Community Service Orders: A Restorative View

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A thesis submitted for the degree of Doctor of Philosophy
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6 May 2000
DECLARATION

I declare that except where otherwise indicated, this thesis is my own work. Further, this work has not been submitted in whole or in part for a higher degree to any other university or institution.

Roy Norman
6 May 2000
I gratefully acknowledge the friendly, unconditional and non-judgemental assistance shown me by the respective Correctional Services' personnel in both Darwin and Brisbane, prior to and during the interstate fieldwork phase of this thesis. My sincere thanks to the Senior Director of Northern Territory Community Corrections, Lyn Keogh, to the Manager of the Darwin Community Corrections Office, David Sanderson, and to their support staff. My sincere thanks, also, to the Director of Queensland Community corrections, Angela Musumeci, to the Senior Area Manager of Brisbane West Community Corrections, Brooke Winters, and to their support staff. A special thank you is due, too, to the offenders in both jurisdictions for their leap of faith in trusting me - I will honour their confidentiality. It is appropriate here, also, to acknowledge the financial support received from the Australian National University by way of an Australian Postgraduate Award Scholarship and for the funding of both field trips to Darwin and Brisbane.

This thesis could not have been completed without the assistance of my academic colleagues and advisers in the Departments of Sociology and History at the ANU, and the dedication and commitment of my supervisory panel. To Dr Stephen Mugford, for his initial guidance and support. To Dr Kevin White, for whom no question of mine was too trivial. To Dr Anthea Hyslop, who, with the subsequent departure of Dr Mugford for greener pastures, graciously stepped in to become one of my two Academic Advisers, despite her increasing workload in the Department of History. To Dr Nova Inkpen, for her friendship, humour, support, and astute advice on matters sociological. To Dr Andrew Hopkins, who subsequently became my Principal Supervisor and, without whose gentle but firm insistence to stay focussed on what was required, this thesis would not have been completed.

To all of those individuals for whom the available space, here, is insufficient to acknowledge them, I say a heartfelt 'Thank you.' To my comrade-in-arms and best friend, Jean, I am deeply grateful for her unceasing belief that bricks could be made without straw and that this thesis would become a reality. And finally, to my mother, Lucy Evelyn, whom life denied the opportunity of reaching her full potential. This thesis is dedicated to the memory of you, may your soul rest in peace forever.


ABSTRACT

The problem that this thesis seeks to resolve is the extent to which the community service order (CSO) model in Australia is consistent with the claims of the decarceration theorists and with the hopes of the restorative justice movement. The claims are that alternatives to custody are as or more expensive than custody (because of net-widening, net-strengthening, and the creation of new and different nets), are just as discriminatory as custody, and are just as or more punitive than custody. The hopes are that alternatives to custody will be less costly than custody, less discriminatory than custody, and be rehabilitative and reintegrative rather than punitive.

To that end, this thesis adopts a theoretical and methodological approach grounded in sociology but also drawing upon other disciplines such as criminology, economics, geography, history, law, penology, philosophy, politics, and social psychology. Such an interdisciplinary approach that draws upon a wide range of literature sources largely follows an ethnographic-inductive design, since the study is structured around qualitative rather than quantitative data. The principal reason for choosing an ethnographic-inductive design is to avoid imposing a predetermined theory or set of theories upon what I perceive as a world of social constructs: a subjective rather than objective world wherein everyone has a story to tell.

This thesis finds that the extent to which the community service order model in Australia is consistent with the claims of the decarceration theorists is evidenced by the way the model (a) is able to widen, strengthen, and create new or different nets; (b) is financially driven; and (c) is punitive. Conversely, the way in which the model is consistent with the hopes of the restorative justice movement can be seen in its potential, under certain circumstances, to be less costly than custody, less discriminatory than custody, and rehabilitative and reintegrative, and non-punitive. These two statements are not contradictory: the decarceration theorists' claims are a statement of what is actually happening, whereas the restorative justice movement's hopes are a statement of what ought to be happening. Thus, both statements are clearly different orders of proposition.
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ABCTV  Australian Broadcasting Corporation Television
ACT  Australian Capital Territory
ACTCRC  Australian Capital Territory Corrections Review Committee
ACTAC  Australian Capital Territory Adult Corrections
Ann Rpt  Annual Report
AO  Authorised Officer
CBD  Central Business District
CBO  Community-Based Order
CEO  Chief Executive Officer
COS  Community Order Scheme
CPS  Crown Prosecution Service
CSO  Community Service Order
CYC  Community Youth Conferencing
DCCO  Darwin Community Corrections Office
DCSSA  Department of Correctional Services South Australia
FOO  Fine-Option Order
HMSO  Her Majesty's Stationery Office (UK Government Printer)
ICO  Intensive Correction Order
ISO  Intensive Supervision Order
MSC  Marrara Sports Complex
NACRO  National Association for the Care and Resettlement of Offenders
NSW  New South Wales
NT  Northern Territory
NTDCC  Northern Territory Department of Community Corrections
NZ  New Zealand
PACE  Police and Criminal Evidence Act
PDC  Periodic Detention Centre
PSR  Pre-sentence Report
PWO  Punitive Work Order
Q  Queensland
QC  Queen's Counsel
QCORR  Queensland Corrections
QCSC  Queensland Corrective Services Commission
SA  South Australia
SADCS  South Australia Department of Correctional Services
SETONS  Self Enforcing Ticketable Offence Notice System
SWO  Saturday Work Order
Tas  Tasmania
TAS  "
TTLC  Tasmanian Trades and Labour Council
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Introduction

In the Mohawk language when we say 'law'... what it really means is "the way to live most nicely together." That is what law means to my Mohawk mind. When I think about courts, when I think about police, are these the experiences of law that reflect living nicely together? Living nicely together is an onerous standard.

Patricia Monture-Angus

Preamble

The problem that this thesis seeks to resolve is the extent to which the community service order (CSO) model in Australia is consistent with the claims of the decarceration theorists and with the hopes of the restorative justice movement. This thesis will demonstrate that the Australian CSO model is consistent with the claims of the decarceration theorists to the extent that it (a) widens, strengthens and creates new or different control nets; (b) is financially driven; and (c) is punitive rather than rehabilitative. This thesis will also demonstrate that the Australian CSO model is consistent with the hopes of the restorative justice movement to the extent that it can be said to be potentially (a) rehabilitative; (b) re-integrative; and (c) non-punitive.

Although the two perspectives appear to be contradictory, they are not. The claims of the decarceration theorists are a statement of what is happening, whereas the hopes of the restorative justice movement are a statement of what ought to be happening. Therefore, both statements are clearly different orders of proposition.

---

The starting point for this thesis is a brief outline of the history of prisons, and may seem at first glance to be a rather odd beginning for a dissertation that is primarily concerned with the community service order scheme or CSO, as it is more commonly called. The decarceration 'movement' (from which CSO had its genesis) is seen to have begun in the 1960s and, in 1998, is still continuing in some Western jurisdictions. In others, notably the USA, there is a return to custodial sentencing as the sanction of first choice. To comprehend the underlying criminal justice processes and why they appear to function as they do, it is helpful to know the circumstances which led to the initial 1960s decarceration 'movement.' For example, if there is no awareness of the ignorance, the abuses of power, and the false assumptions that afflicted early prison administrations, then it becomes difficult to understand the arguments presently being made against custodial sentencing.

This the not the only reason for my starting point focussing on the history of prisons. Strategies of crime control, of which the prison is but one, are often multi-faceted and complex, and the goal of most, if not all, the elimination or reduction of crime, is not always achieved. And even when it is, the reasons for success are sometimes misunderstood. For example, Walker and Henderson (1992) suggest that the Neighbourhood Watch program may be mistakenly perceived as 'successful' because of a reduction in reported crime statistics, yet the real reason for the reduction may simply be that the problem has moved on. Conversely, some successful crime control strategies actually lead to an increase in reported crime figures - for example, drink-driving, domestic violence and sexual assault, because of increased reporting and better detection. The authors further suggest that the major emphasis of crime prevention has been on the protection or improved protection of real and personal property. As such, there is far less emphasis on strategies aimed at turning individuals away from committing crimes. Two current examples of this emphasis on protecting property are the mandatory sentencing laws implemented in 1995 and 1997, in Western Australia and the Northern Territory, respectively, against property offenders. They are loosely
based on California's 1994 mandatory sentencing 'three-strikes' laws. The Northern Territory version of 'three-strikes' is a custodial sentence of fourteen days for a first offence, ninety days for a second offence, and a minimum of one year for a third. An exception is made, in the Northern Territory, in respect of juvenile offenders aged 15 or 16 who are given a second chance for a first offence. A second offence automatically incurs twenty-eight days in a detention centre.

How did Western criminal justice systems arrive at such a draconian impasse? And for what reasons? Are there not more appropriate ways of dealing with certain crimes and those who commit them? These are some of the questions that this thesis attempts to answer by examining the past and the present history of incarceration and by looking at what alternative punishments in the community might offer as a better way forward. Punishment in the community can take many forms and is not a recent phenomenon. Historically, crude variants of it existed as long ago as the Roman Empire, when captured prisoners of war who were not put to death or sold into slavery and those citizens who transgressed the Republic's laws were put to work, in chains, building roads, viaducts, walls and other community projects. In the Middle Ages, offenders were, among other things, fined, exposed, made to do a penance, or banished from their local community (Spierenburg, 1984). However, by the sixteenth century, private vengeance (for wrongs done to a person or to their property) had been transferred from the victims and their families to the state. And this period saw the emergence of the English bridewells and the Dutch rasp houses, both of which attempted to 'reform' the idle and the poor by enforced labour within an institutional setting. Punishment in the community, as it then was, found itself relegated to a less auspicious role in the domain of criminal justice sanctions (Ignatieff, 1978). In more recent times, it is only necessary to go back two hundred years to Australia's humble beginnings as a penal colony and the final destination for the thousands of convicted

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2 These laws specify that after being convicted of two "serious" crimes a third conviction for any crime, no matter how trivial, will see that offender go to prison for between twenty-five years and life, with no prospect of parole.
British felons sentenced to transportation to Botany Bay or Van Diemen's Land. There, too, could be found chain-gangs of convicts who, as a result of secondary punishment, were working on public roads and buildings, often under the most appalling conditions (Shaw, 1977). Similarly, in the United States

The revised penal code of 1786, ... substituted sentences of punishment at hard labour for capital punishment in all but two major crimes. That law, which followed Beccaria in theory and reflected the reform spirit of the newly organized state legislature, prompted the local sheriffs to send gangs of convicts out to work on the public roads and in the city streets. Secured by chains to each other or attached to heavy cannon balls and wearing pantaloons of bright colours to display their identity, the convicts provided a spectacle disturbing to many sober citizens (McKelvey, 1977:7).

That old habits die hard is evidenced by at least one county sheriff in Phoenix, Arizona. Sheriff Joe Arpaio, of Maricopa County, proudly boasts that he has the only female chain gang in the USA (and has had since 1996). Both the women chain gang members and their male counterparts perform 'community service' while chained together in their respective groups. The sheriff has also seen to it that they wear distinctive clothing - black and white striped prison uniforms and baseball-style caps with the words 'chain gang' printed on them. As a further humiliation, all prisoners are required to wear bright pink underwear ('Foreign Correspondent,' ABCTV Current Affairs, 13/7/98).

As will be shown in later chapters, punishment in the community would remain the poor relation of criminal justice sanctions until the second half of the twentieth century.

Contextualisation and Statement of the Thesis

The context of this thesis is the quite extraordinary situation in which Australian and overseas law making and law enforcement bodies presently find themselves: the pursuit of punitive law and order policies aimed at deterrence, incapacitation and retribution for all manner of felonies, at the expense of so-called 'soft options' because of the latter's perceived 'ineffectiveness' in preventing crime (Feeley and Simon, 1992; O'Malley, 1997; Shichor, 1997). Both at the Federal level and, especially, the State and Territory level, the political rhetoric about getting tough on crime is, of late, being
reflected in the numerous changes to the criminal law of each jurisdiction. Examples of these changes are to be found in Western Australia and the Northern Territory - mandatory sentencing laws - and in New South Wales, Queensland, Victoria, and the two aforementioned jurisdictions - intensive correction and supervision orders. When challenged about the legitimacy and practicality of such punitive changes, the standard political response is that the end justifies the means (see Chapter Nine). The adoption by a number of State and Territory governments of the 'community policing' concept (an idea borrowed from the Thatcher years in the United Kingdom in an era when 'there is no such thing as community') is equally problematic. This is because the community policing playing field is permanently uneven. For example, the sharing of information between the police and the community is strictly a one-way process: from the community to the police, not vice-versa (O'Malley, 1997; Rose, 1996). Added to all this is the hypocrisy of political window dressing by a number of jurisdictions, which is intended to give the electorate the impression that 'something is being done' about the crime problem. The revelations of Sutton (1997) and Presdee and Walters (1997) about the South Australian government’s machinations with its criminal justice system are a case in point, as are my own experiences with the Australian Capital Territory.

This thesis takes account of actions such as those outlined and places them in the broader scheme of criminal justice policy formulation. The thesis argues that there is ample room for the inclusion of non-punitive sanctions and policies in the criminal justice process and, given the appropriate amount of support, both financial and administrative, there is every reason to believe they would be successful. In political terms, the difficulty with such a view is that it may lose rather than win voter approval and so, in an era when image is everything, it may receive only lip service, if that. What makes the acceptance of a less punitive criminal justice system more unlikely is the unwillingness of law makers generally, and politicians in particular, to acknowledge that many of their policies harm rather than help large sections of the general community. This is especially so in respect of social and economic policies, and is reflected in issues as diverse as youth suicide, health care for the aged, reductions in
services for country communities, and fewer job opportunities for school leavers and those over 40. All of these issues and more need to be taken account of in the formulation of criminal justice policies at all levels of government. The inability or unwillingness of politicians to acknowledge and accept that many of the laws they pass are an integral part of the overall problem rather than an answer to it, is to be deplored. Even more unacceptable is the insistence of politicians on pursuing (via punitive measures) those in the community who, for a variety of reasons, have fallen through the social 'safety net,' are unable to gain employment, education, or housing, and resort to crime to survive. Sadly, as this thesis makes clear, the 'blame the victim' rhetoric is alive and well. This thesis also suggests that there are more humane methods of dealing with and, in some cases, resolving many of the 'crime problems' if governments have the political will to implement them at the expense of short-term electoral gain.

Theoretical and Methodological Approach

The theoretical and methodological approach adopted for this thesis is grounded in sociology but draws upon other disciplines such as criminology, economics, geography, history, law, penology, philosophy, politics, and social psychology. This recognition of an interdisciplinary approach, which draws upon a wide range of literature sources, largely follows an ethnographic-inductive design, as the study is structured around qualitative rather than quantitative data and includes 249 hours of participant observation and unstructured interviews. The main reason for choosing an ethnographic-inductive as opposed to a hypothetico-deductive approach is to avoid imposing a pre-determined theory or set of theories upon what I perceive as a world of social constructs: a subjective rather than objective world wherein everyone has a particular story to tell. Thus, in terms of a thematic style of expression for this thesis, it moves freely between what Bruner (1990) refers to as a paradigmatic mode and a narrative mode. Or, as McAdams (1993) describes it: from a viewpoint of "tightly reasoned analyses, logical proof, and empirical observation" to one of concern with
"human wants, needs, and goals" (1993:29). The use of the two modes, interchangeably, assists in understanding or explaining events that are or may otherwise be incomprehensible if using only one particular mode. I agree with McAdams view that differences of opinion are not encouraged by theoretical constructs. Also, while this study is not directly concerned with sentencing practices, some discussion of them appears throughout this thesis, since they are a primary issue in the outcomes of cases.

Similarly, with the restorative justice movement, there is a notable absence within the studies in New Zealand, Canada, and the USA.

Scope and Limitations of the Thesis

The scope of this study encompasses the origin, development and diversification of the CSO scheme in Australia, between 1972 and 1998, and its compatibility with the claims of the decarceration theorists and the hopes of the restorative justice movement. Similar schemes outside Australia are also included for purposes of comparison and to detect any major changes to the underlying philosophy that gave rise to CSO. This study does not attempt to analyse to the same degree any of the other alternatives to custody that may be found in most Western criminal justice systems, principally because such analysis would be largely irrelevant to the central question of this thesis. It does, however, touch upon other alternatives throughout the course of the thesis for the express purpose of highlighting an issue or making a particular point. This is especially the case in the USA, for example, with the imposition of multiple non-custodial sanctions on an individual offender, and in the United Kingdom in respect of the imposition of a custodial penalty for a non-custodial offence.

The limitations of this thesis are evidenced by the fact that all Australian jurisdictions are incorporated into the study, but the overseas segments, where applicable, have been restricted to New Zealand, the United Kingdom, Canada, and the USA. The principal reasons for doing this are (a) the considerable orders of magnitude necessary to encompass a detailed examination of all of the variants of CSO schemes worldwide, and (b) the fact that there is a dearth of literature and studies on CSO
schemes presently operating in Australia. Regarding (b), the same can also be said of
the restorative justice movement, with the obvious exception of the large amount of
work done by John Braithwaite on reintegrative shaming (a theoretical body of
knowledge closely associated with the principles of restorative justice). In respect of
the overseas segments, there is an abundant amount of material available on prisons
and alternatives to them, particularly the United Kingdom, Canada, and the USA.
Similarly, with the restorative justice movement, there is a wealth of data available in
New Zealand, Canada, and the USA.

**Structure of the Thesis**

The thesis is divided into three distinct parts which follow the shifts in emphasis
on the ways in which convicted felons are viewed and treated in Australia and overseas.
Part A deals with the socio-historical development of the prison and of one of a number
of non-custodial alternatives - specifically, CSO. Chapter One outlines and briefly
examines the history of prisons in Great Britain and North America, up to the 1960s,
and the subsequent decarceration movements that gave rise to the collective
phenomena known as community corrections. This approach permits a legitimate
starting point for an assessment of the extent to which the CSO model in Australia is
consistent with the aforementioned claims and hopes. Chapter Two expands upon
Chapter One, in particular on the decarceration movement, by detailing the
characteristics, typology, origin, and underlying philosophy of CSO in Australia.

Part B comprises the theoretical and methodological framework underpinning
the main thesis question. Chapter Three expands upon the socio-historical material
outlined in Part A, by analysing the trend away from custody and towards decarceration
from the 1960s onwards. The intention of this analysis is to show that the decarceration
literature that has arisen as a result of that trend is an explanation for why community
corrections (and, thus, CSO) have occurred. Consequently, this and the following
Introduction

Chapter form the theoretical links between Parts A and C. Chapter Four is a detailed examination of the informal criminal justice alternative known as the restorative justice movement, which seeks similar goals to that of the formal criminal justice system but does so in a non-adversarial manner. The examination incorporates theoretical as well as practical issues as a means of permitting a realistic comparison of the two different types of justice procedures - the formal, court-based type emanating from the state, and the informal, non-adversarial type emanating from the community. The strengths and weaknesses of both systems are also analysed as a further way of understanding what does and does not 'work' in terms of delivering equity and justice. Chapter Five is the background to the study and its purpose is to contextualise the study in terms of the geographic, demographic and historical backgrounds applicable to the eight Australian jurisdictions covered by it, as well as to detail the methodologies used.

Part C applies the theoretical and methodological concepts detailed in Part B to the practical issues surrounding CSO. Chapter Six examines the phenomena of net-widening, net-strengthening, and net-creation as they relate to CSO. With particular reference to the work of Stanley Cohen, the thesis argues that, under certain conditions, CSO can be said to widen, strengthen, and create new or different nets. Chapter Seven examines various aspects of gender and sex discrimination and violence against women, in relation to forms of control and the intended and actual operation of community corrections legislation generally, and CSO legislation in particular. This thesis argues that there is sufficient evidence to conclude that female offenders are discriminated against and, in addition, that such discrimination enhances rather than detracts from control over them. Chapter Eight develops more fully the issues raised in Chapter Six in regard to politically- and economically-driven correctional imperatives. The thesis demonstrates that not only are CSO schemes financially driven but, as a result, they have also experienced a concomitant shift in emphasis from rehabilitative to punitive. The thesis argues that in specific jurisdictions, under certain conditions CSO accords with the claims of the decarceration theorists and the hopes of the restorative justice movement. Chapter Nine takes issue with the recent trend towards
punitive treatment of offenders in community corrections under the guise of elected officials being seen to be 'tough on crime.' The thesis argues that the changes in sentencing policy which have resulted from 'playing the law and order card' have, in effect, become a form of vengeance as public policy. Support for these arguments is provided by way of documented legislative and policy changes and fieldwork data from three Australian case studies. Chapter Ten reviews the initial argument, gives a detailed summary of the analysis, and discusses the implications of present government policies in respect of CSO.
This section consists of two chapters. The first, "HISTORY," outlines the history of prisons up to the 1960s and the beginnings of the decarceration movement in punishment in the community. The second chapter, "Characteristics of Australian community service order", which was the length of time it took for all Australian jurisdictions to implement some form of GSO scheme. The initial focus is on the type of GSO solutions used, which is dealt with in Chapters Six and Nine.

Chapter 1: From Imprisonment to Community: A Brief History

Briefly describes the history of prisons up to the 1960s, as well as the subsequent (post-1960s) decarceration in Australian prisons. The emergence of phenomena called 'community corrections' is also discussed.

Chapter 2: The Community Service Order

Describes the characteristics, typical and unusual of the Australian community service order (CSO), as well as the underlying philosophy behind the creation of it as an example of community corrections.

PART A

HISTORY
Synopsis

This section consists of two chapters. The first describes, in brief outline, the history of prisons up to the 1960s and the beginnings of the decarceration movement or punishment in the community. The second describes the origin, development and characteristics of Australian community service orders between 1972 and 1985, which was the length of time it took for all Australian jurisdictions to implement some form of CSO scheme. The push towards a more punitive type of CSO scheme is dealt with in Chapters Six and Nine.

Chapter 1. From Imprisonment to Decarceration: A Brief History

Briefly describes the history of prisons up to the 1960s, as well as the subsequent (post-1960s) decarceration movements that gave rise to the collective phenomena called 'community corrections.'

Chapter 2. The Community Service Order

Describes the characteristics, typology and origin of the Australian community service order (CSO) as well as the underlying philosophy behind the creation of it as one example of community corrections.
Chapter One

From Imprisonment to Decarceration: A Brief History

They shut a man in the four-by-eight, with a six-inch slit for air,
Twenty-three hours of the twenty-four, to brood on his virtues there.
The dead stone wall and the iron door close in like iron bands
On eyes that had followed the distant haze out there on the Level Lands.

Bread and water and hominy, and a scrag of meat and a spud,
A Bible and a thin flat book of rules, to cool a strong man's blood;
They take the spoon from the cell at night - and a stranger would think it odd;
But a man might sharpen it on the floor, and go to his own Great God.

Henry Lawson 1

Introduction

This chapter briefly describes and examines the history of prisons, especially in Great Britain and North America, up to the 1960s, and the subsequent decarceration movements that gave rise to the collective phenomena called 'community corrections.' The principal aim of this chapter is to provide a reference point for an examination of the 1960s decarceration 'movement' and, more particularly, of a specific custodial alternative known as the community service order scheme. This chapter is divided into four distinct phases, following Ball et al. (1988): (i) pre-penitentiary criminal sanctions; (ii) the arrival of the penitentiary; (iii) problems, reforms, and the search for alternatives; (iv) the emerging decarceration movements. For some people, such a compartmentalisation of a brief history of prisons and the subsequent emergence of a decarceration movement might be perceived as 'convenient.' Nevertheless, it assists in contextualising the ongoing changes occurring in criminal justice systems in general, and in the arena of what is now collectively called community corrections, in particular.

Chapter One

From Imprisonment to Decarceration

Phase I describes the ways in which pre-industrial society dealt with transgressors of its codes, rules or decrees, and how those ways were primarily aimed at public humiliation and punishment of the body. Included therein are that society's perceptions of the appropriateness of such punishments and the eventual changes in those perceptions which led to the abandonment of public torture, humiliation and execution in favour of incarceration, impressment and, later, transportation. Also described is the evolution of early English debtor's prisons into what later became houses of correction.

Phase II details the changes that occurred in the way offenders were punished, by moving away from punishment as a public spectacle and towards the private arena of the prison. This section also discusses many of the problems such changes invoked. For example, incarceration dispensed with public humiliation such as was found with exposure on the scaffold and confinement in the stocks, but substituted in its place the private hell of custodial isolation. Incarceration was also a learning process for the keepers and the kept - what punishments 'worked' and what didn't in maintaining good order and compliance within the confines of the prison.

Phase III depicts the ongoing problems of overcrowded prisons and the concomitant, ever-increasing costs to the State of maintaining them, especially in North America and England. Efforts to reform these institutions by various groups, particularly in the nineteenth century, are also described, especially the issues around the removal of the mentally ill from the general prison populations and their placement into purpose-built asylums. The focus then moves to the search for alternatives to custody as a way of combating prisoner overcrowding and spiralling operational costs. Also described here are the selection and training processes and working conditions of prison staff, and the effects of these upon prisoners.

Phase IV picks up on the English 'ticket-of-leave' system of the 1850s, a forerunner to contemporary probation and parole, the development of the early
classification systems, and the growing involvement of the 'helping' professions. Included here is the subsequent growth of the move towards 'punishment in the community.' It touches briefly, too, upon non-prison institutions that experienced the same sorts of overcrowding and operational cost problems and how these were handled. Finally, Phase IV looks at the reasons for the shift in government policy from incarceration to decarceration.

**Phase I: Pre-Penitentiary Criminal Sanctions**

Under tribal law in primitive societies, those who broke the laws of the tribe were declared outcast and driven from the group. Such expulsion or removal of persons from a tribe or region as punishment was society's most primitive form of self-defence (Human Rights Commission, 1986). This was because, in primitive societies, there was no criminal law, therefore there was no crime. Offences by individuals against tribal or societal norms were just that, offences against tribal or societal norms (Bean, 1976). Later, in Ancient Greece and Rome, exile or banishment involved the forfeiture or confiscation of property as well as the deprivation of civil rights and the benefits and protection of the law (Human Rights Commission, 1986).

The word 'prison' (*carcer*) made its first appearance in a code of English laws during the reign of Alfred (c. 890 AD). At that time, it may have merely meant custodial restraint - as in, for example, the stocks - but the origins of imprisonment are located in antiquity and in England, for example, had no historical significance until the thirteenth century (Pugh, 1968). The English Statutes of the thirteenth and fourteenth centuries related to the collection of debts and to the penalty of immediate imprisonment if a debtor defaulted. The Statute of 1352 placed creditors in the same position as the Crown by giving them the power to imprison their debtors until the particular debt was settled (Pugh, 1968). Debtors' prisons housed debtors and their families until the outstanding debts for which they had been confined were settled or until said debtors
were, by act of Parliament, discharged as insolvents (Ignatieff, 1978). While confined, debtors were kept at their creditors' expense, could not be chained or forced to work, were permitted to live with their wives and children inside, and could not be denied visits or other external contacts. Separate apartments could be rented from the keeper by the better class of debtors, but the not so rich were condemned to live in crowded and often filthy quarters (Parliamentary Papers, 1814-15, IV). Living conditions in these early debtors' prisons were, for the most part, atrocious, there being no requirement of the gaoler to keep the particular institution, of which he had charge, clean and free of vermin (Clay, 1861; Howard, 1784; Webb, 1922). The early debtors' prisons were the forerunners of the British House of Correction at Bridewell, which opened in 1553, with the stated purpose of dealing with petty offenders and vagabonds (Vass, 1990). Physically, the house of correction (or bridewell as it also became known) might consist of a stand-alone building, a section of the gaol itself or even a separate but adjacent establishment (Ignatieff, 1978). The Dutch equivalent of the bridewell, the 'Rasp House,' followed four decades later, in 1595. The rationale underlying these houses of correction was to give employment opportunities to their confined poor so that many of them might learn useful trade skills. Masters of various outwork trades such as textiles and rope-making used the labour of these incarcerated poor through contracts with the relevant county benches. But the high turnover of these prisoners combined with low productivity of forced labour made it unprofitable for the outwork masters, many of whom defaulted or gave up on their contracts (Ignatieff, 1978). Another major reason for the failure of the bridewells and similar institutions was the loss of interest in them by the judiciary (Eriksson, 1976).

Across Europe, from the middle ages until the mid-eighteenth century, offences considered serious were punished by public torture and execution, mutilation, blinding, branding, whipping, exposure, banishment or impressment, whereas minor infractions were usually punished by confinement in a house of correction (Ignatieff, 1978; Vass, 1990). Foucault's grisly description of the punishment inflicted upon Damiens the regicide, in 1757, illustrates the idea of punishing the body in order to rehabilitate the
mind and redeem the soul (Foucault, 1977). These actions were not confined to France: in Amsterdam, during the seventeenth and eighteenth centuries, Spierenburg (1984) details the system of public punishment meted out to that country's lawbreakers. He notes the clear distinction made between public and non-public punishment, the former being considered graver and more consequential than the latter. Public punishments were, also, ceremonially more elaborate and clearly intended to humiliate and inflict pain upon the offender. Sentences often consisted of multiple penalties - for example, delinquents condemned to a public whipping on the scaffold usually received confinement in a house of correction and, upon completion of the period of confinement, banishment as well. Spierenburg also posits that public humiliation of the offender was a feature of all forms of punishment at this time and was reflected in even the most mild of penalties - the simple exposure. This penalty required the offender to be exposed or displayed on the scaffold (a structure usually associated with executions) to the public view, wearing or carrying an object that reflected their crime. In the Low Countries in the eighteenth century, for example, a woman condemned for bigamy had to carry two sticks with trousers hanging from each. But the most common object used was a notice attached to the offender's chest with the offence for which he or she had been punished written on it. The other kind of exposure - symbolic exposure - was imposed as an alternative or in addition to a corporal penalty. For example, a pregnant woman ordered to receive a flogging could not be flogged (due to her condition), so she was symbolically flogged by being exposed on the public scaffold with whips hanging over her shoulders, signifying to all that she deserved a flogging (Spierenburg 1984).

Whereas in the urban areas of Europe capital punishment for serious crimes became the chosen punishment (Spierenburg, 1984), it appears that the gradual abandonment of public torture, mutilation and execution was part of a wider, ongoing process of political, economic and social change. To some extent, this process coincided with a marked change in the public's attitude towards such brutal practices - from vicarious enjoyment to overt revulsion (Foucault, 1977; Ignatieff, 1978; McKelvey, 1977; Spierenburg, 1984). The decline in the practice of felons being put to
death in Europe and England coincided with the rise of two other methods of punishing serious offenders. Sentences to galley service for crimes punishable by death or severe corporal punishment became the preferred option in seventeenth century Europe, while England, having advanced beyond galleys, chose to transport its offenders to its new colonies in the Americas, South Africa and Australia (Tomasic and Dobinson, 1979). Until the American War of Independence, in 1776, and the passing that same year of the Hulks Act, which allowed the use of abandoned and rotting English naval ships as temporary prisons for lawbreakers, transportation was an established sentence in English courts. While transportation to America ceased after 1776, it remained in favour with and continued to be employed by successive English governments until the late 1860s. The principal reason that transportation was retained for as long as it was is because it was perceived as being cheap punishment (Shaw, 1977).

**Phase II: The Arrival of the Penitentiary**

In English gaols of the seventeenth and eighteenth centuries, the gaoler had, in effect, the power of life and death over those individuals remanded in custody or sentenced to imprisonment. Gaolers could (and did) manacle their prisoners, women as well as men, with arm and leg irons, although if prisoners had the funds, they could pay to have lighter weight irons fitted. Remandees - those who had not yet been found guilty of committing a crime - were also manacled, on the grounds that it was necessary for safe custody (Howard, 1784). The court was sometimes ten or fifteen miles away from where prisoners were being held, so they had to walk that distance in irons. In towns that had no prison at all, numbers of both sexes were confined together in a single room for days at a time (Beccaria, 1764). Few of the available 'prisons' in this era were purpose-built structures; they consisted of anything from the cellar in a public house to the gate-house in an abbey. Nor were there any clear sets of instructions about prison maintenance or prisoner care. The public duty of the gaoler was limited to the 'safe custody' of those committed to his charge. The regulations did not prohibit a
prison being 'farmed out' to private individuals to make what profit they could from it (Fox, 1934). Gaolers gained their income from a variety of "ingenious extortions" - letting rooms to prisoners, maintaining a coffee shop and 'bar' for prisoners and visitors, selling the privilege of living outside the walls of the prison or, for a lesser sum, "free exit from the prison during daylight hours" (Ignatieff, 1978:29).

The English county or borough gaol was in keeping with most other similar institutions of the time and varied enormously both in design and size. Some were simply the dungeons of medieval castles, while others consisted of little more than a strong room located above a shop or inn (Ignatieff, 1978). In John Howard's prisons census of 1787, only seven of the fifty English county gaols listed therein contained a hundred or more prisoners at the time of his visit; eleven others held between fifty and a hundred, and the remaining thirty-two prisons held fifty or fewer. The categories of the prisoners in these gaols were as varied as the buildings they were housed in. Each category was accorded a different status in law and was entitled to different treatment and privileges, depending on their social and economic standing (Ignatieff, 1978).

As far as North American criminal justice systems were concerned in the seventeenth and eighteenth centuries, William Penn, a Quaker, was the first individual of any note to "prescribe imprisonment as a corrective treatment for major offenders" (McKelvey, 1977:3). His 'Great Law' for the government of the newly established Province of Pennsylvania made provision, in 1682, for both major and minor offenders to be confined in houses of correction where they would undertake useful tasks in proportion to and in compensation for their crimes (Barnes and Teeters, 1943; Gipson, 1915). Under that law the only capital offence was murder, until 1700, when treason was also designated. The Province relied mainly on fines and imprisonment, but following the death of Penn in 1718, the English criminal code was allowed to be reimposed and this brought the number of capital offences to twelve, as well as authorising whipping and other punishments that were commonly used in the colonies (Barnes and Teeters, 1943; Gipson, 1915).
According to Teeters (1955), it was not until 1773, with the opening of Philadelphia's Walnut Street Jail as a temporary state prison to house convicts from throughout the colony, that America's penitentiary system really began. Designed to serve as both a gaol and a house of correction, the three-storey, stone building incorporated a cellblock of sixteen inside cells to house those offenders sentenced to solitary confinement. The two wings of the gaol had large rooms built into them to allow for prisoner segregation - debtors and misdemeanants in one wing and the more serious offenders awaiting trial or sentencing in the other. The concept of confining prisoners to separate cells at night and releasing them to work under close supervision in congregate labour in the courtyard or prison workshops during the day culminated, in the 1830s, in the costly $750,000 Cherry Hill prison (Lownes, 1799; Teeters, 1955). By 1817, the congregate system used in the Walnut Street Jail had begun to unravel quite badly, due to overcrowding (McKelvey, 1977). Within three years, the entire prison system's viability was in doubt and viewed by many as being a failure, because costs continued to exceed revenues and, worse still, prisons were seen as being responsible for educating criminals and encouraging their criminal activities (Rothman, 1990).

The Auburn state prison outside New York, very like Walnut Street in its design, experienced similar outbreaks of prisoner disorder during its building phase and led to prisoners being segregated into three classes. The most hardened criminals were held in solitary confinement, and the less hardened were kept in solitary confinement at night but permitted to work at selected tasks in the daytime. Those prisoners not classified in either group (the least serious offenders) were confined in separate cells at night but worked in groups in prison shops, in total silence, during the day (McKelvey, 1977). Demands for a more severe treatment regime of prisoners, in 1821, saw eighty of the most hardened inmates placed in solitary confinement. But the policy backfired, with several attempted suicides and mental breakdowns from among those eighty, due to the prolonged isolation and idleness in such narrow cells, so the indefinite solitary confinement experiment was abandoned (Knapp, 1834; Lewis, 1965). What was not abandoned but further refined was the strict regimen for the remaining prisoners.
Regulations introduced included lockstep marching, downcast eyes (no eye contact with prison authorities), no talking or other communication between prisoners, and constant activity when out of their cells under the close supervision of the guards. To ensure compliance with these new regulations, flogging and other punishments were reintroduced and used frequently (Erikson, 1966; Knapp, 1834; Lewis, 1965). Despite opposition from several directions to the Auburn prison and its 'silent' system, by 1825 it was a smooth-running industrial plant that was beginning to realise small surpluses over and above operating costs - "an irrefutable economic argument in support of the silent system" (McKelvey, 1977:21). Auburn's 'success' merely fuelled the ongoing debate about the penitentiary's true purpose. But for the next half century, the Auburn model was the one that most American gaols were based upon. By this time, too, three other fairly distinct penal systems had emerged: separate juveniles' refuge homes; houses of correction for misdemeanants; and the 'solitary' system of the Cherry Hill penitentiary. By 1835, North America had succeeded in establishing a functional penal system but could not claim to have halted or reduced crime (Rothman, 1990). Also at this time, McKelvey (1977) notes that humanitarianism was sweeping the Western world, and this gave rise to a number of reform movements: for example, temperance campaigns, peace congresses, opposition to wage and chattel slavery, demands for equal opportunity and education for all men and women, and programs to assist in the reformation of criminals. Several decades would pass, however, before any positive action occurred on this last cause.

Prisons were largely creations of the eighteenth century and after, and evolved as a means of containing those who had broken their country's laws until they could be dealt with by the appropriate legal system (Ignatieff, 1978; Vass, 1990). Rothman (1990) states that Jeremy Bentham heavily promoted his 1791 design for a 'Panopticon penitentiary' to the English government, but without success. The first English prison to reflect Bentham's ideas, however, was Pentonville, commissioned in 1842, but which also incorporated forty years of other developments including many from America. But a major difficulty that has plagued all prison design, aside from being too small, has
been that of multiple and, sometimes, conflicting purposes (Hawkins, 1976; Vass, 1990). In England, the rise to prominence of the 'mercantile class' in the course of the Industrial Revolution and the subsequent punitive change in emphasis on laws related to property offences, saw a greater number of offenders convicted of property crimes and given custodial sentences. Also, previously minor infractions were now being included in the realm of serious crime, with the attendant heavier penalties such as transportation, as well as imprisonment and a more severe policing of such petty crime (Ignatieff, 1978). In turn, successive governments attempted to combat the resultant prison overcrowding by building yet more prisons and by continuing the transportation of convicts. But the 'separate' system was only intended for a small number of prisoners who were to be closely confined. It was never meant to house the increasingly large numbers of offenders sentenced to prison. This was a problem common to justice systems on both sides of the Atlantic. Government budgetary restraints, too, in all national jurisdictions acted to limit prison size and resources. Also, in later decades, the liberalisation of prison routines in response to public pressure further exacerbated the problem (Cross, 1971).

**Phase III: Problems, Reforms, and the Search for Alternatives**

Up until the outbreak of the American Civil War, in 1861, the most pressing and persistent penal problems for North America centred on the local county jails rather than on the major State or Federal penitentiaries. Despite the best efforts of reformers such as Dorothea Dix and Louis Dwight, "petty politicians were still in control, reaping fat profits from the corrupt fee system" (Dix, [1845]1967:94-102). Prisoners' food and clothing were frequently deficient, and cell hygiene and ventilation were inadequate, as the overabundance of bugs and mice testified. Dix was instrumental in the eventual removal of the insane from county jails and state and federal prisons and their placement into purpose-built asylums. She was also the leading American advocate for the abolition of laws governing imprisonment for debt (Marshall, 1937). What assisted
the American prison reform movement at this time were the works of Captain Alexander Maconochie on Australia's Norfolk Island penal colony, and Sir Walter Crofton on the Irish prison system. Maconochie's enlightened approach was to use the 'labour sentence' rather than the brutal and degrading triangle and the 'cat-o-nine-tails' as the basis for correction of convicts. His philosophy was that any penal system should be graded in such a way that, for the past, it used specific punishment in its first stage, and, for the future, specific training in its second (Maconochie, 1839). This two-stage system was enlarged upon by Crofton who advocated four distinct stages of treatment:

Punishment in solitude for two years, followed by congregate labour under a marking system that regulated privileges and determined the date of discharge, then by an intermediate stage during which inmates were permitted to work on outside jobs, and finally conditional release under a ticket-of-leave (Grunhut, [1948] 1972:83-90).

From 1848, the British government began replacing transportation with a national system of convict prisons and, for a further fifteen years, imprisonment became the standard punishment "for all the major crimes, except murder, formerly punished by either public hanging or transportation" (Ignatieff, 1978:200-201). Where, as previous to this policy, the longest sentences in English prisons were three years, by the mid 1850s ten-year sentences had become commonplace (Parliamentary Papers, 1859, XXVI). In place of transportation, convicts were now required, after six months of solitude in either Pentonville or Millbank prisons, to work on specific public-works projects such as quarrying stone or building breakwaters. Once they had completed their sentences, convicts were then released on a ticket-of-leave: "a parole that required them to report to the police at regular intervals, maintain a steady job, and avoid associating with other ex-offenders" (Home Office, 12/4/362; Home Office, 12/3015; Parliamentary Papers, 1854-5, XXV:15-16).

By the time the American Civil War began, the first English penitentiary had been established at Pentonville and in operation for nearly two decades. It had been modelled along the lines of Pennsylvania's separate system but also employed features from the Auburn silent system, and its design permitted unfettered surveillance of all prisoners (Ignatieff, 1978). No sooner had Pentonville been opened in 1842, than it
soon became 'the' model for other prisons and for prison discipline, both in England and in most of Europe. For Ignatieff (1978), Pentonville, like its North American counterpart, Cherry Hills penitentiary, represented the culmination of numerous attempts create the perfect environment in which to reform prisoners. Unfortunately, such was the effect of the daily prison routine with its emphasis on solitary confinement and silence, that between five and fifteen men went mad every year and were taken from Pentonville and placed in an insane asylum (Mayhew, 1861). As Scull (1984) noted, the treatment these prisoners were subjected to was a constant reminder of the consequences awaiting those who could not or would not conform. The duplication of many custodial responsibilities and functions by a diverse number of local authorities, in the latter part of the nineteenth century, saw the enactment of appropriate legislation. The English Prison Act of 1877 finally brought the local prisons under the control of the central government, and the body through which that control was exercised was the Prison Commission (Cross, 1971; Ignatieff, 1978).

The selection of prison guards and overseers, in both the English and North American prison systems of the nineteenth and early twentieth century, was very much a hit or miss affair because of its low priority in the respective criminal justice systems. Training of guards - the majority of whom had poor literacy skills - was at best minimal and done almost as an afterthought. They were also inadequately remunerated and their working conditions left much to be desired. (Fogel, 1979; McKelvey 1977). There were also deeper causes for concern. Donald Clemmer's seminal work on prisoners and his theory of 'prisonization,' published in 1940 under the title *The Prison Community,* argued, among other things, that "prisons work immeasurable harm on the men held in them as well as on the employees that care for them" (Clemmer, 1940:299-316; emphasis added). This last point and those already mentioned were shortcomings not immediately apparent but, in time, manifested themselves in a number of ways - the reputation that a particular prison earned for the harshness of its regime, and the ill-treatment of prisoners, to name just two. But it was the mentality of the prison governors which really "set the historical dimensions of the guards' role" (Fogel,
1979:73). Robert Wiltse, governor of Sing Sing prison between 1838 and 1840, stated: "The best prison is that which the inmates find worst" (1979:73). Wiltse's brutal regime was brief - two years - but in that time he helped make Sing Sing "in the opinion of some visitors into a virtual slave camp" (McKelvey, 1977:40). Similarly, the English Prison Act of 1865 implemented the principles of retribution and deterrence throughout the entire British penal system. It reinforced the 'separate system' in all prisons and abolished the previous distinction between houses of correction and gaols (Prison Act, 1865: 28 & 29 Vict., c.126). Moreover, Edmund du Cane and others championed the notion that prisoners sentenced to "the punishment of hard, dull, useless, uninteresting, monotonous labour" could be deterred from future criminal activity (Du Cane, 1885:175). However, under Du Cane's chairmanship of the British Prison Commission until 1895, the policy of punitive deterrence was shown to be badly flawed (Hawkins, 1976). As a result of such policies, attempts at any sort of real prison reform in the late nineteenth century were virtually doomed to failure.

In America, as in England, prison populations continued to expand during the early twentieth century. Among the new prisons built were Stateville prison in Illinois, it became operational in 1925; Western State Penitentiary in Pittsburgh, opened in 1926; and Attica in New York State, which received its first inmates in 1931 (Reid, 1979). With the exception of Western State Penitentiary, most new prisons followed the Auburn design: they were U-shaped, and "characterised by increasing cost per inmate, Sunday services, a chaplain on duty most of the time, and insufficient educational and vocational training" (Reid, 1979:614). The vocational training available was based not on the interests or needs of the inmates but on the needs of the prison and, in any event, there were insufficient funds available for adequate personnel. Most of these institutions provided work for their inmates and prison products were sold on the open market. But a jealous private industry and the subsequent 1929 stock

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2 Western State Penitentiary was modelled after Bentham's panopticon prison design, but was ordered rebuilt in 1833 because it was "wholly unsuited for anything but a fortress." Quoted in Reid, Sue Titus 1976 Crime and Criminology second edition. Holt, Rinehart and Winston, New York. pp.615-616.
market 'crash' saw Federal and State legislation passed in 1929 and 1935 to restrict the sale of prison goods (Hawkins, 1976; Reid, 1979). Despite Federal legislation in 1937, and the exercise of Presidential decree to set up the Prison Industries Reorganization Administration, a shortage of funds and strong resistance by many states to the perceived threats posed by prison industries to the private sector saw the initiative flounder (Hawkins, 1976; McKelvey, 1977).

The years immediately following the end of World War Two saw a greater emphasis placed by governments upon community welfare, particularly in England, with the expansion of social services to lessen the deleterious effects the war had had upon the civilian population (Vass, 1990). In the United States, too, the cessation of hostilities saw a wholesale shift from the manufacture of weapons of war to consumer goods and the employment opportunities that such a change entailed. Paradoxically, the cancelling of war contracts (made necessary by the declaration of peace) adversely affected many state and federal prisons that had been engaged in production for the war effort. In turn, this meant the loss of considerable income to the states previously derived from prison labour (McKelvey, 1977). Prison management, for McKelvey, had developed an interest in prisoner rehabilitation as a result of many inmates in prisons across the country being gainfully employed in prison industries during the war. They had seen the value of meaningful work in its positive effects upon the prisoners' sense of their own worth. As a result, treatment programs took on new meaning and there was also an unprecedented growth in the ranks of the helping professions. Bureaucratically organised specialists also added to the tendency to professionalise social control in this period, because they were better able to control the morally disreputable (Cohen, 1985; Scull, 1984). These specialists also acted as a buffer between the dominant classes and those the dominant classes sought to control (Scull, 1984). Subsequent curtailment of prison industries returned prisoners to their former position of idleness and low self-esteem. Not surprisingly, prisoners resented such a return and, from the early 1950s onwards, as prisons continued to become even more crowded and conditions, such as they were, deteriorated further, riots broke out. Not surprisingly, prison management
reverted to the tried and tested methods of brute force as a way of putting down these riots (McKelvey, 1977). In the search for answers as to why the riots were occurring it was felt there were several contributing factors - lack of understanding by the public and the prisoners about the role of prisons and what rehabilitation programs were intended to achieve, untrained and poorly paid staff, and inadequate support of prison administrations. Added to these factors were the limited budgets prisons were expected to adhere to, and repeated campaigns to curb crime that succeeded only in ensuring longer sentences and fewer early paroles. The end result of such policies for most states, according to McKelvey, was increasing prisoner populations and an inability to properly provide for them.

Phase IV: The Emerging Decarceration Movements

Concerns about a total collapse of the prison establishment were not limited to the United States. In England, too, prisoner numbers were increasing at an alarming rate in the 1950s and 1960s: for five years between 1950 and 1955 the average daily prison population was around 20,000. By 1960, the figure became 27,000 and in 1967, stood at 35,000 (Vass, 1990). This situation prompted many to question containment philosophy and the ability of the prison establishment to adequately punish and deter. Adding to this problem, according to Vass, was a worsening economic climate in England and trenchant criticism from the political far right about increased share of the national product going to the welfare state. Accusations abounded of the government being 'soft on crime' and, according to the far right, personal, social and economic disorder was explained "by a dependency, or 'living off the state,' culture" (1990:9). In casting around for solutions to overcrowded institutions, increasing crime rates and a sluggish economy, the British government found there was general agreement on the assumed benefits of self-help. Thus, community care and participation, and diverting clients, offenders, or other groups in need, from institutions to community methods of treatment and control was the apparent answer. The passing of the 1959 Mental Health
Act saw the introduction of the community care principle in respect of mental health services. Vass (1990) suggests that this legislation was the forerunner to the subsequent emergence of community work in the 1960s and after as a particular way of combating crime and poverty.

By emptying the asylums for the insane and placing those institutions' former inmates into privately run community care homes or with relatives or friends, the theory was that the state could at last divest itself of the drain on its finances. According to Scull (1984), deinstitutionalisation or decarceration of some or all of the deviant populations was seen, initially, as 'the answer' to the increasing demands upon the state's limited financial resources. Public acceptance of such a major change in policy was perceived as being readily obtainable because hospital inmates were not to blame for their 'condition' and, in turn, were not viewed by the general community as a serious or potential danger to anyone except themselves. Prisons and reformatories, on the other hand, were a different matter. Neither adult nor juvenile offenders could be treated in the same way as the insane and the elderly because of the nature of the offenders' deviancy and the very real threat they posed to the general community. In regard to such threats, there was the notion pushed by politicians and others with vested interests in their respective criminal justice systems that prisons should be equated with 'dangerousness' (Tomasic and Dobinson, 1979). Like Vass (1990), Scull (1984) argues that during the 1970s, in particular, there was a strong resistance by conservatives, both in England and in the United States, to anything that smacked of leniency towards crime and criminals. The view of the public in these jurisdictions was that, whereas the insane and the elderly were deserving of help in its various forms, criminals were definitely not. The latter deserved what they got. Such attitudes were reinforced by right-wing politicians who successfully manipulated the public's concerns about personal property and safety. Moreover, unlike criminals who were sent to prison, the elderly, the infirm and the insane did not stage riots that endangered life and damaged property. On the matter of prison riots, particularly Attica in 1971, Hawkins (1976) makes a telling observation:
Chapter One From Imprisonment to Decarceration

Indeed it could be said that the real tragedy of Attica is that at issue in that confrontation, in which forty-three men died (a death toll surpassed only once before in the history of American prison riots), was really only the simple request that we implement promises over a century old that have not been kept (1976:77).

I suggest Hawkins' observation is equally applicable to most other prison riots that have occurred in Western criminal justice systems (c/f Emery, 1970; Findlay, 1982; Useem and Kimball, 1989).

On both sides of the Atlantic, the respective authorities were assisted in their deliberations on 'the criminal class' by a now well-established national system of criminal records, photographs, and dossiers. Yet, the uniform treatment of all offenders irrespective of age or sex continued to be unhelpful to prison reform attempts. This was especially so, when classifying prisoners into categories that did not coincide with the accepted criminal stereotype (Weiner, 1990). Such a classification system was necessary, however, because of the widely held view by many within and outside the criminal justice system that juveniles could not be held accountable for their misdeeds in the same way that adults could (May, 1973). In America, at this time, similar attempts were being made to devise a workable and acceptable prisoner classification system, not just for juveniles but along the lines of high-risk, medium-risk, and low-risk. Such a classification system signalled a major shift away from the conventional 'treatment' of and attitudes about prisoners towards a more humane and rehabilitative approach via the scientific helping professions (McKelvey, 1977). The differentiation, too, of the various deviant behaviours, such as criminal, insane, and demented, was one of the essential social preconditions for the establishment of the new 'helping professions' (Scull, 1984). Unfortunately, as with so many well-intentioned ideas, a number of these new behavioural experts abused their positions in regard to the treatment of prisoners. Cohen (1985) is especially scathing of 'behaviourism' and cites one example of "another type of "treatment modality in the community":"

Three "sociopathic" girls were taken from a corrective school and "voluntarily committed" to a psychiatric hospital unit where they were administered minimal daily doses of insulin to instil hunger and anxiety. Each girl was then assigned to a "selective maternal companion" with whom she "interacted spontaneously" 5 hours daily for 6 months. "Close dependent relationships developed, changes in identification took place
and there was some suggestion that super ego changes are possible." This is cited [says Cohen], without a hint of criticism or comment, by Marguerite Warren in: 'Correctional Treatment in Community Settings: A Report of Current Research. National Institute of Mental Health, 1974.' Washington, DC. (1985:293-294).

A decade earlier, Fogel (1975) expressed similar concerns about prisoner treatment and, especially, about the indeterminate sentence (For Fogel's particular view of the indeterminate sentence I refer the reader to Appendix A).

In earlier periods of the prison's development, alternative measures had been sought and sometimes found to alleviate the increasing crime rate: in England's case, transportation to its far flung colonies and the use of the notorious 'hulks' to house its excess prison population. What compounded England's crime rate problem was the resistance of the gentry to the creation of a regular police force, preferring, instead, to pass a growing number of laws that carried the death penalty for property offences. In Albion's Fatal Tree, Hay et al. (1975) cite the work of Radzinowicz (1948-1968) who suggests that, between 1688 and 1820, capital statutes increased from 50 to over 200. With the passage of time, such options disappeared and a regular police force became a reality, due largely to changes in public sensibilities and the economic realities of international trade with emerging nations and the colonies (Hughes, 1987; Vass, 1990). In North America, by contrast, neither transportation nor the hulks were viable options, only the building of yet more prisons. It was not until the beginning of the twentieth century that any serious headway was made in reducing prisoner numbers. This was achieved by the introduction of probation and a refinement of the English 'ticket-of-leave' system, which had its genesis in the mid-nineteenth century and had now become the foundation for the modern parole system (Ignatieff, 1978; McNeal, 1974; Rutherford, 1984; Vass, 1990). Whereas parole is conditional freedom granted by a Parole Board to someone who has already spent time in prison, probation is a criminal justice sanction available to the courts in lieu of imprisonment. In both cases, the person being paroled or put on probation is subject to community supervision and any other requirements that may be imposed. The two measures of probation and parole were the forerunners of what has come to be called 'punishment without custody'
(Rutherford, 1984) or ‘punishment in the community’ (Vass, 1990). Both measures were seen as partial answers to the twin problems of prison overcrowding and the increasing costs of incarceration but, as will be shown in the following chapters, the passage of time and considerable in-depth research have raised major questions about such answers. While alternatives to custody have continued to expand in England, Europe, North America, Australia and elsewhere, many are beginning to question the efficacy, utility and economy of these alternatives.

**Conclusion**

This background chapter has outlined the history of the prison and the emergence of the decarceration movements from the 1960s, in something akin to a chronological order. Arguably, it was in England and the United States that major developments and changes to the respective criminal justice systems occurred, and it was from their innovations and mistakes that other countries learned how to manage their own criminal justice systems. This is not to deny that innovations and, for that matter, mistakes did not occur elsewhere, for clearly they did. But Australia took its lead, initially, from England by adopting the same legal structure that operated in the Mother country at the time of colonisation. Only in later years did Australia look to America rather than England for ideas on improving its criminal justice system, particularly in respect of prisons and alternatives to them. As with all criminal justice systems, the Australian system is in a continual state of flux, with laws being continually revised, amended or replaced to eliminate perceived shortcomings.

What the four phases of the development of the prison and punitive policy have also shown in this chapter is that penal sanctions, like the criminal justice systems that encompass them, are always changing. For example, the policy of incarceration that began in England in the 1840s was hailed at the time as the answer to all of the government's criminal justice prayers. Yet, nearly three hundred years earlier, the
bridewells were also going to be the all-purpose answer to what to do with offenders, but government neglect and judicial indifference by the 1650s saw the eventual demise of the bridewells as a viable penal option. These issues suggest that some options within the prison ambit were 'cyclical,' and a possible reason for this is to be found in the following comments of Morris (1965):

'Prison may not follow corporal and capital punishment and transportation into desuetude, for within the term "prison" great development is possible. In the late eighteenth and early nineteenth centuries the prison changed its character and it will change again' (1965:279).

More than three decades later, Greenwood (1998) reinforces the viewpoint expressed by Morris when, in paraphrasing a key line from the American baseball film, *Field of Dreams*, he says:

'Prisons seem to last forever. There is a genuine concern among some policy makers that ... sentencing and parole release decisions will be changed to ensure that all available prison facilities continue to remain full. *If we build them, they will come.*' (1998:136-137; emphasis added).

With the decarceration movement firmly entrenched in Western criminal justice systems by the 1960s, alternatives to custody began to proliferate and, in turn, this saw the introduction of the first contemporary CSO schemes. Chapter Two will trace the emergence and the subsequent growth of this 'new' non-custodial sanction, particularly in regard to the Australian experience. Chapter Two will also demonstrate the many and varied paths along which the CSO scheme was channelled in the endless quest by governments of all persuasions for the 'answers' to crime prevention, offender recidivism, and voter-friendly sanctions.
Chapter Two

The Community Service Order

There are some criminals whose crimes are curable, and the first thing to realise here is that every unjust man is unjust against his will.

Plato

Introduction

This chapter relates the characteristics, typology, and origin of the Australian community service order, or CSO as it is more commonly called, as well as the philosophy underlying its creation as one example of community corrections. The main purpose of this chapter is to expand upon the decarceration movement described in Chapter One, by tracing the history of one particular type of custodial alternative: CSO. Like the previous chapter, this will be a descriptive rather than analytical history, so as to put in place the necessary framework upon which to develop a detailed examination of the theoretical and empirical data in Parts B and C of this thesis. Without such a framework, any sort of detailed examination would be almost impossible, and there could be no meaningful connection made between CSO, the claims of the decarceration theorists, and the hopes of the restorative justice movement. Also, CSO means different things to different people, and there is still much disagreement among scholars and practitioners about the 'true' function of CSO. Since they are inextricably linked to, among other things, issues of control, gender, economics and politics, detailed explanations for these differences and functions are to be found later in this thesis. I begin with the concepts underlying all CSOs and then move on to a broad, general definition of what a CSO is, and describe the three main types of order presently in operation. Next are described the core requirements incumbent upon the sentencing

court when making the order and upon the agency or agencies that will oversee the order's operation. This is followed by a listing of the core conditions that an offender is required to agree to before the order can be made and which are to be found in any typical CSO throughout Australia. Attached to each requirement and condition description is a reference code to Appendix B: for example, B 1.1. By referring to Appendix B, each of the respective State or Territory Acts relating specifically to that requirement or condition can be seen. In instances where a requirement or condition does not exist in the legislation of all jurisdictions, the notation 'not applicable' is shown against the jurisdiction(s) where it is absent. This enables the similarities, differences and absences of those individual requirements and conditions across the eight jurisdictions to be seen. Then follows a brief history of the Australian origins of CSO between 1972 and 1985, the period during which all Australian jurisdictions successively put in place their own CSO schemes. The chapter concludes with an account of a typical CSO working day from each of two case studies.

Concept, Definition, and Typology

The Underlying Concept:

The view that those who wrong the community should be made to work for that community as a means of both punishing the wrongdoer and, at the same time, making him or her repay something to the community can be traced back to the Old Testament (Pease, 1981). The idea that "effort expiates evil" is interwoven throughout the social fabric of religion, education, and penal history. It was implicit, too, in the introduction of the House of Correction at Bridewell, in 1553 (Pease, 1985:56). Three centuries later, English convicts, having completed six months solitude in either Pentonville or Millbank Prison, were required to labour on specific public-works projects until the completion of their sentence (Melossi and Pavarini, 1981). In viewing community service as a form of restitution rather than as a penalty or as rehabilitation, the offender is cast in the role of a debtor to society instead of a criminal, even though such
Chapter Two  The Community Service Order

Restitution is symbolic to the community at large, rather than being direct to the victim(s) (McDonald, 1992; Pease, 1981). Moreover, the community service rendered is a "fine on [the offender's] time" (Pease, 1981:3) and, once the 'fine' is paid, that is, the unpaid community service has been duly rendered, then the offender (debtor) is, in effect, restored to his or her former place in society before the transgression was committed. Pease (1981) also states that such a 'fine on time' is in agreement with a retributive view of community service, but differs in one important aspect: the community service work to be undertaken should not be of a type that will further alienate those undertaking it from the rest of society. In other words, the punitive element of community service is to be restricted to reducing the offender's leisure time rather than to be making the community service work harsh, humiliating, and unpleasant. As will be shown in later chapters, such a restriction upon the punitive element of the CSO in some jurisdictions has been given mere lip service or ignored altogether. Young (1979) suggests that the British Home Office saw the operation of the CSO, primarily though not exclusively, as a means of diverting offenders from serving custodial sentences.

Before moving on to define what a CSO is, it is probably helpful at this point to illustrate, by way of a flow chart, the typical sentencing process that can be found in any Australian Magistrate's Court. Thus, Figure 2.1 delineates that process and also gives some idea of the role that the CSO plays. A couple of points should be noted, however. "Disposition: Non-Correctional" signifies cases where a formal caution, a suspended sentence, or probation has been imposed and so no further action is required: that is, the offender 'exits' from the criminal justice system. The CSO is shown as being imposed (a) directly by the court; (b) via an application for a fine-option order; (c) after consideration of a Pre-sentence Report or PSR; and (d) in conjunction with a custodial sentence (this is sometimes imposed as an additional penalty to the prison term, unless the relevant legislation specifically prohibits it).
Figure 2.1
Flow Chart For Sentencing of Offenders

Disposition
Non-Correctional

EXIT
Fine

Pay Fine
Fine Option

Breach

EXIT

COURT

Pre-Sentence Report

Fine
Default

PRISON

EXIT
Parole

CSO

EXIT

Breach

EXIT

Initial Interview
Case Management Plan

Breach

Information/Warrant

EXIT

Surveillance Only

Reduced Reporting

EXIT

Source: Adapted from the Northern Territory Model (1997)


Chapter Two

The Community Service Order Defined:

A CSO is a court-imposed obligation that the offender agrees to and is, therefore, a contract (Vass, 1990; Young, 1979). CSOs are penal sanctions whereby convicted offenders are required to do unpaid work for a set number of hours, and usually this work is with a non-profit or government agency (Harris, 1980; Pease, 1985). The CSO allows courts to sentence offenders to a period of unpaid, supervised work in the community that, in Australia, may vary from as little as 8 hours to more than 500 hours, depending upon the type of order and the jurisdiction of origin. Although a CSO can usually only be imposed where an offender would otherwise receive a custodial sentence of up to twelve months, it is, nevertheless, a sentence in its own right, rather than an alternative to one: the custodial sentence being suspended during the currency of the order (Young, 1979). There exists some disagreement in academic and legal circles as to the validity of this claim and it will be discussed at length in Chapter Three. Within each jurisdiction, the relevant Acts contain certain requirements incumbent upon the sentencing court and the corrective services' unit that will implement the proposed order. Of equal importance, those Acts also spell out the penalties that will be incurred should an offender breach any of the conditions of a CSO. For example, failure to complete properly the designated number of hours within the stipulated time-frame without an acceptable reason (such as illness) may result in a fine, an increase in the allocated number of hours (up to a predetermined limit), or revocation of the order and imposition of the previously suspended custodial term.

Table 2.2, below, compares some of the important similarities and differences between Australian CSO schemes as they presently exist. The eight jurisdictions are listed in the order that their respective CSO schemes commenced. What quickly becomes obvious between the various schemes is the considerable lack of uniformity regarding minimum and maximum hours, the time for completion of orders, the financial penalties for breaches, and the different labels applied to an offender. Equally non-uniform is the issue of who is responsible for determining CSO work.
<table>
<thead>
<tr>
<th>Particulars</th>
<th>Tasmania</th>
<th>Western Australia</th>
<th>Northern Territory</th>
<th>New South Wales</th>
<th>Queensland</th>
<th>South Australia</th>
<th>Victoria</th>
<th>Australian Capital Territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Min no hrs that can be imposed</td>
<td>none</td>
<td>CBO &amp; ISO 20 &amp; 40</td>
<td>CSO &amp; ISO none</td>
<td>none</td>
<td>CSO &amp; ICO 40 &amp; nil</td>
<td>40</td>
<td>CBO &amp; ICO 20 &amp; 50</td>
<td>24</td>
</tr>
<tr>
<td>3. Max no of hrs that can be imposed</td>
<td>240</td>
<td>120 &amp; 240</td>
<td>480 &amp; 224</td>
<td>500</td>
<td>240 &amp; 624</td>
<td>320</td>
<td>250 &amp; 500</td>
<td>208</td>
</tr>
<tr>
<td>4. Time for completion of CSO</td>
<td>1 year</td>
<td>1 yr &amp; 1 yr</td>
<td>none</td>
<td>18 months</td>
<td>1 yr &amp; 1 yr</td>
<td>18 months</td>
<td>3/24 &amp; 3/12</td>
<td>1 year</td>
</tr>
<tr>
<td>5. Penalties for breach of CSO</td>
<td>(1) $100 fine increase hrs jail</td>
<td>$1,000 fine increase hrs jail</td>
<td>$200 fine increase hrs jail</td>
<td>$250 fine jail</td>
<td>$750 fine increase hrs jail</td>
<td>increase hrs jail</td>
<td>$1,000 fine increase hrs jail</td>
<td>$1,000 fine increase hrs jail</td>
</tr>
<tr>
<td>6. Can fine be worked off with CSO?</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>7. What is the tariff rate for #6?</td>
<td>8 hrs = $100</td>
<td>8 hrs = $50</td>
<td>8 hrs = $100</td>
<td>1 hr = $15</td>
<td>10 hrs = $100</td>
<td>8 hrs = $100</td>
<td>1 hr = $20</td>
<td>8 hrs = $100</td>
</tr>
<tr>
<td>8. What is CSO meant to do?</td>
<td>rehabilitate</td>
<td>punish</td>
<td>punish</td>
<td>punish</td>
<td>punish</td>
<td>rehabilitate</td>
<td>punish</td>
<td>punish</td>
</tr>
<tr>
<td>9. How is CSO recipient labelled?</td>
<td>employee</td>
<td>offender</td>
<td>offender</td>
<td>person</td>
<td>offender</td>
<td>probationer</td>
<td>offender</td>
<td>offender</td>
</tr>
<tr>
<td>10. Who determines CSO work?</td>
<td>Supervisor</td>
<td>Chief Executive Officer</td>
<td>Advisory Committee</td>
<td>Supervisor</td>
<td>Authorised Officer</td>
<td>Advisory Committee</td>
<td>Regional Manager</td>
<td>Authorised Officer</td>
</tr>
</tbody>
</table>

Legend:
CBO = community-based order
CSO = community service order
ISO = intensive supervision order
ICO = intensive correction order
Chapter Two

The Community Service Order

Types of Community Service Order:

There are three main types of CSO currently available to the courts in Australia:

(i) the standard order (referred to variously as the community service, the community-based or the community work order); (ii) the fine-option order; and (iii) the intensive correction or intensive supervision order.

1. The Standard Order fits the definition given in the previous section and contains all of the core requirements and most of the core conditions listed below. It cannot be made in lieu of the non-payment of a court-imposed fine, nor can it be made where a particular offence - for example, arson - requires a more appropriate sentence.

2. The Fine-Option Order has arisen as a result of the quite common situation where an offender is fined but has no funds with which to discharge that fine. In such a case, the relevant laws allow the offender to apply for a special type of CSO called a fine-option order, where the amount of the fine (up to a certain dollar value) can be 'worked off' by a pre-determined number of hours of community service. Depending upon the particular jurisdiction, the 'exchange rate' of service hours for the dollar value of the fine is usually 8 hours (or one day of community service) for each $100 owed. This practical substitution has the benefit of keeping out of prison offenders who, in earlier times, would have had no other alternative but to accept a custodial sentence.

3. The Intensive Order differs from the standard order and the fine-option order in several respects. It requires more frequent contact between the offender and his/her case worker - usually two or three days per week as opposed to one day per week as is the case under a standard or fine-option order. The choice of the offender negotiating what day(s) community service work will be done (as is the case under a standard or a fine-option order) is removed. The rationale behind an intensive order is totally punitive, whereas with a standard or a fine-option order it is partly punitive, partly restitutive, and partly rehabilitative. Any unauthorised breach of an
intensive order will automatically result in revocation of the order and custodial confinement of the offender for the unexpired time of the order. Such breach may also incur additional penalties. In some jurisdictions, an intensive order must be taken to be a custodial sentence for the purposes of all enactments, except those which provide for disqualification for or loss of office, pensions or other benefits.

Characteristics of the Community Service Order

Core Requirements:

Every Australian CSO, irrespective of its type, contains a number of what I call 'common core requirements' which should be present for the order to be valid and binding upon the sentencing court and the offender. These common core requirements are contained to a greater or lesser degree in the sentencing legislation of all eight jurisdictions, although the wording of each requirement may vary.²

- The offender must have attained a certain minimum age - that is, must not be a minor - and have been found guilty of an offence against the law of a State or Territory that is punishable by not more than twelve months imprisonment (B.1.1);
- A CSO cannot be imposed by a court without the express consent of the offender and, once agreed to by the offender, he/she cannot then be committed to custody or, if already in custody, must be released forthwith (B.1.2);
- Before imposing a CSO, a court must be satisfied that the offender concerned is a suitable person to perform work under that order (B.1.3);
- Before imposing a CSO, a court must be satisfied that suitable work will be provided for the offender (B.1.4);
- The court making the order must ensure that the offender fully understands his or her rights and obligations under it and the penalties that will be incurred should those obligations not be met (B.1.5);

² In isolated instances, a particular requirement might not appear at all in a state or territory's legislation and this has been noted in Appendix B.
Chapter Two  The Community Service Order

- A CSO must be made for a specified number of hours (B.1.6);
- The offender must not be required to work for more than eight consecutive hours on the day or days nominated for community service work (B.1.7);
- The requirements of a CSO must not conflict with the offender’s employment or educational training in relation to that or other anticipated employment (B.1.8);
- The requirements of a CSO must not conflict with the offender’s religious beliefs or practices (B.1.9);
- Where an offender breaches one or more of the conditions of his/her CSO then, subject to any existing penalties that may be applicable to such a breach or breaches, the court can (a) admonish the offender; (b) increase the number of hours required to be worked (up to a specified maximum); (c) impose a fine; (d) revoke the order; and/or (e) impose a custodial sentence (B.1.10);
- Under a CSO, an offender is deemed to have completed the order (subject to any evidence offered to the contrary) once the required number of hours have been worked in accordance with the said order and that any additional impositions (such as a fine) have been met in full (B.1.11).

