

Public Opinion, Politicians and Crime Control



RETHINKING LAW AND ORDER

By Russell Hogg & David Brown
(Pluto Press 1998 pp 256 \$24.95)

SCARCELY a day goes by in which the media do not seek to exaggerate and exploit the public's perception that crime — and particularly violent crime — is spiralling out of control. Newspaper and other media proprietors are keen to fuel that perception and to point to the failure of governments to deal with it effectively. In a recent newspaper article entitled 'Crime Hits Confidence', a local reporter, Burns, stated that 'Westpoll' (a survey conducted for *The West Australian*) had found that —

The Court government's performance on law and order was rated as unacceptable by 51 per cent of voters surveyed, with just one per cent claiming the government had done very well in the fight against crime.¹

The Opposition leader, Dr Gallup, responded with the pitch that the public 'had been let down by a weak government'.

It is this mind-set that concerns Russell Hogg and David Brown. Western Australia, like other Australian States, is in the grip of a political law-and-order frenzy in which the current Coalition government is seeking to increase the length of prison sentences and at the same time reduce community-based alternatives to imprisonment.² Given that law-and-order is such a controversial issue, it is timely that this book has been published.

1. A Burns 'Crime Hits Confidence' *The West Australian* 25 July 1998, 4.
2. See eg the Sentence Administration Bill 1998 and Sentencing Legislation Amendment and Repeal Bill 1998 that propose the abolition of work release and home detention, a lengthening of the sentences served where offenders are eligible for parole and a tightening of the eligibility criteria.

Politicians, of course, are keen to give the appearance of responding swiftly and decisively to the perception that violent crime is getting out of control. Tougher law-and-order policies have thus become a predictable criminal justice trend and there does not seem to be any serious opposition to this development, at least at the moment. Hogg and Brown, however, are keen to debunk the rhetoric behind the law-and-order stance of many Australian politicians. Their views are challenging and provocative, and their book provides a well argued critique of conventional government thinking on criminal justice policy. It examines how and why 'the dominant form of law-and-order "commonsense" has failed us, and how we might develop a more responsible and constructive law-and-order politics which takes crime, fear of crime, and criminal justice *more* rather than less seriously' (p ix).

Hogg and Brown do not deny that crime prevention is a serious issue confronting criminal justice policy-makers in modern western societies. But whilst acknowledging that there is a need to reduce crime, they are highly critical of the process of electoral politics and the deleterious effects which it can have on the development of a rational criminal justice system. 'The major parties', they say, 'parade tough law-and-order policies as a leading element in their platforms.... Many appear to welcome any opportunity to show their virility by adopting harsh law-and-order measures' (p 1).

In Chapter 2, the authors identify seven enduring myths of the law-and-order lobby:

- 'Crime rates are soaring!';
- 'It's worse than ever!' – law-and-order nostalgia;
- 'New York and LA – the shape of things to come!';
- 'Going soft on crime – the criminal justice system does not protect ordinary citizens!';
- 'We need more police with greater powers!';
- 'We need tougher penalties!'; and
- 'Victims should be able to get revenge through the courts!'

Discussion of these dogmas provides a useful thread for the book as a whole and the authors 'explore [in] some detail the elements of the law-and-order "commonsense" that forms the bedrock of [a] crisis of perspective' (p 21). They also provide an excellent outline of the social history of crime and the criminal justice system, focusing on New South Wales.

An important aim of the book is to sound a clear warning against the consequences of governments relentlessly pursuing an indiscriminate and unthinking law-and-order approach to criminal justice reform:

The ascendancy of the political 'right' in Australia presents the very real danger that governments will be increasingly driven by the notion that social order is, in essence, synonymous with market order. If so, we can almost certainly expect to see deepening social divisions, and probably rising crime rates, as the economy is

further internationalised ...[and] government provision eroded.... A repressive law-and-order politics will assume even greater prominence as a discourse and tool for managing the social fall-out [of government reforms], just as it has done in other parts of the world (p 179).

