

Crime and Punishment

Brian Bedkoher and **Nicole Billante** debate whether greater use of prison and more police work in reducing crime rates

We don't need more police

Brian Bedkoher

Last year, The Centre for Independent Studies (CIS) promoted a discussion of policing in Australia. The starting point for the discussion was the fact that while the incidence of serious crime (defined as homicide, rape/sexual assault, assault, robbery, break and enter, and motor vehicle theft) has risen by about 450% since 1964, the number of police per 1,000 serious crimes has fallen from 225 in 1964 to just under 60 in 2000. Although the number of police rose by about 37% between 1964 and 2000, this increase was outstripped by the incidence of serious crime. The proportion of crimes cleared (that is, crimes solved by the police) also fell by nearly one-third between 1964 and 2001 when 'only roughly 22% of serious crimes were cleared'.¹

CIS made a number of suggestions in response to these findings. One was to throw their weight behind the 'broken windows' theory of policing, where prompt intervention is encouraged to deal with the little things like graffiti, vandalism, jaywalking and noise on the grounds that any crime at all is damaging to society and if people observe that the little things escape punishment then they are tempted to try bigger things.²

Consistent with a 'broken windows' approach, there is considerable evidence that high police visibility is one of the most effective deterrents to crime. 'Broken windows' policing also often incorporates the targeted policing of 'hotspots' (on the grounds that a high proportion of crime is committed at particular

locations) and the targeting of repeat offenders (since a relatively small number of people are responsible for a disproportionately large amount of the crime). Implementation of this kind of policy frequently leads to the apprehension of offenders with outstanding warrants who, not surprisingly, are the same people who commit the 'smaller' crimes like fare evasion. It is claimed, however, that this 'broken windows' policy will have to be associated with an increase in the numbers of police (or police surrogates).

Furthermore, according to CIS, there are 'strong patterns of a rise in crime in response to falling imprisonment per crime'. That is, imprisonment *per se*, as compared to other forms of punishment, is an effective way to reduce crime rates. Australian imprisonment rates, however, have been falling. 'The chances of going to prison if you commit a serious offence', says Nicole Billante, 'have fallen from one in seven in 1964 to 1 in 32 in 2000'. Not only do we need to increase rates of imprisonment and numbers of police but, argues Billante, we also need more effective policing (improved 'strategic employment of police resources'). In this regard 'advances in technology, such as CCTV (closed circuit television) and DNA matching may have also contributed to increased clear up rates'.

Brian Bedkoher is Editor of *Australian Private Doctor* magazine, in which a longer version of this article first appeared.

As Billante observes, ‘crime, as with most social phenomena, has many causes and thus also many solutions’.³ I would like to suggest an alternative (or complementary) approach that I believe merits greater attention.

Increasing crime rates in the United States, say Billante and Saunders, were accompanied by increasing imprisonment rates so that ‘today the US has a much higher per capita prison population than any of the other countries we looked at but its crime rate has plummeted’.⁴ Yet there are a number of reasons why crime rates may fall. In addition to increasing imprisonment rates, new policing strategies and more police we also have to consider mandatory sentencing, changing age populations (with the number of crime-prone young males decreasing with reduced birth rates and an aging population), the state of the economy and increased private sector responses (neighbourhood watch, alarms, private security personnel and so on).

The number of private security personnel in the United States, for example, now exceeds the number of police officers. Another major factor in decreasing crime rates in the US may have been the spread of private neighbourhoods such as Residential Community Associations and Gated Communities; some 50 million Americans now live in these communities. Yet another critical factor is the role played by laws permitting or denying citizens the right to carry concealed weapons. As John Lott has demonstrated, allowing citizens the use of guns (concealed or in the home) to defend themselves has had a tremendous effect in reducing crime rates in the United States. That 34 US states have acknowledged this fact (up from eight in 1985) and passed the right to carry guns may be reason enough for the reduction in serious crime rates.⁵

Increasing imprisonment rates also has some downsides. As Billante notes, prison works in two ways—as a deterrent and as a means of excluding

RESTITUTION AS A BASIS FOR PUNISHMENT

Too little attention is paid in the current justice system to restitution to the victims of harms and to reducing the costs of the system to the taxpayer. Increasing police numbers and increasing imprisonment rates is expensive. So are the costs imposed on victims when they are not compensated for the harm done to them. The current system allows victims of a robbery, for example, to lose not only their goods with virtually no prospect of recovery, but also to be further victimised by being taxed to pay for the legal processes and detention of the offender. If fines are imposed on offenders they are paid not to the victim but to the state.