Core Conditions:

In addition to common core requirements, every Australian CSO, regardless of type, has a number of common core conditions which, in agreeing to, the offender is bound by. Such conditions may include some or all of the following:

The offender will:

- Complete a specified number of hours of unpaid community service work within a specified time - for example, 240 hours within 12 months (B.2.1);
- Conform to the required standards of dress, cleanliness and conduct deemed necessary to carry out the community service work (B.2.2);
- Not reoffend during the currency of the existing order (B.2.3);
- Not insult, abuse, threaten or assault any community corrections officer or any other duly authorised person (B.2.4);
Chapter Two  
The Community Service Order

- Not disturb or interfere with any other person working or doing anything under a CSO (B.2.5);
- Not report for, nor perform, community service work whilst under the influence of drugs or alcohol (B.2.6);
- Not damage, deface, alter, remove or otherwise interfere with property, tools, signs or other items necessary for the carrying out of community service work (B.2.7);
- Notify the relevant community corrections officer of any change in either their residential address or employment (if employed) (B.2.8);
- Obey all legal directions given by the community corrections officer under whose charge he/she is placed (B.2.9);
- Obtain the written permission of the community corrections officer if they desire to leave the State or Territory before completion of the relevant order (B.2.10);
- Participate in any drug, alcohol, rehabilitation or any other designated self-help programmes at an appropriate attendance centre as directed by the court (B.2.11);
- Report to a specified place (usually a community corrections centre) at a particular time on a nominated day or days in order to undertake the necessary work (B.2.12);
- Perform such community service work for a minimum/maximum number of hours on the designated day or days in a diligent and satisfactory way (B.2.13).

A Brief Antipodean History of The Community Service Order

Preamble:

This section expands upon Table 2.1 by outlining the Australian CSO's chronological and historical development in each of its eight jurisdictions. The reason for its inclusion at this point of the thesis is to locate particular aspects or issues that hindered or assisted the establishment and development of CSO schemes in Australia, between 1972 and 1985. New Zealand owes its inclusion here to the repeated but totally incorrect claim by Western Australian politicians about the long-time existence of a New Zealand CSO scheme - one that did not, in fact, become a reality until 1981.
The New Zealand Connection:

Of concern to Australian sentencers and legislators alike, during the 1960s and early 1970s, was the absence of a mechanism, other than the fine or imprisonment, for the making of reparations to society by those convicted of minor transgressions. There were many instances of offences being committed that did not warrant a prison sentence but for which a fine or bond was too light a penalty. Also, while convicted offenders could be fined, all too often they had no funds with which to pay and the default for such non-payment was, invariably, imprisonment. This created a 'Catch 22' situation for both sentencer and sentenced: because offenders could not pay the fine they would be sent to prison, and going to prison meant they could not hope to earn the money to pay the fine. In casting around for a suitable alternative that would penalise yet enable the offender to make reparations and not remove their source of employment income, sentencers and legislators found a partial answer across the Tasman Sea in New Zealand.

The New Zealand Criminal Justice Amendment Act 1962 incorporated specific amendments into the Principal Act - the Criminal Justice Act 1954 - that established Periodic Detention of Young Offenders as a sentencing option for New Zealand courts of criminal justice. Section 9(1) defined a young offender as: "any person who is not less than fifteen and is under twenty-one years of age [and] is convicted of any offence punishable by imprisonment" (Criminal Justice Amendment Act 1962, s.9(1)). The maximum term of such periodic detention was not to exceed twelve months. The following sections of that Act are selectively quoted to show what was required of an offender under this scheme:

s.16(1) Any person who is sentenced to periodic detention shall, during the term of the sentence, be required to report at a work centre on a specified number of occasions in each week, and on each such occasion to place himself in the custody of the Warden of that centre for a specified period.

s.17(2) Every such person shall be subject to the control, directions, and supervision of the Warden while he is in the legal custody of the Warden whether he is in the work centre or outside the work centre.
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s.18(3) The type of work to which any such person may be directed outside the work centre shall be work -

(a) At any hospital or charitable or educational institution; or
(b) At the home of any old, infirm, or handicapped person or at any institution for old, infirm, or handicapped persons; or
(c) On any land of which the Crown or any public body is the owner or lessee or occupier or which is administered by the Crown or any public body:

Provided that no person shall be directed to any work if in doing that work he would take the place of any person who would otherwise be employed on that work as a regular employee of the institution aforesaid or, as the case may be, of the old, infirm, or handicapped person or of the Crown or public body.

s.18(5) A person directed to work pursuant to this section shall not be entitled to any remuneration in respect of that work.

What these statements show is that the New Zealand scheme was intended simultaneously to punish young offenders by depriving them of their leisure time while enabling community projects to be undertaken with unpaid labour. When compared to the situation existing before Periodic Detention legislation, it now gave the courts a more appropriate addition to their sentencing armoury. Previously, all that was available for young offenders was either probation or Borstal and, judging by the comments of some Stipendiary Magistrates and Judges, the probation system, as a deterrent, was regarded as a total failure. Also, the borstal institutions were hampered by the large numbers of youth offenders they were required to process (Astley, 1959). In due course, the New Zealand scheme proved to have sufficient merit such that the United Kingdom subsequently used it as a model for its own periodic detention scheme. The Australian version of the New Zealand periodic detention scheme functions a little differently and is aimed at adult rather than juvenile offenders. It is similar to the CSO scheme, save that offenders are required to give up their weekends - Friday night to Sunday night - and perform supervised community service work. However, New Zealand's Periodic Detention scheme did not solve the problem of the gap in the sentencing tariff for adult offenders. It was not until 1 February, 1981, nine years after the successful creation of Tasmania's Saturday Work Order (CSO) scheme, that a self-contained CSO scheme came into existence in the New Zealand criminal justice system (Leibrich, 1985).
Tasmania:

Just as the credit for initiating supervised probation in Australia belongs to Tasmania (Mackay, 1976), so, too, it is generally accepted that Tasmania was the first Commonwealth State to institute a CSO program for adult offenders convicted in its courts of certain types of offences. The program, known as the Saturday Work Order Scheme, came into force on 1 February, 1972, and was an alternative to sending offenders to prison. It was the forerunner of similar schemes that followed both in Australia and overseas (Mackay and Rook, 1976). The Tasmanian scheme required offenders so sentenced to work, unpaid, on community projects, up to a maximum of twenty five consecutive Saturdays. The Saturday was chosen as the 'work day' because it enabled those offenders in full-time employment who were sentenced to the Scheme to meet their attendance obligations under it without jeopardising their employment (Briese, 1978; Mackay and Rook, 1976). The Scheme's major objectives were that it would: (i) offer flexibility of operation throughout the State; (ii) deal with a broad spectrum of offenders over the age of sixteen; (iii) involve the community via, say, voluntary supervision of offenders; (iv) provide constructive community-oriented activities for offenders; (v) reduce the prison population by being a viable, alternative sentence to imprisonment; and (vi) be economic to run (Mackay and Rook, 1976).

During Parliament debate in support of the Saturday Work Order Bill, the Tasmanian Attorney-General questioned the value of a prison system that attempted to teach people to live in the community by taking them out of it and placing them in prison (The Hobart Mercury, 17/11/71). He stated that while prison removed the offender from society for a period of time, provided an opportunity for training and treatment, and was a deterrent to future offending, it did have serious disadvantages. Prisons were expensive to run and maintain, prisoners usually lost their jobs, and they and their families then became a burden on the State. There was also the very distinct possibility of hardened criminals already in prison 'contaminating' the newcomers (The Hobart Mercury, 17/11/71). The positive involvement of the Tasmanian Trades and Labour Council (TTLC) in the initial Saturday Work Order proposal saw certain conditions incorporated into the proposed legislation:
no work to be performed by juvenile offenders (those under 16 years of age);
* the Scheme to be run on a trial basis for two years;
* the establishment of a review committee;
* that committee must contain a TTL C representative or nominee;
* the committee not to be able to function without a TTL C representative;
* no project could be undertaken without the concurrence of the TTL C nominee.

According to Mackay and Rook (1976), the views of members of the legal profession, judiciary, magistracy, and police were also sought during a feasibility study in January, 1971, and although some reservations were expressed, there was a generally favourable response. Most work projects virtually suggested themselves: for example, work in State institutions such as child welfare homes and sheltered workshops that did not have regular maintenance staff to carry out upkeep, and civic projects such as the grounds maintenance of historic buildings and construction of or improvements to picnic areas. Other considerations included guidelines for the supervising of offenders, the number of hours, conditions of work, conduct, and workers' compensation cover of offenders, who were to be classified as Government employees for the purposes of the relevant Acts. Work on drafting the Bill began in early 1971, and was completed in October of that year. The Act was proclaimed on 1 February, 1972, and, as Mackay and Rook note, Section II, below, is the key to that and subsequent legislation:

II (1) Instead of sentencing a person to undergo a term of imprisonment, the Supreme Court and Courts of Summary Jurisdiction may, with the person's consent, adjudge that he for his offence attend at such places and times as shall be notified to him in writing by a probation officer or a supervisor, on so many Saturdays, not exceeding twenty-five, as the court may order, and thereafter to do such things for such times as may be required of him under section twelve.

(2) A memorandum of an order under this section in the prescribed form and supplemented by the prescribed information shall be drawn up, be sealed or signed as prescribed, and be given to the person against whom the order is made before he is entitled to depart from the court by which the order is made.

(3) A work order shall be made only where it appears to the court that provision has been or will be made for the doing of work by the person against whom it is made. (1976:15).
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Western Australia:

In the course of researching the background history of Australian CSO, the 1976 Hansard Reports of the Western Australian Parliament were found to contain references to a 'CSO scheme' that allegedly had been operating in New Zealand for twelve years prior to the commencement of the Tasmanian scheme (WA Hansard, 10/8/76:1707-8). Further inquiries revealed this not to be the case. Contrary to popular belief, the Australian CSO scheme had its genesis in Tasmania, not New Zealand. The scheme operating in New Zealand, during the 1960s and 1970s, was a type of juvenile periodic detention (see above), and it was that scheme which was repeatedly referred to in the course of parliamentary debates and public discussions in Western Australia.

It should be noted, at this point, that as Australia's largest state - with a land area of about 2,525,500sq km or 32.87 per cent of Australia's total, and a coastline of 12,500km in length (Philips, 1981) - Western Australia faced some daunting logistical problems in framing its CSO legislation. Aside from the vastness of its jurisdiction, a widely dispersed population (even though much of the inland is uninhabitable desert), and the extreme variations in climate throughout the year, there was also the issue of insufficient staff numbers to facilitate the intended CSO schemes. Initially, this would be resolved by not having CSO schemes available in remote areas and relying upon the existing practice of imprisonment in the nearest large town or city gaol. This limitation also helps explain why CSO was slow to become an accepted sanction (Jones, 1983).

The initial legislation was beset by political disagreements. The State Liberal Government of Sir Charles Court wished to see the CSO Bill become law and be used by the judiciary as a cheap alternative to custody. The Labor Opposition opposed parts of the Bill because of perceived threats to sections of its union members. It proposed an amendment to define the term 'award' and to broaden the definition of 'approved work' on the grounds that workers under industrial awards and agreements would be protected from the possibility of offenders on CSO taking workers' jobs. The proposed amendment was defeated along party lines during the Bill's Second Reading (WA
Hansard, 10/8/76:1707-8; 17/8/76:1995-2002). The Bill became law on 1 February, 1977, and Western Australia became the second Australian state with a CSO scheme. For the first seven years of the CSO scheme in Western Australia, according to Jones (1983), some 2,200 adult CSOs were imposed. Although the growth rate of CSOs made in the early years of the scheme's introduction was around 10 per cent, it was not until the 1982-3 fiscal year that the scheme really came into its own. During this period, there was a 96 per cent increase over the previous fiscal year in the use of CSOs as a penal sanction, mainly attributable to legislative changes in the Road Traffic Act. Those changes enabled the courts to sentence persons convicted of certain drink-driving offences to undertake community service, rather than be sent to prison. Since the 1982 Road Traffic Act amendment, 37 per cent of all new CSOs that have arisen are the result of drink-driving offences, and, on that basis, the community could expect there to be approximately 1,000 CSOs imposed annually, in the future. During the same seven-year period, the breach rate for those who failed to meet their CSO obligations in Western Australia averaged 11 per cent. This figure was doubly encouraging to those charged with the scheme's implementation.

The Western Australian CSO could be imposed either in its own right or in addition to a probation order. It could also be imposed as a special condition of a good behaviour bond (where Commonwealth offences were involved). The officers charged with the scheme's introduction worked towards eradicating many negative perceptions of offenders so that, by late 1983, it could properly be claimed that the CSO scheme was playing an important part in breaking down some of the myths that arose about offenders: for example, "[T]hey are all bad and will never be any good ... [a]s offenders work alongside community-minded volunteers a realisation grows that the offender is a human being with something to offer and not just a 'no-hoper'" (Jones, 1983:73-74). However, it was not until years later that the Western Australian CSO scheme received a similar level of support to that of Tasmania. This was mainly due to the attitudes of the State's sentencers, particularly in the lower courts, towards the usefulness of the order in deterring offenders from future lawbreaking activities.
The legislation that formed the nucleus of the Northern Territory's CSO scheme was largely influenced, initially, by a very comprehensive review of the Northern Territory's criminal justice system carried out by Hawkins and Misner, in 1973. Later, it was further informed by the experiences of the established Tasmanian and Western Australian CSO schemes. And although the Hawkins and Misner Report does not refer specifically to CSO, it does mention periodic detention and attendance centres (Hawkins and Misner, 1973). Parliamentary debate on the proposed legislation's merits followed a pattern similar to that of Tasmania and Western Australia. The Northern Territory Country Liberal Party Government sought to implement the necessary legislation on its own terms, and the Labor Opposition wanted to ensure that there was Trades and Labour Council involvement to oversee any Government proposals that might jeopardise the jobs of union members. This issue was resolved by legislating for the formation of Advisory Committees, one person of whom would be a member of the Trades and Labour Council. These committees, five in all, would be vested with the power to examine and approve (or reject) each CSO project proposal. Also, in a similar way to both Tasmania and Western Australia, the success of the scheme would rely heavily on the availability of voluntary supervision of offenders, courtesy of the organisations for whom the community service work was being done.

In any event, the initial Northern Territory CSO legislation received Administrative Assent on 13 July, 1978, via the Criminal Law (Conditional Release of Offenders) Ordinance No. 68 of 1978. Amendments affecting the initial legislation were later incorporated into the Criminal Law (Conditional Release of Offenders) Act No. 35 of 1979. It became law on 27 April, 1979. The first orders were not made until 1 November, 1979, due to the responsible Minister 'forgetting' to sign the 1978 amendments, and due, also, to the Government's apparent inability to form the necessary Advisory Committees as required by the relevant Act (Northern Territory Hansard Debates, 28/2/1979:855). Under the 1979 legislation, a CSO could not be imposed in default of payment of a fine. But there was nothing in the Act at that time to
prevent the courts from assessing an offender’s ability to cope with a heavy fine and then using a CSO as an alternative to the imposition of such a penalty (Owston, 1983).

By 30 June, 1980, 18 CSOs had been made, of which 3 subsequently ‘failed’ (the offenders did not fulfil their obligations). Two years later, 70 orders had been made, of which 20 failed; and, by 30 June, 1983, a further 112 orders had been imposed by the courts, and 10 of those failed. The total number of community service hours worked for the above periods were 1,471; 5,771; and 8,563, respectively. During this period, the CSO was seen only as an alternative to custody, although some Northern Territory magistrates were not very confident that such a view was justified. The small number of failed orders was pointed to as a reason for this lack of confidence, as was the cumbersome and protracted breaching procedure against offenders who failed their orders (Owston, 1983).

At the time of the CSO scheme’s introduction, a number of benefits to the program were intended to eventuate. These were said to include: (a) cost effectiveness; (b) diversion of significant numbers of offenders away from imprisonment; (c) potential for offenders to develop useful skills; (d) appropriateness to Aboriginal communities; (e) flexibility within the program to accommodate offenders’ needs; (f) an element of reparation; and (g) potential for the aged and the infirm in the community to benefit from offender work (Northern Territory Hansard, 3/5/78:767-771; 7/6/78:1106-1119). While each of these ‘benefits’ could be said to have been achieved to some degree in the early years of the scheme, subsequent legislation has removed several of the aims.

The Northern Territory CSO scheme is administered from the various regional offices in Darwin, Alice Springs, Tennant Creek, Katherine and Nhulunbuy, Jabiru, and Groote Eylandt, and operates differently in each region. This is principally because of the different requirements of and the often limited availability to offenders of local community projects. The Territory’s geography, climate, culture, and high number of indigenous inhabitants are further major challenges to its criminal justice system (Norrmann, 1997).
New South Wales:

The Second Reading debate of the Community Service Orders Bill in the New South Wales State Parliament, on 29 November, 1979, provoked nothing like the acrimonious insults and recriminations that were traded across the floor of the House during the debates, a year earlier, on the Prisons Amendment Bill (NSW Hansard Debates 28/11/78:901-906; 5/12/78:1302-1307, 1360-1381). The latter Bill was part of the outcome of the Report on the Royal Commission into New South Wales' Prisons, conducted between 1976 and 1978. The Report was a damming indictment of the conditions, procedures, mismanagement, brutality, and gross neglect within the State's prisons system over a 33 year period. The Prisons Amendment Bill changed forever the way New South Wales' prisons were administered, by ensuring greater public scrutiny and government accountability. In a similar way, the Community Service Orders Bill, that sought to implement the Nagle Report's Recommendation number 240, also weakened the penchant of many sentencers for using imprisonment as a sentence of first rather than last resort. This was notwithstanding that some sentencers did use periodic or weekend detention for some offenders. But, just as with the Queensland prisons system, weekend detention was not popular with prison administrators, because of the disruption to prison routine and the always present possibility of security breaches. What also helped the passage of the Community Service Orders Bill was the established track record in Tasmania and in the United Kingdom of the first and second fully-fledged CSO schemes. Both schemes had been in operation for some seven years, and each had succeeded beyond anyone's expectations as a realistic and humane alternative to custody. This helps explain, too, the unanimous support for the Bill from both sides of the New South Wales Parliament (NSW Hansard Debates, 29/11/79: 4091-4093, 4212-4216, 4257-4264).

The New South Wales Community Service Orders Act 1979 No.192 was assented to on 21 December, 1979, and commenced on 14 July, 1980, in four regional centres - City of Sydney, Newtown, Gosford, and Goulburn (Griffin, 1983). The agency responsible for the administration of the scheme was the NSW Probation and Parole
Service, which employed the services of a Director, 18 full-time and 38 part-time officers, and 92 Sessional Supervisors. The greater part of actual offender supervision, however, was undertaken by volunteer supervisors associated with the organisations for whom the offenders carried out CSO work. It was estimated that between the scheme's commencement and the end of 1983, some 1,200 individual members of the NSW community had assisted the Department in the overseeing of offenders on CSO. For the same period, some 271,000 hours of unpaid community service was completed. The notional value of that work in 1983 dollar terms was $2,574,500 (Griffin, 1983).

Fine defaulters in this State were still sent to prison, because there was no mechanism in the sentencing process, at this time (1980-1984), that permitted them to swap the dollar value of their unpaid fines for an equivalent number of community service hours. Also, the going rate at which fines were paid for was one day's imprisonment for each $25 of fine; so that a $200 fine, for example, equated to eight days in prison. This changed, in 1985, with amendments to the Crimes and Justices Acts that reduced the time spent in gaol by doubling the rate at which fines were paid for by time spent from $25 to $50 per day. The New South Wales legislation was conspicuous in its lack of alternatives. The New South Wales Attorney-General, Terry Sheahan, had supported the legislation saying that imprisonment would be retained as the ultimate sanction for defaulters, but they (fine-defaulters) would have a reasonable chance to arrange a suitable method of payment (Reform, 1986). At that time, the legislation made no distinction between fine-defaulters and common criminals. According to critics of the legislation, the former were treated as criminals and were sometimes placed in maximum security prisons where the potential for serious injury to or death of a prisoner at the hands of another exists (as it does in all maximum security institutions). Also, the amounts owed by fine-defaulters were usually small, less than $200, yet it cost the taxpayer $85 a day, in 1985, to keep a fine-defaulter in gaol (Reform, 1986). It took a particularly unsavoury incident in Long Bay Gaol - the brutal bashing of a young fine-defaulter by two long-term prisoners - to galvanise the State Government into action to pass the necessary fine-option order legislation in 1987.
Queensland:

The Offenders Probation and Parole Bill, introduced into Queensland State Parliament on 27 March, 1980, was the first major review of the Act since its 1959 implementation (Queensland Hansard Debates, 27/3/80:3018-9). Administrative changes aside, including the provision for more than one member of the Parole Board to be a woman, the major innovation of the Bill was the introduction of legislation for CSO. According to the relevant Minister, Sam Doumany, the purposes of the order were twofold. First, they provided for some form of reparation to the community by the offender, in that the offender was required to perform a number of unpaid hours of community work. Second, they provided sentencers with a more useful and cheaper alternative than was presently available by way of periodic or weekend detention. The Minister noted that, while periodic detention had proved useful, it disrupted prison routine and so was unpopular with prison administrators. CSO benefits were seen as being less costly than imprisonment: the family unit remained intact; the offender's unemployment was unaffected so that neither the offender nor their family became a burden upon the social welfare system; and the offender made a positive contribution to the community (Queensland Hansard Debates, 27/3/80:3019).

According to Turnbull (1983), the proclamation of the Offenders Probation and Parole Act 1980, on 1 November, 1980, saw the first Queensland CSO made for 40 hours in the Toowoomba Magistrates' Court, on 27 February, 1981. All told, some 584 offenders received CSOs in the scheme's first year of operation, and that number almost doubled in the second year to 1123. By November, 1983, about 80 part-time CSO supervisors were employed to oversee the work of offenders in 53 centres throughout the State. Considering that the majority of convictions where CSOs were made consisted of property offences (45 per cent) and driving offences (32 per cent), the successful completion rate of CSOs was around 90 per cent. Community service work was mostly done for needy individuals, charitable institutions, and non-profit and service organisations. Projects were assessed by a Community Service Advisory Committee of three - a Probation and Parole Service Officer, a local community
member, and a Trade Union representative. From a very tentative, initial acceptance by
the courts, the public, and offenders alike, in the early 1980s, the CSO scheme has
undergone several major changes from the program that the 1980 Act originally
encompassed.

For example, Turnbull cites two significant legislative changes that were made
in March, 1983 - one relating to Pre-sentence Reports, and the other to the CSO's legal
status. In relation to the former, before a court places an offender on a CSO, it will no
longer be required to consider a probation officer's Pre-sentence Report on that
offender. Previously, Pre-sentence reports and accompanying recommendations by
probation officers were often ignored by sentencers. This was particularly so in remote
area jurisdictions, where the resident magistrate was often in a much better position to
assess an offender's suitability for community service than was a visiting probation
officer. As regards the latter legislative change, the CSO will no longer be considered a
conviction, save in relation to: the making of the order; the taking of subsequent
proceedings in accordance with the Act; and any proceedings against the offender for a
subsequent offence (Turnbull, 1983).

The amended legislation also contained new provisions for the making of fine
option orders - orders designed to assist offenders who are fined but have no funds with
which to discharge that fine and, as a consequence, are sent to prison. Another issue
that received legislative attention was workers' compensation cover for offenders.
Turnbull (1983) notes that, while offenders are entitled to claim compensation in the
event of their being injured while undertaking community service work, some offenders
have openly abused the entitlement. Hence, it has become departmental policy not to
insure offenders against injury and as a result, costs are met from the Probation and
Parole Department's annual budget. In time, the CSO came to be used with increasing
frequency by sentencing authorities as a sentence in its own right, rather than as an
adjunct to existing penal sanctions.
In 1976, a working party was established to create a CSO scheme for South Australia and, by 1978, had developed a suitable one to proposal stage (SADCS Newsletter, 1993). The proposed scheme suggested the following points be addressed: a Saturday work scheme with an emphasis on work and community benefit; a punitive measure as an alternative to imprisonment, implemented through a bond linked to a suspended sentence; offenders should be assessed for suitability by a probation officer; a State Advisory Committee be established to introduce the program; and local Community Service Committees set up to approve work tasks, with magistracy, union, community and departmental representation (SADCS Newsletter, 1993). Amendments to the Offenders Probation Act 1913, which later included new legislation governing CSOs in South Australia, were debated at length in both Houses of State Parliament between 5 March and 11 June 1981. The Amendment Bill sought to introduce a scheme in which adult offenders could be put on a good behaviour bond that required them to perform unpaid community service, as an alternative to a fine or custody. The bond was for one year's duration, and the number of hours of community service was set at a minimum of 40 and a maximum of 240. Ten hours per week was the minimum required from the offender (or probationer as he/she was now called), of which eight were devoted to community service (usually on a Saturday) and two were given over on a weekday to specified educational classes, such as drug and alcohol rehabilitation, basic literacy, or personal budgeting skills (South Australia Offenders Probation Act 1913 Amendment Bill).

There were three major issues of contention in the proposed legislation. The first was a proposal (s.5c) that the Government would choose a person from a panel of three nominated by the South Australian Trades and Labour Council, to be a member of the community service advisory committee. The second issue was the omission by the Government from the proposed Bill of the power of veto by the Trades and Labour Council representative nominated to that advisory committee. During the Second Reading Debate on the Bill, it became very clear that the Minister responsible for the
Bill, the Hon. W. A. Rodda, had no intention of rectifying that omission, preferring, instead, to argue that his word, as Minister, that the Trades and Labour Council representative did have the power of veto, should be good enough. When challenged to write the omitted clause into the Bill, the Minister refused (South Australia Hansard Debates, 2/6/81:3724-5). It also became quite clear from the Debates that the Minister did not want the Trades and Labour Council to have any say in the decision-making processes of the Bill. He saw no role for the Council at all, and later attempts by Opposition Members to amend the flawed legislation failed (South Australia Hansard Debates, 2/6/81:3726-7). The third and most contentious issue was the decision of the Tonkin Liberal Government not to have probationers, who were bonded for CSO work, covered by workers' compensation insurance. The remarks of the Government's Chief Secretary are quite revealing:

**The Hon. W.A. Rodda:** The question of workers' compensation has been raised, but this matter is not in the Government's character. A person injured when carrying out work under a community service order has a right to seek common law compensation. I understand that in Tasmania offenders are considered by the Crown to be covered for workers' compensation when under the Community Service Order scheme, and it is written into the legislation. In Queensland offenders are covered by the Workers' Compensation Act.

**Mr Keneally:** Why shouldn't we do the same here?

**The Hon. W.A. Rodda:** The Government does not propose to accept the proposal put up by the honourable member (South Australia Hansard Debates, 2/6/81:3712).

The Minister's intention was defeated in the Legislative Council and amending clauses duly inserted, much to his chagrin (South Australia Hansard Debates, 11/6/81:4224). The first meeting of the Community Service State Advisory Committee was held on 17 March 1982. This committee was responsible for formulating guidelines for the sort of work that could be performed by offenders, and to assist local committees in approval of projects. On 1 July 1982, a pilot scheme began at Norwood and at Noarlunga, under two Community Service officers who were each assisted by a clerical officer and a small team of community service supervisors. Six CSOs were supervised in the first month and, by the end of 1982, 56 offenders had been placed on the Scheme and a total of 2,450 hours of work completed on 39 projects in the Norwood and Noarlunga areas (Dept of Correctional Services South Australia Newsletter, 1992).
Victoria:

For Bodna (1983), following the release of the First Report of the Sentencing Alternatives Committee, in 1979, which recommended the introduction of CSO in Victoria, a great deal of planning was undertaken. Initial consultations were had with senior magistrates and police regarding the scheme's operation and the regulations that would govern it. Local magistrates, police and community groups, at the regional level, were then consulted with respect to appropriate projects that would fit the scheme's underlying requirements. The CSO scheme in New South Wales was observed in operation, and data was exchanged with other jurisdictions where the scheme was running. The underlying objectives of the Victorian CSO scheme were similar, in many respects, to those in other jurisdictions: that is, to provide courts with a sentencing alternative to custody whereby suitable convicted offenders are required to carry out unpaid community work. The Victorian scheme settled on a minimum of 20 hours and a maximum of 360 hours. According to Bodna (1983), a related objective in regard to the work done by offenders was for the scheme to provide the community with tangible benefits. Another objective was to ensure, as far as possible, that the work undertaken by offenders on a CSO was 'worthwhile' and that the work should be on projects where volunteers and offenders could work alongside one another.

The Sentencing Alternatives Committee Report recommended the formulation of regional Community Corrections Committees to assist in the involvement of local communities in the scheme and to advise on appropriate work projects, similar to committees that functioned for the same purpose in other jurisdictions. The role of those committees was to advise the relevant Minister of matters pertaining to policy and program implementation as it applied to the specific region. In addition, the committee was to consult with and acquire information from government and non-government organisations and community groups on regional correctional services and related matters. It was also required to foster and promote understanding of community corrections issues and to develop appropriate regional community corrections programs. This included initiating meetings, seminars and publicity material for that
purpose (Bodna, 1983). Following the South Australian example, Victoria also decided
to implement its CSO scheme on a pilot basis. The pilot scheme began on 1 September
1982, in the southern suburbs of Melbourne, which covered the municipalities of
Moorabbin, Sandringham, Brighton, Mordialloc, Oakleigh, Malvern and Caulfield
(Victoria Hansard Debates, 21/9/82:517).

According to Bodna (1983), the first organisation in Victoria to provide work
for an offender under a CSO was the Southern Region Council for the Disabled.
Following the pilot scheme's introduction, the Government established an Office of
Corrections that was responsible for the planning and operation of all the state's adult
correctional programs. In the pilot scheme's first year of operation, 94 offenders were
assessed for it, of whom 74 were placed on CSO by the courts and, towards the end of
1983, 40 offenders were on an order. With these 40 offenders, more than 210 hours of
community service work was being performed weekly, and a total of 6,589 hours had
been undertaken since the pilot scheme began (Bodna, 1983). In late 1983, an
information leaflet was distributed to Victorian Clerks of Courts to be made available
to persons unable to pay fines and, by November of that year, eight CSOs had been
made as a result of that particular inability. Approximately half of the twenty-five plus
local agencies involved with the pilot scheme were self-help groups organised and run
by volunteers - for instance, Bayside Lifesaving Club, several Scout Groups, and
organisations working with the aged and the handicapped. Thirty per cent of other
agencies comprised local councils and hospitals that had projects such as painting,
gardening, handyman tasks, and arts and craft instruction. The remaining twenty per
cent was made up of individual pensioners and invalids, for whom home maintenance
was done by offenders - for example, minor repairs, gardening, and house painting.
From 1 February 1985, the Community Order Scheme or COS came into effect
throughout Victoria (Law Inst Jnl, 1985). The subsequent provision, six years later, in
its Sentencing Act 1991 for an intensive correction order was a reflection of, among
other things, the perception that COS was a 'soft option' for some offenders (ACT
The proposal for a CSO scheme for the Australian Capital Territory received ministerial approval as early as 1974. The principal reasons why the scheme did not get under way until more than ten years later were (a) continual revision of the legislation, and (b) the relevant Department's inability to administer the scheme because of government cut-backs on funding and staff (Hillman, 1983). By the end of 1983, Hillman notes that the proposal had been put forward as a new Departmental initiative for 1984-5; positions for the scheme's administration had been requested in the forward estimates; costs for the first year's operation had been estimated at $66,000; and the CSO Ordinance (as it then was) had been finalised but was awaiting final revision of the amendment to the Crimes Ordinance. The *Supervision of Offenders (Community Service Orders) Ordinance No.10, 1985, and the Crimes (Amendment) Ordinance No.11, 1985*, were notified in the *Government Gazette* on 8 March 1985, and CSO officially commenced on 12 August 1985. At that time, the Australian Capital Territory was administered by the Federal Government's Department of Territories and Local Government and the reference to 'Ordinance' No.10 and No.11 reflects that point. It was not until self-government was imposed upon the ACT, on 11 May 1989, by the then Federal Labor Government, that the Ordinances became Acts.

Part XVA of the *Crimes (Amendment) Act 1992* refers to Community Service Orders regulations as they apply to the ACT. The requirements for the issuing of a CSO are very similar to those in other jurisdictions, with perhaps the major difference being that the minimum number of hours which can be ordered is 24, and the maximum is 208. Nor is there anything to prevent the sentencing court from imposing additional penalties over and above a CSO: for example, ordering an offender to make restitution of property; directing them to pay compensation to an aggrieved person; making an order for costs against an offender; suspending or cancelling their driver's licence; ordering the forfeiture of any property; imposing a fine (s.556G.(1)). While the ACT was the last Australian jurisdiction to introduce a CSO scheme, it appears the (then) Department of Territories and Local Government had no clear idea of what was
required by way of equipment to carry out the prescribed work under a CSO. Anecdotal evidence indicates that on the day the legislation came into effect (12 August 1985), the Community Service Orders Unit of ACT Adult Corrections (as it was then called) lacked the necessary resources to fulfil its charter. Its total assets consisted of two senior corrections officers, a small government car (not a utility or a four-wheel drive, which was really what was needed), an undersized office, and some stationery. There were no tools or equipment of any description to enable community service work to be undertaken, but there were offenders - lots of them. They were reporting to the CSO office as directed after being sentenced in the magistrate's court, and were expecting to be allocated to appropriate community service tasks (participant observation and interview data). There was also (and continues to be) considerable debate about the CSO's 'real' function as opposed to its actual one. Some hold the view that a CSO should be restitutive and rehabilitative - the offender should 'give something back to the community' for the harm he or she has wrought. Others decry this view, believing that CSO should be purely punitive so as to deter the offender(s) from future transgressions.

It is readily acknowledged that there may well have been any number of additional, mitigating factors that might also have contributed to the less than spectacular commencement of the ACT's CSO scheme. A good example would be the difficulties experienced by the ACT Administration in the way of continual and delayed changes to the Territory's criminal laws and the recurrent shortage of funds in the Federal Budget Appropriations over several years. Also, the ACT Administration may well have been the unwilling 'victim' of a form of federal political inertia. In other words, the requirement for an ACT CSO scheme may have had a very low priority on the Minister for Territories' 'tasks to do' list, especially as the Territory's quasi-prison, the Belconnen Remand Centre, was less than ten years old in 1985. Moreover, in the absence of a 'real' prison, the ACT could not have experienced any of the major prison disturbances and scandals that had been a feature of other jurisdictions prior to and during the 1960s and 1970s.
This concludes the jurisdiction by jurisdiction historical outline of CSO's origins and development. To further understand how CSO 'works' as a criminal justice sanction two examples of a typical CSO workday will now be described. The following descriptions are derived from fieldnotes compiled during fieldwork of CSO schemes in Darwin and Brisbane, during 1997. One point that requires clarification, at this juncture, is a reference to "my own CSO gangs in the Australian Capital Territory." Having spent seven years as a CSO supervisor in the Australian Capital Territory, between 1988 and 1995, I found myself continually comparing aspects of the CSO process in both Darwin and Brisbane with those in my home territory. There were times when it seemed to me a particular job could have been done differently and in a better way and, conversely, there were other times when I felt that my approach to a particular task would not have been as efficient. So it was a two-way learning process.

My ongoing interest in all aspects of CSO was one of the prime motivators for undertaking the research for this thesis, which I saw as one way of gaining a better understanding of CSO as it operated in other jurisdictions. Another issue that heightened my interest was the growing push by politicians in a number of Australian jurisdictions for more punitive sanctions to be imposed on offenders. I viewed such a trend with much alarm and scepticism, especially as the contemporary literature was so adamant that punitive measures aimed at deterrence and retribution were, for the most part, a complete failure. Also, given that Australian policy makers in the field of community corrections tend to be followers rather than leaders, it seemed to me that no lessons had been learned from our past penological history, which was a history more of failures than of successes. Had time and funding been more plentiful, I am in no doubt that a physical, hands-on examination of all Australian jurisdictions would have yielded a more comprehensive study of CSO. Unfortunately, this was not the case in reality, but I do believe that my knowledge base about CSO has been considerably expanded, despite the temporal and financial limitations imposed.
Examples of a Typical CSO Work Day

Darwin - Saturday, 8 February 1997:

I arrived at the Marrara Sports Complex at about 9.15am, courtesy of one of the Home Detention supervisors, and the very first people I spotted were two female offenders wearing their orange CSO vests. They became my reference point for locating Simon, the CSO Supervisor that I had met in Head Office the previous day. He introduced me to the various offenders and told them that I would be spending the day with them and that throughout the course of the day, I would be seeking their views and opinions on CSO. Although Simon, as the person in charge of the CSO offenders at the Sports Complex, was employed by the Department of Community Corrections, the two-day position (Saturday and Sunday) he occupied at Marrara was funded by the Sports Complex’s management committee. Normally, the size of the gang Simon was required to supervise at Marrara was about six, but on that particular day there were eleven. This was both unusual and awkward, the latter because of an insufficient number of tools (lawnmowers and whipper-snippers) for that number of people. As will have been gathered from this, the CSO work at this project consisted primarily of lawnmowing, edge-trimming, weeding and general tidying up of the grounds. The difficulty on the day I visited was that the offenders had to take it in turns to use the equipment, so there were always two offenders unoccupied and available for conversation, which was valuable for my research. Notwithstanding all this, however, the gang got through a considerable amount of work and, were I comparing them to my own CSO gangs in the Australian Capital Territory, they were certainly on a par. Their attitudes were quite positive, and the fact that Simon was able to give them the necessary instructions and then go off to other areas of the quite large complex said much about his trust in their ability to ‘do the right thing,’ which they did. There were three separate groups of CSO workers, two groups of two and the main group that I was with. All three were widely dispersed over the complex, which contained a large football stadium and a large indoor sports venue for hockey, basketball and gymnastics. Simon visited the three groups continuously throughout the day to check on progress and to ensure that plenty of iced drinking water was available for the gangs. This minimised the likelihood of any of the offenders dehydrating because of the very hot and humid weather conditions - 35°C and relative humidity of 95 per cent.
Chapter Two

The Community Service Order

The eleven CSO offenders were from a wide cross-section of the Darwin community, the youngest was a fourteen-year-old male Aboriginal and the oldest was a thirty five plus, married female. Amongst the eleven offenders, there were two females, both of whom were married and had children. The average age of the group was about 23. The reason for the mix of juvenile and adult offenders, notwithstanding that there was a separate Juvenile and Adult criminal justice system, was that insofar as the Northern Territory CSO scheme was concerned and particularly at the Sports Complex, juveniles were freely mixed in with the adults. I found such a situation a little surprising but have to say that, for the day I was present, this ‘mixing’ appeared to work very well.

Speaking with the offenders, both collectively and individually, throughout the course of the day, I explained why I was there and what I hoped to achieve. Also made clear my own connection with CSO in the Australian Capital Territory as a Supervisor and pointed out some of the similarities as well as differences of both schemes. This approach seemed to put the offenders a little more at ease, especially as it had been made clear to them that I was ‘on their patch’ and merely seeking information along the lines of the questions contained in my Interview Schedule (this Schedule appears in Appendix C). The resulting answers, overall, were quite positive in terms of the way the offenders viewed the work they did while on the scheme - it was seen as ‘okay,’ with some saying it was easy compared to what they had expected or what they were used to. For a couple of the offenders this was their first order, while for a couple of others, it was their ‘umpteenth.’ The majority were there because of unpaid fines and that, in itself, was a reflection of their socio-economic status - they were unemployed.

While most of those I spoke to were happy with the arrangement of being able to work out their unpaid fines with community service hours, there was clearly some unhappiness from two of the offenders about the requirement in the Northern Territory that, during the course of their CSO work, they wear a distinctive, bright orange vest that had the words ‘community service’ printed in large black letters on front and back. The argument made by one offender was that he could understand the requirement if he was a convicted child-molester or a murderer, but the wearing of the vest should not apply to those like him who were merely working off an unpaid fine. I suggested that if he had been convicted of child molestation or murder he most certainly would not be doing community service but would have gone straight into prison. I had no answer to
the second part of his argument. So far as compulsory wearing of the orange vests was concerned, the attitude of the offenders was, generally, one of acceptance, even allowing for the adverse comments noted above. When I first heard about the compulsory wearing of those vests, I had strong reservations about the wisdom of such a move since it appeared to fly in the face of offender rehabilitation and reintegration, and seemed to be an unnecessary form of public branding or stigmatising. The 'Form 2' that an offender signed in agreeing to undertake community service did not have written anywhere on it that they must wear the vest. The requirements surrounding the wearing of the vest were verbally explained to each offender by the interviewing Probation and Parole or CSO officer at the time they were being assessed as to their suitability for CSO. Each offender was told that, as part of the agreement to undertake CSO, they were required to wear the vest at all times while working on CSO; that if they refused to wear the vest they would not be permitted to undertake CSO and would be deemed to be in breach of their order; and, further, should they unlawfully remove the vest during the period when undertaking CSO, they would not be credited with any hours so worked for that day and would be deemed to be in breach of their order. By way of complete contrast on the matter of the vests, I recalled that several offenders had turned up at the office to sign up for their CSO and had wanted to know when they could pick up their vests! At first glance, it would seem that the vest had achieved something akin to a negative status symbol among a number of the offenders, who, by donning the vest (a dubious badge of honour), could show that they had effectively ‘arrived’ as offenders.

The offenders made no untoward comments about the Community Corrections office, its personnel, or the field supervision. Their collective attitude towards CSO was that they had broken the law or had been unable to pay fines that had been legitimately imposed and were therefore prepared to wear the consequences of their actions. In regard to CSO supervision, they felt, if anything, that Simon was a bit ‘soft’ in his handling of them in that he tended to ‘mother’ them a little but, by and large, the offenders genuinely appreciated his efforts towards them. Later, in talking to Simon separately, I learned he had also initiated a little project whereby all the empty soft drink and beer cans, when collected, were taken to a returns depot, and the money obtained for them was used to buy lunch for a number of the offenders who, being unemployed and not very adept at managing their limited personal finances, often turned up for CSO work without anything to eat or drink during the day and with no means of buying same.
This practice by Simon had a two-way benefit: it ensured that offenders were able to have some sort of mid-day meal at no cost to Simon, the government or the community. The offenders responded in kind, by giving a 100 per cent effort in their work.

Simon was quite proud of his workers and what they were able to achieve with the limited resources available. He also thought that some offenders were probably penalised a little harshly in that a few of the jobs they were required to do and the conditions under which they were required to do them - in oppressive and often inclement weather - were quite onerous. He was keen to approach Darwin Community Corrections Office management and suggest they might consider allowing 'bonus' hours in certain circumstances. In other words, if a particular project was a very difficult one or had to be done under quite extreme conditions, the offender(s) could receive credit of an additional number of hours. In effect, this would mean that if they had worked for eight hours they could actually be credited with nine or ten hours (such a system had operated successfully in the Australian Capital Territory for a number of years). It was seen by Simon as a positive incentive for offenders to do well in the tasks they were allocated. Moreover, it also had the added, if unintended, advantage of enhancing the relationship between the offender, the supervisor, and Darwin Community Corrections Office management, because it meant that their efforts were being recognised in a concrete way - that is, by a remission of their hours. Also, provided that it was closely monitored, it was not the sort of system that could be openly abused. But given the prevailing attitude of the Northern Territory Government towards CSO, the collective view that CSO was a 'soft option,' and the imminent introduction of a Punitive Work Order, it was highly unlikely that such an incentive scheme would be favourably received. The attitude of the offenders towards each other was, generally speaking, quite supportive. They helped one another, shared a smoke or a mug of water and generally seemed concerned for each other's welfare. There was no putting down of colleagues by the group, although one young offender who regularly turned up to CSO with facial bruises and cuts - the result of beatings he received at the hands of his Army officer father - was regarded as 'a bit strange' by some of the group. It seems he often recounted stories to the group of awkward scrapes he had got himself into, and many of the group perceived his story-telling as a form of bravado on his part to impress them. They did not dislike him but treated his stories with some scepticism. I gather he felt the
storytelling was a way to gain acceptance of the group because in other respects, he kept pretty much to himself.

As the work day drew to a close, the co-operation among the offenders with one another was again in evidence, as they cleaned all the equipment they had been using during the day and placed same in the security compound at the rear of the gym. Having completed that task, all of the offenders then filed into the small, temporary site office to physically sign off for the day on an attendance sheet, which was then counter-signed by Simon.

Brisbane - Monday, 18 August 1997:

The meeting point today was at the other end of Herschel Street, at 8.00am, and the supervisor was Gary. For the third morning in a row, only a small number of offenders turned up to sign on - four (out of a possible nine). The weather certainly was not a factor: fine, with an expected maximum of 23°C, the same as it had been for the previous three days. We left shortly after 8.00am and headed out towards the Main Roads Department project on the Southport Freeway. I did as I had done the previous two days, and introduced myself to the four offenders, who were different again from the other two gangs, and explained why I was there and what I hoped to achieve by taking part in the day's activities. Their reaction was much like the Saturday crew, so I didn't push it (the Saturday crew's attitude to my presence was one of polite but cool indifference). On the way, we called in at the Main Roads Depot to pick up a trailer, some empty wastepaper bags, pig-stickers (for picking up paper, plastic and other roadside rubbish), 'sharps' containers for needles, and, of course, gloves. The Main Roads project, I was informed, was a 'fee for service' project, in that a certain number of offenders (and a supervisor paid by the Main Roads Department) were allocated a specific section of, in this case, the Southport Freeway, to clear of roadside litter. For that work, Queensland Corrections (or QCORR) received a pre-determined fee. This arrangement was of no consequence to the offenders, since they were working off their CSO hours. In turn, the Main Roads' Superintendent was happy for the fee to be paid to QCORR for the litter cleanup work done, because it freed up scarce Main Roads' labour resources for more skilled and urgent tasks. The Department also saved some hundreds of dollars per week in labour costs. I was further given to understand that this type of
'contracting out' of jobs like the litter patrol was the way of the future for the Main Roads Department (and, no doubt, for most other Government instrumentalities). The ever-increasing demand of those in charge of the purse strings for Departments to cut costs wherever possible would, in all likelihood, push other public service organisations down the same path. One of my major concerns was 'what would happen if no offenders turned up for several Mondays in succession? Would QCORR have to use its own staff to make up the numbers for this project?' For today, however, I kept my own counsel, having decided to speak to Ann, tomorrow, about this inter-Departmental 'arrangement.'

We eventually arrived at the day's starting point on the southbound side of the freeway, whereupon Gary allocated two offenders to start at this drop-off point and work their way south. The other two offenders were to be driven about 500 metres further along the freeway and they would then work their way back (north) so that both teams would meet approximately in the middle. Gary would then drive ahead of the second team to the next exit off the freeway and double back to where he had dropped off the first team. This would enable him to pick up any large objects such as pieces of truck tyre, large bits of plastic, hubcaps (there were lots of these), and anything else that was too big for the litter bags. I decided to stay with Gary, for the time being, and help him with the larger pieces of rubbish.

Prior to getting the teams started, we placed appropriate 'men at work' signs at two points about one hundred metres north of where the first team was to start. This was a mandatory safety-first requirement by the Main Roads Department of all workers on public roads. Also, none of us were permitted to work outside the designated area, which meant in some parts not crossing a parallel road or an entry or exit lane to the freeway. This requirement was strictly enforced, as any Departmental employee caught doing so was subject to instant dismissal. Where the offenders were concerned, while they couldn't be 'sacked' they would be placed on report (akin to a breach of their order) and, as a bare minimum, banned from any further CSO work with the Main Roads Department. To date, no such action had been required against any offender, which spoke well for the relationship between the supervisor and the offenders on this project. Gary's approach to handling his gang was a little more informal than Ted's with his gangs on the Saturday and Sunday, respectively, and this may have been because of Gary's wood trades' teaching background. In fairness to Ted, however, Ted's function
had been to 'pick up and deliver' to a volunteer supervisor, whereas Gary's was to work in with his crew, directly. One comment made by offenders on both Saturday and Sunday, when I asked their opinion of Ted, was that he was hard but fair. Gary's group, today, was a much more 'hardened' bunch of individuals than Ted's was. One of Gary's offenders had been in and out of prison quite regularly, and was an admitted user of hard drugs, on and off, for twenty-five years. He currently had 240 hours of CSO and expected to be given more, at a later date, because of further charges pending. To his credit, however, this particular offender worked steadily and well all day, as did his colleagues. There was an obviously good rapport between the four offenders and Gary, not unlike what I experienced on the two previous days with the volunteers, and I put this down to the knowledge, experience and ability of both Ted and Gary and, for that matter, the volunteer supervisors, to handle their respective crews. From my experience, volunteer supervision has always had a number of inherent weaknesses. Principal among those weaknesses has been the perennial problems of competence and suitability. Not all volunteer supervisors have been able to fulfil the requirements of supervising CSO offenders. In turn, that has led to problems of offender indiscipline and absenteeism. Subsequent detailed reviews of several CSO programs, elsewhere, have highlighted these problems and suggested ways of rectifying them, such as instituting better monitoring procedures, providing limited training, and utilising improved technology.

Just after midday, we broke for lunch and went to a nearby park with plenty of seating and shade. The offenders stayed in their twosomes, and I gathered that this was the way this crew always worked, since they were regular Monday attendees. One offender from each team had been able to purchase something for lunch earlier that morning, while the other member had nothing. I mentioned this observation to Gary who stated that the reason was probably an indication that this week was dole cheque week - that is, the two not eating had no money to buy anything. Having encountered a similar situation with offenders in the ACT, I made no move to redress the possibly embarrassing predicament of these two offenders, lest it be misinterpreted as a way of trying to 'buy' their friendship. Dignity and a limited independence are sometimes all an offender has left. We resumed our cleanup after the lunch break, observing the same procedures as in the morning session. I could well understand why the Main Roads Department was so insistent about safety-first practices. The speed at which some of the larger vehicles hurtled along the freeway was quite unnerving. The air that was disturbed
by the passing vehicles was, at times, very turbulent, acting like the suction of a vacuum cleaner, and presented a real danger to life and limb when working near the edge of the road. Gary told me that some areas of the freeway were now permanently off-limits to cleanup staff, because of the hazards of passing traffic. This meant that such areas were no longer cleaned of litter and, in turn, with the expected build up of rubbish along the roadside, a potential accident was in the making as wind gusts stirred up the litter and blew some of it onto the traffic lanes and into the path of oncoming vehicles. It seemed to me this was an unintended consequence from the original idea to speed up the freeway traffic flow. The rest of the afternoon passed uneventfully and, by about 2.40pm the trailer was completely full with rubbish. This worked in well with Gary's timetable, because he had to return to the Main Roads depot and empty the trailer, put away all the tools, equipment, and the trailer, wash the troop carrier, do the necessary paperwork for both the Main Roads and the offenders, and then drive back to Herschel Street to drop off the offenders. The unity of the work-gang was again highlighted with the way that all four offenders mucked in to unloading the trailer of its rubbish and equipment, and cleaned and hosed down the troop carrier. No one stood by and watched others do the work; and each knew what was expected of them and did it. The irony was that once their CSO hours were done, this close-knit crew would cease to be.

**Conclusion**

I have sought to give a broad understanding of as many aspects as possible of the Australian experience with the CSO scheme. Thus, this chapter has described the underlying philosophy, typology, characteristics, and the history of CSO in Australia, between 1972 and 1985. It has also clarified the origin of the CSO's alleged New Zealand forerunner (the Juvenile Periodic Detention Order) that influenced, in a major way, the subsequent British and Australian Adult Periodic Detention Centre models. It has examined, too, the various differences among Australian jurisdictions in the way that the CSO legislation of each was drafted, and some of the reasons for those differences. The fieldnote excerpts given to indicate a typical CSO working day tell only a small part of the story. And, while they give an indication of the perceptions and
attitudes of some offenders, a more detailed treatment and analysis can be found in works aimed specifically at those and related areas: for example, Leibrich (1985); Pease (1981, 1985); Vass (1990); Vass and Menzies (1989); and (Young, 1979).

In the next two chapters, I examine the underlying sociological theory of decarceration and restorative justice in order to locate CSO within the context of the Australian criminal justice system. Chapter Three develops in much greater detail the socio-historical material described in the preceding two chapters, in that it analyses the world-wide move away from custodial incapacitation, from the 1960s onwards, to decarceration. The principal aim of such in-depth analysis is to demonstrate that the decarceration literature, which has arisen as a result of that move away from custodial incapacitation, is an explanation for why community corrections and, thus, CSO, has occurred. Chapter Four also develops Chapters One and Two in much greater detail but does so within the boundaries of the informal restorative justice movement, and on a different level to that of the formal criminal justice system of Chapter Three. Where Chapter Three concerns itself with what is actually happening in community corrections, Chapter Four focuses on what ought to happen. In theoretical terms, both chapters are quite dense as regards the material covered and the way it is presented. Such coverage and presentation is necessary, however, because it would otherwise be difficult if not impossible to make sense of the present arguments for and against community corrections' sanctions. Nor would the reader be able to comprehend the present drive by governments, both in Australia and overseas, for criminal justice systems to be made more punitive and retributive and less rehabilitative.
PART B

THEORETICAL AND METHODOLOGICAL FRAMEWORK
Synopsis

This section encompasses the theoretical and methodological framework that underlies the main thesis question. The manner in which that question is resolved is the subject matter of Part C of this thesis.

Chapter 3. Punishment Policies in transition

Expands upon Chapters One and Two and explains the trend, from the 1960s, towards community corrections. It shows that the decarceration literature is an explanation for why community corrections has occurred and why it has become supplementary to rather than a substitute for imprisonment.

Chapter 4. The Restorative Justice Movement

Develops Chapter Three in more detail by describing and discussing the restorative justice movement and the way it would prefer to see community corrections in general and the community service order in particular develop. It also looks at the questions raised about whether community service orders have developed in the way the restorative justice movement would hope they might.

Chapter 5. Background to the Study

Details the methodologies used in gathering data for this thesis, and explains why specific jurisdictions were chosen for three case studies. Also reflects upon some of the practical and ethical issues raised by the study - for example, offender confidentiality, the use of research findings to justify more punitive policies against offenders, and State intrusion into the research.
Chapter Three
Punishment Policies in Transition

The idea of laws fashioned in an emotional political climate as quick fixes for social ills does not seem sensible or acceptable for [any] society.

David Shichor and Dale K Sechrest

Introduction

This chapter develops in much greater detail the historical material described in Chapters One and Two, by analysing the trend away from imprisonment and towards decarceration from the 1960s onwards. The main aim of this chapter is to show that the decarceration literature which has arisen as a result of that trend is an explanation for why the phenomenon of community corrections has occurred, and why it has become supplementary to rather than a substitute for imprisonment. Consequently, this and the following two chapters are the theoretical links between the historical aspects described in Chapters One and Two, and the empirical and practical sociological issues examined in Chapters Six through Nine. In developing the theoretical framework of this chapter, reference is made to several interconnected issues in sociological theory - deviance, punishment, social control, and the transition from punishment in custody to punishment in the community. The rationale for this approach is that any explanation about (a) the way in which offenders and victims are viewed, and (b) major changes in punishment policies, should include an acknowledgment of both the populations or groups affected by and the reasons for such changes. This is a necessary first step to establishing the overarching sociological theory from which this thesis is to be viewed and, equally importantly, to indicate that all players in the respective criminal justice systems have a role to play in these changes.

systems have a contribution to make to eventual outcomes. Put another way, it is not enough to examine just one side of an issue - for example, the offender as an unwilling victim of rampant capitalism - without also examining other sides, such as the role of capital, the State, labour, and their effects upon victims, offenders and communities.

Drawing upon the works of Anleu (1991), Box (1971), Cohen (1971), and Davis (1975), among others, I begin with a brief overview of selected theoretical perspectives of deviance: the Chicago School, anomie, value-conflict, labelling, political economy or social control, and the main variants of feminism. Following that overview, the next part of this chapter briefly deals with five key criminal justice concepts: punishment, retribution, deterrence, incapacitation, and rehabilitation. These interrelated concepts help to highlight changes over time from incarceration to decarceration via intermediate and other sanctions. To a lesser extent, these key concepts also reflect the public's views about deviant behaviour as well as their expectations and demands about law and order issues generally. Also, such views, expectations and demands tend to be manipulated by bureaucracies, politicians, and sections of the media, as governments and other vested interests seek to win hearts and minds or to justify their actions (Barrat, 1986; Chan, 1992; Findlay, 1982; Windschuttle, 1981).

The third and final section of this chapter examines the theoretical and practical issues surrounding the transition from incarceration to decarceration, and the implications for all of the parties involved as a result of the particular policies that have been adopted. Allied to these three sections must also be an awareness that criminal justice policies are not formulated in a vacuum but are much influenced by many factors, some of them interconnected. For example, the law, public opinion, and a combination of political ideologies, personal beliefs, and economic and social imperatives (all of which guide the decision-making processes). Similar influences also apply at the sentencing level where, particularly in the absence of any formal sentencing guidelines, offenders may commit similar crimes yet not receive similar sentences. Although such sentencing issues are ancillary to the main explanation of
policy shifts from incarceration to decarceration, they nevertheless play a role in that explanation. Thus taken together, the three sections of this chapter - constructions of deviance, concepts in a criminal justice system, and the rise of community corrections - constitute the major theoretical framework upon which my arguments in the body of this thesis will be based.

Sociological Constructions of Deviance

Preamble:

The kind of information and misinformation that others possess about our activities conditions both our acceptability to others and the extent to which we are admitted to specific forms of social discourse and interaction. Moreover, to become unacceptable and disreputable to others, it is not necessary to be involved, either directly or unambiguously, in some form of socially disapproved activity. This is because exclusion from social interaction is a variable process governed by the participants involved and their particular motives (Hepworth, 1971). For Cohen (1971), a conception of deviance "carries within it a range of evaluative, moral and practical implications" (1971:21). Regarding political conflict or racial disturbances, Cohen castigates the psychiatric profession for its irresponsible dismissal of deviant behaviour as belonging to the lunatic fringe or to hooligans. His views accord with those of Davis (1975), who perceives deviance as being conceived of "as a social pathology, an ethos borrowed from social Darwinism and promoted by elites and their academic and professional supporters" (1975:7). Cohen (1971) argues it is inappropriate to view the deviant's story as the only story or to ignore the suffering, guilt and unhappiness which might be a part of their situation. Box (1971) asserts that deviant behaviour is just another form of rule breaking. He takes issue with a number of writers who confuse their concept of deviancy with the conditions under which deviancy might be recognised, and suggests that in this confusion "they import into their definitions a consensus model of society" (1971:7). Also of concern to Box is 'cultural legitimacy.'
Subscribers to one culture normally attempt to have its major precepts legalized, thus transforming their culture into the dominant culture. But despite this type of success, advocates of the legal culture may not succeed in obtaining its legitimization. That is to say, substantial sections of the population may prefer, or even demand, to behave according to their own cultural standards, thus withholding their consent to the legal code, or at least parts of it (1971:8).

Table 3.1, after Davis (1975), below, delineates and abstracts the main paradigmatic elements of each of the selected theoretical schools in deviance analysis. For the purposes of my arguments in this and later chapters, The Social Control perspective has been included because of its current relevance to Chapters Six, Seven and Nine. In her Introduction, Davis notes a number of shortcomings in the theories she reviews, not least of which is a deficiency in the linkage between theory and fact, since some propositions are incapable of being proven to be either true or false and others may be unable to be tested at all. She also observes that in respect of the particular dominant paradigm, because different methodologies are used for different theoretical frameworks, additional insights are obtained about those paradigms. For example, even when the paradigm appears to have an accumulation of unsolved theoretical problems, there is a built-in resistance to change. Davis argues that, because the techniques and procedures adapted to work with research designs are compellingly efficient, thereby permitting the researcher to take theoretical shortcuts, then paradigms can be locked into fashionable orthodoxies. She suggests that some theorists who are dissatisfied with one school's research products may seek alternative ways of investigating the social world that are more agreeable with their own experiences and training. Hence, this reaction to the dominant methodology may initiate change in the dominant paradigms.
Table 3.1 Main Paradigmatic Elements of Selected Theoretical Schools in Deviance Analysis

<table>
<thead>
<tr>
<th>Elements</th>
<th>The Chicago School</th>
<th>Anomie Theory</th>
<th>Value-Conflict Theory</th>
<th>Labelling Theory</th>
<th>Social Control Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Social/Professional Conditions</td>
<td>Urbanism as a way of life; a university-based discipline free from elite control; city as a social laboratory; dominance of Chicago School in American sociology; applied sociology.</td>
<td>Rise of welfare state; government financing of social science research; academics provide expertise for non-economic social problems (e.g., racial conflict, social consequences of poverty); 'professionalisation' of sociology as community of specialists; tacit identification with control personnel.</td>
<td>Professional recognition of normative pluralism; continuity of social problems approach; conflict in sociological styles of work generated focus on widespread value dissensus and norm violations; sociological response to wartime and middle-class crime; theoretical attempt to extend integrationist question to include conflict and criminality; specialisation of theory in crime studies.</td>
<td>Liberal reaction to bureaucratic state; counter-intellectual tradition; humanistic orientation; identification with underdog as victim; debunking of establishment institutions and sociologies; rejection of formalistic, structural sociology; alternative professional ideologies.</td>
<td>Developed industrial state; political economy fosters inequality of power, wealth, and authority; crisis of legitimacy. Vietnam war, student protests, urban riots, government corruption; concern with underdog alienation; disenchantment with liberal solutions to social problems; counter-ideological tone; radical sociologists' rejection of status quo.</td>
</tr>
<tr>
<td>2. Perspective</td>
<td>Ecology-Interaction; behaviour a product of physical location; modified environmental determinism; duality of material and moral realms; acceptance of urban diversity, but conceived as social disorganisation; deviance as &quot;natural&quot; or disorganised phase of urban life; change as inevitable.</td>
<td>Variant of functionalism; theoretical focus on structural strain or malintegration of social structure; deviance as stress generated by disjuncture between goals of success and structural means for their achievement; utilitarian calculus generates deviance as response to lack of opportunity; institutionalisation of self-interest (legitimization of amorality).</td>
<td>Normative conflict; differential social organisation and association as sources of deviant and criminal behaviour; law as a device of one party in conflict with another; thus crime and punishment perpetuate cultural conflict; deviance as shared cultural tradition; learned primarily in face-to-face groups; modalities of interaction stressed: priority, duration, and intensity; social psychological analysis stressed; differential identification and deviant vocabularies as crucial elements of deviant act.</td>
<td>Secondary deviation; social control leads to deviant identity; i.e., deviance a product of negative reaction by social audiences (usually formal control agents); moral entrepreneurs create rules against the interests of underdogs, rule breaking common; social change inevitable.</td>
<td>Critical theory; political-conflict model of social control; organisational analysis; society as struggle between conflicting groups for scarce commodities, collective activities as outcomes of organisational rivalry and coercion; deviance created by maudistribution of resources inherent in legitimate social order and maintained by exchange within and between controller groups and controlled populations.</td>
</tr>
</tbody>
</table>

Source: N J Davis (1975)
Table 3.1 (Continued)  
Main Paradigmatic Elements of Selected Theoretical Schools in Deviance Analysis

<table>
<thead>
<tr>
<th>Elements</th>
<th>The Chicago School</th>
<th>Anomie Theory</th>
<th>Value-Conflict Theory</th>
<th>Labelling Theory</th>
<th>Social Control Theory</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Metaphor</td>
<td>&quot;Web of life;&quot;</td>
<td>Differential opportunity structure; varieties of official rates of deviance constitute a &quot;normal&quot; response by lower-class offenders to structural deprivation.</td>
<td>&quot;Criminal behaviour system&quot; - career concept emphasised systematic pattern of deviant motives and acts.</td>
<td>&quot;Stigma&quot; - defining, isolating, and punishing the rule breaker creates and perpetuates the deviant identity.</td>
<td>&quot;Structural contradictions&quot; - opposition and cleavage built into social structure, legitimating processes that foster organisation generate counteracting forces.</td>
</tr>
<tr>
<td>4. Themes</td>
<td>Sites and situations: - social worlds - life cycle or career - crisis.</td>
<td>Deviance as individual adaptation; delinquent subculture; culture of poverty.</td>
<td>Criminal behaviour types; victimology.</td>
<td>Collective rule making; social reactors; deviant careers.</td>
<td>Political economy of control; social organisation of social control; responses to control by the controlled.</td>
</tr>
</tbody>
</table>

Source: N J Davis (1975)
The Chicago School:

By the start of the twentieth century, sociologists of the University of Chicago had moved on from a social pathology-social work focus to establishing a research program that used the city and its diverse populations for theory and data (Davis, 1975). The Chicago School, as it came to be known, used the urban locale as a laboratory, and had a central concern for a program that was pragmatic, experimental, and "guided by studies of the varieties of social types" (1975:36). Thus, slums, ghettos, prostitutes, delinquents, ethnic minorities, and the homeless were viewed as natural occurrences in an urban landscape that was always changing.

Although the Chicago School theories were sociologies of society, they viewed deviance as more than an intrinsic part of the social order; "it often constituted the crucial events of a rapidly changing milieu" (1975:64). Gone was the strait-jacketed world view of evil and the need for reform solutions. In its place, the Chicago School adopted a Durkheimian outlook: population growth meant differentiation, diversity, increased competition, and impersonal relations (Wirth, 1938). While conceding that Wirth's thesis of 'urbanism as a way of life' "lays some claim to identifying universal characteristics of life in cities," Giddens (1986:96) is critical of some aspects of the thesis as being unrealistic. For example, Wirth's theory does not have the general application claimed for it; his generalised account of urbanism is mistakenly based solely upon the characteristics of cities themselves; and his approach shows the limits of a 'naturalistic' model of sociology. Also, the Chicago School's 'ecological approach' to the distribution of city neighbourhoods (a theory credited to Robert E Park) is equally unsatisfactory. This is because (a) it is seen to be concerned with contemporary society urbanism; and (b) it depends upon too mechanical a view of the ecological processes that determine the characteristics of city neighbourhoods (Rex and Moore, 1967). Park and other Chicagoans "failed to see the paradox of social control; that is, control creates and perpetuates deviant categories in the first place" (Davis, 1975:44). Despite the shortcomings of Wirth's and Park's theories, the Chicago school proceeded to document "conformity and deviance as natural patterns of urban life" (1975:46).
Anomie Theory:

Like functionalism, anomie comes under the umbrella of normative theories; but, unlike functionalism's general theory of society, anomie theory was the first serious attempt to develop a special theory of deviance, and its champion was Robert Merton (Anleu, 1991; Davis, 1975). Merton's approach is to examine contemporary American culture with its "great emphasis on certain success-goals ... without equivalent emphasis upon institutional means" (1968:190). For individuals unable to pursue the American Dream with its heavy emphasis on achievement and monetary success, Merton looks at the four modes of deviant behaviour adopted as coping mechanisms by those individuals. The first form of this type of behaviour is what Merton calls 'innovation,' which is the retention of cultural goals but the rejection of institutional practices: in short, the resort by individuals to crime to achieve the monetary success. The second form is called 'ritualism,' which is the abandonment of cultural goals but the retention (often compulsively) of institutional practices. Merton cites as an example of this form the over-conforming bureaucrat. The third form is 'retreatism,' wherein both the cultural and institutional goals are totally abandoned in favour of withdrawal from society. Examples of such withdrawal can occur where personal tragedy strikes an individual or their family, in the case of enforced redundancy, or because of a substance abuse problem. The fourth is called 'rebellion,' which arises as a result of conflict between cultural goals and the socially structured difficulties in living up to those goals. On a small scale in a community this can lead to the formation of small sub-groups, whereas, if the rebellion takes hold of a substantial part of society, it can lead to the reshaping of both the normative and the social structure.

According to Davis, anomie theory never developed beyond Merton's efforts, due to "the social-professional conditions of sociology itself" (1975:97). Post-war sociologists adopted the professional-technical model because it offered a rationale for participation in policy decisions and social intervention. Davis saw that deviance research became, in effect, a product to be manipulated by contracting parties who sought to control troublesome behaviour.
Value-Conflict Theory:
Value-conflict theories view deviance and violations of social norms as one and the same, even though explanations of deviance and its origins may differ. For those people in society with a predilection for deviant behaviour, such normative theories hold that social control follows whenever deviance occurs. Erikson (1966) argues that a particular form of behaviour which causes a community to feel threatened will see that community respond by imposing more severe sanctions against it and by devoting more time and effort towards its elimination. Durkheim's view is similar: An action is criminal (or, by implication, deviant) because it shocks the common conscience, not the other way around - that an action shocks the common conscience because it is criminal. "We do not reprove it because it is a crime, but it is a crime because we reprove it" (Durkheim, [1893]1933:81). He argues that crime is 'normal' in a 'healthy' society on the basis that it is but one of many factors in determining 'social health.' Committing a crime will lead to punishment which, in turn, reinforces the core values and collective sentiments that the crime offends - "Thus crime is necessary" ([1895]1982:101). Hence, crime serves the dual purposes of reaffirmation and protection of society's core values and collective sentiments and thus is 'healthy' and not 'diseased' (Morrison, 1995).

By contrast, Sutherland proposes a concept of differential social organisation and association which emphasises that crime and deviance are learned in the same way as 'normal' behaviour (Anleu, 1991; Davis, 1975). In his Principles of Criminology, Sutherland puts forward nine propositions which, among other things, theorise that it is not need (poverty) or values (greed, jealousy) that explain criminal behaviour, but interaction within intimate personal groups (Anleu, 1991; Davis, 1975). He maintains that crime and deviance cross all social borders and are not the exclusive property of the lower-classes (Davis, 1975). Although Sutherland's thesis has some serious shortcomings - for example, his restricted view of political conflict and stratification - Davis suggests it still helped to "eradicate the notion of simple predispositional factors in human behaviour" (1975:139). She posits that it also dispensed with "an individualistic model of crime causation, and ended the ... almost exclusive attention
given to lower-class crime" (1975:139). For Davis, value-conflict theory, with its premise that deviance is created by law and social control, was the starting point for analysing social reaction and its consequences for a deviant identity.

Labelling Theory:

Labelling theories (or theories of symbolic interactionism) are concerned with differentiating deviance from rule-breaking behaviour, and concentrate not upon the deviant but upon society and its reaction to the rule-breaking and to the actors involved (Becker, 1963, 1964: Davis, 1975; Schur, 1971). Becker's frequently cited definition of deviance well illustrates the labelling perspective:

Deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender." The deviant is one to whom the label has successfully been applied; deviant behaviour is behaviour that people so label (Becker, 1963:9, emphasis in original).

