

BIRTHPLACE,
MIGRATION
AND CRIME

THE AUSTRALIAN EXPERIENCE



RONALD D. FRANCIS



Birthplace, Migration and Crime

Also by Ronald D. Francis

ETHICS AND CORPORATE GOVERNANCE: An Australian Handbook

L'ETICA PER GLI PSICOLOGI

BECOMING A PSYCHOLOGIST

THE TIME WOVEN RAINBOW: An Inquiry into Psychological Principles and Practice

ETHICS FOR PSYCHOLOGISTS

PRIVATE PRACTICE PSYCHOLOGY: A Handbook (*with R. T. Kasperczyk*)

PRIVATE PRACTICE PSYCHOLOGY: The New Australian Manual
(*with R. T. Kasperczyk*)

INTRODUCTION TO CORPORATE GOVERNANCE (*with A. F. Armstrong*)

APPLICATIONS OF CORPORATE GOVERNANCE (*with A. F. Armstrong*)

CORPORATE GOVERNANCE FOR SMALL BUSINESS (*with A. F. Armstrong*)

THE SCIENCE OF MANAGEMENT: Fighting Fads and Fallacies with Evidence-based Practice (*with S. Moss*)

BUSINESS ETHICS: An Indian Perspective (*with M. Mishra*)

LEADERSHIP IN ASIA-PACIFIC: Readings and Research (*with N. Muenjohn and A. F. Armstrong*)

MEETINGS: Formal Rules and Informal Guides (*with A. F. Armstrong*)

Birthplace, Migration and Crime

The Australian Experience

Ronald D. Francis

College of Law & Justice, Victoria University, Australia

palgrave
macmillan



© Ronald D. Francis 2014

Softcover reprint of the hardcover 1st edition 2014 978-1-137-38647-2

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No portion of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, Saffron House, 6–10 Kirby Street, London EC1N 8TS.

Any person who does any unauthorized act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The author has asserted his right to be identified as the author of this work in accordance with the Copyright, Designs and Patents Act 1988.

First published 2014 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United States, the United Kingdom, Europe and other countries.

ISBN 978-1-349-48160-6 ISBN 978-1-137-38648-9 (eBook)
DOI 10.1057/9781137386489

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

*To my sister, Helen
For a lifetime of love and loyalty*

This page intentionally left blank

Contents

<i>List of Tables</i>	ix
<i>Preface</i>	x
<i>Acknowledgements</i>	xii
<i>List of Abbreviations</i>	xiv
<i>Acts of Parliament</i>	xvii

Part I Historical, Policy and Legal Issues

1 Introduction	3
2 Policy, Population and Culture	19
3 Immigration Reports to Date	37

Part II Issues, Data and Interpretation

4 Crime Issues	57
5 Legal Issues	81
6 Police	99
7 Courts	119
8 Prisons	127
9 Mental Health and Crime	150
10 Victimology	168
11 Communication	189

Part III Method, Theory and Moral Issues

12 Social Matters and Indicators	209
13 Theory and Critiques	226
14 Special Problems: Some Basic Facts	237

15	Moral Issues	245
----	--------------	-----

Part IV Concluding Comments

16	Commentary and Conclusions	255
----	----------------------------	-----

	<i>References</i>	264
--	-------------------	-----

	<i>Index</i>	280
--	--------------	-----

List of Tables

3.1	Countries by arrest for illegal entry	49
4.1	Numbers of irregular maritime arrivals: persons (excluding crew)	59
5.1	Number of deportations from Australia	89
8.1	Correlations: rates for crime-prone males and general population	138
8A.1	Prison population by offence and birthplace 2001	144
8A.2	Prisons and total population 2006	146
8A.3	Prison and total population 2006	148
9.1	AIHW Report summary	157
10.1	Fraud by birthplace (expressed in thousands)	179
12.1	Happiness ratings out of 10 for blocs of countries	213
12.2	Social indicator negative measures	218
12A.1	Means of differences between target and donor countries	224
12A.2	Social indicator correlations for target and donor countries	225
15.1	Matrix on cognition and moral IQ	250

Preface

This work follows on from an earlier monograph by this author some decades ago. Since the publication of that early work the situation has changed so much that this present work must certainly be seen as a new one rather than a revision. Among those items are the impact of climate change and its implications for resettlement from environmentally hostile lands, the emergence of powerful forces for the moral treatment of migrants and refugees and the occasional hardline governmental policies that govern immigration intake. Additionally the coverage now needs to be extended to accommodate such issues as victimology, policy and moral issues in migration.

In particular this work deals explicitly with crime-related issues, using the conventional statistical framework, with some explanations that might be invoked to account for various phenomena. It should be made plain that the book is about crime and birthplace. What this book is not about is organised crime, nor is it about crime and the indigenous population. This present account gives the historical context, policy matters, information about police, prisons, and courts, mental health, and crime, and provides some methodological and moral expositions.

In summary one might hold that migration issues are one of the besetting social issues of our time: they cause political chaos, social upheaval and raise some fundamental moral questions. Studies of migration are usually concerned with the consequences to the host country, but consideration might also be given to the effect upon the countries from which migrants depart.

In recent times in Australia we have seen much of the stereotypes of alien-looking men running the drug trade; of gangs of men from Asia engaging in territorial fights; of violent Europeans murdering their compatriots, natives, Family Court judges and anyone else who happens to get in the way of their unfettered desires. An objective examination of these stereotypes shows them to be mostly ill-founded.

