majority of these prisoners are sentenced for breaking and entering offences. The older age groups tend to be over-represented in other property offences, such as fraud and misappropriation. The older prisoners are also over-represented in the categories of murder, drug trafficking and, perhaps surprisingly, driving under the influence of alcohol. Practically all those sentenced for the unlawful possession of weapons were under 20 years old, as were the majority of those sentenced for driving while unlicensed.

Over 40 per cent of all female offenders sent to prison in Australia appear to be driving offenders. A further 27 per cent are imprisoned for property offences. Other offences for which women are sent to prison are drug trafficking and breaches of court orders. Only one in twenty are imprisoned for offences involving violence. By contrast, the proportion of males imprisoned for violent offences, including robbery, is about one in six.

Average times served for offences such as homicide and robbery do not differ very much by sex of the offender. Generally, however, time served by female offenders is less than that served by males, but there appear to be exceptions in the categories of 'good order' offences and the possession of drugs.

The Effects of Prior Imprisonment on Time Served

Previous sections have mentioned the supposed deterrent effect of a prison sentence. Courts are empowered to take previous history into account when deciding the appropriate type and severity of sentence to be given to a convicted offender. No information is published by any Australian courts on the frequency or nature of such decisions.

It appears that roughly two-thirds of sentenced offenders received into prison have already served a sentence in prison. The estimates presented in Table 5 show that, on average, offenders who have previously served a term in prison under sentence will serve only two weeks longer than those who have not previously served a sentence in prison.

This average obscures some differences between offenders, based on their most serious offence. Around half of those given sentences for homicide or for drug possession offences are first-termers. Ninety per cent of those sent to prison for 'other good order' offences and almost eighty per cent of those sent to prison for 'justice/security offences' (mainly breaches of court orders), on the other hand, are serving a repeat term.

In most categories of offending, those serving a repeat prison term will serve more than first-termers. The average time served by homicide offenders, including murderers, is about four years if

they have previously served time in prison (not necessarily for a similar offence), compared with about two years otherwise. The reverse is the case in regard to 'other good order' offences, however, where first-termers serve an average of two and a half months compared to the repeat prisoners' average of less than a month. This apparent paradox is probably the result of differences in the types of offences being committed. Many offenders imprisoned for minor street offences in this 'good order' category are regular visitors to prison, but serve very short sentences each time. The question is worth asking: what is the point of such ineffective sentences?

Table 5

Sentenced prisoners received during 1987-88, by whether previously imprisoned under sentence: estimated percentages and average time served, by most serious offence—Australia

	Percentages		Average Time Served (Months)	
	Prior Imprisonment?		Prior Imprisonment?	
Offence	Yes	No	Yes	No
Murder	0.2	0.2	133.6	145.6
Other Homicide	0.5	1.6	24.3	14.1
Other Violence	10.8	13.1	7.5	9.4
Robbery/Extortion	2.5	2.7	27.2	17.2
Property Offences	31.7	31.0	6.3	5.3
Justice/Security	12.3	5.7	4.2	2.5
Other Good Order	8.5	2.3	0.9	2.5
Possession Drugs	1.9	3.6	3.4	4.0
Trafficking Drugs	3.4	7.7	9.2	7.2
Motoring Offences	27.2	29.9	1.8	1.3
All Offences	100.0	100.0	5.3	5.1

The Over-representation of Aboriginals in Prison

The following figures amplify what is already known about the imprisonment of Aboriginals, that is, that they are almost 15 per cent of the total prison population and that, on a per capita basis, they are over-represented in prisons by a factor of more than ten. They show that, in terms of numbers sent to prison, they are over-represented at twice that rate.

Whereas they are currently an estimated 1.09 per cent of the Australian population aged 17 and over, they appear to make up over 20 per cent of those received into prison. That is, they are

over twenty times more likely than non-Aboriginals to be sent to prison.

Table 6 shows the variation between states in the extent of over-representation of Aboriginals receiving prison sentences. In the Northern Territory, where Aboriginals constitute almost a fifth of the population, an estimated seventy per cent of prison receptions are Aboriginals. They are, therefore, about four times more likely to be sent to prison than non-Aboriginals in that jurisdiction. By contrast, Aboriginals in South Australia and Western Australia are over twenty times more likely to be sent to prison than non-Aboriginals (*see* Table 6).

Table 6

Aboriginals sentenced to prison: estimates by state and territory

	NSW	Vic.	Qld	WA	SA	Tas.	NT	Australia
% of Total Sentenced Receptions	8.8	4.5	20.5	48.1	16.1	2.7	70.2	22.5
% of Total Adult Population	0.8	0.2	1.8	2.1	0.8	1.1	17.9	1.1
Times Over-represented	11.0	18.6	11.5	22.9	20.1	2.4	3.9	20.5

Aboriginals are over-represented in prison receptions in every offence category, particularly the less serious offences and those incurring the shortest sentences.

Aboriginals make up almost 40 per cent of estimated receptions for 'Justice Procedures'—mostly breaches of court orders. That is almost forty times more frequently than non-Aboriginals and reflects the 'revolving door' syndrome referred to in an earlier study based on prison census counts (Walker 1987). Only slightly less alarming figures are obtained for violent offences (29.4 per cent of receptions), 'other good order' offences (35.4 per cent), property offences (20.5 per cent) and motoring offences (20.0 per cent) (*see* Table 7).

Yet their average time served is only 3.9 months compared to 5.6 months for non-Aboriginal receptions. The explanation for this has to be sought from more complex analysis than space permits in this paper. However, some examples will probably suffice to make the point. In the most serious categories of assault, that is, those causing actual or grievous bodily harm, which result in averages of around six months in prison, Aboriginals make up 33.8 per cent of all receptions. By contrast, in the less serious categories which attract average prison terms of only three months, Aboriginals comprise 47.8 per cent of all receptions. Aboriginals account for 5 per cent of receptions for armed robbery, which carries an average two years imprisonment, but 25 per cent of other robberies, which carry an average of about fifteen months in prison. Aboriginals are about a third of all offenders imprisoned for 'driving under the influence of alcohol', yet they

are only about ten per cent of receptions for more serious driving offences such as dangerous driving and driving while unlicensed.

Table 7

Sentenced prisoners received during 1987-88, by Aboriginality: estimated percentages and average time served, by most serious offence—Australia.

Offence	Percentages		Average Time Served (Months)	
	Aboriginals	Others	Aboriginals	Others
Murder	10.5	89.5	123.2	140.2
Other Homicide	11.6	88.4	32.2	16.1
Other Violence	34.9	65.1	7.3	8.7
Robbery/Extortion	12.0	88.0	14.7	24.3
Property Offences	20.5	79.5	4.4	6.4
Justice/Security	37.5	62.5	2.7	4.4
Other Good Order	35.4	64.6	0.7	1.3
Possession Drugs	8.1	91.9	1.4	3.8
Trafficking Drugs	1.6	98.4	6.2	8.2
Motoring Offences	20.0	80.0	1.6	1.6
All Offences	22.9	77.1	3.9	5.6

More detailed examination at the state level indicates that Aboriginals are imprisoned in Western Australia and the Northern Territory for 'breaches of liquor licensing laws' and in Queensland for 'trespassing and vagrancy'—an offence which rarely attracts a prison sentence in other jurisdictions.

In summary, in those jurisdictions where Aboriginals make up a significant proportion of the population, they are particularly over-represented in the short-term prison sentences. Aboriginals make up two-thirds of prisoners sentenced to less than a month's imprisonment in the Northern Territory, 36 per cent of those in Western Australia and 21 per cent of those in Queensland. The offences for which they are imprisoned are generally at the least serious end of the scale.

Conclusions

Our understanding of Australian society is seriously limited by our inability to produce comprehensive information on the numbers and characteristics of persons sentenced to terms of imprisonment, and details of the sentences they actually serve. This paper has shown that much valuable information can, however, be obtained from careful analysis of existing data.

The estimates presented here reveal, to an extent not previously available, the differences between sentencing practices from jurisdiction to jurisdiction, which have been, up to now, hidden from view by the lack of comparable statistics and the confusion created by the terminology of 'indefinite' sentencing. They reveal differences in the relationships between most serious offence and the actual time served which suggest that alternatives to prison may be under-utilised in some jurisdictions.

The estimates reveal, in particular, that Aboriginals are sentenced to prison at twenty times the rate of non-Aboriginals, and that they tend to go to prison for less serious offences than non-Aboriginals. Having been instrumental in legitimising the confiscation of Aboriginal lands and livelihoods in the creation of modern Australia, it would appear to be the clear duty of Australia's criminal justice systems to investigate this apparent disparity. The data presented here are a contribution to this process.

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Life Imprisonment in Australia

IVAN POTAS*

With the abolition of capital punishment in Australia, the sentence of life imprisonment has become the most severe sanction under the criminal law. 'Life imprisonment' is also called 'penal servitude for life', 'natural life' or even in certain circumstances 'strict security life imprisonment' (the terminology varies from time to time and from jurisdiction to jurisdiction). The history of life imprisonment in Australia demonstrates that this sentence does not usually carry the implication that prisoners who are subject to this sanction will spend the rest of their days in gaol. Quite the contrary, sooner or later the vast majority of 'lifers' are released back into the community.

A small percentage of lifers do die in prison by violent means (suicide or murder), as well as by natural causes, as do some offenders who are sentenced to determinate terms of imprisonment—prison is, after all, an extremely stressful, dangerous and unnatural environment. However, the reality is that life sentences are generally commuted or mitigated by subsequent executive intervention.

Broadly speaking, the decision to release lifers after a time is dependent upon a recommendation of a parole board or other specialist agency (in NSW the Release on Licence Board) made to a minister of the Crown and then conveyed ultimately for decision to the governor of the relevant jurisdiction (by convention the governor-in-council). In addition to commutation powers, the various governors of the Australian states and the Governor-General of the Commonwealth have power to grant mercy (under the royal prerogative of mercy) within their respective jurisdictions, and so may override or otherwise mitigate the normal consequences of a sentence—that is, the governor may

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pardon the offender, or remit (reduce) or respite (postpone), the sentence which has been fixed by the court.

If life imprisonment does not ordinarily mean imprisonment until death, questions arise as to 'what does it mean?' and 'how long is it?'. Some people mistakenly believe that it represents a fixed term, such as twenty years—a figure often cited in connection with life sentences. In Western Australia, for example, the special sentence of strict security life imprisonment means that the prisoner must serve a minimum term of twenty years behind bars before being considered for release, but release may not be granted at that time.

The figure of twenty years also applies to some Victorian lifers who were sentenced to death prior to 1974 and whose sentences were later commuted to life imprisonment with the benefit of remissions. These lifers were deemed to have had their sentences commuted to twenty years imprisonment by virtue of reg. 99 of the Community Welfare Services Regulations 1974—an option which had previously been available under reg. 82 of the Gaols Regulations 1931 and reg. 100 of the Social Welfare Regulations 1962. Lifers in this category were entitled to the same rate of remissions as those serving ordinary (that is determinate) sentences, meaning that a lifer in this category could expect to serve about thirteen and a half years of imprisonment. However, reg. 100 of the 1974 Regulations also made provision for the commutation of a life sentence without the benefit of remissions.

Interestingly, the Victorian Office of Corrections advises that between 1962 and the abolition of the death sentence in 1975, there were no death sentences commuted to life imprisonment. Instead some commuted life sentence prisoners in Victoria received extraordinarily long prison terms. For example, a sentence of 50 years with a minimum term of 40 years was not unusual. Sentences of this length, which are rarely imposed by Australian courts today, should also not be confused with the essentially indeterminate nature of a life sentence.

The Indeterminate Sentence

Life imprisonment, particularly where no minimum term is specified, is but one, albeit the most common, form of indeterminate sentence. It is a sentence which places the decision to release the prisoner outside the guidance of the courts and into the hands of another authority such as a parole board. Its distinguishing feature is that the prisoner has no guarantee of ever being released from custody.

In practice, the majority of lifers are released after they have served a substantial term of imprisonment, usually in excess of ten, and in exceptional cases in excess of twenty, years. In this regard, life imprisonment is not unlike some other forms of court disposal, such as:

- indeterminate committal of juvenile offenders to an institution;
- governor's pleasure orders (also in some states called Her Majesty's pleasure or Queen's pleasure, and in the Northern Territory, Administrator's pleasure, orders);
- orders made under near obsolete legislation applying to habitual criminals; and
- legislation which still exists in some states and applies to a category of offenders who are deemed unable to control their sexual instincts.

In summary, executive clemency, coupled with the governmental policy of the day are the key features which determine the period a life sentence prisoner will serve in custody. Certainly the circumstances surrounding the offence, the length of time that the prisoner has already served in gaol and the apparent risk presented by the prisoner to the community are relevant considerations in the decision to release.

Ultimately then, the distinguishing mark of the life sentence is the uncertainty of the date of release and therefore the uncertainty of the duration of the custodial portion of the sentence.

It has been argued that this uncertainty can be a very cruel form of punishment because the decision to release or continue the incarceration is made in an arbitrary and capricious manner (Sheleff 1987, p. 47). It is also unfair in the sense that a young person sentenced to this penalty could, theoretically, serve many more years in custody than an older person. Conversely, an older person has a significantly greater chance of serving the balance of his life in gaol. The prospect of serving a life sentence is such that some offenders have indicated a preference for the death penalty. In South Australia, for example, a lifer who had originally been sentenced to death for murder appealed to the Privy Council in an unsuccessful attempt to have the original death sentence carried out (*see* ex parte Lawrence [1972] 3 SASR 361). A more notorious case—that of condemned murderer Garry Gilmore—occurred in the United States in the mid-1970s. Gilmore, while on death row, fought for his right to be executed in accordance with the sentence imposed upon him. His success in the courts led to the renewal of executions, the first in a decade, in the United States. No longer was the death penalty, per se, to be regarded as a 'cruel and unusual' form of punishment (Bedau 1977, p. 32).

While under Australian law life imprisonment is the ultimate sanction, very few life sentence prisoners are destined to die in prison. This situation could change—the law could provide that lifers should never be released. As will be seen, Western Australia has already moved in that direction.

Should Life Imprisonment really mean Imprisonment until Death?

If the answer is to be found by reference to recidivism rates, then the reply must surely be in the negative. This is because life sentence prisoners (usually murderers) have amongst the lowest recidivism rates of any other category of prisoner (Potas & Walker 1987). This may be partly explained by the fact that low recidivism rates are a function of long-term imprisonment. Reconviction rates decline as offenders age and lifers, being generally much older (and perhaps wiser) upon release than their fellow prisoners, may, for this reason also, be less likely to re-offend.

If the answer is to be based on humane considerations, again the answer must be a resounding 'no'. Long-term imprisonment can be both psychologically and physically harmful, and in some instances can lead to 'institutionalisation' with attendant difficulties for prisoners upon their release (Bottoms & Light 1987, p. 183).

If the answer is to be based on the financial burden that prisoners pose upon the community, then again the answer is 'no'. Detaining prisoners in gaol can cost the community in excess of $45,000 per prisoner per year (Mukherjee et al. 1989, p. 592).

For the above reasons, therefore, it can be argued that it is in the public interest that the majority of life sentence prisoners should not be required to serve the rest of their days in gaol. Rather, as soon as they have served an appropriate period in gaol (determined by reference to the seriousness of the offence and background of the offender), and after careful consideration of the threat they may present to members of the community (based upon the best evidence available), the vast majority of lifers should eventually be released from prison.

Who Gets Life Imprisonment?

Data collected by the Australian Institute of Criminology reveal that the vast majority of all offenders serving life sentences in Australian penal institutions are convicted murderers. Indeed, while a number of jurisdictions continue to have many other crimes which carry sentences of life imprisonment, there are very few instances where this sentence is imposed for cases other than murder. Thus, in practical terms, life imprisonment, now the most severe sanction in the penal hierarchy, symbolises the law's respect for human life and the gravity with which the offence of murder is to be regarded. At the same time, it issues a warning to those who might be tempted to kill without justification or excuse, that if they do so and are caught, they will be dealt with in the most severe fashion that the law will allow.

The data show that on the night of 30 June 1987 there were 590 male and 30 female (total 620) prisoners serving life sentences

in Australian prisons. Of these, 568 (95.2 per cent) of the male population and 29 (96.7 per cent) of the female population were convicted of murder. Thus on 30 June 1987, less than one out of twenty prisoners serving life sentences in Australian gaols had not been convicted of murder.

Table 1 shows that, after murder, the most common offences attracting life imprisonment are: sexual offences (there were eight such persons), attempted murder (seven persons), assault occasioning grievous bodily harm (six persons), and manslaughter (five persons). Included in the miscellaneous category 'other' are armed robbery, government security, and drug trafficking offences. If present trends continue, however, it is likely, for the reasons to be discussed shortly, that the proportion of drug offenders serving life sentences will increase quite significantly in the future.

Table 1

Prisoners Serving Life Sentence by Offence and Sex Categories as at 30 June 1987

Male	NSW	Vic.	Qld	WA	SA	Tas.	NT	Total
Murder	180	112	120	66	42	31	6	557
Attempted Murder	5			2				7
Manslaughter	2		2					4
Assault Grievous Bodily Harm	5		1					6
Sexual Assault	1	1	5	1				8
Other	1		4	2	1			8
Total	194	113	132	71	43	31	6	590

Female	NSW	Vic.	Qld	WA	SA	Tas.	NT	Total
Murder	10	4	2	8	3	2		29
Attempted Murder								0
Manslaughter			1					1
Total	10	4	3	8	3	2	0	30

Source: Debaecker, F. 1989, *Australian Prisoners 1987*, Australian Institute of Criminology, Canberra.

Legislation and Life Imprisonment

Given that the statute books contain a large variety of offences which carry life imprisonment (except Victoria which has only

three such offences), it is somewhat surprising that murderers outnumber all other life sentence prisoners by such a large margin (20 to 1).

The explanation for this can be found partly in the fact that murder has attracted a mandatory, rather than a discretionary life sentence, and continues to do so in many jurisdictions. This may be contrasted with the majority of offences where life imprisonment is regarded as a maximum sentence only, reserved for the most serious offences of their kind. Other explanations are that many offences carrying life imprisonment are obsolete (for example, clipping coins), are likely to be committed mainly during war time (for example, treason), or—like political terrorism—are not the type of offences that are commonly found in a country with a relatively harmonious political and social climate. Less convincing is the argument that these offences are not committed because they carry the sentence of life imprisonment.

Table 2 provides a useful comparison of a selection of statutory penalties from a number of overseas jurisdictions.

Table 2

Current Maximum Penalties From Other Jurisdictions (Selected Offences)

Offence	Canada	United Kingdom	United States[1]	Sweden	France	Nether lands
Manslaughter	Life	Life	10	10	15	15
Attempted Murder	Life	10	10	Life	Life	10
Kidnapping	Life	Life	Life	Life	Life	12
Robbery	Life	Life	Life	10	Life	15
Extortion	Life	14	5	6	10	9
Arson	14	Life	10	Life	20	15
Perjury	Life/14	5	2	8	10	3
Aggravated Assault	14	Life	10	10	15	6
Forgery	14	Life	10	6	Life	5
Imprisonment rate per 100,000 population	108	97	287	49	72	34

Adapted from Table 9.4, Report of The Canadian Sentencing Commission 1986, *Sentencing Reform: A Canadian Approach*, Canadian Government Publishing Centre, Ottawa, Canada, p. 208.

Notes:
1 From UD Model Penal Code.

The Netherlands stands out in stark contrast to the other jurisdictions because of its moderate penalties. The maximum

penalty for murder is twenty years, and although theoretically a life sentence is possible, it has never been used (Downes 1988, p. 122). The Dutch are renowned for their low imprisonment rates (presently about 40 per cent of the Australian rates) and are often held up as a model for demonstrating that less use of imprisonment, and more particularly, short sentences, do not necessarily lead to a greater increase in the crime rate when compared with other countries. Of course, crime rates are increasing in The Netherlands, as they are in most other industrialised countries, but such increases can be attributed to fundamental social and economic developments rather than sentencing policy (Downes 1988, p. 120; Rusche & Kirchheimer 1939, p. 294). There is no lack of political pressure in The Netherlands directed at increasing sentences in the belief that this may stem the rising tide of crime. However, the Dutch have demonstrated that, through moderate sentencing policies, they have attained one of the most humane prison systems in the world, and they have achieved this without any demonstrably adverse effects on crime rates (Downes 1988, ch. 4). Certainly, in Australia, it has been strongly argued that our statutory maximum penalties are too high and provide little guidance for the day-to-day decisions of sentencers (*see* Australian Law Reform Commission 1988).

Discretionary Life Sentence for Murder

Until recently, murder has carried a mandatory sentence of life imprisonment in all Australian jurisdictions except the ACT—a legacy flowing from the abolition of capital punishment. However, in the present decade, the two most populous states of Australia have moderated their statutory penalties by providing judges with a discretion in sentencing murderers. Thus in New South Wales, under the provisions of the *Crimes (Homicide) Amendment Act 1982*, the mandatory life sentence for murder has been ameliorated by enabling the sentencing judge to impose a less severe sentence where the offender's 'culpability for the crime' is found to be 'significantly diminished by mitigating circumstances'.

Even more recently Victorians have legislated to untie the hands of the sentencing judge. Section 8 of the *Crimes (Amendment) Act 1986* amended the Victorian Crimes Act to enable the judge, faced with the prospect of sentencing a murderer, to choose between a natural life sentence and any other appropriate term.

The only other jurisdiction which provides its judges with a discretion to impose a sentence of imprisonment of less than life for murder is the Australian Capital Territory. Indeed, in Wheeldon (1978) 18 ALR 619—a case involving a young man who had been found guilty of murdering his mother—the Federal Court of Australia declared that a mandatory life sentence for

murder had not been substituted when the death penalty was abolished in 1973.

What Is Wrong with the Mandatory Life Sentence?

Some jurisdictions have decided to allow courts to relax the requirement that all murderers should receive the same sentence. To begin with, there can be considerable variation in the culpability and blameworthiness of those who commit murder. Compare, for example, the moral culpability of the so-called 'hit man' (the contract killer whose sole motive is financial gain) with a person who mercifully ends the life of a terminally-ill person; or a woman who, in a murder trial, fails to establish the defence of provocation (thereby empowering the judge to avoid the mandatory sentence) but nevertheless is found to have killed her spouse after putting up with years of physical and psychological abuse.

Is it fair, or even desirable, that all such murderers should be given the same punishment, and then rely on the executive to make the appropriate adjustments? Increasingly, it is coming to be recognised that variations in offence seriousness should be reflected (so far as possible) in the severity of the sentences imposed, as determined by the judge in open court under established common law principles.

Because the sentence of life imprisonment is at the very pinnacle of the sentencing hierarchy and is intended, amongst other things, to denounce only the most serious offences and at the highest possible level, it is important that this sentence should not be applied indiscriminately. Equally, persons serving life sentences should not be released after serving only a very short custodial term, except for very good reason. If either of these prescriptions are ignored, the symbolic or 'awe-inspiring nature' of the life sentence itself will be diluted and trivialised.

Mandatory sentencing laws discourage guilty pleas, thus adding to the problems of cost and delay in criminal proceedings. Certainly there is now some evidence to suggest that a maximum, as opposed to a mandatory, sentence of life imprisonment increases guilty pleas and reduces the number of appeals against convictions. This was noted by the Law Reform Commission of Victoria shortly after discretionary sentencing for murder was introduced in that state (Victorian Law Reform Commission 1988, p. 68).

In short, there is now sufficient evidence to argue that it is wrong, as a matter of justice and of policy, to impose the same punishment on all murderers.

Drug Traffickers

Under Commonwealth law, a person may be sentenced to life imprisonment for drug trafficking. Although this penalty has been available to the courts for some time, courts exercising federal jurisdiction have been reluctant to impose the maximum penalty. The first such case (and for many years the only case) resulting in a sentence of life imprisonment involved a large-scale drug importer named Van Dijk who was sentenced in Western Australia in June 1986. Another example, Mario Postiglione, was sentenced in the NSW Supreme Court on 28 July 1988 to life imprisonment for the offence of being knowingly concerned in the importation of 5 kg of pure heroin concealed inside soccer balls. A third, and most recent instance coming to the writer's attention at the time of writing was that of David John Kelleher. Kelleher, described in court as a Mr Big in the drug trade, was sentenced to life imprisonment in Sydney on 21 September 1988 upon a charge of conspiring to import 9.5 kg of heroin.

Apart from the federal legislation, New South Wales, Queensland, South Australia and the Northern Territory also prescribe life imprisonment as a punishment for some drug offences. However, with the exception of Queensland's *Drugs Misuse Act 1986* under which the mandatory life sentence for certain drug offences has been introduced, the courts have shown a preference for imposing determinate sentences.

Queensland's mandatory drug laws were recently criticised at the International Criminal Law Congress held at the Gold Coast in June 1988. Many of the conference participants, consisting of eminent criminal lawyers, members of the judiciary, prosecutors and academic lawyers, objected to legislation which, in terms of punishment, could not discriminate between on the one hand, a run-of-the-mill, small-time drug pedlar and, on the other hand, a large-scale drug importer whose sole motive was profit and whose actions were bound to contribute to the chain of misery and death for which the trade is renowned.

A further consequence of the legislation is that the less serious as well as the more serious drug traffickers are beginning to clog up the court system. Understandably, these offenders are reluctant to plead guilty because of the penal consequences of doing so. Under normal circumstances, guilty pleas and cooperation with authorities often attract leniency in sentencing, but such cooperation is not encouraged where life imprisonment is mandatory. According to Supreme Court data, as at 25 October 1988 there were thirty-four drug trafficking charges awaiting trial in the Supreme Court of Queensland. This compares with thirty charges on the Supreme Court Criminal Lists in July 1988 and only one such charge in July 1987. Meanwhile there is little evidence that the drug problem in Queensland is abating and, in time, the Government of Queensland may decide that the mandatory sentencing laws serve no useful purpose other than to delay court proceedings and unnecessarily contribute to prison overcrowding.

Setting Minimum Terms for Lifers

In most jurisdictions, courts are simply not empowered to set non-parole periods (or minimum terms) when they impose sentences of life imprisonment. In these circumstances, lifers are simply given no indication when, if at all, they are likely to be released from custody. For them there is no 'light at the end of the tunnel'. However, in two states, Victoria and South Australia, courts do have the power to set minimum terms upon lifers and, in most circumstances, do exercise this option.

In Victoria, the mandatory life sentence for murder was repealed by the Crimes (Amendment) Act 1986, and courts were given power to choose between imposing life imprisonment or a lesser sentence of fixed duration. At the same time courts were empowered to set non-parole periods in respect of life sentence prisoners. Offenders who previously had been sentenced to imprisonment for the term of their natural life (natural lifers) were allowed to apply to the Supreme Court for the setting of a minimum term. Those who had originally been sentenced to death prior to the abolition of the death penalty (effective from 1 July 1976) and had previously had their sentences commuted to life imprisonment were also allowed to apply to the Court to have a minimum term set.

However, it now appears that the Parole Board may not have had the power to release members of the latter group, some of whom may have been released by mistake. The Court of Criminal Appeal has recently held that the commutation of a death sentence to life imprisonment is technically a pardon rather than a sentence and therefore does not permit the court to fix a minimum term (*Bariska*, Court of Criminal Appeal, 19 September 1988).

The setting of minimum terms in concert with life sentences is a desirable reform. It provides a better yardstick as to the perceived severity of the offence and gives the prisoner, as well as the community, some idea as to the minimum duration of the custodial portion of the sentence. Of course, release at the minimum time is contingent upon the prisoner's good behaviour and this incentive contributes to the orderly management of penal institutions.

One distinctive feature of the Victorian model is that remissions are expressly excluded from applying to non-parole periods when set in conjunction with life sentences. In South Australia, life sentence prisoners are treated in the same way as other long-term prisoners—that is, they are subject to the same incentives, including reductions in the minimum term for good behaviour. Only time will tell whether the approach taken in South Australia is to be preferred.

The fact that the South Australian and Victorian courts have power to set minimum terms does not mean that they will always exercise this option. In the Russell Street bombing case, which occurred in Melbourne in November 1986, for example, two men were given life sentences for the murder of a female police constable. However, the principal offender, 51 year-old Stanley

Brian Taylor, was not given the benefit of a minimum term. This was the first and, at the time of writing, only occasion in which the Victorian Supreme Court had declined to set a non-parole period under the new empowering legislation of 1986. Taylor's accomplice, 25 year-old Craig William Minogue, was given a minimum term of 28 years, because, according to the judge, this man was not beyond redemption.

Never to be Released

From time to time the courts have expressed the view that specific offenders should never be released from gaol. For example, this occurred in the case of Crump and Baker (unreported decision of the NSW Court of Criminal Appeal, 7 February 1975), and concerned the horrific and well publicised murder of Virginia Morse at a property in north-western New South Wales. In that case, the Court of Criminal Appeal endorsed the following remarks of the trial judge: 'If ever there was a case where life imprisonment should mean what it says—imprisonment for the whole of your lives—this is it.'

Similar exhortatory statements can be found occasionally, as in the brutal sex murder in February 1986 of Anita Cobby in NSW and in the David and Catherine Birnie case (torture, rape and murder of four Perth women in late 1986). In Osborne, Justice Smith commented that the prisoner, a paroled rapist, who had been convicted of the wilful murder of Susan Frost in Albany, should not be released until overtaken by senility; and, even more recently, in Tilbury, Justice Brinsden, when sentencing the prisoner to strict security life imprisonment for the sex murder of a young woman (he had also killed someone 18 years earlier) said: 'I can see no circumstance in the future which would justify your release into the community' (Gibson 1989).

Until recently, even the endorsement on a life sentence prisoner's file 'never to be released' did not have any binding legal effect upon those charged with the responsibility for determining when the prisoner should be released. However, under the provisions of the *Criminal Law Amendment Act* No. 78 of 1988 in Western Australia, the law was amended so that a court which imposes a sentence of strict security life imprisonment can, where it considers appropriate, order that the person is not to be eligible for parole. This is intended to mean that the prisoner must serve the rest of his or her life in gaol.

Advantages of the Determinate Sentence

Life sentence prisoners have indicated that one of the most important reforms they would like to see is the provision of a firm date as to when they might expect to be released (Whiteford 1988).

This reform has now been implemented in those states which allow the setting of non-parole periods. Certainly the advantages of determinate sentencing have been described, inter alia, as:

- providing a better yardstick by which to reflect public sentiment;
- relieving the Government of the day from being concerned with the political odium attached to the responsibility of releasing lifers when there may be a public outcry over a contemporary crime;
- promoting administrative efficiency by placing all prisoners upon the same footing for the purposes of considering remission entitlements and parole eligibility;
- providing all prisoners with the same incentives to be of good behaviour in gaol, and to participate in work, self-development and rehabilitation programs;
- assisting with prison management by reducing stress and anxiety amongst long-term prisoners;
- allowing prisoners to plan their lives far more effectively and to set realistic goals for themselves (Whiteford 1988).

Average Term Served by Life Sentence Releasees

Given that most lifers are eventually released, the question of how long they are likely to serve in prison becomes important. Researchers have examined this question and found that the average terms varied slightly from state to state (Freiberg & Biles 1975). An examination of their findings, which related to lifers released prior to 1975, suggests that they served, on average, between 11 and 14 years of their life sentences in custody. Since then, there have been fluctuations in the general patterns, as can be illustrated by the NSW experience.

New South Wales

In New South Wales during the period 1975 to 1979, the average term served by lifers was a relatively high 14 years and 3 months. However, by the early 1980s, when Rex Jackson was the Minister for Corrective Services, it was apparent that this average was reducing. By July 1982, the average term for those released on licence between 2 October 1981 and 24 June 1982 had reduced to 12 years and 5 months. Further, of the 27 prisoners released during this period, 57 per cent had served less than 12 years. More recent data, for the period 29 February 1984 to 14 September 1987, reveal that the average term served by lifers was 11 years and 7 months.

Victoria

In Victoria, 46 of 119 prisoners who had been sentenced to natural life prior to 1986 were given an average minimum term of 11 years and 9 months. New lifers (those sentenced since 1986) received minimum terms averaging 14 years and 3 months (calculated on

the basis of 24 prisoners sentenced between July 1986 and December 1987).

Queensland

Queensland not only has the second highest number of life sentenced prisoners in Australia, but also the longest serving. An analysis of 111 lifers released to parole between 1959 and June 1988 reveals that the average term served was 15 years and 9 months. This high average may be explained in part, by the very high proportion of lifers who had served more than 20 years imprisonment before release. The data reveal that there were 17 cases or 15.3 per cent of lifers who served over 20 years, with an average term of imprisonment of 27 years 2 months prior to their release.

South Australia

South Australian figures show that the average non-parole period set by the sentencing court in respect of those with life sentences was 17 years and 8 months. With remissions this reduces to an effective minimum term of 13 years and 3 months. These figures relate to 37 life sentences imposed by the courts during the period 20 December 1983 and 27 July 1988.

