

**GRIFFITH UNIVERSITY**

**FACULTY OF EDUCATION**

An Inaugural Lecture

**FLAWED ORDER:**

**The Administration of Justice in a "Get Tough" Era**

by

**Professor Ross Homel**

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### **The Administration of Justice in a "Get Tough" Era**

My aim in this lecture is to address the role of the criminal justice system - the police, courts, and prisons - in controlling and reducing crime. An important question I want to ask is whether "getting tough" on crime through such means as a greater use of imprisonment or more police can yield the benefits claimed by proponents of such policies. The more general question I am concerned with is the impact of law on human behaviour - not so much the Law of the statute book, which is remote, abstract, and impersonal, but (small 'l') law as it is embodied in the actions of police on the street or in the hurried decisions of the magistrate in a busy court.

Thus my concern is with one side of the "triangle" which has traditionally preoccupied the sociologist of law. This triangle has at its apex the public, official presentation of Law, and, at the base, routine legal events at one end and the behaviour of the general population and of the unfortunates caught in the legal system at the other. I want to know about any "horizontal" effects at the base of that triangle: does it, in the final analysis, matter very much to the youth contemplating stealing a car or to the offender hauled into court what precise policies and procedures the police or the courts or the prisons enact?

Of course my question, though important, is restricted in its scope. What the criminal justice system does in delivering "justice" will always be of fundamental concern, quite apart from its crime control properties. It may or may not create a significant deterrent effect if second-time convictees of serious offences short of murder or rape are sentenced at random to a short detention sentence or to a long period of incarceration, as American criminologist Richard Wright (1994) proposes in a new book entitled *In Defense of Prisons*, but it may make a very big difference to our collective sense of justice. Asking about the human rights and social justice implications of criminal justice policies and practices is always at least as important

as any analysis of their instrumental value, and is something I consider, although as a secondary issue, in this lecture.

There is another potential limitation in asking about the behavioural impact of criminal law. Sociologists have long observed that the public support laws which nobody seriously expects to be obeyed, good contemporary examples being prohibitions on marijuana use and prostitution. However, as Joseph Gusfield (1981a) observes, a public aware of the limited effectiveness of such legislation is not less moved to support the passage of laws to eradicate behaviour which appears to be ineradicable. "Such assurance is symbolic assurance ... in the sense of being about the symbolic structure of the society - its consistency and moral value." (p. 183). In other words, at least some laws are designed as much to give expression to and to reinforce cultural values as they are to have a direct impact on behaviour, and asking about their crime prevention properties may simply be naive. This does not, however, mean that these laws are not vigorously enforced, at least from time to time, or that they have no influence on those targeted. Nor does it undermine the faith many people appear to have in the general capacity of the criminal justice system to get crime "under control" and to punish criminals in the manner they deserve.

My approach in this lecture is to analyse briefly the nature of the crime problem, and then to set out the theoretical bases for two popular approaches to crime prevention: deterrence, and incapacitation of serious offenders through prolonged periods of imprisonment. I will argue on the basis of theoretical analysis and empirical evidence that these approaches must in most cases fail to effect significant reductions in crime, that they will be enormously costly if pursued with the vigour evident in some other countries, and that they may even increase crime rates. I should add that by "deterrence" I mean in this context that people refrain from crime because they fear that if they did offend they might well be caught by police and punished in a court of law. Deterrence in common parlance actually has a wider meaning than this, referring to the influence of other kinds of threats or costs, such as the perceived consequences of acting in a manner contrary to that of one's friends, or

the financial cost involved in keeping one's car fully roadworthy. These kinds of sanctions are incorporated in a general theoretical model of the deterrence process which I will outline briefly to illustrate how difficult it is for the police or other parts of the criminal justice system to influence behaviour in desired directions.

I will argue from the model and from research studies that legal deterrence can in certain circumstances "work" if the threat of legal punishments is communicated effectively, if the emphasis is on the risks of apprehension rather than the severity of the penalties, and if the formal, legal sanctions reinforce informal controls or sanctions already operating in the community. An interesting interpretation of recent research is that deterrence approaches seem to work best when they are "low key" and respect human rights. There is no need for a nihilistic attitude that "nothing works" in crime prevention, and nor is there a need to dismiss the criminal justice system as totally irrelevant. The criminal justice system can in specific situations contribute to a reduction in crime, *provided* that there is a redirection of thinking away from reactive policies based on the detection and punishment of offenders toward preventive policies which involve partnerships with community groups and other agencies.

I will conclude the discussion of successful case studies by describing briefly a crime prevention project we have carried out with colleagues on the Gold Coast, which could point the way toward a model of "academic research" based on the application of academic knowledge to real-life problems. This model, which I have tried to develop and apply throughout my academic career, entails a direct "engagement" with the community and the use of that experience of engagement to refashion my methods and ideas: to revise theories, to develop more refined intervention strategies, and to evolve a teaching curriculum which involves students in the change process and brings the product of university education closer to the elusive ideal of the "reflective practitioner".

## **The Dimensions of the Crime Problem**

The media pay a great deal of attention to crime in Queensland. *The Courier-Mail* regularly reports on Queensland's "crime wave", with stories often focused on the plight of victims and the inadequacy of current laws and penalties.

To take one example from many hundreds which could be used to illustrate the point, on March 17 this year the newspaper reported the experience of a Brisbane shopkeeper who lost several thousand dollars at the hands of two men armed with shotguns. The shopkeeper, who had been broken into many times previously, protested that:

... it was time to stop listening to academics and libertarians and start handing out stiff sentences to criminals. They've got to start throwing the keys away with some of these characters. We've got to stop listening to these people with warm inner glows who say prison is not the answer. Their answer is not working because we're not throwing them in prison today and crime is increasing. There's no deterrent.

An accompanying story, entitled " 'Weak laws' share blame for upsurge", discussed claims that under the new Queensland Penalties and Sentences Act it is virtually impossible for the courts to imprison young offenders "no matter how serious the crimes involved are." An opposition spokesman claimed that "if the Government wanted to ensure hard-core and repeat offenders were dealt with firmly, it should consider introducing minimum mandatory sentences."

It is difficult not to have some sympathy for these points of view, especially if one has been a recent victim of crime oneself. The economic, psychological and physical harm suffered by the victims of both property and personal crimes have, at least until recent years, been given little recognition in the complex, protracted and depersonalised operations of the criminal justice system, and criminologists have frequently given the impression that they have more sympathy for the offenders, whom they portray as themselves victims of an unjust and oppressive social system, than they do for the actual victims of predatory crime. Yet recent estimates put the total economic cost of crime in Australia at between \$16.8 and \$26.9 billion per

annum, which works out at over seven percent of gross domestic product, or more than \$1500 per person per year (Walker, 1994).

The psychological and emotional trauma, especially of crimes of violence, can be shattering to victims and witnesses (Raphael, 1992). Injuries, including those arising from assaults, remain the second major cause of inpatient episodes and of years of potential life lost before age 65 (National Injury Surveillance Unit, 1993). Moreover, official data bases probably understate the importance of injuries arising from intentional violence since surveys of Accident and Emergency Centres in major hospitals indicate that cases of self-inflicted injury and assault are over-represented in the cases being missed by self-reporting procedures (Vimpani, 1991). In a reanalysis of the 1991 Queensland Crime Victims Survey that we are carrying out in collaboration with the Criminal Justice Commission, 232 respondents, or 3.7% of the sample of 6,315 persons, were prepared to report that they had been the victim of an assault in the past twelve months. Of these, only a handful (35 cases) were domestic violence victims, clearly the tip of a much bigger iceberg. However, these women were by far the most traumatised in the whole sample in terms of their sense of personal safety, both at home and outside. Their experience of violence clearly had had a massive impact on their lives.

The belief that crime is rapidly increasing in Queensland, and that punishments are woefully inadequate to stem the rising tide, is widely shared in the community. According to the *Courier-Mail*, which reported the results of a Newspoll survey recently, 75% of Queenslanders personally think that crime in Queensland has increased a lot in the past ten years, and a further 15% think it has increased a little. Virtually nobody believed that crime had decreased, even a little! Not surprisingly, two thirds of respondents (66%) agreed that sentences generally given to people found guilty of crime are a lot too light, and 16% agreed that penalties are a little too light. The rest of the sample weren't in favour of lighter penalties - they just weren't sure.

### *Statistical evidence*

Police statistics support arguments that crime is getting out of control. Across Australia, recorded break, enter and steal offences per 1000 households rose by 153% between 1974/75 and 1991/92, motor vehicle thefts per 1000 households rose by 122%, robbery per 1000 persons by 219%, and serious assaults (other than sexual assaults) per 1000 persons by a massive 423% (Walker, Mukherjee & Dagger, 1994). However, police statistics are known to be frequently extremely misleading as indicators of underlying crime trends, since they are the product of a complex bureaucratic process depending not only on the willingness of victims or witnesses to report crimes but also on police willingness and ability to record reported offences (Farrington & Dowds, 1985; Walker, 1994).

We know that reporting rates for domestic assaults have increased as a result of public education campaigns over the past few years, and it is likely that reporting rates for other kinds of assaults have also increased, although perhaps for different reasons. For example, Bonney and Kery's (1991) analysis of serious assaults in New South Wales suggests that one factor in the rise in official rates may have been the introduction in the 1980s of a requirement for police who had been assaulted to report the incident if they wished to receive financial compensation. In research I conducted with colleagues in New South Wales in the late 1980s (Hemel, Tomsen & Thommeny, 1992), we gained the distinct impression that a combination of improvements in computer technology, the reorganisation of the police service into regions, and the replacement of police by non-sworn clerks who tended to adopt formalistic rather than discretionary criteria in deciding how to enter crime data, had contributed to increased official crime rates.

Problems in interpreting police statistics led some years ago to the development of crime victim surveys as an alternative source of quantitative data on crime and crime trends. The 1991 QLD Crime Victims Survey I referred to above is an example of such a survey. The strengths and weaknesses of victim reports as indicators of actual crime rates and as alternatives to official police data are well known amongst



criminologists, but not so well known amongst the general public (Block & Block, 1984; Fattah, 1991). In a nutshell, victim surveys can only tell us about crimes with specific victims where the victims know and can remember that they have been victimised and are willing to tell an interviewer about their experiences. Thus victim surveys are not very reliable sources of data about domestic or sexual assaults, where fear of recriminations or the private nature of the incidents may reduce reporting rates, or drug trafficking, where there are no "victims" willing to report, or fraud, where victims are frequently unaware they have been "done". Nevertheless, victim surveys can tell us a great deal about such offences as break, enter and steal, motor vehicle theft, and some classes of assault, provided it is recognised that many offences reported in the survey but not reported to police will be at the more "trivial" end of the spectrum.

