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BOOK REVIEW

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RETHINKING LAW & ORDER

AUTHORS: Russell Hogg and David Brown
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David Brown is Professor of Law at the University of New South Wales. Russell Hogg teaches law at Macquarie University and is a member of the NSW Crime Prevention Council. They have combined to write an interesting book about the sociology and economics of crime and the politics of law and order.

In their preface, the authors disclose that the book was conceived at a State of Origin rugby league game in 1986. From this unpromising start, over a decade, they have been reflecting on trends in criminal law, criminology and politics in Australia and in other countries with a similar legal culture, especially the United States and the United Kingdom. There is much food for thought in the book although it is not always easy reading, being packed with theoretical discussion, data and conclusions which the authors frankly admit combine to paint a picture which is "bleak but not hopeless".

It is hard to come away from a book about crime and social responses to it

amongst politicians to demonstrate that each political party is more "tough on crime" than its opponents. This book shows how the complexity of the problem and the frustrations of dealing with it effectively are often swept aside by editorial demands to "Lock them up!". One of the chief points made by the book is that, although that strategy has been embraced enthusiastically by succeeding Administrations in the United States of America, it has scarcely dented the overall crime rate in that country or its steady trends. And it has led to 1.7 million Americans in custody.

The authors are at pains to demonstrate that crime, like the poor (and it is not coincidental), has always been with us. So have the demons used to strike alarm in the hearts of ordinary law abiding citizens. The "ticket of leave" men in the 1830s. The "larrikins" in the 1890s. The razor gangs of the 1930s. The bodgies and widgeys of the 1950s. And now the youths who "roam the streets" declaring "war on society" by wearing baseball caps back to front. Brown and Hogg show that demonology is never far from the surface in the popular images of crime.

Much attention is paid by the authors to the political scene in the United States because of their fear that from that country will probably come Australia's political responses to law and order. President Bush demolished Governor Dukakis in the campaign of 1988 with the aid of advertisements accusing the latter of being personally responsible for the violent crimes of Willie Horton, who had been released from prison when Dukakis was Governor of Massachusetts. Bush's advertisement featured a menacing mug-shot of Horton, an African American, cleverly used to play on community hostility and fear. By the time President Clinton challenged Mr Bush, he had learned well from this experience. He promised, and later delivered, a \$US30 billion law and order crime bill. This introduced into federal law in the United States a "three strikes" provision imposing a mandatory life sentence on anyone convicted of a felony for the third time. It also provided for a hundred thousand new prison places and money for a hundred thousand new police officers. During his first campaign, Mr Clinton took time out from the hustings to return to Arkansas as Governor to sign a final death warrant of a convicted black prisoner whom the authors describe as "so severely brain damaged that he did not understand that he was to die". This is the politics of law and order in the United States.

By reference to the promises of Australian politicians in electoral campaigns of the 1990s, Hogg and Brown suggest that the same competition for a "virile image" has caught on here. They describe how the political auction is egged on by identifiable sections of the media. In an interesting section of this book, they seek to contrast the political forces working for a large measure of economic freedom from government interference with those pressing for an increase in governmental control over those who break the law. They suggest that a metaphor for this imbalance, produced by an economic ascendancy in policy-making in Australia, can be seen in the huge amounts syphoned off by notorious corporate high-fliers. In one case, the shareholders in Bell Resources lost \$1.76 billion which Hogg and Brown point out represented approximately 18 months of accumulated burglaries by little offenders who jam up Australia's criminal justice system and the prisons. Ordinary citizens, it seems, do not feel particularly threatened by well-dressed business tycoons. But they do feel threatened by the burglars, robbers and small time thieves who...