According to Anleu (1991) and Schur (1971), labelling theory had its genesis in the work of George Herbert Mead, whose interactionist tradition sees deviance not as a static phenomenon but one resulting from dynamic processes of social interaction. Becker concentrated on the societal-reaction (or primary-deviation) aspect: primary-deviation is polygenetic and arises from a number of factors - psychological, physiological, cultural and social. Lemert (1967), by contrast, distinguished a secondary-deviation aspect: this refers to the socially-defined responses the individual makes to the facts of his or her deviance (Davis, 1975). Davis points out that this 'secondary-deviation' thesis generated considerable research, but it was research away from Lemert's core proposition of a social control model and the policies and decisions of the labellers, towards the reaction of the labelled. For Anleu (1991), major failings of this social psychological preoccupation with the labelled are that it ignores self-labelling processes, does not explain why some actors are motivated to break rules, and ignores the deterrent effects of sanctioning. As if to underscore such failings of labelling theorists, "McLuhan has exhorted us to love our labels as ourselves, since social labels are derived from the ways in which others see us" (Hepworth, 1971:197).
Yet, insofar as labelling theory implies that deviants 'are so labelled' (or created) by the actions of a state control mechanism that churns out uniform deviant identities, I would argue that it is overly deterministic. Moreover, as Davis notes, the labelling perspective, like other deviance sociologies,

expresses the professional interests and values of its proponents. Allegations of conceptual erosion [Manning, 1973] imply that it is time to seek an alternative mode of explanation which fits different social conditions, professional inquiries, and contemporary problems (1975:170).

Labelling theory reached its peak in the 1960s (Anleu, 1991), but by the mid-1970s fell from favour, due largely to its failure to provide empirical support for explanations of social change and control (Davis, 1975).

**Political Economy or Social Control Theory:**

Within the normative tradition, another type of theory - control theory - holds that the 'correct' approach is to explain conformity to rules rather than deviance from them, and two leading proponents of this approach are Box (1971) and Hirschi (1970). In the content and application of criminal laws, during the 1970s, the importance of power and conflict was reflected in the development of deviance theories which were more concerned with social structure than social interaction. And although they included many aspects of labelling theory, they were referred to as the 'critical' or 'conflict' or 'radical' or 'Marxist' criminology (Anleu, 1991). Such conflict or political economy theories, in addition to emphasising social structure rather than social interaction, are concerned with why certain behaviour is defined as criminal, and not why individuals or groups are motivated to become criminally deviant (Anleu, 1991; Box, 1971; Davis, 1975). Put another way, these types of theories argue that criminal law norms perpetuate the interests of dominant groups instead of reflecting social consensus, thus working against those of subordinated groups (Anleu, 1991). According to Anleu, these theories "do not approach the criminal law or the enforcement agencies as mechanisms of dispute resolution or social control, but as a manifestation or outcome of social conflict and diversity" (1991:38). However, for Box (1971), Davis
(1975), and Hirschi (1970), the social control aspect is intimately bound up in these political-conflict theories. Also, as Box suggests, control theory makes no assumptions as to the inherent wickedness or deviousness of any actor, since these are evaluative labels attached to such behaviour by others (Box, 1971).

For Box (1971), an actor's propensity to indulge in deviant behaviour is governed by three elements - attachments, commitments, and beliefs - "which tie an individual to the "conventional order"" (Box, 1971:141). Attachment refers to an actor's sensitivity, and for control theorists this means that the extent to which an actor is sensitive to the opinion or expectations of others is dependent upon the quality of the social relationship, not upon a personal attribute. Commitment refers to the rational element in a social bond or relationship which, in control theory, may be crudely translated as 'What's in it for me?'. Becker (1963) suggests that, in the commitment process, "normal" individuals weigh up the consequences of past actions and what they stand to lose (or gain) by indulging in rule-breaking behaviour. Usually, but not always, they are able to decide that the costs of rule-breaking outweigh the possible benefits. Beliefs refer to the capacity of human beings to be able to evaluate moral and social issues and take a stand on them.

Control theorists assume that actors do not have to experience special circumstances in order to want to engage in rule-breaking behaviour, this is because such behaviour comes naturally. They also assume that the extent to which people believe they should obey society's rules varies, and, moreover, the less a person believes in obeying the rules, the more they are likely to break them (Hirschi, 1970). Control theorists' propositions are formulated in terms of what is possible rather than what is required or determined (Matza, 1964). If an actor rejects conventional values then they have the option to indulge in deviant behaviour should they so choose (Box, 1971). These three elements and the arguments they involve are depicted in Figure 3.1, below, and are expanded upon in Figures 3.2 and 3.3 that follow, by illustrating the ways in which official deviants and secondary deviants are 'socially constructed.'
Figure 3.1  Factors Affecting Willingness and Decision to Engage in Deviant Behaviour

Patterns and imputed meanings of interaction with parents, relatives, friends, state officials, and X others

Attachment  
- strong  
- weak

Commitment  
- strong  
- weak

Conventional beliefs  
- accepts  
- rejects

Willingness to engage in unconventional, including criminal, conduct

Secrecy  
- inhibiting  
- no fear of detection

Supply  
- difficult to acquire  
- easy to acquire

Symbolic support  
- lack of definitions favourable to deviance  
- excess of definitions favourable to deviance

Skills  
- Special training  
- required  
- similar to conventional skills

Social Support  
- has no deviant friends  
- has deviant friends

If expected rewards from specific deviant act more than perceived costs, then high probability that deviance will occur

Outcome: see figures 3.2 & 3.3

Legend: Contingency lines; Causal lines; Feedback causal lines.

Source: (Adapted from) S. Box (1971).
Figure 3.2  The Social Construction of Official Statistics on Crime and Criminals

Deviant act committed see Fig. 3.1

Not reported not observed

Not taken seriously

Reported

Taken seriously by police

Preference, civility and social status of complainant; seriousness of offence

Institution of routine suspicion

Detecting; apprehended

Factors affecting police decisions

Perceived standards of higher class morality; inter-organisational obligations; ambiguity of behaviour and legal statutes; personal and occupational risks; typifications of criminals; behaviour and attributes of suspect; record. Dramaturgical skills of suspect.

Warning; release

Station arrest

Charge; court

Quality of legal representation; potential usefulness; 'normal' crime? offence; record.

Trial verdict

Guilty plea

Guilty

Not guilty

Sentence

Unconditional discharge

Fine

Probation

Sentence

Prison or similar institution

CSO

Legend: 
- - Into official data;
--- Out of official data;
--- - Factors affecting community or official decisions.

Source: (Adapted from) S. Box (1971).
Chapter Three
Punishment Policies in Transition

Figure 3.3 Becoming Deviant: The Politics of Identity

Legend: Major pathways to accepting deviant identity. NB. Does not mean that most people who commit a deviant act will travel this path.

Source: (Adapted from) S. Box (1971).
Feminist Theory:

Lengermann and Niebrugge (1996) argue that feminist theory developed from a woman-centred perspective and is a generalised, wide-ranging system of ideas about social life and human experience. It is woman-centred (or women-centred) in three ways. First, its main starting point of all investigation is the situation (or situations) and experiences of women in society. Next, it treats women as the central subjects in the investigative process. Thirdly, it is critical and activist on behalf of all women and seeks to produce a better world for women and, ultimately, for humankind. According to Lengermann and Niebrugge, the impetus for contemporary feminist theory began with a simple question: "And what about the women?" That is, where are the women in any situation being investigated? If they are not present, why? If they are present, what exactly are they doing? How do they experience the situation? What do they contribute to it? What does it mean to them? (1996:438).

Since this first simple question - "And what about the women?" - called for a description of the social world, a second question was needed to explain that world: "Why then is all this as it is?" Attempts by feminism to answer these questions have, according to Lengermann and Niebrugge, produced a theory of universal importance for sociology. In the intervening twenty-five years, they see the search for answers to these questions has led to what is now called 'third-wave feminism,' a movement focussed on, among other things, an intense interest in the issue of differences among women (1996:438). Out of this interest has come a third basic question: "And what about the differences among women?" Lengermann and Niebrugge state that this third question is feminism's qualifying question since it leads to a general conclusion that the invisibility, inequality, and role differences in relation to men which generally characterise women's lives are in their particularities profoundly affected by a woman's social location - that is, by her class, race, age, affectional preference, marital status, religion, ethnicity, and global location (1996:438-439).

Feminist theory can be classified into four main streams: gender difference, gender inequality, gender oppression, and third-wave feminism. Table 3.2: 'Overview of Varieties of Feminist Theories' presents an overview of these four streams in relation to the first two basic feminist questions.
Table 3.2 Overview of Varieties of Feminist Theory

<table>
<thead>
<tr>
<th>Basic varieties of Feminist theory - answers to the descriptive question: &quot;And what about the women?&quot;</th>
<th>Distinctions within theories - answers to the explanatory question: &quot;Why then is all this as it is?&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender difference</td>
<td>Cultural feminism</td>
</tr>
<tr>
<td>Women's location in and experience of, most situations is different from that of men in the situation.</td>
<td>Biological</td>
</tr>
<tr>
<td></td>
<td>Institutional and socialisation</td>
</tr>
<tr>
<td></td>
<td>Social-psychological</td>
</tr>
<tr>
<td>Gender inequality</td>
<td>Liberal feminism</td>
</tr>
<tr>
<td>Women's location in most situations is not only different but also less privileged than or unequal to that of men.</td>
<td>Marxian</td>
</tr>
<tr>
<td></td>
<td>Marx and Engel's explanations</td>
</tr>
<tr>
<td></td>
<td>Contemporary Marxian explanations</td>
</tr>
<tr>
<td>Gender oppression</td>
<td>Psychoanalytic feminism</td>
</tr>
<tr>
<td>Women are oppressed, not just different from or unequal to, but actively restrained, subordianted, moulded, and used and abused by men.</td>
<td>Radical feminism</td>
</tr>
<tr>
<td></td>
<td>Socialist feminism</td>
</tr>
<tr>
<td>Third-wave feminism</td>
<td>Diversity</td>
</tr>
<tr>
<td>Women's experience of difference, inequality, and oppression varies by their social location.</td>
<td>Critique</td>
</tr>
<tr>
<td></td>
<td>Vectors</td>
</tr>
</tbody>
</table>

Source: (Adapted from) Lengermann and Niebrugge (1996)

Feminist theories of deviance are, therefore, predominantly criticisms of all other theories of deviance because those theories concentrate upon deviant males and ignore or are biased against deviant females. This is not surprising, male is the norm, so "to be female is to be deviant ... women thus face a double bind. Gender norms make women deviant but deviation from those norms invokes more deviant labels" (Anleu, 1991:46). Brown (1986) makes a similar case: "the crime of the deviant woman is first and foremost a crime against her nature as a woman and only secondly against the state" (1986:360). Lombroso and Ferrero's atavistic assessment, in 1895, of female criminals - that they are less criminal than men because "their lack of intelligence, passion and sedentary lifestyle restrain them" (Anleu, 1991:44-45) is, when viewed
from the 1990s, laughably out of touch with reality. This is even more so when examining their argument that "the born female criminal, the prototype being the prostitute, possesses all the criminal qualities of men combined with women's worst characteristics, namely cunning, spite and deceitfulness" (Lombroso and Ferrero, 1895:103-114). Sadly, such arguments tell nothing of the social, economic, political and biological barriers that confronted women in 1895, but do say a great deal about male attitudes towards women at that time. In the one hundred years since, many would argue that such attitudes have changed little (Anleu, 1991; Brown, 1986; Smart, 1976).

Theoretical Concepts in a Criminal Justice System

Punishment:

Garland (1990) states that punishment is, among other things, "an apparatus for dealing with criminals [and] an economically conditioned social policy" (1990:287).

Punishment is ... the legal process whereby violators of the criminal law are condemned and sanctioned in accordance with specified legal categories and procedures. This process is itself complex and differentiated ... It involves discursive frameworks of authority and condemnation, ritual procedures of imposing punishment, a repertoire of penal sanctions, institutions and agencies for the enforcement of sanctions and a rhetoric of symbols, figures, and images by means of which the penal process is represented to its various audiences (1990:17).

At any given time, the forms of punishment used by a society are guided by a number of intentions and interests (Beattie, 1986). And as Chan (1992) points out, our attempts to change a deeply social issue into a technical task for specialist institutions account for much of our disappointment and frustration with aspects of punishment. Theories of punishment, like those of retribution, deterrence, and incapacitation, are not, in the strictest scientific sense, theories at all, since unlike, say, Newton's theories about the earth's gravity, they cannot be subjected to empirical investigation (Hart, 1957; Michael and Adler, 1933; Reid, 1979). In effect, such criminal justice theories are largely recommendations rather than propositions able to be evaluated factually (Honderich, 1971; Zimring and Hawkins, 1973). This does not mean that, because they cannot be subjected to empirical scrutiny, they are of little or no value. Far from it. As Garland
argues, theory assists in thinking about the real world of practice in such a way as to enable us "to develop analytical tools and ways of thinking which question ... established habits of thought and action, and seek alternatives to them" (1990:277). In a practical sense, punishment is involved in decarceration in one form or another, and punishment, in turn, is an absolute requirement if a society's laws are to be effective because, in the absence of its operation, the law would have little or no meaning. As Andenaes (1974) has so succinctly put it, if it is ethically justifiable to make laws for the regulation of human conduct, it cannot be considered ethically unjust to apply those laws in the event of a breach of such regulation.

Put another way, the main rationale of criminal punishment is in proclaiming certain standards of (expected) behaviour, attaching penalties for deviations from those standards, and then allowing individuals to choose to abide by or deviate from them (Hart, 1968). Punishment in developed legal systems is "the authoritative infliction of pain or other deprivation on a person for (or because of) an offence which he has committed" (Honderich, 1971:19. See, also, Ginsberg, 1965; Von Hirsch, 1976; and Zimring and Hawkins, 1973). A more Durkheimian version is offered by Andenaes: "Punishment is an expression of society's disapproval of the act, and the degree of disapproval is expressed by the magnitude of punishment" (Andenaes, 1974:25). Skinner (1971) views punishment as a behaviour-modification process whose actual outcomes do not always accord with intended outcomes: "a person who has been punished is not thereby simply less inclined to behave in a given way; at best, he learns how to avoid punishment" (1971:81). But Carlen notes that theories of punishment have been concerned more with the right to punish than with the power to punish and "present debates emphasise the rights (divine, human, legal or otherwise) of individuals" (1983:203-4). She argues that the concept of rights is problematic and the discussion of rights is "all things to all people" (1983:204).

In relation to CSO, punishment is a principal component of the sanction, in that it is a fine on the offender's leisure time. By requiring an offender to make good, symbolically, the damage or loss caused as a result of their actions by performing
unpaid labour for a specified number of hours, punishment can be said to be both appropriate and justified. The manner in which that unpaid labour is implemented is a function of the sentencing court and the relevant Act(s) by which it is governed, as is any action against the offender for subsequent non-compliance of the order.

Retribution:

The theory of retributive punishment (also regarded as the doctrine of legal revenge) holds that the wrong-doer should suffer for their crime by way of retaliation even though, arguably, no benefit will accrue to either the wrong-doer or to others. This theory is backward-looking and based solely upon vindictive justice (Reid, 1979). The philosophy behind this eye-for-an-eye doctrine can be traced back to pre-Biblical times and has survived into the latter half of the twentieth century. Witness the Iowa Supreme Court decision in *State v. Rinehart*, 125 N.W. 2d 242, 247 (1963), in which a fifteen-year-old boy was sentenced to life imprisonment upon his conviction for the murder of a young woman. The court judgement reads in part:

> It is true that for a boy of fifteen a sentence for life seems a long time, but we must remember that as judge, jury and executioner he imposed a sentence to eternity upon [the victim] ... The Old Testament doctrine of "an eye for an eye and a tooth for a tooth" without doubt seems harsh to the criminal, who prefers the modern trend toward rehabilitation and "the humanities." But the loser of the eye, or the tooth, may well have a different viewpoint: and so should those who have not yet lost eyes, or teeth, or their lives (Cited in: Reid, 1979:587-588).

The 'just deserts' rationale that is often associated with retributive punishment holds that 'we are justified in punishing because and only because offenders deserve it' (Moore, 1992). If a person were only to be punished as they deserved (in line with the notion of just deserts), all that would matter was what that person actually did - there would be no need to take account of extenuating circumstances (Honderich, 1971). Such 'punishment in kind' may well prove suitable or effective in certain instances: a Cleveland youth, in 1971, was sentenced to spend several hours in a pig pen (replete with hogs and pigs) in lieu of thirty days in jail, because he had called a policeman a
pig for giving a motorist a ticket (Reid, 1979). For an opposing view, however, see, for example, Clear (1996), who proposes that, under certain conditions, deserved punishment might be foregone. Carlen (1983) states that the retributive infliction of pain has been seen "as an inevitable component of the good social life [yet] punishment in general and imprisonment in particular [have failed] either to diminish law-breaking or to reform those who engage in it" (1983:203-4). Davies (1993) supports the inclusion of retributive principles in the aims of the criminal justice system: "they set clear limits on that system as to who, how and when it can act against an individual [and] they provide the justification for civil rights within the criminal justice system" (1993:11).

In respect of CSO, retribution is a component of the sanction, but only to the extent that the offender should make good the loss or damage that their actions have caused. For example, if a person is caught and convicted of unlawfully writing graffiti on public or private property, it would be appropriate for that person to be required to remove said graffiti. The penalty would be regarded by most as 'just deserts,' and the notion of "extenuating circumstances" raised by Honderich would be a non-issue.

Deterrence:

Whereas retribution theory may often be characterised as an account of the justification of punishment which looks to the past, deterrence theory finds no such justification for action in a past offence (Honderich, 1971). What deterrence theory does regard as of the utmost importance is that offences are prevented by punishment. Unlike retributive punishment, "deterrence, both general and special, is one of the traditionally accepted aims of the criminal law" (Andenaes, 1970:649). General deterrence (referred to by some as general prevention) is used "to signify the motivating effect of the threat of punishment ... special or specific deterrence (otherwise called individual prevention) is used to signify the effects of actual punishment" (Andenaes, 1974:173). Zimring and Hawkins (1973) see deterrence as threatening some harm, loss, or pain for non-compliance. They make what they call a "crucial" distinction between
'absolute' and 'marginal' deterrence. Absolute deterrence refers to the comparison between behaviour that would result from a particular threat with behaviour that would result from the removal of that threat. Marginal deterrence, on the other hand, is the comparison of one type of threat with another type of threat, and they use the example of a threat of $y$ years in prison compared to a threat of $y + 10$ years in prison.

Their view of simple deterrence is that threatened unpleasantness of the specific consequences can reduce crime by causing a change of heart (1973. See, too, Honderich, 1971). Reid (1979) says proponents of the notion that punishment is a general deterrent base their beliefs mainly on conjecture or emotion rather than on hard evidence. She adds that such beliefs help explain why legislatures impose harsher penalties with the expectation that crime rates will decrease. For DeJong (1997) and Zimring and Hawkins (1973), specific deterrence theory suggests that experience of a severe sanction is much more likely to deter than one which is not severe. While such an experience may heighten a person's view of punishment's certainty or severity, DeJong points to an approach that is more sophisticated, which treats deterrence as a conditional phenomenon.

Although deterrence is a hoped-for outcome of a CSO sentence, few law enforcement practitioners would subscribe to the view that CSO deters offenders from reoffending or that would-be offenders are deterred by the prospect of being sentenced to CSO. The current literature and evidence from court transcripts supports this view - see, for example, the British Home Office (1986) Report, Sentence of the Court. With the recent imposition of very punitive CSOs, such as those in Victoria and Queensland, it might be argued that they have some inherent deterrence value but this remains to be seen. Moreover, the type of offender on whom a very punitive type of CSO is imposed is, invariably, not your first-time offender, but is more likely to be a hardened recidivist.
Incapacitation:

According to Zimring and Hawkins (1995), the prison is intended to restrain those under its control - that is, incapacitation is central, and all other incarceration objectives are ancillary to it. A decade earlier, Morris and Miller (1985) stated that the efforts to predict dangerousness and to apply the pre-emptive strike in the criminal justice system were reflected in "policies of selective law enforcement, selective prosecution, and selective incapacitation" (1985:6, 10). But they accept the conclusions of Floud and Young (1981), and Monahan (1981) on the limits of predictive capacity. Morris and Miller concede that with present knowledge and the best possible long-term predictions of violent behaviour, "we can expect to make one true positive prediction of violence to the person for every two false positive predictions" (1985:15-16).

Von Hirsch's 'Report of the Committee for the Study of Incarceration', defines incarceration as "collective residential restraint" (1976:107). A narrower concept of incapacitation is seen as predictive restraint, which is the selection of particular individuals to be incapacitated made on the basis of "a prediction of their criminal tendencies" (1976:19). The difficulty with such predictions is the basis upon which they are made - dangerousness - and the guarantee of their accuracy, given the very high sample number required to identify even a small number of 'definite' recidivists. Also, what proportion of 'false positives' will be 'acceptable' and how will it be justified? Von Hirsch (1976) states that irrespective of the benefits of predictive restraint, "confining the false positives is dubious justice" (1976:107). In a similar way, dangerousness needs clarifying. With regard to incapacitation, dangerousness is viewed as "intentional behaviour that is physically dangerous to the person or threatens a person or persons other than the perpetrator - in effect, [it is] assaultive criminality" (Morris and Miller, 1985:11). But which one takes priority, the risk of harm to potential victims or the risk of unnecessarily detaining (false positive) offenders judged to be dangerous? Complicating such a decision is the heavy reliance placed on those making the predictions. A case in point is the Barefoot v Estelle (1983) judgement. Briefly, the US Supreme Court was required to determine whether the Texas death penalty statute...
permits a finding of future dangerousness to justify a capital sentence. The Court, in its deliberations, also had to consider the constitutionality of testimony given under that statute. At issue was the testimony given by two psychiatrists, neither of whom had personally interviewed nor clinically examined the defendant, Thomas A Barefoot. The Court held "Psychiatric testimony need not be based on personal examination of the defendant but may properly be given in response to hypothetical questions" (Barefoot v Estelle (1983))\(^2\) (Cited in: Morris and Miller, 1985:32-33).

Yet, according to Jacqueline Cohen (1983), policies of collective incapacitation involving uniform increases in the use of a custodial term for a variety of offences have only slight impacts (less than twenty per cent) on crime reduction. Also, the imposition of alternative policies that carry five-year prison terms following convictions for serious offences have similarly modest impacts. In both instances, such policies would result in enormous increases in prison populations. Conversely, policies of selective incapacitation, that is, policies aimed at career criminals or habitual offenders, may achieve larger reductions in crime for smaller outlays of prison resources. But the success or failure of selective incapacitation policies is critically dependent on the ability "to identify career criminals reasonably early in their careers" (1983:74). Greenberg and Larkin (1998) express a similar viewpoint. Cohen (1983) perceives that a major deficiency in any incapacitative strategy aimed at crime reduction is that the strategy is severely limited by "the large number of offenders who have no prior convictions" (1983:74; emphasis added). For her, no policy of incapacitation which requires a conviction before imposing a prison term could prevent crimes committed by first offenders.

\(^2\) However, in one of three dissenting judgements, Blackmun J. correctly found the testimony of the Barefoot psychiatrists so highly prejudicial and overpersuasive that such evidence should not have been admitted on evidentiary grounds... Pointing to the absurdity of the witnesses' statements and their express reliance on professional expertise in making their predictions, Justice Blackmun argued in dissent that such testimony cannot justly be allowed... Barefoot provides an example of why clinical predictions should not be allowed, and yet the Court upheld the admittance of the proffered testimony on both constitutional and evidentiary grounds (Cited in: Morris and Miller, 1985:32-33).
Cohen's position is later echoed by the British Home Office in its 1986 *Sentence of the Court* report, "the incapacitation theory - that is, the ability of custody to deter, is of limited value" (Home Office, 1986). The report asserts that findings suggest that increased terms of imprisonment have no real effect on crime rates as regards deterrence or recidivism. In other words, neither imprisonment nor the threat of imprisonment have a positive effect on crime rates. Cohen's views also accord with those of Greenwood *et al.* (1994), who, in analysing California's 1994 three-strikes law, estimated that if the law was applied as written, then the requisite extended sentences would see California's prison population more than double in less than ten years. Such an increase would raise the Corrections' portion of the state budget from 9% to 18%, eliminating "all discretionary spending in support of higher education and the environment" (1994:138). As well as concluding that requiring convicted offenders to serve longer prison terms is the most favoured political strategy for reducing crime, in recent years, the study showed that the three-strikes law would cost the criminal justice system $US16,000 in additional outlays for every serious crime prevented by that law.

For Zimring and Hawkins (1995), an ideological commitment to incapacitation is not a firm platform for allowing punishment policy to be determined by incapacitative purposes, and punishing with imprisonment is an open-ended claim when justified by incapacitation. This is because as long as there are criminals to punish proponents of incapacitation as well as those of deterrence come to no natural stopping point. They view the limits to such open-ended justification as deriving from the limited amount of imprisonment a society is willing to support, and from concern about the costs of incapacitative punishment. For Braithwaite and Pettit (1990), what further undermines incapacitation's case is the realisation that, on present evidence, enough criminals can never be caught to reduce crime sufficiently through that method. It is beyond the fiscal capacities of even the wealthiest countries in the world to lock up enough criminals to make a real difference to crime. For example, the number of inmates held in USA state and federal prisons, in 1985, was less than 750,000; but by 1995, the number exceeded 1.5 million (US Bureau of Justice Statistics, 1996).
Incapacitation, while a major plank in most Western criminal justice systems due to its perceived effects in fighting crime, has little relevance to CSO. This is principally because CSO is imposed in lieu of a prison sentence and does not seek to incapacitate the offender from contact with the outside world as happens in a prison environment. Such ‘incapacitation,’ if it can be called that, occurs only to the extent that an offender is prevented, for eight hours on one day of any given week, from free association with their family, friends and community while undertaking CSO work.

Rehabilitation:

Because of the political sensitivity that currently surrounds criminal justice issues, rehabilitation programs (both inside and outside of prisons) have a limited shelf life depending upon what aspect of the criminal justice system is ‘the flavour of the month.’ Such programs suffer from the added disadvantage that there is little or no kudos to be had from being ‘soft’ on offenders, but there is considerable political mileage to be had in adopting a hard line stance under the banner of ‘law and order.’ The following example nicely illustrates these points. In a 1990 report which reviewed prisoner education in Queensland prisons, the author sees the utterly negative and demotivating effect on prisoners of being moved from gaol to gaol with no thought or consideration at all of the effects on their half-completed programmes of education or training or their particular stage in their rehabilitation (Byrne, 1990:27).

She points out that the education officers and educational providers were considerably irritated, frustrated and even angered by this particular issue. The following comments of one such educational officer typify the mood of the report.

Education Officer: The motivation gets knocked out of them because of the illogicality and unjustness and inconsistency of the system. They finally get committed to studying - or we get them committed - and then they get transferred elsewhere instantly without any of us being consulted. Phone calls - "I need four for Borallon [private prison] today - we've got four coming in from sentencing" and it means suddenly four of ours are in a bus and on their way at less than 24 hours notice. And no-one asked the prisoners or us or the trade instructor - no sentence management approach - whether this was the right time to move him. It's destabilising, it's demotivating, it's plain stupid if the bureaucrats had any understanding of the most basic human psychology (1990:27).
These comments also echo the earlier views of Zdenkowski and Brown (1982) that the unfettered exercise of discretion regarding the control of prisoners has been a central feature of prison administrations. Moreover, rehabilitation programs are an adjunct to prison existence, not a substitute for it; and the same may be said of similar programs in the field of community corrections. Also, such programs are, at all times, constrained not only by political considerations and the very adversarial nature of our criminal law but also by available funding and staff. As Anleu (1991) points out, the rehabilitative model of justice is now unpopular because (a) rehabilitation is seen as unjust and leading to inconsistency; and (b) rehabilitation programs in prisons do not reduce reoffending. In the sphere of community corrections, the story is the same.

As will be shown in Chapter Nine, punishment and deterrence are the present policies of choice, especially in the United States, and rehabilitation runs a very poor third. A principal reason for this is the proliferation of new prisons, particularly in California, and the concomitant 'get tough on crime' siege mentality. Rehabilitation may be a laudable goal, but in practice it is and remains difficult to achieve. The insistence on more punitive measures against offenders by sections of the community, and the willingness of politicians and their bureaucracies to pander to those wishes, together continue to work against any serious form of rehabilitation program (Sutton, 1997).

Where CSO is concerned, rehabilitation was the primary goal of legislators when formulating laws for the scheme's implementation in Australia, during the 1970s and 1980s. However, as discussed in Chapter Two, the conceptualisation of CSO has not matched up with reality in that what was intended to be achieved by the scheme has not fully materialised. The continuing confusion over (a) precisely what CSO's role is or should be, (b) its location in the sentencing tariff, and (c) the perception by some that it should be supplementary to rather than a substitute for custody, have meant that its full potential has been compromised.
Punishment in Transition - The Rise of Community Corrections

Reasons for the Transition from Incarceration to Decarceration in the 1960s and After:

According to Cohen (1985), Rothman's account of the asylum links the concept of rehabilitation to the practice of incarceration.

The asylum was conceived as a microcosm of the perfect social order, a utopian experiment in which criminals and the insane, isolated from bad influences, would be changed by subjecting them to a regime of discipline, order and regulation (1985: 19).

Cohen suggests that the individual treatment ideal and the entry of psychiatric doctrines, among other things, "produced a whole series of innovations - attempts to humanize the prison, probation and parole, indeterminate sentencing, and the juvenile court" (1985: 20). But as he points out, Rothman's crucial concept here is 'convenience' because it does not weaken or undermine the original vision ('conscience') but actually assists in its acceptance. In turn, system managers embraced the new programs and utilised them for their own ends, and this led to a political force comprised of reformers and managers which permitted programs to survive even if they seemed abject failures. Moreover, there was an enormous gap between what was promised and what was actually delivered, because none of the programmes turned out the way they were intended: practice bore no relationship to the original text.

Closed institutions hardly changed and were certainly not humanized; the new programmes became supplements, not alternatives, thus expanding the scope and reach of the system; discretion actually became more arbitrary; individual treatment was barely attempted, let alone successful. Once again, however, failure and persistence went hand in hand: operational needs ensured survival while benevolent rhetoric buttressed a long-discredited system, deflected criticism and justified 'more of the same' (1985: 20).

Writing in 1966, Bittner and Platt saw that psychologically oriented treatment was in ascendance and that, for all intents and purposes, the punitive approach had no future. They explained that this shift towards treatment was due to punishment's implementation becoming less and less compatible with prevailing moral sentiment. This line of thinking is in accord with what was then the conventional wisdom: that sentencing should function in a dual role - rehabilitate the offenders, and isolate them from society if they are a danger to it. A decade later, Fogel (1979), Von Hirsch (1976),
and Wilson (1975) were arguing for the 'doing justice' model of prisoner reform, as opposed to the 'doing good' model which emphasised rehabilitation. For Cullen and Gilbert (1982), the 'doing justice' model had none of the redeeming features of the 'doing good' model and, in practice, because of its incorporation into right-wing 'law and order' politics, turned out to be "a masterpiece of unintended consequences" (1982:152). Because of its visible 'success' in altering sentencing systems by making them mandatory, fixed, flat and presumptive, they became longer, harsher and more unjust. In effect, discretion, fairness, and justice were replaced by an abstract dispensation of justice. For example, Fogel's thesis argues that "the best way to teach non-law-abiders to be law-abiding is to treat them lawfully" (1979:xv). His concern being less with the administration of justice and more with the justice of administration.

Cohen (1985) posits three types of beliefs about decarceration in the 1960s: cognitive, theoretical, and ideological. They are a concise summary of the prevailing social, economic, and political climates of the time and are shown in full in Table 3.3.

**Table 3.3 Cognitive, Theoretical, and Ideological Beliefs about Decarceration**

**Cognitive beliefs:**
1) Prisons and juvenile institutions are ... simply ineffective [and can] actually make things worse by strengthening criminal commitment; 2) most institutionalised deviants can be managed just as safely by various community alternatives; 3) just as effectively, 4) almost certainly more cheaply and 5) without any doubt more humanely than the prison. Community alternatives, therefore, 'must obviously be better,' 'should at least be given a chance' or 'can't be worse.'

**Theoretical beliefs:**
1) Theories of stigma and labelling have demonstrated that the further the deviant is processed into the system, the harder it is to return him [her] to normal life. Stabilised deviance is in fact a product of the control system. 2) The causal processes leading to most forms of deviance originate in society (family, school, community, economic system). 'Therefore' prevention and cure must lie in community and not in artificially created agencies constructed on a model of individual intervention. Intervention must be aimed not at 'revenge' (supposedly the pre-progress slogan) nor 'rehabilitation' (the first fruits of progress) but at 'reintegration' (the new panacea).

**Ideological beliefs:** Destructuring became a package deal for many more resonant ideologies: criticisms of centralisation and bureaucracy in the criminal justice system; doubts about the expertise and good faith of the helping professions; disenchantment with the rehabilitative ideal; questions about the desired limits of state intervention and even the whole notion of the liberal, welfare state itself ... The goal should be less harm rather than more good" (1985:33-34).
Scull, (1984) suggests that, because the governments of both the United States and England found, throughout the 1960s and 1970s, that the average price level was falling behind the costs of state services, new or alternative methods were needed to enable the retention of those services in real terms. For Scull, one solution was the closure of institutions considered too costly to renovate, repair or maintain. Thus, as in the case of the Massachusetts reformatories, the move to decarceration in the prison system was assisted by the often run-down nature of many institutions, whose infrastructures were in serious need of considerable outlays of funds for necessary repairs. By cutting back on such funding or withholding it entirely, those infrastructures deteriorated even further and more quickly, so that such deterioration added strength to the case for decarceration and weakened the argument for more funding to effect the much needed repairs. What gave added credence to such 'solutions' was the belief that 'punishment in the community' alternatives would be cheaper (for governments) than incarceration (Brake and Hale, 1992; Scull, 1984).

In England during the 1960s and 1970s, there was the public perception of increased hooliganism and violence among the 'dangerous' classes (Dunning et al., 1988; Jefferson, 1990; Murphy et al., 1990; Pearson, 1983). When Thatcher and her Conservative Party won government in 1979, they set about implementing their own ideologically-driven agendas to curtail that perceived hooliganism and violence. One result of such implementation was Conservative criminology (see below). Across the Atlantic, from the 1970s onward, American legislators and law enforcement agencies were finding their time and efforts increasingly taken up combating drug-related issues - especially crime. One response among many has been 'mandatory sentencing' laws, but the consensus appears to be that such laws increase prison populations without having a corresponding effect on crime reduction (Lucken, 1997; Shichor and Sechrest, 1996; Shichor, 1997; Stolzenberg and D'Alessio, 1997; Tonry, 1992). Braithwaite and Pettit (1990) present a further scenario which emphasises the huge difficulties that beset law-enforcement agencies in bringing lawbreakers to justice and the judiciary in
fixing appropriate punishments for the offences committed. I refer to 'white-collar' crime. Braithwaite and Pettit (1990) argue that even on the limited data sets available, most major corporations are recidivist lawbreakers. As such, the volume of corporate offences, combined with the high probability of multiple offenders for each offence in a complex organization, is sufficient to invert conventional assessments of the class distribution of crime (1990: 184-185).

Despite such volume and the larger harm done to society by white-collar crime than by blue-collar crime, they argue that it is better not to prosecute white-collar crime punitively. Instead, a 'softly, softly' approach potentially yields better results as regards compliance with the law.

Subsequently, both in England and the United States, by way of alleviating growing pressures on the public purse from seemingly ineffective carceral policies, the respective governments opted for their own versions of 'punishment in the community.' Among others, alternatives to custody took the form of police cautioning, suspended sentences, neighbourhood crime prevention schemes, bail, probation orders, fines and fixed penalties, tracking schemes, electronic tagging, parole, attendance centre orders, home detention, intensive supervision orders, and CSOs (Cohen, 1985; Lucken, 1997; Vass, 1990). However, as some criminologists have pointed out, in moving from incarceration to decarceration, many such alternatives to custody have become supplementary to rather than a substitute for custody (Cohen, 1985; Lucken, 1997; Vass, 1990). This is largely due to the perceptions of both the law makers and the law enforcers about what punishment is supposed to be and what it should achieve: Lucken's case study of the 'piling up of sanctions' is a good example. A further reason (noted by Vass) is that some alternatives to custody, notably the CSO, are made multi-functional, something that was not intended with the creation of the community service order in 1972 (Vass, 1990; see, too, Cohen, 1985; Garland, 1985; Pease, 1985; Young, 1979). The lack of any clear understanding, uniformity, and agreement between jurisdictions about the precise intended functions of many alternatives is an added impediment; thus 'alternatives to custody,' like 'community,' come to signify all things to all people. Bottomley and Pease (1986) suggest that such custodial alternatives as
suspended sentences of imprisonment, partly suspended sentences, probation orders with enforceable conditions, and community service (among others) have failed in their task to control the prison population and that none of these measures has been used exclusively as an alternative to custody (1986:107).

Scull (1984) critiques Lerman's (1982) discussion about deinstitutionalisation's origins in California: "[i]t is one of the more sophisticated attempts to grapple with these [decarceration] issues, and does at least begin to recognise the existence of "hidden" savings and their impact on public policy" (1984:174). Lerman suggests that one reason why decarceration did not occur uniformly across all USA state jurisdictions was because of the differential sophistication of the state mental health bureaucracies.

Short-run costs generally increased in the early stages of deinstitutionalization, since states had to supply matching funds ... to capture Federal subsidies. Consequently, "States whose leaders exhibited entrepreneurial skills, and who were supported by executives and legislators willing to risk increased spending in order to gain long-term fiscal benefits via deferred construction and maintenance of facilities, displayed marked population reductions by 1969" (1982:209).

Contrast these deinstitutionalization processes with those of Massachusetts' Department of Youth Services, under its new director, Jerome Miller, between 1969 and 1973. According to Scull (1984), Miller shut down all of the state reform schools on the basis that any alternative would be better than what was currently available. The schools were then replaced by a regional system of largely privately operated group homes and treatment programs. Despite increased opposition from staff and the local communities, and pressure from the legislature about these closures, Miller forced the introduction of the concept of 'therapeutic communities' - the brainchild of an English psychiatrist, Dr Maxwell Jones - into these group homes and treatment programs. It was a total disaster which polarised the staff and caused mass runaways of the residents. The response of the Massachusetts Legislature to the employee problems created by the subsequent shutdown of the centres was to retain the centres' guards on the payroll after the dispersal of all the inmates, allegedly to maintain the empty buildings. But the real reason was to blunt their opposition to the closures and head off any political trouble they might try to make.
Rather than the introduction of radically novel approaches, Scull (1984) asserts that community corrections' emergence has meant transforming traditional mechanisms in a way that encourages the return of many (offenders) to the community who, in earlier times, would have been incarcerated. In addition, he sees that the transformation has assisted in developing incentives to speed up this process. Clear and Byrne (1992) espouse a similar view. By the 1980s, however, both these models were out of favour. Cohen (1985) cites a *New York Times* article which stated that neither rehabilitation nor deterrence works but that selective incapacitation of the worst career criminals was the newly arrived theory of justice. However, as was shown in the previous section, this 'new theory' was neither new nor successful. Chan (1992:1) suggests that the growing disenchantment with prisons (and mental institutions) "as places for the treatment or correction of deviants" was to be found in the United States from the 1960s onwards. She states that in the criminal justice arena, the destructiveness and ineffectiveness of incarceration began to be replaced by an umbrella concept known as "community corrections" and from which the notion of "decarceration" or "community treatment" emerged.

**Decarceration - Community Corrections' Problem Step-child:**

Scull (1984) sees the movement to deinstitutionalise or decarcerate those individuals who were labelled as deviants - criminal, insane or senile - as largely the result of economic imperatives forced upon the state. He argues that the burgeoning costs to the state of operating and maintaining asylums, prisons, and juvenile reformatories, particularly from the 1950s onwards, forced a complete rethink about the treatment of institutionalised deviant populations. In tandem with the state's concerns was the self-interest of those charged with their care and control - the 'helping' professions and the attendant bureaucracies. Scull's contention about economic imperatives is supported by Greenwood (1998), who states that prison costs represented only 1 or 2 per cent of most USA state budgets twenty years ago, but now they represent between 8 and 10 per cent. In respect of Scull's definition of decarceration, however,
Matthews (1979) takes him to task by suggesting that, for Scull, decarceration "means the difference between the number of indictable offences and the number of people incarcerated" (1979:104). Scull defines decarceration as: "shorthand for a State-sponsored policy for closing down asylums, prisons and reformatories" (1977:1). Matthews argues that the term 'decarceration' as used by Scull "includes not only the removal of people from institutions, but also the processes by which they are diverted away from them" (1979:104). According to Matthews, decarceration is the negative moment of incarceration:

the process by which offenders are selected or diverted from segregative forms of control ... [D]ecarceration and community care are not two mutually interdependent phenomena, but rather two distinct processes which ... may become related under specific social and historical conditions (1979:103).

For Chan (1992), the way the decarceration debate has been studied is open to serious question. The term 'decarceration' has, itself, encompassed so many different concepts, policies, practices and programs, as to make it hazardous to construct theories or even generalise about it. Thus, the subsequent decarceration literature is questionable in terms of the utility of generalised concepts and general theories. Chan argues that what is needed is a separation of penal discourse (the ideological representations of decarceration) from penal practice (its practice). In light of Scull's and Matthews' arguments about what amounts to a process of 'net-widening', Chan's suggestion to separate penal discourse from penal practice makes sense. That is, that the mechanisms for diverting or releasing people from imprisonment should be called 'decarceration mechanisms,' and the rhetoric employed to justify the use of those mechanisms should be called the 'community corrections movement.' Chan states that 'decarceration' was originally used as the opposite of 'incarceration,' but that aside from the closure of juvenile institutions in Massachusetts, "such a form of decarceration has largely not occurred" (1992:1). She adds that the term 'decarceration' has been used

...to describe a variety of diversionary measures, including the decriminalisation of offences, police cautioning of juveniles, pre-trial diversion of accused persons, sentencing of offenders to non-custodial penalties, conditional release of prisoners, the use of half-way houses and even the privatisation of corrections (1992:1).
Chan (1992) also sees that, even though the ideological umbrella under which all of these policies or programs have been justified is referred to as 'community corrections,' this is a misnomer because the role played by community members is usually rather limited. Cohen (1985) goes further, by taking issue with the entire 'deconstructing impulse' of the 1960s and questioning the whole basis of what community corrections (or similar labels) actually means. Almost anything can be labelled 'community' and, equally, if this prefix is used, then almost anything can be justified. Not only is the word 'community' "rich in symbolic power, but it lacks any negative connotations" (1985:117).

Similarly, Vass (1990) states that all such concepts of 'alternatives to custody' have been used, at some point, as synonyms or substitutes for each other as though anything which denotes some small notion of 'community' within which penal service and penalties are administered should make sense and be applicable on a universal scale (1990:1).

His solution is to regard 'alternatives to custody' as being penalties that "allow an offender to spend part or all of his or her sentence in the community and outside prison establishments" (Vass, 1990:2). Findlay (1982) cautions that, in discussing 'alternatives to custody' they must be seen to be 'viable,' "which implies that they must bolster up rather than threaten the continued existence of the prison as the central criminal sanction" (1982:153). He argues that prisons should be seen as an integral part of a larger political, economic and social order that sustains and is sustained by the prison.

The Emergence of Intermediate Sanctions:

For Clear and Byrne (1992), the cycles in which correctional movements run are fairly predictable: "the call for reform, followed by changes designed to implement reform, followed by criticism of the changes and new calls for reform" (1992:320). This was the pattern preceding the emergence of intermediate sanctions during the 1990s, and they have the potential to manage many offenders currently in custody in ways that are both more efficient and less costly. For Petersilia et al. (1992:ix), intermediate
sanctions, with respect to their harshness and restrictiveness, are "punishments that lie somewhere between prison and routine probation, [including] electronic monitoring, intensive supervision, day reporting and community service centres and boot camps."

These sanctions, like those surrounding custody, are fraught with their own particular problems, however, and Von Hirsch (1990), offers some current examples. In his essay on the ethics of community-based or intermediate sanctions, Von Hirsch (1990), explores three kinds of ethical limits to the use of non-custodial penalties. These are detailed in Table 3.4: 'Ethical Limits to the Use of Non-Custodial Penalties.'

**Table 3.4. Ethical Limits to the Use of Non-Custodial Penalties**

<table>
<thead>
<tr>
<th>Type of Ethical Limit</th>
<th>Details</th>
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<tr>
<td>Proportionality (desert) constraints.</td>
<td>The fallacy of the 'anything but prison theory' holds that intervention in the community is tolerable in spite of its intrusiveness ... as long as a resulting sanction is less onerous than imprisonment ... A sanction needs to be justified in its own right, not merely by comparison with another - possibly more onerous - punishment.</td>
</tr>
<tr>
<td>Restrictions against humiliating or degrading punishments.</td>
<td>The fallacy of 'intrusiveness is a matter of technology' means the installation of an electronic monitor on an offender's telephone elicits comparisons to &quot;Big Brother,&quot; but no similar issues of privacy are assumed to arise from home visits by enforcement agents. Intrusion is dependent not on technology but on the extent to which the practice affects the dignity and privacy of those intruded upon. Frequent, unannounced home visits may be more disturbing than an electronic telephone monitor that verifies the offender's presence in the home but cannot see into it.</td>
</tr>
<tr>
<td>Intrusions into the rights of third parties.</td>
<td>Whereas prison segregates the offender, non-custodial penalties reintroduce the punished offender into settings in which others live their own existence. As a result, the offender's punishment spills over into the lives of others. Home visits, or an electronic monitor ringing at all hours of the day, affects not only the defendant, but any other person residing at the apartment.</td>
</tr>
</tbody>
</table>

Source: A Von Hirsch (1990)
The Role of the Community Service Order

CSOs, which were originally intended to be used in lieu of custody and not as an adjunct to it, are now commonly used in the latter way as a supplement to non-custodial sentences (Pease, 1985; Rex, 1997; Vass, 1990). It is not necessarily because offenders should be diverted from the damaging effects of a custodial sentence so much as because the order itself imposes a credible degree of restriction. For example, the British Government's White Paper on community penalties argued that it was not the activities carried out during the order which was the punishment, rather it was the loss of liberty involved in carrying out the terms of the order (Rex, 1997). Such usage causes many to see the community service order as part of the net-widening and net-deepening processes so often associated with 1990s community corrections (Austin and Krisberg, 1981; Cohen, 1985). Also, the various 'gradations' of CSOs now emerging - community-based, standard, and intensive - further add to the misconceptions about and confusion with the CSO's 'true' purpose.

Clearly, these problems will continue until such time, if ever, as they are meaningfully addressed and corrected. Harding (1989) states that the British Home Office-sponsored community service pilot scheme of the early 1970s was partly influenced by the 'New Careers' model largely developed in USA anti-poverty programmes. This model held that if offenders were given the right opportunities, they could gain status and a sense of re-integration with their own community "by carrying out acts of service for others whose needs were easily demonstrable" (Harding, 1989:27). Thus CSO is in the nature of symbolic reparation to the community for the offending behaviour, although it may provide direct reparation to the victim where the organisation concerned was the victim of the offending, but this is less usual. For example, in 1993 in New Zealand, 9,953 offenders were sentenced to do community service - almost ten per cent of total cases sentenced (Spier, 1994).
Conclusion

The theoretical concepts, empirical studies, and practical examples that have been examined here illustrate many of the difficulties and contradictions of criminal justice systems generally, and of the United States and Great Britain in particular. The perceptions and opinions of theorists and practitioners alike about punishment, retribution, deterrence incapacitation and rehabilitation, for example, give some idea of the complex nature of the theoretical aspect of criminal justice policy formation. Which approach will work best in a particular situation or environment? What policy or group of policies will yield the most equitable (or efficient or economic) outcome? Are there likely to be any unintended consequences from the implementation of the policies selected? In a similar way, the practical application of laws and policies derived from such theoretical concepts is equally complex for the law makers and the law enforcers, and the empirical studies and actual examples cited herein emphasise that complexity. What also plays a major part in how well or how poorly the criminal justice system functions is the social, economic and political environment in which it operates. And the changes to that environment are reflected in the types of legislation enacted by governments.

This chapter has highlighted the theoretical and practical paths that criminal justice systems, particularly in the United States and Great Britain, have followed in the shift from incarceration to decarceration, especially since the 1960s. It has shown that the not inconsiderable literature on decarceration, which has arisen as a result of that shift, helps explain why decarceration has become not so much a substitute for custody as a supplementary adjunct to it. In the next chapter, a similar theoretical/practical approach will be adopted in regard to what has come to be called 'restorative justice.' Once that task has been completed, it will then be possible to apply both sets of data from Chapters 3 and 4 to the 'hands on' issues of CSOs and thus attempt to resolve the central question of this thesis.
Chapter Four

The Restorative Justice Movement

People who move through the current system of criminal justice do not usually find it a very healing or satisfying experience. Restorative justice offers a very different kind of experience, because it gives victims a role in the justice process, and it holds offenders accountable for repairing, as much as possible, the damage caused by their criminal action.

Susan Sharpe 1

Introduction

The focus of this chapter is on describing and explaining the criminal justice alternative known as the restorative justice movement. Until the Norman conquest of most of Europe after the Dark Ages, restorative justice was the main criminal justice model (Van Ness, 1986). It is a model which advocates the use of mediation between victim and offender, usually outside of the normally accepted state-sponsored procedures for dealing with crime and punishment. It will be shown that restorative justice can play a valuable role in the healing process that is so necessary between victim and offender and which is so patently absent from state-run, adversarial criminal justice procedures. This chapter examines the strengths and weaknesses of the restorative justice movement and the way in which it would like to see community corrections develop, especially in regard to the community service order. The importance of this chapter to the overall thesis is that it permits a realistic comparison of two different types of 'justice' procedures - a formal, court-based type that emanates from the state, and an informal type that has its roots in the community. Such a comparison is both worthwhile and necessary if a better comprehension is to be had of what does and does not 'work' in respect of particular non-custodial sanctions against

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criminal activity. In terms of practical implications, restorative justice holds much promise as a useful and suitable mechanism for dealing with certain types of criminal activity, particularly that related to juveniles.

**Theoretical Concepts about Restorative Justice**

Restorative Justice and the Criminal Justice System:

This section examines a number of issues within the criminal justice system that connect with restorative justice: for example, the admission of guilt, the ownership of crime, the seriousness of an offence, and the treatment of the offender. Also examined are theoretical considerations about crime and punishment, such as respect for people and for their property, and reparations where harm is inflicted. These issues, in turn, lead on to the philosophy underlying restorative justice.

Criminal justice systems such as those in Australia and New Zealand respond to crime proportionally to the seriousness attributed to the category of offence, the actual or risked harm and the culpability of the offender. This is in line with international covenants associated with civil and political rights that emphasise protections against convicting the innocent (Ashworth, 1993). Within criminal justice systems the majority of offences are dealt with on the basis of an admission of guilt. For example, in 1993, in New Zealand, fewer than 13 per cent of district court matters went to trial because of a 'not guilty' plea (Spier, 1994). For Christie (1977), criminal conflict has been removed from victims and offenders and has become the property of the state and defence lawyers. He argues that the ownership of crime, and the responsibility of how to deal with it, should be returned to victims, offenders and their communities. Regarding any criminal offence, Ashworth and Von Hirsch (1997) argue that two components - harm and culpability - together comprise the seriousness of such an offence, and that while the degree of culpability is always important, it should not be allowed to overshadow harm. They hold that a minor harm should not lead to a severe sentence, for example,
custody, simply because the harm was caused deliberately or even with real malice; hence, the degree of harm (actual, intended or knowingly risked) is crucial. What concerns them is that, in some of the decisions, the courts have focussed on a non-existent secondary harm of the 'what if?' variety: for example, not just vandalising a public telephone box but putting at risk a possible emergency response. Moreover, the courts have done this without considering the defendant's culpability. Ashworth and Von Hirsch also criticise the use by the judiciary of the 'right-thinking members of the public' test as meaningless, because it could easily be construed as an appeal to public opinion. However, in an earlier publication, Morris and Tonry (1990) argue differently. They see the requirement that the gravity of the offence should determine the severity of the penal response as unrealistic, preferring Morris's view that, on unreservedly lenient or severe punishment, considerations about retribution can only be a guide.

There is also the issue of deterrence, in that, while a certain degree of threat can pressure people to conform, common sentencing standards simply don't work. Once a certain point is reached, further or more severe punishment comes to be seen as an injustice and unwarranted, rather than as motivation to conform (The Church Council on Justice and Corrections, 1996). Marshall (1995) and Zehr (1990) suggest that respect is another important dimension of crime. In their views, offending stems from a lack of respect for others and community values. Such disrespect is more likely from those who are alienated from the benefits of community membership, or who are themselves subjected to disrespect because of prejudice (for example, concerning race, class, or educational achievement) (Marshall, 1995; Zehr, 1990). According to Marshall:

People who feel unfairly devalued and lacking respect, who feel cut off from main-stream society, are likely to have little respect for society, its laws and values. If community does not extend to such people, then informal control does not affect them, and restorative outcomes will not be possible. The introduction of restorative practices can only take place if there is, at the same time, a real effort to combat institutionalised injustice. (1995:6).

Also, as Moore and Forsythe (1995) point out:

Social regulation often falls to one of two extremes. It either punishes an offender in order to convey that a certain act is unacceptable (as in official justice systems), or it looks past an unacceptable act in order to support the offender (as in
counselling and treatment programs). Yet a third approach is more effective. That is, to send a clear message that a particular act is unacceptable, while at the same time supporting the offender. (1995:257).

It is this balance which is at the heart of restorative justice, because restorative justice considers that issues such as prejudice, social injustice and inequity support an environment in which crime and victimisation are more likely (Sharpe, 1998). Restorative justice is sometimes presented as a new paradigm of justice (Consedine, 1995; McElrea, 1994; Zehr, 1990). If it is, it is an incomplete model, because the literature and practice of restorative justice neither resolve major issues such as disputes over guilt or the identification of a defendant nor suggest principles and rules of evidence that would apply in such disputes. In spite of this limitation, many cases can still be considered for restorative interventions (Ministry of Justice, 1995). Thus, instead of worrying about the rules that have been broken, by concentrating on the harm done community members are better able to deal with a crime, be more discerning, and more innovative in looking for options (Sharpe, 1998). And insofar as they help offenders make amends that are meaningful to victims, and make meaningful changes in their own lives, the increased use of alternative measures is clearly an improvement over fines and jail terms (Sharpe, 1998). Braithwaite (1989) sees restorative justice as a philosophy rather than a practice or group of practices, in terms of looking at crime and responding to it. Under such a philosophy, crime is defined as an offence by one person against another, rather than as an attack on the state. It is based on a recognition of the humanity of both offender and victim. The goal of the restorative process is to heal the wounds of every person affected by the offence, including both victim and offender. Options are explored that focus on repairing the damage (Consedine, 1995). Also, the offender is duty bound to make reparation to the victim and another important objective is the restoration of community peace (Marshall, 1990). In effect, restorative justice involves a power shift from the state to the community (Consedine, 1995). The philosophy of restorative justice is based on three general beliefs. (i) Crime results in harm to victims, offenders and communities; (ii) not only government, but victims, offenders and communities should be actively involved in the criminal justice process;
and (iii) in promoting justice, the government should be responsible for preserving order, and the community be responsible for establishing peace (Van Ness, 1990).

Restorative Justice Defined:

According to Braithwaite (1999), throughout most of human history for all the world's peoples the dominant model of criminal justice has been restorative justice. The term 'restorative justice' developed from the victim-offender mediation movements that resurfaced in Canada and North America in the early 1970s (Hudson and Galaway, 1977; Peachey, 1989) and in Great Britain in the late 1970s (Harding, 1989; Reeves, 1989). Many writers use the terms 'restorative justice' and 'victim-offender mediation' interchangeably - mediation being a core technique of conflict resolution and, thus, restorative justice (Marshall, 1992; Umbreit and Coates, 1992). Other terms include 'healing justice,' 'satisfying justice,' 'transformative justice' 'relational justice,' and a technique called 'reintegrative shaming' (Braithwaite, 1989; Sharpe, 1998). Marshall's definition of restorative justice is:

A way of dealing with victims and offenders by focusing on the settlement of conflicts arising from crime and resolving the underlying problems which cause it. It is also, more widely, a way of dealing with crime generally in a rational problem-solving way. Central to restorative justice is recognition of the community, rather than criminal justice agencies, as the prime site of crime control (1995:1).

As well as victim-offender mediation, restorative justice can be achieved in a variety of ways, including the use of sentencing circles, and community conferencing (Sharpe, 1998). According to Merry (1982), there are several reasons for the rise of restorative justice programs: the belief that the legal system is now too complex, that it no longer meets community needs, and that communities are a more appropriate setting for dispute resolution than the formal state legal system. For Sharpe, restorative justice is based on dialogue about what happened and why, and about what is needed to put things right; that dialogue should be inclusive: victims must be able to speak for themselves, not as witnesses for the prosecution. Part of the reason for this is that 'Justice Committees' whose members make decisions on behalf of the victim without
The victim being present, can lead to retributive not restorative justice. Offenders must be able to explain their behaviour and apologise for it, rather than choose to remain silent for the sake of legal defence. Also, community members need to describe how they are affected and how they can help instead of being used to prove guilt.

Braithwaite (1999) argues that restorative justice is far more effective in achieving reparation and reintegration (as between victims and offenders) than is criminal justice, the latter being principally concerned with punishment of offenders such that they receive their 'just deserts.' He bases his claims upon empirical evidence for two opposing theories: an Immodest Theory, which supports the restorative justice concept, and a Pessimistic Theory, which argues against the concept. He finds the propositions of both theories plausible, given the limited evidence currently available. The Immodest Theory suggests fifteen distinct arguments in favour of restorative justice practices; the Pessimistic Theory argues thirteen distinct points against restorative justice practices. These arguments are shown comparatively and in brief in Table 4.1: 'A Comparison of an Immodest Theory and a Pessimistic Theory,' below. Braithwaite's conclusion is that none of the claims in the Immodest Theory are satisfactorily demonstrated, and, likewise, none of the problems in the Pessimistic Theory are satisfactorily solved. He sees much time and effort being required to confirm that either of these theories are correct. As Table 4.1 shows, some restorative justice models are unable, in practice, to achieve all of the objectives of a system of justice and, depending upon which aspect of theory one chooses, can work against restorative justice aims. For example, if reparation is required to be made in cash and not in kind, and the offender has no funds and is unemployed or, worse, unemployable, then, without third-party assistance, the reparation requirement is defeated.

From a different aspect, Marshall (1990) argues that the victim-offender mediation process should be free of any criminal justice agency and of any reliance on any particular point in the criminal justice process. Also, the process should be able to time interventions according to the interests of the victim. The mere provision of a
forum for mediation is not going to be sufficient to achieve the requisite restorative justice. Instead, other segments of the criminal justice system may later have their judgements and processes influenced by seriously considering the resulting recommendations and outcomes of the mediation process (Ministry of Justice, 1995). Sharpe (1998) suggests that current criminal justice systems focus on past events (offences) and how they should be punished, rather than on future reduction of such events - save to the extent that deterrence is still believed to be effective. But, as Braithwaite (1999) points out in Table 4.1, restorative justice practices deter crime better than practices developed from deterrence theories. Sharpe (1998) argues that where social injustice exists, conventional criminal justice cannot become a reality; justice, per se, should reflect the highest standard of accountability and care. In her view, restorative justice programs offer a way for communities to achieve that standard of accountability and care.

The foregoing discussion suggests that restorative justice is a movement or, as Braithwaite (1999) puts it, a philosophy, rather than a particular practice. It is a way of thinking about crime and informing or reforming systems for achieving justice. And to the extent that it describes the outcomes of a criminal justice system in a coherent and publicly accepted way, restorative justice redefines what is justice (Ministry of Justice, 1995). In restorative justice, the emphasis is on crime as a violation of one or more person(s) by another, rather than as an offence against the state. Future problem-solving is seen as more important than establishing blame for past behaviour (Ministry of Justice, 1995). For Zehr (1990), three questions should be asked: What is the harm done by the offence? What can be done to put right the harm? Whose responsibility is that? Zehr also points out that "violations create obligations [and that] when someone wrongs another, he or she has an obligation to make things right" (1990:197).
<table>
<thead>
<tr>
<th>An Immodest Theory</th>
<th>A Pessimistic Theory</th>
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<tr>
<td>Restorative justice practices deter crime better than practices grounded in deterrence theories.</td>
<td>Restorative justice practices have no significant impact on the crime rate.</td>
</tr>
<tr>
<td>Restorative justice practices incapacitate crime better than criminal justice practices grounded in the theory of selective incapacitation.</td>
<td>Restorative justice practices are prone to capture by the dominant group in the restorative process.</td>
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<tr>
<td>Restorative justice practices rehabilitate offenders better than criminal justice practices grounded in the welfare model.</td>
<td>Restorative justice practices can disadvantage women, children and oppressed racial minorities.</td>
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<tr>
<td>Restorative justice practices are more cost-effective than criminal justice practices grounded in the economic analysis of crime.</td>
<td>Restorative justice practices fail to address structural problems inherent in liberalism like unemployment and poverty.</td>
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<tr>
<td>Restorative justice practices secure justice better than criminal justice practices grounded in &quot;justice&quot; or just deserts theories.</td>
<td>Restorative justice practices can trample rights because of impoverished articulation of procedural safeguards.</td>
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<tr>
<td>Restorative justice practices can enrich freedom and democracy.</td>
<td>Restorative justice practices can widen nets of social control.</td>
</tr>
<tr>
<td>Restorative justice practices restore and satisfy victims better than existing criminal justice practices.</td>
<td>Restorative justice practices provide no benefits whatsoever to over 90% of victims.</td>
</tr>
<tr>
<td>Restorative justice practices restore and satisfy offenders better than existing criminal justice practices.</td>
<td>Restorative justice practices can be a &quot;shaming machine&quot; that worsens the stigmatisation of offenders.</td>
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<tr>
<td>Restorative justice practices restore and satisfy communities better than existing criminal justice practices.</td>
<td>Restorative justice practices can increase victim fears of re-victimisation.</td>
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<tr>
<td>Restorative justice practices reduce crime more than existing practices because of the claims of reintegrative shaming theory.</td>
<td>Restorative justice practices can make victims little more than props for attempts to rehabilitate offenders.</td>
</tr>
<tr>
<td>Restorative justice practices reduce crime more than existing criminal justice practices because of the claims of procedural justice theory.</td>
<td>Restorative justice practices can extend unaccountable police power, &amp; compromise the separation of powers among legislative, executive &amp; judicial branches of government.</td>
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<tr>
<td>Restorative justice practices reduce crime more than existing criminal justice practices due to the claims of by-passed shame theory.</td>
<td>Restorative justice practices rely on a kind of community that is culturally inappropriate to industrialised societies.</td>
</tr>
<tr>
<td>Restorative justice practices reduce crime more than existing criminal justice practices because of the claims of defiance theory.</td>
<td>Restorative justice practices can oppress offenders with a tyranny of the majority, even a tyranny of the lynch mob.</td>
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<tr>
<td>Restorative justice practices reduce crime more than existing criminal justice practices due to the claims of self-categorisation theory.</td>
<td></td>
</tr>
<tr>
<td>Restorative justice practices reduce crime more than existing criminal justice practices due to the claims of crime prevention theory.</td>
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In a similar way, Marshall (1992) notes that an opportunity to make reparation should be offered to the offender at the earliest stage possible and that payment at this stage may be irrespective of how, or whether, any criminal charges are dealt with. He also argues that greater emphasis should be placed on expecting reparation from offenders. Reparation may include, apart from the payment of money, demonstrations of the offender's willingness to co-operate in counselling, therapy or training. Thus, restorative justice is a form of criminal justice based on reparation; that is, actions which attempt to repair the damage caused by the crime, either materially (at least in part) or symbolically (Wright, 1991).

The following data shows at what stage restorative justice programs are usually implemented. There are, in effect, three different stages.

1. **Pre-Conviction:** These programs operate where the defendant does not deny guilt or has indicated that they do not intend to defend the case. As a procedural safeguard it is usually expected that the prosecuting agency has formed an intention to prosecute the case. Outcomes may include a recommendation or report to a court, or else the case may be finalised by agreement between the victim, the offender and the prosecuting agency without proceeding to a court.

2. **Pre-Sentence:** Once guilt has been admitted or proven, a court may refer the case for a victim-offender mediation.

3. **Post-Sentence:** Some victim-offender mediation programs work with offenders who have been sentenced, either to community-based sentences (Shadbolt, 1994) or to imprisonment (Green and Gray, 1994; Immarigeon, 1994). They may operate between victims and offenders who have a direct relationship, or between groups of victims and offenders who are not connected by a specific offence. Mediation between an inmate and the community into which he or she will be released has also been used to assist integration (Ministry of Justice, 1995:10).

**Intended or Ideal Outcomes of Restorative Justice:**

Restorative justice contains a number of intended or ideal outcomes. They include, among others, denouncing crime, reforming individual offenders, preventing crime, helping victims, making good the suffering caused by crime, and minimising justice administration costs (Marshall, 1995a, 1995b). Restorative justice should also
encourage full participation and consensus, make the offenders fully accountable for his or her harmful actions, and reunite and strengthen the affected community (Sharpe, 1998). This section will detail some of these outcomes and their ramifications.

For the denunciation of crime, the action taken in response to crime will define the limits of acceptable behaviour. The expression of denunciation will often take the form of punishment or some burden placed upon the offender (Marshall, 1995a, 1995b). The reform of individual offenders, as with the formal criminal justice system, is a major goal of restorative justice. The prevention of crime in a general way means that restorative principles should promote the role of the community in controlling and reducing crime. Hence, restorative interventions would aim to enhance the ability of communities to take on this role or expand their capacities (but note, however, later comments of Merry (1989) against this). Helping victims is, arguably, the principal intention of restorative justice processes. Making good the suffering caused by crime is also integral to 'helping the victim.' Keeping the costs of administering justice to a minimum means that funds allocated to respond to crime are not then available to be used in the provision of education, health or welfare services. It is, therefore, important that the financial and social costs of resolving crime-associated problems do not exceed the consequences of not taking any action at all (Marshall, 1995a, 1995b).

Sharpe (1998) believes that restorative justice should invite full participation and consensus; heal what has been broken; seek full and direct accountability; reunite what has been divided; and strengthen the community to prevent further harms. By 'inviting full participation and consensus,' justice can be achieved thus enabling participants to get on with their lives. As Sharpe points out, "[j]ustice is not achieved simply by decree. It lives in the space created when people begin to move on, feeling, "There. That is over."" (1998:8). 'To heal what has been broken' signifies that harm has been done rather than that a law has been broken, and that harm done affects many more people than just the victim and the offender - for example, family members, friends, and associates on both sides. Those affected by the harm done may feel
betrayed, apprehensive, and disconnected in their relationships. (Sharpe, 1998). To 'seek full and direct accountability' means an offender must take full responsibility for their harmful behaviour and account for that behaviour to the victim. In addition, the offender is expected to make appropriate reparations to the victim for the harm caused: a specific set of actions to address a specific set of harms (Sharpe, 1998).

The term 'reunite what has been divided' stems from the restorative justice view that, the community is broken and in pain when a crime is committed and there is a sense by the perpetrator and the victim of being disconnected from the rest of the community; both need to experience the process of healing justice (Spicer, 1997). Such a process then helps to reintegrate 'us' with 'them' into a larger community whole (Sharpe, 1998). According to LaPrarie (1997), 'Strengthening the community to prevent further harms' means recognising that family violence, and its severity and duration, is often a major contributing factor to the future involvement of someone with crime. In LaPrarie's view, truly restorative justice redistributes power and enhances peoples' ability to work in harmony at solving problems of crime. Morris (1995) goes even further, by arguing that if restorative justice doesn't address the fundamental issue of racist and classist injustice which goes to the base of every one of our systems then it is totally inadequate. She adds that if this fundamental issue is ignored and incidents are simply papered over and those involved in them merely sent back to the way things were before those incidents happened, then this, too, is totally inadequate.

Central Principles of Restorative Justice Programs:

A review of the restorative justice literature indicates three common principles among restorative justice programs, as well as data which suggest that, in practice, many programs have trouble maintaining these principles (Marshall, 1990; Umbreit and Coates, 1992). These principles are detailed in Table 4.2: 'Central Principles of Restorative Justice Programs.' An example of the complexity of 'community' that is mentioned in Table 4.2 can be seen in Merry's (1993) study of the phenomena of
private neighbourhoods in the United States. During the course of the study, Americans were seen to pursue individual opportunity at the expense of community ties. Merry found that people chose to move from urban ethnic neighbourhoods to suburbs where they were insulated from gossip of neighbours and the authority of community leaders. In private neighbourhoods, order and belonging came from a stable class identity rather than from enduring social relationships. In working class and poor neighbourhoods, Merry found that: "Good fences made good neighbours ... because they diminished the opportunity for conflict" (1993:71). As a result of earlier studies of mediation processes in American communities, Merry (1989) argues that the structure of such communities limits them from assuming social control functions presently carried out by the legal system and in a way that would genuinely decentralize behaviour control. Sharpe (1998) restates this argument in another way:

Our society's primary approach to justice leaves many people unsatisfied because it reduces crime to a violation of rules, and seeks punishment rather than accountability. It takes power from those who have been hurt and denies them the chance to express their pain and anger to the person responsible. It takes power from those who have caused harm, and denies them the chance to make amends for what they have done (1998:3).

but note, too, Leibrich's warning that:

It may not be possible to make a person analyse the costs and benefits of offending nor to change their personal morality, but it is possible to give them information and feedback which they can at least consider (1995:28).

