



the history  
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conference

THE HAWKE CENTRE

Adelaide 19-21 June 2008

SOCIAL INNOVATION, LAW AND JUSTICE

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# SOCIAL INNOVATION, LAW AND JUSTICE

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## Abstract

Criminal justice is an important topic for governments and voters. About ten per cent of Australia's national budget is concerned with public order and safety, a figure that does not include expenditure on private security or on the vast array of administrative regimes, such as the tax office and child-support agencies, that regulate our behaviour. One would have thought that this level of resource allocation would have ensured widespread debate on the most cost-effective and productive means to police and punish antisocial activity and crime. Sadly, the justice debate is usually facile and shallow, and based on the major political parties setting out their tough on crime credentials. Thus, political justice promises are typically narrowly focused, centred on more laws, more police, less discretion for those charged with the task of sentencing, longer sentences and more prison beds (without regard for overcrowded cells). Opposition parties rarely argue against these promises lest they be targeted as being soft on crime and thereby place their political survival in jeopardy. It is unusual to find informed discussion of alternative policy options that may better address crime and justice concerns and that may allow the public dollar to be spent more effectively. This is a political disconnect of major proportions, and a very costly one at that. What makes this situation even more remarkable is that there is an abundant and growing body of cross-disciplinary research evidence that highlights successful policy initiatives that could be implemented by policy makers. In this paper I explore this political disconnect, and consider the policy alternatives. I posit, amongst other things, that a high imprisonment rate is a failure of policy, not a badge of honour. There is nothing mutually exclusive about a low imprisonment rate and a low level of crime. Indeed, both targets can satisfy the concerns of voters generally and victims of crime more specifically.

## Introduction

Imagine the following exchange occurring in the current South Australian parliament.<sup>1</sup>

*The Speaker:* The Honourable the Premier

*The Premier:* Thank you Mr Speaker. I rise to announce a new goal that this government intends to meet in the next 12 months, that is, to reduce the imprisonment rate by 20 per cent in order to match the rate currently found in Victoria, and overseas in France, The Netherlands, Germany and Austria. We do this because we recognise that a higher rate of imprisonment has not made any difference to the level of violent crime over the last decade. We note the wildly disproportionate way in which Indigenous Australians are

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overrepresented (by ten times) in prison in this state, and the drain on state resources by the \$60,000 tag per prisoner paid by the state each year. We plan to make these reductions on the basis of the research evidence that indicates good rates of success of by exploring meaningful employment schemes in prison, by forbidding sentences of less than six months, by strong aftercare programs and by providing mental health and drug rehabilitation programs that follow world's best practice.

*The Speaker:* I recognise the Honourable the Leader of the Opposition.

*The Leader of the Opposition:* Thank you Mr Speaker. I applaud the Premier's zeal on this matter but I argue that he is setting his sights far too low. The electorate deserves better than that. If elected, our party will the drop imprisonment rate even further, to 50 per cent. Such a drop will match the imprisonment rates of Sweden, Switzerland, Finland, Norway, Denmark, Ireland and Italy. We will do this over a longer term, that is, the next five years, by an injection of funding and a whole of government approach towards preventing the supply of young offenders entering the justice system. Good research tells us that developmental education approaches, healthy communities initiatives, and family conferencing of juvenile offenders can have dramatic effects upon the future offending of young people. We also plan to spend the money we save on custodial corrections on victim support services. The evidence, I might add, points to victims being far less vindictive than we might otherwise assume. Finally, we will also commission more research into the evaluation of existing and new initiatives to ensure that we get the best outcome for the dollars we spend.

Such an exchange is, in fact, quite unimaginable, but why? Would it be possible to direct the current discussion on justice issues in political circles towards this line of thought? This paper seeks to explore answers to these questions.

### **The law and order debate**

Criminal justice (or so-called law and order) issues are important for governments and voters. Indeed, governments and opposition parties are quick to assert that *their* policies, not those of their opponents, will make the streets safer for citizens and send a clear message to those who would commit crimes (assuming that they are listening) that enough is enough. Typically the assertions are centred on more punitive measures. Any parliamentarian who is not perceived to be tough on crime is told by his or her minders that they are sure to be denounced as being soft on crime, and that that will jeopardise their electoral chances. Rarely, in the popular media, or in political discourse, is there any informed discussion on the policy options that are available to address law and order concerns.

