SOCIETY'S RESPONSE TO THE VIOLENT OFFENDER

Australian Institute of Criminology

During its life, the National Committee on Violence anticipates publishing:

Monographs

Violence in Australia
Victims of Violence
Final Report

Violence today - a series of information papers

Violence, Crime and Australian Society Domestic Violence
Violence Against Children Violence in Sport
Violence and Public Contact Workers Violence on Television
Violence, Disputes and their Resolution Racist Violence
Political Violence

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Note on Illustrations

The Australian Institute of Criminology has a small representative collection of paintings which illustrate the characteristics of individuals with personality disorders. They were selected from the Australian Collection of Psychiatric Art located in the University of Melbourne where there are some 8000 paintings, drawings, models and embroidery.

The material there is divided into diagnostic groups of which schizophrenia, the manic-depressive illnesses, the neuroses and the personality disorders are some of the categories.

Most of the items date from the early 19605; additions are, however, being made by both public and private gifts. One of the advantages of studying art during this period is that psychotropic drugs were not so commonly used. They influenced the paintings less than they might now. Moreover, drug-taking amongst this group of people was then comparatively rare.

Many of the adolescents and young adults who entered the psychiatric hospitals might have been under the correctional services except they had made suicidal gestures or exhibited impulsive and aggressive behaviour: So there was a considerable overlap between the two services and this is illustrated by the Institutes collection.

It is not easy to understand the feelings of these artists, the intensity of their frustrations or the guilt associated with their actions. Often they think themselves ugly, unworthy, inferior, unwanted and ill-treated, and because of their limited abilities to deal with their problems they resort to actions which lead them into further conflicts and so they become even greater social outcasts.

For some, the arts can be used as creative outlets for the free expression of their difficulties, that is providing there is no interference in their work. Therefore their products must be confidential, without forcing them into the description of their production or trying to make them verbalise their meaning. The value of the paintings lies in that they express their thoughts, fears or aggressions in an unhampered fashion.

Violence can then be depicted as in sympathetic magic, so injury; suicide or even murder may be committed on paper instead of in action.

The examples held by the Australian Institute of Criminology were collected from freely painted material, thus showing the seeds of violence, frustration, anti-social activities, imprisonment, mutilation, guilt, torture and self destruction. Often they are the products of rage and terror in inadequate, insecure and immature people who lack the psychological resources needed to deal with emotional stress.

There is still the room for a much wider therapeutic application of the arts in such people but equally well there is the need for a better understanding of the reasons for their behaviour, and much can be learned from the study of the products of their creative expression.

E. Cunningham Dax
Melbourne University
Australian Collection of Psychiatric Art

PREFACE

The National Committee on Violence was established in October 1988 as a co-operative venture of all governments in Australia. It is due to report to the Prime Minister; the Premiers, and Chief Ministers at the end of 1989.

As part of its terms of reference, the Committee has been asked to report on the need for special measures in the treatment of violent offenders. How to deal with the violent offender has provoked emotive debate in Australia, as it has elsewhere. This publication reviews the basic issues which must be considered by authorities on behalf of society in response to an act of violence. It is apparent that some violent offenders can be rehabilitated and should not be imprisoned, but others are a very real risk to society and need to remain in prison for some time.

As *Society's Response to the Violent Offender* indicates, the interests of justice, and the enormous cost of imprisonment, dictate that offenders who can be rehabilitated should be identified and offered suitable treatment programs. The authors also acknowledge the very important need in our society that acts of violence and those who perpetrate them, be forcefully denounced. In its final report, the National Committee on Violence will give consideration to the appropriate allocation of the limited resources available for the prevention and control of violence in Australia.

Professor Duncan Chappell
Director, Australian Institute of Criminology

Chair
National Committee on Violence

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INTRODUCTION

Violence pre-dates recorded human history. So too do the earliest means by which societies dealt with the aftermath of violence. Pre-industrial societies developed systems of dispute resolution in response to acts of aggression. Some of these entailed carefully measured compensation or restitution by the offender to the victim of non-fatal injury, or to the surviving relatives of homicide victims (Rohrl 1984). Others involved aspects of direct retribution, as reflected in the biblical injunction 'an eye for an eye' Black 1984, pp. 2-5). As societies evolved, however; their growing complexity was accompanied by the development of formal government. Among the functions embraced by the institutions of the state were the powers to define certain behaviours as criminal, to adjudicate criminal responsibility, and to punish those deemed to have offended. Response to violence thus became a governmental responsibility rather than a matter left simply to an aggrieved victim and his or her kin. Society's response to victims of violence was the subject of an earlier volume in this series (Grabosky 1989). The present publication deals with adult violent offenders and what to do with them.

The problem of how to deal with the violent offender is by no means unique to contemporary Australia. Indeed, it is a problem which has plagued societies for centuries, and continues to do so. It was, of course, central to Australia's very founding: the transportation to Australia of violent and other offenders was the solution to crime chosen by British authorities over two hundred years ago (Hughes 1986).

Over the past two centuries in Australia, as elsewhere, public officials, judicial authorities, philosophers, and concerned citizens alike have participated in an ongoing debate on what society should achieve in its response to an act of violence. This debate tends to be grounded in divergent perspectives of human nature. There are those who see violence as the product of social forces, and the perpetrators of violence as, to a great extent, the victims of their environment. Others regard violent offenders as rational individuals, very much in control over their own destinies, and able to choose freely between criminal and non-criminal alternatives. The most pessimistic commentators regard violent offenders as essentially evil or inherently depraved.

These conceptions of human nature are as persistent as they are fundamentally incompatible. It comes as no surprise, then, that policies of response *to* violence are directed towards a number of goals, which themselves are incompatible, if not entirely contradictory. The task of balancing these competing priorities falls *to* the criminal justice systems of the Australian states and territories.

This monograph will review the basic issues relating *to* the treatment of adult violent offenders in Australia. First, we discuss the initial response of the criminal justice system, and the principles of punishment. The focus then turns *to* the extraordinary expense which imprisonment entails. We conclude with the argument that penal policies, be they based on principles of deterrence, rehabilitation, retribution or some other criterion, be employed efficiently and be subject *to* rigorous analysis and systematic evaluation, Case histories illustrating the variety of violent acts and the diversity of violent offenders appear throughout the monograph. In addition, artwork produced by psychiatric patients is included in this work with captions written by Dr E. Cunningham Dax.

DECISIONS TO INVOKE THE CRIMINAL LAW

The response to violence in Australia is very much a systemic one, in the sense that it is conditioned on the interdependent decisions of a variety of individuals and offices. The initial stage, upon which any formal or governmental response to violence often depends, is the victim's definition of an incident as a violent criminal act. Whilst at first blush such definition might appear unambiguous to the point of truism, this is hardly the case. Brawling, at least within certain limits, is regarded by many young Australian males as recreation, not as crime. To some members of the public, the resolution of disputes by physical means is not regarded as a criminal offence. A 1983 survey conducted by the Australian Bureau of Statistics revealed that 16 per cent of those who reported having been assaulted during the previous twelve months regarded the incident as a 'private matter'. Others regard minor acts of violence as unworthy of official attention. A further 28 per cent of assault victims identified in the 1983 survey regarded the incident as 'too trivial or unimportant' to warrant notification of the police (Australian Bureau of Statistics 1986, p. 53).

Traditionally, many victims of domestic violence did not regard an act of violence at the hands of a spouse as a criminal assault, but rather, as an unfortunate fact of married life. In recent years, heightened consciousness of basic rights has been accompanied by a growing readiness on the part of domestic violence victims to define an assault as criminal. Nevertheless, a recent survey found that 17 per cent of Australian women regarded it as acceptable for a man to use physical force against his wife in some circumstances (Public Policy Research Centre 1988).

Even when a victim defines an incident as criminal assault, he or she may be disinclined to invoke the law by calling the police. The non-reporting of assaults perceive? as trivial was noted above. In other cases, non-reporting may arise from a perception that police would be unwilling or unable to act on such a complaint. Twenty-six per cent of those surveyed in 1983 by the Australian Bureau of Statistics who reported having been the victims of sexual assault, failed to report the incident to the police because they felt that the police 'couldn't or wouldn't do anything about it' (Australian Bureau of Statistics 1986, p. 53).

In some Australian communities, local values may militate against reporting an incident to police. A current Federal Minister describes quite colourfully how this ethos prevailed in a working class suburb of Melbourne not long ago:

> …you can't give people up. I mean between 1955 and '65 in Richmond, if I walked into a hotel and someone from the DLP said 'There's Holding', and he had a few beers in him and landed one on me, the one thing I couldn't do would be to report it to the police (quoted in Victoria 1982, p. 59).

For whatever reason, the size of the 'dark figure' of unreported violence is substantial. The most recent crime survey conducted by the Australian Bureau of Statistics suggested that over 70 per cent of sexual assaults, over 60 per cent of non-sexual assaults, and over half of all robberies were not brought to the attention of the police (Australian Bureau of Statistics 1986, p. 53).

Nor does an incident of fatal violence automatically trigger an official response. To be sure, most homicides in Australia, if not actually occurring in public, come to the attention of the authorities soon after they take place. But others are less visible. As is

indicated by the occasional discovery of human remains, there are incidents where persons who meet with foul play simply disappear. In some instances, the precise circumstances giving rise to a death might be obscure.

The lingering public perception of the occasional bizarre event overshadows the more common incident of violence. In most crimes of interpersonal violence the identity of the perpetrator is known. But there are those instances in which there may be no identified suspects. In these cases, and those in which there is a suspect at large, the police must decide the extent of resources which they will contribute to the investigation. All else being equal, the more serious the offence and the greater the probability of apprehending a suspect, the more likely are the police to commit resources to an investigation and the greater the amount of resources they are likely to commit.

Once a suspect has been apprehended, the decision then arises as to whether to bring charges against the alleged offender; and if so, which charges to bring. Here, the decision rests largely on the gravity of the alleged offence, the strength of the evidence, and the likelihood that a prosecution will succeed.

PRE-TRIAL DETENTION OF THE ALLEGED VIOLENT OFFENDER

It is, of course, a fundamental principle of Australian justice that a defendant facing criminal charges is regarded as innocent until proven guilty. Whether a defendant is detained in custody or remains free in the community pending formal adjudication of these charges is often a matter of concern to the alleged victim, to the police, and to the general public. The issue is important to the accused as well, for the deprivation of liberty is inherently punitive, and another fundamental principle of Australian justice holds that punishment should follow, rather than precede, the determination of criminal responsibility. At common law, the basic justification for pre-trial detention is concern that the accused might abscond. Concerns about the interests or preferences of the alleged victim, and about possible re-offending or intimidation of witnesses by an accused at liberty were traditionally regarded as subordinate. The accused may apply for bail, and the Crown may oppose bail; the decision rests with a magistrate, and may be subject to review by higher judicial authority.

When a magistrate grants bail, he or she may specify one or more conditions, such as periodic reporting to local police, the pledge of a financial surety, or an order that the accused refrain from contact or communication with the alleged victim. All else being equal, the more serious the charges facing an accused, the greater the likelihood of pre-trial detention. The vast majority of persons charged with the most serious crimes of violence remain in custody pending determination of guilt or acquittal.

It is suggested by some that violent offenders are too often allowed at liberty pending trial. Evidence to support such an assertion tends to be lacking, however. Indeed, the fact that over fifteen per cent of all Australian prisoners are remandees, awaiting trial or sentence (Walker 1989a), suggests that the granting of bail has been less than extravagant. In any event, debate on pre-trial detention in Australia continues to be based upon ideology rather than fact. It does not seem unreasonable to suggest that authorities in the states and territories of Australia might be expected to monitor closely the consequences of bail, and would regularly publish precise statistics on the proportion of bailed defendants who abscond or who re-offend whilst awaiting trial. They do not.

The determination of an accused person's guilt may occur in one of two ways. The accused may plead guilty to the charges against him, or he may stand trial. Minor assaults are heard before a magistrate, and more serious charges are tried in the higher criminal courts. These trials are usually held before a jury, comprised of members of the public. Although comparable statistics are not maintained across the states and territories of Australia, the majority of trials relating to alleged crimes of violence result in conviction.

Because guilty pleas, by definition, entail conviction, the vast majority of persons charged with violent offences are in fact convicted. Through plea bargaining or evidentiary deficiencies, some of these convictions may be on lesser charges. It is not uncommon, for example, for murder charges to result in a conviction for manslaughter.

CASE ONE

An Aboriginal man had two wives and had been living with the first, who was to be his victim, for about 20 years. On the morning of the offence they woke about 6 o'clock and this wife told her husband she

wished to shop at the store which was about 7 kilometres away. He did not want to go until later and a minor dispute followed at the campfire. The woman called her husband a 'frick', a term which offended him.

He left the campfire and went inside the house where he obtained a single barrelled shotgun and loaded it. Returning outside he walked past the campfire before turning around. His second wife saw the firearm and immediately left. The first wife ran towards the house and was shot in the back, just above the heart. She died. When the police attended and interviewed the husband he made full admissions.