The restitution model of punishment requires criminals to make up for the damage that they have done. As Mary Ruwart suggests in *Healing Our World*, costs should include not only reimbursement for victims’ losses but also the costs of the legal processes required to catch and convict offenders and the costs of their incarceration. Costs might also reasonably include an amount to cover the inconvenience and stress caused to victims. The costs of the legal process and incarceration would be owed to the enforcement authority (public or private). Where property has not been stolen, for example in cases of physical injury, offenders should be allowed to buy their way out of punishment at a cost agreed to by the victim. Because the costs of catching criminals will be charged to them, the restitution model may well result in the maximisation of deterrence as well.

In a system based on restitution, the pursuit of justice would be a much more economical proposition (particularly for the poor) since lawyers would be more prepared to offer their services on a contingency basis (if that were permitted). Overall costs would be reduced since the guilty would be reluctant to adopt delaying tactics by pursuing frivolous appeals if, when they ultimately lost, they were personally responsible for the costs incurred. Furthermore, if the plaintiff is able to benefit via restitution then there is an incentive both to report crimes and to be a witness against the accused, an incentive that is not always present when fines and punishment are the province and property of the state.

A problem with the restitution model is that no payment can adequately compensate for some crimes. The amount of any payment made must also be commensurate with the ability of the offender to pay while at the same time allowing some incentive for early payment. Criminals are capable of earning an income while institutionalised. Those who refuse to work would have to depend on charity to survive (or to repay their debt). Victims might also be able to insure themselves for crimes for which adequate compensation could not be obtained from the criminal.

criminals from society so that they can no longer carry on with their criminal activities. But has imprisonment really been effective in excluding criminals from society? When imprisonment rates are high the system becomes congested and we see an increase in plea-bargaining in which criminals negotiate with the justice system and the wishes of victims are disregarded. In the United States criminals serve less than 37% of their sentences and a study of more than 100,000 former prisoners showed that 63% of them were re-arrested for serious crimes, including more than 2,000 murders.⁶ At the end of 1998, there were over four million people in America who were either on probation or parole and 57% of these had been convicted of a felony crime and released straight to probation.⁷

Moreover, as Billante and Saunders observe, 'locking up novices with experienced criminals can increase the chance that they will re-offend . . . and it can be a brutal experience. Furthermore, any expansion of the prison system would be a very expensive option'.⁸

So is increasing police numbers. It has been estimated, says Billante, that an increase of 1,000 policemen in New South Wales would cost \$77 million (although locking up criminals and increasing police numbers need only be expensive if the taxpayer is forced to fund them, see box opposite). For this reason CIS has proposed a trial of Community Support Officers (CSOs), with or without an increase in 'real' police, to deal with 'order-maintenance and low level crime'.⁹ The involvement of 'the community' in policing activities is supposed to enhance social capital, yet the CSO concept could lead to a corps of busybodies and peeping Toms, tattling on their fellows and 'policing' their moral preferences. In the UK these CSOs have the power to demand identification, detain individuals for up to half an hour, issue on-the-spot fines and confiscate private property.

Respect for the law can only be maintained if the law is worthy of respect. A side effect of making everybody a criminal is that the concept of crime becomes blurred and genuine criminality becomes less unacceptable. This raises a critical issue—the distinction between illegal and immoral activities. It is when this distinction is not made that citizens are often turned into smugglers, tax-evaders and law-breakers by regulatory governments gone mad. Increasing 'crime rates' are in no small part related to the increasing criminalisation of consensual acts (e.g. prostitution) and victimless crimes (e.g. smuggling, gambling). Making drugs illegal, to give another example, results in an exponential increase in their price so that addicts often indulge in grand larceny to support their habits.