Fortunately the results of the third major crime victims survey conducted in Australia have just been published, and so we are currently in a good position to examine the official crime wave from an angle other than the police statistics. I refer to the April 1993 national survey conducted by the Australian Bureau of Statistics: *Crime and Safety Australia* (Australian Bureau of Statistics, 1994). Approximately 52,300 persons aged 15 years and over participated in this survey, which aimed to provide information on both reported and unreported crimes and the socio-economic profile of victims. For the reasons just stated, the survey was restricted to break, enter and steal; motor vehicle theft; robbery; sexual assault; and other serious assault. Previous national surveys were in 1983 and in 1975.

On the whole, the comprehensive crime survey data do not support the picture depicted in police statistics. Across Australia, there was only a 51% increase in the proportion of households reporting break, enter and steal offences since 1975, compared with the 153% increase suggested by the police data. The fact that there has been an increase in these offences over the past 20 years is in accordance with common experience, but the more accurate victims survey suggests that the increases are less dramatic than we thought - but of course still a matter for serious concern.

The increase for Queensland between 1983 and 1993 was 29%, more than the national increase of about 11%, which is also a matter for concern (and research) but not necessarily for panic. On the other side of the ledger, there was an actual reported *decline* in per capita serious assaults (excluding sexual assaults, which were stable) since 1975 and especially since 1983. Compared with 1975 the national assault victimisation rate in 1993 had declined by about 9%, but compared with 1983 the decline was 26%. The trend since 1983 for Queensland was once again not as encouraging, with exactly the same victimisation rates reported in the two surveys. Clearly further analysis of the reasons for Queensland's worse record over the past 20 years is warranted, focused probably not just on population increases but on rapid increases in urbanisation. Equally clearly it is not reasonable to conclude from the government surveys that Queensland - or any other part of Australia - is in the grip of a crime wave.

#### *Trends in criminal justice*

Statistical arguments will probably not be sufficient to persuade many sectors of the Queensland community that crime is in fact not out of control. Strongly expressed views of the kind I have cited, which are given wide and frequent airing in the press and the electronic media, have encouraged governments in recent years to "get tough" on criminals. Australia in the past few years has witnessed police and criminal justice budgets that just keep on increasing despite cutbacks in all other areas of the public sector (Polk, 1994), with an overall 2000 percent increase in expenditure on policing since 1960. Other trends include "truth in sentencing" and the introduction of genuine "natural life" imprisonment for some murderers and drug traffickers in New South Wales (Zdenkowski, 1994); the introduction of indefinite periods of imprisonment for serious and repeat offenders in Western Australia (Broadhurst & Loh, 1993) and for violent and dangerous offenders in Queensland (Penalties and Sentences Act 1992); a major growth in the number of juvenile and adult offenders in prison or on some form of community-based correction (Walker,

1994); and a move away from welfare policies for juveniles to an approach based on justice and proportionality of sentencing (making the punishment fit the crime, not the criminal: Naffine & Wundersitz, 1994).

A concern with traditional youth and street crime has not been the only development during this period. To combat the assumed menaces of organised crime, corporate fraud, and public corruption, a number of specialist law enforcement and regulatory agencies have been created. These "super agencies" include the National Crime Authority (NCA), the Australian Securities Commission (ASC), the Cash Transaction Reports Agency (AUSTRAC) and, at the state level, the New South Wales Independent Commission Against Corruption (ICAC) and the Queensland Criminal Justice Commission (CJC). The fact that this is not an exhaustive list indicates the magnitude of government investment in this area. These agencies have been ceded powers substantially in excess of those allowed to state police services and to the Australian Federal Police, on the assumption that stronger powers are absolutely necessary to deter public and private sector corruption and to deal with organised crime at its roots.

It would be misleading to claim that in the past decade or so the only trends in criminal justice have been toward a more stringent and punishment-oriented system. Partly because of the huge costs of court processes and of imprisonment (currently around \$40,000 per prisoner per annum), governments have at the same time moved toward diversion (designed to shunt people out of the system before a formal finding of guilt in court), limited decriminalisation (for example, through "traffic ticket" type punishments for minor cases of shoplifting or smoking marijuana), and deinstitutionalisation (through such devices as early release "on license", work-release programs, half-way houses, and the like) (Chan, 1992; Polk, 1994).

The system is in a process of constant change, sometimes in a "conservative" and sometimes in a "progressive" direction, pushed and pulled not only by public opinion and political whim but also by economic constraints and by developments in professional knowledge and practice. I think it is fair to say, however, that the

general trend at the moment is toward a tougher, "justice-oriented" approach which emphasises police, punishment, and imprisonment. In this we are to some extent following trends in other countries, notably the United States, where between 1975 and 1989 the prison inmate population nearly tripled (Reiss & Roth, 1993). This represents a major shift in public policy, an apparently decisive break with the thinking of the 1960s and early 1970s which was based on the assumption that through an attack on poverty and other social problems crime could be greatly reduced or eliminated. As Marcus Felson (1994) puts it, the liberal leadership of the 1960s proposed to reduce crime by assuming that if government is good to people, then they will be good in return. The new conservative leadership proposes to reduce crime by assuming that if government is bad to people, then they will be good in return.

Is it the case that by being "bad to people", governments can reduce crime? Can more police, tougher penalties, and increased use of imprisonment "deliver the goods"? Are there any circumstances at all under which the criminal justice system can prevent or reduce crime?

The conventional criminological perspective on this issue virtually takes it for granted that the answer must be "no". For most of this century it has been hard to find social scientists who have much confidence in the crime prevention properties of the criminal justice system. One important reason for this has been the theoretical, particularly positivistic, bias of most social scientists, which has generated a strong backlash against the classical model of crime control. The classical model, which despite a century of sociology and psychology remains the cornerstone of all modern criminal justice policies (Vold & Bernard, 1986), emphasised "rational" decision making processes and the deterrent potential of law and law enforcement for amoral individuals with hedonistic tendencies and risk-taking proclivities. By contrast, most modern schools of thought reject legal punishments or the threat of legal punishments as meaningful influences on crime, preferring explanations rooted in psychopathology, human developmental processes, or societal structures (Grasmick

& Bursik, 1990). It is argued that in comparison with these fundamental forces shaping human behaviour, anything the police, courts or prisons can do will be of strictly marginal significance.

In order to investigate the possible preventive properties of the criminal justice system, it is necessary to explore some of the ways in which legal sanctions can influence behaviour. This is a surprisingly complicated question. In addition to the mechanism of fear, which comes under the heading of deterrence, Gibbs (1975) enumerates nine possible ways that punishment may prevent crime. These mechanisms are incapacitation (e.g.: imprisonment limits opportunities to commit crime), punitive surveillance (e.g.: probation and parole make the offender visible to authorities), enculturation or socialization (public knowledge of laws is furthered by punishment), reformation (the moral jolt of arrest or punishment), normative validation (legal punishments reinforce social condemnations of an act), retribution (legal punishments discourage crime victims or their families from seeking revenge), stigmatization (the anticipation of stigma may deter the typical citizen more than the punishment itself), normative insulation (incapacitating punishments like imprisonment reduce the influence of offenders on the attitudes and values of others), and, finally, habituation (people may initially conform to the law through fear or for some other reason, but eventually compliance becomes a habit). I focus for the remainder of this lecture on two of Gibbs' mechanisms: deterrence and incapacitation.

### **Incapacitation of Serious Offenders Through Imprisonment**

There have been recent news reports in Australia of the new "three strikes and you're out" sentencing policies in the United States. At least 16 States have approved such laws, and President Clinton has proposed a federal version. The laws, which in one form or another mandate life imprisonment for anyone convicted of a third "violent" offence, are an extreme manifestation of the attempt to achieve what criminologists call "selective incapacitation" - the identification of hard core, violent, persistent offenders and their removal as a danger to society by putting them in prison

and throwing away the key. In most versions there is no provision for parole, no remissions, and no judicial discretion. The emphasis is totally on physical prevention of offending through indefinite terms of imprisonment.

Selective incapacitation is not just about punishing and eliminating problem offenders; it is also about reducing the overall rates of crime in society. The basic idea is simple and very politically attractive. According to criminological research, a small minority of detected offenders commit a disproportionate share of known offences. For example, in the classic longitudinal study by Wolfgang, Figlio and Sellin (1972) in Philadelphia, 6.3 percent of a birth cohort of 9,944 boys accounted for 52 percent of "police contacts" with juveniles. These boys were labelled 'chronic offenders'. Studies in other countries have revealed a similar concentration of offending amongst a small minority of offenders (Farrington, 1992). If all or most chronic offenders could be detected early in their criminal careers and imprisoned at least for the period they would remain active offenders, then (the argument runs) crime could be dramatically reduced. Moreover, if some less dangerous or risky offenders who are currently unnecessarily occupying places in prisons were released, then (happily) a selective incapacitation policy could be implemented without increasing prison numbers overall, and perhaps numbers could even be reduced (Greenwood & Abrahamse, 1982). As Haapanen (1990, p. 2) puts it, "Selective incapacitation seems to provide the best of both worlds: as a policy, it allows society to 'get tough' on the worst offenders in the name of pursuing a rational strategy aimed at fighting crime."

The newspaper accounts of the "three strikes" laws indicate some of the practical difficulties with this approach. The *Sydney Morning Herald* on April 2 this year carried the story of Larry Lee Fisher, sentenced to life imprisonment in Washington State for stealing \$151 from a sandwich shop. Fisher pointed his finger inside his coat and pretended he had a gun, a ploy he had used in 1988 when he robbed a pizza parlour of \$100. Strike one was in 1986 when he was convicted of second-degree robbery for pushing his grandfather and robbing him of \$390. Most

people would agree that Fisher deserved to be imprisoned at some point, especially since he also had a record of "non-violent" offences, but even the leaders of some of the victims groups which have pressed politicians to introduce the tougher laws are unhappy with the breadth of the new three-strikes provisions and are urging politicians to pass narrower bills focused specifically on truly violent felons. Even more disturbing are police reports that now that word of the new laws has got out onto the streets, criminals are resisting arrest far more violently than in the past. Tougher laws create tougher criminals.