Western Australia

There are considerable difficulties in making direct comparisons of Western Australian data with other jurisdictions because of Western Australia's 'strict security life imprisonment' sentence. This unusual sanction, introduced in 1984, effectively requires 'strict security lifers' to serve a minimum term of 20 years imprisonment before they may be considered for release on parole and accordingly it will be some time before the first prisoners given this sentence may be considered for release. Freiberg and Biles (1975) reported an average term of 12 years and 11 months for male lifers released between 1900 and 1974 in Western Australia. Between 1975 and 1979 this term shrunk to about 9 years and 9 months. More recent data relating to nine wilful murderers released between 1975 and 1987 however, indicate an average term of 13 years and 11 months was served. This may be compared with 33 murderers (that is not wilful murderers) released during this same period who served an average term of 6 years and 7 months.

Of course, the exercise of the royal prerogative of mercy is always possible. Thus even the sentence of strict security life imprisonment may be commuted, so that offenders subject to this sanction may be released prior to the expiration of their minimum review date of 20 years. In practice, this is only likely to occur where the governor is of the opinion that special circumstances exist (*see Offenders Probation and Parole Act 1963* [WA] s.40D).

Tasmania

The Tasmanian numbers are small and so are easily analysed. According to the Parole Board, from the date of the last execution in Tasmania on 14 February 1946 until 26 October 1987, 57 persons, including four women, were sentenced to life imprisonment. During this period three lifers died while serving their sentences in prison and 20 lifers were released to parole. The average custodial term served by the 20 releasees was 10 years and 3 months. If, however, the four shortest terms (between 2 and

6 years) are excluded, then the average custodial term served by these lifers increases to 11 years 3 months.

Tasmanian lifers do not appear to serve exceptionally long custodial terms, and Parole Board data as at the end of October 1987 suggest that the longest serving lifer still in gaol has been incarcerated for 17 years and six months. The longest term served by a life sentence releasee is 14 years and 10 months (released in 1965) and only eight cases out of a total thirty-four lifers still in prison have served 10 years or more.

Truth in Sentencing

If there is a problem with the practice of releasing lifers it is that it fails to satisfy the principle of 'truth in sentencing' and invites the criticism that the imposition of a life sentence is nothing more than a sham designed to mislead a gullible public. There is some validity in this criticism and perhaps it is best met, not by ensuring that prisoners are never to be released, but by ensuring that only the very worst offenders are given this sentence. Inevitably, this entails not only restricting the type of offences in respect of which life sentences may be imposed but also abolishing mandatory life sentences. Better still, changing the label 'life imprisonment' to (for example) 'imprisonment for an indeterminate duration' might more honestly represent what is really intended by the sentence. In order to reduce the uncertainty of such a sentence, it could be coupled with a non-parole period indicating to the community at large and the offender alike, the minimum period to be served as a punishment for the offence.

Conclusion

Reforms in some Australian jurisdictions which have extended discretion to the sentencing judge in murder cases are welcome developments, as are the powers to specify non-parole periods for those sentenced to life imprisonment. Such reforms serve to remove the aura of uncertainty and capriciousness surrounding this sentence and so contribute to the administration of justice in a positive way.

There is little merit in creating a regime which gives prisoners absolutely no hope of ever being released from prison. In the majority of cases such a drastic penalty serves little purpose other than perhaps, to exact uncompromising retribution for the harm done, to appease some advocates of the death penalty or to reassure those who may entertain a generally unfounded fear of the offender's potential for future harm.

Society must find a humane way of handling life sentence and long-term prisoners. One step towards this is to ensure that life and long-term sentences are imposed infrequently and in

exceptionally bad cases only. Another step is to avoid the temptation of assuming that mandatory sentences, and particularly mandatory life imprisonment provisions provide a panacea for society's ills. Finally, in those rare cases where life imprisonment is appropriate, the sentence should be such that, while broadcasting both to the community at large and to the prisoners themselves, the total abhorrence of what they have done, it preserves still a real glimmer of hope for such prisoners—a hope that one day, perhaps a long way, and in some cases a very long way, down the track, they will be given an opportunity to resume normal living.

Such demonstrable compassion should not be viewed as a sign of weakness but one of strength—a working symbol of a tolerant society which tempers justice with mercy and gives more than passing recognition to the cruelty and ultimate futility of imprisonment until death. It exemplifies a society which places a high premium on human life, including that of a condemned murderer, and accepts that over time, even the most violent offender may reform in character, attitude and behaviour.

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Postscript

Since this was first published, a number of legislative reforms have been introduced which render some of the information contained in the body of the article of historical significance. Perhaps the two most significant developments have been the abandonment of the blanket mandatory life sentences for drug offenders in Queensland and, in New South Wales, the substitution of maximum terms of 25 years penal servitude for a large number of offences which previously carried the life sentence.

Thus in New South Wales, since the *Crimes (Life Sentences) Amendment Act 1989* (which commenced on 12 January 1990), it is no longer possible for courts to impose penal servitude for life for such offences as manslaughter and various categories of attempted murder, conspiracy to murder, accessory to murder, wounding with intent to cause grievous bodily harm, robbery with wounding, homosexual intercourse with a male under 10 years of age and a host of other offences which, in practice, rarely attracted life sentences.

Section s.431A of the Act provides that person is not liable to the punishment of penal servitude for life unless the offence is murder or one of a number of selected offences under the *Drug Misuse and Trafficking Act 1985* (NSW). Where a life sentence is available, it is not mandatory, and courts are free to impose a less severe sentence if the maximum is not appropriate.

Where, however, a life sentence is imposed the prisoner is required to serve that sentence for the term of his or her natural life. Following the 'truth in sentencing' philosophy of the *Sentencing Act 1989* (NSW), 'life' is intended to mean that the person, so sentenced, will serve the rest of his or her life in gaol.

Those who had been sentenced to penal servitude for life prior to the commencement of the *Crimes (Life Sentences) Amendment Act 1989*, may, after serving a minimum term of eight years of imprisonment, apply to the Supreme Court for re-sentencing. In turn, the Court may impose a determinate sentence, or set a minimum term with an indeterminate sentence, or simply decline to alter the original life sentence.

In the wake of the 'truth in sentencing' legislation, the Release on Licence Board has been replaced by the Serious Offenders Review Board and the latter is no longer required to determine whether lifers should be released on licence. This does not mean that lifers under the new Act can never be released on licence, for release under the Prerogative of Mercy is still a possibility. Indeed it is not unlikely that this device will be used in the future,

although the likely extent of its use cannot be predicted. Under present policies there can be little doubt that those sentenced to life imprisonment will serve substantially longer terms of imprisonment than under the previous regime.

The developments in New South Wales may be contrasted with those under the *Crimes Act 1914* (Cwlth). An amendment to that Act, which came into force on 17 July 1991, generally required the Court to set a non-parole period when it imposes a life sentence. Further the offender may still apply to the Commonwealth Attorney-General for release on licence.

Having regard to these changes, and to the disparate laws applying to life sentenced prisoners throughout Australia, it is little wonder that the public is confused by the meaning of a life sentence. It is surely time to consider a uniform approach to laws in this area.

Remand Imprisonment in Australia

DAVID BILES

Between 1978 and 1990, the composition of Australian prison populations has changed markedly, largely as a result of the dramatic increases in the numbers of remand prisoners. Over the period for which full annual data for Australia as a whole are available—from 1978 to 1989—the total prison population has increased by 31 per cent, and this has resulted in significant overcrowding in some jurisdictions. A closer examination of the figures shows that this increase is made up of an increase in convicted prisoners of just under 24 per cent, but an increase in remand prisoners of 88 per cent. The increase in the total number of convicted prisoners is only a little higher than the natural increase in the general population (estimated to have been 18 per cent) and, therefore, it is not overstating the case to say that the overcrowding problems are almost entirely due to the increase in remand imprisonment that has occurred in recent years.

This paper aims to present the facts about three separate but related aspects of the use of remand imprisonment in Australia. These are:

- the differences between jurisdictions in the use of remand;
- the statistical data indicating increased use of remand; and
- the structure of remand populations in terms of intake numbers and length of stay.

It will be suggested that these facts and figures provide guidance as to where changes are needed as well as an indication of the type of changes that are appropriate in particular jurisdictions.

The data used to illustrate the first two matters are all derived from *Australian Prison Trends*, a monthly collection of the basic correctional statistics that was started by the Australian Institute of Criminology in May 1976 and has included remand data since late 1977. While this data set is widely recognised as being of great value in any review of Australian imprisonment, it is, as its title suggests, limited to statistics about persons in prison. *Australian Prison Trends* does not include information about persons, either remanded in custody or serving short sentences, who are held in police facilities because of prison overcrowding or because of geographical isolation. (It is a matter of some concern that there is no monitoring at a national level of the number of persons in police watchhouses who would be in prison if there were sufficient space. The Institute has initiated discussions with the police forces to establish whether or not such monitoring is feasible.) The data used for the third sub-topic in this paper are derived from the results of the most recent national prison census, which is published each year under the title *Australian Prisoners*.

Each issue of *Australian Prison Trends* contains, among other things, the number of unconvicted prisoners on remand for each jurisdiction on the first day of the month, as well as the percentage of the total prison population that is comprised of remandees on that day. The percentages are of some interest in themselves, but they can be misleading in view of the very large differences in overall imprisonment rates between Australian states and territories. Thus a jurisdiction with a low imprisonment rate may be shown to have a high percentage of remandees compared with another jurisdiction with a high imprisonment rate. To overcome this problem, *Australian Prison Trends* also includes for each jurisdiction a remand rate, which is the number of remandees per 100,000 of the general population. For most purposes, comparisons of remand rates are preferable to comparisons of remand percentages. Annual averages of three indices for each jurisdiction for each year from 1978 to 1990 are given in Tables 1, 2, and 3.

These tables have been constructed from the data published in *Australian Prison Trends* which relate to the first day of each month. The tables show respectively: the annual mean number of remand prisoners; the annual mean percentage that remandees represent in the total prison population; and, the annual mean number of remand prisoners per 100,000 of the relevant general population.

Differences Between Jurisdictions

A simple illustration of the differences between Australian jurisdictions in the use of remand is shown in Figure 1, which is a graphical representation of the average remand rates for each state and territory for the first six months of the calendar year 1990.

The numbers shown in this figure are reproduced from the bottom line of Table 3. A close scrutiny of figures in the table

shows that the remand rates for all jurisdictions except Tasmania have increased markedly in the past decade or more. At all events, it is clear from this table that the four jurisdictions of the Northern Territory, New South Wales, South Australia and Western Australia are the ones which seem to make much greater use of remand than do the other jurisdictions.

Table 1

Annual Average Remand Prisoners, 1978-90

Year	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1978	502.4	144.3	96.8	96.8	135.4	26.4	25.3	11.0	1,038.1
1979	528.7	123.8	101.2	117.4	135.9	21.8	31.1	10.1	1,069.9
1980	493.3	104.1	102.8	89.5	136.1	18.9	34.4	7.4	986.5
1981	521.4	126.3	115.9	108.4	125.0	15.0	35.6	7.3	1,054.9
1982	627.1	154.5	127.0	112.8	137.6	14.6	39.9	8.7	1,222.1
1983	633.8	176.3	137.6	136.7	130.9	13.8	47.8	12.8	1,281.3
1984	609.2	183.4	131.9	131.0	139.8	13.8	47.5	14.5	1,272.0
1985	753.6	191.6	157.8	150.8	162.6	19.1	58.4	12.9	1,506.8
1986	792.7	231.8	154.5	159.9	173.7	29.1	66.0	14.4	1,621.0
1987	909.8	265.7	146.8	184.1	174.5	36.3	50.4	8.5	1,794.2
1988	966.9	270.0	177.1	165.3	179.0	28.0	54.4	14.7	1,855.3
1989	1,013.3	312.0	179.0	181.3	175.7	21.8	51.5	23.3	1,954.0
1990*	1,199.8	353.2	196.2	187.0	179.0	16.2	54.7	23.3	2,209.4

* First six months only.

Table 2

Annual per cent Remand Prisoners, 1978-90

Year	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1978	13.6	9.2	6.2	7.9	18.5	9.5	15.1	24.5	11.2
1979	14.0	7.6	6.3	8.0	17.1	7.5	12.6	23.9	10.8
1980	14.4	5.4	6.3	6.1	16.1	7.1	12.9	13.7	10.1
1981	15.0	7.1	6.8	7.8	14.9	5.9	12.3	15.3	10.8
1982	17.8	8.6	7.7	8.0	16.9	6.3	14.1	19.5	12.6
1983	17.9	9.2	8.2	9.4	16.7	6.1	18.9	22.6	12.9
1984	18.8	9.3	7.3	9.0	22.0	5.6	17.7	25.1	13.1
1985	20.3	10.2	8.0	10.0	21.9	8.1	16.9	18.3	14.4
1986	20.7	12.0	7.1	10.0	21.6	10.9	17.0	18.6	14.7
1987	22.7	13.4	6.5	11.1	22.3	12.9	11.5	10.3	15.5
1988	23.6	13.1	7.4	10.3	22.1	10.2	13.8	20.0	15.9
1989	22.2	14.1	7.6	11.4	20.5	8.3	13.7	25.7	16.0
1990*	23.6	15.6	8.9	11.0	20.0	7.2	14.2	22.0	17.2

* First six months only.

Table 3

Annual Remand Rates, 1978-90

Year	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1978	10.0	3.8	4.5	7.9	10.5	6.4	22.7	5.1	7.3
1979	10.4	3.2	4.6	9.4	10.5	5.2	26.7	4.5	7.4
1980	9.6	2.7	4.6	7.1	10.5	4.5	28.6	3.2	6.8
1981	10.0	3.2	5.0	8.4	9.6	3.5	27.8	3.1	7.1
1982	11.9	3.9	5.3	8.6	10.4	3.4	29.7	3.7	8.1
1983	11.5	4.4	5.6	10.2	9.8	3.2	36.6	5.5	8.4
1984	10.7	4.6	5.3	9.6	10.4	3.2	35.2	6.1	8.1
1985	13.8	4.7	6.2	10.8	11.9	4.3	41.0	5.1	9.6
1986	14.3	5.6	6.0	11.2	12.7	6.5	45.0	5.5	10.2
1987	16.3	6.3	5.6	12.5	13.7	8.1	33.6	2.4	11.1
1988	17.0	6.3	6.5	11.0	12.5	6.2	34.1	5.4	11.3
1989	17.5	7.2	6.4	10.9	12.3	4.3	33.3	8.3	11.6
1990*	20.7	8.1	6.7	11.5	12.5	3.6	35.1	8.3	13.0

* First six months only.

The differences in remand rates shown in Figure 1 are even greater than the differences in imprisonment rates. With remand rates, the highest (Northern Territory) is approximately 9.7 times higher than the lowest (Tasmania), whereas the highest imprisonment rate (Northern Territory) is approximately 6.6 times higher than the lowest (Australian Capital Territory). There is, however, greater variability over time with remand statistics as they are necessarily much smaller than total prison statistics.

The Increasing Numbers

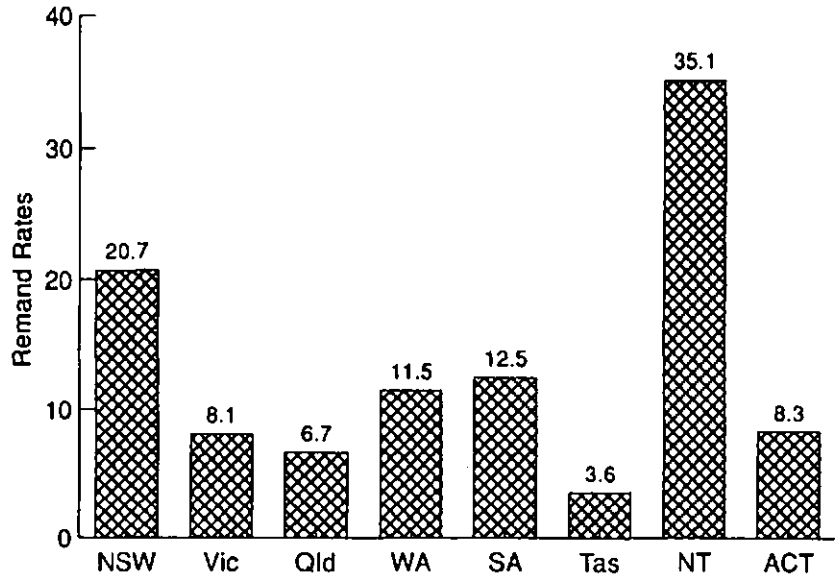
The trend of increasing remand numbers can be seen in Table 1 for each jurisdiction and for Australia as a whole, and the national picture is shown in Figure 2.

It can be seen from Figure 2 that the average number of remand prisoners has more than doubled in the past twelve years. The trend of increasing numbers has been almost constant with very small divergences occurring in 1980 and 1984.

In summary it can be said that in 1990 there were over 1,000 more unconvicted prisoners throughout Australia than there were at the start of the decade. The increase has been particularly marked in New South Wales and Victoria, the two larger jurisdictions, as shown by the figures in Table 1. The figures have virtually doubled in New South Wales and trebled in Victoria over the past decade.

Figure 1

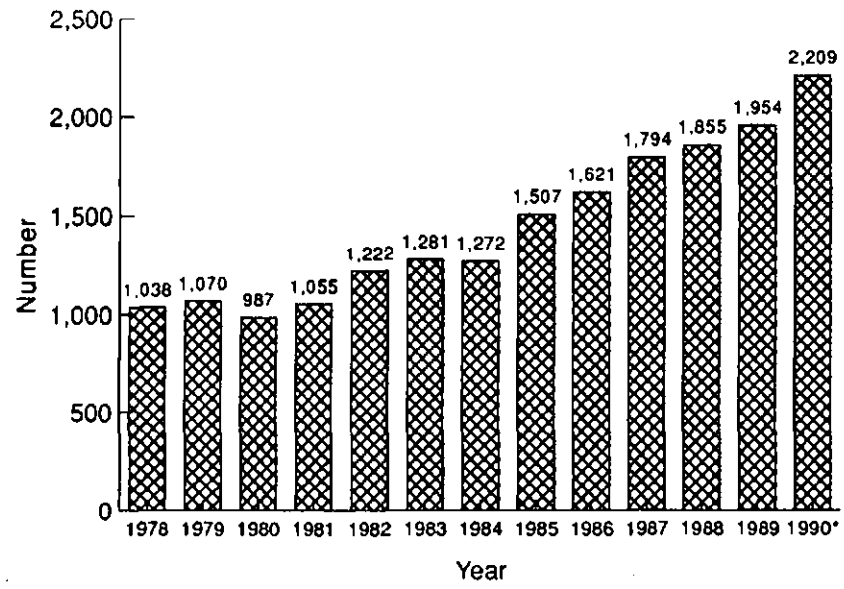
Remand Rates, Australia, 1990*



* First six months only.

Figure 2

Annual Average Remand Prisoners, Australia, 1978-90



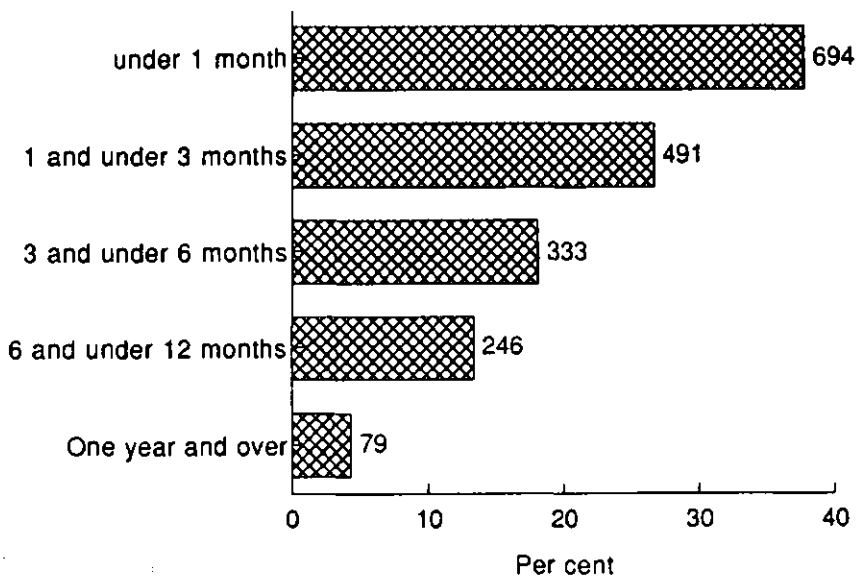
* First six months only.

The Structure of Remand Populations

In this section, the structure or composition of remand populations is examined with a view to identifying for each jurisdiction the relative significance of the numbers of persons entering remand populations or the average length of stay in custody of those persons. The most up-to-date figures from the annual census of prisoners conducted on 30 June 1990 include the numbers of remandees in each jurisdiction as well as the time that they had served on remand on that date. These figures will shortly be published by the Institute under the title *Australian Prisoners 1990*. For Australia as a whole, the census identified 1,843 remandees on that date, 4.3 per cent of whom had served more than one year and 13.3 per cent of whom had served from six to twelve months. These data are presented graphically in Figure 3.

Figure 3

Structure of the Australian Remand Population, 30 June 1990



In this figure, the actual number of remandees in each time-served category is shown at the end of each bar and the percentages for each category can be read off the horizontal axis. Figure 3 shows, for example, that as at 30 June 1990 there were 79 persons in prison in Australia who had been held for more than

one year as unconvicted remandees, and a further 246 persons had been on remand for over six months. The numbers who had been on remand for shorter periods are also shown, with the largest single category being those who had served less than one month.

In Figure 4, the remand populations for each jurisdiction as at 30 June 1990 are shown. (Attention is drawn to the fact that different scales are used for the horizontal axis according to the distribution of cases in each jurisdiction.) From this collection of graphics it can be seen that New South Wales had by far the highest number of remandees who had served over one year, but Victoria had the highest proportion, while some jurisdictions (Western Australia, Tasmania and the Australian Capital Territory) had no cases in that category.

The data presented in Figures 3 and 4 can be used to calculate a notional estimate of the mean period of stay on remand for each jurisdiction and for Australia as a whole. (The method that is used is necessarily inexact and will over-estimate the mean period of stay on remand as very short stay remandees are undercounted in any census. For this reason those jurisdictions with proportionately more short stay remandees will suffer some bias in these calculations.) The method simply assumes that the midpoint of each time-served category is the average for that category. Thus it is assumed for Australia as a whole (from Figure 3) that 694 remandees had served 0.5 months, and 491 remandees had served 2.0 months, and so on. For the 79 remandees who had served over one year, the average was taken as 15 months. For each time-served category these two numbers were multiplied (to give a notional indication of the space occupied by each category), the products were summed, and divided by the total number of remandees held at the date of the census to yield a notional mean time served for the whole group. This is illustrated for Australia in Table 4.

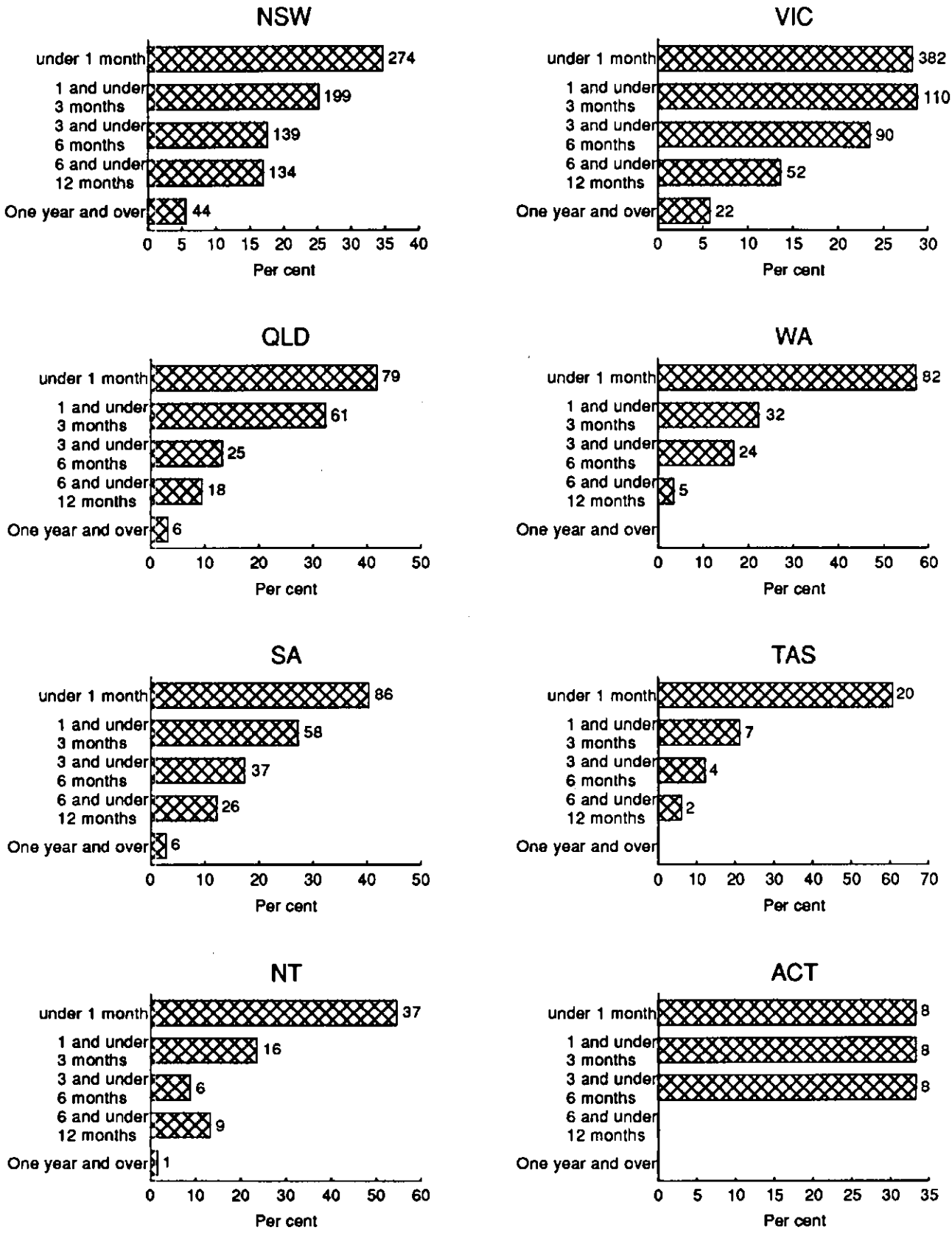
Table 4

Notional Mean Time Served on Remand, Australia, 30 June 1990

Time served	Assumed Mean Time	Number of Remandees	Product
Under 1 month	0.5	694	347.0
1 and under 3 months	2.0	491	982.0
3 and under 6 months	4.5	333	1,498.5
6 and under 12 months	9.0	246	2,214.0
1 year and over	15.0	79	1,185.0
Total		1843	6,226.5

Figure 4

Structure of Australian Remand Populations by Jurisdiction, 30 June 1990



Finally, 6226.5 is divided by 1,843 to yield 3.38 as the notional mean time served by remandees in months in Australia as at 30 June 1990. This exercise has been repeated for each jurisdiction separately to yield a range of figures for notional mean time served from 3.87 months in Victoria to 1.8 months in Western Australia.

The figures derived from these calculations can be then related to the known facts about remand rates (as shown in Figure 1, or as shown in Table 3) to establish an estimate of the intake rate for each jurisdiction. The basis for this is the widely accepted fact that any institutional population is a function of the intake and the mean time served. It follows that the remand rate is a function of the rate of intake and the notional mean time served. Thus, for Australia as a whole, a remand rate of 13.0 (remandees per 100,000 of the general population for the first half of calendar year 1990) may be divided by 3.38 (the notional mean time served established above) to yield a figure of 3.8 which is the remand intake rate, or an indication of the number of persons remanded in custody per 100,000 of the general population per unit of time. (The size of the unit of time is of no consequence in this exercise as the same method is to be used for all jurisdictions, and the purpose of the exercise is to compare jurisdictions rather than to describe the operation of the remand system.) Strictly speaking, the mean times served by the actual persons remanded in custody should be used in this calculation, rather than the mean times served by the remand populations on hand. However, such data are not available, and for the purposes of this exercise the population means provide a reasonable substitute. The intake mean times would be lower than the population mean times, which would in turn increase the estimated intake rates. However, interstate relativities would remain basically unchanged. Using this method, estimated intake rates have been established for each jurisdiction as shown in Table 5.

Table 5

Remand Rates, Notional Time Served and Estimated Intake Rates, Australia, by Jurisdiction, 1989

	Remand Rate	Time Served	Intake Rate
NSW	20.7	3.83	5.4
Vic.	8.1	3.87	2.1
Qld	6.7	2.78	2.4
WA	11.5	1.80	6.4
SA	12.5	3.05	4.1
Tas.	3.6	1.81	2.0
NT	35.1	2.51	14.0
ACT	8.3	2.33	3.6
Australia	13.0	3.38	3.8

From Table 5 it can be seen that New South Wales has higher than average indices for both time-served and intake, while Victoria is only above the national figure with regard to time served. The Queensland figures are both below the national averages, while Western Australia and South Australia both have relatively low time-served figures but above average intake indices. The Western Australian intake figure is particularly high but its time-served figure is the lowest in the nation. Tasmania is low on both figures. The Northern Territory can be seen to have an extremely high intake index but a time-served figure which is well below the national average, while the Australian Capital Territory is below average for time-served but close to the national average on intake.

The concepts of mean time served and intake rate suggest the two separate strategies that may be pursued to reduce the size of remand populations. In the first place, if the intake rate is high, efforts may be made, either by legislation or by education, to encourage magistrates and judges to order remand in custody as sparingly as possible and thus to keep the remand intake to a minimum. The submissions made by prosecutors are also relevant to this issue. The second strategy is to ensure that the time spent on remand is kept as short as possible by increasing the efficiency of the court system, particularly the efficiency of the higher courts. The second strategy may require the appointment of additional judges, while the first focuses on the decision making (largely) of magistrates in relation to bail or remand in custody.

These two strategies are obviously quite different, even though they both aim to reduce remand numbers. The central point of this exercise is that one is unlikely to know which of these two strategies is more appropriate (or whether neither is, or both are, appropriate) in particular jurisdictions unless one undertook the type of analysis of the data that has been demonstrated in this paper.

Bearing these different strategies in mind, as well as the statistical information presented earlier, the following observations are made in relation to remand in each Australian jurisdiction.

New South Wales | The doubling of remand numbers over the past decade is a particular cause of concern. The data suggest that this increase has resulted from both a high intake and a high average length of stay. Both strategies to reduce remand numbers should be pursued simultaneously.

Victoria | Even though the Victorian remand rate is still relatively low, the actual numbers have trebled in a decade. If that trend continues there will be severe problems in the near future. The pattern shown in Figure 4 suggests that there is a log jam of remandees in the three to six months period, which possibly explains the high time-served figure in Table 5. Efforts should be made to reduce the length of stay in custody on remand.

Queensland	The Queensland remand rate is the second lowest in Australia, but that rate has been steadily increasing in recent years, and the actual numbers have nearly doubled in a decade. Nevertheless, neither of the reduction strategies seems to be urgently required at this time.
Western Australia	The remand rate in Western Australia has doubled in the past decade, but the 1990 rate is considerably lower than that of New South Wales. The pattern shown in Figure 4 and the figures in Table 5 indicate relatively small numbers of long-serving remandees and, therefore, reducing the intake will be the principal strategy for reducing the overall numbers.
South Australia	The rate of increase in South Australia's remand rate has been slower than in most other jurisdictions, but at the beginning of the past decade, South Australia had a remand rate which was higher than all other States. There is, therefore, still a problem in South Australia and that seems to be largely due to high intake numbers, but concern must also be expressed about the number of remandees who have been in prison for relatively long periods.
Tasmania	The available evidence suggests that Tasmania has a low remand rate and no particular problem with the length of stay on remand or the intake.
Northern Territory	The Northern Territory has by far the highest remand rate in the nation, but only very small numbers are held for lengthy periods. To reduce the rate, it will be necessary to reduce very substantially the intake into remand.
Australian Capital Territory	The low numbers of remandees in the Australian Capital Territory make comparisons with other jurisdictions problematic, but the remand rate is in the middle of the range for all Australian jurisdictions and some problems may be expected in the future, especially with the intake rate.

Conclusion

No attempt has been made in this paper to explain why remand numbers have increased in such a dramatic manner, but some speculation may be permissible. The increases may be due to the increase in serious crime that has occurred, particularly drug-related crime, together with legislation in some jurisdictions which reverses the presumption in favour of bail for drug-related offences. It may also be the case that, in some jurisdictions, police numbers have been increased without increased facilities being made available to the courts and to corrections authorities, with the result that court delays are exacerbated. Finally, it is possible that the provision of modern remand centres, such as in Adelaide and Melbourne, may have the effect of reducing the reluctance of magistrates to remand suspected offenders in custody.