Two psychiatrists who assessed the man diagnosed a thyroid disorder which had led to a psychiatric disturbance. The psychiatrists agreed that because of the psychiatric disorder the man's responsibility for the crime was substantially reduced and the defence of diminished responsibility (a defence available in Australia only in Queensland, New South Wales and the Northern Territory) could apply. The defence was successful, resulting in a conviction for manslaughter rather than murder: The sentence was five years imprisonment with a non-parole period of 30 months.

SENTENCING CRITERIA

In contemporary Australia, sentencing decisions are based on numerous factors. These may be conveniently categorised as circumstances relating to the offence on the one hand, and to the offender on the other. Given the diversity of violent offending and the complexity of many violent offenders, parliaments have set out a broad framework within which appropriate sentences may be determined. Sentencing authorities are given wide discretion to impose sentences, although this discretion is constrained in some jurisdictions by the limited availability of facilities and programs.

The exercise of sentencing discretion entails identifying the relevant characteristics of the offence and the offender; weighing the relative importance of those which would aggravate or mitigate the gravity of the offence and the culpability of the offender; and determining an appropriate sentence in light of the maximum prescribed by law.
The Australian Law Reform Commission has described the following circumstances as aggravating:

- intention, premeditation, or planning
- participation as a principal, ringleader, or instigator
- use of a weapon
- systematic commission of offences for profit
- unusually extensive harm to the victim
- knowledge that the victim is a member of a particularly vulnerable group (for example, children or the elderly)
- breach of confidence or trust
- offence by law enforcement officer
- prior offences
- prevalence of the offence

(Australian Law Reform Commission 1988, p. 88).

The Commission described the following mitigating circumstances:

- lack of intentional planning or impulsiveness
- minor participation in offence
- provocation
- duress falling short of a complete defence
- entrapment
- youth or old age
- previous good character, where prior offences are irrelevant
- that the offence was out of character
- effect of alcohol and other drugs
- personal crisis, such as emotional stress, ill health, or financial difficulties
- cultural background, as it relates to the offence
- remorse or contrition
- offer to make restitution or reparation or actually making restitution or reparation
- voluntarily seeking treatment
- confession and guilty plea (not necessarily as a result of remorse)
- providing information to the authorities
- hardship to the offender; such as physical or psychological injuries or infirmities or additional hardships in prison, from particular sanctions

- hardship to others, such as distress, reduced financial circumstances and deprivation of emotional support
- indirect consequences of conviction, such as loss or inability to obtain similar employment, pension rights, cancellation or suspension of trading or other licences, diminution of educational opportunities or the possibility of deportation
- a jury recommendation as to mercy
- grievances arising in the course of proceedings, for example, delay in bringing the matter to trial.

(Australian Law Reform Commission 1988, pp. 88-9).

Needless to say, not all of the information which is relevant to the determination of a sentence will always be available to sentencing authorities in complete detail.

Sentencing Options. The imposition of a criminal sentence upon a person convicted of a violent crime is an important public function. It often entails the most awesome power which can be wielded against a citizen -the deprivation of liberty. In years past, prior to the abolition of capital punishment, it could entail matters of life or death.

Because of the diversity of violence and the diversity of its perpetrators, no simple formula for the management of the violent offender can exist. What is required is flexibility to select from a set of diverse options, so that the response, be it punishment, treatment, or some combination of the two, fits not only the crime but the criminal.

Such diversity and flexibility in sentencing poses a risk of disparity, however. Ideally, similarly situated offenders committing similar acts should receive similar sentences. Grossly disparate sentences are more indicative of a lottery than of a rational sentencing process.

Sentencing authorities in Australia enjoy the discretion to impose a sentence of imprisonment up to the maximum specified by statute, or to impose a sentence involving one or more non- custodial options. Defendants may seek leave to appeal if they regard their sentence as unduly severe; the Crown may appeal on grounds of undue leniency. Courts of appeal are thus in a position to guide the discretion of sentencing authorities. Gross inconsistency or disparity in sentencing is thereby minimised.

The four major criteria which have evolved as the basis of society's response to the violent offender are

- deterrence;
- rehabilitation;
- incapacitation; and
- retribution.

More recently, with increasing concern for the victims of crime, compensation to and rehabilitation of victims have been added to these criteria.

Unfortunately, many prescriptions for dealing with the perpetrators of violence are based on misunderstanding and over- simplification. Violence itself is a complex phenomenon, not thoroughly understood even by specialists in those professions whose members have regular contact with violent people. Under- standing on the part of the lay public is even more superficial. The emotive nature of crime and violence in contemporary Australia is such that simplistic solutions are often advanced.

Any single prescription, moreover, is likely to entail unintended and often unanticipated consequences; these tend to be overlooked in the course of superficial discussion or debate. Moreover; a number of basic criteria for response to violence are mutually exclusive -that is, one can only be achieved at the expense of the other.

As the case histories in this monograph illustrate, violence in Australia takes many forms. At one extreme are what might loosely be described as the most savage and atrocious crimes -deliberate, pre-meditated, cold-blooded murders. No less heinous are those without apparent motive, as well as so-called 'thrill killings' -those from which the perpetrator derives sadistic gratification. Some, but by no means all, of these may be explained by insanity or diminished responsibility on the part of the perpetrator. A small number of homicides result, intentionally or otherwise, from hold- ups or muggings. A more common category of homicide, generally regarded as less evil than those of the above types, is that which results from the escalation of an interpersonal dispute, whether between acquaintances, friends, or spouses. Non-fatal violence in Australia is, if anything, even more diverse. Assaults on strangers may be committed for fun or profit. Spouses or children may be subject to occasional or to routine physical abuse. Sexual assaults may be committed against strangers, friends, or spouses, as expressions of aggression or dominance, or for purposes of physical gratification. Ordinary disputes between acquaintances or friends may erupt into assault. Drunken brawls date to the European settlement of Australia, and throughout our nation's history have remained a not uncommon pastime of young males from backgrounds of low socioeconomic status.

The diversity of violent behaviour in Australia is compounded by the varied circumstances of those who perpetrate violent acts. There are those offenders without morals or remorse, and those who derive gratification from the suffering of their victims; there are offenders whose cultural circumstances have led them to develop a self-image of toughness and meanness; others may be generally ill tempered, endowed with 'short fuses'. Others still may have learned from family or peers that aggression is an appropriate response to stressful circumstances. Some individuals only become aggressive whilst under the influence of alcohol-the so-called 'nasty drunks'.

In very few instances, the offender may be mentally ill, and at law not responsible for his acts (Wallace 1986, pp. 55-9). More common are those violent offenders with organic brain impairment, with intellectual disabilities, and with various forms of mental illness which may compound the various social influences briefly noted here (Potas 1982). Mental illness does not necessarily provide a defence to a criminal offence (violent or otherwise), but is often taken into account as a mitigating circumstance at sentencing.

Given the wide diversity of violence and the varied circumstances of violent offenders, it is self-evident that a rational policy of response to violence must incorporate a range of alternatives. The following pages review some of the basic issues which surround policies relating to violent offenders in Australia.

DETERRENCE

One of the fundamental principles on which the criminal justice system is based is that of deterrence. It has become an article of faith that a person's decision to commit an act of violence will depend upon his or her perception of the probability of detection and punishment, the likely severity of that punishment, and, to a lesser extent, the speed with which that punishment will take place.

Those who speak of deterrence tend to differentiate between specific deterrence, the effect of punishment on an individual' s inclination to re-offend, and general deterrence, the effect of the threat of punishment on prospective offenders in general.

The nature of punishment available under Australian law is constrained by prevailing standards of civility and by the international human rights agreements to which Australia is a signatory. The brutal floggings administered during the convict era have become part of Australia's grim history. At present, the most severe penalty available is imprisonment.

Central to the theory of deterrence is the assumption that violent acts are the result of rational decisions on the part of the offender. To be sure, most acts of violence entail some degree of conscious choice. They are hardly random occurrences. But they do not always flow from the perpetrator's careful calculation of the probabilities of arrest and conviction, and from an estimate of the severity of punishment contingent upon conviction. Many homicides are impulsive acts. Others arise in a situational context of threat, insult, or instigation, or from an escalation of dispute between two parties, where rage eclipses any real consideration of the consequences of one's actions (Steadman 1982). It would appear that a careful assessment of the costs and benefits of alternative courses of action is more characteristic of corporate criminals (and responsible drivers) than of violent offenders.

On the other hand, the fact that the vast majority of violent acts are other than random suggests that some element of personal choice underlies most acts of aggression. This in turn would imply that some, if not all, potential aggressors can be discouraged by an explicit threat of certain punishment.

CASE TWO

After an argument in a hotel bar with some acquaintances, a man aged in his late twenties went to his nearby home and obtained an infrequently used .22 calibre rifle from a wardrobe. Returning to the hotel he waited outside and later fired at a man from a distance, killing him. He had been drinking but was only moderately intoxicated. He was charged with murder. On assessment he was found not to be suffering from any medical or psychiatric disorder. He was unemployed and his marriage had failed some time before. He had been generally unhappy and drinking to moderate excess. Although a large, powerfully built man, he was in many ways passive and tended to avoid confrontation or physical aggression. Not long before the shooting he had played a practical joke on an acquaintance by concealing an expensive item of property and later surreptitiously returning it. He was suspected of this and during an argument felt embarrassed and humiliated, especially by having beer thrown over

him. He thought that if he had retaliated at the time he would not have taken the matter further. The easy availability of the firearm led to the tragedy and to the conviction for murder.

Of course, Australian systems of criminal justice do not dispense swift and certain punishment to all violent offenders. The costs, in both fiscal terms and human rights considerations, of approximating such a goal would be high indeed. Moreover, a great deal of human conduct in general, and aggressive behaviour in particular; is self-destructive, if not self-defeating. One need only consider the driving behaviour of adolescent males *to* conclude that risk aversion is not a universal Australian characteristic. There is an obvious unconsidered element in much violence, which while not excusing the offender, certainly suggests that a deterrent threat may be only vaguely perceived and comprehended.

It has also been suggested that it is not the perceived deterrent threat, but rather the individual's own conscience reinforced by the likely shaming of others which inhibits an act of violence (Braithwaite & Petit, forthcoming). Those of us who may have been tempted to express aggression from time to time, have refrained from so doing less because of any legal threat than from personal moral inhibitions. Braithwaite (1989, p. 70) argues that it is the informal sanctions, such as embarrassment of family and friends, and fear of shame in the eyes of intimates -which offenders may fear as much as legal punishment. The power of shame as a means of social control is evident in Japan and other eastern cultures.

Most probably, the truth embraces all three assertions. There are those who would commit a violent act but for the threat of arrest conviction and punishment. There are those whose consciences: reinforced by community social controls, inhibit acts of violence. And there is a (thankfully) small minority who are constrained neither by their consciences nor by the threat of legal sanctions.

It would thus appear that an increase in the certainty and severity of punishment for violent crime would be unlikely to produce a commensurate decrease in violence. Precisely what effect such increases would have remains problematic. Despite the centrality of deterrence as a basis for the criminal justice system, definitive analysis of the deterrent effect of penalties has yet to be conducted in Australia. Homel (1988) has demonstrated that the legal threat inherent in random breath testing has had a deterrent effect on drivers in New South Wales. Biles (1979; 1983) has found that those Australian states and territories with high rates of imprisonment report rates of crime no lower than those jurisdictions which rely less on incarceration. An additional study (Biles 1982) reported no relationship between changes in the rates of imprisonment for violent crime and the actual incidence of violence. At present, it seems safe to speculate that whilst the threat of punishment does deter many acts of violence, a number of prospective offenders remain relatively impervious to the threat of punishment. And the expense entailed in increasing the deterrent threat may not produce proportionate benefits.

Capital Punishment. One of the most contentious issues in contemporary penology concerns the presence or absence of a deterrent effect of capital punishment. Once prescribed for over two hundred offences in England, including minor thefts, capital punishment gradually fell into disuse in England and Australia. The most recent sentence of death in Australia to be carried out was the execution by the Victorian government of Ronald Ryan in 1967; capital punishment has since been abolished by

law in all Australian jurisdictions. Most serious proponents of capital punishment tend to favour its use only in response to the most egregious cases of violence. Public opinion surveys suggest that approximately half (52 per cent) of the Australian public support the death penalty for murder (Morgan 1989). Presumably, this connotes deliberate, cold blooded acts, rather than 'crimes of passion'.

Whether the threat of execution constitutes a deterrent, or more precisely, whether it constitutes a greater deterrent than would a lengthy term of imprisonment, is a question which has been the subject of considerable, but imperfect research (Zimring & Hawkins 1987). The vast majority of these analyses have failed to demonstrate a relationship between the threat or use of capital punishment and the homicide rate. They have been criticised for various methodological inadequacies, as have those few studies which purport to have demonstrated a deterrent effect.

The fact is that research on the deterrent effects of executions tends to have been conducted in jurisdictions where the penalty is rarely, if ever imposed. The argument has also been made that capital punishment constitutes a brutalising, or counter-deterrent effect (Bowers 1988). It may well be that executions deter a small number of homicides, inspire a few others, and have no effect on the remainder. Under these circumstances, the likelihood of a definitive determination about the utilitarian merits of capital punishment seems remote.