Braithwaite (1999) argues the restorative justice process cannot succeed in a vacuum. It is not reforms to the criminal justice system that will control crime and thereby improve the lot of victims, rather it is reforms to liberty, equality, and community in more deeply structural senses that will achieve this.
<table>
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<tr>
<th>Principle</th>
<th>Details</th>
<th>Practical Problems</th>
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<tr>
<td>Emphasis on Addressing Victims' Needs</td>
<td>Victims are actively involved in the criminal justice system; are helped to regain a sense of control; and have their personal and relational needs met. Because responses to crime are individual, designers of restorative justice programs cannot be aware of the needs of a particular victim. Thus, the emphasis of the structure of restorative processes and the focus of any agency administering them would have to be on meeting individual needs.</td>
<td>Similar criminal offences may have dissimilar effects on victims and offenders, so a different or unique response may be necessary to right the wrong. In addition, the need of victims for vindication, reparation or satisfaction may be influenced by the extent to which they believe the offender liable for the crime.</td>
</tr>
<tr>
<td>Involvement of Victim, Offender and Community</td>
<td>Restorative justice programs normally require victim, offender and community to be actively involved in the response to an offence, and a prerequisite to that active involvement is a forum for communication between all the parties. However, if the parties are represented through counsel, then such involvement is difficult to achieve. In Great Britain it is common in neighbourhood disputes to find that most disputants prefer to negotiate individually through the mediators, joint mediation sessions involving all parties are rare (Harding, 1989:39). For those restorative justice programs which desire community involvement, some system of selecting representatives is required. This is complicated by the influence of such things as urbanisation and social mobility, so that ‘community’ comes to mean different things to different people. Motherhood concepts such as ‘community values’ - which also mean all things to all people - may represent the values of only a part of society, such as the middle class, who are articulate and have the power and influence to assert their values on others. A victim and an offender may be members of different communities and cultures, raising the problem about whose community to involve.</td>
<td>There may be instances where victims are unable to attend restorative justice processes, and when this occurs the principle of meeting victims’ needs suggests the possibility of involvement through intermediaries or representatives. In New Zealand, this is reported as having been successfully tried in at least one initiative (Mansell, 1994). There may be times when very serious offending leads to actions that demand the needs of the larger community be met instead of those of any individual victim or offender. The offending may be detrimental to the point where reinforcement of societal values and denunciation of the offender is more important to the community than actual restoration of either the victim or offender. In such circumstances, neither the community nor the state can afford to give effect to the victim’s wishes or the offender’s needs for rehabilitation, irrespective of human rights or cost. This is notwithstanding that a custodial term might be the outcome recommended from a restorative justice intervention, even though it is the state and the community which bear the costs of such a custodial term.</td>
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### A Consensus Approach to Justice

An underlying concept of restorative justice is to obtain, as far as possible, a consensus approach to justice. Once a victim and an offender have decided that they have something to gain by seeking a mediated process, experience suggests that a consensus is usually possible on at least some issues. This is because it is rare for parties to an offence (victim, offender, community, state) to have only one interest in seeking justice. Usually the parties have common interests or interests that can be achieved without significant compromise. By finding agreement on matters in which there is little conflict, this can then lead on to the parties trying to find agreement on matter of a more contentious nature.

**Practical Problems**

Forced interventions or encounters are likely to prove harmful to all parties and may well backfire. Offenders can be required to make good but, without some degree of voluntarism on their part, they cannot be made to feel fully responsible for the offence(s) (Zehr, 1990). The offender who is most suitable for restorative justice intervention is the one who understands the consequences of their behaviour, accepts that the behaviour was wrong and is then prepared to act to remedy that wrong. This is necessary because programs that are separate from the criminal justice system must rely on voluntary involvement. They proceed regardless of what happens in the court.

The Ministry of Justice (1995) Discussion Paper states that, of the current sentencing options in New Zealand, none satisfies all three principles of restorative justice. Also, within the current criminal justice system, the restorative elements are fragmented. The Paper cites, as examples of this fragmentation, the division between reparation and fines provisions in respect of restitution provisions for property loss, emotional harm, and physical injuries. It suggests such fragmentation is unhelpful for victim-oriented restoration because of what are considered to be more important criminal justice objectives. Jackson (1988) posits that this situation of non-victim priorities is directly attributable to the influence of public opinion on decision-makers within the criminal justice system, who reflect the concerns of the conforming public by applying that public's judgements. The 1995 Discussion Paper also lists a number of "common elements" that are to be found in a restorative justice program, and these are shown in Table 4.3, as under.

Table 4.3 Common Elements Included in a Restorative Justice Program

- A definition of crime as injury to victims and the community peace.
- A focus on putting right the wrong.
- A view that both the victim and the offender are active players in responding to and resolving the criminal conflict.
- Compensating victims for their losses through restitution by the offender.
- Empowering victims in their search for closure through direct involvement in the justice process.
- Assisting victims to regain a sense of control in the areas of their lives affected by the offence.
- An objective of holding offenders accountable for their actions.
- Impressing on offenders the real human impact of their behaviour.
- Encouraging offenders to accept responsibility for their behaviour in a way that will aid them to develop in a socially acceptable way.
- A commitment to include all affected parties in the response to crime.
- Seeking to address the personal and relationship injuries experienced by the victim, offender, and the community as a consequence of the offending.

Reintegrative Shaming:

Another concept within the restorative justice movement is called reintegrative shaming. Braithwaite (1989) has proposed a theory of reintegrative shaming that can be used to understand the way conferencing models assist in reducing offending. Reintegrative shaming is a sociological theory that deals with the relationship between emotions and motivation (Braithwaite, 1989, 1993; Braithwaite and Mugford, 1994; Braithwaite and Pettit, 1990). Reintegrative shaming operates along similar lines to the principles of restorative justice espoused in Table 4.2. It can be used to comprehend a group conference that includes the offender, the victim, supporters and/or relatives of both, community representatives, the police and a coordinator, with the most important participant being the victim (Braithwaite and Pettit, 1990). While the victim is encouraged to pursue the restoration of their (previously unviolated) dominion, the victim’s presence is crucial in making the offender confront his/her crime so as to induce shame on their part. This sense of shame is heightened by the degree of affection and respect as between the offender and family, friends, and peers. A major aspect of this relationship between the offender and his or her supporters is that it enables an affirmation of the offender’s positive character traits. In turn, this is seen to be reintegrative instead of degrading (Braithwaite, 1989; Braithwaite and Mugford, 1994). As Braithwaite notes: "Shame is more deterring when administered by persons who continue to be of importance to us; when we become outcasts we can reject our rejecters and the shame no longer matters to us." (quoted in: Findlay, 1994:36): (See, too, Braithwaite and Mugford (1994:142)). For Sharpe (1988), Braithwaite's theory is a good explanation of the effectiveness of restorative justice in reducing criminal behaviour. In addition, Braithwaite's theory permits a generalisation of crime so that consideration may be given to both the actual effects and the potential effects or risks of an offence (Ministry of Justice, 1995). Labelling offenders with a criminal status encourages them to maintain that status by associating with criminal subcultures and pursuing a life of crime (Braithwaite and Pettit, 1990).
Practical Implications of the Restorative Justice Movement

The Range of Initiatives Contributing to the Restorative Justice Movement

There is a range of initiatives that contributes to the restorative justice movement. It includes reparation schemes; the use of mediation between offenders and their own families or communities to impose social integration and support, or to heal serious rifts; and general community mediation and dispute resolution services. It also means providing mediation to respond to or resolve public order and other major social conflicts; training in handling violence constructively (both one's own and other's violence); prejudice reduction workshops; and conflict resolution training (Ministry of Justice, 1995). According to Morrell (1993), restorative justice programs generally operate within, or in tandem with, a number of criminal justice systems. Proponents of restorative justice like Consedine (1994), and Zehr (1990) acknowledge historical and cultural precedents for it. However, because restorative justice is a relatively recent phenomenon in Western systems of criminal justice, there has been little opportunity for research and so the knowledge-base concerning it is incomplete. Thus, it cannot be viewed "as a tested model or theory of justice" (Ministry of Justice, 1995:15). There is no consensus in the literature as to what should happen if the parties cannot reach agreement. Some think that cases should be referred back to the court system or referral source (Stutzman-Amstutz and Zehr, 1990). Others see that the scope of restorative interventions extends beyond victim-offender agreement so the principles of restorative justice could have emphasis in any judge's sentencing decision (Mediation UK, 1992).

The Types of Restorative Justice Programs Currently Operating:

There are currently three distinct types of restorative justice programs operating across Australia, Canada, England, and the United States. In Canada and the United States they are called Victim-Offender Reconciliation Programs or VORPs. In Australia and England they are known either as Victim-Offender Mediation Programs or Family/Community Group Conferences. A brief outline of each type now follows.
Victim-offender reconciliation programs (USA and Canada) -

The Victim-Offender Reconciliation Program (VORP) concept originated in Kitchener, Ontario, in 1974, as a joint project of the Waterloo Region Probation Department's volunteer program and the Mennonite Central Committee, Ontario. It subsequently became known as the Kitchener Experiment. Although the Kitchener VORP has declined in both appeal and volume since the late 1970s, Peachey suggests that its legacy is that "it has led to further innovation in dozens of communities in Canada, the United States, and Europe" (1989:24). For example, by 1990, of the 100 programs in the United States involving victim-offender mediation about 60 could be traced directly to the VORP tradition. Since 1989, programs formed under this model have tended to call themselves victim-offender mediation programs. VORP are community-initiated programs, which seek to mediate between the victim and the offender and are often church-based, and, although they may employ coordinators, most of the mediation is done by trained volunteers. Referrals come mainly from the courts and probation services, and coordinators record and screen a referred case for appropriateness then pass it to a volunteer. The volunteer contacts and meets with the offender and victim separately and, assuming that both agree to proceed, makes arrangements for the VORP meeting. About 50 to 60 per cent of referred cases move to a victim-offender meeting and such meetings are held in neutral places - for example, the VORP office, a church or a school. Meetings seek to review the facts, provide for the expression of feelings and discuss an agreement, and care is taken to give all parties a chance to tell their story. Following the mediation, a report is prepared advising whether agreement was reached, the details of any agreement and any other matters the mediator considers relevant (Stutzman-Amstutz and Zehr, 1990; Zehr, 1990b).

Victim-offender mediation programs (England and Australia) -

These types of programs tend to be referred to as reparation schemes and are of two general types. The first is used in cases where the offender has been cautioned instead of prosecuted or when that course of action is being considered. The second

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2 For a more detailed outline of the Kitchener Experiment the reader is referred to Appendix C.
The Restorative Justice Movement

type uses victim-offender mediation for cases proceeding through the court process. With the first type, its use is restricted mainly to juveniles; the schemes are administered by an agency; it involves police, probation, and social service department collaboration; and the majority of referrals are made by police (Ministry of Justice, 1995). For such schemes in the United Kingdom, each case requires approximately three hours of negotiations for reparation agreements, and most of that time is spent with the offender rather than the victim. In about seventy per cent of cases, meetings between offender and victim are offered and, if agreed to, usually last for less than one hour and involve only victim and offender. On some occasions, family members of both may also be involved (Marshall and Merry, 1990). In the second type of program, the victim-offender mediation process occurs between conviction and sentence, and includes a few defendants prior to conviction but following an admission of guilt. Many of these schemes are initiated or administered by the probation service, in conjunction with a group of advisers from the courts and voluntary organisations. In some cases, these schemes are operated by the voluntary organisations and, from time to time, members of those organisations are utilised to conduct the mediations. Unlike the first type where the majority of referrals are from police, in this type referrals come from a wide range of sources that include defence solicitors, probation officers and magistrates (Ministry of Justice, 1995). In the British schemes, negotiations with the parties take between three and seven hours per case, prior to any meeting. In about 85 per cent of the cases a direct meeting is offered and actually occurs in 34 per cent of referred cases (Marshall and Merry, 1990).

Family/Community Group Conferencing -

Conferencing is used for juveniles in a number of Australian jurisdictions. For instance, New South Wales has instituted a cautioning programme for juveniles in Wagga Wagga, based on the New Zealand concept of family group conferences. It is administered by the police and aims to maximise the impact of juvenile cautions by helping the offender to understand better the seriousness of his or her offence and to accept responsibility for it, by providing 'input' opportunities for the victim, by bringing
in family members and significant others and by encouraging victim restitution or compensation (Fisher, 1994). Some in the legal profession are quite supportive of community youth conferencing such as that taking place in Wagga Wagga.

Community Youth Conferencing is an innovative, alternative method of dealing with young offenders. It is based upon principles of restorative justice rather than the retributive justice model of the courts and offers some young offenders an opportunity to avoid the stigmatisation and labelling of the court process (Cumes, 1997:63).

But in a follow-up article the Law Society of NSW, while lauding the efforts of a working party which was evaluating the CYC scheme, cautioned against abuses of it.

The Law Society strongly commended the Working Party's emphasis on the need for comprehensive data gathering. This was necessary, the Society said, not just to evaluate the [CYC] scheme but to meet concerns over net-widening and to enable inappropriate use of options to be addressed as soon as possible (1997:81).

Also, the Law Society drew attention to what it saw as a discriminatory label - the referring to the CYC as a "family or group conference." This was because some young offenders often had no parents or relatives, so a more appropriate title for the conference was to call it an "accountability conference" or, just simply, a "conference" (1997:81). This program has been extended to eight other communities in NSW and has also been adopted by the Australian Capital Territory (Connolly, 1994).

Net-widening, Net-strengthening, New or Different Nets, and Restorative Justice:

.Net-widening is a term used to describe the impact of measures which cast the net of the criminal justice system more widely, such that more offenders get into the criminal justice system than would previously have done so (Austin and Krisberg, 1981; Cohen, 1985). Net-strengthening is the deeper involvement of offenders with the criminal justice system either through more intrusive processes or through outcomes than would otherwise have been the case (Austin and Krisberg, 1981; Cohen, 1985). New or different nets emanate from criminal justice reforms which see new agencies and services supplementing rather than replacing existing control mechanisms (Austin and Krisberg, 1981; Cohen, 1985).
In regard to restorative justice programs generally, one criticism made is that pertaining to net-widening. For example, were they to be included as part of the criminal justice process and were the police to see value in offenders taking part in such processes, then more cases might be drawn into the system.

Or again, if victim-offender meetings were introduced as part of the police adult pre-trial diversion scheme, and individual police officers thought that particular offenders might benefit from such a meeting they might be less inclined to give cautions and warnings and more inclined to proceed with formal charges so that the offenders could be diverted subsequently through the police scheme (Ministry of Justice, 1995:59).

Whereas Young and Cameron (1992) conclude that the police diversion scheme itself has resulted in net-widening because offenders who were prosecuted, taken to court and then diverted would previously not have been prosecuted, Spier and Norris (1993) disagree. Following an examination of data on cleared offences, number of cases prosecuted and case outcomes, Spier and Norris doubt that net-widening occurred. As to the possible link between restorative justice and net-strengthening, the Ministry of Justice (1995) makes the point that if restorative justice processes were to be instigated at the post-conviction/pre-sentence stage, then fewer cautions, warnings and diversions might result. Instead, more cases might proceed through the formal criminal justice system, resulting in minor offenders being caught up in a more complex criminal justice process, where previously they might have completely avoided the formal system. Hence, more people would be involved and to a greater extent than otherwise.

From the perspective of the creation of new or different nets via restorative justice, it is suggested that the use of restorative justice processes might lead to more intrusive and complex outcomes than would otherwise be the case. In addition, there are or may be additional and unwarranted financial and social costs involved in the transfer of intervention authority from the formal, court-based system of justice to the informal, restorative justice system (Cohen, 1985). The Ministry of Justice makes a similar observation:

The risk that restorative programs which are integrated with the formal criminal justice system might contribute to net-widening depends to a large extent on the stage at which those processes apply, the attitudes of gatekeepers to the program and the extent of discretion which can be applied in referrals (1995:60).
There is insufficient information to sustain the argument that restorative justice practices lead to a reduction in offending. The international data indicate some reductions in offending over the short-term, but such changes were not statistically significant (Ministry of Justice, 1995:63-64).

Key Differences Between the Current Court-Based System and Restorative Justice:

In analysing available data, the New Zealand Ministry of Justice suggests that there are currently four main thematic differences between formal, court-based criminal justice systems and restorative justice systems. Those differences are in the feelings of guilt and emotion, in the process of individual cases, and in the relationships between the parties (Ministry of Justice, 1995). Table 4.4: 'Key Differences Between the Current Court-Based System and Restorative Justice' lists these differences. With regard to the sharing of the offender's guilt, this can also apply to, for example, the principals of an organisation whose employee defrauds clients (Braithwaite and Mugford, 1994; Braithwaite, 1995). A further point needs to be made in respect of the 'relationships' theme. Dunstan et al. (1995) state that a recent survey of prosecutors reports that respondents saw the Crown as their client, with the Crown being interpreted as the public or community interest. Some considered that, at times, the interest of the victim and the Crown were similar; but others thought that viewing themselves as representing the interest of the victim was dangerous.

Proponents of restorative justice such as Consedine (1995) argue that retributive justice, by comparison, is a total failure both as a concept and as a policy. Its emphasis upon punishment of the offender, rather than on healing the damage caused, all too often leaves the victim of crime traumatised and marginalised. It also simultaneously ensures that the offender will almost certainly reoffend because of what is done to him or her in the course of the punishment process. Consedine maintains that such an abject failure of retributive justice is nowhere more apparent than in the world's prison systems, especially the USA, New Zealand, and Great Britain. In Australia, at least one
Chapter Four

The Restorative Justice Movement

state other than New South Wales has recognised the potential value of restorative justice over retributive justice. In the South Australian Department of Correctional Services' 1995-96 Annual Report, it is stated that, as a major policy initiative, a change in emphasis is henceforth being made from offender rehabilitation to restorative justice (victim reparation). However, given the comments by Sutton (1997) and Presdee and Walters (1997) alluded to in the Introductory Chapter of this thesis, there is considerable room for scepticism about the outcome of such a policy initiative.
Table 4.4 Key Differences Between the Current Court-Based System and Restorative Justice

<table>
<thead>
<tr>
<th>Theme</th>
<th>Court-Based System</th>
<th>Restorative Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilt</td>
<td>The court-based system focuses upon defining those particular actions that identify, beyond reasonable doubt, the elements which constitute a <em>criminal</em> offence.</td>
<td>In restorative justice the focus is on offenders taking responsibility for their actions.</td>
</tr>
<tr>
<td></td>
<td>The court-based system employs rules of evidence and procedure to shape the process, influence the actions of police, defence, and prosecution counsel, prior to the defendant making a plea.</td>
<td>During the mediation process of some restorative justice programmes, defendants are asked whether they accept responsibility for the harm caused. This is quite different from asking whether they are guilty.</td>
</tr>
<tr>
<td></td>
<td>The court-based system is generally more interested in a defendant's intention to commit an offence, rather than whether he/she accepts responsibility.</td>
<td>To understand how restorative justice might fit with or compare to existing justice processes, it is important to distinguish between 'guilt' and 'accepting responsibility.'</td>
</tr>
<tr>
<td></td>
<td>For the defendant's part, they may deny guilt because there was no <em>criminal</em> intent or because the prosecution's allegation(s) may not accord with what the defendant believes to be the actual case.</td>
<td>The defendant may admit responsibility for the outcome of their actions and wish to make reparation.</td>
</tr>
<tr>
<td></td>
<td>In the case of a death by way of a traffic offence, for example, the response of the formal, court-based system of justice would be tempered by considerations such as the contribution of inattention or drunkenness to the death.</td>
<td>Thus, in the example of a traffic offence death, restorative justice would focus on responsibility for the outcome of the driver's act.</td>
</tr>
<tr>
<td></td>
<td>There is also the possibility under both systems that similar offences may result in very different outcomes. For example, &quot;two offenders acting with equal culpability and causing similar consequences could find themselves confronted by two differently disposed victims, one forgiving, the other vindictive&quot; (Ashworth, 1993:291).</td>
<td>In such a situation, involvement of community members and consideration of the objectives of the process could moderate those effects. In victim-offender mediation, the needs of the victim and the degree to which the victim desires retribution or recompense may be more influential on the outcome of the process than either the category of offence or the culpability of the offender.</td>
</tr>
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</table>

### Table 4.4 (Continued)  
**Key Differences Between the Current Court-Based System and Restorative Justice**

<table>
<thead>
<tr>
<th>Theme</th>
<th>Court-Based System</th>
<th>Restorative Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilt</td>
<td>The formal, court-based system of justice tends to the view that parents are responsible for their children's actions.</td>
<td>Restorative justice programs, too, envisage that others may share with the offender some responsibility for putting right the harm done.</td>
</tr>
<tr>
<td>Emotion</td>
<td>In the court-based system, crime is dealt with, as far as possible, dispassionately so that the expression of strong emotion is closely managed. The protocols of representation through counsel and the presentation of written reports and 'victim impact statements' to describe the emotional, physical and financial effects of the offence(s) on the victim(s), limit the opportunities for emotional displays. So, by reference to established principles and precedents, the system attempts to manage any public demand for retribution and revenge, and to give considered responses.</td>
<td>Restorative justice, on the other hand, directly recognises the emotional effect of crime on victims, offenders and the community. It therefore seeks healing of the emotional effects of crime as an important part of putting right the wrong. And just as with the tabling of victim impact statements in the formal, court-based system, restorative justice holds the offender accountable by hearing the emotional, physical and financial effects of the crime on the victim(s). It is unlikely that an offender could genuinely take responsibility for the offence and its consequences without understanding the effects of their behaviour on the victim(s).</td>
</tr>
<tr>
<td>Process</td>
<td>In the formal, court-based justice system, the process focuses on procedures and precedents so as to establish criminal intent (guilt). The court-based system has established procedural safeguards. The Victims' Task Force, in its 1993 Report, notes that, in the last decade, some changes have been made in the formal, court-based system of justice to give better access to and involvement of victims. While these changes include the provision of victim impact statements and the introduction of the sentence of reparation, they do not provide for victims to address or assist the court as of right.</td>
<td>Restorative justice, by contrast, shifts the focus from guilt to responsibility and thus provides an alternative process for resolving criminal issues. Restorative justice appears not to have such safeguards. To overcome this perceived shortcoming, Van Ness suggests a &quot;two track system&quot; with the formal court setting being one track and mediation the other. In this model, either party could have recourse to the court-based system and at any time. Also, with appropriate safeguards in place, it would eliminate the perception that restorative justice programs would be offered only after guilt is admitted or proven in an adversarial or inquisitive process.</td>
</tr>
<tr>
<td>Relationships</td>
<td>In the court-based system, the state's role is predominant and the victim's role is that of complainant and witness. In cases of victimless crimes, they proceed without any involvement of a victim. Examples of victimless crimes would be drink-driving or certain drug offences. New Zealand Department of Justice statistics from 1995 show that about forty per cent of information dealt with in district courts was for traffic offences; only some seven per cent related to drug offences.</td>
<td>With drink-driving and similar offences, the question arises as to how restorative justice interventions can be applied, given that many such offences are 'victimless,' and that victim-offender reconciliation programs have tended to deal with clear victim-offender relationships. Braithwaite's reintegrative shaming and family group conferences can operate in such circumstances, despite the absence of any individual victim.</td>
</tr>
</tbody>
</table>

Table 4.4 (Continued)  

<table>
<thead>
<tr>
<th>Theme</th>
<th>Court-Based System</th>
<th>Restorative Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relationships</td>
<td>In the formal, court-based systems of justice, both the victim and the community are represented by the state. For example, the biggest proportion of cases in New Zealand are dealt with in the summary jurisdiction - 135,988 cases in the year to 14 February, 1995. There, because the prosecutor is usually a police officer, the interest of the victim and the community are reflected indirectly through the agents and agencies of the state. The processes involved mean that victim impact statements are prepared by the police in consultation with the victim, victim’s views on bail are represented through the prosecutor, and the prosecution represents the interests of the community in obtaining a conviction. A recent survey of prosecutors reports that respondents saw the Crown as their client: with the Crown being interpreted as the public or community interest. Some considered that, at times, the interest of the victim and the Crown were similar but others thought it “dangerous to view themselves as representing the interest of the victim” (Dunstan, et al, 1995:102).</td>
<td>Restorative justice does not consider that the formal state criminal justice system should ideally be the first response to crime. Wherever possible, in restorative justice programs, individuals present their views, feelings and positions in person, whether as victim, offender, community member or representative of the state. By doing so, the state is then responsible for providing fair procedures to hold offenders accountable for making amends while the content of that process would be provided by the victim, offender and members of the community. Where mediation is involved in a restorative intervention, participants may have several viewpoints. Both victim and offender are community members, as are their supporters, and may represent minority groups within the wider community. State representatives such as the police, social workers and professionals may live or work in the local area. Community representatives may have an interest in supporting the victim or the offender and in providing longer-term rehabilitation. The multiple roles of individuals can often indicate common interests. These might include restoring community peace, reducing the risk of further offending against the current victim or other citizens, and the resumption of productive roles in society by both offender and victim.</td>
</tr>
</tbody>
</table>

Community Service Orders and Restorative Justice:

As noted in Chapter Three, there exists a wide perception among workers in the community corrections field that the community service order enhances the control mechanisms in the criminal justice system. And although this aspect of the community service order is examined in considerable detail in Chapter Six, the issue is canvassed here because of its relevance to the restorative justice movement. This relevance stems from several aspects. The community service order signifies to the world at large that it is a form of symbolic reparation, to be rendered to the community for behaviour that was found to be offensive to that community. Such reparation may, on rare occasions, be direct reparation to the victim where the community organisation concerned is the victim of the offending. Reparation, symbolic or real, is an integral part of the restorative justice process. Restorative justice and the community service order share the common goal of reintegrating the offender into the community, even though the paths may be somewhat different (c/f Harding, 1989). Another commonality between the community service order and restorative justice is the issue of net-widening, but it is a dichotomous commonality. For the community service order, the net-widening aspect is a negative one in that certain orders are punitive, both in their intent and implementation. The predominant concern is with punishment of the offender, not with their rehabilitation or reintegration (see Chapter Six for development of this viewpoint). In the case of restorative justice, net-widening has considerable positive potential, because, as Braithwaite and Pettit (1990) make clear, increasing freedom as non-domination via net-widening is a good thing. Braithwaite (1999) suggests that present limited evidence shows restorative justice narrows more often than widens formal state control nets, although nets of community control do tend to be widened. He also suggests that, viewed from a republican normative perspective, nets of social control over white-collar crime and domestic violence and even over school bullying should be widened.

On balance, the community service order, as it was originally formulated in the 1970s, with its emphasis on offender rehabilitation and community reintegration, accords by and large with the hopes of the restorative justice movement.
Conclusion

This chapter has examined the theoretical concepts of restorative justice and the practical implications of implementing it as a serious alternative (rather than as a supplement) to the formal, court-based system of criminal justice. This chapter has also defined the concept of restorative justice, and shown that restorative justice programs can function independently of, in conjunction with, and even within existing formal, court-based criminal justice systems. The three central principles of restorative justice: (i) addressing the needs of victims of crime, (ii) involving the offender, victim, and community in seeking a satisfactory outcome, and (iii) adopting a consensus approach to justice, have been detailed and analysed. Similarly, reintegrative shaming has been described and examined as to its function and location in the restorative justice process. What has also been shown is that there is no single, definitive restorative justice program, since such programs take a variety of forms to suit the requirements of specific jurisdictions. This is also a reflection of the underlying ethos of the restorative justice movement, namely: conflict resolution of criminal acts through mediation and reparation without the stigma of criminal labelling. In turn, this involves the empowerment of victims, holding offenders accountable for their actions, and ensuring that they (the offenders) accept responsibility for the harm they have caused. As this chapter has demonstrated, this approach and the use of the community environment rather than the formal, state court structure as the venue for the restorative process to take place, greatly assists the eventual healing process. As well, this chapter has shown that the use of the community environment also encourages offenders to respect not only those they have harmed, but also their peers and themselves, since crime is perceived to have arisen out of disrespect of people and disregard for property.

Having put in place the necessary, theoretical framework, I now turn to Chapter Five which details the research methodologies employed in gathering the data for this thesis, and explains why specific jurisdictions were chosen for three case studies.
Chapter Five

Background to the Study

We do not conduct this inquiry in a vacuum; we write in a city whose streets are far from safe at night. In an area of clear social importance, the fundamental significance of knowledge is its use.

Franklin E Zimring and Gordon J Hawkins

Introduction

The purpose of this chapter is to detail the methodologies used in gathering data for this thesis. In so doing, it will explain why specific jurisdictions were chosen for three case studies, including my home jurisdiction, the Australian Capital Territory. This chapter will also outline relevant demographic and criminal justice data applicable to each of the eight Australian jurisdictions covered by this study, especially in regard to the CSO. As well, this chapter will reflect upon some of the ethical issues the study raises. The principal emphasis of the research for this thesis is upon qualitative rather than quantitative data, since the primary topic - CSOs - lends itself much more naturally to an ethnographic rather than a statistical treatment. The research is also informed by my seven years' practical experience as a CSO Supervisor with the Australian Capital Territory Adult Corrections Department, between 1988 and 1995. Fieldwork research data appearing throughout the body of this thesis are derived from my field notes, individual and group interviews, participant observation, various Departmental documents that I was given access to, and from library and archival searches. Throughout this thesis, where appropriate, the Australian jurisdictions are shown in the sequential order in which their CSO legislation came into force. Thus, except where dealing with specific fieldwork locations, this means that Tasmania is always shown

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first and the Australian Capital Territory last. By way of a criminal justice system backdrop, I begin with a series of related tables which, in tandem with the data provided in Chapter Two, assist in understanding why certain criminal justice policies are pursued and others are discarded. These tables encompass the size of each jurisdiction's population, police force, the average daily prisoner population, the average daily number of indigenous prisoners within that population, and the number of criminal cases processed by the courts. From there, the chapter moves to a discussion of ethical dilemmas raised by this and other research. Then follows a description and discussion of the research methodology, the procedures employed and the problems encountered with those procedures. The penultimate section details the timetables for the two interstate case studies, and the chapter concludes with some observations about the overall methodology of the thesis.

Demographic and Criminal Justice System Data

Preamble:

To set the scene for this chapter and what follows by way of applied sociology in Part C, I begin with a series of related statistical data that assist in giving a general overview of major aspects of the Australian criminal justice system. These data also help in locating the bases of several key arguments in later chapters of this thesis.

Table 5.1 lists the most recent population figures for all principal Australian states and territories. Table 5.2 shows the number of police employed in each principal Australian jurisdiction, as at 1 July 1997. Table 5.3 contains the average daily prisoner population for the principal Australian states and territories as at March, 1997. Table 5.4 details the average daily number of indigenous prisoners for Australian states and territories as at March, 1997. Table 5.5 records the total number of criminal cases dealt with in Australian Courts during 1995-96. While some data on the geography of each jurisdiction is included in the body of the thesis, the bulk of it is located in Appendix I.
Table 5.1  Population of Australian States and Territories In 1996

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Population</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>475,000</td>
<td>2.59</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1,766,000</td>
<td>9.65</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>182,000</td>
<td>1.00</td>
</tr>
<tr>
<td>New South Wales</td>
<td>6,204,000</td>
<td>33.88</td>
</tr>
<tr>
<td>Queensland</td>
<td>3,339,000</td>
<td>18.24</td>
</tr>
<tr>
<td>South Australia</td>
<td>1,474,000</td>
<td>8.05</td>
</tr>
<tr>
<td>Victoria</td>
<td>4,561,000</td>
<td>24.91</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>308,000</td>
<td>1.68</td>
</tr>
<tr>
<td><strong>Total Australia</strong></td>
<td><strong>18,309,000</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

Source: Adapted from Year Book Australia, 1998

Table 5.2  Size of State or Territory Police Force as at 1 July 1997

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Number of Police</th>
<th>% of Total</th>
</tr>
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<tbody>
<tr>
<td>Tasmania</td>
<td>1,052</td>
<td>2.59</td>
</tr>
<tr>
<td>Western Australia</td>
<td>4,784</td>
<td>11.79</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>779</td>
<td>1.92</td>
</tr>
<tr>
<td>New South Wales</td>
<td>13,207</td>
<td>32.55</td>
</tr>
<tr>
<td>Queensland</td>
<td>6,561</td>
<td>16.17</td>
</tr>
<tr>
<td>South Australia</td>
<td>3,447</td>
<td>8.50</td>
</tr>
<tr>
<td>Victoria</td>
<td>10,130</td>
<td>24.97</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>614</td>
<td>1.51</td>
</tr>
<tr>
<td><strong>Total Australia</strong></td>
<td><strong>40,574</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

Source: Adapted from Year Book Australia, 1998

An interesting point with these two tables is the similarity in the ratios of population size and police numbers for all jurisdictions. For example, Tasmania has 2.59 per cent of the total population and its police force size has an identical ratio to total police numbers. Again, Victoria accounts for 24.91 per cent of the total population and its police force size is 24.97 per cent of the total police number.

Figures for ACT are as at 1 July, 1996 and not 1997.
### Table 5.3 Average Daily Prisoner Population for Australian States and Territories as at March, 1997

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Males</th>
<th>Females</th>
<th>Total Persons</th>
<th>Rate per Males 100,000</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>253</td>
<td>9</td>
<td>262</td>
<td>146.0</td>
<td>73.7</td>
</tr>
<tr>
<td>Western Australia</td>
<td>2,106</td>
<td>133</td>
<td>2,239</td>
<td>317.4</td>
<td>168.5</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>549</td>
<td>14</td>
<td>563</td>
<td>800.6</td>
<td>435.2</td>
</tr>
<tr>
<td>New South Wales</td>
<td>5,996</td>
<td>330</td>
<td>6,326</td>
<td>257.6</td>
<td>133.6</td>
</tr>
<tr>
<td>Queensland</td>
<td>3,367</td>
<td>167</td>
<td>3,534</td>
<td>268.9</td>
<td>140.2</td>
</tr>
<tr>
<td>South Australia</td>
<td>1,392</td>
<td>79</td>
<td>1,471</td>
<td>250.3</td>
<td>129.4</td>
</tr>
<tr>
<td>Victoria</td>
<td>2,310</td>
<td>126</td>
<td>2,436</td>
<td>135.2</td>
<td>69.6</td>
</tr>
<tr>
<td>Australian Capital Territory in New South Wales&lt;sup&gt;3&lt;/sup&gt;</td>
<td>106</td>
<td>8</td>
<td>114</td>
<td>93.0</td>
<td>49.2</td>
</tr>
<tr>
<td>Australian Capital Territory in remand</td>
<td>38</td>
<td>2</td>
<td>40</td>
<td>33.4</td>
<td>17.4</td>
</tr>
<tr>
<td>Australia</td>
<td>16,011</td>
<td>860</td>
<td>16,871</td>
<td>233.2</td>
<td>121.1</td>
</tr>
</tbody>
</table>

Source: Adapted from Year Book Australia, 1998

### Table 5.4 Average Daily Number of Indigenous Prisoners for Australian States and Territories as at March, 1997

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Indigenous (includes males and females)&lt;sup&gt;4&lt;/sup&gt;</th>
<th>Rate per 100,000 Indigenous to Non-Indigenous&lt;sup&gt;5&lt;/sup&gt;</th>
<th>Ratio of Indigenous to Non-Indigenous&lt;sup&gt;6&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>23</td>
<td>391.6</td>
<td>5.6</td>
</tr>
<tr>
<td>Western Australia</td>
<td>726</td>
<td>2,674.0</td>
<td>23.6</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>388</td>
<td>1,429.4</td>
<td>8.4</td>
</tr>
<tr>
<td>New South Wales</td>
<td>934</td>
<td>1,992.1</td>
<td>17.7</td>
</tr>
<tr>
<td>Queensland</td>
<td>807</td>
<td>1,731.8</td>
<td>16.0</td>
</tr>
<tr>
<td>South Australia</td>
<td>223</td>
<td>2,019.7</td>
<td>17.4</td>
</tr>
<tr>
<td>Victoria</td>
<td>121</td>
<td>1,042.1</td>
<td>15.6</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>11</td>
<td>985.7</td>
<td>15.9</td>
</tr>
<tr>
<td>Australia</td>
<td>3,233</td>
<td>1,822.3</td>
<td>18.4</td>
</tr>
</tbody>
</table>

Source: Adapted from Year Book Australia, 1998

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<sup>3</sup> Figures for ACT prisoners are already included in New South Wales totals.

<sup>4</sup> The number of indigenous prisoners sentenced in the ACT and held in NSW prisons has been subtracted from the NSW figures and added to the ACT remand figures to provide total figures for ACT.

<sup>5</sup> Rate of indigenous prisoners per 100,000 adult indigenous population.

<sup>6</sup> Ratio of indigenous to non-indigenous rates of imprisonment.
The above two tables, Table 5.3 in particular, have considerable relevance for Chapter Seven in respect of discrimination against gender and race. They depict not only the quite small number of females imprisoned compared to males, but also the over-representation of indigenous to non-indigenous prisoners.

Table 5.5 Total Number of Criminal Cases Handled in Australian Courts in 1995-96

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Supreme Court</th>
<th>District Court</th>
<th>Magistrates Court</th>
<th>Total</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>400</td>
<td>-</td>
<td>25,900</td>
<td>26,300</td>
<td>1.78</td>
</tr>
<tr>
<td>Western Australia</td>
<td>500</td>
<td>2,200</td>
<td>147,000</td>
<td>149,700</td>
<td>10.09</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>400</td>
<td>-</td>
<td>19,000</td>
<td>19,400</td>
<td>1.31</td>
</tr>
<tr>
<td>New South Wales</td>
<td>900</td>
<td>10,600</td>
<td>393,000</td>
<td>404,500</td>
<td>27.27</td>
</tr>
<tr>
<td>Queensland</td>
<td>1,400</td>
<td>7,100</td>
<td>248,000</td>
<td>256,500</td>
<td>17.29</td>
</tr>
<tr>
<td>South Australia</td>
<td>600</td>
<td>1,800</td>
<td>119,000</td>
<td>121,400</td>
<td>8.19</td>
</tr>
<tr>
<td>Victoria</td>
<td>400</td>
<td>3,800</td>
<td>488,000</td>
<td>492,200</td>
<td>33.18</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>200</td>
<td>-</td>
<td>13,000</td>
<td>13,200</td>
<td>0.89</td>
</tr>
<tr>
<td><strong>Total Australia</strong></td>
<td><strong>4,800</strong></td>
<td><strong>25,500</strong></td>
<td><strong>1,452,900</strong></td>
<td><strong>1,483,200</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

Source: Adapted from Year Book Australia, 1998

Research Ethics

It is argued that covert participant observation is a legitimate method to use in social science research generally, and in criminal justice and deviant research in particular (Denzin, 1968; Miller, 1995). One of the most frequently cited examples of covert research is probably Laud Humphreys' (1970) *Tearoom Trade: Impersonal Sex in Public Places* which subsequently generated considerable debate as to the ethics of and the deception involved in that particular study. And although the end may justify the means in such covert research, I have considerable difficulty with the ethics that are ignored in the process of it. Babbie (1992) cites *Webster's New World Dictionary*’s definition of "ethical" as: "conforming to the standards of conduct of a given profession"
or group" (1992:464). Judd et al. (1991), while not specifically defining "research ethics" or "ethical," point out some ethical concerns that "can arise from several aspects of the research process" (1991:528). According to Kellehear (1993), research ethics refers to "the responsibility that researchers have towards each other, the people who are being researched, and the wider society which supports that research" (1993:11). In his 'Ten Lies of Ethnography: Moral Dilemmas of Field Research,' Fine (1993) neatly captures many of those ethical issues that bedevil qualitative methodology. His remarks on the "Kindly Ethnographer," the "Honest Ethnographer," and the "Chaste Ethnographer," exposes some of the ethical and methodological pitfalls that await the unsuspecting field researcher.

Van Maanen (1982:116) suggests, "Fieldwork inevitably entails attachment," and as he also notes, informant relationships in the pursuit of ethnographic goals can place the ethnographer in a situation of ethical and moral dilemmas. In regard to this thesis, a fundamental error I made was to believe that I could be totally objective and impartial at all stages of my fieldwork just like "The Fair Ethnographer" (Fine, 1993:285-288). This proved next to impossible, mainly because of my CSO Supervisory background of seven years that refused to acknowledge there could be any negative aspects to either of the interstate CSO schemes I was researching. Upon a much later and more circumspect reading of my field notes, I found I had tended to concentrate upon only positive aspects of both schemes. In retrospect, this may have been because of the more open and professional approach towards corrections that I encountered by both administrations in Darwin and Brisbane, and the absence of the angst and deception so evident in the ACT administration. It may also have been the result of my wanting the fieldwork to have a 'positive' rather than a 'negative' bent to it, in order that it might be more 'acceptable' to my peers. Happily, hindsight has given me the capacity to see my field research in a more balanced light.

Having chosen participant observation and the unstructured interview as my two major fieldwork tools for the case studies, I was certainly conscious of problems that
could arise like those associated with, for example, the 'Hawthorne effect.' This was a label applied to the results of a series of industrial research studies carried out in the United States at Western Electric's Hawthorne plant, during the late 1920s and early 1930s. The studies became famous more for their methodological flaws than for their discoveries of anything substantive. What the particular studies emphasised was the need for researchers to be very aware of the effect of their presence on the subjects being studied (Babbie, 1992). Such an awareness has considerable application in the pursuit of qualitative sociological studies, especially those involving participant observation and unstructured interviews. For my part, closely bound up with this awareness of any effects my presence might have on those subjects with whom I would be interacting was the knowledge that I had an established track record as a CSO supervisor. I drew comfort from this knowledge and was confident that I would not need to resort to any unethical subterfuges like those referred to in Humphreys' 1970 'Tearoom Trade' study. For example, it had been suggested to me that I might gain a 'better' reaction from my subjects if I pretended to be one of them, that is, an offender doing his CSO hours, but I rejected the suggestion out of hand. I did so not simply because it was totally unethical, unnecessary, and probably would not be permitted by the respective administrations anyway, but also because if the pretence was discovered there could be serious and very adverse ramifications for all involved. At the very least, there would be created in the minds of the offenders a sense of betrayal of their situation by the responsible officers concerned. In short, the risks of engaging in such a ploy far outweighed any benefits that might be gained from it.

Research Procedures and Problems

Just as the prison setting presents certain challenges to the researcher that require consideration before undertaking any sort of study (Jones, 1995), so, too, does the field of community corrections. Many of the problems inherent in prison research are also present in research on community corrections: for example, issues around
offender confidentiality; the possibility that research findings may be used against offenders by way of justifying more punitive policies; and the often overlooked fact that the researcher's world view is almost always entirely different from that of the offender (Silberman, 1995). Other problems may include the intrusion of the State into the research project, its desire to define the type of study, and to access the data - much of which may have been obtained by the researcher on a strictly confidential basis (Presdee and Walters, 1997; Sutton, 1997; Zwerman and Gardner, 1986). I encountered just such an intrusion problem with the New South Wales' Corrective Services Department, in 1994, while researching material for my Honours thesis. The impasse with the Department was only resolved by my agreeing to shred the data I had collected and discontinue the particular study.

To avoid confusion and ambiguity, and working on the principle that changing the name of a function does not, of itself, change that function, I refer to prisons as prisons and not 'correctional centres.' This is because in some jurisdictions, correctional centres signify non-custodial centres. Also, convicted lawbreakers are here referred to as 'prisoners' if they are undergoing a custodial term, and 'offenders' where their sentence is non-custodial. These labels are used instead of the politically correct but totally misleading and inappropriate 'clients' (even though a number of Australian jurisdictions have lately deemed that 'client' is the preferred term of choice to be used). A perfect example of the 'client' misnomer is illustrated by an internal directive circulated throughout ACT Corrective Services in 1992, which stated that, henceforth, all offenders were to be referred to as 'clients.' This changed nothing at all in the Belconnen Remand Centre, where all detainees processed through its system, whether convicted or awaiting trial, were referred to as 'crims' (and still are) by the Remand Centre's staff. But the stupidity of the directive was to be found in dealings with CSO offenders. To the officers who organised CSO work, the real clients were individual pensioners, single mothers with small children, and non-government organisations such as Handyhelp (a Council on the Ageing home help body) and Koomari (who employed and looked after the physically and mentally impaired). As supervisors of CSO
offenders, if I and my co-supervisors followed the directive to the letter we were now taking out clients, formerly called offenders, to do CSO work for clients, the real ones! Repeated requests from the CSO Unit to senior management to re-examine the nonsensical directive fell on deaf ears.

Choice of Case Studies:

In casting around at the outset of this research for suitable case studies to demonstrate the arguments made by the decarceration theorists and the restorative justice movement, I settled on just two Australian jurisdictions. Much later, however, it occurred to me that I had a ready-made third case study if I chose to use my home jurisdiction, the ACT, and draw upon my seven years' practical experience and knowledge as a CSO supervisor. Used wisely that experience and knowledge could make a positive contribution to the field of Australian community corrections. The inclusion of the ACT with the other two case studies also owes much to a number of internecine issues present in ACT Corrective Services that related directly to the viability and continued functioning of the CSO Unit. In support of this inclusion, I have drawn upon intimate knowledge gained from more than seven years of direct involvement in the ACT CSO scheme, as well as upon documentary and legislative evidence. Therefore, on these bases, I have included the ACT as a third case study.

The two case studies initially used for analysis in this thesis in 1997 were of Darwin's CSO scheme in the Northern Territory and Brisbane's CSO scheme in Queensland. The principal reason for choosing those two jurisdictions for fieldwork was due to my earlier perceptions of each jurisdiction's apparent change in attitude towards its CSO scheme, over the course of eighteen and seventeen years, respectively. After reviewing the literature, it seemed that both schemes - the Northern Territory's in 1979 and Queensland's in 1980 - had begun with a strong rehabilitative emphasis towards the offender but, by 1997, that emphasis had apparently changed to a punitive one. The Intensive Supervision Order and the Mandatory Sentencing Laws (Northern
Chapter Five

Background to the Study

Territory) and the Intensive Correction Order (Queensland) were symptoms of this change. The states of Western Australia and Victoria had also followed a similar route from rehabilitative to punitive with similar legislation, whereas South Australia and Tasmania had not. New South Wales' CSO legislation had, from the very beginning, indicated that the emphasis would be on retribution, not rehabilitation; and the Australian Capital Territory, in quite bizarre circumstances, also came to embrace a policy change from rehabilitative to punitive. However, what intrigued me about the Northern Territory and Queensland jurisdictions was that both had gone to considerable trouble to provide fine-option orders for those offenders who could not pay certain court-imposed fines. And, in both instances, the 'hours for dollars' concept had proved financially disastrous by way of unpaid fines and uncompleted CSOs. I had wondered, initially, if this was a reason or the reason why very punitive intensive supervision orders had been subsequently implemented. As it turned out, it was not. This thesis will show that the principal reasons for the institution of punitive orders were politically motivated, in that the 'let's get tough on crime' stance was a proven vote-winner in election campaigns.

Pre-Fieldwork Research:

For the literature review segment of my research, I began by constructing a comprehensive picture of the ACT's CSO scheme - how it operated, how it was structured, who did what for whom or to whom, what sorts of processes were involved in moving a particular offender through the criminal justice system, and, especially, what were the dynamics of the relationships between offenders and corrective service officers. What became very quickly apparent was the vast body of knowledge in a variety of forms that was relevant to my thesis. Among other things, this body of knowledge consisted of books, theses, dissertations, journals, monographs, papers, newspaper articles and letters, film and radio materials, parliamentary speeches and reports, and an enormous volume of legislation pertaining to criminal justice systems both in Australia and overseas. On a positive note, the availability of all of these
sources meant this thesis was able to draw upon a wealth of knowledge and experience from which to analyse the three case studies. Nor was this knowledge contained solely within the discipline of sociology: other disciplines included criminology, economics, geography, history, law, penology, philosophy, politics, and social psychology. My next step was to look at CSO legislation in the other jurisdictions and to compare and contrast the differences and similarities between them and the ACT. What became very obvious, at that point, was the complexity of much of the legislation, particularly where there were four or five different Acts that needed to be read in conjunction with one another so as to obtain a clear picture of what was happening.

Detailed notes were made of the differences and similarities with a view to determining, at a later time, if there existed any identifiable patterns in the formulation of those pieces of legislation - for instance, were the minimum and maximum hours of CSO to be worked by offenders the same across all jurisdictions? Why? Why not? This process also involved backtracking over earlier legislation to pick up any changes. Then followed a detailed examination of Parliamentary Reports such as Hansard, which gave a fairly unambiguous picture of the underlying political activity involved in the way the CSO legislation was being formulated. It was also very revealing of the way the dynamics of party politics worked in the upper and lower Houses of the respective State and Territory Parliaments. That examination also enabled clarification of certain data that were otherwise difficult to corroborate.

In tandem with the examination of Hansard was the necessity to look at other sources such as those described above: books, journals, magazines, and newspaper coverage, including 'Letters to the Editor' columns. Aside from gaining a better understanding of what it was that politicians were trying to articulate in some of their comments in Parliament, those other sources gave one a good 'feel' for issues that concerned the general public and, as a consequence, the politicians. It was also at this stage that a comprehensive reading of the available literature specifically related to Australian CSOs was undertaken. This part of the research exercise, too, was
informative as to the dearth of Australian material available on my topic; but given the nature of that topic and what it involved, this came as no surprise. As well, there is a current and quite unhelpful trend by some Correctional Services' administrations to emphasise their organisation's 'Mission Statements' and 'Corporate Goals' and how they will be achieved, rather than provide meaningful data on what has actually been done. Although this type of rhetorical 'window-dressing' may look good in an Annual Report, it is very frustrating to researchers seeking relevant and factual data. In keeping with this trend there is also the use by those same organisations of simplistic charts and of data aggregated in such a way as to hamper further the finding of meaningful material.

In terms of a set of procedures for undertaking my fieldwork, and having regard to the processes I had followed for the literature side of the research, I decided to use participant observation and the unstructured interview as the major 'tools' for the fieldwork segment of this thesis. In addition, I prepared a list of ten general, 'open-ended' questions. The ten questions were to be used in the course of all contact interviews, in order to obtain a general 'feel' for both the jurisdiction and the individuals therein. Accordingly, the questions were of a general rather than specific nature to achieve that desired end and are listed in Appendix C of this thesis. It was not my intention, however, to rely upon just the ten questions, because I felt there would probably arise situations where I might want to seek additional information.

Participant observation or field research as it is often referred to (Babbie, 1992; Judd et al. 1991) has four distinct methods: complete participant, participant-as-observer, observer-as-participant, and complete observer (Gold, 1969). As a complete participant, his or her true purpose and identity are unknown to those whom he or she observes. He or she is only ever seen as a participant and never as a researcher. The classic example of this type of participant observation is that cited earlier of Humphreys' controversial 1970 study of illicit homosexual activity. As a participant-as-observer, there is full participation with the group being studied but with the proviso that he or she has made clear to that study group the fact that he or she is also
undertaking research. A danger with this method is that the researcher can become so involved with the study group that he or she 'goes native.' Two excellent examples of this method are Whyte's (1943) *Street Corner Society: the Social Structure of an Italian Slum*, and Stack's (1974) *All Our Kin: Strategies for Survival in a Black Community*. As an observer-as-participant, he or she identifies themselves as a researcher and interacts with the study subjects but makes no pretence of being a participant. An example of this would be a newspaper reporter who is learning about a particular social movement. As a complete observer, he or she observes a social process without becoming a part of it in any way. It is highly likely that the study group is totally unaware that they are being studied (Gold, 1969). Of these four roles it was my intention to be a participant-as-observer, because I believed then, as now, that it was the most appropriate role for that part of my research.

The unstructured or nondirective interview, like participant observation, is an appropriate data-collection technique to use in situations where one wishes to provide a basic description of a new or unusual topic or generate hypotheses. A major advantage of this technique is that it permits a completely unrestricted environment in which the study subjects can freely express their views without concern for admonition, dispute, disapproval or advice from the interviewer. This advantage was a prime consideration in my case when assessing the pros and cons of interviewing CSO offenders, especially as we had not met previously. The major disadvantage of the unstructured interview is, of course, the inability to replicate it (Judd et al., 1991).

To preserve total anonymity of all participants, only alias first names have been used. For example, an interview with John Smith would be referred to as an interview with Peter. For the same reason, I have avoided, wherever possible, using a person's title, choosing instead to refer just to their office - for instance, magistrate. Obviously, those people who participated in the study may well be able to identify some of their own comments, but to any outsider reading this thesis no such opportunity for identification exists or will arise. That anonymity was necessary to respect the total
background to the study

confidentiality of all participants, so as to create an environment where all questions could be answered freely without regard to any breach of confidentiality occurring, accidentally or otherwise. As a further measure of protection for the sources of my information, I chose to use a reference label. This reference label, derived from: 'participant observation and interview data,' was used by Lucken (1997) in research done on intermediate sanctions. This, then, is what was undertaken by way of pre-fieldwork research. The next section of this chapter details what was actually done by way of participant observation and the use of the unstructured interview.

fieldwork procedures - what i did:

the questionnaire or interview schedule I had constructed was subsequently imparted through unstructured interviews. This method had the advantage, for the most part, of not putting interviewees on the defensive, and they were made aware of my role as a participant-as-observer undertaking specific research related to CSO. I believed the approach taken would yield a more 'genuine' set of responses than it might otherwise have done. It is conceded that my interpretations of those responses is arbitrary and that were the same questions to be asked by someone else, their interpretation might well be entirely different. This is, as already noted, one of the vagaries of such qualitative field research. As Babbie (1992), Judd et al. (1991), and Kellehear (1993) all point out, there are inherent strengths and weaknesses in the participant observation approach where the targeted audience is a captive one - such as (in my case) a CSO work gang. This is particularly so in regard to 'voluntary' participation by the researcher's subjects. If subject participation is not totally voluntary, then the exchange of information (if it takes place at all) may be so heavily qualified or biased as to be of little or no use at all. In addition, because of my unfamiliarity with the type of CSO projects that were being carried out in Darwin and Brisbane, I did not seek to be placed with any particular type of CSO work gang. This meant that the corrective services administrations in both venues could obviously choose which gang(s) I would be allocated to or, alternatively, which ones I should be kept away from. It should also be stated, here, that during my
research in both the Darwin and the Brisbane precincts no attempt was ever made, either directly or indirectly, to cause me to divulge information about any of the people with whom I spoke. Those with whom I associated conducted themselves with the utmost probity, and at no time did I ever get the feeling that a 'snow job' was in progress, in respect of attempting to hide anything untoward from me. At all times, I attempted to be straightforward, reasoning that if I expected the same of my study subjects, then it was incumbent upon me to set the example. Both administrations were able to accommodate my wish to accompany a CSO work gang - In Darwin, this would be on a Saturday, and in Brisbane, it would be on a Saturday, Sunday and Monday.

The following sections detail the fieldwork timetables for both interstate case studies on a day-by-day basis, in terms of what I did, where I went, with whom, and who I interviewed. The introductory paragraphs to each timetable detail some of my thoughts and observations at the time.

Case Study No.1 - Darwin (6-13 February, 1997):

A field trip was undertaken between 6 and 13 February, 1997, to observe at first hand the Northern Territory CSO scheme in operation within the Darwin precinct. My primary interest in the scheme was the degree of change it had undergone since its inception in 1979. In terms of a methodology, my principal research tools were participant observation and the unstructured interview.

The city of Darwin had undergone major structural and developmental changes from the way I remembered it prior to Cyclone Tracy in 1974. The CBD was much larger and more densely populated and there was considerably more vehicle traffic. The Darwin Community Corrections Office was a modern, air-conditioned building centrally located at ground floor level in the CBD. On my arrival in the Darwin office I met with my contact person through whom I had organised the field trip, Arthur. He was also in charge of community corrections operations. I was made to feel quite
welcome by Arthur and his staff and, while I had in mind an approximate idea of how I
would begin my field research, there seemed so much information that required
absorbing that I didn't quite know where to begin. The genuine openness of Arthur and
his staff unknowingly made such a decision all the more difficult, so I began by asking
about the way that community corrections functioned within the Northern Territory.

- Day One: Spent the afternoon with Northern Territory Corrective Services' senior
management, being briefed on local conditions and procedures regarding aspects of
the Northern Territory's criminal justice system and, especially, the CSO scheme.

- Day Two: Spent the entire day with a senior probation and parole officer observing
CSO administration procedures. This included accompanying the officer to the
Darwin Watchhouse to interview an offender and assess his suitability for being
recommended for a CSO; visiting a city-based CSO project, a home for the elderly
and infirm, and interviewing the home's resident manager; and, later that afternoon,
visiting two other CSO project sites within the Darwin precinct.

- Day Three: This was Saturday and I joined a group of eleven offenders and their
supervisor as they went about their CSO duties at a large, multi-purpose sports
complex located at Marrara, a few minutes drive from the Darwin CBD. There, as a
participant-as-observer, I interviewed the supervisor and the offenders individually
and collectively.

- Day Four: This was Sunday during the course of which I wrote up extensive field
notes.

- Day Five: Spent the day debriefing with senior management in the Darwin office,
and reviewing existing and intended legislation - particularly that in respect of the
proposed mandatory sentencing laws.
• Day Six: Visited the Northern Territory University campus in the morning to interview a senior law lecturer and the Head of the Department of Sociology about the proposed new mandatory sentencing laws and the compulsory wearing by offenders of the CSO vests. The afternoon was spent in the Darwin Public Library researching material on issues and legislation related to sentencing and CSOs.

• Day Seven: In the morning, accompanied a senior probation and parole officer to the Darwin Watchhouse to observe interviews with two more possible CSO candidates, one of whom was deemed suitable for community service and the other one who was not. The afternoon was spent in debriefing sessions at the Darwin office on my observations and findings.

• Day Eight: Had only the morning available to me and this was used for an extended interview with a senior magistrate on matters related to CSO and the proposed mandatory sentencing laws.

Case Study No.2 - Brisbane (15-20 August, 1997):

As with the Northern Territory case study in February, 1997, a field trip was undertaken to Brisbane, between 15 and 20 August, 1997, to observe at first hand the Queensland CSO scheme in operation in the Brisbane precinct. My primary interest in the scheme was the degree of change it had undergone since its quite inauspicious beginning in 1980. In terms of a methodology, my principal research tools were again participant observation and the unstructured interview.

On my arrival at the QCORR offices in Toowong on 15 August, I quickly realised that the unstructured interview would be my most effective research tool. This was because I was unknown to either the staff or the offenders, and I had no clear idea of the scale and diversity of the CSO operations there. I was very aware, too, of my lack of local knowledge of the Brisbane precinct. During conversations with staff, questions
from my interview schedule were interspersed with those of a general nature, since my purpose in speaking with them was to gain an insight into local conditions. The unstructured interview was of particular benefit when discussing issues such as the 'fee for service' CSO concept, because this meant asking questions specifically related to that issue, a situation not previously contemplated when drafting my questions in 1996. In respect of QCORR Administration personnel, where they were available, I was able to conduct one-to-one interviews. This had the decided advantage of allowing me to become informed on much of the background to the present Queensland CSO scheme, as well as to gain a good understanding of current Administration philosophy behind the CSO scheme generally. This proved invaluable in putting into proper context some of the more apparently radical proposals such as the 'fee for service' CSO concept. Regarding offenders, I was able to accompany three different groups on consecutive days - Saturday, Sunday and Monday - and to work alongside them on specific CSO projects. Also, since the weekend projects involved volunteers working with the offenders, it proved an added bonus for me and much additional information was freely given. Once I had made myself known to a number of them and my reasons for being there, some of the volunteers, in particular, found the subject matter of my research interesting if unusual. My role as participant-as-observer and the continued use of the unstructured interview were crucial in not only gaining knowledge about the study subjects, but also in their 'acceptance' of me as both a participant and a researcher.

- Day One: Spent the morning and most of the afternoon with Brisbane West Community Corrections Office senior management and staff (located in Toowong). My initial time was taken up with briefings on local conditions and procedures regarding Queensland's criminal justice system and, in particular, the CSO schemes. Also arranged to accompany three different CSO work gangs on the coming Saturday, Sunday and Monday. In the afternoon, I read through the Department's Procedures Manuals to get a better idea of the way CSOs were administered here, especially the procedures related to the intensive correction orders. Obtained a copy of the Penalties and Sentences Act 1992 from the Government Printer's Office.
Chapter Five

Background to the Study

• Day Two: Spent the morning working alongside four offenders and a group of local volunteers on a landcare project in a Brisbane suburb called "The Gap." I mixed freely with both groups and also met the local member of parliament who was a keen environmentalist. Much of the afternoon was spent with the CSO supervisor as we waited for assistance from the RACQ for a flat tyre our transport vehicle had sustained (the spare tyre on the vehicle also being flat).

• Day Three: Was spent with the same supervisor from Saturday but with a different group of offenders and on another community project, this one being located at Toowong. I again worked alongside the offenders and the volunteers, mixing freely with both groups and exchanging information. After lunch, I accompanied the supervisor back into the city and, because he had other tasks he had to finish from the previous day (due to the time lost with the flat tyre), we parted company and I returned to the motel to write up my field notes.

• Day Four: This was spent with a different CSO supervisor and group of offenders, but this time the location of the work site was the Southport Freeway, where we were to remove rubbish and litter from a designated section of the southbound side of the freeway. Again I worked with the group, but there were no volunteers.

• Day Five: Was begun in the Toowong office. Met and talked with a number of people involved in the administration of all aspects of community corrections. Arrangements were made for me to visit the Inala Community Corrections Office, located in a public housing estate some 15km south-west of Brisbane. I duly arrived there just before lunch. The rest of that day was spent in the company of the Office Coordinator and learning about the sorts of problems the Coordinator and her staff of three faced in an area of high unemployment and high crime rates.

• Day Six: Met with the Department’s senior research officer, Colin, who had been my initial contact in 1996 for making arrangements for the field trip. Due to his
particular commitments and my own time constraints regarding my return to Canberra that afternoon, the meeting was quite brief but cordial and informative.

**Conclusion**

The subsequent consolidation of the empirical fieldwork data in this study, which includes 249 hours of participant observation and unstructured interviews, with the chosen sociological theory reflects and, in some cases, enhances many of the issues raised by the decarceration literature. The end result is a study in which contemporary sociological theory and the field research data complement each other in a number of respects. It is hoped this study contributes towards furthering the knowledge and understanding of Australian community corrections generally, and the criminal justice sanction known as the CSO in particular.

To paraphrase Pat Carlen (and with due apologies to her), the methodologies, procedures and processes outlined above are what I did. This thesis is what was made of them (Carlen, 1983; 1990).
APPLYING THE LITERATURE TO CSOs

Chapter 6. Do Community Service Orders Work, Strengthen or Create New or Different "Norms"?

Argues, with particular reference to the work of Identity Design, that under certain conditions (such as for example, integration/intervention by community corrections staff) CSOs can be increased. A method of making contact both wider and stronger, and can even create new and different norms.

Chapter 7. The Issues of Gender, Community Service Orders and Custody

Argues that because female offenders and prisoners are such a minority group compared to male offenders and prisoners in most of the Western institutions, they (female offenders) are treated differently. Such gender-biased treatment endures regardless of whether they are community service workers or other prison officials and personnel.
Synopsis

This section applies the theoretical and methodological concepts outlined in Chapters Three, Four and Five to the practical and ethical issues which confront Australian community service order schemes. Integrates the theory with the practice in order to resolve the central thesis problem.

Chapter 6. Do Community Service Orders Widen, Strengthen or Create New or Different 'Nets'?

Argues, with particular reference to the work of Stanley Cohen, that under certain conditions (such as, for example, increased intervention by community corrections' staff) CSOs can be said to have the effect of making control nets wider and stronger, and can even create new and different nets.

Chapter 7. The Issue of Gender, Community Service Orders and Control

Argues that, because female offenders and prisoners are such a minority group compared to male offenders and prisoners in most if not all Western jurisdictions, they (female offenders) are treated differently. Such gender 'segregation' enhances control over them at all stages of the criminal justice process.

Chapter 8. Are Community Service Orders Financially Driven?

Argues that the community service order, from initial concept to eventual reality, was (and is) financially driven. Shows that in recent years the privatisation/corporatisation of correctional services generally has seen a move towards making the community service order and other prison alternatives cost-neutral.
Chapter 9. Are Community Service Orders Punitive or Rehabilitative?

Argues that all Australian community service orders are punitive to some extent. Further, that the recent proliferation of 'intensive' CSOs (largely the result of changes in sentencing policy) are particularly punitive and have become, in effect, a form of what some have termed 'vengeance as public policy.' Evidence is provided, primarily, by way of documented legislative and policy changes as well as fieldwork data from three Australian case studies.

Chapter 10. Conclusion

Reviews the data related to the central argument of the thesis and presents a detailed summary of the analysis thus made of it. Discusses the implications of present government policies in respect of community service orders and the directions in which those policies may go.
Chapter Six

Do Community Service Orders Widen, Strengthen or Create New or Different 'Nets'?

*It has been well said that the only difference between throwing people into the fire and throwing fire into the people is an altitude of some thousands of feet.*

Hans W. Mattick

Introduction

The purpose of this chapter is to address the question of whether alternatives to custody in general and CSOs in particular can be said to effectively make the criminal justice system 'control nets' wider, stronger, or even create different or new nets. This chapter connects the theoretical aspects in Chapters Three and Four with the practical considerations of Western criminal justice systems generally and with community corrections in particular. It also serves as the platform from which to view and analyse a number of current issues, such as gender bias, control, politically and economically-driven corrections imperatives, and the ramifications of competing and conflicting criminal justice system goals. For example, the pursuit of punitive measures to reduce the levels of, or at least control, crime, and of rehabilitative measures aimed at helping offenders. The chapter begins with an overview of 'the decades of change' - the 1960s and 1970s - and the direction that criminal justice systems took in response to calls for alternatives to the destructiveness of the prison. At the forefront of these responses was the movement to decarcerate the 'mad and the bad' (Scull, 1984); to minimise the role of the state in punishing criminals; and to broaden the criminal sanctions base in order to give courts a wider choice of punishments (Chan, 1992). So that inmate numbers

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might be reduced, it was intended, in the 'destructuring' process, that control and surveillance systems would be decreased. In fact, the opposite happened and, as Cohen (1985); Vass (1990) and others note, those systems were actually expanded and have continued to expand and absorb an ever-increasing amount of the respective State's fiscal and human resources.

This chapter then moves from the general to the specific, by looking at what Cohen (1985) calls the "Master Changes in Deviancy Control," detailed in Table 6.1. This Table and the accompanying notes expand upon much of the sociological theory underpinning the 'Sociological Constructions of Deviance' in Chapter Three of this thesis. Having set the scene, the thesis proceeds into a detailed analysis of the three major ways that deviancy control and surveillance 'nets' are expanded: that is, by net-widening, by net-strengthening, and by the creation of new or different nets. The analysis draws heavily on the work of Cohen (1985), and to a lesser extent, Austin and Krisberg (1981), and Chan (1992), among others. The final part of this chapter examines the role of the CSO as a criminal justice system control mechanism. By such an examination and with cross-reference to the other segments in this chapter, I will demonstrate that, under certain conditions, the CSO does, in fact, widen, strengthen, and create new or different deviancy control nets.

**Setting the Scene**

**The Decades of Change:**

On both sides of the Atlantic, as well as in the Antipodes, decarceration policies in all their manifestations have evolved from a wide array of complex social, economic, and political issues. At the heart of these issues is the problem of crime, the cost of crime, and how to prevent or contain crime, because, as Harding (1989) observes, crime is of concern not only to victims and offenders, but also to professionals and the public. Attempts at prevention and containment of crime have, in turn, spawned a host of...
concepts and theories to explain the origins of and motivations for crime, as well as policies and procedures to punish those individuals convicted of committing crimes. Thus, arguments surrounding the use of incarceration as being 'the answer' to the crime problem, and the counter arguments which promote decarceration or punishment in the community as 'the answer,' become quite significant. It is, therefore, instructive to look at how both the law makers and the law enforcers have attempted to deal with these arguments, in both the short and the long term.

The starting point is a period of intense economic, political, and social unrest that I call the 'decades of change' - the 1960s and 1970s. Austin and Krisberg, (1981) saw that activists who were promoting civil rights argued about the myth of equal opportunity and how the powerless would only attain self-determination by asserting their rights. The 1960s was also a time of rebellion among America's white, middle-class youths against their parents' traditional life styles, and against the legitimacy of the family and the Protestant Ethic (Flacks, 1971). Those youths grew up confused and unable to reconcile the glaring contradictions between the social deprivations endured by whole populations in their society and the professed values of egalitarianism and democracy (Flacks, 1971). The ensuing disfunctionality of such anger and confusion in the middle- and oppressed lower-class youth manifested itself in "changing family structures and life styles, drug use, Vietnam War protests, and demonstrations against racial and economic segregation" (Austin and Krisberg, 1981:167). Public officials equated such dissent with lawlessness and promptly called for stronger social controls, a view endorsed by conservatives (Harris, 1969). But such calls also stirred progressives to seek a reduction in state intervention and the implementation of alternatives to imprisonment (Chan, 1992).

Scull (1984) had earlier spoken of the marked increases in prison populations, and had posited that there was a growing body of evidence which indicated that the development of diversionary programs led to the processing of an even larger deviant population. Chan and Ericson (1981) state that, unlike the mental health situation, the
network of social control for the decarcerated criminal has been widened, over time, and many are being diverted into the system rather than from it. According to Cohen (1979, 1985), this 'diverting' process has involved a more or less deliberate blurring of the social control network's boundaries. The maze of diversionary schemes such as halfway houses, community correctional centres, group homes, foster homes, pre-trial release centres, and deferred sentencing agencies, requires an ability to make meaningless conceptual distinctions. Matthews (1979) elaborates further on this:

Placing people in 'twenty-four-hour detention hostels' in the 'community' instead of traditional institutions is not adequately reflected in the term 'decarceration.' More importantly, a large percentage of apparently 'decarcerated' individuals are not placed outside of the general network of control and surveillance, but are diverted into more flexible programmes only to reappear in traditional institutions at a later date (1979:103).