The main target readers here are those with an interest in migration studies, legislation and senior migration administration. The work is written within a frame of reference such that it may also have some appeal to the interested public. The study is not one on law – although there is a section that addresses that topic – nor is it an exhaustive

account of published material. It is, rather, a selection of examples highlighting important contributions, and is oriented toward issues. It is seen of particular value that this work provides population data on prisons, offences and birthplace. This work seeks to outline both the historical and the contemporary issues of migration into Australia, and to give, in effect, an account that represents a contextual account of a nation that was founded for immigrant criminals.

It is instructive to consider the reasons for the wish to emigrate: as such they are bound to be multiple and complex. The selection of preferred places (host countries) must be based upon multiple considerations, such as proximity, the likely reception, political stability, tolerance and economic factors. Those pull factors must be as implicated as dissatisfaction with the native place, with such issues as persecution and tyranny. As one might rephrase a common aphorism – immigration is the sincerest form of flattery.

On a personal note it is clear that this is academic recording and analysis. There is one personal conclusion that is drawn, and that concerns language. If one wishes to foster nationhood, to be part of the body social and the body politic and to be any kind of social animal there must be a common form of communication: one does wish that. To that end this writer strongly believes that a requirement to learn the language of Australia be imposed as a condition of settlement. It is almost impossible to see how a migrant can be part of Australian society without communicating. Further, it is not possible to imagine anyone making an informed decision at voting time without being able to read and understand what is being offered. As the language of Australia is English, that is the language to be learned. Without such means of communication our being is impaired, and our social life seriously impoverished.

There is a final point to note: that the information in this work was so at the time of writing. While historical matters are relatively fixed those of contemporary relevance are not. The issue of immigration is in a constant state of flux, and we confidently predict that new policies will emerge, change, with some eventually discarded: it is ever thus.

Acknowledgements

In this presentation a debt is owed to many. I must nominate the staff of the College of Law and Justice at Victoria University. All those that I approached were unfailingly helpful. In particular I thank Professor Neil Andrews for this valuable advice on constitutional issues, which I hope I have understood. My colleague, Professor Anona Armstrong, has been a constant in encouragement. Also within my own institution, Ms Vicki Totikidis was a model research assistant, as was Ms Maggie Luke as the outside assistant. I am much indebted to my colleagues. My sincere thanks go to my colleague and friend, Professor Ian Coyle of Bond University, for his constant help, and for being part of the empirical studies recorded in this work. Thanks are also due to Associate Professor Hamish Maxwell-Stewart of the University of Tasmania for his kindly drawing the author's attention to some salient historical issues.

On one occasion I did have an appointment with the then Minister for Immigration in Canberra but that meeting was cancelled by him at the last minute, as was a second appointment. One must conclude that pressure of other issues subverted that question and answer session. I am, however, grateful for conversations with his political adviser and senior departmental officials.

Within Forensicare Victoria I am indebted to Professor Paul Mullen and Dr Danny Sullivan for their answering tricky questions. Outside of that organisation the former Chief Magistrate of Victoria (and now State Coroner), Judge Ian Gray, has been a model of helpfulness, as has Mr Ian McPhee, a former Minister for Immigration in the Australian government. Professor Paul Wilson of Bond University has provided me with valuable advice and writings for which I am most grateful.

While a Visiting Fellow in Criminology at Cambridge I enjoyed and benefited from conversations with Professor Lawrence Sherman, Dr Adrian Grounds, Professor David Farrington, Professor Friedrich Lösl, and Sir Anthony Bottoms. In Italy Professor Luigi Solivetti has provided me with valuable information and encouragement, as has Professor Martin Killias of Switzerland.

The Embassies of Greece, Italy and Spain in Canberra all responded promptly to my requests for information and I record my thanks to them, as I do to the most helpful staff of the Australian Bureau of

Statistics – particularly Mr Simon Jarman. From the ABS I obtained prisons data by birthplace and then, as a separate exercise, selected census data in the public domain in order for me to compute imprisonment rates. For my analysis I then broke up that data to include those in the crime-prone years. From that overall data I derived correlation coefficients that I then interpreted. Where data is sourced from the ABS that is gratefully acknowledged. My breakdown of all data, the analysis and interpretation are my own, and the ABS bears no responsibility for the conclusions that I have drawn.

Ms Ingrid Johnson of the AIHW very kindly supplied tables that I have interpreted in the chapter on mental health and crime. That institution has kindly supplied permission to include this interpretation of the data, for which I am grateful. The interpretation of the tables is my own, and the AIHW bears no responsibility for the conclusions that I have drawn.

In a work such as this I have relied on advice and assistance. It would be pleasant to blame others for this work's shortcomings, but that would be patently false. One thing that I can note with certainty is that my most sincere thanks go to my wife for her unremitting support and encouragement.

