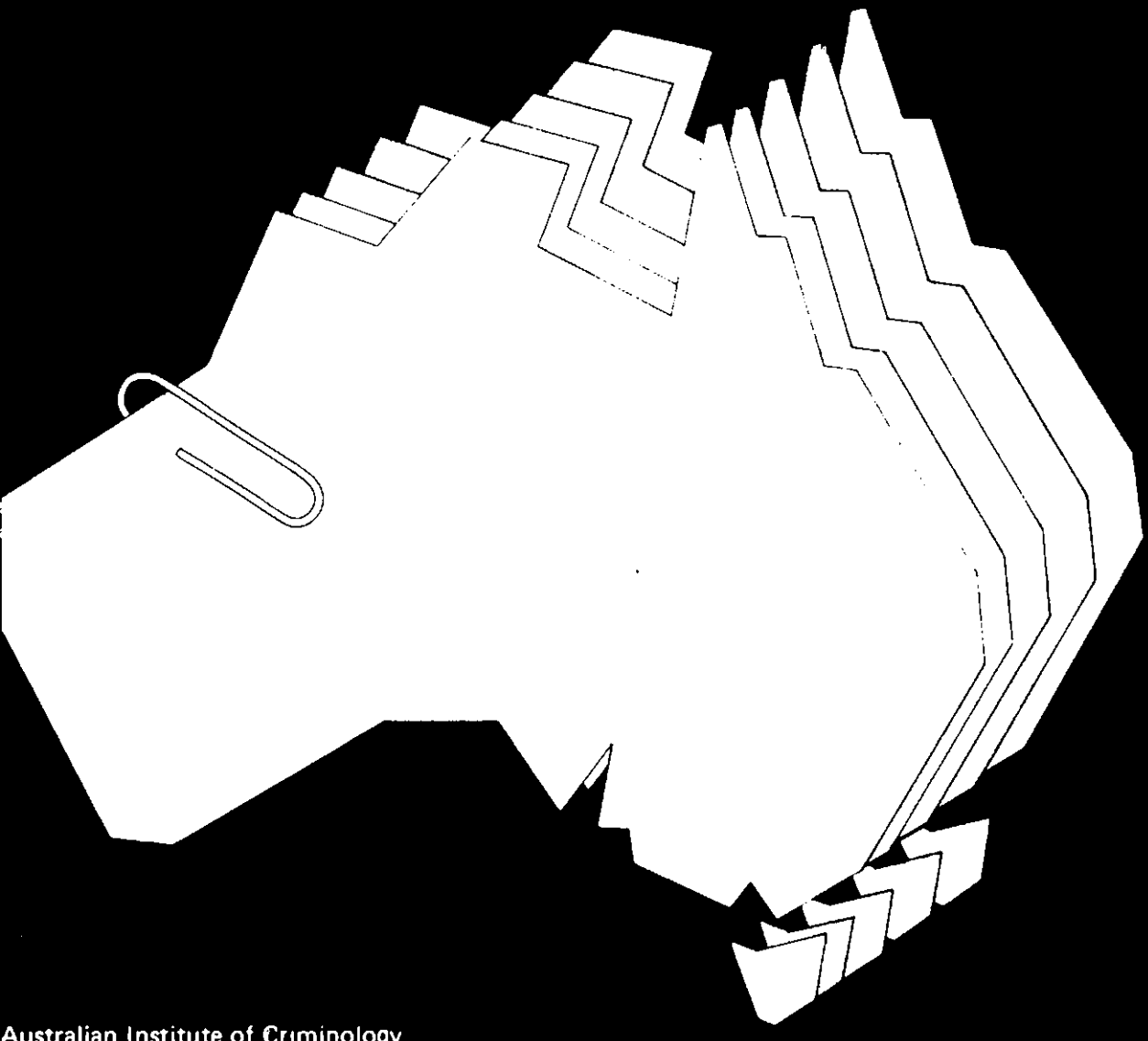
Seventh United Nations Congress
n the Prevention of Crime and Treatment of Offenders

Milan, Italy, 26 August to 6 September 1985

AUSTRALIAN DISCUSSION PAPERS

Contributors: David Biles, Bill Clifford, Peter Grabosky, Richard W. Harding, Peter Loof, and Satyanshu K. Mukherjee



Australian Institute of Criminology
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DEVELOPMENT AND CRIME CHALLENGES FOR THE FUTURE

TOPIC I

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This chapter, with the help of statistics from a group of countries, attempts to explain the relationship between development and crime. Although statistics on many variables are not available and those available are often inadequate, some of the findings nonetheless are revealing. Statistics on socio-economic and cultural aspects do not offer any surprises but those on crime tend to show that the volume of aggravated thefts moves hand in hand with economic development.

Using longitudinal data, the chapter also examines the relationships between economic conditions and crime in Australia. The gross domestic product per capita and the unemployment rate have been used as the two indicators of the economy, and offences charged before magistrates' courts and burglaries reported to police, were used as indicators of crime. The analysis, both of major categories of offences and burglary, show that different periods in the present century have had a varied impact on types of crimes. A major finding suggests that property crimes increase sharply in situations when the economy received a major setback like the Depression, as well as when it is growing at a very fast rate. Also the study reveals that the increase in burglaries is closely linked with the growth in the economy and the production of, and accessibility to, ever increasing consumer goods, have led to a shift in the targets of burglary, both in terms of the types of premises broken into and kinds of goods stolen.

The chapter concludes with a statement on the uses of statistics and the assistance that the United Nations and its regional offices can provide in the development of proper statistical systems.

CONTENTS

ERRATUM: The code for Table 10 on page 16 should include the following:

7. H = Over 5, M = 2 — 5, L = Under 2
8. H = Over 500, M = 200 — 500, L = Under 200
9. H = Over 400, M = 100 — 400, L = Under 100

CROSS NATIONAL PERSPECTIVE

The sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in 1980 unanimously adopted *The Caracas Declaration* which, among other aspects, embodied the new United Nations perspectives in crime prevention in the context of development. Based on valuable information gleaned from the first World Crime Survey, the United Nations recognised the significant increases in crimes as well as occurrences of new forms of criminality in various parts of the world. *The Caracas Declaration* 'recognised that crime impairs the overall development of nations, undermines people's spiritual and material well-being, compromises human dignity and creates a climate of fear and violence that erodes the quality of life', (United Nations, 1983, p. 3). Although there exists wide disparity in the standards of living between nations and within nations between the rich and the poor, conditions within countries have been changing constantly. Whatever level of economic and technological development exists, some social problems, such as crime, continue to grow. Information and statistics from countries with different levels of development show that crime has been increasing in most societies. It is a paradox, because, on the one hand, we strive for development, and on the other we seem to pay a very heavy price for that development. It is not difficult to conclude that something is amiss. Perhaps it is the irrational use of the gains of development that exacerbate social problems.

Aside from increases in traditional crimes, certain new types of crimes have emerged during the last decade or so. While the extent of such new crimes varies from country to country:

> certain common features, evident in many forms of commercial, economic and technological crime, some related to transnational corporations and international trade, some involving offences against consumers or acts harmful to the environment, or computer crimes; various forms of corruption, organized crime and illicit traffic in drugs and weapons; local and international terrorism; instrumental and inter-personal violence including hijacking, kidnapping, taking of hostages, destruction of public property and facilities; institutional violence related to racial discrimination and the violation of basic human rights, including tortures, disappearances and mass killings, as well as institutional collective or individual State actions aimed at severely damaging the economy of, or causing widespread social disruptions in, other countries (United Nations, 1983, pp. 3-4).

The above statement appears manifestly valid; data and statistics are difficult to assemble, but reports of special commissions and committees and journalistic writings on the subject abound in most countries. These new crimes have not emerged overnight, yet there is little evidence of an attempt to understand the dynamics of the development-crime relationship. It would, however, be unfair to say that this neglect is obvious in criminology only; in fact development studies have also missed the significance of crime in development. In the middle of the third development decade, this neglect by scholars and researchers on the one hand, and uncritical adherence to the development models of the industrialised world by the leaders of the developing countries on the other, have supported the status quo. In spite of warnings, albeit muted, that the developing countries have the opportunity to learn from the mistakes of the developed world, development has continued unabated, often in total disregard of the needs of the masses.

Perhaps because of this lack of understanding, no systematic effort has yet been made to develop and disseminate adequate statistical and other information relevant to the issue. It is not possible in this paper to make a serious attempt to settle the issue of the relationship between development and crime. The emphasis instead will be on the description of economic, social and cultural changes and changes in the patterns of selected crimes in a few selected countries. These changes will be measured in terms of certain quantifiable variables, selection of which is based on the availability of statistics. Changes in crime patterns will be described in relation to a few offences, traditionally defined as crimes, and a few 'new' forms of deviance. Again, selection of offences is based on the ready availability of statistics. Patterns in 'new' forms of deviance will be described for Australia only, as it is difficult to obtain data from other countries.

Variables Selected

Economic: Gross domestic product in US dollars and the unemployment rate.

Social: Total population, 'medical physicians' per unit of population, expenditure on education as a proportion of the gross national product and as a proportion of the total government expenditure.

Cultural: Television receivers and daily newspapers per 1,000 population.

Crime: It was the intention to select several types of crimes but statistics were not available. Information even on crimes which were thought to be common, viz., robbery and burglary, were not readily available. Therefore, statistics on the three categories of offences reported becoming known to the police were extracted from the biannual International Criminal Statistics. The difficulties in assembling statistics on crime will be evident when these are considered. The three offence categories selected for examination are: murder, including any act performed with the purpose of taking human life in whatever circumstances. This definition excludes abortion but includes infanticide; aggravated theft including theft with dangerous aggravating circumstances (e.g. robbery, violent theft, burglary and housebreaking); fraud including any act of gaining unlawful possession of another person's property other than by theft (i.e. embezzlement, misappropriation, forgery, false pretences, trickery, deliberate misrepresentation, swindling in general). Originally, it was planned to select the offences of rape, robbery, burglary and drug offences; unavailability of data made this choice impossible. However, the three offence categories on which statistics have been collected, and will be presented later, do represent some of those which create considerable fear and some which have shown unprecedented increases in recent years in most western nations.

In this paper attempts were made to assemble statistics on the above variables for the period beginning 1955, the year in which the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held. This proved to be another hard requirement to satisfy. However, this requirement was not relaxed, mainly to provide a focus for this paper. It is almost impossible to obtain all types of statistics a researcher desires even in one country. It became essential, therefore, to select. After considerable search for statistics the variables were finalised but there still remain gaps which are unavoidable.

Generally, no advanced statistical techniques will be used to analyse the data. This stance is taken mainly because of the perceived limitations in the data, unavailability of long series, and gaps in the data. However, examples of statistical techniques that can be used in analysing time series data have been presented. This exercise pertains to specific long term statistics from Australia. The relationship between crime and development may change over time, and it appears that such techniques can serve an effective purpose in identifying the pace and direction of change.

Finally, a comment on the selection of countries. Because of the deficiencies in the statistics no systematic criterion for selection could be followed. In the beginning it was planned to select at least two countries from each of the continents — one developed and the other developing, in relative terms. But the most common difficulty encountered was, that if statistics on crimes were available those on socio-economic variables were missing. Consequently, like the selection of variables, countries had to be selected on the basis of availability of statistics. The countries included in this paper are: from Asia and the Pacific — Australia, New Zealand, Japan and Singapore; from Europe — Holland, Sweden, West Germany and England and Wales; from Africa — Egypt and Nigeria; and from North America — Canada and the United States of America.

Social Change

In the general area of social change, population growth and its structure is one of the most important phenomena. In recent years numerous scholars have written on the significance of population changes in measuring changes in criminality. In this process the post Second World War baby boom has attracted much attention in most western countries. Since the early 1960s, when some of these boom babies became teenagers, the western world has encountered sharp increases in crimes, especially those involving violence and property. This is not to say that there exists a strong causal link between population growth and crime. On the

contrary, scholars seem to take the view that it is not the total population growth but its structure which influences levels of criminality. It is perhaps an irrefutable fact that an overwhelming majority of all crimes in any society are committed by adolescents and young adults. Therefore, it is the proportion of this age group in the total population, or more precisely, in the population which can be criminally responsible, which is measured against crime. Actually, even though intuitively it may be said that the large majority of crimes are committed by young persons, this conventional wisdom is also based on partial and often inaccurate sets of statistics. Knowledge of criminality by specific segments of the population, is based on the statistics on persons involved in crimes cleared, which happens to represent a stage several steps away from the incidence of crime.

During the 1970s a number of research studies have attempted to forecast levels of criminality using the proportion of youth population as one of the major variables. Some of these studies predict that because of the maturing of the post war baby boom population and of the declining birth rate since the late 1960s, levels of criminality should drop in the 1980s. It is not time yet to verify whether such forecasts have eventuated. Even if the levels of criminality present a declining pattern for a year or two in the 1980s, that could not be considered as a significant sign of relief. Aside from the impact of other factors, such a relationship does not explain why levels of criminality increase at a rate several times that of population increase. Neither population nor crime statistics, with that degree of sophistication, is readily available for most countries. Hence total population statistics for the selected countries have been used to examine the changes.

TABLE 1
POPULATION IN MILLIONS
For Selected Countries

		1955	1960	1965	1970	1975	1980
AUSTRALIA	N	9.150	10.400	11.000	12.507	13.890	14.690
	R		13.66	5.77	13.70	11.06	5.76
NEW ZEALAND	N	2.131	2.400	2.650	2.811	3.080	3.110
	R		12.62	10.42	6.08	9.57	0.97
JAPAN	N	89.300	93.300	98.275	104.345	111.570	116.780
	R		4.48	5.33	6.18	6.92	4.67
SINGAPORE	N	1.210	1.630	1.890	2.075	2.260	2.410
	R		34.71	15.95	9.79	8.92	6.64
HOLLAND	N	10.800	11.600	12.212	13.032	13.650	14.140
	R		7.41	5.28	6.71	4.74	3.59
SWEDEN	N	7.300	7.700	7.808	8.043	8.190	8.310
	R		5.48	1.40	3.01	1.83	1.47
WEST GERMANY	N	52.200	55.600	59.040	60.714	61.830	61.560
	R		6.51	6.19	2.84	1.84	.44
UNITED KINGDOM	N	44.441	45.775	47.762	48.680	49.160	49.240
	R		3.00	4.34	1.92	.99	.16
EGYPT	N	19.520	25.700	30.040	33.329	37.014	2.290
	R		31.66	16.88	10.95	11.04	14.27
NIGERIA	N	n.a.	35.000	55.000	55.073	65.660	77.080
	R		57.14	.13	19.22	17.39	
CANADA	N	15.698	17.870	19.644	21.324	22.730	23.940
	R		13.83	9.93	8.55	6.59	5.32
UNITED STATES OF AMERICA	N	165.300	179.300	194.303	204.878	215.970	227.700
	R		8.47	8.37	5.44	5.41	5.43

Notes: N = number in millions
R = per cent change

Source: For 1975 and 1980, *Demographic Yearbook 1982, Thirty fourth issue*, New York, United Nations, 1984. For 1970, *Statistical Yearbook 1976*, New York United Nations, 1977. For 1955, 1960 and 1965, *International Crime Statistics, 1979-80*, International Criminal Police Organisation, Saint Cloud, France.

Table 1 presents the total population in millions for the selected countries. The Table very clearly shows not only the variations in rates of population change, but also shows certain gross inaccuracies. Consider the inaccuracies first. Even a cursory look at the statistics from Nigeria shows that a jump of 20 million people in a five year period, considering also the base population of 35 million, is under any set of parameters impossible. It becomes even more so when it is noted that between 1965 and 1970 the Nigerian population grew by only 73,000, an average of only over 14,000 per year. Having said that, it seems inappropriate to use the data, but there is no alternative. On the variations between countries, it is quite apparent that the two poorest countries in the list, e.g. Egypt and Nigeria, show the largest changes, over 14 and 17 per cent respectively between 1975 and 1980; the smallest change is observed in England and Wales and West Germany. The populations of both the latter countries have remained virtually constant during the period 1975 to 1980. The main point to remember, however, is that the population in each of the 12 countries presented monotonic increasing trends.

Among other variables used to identify social changes are expenditure on education and medical physicians. The education data is more patchy than suspect. All efforts to obtain statistics on student population at different levels of education failed, in that no common denominator in even half the countries could be found. The only alternative was to select the two sets of expenditure statistics. In a sense budgetary allocations for services such as education, social services, health, etc., demonstrate a nation's willingness and commitment to tackle the most basic problems. Ultimately improvement in these will determine the positive gains of economic and technological development.

TABLE 2
EDUCATION
EXPENDITURE ON EDUCATION PER PERCENTAGE OF GROSS NATIONAL PRODUCT AND TOTAL GOVERNMENT EXPENDITURE FOR SELECTED COUNTRIES

Country		1970	1978
AUSTRALIA	N	4.2	6.5*
	R	13.3	16.2*
NEW ZEALAND	N	4.8	5.4
	R	n.a.	21.4
JAPAN	N	3.9	5.7
	R	20.4	16.1
SINGAPORE	N	3.1	2.5
	R	11.7	7.5
HOLLAND	N	7.7	8.5
	R	n.a.	n.a.
SWEDEN	N	7.7	9.1
	R	n.a.	13.1
WEST GERMANY	N	3.7	4.7
	R	9.4	n.a.
UNITED KINGDOM	N	5.3	n.a.
	R	14.1	n.a.
EGYPT	N	4.8	4.1
	R	15.8	n.a.
NIGERIA	N	n.a.	4.0
	R	n.a.	13.9
CANADA	N	8.9	8.1
	R	24.1	18.5
UNITED STATES OF AMERICA	N	6.6	6.3*
	R	19.4	17.7*

* 1977

Notes: N = as per cent of gross national product
R = as per cent of total government expenditure

Source: *1981 Statistical Yearbook*, United Nations, New York, 1983.

Two sets of expenditure data for education were available from these countries — expenditure on education (i) as a proportion of the nation's gross national product and (ii) as a proportion of annual government expenditure. In examining these data it should be kept in mind that there can be no standard investment in these areas which will be applicable to all the countries. That is to say that if Australia spent 6.5 per cent of its gross national product on education in 1977, a similar proportion might neither be necessary nor adequate for other countries as well. Nor is it necessary that expenditure on education should only increase. Data in Table 2 show that in Singapore, Egypt, Canada and the United States, expenditure on education as a proportion of the gross national product declined between 1970 and 1978. Among the countries which showed increases, Australia figures prominently in front. With regard to expenditure as a proportion of the total government expenditure, New Zealand stands in front; it spent more than one-fifth of its total expenditure on education in 1978. In the absence of other statistics it is difficult to assess what these figures mean, especially when it is noted that in almost every country, there exists what may be termed private schools (including institutions of higher learning) which use funds from sources other than the government as well. Also, the figures on expenditure do not indicate anything about the size of the student population by level of education, nor do they show the literacy level of the population. In countries like Egypt and Nigeria, there exists no compulsory education and in the process of development, compulsory education may not receive top priority. This point is made here to indicate that development is not a unitary concept and it must necessarily embrace various dimensions. It also points to the difficulties in measuring development.

There exist enormous differences in the standards of health between countries. This situation can be assessed not only from the statistics on the number of physicians per unit of population but also on infant mortality and life expectancy. From Table 3, two points become abundantly clear — differences between developed and developing countries in the number of medical physicians, and deficiencies in data. West Germany stands out to be the most 'doctored' country, with a medical physician to population ratio of 1:452 in 1979. Generally this ratio is high for the rest of the countries of Europe, North America, Australia and New Zealand. Japan and Singapore appear in the middle and Nigeria stands at the other extreme with a ratio of 1:11,330. Deficiencies become apparent from the Egyptian statistics. First of all, the fluctuation in the number of medical physicians in Egypt from 18,039 in 1970 to 8,037 in 1975 to 43,547 in 1980 is most unusual. Although the number in 1980 represents 'all those registered but not necessarily residing in the country', the decline between 1970 and 1975 remains unexplained. Be that as it may, the question may be posed whether a high doctor to population ratio, e.g. West Germany, signifies a high standard of health. Types of statistics which can answer this question would be, besides infant mortality and life expectancy, number of hospital beds and average bed occupation rates, deaths by disease, and investment in medical research. None of these sets of statistics are readily available for many countries. Another dimension must be added to this discussion. In countries like Egypt and Nigeria there is another group of professionals who perform the duties of general practitioners — they specialise in indigenous medicine. It is not known whether such personnel are included in the statistics for these two countries. Development must be understood in a very relative manner. It is one thing to divide the list of countries into developed and developing, but it is an entirely different and almost meaningless exercise to compare the two. It immediately emerges that even among the so called developed or highly industrialised countries there are those which are less developed than others. For example, Australia, England and Wales and West Germany are among the most developed countries of the world. Yet there appears substantial differences in the doctor to population ratios in these countries: 1:559, 1:654 and 1:452 respectively. The Australian ratio in 1980 is similar to what West Germany experienced in 1970. This phenomenon demonstrates the changing nature of the concept of 'development'. If increases in the doctor to population ratio demonstrate positive gains, then it is possible to say that country 'A' is more developed in 1980 than it was in 1970. Such a comparison over time within a country is much more meaningful than cross-country comparison. Accordingly, it appears that Nigeria has shown the fastest increase in doctor to population ratio between 1970 and 1979.

TABLE 3
PHYSICIANS
MEDICAL PHYSICIANS AND POPULATION
PER PHYSICIANS FOR SELECTED COUNTRIES

Country		1970	1975	1980
AUSTRALIA	N	15304*	20543*	26140
	R	810*	667*	559
NEW ZEALAND	N	3375 1971	4110	4880
	R	844 1971	747	635
JAPAN	N	117032*	130119*	148580 1979
	R	887*	852*	779 1979
SINGAPORE	N	1524 1972	1622	2096
	R	1411 1972	1387	1140
HOLLAND	N	15644	21825	24878 1978
	R	832	625	560 1978
SWEDEN	N	10950	14050	16340 1978
	R	734	580	506 1978
WEST GERMANY	N	105976	121167*	135711 1979
	R	561	509*	452 1979
UNITED KINGDOM	N	62000 1971	67900*	75000 1978
	R	787 1971	718*	654 1978
EGYPT	N	18039*	8037	43547
	R	1882*	4650	971
NIGERIA	N	2683	4248	6584 1979
	R	20526	14814	11330 1979
CANADA	N	31166	39104	43192 1979
	R	684	584	548 1979
UNITED STATES OF AMERICA	N	323832*	345002*	424000 1978
	R	633*	585*	524 1978

Notes: N = number of physicians
R = population per physicians

* where data have been unavailable for the actual year shown, estimates have been made by linear interpolation on adjacent years' data. Where interpolation was not possible the nearest available years' data were used

Source: *1981 Statistical Yearbooks*, for 1972, 74, 75, 76, 77, 78, 79/80, United Nations, New York.

Economic Change

Development is very often equated with economic growth, and the variable that is used most often to measure such development, is gross domestic product. When expressed in per capita terms this measure facilitates comparison within, as well as across country over time. Theoretically, increases in per capita gross domestic product should mean improvements in the economic well-being of individuals. It is difficult, however, to say that an average Singaporean is less well off than an average Australian just because the per capita gross domestic product of the former is less than half that of the latter. This becomes complicated when it is recognised that the figures in Table 4 are based on current prices, i.e. disregarding the changes in the value or purchasing power of money. Irrespective of the criteria used, although Sweden's per capita gross domestic product in 1980 was highest among the 12 countries, it is Japan which showed the most remarkable increase in gross domestic product from 1960 to 1980. Excluding Egypt, the United States shows the least amount of increase in per capital gross domestic product between 1960 and 1980.

Gross domestic product is the one measure which has been used by many scholars to examine the relationship between economic condition and criminality. Because of contradictory results, e.g. fastest economic growth rate and slowest increase in the level of crimes in Japan *v.* moderate economic growth rate and high crime rate in the United States, such analyses have given rise to more problems than they have solved. For a less developed country even a

TABLE 4

PER CAPITA GROSS DOMESTIC PRODUCT

(In US Dollars)

For Selected Countries

	Type of estimate (1975)	1960	1970	1975	1980
AUSTRALIA	A	1580	2976	6900	10127
NEW ZEALAND	A	1576	2235	4545	6896*
JAPAN	A	462	1969	4470	8873
SINGAPORE	A	430	916	2507	4595
HOLLAND	A	971	2429	6066	11857
SWEDEN	A	1865	4085	8790	14881
WEST GERMANY	A	1301	3055	6798	13304
UNITED KINGDOM	A	1360	2202	4140	9352
EGYPT	A	129	217	363	435*
NIGERIA	A	80	140	534	n.a.
CANADA	A	2229	3884	7214	10584
UNITED STATES OF AMERICA	A	2797	4822	7125	11363

* 1979

Source: *1981 Statistical Yearbook*, United Nations, New York, 1983.

TABLE 5

TELEVISION

NUMBER OF RECEIVERS AND RECEIVERS PER 1000 INHABITANTS FOR SELECTED COUNTRIES

Country		Code	1965	1970	1979
AUSTRALIA	N	R	1954	2758	5515
	R		172	221	383
NEW ZEALAND	N	R	413	661	860
	R		157	235	278
JAPAN	N	L	18080	22883	28439
	R		183	219	245
SINGAPORE	N	L	63	157	500
	R		33	76	212
HOLLAND	N	L	2113	3086	4111
	R		171	237	293
SWEDEN	N	L	2085	2513	3103
	R		270	312	374
WEST GERMANY	N	L	11379	16675	20672
	R		193	275	337
UNITED KINGDOM	N	L	13516	16309	22000*
	R		248	294	394*
EGYPT	N	R	323	529	2300
	R		11	16	32
NIGERIA	N	R	30	75	450
	R		0.6	1.3	6
CANADA	N	R	5310	7100	11040
	R		270	333	466
UNITED STATES OF AMERICA	N	R	70350	84600	140000
	R		362	413	635

* data calculated using estimated number of receivers in use (R)

Notes: N = number (thousand units)
R = per 1000 inhabitants

Code: R - the data shown is the estimated number of receivers in use
L - when estimates are not available the data is the number of licences issued

Source: *1981 Statistical Yearbook*, United Nations,

high rate of growth in the economy may not mean much for the people. Thus, annual reports published by governments may show a sizable increase in per capita gross domestic product, yet a high inflation rate might neutralise this gain altogether.

Cultural Change

The two indicators used to show cultural change are the number of television receivers and newspaper circulation. When the first United Nations Congress took place in 1955 television receivers were a novelty, most countries of the world did not have them. Social scientists when measuring changes in the quality of life were content with the number of radios and transistors as indicators among a host of variables. Undoubtedly, the introduction of television has brought about profound changes in the life style of citizens and it has been credited with both positive as well as negative impact. Data in Table 5 show that if an average family in Europe, North America and Australia consists of four members, then all countries in these regions had more than one television receiver per family in 1979; the United States had more than two per family. It is difficult to say why some countries, with more or less similar economic growth, should have higher television sets to population ratio than others. Certainly, it is quite obvious that economic growth rate is not the only determining factor. Consider, for example, the two poorest countries in the sample. Egypt, with lower economic growth rate, has a higher number of television sets than Nigeria. Again, Singapore with a per capita gross domestic product half as much as Japan, has a similar television sets to population ratio.

TABLE 6
DAILY NEWSPAPERS
DAILY NEWSPAPERS PER 1000 INHABITANTS
FOR SELECTED COUNTRIES

Country		1965	1970	1979
AUSTRALIA	N	61	58	63
	R	372	322	336
NEW ZEALAND	N	n.a.	40	37
	R	n.a.	376	345
JAPAN	N	185	178	178
	R	450	511	569
SINGAPORE	N	12	12	11
	R	n.a.	n.a.	249
HOLLAND	N	88	169	80
	R	291	315	325
SWEDEN	N	119	114	112
	R	505	538	526
WEST GERMANY	N	1115	1093	n.a.
	R	326	324	n.a.
UNITED KINGDOM	N	110	n.a.	120
	R	479	n.a.	n.a.
EGYPT	N	n.a.	14	9
	R	n.a.	22	n.a.
NIGERIA	N	22	21	15
	R	8	n.a.	n.a.
CANADA	N	115	n.a.	126
	R	217	n.a.	241
UNITED STATES	N	1751	1763	1787
OF AMERICA	R	311	303	282

Notes: N = number of daily newspapers
R = rate per 1000 inhabitants

Source: *1981 Statistical Yearbook*, United Nations, New York, 1983.

Table 6 presents data on daily newspapers. Irrespective of what television can offer in terms of news, government policy on issues like taxation, social services, industrial growth, education, human rights, international relations, and technology, etc., newspapers perhaps will continue to remain the primary source of detailed information on various issues. Sports, entertainment, travel, leisure, stock market, houses, products, etc., are only a few of the items on which there remains tremendous interest. At the same time, the daily circulation rate of newspapers in most countries has reached a plateau; some countries even show some decline. Japan is the only country in which the circulation rate increased by about 25 per cent between 1965 and 1979. Again as in the case of most other variables, the two poorest countries of Egypt and Nigeria remain 'less cultured'.

What the above discussion of change has shown is that it is difficult to interpret change in all the countries with a single standard. And therefore, it is problematic to interpret a high population growth rate in Nigeria as necessarily detrimental to its development or progress. Similarly, a relatively slow growth in gross domestic product, from western standards, may be considered a sluggish economy, but a faster growth than at present might produce such a sudden change in life style that the population could not cope. It is well known that in the wake of the oil price war in the early 1970s, even such a highly developed nation as Norway decided systematically to control oil production. The main argument for such a decision was that the increased wealth would bring far-reaching changes in the life style of the population which may be counter-productive. On each variable examined, similar arguments can be made. With all these limitations, it is now the time to examine the changes in the levels of criminality.

Changes in Crime Rates

Statistics on the three categories of crimes selected for this paper appear more complete than those on the other variables discussed above, but the quality of the statistics remains as uncertain as can be imagined. In relation to the Seventh United Nations Congress, however, the statistics presented in Tables 7-9 reveal several important issues with which such congresses are concerned. Ever since the fourth Congress in 1970 the United Nations has laid strong emphasis on research and statistics and it has demonstrated its commitment to improving the situation. Statistics shown in these Tables and time series analysis of Australian statistics presented in the following section will address the issue of quality of research and statistics.

Table 7 presents the number of homicides reported to police per 100,000 population. The wealth of information this Table contains is hard to ignore. First of all, the 12 countries can easily be separated in groups in terms of homicide rates. England and Wales, Japan and New Zealand not only show a low homicide rate, but the trend within each country is interesting. Homicide is the extreme form of violence and judging from this stance, England and Wales appears to be the least violent country in the sample. While the homicide rate shows an increasing trend, during the 25 year period (1955 to 1980) this has barely doubled. But it is Japan which shows one of the most remarkable trends — a systematic decline in rate from 3.4 in 1955 to 1.4 per 100,000 population in 1980. New Zealand, on the other hand, shows a gradually increasing trend and the most recent volume of homicide is over three times that of 1960.

Without careful examination of the original sources of statistics, it is extremely difficult to comment on the accuracy and reliability of statistics. Taken on face value, therefore, Egypt and Holland present the most interesting pattern. The declining trend of homicide rates in Egypt is much more striking than that in Japan. Between 1955 and 1980 this rate dropped from 10.9 to 2.2. The situation in Holland is most surprising. Holland is known to have a liberal criminal policy, it imprisons far less numbers of individuals than most countries of the world. The most systematic and sharp increase in homicide rates from 2.3 in 1955 to 10.6 in 1980 is shocking. Of all the countries in the sample, Holland presents the highest increase in homicide rates.

Singapore and Sweden demonstrate opposite trends; the former shows a steady declining trend like Japan but the current rate is still much higher than in Japan. The trend in Sweden is similar to Holland, but not quite as high. The Nigerian homicide pattern cannot be explained.

TABLE 7

HOMICIDE

NUMBERS AND RATE PER 100,000 POPULATION
FOR SELECTED COUNTRIES

		1955	1960	1965	1970	1975	1980	latest
AUSTRALIA	N	190	202	256	326	408	455	
	R	2.07	1.94	2.45	2.50	3.00	3.11	4.1†
NEW ZEALAND	N	n.a.	21	28	25	36	69	
	R	n.a.	0.88	1.06	0.87	1.16	2.19	2.9†
JAPAN	N	3066	2648	2288	1986	2098	1684	
	R	3.43	2.84	2.33	1.91	1.87	1.44	
SINGAPORE	N	58	51	45	59	49	62	
	R	4.79	3.12	2.38	2.95	2.18	2.55	
HOLLAND	N	249	296	378	541	998	1501	
	R	2.30	2.60	3.10	4.10	7.34	10.65	
SWEDEN	N	118	126	170	210*	294	394	
	R	1.61	1.63	2.20	2.60	3.58	4.74	
WEST GERMANY	N	1084	1215	1634	2477	2957	2733	
	R	2.07	2.20	2.70	4.00	4.78	4.44	4.9†
UNITED KINGDOM	N	335	447	493	642	1014	775	
	R	0.75	0.98	1.03	1.31	2.06	1.57	1.4†
EGYPT	N	2131	2262	1273	1224	n.a.	914	
	R	10.91	8.79	4.20	3.70	n.a.	2.21	
NIGERIA	N	n.a.	596	1110	n.a.	42126	1633	
	R	n.a.	1.73	2.02	n.a.	76.59	2.97	
CANADA	N	n.a.	n.a.	354	690	1338	1468	
	R	n.a.	n.a.	2.20	3.70	5.90	5.99	6.5†
UNITED STATES OF AMERICA	N	6850	9136	9900	15890	20510	23044	
	R	4.14	5.10	5.10	7.90	9.60	10.00	9.1†

Sources: *International Crime Statistics 1979-80*, International Criminal Police Organisation, Saint Cloud, France.

For the years 1965 and 1975 data for the United States was taken from *Crime in the United States*, Federal Bureau of Investigation, Washington, DC, 1965.

† Data taken from annual reports for the respective countries for the year 1982.
* 1969

Table 8 presents data on the most serious property related offences including robbery, violent theft, burglary and housebreaking. The Table is full of surprises, shocking fluctuations and glaring inconsistencies in counting rules over time. It is absurd to even think that the aggravated theft rate in Japan could increase by 125 times between 1975 and 1980. Equally perplexing is the situation in Nigeria — between 1975 and 1980 aggravated theft rates dropped from 178 to 4 per 100,000 population. Canada presents similar scenarios with a 20 fold jump in the aggravated theft rate between 1970 and 1975. On lesser magnitude such a situation is obtained in Egypt as well. Again it is tempting to cite Holland. Precisely when the prison population was declining in the early 1970s, the aggravated theft rate was reaching new highs; between 1970 and 1975 the rate more than doubled. Leaving aside the two poorest countries in the list, it appears that when post Second World War economic development was in full swing aggravated theft rates also showed a significant jump. Data on fraud, included in Table 9, also show a few strange movements. Egypt again is a case in point: from 0.3 in 1955 the rate jumped to 270 in 1960 and twenty years later the rate plummeted to five per 100,000. Among other points worth highlighting is the sharply increasing trends in Australia, New Zealand, Canada and the United Kingdom.

TABLE 8

AGGRAVATED THEFT

NUMBERS AND RATE PER 100,000 POPULATION FOR SELECTED COUNTRIES

		1955	1960	1965	1970	1975	1980	latest
AUSTRALIA	N	12081	22322	36960	65025	125147	194058	
	R	132.03	214.95	354.29	500.14	920.14	1324.89	1755.6†
NEW ZEALAND	N	n.a.	7283	13646	20940	378	54746	
	R	n.a.	306.32	514.94	732.71	12.17	1738.80	2133.5†
JAPAN	N	5878	5198	3886	2689	2300	292891	
	R	6.58	5.57	3.95	2.59	2.05	250.21	
SINGAPORE	N	281	858	1151	1408	1823	3852	
	R	23.22	52.63	60.89	70.40	81.02	158.50	
HOLLAND	N	7707	12525	22850	54047	114743	176020	
	R	71.36	109.00	185.94	14.5	843.91	1249.61	
SWEDEN	N	33635	56564	81547	91451*	135943	143371	
	R	460.75	734.59	1054.40	1141.2	1635.13	1723.64	
WEST GERMANY	N	140030	201206	344643	659555	1064931	1297700	
	R	268.25	362.0	583.8	1072.3	1722.29	2108.60	2646.5†
UNITED KINGDOM	N	75485	153679	256848	438137	533178	637653	
	R	193.55	386.55	537.75	849.38	1083.71	1294.88	1523.4†
EGYPT	N	441	420	115	240	n.a.	3780	
	R	2.25	1.63	0.4	0.7	n.a.	9.16	
NIGERIA	N	n.a.	9489	12539	12153	97773	2052	
	R	n.a.	271.11	22.79	22.00	177.77	3.83	
CANADA	N	n.a.	n.a.	5576	11630	281951	392189	
	R	n.a.	n.a.	34.0	62.5	1236.6	1600.77	1612.1†
UNITED STATES OF AMERICA	N	642760	910027	1408330	2532260	3717070	4308002	
	R	388.84	507.52	734.4	1257.0	1744.1	1913.0	1707.1†

Sources: *International Crime Statistics 1979-80*, International Criminal Police Organisation, Saint Cloud, France.

For the years 1965, 1970 and 1975 data for the United States was taken from *Crime in the United States*, Federal Bureau of Investigation, Washington, DC, 1965.

† Data taken from annual reports for the respective countries for the year 1982.

* 1969

TABLE 9

FRAUD

NUMBERS AND RATE PER 100,000 POPULATION
FOR SELECTED COUNTRIES

		1955	1960	1965	1970	1975	1980
AUSTRALIA	N	8546	17796	18850	27514	43705	48987
	R	93.39	171.36	181.45	211.64	321.34	334.45
NEW ZEALAND	N	n.a.	3374	5810	5559	11717	19470
	R	n.a.	141.90	219.25	194.52	377.31	618.39
JAPAN	N	196965	152472	137649	76004	72678	80349
	R	220.56	163.34	140.07	73.29	64.93	68.64
SINGAPORE	N	456	618	524	351	788	1470
	R	37.68	37.88	27.72	17.55	35.02	60.49
HOLLAND	N	10253	8871	7696	10805	12676	4056
	R	94.93	76.47	62.6 8	2.9	93.23	28.78
SWEDEN	N	23168	24550	40666	n.a.	57223	101122
	R	317.37	318.83	525.81	n.a.	697.12	1215.71
WEST GERMANY	N	295364	279969	240767	227882	272091	287855
	R	565.83	503.8	407.8	370.5	440.05	467.60
UNITED KINGDOM	N	25880	39324	53795	74562	123055	105246
	R	66.36	98.92	112.62	152.20	250.11	213.72
EGYPT	N	54	69447	58249	48088	n.a.	2090
	R	0.27	269.76	193.9	144.9	n.a.	5.06
NIGERIA	N	n.a.	n.a.	2271	2526	5432	1481
	R	n.a.	n.a.	4.11	4.6	9.88	2.69
CANADA	N	n.a.	n.a.	32401	67271	86024	109293
	R	n.a.	n.a.	197.5	361.5	377.3	446.09
UNITED STATES OF AMERICA	N	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
	R						

Source: *International Crime Statistics 1979-80*, International Criminal Police Organisation, Saint Cloud, France.

Summary

Tables 1 to 9 present statistics on six socio-economic and cultural variables and three crime variables: these nine variables do not make up an exhaustive list of variables which can be used to examine the relationship between development and crime. Indeed it is doubtful whether all the nine variables used in this paper are relevant. The most significant story that the nine Tables reveal, however, is the status and limitations of social accounting systems in the selected countries. The nature and quality of these statistics do not inspire confidence and therefore, use of sophisticated statistical techniques to analyse these, is meaningless. Although computers are gradually becoming commonplace, the inadequacies lie not so much in storage and dissemination but in the classification and processing of statistics at the point of origin. However, it is not implied here that the statistics presented are useless. The rules of classification, counting and processing vary between countries and therefore comparisons of statistics from various countries will always present problems.

Table 10 attempts to summarise the characteristics of these nine variables for the latest year for which statistics were available. The magnitude of rates and ratios has been placed in low, medium and high categories, values of which appear at the base of the Table. This exercise produces some interesting patterns. Canada and the United States appear very similar in most of the nine items. The only difference observed is in the expenditure on education. Most likely, this difference occurs because the expenditure figures relate to government expenditure only. In the United States a large number of schools, colleges and universities receive funds also from sources other than the government. Thus the pattern obtained in these two countries indicate that high rates of violent and property crimes coincide with a medium rate of population

TABLE 10
SUMMARY CHARACTERISTICS OF VARIABLES IN SELECTED COUNTRIES

Country	Population Growth Rate	Expenditure on Education	Doctors to Population Ratio	GDP Per Capita	Television Population Ratio	Newspaper Population Ratio	Homicide Rate	Aggravated Theft Rate	Fraud Rate
	1	2	3	4	5	6	7	8	9
AUSTRALIA	M	M	H	H	H	H	M	H	M
NEW ZEALAND	L	M	M	M	M	H	M	H	H
JAPAN	M	M	M	H	M	H	L	M	L
SINGAPORE	M	L	L	M	M	M	M	L	L
HOLLAND	M	H	H	H	M	H	H	H	L
SWEDEN	L	H	H	H	H	H	M	H	H
WEST GERMANY	L	L	H	H	H	H	M	H	H
UNITED KINGDOM	L	M	M	H	H	H	L	H	M
EGYPT	H	L	L	L	L	L	M	L	L
NIGERIA	H	L	L	L	L	L	M	L	L
CANADA	M	H	H	H	H	M	H	H	H
UNITED STATES OF AMERICA	M	M	H	H	H	M	H	H	n.a.

N.B. H = High; M = Medium; L = Low

1. H = Over 2% per annum, M = 0.5 to 2% per annum, L = Less than 0.5% per annum
2. H = Over 8%, M = 5% to 8%, L = Under 5%
3. H = 1:600, M = 1:600 — 1:800, L = Over 1:800
4. H = Over 8000, M = 4000 to 8000, L = Under 4000
5. H = Over 300, M = 100 — 300, L = Under 100
6. H = Over 300, M = 100 — 300, L = Under 100

growth, high levels of expenditure on education, high doctor to population ratio, high per capita gross domestic product, high television to population ratio, and medium daily newspaper circulation rate. As it is not possible to carry out lag or path analysis it is difficult to explain this relationship. It is possible to speculate that a pattern of high crime rate itself may be a sign of development. Statistics from Egypt and Nigeria seem to support such a notion. In these two countries all the non-crime variables signify a low level of progression and rates of aggravated theft and fraud are also low.

The four countries of Europe do not present such clear cut patterns. However, on at least three variables, the magnitude of values are similar. These are per capita gross domestic product, daily newspaper circulation rate and rate of aggravated theft. Therefore, the indications are that economic growth and serious property crimes move in the same direction. The remaining four countries do not match on most variables. The Australian pattern approximates those of the European countries on more aspects than it approximates that of New Zealand. Japan seems to have become the envy of most nations. In conclusion the relationship between development and crime appears to be a far more complex phenomenon than conventional wisdom would have society believe. At this stage of record keeping it is not possible to settle the issue of the relationship between development and crime with the help of available crime statistics. It does not necessarily follow that efforts to examine such relationships be abandoned. Indeed such efforts should be encouraged. In this context the efforts of the United Nations in carrying out two world crime surveys is most encouraging. Those familiar with the quality of criminal and other social statistics in various countries may disagree substantively with the surveys and the value of their findings based on highly aggregated data. But the importance of the two United Nations surveys lies not so much in the actual results but in their emphasis on collection of statistics, research and their relevance to criminal policy.

It follows, therefore, that if adequate statistics were available, much valuable analysis could be carried out. The use of econometric techniques on social data are becoming possible and are being used. In the following section an effort will be made, with the help of Australian statistics, to demonstrate the types of time series and other analysis that can be used to explain changes in socio-economic trends. In this effort, two economic variables, e.g. gross domestic product and unemployment rates will be used against a few selected crime categories. At best, this exercise will examine economic development and crime in Australia in the present century.

ECONOMIC DEVELOPMENT AND CRIME: BURGLARY IN AUSTRALIA

Discussions on the relationship between economic development and crime generally tend to centre on the levels of crime vis-a-vis poverty *v.* prosperity. A most common method of exploring such a relationship is to examine the levels of criminality in countries at different stages of economic development, including the least developed countries of Africa, Asia and Latin America to the most developed nations of North America and Europe. Such comparative assessment undoubtedly serves some purpose and this is of substantial academic interest. However, often the examination of such relationships is based on national and highly aggregated data, and therefore offers limited utility. A major limitation of such an analysis is that they fail to take into account the process of economic development, which besides providing data on economic development, also enables one to observe fluctuations in the economy and its relationship with crime within a country, and over time.

There exists, on the other hand, a substantial body of knowledge on the relationship between economic conditions and crime. Among theories with group orientation, explanations based on economic factors, and their influences on criminality, are one of the oldest. Such explanations gain support from the idea that the economy plays a fundamental role in shaping the nature and form of human relations. For an excellent survey of literature examining the relationship between criminality and economic conditions up to the Great Depression, see Sellin (1937). Since the late 1930s several new research reports have appeared, some of which

have analysed this relationship with the help of advanced statistical techniques. A review of the literature in this field reveals that researchers have used a variety of indices of economic conditions and of criminality. Wholesale prices, business indicators, poverty levels, wage payments, retail trade, consumer price index, gross domestic product, automobiles registered, income and unemployment have been used as indices of economic conditions. As indices of criminality, data on such variables as commitments to prison, convictions in various courts, prosecutions in various courts, charges before magistrates courts, arrests and offences known to the police, have been used. A few of the recent studies need to be described briefly to set the stage for a description of the study on burglary in Australia.

In a widely quoted study, Fleisher (1966) obtained a positive relationship between unemployment and delinquency. His findings led him to conclude:

> that a 1 per cent increase in unemployment rate is associated, on the average, with an approximate .15 per cent increase in the rate of delinquency (arrest rate) (1966, p. 84).