It is perhaps worth noting that the rate of homicide in Australia has shown no apparent increase over the past two decades, and remains significantly lower than during the nineteenth century when executions were conducted by all colonial governments (Potas & Walker 1987; Mukherjee et al. 1989).

Admittedly, the threat of detection, apprehension, conviction, and punishment probably does deter some potential offenders from committing crimes of violence. The precise estimation of a deterrent threat defies the current interests, if not the analytical abilities, of Australian authorities; its effect can only vaguely be estimated as marginal.

Whilst hardly any attempts have been made systematically to assess the effect of a deterrent threat, it appears most unlikely, given the complexity of violence as a phenomenon, that a doubling in police resources, and a doubling in the length of sentences imposed on convicted violent offenders, would contribute to anything approximating a fifty per cent reduction in the rate of violent crime.

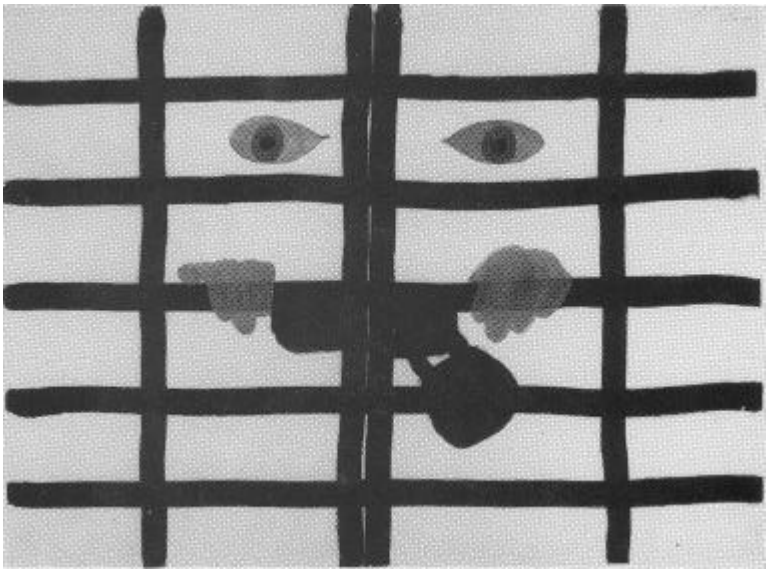
That is not to suggest that the increases in question would fail to produce any changes in violent behaviour. Rather; the proposed increase in penalties is not likely to produce a commensurate reduction in violence. The issue at stake here is not trivial, given the very significant costs of criminal justice in Australia today -an estimated $3,000 million per year. As noted below, the cost of confining one prisoner in maximum security can exceed $50,000 per year.

On the other hand, overseas research does suggest that the criminal sanction may have at least a specific deterrent effect in some cases of domestic violence. An assault is a crime, whether it occurs on the street or in the home. In the United States, as in Australia, the traditional disinclination of police to make arrests in cases of domestic assault was based on the assumption that violence between spouses was essentially a private matter, as opposed to 'real crime', and that police intervention would accomplish little. But analyses have shown that police intervention can reduce repeated incidents of

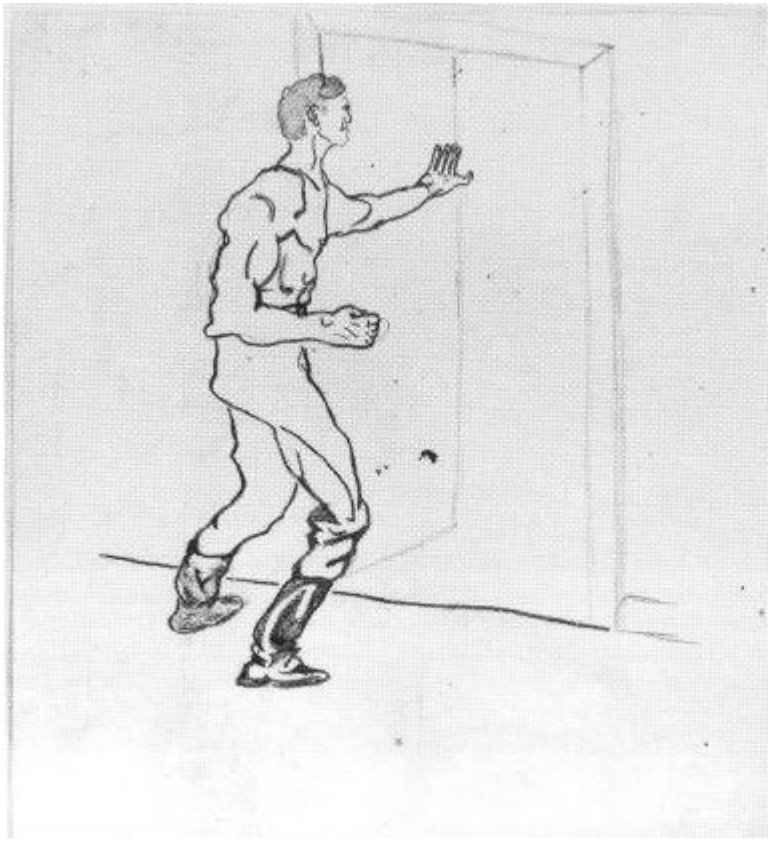
domestic assault. The Minneapolis Police Department conducted an experiment which randomly assigned one of three intervention strategies to cases of common assault by one spouse against another. The strategies included arrest; an order to the suspect to leave the premises for eight hours; and advice, which included informal mediation in some cases. Arrested suspects were significantly less likely to engage in subsequent acts of violence than were those suspects assigned the other intervention strategies (Sherman & Berk 1984).

It would nevertheless be premature to advocate a significant change in public policy based on the results of a single American study, no matter how well designed or executed. Rigorous analysis of the deterrent effect of arrest on domestic violence in Australia should precede any policy changes.

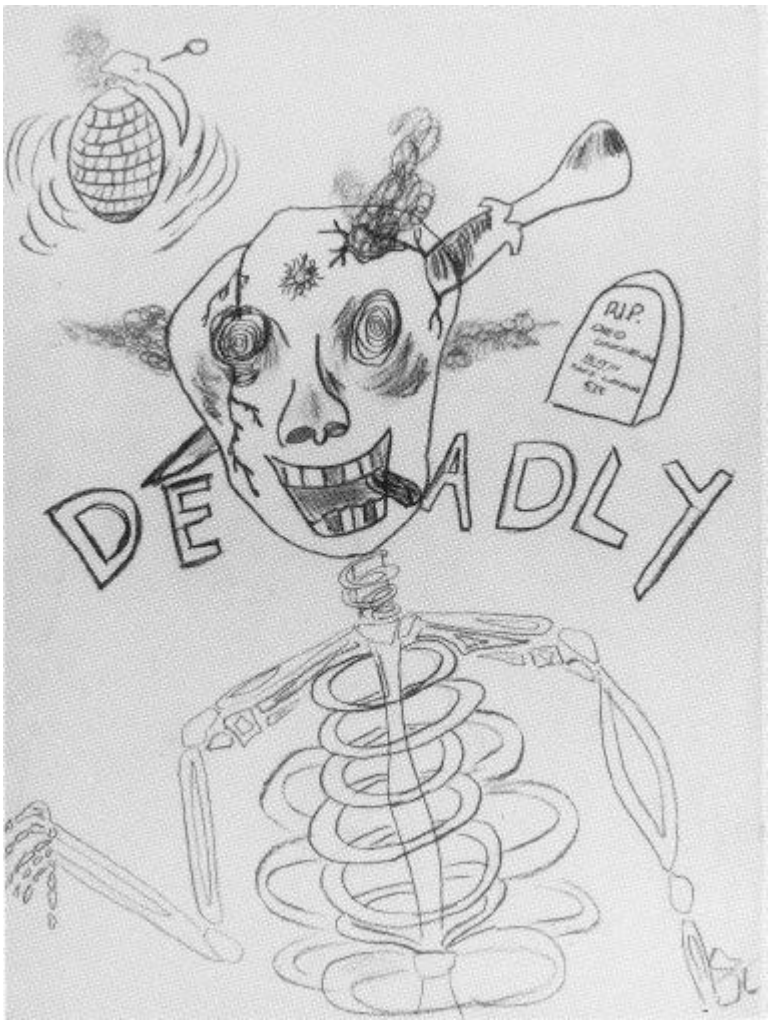
A violent creature, a menacing attitude, claws and teeth prominent and the black figure filling the paper



The fear simply expressed by someone locked up with a possible anticipation of impending doom.



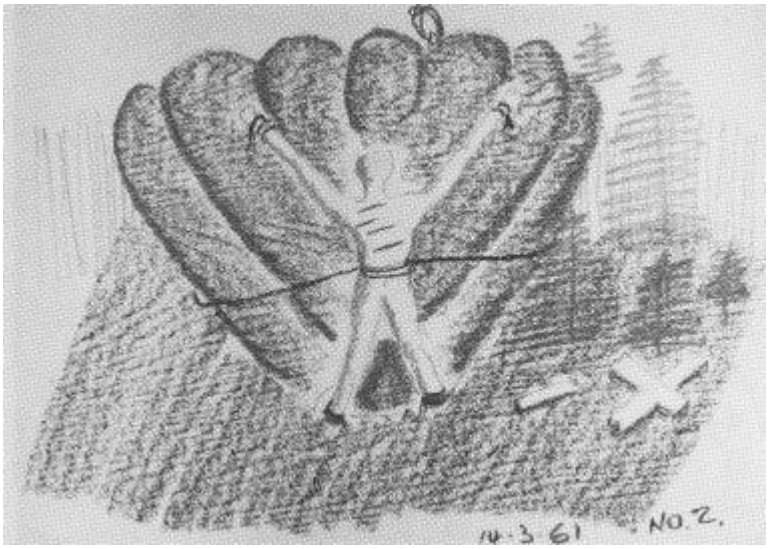
The preliminary to a violent attack. The drawing shows great strength and accentuated muscles.



A violent product of an immature young man amused and self-satisfied with his perverted sense of power.

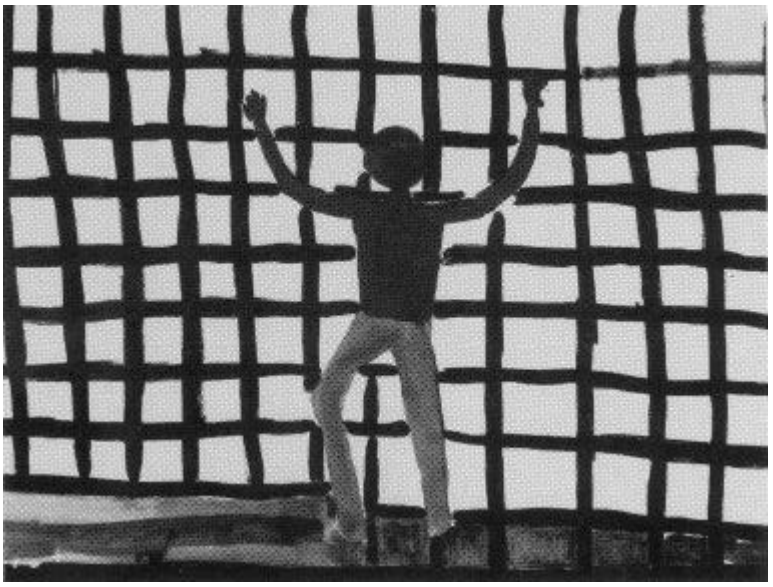
The feeling of being mutilated. The attitude and appearance show her fear while the exposure of her underclothes suggest she was attacked or frightened by a child molester.

A stabbed and elderly overbearing woman, probably the patient's mother. This may be an example of sympathetic magic and what he would like to have done to her.

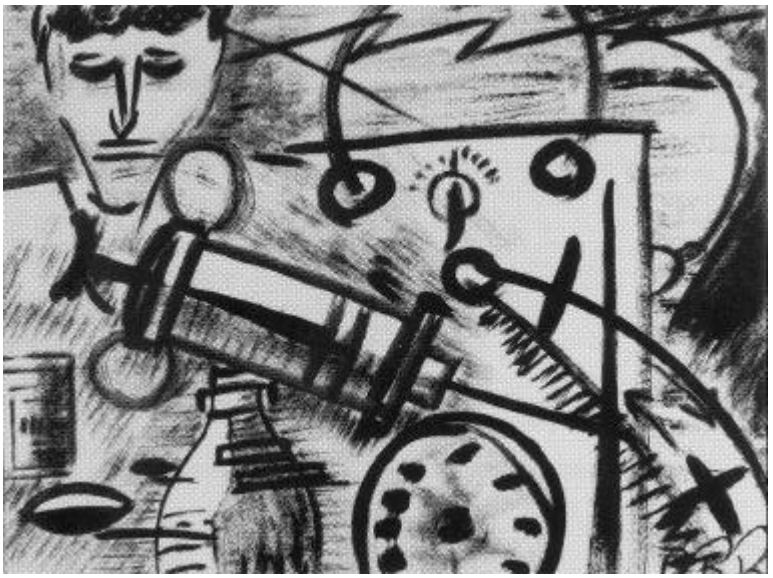


Flogging, perhaps associated with religious rejection.