Ronald D. Francis
Melbourne, August 2013

Abbreviations

AI	Amnesty International
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ADHD	Attention Deficit Hyperactivity Disorder
AGPS	Australian Government Publishing Service
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
AMA	Australian Medical Association
ANZ	Australia and New Zealand (also called Australasia)
APRA	Australian Prudential Regulation Authority
ASAS	Asylum Seeker Assistance Scheme
ASCCEG	Australian Standard Classification of Cultural and Ethnic Groups
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Exchange Commission
ASIO	Australian Security Intelligence Organisation
ATESOL	Association for Teaching English to Speakers of Other Languages
BMA	British Medical Association
BME	Black and mixed ethnic
BPS	British Psychological Society
CALD	Cultural and linguistic diversity
CBT	Cognitive behaviour therapy
CHI	Crime-harm index
CJS	Criminal justice system
COPQ	Committee on Overseas Professional Qualifications
CWLTH	Commonwealth of Australia
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
EU	European Union

HDI	Human Development Index
HMAS	Her Majesty's Australian Ship
ICC	International Criminal Court
IELTS	International English Language Test System
IHSS	Integrated Humanitarian Settlement Strategy
IMA	Irregular Maritime Arrivals
IOM	International Organisation for Migration
ITP	International Transfer of Prisoners
LEAP	Law Enforcement against Prohibition (United States)
LEAP	Law Enforcement Assistance Program (Victoria Police)
LGA	Local Government Area (local councils)
MARA	Migration Agents Registration Authority
MHCA	Mental Health Council of Australia
NAFIS	National Automated Fingerprint Identification Service
NATO	North Atlantic Treaty Organization
NCCJS	National Centre for Crime and Justice Statistics
NESC	Non-English Speaking Country
NHS	National Health Service (UK)
NOMS	National Offender Management Service
NOOSR	National Office of Overseas Skills Recognition
NSW	New South Wales
NT	Northern Territory
NSWCCA	New South Wales Court of Criminal Appeal
OECD	Organisation for Economic Co-operation and Development
PNG	Papua New Guinea
PRC	People's Republic of China
QLD	Queensland
SA	South Australia
SBS	Special Broadcasting Service
SIEV	Suspected Illegal Entry Vessel
SOL	Skilled Occupation List
TAFE	Technical and Further Education
TAS	Tasmania
TMHC	Transcultural Mental Health Centre
UNODC	United Nations Office on Drugs and Crime
UNESCO	United Nations Educational, Scientific and Cultural Organisation

UNRWA	United Nations Relief and Works Agency
VIC	Victoria
WA	Western Australia
WTO	World Trade Organization
ZPG	Zero Population Growth

For a set of precise definitions concerning refugees and the like, see York (2003).

Acts of Parliament

Federal Acts of Parliament (Commonwealth)

Age Discrimination Act (2004)
Anti-Terrorism Act (2004) (including amendments to
Crimes Act [1914])
Anti-Terrorism Act (No. 2) (2005)
Australian Citizenship Act (2007)
Australian Human Rights Commission Act 1986
Citizenship Act (1973)
Crimes Act (1914)
Criminal Code Act (1995)
Disability Discrimination Act (1992)
Equal Opportunity For Women In The Workplace Act (1999)
Fair Work Act (2009)
Immigration Restriction Act (Cwlth) (1901)
International Transfer of Prisoners Act (1997)
Marriage Act 1961
Migration Act (1958)
Migration Amendment (Detention Arrangements) Act (2005)
Native Title Act 1993
Racial Discrimination Act 1975
Sex Discrimination Act (1984)

ACT: Discrimination Act 1991 (ACT)
NSW: Anti-Discrimination Act (1977) (NSW)
R v Ballard, NSW 1829

QLD: Anti-Discrimination Act 1991 (Qld)
Mabo v Queensland. No.2 1992

SA: Racial Vilification Act (1996)

Victoria: Chinese Immigration Act (1855) (Vic)
Racial and Religious Tolerance Act (2001) (Vic)

WA: Equal Opportunity Act 1984 (WA). 1984

UK: Eliz 1st. 1597 (Vagabonds Act)
Geo I. 1717 (Transportation Statute)
Human Rights Act UK (1998)

Romania: State Decree No.770 (1966)

Cases referred to:

Moffa v The Queen (1977) 13 ALR 225
R v Qutami (2001) NSWCCA 353, 28 June 2001
(see also NSW case Ballard, above)

Part I

Historical, Policy and Legal Issues

1

Introduction

Whether driven or drawn, one of the enduring features of the human condition is the disposition to seek new and better things, with physical relocation an essential part of that tendency. The stimulation of new environments, the aspirations believed achievable, political freedom, economic benefits and the potential for spiritual accomplishments are all an integral part of this. A darker side of the impulse to migrate is manifest in the incidence of repressive regimes, of dictatorships, of social feudalism and of economic deprivation. Despite that, it has been cogently argued that world violence is diminishing – a point of view well documented by Pinker (2011).

Migration affords a means of both achieving aspirations and escaping social and political impositions. To that extent it is of social significance. The fact of migration may be energised in various ways, of which the earlier policy of transportation is but one. It is a defining global issue, and one of increasing importance. Even allowing for the growth in population numbers there is an unprecedented movement of peoples. *The International Organization for Migration* (IOM) website estimates that about 192 million people are living outside their place of birth, or about 3 per cent of the world's population.

The complexity of the numbers of immigrants is implied in an IOM table that lists countries where international migrants make up more than 60 per cent of the population. The countries listed include: Andorra, United Arab Emirates, Guam, Macao Special Administrative Region of China, Monaco, Qatar and the Vatican. From this it will be seen that the simple recitation of these numbers does nothing to convey the complexity of the issue. For example, the circumstances of the Vatican are vastly different from those of the United Arab Emirates, as are those of Guam and Macao. Further, the short-term benefits of

migration do nothing to accommodate the long-term consequences, nor do they illuminate the moral complexities that attach to migration policy. What is seen as important is that some basic facts be given, and then interpreted in a wider context. For a general account of post-war migration to Australia, up to 1990, see Collins (1991): for an account that extends over a longer time period, readers are directed to Jupp (2003).