As a result of this lack of dialogue, the public continues to believe that crime is increasing and may be out of control. An opposition likes to warn voters of this fact in order to damage the government. Reporters often make matters worse. They have been known to use a faxed press release from a politician as the basis for their story. These law and order stories seem to increase in number during election periods, and political parties do not seem to mind the publicity, so long as the stories are selling their tough on crime credentials.

An example can be found in the lead-up to the March 2003 NSW election. Results began to emerge from studies of family group conferences (an initiative of the Labor party that

diverts young people away from court and into dialogue sessions with victims and police)<sup>2</sup> that there had been a reduction of some 15–20 per cent in juvenile reoffending across different offence types and that this had occurred regardless of the gender, criminal history, age and Aboriginality of the offenders.<sup>3</sup> This was a success story that one could have expected to hear booming from the corridors of the Carr government. It spoke of crime prevention and restoring young people to good relationships with victims and support networks. But nothing was said about these studies. Justice announcements were confined to policies that spoke of more police and longer sentences for offenders.

There is evidence, thus, that even good stories are buried if there is a perception that the consequences for governments are risky. It would appear, as one commentator has said recently, ‘that political expediency remains a major determinant of penal policy’.<sup>4</sup>

The media have always put crime stories at the top of the news and typically reduce them to a three-minute analysis. There is also a trend towards increased acceptance of personal anecdote rather than social science research as the basis for policy making.<sup>5</sup> Sound research findings receive second billing and are deemed less persuasive than personal views or accounts. Academics are easy, soft targets in this world of anti-intellectualism. Lawyers are vilified. Judges are easy targets of ridicule, too. It appears that the fallacy of the zero-sum game (one is either for or against the ‘right’ interests) is alive and well in this environment. If a barrister is acting for an offender, or a judge is suspending an offender’s sentence, then she or he is somehow (according to the fallacy) acting in defiance of the interests of victims or the public generally. Recently in this state, a senior minister mocked the views of a certain lawyer on the basis that that lawyer had acted for a serial killer. The comment displayed an abject ignorance of the role of defence counsel. It indicated, sadly, that the fallacy is alive and well in the corridors of power.

The justice policy-making of the past two decades has centred on two key planks: the number of police, and imprisonment as the key sentencing option. Allow me to explore each in turn.

### **Police**

We spend about \$6.67 billion on police per year (2006–07 figures)<sup>6</sup> which is a large (around 70%) proportion of the justice budget and a major contributor to estimates of the cost of crime to Australians.<sup>7</sup> But is there a connection between the number of police and a lower rate of crime and better community safety? We need to review the evidence.

Typically, governments of all persuasions make a strong connection between the number of police and the crime rate. If there are more police, then the crime rate should be lower. Are there more or fewer police? According to the 2006 census data collected by the Australian Bureau of Statistics, there were 44,898 police in Australia on June 30 that year, up 14.5 per cent from 1996 (39,225 police) while the population grew just 11.8 per cent. In 1996, there were 221 police per 100,000 Australians. By 2006, that ratio had grown to 226 per 100,000. Western Australia has the highest expenditure per person on policing of any state (just over \$350) followed by NSW, and Tasmania. SA, Victoria and Queensland are all about the same, at around \$300.<sup>8</sup>

For all this investment, police must be key players in keeping law and order, but do they make a significant difference to the crime rate? Do more police mean better control of crime?

One cannot say with any confidence. There is certainly no evidence that there is a linear relationship. Ninety per cent of the variation in crime rates between population aggregations of a substantial size can be predicted by factors other than police strength, such as population density, ethnic heterogeneity, unemployment, income, school leaving age and household structure.<sup>9</sup>

In any event, at what cost does more intensive policing come? Police budgeting models developed by David Bayley<sup>10</sup> suggest that the cost of putting one extra visible police officer on the streets is approximately ten times their salary per year. If a constable earns \$50,000, then a government would need to find \$500,000 for each extra officer. That is a significant expenditure. It may not be the best use of the taxpayer's dollar.

### **Prisons**

Is there a connection between the crime rate and imprisonment rate? Again, we need to review the evidence.

We spend about \$2.6 billion annually on corrections. Over the last two decades, the number of prisoners in Australia has risen dramatically. Ten years ago there were 18,193 prisoners in Australia. By 30 June 2006, this figure had jumped to 25,790, an increase of almost 43 per cent in a decade, well in excess of the growth rate of the Australian adult population (11.8 per cent).<sup>11</sup> The imprisonment rate in Australia increased from 133 per 100,000 adults in 1996 to 163 per 100,000 adults in 2005.<sup>12</sup> It remained at that level through 2006. This rate of increase (7% per annum) is one of the highest among OECD countries, and exceeds that of the United States.