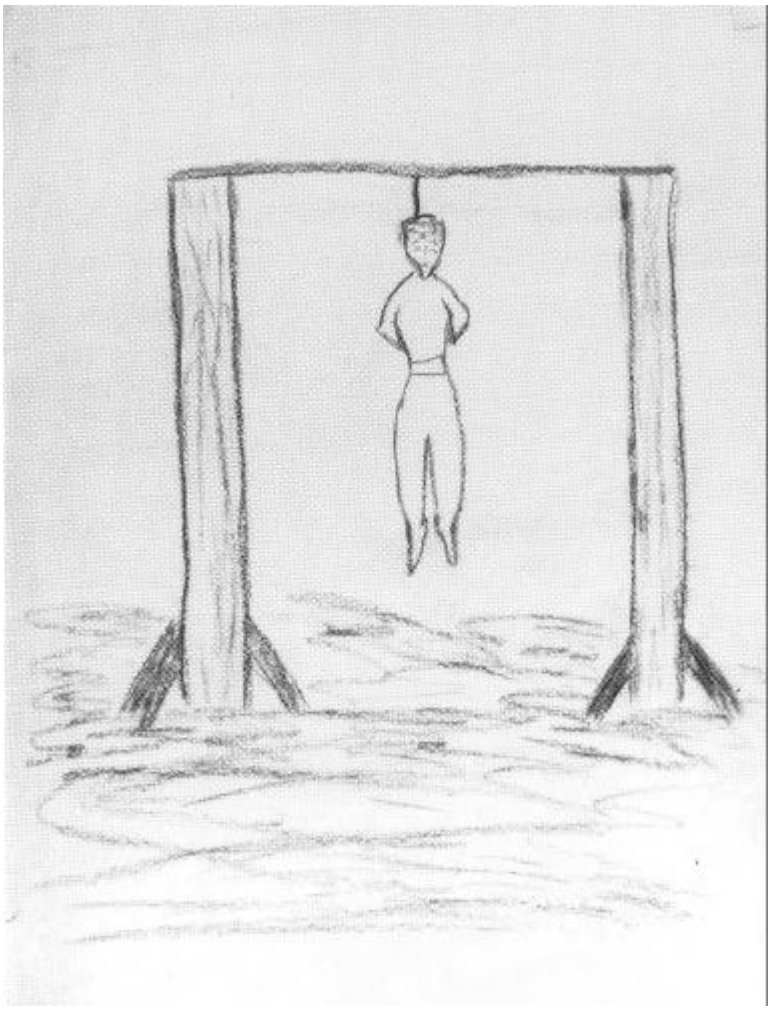
One of a series of violent and obscene drawings found hidden suggesting the products of one with an anti-social personality disorder.



This probably shows more frustration than violence or aggression. It may be related to the effects of incarceration in a prison or a mental hospital experience.



A typical drug addict's picture possibly incorporating the idea of having convulsion therapy.



The tied hands show this isn’t suicide. Whoever hung the person has left him to die in a lonely empty space.

REHABILITATION

The ideal of rehabilitation holds that through exposure to the benign influence of correctional and welfare programs, violent offenders may learn alternative behaviours, become law-abiding members of the community, and conduct their interpersonal relations in a non-violent manner. History has shown this to be easier said than done. A majority of opinion in contemporary Australia regards rehabilitation as fruitless. Systematic reviews of overseas research on rehabilitation paint a similarly pessimistic picture. There is little in the overseas literature which has been demonstrably effective. But this may be less an indictment of rehabilitation as a strategy than of inadequacies in the implementation of programs. Rehabilitative programs may simply be lacking in sufficient quality, duration and intensity to produce an observable effect. (Sechrest et al. 1979; Martin et al. 1981). Cynics would argue that rehabilitation has never been seriously attempted.

Because of the complexity of violence and its various manifestations, not all violent offenders are alike. Consequently, there can be no single rehabilitation program for violent offenders Those persons who are sentenced to prison in Australia following conviction for crimes of violence are not a cross-section of the Australian public (Walker & Biles 1987). Upwards of ninety per cent are male. Nearly half are in their twenties. Not at all do they resemble the well-scrubbed, respectable, middle class school-boy. The majority were out of the workforce at the time of the incident for which they were convicted. Perhaps as many as one-third are unable to read and write. Many are lacking in basic social skills. Some are intellectually handicapped, others suffer in varying degrees from neurological impairment or brain damage. Hayes (19 estimates that at least one prisoner in eight in New South Wales suffers from some intellectual disability.

CASE THREE

Two mentally retarded brothers in their mid- twenties were charged with the murder and sexual assault of a 7 year old boy. One of them, the instigator of the crime, made full admissions and finally pleaded guilty, giving evidence for the prosecution at the trial of his older brother.

During a visit to the older brothers flat the younger went out to obtain some wine, returned and immediately left again to pick up a young boy whom he had seen in the street. The boy voluntarily went to the flat but probably became frightened and attempted to leave. Following this, the first brother subjected him to a sustained assault involving strangulation, attempted drowning and the infliction of head injuries. The second brother did not interfere or raise the alarm. During the attack the boy was sexually assaulted by the first brother and towards the end, when unconscious or possibly dead, by the second. The body was placed on a neighbouring property by the instigator of the crime while the older brother kept watch in the street. The flat was cleaned up and knowledge of the boy denied during a police door knock following the discovery of the body. When interviewed the next day; the younger brother made full admissions about his own and his brothers involvement.

These two young men came from an unsettled family background and had been in an institution for the intellectually handicapped until their mid or late teens. The younger had spent time in a treatment program aimed at improving his general functioning. There was a history of a minor sexual offence against a young boy whom he had met up with in similar circumstances six years previously. Both brothers survived in the community in a marginal way; one in a boarding house, one in a flat, and received support from their mother. Neither was involved in any treatment, rehabilitation or work program, both were illiterate and their time unstructured apart from regular visits home.

They received life sentences for the murder with lengthy non-parole periods of 28 and 24 years being set. Their time in prison will involve protection from other prisoners and placement in special units. No special treatment programs are available for them. Each knew the wrongness of his actions but neither had anything like a normal appreciation of the seriousness of what happened t and its implications.

In addition, there are those prisoners who are schizophrenic, or who manifest more extreme delusional symptoms. Amongst those who are more 'normal' may be found a range of personality disorders including general hostility, coldness, and the inability to feel remorse or to empathise with others. It should be noted that very few services are devoted to the identification of people who may require treatment.

Whilst none of these circumstances should be regarded as excusing or justifying violence, some are more or less intractable. The likelihood of restoring all violent persons to a peaceful constructive role in the community is thus remote.

Many aspects of the prison environment are regarded as impediments to rehabilitation. The basic prison setting is not conducive to the acquisition of social skills and to the learning of adaptive behaviour appropriate to resuming life as a responsible member of the general community. The experience of incarceration can be extremely stressful and humiliating, not the most ideal setting for developing self-esteem. In the custodial setting, violent offenders are exposed to few appropriate role models. Indeed, for well over a century, prisons have been referred to as 'schools of crime'.

With few exceptions, Australian correctional agencies do not provide specific programs for inmates convicted of crimes of violence. Nor do community welfare agencies. Many of the more general programs do address the needs of violent offenders, however. Whether these programs are sufficient in quality and scope to meet the needs of all violent prisoners is a key question. To the extent that they are not, this probably reflects less on the competence and innovativeness of prison administrators than it does upon the political climate and the severe cost constraints under which they labour. Annual reports of Australian corrections departments are as likely to boast of reductions in the costs of meals for prisoners and of a decline in the number of escape incidents as they are to herald new programs for prisoner rehabilitation. Australian prisons have been criticised for insufficient vocational, educational, life skills training, and for inadequate drug and alcohol rehabilitation programs (Australian Law Reform Commission 1988, p. 26).

Counselling and Therapy for Violent Offenders. All Australian corrections departments employ professional psychologists who are available for assessment and counselling of prisoners. The selection of the most effective treatment for a violent person requires sophisticated clinical judgment. The sources of an individual's violent conduct must be identified; then a course of treatment appropriate to the individual and his or her circumstances must be selected.

Most programs of rehabilitation require the willing participation of the offender. The individual must first recognise that a problem exists, and then accept responsibility for the problem, and accept responsibility for changing their behaviour. The idea of enforced rehabilitation is regarded by many penologists as futile; indeed, to others, the idea of forced rehabilitation is obnoxious. Not least important is the fact that many violent offenders will respond to coercive treatment with defiance and rage.

The essential basis of rehabilitation for violent offenders is to encourage the individual to identity and to recognise warning signs - once the individual is able to identity the stress and the anxiety which herald an impending loss of control, he is then able to learn appropriate alternative responses.

One of the most common approaches to aggression management is referred to as social skills training (Henderson 1984; 1989). This entails identification of the target behaviour (aggression); recognition of the situations and circumstances under which it is likely to occur; the learning of alternative responses under such circumstances; the practice or rehearsal of these alternative behaviours, and the generalisation of these responses in future real- life situations. This learning process is reinforced by corrective feedback and rewards. Having met with considerable success in the treatment of psychiatric patients, social skills training is being applied more frequently to offender populations.

Whilst some individuals are more responsive to treatment in a one-on-one setting, others benefit more from group therapy. A group setting permits an individual to identity with others and to recognise that his problems are not necessarily unique. Group settings, moreover, are more efficient.

Violence often occurs to compensate for a poor self-image. Rehabilitation programs thus seek to restore the self-esteem of the violent offender. In addition, the lack of empathy which appears to characterise many violent people may be addressed by encouraging them to relate to the experiences and feelings of others.

It should be immediately apparent that the restoration of an offender's self-esteem may be difficult to achieve in a setting often referred to as a dumping ground for society's wreckage, and indeed designed as a place of discomfort and deprivation. But such are the inherent contradictions of Australian penal policy.

Perhaps one of the most effective agents of rehabilitation for violent offenders is simply the passage of time. Whilst aggressiveness tends to be a fairly stable personality trait, the natural aging process does have a moderating effect on violent behaviour. Not all violent adolescents become violent adults; not all violent individuals in their twenties remain violent in their fifties. When this attrition does occur it often results from simple maturation. In general, aggression and other anti-social personality traits tend to dissipate during the fourth decade.

Prison Industries. All Australian corrections departments provide some vocational opportunities for prisoners. Only a few years ago, following a national survey of prison education and work programs (Braithwaite 1980), Australian prison industries were described as 'among the most inefficient and unbeneficial for inmates in the world, and….getting worse'. (Braithwaite 1984, p. 56). Given the overriding concerns of prison administrators - security and cost control - this may not come as a surprise.

Workshops exist in most institutions, and some prisoners in rural areas are engaged in primary production. Among typical prison industries are the production of automobile number plates, and various products for internal prison consumption, such as clothing, farm produce, and baked goods.

Victoria is the only Australian state to have created a special Prison Industries Commission, directly responsible to the state's Minister for Corrections for the management of prison industries and farms, and for the vocational training of prisoners. The Commission is also engaged in the development of new industries and in the marketing of products.

The difficulties inherent in providing meaningful work for prisoners are compounded by the fact that most prisoners are poorly educated, lacking in vocational skills, and come to prison with a history of unemployment which may reflect choice as well as circumstance.

Since Braithwaite's critical comments in the early 1980s, significant increases in the prison populations of most Australian jurisdictions have heightened the difficulty of providing appropriate vocational training and meaningful work for all prisoners.

The capital costs of manufacturing equipment are not trivial. Space constraints in overcrowded, antiquated facilities, many well over a century old, further limit the kinds of production processes which may be housed there. Minimal remuneration for prison labour may not provide sufficient work incentives. The operational rhythm of prison systems, which can entail frequent interruptions of daily routine and indeed, frequent transfer of prisoners between institutions, militates against productivity and ultimately the profitability of prison industrial enterprise. The suggestion that award wages be paid, at least in those activities which are productive, offends the values of many who would subordinate rehabilitation to retribution.

Well over a decade ago, Australia's foremost penologist advocated that private businesses establish branches within correctional institutions (Hawkins 1976, p. 125). The possibility of vocational training, meaningful employment, and eventually a post-release career with the employer remains an elusive ideal, however.

Special Programs - Sex Offenders. In some jurisdictions, one still sees vestiges of the old sexual psychopath laws, under which offenders deemed to have uncontrollable sexual instincts may be detained at the Governor's pleasure *(See,* for example, South Australia, *Criminal Law (Sentencing) Act* 1988, s. 23 (3) which has the same effect as the recently repealed *Criminal Law Consolidation Act*, s.77a).

A more recent model for the rehabilitation of sex offenders has been presented by a joint working party of the South Australian Health Commission and Department for Community Welfare (South Australia 1988).

Under the proposed South Australian model, the first step in the rehabilitation of a sex offender, as is the case with violent offenders in general, is an initial assessment of the individual. This will identify those psychological and physiological properties which may impede or facilitate successful completion of a treatment program.