This trend towards increased intervention was compounded by the vested interests of those staff employed directly and indirectly in the prisons and in community corrections, as well as by more frequent calls from the public for better crime control (Greenberg, 1975). The criminal justice literature of this time reflected academic and public concerns about the need for deterrence and retribution in sentencing - (c/f Fogel, 1975; Van den Haag, 1975; Von Hirsch, 1976; Wilson, 1975). This is also one possible explanation for why the CSO experienced difficulty in gaining public acceptance during its formative years, and why, in the USA, the order was often referred to as 'symbolic restitution' (McDonald, 1992). Given such a background, it is no surprise that more than three decades later the decarceration debate "far from being over, has only just begun" (Chan, 1992:5). This is largely because criminal justice agencies are constantly changing by virtue of new laws being passed, new theories of social control are promoted and funded, and agency budgets are increased or reduced. In effect, as the agencies change, so, too, do the nets (Austin and Krisberg, 1981).
Master Changes in Deviancy Control:

The 1960s and 1970s were the start of new and different social control nets and differ considerably from those of earlier times. Cohen (1985) suggests that, in Western industrial societies, "there have been two transformations ... in the master patterns and strategies for controlling deviance" (1985:13). The first of these occurred between the end of the eighteenth and the beginning of the nineteenth centuries, and was the forerunner of all subsequent systems of deviancy control. The second change, according to Cohen, is occurring now and represents to some that earlier transformation being radically reversed. And it is with the second master correctional change that Cohen is more concerned, in particular, with "just what is happening" (1985:14). He sees there have been real changes to the criminal justice system, but those changes have been ongoing, in keeping with the original changes of the nineteenth century. He also suggests these changes run are diametrically opposed to "the ideological justifications from which they are supposed to be derived" (1985:14), creating the perception that things are not what they appear to be. Cohen outlines what he sees as the four main features of the modern deviancy control system and suggests that in most industrial societies they have already been established. These features are delineated below, and are then shown in the context of the overall master changes, in Table 6.1: 'Master Changes in Deviancy Control' under the column titled 'Phase Two':

1. The increasing involvement of the state in deviancy control - the eventual development of a centralised, rationalised, bureaucratic apparatus for the control and punishment of crime and delinquency and the care or cure of other types of deviants.

2. The increasing differentiation and classification of deviant and dependent groups into separate types and categories, each with its own body of 'scientific' knowledge and its own recognised and accredited experts - professionals who eventually acquire specialised monopolies.

3. The increased segregation of deviants into 'asylums' - penitentiaries, prisons, mental hospitals, reformatories, and other closed, purpose-built institutions. The prison emerges as the dominant instrument for changing undesirable behaviour and as the favoured form of punishment.

4. The decline of punishment involving the public infliction of physical pain. The mind replaces the body as the as the object of penal repression and positivist theories emerge to justify concentrating on the individual offender and not on the general offence (Cohen, 1985:13-14).
<table>
<thead>
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<tr>
<td>Professional dominance</td>
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<td>Established and strengthened</td>
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<td>Object of intervention</td>
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<td>Ideological stress on inclusion and integration: both modes remain</td>
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Source: S. Cohen (1985)
Chapter Six

Do CSOs Widen, Strengthen or Create New Nets?

Types of Changes in Control Nets

Cohen (1985) sees the destructuring movements as being intended to decrease the intensity, scope and size of the formal deviancy control system, and the two most established methods to achieve these aims are diversion and deinstitutionalisation/community alternatives. Austin and Krisberg (1981) offer four others: due process, deterrence, decriminalisation, and just deserts. However, it is difficult to see how the destructuring movements have succeeded, if at all. I am inclined to Chan's view that, within the criminal justice system, it "has largely not occurred" (1992:1). What seems to have happened is that 'social control' has merely changed shape. As to issues of net size, net density and the creation of new nets, Cohen suggests three classifications:

1. Net-Widening:

This equates to "[a]n increase in the total number of deviants getting into the system in the first place and many of these are new deviants who would not have been processed previously" (Cohen, 1985:44). Or, as Austin and Krisberg put it, is created from criminal justice reforms that "increase the proportion of subgroups in society (differentiated by such factors as age, sex, class, and ethnicity) whose behaviour is regulated and controlled by the state" (1981:169). Two recent studies on California's three-strikes legislation, one by Stolzenberg and D'Alessio (1997) and the other by Shichor (1997), adequately demonstrate, among other things, the net-widening concept. According to Stolzenberg and D'Alessio (1997), the origin of California's 1994 three-strikes legislation is to be found in a 1972 study on juvenile career criminals. In this study, the researchers traced a cohort of 9,945 boys born in Philadelphia in 1945 through to their eighteenth birthday in 1963. The study's main finding was that a small group of juvenile offenders, who accounted for only 6 per cent of the Philadelphia cohort, were responsible for 52 per cent of all arrests of cohort members. As well, this same small group were arrested for the majority of the serious crimes committed by the cohort. Stolzenberg and D'Alessio (1997) point out that the policy implications from this particular research suggest that if the relatively small number of possibly habitual
offenders can be incapacitated early in their criminal careers, then society can expect a substantial reduction in the levels of crime.

California's mandatory sentencing law, referred to as the three-strikes law, became operational in March, 1994, and requires that "felons found guilty of a third crime can be locked up for 25 years to life" (Shichor, 1997:471). It stipulates that

Although the first two "strikes" accrue for serious felonies, the crime that triggers the life sentence can be for any felony. Furthermore, the law doubles sentences for a second strike, requires that these extended sentences be served in prison (rather than in jail or on probation), and limits "good time" earned during prison to 20 per cent of the sentence given (rather than 50 per cent, as under the previous law) (Greenwood et al. 1994:xi).

According to Shichor (1997), three-strikes laws are based on the penal principle of incapacitation and have their historical roots in American penology. Predicated upon Max Weber's rationalisation process that is presently embodied in the operation of fast-food restaurants, Shichor (1997) sees 'McDonaldization-type efficiency' (in the context of three-strikes) as: achieving the maximum incapacitation effect possible for dangerous offenders, where incapacitation is an efficiency indicator in that, during their prison sentences, those offenders are prevented from causing harm to the outside community. Shichor links his analysis of the three-strikes laws to what Feeley and Simon (1992), in their much cited paper, have termed the 'new penology'. It is distinct from the 'old' penology, which concentrates upon the individual offender and upon individual-based theories of punishment. The new penology, of which the three-strikes laws are but one manifestation, is to do with identifying, classifying, and managing groups sorted according to their level of dangerousness. According to Feeley and Simon, the new penology involves shifts in three separate areas:

1. The emergence of new discourses: In particular, the language of probability and risk increasingly replaces earlier discourses of clinical diagnosis and retributive judgement.

2. The formation of new objectives for the system: [T]he increasing primacy given to the efficient control of internal system processes in place of the traditional objectives of rehabilitation and crime control.
3. The deployment of new techniques: These techniques target offenders as an aggregate in place of traditional techniques for individualizing or creating equity (1992:451-452).

For Shichor (1997), the new penology revisits earlier notions of those groups traditionally associated with the urban poor: the 'dangerous classes.' For example, Feeley and Simon argue that it is the continued emphasis on the 'underclass' in American jails needing to be 'managed' that has assisted in "the lowered expectations of the new penology" (1992:469). In other words, correctional thinking has shifted away from individual rehabilitation and towards group monitoring and management. These views echo those of Allen (1981), who sees the decline of the rehabilitative ideal being the result of the cultural revolts of the 1960s, which undermined the capacity of the American middle classes to justify their norms and the imposition of those norms on others. For Allen, it is this decline in social will, rather than empirical evidence of the failure of penal programs to rehabilitate, that doomed the rehabilitative ideal.

The increase in and differentiation of offender subgroups in Western societies, the concerns about the 'dangerousness' of those subgroups, and the shift towards a punitive rather than a rehabilitative treatment of them assist in widening the control nets (Allen, 1981; Austin and Krisberg, 1981; Cohen, 1985; Feeley and Simon, 1992; Shichor, 1997; Stolzenberg and D'Alessio, 1997). The expansion of sections of the criminal justice system to help 'classify,' 'divert,' or 'manage' new and potential offenders coming into the system promotes yet more expansion of it, thus widening the nets even further. This, in turn, leads to other forms of system expansion and one of these forms is net-strengthening, which will now be described and examined.

2. Net-Strengthening:

This is an increased intensity in intervention, with both existing and new deviants experiencing levels of intervention they might not previously have been subjected to (Cohen, 1985). For Austin and Krisberg (1981), net-strengthening is
created from criminal justice reforms that "increase the state's capacity to control individuals through intensifying state intervention" (1981:169).

Tonry's 1992 paper on 'Mandatory Penalties' highlights the overt and covert ways in which net-strengthening takes place. According to Tonry, The United States Sentencing Commission Report (1991) on 'Mandatory, Minimum Penalties in the Federal Criminal Justice System' demonstrates that

mandatory minimum sentencing laws unwarrantedly shift discretion from judges to prosecutors, result in higher trial rates and lengthened case processing times, arbitrarily fail to acknowledge salient differences between cases, and often punish minor offenders much more harshly than anyone involved believes is warranted (1992:254).

Tonry wryly observes that if federal officials were less interested in political posturing and more interested in rational policy-making, then the Commission's report "would result in withdrawal of all mandatory sentencing proposals and repeal of those now in effect" (1992:254). Tonry's observations may seem unduly harsh, but when the report's empirical evidence is analysed, along with that of four other studies, they appear quite justified. While mandatory sentencing is politically attractive in that it is a vote-winner rather than a vote-loser, it is still important to acknowledge that it can only be mandatory if the police, prosecutors, and judges choose to make it so. The reason for this is that many people involved in the criminal justice system find mandatory sentencing laws to be too inflexible and overly punitive; consequently, they adopt avoidance strategies or, as frequently happens, they simply ignore such laws entirely. The Commission's report revealed several disturbing patterns in the use or, rather, misuse of the mandatory penalties. According to Tonry (1992), the first was the action of prosecutors in not filing charges that carry mandatory minimums when the evidence

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would have supported such charges. Second, mandatory provisions were used as a
tactic by prosecutors to elicit guilty pleas - in other words, offenders were induced to
plead guilty to a lower charge or one that bore no mandatory minimum. Third,
mandatory sentencing increased trial rates, workloads and case processing times. Tonry
states that, of those convicted of offences bearing mandatory minimums, nearly 30 per
cent were convicted at trial (a rate two-and-one-half-times the overall trial rate for
federal criminal defendants). Fourth, indications were that judges (presumably with the
prosecutors' blessings) imposed less severe sentences than those required by the
applicable mandatory provisions. An opinion survey that had been undertaken as part
of the report revealed that the majority view among judges, prosecutors, private
counsel, federal defenders, and probation officers was that mandatory penalties were
too harsh, resulted in too many trials, and eliminated judicial discretion. The
Committee's report and the other four studies mentioned lead Tonry to make the
following generalisations:

1. Lawyers and judges will take steps to avoid application of laws they consider
unduly harsh;

2. Dismissal rates typically increase at early stages of the criminal justice
process after effectuation of a mandatory penalty as practitioners attempt to shield some
defendants from the law's reach;

3. Defendants whose cases are not dismissed or diverted make more vigorous
efforts to avoid conviction and to delay sentencing, with the results that trial rates and
processing times increase;

4. Defendants who are convicted of the target offence are often sentenced more
severely than they would have been in the absence of the mandatory penalty provision; and

5. Because declines in conviction rates for those arrested tend to offset increases
in imprisonment rates for those convicted, the overall probability that defendants will be
incarcerated remains about the same after enactment of a mandatory sentencing law

Tonry (1992) suggests that mandatory sentencing laws could be made far more
effective (and palatable to those public officials who are required to enact them) if the
laws were made 'presumptive' - that is, it would allow judges to take into account any
mitigating circumstances "without resort to subterfuge" (1992:267). By converting to
mandatory (presumptive) penalties, Tonry argues that systematic enforcement will not diminish but hypocritical efforts at avoidance will be eliminated. Such a change will also overcome the huge gap between political rhetoric about 'getting tough on criminals,' by passing ever harsher laws that are impractical to enforce, and courtroom reality, where judicial discretion can make such legislation workable.

3. New or Different Nets:

These arise because new agencies and services supplement rather than replace "the original set of control mechanisms" (Cohen, 1985:44). Or, according to Austin and Krisberg (1981), are "the transfer of intervention authority or jurisdiction from one agency or control system to another" (1981:169). An excellent, contemporary example of this process is Karol Lucken's 1997 study titled 'The Piling Up Of Sanctions.' This empirical study on the dynamics of penal reform also provides a different perspective of the downside effects of intermediate sanctions, via a process called the "piling up of sanctions" (Lucken, 1997:367). The study was done in a major metropolitan county in Florida, between 1989-1994, and concentrated upon offenders who were processed through a penal reform program that had, as its primary aim, the reduction of the number of custodial sentences. Lucken finds that the dual intentions of the reform to provide punitive and rehabilitative sanctions while simultaneously reducing costs "created an abundance of intermediate sanction options" (1997:373). The individual programs were used as custodial alternatives and, also, as supplements to each other, which meant that instead of a continuum of sanctions there occurred a piling up of sanctions. This piling up of sanctions is the "culmination of two sentencing scenarios: the split sentence (that is, short-term incarceration followed by probation) and probation with multiple conditions imposed" (1997:373). The offenders most likely to be subjected to this piling up of sanctions are the serious and/or repeat misdemeanour offenders - for example, drunk drivers or spouse abusers. Lucken notes that the difficulties arise when these types of offenders are placed into a number of different programs - anger management, alcohol and drug abuse, community service, and day reporting - as part of the conditions of their probation.
Aside from offenders under these types of programs being required to be at several places at different times they are also under severe financial obligations by way of costs for some or all of their programs. According to Lucken's study, this is because successful completion of probation is dependant upon offenders meeting the conditions imposed by treatment agencies, and an offender's treatment 'needs' are determined by the agencies via broad, subjective and often intrusive diagnostic tools. Offenders are thus faced with a number of fees for services - for example, evaluation fee, treatment fee, late fee, reschedule fee, urinalysis fee - which can total $US500 or more. And since many offenders live a "socially disorganised" lifestyle - family problems, unstable employment, unreliable transportation, no telephone, poorly educated - they eventually "collapse" under the weight of piled up sanctions. Thus, for Lucken, many offenders who are directed into these various programs opt out, either by requesting a custodial sentence, by violating their sentence while under supervision, or by not reporting for the initial probation intake.

Lucken (1997) also finds the judiciary and private treatment agencies contribute to the piling up of sanctions against offenders. Unhampered by sentencing guidelines and similar restrictions, USA County judges can exercise enormous discretion. Thus, while the duration of the sentence is fixed, the number or type of community-based sanctions a judge can impose are almost unlimited. Private treatment agencies, most of which have come into existence as a response to the numbers of offenders court ordered to treatment, depend for their survival on fees charged to offenders and on referrals from the criminal justice system. Offenders can incur fees for turning up late for appointments or courses and can even be excluded from courses and be required to restart a course and repay the fees all over again. As Lucken points out, the agency rationale is one of personal responsibility and discipline; "if you can afford liquor [or drugs] you can afford counselling" (1997:376). Lucken's study shows, too, that the multiple and conflicting objectives of the various players - "clean" streets, reduce costs, lessen overcrowding in prisons, and balance treatment with punishment - contribute to community-based programs' ongoing development. The end result is that, in pursuing
their individual objectives, the various sanctioning agents - the judges, the program personnel, and the private treatment agencies - cause a piling up of sanctions. Inevitably, this leads to technical violations by offenders and wholesale returns to custody. Lucken suggests that the reliance on incarceration has not been reduced by the numerous community-based alternatives that are available. Moreover, it is possible that reliance on incarceration has been increased due to the use of those alternatives as supplements for each other, especially for those offenders unable to cope with multiple programs and conditions. This situation leads us to examine the idea that custodial alternatives are not, in practice, what they were intended to be, and the discussion in the following section - the dispersal of discipline thesis - neatly encapsulates this problem.

The Dispersal of Discipline Thesis:

The dispersal of discipline thesis holds that alternatives to custody are not really alternatives at all but, rather, tend to widen the net of surveillance and control; alternatives assist rather than hinder the expansion of the prison. It suggests that alternatives to custody fail to deliver what they promise - a reduction in prison numbers. Alternatives to custody do, however, do three things: they widens the net of surveillance and control; they make that net denser; and they produce and reproduce new and different nets which are added to the original ones (Cohen, 1985; Vass, 1990). The purpose of this section is to further emphasise the effects of so-called alternatives to custody in net-widening, net-strengthening, or creating new or different nets.

For Cohen (1985), the destructuring movements of the 1960s, although aimed at reducing the size of the formal deviancy control system and, hence, the size of the (metaphorical) fishing net (for catching deviants), turned out to have the opposite effect. There are an increasing number of deviants getting into the system because of wider nets. There is also an increase in the overall intensity of intervention with both old and new deviants being subject to levels of intervention, which they might not previously have received, due to denser nets. And the new agencies and services
spawned as a result of the destructuring movements are supplementing instead of replacing the original set of control mechanisms, because of the use of different nets. The end result of this 'fishing exercise' is deviant classification, not whether it is a success or failure. Each individual decision in the [classification] system - who shall be chosen? - represents and creates this basic principle of bifurcation: how to sort out the good from the bad (Cohen, 1985). By the mid-1980s, according to Cohen, rather than destructuring taking place, original structures have become stronger, state control has increased, the 'helping' professions are flourishing, the legal system is as formal as ever, and treatment has not died but simply changed its form.

As regards custodial institutions, with few exceptions prison populations have, over the last twenty years (1960s to 1980s), remained steady or have increased (Cohen, 1985). Moreover, one British study found the prison had not only survived the decarceration era but had actually emerged stronger (Hudson, 1983). This leads Cohen to suggest that, if traditional custody is either increasing or only remaining constant and not falling, and if the use of community control is increasing, then the conclusion must be that the system is getting larger overall. Research reports all confirm this trend. Despite the destructuring movements of the 1960s, professionalisation of deviancy control is stronger than ever. More recent studies, such as those on California's mandatory sentencing laws (Shichor, 1997; Stolzenberg and D'Alessio, 1997, Tonry, 1992), and on intermediate sanctions (Lucken, 1997, Petersilia and Turner, 1993), confirm Cohen's claims. There is, however, a counter-argument to the dispersal of discipline thesis, and emanates from Vass's study of the English criminal justice system.

The English criminal justice system is no different; it, too, is expanding (Vass, 1990). As for the move by governments for 'tougher' laws and penalties against offenders, and to make alternatives to custody harsher regimes than prison, those governments have missed the point "because 'harsher' does not necessarily mean 'more efficient'" (Vass, 1990:167). But he warns against accepting without question such notions as the 'dispersal of discipline' thesis or the 'Trojan horse' metaphor, because not
enough is known about many of the alternatives to custody. The Trojan horse metaphor, which describes custodial alternatives as "a monster in disguise" (Vass, 1990:113), reasons that some custodial alternatives not only widen the surveillance net, but also aid and abet the growth in prisoner numbers. Vass cites the suspended sentence sanction as a prime example of the 'Trojan horse' concept.

The suspended sentence was introduced in 1967 expressly for the purpose of being imposed in lieu of imprisonment. While the numbers incarcerated decreased shortly after its introduction, within two years the number of those being incarcerated increased to a level higher than would have been the case if the suspended sentence had never been introduced (Home Office, 1977). A principal reason for this increase was attributed to suspended sentences, subsequently activated because of breach conditions, being used for offenders who would otherwise have received other non-custodial penal sanctions. These other sanctions did not carry the precondition of imprisonment (Sparks, 1971; White, 1973). Bottoms (1981) states the suspended sentence had also been used in place of fines and probation orders, thus contributing to the increase in incarceration numbers. In light of the controversy surrounding the suspended sentence, Vass (1990) acknowledges that, in some spheres, evidence exists for net-widening, but suggests that much of what is said about custodial alternatives is premised not on any serious considerations of how such penal measures work, but on personal and ideological values.

The Community Service Order as a Control Mechanism

Replacement for or Supplementary to a Custodial Sentence?

The net-widening and net-strengthening problems that have befallen the suspended sentence sanction also have quite serious implications for CSO. Vass (1986a, 1990) notes that it is generally open to interpretation as to whether a custodial sentence, another alternative to custody, or a non-custodial penal measure is actually
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'replaced' by an order for community service. The law is unclear about CSO being an unequivocal alternative to custody, particularly in view of the notion that the term 'punishable by imprisonment' means different things to different people. And since that term covers a majority of offences, courts could, if they wished, take the position of imposing a custodial sentence in all cases. Vass (1986a) argues that, as an alternative to custody, CSO's legal and formal status is rather doubtful and thus permits sentencers to interpret such orders as they see fit. In effect, Vass maintains that CSO is used as an alternative to custody; as an alternative to other non-custodial penal measures; as a sentence in its own right; and as a stopgap measure when nothing else is suitable.

Ken Pease (1985) views CSOs as penal sanctions under which convicted offenders are required to work for no payment with governmental or non-profit agencies. He argues that justifying CSOs as alternatives to incarceration is hypocritical when those same CSOs are used supplementary to nonincarcerative sentences. This is especially so when, in the absence of orders, some offenders who would not have been placed in custody are later so placed because of violation of an order. Pease also finds similar problems to Vass about CSO characteristics: disparities in the length of orders, in the use of sanctions against offenders who do not comply with orders, and in the extent of the imposition of orders. Cohen (1985), too, is highly critical of such alternatives: the alternatives leave us with wider, stronger and different nets. He sums up the conclusion arrived at by critics of alternatives to custody by suggesting that an overall expansion of the criminal justice system, that might not otherwise have occurred, is due to the use of community alternatives. Young (1979) foresaw many of these problems when he suggested that unless the CSO's objectives were clarified and its location in the sentencing tariff established, pessimism and disillusion would result. The evidence, to date, suggests he was right.

Vass (1990) states that a major problem with CSO (in England) is the way it has been written into the legislation and how it is subsequently interpreted by the courts. For example, CSO is supposed to be activated for offences which are punishable by
imprisonment, but as already noted, it presently fills four different roles. Vass argues that the success or failure of implementation of a CSO is very much dependent upon the staff involved; that, in effect, staff can greatly assist or hinder an offender in completing his/her designated hours. This is a sentiment that I agree with totally. It does not matter how many hours of community service are involved or how interesting the particular CSO project might be, if the supervision of the offender(s) is such that it discourages rather than encourages, then there is a high probability that the order will fail. Vass also refers to what amounts to an unjustified insistence (in recent times) from government ministers and sections of the community for a more punitive attitude to be adopted towards and in the treatment of offenders, regardless of their offences. Since the 1960s, in concert with 'leisure controls' imposed upon offenders by way of close surveillance, "punishment has become an economy of suspended rights" (1990:13). For Vass, this policy of suspended rights permits the different sanctions to be interchanged with each other, which gives rise to a whole range of new and additional penalties, as well as the opportunity for further expansion of the sentencing process.

The claim by the British Home Office that CSO "may be used as an effective alternative to custody" (Vass, 1990:83) is one that Vass argues is not supported either by official or independent sources - (c/f. Andrews, 1982; Pease, 1980; Pease et al., 1975, 1977; Vass, 1981, 1984, 1986a; Vass and Menzies, 1989; Willis, 1977; Young, 1979). As a result of the findings in R. v Lawrence (1982). Cr. App. R. (S) 69, Vass points out that CSO "is both an alternative to custody and a sentence in its own right" (1990:83; emphasis added). A later Home Office Draft circular tried to lend CSOs an undeserved degree of punitiveness and credibility. At the same time, it tried to justify the introduction of national standards aimed at administering and enforcing CSOs by avoiding any direct reference about CSO being an alternative to custody (Vass, 1990). The circular also indicated CSO now had three main purposes: punishment of the offender; reparation to the community; and provision of work beneficial to the community (Home Office, 1988g:2). Although not explicitly stated, a fourth purpose was the hope that doing community service might assist in reintegrating offenders into
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Do CSOs Widen, Strengthen or Create New "Nets"?

the community (Vass, 1990). Young (1979) posits that, when CSO was first introduced (in England), the three penal philosophies underlying it were punishment, reparation, and reintegration. He suggests that no attempt was made to analyse how these three philosophies might all be achieved within the single legislative and administrative framework, "because the sentence was so firmly embedded in pragmatic politics" (1979:33). In their 1989 study of CSO as a 'public enterprise' in England and as a 'private enterprise' in Ontario, Canada (see Chapter Eight), Vass and Menzies suggest that, in practice, there seem to be two possible implications which may make themselves felt.

First, it appears that public agencies are more capable (through internal and external accountability and controls) to administer and enforce CSOs as an alternative to custody. Private agencies are geared to working only with 'shallow-end' offenders, and we consequently expect that privatisation would move the CSO down the sentencing tariff and make it less of an alternative to custody than it is at the moment.

Secondly, there would be a change in productivity: input and output. Privatisation will facilitate expansion of the CSO scheme relative to other non-custodial penal measures, resulting both in more people being caught in its meshes and a proliferation of activity in supervising offenders in the community, which will widen the network of social and state control (1989:268).

'Combination' Orders - A Legislative and Administrative Minefield:

According to Rex (1997), community orders were perceived (especially by the judiciary) as being simply not sufficiently punitive, and this view needed to be addressed. This led to the introduction of the new 'combination order.' Rex argues that the origins of the framework in Section 6 of the Criminal Justice Act 1991 could be traced back to the British Government's 1988 Green Paper: 'Punishment, Custody and the Community' (Home Office, Cmdn.424 1988, HMSO). Rex describes this as: "the first official response to the evident failure of the "alternative to custody industry" to keep offenders out of prison" (1997:382). Both the 1988 Green Paper and its companion, 'Tackling Offending: An Action Plan' Paper, endorsed rehabilitation as the principal reason for probation supervision (Rex, 1997). Rex suggests that the 1991 Act contained the seeds of its own demise in its lack of resolution over its deserts principles. The failure, both by the Act and by the courts, to give priority to the
requirements of proportionality has doubtless contributed to a tendency for community orders to slip back into the role of "alternatives to custody" in which the need to prove their effectiveness has become more important than their restrictiveness (1997:390).

She argues that by calling personally restrictive, non-custodial sanctions community orders (as opposed to the fine and discharge, which are not restrictive of offenders' personal freedom), then Section 6 of the 1991 Act was indicating that they were punishments in their own right. This also meant that the more restrictive of those orders could be used instead of custody.

The issue of CSO being a sentence in its own right - a point made by Pease (1985), Vass (1990), and Young (1979) - is one that was flagged as early as 1970, by the British Advisory Council on the Penal System in its Report to the Home Office. The Report - 'Non-Custodial and Semi-Custodial Penalties' - proposed, among other things, a limited form of 'service to the community' to be conducted at attendance centres at weekends (Home Office, 1970). It noted that although it was preferable to conduct such a scheme within the framework of the existing law, the Council were advised during their deliberations against this course of action. The Council argued that, because probation was at present an alternative to the imposition of a sentence, and because CSO would clearly constitute a sentence, then a probation order cannot properly include a requirement of community service. Not surprisingly, at the end of the 1990s, the issue of whether or not a CSO constitutes a sentence in its own right still has not been satisfactorily resolved, either in the UK or elsewhere.

By contrast, the Western Australian Liberal Government of Sir Charles Court, in 1977, saw no such difficulty in combining a probation order with a CSO. The possibility that this combination of orders would ultimately detract from the usefulness of the CSO, or would prove very confusing for sentencers, community corrections staff, and offenders alike was never considered. The combining of the two orders also ignored the technical and legal difference between probation and community service: probation orders are made, whereas CSOs are imposed as a sentence (Harding, 1992). One possible explanation for the desire by legislators to link or combine probation
orders and CSOs is the fact that, with few exceptions (some Australian jurisdictions being one), CSOs are administered by probation staff. Cohen (1985), Pease (1975), Vass (1990), and Young (1979) all acknowledge that probation staff charged with administering CSOs and other custodial alternatives, have had and continue to have considerable influence over their viability and direction.

Such influence has enormous implications for legislators, the courts, enforcement agencies, offenders and victims of crime. For example, in discussing the much-maligned strategy of 'diversion,' Cohen (1985) states that juveniles have been diverted out of the criminal justice system by the wide use of police discretion. That diverting has been by way of cautioning, informally reprimanding, by dropping charges or by informal referral to social service agencies. According to Cohen (1985), what now occurs is that police discretionary powers have been formalised, extended and transformed, so that diversion no longer simply 'happens.' There is now in place a large infrastructure of programs and agencies which may continue to divert some juveniles out of the system or, as is more likely, it may divert many into the system. Put simply, in respect of diversion of juveniles, police now have three options - screen right out, process formally, or divert into a programme. And it is this last option which permits net-widening and net-strengthening. The point of this diversion example is that it can be (and is) applied to any sector of the criminal justice system quite legitimately. In the case of offenders sentenced to community service, probation staff can, if they so choose, relabel a particular status offender (or group of offenders) 'downwards' - which means that offender (or group of offenders) requires additional 'treatment,' 'programs,' or 'assistance.' Thus, he/she (or they) are drawn further into the system and for a longer period of time.

By way of a recent Australian example, I offer, as anecdotal evidence, a case I became involved with, initially, in 1994. At that time, the offender (whom I shall call John) had been allocated to my CSO work gang in order to complete his court-imposed 208 hours. He duly completed those hours along with the other requirements of his
order and I did not hear from him again until two years later. John sought my advice about the case-worker he had been allocated to - the result of his being recently convicted of a sex-related offence in New South Wales. John's dilemma was that his female case-worker was "giving him a hard time" (as he put it) because of the nature of his offence. It seemed to me that there was a conflict of personalities between John and his case-worker, and I suggested that perhaps a change of case-worker might be the answer. He had already tried to arrange that but without success and, in turn, because he had tried to change case-workers, this particular woman "had it in for him" (or so John believed).

What was not helping his cause was the fact that the entire ACT Corrective Services Department was in considerable administrative disarray, the result of ongoing inquests into two recent deaths in custody at the Remand Centre, senior management changes resulting from those inquests, and some atrocious administration decisions regarding CSO staff. John's situation was also complicated by the fact that his New South Wales court-ordered community service hours were being completed at the Periodic Detention Centre at Symonston, in the ACT (by a one-off 'arrangement' between New South Wales and ACT Corrective Services Departments). However, the crux of his problem was this: (i) there was a dispute between the two jurisdictions over the number of hours John had completed; and (ii) his case-worker was extending the time his order had to run by continually refusing to accept that he, John, was 'rehabilitated' and able to resume a normal life in the community. For his part, John felt he was being victimised by his case-worker because of her open dislike of him and the offence for which he had been convicted. Personality clashes aside, the thing I found most worrying in John's case was that he was effectively faced with what amounts to an indeterminate sentence: that is, by his case-worker withholding her approval as to his 'rehabilitation' and notwithstanding the disagreement about the number of completed hours, John was placed in a situation of having to prove the unprovable: that he was, in fact, 'rehabilitated.' His case-worker may have felt she was right to withhold her approval; but, short of his case going back to court as a 'breached' order (a distinct
possibility if he failed any of the order's requirements), there was nothing John could
do. There was no independent dispute resolution/advocacy available to him, it was not
a trade union matter, and he was regarded by ACT Corrective Services' Department
staff as a troublemaker. At the time of writing this, John's situation is unchanged. This
case is an example of how this new infrastructure can keep offenders 'in the system' for
longer than would ordinarily be the case, thus making the control net stronger.

This example also echoes earlier concerns expressed by Stanley and Baginsky
(1984) about the not unrelated 'treatment model' of probation. One of their main
criticisms of the 'treatment model' of probation is that it is unjust. For Stanley and
Baginsky, this has two aspects: (i) the large degree of discretion possessed by the
probation officer in whether or not to bring an offender back to court for failing to
comply with the conditions of the order; and (ii) the operation of the 'interaction effect'
or 'interactionism' which deals with the relationship between the probation officer and
the individual offender. That is, in some relationships the 'interaction effect' will be
quite positive, while in others it will be quite negative and, in this latter instance, may
prove to be detrimental (or unjust) to the offender. This view also restates what Vass
(1990) had said earlier about the importance of good supervision. Yet even then all may
not go according to plan. A major difficulty within community corrections in the 1990s
is the penchant for disguising the true meaning or intent of a particular policy or
decision; and it is to this issue I now turn.

A Community Service Order by Any Other Name ....:

One reason for the lack of support for CSOs in some jurisdictions is in the
confusion surrounding the labelling of custodial alternatives - that is, calling an activity
by a different name but not changing the activity's function. For example, in Western
Australia, in The Report of the Joint Select Committee on Parole (1991) a proposal was
made to change the name of 'Parole' to 'Supervised Community Sentence.' The potential
for confusion was obvious (Morgan, 1992). Such a proposal could easily be
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misconstrued as being merely the personal preference for a more politically correct euphemism for the word 'parole.' This is especially so when there still exists so much confusion as to whether 'parole' is an order or an integral part of a (combined) sentence. Parole is not, after all, a 'sentence' but rather an early release of a prisoner, on licence, from custody and, while on parole, that prisoner is subject to community supervision and any other requirements contained within the parole order. A prisoner is 'paroled' from prison, not 'sentenced' to parole, and parole can only occur after an offender has been imprisoned, not before; by contrast, a CSO is made in lieu of custody. Release from parole "is determined, to an extent which varies between different schemes, by an executive decision-making body" (Harding, 1992:89).

Vass (1990) questions the British Home Office policy of equating a sentence being an alternative to custody with serious demands on the offender. He states that the gravity of the offence or the courts' intentions are no longer considerations as to whether or not an offender should be diverted from custody to a community penal measure. Rather, it is the notion that: "the harsher the punishment, and the more stringent its administration in the community, the higher the probability that the community penal measure is a credible alternative to custody" (1990:85). He suggests such a policy puts at risk efforts to clarify the position of the CSO and, for that matter, other alternatives to custody. In addition, he points out that under such a policy: petty offenders could still be regarded as 'deep-end' or 'high risk' offenders because of their participation in a so-called 'tightly supervised' CSO scheme, even though they had never received a custodial sentence. Their true status as 'shallow-end' or 'low risk' offenders might be lost under the guise that a 'tightly supervised' CSO scheme only ever houses 'deep-end' or 'high risk' offenders who have been spared a custodial sentence.

For Vass, this possible scenario is unacceptable because, by virtue of a particular label, many offenders could be subjected to harsher treatment (including custody) for subsequent court appearances that possibly might not have occurred had they not been sentenced to community service in the first place. The label - that of
'deep-end' offender - arises from a scheme initially aimed at rehabilitation of the offender subsequently becoming a punitive one able to deliver harsh punishment or 'tight supervision,' thus, placing offenders sentenced to it "higher up the tariff system" (1990:85). Given that, by and large, those offenders sentenced to community service have committed only minor offences, then Vass's concerns are accorded considerable credence. Moreover, as he points out, in regard to the type of offender sentenced to community service in the last ten years or so, little has changed. As well, between 1979 and 1986, the proportionate use of this sanction for indictable offences increased from about 3 per cent to around 8 per cent. Cohen (1985) makes a similar point in regard to deep-end and shallow-end offenders: there is considerable agreement that a large number of offenders, perhaps even a majority of them, are 'shallow-enders and, while the old control nets continue catching most of the original deep-enders, the new nets mostly catch the original shallow-enders. Those deemed 'deep-enders' (who are real deep-end offenders) and who are sentenced to community service may commit further offences during the currency of their order(s) - a not unusual occurrence. This raises the question of whether or not such offenders should have been incapacitated in the first place - that is, given an appropriate custodial sentence. The difficulties of predicting future criminal activity have been canvassed in Chapter Three, but still remain problematic. In other words, should the 'benefits' (whatever they might be) of CSO, be assumed to outweigh the 'costs' (whatever they might be)? Or will the costs of the crimes they may commit while undertaking CSO be greater than the costs of keeping them incarcerated for the duration of their sentence? There is no easy answer here, but it emphasises how imprecise community corrections theory and practice are.

Conclusion

The CSO widens existing control nets by virtue of its function as (a) a sentence in its own right, and (b) as an alternative to custody. When an offender is sentenced to community service and subsequently breaches any of the terms of that order, he/she is
usually returned to court for re-sentencing, which can often mean the imposition of a custodial sentence. This is regardless of whether the original offence warranted a prison term or not; although, in many jurisdictions, a CSO cannot be imposed as a sentence unless the offender was to receive a custodial sentence in the first place. Also, depending upon the jurisdiction in which it is imposed, such a custodial sentence must not be of more than one year's duration. Where these requirements do not exist, then the activation of the custodial sentence for the breach(es) of the order means the offender goes to prison on account of the breach and not for the original offence, which may have been, say, the non-payment of a fine.

The CSO strengthens or makes the control net more dense by virtue of the conditions of the order being made more intense. That is, certain requirements of the order are made punitive as opposed to rehabilitative. For example, instead of an offender only needing to make a once a fortnight telephone contact with his/her caseworker to 'touch base,' the order could require the offender to report, in person, three times per week to the community corrections office. If the offender is attempting to gain employment or hold down an existing job, such a requirement would be considerably onerous and punitive. This is not to say that, under such circumstances, the offender and his/her caseworker could not come to some suitable arrangement that would enable the offender to pursue employment opportunities or retain an existing job. But the potential does exist for the system to be abused. The anecdotal evidence cited earlier of the ACT offender who found the completion time of his order being unduly extended, because of what appeared to be a serious personality clash with his caseworker, is a case in point.

The CSO can assist in the creation of new or different control nets by virtue of its function and jurisdiction being extended: for instance, if a special class of CSO were to be created for a particular type of offender. An example of such a new order is that created in Australia's Northern Territory, in 1997. It took the form of a very punitive 'intensive correction order' aimed at recidivist offenders and those convicted of 'serious'
crimes such as domestic violence, and certain types of property offences, but excluded murder, arson, and the like. The question of whether CSOs widen, make stronger or more dense, or create new or different control 'nets' is thus greatly dependent on a number of interrelated factors. These include: the jurisdictions where the orders are imposed, the types of sentencing policy being pursued in those jurisdictions, the nature of the offence(s), and who the offender is (age, sex, class, and ethnicity being relevant issues). However, the current literature and present practices would seem to indicate that the CSO, in line with other custodial alternatives, does widen, strengthen, and create new or different control nets; and thus encapsulates the claims of the decarceration theorists. In the chapters that follow, the ramifications of this expansion of control and surveillance are examined in respect of issues around gender, economics, and punishment.
Chapter Seven

The Issue of Gender, Community Service Orders and Control

Apparently policy-makers, like many criminologists, perceive female criminality as irrational, irresponsible and largely unintentional behaviour, as an individual mal-adjustment to a well-ordered and consensual society. 

Carol Smart

Introduction

This chapter takes a diversion from the CSO literature to demonstrate a central issue about gender and CSO - that issue is discrimination. This diversion examines the treatment of women in prisons, courts and wider society, and demonstrates the causal factors that bring women into the criminal justice system. This chapter also expands upon some of the issues raised in the previous chapter as regards the connection between the various types of criminal justice system control mechanisms and CSO. It will be argued that a major reason for the continuation of that connection is that female offenders are treated differently from male offenders in Australian (if not most) criminal justice systems. This chapter will explore the reasons for such differences in treatment and suggest some of the more obvious implications which result from that treatment, including the enhancement of control over female offenders. In addition, this chapter also serves as a vital link to several broader, related issues to be discussed in chapters eight and nine concerning CSO: for example, the current climate of economic rationalism that dominates government policy-setting in regard to criminal justice issues in general and corrective services issues in particular. An examination of the relevant literature and data from my field notes and diaries will be employed to show the many ways that gender is simultaneously used to demarcate, discriminate against,

and control women and women's issues. Of special concern in this chapter is the continuing dichotomy between patriarchal-espoused rehabilitative ideals and the reality of punitive rather than rehabilitative action in the sentencing process of female offenders.

Disparities in the Treatment of Women and Women's Issues

Historical Gender Bias - Theory and Practice:

The structuring of penal practice is greatly influenced by distinctions based upon gender differences, according to Garland (1990). At the present time, female offenders are dealt with in gender-specific ways reflective of traditional conceptions of the female role and its pathologies. He sees that, at every stage in the penal process, cultural perceptions of how women ought to behave and what they are like all act to define appropriate responses to their conduct and to structure their punishment. He concedes that the same is also true for male offenders, who are understood within the cultural framework of 'masculinity' and are punished accordingly.

Before 1975, most theories attempting to explain the aetiology of criminal behaviours, and the concomitant reactions of and by criminal justice systems, were developed to explain male criminality. Such theories proposed psychological, social, biological, political, and economic causes (Belknap, 1996; Robinson, 1992). Adler's 1975 'women's liberation' theory was the first real attempt to explain women's criminal behaviour; but, as Belknap (1996) points out, the theory was based on incorrect assumptions about the feminist movement, and about related statistics. Since then, further work has been undertaken by feminists and others to reassess existing theories and develop feminist theories. In reality, female offenders have had imposed upon them sanctions determined not by their own gender crime rates and trends, but by male-dominated aggregate crime rates and trends (Robinson, 1992). Most women's crime is of an economic nature - credit card fraud, welfare fraud, shoplifting - and reflects their
prolonged disadvantaged economic status (Elder, 1985; Robinson, 1992). Note, too, the 'feminisation of poverty,' a term coined by Pearce, in 1978, that refers to the increasing number of the poor who are female or who live in a female-headed household. Ryan puts the issue very succinctly when he says: "For an understanding of the desperation of living poor and powerless, I recommend acquaintance with a black, teenage, unmarried mother living on public assistance" (1971:87). The nexus between committing crime and being unemployed "remains ambiguous and underresearched" (Freeman, 1983), although some studies do show a positive relationship (Chiricos, 1987).

As regards the role of welfare payments in regulating the labour market, Anleu (1991) cites the work of Piven and Cloward (1971; 1982) who found that, in times of high unemployment, welfare payments expand to quell political unrest. Conversely, in times of low unemployment, welfare recipients "are degraded and humiliated, thereby reasserting individualistic theories of social problems and reinforcing work norms [and] reflecting the notion of 'blaming the victim'" (Anleu, 1991:191). From these data, Anleu suggests that when unemployment is viewed as resulting from structural changes in the economy, welfare payments are used as a form of social control. However, when individualistic explanations predominate, criminal penalties prevail. Also, labour market manipulation by the Australian federal government extends to providing certain groups with incentives to withdraw from the formal economy. This reduces the competition for jobs in periods of high unemployment. One example of such 'legal discrimination' is that "women are not eligible for unemployment benefits beyond the age of sixty, whereas the cut-off age for men is sixty-four" (Anleu, 1991:193).

Thus, unlike those sociological theories that attempt to explain why individuals break the law - for example, strain theory, differential association theory, and labelling theory - control theories seek to explain why individuals abide by the law (Belknap, 1996). Belknap is justifiably critical of theorists who play down or even ignore entirely the role of gender in their analyses of criminal and non-criminal behaviour. In effect, "the visibility of females in criminological theories is vague and/or distorted" (Belknap,
This idea of female offender 'invisibility' is echoed in Carlen's 1983 seminal study of Cornton Vale prison (Carlen, 1983). Carlen cites Gibson's 1973 summation of the main reasons for such invisibility:

First, women represent only a small percentage of those arrested and an even smaller percentage of those incarcerated. Second, the crimes they commit are usually related to sex or property, and, instead of harming others, women criminals usually harm themselves. Finally, with the public and official awareness of a general increase in crime and serious prison disorders, the problems of women prisoners pale into insignificance (Gibson in Crites, 1976:93).

Carlen also makes the point about the unwillingness of prison authorities to set up training programmes for 'short-stay' women prisoners, and that the dominant feature of women's prison regimes, both in the UK and the USA, is 'training' for "domesticity and motherhood" (Carlen, 1983:19). Coincidentally, 'short-stay' sentences were often the same excuse used by some Australian State politicians in arguing against the suitability of CSO. In New South Wales, for example, the view taken in the 1980s was: "CSOs, although an excellent form of punishment, are not suitable for short-term sentences because of the time needed to organise training" (Reform, 1986:27). The responsible Minister's comment, in this instance, appears rather curious and seems to indicate that he had little or no idea about what a CSO was or, indeed, what it involved.

Still on the themes of patriarchal ignorance and gender discrimination, the seminal study in 1995-6 by the New South Wales' Department for Women - Heroines of Fortitude: the experiences of women in court as victims of sexual assault - paints a grim picture of continuing gender bias against women rape victims (Heroines of Fortitude, 1996). The Report's data and findings make chilling reading in terms of the discriminatory tactics employed against female sexual assault victims throughout the entire criminal justice process, a process that continually treats the victim as the guilty party. For example, in respect of the victim's credibility, the Report notes that

A total of 32% of complainants were asked questions which suggested that they were responsible for or contributed to the offence. Complainants who were cross-examined on this issue were asked an average of two questions on the topic with the maximum number of questions asked of any one complainant being 18 (1996:165).
In regard to the language used in the courtroom,

The study found a number of instances where court personnel used demeaning terms and expressions for women complainants and made, for example, comments about her Aboriginality and level of education. During his summing up, one judge referred to the 17 year old complainant as an "unfortunate little girl" (1996:132).

A final example relates to judicial attitudes towards victims in the sentencing process.

Some remarks by Judges suggest that the sexual assault of a "woman of good repute" an "ordinary decent housewife" necessarily deserves a more severe sentence than the sexual assault of someone without such a reputation. Other cases like that of R v Hakopian treated the fact that the victim was a prostitute as a mitigating factor for the sentence of the offender, stating that "the likely psychological effect on the victim of forced [sex] is much less of a factor in this case and lessens the gravity of the offences" (1996:279).

For Walton (1994), Carrington's position supports Carlen's argument that there is no 'essential' criminal woman. Carlen indicates the following limits to feminism as an explanation of the female offender:

No single theory (feminist or otherwise) can adequately explain three major features of women's law breaking and imprisonment, that women's crimes are in the main, the crimes of the powerless; that women in prison are disproportionately from ethnic minority groups; and that a majority of women in prison have been in poverty for the greater part of their lives ("Criminal Women and Criminal Justice in Issues" (1992). in: Roger Matthews and Jock Young (eds.), Realist Criminology) (Walton, 1994:241).

The National Association for the Care and Resettlement of Offenders' (NACRO) 1987 analyses of women's imprisonment in England and Wales suggest that women tend to be sent to prison for less serious offences than men, and that, in the previous ten years, the proportionate use of imprisonment for women had doubled (NACRO, 1987a; 1987b). These are not the only concerns of those individuals and groups committed to a more acceptable and less discriminatory treatment of female offenders. Carlen (1990) points to prison conditions at Risley Remand Centre, and in Durham 'H' Wing, the maximum security block for females; to inadequate medical services for women in prison; and to the long distances at which women are imprisoned from their home areas. In respect of Durham 'H' Wing, a 1989 Report commissioned by Women in Prison, the Prison Reform Trust, the Howard League for Penal Reform, and the National Council for Civil Liberties found discriminatory treatment of women.
prisoners. Women in 'H' Wing were being treated less favourably in many respects than they would otherwise be if they were male long-sentence or Category A prisoners. Also, in respect of some facilities and services, there was a strong argument that their unequal treatment was unlawful (Lester and Taylor, 1989).

Violence Against Women:

This section is included for its relevance to gender and sex discrimination, to women's crime, to various forms of control, and to the criminal justice system which, arguably, is so heavily biased against women offenders and victims alike. It is not possible to appreciate the difficulties faced by many women offenders and victims who are processed through Western criminal justice systems without first having an understanding of what many of them have gone through before ever entering 'the system.' Although there is no direct 'link' from violence against women to CSO, this chapter will demonstrate that the two are not mutually exclusive phenomena.

Recorded assaults 'against the person,' while a major offence category, tell only part of the picture, because most of the assaults made known to the police are of a public nature such as street brawls and muggings (Anleu, 1991). Domestic violence, however, rarely receives such public exposure and all too often goes unreported - either through fear of reprisals or by the victim feeling that she (for it is invariably a female) will place herself (and her children) in a much worse economic situation. When domestic violence is reported, police will often not intervene; or, if they do and charges are laid they subsequently don't proceed with the charges (Anleu, 1991). The role of the police is central to all domestic violence reports, yet they are often reluctant to act in what they see as 'just another domestic.' Instead, police prefer to believe that the women victims will not prosecute, that a police presence will only aggravate the dispute, or that arresting the perpetrator will cause a family break-up (Gee, 1983; Kennedy, 1992). In regard to domestic violence, Anleu suggests the police are placed in an invidious position: they have to balance their law enforcement and welfare roles, and provide
Chapter Seven

The Issue of Gender: CSOs and Control

immediate protection for victims, but, at the same time, respect citizen's rights and civil liberties, and in responding to the victim's request to 'do something,' stop the violence without necessarily apprehending the perpetrator (Anleu, 1991). Kennedy, an English barrister and QC, is scathing of the authorities' failure to investigate or prosecute domestic violence, and of the consequent marginalisation of women in the criminal justice system:

Many excuses given for failing to prosecute lack substance. Police officers fail to look for evidence that would support the complaint, particularly of a forensic nature, once an assault has been labelled 'domestic.' The reluctance of victims to pursue a prosecution is often exaggerated (1992:84).

Domestic violence is also charged as a minor common assault, even where there are visible injuries which would amount to actual bodily harm. This means that the cases are assigned to magistrates courts, processed quickly, and treated less seriously than other types of assault. In the few cases where they do go for trial, rates of acquittal are high and fining is by far the most common disposal. Imprisonment is the least frequent outcome (1992:85).

One of the appalling courses taken by courts under pressure to get through the list is to bind over both parties to keep the peace. This is seen as a nice, speedy disposal, which dispenses with the need for a contested case. By supposedly creating equality between the parties the court reinforces inequality. The message to the defendant is that he is not accountable for his violence and the cycle is perpetuated (1992:85).

Battering or abuse, as types of domestic violence, can take any or all of four forms, according to the Oklahoma Coalition on Domestic Violence and Sexual Assault: physical, sexual, psychological, and destruction of property and pets.

Physical battering includes all aggressive behaviour by the offender to the victim's body. Sexual battering includes attacks on the victim's breasts or genitals or forced sexual activity, usually accompanied by either threat or actual physical battery. Psychological battering includes threats, controlling behaviour, attacks on self-esteem, and intentionally frightening the victim. Psychological battering usually takes place in a relationship where there has already been at least one instance of physical abuse. Destruction of property and pets is not random, but intentional and aimed at destroying objects of value to the victim (Culpepper, 1991).

According to Dobash and Dobash (1988), wife assaults account for twenty-five per cent of all violent crimes; but other researchers are of the view that up to fifty per cent of all women will be victims of violence perpetrated by a husband or boyfriend (Mills and
McNamar, 1981; Walker, 1979). In point of fact, Walker (1979) has developed the 'cycle of violence theory' that identifies three phases of battering in a relationship (since battering occurs outside of as well as inside marriage). In phase one - "the tension-building stage" - it is the calm before the storm, wherein the victim feels that pressure is mounting towards a violent and inevitable explosion. Phase two is the "acute battering incident" which Walker describes as usually the briefest of the three phases in the cycle. Phase three - "kindness and contrite loving behaviour" from the batterer - is when the batterer attempts to make up to the victim by way of gifts and promises to control his violent behaviour. Walker sees this phase as lasting longer than phase two but shorter than phase one. As phase three ends, phase one begins again, and the cycle continues (Walker, 1979). Later research by Walker finds that these three phases change over time in a battering relationship - phase one becomes longer and more evident, and phase three gets shorter as the batterer feels less inclined to apologise for his behaviour and begins to 'blame the victim' (Walker, 1983).

Battering continues to exist for two main reasons, according to Goolkasian (1986): first, as a means of control, violence is highly effective; and second, because in most cases no one has told batterers that they must stop, they continue battering. Kennedy (1992) argues that, because of their feelings of powerlessness and low self-esteem, battered women feel unable to leave an abusive relationship. What also compounds these feelings of powerlessness and low self-esteem is the apparent ambivalence of the British criminal justice system. Kennedy cites the case of Mabel Patterson who was sentenced to life imprisonment, in 1983, for killing her abusive husband. In this Scottish case, Lord Wheatley, when passing sentence, stated "there were so many wives subjected to rough treatment that it would be dangerous to establish a precedent for them to take the law into their own hands" (Kennedy, 1992:215). Kennedy maintains that, in respect of women's crime, society in general and the criminal justice system in particular look for psychiatric explanations in an effort to make it invisible and to deny the obvious - that the social fabric of society is
unravelling. By contrast, writing about British hooliganism, Pearson (1983) sees violence against women somewhat differently:

'Reclaim the Night!' says the feminist slogan, confronting us yet again with that nagging difficulty: because it is not clear where we can locate historically a time when women were, in fact, free to walk the streets without the possibility of harassment or molestation. The safety of the night is not a 'thing of the past'; it is a prospect for the future. Indeed, in spite of all their different points of emphasis, these varying ideological deployments of the criminal question agree on one thing: that there was in the past a haven of tranquillity. ... whatever else we might wish to say about their differences, these moral-political responses to lawlessness are grounded in the impotent premisses of myth(1983:236).

The practice in many courts of imposing fines on poor people and then, later, sentencing them to prison for non-payment of those fines appears quite irrational. McDonald (1992) makes the observation that sending to prison poor women for fine default has the unwelcome effect of imposing punishment upon the children and dependants of those women. Hence, the following case of the impoverished UK mother of five, who was given a custodial sentence because she was unable to pay a fine for using a television without a viewing licence, illustrates a very different and much more subtle form of violence against women. The case also raises some serious questions about current Home Office philosophy on conviction and sentencing, and about the appropriateness or otherwise of the use of custody to incapacitate an offender for what was, initially, a civil wrong.

In December, 1995, Yvette Griffiths, a 33-year-old mother of five who was unable to work because of severe kidney and liver illness, was sentenced to fourteen days' custody for failing to pay a £190 fine levied upon her for using "apparatus for wireless telegraphy" (namely a television receiver) without a licence contrary to Section 1 of the Wireless Telegraphy Act 1949. Once the sentence was passed, in a terrified state and unable to contact her family, she was taken directly to the Risley remand centre, from where she was released after five days (Davies, 1996 :8).

Wall and Bradshaw (1994) calculated that in 1994 the approximate cost of detection, prosecution and imprisoning a single parent with two children for one week (a common personal circumstance and length of sentence) was about £2,130 (roughly 25 times the £86.50 cost of the original TV licence). These costs make imprisonment a very inefficient, uneconomic and ineffective method of punishment and contrast with the managerialist holy trinity of economy, efficiency and effectiveness which currently drives the "new public management" even within the courts" (1994: 182).
Walker and Wall (1997) point out that the Griffiths case highlights the ongoing discrimination being practised against the poor and the dispossessed, particularly against women, who constitute that group's largest proportion. Walker and Wall (1997) conclude that their paper raises concerns about inequalities in the enforcement of the TV licence fee system against those who transgress: that is, they are imprisoned. The impact [of this enforcement] reinforces the idea that the criminal law serves symbolically to control part of the underclass, whilst achieving neither the recovery of lost revenue nor the creation of more responsible citizens (1997:186).

Cole (1992) suggests that, in the past, fines have been regarded as additional to the "real" punishment, such as probation or incarceration. At the same time, judges have been reluctant to impose fines as the sole punishment, because "at the levels necessary to achieve justice, they cannot be collected" (1992:143). Recent trends have seen a wide range of financial penalties added to the list of available criminal sanctions (Hillsman and Greene, 1992), the view apparently being that "offenders should pay for the correctional services provided them by the state" (1992:143). As well, the mandatory nature of fine impositions and their expansion as a criminal sanction often results in an unrealistically high total assessment being placed on the offender and beyond the offender's means, so the amount remains uncollectable (Cole, 1992; Hillsman and Greene, 1992). A quite different fining regimen applies in Northern Europe, where, during the course of assessing the total value of a fine (or fines), judges take into account the ability to pay of the offender on whom the fine is to be imposed (Hillsman and Greene, 1992).

In a Sunday Times article published on 9 April, 1995, the authors state that the number of women receiving 'immediate' custodial sentences in England and Wales (as opposed to fine defaulters) rose by 24 per cent in 1994 to 2,952, even though women make up less than 4 per cent of the total prison population (Lightfoot and Anderson, 1995). Their article also states that, in 1994, according to research by Leeds and York universities, more than 300 women were imprisoned for non-payment of fines for not having a television licence (Lightfoot and Anderson, 1995). The article thus indicates
that Yvette Griffiths' case was not an isolated one but was symptomatic of a much larger crisis in the UK criminal justice process. As Kennedy (1992) points out, when it comes to sentencing women, the judiciary complain about the limited range of possibilities. However, when faced with having to decide whether a particular sentence is or is not the most suitable, and because there is no really suitable penalty available, "our judiciary plays the sugar and spice game of deciding what this little girl is made of" (1992:74). More importantly, the assumption that women are treated with paternal benevolence is now open to question (c/f Belknap, 1995; Shaver, 1993; Yu and Marcus-Mendoza, 1993). For example, having children to care for does not protect women from being given a custodial sentence. Walker (1985) suggests that if women are perceived to be 'sheltering' behind their children they may be dealt with in the criminal justice system far more harshly. She cites the following example as evidence of this:

A woman judge told two defendants:

I have no doubt that you have brought your babies to court in order to try and blackmail me. All I can say is that when I see you in three weeks time you had better not bring the babies. I do not care if you bring a whole host of babies - a whole orphanage - because it is not going to stop me from sending you to Borstal or prison if necessary. (South London Press, 1 February, 1980).

Later, describing them as "brazen hussies," she sentenced one to prison and the other to borstal (1985:68).

Gender and Sex Discrimination:

Justice is an abstract ideal and with it comes the assumption (however tenuous) that all people are equal before the law. But what exactly is 'equal treatment?' Two extremes that illustrate any discourse on this question are the concepts of procedural justice and substantive justice. Procedural justice is "the impartial application of existing rules and principles, regardless of the outcome" (Gelsthorpe, 1996:129). Substantive justice, on the other hand, views any policies or procedures that have the effect of punishing a higher proportion of one social group than another as unjust, and that "law and policy should be adjusted to achieve equal outcomes" (1996:129). Both these extremes are problematic, however, and mirror models of justice implied in antidiscrimination law: the individual justice model and the group justice model of
legislation against race and sex discrimination (McCrudden et al., 1991). The individual justice model, by eliminating illegitimate considerations during the process of dealing with individuals, aims to secure fairness. By contrast, the group justice model has as its goal the improvement of the relevant economic position of certain social groups (such as ethnic minorities) (McCrudden et al., 1991). Notwithstanding that 'discrimination' is a legally defined concept, its interpretation extends well beyond the law and is fraught with problems when attempting to measure and define it (Gelsthorpe, 1996). What may be perceived as racial or sexist by one individual or group may not necessarily be seen in the same way by another individual or group (Fitzgerald, 1993). For example, disadvantages experienced by ethnic minority groups in obtaining adequate housing may also be experienced by others who are not of those groups (Gelsthorpe, 1996). There are also differences in the type and intensity of experiences by ethnic minority groups. And Reiner (1993) adds that no one research method can isolate the chimera of 'pure' discrimination which appears to be needed to actually recognise that discrimination exists.

In the White Paper "Crime, Justice and Protecting the Public" (Home Office, 1990), it is stated: "there must be no discrimination because of a defendant's race, nationality, standing in the community or any other reason" (sex is implicitly rather than explicitly included) (Gelsthorpe, 1996:146). However, discrimination can take many forms, both overt and covert, conscious and unconscious. Bruselid (1980) argues that in relation to women's rights legislation, particularly sex discrimination and equal pay laws, the way in which such legislation is implemented "can be seen to prevent rather than promote a radical change in the position of women in capitalist society" (1980:111). Citing the change of Federal Government in Australia, in 1975, from Labor to Liberal, Bruselid points out that:

Once a class is entrenched in the state apparatus, it enjoys a privileged position of strength and can withdraw concessions and abandon alliances. ... When the new [Liberal] government withdrew major welfare and health policies initiated by Labor and introduced legislation to control trade unions, it was the working class which, through increased unemployment etc. had to bear the brunt of what were termed 'anti-inflationary policies' (1980:111).
But gender discrimination can have far more serious implications and adverse long-term effects than social and economic policy changes made to suit a government's political ideology. In her seminal work on the commercialisation of human feeling - *The Managed Heart: Commercialization of Human Feeling* - Hochschild (1983) suggests that in the gender system, social conditions make emotion management more prevalent for women than men, and do so in different ways. She argues that although both males and females do emotion work, at work and in private life, it is much more important to women. This is because, in general, "they have far less independent access to money, power, authority, or status in society" (1983:162). As such, there are four consequences.

1. Women make a resource out of feeling and offer it as a gift in return for the more material resources they lack.

2. Women tend to specialise in the flight attendant side of emotional labour, men in the bill collection side of it [because of different childhood training of the heart].

3. The general subordination of women leaves every individual woman with a weaker status shield against the displaced feelings of others.

4. For each gender, a different portion of the managed heart is enlisted for commercial use. Women more often react to subordination by making defensive use of sexual beauty, charm, and relational skills (1983:163).

Hochschild argues this is because "it is these capacities that become most vulnerable to commercial exploitation, and so it is these capacities that they are most likely to become estranged from" (1983:163). She questions how a woman's lower status might influence the way she is treated by others, given that "the lower one's status, the more one's feelings are not noticed or [are] treated as inconsequential" (1983:163).

Whereas Hochschild examines workplace discrimination in the airline industry, a more relevant example is Merlo's excellent 1995 autobiographical account of her twelve years as a prison officer in the Victorian prison system and the ongoing victimisation she endured. Her book, aptly titled *Screw: Observations and revelations of a prison officer*, details her experiences as a Victorian prison officer and the ten-year battle she had with the Prisons Investigation Unit to clear her name.
over a false accusation placed on her service record. Such are the vagaries of the prison system in Victoria that when her case was finally investigated, the investigation was carried out by the very officer against whom she was complaining! The investigation was, of course, a complete sham and Merlo resigned on 18 March, 1994 (Merlo, 1995).

Regarding women offenders in the criminal justice system, discrimination can also be in the form of 'patriarchal oppression,' as Allen (1987) argues. Her research findings lead her to conclude that women offenders are generally treated more leniently than their male counterparts; as such, that leniency constitutes the tactic of patriarchal oppression. She argues that to further women's equality, women should be treated more punitively (Allen, 1987). A different approach, according to Gelsthorpe, would be to treat men more leniently. Allen's focus on equality assumes that the law is gender or sex neutral in its operation; but as Kingdom (1981) points out, the law is already gendered in its construction and its practices. Kennedy (1992) voices a similar opinion: in her view, calling for equal treatment is not the answer, because equal dealing with those who are already unequal perpetuates inequality. She believes that a better way is to appraise each person and situation on a case by case basis.

At the other extreme of bias or discrimination against women offenders, there is the issue of punishment for the breach of traditional sex role expectations, as reiterated in Carlen's (1983) interviews with male sheriffs in Scotland. Her most significant finding was that the women who were sent to prison were those who, in the eyes of the sheriffs, had 'failed' as mothers. Sheriffs [and magistrates] wanted to know not only whether the woman was a mother but also whether or not she was, in their view, a 'good' mother:

Other things being equal, the appropriate sentence should indicate the appropriate measure of social disfavour. Then you add on and take off marks for particular social circumstances - a few marks on for having children, a few marks off if you haven't any!

If she's a good mother we don't want to take her away. If she's not a good mother, it doesn't matter.
If... a woman has no children then it clears the way to send her to prison. If she has children but they are in care then I take the view that she is footloose and fancy-free and I treat her as a single woman (1983:66-67).

For Gelsthorpe (1996), the key issue here is domesticity, but she is quick to point out that there are conflicting opinions as to whether or not it is a positive or negative one for women. Eaton (1986) states that magistrates reported they considered family circumstances important as well as the nature of the offence and any prior criminal record when deciding sentences for both sexes. Eaton adds that magistrates would also be influenced by the presence of children if the defendant were responsible for child care, irrespective of whether the defendant was male or female. However, since the responsibility for children was more likely to arise in women's cases rather than in men's, both sexes were presented differently to the court - 'women as dependant and domestic' and men as 'breadwinners,' thus reinforcing 'traditional' gender roles. According to Eaton, this meant that women who were negatively assessed as women were dealt with more severely. By comparison, Allen (1987) draws different conclusions from her empirical study. She maintains that the social inquiry reports she examined drew on sex stereotypes that systematically placed women 'at a moral advantage and men at a moral disadvantage'. These different research findings may just mean that different research methodologies were employed - for example, experimental, matching, or multivariate analysis; or that different courts in different regions operate in dissimilar ways to each other.

Gelsthorpe (1996) suggests there is a third possibility: to explain the apparent disparities in sentencing, we need to consider the importance of gender rather than sex. She states that the social behaviour we associate with each of the sexes - masculinity with men, femininity with women - is gender-related behaviour. Gender considerations, however, are the assumptions we have about right and wrong sex role behaviour, assumptions which are socially (not biologically) constructed. For Gelsthorpe, to the large amount of research on women's sentencing that has identified three major themes - pathology, domesticity, and respectability - a fourth may now be added: sexuality.
On a similar theme, for Kennedy (1992) there is a clear preoccupation with the sexuality of teenage girls and an over-emphatic concern with their moral welfare. If she fails to come home on time, hangs around the wrong part of town or adopts dubious friends, a girl is far more likely to be declared in moral danger, for which, at the instigation of her parents, school, social worker or the police, she may be taken into the care of the local authority. The same behaviour in boys does not evoke the same response from the courts (1992:77).

Kennedy states that, while these young women may start off in the penal system having not committed any crime, "once it is on their record that they have been locked up, a cycle of imprisonment begins, and offending often follows" (1992:77-78). The longer-term implications for young women of having a criminal record extend into other areas of their lives, and in particular, into future employment prospects. Having a record, no matter how minor the offence, often debars them from pursuing certain careers, for life.

The Issue of Gender, Community Service Orders and Control

Control Through Discriminatory Practices:

Even in the legal profession, gender discrimination is alive and well. Writing in the *Law Society Journal*, in 1997, Bourke echoes earlier comments of Kennedy (1992) when she states that "The practice of law is tainted by blatant and systemic bias against women" (1997:52). Referring to the 1995 Keys Young Report, which investigated the disparities between female and male law graduates, Bourke cites findings that "the gender bias is almost endemic in the structure and culture of a profession which rewards aggression and individualism" (1997:52-53). Her article concludes with the observations of the Hon. Mr Justice L J Priestley, of the New South Wales Court of Appeal, who likened the pressure (on male colleagues in the law fraternity) to respond to gender issues as ""something like the shifting of tectonic plates"" (Evans, 1993:1131). Also, given that authorities (especially male) throughout the various criminal justice processes often have very firm views about women generally and women offenders in particular, it follows that those views will more than likely be reflected in such things as sentencing.
As the *Heroines of Fortitude* Report and a number of other writers have noted, preconceived ideas and beliefs about women offenders readily lend themselves to punitive rather than practical punishments. For example, probation and hospital orders are 'naturally' recommended for and given to women, whilst others like community service are not (Gelsthorpe, 1996). The reasons usually given by magistrates and probation officers for not recommending community service are that "the work is too physical" or that "it is not suitable for mothers with family commitments" (Lightfoot and Anderson, 1995). Of course, the fact that the only other alternative is often a custodial term, where mothers will be separated from their children regardless, seems to escape consideration altogether.

This state of affairs merely echoes that of four years earlier when, during their inspection in 1991, the Probation Inspectorate in Scotland found that all the community service schemes they visited had at least some child-minding provision. They also found, four years after the research on the issue by Jackson and Smith, that social inquiry reports on female prisoners continued to refer to the unsuitability of a mother for community service:

- The ages of her children mean she is not suitable for community service...
- As a single woman with two small children she is not suitable for community service...
- Community service, regrettably, is not a viable option in view of her responsibilities as a mother... (Jackson and Smith, 1987; quoted in Probation Inspectorate, 1991:47).

Moreover, as Gelsthorpe also shows,

- Paradoxically, all of these women (and other women in the six prisons where the Inspectorate examined social inquiry reports) had been sent to prison and yet, as stated by the Inspectorate, at least some of the women came from probation areas known to have child-minding facilities (Barker, 1993; cited in Gelsthorpe, 1996:145).

The content of the [social inquiry] reports frequently focuses on the social and sexual behaviour of the women, suggesting that women are sentenced for who they are and not what they have done (Mair and Brockington, 1988).
The earlier statements by Walker and Wall (1997) about women who are forced to live in poverty, subsequently break the law, are convicted and fined, and then incur a prison sentence because they are unable to pay the fine(s), are given further emphasis by a 1998 review. This review, by the Social Work Services and Prisons Inspectorates for Scotland, states in part:

Cl.56. Women tend to commit minor offences - mainly motoring, TV licence, prostitution and theft. Very few women commit violent offences. Many women offenders are repeat offenders but about one third of those in prison are likely to be first offenders.

Cl.57. The backgrounds of women in prison are characterised by experience of abuse, drug misuse, poor educational attainment, poverty, psychological distress and self-harm (Social Work Services and Prisons Inspectorates for Scotland, 1998:13).

The review finds that only four per cent of women convicted in Scottish courts are placed on probation. Also, fewer than two per cent of women offenders are sentenced to community service (the legislation permits the use of community service only where courts would otherwise be considering a custodial sentence. And that by 1995, forty per cent of women offenders had breached their community service or probation orders. Given the very small percentage of women offenders who were placed on probation or were sentenced to community service - less than six per cent - it tends to make a mockery of a much earlier finding. In England, in 1970, the 'Report of the Advisory Council on the Penal System' states:

Female offenders are seldom deprived of liberty; not only do women commit much less crime than men, but a much smaller proportion of those convicted are sent to custody. ... On 30th April, 1970, 1,016 women and girls were detained ... out of a total of 39,254 persons then in custody (Wootton Committee Report, 1970:4).

This same Report then concludes that it would be unfeasible to create non-custodial penalties that would be used exclusively for female offenders, although the Report's authors hoped that some of their (other) proposals would serve as appropriate alternatives to custody for some women.
Chapter Seven

The Issue of Gender, CSOs and Control

Gender and the Community Service Order - the Australian Experience:

As has been shown, there are differing degrees of gender discrimination in all criminal justice systems, some are quite blatant whereas others are considerably more subtle. And it does not matter whether the woman is the offender or the victim, or is cast in some other role such as legal counsel. In respect of CSO in Australia, gender discrimination varies from jurisdiction to jurisdiction, but, on the whole, is gradually being eliminated thanks to improved work practices, a better educated workforce, and a greater awareness of discriminatory practices and their ramifications.

In Tasmania, Departmental policy presently makes no distinction whatsoever between male and female offenders, in terms of who will do what work - that is, both sexes are treated equally. Female offenders are given a choice, however, when they first come onto the scheme, as to whether or not they would prefer to work with male offenders. My research indicates that it is only on rare occasions that females request that they not be placed with male offender work gangs. About the only time that male offenders and female offenders are intentionally separated is when a women's refuge requests assistance for, say, grounds maintenance to be carried out. In such cases, only an all-women work gang is sent. This provision applies in all Australian states and territories (participant observation and interview data).