Whatever the underlying reasons, the overall picture presented in this brief paper must be a cause of serious concern. No society which places high value on respect for the human rights of individual citizens can be complacent about well over 2,000 of its innocent, but suspected, members being held in custody, in many cases for considerable periods of time.

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Section 3: Contemporary Crime Issues

Capital Punishment

IVAN POTAS AND JOHN WALKER

The term 'capital punishment' is derived from the Latin caput, meaning 'head'. It originally referred to death by decapitation, but now applies generally to state sanctioned executions. Some Middle East countries still practise decapitations for certain offences, but more common forms of the death penalty include electrocution, gas, firing squad, lethal injection and hanging. At the time of writing, in the United States lethal injections are the preferred method of execution (16 states) then electric chairs (14 states) followed by gas chambers (7 states) and firing squads (2 states). History records many other methods of putting persons to death, including flaying and impaling, boiling in oil, crucifixion, stoning, pulling asunder, breaking on the wheel, burying alive, sawing in half, pressing to death, drownings, drawing and quartering, and burning at the stake (*see* Bedau 1982, p. 14).

The History of Capital Punishment in Australia

In Australia in the nineteenth century, as many as 80 persons were hanged per year for crimes such as burglary, sheep stealing, forgery, sexual assaults and even, in one case, 'being illegally at large', as well as for murder and manslaughter. This was at a time when the population was counted in the hundreds of thousands rather than millions. Since Federation (1901), only 114 persons have been legally executed in Australia. Incidentally, this figure of 114 happens to coincide with the total number of persons said to have been executed in South Africa in 1984. (Of those executed in South Africa, 2 were white, 87 black, 24 coloured and 1 Indian. South Africa is the only Western country which executes people regularly for a wide range of offences, including murder, rape and robbery—*Sydney Morning Herald*, 1 March 1985.)

Australia, in common with most Western countries (*see* Tables 1 and 2), has abolished capital punishment. Yet debate on this topic has not abated. Table 1 illustrates the diminishing use of the death penalty and dates of abolition in each jurisdiction since 1820. The last person to be executed in Australia was Ronald Ryan. Ryan was 'hanged by the neck until he was dead' at Pentridge Prison, Victoria, in 1967. Now the sentence of life imprisonment (in some states 'penal servitude for life', 'strict security life imprisonment', or 'for the term of his natural life') has become the most severe sanction authorised by Australian law.

While Table 1 gives the date of abolition of capital punishment in the state of New South Wales as 1955 and Western Australia is generally regarded as the last state to abolish capital punishment in Australia (in 1984), New South Wales did in fact retain some residual offences relating to piracy and treason, which continued to carry the death penalty. However, these anomalies were swept away with the passing of the *Crimes (Death Penalty Abolition) Amendment Act 1985*. Under Commonwealth law, the death penalty was abolished in 1973 by s.4 of the *Death Penalty Abolition Act 1973*.

The data presented in Table 2 were compiled on the basis of information available to Amnesty International as of February 1986. Some countries, namely Mexico, Canada, Spain, Brazil, Fiji, Peru, Cyprus, El Salvador and Argentina, continue to provide for the death penalty for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances such as wartime. At the time of writing, the United States of America, which does not appear in the table, is the only country with divided jurisdictions in which the law provides for the death penalty in some states but not in others.

The United States of America stands in stark contrast to the abolitionist jurisdictions. For almost a decade from the mid-60s, the death penalty was declared to be 'a cruel and unusual punishment', because it had been administered in an arbitrary manner (*Furman* v. *Georgia*, 408 US 238 (1972)). Since then, constitutional objection to the imposition of capital punishment has been overcome and 37 jurisdictions of the United States may now impose the death penalty. Between 1976 and the end of 1984, 32 persons were executed. By March 1986, the figure had risen to 51, and a further 1600 prisoners are on death row awaiting appeals to higher courts, commutation of sentence or execution.

These figures raise the issue as to whether the death penalty is, or indeed can ever be, applied in other than a capricious or discriminatory manner (*see*, for example, Harris 1982, pp. 22-48). The criminal justice system is not noted for its infallibility and the modern history of the death penalty is replete with examples where sentences of death have been commuted to less severe forms of punishment, indicating a reluctance to impose the ultimate sanction even when available.

Table 1

Number of Executions Carried Out in Australian Jurisdictions since 1820*

Year	1820-29	30-39	40-49	50-59	60-69	70-79	80-89	90-99	1900-09	10-19	20-29	30-39	40-49	50-59	60-69	70-79	80-89	Last Execution
NSW	170	288	99	36	51	23	26	67	12	5	2	4	1	(abol 1955)	—	—	—	1940
Vic.	—	—	—	56	39	23	14	19	5	5	2	5	1	3	1	(abol 1975)	—	1967
Qld	—	—	—	—	7	18	19	12	16	3	(abol 1922)	—	—	—	—	—	—	1913
WA	—	—	—	—	—	—	4	9	18	7	5	2	—	2	4	—	(abol 1984)	1964
SA	—	3	9	7	12	7	2	4	4	4	4	—	2	3	1	(abol 1976)	—	1964
Tas.	190	99	90	89	19	3	5	1	—	2	1	1	1	—	(abol 1968)	—	—	1946
NT	—	—	—	—	—	—	—	—	—	—	—	—	—	2	—	(abol 1973)	—	1952
ACT	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(abol 1973)	—	—
Total	360	390	198	188	128	74	70	112	55	26	14	12	5	10	6	—	—	

Source: Mukherjee, et al. 1985.

* In the early part of the nineteenth century, the jurisdiction of NSW included what is now Victoria and Queensland. Similarly, Northern Territory was incorporated in South Australia.

Table 2

List of Abolitionist Countries

All offences	Ordinary offences*	Abolition since 1975	
Australia	Argentina	1975	Mexico
Austria	Brazil	1976	Canada
Bolivia	Canada	1977	Portugal
Cape Verde	Cyprus	1978	Spain
Columbia	El Salvador	1979	Luxembourg
Costa Rica	Fiji		Nicaragua
Denmark	Israel		Norway
Dominican Republic	Italy		Brazil
Ecuador	Malta		Fiji
Finland	Mexico	1980	Peru
Federal Republic	Monaco	1981	France
of Germany	New Zealand	1982	Netherlands
France	Papua New Guinea	1983	Cyprus
Holy See	Peru		El Salvador
Honduras	San Marino	1984	Argentina
Iceland	Spain	1985	Australia
Kiribati	Switzerland		
Luxembourg	United Kingdom		
Netherlands			
Nicaragua			
Norway			
Panama			
Portugal			
Solomon Islands			
Sweden			
Tuvalu			
Uruguay			
Vanuatu			
Venezuela			

* Abolished for all crimes except certain military and political offences.
Source: Amnesty International 1986.

Public Opinion Polls

Although Australia has abandoned capital punishment, it does not follow that it could never be reintroduced. Nor does it mean that it cannot be imposed on Australians travelling overseas, as illustrated by the double execution of Barlow and Chambers who were hanged in Malaysia on 7 July 1986 for drug trafficking. Whenever a particularly vicious crime is committed, members of the public, police, politicians and the press re-open the debate on the death penalty. For example, as recently as October (1986) the 30 member council of the Police Federation of Australia voted unanimously to press state and federal governments to hold a referendum upon the reintroduction of capital punishment. The

issue of capital punishment is most often raised in respect of sex-murder cases, acts of wanton terrorism, or the killing of police or prison officers.

Over recent years, a number of opinion polls have been carried out to determine the public's attitude to capital punishment. Results vary because of differences in the wording of the questions and in the type and timing of the surveys. A phone-in poll conducted in January 1986 by a Sydney TV station shortly after a particularly gruesome sex-murder received over 48,000 calls. On this occasion 95 per cent of the respondents were in favour of the reintroduction of capital punishment.

More reliable surveys have elicited pro-capital punishment results ranging from 70 per cent in response to a question which specifically related to crimes such as child-murder, rape-murder or gang-war murder (Australian Public Opinion Polls, January 1985), to only 43 per cent where an almost equal percentage voted for life imprisonment when asked to decide the appropriate penalty for murder; *see* Table 3 (Morgan Gallup Polls 1980 & 1986).

Table 3

Death Penalty or Gaol for Murder

			Federal voting intention		
	1980 %	1986 %	ALP %	Dem %	L-NP %
Death Penalty	43	43	42	40	45
Imprisonment	40	41	42	42	40
Undecided	17	16	16	18	15
	100	100	100	100	100

Source: Morgan Gallup Poll, File No. 1409, *The Bulletin*, 11 March 1986.

A national survey was commissioned in May 1986 by the Australia Institute of Criminology and involved 2,551 respondents over the age of 14 years. It revealed that only 26 per cent of respondents felt that the death penalty was appropriate for a person who had stabbed a victim to death, and only 17 per cent favoured capital punishment in respect of a person convicted of serious drug trafficking.

Effects of Capital Punishment: Crime Rates

Although media reports may suggest homicide rates are forever increasing, statistics show that on a per capita basis the incidence of these crimes is relatively constant (Figures 1 and 2). The lowest period of homicide rates (late 1930s and 1940s) is actually

preceded by a decline in the use of capital punishment (Figure 3), while a spate of executions in the early 1950s appears to have had no downward effect on homicide rates (Mukherjee et al. 1988).

The argument for capital punishment usually hinges on the fear of increasing murder rates. Yet in Queensland, for example, in the decade prior to the abolition of capital punishment (1912-21), there were 131 murders, whereas in the decade following abolition (1923-32) there were 129 murders. These data are not conclusive but suggest that abolition does not lead to an increase in the incidence of this offence (Barber & Wilson 1968, p. 100).

Table 4 shows that, of the major Australian states, only South Australia experienced any sudden increase in murder or manslaughter convictions in the five years after abolition compared to the five years before, yet a detailed report on homicide published in 1981 by the South Australian Office of Crime Statistics showed that abolition of the death penalty had no effect on homicide trends in that state (Grabosky et al. 1981).

Experience overseas supports this Australian evidence. For example, when statistical material from various countries is considered, the presence or absence of the death penalty does not appear to indicate any significant influence upon the rates of murder and homicide (*see* Beyleveld et al. 1979, p. 759; *see also* Forst 1971, p. 764; Zeisel 1976, p. 317-43) and the preponderance of evidence suggest that the abolition of capital punishment has not resulted in any significant increase in the murder rates (Rehav 1983, pp. 61-71).

Table 4

Effects of abolition on conviction rates for murder and manslaughter*

Jurisdiction	Av. No. of convictions for murder and manslaughter in 5 years prior to abolition	Percentage of manslaughter verdicts	Year of abolition	Av. No. of convictions for murder and manslaughter in 5 years after abolition	Percentage of manslaughter verdicts
New South Wales	31	46	1955	29	54
Victoria	28	57	1975	29	43
Queensland	8	31	1922	11	29
South Australia	10	35	1976	16	44

Source: Mukherjee, et al. 1981.

Comparable 'before and after' figures are not yet available for other jurisdictions. Tasmanian conviction data are not available in detailed form and, in any event, small numbers of cases result in meaningless trends. Northern Territory data are affected by the major population upheavals associated with Cyclone Tracy.

Figure 1

Reported Homicide and Murder Cases* Australia 1915-89

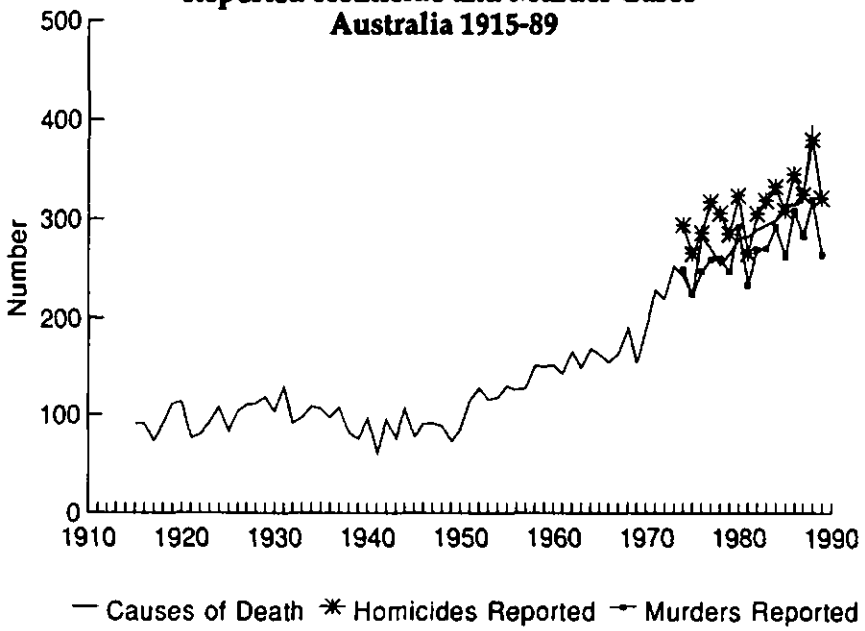
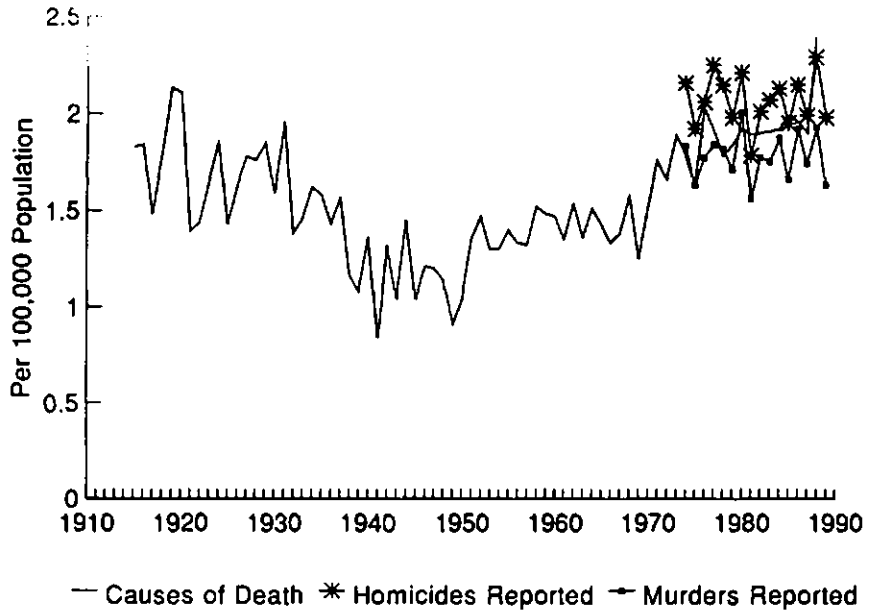


Figure 2

Reported Homicide and Murder Rates* Australia 1915-89



Notes for Figures 1 and 2:
* Excludes manslaughter by driving.
Source: 'Causes of Death' figures from Australian Bureau of Statistics. 'Reported Crime' figures are aggregated from Annual Reports of the Police Forces of Australia.

Effects of Capital Punishment: Sentencing Differences

The 'before and after' data in Table 4 on the percentages of manslaughter verdicts tend to support, albeit weakly, the theory that juries are reluctant to convict for capital offences, and will either acquit or convict on a manslaughter charge, which does not carry the death penalty. In Victoria and Queensland, the proportion of manslaughter convictions was higher when capital punishment was available than after abolition. In New South Wales, although the percentage of manslaughter verdicts rose after abolition, the proportion of murder/manslaughter cases which resulted in acquittals fell dramatically from 26 per cent to only 17 per cent over the same period (Mukherjee et al. 1981). Unfortunately, data are not available in sufficient detail to show if similar trends occurred in other states.

An earlier study (Johnston 1962), however, found quite convincing evidence which indicated that convictions for murder were less likely in jurisdictions where there was a possibility that the offenders would be hanged. As the author explained: 'Juries, not always ready to trust the government, commit a pious perjury, and bring in fewer verdicts of the capital crime, murder, under a conservative government than under a Labor government' (Johnston 1962).

The availability of capital punishment also appears to attract a significantly higher incidence of insanity verdicts. The effect of such a verdict is that it results in a direction that the prisoner be detained 'at the Governor's Pleasure', an indeterminate form of disposition and, again, this avoids the death penalty.

Victorian data for the five years prior to abolition show that there were 30 convicted murderers and 24 persons acquitted on account of insanity (total 54), whereas in the five years after abolition there were 43 convicted murderers but only 13 persons acquitted on account of insanity (total 56) (Potas 1982, p. 93).

Capital Punishment: The Debate

Nature of capital offences

A substantial portion of all homicides in Australia are the results of domestic disputes. Research from New South Wales has shown that four out of five homicide victims knew their attacker and often their relationship was an intimate one (Wallace 1986, p. 93). Often they involve murder-suicides resulting from family breakdowns, or the tragic response of one family member to years of ill-treatment from another. The courts sometimes categorise homicides arising out of matrimonial discord as manslaughter and take mitigating circumstances into account at the sentencing stage. Very short prison sentences, or even non-custodial sanctions, are occasionally handed down in such cases.

With the exclusion of deaths by driving, the balance of homicides in Australia are typically connected to criminal underworld infighting or associated with other offences such as rape and robbery, terrorist attacks or hijackings. In such cases, the offender is more clearly deserving of severe punishment - particularly, as in the latter cases, where the victim is often an innocent bystander.

Unfortunately, with the exception of one New South Wales study, there is a paucity of official statistics or studies showing the relative percentages in these categories (Wallace 1986). Statistics from the United States of America suggest that almost 20 per cent of all murders in the country are committed in association with offences such as robberies, drug offences, rapes or arson (Federal Bureau of Investigation 1984). Around 40 per cent arise out of arguments, many of which are domestic, and such events are seldom considered to be affected by the existence or otherwise of capital punishment.

Deterrence

Where offences are committed in the heat of passion, with no premeditated intention to kill, the offender often makes little attempt to avoid detection. In these circumstances, it is clear that the deterrent effect is minimal. On the other hand, where homicides are premeditated, the threat of capital punishment may be less of a deterrent than the risk of being caught. Further than this, the death penalty may create a brutalising effect, actually inspiring acts of violence, and thereby diminish rather than increase the deterrent effect of capital punishment (Bowers et al. 1984, p. 333). Bowers et al. are highly critical of the claim by Ehrlich (1975) that the death penalty deters potential murderers (*see also* Barnett 1981, p. 346; Brier & Fienberg 1980; Van den Haag & Conrad 1983). Certainly, the evidence to date has failed to establish that the death penalty is any more effective than imprisonment in deterring crime (Blumstein et al. 1978; *see also* Bedau 1976).

Incapacitation and recidivism

There is grave public concern of convicted persons re-offending on release. There is no question that the death penalty provides the ultimate incapacitant. It removes the risk that the offender may escape or be released on licence or parole and kill again. It also removes the risk that the prisoner may kill a prison officer or another inmate while serving his or her sentence.

Yet the rate of recidivism for murder is among the lowest of all offences. Thus, acting on information received from nearly all Commonwealth countries, including Australia, the British Royal Commission on Capital Punishment (1953) reported that the majority of released murderers behaved well after leaving prison and were not regarded as a type of prisoner that were particularly liable to misbehave upon release. If this is so, life imprisonment would appear to be a sufficient incapacitant for murderers (*see also* Burgoyne 1979).

Retribution

The concept of 'an eye for an eye, a tooth for a tooth' is said to be applicable to capital punishment. Under this theory, sometimes referred to as 'just deserts', it is not necessary to argue that the death penalty is instrumental in achieving some other purpose such as community protection or deterrence. The person who murders, it is said, should be executed for the sake of justice alone.

Against this moral argument is one which holds that the community itself has the power to determine what is just and fair punishment. After all, there is no law of nature indicating that the ultimate sanction should or should not be death. Some people may believe that the taking of a life, even if sanctioned by law, is a barbaric enterprise that serves only to brutalise the community. Furthermore, it is possible to argue that there is something illogical in the state employing execution to demonstrate its high regard for the sanctity of human life.

Rehabilitation

By definition, capital punishment does not rehabilitate offenders. In the case of serious crime, rehabilitation assumes a secondary consideration to social defence and retributive notions of punishment. Nevertheless, it is well recognised that people change over time and many murderers, sometimes through the ageing process itself, can and do change their attitudes towards crime. This enables the majority of life sentenced prisoners to be released back into the community without significant risk to that community after they have served a significant term of imprisonment.

When justice errs

It is too late to reverse the decision or compensate the prisoner for a miscarriage of justice after the death sentence has been carried out. No case better illustrates this point than that of Timothy Evans. Evans was hanged in 1950 in the United Kingdom for murders subsequently found to have been committed by the notorious John Christie and was pardoned posthumously in 1966. In Australia, there have been cases where those wrongly convicted of murder have eventually been released and pardoned. The case of Edward Splatt is but one recent example. In view of the severity and irreversibility of the death penalty there would need to be very compelling arguments to justify the reintroduction of capital punishment.

Conclusion

While public opinion polls generally indicate that a majority of the community are in favour of capital punishment for certain offences, many people would currently argue that it has little real deterrent value over and above that of imprisonment. Those who argue for the death penalty on the ground that at least the killer is removed permanently from society, have also to keep in mind the fact that, in practice, the death penalty is often administered capriciously and that there is always a possibility that an innocent person may be executed.

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Entrepreneurial Crime: Impact, Detection and Regulation

BORONIA HALSTEAD

The issue of entrepreneurial crime is of current interest as the 'decade of reckoning' follows the excesses of the so-called 'decade of greed'. Entrepreneurial crime as a concept refers to punishable acts which are committed by individuals in controlling positions within corporations, using the resources and power deriving from the corporate form as a vehicle to achieve ends which benefit the entrepreneur personally. Corporate crimes, in general, may be considered as punishable acts committed by directors or agents on behalf of the company, which benefit the company. Entrepreneurial crime and corporate crime are both forms of white-collar crime.

Obviously, some punishable acts which benefit a company also have benefits which accrue to individual protagonists, in the form of promotions, bonuses, and salary increases, which may well be anticipated by the protagonists. Some overlap between the two concepts exists, therefore. These acts should be distinguished from other punishable acts against the interests of the company which are committed for personal gain by agents or associates of a company not in controlling positions, such as embezzlement or misuse of company property.

Entrepreneurial crimes may victimise the corporation itself, for example, when the assets of a company are stripped off for private use. Alternatively, the corporation may be used as a powerhouse or fortress for the commission of crimes, such as insider trading, price rigging, or 'milking' public companies and channelling the money into linked private companies owned by one or two shareholders. These crimes may impact directly upon

minority shareholders, creditors and even the company itself. Victims may, however, be unaware that crimes have been committed against them, if the market is 'bullish' and transgressions do not result in obvious losses.

The Impact of Entrepreneurial Crime

The precise cost of entrepreneurial crime over the last decade is incalculable. A number of major cases are currently before the courts or are the subject of royal commissions. Some remarks about white-collar crime in general may be made as a backdrop, however. The cost of white-collar crime to the Australian community is believed to be much greater than all other forms of crime combined. White-collar offenders are generally at less risk of apprehension or being convicted than other types of offenders, and on conviction they are likely to incur a lesser penalty.

Mr Henry Bosch, speaking of corporate deviance in general, has observed that: 'There might be 50 problem [public] companies among the 1300 or 1400 which are listed on stock exchanges' (Warneminde 1990, p. 45). The excesses of this minority have attracted considerable attention both at home and abroad.

In considering the impact of entrepreneurial crime on the Australian community, it should be remembered that though there has been an enormous increase in the rate of bankruptcy over the last five years, very few of these cases have been proven to be associated with criminal activity. Although the community may feel a desperate need for retribution in return for the losses corporate collapses inflict upon shareholders, investors, employees and creditors, non-criminal factors, such as bad luck, poor business sense or the recession are more likely to be central determinants.

The potential losses from such crimes are very large indeed. Comparison of Victorian police investigations in 1989 which involved alleged fraud totalling some $335m, most of which relates to a single case, against a total of only $2.8m for armed robbery, highlights the magnitude of potential gains, though it is widely believed that this still only reflects the tip of the iceberg.

Some cases which have come before the courts and not resulted in convictions have drawn attention to problems of proof under existing legislation, particularly with regard to insider trading charges. The impact of these and many other incidents upon the broader Australian community is summarised below:

- Losses to small shareholders have wrought great personal tragedy, particularly for older investors facing an impoverished retirement.
- Investment in the corporate sector represents a major part of the community's savings base. If these funds are not well managed, the potential for enhanced prosperity arising from these savings is diminished accordingly. Jobs are not created,

confidence is eroded, taxation benefits are not returned to the community and so on.

- The confidence of investors in the Australian share market is undermined by perceptions of price rigging or insider trading, with the result that efforts to raise share capital by legitimate businesses are disadvantaged.
- The tarnished international reputation of Australian corporate performance makes efforts to raise money abroad by the private and the public sector more difficult and more expensive (Sykes 1990, p. 6).
- Increased borrower premiums on off-shore loans impact upon Australia's $164 billion foreign debt.
- Legitimate businesses suffer as it is hard to compete honestly in a marketplace occupied by dishonest players. These businesses also endure increased regulation and scrutiny which consumers eventually pay for.
- Governments are brought into disrepute where they are seen to have had questionable associations with certain entrepreneurs.
- Where governments have underwritten failed financial institutions and taxpayer funds have been directed away from projects in the general interest, increases in charges or downgrading of services may be required to pay for large losses.
- Confidence in the so-called 'free enterprise system' is eroded with attendant effects on political stability.

Explanations for Entrepreneurial Crime

Factors contributing to the commission of entrepreneurial crime range from the psychological characteristics of individuals operating in a corporate culture which values risktaking, to factors at the macroeconomic level which may provide opportunities for such individuals.

Sutherland (1983, p. 240), in developing his theory of 'differential association' to account for white-collar crime, emphasised that attitudes to unethical and illegal behaviour are learned in the workplace. 'White-collar criminals as well as street criminals should be viewed as conformists rather than as deviants because they have taken over behaviour patterns that are dominant in their social worlds.' (Cressey 1986, p. 196). Such behaviour is sanitised with rationalisations about distaste for government interference in private enterprise, the 'unreasonable' demands of bureaucratic red tape, and so on.

Braithwaite (1989) highlights the role of a 'culture of compliance', in which illegal or unethical activities can become

routine. The hiring and promotion policy of senior management may entrench these attitudes. Management, because of its isolation from significant interaction with others outside of the corporate community, can itself be vulnerable to 'ethical numbing' (Coleman 1990, p. 22). Moreover, wealth and corporate success are highly prized values in modern industrial societies. Conversely, failure and the fear of failure are negatively valued.

To play 'chicken' with the maze of sometimes contradictory taxation and company laws, and win, may be seen as a culturally legitimate challenge in itself in the corporate world. Finding such legal loopholes is certainly a highly-paid art form. Sometimes schemes are deliberately designed which risk incurring minor penalties for technical breaches, or are so convoluted that regulators would be unlikely to take up pursuit. Henry Bosch (1990, p. 28) recounts the story of one 'very well known business executive who wished to carry out an intricate financial manoeuvre. When he was told by his legal advisers that it was illegal he replied, "Yes, but can you go to jail for it?"' The risk of incurring a financial penalty becomes merely a part of the calculation of overall risk. And risk-taking is part of being in business.

Braithwaite (1987, p. 2) cautions against accepting a concept of motivation for white-collar crime which only has currency within a capitalist economy, such as the pursuit of profit. White-collar crime has been documented in non-capitalist economies. He points to other equally strong motivations, even within capitalist economies, such as 'expansion by diverting profits to empire-building investment, [and] protection of the top management team from a hostile takeover', concluding that it is the overriding emphasis on goals per se that is critical. These goals need not necessarily be competitive or profit oriented.

Braithwaite (1987, p. 4) proposes a formulation of motivation to commit such crimes in which 'people in positions of responsibility are put under enormous performance pressures to achieve economic or cultural goals . . . in contexts where structural blockages to legitimate means of goal attainment occur'.

Economic and Related Factors

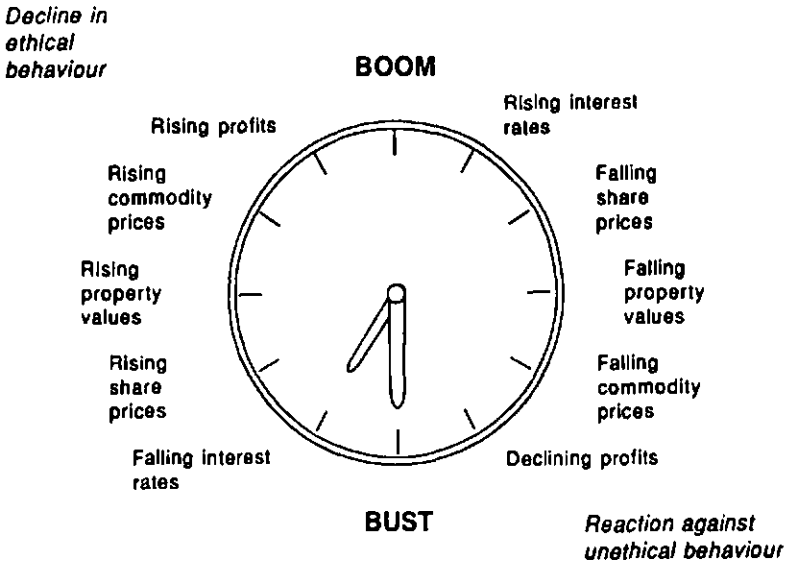
Deterioration in ethical standards of business conduct tends to be cyclical, corresponding with the boom peaks of economic cycles. Similarly, moves toward reform of regulatory practices tend to be strongest in times of 'bust', when recriminations for losses sustained are most strident (*see* Figure 1). However, major changes to the economic landscape occurred during the 1980s, providing a range of quite new opportunities, significantly increasing the potential financial rewards from the commission of entrepreneurial crime.

Deregulation

In keeping with international trends, a policy of market deregulation was adopted to stimulate economic activity. This included the lifting of foreign exchange controls, freeing up foreign investment rules, floating of the exchange rate, acceptance of foreign banks, and deregulation of the futures industry.

Figure 1

Time Clock of Economic Cycles



Source: Lonergan 1991.

Together, these policy measures resulted in significant growth in the size and breadth of the financial services sector.

There is a view that deregulation compounded already existing weaknesses in corporate regulation. The inability to control the competitive frenzy in the financial services sector, which resulted from deregulation, highlighted these inadequacies. Certainly, the increasing complexity and uncertainty of the deregulated marketplace may blur the distinction between right and wrong even for the honest operator. For example, as Henry Bosch noted: '. . . When the corporate law was written before anyone had thought of interest rate swaps, debt defeasance or flip-flopping companies, it is not always clear how to apply the old rules to the new situations' (Bosch 1990, p. 35).

Growth in the financial services sector

Some analysts have described the growth of the financial services sector in Australia and overseas as the development of a 'casino economy' (McManamy 1990; Calavita & Pontell 1990). 'Although billions of dollars are being churned about, no new jobs are being created (save their own), no new factories are being built, no additional goods and services are being provided' (McManamy 1990, p. 10). The 'deal' became more important than any tangible relationship to a product or to real value.

Explosion of credit availability

With expansion in the breadth of the financial services sector came increased aggressiveness in pursuit of borrowing customers. Bank executives were paid with large bonuses and commissions for loan deals, in the race for market share. Inevitably, especially in the context of a bullish market and high interest rates, unwise and hasty loans were made, and many companies were unable to service these debts after the market crashed. In the rash of bankruptcies of good and bad companies that followed, shareholders are anxious to determine the extent of malpractice that may have contributed to some bankruptcies. A major parliamentary inquiry into banking practices has just concluded.

Technological changes

Electronic information and satellite technology have transformed the operation of the marketplace, creating computer-based product portfolios, screen trading and international linkages between markets. In the anonymity of electronic speculation, where the trading of paper back and forth reigns, responsibility to shareholders may decline. Mistakes and outright fraud are easy to bury in the roundabout of electronic transactions.

Perceived Decline of Business Ethics

The factors described above are perceived by some observers, notably Bosch, to have contributed to an environment in which the observance of traditional business ethics has been eroded. New attitudes developed—do not make things: make money. Forget the Depression mentality; debt is good. Don't spend decades developing your own businesses; take over someone else's in a few months. However, it is doubtful that appeals for revived standards of corporate ethics will produce marked changes of attitude, unless backed up with adequate measures for detection, investigation and prosecution.

In reviewing the perceptions of good corporate citizenship of a sample of directors of listed companies, Tomasic (1992) found that many regarded the concept as a marketing ploy or a public relations issue—as a means 'to avoid excessive scrutiny from legal rules and regulations'. On the one hand a reputation as a good corporate citizen can assist in capital raising; on the other, it should not interfere with profit maximisation.

Referring to the extent to which good corporate citizenship accords with assisting regulators in their task of cleaning up the corporate sector, Tomasic refers to a pervasive reluctance to break with a peer ethos against assisting 'corporate cops' in pursuit of business mates. 'It was seen to be better to exact discipline privately against those who had breached the understandings of the group or network, rather than seeking to involve the formal agencies of the law' (Tomasic 1990, p. 378).