The offender then must acknowledge responsibility for his crime, and begin to acquire an understanding of the stimuli, thoughts, feelings and circumstances which tended to precede his aggressive acts. Having developed the ability to recognise the antecedents of aggressive behaviour, the offender must then learn to intervene as these antecedents emerge, and to gain control over the process.

At this point, the offender and therapist begin to construct an alternative behavioural repertoire. The development of a positive self concept is the foundation for this process. The offender then learns the replacement of anti-social thoughts and behaviours with pro-social ones, and acquires new sexual and social skills which will permit satisfying, positive, and non-aggressive relationships with others.

Reintegration into society may well be a gradual process. At this stage, and for a considerable period thereafter, the offender can benefit from a post treatment support group and access to therapeutic treatment when needed.

In June of 1987 the Western Australian Department of Corrective Services established a pilot program for the treatment of imprisoned sex offenders (French 1988). Operating as a therapeutic community within Fremantle Prison, the program accommodates twelve prisoners at a time. The average number of participants between June 1987 and October 1988 was ten per month. Participants include persons convicted of sexual offences against children as well as sexual assault against adults.

The program includes both individual and group counselling, and includes sessions on sex education, social skills, relaxation skills and anger management, negotiation and conflict resolution, victim empathy, and dealing with depression and low self-esteem. It provides for recreational opportunities as well. A review of the program was conducted in 1988, and a full evaluation, including an assessment of the effectiveness of the program, is planned after two years of operation (Indermaur 1988). It is envisaged that the program will be extended to enable graduates to have access to periodic guidance and therapeutic services from general correctional facilities throughout the state, as well as during the period prior to their release from custody, and the period following their discharge from prison.

Special Care Unit. Until well into the 1970s, unco-operative, 'difficult', or otherwise intractable offenders in New South Wales received systematic beatings by prison officers at the notorious Grafton Gaol (New South Wales 1978). At the time, correctional authorities were less inclined than their counterparts today to recognise the principle that if prisoners are treated like animals, they will behave accordingly. Today, arguably more appropriate means are employed to deal with those prisoners who experience difficulty in adjusting to the experience of incarceration. Established in 1981, the Special Care Unit exists within a maximum security setting at Long Bay Correctional Centre, Sydney. The Unit is described as a therapeutic community, and at least two-thirds of prisoners participating in the program have had previous convictions for violent offences. Inmates agree to identify and to work on five self- nominated personal issues; aggression management, impulse control, conflict resolution and non-violent negotiation are among those most often emphasised. The basic counselling

strategies employed by staff are the encouragement of cognitive self-control and stress/relaxation management. In addition, a variety of educational and recreational activities are available including creative writing, pottery and sport. These serve the purpose of training the individual to develop patience and of enhancing self- esteem.

Participation in the Unit program, which lasts four months, is voluntary and selective. Prisoners are received into the program from prisons throughout New South Wales. Since 1981, over 605 male prisoners have been admitted to the program, and at least 50 percent have completed it successfully. During the eight years of the program's operation, there have been only three incidents involving violence against staff, none of which entailed serious injury (Hely & Propper 1989). The program is also envisaged as a vehicle for training prison officers in counselling and leadership techniques. Between 1981 and 1988 approximately 240 officers were rotated through the Unit.

Although participation in the NSW special care program does appear to have a beneficial effect on prisoner adjustment to the custodial setting, the question remains whether participation in such programs provides any measureable long-term benefits to those prisoners who are eventually discharged from custody. No such evaluation has been published. Indeed, there is a dearth of rigorous, objective evaluation of correctional programs in Australia generally.

Intellectual Disability, Mental Illness, and the Violent Offender. Much as one might be tempted to regard violence as a clear-cut matter of good and evil, life is not always that simple. Some of the most heinous and repulsive acts may be perpetrated by individuals who, by virtue of their mental incapacity, may be less than entirely blameworthy. Nor is mental incapacity an 'either-or' situation. It is perhaps more useful to conceive of a continuum, between, at one extreme, the person fully in possession of his faculties and at the other, the mentally ill person who may be unaware of the wrongness of his actions. In between are a range of people with varying degrees of disability, arising from brain damage, congenital handicap, or mental illness. The vast majority of individuals on this continuum, regardless of their disability, can still be found criminally responsible for acts of violence which they may commit.

Needless to say, offenders suffering from one or more handicaps or disorders have certain vulnerabilities and special needs. A recent review of these issues in New South Wales (Hayes 1988) has called attention to the importance of identifying intellectual disabilities and implementing special educational, welfare, and vocational programs for intellectually disabled offenders. These not only serve the interests of intellectually disabled offenders, facilitating their adjustment to prison and ultimately, to life back in the community, but can help to reduce problems of prison management in the long run.

In other cases, there are those persons who may have been of normal mental condition at the time of committing an offence, but who may become mentally ill whilst in prison. The stressful experience of incarceration, it should be noted, may also have adverse effects on a prisoner's physical health. For example, upon occasion it can induce prisoners to maim themselves and to take their own lives (Walker 1987).

Of the small number of offenders who can be identified as very dangerous, at least in certain situations, there are some who may be detained indefinitely because of unfitness to stand trial or because of a finding of not guilty by reason of mental illness or insanity. Most (but not all) accused persons who are found unfit to stand trial suffer from a psychiatric disorder or mental retardation. A few will never be fit to stand trial. Their

indefinite detention at the Governor's pleasure or its equivalent raises particular problems. These were addressed by an inquiry in New South Wales, and by special provisions made in that state's *Mental Health* Act of 1983. (University of Sydney 1986).

Detention at the Governor's pleasure of those found not guilty by reason of insanity also raises issues regarding the institution or institutions at which they may be detained, and the procedures and criteria to be used when they are considered for release. Practices vary from state to state.

One might envisage a hospital inside a prison or a secure ward inside a 'civilian' mental hospital. Commentators have suggested that prisons should be reserved only for those persons who have been adjudged guilty of having committed a crime. Persons who have been adjudged not guilty by reason of insanity, they argue, should be confined in a non-penal setting (Potas 1982, p. 58).

CASE FOUR

A middle-aged man who was the successful manager of a branch of a national organisation returned home one evening from a social occasion and shot and killed his wife and two children. He turned the rifle on himself inflicting a serious head wound with brain injury.

After emergency treatment and some weeks in a general hospital he was transferred to a psychiatric hospital where he remained for three years. There was complete amnesia for the shootings and for his mental state in the weeks leading up to them. His gait had been affected by the brain injury and neurological recovery took the best part of several years.

When he was considered well enough to stand trial, assessment revealed a man still without memory for the events and his mental state at the time, whose intelligence was in the superior range and apparently unaffected by his brain injury; and who was conspicuously lacking in insight and social judgment. At trial, evidence was given by friends and associates strongly supporting the diagnosis of severe depression for some time before the shootings. This along with psychiatric evidence led to his being found not guilty on the grounds of mental illness.

He was unconcerned about his transfer from hospital to prison. (In the jurisdiction concerned, patients who are found not guilty by reason of mental illness at the time of the offence may serve their detention in prison rather than a psychiatric hospital). His financial position was satisfactory but his proposed plans for life after release were inappropriate, especially for presentation to a Parole Board. After a few years he was released to f a nursing home where he would have adequate supervision. There had been no return of the severe depression which led to the murders and the f attempted suicide.

Medical and Psychiatric Treatment. With some violent offenders, medical and psychiatric assessments may be important in understanding and attempting to treat their violent conduct. The results of medical and psychiatric assessment pre-trial and pre-sentence may influence the course of legal proceedings, the defences raised, and the

final disposition of the offender. Subsequent treatment, if available and effective, and psychiatric opinion may, in some jurisdictions and for some offenders, affect the decision to release on parole or licence and the conditions imposed for supervision. Psychiatric assessments of dangerousness may be problematic but are often sought, quite often on offenders without psychiatric disorder.

It is important to note that not all violence, even if extreme or bizarre, has a psychiatric or medical basis. Although assessment is often appropriate - if only to exclude medical or psychiatric diagnosis - explanations of violent behaviour usually lie elsewhere and interventions, not to mention judicial responses, will be non-medical. Even when a disorder is present, social, situational and personality factors may not only be important but predominant in any explanation of what has occurred.

Mental illness is a relatively weak predictor, statistically speaking, of future violence when compared to a history of violent acts; no matter what the cause of violence may appear to be, a careful history of violent conduct is essential. However, mental illness may be a crucial factor in individual cases and particular psychiatric diagnostic groups present higher than usual risks for violence (Mullen 1984).

CASE FIVE

A man in his early twenties who had migrated to Australia from Europe with his parents was charged with their murders. He had no other relatives in Australia and at his trial psychiatric evidence was supported by observations made by work mates.

He gave a history of slowly developing paranoid beliefs involving his parents. At first they were thought to be talking about him and laughing at him behind his back. Slowly he began to fear for his safety and took precautions so they could not enter his bedroom at night. Later he began bringing food home to avoid eating what his mother had cooked. His fears increased and he moved out of the house although continuing to visit. On one visit he ate a stew prepared by his mother, only to develop vomiting and diarrhoea.

He decided he had to kill his parents, waited until the next pay day and then on a Saturday morning bought an expensive rifle. Not wishing to use an unlicensed firearm he obtained a shooters' licence from the local police station and informed the gun shop of its number.

That afternoon he visited his parents and shot them both as soon as the door was opened. He then rang the police, giving his name and address, saying he had shot his parents, the door of the flat was open, the firearm was on the coffee table and that he had to go and feed the budgerigars.
On arrival the police found everything as he had stated and noted his complete unconcern.

Psychiatric assessment found him to be suffering from a schizophrenic illness of more than a years duration. The trial for the murders resulted in a jury returning verdicts of not guilty on the grounds of mental illness. He was detained indefinitely in a psychiatric hospital at the

Governors pleasure. Despite treatment he remained virtually without insight into his illness or his actions for several years. His suicide in hospital appeared to coincide with the development of some appreciation of what he had done.

Medical or psychiatric intervention with violent offender is usually by the offering of treatment or, if the person is facing sentence, by offering recommendations about treatment a sentence. The basis of the intervention must be an assessmen1 least adequate to the legal, medical and psychiatric issues presen1 by the individual offender. While this may not be too difficult w an offender who can attract, or obtain, the necessary resources pre-trial or pre-sentence, real problems arise in providing assessment services for the offender population as a whole.
Assessment procedures will depend upon the stage which proceedings have reached, what is already known of the violent person and the setting and resources available for the assessment. The referrals from courts, correctional authorities and parole boards are often dealt with by small, under-resourced services or professionals with little experience of the criminal justice system Assessment may lead to a treatment dead-end: recommendations cannot be implemented if treatment programs are unavailable the community or in prison. This is particularly so in the case of offender with complex problems but no clear cut diagnosis of a disorder amenable to a specific line of medical, psychiatric correctional management, including admission to a particular institutional program. These problems were addressed Dame Roma Mitchell (1985) when she examined services to such persons in South Australia. As a result of her recommendations the Management Assessment Panel was established and now assesses individuals and negotiates management programs, often with multiple agencies. Problems of assessment and treatment a compounded by the often poor flow of relevant information within the criminal justice system.

The Australian states and territories each have their own criminal laws, correctional services and health systems. There is no one way by which medical and psychiatric services are delivered to our criminal justice systems and to offenders within the community, and it is not the intention of this monograph to attempt to review the differing systems in the states and territories. It is difficult to decide whether differences in service delivery have arisen at times more because of the influence of particular events, such as escapes, and personalities rather than the rational adoption of sped models.

Certain medical and psychiatric conditions may be important violence and require mention here in broad groupings, rather the in detail. Treatment approaches, which are often obvious on diagnosis is made, are dealt with similarly. Reviews of the subject (Roth 1987; Tardiff 1988) and practical approaches to the problem (Reid 1988) are readily available.

In assessing violent patients a decision tree has been suggested (Reid 1988). It is also useful for violent offenders generally, although the incidence of medical and psychiatric disorder will be lower. Assessment takes place sequentially from first to the third category.

The first category is that of organic, or physical, conditions leading to dysfunction of the central nervous system. Included here are substance abuse (such as of alcohol, sedatives and amphetamines), the effects of prescribed medication, intracranial pathology (including head injury, tumour or vascular disorders), seizure or seizure-like syndromes

('epilepsy') and systemic disorders (medical conditions including infections, diabetes and endocrir disorders).

A second category includes psychiatric disorders such (schizophrenia, schizophreniform and paranoid disorders. Mood, or affective disorders, require special consideration, as severe depression can be associated with violence or suicide.

The third and final category includes personality and developmental disorders, and reactions to stress and to emotional trauma. These are frequently important in both first offenders and recidivists.

Reviews of the psychiatric health of prison populations (Gunn 1978) show that while the incidence of psychosis, schizophrenia or severe depression is about the same or a little more than in the general community, alcohol and drug abuse is much higher. Many prisoners believe they need some form of help. Varying diagnostic criteria make estimates of personality disorder in prisoners difficult to assess.