Despite these difficulties and the criticisms of groups like the American Civil Liberties Union, the use of imprisonment to control crime commands enormous public support in the United States. As I noted earlier, the U.S. prison population tripled between 1975 and 1989, chiefly because sentences became longer, and as Rothman (1994) points out, the U.S. now leads the world with a rate of 455 incarcerated per 100,000 of population. South Africa is a distant second with 311 per 100,000. By comparison Australia is hardly in the race with a rate of only 107 (which nevertheless is up from 91 in 1976-77 and is higher than most European countries and Japan [Walker, 1994]).

### *The research evidence*

What is the evidence for incapacitation or selective incapacitation through imprisonment as a crime prevention mechanism? In order to answer this question, it is essential to distinguish between the effects of *collective incapacitation* and *selective incapacitation*. Collective incapacitation refers to the use of imprisonment to prevent crime in society at large through traditional sentencing practices which emphasise the seriousness of the crime and (to a lesser extent) the offender's prior criminal record. By contrast, selective incapacitation policies, as we have seen, attempt to use imprisonment "more efficiently" by targeting the chronic offenders who commit a disproportionate share of the crimes. At the heart of selective sentencing practices are the creation of predictive instruments that can identify likely

chronic offenders prior to sentencing. If *future* chronic offenders cannot be identified accurately, then selective incapacitation must fail (Wright, 1994).

Haapanen (1990) points out that for collective incapacitation to work, two conditions must be met: (1) incarcerated offenders would, in fact, commit crimes during the period of incapacitation were they free to do so; and (2) the crimes prevented by incapacitating these offenders would not be committed by others instead. The first assumption is reasonable, given that those offenders most likely to be imprisoned are often at the peak of their criminal careers, but determining precise estimates of the amount of crime prevented is a very complicated process since some imprisoned offenders would have retired from crime in any case and others will simply resume their careers after the interruption. The second assumption is much more questionable, especially for drug-related crime where market conditions almost dictate that new offenders will appear to fill the breach. For this reason research on incapacitation has tended to focus on predatory crimes such as assault, robbery, and burglary, which are more validly modelled as single-offender crimes, but this severe limitation on the generalisability of the incapacitation argument is seldom acknowledged (Haapanen, 1990).

In order to arrive at estimates of the crime reduction benefits of collective incapacitation, it is necessary to construct complex mathematical models which build on what is known about arrest and incarceration rates for specific offence categories, as well as on empirical data on criminal careers - particularly the rates at which different offenders commit offences and the durations of their offending careers. More precisely, the models estimate the amount of time that an offender is expected to be both active and imprisoned, which is as we have seen the only time incapacitation can apply, as a function of four parameters: arrest and imprisonment probabilities following the commission of a crime, period of incarceration, the frequency of offending, and the duration of careers (Cohen & Canelo-Cacho, 1993). Thus the models allow an evaluation of the crime reduction effects of the successful prosecution, imprisonment and incapacitation of offenders, but they do not allow us



to estimate the *deterrent* effects of such activities or the possibly *criminogenic* effects through such processes as the labelling and stigmatising of offenders.

Early models (e.g. Avi-Itshak & Shinnar, 1973) assumed that the frequency of offending over a year was constant for all offenders. These models predicted modest reductions in crime of 5 to 10 percent due to arrest and imprisonment, but more recent research has revealed the fallacy of assuming that all offenders offend at the same rate. The recent models take into account the evidence of very great offender heterogeneity, epitomised by the finding that a small subset of offenders accounts for a disproportionately large share of offending (Cohen & Canelo-Cacho, 1993; Wolfgang, Figlio and Sellin, 1972). When these kinds of variations are modelled and applied to specific offences, the crime prevention estimates are considerably higher than for the homogeneous model. Thus for robbery, the percentage reductions from the potential level of robberies resulting from incapacitation following a robbery conviction were estimated at 30.1 percent for California, 41.3 percent for Michigan, and 27.8 percent for Texas (Cohen & Canelo-Cacho, 1993: Table 9). The reason for these higher estimates is the phenomenon of *stochastic selectivity*: high frequency offenders run a higher risk in the long run of arrest and imprisonment, and when imprisoned are likely to receive longer sentences because of their record.

What does all this mean? It suggests strongly that collective incapacitation based on current sentencing practices does have a considerable effect on crime. If we were to close down all the prisons tomorrow and release all offenders, there probably would be a marked increase in some serious crimes as active offenders resumed their careers - not as marked an increase as some sectors of the community would have us believe, but obviously sufficient to rule out abolition as a realistic policy at this time. However, it *does not follow* from these analyses that sentencing more offenders to imprisonment or greatly extending current periods of imprisonment will have much effect on crime rates. Nor does it follow that many classes of prisoners, such as traffic offenders and fine defaulters, could not be released without detrimental effects on the community.

The best evidence available that increasing incarceration rates has little effect on crime comes not surprisingly from the United States. One can hardly improve on the recent conclusions of the authoritative report of the Panel on the Understanding and Control of Violent Behavior (Reiss & Roth, 1993, p. 293):

... under a variety of alternative scenarios ... the estimated incapacitative effect of tripling the average time served per violent crime was fairly small - preventing on the order of 10 to 15 percent of the crimes that potentially would have been committed otherwise.

Two facts seem to explain the limited incapacitative effect of the increase in prison time. First, while the average annual frequency of violent crimes per offender is fairly small (e.g., 5 to 10 robberies per year), a small fraction of offenders commits hundreds of crimes per year. But even before the increase in average prison time per crime, these high-frequency offenders were spending much of their criminal careers in prison - both because their high crime rates presented more opportunities to be arrested and incarcerated and because, under otherwise comparable circumstances, convicted offenders with extensive prior records tend to receive longer prison sentences. Second, incapacitation is subject to diminishing returns, because most criminal careers are fairly short. Successive increases in the per-crime chance of incarceration bring into prison less serious offenders, thus preventing fewer crimes per inmate-year. Successive increases in average time served by those incarcerated allocate larger shares of prison space to offenders who would have stopped committing crimes even if they had been free in the community.

It should be stressed that the estimated 10 to 15 percent upper limit on the crime reduction impact of the tripling in imprisonment rates takes no account of the enormous cost of building and operating all the extra prisons (Rothman, 1994), it takes no account of possible criminogenic and other negative social effects of imprisonment (Farrington, Ohlin & Wilson, 1986), and it takes no account of human rights issues (Christie, cited in Rothman, 1994).

*Selective incapacitation and the perpetuation of myths about crime*

Collective incapacitation does keep crime rates down, at least to some extent, but a general increase in incarceration rates is unlikely to reduce crime much, especially in a cost-efficient or socially just manner. Could selective incapacitation deliver added crime reduction benefits while simultaneously punishing severely the most deserving offenders? Two reasons why selective incapacitation must fail have already been spelled out: the phenomenon of stochastic selectivity means that the high frequency offenders are already imprisoned for longer terms anyway, and confinement beyond the end of the offending career yields no incapacitation benefits. Most high frequency offenders imprisoned for a long period would have ceased offending long before the time of release (Cohen & Canelo-Cacho, 1993). In addition, all models which estimate the crime reduction effects of imprisonment ignore the possibility of offender replacement, thus limiting their general application to property offences and to some types of violent crime.

There are several further reasons why a policy of selective incapacitation is doomed to failure. The most important of these is that it is extremely difficult to predict accurately *in advance* who the worst offenders are, and equally as hard to predict when their criminal careers will end (Blumstein, Cohen, Roth & Visher, 1986; Gottfredson & Tonry, 1987). If a sufficiently small proportion of the worst offenders are identified, eliminating all the doubtful cases, it is possible to predict with some accuracy that they will all reoffend for a serious crime, but the great majority of serious offences will nevertheless be committed by offenders not identified by the prediction instrument or by people not previously arrested (Block & van der Werff, 1991). Moreover, as Bernard and Ritti (1991) argue in a careful reanalysis of the Philadelphia birth cohort data, successful prediction of chronic offenders would incarcerate 30 times as many boys as at present, even if all non-chronic offenders were released. The costs of such a policy are unlikely to be tolerated by the taxpayers, even in the United States.

A further technical objection to selective incapacitation, related to the problem of prediction, goes to the heart of the problem - and to the very core of our ideas

about the nature of crime and how it can be prevented. In his careful study of the criminal careers of 2,800 serious offenders in California, Haapanen (1990) argues that selective incapacitation policies depend for their success on the assumption of *stability* of the rate of offending for an individual throughout his or her criminal career. Only if chronic offenders would have maintained their high rates of offending for a long period will incapacitating them have the claimed effects on the crime rate. In fact, he demonstrates that the frequency of offending declines with age, and that social and environmental factors undoubtedly play a much greater role than acknowledged by incapacitation theorists in influencing offence rates:

Thus, current thinking about criminal careers and selective incapacitation presupposes a certain fundamental characteristic of criminal careers - a stable offense rate that is basically an outgrowth of individual criminal propensities. ... Actual data to support this assumption of stability are, however, scarce and open to question ... (p. 9).

Phillip Cook (1986) expresses the fundamental problem even more clearly when he asserts that incapacitation research is guided by a conceptual framework that views criminals as "automatons, insensitive to changing incentive structures and programmed to play out predetermined criminal careers subject only to possible interruptions due to incarceration" (p. 203).

There is an increasing body of evidence associated with several emerging theoretical perspectives in criminology that the notion of "individual criminal propensities" has been greatly overstated in criminological research and popular imagination. Certainly surveys which question juveniles and adults about their offending behaviours find that crime is far more pervasive than the police statistics would suggest. For example, Farrington (1989) showed that 96 percent of the males in his London longitudinal survey had committed at least one of 10 specified offences (including burglary, thefts, assault, vandalism, drug use and fraud) by age 32. If one extends the list of crimes to include such offences as driving over the legal blood alcohol limit, being a computer hacker, evading tax, or defrauding one's employer, it

is hard to avoid the conclusion that nearly everyone is a criminal, at least occasionally.

Cornish and Clarke (1986), authors of *The Reasoning Criminal*, propose the *rational choice perspective* on crime, which emphasises the mundane, opportunistic, and rational nature of much offending, and that potential offenders make decisions and choices, however rudimentary, in which they seek to benefit themselves. This model of criminal behaviour is in stark contrast to popular views of criminals as somehow different from ordinary people. Cornish and Clarke suggest that "... our deeply held and abiding fears about crime depict it as irredeemably alien to ordinary behavior - driven by abnormal motivations, irrational, purposeless, unpredictable, potentially violent, and evil." (p. v). Sir Leon Radzinowicz, in discussing the development last century of "scientific" or positivistic criminology, comments that:

It served the interests and relieved the conscience of those at the top to look upon the dangerous classes as an independent category, detached from the prevailing social conditions. They were portrayed as a race apart, morally depraved and vicious, living by violating the fundamental law of orderly society, which was that a man should maintain himself by honest, steady work.