Western Australia has a similar CSO work gang policy to that of Tasmania. At the community corrections level, with all of the orders that have a community service component attached to them (including the intensive supervision order or ISO), there is no segregation of male and female offenders - both work in the same gangs. As in the case of Tasmania, the emphasis is on equality. At the custodial level it is somewhat different, however. Prisoners who qualify for work-release gangs prior to completion of their sentences are placed in gangs only of their gender. In other words, just as male and female prisoners are kept separate while in custody, so they are also kept separate in the work-release gangs (participant observation and interview data).
Chapter Seven

The Issue of Gender, CSOs and Control

My Northern Territory research found that, at the community corrections level, there was no distinction made between male and female offenders - both were treated equally in respect of court requirements. This equality held, too, for the type of CSO work undertaken by offenders, in that both males and females were expected and required to do the same types of jobs allocated to all of them. My field notes show that work teams comprised both sexes, as was the case at the Marara Sports Complex and at a retirement home for elderly indigenous residents that I visited in a Darwin suburb. In both instances, female offenders were in the minority (participant observation and interview data).

By contrast with the jurisdictions mentioned so far, in New South Wales the current policy on community corrections offenders is to separate the males from the females at all stages of the judicial process. Just as there are separate custodial facilities for males and females in New South Wales, so, too, there are separate community correctional facilities. At no time during the completion of their community service hours are the two sexes mixed. This merely reflects long standing Departmental policy and the fact that community service activities are carried out under the auspices of the various periodic detention centres, which are domiciled in the state's custodial facilities (participant observation and interview data).

Regarding my Queensland research, the CSO work gangs I encountered during my field trip were made up entirely of young males. Nor did I think this to be anything other than 'normal,' since my own CSO supervisory experience in the Australian Capital Territory had conditioned me to expect that no female offenders would be included in any CSO work gang. The reality is that had there been female offenders turning up to do their CSO on the days I was present with the work gangs, they would have been included as part of those gangs - there would have been no separation of the sexes. As far as QCORR is concerned, it is and must be equal treatment for all offenders, regardless of gender, race or religion, except where a female offender expresses a specific concern regarding her safety (participant observation and interview data).
South Australia's Department of Correctional Services makes the same gender distinctions as other jurisdictions in respect of its custodial facilities, that is, males and females are confined separately. However, with regard to community corrections, there are no such distinctions made - both males and females work together in the various CSO work gangs throughout the state. Nor are any distinctions made between racial or religious differences, the principal concern for the department being that no offender is discriminated against on any grounds (participant observation and interview data).

Victoria is arguably one the most progressive Australian jurisdictions in terms of its policies and treatment of gender issues vis-a-vis female offenders. This principally stems from a June, 1991 policy document titled 'Women Prisoners and Offenders: Agenda for Change.' This is a detailed blueprint for the humane treatment of women as they are processed through Victoria's criminal justice system: from the time of arrest to the point of return back into the community after completing their sentence. The state's policy in respect of CSO is that female offenders may, if they so choose, be placed with male work gangs where it is both appropriate and feasible to do so. Alternatively, if they decide to complete their CSO obligations in a 'male-free' environment, then this is respected and acted upon accordingly. In addition, where there are children involved, every effort is made to ensure that the CSO work undertaken is in no way detrimental to that family unit's welfare. That is, wherever possible, tasks are found that enable female offenders with school age children to fit in their CSO obligations with their parenting requirements and responsibilities (participant observation and interview data).

By contrast, in the case of the Australian Capital Territory, it has always been a firm Unit policy to keep male and female offenders separate; only in rare instances was a female offender placed in an all-male CSO crew. This was usually due to there not being an agency placement available at the time for the female - for example, agencies such as the Smith Family or the Salvation Army, where female offenders worked with agency staff sorting donated clothing, books, and toys. Following a similar policy
already operating at the Belconnen Remand Centre for nearly a decade, the segregation of male and female offenders was set in place when the Australian Capital Territory's CSO scheme began in 1985. At that time, nobody in the Australian Capital Territory's corrective services' administration had had any experience with the operation of CSO schemes. Moreover, ACT corrective services was then under Federal jurisdiction and its Director answered to the Minister for Territories (via the Chief Secretary), who had many other responsibilities such as health and education that occupied his time and attention (participant observation and interview data).

While it is true that current knowledge on the operation of CSO schemes was available from other Australian jurisdictions and from overseas, the Australian Capital Territory was in a unique situation. It had no prison, but it did possess a Remand Centre that could hold a maximum of 29 detainees (24 males and 5 females), and this is still the situation in 1998. Not surprisingly, there was also the firm belief by the male-dominated Australian Capital Territory Corrective Services' management that male offenders would constitute the bulk of those sentenced to community service. With the passage of time, not surprisingly that belief has been proven correct. Thus, female offenders were effectively rendered 'invisible' and the policies instituted (such as the segregation of male and female offenders on CSO projects) mirrored that perception. Those few female offenders who were allocated to CSO work gangs almost always acquitted themselves admirably, and the Offender CSO Performance Reports compiled by the various supervisors reflected this. Put another way, it was invariably male and not female offenders who caused the majority of problems for supervisors and case workers. In my seven years as a CSO supervisor I had only three female offenders allocated to my work gangs, and this was typical of the other dozen CSO supervisors.

The principal reason for this 'distinction' between male and female offenders sentenced to community service was that it was believed the females would be a 'distraction' for the male offenders, and/or they might also be 'at risk' from the unwarranted attentions of some of the male offenders. For the record, neither of these
concerns ever materialised, a fact due largely to the small size of the work gangs (four to five offenders), the close supervision of them, and the degree of mutual respect between the CSO Unit administration and the offenders. What also assisted, if indirectly, in the control of the work gangs was the fact that most of the offenders, male and female, already knew one another, either from school, from work, or socially—through such things as sport and recreation activities. Several male recidivists had also become acquainted through the Territory's juvenile and adult criminal justice systems (participant observation and interview data).

Conclusion

From the research literature reviewed and my own fieldwork on gender and sex discrimination in its many forms within Western criminal justice systems, it is difficult not to be persuaded that women are treated differently from men. Whether that different treatment enhances or detracts from women's social, economic or political standing in society depends upon many diverse and often complex factors, and is still the subject of considerable debate. As this study shows, it very often depends upon which jurisdiction the offender—male or female—finds themselves in as to what treatment they can expect when they are processed through the criminal justice system. I tend to the view that, on balance, women are worse off than men for the sorts of gender and sex discrimination practised against them, especially when they are processed through the criminal justice system as offenders. Also, it is my belief that such discriminatory practices enhance control over women offenders much more so than over men. The suggestion that "women are sentenced for who they are and not [for] what they have done" (Mair and Brockington, 1988) is, in my view, a valid one. Given the present attitudes of many law making and law enforcement agencies, the tendency appears to be towards, rather than away from, a more punitive sentencing regime for all offenders. Clearly, this means that the position of women offenders generally will be made worse rather than better, within many criminal justice systems.
The implications for any improvements to their present (and future) situation are rendered even less likely by the pursuit by government agencies of unrealistic economic rationalist policies. Such policies are the antithesis of any meaningful reduction in women's offending. This pursuit by governments of cheaper methods for dealing with offenders, both male and female, through the entire criminal justice system, but particularly through community corrections, is the subject matter of the next chapter. There, I will argue that CSOs in Australia are, and have always been, financially driven.
Chapter Eight

Are Community Service Orders Financially Driven?

It takes a certain brashness to attack the accepted economic legends but none at all to perpetuate them. So they are perpetuated.

John Kenneth Galbraith

Introduction

The issues raised in Chapter Six about politically- and economically-driven correctional imperatives are developed further in this chapter, with a view to answering the question: 'Are CSOs financially driven?' This chapter demonstrates that, given the underlying rationale which prompted Australian state and territory governments (as well as the British government) to legislate initially for CSOs, the answer to the question is presently in the affirmative. Also, of recent relevance is the shift in emphasis by the administrators of community corrections programs from rehabilitation of the offender to ensuring that, as far as possible, all programs are (at worst) cost-neutral. In effect, offender rehabilitation is no longer the primary consideration but, rather, has become a hoped-for by-product of the community corrections process. The preoccupation of correctional administrators and their political masters with the economic 'bottom line,' and the often vocal insistence of various citizens on more punitive treatment of offenders, further erode concerns about the rehabilitative ideal.

Using an economic history basis, the eight Australian jurisdictions will be analysed to demonstrate the extent to which their CSO schemes are financially driven. To present the argument that CSOs are financially driven, it is first necessary to discuss the economic drivers of the prison system. This is because it is and has always been

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argued by the decarceration theorists that it is and was the increasing costs of incarceration that necessitated the search for alternatives to custody such as punishment in the community and, in due course, CSO. Similarly, the restorative justice movement has also pointed to the continually increasing costs of incarceration as a valid reason for seeking alternatives to custody (but preferably via restorative justice).

The Economic Drivers of the Prison System

A principal argument against the use and proliferation of prisons is their cost and upkeep (Cohen, 1985; McDonald, 1992; Pease, 1985; Scull, 1984; Vass, 1990). The dilemma facing both supporters and opponents of prisons, however, is what to do with those individuals who, on account of particular crimes, must be kept behind bars and can never be set free in the wider community. Incapacitation, for all its shortcomings, does lend a measure of protection to members of the wider community against the prospect of personal injury and property damage or theft. In turn, that 'protection' also eliminates the economic and social costs to the community that might arise in the event of those presently incapacitated being free to commit crimes (Chan, 1995; McDonald, 1992; Wilson, 1983). The difficulty exists in trying to estimate in dollar terms what that 'protection' is actually worth, in regard to the costs of the crimes that are not committed. According to Chan (1995), a ten per cent reduction in crime "typically requires a doubling of the prison population" (1995:10). Also, aside from the ethical issue of incarcerating an offender on the basis of predicted future behaviour rather than on 'just deserts' and proportionality principles, incapacitation also carries with it certain social costs which governments and the communities that support them must reckon with continuously. In arguing against incapacitation (and, hence, the prison) as a strategy, the questions arise of what sanction(s) to use as alternatives to prison - which ones? in what combination? and at what costs (McDonald, 1992)? A further consideration muddying the carceral waters is that of the type of criminal justice system in which the prison operates: that is, the Australian, the English, and the
American systems are all adversarial systems. Davies (1993) makes the point that, in the United States, constitutional law and legal tradition dictate that the system leading to prosecution, rather than being cooperative or inquisitorial, shall be adversarial. He cites the Fifth and Sixth Amendments as making the defendant and defence attorney independent of the courts and prosecution, such that neither owes any duty of cooperation into the investigation of crime. In other words, the justice system has conflicting goals.

In a survey he conducted among USA criminal justice officials, in 1988, on the impact of prison and jail costs and overcrowding, and whether it influenced judicial decisions, Davies (1993) asked two specific questions:

1) Does the cost of incarceration have any impact on decisions made by you and your colleagues?

2) Does the current level of overcrowding in jails and prisons have any impact on decisions made by you and your colleagues?

Of the 289 respondents, 37 per cent answered "yes" to the first question, 62 per cent "no," and 1 per cent "don't know." On the second question, 59 per cent answered "yes," 38 per cent "no," and 3 per cent "don't know" (1993:63). Davis concluded that resource considerations do influence the decision-making processes of officials in the criminal justice system. Nor does he find this surprising, given the proliferation of defendant's rights in recent years, the insistence upon 'due process,' and the impact these two issues have had upon the overall criminal justice system: cases take longer to come to trial and longer again in the trial process. Consequently, the additional time adds enormously to the total costs of any particular litigation.

With these provisos in mind, and in tandem with earlier discussions in Chapters One and Three, I now turn to one particular alternative to the prison - CSO - and examine it from an economic history viewpoint. This chapter will demonstrate that it was principally economic considerations which drove Australian law makers and law enforcement agencies to find, implement, and promote CSO as a suitable and
economical alternative sanction to incarceration. Moreover, it is still the same economic considerations today, in the late 1990s, that continue to promote CSO and similar schemes as being cheaper alternatives to prison.

**An Economic History of the Community Service Order**

**Tasmania:**

In 1971, The Tasmanian Government was contemplating the construction of a new prison complex near Launceston, to augment existing facilities at the State's main prison facility at Risdon Vale, but was baulking at the cost of $2.5 million to build it. Prisoner capacity at Risdon Vale was then nearing maximum and memories were still fresh of the April 1959 prison riot there that saw eighty rioting prisoners subsequently confined to their cells for a week (Rinaldi, 1977). The Tasmanian Government had been reminded of that incident as recently as 1970 with reports, mainly through the media, about the systematic bashing of prisoners in Bathurst Gaol, in New South Wales, and in Victoria's Pentridge Gaol, following peaceful sit-ins by prisoners that turned into full-scale riots in both facilities. At the same time as the issue of building a new prison was being discussed, the Tasmanian Parliament was debating the merits of implementing a non-custodial alternative sentence - the Saturday Work Order Scheme - which, it was hoped, would ease the pressure upon existing prisoner numbers. More importantly, such an alternative sentence could be expected to save the Government considerable expense that could more profitably be channelled into other areas such as local business development, or education and health care for that State's citizens. This was because the Saturday Work Order Scheme was meant to rely upon cost-free client supervision of those offenders selected to participate in it (Barnes, 1983).

According to Mackay and Rook (1976), the Tasmanian government eventually chose to institute the Saturday Work Order Scheme rather than commit itself to building a new $2.5 million prison. This was principally because the Saturday Work
Chapter Eight  Are CSOs Financially Driven?

Order scheme, although an unknown quantity, involved only minimum funds; if the scheme 'fell over,' then the small outlay used to set it up could be absorbed into 'General Expenditure.' Thus, Tasmania's Saturday Work Order scheme evolved as an economic measure to lessen the burden on the State's criminal justice budget. Even so, adequate funding of the scheme did not match the political rhetoric of its establishment. A heavy reliance on voluntary supervision, coupled with minimum expenditure on necessary equipment and the use of existing probation and parole staff, saw the fledgling scheme almost fail on several occasions. The scheme survived to become a key factor in the State's criminal justice system only because of the efforts and dedication of a few professional officers, support staff, and a small number of community volunteers.

The scheme's establishment was not helped by Tasmania's demographic profile and its unique geography. The island's population was widely dispersed throughout the State, the largest concentrations being found in and near Hobart in the South (47.4%), Launceston in the North (26.9%), and Devonport and Burnie in the North-West (25.6%) (Mackay and Rook, 1976). For practical purposes of the Work Order scheme, the State was divided into five districts - North (Launceston), Central-North (Devonport), North-West (Burnie), West Coast (Queenstown), and South (Hobart). Early problems were encountered in finding suitable work projects and the requisite volunteer supervisors in the non-urban areas. Also, much investigation and public relations work was necessary where an order was being sought for an offender located in a remote or country area. In 1975, an amendment to the Act substituted the word "days" for "Saturday," enabling offenders to do CSO work on any day of the week (Mackay and Rook, 1976). As well as the work order, the initial legislation also provided for the courts to be able to make a supervised probation order, or impose a fine or a custodial sentence. According to Mackay and Rook, the legislation's flexibility provided opportunities for offender counselling and for implementing other behaviour modification programs. Although the work order scheme was a custodial alternative, it was seen as and meant to be punitive. The discipline to which offenders were required to submit imposed restrictions upon their leisure time and regulated their activities during the work order hours.
Governments in all jurisdictions except the Australian Capital Territory ensured, as far as possible, that their draft CSO legislation was quite specific about the respective schemes being based upon cost-free supervision. Tasmania had already shown, after four years of operation, that its Saturday Work Order Scheme was a viable one, particularly on the voluntary supervision premise (Mackay and Rook, 1976). The very comprehensive report by Mackay and Rook, in 1976, on the success of the Tasmanian scheme, was, for criminal justice authorities in other jurisdictions, the green light to proceed with their own versions of that scheme. The Australian Capital Territory was the only exception, in that it was decided to employ paid Departmental, casual supervisors and, in hindsight, that proved to be the correct decision for the ACT. Later in Tasmania, however, limited free agency supervision - that is, supervisors supplied by agencies (clients) such as the Salvation Army - was used in concert with paid (casual) supervisors (Mackay and Rook, 1976).

In the Productivity Commission’s Report on Government Services for 1997-98, the Tasmanian Government notes that "Community Corrections continues to be a cost effective alternative to imprisonment" (1999:564). This 'effectiveness' is depicted in Table 8.1: 'Tasmania Community Corrections Effectiveness Indicators.'

Table 8.1 Tasmania Community Corrections Effectiveness Indicators

<table>
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<tbody>
<tr>
<td>Successful completion of orders (%)</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Home detention orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>83.76</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>87.58</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>92.87</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>92.87</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>94.50</td>
<td>92.70</td>
<td>91.20</td>
<td>93.30</td>
<td>88.99</td>
</tr>
<tr>
<td>Reparation - employment (hours)</td>
<td>66.8</td>
<td>65.9</td>
<td>71.6</td>
<td>68.9</td>
<td>70.2</td>
</tr>
<tr>
<td>Av hours ordered worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>30.0</td>
</tr>
<tr>
<td>Hrs worked as proport'n of hrs ordered</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>42.7</td>
</tr>
<tr>
<td>Rehabilitation and person development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>42.7</td>
</tr>
<tr>
<td>Proportion of eligible offenders taking personal development*</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>42.7</td>
</tr>
</tbody>
</table>

*Orders with personal development components could only be counted for work orders. It is estimated that approximately 50 per cent of supervision and parole orders have a personal development component.

na Not available.

Source: Report on Government Services for Period 1997-98
Chapter Eight  Are CSOs Financially Driven?

The present situation of CSOs in Tasmania is that they still function in the way the 1972 legislation intended, and there is now a much wider choice of agencies and community projects. Successive changes of government in that state have not seen the need to implement more punitive orders, as has happened in some of the mainland jurisdictions (participant observation and interview data). Tables 8.2 (Descriptor Indicators) and 8.3 (Efficiency Indicators) further supplement much of the CSO data already given, and provide further statistical support for my contention that CSOs are financially driven. A similar set of tables is provided for the other seven jurisdictions.

Table 8.2  Tasmania Community Corrections Descriptor Indicators

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<tbody>
<tr>
<td>Av daily no. of community correc orders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>174</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>988</td>
</tr>
<tr>
<td>Community service bonds or orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>592</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td></td>
</tr>
<tr>
<td>Total - all orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>1,754</td>
</tr>
<tr>
<td>Av daily no. of persons serving orders</td>
<td>1,254</td>
<td>1,783</td>
<td>1,560</td>
<td>1,765</td>
<td>1,754</td>
</tr>
<tr>
<td>Community corrections rates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>356.3</td>
<td>504.8</td>
<td>440.1</td>
<td>497.3</td>
<td>493.4</td>
</tr>
<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>22,272</td>
<td>22,003</td>
<td>21,216</td>
<td>23,316</td>
<td>42,171</td>
</tr>
<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>18,051</td>
</tr>
<tr>
<td>Expenditure ($'000 1998)</td>
<td>2,713</td>
<td>2,814</td>
<td>2,945</td>
<td>3,039</td>
<td>2,954</td>
</tr>
<tr>
<td>Recurrent expenditure</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total recurrent exp less recurrent recp</td>
<td>2,713</td>
<td>2,814</td>
<td>2,945</td>
<td>3,039</td>
<td>2,954</td>
</tr>
<tr>
<td>Value of community corrections assets</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

* Tasmania did not have any form of home detention.  
* Total orders and total persons serving orders may not be the same, as individuals may be serving more than one type of order.  
* Data for previous years have been adjusted by the GDP deflator.  
* All accommodation, motor vehicles and computer equipment are rented. Rents are included in recurrent costs.  
* Na Not available.  Not applicable.

Source: Report on Government Services for Period 1997-98

Table 8.3  Tasmania Community Corrections Efficiency Indicators

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>Cost per offender per day ($'998)</td>
<td>5.92</td>
<td>4.32</td>
<td>5.17</td>
<td>4.71</td>
<td>4.61</td>
</tr>
<tr>
<td>Offender to staff ratios</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offender to operational staff</td>
<td>33.9</td>
<td>43.0</td>
<td>38.4</td>
<td>54.3</td>
<td>54.0</td>
</tr>
<tr>
<td>Offender to other staff</td>
<td>80.9</td>
<td>162.1</td>
<td>192.6</td>
<td>176.5</td>
<td>159.5</td>
</tr>
<tr>
<td>Offender to all staff</td>
<td>23.9</td>
<td>34.0</td>
<td>32.0</td>
<td>41.5</td>
<td>40.3</td>
</tr>
</tbody>
</table>

* Data for previous years have been adjusted by the GDP deflator.

Source: Report on Government Services for Period 1997-98
Western Australia:

The philosophical aims of community service in Western Australia, according to Jones (1983), are reparation to the community, economic expediency, and a positive change of the offenders' attitudes. A decade later, Harding (1992) echoes similar sentiments when he states that CSO appeals as a custodial alternative because of its humanitarian emphasis and its economic attractiveness. At the same time, CSO is more punitive than other non-custodial options and contains an element of reparation to the community. Jones notes that in the first five years of the CSO scheme's operation, the high rate (up to 89 per cent) of those offenders completing their orders, augured well for the scheme's success and its acceptance by all parties concerned. Added to this was the scheme's cost-effectiveness - less than $1 per person per day to administer (in 1983 dollar terms). These factors did not take into account the (nominal) monetary value of the unpaid community work actually done by offenders, which, in 1982-3, totalled 43,911 hours. Nor did they include the non-monetary benefits that flowed as a result of the positive, personal contact between many offenders and the aged clients for whom they worked (Jones, 1983). As an additional economic argument in favour of the CSO, Harding (1992) maintains that Western Australia has a long-established tradition of high imprisonment rates, which, in 1992, was almost fifty per cent higher than the national rate. Also, s.19A of the Western Australia Criminal Code 1913, which covers the use of imprisonment as a punishment of last resort, and official government penal policy (since 1988) that endorses s.19A, appear to be largely ignored by the judiciary, if the current high imprisonment rates are any guide.

Harding also argues that a large proportion of Western Australian imprisonment is attributable to sentencers who are in a position of comparative irresponsibility in terms of their accountability for the social and financial costs of imprisonment. He describes such non-accountability as a "custodial free lunch" (1992:89). In practical terms, Courts of Petty Sessions are "virtually immune from appellate review as to their imposition of custodial sentences" (1992:89). He also observes that the ready availability of "custodial free lunches" to lower court sentencers, particularly in non-
metropolitan areas, may mean that insufficient effort is put into community crime prevention and rehabilitation programs at the very point where its potential is greatest—that is, where the anti-social conduct is occurring. The cause of Western Australia's high imprisonment rate is not the length of sentences but rather the frequency with which people are being imprisoned.

On the issue of length and frequency of prison sentences, Harding notes from *The Report of the Joint Select Committee on Parole (1991)* that the Committee recommended the abolition of short prison sentences except in cases of violent offences against the person - sentences of less than three months should not be imposed. The Committee also recommended the strengthening of control of the Court of Criminal Appeal upon lower court sentencing patterns to eliminate or, at very least, minimise the "custodial free lunch" (1992:89). Allied to this recommendation is the suggestion that the Chief Justice should have the power to report to Parliament on any sentencing matter that he thinks fit.

Morgan (1993) has a somewhat different view. He feels the Supreme Court and the Court of Criminal Appeal should take an active checking role, by emphasising the potential of community service as an alternative to custody in its own right and by promulgating general guidelines in its use and on the appropriate duration of orders. He argues that it is time for the Supreme Court and the Court of Criminal Appeal in Western Australia to redirect community service as a positive and punitive alternative to immediate imprisonment and, in appropriate cases, to the fine. He sees two further benefits that might possibly result from the wider use of community service in its own right: the first, that the resources of the community corrections personnel may be less thinly stretched than they are by the supervisory requirements of combined orders such as community service and probation; the second, that offenders who successfully complete community service will, in so doing, have worked off the sentence and would not be subject to the probation supervision. Morgan thinks this may reduce the number of breaches resulting in custody (and thus lessen the demands upon the public purse).
The 1995-96 Annual Report of Western Australia’s Ministry of Justice states that there will be a much greater emphasis placed on contracting out a greater range of ancillary services, to "help relieve pressure on workload growth" (p.18). The report also states that the closure of the underutilised Bail Hostel "realised savings of more than $200,000" (p.19). As well, the role of private sector security companies in compliance monitoring (of, for example, offenders sentenced to home detention) has increased so that "savings of about $250,000 per annum will be achieved" (p.19).

From a more recent source - the Report on Government Services for the period 1997-98 - the cost of community supervision has increased over the past few years (see Tables 8.4, 8.5, and 8.6), and the government was examining ways of curtailing that cost. One method was to explore the "contestability for the provision of offender management services under a purchaser, provider and regulator model" (1999:563) (a euphemism for privatisation of corrections activities). On the current status of CSOs in Western Australia, the original order from 1977 has undergone several legislative changes. While the revamped community-based order (CBO) continues to perform the basic functions of the original order, it now has a quite punitive relative - the intensive supervision order. With this latter order, and in tandem with the suspended sentence, the government hopes to bridge "the gap between former community orders and imprisonment" (1999:563).

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<tbody>
<tr>
<td>Cost per offender per day ($1998)*</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>8.75</td>
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<tr>
<td><strong>Offender to staff ratios</strong></td>
<td></td>
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<tr>
<td>Offender to operational staff</td>
<td>40.59</td>
<td>37.01</td>
<td>34.81</td>
<td>36.72</td>
<td>35.85</td>
</tr>
<tr>
<td>Offender to other staff</td>
<td>121.29</td>
<td>116.68</td>
<td>86.17</td>
<td>105.38</td>
<td>102.66</td>
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<tr>
<td>Offender to all staff</td>
<td>30.41</td>
<td>28.10</td>
<td>24.79</td>
<td>27.23</td>
<td>26.57</td>
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* Data for previous years have been adjusted by the GDP deflator.
na Not available.

**Source:** Report on Government Services for Period 1997-98
### Table 8.5 Western Australia Community Corrections Descriptor Indicators

<table>
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<tr>
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</thead>
<tbody>
<tr>
<td>Av daily no. community correcc orders(^a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>47</td>
<td>46</td>
<td>43</td>
<td>53</td>
<td>57</td>
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<tr>
<td>Fine option orders</td>
<td>0</td>
<td>719</td>
<td>54</td>
<td>142</td>
<td>329</td>
</tr>
<tr>
<td>Community service bonds or orders</td>
<td>1,263</td>
<td>1,153</td>
<td>1,115</td>
<td>1,331</td>
<td>1,777</td>
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<tr>
<td>Supervision orders</td>
<td>4,324</td>
<td>4,460</td>
<td>4,345</td>
<td>4,390</td>
<td>3,867</td>
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<tr>
<td>Total - all orders(^b)</td>
<td>5,634</td>
<td>6,378</td>
<td>5,557</td>
<td>5,916</td>
<td>6,030</td>
</tr>
<tr>
<td>Av daily no. of persons serving orders(^b)</td>
<td>5,458</td>
<td>5,134</td>
<td>4,438</td>
<td>4,664</td>
<td>4,593</td>
</tr>
<tr>
<td>Community corrections rates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>431.50</td>
<td>399.25</td>
<td>339.05</td>
<td>345.00</td>
<td>332.60</td>
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<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>32,493</td>
<td>40,605</td>
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<td>Work hrs performed per 100,000 adults</td>
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<td>na</td>
<td>na</td>
<td>16,494</td>
<td>17,883</td>
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<tr>
<td>Expenditure ($'000 1998)(^c)</td>
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<tr>
<td>Recurrent expenditure</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>14,699</td>
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<tr>
<td>Recurrent receipts</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>26</td>
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<tr>
<td>Total recurrent exp less recurrent recp</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>14,673</td>
</tr>
<tr>
<td>Value of community corrections assets ($'000 1998)(^c)</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

\(^a\) From 4 November 1996, Intensive Supervision Orders and Community Based Orders replaced Probation Orders and Community Service Orders. Orders with both Supervision and Community Work components are counted under both order types.  
\(^b\) Total orders and total persons serving orders may not be the same, as individuals may be serving more than one type of order.  
\(^c\) Data for previous years have been adjusted by the GDP deflator.  
na Not available.

Source: Report on Government Services for Period 1997-98

### Table 8.6 Western Australia Community Corrections Effectiveness Indicators

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</thead>
<tbody>
<tr>
<td>Successful completion of orders (%)(^a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>74.10</td>
<td>76.56</td>
<td>74.14</td>
<td>70.36</td>
<td>70.26</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>71.59</td>
<td>67.92</td>
<td>57.11</td>
<td>65.49</td>
<td>63.67</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>64.56</td>
<td>62.40</td>
<td>62.46</td>
<td>63.49</td>
<td>53.59</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>67.91</td>
<td>66.96</td>
<td>67.34</td>
<td>69.31</td>
<td>67.16</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>70.21</td>
<td>67.06</td>
<td>65.73</td>
<td>67.42</td>
<td>63.20</td>
</tr>
<tr>
<td>Reparation - employment (hours)(^b,c)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Av hrs ordered worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>105.1</td>
<td>100.2</td>
</tr>
<tr>
<td>Av hrs worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>53.3</td>
<td>44.1</td>
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<tr>
<td>Hrs worked as prop'n of hrs ordered</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>0.51</td>
<td>0.44</td>
</tr>
<tr>
<td>Rehabilitation and person development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

\(^a\) In a small number of cases orders were revoked for reasons other than breach, or the termination type was unknown.  
These have been included under revoked or breached.  
\(^b\) Early release orders with a work component have been excluded as the hours to be worked may vary between such orders and there is no complete record of hours worked under such orders.  
\(^c\) No data were reported for 1993-94 to 1995-96 as the data base of hours worked is incomplete.

Source: Report on Government Services for Period 1997-98
Chapter Eight

Are CSOs Financially Driven?

Northern Territory:

Mention was made in Chapter Two of the very tentative start made by the CSO scheme in the Northern Territory between 1979 and 1983. By the end of 1986, a year in which 433 orders had been made, those convicted felons who had received a CSO during the intervening period (1979 to 1986) numbered less than 1,000. According to Furby and Elliott (1989), two reasons help explain this low number: (i) an apparent reluctance by the courts to use CSO as an alternative sentence to imprisonment; and (ii) the very restrictive qualifications of the relevant legislation as to who qualified for CSO and who didn't. As well, all Northern Territory fine-defaulters, until this time, were still imprisoned, because there was no legislative mechanism to permit an offender who could not pay a fine to swap the value of that fine for an equivalent number of community service hours. In 1986 dollar terms, it cost the Government $125 per prisoner per day. Fines were equated at the rate of one day in prison for every $50 of fine owed, so a $200 fine meant four days in prison or a cost to the public purse of $500. Subsequent amendments to the Criminal Law (Conditional Release of Offenders) (Community Service Orders) Regulations that came into force on 19 January, 1987, however, dramatically altered the situation. Those amendments, among other things, increased the limit of community service hours that could be imposed from 240 to 480, thus widening the range of offenders for whom a CSO would be suitable. More importantly, they enabled fine-defaulters to satisfy monetary penalties by performing community service work in preference to being imprisoned. They also allowed potential fine-defaulters (those persons fined who did not have the necessary resources to pay) the option of choosing community service to work off the fine(s) imposed. The amendments also provided stronger penalties for those who failed to comply with the conditions of their CSOs; and clarified the positions of Departmental officers and offenders vis-a-vis breaches to CSOs.

As a consequence of these amendments, by the end of 1987 the number of CSOs made had grown to 2,497. That figure increased to 2,961 in 1988, and to 2,598 by 31 October, 1989. Between 19 January, 1987 and 31 October, 1989, 8,056 CSOs were
issued across the Northern Territory. Of these, 986 were court-imposed orders, 1,450 were issued as a direct alternative to prison (these fine-default orders were made following the issue of a Warrant to Arrest for Commencement of Custody), and 5,620 were granted for persons who chose to work out a fine rather than chance default and subsequent imprisonment (Furby and Elliott, 1989).

For Furby and Elliott, the positive side of the 1987 amendments to the CSO legislation was a considerable increase in offenders receiving CSOs instead of going to prison and a similar decrease in prison numbers due to far fewer fine-defaulters. The negative side, however, was an unintended consequence of those legislative changes that manifested itself in the form of a very large increase in administrative paperwork needed to process Section 20 and Section 21A offenders. It had been incorrectly assumed that existing staff levels would be adequate to handle the increased processing workload. As the workload grew and staff numbers remained static, some CSO procedures were either abbreviated or ignored altogether as a way of managing the overall requirements of the scheme. The tenfold increase in offender numbers, the result of individuals choosing to exercise their right to a Fine-Option Order as opposed to imprisonment, meant a substantial increase in the number of possible breach proceedings for non-compliance with the conditions of their orders. If such a scenario was difficult to contend with in the major urban areas of Darwin and Alice Springs, then the thinly stretched staff and equipment resources located in such remote jurisdictions as Borroloola and Nhulunbuy had no chance of coping. Furthermore, an additional difficulty in the remote areas was the lack of suitable CSO projects and requisite supervision. As often happened, because of the extended family structure of Australian Aboriginal society, the person chosen to supervise an Aboriginal offender was usually related to him (this was not always known by the court at the time). Such issues were never a consideration when the initial CSO legislation was formulated, because that legislation had been based upon a model designed to deal with non-Aboriginal offenders located in heavily populated, urban centres like Hobart in Tasmania. This partly explains some of the Northern Territory CSO scheme's
shortcomings at that time, and why it was found necessary to conduct a detailed review of it.

A decade later, much has changed with regard to Northern Territory community corrections. The introduction of mandatory sentencing legislation in 1997 for both juvenile and adult offenders has seen a considerable increase in prisoner numbers: a fact acknowledged by the government in the Productivity Commission's Report on Government Services for the period 1997-98. The government is able to justify the increase in prisoner numbers by pointing to the reduction in the daily average cost per prisoner per day. While the reduced daily average costs may look good on paper, they disguise the fact that the fixed costs associated with operating any prison always remain, irrespective of the number of prisoners. Thus, a decrease in prisoner numbers means a higher daily average cost per prisoner per day. I am not suggesting for a moment that the mandatory sentencing laws were implemented simply to gain a better economic bottom line in prison operations. Rather, it is a happy coincidence that political 'points' accrue to the government by virtue of the increase in prisoner numbers primarily as a result of mandatory sentencing. The ramifications of this and related legislation will be discussed more fully in Chapter Nine. The Commission's report also notes that the Northern Territory's costs for Community Correction offenders "continues to be significantly higher than for other jurisdictions" (1999:567) and Tables 8.7, 8.8, and 8.9 confirm this claim. This is attributed to the decrease in the number of offenders with community corrections orders as well as to the physical characteristics - scale, isolation, remoteness, dispersion, and large indigenous population.

Table 8.7  Northern Territory Community Corrections Efficiency Indicators

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<tbody>
<tr>
<td>Cost per offender per day ($1998)*</td>
<td>8.56</td>
<td>9.72</td>
<td>8.88</td>
<td>11.89</td>
<td>15.13</td>
</tr>
<tr>
<td>Offender to staff ratios</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offender to operational staff</td>
<td>29.9</td>
<td>29.0</td>
<td>38.7</td>
<td>28.2</td>
<td>22.8</td>
</tr>
<tr>
<td>Offender to other staff</td>
<td>66.9</td>
<td>64.8</td>
<td>64.0</td>
<td>53.9</td>
<td>47.7</td>
</tr>
<tr>
<td>Offender to all staff</td>
<td>20.6</td>
<td>20.0</td>
<td>24.1</td>
<td>18.5</td>
<td>15.4</td>
</tr>
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</table>

* Data for previous years have been adjusted by the GDP deflator.

Source: Report on Government Services for Period 1997-98
## Table 8.8 Northern Territory Community Corrections Descriptor Indicators

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<tbody>
<tr>
<td><strong>Av daily no. of community correc orders</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>21</td>
<td>25</td>
<td>42</td>
<td>47</td>
<td>24</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds or orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>306</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>1,383</td>
<td>1,336</td>
<td>1,621</td>
<td>1,192</td>
<td>672</td>
</tr>
<tr>
<td>Total - all orders*</td>
<td>1,404</td>
<td>1,361</td>
<td>1,663</td>
<td>1,239</td>
<td>1,002</td>
</tr>
<tr>
<td><strong>Av daily no. of persons serving orders</strong></td>
<td>1,404</td>
<td>1,361</td>
<td>1,663</td>
<td>1,239</td>
<td>1,002</td>
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<tr>
<td>Community corrections rates</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Offenders per 100,000 adults</td>
<td>1,210.3</td>
<td>1,153.4</td>
<td>1,352.0</td>
<td>885.0</td>
<td>753.4</td>
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<td>Work hrs ordered per 100,000 adults</td>
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<td>na</td>
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<td>na</td>
<td>na</td>
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<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>16,691</td>
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<td>144,967</td>
<td>77,543</td>
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<td><strong>Expenditure ($'000 1998)</strong></td>
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<td>Recurrent expenditure</td>
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<td>5,544</td>
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<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<td>Total recurrent exp less recurrent recp</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Value of community corrections assets</td>
<td>$'000 1998</td>
<td>$'000 1998</td>
<td>$'000 1998</td>
<td>$'000 1998</td>
<td>$'000 1998</td>
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<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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</tbody>
</table>

*Total orders and total persons serving orders may not be the same, as individuals may be serving more than one type of order.*  
*Data for previous years have been adjusted by the GDP deflator.*

**Source:** Report on Government Services for Period 1997-98

## Table 8.9 Northern Territory Community Corrections Effectiveness Indicators

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<tbody>
<tr>
<td><strong>Successful completion of orders (%)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>86.96</td>
<td>89.09</td>
<td>85.92</td>
<td>73.47</td>
<td>90.67</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>na</td>
<td>na</td>
<td>75.49</td>
<td>57.99</td>
<td>63.34</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>97.46</td>
<td>79.01</td>
<td>82.06</td>
<td>71.27</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>86.96</td>
<td>97.26</td>
<td>76.40</td>
<td>62.96</td>
<td>65.99</td>
</tr>
<tr>
<td><strong>Reparation - employment (hours)</strong></td>
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</tr>
<tr>
<td>Av hours ordered worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>63.9</td>
<td>63.1</td>
</tr>
<tr>
<td>Av hours worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Hrs worked as proprtn of hrs ordered</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Rehabilitation and person development</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>27.0</td>
<td>38.0</td>
</tr>
</tbody>
</table>

*na Not available.*

**Source:** Report on Government Services for Period 1997-98
New South Wales:

Introducing the Community Service Orders Bill (1979), on 27 November 1979, into the New South Wales Legislative Assembly, Minister for Corrective Services, William Haigh, stated:

It is intended that this measure will act as an alternative to imprisonment, and will thus save some of the high cost involved in gaol sentence. It will also avoid the disruption to family life, loss of employment and social security payments that flow from a term of imprisonment. In this respect, it is in keeping with recommendation 237 of the report of the Royal Commission [of 1978], which states that alternatives to imprisonment should be used as extensively as possible and prisons should be used only as a last resort.

Under this scheme convicted offenders will be ordered, after certain conditions have been met, to perform unpaid work in the community. Officers of the probation and parole service will obtain suitable work from voluntary agencies, will assign the offender to a task, and will ensure that he or she is adequately supervised while carrying out the specified duties (Hansard, 1979:4092).

The concern with what the scheme might eventually cost was reflected in a question from a member of the Opposition, during the Second Reading Debate, about the additional Probation and Parole staff that would be needed to run the proposed CSO scheme. The Minister for Corrective Services informed the House that the current State Budget already contained provision for an additional 52 probation and parole officers to be recruited and added to the existing staff of 252, but if necessary, the number would be increased (Hansard Report, 1979:4262-3). What was not envisaged, however, was the inclusion of 'drug addicts' and 'alcoholics' in any CSO scheme. Given the enormous social and economic costs of drug and alcohol-related crimes and accidents, the exclusion appears short-sighted, but the reason given by the Minister was accepted in the New South Wales' State Parliament in 1979 without further comment.

A question was raised why alcoholics could not be brought within this scheme. My feeling is that an alcoholic is a person suffering from a sickness and would be better cared for by receiving medical treatment and being assured that the medical treatment will overcome his problem. I should be concerned that a person suffering from that disease - after all, alcoholism is a disease - might break down when placed on a community service order and not otherwise treated. If that were to happen he would be taken back before the court and more severe action would then follow (Hansard, 1979:4264).
Also not envisaged was the use of CSOs as a custodial alternative in the case of fine-default. The reason given for the exclusion of fine-defaulters was "because of the likely short duration and possible large numbers of orders resulting" (Hansard, 1979:4259). This all changed in 1987 with the brutal beating of a young offender, Jamie Partick, incarcerated in Long Bay Gaol for three days, for the non-payment of a traffic fine. The battering he received at the hands of two hard-core prisoners left him a cripple. The public outcry that resulted saw the *Community Service Orders (Fine Default) Amendment Act 1987* come into operation on 1 January, 1988. In the first eighteen months' operation of the new scheme, 6,869 persons registered to take advantage of the custodial alternative (NSW DCS Ann Rpt (1989-90):63).

The Productivity Commission's *Report on Government Services* for the period 1997-98 notes that the New South Wales government was pursuing a policy of upgrading its correctional services record-keeping facilities and its custodial facilities: the former by way of a new computerised offender management system, and the latter by way of a 900 bed purpose-built remand and reception facility at Silverwater, near Sydney, which was opened in July, 1997. At the same time, the government had closed the old Cooma and Maitland gaols, principally because of the inordinately high costs involved in the maintenance of both facilities. What made the upkeep of the Cooma Gaol so difficult was not just its age but the fact that it is covered by a heritage order, which prevents certain types of necessary refurbishment being carried out. The Report also details that, across the state's prison system, "77 per cent of those prisoners eligible to work were employed - one third of them in industries" (1999:560). In respect of CSOs, the Report cites a completion rate for offenders with community orders of 84 per cent (refer Tables 8.10, 8.11, and 8.12). This is not surprising, given that the approach to offenders on CSO has changed markedly (in the offenders' favour) since the Carr Labor Government came to power in 1995.

Government policy on CSO now sees all offenders processed through that state's periodic detention centres (PDCs) on a two-stage basis. In Stage 1, all offenders are
required to report to the relevant PDC for initial assessment and allocation. After a period of time has elapsed and depending upon the length of the sentence, offenders are individually assessed as either suitable or unsuitable to progress to stage 2, and this usually occurs about one third to half way through their sentence. If the offender’s attendance has been good - no more than two days of absence due to illness or other approved reason - and their performance while at the PDC has been up to acceptable standards and with no adverse reports, then they are moved up to stage 2. This means they are placed with a suitable agency, for example, St Vincent De Paul, and are permitted to report directly to that agency on the days they are scheduled to do their community hours. They no longer have to report to the PDC and be detained there for the requisite two or three days and nights while they complete their weekly hours. Having earned the 'right' to be trusted to 'do the right thing' by the agency that they are assigned to, stage 2 offenders are permitted to travel directly from their home to the agency, do the requisite hours satisfactorily and then return home at the end of the day. This obviates the necessity for accommodation and meals at the PDC, thus reducing overall costs on the scheme and, at the same time, it allows the offender to live a 'normal' life by not being forced to live away from their family or support group. In the event that an offender 'messes up' by not reporting to the agency when required without just cause (such as illness), or by not obeying all lawful instructions in relation to their CSO work, they are immediately returned to the PDC and placed back in stage 1. Such revocations for breaking the trust previously established are viewed quite seriously by the Corrections Department, and a second chance for the offender becomes very difficult to earn (participant observation and interview data).

**Table 8.10 New South Wales Community Corrections Efficiency Indicators**

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<tr>
<td>Cost per offender per day ($1998)</td>
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<td>6.89</td>
<td>6.74</td>
<td>5.56</td>
<td>6.89</td>
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<td>Offender to staff ratios</td>
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<tr>
<td>Offender to operational staff</td>
<td>28.27</td>
<td>26.90</td>
<td>31.11</td>
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<td>Offender to other staff</td>
<td>311.62</td>
<td>301.02</td>
<td>83.57</td>
<td>105.77</td>
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<tr>
<td>Offender to all staff</td>
<td>25.92</td>
<td>24.69</td>
<td>22.67</td>
<td>24.29</td>
<td>22.47</td>
</tr>
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</table>

*a Data for previous years have been adjusted by the GDP deflator.  
*b The counting rule for this indicator was changed in 1997-98, combining Community Custody and Community Supervision.

Source: Report on Government Services for Period 1997-98
### Table 8.11 New South Wales Community Corrections Descriptor Indicators

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</thead>
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<tr>
<td>Av daily no. of community correction orders</td>
<td>13,088</td>
<td>12,643</td>
<td>13,037</td>
<td>14,596</td>
<td>14,199</td>
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<tr>
<td>Home detention orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>13,088</td>
<td>12,643</td>
<td>13,037</td>
<td>14,596</td>
<td>14,199</td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>284.5</td>
<td>273.7</td>
<td>276.2</td>
<td>305.4</td>
<td>292.8</td>
</tr>
<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Expenditure ($'000)</td>
<td>34,198</td>
<td>31,847</td>
<td>32,506</td>
<td>30,051</td>
<td>36,055</td>
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<td>Recurrent expenditure</td>
<td>0</td>
<td>23</td>
<td>400</td>
<td>415</td>
<td>329</td>
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<tr>
<td>Total recurrent exp less recurrent recp</td>
<td>34,198</td>
<td>31,824</td>
<td>32,106</td>
<td>29,636</td>
<td>35,726</td>
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<td>Value of community corrections assets</td>
<td>na</td>
<td>na</td>
<td>2,941</td>
<td>1,862</td>
<td>2,761</td>
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</table>

*a* Each offender is counted only once irrespective of the number of orders or order types they may be serving.

*b* Data for previous years have been adjusted by the GDP deflator. *na* Not available.

**Source:** Report on Government Services for Period 1997-98

### Table 8.12 New South Wales Community Corrections Effectiveness Indicators

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<tr>
<td>Successful completion of orders (%)</td>
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<td>na</td>
<td>62.96</td>
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<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Total - all orders</td>
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<td>na</td>
<td>na</td>
<td>80.96</td>
<td>89.07</td>
</tr>
<tr>
<td>Reparation - employment (hours)</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Av hours ordered worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Av hours worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Hrs worked as proportion of hrs ordered</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Rehabilitation and person development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

*na* Not available.

**Source:** Report on Government Services for Period 1997-98

Queensland:

In Queensland, 1985 saw the introduction of a Fine Option Order provision that permitted offenders unable to pay court-imposed fines to undertake community service...
work in lieu of payment or, in default of payment, being sent to prison. The major concern at the time of the Fine Option Order's introduction was the availability of sufficient community work projects to accommodate the expected increase in the number of offenders choosing to 'work off' their unpaid fines (participant observation and interview data). To circumvent such an eventuality, the Probation and Parole Service had already established its own work projects in some centres - for example, in Toowoomba, one such project involved the development of 150 hectares of Crown Land into a recreational area to provide bush walking and picnic facilities (Turnbull, 1983). However, there subsequently arose unforeseen but major enforcement problems in respect of many offenders working off fine-option orders and this necessitated a radical change to procedures (see below).

The first major turning point in Queensland community corrections, after 1985, was the Offenders Probation and Parole Act 1980 being replaced by the Corrective Services Act 1988 and, later, by the Administration Act 1990. The Penalties and Sentencing Act 1992 along with amendments, in 1992, to the Justices Act 1886, sought to increase sentencing options. The 1992 legislation saw the creation of another type of Fine Option Order that enabled people who incurred transport or traffic infringement fines under the Traffic Act 1949 to apply for a CSO in lieu of either payment or imprisonment for non-payment of the fine(s). The regulations applicable to such infringement notices came under the Self Enforcing Ticketable Offence Notice System, known by the acronym SETONS, but usually referred to as the SETONS Court legislation. Different provisions apply to amounts forfeited under recognisances and undertakings and the collection and enforcement of compensation and restitution. In time, these distinctions of the Fine Option Order scheme have become blurred and created considerable administrative difficulties as regards enforcement (participant observation and interview data).

At this point, it is necessary to make a distinction between the operational arm of the Queensland criminal justice system - Queensland Corrections (referred to as
Chapter Eight
Are CSOs Financially Driven?

QCORR), and the corporate arm - Queensland Corrective Services Commission (or QCSC). Prior to 1988, the Queensland Prisons Department and the Queensland Probation and Parole Service were two separate government departments. In 1988, the Queensland Corrective Services Commission or QCSC was created, which then encompassed both these departments. In September 1997, Queensland Corrective Services Commission was corporatised and became the service contractor for QCORR, which, in turn, became the service provider, since it comprises all the State's prisons and community corrections. QCSC now contracts correctional services from QCORR (participant observation and interview data).

In June 1997, a Discussion Paper titled 'Report on Collection and Enforcement of Fines, Infringement Notice Penalties, and Other Debts' was circulated for comment by the Department of Justice. The discussion paper concentrated on the considerable amounts of money outstanding in uncollected fines, particularly those incurred under the SETONS Court legislation. It drew comparisons with the system of fines collection in other States, notably Western Australia, New South Wales, Victoria, and South Australia, and proposed a model based upon the present one but with refinements of the Western Australian and New South Wales models. In the push to retain imprisonment as a sentence of last resort, an unintended consequence has emerged via the SETONS Court legislation in the form of the Fine Option Order, which has proved to be ineffectual in intent and execution. Given the limited manpower and temporal constraints of the enforcement authorities for collecting the outstanding fines or proceeding against Fine Option Order defaulters, it does appear that a complete rethink of present operations is required by the legislators.

The discussion paper does, however, offer some short and longer-term solutions that could assist in turning around the present, unsatisfactory situation regarding Fine Option Orders and, at the same time, restore the integrity of the CSO as a genuine sentencing option (Queensland Dept of Justice Discussion Paper. June, 1997). The SETONS Court legislation permits any individual who incurs a fine under it to apply
Chapter Eight  Are CSOs Financially Driven?

for a Fine Option Order, with the proviso that, under certain circumstances, the application may be refused. As it presently stands, the SETONS Court legislation seems unevenly weighted in favour of the fine recipient at the expense of the enforcement authorities, and the Fine Option Order is perceived by the former as a 'soft option.' This is reflected in the large number of outstanding Warrants of Commitment (261,523 as at 30 June, 1996), the equally high amount of uncollected fines ($67 million, for the same period) and, in 1995-96, a rate of successful completion of Fine Option Orders of only 58 per cent, a decrease of 11 per cent on the previous year. Irrespective of whether the reality is that a Fine-Option Order is a 'soft option' or not, the integrity of CSO as a sentencing option has been seriously compromised. This is because the Fine Option Order is, or should be seen to be, similar to a CSO - an alternative to imprisonment, not merely an alternative to payment of an outstanding SETONS fine (Queensland Dept of Justice Discussion Paper. June, 1997).

The second and, perhaps, most significant turning point has been the quite recent adoption (mid-1997) by QCORR of a 'fee for service' policy. The Queensland CSO scheme is presently being linked, on a trial basis, to this 'fee for service' concept, the result, in part, of the corporatisation of the organisation. 'Fee for service' is a concept designed to ensure that CSO schemes generate sufficient income to defray their operating costs, or, in other words, that the schemes become 'cost neutral.' This is expected to be achieved by charging a fee to an organisation, say, for example, the Brisbane City Council, in return for supplying a guaranteed number of 'workers' (offenders doing CSO) for a particular project. The fee is not for offender labour (since that is free), but, rather, is to cover costs of supervision, equipment, compensation work cover, and project costs. The rationale behind 'fee for service' is that QCORR, like any corporate organisation, is expected to pay its way by successfully competing for business in the market place. Moreover, as a corporation, all Queensland prisons and community corrections regions are going to be 'market tested,' wherein they have to compete with the private sector. If a private sector organisation wins the bid, then people in, say, an individual community corrections region could expect to lose their
jobs (participant observation and interview data). What presently makes life doubly difficult for QCORR is the large outstanding amount of uncollected fines, especially those related to the SETONS Court.

The whole issue of 'fee for service' is a new and extremely complex one that appears to be a contradiction in terms and raises several very interesting questions. Moreover, 'fee for service' is a double-edged sword. QCORR would probably be expected to ensure that offenders allocated to 'fee for service' projects are not taking what might otherwise be work currently being done by employees or that could be done by unemployed persons. I raised these issues with senior management in QCORR and posed the hypothetical situation of the Brisbane City Council deciding to use offenders doing CSO to replace the Council's contract cleaners: the inference being that if one particular 'fee for service' project proved successful, there was no valid reason why other similar projects should not prove equally so, both to QCORR and, more particularly, to the Brisbane City Council. Also, most, if not all, offenders probably would not be too concerned about what they are doing, as long as it reduces their outstanding hours. QCORR management had obviously examined just such a possibility and their response to my 'hypothetical situation' was that it would be 'highly unlikely to ever occur because the public backlash would be enormous' (participant observation and interview data).

From the perspective of the volunteer groups who presently use the services of offenders on CSO, corporatisation of QCSC and the inception of the new, corporatised body, QCORR, have little or no relevance. In time, however, this may change as priority is given over to 'fee for service' projects at their expense. I saw enough in my all too brief stay to indicate, at what could be termed the 'grass roots' level of community service, that the original concepts of CSO - offender rehabilitation and reintegration - were alive and well, and working very smoothly. The general community appears, in large part, to have accepted, as a normal fact of life, offenders doing CSO. That was certainly the impression I gained from my weekend experience. In addition, as ever
more services are subjected to the 'user pays' principle by governments, local councils, public utilities, and corporations the role of offenders doing community service work will surely take on increasing significance. The role of volunteers in many aspects of daily life - particularly as carers to the aged and infirm - is already widely acknowledged, even at Federal Government level, as being an 'essential service' to the general community. In time, offenders undertaking community service work for the needy and for volunteer groups may also become similarly classified (participant observation and interview data).

My understanding is that there were, at the end of 1997, just two 'fee for service' projects under way in the Brisbane precinct and only one of them was associated with the CSO scheme. If 'fee for service' proves to be a successful concept, then future projects that can pay might well take precedence over those that cannot, since the bottom line will be the costs of the scheme that can be recovered from the utilisation of QCORR's limited resources. If handled in the right way, 'fee for service' could well solve some of QCORR's funding difficulties. Whether QCORR is to be permitted to utilise the revenue it raises in this way is, of course, another matter. My information is that all such fees raised by QCORR presently go directly into consolidated revenue. However, irrespective of how QCORR balances its books, rehabilitation of offenders should remain the major issue. Whatever type of work they are engaged in should, ideally, be meaningful work that will provide them with a sense of personal worth, and be of some tangible value to society. CSO work should also continue to reflect a further original tenet, that of work being done for the needy and for non-profit service and community organisations. In the current economic climate, this may prove very difficult as QCORR struggles to balance its priorities (participant observation and interview data).

A pragmatist might argue that it makes no difference to offenders working off their hours under a CSO or a fine option order, whether the work they do is being charged for by the Corporation or not. Either way, they will still be credited with the
number of hours they work. The difficulty with both these viewpoints, however, is that they are required to take account of existing legislation and to accord with Corporation policies. And therein lies the problem. If corporatisation is the perceived answer, then it may be exceedingly difficult to adhere to doing CSO work free of charge for the aforementioned categories. There are, after all, a finite number of offenders doing CSO at any one time and staff numbers also have limits. In addition, many offenders doing CSO are notorious for their unreliable attendance, which makes the 'guaranteeing' of offender numbers for a particular project rather risky at best. The use of prisoners on work release schemes may seem an appropriate solution, but I am under the impression that there may be certain legal impediments involved in placing a prisoner on a 'fee for service' project if it is one normally undertaken by offenders working off their CSOs. This presently seems to be a very grey area (participant observation and interview data).

According to the Report on Government Services for the period 1997-98, Queensland has the highest use of fine option orders and CSOs in Australia, and is exceeded only by New South Wales in direct supervision numbers (refer Tables 8.13, 8.14, and 8.15). The cost of supervision per offender per day in 1997-98 was $2.97. In addition, Queensland intends, at a later date, to separate out the direct supervision (of, say, the intensive supervision orders) from community supervision (where an agency supervises offenders) to give a more realistic cost per day figure.

Table 8.13 Queensland Community Corrections Effectiveness Indicators

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<tr>
<td>Successful completion of orders (%)</td>
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<tr>
<td>Home detention orders</td>
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<td>na</td>
<td>na</td>
<td>86.41</td>
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<td>66.82</td>
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<td>na</td>
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<td>Reparation - employment (hours)</td>
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<tr>
<td>Av hours ordered worked per offender</td>
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<td>58.4</td>
<td>56.4</td>
<td>54.2</td>
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<tr>
<td>Av hours worked per offender</td>
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<td>34.2</td>
<td>32.7</td>
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<tr>
<td>Hrs worked as proport'n of hrs ordered</td>
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<td>0.59</td>
<td>0.60</td>
<td>0.63</td>
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<td>Rehabilitation and person development</td>
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<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

na: Not available.

Source: Report on Government Services for Period 1997-98
Table 8.14 Queensland Community Corrections Descriptor Indicators

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<tr>
<td>Av daily no. of community corr. ordersa</td>
<td>na</td>
<td>129</td>
<td>134</td>
<td>144</td>
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<td>Home detention orders</td>
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<td>Fine option orders</td>
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<td>2,058</td>
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<td>1,882</td>
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<td>Community service bonds or orders</td>
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<td>8,068</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>16,488</td>
<td>16,227</td>
<td>16,034</td>
<td>17,126</td>
</tr>
<tr>
<td>Total - all ordersb</td>
<td>na</td>
<td>16,488</td>
<td>16,227</td>
<td>16,034</td>
<td>17,126</td>
</tr>
<tr>
<td>Av daily no. of persons serving ordersb</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community corrections rates</td>
<td>na</td>
<td>1,346.0</td>
<td>1,292.0</td>
<td>1,238.1</td>
<td>1,312.3</td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>na</td>
<td>70,261</td>
<td>73,969</td>
<td>77,291</td>
<td>76,223</td>
</tr>
<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>na</td>
<td>43,761</td>
<td>46,367</td>
<td>48,075</td>
<td>49,306</td>
</tr>
<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>na</td>
<td>19,512</td>
<td>20,428</td>
<td>20,669</td>
<td>21,168</td>
</tr>
<tr>
<td>Expenditure ($'000 1998)c</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Recurrent expenditured</td>
<td>19,512</td>
<td>20,428</td>
<td>20,669</td>
<td>21,168</td>
<td>18,581</td>
</tr>
<tr>
<td>Recurrent receipts</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total recurrent exp less recurrent recpd</td>
<td>19,512</td>
<td>20,428</td>
<td>20,669</td>
<td>21,168</td>
<td>18,581</td>
</tr>
<tr>
<td>Value of community corrections assets ($'000 1998)d</td>
<td>749</td>
<td>577</td>
<td>4,182</td>
<td>3,343</td>
<td>203</td>
</tr>
</tbody>
</table>

a Data from 1994-95 to 1996-97 as at 30 June (not daily average). b Total orders and total persons on orders may not be the same, as individuals may be serving more than one type of order. c Data for previous years have been adjusted by the GDP deflator. d The transfer of Community Custody program to the category of Open security prison affected recurrent expenditure in 1997-98. na Not available.

Source: Report on Government Services for Period 1997-98

Table 8.15 Queensland Community Corrections Efficiency Indicators

<table>
<thead>
<tr>
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<th></th>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost per offender per day ($1998)a</td>
<td>na</td>
<td>3.39</td>
<td>3.49</td>
<td>3.61</td>
<td>2.97</td>
</tr>
<tr>
<td>Offender to staff ratios</td>
<td>na</td>
<td>182.33</td>
<td>172.15</td>
<td>166.65</td>
<td>na</td>
</tr>
<tr>
<td>Offender to operational staff</td>
<td>na</td>
<td>302.53</td>
<td>220.96</td>
<td>228.42</td>
<td>na</td>
</tr>
<tr>
<td>Offender to other staff</td>
<td>na</td>
<td>113.77</td>
<td>96.76</td>
<td>96.35</td>
<td>na</td>
</tr>
</tbody>
</table>

a Data for previous years have been adjusted by the GDP deflator. na Not available.

Source: Report on Government Services for Period 1997-98

South Australia:

Following on from the unqualified success of the earlier pilot CSO schemes, the South Australian scheme was subsequently extended to Port Adelaide, Whyalla, and Port Augusta, in February, 1984. A year later, it was expanded to cover the entire state (DCS(SA) Newsletter, 1992). By the end of June, 1985, offenders had completed a total of 58,600 hours of unpaid work for the benefit of the community (DCS(SA) Newsletter,
1992:2). While this new custodial alternative was enjoying a 'honeymoon' period with both the government and the community, the same could not be said of the State's prisons. The first of the recommendations of the *Interim Report on Aboriginal Deaths in Custody* suggested that: "Governments which have not already done so should legislate to enforce the principle that imprisonment should only be used as a sanction of last resort" (*DCS(SA) Newsletter*, 1989:2). The Interim Report also recommended

Legislation should be introduced to ensure that sentences of imprisonment are not automatically imposed in default of payment of fines. Such legislation should provide alternative sanctions and impose a statutory duty upon sentencers to consider the appropriate monetary penalty and time to pay, by instalments or otherwise (*DCS (SA) Newsletter*, 1989:2).

This recommended legislation was subsequently incorporated into the *Criminal Law (Sentencing) Act 1988*, which replaced the *Offenders Probation Act* and the *Justices Act* and was proclaimed on 1 January 1989. With the new Act, an offender could be placed under the supervision of a probation officer in one of two ways - either as part of an order or as a condition of a bond. A bond has a mandatory good behaviour condition attached but may also have other conditions set by the sentencing court. If the bond is consequent upon a suspended prison sentence, it can include a CSO. By contrast, a CSO has no such good behaviour requirement and supervision by a probation officer can only be imposed as an adjunct to a CSO. The maximum period for supervision by a probation officer is still three years, whether under a bond or an order. The maximum number of hours has been increased to 320 and the completion time extended to 18 months (*DCS(SA) Ann Rpt (1994-5)*). Part 9, s.67, of the 1988 Act permits a person fined an amount of $2,000 or less to apply to the Departmental CEO for a CSO, in lieu of payment of the fine. Such hours to be calculated at the rate of eight hours for every $100 of fine, so the maximum number of hours permitted is 160.

While the impact of the legislation had yet to be felt in 1989 and beyond, an example of its potential can be gleaned from the following: Of the 320 prisoners received into Adelaide prisons during September 1988, 230 (72 per cent) had a head
sentence of less than one month. Also, 212 (66 per cent) of those were fine defaulters (Department of Correctional Services (South Australia) Newsletter, 1989). The fine option scheme, after a tenuous beginning, accounted for nearly 50 per cent of all community service work done, in 1991-2. The fine option scheme also positively affected the South Australian imprisonment rate. For every person held in custody, in 1992, there were five under supervision in the community, three of whom were performing community service work. The CSO Scheme has also proven to be a cheaper alternative to imprisonment. In 1991, the average cost of imprisonment was $190 per day, compared with $42 per eight hour day to supervise an offender performing community service work. By the end of the first decade of the scheme's introduction in South Australia, one million hours of unpaid community service work had been done (DCS(SA) Newsletter, 1992).

From the point of view of the Productivity Commission's Report on Government Services for the period 1997-98, a formal agreement was reached with Aboriginal tribal authorities to provide supervision for some indigenous offenders on CSO. This is similar to arrangements that presently exist in Western Australia and the Northern Territory. The Report also notes that the percentage of CSOs successfully completed increased only marginally from the previous period in 1996-97. The daily average community corrections population increased by 14 per cent in 1997-98 (refer Tables 8.16, 8.17, and 8.18).

<table>
<thead>
<tr>
<th>Table 8.16 South Australia Community Corrections Efficiency Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost per offender per day ($1998)a</td>
</tr>
<tr>
<td>Offender to staff ratios</td>
</tr>
<tr>
<td>Offender to operational staff</td>
</tr>
<tr>
<td>Offender to other staff</td>
</tr>
<tr>
<td>Offender to all staff</td>
</tr>
<tr>
<td>a Data for previous years have been adjusted by the GDP deflator.</td>
</tr>
</tbody>
</table>

Source: Report on Government Services for Period 1997-98
Table 8.17 South Australia Community Corrections Descriptor Indicators

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Av daily no. of community correction orders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>95</td>
<td>75</td>
<td>86</td>
<td>108</td>
<td>113</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>3,802</td>
<td>3,814</td>
<td>3,758</td>
<td>3,481</td>
<td>4,542</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>1,572</td>
<td>1,602</td>
<td>1,651</td>
<td>1,568</td>
<td>1,412</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>3,014</td>
<td>3,036</td>
<td>3,092</td>
<td>3,190</td>
<td>3,189</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>8,483</td>
<td>8,527</td>
<td>8,587</td>
<td>8,347</td>
<td>9,256</td>
</tr>
<tr>
<td>Av daily no. of persons serving order</td>
<td>7,498</td>
<td>7,492</td>
<td>7,531</td>
<td>7,373</td>
<td>8,375</td>
</tr>
<tr>
<td>Community corrections rates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>665.3</td>
<td>662.7</td>
<td>663.2</td>
<td>645.7</td>
<td>727.7</td>
</tr>
<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>259,236</td>
<td>329,051</td>
<td>331,297</td>
<td>322,149</td>
<td>311,452</td>
</tr>
<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>57,994</td>
<td>57,490</td>
<td>52,718</td>
<td>49,674</td>
<td>54,757</td>
</tr>
<tr>
<td>Expenditure ($'000 1998)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recurrent expenditure</td>
<td>13,446</td>
<td>14,290</td>
<td>12,934</td>
<td>12,924</td>
<td>17,187</td>
</tr>
<tr>
<td>Recurrent receipts</td>
<td>0</td>
<td>127</td>
<td>615</td>
<td>652</td>
<td>1399</td>
</tr>
<tr>
<td>Total recurrent exp less recurrent recep</td>
<td>13,446</td>
<td>14,163</td>
<td>12,319</td>
<td>12,272</td>
<td>15,788</td>
</tr>
<tr>
<td>Value of community corrections assets ($'000 1998)</td>
<td>na</td>
<td>7,182</td>
<td>5,979</td>
<td>2,943</td>
<td>3,262</td>
</tr>
</tbody>
</table>

a Total orders and total persons serving orders may not be the same, as individuals may be serving more than one order.
b Data for previous years have been adjusted by the GDP deflator. c Figures from 1993-94 to 1996-97 include expenditure on community custody and home detention. na Not available.

Source: Report on Government Services for Period 1997-98

Table 8.18 South Australia Community Corrections Effectiveness Indicators

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Successful completion of orders (%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>81.30</td>
<td>76.01</td>
<td>73.76</td>
<td>75.33</td>
<td>67.52</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>62.71</td>
<td>56.34</td>
<td>56.50</td>
<td>57.14</td>
<td>57.18</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>69.65</td>
<td>67.70</td>
<td>60.24</td>
<td>63.00</td>
<td>63.93</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>79.04</td>
<td>82.99</td>
<td>81.03</td>
<td>80.09</td>
<td>81.20</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>66.47</td>
<td>61.83</td>
<td>61.03</td>
<td>61.95</td>
<td>60.62</td>
</tr>
<tr>
<td>Reparation - employment (hours)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Av hours ordered worked per offender</td>
<td>194.4</td>
<td>237.1</td>
<td>251.6</td>
<td>232.4</td>
<td>184.3</td>
</tr>
<tr>
<td>Av hours worked per offender</td>
<td>43.5</td>
<td>41.4</td>
<td>40.0</td>
<td>35.8</td>
<td>32.4</td>
</tr>
<tr>
<td>Hrs worked as proport'n of hrs ordered</td>
<td>0.22</td>
<td>0.17</td>
<td>0.16</td>
<td>0.15</td>
<td>0.18</td>
</tr>
<tr>
<td>Rehabilitation and person development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

na Not available.

Source: Report on Government Services for Period 1997-98

Victoria:

The initial success of Victoria's pilot CSO scheme from 1983 saw government funding for the new State-wide Community Order Scheme increased from $3 million to
$10 million, in 1985. Running in conjunction with the new scheme was the Attendance Centre Order Scheme. This latter order meant offenders could be sentenced to up to twelve months to spend two three-hour periods on week nights in self-development courses such as accounting or furniture-making. They were obliged to undertake unpaid community service and to receive personal counselling (Law Institute Jnl, 1985). A comparison of weekly costs per offender for the five types of penal sanction then available were: Probation: $18; Parole: $40; Community Service: $41; Attendance Centre: $68; and Prison: $360 (Law Institute Jnl, 1985). The passage of the Penalties and Sentences Act 1985 repealed the earlier community order, the probation order and the attendance centre order and replaced them with the Community-Based Order or CBO. Under the 1985 Act, the community-based order only required the offence for which it was being made be punishable by imprisonment, thereby altering its status from a substitute to an alternative sentence (Freiberg and Ross, 1995). The commencement of the community-based order, in 1986, "proved immediately popular, increasing from 290 persons on such orders in June of that year, to 5,931 by June, 1992" (1995:122). Yet, in spite of its popularity, the order had little effect upon the rate of imprisonment, due, largely, to most of the sentences that it replaced being sentences of probation. Freiberg and Ross believe that the CBO, as a form of intermediate sanction, represents "only a ... small proportion of all sentences imposed" (1995:122).

Before the implementation of the community-based order, only about twenty per cent of all orders required some form of community work; with the introduction of the community-based order, that figure quadrupled to eighty per cent (Richards, 1991). To curb the possibility of sentencers indiscriminately imposing most or all of the community-based order's program conditions, ss.39(6) and 39(7) were amended by the Sentencing (Amendment) Act 1993 No.41 of 1993, ss.11(a) and 11(b). These changes permitted the creation of "a limited form of unpaid-work condition within the community-based order itself" (Freiberg and Ross, 1995:121). The number of hours of unpaid work that could now be ordered in this way was increased from 125 to 250 and when the number of hours that had been set was completed, the order ceased (s.11(a)).
Chapter Eight
Are CSOs Financially Driven?

Prior to the 1993 Amendment, the nexus between the CBO and imprisonment was made more tenuous with the introduction of the *Sentencing Act 1991*, by making the order apply to offences punishable by a fine of more than five penalty units (1995).

In respect of the "Victorian Government comments" section of the *Report on Government Services* for the period 1997-98 (see p.561), the government is rather non-committal on Community Corrections data. This is reflected in the relevant statistical data contained in Tables 8.19, 8.20, and 8.21, with many performance indicators therein simply recorded as "na" not available or "-" not applicable.