Such findings, based on time series and cross sectional data also prompt him to make causal inference in that the 'examination of delinquency rates by age adds further to the hypothesis that increases in unemployment cause increases in delinquency' (Fleisher, 1966, p. 85).

Several years later, analysis based on post Second World War time series data, Brenner arrives at similar conclusions:

> Thus a one percent increase in the unemployment rate sustained over a period of six years has been associated (during the past three decades) with increases of approximately . . . 648 homicides and 3340 state prison admissions (1976, pp. 5-6).

Unemployment is but one aspect of economic conditions. Brenner (1976) used three economic indicators — gross domestic product, unemployment and consumer price index and found positive association between these and homicide and imprisonment rates. Fox (1978) found an association between the consumer price index and property crimes and suggested that economic factors of crime may be alleviated by reducing the effects of income inequality.

Mukherjee (1981) analysed charges before magistrates courts in Australia and their relationship with a host of socio-economic variables including population, standardised gross domestic product per capita, unemployment, number of cars registered and police and prison expenditure for almost eight decades. For the entire period, total property and petty offences charged before magistrates courts showed strong positive association with each of the socio-economic variables listed above except unemployment. When the period of 1900 to 1976 was divided into several segments, these relationships changed significantly (Mukherjee, 1981, pp. 119-35).

Scanning the findings of various researches in this area points to at least two possibilities. Firstly, time series data, used to examine the relationship between criminality and other variables, have to contain a large number of data points. That is to say, that if annual data are used as the time series data points, then the researcher would be well advised to present data for a number of years. The length of the data span, to a large extent, would be dictated by the purpose of the study. However, since changes in economic conditions and in other aspects in a country may also be instigated by certain 'unforeseen' or 'unusual' circumstances, it is useful to extend the time span to incorporate as many 'unusual' circumstances as possible. And secondly, a longer time span enables the researcher to examine segments of the data set in light of the prevailing socio-economic climate. Historical analysis of trends must take into account special characteristics of different periods. The study of a data set spanning several decades, without considering detailed characteristics of various segments of this time span, tends to mask the importance of 'unusual' circumstances. A clear example of this situation was obtained in a study in Australia which analysed the relationship between the unemployment rate and property crime (Mukherjee, 1981). In that study, the overall relationship between unemployment and property crimes charged before magistrates courts for the period 1900-1976 was found to be weak but negative. When discriminant analysis, using a number of variables, divided these 77 years into seven time periods or environmental sets, the relationship between unemployment and property crimes changed to positive in each period but the first.

Such differences in findings also highlight a major limitation in the analysis, especially in

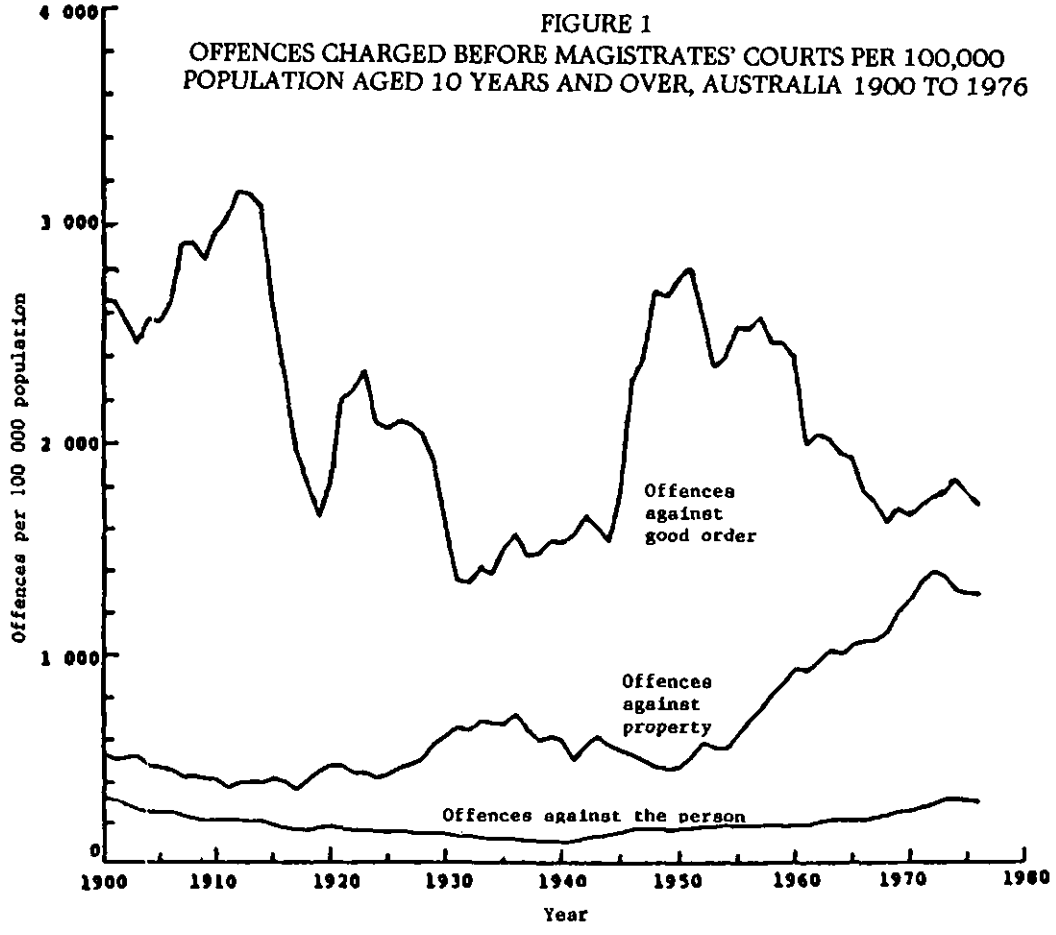
the case of the above example. Most researchers tend to consider the unemployment and property crime relationship as unidirectional and some have imputed such relationships to be causal. Thornberry and Christenson have very effectively demonstrated the fallacy of this stance and suggest:

> that such a perspective is too limited to model the causal processes actually at work. A more accurate reflection of these processes is a reciprocal one in which criminal involvement and a variety of other process variables mutually influence one another over time (1984, p. 408).

In this paper the main aim is to examine economic conditions and the offence of burglary in Australia. The two indices of economic conditions used are gross domestic product and the unemployment rate. The offence of burglary has been selected for several reasons:

(i) it is the sharpest growing serious crime in Australia since the Second World War;
(ii) during the last two decades private dwellings have become increasing targets of burglary. Currently, of all the burglaries reported or becoming known to the police over 58 per cent involve private dwellings. This means that burglary affects directly a large segment of the Australian population. Also, although predominantly an offence against property, burglary creates a significant amount of fear among the community;
(iii) existing studies tend to show that burglary is a crime of opportunity and the network of such opportunity is facilitated as well as expanded by changes in life styles brought about by economic growth and resulting technological developments; and finally,
(iv) it is an offence in which juvenile involvement is shown to be disproportionately high.

FIGURE 1
OFFENCES CHARGED BEFORE MAGISTRATES' COURTS PER 100,000 POPULATION AGED 10 YEARS AND OVER, AUSTRALIA 1900 TO 1976



The findings of the present paper are based on charges before magistrates courts, which are the courts of first instance, for the present century. Before analysing the data on burglary it may be of interest to present briefly the trends in the three major categories of offences charged before magistrates courts and their relationship with the two economic variables of gross domestic product per capita and the unemployment rate. The three categories are: offences against the person, offences against property, and offences against good order. Besides presenting raw rate figures for these offence categories, this selection will also show relative movements in the trends with the help of polynomial curves. Polynomials smooth the rough edges of the basic curves by removing erratic perturbations, thereby emphasising the more fundamental movements in the data. The order of polynomials was decided on the basis of F-ratio of regression and explained variance. The rates of offences charged are shown in Figure 1. The results of the polynomials for each of the three offence categories are presented in Table 11 and the slopes of the curves produced in Figure 2.

Data in Figure 1 is quite clear and appear to offer two distinct trends. One relates to the offences against the person which shows a decline in rates up to the late 1930s and an increase thereafter. The second trend reflects inverse patterns of increases and decreases in rates between property and good order offences. That is to say, that when charges rates for property offences declined, charges rates for good order offences increased and vice versa.

During the first few years of this century charges for property crimes declined, at the same time good order offences increased. A reverse pattern is seen during the Depression, and a very sharp pattern is obtained since the post Second World War economic growth began.

Changes in the volume of the three offence categories in Figure 1 can now be examined in terms of relative movement — not only increases and decreases in a group of years but also the pace of increase or decrease. Data in Table 11 show that the F-ratios for offences against the person and property are very high and their explained variance are 0.94 and 0.96 respectively. For good order offences, although the R-ratio is relatively low, it is still significant at the 0.001 level. Besides good fit, the polynomial stationary points present some interesting insights. The stationary points represent the times when the slopes of the curves are zero.

TABLE 11

MEASURES OF THE GOODNESS OF FIT AND POLYNOMIAL STATIONARY POINTS FOR OFFENCES CHARGED IN MAGISTRATES' COURTS, AUSTRALIA 1900 TO 1976

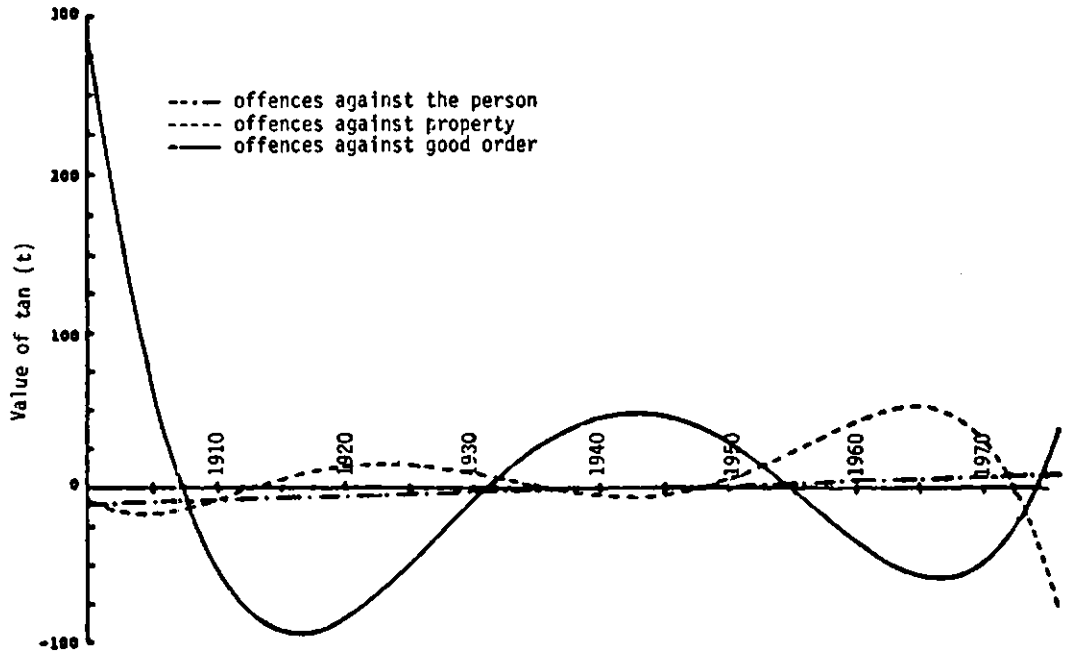
Offence Category	F-ratio of regression $F^{df_1}_{df_2}$	r^2	Order of f(t)	Polynomial stationary points: F '(t) Year
Offences against the Person	$556.532\,^{2}/_{74}$	.93766	2	1937
Offences against property	$325.164\,^{6}/_{70}$	0.96536	6	1913 1936 1948 1973
Offences against good order	$32.076\,^{5}/_{71}$	0.69315	5	1908 1932 1955 1975

Note: df_1 and df_2 are the degrees of freedom of the regression and residuals respectively. All the F-ratios are significant at less than 0.0001.

From Figure 2 it is apparent that property and good order offences show an almost perfect inverse phase relationship. The turning points for these two offence categories coincide within five to six years of each other and during the entire century they have moved opposite to each other. The slope of the offences against the person curve shows only one turning point, in 1937, before which these offences always declined and afterwards always increased.

The reading of the curves in Figure 2 in conjunction with those in Figure 1 helps to clearly identify the general tendencies. Thus considering the property offences curve it is noted that the first directional change takes place in 1913, when the rates of property offences began to

FIGURE 2
SLOPES OF THE POLYNOMIAL CURVES (Value of f '(t)) FOR MAJOR OFFENCE CATEGORIES, AUSTRALIA 1900 TO 1976



Offences against the person
$f'(t) = 0.2492.t - 9.1582$

Offences against property
$f'(t) = -4.0322E - 6.t^5 + 6.7678E - 4.t^4 - 3.8658E - 2.t^3 + 8.5857E - 1.t^2 - 5.4238.t - 7.2780$

Offences against good order
$f'(t) = 3.1195E - 4.t^4 - 5.2215E - 2.t^3 + 2.8833.t^2 - 57.7381.t + 285.3512$

increase. Furthermore, it shows that between 1900 and 1912 the angle of the slope or the rate of decline was maximum in 1906 after which the rate began to fall. Similarly, between 1948 and 1972 charges for property offences increased, and the rate of increase was maximum in 1965. The curve for good order offences can also be dissected in a similar way.

The polynomials and their stationary points made it possible to offer certain general statements. These indicate that whatever is responsible for such movements does not have similar effects on all the offence categories. Furthermore, the opposite directional changes in property and good order offences show that events during the specific periods have opposite effects on these two offence types.

This exercise led to the examination of the present century in relation to structural, technological and socio-economic changes. With the help of a host of exogenous variables and the technique of discriminant analysis the period between 1900 and 1976 was divided into seven time segments (for detailed methodology and results see Mukherjee, 1981, pp. 119-35).

These time segments were:

1 1900 — 1907
2 1908 — 1912
3 1913 — 1927
4 1928 — 1937
5 1938 — 1949
6 1950 — 1965
7 1966 — 1976

Since the focus of this paper is on the relationship between economic conditions and crime a brief description of the changes in the two economic variables of gross domestic product per capita and unemployment and the three offence categories during the seven time segments will be offered. These changes are shown in Table 12. The difference in the values of gross domestic product per capita (Gdp) from time segment 1 to 2, 2 to 3 and 3 to 4 were not significant, but the increase in Gdp from 4 to 5, 5 to 6 and 6 to 7 were highly significant. The pattern in the unemployment rate is vastly different from the above.

TABLE 12
CHARACTERISTICS OF TIME SEGMENTS
AVERAGE VALUES OF SELECTED VARIABLES

Variable	1	2	3	4	5	6	7
GDP†	789	981	991	9651228	*	1525*	2000*
Unemployed	6.71	3.06*	4.56	12.75*	3.63*	1.97	2.13
Offences against# The Person	271.6	213.7	170.7*	127.0*	137.8	191.6*	271.1*
Offences against Property	490.1	408.7*	434.1	641.8*	550.4*	770.4*	1238.4*
Offences against Good Order	2626.9	2981.4*	2234.1*	555.1*	1888.7	2348.0	1717.1*
Burglary	21.0	19.8	50.0*	112.8*	104.8	126.7	243.1*

* Denotes the t values between time segments being significant at 0.001 level.
\# Figures relate to rate per 100,000 population aged 10 years and over.
† In dollars

There was a significant drop in the unemployment rate from time segment 1 to 2, a significant increase from 3 to 4, and a significant drop from 4 to 5. Economic logic would find these patterns perfectly in order.

What changes took place in the crime rates? Changes in the rates of offences against the person are hard to explain. The significant fall in the offence rate from time segment 2 to 3 and 3 to 4 corresponds with virtually no change in Gdp and rise in the unemployment rate. In other words, when the economy did not grow at all and when the unemployment rate increased there was a significant fall in charges for offences against the person. Does this, therefore, suggest that when the economy improves and the unemployment rate falls, offences against the person would increase? Well, some such scenario does emerge when the changes from time segment 5 to 6 and 6 to 7 are examined. There was significant growth in the economy and the levels of unemployment were very low; offences against the person increased significantly.

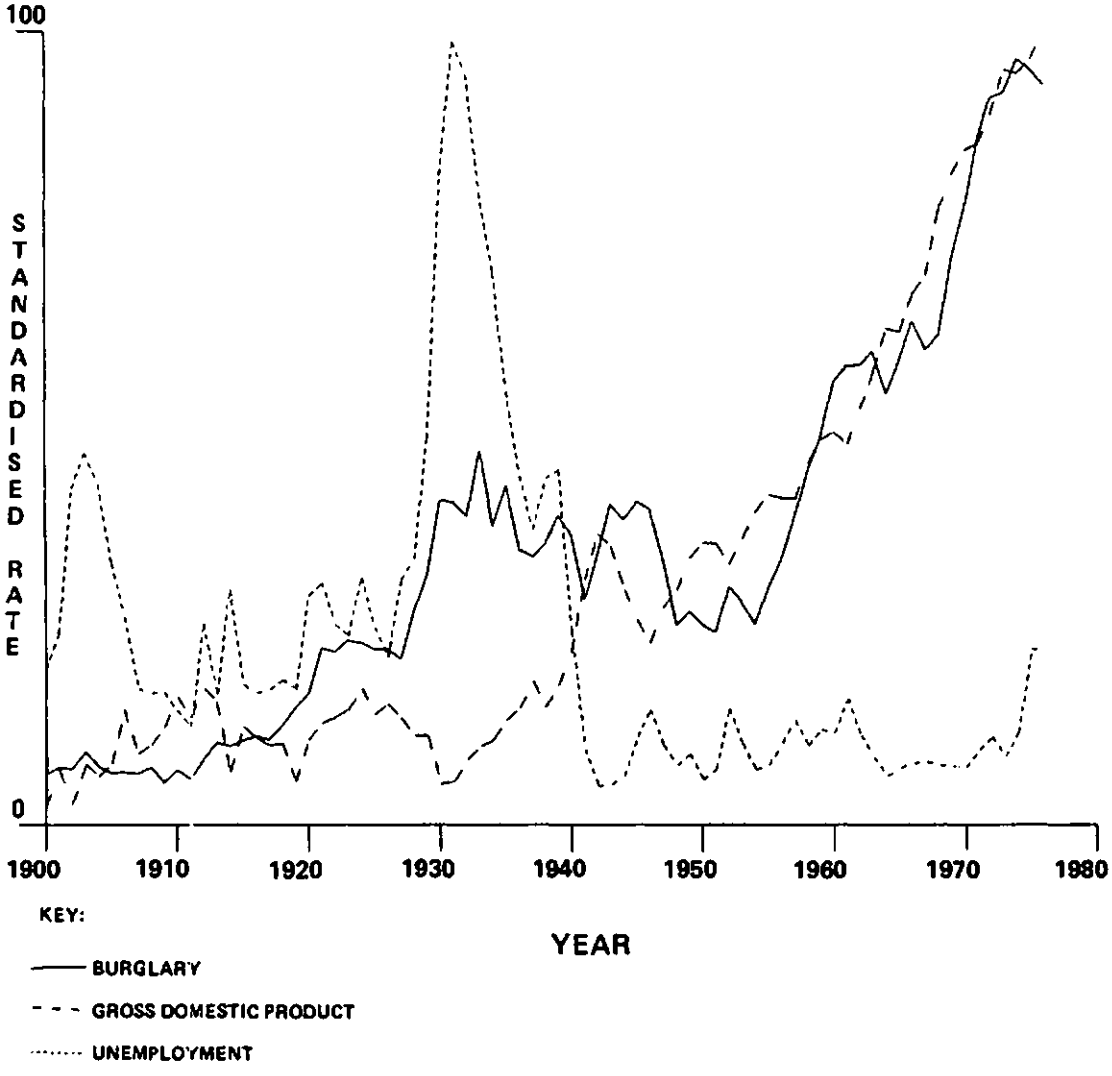
Property offences rates, on the other hand, show patterns in some ways different from, and in other ways similar to, those shown by offences against the person. From 1 to 2 time segment there was a significant decline in property offences. This coincided with a significant fall in the unemployment rate and a substantial rise in the Gdp. From time segment 3 to 4 property crime rates increased significantly, the unemployment rate rose at an unusually high level, and the Gdp showed a decline in real terms. This pattern reverses, as can be seen from the changes, from time segment 5 to 6 and 6 to 7. In these two situations, property crime rates showed sharp increases in spite of significant growth in the economy and a substantial lowering of unemployment rates. Thus, during the last eight decades the relationship between the

three crime variables and the two economic variables showed two opposite patterns. Before the second World War economic well being 'coincided with decline in property crime, and economic hardship coincided with increases in property crimes. Since the second World War, however, economic wellbeing' matched with the significant increases in property crimes. Good order offences show erratic movements and the most pronounced drop in the rates is observed during significant economic progress in the seventh time segment.

Economic Conditions and Burglary

In examining the relationship between economic conditions and burglary two sets of statistics on burglary will be used: (i) charges before magistrates courts, and (ii) rates of burglaries reported/becoming known to the police for the last two decades. Figure 3 presents the standardised rates of burglary charges, the unemployment rate and the gross domestic

FIGURE 3
STANDARDISED RATES OF BURGLARY,
GROSS DOMESTIC PRODUCT AND UNEMPLOYMENT
1900 TO 1976



product per capita. The standardised rates are calculated so that the maximum value of each of the three variables during the entire century is 100 and the minimum value in the scale of 0 to 100 is adjusted accordingly. Except for about a period of two decades between the mid 1920s and early 1940s burglary rates and gross domestic product have moved hand in hand and the synchronisation between the fluctuations of these two variables have been near perfect since the mid 1950s. It is needless to point out that the period from the 1920s to the early 1940s included two of the most turbulent episodes of the present century — the Great Depression and the Second World War. In Australia the post-war economic development began in the mid 1950s.

The relationship between the unemployment rate and burglary, as expected, is quite the opposite. During the mid 1920s to the mid 1930s the unemployment rate was the highest recorded this century, gross domestic product was the lowest, and the highest burglary rate in the first six decades. If it can be argued that the high burglary rate during the above period was due to a serious downturn in the economy and committing burglaries was a means to survive for at least some, then one must find some convincing explanation for the sharp rise in burglaries during the economic boom, since the mid 1950s. Increases in burglaries during economic depression and economic boom can be explained in terms of necessity *v.* opportunity. The necessity principle can be supported with the help of court disposition data. During the Depression of the 1930s the conviction rate for burglary charges dropped very significantly. It could be possible that the charges during this period increased because of the prevailing economic distress, some acts which otherwise would have been ignored were brought to the courts' attention. The infrequent use of 'conviction disposition' by the magistrates demonstrated attitudes and concerns which reflected the realities of the times. This explanation appears plausible when the data on discharges are examined. During the Depression years not only did the conviction rates for burglary drop but also the discharge rates were higher than at any other period in this century. At the peak of the Depression, 1933, only about one in ten burglaries charged resulted in a conviction, whereas seven out of ten resulted in discharges. The case files of the 1930s reveal that the magistrates paid greater attention to the economic conditions during the Depression than in other times. Therefore, the inference that the necessity principle operated during economic distress is a reasonable one.

On the opportunity principle there exist numerous studies which tend to show that the number of burglaries increase in direct proportion to growth in the opportunity structure (Cloward and Ohlin, 1960; Scarr, 1973; Sparks, *et al.*, 1977; Maguire, 1982; Clarke, 1984).

Economic development since the mid 1950s has made profound changes in life styles. This can be looked at from at least three perspectives which point to the creation and enlargement of the opportunity structure for crime, especially burglary.

(i) There has been a phenomenal growth in the number and variety of consumer goods. The attractiveness of these products is that they are becoming gradually lighter and their life is relatively short. That is to say that goods like stereo-systems, colour TV, video cassette recorders, home computers etc. are gradually becoming more compact and that these are not so durable because swift changes in models, in relation to appearance as well as performance, make the earlier models obsolete and out of fashion. Of course, there are numerous other products, including small transistor radios, bicycles to expensive jewellery and watches which also are stolen in large numbers.

(ii) With economic development and population growth there has been substantial increase in the number and variety of establishments such as shops, service stations, office buildings, warehouses, schools, factories, show rooms, etc. Unlike structures of earlier days most present structures, including private dwellings, use glass, plasterboard and single brick walls, and although a large majority of commercial business and office premises are insured as well as under surveillance during nights and weekends, the would-be burglar manages to enter such premises; indeed some burglars seem to operate in a very professional way.

(iii) The post Second World War economic boom has also drawn a large number of women out of home to work places. Both husband and wife in employment means that an

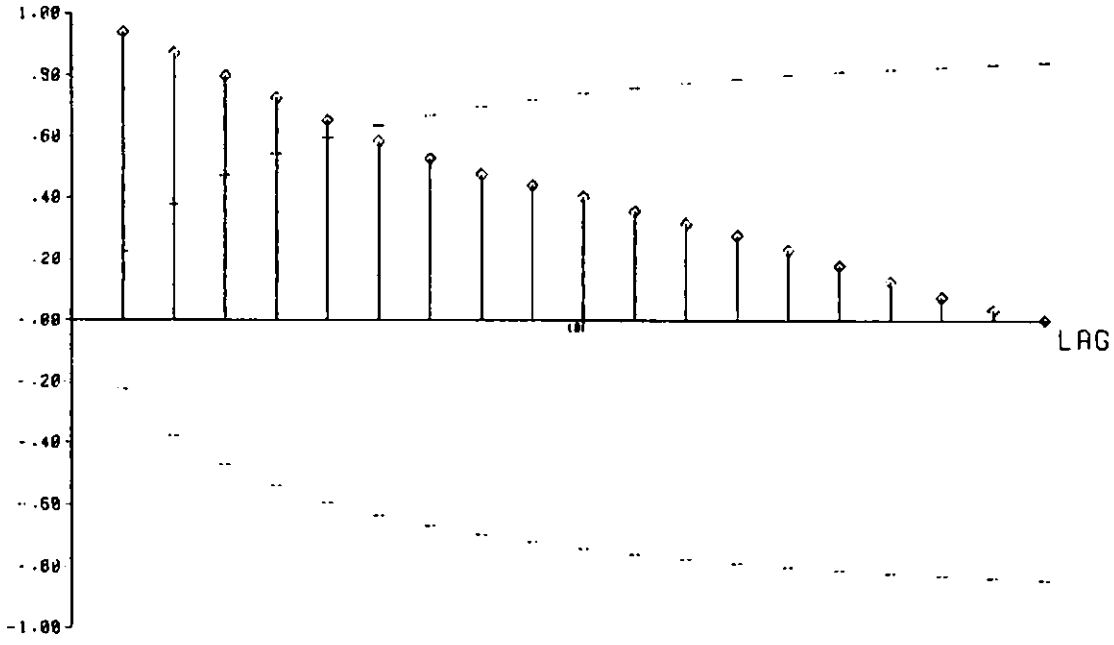
increasing number of houses are left empty during the day and are tempting targets for would-be burglars. The dual income family has given rise to the new problem of a large number of school children being left unsupervised for a few hours every day between the time they finish school and parents finish work. Also, double income has provided families with the opportunity to enjoy longer vacations and leisure time.

An examination of the trend of burglary charges follows. An attempt was made to subject the burglary data to a polynomial fit, similar to the one shown in Figure 2. Such an exercise revealed the curve of best fit was the fifth-order polynomial with only one stationary point. The overall trend in burglaries during this century was that of increase.

The long term burglary data were subjected to two other tests to ascertain whether (a) there existed any lagged correlations between burglary and gross domestic product, and burglary and the unemployment rate, and (b) whether the burglary data showed any periodic or cyclical movement.

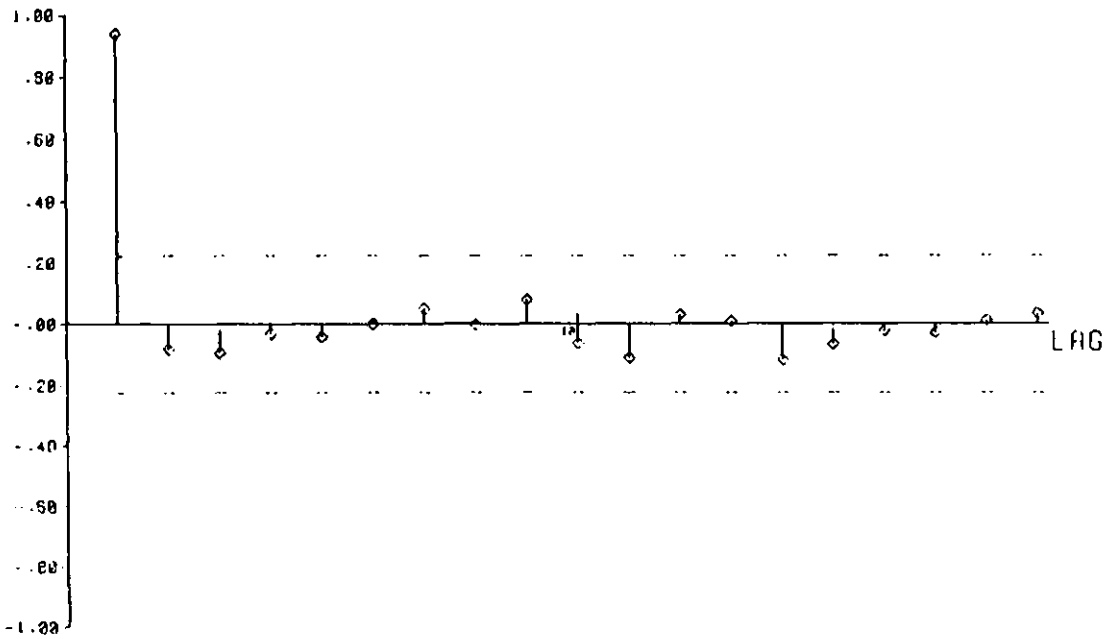
In order to test the hypotheses that burglary and gross domestic product are causally connected, these two variables were entered into an analysis which systematically calculates lagged correlations for lags up to 20 years either way. This analysis revealed that the correlation between the variables was maximised when the lag was zero, and hence does not support the notion of lagged causal relationship. A similar result was obtained for the test between burglary and unemployment.

FIGURE 4
AUTOCORRELATION FUNCTION:
BURGLARY



As regards the second test, visual inspection of the burglary data, see Figure 3, does not indicate the existence of any cyclical movement. Nevertheless, with the help of spectral analysis, the possibility of periodicity in the burglary data was examined and the results are presented in Figures 4 and 5. In this case, as shown in Figure 4, lags of up to 25 years showed a monotonic decline in the autocorrelation coefficients. Figure 5 shows a single significant partial autocorrelation, with a lag of one year. This indicates that burglary trends are not influenced significantly by previous years other than the immediately preceding years, and therefore burglary occurrences can only be predicted from year to year. There is, therefore, no reason to believe that the burglary data of this century presented any regularities in fluctuations.

FIGURE 5
PARTIAL AUTOCORRELATION FUNCTION:
BURGLARY

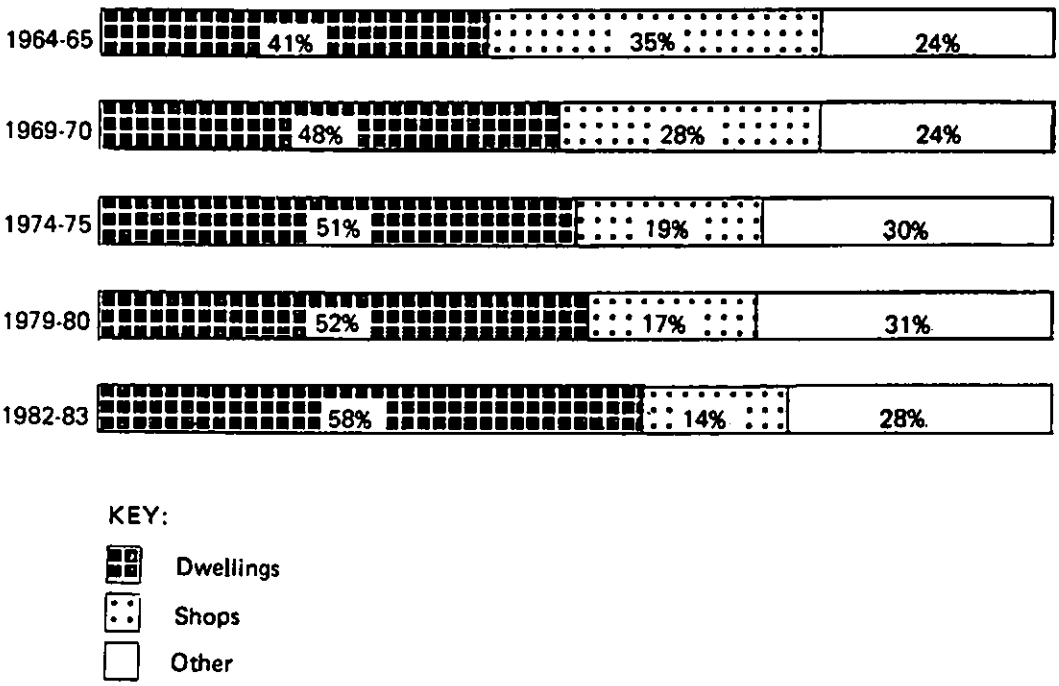


Summary

The historical data presented above show that burglary and the economy in Australia have tended to move hand in hand and that the occurrences of burglary increase at times of economic depression as well as boom. Fortunately, the spectre of a 1930s-style unemployment level does not seem likely at the present moment. Since the mid 1970s, however, the unemployment rate in Australia has increased sharply, reaching for the first time since the Depression a double-digit figure in 1982. The rate of reported burglaries has also shown the sharpest increase since the mid 1970s. However, the most noticeable and interesting change in the pattern of burglary in recent years has been in the change in the scene. Undoubtedly, the economy seems to have played a significant role.

Consider the data in Figure 6. Since 1964-65 there has been a consistent drift away from the shops to private dwellings. Thus, in 1964-65 a little over two out of five burglaries reported to the police took place in private dwellings. In 1982-83 this ratio increased to almost three out of five. Burglaries of shops, which constituted over one-third of all burglaries in 1964-65 declined to a mere 14 per cent in 1982-83. Looked at in another way, the

FIGURE 6
BREAK, ENTER AND STEAL (BURGLARY) REPORTED TO POLICE
BY TYPE OF PREMISES (PROPORTION)
AUSTRALIA, 1964-65 TO 1982-83



Source: Australian Bureau of Statistics, *Year Book of Australia.*
Annual Reports of the Police Departments of New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and Northern Territory and of the Australian Federal Police

chances of a burglary of a dwelling was one in 206 in 1964-65; in 1982-83 this ratio was one in 40. The role of the economy can hardly be ignored in this shift of venue. Production of consumer goods, changes in consumption habits, a general increase in purchasing power, through financial schemes such as lay-bys, hire-purchase, instalment payment and personal loans, are some of the blessings of economic development. The financial schemes help the population acquire goods and a large majority of households in Australia own the products. Changes in life style — work habits and leisure which result in most dwellings being empty during the day time — combined with sophisticated electronic and other alarm systems installed to protect shops, thereby making shops a riskier target, have resulted in a higher incidence of burglary of dwellings.

Although economic growth has made a significant impact on Australian society, it is important to point out that since the oil crisis of late 1973, growth in the economy in most industrialised nations has slowed down significantly and as a result there has been a sharp increase in the unemployment rate. Currently in Australia, it is a belief in most circles that sharp increases in burglaries in recent years have occurred as a result of two factors: a high unemployment rate in general, and higher still among those 16 to 19 years old, and that Australia currently faces a serious drug problem and increases in burglaries are by addicts to maintain their drug habits.

Examination of these relationships in itself constitutes a large research project. The emphasis in this paper has been on presenting trends in economic conditions and burglary, based on aggregate data. Therefore, it was not possible to examine who commits burglaries. And even if it can be shown that a substantial proportion of burglars are unemployed this still leaves two questions wide open: (i) why only some of the unemployed commit burglaries, and not others, and (ii) is unemployment a cause of burglary? At this stage it is not possible to answer these questions, but in light of the current situation it is useful to differentiate between the high burglary rates during the Depression and in recent years.

During the economic crisis of the 1930s survival for some was a paramount issue. At that time Australia did not have an unemployment benefit scheme; of course to help the population food coupons and other types of ad hoc assistance were made available by the government. Since the 1940s, the government has spent hundreds of millions of dollars on unemployment benefits. Unlike schemes in the United States and Canada, an Australian receives government assistance as long as he/she remains unemployed. Although one cannot maintain a respectable life style, the current unemployment benefits make survival easier than during the Depression. The opportunity structure created by the changes in the economy and life style make it possible to live a faster life through illegitimate means.

The historical data analysed above tend to show that predominating characteristics of a time period need not have similar effects on all types of crimes. Data on the three major offence categories — against the person, property, and good order — demonstrate entirely different movements. It may, however, be possible that a specific offence, say assault, may show movements similar to those observed for offences against the person.

The trends of burglary charges, in general, appear similar to those of offences against property (see Figures 1 and 3). However, this apparent similarity may be because of intrinsically different reasons. Two major research projects (Mukherjee, *et al.*, 1985 and Mukherjee, forthcoming 1985) lend support in this direction. Firstly, property offences in general showed a declining trend in the early years of this century. Data for the last century indicated that this declining trend began in the late 1880s. Burglary offences, on the other hand, did not show such a trend. And secondly, unlike some property offences, viz, larceny, shoplifting, motor vehicle theft, etc., the offence of burglary shows a distinct and continuous shift in targets, both in terms of types of premises broken into and type of goods stolen. It appears that the offence of burglary is very much influenced by the changes in life style.

WHY COLLECT STATISTICS

The preceding two sections throw ample light on the difficulties in the collection, analysis and interpretation of social statistics; such difficulties multiply when statistics from countries

with different backgrounds are examined. Some of the problematic aspects of such statistics which emerge out of this paper are:

(i) that the division of the countries of the world into developed and developing are based on inadequate, and at times inaccurate, information;
(ii) that even a vital set of data such as population census has only a brief history in some countries;
(iii) that there exists no universal agreement on the type and number of variables that can be used to measure 'development'. Such a quandary emerges because of a multitude of reasons some of which are:
- the nature of social statistics is such that their counting and classification can easily be influenced by individual judgment;
- as shown in this paper the relationship between variables of the types examined can change direction over time, giving rise to the suspicion that 'time' itself may be an influencing factor;
- the history of social statistics collection in many countries is indeed a brief one, which necessarily puts limitations on the quality and adequacy of the series under examination; and
- this state of affairs makes time-series analysis difficult.

What then is the utility of the sort of analysis presented in this paper? The most important contribution such efforts make is to provide countries with a framework for the development of proper social accounting systems. This takes place in two ways:

(i) by making countries aware of what types of information they possess on their people, government, economy, social services, etc. and thereby providing the impetus to improve, and
(ii) by showing the long history of the development of social accounting systems in some countries, and thereby offering valuable assistance to improve and update current systems. There appears no doubt that the United Nations and its regional offices are well equipped to organise co-operation and exchange of know-how between countries. Technical assistance is another means of accomplishing this task.

Among other important uses of studies on change are:

(i) that the type of description in the first section of this paper serves as a pointer to the achievements or lack of these. Perhaps it is not exaggeration to say that most governments would like to know how the conditions of their people have changed over time and how such changes compare with other countries. It must be emphasised, that they serve only as pointers to rearrange priorities. For example, among the countries selected for this paper, Singapore spends the lowest proportion of the gross domestic product as well as of annual government expenditure on education. This does not necessarily mean that Singapore must increase this proportion. What it does is to alert the government to consider if any changes are necessary. It must, however, be emphasised that highly aggregated data at the national level may not be of much value, except in a country like Singapore, in evaluating programs or in assessing trends in urban *v.* rural areas, etc. Statistics of more disaggregated type will be necessary to examine these issues.
(ii) that types of analysis presented in the second section of this paper can be most useful when a relatively long and adequate series have been developed. Eventually, numerous other statistical techniques, could be used to respond to specific research objectives.

And finally, the major thrust of this paper has been to demonstrate how the phenomenon of crime can be studied meaningfully. It seems, therefore, appropriate to conclude this paper, reiterating the uses of systematic collection of statistics. Such a collection will provide a set of empirical variables upon which theories of human behaviour may be based. These will also enable testing of operational hypotheses about the causes of crime as a social and institutional process, and criminal behaviour as a reflection of, or a reaction to, the social system. Another important area in which such a collection of statistics can be of immense help is to know the

extent to which the parameters of freedom of movement in democratic societies are restricted or otherwise impaired by criminal assaults on persons and property of citizens. It is now common knowledge that minority groups, or disadvantaged communities in many countries are disproportionately represented in the criminal justice process. Statistics and research can unravel the biases, if any, in processing such groups. The cost of crime, both in terms of injury inflicted on the community and maintaining the law enforcement, the courts, correctional service, victim assistance, etc. is becoming a serious burden on the governments of even relatively affluent countries. Again statistics can inform us as to how much of the positive economic growth is consumed by criminal deviance. The importance of systematic statistics to aid planning, allocation of resources and evaluation is also not insignificant. These can help in indentifying the extent of population involvement, in locating major social areas of criminal activity, and in designing counteraction necessary to contain or reduce criminal behaviour.

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CRIMINAL JUSTICE PROCESSES AND PERSPECTIVES IN A CHANGING WORLD

TOPIC II

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and
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Canberra 1985

Power to make and enforce criminal law is, in Australia, distributed between no less than eight jurisdictions. Consequently, it is not accurate to speak of a criminal justice 'system'; services and policies have developed independently and often tug in opposite directions. The area of criminal justice administration sometimes appears to be quite unplanned.

Nevertheless, it has been a sign of the vitality of the Australian federal system that a great deal of co-ordination has developed in the last decade — crossing State boundaries and professional barriers. There is a point at which one can say that co-ordination is tantamount to planning.

This theme is explored with particular reference to policing — where Australa is responding to the new areas of major crime — and to corrections — where one can quite realistically speak of a national corrections policy having evolved. The special sub-topic — the Fair Treatment of Women — is also illustrative of the fact that common trends have developed in all jurisdictions, partly as a consequence of deliberate co-ordination and partly as a common response to common social factors.

Public opinion as a factor in the development of criminal justice policies and perspectives is examined in detail. The conclusion is reached that it is a double-edged sword.

Finally, reference is made to current Australian research. Issues identified for the future include the development of new and informative methods for the evaluation of criminal justice programs. Criminal justice research must address itself to the relationship between crime and the larger social, economic and political questions.

CONTENTS

CRIMINAL JUSTICE SYSTEMS IN AUSTRALIA

A system implies joint means to reach common objectives — the parts of the machine intermeshing to achieve the specified result. On such criteria, the criminal justice services at State level in Australia are no more a system than they might be in any other part of the democratic world. Obviously the police, courts and prisons interact to assist or to create problems for each other, and they can be made more co-operative and mutually helpful. But they can never be represented as having common objectives; indeed, by their very nature, the measures applied by the different services to achieve those objectives will sometimes be in conflict.

For example, sterner prison sentences awarded by the courts — perhaps in response to public pressure — can crowd the prisons and interfere with the programs and procedures of the correctional authorities. Again, a drive by the police to clear the streets of prostitution or the roads of careless drivers, can crowd the courts and delay justice. Then, the correctional services, at the end of the line, do their best with what they are given; but they are sometimes taken aback at the unrealistic expectations of judges or police officers who may have never seen a prison and who are not aware of the constraints under which they are obliged to operate.

Recently in Australia there has been considerable judicial and police criticism of early release schemes; yet correctional authorities see these as integral to the management of the prison population if the outmoded and inadequate prison accommodation is to be equal to the task. Much of this misunderstanding by one service of the roles and limitations of the other can be eliminated. Indeed, the demographic patterns prevailing in Australia — where the population of most States is crowded into one larger urban centre — are such that it is almost impossible for the various sectors of the criminal justice complex to operate at any great remove, one from another. Personalities in the courts, the police and corrections are frequently well known to each other and on public occasions, at seminars or professional functions they intermingle. So, at the State level, there is contact and understanding, and interstate relations professionally have become much closer in recent years. Thus, frequently people from the various criminal justice services are joined in the same voluntary or non-governmental organisations for crime prevention, criminology, prison after-care, human rights or road safety. In addition, in the last ten years or so the status, jurisdiction and vigour of numerous intergovernmental committees have increased enormously, as will be explained below.

Yet, however close, mutually collaborative, or understanding these services become, it would not really be claimed that they constitute *systems* at either State or federal levels. True, 'crime prevention' is a common objective; but, once stated, it has to be qualified. Courts are more concerned with justice than with crime prevention for its own sake. And if the sole objective of policing were the prevention of all crime, then citizens' lives would become unliveable. There are now so many laws that nearly everyone breaks some of them at some time — so that law enforcement without discretion would change the quality of life. In any case, even if total crime prevention could be achieved by such means as electronic inserts or the use of behaviour modifying drugs, this could only be by sacrificing human rights. Prisons are frequently torn between crime prevention and safe-custody in accordance with the law. As mentioned above, tight security in prison and a better training in the law-abiding use of freedom can appear to be in conflict. Even when 'crime prevention' is distilled into 'serious crime prevention' the problems remain. It is often the murderers and others on life sentences who are the most amenable in prison and who are the least likely to re-offend on release. If they are segregated too long and become unable to look after themselves in the outside society, they could be a greater danger when released; but what is best for crime prevention may not be possible. The courts, for their part, must give all alleged offenders the benefit of the doubt. And the police are often obliged, in situations where the evidence is strong but challengeable, to proceed with a less grave charge to be sure of gaining a conviction by means of a plea of guilty.

One could say, therefore, that if 'system' is supposed to mean machine-like efficiency, then the term 'criminal justice system' is a contradiction in terms. A truly *just* system is probably irreconcilable with a very efficient arrest, conviction and incarceration procedure. The very fact that such a procedure went like clockwork would make it suspect in terms of justice. And the criteria for efficiency — either no action at all or conviction and a sentence leading to

greater social conformity — begs the basic question of what political or social interests the total conformity might be serving.