(Quoted in Vold & Bernard, 1986, p. 40).

In contrast to the view of criminals as "a race apart", many modern criminologists, even those who might have reservations about the rational choice perspective, see crime as an integral part of life, committed not usually by deviants or psychopaths but by ordinary people who sometimes face in the routines of daily life out-of-the-ordinary opportunities and temptations (Felson, 1994). According to this *routine activity perspective*, as society multiplies opportunities and temptations but reduces the effectiveness of informal social controls as a byproduct of technological and economic growth and geographical mobility, more crime (especially property crime) occurs. As Cohen and Felson (1979) put it:

Rather than assuming that predatory crime is simply an indicator of social breakdown, one might take it as a byproduct of freedom and prosperity as they manifest themselves in the routine activities of everyday life. (p. 605).

In this view, we are all potential offenders, and what has to be explained is not so much why people commit crime but why so often people do *not* commit crime when faced with opportunities to do so (Hirschi, 1969). This is the central question of *social control theory*, and the answer is given in terms of the extent to which individuals are bonded to conventional society through such things as attachments to people or institutions, commitment to conventional lines of action, involvement in noncriminal activities, and belief in the moral validity of norms. Felson (1986) summarises these kinds of bonds with one word: handle. If there is no "intimate handler" who can grasp a person's handle, informal social control is difficult.

These theoretical perspectives, together with the empirical evidence which supports them, would constitute a serious challenge to a policy of selective incapacitation, even if the more specific technical criticisms I have summarised were not considered sufficient to put it to rest. But of course in the real world criminological research is usually ignored unless it fits with political imperatives, and as I have indicated selective incapacitation is very attractive to those who want to dramatise a law and order problem and lay the blame at the feet of groups of offenders who are unattractive, in value terms, and who possess no political influence. I fear that rather than see selective incapacitation policies wither away in the face of the criminologist's critique, we may witness in Australia the development of our very own "Three strikes and you're out" policies. Indeed, we already have. I refer to the Western Australian *Crime (Serious and Repeat Offenders) Sentencing Act 1992*.

It will be instructive to conclude the discussion of selective incapacitation by considering this law and its impact, since it throws into sharp relief the "get tough" debate and also raises questions about human rights, deterrence, and police enforcement practices which I have so far mentioned only in passing.

*Getting tough on car thieves in Western Australia*

Perth, Western Australia, is the most geographically isolated city in the world. It is perhaps not surprising, therefore, that criminal justice policies can develop there which are in some cases more progressive and in other cases more regressive, but in each case more extreme, than in other jurisdictions. A noticeable feature of the law enforcement scene in that city is a heavy use by police of high speed pursuits to deal with car thieves. Many pursuits involve a group of perhaps 100 young offenders, many of whom are aborigines, who are blamed for a high percentage of all car thefts (Broadhurst & Loh, 1993; Homel, 1990a). Public concern, partly orchestrated by some sections of the media, led the government in February 1992 to introduce the new legislation, the *Crime (Serious and Repeat Offenders) Sentencing Act*, which was hailed as the toughest law in Australia for dealing with hard-core juvenile criminals. The primary objective of the new Act is to provide police with the support which the juvenile justice system was seen to be not providing (allegedly by being soft on offenders and releasing them to offend again), by identifying "serious repeat offenders" and incapacitating them through imprisonment for indefinite periods.

The interest of this Act, and police practices in relation to pursuits, is that they represent an explicit and contemporary attempt to implement deterrent and selective incapacitation policies by intensifying one traditional method of reactive policing, supported by more severe and inflexible punishments. The appeal of this approach to the police is obvious. I vividly recall meeting with a senior police officer in Perth who unfolded in front of me a computer printout containing the criminal record of a single juvenile car thief who had been pursued by police many times. The 20 page printout spilled off the table and flowed onto the floor. Nearly all police I talked to expressed extreme frustration with a juvenile justice system which released such offenders after a short period to offend again, and called for long prison sentences in adult prisons and stronger support for police who regularly risked their own lives in the pursuit of habitual offenders. Fortunately, both the enforcement practices and initial effects of the new act have been subjected to close analysis and evaluation, and

we therefore have a research base which we can use to assess the validity of the police argument (Broadhurst & Loh, 1993; Homel, 1990a).

It should be emphasised at the outset that whatever their ultimate crime prevention properties, police pursuits highlight vividly the ways in which policies based on detection and then arrest at all costs may conflict with broader considerations of public safety enshrined in police mission statements. Catching law breakers is a police imperative, with arrest statistics traditionally being the major performance indicator. These practices may up to a point have significant crime prevention value. However, another goal which is always an integral part of any police mission statement is the preservation of public safety, including traffic safety.

Thus on the one hand, the police constable has a duty to apprehend offenders - the rule of law requires as a fundamental principle that those who break the law be brought to justice, and traditional models of policing emphasise the deterrent value of such practices. On the other hand, high speed pursuits pose, by their very nature, a grave threat to the safety of motorists - police, offenders, and uninvolved third parties. This is dramatically illustrated by the fact that 16 people (but no police) died in police car chases in Perth in an 18 month period from April 1990. As Australian philosopher John Kleinig has put it: "It is the danger they pose to life and limb which gives hot pursuits their morally problematic character. What is therefore needed to justify them will be some proportionate good." (Kleinig, 1990, p. 1).

I summarise elsewhere the research I have carried out on high speed pursuits in Western Australia (Homel, in press(a)). It will be sufficient to state here that *the deterrent value of pursuits is extremely problematic*. The fact that many offenders are recidivists, deliberately steal powerful vehicles to escape police, and are frequently drug or alcohol affected, suggests that the specific deterrent value - that is, the effect of pursuits in preventing reoffending amongst those chased - is extremely limited. To illustrate how problematic specific deterrent effects are, consider the following comments from one of the recidivist juvenile car thieves I interviewed:

*How did the chase happen? What were you doing at the time?*



There was me and my friend .... and a few other kids. We'd been on a few drugs - Serepax, and we weren't really to it and we went out looking for cars and we ended up getting a car in Cannington (Commodore with full tank). We did not know what to do - our minds were pretty, you know, we weren't all there. Serepax makes you go real violent sort of thing - smash things up ... Sleep, dizzy spells ... Just went driving around and that.

*How did the police spot you?*

The paddy wagon came behind - we all panicked because, you know, the drugs - we weren't all there - you know - type of thing - panicked. Driver took off straight away on wrong side of road - fair bit of traffic. Saw TX5 Turbo at intersection - only five of them in Perth. Went through red light, then they chased us (the turbo).

Not all offenders confessed to this degree of impairment, but drug and alcohol use was a fairly consistent feature of the chase scenario and also of the offenders' lives generally. Under these circumstances, pursuits seem calculated to exacerbate rather than deter offending.

The general deterrent impact - the number of potential car thieves who are discouraged from stealing through fear of being pursued - is hard to estimate. The analysis by Broadhurst and Loh (1993) of the combined effects of the new legislation and associated police enforcement practices suggests that although deterrence may have been achieved on a very temporary basis, the overall impact was at best nugatory. This is clearly demonstrated by data presented in their paper. Motor vehicle thefts were declining for most of the year prior to the new law, but actually *increased* in the following year, in fact very soon after the law had been enacted. One might have predicted the opposite pattern if deterrence had really been operating, especially since arrests and pursuits increased during 1992. Correlational analysis casts further doubt on any deterrent or incapacitation interpretation of the data. In the words of the authors:

On the basis of these correlations it seems unlikely that intensified policing explains the decline in motor vehicle theft prior to the new law or immediately after its introduction.

The fact that both the number of vehicle thefts and the number of arrests are positively related while the number of pursuits and multiple offenders are positively but not significantly related to vehicle thefts tends to rule out any deterrent or special incapacitation effects (i.e. the removal of 'hard core' car thieves) contributing to the reduction in motor vehicle theft observed. (p. 29).

### *Pursuits and the Sentencing Act: An overview*

High speed police pursuits of chronic offenders are a logical application of traditional police enforcement practices, but carried to an illogical extreme. They have to be understood not as a crime prevention measure, nor as a means of protecting the public, nor even as an effective law enforcement strategy, but rather as an irrational and primarily symbolic way of asserting police authority. A common theme in the literature is that *the motorist's act of fleeing from police* is the real reason for a pursuit getting started, and his behaviour during the pursuit is the reason for the pursuit continuing (Auten, 1988; Fyfe, 1990; Hogg, 1988).

Although the *Crime (Serious and Repeat Offenders) Sentencing Act 1992* undoubtedly had crime control objectives when it was first formulated, analysis suggests that it too should be seen primarily as symbolic. Legislation designed to target chronic offenders without devising any effective strategy for increasing the perceived risk of arrest must on theoretical grounds fail to achieve deterrent effects (Homel, 1988), a prediction confirmed by the analysis of Broadhurst and Loh (1993). Moreover, we can assert with confidence that it will fail to achieve any reduction in offending through selective incapacitation, for the reasons already discussed at some length.

When the comparative uselessness of pursuit policies and selective incarceration laws for crime prevention is viewed in the context of the extreme dangers to the public and the violations of human rights entailed in such practices, the full magnitude of the human and social disaster resulting from the blind intensification of traditional enforcement practices and the introduction of tougher

legislative measures is apparent. Wilkie (1993) demonstrates clearly that the *Sentencing Act* is in conflict with the UN Convention on the Rights of the Child, which emphasises the "best interests of the child". As she points out, there has been no pretence on the part of the Western Australian Government that the requirement of mandatory indeterminate detention is in the interests of the children to whom it will apply. She also demonstrates that the *Act* is in conflict with the principle that detention should be a sentence of last resort, that it should be for the shortest appropriate time, that it should not be arbitrary or unjust, and that it should be proportionate.

Selective incapacitation laws are bad laws because they are unjust, violating established principles of human rights. But the ultimate cheat is that in the end rigid police "crime control" policies and the tough laws don't even deliver the increased levels of public safety which they promise, and by distracting police and politicians from approaches which have more chance of success they undoubtedly make the situation worse.