Bombs and guns are essential in defence against tyrants: as long-term solutions they are less effective. At a different social level we note that negotiation, boycotts and economic drivers are more effective. Encouragement, negotiation and economic sanctions are better long-term solutions. It should not be surprising that moral force has such power. One thinks of Gandhi's resistance to the British Raj, Mandela's moral force in ending apartheid and the Dalai Lama's stance on Tibetan independence.

An instance of international sanctions that may seem of lesser import, but of substantial power, was that of Soviet psychiatry. Some years ago the claim was that psychiatry in the Soviet Union was being used as a political weapon: those who opposed the precepts of the state were diagnosed as psychiatrically malfunctioning, and removed from effective positions, or incarcerated. This had the effect of both providing a quick means of removing political dissidents, and also of bringing psychiatry into disrepute. In that sense branding as mentally ill becomes a way of dealing with 'crimes against the state'. A concerted ban by international psychiatrists, the use of boycotts and professional condemnation proved to be very effective in restoring the reputation of Soviet psychiatry.

All this has to do with people. Imagining the opposite, the idea of how the world would be if people were to vanish was the topic of Weisman's (2007) book *The World without Us*. In that work he examined the consequences of people-vanishment. In this world there are some examples of areas that humans have vacated. They include Chernobyl because of its radioactivity, Cyprus where partition has created people-free zones, the de-militarised zone between the two Koreas and the sites of the former Maya civilisation. The absence of people implies the absence of migration; thus that book gives a graphic description of how nature resumes sway when humans are absent.

Migration as a significant feature of modern life

Migration is, arguably, one of the most significant features of contemporary life: to re-coin a cliché, it is an integral part of globalisation.

There is evidence that migration has been a feature of human life since time immemorial. Archaeological artefacts, biological similarities, written records, the feasibility of long-range ocean migration (well demonstrated by such feats as the Kon Tiki expedition) and common customs are all evidence of population movements.

Such themes have been well documented elsewhere, but the point is emphasised that the reasons for considering the problem of migrant crime in Australia are of historical as well as contemporary interest. It is worth the strongest emphasis that the issues discussed in this book may be applicable to other minority groups. It is also certainly not intended to convey the impression that these ideas are applicable only to the foreign-born. In fact, the converse applies: where ideas have been applied in other contexts, their application here may be seen as useful.

The position of this book

In order to address the problem of migration and crime one needs to have a defined stance. This work differs from much of the published work in that it deals with birthplace as the criterion. Many studies, notably in the UK and the USA, deal with the racial issue of skin colour: this study looks at ethnicity as indicated by birthplace. While one might argue that birthplace is only a guide to ethnicity, it is the one criterion that is explicit, rather than relying on a judgement of 'racial-ness'.

The second point that is impressive is the absence of debate on fundamental propositions. For example, one might consider and resolve the idea that 'The primary concerns of Australian governments are welfare and guidance for the benefit of Australian citizens' (yea or nay). Second, there is the idea that recognises the prime responsibility of governments, however strangers arrive, to ensure they be treated with dignity and despatch. It is only by the adoption of clear principles that the issue of migration will receive much needed guidance to resolve these very difficult dilemmas. As it is, the 'policy' varies from government to government, and even changes within the life of a government.

Background to the founding of Australia

At the outset it should be made clear that Australia was founded originally as a colony of Great Britain. In 1901 it became a nation in its own right, with strong ties to Britain. At that point the Commonwealth of Australia, the Federal Government, assumed control of immigration.

The Statute of Westminster in 1931 gave legislative equality to the self-governing dominions of the British Empire, making for legislative independence. Since that time there has been a steady move to release ties to Great Britain.

It is also worthy of note that the Federal Government has responsibility for such issues as currency, immigration, defence and marriage. The states assume responsibility for issues such as crime, health, education, and transport.

In all there are six states: New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. In addition there are two Territories: the Northern Territory and the Australian Capital Territory; the latter is the seat of the Federal Government. The Federal Government has the power to overturn legislation passed by the Territories, but not those laws passed by state parliaments (unless, of course, they are unconstitutional).

Two ways of looking at crime

When a single murderer is indicted, the full panoply of the law is brought into play: when a tyrant murders many, it is regarded as 'suppressing an uprising', and the law is, relatively, powerless (one death is a tragedy, a thousand deaths is a statistic). Picking an endangered wild-flower invites individual sanctions: digging up a patch of them to build something profitable may invite fewer sanctions. These are examples of socio-political crime. Such crimes are ones that a state may make against an individual, as distinct from the reverse.

The declaration of hostilities against another sovereign state, save for self-protection, may well reflect some psychopathology on the part of the leader, or it may be driven by purely domestic political purposes. If you get drunk and act offensively in a public place you are liable to be arrested: if you manufacture alcoholic drink and promote its use and you may be rewarded as a successful business entrepreneur. Thus, in a similar vein, it is important to understand that crimes involving migration issues are wide in implication.