Mentally ill persons seem not to make an undue contribution to violent crime but some subgroups present an increased risk of such conduct, conduct which when it occurs largely within institutions or families, may not always be reported to the police, and if it is, may not lead to further action by the criminal justice system. A small number of patients exhibit repeated, even frequent, episodes of sometimes serious violence, testing the resources and therapeutic imaginations of those caring for them. They are, it is stressed a minority amongst psychiatric patients. Their careers may include periods in prison and their sentencing may pose great difficulties. A few persons who commit homicide or serious violent offences may be found not guilty on the grounds of mental illness and ordered to be detained indeterminately in a prison or psychiatric hospital, depending on the jurisdiction (Wallace, 1986).

Psychiatric disorders which may have an association with violence are many but it is not an essential diagnostic feature of most. It is, for example, with some personality and conduct disorders. With schizophrenia, some other psychoses, and mental retardation, violence is an associated feature. It is an infrequent feature of mood disorders and some other conditions.

The treatment of medical and psychiatric disorders in violent offenders is, in the first instance, treatment of the disorder itself with special efforts to control violence if it is continuing or threatens to recur. Some disorders may not be amenable to treatment, for example dementia or a longstanding paranoid psychosis, so symptomatic and behavioural control may be a prime aim with due respect for the comfort, rights and liberty of the person.

Important treatment approaches include, often in combination, pharmacological, behavioural and psychotherapeutic techniques and, in psychiatric hospitals, the occasional use seclusion and restraint. Psychopharmacological treatment commonly involves, in the mentally ill, use of antipsychotic drugs (the major tranquillisers), antidepressants and lithium. The latter drug has been used with some success for violent patients and offenders who do not have a diagnosis of mood disorder, a disorder for which it is primarily prescribed. Long-term use of the major tranquillisers is not advocated for the control of violent offenders who do not have an appropriate psychiatric diagnosis.

The use of drugs in the treatment of sexual offenders is controversial and relatively uncommon in Australian institutions. Antiandrogen drugs have been used. Indeterminate detention of certain sexual offenders is available in South Australia despite recommendations for its abolition. It is rarely combined with psychiatric or medical treatment due to the nature of the f offenders detained.

It is fair to say that medical and psychiatric approaches to the assessment and treatment of violent offenders are hindered by imprisonment because of the prison environment and reduced access to services and professional staff, including psychologists. Mentally ill offenders may be transferred to psychiatric hospitals or special units, where treatment can be offered, for at least part of their imprisonment. When those who commit serious violent offences are sentenced, other considerations may outweigh those of rehabilitation and treatment. Where it is possible to provide treatment for a violent offender; in prison or in the community, it should be given in an appropriate setting with proper legal and procedural protections, especially for those who have chronic disorders or disabilities or who are subject to indeterminate detention. Appropriate attention must be given to personal and social problems, to supervision conditions and to compliance with long-term drug therapy.

The unintended consequences of imprisonment. While there may be good reasons to imprison violent offenders, rehabilitation is not one of them. Despite the occasional (and patently erroneous) reference to the 'motel-like accommodation' of prisons, the prison environment can be highly threatening. The self-doubt and low self-esteem which often give rise to violence tend to be reinforced. Prisons have been described as analogous to jungles, where power and exploitation are dominant values.

Almost invariably, prison has serious adverse consequences for the offender. The deprivation of liberty can be an extremely stressful experience. Many prisoners, whose propensity to maladaptive behaviour may have landed them in trouble in the first place, experience great difficulty in adjusting to a prolonged period of custodial confinement. The stresses induced by confinement may have adverse effects on a prisoner's physical and mental health. These stresses may be compounded by separation from family and friends. Indeed, it can be argued that the subculture of most Australian prisons emphasises aggression as a coping strategy. Assault, rape, self-mutilation and suicide all occur within prisons. Threat, intimidation and force are common currency. The popular injunction 'if you can't do the time, don't do the crime' obscures the fact that the prison setting may be a futile environment in which to seek to instil such values as warmth, trust and empathy, precisely those qualities which are appropriate to life as a respectable member of the community.

Non-custodial options. In certain cases, usually involving relatively minor violent offences or significant mitigating circumstances, it may be deemed appropriate by the sentencing authority to impose a sanction other than a term of imprisonment.

Considerable attention has been accorded non-custodial options in recent years, in part because they appear to offer greater (or at least no less) rehabilitative potential than imprisonment, at a fraction of the cost per offender.

Non-custodial sentences can include one or more of a variety of options, including probation, a monetary fine, a good behaviour bond, community service orders, restitution, or a suspended sentence of imprisonment. Probation may entail a number of conditions, including the requirement that the offender undergo medical or psychiatric

treatment, or that he participate in a drug or alcohol rehabilitation program. A monetary fine, which entails the payment of a specified sum to general revenue, is an uncommon sentence for violent offenders, given the relative severity of the offence and the fact that many violent offenders are drawn from relatively disadvantaged backgrounds.

CASE SIX

After pleading guilty to *an armed robbery; a man in his thirties remained* on *bail while a probation pre-sentence report was prepared. The probation officer referred him for psychiatric assessment, although there was* no *history* of *psychiatric disorder: However; his wife was receiving outpatient treatment and there were long- standing financial and family problems. When asked about himself, the man stated that he was a pauper; always would be and would not know how* to *spend one thousand dollars if he had it. He had been working but had taken much time off* to *care for his children and accompany his wife* to *the psychiatric outpatient department* of *a large hospital where she was receiving long-term and frequent treatment. Little money was available and while his wife and three young children ate what more nutritious food might be in the house, he ate mashed potatoes flavoured with meat extract.*

The armed robbery occurred one day when he had sufficient money to *spend* 60 *cents on* a *green and orange water pistol for his* 6 *year old son whose birthday it had been three weeks before. While returning home on* a *borrowed motorcycle he noticed* a *bank. He thought of money and returned shortly after, having altered the motorcycles number plate with adhesive tape. With the water pistol in his pocket and its paper bag in his hand he asked the female teller for money. After she had placed some in the bag he told her that was sufficient and left, accidentally dropping the bag in the street. He returned later* to *retrieve it. Of the $180 taken he banked $100 and spent $80 on baby food.*

The sentence was a bond with probation supervision.

A good behaviour bond requires the offender to comply with certain conditions, not the least of which is obedience to the law. Good behaviour bonds may be accompanied by a financial surety, the breach of which can entail the forfeiture of a specified sum.

CASE SEVEN

Following a *brief argument in* a *place of entertainment this heavily intoxicated man in his early twenties picked up* a *sharp cooking utensil and attacked* a *relative stranger: He was restrained after injuring his victim and the police called.*

He was unable to *explain the reason for the attack and remembered it poorly. For some days he had been drinking in excess of* a *bottle of whisky* a *day. His past history revealed he had been a*

hyperactive child, had experienced difficulties towards the end of his schooling but had received no special attention or treatment. Five years in professional sport were successful but this ended after severe injuries in a *motor vehicle accident which occurred while he was drunk. After this his drinking became seriously out of control, he had self-destructive urges and became impulsively violent as well as over-sensitive and lacking in self- esteem.* A *series of sexual involvements caused conflicts and more drinking. Symptoms of alcohol dependence were apparent. He had not worked since his motor vehicle accident.*

He had become abstinent after the assault but remained distressed about the conduct of his life. After pleading guilty he was given a *suspended sentence, probation supervision and referred for psychiatric treatment aimed* at *his rehabilitation.*

Community service orders require offenders to devote a specified number of hours to constructive activity in the community. It may enable them to acquire work skills which they might not otherwise develop. This form of generalised restitution is now available in all Australian jurisdictions (Australian Law Reform Commission 1987). Used primarily for minor offenders, it is generally regarded as unsuitable for perpetrators of serious violent crime. In cases where they are used as a sentencing option, community service orders appear to be no less effective a rehabilitative response than imprisonment.

Restitution entails the payment by an offender to a victim, in cash or in kind, to compensate for injuries or loss inflicted in the course of a crime. The concept is hardly a new one; its roots are dearly visible in the dispute settlement practices of pre-industrial societies. The principle of restitution has been incorporated in the sentencing law of most Australian jurisdictions. Of course, the common law has long provided victims with a course of action in cases of injuries arising from intent, as well as from negligence: a victim can sue the offender for damages.

Laudable as these remedies may seem, they are largely peripheral. Most violent offenders, by choice or by circumstance, were either out of the workforce or employed in relatively menial occupations at the time of the incident leading to their conviction. Their ability to pay restitution or damages for the losses which they may have inflicted is thus limited. Most state criminal injuries compensation schemes provide for recovery from the convicted offender of monies up to the amount awarded to the victim under the scheme. (For a more detailed discussion of criminal injuries compensation, see Grabosky (1989)).

A suspended sentence of imprisonment may be imposed in some jurisdictions, subject to revocation in the event of subsequent offending or breach of specified conditions. In such circumstances, the offender would serve the term of imprisonment originally specified by the sentencing authority.

One recent innovation in Australian corrections is home detention. Home detention requires offenders to remain at home during those hours when they are not at work or engaged in approved study, religious activity, or rehabilitation programs. It is used as a sentencing option in its own right in the Northern Territory, and as the basis for early release from prison in South Australia and Queensland. It appears likely that a number of jurisdictions will complement this alternative with electronic surveillance and

monitoring technology. Some commentators have cautioned that excessive reliance on electronic monitoring, at the expense of personal contact, can have adverse implications for rehabilitation. Fox (1987), for example, has suggested that such measures may be more appropriate as alternatives to custodial remand than to a fixed term of imprisonment.

Non-custodial sanctions may also be employed at the end of a period of imprisonment. Indeed, the option commonly referred to as parole entails release from custody prior to the expiration of a prison sentence.

These non-custodial options are usually accompanied by binding conditions, which may be tailored to suit the rehabilitative needs of the offender. They may, for example, include the requirement that the offender abstain from alcohol or drugs, that he refrain from contact with the victim or with other specified persons, that he pay restitution to the victim, or that he participate in a specified counselling or treatment program. Conditions usually require regular reporting to probation and parole officers.

In recent years, state and territory corrections authorities have expanded probation and parole services to accommodate a growing number of non-custodial clients. For example, the New South Wales Department of Corrective Services has established a number of Attendance Centres which provide programs for probationers, parolees, and those offenders sentenced to community service.

These programs do not focus on violence per se, but rather on general skills, as many of the clients lack the ability to read and write, and are unable to perform the simple arithmetic necessary to budget their income. Among the programs offered are basic literacy, job seeking and interviewing techniques, money management, and general communications skills.

The economics and relative flexibility of non-custodial options make them attractive, at least in those cases where the offender in question poses no danger to the public, or where the offence may not be so heinous as to militate in favour of a more punitive response. Non-custodial options are often less injurious to the offender; and thus potentially more conducive to rehabilitation.

Domestic Violence Offenders. In recent years specialised programs for perpetrators of domestic violence have been developed under various auspices in Australia. In some cases, these programs have been established within the community, and are available to violent men on a voluntary basis. In others they have been established as an adjunct to the probation and parole services of state or territory corrections departments. Participation in these programs may be voluntary for probationers and parolees in general, or may be made an explicit condition of probation or parole. As with other rehabilitation strategies, the basic principle of these programs is to enable participants to recognise stress and anger, to develop skills for control of anger and to assist in self-image building. Despite the proliferation of these programs in recent years, none has been subject to systematic evaluation. It thus remains to be seen which, if any, of these programs actually work, and which operate most effectively and most efficiently.

That Australian correctional rehabilitation programs in particular; and public policy initiatives in general, have escaped rigorous evaluation is unfortunate. It may be explained in part by the fact that administrators and policy-makers tend to invest their

reputations in programs per se, and can ill afford the risk of a demonstrably unfavourable outcome.

With regard to correctional rehabilitation strategies, this concern is compounded by the knowledge that the vast majority of overseas rehabilitation programs which have been subject to evaluation have been shown to be unsuccessful. The apparent failure of rehabilitation may arise from inadequate design and funding of programs, from the immutability of many anti-social personality traits, and from the persistence of social conditions which help spawn criminal behaviour. If anything does work to rehabilitate violent offenders in Australia, the current lack of investment in planning and evaluation will militate against its early discovery.

INCAPACITATION

Incapacitation is, quite simply, the removal of an offender from society. Today, the most common form of incapacitation is imprisonment, such earlier forms as execution and transportation having been abandoned. The logic behind incapacitation is simple: a violent person who has been incapacitated is no longer able to offend against innocent members of the community. If enough chronically violent people are identified and incarcerated, there will be fewer violent people at large. It is thus assumed that incapacitation will reduce the level of violence in society.

The incapacitated offender is, however; often able to offend against his fellow prisoners, and against prison officers. Indeed, because of the concentration of violent people in prisons, these institutions are among the most violent places in Australia today.
The extent to which incapacitation can affect the incidence of violence in Australia depends on a number of considerations. The biological, social, economic, cultural and other factors which produce violence are many and varied. A policy of incapacitation focuses on the aftermath of violence, not on its causes. For every violent offender who is incapacitated, there may be another growing up to replace him. Of course, the assumptions which underlie incapacitation would hold that in the absence of such a policy, the incidence of violence would be even greater.