At the same time more and more people are remanded in custody, that is, they are in prison awaiting trial because they have not been successful in getting a grant of bail. The proportion of the Australian prisoner population that is not sentenced increased from 12.6 per cent in 1996 to 21.6 per cent in 2006. That is, one in five Australian prisoners, at any night of the year, have yet to be found guilty of an offence. The number of remandees has tripled (10 per 100,000 people to 33 per 100,000 people) over the last decade. South Australia has the highest remand rate in the country (other than the NT).<sup>13</sup>

On June 30 2005, the Indigenous imprisonment rate was 1,921 per 100,000 Indigenous adults, compared with 129 for the non-Indigenous adult population. Indigenous prisoners make up 22 per cent of the prison population, compared with 14 per cent at the time of the Royal Commission into Aboriginal Deaths in Custody, although they account for only two per cent of the current Australian population (an over-representation of some 11 times). In July 2004, it was reported that Indigenous people aged 18 years and over in Australia suffer twice the victimisation of non-Indigenous Australians.<sup>14</sup>

What crimes put people into prison? About 47 per cent of all sentenced prisoners are there for crimes of violence. Property offenders make up around 20 per cent of prisoners, and the remaining 33 per cent represent all other offences.<sup>15</sup>

Perhaps it is the case that a high imprisonment rate mean fewer criminals on the streets and thus Australians are safer as a result. There are two difficulties with this assertion. The

first is that Victoria has the lowest rate of crime against the person of any other jurisdiction (with the exception on some matters in Tasmania). For example, in 2005 it had the lowest rate in Australia of victimisation of personal crimes.<sup>16</sup> Its robbery victimisation rate is half the national rate.<sup>17</sup> Does that mean it has the highest imprisonment rate? No, it has the lowest rate of imprisonment—20 per cent lower than South Australia's. The NSW imprisonment rate, for example, is over 50 per cent higher than Victoria's. Queensland's rate is more than double that of Victoria's.<sup>18</sup> The second difficulty is that the crime rate in this country varies with offence type, and while some offences are declining in number, many offences are on the rise. One might assume with high rates of imprisonment that they should all be on the decline. It is therefore timely to review some useful crime trend data.

### **Crime trends**

According to the ABS Recorded Crime data,<sup>19</sup> the number of victims recorded by Australian police is declining generally in most offence categories. Property crime offers a useful starting point. The victimisation rate for unlawful entry with intent (UEWI) and motor vehicle theft (MVT) in 2004 was the lowest since national reporting began in 1993. An UEWI occurs at the rate of 33 per hour across Australia (2005 figures), an appalling statistic but, fortunately, it is in long-term decline. In 2006 there were 261,895 recorded victims of an UEWI, a decline of eight per cent from the previous year.<sup>20</sup>

From 2001–06, MVT decreased by 46 per cent. Other theft amounts to about 60 per cent of all property crime and, for the period 2001–06, the total decline in this category was some 26 per cent, from 700,137 to 517,492 victims. The overall trend in fraud over the 11 years 1995–2005 has been stable, although the fraud rate for 2005 was the lowest recorded.<sup>21</sup> Over the last decade there has been an overall decline of 22 per cent in arrests for drug offences, with the majority being consumers of the drugs rather than the providers.

Violent crime statistics do not paint as good a picture. The upward trend in assaults recorded by police shows a steady increase of 50 per cent between 1996 and 2006, with over 170,000 reported assaults now occurring in Australia each year. The trend in recorded sexual assault displays a steady increase too (an increase of four per cent every year since 1995), although there was a slight decline between 2004 and 2005 (from 92 per 100,000 people to 89 per 100,000 people) but there was an upward trend again in 2006 to over 18,000 reported incidents that year. For both assault and sexual assault, the rate of increase is greater for children aged less than fifteen years, with increases almost double those of the older age group.<sup>22</sup>

The incidence of robbery peaked in 2001. Following a subsequent decline, it has levelled out at 84 per 100,000 in 2006 (some 17,000 robberies per year). The homicide rate remains stable at around 1.5 per 100,000 people, with the number of murders in 2004 the lowest figure since 1993. Unfortunately, in 2006, homicides rose above 300 again, to 319 for the year.<sup>23</sup>

Can we make some connections between these crime trends and the profiles of perpetrators of crime to determine how best to limit the supply of potential offenders? The following paragraphs discuss some important connections.