Clearly one may look at crime as the delictions of migrants against law and social order; or one may regard it as the offences of states, power and the status quo against particular groups. The evidence in this work almost exclusively relates to the former but it is of great importance to see it in the context of the latter. One might argue that crimes against humanity (power and the state against the individual) are

more widespread and serious than are those of offenders against social order.

Such socio-political crime is by no means a new phenomenon. It is a long time since Blake wrote of 'Dark satanic mills', and Shelley asked 'Men of England wherefore labour for the lords who lay you low? Wherefore weave with toil and care, the rich robes your tyrants wear?'. An apt instance of the crimes of the socially and economically dispossessed at the time of enclosures of formerly common land is captured in the traditional verse:

The law doth punish man or woman
Who steals the goose from off the common
But lets the greater felon loose
Who steals the common from the goose

As Jonathan Swift so felicitously put it, 'Laws are like cobwebs, which may catch small flies but let wasps and hornets break through'. In this sense he was predicting what we now call socio-political crime. Where conventional law is often concerned with relatively minor malefactors, larger offences often go unsanctioned.

History of Australian settlement

It will be understood that Australia had its first settlement as a penal colony in 1788. By degrees that method of settlement was modified to include free settlers, and then to exclude convicts. All of this analysis, and Nicholas's (1988) contribution, serve to remind us to view migration in the widest spatial and temporal context. Jupp's (2003) abovementioned work is a concise and acute analysis of the migration facts and trends in migration to Australia. The notion of the justification of the White Australia Policy is not to be found in social Darwinism (or, indeed, anywhere else), as he noted. The various changes from the original conception through successive governments, from exclusion through assimilation to multiculturalism, is well documented.

Transportation

The first known enactment for transportation was an Act by Elizabeth I in 1597 for 'banishing from the realm and beyond the dominions' (the Vagabonds Act).

In 1611 Sir Thomas Dale suggested a three-year term in the colonies as a punishment and in 1655 eleven offenders who were sentenced to death in Middlesex were pardoned on condition of transportation.

The ostensible reason for transporting convicts to Australia was as a punishment, and in some cases for further punishment. As a matter of history the background and motives were much more complex. Radzinowicz (1948) referred to Lord Ellenborough, who noted in 1810 that it was '...a summer's excursion, an easy migration to a happier and better climate'. Radzinowicz also referred to Bentham's view that transportation may have had slender deterrent value, particularly for the young, unattached and out of work. This point of view is consistent with that of one then contemporary writer who said that the effect was slight because it was inflicted on persons of no property and reputation and the response of the 'punished' was invisible to those who it was supposed to deter.

To complement this view there is that of regarding transportation as the wisest and most humane course as it removed the evil, separated them from abandoned connections and gave freer opportunity. It served at once as both a humanitarian and a reformative measure. Earlier transportation to the American colonies also had the desirable consequence of reducing the need for the slave labour of Africans on the American plantations.

It is plain that transportation was a temporary and ineffectual means of dealing with a burgeoning crime problem, but there are a number of reasons why transportation to Australia was considered desirable. First, with urbanisation and the development of the Industrial Revolution, crime was increasing; second, the penal policy of England and Wales was ineffective and poorly coordinated; and third, the American colonies were no longer available as receiving grounds. Slave traffic had ceased, and convicts were expendable substitutes.

The theme of criminological explanations for transportation could be developed further, but reasons of a non-criminological nature should also be considered. It could be said that transportation was a convenient and inexpensive way of planting the British flag in the southern hemisphere; it could also be said that Australia could become a naval provisioning base and a trading station for the British, as a means of countering the Spanish and Dutch incursions into the South Pacific, as Matra suggested in 1783 (O'Brien, 1950). (Readers may recall that in Galsworthy's *Forsyte Saga* there was an extended reference to 'Foggartism'. The politician Foggarty espoused the view that British emigrants should be sent to the colonies so that the colonies might

grow in population and thereby become export markets for British goods.)

After the American War of Independence an Act recognised the difficulties of transportation to America and therefore provided for transportation to any part beyond the seas ‘... whether in America or elsewhere’. It was in that same year that the branding of criminals ceased, and the notion of state-run prisons was introduced.

The notion of transportation had been canvassed in imperial parliaments during the 18th century and clearly flowed from the idea of exiling the socially undesirable. With the loss of the American colonies, and with the prisons packed to overcrowding, the House of Commons decided in 1784 to renew transportation, and the Home Office was called upon to select a site. A variety of alternative locations were considered, among them Canada, the west coast of Africa and the West Indies. Using the late Captain Cook’s recommendation, Lord Sydney chose Botany Bay, on the east coast of what was then called New Holland.

During such debates there were some bizarre themes in transportation policy, including Governor Phillip’s view about criminality. At one point he was quoted as suggesting that murderers and sodomites were best delivered to the cannibals of New Zealand (Clark, 1977, vol. 1, p.77).

Most of the transportees were sent to Australia after 1815 – half for seven years, one-quarter for life. Approximately two-thirds were tried in England and one-third in Ireland: only a tiny proportion was tried in Scotland and elsewhere. The average age of all transportees was twenty-six years, and 75 per cent were single. Between half and two-thirds had been punished previously (usually for theft). About four-fifths were transported for larceny of some kind, about two-thirds were Protestant and one-third Roman Catholic.