**Table 8.19 Victoria Community Corrections Descriptor indicators**

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Av daily no. of community correction orders</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>Home detention orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds or orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total - all ordersa</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Av daily no. of persons serving ordersa</td>
<td>7,463</td>
<td>7,030</td>
<td>6,952</td>
<td>7,063</td>
<td>7,069</td>
</tr>
<tr>
<td>Community corrections rates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>218.8</td>
<td>205.5</td>
<td>199.9</td>
<td>201.1</td>
<td>200.1</td>
</tr>
<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>na</td>
<td>35,940</td>
<td>29,237</td>
<td>28,336</td>
<td>26,458</td>
</tr>
<tr>
<td>Expenditure ($'000 1998)b</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recurrent expenditure</td>
<td>17,739</td>
<td>18,913</td>
<td>17,816</td>
<td>19,792</td>
<td>15,105</td>
</tr>
<tr>
<td>Recurrent receipts</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total recurrent exp less recurrent recp</td>
<td>17,739</td>
<td>18,913</td>
<td>17,816</td>
<td>19,792</td>
<td>15,105</td>
</tr>
<tr>
<td>Value of community corrections assets ($'000 1998)b</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

- Total orders and total persons on orders may not be the same, as individuals may be serving more than one type of order.
- Data for previous years have been adjusted by the GDP deflator.
- "-" Not applicable.

**Table 8.20 Victoria Community Corrections Efficiency Indicators**

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost per offender per day ($'998)a</td>
<td>6.51</td>
<td>7.37</td>
<td>7.02</td>
<td>7.68</td>
<td>5.85</td>
</tr>
<tr>
<td>Offender to staff ratios</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offender to operational staff</td>
<td>37.5</td>
<td>34.6</td>
<td>36.4</td>
<td>34.5</td>
<td>34.7</td>
</tr>
<tr>
<td>Offender to other staff</td>
<td>80.2</td>
<td>76.4</td>
<td>85.8</td>
<td>86.1</td>
<td>135.9</td>
</tr>
<tr>
<td>Offender to all staff</td>
<td>25.6</td>
<td>23.8</td>
<td>25.6</td>
<td>24.6</td>
<td>27.6</td>
</tr>
</tbody>
</table>

- Data for previous years have been adjusted by the GDP deflator.

**Source:** *Report on Government Services for Period 1997-98*
Table 8.21: Victoria Community Corrections Effectiveness Indicators

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Successful completion of orders (%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home detention orders</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>94.44</td>
<td>88.40</td>
<td>89.81</td>
<td>84.69</td>
<td>86.23</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>84.12</td>
<td>75.95</td>
<td>72.13</td>
<td>71.88</td>
<td>75.13</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>69.12</td>
<td>67.22</td>
<td>64.33</td>
<td>62.81</td>
<td>62.21</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>80.93</td>
<td>79.14</td>
<td>78.31</td>
<td>76.05</td>
<td>76.49</td>
</tr>
<tr>
<td>Reparation - employment (hours)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Av hours ordered worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Av hours worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>51.7</td>
</tr>
<tr>
<td>Hrs worked as proportion of hrs ordered</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Rehabilitation and person development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>13.8</td>
<td>17.2</td>
</tr>
</tbody>
</table>

Note: Not available. Not applicable.

Source: Report on Government Services for Period 1997-98

Australian Capital Territory:

The ACT Adult Corrective Services CSO unit is responsible for the supervision of offenders who have been sentenced by the Court to perform unpaid community labour of up to 208 hours on approved projects. From a quite tenuous beginning, the ACT CSO unit grew and developed to the point where, by 1990, it had come to be regarded by other jurisdictions as possessing and operating a first class CSO scheme. Careful selection of the 'right' staff, even more careful management of the Unit's budget and resources, and a predilection by the Unit Manager for fair and equal treatment of all staff, offenders, and clients in their dealings with each other, made for an efficient and harmonious unit. The forced imposition of self-government on the Australian Capital Territory by the Hawke Federal Labor Government, in May, 1989, was a two-edged sword. For example, it gave control and funding of the criminal justice system to a duly elected Territory Government; but that control and funding had the potential to wreak a large degree of havoc over exiting and proposed criminal justice programs.

In 1991, the CSO Unit moved its operations to a purpose-built facility at Belconnen, a northern Canberra suburb. Although the CSO is intended to be largely punitive, it is acknowledged by some that the main beneficiaries - community agencies
Chapter Eight

Are CSOs Financially Driven?

and pensioners - may have "a rehabilitative effect upon the offender" (ACTCRC, 1991:13). In terms of reparation to the community, in 1990-91, a total of 50,962 hours of community service was carried out. In the same period, 297 orders were completed, a monthly average of 211 orders were supervised by the unit, and the average total cost to supervise each offender was $2,392. The CSO unit required three weeks to assess an offender's suitability for a CSO, and an average of 29 assessments were prepared each month, with the average caseload being 42 (in 1991). At this time, the ACT had nearly four times as many offenders under supervision in the community as it had in custody, although this is now common in all other Australian jurisdictions (ACTCRC, 1991).

The remarks made in relation to the Victorian Government being non-committal about community corrections data are equally applicable to the ACT government. But, given this government's penchant for secrecy at all levels of its administration, this does not surprise. I have detailed elsewhere in this thesis many of the reasons for this and refer the reader to Chapter Nine and the Epilogue, in particular, for a fuller explanation (participant observation and interview data). The Tables from the Report on Government Services included here - Tables 8.22, 8.23, and 8.24 - have serious gaps in some of the data, making meaningful comparisons with other jurisdictions difficult.

Table 8.22 Australian Capital Territory Community Corrections Effectiveness Indicators

<table>
<thead>
<tr>
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<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Successful completion of orders (%)</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Home detention orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds/orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>88.25</td>
<td>90.43</td>
</tr>
<tr>
<td>Supervision orders*</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>88.12</td>
<td>85.67</td>
</tr>
<tr>
<td>Total - all orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>88.16</td>
<td>87.13</td>
</tr>
<tr>
<td>Reparation - employment (hours)</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>81.0</td>
<td>83.4</td>
</tr>
<tr>
<td>Av hours ordered worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>68.6</td>
<td>57.0</td>
</tr>
<tr>
<td>Av hours worked per offender</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>68.6</td>
<td>57.0</td>
</tr>
<tr>
<td>Hrs worked as proportion of hrs ordered</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>84.7</td>
<td>68.3</td>
</tr>
<tr>
<td>Rehabilitation and person development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Proportion of eligible offenders taking personal development</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

* Supervision orders include offenders on community work. These numbers have dropped due to a drift to periodic detention. na Not available.

Source: Report on Government Services for Period 1997-98
## Table 8.23 Australian Capital Territory Community Corrections Descriptor Indicators

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Av daily no. of community correc orders</strong></td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Home detention orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Fine option orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Community service bonds or orders</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Supervision orders</td>
<td>na</td>
<td>na</td>
<td>540</td>
<td>642</td>
<td>775</td>
</tr>
<tr>
<td><strong>Total - all orders</strong></td>
<td>na</td>
<td>na</td>
<td>540</td>
<td>642</td>
<td>775</td>
</tr>
<tr>
<td><strong>Av daily no. of persons serving orders</strong></td>
<td>na</td>
<td>na</td>
<td>540</td>
<td>642</td>
<td>775</td>
</tr>
<tr>
<td><strong>Community corrections rates</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offenders per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>234.8</td>
<td>267.5</td>
<td>322.9</td>
</tr>
<tr>
<td>Work hrs ordered per 100,000 adults</td>
<td>na</td>
<td>na</td>
<td>17,376</td>
<td>17,665</td>
<td>17,665</td>
</tr>
<tr>
<td>Work hrs performed per 100,000 adults</td>
<td>na</td>
<td>13,597</td>
<td>18,640</td>
<td>14,723</td>
<td>12,065</td>
</tr>
<tr>
<td><strong>Expenditure ($’000 1998)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recurrent expenditure</td>
<td>1,634</td>
<td>1,538</td>
<td>1,612</td>
<td>1,605</td>
<td>1,715</td>
</tr>
<tr>
<td>Recurrent receipts</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total recurrent exp less recurrent recp</td>
<td>1,634</td>
<td>1,538</td>
<td>1,612</td>
<td>1,605</td>
<td>1,715</td>
</tr>
<tr>
<td><strong>Value of community corrections assets ($’000 1998)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>na</td>
<td>2,017</td>
<td>2,209</td>
<td>1,824</td>
<td>1,563</td>
<td></td>
</tr>
</tbody>
</table>

* Total orders and total persons may not be equal, as individuals may be serving more than one order. ** Data for previous years have been adjusted by the GDP deflator. ** The majority of plant and equipment was sold in 1997-98 due to a change in mode of operation. ** Not available.

Source: Report on Government Services for Period 1997-98

## Table 8.24 Australian Capital Territory Community Corrections Efficiency Indicators

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost per offender per day ($1998)</strong></td>
<td>na</td>
<td>na</td>
<td>8.17</td>
<td>6.84</td>
<td>6.06</td>
</tr>
<tr>
<td><strong>Offender to staff ratios</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Offender to operational staff</td>
<td>na</td>
<td>na</td>
<td>21.8</td>
<td>29.2</td>
<td>33.1</td>
</tr>
<tr>
<td>Offender to other staff</td>
<td>na</td>
<td>na</td>
<td>93.1</td>
<td>107.0</td>
<td>99.4</td>
</tr>
<tr>
<td>Offender to all staff</td>
<td>na</td>
<td>na</td>
<td>17.7</td>
<td>22.9</td>
<td>24.8</td>
</tr>
</tbody>
</table>

* Data for previous years have been adjusted by the GDP deflator. ** Includes 27 per cent of policy and support staff. ** Not available.

Source: Report on Government Services for Period 1997-98

At this point, it is instructive to look, also, at the origin and development of CSOs overseas, and the way that they, too, have been largely shaped by economic considerations. This next sub-section, therefore, examines the economic history of CSOs in both England and Canada, and, in turn, leads into the latter part of this chapter: a discussion of the costs and benefits of CSOs.
Chapter Eight
Are CSOs Financially Driven?

England:

The 'Report of the Advisory Council on the Penal System' of 1970 (also referred to as the Wootton Committee Report) states in Paragraph 9 that

Imprisonment is not only inappropriate and harmful for many offenders for whom it is used, often it is also a wasteful use of limited resources. Cost is not the only factor, but it is worth observing that, quite apart from the increased risk that the State would have to support the family of an offender deprived of liberty, the cost of maintaining an inmate in a prison service establishment is on the average about £22 a week. No official estimate has been made of the average cost of supervising a probationer but we would judge it to be of the order of £1 a week (1970:3).

Writing in 1979, Young suggests that it is financial considerations that have "given the search for alternatives to custody its cogency in the formulation of recent policy" (1979:7). He notes that, during the 1960s and 1970s, while economic motives "remained largely unstated in the parliamentary debates ... they were the driving force behind concerns about prison overcrowding, prison ineffectiveness, and simple humanitarianism" (1979:8). Young also suggests "economic strictures explain the susceptibility of penal policy to the influence of other arguments which were not in themselves sufficient to explain the disillusion with imprisonment" (1979:8). In a review of CSOs that was undertaken by Pease for the Howard League for Penal Reform, in 1981, relevant cost data for 1978-9 are cited:

Around five million pounds was spent on community service....this represented £345 per order. On the other hand, net social costs were much lower because of the value of the work carried out by those subject to community service orders (1981:45).

Pease states that "the savings in comparison with prison are, of course, likely to be infinitely more dramatic" (1981:45). However, Vass (1990) offers Home Office data for the 1980s, which, at first glance, appear to contradict the projections of both Young and Pease (Vass, 1990:Ch.2). Vass suggests that under the Thatcherite banner of law and order, far from the English prison system being in crisis, "As an institution the prison never had it so good!" (Vass, 1990:20). Not only were more prisons being built and longer sentences being imposed, but also a parallel expansion of custodial alternatives was occurring at the same time. The real crisis, according to Vass, was a fiscal and social control crisis - that is, one of government policy (Vass, 1990).
Canada:

Unlike Australia and England, in Canada CSO is part of probation order requirements: it is not a separate and distinct penal sanction (Vass and Menzies, 1989). However, just as in England (and some jurisdictions in Australia), the administration of the CSO was made the responsibility of the probation and parole services in the respective provinces. The principal reason for this was that the probation services had an established and extensive network of local offices. Hence there was no need to dip into the public purse to set up a new organisation to administer the CSO. As well as the saving of public expenditures, the probation services had firm and cordial relationships already established with the courts and, more particularly, with the communities in which they worked. Another major reason (one that was never stated) was the probation service's occupation of the middle ground on the penal scale so that it acted as a social buffer in the criminal justice process (Vass and Menzies, 1989).

Although modelled on the English CSO, the Ontario CSO originated not through separate legislation as happened in Australia and England in 1972, but through individual Ontario judges, in the 1970s, adding a further condition to the existing probation order. This further condition was that the probationer should do unpaid work for the community (Vass and Menzies, 1989). With the subsequent acceptance of this judicial initiative by the Ontario Ministry of Correctional Services, in 1977, it opened the way for the formal introduction of CSO based on the English model. For the Ontario Ministry, privatisation was the key.

The administration of the CSO was based on contracts with a diverse range of private non-profit-making organizations... The decision to proceed by contract with private non-profit-making agencies was based on practical, financial, political, and ideological factors. Not only would contracting out be cheaper, but implementing the scheme through a task-force of community service employees (from voluntary organizations) functioning as 'para-civil servants' would obviate the expansion of government agencies and would stop the growth of 'Big Government' (1989:257).

Vass and Menzies argue that the choice of agencies to administer the CSO, both in England and in Ontario, Canada, was influenced by the same goals: that is, to promote the CSO scheme in a way that would make it acceptable to those who favoured...
different varieties of penal philosophy. In effect, the CSO scheme was to be shown to be an alternative to imprisonment in the community; reparative; humane; and, above all, cheaper than custodial establishments.

The Costs versus Benefits Debates about CSO

As already shown, in the course of all parliamentary debates, departmental and private consultations, and public discourse on whether or not to introduce a CSO scheme, the dominant issue appears to have always been one of costs versus benefits. While cost considerations were a major plus in the arguments for a rapid and uniform development of the CSO scheme across Australia and, indeed, the Commonwealth, the projected but as yet invisible benefits were something of a barrier. At the same time, the escalating costs of operating the various prison systems were pushing governments either to adopt and implement a CSO scheme or else to find a suitable and cheap alternative solution. Prisons, of course, were and still are viewed as an essential part of the criminal justice system and, as such, they had and still have priority over non-prison alternatives. In respect of funding, prisons garner the greatest share of monies allocated to most criminal justice systems, and this is a major reason for governments presently turning to the private sector for assistance in taking over and managing some or all of their prisons. But it does not stop there. The widening, strengthening, and creating of new and different criminal justice system nets is seeing the private sector also take over the operating of community corrections, in addition to the prison systems. However, with privatised operations comes another set of problems - disclosure, secrecy, and accountability. I subscribe to the views of Chan (1992), Donahue (1989), Moyle (1994), and Robbins (1987) that, in respect of the operation of prisons and community corrections, governments are all too ready to divest themselves of responsibility and accountability. Private operators, in turn, may voice platitudes about offender rehabilitation and prison reform, but the reality is different: they are far more interested in doing well (financially) than in doing good (therapeutically) (Robbins, 1987). Also,
the ability of private operators to hide behind the cloak of 'commercial-in-confidence' is very problematic, as Moyle's case study of Borallon prison in Queensland readily attests (Moyle, 1994).

Studies of local and overseas CSO schemes attach a monetary value to the unpaid community work undertaken, as a way of evaluating or quantifying the worth of the work to the community. While the work would probably not have been done if it had had to be paid for, by apportioning a dollar value to offender hours worked the result is a notional dollar value for the work done. For example, in the case of Victoria, in 1982, a rate of $9 per hour for the 6,589 hours worked by offenders, gives a notional value of $32,945 for that community work (Bodna, 1983). Many claims have been made that it is cheaper to run a CSO scheme for a group of offenders than it is to imprison them, due to the absence of the high, fixed overheads of the prison buildings and infrastructure, as well as the staff supervision differential. However, in view of many of the issues raised in this and other chapters regarding net-widening, net-strengthening and the creation of new or different nets, the claims that custodial alternatives are cheaper than incarceration are being seriously challenged (cf Chan, 1992; Cohen, 1985; Moyle, 1994; Vass, 1990). This also applies to restorative justice.

There is insufficient information to support a conclusion that the introduction of restorative programmes could be expected to result in major savings for the criminal justice system. [In fact] there would be costs associated with introducing restorative justice programs (Ministry of Justice, 1995:63-64).

CSO is the only non-prison alternative sentence that permits an offender to 'work off' a court-imposed fine where that offender is unable to pay the fine directly as ordered. As shown earlier in Chapter Two, all Australian jurisdictions have legislated to enable such an arrangement, but the swapping of fines for CSO hours has not been without its problems. Where an offender defaults on a CSO that has been imposed in lieu of a fine (usually referred to as a 'fine-option order'), the administrative machinery that is in place is sometimes inadequate. This may be due to a number of factors: a shortage of staff and an inordinately high case-load; poor follow-up procedures on
offenders by case workers; or departmental priorities. In the latter case, a departmental officer may make a conscious decision not to expend limited resources on chasing a defaulting offender but, instead, concentrate those resources on offenders who are meeting their obligations. While it can be argued that a larger number of offenders failing to complete their orders can make the case-workers responsible for such completions appear inept, there is also the possibility that such failures will never be made known.

For example, Vass and Menzies (1989) make the point that in Ontario, Canada, "reliable national data are lacking; individual provinces report what they choose on community service and indeed often they choose not to report at all" (1989:256). A case in point of choosing "not to report at all" occurred in the Australian Capital Territory in 1994. Anecdotal evidence indicates that a conscious decision was taken by ACT Corrective Services management not to report failed orders, even though the occasional breach proceedings were being activated by some corrections staff at the behest of the courts. The result of this was that, by 1998, of some 240 current CSOs, about 85 were sitting in the 'pending' trays of case-workers awaiting breach action (participant observation and interview data). The principal reason why case-workers were able to do this was the utter, demoralised disarray of ACT Corrective Services. Its management and staff were embroiled in a highly embarrassing and protracted coronial inquiry into yet another suicide at the Belconnen Remand Centre, but with the added indignity of a cover-up that went horribly wrong. The finger-pointing and the search for scapegoats were not helped during proceedings by another questionable relocation of all corrective services staff (except those at the Remand Centre) from two suburban offices into one quite unsuitable building in the city (participant observation and interview data). For further details about the cover-up issue, its ramifications, and the subsequent fall-out as a result of the coronial inquiry, the reader is directed to Appendix E.
Conclusion

The data presented in this chapter suggest, other things being equal, that CSOs were and are financially driven. This is not to deny that there are those within governments, the criminal justice system, and the community who are genuinely and primarily concerned with the rehabilitation and reintegration of offenders back into the community. For them, questions about the financial bottom line are of little or no moment. But it is suggested that such people are probably in the minority in the late 1990s, especially given the present industrial relations climate with its push for individual work contracts and its scant regard for retaining the corporate or organisational memory. The intrinsic value of such things as employee loyalty, ethical conduct, and corporate and community harmony will only become apparent when they have totally disappeared. The moves towards corporatisation of government responsibilities, such as the privatisation of prisons and community corrections, are highly problematic and do not readily lend themselves to offender rehabilitation or community consensus. This being so, offender rehabilitation becomes a hoped-for byproduct of the criminal justice process, rather than a primary goal. As such, CSO is consistent with the claims of the decarceration theorists that financial considerations were a major factor in the moves to decarcerate 'the mad and the bad.'

Hence, given that the prime concern of correctional authorities is the economic bottom line rather than the rehabilitation of prisoners and offenders, this leads us to ask the obvious question: what exactly is the status of CSOs? Are they punitive as the decarceration theorists claim, or are they rehabilitative and reintegrative as the restorative justice movement hopes? This question is the subject of the next chapter.
Chapter Nine
Are Community Service Orders Punitive or Rehabilitative?

Except when physically constrained, a person is least free or dignified when under the threat of punishment.
B.F. Skinner

Introduction

By expanding upon examples in the literature, in practice, and in fieldwork, this chapter argues that, in the community corrections arena, all community service orders are punitive to some extent. It also argues that, far from merely punishing offenders by imposing a 'fine' on their leisure time, the intent of legislators in framing laws governing the more punitive types of orders appears to be one of vengeance as a form of public policy. Support for this view is provided, principally, by way of recent criminal justice legislation, both in Australia and overseas, by data gathered from case studies and in the course of recent fieldwork. What will also be shown is that, while the less punitive types of CSOs go some way towards meeting the expectations of the restorative justice movement, the more punitive types of such orders are the antithesis of those expectations.

Hence, this chapter serves the function of bringing together the various strands of arguments, issues, and processes from earlier chapters into a cohesive whole, as a precursor to answering the central question of this thesis. It also enables a better understanding of the broader picture of the CSO's place in the sentencing tariff and, equally, why certain types of CSO may be inappropriate custodial alternatives.

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Chapter Nine

Are CSOs Punitive or Rehabilitative?

Reviewing the Australian Evidence

Imprisonment provides a means of compulsory removal from society of those who offend against its laws. Also, by depriving inmates of liberty, such deprivation has, itself, caused sufficient suffering to inmates and, therefore, "no further deliberately punitive treatment of the offender in prison is necessary" (Hawkins, 1976:46). Similar sentiments were expressed more formally in Recommendation No. 7 (2) of the Royal Commissioner's Report Into New South Wales Prisons, which states:

The policy recommended is spelt out in this Report. It accepts the aims of imprisonment as punishment, retribution, deterrence and protection of society, but emphasises that the loss of liberty is the extent of the punishment. Whilst in prison a prisoner should be treated justly and humanely and an attempt should be made at rehabilitation. Imprisonment should be a last resort and those imprisoned should be kept in the lowest appropriate security (Nagle, 1978:380).

There is also, unfortunately, the universally-held view about all ex-prisoners: nobody expects them to contribute very much to a state's economy. The concern of authorities is more with reducing the drag they will probably exert on it (Greenwood, 1998). This sentiment has its roots in the eighteenth and nineteenth centuries. According to Cohen (1985), prisons and asylums were places of the last resort at the end of the eighteenth century, fifty years later they became places of the first resort as the preferred solution to deviancy problems. A century later, in the mid-1960s, prisons and asylums seemed like they might once again become places of the last resort. But, the passage of punitive legislation in many Western jurisdictions sees them, by the end of the 1990s, again being places of first resort (Feeley and Simon, 1992; Shichor, 1997; Stolzenberg and D'Alessio, 1997). This continual cyclical fluctuation between punitive and non-punitive sanctions has certain implications for custodial alternatives sentencing, especially CSO.

Current Australian State and Federal laws governing the conviction, sentencing and incarceration of offenders are the end product of over two hundred years of theoretical and legal discourse, practical penological experience, political demands, administrative requirements, and an emerging social conscience. All of these factors

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have operated, to some extent, to shape the Australian penological system of the 1990s and the plethora of non-custodial alternatives presently available to the sentencing courts is a reflection of some or all of those factors. In contemporary Australian society, being sentenced to community service usually (but not always) requires that a conviction be recorded against the offender in the jurisdiction where the case is being tried. It is worth noting that courts in all Australian jurisdictions can impose a wide range of sentences, including a CSO, without recording a conviction, if they so choose. But where a conviction is recorded, and although the offender may successfully complete the required number of hours of community service, the conviction for the offence remains on his or her record, in most jurisdictions, forever. So, in effect, the offender’s slate is never wiped clean and their criminal history record merely notes that the sentence of community service was successfully completed. While the issue of ‘spent convictions’ legislation is not strictly relevant to this discussion, it is an integral part of a much wider argument about punitiveness and offender rehabilitation and reintegration.

Table 9.1, ‘Data Applicable to Increased Punitive or Rehabilitative Measures’, lists the various data indicating the quite punitive line adopted by most Australian criminal law jurisdictions, during the past decade. Only Tasmania and South Australia have seen fit to retain the CSO as it was originally conceived in those states in 1972 and 1982 respectively. Nor does either of these states see any need in the immediate future for the introduction of a strictly punitive type of order such as, for example, in the Northern Territory or Queensland. For those jurisdictions that have chosen to institute more severe sanctions against offenders, most have opted for an intensive and intrusive type of community order, supplemented, in some cases, by harsher penalties for certain offences. Such changes to Australian criminal justice legislation are also a reflection of what is occurring overseas, especially in England and the United States. In England, two examples are the Police and Criminal Evidence Act 1984 and the Prosecution of Offences Act 1985. In the United States, the outstanding example is California’s 1994 ‘three-strikes’ laws.
Table 9.1  Data Applicable to Increased Punitive or Rehabilitative Measures

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Data</th>
<th>Source</th>
<th>Punitive or Restorative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmania</td>
<td>None applicable. This state has a restorative justice focus.</td>
<td>No change in original CSO philosophy.</td>
<td>Restorative</td>
</tr>
<tr>
<td>South Australia</td>
<td>None applicable. This state has a restorative justice focus.</td>
<td>No change in original CSO philosophy.</td>
<td>Restorative</td>
</tr>
</tbody>
</table>

Tasmania:

Tasmania is a restorative-focussed jurisdiction rather than a punitive-focussed one. With the exception of some minor administrative changes, the Tasmanian criminal justice system has retained the same type of CSO in 1998 as has been operating since 1972. Further, in regard to its overall criminal justice legislation, the Tasmanian government has, up to this point, not felt it necessary to incorporate either a punitive work order or similar (punitive) legislation, as has occurred in most other Australian jurisdictions. In that respect, the government deems the present legislation to be 'adequate' - notwithstanding the 35 innocent people gunned down by a deranged local...
Chapter Nine
Are CSOs Punitive or Rehabilitative?

resident on 28 April 1996, in what came to be called 'the Port Arthur massacre' (participant observation and interview data).

Western Australia:

Western Australia is a punitive-focussed jurisdiction, in terms of its criminal justice system. The Western Australia Young Offenders Act No.104 of 1994 that came into operation on 13 March, 1995, was something of a precursor to the Sentencing Act No.76 of 1995, which is aimed at adult offenders. The 1994 Act is distinct from the latter Act by way of its mandatory sentencing clauses in Division 9, clauses intended to punish and deter recidivist juvenile offenders. The principal clauses are set out in full, in Table 9.2: 'Western Australia Young Offenders Act No.104 of 1994 - Division 9.' Unlike the 1997 mandatory sentencing laws of the Northern Territory, the wording of these two sections makes it clear their principal intention is to incapacitate a particular type of recidivist offender for whom all other sanctions have failed.

With the Sentencing Act No.76 of 1995 that came into operation in 1996, the CSO was replaced by the community-based order, and a more punitive type of CSO, the Intensive Supervision Order, was added. The work and development order (WDO) was retained in its 1988 format. This latter order arose when an individual, in default of payment of a fine, chose to convert the period of default imprisonment to a non-prison alternative, that is, to a WDO, at a rate of eight hours for every $50 of a fine. Under a WDO, an offender is required to undertake a supervised program of unpaid community work and personal development activities (Ferrante and Loh, 1996). The WDO, although introduced in 1988, did not become fully functional until 1990. It was a mechanism to forestall direct imprisonment for fine default, and imprisonment in default of such an order is not ordered by the courts but by the chief executive officer of the Department of Corrective Services (Harding, 1992).
When this Division applies

S.124(1) This Division applies to the sentencing of the offender for a serious offence ("the current offence") if:

(a) the offender is a person who has committed and been found guilty of an offence for which a custodial sentence ("sentence 1") was imposed; and

(b) after being released from custody having served a portion or the whole of sentence 1, the offender committed and was found guilty of another offence for which another custodial sentence ("sentence 2") was imposed; and

(c) after being released from custody having served a portion or the whole of sentence 2, the offender committed the current offence; and

(d) the court, after taking into account the offender's history of re-offending after release from custody, is satisfied that there is a high probability that the offender would commit further offences of a kind for which custodial sentences could be imposed.

(2) Where the sequence referred to in subsection (1)(b) of release, reoffending and imposition of another custodial sentence has occurred more than once, the reference to sentence 2 in subsection (1)(c) is a reference to the custodial sentence most recently imposed.

(3) In subsection (1) "serious offence" means:

(a) a Schedule 2 offence; 2 or

(b) an offence under section 401 of The Criminal Code, or the offence of counselling or procuring the commission of an offence under that section, for which the offender was convicted on indictment (Young Offenders Act No.104 1994).

Protection of the Community Paramount

S.125. If this Division applies to the offender, the court, in disposing of the matter, is to give primary consideration to the protection of the community ahead of all other principles and matters referred to in section 46 [section 46 refers to Sentencing and related matters] (Young Offenders Act No.104 1994).

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2 A Schedule 2 offence is one (a) for which a caution cannot be given; (b) which cannot be referred to a juvenile justice team; (c) for which a conviction will normally be recorded; and (d) which may lead to the application of the provision relating to offenders who repeatedly commit offences resulting in detention.
Unlike the WDO and community-based order or CBO, the Intensive Supervision Order (ISO) requires a pre-sentence report on the offender before it can be imposed. Also attached to it are some quite stringent rehabilitation program conditions even though, like the work and development order, the ISO is primarily punitive in its intent. As Vass suggests elsewhere, this may be because government policy requires it be so in order to further justify the continued use of prisons as a penal sanction of last resort (Vass, 1990).

Contributing to the ongoing use of the prison was the reluctance of some judges in Western Australia to use community service at all. During the Royal Commission into Aboriginal deaths in custody, one Western Australian Justice remarked to Commissioner Dodson: "I don't think I've ever given anybody a community service order - I don't think I ever would ... the idea of community service is probably a good thing but the operation of it is not so good" (Johnston, 1991:22.4.10). Yet, in spite of (or perhaps because of) all the political rhetoric about getting tough on law and order issues, at the one-to-one ground level the underlying philosophy of reintegration of the offender into society via the CSO concept has, for the most part, worked (Jones, 1983).

An intriguing point about the Western Australian Sentencing Consequential Provisions Act 1995, was the way various penalties applicable to a number of other Acts were amended. For example, in s.96 of the Criminal Code, the wording "3 months, or to a fine of $40" is deleted and substituted by "12 months, or to a fine of $4,000." Similarly, with s.90(10) of the Electoral Act 1907, the wording "$200 or 3 months imprisonment" is deleted and replaced with "$4,000 or 12 months imprisonment." Again, with s.21 (1) of the Welfare and Assistance Act 1961, "Fifty pounds, or imprisonment for three months" is deleted and substituted by "$3,000." S.22 of that Act deletes the same but substitutes "$1,000." While it could be argued that all the Government was doing was simply legislating to reflect current (1995) monetary values, the fourfold increases in the prison terms (above) cannot be explained under the same rationale. It may be reasonable to suggest that there is a strong chance
Government Law and Order policies are being reflected here, both at the sentencing stage and at the penalty application stage. Undoubtedly, by the time this thesis is completed, much of the legislation referred to herein will have been amended, deleted or added to yet again. However, from the research undertaken here, any amendments, deletions or additions are towards a more punitive CSO scheme and, ultimately, a more punitive criminal justice system.

Northern Territory:

The Northern Territory, like Western Australia, has a criminal justice system which is primarily focussed on punitive rather than restorative measures. But this was not always so. Research of the literature around the formulation and implementation of the initial Northern Territory CSO legislation in 1979, indicated a pattern of intent towards offenders that I would describe as 'rehabilitative' rather than 'punitive.' However, subsequent changes to the legislation and operational procedures following the completion of a 1989 CSO review, have seen a greater emphasis by the Northern Territory Government upon punishment of convicted offenders rather than on their rehabilitation. For example, the Northern Territory Correctional Services' Annual Report for 1994-95 states the primary objectives of the CSO Program as being: "To offer elements of rehabilitation together with reparation; to provide a punitive sentencing alternative to imprisonment; and to provide a cost-effective alternative to imprisonment" (1994-95: 15, 31). No longer was mention made (as in previous Annual Reports) of "potential for offenders to develop useful skills," or of the program "having flexibility to accommodate offenders' needs." This suggests that the omission of these latter objectives reflected the reality of the Government's change in policy direction, rather than that they had been achieved.

Picking up roadside litter, weeding and mowing nature strips, and hosing footpaths and walkways are not what one would normally class as 'skills.' One stipendiary magistrate states that "Aboriginals say it is considered a "shame job" to be
seen doing CSO work. Also such tasks are culturally inappropriate" (McCormack, 1993:8). He was referring to Groote Eylandt Aboriginals and states that, in 1991, the arrival there of two new Probation and Parole officers "brought a new impetus to the corrections work on the island ... Jobs such as litter picking were rejected in favour of work which benefited the Aboriginal community and had cultural relevance" (McCormack, 1993:8). He notes that, as a result of the change in emphasis on CSO work, it is no longer regarded as a shame job.

The Groote Eylandt example is, however, the exception rather than the rule. CSO work in Darwin and Alice Springs is, in the main, of the type noted earlier, so work that is 'culturally relevant' is almost non-existent. This view was echoed in concerns expressed by some regional office staff during the 1989 Departmental review. According to Furby and Elliott (1989), staff believed there was a real need for more meaningful programs to be made available wherever and whenever possible. It was the belief of one staff member that the range of duties available was extremely limited, especially for Aboriginal offenders. Many offenders would be suited to working with the aged and infirm, although it would be necessary to carefully match the offender to the work intended. The Old-Timers' Home and the Hedy Perkins Home, for example, could benefit from the offenders spending time with the residents. Attention was also drawn to the overdue need for a procedures manual. It was felt the manual could cover normal procedures and the accommodation of extraordinary circumstances. As well, it should contain suitability criteria. Regional Centre staff who took part in the review saw the program's objectives as being: (a) to provide an alternative sentencing option; (b) to give offenders meaningful work experience which reinstated pride in the work done; (c) to give reparation to the community by offenders; and (d) to provide a punitive element to offenders.

In the years immediately following the 1989 review, ongoing problems with offender absenteeism, enforcement of Section 21As (the fine-option CSOs), and an increasingly vocal 'get tough on crime' lobby, saw the fine-option order eventually
removed from the legislation. This was done by proclamation of the *Sentencing Act No.39 of 1995*, on 29 September. The new Act, which came into force on 1 July, 1996, was the outcome of the ruling Country Liberal Party's 'Law, Order and Public Safety' election policy that it had taken to the Territory elections on 4 June, 1994. The Government was returned to office (Flynn, 1994). The *Sentencing Act 1995* repealed the *Criminal Law (Conditional release of Offenders) Act No.35 of 1979* and all of its subsequent amendments up to 1991. Among other things, it fixed non-parole periods for all prisoners thus abolishing sentence remissions. It also revoked the Section 21A Fine-Option clauses, mainly because of the difficulties experienced in enforcing such orders, since the fine-option was voluntary as opposed to the fine-default which was not. Under a fine-option order, a person could not be classified as 'an offender' with all the opprobrium that label carried. Under s.19 of the new Act, all persons who were in default of court-imposed fines for more than one month were liable to be arrested and brought before the original sentencing court. The court, if it saw fit, could then make an order for the fine to be paid by instalments (s.20(a)); extend the time for payment (s.20(b)); require the offender to apply to the Director of Community Corrections for a CSO (s.27); or order imprisonment (ss.31, 39(4)) (Flynn, 1994).

The procedure of an offender applying to the Director for a fine-default CSO also raises an interesting legal point about the 'Separation of Powers' convention under the Westminster system of government. An officer of the Crown who is employed to administer the law is now also empowered to perform the judicial task of making a CSO. Until 1995, the legislative authority has been the *Criminal Law (Conditional Release of Offenders) Act* and regulations administered by the agency of Northern Territory Correctional Services. With the introduction of the *Sentencing Act 1995*, the authority for the CSO scheme now lies within that legislation. The new Act allows the courts to place offenders on probation, on CSO or on home detention. It also offers the courts a range of other sentencing options as custodial alternatives. The sections of the *Sentencing Act 1995* relevant to CSOs are ss.26 to 30 and ss.34 to 39 inclusive, and the Minister for Correctional Services is responsible for all these provisions (Flynn, 1994).
Under the *Sentencing Act 1995*, there was also a broadening of the term 'approved project' to include rehabilitation programs. Community service advisory committees have the power to approve these programs and, by this means, there is a formal basis for the element of rehabilitation within the scheme. But it is a formal basis in name only, because of the *Sentencing Amendment Act (No.2) No.65 of 1996*, which was assented to on 31 December 1996. This Act is the centre-piece of the Government's 'Law, Order and Public Safety' policy of 1994 and marks an unmistakable shift towards offender punishment rather than rehabilitation. The Act is directed at property offences and is in line with the Government's 1994 election manifesto to: "[i]ntroduce compulsory imprisonment of 28 days for repeat offenders, (including juveniles) for crimes such as unlawful entry ... stolen motor vehicle ... shoplifting and criminal damage" (Flynn, 1994:214).

Known simply as the 'mandatory sentencing laws,' Section 78A (1-6) is a type of copycat version of the 1994 Californian 'three-strikes' legislation. Briefly, anyone found guilty of a property crime will, as a first offender, receive an automatic, minimum fourteen days prison sentence. A second offence will mean a ninety days prison sentence; and for a third or further offence the penalty will be a minimum one year in prison. The only exception to this is in respect of juvenile offenders aged 15 or 16 who, under amendments to the *Juvenile Justice Act 1991*, are given a second chance for a first offence. A second offence automatically incurs 28 days in a detention centre. Section 78B of the *Sentencing Amendment Act (No.2) No.65 of 1996*, relates to the Punitive Work Order (or PWO). This is a standard CSO with, supposedly, many more stringent surveillance conditions attached and, strangely, a limit of just 224 hours of unpaid community work being required. The Punitive Work Order may be imposed in addition to, but not in lieu of, the mandatory prison sentences as outlined above. What the legislation does not spell out precisely is the difference between the two orders, other than the maximum number of hours - viz. 224 and 480, respectively. Nor does it say anywhere in that legislation just what constitutes 'punitive' work.
As another way of reinforcing the Government's 'get tough on crime' attitude, an additional and unprecedented move was made against all offenders ordered (and who elected) to undertake community service after 31 January 1997. An internal Department of Correctional Services' directive came into force on 1 February 1997, requiring all offenders undertaking a CSO to wear an identifying orange vest, with the words 'community service' printed in black on the front and back of it, when engaged in that work. If offenders did not agree to the wearing of the vest or, having agreed, later removed it without authority, then they would be assessed as 'unsuitable' and prevented from either doing CSO work or obtaining another CSO. The wearing of the CSO vests was seen as "a step down from the planned Punitive Work Order, which was intended to be "chain gangs without the chains"" (Hatton, 1997:3). This directive was the result of an earlier undertaking flagged by the Northern Territory's Attorney-General, Denis Burke, in an article in the Northern Territory News, on 16 July 1996, where he was quoted as saying that he:

supported the formation of chain gang-like prisoner teams in the Northern Territory. And he did not rule out the use of leg irons... He also stated that he: would have no problems with people on community service orders being given direct, visible work on the highway. Not in leg irons, necessarily, but certainly well supervised. So people can see these are prisoners that are not in prison but are undertaking work that is punitive... it has an aspect of shaming which is important... The offender should be suitably punished to the satisfaction of the community (Northern Territory News, (16/7/1996:3).

The above directive is counter to any notion of genuine rehabilitation, since the wearing of the 'community service' vest is a visible sign to all, as it was intended to be, that here is 'an offender.' Some commentators were of the view that compulsory wearing of the vest amounted to a form of public branding which added an unnecessary element of public humiliation to the offender's punishment. They also felt that, in the drafting of the legislation, considerable discretionary power had been given to the Minister and the Director of Community Corrections. Their concern was that all manner of additional requirements could be incorporated under such a discretionary umbrella, merely at the whim of the Minister or the Director and so be given legitimation. The first the public knew of the directive to CSO workers on the vests was
by way of the Northern Territory News on 18 January 1997. Steve Hatton, the Minister for Correctional Services, said: "The public has a right to expect that those who offend against society will suffer the full consequences of the law." Wearing the vest:

would help identify offenders in the community and serve as greater punishment. The Government wants to ensure that offenders are recognised, and to demonstrate that CSO work is not a soft option. The bibs will clearly identify CSO offenders and remind the community of the types of projects they are involved in. (Hatton, 1997:3).

Predictable responses came, immediately, from civil libertarians and Opposition politicians. Hatton defended the decision saying: "[i]t was about penalising people, not re-integrating them into society ... Why shouldn't there be a little bit of shame attached to this?" (p.4). The day before the vest was to come into force, an article appeared in the Northern Territory News in which a Darwin alderman asked for the colour of the vest to be changed because Council workers also wore bright orange safety jackets and "should be saved embarrassment ... there needs to be some sort of differentiation in the uniforms [because] we have a responsibility to look after our council workers" (Moir, 1997:3). My field notes record that, for the majority of the offenders with whom I came in contact, the CSO vests were a non-issue. The compulsory wearing of the vest was perceived by most of them as merely another requirement by the Administration that had to be observed in the course of doing their CSO hours. The absence of concern for the vest was shown by a couple of offenders who, having ceased work with their colleagues for the mandatory lunch break, did not bother to remove their vests when they went to buy their lunch at the local 'hot-dog' stand in the complex. It was as if the vest was merely a t-shirt or tank-top (participant observation and interview data).

The wording of the amending legislation, especially in 1996, the Hansard Reports, procedural changes, and articles in the Northern Territory daily newspapers provide some clues as to why this shift from rehabilitative to punitive has taken place. Clearly, the Sentencing Act of 1995, the Juvenile Justices Act of 1991, the subsequent amendments to those Acts in 1996 and, more particularly, the issue of the CSO vests, are concrete indications of the shift in Government policy from offender rehabilitation to offender punishment. Also, the changes to the laws on property offences outlined
above appear to mirror community concerns about a perceived substantial increase in property crime and, to a lesser extent, crimes against the person. But are these public perceptions more apparent than real? As is commonly the case with such perceptions, their accuracy remains open to question. The characteristics of those committing property crimes also appear to have changed. It seems that many more juveniles are involved in law-breaking activities in 1997 than were a decade and more ago, although I did not sight actual evidence by way of, say, police charge sheets or crime statistics to confirm this. The most visible 'evidence' in that regard is the stories and photographs carried by the main Darwin daily newspaper, the *Northern Territory News*. If there is any substance to that perception, then what should concern the Government, the law-enforcement authorities and the public is that the cure (mandatory sentencing laws) may be more fatal than the disease (property crime). The accuracy of this prediction, too, remains open to question.

In a brief meeting with a Northern Territory senior Magistrate, during my field trip to Darwin, we discussed his particular views on several aspects of the Northern Territory criminal justice system. His major concerns were (a) the compulsory wearing of the CSO vest and (b) the mandatory sentencing legislation. On the issue of the vests, and while appreciating the Minister's rationale behind the requirement of 'making the offender visible to the public,' he was concerned at the adverse psychological effect the wearing of the vest may have on offenders. He felt that other, more acceptable means might have been found to meet the 'visibility' criteria, since the vest stigmatised the wearer and, he believed, would contribute nothing towards offender rehabilitation. He did concede it would certainly achieve the desired effect of 'shaming' (participant observation and interview data). But he was even more concerned about the mandatory sentencing legislation then awaiting assent to become law. He believed that the drafting of the legislation had been poorly thought out in terms of the possible ramifications of its enactment. For example, he doubted that the Territory's prison system would be able to cope with the massive increase in its population that would result from implementation of the Act. He also wondered what the outcome would be if a family
member of one of the Government Ministers or of a prominent local family was
prosecuted under that legislation. Would the sentencing magistrate be expected to treat
that person the same as any other offender - that is, sentence them to prison - or would
he/she be 'required' to make an exception because of that offender's 'connections?'
Although I had no answer to that question, I thought it a very shrewd observation of
Northern Territory politics. In 1998, such an event did occur (Refer to Appendix F).

Quite understandably, the senior Magistrate hoped that such a scenario would
never arise to be tested. He indicated that when the mandatory sentencing legislation
was first made public he had spoken out strongly against it, because he could see many
of the problems such a law would create, both for the magistracy and the government.
His arguments, it seemed, went unheeded as did those of a number of the general
Northern Territory community - civil libertarians, social workers, and members of the
clergy. What apparently carried the day was the spectre of unchecked property crime
and the desire of the Northern Territory's Country Liberal Party Government to be seen
to be tough and totally uncompromising on those who perpetrated it. The senior
Magistrate also noted that, as a result of the emphasis on property crime, there appeared
to be a corresponding decrease in the Government's concern about crimes against the
person - that is, assaults and rape. He was quite worried by such a trend because it
appeared that both Government and community placed a greater value on property than
on the person, and he likened that to the era of Transportation to the Colonies during
the last century.

I asked him about the issue of consistency or the sometimes perceived lack of it
in the sentencing process. He replied that, on the whole, consistency was always striven
for by his fellow magistrates and himself, but that all cases were not the same and so
some flexibility was required. On the point about flexibility, he was adamant that the
magistracy should not be shackled to a particular sentencing regime by Government
legislation, as would be the case with the mandatory sentencing legislation. While the
'up' side was that sentences for crimes committed under that legislation were clear cut,
the 'down' side was that they provided no margin for the use of judicial discretion. And that was an ingredient he felt was vital to the proper functioning of the judiciary, because it allowed such issues as 'special or extenuating circumstances' to be taken into account when passing sentence (participant observation and interview data). The views of this senior magistrate, as well as those of other law officers and people whom I interviewed, and the tenor of the criminal justice legislation now in place are further evidence supporting the claim of the punitive nature of the Northern Territory's CSO scheme as presented above.

New South Wales:

The New South Wales criminal justice system has, arguably, always had a punitive attitude towards offenders, an attitude which may well be traced back to the early convict days when the state was a struggling British colonial outpost. In contemporary Australian society generally, and in New South Wales in particular, the punitive treatment of felons probably reached its nadir in the two decades that followed the end of World War Two. The 1978 Nagle Royal Commission into New South Wales prisons and its subsequent findings and recommendations add much weight to this probability. However, while treatment of prisoners is now far more transparent and humane than it was forty years ago, the pace of that change has been quite pedestrian. The 1970s and early 1980s, for example, were troubled times for the NSW Department of Corrective Services. The Nagle Royal Commission of 1976-8 into NSW prisons and its aftermath sowed the seeds of change in the corrective services' system. In mid-October, 1981, Tony Vinson, Chairman of the Prisons Commission, resigned after only eighteen months due to strong conservative opposition from sections of the media and some prison officers. They had opposed the many humane changes he had made within the prison system following the release of the Nagle Report. Then, in 1982-3, the so-called 'early release' scheme saw some 1,100 inmates released from New South Wales prisons.
According to Ramsland (1996), the early release scheme was, essentially, a government cost-cutting exercise to quickly reduce prisoner numbers. But, after eighteen months operation, the scheme was corrupted by the Minister for Corrective Services, Rex Jackson, who resigned in disgrace, in November 1983, after misleading Parliament. The whole episode scandalised the Wran Labor Government. However, Chan (1992) argues that the early release scheme was not simply a cost-cutting exercise as is commonly believed. She suggests that the early release scheme "failed in the sense that it did not win acceptance from the public, it alienated some members of the judiciary, and it fell into disrepute because of corruption" (1992:146). Chan points out that the early release scheme's introduction was prompted by certain political, economic and managerial interests. She sees that these interests substantially coincided "with those of probation and parole officers but collided with those of custodial officers, the Parole Board, the judiciary and the "general public" as represented by the media" (1992:156). What was lost sight of from the outset of the scheme's introduction was the recognition that: "in general, it is virtually impossible to introduce a correctional policy which does not threaten the interests of one or more groups" (Chan, 1992:156). Chan cites, as an example of this, the problems that beset Tony Vinson (see above). The Jamie Partick bashing incident in 1987 proved to be the final scandal that swept Labor from office, in March 1988, and the Greiner Liberal Government was elected in its stead. The Liberals had run on a very strong Law and Order platform and this led to the appointment of Michael Yabsley as Minister of Corrective Services, an avowed prison hard-liner. His influence manifested itself in the Sentencing Act 1989 No.87, a piece of right-wing legislation designed to replace former rehabilitative initiatives with those of a more punitive nature (Ramsland, 1996).

The Sentencing Act 1989 No.87 repealed the Probation and Parole Act 1983 No.194. The key difference between these two Acts is the abolition of the system of remissions - s.58(1) of the Act brought about this result by repealing that part of the Prisons Act 1952 (NSW) which dealt with the system of remissions. The system of remissions contributed to what was conceived to be a fictional element which had
emerged in the New South Wales' sentencing process. That element arose from the combination of, on the one hand, a requirement imposed by s.5(d) of the Probation and Parole Act 1983 and, on the other hand, an established system of sentence remissions for good behaviour during imprisonment. The s.5(d) requirement meant the sentencing judge had to specify a period before the expiration of which a person convicted was not to be released on probation (in Australia, usually referred to as "a non-parole period"). The practical significance of all this was that the official non-parole period was often substantially longer than the period actually served by a prisoner before release on parole. The appearance and the reality of sentences imposed did not coincide (R v Maclay (1990) 19NSWLR 112 at pp.121, 123). The new Act sought to correct this anomaly and achieve "truth in sentencing" through the abolition of the system of remissions and the institution, in its stead, of a regime of fixed and minimum terms which accurately stated the period before which a prisoner was ineligible for release. Section 5(1) in Part 2 of the Act requires a court, when sentencing a person to imprisonment, to set a minimum term which must be served and an additional term during which the person may be released on parole. The additional term must not exceed one third of the minimum term "unless the court decides there are special circumstances" (s.5(2)). The term of the sentence of the court comprises the minimum and the additional term (s.5(4)). A court may decline to fix a minimum and an additional term and instead may impose a fixed term of imprisonment that must be served (s.6(1)). The legislative change is reflected in the different terminology used to describe sentences imposed under the Act, "fixed," "minimum" and "additional" terms being creatures of the new legislation and successors of the earlier expressions "head sentence" and "non-parole period" (Radenkovic v R. (1990) 97ALR pp.199-200).

The Greiner-led NSW Liberal Government saw "Truth in Sentencing" as a vote-winner. But winning votes aside, whatever else this piece of legislation was intended to achieve, in terms of prison administration it has been something of a disaster. Prior to its enactment, prison officers had a limited degree of power to recommend remissions of sentence where prisoners were well-behaved and obeyed all lawful instructions. The
prisoners, in turn, accepted this situation even though they may not have always agreed with some of those instructions because, by toeing the good behaviour line, subsequent recommendations for sentence remission could only reflect favourably upon them. There was also the added bonus that there was less tension between the 'blue' and the 'green' - that is, between the officers and the prisoners. Prison officers and other prison staff were treated with a measure of respect by the prisoners who saw the mutual benefits to be gained by so doing (participant observation and interview data).

However, with the passing into law of the Sentencing Act 1989, the limited power that prison officers and other prison staff had to recommend remissions of sentences was revoked. In its place was put the ill-considered decree that all prisoners would serve at least their minimum sentence with no remissions. What this change effectively did was to remove the previous incentive that prisoners had of time off their sentence for good behaviour. With no incentive, prisoners, particularly the more recalcitrant ones, no longer saw the need to behave or to treat prison officers with even the barest minimum of respect. The result has been an increase in the tensions and stress levels between the guards and the guarded. Prison officers are frequently abused and feel considerably more threatened with violence. Prisoners, in turn, have many of their requests for basic needs ignored and feel betrayed by a system that no longer seems to care (participant observation and interview data. See, also, Ramsland, 1996).

Within the New South Wales' Community Service Orders Act No.192 of 1979, there are certain requirements in the making of a CSO that are peculiar to that State's legislation. These requirements further reflect the hard line 'law and order' approach to that State's criminal justice system. For example, Part 2, Section 4 (1A) of the Act stipulates that:

An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include: (a) the removal of graffiti from buildings, vehicles, vessels and places, and (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.
This particular requirement of offenders to undertake work that is punitive, boring, meaningless and requires little skill or forethought, flies in the face of initial CSO legislation in other Australian jurisdictions, which specified that unpaid community service work undertaken by offenders should not be punitive, boring, or meaningless and should require the use and development of personal skills and have a rehabilitative effect. The emphasis of the New South Wales legislation seems to be only on punishment and reparation. What arguably could be seen as 'unfair' is the requirement for offenders to clean up graffiti from buildings, vehicles, and other areas when they may never have been responsible for putting the graffiti there in the first place. Hence, this example further emphasises my earlier statement about the punitiveness of the New South Wales criminal justice system. Add to this the fact that all persons convicted in New South Wales courts of a felony, no matter how minor, retain that conviction on their criminal record file for life - it is never erased. This alone makes a mockery of any platitudes voiced by politicians, from time to time, about genuine concerns for the rehabilitation of convicted offenders, because the slate is never wiped clean.

Queensland:

Queensland, in a similar way to the Northern Territory, did not start out with a punitive CSO scheme, but, as will be demonstrated, the scheme became markedly punitive over a fifteen year period. The literature shows that, during the 1960s and 1970s, all Australian States were experiencing difficulties with their respective prison systems. Rinaldi (1977) catalogues a number of inquiries into the bashing of prisoners by prison officers, that showed the practice was rife across all jurisdictions, and he notes that internal inquiries following yet another prison 'disturbance' became quite common. Among those prisons that continued to make headlines for all the wrong reasons was Brisbane's notorious Boggo Road Gaol, which rivalled Victoria's Pentridge Gaol, New South Wales' Long Bay Gaol and Western Australia's Freemantle Gaol as, arguably, Australia's worst carceral institution. Of these four prisons only Long Bay Gaol has survived into the 1990s as an ongoing operation.
Despite the reputation of its prison system in treating prisoners harshly, in Queensland the overriding rationale behind the initial CSO legislation of 1980 was rehabilitation of the offender. Nowhere in the Hansard Debates at that time, is there any notion that, subsequently, there would be seen a necessity for an intensive correction order. It is true that there were comments on the Government's side of the House to the effect that the CSO concept was too soft an option, and what was really needed was much harsher treatment of convicted offenders: "We should bring back the lash. That is the first mistake we made" (Hansard, 1980:3114). Such punitive attitudes were, at that time in the Queensland parliament, in the minority.

There are presently three main components that relate to the Queensland criminal justice system: (i) Police; (ii) Law Courts and Legal Services; and (iii) Corrective Services. Almost all individuals who are sentenced by the Queensland courts will come under the auspices of Queensland Corrections (QCRR), either as an inmate of one of the State's prisons or as a person subject to a community-based order supervised by QCRR. Many of those sentenced to prison will, at some time or other, go through community custody to community supervision via one or more pre-release programs, before finally exiting the criminal justice system and returning to the community (Criminal Justice System Monitor, 1995). A primary function of QCRR's community corrections area is to administer a wide range of community-based court sentences such as community service or probation. The same area also manages several post-prison programs which allow the gradual reintegration of a prisoner back into the community and include parole and home detention. Other responsibilities of the community corrections division include assessing offenders prior to their release and providing advice to courts (Criminal Justice System Monitor, 1995).

Since 1990-91, there has been a substantial increase in the use of community corrections orders, but not sufficient to ease the pressure on the State's prison system. There are several reasons for this: the number of offences being committed for which imprisonment is the only appropriate sanction is on the increase; and a number of those
offenders placed on community corrections orders (such as probation) are not successfully completing those orders (Criminal Justice System Monitor, 1995). Other reasons include an increase in the number of police and, consequently, an increase in the number of arrests; changes to criminal law and increases in sentences; and legislation of new types of crime. There is, also, the governing National Party's hard line on 'law and order' issues, as reflected in a more punitive sentencing regime (participant observation and interview data).

The offender's role is a crucial one in that (i) a number of volunteer groups have come to rely upon their participation; (ii) the Corporation's recently introduced 'fee for service' CSO projects are predicated upon the availability and presence of offenders; and (iii) offenders are in the ascendancy, on one hand, by virtue of their being needed in (i) and (ii), yet, on the other, are subject to the vagaries of their own lifestyles, attitudes, requirements, and social norms. A point perhaps in QCORR's and the volunteer groups' favour is that, realistically, crime is a growth industry. As such, the present trend of increasing drug-related, property crimes, coupled with high levels of unemployment (in areas such as Inala) and a concomitant reliance upon social security incomes, means there will continue to be a regular pool of offenders for CSO. Nor is it drawing too long a bow to suggest that such a pool will increase, over time, particularly given the present SETONS Court legislation that enables fines to be swapped for CSO. In addition, any work undertaken by offenders on CSOs should be meaningful (within the intention of the original 1980 Act). This is important for them from a rehabilitative aspect and should not be lost sight of. I remain unconvinced that litter collection on the sides of freeways, for instance, can really be classed as meaningful. This means, too, that sentencers have a major input. A recurring comment in my field notes was the dissatisfaction with sentencers, some of whom were perceived, quite often, as being too lenient on offenders. This perception is not limited to Queensland: it is a contentious issue in other jurisdictions, too (participant observation and interview data). Attitudes are influenced on both sides of the law, for better or worse, by the way in which prosecutor and defendant perceive the meting out of justice. The tempering with
leniency of what a sentencer might see as a harsh law still remains a 'no win' situation. Although the defendant may feel the right decision has been made, the prosecution and those who are to implement the sentence may equally feel hard done by. The reverse, of course, is also true.

The Intensive Correction Order was introduced in 1993 as a further sanction that could be utilised by the courts where it was felt that the standard CSO was not sufficiently punitive. In this regard, the Queensland Corrective Services Commission (QCSC) Procedures Manual gives added insight into the punitive intent of the Intensive Correction Order (or ICO), by way of the requisite surveillance practices. These practices are detailed, hereunder, in Table 9.3: 'Queensland Intensive Correction Order Surveillance Practices.' What these surveillance procedures clearly demonstrate is the punitive intent underlying these particular types of CSOs. As pointed out, when the initial CSO scheme was proposed nearly two decades ago there was no thought in the minds of lawmakers at the time that there was or might be a need for a more punitive CSO-type sanction. Moreover, these procedures further substantiate my claim that CSOs are punitive rather than rehabilitative.

Table 9.3 Queensland Intensive Correction Order Surveillance Practices

| 3.3. Surveillance Practice - | All offenders supervised in relation to an intensive correction order are to be subject to a specified schedule of surveillance according to the risk level/Order type. This is to monitor adherence to the standard conditions of the Order as well as to motivate the offenders to continue abiding by the conditions, through knowing that they remain accountable.

3.3.1. Surveillance involves the planned intrusive gathering of information relating to the offender's activities/functioning in the community. An important aspect of surveillance is to assist in the prevention of offending.

3.3.3. In the case of those subject to intensive correction orders, there must be a minimum of two personal contacts per week between the offender and his/her Community Corrections Officer or other Authorised person. An appointment slip shall be given to the offender at the completion of each contact. The original shall be retained by the supervising officer and the copy shall be given to the offender. On the failure of an offender to report as directed, a Commission officer or appropriate person shall visit or contact the residence of the offender within one working day of the failure.
Chapter Nine Are CSOs Punitive or Rehabilitative?

Table 9.3 (cont) Queensland Intensive Correction Order Surveillance Practices

<table>
<thead>
<tr>
<th>3.3.5. Levels of Contact for Surveillance Purposes -</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.3.5.1 Surveillance Level - Assessment Phase.</td>
</tr>
<tr>
<td>During assessment phase for all offenders, a minimum of 4 contacts per month of the type described in 3.3.1 including at least 2 personal reports to the Supervising Officer per month.</td>
</tr>
</tbody>
</table>

| 3.3.5.2 Surveillance Level - Assessed as High risk at the Initial Assessment. |
| Once confirmed by the assessment Team as high, a minimum of 4 contacts per month of the type described in 3.3.1 including at least 2 personal reports to the Supervising Officer per month. After the first six months from commencement of supervision (assuming risk level confirmed through the Review Process), a minimum of 2 contacts per month of the type described below including at least 1 personal report to the Supervising Officer per month. |

| 3.3.5.3 Surveillance Level - Assessed as Medium risk at the Initial Assessment. |
| Once confirmed by the assessment Team as medium, a minimum of 2 contacts per month, 1 of which must be a personal report to the Supervising Officer. After the first six months from commencement of supervision (assuming risk level confirmed through the Review Process), a minimum of 2 contacts per month of the type described below including at least 1 personal report to the Supervising Officer every second month. |

| 3.3.5.4 Surveillance Level - Assessed as Low risk at the Initial Assessment (NB Not Parolees). |
| Once confirmed by the assessment Team as low, a minimum of 1 contact per month. In those areas where the officer is unable to personally interview the offender each week, then the officer must arrange to see an appropriate person who will provide the officer with a Report within 1 working day of each offender contact. An appropriate person will be a person who, in the opinion of the Area Manager, is qualified by virtue of formal qualifications and/or life experience and knowledge of the community in which the offender resides, to make an assessment of the offender in his/her circumstances. It is necessary for the 'appropriate person' to be appointed as a voluntary community correctional officer (CSA, s.200). |

3.4 Intervention Practice -
All offenders admitted to intensive correction orders classified as 'high risk' who are assessed as requiring it, are to have prepared an individual offender management plan which addresses offending-related issues.

3.4.1. 'Intervention' means the development of an on-going assessment of an individual offender management plan. The purposes of intervention can be addressed through such actions as: individual counselling directly related to management plan goals (QCSC Procedures Manual, 1997).

To add further weight to my argument that the Queensland Government's emphasis is firmly focussed upon punitive rather than rehabilitative treatment of offenders, the reader is referred to an article from *The Canberra Times* of 17 March 1997, which is reproduced in full in Appendix G.
South Australia:

The South Australian criminal justice system, similar to Tasmania, has retained the same type of CSO in 1998 as was implemented in 1982, with the exception of some minor administrative changes. Further, the government, up to this point, has not felt it necessary to incorporate either a punitive work order or similar (punitive) legislation, as has happened in several other jurisdictions. In that respect, the government regards the present legislation as "sufficient for its purposes" (participant observation and interview data). It could be argued that this reflects a view by the government that rehabilitation of offenders is still paramount in the criminal justice process, although it is readily acknowledged that the mere absence of punitive legislation is not, of itself, definitive proof. However, my contacts with various officers from the Community Corrections Department during the research for this thesis and the tenor of that Department's annual reports and other literature strongly suggest that a rehabilitative approach rather than a punitive one is the appropriate path to follow. In turn, such an approach also supports the 'hopes' of the restorative justice movement.

Victoria:

In Victoria, as in New South Wales, the treatment of offenders has a long history of a punitive rather than a rehabilitative focus, particularly in respect of that state's prisons, and existing sentencing legislation confirms this claim. The community-based order, along with the fine, is the major intermediate penal sanction presently available to the courts, according to Freiberg and Ross (1995). It has been argued that the combining of the earlier intermediate and substitutional measures has meant an overall emphasis upon punitiveness of those intermediate measures at the expense of rehabilitation. However, the Sentencing Act 1991 also saw the creation of the intensive correction order, a penal sanction added to the Victorian sentencing armory to fill a perceived gap at the upper end of the sentencing range, which had been created by the abolition of the attendance centre order. In discussions prior to the Act's passage, Victoria's Office of Corrections had put forward a strong case for the introduction of a
form of conditional suspended sentence. This was in response to the concerns of sentencers that there was an absence of a sufficiently punitive non- or quasi-custodial sanction from the available range (Freiberg and Ross (1995)).

The intensive correction order is aimed at offenders sentenced to terms of imprisonment of twelve months or less. The Act provides that a court can order that the prison sentence be served by way of 'intensive correction' in the community (Sentencing Act 1991, s.19(1)). The offender must agree to the making of the order (s.19(2)). The court cannot make an intensive correction order if the sentence of imprisonment by itself would be inappropriate (s.19(3)). Freiberg and Ross are of the view that the intensive correction order, in the overall sentencing structure, has proved to be only marginally significant. They cite statistical data in support of their view that would seem to indicate the intensive correction order has not had the intended effect on prison numbers that was initially hoped. For example, in the first eight months of operation of the Act, 22 April to 31 December, 1992, some 530 intensive correction orders were made. In 1993, about 873 intensive correction orders were handed down, a monthly average increase of approximately 7. For the same periods, 1500 and 2300 persons, respectively, were received into Victorian prisons. The June 1992 Community-based Corrections Census showed only 1.5 per cent of all persons on some form or other of community-based order were on an intensive correction order. These apparently low figures could be explained by the types of felonies committed which, perhaps, do not lend themselves to the making of an intensive correction order - for instance, crimes of violence that result in loss of life (Freiberg and Ross, 1995). Again, not every offender who 'qualifies' for the making of an intensive correction order may agree to its undertaking. It has been well documented elsewhere that many offenders are very poorly organised individuals and, as such, would experience considerable difficulty coping with the stringent demands of an intensive correction order. For many of these individuals, the regimented structure of prison life that requires them only to obey instructions and not to have to think would be far preferable to meeting the demands of an intensive correction order. The existence and continued use of intensive correction...
orders by the state, even allowing that the number of such orders is not large, confirms my earlier claim that the focus is on punitive rather than rehabilitative treatment of offenders in Victoria.

**Australian Capital Territory:**

The Australian Capital Territory's path to a punitive rather than a rehabilitative treatment of CSO offenders has a similar history to that of the Northern Territory and Queensland: the original CSO legislation did not start out to be punitive but eventually became so. How this change came about is the subject of the following paragraphs.

As often happens in bureaucracies, in 1992 the CSO scheme fell foul of internal Departmental politics, which ultimately took on a life of their own to the extent that senior management attacks on certain CSO Unit staff became intensely personal. The word 'combatant' comes quickly to mind here, but this is possibly an overly dramatic description of the roles of the various protagonists in what unfolded between 1992 and 1998. Much of what occurred during that time, including the subsequent government policy shift against offenders from rehabilitative to punitive, happened for the same reasons as in the Northern Territory and Queensland: an impending election and the desire of politicians to outdo each other in their stance of being tough on crime. In addition, the continual victimisation for more than four years (1993 to 1997) of my immediate superiors because of their stand against what they perceived as very discriminatory workplace practices by senior management against CSO Unit staff was a further reflection of this punitive attitude. The 'final solution' that was subsequently decreed by the Minister for Justice served only to perpetuate the irreparable divisions in ACT Corrective Services that he had helped create. For more detailed information, the reader is referred to Appendix H (participant observation and interview data).

The ACT government's intent towards offenders became overtly punitive via the proposed 1995 periodic detention centre legislation and, at the same time, its
opposition to the continuation of the CSO scheme as it then existed was growing. This political opposition stemmed from two issues: (i) the need to justify the building and operating of the periodic detention centre; and (ii) allegations of serious misconduct made against certain Corrective Services management and staff who, by coincidence, supported the Minister in his push to shut down the CSO unit. Issue (i) was never going to be a serious problem for the government because the previous Labor administration had already done much of the preliminary 'groundwork' in preparing the community's taxpayers for the additional impost of running a periodic detention centre. Issue (ii) was not as easy, but was helped considerably by being conducted 'in house' and behind closed doors. The government delayed, procrastinated, and contested the allegations for four years until it became obvious that the allegations were going to be tested in the public arena of the Courts. To avoid this ultimate humiliation, an 'out of court' settlement was reached in 1998 (participant observation and interview data).

Periodic detention had already been tried in Queensland in the early 1980s, was a failure, and fell into desuetude. This was because: (i) it was not used as a custodial alternative - detainees were received into high security prisons on Friday evening and discharged on Sunday evening; (ii) detainees were often used as messengers by other prisoners; and (iii) reception and discharge procedures were labour intensive (Brand, 1993). As described in Chapter Eight, the New South Wales Government persisted with its periodic detention centres, but lately has sought to temper its adversarial approach towards offenders in respect of CSO. The ACT, for its part, did not have a prison (so (i) and (ii) could not occur), but (iii) was still applicable, and periodic detention centre staff were seconded from the Belconnen Remand Centre rather than from the CSO Unit or Probation and Parole area. Consequently, the Periodic Detention Centre staff mindset and philosophy was geared around institutionalised security of detainees, not offender rehabilitation. Moreover, as previously noted, the attitude of the ACT Remand Centre's custodial officers towards the offenders was and has always been that the offenders are 'crims' and should be treated as such. Hence, this did not bode well for those offenders sentenced to periodic detention.
The existing Remand Centre at Belconnen was a totally inadequate facility for holding any detainees, and was the focus of a coronial inquiry (in 1997-98) into yet another death in custody, but this time with a botched cover-up of it (see Appendix E). The subsequent revelations of the Coronial Inquest further weakened staff morale throughout the Community Corrections Department, already in a state of crisis, thanks largely to ongoing 'restructuring,' via the machinations of senior management. This was a management totally preoccupied with economic bottom lines and pleasing its political masters (participant observation and interview data).

The Periodic Detention Act 1995 had its genesis in the ACT's Legislative Assembly, where politicians of both the major parties were pushing the 'get tough on crime' line, in preparation for a forthcoming election. The subsequent election 'dead heat' by both major parties - Labor and Liberal - saw two of the three elected Independents side with the Liberals to allow them to oust Labor and govern in a minority capacity. The necessary periodic detention centre legislation, begun by Labor in its previous term in office, was completed in 1995 by the Liberals. The Assembly Debate on the Bill on 11 May 1995, is revealing for what it says about the Liberal Party's philosophy on punishment of offenders, as well as for what it does not say about comparative costs of the proposed periodic detention centre with those of the then existing CSO scheme. The excerpts from the ACT's Weekly Hansard Reports which detail both these points are shown in full in Table 9.4: 'Australian Capital Territory Hansard Excerpt on PDC Bill 1995.' What would have also helped the passage of this Bill was the tabling, one week before the debate on the Bill, of a petition from 4,904 ACT residents. The petition reads:

To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory:

The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly the sentencing of violent criminals. The sentences handed down to these criminals should reflect the serious nature of their crimes. Soft sentencing by judges should end so that there is fairness to the victims as well as to the accused.

Your petitioners therefore request the Assembly to ensure that penalties reflect the violence of the crimes (Weekly Hansard, 4 May, 1995).
Are CSOs Punitive or Rehabilitative?

Table 9.4  Australian Capital Territory Hansard Excerpt on PDC Bill 1995

The present Bill will also bring the ACT into line with New South Wales, which operates 11 periodic detention centres at the present time. Periodic detention will involve convicted offenders attending at the detention centre from 7.00pm on Fridays until 4.30pm on Sundays, for 12 to 104 consecutive periods, as determined by the court - a period being two days. This means that the obligation of the offender to the court can vary from three months up to two years.