### **Deterrence At Last? The Police and Crime Prevention**

It is not my intention in this lecture to debunk all existing criminal justice practices, but rather to search for those approaches which actually have benefits to the community in terms of crime prevention. I want to present some good news in a moment, but before doing so it is necessary to review some more bad news and make an important distinction.

The important distinction is between *absolute* and *marginal* deterrent effects. I have already indicated that if all prisons were to be closed down tomorrow, some classes of serious crime would probably increase immediately. The difference between the current crime rate and the crime rate that would obtain if all prisons were immediately shut down can be thought of as the absolute deterrent (plus incapacitative) effect of prison. This difference could be quite large. By contrast, the difference between current crime rates and the crime rates that would obtain if three

times as many people were imprisoned reflects the marginal deterrent (plus incapacitative) effect of the increase in imprisonment rate. This difference is, as we have seen, likely to be quite small.

The same distinction can be made for policing. It is quite possible to argue consistently that doubling the number of police would not reduce crime rates (that is, there would be no *marginal* deterrent effect) but that reducing the number of police to zero would result in a sudden increase in crime (that is, that the existence of some police creates an *absolute* deterrent effect). Indeed, there is strong empirical evidence for this position, which I review in a forthcoming book chapter (Homel, in press(a)). The history of police strikes, and particularly the strike in Melbourne in 1923, suggests that at any time a small minority of the population is ready to take advantage of opportunities for a quick illegal profit or for a bit of "fun", but are generally restrained by police presence and activity.

Thus it is possible to be critical of criminal justice programs on the grounds of a lack of marginal deterrent impact, without arguing that all such programs should be abandoned. It is quite reasonable to concede that traditional reactive policing focused on the detection and apprehension of offenders does achieve crime reduction benefits, but at the same time to argue that more of the same - more police, more car-based patrols, more resources to forensic science and to investigative detective work, and so on - will do nothing to reduce crime rates further. Indeed, this is a major conclusion from 50 years of criminological research.

The disappointing results of the Kansas City Preventive Patrol Experiment are well known in the police and academic communities, although not amongst the general public (Kelling, Pate, Dieckman & Brown, 1974). Using a field experimental design, Kelling and his colleagues divided 15 independent, motorised police patrol districts into three groups: one group retained normal police patrol techniques, another increased police patrol to two or three times the normal rate, and the third abolished routine motorised patrols so that police only responded to requests for service. Crime rates stayed the same in the three groups of districts. Wright (1994)

summarises evidence that sting operations (where elaborate procurement services are staged by the police to apprehend offenders), improvements in police technology, different models of police administration, and a number of other innovations appear to have little long-term impact on crime rates. Sting operations may actually *increase* crime rates by providing offenders with more opportunities to sell their illegal goods.

The bad news continues. An experimental study in Britain of the effects of increasing the level of foot patrol showed no reductions in crime (Weatheritt, 1991), while evaluation studies of rapid response, police patrols and follow-up investigations by detectives have not produced positive results (Clarke & Heal, 1979; Greenwood, Chaiken & Petersilia, 1977; Kansas City Police Department 1977-79; Moore, 1992). Increasing police numbers seems not to decrease crime but simply to increase reported crime (Koenig, 1991); as Felson (1994, p. 11) puts it, given the size of modern cities, "Doubling the number of police in a U.S. metropolis is like doubling a drop in a bucket". Greene and Taylor (1991) summarise the position of most scholars in the field:

These studies suggest that the deterrent capacity of the police has been largely overestimated and the traditional police response exaggerated. Collectively, these findings call into question the effectiveness of traditional policing in dealing with crime, disorder, or citizen fear of victimisation. (p. 196).

#### *A rare success story - random breath testing in New South Wales*

It is time for some good news. On December 17, 1982, random breath testing (RBT) was introduced in New South Wales. Under RBT, large numbers of motorists are pulled over at random by police and required to take a preliminary breath test, even if they are in no way suspected of having committed an offence or been involved in an accident. Thus RBT should be sharply distinguished from the American practice of sobriety checkpoints, or the old Reduced Intoxicated Driving (RID) program in Queensland, in which police must have evidence of alcohol consumption before they can require a test. The RBT law was very extensively

advertised and vigorously enforced, with about a million tests in the first year out of a licensed driving population of three million. In later years, police improved on this ratio of one to three. Indeed, RBT in New South Wales must rank as one of the best enforced and most widely publicised laws ever enacted (Homel 1990b).

RBT embodies a preventive, general deterrent philosophy, in contrast to the traditional approach emphasising the detection and punishment of offenders. In stark contrast to the principles underlying selective incapacitation, the problem of alcohol-related road crashes is laid not at the door of the alcoholic or the repeat offender, the "juvenile delinquent of traffic", but at the door of Everyman, "rational, socially responsible, given to occasional and human lapses of conduct but basically law-abiding, controllable and controlling, and responsive to norms of social cooperation and control." (Gusfield 1981a: 99-100).

RBT is properly understood not as a police crackdown in the sense discussed by Sherman (1990), since this would imply a "backoff" after a period of intense police activity usually generating many arrests. On the contrary, it is an entirely new form of ongoing law enforcement which relies for its success both on permanently raising the perceived probability of apprehension and on keeping potential offenders guessing about the times and places they could be tested. The media publicity and apparent ubiquity of RBT make the chances of apprehension *seem* higher, even if total arrests do not increase (which they didn't in New South Wales), and the unpredictable nature of its timing and location increase uncertainty, an important device for increasing perceptions of the risk of apprehension according to Sherman's analysis of police blitzes. Potential offenders know that if they can avoid RBT they will have a very low probability of apprehension (Ross, 1982) but that if they do drive past an RBT operation they will have a very high chance of being pulled over and tested. However, they are always uncertain as to whether tonight will be such an occasion, so in Sherman's terms we have generated a situation of low certainty about whether the risk of punishment is high or low at any given time and place.

The results of the new approach were, on the face of it, dramatic. There was an instantaneous 22% decline in total fatal crashes, and a drop of about 36% in alcohol-related fatal crashes, relative to the previous 3 years (Homel, Carseldine and Kearns, 1988). Although these are large declines in terms of what would be expected from experience with drink-driving laws around the world (Ross, 1982), what really distinguishes RBT in New South Wales from new laws or police crackdowns elsewhere is that the effects appear to have been sustained for over 10 years, with only occasional signs of a diminution in effectiveness. Whereas before the law drivers with an illegal blood alcohol concentration comprised about 44% of all fatalities, in 1993 this figure had dropped to about 26%. No other state, with the possible exception of Victoria, can claim the success with RBT that has been achieved in NSW (Homel, 1990b).

Further evidence is required before one can accept the proposition that RBT actually *caused* all or some of the observed decline in crashes. Time series and other statistical analyses of crash data (e.g., Barnes 1988; Homel in press(b); Homel, Carseldine & Kearns 1988; Kearns & Goldsmith 1984; Thomson & Mavroleftou 1984) do tend to confirm that RBT did indeed have a substantial causal impact, although the precise size of the effect might be disputed. Given this causal impact, and given that RBT is based explicitly on the principles of general deterrence and has been vigorously implemented and publicised for more than 10 years, it is reasonable to assume that a large and sustained deterrent effect has been achieved, even if non-deterrent factors such as economic conditions are also important over time.

#### *A model of the deterrence process*

My involvement with the introduction of RBT in NSW (Homel, 1993a) and my analysis of its deterrent impact led me to develop a theoretical model of the deterrence process which can, in principle, be applied to any class of offences. Although the model was developed before I was aware of the developments in the rational choice and routine activity perspectives, it can easily be incorporated within

these frameworks (Homel, 1993b). Although we tend in our thinking to separate traffic offences and traffic law enforcement from "real crime" and "real policing", in fact there are many fewer differences than might be imagined, especially in regard to the kinds of decision processes which might be involved. A better understanding of the processes underlying a successful deterrence program in one area may well lead to insights into how deterrence might be achieved in other circumstances.

A diagram outlining some of the major features of the model is set out on the next page. The model explicitly incorporates a time dimension (decisions on a particular occasion are influenced by decisions and experiences on previous occasions), since a key finding of the analysis of panel data collected soon after the introduction of RBT in NSW was that deterrence should be seen as:





*... a dynamic and unstable situation, with a constantly changing mix of those deterred through personal exposure to RBT and those 'undeterred' through a successful drink-driving episode or through nonexposure to the operation of RBT. .... RBT is always in the process of losing its effectiveness among drivers who, because they feel under pressure to drink or because they have not seen RBT in operation for some time, take the risk of driving after drinking. [emphasis in original]. (Homel 1988, pp. 244-245).*

Four key propositions undergird the model, and are explained in further detail below. First of all, individuals must be exposed personally to law enforcement, or must receive information about law enforcement (perhaps through media publicity), before they can be deterred (these are the exposure boxes in the diagram). Secondly, neither exposure to law enforcement nor perceptions of legal sanctions have any influence on behaviour apart from a process of evaluation whereby these experiences or cognitions are given a meaning (the "e" symbols over some of the arrows). Thirdly, the extent to which an individual is deterred can, in principle, be measured by questioning him or her about behaviour change caused by exposure to law enforcement (the deterrence boxes). Finally, there must be an investigation of the effects of official legal activity on non-legal sanctions\_which inhibit or encourage drinking and driving, so that the deterrent effects of legal activity can be clearly distinguished from the probably substantial effects of other kinds of sanctions. In the diagram, these are the "informal sanctions" and "moral commitment" boxes.

Since informal sanctions are included, the behaviour of all types of persons is described in the model, even the behaviour of persons who might have highly developed consciences concerning breaking the law and the behaviour of "high risk" people such as chronic offenders. Following the diagram, it is proposed that offending and official legal activities (such as audits by the Tax Office or RBT) are linked through exposure to law enforcement leading to perceptions of severe and/or certain sanctions and hence to attempts to avoid committing the offence when there is a risk of doing so. The more strategies are adopted to avoid offending (through fear of legal sanctions or through the operation of non-legal sanctions), the less likely it is

that an individual will commit an offence on a given occasion. The "commit offence" box refers to the decision to comply or not to comply with the law.

At the heart of the model are the perceptions of legal sanctions. However, these perceptions on their own are not sufficient to explain behaviour; a process of evaluation takes place, whereby the individual weighs the personally determined costs of the threatened consequences of his behaviour. Thus two individuals might have exactly the same perception of the penalties which would be applied to them if they were caught committing a specific offence, but one might be much less worried than the other at the prospect of actually experiencing those penalties. The interaction of perceptions and evaluations is a major reason why decisions based on fear of legal threats are constantly being reassessed by potential offenders. While in principle objective sanctions and police enforcement can be maintained at a given level, subjective assessments of these official activities are likely to be much more unstable.