### What are the causes of crime?

There are, of course, many and varied causal influences in crime, and therefore sweeping generalisations are to be avoided. Examination of people who find themselves coming to the attention of police or who are in correctional services custody, indicates that there is a strong correlation between crime and substance abuse, generational unemployment, mental illness and disorder, family breakdown, Aboriginality, gender and poverty.

For example, from 1999 to 2005, there is evidence that the percentage of police detainees testing positive to a drug was consistently around 80 per cent of those charged with property offences and 66 per cent of those charged with violent offences. Approximately 50–60 per cent of male prisoners and 70–80 per cent of female prisoners had a substance abuse problem. Approximately 30 per cent of male and 60 per cent of female prisoners were hepatitis C positive. Over 40 per cent were long-term unemployed when they committed the act that put them in prison.<sup>24</sup> About 60 per cent of all prisoners had numeracy and literacy skills that were below functional levels, and 2 to 3 per cent were illiterate. Around 10 per cent had an intellectual disability.

The health of prisoners is not good, generally speaking. Rates of schizophrenia, depression and anti-social disorder are, amongst prisoners, 5 times, 10 times and 20 times respectively that of the wider community.<sup>25</sup> Some 40 per cent of women and 20 per cent of men had attempted suicide before being sent to prison. Almost all male sex offenders had been abused as children. Approximately 75 per cent of women prisoners have a history of some sexual or other physical abuse. Thus, many offenders are victims of crime, too.

A typical offender in Australia today, therefore, is someone who fits the profile of those to whom the Premier was alluding when he explained, earlier this year, the focus of attention of the Labor government's Social Inclusion Initiative. In a speech on 21 April 2008, marking the 6th anniversary of the Initiative, Mr Rann spoke of the importance of addressing the long-term accommodation needs of the homeless, school retention, mental health services, and generational poverty.<sup>26</sup> That is, the Premier reinforced a whole of government approach to addressing social disorder.<sup>27</sup>

The Premier also referred to Monsignor David Cappo's *Breaking the Cycle* report and its call for 'greater engagement in recreation, sport and the arts ... being encouraged for young offenders'. Let me quote further from the Premier's timely call to arms:

The State is set to experience a massive economic dividend [from mining, defence and advanced manufacturing], and we need to work to make sure there's a social dividend as well. I'm asking David Cappo and his team to work on ensuring that the most marginalised people—those with disabilities, Aborigines, people from jobless households, and those in regional and remote communities get a slice of the action. We want to use the benefits flowing from the boom to re-engage the disadvantaged, not just those who are on the edges of participation, but also those who have been deeply and persistently excluded.

The speech commendably placed great emphasis on policy initiatives for the most marginalised in the community. But it failed to link factors that create marginalisation with the very same factors that clearly cause people to offend. Would it not be innovative and

important to have a whole of government approach to offenders and offending as well? Would it not be appropriate for a government to tout these initiatives as having a desirable effect on the crime rate? A cynic might suggest that a government that makes these links may think that they are sending the wrong message to the electorate; a message that may appear to be promoting social crime prevention rather than toughness when it comes to responding to criminal activity.

### **Does prison cut crime?**

It is certainly the case that fewer crimes can be committed while criminals are behind bars. But there are costs associated with putting all the justice eggs in this basket. The first one is that these prisoners, with very few exceptions, will all be released at some time, and there is much research to suggest that the prison experience will not have made one jot of difference to the ex-felons' offending patterns.

It also costs a lot to lock people away. According to the latest Report on Government Services, some \$62,087 was spent on each prisoner in Australia in 2004–05.<sup>28</sup> There is some other interesting research on this score from the NSW Bureau of Crime Statistics and Research, published in 2006.<sup>29</sup> The high NSW imprisonment rate prevents, according to the Bureau, some 45,000 burglaries a year. That is a very good outcome. But to get a further ten per cent reduction (on the current rate of crime and on the current cost of incarceration), one would need to devote an additional expenditure of \$26 million per year in NSW. Is this the best option? It is arguable that it is far more useful to spend that amount on health services for offenders, post-release support, employment support, Indigenous community capacity-building, restorative options for offenders, and care for at-risk groups; activities that have the potential to turn offenders away from crime and to affect the supply of potential future offenders. The dilemma is that governments dare not breathe a word that that money is being spent on social options lest they suffer at the polls. This is a tragic state of affairs for a so-called enlightened society.