Detection

The initial detection of entrepreneurial crime is likely to be undertaken by company directors, accountants and auditors. However, these agents are not consistently vigilant, and at worst may be highly paid handmaidens, if not protagonists in the commission of entrepreneurial crimes.

Attention is now focussed on the adequacy of auditing and disclosure standards. The McCusker investigation into Rothwells Ltd (McCusker 1990) demonstrated the costs to ordinary taxpayers of the failure of auditors to report on irregularities in company affairs. The duties of auditors in detecting and reporting breaches of the *Corporations Act 1989* (Cwlth) to the Australian Securities Commission (ASC) have subsequently come under close scrutiny. In this debate auditors have defended their claims of limited responsibility, arguing that they are not lawyers, and that directors are responsible for their own commercial judgments and the correctness of their accounts. Confusion regarding the precise meaning of auditors' statements that accounts are 'true and fair' is of concern, as is the need for more comprehensive and intelligible accounting standards.

Marketplace pressures to provide auditing services at cut-price rates tend to erode the quality of those services. Following through with the reporting of irregularities is in itself time-consuming and expensive, impacting on market competitiveness. There is also an intrinsic conflict of interest between the paying expectations of auditor's clients, and the auditor's responsibilities to regulatory agencies, particularly when clients are overbearing. Audit committees have been proposed as a possible solution to some of these problems (*see* section on Legislative Changes).

The implication of audit failure as a major factor in the collapse of Rothwells, Tricontinental and the National Safety Council and other instances as far back as the Nugan Hand Royal Commission point to the need for an urgent tightening and clarification of the responsibilities of auditors in protecting the interests of shareholders and management.

Calls have been made for more effective regulation of the flow of information to the share market to ensure prompt disclosure of more reliable information, particularly regarding the activities of unlisted subsidiaries of listed companies. Effective information flow is certainly critical to effective detection.

The task of detecting illegal activity may often be obstructed by the complexity of corporate structures. There may be hundreds of companies within a given group. The controllers may operate the structure as a single company. However, the resulting labyrinth provides a fortress against outsiders, in itself deterring investigation, obscuring money flows, and dissipating responsibility and accountability. Any legal challenge would be costly and time-consuming. Increasing the cost of setting up limited liability companies would make it more difficult and expensive to set up such structures.

Legislative Changes

The general thrust of both legislative and self-regulatory initiatives has been to improve the quality of corporate governance. Efforts have been made to improve the content and flow of information to shareholders, to provide checks and balances in corporate decision-making, and to make those responsible for making decisions more accountable.

The Corporations Law became operational on 1 January 1991. This legislation underpins the new national scheme of corporate regulation, including provision for the establishment of the Australian Securities Commission to administer the new law. Breaches of the legislation will attract criminal prosecutions and civil actions. The Government is undertaking a review of penalties under the Corporations Law, as part of the process of legislative review in the corporate arena. Under consideration is the appropriate form penalties should take, as well as the magnitude of penalties. Some penalties have increased substantially already. For example, breaches of the insider trading provisions have been increased tenfold, up to $200,000 for individuals and $1m for companies.

The new law includes provisions previously in the state and federal companies codes. Although it provides a more coherent configuration of legislation, most of the provisions remain unchanged. However, a number of recent reports, including the report of the Senate Standing Committee on Legal and Constitutional Affairs (Australia 1989), also known as the *Cooney Report*—have addressed the need for legislative reform in the area of director's duties. Significant changes were also proposed by the Companies and Securities Advisory Committee in its report on corporate financial transactions, which included a draft Bill for consideration. The Government subsequently incorporated many of the recommendations from this report in its own exposure draft Bill, released in 1992. Provisions relate to:

- *Loans to directors and related companies;* the class of regulated transactions has been broadened to cover all types of financial assistance; a company will be prohibited from entering into loans with its directors, subject to certain exemptions; a company will be prohibited from entering into loans to related bodies corporate, or bodies corporate to which it is 'linked' unless a strict members' approval procedure is followed and approval obtained; a strict members' approval procedure must be followed before a company may obtain approval to enter into any asset transfer transactions with associates of the company.
- *Disclosure of conflicts of interest by directors;* any transaction or arrangement in which a director has an interest must be disclosed; fuller information must be disclosed to the Board regarding the director's interest; directors are restricted from voting on transactions in which they have an interest;

companies are required to keep a register of director's interests.

- *Disclosure of benefits given to directors;* all payments over $50,000 which directly or ultimately benefit a director, including payments to relatives or spouses and any artificial devices for the receipt of benefits such as consultancies and 'management companies', require disclosure to the ASC, and in the company's annual accounts and directors' report.

These specific changes in regulatory requirements have been accompanied by significant common law developments relating to director's liability:

- *Clarification of the concept of dishonesty* in the exercise of a power or the discharge of a duty, as it applies to corporate officers. Some confusion has arisen in the interpretation of the concept of 'dishonesty' between the normal criminal law concept, which involves the existence of a 'guilty mind', and the fiduciary concept of dishonesty which requires that a fiduciary has acted to further their own personal interests, in contrast to the interests of the beneficiaries. 'The general object of fiduciary law . . . is to ensure that the power or capacity that that person [the fiduciary] possesses is not used to further any interest other than the beneficiary's interests—the company's interest.' (Finn, cited in Australia 1989, p. 37). Fiduciary honesty turns upon the upholding of this trust regardless of individual intent.

  Some commentators suggest that a clearer definition of the concept of 'dishonesty' is needed, arguing that a concept 'which does not involve moral turpitude' or a guilty mind (*Australian Growth Resources Pty Ltd v. Van Reesma* (1988) 13 ACLR 261) is at odds with ordinary usage of the term (Fisse 1991, p. 3). The judicial interpretation of this requirement in the above case implies that criminal liability may be incurred although a director has, 'according to his own lights', acted honestly, for a purpose which is improper under the law relating to the fiduciary duties of directors.

  The proposed amendments in the Bill which apply civil penalties to sections 232 (2), (4), (5), and (6) will confine criminal liability to acts involving dishonest intent as conventionally understood. Breaches falling short of dishonest intent will attract civil penalties, thus clarifying the confusion between the two concepts of dishonesty.

- *The extension of liability to cover passive neglect by corporate officers,* thereby raising the level of diligence required in the performance of director's duties. Directors are obliged under s. 232(4) of the Corporations Act 'to exercise a reasonable degree of care and diligence in the prevention of the commission of fraud by or against the company' (Fisse 1991, p. 6). Accordingly, directors may be personally liable for the payment of debts incurred by a company at a time when there were reasonable grounds to suspect that the company would be unable to repay all its debts as and when they fell

> due. Recent cases have demonstrated that it is not enough for the director to delegate these responsibilities to co-directors and claim immunity through ignorance generated by neglect. (*Metal Manufacturers Ltd v. Lewis* (1988) 13 NSWLR 315, and *Statewide Tobacco Services Ltd v. Morley* (1990) 8 ACLC 827) (Fisse 1991, p. 7).

Currently, the standard of the duty of care owed by directors is determined by a particular director's knowledge and experience, thus making the standard subjective. This standard has been criticised as inadequate and unclear. Accordingly, amendments in the Bill provide criteria upon which an objective standard for fulfilment of a duty of care can be assessed. These and other provisions relating to the personal liability of company directors may be expected to have a direct bearing on the number of boards upon which directors may sit and still remain adequately informed and free of conflicts of interest.

The ability of directors to comply with increased personal liability is complicated by the realities of decision-making within the modern corporation. Tomasic (1992) has investigated the relationship between corporate executives and company boards of directors. He found that in many cases, de facto control, policy directions and initiatives were in the hands of executives, effectively relegating the role of the board to that of a rubber stamp. The extent to which this is the case will depend upon how well-informed board members are, strength of personalities, and the level of executive representation on the board. In some cases, the chair of the board is also the chief executive officer, an arrangement that reduces the checks and balances on both positions. While such a situation may be adequate for a small corporation, it is considered unacceptable practice for large corporations.

One suggested means of neutralising the potential for executive officers to dominate the boards of publicly listed companies has been the introduction of audit committees, comprised of a majority of non-executive directors, to review financial information and to monitor the 'effectiveness of management information and other systems of internal control' (Bosch 1991, p. 5). These committees could 'blow the whistle' on management inadequacies, or act as go-betweens for the board and management. However, such committees will only be as good as the competence of the directors sitting on them.

Another recommendation has been that boards of publicly listed companies should include 'a majority of non-executive directors with an appropriate mix of skills and experience' (Bosch 1991, p. 4). Both recommendations are set out in a paper produced by a task force including representatives from the Australian Stock Exchange, the Business Council of Australia, the Australian Institute of Company Directors and the Institute of Chartered Accountants in Australia. The paper emphasises the need for more effective self-regulation, through recognition of principles for the development of codes of corporate practices and conduct. The Government stated in its response to the *Cooney Report* that it

will monitor the impact of these and other self-regulatory proposals before considering a legislative response.

Under the proposed amendments to the Corporations Law, shareholder discretion is broadened through the requirements for shareholder approval of prescribed transactions in the form of loans and other transactions. In addition, there are requirements for detailed disclosure of information to shareholders prior to voting upon resolutions. If these provisions prove to be workable, they will go some way to providing a more preventive approach, focusing on the quality of decision-making within corporations. This is a more practical strategy than reliance solely on detection and prosecution, both of which are much more expensive.

Shareholders are currently inhibited from seeking redress from miscreant directors through the courts due to the enormous costs of litigation, particularly when company directors can call upon company funds to cover their legal expenses. The high cost of litigation effectively protects directors against actions of this type. Additionally, the benefits from any successful action against directors by a company would be shared amongst all shareholders, not just the individual shareholder commencing legal action (Ramsay 1990, p. 37).

There has been vigorous opposition to the new legislative changes. The Business Council of Australia and others, see too great an emphasis on 'black letter law' which they believe could over-regulate business to the detriment of honest entrepreneurs. It is also argued that this will increase the opportunity for exploitation of technical loopholes in legislation. Self-regulation is seen by the commercial sector as a more appropriate solution to the problems of corporate regulation. The targets of self-regulatory vigour include individual company director's ethics, the development of structural checks and balances such as audit committees, and more general corporate community discipline through reprimands from professional bodies such as the Institute of Chartered Accountants. Others see the notion of self-regulation more cynically, as 'a sort of magical incantation used to ward off nosey government regulators' (*Australian Financial Review*, 19 July 1991, p. 14). How the self-regulatory approach will impact upon those entrepreneurs who take no account of ethical values is not clear.

As regulations tighten the personal liability of directors in Australia, it will be interesting to note whether there will be an increase in squeamishness in taking up such responsibilities.

It should be noted, however, that the definition of a 'director' in s. 60 of the Corporations Law includes a reference to 'a person in accordance with whose directions or instructions the directors of the body are accustomed to act', excluding persons whose advice is sought in a professional capacity or as part of a business relationship with the directors or the members of the board. The clarity of this distinction will be tested as the full weight of director's liability is felt in the corporate sector.

Regulation

In their analysis of the behaviour of Australian regulatory agencies Grabosky and Braithwaite (1986, p. 2), conclude that there is no shortage of powers to enforce regulations. 'Indeed the majority of agencies we studied are vested with statutory powers of entry, search, seizure and investigation which would make them the envy of most Australian police forces.' However, the agencies have previously most often chosen a non-adversarial approach to regulation, particularly when large organisations are involved.

Underfunding of regulatory agencies has been a key factor in their choice of modus operandi. It has been reported that only $150,000 of the NCSC annual budget of $7m was available for prosecutions and investigations. By comparison, the replacement Australian Securities Commission is reported to have allocated $50m for legal work and investigations (The Age, 10 October 1991).

Individuals with the highly developed legal and commercial skills necessary to master the complexity of the corporate environment are in short supply and can command high prices for their expertise. More often than not they have been working for the entrepreneurs and not the regulators up until now.

The ASC has responsibility for the administration of the Corporations Law. The amalgamation of state and federal responsibilities came after a decade of at times bitter opposition to the idea of a powerful, centralised national regulator from the states' corporate affairs bodies, particularly South Australia and Western Australia. The amalgamation was supported, however by the Australian Stock Exchange and the Business Council of Australia.

The ASC has improved investigative powers, stronger prosecuting powers and vastly increased financial resources, initially of $111m, with forward estimates of $118m and $137m for the succeeding two years (compared with an estimated $70m spent by the state corporate affairs commissions and the NCSC combined). The current level of funding of the ASC is surpassed internationally only by the funding of its American counterpart, the US Securities and Exchange Commission.

The ASC initially identified 16 companies on which it will initially focus investigations. These include Bond Corporation, Quintex, Rothwells, Estate Mortgage Trusts, Independent Resources, Spedley, and Hooker Corporation, each of which will be pursued by its own ASC task force. While some of these investigations have been concluded, others may take some years to complete.

Sanctions

Determining an effective sanction for entrepreneurial crime presents special dilemmas for courts. Many offences are addressed through civil proceedings, because there are fewer delays and, in general, the monetary amounts of damages awarded are greater than those fines which would be imposed following conviction in a criminal court. In a civil court, damages claims are determined by current market values whereas in a criminal court legislative ceilings on monetary penalties apply, which may never have reflected the potential damage which could be inflicted, and/or the prescribed penalty may be years out of date. Moreover, the burden of proof 'beyond reasonable doubt' in criminal proceedings means that many cases are never taken to court at all, particularly insider trading cases. In a civil action the plaintiff's less onerous requirement of proof on 'the balance of probabilities' applies. Some analysts have suggested that Australia should consider the American option in civil cases in which double or triple damages can be awarded to litigants, to make damages more punitive (Professor R. Tomasic 1991, pers. comm.).

The central issue from the shareholders' point of view, is the recovery of lost funds. While increased criminal penalties may serve as a deterrent, and satisfy the need for vengeance, they do not replace the lost savings of these people. The cost of litigation also obstructs the satisfaction of their claims. Professor Walker of the Australian Shareholders' Association believes that some form of tribunal system similar to the Consumer Claims Tribunal may provide an effective alternative to the existing high-cost legal mechanisms (Professor R.G. Walker 1990, pers. comm.).

Some analysts in submissions to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into company director's duties, have argued for the 'decriminalisation of company law' in favour of civil remedies. Professor Baxt, the former Chairman of the Trade Practices Commission, maintains that criminal penalties are inappropriate for minor administrative offences, for example, failure to file accounts (Australia 1989, p. 189). The less stringent standard of proof required in civil proceedings would make legal action more feasible. In his submission, Professor Fisse sought to highlight the distinction between negligence and blameworthiness to clarify the role of criminal sanctions (Australia 1989, p. 190).

Many commentators see a stronger deterrent effect in criminal sanctions, especially imprisonment, particularly due to its potential to inflict public shame and humiliation upon offenders.

There is an ever louder clamour for fines to be increased to give greater sting to sanctions and for penalties to reflect more accurately the damage inflicted by offences. Professor Baxt argued for increases in maximum trade practices penalties from $250,000 to $5m. By way of comparison, the United States Sentencing Commission has recommended a maximum fine of approximately $A383m for corporate crimes.

Community service orders are an alternative criminal sanction which must be personally discharged. This sanction is seen as less severe than a gaol sentence, though often having greater personal impact than fines.

Publicity of illegal activities can itself serve as a sanction. To harness this deterrent potential, Fisse & Braithwaite (1983, p. 313) have called for 'emphatic stigmatising' for particularly egregious offences. Henry Bosch was criticised for his active employment of this sanction through the media to achieve ends which were perceived to be inaccessible through the courts. However, as Tomasic (1990, p. 371) and others have remarked, any discussion of penalties is 'quite academic in nature in view of the dearth of prosecutions under Australian companies and securities laws'.

Conclusion

It is to be hoped that as Australia moves into the next century, the ritual cycle of corporate greed followed by government inquiry will generate more than highly paid handwringing. The proposed legislative changes appear to offer hope that future corporate governance in listed companies will be based upon principles which clearly spell out the fiduciary responsibilities of directors. The quality of information to shareholders and directors should improve, thus enhancing decision-making at both levels. The effectiveness of the proposed changes will need to be monitored and assessed, to determine how preventive their impact will be in the boardroom. Further initiatives are needed to provide opportunities (which are not prohibitively expensive) for redress against miscreant entrepreneurs.

Government will always feel threatened by possible loss of political support if they are seen to be reining in the corporate sector. Ideally, changes would impose minimal inconvenience upon legitimate law abiding entrepreneurs on whom the future stability of the Australian economy depends.

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Sexually Explicit and Violent Media Material: Research and Policy Implications

PAUL R. WILSON AND STEPHEN NUGENT[1]

Public concern over the availability of sexually explicit and violent media material is considerable. The following headlines are taken from major newspapers and illustrate corresponding media concern with this issue:

- How video is breeding violent kids;
- Viewers see risk in sexually violent films;
- TV violence linked with delinquency: expert;
- Irate groups berate the R-raters;
- Horror film blamed for teen suicides;
- Junk violence for our children;
- Yes . . . pornography can lead to sexual violence.

As these headlines suggest, much of the concern is centred on the effect which pornographic and violent material is having on the behaviour of individuals, particularly on the behaviour of children and teenagers. A number of studies, including one carried out by the South Australian Council for Children's Films and Television Inc. (1985), suggest that many young people under the age of 18 are gaining access to explicit material in the form of R-rated and X-rated videos. These studies have reinforced calls by some sections of the population for increased censorship of video

1 Our thanks to Terry Brooks and David Fox from the Attorney-General's Department for their assistance and advice. Joint reports from the Institute and the Department form the basis of some research reported here.

movies (*see* for example: 'Irate Groups Berate the R-Raters', *Daily Mirror* (Sydney), 20 February 1987).

Clearly, there are also many people opposed to such a position. These citizens believe that adults should be able to view what they like and argue that censorship is a violation of civil rights: rights that are an integral part of democratic society. The debate can be seen as an argument involving the alleged 'evils' of explicit material in videos, versus the alleged 'evils' of excessive censorship.

This debate is certainly not a new one. Indeed, Pearson, in recounting the history of arguments concerning censorship, points out that in the 1840s and 1850s it is possible to find 'more recognisably modern forms of complaint brought against the "penny gaff" theatres and "two penny hop" dancing saloons for encouraging immorality and imitative crime among the young (*see* Pearson 1984, p. 97).

However, technology has shifted the grounds of the debate. The prerecorded video movie designed for consumption in the home first appeared in Australia in 1980. Since that time, there has been a rapid increase in ownership, so that today almost half of all Australian homes contain a VCR (*see* Shoebridge 1987, p. 79). Along with the proliferation of these machines, there has been a rapid increase in the number and range of videotapes being offered for sale or hire at a wide range of outlets all over Australia. The proliferation of both machines and videotapes raises very real problems concerning the home use of violent and sexual material, especially the use by young people of such material. Though this report concentrates on video material, the findings are, we believe, generally applicable for film materials as well.

The Nature of Explicit Material

Many of the newspaper headlines mentioned at the start of this report refer to either violence or pornography. These two categories of material are the focus of public concern. The following definitions may help to clarify what is meant by these words. The portrayal of violence has been defined by Gerbner et al. (1980, p. 2) as 'the overt expression of physical force (with or without a weapon, against self or other), compelling action against one's will on pain of being hurt or killed, or actually killing and hurting'.

A number of different definitions of pornography have been proposed. In its submission to the Joint Select Committee on Video Material, the Institute recognised the range of material covered by the generic term 'pornography' by distinguishing between *'soft pornography*, *'hard-core' pornography*, and *hard-core incorporating violence* (Australian Institute of Criminology 1985). Soft pornography is characterised by the fact that it contains, at most, implied or simulated sexual intercourse. Hard-core pornography, on the other hand, is far more explicit. It is characterised by the fact that it is quite clear that the sexual act is

actually taking place. The final category contains hard-core sexual acts intertwined with apparent threat or violence (for example, rape). These definitions though, are more applicable to visual media and it is difficult to transfer them exactly to print media.

The following sections deal with exposure to explicit media material and the effect of such exposure on viewer behaviour. This issue will be discussed in three parts based on the above distinctions. Three categories of explicit material will be discussed in turn. These are violent media material, sexually explicit material, and sexually violent material. The sexually explicit category includes material defined as erotica, soft pornography, or hard-care pornography. Sexually violent material will refer to pornography which incorporates violence. Unfortunately, much of the research in this area fails to distinguish between these different types of material. However, the Australian videotape censorship guidelines distinguish between these categories of material in stating what is acceptable under each censorship classification.

Violent Material

Censorship

The censorship guidelines for videotapes contain the following in relation to violence.

- *General (G)* Minimal and incidental depictions, and only if in a justifiable context.
- *Parental Guidance (PG)* Discreet, inexplicit and/or stylised depictions.
- *Mature (M)* Depictions of realistic and sometimes bloody violence but not if gratuitous, exploitative, relished, cruel or unduly explicit.
- *Restricted (R)* Explicit depictions of violence, but not detailed and gratuitous depictions of acts of considerable violence or cruelty.
- *Extra-restricted (X)* No specific guidelines.
- *Refused classification* Detailed and gratuitous depictions of acts of considerable violence or cruelty.

In a recent study carried out by the Institute and the Attorney-General's Department, a comprehensive content analysis of 58 frequently-hired videos was undertaken. The report by Brookes et. al. (1987) discusses the findings of the content analysis. As Figure 1 illustrates, the viewers of PG-, M- and R-rated videos were exposed to relatively frequent depictions of aggressive activity.

Figure 1

Amount of explicit material in videos according to censorship classification: raw data

A further, more detailed analysis of the degree of severity in the aggressive scenes revealed that, though R-rated videos had the highest number of very severe scenes, M- and PG-rated videos contained a 'severity' score only minimally lower than that obtained in the R-rated classification.

Usage

In a previous report we outlined the hiring patters at two video outlets in Canberra and Queanbeyan (Brooks et al. 1986). The results of this analysis are presented in Figure 2.

R-, M- and PG-rated videos appear to account for the great majority of hires from video outlets. These categories also contain scenes of aggressive activity, some severe in their depictions. Much of this violence is readily accessible to young people under the age of 18 (M- and PG-rated videos). These findings, we believe, reflect the degree to which our society accepts aggression, and the extent to which it exposes its young people to filmed violence. The possible effects of such exposure will now be discussed.

Effect on behaviour

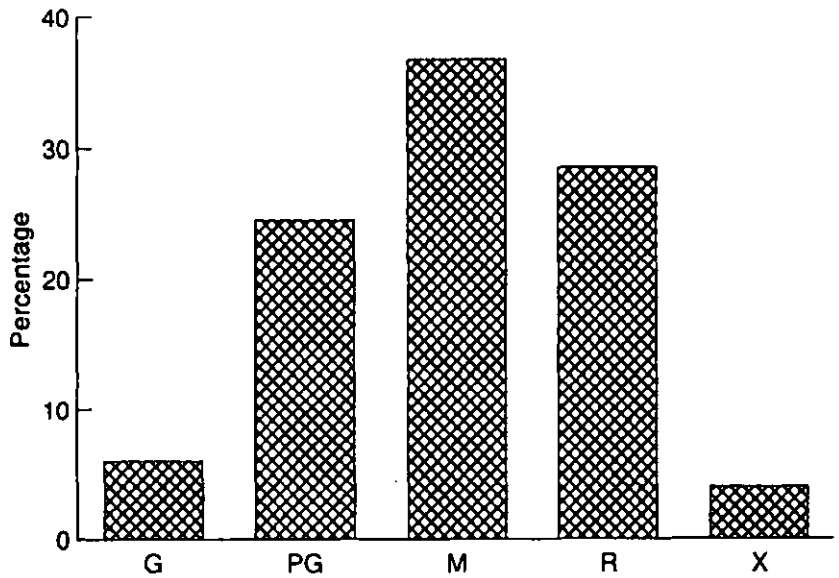
In the submission to the Joint Select Committee on Video Material, the Institute stated that the research evidence available at the time could not be said to establish a causative link between media violence and violent offences. Research conducted since the preparation of that submission has still not, in our opinion,

conclusively established such a link. *Even so, it appears that many of the researchers in the area are now convinced that excessive media violence increases the chances that at least some viewers will behave more violently* (Huesmann & Malamuth 1986, pp. 1-6).

It is also possible that exposure to media violence may result in undesirable effects other than aggressive behaviour. Linz, Penrod and Donnerstein, in a recent review of the literature, suggested that exposure to media violence may numb the ability of the viewer to feel empathy, or may reduce the viewer's capacity to be emotionally aroused at the sight of violence (a process referred to as desensitisation) (Linz et al. 1986, pp. 171-93). They also suggest that media violence may produce changes in attitudes that indirectly affect aggressive behaviour.

Figure 2

Censorship classification share of total videos hired from two outlets: June/July 1986



Numerous studies have considered the effect of media violence on a specific population, namely children. Professor Peter Sheehan (1983, pp. 417-31), one of the leading Australian researchers in this area, believes that the research data suggest that a relationship exists between children's viewing of television violence and their behaving aggressively. However, he says that this relationship has not been proven to be causal in nature.

Even though exposure to media violence has not been proven as a direct cause of violent behaviour, there appears to be enough

evidence of its 'harmful' effects to warrant real concern. This concern is reinforced by the findings on the amount and severity of aggressive and violent depictions in popular video movies. Possible responses to this concern will be discussed in the final section of the report.

Sexually Explicit Material

Censorship

The following videotape censorship guidelines relate to acceptable sexual content for the various classifications.

- *G* Very discreet verbal references or implications and only if in a justifiable context.
- *PG* Discreet verbal and/or visual suggestions and references to sexual matters.
- *M* Depictions of discreetly implied sexual activity.
- *R* Implied, obscured or simulated depictions of sexual activity.
- *X* Material which includes explicit depictions of sexual acts involving adults, but does not include any depiction suggesting coercion or non-consent of any kind.
- *Refused classification* Child pornography, bestiality.

The video content analysis undertaken by the Institute and the Attorney-General's Department provided a tentative measure of the degree to which these censorship guidelines were being adhered to. As can be seen from Figure 1, the X-rated videos contained far more sex scenes than did the other categories. Further analysis revealed that the number of sex scenes as a proportion of total scenes was, on average, 40 per cent for X-rated movies. In addition, the sex scenes were far more explicit in the X-classification than in other categories with few sex scenes in the PG and M classifications rated as relatively explicit. We concluded that, based on these findings, it appears that the censorship guidelines in relation to sexual content were adhered to by classification authorities.

Usage

Figure 2 shows that R- and X-rated videos accounted for 33.4 per cent of hires from two video outlets in June/July 1986. It is apparent that videos containing relatively frequent depictions of sexual activity do not appear to account for a majority of video hires. Little is known about the psychology of those who regularly view X-rated material. Most (88 per cent) are male but in other social and demographic characteristics (age, social class, marital status) they do not appear to differ from irregular and non-users of explicit material. Though such material may interact with personality characteristics of sexual offenders, it is possible that explicit sexual scenes may also serve a cathartic or therapeutic

purpose for those who are predisposed to sexual aggression or who are sexually inadequate. Thus Kutchinsky (1973, pp. 163-81), in his study of the increased availability of pornography in Denmark, presents strong evidence to suggest that decreases in child molestation may be directly attributable to the availability of such material. The argument here is that those with a predisposition towards child molestation 'used' explicit material instead of acting out their predispositions with children.

Effect on behaviour

Stage two of the three-part video project conducted by the Institute and the Attorney-General's Department involved a sample of video users in Canberra and Queanbeyan completing a questionnaire which sought information on viewing habits and attitudes towards availability (*see* Pope et al. 1987). One section of the questionnaire asked respondents to indicate the extent of their agreement with a series of statements regarding the effects of R- and X-rated videos on society. Approximately half the respondents (50.3 per cent) strongly agreed or tended to agree with propositions stating that X-rated videos led some people to commit sexual crimes of violence. The equivalent figures in relation to R-rated videos were 34.3 per cent for sexual crimes and 40 per cent for crimes of violence.

A number of government enquiries in different countries have considered the effect of pornography on society. The first major enquiry was the 1970 Federal Commission on Obscenity and Pornography in the United States (the Lockhart Commission). Other government reports produced since that time include the 1979 Williams Committee Report in the United Kingdom, the 1985 report of the Fraser Commission in Canada, and the 1986 report of the Meese Commission, again in the United States.

Most of these reports have distinguished between different categories of pornography in making recommendations. For example, the Fraser Commission distinguished between three levels of pornography in recommending action for regulation. These levels were: child pornography; sexually violent pornography—material in which physical harm or abuse is portrayed in a sexually explicit context; and visual pornographic material—material that includes depictions of genital, oral or anal intercourse, masturbation, fondling of breasts or genitals, or nudity (Special Commission on Pornography and Prostitution in Canada 1985). It is this third category of pornography that is the subject of this section. Sexually violent pornography will be discussed in the next section.

In its submission to the Joint Select Committee on Video Material, the Institute stated that, in relation to soft pornography, there was 'no convincing criminological or psychological evidence that exposure to such material produced measurable harm to society' (Australian Institute of Criminology 1985, p. 9). In relation to hard-core pornography, the Institute was of the opinion that there was no proven link between this category of material on the one hand, and sex offences on the other. The Institute considered most of the research evidence available to the four government commissions in formulating these opinions. The first of the American commissions, along with the British and

Canadian reports, came to the same conclusions as the Institute in relation to non-violent pornography. The Meese Commission concluded that substantial exposure to non-violent pornography bears some relationship to adverse attitudinal changes relating to rape and other forms of sexual violence (Attorney-General's Commission on Pornography 1986, p. 332). It is important to note that there have been suggestions of alleged political bias in the formation and determinations of the Meese Commission. The Commission has also been criticised for its small budget, lack of original research and the partisan approach of its Chairman (*see Reform*, No. 44, pp. 193-4).

Given that the censorship guidelines for X-rated videos prohibit depictions of sexual violence, the research evidence does not appear to support those respondents (50.3 per cent) in Institute surveys who believed that X-rated videos led some people to commit sexual crimes and to commit crimes of violence. In addition, X-rated videos appear to constitute a relatively small proportion of total video hires. *Based on findings of commissions that we have reviewed, it is suggested that videos containing non-violent pornography are less of a 'threat' to society than are videos containing depictions of aggression and violence.*

Sexually Violent Material

Censorship

Sexually violent material is governed by the following videotape censorship guidelines.

- *R* Depictions of sexual violence only to the extent that they are discreet, not gratuitous and not exploitative.
- *X* Material which includes explicit depictions of sexual acts involving adults, but does not include any depiction suggesting coercion or non-consent of any kind.
- *Refused classification* Explicit or gratuitous depictions of sexual violence against non-consenting persons.

In Institute studies, the incidence of sexually aggressive material in classified videotapes was remarkably low. Though Figure 1 shows that there were some sexual aggression scenes in X-rated videos, these relate to videos classified prior to the 1984 guidelines.

Despite the relatively low frequency overall of sexually aggressive scenes *it was disturbing to note that R-rated videos (legally available in all states) contained nearly half of all sexually aggressive scenes found in our content analysis.* Though these scenes were not nearly as explicit as those found in the pre-1984 X-rated videos, they intertwined sex with violence in a direct manner.

Usage

Figure 2 shows that R-rated videos accounted for 28.3 per cent of all video hires from two video outlets in June/July 1986. It is not

doubted that some videos which have been refused classification are available for hire or purchase at certain video outlets. However, because they are not legally available, there are not statistics on the extent of their usage.

Effect on behaviour

Respondents to Institute questionnaires, administered as stage two of the video project, appeared to see sexually violent material as potentially more harmful than non-violent pornographic material. Only 5 per cent of respondents thought that X-rated videos should be banned, whereas over 60 per cent thought that videos featuring sexual violence should be banned. Our assessment is that public attitudes towards sexual violence seemed justified given the research findings in relation to the effects of exposure to sexually violent material. As with violent media material, it is difficult to demonstrate conclusively a causative link between exposure to such material on the one hand, and criminal offences on the other. However, the Meese Commission concluded that depictions of violence in sexually explicit contexts were likely to increase the incidence of sexually violent behaviour (Attorney-General's Commission on Pornography 1986, p. 324). The Fraser Commission in Canada considered much the same evidence as its American counterpart. Despite having reservations about the value of the social science data, the Canadians came to the conclusion that violent pornography is harmful to women. The harm resulting from violent pornography was said to include its impact on the fundamental values of Canadians. It was seen as denying the validity of female aspirations to be 'treated as full and equal citizens within the community' (Special Commission Pornography and Prostitution in Canada 1985, p. 103).

A recent, comprehensive review of all the evidence in this field confirms the findings of official commissions. Malamuth and Briere, in their review, conclude that exposure to media sexual aggression may adversely affect the thought patterns of some men, and that there appears to be a link between thought patterns condoning sexual violence and sexually aggressive behaviour. However, they caution against concluding that this link is a cause and effect relationship (*see* Malamuth & Briere 1986, pp. 75). Similarly, there are strong arguments suggesting that sexually violent media material played a part in the psychology of persons who commit some violent murders (*see* Wilson 1985) though this evidence is anecdotal and inconclusive.