The first immigrants

One of the lesser known places considered for transports was West and South West Africa. Christopher (2010) has written an account of such a venture in which two companies of felons, enlisted as soldiers, sailed to what was to become known as Ghana. Roguishness, psychosis, tropical diseases and class (rather than morality) separated the containers and the contained. It was from such experiences that Australia emerged as a strongly preferred option for transportation. The whole story of how the failure of transportation to Africa, and its lead-in to transportation to Australia, is told by Christopher.

The first criminal expatriates from Britain were sent to the American colonies, and to Africa. The first failed for several reasons, not the least of

which was that the the residents of the colonies did not want their settlements to be regarded as dumping grounds for British criminals. Those sent to Africa did not fare well for dissimilar reasons. The arrangements, the minding personnel, the climate and disease made it an unacceptable place for a criminal depository (see Christopher, 2010). It is interesting to note the then doctrine of Australia being a *Terra Nullius*; evidence to the contrary made it a more acceptable alternative, without seeming to question the notion of exporting criminals.

The first settlement was in Botany Bay in 1788: in 1803 transportation to Tasmania (Van Diemen's Land) was begun. The Tasman Peninsula, which is a relatively short distance from the city of Hobart, was a preferred site because it was a peninsula with a very narrow neck, and it was therefore relatively economical to contain the prisoners by chaining guard dogs close together across the isthmus. Port Arthur was the largest penitentiary on that peninsula and is one of the few places (together with Norfolk Island) still sufficiently preserved for the layout of the penal settlement to be readily recognised.

At a more formal level, for more than thirty years after the arrival of the First Fleet the colony was governed by a succession of autocrats. Laws for this infant colony were made by issuing *General Orders* or *Proclamations* that were designed to inform the inhabitants, who were obliged to obey. The laws were variously distributed by being nailed on doors or trees and read from pulpits, and after 1803 they were published in *The Sydney Gazette*. Such a method of law-giving was unavoidable at a time when the population consisted of three classes: the governor, his civil officers/the military and the convicts. After the arrival of free settlers, and when convicts became free at the expiration of their sentences, the situation changed.

Repute and importance of transportees

In addition to taking account of the number of convicts is the consideration of the repute and importance of some persons and groups. For example, Thomas Muir was sentenced in 1792, for sedition, to 14 years in the penal colony of New South Wales. His offence was making a speech to the National Convention of Societies of Friends of the People, for distributing Tom Paine's pamphlet 'The Rights of Man', and for exhorting people to 'adopt none but the measures that were constitutional' for ameliorating social and economic conditions.

In 1796 he escaped from Sydney on an American ship that was later captured by a Spanish vessel. While being accompanied to France the ship was attacked by an English squadron and in that skirmish Muir lost

an eye and was facially disfigured. He was taken to France and became something of a celebrity, giving propaganda value to the French Revolution. He died in 1799 in impoverished circumstances in France (for a fuller account see Moore, 2010).

There were tens of thousands of these unwilling immigrants to Australia, including a select few whose crimes stemmed from conscience rather than the absence of conscience. Political prisoners occupied a place in convict history in disproportion to their numbers. The Scottish Martyrs were transported in 1794–95 for their part in the advocacy of fiscal and electoral reform. Some fifty Luddites and eleven Derbyshire agricultural workers arrived between 1812 and 1817.

Perhaps the most important group were the Tolpuddle Martyrs. These six Dorchester labourers were convicted of taking unlawful oaths when they united to oppose a threatened cut in wages from seven to six shillings a week. During the 1830s and 1840s a number of trade unionists and Chartists were transported, and among their number were 148 Canadian rebels and 50 army deserters. The former's offence was involvement in an abortive attempt to free Canada from British rule. Indeed, one might regard the Australian penchant for civilised working conditions, and of trade unionism, to stem from such cases.

In some cases there was an amelioration of sentence for the clergy. In 1717 an Act provided that certain cases of clergyable offences could be punished by transportation for seven years to America instead of burning on the hand or whipping (the Benefit of Clergy began as a legal rule allowing clerics charged with capital offences to have their cases heard by a church court rather than by a secular court – and did not involve capital punishment). The Act also contained provisions enabling offenders to be pardoned on condition of fourteen years' transportation, or any term specified in the pardon. Indeed, the ability to simulate holy orders, and to recite an appropriate passage, was a means of avoiding being hanged – that religious passage thus became known as the 'neck verse'.

Numbers transported

During the entire period of transportation a total of 123,000 men and 25,000 women were transported (Robson, 1965). In 1790 the second fleet carried 1,017 people and of these 267 died on the way. On the *Hillsborough* in 1798, 95 people out of 300 were lost through typhoid. Altogether the number of persons lost en route was 2,834 (including 577 women), 283 of these losses being in the wreck of the *George III* off Van Diemen's Land, and the *Waterloo* off the Cape of Good Hope. The mean loss was 1.8 per cent over the total period of transportation.

There was no lack of prisoners to be sent to Australia. In the early 1830s about 5,000 convicts a year were arriving in the colonies. This influx eased later, but three-fifths of all transported felons arrived in Australia after 1830. In 1838 the British parliament appointed a committee, under the chairmanship of Sir William Molesworth. That committee met thirty-eight times between April 1837 and August 1838, and subsequently produced an extensive report. The gist of the Molesworth recommendations was that transportation to New South Wales and the settled districts of Van Diemen's Land should be discontinued as soon as practicable, the assigning system in both colonies should be immediately abolished, and convicts should be sentenced to hard labour by being confined in penitentiaries at home and abroad, not in places where there were free settlers. It was also decided that the colonists' demands for labour should be financed through the sale of colonial waste lands. The Molesworth Committee wanted a quick end to what they described as 'an unclean thing'. This committee was instrumental in reducing and eventually stopping transportation to Australia.