All the general questions about criminal justice as a system are reflected in the Australian complex of federal and State services to deal with crime. If this complex is to be understood, some brief reference must be made to Australian constitutional arrangements.

The Australian Constitution, under which the former colonial State Governments entered into a Federation in 1901, confers various enumerated powers upon the Federal (central) Government. These enumerated powers do not include a power to make criminal law generally for Australia or to provide for general police services or correctional systems. Powers of this type can only be exercised by the Federal Government in relation to particular matters in which it possesses jurisdiction or where legislation would be reasonably incidental to carrying out the exercise of some other enumerated legislative power. In fact, federal criminal law is increasing in range and scope, and this trend has been particularly evident in the last ten years or so. Nevertheless, criminal law matters still are predominantly dealt with by State legislatures, and it is to State law therefore that citizens principally refer to ascertain what is criminal and what is lawful.

There are six separate States and one self-governing Territory in Australia. Each has a distinct criminal law (often scattered through many statutes and much case law, though in four jurisdictions a wide measure of internal codification has now been achieved) and quite separate police, judicial and correctional services. Whilst, culturally, Australia is certainly a more cohesive Federation than some others, nevertheless quite conflicting directions have been taken from time to time by the various jurisdictions. There is a vigorous, and one could say healthy, belief by politicians and citizens whom they represent that the local way of doing things is probably the best. Recently, one Australian State criminalised strikes in certain industries whilst another was, in a sense, criminalising work by imposing enormous fines upon traders who open their businesses for sales after certain hours of the day! The latter State was, in the same parliamentary session, in the course of decriminalising prostitution whilst a third jurisdiction was involved in another of its periodic blitzes against nude bathing and a fourth was reversing its onus of proof in relation to some criminal charges. It can readily be seen, in this sort of context, that the potential for effective national planning of criminal justice must inevitably be limited. In this respect, the same must be said of social and economic planning in Australia generally; the vested interests and special values of the States conflict sufficiently (agriculture *v.* mining, urban *v.* rural, manufacturing *v.* primary, etc.) that centralised planning must always ultimately give way to pragmatic needs.

In this macro area — social and economic planning — the Federal Government has nevertheless become dominant during the course of Australian history; this has been by dint of control of the purse strings through the taxation power. Thus, education services in the various States are of comparable standard, not because the Federal Government possesses an enumerated power to legislate with regard to education but because it can and does, in allocating moneys to the States to run education systems, require that certain approaches be taken and standards be met. The same is true in relation to social and community services generally. There may not be planning, there certainly is not any identity of approach, but there is congruence across Australia in these sorts of areas. The same sort of process has occurred and is continuing to occur in relation to criminal justice services. This has not perhaps been quite as much attributable to federal control of the purse strings as in the previous examples; it is partly due to the recognition, by criminal justice practitioners, of the crucial need for co-ordination, and if possible, common approaches, at a time when crime is becoming a national problem. In other words, it has increasingly been recognised that patterns of crime are not, to a major extent, parochially distinct but reveal many common themes.

Inter-governmental structures which are either new or have become particularly vigorous in the last decade or so, include the following:

(a) The Australian Police Ministers' Council;
(b) the Australian Police Commissioners' Conference;
(c) the Ministerial Council on Human Rights;
(d) the Standing Committee of Attorneys-General;
(e) the Ministerial Council on Corporate Affairs;

(f) the Australian Aboriginal Affairs Council;
(g) the Council of Ministers responsible for Corrections;
(h) the Conference of Administrators responsible for Corrections; and
(i) the Ministerial Meeting of Ministers concerned with Community welfare.

Typically, these bodies meet at regular intervals and are well served by secretarial services to prepare agendas and discussion papers. They provide the opportunity for Ministers to have confidential, off-the-record discussions; for policy development involving all the States; for detailed discussions between senior officials from each State, and for the exchange of information.

Some examples of the sorts of matter dealt with by these bodies will reveal their importance and the degree to which there is now widespread co-ordination between the Australian jurisdictions — co-ordination which is often tantamount to planning. Thus, the Australian Police Ministers' Council and the Police Commissioners' Conference have brought about a situation where there is widespread exchange of operational information amongst police forces — as to fingerprints, traffic records, criminal records etc. Indeed, joint task forces into particular kinds of criminal activity have been established from time to time. The recent establishment of a National Crimes Authority — which draws its jurisdiction from the decisions of an inter-governmental committee — consolidates this trend towards national co-ordinated investigation of major or organised crime. Again, the Commissioners' Conference has recently taken initiatives in the field of recorded crime statistics. Such statistics are still not uniform within Australia, nor are they promptly published so as to enable crime trends to be identified. In 1984 the Commissioners set up a National Crime Statistics Subcommittee to address this problem. Crime statistics is also seen by the Standing Committee of Attorneys-General to be part of its concern, and it has accordingly sought to make an input into the development of a national collection of recorded crime data. From this it can be seen that there are developing moves towards co-ordination across services as well as across State lines. The Standing Committee of Attorneys-General also has concerned itself with such matters as the Australian attitude towards the international transfer of prisoners, a standard model Bill for criminal investigation, and the modernising of the laws relating to restitution of assets as an aspect of criminal proceedings. The Ministerial Council on Corporate Affairs — consisting in fact of the Attorneys-General — has been developing a common database with regard to company structures and operations so as to combat corporate crime. Many years earlier this body had provided the initiative for uniform company laws across Australia.

Many other examples of co-ordination could be given. The most notable, however, relates to Corrections Ministers. It is not fanciful to say that in Australia at the present time there is a national perspective on corrections. This perspective has been developed in Ministerial meetings, fortified by more frequent meetings of senior administrators. The perspective is that there must be emphasis within Australia, in all States, on community-based corrections and alternatives to imprisonment. The Council has constantly highlighted the impact upon the community, both financially and in terms of human waste, of unnecessary imprisonment. A recent study, for example, was commissioned on the outcome of remands — another example of unnecessary imprisonment.

In urging this perspective, Corrections Ministers and senior administrators have not always been able to take the other parts of the criminal justice services with them — particularly the courts and the police. In many ways, moreover, their attitudes are more liberal than that of the general public. Be that as it may, it is quite clear that there is a national perspective upon this particular part of the criminal justice process and that this national perspective has evolved despite the divisions and limitations of the federal system. This can be seen, as can all the co-ordinated developments in this area, as a manifestation of the vitality of a federal democratic system and a tribute to its capacity to adapt to changing situations. It may not be planning in an abstract sense, but the end-product displays recognisable patterns and directions.

The concept of a system has, of course, been fashionable in criminological services for quite some time to express the inadequate appreciation of the inter-relationship between the criminal justice services and the effect that decisions in one of the services may have on the others. The idea of a system may be useful to promote the awareness of the interdependence of

the legislature, the courts, the police and the correctional services; but with values so diverse in a plural society, with objectives so distinct and sometimes inconsistent, and with acknowledged vested interests in the exercise of power, it is not realistic to expect integrated systematic collaboration. Nor is it necessarily desirable, inasmuch as uniformity can stifle creativity in social or criminal justice services. Occasionally and for specified purposes on which there is a deeply felt community consensus, systematic operations might be attained; but these are the exceptions which prove the rule that criminal justice cannot be a system in the narrow sense of that term. It is an idea which, in a sense, does violence to the basic doctrine of the separation of powers.

Australia, in the light of its own varied experience of trying to get the best out of criminal justice services, notes that there is a danger that the expectations being raised by the preparatory meetings already held by the United Nations may be unrealistic. Thus, the Asian and Pacific meeting, as well as the European meeting, called for a flow of information between the separate criminal justice services to reduce conflict and promote efficiency. This derives from the notion of these services *as an integrated system*, and it presupposes common measures of conflict resolution and efficiency which do not exist except in countries where overriding political objectives subordinate all other considerations and impose expectations and criteria of performance. Not only would a perfect flow of information fall short of the co-ordination expected (given all the vested professional interests involved) but the conflict to be eliminated and the efficiency to be attained might well override questions of privacy, justice, human rights and due process. Conversely, doing what is right might well involve conflict and inefficiency.

It is important to note that both the above preparatory meetings stressed the need to retain the *independence* of the various criminal function services; but as demonstrated above it is this vested concern with independence which frequently ensures conflict and generates inefficiency. The European meeting mentioned the need for the 'system' to be cost-effective. However, the most cost-effective 'system' could be the least efficient in terms of justice or in terms of a more discriminating application of law enforcement. The death penalty would certainly ensure that those executed committed no more crimes and might therefore be distinctly cost-effective. So would the use of behaviour-modifying drugs to achieve conformity. But for many people these would be remedies worse than the disease. Thus, in Australia as in so many other countries the death penalty was abolished *in fact* long before it was abolished *in law* because, however effective, it became officially unacceptable. (Though Western Australia retained capital punishment on its statute book until very recently, it did not use it after it had been legally abolished by the other States.) This could be regarded as one example of moral pressure preventing the authorities doing what might well have been regarded as cost-effective. It is, however, distinctly unsystematic.

In a similar context the preparatory meetings called for a reconciliation of the conflicts between the goals of the separate services and for consideration to be given to the rights of victims and of society at large. Obviously in practice, and where there is a clash of purposes, a *modus operandi* has to be found in dealing with individual cases and with particular services. Beyond this, however, the expectations expressed in these meetings are, and indeed must be, largely rhetorical. The principal objective of police must inevitably be to clear up an offence, and, if possible, obtain a conviction; the trial court must be concerned with the absolute fairness of the trial; and the legislature, out of a respect for human rights, may well have imposed strict procedural pre-conditions for a conviction. In these contexts, it is not only inevitable but to a degree appropriate that victim issues are seen as quite secondary. In much the same way, where justice and crime prevention are in opposition there can be no reconciliation of goals. Undoubtedly, the rights of victims need far more consideration than they have received; but justice dictates that a balance be maintained between these and the rights of the accused to be regarded as innocent until proven guilty: see the Australian Discussion Paper for Topic III.

In summary of this section, it can be said that the very essence of Australia's political structure militates against comprehensive national social and economic planning. That being so, there are obvious and inherent limitations upon the extent to which the criminal justice system can be effectively planned. Despite this, Australia has managed to achieve, particularly in recent years, a substantial degree of co-ordination in the objectives and operations of the criminal justice services. Consequently, there is a proven capacity to respond to the changing nature of crime in contemporary Australian society.

CRIME PREVENTION

There are macro and micro dimensions to crime prevention. At the *macro* level, crime prevention methods extend to the total socio-economic system of a country so that the allocation of resources in the national budget can be both crime-generating and crime-preventative. Measures to improve incomes and raise the quality of life may, for example, be far more crime-preventative than a regiment of police or a nation-wide employment of guards and electronic alarms. And policies to raise the levels of education or the number of available jobs or to reduce the disparities between rich and poor may be more significantly crime-preventative than a library of new laws, a proliferation of courts or a huge investment on corrections. Crime prevention in a country is meaningless without these wider dimensions of social and economic planning being taken into account.

This paper however is concerned more with the *micro* aspects of crime prevention. Because it is required to concentrate on the criminal justice processes and perspectives, it is restricted to the more direct measures taken to reduce the number of actual crimes committed. Other papers, it is assumed, will cover the less direct but perhaps more important broader methods of crime control at the macro level, which extends outside a country's usual criminal justice processes and perspectives.

There is a sense in which this is the most apposite approach to crime prevention in Australia. For, despite its modernisation and its reflection of much of the best and some of the worst in the western democracies, Australia, as explained above, faces inherent limitations in matters of general social and economic planning.

At the micro level, crime prevention is extremely well organised in Australia, though here, as in most of the western countries, it still lacks a sufficient measure of community interest and participation. The police forces of Australia have taken a very lively interest in crime prevention even though the numbers of officers they have been able to assign to its development have been limited. There are radio and television programs to keep the public aware of the risks it runs and to educate people as to the ways they can protect themselves and their homes more effectively; there are school lectures and school projects to alert children to the problems; there are joint projects between police and private firms (especially insurance firms) to prevent crime; and exhibitions of protective equipment are held regularly for the benefit of those who have the money to invest in the latest devices. As house breaking has soared in recent years the police have organised in several states 'neighbourhood watches' on a pattern developed in the United States of America to provide surveillance of each other's houses by the residents of a given locality.

In Australia, as elsewhere, the macro and micro levels of crime prevention overlap at the boundaries of urban planning and architectural design. Whilst planning for communities and their life-styles at this level has macro significance and feeds back into the broader issues of the allocation of resources for economic growth and social integration, the design of buildings and the lay-out of streets determines, to no small extent, the access of police to public places, the facilities for the residents to protect themselves, and the opportunities for criminals to exploit the arrangements for isolation as well as privacy.

The Australian Institute of Criminology has taken a prominent role in trying to encourage local and central authorities to pay more attention to crime as a broader than street crime concept and to develop wherever possible the machinery required for linking investments in one area with investments in another from a crime preventative point of view. The Institute conducted a special seminar in 1975 at Albury/Wodonga, an area for regional planning which has recently been established, and was in fact consulted throughout the next few years on measures which could be more crime-preventative in the total planning of the project. In Geelong in 1976, the Australian Institute of Criminology again ran a special seminar bringing together the various services in the region with a view to looking at crime as being in part a function of the lack of co-ordination between them. This led to publications which were given wide circulation and represent the nearest approach that Australia has made to the planning concept first developed by the United Nations and extensively discussed in 1970 at the Fourth Congress. However, much remains to be done.

THE LEGISLATIVE PROCESS

With the possible exception of references to law reform and public opinion, it is noteworthy that neither the United Nations Discussion Guide nor the proceedings of the preparatory regional and specialist topic meetings have dealt in any substantial way with the process of legislation as a significant feature of crime prevention and criminal justice. Whilst this may be understandable at a global level, and there may be delicate political questions involved in comments on the political process in some countries, Australia has no reservations about its political and legislative procedures being discussed in the context of crime prevention and control. In fact, it would be a very deficient Discussion Paper from Australia which did not provide a description of the criminal justice significance of the eight legislatures and their impact on the generation and prevention of crime, as well as an appreciation of their concern with and implications for criminal justice on the Australian continent.

Reference has already been made to this issue in the first part of this paper. From that discussion, it would be apparent that in Australia, as elsewhere, the legislatures define crime. It is for this reason that they are so important in any consideration of criminal justice processes and perspectives. The legislatures do not merely define crime, they prescribe the procedures by which the law will be enforced and offenders will be tried and (if guilty) punished.

It is necessary to make the point here, that in defining crime, determining the processes of law enforcement and calculating the sanctions to be available to the court, the legislature does not always follow the majority opinion of people in the country. The members of the various parliaments represent their constituents, but are bound to both their parties and their consciences. It does not follow therefore, that because parliaments represent the people, the majority will of the people will always be reflected in the laws. This is extremely important for an understanding of criminal justice procedures and perspectives because, in democracies generally, including Australia, public opinion tends to be much more severe than the legislatures. For example, in both Britain and Australia, parliamentary votes to abolish capital punishment occurred at times when public opinion polls were showing majorities in favour of its retention. Similarly, there can be no doubt that in Europe, the United States and Australia, laws on racial discrimination, environmental pollution and perhaps equal status for women were passed by the parliaments *in advance* of a public consensus on their desirability. Indeed, the speeches made in the parliaments in support of these legislative changes confirm the governments' appreciation of the fact that these were educational measures intended to be in advance of current social practice in the community and to change it.

Of course, there are the occasions also when governments react to media interpretations of public opinion and seek to allay fears by increasing penalties or strengthening the law enforcement machinery; but throughout the years, in Australia as elsewhere, parliaments have made laws, both severe and lenient with which the majority of the people in the country would not have agreed. This has sometimes happened in response to pressure groups which may have persuaded on the one hand, progressive politicians to convince their other party members that it was shameful for the government to be so far behind in, say, provisions for the protection of human rights or in measures of penal reform; or, on the other hand, pressure groups with interests in, say, gun ownership, private security or the sale of liquor might have succeeded in delaying or defeating legislation which might have affected their businesses.

This parliamentary independence of public opinion has not really extended to longer-term planning, for example, to the sort of advanced law-making which might provide for there to be crime impact studies of Bills being considered by the legislature to regulate social or economic affairs generally. However, there are signs that this may be changing. For example, in early 1985 a senior Federal Government Minister announced that there would be crime impact studies of legislation, such as passport or immigration laws, which is being abused. One such area is, of course, taxation; and it is instructive that one of the motives leading the Australian Prime Minister to call a National Taxation Summit in July 1985 was a recognition of the extent of tax fraud in Australia and a realisation that, in part at least, such fraud is a predictable response to the structure of tax scales. In addition, the sheer complexity of the myriad existing tax laws seemed positively to invite criminal circumvention.

The progress is halting and uncertain, however. There is still a tendency for legislatures,

and those who advise Ministers, to assume unthinkingly that the attachment of a criminal label to a behaviour will somehow in itself deter and diminish that behaviour. An example is the law relating to copyright, where quasi-criminal sanctions are now commonplace. Indeed, the legislation has recently been amended so as to 'protect' computer software programs by this law, including the quasi-criminal sanctions. Yet what is really needed, in this most widely ignored of laws, is fundamental re-evaluation of what it is that is sought to be protected and what the social and economic rationale of so doing really is. It might well be that 'breach' of copyright should then be characterised as pro-social dissemination of information, at least in some of its aspects. That is not to pre-judge the issue but merely to urge the desirability of lateral thinking in areas of social regulation.

Though in criminal law the basic offences do not change quite so much, there are frequent amendments to the procedure and the sanctions, and the range of offences for which a person can end up in prison is frequently extended. Even legislation to deal with domestic affairs, such as agricultural health, industrial waste and public order, can extend police powers and provide local government inspectors with powers of search and rights to destroy infected property beyond any normal police powers.

Moreover, not infrequently legislatures try to enforce the payment of fines for minor transgressions by providing for imprisonment in default. In fact, an increasing proportion of Australia's prison population, in some States as high as 10 per cent, are fine defaulters.

Without even intending it, therefore, the routine stream of legislation can overburden the police and the courts with cases that could be dealt with administratively, and, more seriously, can crowd the prisons with people who were never expected to be there. These are people far easier to detect and prosecute for the peripheral offences than are the more serious criminals to be discovered and processed for the major crimes. In such ways the shape and impact of the criminal justice structure can be distorted.

One way out of this which Australia has adopted from other countries of the western culture has been Law Reform Committees or Commissions. Originally these were devised to regularly review and streamline the law, avoiding anachronisms, inconsistencies and duplication, bringing definitions and sanctions up-to-date and providing governments with guidance on more precise and streamlined law making. It has not been quite as simple as that, inasmuch as Commissions, in a laudable desire to make a contribution to social development generally, have widened their briefs. Consequently, the laws still need streamlining: something which has now become the second phase of law reform even though it was intended to be the first phase.

Yet data and expertise do exist to enable long-term planning to be carried out and to be incorporated therefore into legislative and governmental programs. An outstanding recent example is work on *Forecasting Prison Numbers*, carried out at the Australian Institute of Criminology. This work has supplied a computer model which takes account of numerous key variables and thus permits forecasting within a relatively narrow range. The work has attracted considerable interest not just within Australia but also in the Pacific Region. It provides the sort of factual underpinning which is so necessary if the legislative process is not itself to get completely out of kilter with crime patterns and social factors.

CHANGING PERSPECTIVES IN THE CRIMINAL JUSTICE SERVICES

Police

There are eight police forces in Australia: the six State forces, the Northern Territory Police Force and the Australian Federal Police. The latter, in addition to enforcing Federal laws across the nation, carries out local police duties within the Australian Capital Territory.

Australia believes that the quality of policing is a central issue in determining the adequacy of the criminal justice system. It is tremendously difficult to find the correct balance in policing — too much policing may threaten basic freedoms, too little allows elements of the community the licence to tyrannise others. A good police force may not be able to dictate to its

political masters; but it can often moderate their undue reliance on legislation to control conduct by the use of discretion in enforcing the law. It needs power and authority to do its work; but must carefully monitor the use of this power lest it becomes a peril to a fair and equitable society. Just to state such principles is to highlight the balances which are easier to describe than achieve.

We have lived through a generation which has seen the traditional police image tarnished by proved charges of insensitiveness and corruption, but which has also seen the police develop through union action a better appreciation of their own status as an occupational group. As a consequence, their input into policy development with regard not only to policing matters but also to criminal justice generally has measurably increased. Police work has always been a matter of intense media interest. Consequently, police find themselves subjected not only to praise but also to adverse criticism. Anyway, whatever the media may have said about the police, public opinion has always been shown to be largely behind them. Public opinion polls have demonstrated solid public backing for the police even when certain sections of the public were trying to make the police officers' life difficult. The friction has unfortunately encouraged myth building and a polarisation of positions, however. Radicals may deride the supposed detachment of the police, and call for more controls of police, more investigations of abuses of power, of corruption and of decriminalisation. On the other hand, unionism threatens to bring the police into an entrenched conservative position. As we look to the future, with the demand for more police and more effective police services, and with increasing public expenditure being devoted to law and order, tolerable levels of policing as well as the tolerable levels of crime are crucial issues. Compromise, understanding and flexibility are now needed to keep the balance.

What, then, are the issues? First, there is the definition of the police function. Are the police primarily to keep order or prevent crime? Can we amalgamate the keeping of order with the control of crime? Or do we envisage two types of police: the uniformed officers committed primarily to keeping order and the detectives for investigating crime? How are the functions to be defined in relation to public demand and how is this to be assessed? Should the police encourage the growth of a variety of other law enforcement agencies, perhaps moving into them as their own high specialisation develops into an alternative professionalism? Or should they try to incorporate within the police services a wide variety of sub-professionals, as with forensic sciences, sophisticated fraud squads with accountancy expertise or traffic specialists? This has been extended to the computer field, nuclear science and bomb disposal to mention only a few new areas. Just how far should investigations of crime be specialised?

We have never really solved the problem of exactly what the police should be doing in a democracy. It has been suggested that less than 20 per cent of total police time is spent on crime work. We have thought of them sometimes as a 24 hour social service, the only one of its type that we have, but most police officers would not differentiate this kind of service from crime control. If they are really different aspects of the same thing, how should their resources be used to the best advantage? Since no democracy can afford the number of officers which any conscientious police commissioner would wish to have, how are the resources best placed and their effects evaluated? All these questions have to be addressed in order to adjust policing to democratic requirements. The problem is that we stumbled into modern industrial democracies carrying pre-industrial police structures with us. It is a reflection of society's improved education and concern with the quality of life that at least we are now aware of such issues.

If we are to find answers, the first task is to build up knowledge of what works in policing and what does not. So much is taken on faith, whether it is more patrol cars, neighbourhood policing or getting police officers back on the beat. Police research and police science is so much in its infancy that we go on making acts of faith as a prelude to investing more and more public funds in 'more of the same'. The operation has to be costed, evaluated and progressively streamlined to get better value for the dollar.

In this regard, the foundations are fast being laid. Most Australian police departments now make a substantial commitment to research; they have also become keenly aware of the utility of up-to-date crime statistics from the point of view of policy development and operational needs. In addition, the National Police Research Unit was recently established under the auspices of the Australian Police Ministers' Council with the objective of carrying out

advanced research into matters of operational importance. For example, it has been examining the issues of witness protection, police intervention modes in domestic violence calls, the comparative value of various types of weapon and ammunition, and the efficacy of modes of community policing. The Unit has a degree of independence in its day-to-day operations, yet works to an agenda set by Police Commissioners; this *modus operandi* should ensure that its research is both academically respectable and operationally utilitarian.

In this context, both the Australian Institute of Criminology and the Criminology Research Council should also be mentioned. The former carries out research and arranges conferences in relation to policing from a perspective which is at least one step away from the workface. Nevertheless, its work assists police management in understanding and applying crucial criminal justice perspectives, for example, in relation to the position of Aboriginals in the criminal justice system and in relation to the operation of prosecutorial discretion. A conference on Violence in the Family to be held at the Institute later in 1985 is also a prime example of an independent organisation tuning in at a general social level to an issue which is of key operational importance to police authorities. As for the Criminology Research Council, its funds are available to all kinds of high quality research in any aspect of criminal justice. Police Departments, or persons working in association with Police Departments, have taken advantage of this important facility on numerous occasions in the past, for example, to carry out an evaluation of a State Police Program which sought to identify children at risk, and to evaluate the Police/Aboriginal relations in two areas of another State with a view to recommending improved liaison and communication. In summary, the mechanics and facilities for research are available and are increasingly being utilised so as to facilitate police forward planning of a kind which takes account of social developments generally as well as police operational needs.

A second task is to encourage more public participation in policy making. The essence of successful policing of a democracy is consent and approval of the overwhelming majority of the policed population. As has already been pointed out, Australian police generally enjoy a high approval rating from the public. Nevertheless, this kind of approval can all too readily be broken down by initiatives which are not sufficiently explained or understood, for example, road blitzes at certain times of the year with regard to conduct which is in no way morally reprehensible.

Third, it is perhaps little more than a truism to say that the effectiveness of police would benefit from improved education and training. This training should, in particular, relate to criminal justice and crime prevention generally. An increased understanding of the inevitability of failures within all parts of the criminal justice system, including policing itself, would forestall any tendency to invoke simplistic solutions to crime.

Fourth, we need to keep a much closer eye on the development of private security. There is a discernible relationship between the rise of private security and the decline of police/community effectiveness in offering protection from crime. Private security favours those able to pay for it, it could mark a shift of the pendulum from right to might. The trouble is that no modern industrialised community can hope to avoid private security.

In modern conditions the question of whether a democracy is more of a democracy when citizens are provided with the facilities to protect themselves and to guard their own property, or whether it is more of a democracy when an official police force is entrusted with the task, can still be approached from either side. It is an issue in our day-to-day life. The regular police are not usually interested in guard and escort duties, and they have served notice on the public in some western countries that they cannot undertake to protect them all against minor assault and breaking and entering. Private security and a whole industry of security devices has therefore developed. This returns us to the problem of security being available only for those able to pay the high price. On the other hand, it underlines the other well-known fact that the police alone can never control crime. They need public support. There has to be public involvement. Private security is one form which it can take; but it is a development which has to be monitored carefully if some are not going to get a bigger share of the justice cake than others.

Starting from the premise of a need for public security we may need a fairly intensive research project designed to explore what is meant by public protection and bringing in the subjective and objective aspects of the fear of crime and its probability. We have to know what

levels of security people are prepared to pay for, and to line these up with different combinations of official, community and private protection.

Fifth, we have to look at management. This does not mean simply inviting management consultants to build a new structure. If the public has to be brought in, this is one area in which they could be helpful. But more than that, police officers themselves know more about what needs to be managed than anyone else. So management-union task forces are needed to draw up designs which can then be discussed with the public and outside experts.

Sixth, it is already well appreciated that the police need to develop better public relations. Sir Robert Mark, who has advised Australia on police matters, had a reputation for an open door to the media. Police have nothing to hide, so they should disclose as much as possible without, of course, jeopardising their confidentiality, dealing with matters *sub judice* or breaking security. Unfortunately, this has not always proved an advantage to the police. Media specialists have their own angles to develop, and they are far less interested in years of good policing than one blatant mistake. They are looking for drama or dissent, disagreement and confrontation more than routine efficiency and public satisfaction. They are more interested in the process than in the results. Their objectives are not always those of the police or the public. This would seem to imply the need for a new potential in the police to present their material more dramatically. Usually this can be done, though one eye needs to be kept on the court case in the making. There are ways in which the media can be used as part of the widening public participation. They have been used in the past to develop campaigns for road safety, education in drug abuse, and for the raising of the security consciousness and to reduce vandalism.

Seventh, the time is now apposite to begin re-examining the whole question of the police role in prosecutions. Police naturally value this traditional link with the courts; but from the point of view of public confidence in the policing process, it is arguable that there would be virtue in separating the prosecution process from the investigatory function of police. Moves have begun in Australia to bring this kind of situation about. In particular, with regard to the prosecution of federal offences, the general control of this function now rests with an independent statutory officeholder, the Director of Public Prosecutions. It is notable that the guidelines and criteria on the basis of which the Director of Public Prosecutions will exercise his discretion are public documents — a relatively new situation in Australia and one which certainly serves to enhance public confidence in the prosecution process. Generally, there is a move within Australia to professionalise the prosecution process by the creation of independent statutory offices of Director of Public Prosecutions; this has also now occurred in Victoria and Queensland. However, so far these States have not followed the federal model of giving jurisdiction in relation to minor or summary offences to that public official.

The Courts and the Judiciary

As noted earlier, criminal law is predominantly State law; accordingly, the bulk of criminal trials occur within the hierarchy of State courts. In this regard the Northern Territory and the Australian Capital Territory are akin to States. In addition, as also noted earlier, there is a growing body of federal criminal law. Constitutionally, the Federal Government could have created a distinct structure of Federal Criminal Courts to try alleged offences against federal criminal law. However, apart from a few quite distinctive exceptions, notably the vesting of criminal or quasi-criminal jurisdiction in relation to breaches of the Trade Practices legislation in a federal court, the Federal Government has chosen instead to vest federal criminal jurisdictions in State courts situated in the area where the offence was allegedly committed. (In passing, it is interesting to note that Australia has followed this practice also in relation to imprisonment, in the sense that federal prisoners are in fact held in State prisons.)

In all States and Territories, the predominant pattern of courts exercising criminal jurisdiction is as follows:

- an inferior court dealing with minor or summary offences;
- an intermediate court dealing with more serious offences; and
- a Supreme Court dealing with the most serious offences.

Contested trials in the intermediate and Supreme Courts would invariably be jury trials. The present pattern of courts existing in Australia can be seen from Table 1.

TABLE 1
Titles of Courts Dealing with Criminal Matters at Lower and Intermediate Courts Levels

List of States and Territories	Inferior Court	Intermediate Court	Supreme Court
New South Wales	Local Court	District Court	Supreme Court
Victoria	Magistrates' Court	County Court	Supreme Court
Queensland	Magistrates' Court	District Court	Supreme Court
Western Australia	Court of Petty Sessions	District Court	Supreme Court
South Australia	Court of Summary Jurisdiction	District Criminal Court	Supreme Court
Tasmania	Court of Petty Sessions		Supreme Court
Northern Territory	Court of Summary Jurisdiction		Supreme Court
Australian Capital Territory	Court of Petty Sessions		Supreme Court

The allocation of jurisdictions between the various courts is not quite as straightforward as suggested in the summary above. There is an increasing trend for legislatures to provide that quite serious offences, of a sort normally triable in the intermediate court, may be tried by the inferior court in certain circumstances. Applicable criteria include: the consent of the accused; in property offences the value of the property; in offences against the person the seriousness of the injury caused; in driving offences the degree of negligence accompanying the driving; and generally the overriding opinion of the inferior court itself that the matter is one appropriate to be dealt with by that court in the light of its seriousness and the available penalty if it is so tried. For, of course, the carrot held out to the accused to persuade him or her to consent to this form of trial is the fact that the inferior court possesses lesser punitive powers if he or she is found guilty.

The rationale of this trend, which is Australia-wide, is to take work away from those courts whose procedures are more complex and expensive and where there is in any case a long waiting list; an additional, not always acknowledged, rationale, is to encourage guilty pleas at a level where the implication of such a plea is less threatening. From time to time in Australia the propriety of such a policy has been questioned; should not the legal system be positively encouraging accused persons to exercise their fullest democratic rights, namely a trial by jury, it is sometimes asked. The point of principle is an important one. However, it must be said that in Australia there has been no real evidence of widespread abuse of this system or measurable prejudice to the accused in deciding to opt for trial before an inferior court.

The rationale of moving work away from the higher courts has not, however, been entirely successful. The intermediate courts, which were created to take the pressure off Supreme Courts, are themselves now having difficulty coping with the volume of criminal work which now comes before them, even taking into account the filtering mechanism which causes so much work to be dealt with by inferior courts. In all States there have been pressures to appoint more intermediate court judges to expedite procedures and to develop means whereby the matters in issue may be identified in pre-trial procedures. Those three jurisdictions, Tasmania, the Northern Territory and the Australian Capital Territory, which do not have intermediate courts have managed to survive so far because of the fact that their population base is so small. However, it seems likely in the foreseeable future that these will find themselves obliged to set up an intermediate court system.

A word should be said at this point about the operation of the jury system. More contested criminal trials seem to be complex and very long, compared with 20 years or so ago. This places greater strain on juries, both in the sense of the time which they must take out from the normal lives and their ability to follow fully some of the very complex and technical issues which come

before them. Criticisms have been made of the jury system from many quarters: the police, because they consider that juries are sometimes too ready to acquit defendants; and the media, because in individual cases of great public interest the rights and wrongs of the matter linger on, resulting, perhaps, in a Royal Commission into the correctness of the verdict or a continuing trial by newspaper. Members of the judiciary, also express concern from time to time about the burdens and responsibilities placed upon juries. Nevertheless, the jury system is and will remain integral to the administration of criminal justice throughout Australia. The involvement is essential to the democratic process. If there are problems with jury verdicts from time to time, they arise not from the nature of the jury system as such, but from the way in which it is applied in practice. For example, there are typically very wide categories of exemptions and disqualifications from jury service in the Australian jurisdictions. The way in which these work is in fact to remove from the panel of jurors the most highly educated people in the community (who presumably may be expected to cope better with technical evidence), the mature senior citizens (who are likely to be retired from working life and thus not to be concerned about the length of the trial and who also can bring a wealth of experience to assessing the human situation before them) and women (who typically are permitted to claim exemption on the basis of their domestic responsibilities, with the consequence that many juries do not reflect the distribution of population by sex in Australia). The objective should be to strengthen the jury system by legislating to remove such anomalies and then to lend it our unhesitating and unstinted support.

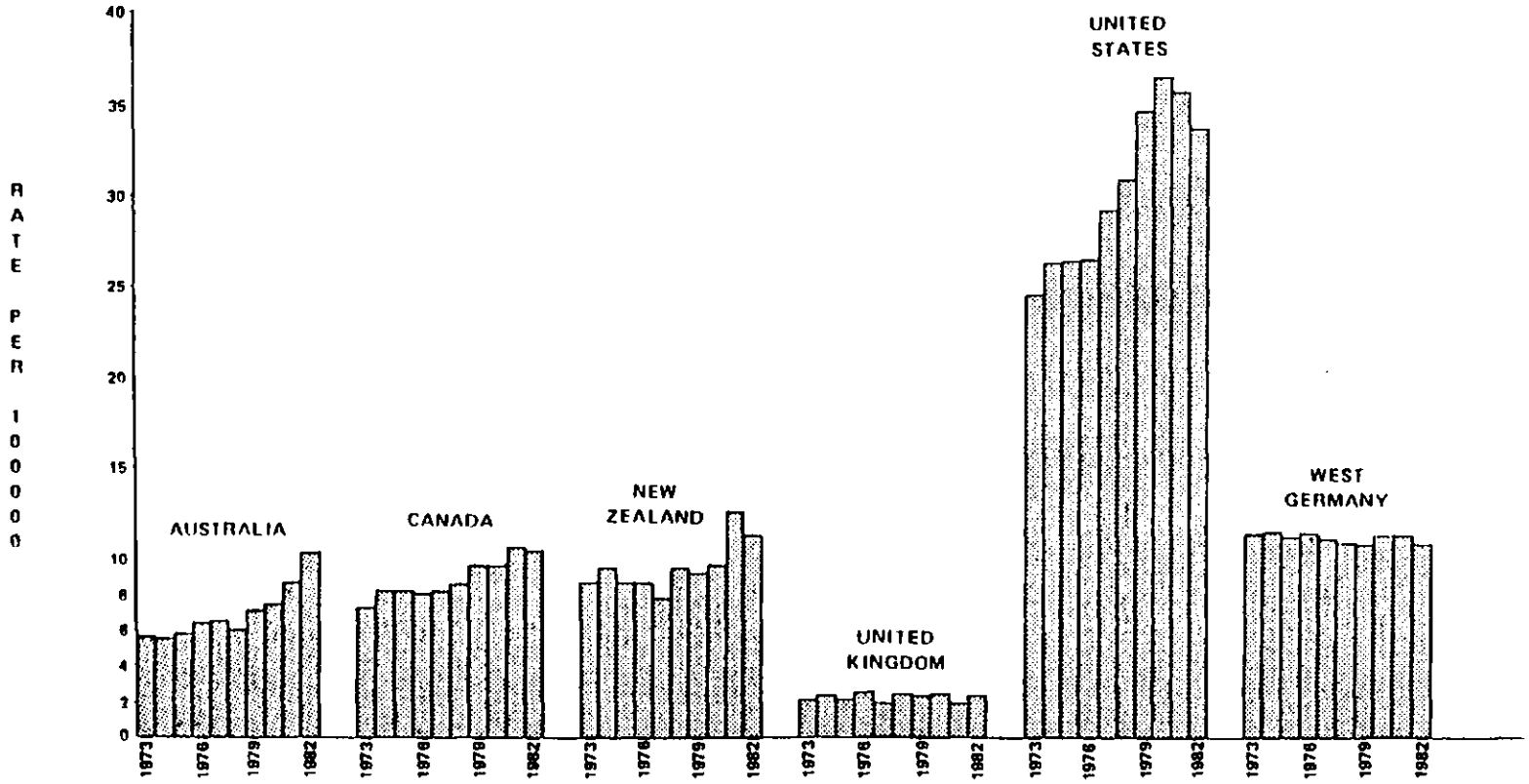
In Australia, there is a comprehensive appellate structure in relation to criminal cases. All States and Territories have, under various names, courts of criminal appeal, and there exists in principle a further route of appeal to the High Court of Australia. Such avenues of appeal continue to be utilised on matters of pure law much as they have in the past. A new perspective which should be noted, however, concerns appeals against sentence. These seem to be much more frequent than was formerly the case, and a new aspect of this is the increasing willingness of the prosecution to appeal against what it considers to be an inadequate sentence. Recent amendments to the *Judiciary Act* seem potentially to have enlarged the jurisdiction of the High Court itself to deal with appeals against sentence, so that it can be hoped that in the forthcoming years general sentencing principles and guidelines can be laid down for the whole of Australia from the highest judicial level.

Corrections

Each State and the Northern Territory operates its own prisons and other correctional services (such as probation and parole, periodic/weekend detention, attendance centres, and community service order schemes). In the Australian Capital Territory, provision is made for the short-term custody of remand prisoners and for probation and parole services, but convicted prisoners serve their sentences in New South Wales prisons. There is no federal correctional service of any kind, and as mentioned previously federal offenders (that is, persons convicted of offences under federal laws) serve their sentences in State correctional facilities or programs. The Australian Law Reform Commission has commented adversely on the disparities caused by housing federal prisoners in different State and Territory prison systems. Although rejecting as impractical at present the suggestion that the Federal Government should either establish its own separate correctional system or, alternatively, take over the administration of existing State and Territory systems (for which no Constitutional authority in any case exists), the Commission did recommend the adoption of national minimum standards for Australian prisons.

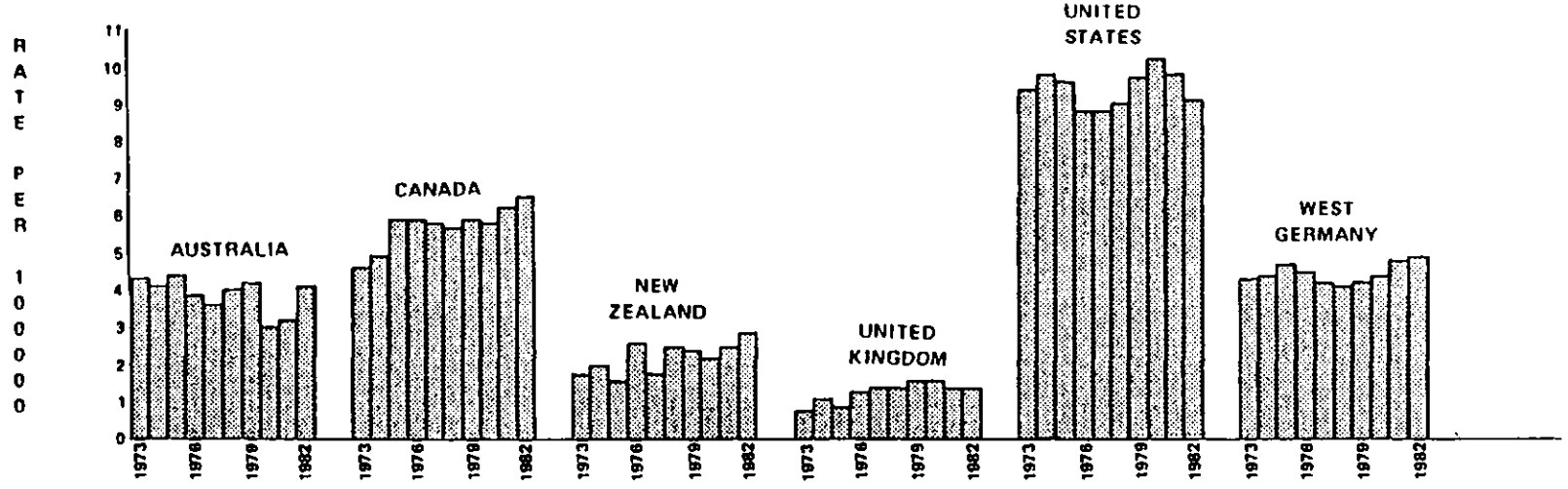
Neither crime rates nor imprisonment rates in Australia are particularly high by international standards. Figures 1 to 4 show the number of offences reported per 100,000 population in Australia for selected offences (rape, homicide, burglary and robbery) in comparison with those for a number of other western countries. Figure 5 shows the imprisonment rates per 100,000 population for all of this century for Australia, with comparative data for Canada, Great Britain, New Zealand and the United States. Although the imprisonment rate overall in Australia is not high, there do exist significant differences in rates between the various jurisdictions. Table 2 shows the imprisonment rates for all jurisdictions in Australia for the month of April 1985, as an example.

FIGURE 1
NUMBER OF RAPES REPORTED PER 100,000 POPULATION
FOR SELECTED COUNTRIES, 1973-1982



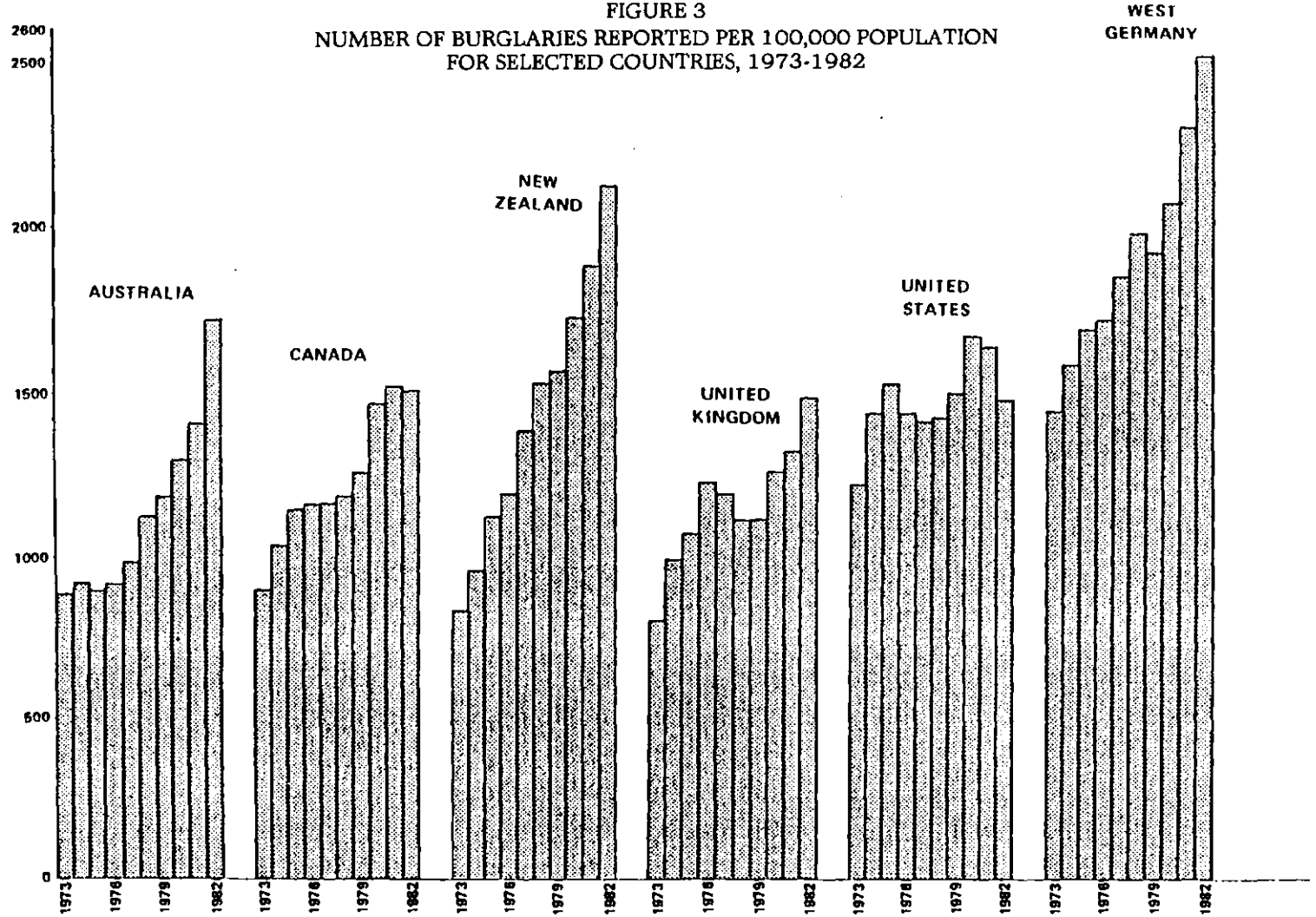
Source: Mukherjee, S.K., Psaila, T., Scandia, A., and Walker, J.R., *Comparative Crime Statistics*, Australian Institute of Criminology, Canberra (forthcoming August 1985).