Criminals, like everybody else, balance the risks and rewards of the actions they contemplate. This is

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the principle that underlies putting more police on the beat in the 'broken windows' scenario. Yet there is not only less chance of getting caught when police numbers are low but also when the police are busy locking up prostitutes, seizing marijuana plants and issuing speeding tickets. There is also much less chance of being appropriately punished when the courts and jails are clogged up by those apprehended for minor 'offences' for which the only victim is the offender. While law enforcers pursue these offenders, the genuine criminal has a proportionally lower expectation of getting caught and genuine crime becomes worth the risk.

Allied to this problem is, as Billante observes, the fact that 'Clear up rates for robbery have the lowest clear-up rate for crimes against the person at 31% in 1964 reducing to 27% in 2001'.¹⁰ Clear up rates are obviously affected by factors other than the decreasing ratio of police to crime. The fact that property crimes account for the most significant falls in clear up rates (a 60% drop since 1964) raises the question of what effect the decline in respect for private property, and the fact that many householders are insured against these losses, has on the diligence with which police pursue these cases.

Furthermore, 'zero tolerance' policing has led to stop and search powers that threaten traditional concepts of individual rights to privacy, self-defence and private property. Although it is important for citizens to have access to technological wizardry (microwaves, portable cameras, magnetic sensors and lasers) to protect their property from criminals, I am not so sure about the wisdom of giving that technology to police without strong limits on its use to forbid the indiscriminate monitoring of citizens. It is when the laws extend to calling criminal those acts for which there is no victim to complain or to offer evidence of wrongdoing that the police must use other means to catch the 'criminal'. It is in the presence of victimless crimes and oppressive tax regimes that authorities find technological advances (and entrapment) so necessary and useful—and they resort to wiretapping, Closed Circuit Television (CCTV), militarised law enforcement and other police-state tactics to identify the 'criminal'.

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We certainly do need to apprehend those who indulge in 'little' episodes of abuse of private property and to make sure that perpetrators of more serious crimes are caught and convicted. But instead of pouring more resources into increasing imprisonment rates and the numbers of police and pretend-police available, we may be better advised to free up existing numbers of police and utilise existing prison places by re-examining what it is that we declare 'illegal', and therefore, 'criminal'.

If we increase police numbers without first taking this step then we may simply find that the greater numbers of police will busy themselves attending to minor 'offences' since more serious offences are less visible and less amenable to action until after the fact. Increased numbers of police in these circumstances may simply result in more police going after the things that they do see—that is, you and me.

Endnotes

- ¹ Nicole Billante, *The Thinning Blue Line*, Issue Analysis No.31 (Sydney: The Centre for Independent Studies, March 2003).
- ² Nicole Billante and Peter Saunders, 'A Glimmer of Hope on the Mean Streets', *The Australian* (6 March 2003).
- ³ Nicole Billante, *The Beat Goes On: Policing For Crime Prevention*, Issue Analysis No.38 (Sydney: The Centre for Independent Studies, July 2003).
- ⁴ Nicole Billante and Peter Saunders, 'The Price of Crime Without Doing Time', *The Adelaide Advertiser* (24 January 2003).
- ⁵ John R. Lott Jr., *The Bias Against Guns: Why Almost Everything You've Heard About Gun Control is Wrong* (Regnery Publishing, 2003).
- ⁶ Thomas Sowell, *Barbarians Inside the Gates*, (Hoover Press, 1999), pp.143-144.
- ⁷ Morgan Reynolds, 'Privatising Probation and Parole', in Alexander Tabarrok (ed), *Entrepreneurial Economics* (Oxford University Press, 2002), p.117.
- ⁸ N. Billante and P. Saunders, 'The Price of Crime'.
- ⁹ N. Billante, *The Beat Goes On*.
- ¹⁰ Nicole Billante, 'We Need More Police and to Use Them Better', *The Canberra Times* (25 March 2003).

The Benefits of More Police and Imprisonment Outweigh the Costs

Nicole Billante

I agree with several of Brian Bedkober's points, but many of his arguments are complementary to the policy suggestions that I have put forth in earlier work rather than alternatives.