There is a view that governments would prefer to break free from these populist shackles if they could. Here is what NSW statistics bureau head Don Weatherburn has said on the matter.<sup>30</sup>

The defensiveness governments often evince when they are accused of engaging in a law and order auction suggest that many would welcome an opportunity to stop beating the law and order drum, if one were provided that did not come at too high a political price. That 'political price' is the loss of electoral support. We need an explanation then for why there is such a cleavage between what the public wants in the way of government action on law and order and what would constitute a rational approach to controlling crime.

Dr Weatherburn went on to look at the role of the media in this malaise, and the possible hunger for retribution of a public facing an uncertain future because of massive economic and social change. He muses that criminals and their lawyers are excellent scapegoats.

### Smart responses

I assert that we need to be smarter rather than tougher in our justice policies. There are some very good examples of well-structured research findings that have provided information for policy advisers on a range of subjects. These findings include conclusions on the effectiveness of community-based programs and community policing, drug diversionary initiatives, community corrections, non-custodial sentencing options such as home detention, diversionary courts (Nunga, Mental Health, and Domestic Violence courts), rehabilitation programs (such as anger-management programs), family conferencing, integrated crime prevention at the local level, and victim assistance programs, to name but a few. The work of desistance theorists on the importance of working with a prisoner's cognition just before his or her release is offering some support for the view that prisoners are capable of being agents of their own change.<sup>31</sup> In other words, there is no shortage of evidence that good research can bring about good policy options if there is the political will.

Let me list a few highlights of good research and policy-making in the social crime prevention sphere.

1. *Child neglect and child abuse* has been correlated with juvenile participation in crime. Juveniles from low socio-economic status families that reside in low socio-economic status neighbourhoods are more likely to become involved in crime than their counterparts who do not reside in such neighbourhoods. The policy implications for governments are clear: governments can reduce the supply of potential offenders by reducing economic stress in the community, preventing geographic concentrations of poverty and introducing programs designed to prevent social and economic stress from disrupting parenting processes.<sup>32</sup>
2. The *Pathways to Prevention* crime prevention studies (National Crime Prevention) have found strong connections between early childhood experiences and later crime, while pointing out that it is possible to redeem poor influences at later transition phases in a child's experience. Thus policies designed to install protective factors at crucial transition points in a child's life, namely around birth, at the commencement of primary school and at the move to high school can be very effective in turning errant lives around.<sup>33</sup> Other programs that have been shown to be important include empowering children and care givers to seek child-friendly preschools, neighbourhoods and community services. Significantly, in the USA, one of the most measurable crime prevention initiatives is regular home visits by nurses to selected at-risk households, especially when provided in conjunction with other early intervention crime prevention efforts.
3. The *National Homicide Monitoring Unit* of the Australian Institute of Criminology provides excellent data on the scourge of violence in Australia, where it occurs and who the perpetrators are. The facts speak for themselves. About two-thirds of homicides each year in Australia occur inside residential premises. Approximately 70 per cent of Australian homicide victims are family or friends, or those who have some other relationship with their killer. Only 2 per cent of female victims of murder are killed by a person unknown to them, compared with 25 per cent of male victims. Of the 33 per cent of homicides where direct family members are involved, 58 per cent of

these relationships are intimate relationships. Children aged less than 12 months old are at greater risk of risk of homicide than of death by accident. Almost 40 per cent of all assaults perpetrated by close relatives or friends occur inside the home, a large majority of which are against girls and women from age 15 onwards. Two-thirds of sexual assaults, including assaults on toddlers and teenagers, are perpetrated by family members or people known to the victim.<sup>34</sup> Only a fool would suggest that this violence is not connected to the social forces that place enormous strains on contemporary Australian families: unemployment, poverty, social disadvantage, mental ill health and discrimination.<sup>35</sup> Thus, policies need to be developed to address these social forces. The problems do not go away in the long term as a result of governments simply relying on imprisonment.

4. *The Legal Services Commission (SA)* has commissioned a number of programs and initiatives designed to lessen the potential for crime victimisation in South Australia. Of particular significance is its recent Legal Education and Awareness Project for African Youth that is aimed at providing youth-focused and culturally appropriate legal education to those arriving, and in emerging communities in South Australia. Since its inception in September 2007, the project has delivered over 20 workshops to 315 African youths from a variety of cultural and linguistically diverse nations. It is yet to be fully evaluated, but augurs well for better understanding by the community of the needs of recently arrived Africans, especially given the persistent adverse treatment delivered to them by some sections of the media.