FIGURE 2
NUMBER OF HOMICIDES REPORTED PER 100,000 POPULATION
FOR SELECTED COUNTRIES, 1973-1982



Source: Mukherjee, S.K., Psaila, T., Scandia, A., and Walker, J.R., *Comparative Crime Statistics*, Australian Institute of Criminology, Canberra (forthcoming August 1985).

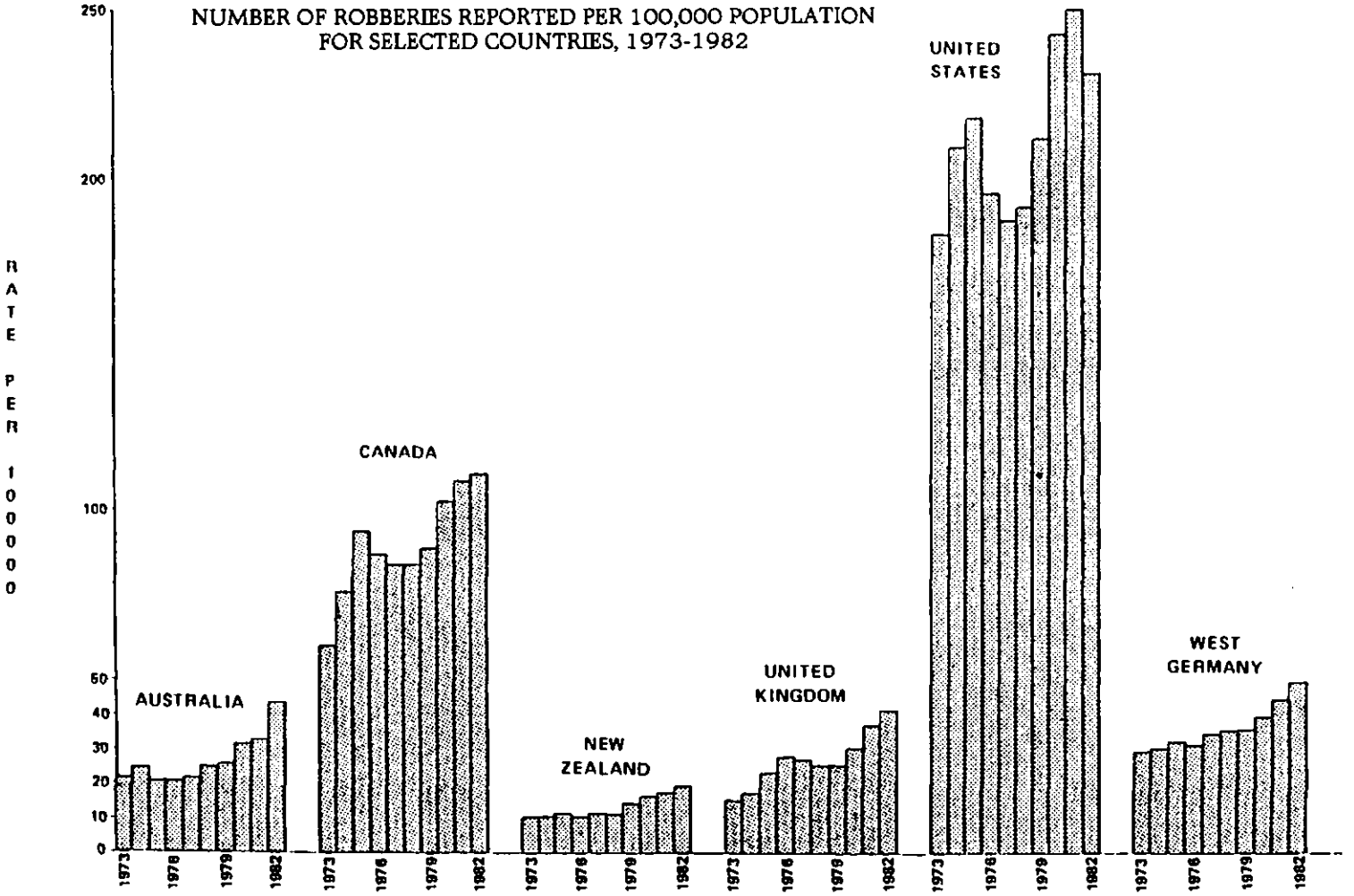
FIGURE 3
NUMBER OF BURGLARIES REPORTED PER 100,000 POPULATION
FOR SELECTED COUNTRIES, 1973-1982



Source: Mukherjee, S.K., Psaila, T., Scandia, A., and Walker, J.R., *Comparative Crime Statistics*, Australian Institute of Criminology, Canberra (forthcoming August 1985).

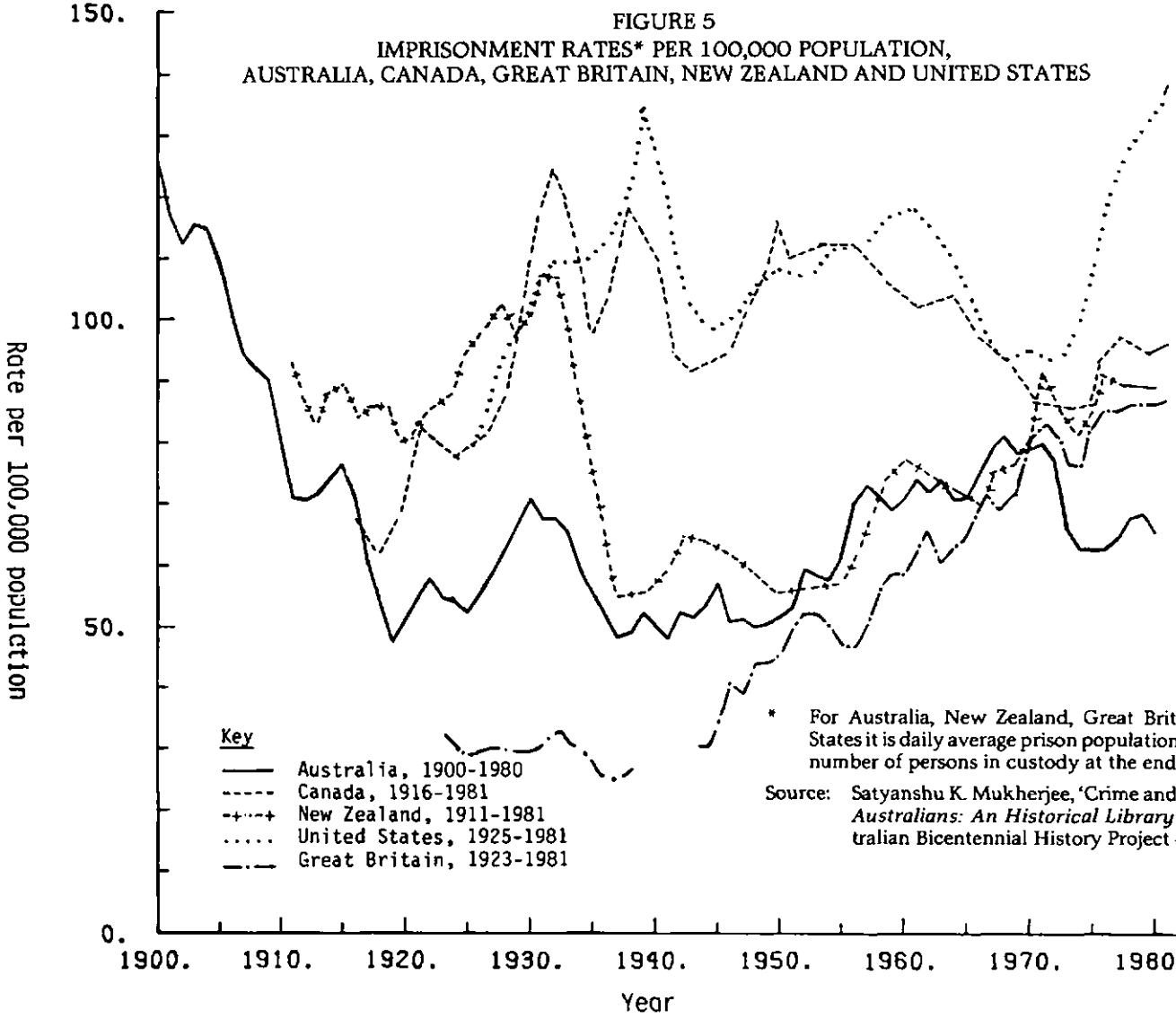
FIGURE 4

NUMBER OF ROBBERIES REPORTED PER 100,000 POPULATION FOR SELECTED COUNTRIES, 1973-1982



Source: Mukherjee, S.K., Psaila, T., Scandia, A., and Walker, J.R., *Comparative Crime Statistics*, Australian Institute of Criminology, Canberra (forthcoming August 1985).

FIGURE 5
IMPRISONMENT RATES* PER 100,000 POPULATION,
AUSTRALIA, CANADA, GREAT BRITAIN, NEW ZEALAND AND UNITED STATES



* For Australia, New Zealand, Great Britain and the United States it is daily average prison population, and for Canada it is number of persons in custody at the end of the year.

Source: Satyanshu K. Mukherjee, 'Crime and Justice Statistics', in *Australians: An Historical Library* (a ten volume Australian Bicentennial History Project — forthcoming)

TABLE 2
Australian Imprisonment Rates (Prisoners Per 100,000 Population)
Based on Daily Averages (April 1985)

	Daily Average Prisoners	General Population (in thousands)	Imprisonment Rates
New South Wales	3813	5745	70.1
Victoria	1893	4013	46.2
Queensland	1972	2524	78.0
Western Australia	1581	1382	113.3
South Australia	758	1352	55.7
Tasmania	220	436	49.8
Northern Territory	311	137	219.0
Australian Capital Territory	66	240	26.0
Australia	10614	15829	67.8

Source: David Biles, *Australian Prison Trends*, No. 107, Australian Institute of Criminology, Canberra, 31 May 1985.

As with imprisonment rates, there is a wide variation between Australian jurisdictions in their use of the various community corrections data. Table 3 shows numbers and rates for community corrections programs in Australia for March 1985.

TABLE 3
Numbers and Rates (Per 100,000 Population) of Adult Persons on Probation and Parole or Subject to Community Service, Work or Attendance Centre Orders
(as at 1 August 1984)

	PROBATION		PAROLE		COMMUNITY SERVICE ORDERS	
	Number	Rates	Number	Rates	Number	Rates
New South Wales	9564	176.1	2738	50.4	1721	31.6
Victoria	3652	89.1	937	22.8	380	9.2
Queensland	5053	200.1	542	21.4	1718	68.0
Western Australia	2066	148.4	768	55.1	700	50.2
South Australia	2291	168.4	390	28.6	165	12.1
Tasmania	1526	346.0	72	16.3	306	69.3
Northern Territory	313	220.4	76	53.5	14	9.8
Australian Capital Territory	252	78.9	48	19.0	n.a.	n.a.
Australia	24664	157.7	5571	35.6	5004	31.9

Source: Ivan Potas, *Australian Community Corrections Data*, No. 79, Australian Institute of Criminology, Canberra, 5 June 1985

In any democratic society of plural values like Australia, corrections are at the razor edge of public contention, legal debate and administrative dilemma. Perhaps, as the earlier sections of this paper show, it has never been easy to determine what Correctional Services were really expected to do. However, the activities of the Meetings of Correctional Administrators and their senior administrators have developed to the point where one can sensibly say that there is a broad national strategy, to emphasise, as far as it is feasible and society is adequately protected, community-based corrections. There is also a recognition of the need to upgrade the physical plant in which prisoners are housed, so that penal policies can be pursued without diversionary factors, such as the need to avoid over-crowding, cutting across strategies.

However, it is difficult to retain this common broad objective. Until the 1970s, the decent limits of individual and social behaviour were unquestioned. Moreover, there was confidence

in the general effectiveness of the criminal justice services and an unchallenged assumption that it was right and proper for them to be supported by all citizens. The extent of the dark figure for crime was suspected but purely speculative, and the symbiotic relationship between crime and its control was still largely undocumented. In a decade such ideas crumbled. As organised, corporate and white collar crime captured public attention, the existence of enormous segments of criminal behaviour, undetected, unprosecuted and unprevented, led to a closer examination of conventional crime. Victimisation studies showed that only about 40 per cent of all crime is reported or known to the police and the falling rates of 'cleared' crime confirmed that those held in prison were, by and large, the unsuccessful criminals, the unlucky ones who had been caught. The evidence thus accumulated that there were more criminals outside than inside the prisons. This meant, of course, that the traditional line drawn between the prison population and the population of people outside was largely erased. There was a time when the attempt had been made to draw genetic, physical, psychological and social distinctions between the two; but the increased knowledge of an essential similarity affected only by the chance of some being caught, demolished the previous reliance which had been placed on comparisons of 'offenders' and 'non-offenders'. Thus, arguments for the ones in institutions to be trained to be like those outside the prisons, i.e. rehabilitation, largely fell away.

This change in penal philosophy thus gradually shifted the emphasis both inside and outside the institutions from considerations of caring, welfare and reform to a strict demand for rights and a criticism of any departure by the authorities from their legally prescribed duties. This is not to say that considerations of humanity were entirely excluded but there was intense suspicion of any so-called 'welfare', 'caring' or 'do-gooder' relationships by the inmates and the prison officers alike, who had been claiming such relationships were hypocritical and did not work long before they were attacked by lawyers and criminologists. Therefore, considerations of humanity were translated into human dignity protected by the recognition of either human or legally protected rights.

Naturally, resentment, the sense of grievance and the desire to attract media attention to real or supposed injustices, multiplied. Obviously, there were instances of injustice which were frequently countered either by direct violence or legal process. Either way the prison officers at the cutting edge of such resentment eventually countered by their own use of their powers and by their own union organisation for the protection of their rights. Whereas, previously there had been a wide appreciation that the life of an institution could become bearable and the beneficial effect on inmates was possible only by a co-operative and understanding relationship between officers and prisoners, suspicion and a jealous protection of basic rights began to characterise institutional life dividing the communities, sometimes undermining attempts to break through and establish confidence. The divisions were not only between officers and inmates, though these were the most marked, but prisoners rapidly categorised themselves and power struggles frequently developed.

Of course, the situation differs remarkably between different types of institutions. Much depends on the size of the inmate population, the 'mix' of the different categories of inmates. These become critical factors in the maintenance of correctional peace in modern institutions and not only in Australia. Nearly all States have had crises in their penal institutions in the past decade. However these crises may have arisen — from staff strikes or inmate riots, from a series of escapes alarming the public or from organised complaints about abuses of power by prison administrations — they have nearly always developed into political controversies intensified by the media. This has emphasised the fact that correctional problems are no more than reflections of the cleavages of fundamental opinion within the depths of society itself.

The fact that these problems in Australian corrections are particularly related to the western culture of which Australia is a part has been confirmed since 1980 by Australia's association with the Asian and Pacific Conference of Correctional Administrators. Collectively, this group of regional correctional representatives has time and again repudiated the western denunciation of the rehabilitative principles in corrections. In Asian and Pacific countries, just emerging from the cruelties of an age that interpreted retribution in barbaric terms and depended mainly on the deterrent effect of savage penalties, rehabilitation brought hope and a more meaningful policy to corrections. Of course, in these countries there had never been enough social workers or psychiatrists to develop the pretensions of the advanced 'medical model'. Administrators in the Asian and Pacific region did believe in helping prisoners

to change; and they saw great problems for their institutions if they lost the discretion which allowed them as administrators to use rewards and penalties to induce co-operation. They had studied the drawbacks of rehabilitation as set out by their western mentors. Many of them had been trained in western correctional administrations or had made extensive visits of observation. Their decision on future penal policy for the region was diametrically opposed to that of the west. They have decided, and the Australian administrators at the conferences did not dissent, that whatever has been or is wrong with rehabilitation, a regressive preference for 'just deserts' is much worse and serves neither the best interests of society nor the inmates. They believe that whether the prisoners sent to prison deserve to be there or not, and whatever the argument for there being worse people outside, as long as they have to be in prison a hopeful program of rehabilitative projects is necessary for the benefit of all. Moreover they believe that whatever the rhetoric on 'just deserts' and the rights of prisoners and staff, the west still cannot abandon what they call voluntary self-improvement programs and projects to aid reintegration which when taken together have a remarkable similarity to the reformative rehabilitative programs of old. After all, none of these in the past could even be introduced or run effectively without the voluntary agreement of the inmates, and the professional services and technical resources to make rehabilitation possible were always inadequate in the developed, as in the developing, countries. However, the need for an individualised and hopeful approach to possible improvement retains its attraction for Asian and Pacific authorities.

Australia's correctional problems remain, then. However, the States are now spending more on the prisons and prison services than ever before, and Ministers and administrators continue to be ahead of public opinion on penological issues. This manifests itself in concrete achievements, for instance, that the 'just deserts' policy has not been translated generally into legislation. Consequently, Australian prisons have not yet become as overcrowded as they have in the United States and Europe.

THE FAIR TREATMENT OF WOMEN BY THE CRIMINAL JUSTICE SYSTEM

Australia has been at the forefront of the movement, fostered by the United Nations from 1975 onwards, for improvement in the status of women and their rights in the criminal justice system. This has manifested itself in various ways.

First, there has in the last decade been a marked increase in the numbers of women employed in all aspects of the criminal justice services. For example, recruitment patterns by police forces have changed dramatically; thus, at least one Australian police force is currently recruiting at the rate of approximately 25 per cent female probationary officers. At the judicial level, there has been a substantial increase in the numbers of women appointed to childrens' courts, inferior courts and intermediate and specialist courts. Prison services also have been recruiting more and more women not only as custodial guards for women's prisons, but also, in some cases, for duties within men's prisons. Women were always more heavily represented in community-based correctional services, because of its natural association with social work, and this trend has been maintained over the years. Such movements have been supported and stimulated by the *Sex Discrimination Act* passed by the Federal Government. However, it must be said that women are still more under-represented at the higher echelons of the various services than at the lower echelons.

Second, it should be noted that the frequency and patterns of female crime have increased and changed over the years, with a consequent increase in the proportion of women in the Australian prison population. There does appear to be an increase in the female participation rate in major property crimes, in offences of violence and in drug offences. The first would to some extent be a function of increased opportunity, as women take up positions of greater responsibility in industry and commerce. The second is not altogether easy to explain, but has manifested itself with crime patterns of young females as well as adults: see also Australian Discussion Paper IV. The third matter is an aspect of the growing international drug trade in which women are evidently considered to be particularly suitable as couriers. Of course, there

is also an additional aspect of use of and addiction to drugs by women. These trends, in conjunction, have led to a situation where the proportion of prison population which is female is now over 4 per cent whereas a decade ago it was little more than 2 per cent.

Consequently, increasing attention has been given within Australia to the whole question of the position of women in the prison system. The Australian Institute of Criminology held a major seminar on this topic in 1984; the New South Wales Government set up a task force in the same year which has now reported its findings; and the issue was discussed widely by the Conference of Asia and Pacific Correctional Administrators in May 1985. Deliberations such as these have reached a wide measure of consensus on certain matters, most notably, that in general terms the range of facilities and services available to women prisoners should be no worse than those available to male prisoners. However, at least two fundamental values remain a matter of conflict. The first is whether or not women should be housed in separate institutions from men; the second, interrelated with this, is whether or not new prisons should be built for female prisoners.

As to the first, the prevailing Australian trend is to house women separately, and despite a recommendation in Victoria to the contrary this policy seems likely to continue. Of course, practical exigencies may compel the dilution of this policy, particularly in the very large States such as Western Australia where the logistics, expense and inconvenience to the prisoner herself of moving a female to the only single sex female institution in the State may seem to be insurmountable.

The second issue revolves around the decarceration debate, coloured by feminist objectives. The argument essentially has been that if new institutions are built for women then almost inevitably they will be filled up, thus increasing the female incarceration rate, whereas, by contrast, the strategy should be to develop even further the community-based corrections alternatives so as to cater for women's special needs. This point is fortified by further consideration of the difficulties which arise when women with young babies are imprisoned. Obviously, such debates as these cannot be readily resolved; they will continue for some time. However, as it is most improbable that the imprisonment rate of women will noticeably decrease in a context where there is still such a low base rate of imprisonment, and as there are real doubts as to the appropriateness and efficacy of mixed or even co-correctional institutions, it would seem that the optimum path would be to build new female institutions with an appropriate design and lay-out for the range of services and programs which are needed. If this approach were taken, it would also be possible to arrange the security classifications in the way which is related to the actual needs of the prison administrators in relation to women — a process which would probably result in a greater proportion of minimum or medium-security beds than at present.

Australia has also paid considerable attention in the last decade to the position of women as victims of crime. This matter is dealt with in detail in Australian Discussion Paper III. Briefly, the laws relating to sexual assault have been amended in most States so as to reflect more accurately the power relationship between the sexes; and the laws of evidence have generally been amended so as to protect a woman's reputation except where it is in itself a central issue in the case. Also, new laws have been passed relating to domestic violence; the device of restraining orders has, for example, been adopted in at least four States and early evaluation would indicate that it has been extremely successful. Police personnel are being specially trained for intervention in these kinds of situation and liaison between community welfare departments and police departments in this regard has been improved. Self-help, however, remains a prominent theme; numerous women's refuges are now available in every Australian State.

It can truly be said that the women's movement and the politicians who have been receptive to it have raised the consciousness of criminal justice practitioners to the special problems of women in relation to a system which was principally designed to respond to the wrongdoing of men. That is for the good. However, if there is one reservation that should be made, it is this: that, perhaps, in identifying aspects of the system which impact unfairly or unfavourably upon women the next step has not always been taken, of recognising that the very same system may impact unfairly or unfavourably upon men also. We have not quite reached the stage where the debate and the literature about women's issues has seen them in the broader perspective of people's issues.

PUBLIC OPINION

In criminal justice, the role of the public is singularly ambiguous. There can be no effective criminal justice without the community, but paradoxically there can be no criminal justice based wholly or largely on mass participation. Criminal justice is of its nature dependent on public support, but to maintain credibility it has to be abstracted from the vagaries of unrestrained public zeal. If, in a democracy, the will of the people is really sovereign, then the laws and the manner of their enforcement should be clear reflections of what the majority of the people want. Yet in practice it has never been quite like this. Though, theoretically, the will of the people can change the law and the declared wishes of the majority can be translated into statutes, the fact is that public opinion has nearly always been peripheral to the development of criminal justice. Moreover, administrations everywhere are still wary of the mass impact on the formulation of criminal policy.

In the past, of course, the public was largely subjected to the imposition of the law by those wielding political power. The 'King's Peace' in Britain may have been intended to subdue the barons but it also bound the people. They had to present all their wrong-doers for justice; and public trials, public executions as well as the public shaming of minor offenders were all criminal processes intended to educate and terrify the public, and when necessary, to coerce co-operation. Maybe this was not only the crude exercise of power, but to some extent, an inevitable development, given the fact that the origin of criminal justice was in the attempt to regulate public involvement in the treatment of crime. Society was really only possible when private vengeance and the family feud could be brought under control. The unauthorised individual use of force as well as mob reaction to crime had to be outlawed if the issues in any particular case were to be calmly considered and justice done.

In the modern world of democratic rule, the public is no longer overtly coerced; and there is no reliance on public horror spectacles to educate and deter. However, in a milder form the principle survives, when stiff prison sentences are imposed to deal with increases of certain crimes or when news of police successes is propagated, to convince those tempted to break the law that they will be caught. There are also campaigns by governments to secure public acquiescence to criminal justice policies already formulated; but in such instances the broad policy outline has usually been achieved prior to the public discussion.

Maybe nowhere in the world is criminal justice policy actually determined by the public. It would certainly be very difficult to maintain, that in Australia, the public either understands the fundamental issues or is particularly effective in the formulation of criminal policy. This is another important paradox at a time when it can be claimed that mass communications keep the public better informed on national affairs than at any other time in history.

In a general sense, of course, the public does direct policy by its periodical election of political representatives who then make the laws; but this is like saying that the public directs health or scientific research policy by means of general elections. The people as a collective whole are far removed from practical policy making. Having elected their representatives, they expect them to get on with the job of governing including making laws and enforcing them with such specialist help as may be available.

However, in criminal justice this distancing of the public from the policy determination might be considered to be desirable. For, usually, experience has shown that public opinion is likely to be less scrupulous about judicial safeguards, much less forgiving of human failings, and indeed, a great deal more punitive than are the officials who have to deal with such matters.

The reality is that, for all their familiarity, for cinema goers or television watchers, the courts in all their majesty are still removed from the daily life of the mass of the people. They may be more used now by quite ordinary people than they ever have been, but they remain much more the familiar battle grounds for lawyers, police officers and professional offenders than places of free and confident resort by the ordinary citizen.

The police are rather different. They run youth clubs, discos and public awareness campaigns. They lecture in schools or talk to business men and women and they have taken to the media to spread their message of the need for the community to co-operate with the police to prevent crime. Usually the police have public support, even if it often falls short of individuals

becoming informers or 'sticky-beaks' for their neighbours. For in Australia perhaps more than anywhere else such a person is despised. On the whole, despite countervailing factors, such as wider police/public contact through traffic law enforcement, negative interaction in some public order situations and the fact that a more highly-educated population looks to its rights, the police are more supported than opposed by public opinion. Yet they cannot take such support absolutely for granted; if they wish to retain it they must be careful not to exceed certain limits. In a democracy, public opinion supplies the crucial checks and balances.

The public approach to corrections is again different from the public approach to the courts and the police. Of their nature corrections, particularly the prisons, are far more remote from the ordinary citizen than either the courts or the police. It seems however that, in this case, distance increases the desire for severity. Curiously enough, the distance appears to perpetuate the traditional preference for tough penalties to deter the populace. Possibly it is because the majority of people have not been in direct contact with penal institutions that they are inclined to believe that they should be used to induce a healthy fear in anyone likely to be threatened with admission. Unfortunately for such hard liners, they elected a long time ago the parliamentary representatives who legislated against any such harshness. And, at the Federal Government level, Australia is committed to adhere to international standards for conditions in prisons which exclude unnecessary hardship.

With this kind of background, it is not surprising that most reforms of penal policy have tended to be far less direct responses to public demand than the work of enlightened administrators, religiously motivated reformers or crusading academics and politicians. People like this have plunged daringly ahead, extending the interpretation of laws and regulations, badgering the influential to seek change and trying to shock educated or refined opinion by their monitoring and exposing of penal conditions. As might be gathered from the foregoing, the populace in general has remained unmoved by most of these accounts of severity in prisons. The bulk of the population have usually expected prisons to be tough and forbidding, retributive and deterrent. Whereas, with the police and the courts, the public is usually inclined to defer to specialist guidance on what policies should be followed, it is far less in the public eye certain that correctional officials know what they are doing. For everyone is an expert on what will deter offenders and prevent crime. When, in fact, there have been legislative responses to mass pressure in penal policy, it has usually been in the form of more severe penalties or else more rigid law enforcement. It is again very significant socially that it is always the smaller minority groups in a country which campaign for human rights or which protest against their violation. The majority of the public is usually prepared to compromise even on these crucial issues of rights in order to maintain social control.

Of course there have always been well organised lobbies for penal change since the late 18th century whether or not such lobbies accurately reflected the majority opinion in society. And all of these lobby groups had influential branches in Australia. To such societies can be ascribed the abolition of slavery, of transportation, of capital and corporal punishment. The social status and influence of the individual members of these well-connected and vigorous lobby groups have been far more effective in obtaining political action than any broad appeal they might have had for the masses.

As J.V. Barry's account of Maconochie's work shows, the improvements in penal conditions in Australia as elsewhere have frequently been instigated by prison administrators themselves. They have determined minimal standards or taken risks with established security limits for the benefit of the individuals concerned. They have stretched regulations to unintended proportions and tempered strict legality with a more considerate humanity. Soon after Maconochie's pioneering work on Norfolk Island, prison administrators from Europe and America were meeting in Germany to discuss penal reform. In 1872 the International Penal and Penitentiary Commission was founded in London. Ten years after the First World War it produced agreed minimum standards for the treatment of prisoners. More than a half century later those were the standards adopted (substantially unaltered) by the United Nations for global guidance on humane treatment. It was prison administrators who, over the years diluted the meaning of 'hard labour' to insignificance, and who, on their own authority, experimented with open institutions, the day release of prisoners for outside jobs, conjugal visits and various schemes of early discharge.

What then is the role of public opinion in the future development of criminal justice processes and perspectives? Unfortunately, the answer to this question is not known, but as the above account indicates, there are dangers as well as advantages in mobilising public opinion, unless its role is clear and the limits strictly defined. To carefully sketch these parameters there is a need to know more about the precise effect of public opinion on criminal justice and the United Nations Discussion Guide rightly calls for the kind of research necessary to measure its effect. Public information needs to be increased and the public brought into more enlightened contact with the criminal justice services. Only by more direct contact can the distortions of concept be reduced and balanced perspectives obtained.

Public opinion, however, in the service of criminal justice is a complex subject with many angles. Some of these have been explored here. Others remain to be investigated. Australia like most other countries has not delved into this subject very deeply, and would wish to do so in the years ahead.

RESEARCH

The number of major research institutions devoted to the study of the criminal justice system in Australia is relatively small. Two university organisations (the Sydney University Institute of Criminology and the Melbourne University Criminology Department) are predominantly concerned with teaching, but also carry out research. A number of other university departments (predominantly those concerned with legal studies) also have a major interest in research into the criminal justice system. Two State Government authorities have been established in this field. The South Australian Office of Crime Statistics and the New South Wales Bureau of Crime Statistics and Research both are predominantly concerned with producing up-to-date statistics on their respective criminal justice systems. Both, however, are increasingly producing research reports on a wide range of topics. In New South Wales, the emphasis has been on evaluation and policy research, with examples being studies of reforms in the law with respect to bail, homicide, sexual assaults, and the decriminalisation of public drunkenness. The Bureau has recently finished a major study of the relationship between drug taking and property offences.

The largest criminal justice research organisation in Australia is the Australian Institute of Criminology. The Institute, based in Canberra, is an independent federal statutory body devoted to the conduct of criminological research, the dissemination of criminological information and the arrangement of seminars and conferences on all aspects of the criminal justice system. The Institute also services the Criminology Research Council, which is a Federal-State body established to fund research into the criminal justice area. A recent review of Australian criminological research (Biles, 1983) showed that research funded by the Criminology Research Council tended to focus on studies related to criminal behaviour and correction of offenders. Relatively small numbers of grants have been made in such areas as community attitudes to crime and justice, the criminal law, or the operation of the police or court systems; though this pattern is certainly changing. As a matter of policy, a distinction has been drawn between those types of research that are appropriate for Council funding and those which are more appropriate for its related organisation, the Australian Institute of Criminology, to undertake. The Council prefers to fund projects of a regional or local character which may involve primary data gathering by interview, observation or questionnaire. The Institute, on the other hand, has specialised in national, multi-jurisdictional comparative studies. In recent years, however, the focus has shifted from this emphasis towards research into major policy issues in criminal justice. Current projects, for example, include research on Aboriginals and the criminal justice system, principles of public order policing, domestic violence, jury instructions, corporate crime, burglary, and drug enforcement policies.

Much of the criminal justice research undertaken in Australia in the past has been subject to the criticism that it is too conservative, and bound to maintaining the status quo. Researchers in the 'alternative criminology movement' have claimed for example, that Australian research has seldom questioned the basic functioning of the criminal justice system, preferring

rather to conduct research on ways merely to 'tinker' with the system (Brown, 1983). Others have criticised Australian criminology for concentrating on trivial issues (Harding, 1983). However, some of the major studies have led to action to reform the system. There has been a broadening of the scope of Australian criminal justice research in recent years and an increasing number of researchers are now addressing themselves to the adequacy of our systems and to a critical appraisal of the basic assumptions upon which our criminal justice issues are built. There is a growing realisation, too, that criminal justice and problems cannot be addressed adequately without examining the existing social and economic arrangement of Australian society. On the whole, though, this realisation has not translated into a research focus on criminal justice *systems* and their inter-relations.

The challenges for the future of criminal justice research in Australia are multiple ones. First, although progress is being made, it is still necessary to establish a system for the adequate compilation of criminal justice statistics. Present efforts are limited and fragmentary, and do not allow more than the most basic counting exercises in some areas. The situation has as already mentioned, improved in recent years: with the formation of crime statistics units in New South Wales and South Australia; with the substantial upgrading of information collections within police, court, and corrections services; with basic national statistical collections published by the Australian Institute of Criminology; and with the establishment of new sources of data such as the Australian Bureau of Statistics' National Crime Victims Surveys. The usefulness of these collections has been repeatedly demonstrated, and we can expect a further substantial upgrading of the capacity to produce regular and comprehensive criminal justice statistics in Australia in the future.

A second challenge, and one which depends for its success on adequate statistics, is the development of new methods for the evaluation of criminal justice programs. Such evaluations, which are becoming a more obvious part of Australian research, will need to focus on outcome measures reflecting broad social goals, and considerations such as equity and human rights, in addition to the basically financial cost-benefit analyses which have typified many previous efforts.

Finally, research will need to address itself more to analyses of the assumptions underlying the criminal justice system and to the relationships between criminal justice and larger social, economic and political questions. Australian criminal justice research is young and growing, and should be able to rise to meet these challenges.

CONCLUSIONS

The foregoing will have demonstrated that in terms of criminal policy, crime prevention, criminology and the broader perspectives on crime, Australia has all the humanitarian advantages, and all those unavoidable costs of permitted deviancy which are so typical of democratic societies anywhere.

Australia does not feel overwhelmed by crime, and values its traditional liberties more than bureaucratic control. It already believes that it has too many laws and, with active federal, State and local administrations, may well be over-governed. There is extensive public discussion of such problems, with the civil rights groups fiercely defending the individual rights of all Australians and the law and order protagonists maintaining that the criminals are the main violators of the citizen's liberty and of his or her security or person and property. Accretions over the years to official powers to control the people in a multitude of their regular activities have made them wary of even justifiable extensions designed to limit criminality. On the other hand, the recent bourgeoning of organised criminality has made Australians painfully aware of the inherent limitations of their criminal justice services.

Of course, Australia knows perfectly well how to eliminate all crime and how to secure total conformity but it regards this total control as so restrictive of human rights as to be a remedy far worse than the disease. In this preoccupation with individual liberty rather than public conformity, Australia is a more faithful reflection of the western, free-enterprise culture than it is typical of its own geographical region. For, in the Asian and Pacific region, legal rights are usually qualified, at the very least by those family, community, social and moral obligations

which have been in decline in the west for a long time.

Criminal policy, as explained above, is complex in Australia because of the federal/interstate divisions, yet as indicated, there are common features to the organisation and administration of criminal justice services across the continent, particularly through Intergovernmental Councils and Committees. Also, there are common traditions flowing from a shared Common Law and from the basic institutional framework of law enforcement. The federal and State Governments share not only the principles and perspectives on crime and its prevention: they share too the inherent limitations of their methods of crime control. Broad perspectives and new initiatives can be thwarted by established routines; it is difficult to change or reform the services already entrenched with vested professional interests in crime control. Again, in this, Australia is following the west, and is constrained by the same operational strait jackets. Even when the need for change is appreciated, it is not always easy to effect.

Australia, it must be said, has so far achieved little progress in appreciating or applying the broader perspective of crime prevention through national economic and social planning which the United Nations has been advocating for its member-states since 1970. To some extent this is a function of the limited experience of national economic and social planning on the Australian continent, referred to in the first part of this paper; but it is also a consequence of a deeply rooted reluctance to acknowledge that crime is really more normal than abnormal. In Australia the impression is still widespread that crime can be stamped out or at least effectively controlled by appropriate law enforcement. The idea of a symbiotic relationship subsisting between crime and the measures for its control are not understood, despite some quite interesting and suggestive research on the subject in various parts of Australia.

One reason for this is that crime, as mentioned above, though widespread (and frequently serious and violent) has not, until quite recently, been perceived as a truly national or particularly significant problem for Australians. Whilst all were aware of the criminal origins of the very establishment of the nation, Australians have considered themselves criminally backward when compared with the other highly sophisticated and industrialised countries of the west. Gambling has been a national characteristic of which Australians have been not only tolerant, but even proud. Though it was understood that this, along with prostitution, pornography and the bourgeoning drug trade, constituted the ingredients for organised crime in the country, and though it was obvious from the occasional 'contract killings' and seizures of both soft and hard drugs by customs or the police that criminal groups were operating profitably in the larger towns, no-one knew at what levels or to what extent. There were many 'guesstimates'; but their reliability could readily be impugned. However, this perspective has recently undergone fundamental change. This is a situation which has changed dramatically in a few short years.

Royal Commissions into the illegal drug trade, the extent of corruption, corporate crime and massive tax evasion have alarmed the nation. In turn this has led to such reactions as the establishment of the National Crime Authority and the conferral of additional powers upon police, as described above. However, the civil libertarians are watching carefully the measures likely to be taken at both the federal and State levels to circumscribe individual liberties in the interest of crime prevention: the democratic balance.

Australia provides a rare example of a country with a history of progressive leniency on the treatment of crime correlating with economic and social growth. Over the long term, this may have happened elsewhere but surely not as conspicuously on a national scale as in Australia. It is indeed significant that a country which was founded as a cheap alternative to the death penalty in the United Kingdom, which pioneered penal reform in the 19th century and which strove to develop all the respected western patterns of law enforcement, has had throughout the whole of the 20th century, a ratio of imprisonment per 100,000 people which, if not always low, has not been particularly high by world standards. The only exception to this modest public rate of imprisonment in Australia has been in the imprisonment of Aboriginals. But here the situation in Australia is a reflection of that in most other countries where indigenous peoples tend to suffer most even from equal law enforcement. The fact that it has been Australia itself which has discovered and widely publicised this defect in its criminal justice services confirms its consciousness of the need to satisfy the interests of minorities from the built-in biases of criminal justice systems.

Internationally, Australia is becoming increasingly aware that national measures alone cannot contain even local crime. Maintaining accepted international standards for the protection of human rights and the treatment of offenders imposes restraints on the effectiveness of law enforcement. Since many of these were originally derived from the Common Law which is at the base of Australian criminal justice, it is inevitable that they have become an integral part of all approaches to criminal policy in the country, thus colouring the perspectives. At the same time, national policies will fail if they do not dovetail with the policies of so many other countries. In recent years, therefore, Australia has become increasingly active in international crime prevention and control. Through these initiatives and by active participation in international forums such as the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, Australia hopes both to share its experiences with others and to learn from the experiences of others.

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CRIME VICTIMS IN AUSTRALIA

TOPIC III

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This paper presents current information on crime victims in Australia.

It surveys current sources of data on Australian victims, including victim surveys, vital statistics and police records, and notes that the risk of becoming a victim of crime is distributed very unevenly across demographic and economic groups within Australian society.

The paper then reviews the experience of those groups within society whose position of dependence or disadvantage renders them least able to cope with the experience of victimisation, including women, children, the elderly, Aboriginal people and persons of low socio-economic status in general, and describes the specialised services which may be made available to them.

Attention then turns to issues of compensation and rehabilitation. The basic organisation of criminal injuries compensation programs in Australia is discussed, as are the shortcomings inherent in existing compensation schemes. It is suggested that too much concern is devoted to the issue of compensation by itself; the most effective way of restoring a crime victim is through a mix of compensation and rehabilitation, including professional counselling and services.

The paper then addresses the question of victims' rights, and suggests that the interests of the victim are not incompatible with the rights of the accused. It reviews a number of measures by which the victim's basic needs for social support and information may be met.

Brief discussion is accorded the unique circumstances of victims of corporate crime, and of victims of the abuse of state power. Suggestions are made for policies which would contribute to the prevention of victimisation by corporate offenders and for the abatement of the consequences of that victimisation which might occur.

The paper concludes with a review of major priorities for research and victim services in Australia.

CONTENTS

INTRODUCTION

In recent years, many western industrial societies have seen a growing interest in, and sympathy for, victims of crime. Australia is no exception. But indications of the difficulties experienced by crime victims in Australia did not appear simultaneously or with equal clarity. Rather, they arose over a period of years from State to State within the federal system, with varying degrees of public and governmental recognition.

In 1967 New South Wales became the first Australian jurisdiction to introduce a criminal injuries compensation program. Over the next decade, the remaining States and Territories followed. The first Australian Rape Crisis Centre was opened in Sydney in 1974. In 1975, the Australian Bureau of Statistics conducted the first Australian national sample survey of crime victims.

Throughout the 1970s activists from the women's movement drew increasing attention to victims of sexual assault and domestic violence. The Australian Institute of Criminology, the Tasmanian Law Reform Commission, and the University of Tasmania Law School organised a National Conference on Rape Law Reform in 1980. A month later, the South Australian Government undertook a general review of the needs of crime victims in that State. The following year, the Australian Institute of Criminology and the Government of South Australia jointly convened a National Symposium on Victimology. During that year, the New South Wales Government enacted significant reforms to the criminal law relating to sexual assault and domestic violence.

The goal of this discussion paper is to summarise existing knowledge about crime victims in Australia, and to suggest areas in which our knowledge of victims and their problems remains inadequate, and in which their needs remain urgent.

INFORMATION ABOUT CRIME VICTIMS

Knowledge about the extent and distribution of crime victimisation in Australia is inadequate. Knowledge in this area is important not for its own sake, but to provide members of the public with objective indicators of their own security or vulnerability, and to inform the rational allocation of scarce and costly criminal justice and social welfare resources in Australia. The two basic sources of information about crime victims — periodic reports by the police departments of the various States and Territories, and the occasional surveys undertaken by the Australian Bureau of Statistics — each have major shortcomings.

Police Statistics

Reports of the various police departments tend to reflect total incidents coming to their attention in each of a number of offence categories. Unfortunately, definitions and counting practices vary considerably from State to State, and thus preclude comparison. For example, the legal definitions of rape are considerably broader in New South Wales and in South Australia than in other jurisdictions. State-by-State comparisons are therefore inappropriate. Nationally aggregated statistics of reported rape thus provide an unclear picture of serious sexual assault coming to official attention, and comparisons over time are not possible. Police departments also differ with regard to their aggregations of homicide statistics; it is not possible to distinguish Australia-wide between reported murder, attempted murder, manslaughter, and deaths resulting from criminally negligent operation of a motor vehicle.

Perhaps the most significant problem with statistics of offences coming to the attention of police arises from the fact that they reflect only a proportion of all criminal activity. A considerable number of crimes never reach police attention, and thus never appear in police statistics. Perhaps foremost among these, in terms of seriousness and prevalence, are the majority of sexual assaults and incidents of domestic violence. Factors which underline this so-called 'dark figure' of unreported crime are numerous and complex. Suffice it to say that a large number of offences involving victims and offenders who are closely related, and a large number of offences of a relatively minor nature, go unreported.

Another problem in relation to statistics published by police is that they do not reflect the characteristics of victims — the distribution of criminal victimisation across physical, demographic, and social space. This provides particular difficulty in that the likelihood of becoming the victim of crime is borne disproportionately by persons drawn from specific social backgrounds, whilst individuals from other social groups remain relatively secure. The existence of this differential burden is not revealed in the gross aggregate totals published by police departments. These published statistics thus fail to reassure those citizens whose fears tend to be unwarranted, and understate the dangers faced by the most vulnerable members of Australian society (Braithwaite, Biles and Whitrod, 1982).

Yet another shortcoming of published police statistics is their inadequate coverage of the criminal use of firearms. It has been well documented that in purely instrumental terms, firearms are far more dangerous to potential victims than are other weapons (New South Wales Bureau of Crime Statistics and Research, 1973; forthcoming). Police statistics which fail to document illicit firearm use, prevent governments from monitoring systematically the effects of current firearms policies. Policies which fail to keep the inventory of firearms to a minimum also fail to protect citizens from victimisation.

The above problems in relation to police published statistics, combined with a substantial delay in their aggregation and eventual publication by the Australian Bureau of Statistics, render them an incomplete source of information on crime victims in Australia.

Victim Surveys

Some of the shortcomings of the police-generated statistics on victims have been satisfactorily met by sample surveys. The first Australian surveys of crime victims were conducted in the early 1970s by Wilson and Brown (1973) and by Congalton and Najman (1974). In 1975 the Australian Bureau of Statistics conducted the first nationwide study of crime victims, based on a stratified multi-stage area sample of 18,694 respondents throughout Australia, but excluding the Northern Territory and remote country areas.

The findings, published in 1979, made a significant contribution to knowledge about the extent and distribution of victimisation in Australia (Australian Bureau of Statistics, 1979). Significantly, they confirmed the existence of the aforementioned 'dark figure' of unreported crime. Approximately 60 per cent of all incidents covered in the survey were not reported to police, although the reportability rate varied widely according to offence. Whilst over 90 per cent of motor vehicle thefts were reported, less than a third of all rapes, and less than a quarter of incidents of fraud, forgery, and false pretences were brought to the attention of the police.

The 1975 victim survey also revealed considerable differences in the risk of becoming the victim of certain crimes. Rates of crime generally tended to be lower in country areas. The elderly, and those persons living in stable residential communities, were *less* likely to have been victims. The unemployed, people who were separated or divorced, and inhabitants of neighbourhoods with a high degree of residential mobility reported a higher rate of victimisation.

The survey also shed considerable light on the relationship between crime victims and their offenders. Eighty-four per cent of robberies identified in the survey were committed by persons unknown to the victim. Nearly half of all non-sexual assaults and more than half of all rapes were committed by acquaintances or close friends.

Reasons given for not reporting an offence to police tended to differ by gender. Male victims of assault were more likely to have regarded the incident as too trivial or to have expressed a preference to handle the matter themselves. Female victims tended to define the incident as a private and not a criminal matter, or said that they were too confused or upset to notify the police. A number of others expressed the view that the police 'would not bother' if notified (Braithwaite and Biles, 1980e).

Results of the 1975 survey were analysed in considerable detail by researchers at the Australian Institute of Criminology (Biles and Braithwaite, 1979; Biles, Braithwaite and Braithwaite, 1979; Braithwaite and Biles, 1979, 1980a, 1980b, 1980c, 1980d, 1980e, 1980f, 1984; Braithwaite, Biles and Whitrod, 1982). Their publications have significantly enhanced the understanding of crime and its victims in Australia.