Historical boat people

Lest it be thought that marine risks for transports are new it is worth pointing out that there is an extensive history of loss of life on the way to Australia from the UK. A website (see *Shipwreck* in the References) mentions other vessels. For example, the auxiliary steamer *London* foundered in the Bay of Biscay with a loss of 244 lives; the *Hibernia* caught fire in the Atlantic in 1833 with the loss of 153 lives; the *Waterloo* was wrecked in Table Bay in South Africa with the loss of 190 people; and the *Cospatrick* caught fire off the Cape of Good Hope with the loss of 470 people (and only three survivors). What is clear is that the risk of losing one's life on the way to Australia was quite substantial, and that included dying of other causes en route.

If one were to quantify such losses, the present situation is no more parlous than it was in earlier times – with the proviso that we now know better, and pay greater attention to humanitarian issues. To this notion of modern parallels we might add another. Where we see a parallel between the early transportation and asylum-seeker boats we might engage the parallel between penal settlements and refugee camps: Patterson (2011) has drawn such a link. The use of the labour of those incarcerated both was and is an issue. The issue of temporary residence visas allows access to the community, and the ticket of leave

was something similar. The controversy over assimilation, the special treatment of children, and the challenge of differing religious values all have a modern resonance with the early engagement of those same issues.

The Colony

As is inevitable, significant social changes took place in the Colony. It is interesting to note that the 'classes' of persons that were endemic in the early days of colonisation have given way to a reduction of 'class', something that seems to be constant in Britain and Europe. It would be inaccurate to say that classes do not exist: what is different about Australian 'class' is that it is self-defined, and far less based on what one's father did, or how far back one's lineage might be traced.

The Colony had its own inbuilt class distinctions. First, and most obvious, was that of prisoner and guard. Within the group of prisoners there were distinctions of hard labour: chain-ganged men, ticket-of-leave men and freemen. A ticket-of-leave person was someone with a non-expired sentence who was permitted to work in specified places and under certain conditions – at least until their sentence expired or they were granted a pardon. An emancipist was someone whose sentence had been served and was then 'emancipated', and they were then free to do whatever they wished.

Above that were the administrators, headed by the Governor. In those times the attitude towards suffering was less empathetic than it is now. In the records of the prison at Port Arthur are accounts of such treatment: these include wearing irons while on the treadmill, having guards sit on the logs that the prison gangs had to carry, flogging and, almost unbelievably, when amputations were carried out the stumps were cauterised with a red hot frying pan.

Caroline Chisholm, a woman emigrant with early insight, recognised the difficulties of the social structure of the new Colony because of the small number of women, whom she described as 'God's police'. Mrs Chisholm probably did more as an individual to change the social structure than did any other colonist at that time. Although transportation ceased in New South Wales in 1840, many of the colonists had left their families behind in Britain. Without the conventional social pressures exerted by family life, the trend to drinking, violence and crime was more pronounced. Mrs Chisholm's contribution has been well documented by Kiddle (1957, p.73) who also stated that during the height of transportation the government attempted to send, by free passage, the

wives and children of convicts as a reward for good conduct, but this was discontinued in 1842 on the grounds of economy. Clearly there were short-term and long-term effects of transportation. Such consequences may have been inconsistent one with another, and many of them were unforeseen and unintended.

Fortune smiled upon some of the early settlers, but they were few compared to the number transported. Early Australian society was a society with distinct classes. Popper, in *The Open Society and its Enemies* (1945), labelled Plato as an early fascist in that he advocated a class-based society. Bertrand Russell has remarked that the most distinguishable class society evident in the world is that of the caste society in India, but it could be argued that early Australian society was just such a system, with relatively clear barriers between classes of people (governor and council, military, convict, emancipist). These complex interplays of forces are quite properly the province of social historians but it should be noted that the early categorisation of migrant criminals had an enduring effect on the development of Australian society.

Civil rights

It will be apparent that such a set of law-making conditions could not persist, and after 1812 repeated efforts were made to persuade the British government to grant full civil rights to free colonists. One such colonist, W.C. Wentworth, who was studying for the bar in England, published a *Description of the Colony* in 1819. It is a notable original work in that it was the first publication by an Australian-born author. Wentworth demanded the creation of an elected Legislative Assembly as well as a nominated Council; that such politicians should take over the Governor's powers of taxation; and that there should be an introduction of trial by jury.

Continued concerted actions followed in the succeeding decades and some measure of representative government was secured, but it was not until 1851 that the New South Wales Legislative Council drew up a *Declaration of Remonstrance* that was sent to London. The response was 'Draw up a constitution for yourselves'. That challenge was accepted and select committees drew up a constitution for New South Wales that received Royal Assent on 15 July 1855. Under this consideration the Parliament of New South Wales assembled on 22 May 1856 to elect a speaker and the next day it was opened, with Stuart Donaldson as premier.