Crime prevention literature is full of evidence that properly conceived and well-executed initiatives can have the desired prophylactic effect, not only in the social fields described above, but also in other situational settings. The following example highlights how clever ideas trumped a law and order response that was never going to be effective.

The National Motor Vehicle Theft Reduction Council (NMVTRC) points out that there are over 70,000 car thefts per year. A vehicle is still stolen every eight minutes in Australia. This is a lamentable and unacceptable statistic. Yet the rate of motor vehicle theft has almost halved over the last five years. How did this occur? Was it more police and heavier sentences? Let us look west for a possible answer. In 1992, the WA government announced that it was concerned about ridding that state of car theft. It was going to do this by increasing penalties. It decided to implement the 'toughest laws in Australia', including minimum jail terms for car thieves, longer sentences and, in the case of repeat juvenile offenders, indefinite detention.

An evaluation of these initiatives some years later by the WA Crime Research Centre concluded that the new laws had had no effect whatsoever. Rather, the problem was eventually brought under control by a law passed in 1999 requiring engine immobilisers to be fitted to all vehicles being registered.<sup>36</sup>

Indeed, the National Motor Vehicle Theft Reduction Council in 2002 discussed the positive effect that two other simple initiatives would have on discouraging car theft around the nation. Both involve insurance company practices. The first is removing 'agreed value' car insurance, which provides an incentive for dishonesty, and the second is stopping the practice of insurance companies selling 'written off' vehicles with their vehicle identification

number (VIN) attached, so allowing professional car thieves to purchase a VIN and transfer it easily to any stolen car.<sup>37</sup>

### **The challenge**

The challenge for governments is to rely less on the police, courts and corrections to control crime and victimisation and more on creative means to lower the crime rate by seeking lower, not higher, imprisonment rates. Prisons are financially wasteful, disproportionately affect Indigenous Australians and other disadvantaged groups, drive a massive wedge into the social fabric and have a limited impact on crime and the incidence of re-offending. Yet we are relying on them to an increasing degree.<sup>38</sup>

### **What steps are required to change the current mindset?**

1. By having Opposition spokespersons who will open up a debate rather than be Tweedledee to the government's Tweedledum. Debate leads to understanding. Understanding leads to alternatives and options being considered, which drives informed policy development. Let's take the Rann government's 2006 name and shame announcement on juvenile offenders. Shaming is a very well researched area, with arguments on shaming that cut both ways. Some shaming allows offenders to take responsibility for their actions. Other shaming can be counterproductive and may lead to social exclusion (and consequent antisocial attitudes). What did the Opposition do with the announcement? It said that it was a 'hypocritical' policy because suppression orders are allowing paedophiles and other criminals to avoid being named and shamed. There was no criticism of shaming *per se*. That may have been perceived as too dangerous, electorally. But because the debate evaporated, the public was being told, effectively, that shaming was an uncontroversial and preferred option to address juvenile offending.

When the *Serious and Organised Crime (Control) Bill 2007* was being debated in May 2008, the Opposition's criticism had little to do with the challenge to fundamental civil liberties of suspects and their associates, or with the possibility of alienating those who might supply the police with information, or with the probability of interminable legal arguments over definitions, or with the dearth of evidence of the effectiveness of such measures elsewhere in the world, or with the fact that the Australian Crime Commission has initiatives to tackle these problems from a national perspective, or with the extension of liability to guilt by association.<sup>39</sup> The best the Opposition spokesperson could do was to say that the government had been 'dragging its feet' on the legislation. There was no criticism of the legislation itself. Given that the Law Society and the Bar Council had made wide-ranging attacks on the Bill, one might have expected a more considered and critical appraisal of its merits and demerits by the Opposition, rather than fulsome praise.

When the Deputy Premier made his now famous remark in May 2008 that the government was prepared, with reference to the large number of prisoners, to 'rack 'em, pack 'em and stack 'em', the Opposition leader called him a 'bully' and pointed to Mr Foley's apparent about-face on the issue, given public statements that Mr Foley had previously made. There was no mention, however, by Mr Hamilton-Smith of the number of prisoners being

unacceptably high or the dilemma of the government having ostensibly breached the Standard Minimum Rules (international guidelines) 1977 on prisoner management and overcrowding.<sup>40</sup>

2. By challenging the assumption of punishment. The evidence is there that, when given the right information, the population is not as punitive or vindictive as our political leaders might think or fear. In a study conducted 20 years ago in Canada, volunteers were asked to consider a sentence given to an offender convicted of manslaughter on the basis of a brief news report. Eighty-five per cent said it was too lenient. When participants were then given all of the information that was available to the judge, only 15 per cent said it was too lenient. In fact, 45 per cent now said it was too tough.<sup>41</sup> Compare this to the nonsense trotted out by *The Advertiser* and the *Sunday Mail* from time to time when reporting their so-called surveys (full of self-selectivity and loaded questions) where they find that the vast majority of respondents want tougher sentences for drug manufacture, rape, child abuse and paedophilia, and want juveniles treated as adults for a whole range of offences.