Despite their contribution to our knowledge about the distribution and processes of victimisation, crime victim surveys, at least as they have been conducted to date, are not without shortcomings. The changing social values regarding the acceptability of some forms of behaviour, and the intimate nature of some offences — particularly sexual assault, domestic violence, and child abuse — renders them less amenable to measurement by victim survey.

The most skilfully executed frauds are those which leave the victim unaware that he or she has been preyed upon. Similarly, many forms of corporate crime, both of a financial nature and those involving hazardous substances or products, are not readily detectable by their victims (Braithwaite, 1983). In addition, the memory of survey respondents is often fallible, thus posing substantial methodological problems (Skogan, 1983). These may be compounded by the psychological processes of repression and denial, which often characterise response to trauma.

The infrequency with which national victim surveys are conducted is also a source of significant problems. A second survey of over 35,000 respondents was conducted in 1983. Preliminary results, available at the end of 1984, provided further insight on the question of vulnerability. Approximately 40 per cent of victims of assault, robbery, or sexual assault reported having been the victim of the same offence at least twice in the preceding 12 months (Australian Bureau of Statistics, 1984, p.1). This reinforces findings from the 1975 survey revealing differential vulnerability across Australian society. Further analysis of these data on recurrent victims should shed additional insight on the epidemiology of victimisation in Australia.

Whilst differences in survey design and sample preclude systematic comparison of Australian victim survey findings with those from overseas, some general impressions of similarity and difference may be discerned. In England, Wales, Scotland, Canada, the United States and Australia alike, young, single, unemployed males appear to run greater risks of becoming the victims of assault and robbery. The likelihood of a crime of violence coming to the attention of police is less than that of a household burglary, which in turn is less likely to be reported than a motor vehicle theft. In general, Australian crime rates tend to be lower than those of the United States and Canada, and higher than those of England, Wales and Scotland. (Braithwaite and Biles, 1980b; Australian Bureau of Statistics, 1984; Hough and Mayhew, 1983; Chambers and Tombs, 1984; Solicitor-General Canada, 1983; United States Department of Justice, 1984.)

The Australian Bureau of Statistics has advised interested parties that a third survey could be conducted no earlier than 1989. Not only do delays of this order preclude analysis of trends, they also inhibit the refinement and development of survey technology.

Moreover, the Australian Bureau of Statistics has not taken advantage of their having combined the 1983 crime victims survey with a general survey of health. Although much could be learned about the general physical and mental health of crime victims (cf. Biles, Braithwaite and Braithwaite, 1979) and about their insurance coverage and access to medical services, the data from the crime and health surveys will be produced separately, and will not be aggregated for purposes of comparative analysis.

Much greater use can be made of victim surveys in a number of areas. First, the results of victim surveys can be used to allow members of the public a more accurate assessment of the risks of becoming a crime victim. As will be noted, vulnerability varies directly with social disadvantage. A wider dissemination of research findings may thus enhance feelings of security on the part of the relatively privileged members of society, who are, in fact, least at risk.

The results of victim surveys can also be of great use in planning the allocation of criminal justice and community service resources. More complete information about differential victimisation across racial, socio-economic, and demographic groups can improve the design of crisis intervention and victim support programs.

At the same time, findings may contribute to more broadly based public policies designed to reduce the risk of future victimisation. Findings tend to justify those policies which would serve to reduce inequalities of opportunity in our society. A very great proportion of the suffering experienced by female, Aboriginal and child victims in Australia may be traced to circumstances of socio-economic disadvantage. Policies designed to reduce unemployment, to permit Aboriginal people autonomy, dignity and respect, to provide child care facilities for parents otherwise unable to afford them, and to provide equal economic opportunities for

women, can contribute to a significant reduction of suffering.

It is some consolation to know that the recorded incidence of violence in Australia today is relatively low by contemporary world standards, and in historical terms as well (Grabosky, 1983; Mukherjee, 1981). As threatening as the spectre of interpersonal violence may appear, Australians face much greater risks from other sources. For every homicide in Australia, there are six suicides and 13 road traffic fatalities. Despite the fact that statistics on death and injuries resulting from accidents in the workplace are even less informative than crime statistics, one may conclude that more Australians perish in industrial accidents than from intentional attacks, and the number of injuries sustained in the workplace dwarfs those occasioned by assault.[1]

Homicide Mortality Studies

Additional research based upon official police vital statistics has shed further light on the epidemiology of violent crime in Australia.

Najman's study of the 517 death certificates relating to homicides recorded throughout Australia in 1965-67 revealed that the risk of homicide victimisation varied inversely with occupational status. Those from the most prestigious occupations had the lowest homicide death rates. The risk of becoming the victim of homicide rises dramatically within the lowest occupational prestige categories (Najman, 1980, pp. 275-76).

Other studies have shown that men are at a much greater risk of suffering a violent death, from whatever cause, than are women. Men are half again as likely to become victims of homicide. One should note, however, that women are much more likely to be the victims rather than the perpetrators of violence. Data revealed that approximately 40 per cent of homicide victims are female; it has been estimated that females commit fewer than 5 per cent of recorded homicides (South Australia, 1981b p. 51).

No striking variations appear to characterise age-based homicide mortality rates. Infants are at slightly greater risk, no doubt due to their fragility, their dependency, and the stress and frustration which may accompany their upbringing. Preadolescents face the lowest risk. Age-based rates increase until middle age, and then gradually decline (Grabosky, 1983).

Accumulating evidence suggests that Aboriginal Australians constitute a much greater proportion of homicide victims than might have been expected from their numbers in the general population. A recent study of homicide victims by the South Australian Office of Crime Statistics sought to identify the racial background of victims of homicide over a three year period. Ten per cent of the victims were identified as Aboriginal, and 40 per cent as Caucasian. Data were not available for a full 50 per cent of cases. This means that Aboriginals, who constitute approximately one per cent of South Australia's population comprised *at least* ten per cent of that State's homicide victims (South Australia, 1981b, p .6). A similar ten-fold differential has been revealed in New South Wales as well (New South Wales Bureau of Crime Statistics and Research, forthcoming).

Further evidence on the exceptional vulnerability of Aboriginal people may be drawn from Wilson's study of living conditions on Queensland Aboriginal reserves. The homicide rate

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1 Some New South Wales statistics are illustrative: in the calendar year 1981, 115 homicides (intentional killings or deaths resulting from injuries purposefully inflicted) were recorded in New South Wales (Australian Bureau of Statistics 1982, p. 18). In the year ended 30 June 1981, 176 fatalities in the course of employment were subject of cases under the *New South Wales Workers' Compensation Act*. This total excludes deaths attributed to work-related diseases (64) and those occurring on periodic or other journeys (94), (Workers' Compensation Commission of New South Wales, 1982, p .17).

For the year ended 31 December 1980, 1,388 serious assaults (generally involving bodily harm) were reported to the New South Wales Police and accepted by them as founded complaints, (New South Wales Police Department, 1982).

During the same period, 129,419 injuries resulting in three or more days incapacity were reported to the Workers' Compensation Commission of New South Wales. Lest one suspect that these latter injuries largely involved malingering, it should be noted that they included over 10,000 fractures, over 20,000 lacerations, and nearly 400 amputations and enucleations (Workers' Compensation Commission of New South Wales, 1982, p. 6, 14).

for the 17 communities under review was 39.6 per 100,000, more than ten times the Australian national homicide rate (Wilson, 1982, p. 4). It thus appears that Aboriginal Australians suffer at least ten times the burden of homicide mortality borne by the general population.

Special Inquiries

Additional information on crime victims in Australia has been generated by special inquiries in various jurisdictions. These have tended to be based upon in-depth interviews with victims themselves, and with knowledgeable persons in the justice and welfare professions. An interdepartmental committee in South Australia concluded that the most pressing needs of crime victims generally were for social support and information and that counselling services should be made more accessible to victims (South Australia, 1981a, pp. 147-48). Victims of domestic violence were the subject of inquiries in New South Wales (1981) and South Australia (1981c). The Government of Victoria conducted a domestic violence inquiry in 1983. The South Australian Health Commission (1983) reviewed services available to victims of child abuse. Interviews with victims of sexual assault and domestic violence were the basis of a recent book by Scutt (1983b). As such, surveys tend to be based on self-selecting samples, and their findings cannot be generalised to all cases. They nevertheless have provided very rich material to present a compelling statement about the suffering of crime victims and to demonstrate obvious shortcomings in the law and in victim services.

THE MOST VULNERABLE VICTIMS

It should be recognised that the experience of being the victim of crime affects different people in different ways. People vary widely in their ability to cope with becoming the victim of crime, as they do with all crises. Among the factors which affect a victim's resilience are age, financial, social and intellectual resources, cognitive and emotional development, philosophical or religious beliefs and previous coping experiences (Ball, 1983, p. 80). Aspects of the physical and social environment may also influence the victim's ability to recover. The degree and quality of social support in the aftermath of a traumatic experience is particularly important to subsequent adjustment (Raphael, 1977a; Bordow and Porritt, 1979; Porritt and Bordow, 1980).

There are those individuals whose position of dependence or disadvantage renders them less able to cope with the experience of victimisation. In general, the most vulnerable victims of crime include women, children, the elderly, Aboriginal people, and persons of low socio-economic status.

Victims of Sexual Assault

Of all categories of crime victim, none has been accorded as much attention over the past ten years as has the victim of rape (Bush, 1977; Wilson, 1978; Scutt, 1980b; Sallmann and Chappell, 1982; South Australia, 1983; Scott and Hewitt, 1983; Naffin, 1984). The number of rapes reported to the police in Australia has increased sharply over the period, and now exceeds 1,200 per year. The degree of concern for the rape victim which has been expressed in recent years is not unwarranted, given the intensity of suffering experienced by many rape victims, and the large proportion of offences which do not reach official attention. Of all serious crimes of violence, murder, rape, robbery, and assault occasioning grievous bodily harm, rape is least likely to be reported to the police.

Changes in the incidence of reported rape should be interpreted with extreme caution. Whilst it is likely that the *actual* incidence of rape has increased over the past ten years, the magnitude of this increase may not have been as great as official statistics suggest. Reforms in police practices, significant improvements in the services available to rape victims, and changing social attitudes toward the offence and its victims, may mean that a greater *proportion* of offences is coming to the attention of police than was the case in years past. It should also be noted that the definition of rape has changed in some jurisdictions, most notably New South Wales and South Australia.

Three main factors contribute to an explanation of why so many sexual assaults go unreported (Wilson, 1978, pp. 57-65). One is the feeling on the part of many victims of a need to cope with the experience by 'getting over it' as quickly as possible. By not reporting an offence, a victim is assured of not having to relive the experience in the course of a police investigation or ultimately, in court.

The second disincentive to reporting a rape arises from a set of cultural biases which surround the offence. One still hears people express the belief that true rape is impossible and that all purported victims must have consented. Others suggest that rape victims inevitably acted in a provocative manner which invited the assault. It remains the view of some persons that an element of coercion is not entirely inappropriate in relations between males and females. As a result of these attitudes and myths surrounding the crime of rape, the victim is stigmatised to a degree unique to this type of offence. In some instances, close friends or relatives of a victim might withdraw, leaving the victim socially and emotionally isolated at the precise time when social support is most needed (Scott and Hewitt, 1983, pp. 101-102). Public ignorance about rape and attending cultural biases against victims are diminishing, but sensitive understanding of and sympathy for the rape victim are not widespread. No doubt many victims continue to suffer in silence.

The feelings of shame which a victim might experience may be compounded in some jurisdictions by insensitive police investigative practices, by the apparent callousness of prosecutorial authorities, and by unethical defence tactics (Woods, 1982).

Long term consequences of rape may be particularly disturbing. Even after less aggravated attacks, fear of strange men or of public places is a major concern. Moreover, an assault may produce temporary or permanent disruption of personal relationships. Special psychiatric long-term problems, if not managed by appropriate professionals, may result from life-threatening situations such as attempted strangulation during the attack. In such cases the victim may be grateful for her life, but may thereafter bear a special guilt about her failure to resist the sexual attack. This is particularly apparent if the woman is single. The full manifestations of a psychiatric problem may not be apparent for many years after the event (Chambers, 1982).

The first initiatives on behalf of sexual assault victims originated in the community by feminists. Rape crisis centres were established in each of the capital cities on a volunteer basis during the mid-1970s. These centres, some of whose staff themselves have been victims of sexual assault, provide short and longer term counselling and support for victims of rape and other sexual abuse. Some centres also conduct research, disseminate information on sexual assault, and provide instruction in rape prevention and self-defence. Rape crisis centres in Australia continue to rely on volunteer staffing, and in some cases receive small grants from government agencies. In addition to such voluntary initiatives, a variety of administrative reforms have been introduced in the various States and Territories over the past 15 years to respond to the needs of sexual assault victims. Police response to sexual assault has occurred gradually and unevenly across Australian jurisdictions. South Australia introduced mixed (male and female) patrols on a limited basis in 1973; where possible mixed patrols are despatched to the scene of a reported rape. Two years later, South Australia established a Rape Enquiry Unit within the Major Crime Squad. The six female officers attached to the Unit conduct initial interviews with sexual assault victims, inform them of procedures to be followed during the inquiry, and are available to accompany the victim during the subsequent investigation and court proceedings. The Victoria Police Sex Offences Squad, consisting of 14 female officers, performs a similar function.

Significant improvements have also been introduced in most States in the provision of medical services to sexual assault victims and in the collection of forensic evidence. The Sexual Assault Referral Centre at the Queen Elizabeth Hospital in Adelaide, the Queen Victoria Hospital in Melbourne, the Sir Charles Gairdner Hospital in Perth, and similar centres at eight metropolitan and regional hospitals in New South Wales, have all been established since 1977. These centres provide specialised medical treatment for victims, and have developed refined procedures for the collection of forensic specimens. Social workers are either present or on call on a 24 hour basis.

The State of Victoria is unique in having a special Rape Squad within the Office of the Director of Public Prosecutions. The Squad, consisting of three persons, specialises in

prosecuting sexual assault cases. Aware of the counter-therapeutic consequences to the victim of delay in the conduct of criminal proceedings, members of the squad endeavour to achieve committal proceedings within three months of arrest, and to bring a case to trial within three months of committal. First contact with the victim usually occurs at the committal proceedings, where the court procedures and the role of the prosecutor are explained. Specialised communication between prosecutor and victim-witness is intended to lessen the trauma of appearing in court.

Significant law reform in the area of sexual assault has occurred during the past ten years in a number of Australian jurisdictions. South Australia led the way in the 1970s by broadening the definition of rape to include nonconsensual oral and anal sexual acts, sexual assaults against males, and sexual assaults within the marriage relationship (Sallmann and Chappell, 1982). In addition, significant amendment to laws of evidence and procedure in South Australia restricted the admissibility of evidence bearing upon the victim's previous sexual history, and no longer required every victim to appear at the committal hearing (Martin, 1982, pp. 13-15; South Australia, 1983, p .4).

Toward the end of the 1970s, it became apparent that even under the traditional definition of rape, a wide variety of circumstances were subject to the same maximum penalty of life imprisonment. It was argued that juries were less inclined to convict in cases not involving serious bodily injury or use of a weapon. Not long after a national conference on rape law reform (Scutt, 1980b) the New South Wales Parliament enacted the *Crimes (Sexual Assault) Amendment Act*, 1981 (New South Wales).

The new law differentiates between four degrees of sexual assault, each with its own penalty structure. These include:

1. sexual assault inflicting grievous bodily harm — maximum penalty: 20 years
2. sexual assault inflicting or threatening actual bodily harm — maximum penalty: 12 years
3. sexual intercourse without consent — maximum penalty: 7 years (or 10 years, where the victim is under 16 years old)
4. indecent assault — maximum penalty: 4 years (or 6 years, where the victim is under 16 years old)

One consequence of the New South Wales reform has been an increased tendency for defendants to plead guilty, especially in less aggravated cases. This has had the important benefits of expediting dispositions, and of sparing victims the necessity of appearing in court. Of those cases which have proceeded to trial, the rate of conviction has increased (Wallace, 1984).

One lingering issue in the area of rape law reform concerns the extent to which the credibility of the victim-witness is so persistently challenged by counsel for the accused. This occurs in part because a common defence to the charge of rape is that the victim consented, or that the accused honestly and reasonably believed that the victim consented.

As many rape victims, fearing death or serious injury in the event of resistance, acquiesce without struggle, there may not be evidence which corroborates lack of consent. Under the circumstances, efforts to discredit the victim-witness have the effect of putting the victim on trial.

Some of the most significant reforms yet introduced in the common law world have been implemented in New South Wales to address these problems. In addition to restricting the admissibility of evidence regarding the prior sexual experience of the victim, there is now an absolute prohibition of evidence concerning the victim's sexual reputation.

Moreover, at the discretion of the trial judge, instructions to juries may be varied from the traditional warning that it is 'dangerous' to convict on the basis of uncorroborated testimony to the modified 'unsafe to convict'.

It has been suggested that the onus of proving honest and reasonable belief that the victim consented be placed on the accused (Naffin, 1984). It nevertheless remains to be seen whether, in light of recent protections accorded sexual assault victims by reforms of the law of evidence, the defence of honest belief is in fact accepted by juries to any discernible extent.

Victims of Domestic Violence

The problems faced by victims of domestic violence are longstanding and numerous, but have only recently become the subject of official concern. The incidence of domestic violence in Australia is difficult to quantify. As was mentioned earlier, published police statistics do not refer to the relationship between victim and offender. Assaults by a spouse are often regarded by the victim as personal matters, rather than crimes. As such, they are less likely to be reported to police than are attacks by strangers. Not only do many domestic assaults fail to reach the attention of the police, domestic assaults tend to be under-reported in crime victim surveys as well (Scutt, 1983a).

But even when the victim of domestic assault calls for police assistance it might not be adequate. Scutt (1983b, pp. 216-41) has characterised police response to the victim of family violence as generally unsympathetic. Traditionally police have tended to regard incidents of domestic assault as not *real* police work, offering the rationale that their powers were insufficient in any event to deal adequately with the situation. Thus many assaults occasioning actual bodily harm and an even larger number of non-indictable assaults have failed to evoke police response. Whilst Australian police departments have developed greater sensitivity to victims of domestic violence in recent years, their response is still regarded as inappropriate in light of the seriousness of the problem. This further discourages reporting by victims.

Research suggests that the most common response by victims of domestic assault in Australia is passive acceptance (South Australia, 1981a, p. 51). Financial dependence underlies the passivity shown by many victims; a number have no other source of income other than that provided by the offender. Victims with dependent children have even greater constraints placed upon them to remain within a violent home. Those victims who are without outside support from family or friends are at a worse disadvantage. Feelings of hopelessness, resignation, and of episodic terror are not uncommon (Scutt, 1983b, pp. 126-35).

To provide some alternative to a violent home, women's refuges were established in all States and Territories during the 1970s. These refuges were established initially on a voluntary basis, by feminists in the community, to provide emergency accommodation, counselling, and support for women fleeing violent homes. Subsequently, State and Commonwealth Governments began to provide financial assistance on an exceedingly modest scale. The crowded conditions which characterise many women's refuges in Australia are indicative of the magnitude of the problem of domestic violence, and of the lack of resolve on the part of governments to deal with it.

New South Wales made a significant contribution to law reform in the area of domestic violence with the *Crimes (Domestic Violence) Amendment Act* 1983. These amendments were designed largely to overcome the traditional passivity of domestic violence victims and their reluctance to invoke the criminal process. The new law permits police to enter a dwelling if they believe an assault has occurred or is likely to occur. If refused entry, police may obtain a warrant from a magistrate at any time, day or night. Police themselves may now lay charges, and the victim is required to give evidence.

The new law also enables the court, by means of an Apprehended Domestic Violence Order, to impose certain conditions on an offender's behaviour. These may include the requirement that an offender not threaten or otherwise contact a victim. A breach of the conditions of order renders the offender liable to immediate arrest.

Victims of Child Abuse

Children, particularly infants, are perhaps the most vulnerable victims of crime, because of their very great dependence upon their parents. It is a tragic fact that children suffer to a far greater extent at the hands of parents and their friends than they do at the hands of strangers. The vulnerability of children in Australia is grimly highlighted by the fact that infants (under one year of age) suffer the highest rate of homicide victimisation of any age group in the Australian population (Grabosky, 1983, p. 39).

Child abuse may take a number of forms, including physical, sexual, emotional, chemical/pharmacological abuse, and nutritional, medical or general neglect (South Australia, 1983). Extreme physical abuse may be manifest in injuries including bruises, burns, fractures, abdominal injuries or abnormally low height and body weight, for which no satisfactory explanation may be offered.

Child sexual abuse may include sexual intercourse between parent and child, or between siblings. Other forms may include inappropriate genital contact, imposed observations of sexual activity or exposure to pornographic material. Problems of identifying child sexual abuse are considerable. Children are often reluctant to lodge complaints against their parents. Younger children may be sworn to secrecy, or perhaps threatened with punishment for disclosure. Children may fear that other adults would not believe them.

The circumstances surrounding child abuse are often complex. Thus the most appropriate form of State response — whether to impose criminal sanctions or whether to rely instead on some therapeutic alternative — is a difficult decision. Australian States and Territories generally follow that course of action believed to be in the best interests of the child.

Child victims of sexual abuse may experience enduring feelings of guilt, shame, and emotional isolation. The infliction of serious bodily injury upon a child leaves psychological scars which endure long after any physical wounds are healed. The development of a healthy personality will be seriously jeopardised for a child who feels unsafe, unwanted, and uncared for in its parents' presence. This leads to poor development in terms of initiative and low school performance. In some cases it can be stated that the child 'survives' rather than develops.

The parents may feel guilt, which leads to emotional disturbance. An abused, damaged child before their eyes may reinforce their belief as to their own inadequacy as parents, which results in depression and further abuse. A significant proportion of abusing parents were themselves abused as children.

Governmental responses to child abuse are varied. Casualty staff of the various pediatric and general hospitals have been sensitised to the problem of child abuse, and are trained in the diagnosis of non-accidental injuries to children. A number of States also require compulsory notification of suspected child abuse by teachers, medical practitioners, social workers, and members of other designated professions. In South Australia, cases are referred to specially constituted child protection panels for assessment and recommendations. Queensland has established Suspected Child Abuse and Neglect Teams, consisting of medical, social work and police personnel in each of 30 regional centres. These teams develop a comprehensive and continuing management plan for each notified case of child abuse. In the majority of cases, the criminal process is not invoked, and the families in question are provided with welfare and counselling services.

Additional services designed to prevent child abuse have also been introduced in some jurisdictions. Among the more important of these are emergency child minding centres which provide some relief from short term stress. No doubt an expansion of general child care services would contribute greatly to a reduction of child abuse in Australia.

In the rare instance when the Crown seeks to prosecute an alleged child abuser, it may not be within the victim's ability or best interests to testify. It is readily understandable that even a child who is old enough to testify might be severely traumatised and easily discredited by a skilled barrister. It has been argued that this can be an impediment to justice in some instances. Whilst alternatives have been proposed such as admitting evidence taken *in camera* by a special officer of the court, it remains to be seen how many prosecutions have actually suffered for want of a child victim's testimony. There seems little doubt that as far as the victim's role in child abuse prosecutions is concerned, the interests of the child should predominate.

Aboriginal Victims

No group in Australian society has suffered the extent of victimisation as have the Aboriginal peoples (Rowley, 1970). Perhaps the most dramatic general example was the decimation of the Aboriginal population during the 19th century. In more remote areas of the continent, Aboriginals were the victims of hunting expeditions well into the present century.

The dispossession of Aboriginal Australians from their land was by no means limited to the colonial era. More recently, Aboriginal people in a number of States were required to live in reserves, and were subject of various systems of control and punishment in excess of those to which white members of Australian society were liable (Nettheim, 1981). The social and cultural disintegration resulting from these and other forces have contributed to a level of violence within Aboriginal society measurably in excess of that which characterises the

general public (Wilson, 1982). Moreover, long traditions of hostility toward and mistrust of the enforcers of white Australian law have led to a situation where many Aboriginal victims of crime are reluctant to notify the police.

Other reasons for the under-reporting of criminal incidents by Aboriginal victims may vary, depending on the circumstances of the offence and the relationship between victim and offender. In cases of assault committed by one Aboriginal person against another, there may be extreme reluctance to invite police intervention, even though the injuries sustained may be very serious.

When an assault occurs in the context of a dispute between two Aboriginal people, it may be viewed as more suitable for informal or traditional means of conflict resolution. Indeed, in tribal situations, outside intervention in a family dispute tends to be regarded as highly inappropriate.

In cases of other offences, particularly those involving attacks on Aboriginal people by non-Aboriginals, failure to invoke the formal criminal process may depend on different considerations. The understandable mistrust of traditionally oppressive institutions was noted above. The formalities of the criminal process are often more alien and bewildering to Aboriginal victims of crime than they are to victims in general. Moreover, certain cultural biases operate to the disadvantage of Aboriginal victims; it has been suggested that their complaints are often regarded as less worthy and their testimony as less credible than those of non-Aboriginal witnesses. This problem is particularly acute in cases of Aboriginal victims of rape (South Australia, 1981a, p. 68).

Elderly Victims

According to the 1975 Australian Bureau of Statistics survey, citizens aged 60 and over expressed the greatest fear of crime. This is particularly unfortunate, as the same survey revealed the objective likelihood of an elderly person's becoming the victim of crime to be relatively low (Biles, 1983). This apparent paradox may be explained by a number of factors. Older people tend to be less physically resilient than younger people. If attacked, they are less able to flee or strike back; if injured, they are less able to recover fully. Elderly citizens tend to be less economically resilient as well, and may be unable to afford to replace stolen or damaged possessions. Indeed, the intrinsic worth of these items sometimes exceeds their market value. Increasingly, elderly persons face the problem of social isolation, which tends to compound the suffering of so many victims. Older people also tend to lack psychological resilience (Duncan, 1981). Having lived most of their lives in an age of relative social tranquility, they tend to regard crime as one of the least pleasant manifestations of a contemporary society which they would gladly exchange for one of 30 years previous.

The elderly who become victims of crime may develop an increasing sense of nervousness and general fearfulness. This leads to a growing feeling of timidity and insecurity, even in the home; to an inability to cope; and to fear of recurrence. Deterioration in personality may ultimately result. Relatives of elderly victims may become increasingly impatient, and may even blame the victim for not exercising sufficient caution. This can lead to increasing reduction in perception of self-worth by the victim, which will further increase interpersonal conflicts. Relatives may then withdraw from the victim, or conversely, become overprotective, each with corresponding unfortunate consequences (South Australia, 1981a, pp. 71-74).

Because of the relative infrequency of crimes against senior citizens, no specialised services to elderly crime victims are available. There does appear to be a need, however, for support and reassurance to elderly persons in general, whose *fear* of crime detracts from the quality of their lives. A significant contribution could be made by programs designed to reduce the social isolation of Australia's senior citizens.

Unemployed Victims

Among the more striking findings to emerge from the 1975 Australian Bureau of Statistics crime victims survey was the extent to which a disproportionate amount of crime is committed against unemployed persons. Unemployed persons showed significantly higher rates of victimisation from assault, robbery, break and enter, and theft than did respondents who were members of the active workforce (Braithwaite and Biles, 1979).

The unemployed victim of crime is deserving of special concern, since the stress induced by a criminal act tends to augment the stress which is a standard concomitant of the inability to find work. Unemployed victims of theft may not have had the means to insure their property, or may lack the means to replace stolen possessions.

A number of explanations have been advanced to account for the disproportionate vulnerability of the unemployed. Unemployed people tend to spend a greater proportion of their time in public places. The more time spent in public transport rather than in cars, in streets and parks rather than in offices and factories, in public bars rather than at home, the less the chance of keeping out of harm's way.

Unemployed persons are also likely to spend more time in the company of other unemployed persons. As a general group, unemployed persons are themselves disproportionately represented amongst those charged with criminal acts. The most accessible victims are their fellow unemployed.

Unemployed victims, many having suffered a lifetime of disadvantage, may lack the social and financial resources to protect themselves from crime.

Families of Homicide Victims

Because of the relatively low incidence of homicide in Australia, the number of surviving relatives of homicide victims is not great. Their loss, however, is permanent. The experience of bereavement can be a difficult one, even for the strongest, most resilient person. When the death in question results from a homicide, the impact can be shattering.

The sudden, unanticipated loss of a loved one at the hands of another human being, often under gruesome or repulsive circumstances, is not easily overcome. If the survivor were financially dependent upon the victim, the stress of bereavement is compounded.

Other responses which may be manifest include a desire for revenge, a feeling of fear, despair, insecurity in general, or a lack of trust in others. If an offender has been apprehended, there may be fear of retaliation in the event of acquittal, escape, or remission of sentence. In addition, family members tend to express bitterness about the event, especially if there is conscious or subconscious guilt that the homicide might possibly have been avoidable through some effort of their own.

Survivors of homicide victims often show signs of considerable anxiety, in some cases, years after the death in question. They tend to experience difficulty in coping with general, day to day affairs, including such responsibilities as budgeting and household management. Many express the fear of future attack. Parents of homicide victims are often self-consciously overprotective of surviving children, who themselves are susceptible to emotional distress.

Relatives of homicide victims experience problems over and above those faced by other bereaved persons. Foremost of these is the unpleasant burden, in the event that a suspect is charged with the offence, of having their bereavement prolonged and often intensified by the criminal trial. Depending upon the duration of proceedings, the grieving process may last many months. Subsequent publicity can further delay the resumption of a normal life.

The immediate family of homicide victims may also be vulnerable to harassment by the media. Homicide is deemed by editors to be among the more newsworthy of human events; unlike victims of sexual assault, whose names are suppressed from publication, relatives of homicide victims are often subject to intensive media scrutiny. Not only are such violations of the privacy and dignity of bereaved persons in singularly poor taste, they also militate against recovery.

The small number of homicides in Australia, combined with the existence of cohesive family and community 'support systems' for many, and the availability of general State, Commonwealth, and voluntary welfare services, has obviated the need for specialised assistance to families of homicide victims. Nevertheless, some survivors of homicide victims are either unaware of available support services or disinclined to use them. State welfare agencies should systematically contact the families of each new homicide victim to ensure that their needs are met.

CRIMINAL INJURIES COMPENSATION

The historical roots of compensation to victims of crime may be traced back to the dispute settlement practices of pre-literate societies. As more formal procedures evolved over the centuries, payments were made to victims by offenders according to a number of factors, including the status of the victim, the nature of the offence, and the seriousness of the injury sustained. With the gradual development of a state-controlled criminal process, the importance of the victim diminished until the focus of attention rested almost exclusively on the offender. The victim was thus left with private insurance and often ineffectual civil litigation to obtain recompense for loss or injury. Thus, victims lay largely overlooked until the 1960s, when victim compensation programs were established in New Zealand and Great Britain. These were soon followed by schemes in Australia, Canada, and the United States.

Justifications

Four rationales may underlie the payment of compensation to crime victims. Some commentators have suggested that governments have a moral responsibility to compensate victims of crime, since governments fail to fulfil their obligations to protect their citizens by preventing criminal activity. This rationale overlooks the fact that the capacity of governments to control human behaviour is quite limited. It also overlooks the unhappy reality that some victims (although certainly not all) contribute in varying degrees to their own misfortune through carelessness or provocation. A second rationale suggests that compensation to crime victims is part of the welfare responsibility of government, as is the case of the sick, the aged, or otherwise dependent persons. The payment of compensation is thus intended to foster the victim's physical, financial, and emotional recovery. It should be noted that crime victims in Australia, including those who have contributed to their own difficulties, may avail themselves of the full range of health and welfare services provided by State and Commonwealth Governments according to need.

A third rationale would maintain that victim compensation is an act of grace by the State, while a fourth would view compensation as complementary to restitution by the offender. Indeed, a number of Australian criminal injuries compensation schemes provide for recovery of all or part of compensation award payments from the offender's resources, when available. It is these latter three rationales which serve as the basis for criminal injuries compensation in Australia.

State and Territory Programs

The structure of criminal injuries compensation schemes in Australia take two basic forms: tribunal or court-based. In Victoria, the program is administered by a specially constituted tribunal, and in Tasmania, by the Master of the Supreme Court. In all other jurisdictions, compensation is determined by the criminal courts. In some instances, this may be supplemented on an ex-gratia basis by the Department of the Attorney-General.

The advantage of a specialised tribunal is that it permits a more expeditious determination of awards; court-based schemes tend to defer determination until a trial has taken place, or until a clear decision has been made that a case will not proceed to trial.

Each of the various criminal injuries compensation schemes is funded from the general revenue of its own State or Territory. Legislation in each jurisdiction specifies a maximum amount which may be awarded for any claim. All jurisdictions permit awards for pain and suffering, in addition to financial loss. In general, there is no right of compensation for property loss or damage.

Shortcomings of Compensation Programs

Australian criminal injuries compensation schemes have been criticised on a number of grounds (Bartley, 1980; Willis, 1980, pp. 148-51; Australian Law Reform Commission, 1980, pp. 292-93; South Australia, 1981a, pp. 113-18). Perhaps the most commonly voiced criticism is that the maximum payment allowable under existing programs is too low. It is, of course, difficult to put a price on human suffering. Whilst a number of crime victims have no

doubt been disadvantaged financially as a result of their experience, the vast majority of claimants appear not to have sustained economic loss in excess of the statutory maximum amount payable. Criticisms nevertheless arise from the very fact that a ceiling has been placed on human worth, or from those rare instances involving persons who sustain catastrophic injury or permanent physical disability.

The reluctance of Australian governments to increase the maximum award payable to crime victims is based on considerations of cost. It is argued that an increase in the statutory maximum, or the elimination of an upper limit entirely, would be followed by an uncontrollable drain on revenue. The fact that a compensation 'blow-out' has not occurred in the United Kingdom, where there is no statutory upper limit, would appear to refute this argument.

It is argued by some that an overall increase in criminal injuries compensation payments could be funded by a surcharge on those fines which are imposed on convicted offenders. Whilst such a proposal might appear attractive on its face, it poses problems both of logic and of justice. The vast majority of fines are those imposed on traffic offenders, not conventional criminal offenders. It would strike some as inappropriate for the cost of criminal injuries compensation to be borne by delinquent drivers, the vast majority of whom bear no responsibility for criminal injuries. Moreover, those persons who in fact are responsible for inflicting criminal injuries or property loss or damage tend by and large to be poor. As the monetary fine is a regressive penalty, in the economic sense, it weighs most heavily on those least able to pay. A simple surcharge on fines imposed would compound this regressivity, actually increasing the burdens borne by the poorest offenders. This is of particular significance in light of the fact that a large number of persons entering prison each year were sentenced in default of payment of fine (Brown, 1984). That is, many of them were too poor to pay the fines already imposed upon them, often for offences which carry no penalty of imprisonment in the first instance. A surcharge on criminal fines would thus appear likely to produce many unforeseen and undesired consequences.

Another criticism of existing compensation programs arises from the delay in determination and payment of awards (South Australia, 1981a, pp. 113-15). This may arise from the delay in apprehending and convicting an offender, as well as from the time required to process and to evaluate a compensation claim. Regardless of its underlying circumstances, delay in the payment of criminal injuries compensation tends to have a counter-therapeutic effect on the victim-claimant. Whilst a claim for compensation is pending, the claimant's self-identity as victim is reinforced. Indeed, the victim-claimant may well tend to focus on, or even to amplify his or her state of misfortune, pending resolution of the claim. The process of evaluating a claim may actually invite the victim-claimant to do so, whether implicitly or explicitly. This takes on special significance given that the primary task of any governmental response to crime victims should be to foster and to expedite the victim's recovery, to reduce the duration and intensity of the victim's self-perception *as victim* and to restore the victim, at the very least, to his or her pyschological and/or social *status quo ante.*

The adversarial nature of many compensation programs has also been criticised by some victims and their advocates. After having represented the Crown, the public, and the victim in prosecuting the accused, the Crown Prosecutor (in some jurisdictions the very same individual) may challenge the victim's claim for compensation. This can be a most discomforting experience, coming as it does in the aftermath of criminal proceedings where the extent of injuries sustained by the victim-claimant may well have been challenged by counsel for the accused. In any event, it can have the effect of encouraging the victim to reaffirm and again, perhaps, to amplify, his or her identity as victim. Whilst one must concede that some type of evaluation of the victim's circumstance is essential to the proper administration of a compensation program, the counter-therapeutic effect of an aggressively adversarial process cannot be ignored.

Yet another source of discomfort to crime victims is the inconsistency of compensation payments. The recipient of a compensation payment may feel, for example, that his or her suffering was 'worth as much' as that of another claimant, from the same or from another State, who received a larger award. The invidious comparisons which such differences invite are obviously detrimental to the individual's psychological well being.

Inconsistencies are even more dramatic, however, when they involve comparison across various types of injuries compensation programs. The identical disability, occasioning the identical incapacity and loss of income, could give rise to a payment in excess of $1,000,000 if

sustained in a road traffic accident, somewhat less if sustained in the workplace, less again if sustained on the playing field, and still less if resulting from a criminal assault. Such inconsistency cannot help but reinforce feelings of self-pity on the part of many crime victims, to the detriment of rehabilitation.

The above factors combine to produce uncertainty and dissatisfaction on the part of many criminal injuries compensation claimants. Such circumstances cannot help but delay the process of recovery, and in the long run, may even help erode the legitimacy of the criminal justice system generally.

It could be argued that the debate over statutory limits to criminal injuries compensation payments is largely misplaced. Criminal injuries compensation must not be regarded as an end in itself. It should always be kept in mind that compensation programs exist not for their own sake, but to further the restoration of the victim. No doubt a cash payment can have a substantial soothing effect to offset life's bitter experience; for many victims, however, a simple cash payment often fails to mitigate one's psychological injury or social isolation. Governmental resources available to assist victims of crime are not inexhaustible. It is thus appropriate to begin thinking in terms of a cost-effective mix of compensation and other rehabilitation strategies, including counselling, support services, and additional therapeutic methods.

The economic and organisational inefficiencies of separate compensation programs are ill suited to the realities of scarce public resources. Ideally, problems of delay, uncertainty, inconsistency and inefficiency would be significantly reduced, if not eliminated, under a national system of general accident compensation. Time and effort devoted to designing minor improvements to criminal injuries compensation programs would be much better spent in planning a comprehensive national scheme of general injuries compensation and rehabilitation. It is the policy of the Commonwealth Government to develop an integrated national scheme of general accident compensation in co-operation with the States by means of a step by step approach. Active consideration is now being given in New South Wales, Australia's most populous state, to a scheme of transport accident compensation which might become the model for a national scheme.

Restitution

Restitution is the payment of money or provision of service to a crime victim by the offender. The principle of restitution, that the offender should bear the cost of 'restoring' the victim, is an overwhelmingly popular one. As was noted above, restitution pre-dates the development of the modern state as the agent of criminal justice.

Contemporary proponents of restitution suggest that a well designed and administered program, in addition to compensating the victim, may contribute to the rehabilitation of an offender by assisting him or her to develop a sense of self-worth and concern for others (Duckworth, 1980). Some proposed restitution schemes would actually strive to achieve reconciliation between victim and offender. The resolution of interpersonal conflict is the goal of community justice centres, for example (Schwartzkoff and Morgan, 1982). In many instances, however, particularly those more serious offences in which there was no previous relationship between the parties, victims would be understandably unenthusiastic about such a program.

Victims in each Australian jurisdiction may avail themselves of traditional civil remedies, as appropriate. Provisions for the use of simple monetary restitution exist under the criminal procedure of various Australian jurisdictions, and criminal injuries compensation awards may be charged against the assets of the convicted offender (Scutt 1979; 1980; 1982). Nevertheless, restitution is not often used as a sentencing or probation option, and recovery of moneys from offenders under the various criminal injuries compensation acts is insignificant.

The reason for this failure to make greater use of restitution is a simple one. Most convicted offenders are poor, and unable to make even a token contribution to compensate their victims. Despite this very real barrier to wider reliance upon restitution, authorities should be encouraged to make use of this option, whenever the resources of the offender permit.

GENERAL SERVICES

As noted above, victims may differ substantially in terms of their vulnerability and resiliency. An experience defined as trivial by one person may be regarded as profoundly traumatising by another. There are thus no criteria of eligibility for victim services, as there are for criminal injuries compensation. Rather, access to victim services has been on the basis of self-selection.

In addition to the specialised services alluded to above, victims of crime have access to the general range of welfare services provided by Commonwealth and State Governments. These include emergency financial assistance, income support, housing, and medical services. In South Australia, a 24 hour, mobile crisis intervention service is available to all metropolitan residents in need of such assistance.

Police in Australia have become increasingly sensitive to the problem of crime victims. Training curricula in a number of States and Territories include a component on victims and their problems. In Tasmania, for example, the Certificate of Police Studies incorporates victim assistance in several of its units. Throughout Australia, every police officer is expected to provide immediate assistance to crime victims, and increasingly, is expected to develop close support and co-operation with other welfare agencies. In addition to immediate assistance for victims and referral to welfare services, Police prosecutors in the Northern Territory actually apply for compensation on the victim's behalf.

In a number of States, voluntary, general-purpose victim assistance groups have been formed to provide social support and information for crime victims. Organisations such as the Victims of Crime Service in South Australia and the Victims of Crime Assistance League in Victoria have served to raise the level of awareness of the general public, and of government officials, regarding crime victims and their needs.

These groups offer emotional support for victims and their families, as well as other practical assistance. They also give advice and information on crime prevention and the functioning of the criminal justice system.

In addition, these organisations provide an extremely important service by accompanying victims to court. These 'court companion' schemes, as they have been described in South Australia, and the Victoria Court Network Service, serve to reduce the inconvenience, bewilderment and trauma of the courtroom experience.

Police in a number of Australian jurisdictions are developing community relations and crime prevention programs which may also serve to assist victims. Based in part on increased contact between police and neighbourhood residents, and upon greater co-operation amongst neighbours themselves, such programs may succeed in reducing the incidence of victimisation in the first place. They may also lessen the impact of victimisation, should it occur, by reducing social isolation within the community.

THE RIGHTS OF CRIME VICTIMS

In recent years, most Australian criminal justice systems have come under considerable criticism by crime victims and by commentators speaking on behalf of crime victims. Many of their substantive criticisms are very insightful, and point the way toward long overdue reforms in the criminal law and its administration. To be sure, nowhere in Australia is the administration of justice so perfect that it cannot be improved upon. But this is not to suggest that all proposals made in the name of crime victims should be accepted uncritically, for some may be inconsistent with fundamental principles of Australian justice.

Increasing concern has been voiced for the concept of rights for crime victims (Wardlaw, 1979). Such concern is well deserved, for without the assistance and co-operation of victim-witnesses, the criminal justice system would be even less effective than it is today. For this reason, it is particularly significant that most victims regard their participation in the criminal process as a bewildering and stressful experience. Transient participants in a chain of events which have long since become routine to judges and to officers of the courts, victims are

uncomfortable with the adversary process, and are often offended by cross-examination designed to test the credibility of their testimony. Indeed, many are upset by what they regard as the patronising demeanour of police and prosecutors. For these reasons, it has been suggested that victim-witnesses should be entitled to legal representation in their own right, quite independent from the Crown.

Perhaps the most important criticism of current law and practice is that victims are poorly informed about the process of criminal justice, both in general terms and as it affects them in their 'own' case. Police, generally overworked and preoccupied with identifying, locating and apprehending the offender, have little time to explain the intricacies of the criminal process. Crown Prosecutors, burdened with heavy caseloads and by previous legal training which develops a certain emotional detachment, may not see it as their role to provide emotional support and counselling to victims regardless of the importance of these victims as Crown witnesses. There is no doubt that despite the progress in some areas noted above, police, prosecutors, court administrators, and judges alike should develop a greater understanding of and sensitivity toward victims and their problems. This would obviate any perceived need for independent legal representation for victims.

It is important to identify those aspects of the process which give rise to victim discomfort, and to reform them. This can, and should be accomplished at little cost, and without jeopardising the rights of the accused.

There are a number of stages of the criminal process where victims arguably might be accorded certain rights. These include:

1. The right to be informed about the progress of investigations being conducted by police (except where such disclosure might jeopardise the investigation).
2. The right to be advised of the charges laid against the accused and of any modifications to the charges in question.
3. The right to be advised of justifications for accepting a plea of guilty to a lesser charge or for accepting a guilty plea in return for recommended leniency in sentencing. This is particularly important in light of the fact that the vast majority of convictions in criminal cases result from pleas of guilty. Consultation may serve to minimise victim dissatisfaction with such an outcome (Sallmann, 1982).
4. The right to be advised of justification for entering a *nolle prosequi* when the decision is taken not to proceed with charges. The Crown should be able to justify its exercise of discretion to the public in general, as well as to the victim in particular. Decisions which might prove discomforting to victims should be explained with sensitivity and tact.
5. The right to recover property held by the Crown for purposes of investigation or evidence as promptly as possible. Inconveniences to victims should be minimised wherever possible.
6. The right to be informed about the trial process and of the rights and responsibilities of witnesses. Ignorance of the basic principles of Australian justice and of court procedure gives rise to needless anxiety and occasional alienation on the part of the victim. Simple, basic information in these areas can do much to relieve these problems.
7. The right not to disclose one's residential address unless deemed material to the defence. Victims often express fear of retaliation, which is usually unwarranted when there was no prior relationship with the offender. Nevertheless, this modest affirmation of the victim's privacy can provide some reassurance.
8. The right not to appear at preliminary hearings or committal proceedings unless deemed material to the defence. Unnecessary court appearances can compound a victim's anxiety. Unless the interests of justice so require, victims should be free not to attend.
9. The right to be advised of the outcome of criminal proceedings, and to be fully appraised of the sentence, when imposed, and its implications.
10. The right to be advised of the outcome of parole proceedings.
11. The right to be notified of an offender's impending release from custody.

At the present time, the Australian States have no discernible common approach to these questions of possible victims' rights.

To be sure, however, victims deserve the right to be treated with respect, with dignity, and with courtesy. It is the responsibility of the Crown prosecutor to object to gratuitously insulting or irrelevant questioning of a victim-witness, and it is the duty of the trial judge to disallow such questioning.