Whilst in periodic detention, under supervision of Corrective Services officers, it is intended that detainees will undertake unpaid work for the community. This work will allow offenders to make a positive contribution to the community affected by their offences. It is also intended that detainees on periodic detention orders will participate in educational programs designed to address the causes of their offending behaviour.

I might mention, Mr Speaker, that the Government will also be putting forward an amendment to this legislation - which is not presently available in the Bill but will be introduced during the detail stage - which will have the effect of allowing a court to suspend all or part of a sentence or a person coming back before it in the case where a periodic detention order is cancelled by virtue of, for example, a failure to turn up at the centre. It is the Government's view that the option needs to be provided to ensure that people are going to have longer sentences of imprisonment imposed on them than would otherwise be the case (emphasis added).

There are also potential savings in providing this sentencing option to the court where suitable offenders may have otherwise been sent to gaol for their offences. The cost per bed per year in the periodic detention centre, if its 30 beds are fully occupied, will be around $9,500 per detainee. As a comparison, in 1993-94 it cost he ACT around $50,000 per year to house each prisoner in New South Wales gaols. The program will create eight new positions - three full-time and five part-time - in the ACT [no mention is made of the twenty-one CSO positions that would be subsequently dispensed with].

Recurrent funds to operate the centre in 1995-96 will be $285,000 [this figure is arrived at by multiplying the $9,500 per detainee with the expected maximum intake of 30] (Weekly Hansard, 11 May, 1995:427-429).

The ACT periodic detention centre became operational on 19 June, 1995. In terms of its ability to fulfil its charter, it was as under-resourced as the CSO scheme had been a decade earlier. For the first three years of its operation, the centre had to borrow vehicles and equipment from the CSO Unit every weekend in order for the detainees to carry out designated 'community service' work. Designed to accommodate only thirty detainees, the centre was not big enough to house the unexpectedly larger number of detainees sentenced to periodic detention. Following repeated complaints from several detainees, the Official Visitor made a number of requests to the new (in 1998) Director
of Corrective Services for more appropriate accommodation facilities, particularly in regard to beds. There simply were not enough and far too many detainees - the latter being reduced to sleeping 'head-to-toe' on the floor. In the same way as his predecessor, the Director did not want to know about such 'minor discomforts,' preferring instead to lecture the Official Visitor on the 'niceties' of the periodic detention centre's intended punitive role. As an aside, the Official Visitor was one of the original two officers who, a decade earlier, had been responsible for setting up the CSO scheme, so he was familiar with the centre's present problems. Later that year, however, the Official Visitor's work contract was not renewed (participant observation and interview data).

The evidence offered here in respect of the ACT's Periodic Detention Centre and the CSO scheme's operations, particularly since 1995, supports my contention that the emphasis is firmly on punitive rather than rehabilitative treatment of offenders. In addition, the continuing internecine struggles within the various Units of ACT Community Corrections, combined with very low staff morale, will no doubt ensure that the punitive mindset towards offenders will persist for some time yet.

**Conclusion**

This chapter has demonstrated the complexity that encompasses many decisions made in regard to sentencing legislation generally, and to community service order legislation and implementation, in particular. For instance, the Northern Territory Government's quite valid attempts to deal with the public perception of CSO being a 'soft option' was by making it mandatory for all potential CSO recipients to wear an identifying vest. While civil libertarians felt the requirement was unnecessary and discriminatory, victims of crime and government supporters applauded the move. In addition, the government's 'get tough on crime' rhetoric further manifested itself in the promulgation of the mandatory sentencing laws and the introduction of a new, more intensive correction order, designed to punish rather than rehabilitate the offender.
Similarly, in Queensland, the view by some that the standard community service order was too easy led to the introduction of a more intensive and intrusive community order. The process was repeated in Western Australia and Victoria (see Table 9.1).

As already noted, this push towards more punitive sanctions is not simply isolated to Australian jurisdictions; rather it has been ‘imported’ from overseas. In England, the ‘Conservative criminology’ of the Thatcher years, as reflected in the Police and Criminal Evidence Act 1984 (PACE) and the Prosecution of Offences Act 1985 (CPS), has set in train courses of action against offenders that are totally punitive in their intent (Rex, 1997; Rose, 1996). In the USA, a similar situation is to be found with the implementation in California, in 1994, of the mandatory ‘three-strikes’ laws. Following the unqualified political success of those laws, other jurisdictions both in the United States and elsewhere have followed suit (Shichor and Sechrest, 1996, Shichor, 1997; Stolzenberg and D’Alessio, 1997). In certain respects, this latest embracing of punitive measures is a revisiting of the 1970s, when incapacitation, collective and selective, was hailed by Fogel (1979); Wilson (1975, 1983); and others as ‘the answer’ to rising crime rates. However, as Chan (1995) in her comprehensive paper on the limits of incapacitation rightly points out, incapacitation as a crime control strategy is highly suspect in regard to much of the hypothetical data used, precisely because many of the assumptions and claims made may, in fact, be false. Echoes of the incapacitation argument can be heard in the political rhetoric of those elected officials now promoting mandatory sentencing as the latest answer to crime prevention.

For the jurisdictions that have chosen the path of more punitive sanctions against offenders, there is neither the intent nor the hope that offender rehabilitation will take place. On this point the literature and my own research are very clear. As a consequence, any possibility of a restorative justice-type reconciliation between victim, community and offender, and reintegration of the offender back into the community are non-existent. Conversely, jurisdictions such as South Australia and Tasmania, who do not see additional punitive sanctions against offenders as the answer to crime-
prevention, are in a much better position vis-a-vis restorative justice reconciliation. Again, the literature is very clear on this point. Thus, the answer to the question posed in the title to this chapter is that, generally speaking, all community service orders are punitive to some degree. The intensive supervision or correction orders are, most definitely, punitive, as they were intended to be, whereas the non-intensive orders can be said to be more inclined towards rehabilitation and reintegration. However, when examining the evidence, it should be noted that the jurisdictions not using intensive corrections orders - Tasmania and South Australia - nevertheless do contain strong punitive elements in their sentencing armory.
Chapter Ten

Conclusion

The criminal justice system should drop the pretense that it can rehabilitate and correct offender behaviour as a matter of routine. That it can do so on a limited and less ambitious scale is a more realistic goal. Drop the notion that it is the offender, or even the victim, who is the client or customer of the system. Dispensing criminal justice is not a private matter between the courts, the professionals, the victims, and offenders. The customer, if that is the correct metaphor, is the public.

Malcolm Davies

Introduction

This thesis has examined the theoretical and practical content of the alternative to custody phenomenon known as the community service order or CSO. In particular, this thesis has focussed on the relationship of the community service order to the claims made by the decarceration theorists about alternatives to custody, and to the hopes held by the restorative justice movement about those same alternatives. During this examination, a number of issues have been raised and addressed that are central to resolving the principal problem posed by this thesis: that is, "To what extent is the community service order model in Australia consistent with the claims of the decarceration movement, and to what extent does it fulfil the hopes of the restorative justice movement?" The claims are that alternatives to custody are as or more expensive than custody (by virtue of net-widening, net-strengthening, and net creation), just as discriminatory as custody, and just as or more punitive. The hopes are that alternatives to custody will be less costly than custody, will be less discriminatory than custody, and be rehabilitative and restorative as opposed to punitive.


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This thesis has begun the process of resolving the extent to which the community service order model in Australia is consistent with the claims of the decarceration movement, and the extent to which it fulfils the hopes of the restorative justice movement. To achieve this, it has drawn upon a wide range of disciplines and the literature within them, including sociology, criminology, penology, philosophy, history, geography, economics, and politics, as well as journalism and legislative sources. Using this broad knowledge base, as well as first-hand experience as a CSO supervisor and the research methods of participant observation and the unstructured interview, this thesis has explored whether the claims of the decarceration theorists and the hopes of the restorative justice movement are evident with CSO as it is presently practiced in all Australian jurisdictions.

This thesis finds that the extent to which the community service order model in Australia is consistent with the claims of the decarceration theorists is evidenced by the way the model (a) is able to widen, strengthen, and create new or different nets; (b) is financially driven; and (c) is punitive. Conversely, the extent to which the model is consistent with the hopes of the restorative justice movement can be seen in its potential to be, under certain circumstances, rehabilitative and reintegrative, and non-punitive. Nor are these two statements contradictory: the decarceration theorists' claims are a statement of what is actually happening, whereas the restorative justice movement's hopes are a statement of what ought to be happening. Thus, both statements are clearly different orders of proposition.

In the next section of this concluding chapter, the data supporting the research for this thesis is reviewed on a chapter by chapter basis; in effect, recapitulating what has been done. The arguments that have been made in respect of resolving the central problem of this thesis are briefly restated in Chapters Six through Nine. The section which follows then summarises the analysis made thus far, and the final section examines the implications for future policy makers of pursuing either the punitive path or the rehabilitative path in community corrections.
Review of the Data

Chapter One briefly described and examined the history of prisons, especially in England and the United States, up to the 1960s, and the subsequent decarceration movements that gave rise to the collective phenomena called 'community corrections.' The principal aim of this chapter was to provide a reference point for the examination of the 1960s decarceration 'movement' and, more particularly, of the evolution of the subsequent alternative to custody called the community service order scheme or CSO.

Chapter Two detailed the origin, development, and subsequent characteristics of Australian community service orders between 1972 and 1985, which was the length of time it took for all Australian jurisdictions to implement some form of CSO scheme. The main purpose of this chapter was to expand upon the decarceration movement described in Chapter One by tracing the history of one particular alternative to custody: the community service order scheme.

Chapter Three developed in much greater detail the material described in Chapters One and Two, by analysing the trend away from imprisonment and towards decarceration from the 1960s onwards. The main function of this chapter was to show that the decarceration literature which had arisen as a result of that trend was an explanation for why community corrections had occurred, and why it had become supplementary to rather than a substitute for imprisonment. This chapter and the two immediately following it served as the theoretical links between the historical aspects described in Chapters One and Two and the empirical and practical sociological issues examined in Chapters Six through Nine. In developing the theoretical framework of this chapter, several interconnected sociological theory concepts were canvassed. These concepts - deviance, punishment, social control, and the transition from punishment in custody to punishment in the community - were a necessary and integral part of explanations about major changes in punishment policies that occurred during and subsequent to the 1960s decarceration movement.
Chapter Four described and explained the criminal justice alternative known as the restorative justice movement, including its significant strengths and weaknesses, and the way it wished to see community corrections develop: in a rehabilitative and restorative way rather than a punitive one. The importance of this chapter was that it permitted a realistic comparison of two different types of justice procedures: the formal and adversarial criminal justice system, and the largely informal restorative justice system with its emphasis upon healing and reintegration of both offender and victim.

Chapter Five expounded upon the research and methodology used in gathering the necessary data for this thesis. It also explained why specific jurisdictions were chosen for three case studies, which, in turn, involved 249 hours of participant observation and unstructured interviews. Also discussed were a number of ethical dilemmas that confront researchers undertaking this particular type of study. Although some geographical data has been included in the body of the thesis in order to support a particular argument or point, the bulk of it is to be found in Appendix I.

Chapter Six argued that the community service order, under certain conditions, could be said to have the effect of making the control net wider and stronger, and could also assist in the creation of new or different nets. Such effects on the control net were viewed in the criminal justice (court-based) system as potentially negative rather than positive, for two main reasons: one, because of the unintended 'ensnaring' of many individuals who would not otherwise be participants in the criminal justice system; and two, because of the expansion of the necessary administrative processes and personnel required to run such schemes. This was especially so in regard to intensive type community orders. Restorative justice, by comparison, could also be said, under certain conditions, to widen and strengthen control nets and to create new and different nets. However, the significant difference here was that such effects could be potentially negative or positive, depending upon the circumstances, as pointed out in Chapter Four: for example, net-widening which increases freedom was a good not a bad thing (Braithwaite and Pettit, 1990).
Chapter Seven maintained that female offenders and prisoners were treated differently from their male counterparts, principally for two reasons: first, because of entrenched patriarchal attitudes among many of those charged with the responsibility of running criminal justice systems; second, because males constitute the majority of both offenders and prisoners, as evidenced by, for example, the statistical data in Chapters Five and Eight. This meant there were neither the facilities nor the personnel available for women that there were for men. There was also strong evidence to suggest that while men were sentenced for what they had done, women were sentenced for who they were. In restorative justice, although the ratios of male to female offenders were much the same as in the formal criminal justice system, the principal issue was about healing, about restoring the status quo and making good the harm, not whether the offender or victim was male or female.

Chapter Eight contended that community service orders were financially driven and that offender rehabilitation had become a hoped-for by-product of the criminal justice process rather than the dominant, underlying goal. As well, the push to privatise prisons and community corrections operations as a way of reducing a government's expenditure and sidestepping corporate responsibilities was seen to be questionable and problematic. Hence, the community service order was consistent with the claims of the decarceration theorists as being potentially as costly as incarceration due to its capabilities for net-widening, net-strengthening and creating new or different nets. In regard to intensive correction or supervision orders, the potential for being as costly as incarceration was considerably enhanced by virtue of their inherently intrusive nature and retributive intent.

Chapter Nine argued that, generally speaking, the community service order was punitive more so than rehabilitative and reintegrative. While the standard order and the fine-option order did, to a limited extent, meet the hopes of the restorative justice movement, the more intrusive intensive correction order, by contrast, did not. It was also argued that the imposition of mandatory sentencing laws, and the emphasis
Chapter Ten

Conclusion

currently being placed by governments on offender punishment instead of on offender rehabilitation, effectively constituted forms of vengeance as public policy.

Summary of Analysis

Within this thesis, the analysis can be summarised firstly by recognising that both the criminal justice system and the restorative justice movement seek similar goals but do so by very different means. Both 'systems' aim for reparation for the harm done; rehabilitation (where possible) of offenders and their subsequent reintegration into the community; no recidivism; and restoration of victims to their former status. Both systems also seek the reduction or, even, elimination of crime (bearing in mind Durkheim's insistence that the presence of crime in a society is indicative of that society's state of health). Second, it must be acknowledged that both systems often fall short of their intended goals because of a multiplicity of reasons, some of which are beyond the control of the actors involved. For example, this thesis has demonstrated many instances of entrenched class, gender, and sex discrimination which continue to be practised as I write, and it seems immaterial to the discriminators that such behaviour is both unlawful and unacceptable. Also allied to this second issue is the familiar problem of making legislation or policies that have one set of intended outcomes but, when implemented, give rise to one or more adverse, unintended consequences. The study by Lucken (1997) of the 'piling up of sanctions' against offenders is an excellent example of this, as are the many instances cited throughout Cohen's (1985) seminal work: Visions of Social Control: Crime, Punishment and Classification. This thesis has shown, too, that there exist considerable philosophical differences about the community service order's viability as a custodial alternative, to which must be added the observation that certain crimes often render such an alternative totally inappropriate. Examples of such crimes would be murder, rape, and treason. In the defence of both alternatives, however, it was never envisaged that either should be an appropriate remedy for these.
Another factor that operates to determine the outcome of community service order schemes is that of politics. Perhaps more than any other, this factor is the most crucial element of any consideration of alternatives to custody. Throughout this thesis, both from a theoretical and practical viewpoint, the primary concern of a jurisdiction's lawmakers has been shown (in its crudest terms) to be "how will this piece of legislation benefit me (or us)?" The most contentious example of this claim is the recent proliferation of mandatory sentencing laws, both in Australia and in the USA. The principal, underlying philosophy of such laws is that they will deter would-be offenders from committing crimes, yet the literature and the practical realities of enforcement of such laws indicate that they do not deter. Certainly, they do incapacitate and, in regard to the 'three-strikes' approach, they do so for a very long time (twenty-five years to life imprisonment for a third offence in California). The implications of such laws will be examined in the next section of this chapter, but the reality for all USA lawbreakers is that many more states are embracing the three-strikes philosophy at the behest of their elected officials, who see being tough on crime as a vote-winner. The difficulty with such a self-serving view is that it affects all levels of the sentencing tariff, not just the capital crimes that would, ordinarily, require a custodial term. As the literature and practice show, the sanctions further down the scale come to be viewed by many as 'inadequate' (meaning 'not tough enough') and so non-custodial sanctions like the community service order tend to be perceived as 'soft options.' For the same reasons, restorative justice initiatives fare little better. What compounds this problem is that there is also a simultaneous shift in penal policy towards aggregate controls of prisoners and offenders as opposed to their individual rehabilitation. This, too, further undermines the non-custodial alternatives (see Chapter Nine and, especially, Feeley and Simon's 1992 study).

The outcome of these various but often related factors is that, whereas in the 1960s, decarceration was seen as 'the answer' to prison overcrowding, to burgeoning operation costs of prisons, and to prisoner rehabilitation, in 1998 this is no longer the case. The earlier claims by some supporters of decarceration that it was a cheaper, more
effective and more humane way of dealing with prisoners and offenders has proved to be questionable at best and problematic at worst. The punitive policies being pursued by elected officials against offenders have now extended from the prison into the community by way of intensive correction and supervision orders, so that punishment in the community has become indistinguishable from punishment in custody. Thus, what was in its early years a promising non-custodial initiative - the community service order - has become merely an addition to the state's control and punishment mechanisms. Although not part of the formal criminal justice system, restorative justice is also struggling for a more universal acceptance by lawmakers as a genuine and successful alternative to that formal system.

Policy Implications

The successes and failures of the community service order model in Australia create a unique paradox. On the one hand, the undoubted if limited successes of the model prompt the question: why has it not been more universally accepted? On the other hand, the failures of it, for a variety of reasons, prompt a different question: why has it not been abandoned? To unravel this paradox, the various political agendas underlying the model require deconstruction; and to do that it is first necessary to understand the context in which much of our criminal law is formulated. As pointed out in Chapters Eight and Nine, it is financial considerations and the need or wish to maintain political office that drive elected officials and their bureaucracies to formulate policies which will achieve the desired outcomes. At the same time, there is the requirement to accommodate the vested interests of those employed directly or indirectly in the criminal justice system, as well as public demands for better crime control, as Greenberg (1975) and Chan (1992) have suggested. One consequence of this is the 'get tough on crime' edict which, while gaining the approval of many of those vested interests (including the public), ensures that criminal laws become increasingly more draconian. To counteract the predictable responses from human rights activists,
prisoner reform groups and the like, it is helpful to have in place 'rehabilitation' programs that can be pointed to as 'proof' that the aforesaid elected officials are being tough but even-handed. Such even-handedness is, of course, much more apparent than real, as evidenced by, for example, the Northern Territory's mandatory sentencing laws or the Australian Capital Territory's periodic detention centre legislation.

As an aside, my Northern Territory field notes record a great deal of concern by a number of citizens of that jurisdiction about the ramifications of such laws, particularly for the juvenile offenders, against whom the legislation is primarily aimed. Another ramification, and one rarely mentioned because it can be a vote-loser, is the absence of 'spent convictions' legislation. This is legislation intended to assist prisoners and offenders in the rehabilitation process by allowing their convictions to be wiped from the record after the lapse of a certain period of time (in Western Australia, for example, this period is ten years). In other words, they are given a fresh start. However, not all States and Territories have such legislation in place, so convictions, where recorded, remain on the offender's criminal record file forever. This, in turn, makes a farce of offender rehabilitation, particularly in respect of pursuing certain avenues of employment or of obtaining an entry visa to certain countries in the course of overseas travel.

A further implication of pursuing fiscal constraint and the retention of political office is that community corrections and internal prison programs are invariably pared back or curtailed altogether, under the tried and tested guise of 'restructuring.' Such cost-cutting (often unwarranted and unjustified) has ramifications not only for prisoners and offenders but also for staff involved in those programs, because of the adverse effects upon morale and discipline. Such measures may also have the unintended effect of endangering the public's safety. The present push by all Australian State and Territory governments for correctional administrations to achieve ever leaner, more efficient and less costly programs is unsustainable. Nor is going down the privatisation road much of an option. The Victorian Government, for example, is in the process of
privatising all its prisons and correctional services, in the belief that privatisation will be cheaper and more efficient than government-run facilities. As I have noted in Chapter Six, it remains to be proven conclusively, either in Australia or overseas, that privatised facilities are cheaper or better. A major stumbling block is the unwillingness of the private operators to disclose the relevant financial data that would enable a realistic comparison to be made. Governments, in turn, are unwilling to force the issue, preferring, instead, to hide behind the lame excuse of 'commercial-in-confidence.'

The next obvious step - cost-neutral community corrections programs - brings us almost back to our starting point. As indicated in Chapter Eight, Queensland is presently experimenting with a 'fee-for-service' CSO program that, if successful, will see a range of offender programs become cost-neutral. Short of the privatisation path of 'punishment for profit,' revenue-neutral programs will be the 'ideal' and, for cash-strapped governments, a most welcome addition to the range of present programs on offer. Properly managed, there is nothing to suggest that such (revenue-neutral) programs could not be beneficial to all parties concerned. At present, however, such programs are in their infancy, so a good deal more experimentation and research is required. At the same time though, I believe a serious case can be made for the implementation of restorative justice-oriented CSO programs, particularly as they, too, can be made revenue-neutral within certain parameters. This, of course, means that a sea change in punishment philosophy is required - that is, from punitive and retributive to rehabilitative and reintegrative. A tall order. And yet, considering what is presently on offer by way of mandatory sentencing laws, punitive correction orders and intensive and intrusive surveillance procedures, without any real reduction in crime and recidivism rates, any measure of some potential is surely worth a try.

Thus, from all of the literature reviewed, from all of the research conducted, and from my own personal 'hands-on' experience with CSO, in regard to this thesis I would argue that CSO is a worthwhile and valuable criminal justice sanction. And, just like the restorative justice movement, CSO has enormous but as yet untapped potential.
Epilogue

A society has one higher task than to consider its goals, to reflect on its pursuit of happiness and harmony and its success in expelling pain, tension, sorrow, and the ubiquitous curse of ignorance. It must also, so far as this may be possible, ensure its own survival.

John Kenneth Galbraith

On Saturday, 9 May, 1998, all of the ACT Community Service Order Unit's motor vehicles, trailers, property maintenance equipment, workshop tools and work safety clothing and equipment, were auctioned off. On the very same day, Gary Humphries, the ACT Attorney General (now called the Minister for Justice and Community Safety) was seeking $30,000 from the Federal Liberal Government to remove graffiti from some ACT public housing flats (see Appendix H). Prior to the public auction, which was held at the CSO Unit's purpose-built Belconnen depot, the Minister claimed that the sale would generate income in excess of $100,000. The fire sale yielded less than $40,000 (participant observation and interview data). The seven CSO supervisors were 'absorbed' into other ACT Community Corrections Units to become, effectively overnight, instant caseworkers - without any formal training or qualifications. The jobs they had been doing of supervising offenders on CSO schemes were abolished, and offenders sentenced to CSO would, henceforth, be channelled through the Periodic Detention Centre's 'community service' scheme. A scheme totally punitive in intent, with no redeeming rehabilitative element in mind. The 500 odd households (mainly aged and infirm pensioners) who previously benefited from the CSO scheme would no longer receive that benefit. Any future work they required done would have to be obtained through private contractors for a charge of $30 or more, in contrast to the CSO scheme which had been a free service since 1985.

The Minister's reason for scrapping the CSO scheme was that "the work gangs created an unhealthy environment for offenders" (refer Appendix H). Just what this "unhealthy environment" was or how it was created has never been explained; nor, coincidentally, has this "unhealthy environment" been found to exist in the Periodic Detention Centre's very punitive 'replacement' CSO scheme.

The Minister also claimed that the "restructured" CSO scheme would generate more than $1 million in budget savings. Those "savings" have yet to materialise.
APPENDIX A

AN INDETERMINATE SENTENCE
The history of the American prison can be visualised as a colossal fortress, a human zoo complete with steel and concrete cages into which came hundreds of thousands of America's poor, migrants, immigrants, and minorities: first we viewed them as sinners, then wayward, then ornery, then sick .... we gave them Bibles, forbade them to speak, preached at them, and worked them .... we introduced libraries, schools, recreation, medical services, counselling, and vocational guidance while we whipped them, maimed them, executed them, and drove some to suicide .... we let them volunteer for military suicide squads and performed medical experiments on them .... and when they resisted we called them militants, radicals, and revolutionaries, and gassed, maced, and shot them .... doing all these things because we were told it was the right thing to do .... first by Puritans, then by Quakers, then by Christians of all sorts .... by educators, phrenologists, eugenicists, endocrinologists, and therapists of speech, vocational, occupational, music and dance variety .... who multiplied into group counsellors, group interactionists, milieu therapists, prison community counsellors, and group psychotherapists .... then came the psychologists .... who became clinical, confrontational, reality therapists, and transactional analysts .... and they all tested, diagnosed, and classified .... then there were the behaviour modifiers .... who divided into aversive therapists, chemotherapists, electrode implanters, and psychosurgeons .... and the universities sent in hoards of theorists and researchers .... who had formulated theories about crime and criminals, prisoners, guards, therapists, and wardens .... but what they found were gorillas, bulls, rats, wolves, punks, hacks, heroes, screws, squares, squealers, gunsels, fags, queens, ball busters, toughs, politicians, merchants, and right guys .... and the writers got degrees, prizes, kudos, and money .... while the library shelves bulged with articles, papers, theses, dissertations, monographs, journals, and books .... and occasionally they argued about the ethics of prison research .... so the prison was industrialized, sociologized, then clinicized, but it was always brutalized .... but no one noticed because torrents of claim ran into streams of panaceas swelling to oceans of rhetoric drowning out the tears of pain .... and its still there .... and Haviland smiled at the ceremony dedicating Lucasville ... and ... "WE ARE THE LIVING PROOF OF ITS EXISTENCE AND WE CANNOT ALLOW IT TO CONTINUE ...."

APPENDIX B

STATE AND TERRITORY COMMUNITY SERVICE ORDERS LEGISLATION 1972-1998 LINKED TO CORE REQUIREMENTS AND CORE CONDITIONS
STATE AND TERRITORY COMMUNITY SERVICE ORDER LEGISLATION - 1972-1998 LINKED TO CORE REQUIREMENTS AND CORE CONDITIONS

[New South Wales] Community Service Orders Act 1979 No.192 - Pt 2:4(1(b)).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 3:36(1(a)).

B.1.2 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:11(1).
[South Australia] Criminal Law (Sentencing) Act 1988 - Not applicable.
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 3:36(1(c)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556J(1(a)).

B.1.3 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:11(3).
[Western Australia] Sentencing Act 1995 (No.76 of 1995) - Not applicable.
[Northern Territory] Sentencing Act 1995 (No.39 of 1995) - Part 2:5(2(c)).
[New South Wales] Community Service Orders Act 1979 No.192 - Pt 2:6(2(b)).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 2:5(2(d)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556J(1((c(i)))).

[Western Australia] Sentencing Act 1995 (No.76 of 1995) - Not applicable.
[New South Wales] Community Service Orders Act 1979 No.192 - Pt 2:6(2(b)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556J(1(c(ii))).

B.1.5 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:11(1); 11(2).
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[South Australia] Criminal Law (Sentencing) Act 1988 - Part 2:9(1(a)(b)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556J(2(a)(b)(c)).

B.1.6 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:11(1).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(2(a)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556G(1(a)).

B.1.7 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:12(7(b)).
[Western Australia] Sentencing Act 1995 (No.76 of 1995) - Part 9:67(2(b)).
[New South Wales] Community Service Orders Regulation 1988 - Part 4:24(1
(a)(b)).
[Australian Capital Territory] Supervision of Offenders (Community Service

B.1.8 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:12(1A).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part
7:76(3(b)).
(b)).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 2:5(2(g)).
[Australian Capital Territory] Supervision of Offenders (Community Service
Orders) Act 1985 - 6(3(b)).

B.1.9 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1A).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part
7:76(3(a)).
(a)).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 2:5(2(g)).

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[Australian Capital Territory] Supervision of Offenders (Community Service Orders) Act 1985 - 6(3(a)).

B.1.10 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:13(2(c)(d)),(3), 14(1(a)to(g), 2(a)to(d)).

B.1.11 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:13(3(a)).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:16(1 (a)(b)(c)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556V.

[Queensland] Penalties and Sentences Act 1992 - Part 5:103(2(a)(b)).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 3:36(3); 38(1(a)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(a)) 556L(1).

B.2.2 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:11(1).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(1)(2(a(ii))].
[New South Wales] Community Service Orders Regulation 1988 - Part 4:20(1(c)).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(1(d(i)(ii))].
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))].
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(d)).

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B.2.3 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(g)).
[Western Australia] Sentencing Act 1995 (No.76 of 1995) - Part 9:62(3(a)(b)).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(1(a)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 3:37(1(a)).

B.2.4 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(d)).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(2(c(v))).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1(b)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(d)).

B.2.5 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(c)).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(2(c(iii))).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1(b)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(d)).

B.2.6 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(g)).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(2(c(i))).
[Northern Territory] Sentencing Act 1995 (No.39 of 1995) - Part 3:39(1(g)).
[New South Wales] Community Service Orders Regulation 1988 - Part 4:20(2(a)).
[Queensland] Penalties and Sentences Regulation 1992 - Part 7(1(a)(b)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(d)).

B.2.7 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(c)).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(2(c(iv))).
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[Queensland] Penalties and Sentences Regulation 1992 - 7(1(c)(iii))).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(d)).

B.2.8 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(f)).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1 (d)).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(1(e)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(ii))).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 3:37(1(d)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(b)).

B.2.9 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:12(6).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(1).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1 (c)).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(1(g)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(c)(e)).

B.2.10 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:15(5).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1 (d)).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(1(f)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(iii))).
[Victoria] Sentencing Act 1991 (No.49 of 1991) - Part 3:37(1(e)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(b)).

B.2.11 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:Not applicable.
[Western Australia] Sentencing Act 1995 (No.76 of 1995) - Part 9:66(2(c)).
[New South Wales] Community Service Orders Regulation 1988 - Part 4:20(1 (a)).
[Queensland] Penalties and Sentences Act 1992 - Part 6:114(1(d)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(v))).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(c)(e)).

B.2.12 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:12(1(a)).
[Queensland] Penalties and Sentences Act 1992 - Part 5:103(1(b)).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(a)).

[Western Australia] Sentencing Act 1995 (No.76 of 1995) - Part 9:67(2(b)).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1(a)).
[Australian Capital Territory] Supervision of Offenders (Community Service Orders) Act 1985 - 7(1).

B.2.14 [Tasmania] Probation of Offenders Act (No.2 of 1973) - Part IV:14(1(b)).
[Western Australia] Sentencing Administration Act 1995 (No.77 of 1995) - Part 7:76(2(b(ii))).
[New South Wales] Community Service Orders Act 1979 No.192 - Part 2:14(1(b)).
[South Australia] Criminal Law (Sentencing) Act 1988 - Part 6:50(2(a(vi))).
[Australian Capital Territory] Crimes Act 1900 - Part XVA:556K(1(d)).
APPENDIX C

COMMUNITY SERVICE ORDERS INTERVIEW SCHEDULE

1. Tell me a little about yourself.

2. How did you come to be involved in the CSO scheme?

3. What do you think are the positive aspects of the CSO scheme?

4. Why do you think that?

5. COMMUNITY SERVICE ORDERS INTERVIEW SCHEDULE

6. Why do you think that?

7. How do you believe the CSO scheme could be improved?

8. How do you see the CSO scheme functioning in the future?

9. In what way, if at all, have you benefited from the CSO scheme?

10. Given the choices made by the sentencing judge, whether to impose a suspended term on a convicted offender for a particular crime or whether instead to impose a non-custodial alternative sentence, where do you see the Community Service Order fitting into the sentencing structure?
1. *Tell* me a little about yourself.

2. *How* did you come to be involved in the CSO scheme?

3. *What* do you think are the positive aspects of the CSO scheme?

4. *Why* do you think that?

5. *What* do you think are the negative aspects of the CSO scheme?

6. *Why* do you think that?

7. *How* do you believe the CSO scheme could be improved?

8. *How* do you see the CSO scheme functioning in the future?

9. *In* what way, if at all, have you benefited from the CSO scheme?

10. *Given* the choices faced by sentencers in deciding whether to impose a custodial term on a convicted offender for a particular crime or whether, instead, to impose a non-custodial alternative sanction, where do you see the Community Service Order fitting into the sentencing structure?
APPENDIX D

THE KITCHENER EXPERIMENT

The Kitchener Experiment was a part of the "Chemin-Cove" Elliot's housing scheme. The tenants, mainly Canadian-born, where two offenders—21 and 18 years old—were arrested after a teenager's body was found in a secluded woodland area on Saturday night in April, 1994. On 28 May, 1994, the two offenders pleaded guilty to twenty-two counts of arson, assault, and theft. They were allowed out of jail on condition that they work as janitors for the weekend. Their pleas were accepted by the judge who sentenced them to eight and a half years in prison. However, when the case was called, the judge ordered a one-month remand in order to allow time for the convicted pair to meet the victims and assess their needs, with the assistance of Dave Work and Mark Yantzi (Peachey, 1980:13).

Accompanied by a social worker, the two offenders visited their victims from the night before. They visited each of the places where the Arsonists had committed arson, theft, and assault. The victims took their own pictures, and the Ontario Provincial Police and the MCC representatives stood by with their cameras while the two youths knocked on doors, explained who they were, and why they were there (1989:4).

In all, they spoke to twenty-one victims, an additional victim had passed and could not be contacted, whose damages totalled $77,159.00. Approximately half of that amount had already been covered by the victims' insurance policies, leaving $38,529.50 in actual losses to the victims (Peachey, 1980:13).

According to Peachey (1980), who visited the offenders while on remand on 26 August, 1994, Yantzi reported to the judge that he had angered the judge and that the judge had asked him to think about it and not to do it again. Yantzi was then placed on probation for eighteen months, and ordered to attend
The Kitchener Experiment grew out of the 'Elmira Case,' Elmira being a small Canadian town where two offenders - one aged 18 and the other 19 - were arrested after a drunken vandalism spree one Saturday night in April, 1974. On 28 May, 1974, the two offenders pleaded guilty to twenty-two counts of wilful damage and were requested by the judge to return to court in July for sentencing (Peachey, 1989). Mark Yantzi, a probation officer assigned to prepare pre-sentence reports for the two offenders, thought it would be "neat for these offenders to meet the victims" (Bender, 1985:6). Encouraged by a Mennonite Central Committee colleague, Dave Worth, Yantzi enclosed a letter with his pre-sentence report to the judge suggesting that "there could be some therapeutic value in these two young men having to personally face up to the victims of their numerous offences" (Peachey, 1989:15). When Yantzi and Worth met in the judge's chambers on the day of sentencing of the two offenders, they were told by the judge that he did not think it possible to ask the offenders to meet the victims. However, when the case was called, the judge ordered a one-month remand "to allow time for the convicted pair to meet the victims and assess their losses, with the assistance of Dave Worth and Mark Yantzi" (Peachey, 1989:15).

Accompanied by Yantzi and Worth, the two offenders... retraced their steps from the night of vandalism. They visited each of the places where they had damaged property, slashed tyres, or broken windows. The circuit took them to private homes, two churches, and a beer store. The probation officer and the MCC representative simply stood by with their notepads while the two youths knocked on doors, explained who they were, and why they were there (1989:15).

In all they spoke to twenty-one victims (an additional victim had moved and could not be contacted) whose damages totalled $2189.04. Approximately half of that amount had already been covered by the victims' insurance policies, leaving $1065.12 in actual losses to the victims (Peachey, 1989).

According to Peachey (1989), when the offenders returned to court on 26 August, 1974, Yantzi reported to the judge what had happened. The judge fined each offender $200, placed them on probation for eighteen months, and ordered that each
offender make restitution up to $550 to be paid to the victims as arranged by the probation officer Yantzi. The fine and the restitution were to be paid within three months. From this inauspicious beginning, Yantzi and his colleagues formulated a program proposal in 1975 which they called 'Victim/Offender Reconciliation Project' with its emphasis on offenders meeting their victims face to face and repaying the losses caused. Through such personal contact, the VORP process was also a way of challenging victims' stereotypes about 'offenders'. 
APPENDIX E

CORONIAL INQUEST INTO BELCONNEN REMAND CENTRE REMANDEE SUICIDE AND SUBSEQUENT ATTEMPTED COVER-UP
**Remand centre records falsified: custodial officer**

By RACHEL HILL

Falsifying detainees' observation sheets had been "common practice, tolerated" by senior staff at the Belconnen Remand Centre, ACT Coroners Court heard yesterday.

At the inquest into the death of a 21-year-old "prisoner at risk" who hanged himself in his cell at the centre last April, a custodial officer told the court he had been involved in falsifying such records.

Gavin Curbishley had been on duty when the youth, whose name has been suppressed, was found with torn sheeting around his neck.

He told Coroner Michael Somes that it had been "more convenient" to write up observations in blocks: "I'd have been done in the sight of a chief custodial officer."

Counsel assisting the coroner, Terry Buddin, said Mr Curbishley that filling out sheets depended on "mates... it was mates looking after mates".

Mr Curbishley, replied, "Yes..."

Earlier the court had heard evidence of irregularities in the filling out of records and observations taken. At times the observations, with one officer - Cevvy 15 to 30 minutes, had allegedly been missed for up to four hours.

Mr Curbishley had agreed that on numerous occasions observations had been filled out by someone other than the officer whose signature was on the sheet.

Mr Buddin went on to suggest that "as we speak, a prisoner at risk could be somewhere in the centre's yard without a monitor".

Mr Curbishley agreed.

Asked what safeguards were in place to ensure the safety of such prisoners, Mr Curbishley said, "only the 15-minute observations."

Mr Curbishley told the court he had been aware that the centre's standing orders had since been changed and that workers had been given to the end of the month to familiarise themselves with the new procedures.

He said that he had only "partially" familiarised himself with the new instructions but he understood

**Officers lied to inquest, coroner told**

By RACHEL HILL

Belconnen remand centre officers concocted observation sheets about a prisoner found hanging in his cell, had told lies about their conduct to the inquest, and, as late as Wednesday, had been ringing each other to make sure all told the coroner the same story, the ACT Coroners Court was told yesterday.

After the man was found, the custodial officers had given top priority to rewriting the observation record on the prisoner, who had been identified as being at risk of suicide, one officer said.

Custodial officer John Kelly, now on stress leave and showing obvious signs of distress, told the court that he and two other officers had taken part in rewriting the observation sheet shortly after the incident.

The 21-year-old man, whose name has been suppressed, had been placed in a special cell with 24-hour video surveillance because of suicidal tendencies and fears about his psychologic condition.

Mr Kelly, a former Commonwealth police officer, said fellow officer Brad Gordon had directed him and Gavin Curbishley to "fix up" the record.

Mr Curbishley appeared in court on Wednesday and had given evidence that observations had allegedly been recorded in multiple blocks rather than individually.

Counsel assisting the Coroner, Terry Buddin, asked, "Nothing?" Mr Kelly said.

"Did you observe him on the monitor?" Mr Buddin asked.

"No."

Earlier the court had heard that Mr Kelly had received a telephone call from Mr Gordon on Wednesday night instructing him to mention nothing about the rewritten observation sheet.

Mr Buddin said, "So the new..."

Continued on Page 2

**Custodial officers lied to inquest, coroner told**

Continued from Page 1

story goes: 'We'll admit to the blocking but don't mention a word about the rewrite?'"

While waiting for an answer Mr Buddin directed Mr Kelly to look at the dead man's parents and then face Coroner Michael Somes. He eventually conceded that this had been discussed.

Mr Kelly further agreed that he had been caught up in a "tradition of mateship".

On a number of occasions during the inquest, Mr Somes had repeatedly asked Mr Kelly to explain why the sheet had needed to be altered, reminding him of the truth.

Mr Kelly agreed that he had done nothing but lie to the court all day, and had been "caught out desperately".

He also said he had seen statements made by the other two officers before he appeared in court. Counsel for the parents, Ian Bradfield, said they were extremely concerned that they had been advised by remand centre officers that the cased place for their son was in the centre.

The inquest continues on Monday.
Death an ‘accident waiting to happen’, court told

By NICOLE LEEDHAM

A former custodial officer at Belconnen Remand Centre has admitted to the ACT Coroners Court that last year’s death of a detainee, aged 21, was “an accident waiting to happen”.

Walter Black, who has since left Corrective Services voluntarily, also agreed with a proposition from Terry Buddin, SC, assisting the coroner, that if this man had not died, it would have been someone else.

“It was just waiting to blow. It wasn’t a surprise when it came,” he said.

Coroner Michael Somes has been hearing evidence into the death, in which the detainee, whose name has been suppressed, was found hanged in his cell on the morning of April 15, 1996.

Three custodial officers, John Kelly, Gavin Curbishley and Bradley Gordon, have admitted to rewriting observation sheets after the man had been found. All three have been suspended from service since, pending the outcome of the inquest.

Giving evidence yesterday, Mr Black, who was in charge on the night of the death, broke down as he admitted to the court that he felt responsible because he now knew that he did not supervise his staff properly.

He agreed with a suggestion from Mr Buddin that he was part of a system which had let the detainee down. In fact, he said he felt “worse now” and he had been “badly let down by the people I had faith in”.

Earlier, the court heard that it was not unusual for night duty staff to sleep, watch television, play cards, or tend to other personal matters during their shifts.

Mr Black conceded that it seemed likely that not all observations had been done each night.

He said it was difficult to supervise his staff, because he had to remain in the control room and could not contact them. Under cross-examination from Chris Erskine, representing the territory, however, Mr Black admitted that isolation was just one of the reasons he could not supervise properly.

Mr Kelly gave evidence to the court last week that he had observed the dead man about 5.50am, 40 minutes before he had been found dead.

Yesterday, Mr Black agreed with Mr Buddin that “everything” he had heard in court told him that this observation had not been done. He also agreed with a suggestion that the man may have been dead for some time before he had been found.

The inquest continues to morrow.
Remand centre stands down accuser

By LIZ ARMITAGE

A senior custodial officer at the Remand Centre has been stood down from his job pending an inquiry into the death of a detainee. The centre's officer, a detective known as the Investigation Officer, was suspended in the wake of the death of a detainee who died in custody on April 15, 1996.

The officer was suspended pending the results of an investigation into the circumstances surrounding the detainee's death. The investigation is being conducted by the Coroner's Office, with the assistance of the ACT Police. The Coroner, Michael Somers, has also ordered the suspension of the centre's senior officer, who is also a detective.

The officer in charge of the Remand Centre, a detective known as the Investigation Officer, has been suspended pending the results of an investigation into the circumstances surrounding the detainee's death. The investigation is being conducted by the Coroner's Office, with the assistance of the ACT Police. The Coroner, Michael Somers, has also ordered the suspension of the centre's senior officer, who is also a detective.

Psychiatrist refutes inquest claims

By LIZ ARMITAGE

The ex-director of ACT Mental Health Services interrupted yesterday the inquest into the death of a detainee at the Remand Centre, during which a psychiatrist testified that there was no evidence of mental illness.

The Remand Centre is facing criticism over the death of a detainee who died in custody on April 15, 1996. The inquest, which was held yesterday, heard evidence from a number of police officers, including the officer in charge of the Remand Centre, who are under investigation by the Coroner's Office.

The psychiatrist, Dr. Rosenman, testified that there was no evidence of mental illness or any other form of psychological disorder that would have contributed to the detainee's death. The inquest, which was held yesterday, heard evidence from a number of police officers, including the officer in charge of the Remand Centre, who are under investigation by the Coroner's Office.

The psychiatrist, Dr. Rosenman, testified that there was no evidence of mental illness or any other form of psychological disorder that would have contributed to the detainee's death. The inquest, which was held yesterday, heard evidence from a number of police officers, including the officer in charge of the Remand Centre, who are under investigation by the Coroner's Office.
ACT Ombudsman damns remand centre

By PETER CLACK

Detainees from Belconnen Re- mand Centre have warned of the likelihood of suicide attempts at the outdated and overcrowded centre unless urgent improvements are made.

In a damning report yesterday, the ACT Ombudsman, Philippa Smith, identified many serious defects in procedures and conditions.

Ms Smith said there had been many "hanging points" in the centre. These had been removed.

A coroner is inquiring into the death in his cell last year of a 17-year-old centre detainee, Bernard Robert Campden.

This week, research by the Australian Institute of Criminology revealed 97 deaths in custody in Australia in 1996-97, the highest since 1980.

The ACT Government is in the early stages of moving towards building a prison and detention complex in Canberra.

A letter to The Canberra Times, signed by 18 detainees, condemns their treatment and conditions, arguing that they have not yet been found guilty and are entitled to treatment assuming their innocence.

One detainee, Matthew Smith, said he had been held at the centre for four months, and several others had been there more than six months.

"I have on numerous occasions been the victim of verbal abuse from both upper and lower ranking officers," he said.

Detainees were locked inside their cells for long periods, staff saying they were understaffed. There was little to do except watch television.

There had been four attempted suicides in one 36-hour period and no improvements since the start of the coronial inquiry.

He asked, "What will it take for something to be done about the BRC? Surely another death is something that we all would like to avoid?"

A spokesman for Attorney-General Gary Humphries said the courts determined the time detainees were at the centre.

"No one can be held in custody for longer than 15 days without it being referred back to a court for a renewal of remand or release on bail," he said.

"Lengthy periods on remand can be due to a numerous factors, although every effort is made to finalise matters in the shortest possible time."

The telephone system had been upgraded, with improvements to the voice mail and the installation of an answering machine. "If detainees are locked in their cells, they have access to welfare or legal telephone calls only."

"Throughout this year, the Government has conducted a number of reviews (giving) improved conditions for detainees. A refurbishment of the centre will give remandees an additional recreation centre."

"The health and welfare of detainees at BRC is very important and the Government makes every effort to ensure that they are properly looked after."

The Ombudsman found legislative requirements were not being complied with, guidelines were inadequate and problems of privacy and recreation, and intrusive searches.

"The remand centre was shabby in appearance, poorly ventilated and the cells and exercise yards generally backed space and natural lighting."

The Ombudsman has called for many improvements, including the transfer of juveniles to juvenile centres interstate.

More Ombudsman reports — Page 4

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**Editorial**

The Canberra Times — Page 23
36 Pages Vol 72 No 22,806
The death of a young man at Belconnen Remand Centre last year exposed some critical flaws in Canberra's criminal-justice system. Less than two weeks before he died, a fellow detainee had tried to hang himself in almost identical circumstances.

There was no investigation into the matter. It is alleged the detainees were banging on doors and pressing intercom buttons for 20 minutes before a guard was alerted to the situation. Detainee T was cut down by custodial officers in time to save his life. He was supposed to be on 10 minute observations, but his observations sheets were never signed.

Shannon Camden, 21, highly intelligent, and suffering from undiagnosed mental-health problems since he was six, was not so fortunate.

He was found hanging in his cell about 6.30 on April 15, 1996. Autopsy results indicated he had been dead for at least two hours. Coroner Michael Somes said this week it was "tragically significant" that the two officers on duty at the night of the night detainee T tried to hang himself.

A proper investigation by the ACT Government into the remand centre's acting superintendent, Arnie Van Hinthum, could have exposed the failings of these officers to perform their duties, the coroner said it could have prevented Camden's death.

The inquest that followed uncovered a culture of neglect and dishonesty that had manifested itself at Belconnen Remand Centre over a period of 20 years. There was, however, no protocol in regard to where detainees were placed. This was largely up to individual officers.

As one officer put it: "It is like playing a game of chess. You have to juggle them around and keep them in the right spot so they don't bash each other and harm themselves.

"There is no set rules, no set procedures. Each day is different.

Staff shortages at the remand centre meant restricted visits and phone calls — a source of distress for Camden's parents.

His mother, Lorraine Camden, said: "It is the feeling of being a parent. You know when your child needs you.

The fact that you can't be with them is very destroying in that you feel you are neglecting your child.

Shannon may be alive today if he had been able to talk to somebody."

The inquest revealed that custodial officers John Kelly, Gavin Curbishley and Bradley Gordon had lied to the court and forged observation sheets to cover up the fact that Camden was not being properly observed when he took his life.

Coroner Somes said he had clear evidence for health authorities to provide better service than was available to Camden in his last months of life.

He identified a conflict of interest in the role of the chief magistrate for the ACT and referred the case to the ACT Government and recommendations to them as to why this decision was made.

Two days after Camden died, Van Hinthum made the following statement to police: "Although Shannon Camden committed suicide at the remand centre on the 12th of April 1996, I am satisfied that all staff and centre management fulfilled all obligations as required by the Remand Centre Act and recommendations given to us by medical personnel." He later withdrew the statement.

This information was passed on to Van Hinthum, who later changed Camden's observations from 15 to 30 minutes. There was no documentation as to why this decision was made.

On remand: ACT System

SENTENCED
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The inquest revealed that custodial officers John Kelly, Gavin Curlewis and Bradley Gordon had lied to the court and forged observation sheets to cover up the fact that Camden was not being properly observed when he took his life.

Coroner Somes found that these three officers and their supervisor, Walter Black, had contributed to the cause of death. Van Hinthum, "inadequate" in the role of superintendant, had also contributed.

Senior custodial officer Graham MacKenzie had failed to report the conspiracy to police. He faces possible perjury charges along with Kelly Curlewis and Gordon.

Coroner Somes said there was clearly a need for ACT Health Services to facilitate speedy preparation of mental health assessments. He proposed a complete review of the Belconnen Remand Centre by an external agency, with particular attention to administrative procedures.

To facilitate the flow of information, the Government announced this week the appointment of a Corrections Health Services director to the Remand Centre.

The coroner also recommended adequate resources be provided to ACT Mental Health Services to facilitate speedy preparation of mental health assessments.

He proposed a complete review of the Belconnen Remand Centre by an external agency, with particular attention to administrative procedures.

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APPENDIX F

A CONSEQUENCE OF MANDATORY SENTENCING LAWS
NT minister's son faces jail if found guilty

DARWIN: The son of the Northern Territory's Correctional Services Minister appeared briefly in court yesterday to face charges that, if proved, would see him jailed under the territory's tough "one-strike-and-you're-in" jail laws.

The minister, Eric Poole, who supported the controversial legislation but admitted recently he regretted the "odd incidents" of people being jailed as a result of it, was not in court when his 24-year-old son Cameron Bruce Poole appeared.

Because Cameron Poole is charged with unlawful entry and stealing, he faces a minimum mandatory jail term of 28 days if found guilty.

Under the controversial mandatory sentencing legislation, which came into effect in March last year, anyone aged 17 years or over found guilty for the first time of crimes such as theft (except shoplifting in business hours) and unlawful entry must be sentenced to at least 14 days' jail.

It does not matter what the circumstances of the offence or how little was stolen.

And, according to as-yet untested recent amendments to the law, magistrates and judges must add together any multiple mandatory sentences they hand down for any person.

Police allege Cameron Poole unlawfully entered a room at the Don Hotel in Darwin on the night of June 21. They say he stole $US182 ($A293) as well as a camera, sunglasses and pouch valued at $210.65.

At the hearing yesterday, Cameron Poole's bail of $1500 was extended and he was ordered to appear for a committal hearing on November 3.

His father has refused to comment on his son's case but when asked about another mandatory sentencing case in which a 27-year-old woman of impeccable character was facing 14 days' jail for pouring water over an electronic till in a dispute over a hot dog, Mr Poole indicated that he had some regrets.

"Whilst I would suggest that everybody in government regrets those odd incidents, the Government has made a decision that for various crimes in the Northern Territory, you will serve a mandatory term of imprisonment and that is the way that it is," he said last Friday.

Under the sentencing legislation, those who reoffend after serving their 14 days are dealt with much more harshly.
APPENDIX G

QUEENSLAND'S PURSUIT OF PUNITIVE JUSTICE
Qld gets tough on serious criminals

BRISBANE: Serious offenders found guilty by Queensland courts would do at least 80 per cent of their sentences in jail under tough new measures announced yesterday by state Attorney-General Denver Beanland.

"For example, a rapist sentenced to 15 years with a non-parole period of six years will now serve at least 80 per cent of the sentence behind bars under the new laws. That's 12 years, not six," Mr Beanland said.

Some of the serious offences captured by the new laws include rape, attempted murder, armed robbery, sexual assault and serious drug crimes.

The new laws, to be debated in state Parliament this week, would automatically apply to anyone sentenced to 10 years or more. Criminals sentenced to five years or more may also be branded a serious violent offender at the discretion of the court.

"These laws are a triumph for common sense and will help make Queensland safer," Mr Beanland said. They would do away with the principle that jail was the last resort and would ensure the court's primary consideration when sentencing violent criminals was the protection of the community.

"These changes will keep dangerous criminals out of mainstream society," Mr Beanland said. The Coalition's law-and-order package was designed to make offenders, and in some cases their families, responsible.

Under changes to the Juvenile Justice Act already in place, parents could be forced to attend court to explain their child's behaviour.

Changes to the Criminal Code had given citizens a clearer right to defend themselves and their homes. "Parents have also been given the right to manage, discipline and control their children, which includes smack ing them if necessary," Mr Beanland said.

Changes to the Penalties and Sentencing Act gave a simple message — do the crime, do the time, he said.

Mr Beanland said the state's Criminal Code Act 1989 had been thoroughly overhauled.

The wide-ranging changes included a crackdown on child abusers and paedophiles, home invaders and fraudsters, computer hackers, graffiti artists and serious violent offenders.

Queensland Civil Liberties Council vice-president Terry O'Gorman criticised some of the changes to the Criminal Code.

He said one prohibited a person from receiving a benefit by agreeing to discontinue a criminal complaint.

"If a burgled householder approaches a suspected offender and says he will not report the burglary to police if he gets his property back, the householder can be charged with the criminal offence of compounding a crime," he said.

Mr O'Gorman also criticised the proposal to prevent a person suing for injuries sustained while breaking the law.

"It was intended to prevent burglars suing a householder because he tripped over a garden hose and broke his leg," Mr O'Gorman said. But he said the way the law was framed would prevent a person who had an arm broken by a security officer while stealing a packet of cigarettes from suing.

Schoolyard intruders could soon face tougher penalties and jail sentences as part of a crack down on people trespassing on NSW schools by the Carr Government.

"I want to see kids and teachers protected from outsiders," Education Minister John Aquilina said. "About a quarter of violent incidents in schoolyards involve people who are not part of the school community."
APPENDIX H

TERMINATION OF ACT COMMUNITY SERVICE ORDERS SCHEME
Man hurt in home invasion

A Queanbeyan man was injured when three home invaders beat and robbed him on Wednesday night.

Police said the man, 48, had been tricked into opening his front door by a man asking for a light for his cigarette. The man and two others wearing balaclavas had pushed into the house, attacked the man and stolen money, alcohol and cigarettes.

Ambulance officers treated the man at the scene for a possible broken nose and bruising. He refused transport to hospital.

Police said this was the second home invasion involving violence in Queanbeyan this week.

On Sunday there was an attempted robbery of a shopkeeper in the Karabar shopping centre. A man aged 50 was assaulted before the male attacker fled.

In another incident, a pregnant Queanbeyan woman disturbed and scared off an intruder who had entered her kitchen in Early Street on Wednesday.

Police asked that anyone with information to contact them on 6280 2208.

Burnie Court clean-up plan

The ACT Government is seeking $30,000 from the Federal Government's national Fear of Crime scheme to remove graffiti from the ACT Housing Trust flats complex at Burnie Court.

Attorney-General Gary Humphries said the program would aim to work with Burnie Court residents to clean up graffiti and vandalised property to help a sense of community.

By GEORGIA CURRY

UP TO 500 households in the frail and disabled community are set to lose free community services following the closure of a Corrective Services "work gangs" program.

The ACT Government has scrapped the program — part of the Community Service Orders (CSO) Scheme, which allocates hours of community work through the court system to rehabilitate offenders — after more than 10 years of its successful operation.

Justice and Community Safety Minister Gary Humphries said the work gangs created an unhealthy environment for offenders and that the restructured CSO scheme would generate more than $1 million in budget savings.

However, those dependent on gang work, such as the Health and Community Care program Handyhelp, received no written notification that the program would close and, according to executive officer Helen Holgate, "it's going to leave a gap".

"I don't think we'll be able to meet the requests that we have from the frail-aged and disabled and I don't believe that they will have an alternative means to get that work done," she said.

Handyhelp is contracted by the ACT Government to coordinate volunteers to do general house maintenance to help frail-aged residents and people with disabilities to maintain independence in their own homes.

Although the CSO program would continue to place individuals in Handyhelp jobs, Ms Holgate said this was no replacement for the program that the lai~

BRIGGS: • • • • • •

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Continued Page 6
TIME was when I carried in the intimate trust and twoway confidence which existed between me and my bank. Bank tellers were proud to provide personal service to their clients. I used almost to feel like a member of My Bank's family.

Then, one by one, My Bank's tellers began to disappear. I was sad. I became confused and afraid when My Bank started to hint that it was moving into the business of "marketing client-oriented finance packages".

For at least three months domestic animals for such purposes and the ACT division opposes moves to rescind the 1992 law.

MICHAEL HAYWARD
Australian Veterinary
Scheme abandoned wastefully

ON SATURDAY, May 9, a public auction was held at Belconnen to sell off all of the property-maintenance equipment used by the Community Service Order work gangs.

On the same day, Minister Humphries was seeking $30,000 from the Federal Government "to remove graffiti from the ACT Housing Trust flats complex at Burnie Court" (CT, May 9, p.5). What a cruel joke!

One of the projects that the now-defunct CSO work gangs carried out with some distinction, four years ago, was the removal of graffiti from ACTION bus shelters.

The equipment, used by the gangs, will be auctioned.

Like a lot of other good initiatives that emanated from CSO staff up until 1984, the ACTION project fell by the wayside in Corrective Services management's unjustifiable push to destroy the CSO scheme. That destruction is now complete.

The very equipment needed to carry out the many CSO projects has been auctioned on the quite spurious grounds that the CSO scheme was "too costly".

Minister Humphries compounds his ignorant and stupid decision to "sell off the farm" by now seeking Federal Government financial assistance, and by telling the 500 households (mainly pensioners) who previously benefited from the free CSO scheme that, in future, they will have to pay $30 or more to a private contractor. His suggestion that the Periodic Detention Centre offenders can fill the gap is utter nonsense.

ROY NORRMAN
Lyneham

As expected, the Capital Territory has been saved initially under the new scheme, with recurring savings of more than $100,000 annually.

"The services previously offered by the CSC scheme were costing Canberra taxpayers considerably more than an outside contractor had been paid to complete the same work," he said.

"A job that could have been completed by a private contractor for $30 was costing the taxpayer $200 through the old CSO scheme."

The last gang was sent out last Wednesday. The equipment used by the gangs — also used by preschools and play groups — will be auctioned.

PETER SHEKELTON
Hawker

Please go ahead with saving. Go ahead with the trials, which was quite rare.

Govt scraps work gangs

From Page 1

"The primary function of corrective services is to rehabilitate offenders in order to reintegrate them into mainstream society," Mr Humphries' spokesman said. "Free labor will still be offered to Handyhelp and many other community organisations, although I will now come in a different form."

The spokesman said more than $1 million would be saved initially under the new scheme, with recurring savings of more than $100,000 annually.

"The services previously offered by the CSC scheme were costing Canberra taxpayers considerably more than an outside contractor had been paid to complete the same work," he said.

"A job that could have been completed by a private contractor for $30 was costing the taxpayer $200 through the old CSO scheme."

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GEOGRAPHICAL DATA OF VARIOUS AUSTRALIAN JURISDICTIONS

TASMANIA

Tasmania, Australia's smallest state, is located about 24,000 km of Victoria and is separated from it by a stretch of water known as Bass Strait. The land area of Tasmania is 68,848 sq km which is 9.65 percent of Australia's total land area and the coastline is 24,954 km. It is an island that is quite mountainous, the highest peak being Mt. Ossa at 1,617 m. (Phillips, 1971). Located in the temperate zone with a cool climate, Tasmania is the only Australian state with a plentiful supply of water all year round. The first permanent settlement on this island was established in September, 1803, at Risdon Cove, near what is now Tasmania's capital city, Hobart (Higgins, 1956). The main sources of employment and development are the hydro-electric schemes, telecommunication facilities and mining operations (Higgins, 1956).

APPENDIX I

GEOGRAPHICAL DATA OF VARIOUS AUSTRALIAN JURISDICTIONS

WESTERN AUSTRALIA

Because of its size and varied geology, Western Australian climate shows significant differences, for example, in the north of Western Australia, which is located on a coastal plain, maximum temperatures vary between 22°C in summer and 12°C in winter (Higgins, 1956). Moving south west to the mid west and southern regions in the Kimberley, the climate is hot and dry from November to March but during the winter months, almost rain falls. Average annual rainfall is about 600mm (1990). Proceeding north down to Perth, the state's capital, summer temperatures average 25°C and in winter, 15°C, average annual rainfall along the south coast (Robson, 1990). In the far south of the state, Albany and Esperance experience cooler temperatures and slightly higher rainfall. Further inland, a large part of the state, which and includes much of the southwest, is a typical Mediterranean climate with temperatures in winter averaging 10°C and growing in summer to 25°C. The west is the wettest part of Western Australia, with many areas receiving over 1000mm of rain annually. The best permanent settlement was established at King George Sound and called Fremantle. Major industries are coal, pastoral, wool, lumber, and increasing mining and offshore oil drilling. Agricultural products, livestock, and the fishing industry are also major export earners for Western Australia (Higgins, 1956).
GEOGRAPHICAL DATA OF VARIOUS AUSTRALIAN JURISDICTIONS

Tasmania:

The island of Tasmania, Australia's smallest state, is located about 240km south of Victoria and is separated from it by a stretch of water known as Bass Strait. The total area of Tasmania is 67,800sq km, which is 0.88 per cent of Australia's total land area, and the coastline is 3200km long and surrounds an island that is quite mountainous, the highest peak being Mt Ossa at 1617m (Philips, 1981). Located in the temperate zone with a cool climate, Tasmania is the only Australian state with a plentiful supply of water all year round. The first permanent settlement of just 49 individuals was established, in September, 1803, at Risdon Cove, near what is now Tasmania's capital city, Hobart (Higgins, 1986). The main scientific and technological developments are the hydroelectric schemes, telecommunication facilities and mining operations (Higgins, 1986).

Western Australia:

Because of its size and varied geomorphology, Western Australia experiences marked climate differences. For example, in the far north at Wyndham, which is situated on a coastal plain, maximum temperatures vary between 32°C in summer and 18°C in winter (Higgins, 1986). Moving south-west to the iron ore mining regions of the Kimberley, the climate is hot and wet from November to March but, during the winter months, almost no rain falls. Average annual rainfall is about 700mm (1986). Proceeding on down to Perth, the state's capital, summer temperatures average 24°C and, in winter, 15°C; average annual rainfall is about 890mm (1986). In the far south of the state, Albany and Esperance experience cooler temperatures and slightly higher rainfall - 965mm. A large inland portion of the state is desert and summer temperatures average 35°C whereas in winter the average is 11°C (1986). The first permanent settlement was established at King Georges Sound and called Frederickstown. Major industries are gold, diamond, nickel, bauxite, and iron ore mining, and off-shore oil drilling. Agricultural produce, livestock, and the fishing industry are also major export earners for the state (Higgins, 1986).
Northern Territory:

The Northern Territory, most of which is located north of the Tropic of Capricorn, encompasses an area of 1,346,200sq km, or 10.43 per cent of the total area of Australia. Its coastline, which seldom reaches 30m in height, is 6,200km long and faces the Timor Sea (Philips, 1981). The Territory has two main climates: the wet season from November to April, and the dry season from May to October. Weather changes are uniform and almost all rain falls in the summer, such that rainfall is 1,658mm and the average annual temperature is 27.5°C (Higgins, 1986). This contrasts sharply with the southern part of the Territory where, for example, in Alice Springs, annual rainfall is only 286mm and temperatures average 20.8°C (1986). Like Western Australia, the greater part of the Northern Territory is uninhabitable desert, hence the frequent if unkindly reference to the area surrounding Alice Springs as "the Dead Heart." The first white settlement was made at Port Essington, on the north coast, in 1823. It was a temporary trading station, however, and it was not until 1869, at Port Darwin, that a permanent town called Palmerston was established. The name of Palmerston was later changed to Darwin (1986). The main rural industry in the Northern Territory is beef cattle production, with the fishing industry a close second. Tourism, and the mining industry are also vital contributors to the Territory's economy - particularly the mining of manganese ore on nearby Groote Eylandt and bauxite in the Gove Peninsula (Higgins, 1986).

New South Wales:

New South Wales occupies a land area of 801,428sq km or 10.43 per cent of Australia's total area. Its coastline, bounded by the South Pacific Ocean and the Tasman Sea, is 1900km in length (Philips, 1981). The state experiences a wide range of climatic conditions: a semi-tropical north coast, an alpine zone in the Australian Alps in the south, and a desert-like region in the west. Temperatures vary widely - for example, the lowest temperature ever recorded in Australia was minus 22°C, in 1945 and 1947, at Charlotte Pass in the Australian Alps. In contrast, at Tibooburra in the state's far north-west, temperatures frequently reach 40°C in the summer months of December to February.
Sydney, the state's capital, experiences an average maximum midsummer temperature of 25.7°C (average minimum is 18.3°C) and an average midwinter maximum of 15.8°C (average minimum is 7.8°C). Rainfall is highest in the coastal districts, with average annual rainfall in the far north being 2,000mm and decreasing in the south to 750mm. However, more than one-third of the state receives less than 350mm (Philips, 1981). Sydney has a fairly evenly distributed average annual rainfall of 1,140mm. Wool, wheat, and cattle production are the state's major agricultural activities (Higgins, 1986). The first permanent settlement was established at Port Jackson in 1788. In 1840, the state became constituted as a Crown colony (Philips, 1981).

Queensland:
The land area of this, the second largest Australian state, occupies 1,727,200sq km or 22.48 per cent of Australia's total. Queensland is also one-fifth the size of the USA. Queensland stretches 2,100km north-south and 1,450km east-west, with a coastline that is 7,400km long and bounded by the South Pacific Ocean and the Coral Sea. 54 per cent of Queensland lies in the tropics, so the climate, like the rainfall pattern, varies widely. Most of the rain occurs in summer, between December and March. Tully, on the northeast coast, is the wettest area of the continent with an average annual rainfall of 4,400mm. By contrast, Mount Isa in the arid north-west receives only 394mm annually, and Brisbane, the state's capital, located on the south-east seaboard, enjoys an average annual rainfall of 1,148mm. Brisbane's average maximum midsummer temperature is 29.4°C and in midwinter its average maximum is 20.3°C. Cairns in the north-east records 31.5°C and 25.4°C, respectively; whereas Longreach in Central Queensland has readings of 37.8°C and 25.2°C (Philips, 1981). Brisbane was established in 1824 as a convict colony and did not become open to free settlers until 1842. Queensland did not become a separate colony with responsible government until 1859. Development of the state's mineral resources has meant that manufacturing now outstrips rural production, once the foundation of the state's economy. Sheep, cattle, and grain production are still the rural industry's backbone (Higgins, 1986).
South Australia:

This state is located in the central area of Southern Australia, and has a land area of 984,000sq km, which is 12.81 per cent of Australia's total. The length of its coastline is 3,700km (Philips, 1981). It shares borders with every other mainland state and the Northern Territory (Higgins, 1986). Almost 83 per cent of the state receives less than 250mm of rain annually, and Adelaide, the state's capital, is the driest of all Australian capital cities with an average annual rainfall of just 544mm (Philips, 1981). The vast arid northern part of the state, with average annual rainfall of less than 130mm, accounts for three-quarters of the land area and its population of about 10,000 live mostly on large pastoral holdings (Higgins, 1986). The average maximum midsummer temperature is 29.6°C, and an average minimum of 16.4°C; and the average maximum midwinter temperature is 15.0°C, with 7.3°C being the average minimum (Philips, 1981). Adelaide was founded by free settlers in 1836 and South Australia gained colonial statehood (that is, responsible government) in 1855. Despite the low rainfall throughout much of the state, South Australia has developed a highly efficient farming system, so that the main agricultural crops are wheat, barley, wool, fruits, and wine (Higgins, 1986). Iron ore mining and petroleum production are the main industrial pursuits, along with motor vehicle and home appliance manufacturing, fishing and forestry (Philips, 1981).

Victoria:

Victoria's land area is 227,600sq km or 2.96 per cent of the total for Australia. Its coastline measures 1,577km (Philips, 1981), and is bounded by The Great Australian Bight, Bass Strait and the Tasman Sea. While it is the smallest mainland state, it is only 608sq km smaller than Great Britain (Higgins, 1986). Most of Victoria is located in a warm, temperate climate characterised by hot summers and cool to mild, wet winters. Rainfall is heaviest in the east and north-east, with an average annual rainfall of about 860mm, and lightest in the Mallee scrubland of the north-west, with 327mm (Philips, 1981). Temperatures in and around Melbourne, the state's capital, average 19.0°C in summer and 10.0°C in winter. In the far west of the state, summer temperatures average
in excess of 34.0°C, whereas on the Great Dividing range, snow falls in winter and temperatures can fall to as low as minus 10.0°C (Higgins, 1986). The highest point in the state is Mount Bogong at 1986m. The first permanent settlement was created in 1834, near Portland on the south coast, and, a year later, Melbourne was established. Victoria became an 'official' colony in 1851. In 1856, Victoria pioneered the secret ballot - a system now widely known overseas as the "Australian Ballot" (Philips, 1981). Wheat, oats and barley are the main field crops in Victoria, whereas pastoral farming has steadily declined during the twentieth century. Food processing of the state's fruit and vegetable production is one of the state's largest manufacturing industries (Higgins, 1986).

Australian Capital Territory:

The Australian Capital Territory, which is geographically located within the state of New South Wales, comprises two areas, one where the city of Canberra is situated and which is 2327sq km in area; and a second which is located at Jervis Bay (the Territory's sea port) on the New South Wales south coast and has an area of 73sq km (Higgins, 1986). The length of coastline that thus 'belongs' to the ACT is 35km (Philips, 1981). The reason for the Territory's landlocked location being in New South Wales was that Victorians would not agree to having Sydney as Australia's capital city, and the people of New South Wales would not agree to Melbourne being made the nation's capital. Thus, Canberra, in the ACT, became the acceptable compromise. The city of Canberra occupies about 31sq km, with about 100,000 hectares reserved for parks and other public grounds. The remaining land is mostly used for pastoral, farming and forestry. Topographically, the land is generally elevated between 500 and 700m with several peaks along their western border ranging in height between 1500 and 1900m. Average annual rainfall is 600 to 700mm, and temperatures fluctuate between 20.0°C and 30.0°C in summer and, in winter, between 2.0°C and 10.0°C (Higgins, 1986).
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