A direct link between exposure to sexually violent media material and sexually aggressive behaviour has not been proven, and is unlikely to be proven in the near future given the nature of the problem and the research methodology available. A vast array of methodological problems are evident in the literature. These problems include the questionable applicability of the laboratory studies to the real world, the use of unrepresentative subjects (usually university students), material presented to subjects out of context and the use of laboratory measures of aggression not equivalent to sexual assault (for a detailed critique of inadequacies in experimental studies in this field *see* Lab 1987, pp. 301-21). Despite the difficulties in imputing a causal

relationship between sexually violent material and aggression (sexual or non-sexual) there appears to us to be enough tentative evidence of possible harmful effects of such material to place it alongside violent material as a cause for at least some concern for the community at large.

Conclusion

In voicing this concern over the possible harmful effects of sexually violent material, we would urge that such material be clearly differentiated from non-violent sexual material, suggested to be less of a threat or no threat to the community in quoted research. Such a differentiation allows, in the minds of legislators, policy makers and the community, a clear identification of material with a possible potential to cause harm.

Furthermore, a clear identification of sexually violent material could promote more efficient monitoring, regulation and perhaps reduction of such material in the Australian community.

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Alcohol and Crime

GAIL MASON AND PAUL R. WILSON

The Impact of Alcohol

Alcohol abuse is a serious health and social problem for Australia. In 1977, the Senate Standing Committee on Social Welfare reported that alcohol had been a major factor in the death of more than 30,000 Australians in the previous decade and that one in five hospital beds was occupied by a person suffering from the adverse effects of alcohol. The Committee stated that, 'Many people do not realise that the use of alcohol and tobacco is drug use and that each causes vastly more damage in Australia than all illicit drugs combined' (p. 16).

This situation still prevails. In 1987, The Drug Offensive revealed that, for the year 1985, deaths due to alcohol far outnumbered those resulting from all other drugs except tobacco. Almost 3,500 deaths were attributable to alcohol, representing about 3 per cent of all deaths.

The 1977 Senate Standing Committee noted a number of other important facts related to the socially damaging effects of alcohol.

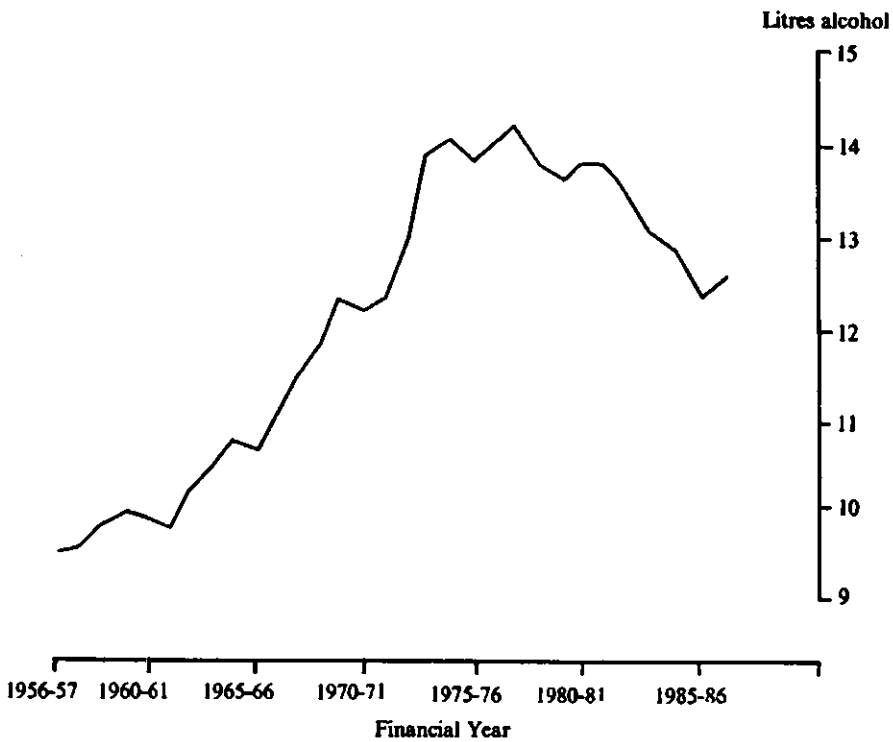
- Approximately 10 per cent of Australia's total health costs are alcohol-related.
- Over 250,000 Australians can be classified as alcoholics and an equal number of families are affected by the abuse of alcohol.
- In 1972-73, costs to the economy directly related to alcohol, including industrial accidents and absenteeism, were more than $500m.

Total alcohol consumption in Australia rose steadily during the 1950s, 1960s and 1970s. However, as Figure 1 shows, since the

early 1980s, consumption has started to decrease. Australia's ranking in consumption is also dropping. In 1975 Australia was ranked tenth in the world in total absolute alcohol consumption, but by 1985 Australia's relative position had dropped to thirteenth—that is, 9.41L per person per year (Department of Community Services and Health 1988).

Figure 1

Consumption of absolute alcohol per person aged 18 years and over, 1956-57 to 1985-86



Source: *Alcohol in Australia: A summary of related statistics*, Department of Community Services and Health 1988, AGPS, Canberra, p. 41. Reproduced by permission.

However, despite this encouraging drop in consumption, 64 per cent of males and 42 per cent of females over 14 years of age have reported that they drink alcohol on one or more days per week (Department of Community Services and Health 1988). The proportion of males who consume alcohol is higher than the proportion of females at all levels of consumption and across all age groups.

Although consumption of alcohol in Australia (in per capita terms) has stabilised, and even fallen slightly, in recent years, the

Draft National Health Policy on Alcohol in Australia in 1987 expressed unease that this plateauing of previous escalating use masks two significant areas of concern: a high level of consumption by young people, many of whom are below the drinking age; and increasing consumption by women. The Draft Policy states that the problems associated with alcohol (including crime) remain at a level which require a concerted, comprehensive policy for their amelioration.

Youth Consumption

The alcohol consumption of young Australians is of special concern in that, by the age of 16 years, approximately 50 per cent of school students claim to drink alcohol regularly.

A 1984 survey by the Anti-Cancer Council of Victoria found that 23 per cent of boys and 14 per cent of girls aged 12 years reported having consumed alcohol in the past week and, in 1986, alcohol was the most frequently used drug in the past month among year 10 students in New South Wales. However, recent surveys have revealed a significant decrease between 1983 and 1986 in daily and weekly drinking among minors of both sexes.

Alcohol and Crime

Both Australian and overseas research support the hypothesis that there is, at the very least, a relationship between alcohol and the commission of criminal offences. In 1968, Bartholomew found that 59 per cent of Victorian prisoners had consumed alcohol before committing the offence for which they were charged. Bartholomew repeated this research in 1983 and found that the rate had increased to 81 per cent (Bartholomew 1985). He also found that prisoners who had committed offences against the person were much more likely to have drinking problems or to have been drinking at the time of the offence than had property offenders. Prison surveys in both Tasmania (White & Boyer 1985) and Western Australia have reported similar results (Taylor 1988).

Clearly, prisoner surveys such as these have limitations, not the least of which is the fact that they exclude persons who have already been diverted from the criminal justice system. An American review of twenty such prison studies found that the percentage of offenders who reported having been drinking at the time of the offence ranged from 8 to 100 per cent (Smith 1983a).

Welte (1987) notes that alcohol depresses the body's central nervous system and has a disinhibiting effect on behaviour. Disinhibition theory asserts that, as property offences tend to be utilitarian and crimes of violence stem more from a loss of self-control, alcohol will play a greater role in violent than in property crime. Research undertaken in this area does suggest a strong

association between crimes of violence and alcohol consumption. For example, the 1977 Senate Standing Committee on Social Welfare reported that, in a study of 644 violent assaults, 73 per cent of offenders had consumed alcohol before committing the offence.

Homicide

The New South Wales Bureau of Crime Statistics and Research (1986) has found alcohol to be prevalent in 42.3 per cent of homicide incidents, while in 46 per cent of spouse killings, alcohol had been consumed by one or both parties prior to the offence. Alcohol is considered to be a more common factor in killings which take place between friends, strangers and neighbours than in homicides involving family members or sexual partners. Studies are remarkably consistent in indicating that alcohol is present in approximately 50 per cent of homicides.

Rape

Forty-nine per cent of convicted rapists in Victoria described themselves as heavy drinkers or alcoholics: 67 per cent reported that they had been drinking moderately prior to committing the offence; 10 per cent claimed to have been drinking heavily and 10 per cent said they were drunk (Hodgens et al. 1972). The results of similar research by Cordner et al. (1979) support these findings.

Domestic violence

The West Australian Task Force on Domestic Violence found that 42 per cent of domestic violence incidents involved alcohol, and victims of domestic violence have suggested that they are more likely to be the subject of a violent attack when their husband or partner is drunk.

Assault

Serious assault in New South Wales is particularly common on Fridays and Saturdays, and between 10 pm and 2 am—hours that correlate with hotel and club closing times (New South Wales Bureau of Crime Statistics and Research 1988). Of the assaults studied, 19 per cent occurred in a venue serving alcohol and 27 per cent occurred in the street, with many street assaults spilling over from the drinking venues. Other research has found varying results, and the estimates of offenders with positive alcohol readings in assault cases range from 24 per cent in some sample populations through to 72 per cent in others (Smith 1983). Generalisations are difficult as assault covers a wide range of offences, all of which vary in relation to their severity.

Property offences

The extent to which alcohol consumption is involved in the commission of property offences is by no means certain; studies into alcohol and robbery have found differing and inconclusive results. Worth noting however, is one study which found that 46 per cent of men imprisoned for motor vehicle theft had been drinking prior to committing the crime—with 31 per cent claiming to have been drinking heavily (Roizen & Schneberk 1978).

Suicide

Alcohol use and alcoholism are considered to be high risk factors for suicide. Alcohol has been associated with 50 per cent of suicides and has been found to increase the risk of suicidal

behaviour for both the alcoholic and non-alcoholic populations (Frances, Franklin & Flavin 1987).

Traffic safety

Though often not considered as 'crimes', many traffic accidents are the result of driving whilst under the influence of alcohol. For this reason we have included traffic safety issues in this report.

The association between alcohol and traffic fatalities, casualties, and accidents is well documented, with alcohol implicated in a considerable percentage of all accidents. In 1985, 39 per cent of drivers and motorcycle riders killed in Australia had a blood alcohol level over 0.05g/100mL (Department of Community Services and Health 1988)—a reduction on the 1981 figures when the rate was 44 per cent. In 1987, drivers aged 16 to 19 constituted 60 per cent of South Australia's road fatalities, despite being only 7 per cent of the licensed drivers.

Alcohol and Youth

As has already been noted, alcohol consumption among Australian youth was on the increase until 1983, after which consumption began to decline. While this trend is certainly encouraging, it only offers partial relief from the fact that an alarming proportion of Australia's youth still consume alcohol on a regular basis. Indeed, recent South Australian figures reveal that charges for underage drinking offences on licensed premises are believed to have risen 300 per cent in the last two years (Ferguson & Yates 1988). Studies in other states support these results.

Alcohol is the greatest cause of drug-related deaths for Australian youth under 24 years of age and, as it is responsible for 71 per cent of drug-induced deaths in the 15 to 34 age group, alcohol remains the main killer drug of young Australians. The greatest proportion of these alcohol-related deaths result from road accidents.

Smith (1988a) found that the lowering of the legal minimum drinking age to 18 years in four Australian states led to an increase in male juvenile crime rates by 20 to 30 per cent and has also adversely affected traffic safety. For example, after the drinking age was lowered in Western Australia there was a 20.8 per cent increase in public hospital admissions for male traffic accident casualties aged 18 to 20 years. Indeed, a number of studies reveal that lowering the drinking age has increased traffic accident casualties among drivers and motorcyclists, and increased the proportions of accidents involving drivers with elevated blood alcohol levels.

With regards to crime, some criminal offences have increased more significantly than others with the lowering of the drinking age; burglary, motor vehicle theft, and drunkenness in particular. However, there has been very little evidence of an increase in violent crime for young people. Police in most Australian cities are concerned about the incidence of property damage as well as

offensive and indecent behaviour in the public streets. 'Street crime' of this nature is usually linked to young men who are under the influence of liquor.

It is important to note that a reduction of the legal drinking age has not affected female juvenile crime rates even though it appears that there has been an increase in youthful female drinking.

Does Alcohol Consumption Cause Crime?

Though there is a close relationship between alcohol and crime, the impact of alcohol as a cause of crime should be seen in the context of other causal factors. The use of alcohol alone explains very little, whereas alcohol use in combination with an assortment of other variables can account for a substantial proportion of criminal behaviour.

Clearly, there is much crime that is not committed under the influence of alcohol and many persons who drink, and even abuse, alcohol do not commit criminal offences. This fact alone casts doubt on the existence of a direct causal link. For example, Scutt (1980) states, with reference to domestic violence, that in almost one-third of cases (if not more) there is no prior consumption of alcohol. 'Thus in many cases drink can in no way be said to 'cause' or be related to the violence—what then is the cause in these cases?' (p. 88).

Despite the complexities in establishing a causal relationship between alcohol and crime, some research suggests that alcohol consumption may promote or facilitate the planning or execution of a crime and that, within a given society, changes in the total consumption of alcohol are likely to induce similar changes in recorded rates of crimes of violence (*Encyclopedia of Crime and Justice 1983*). On the other hand it can be argued that alcohol consumption may actually impede or inhibit the commission of some criminal offences. Although no research on this possibility has been noted, Collins (1981) claims the existence of a 'malevolent assumption' that whenever drinking is associated with an unwelcome event it is considered to be the cause of that event.

Proposals

The connection between alcohol consumption and crime has led many to suggest possible methods of reducing consumption with the intention that this will in turn reduce the problems—including criminal behaviour—associated with alcohol. Any initiative which decreases total absolute alcohol consumption can be expected to have a beneficial effect on alcohol-related crime.

Legal drinking age

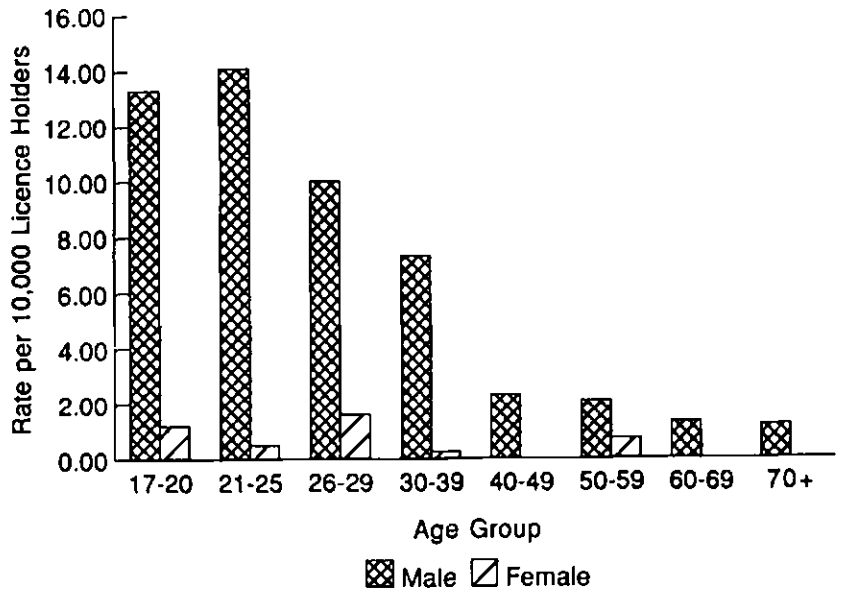
As previously stated, there is sufficient evidence, both Australian and overseas, to indicate that lower legal drinking ages have lead to increases in juvenile crime, as well as traffic accidents and fatalities among young people. As a result, it has been recommended that the legal minimum drinking age should be raised, and the Department of Employment, Education and Training lists this as a priority strategy for addressing youth drinking. United States research suggests that the optimum age is 20 and that there is little to be gained by making the minimum drinking age any higher (Smith 1988a).

One of the major motivations for raising the legal drinking age is to reduce road fatalities, as young drivers are vastly over-represented among accident casualties and fatalities. However, there is one very important fact that has been acknowledged, then only to be forgotten, by virtually every researcher and commentator in this area: a gender breakdown of available statistics reveals that it is not merely young drivers who are responsible for the disproportionate number of road accidents and fatalities, but young male drivers.

Figure 2 shows the number of drivers, per 10,000 licence holders, killed in 1987 in New South Wales while under the influence of alcohol.

Figure 2

Motor vehicle controller casualties killed while under the influence of alcohol, NSW 1987



Source: Statistics from Traffic Authority of New South Wales 1988

It can be clearly seen that while young male drivers are greatly over-represented in driver fatalities, this is not the case for young female drivers. In fact, young female driver fatalities are clearly outnumbered by male drivers in nearly all the older age groups. Trends for driver casualties who are affected by alcohol, for drink driving convictions, and for overall road deaths reveal a similar picture.

Analysing this data, from both a gender and age perspective, reveals that, contrary to common belief, it is not young people who are the greatest danger on our roads; it is men, and young men in particular. Male drivers killed outnumber female drivers 6:1, and excessive alcohol consumption, speed, male aggression and driver inexperience are the main components of the carnage (Royal Australasian College of Surgeons 1980).

This leaves an interesting dilemma. There is considerable support in Australia for the move towards raising the minimum legal drinking age. Yet, in reality, age is not the crucial factor in many recorded traffic incidents. If laws can be implemented that discriminate against a certain section of the society (namely youth) on the basis that this will make society a safer place, then we must ask ourselves whether, having identified the real offenders as young men, any purpose will be served by disallowing young women to drink. Should we be advocating legislation that makes it illegal only for males under 20 to drink? Prohibiting young women from drinking may be less preventative than prohibiting men over 50 from drinking. Clearly, such a concept will not receive ready acceptance, but from an enforcement point of view a change of this kind would be no more difficult to administer.

Random breath testing

There is increasing evidence that random breath testing (RBT) in NSW has achieved a permanent deterrent effect upon drink driving offences.

> The distinguishing marks of RBT in New South Wales are intensive and sustained enforcement combined with massive and sustained media publicity. A deterrence threshold—testing at least one driver in three each year—was reached. Other jurisdictions need to follow this example if they are to achieve cost-effective success with enforcement programs (Homel & Wilson 1987, p. i).

However, despite the success of RBT in New South Wales, self-reported drinking and driving is still at unacceptably high levels and a third of fatalities still involve alcohol. The Department of Employment, Education and Training (1988) has recommended that all states in Australia should implement effective blood random breath testing programs.

Blood alcohol level

Research indicates that a 0.05 per cent BAL can significantly reduce injury and property damage accidents over and above the presumed accident reducing effectiveness of a 0.08 per cent BAL (Smith 1988b). Furthermore, this effect continues beyond the first year of operation. There are also suggestions that, for first year

drivers, a lower BAL may reduce driver and motorcycle casualty accidents.

Education/ mass media

According to Smith (1987), gains in knowledge do not necessarily mean that a change in attitudes will occur. Nor can an improvement in attitudes be assumed to mean that there will be a change in behaviour, such as reduced drinking. School alcohol programs have not, to date, evidenced great success in producing behavioural change. Yet the 1988 report from the Department of Employment, Education and Training states that there is moderate evidence for the effectiveness of properly designed alcohol and drug education programs that are fully integrated into the school curriculum. Such programs are accordingly recommended as a strategy to fight alcohol and drug abuse among young Australians.

Mass media campaigns have been found to have similar results as school programs. This means that while they are able to create an awareness of alcohol issues, they are unlikely to change behaviour. Yet, mass media campaigns have an important role to play in overall prevention and are often a critical and efficient method of keeping the public informed of alcohol issues and legislative changes.

Availability

Some of the most frequently discussed measures for reducing the consumption level of alcohol, and in turn the level of alcohol-related crime, is to reduce the availability of alcohol through legal restrictions on outlets. Overseas studies indicate that a reduction in the availability of alcoholic beverages reduces crime (Smith 1986). There is no reason to suggest that these benefits would not also apply to Australia if the availability of alcohol was to be reduced.

Thus, if consumption levels influence the rate of crime, it is necessary to look at ways to reduce consumption. A number of strategies and regulations have been proven, both within Australia and overseas, to result in decreased consumption of alcohol.

Drinking Age

The possibility of increasing the legal minimum drinking age has already been discussed. As previously stated, lowering the drinking age to 18 has led to increases in male juvenile crime. Therefore, raising the drinking age may lead to reductions in crime.

The Number and Type of Alcohol Outlets

The number and type of alcohol outlets influence consumption levels and, in turn, affect alcohol-related problems. It has been suggested that outlets offering 'take-away' alcohol for off-premise consumption have a positive impact on a number of alcohol-related factors, including some types of crime and traffic mortality in particular.

As a consequence, there have been moves to restrict any increase in the number of venues serving alcohol. Increasing the proportion of off-premise consumption outlets has also been suggested. Increased consumption of alcohol by men in their homes might, however, have an adverse effect on the levels of violence towards women and children who are also at home.

The introduction, or extension, of liquor licensing for off-premise sales by grocery stores and supermarkets has been connected with the increased consumption of alcohol by women, and there is a greater tendency for impulse buying where alcohol and groceries are available at the one outlet.

Days and Hours of Sale

Smith (1987) has reviewed a number of studies looking at the effects of days and hours of alcohol availability upon traffic accidents. Clear and consistent results show that increased availability leads to additional consumption with alcohol-related problems (Smith 1987). For example, following the introduction of Sunday alcohol sales in Perth, there was a 63.8 per cent increase in the number of persons killed on Sundays in comparison with the other six days of the week.

Furthermore, the availability principle applies to various types of increases. These include: early openings, the introduction of flexible hotel trading hours, and establishing the two-hour Sunday session. Overseas studies have shown that decreasing the days of sale of alcoholic beverages can significantly reduce alcohol-related problems.

Low Alcohol Beer

Low alcohol beer is generally consumed by persons who already have a low level of consumption. As a consequence these beers have had little or no impact in decreasing alcohol-related crime.

Price of Alcohol

The consumption of alcohol almost invariably rises when the real price of alcohol falls. Research has demonstrated that price increases affect the consumption levels of heavy, dependent drinkers to the same, if not to a greater, extent as consumption levels of moderate drinkers. Consequently, the Department of Employment, Education and Training, among others, recommends that a uniform system of taxation and excises based on the alcohol content of the beverage be implemented, rather than the present system which enforces different rates for various alcoholic drinks. Pricing and taxation could also be lowered to encourage greater consumption of low alcohol beers. Price is one factor that plays a large role in the consumption level of alcohol for young people.

One of the major difficulties, however, with increasing the price of alcohol is that it may affect low income earners to a greater extent than those in higher income brackets. Before price raising action is taken, it would be necessary to ascertain who

would be the most disadvantaged by such changes, and which groups will actually decrease their consumption.

Server Intervention

Server intervention involves the development of policies and procedures for dealing with customers on licensed premises and ensuring that staff are equipped to carry out these policies. Examples of server intervention include: promoting non-alcoholic beverages and food; raising standards for customer behaviour; providing transport; and strict control over underage drinking. Homel and Wilson (1987) note that such programs do not have to result in a loss of profits for the alcohol outlet.

Alcohol Advertising

Alcohol advertising does not have a strong impact upon consumption levels. Although it may cause changes in brand and beverage preference, there is no conclusive evidence to indicate that the contents of advertisements actually influence consumption or attitudes. In two Australian studies, advertising was found to have little or no effect on adult alcohol consumption.

> . . . It is clear that any influence which alcohol advertising has on consumption is very small in comparison to that of other factors. Accordingly, it is recommended that persons rightly concerned about the high level of alcohol consumption and alcohol-related problems in Australia should not allow themselves to be sidetracked into the advertising issue at the expense of factors such as availability and price (Smith 1987, p. 31).

While advertising may not have a direct effect upon consumption levels, advertisements frequently promote images of desirable and successful alcohol-affected lifestyles without reference to any of the ill effects. The current system of industry self-regulation is not protecting the health interests of the population, but rather, is 'serving to at least maintain attitudes which are not compatible with the responsible use of alcohol' (*Draft National Health Policy on Alcohol in Australia 1987*, p. 15).

Although a total ban on alcohol advertising may be unwarranted, the strategies for alcohol advertising recommended by the Department of Employment, Education and Training report appear to have considerable merit. They include: extending the restrictions on advertising and promotion of alcohol at public entertainment and sporting events which attract predominantly young people, and discouraging any association between motor racing and alcohol beverages.

Sponsorship

The *Commentary on National Health Policy on Alcohol in Australia* (1987) reveals a genuine concern regarding the glamorised association between alcohol and the exploits of sporting and cultural heroes when, in the case of the former, if not also the

latter, the consumption of alcohol is inimical to such performance. This report notes the substantial disagreement regarding the necessity for regulation of sponsorship by the alcohol industry. However, it points out that if greater limitations were imposed on alcohol sponsorship of sporting and cultural activities then this may permit other non-alcohol industries to compete in the sponsorship stakes.

Conclusion

The above proposals offer a research-based package for combating alcohol-related problems, including crime. Though the implementation of these proposals poses political difficulties for any government, we believe that the social benefits will be significant in terms of lives saved and a reduction of criminal offending.

The proposals suggested do not deal directly with the underlying reasons for excessive alcohol consumption by individuals or across the community as a whole. Such underlying reasons though must be addressed and afforded equal priority along with the more straightforward proposals for legislative change.

As Kingshott (1981) states, focusing on the individual or on alcohol alone:

> has the effect of ignoring the continuing set of problems incipient in our social system that result in frustrations, tensions and probably unconscious aggressive urges which on occasions surface with the assistance of alcohol (p. 30).

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Serial Murder

SUSAN PINTO AND PAUL R. WILSON

> 'What's one less person on the face of the earth anyway' (Ted Bundy to his biographers Michaud and Aynesworth (1989, p. 73) when queried about his victims).
>
> 'They weren't worth much. One of them even enjoyed it' (James Miller during his trial for the murder of seven young girls and women at Truro, cited in Wilson 1985, p. 81).

In recent years, Australia has had a number of serial killings which have received considerable attention from the media and created concern in the general community. While the Truro (South Australia) and Tynong North (Victoria) murders were still fresh in the minds of many Australians, publicity surrounding the murders of five young men in Adelaide and six elderly women in Sydney yet again aroused both fear and interest in the phenomenon of serial murder.

Although it is clear that Australia has not altogether escaped serial killers, it is equally obvious that the proportion of serial murders in the United States is much greater than in our society, even given their massive population. Names such as the 'Boston Strangler', 'Son of Sam', 'Freeway Killer', 'Stocking Strangler', 'Green River Killer', 'Lonely Hearts Killer', 'New Orleans Axeman', John Wayne Gacy and Theodore 'Ted' Bundy are well known as serial killers in the United States. Estimates of the number of serial killers currently at large in the United States vary considerably, ranging from the low 30s to over 100 (Holmes & De Burger 1986, p. 20).

In this report, the various facets of serial murder are noted, including definition, elements of the crime, occurrence in Australia, explanations for serial murder, the copy cat phenomenon and the special problems that serial murder poses for law enforcement agencies. Finally, there is a discussion of

methods currently employed, or under consideration, which attempt to combat serial killings.

Defining Serial Murder

Although there is no universally accepted definition of serial murder, here the term will refer to a specific type of homicide involving the murder of two or more persons in separate incidents, with an interval of time between the homicides. The interval can be several hours, days, weeks, months or even years. Mass murder is another form of homicide which is commonly confused with serial murder. This type of murder characteristically involves the killing of several people, in the same general area, at roughly the same time, by a lone assailant. It is usually a one-time murderous act (Levin & Fox 1985).

Excluded from the category of serial murders are professional killers, 'contract' killers and people working from political motives. For example, killers who operate for the Mafia could not be labelled as serial murderers in the true sense of the word, despite having committed several homicides at different times.

Elements of Serial Murder

Holmes and De Burger (1988) have identified key elements applicable to serial murder.

- The central element is repetitive homicide.
- Serial murders usually occur between two people; a victim and a perpetrator.
- The relationship between victim and perpetrator is usually that of stranger or slight acquaintance. Serial murder rarely occurs between people who are strongly affiliated.
- Apparent and clear cut motives are typically lacking in many serial murders, due to the fact that 'strangers' generally perpetrate this crime. There are, nevertheless, very real motives—even if they may appear non-rational—that originate within the individual. These motives govern and structure the serial killer's homicidal behaviour. In most cases the motives do not reflect passion, personal gain, or profit tendencies.
- A common perception is that all serial murderers are lust murderers; that is, there is evidence or observations to indicate the murder was sexual in nature (Ressler et al. 1988, p. xiii). Although it is true that many serial murderers are lust killers, this is not always the case. It may be closer to the true situation to say that in most cases the perpetrator is a lust killer.

Australia Serial Murders[1]

Tables 1 and 2 detail murders which have been identified as serial killings, based on our previous definition and description of the elements of serial murder. These tables do not represent a comprehensive listing of all occurrences of serial murder in Australia. Although some Australian jurisdictions have undertaken occasional analyses of homicide trends and patterns (South Australia 1981; Wallace 1986; Bonney 1987; Law Reform Commission of Victoria 1988), there is no ongoing monitoring system operating in any state or territory. National baseline data and uniform national homicide statistics remain elusive, and information about the characteristics of homicide victims is unavailable (National Committee on Violence 1990, p. 218). The situation is further complicated by the number of missing persons in Australia. Swanton and Wilson (1989) suggest that approximately 250 persons are outstanding on state police missing persons files at any one time, exclusive of long-term missing persons and institutional absconders. Although it is impossible to assess accurately how many of these people have been victims of serial murder, police are reasonably certain that a proportion may have been.

At this point, it is important to note that although the actual number of serial murders in Australia is presently unknown it appears that the number of murders committed by 'strangers', a common element of serial murder, is relatively small. A study by the New South Wales Bureau of Crime Statistics and Research found that 'stranger-killings', so often portrayed in the media, account for less than one in five killings in New South Wales (Wallace 1986, p. 3). According to the evidence provided by studies throughout the world in which the relationship between homicide offenders and their victims were examined, the homicide victim is typically an intimate of the offender, most commonly a family member or friend (Curtis 1974).

The following discussion includes some specific cases of murder in Australia, which although not solved, appear to be the work of serial murderers. The Truro murders, possibly the most well-known of all Australian serial murders, are also discussed.

North-Shore 'granny' murders

The 'granny' killings, so-called because all but one of the victims were over the age of 80, involved the murders of six women in Sydney's north-shore district between 1 March 1989 and 19 March 1990. The victims were all attacked in the vicinity of their homes in broad daylight with some kind of blunt instrument. Two of the women were strangled with their own stockings.

A 57-year-old man was charged with the murders in March 1990. It is alleged that the offender, after strangling the last of the murder victims, undressed, climbed into a bath and took an

1 The Australian Institute of Criminology, not wishing to jeopardise the rights of the defendants facing specific charges, has omitted the names of those who have not been convicted of the alleged offences.

unknown quantity of prescription drugs. On 28 November 1990, a five-woman and seven-man jury found John Glover guilty of all six murders.

Adelaide murders

Between 1979 and 1983 the bodies of five young men, between the ages of 14 and 25, were discovered in Adelaide. The victims all had similar types of wounds, several were washed and dressed and their bodies disposed of in similar ways. The television program '60 Minutes' in 1989, numerous newspapers and some police officers have suggested that there are links between the five murders and a group, dubbed the 'Family', which has allegedly picked up and drugged numerous young men for up to 20 years. Despite all the speculation there is, however, no persuasive evidence that such a group exists. A man has been convicted of the murder of one of the five boys and is currently serving a life sentence with a record 36-year non-parole period.

Truro murders

In the summer of 1976-77 the bodies of seven young women were discovered near Adelaide. A 40-year-old labourer, James Miller, stood trial for the killings. It was alleged that Miller, together with accomplice Christopher Worrell (subsequently killed in a car accident), picked up the seven victims and raped and murdered them. Miller was found guilty of six of the seven crimes. Forensic evidence suggested that all the victims had been strangled, either manually or by ligature, although there was a strong suspicion that the last of the victims had been placed alive in a makeshift grave (Wilson 1985, p. 80).

Wanda Beach murders

The bodies of two 15-year-old girls were found on 11 January 1965 at Wanda Beach, Sydney. The girls had been brutally bashed, stabbed and sexually violated. On 29 January 1966 the body of a 57-year-old woman was found in Piccadilly Arcade in Wollongong. The victim had been strangled, viciously bashed, mutilated and possibly sexually assaulted. Four days after the Piccadilly Arcade murder the body of a 27-year-old woman, a known Kings Cross prostitute, was found near Lucas Heights, south of Sydney.

Police suspect that there are links between the Wanda Beach murders and the other two murders. Indeed, there appears to be striking similarities between all three murders. In each case a body was dragged along the ground with no real attempts made to conceal the bodies. Sexual molestation after the slaying was involved in all cases, and the victims were murdered near or in Sydney.