The frustration and bewilderment which many victims experience tend often to give rise to calls for changes to the criminal process so drastic that they challenge some of the fundamental principles of Australian justice.

For example, suggestions that victims be allowed to participate in decision-making regarding sentencing and parole have rather serious implications. One of the fundamental principles of justice is consistency, and the disparity which characterises the existing system of sentencing and parole has been the subject of extensive criticism (Australian Law Reform Commission 1980, pp. 127-59). To inject another element, particularly one so variable by virtue of its dependence upon the resiliency, vindictiveness or other personality attributes of a victim, is to invite further inconsistency, a situation which Australian criminal justice systems could ill afford.

VICTIM IMPACT STATEMENTS

Victim advocates have for a number of years urged the introduction of 'victim impact statements' as part of those materials considered by judicial authorities in determining the appropriate sentence to impose upon a convicted offender. Such impact statements might include statutory declarations concerning the social, financial, psychological, and medical consequences experienced by the crime victim.

Such proposals are often accompanied by the argument that sentencing authorities are often presented with extensive pre-sentence reports which set out in considerable detail the circumstances of the offender, and materials relevant to his or her potential for rehabilitation. An informed sentencing decision, it is argued, should be based upon commensurate detail regarding the victim's circumstances. Pre-sentence reports, however, are not requested by the sentencing judge or prepared by probation and parole officers, as a gesture of sympathy toward the offender. They serve to influence the decision as to whether to spend tens of thousands of tax dollars per year to incarcerate the offender, or whether more cost-effective means of deterrence and rehabilitation might be available.

It should be kept in mind, moreover, that the effect of a crime upon a victim is determined to a much greater extent by post-event influences. The availability and quality of social support, counselling, medical treatment and other services which may be provided by government agencies or by non-governmental organisations can be crucial in aggravating or in mitigating a victim's suffering. To hold an offender responsible for influences well beyond his or her control may be inappropriate. There is a place for victim impact statements, however, in the determination of an appropriate compensation award, and in indicating the need for further support services.

This is not to say of course that the *full circumstances of the crime itself* should not be considered by a sentencing authority. Such a suggestion is far from a banal truism, for full details of injuries sustained by a victim are not always introduced in the course of a trial. The problem is particularly salient in cases where convictions have followed a plea of guilty. Here the circumstances of the offence, the extent of injuries, if any, sustained by the victim, and other information directly relevant to severity of the offence and to the culpability of the offender may otherwise escape judicial notice. Consistency and ultimately justice in the imposition of sanctions is best served by making the sentence commensurate with malice on the part of the offender, and legally admissible evidence to this end should be placed before the court.

UNSWORN STATEMENTS

All Australian States and Territories, with the exception of Queensland, Western Australia, and the Northern Territory, permit the accused to make a statement from the dock,

not under oath nor subject to cross-examination. This practice has been the subject of considerable criticism from some victims and their spokespeople. These criticisms are based upon three premises. First, it has been argued that the 'unsworn statement', as it is called, provides an opportunity for gratuitous assassination of the victim's character, without any opportunity for rebuttal. A second ground for criticism is the argument that unsworn statements enhance the probability of acquittal. Thirdly, it is noted that the unsworn statement was introduced at a time when a defendant was not permitted to give sworn evidence in his or her own defence.

The unsworn statement is defended by those who argue that it provides an opportunity for the most disadvantaged defendants, particularly those from Aboriginal backgrounds, an opportunity to present their case. It is suggested that the testimony of a poor, inarticulate, and innocent defendant could be discredited by a skilled prosecutor (Australian Law Reform Commission, 1983, pp. 68-69; 1984, pp. 20-21).

It should be noted that no evidence exists that the accused who makes an unsworn statement is more likely to escape conviction. Moreover, reforms in at least South Australia and New South Wales prevent a defendant from making references to a victim's character if such would have been inadmissible under oath (South Australia, 1983, pp. 48-49). The Australian Law Reform Commission has recommended retention of the right to make an unsworn statement, subject to appropriate reforms (Australian Law Reform Commission, 1982, p. 95).

THE RIGHTS OF VICTIMS AND THE RIGHTS OF THE ACCUSED

It is unfortunate that some victim advocates tend to perceive the furtherance of interests of the victim as inextricably dependent upon the curtailment of the rights of the accused. Concern for, and service to victims can be more productively expressed and efficiently achieved. Each additional person-year of incarceration costs the Australian taxpayers somewhere in the vicinity of $30,000. Whilst long-term incarceration may be necessary in a small minority of cases to protect society from a few intractably dangerous offenders, there seems little doubt that in most instances, the interests of justice and the needs of crime victims can be met more economically.

Victim advocates, and indeed, members of the public generally, should not lose sight of the fundamental principles of justice. The criminal process involves the most awesome power which a State commands against a citizen — the power to deprive that citizen of his or her liberty. The resources which the State brings to bear in exercise of that power are massive, and include highly sophisticated investigative skills, forensic techniques, and well developed prosecutorial strategies. In dollar terms, the value of these resources at the disposal of Australian Governments exceeds two billion dollars per year.

Over centuries, principles of justice have evolved in order to ensure that State power is exercised fairly — free from mistake or caprice. First and foremost of these principles is the presumption of innocence. The Crown must bear the burden of proving, beyond reasonable doubt, the guilt of an accused person. Another fundamental principle is the right of an accused (or counsel for the accused) to cross-examine witnesses for the Crown. A third principle concerns the right of the accused to remain silent. Such a principle serves as a partial safeguard against coercion or intimidation.

It must be emphasised that these basic principles for the determination of guilt or innocence in Australian courts of law by no means conflict with sensitive or dignified treatment of the victim-witness. There exists no fundamental incompatibility between the rights of the victim and those of the accused.

It may be that in some instances, Crown prosecutors and indeed, even trial judges might do more to protect victim-witnesses from insulting or irrelevant cross-examination by defence counsel. But individuals throughout the criminal justice, health and welfare professions can improve their sensitivity to and awareness of the particular burdens borne by crime victims in Australian society without further altering the balance of advantage which the State wields against the accused.

SERVICES TO CRIME VICTIMS — TOWARD A MORE RATIONAL ALLOCATION OF RESOURCES

As interest in and support for crime victims develops throughout Australia, one is tempted to ask if there is room for improvement in victim services. It is conceivable that some victim assistance initiatives, no matter how well intentioned, may actually *inhibit* the victim's resumption of a normal life. The possibility is real; one need only recall the potentially counter-therapeutic aspects of some criminal injuries compensation schemes discussed above.

Few would argue that those victim assistance programs which have been established, whether governmental or volunteer based, are failing to meet an important range of previously neglected needs. But given the limited nature of resources available, in both voluntary and public sectors, systematic evaluation and refinement of services for crime victims is highly desirable.

Australian researchers have made significant contributions to knowledge in the field of crisis intervention, with regard to mitigating the effects of bereavement (Raphael, 1977a; 1977b) as well as those of traumatic injury (Bordow and Porritt, 1979; Porritt, 1980; Porritt and Bordow, 1980). Recent advances in crisis intervention should be widely disseminated to and implemented by those involved in providing services to crime victims.

Above all, there is a need for rational planning and integration of victim services. Programs in the various social welfare and criminal justice agencies tend to have been established on an ad hoc basis. The resulting lack of co-ordination may well have impeded access to appropriate services on the part of some potential users. It quite likely has contributed to some degree of operational and economic inefficiency. Administrators should be urged to approach victim services from a broad, integrated social policy perspective.

VICTIMS OF CORPORATE CRIME

Concern for crime victims in Australia has heretofore been limited to the victims of conventional crimes of violence (murder, rape, robbery) and to a lesser extent, of theft.

Other forms of victimisation, particularly those resulting from illegal corporate practices, are insufficiently publicised or documented, and therefore poorly understood by the general public. The term corporate crime is used to refer to those offences committed by corporate bodies, or by employees or agents acting in furtherance of corporate objectives. Even though the harm in question may be cumulative, the victim's suffering is no less real. Large numbers of citizens may be involved. Moreover, the costs of corporate crime far exceed those of 'street crime'.

Corporate offending may affect many categories of victim. Consumers may be deceived, or be sold dangerous products. Investors or creditors may be defrauded. Employees may be killed or injured in unsafe workplaces. Citizens' health may suffer as a result of toxic substances released into the environment.

Among the forms of corporate crime which impose considerable cost on the Australian public are the mismanagement of hazardous products or substances, and violation of occupational health and safety standards. Public awareness of these forms of corporate misconduct is inhibited by the gradual cumulative nature of harm in many instances and by inadequate media attention to more visible incidents.

As indicated previously, injuries sustained in Australian workplaces each year far exceed those resulting from road traffic accidents, and surpass to an even greater extent those occasioned by conventional criminal assaults. Not only are many of these avoidable, a significant proportion arise from violations of State and Territory laws. Whilst inadequate reporting requirements and relaxed administration of occupational health and safety statutes make it impossible to determine how many of these injuries result from breaches of the law, the number is likely to be great.

Central to the problems faced by victims of corporate crime is their relative lack of

resources with which to confront a large, well endowed adversary. In some instances, organisational affiliations (such as trade union membership), participation in insurance schemes (such as workers' compensation) and the existence of regulatory agencies (such as consumer affairs bureaux) may help to redress this imbalance, as may the availability of civil remedies to individual victims.

There nevertheless exists a significant short fall in the availability of resources for victims of corporate crime. Possible directions for reform might include a broadening of the law of standing to permit a number of similarly situated victims to join forces in class action litigation, increased government support for citizens' interest groups and legal services, and an extension of the proposed compensation and rehabilitation schemes discussed above.

DUMPING: AUSTRALIANS AS VICTIMS AND AS OFFENDERS

One of the more objectiontable forms of antisocial corporate conduct is dumping — referred to here as the export overseas of products deemed hazardous or otherwise banned as unacceptable for domestic consumption. Because regulatory processes tend to be more rigorous in western industrial societies, it is the nations of the Third World which tend to be the recipients of this form of dumping (Wells and Tiranti, 1983).

Whilst some commentators might be inclined to dismiss those concerned with dumping as overprotective and paternalistic, the costs of dumping are frequently fatal. Braithwaite (1984, pp. 257-65) has shown how transnational pharmaceutical firms export banned or expired products to developing nations, often occasioning considerable loss of life. Whilst such conduct may not be defined as criminal under the laws of exporting and importing nations, the immorality of dumping is unquestionable.

Australians, too, have been the victims of dumping. At least five Australian deaths in recent years have been attributed to defective mechanical heart valves, banned in the United States but imported from that country (Australian Federation of Consumer Organisations, 1984). Pesticides are being used in Australia which have been banned, restricted or unapproved for use in the United States and Canada (Matthews and Calabrese, 1982, p .7).

Products which cause harm in Australia are no less likely to cause harm in Indonesia, Sri Lanka, or Malaysia. There is no moral justification for the Australian Government to accord citizens of other lands less protection than it accords its own citizens. The label 'Made in Australia' should be a symbol of quality, not one of risk. Yet in 1977, batches of milk powder, recalled from the Australian market due to salmonella contamination, were exported to an unknown destination.

The Commonwealth Government has indicated its intention to limit the export of dangerous products by amending the *Trade Practices Act* to forbid the export of products banned under that Act.

VICTIMS OF ABUSES OF STATE POWER

Citizens of some of Australian jurisdictions in recent years have been the victims of illegal police surveillance, and in extreme cases, of theft and of violent acts at the hands of law enforcement and correctional authorities. Whilst Australians are fortunate not to suffer abuses of power of the magnitude experienced in some parts of the world, Australian Governments and their agents are not entirely above reproach. It is envisaged that the proposed Australian Bill of Rights will reaffirm the basic entitlements of freedom for all Australians, and will provide the basis for essential safeguards against abuses of State power. Whilst Australian citizens enjoy avenues of civil, criminal and administrative redress depending on the nature of the abuse they have suffered, few would regard existing arrangements as entirely satisfactory. The expense of challenging government malpractice may be prohibitive for some, and legal

assistance is available on but a limited basis. Procedural delays often compound a citizen's frustration. And the doctrine of sovereign immunity may preclude redress in some instances.

In addition to the traditional avenues of redress, both the Federal Government and the governments of each State and Territory has an Ombudsman, with statutory responsibility for investigating complaints against public agencies. Whilst the institution of Ombudsman appears to be functioning adequately in response to administrative malpractice on the part of Commonwealth, State and Territory Public Service departments, some concerns have been voiced about their efficacy in controlling malpractice committed by police and correctional authorities.

Most Australian Ombudsmen are restricted in part, if not totally barred, from investigating a citizen's complaints against police. Police departments and police associations have tended to object to external investigations of police misconduct, arguing that abuses of police power can be adequately controlled by internal self-regulation.

There nevertheless exists a considerable degree of skepticism on the part of the public that police departments are able, even if willing, to exercise sufficient self-control (Page and Swanton, 1983). The burden of proof rests with the police themselves. Whether Australian police departments can rise to this challenge remains to be seen.

By contrast, Australian Ombudsmen are empowered to hear and to investigate grievances of prisoners concerning prison administration in their respective jurisdictions (Australian Law Reform Commission, 1980, pp. 165-74). By virtue of their public stature, their reputation for impartiality, and their willingness and ability to criticise sub-standard prison conditions and malpractice, ombudsmen play an important role in curtailing abuses in Australian prisons.

CONCLUSION

A significant proportion of the resources of the criminal justice system are devoted to suppressing crimes without victims — behaviours which inflict neither physical injury nor property loss or damage upon another. It is too often overlooked that such an allocation of resources occurs at the expense of victims. Aggressive policing, prosecution, and application of criminal sanctions to so called victimless crimes require resources which could otherwise be allocated to the protection of individuals from genuinely predatory behaviour, and to improving assistance for the real victims.

The desire for retribution on behalf of one who has suffered at the hands of another is understandable. But we do ourselves a disservice by adhering to the narrow view that suffering can best be alleviated through retaliation. This is not to suggest that malice should go unpunished, but rather that the limited human and financial resources at our disposal should be used as far as possible for restoring both victim and offender.

Whilst Australian governments have made considerable progress in recent years toward recognising and alleviating problems faced by victims of crime, a great deal remains to be accomplished. The future of victim assistance in Australia will depend upon realisation of three basic principles. These involve information, the law and its administration, and victim services.

First, we must continue to improve our understanding of criminal victimisation — those economic, psychological, and social factors which combine to influence the risk of becoming a victim of crime.

This understanding is desirable not merely for the sake of knowledge. Its relevance to the effective design of crime prevention programs, and ultimately to the allocation of the two thousand million dollars expended annually on criminal justice in Australia, is self-evident. The better our understanding of victimisation, including the dynamics of the victim/offender relationship, the closer we are to the heretofore elusive dual goals of reducing crime and enhancing personal freedom.

Information necessary to achieve a better understanding of victimisation will depend upon two types of research. Sample surveys should be fielded at regular intervals, their techniques refined, and their data made promptly available for analysis. In addition, official police and court records should contain information on victims and on victim/offender relationships.

Another potentially fruitful area of inquiry concerns the victim's perceptions and understanding of the criminal justice system. The unfortunate reality of many victims' alienation from the criminal justice system has been apparent for some time. Where victim dissatisfaction arises from remedial shortcomings in the criminal process, such a 'consumer survey' can indicate an appropriate area for law reform. When, on the other hand, dissatisfaction arises from lack of awareness, or misunderstanding on the part of the victim, information and educational resources can be mobilised as appropriate.

The second basic principle involves reform of the criminal law and its administration. A number of Australian jurisdictions have implemented significant changes over the past ten years, ranging from the introduction of more sensitive investigative practices, to redefinition of the criminal law, to modifications of procedure in criminal prosecutions. To the extent that these reforms have contributed to a diminution of victims' suffering, have enhanced the efficiency of the criminal process, and have protected the rights of the accused, they should be adopted elsewhere. To the extent that they have not, they should be further modified. Suffice it to say that rigorous evaluations of these and of future reforms, and widespread promulgation of the results throughout the various jurisdictions of Australia will constitute a valuable contribution. If found to be functioning adequately, a reform is worthy of emulation. On the other hand, unanticipated shortcomings may be amenable to remedial modifications.

The third basic principle concerns services to crime victims. The most pressing needs of crime victims are for social support and information on the one hand, and for the alleviation of economic distress which compounds the victim's suffering on the other. In past years, Australians in crises of whatever kind were able to turn to family and to neighbours for sympathy and for guidance. As fundamental changes to Australian society have lessened the availability of these traditional sources of support, crime victims have become increasingly dependent upon government agencies, and in many cases upon voluntary agencies, to meet these needs.

The sooner public officials, from police officers to Crown prosecutors, to court administrators to magistrates and judges, recognise this fully, the sooner they will become more responsive to victims' needs.

It is now apparent that one of the glaring gaps in our knowledge of crime victims concerns their mental health. Psychiatric experts concede that there is an enormous need for basic research in this area. Simply to identify the range of individual responses to the experience of victimisation is important. To document the successful coping strategies of individual victims, and to identify the most effective techniques of therapeutic intervention, must remain high on the research agenda, for such knowledge can best inform the design and delivery of victim services. The long-term follow up of victims is also worthy of attention.

Monetary compensation to crime victims, once regarded as a panacea, deserves critical attention. Delay and uncertainty have been identified as two of the more counter-therapeutic aspects of compensation programs. Victims and governments alike would benefit from greater attention being devoted to the development of a general compensation and rehabilitation program to permit the quickest recovery of the victim at the lowest cost to the taxpayers.

It is, of course, essential to look at monetary compensation in the context of an integrated victim assistance regime. A compensation program which exists *in vacuo* will fail to address the victim's needs for social support and information. The design of victim assistance programs should therefore be based upon holistic thinking. Funds allocated to victims of crime should be directed towards a cost-effective mix of compensation and other rehabilitation services.

With little effort, Australian governments can achieve a significant reduction of unnecessary suffering on the part of crime victims, within the context of a just and humane criminal justice system.

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YOUTH, CRIME AND JUSTICE

TOPIC IV

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The concept of 'youth crime' can be misleading. It is preferable to analyse patterns of crime by juveniles, youths, and young adults, for these three groups differ markedly with regard to types of crime and *modus operandi*. Failure to make these distinctions has led to exaggeration and the volume and seriousness of crime by young people.

Changing patterns of crime by these groups are next identified, particularly with regard to the offending patterns of girls and young women and aspects of drug use. Attention is drawn to the very high rates of incarceration applying to young people generally, and more specifically, to Aboriginals.

The causes of youth crime are examined, with particular attention being paid to unemployment, inappropriate educational objectives, family breakdown and the marginalisation or alienation of young people. Particular reference is made to the single most alienating factor, the source of unparalleled despair amongst modern youth — the threat of nuclear war. The conclusion is reached that the causes of youth crime are inter-related, not discrete. The surprising thing is not that present levels of youth crime are fairly high, but rather that they are not considerably higher.

Responses are described. The view is expressed that they must be integrated, that just as there is no simple cause of youth crime, so there is no simple solution.

Throughout the paper recent Australian research and policy initiatives are described and highlighted. The paper concludes that a deep and sympathetic understanding of the dilemmas of young people must replace moralistic condemnation. Australia is concerned for its young people and their future rather than alarmed at their conduct.

CONTENTS

THE EXTENT AND NATURE OF YOUTH CRIME IN AUSTRALIA

Australia welcomes the decision of the United Nations, in setting the agenda for the Seventh Congress, to place strong emphasis on the problems of youth in the contemporary world. It was stated in the Discussion Guide circulated to participants in the Regional and Inter-regional Preparatory Meetings that the reasons for doing so included the following:

(a) the proportion of youth among the population will continue to increase for decades to come;
(b) contrary to the growing expectations of fuller participation in the development process, employment opportunities for youth are declining in many parts of the world, due to economic depression, recession and inflation;
(c) youth are particularly vulnerable to maltreatment, exploitation and neglect, as well as to the undesirable consequences of socio-economic changes;
(d) for these and other reasons, crime committed by youth, tending to be the most crime-prone age group, seems to be increasing disproportionately;
(e) serious manifestations of youth drug abuse and criminality, particularly violence, as a group phenomenon, are becoming more widespread; and
(f) there is increasing recognition that juvenile justice requires greater attention at the national and international levels.

Broadly speaking, these reasons are valid in the Australian context. However, the fact that the definition of 'youth' adopted by the United Nations is so wide, encompassing young people between the ages of 15 and 24, means that some qualifications must be made to the above propositions.

A more informative analysis, from the Australian point of view, can be made if this composite category is divided into three: *juveniles*, aged below 17; *youths*, aged between 17 and 20; and *young adults*, aged between 21 and 24. Offending patterns, modes of disposition and criminological trends differ markedly between these groups. Australia is concerned that a failure to maintain rigorous distinctions between groups might lead to a mode of thinking where criminal characteristics and crime trends are attributed to 'youth' as a whole which are in fact only relevant to one of the sub-categories. It is this sort of error which the media not infrequently commit, thus contributing to an exaggerated and inaccurate community perception of crime committed by young people.

Data Sources and their Defects

It is necessary, before attempting to analyse the Australian situation in the terms suggested above, to describe and comment on available data sources. They are as follows: (i) official statistics; (ii) self-report studies and victimisation surveys; and (iii) specialised research projects.

With regard to official statistics, their inherent limitations are well-known. In a nutshell: much crime is never reported; offence categories used by police are so broad that they often cover very dissimilar fact situations; only about 20 per cent of recorded offences are cleared up. It is only after clear-up that data as to the sex and age of offenders come into existence: yet it is this highly-filtered data upon which public and official perceptions of youth crime are based. As will be seen later there is reason to believe that such data give a false picture in many ways.

With regard to self-report studies and victimisation surveys, these are not in Australia particularly productive sources of data regarding youth crime. There has never been a comprehensive, national self-report study from which overall levels of youth crime may be projected; though there have been specialised studies as aspects of other research projects, for example, with regard to drug abuse, vandalism, prostitution and truancy. The methodological problems inherent in the kind of comprehensive studies which have been carried out elsewhere are very considerable; and it is likely that the information contained in the more limited studies is at least as valuable As for victimisation surveys, there have recently been two such national surveys — in 1975 and 1983. However, in neither of these were respondents asked

to estimate the age of the alleged offender. There is thus in Australia no source material equivalent to that presented by McDermott and Hindelang (1981) in the United States.

It will be recalled that the most important conclusions of those researchers were as follows:

> When crimes committed by the three age groups — juveniles (12-17), youthful offenders (18-20), and adults (over 21) — are compared, juvenile crime is shown to be *demonstrably less serious* than youthful offender and adult crime in three major ways. First, weapon use by juveniles is less prevalent, and even when weapons are used by juveniles they are rarely guns. Second, juvenile offenders are much less successful than adults in the theft-motivated offences of personal and commercial robbery, pocket picking, and purse snatch. Victims of juvenile offenders are less likely to suffer a completed theft than victims of youthful and adult offenders; moreover, even when a theft is completed, victims of juvenile offenders suffer less financial loss than do victims of youthful and adult offenders (McDermott and Hindeland, 1981).

However, data generated from various special research projects confirm for Australia that it would be as unwise as it is in the United States to treat crime by persons aged 15-24 as a single phenomenon. Pioneering work by Mukherjee, of the Australian Institute of Criminology, establishes the differing participation rates in various broad categories of crime, as follows:

TABLE 1
ARREST RATES FOR MALE JUVENILES, YOUTHS AND ADULTS PER 100,000 RELEVANT POPULATION FOR SELECTED OFFENCES, AUSTRALIA

	HOMICIDE			SERIOUS ASSAULT		
	Juvenile <17	Youth 18-20	Adult 21-24	Juvenile <17	Youth 18-20	Adult 21-24
1977-78	0.56	13.30	4.84	14.78	72.61	22.92
1978-79	1.86	13.45	5.73	16.90	78.89	24.98
1979-80	1.40	12.76	5.78	23.77	108.09	31.05
	ROBBERY			BREAK, ENTER AND STEAL		
	Juvenile <17	Youth 18-20	Adult 21-24	Juvenile <17	Youth 18-20	Adult 21-24
1977-78	10.55	41.74	5.96	601.87	433.83	41.03
1978-79	9.92	38.35	6.78	602.61	480.60	46.04
1979-80	12.11	42.80	6.75	680.73	486.58	47.66

Source: Mukherjee, S.M. 1985, 'Juvenile Delinquency: Dimensions of the Problem', in A. Borowski and J.M. Murray (eds), *Juvenile Delinquency in Australia*, Methuen Australia, Melbourne, 1985.

The data for these three years epitomise, in terms of relativities, those prevailing for the previous fifteen years and the subsequent five years. Mukherjee points out that these data reveal two important findings: (i) when arrest rates of juveniles, youths and adults are separated out, the concern about growing juvenile delinquency can be seen to be less well-based; and (ii) that arrest rates drop significantly after a certain age.

Mukherjee (1985) takes this point on by relating arrest rates of male juveniles for offences of violence (i.e. homicide and serious assault) to population figures. During a continuous period of 17 years, from 1964 to 1980 inclusive, juveniles were disproportionately *under*-represented in arrest figures:

> Perhaps the most significant finding of this study is that the involvement of juveniles in arrest for violent offences... is less than their share in the general population. This finding is strongly supported by data over time and across countries.

Continuing for the present with juveniles, the area where they are positively and grossly over-represented is, of course, that of breaking, entering and stealing. A similar pattern is found with car-stealing. These are matters of concern. But even in these areas, Mukherjee (1985) has raised questions which indicate that the undoubted over-representation may be somewhat

TABLE 2
ARREST DATA: OFFENCES OF BREAK, ENTER AND STEAL BY AGE GROUP AND NUMBER OF OFFENDERS IN EACH OFFENCE, SYDNEY METROPOLITAN AREA, 1981

No. of Offenders in each Offence	Adults Only			Adults and Juveniles			Juveniles Only			Total		
	No.	% down	% across	No.	% down	% across	No.	% down	% across	No.	% down	% across
1	1348	78.69	76.94	—	—	—	404	43.53	23.06	1752	62.71	100.0
2	319	18.62	42.59	90	58.82	12.02	340	36.64	45.39	749	26.81	100.0
3	42	2.45	21.43	36	3.53	18.37	118	12.72	60.20	196	7.01	100.0
4	2	0.12	2.82	21	13.73	29.58	48	5.17	67.60	71	2.54	100.0
5 & over*	2	0.12	7.69	6	3.92	23.08	18	1.94	69.23	26	0.93	100.0
TOTAL	1713	100.0	61.31	153	100.0	5.48	928	100.0	33.21	2794	100.0	100.0
No. of Offenders	2131		49.95	403		9.45	1732		40.60	4266		100.0

* Adults Only - 1 x 5 and 1 x 6 (11); Adults and Juveniles - 5 x 5 and 1 x 6 (31); Juveniles Only - 11 x 5, 3 x 6, 3 x 7 and 1 x 8 (102).

Source: Mukherjee, S.M. (1985), 'Juvenile Delinquency: Dimensions of the Problem', in A. Borowski and J.M. Murray (eds), *Juvenile Delinquency in Australia*, Methuen Australia, Melbourne, 1985

exaggerated. In particular, his analysis of the group effect upon juvenile delinquency suggests strongly that the number of arrests of juveniles is proportionately much greater than the number of separate crime situations in which they are involved. The data in question relate to burglary incidents in the Sydney metropolitan area; Table 2 presents data on the number of break, enter and steal offences by number and age of offenders involved in each offence.

There exists a negative correlation between age and arrest for breaking and entering in a group.

From related data, Mukherjee (1985) is able to calculate that juvenile status increases the probability of arrest for a burglary by about 150 per cent. This is a striking conclusion which certainly puts a different perspective upon the official statistics, as foreshadowed on page 94.

In summary, the Australian data indicate that too simplistic an analysis of crime committed by young people can be positively misleading. Distinctions must be made as to age-groups, types of crime and *modus operandi*. Otherwise, any attempted diagnosis of causes and suggested strategies for prevention or treatment must inevitably be flawed.

Changing Patterns of Youth Crime

Whilst it is proper to be rigorous in interpreting the data as to the extent of youth crime, it should also be noted that the data indicate that the 1980s have brought with them some new trends. Most notably, the extent and pattern of crime committed by young females are each

TABLE 3

ARREST RATES FOR ADULTS AND JUVENILES PER 100,000 ADULT POPULATION AND PER 100,000 POPULATION AGED 10-16 RESPECTIVELY BY SEX, AUSTRALIA, 1964 TO 1982-83*

	HOMICIDE**				SERIOUS ASSAULT			
	Men	Boys	Women	Girls	Men	Boys	Women	Girls
1964	6.4	1.2	1.4	0.1	48.8	21.2	2.3	0.8
1965	5.7	2.5	1.1	0.1	43.8	19.2	1.8	0.4
1966	6.9	2.2	1.0	0.1	48.2	18.4	2.9	0.3
1967	6.1	1.0	1.1	0.1	45.5	13.1	1.9	1.1
1968	6.8	1.8	1.1	0.1	48.0	18.9	2.5	0.7
1969	5.3	1.5	1.3	0.0	51.9	21.0	2.6	0.5
1970	6.9	2.8	1.2	0.0	62.4	30.7	2.6	1.4
1971	7.1	1.0	0.9	0.5	72.0	40.6	3.6	1.4
1971-72	8.1	1.9	1.0	0.2	76.8	51.8	1.4	1.5
1972-73	8.6	1.2	1.1	0.2	59.6	27.9	2.8	2.1
1973-74	12.2	1.5	1.0	0.4	40.2	23.0	2.6	1.7
1974-75	12.2	3.1	1.2	0.4	37.3	21.3	2.3	0.8
1975-76	11.7	1.3	1.1	0.4	47.0	22.1	2.7	2.1
1976-77	12.1	2.2	1.4	0.4	46.6	20.8	2.9	2.3
1977-78	10.4	1.1	1.2	0.0	53.8	25.4	3.0	3.6
1978-79	11.7	3.2	1.5	0.5	58.0	29.1	3.8	4.3
1979-80	11.9	2.4	1.3	0.4	73.5	40.4	5.2	6.5
***1980-81	7.0	2.6	0.9	0.2	75.0	40.7	4.6	6.5
***1981-82	7.1	2.4	1.0	0.3	81.1	40.4	6.2	8.6
1982-83	7.8	1.9	1.0	0.1	87.4	45.0	5.9	6.0

* Figures for 1980-81 onwards are derived from the Annual Reports of the Police Commissioners.
** 1980-81 excludes 'Manslaughter by driving'.
*** Excludes the Australian Capital Territory.
Source: Mukherjee, S.M. (1985), 'Juvenile Delinquency: Dimensions of the Problem' in A. Borowski and J.M. Murray (eds), *Juvenile Delinquency in Australia*, Methuen Australia, Melbourne, 1985.

evolving, and drug-related crime amongst both sexes is on the increase.

As regards the offending patterns of young females, Mukherjee (1985) has identified their increasing involvement in violent crime, as seen in Table 3. Not only have juvenile females, in a context where crimes of violence by females generally are increasing, overtaken adult women during the last 20 years, but also the ratio of girl to boy arrests has risen from 1:25 to approximately 1:6. Work by Warner (1982) in Tasmania has confirmed, indeed positively strengthened, this perspective. Such findings are very significant. At an adult level a comparable trend has seen an increase of 80 per cent in the female prison population over the last eight years. These patterns require close monitoring and research in forthcoming years.

As for drug abuse and drug-related crime, these are each increasing markedly amongst young people. In this respect, licit drugs such as alcohol, and drugs such as petrol (for sniffing) which are in a legal no-man's land, are quantitatively more harmful than illicit drugs, such as marijuana or heroin. In fact, alcohol use is increasing rapidly — from 22 per cent of 15 year olds in 1971 to 50 per cent in 1983 — whilst illicit drug use has remained relatively constant. However, it is the latter to which adult society tends to address itself.

With regard to illicit drug abuse, then, it is necessary to point out that young people —at least initially — are in reality *victims* rather than young offenders. The pushers and the financiers are typically of an older generation, cashing in on the immaturity and vulnerability of their juniors. Of course, the downward spiral of drug abuse leads, for many young people, to a situation where they must indulge in other types of criminal behaviour if they are to sustain their habit. These include: drug distribution, armed robbery, breaking and entering, and prostitution. This is a matter of common observation, most recently well-documented in Australia by Wilson (1984) and by Dobinson and Ward (1985).

The latter work is of particular interest in that it indicated that 44 per cent of armed robbers in the New South Wales prison population were drug users at the time of committing the offence in question, and that 78 per cent of drug users indicated that property crime of various kinds was their principal source of income before conviction. This was true for only 30 per cent of property offenders who were *not* drug users — a striking insight. It should be said that two-thirds of the offenders were above the age of 24; however, 72 per cent of such persons had in fact become addicted before the age of 24. Specifically 50 per cent of them were addicted before the age of 18, indicating that in this regard (i.e. drug abuse) patterns of life, developed at a young and impressionable age, flow through to adult behaviour.

The fact of the matter is that westernised societies, such as Australia, have now institutionalised, glamorised and rewarded numerous sorts of drug-pushing: of alcohol, of analgesics, of tobacco. The doctor who over-prescribes medical drugs is often rewarded by high status and income; the pharmaceutical company which distributes advertising matter about new drugs to doctors in an effort to capture the market is rewarded by record profits; the sportsman who swills down alcohol on television advertisements continues to receive the adulation of his fans. The temper of our times is one where the quest for altered bodily sensations has become almost obsessive. Not surprisingly, this quest sometimes, amongst young people as well as older ones, takes the form of the use of illicit drugs.

In the light of the foregoing, there can be no question that drug abuse amongst young people, and the resultant patterns of behaviour, is one of the great issues facing Australian society at the present time.

The Punishment and Correction of Young People

The incarceration rate of young male offenders is much higher than that for any other group within the population. As at 30 June 1984 the male rates of imprisonment per 100,000 of age-specific population were as in Table 4.

In addition, some 1,200 persons under 18 were incarcerated either in prisons, or more commonly, in juvenile institutions.

These figures conform with patterns generally prevailing in the developed world. Nevertheless, in view of the earlier comments as to the *seriousness* of youth crime, as opposed to its quantity, they are a source of concern.

TABLE 4

18 years	275
19 years	357
20-24 years	381
25-29 years	341
Total, all ages	174

Source: Walker, J. and Biles, D. (1985), *Australian Prisoners 1984*, Australian Institute of Criminology, Canberra.

Within these figures can be found a source of even greater concern — the incarceration rates of Aboriginals, Australia's indigenous people. The age-specific rates per 100,000 males as at 30 June 1984 are shown in Table 5.

TABLE 5

18 years	5182
19 years	4972
20-24 years	5718
25-29 years	5117
30-34 years	3809
35-39 years	2477
40-44 years	1456
45-49 years	322
50-54 years	521
55-59 years	191

Source: Walker, J. and Biles, D. (1985), *Australian Prisoners 1984*, Australian Institute of Criminology, Canberra.

Even taking into account the small actual numbers which underlie these rates, such figures are matters of grave concern to the Australian Government and to all State Governments; for example, that of South Australia which has established a task force to examine this matter. When it is also considered that the recidivism rate for young male Aboriginals is approximately 90 per cent it is probable that nothing short of a national campaign, and possibly, the creation of a federal sentencing standard to which State courts must conform, will rectify this long-standing phenomenon. The Australia Law Reform Commission currently is working on two references relevant to this — Customary Law, and Sentencing of Federal Offenders. The Australian Institute of Criminology is co-operating closely with the Law Reform Commission on the latter project.

To summarise this section: Australia shares the concern of other nations about patterns of youth crime. However 'youth crime' is not a unitary phenomenon. On the contrary, distinctions must be made between age groups, types of offence and *modus operandi*; moreover, possible future trends must be identified. When all this has been done, concern remains, but alarm is not justifiable. More alarming than youth crime itself are certain aspects of society's response, in particular incarceration rates.

THE CAUSES OF YOUTH CRIME IN AUSTRALIA

The Report of the Inter-regional Preparatory Meeting in Beijing identified the following causes or associated factors in relation to youth crime: unemployment, deficiencies in education systems, family breakdown, and marginalisation of youth. Australia sees all these factors as being relevant to its own situation. However, they are overlapping and interacting in their impact, rather than discrete or self-contained.

Unemployment

It is now well-established that unemployment and criminal involvement are associated matters, though the inter-relationship is not entirely straightforward. A recent, highly authoritative analysis has concluded that 'unemployment exerts a rather immediate effect on criminal involvement, while criminal involvement exerts a more long-range effect on unemployment' (Thornberry and Christenson, 1984). In Australia, more than 60 per cent of those persons whose employment status can be determined at the time of trial leading to conviction and entry to prison are unemployed. In a current study, Mukherjee has found that, in a sample of 292 persons coming before juvenile courts for serious assault, breaking and entering and robbery, *67 per cent of offenders over the age of 15 were unemployed* at the time of commission of the offence, whilst only 9 per cent were employed.

In the light of such patterns, the unemployment rate for young Australians (aged 15 to 24 years) is a matter of great concern. As of August 1984, there were 288,000 persons in this category registered as unemployed, that is a rate of 16 per cent. For young males, the most crime-prone group, the rate was even higher: 18 per cent. The corresponding number and rate for persons over the age of 25 were 315,700 and 6 per cent respectively. Another perspective emerges from these figures, that nearly 48 per cent of all unemployed persons in Australia were aged 15-24 (Australian Bureau of Statistics, 1985).

Young people are acutely aware of the wasteland which they are in danger of entering upon leaving school. A 1984 survey of secondary school students, for example, showed 61 per cent feared unemployment when they left school (Ochiltree and Amato, 1985). This fear is an important component in the marginalisation, or alienation, of youth which, in Australia's view, is so integral to the problems of youth crime.

Wilson's research (1984) has given a qualitative feeling to the fear of unemployment and its psychological impact. In his conclusions, after a participant observation/interview analysis of the lifestyles of 36 juvenile delinquents, he states:

> Youth unemployment is indeed seen as a serious social problem, which promotes the scenario of future generations of aimless youth, without income and without security. There are numerous psychological and social dimensions to unemployment, but a central factor is that of finance . . .
> It is ludicrous to believe that most unemployed under 18 year olds live at home with caring parents . . .
> Adult economic status is not extended to the young, and this is the first in a long chain of restrictions which drags them into an alienated state or into crime and prostitution.

A 1983 Background Paper prepared for the Organisation of Economic Cultural Development (OECD) by the Australian Government — *Youth Policies, Programs and Issues* — identified not merely registered unemployment as an acute youth problem, but also 'hidden unemployment' (that is, those who would be available for work but are not trying to obtain it) and under-employment (that is, those working part-time whilst having both a desire and a capacity to work full-time). The 1984 survey of the Australian Bureau of Statistics — *Australia's Youth Population 1984* — confirmed that youth employment issues encompass all of these dimensions. Accordingly, it must be said that the official figures of registered youth unemployment do not tell the whole story.

Education

In Australia, secondary education is generally compulsory until the young person's 16th year, and is available until the 18th year. Thereafter, there may be transition to tertiary education.

The participation rate of young people in non-compulsory secondary education has increased markedly in the last 20 years. However, the rate of increase has recently evened out. One child in eight still leaves the formal school system at the age of 15. A further loss of approximately 55 per cent occurs amongst 16 year olds and early 17 year olds. Thereafter, the transition rate to tertiary education is approximately 42 per cent. This rate has been in steady decline since 1974 when it was 56 per cent (Australian Bureau of Statistics, 1985).

It is often considered that the prospect of unemployment is itself a factor tending to inflate the secondary education participation rate. Certainly, conversations with young people tend to bear out this impression. On the other hand, the statistical data are ambivalent, in that the

trend of increasing school participation was most noticeable at a time (the early 1970s) when the increases in youth unemployment rates had not yet begun to manifest themselves.

Be that as it may, the education participation rates at all levels are, perhaps, somewhat lower than could be hoped for in a wealthy and highly-industrialised nation. Australia's future lies not merely in the traditional areas — primary industry and resource extraction and development — but in manufacturing service industries, communications and high technology industries. As the education system is the forum in which, conventionally, the necessary skills can start to be assimilated, do these slightly disappointing participation rates tell us something about the nature of Australian youth?

In themselves, they are not particularly informative. However, in conjunction with other work, they amount to evidence that the Australian educational system has been disappointing to quite a large proportion of its clients: the youth of Australia. The primary evidence of this is found in a truancy study conducted by Coventry (1984) in the State of Victoria. This is the second most populous State in Australia, and in the absence of a comprehensive national truancy study its results will be referred to in detail.

The broad conclusions of the study were as follows:

> ... Involvement in truancy is fairly widespread among the secondary school population. This activity varies from infrequent to frequent involvement in truant behaviour. The findings also suggest that the chronic truant groups at any year level is of the order of 5 per cent of the year cohort.
>
> ... Involvement in truancy increases from Year 7 (12 year olds) to Year 10 (15 year olds), and peak involvement appears to coincide with the end of compulsory schooling (Years 9 and 10). In addition, official school data indicate that the proportion of students engaging in truant behaviour peaks within each year in term three.

Who are the students who truant? The research is unambiguous: 'truancy is more likely to occur among the student group which is not well-placed in the success flows of schools'. Wilson's research (1984) endorses this analysis. He puts it as follows:

> School is a critical agent in the processing of children to adulthood. For youth who are unsuccessful at school or for other reasons, (poor economic background, problems at home, etc.) there is no possibility that they will be the quality product that the education system is geared to produce. The youth in this project had only criticism to make of school. There were aspects which they enjoyed but these centred on social activities . . .
>
> Truancy was a major issue with most of them rarely attending. Some were absent for six months at a time. In such cases they did not suggest that there should be intervention but found it doubly damaging when it appeared that no-one in authority bothered whether they turned up at school or not. Usually these youths went to the shopping malls, video game locations or to friends' houses. The latter was usually where there was only a single working parent and these houses were like 'safe houses' to the youths. This was, as previously stated, the period where they first came into contact with the justice system through shop stealing and break and enter offences.
>
> The paradox that the youthful participants highlighted seemed almost insoluble by them. They disliked the school system and were highly critical of teachers. Yet the lack of action over their regular truancy bothered them even more.

What Wilson has documented here is a classic case of the deviancy amplification spiral — the young people truanting out of disenchantment; the education authorities, with relief or indifference, ignoring this truancy inasmuch as it leaves them free to pursue traditional goals with more malleable students; the truants having their disenchantment vindicated and amplified.

The question now arises: is the association between truancy and delinquency as direct, phenomenologically, as in the case of Wilson's special sample of persons who were already delinquents? The Victorian study (Coventry, 1984) indicates that it is not:

> It appears from the longitudinal data concerning truancy and juvenile delinquency that labelling practices of schools and the criminal justice system have no bearing on one another. Acquiring a school label as a truant does not predispose young people to engage in other troublesome behaviour. The predisposition for juvenile delinquency appears related to antecedent conditions similar to those of truancy (Wilson and Braithwaite, 1977). On the other hand, the data in this chapter suggest that acquiring a delinquent label has little or no effect on persistence or reform of truant behaviour.
>
> In summary, while there appears to be a slight relationship between truancy and juvenile delinquency, as Wilson and Braithwaite (1977) suggest, this relationship is not causal but rather it arises because of the association between both behaviours and particularly antecedents.

Congruent with this is the conclusion of Warner (1982) that low educational expectations, and presumably, low self-esteem are associated with delinquency:

> This self-report study failed to confirm any relationship between delinquency, whether measured by admitted police contacts or high self-report scores, and father's occupation, broken homes, family size or income level. School performance, measured rather roughly by level of difficulty of subjects studied, showed a significant association between lower level subjects and high crime points scores for boys. A similar trend was shown for girls and for both sexes using the delinquency measure of police contacts, but results failed to reach significance.

These conclusions take one back to the Australian view that the various factors associated with youth crime should not simply be analysed in isolation but rather in terms of their interaction with each other and their contribution to the marginalisation or alienation of the youth population or particular segments of it: see page 99.

Family Breakdown

Australia, in common with most westernised nations, has a high divorce rate. It is currently estimated that 40 per cent of all marriages will terminate in divorce. Increasingly, such divorces will occur during the first ten years of the marriage. Small children will thus be directly affected, and as adolescents they will be reared in a family situation which is far different from that of the traditional nuclear family — in single parent situations, step families, with access parents, and so on.

It is most difficult to measure with confidence the impact of such social factors upon children and young people. A recent Australian study by the Institute of Family Studies (Ochiltree and Amato, 1985) confirms what common sense would tell one, that a substantial percentage of children suffer anxiety about the possibility of their parents splitting up. For primary school age children the figure was 48 per cent; for secondary students 32 per cent.

Of course, 'for children, the separation of parents may be only the first of several major changes in their lives, all of which can cause tremendous emotional strain. This stress occurs when parents are least able to support them because of the pressure of their own anxieties, guilt and problems associated with the marriage breakdown. This is so whether the parent is the "leaver" or the "left".' (Ochiltree and Amato, 1985).

It should be noted, from this survey, that once a breakdown has occurred about three-quarters of children considered that they adjusted to the new situation satisfactorily. However, 23 per cent remained upset.

Is family breakdown, therefore, directly associated with juvenile delinquency? The Australian Institute of Family Studies, noting that 'in the public mind there is still a residue of the ideas put forward by earlier research linking delinquency and anti-social behaviour with children from one-parent families', has argued that there is no direct link:

> In a review of research of the effects of parent-child separation Michael Rutter (1971), a psychiatrist, pointed out that while past studies linked parental separation and divorce with delinquency and anti-social behaviour in children, parental death is not linked. This supports his argument that it is not so much the loss of a parent that leads to behaviour problems and delinquency but disturbed interpersonal relationships in the family. Other researchers have also supported this position, with research indicating that interpersonal family processes and parental harmony are more related to child adjustment, behaviour and achievement than is family type. For instance, severe family conflict has some detrimental effects on children in all family types, just as children do well in harmonious, warm families whether they be one-parent, two-parent or step family (Ochiltree and Amato, 1985).