Thus, for the authors, the policy path of law-and-order will, paradoxically, create further divisions in society and increase crime rates. It is a sobering thought, but who will heed it? Regrettably, the authors do not tease out the precise mechanisms or impetus for 'progressive change', as they define it. Nevertheless, their conclusions are rational and humane, and will appeal to imaginative policy-makers, though many business entrepreneurs and mainstream politicians will not share them. Such people play to the tune of profits and opportunism, rather than reason and justice.

As the authors note, the financial and structural constraints on building more and larger prisons are now being swept away by the emergence of large multinational corporations which have a strong commercial interest in designing, financing and operating private prisons. This means that progressive government ministers have lost an important and convenient excuse not to incarcerate more offenders for longer periods: after all, now that governments can afford to expand the capacity of the prison system without cost to the public purse, what excuse could there be for not doing so?

Despite their pessimism, the authors are mildly optimistic about the possibility for the current 'law-and-order commonsense' to be weakened and for a more co-operative approach to emerge. Since the current policies have failed so badly there must be some pressure for reform. Unfortunately, the precise way in which such reform may be brought about is not fully explored; this is an area which could have received more detailed attention. However, community service orders, family group conferencing of juvenile offenders, and moves towards community-based problem-solving rather than prosecution-oriented approaches, are mentioned as illustrations of a trend towards a more enlightened approach. Disappointingly, one important movement that is not discussed is the 'Restorative Justice Movement', which is now gaining increasing recognition in influential circles, particularly in New Zealand.

One problem with the book (although this is not a criticism of its authors) is that the key political players, both of the right and left, who would most benefit from its insights are the ones least likely to read it. This is a paradox of modern political decision-making and one that is highly disconcerting to policy-makers who can see the futility of continuing to pursue the stock law-and-order approach to criminal justice reform. Where there is a strong feeling in the electorate that violent crime is increasing, as there is today, any statement by a political leader that prison is ineffective and that community-based alternatives are preferable is tantamount to electoral suicide. It is a harsh fact of life that most politicians will

pander to whatever feelings the public has regarding the most appropriate means of controlling violent crime, even when they know that those feelings are palpably wrong.

On a brighter note, a recent example from within the Western Australian criminal justice system suggests that there may be a growing awareness of the limitations of the 'commonsense, law-and-order' approach to dealing with crime. A Report of the Parliamentary Standing Committee on Estimates and Financial Operations suggests discontent with the current penal policies of the Western Australian government. The Chair of that Committee, the Hon Mark Nevill MLC, reported to the Legislative Council that —

the escalating costs of imprisonment to the State and its apparent ineffectiveness in deterring offenders, particularly juvenile offenders, from re-offending *must lead to a re-evaluation of the effectiveness of imprisonment as a sentencing option other than for the most dangerous and persistent criminals from whom the public must always be protected.* This leads to a consideration of alternatives to custody.³

Policy-makers who share the enlightened approach of the Standing Committee will welcome Hogg and Brown's book. The reviewer, having worked in criminal justice policy-making at government level, is convinced of the need to provide alternative political strategies to the authoritarian, 'commonsense' approach of many Australian State governments. A credible and saleable political alternative is needed now. Perhaps this is a task for the next edition of this book. If the present edition is any indication, these authors have the skills and expertise to undertake it.

There are, of course, many recent books dealing with law-and-order issues. What sets this book apart is that it evaluates a diverse range of popular material on crime control which has not been seriously critiqued elsewhere. The book uses a viewpoint that recognises the 'pluralistic and polycratic nature of modern societies' (p 112). It is a viewpoint which is engaging and original.

PAUL MOYLE

Senior Lecturer, The University of Western Australia

3. WA Legislative Council *Report of the Standing Committee on Estimates and Financial Operations* Report 25 (Nov 1998) 9 (emphasis added).