Bedkober argues against employing more police to look into petty offences, but the statistics that I used in 'Does Prison Work?' and 'The Thinning Blue Line' focused on homicide, robbery, rape, serious assault, burglary, and motor vehicle theft—offences that we can all agree are criminal acts. The number of police per thousand *serious* crimes has fallen from approximately 225 in 1964 to around 60 in 2000. A debate about the grey areas of the law does not alter the conclusion that we have seriously weakened our capacity to fight crime.

It is true that I do argue that one way of tackling the crime problem is by addressing minor offences, as supported by the 'broken windows' theory of crime. This includes directing resources to hotspots (focusing police in areas of high crime and disorder). The concerns raised by Bedkober about the implementation of 'broken windows' policing are valid. Clamping down on minor offences through such things as increased stop and search or targeted arrests requires walking a tightrope between personal liberties and effective crime control.

I have refrained from endorsing a blanket transfer of New York's practices to an Australian context, but instead have argued for adapting the principles to local circumstances. Research evidence clearly supports the 'broken windows' theory. It is up to the Australian public and policymakers to determine what the issues of disorder are locally and how they wish police to address them.

Bedkober says police should not be using their power as a moral prerogative. But part of the role of the police is to act on behalf of citizens against those who are violating fundamental property rights and interfering with the quality of life of others. We delegate authority to these figures in order to deal with problems that we feel need to be addressed. There may be times when those issues are not necessarily

Nicole Billante is a former Research Assistant at The Centre for Independent Studies (CIS) and author of the CIS Issue Analysis reports, *The Thinning Blue Line* and *The Beat Goes On* (2003) as well as the CIS Occasional Paper, *Preventative Policing* (2004)

of a 'criminal' nature, for example youths loitering outside local shops (which is often intimidating to older people). The police can assist in maintaining society's standards without having to take criminal action against individuals. One of the key points in Wilson's original 'broken windows' article is that policing has become over-formalised; traditionally the role of the police was to maintain order as much as to clear up crimes, and maintaining order can be achieved without arrests clogging up the courts.

In a liberal society we have individual rights which the state must respect but we also have responsibilities to our fellow citizens to act in a considerate manner towards those around us. For the majority of people, a reminder from figures of authority of their responsibilities is enough to address the issue. For instance, the research on hotspots showed that the mere presence of police was enough to curb disorderly behaviour significantly. Similarly, in my discussions with various police officers they have confirmed that often a word of caution is enough to stop uncivil behaviour. When confronting hardened thugs bent on terrorising neighbourhoods, however, retired detective Tim Priest has advocated a return to 'old-style policing', where officers could expect a 'good punch in the mouth or broken nose in the line of duty'.¹

With regard to restitution as opposed to imprisonment, I believe the use of this as an *alternative* is limited. I do support the idea of restitution directly from the offender to the victim. Some proponents suggest that this can be beneficial in humanising the crime for the offender (and thereby impacting on the likelihood of re-offending) and providing a more direct sense of justice for the victim. However, the state still has a role to play in punishment by acting on citizens' behalf.

'Does Prison Work?' looked at imprisonment as part of a crime prevention policy, namely deterrence and incapacitation. Research supports the claim that it is effective in stopping some crime being committed. However, imprisonment also has a functional role in reinforcing societal values. Crime does not just affect the direct victim. Crime is a violation of the collective values that as a society we have chosen to legislate. It is important for members of society to feel that crimes against these values are adequately punished. The state as our delegate has a legitimate role to play in acting against those that break the law. While restitution has great potential to compensate the victim, it is also important to have punishment that allows the public to feel the offender has paid their debt to society. Deprivation of rights and liberty, for whatever time

period is deemed appropriate, is the ultimate means by which we can enforce this.

Bedkober notes that factors in addition to increased police and higher imprisonment should be considered in evaluating the drop in crime in the United States. I have pointed out several times that changing drug markets, the economy, and changing demographics have also been contributing factors. Bedkober adds private security to this list.² Yet our crime continued to rise in the 1990s despite Australia having higher economic growth than the United States, an aging population (our crime went up when the number of young men was decreasing), and about 100,000 private security officers. An analysis of New York's crime by William Sousa and George Kelling³ found that policing was the primary contributor to the drop in crime.