This conclusion seems for the time being to be appropriate for Australia. It conforms with the Australian experience that juvenile delinquency is not uni-causal, but rather is a complex phenomenon demanding integrated responses. However, further research into the impact of second and even third families upon children would seem to be merited.

Alienation

For some young people then, modern society can be profoundly alienating. This is not merely manifested in crime rates, but for example, emerges in suicide rates.

TABLE 6
DEATHS BY SUICIDE OF PERSONS AGED 15-24

	1961	1966	1971	1976	1978	1979	1980	1981	1982
	NUMBER								
Males									
15-19	23	32	75	65	69	85	66	72	69
20-24	46	57	107	119	153	149	163	166	189
Total	69	89	182	184	222	234	229	238	258
Females									
15-19	8	19	29	16	24	23	15	15	11
20-24	15	39	38	32	38	48	41	41	31
Total	23	58	67	48	62	71	56	56	42
	PERCENTAGE OF ALL DEATHS OF PERSONS OF SAME AGE AND SEX								
Males									
15-19	4.5	4.4	8.3	6.8	7.4	9.7	7.7	8.8	8.3
20-24	8.0	7.8	10.0	12.0	13.4	14.0	15.8	16.5	17.4
Total	6.3	6.1	9.2	9.5	10.7	12.0	12.1	13.0	13.5
Females									
15-19	4.3	6.6	7.8	5.5	7.5	7.6	5.4	5.3	4.2
20-24	7.3	14.6	10.8	11.1	11.7	13.8	12.1	13.4	10.1
Total	5.9	10.5	9.2	8.3	9.6	10.9	9.1	9.5	7.4

Source: Australian Bureau of Statistics (1985), *Australia's Youth Population, 1984: A Statistical Profile*, Australian Bureau of Statistics, Canberra.

Whilst this trend of increasing suicide amongst youth (particularly males) is found in virtually all westernised societies, it is once more a disturbing trend, indicative of a society which is failing its young people in significant respects.

Wilson (1984) found, in a survey of secondary school students, that one in ten claimed to have attempted suicide at some stage in their lives; whilst over half of his sample of alienated juvenile delinquent youths had done so. Even allowing for the profound methodological problems in this kind of self-report study, such findings demand our attention. After an exhaustive case-study analysis, Wilson concludes:

> The reasons for suicide, then, which stem from the macrocosmic view of the individual's circumstances, are tied up with unemployment, adolescent powerlessness, drug use and lack of social and group cohesion.

When it is understood that the same factors which engender crime also engender self-destruction, compassion becomes more apposite than condemnation.

Drug abuse also is to some extent a function of alienation. Drug abuse, as mentioned above, does not merely manifest itself as criminal conduct but also in other self-destructive forms, as shown in Table 7.

The slight recent improvements in these figures are welcome to Australian authorities. To some extent, they probably represent a response to sustained publicity and educational campaigns which have been conducted in the last decade, as well in the case of road accidents as reflecting law enforcement campaigns. Nevertheless, whilst alienation persists, there is a point beyond which socially deleterious and self-destructive drug abuse patterns will not be able to be significantly reduced.

Another possible symptom of youth alienation is vandalism. A recent Australian study (Patience, 1984) has lent support to this perception. The research in question focused on two groups in two regions of Adelaide. The first group consisted of those who had come before Juvenile Aid Panels (a diversion program available for suitable offenders), and the second of those identified by street-workers (youth social workers) as having committed relevant offences even though not having been apprehended for them.

TABLE 7
DEATHS OF PERSONS AGED 15-24 ESTIMATED TO BE DRUG RELATED: AUSTRALIA

TYPE OF DRUG AND CAUSE OF DEATH	MALES 1980 %	MALES 1981 %	MALES 1982 %	FEMALES 1980 %	FEMALES 1981 %	FEMALES 1982 %
Alcohol						
Motor vehicle accidents	75.3	74.5	78.2	59.0	62.2	68.2
Suicide	6.7	7.2	8.3	5.4	5.8	4.6
Homicide and injury purposely inflicted by others	1.4	1.7	1.8	5.4	3.1	3.1
Other Causes	3.5	3.4	3.2	3.8	1.4	2.7
Total	86.8	86.8	91.5	73.6	72.5	78.6
Other drugs (excluding tobacco)						
Drug dependence	3.2	5.6	2.9	6.2	6.2	7.1
Accidental poisonings by drugs, medicaments and biologicals	3.3	2.4	2.3	6.2	4.1	2.7
Suicide by solid or liquid substances	6.1	4.7	3.4	12.0	16.6	11.5
Other causes	0.6	0.5	—	1.9	0.5	—
Total	13.2	13.2	8.5	26.4	27.5	21.4
All drug related deaths	100.0	100.0	100.0	100.0	100.0	100.0
All drug related deaths						
Numbers	690	660	620	210	190	180
As a proportion of all deaths (per cent)	36.5	36.0	32.5	33.6	32.8	32.0

Source: Australian Bureau of Statistics (19850, *Australia's Youth Population, 1984: A Statistical Profile*, Australian Bureau of Statistics, Canberra.

The conclusions of the study were as follows:

> All of the subjects identified telephone booths, schools, street signs and windows (shops and private homes) in that order, as the most likely targets of vandal activity. All were seen as relatively 'anonymous' targets with no immediately obvious owners who would be personally affronted or inconvenienced by vandal activity . . .
> Overall, the subjects seemed to see wilful damage to public property, or to the property of unknown private persons, as somewhat insignificant. Because there was, in most cases, no personal identification with the things being vandalized, the subjects felt very little inhibition at the time of the offences.

However, the study concluded that this sort of conduct — which comparatively speaking is far less self-destructive than the other forms of behaviour considered in this section — arose more out of blocked opportunities and frustration than from fundamental alienation: 'the subjects have internalised society's goals; they are simply denied access to the normal paths for achieving them'. More specifically:

> The first and most overwhelming impression gained from reading through the transcripts and listening to the tapes is the remarkable orthodoxy of the attitudes towards parents, homes, schools, police and society as a whole. What is abundantly clear is that these young people are not, by any stretch of the imagination, in some full-flighted revolt against the prevailing norms and values of society (Patience, 1984).

Nevertheless, frustration is on the same continuum as alienation. It represents, therefore, a statement about adult ordering of the youth world as much as a statement about youth propensity for crime.

At this point — that of the manner in which adults have ordered the world — one comes to the single most alienating factor, the source of unparalleled despair and sense of powerlessness amongst modern youth. This is, of course, the threat of nuclear war — a war which, if it happens, will cause not only death but the very end of life on Earth. Nothing in the history of mankind is comparable to the experience of living in such a shadow. Youth is particularly affected by it. Over the years, various surveys have consistently shown a high level of expectation — of the order of 70 per cent of young people — that nuclear war *will* occur during their lifetime. *Extermination has become an integral aspect of youth culture* — expressing itself in songs, graffiti, jokes, clothes, life-style, and above all in a sense of alienation.

This leads to the question of the role of the media, particularly in relation to youth alienation. The first point which must be made is that no criticism whatsoever can be directed at the media in a free country for discussing and exposing matters which are in themselves liable to alienate youth. Unemployment is a fact of life; so is the youth culture of exterminism; so are drugs. Such matters must be addressed by press, radio, television, pop songs, video-disc, and so on. Having said that, it should be clearly stated that media presentations of reality are not, in Australian experience, uncritically absorbed, and that direct experience and peer-group perceptions are at least as important even in areas to which the media devotes saturation coverage (O'Connor, 1981). The influence of the media, though very great, can in other words be exaggerated.

A closely related question, to which the various regional meetings and the Beijing Interregional Preparatory Meeting devoted a great deal of attention, is whether media presentation of violence, pornography and crime is itself a direct criminogenic influence upon youth. The Australian expert view, expressed at the Beijing Conference, was that 'the most generous evaluation one can make of the research is that it is ambiguous. The author's personal view is that it has in fact failed to show a direct causal relationship between television-watching habits and real-life violent conduct. However . . . if violence is not positively anti-social in the way suggested, it is certainly not pro-social' (Harding, 1984).

At the present time, Australia has been examining, through Parliamentary Select Committees, the whole question of the regulation of video-material, particularly pornography and violence. Preliminary recommendations have been made to limit the availability of such materials. However, it is true to say that these recommendations have not really been based on evidence that such material causes anti-social behaviour. These preliminary recommendations are now under further review.

The Australian view, then, is that whilst there may be proper reasons for regulating the media — reasons which can be fully debated in a free society — a supposed direct criminogenic effect upon youth is probably not one of those reasons. Indeed, one could say that other abuses of taste and truth by the media put this issue into the shade: for example, the explosion of disinformation (propaganda) and anti-information (advertising); massive invasions of privacy; transnational ownership patterns leading to cultural colonialism. Australia is fortunate that, thus far, it has only been partially affected by these phenomena.

The final point which should be made about the media is its exaggeration of youth crime. Cohen's classic British study, *Folk Devils and Moral Panics* (1973), has never been bettered in documenting this; his insights are applicable to Australia also. A research project concerned with police and media behaviour at the annual motor-bike races at the town of Bathurst, New South Wales, which not infrequently lead to some degree of conflict, is currently in progress, and may be expected to throw some contemporary light on the matter.

In summary of this section, it is the Australian view that youth crime, which has always been exaggerated by adults, does not in any way amount to a crisis. The causes are so profound and far-reaching, the factors leading towards alienation so strong, that it is astonishing that the amount and the seriousness of youth crime is not in fact much greater. In this regard, the young generation are indeed a credit to themselves and deserve our approbation.

RESPONSES TO YOUTH CRIME

Responses are of three main kinds: research, policy development and implementation, and new modes of legal intervention. Each bears upon the other, just as the factors associated with youth crime bear upon each other.

Unemployment

Mukherjee's recent research has already been referred to on page 100. In addition a wide-ranging general research project upon the relationship between unemployment and crime is currently being carried out in South Australia. Also, the Criminology Research Council has recently granted funds for a study of crime prevention strategies for services for unemployed youth. The services in question are the Commonwealth Youth Support Scheme, welfare rights groups, youth drop-in centres and refuges. The perception has been that 'official' studies and strategies have directed themselves exclusively at labour-market questions, and that an opportunity is thus being lost to develop crime prevention policies *relevant to ongoing unemployment*. The results of this research are expected to be available in early 1986.

Labour market strategies should not, of course, be ignored. On the contrary, the unemployment/alienation link is so strong that they are of prime importance. In 1983 the Commonwealth Government commissioned a national study of such strategies. The *Report of the Committee of Inquiry into Labour Market Programs* — the Kirby Report — became available in January 1985.

The Kirby Report was critical of the present proliferation of schemes for youth employment and also of the fact that they were, for the most part, divorced from meaningful training. Government-sponsored youth employment schemes tended to be 'make-work' and to lead nowhere, and were perceived by youth in those terms. A new employment and off-the-job training scheme has been recommended, with a target of 75,000 to 100,000 training places by the end of 1988. 'The target group must include both the employed and the unemployed because . . . many junior jobs offer essentially unstable employment and few training opportunities, and a large proportion of young people experience at least some unemployment during their early work career'. The Australian Government is at present considering its response to these proposals.

Kirby also commented adversely on the present trend towards 'credentialism' — a process which 'occurs when the qualifications needed for entry to an occupation are upgraded without any commensurate change in the skill and knowledge requirements of the job'. Such a process blocks off opportunities to those who are low achievers in standard educational terms — yet who might by virtue of other characteristics be quite suitable for participation in the particular employment.

Education

This leads on to the profound re-evaluation of the Australian education system which is currently in progress and to which the Kirby Report has made a contribution. That Report states: 'It is vital that the present efforts to make school more attractive and relevant to young people be maintained, and that the Government's aim of increasing participation, particularly among the disadvantaged, continues to be strongly supported. Traineeships (of the sort recommended above) should give an added dimension to the education and training options of young people rather than replacing existing ones' (Kirby, 1985).

The truancy report (Coventry, 1984) referred to previously also throws the onus upon schools to make their curricula and programs more attractive and relevant to young people. The researchers state:

> In sum, these data suggest that the target for truancy prevention strategies should be the school and not the family; schools are also more amenable than the family to truancy policy initiatives. The need to focus on schools in preventing or reducing such behaviour is a conclusion supported by the student-conducted case studies. Each case study identified the role of school practices and school curricula, rather than the family, as significant 'causes' of truant behaviour.

Wilson (1984) cites the views of chronic truants to the same effect:

As recommendations they opted for changes to school curricula so that more special skills courses could be offered. These would be designed to prepare them for a trade in the workforce as well as other living skills courses. This implies that schools should offer studies which technical colleges currently do or that students could be accepted into colleges at a younger age. What was critical was that the students should receive some form of 'junior trade ticket' rather than a more general academic qualification on completing the required years in secondary school.

Governmental initiatives are, in fact, beginning to take account of the anomaly that much of the secondary education system has traditionally been geared to the supposed needs of the 10-15 per cent of Australian youths who ultimately undertake tertiary education. The most far-reaching review so far has been the Beasley Report in Western Australia (1984). Already some of its recommended changes are in the process of implementation, in particular its scheme for bringing flexibility to the final two years' curriculum so that less academic subjects are regarded as no less meritorious — equal but different.

There is, of course, a dilemma or paradox here — that Australia's future industrial and commercial needs are likely to be such that high technology skills will be needed in abundance, skills that have in the past tended to be associated with high levels of traditional educational attainment. In partial recognition of this paradox, the Australian Government has recently made a massive investment in computer-hardware for Australian schools, with matching teaching resources.

In summary, one can say that the problems and issues concerning youth education have now begun to be diagnosed and acknowledged. The mainspring for this has been concern about labour market economics. However, many researchers have explicitly recognised the alienation/crime aspects of these issues, which are in any case likely to be improved somewhat as a by-product of the economic forward planning.

Family Breakdown

This seems at present to be endemic, though in the longer term the pendulum could swing back. Meanwhile, governments must do what they can to cushion young people from what, on balance, must be regarded as negative effects.

It is notorious that female single-parent families are amongst the most disadvantaged in the Australian community, with some 47 per cent currently estimated to be living below the official poverty line. Bearing in mind the stresses which poverty creates and the preferred view previously mentioned on page 102 that it is household stress rather than family breakdown *per se* that is the primary factor associated with alienation and crime, it is clearly desirable to provide for adequate income maintenance for such families. To the extent reasonably practicable the Australian Government has sought to do this. However, more remains to be done.

Although the nuclear family situation may be at risk for 40 per cent of marriages, Australian Welfare Departments seem in no doubt that surrogate families are often beneficial for young delinquents. In at least two States — Tasmania and South Australia — interesting innovations have been made, and are in the course of evaluation. In South Australia the Community Welfare authorities initiated in 1979 an Intensive Neighbourhood Care program (INC). The program involved placing known delinquents who would otherwise be the subject of secure care with hand-picked two-parent families for a period of approximately six months after offending:

> The programme aims at reducing re-offending, keeping the child out of institutions, preventing harmful peer group contact but maintaining close ties with the child's family and improving the child's behaviour, self-image and attitude to society. INC aims to be an alternative to secure care and not an alternative to not sentencing or deferred sentencing or other lesser forms of sentencing (Rungie and Burns, 1984).

After three years operation, this scheme was reviewed with funds made available by the Criminology Research Council (Rungie and Burns, 1984). The researchers analysed a total of 219 placements. Their conclusions were strongly supportive:

> The research clearly indicates the INC is not being used as an alternative to lesser forms of sentencing. In general INC cannot be accused of causing individuals to be sentenced where they would not be if the programme did not exist.
>
> On the contrary, the research indicates that INC as being used for cases with a greater level of

difficulty than was originally intended. The research indicates that possibly as high as 3 in 4 INC placements have committed more than one previous offence, and a similar number has had secure care experience through remand or detention.

The survey results have indicated that in the majority of cases the programme is seen to be instrumental in improving the behaviour of the INC child, specifically there is an improvement in interpersonal skills and coping skills.

The programme is perceived by most of the INC parents involved to be one in which it is possible for them to foster a loving relationship. The programme is generally characterised by positive dispositions. This was evident in the high degree of support which was offered to the research. The INC parents see themselves as being individuals who are in a position to contribute to young people with difficulties and that they have an understanding of these difficulties . . .

The study has covered offenders placed in INC. It has indicated that the enthusiasm shown by the Department and INC families for the programme is justified. Consideration should be given to undertaking an audit to establish the number of young offenders not in INC who would benefit from the programme now.

Encouraged by this review of the South Australian experience, Tasmania has just embarked upon an almost identical scheme for young people between the ages of 12 and 16, under the title Special Contract Care. Obviously, each of these schemes is essentially a refinement of standard foster-care schemes. But an important new dimension has been added by concentrating on the difficult cases, by hand-picking and training the parents, by providing realistic financial support to the parents, by stressing the desirability of maintaining contact if possible with the natural parent or parents, and finally, by providing stong support from a team of specialist social workers. Such schemes, then, are very expensive, in terms of human resources and funds. Their very existence represents an important statement as to relative priorities in the Australian welfare area.

Symptoms of Alienation: Drug Abuse

In April 1985, the Prime Minister of Australia presided over a National Drugs Summit meeting. It had been preceded by a series of specialist meetings involving officials, experts, police, health Ministers, and so on. This series of meetings proceeded from a recognition of, and deep concern about, the destructive influence that hard drugs are having upon Australian life:

> The Conference noted that the cost to the Australian community of drug abuse is high whether measured in terms of death and illness, wasted human potential, violent and property crime, loss of production or social misery. It was recognised that drug abuse is a complex problem and that there are no simple or quick solutions. The Conference agreed that a sustained effort would be required over a period of years (Official Press Release).

The Summit Meeting agreed in broad principle upon a series of additional treatment, rehabilitation and law enforcement programs. With regard to drug abuse by young people, the emphasis will very much be placed upon education and awareness campaigns:

> The Conference recognised, however, that the drug problem will not be effectively tackled unless there is success in reducing the demand for drugs. Every effort will be made to convince young people of the dangers of involvement with drugs. Greater assistance and support will be provided for parents, educators, community groups and others who work with and counsel young people. It was also agreed that both the quality and the quantity of treatment and rehabilitation programs for those already suffering from drug addiction should be improved.
>
> Special attention will be given to the needs of particular sectors of the community. The so called hard drugs pose a threat to young people generally (Official Press Release).

It remains to be seen how successful Australia will be at translating these statements of intent into effective programs. As indicated on page 103, there is a point beyond which awareness campaigns are unlikely to be effective. Moreover, a campaign which concentrates so strongly on illicit drugs and yet remains ambivalent about licit drugs has inbuilt limitations. But at least, as with education, the issues have been diagnosed and are being addressed.

Youth Participation in Planning Youth Programs

Alienation — a sense of being excluded from, and irrelevant to, decisions directly affecting one's own destiny — obviously can be allayed to some extent by a deliberate policy of

involvement of the alienated group in decision-making. Recognition of this fact has, perhaps, been somewhat slower in the area of youth politics than, say, in industrial relations or some types of Australian broadcasting or parent involvement in educational policies or health-care planning.

However, the tide seems now to be flowing in this direction. Researchers have, predictably, stimulated this process; for example, Coventry (1984) and Patience (1984) and Wilson (1984), in their research studies referred to above, have each stressed youth input as being essential to effective planning in relation to the youth phenomenon under review. This evolution of approach is epitomised by the procedures followed in two recent major inquiries: the *Carter Review of Welfare and Community Services in Western Australia* (1984) and the *Carney Inquiry into Child Welfare Practice and Legislation in Victoria* (1985). Each inquiry sought wide-spread community input, and each went out of its way to elicit the views of youth generally, and more particularly, youthful clients. This shows a degree of sense and sensitivity which has not always been present in the past. The climate is certainly changing.

Earlier, before the Carter Review, Western Australia had set up a Youth Task Force. One of its principal recommendations had been to set up a Standing Co-ordinating Committee on Youth to overview the implementation and development of all policies relevant to youth welfare. Predictably enough, the usual sorts of officials would be members of the Committee: representatives of Government Departments, of the business sector and of voluntary organisations. But in addition 'three young people' were to be members — a new and welcome departure. At the time of writing the Youth Task Force Report was still under governmental consideration.

In the area of education, the Australian Government marked International Youth Year by allocating funds to various youth groups to enable them to contribute to such matters as curriculum development, the improvement of school recreational facilities, and so on. It is not always easy to go beyond the stage of tokenism in such matters. But Australia seems to be committed to this new approach. It is certain to be at least marginally efficacious in allaying some of the factors underlying the alienation of segments of the youth population.

Perhaps two final words about cures for alienation and crime are in order. The first is of course a truism: there is no substitute for growing up. For the majority of young offenders the 25th birthday is a turning-point — even if they have been an agony to themselves and to others in getting there. The bulk will soon join the ranks of those who condemn youth crime, fashions, pop-songs, hair-length, inability to defer self-gratification, driving habits, morals, indifference to the work-ethic and general lack of proper respect for adult standards. In these perceptions they will be abundantly fortified by the media.

Yet this human tragi-comedy may not be quite as neatly symmetrical now as it has been in the past. The degree of alienation is possibly more profound than it previously has been, so that it is not enough to merely 'sit it out'. It does appear that the adult world must build into its structures and procedures, as an ongoing feature, concern about youth alienation. In much the same way, Australia has now built into its social structure responses to the movements for equality of race, sex, religion, and so on.

The second is more fundamental and risks, in an age of dour pragmatism, being characterised as fanciful. At a time of alienation, it is inspiration which is needed. Can the alienated generation be mobilised, can their attention be captured and held by long-term social objectives?

Australia could, perhaps, build upon its unique advantages as a developed country occupying a strategic position in the increasingly important Asia/Pacific Basin/Antarctica area. The area is one fraught with natural disasters on a recurrent basis — flood, tidal waves, hurricanes, fires. At such times, charity cheques, whilst welcome, do not in themselves feed anyone or provide shelter or re-start electrical generators or clear debris from streets. What the Region needs is a quick-response team made up of trained and skilled personnel and backed up by appropriate machinery, mobile kitchens, medical aid, tents, etc.

In this context, Australia's youth, particularly but not solely the unemployed, could possibly be mobilised. This is not the occasion on which to attempt to develop any detail for such a proposal. Suffice to say that Australia's youth — in common with the youth of the world — possess a degree of altruism and goodwill which is not being fully tapped and utilised. Altruism and alienation are two sides of the same coin.

Legal Responses

The most notable feature has been the move towards decarceration of juveniles; this is now the prevailing Australian policy. The most populous State, New South Wales, has reduced its incarcerated juvenile population by 50 per cent in one year, from 600 to 300; Victoria is committed to trying to do so; Western Australia halved its population between 1982 and 1984; Tasmania and South Australia have invested heavily in the diversion schemes described on page 107 above.

With regard to policing, the spread of community policy — preventive policing whose *modus operandi* involves positive contact with the policed community or sub-group, whether it be homosexual, Aboriginal, immigrant or youth — is a progressive move. The enhanced role of juvenile aid panels in the last few years has also worked so as to improve police/youth relations by bringing flexibility into the criminal justice system.

In court, there has been a growing awareness of the need for procedural due process in youth cases no less rigorous than in adult cases. Specialised youth legal aid schemes have been implemented — for example, in Western Australia — and reports such as Carney (1985) have stressed the need for full and separate legal representation of young people. With regard to disposition, a wider range of community-based sanctions is now available, most notably that of the community service order for juveniles. One could say, surveying such developments, that in Australia our bark about youth crime is starting to become worse than our bite.

CONCLUSION

Australia is concerned *for* youth, more than *at* youth. The trends of the last five years or so, documented in this paper, demonstrate a recognition that understanding youth dilemmas must replace moralistic condemnation of youth conduct. Indeed, because of their economic vulnerability and political powerlessness, young people must be positively nurtured into contributing to their own destiny. Alienation and marginalisation must be forestalled or minimised, so far as possible.

Yet when the line of anti-social conduct is crossed there must be sanction and guidance; it is false compassion to imagine otherwise. Even so, it is crucial to the maintenance of Australian values that such sanctions only be imposed according to rigorous due process.

As pointed out at the beginning of this paper, it is erroneous to regard youth crime as a unitary phenomenon. Nevertheless, all aspects of youth crime have this in common — that they require an integrated approach, taking account of the impact of an enormous range of social and cultural phenomena. This approach not only encompasses but also goes far beyond the limited concerns of the justice or legal system. The Carney Report (1985) recently reflected this view by proposing a comprehensive, cradle-to-adulthood *Charter of Rights* for young people: see Appendix 1.

Youth crime will continue to be a source of concern in Australia — not simply because it is committed by youth but because crime is always a source of concern. But it must not be permitted to become a source of alarm, thereby provoking over-reaction and counter-productive responses. The signs are that today's Australian youth will grow up to be citizens at the very least as law-abiding, peaceable and responsible as their parents.

CHARTER OF RIGHTS

The Right to a Protective Environment	I	Every child has a right to an environment free from exploitation, physical abuse and degrading treatment.
The Right to a Family and Family Support	II	(1) Every child has a right to a family and family relationships. (2) The State has a duty to provide resources which complement, supplement and support the family in ensuring this right.
The Right to Education	III	(1) Every child is entitled to receive an education provided by the State which will enable the child to develop her or his individual abilities and judgment and to become a useful member of society. (2) Every child is entitled to have full opportunity for play and recreation which will enable the child to develop her or his abilities and judgment and to become a useful member of society.
The Right to Health and Social Services	IV	Every child has the right to adequate health services and social services to promote her or his mental, physical and emotional development to its fullest potential.
The Right to Protection in Employment	V	Every child has the right to be protected from engaging in any occupation or employment which would prejudice her or his health or education or interfere with her or his mental, physical or moral development.
The Rights of the Disabled	VI	(1) Every disabled child has the right to respect for her or his human dignity. (2) Every disabled child, whatever the origin, nature and seriousness of her or his handicap and disability, has the same fundamental rights as other children of the same age. (3) Every disabled child has the right to live with her or his family and to participate in all social, creative and recreational activities. (4) Where a disabled child must live away from her or his family because of her or his condition or to allow her or his development to be realised to its maximum potential, the child has a right to an environment and living conditions which are as close as possible to those of the normal life of a child of her or his age.
The Right to Cultural Identity	VII	Every child has the right to have her or his cultural identity recognised including the right to: (a) a name; (b) an identity; and (c) access to services which are culturally appropriate.
The Right to Participation	VIII	Every child and the parents of the child have the right to be heard when a decision affecting the rights or interests of the child is being made by or on behalf of the State or a public authority or by a court.

The Right to Information	XI	Every child and the parents of the child shall have the right to be given the reasons for any decision taken by or on behalf of the State or a public authority which affects or will affect the rights or interests of the child.
The Right to Advocacy/ Counselling	X	Every child and the parents of the child have the right to consult with and be counselled by an advocate when any matter arises which affects the rights of the child.
The Right to Legal Assistance	XI	Every child and the parents of the child have the right to independent legal assistance before the courts especially in relation to decisions affecting guardianship, custody or the status of the child at law or where there is a difference of opinion between the child and her or his parents.
The Right to Review/Appeal	XII	(1) Every child and the parents of the child have the right to challenge a decision made by or on behalf of the State or a public authority concerning the rights of the child which they believe was wrongly made. (2) Any person who has a responsibility regarding a child under any law has the duty to inform the child and her or his parents of their rights set out in this Act, and in particular the right to seek review of and to appeal from decisions affecting the child.
Criminal Investigation Rights	XIII	(1) A child accused of committing an offence should be proceeded against by way of summons rather than arrest other than in exceptional circumstances. (2) Where a child is arrested and taken into custody: (a) she or he shall be afforded adequate time and facilities to communicate with an advocate and to obtain legal advice; (b) she or he shall not be compelled to make any statement which might incriminate her or him; and (c) she or he shall be brought promptly before a court; (d) she or he shall be informed of the rights referred to in paragraph (a) and (b) and (c). Bail (3) A child taken into custody shall be entitled to bail in the same manner as an adult. Detention pending a hearing. (4) A child detained in custody prior to the determination of the charge against her or him has the right to be treated with humanity and respect for the inherent dignity of the human person. (5) A child detained pending a determination of the charge against her or him has the right to be segregated from children who have been convicted of an offence and shall be subject to separate treatment appropriate to her or his status as an unconvicted person.

Criminal Process Rights

XIV (1) Any child charged with committing an offence shall be entitled to a trial within a reasonable time.

(2) Any child charged with an offence shall have the same rights at law as would an adult charged with the same offence.

(3) In the determination of any criminal charge against a child, she or he shall be entitled:

(a) to have independent legal assistance assigned to her or him;

(b) to have the free assistance of an interpreter if she or he cannot understand or speak the language used in court.

(4) In the determination of any criminal charge against a child the procedure shall be such as will take account of the child's age and understanding.

(5) A sentence imposed on a child shall be determinate, precisely framed and not disproportionately harsh.

(6) A child who is in custody shall be entitled to:

(a) have regular reviews made of

(i) the need to maintain custodial care of the child; and

(ii) the conditions of custodial care of the child; and

(b) appeal to an independent body against any decision made as a result of such a review.

Institutional Rights

XV Every child admitted to substitute or custodial care (whether by being admitted to away from home care or by the order of a court) or residing in an institution because of a disability

(a) shall have the right to the care and treatment that a good parent should provide; and

(b) without limiting, any other rights of the child, shall have the right to privacy and confidentiality, to visits from family and friends and to participate in decisions affecting her or him.

(c) shall have the right to be placed in the form of care most appropriate to her or his age and legal status.

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FORMULATION AND APPLICATION OF UNITED NATIONS STANDARDS AND NORMS IN CRIMINAL JUSTICE

TOPIC V

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Canberra, 1985

In the preparatory documentation for the Seventh United Nations Congress available at the time of writing this paper, three central themes stand out, the implementation of existing standards and norms in the criminal justice, the development of new standards and norms and the issue of capital punishment.

The authors of this paper have focused attention on the first of these themes, the implementation of existing standards and norms. Discussions at the Congress of the development of new standards and norms will be concentrated very much on an examination of draft international instruments that have been circulated and the emphasis will thus be on drafting detail rather than on the discussion of broad issues. The third theme, that of capital punishment, is of concern to Australia as an international question but not as a local issue, the punishment having been abolished in this country. The authors have therefore directed attention to issues of importance to Australia on the first theme.

Peter Loof has provided an Australian approach to mechanisms for the implementation of human rights. Those mechanisms have been designed specifically for the implementation of the main instrument relevent to this topic, the International Covenant on Civil and Political Rights, but are relevant to the full range of United Nations instruments on criminal justice, whether in the form of treaties or statements of principles and guidelines.

David Biles has written more specifically on the implementation of the Standard Minimum Rules for the Treatment of Prisoners in Australia and he has provided a synthesis of the responses of the Australian States and the Northern Territory of Australia to the United Nations questionnaire on the Rules. He has also provided insights into the difficulties inherent in the approach of a federal system to this task, and a commentary on general issues and problems that arise in the delineation and implementation of the Rules and methods of overcoming them.

CONTENTS

MECHANISMS FOR THE IMPLEMENTATION OF HUMAN RIGHTS

Introduction

The Constitutions of the Commonwealth of Australia and the Australian States do not contain a comprehensive statement of guarantees of basic rights. In Australia, norms and guidelines in criminal justice are protected by the common law, specific statutory enactments, judicial procedures and guarantees and other processes referred to in more detail below.

The incorporation of guarantees of basic rights in the Australian Constitution is a longer-term objective of the Australian Government. In the meantime, a variety of specific laws have been enacted and a Human Rights Commission has been established to examine complaints of infringements of basic rights and undertake promotional functions. In addition, consideration is being given to the enactment in federal legislation of an Australian Bill of Rights based on the International Covenant on Civil and Political Rights.

The following principles and mechanisms have emerged in the development in Australia at the federal level of measures for the implementation of human rights:

1. Legislation is required to supplement common law guarantees of human rights.
2. Effective remedies are required for the implementation of human rights.
3. Formal administrative machinery should be established to investigate infringements of human rights on a systematic basis and attempt to achieve a settlement of issues by conciliation.
4. Facilities are required to foster programs of education and research and other programs to promote human rights.

The approach that is taken is that it is desirable for all of these principles to be brought into operation if maximum results of a long-term, as well as short-term, nature are to be achieved in the implementation of human rights.

In relation to the first principle, both general legislation establishing general guarantees and specific and detailed legislation are required to supplement the common law which is deficient in the protections it affords to human rights. Second, the utilisation of a comprehensive framework of practical and effective remedies is important, as legislative guarantees, apart from their value as an educative mechanism, are of little value unless they can be given practical expression. Third, legislative provisions and the provision of effective remedies should be supplemented with administrative machinery established to enable infringements of rights to be investigated and conciliation processes to be employed on a systematic basis. The utilisation of processes of mediation and conciliation is often a more satisfactory way of tackling individual infringements of human rights than reliance on legal processes. The fourth principle relates to the important role to be played by programs of education and research and other programs to promote human rights. This approach recognises the importance of programs designed to change attitudes that result in the denial of rights and to mobilise public opinion for the promotion of human rights, and the need for this long-term approach to supplement action on individual complaints.

In the case of the International Covenant on Civil and Political Rights and its Optional Protocol and the Convention on Torture, which are the only instruments of those raised for consideration that have treaty status creating international legal obligations upon States Parties, each of the four principles referred to above plays an important role in the implementation process. In relation to the remaining instruments or draft instruments encompassed in this topic which do not provide legally binding obligations, the focus of attention falls largely on the implementation processes referred to in the third and fourth principles set out above.

Role of legislation

The first of the implementation mechanisms referred to above, the need for legislative protections of human rights is of central importance. The common law is deficient in providing a comprehensive system for the protection of human rights. Legislative provisions therefore provide important safeguards to supplement the common law, where common law guarantees do not exist or do not operate satisfactorily. While legislation establishing general guarantees is of

great importance, specific and detailed legislation is also necessary to deal with problems relating to human rights with a particularity and comprehensiveness that cannot be achieved by means of the development of the common law or by means of judicial interpretation of general guarantees.

There are also policy aspects to the role of legislation. Statutes and Charters proclaiming fundamental rights provide enduring monuments both as a basis for national aspirations and as a refuge in times of crisis. Legislative statements of rights have great educative value. The embodiment of rights in legislative form can make people more aware of their rights and make infringements more obvious and conspicuous. Two issues arise. First, the role of general provisions providing general guarantees, such as a Bill of Rights, and, second, the role of specific legislation dealing with matters of detail.

The question arises whether human rights should be granted by means of a Bill of Rights that is either entrenched in the national constitution or incorporated as part of domestic law by national legislation. Opinions have often been divided on the issue whether basic rights are best protected by general guarantees. Proponents of Bills of Rights point to the inadequacy of the common law. Thus it is pointed out that the common law provides no guarantees of the rights to freedom of expression, movement or peaceful assembly or the right to a speedy trial, legal aid or many other rights in the administration of criminal justice. Moreover, even where common law or statutory remedies exist, these can, in the absence of a Bill of Rights, be set aside by parliament or by subordinate legislation.

It is also pointed out that parliaments have been in default in providing, on a comprehensive basis, specific statutory remedies to repair deficiencies in common law protections of rights. As stated by one writer:

> A Bill of Rights is an opportunity for developing law and practice beyond what would be likely to occur if left to the executive and the legislature. The vested interest of all government is to preserve the normal ways of doing things and to resist pressure for change. Government, of whatever political complexion, is usually moved to change things only when the pressure to do so becomes greater than the convenience of leaving things as they are. Legitimate pressure can be generated through litigation on a Bill of Rights (Zander, 1975, p. 23).

It would, in any event, be impossible, in practice, for parliament to deal in specific legislation with all of the situations or problems that involve an infringement of basic rights.

Bills of Rights provide protection against legislative or administrative interference with basic rights and introduce comprehensive provisions that operate as a yardstick against which legislative or administrative intrusions on basic rights can be measured. A Bill of Rights frees citizens from unprotected reliance on 'legislative and judicial self-restraint' and gives them a firm legal basis on which they can go to the courts and require positive protection of their rights or on which they can resist the invasion of those rights by others (Evans, 1973, p. 11; Evans, 1983a, Evans, 1983b). Bills of Rights provide the individual citizen with a positive and public declaration of the rights guaranteed to them, thus complementing the traditional 'negative' definition of common law rights. Bills for Rights thus provide a positive means of guiding the actions of legislators, administrators and public officials.

Proponents of Bills of Rights also emphasise its educative value. Thus, it has been said:

> A Bill of Rights is a major educative force. A Bill of Rights by no means guarantees either the establishment or the enforcement of human rights... [In some countries] Bills of Rights... can be mere scraps of paper. On the other hand, there can be little serious question that a Bill of Rights may play a major role in raising the level of consciousness about human rights... [As Harold Laski wrote] Bills of Rights are... a check upon possible excess in the Government of the day. They warn us that certain popular powers have had to be fought for, and may have to be fought for again. The solemnity they embody serves to set the people on their guard. It acts as a rallying point in the State for all who care deeply for the ideals of freedom (Zander, 1975, p. 25).

Those who argue against Bills of Rights submit that the practical effect of a Bill of Rights is to transfer what is really legislative power from parliament which is answerable to the people, to the courts which are not. A Bill of Rights is necessarily couched in general terms, many of its provisions being no more than the articulation of social ideals. The determination of what those ideals mean in terms of concrete realities becomes a matter for the courts. The consequence is that the courts are called upon to decide questions of great political and social importance without reference to the wishes of the people. The view is put that courts are not equipped to

decide such issues, and that such issues should not be decided in a democracy by institutions which are required not to be responsive to public opinion. It is further argued that to introduce a Bill of Rights where none already existed would throw doubt and uncertainty on the validity of existing law that would be superimposed on uncertainties presently experienced in ascertaining the true rule of law to govern a particular situation (King, 1974; Hailsham, 1976; Campbell; 1970).

Opponents of Bills of Rights submit that it would be more satisfactory to deal with grievances by specific legislation of parliament than by a Bill of Rights cast in general terms. In this way, it is said, concrete problems can be addressed directly, rather than through general statements that might or might not be applied to the problems through judicial interpretation.

The view taken by the Australian Government is that Bills of Rights should be entrenched in national constitutions or enacted as legislation by national parliaments. During recent years, consideration has been given in Australia to the introduction at the federal level of legislation on the subject of civil and political rights. There has been common agreement on the need for legislative action for the protection of human rights. However, the legislation has reflected different approaches.

First, a 'Bill of Rights' approach was proposed in a Bill introduced in 1973, the purpose being to implement, by legislation of the Federal Parliament, the provisions of the International Covenant on Civil and Political Rights. The Bill, the Human Rights Bill 1973, provided that guarantees contained in the Covenant would be capable of enforcement in the courts. The courts were to have power to issue an injunction, set aside or vary a judgment, quash a conviction or direct a new trial, and award damages in respect of the loss suffered by an aggrieved person and the loss of dignity, humiliation and injury to the feelings of the aggrieved person. Traditional remedies were thus proposed to be supplemented with new remedies appropriate to infringements of human rights. The Bill also proposed the establishment of administrative machinery for the investigation of complaints and the utilisation of conciliation and educational processes. The Bill lapsed when Parliament was prorogued in 1974 and was not reintroduced.

After a change in government, it was decided not to introduce legislation providing for judicially enforceable guarantees. However, a Human Rights Commission was established by the Federal Government in 1981 to investigate and report on complaints of infringements of the Covenant at the federal level and report on the need for specific laws for the protection of rights.

With a further change in government, a 'Bill of Rights' approach is again under consideration. A proposed Australian Bill of Rights and legislation to strengthen the Human Rights Commission was prepared in 1983 and 1984 pursuant to a package of major human rights legislation announced by the then Australian Attorney-General, Senator the Honourable Gareth Evans, Q.C. Further work on these measures has been undertaken by the current Attorney-General and Deputy Prime Minister of Australia, the Honourable Lionel Bowen, M.P., with a view to introducing legislation in the Federal Parliament. The proposed Australian Bill of Rights has been drafted in succinct and accessible terms and with the objective of providing an inspirational and educational charter. Wide comment is to be sought on the proposed legislation before it is debated in Parliament.

Although there have been differences in views, since the introduction of the Human Rights Bill 1973, as to the desirability or otherwise of laws providing general guarantees, no dissent is expressed as to the importance of specific and detailed legislation which can deal with individual problems relating to human rights with a particularity and comprehensiveness that cannot be achieved by means of judicial interpretation of general guarantees. Detailed provisions relating to arrest, bail, criminal procedure and prison administration are examples of specific legislation that has been enacted in Australia.

The importance of the recognition of basic rights in the formulation and revision of the laws on particular matters is recognised in the *Law Reform Commission Act* 1973 of the Federal Parliament. That Act provides that, in the performance of its functions, the Law Reform Commission is to ensure that its recommendations do not trespass unduly on personal liberties and are consistent with the International Covenant on Civil and Political Rights. A number of references have been given to the Law Reform Commission that are relevant to the

protection of human rights. The Reports of the Commission on Complaints against the Police and Criminal Investigation are of particular relevance. Specific legislation has been enacted on the first matter and is under consideration in relation to the second.

Remedies

The second of the implementation mechanisms referred to above is the need for effective remedies in the implementation of human rights. As stated above, legislative guarantees, apart from their value as an educative mechanism, are of little value unless they can be given practical expression. Accordingly, guarantees of human rights, whether in the form of general constitutional or legislative provisions or contained in specific and detailed legislation, need to be supplemented with a framework of practical and effective remedies.

The International Covenant on Civil and Political Rights contemplates the availability of a range of effective remedies to give redress for infringements of the rights recognised in the Covenant. Remedies determined by legislative, judicial, administrative and executive authorities are referred to in the Covenant and in the United Nations debates preceding the Covenant. It is not possible within the scope of this paper to make a comprehensive analysis of the legislative, judicial and administrative remedies available in Australia to give redress for infringements of human rights in the administration of criminal justice or to canvass in detail the relative effectiveness of individual remedies. However, examples are provided of the range of remedies that are available and the areas in which existing remedies are being developed and expanded.

Examples of the safeguards in Australia for the protection of basic rights and remedies for violations of human rights in the administration of criminal justice (which include legislative, judicial, parliamentary, administrative and executive remedies as well as remedies utilising the pressure of public opinion) are as follows:

1. Legislation on specific matters, such as legislation relating to arrest, bail, criminal procedure and prison administration, and statutory offences relating to assault.
2. Common law remedies, such as apply to assault and battery and the civil actions for damages for the torts of assault and battery, false imprisonment, trespass and malicious prosecution.
3. The rule of law, pursuant to which everyone is entitled to equality before the law; the independence of the judiciary and the requirement of impartiality of judicial proceedings.
4. The Judges' Rules relating to the cautioning of persons in custody before taking statements from them; the right during a police interrogation to remain silent (subject to certain exceptions).
5. In criminal proceedings, the right to trial by jury for serious offences, to be presumed innocent until proven guilty, to have the burden of proof placed on the prosecution, to have guilt proven beyond reasonable doubt, and not to be punished more than once for the same offence or twice placed in jeopardy of being convicted; the exclusion from evidence of confessional statements not made voluntarily; the discretion of the court to exclude evidence obtained by illegal or improper means if its admission would operate unfairly against the accused; the rights of appeal against conviction and sentence.
6. The writ of habeas corpus, which enables a person, or someone on behalf of that person, to contest the validity of the person's detention in custody.
7. Judicial review of a decision on the ground that it is contrary to the principles of natural justice, an improper exercise of power or otherwise contrary to law; employment of the remedies of a declaration that the decision is unlawful, an injunction ordering or prohibiting a particular course of action, a writ of mandamus requiring an official to perform a duty, a writ of prohibition requiring a lower court or tribunal to cease proceedings, or a writ of certiorari to set aside the decision.
8. The availability of legal aid, subject to tests of means and needs.
9. The Australian system of representative and responsible government; the laws providing for the holding of free elections with secret ballot; Standing Orders and procedures of parliaments providing for the presentation of petitions of individuals, the submission to Ministers of questions, upon notice or without notice, and the debate of

grievances and matters of public importance and of special interest; the establishment of Standing and Select Committees of Parliament with wide powers of investigation; the role of the member of parliament as watch-dog on behalf of his or her constituents; the vigilance of the parliamentary Opposition.

10. The appointment of Ombudsmen, and similar officers; the appointment of Royal Commissions and other ad hoc commissions of inquiry.
11. Codes of conduct and disciplinary procedures with respect to police and prison officers and other public officials.
12. The freedom of the press, the activities of non-governmental bodies concerned with civil liberties and other aspects of public life, and the pressure of public opinion.

Notwithstanding the breadth of these factors, gaps arise in the protection of basic rights which call for the utilisation of specific legislation and the introduction of general guarantees. As has been stated, a Human Rights Commission has been established in Australia at the federal level with functions to assist in identifying deficiencies in laws and practices that may be inconsistent with the International Covenant on Civil and Political Rights.

The Human Rights Commission Act 1981, which established the Commission, provides that the Commission is to inquire into, and endeavour to settle, complaints of infringements of the International Covenant. If a settlement of a matter is not achieved, the Commission is to report to the Minister the results of its inquiries into violations of the International Covenant. The Act provides that, where the Commission finds that an act or practice is inconsistent with the International Covenant, it is to serve notice of its findings and recommendations on the person responsible as well as reporting on the matter to the Minister. The report to the Minister is to state whether the person responsible has taken or is taking any action as the result of the findings and recommendations of the Commission. The Act provides that the Commission may at any time report to the Minister on any matter arising in the course of its functions. The Commission is required to furnish an Annual Report, and this and every other report furnished by the Commission to the Minister is required to be tabled in Parliament. The reports of the Commission are thus given wide publicity.

The seeking of a remedy by an Ombudsman is also relevant. The office of Ombudsman has been established in the Australian States and in the Northern Territory of Australia, as well as by the Federal Government. The Ombudsman is empowered to investigate grievances by members of the public about administrative actions of officials of departments and governmental agencies. As with the Human Rights Commission, the strength of the Ombudsman's work lies in the independence and impartiality of the investigation. The findings of the inquiry are submitted in a report with recommendations for remedial action. Failure to act on a recommendation may lead to a report on the matter being tabled in Parliament.