Table 1

Solved Serial Murders in Australia*

Year/ Location	Number and Sex of Victim(s)	Offender(s)	Sex/Age of Offender	Method of Killing	Employment
1900-06 Perth	Suspected of killing 37 babies	Alice Mitchell	Female	Starvation Negligence	Baby Nurse
1930-35	4 Females 6-16 yrs	Arnold Sodeman	Male 30 yrs	Strangulation	Labourer/Road Construction worker
1942 Melbourne	3 Females 31-43 yrs	Edward Leonski	Male 25 yrs	Strangulation	American G.I. Private
1961** Sydney	1 Female 16 yrs++ 1 Female 15 yrs++	Leonard Lawson+	Male 26 yrs	Stabbing Strangulation	Artist
1972 Sydney	in prison, attempted murder of 1 female			Stabbing	
1959-65 Perth	2 Females++ 4 Males	Eric Cooke	Male 32 yrs	Shooting Strangulation	Truck driver
1961-62 Sydney	4 Males	Alan Brennan alias William McDonald & Allan Ginsberg	Male 36 yrs	Stabbing Sexual Mutilation	Unknown
24-28 Aug. 1973 Sydney	3 Males 25-50 yrs	Archibald McCafferty	Male 25 yrs	Shooting	Unknown
1976-77 Truro (SA)	6 Females++ 15-26 yrs	James Miller Christopher Worrell (accomplice)	Male 36 yrs	Strangulation	Labourer Unknown
1979-80 Sydney	2 Females 16 mths & 2 yrs 1 Male 7 yrs	Patricia Moore	Female 18 yrs	Suffocation Strangulation	Baby Sitter
1984 NSW	2 Males 11 & 12 yrs	Michael Laurance	Male 42 yrs	Drowning	Farmer
1986 NSW	1 Male 8 yrs			Suffocation Drowning	
Oct.-Nov. 1986 Perth	4 Females++ 15-31 yrs	David Birnie Catherine Birnie (accomplice)	Male 36 yrs Female 35 yrs	Mutilation Strangulation Stabbing	Labourer Housewife
09 Jul.- 14 Jul 1987 NT and WA	4 Males 26-70 yrs 1 Female 25 years	Joseph Schwab	Male 26 yrs	Shooting	Public Servant#

Table 2

Unresolved Serial Murders in Australia*

Year/ Location	Number and Sex of Victim(s)	Method of Killing
Jan. 1965- Jan. 1966 (NSW)##	4 Females++	Bashed Stabbed
1979-83 Adelaide	5 Males++ 14-25 years	Sexual Mutilation
1980-1983 Tynong North (Vic)	2 Females++ 14-18 yrs 1 Female 34 yrs++ 1 Female 75 yrs	Unknown
March 1984- March 1990 North-Shore of Sydney (NSW)###	1 Female 60 yrs 5 Females 81-92 yrs	Bashed Strangulation
Nov. 1962 June 1990	Female 5 yrs Female 9 yrs	Strangulation Strangulation

Notes to both Tables 1 and 2:

* These Tables do not necessarily include all occurrences of serial murder in Australia. Table 1 respresents solved serial murders in Australia, which generally include those for which a conviction has been recorded. Table 2 represents unresolved serial murders in Australia, including cases where a suspect has not yet been apprehended and cases where a conviction has not yet been recorded.

** These cases occurred on consecutive days.

\+ Lawson was also convicted in 1952 of the rape of two teenage girls. He was sentenced to life imprisonment and released on parole in 1961.

++ In these cases the victims were also raped.

\# German tourist holidaying in Australia.

Police suspect that these murders were the work of a serial killer.

Subsequent to this Trends and Issues report, John Glover was found guilty of these murders.

Explanations for Serial Murder

Explanations provided for serial killings vary considerably and range from those which suggest that serial killers have an additional chromosome (the XYY theory) to those describing serial murder as a disease with characteristics as distinct as cancer or

leprosy. These theories do not, however, have sufficient evidence to warrant much credence. This paper focuses on psychological, sociological and cultural explanations.

Sociological explanations generally stress 'social disadvantage', including unemployment, financial hardship, ill health, economic inequality, lack of housing and discrimination. Psychological explanations tend to explain serial murder as a result of individual propensity to commit murder, including the inability to conceptualise right from wrong, willingness to inflict injury on others, inability to perceive future consequences of actions and degree of impulse management. Cultural explanations for serial murder focus on the extent to which cultural factors enhance the probability of the occurrence of serial murder. These include the influence of mass media, feelings of alienation and estrangement on the part of marginal members of society, normalisation of interpersonal violence and values and prestige a society attaches to violent behaviour.

There are considerable difficulties in attributing these explanations to the phenomenon of serial murder. Serial murderers represent a diverse range of personality types, with varying backgrounds, motives and reactions to crimes. For example, John Wayne Gacy (suspected of killing 33 boys and young men) and Ted Bundy (suspected of killing 36 women) were generally considered to be respectable citizens from middle-class backgrounds. These men generally selected their victims carefully before murdering them and mutilating their bodies. By contrast, David 'Son of Sam' Berkowitz killed at random, claiming to be subject to the whims of his neighbour's dog. Berkowitz was illegitimate and had an emotionally and economically deprived upbringing. Consequently, serial killers cannot be neatly categorised into a particular behavioural type. While researchers and therapists must endeavour to recognise the nature of the crime and document the social, psychological and situational aspects of victim-offender interaction, this documentation should occur within a framework which recognises that serial killing is not committed by specific psychological or sociological types.

Additionally, although it is important to observe the background of homicidal violence, it is misleading to assert that serial murder is 'caused' directly by an individual factor or even a specific pattern of factors. While it is undoubtedly true that certain sociological and psychological factors are important in the creation of a violent and aggressive personality, these factors do not sufficiently explain the specific motives that impel the serial killer.

Similarly, it is possible that aspects of the general culture—violence exemplified in mass media entertainment, justification of violence as a 'normal' mode of dealing with problems, and anonymity and depersonalisation in contemporary society—enhance the risk of serial murder in our society. It is, however, difficult to determine the specific mechanisms by which a culture of violence may be translated into the heinous crimes characteristic of serial murder.

Is the serial killer mentally ill?

In attempting to understand fully the phenomenon of murder, the mental stability of the offender has assumed considerable importance. Arguments over whether homicide offenders are 'bad' or 'mad', or both, continue today and are likely to continue for some time in the future (Wallace 1986, p. 55). The relationship of mental disorder to violence, and homicide in particular, is however, extremely difficult to determine. Accordingly, the literature on homicide reveals that homicide can be 'caused' by almost any kind of psychiatric illness, including feeblemindedness, retardation, senility, paranoia, epilepsy, manic and depressive psychosis and 'psychopathic' personalities (Wolfgang & Ferracuti 1967).

The significant blurring around issues of mental illness and insanity is reflected in the variation in the assessments of mental states of murderers in various countries. For example, in England the association of madness with murder is much more common than in the United States (Lunde 1975). Between 1957 and 1968, 8 per cent of those tried for murder in England and Wales were found legally insane (Gibson & Klein 1969); however, in the United States only 2-3 per cent were found insane (Lunde 1975). Although it is true that the differences could be partially due to the different structure of homicide in the two countries (for example the relatively high proportion of felony murders in the United States), it is clear that other considerations must be taken into account (Wallace 1986, p. 56). According to Wolfgang and Ferracuti:

> The percentage of 'mentally ill criminals' vary, not so much in accordance with demonstrated variations of the phenomenon, but in the nosographies and medico-legal norms employed, and in the orientation of the examining psychiatrist (Wolfgang & Ferracuti 1967, p. 209, cited in Wallace 1986, p. 57).

Studies and investigations of serial and sadistic murderers have argued that most such killers are neither insane within the McNaughten rules (legal guidelines which define sanity), nor psychotic (Brittain 1970, Bartholomew et al. 1975, Holmes & De Burger 1988, Norris 1988, Wilson 1988). Although it is difficult to believe that persons who commit horrific and devastatingly cruel crimes are 'normal' people, scientific and psychiatric evidence does not lead inevitably to the conclusion that the majority of these killers are mentally ill. It is clear, nevertheless, that those who kill repeatedly and without remorse are suffering from an aberrant and socially defective mind set (Holmes & De Burger 1988), although this is not in itself evidence of psychiatric illness.

Copycat phenomenon

Extensive media reporting given to serial murder may have the unintended consequence of encouraging others to commit similar crimes. For example, in Chicago in 1982 seven people died after ingesting Tylenol capsules, a commonly used pain killer, which had been contaminated with cyanide. Following nationwide television and newspaper coverage, poisons of various forms were

discovered in pies, lollies, mixed nuts, mouthwash and a variety of over the counter drugs (Levin & Fox 1985, p. 23).

Studies have demonstrated the existence of copycat effects, known formally as contagion phenomena or imitative behaviour. Research conducted by Bollen and Phillips (1982), Mazur (1982) and Phillips (1986) suggests that there could be a link between the degree of publicity attached to a homicide, suicide or terrorist incident and subsequent conduct of a similar nature.

The influence of violent, sadistic pornographic material may also be relevant here. In the United States several serial killers were found to have an obsessive interest in sexually violent pornographic literature and videos (Wilson 1988, p. 273). In Australia it was revealed during the trial of the Truro murderers that both accused men kept a large, locked trunk filled with pornographic magazines, most of which emphasised sadism and bondage. Wilson (1985, p. 83) has argued that the glorification of violence in sex, as reflected by much pornography, mirrors the emphasis that society places on the interlocking of the sexual and the aggressive. Although the strong link established between sadistic pornography and sadistic crimes cannot be ignored, again it is necessary to exercise caution when attributing these factors directly to the causation of serial murder.

Control Mechanisms

Serial murder raises serious challenges for law enforcement agencies. Experience in the United States, Britain, Canada and Australia demonstrates that serial killers are particularly difficult to apprehend and law enforcement often inept in coordinating searches for this type of killer. The most notorious example is provided by the investigation of the 'Yorkshire Ripper' from 1975-81. By mid-1977 excellent detective work had focused the trail on Peter Sutcliffe's farm and Sutcliffe was interviewed; however, his file was then marked 'no further action required'. The trail became lost and police put mistaken credence in a series of letters and tapes purporting to come from the killer. Sutcliffe was thus able to kill eight more times before being apprehended (Jenkins 1988, p. 11). Whereas motives for 'normal' homicides are generally relatively easy to detect because of the victim-offender relationship previously discussed, in a crime such as serial killing there is no readily identifiable motive. The difficulty for the investigator is first identifying that the murder may be the work of a serial killer, as an isolated killing will probably be insufficient to alert the investigator to this possibility. Seldom is there enough evidence at one crime scene for investigators to build a case. The next crime may be in a different jurisdiction, seemingly unrelated to the first. The killer's mobility and random victim selection complicates the investigation (Brooks et al. 1987, p. 40).

Reflecting the unusual difficulties this form of murder presents for law enforcement agencies, some control mechanisms have been established. A discussion of these follows.

Violent Criminal Apprehension Program (VICAP)

In the United States, an attempt to contend with serial killings has emerged in the form of the national Violent Criminal Apprehension Program (VICAP). Based at the FBI Academy in Quantico Virginia, this program provides a computerised clearinghouse for information on unsolved murders, violent or deviant sexual assaults and kidnappings or disappearances. It is the objective of VICAP to provide law enforcement agencies reporting similar patterns of violent crimes with the necessary information to initiate a coordinated multiagency investigation so they may identify and apprehend offenders as expeditiously as possible (Brooks et al. 1987, p. 41). The VICAP computer system also produces selected reports which monitor case activity geographically, with the hope that it will eventually trace the movements of violent serial offenders across the United States (Ressler et al. 1988, p. 113).

National Homicide Monitoring Program

The Australian Institute of Criminology has established a national Homicide Monitoring Program. The major functions of the Program are the systematic collection of information on cases of homicide coming to the attention of Australian police agencies, and the analysis of these data. In time, it is possible that the Program may be able to assist police in identifying linkage patterns in homicides throughout Australia. National data of this type have hitherto been unavailable. The Program hopes to publish annual reports on patterns and trends in homicide, which may aid police in the identification of serial murders.

DNA

DNA (deoxyribonucleic acid) matching (also known as DNA profiling and fingerprinting) is a method of identifying biological samples by analysing the genetic material or DNA contained in the cells. Using this technique, blood, semen or other human tissue found at the scene of a crime can be matched to a sample taken from a suspect. Similarly, blood or other tissue found on a suspect can be matched to that of a victim (Kearney 1989, p. 2). Alternatively, DNA matching has the power to exclude a suspect if a non-match is evident. It is clear that DNA matching has the potential to benefit police in their investigations of serial murders. Police are able to match DNA found at different crime scenes to establish whether the same person is responsible for the crimes, thereby establishing the likelihood that they are dealing with a serial killer.

While DNA is possibly the most important development in forensic evidence for law enforcement this century, it is important that it be kept in perspective. Although scientists assert that DNA patterns are 'unique', they also acknowledge that one individual's DNA patterns may have similarities with another's. In some cases it is possible that similarities may be striking, while in other cases the DNA structure may in fact be identical (Scutt 1990, p. 9). DNA is an extension of a technology which allows more precise results. Law cases where the identity of the person is the only issue are few. In sexual assault cases, the question of consent is paramount; in assault, the question of provocation and so on (Selinger 1989, p. 6). In addition, the scientific community has not yet agreed on

standards that ensure total reliability of the evidence (Lander 1989, p. 501).

Criminal profiling

Criminal profiling can be defined as a technique for identifying the major personality and behavioural characteristics of an offender, based upon an analysis of the crime committed and the information obtained from the scene of a crime. Profiling does not provide the specific identity of the offender. Rather, it indicates the kind of person likely to have committed a crime by focusing on certain behavioural and personality characteristics (Douglas et al. 1988, p. 402). The criminal profile generating process is described as having five main stages, with a sixth stage, or goal, being the apprehension of a suspect (*see* Figure 1).

Criminal profiling has been described as a collection of leads (Rossi 1982), as an educated attempt to provide specific information about a certain type of suspect (Geberth 1981) and as a biographical sketch of behavioural patterns, trends and tendencies (Vorpagel 1982). Detractors of psychological profiling dismiss it as very hit and miss. Specific criticisms are that the information from the profiler is:

> little better than information one could get from the neighbourhood bartender . . . profiles are too vague and ambiguous or else they are simple common sense (Holmes & De Burger 1988, p. 85).

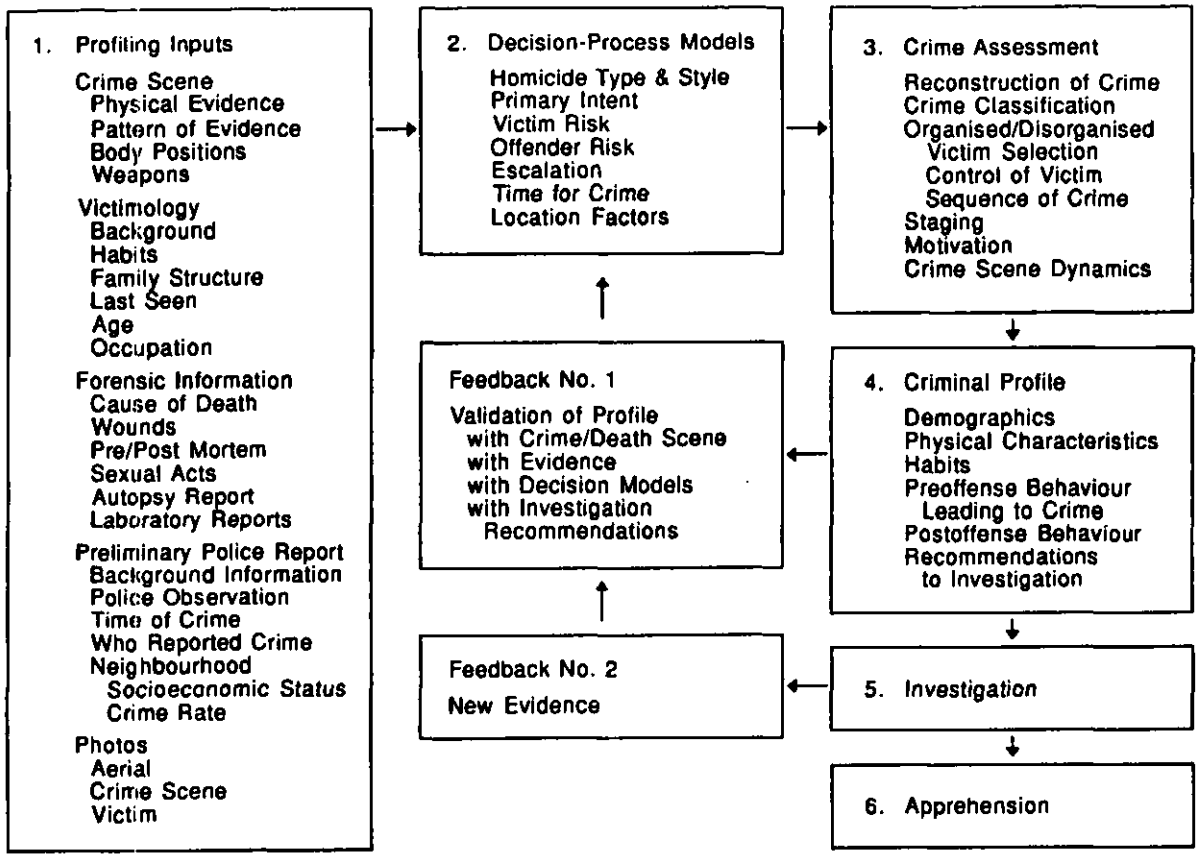
Australian critics claim that a danger exists if police seize on a stereotyped view of the offender's profile and then encourage the community to adopt the same view through media reports (*Canberra Times*, 20 April 1990).

According to Douglas et al. (1986, p. 403) criminal profiling has been found to be of particular usefulness in crimes such as serial homicides which, because of their apparently random and motiveless nature, are given high publicity. Consequently, the public demands that law enforcement agencies act quickly to apprehend the offender.

The challenge posed to law enforcement agencies by serial murder leads inevitably to the conclusion that complete cooperation between and within agencies in all jurisdictions is essential. Additionally, it is clear that sophisticated investigative techniques are required to confront the special problems presented by this form of murder. Although the national Homicide Monitoring Program may assist police agencies in Australia to identify related murders, it is unlikely to assist in apprehension. In this context, it is possible that criminal profiling may be of some benefit. Police agencies should explore the benefits of implementing such a system in Australian jurisdictions.

Figure 1

Criminal Profile Generating Process



Source: Douglas, J. Ressler, R., Burgess, A. & Hartman, C. 1986, 'Criminal Profiling from Crime Science Analysis', *Behavioral Sciences and the Law*, vol. 4, no. 4.

Conclusion

Although serial murder currently represents only a small proportion of all homicides in Australia, the question of whether this situation may change in the future should be raised. In the United States experts have predicted that there is a very real possibility that serial murders will increase as the gulf between socioeconomic groups becomes more apparent and the

marginalisation of some sections of society increases. Whether the same situation will occur in Australia, and indeed whether an effect of this will be an increase in the incidence of serial killers, is impossible to predict.

In the meantime it is important that simplistic solutions to serial murder are not taken up. Serial murderers generally favour immediate gratification, regardless of the consequences. In the words of Douglas Clark, a man condemned to death for the sadistic murder of six adolescent girls:

> It doesn't bother me in the least . . . there are a hell of a lot worse things that can happen than to die in the gas chamber (*Los Angeles Herald Examiner*, 16 February 1983).

The debate over the re-introduction of the death penalty for horrific and violent crimes often emerges after such crimes have taken place, but the deterrent effect of the death penalty is highly questionable. Potas and Walker (1987) have argued that the death penalty may create a brutalising effect, actually inspiring acts of violence, thereby diminishing rather than increasing the deterrent effect of capital punishment.

Instead of focusing on penalties for such crimes, it is more appropriate to focus on strategies that will assist law enforcement agencies in identifying and apprehending serial murderers. Effective identification and apprehension of serial murderers in Australia is heavily reliant on the response of Australian police agencies to new technologies and advances in investigative analyses.

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Section 4: Crime in the Ethical Dimension

Homosexual Law Reform in Australia

MELISSA BULL, SUSAN PINTO AND PAUL R. WILSON

Homosexual behaviour between males has been illegal in most countries for several centuries. It was only in recent decades that a number of nations began to implement legislative reforms which allow for certain consensual homosexual acts. In Australia, most jurisdictions have responded to this trend and have decriminalised homosexual acts between consenting adults in certain circumstances. Most recently, the Queensland State Caucus approved the amendment of legislation proscribing homosexual practices; however, in Tasmania, the passage of this type of reform is still a matter for debate.

This paper focuses primarily on issues surrounding the current status of laws addressing homosexuality throughout Australia. As in most countries throughout the world, the law relating to homosexual behaviour has traditionally applied only to males. Females have never come within the ambit of Australian statutes, nor has there ever been any attempt in Australia to introduce penalties for consensual lesbian behaviour. Lesbian acts with females under the age of consent are covered by provisions proscribing heterosexual acts with females under the age of consent. For this reason, the following discussion relates primarily to male homosexuality. It is important to note at the outset that to identify as homosexual has never been an offence in any Australian jurisdiction; it is homosexual acts which have been outlawed, and indeed remain criminal offences in Tasmania.

Homosexual Laws

In 1972, South Australia became the first Australian jurisdiction to decriminalise some homosexual acts. Further reforms in this state were achieved in 1975 and 1976. In 1976 and 1980 respectively, the Australian Capital Territory and Victoria followed suit and decriminalised some aspects of homosexual behaviour. The Northern Territory became the next jurisdiction to decriminalise consensual homosexual acts between men in 1983, with New South Wales following the trend in 1984. Western Australia became the most recent jurisdiction to implement legislative reforms in 1989.

The legislation of Western Australia provides a curious preamble which begins by acknowledging the inappropriateness of the criminal law to intrude on people's private lives, but ends with a condemnation of homosexual acts. An unfortunate result of the Western Australian provisions, intended to decriminalise homosexual practices, is the extension of express government policy to condemn lesbianism.

The legislation in these jurisdictions differs considerably; however, it has as a common feature the decriminalisation of some homosexual acts between consenting adults in private. The legislation provides a minimum age of consent at which homosexual behaviour is allowed, and incorporates provisions which are designed to protect those who are under this age or mentally impaired from exploitation. Also contained are provisions to protect people from acts to which they have not consented.

In Queensland, the *Fitzgerald Report* (Queensland 1989, p. 377) recommended that the Criminal Justice Commission review the laws governing voluntary sexual behaviour. As a result, on 21 November 1990 the Queensland State Caucus decided to amend the Criminal Code and the *Criminal Law (Sexual Offences) Act 1978-1989* to decriminalise consensual sexual activity between adult males in private. It approved the introduction of appropriate legislation, setting the age of consent at 18, while reaffirming its determination to enforce its laws prohibiting sexual interference with children and intellectually impaired persons and non-consenting adults. The introduction of legislation includes a preamble noting that there are limits to the power of the state to intervene in the private lives of its citizens and that it is not the role of the Parliament to condone or condemn the subject of the legislation (Wells 1990).

In Tasmania, reform of homosexual laws was attempted unsuccessfully after recommendations contained in the report of the Tasmanian Law Reform Commission (1982) were presented to Parliament. The report included recommendations to remove homosexual offences from the *Criminal Code Act 1924*; however, the Upper House rejected these recommendations. The only reform made to laws regarding homosexual acts in Tasmania was a change in the terminology in section 122 of the *Criminal Code*

1924 from 'unnatural carnal knowledge' to one of 'unnatural sexual intercourse'.

The Accord between the Labor Party and the Green Independents, which was signed on 29 May 1989, provides for decriminalisation of consensual homosexual acts in private. Draft legislation went to Cabinet in mid-May in the form of the HIV/AIDS Prevention Measures Bill 1990. It was considered in conjunction with amendments to the Criminal Code which would decriminalise homosexual acts between consenting adults in private. However, at the time of writing, the tabling of the Bill had been temporarily deferred. The Clauses are contained within a Bill which addresses legal impediments to HIV prevention and treatment. According to commentators, if the Bill is passed, homosexual law reform in Tasmania will be achieved in the context of public health measures, rather than, as other Australian Parliaments have done, in Acts which acknowledge that laws against consensual sex between adults are unjust and archaic (Carr 1990, p. 31). Instructions have been given to Parliamentary Counsel to draft anti-discrimination legislation intended for introduction in the Autumn 1991 session. Discrimination on the grounds of a person's sexuality will be unlawful. (*See* Table 1 for a summary of the homosexual laws in Australia.)[1]

Equal Opportunity Legislation

The equal opportunity legislation in New South Wales[2] and South Australia[3] covers discrimination which is related to sexual activity or sexual preference. This legislation applies equally to males and females. In these states a reference to a person's homosexuality includes a reference to the person being thought to be homosexual, even if the person is in fact not homosexual.

In Western Australian and Victorian equal opportunity legislation, discrimination on the basis of homosexuality is not covered. In Victoria, an attempt was made in 1985 to extend the definition of 'private life' under the *Equal Opportunity Act 1984* to include 'engaging in or refusing to engage in any lawful sexual activity or practice', but this amendment to the legislation was

1 At the time of preparing this manuscript for publication (June 1992), homosexual law reform had still not been achieved in Tasmania.

2 *Anti Discrimination Act 1977* (NSW) (as amended by *Anti-Discrimination (Amendment) Act 1982* (*see* Part IVC). In New South Wales, it is unlawful to discriminate on the ground of homosexuality in the areas of: employment, partnerships, trade unions, qualifying bodies, employment agencies, education, provision of goods and services, accommodation and registered clubs.

3 *Equal Opportunity Act 1986* (SA). In South Australia, it is unlawful to discriminate on the ground of sexuality. 'Sexuality' is defined in the *Equal Opportunity Act* as meaning heterosexuality, homosexuality, bisexuality or transexuality. It is unlawful to discriminate on the ground of actual or presumed sexuality in: employment, education, provision of goods and services and land and accommodation. An exception may apply in employment situations where appearance and manner of dress are relevant.

defeated in Parliament (*Australia and New Zealand Equal Opportunity Law & Practice* 1984, p. 9-080).

The Victorian Law Reform Commission is currently reviewing the need for the inclusion of such provisions in the Victorian legislation and legislation to prohibit discrimination on the grounds of sexuality is likely to be introduced into the Victorian Parliament this year (Hodge et al. 1990, p. 48).

The Northern Territory is also reviewing the need for individual equal opportunity legislation. It is expected that this legislation, which will probably come into force in late 1990, will include provisions which guard against discrimination on the ground of sexual preference.

In other jurisdictions, which do not have separate equal opportunity legislation, the *Commonwealth Human Rights and Equal Opportunity Commission Act 1986* applies. Regulation 4 of this Act contains provisions against distinction, exclusion or preference on the ground of sexual preference or former sexual preference. These regulations came into effect in January 1990 and were legislated under the terms of the International Labour Organisation Convention no. 111. The effect of these regulations will be to allow the Human Rights and Equal Opportunity Commission to receive and investigate complaints of discrimination in employment or occupation on the ground of sexual preference. The Commission is able to conciliate complaints and report to the Attorney-General in respect to any discriminatory practice or ground found. These include acts or practices of Commonwealth, state and private employers. The declaration does not, however, make these practices unlawful.

The *Federal Family Law Act 1975*, with respect to guardianship and custody of children in Part VII, has been interpreted by the Family Court in such a way that it is clear that homosexuality is not a disentitling factor with regard to the custody of a child (*see* O'Reilly (1977) FLC 90-685; Spry (1977) FLC 90-271; Schmidt (1979), FLC 90-685; Shephard (1979) FLC 90-729).

Notes to Table 1:

+ In these jurisdictions homosexual acts in public places would be dealt with under offensive behaviour provisions in legislation which also applies to heterosexual behaviour in public places.

* In the Northern Territory the definition of 'in private' provided by section 126 of the Criminal Code Act 1983 is 'with only one other person present and not within view of a person not a party to the act'. 'In public' means 'with more than one other person present or within the view of a person not a party to the act'.

** When a person is charged under ss. 79, 80 or 81 of the *Crimes Act 1900* (NSW), the court shall not find the offence has been established unless it is proved under s. 5(c) of the Law Reform (Sexual Behaviour) Ordinance 1976 that the act alleged to constitute the offence was committed otherwise than in private.

Table 1

Homosexual Laws in Australia

State/Territory	Private Homosexual Acts	Public Homosexual Acts	Age of Consent
New South Wales *Crimes Act 1900* *Crimes (Amendment) Act 1984*	Not an offence	The legislation makes no distinction between public and private homosexual acts[+]	18 years. Offences for under age, s. 78 H, I, K, L, Q of the *Crimes Act 1900* as amended by the *Crimes Amendment Act 1984*
Victoria *Crimes Act 1958* *Crimes (Sexual Offences) Act 1980*	Not an offence	The legislation makes no distinction between public and private homosexual acts[+]	18 years. Offences for under age, ss. 47, 48, 49, 50 of the *Crimes Act 1958* as amended by the *Crimes (Sexual Offences) Act 1980*
Queensland *Criminal Code Act 1899*	Not an offence	An offence ss. 208, 209, 211	18 years.
Western Australia *Criminal Code 1913* *Law Reform (Decriminalisation of Sodomy) Act 1989*	Not an offence	Gross indecency between males in public an offence s. 184	21 years. Offences for under age, ss. 185, 187 (1) & (2) of the *Criminal Code 1913* as amended by the *Law Reform (Decriminalisation of Sodomy) Act 1989*
South Australia *Criminal Law Consolidation Act 1913* *Criminal Law (Sexual Offences) Amendment Act 1975* *Criminal Law Consolidation Act Amendment Act 1976*	Not an offence	The legislation makes no distinction between public and private homosexual acts[+]	16 years. Offences for under age, s. 49 of the *Criminal Law Consolidation Act 1913* as amended by the *Criminal Law (Sexual Offences) Amendment Act 1975* and *Criminal Law Consolidation Act Amendment Act 1976*
Tasmania *Criminal Code Act 1924*	An offence s. 122, 123	An offence s. 122, 123	
Northern Territory *Criminal Code Act 1983*	Not an offence	Carnal knowledge or gross indecency between males in public or in any public place is an offence s. 127[*]	18 years. Offences for under age, s. 128
Australian Capital Territory *Law Reform (Sexual Behaviour) Ordinance 1976* *Crimes Act 1900 (NSW)*[**]	Not an offences s. 3	An act done in a public lavatory is taken to be not in private *Law Reform (Sexual Behaviour) Ordinance 1976* s. 2(3)	18 years. Offences for under age, *Law Reform (Sexual Behaviour) Ordinance 1976* s. 4(1) & (2)

The Debate

Against homosexual law reform

Those who oppose homosexual law reform do so for a variety of reasons. Submissions to the Queensland Criminal Justice Commission's Parliamentary Committee indicated that there are a number of vocal opponents of homosexuality. This opposition often has a theological base centred around the belief that homosexuality is a sin, and that any act which is contrary to the natural order is against the will of God; and since the 'obvious' function of the sexual act is the consummation of Christian marriage and procreation, homosexual acts should be considered against the natural order (Wilson 1971, p. 50).

Some clergy argue that there is no distinction between the moral code of society and criminal law; that the moral code of society should be expressed in its criminal law. 'The English common law on which our civil and criminal law is based finds its source, to a great extent, in Biblical law'. Thus, the criminal law should express 'God's revealed standards' as expressed in the verses of the Bible which condemn homosexual acts (Percy quoted in Parliamentary Criminal Justice Committee 1990, pp. 106-10).

Religious opponents also argue that anti-discrimination legislation regarding homosexual behaviour discriminates against all those who hold traditional Christian views by forcing them and (through education programs) their children to accept the subjective, judgmental view that homosexuality is a normal and/or good mode of sexual expression (Lansdown 1984, p. 157).

The arguments most frequently put forward by religious opponents are best presented by way of a summary of the points expressed in the submissions by representatives of the Baptist, Presbyterian and Lutheran churches to the Queensland Criminal Justice Commission's Parliamentary Committee:

- the incidence of homosexuality will increase;
- the incidence of AIDS and other sexually transmitted diseases will dramatically increase;
- homosexual acts are physically unnatural;
- homosexuality will be encouraged in schools;
- homosexuality is contrary to the interests of society;
- decriminalisation will endanger the welfare of children;
- decriminalisation will lead to the acceptance and proliferation of sexual 'perversion' in society;
- decriminalisation will result in moral instability and the downfall of society;
- homosexual acts are a sin and detestable to God.

Despite the religious foundation of these arguments, there are members of the clergy who are inclined to believe that the

problem is a social one, and since homosexual behaviour poses no threat to society there is no justification for its being considered a crime against the state. Thus some churches, most notably the Metropolitan Community Church in Brisbane, the Religious Society of Friends, the Anglican Church and the Uniting Church, have expressed support for homosexual law reform (Parliamentary Criminal Justice Committee, Queensland 1990).