3. By driving home the argument that a safe community is one that is built on trust, equality of opportunity and social capital, not one where a disproportionate number of social misfits is locked away. It is undeniable that in our prisons we find principally those who are economically marginalised and facing labour market uncertainty, and who live under the influence of drugs, poor education or mental illness. These issues are rarely addressed. When they are released, inmates find that many of their problems have been compounded. Prison makes little difference to our safety in these cases, for safety is compromised once angry men are released onto the streets. As a priority, governments should be offering meaningful work in their correctional facilities, as well as a full suite of rehabilitation programs and health services, particularly mental health. The legislation required to make that happen needs to be overhauled.<sup>42</sup>

In fact, governments *are* seeking to build social capital and to address social exclusion. The Labor Justice Platform 2005, for example, lists a focus on rehabilitation, poverty and social misfortune, opposition to mandatory minimum penalties, a strengthening of the diversionary courts, a commitment to not interfere with judicial discretion, and extensions to restorative justice and conferencing models. There is also a commitment to work with at-risk offenders, to implement spent convictions legislation, and to strive to ‘ensure changes to criminal law are based on sound criminological theory and evidence’.<sup>43</sup> But governments appear afraid to link these laudable objectives and successful initiatives to crime control for fear of electoral backlash.

Indeed, South Australia’s Strategic Plan 2007 includes a target of reducing crime by 12 per cent by 2014.<sup>44</sup> An investment in social capital, legal aid, education and welfare safety nets, along with an attack on marginalisation generally, will do far more to meet that target than simply adding more police and building prison cells.

Governments remain quiet on this because they are unsure about whether touting these objectives loudly would jeopardise their political survival. To that extent we, as citizens, have only ourselves to blame. We need to challenge more boldly the lack of commitment of governments to debate justice alternatives. We need to challenge populism, and to tell governments that they *can* build long-term social investment into criminal justice policy-

making without risking electoral backlash. We need to engage with academia in this crucial task.<sup>45</sup>

It is not beyond the wit of modern societies to find the best and most effective strategies to combat the scourge of crime, to protect victims, to stop victimisation, and to stem the tide of young people that keeps coming, in increasing numbers, to the attention of police. That will not happen without well-informed debates free from the politics of law and order and informed by good research. These are the debates that we deserve. Good policy-making does not happen by chance.

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- 1 The imprisonment rate data mentioned were taken from the European Society of Criminology newsletter *Criminology in Europe*, page 11, May 2008, citing Aebi and Lagrande (2008) as the source.
  - 2 Rick Sarre, 'Family Conferencing as a Juvenile Justice Strategy', *The Justice Professional*, 11(4), 259–71, 1999.
  - 3 Garth Luke and Bronwyn Lind, Reducing Juvenile Crime. Crime and Justice Bulletin 69, 2002.
  - 4 Stephen Monterosso, 'Punitive Criminal Justice in Contemporary Society', *Curtin Business School, Working Paper Series*, 08:01, May 2008.
  - 5 John Pratt and Marie Clark. 'Penal populism in New Zealand'. *Punishment and Society*, 7(3), 303–22, 2005.
  - 6 Report on Government Services, Canberra: Productivity Commission, 2008, Chapter 6.
  - 7 Kiah Rollings, 'Counting the Costs of Crime in Australia: A 2005 update,' Australian Institute of Criminology, *Research and Public Policy Series* No. 91, 2008.
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  - 9 David Bayley, 'Back from Wonderland, or toward the rational use of police resources' in Tony Doob (ed.), *Thinking About Police Resources*. Toronto: Centre of Criminology Research Report number 26, 1993, pages 1–34.
  - 10 Ibid.
  - 11 Sue King, David Bamford and Rick Sarre, 'The Remand Strategy: assessing outcomes', *Current Issues in Criminal Justice*, 19(3), 327–44, 2008.
  - 12 Up from 88 per 100,000 adults in 1984.
  - 13 In 2006 the remand rate in South Australia was between two and three times the remand rate in Victoria, see Rick Sarre, Sue King, and David Bamford, 'Remand in Custody: Critical factors and key issues', *Trends and Issues in Crime and Criminal Justice*, No. 310, Australian Institute of Criminology, 1–6, May 2006.
  - 14 Rick Sarre, 'Police and the Public: Some observations on policing and Indigenous Australians', Contemporary Comments, *Current Issues in Criminal Justice*, 17(2), 305–13, 2005.
  - 15 Australian Crime: Facts and Figures, Australian Institute of Criminology, 2007, refer <www.aic.gov.au/publications/facts/>
  - 16 Refer Report on Government Services, Canberra: Productivity Commission, 2008, Figure 6.16.
  - 17 Refer Report on Government Services, Canberra: Productivity Commission, 2008, Figure 6.20.
  - 18 Often explained by the commitment of the Victorian government to 'therapeutic' approaches to justice policy.
  - 19 All of these figures are updated each year by the Crime and Justice statistics website based on ABS data, refer <www.aic.gov.au/stats>
  - 20 Australian Crime: Facts and Figures, Australian Institute of Criminology, 2007.
  - 21 But then fewer than 50 per cent of fraud incidents are reported to police.