In order to be a sociological model and to have policy relevance, perceptions must be linked in some way with the objective legal actions. It is proposed that official legal activity is relevant to the individual only inasmuch as it enters the world of his everyday experience. In the model, exposure to the legal actions is the variable linking official activity with perceptions and evaluations of sanctions. The more intensive or frequent the official activity, the more intense or frequent will be the exposure of the threatened or punished population. Exposure might occur through observing or experiencing police activity, or through knowing others exposed in this way. In addition, the experience of punishment through a conviction is a form of exposure. The model predicts that those exposed to legal sanctions in any of these ways will be fearful of the consequences of offending and will modify their behaviors accordingly. On the other hand, individuals who have broken the law with impunity will not fear legal sanctions as much as those without this experience of law breaking (the "experiential effect": Minor & Harry, 1982). Thus successful criminal offending episodes are also a form of exposure to objective legal activity.

However, the relationship between exposure and fear of sanctions is not automatic: once again it is proposed that an individualised process of evaluation takes place. One way of illustrating this is to consider how an individual's decision to drive after drinking or not to drive after drinking on a particular occasion affects his behaviour on subsequent occasions. This involves tracing the paths in the diagram which link Occasion N with Occasion N+1. Whatever his decision, the motorist will be exposed to police enforcement or will notice the absence of police activity on the way home, or on an occasion soon after (see the exposure box at the bottom of the "Occasion N" section of the diagram). If he complies with the law, at some cost in terms of pleasure, time, or money, he may be annoyed that police are nowhere to be seen on the way home or in the month before the next party, and re-evaluate the risks involved in driving after drinking. On the other hand, he may find his virtuous behaviour rewarded when he passes a random breath test. Such an experience will affect people in different ways; for some, the experience of a single random breath test will leave an indelible impression, while for others many tests or observations of police activity will be required to convince them that compliance with the law is the least costly option.

If a motorist decides to drive after drinking he may get a real scare if he drives past an RBT operation, even if he gets home without being pulled over for a test. Although he has successfully driven when he may be over the legal limit, because he has seen police conducting RBT he may not reduce his perceptions of the chances of detection as predicted by the experiential effect. Alternatively, he may decide that not being pulled over had something to do with his ability to drive brilliantly when drunk, and thereafter dismiss RBT as a "paper tiger" (fulfilling the experiential prediction).

These scenarios clarify the dynamic nature of the deterrence process, with potential offenders constantly reassessing the legal threat and modifying their behaviours accordingly. They also illustrate that different forms of exposure to legal activity, or differing constructions of the meaning of similar experiences, will lead to

differing evaluations of threatened or actual legal sanctions even if there are no differences in perceptions of what the legal threat actually is.

### *Non-legal sanctions*

The incorporation of non-legal sanctions in the model highlights the importance of the physical and social environment. The individual is assumed to be subject to three and only three types of social control mechanisms: guilt feelings resulting from the internalization of norms, the threat of social stigma or a sense of shame resulting from informal sanctions, and the threat of physical and/or material deprivation (Grasmick & Green 1980; Grasmick & Bursik 1990). One source of material deprivation is formal, legal punishments (imprisonment, loss of licence, and so on), but other sources include the costs and inconveniences involved in *not* offending (e.g.: the cost of keeping all one's receipts when preparing a tax return), as well as the non-legal material costs entailed in committing the offence. Probably the major material cost which can result from drink-driving is having a crash, and perhaps for burglary the sheer physical effort involved in climbing through windows or scaling fences is enough to deter the elderly or the lazy.

An important type of non-legal sanction is moral commitment: individuals who believe that it is immoral or antisocial to break the law, especially to commit serious offences, will experience strong feelings of guilt if they do offend. Zimring and Hawkins (1968) have argued for the existence of a law abiding group in the community who have received strong moral training in their early years and who cannot commit crimes because their self concepts will not permit them to do so. However, the model proposed in this study corresponds to a parallelogram of forces rather than to a division of the population into those to whom deterrence applies and those to whom it does not. A person's conscience is only one force influencing behaviour, competing with such factors as peer pressure and fear of punishment, although in many cases the force of conscience will be the major influence.

It is not clear that routine law enforcement will have an immediate impact on the sense of moral commitment. However, theorists such as Andenaes (1974) have argued that in the long term, law may have an educative or habit forming effect, operating as a "moral eye-opener" (Andenaes 1983, p. 2). Although people may change their behaviours in the short term because of fear or peer processes, in the longer term they internalise the legal standards and start to police their own behaviours. Thus a link is shown between exposure and moral commitment at the bottom of the diagram, which represents long term effects. It is proposed that repeated exposure to law enforcement and to publicity about law enforcement, perhaps over a period of years, will begin to mould beliefs and induce law abiding habits in the manner predicted by Andenaes.

Braithwaite (1989) has recently reminded criminologists of the central importance of shaming as a powerful mechanism of social control. Mostly shaming operates to reduce crime: " ... the key to crime control is cultural commitments to shaming in ways that I call reintegrative" (p. 1), but for some classes of offences shaming may actually increase pressures to offend. For example, historically in most Western societies, especially Australia, there has been very little shame attached to drinking and driving (Homel, 1988; Gusfield, 1981a) or to tax evasion (Wallschutzky, 1985), and pressure from other people may in some circumstances encourage people to commit these offences. The importance of shaming in the present context is that it is a primary expression of the force of informal sanctions in the decision making processes of potential offenders. Contemplation of what loved ones or friends would think of us if we committed a crime is sufficient to direct many of us to law abiding activities. Similarly, working in an environment in which criminal activity is not condoned by the rank and file creates many subtle pressures for conformity with the law. Unfortunately, as we have noted, the opposite can also be the case - if ripping off the boss is accepted practice by all the smart operators at work, there may be considerable stigma attached to not being a smart operator as well.

The key question from the perspective of my deterrence model is how formal, legal sanctions will impact on informal sanctions. In principle, there are four possibilities: formal sanctions may either reinforce or undermine informal sanctions which in turn either encourage or discourage compliance with the law. In my drink-driving research, the enforcement of RBT undermined informal group processes which were *encouraging* offending. Based on ethnographic work in bars, Gusfield (1981b) argues that to understand risk-taking behaviour such as drinking and driving, it is less important to know how much drinkers consume than whether they are portrayed in their own eyes and in those of their peers as competent or incompetent drinkers. There is an implicit assumption that in the barroom environment adequate drinkers (especially men) do not get caught and do not have an accident when they drive after drinking.

For Gusfield (as for social control theorists) what needs to be explained is why people *don't* drive after drinking, and it is here that exculpatory defenses, legitimate excuses, come into play. One exculpatory defense is the responsibility to work; another is past arrests for drinking-driving. These circumstances make the avoidance of driving understandable and reasonable, and allow the image of competence of the drinker to be preserved. In view of this, it is quite reasonable to argue that RBT achieved its impact in NSW by allowing many drinkers to maintain their image of competence while reducing their level of drinking. In effect, the presence of police carrying out RBT provided a powerful exculpatory defense, since there are in principle few steps the drinker can take to avoid being pulled over. Since it could happen to anyone, there is no disgrace in not drinking or in not driving. There is considerable empirical evidence for this explanation; indeed, the impact of RBT on informal sanctions was a bigger contributor to the decline in road deaths than the direct effect of legal sanctions through the increased perceptions of the risk of getting caught (Homel, 1988).

Understanding the complex interplay between formal legal sanction and informal sanctions operating through stigma or shame is one of the keys to explaining

the contradictory and frequently minimal impact of criminal law on behaviour. Since informal sanctions are vastly more powerful as influences on behaviour than the threat of legal punishments, to be really effective law enforcement must reinforce informal sanctions which are already present in potential offenders' lives and which are operating to discourage offending. My research on deterrence strongly suggests that behaviour change brought about only through fear of apprehension and punishment is highly unstable, and will quickly dissipate unless changes are wrought either in moral attitudes (preferable) or in informal sanctions.

The results of Sherman's (1992) research on the policing of domestic violence are best understood in terms of the interface between formal and informal sanctions. In 1981/82, Sherman supervised the first randomised scientifically controlled test of the effects of arrest for any crime. Sherman persuaded a group of police in Minneapolis when called to domestic violence incidents where both suspect and the victim were present to decide *at random* whether to arrest the offender, to send him away from the scene of the assault for eight hours, or to give him some form of advice, which could include mediation. The results of the Minneapolis experiment strongly suggested that arresting the offender caused fewer assaults in the following six months, but subsequent replications of the experiment in other parts of the United States produced far more complicated results. Sherman found, amongst other things, that arrest *increases* domestic violence among people who have nothing to lose, especially the unemployed; arrest deters domestic violence in cities with higher proportions of white and Hispanic suspects; and arrest deters domestic violence in the short run, but escalates violence later on in cities with higher proportions of unemployed black suspects. Thus there were differential effects of arrest, depending on a suspect's ties, or lack of ties, to conventional society, and according to the ethnic composition of the city. Although the precise processes are not well understood, it seem likely that arrest was a much more shameful event in Minneapolis than in most of the other locations, that the stigma associated with an arrest means very different things in predominantly black, white or Hispanic communities, and that the



unemployed may have so few "handles" that can be grasped that there is very little in the way of informal controls that the formal sanction of arrest can reinforce.

Klein's (1993) analysis of why attempts to suppress gangs frequently fail also illustrates how formal and informal sanctions can interact. One of the most common police tactics is to use *street sweeps*, in which hundreds of police officers, usually with public forewarning, crack down on high-intensity gang and drug distribution neighbourhoods, round up hundreds of suspects and subject them to an accelerated booking and disposition process. These kinds of programs are described by police as "sending a message" to drug dealers in gangs, but Klein argues that what is missing is any considered attention to the gap between the message as delivered and the message as received. In terms of my model, there are problems with the *exposure* to law enforcement and the *evaluation* of this exposure. He suggests that the message as received (that is, cognitively altered to serve the purposes of the gang audience) may well be, "the police are incompetent", or "only fools get caught, or guys who want some excitement." Klein observes that "Gang group processes can turn a street sweep into a source of gang bravado and cohesiveness" (p. 92). In other words, the informal processes undermine and even nullify the formal law enforcement processes of street sweeps.