In the following section these views are considered in the context of research findings.

For homosexual law reform

One of the main concerns of opponents of decriminalisation is the fear that homosexuality will become more prevalent and more public. The research findings do not, however, support this fear. In 1976, Geis et al. surveyed a number of homosexuals, district attorneys and police officials in the seven states in the United States which had decriminalised homosexual acts. Those surveyed noted that there had been no changes in the involvement of homosexuals with minors, use of force by homosexuals or the amount of private homosexual behaviour. Geis et al. necessarily relied on the opinion of homosexuals, attorneys and police rather than on behavioural changes.

Another of the arguments levied against the decriminalisation of homosexual acts is that these practices fail to produce children and this could lead to the 'downfall of society'. There is little support for such a belief. In Italy, where homosexual acts are not illegal, there appear to be no deleterious effects on society: it would be difficult to argue that the status of the family had been undermined, or that there had been any significant reduction in population. In *The Sexual Dilemma*, Wilson adds that many heterosexuals do not procreate and are not for this reason considered a threat to society; thus there should be no such implication concerning homosexuality (1971, p. 53).

In response to the argument that the incidence of AIDS (and other sexually transmitted diseases) will dramatically increase, it has been alleged that the former attitude of the Queensland Government towards homosexuality seriously restricted any response to the AIDS crisis. Bill Rutkin of the Queensland AIDS Council suggests that:

> [t]here can be no serious doubt that lives have been lost in Queensland because of the laws . . . If there had been state government support for education and behavioural change programs for gay men then, from November 1984, it would not be unreasonable to claim that 25 per cent of the cases of AIDS we now have wouldn't have occurred (Leser 1990, p. 51).

Figures from the National Health and Medical Research Council provide some support for this belief. As of June 1990, there were 892 known cases of HIV infection in Queensland. Eighty people had already died from full-blown AIDS. To make a comparison—Queensland has twice the population of South Australia, but more than twice the rate of HIV infection and more than twice the death toll (Leser, 1990, p. 51).

Sinclair and Ross (1985) have compared two populations of homosexual men which are similar apart from living in 'criminalised' and 'decriminalised' jurisdictions. The jurisdictions chosen were South Australia and Victoria. A questionnaire was used to obtain homosexuals' views in these states. At the time of data collection (1979-80), Victoria had a maximum penalty of 20 years for homosexual acts between males, while the South Australian law had been repealed in 1975. The findings of this study suggested that there were few if any negative consequences of decriminalising homosexual practices. It appears that the positive consequences of decriminalisation include an improvement in the psychological adjustment of homosexual men and a decline, within the gay community, in the incidence of sexually transmitted diseases and public solicitation.

The Criminalisation of Homosexuality

In *The Honest Politician's Guide to Crime Control*, Morris and Hawkins cogently argue that 'the prime function of the criminal law is to protect our persons and our property', and that it is 'improper, impolitic, and usually socially harmful for the law to intervene or attempt to regulate the private moral conduct of the citizen' (1970, pp. 4-5). Nevertheless, in Australia, it is primarily this end that laws regulating homosexual behaviour endeavour to achieve. However, it is evident, as these authors also argue, that the criminal law is 'a singularly inept instrument for that purpose'; laws intended to prevent homosexual behaviour are virtually impossible to enforce, and rather than protect society and individuals they, in effect, discriminate against a significant [homosexual] minority in the Australian population.

Homosexuality has existed in most societies throughout history, and despite regular attempts, it is apparent that it cannot be legislated out of existence. A homosexual presence in the community is a fact of life and, even though it may challenge popular and deeply held moral beliefs, there is no justification for continued discrimination against this group. Legislation which singles out 'homosexuals' or differentiates between homosexual and heterosexual acts makes a mockery of our social values of minority and individual rights; and as a consequence raises important questions regarding the proper scope of the criminal law. As the Commission of Inquiry into the Queensland Police (The *Fitzgerald Report*) put it:

> Laws should reflect social need, not moral repugnance. Unless there are pressing reasons to do so, it is futile to try and stop activities which are bound to continue and upon which the community is divided . . . Where the moral issue is one upon which there is room for seriously divergent opinions, the legislature should interfere only to the extent necessary to protect the community, or any individuals with special needs.

> Generally those who take part voluntarily in activities some consider morally repugnant should not be the concern of the legislature unless they are so young and defenceless that their involvement is not truly voluntary (Queensland 1989, p. 186).

Despite this belief among legal commentators, the law in most Australian states does not take a neutral stance, but continues to treat homosexual acts as qualitatively different from heterosexual acts. The effect of criminal sanctions against homosexual behaviour include violence against homosexuals, blackmail, police intimidation and entrapment, reluctance by homosexual men to report rapes or lesser crimes for fear that it will implicate them with homosexual activity, adverse psychological effects which may eventually result in suicide, and the inability to acknowledge freely and express sexual preference without fear of social oppression, stigmatisation and ridicule.

Information obtained from representatives of the gay communities in New South Wales and Victoria, where law reform has taken place, suggests that many of these problems and feelings are sustained even after legislative change. This calls into question the value of the reforms, made in some states, aimed at achieving equality or alleviating the problems experienced by the homosexual community. Laws making homosexual acts illegal and/or marking a difference between homosexual and heterosexual acts do not stop men having sex with men but drive a minority underground, render them liable to blackmail, violence, scapegoating, discrimination, and cause immeasurable human suffering.

Blackmail

Blackmail of homosexuals or bisexuals by persons with whom they have had a sexual relationship refers to both the possible reporting to police and possible discrimination in the workplace. As early as 1953, the *Wolfenden Report* observed that 32 of the 71 cases of blackmail reported to the police in England and Wales during 1950-53 were connected with homosexual activities (Committee on Homosexual Offences and Prostitution 1962, p. 40). It is extremely difficult for a homosexual who is being blackmailed to seek assistance from the police. A homosexual of high social and professional status stands to lose a great deal should his sexual practices become public knowledge or be brought to the attention of the law. The victim is thus reluctant to bring a complaint against the blackmailer.

Discrimination

Individuals in the gay community experience the social world in a different way to those in the heterosexual community. Everyday socially acceptable actions become outlawed and justifiable reasons for discrimination in employment, law enforcement (discussed in greater detail below), and limited access to community services—for example, public moneys granted to minority groups for self-development and special education projects are not readily available to gay communities. Similarly, lack of support and social stigma ensures that problems of domestic violence tend to be hidden within the homosexual

community as noted in a study of violence within lesbian relationships (*see* Renzetti 1990).

The lesbian community is reluctant to address openly issues that could be used to fuel heterosexual stereotypes and anti-lesbian sentiments, especially when abuse of a woman by another woman contradicts the widely held belief that physical violence is a male or patriarchal problem, and discussing the issues also threatens the ideals of the community. Consequently, sources of help available to heterosexual victims of violence are not perceived as being available to lesbian victims. This feeling is reinforced by the experience of those who do seek assistance and generally find it to be of little or no help at all.

Law enforcement

It is clear from the evidence available that laws on homosexuality are characterised by arbitrary enforcement (Australian Federation of AIDS Organisations 1989, p. 11), and that there is considerable variation between Australian jurisdictions in police enthusiasm for detecting and prosecuting homosexual offences (Wilson 1971, ch. 3). It is evident that police focus most of their attention on public displays of homosexuality. Homosexuals themselves note that:

> Police very rarely arrest people for gay sex in private, eg in your own home. Although we do know of a few cases where men have been charged after they admitted to the police that they had gay sex in private. Most of the arrests of gay men—a couple of hundred a year—are for hanging around a street or park trying to meet other gays, or for having sex in places like cars parked in secluded spots (Walsh 1978, p. 42).

A 1978 study by the New South Wales Bureau of Crime Statistics and Research provides empirical support for this argument in its findings that the bulk of prosecutions for homosexual offences are for public acts of some kind (New South Wales Bureau of Crime Statistics and Research 1978, p. 38). Private offences attracted prosecutions mainly when minors or coercion were involved.

In gathering evidence for prosecutions for offences by homosexuals in public places, police have been known to use decoys or agents provocateurs in a method known as 'entrapment'. In Queensland, a number of charges against homosexuals in 1988 were a consequence of this technique (Lane 1988, p. 155). Most of the men were detected in semi-public places such as the Brisbane Transit Centre shower and lavatory complex. Lane (1988, p. 156), in his examination of transcripts and statements of prosecutions of homosexuals in Brisbane, found that police have used peep holes cut between adjoining shower cubicles to observe the behaviour of occupants and, in some cases, invite a response. Most of the cases have made use of a young, stylishly dressed officer purporting to be available for casual liaison. The Australian Federation of AIDS Organisations (1989, p. 18), in their conversations with homosexual men, alleged that

police in Western Australia (prior to decriminalisation) adopted similar tactics.

Police agencies often justify the use of enforcement and entrapment techniques by the argument that, without appropriate reinforcement techniques, male homosexual activities in public places would be a common spectacle (Green 1970, p. 50). Contrary to this belief, Humphreys (1970, p. 88) in his study of male homosexual activity in public lavatories, *Tea Room Trade*, found that men who frequented 'tea rooms' (public lavatories) for sexual purposes were remarkably discreet in their behaviour. Similarly, the New South Wales Bureau study mentioned above (1978, p. 38) found that, although public acts accounted for the bulk of prosecutions, the risk of the public observing such offences is less than the figures suggest. The most common prosecutions for these offences were alleged to have been committed within a closed toilet cubicle and could only have been observed with considerable difficulty and a degree of deliberateness on the part of the observer.

In the United States, entrapment is a defence to a criminal charge. Although Australian courts have expressed considerable distaste for the practice, there is no specific legislation to curb it (Lane 1988, p. 156). However, under Australian law, a trial judge does have a discretion to exclude evidence unfairly or improperly obtained (*see R v. Ireland* (1970) 126 CLR 321; *Burning v. Cross* (1978) 141 CLR 54; *Cleland v. R* (1982) 151 CLR 1 cited in Lane 1988). Recent supreme court decisions also show that this discretion is applicable in some circumstances to evidence obtained by entrapment (*see R v. Vuckov and Romeo; R v. Romeo; R v. Romeo* (1987) 45 SASR 212; *see also* Street CJ in *R v. Dugan* (1984) 2 NSW LR 554).

In the cases of entrapment in Queensland mentioned above, the defendants, faced with public embarrassment, pleaded guilty after committal (Lane 1988, p. 157). However, judges in Queensland generally imposed mild penalties, ranging from finding an offence proved without recording a conviction to convictions and bonds (Australian Federation of AIDS Organisations 1989, p. 18).

The issue here is not whether homosexuals should be allowed to conduct sexual liaisons in public toilets, it is the manner in which charges are brought against them. Police could have stopped this behaviour by sending regular patrols into designated areas, rather than utilising the practice of entrapment (Australian Federation of AIDS Organisations 1989, p. 18).

Violence

Violence against homosexuals is nothing new, but a recent increase in the intensity of assaults against this group is a cause of major concern. Stories of violence against lesbians and gay men appear frequently in the popular press and in practically every issue of gay community papers. On 4 March 1990, *The Sun Herald*, reporting the alarming rate of violence experienced by the homosexual community in Sydney indicated that 'packs—of up to 15 youths—are responsible for 30 attacks each week'; while *The Age* published a story in a similar vein: between January and March of 1990, one murder

and more than 30 bashings had been reported in Sydney's inner city area (29 May 1990).

In general, this type of violence is intended to be directed towards homosexuality, and the victim is a fairly arbitrary choice. The presumption that someone is homosexual is sufficient to set off a violent attack, this presumption may be founded on as little as the victim's geographic location. The initiative to carry out a violent attack comes from the perpetrators, with the victim being taken unawares—as a rule, because of this unexpectedness, the victims are not able to react immediately in an effective manner. '[T]hey don't fight back' and this feeds the prejudice that they are just defenceless victims—not real men (van den Boogaard 1989, p. 55). It is the unexpectedness of the situation that makes them defenceless.

Until recently, there has been a general lack of interest in the nature of this violence. Causes for anti-homosexual violence are usually presented in general terms like anti-homosexuality or homophobic, or they are ascribed to economic factors—robbery and blackmail. However, if it is true, as one study (van den Boogaard 1989, p. 54) suggests, that the perpetrators of violence surmise homosexuality only after observing inter-male behaviour in areas where homosexuals are likely to be encountered, violence against homosexuals could be an indication of sexual confusion experienced in the passage to manhood. The youthful perpetrators may be expressing their own uncomfortable feelings regarding their contacts with men, which could arise as a result of conflict between their boyhood experience of friendship and newly adopted rituals of manhood. This is not to say that the attackers are covertly gay—though that may be the case—but that the violence could be a consequence of male adolescent sexual confusion.

As a response to the increasing violence in Sydney, the Gay and Lesbian Rights Lobby has initiated strategies to combat hate related attacks. One of these strategies is *The Streetwatch Report* (Cox 1990); a survey of 67 victims of gay-bashing in the Sydney metropolitan area. It provides information on the nature of the assaults, the survivors, the assailants, and also the possible reasons for the recent increase in offences of this kind. Some of the more disturbing findings in the report were that the motivation for the attacks is hate against lesbians and gays, robbery was not a major feature; and the assailants were predominantly youths or young adults (86 per cent under 31) who generally attacked in gangs of four and frequently more. Victims were reluctant to report to the police—a report rate of only 48 per cent suggests that despite some changes in police attitudes in recent years, a major section of the population still feels unable to claim their rights to protection under the law. Only 56 per cent of those who did report were satisfied with the service offered by the police; 73 per cent of survivors sustained serious physical injury; 52 per cent of attacks took place on the street, and 60 per cent of the attacks occurred in Darlinghurst and Newtown. The information available from other states and territories suggests that anti-homosexual violence is not exclusively a Sydney phenomenon.

Scapegoating

As a community, we frequently seek scapegoats for the explanation of 'social ills'; at times homosexuals have fulfilled this role explaining increasing promiscuity, 'sexual perversion', 'corruption', and most recently the spread of the AIDS virus.

The most glaring examples of these feelings are apparent in the Queensland popular press where claims are granted credibility by publication in major newspapers, for example, there have been claims that 'Gays are creators of misery and death . . .', calls for homosexuals to be made to wear identification tags in public and to undergo counselling to correct their 'depravity' (*The Courier-Mail*, 13 June 1990), and suggestions that 'it was in the political interests of gay rights activists that AIDS should spread quickly into the general community . . . For only when it spreads to the community at large will homosexuals be able effectively to conceal that AIDS is a consequence of homosexual behaviour.' (*The Sun*, 13 June 1990). Echoes of these sentiments are also identifiable in some of the moral and religious commentaries on homosexual law reform aired in other states.

Homosexuality and AIDS

As previously mentioned, since the early 1980s, opponents of homosexual law reform have frequently cited AIDS as a justification for continuing to criminalise homosexual behaviour. Figures available in February 1990 suggest that over 88 per cent of those who have died from AIDS in Australia have been homosexual or bisexual men (National Centre in HIV Epidemiology and Clinical Research 1990). To date, there are no studies which provide evidence as to the impact of decriminalisation on AIDS.

Proponents of homosexual law reform argue that laws criminalising homosexual acts seriously impede public health programs which educate and promote safe sex practices among the general community and particularly those at risk of developing AIDS (Australia 1989). A 1989 consultation paper by the Department of Community Services and Health (Australia 1989, p. 8) recommended:

> That laws criminalising consensual adult homosexual acts in private be repealed. The age of consent for homosexual activity should be the same as for heterosexual activity (Australia 1989).

The paper, which was compiled after a series of consultative panels throughout Australia, suggested that many of the people who appeared before the panels argued that the illegal nature of homosexuality in some states created a barrier for workers attempting to carry out education and prevention programs with homosexual groups. Many people expressed concern at having their names on lists of organisations, such as AIDS Councils, which could be seized by police and used as evidence in prosecutions or lead to disclosure of their activities to employers or others. Regardless of whether these fears are founded, it causes the workers concern and as such may hamper AIDS prevention. People appearing before the panels also pointed to the success of gay education and HIV prevention programs in states which had

decriminalised homosexual acts (Australia 1989, pp. 7-8). Lane (1988, p. 15) argues that while the AIDS factor has become a justification for the harassment of homosexuals, in fact 'nothing could be more effective in hindering official attempts to uncover and control the disease than a witch-hunt against one of the high risk groups'.

The Australian Federation of AIDS Organisations (1989) has argued that the criminal status of homosexual behaviour leads to difficulties at two levels, the public and the personal. At the public level, these difficulties involve restrictions placed on the nature of programs and services offered to those at risk because the government cannot be seen as supporting or encouraging illegal activity. At the personal level, individuals will be unlikely to have confidence in services which they might otherwise use if they fear there may be negative repercussions at a later date. In addition, problems of status may detrimentally affect some individuals' views of their own self-worth which will have implications for the value they place on maintenance of good health (Australian Federation of AIDS Organisations 1989, p. 19).

The Queensland AIDS Council has conducted research which has revealed that significant numbers of men do not have an HIV antibody test until they are physically unwell, or they test interstate. The most significant reason given for this was fear of prosecution by Queensland authorities and a total mistrust of Queensland government guarantees regarding medical confidentiality (Queensland AIDS Council, 1988).

In Western Australia, similar research conducted by the Western Australian AIDS Council (prior to decriminalisation) revealed similar fears by homosexual men in this state. Some of the men attending the sexually transmitted diseases clinic in Western Australia suggested that they generally give false names or only a first name due to insecurity regarding the potential use of clinic files (Western Australia 1988).

In Tasmania, this pattern is repeated; however, in this state the situation has been worsened by highly placed medical practitioners and politicians who have made anti-homosexual statements. The prevailing view in this state is that homosexual men are reluctant to admit their status and would prefer not to be tested for AIDS in Tasmania. This environment ensures that health promotion information is not freely distributed (Australian Federation of AIDS Organisations 1989, p. 21).

Public Opinion

In Australia, the use of opinion polls to determine the views of the populace on a particular subject has become increasingly popular. The results of a nationwide survey on homosexuality conducted by Wilson and Chappell in 1967 indicated that the majority of respondents disapproved of the legalisation of male homosexual activity between consenting adults (Wilson & Chappell 1968, pp. 7-17). Prior to the decriminalisation of the homosexual act in

South Australia in 1974, the Morgan Research Group conducted a nationwide survey to gauge public attitudes to this proposed change in the law. The results of the survey showed that 54 per cent of Australians supported homosexual law reform, while only 20 per cent believed that 'homosexuality' should be illegal (20 per cent were undecided). In 1989, the same survey was repeated by the Morgan Research Group with the results again indicating that the majority of respondents (58 per cent) believed that homosexual acts between consenting adults in private should be legal. (Thirty-four per cent believed it should be illegal and 8 per cent were undecided). Given the fact that the 1974 survey preceded the advent of AIDS, it appears that the incidence of this disease is not as high profile a concern in the community as some opponents of law reform would have us believe (Queensland 1990, p. 15).

Changing the Law

Passing laws is easier than trying to alter people's behaviour by tackling their attitudes. Old prejudices and attitudes take some years to change. In fact, in the states where legislation has been changed the delay is apparent; disadvantage is still experienced by homosexuals. New attitudes are needed; hopefully making the appropriate changes to the law will facilitate an environment in which these can develop.

Jurisdictions yet to institute, or in the process of instituting, law reform regarding homosexual acts should consider the following guidelines: provisions involving carnal knowledge against the order of nature and gross indecency between males should be repealed; there should be no inconsistency between 'Age of Consent' provisions involving homosexuals and heterosexual intercourse; and the enforcement of less obvious mechanisms which utilise general provisions circumscribing behaviour in public must be reanalysed and police instructed as to what is acceptable use of power and what is misuse.

Generally, homosexual law reform in English-speaking countries has followed the form of decriminalising homosexual acts between consenting adults in private. There will always be a need to retain provisions to protect children from sexual molestation, it is not the purpose of homosexual law reform to remove this protection. Homosexual law reform is not just a simple matter of removing those sections from the Criminal Code that proscribe homosexual activity—provisions still need to be made in the Code to protect victims of non-consensual homosexual acts. To this end, certain sections of the Code need to be gender-neutralised so that they can apply equally to males and females.

There are still serious problems experienced in states which have already implemented changes. To resolve these problems and avoid the absurd situation where the legality of a person's sexual preference—or the expression of this sexual

preference—depends on nothing more rational than the state or territory in which the individual concerned happens to reside, there needs to be some consistency in reform throughout Australia. In addressing these issues, states and territories need to consider the areas where inconsistency persists; primarily the regulation of the 'Age of Consent' and the public/private distinction.

Age of Consent

There should be no difference in the 'Age of Consent' for males and females in relation to heterosexual or homosexual acts. The Queensland Psychologists for Social Justice indicated in their submission to the Parliamentary Criminal Justice Committee (Gallois, North & Raphael 1990) that research and clinical experience support the proposition that young males start sexual activity earlier and are more likely to have more sexual partners than girls at any given age through the teenage years. Thus, to legislate differently on the 'Age of Consent' for homosexual acts ignores the realities of sexual expression and sexual identity formation. In a letter to the Premier of Queensland, the Honourable Wayne Goss, several Queensland academics argue further:

> . . . that any distinction made in age of consent for homosexual activity and the age of consent for heterosexual activities would be discriminatory and prejudicial . . . The dangers exist in that any differentiation, in age of consent . . . further reinforces negative social constructions and public opinion. Such legislative differentiation will ensure that young homosexuals in Queensland will continue to face the monumental task of developing a positive self identity and acceptance of social responsibility in relations to AIDS and public health (personal communication to the Honourable Wayne Goss from Gallois, North, & Raphael 1990).

The recommendations regarding 'Age of Consent' finally proposed by the Queensland Parliamentary Criminal Justice Committee concur with these views.

Public and private distinction

South Australia and Victoria make no mention of this in their legislation controlling homosexual conduct. In those states, a homosexual offence is only an offence in the same circumstance as a heterosexual act is in public. There is no reason that it should be otherwise.

Although homosexual law reform has had a high profile on the recent political agenda, and changes—in legislation and public opinion—are in train, there is still a long way to go. Achieving consistent law reform in the last frontiers, Queensland and Tasmania, is a significant step in alleviating legislative discrimination against the homosexual community in Australia.

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Gambling in Australia

SUSAN PINTO AND PAUL R. WILSON

Gambling has a crucial and distinctive place in Australian culture. Since the first colonial settlement, gambling has been widespread throughout the country and many Australians are proud of their reputation as a nation of people who will 'bet on two flies on a wall'. Almost 90 per cent of Australians gamble—anything from a sweep on the Melbourne Cup to cock fighting or frog jumping in remote parts of Australia. Despite restrictive legislation and strong opposition from those who were determined to eradicate the 'evils' of gambling, the Australian passion for gambling has survived.

Each state and territory in Australia has a proliferation of various forms of gambling (*see* Table 1 for Australian per capita gambling expenditure). Gamblers outlay millions of dollars on horses, bingo, lotteries, soccer pools, Super 66 and casinos. On a single Saturday, gamblers will spend at least $80 million to satisfy their craving for gambling (Lesser 1989, p. 69). State and territory governments are, in turn, able to obtain millions of dollars in revenue from gambling proceeds (*see* Table 2).

Despite the legitimacy and popularity that many forms of legal gambling enjoy in Australia, illegal gambling continues to flourish. In various Australian cities, there is an abundance of illegal starting price (SP) bookmakers, as well as places where two-up, pakapoo, mahjong, cards, billiards and backgammon are played. The failure of regulatory and law enforcement agencies to control the almost obsessive determination of gamblers to partake in illegal gambling has been documented by various royal commissions and inquiries, including the Moffit, Woodward, Costigan, Wilcox and Stewart Royal Commissions and the Connor and Fitzgerald Inquiries. However, these commissions and inquiries have found that it is not only illegal gambling which is associated with crime, but some forms of legal gambling are also associated with alarming levels of criminal activity.

The focus here is on both legal and illegal gambling in Australia. We begin by examining popular forms of gambling

and their legal status in each state and territory. We then discuss legislation and policies relating to gambling in Australia. The report goes on to examine problems associated with both legal and illegal gambling. We conclude with a discussion of policy implications and areas for future research and evaluation.

Table 1

Total Real Australian per capita Gambling Expenditure*

Year	Total Real per capita Racing Gambling Expenditure	Total Real per capita Gaming Expenditure	Total Real per capita All Gambling Expenditure
	$	$	$
1972-73	25.24	26.83	52.07
1973-74	25.42	28.68	54.10
1974-75	27.62	34.31	61.92
1975-76	26.57	36.49	63.06
1976-77	25.36	35.86	61.22
1977-78	25.15	35.79	60.94
1978-79	24.35	37.08	61.44
1979-80	23.87	38.61	62.48
1980-81	23.25	39.78	63.03
1981-82	22.81	39.71	62.51
1982-83	21.49	37.95	59.45
1983-84	22.51	38.29	60.81
1984-85	23.36	39.76	63.12
1985-86	23.88	40.45	64.33
1986-87	23.00	42.74	65.74
1987-88	23.59	43.14	66.73
1988-89	24.57	47.27	71.84

* dollar value deflated to 1972-73 dollars.

Source: Tasmanian Gaming Commission in association with Peter Bennett and Associates Pty Ltd 1990, *Australian Gambling Statistics 1972-73 to 1988-89*, Hobart.

Popular Forms of Gambling in Australia

Although there is considerable similarity between the legislative and social structures between the states and territories, there is considerable variation in gambling legality and illegality. In each state and territory the legal status of popular forms of gambling is as follows:

Table 2

Total Real Government Revenue from all Racing Gambling and Other Gaming Operations* (All States and Territories)

Year	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
	$m	$m	$m	$m	$m	$m	$m	$m	$m
1972-73	98.455	37.495	15.758	8.070	6.565	1.926	n/a	0.138	168.407
1973-74	100.803	42.202	17.004	8.840	6.956	2.832	n/a	0.164	181.419
1974-75	115.002	50.983	18.906	9.457	8.204	2.789	n/a	0.186	209.839
1975-76	122.007	59.765	19.132	10.167	8.950	2.542	n/a	0.171	226.919
1976-77	118.141	66.804	18.613	10.345	8.817	3.335	n/a	0.367	230.367
1977-78	117.169	71.017	17.489	10.081	9.305	3.597	n/a	0.520	232.915
1978-79	118.938	71.657	17.876	10.121	11.820	4.149	0.408	0.550	239.052
1979-80	130.342	75.731	17.600	9.745	11.743	4.489	0.854	0.559	254.408
1980-81	137.661	73.473	17.732	10.169	10.450	4.916	1.083	1.021	259.748
1981-82	136.924	75.577	22.755	10.335	10.450	6.309	1.383	1.856	269.015
1982-83	143.451	70.443	24.198	12.234	10.281	6.021	1.478	2.565	273.622
1983-84	150.226	76.681	24.807	15.290	12.127	6.508	1.722	2.796	293.092
1984-85	150.930	84.842	34.496	17.172	13.421	6.731	1.400	3.152	315.394
1985-86	154.408	80.977	35.641	17.924	16.581	6.478	1.726	3.416	320.177
1986-87	151.809	83.720	35.196	18.172	18.385	6.519	1.553	3.310	321.736
1987-88	152.378	88.556	35.599	26.863	19.927	6.721	2.188	3.706	335.960
1988-89	157.130	87.539	37.443	26.500	22.255	6.747	2.697	4.194	344.500

* dollar value deflated to 1972-73 dollars.

Bookmaking

The first form of gambling institutionalised in Australia was horse-racing. By the 1850s, every capital city in Australia had established turf clubs. By 1930, betting was permitted at racecourses with private licensed bookmakers and the totalisator. After 1960, state governments all followed Victoria's example and introduced government operated Totalisator Agency Board (TAB) off-course agencies. Off-course starting price (SP) bookmaking has remained illegal in all jurisdictions under any circumstances, although the Northern Territory has off-course licensed bookmakers at Groote Island.

Lotteries

Government-operated lotteries first appeared in Australia in the 1920s. Lotteries are permitted in all jurisdictions and most have a variety of different types of lotteries, some government owned and operated and some privately owned and operated. Governments have a firmly established authority over lotteries and are able to obtain high rates of taxation from commercial operators of lotto and pools, for example in return for the necessary operating licences (McMillen & Eadington 1986, p. 183).

Poker machines

Legal poker machines were first permitted in registered clubs in New South Wales in 1956, although illegal machines have operated in Australia since the 1900s. Poker machines were legalised in the Australian Capital Territory in the 1970s. In the Northern Territory, poker machines are permitted only in licensed

casinos. No other state permits poker machines. Queensland is expected to legalise poker machines in clubs and hotels in mid-1990.

Casinos

The first legal casino was opened in Hobart in 1973. Three others followed in Launceston, Alice Springs and Darwin between 1979 and 1982. In the early 1980s, four more appeared in Surfers Paradise, Townsville, Perth and Adelaide. Although casino legislation was passed in New South Wales in 1986, the future of Sydney's casino is yet to be resolved. Similarly, a casino has been approved for the Australian Capital Territory, but its future is yet to be determined. Only Victoria has rejected casinos altogether, deciding the risks involved were significant (Victoria 1983a).

Two-up

Two-up became accepted as a form of national sport during the First World War and has since become part of our national legend. An amendment to the *Gaming and Betting Act* has made two-up legal in New South Wales on ANZAC Day.

In Victoria, two-up is illegal and, according to police, is not tolerated under any circumstances. In Queensland, two-up is illegal, but gambling legislation is to be reviewed as a result of recommendations made by the Fitzgerald Inquiry.

In Western Australia, a form of two-up is legal in the Burswood casino and outside a 200 kilometre radius of the casino. In Kalgoorlie, police regulations permit two-up to be run by two people, each of whom has been named in the regulations. In other towns in Western Australia, two-up can be played only if a permit to do so is obtained.

In Tasmania, South Australia and the Northern Territory it is also legal for two-up to be played at legal casinos. Following amendments to the *Racing and Gaming Act* (Tas.), two-up can now be played legally on ANZAC day in RSL clubs. In the Australian Capital Territory, official police policy does not allow for two-up to be played.

Gambling Legislation and Policies

Historically, objections to gambling were based on a mixture of paternalistic and moralistic considerations. During the 19th and 20th centuries, governments adopted a more liberal stance towards gambling laws and created a wide variety of opportunities for legal gambling. Government legislation and policies towards gambling gradually changed from prohibition of most forms of gambling to support for commercial gambling for revenue purposes and casino development. Changing social attitudes and the development of tourism and leisure service industries increasingly led to the perception of gambling as a source of positive entertainment (Eadington 1987, p. 11).

Legislation dealing with commercial gambling prior to the 1960s catered essentially for an existing market, such as on-course bookmakers. After the 1960s, legalised forms of gambling such as

TABs, lotto, pools and casinos were vigorously promoted by governments. In recent years, Australian governments have increasingly welcomed the involvement of large corporations in Australian gambling, thereby moving towards the privatisation of gambling. The introduction of casinos, in particular, exemplifies these trends (McMillen 1987a, p. 2).

Responsibility for the control of legal and illegal gambling is primarily a state government responsibility. Federal government controls are limited to the investigation of organised crime and international investment. The practical implementation and administration of much of Australia's gambling legislation and policies is left up to numerous 'semi-autonomous' statutory bodies—boards, commissions, tribunals and committees (McMillen & Eadington 1986, p. 175). The result has been the emergence of a haphazard, unwieldy semi-government structure that makes it difficult, if not impossible, to ensure effective parliamentary supervision. Differences of opinion on policy issues, interdepartmental rivalry, political disputes and an absence of coordination between the various gambling bodies means that administrative efficiency is considerably weakened (McMillen 1986b, p. 67). Policy decisions are generally kept out of the reach and scrutiny of public representatives. Some agencies report on their activities to Parliament, others do not. Financial reports are difficult to obtain and even when available they are often so superficial that they are meaningless (McMillen 1986a, p. 5).

McMillen (1986b) argues that problems go beyond the structure of government bodies. The privatisation of gambling operations has severely limited the capacity of governments to control and regulate aspects of legal gambling. The collaboration of private gambling operations and public agencies has undermined government autonomy and action and resulted in imbalances between economic and political power, facilitating control by powerful economic groups (McMillen 1986b, p. 68).

Gambling and Crime

There is little doubt that certain types of gambling in Australia are connected with crime. The Woodward (New South Wales 1979), Stewart (Australia 1986), Costigan (Australia 1984) and Moffit (New South Wales 1974) Royal Commissions, the Fitzgerald Inquiry (Queensland 1989), the New South Wales and Commonwealth Joint Task Force on Drug Trafficking (Australia 1983), as well as various others, have revealed that there are strong connections between organised crime and illegal gambling in Australia. McCoy (1980, p. 200) has estimated that between 1976 and 1977 the cash flow from illegal gambling in New South Wales was vast—SP bookmaking, $1,420 million; illegal casino gambling, $650 million; and poker machine 'skimming', $90 million. Casino bribe payments to senior politicians and police were estimated at $1.4 million per annum, making illegal

gambling, by the late 1970s, an enterprise capable of wielding considerable influence in New South Wales.