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- 22 Samantha Bricknell, 'Trends in Violent Crime', *Trends and Issues in Crime and Criminal Justice*, no. 359, Canberra: AIC.
- 23 Australian Crime: Facts and Figures, Australian Institute of Criminology, 2007.
- 24 These figures were obtained in discussions in 2000 with the then Department of Correctional Services CEO John Paget, derived from DCS data.
- 25 Ibid.
- 26 Premier Mike Rann MP, in a speech to the Don Dunstan Foundation, Adelaide, 21 April 2008.
- 27 Sometimes now referred to, in the social inclusion parlance, as 'joined up' government.
- 28 Community correction consistently costs around 6 per cent of what it costs to house a prisoner.
- 29 'How much crime does prison stop?' Press Release, BOCSAR, 10/2/06  
<[www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au)>
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- 33 Ross Homel, Kate Freiberg, Cherie Lamb, Marie Leech, Sam Batchelor, Angela Carr, Ian Hay, Rosie Teague and Gordon Elias, 'The Pathways to Prevention project: doing developmental prevention in a disadvantaged community', *Trends and Issues in Crime and Criminal Justice*, no. 323, Canberra: AIC, 2006.
- 34 All references found at <[www.aic.gov.au/research/homicide](http://www.aic.gov.au/research/homicide)>
- 35 *Social Disadvantage in South Australia*. A Report by the Social Policy Research Group (UniSA) and SACOSS, 2004.
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- 37 The rebirthing methodology has been largely halted by the NMVTRC's instigation of written-off vehicle registers in all states and territories. With regards agreed value, it is believed that some 10–25% of all car theft is related to people seeking to claim on agreed value insurance, refer private correspondence with the CEO of the NMVTRC, Ray Carroll, 18 June 2008.
- 38 Which is a little disconcerting given that section 11 of the *Sentencing Act 1988* (SA) maintains that imprisonment is to be avoided where possible, and only imposed if one of a series of listed seriousness factors is present.
- 39 Andreas Schloenhardt, 'Battling the Bikies: South Australia's Serious and Organised Crime (Control) Bill 2007', *Law Society Bulletin* 30(3), 8–11, 2008.
- 40 The Human Rights Committee of the Law Society of SA has submitted a damning report the government's Correctional Services Advisory Council, an edited version of which is found in Nick Niarchos *et al.*, 'The State of Prisons in South Australia: A Systemic Failure', *Law Society Bulletin* 30(1), 14–18 (Part 1), 30(2), 24–28 (Part 2) and 30(3), 12–14 (Part 3), 2008.
- 41 Tony Doob and Julian Roberts, 'An analysis of the public's view of sentencing. A report to the Department of Justice', Canada. October, 1983, see also Neil Hutton, Beyond Populist Punitiveness, *Punishment and Society* 7(3) 243–58, 2005.
- 42 Howells, K., K. Heseltine, R. Sarre, L. Davey and A. Day, Report to the Criminology Research Council, *Correctional Offender Rehabilitation Programs: The National Picture in Australia*, (May 2004). <[www.aic.gov.au/crc/reports/200203-04.html](http://www.aic.gov.au/crc/reports/200203-04.html)>
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