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Bedkober questions whether imprisonment has been effective in excluding criminals from society. While there may be a large proportion of offenders who are not imprisoned in the United States, American imprisonment rates are still far in excess of Australia's. They have 300 prisoners per 1,000 serious crimes, and we have just under 30.⁴ There is also double the likelihood of being a victim of crime in Australia compared to the US.⁵ There is clearly room for improving the system in the US, but American policy is still more effective than Australia's has been in safeguarding members of society from criminals.

Research continues to establish beyond doubt that prison works. Steven Levitt, this year's winner of the John Bates Clark medal awarded to the young economist deemed to have made the greatest contribution to the discipline, shows in one of his innovative papers that reducing the US prison population by one increases the number of crimes committed by 15 per year and costs the economy more than it saves.⁶

Recent NSW research similarly leaves no doubt that falling imprisonment rates (coupled with falling clear up rates as the two are interconnected) were a major factor explaining the growth of robberies in the state since 1974. The NSW Bureau of Crime Statistics

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and Research estimates that a 10% increase in the arrest and imprisonment rate would produce a 3% to 4% reduction in the number of robberies (although they also claim that getting heroin off the streets would have an even bigger impact).⁷

Further, the degree to which restitution offers a solution to the congested justice system is questionable. The system is clogged because there is a large number of *serious* crimes being committed. Choosing to imprison someone or not does not alter the fact that the offender must still be processed through the justice system.

Bedkoher also expresses concern that Community Service Officers would become a corp of busybodies. In my paper, 'The Beat Goes On', I highlighted this as a potential problem. As I initially stated, this is a concern with any position of authority. The means of addressing this issue comes down to recruitment procedures, management by local police (who oversee CSOs), and accountability to the public.

The same can be said of the use of technology by police. Bedkoher cites my point that the use of CCTV and DNA matching may have contributed to higher clear-up rates. Undoubtedly this technology can assist police in identify offenders, but nobody advocates indiscriminate use of such technology.⁸

No public policy is free of flaws; policy decisions always require a weighing up of the positives

and negatives. Part of this equation, though, needs to include the cost of high crime rates to society. In social terms it impacts on trust levels and social cohesion. In economic terms we already have high financial costs through increased insurance premiums, continual payment for repairs to public and private property, lost productivity of victims, etc.⁸ While there may be social and economic costs attached to the policies I have presented, we must consider the savings we make in other areas. Steven Levitt's US research certainly suggests that the cost of imprisonment is outweighed by the savings from the crimes it prevents.

Endnotes

- ¹ Tim Priest, 'The Rise of Middle Eastern Crime in Australia', *Quadrant* (January-February 2004), p.11.
- ² He also argues that the growth of gated communities in the US coincided with the drop in crime. However, the suburban communities that increased security were not the areas that suffered from high crime rates in the first place; the crime problem was concentrated in urban areas.
- ³ William Sousa and George Kelling, 'Do Police Matter? An Analysis of the Impact of New York City's Police Reforms', *Civic Report 22* (New York: Manhattan Institute, 2001).
- ⁴ It should be noted that while attempts were made to base these figures on like crimes, differences in classification between the US and Australia mean direct comparisons in the crime figures should be made with caution. See below for the international victim survey, which is a better tool for comparison.
- ⁵ See John van Kesteren, Pat Mayhew, and Paul Nieuwebeerta *Criminal Victimisation in Seventeen Industrialised Countries* (The Hague: Ministry of Justice WODC, 2000), p.178.
- ⁶ *The Economist* (8 January 2004).
- ⁷ Marilyn Chilvers and Don Weatherburn, 'The Impact of Heroin Dependence on Long-term Robbery Trends', *Crime and Justice Bulletin* 73 (October 2003).
- ⁸ Recent work by the Australian Institute of Criminology has estimated the cost of crime to be around \$31 billion, with the cost of the criminal justice system to be \$6.4 billion. See Pat Mayhew, 'Counting the Cost of Crime in Australia', *Technical and Background Paper Series #4* (Canberra: Australian Institute of Criminology, 2003).
- ⁷ See Caspar Conde for an analysis of CCTV, its effectiveness in helping to reduce crime and the questions it poses for civil liberties. C. Conde, *The Long Eye of the Law*, Issue Analysis (Sydney: The Centre for Independent Studies, forthcoming 2003).



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