More recently, Hickie (1985, p. 178) has speculated that illegal gambling profits provide a major source of capital for organised crime, enabling criminals to maintain their involvement in the drug trade and giving them the necessary funds for the corruption of public officials.

A discussion of criminal activity associated with both legal and illegal gambling follows.

Casinos

Casinos, both legal and illegal, have traditionally been linked with crime. British and American experience has revealed that legal casinos present authorities with problems such as hidden ownership, tax evasion, laundering of money, cheating and loan sharking. Legal casino gambling is particularly susceptible to crime and corruption because criminals are able to disguise their interests through the use of nominee shareholders holding shares on trust. Law enforcement and regulatory agencies in Britain and the United States have generally been unable to eradicate hidden ownership, questionable sources of finance and skimming of casino profits (McMillen 1987b, p. 57). Customers of casinos have also been known to employ diverse methods of cheating.

In Australia, casino controls are among the most stringent in the world and organised crime which has undermined American casino operations is not thought to be as prominent here (Australia 1988, p. 148). Certain events of the last few years have, however, suggested that government controls imposed on casino operators have failed to anticipate some issues. The trend toward bigger casinos with experienced overseas partners has increased potential for internal corruption. Despite promises of thorough investigation of casino applicants, there is no guarantee that the various officials involved possess the necessary experience and knowledge of the casino industry to make informed judgments. Public scandals which erupted over the Sydney casino in 1986—when the New South Wales government failed to follow normal licensing procedures and overlooked police objections to one of the applicants—raised concerns regarding criminal association and the corruption of certain individuals in the casino industry (McMillen 1987c, p. 23).

Despite the fact that legal casinos operate in most jurisdictions, illegal casinos undoubtedly still exist. The Committee of Inquiry into Gaming in New South Wales named the location of several illegal casinos in New South Wales (New South Wales 1985). Relationships between organised crime and Sydney's illegal casinos have been documented by the New South Wales and Commonwealth Joint Task Force on Drug Trafficking (Australia 1983), *The Age* tapes and the interpretation of them by the Stewart Royal Commission (Australia 1986). It was revealed by these inquiries that a complex web of relationships existed between Sydney's notorious card clubs and senior drug traffickers. It was also revealed that protection of criminals in the 1970s was provided by an informal committee of corrupt police officers responsible for the enforcement of gaming laws, senior organised crime figures and senior casino operators. The

Woodward Royal Commission (New South Wales 1979) and similar inquiries have documented connections between illegal casinos and money laundering.

Poker machines

The Board of Inquiry into Poker Machines (Victoria 1983b) found there is significant criminal activity associated with poker machines. The Inquiry heard evidence which revealed the existence of loan organisations in Sydney which customarily made loans to gamblers at rates of interest well above 100 per cent. It also revealed that serious problems existed among some clubs with respect to tax evasion, player cheating, theft by management or staff and possible kickbacks or illegal commissions paid by poker machine manufacturers for placement of their machines.

Illegal bookmaking (SP)/race fixing

The race track, it appears, is a great meeting place for criminals. The Costigan Royal Commission (Australia 1984), the Connor Inquiry (Victoria 1983), the Moffit Royal Commission (New South Wales 1974) and the Fitzgerald Inquiry (Queensland 1989) revealed that a vast network of SP bookmakers exists throughout Australia. They found the monetary flow in the industry huge, and as such has the potential to finance many other illegal activities. Mr Justice Moffit warned that there was evidence to indicate that SP syndicates were in contact with major heroin smugglers and domestic drug distributors (New South Wales 1974). Connor estimated that the annual turnover for SP bookmaking was $1,800 million in New South Wales and $1,000 million in Victoria. Connor has said of illegal bookmaking:

> Illegal bookmaking is a multi-million dollar industry run by people who can get up to forty or fifty telephones and who, if their telephones are closed down, can get them in new premises a week later. Illegal bookmakers prosper, making millions of illegal dollars, simply because they do not pay income tax or betting taxes (Victoria 1983a, vol. 2, ch. 14).

According to Bernard Bongiorno, counsel who assisted the Victorian Inquiry into Poker Machines, horse races are regularly rigged to eliminate the risks of some bookmakers losing at all. It is not uncommon for certain bookmakers towards the bottom of the pyramid to be 'required' to hold money on horses they know are going to win certain races. The penalty for failing to do so might be loss of business or, not uncommonly, physical violence or the threat of it (Bongiorno 1985, p. 21). One recent instance of race-fixing, the infamous Fine Cotton Affair, occurred in 1984 when Bold Personality was substituted for Fine Cotton at Eagle Farm in Brisbane.

Aside from the illegality of SP bookmaking and the crime which it generates, there is also a massive tax evasion industry operating. The Connor Inquiry found that if even half of the estimated illegal bookmaking in Victoria could be channelled into the legal state TAB the increased revenue from taxation would amount to $40 million per year (Victoria 1983a).

Compulsive Gambling

The issue of compulsive gambling is important in a discussion of problems associated with gambling in Australia. Although there is an absence of reliable information on the prevalence and impact of excessive gambling on Australians (Blaszczynski 1987, p. 308) it is generally accepted that problems associated with excessive gambling may be severe and costly to both the individual, significant others and the community in general. The work of McConaghy, Armstrong, Blaszczynski and Allcock (1983) has demonstrated beyond dispute that excessive gambling can be associated with complex personal and social problems.

Surveys (Kallick et al. 1979) and clinical reports (Moran 1970) have shown that there is a positive relationship between participation rates and the number of gambling outlets. Blaszczynski (1987, p. 307) has argued that it is logical to assume that, as opportunities to gamble are expanded and become more accessible, the more likely it is that people will indulge. He has further argued that a logical extension of this is that the higher the proportion of the community that gambles, the more likely it is that problems will develop.

Blaszcyzyanski & McConaghey (1987, p. 263) suggest that their discussions with several government bodies and private organisations gave rise to the impression that an attitude of ignorance and indifference prevails as to the effects of excessive gambling on individuals, their families and society. Australian governments, unlike governments in the United States which have initiated funded treatment centres for pathological gamblers, have failed in their social responsibilities and have given limited consideration to treatment programs and counselling services for compulsive gamblers (Blaszcyzynski 1987, p. 313).

Policy Implications/Areas for Future Research

Having identified some of the problems associated with both legal and illegal gambling in Australia it is appropriate to outline policy implications and areas requiring future research and evaluation.

Legal gambling

It is clear that more effective control and supervision of legal gambling is required. Suggested models of improved regulation have been provided by the Western Australia (1984) and New South Wales (1985) commissions of inquiry into gambling. McMillen (1986a), while acknowledging the problems posed by constitutional issues and opposition from gambling bodies who will undoubtedly defend their specialisation, has summed up a new approach to gambling to include:

- A framework for gambling policies and regulation. For example, a Gambling Act, at state or federal level.

- Proper community democratic participation at all levels of the policy process.
- Improved structures of ministerial control and routine patterns of negotiation and regulation.
- A permanent representative body of public review. This could be modelled on the Gambling Advisory Board of the British Home Office.
- Gambling revenues could be used to fund welfare and community initiatives to deal with the social effects of gambling and compulsive gambling.

While consideration should indeed be given to these proposals, it is important that extensive evaluation of their merits and disadvantages be conducted prior to implementation. A requirement would be a comprehensive review of how such an approach could be made operational, including research based on overseas experience on the suitability of suggested proposals for Australia. In order to assess the type, location and extent of services that should be established for compulsive gamblers, research on the incidence and prevalence of compulsive gambling in Australia is also required.

Illegal gambling

It is clear that current practices and policies to control widespread illegal gambling in Australia are inadequate. A comprehensive review of gambling policies, at state or federal level is necessary. This would include a review of laws criminalising gambling, law enforcement procedures and penalties for breaches of gambling laws.

To date, there is a dearth of reliable Australian research on the effects of legalisation or decriminalisation of individual forms of gambling, including benefits and disadvantages for both individuals and the community. Prior to the implementation of legislative or policy initiatives it is important that research and evaluation be conducted on these areas. The *Fitzgerald Report*, while acknowledging the inadequacy of current options to control illegal gambling, stressed the importance for law reform to be approached in a comprehensive considered way:

> Until a comprehensive review is undertaken, narrowly focused piecemeal action including expanding the legal means of gambling is inadvisable (Queensland 1989, p. 195).

Conclusion

It is evident that gambling, whether legal or illegal is difficult to regulate and control. The need for regular and routine monitoring of gambling policies is critical—both to eradicate gambling that is organised and monopolised by criminals and to reduce the social

casualties that arise in both legal and illegal gambling. Governments are confronted with the difficult task of attempting to rectify existing problems and develop and implement innovative and workable policies and legislation. However, this task will not adequately be dealt with until more extensive research and evaluation in the field of gambling is undertaken.

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'Body Crime': Human Organ Procurement and Alternatives to the International Black Market

BORONIA HALSTEAD AND PAUL R. WILSON

Developments in human tissue transplantation over the past 15 years have generated much controversy about the ownership of the body, the relationship of the individual to the state, the role of governments and markets, and the legal definition of death. The success of human tissue transplantation has thrust what was previously considered as the realm of science fiction into the 'here and now', bringing with it the potential for macabre commercial exploitation of uninformed poorer citizens in the Third World.

In this report, human organ procurement policies will be reviewed to assess the latent potential for criminal solutions to the problems of acute shortage in organ supply to meet the desperate demand. Shortage of kidneys for transplant, for example, presents the choice of life encumbered by dialysis treatment in developed countries, or death where no dialysis treatment is available. In these circumstances, people may be prepared to take extraordinary and sometimes criminal measures to obtain an organ for transplant, particularly where death is the only alternative. A variety of strategies to increase the supply of organs for transplant will also be assessed.

Of particular interest are the global consequences of decisions which curtail or limit the supply of organs in developed countries in the face of inelastic demand in those countries. Such policies

may have the unintended effect of contributing to the proliferation of black markets in human organs.

Human Organ Procurement for Transplant

While considering organ procurement and distribution policies in general, this report will focus on kidney procurement in particular. Kidney procurement is of special interest in examining the potential for criminal or unethical procurement because kidneys may be obtained from living or dead donors. Moreover, they are one of the most commonly used organs in transplantation surgery. Current technology also permits the transplantation of corneas, skin, blood, bone cartilage, blood vessels, intestines, hormone producing glands (pituitary, thyroid, parathyroid, adrenal, testes, ovary), ear, liver, heart, lung and pancreatic tissue.

Recent improvements in immunosuppression and techniques for the preservation of organs have increased the success rate for organ transplants, resulting in greatly increased demand for human organs, particularly kidneys. As technology improves, it is likely that demand will increase rapidly, placing ever greater strains on an inadequate supply. Other organs, such as livers, hearts and lungs are also likely to be increasingly in demand as transplants of these organs become more routine. At present, supply of organs is the limiting factor in determining the total number of transplants of any sort.

Kidney Transplants

For people with end-stage renal disease, successful kidney transplantation offers the best chance for full rehabilitation and long-term survival. Transplantation is also the most cost-effective form of renal replacement therapy. It costs approximately A$30,000 for kidney transplantation, plus ongoing costs of up to A$10,000 per annum for drugs to counteract organ rejection. This compares favourably with A$28,000 per annum for hospital dialysis treatment (Gordon 1990, personal communication). However, costs may vary considerably depending on many factors, including the health of the patient.

The immediate and short-term risks of complications from living donor nephrectomy (removal of a kidney) are those of any major operation. The quality of life and life expectancy of healthy kidney donors is not impaired as the appropriate functions can be performed by one kidney alone, though the donor loses the renal safety net he or she was born with.

Strategies for Organ Procurement

A number of methods for developing an increased supply of organs for transplant from cadaver or living donors are summarised below:

- Encourage altruistic cadaver donation of organs upon death; willing citizens would 'opt in', for example, through a donor card system.
- Presume consent to cadaver donation of organs upon death unless otherwise declared; unwilling citizens would need to officially 'opt out' of donation.
- Encourage altruistic tissue donation from live unrelated or related donors.
- Encourage rewarded tissue donation from live unrelated donors, for example, offer compensation for inconvenience in the form of tax concessions.
- Allow market mechanisms to regulate the supply of organs through organ commerce.
- Use tissue from aborted foetuses—currently only used experimentally for the treatment of Parkinson's disease, Alzheimer's disease and diabetes. This issue has given rise to acrimonious debate.

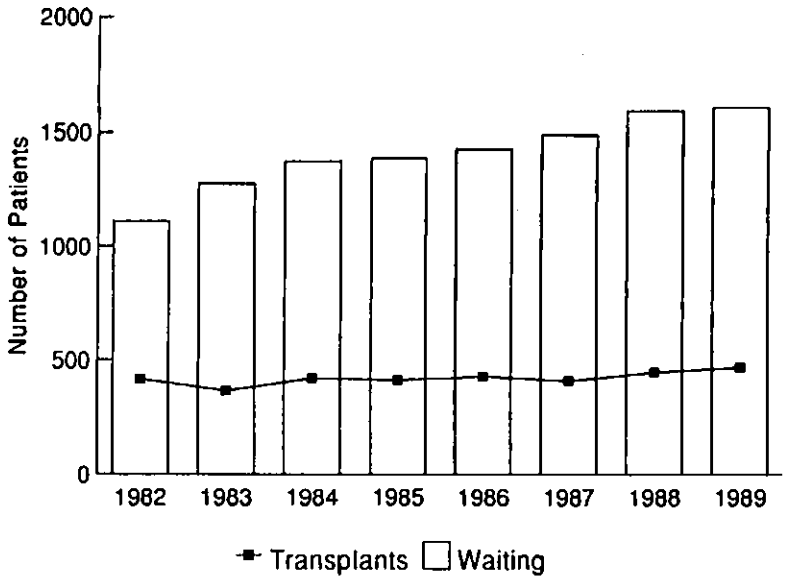
Organ Procurement in Australia

Following the publication of the Australian Law Reform Commission Report No. 7, *Human Tissue Transplants* in 1977, Australian states and territories enacted legislation based on the recommendations contained therein. The supply of organs in Australia is largely dependent upon the voluntary altruistic donation of cadaver organs, or 'opting in'. No financial inducements may be offered to donors except to defray expenses. Cadaver donation of organs is encouraged through community education campaigns. The supply from this source is vulnerable to shifts in public opinion due to adverse publicity and other factors, such as reductions in the road toll or the incidence of head injuries.

The present donor card/drivers licence system is not totally effective in implementing the potential donor's wishes, as next-of-kin may object to the extraction of organs. Although not legally required, consent of next-of-kin is sought to avert adverse publicity of the donor process.

Figure 1

Patients awaiting Kidney Transplants, Australia, 1982-89



Source: ANZDATA Registry, Adelaide.

Campaigns to increase public awareness of the need for cadaveric organ donation have been conducted by agencies such as the Australian Kidney Foundation and the Australian Red Cross. Intensive care staff and doctors have also been targeted to increase their awareness and highlight ways in which they can assist. The success of these campaigns in increasing the rate of organ donation has not been proven, although it has been shown that an increase in community awareness of need has resulted (Thomson 1990, personal communication).

Australia's current cadaver retrieval rate of 14 per million population may be compared with the retrieval rate of 24 per million population for Oxford in England, which also has an 'opting in' or presumed non-consent policy, though this difference may be partly explained by the more localised and well-informed population in Oxford (Gordon 1990, personal communication). In Australia, at present, less than 3 per cent of road accident victims become organ donors. Potentially, at least 8 per cent would be suitable organ donors. Many more would be suitable corneal donors. The annual road toll is around 3,000.

People over 18 years of age may donate regenerative and non-regenerative tissue, providing informed consent is obtained. Persons under the age of 18 years may also donate regenerative tissue but in more restrictive circumstances. However, of the 470 kidney transplants performed in 1989, only 39 were from live donors, two of whom were unrelated live donors. Of course,

some tissue is not obtainable from live donors, such as hearts and lungs, except from patients with lung disease who are concurrently undergoing heart/lung transplant, whose own heart may be quite healthy and available for transplant.

Shortage of Organs in Australia

The number of people requiring kidney transplants in Australia is about 2,000 at the present time, with about 400 transplants performed each year (*see* Figure 1). The average waiting time for a kidney transplant is three years. Fifty patients with liver disease, which is potentially treatable by transplants, die each year. Some 20 per cent of patients awaiting heart/lung transplants die because organs are not available. In New South Wales alone, 300 people are waiting for corneal transplants.

The Australian Red Cross knows of only two or three cases in which Australian patients have travelled overseas for kidney transplants. Because of the need for follow-up treatment, such cases would become known to transplant service providers. No cases of organs being brought into the country from anywhere apart from New Zealand are known of. Some patients from the Asian-Pacific region have undergone transplants from living related donors in Australia.

Factors limiting the supply of organs, given the current organ procurement policy, include the hesitancy of hospital staff to burden grieving relatives with a request for organ donation from a dead loved-one. In many such cases death is unexpected, due to road trauma or cerebral haemorrhage. Relatives may be so shocked and overwhelmed that they are simply incapable of making any reasoned decision. There is limited public understanding of recent changes in the legal definition of death to include brain death. Because cardio-pulmonary function can be maintained artificially after brain death, the decision is made more difficult for relatives when the body of the deceased remains warm and breathing. Additionally, families may not have discussed their preferences about organ donation beforehand.

International Organ Shortage

At present, no country is able to meet the demand for organs adequately, and waiting lists are growing at a faster rate than the supply of organs. The United States, Britain, and Canada all depend on voluntary, altruistic donation of organs for transplants. Most developed countries have cadaver organ procurement programs which require high cost intensive care facilities to maintain brain-dead patients until arrangements can be made for transplantation. These must be surplus to the needs of living patients. It costs approximately A$2,500 per day to provide life

support for a donor body (Health Issues Centre 1990, p. 19). In addition, an efficient centralised means of distributing and matching organs with recipients is essential to ensure equitable organ allocation.

Some developed countries have not developed an extensive cadaver organ procurement network for cultural reasons. For example, in Japan, Shinto religion does not permit mutilation of the body after death and it is believed that the dead body is impure and polluted. From 1964 to 1988, three-quarters of kidneys donated came from live donors, mostly parents of the recipient. Consequently, many Japanese patients seek kidney transplants on the international market.

Third World, wealthy patients seeking organs have fewer options than patients in the developed world, due to the lack of a cadaver organ procurement program and dialysis treatment facilities. This means the search for a suitable live donor becomes a matter of life and death. This situation would provide the most ethical surgeon with a great dilemma. 'Either I buy, or they die', said Indian surgeon, K. C. Reddy paraphrasing the dilemma (Bailey 1990, p. 367).

As a consequence of bans on the sale of organs in Britain, North America, Canada and most European countries, Bombay, Hong Kong, Cairo and Manila have become the capitals of the kidney transplant trade. Here business can flourish unencumbered by restrictions applying elsewhere, although the standard of care of recipients and donors may not be ideal. Some of these centres employ surgeons who have been trained in the elite medical schools of Europe and North America, however.

The viability of organ trade will be enhanced by improvements in organ preservation techniques which have increased the length of time organs can remain fresh outside the body. Kidneys up to 72-hours-old may now be transplanted (Bowcott 1990, p. 4).

The international shortage has led to the proliferation of the unethical and criminal activities of the black market. Already transplant agencies speak of victim donors, referring to the practice of obtaining organs in Third World countries from impoverished citizens without informed and freely given consent.

Unscrupulous Organ Procurement

From time to time, organisations such as Interpol investigate allegations that children from the Third World are murdered for illicit organ transplants. A recent instance referred to allegations of baby trade in the Brazilian province of Bahia, in which children sent to Europe, ostensibly for adoption, were later murdered, 'and their kidneys, testicles and hearts sold for between $40,000 and $100,000'. (*Sydney Morning Herald*, 26 September 1990 referring to an article from *The Guardian*.) The report also claimed that 'such a trade is known to exist in Mexico and Thailand'.

It was reported in the London *Daily Telegraph* that, in Hong Kong, one could purchase kidneys obtained from felons executed in Canton in the People's Republic of China for A$11,000. Neither the prisoners nor their families were consulted. Two major Canton hospitals perform transplants of the kidneys. 'The transplants are not unethical as the criminals are making use of their last virtue', Miss Ho Mei-sim of the Wei Kui Agency said (*The Herald*, 13 December 1988).

In the Philippines where organ commerce is permitted, it is possible for prisoners to have their sentences shortened in return for kidney donation (Health Issues Centre 1990, p. 15).

In 1989, four Turkish donors were paid A$5000-A$7000 each to let a kidney be removed and transplanted into wealthy patients at the private Humana Hospital in London. The donors were all healthy but impoverished: a peasant farmer finding it hard to feed his four young children; a twenty-dollar-a-week print worker who wanted to pay for a hip operation for his daughter; a part-time dressmaker left to raise two sons who wanted the money to pay rent arrears; a thirty-dollar-a-week driver wanting to finance treatment for his crippled father (Parry 1990, p. 4).

The Turkish brokers involved in the above case were alleged to have received much larger sums, making a substantial profit. Subsequently, the main broker in Turkey was found guilty of 'cheating people of their body organs', gaoled for two years and fined A$300. The Harley Street physician involved was struck off the Medical Register and three surgeons had restrictions placed on their practice.

The defence in this case was that the foreign donors had all claimed to be related to the recipients, and thus met British live organ donation criteria. Several other cases of doctors being 'duped' by false claims about relationships between live donors and recipients have arisen. Legislation to outlaw organ sales was hastily introduced in Britain following the Turkish case.

The same Harley Street specialist was charged with professional misconduct over allegations of queue jumping: wealthy foreigners paid large sums of money to be treated before the other 3,600 National Health Scheme patients in line.

In another case just prior to the introduction of legislation prohibiting organ sales in England, a German count, Rainer Rene Adelmann zu Adlemannsfelden, styling himself as 'a specialist in legal loopholes', announced that he intended to set up a transplant kidney buying agency. His 'Organ Bureau' in Germany offered approximately A$54,000 for a kidney to people with bad debts, identified through bankruptcy notices in newspapers. 'Selling a kidney is the way back into solvency', he claimed. The transplants were to take place outside of Germany to avoid the law, his brochures said. He claimed to be able to sell more than 100 kidneys in a year, earning A$10,000 per transaction. Such activity was within German law in 1989. Similar opportunities for blackmailing people into donating kidneys are imaginable.

It has been reported that private British hospitals accepted consignments of kidneys from the United States because they were too old for use by American surgeons fearful of litigation. Thus it is possible that international trade in rejected organs could

flourish. There is also the potential for fraudulent claims about the age of organs and the health of donors, in attempts to secure higher prices for organs.

Outright theft of organs has been reported. In an account in an Indian journal, a young man was taken to hospital by a middleman for a 'stomach ache' but had his kidney removed while undergoing surgery. He was later 'rewarded' with money from the Middle Eastern recipient (Abouna et al. 1990, p. 919).

Accounts of exploitation of organ recipients in the Third World are a further source of concern. Middle Eastern renal failure patients who acquired kidney grafts in India and elsewhere sometimes returned with mismatched kidneys, acute rejection, sepsis or other medical problems. Some patients are required to bring excessive amounts of immunosuppressive drugs with them to some transplant centres in India and the Philippines. The surplus is then sold by the centres to increase profits (Abouna et al. 1990, p. 918).

The Growth of a Black Market

The question arises whether the black market in human body parts is linked to strict regulations based on ethical principles in some countries in the First World. These regulations limit the supply of a scarce resource in the face of desperate demand, thereby generating the potential for supply to be met by unethical and criminal activity in less developed countries in which regulation is more difficult.

Already American nephrologists are anticipating that patients who face extensive waiting times in the United States because they have, say, a rare blood type and/or who may have a short life expectancy, will seek kidneys on the international market.

Consider the analogy proposed by Swan (1982, p. 12) in which he suggests replacing consideration of human 'spare parts' with automobile spare parts.

> Suppose that by law the price of automobile parts were set at zero. For a while car repairers and panel beaters might rely on spares from scrapped cars (cadavers) and donations of non-vital parts from the owners of functioning cars to non-profit voluntary organisations like the 'Automobile Cross Society'. The supply of spares from General Motors and Ford, not being philanthropic organisations, would soon coagulate and congeal. At the regulated price of zero, an excess demand for spares would rapidly develop and the professional car strippers and spare parts thieves would conduct a profitable trade. A rapid growth in the black market for spares would be inevitable and no unattended vehicle would be safe from molestation (Swan 1982, p. 12).

While there are fundamental differences between the two products, it is obvious that apparent outcomes have disturbing similarities. As various means of increasing the rate of organ procurement are tried with limited success, second best options will inevitably be considered.

What is required is a successful strategy to overcome the inertia that inhibits potential donors from donating organs. This inertia arises out of distaste for considering the subject, doubts about their preferences, and fears of dismemberment after death. Various strategies have been proposed and some have been mentioned in this report. These range from attempts to modify prevailing social norms through publicity campaigns, so that it becomes the custom to donate rather than the converse; to providing financial incentives to compensate potential donors for the psychic cost of making a decision to donate.

Increasing the Supply of Organs

Market transactions involving human tissue have been prohibited in many countries because it is believed that the human body should not be allowed to become a commodity. It is believed that such transactions should be governed by norms of right or obligation, not market exchange. Similar non-market transactions include the acquisition and care of children.

Enhancing organ donation

It seems that the preferred option for organ procurement in the developed world is altruistic organ donation. Various means of enhancing this strategy have been tried, such as the Required Request legislation in the United States, which requires that the next-of-kin of all potential cadaver donors must be asked for consent to donate. This attempts to force hospital staff to overcome their reluctance to approach grieving relatives, and ensure that hospitals salvage organs from all potential altruistic donors. This strategy has not, however, had a marked impact on increasing the rate of organ procurement. Donor consent rates actually declined following the introduction of this policy (Gaber et al. 1990, p. 319).

Presumed Consent or Routine Removal

Opinion polls consistently find that most people do not object to donating their organs upon death, though only a small percentage actually get around to declaring their consent officially. Routine removal policies attempt to exploit this implied consent.

In 14 European countries, including France, Austria, Czechoslovakia and Denmark, legislation has been enacted that allows organ procurement from cadavers of all citizens, unless they have specifically given an indication that they do not wish

this to be so. This policy is known as presumed consent or 'opting out', as opposed to the policy of 'opting in'. There is often no legal requirement to seek the consent of next-of-kin for organ retrieval.

Opportunities for French citizens to opt out are provided on each hospital admission, either to the family or the patient. In France, the presumed consent policy seems to have met with public acceptance. A considerable increase in the number of transplants able to be carried out has resulted. The lack of a central registry of non-consenting citizens presents difficulties in some cases (Benoit et al. 1990, p. 320). Presumably this obstacle may be overcome in the future.

The presumed consent alternative was raised in Australia by Dr Neal Blewett, then Minister for Health, for consideration by a working party set up by Australian Health Ministers.

> I believe our country will be forced to move in a similar [presumed consent] direction unless our non-legislative efforts achieve a marked improvement to the current unacceptable shortage of available donor organs. (Blewett, Opening Address to International Congress of the Transplantation Society in Sydney, 14 August 1988).

Financial Incentives for Organ Donation

Organ commerce is seen as repugnant by most countries and was condemned by the World Health Organization at its annual meeting in 1989. Organ commerce is also condemned by the Transplantation Society; the American Society of Transplant Surgeons; and the European, the Canadian and the British Transplantation Societies. However, while organ commerce has been outlawed in the United States since 1984, the sale of frozen human sperm and bone has continued legally, with significantly little public outcry. It should also be acknowledged that already the medical/industrial complex, including surgeons and drug companies, profit greatly from transplantation technology.

It has been claimed that decisions to outlaw organ commerce were made partly as a reaction to 'substantiated horror stories' requiring an urgent policy response (Sells 1990b, p. 935). Many of the lurid accounts which have been advanced as arguments against organ commerce are in reality the inevitable result of shortage of supply in the international context. They are the result of a flourishing black market which, not surprisingly, has no medical or business ethical standards, and no means of regulation.

However, a creative approach to a regulated market may well be able to accommodate ethical ideals. For example, it is possible for altruism to be designed into a market mechanism, or to design out any potential for exploitation of poorer citizens.

The crudest form of market transaction involves cash-in-hand payment to donors, sometimes involving brokers. There is obvious potential for exploitation here. For example, husbands have forced their wives to sell kidneys in some cases in India.

Where broking agencies are involved, the donor may only receive a small part of the price the desperate recipient is prepared to pay, the broker pocketing the rest.

'Rewarded gifting' has been promoted as an alternative form of spot market, in which unrelated live donors could be fairly compensated with a non-transferable reward for the inconvenience and hospitalisation. Compensation could take the form of tuition subsidies for children, tax rebates, or payment of funeral expenses.

The development of some form of futures market in cadaver organs may offer the most palatable form of organ commerce. In an organised, publicly controlled future delivery market, an individual could contract to deliver body parts upon death, for financial consideration while alive and in good health. This would allow the decision to donate to be made rationally at a non-stressful time by the donor, who is also able to enjoy the reward. The scheme could be entered into by potential donors for life, or on an annual basis with the option to contract out at renewal.

Payment to the donor could be in the form of a contribution to a charity of the supplier's choice to maintain altruistic organ donation. Alternatively, positive advantage could be taken of public inertia. If the reward was, say, a reduction in compulsory health insurance fees, individuals who chose not to be organ donors could pay a higher premium than people who participated. This would allay, to some extent, the fear that exploitation of the poor is inevitable in organ commerce. The potential practical application of futures markets is expanded upon in the work of Hansmann (1989), and Schwindt and Vining (1986).

Arguments against organ commerce

Organ commerce has been outlawed in many countries, due to the potential for rich nations to benefit from the exploitation of poorer countries whose citizens are in such desperate poverty that they will sell parts of their bodies. Such citizens are unlikely to be able to take advantage of the technology themselves because health care priorities in Third World countries are dominated by the pressing issues of population control, communicable diseases, maternity and child care, and basic nutrition.

However, it has been argued that concern with the morality of the exploitation of the poor by the rich in trade in body parts is misplaced, as such exploitation goes on in so many other activities, reflecting the unequal distribution of wealth in the first place. It has been claimed that the 'increased risk of death to a healthy 35-year-old from giving up a single kidney is about the same as that involved in driving a car sixteen miles every workday' (Hansmann 1989, p. 72). Society already permits workers to undertake jobs with equal or greater risk, such as coal mining and construction work.

A commercial model of organ procurement from live donors may open doors to the exploitation of individual recipients and donors alike. Informed consent of live donors may not always be obtained from donors with little education. The practice of organ commerce involving underinformed live donors may spread to removal of other organs such as the pancreas and liver which will

have a fatal impact on the donor. If the price is high enough, buyers may ignore ethical and legal constraints.

In countries where organs may be bought or otherwise obtained from live unrelated donors, for example through a 'rewarded gift' program, the incentive to develop seriously a harvest program for local cadaveric organs for transplant is diminished. Ironically, the Middle East has the world's highest annual rate of traffic fatalities (about 250 per 1 million population) as well as one of the highest rates of renal failure, although cadaver procurement programs are not well established.

Organ Distribution

A desperately short supply of organs presents an onerous responsibility to transplant teams to ensure equitable distribution of a scarce resource.

Perceptions of inequity in organ allocation will have adverse effects on the public's willingness to donate organs. Studies have revealed that access to high-technology medical care is often dependent on race, sex and income level. Kjellstrand claims that in the United States, 'women and non-white patients had only two-thirds the chance of men and white patients to receive a transplant' (Kjellstrand 1990, p. 964). Obvious potential for bribery and corruption exists. Close scrutiny to ensure that due process is universally observed is essential.

Society will increasingly be faced with 'second-best' options in trying to balance the needs of people requiring organ transplants with the development of a workable method of acquiring an adequate supply of organs. In public policy terms, does the provision of financial incentives to encourage organ donation provide more freedom for the individual than presumed consent policies for cadaver organ procurement? Is the body priceless? Should society consider adopting both options? There is increasing pressure for society to make such choices, or continue to allow citizens to die for want of an adequate organ supply. There is also an international responsibility to increase and regulate organ supply to control the pressures which will lead to the exploitation of poorer citizens in an unregulated black market.

International agencies, such as the World Health Organization through its WHO/CIOMS Project on Organ Transplantation, are acutely aware of the already drastic impact the world shortage of organs is having on tissue procurement practices in poorer countries. This project has resulted in the preparation of a draft international code of guiding principles on organ transplantation. Richer countries, like Australia, which is already participating in this project, will need to take into account the international consequences of their organ procurement policies.

Inevitably, the transplantation of human organs will emerge as an issue that will concern not only health officials but also law

enforcement authorities. It is important that both groups begin to discuss the implications of policy developments in this area.

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