I wish to turn now from the description of the model to some recent examples of successful deterrence, outside of drinking and driving. My concern is to draw out the critical elements of the deterrence process and establish what is the proper role and function of the police in crime prevention.

#### *Some cases of successful crime prevention*

I take as my primary data sources at this point portions of the emerging literature on situational crime prevention, particularly the recent edited volumes by Ron Clarke (Clarke, 1992; 1993), together with the small literature on the prevention of violence in and around licensed premises. Situational prevention, as opposed to social or community prevention, focuses on the immediate crime event rather than

the psychological and social processes which lead to criminal involvement or criminal motivation. The emphasis is on manipulating the immediate social and physical environment in order to increase the risks of detection or apprehension, increase the effort required to commit an offence, or reduce the rewards flowing from the commission of an offence. Situational crime prevention clearly includes legal deterrence as a special case, and is an outgrowth of work within the rational choice perspective. If this literature is any guide, crime prevention is possible but it would be a big mistake to see the police as central to the enterprise.

This last point about police can be understood more clearly by reference to a recent comprehensive review of the crime prevention evaluation literature carried out by Poyner (1993). Poyner identified 122 evaluation studies from which it was possible to make a rating of the crime reduction success of the program or intervention. He divided prevention measures into seven general categories: campaigns and publicity (74 citings); policing and other surveillance (68 citings); environmental design or improvement (45 citings); social and community services (27 citings); security devices (26 citings); target removal or modification (5 citings); and "other" (4 citings). Four measures (out of 47) directly involved police: doorstep campaigns by police; neighbourhood or block watches; increased police patrols; and focused or saturation policing. Each measure was rated for effectiveness on a four point scale, from "good evidence of crime reduction" to "crime increased".

One of the most surprising outcomes of the review was that about half the 249 citings received were rated in the top category for effectiveness. As Poyner (1993, p. 14) observes, " ... there is plenty of evidence to show that crime prevention can work, provided we understand what works and under what circumstances. Our troubled politicians and administrators should not lose heart." Some aspects of police activity were successful in many studies, particularly doorstep campaigns and focused or saturated policing. The success of the latter strategy is consistent with Sherman's (1990) review of crackdowns, while the success of the former suggests that police can play a major crime prevention role by communicating concerns about crime

prevention to the community. A further feature of the review is that the success of different measures was very dependent on the crimes being targeted. For burglary, the only police strategy which worked was doorstep campaigns, while for car crime both doorstep campaigns and focused policing worked. For robbery the key approach was focused policing. In every case, increased police patrols - perhaps the most common police response to a crime problem - failed to make the grade.

Five studies in the two volumes edited by Clarke help to add flesh to the bones of Poyner's (1993) review, and also highlight some features of police involvement in successful crime prevention measures which seem frequently to be of crucial importance: communicating the legal threat in an effective way, cooperating with other agencies, using available data in a systematic way, and strengthening informal social controls.

Laycock (1992) reports the results of a project in South Wales which ostensibly was about marking property but which actually was about publicity. The assumption underpinning the project was that while the marking of goods to deter theft might be important, the extent to which this was advertised was even more important. Following extensive publicity in local media, police made door-to-door visits in three villages to enlist participants and also provided equipment and window decals. All these strategies contributed to the very high resident take-up rate and the sustained reduction in burglary achieved (without displacement to other areas), but of even greater significance was the author's conclusion that through the thorough police visiting program many *burglars* as well as potential victims were made aware of the scheme. The knock on the door by police heightened potential offenders' perceptions of the likelihood of being detected with stolen goods, and so greatly amplified the deterrent effect of police activity. Although these kinds of doorstep campaigns may not fit the traditional image of policing, clearly they should be taken more seriously as a crime prevention measure, particularly since there are obvious parallels with random breath testing.

A study by Matthews (1992) on curbing prostitution in a residential area of London illustrates both the pointlessness of traditional policing focused on arrests of prostitutes and the power of focused policing combined with changes in the physical environment. The successful strategy had two primary elements: firstly, intensive policing not only of the women but also of "curb-crawlers" - men in cars who drove into the area and frequently harassed and distressed female residents - as well as pimps and brothel keepers; and secondly, a road closure scheme which greatly reduced through traffic. The keys to the success of this project were a willingness by police to abandon traditional approaches based on "managing" and recycling the problem through arrests of prostitutes, and a willingness to work closely with residents and the local council in an organised and sustained way. Focused policing was crucial, but could not have achieved permanent effects apart from the coalition with the community and other agencies.

Two further studies in Clarke (1992) illustrate the importance of lateral thinking based on reliable data, combined with police cooperation with other agencies. Bell and Burke (1992) describe how after the failure of the enforcement of traditional city ordinances prohibiting cruising in automobiles by young men and women in a small U.S. city, a "cruising committee" comprising representatives of police, city council, local businesses, and parks and recreation and transport departments was able to greatly reduce the problem by leasing a downtown parking lot on Friday and Saturday nights, opening it to the cruisers, staffing it with police, equipping it with portable restrooms and cleaning it up next morning. Eck and Spelman (1992) show how police in a U.S. city used problem-oriented policing techniques to effect a longterm reduction in thefts from vehicles parked in shipyard parking lots. A key strategy was better use of information, particularly information obtained from offenders through interviews concerning their motivations and techniques. As the authors point out, mostly traditional tactics were employed, such as interception patrols and plain clothes stakeouts, but these tactics were directed in nontraditional ways through the extensive and unconventional use of data. The need

for strategies which involve non-criminal justice agencies, such as the shipyard union, is emphasised.

The study by Veno and Veno (1993) on the reduction of violence and public disorder at the Australian Motorcycle Grand Prix is a classic illustration of how confrontational and aggressive police tactics, amplified by sensational media reporting, exacerbated the problems they were designed to control, and ultimately destroyed the races at Bathurst, New South Wales. The paper also illustrates how police tactics based on consensus and prevention "saved" the races in a new locale (Phillip Island, Victoria), and contributed to an increase in attendance from a low of 4,300 in 1987 (Bathurst) to an amazing 241,000 in 1989 (Phillip Island). Under the old regime, police searched every traveller to the event (ostensibly looking for weapons), took a pedantic "letter-of-the-law" approach to traffic offences, engaged in "garrison", reactive policing on the camping grounds, and overreacted to minor games and horseplay. By contrast, Victoria police demonstrated a genuinely cooperative approach toward the motorcyclists, illustrated by the fact that when the 10,000 motorcycle riders assembled in Melbourne for the rally they were led by police motorcycles with lights flashing!

The key to the success of the Victorian approach was that it devolved a sense of ownership of the problem of public disorder to the motorcyclist community. Motorcyclists were made responsible for the orderly and safe operation of camping sites:

It was agreed that motorcyclist camp operators or their representatives should contact the command post daily and, if required, police would take action. The marshals were mature people who were properly briefed ... Camp operators and marshals developed common rules within the camping ground to govern antisocial behavior and alcohol usage. This tactic ... also helped a powerful faction of the motorcyclists to take significant responsibility for control of the problem. (Veno & Veno, p. 169).

In short, this study illustrates again the powerful role of *informal social controls*, and the ways in which intelligent and consensual policing can amplify and

channel these informal processes so that the need for confrontational, reactive policing is reduced to a minimum.

*The Surfers Paradise Safety Action Project: A model for the future?*

The work by Veno and Veno (1993) is a vivid illustration of the success of non-traditional modes of policing in managing disorder and violence. It is especially interesting in an Australian context, since in this country alcohol-related violence is a particular and neglected problem (Homel & Tomsen, 1991; Homel, Tomsen & Thommeny, 1992). More than 40% of serious assaults are nominated by the police as involving alcohol, and it is a consistent finding in many jurisdictions that assaults are more likely to occur after midnight around pub and club closing times. At least 20% take place in or around licensed premises, which is about the same proportion that are recorded as domestic assaults (Ministry for Police and Emergency Services, Victoria Police, 1989; Robb, 1988).

Like domestic violence, violence in and around licensed premises is not new; it has been a feature of Australian life since the first day of European settlement. It is surprising, therefore, that until recently little attention has been paid to identifying and dealing with the causes of the problem. Police strategies have been almost entirely reactive, and have focused on street offences and the public disorder associated with drunkenness rather than on the activities of managers and security staff who frequently exacerbate the problem by irresponsible drink promotions and by arbitrary acts of violence against selected patrons. It is paradoxical that although rowdy drinking is regulated with consideration to the 'public order' through legislation which, for example, sets out the responsibilities of licensees to manage the business in such a way that "the quiet and good order of the neighbourhood of the licensed premises" is maintained (Section 104 of the *NSW Liquor Act, 1982 (Amended 1989)*), instances of violence are perceived by politicians, bureaucrats, and police as individualised disputes between different patrons who effectively deserve their misfortune, particularly if they are young, drunk, male, and working class.

Licensees can be prosecuted or have their licenses withdrawn if they serve underage patrons, trade outside legal opening hours, infringe regulations surrounding the provision of food, entertainment, or gambling facilities, or - worst of all - fail to pay their license fees, but the operation of premises which are regularly violent has rarely been a cause for concern (except in the state of Victoria: Homel & Tomsen, 1991).

There is no evidence that police concentration on street offences around licensed premises, or responses (usually delayed) to serious assaults occurring in or near pubs and clubs, are effective in preventing alcohol-related violence. However, there is evidence that more preventive strategies focused on *managers* may be effective in reducing disorder and violence (Jeffs & Saunders, 1983; McKnight & Streff, 1994).

The Surfers Paradise Safety Action Project commenced in March 1993 and formally concluded in December 1993. The project was designed and funding obtained by myself and Mr Russell Carvolth of QLD Department of Health, but funding was directed through the Gold Coast City Council. The project is a good example of collaborative action research involving university researchers and state and local government representatives (McIlwain, 1994). The methods adopted in the Surfers Paradise Safety Action Project were grounded in the extensive research referred to above. The aims of the Project were to reduce alcohol-related violence and disorder in and around Cavill Mall, the major nightclub and entertainment area, and as a result to improve the image of Surfers as a tourist destination and to reduce fear of crime victimisation by patrons, residents, tourists, and local businesses.