Sooner or later most people who are sent to prison return to society. Hopefully, they will be no more violent upon release than they were upon admission; ideally they would be less violent. But prisons themselves can be extremely violent places. Ironically, they may in some circumstances provide the opportunity to develop or expand a repertoire of violence.

Not all violent offenders are chronically or intractably violent. For some, the commission of a violent act may have been a once-in- a-lifetime episode, occurring in response to extreme threat or provocation. In the case of these individuals, incapacitation is an extremely inefficient response. Incapacitation is no more efficient in the case of the offender who is amenable to some form of rehabilitation, and whose propensity to reoffend might thereby be minimised.
The utility of incapacitation is thus limited to those violent offenders who are likely to re-offend. These constitute an undetermined subset of all violent offenders, and the precise determination of this likelihood is problematic.

This problem of identifying the chronic violent offender is of more than intellectual interest, since, under the present state of knowledge, a very large increase in the number of imprisoned offenders would be likely to achieve only a marginal decrease in the incidence of violence. Despite recent improvements in the techniques of clinical and actuarial prediction, the likelihood of recidivist violence still defies accurate estimation (Monahan 1984). Mental illness alone is of little use in predicting violent behaviour (Mullen 1984; Collins et al. 1988).

Table 1 reflects the state of prison overcrowding in Australia at the beginning of 1987. Although a number of additional prisons have been built since that time, so too has the number of prisoners increased. Table 2 shows the numbers and percentage of prisoners by gender and most serious offence or charge as at 30 June 1988. The daily average number of prisoners held in custody throughout Australia during March 1989 was 11,896 (Walker 1989a).

In light of the serious overcrowding which exists in Australian prisons today, and the significant expense entailed in building and operating additional prisons, incapacitation may be a relatively inefficient response to violence.

Recidivism. The question of whether violent offenders will commit further crimes of violence upon their return to the community is one which is central to policies of sentencing and parole. It does come as somewhat of a surprise, therefore, to learn that systematic information on re-offending rates of Australian violent offenders is not regularly published. To be sure, statistics on the re-arrest, re- conviction, or re-imprisonment of violent offenders may not encompass those offences which are not reported to or cleared by police. Nevertheless, those statistics which are available suggest that repeated violent offending may be more the exception than the rule.

Burgoyne (1979a; 1979b; 1979c;1979d) observed the records of 664 Victorians released from prison in 1972 and 1973 after serving sentences for homicide, assault, robbery or rape *(see Table* 3). He found that whilst a majority were reconvicted of some offence within five years of their release, less than 30 per cent were convicted of subsequent crimes of violence.

A recent South Australian study (Morgan 1989), based on reconviction rates of 866 offenders released over a three-year period, showed that 19 per cent of those originally imprisoned for

TABLE 1
Occupancy rates of Australian prison systems, by state, January/March 1987

State	*Total capacity*	*Highest number of prisoners*	*Percentage occupancy*
NSW	3,821	4,081	106.8
Victoria	2,038	1,975	96.9
Queensland	2,107	2,278	108.1
Western Australia	1,800	1,684	93.6
South Australia	850	841	98.9
Tasmania	449	273	60.8
Northern Territory	363	463	127.5
Australian Capital Territory	18	20	111.1
AUSTRALIA	11,446	11,615	101.5

Source: Biles, D. 1987, 'Prison Accommodation and Occupancy' April (Revised), Australian Institute of Criminology, Canberra.

TABLE 2
Numbers and percentage of prisoners by gender and most serious offence or charge Australia, 30 June 1988

Offence/Charge	*Males*	*Females*	*Total*	*Percentage*
Homicide	1183	71	1254	10.2
Manslaughter -Driving	61	4	65	0.5
Assault	903	22	925	7.5
Sex Offences	1150	7	1157	9.4
Robbery/Extortion	1520	69	1589	12.9
Break/Enter	1861	77	1938	15.7
Fraud/Misappropriation	436	107	543	4.4
OtherTheft	1266	95	1361	11.0
Possess/Use Drugs	221	17	238	1.9
Manufacturing/ Trafficking Drugs	1025	88	1113	9.0
Unidentified	2044	94	2138	17.3
Total	11670	651	12321	100.0

Source: Walker, J. 1989b, *Australian Prisoners* 1988, Australian Institute of Criminology, Canberra.

TABLE 3
Reconviction rates of violent offenders released from prison, Victoria, 1972-3

Original Offence	*Per cent with at least one subsequent conviction, any charge*	*Per cent with at least one subsequent conviction, violent offence*
Homicide (N=150)	30.1%	10.7%
Assault (N=249)	65.1	32.9
Robbery (N=195)	63.1	22.1
Rape (N=115)	58.3	31.3

Source: Burgoyne, P. 1979a; 1979b; 1979c; 1979d;

violent offences (homicides, offences against the person and robberies) were reconvicted for violent offences *(see* Table 4). Reconviction rates for violent offenders released from prison were lower than for those who had originally been imprisoned for non- violent offences. Those few South Australian murderers released during the three-year period showed no reconvictions of any kind. These cases were too few in number to make any reliable inferences, howeyer.

TABLE 4
Reconviction rates of violent and non-violent offenders, released July 1982 – June 1985, South Australia

	Reconvicted		*Not*	
Original Offence	*Violent*	*Non-violent*	*Reconvicted*	*Total*
Violent	19.0%	34.3%	46.7%	100%
Non-violent	16.7%	49.9%	33.4%	100%
Total	17.7%	43.3%	39.0%	100%

Source: personal communication, South Australia, Department of Correctional Services.

Australian research on criminal careers and recidivism remains in its infancy. Maller and Broadhurst (1989) have found that between 30 per cent and 50 per cent of Western Australian offenders imprisoned on numerous occasions have tended to commit progressively more serious offences. The likelihood of recidivism for serious sex offenders was even greater. In general, the authors conclude that the more frequently an offender has been imprisoned, the greater the likelihood of subsequent incarceration (Broadhurst & Maller 1989).

Available data suggest that there are a relatively small number of violent offenders whose continued incarceration would indeed prevent some violence in the community. But the identification of these offenders remains the problem. Authorities in Australia have yet to engage in systematic thinking about the logic of incapacitation, or about the costs and benefits of incapacitation as a crime control policy, or about identifying the minority of violent offenders who will continue to commit violent acts when released.

CASE EIGHT

A man in his early twenties was received into prison following conviction on several charges of *assault. He had* a *past history* of *offences associated with drinking.*

Early in his imprisonment he asked the prison medical officer to *refer him* to a *psychiatrist. When seen for psychiatric assessment he complained* of *having 'black outs' which, on enquiry; suggested* a *diagnosis* of *epilepsy; There was no prior history* of *epilepsy in the patient or his family; He had* a *long history* of *what might be called social fighting while out drinking with friends. Many* of *the fights were in fact with acquaintances and involved no serious injury or long disruption* of *friendship.*

However, in one street fight he had fallen, striking his head with brief loss of *consciousness. Following this, and before the onset* of *his 'black- outs', his fighting behaviour changed. He fought when sober and not when intoxicated. He also began losing control in fights, using anything as* a *weapon. There was amnesia for his actions when fighting and afterwards he was remorseful. His friends noticed the change, considered his behaviour abnormal and advised medical help.*

On neurological investigation epilepsy was diagnosed and attributed to *brain damage following head injury. The episodes* of *violence* were *not occurring in close association with his seizures, but* were *related* to *the* brain *damage. Anticonvulsant* treatment *controlled his epilepsy and there* were no *problems with violence in prison.*

RETRIBUTION

As every man doth, so *shall it be done to him, and retaliation seems to be the great law that is dictated to us by nature.* (Adam Smith 1759)

Another principle of punishment is that of retribution. One of the oldest responses to violence in the repertoire of human civilisation, retribution underlay the biblical injunction of 'an eye for an eye, a tooth for a tooth' as well as the 'payback' which served as the basis for dispute resolution practices in pre-industrial societies. Retribution embodies the principle of equivalence in social exchange. The contemporary term for retribution is 'just deserts'. Stated simply, a person who inflicts harm and suffering upon another should be made to experience suffering him or herself, commensurate with the degree of harm inflicted and with the degree of culpability or blameworthiness which the act entailed.

Unlike principles of deterrence, rehabilitation and incapacitation, which are fundamentally concerned with the prevention of violence, retribution is concerned with basic morality. And unlike deterrence, which is concerned with the prevention of future offending, retribution focuses on the past. It is the seriousness of the offence and the culpability of the offender which serve as the basis of the penalty to be imposed.

Contemporary Australian governments are constrained in their ability to exact retribution against perpetrators of violence. Capital punishment is strenuously opposed by human rights organisations such as Amnesty International, and Australian public opinion tends to be divided on the issue. Torture, and less draconian forms of corporal punishment are contrary to international human rights agreements to which Australia is a signatory.

The main vehicle for retribution in Australian criminal justice systems is thus imprisonment. It is the basic retributive inclination, rather than any possible deterrent or rehabilitative effect, which appears to underlie public demands for more severe prison sentences.
Retribution may be comforting in theory, but as a principle of response to the violent offender; raises a number of practical questions. A variety of considerations, not least of which may be the offender's relative youth and potential for rehabilitation, can militate in favour of a more lenient sentence. Again, it should be noted that imprisonment is a very costly punishment. Full retribution may be very expensive to implement.

Proponents of capital punishment as a retributive response to murder often overlook important considerations. One of these is the possibility of wrongful conviction and execution of an innocent person. Execution is an irrevocable punishment. The belated discovery of exculpatory evidence, and the granting of a posthumous pardon will not console the deceased.

It might also be suggested that in many ways, the state should be regarded as a moral exemplar. That is, activities undertaken in the name of the state should serve as a model for the general public. When the state itself uses violence to further ends which it perceives as legitimate, this is an implicit invitation to some members of the public to do likewise.

DENUNCIATION

An act of criminal violence affects more than a victim. As noted above, it is regarded by law as an offence against the state. Depending on its severity and unpredictability, it may instil fear and insecurity among members of the public. Depending on the degree of heinousness which it entails, it may be regarded as an affront to public morality.

One way of re-affirming those values embraced by a widespread majority of citizens, and which have been violated by an act of criminal violence, is to repudiate the act in question, and to denounce it publicly, both officially and informally. Remarks made by judges in imposing sentences on convicted offenders constitute the formal denunciation of the criminal act. Moralising statements by police and by elected officials represent informal denunciation, as does much of the commentary which accompanies news media coverage of violent crime.

Denunciation has an educative purpose, as well as an expressive function. By communicating society's abhorrence of a given act, a statement of denunciation sends a message which highlights a boundary between acceptable and unacceptable behaviour. Braithwaite (1989, p. 77) describes how it can serve as the basis for the moral development of children. It 'supplies the morals which build consciences' (Braithwaite 1989, p. 78). To the extent that this purpose is achieved, denunciation can further the aim of prevention.

Thus it has been suggested that denunciation can perform a utilitarian role as well as an expressive one. Braithwaite (1989) contends that a society which shames an offender without stigmatising him will be a less violent society. He advocates that states give more prominence to moralising social control than to punitive social control.

Shaming, when it serves to stigmatise an offender; can reinforce a criminal self-image, perpetuate a criminal career; and create a class of outcasts. Persons who have been so 'branded' tend to gravitate toward a criminal subculture.

By contrast, shaming which is reintegrative, in other words, followed by re-acceptance of the offender into the community of law-abiding citizens, can have a rehabilitative effect. Braithwaite refers to a 'family model' of the criminal process where punishment is imposed within a framework of reconcilable interests rather than within a context of disharmony and fundamental antagonism (Braithwaite 1989, pp. 54-6). Braithwaite argues that societies have less crime when they deliver potent shaming at wrongdoers, and where that shaming is reintegrative rather than stigmatising.

There are those violent offenders who may be characterised as remorseful and contrite, and those who can be described as 'shameless'. Formal denunciation mayor may not instil a sense of shame in the latter group of offenders, but it can serve to reinforce in the general public the shamefulness of violence.

There are, nevertheless, those individuals who remain impervious to moral reasoning and to societal injunctions; indeed, there are those who positively and enthusiastically embrace a mean and tough identity, A few go even further and revel in a self-image of evil (Katz 1988). Stigmatisation, according to Braithwaite, actively encourages the formation of such self-images. If this is a transient phase, they may be yet amenable to reprobation. If it is not, moralising injunctions serve little purpose, whether for the

individual in question, or for citizens in general. Society should nevertheless guard against responses to violence which may reinforce in offenders a criminal identity.

To a significant extent, the denunciation of an act of criminal violence is symbolised by the sentence which is ultimately imposed on the convicted offender. Maximum penalties available at law tend to be reserved for only the most heinous offences, and are only rarely imposed. If sentences are perceived as lenient, that is incommensurate with the heinousness of the offence, the goal of denunciation remains only partially fulfilled.

On the other hand, there are those commentators who would not equate length of sentence with denunciatory impact. As Braithwaite and Pettit suggest

> Denunciation, we believe, is determined less by the length of sentence than by whether the trial is reported in the media, whether it is held in open court in the presence of significant others, how many of the offender's acquaintances come to know of the conviction throughout the rest of his life (Braithwaite & Pettit, forthcoming, p. 179).