Administrative machinery

The third of the implementation mechanisms listed above is the need for formal administrative machinery to investigate violations of human rights and undertake conciliation. As has been stated, in the development of measures in Australia for the implementation of human rights, it was thought that legislative provisions and the provision of effective remedies should be supplemented with administrative machinery established to enable infringements of human rights to be investigated, and conciliation processes to be invoked, on a systematic basis. The view has been taken that the utilisation of processes of mediation and conciliation are a more satisfactory way of tackling individual infringements of human rights than reliance on legal processes.

In this context, Australia has been supportive of resolutions adopted at meetings of the United Nations and subsidiary bodies calling for the setting up of national institutions for the promotion and protection of human rights. An example of such an initiative is Resolution 23 (XXXIV) of the Commission on Human Rights of 8 March 1978, which called, *inter alia*, for a seminar to be held on national and local institutions in the field of human rights which would suggest possible guidelines for the structure and functioning of national institutions.

This seminar, which was organised by the United Nations Division of Human Rights and held at Geneva from 18 to 29 September 1978, was an important development in the present context. The report of this seminar (United Nations, 1978a) sets out in detail guidelines for the

structure and functioning of national institutions on human rights.[1] The matters dealt with in the guidelines in relation to the functioning of national institutions may be summarised as follows:

1. The function of providing a source of relevant information for the Government and the people concerning human rights.
2. Assistance in the education of public opinion towards an awareness of and respect for human rights.
3. Making recommendations on matters referred to the institution by the Government and investigating complaints of violations of basic rights.
4. Advising on any questions relating to human rights referred to the institution by the Government.
5. Keeping under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights and submitting periodic reports to the Government.
6. Performing any functions submitted by the Government concerning the implementation of international conventions in the field of human rights.

In regard to the function of acting as a source of relevant information, the guidelines proposed that national institutions should sponsor national, regional and local conferences for fact gathering and disseminating information. It was suggested that the mass media should be utilised.

In relation to the education of public opinion, guidelines stated that national institutions should inform the general public of the nature of their human rights and the means of enforcement of their rights according to national law; mobilise public opinion in their countries against gross and massive violations of human rights; promote respect for the rule of law and the independence of the judiciary; and co-operate with educational institutions, trade unions and other appropriate associations and the mass media in relation to the promotion of human rights. The guidelines also stated that an objective should be to ensure that the teaching of human rights was made part of the curricula of all formal educational institutions, and made available to professional groups, particularly law enforcement personnel. In addition, education programs and research by a national institution should include measures to change attitudes detrimental to the protection of human rights.

In relation to complaints, the guidelines stated that national institutions should be authorised to investigate complaints alleging that citizens had been deprived of their basic rights, should have power to summon witnesses and access to relevant evidence, should have the function of conciliation and should be authorised to apply concrete remedies to individual cases of human rights violations.

The guidelines proposed that national institutions should make periodic reviews of legislative and administrative systems and procedures for the protection of human rights and suggest improvements; promote the incorporation of human rights provisions in national constitutions; promote remedial measures against unlawful decisions of the executive; and facilitate research designed to bring national legislation into conformity with the international covenants on human rights and other instruments.

In relation to the structure of national institutions, the guidelines stated that the institutions should be so designed as to bring all parts of the population into the decision-making process in regard to human rights. Institutions should be statutory authorities or bodies created within the laws of the respective States and should be established as autonomous, impartial bodies. Membership of the institutions should reflect in its composition wide cross-sections of the public. It should be provided that the appointees to the institutions should reflect in its composition wide cross-sections of the public. It should be provided that the appointees to the institutions should not be removed arbitrarily or without good cause. The institutions should be adequately staffed. They should function regularly and should make adequate provisions for immediate access to them by the public. In appropriate cases, they should have local or regional advisory organs to assist them in discharging their functions.

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1 United Nations Document ST/HR/Ser.A/2. The General Assembly of the United Nations has adopted a series of resolutions on national institutions for the protection and promotion of human rights, the most recent being Resolution 39/144 of 14 December 1984.

From all these functions, it is suggested that a number of central threads stand out. First, the function of inquiry and conciliation which has short-term significance is of crucial importance for all the reasons that have led to the establishment of national Ombudsmen. Complainants, whether disadvantaged or otherwise, need ready access to an inexpensive process of independent, impartial and effective investigation. Second, the educational and promotional function (dealt with in more detail below) is of equal importance and is necessary for longer-term objectives. Third, the function of advising the Government on human rights issues is of particular value in promoting the observance and maintenance of international standards in national laws and practices.

The Human Rights Commission that has been established in Australia at the federal level has functions that reflect most of the guidelines set out above. The Commission has been set up as an independent statutory authority. The functions of the Commission provided in the *Human Rights Commission Act* 1981 are as follows. The Commission is to report on laws, acts and practices that might be inconsistent with the International Covenant and on laws that should be enacted or other action that should be taken by the Federal Government in relation to human rights. When requested by the Minister, the Commission is to report on action required to comply with the provisions of the International Covenant. The Commission also has functions relating to promotion of human rights and the co-ordination of programs of education and research.

An important function of the Commission in the present context is the function of examining complaints. The Commission is empowered to inquire into any act or practice that may be inconsistent with the International Covenant and, where the Commission considers it appropriate to do so, endeavour to effect a settlement of the matters that gave rise to the inquiry. Where a settlement is not effected, the Commission is to report on the matter to the Minister and the Minister is to table the report in Parliament. The Commission is to perform the latter functions when requested by the Minister, when the matter is the subject of a complaint by an individual under the Act or on the Commission's own initiative. The Act provides for appearances before, and the making of submissions to, the Commission. The Commission has compulsory evidence-gathering powers.

In pursuance of its functions, the Human Rights Commission has engaged in a range of activity. The Commission has investigated a variety of complaints of infringements of the International Covenant. Justice issues have been amongst the most frequent category of complaints handled under the Covenant. The Commission examines, for example, human rights complaints of offenders imprisoned for federal offences and has commissioned a study on this subject by an external consultant. Complaints of residents who have served terms of imprisonment for criminal offences and have thereby become subject to deportation are further examples of matters that come before the Commission. In addition, the Commission has reviewed a substantial number of federal statutes, including statutes relating to federal criminal laws, in order to report on their consistency with the International Covenant and recommend changes and improvements. Reports on specific issues have been prepared, such as a report on the rights of persons detained at an immigration detention centre. In the performance of its activities the Commission has built up extensive contacts with non-governmental organisations in the human rights field and with other community bodies. The Commission currently has Branches concerned with legal matters and projects, inquiries and conciliation, and promotion and information. The Commission's central office is in Canberra. It also operates in the States and the Northern Territory through regional offices and through State Equal Opportunity bodies. Promotional activities of the Commission are referred to in more detail below.

Although the operation of the Commission, as presently constituted, is restricted to the federal level, its establishment has been a significant development. So far as the writer is aware, the Commission is the only body of its kind to have been established at the national level specifically to deal with complaints of infringements of the rights set out in the International Covenant. As has been mentioned above, work is currently being undertaken to improve and strengthen the current structure and operation of the Commission.

Education and Research

The fourth implementation mechanism that has been suggested by this paper is concerned with the need for education and research. In the development of measures in Australia for the implementation of human rights, an emphasis has been placed upon the role to be played by programs of education and research and other programs to promote human rights. Programs of this kind have been particularly useful in combating discrimination. They address the broader social issues that affect the observance of human rights. They also recognise the importance of an approach designed to change community attitudes that result in the denial of rights and to mobilise public opinion for the promotion of human rights.

Under these programs, explanatory material on human rights is brought to the attention of, or utilised by, educational institutions and professional, trade and community organisations, as well as the general public. Pamphlets, displays, advertisements, seminars, films, teaching and lectures are also utilised. Working relationships are established between groups within the community. Research at both the governmental level and within academic institutions is encouraged.

The importance of educational programs for the promotion of human rights is widely recognised and advocated at the international level. For example, an International Congress was conducted by UNESCO in 1978 on the Teaching of Human Rights. The conclusions of this Congress have particular relevance in the present context. The final document of the Congress referred, *inter alia*, to the following principles and considerations:

1. Human rights education and teaching should be based on the relevant human rights instruments of the United Nations and equal emphasis should be placed on economic, social, cultural, civil and political rights as well as individual and collective rights. The indivisibility of all human rights should be recognised.
2. Human rights education and teaching must aim at fostering the attitudes of tolerance, providing knowledge about human rights and the institutions established for their implementation and developing the individual's awareness of the ways by which human rights can be translated into social and political reality.
3. While education should make the individual aware of his or her own rights, it should at the same time instil respect for the rights of others.
4. Human rights must be taught at all levels of the educational system as well as in out-of-school settings; in particular fields, such as political science and law, they should be taught as an independent course.[2]

The final document also sets out recommendations relating to programs, teaching materials, methods and structures. In relation to programs, the document observed that human rights programs should take into consideration the fact that attitude formation in regard to human rights began in infancy. The document listed topics that could be included in human rights curricula, including the topic of existing deficiencies in the techniques and methods of protecting human rights. Human rights curricula in law and political science programs should devote special attention to the procedures and guarantees for the judicial protection of human rights. The development of curricula for the teaching of human rights should be guided by two principles: the teaching of legal means of action and its application to concrete situations.

In relation to teaching materials, the recommendations referred to the publication of textbooks on human rights, and the establishment of an international clearing house for information and research on human rights to collect and disseminate information on human rights legislation, adjudication and other human rights activities, and to facilitate discussion on the priorities for effective human rights research.

On the subject of methods, it was recommended, *inter alia*, as follows:

- The teaching of human rights should be developed for people of all ages, from infancy to adulthood.
- New methods and materials should be developed.
- Human rights teaching should involve the active participation of students.

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2. United Nations Document, 1978(b). Following this Congress, a similar conference was held at the Australian National Commission for UNESCO in Sydney in 1980. See Tay, *et al.*, 1981.

- Workshops on the methodology of human rights education should be held.
- Teacher-training courses should be developed.
- Courses should be organised for lawyers, judges, police officers and other justice personnel, psychiatrists, psychologists and sociologists, to increase their awareness and concern for the protection of human rights.
- The teaching of human rights should be included in the continuing education of professionals as a prerequisite for certification and relicensing where applicable. There should be developed, through the media of the press, radio and television, educational programs especially intended for the general public.

In relation to the topic of structures, the UNESCO Congress recommended, *inter alia*, that the guidelines for local and national human rights institutions being elaborated within the United Nations should specify the role of these institutions in the planning and implementation of human rights education and training.

A variety of institutions in Australia have functions relating to the promotion of human rights. The Human Rights Commission, in recognition of the needs identified above, has the function of undertaking research and educational programs to promote human rights. It also has a co-ordinating function in respect of similar activity conducted by other bodies on behalf of the Federal Government. In addition, the Commission has the specific function of promoting an understanding and acceptance, and the public discussion, of human rights in Australia.

In pursuance of its statutory functions, the Commission has engaged in a variety of programs with respect to education, information and research. It inaugurated a bi-monthly Newsletter to publicise its activities and those of other bodies and to provide information on the practical application of the concept of human rights in Australia. The Newsletter is sent to approximately 9,500 organisations and individuals in Australia and overseas. The Commission also publishes Reports (which, as stated above, are tabled in Parliament), Occasional Papers, Discussion Papers and a variety of leaflets and special purpose booklets. Its publication *The Human Rights Commission and You*, which has been translated into a number of community languages, fulfils the dual purpose of education and providing information on procedures to be followed in lodging complaints. The Commission has developed a kit entitled *Teaching for Human Rights: Activities for Schools*, consisting of a core manual, three booklets and a video-cassette, and has recently conducted an evaluation of the impact of this program (Human Rights Commission, 1985). A special purpose booklet has been produced entitled *Human Rights: A Handbook*, an illustrated handbook for children. The Resource Centre of the Commission collects and organises relevant material and disseminates information. The Centre, and the Commission's Library, are open to the public.

The Commission has sponsored conferences and seminars to further its activities. For example, it joined with UNESCO in conducting a conference on The Teaching of Human Rights dealing with education in schools and tertiary institutions (Human Rights Commission, 1984).

The Commission also undertakes research on current issues and enters into contracts for externally conducted research. It has published a Survey on Human Rights Research Literature and Associated Bibliography, a project of importance to the carrying forward of systematic studies on human rights.

The promotional approach outlined above recognises the importance of programs designed to change attitudes that result in the denial of human rights and to mobilise public opinion for the protection of human rights, and the need for this longer-term approach to supplement action on individual complaints.

Conclusion

The preparatory documentation for the Seventh United Nations Congress has referred to the advantages of diversity in the implementation of standards and norms in criminal justice. As will appear from the breadth of the implementation mechanisms in this paper, Australia supports a diverse, flexible and multi-faceted approach to the implementation of human rights.

At the national level, this paper suggests that consideration should be given, in the implementation of United Nations standards and norms, not only to processes concerned with

rights, remedies and enforcement mechanisms, but also with procedures to give effect to the right to make complaints to competent authorities and to utilise conciliation and educational processes on a systematic and comprehensive basis. In particular, the paper supports United Nations advocacy of the establishment of national institutions, such as national Human Rights Commissions, to undertake broad ranging responsibilities in this field.

At the international level, the following United Nations procedures have been utilised effectively from time to time: the publication of reports and answers to questionnaires; the establishment of special committees to examine reports, to acquire further information and submit comments on reports; and the dissemination by the United Nations Secretariat of reports and analytical studies of reports. Further attention could be given to the more widespread development of these procedures. To supplement these processes, consideration could be given to the development on a more comprehensive basis of conciliation, and importantly, educational and promotional processes. This would enable systematic action to be taken to apply persuasion and moral pressure and utilise world public opinion as a mechanism for the implementation and enforcement of human rights.

IMPLEMENTATION OF THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Introduction

The federal structure of Australia means that the administration of prisons is the responsibility of the six States and the Northern Territory. (The Australian Capital Territory has a remand centre but convicted prisoners from the Australian Capital Territory serve their sentences in New South Wales prisons.) Each of the seven jurisdictions has completed a comprehensive questionnaire prepared by the United Nations on the implementation of the Standard Minimum Rules, and the Department of Foreign Affairs has compiled a composite Australian response for the United Nations. The pages that follow comprise a synopsis of the composite response together with statistical material compiled by the Australian Institute of Criminology.

By international standards Australia has a relatively low use of imprisonment, even though there are some European countries with lower rates. The most recent Australian imprisonment rate, for April 1985, was 67.8 (daily average prisoners per 100,000 population) but this rate has increased markedly in the past year, and there are very great differences in rates between jurisdictions. Imprisonment rates for individual jurisdictions vary between 219.0 and 26.0 for the Northern Territory and the Australian Capital Territory respectively, both of which have relatively small general populations but with quite different social and economic backgrounds. Even among the six States the imprisonment rates vary between 113.3 for Western Australia and 46.2 for Victoria. These differences have been studied in detail and cannot be satisfactorily explained, but they seem to be related to the racial composition of the population in each jurisdiction. With the exception of the Northern Territory, where crime rates are higher than average, the differences in imprisonment rates seem to have no relation to the levels of reported crime and may reflect differences in sentencing practices.

There are 73 separate correctional institutions in Australia with the majority holding fewer than 100 prisoners. The large prisons in metropolitan areas, such as Long Bay in Sydney and Pentridge in Melbourne, are divided into a number of self-contained and autonomous sub-institutions, and if these were counted separately the total would be around 80. In addition to these gazetted prisons all jurisdictions have a number of police lockups in which persons may be detained for short periods. This applies particularly to remote country areas. The number of prisons in any jurisdiction seems to have been determined more by history and geography than by the number of prisoners to be accommodated. Thus there are 11 prisons in Victoria for 1893 prisoners and 16 in Western Australia for 1581 prisoners. The most diverse range of

institutions is to be found in New South Wales where there are 19 separate prisons, including four afforestation camps, and five periodic detention centres. At the other extreme there are only two prisons in Tasmania and three in the Northern Territory.

In addition to the differences between jurisdictions in imprisonment rates mentioned above, there are even greater differences in the use of remand in custody. The most recent information, as at 1 April 1985, indicates that 1465 out of 10,621, or 13.8 per cent, of all Australian prisoners were unconvicted remandees. As the percentage of remandees is greatly influenced by the underlying imprisonment rate, a more useful measure is the remand rate which is defined as the number of remandees per 100,000 of the general population. Remand rates for individual jurisdictions at 1 April 1985 varied between 2.5 in Tasmania and 39.4 in the Northern Territory with the national rate being 9.4. Other jurisdictions with remand rates higher than the national rate were New South Wales, South Australia and Western Australia.

Other basic facts and figures describing prisons and prisoners are incorporated where appropriate in the following synopsis of the replies to the United Nations questionnaire on the implementation of the Standard Minimum Rules.

Changes in prison law or practice influenced by the Rules

It is suggested in the questionnaire responses that in all States except Tasmania and in the Northern Territory the Standard Minimum Rules have been a seminal force in the formation of regulations for the treatment of prisoners. The extent and the method by which the Rules have been influential varies considerably between jurisdictions. In South Australia and Victoria the Rules have been fully incorporated into internal management documents while in the Northern Territory there is a general adherence to the spirit and purpose of the Rules.

Dissemination of the Rules

All jurisdictions claim that the Rules are widely disseminated in English and may also be available in other languages from ethnic organisations. The Rules are made available to prison staff both as a part of initial and in-service training and in the course of their work. In some jurisdictions, South Australia for example, all correctional officers are given a copy of the Rules as part of a training manual, while in others such as Queensland, the Rules are kept in a central library and are available to staff on request. All jurisdictions see the Rules as a useful training aid exemplifying how to achieve the goal of humane containment or as a means of heightening the awareness and responsibility of prison officers.

Extent of implementation of each of the Rules

All seven jurisdictions indicated their own assessment of their compliance with each of the Rules (or groups of Rules) in tabular form. The questionnaire required respondents to indicate whether each of the Rules was fully implemented, implemented partially, recognised in principle, not implemented or not applicable. Table 1 presents a consolidation of the Australian responses.

From the information contained in Table 1 it could be claimed that Australia has fully implemented 66.6 per cent of the Rules and partially implemented a further 25.5 per cent. Only 2.8 per cent of the Rules were designated as recognised in principle and 2.3 per cent were designated as not implemented. A further 2.8 per cent of the responses indicated that the Rules were not applicable. The latter group referred to the Rules relating to civil prisoners and persons arrested or detained without charge. While this overall response might be seen as commendable it must be recognised that there were considerable differences between jurisdictions, particularly in the extent to which they saw their implementation of the Rules as complete or partial. For example, one jurisdiction claimed to have implemented virtually all of the Rules while three others designated approximately half of the Rules as only being partially implemented. There is arguably a problem here of the reliability which may be attributed to the practice of correctional administrators making assessments about their own work.

Even with the somewhat deficient data available in Table 1 some tentative conclusions may be drawn. It seems clear for example that there is a widely held belief that Australian prison conditions meet the requirements of the Standard Minimum Rules in relation to

TABLE 1

Extent of implementation of each rule/section of the United Nations Standard Minimum Rules for the Treatment of Prisoners

RULES Number	Title	Fully implemented	Implemented partially	Recognised in principle	Not implemented	Not applicable
General application						
6	Basic principle	*****	**			
7	Register	***	****			
8	Separation of categories	*	*****		*	
9 - 14	Accommodation	**	****	*		
15 - 16	Personal hygiene	*******				
17 - 19	Clothing and bedding	*****	*	*		
20	Food	*******				
21	Exercise and sport	****	***			
22 - 26	Medical services	****	**	*		
27 - 32	Discipline and punishment	******	*			
33 - 34	Instruments of restraint	*****	**			
35 - 36	Information and complaints	******	*			
37 - 39	Contact with the outside world	*******				
40	Books	*******				
41 - 42	Religion	*******				
43	Retention of prisoners' property	*******				
44	Notification of death, etc.	*******				
45	Removal of prisoners	******	*			
46 - 54	Institutional personnel	***	***		*	
55	Inspection	******	*			
Special categories						
56 - 64	Prisoners under sentence	****	***			
65 - 66	Treatment	*****	**			
67 - 69	Classification and individualisation	****	**			
70	Privileges	*****	**			
71 - 76	Work	*	******			
77 - 78	Education and recreation	*****	*		*	
79 - 81	Social relations and after-care	******		*		
82 - 83	Insane and mentally abnormal prisoners	**	***	*	*	
84 - 93	Prisoners under arrest or awaiting trial	**	*****			
94	Civil prisoners	***	*		*	**
95	Persons arrested or detained without charge	**		*		****
	TOTALS	144 (66.6%)	55 (25.5%)	6 (2.8%)	5 (2.3%)	6 (2.8%)

Each star denotes one jurisdiction.

personal hygiene, food, contact with the outside world, books, religion, retention of prisoners' property and notification of death. None of the responses to these items indicated anything other than full implementation. Other Rules which are also seen as very nearly fully implemented by the clear majority of respondents refer to basic principles, clothing and bedding, instruments of restraint, information and complaints, removal of prisoners, inspection, treatment, classification and individualisation, privileges, education and recreation, and social relations and after-care. On the other hand, there is clearly some doubt about the extent to which Australian prisons comply with the Rules related to work, prisoners under arrest or awaiting trial, the segregation of categories and accommodation. In these cases the majority of the respondents indicated that the particular Rules were not fully implemented. The separation of categories of prisoners is clearly not implemented in one jurisdiction, Western Australia, which is pursuing a policy of integrating male and female prisoners and staff. Some jurisdictions have also questioned the need or desirability of maintaining a bound register of prisoners in view of the establishment of computerised record systems.

The United Nations questionnaire also asked the responding agencies to indicate the reasons for discrepancies between the laws or practice and the Rules. The possible reasons were classified as budgetary, cultural, economic, geographical, legal, social, technical or other. An analysis of these responses for all jurisdictions shows that budgetary reasons accounted for 36.3 per cent of the discrepancies. Legal reasons were given in 18.6 per cent of the discrepancies and geographical reasons 8.8 per cent of cases. A consolidated picture of Australia's reasons for the discrepancies is given in Table 2. It is interesting to note that overall a greater number of reasons for non-compliance were given in Table 2 than the total number of responses indicating less than full compliance in Table 1. This is explained by the fact that in several cases two or more reasons for each discrepancy were given.

Capacity of prisons

In this part of the questionnaire respondents were initially asked if cells contained considerably more prisoners than were originally intended. In general the prison authorities indicated that they always attempt to house prisoners in single cells but in some cases doubling up (i.e. two prisoners in a cell) did occur. In South Australia, for example, it was suggested that 20 per cent of the prisoners in the Adelaide Gaol were sharing cells and in Western Australia there was some regular doubling up in Fremantle Prison. In Queensland there was never more than one prisoner in a cell but during periods of severe crowding prisoners have been accommodated in classrooms and hospital clinics. In New South Wales it was indicated that there had been some doubling up for short periods in metropolitan prisons, but in Victoria, Tasmania and the Northern Territory this had not occurred.

The questionnaire then asked respondents if there were a lack of other physical facilities such as workshop space and recreational facilities. Again, there were variations between jurisdictions with the majority acknowledging some lack in physical facilities. In particular, reference was made in a number of jurisdictions to the inappropriate use of old prisons for modern purposes. It may be noted in this context that many prisons still in use in Australia today were constructed well over 100 years ago. Responses to this question may be seen as confirming the indication in Table 1 that the rule relating to work was not fully implemented in most jurisdictions.

Also in this part of the questionnaire respondents were asked: What kind of efforts have been made to reduce the overcrowding and lack in facilities, in particular in co-operation with the courts, the police and relevant social services? In all jurisdictions except Tasmania the responses indicate that overcrowding is recognised as a problem. Methods being pursued to cope with this include the introduction of new parole legislation (South Australia), consideration of alternative dispositions for short-term prisoners (Western Australia), the introduction of more extensive alternatives to imprisonment (Queensland, New South Wales, Victoria) and the early release of prisoners (Victoria).

Notwithstanding these efforts the latest information from *Australian Prison Trends* No. 107, April 1985, indicates that all Australian prison systems were holding 841 more prisoners than they were one year earlier. The increases in numbers were particularly severe in New South Wales (+ 511), Queensland (+ 158) and South Australia (+ 150). These statistics

TABLE 2

Reasons for discrepancies between the laws or practice and the United Nations Standard Minimum Rules for the Treatment of Prisoners

Rules Number	Title	Budgetary	Cultural	Economic	Geographical	Legal	Social	Technical	Other
General application									
6	Basic principle	*	*		*	*			
7	Register						*	*	
8	Separation of categories	*****	*	*	*		*		
9 - 14	Accommodation	****	**	*	*	*			
15 - 16	Personal hygiene								
17 - 19	Clothing and bedding	**							
20	Food								
21	Exercise and sport	***				*			
22 - 26	Medical services	**				*			*
27 - 32	Discipline and punishment				*	*			
33 - 34	Instruments of restraint					*			
35 - 36	Information and complaints								**
37 - 39	Contact with the outside world								
40	Books								
41 - 42	Religion								
43	Retention of prisoners' property								
44	Notification of death, etc.								
45	Removal of prisoners								
46 - 54	Institutional personnel	*				***	*		*
55	Inspection					*			
Special categories									
56 - 64	Prisoners under sentence	*	*	*	*	*	*		**
65 - 66	Treatment	**				*			
67 - 69	Classification and individualisation	*	*	*	*				*
70	Privileges	*		*			*		*
71 - 76	Work	***		**			*	*	**
77 - 78	Education and recreation	**				**			*
79 - 81	Social relations and after-care	*			*	*	*		
82 - 83	Insane and mentally abnormal prisoners	**			*	***			
84 - 93	Prisoners under arrest or awaiting trial	***	*				*	*	*
94	Civil prisoners	**				*			*
95	Persons arrested or detained without charge	*			*				
	TOTALS	37 (36.3%)	7 (6.9%)	7 (6.9%)	9 (8.8%)	19 (18.6%)	7 (6.9%)	2 (1.9%)	14 (13.7%)

Each star denotes one jurisdiction

suggest that the efforts made by correctional administrators to control prisoner numbers have not been altogether successful. In fact, even though new legislation in New South Wales and South Australia produced a temporary decline in numbers, it seems that the savings have now been lost and the numbers in those jurisdictions are now higher than they otherwise would have been. It may be observed that public and judicial attitudes towards sentencing and such sentence-mitigating practices as parole, remissions and early release procedures are becoming markedly more severe and this is being reflected in the increasing numbers of prisoners.

Finally, this part of the questionnaire asked respondents to indicate what steps if any were being considered to ameliorate overcrowding such as the building of new prisons, the reduction of detention pending trial and changes in legislative and sentencing policies. All jurisdictions except Tasmania and the Northern Territory, where prison crowding was not seen as a problem, outlined plans for significant developments in prison building. Also reference was made in South Australia to new bail legislation which aimed to reduce the high remand rate in that State. New and separate remand centres are under construction in both South Australia and Victoria and other prisons are planned for Queensland, New South Wales, South Australia and Victoria. These are largely intended to replace outmoded prisons and not to increase the total capacity.

Services for special categories of prisoners (women, juveniles, foreigners)

There has been a very significant increase in the number of female prisoners in Australia over the past 10 years. During this time the women prisoners, as a proportion of the total prison population, have increased from 2.6 per cent to 4.8 per cent. In New South Wales a special task force has prepared a report on the needs of this category of prisoners and in Victoria problems have been experienced resulting from the partial destruction by fire of the only women's prison. As indicated previously, Western Australia is pursuing a policy of integration of male and female prisoners, and in South Australia a 'co-correctional' prison is being developed in which there will be some degree of contact and joint use of facilities by male and female prisoners. In all other jurisdictions a policy of segregation of the sexes is pursued, generally with women prisoners all being housed in one institution. In all jurisdictions facilities are provided for the babies and young children to stay with their prisoner mothers, but in New South Wales prisoner mothers are generally transferred to an alternative form of custody.

All responding jurisdictions indicated that juvenile offenders were the responsibility of welfare authorities and only very rarely were juveniles placed in prisons. Similarly, no problems were seen in relation to the imprisonment of foreigners, even though in some cases special diets were required and supplied. Particular reference was made by some respondents to the need to provide specialist services for Aboriginal prisoners who are grossly over-represented in all Australian prison systems.

Separation of categories of prisoners

Most jurisdictions report that they have some difficulties in maintaining a strict separation of convicted and unconvicted prisoners and some of them suggest that it would be unnecessarily restrictive for such a segregation to be enforced. In remote prisons in country areas it is suggested that some degree of association between the two categories is desirable in the interests of the individual prisoner or remandee. To enforce strict segregation in these circumstances would be equivalent in some cases to imposing solitary confinement on the accused person, and this could also be the case in some circumstances with female and young prisoners.

Classification and individualisation

All jurisdictions report that they have adequate procedures for the classification of prisoners, but some expressed doubts about their capacity to provide individual treatment programs. Most of the larger jurisdictions have classification committees with statewide responsibilities which are supported by committees at the institutional level which make detailed decisions in relation to work and training and also review security ratings. It is recognised that where there is little or no spare capacity within a prison system sophisticated

classification procedures may be wasted in the sense that there are insufficient placement options for the prisoners so classified. In many Australian jurisdictions this reality is recognised. On the other hand, classification procedures provide an additional incentive to identify the real needs of prisoners in terms of security, work, education and training and location. For that reason there is no suggestion that classification procedures in any Australian jurisdiction will be downgraded.

Discipline and punishment

The type and nature of discipline and punishment that may be inflicted on prisoners varies considerably from jurisdiction to jurisdiction. In general, however, the punishment of minor offences is the responsibility of prison officials and more serious offences are dealt with by visiting justices or magistrates. For extremely serious matters the police are called in to investigate and the matter is dealt with in the normal criminal courts. In most jurisdictions legislation distinguishes between minor and major prison offences with the former being dealt with by the governor or superintendent of the prison and the latter being dealt with by visiting justices or magistrates. Below is a summary of the punishments that may be imposed by both authorities.

New South Wales. Governors or superintendents of prisons can order cell confinement for up to three days and loss of privileges for up to one month. A visiting justice, who is a magistrate, may confine a prisoner in his or her cell for up to 14 days, and two visiting justices may order such confinement for up to 28 days. Visiting justices may also order forfeiture of remissions or forfeiture of accrued pay.

Victoria. Governors of prisons may order postponement of discharge for up to seven days or loss of privileges for up to 28 days. Prisoners subjected to loss of privileges retain regulation visits but are not allowed contact visits. They receive normal meals, medical and welfare services and have access to educational materials but their earnings are at a basic rate which is sufficient for toiletries, etc. For more serious prison offences a visiting magistrate may impose an additional sentence of up to two years.

Queensland. The superintendent of a prison may order confinement in a punishment cell with bread and water only for up to three days or such confinement on half rations for up to seven days. (It is understood that these dietary punishments are rarely used and are likely to be abolished in the near future.) Superintendents may also order exclusion from work, leisure, and association with other prisoners for up to 14 days. A visiting justice in Queensland may sentence a prisoner to an additional three months and may order solitary confinement on a bread and water diet for up to seven days.

Western Australia. Superintendents of prisons may order up to three days loss of remission or up to 14 days cancellation of gratuities, or confinement to sleeping quarters for up to 72 hours. Visiting justices may order separate confinement in punishment cells for up to seven days or up to 28 days loss of remission. A magistrate or two justices in Western Australia may sentence prisoners for up to six months, order fines up to $300 or order separate confinement for up to 28 days.

South Australia. The superintendent or manager of a prison may order loss of remission for up to 15 days, loss of privileges for up to 28 days or exclusion from work in association with other prisoners for up to 14 days. More serious prison offences are dealt with by Visiting Tribunals, comprising either a magistrate alone or a magistrate and a justice. Visiting Tribunals may order loss of remissions for up to 30 days, forfeiture of prison earnings up to $50, loss of privileges for up to two months or exclusion of work in association with other prisoners for up to 28 days.

Tasmania. Superintendents of prisons may order forfeiture of accrued earnings including moneys earned from hobby activities, and they may also order that prisoners be held in segregation for unspecified periods. The Controller of Prisons may impose the penalties above but may also order the loss of all or part of any remissions that have been earned. Visiting magistrates hear complaints by prisoners but are not involved with internal prison discipline.

Northern Territory. Either superintendents of prisons or visiting justices may order forfeiture of remissions for up to three days, forfeiture of amenities for up to 30 days or exclusion from association for up 14 days.

Prison work

In all jurisdictions except New South Wales prisoners may be required to work by law. In general, however, there are not sufficient work opportunities for prisoners and there is therefore some degree of enforced idleness. To some extent this is overcome by prisoners being designated as sweepers or billets, their duties being essentially concerned with routine cleaning. The main areas in which work is available in all jurisdictions includes workshop activities of various types, farming and domestic duties such as laundry and kitchen work. As indicated in the responses to the United Nations questionnaire relating to compliance with Rule No. 76 there is widespread acknowledgment by prison administrators that the provision of adequate and appropriate work is less than satisfactory.

The availability of suitable work in all jurisdictions is restrained to a greater or lesser extent by the need to maintain security, competition with outside markets and some degree of resistance from labour unions. In Victoria an interesting development is the establishment of the Victorian Prison Industries Commission in 1983. This body has a statutory responsibility to establish prison industries on a fully commercial basis, but it is too early to assess its success or otherwise.

Health services

All Australian prison systems provide a full range of medical, dental, pharmaceutical and psychiatric services, but it is not possible for all of these services to be provided on a full-time basis in prisons in remote locations. While the larger prisons in metropolitan areas all have permanent medical staff and hospitals within the prisons, in remote areas medical services are provided by local doctors on a contract basis. In cases of serious illness or injury prisoners are transferred to normal hospitals in the community, and in Victoria a special security ward has been established in a public hospital for this purpose.

In the largest jurisdictions of New South Wales and Victoria medical staff are employed by the relevant government health authorities and seconded to work in the prisons, but in some jurisdictions such as Western Australia they are employed by the correctional authorities. In most jurisdictions prison officers receive some training in first aid and in some jurisdictions they may also receive training to become medical orderlies or nurses.

In all cases basic medical and dental care is provided to prisoners free of charge, but only long-term prisoners will be supplied with dentures and spectacles without charge. Also, if a prisoner chooses to be treated by a private medical practitioner he or she will be responsible for the costs.

Most jurisdictions acknowledge that they are not able to provide completely adequate services for psychiatric treatment, even though some improvements have been made in recent years. The main difficulty in this area arises from the fact that psychiatrists devote much of their time to preparing and presenting diagnostic reports to the courts and to parole boards.

Possible ways of ensuring more effective implementation of the Rules

Respondents to the questionnaire suggested that improved knowledge and awareness of the Standard Minimum Rules within the Australian community generally, and in relation to criminal justice practitioners in particular, could be attained by action at various levels.

At the national level. It was suggested that the Australian Institute of Criminology could do more to focus attention on the existence of the Rules, not only in relation to corrections authorities. It was also suggested that the Annual Conferences of Corrective Services Ministers and their administrators could be encouraged to direct their attention to the Rules and to use them as measures of progress in the establishment of improved correctional services.

In this context it is noted that in 1984 the Corrective Services Ministers' Conference proclaimed itself to be the National Correctional Standards Council, a body whose functions

would include the more precise specification of standards that are appropriate to Australian conditions. This body has not yet made significant progress but developments may be expected in the future. It is highly likely that the National Correctional Standards Council will not only make extensive reference to the Standard Minimum Rules but also to the discussion paper *Minimum Standard Guidelines for Australian Prisons* published by the Australian Institute of Criminology in 1978 and updated in 1984.

At the regional level. It was suggested that the Asian and Pacific regional community could be encouraged to make more use of the Standard Minimum Rules and that this could be done in the context of the Annual Conference of the Asian and Pacific Correctional Administrators. It was also suggested for the regional level that greater use could be made of exchanges of correctional personnel in order to heighten awareness and professionalism in this area of work. The most recent meeting of this conference in May 1985 resolved to consider a revised draft version of the Rules, suitable to conditions in the region, at its 1986 conference.

Role of the United Nations in this area

The questionnaire asked respondents whether they would consider:

1. Requesting the United Nations for technical co-operation, for example, to make available the services of inter-regional advisers and other experts in crime prevention and criminal justice;
2. Promoting national and regional seminars and other meetings at the professional and non-professional levels to further the implementation of the Rules;
3. Strengthening substantive support to regional research and training institutes in crime prevention and criminal justice that are associated with the United Nations; and
4. other (please specify).

The Federal Government has indicated that in consultation with State Governments it would welcome the opportunity to further disseminate the Standard Minimum Rules.

The United Nations, through the services of the Australian Institute of Criminology, has in the past conducted a number of international seminars in Australia. In each of these cases the proceedings of the seminars have been published by the Institute and have been widely distributed. Further activity of this type would be welcome.

Another possible development would be for the Australian Institute of Criminology to seek accreditation from the United Nations so that it would serve as an international as well as a national body. Such a move would require amendment to the legislation which governs the Institute.

Supplementary information

The Australian Institute of Criminology has published a considerable number of reports and bulletins which provide empirical data and other information on Australian prison systems. Most significantly, each year since 1982 the Institute in conjunction with all prison authorities has conducted a national census of prisoners. This has entailed collecting some 25 items of information in relation to every person held in a gazetted prison on 30 June each year with the most significant results being published in a readily accessible document. The most recent available of such documents is entitled *Australian Prisoners 1984*.

A less ambitious data collection exercise undertaken by the Australian Institute of Criminology is a monthly collection of basic information about Australian prisons. This is entitled *Australian Prison Trends* and has been published each month since May 1976. Recently a consolidated version of the first one hundred of these bulletins was published by the Institute. A parallel monthly collection of data entitled *Australian Community-based Corrections Data* has been published by the Institute since 1979. This provides details of the numbers of persons undergoing probation, parole, community service and related orders in each Australian jurisdiction.

A number of research projects have been undertaken on specific aspects of corrections largely using data derived from either the results of national prison censuses or the monthly data collections. These include a study of the structure of remand populations, a study of

women prisoners in Victoria, a study of the facilities needed for remand prisoners and a study of the use of imprisonment on Groote Eylandt, a remote location in the Gulf of Carpentaria. Other research currently being undertaken by the Institute which is of relevance to this topic includes a study of deaths in corrections with particular emphasis on prison suicides and a study of the outcomes of remand in custody.

All of the above reports are routinely presented to Ministers and administrators in charge of correctional services and many of them were undertaken at the specific request of the Ministers.

Commentary

The preceding synopsis of Australian responses to the United Nations questionnaire is not totally satisfactory as there are clear differences between jurisdictions in interpretation, particularly with regard to the full or partial implementation of the Rules. As indicated previously this problem could be overcome to some extent by having the assessments of compliance made by an independent authority such as a national accreditation council. The establishment of such a body might be resisted by prison authorities, however, on the grounds that they do not need to be told of their deficiencies by an outside authority as they are well aware of their shortcomings and are doing their best with limited resources. On the other hand, such defensiveness has diminished considerably in recent years, largely as a result of a greatly increased exchange of information and ideas. This process has been expedited by the twice yearly meetings of correctional administrators and the annual conference of their Ministers.

An alternative approach to the assessment of the extent of compliance with the Rules would be for the judgments to still be made by the prison administrators themselves but with the assistance and guidance of detailed specifications which would spell out how the Rule should be interpreted in an advanced democratic country such as Australia. Such specification would counteract the generality of the language used in the Rules, which it is recognised is unavoidable in any standards designed for all nations with a diversity of social, economic and political conditions. That is the fundamental difficulty with the interpretation of the Rules as they stand. Any person making an assessment of the extent of implementation, whether it is an independent or an internal assessment, is faced with the problem of deciding what each of the Rules should mean in a particular context. If each of the Rules was accompanied by an explanatory statement giving examples of what is to be understood by full or partial implementation in the Australian context the problem of inconsistent interpretation should be considerably reduced.

If this approach were pursued, the question that would arise would be that of who should prepare the explanatory details. It would seem that the most appropriate body for this task in Australia would be the prison administrators themselves through the recently established National Correctional Standards Council in consultation with independent authorities such as the Human Rights Commission and the Australian Institute of Criminology. The secretariat of the Corrective Services Ministers' Conference, which is soon to be established, would clearly be the most appropriate body to co-ordinate this work.

If all this were done, Australia would be able to indicate to the United Nations with some confidence and precision the extent to which this country does or does not comply with the Rules. Furthermore, Australian prison administrators themselves would benefit from having reasonably reliable statements of their strengths and weaknesses and thereby be in a stronger position to argue for appropriate resources from their governments. It is suggested, however, that ultimately the Standard Minimum Rules should not be seen as a static standard to be achieved, but as the dynamic basis for change. In other words, it should not be seen as sufficient to achieve 100 per cent compliance with unchanging standards as the standards themselves must continue to advance with the progress of economic and social conditions. Thus, it is argued, the next stage in the development of correctional standards in Australia must be the addition of both quantification and direction to the explanatory specification of the Rules.

To take a simple example, it is suggested that it is not sufficient to assert that prisoners should have adequate opportunities for education and recreation (Rules 77 and 78) or for exercise and sport (Rule 21) but the precise extent of those opportunities should be specified and, even more importantly, the actual extent of usage or participation should be quantified. Hence

a prison with excellent classrooms, workshops and gymnasia could be rated high or low on these standards according to the extent that these facilities were actually used by the prisoners in constructive and purposeful ways. A participation rate in education of 10 per cent (i.e. 10 per cent of the prisoners actively engaged in one or more educational activities on a voluntary basis) would obviously be seen as less laudatory than an equivalent rate in another prison or prison system of 50 or 60 per cent.

Similarly, with classification and individualisation (Rules 67 to 69) it is not sufficient simply to have the desirable options and procedures available, but it is necessary to quantify the extent to which they are used in appropriate ways. In this context it is suggested that there is a need for the principle of least restrictive custody to be clearly enunciated. Thus, prisoners should not be held in conditions of maximum security unless there is a real need or threat. The differences between Australian jurisdictions in the proportions of prisoners in maximum, medium and minimum security revealed by *Australian Prisoners 1984* suggests that this principle is not being consistently applied, even though all jurisdictions have the full range of security options.

On the subject of security, the Standard Minimum Rules are strangely silent on the vital and politically sensitive question of escapes from prison. Prison officials receive no guidance from the Rules on what number and type of escapes should be regarded as either acceptable or outrageous. It is suggested that it should not be impossible to establish acceptable and measurable standards in this area. It would obviously be naive to suggest that no prisoner could ever escape and therefore what is needed is a statement that clarifies what should be seen as acceptable. In juvenile low-security detention institutions it is not uncommon to find an absconding rate of 100 per cent, i.e. the number of escapes per year is equal to the daily average muster, without undue public consternation. Such an escape rate would clearly not be acceptable for any adult prison, but more escapes are tolerable from open prison camps and from work release centres than they are from maximum security institutions. With a view to promoting further discussion of this issue, it is suggested that perhaps an acceptable standard for escapes from adult correctional institutions would be 5 per cent per year from minimum security and other open conditions including day leave and work release, 1 per cent per year from medium security and zero from maximum security. Any escapes from maximum security should be the subject of detailed investigation, report and remedial action. (This approach to measurement would still be possible in a prison system where only the prisoners are classified and the prisons themselves provide different levels of security.)

It may be thought that these tentative standards are too stringent, but if they were widely accepted they could be seen as targets to be achieved by the sensitive use of the classification process. Standards such as these would provide a baseline for judgments about escape rates being acceptable or unacceptably high, but they are not intended in themselves to provide a basis for concluding that the escape rate in a particular system is too *low*, although such a conclusion might be reached after a full review of a wider body of evidence. If it were found, for example, that the escape rate of a prison system was unusually low because nearly all prisoners spent all of their sentences in maximum security with only a very small proportion of absolutely 'safe bets' being granted the privileges and opportunities of less restrictive conditions, then criticism would be justified. Correctional administration is fundamentally a matter of risk management. Administrators who are not prepared to take any risks are failing in their responsibility, and are almost certainly misapplying their resources.

With most if not all of the other areas of prison practice that are covered by the Standard Minimum Rules it should be possible to specify standards with a similar level of precision. With regard to medical care (Rules 22 to 26) it should be possible to specify the desirable frequency of routine medical checkups as well as the range of medical procedures and equipment that should be available. Also, with regard to personal safety, a highly controversial topic not specifically covered by the Rules, it should be possible to enunciate some standards. It would obviously be unreasonable to expect no black eyes or bruises from the occasional altercations between prisoners, but when prisoners murder and rape each other it is equally obviously intolerable. As with escapes, a standard which expresses an expectation of absolutely no injury to any prisoners ever has been set at an unreasonably high level and is therefore of litle value.

If this approach to the measurement of correctional performance were fully developed it

would be of considerable value to prison administrators as it would provide a reliable and verifiable yardstick to assess improvement on the need for more resources or training. It could also be linked to the development of program budgeting which is being considered in most Australian jurisdictions.

In conclusion, it is submitted that the Standard Minimum Rules, since their original publication in 1929 by the International Penal and Penitentiary Commission and their acceptance in an expanded form in 1955 by the United Nations, have served a useful purpose in drawing attention to areas of concern. In the future, however, as far as Australia is concerned, the Rules need to be buttressed with precise specifications in measurable form. In particular, there is a need for the preamble to the Rules, and to any other subsidiary documentation, to state as a matter of basic principle that the only people who should be imprisoned are those for whom no other less destructive penalty is available. Now that we have comprehensive data on the enormous differences between jurisdictions in the use of imprisonment, it is essential that this principle be fully recognised. In relatively homogeneous cultures like that of Australia, persons incarcerated in high imprisoning jurisdictions for offences that would not attract custodial sentences in low imprisoning jurisdictions are more concerned about being in custody at all than they are about internal prison conditions. The Standard Minimum Rules must ensure that as a rule the standard number of prisoners be kept to a minimum.

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