Three lessons emerge from the book for those who are looking for positive ideas which might work. The first is a general point that should run through all social and legal policy but in the emotional work of law and order can easily be overlooked. The authors insist that the only real basis for sound policy on criminal law is empirical data. Sadly, this tends to be ignored in the heat of political campaigns. Bureaus of Crime Statistics have been established for some time and uniform crime statistics have at last been achieved. Long-term offending and clear-up rates tend to be relatively stable but passing variations are seized upon to provide political catch-cries alleging that those in charge are "soft on crime". Statisticians are denounced for being out of touch with popular opinion. Anyone who disagrees with the populist editorialist has his or her professional competence challenged and now, increasingly, must face distraught relatives and the victims of crime. Brought together by the media and by understandable anger, these people cry out for withdrawal of civil liberties, an increase in custodial sentences, reduction of legal aid and the enhancement of official powers. Hogg and Brown suggest that the only effective way to respond to such demands is constantly to bring the minds of politicians, officials and thinking members of the public back to empirical crime data. Not only does this tend to destroy the alarmist theories of rapid increases in crime, it helps to identify basic causes (such as long-term unemployment, social despair, drug use, etc). It also undermines the simplistic notion that more prisons will make the streets of Australia significantly safer.

The second solution offered by the authors lies in the targeting of marginalised groups so that the causes of their isolation and involvement in crime can, wherever possible, be addressed. They single out unemployed youth, heroin users, Aboriginals and homosexuals as minority groups requiring initiatives in policing which draw on the communities involved. A significant improvement in police relations with homosexual citizens followed the repeal of criminal laws which formerly targeted them. Symbolic of the change in community relations was the contingent of NSW Police who marched in the 20th Gay and Lesbian Mardi Gras Parade in Sydney in 1998. No participants gained more wholehearted applause from the crowd. Are there lessons in the improvement of police community liaison in that field for the other groups identified? Is it appropriate to withdraw the criminal law from some of its present activities which have caused the isolation of groups who make up the bulk of present criminal offenders? The authors pay special attention to the problems of regular heroin users. They contrast the "zero tolerance" approach of many political leaders with that of "harm minimisation" which they favour. They suggest that, at least amongst the young, the latter is a much more promising strategy by which to take large numbers of otherwise law-abiding people out of the criminal treadmill. An obstacle to doing so, they point out, is political fear engendered by populist media in an atmosphere which they describe as "uncivil politics". The authors express concern about this atmosphere which will lead Australia down the path to a community in which two-thirds of the people are relatively well off and live in suburbs locked off against the deprived one-third. Such suburbs can be seen in South Africa, in many parts of Asia and in the United States. The underlying objective of this book is to address attention in this country to the strategies that will avoid that outcome.

The final section of the book lists other strategies which may be adopted in

in the use of knives carried by young people presents a new challenge to the imagination of those designing effective programmes of crime prevention.

The authors describe crime prevention strategies adopted in several overseas countries, including the United Kingdom and France. They outline initiatives in Australia, notably in South Australia and New South Wales where special efforts have been made to coordinate government policies on responses to crime. There is a useful treatment of the way in which local government is increasingly building into urban planning requirements aimed at reducing the opportunities for offending. These may be areas in which law can make positive contributions and not simply turn up, after the event, to attempt to identify the offender, determine guilt and impose punishment. Yet the book is depressingly short of positive responses of this kind. It offers no analysis of the suggested success of some political strategies (such as that which is said to have reduced the homicide rate in New York). It does not really examine attempts, by education, to combat criminality. More could have been said about the possibilities of redesigning criminal law to concentrate more effectively on redefined targets. And virtually nothing is written about the new challenges presented by transborder crime and crimes which use the latest technology to do widespread social harm. If the problems have been hard in the past, they are not getting any easier.

Are we condemned, in the criminal law of Australia, to more of the same? The ultimate appeal of this book is to those who have responsibility for law and order, to think again about the ways in which we can respond in a manner which accepts the limits of the capacity of policing and of the justice system, responds effectively to the demands of victims and a frightened community, prevents crime from occurring wherever we can and minimises the harm done by the available systems of punishment. In the end, everyone must contribute to these objectives. But because judges and lawyers have such a vital role to play in the system as it operates, they do well to inform themselves about the problems and such of the solutions as may be applicable to this country. I do not pretend that the book by Mr Hogg and Professor Brown is light reading or that I agreed with all of the authors' conclusions by any means. But as elections in Australia loom, their book is undoubtedly a timely reminder of the dangers and futility of the punitive policies auction. It demonstrates the need for those in the know to counter-balance the strident voices which demand quick-fix solutions.