Fundamentally, Braithwaite's theory of reintegrative shaming, like so much criminological theory, implies that the most important ways of reducing violence are not to be found in the design of the criminal justice system, but rather in society's structure and culture.

Public Perceptions of Criminal Sentencing. Perhaps the greatest source of contemporary public concern relating to criminal justice in Australia is the widely shared perception that sentences imposed on convicted offenders, particularly those convicted of crimes of violence, are unduly lenient. Whilst the argument might be made that leniency is in the eye of the beholder, and that those who complain most vociferously about the leniency of sentences have never seen the inside of a prison, much less been confined in one, there exists a great deal of cynicism with regard to the sentencing process.

Concern about the sentencing of offenders has focused on two major issues - the perceived leniency of sentences imposed, and the apparent inconsistency of penalties imposed on convicted offenders both within and between states and territories. These concerns have given rise to inquiries at both the Commonwealth and state levels (Australian Law Reform Commission 1988; Victorian Sentencing Committee 1988) and to the establishment of a Judicial Commission in New South Wales.

An additional concern arises from the ambiguity which often surrounds the sentence of imprisonment. In such cases, judges commonly specify a given period of incarceration, generally referred to as the 'head sentence'. This sentence, however, often bears little or no relationship to the period of time which the offender actually serves. It addition to the head sentence, judges may also specify a minimum term of imprisonment, called the non-parole period, after which the prisoner may, depending upon the jurisdiction, be released automatically or be released at the discretion of parole authorities. The non-parole period as a proportion of the head sentence can vary substantially within and between jurisdictions.

In addition to the possibility of a term of imprisonment being curtailed by parole, state and territory corrections authorities also provide for remissions of sentence. These may be granted automatically, or on a discretionary basis for good behaviour. Such

remissions may serve to reduce the duration of a prisoner's non- parole period, thus further decreasing the time served in prison.

Those members of the public who stop to compare the duration of an original head sentence with the amount of time an offender actually spends in custody might be excused for expressing cynicism, if not anger. The moral education of both the convicted offender and society at large which might flow from the imposition of a sentence, is thus weakened.

A loss of public confidence in the criminal justice system poses more problems than just a headache for politicians. It can lead to self-help in the form of vigilantism, and ultimately to an escalation of violence.

Because of public disquiet, the Commonwealth and New South Wales governments, among a number of jurisdictions, have sought to restore the principle of 'truth in sentencing' where ambiguity in the calculation of time to be served is eliminated, and the act of delivering a sentence is clear and accessible to the public.

There nevertheless remain very good reasons for a certain degree of administrative flexibility in determining the actual time an offender will serve in prison. The management of prisons is, at the best of times, a difficult task. It can be greatly facilitated by the co-operation of prisoners, and can be made extremely difficult by their recalcitrance. The following selective list of prison disturbances in Australia is illustrative.

- August 1982 Goulburn Training Centre, NSW Numerous fires and serious damage to internal areas of the building.
- March 1983 Yatala Labour Prison, SA C Division set on fire; three prison officers taken hostage; 17 prisoners and four prison officers injured.
- November 1983 Brisbane Prison, Qld 129 Cells destroyed during major disturbance.
- October 1987 Jika Jika Prison, Vic. Five prisoners die in a fire lit during a protest.
- December 1987 Brisbane Prison, Qld 200 Cells destroyed; one prisoner shot; one prison officer wounded.
- January 1988 Fremantle Prison, WA Five prison officers held hostage; serious fire damage to one division.

Source: Australian Law Reform Commission 1988

Skilful management of prisons often entails the constructive use of inducements. During periods of industrial action by prison officers, Australian correctional authorities have granted credit towards remission in order to reduce the potential for prisoner unrest. In addition to various privileges which might be granted to the well-behaved prisoner, some degree of remission of sentence for good behaviour can be an important incentive.

In contrast to what might be described as the dilution of denunciation through the imposition of comparatively trivial sentences, the rhetoric of denunciation has become devalued through indiscriminate application. To the extent that police, judicial authorities, public officials and other commentators describe victimless crime and other

minor breaches of decorum as abhorrent, the more appropriate condemnation of truly heinous behaviour carries less denunciatory weight.

COST CONSIDERATIONS

One of the more significant considerations in determining an appropriate response to the violent offender is that of cost. This particularly significant in the current climate of fiscal constraint, which appears destined to dominate Australian public policy for the foreseeable future.

Imprisonment in maximum security is an expensive public policy. It costs an estimated $200,000 per bed to construct a maximum security prison (Australian Law Reform Commission 1988, p. 25). The cost of operating a prison is also enormous. In order to prevent escape, and to minimise the risk that a prisoner will injure himself or another, prisons must be staffed around the clock. Table 5 reports recent statistics of prison expenditures in Australia. These costs have increased further over the past two financial years. The cost of operating a maximum security prison has been estimated at $80,000 per prisoner per year; a secure psychiatric facility, $180,000 per prisoner per year.

TABLE 5
Prison Expenditures, Australia 1986-87

	Total expenditure	*Cost per prisoner*
NSW	$159,631,000	$40,199
VIC	101,043,000	52,084
QLD	45,918,900	20,435
WA	59,445,500	37,015
SA	49,273,000	59,080
TA5	6,921,100	26,019
NT	17,380,200	40,513
Total Australia	439,612,700	38,928

Source: Mukherjee, 5.K. *et* al. 1989, *Sourcebook of Australian Criminal and Social Statistics,* Australian Institute of Criminology, Canberra, pp. 591-642.

Based on these figures, and considering that violent offenders comprise at least 40 per cent of the national adult prison population, the cost of imprisoning violent offenders in Australia approaches $200 million per year.

Because the resources available to Australian correctional authorities are limited, the incapacitation of violent offenders is an extremely difficult undertaking. As already noted, most state prison systems currently suffer serious problems of overcrowding. Whilst this no doubt contributes to the discomfort of those imprisoned, it makes the orderly management of prisons extremely difficult. Most Australian prison systems have experienced serious disorders over the past decade as a result of overcrowding.

UNITED NATIONS STANDARD MINIMUM RULES

Regardless of the heinous acts which may have been committed, the violent offender should be accorded certain rights and be entitled to certain fundamental protection. This is of more than passing interest, because of the very great potential for abuse of persons in the custody of the state. The imprisoned offender is in one of the most vulnerable positions in any society. Australian society is no exception.

Largely beyond the scrutiny of the general public, but ostensibly accountable to parliament, to oversight agencies such as state ombudsmen and at common law, state correctional authorities are responsible for the safe and secure custody of their prisoners.

This mission has not always been fulfilled, in Australia or elsewhere. Whilst Australian prisoners have not been subject to torture and brutality of the kind practised in many nations, they have been subject to unwarranted abuse, at the hands of fellow prisoners or of prison officers themselves. By way of one example, the systematic beating of prisoners was practised in the prisons of New South Wales until nearly a decade ago. A modern high-security facility in New South Wales, Katingal, was described in the report of a Royal Commission as an 'electronic zoo' (New South Wales 1978, p. 121). At present, it is perhaps more accurate to say that Australian prisoners enjoy very few enforceable rights. Rather, they may be accorded certain privileges at the discretion of correctional authorities.

Hawkins (1985) identifies three justifications for concern for the rights of prisoners. First is their extreme vulnerability to abuse, as has been demonstrated throughout Australian history, and more recently in the events leading up to the Nagle Royal Commission (New South Wales 1978). The second justification is the importance of reaffirming to prisoners, of all people, the importance of the rule of law. To quote the late Hans Mattick, 'It is perhaps gratuitous to assert that those who have been convicted of breaking the law are most in need of having respect for the law demonstrated to them' (Mattick 1972, p. 1). Hawkins' third justification holds that having deprived prisoners of the most fundamental right in a free society, freedom, 'we are under a moral obligation to ensure that their other rights are not curtailed more than is absolutely necessary for custodial purposes' (Hawkins 1985, p. 204).

International concern for the rights of prisoners dates back to the beginning of the present century. In 1929, the International Penal and Penitentiary Commission published a set of Standard Minimum Rules for the Treatment of Prisoners. In 1955, the Rules were adopted in an expanded form by the United Nations. The rules today set out basic principles for the custody of prisoners in general, such as freedom of religion, the availability of food and medical services, and the opportunity for exercise. They also detail special provisions covering such issues as insane and mentally abnormal prisoners, work, and educational opportunity. The Standard Minimum Rules are summarised in Table 6.

TABLE 6
Summary of United Nations Standard minimum rules for the treatment of prisoners

GENERAL APPLICATION	
number	*title*
6	Basic principle
7	Register
8	Separation of Categories
9-14	Accommodation
15-16	Personal Hygiene
17-19	Clothing and Bedding
20	Food
21	Exercise and Sport
22-26	Medical Services
27-32	Discipline and Punishment
33-34	Instruments of Restraint
35-36	Information and Complaints
37-39	Contact with the Outside World
40	Books
41-42	Religion
43	Retention of Prisoners' Property
44	Notification of Death, etc.
45	Removal of Prisoners
46-54	Institutional Personnel
55	Inspection
SPECIAL CATEGORIES	
number	*title*
56-64	Prisoners Under Sentence
65-66	Treatment
67-69	Classification and Individualisation
70	Privileges
71-76	Work
77-78	Education and Recreation
79-81	Social Relations and After Care
82-83	Insane and Mentally Abnormal Prisoners
84-93	Prisoners Under Arrest or Awaiting Trial
94	Civil Prisoners
95	Persons Arrested or Detained Without Charge

(Adapted from Loof, P. & Biles, D. 1985, 'Formulation and Application of United Nations Standards and Norms in Criminal Justice', in *Australia Discussion Papers, Seventh United Nations Congress on the Prevention* of *Crime and Treatment* of *Offenders,* Australian Institute of Criminology, Canberra, p. 129).

Since its establishment in 1973, the Australian Institute of Criminology has sought to assist state and territory correctional authorities throughout Australia in implementing the United Nations Rules (Loof & Biles 1985). In 1989 the Institute co-operated with state corrections ministers in developing a set of standard minimum rules for Australian prisons.

CONCLUSION

What basic principles, then, should govern society's response to the violent offender? Many observers would argue that by the time a violent offender has reached prison, it is too
late, and the most appropriate response to violence in Australia is to change those social conditions which give rise to violence in the first place.

It is important to recognise that if a 'solution' to the problem of violence does exist, it is not likely to be found in the criminal justice system. Resources available for the prevention and control of violence in Australia are limited. The National Committee on Violence will give substantial consideration to where these resources might most productively be allocated, whether in areas of family support, employment-based delinquency prevention programs, or more prisons. Of course, police, courts and correctional agencies make some difference. But overall, they constitute a very imperfect means of social control. A massive investment in criminal justice resources may produce some reduction in violence, but the marginal reduction is unlikely to be commensurate with the increased cost.

This is of course no consolation to Australia's correctional administrators, who must receive and manage those consigned to their custody, and do so with meagre resources. The fact remains that deprivation of liberty will continue to be the basic response to cases of serious violence in Australia.

Considerations of economy and justice should dictate that punishment not be imposed gratuitously. New South Wales and other jurisdictions have formally acknowledged that imprisonment should be used only as a last resort. At the same time, there are those offenders who constitute a real risk to society, and for whom there is no alternative to prison. It may thus be said that a significant number of prisoners do not really belong in prison, and a significant number who are in prison belong there for a long time. The challenge is that of identifying in which category a given prisoner might be placed. In light of the trend towards hardened public attitudes and longer sentences, it is important for reasons of justice as well as economy to ensure not only that pre-sentence assessment of violent offenders provides adequate information to the courts, but that appropriate treatment programs be made available, in the community and in the prison system.

For those prisoners who might be termed chronic violent offenders, the task then becomes identifying those who may be amenable to rehabilitation, and determining those rehabilitative treatments which may produce a positive and lasting effect.

Society's response to the violent offender has been characterised by contradiction and ambivalence. This may be explained in part by the fundamental inconsistencies, and indeed, the mutual exclusivity of the principles of punishment. It may also be explained by the absence of current, useful knowledge about the deterrent, incapacitative and rehabilitative effects of those policies which are in place. And by no means least, it flows from the indifference on the part of the Australian public to prisons generally, and their hostility to prisoners in particular.

To the extent that violence is a product of human nature, policies of deterrence and rehabilitation may have a positive effect. To the extent that violence is rooted in cultural

and economic circumstances, penal policies will have less of an impact. The Australian public must be made aware, however; that whatever penal policies are likely to be effective will almost certainly be extraordinarily expensive.

It has long been an article of faith among Australian politicians that there are no votes in prisons. In the foreseeable future, penal policies appear destined to be dictated not by hard-headed evaluation, but by ill-informed public opinion, by fads, and by political expediency. Ultimately, it is the Australian taxpayer who will bear the long-term costs of continuing penal programs in the dark. The public and policy-makers alike will lack systematic information about the efficiency and effectiveness of alternative policies.

Meanwhile, it may be most appropriate to reserve imprisonment as a last resort, and to pursue strategies for the abatement of violence not in the criminal justice system but in family, education, and employment policy.

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