The project was based on three major strategies:

- (a) The creation of a Community Forum, along the lines of the Melbourne Westend Forum (Digby, 1991), and the consequent development of community-based Task Groups and the implementation of a safety audit;
- (b) The development and implementation of risk assessments in licensed premises by the Project Officer and QLD Health, and the consequent development and implementation of a Code of Practices by nightclub managers;

(c) Improvements in the external regulation of licensed premises by police and liquor licensing inspectors, with a particular emphasis on preventive rather than reactive strategies and a focus on the prevention of assaults by bouncers and compliance with provisions of the Liquor Act prohibiting the serving of intoxicated persons.

Since commencement in March 1993, the Code of Practices has been developed and accepted by nightclub managers. This, and numerous other activities including a safety audit of the area conducted by the community, risk assessments of all nightclub venues, and training for nightclub managers in responsible serving practices in addition to security staff training, means that project workers now have practical and research knowledge concerning the critical elements which combine to bring about substantial change which is understood, accepted, and supported by the community.

The process by which this has been achieved has been tracked using a range of databases which provide information about actual violence before and after the intervention, management and staff practices in nightclubs, and perceived fear of violence by the community, business and young patrons. More specifically, we have data on incidents of violence and disorder in and around Cavill Mall recorded by security companies, police statistics on incidents of violence and street offences in and around Cavill Mall, and structured unobtrusive observations of staff, patrons, drinking patterns and aggression and violence in 18 nightclubs in January 1993 (56 visits) and January 1994 (43 visits) (Homel, Hauritz, Wortley, Clark & Carvolth, in preparation).

The data all strongly suggest a decline in aggression, violence and street offences, and dramatic changes in the proximate causes of such incidents (such as declines in observed levels of drunkenness, more responsible serving practices, and less aggressive bouncers). For example, the number of incidents of physical violence observed during the unobtrusive observation sessions in January 1993 was 9.8 per 100 hours of observation, consistent with the rates observed in some of the worst pubs and clubs in Sydney (Homel, Tomsen & Thommeny, 1992). This rate declined to 4.7 per 100 hours observation in January 1994 - less than half the pre-intervention



rate (Homel, Hauritz, Wortley, Clark & Carvolth, in preparation). Other data sources suggest trends in the same direction. Of course in the absence of a control group, it is not possible to conclude that the project *caused* these positive outcomes.

Nevertheless, the "meshing together" of outcomes and processes further up the line (such as a reduction in the number of intoxicated patrons) does suggest a positive impact.

The project team has also developed a firm understanding of political sensitivities (local, state and federal) as well as of the complexities of the interactions between the many layers of regulation which operate, or fail to operate, at the level of licensed premises. Indeed, self-regulation through such devices as a Code of Practice can be supported or undermined in a variety of ways by the activities of a local Monitoring Committee, local police, Liquor Licensing inspectors and by higher level authorities such as the Liquor Advisory Board and the Appeals Tribunal. The interrelationships between these layers of regulation can have a major impact on the achievement of targeted goals, a further illustration of the importance of the interactions between formal and informal sanctions in the deterrence model.

This project has involved university staff and students in working on a grassroots, community problem. In this connection, I was interested to read in the April 14-20 issue of *Campus Review* an article by Geoff Maslen entitled, "Have Australia's universities lost their way?" Maslen quotes Mr Ernest Boyer, president of the Carnegie Foundation for the Advancement of Teaching, as saying that professors should apply knowledge to real-life problems, use that experience to revise their theories, and become 'reflective practitioners'. This is precisely the model of research which I tried to develop some years ago when I began to advocate for the introduction of preventive traffic law enforcement practices by police (Homel, 1993a). However, I always saw this as rather an individual process, and it had little impact on my work with colleagues or in my teaching.

Boyer goes on to argue that universities should organise cross-disciplinary institutes around pressing social issues, and that undergraduates should participate in

field projects, relating ideas to real life. This suggests that the Surfers model could be extended to other crime prevention problems, and that students could engage in something like a "crime prevention internship", at least in their final year, and not simply be employed as collectors of data in the summer holidays. In this way, students could be at the cutting edge of action research, seeing for themselves how messy field projects can be, and how difficult it is to introduce any controls for a rigorous evaluation. Staff would also benefit in their teaching, since students would be more motivated to learn. They would have first hand knowledge of community problems which could not be addressed without digging further into the relevant research literatures, and could very quickly get ahead of their teachers in specific areas. Thus could research, teaching, and community service be brought into closer alignment.

### **Conclusion: Getting Tough or Getting Serious About Crime?**

Crime is a serious social problem in Australia, and deserves to be taken seriously by all sectors of the community. Fear of crime appears to be growing, and victims of crime are demanding more adequate forms of redress through the criminal justice system. Nevertheless, there is no evidence for an epidemic of crime, and no reliable evidence for any increase at all in most forms of violent crime. However, there is no doubt that increases in the numbers of property crimes such as break and enter and car theft have outstripped population growth, particularly in south-east Queensland which is rapidly becoming much more urbanised. These increases in property crime rates reflect in part the increased opportunities and temptations that are afforded by a more depersonalised urban landscape with fewer forms of informal surveillance and control (such as neighbours watching over the back fence), and are therefore perhaps better viewed as a byproduct of prosperity and freedom than as an indicator of societal breakdown. In other words, much crime may be the price we pay for the sort of materialistic and mobile society we have fashioned (Felson, 1994).

I have tried to argue in this lecture that although "get tough" policies give the appearance of constituting decisive action, in fact they involve a retreat from rationality and a failure to take the reality of crime seriously. They invariably fail to deliver the goods in terms of long term reductions in crime because they are based on fantasies about crime and punishment rather than on systematic and sober analysis. This is nowhere more obvious than in the headlong rush toward selective incapacitation policies in the United States and some parts of Australia. By overpathologising crime and attributing the problem entirely to chronic offenders (who turn out to be overwhelmingly members of powerless minority groups), a set of programs are justified and adopted which are politically convenient but which violate fundamental human rights and in the end fail to grapple with the real problems. Does putting away thousands of small time street criminals like Larry Lee Fisher *for the duration of their natural lives* really sound like cost effective crime prevention, when we know that most violent crime can't be prevented in this way and that non-violent white collar crimes like fraud, forgery and false pretences, which generate well over half the total financial cost of crime in this country (Walker, 1994), will be completely untouched?

Do we want to live in the kind of society that these get tough policies would create? It should not be forgotten that the targets of imprisonment policies are disproportionately Aboriginal people in Australia and Americans of African descent in the United States. In Australia, on a per capita basis Aboriginal people are 18 times more likely to be in prison and over 26 times more likely to be taken into police custody than non-Aboriginals (Walker, 1994). These are the people who will bear the burden, overwhelmingly, of incapacitation policies. We should heed the words of Nils Christie, a Norwegian criminologist who has commented recently on the massive increase in the numbers of prisoners in the United States. He draws an analogy with Nazi Germany:

The extermination camp was a product of industrialization ... a combination of thought-patterns, social organization and technical tools. My contention is that the prison system in the USA is rapidly moving in the same direction. (Quoted in Rothman, 1994, p. 34).

We may be horrified by the analogy, but this could be the reality of Australian criminal justice unless we take decisive action as a community to reject selective incapacitation policies.

I have argued that it is not necessary to abandon the criminal justice system in our search for ways to prevent crime, and that under the right conditions crime can be deterred by legal measures. This is perhaps a fortunate conclusion, since we will undoubtedly continue to spend enormous sums of money on keeping the system going. However, intensification of traditional policing practices will be an expensive failure. My point in presenting my model of deterrence is to illustrate the complexities of the processes involved, and to emphasise the importance of seeing deterrence essentially as a *communications exercise*. It is the way potential offenders become aware of, perceive and evaluate enforcement activities which has a decisive impact on their success, not the severity of the penalties which are threatened. I know of no scientific study ever conducted anywhere in the world which has demonstrated that increasing the severity of legal punishments while keeping everything else the same reduces crime. The critical factors are an individual's perception of the chances of getting caught and the influence on him or her of informal, non-legal sanctions. To have a permanent impact, law enforcement activities must undermine informal processes working against compliance with the law and reinforce informal sanctions against offending. Winning over the adolescent's peer group is much more effective than threatening him or her with punishment in the unlikely event that he or she is arrested for doing something illegal that everyone in the group does.

I have presented a sufficient number of case studies to illustrate some of the directions social policy should take. It is quite clear, for example, that police are far more effective when they work in cooperation with the community and with other

government agencies, often in a minor role, and when they adopt a scientific, data-based, problem-oriented perspective. Even when, as in the case of RBT, the enforcement activities are essentially restricted to the police, success appears to depend critically on how well enforcement is *advertised* in the mass media, which is of course an aspect of deterrence as a communications process. It is also instructive to note that the great majority of successful crime prevention programs involving the police did not require threats of severe penalties and none that I know of violated human rights. Effective crime prevention does not depend on taking extreme measures, but rather on building on incentives and opportunities which are already present in the community.

Research on the criminal justice system and on crime prevention builds on criminological theories, which in turn depend on certain conceptions of human behaviour and of social change. The study of the administration of justice cannot be divorced from larger questions concerning the causes of crime and what constitutes the "good" society. While we should search relentlessly for ways to prevent or reduce crime, and use the best available theoretical and methodological tools in the process, we should also constantly question our solutions from the perspective of social justice. I am disturbed at how easily criminal justice "solutions" turn into practices not too far removed from what we saw in *Schindler's List*. What lies behind the astonishingly high incarceration rates of Aboriginal people in this country? Why does nobody seem to care about the young car thieves killed in high speed police pursuits? Given that criminal offending is most prevalent in the teenage years, how can we feel comfortable with policies that seem intended simply to cause suffering for large numbers of mainly lower class and Aboriginal young people?

I know that crime causes harm and that victims have rights. I know - I have been a victim too, on more than one occasion. But I am haunted by children's stories I read in a simple book published some years ago. *What Happens to Children: The Origins of Violence*, by psychologist Valerie Yule (Yule, 1979), contains stories by disturbed young children from very deprived backgrounds. The purpose of the book

was, in the authors's words, "to show what happens today to children who are *not* shielded from harsh realities" (p. 13). The children she talked to in the 1970s seemed destined to be the bashers, vandals, criminals, psychiatric patients, and alcoholics who probably now fill our prisons. Their stories were often told without any expression at all, as if they were flat statements of fact. "Monsters appeared as if they were everyday realities for these children, and the violence and tragedy of what comes out is beyond any emotion" (p. 16).

Understanding the world from the perspective of children like these is essential if we are to fashion effective responses to crime. Understanding *and* compassion are essential if we are to make progress toward a society which generates less crime in the first place and is one we feel, in good conscience, happy to live in.

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