Transition to free settlement

The transition to free settlement was relatively smooth. A later more dramatic change in migration intake followed the discovery of gold in eastern Australia, resulting in a massive influx of migrants to work the goldfields. They came from conventional sources such as the British Isles, New Zealand, and parts of Europe and North America, bringing the dual qualities of gold fever and expertise. The arrival of a large number of Chinese had a significant social effect in Australia. From the beginning of the gold rush to the year 1861 Chinese numbers increased from just under 2,000 to over 40,000, by which time they had become the third largest national group in Australia. It is also significant that the group was almost entirely male: combined with relative youth it was a mix that increased in the crime-prone years.

In the early years of settlement, it was difficult to attract free settlers and efforts to bring them to Australia met with mixed success. It was not until 1793 that the first free settlers arrived. By 1830 free settlers comprised 18 per cent of the European population of New South Wales. Development schemes to encourage settlers were introduced and, in 1835, private employers were encouraged to select migrants by government bounty paid for each approved person who actually arrived. Some thousands of migrants were brought in by this means. Others came with government assistance, so that between 1831 and 1840, 56 per cent of the 116,000 new arrivals were free immigrants. At that time the migrant intake included blocs of common nativity groups.

At that same time a fall in the price of wool caused a depression and unemployment. Sales diminished substantially, reducing migration that had been largely financed from such sales. By the period 1841 to 1850 migration had moderated, with some 140,000 arrivals, of which about three-quarters were free settlers. This increasing flow of free labour hastened the end of transportation. After the arrival of so many convicts to Australia, by 1853 transportation had ceased entirely in the eastern colonies, and in Western Australia by 1867.

Maconochie of Norfolk Island

One of the harshest penal colonies was on Norfolk Island (about 1,000 miles east of Brisbane). That island prison was for 'incurables' who had already been transported to Sydney or to Van Diemen's Land. However, a dramatic example of social operant reinforcers, that of rewards and

kindliness, was used there in a program designed by Captain Alexander Maconochie, who had been appointed Governor. His agenda was one of reform rather than punishment and, to this end, a 'marks' system was introduced.

One of the innovations was that, rather than serving their fixed sentence, prisoners could earn credits (with some proportionality to the severity of their crime) and thus claim early release. Marks were given for conduct, diligence and study. Marks would be subtracted for laziness or misbehaviour (an early form of the indeterminate sentence, or of early release on a form of parole). Maconochie saw his regime on Norfolk Island as a moral hospital – a place where the socially ill went for treatment in order to return to normal living. In this respect, he was in accord with the prison reformers John Howard and Elizabeth Fry: the deleterious effects of a brutalising regime do not tend to rehabilitation.

This set of operant reinforcers was so effective that many prisoners became rehabilitated and eligible for early release, thereby angering the colonial office in Britain. Maconochie was, as a result, recalled to Britain, and replaced with a Governor whose job it was to see that the prisoners were punished. To put this another way, the regimen was of work and behaviour reinforcers rather than 'doing time'; measurable 'marks' were awarded for appropriate evidence to all of rehabilitation; there were group incentives as well as individual ones; and the approach hierarchy of graduated freedom was an essential element. Notwithstanding, since the effect of operant reinforcers is known to be effective, it would be difficult to discount the effect that this particular aspect of the regime had. Reinforcement, more so than punishment, does set parameters for behaviour (see Barry, 1958 and Morris, 2002 for fuller accounts).

One of the main points of the Maconochie approach was the imposition of meaning and effectiveness. Something to which humans seem especially averse is pointlessness. Thus was Sisyphus condemned to roll a stone eternally uphill only to have it roll back again. This principle is used in some armies as a punishment. For instance, the 'guilty' one is required to scrub the barrack-room floor with a toothbrush. As soon as this task is completed the sergeant major comes in with muddy boots and tramples on it, whereby the miscreant has to start again.

Waves of migration

With the end of transportation came waves of immigrants, each group impelled by different pressures and considerations. The waves included refugee Irish driven by the potato blight; Kanakas, largely from

Melanesia, to work in the sugarcane fields of Queensland; Cameleers from Afghanistan and Iraq, who helped open up the outback; and a massive influx of other groups, including, as previously mentioned, many Chinese to the gold rush.

Since 1788 Australia's population has been subject to continuous cycles of growth and structural change. While this has been mainly due to Australia's immigration policies, it has also been a reflection of events and economic conditions, both within Australia and in the rest of the world.

At the end of World War II there was a substantial intake into Australia of stateless and refugee cases. They formed a group of people who were grateful to finally have a country of their own, and in a country with political stability. One of the requirements of the government was that the immigrants work in a specific area, on a particular project, for two years, and then they were free to relocate if they wished. The implications of that government requirement, particularly on crime, are detailed in reference to the Snowy Mountains scheme, and analyses given in the Dovey Reports (Dovey, 1952, 1955, 1957).

Later waves included children sent from Britain (sometimes without parental permission, but with good, if misplaced, intent). Another scheme for adults was set up, encouraging British families to migrate to Australia for £10 per person. This scheme was a response to the 'populate or perish' mentality, which encouraged the settlement of those who would most likely 'fit in' to Australian society. Subsequent waves have included refugees from the Balkans, and from Vietnam. The end of the Vietnam War encouraged people to embark, in frail craft, in the hope of reaching and settling in Australia – 'boat people', as they came to be called. Later waves have also stemmed from wars and persecution, and include Iraqis, Afghans and Sri Lankans.

Such events include the transportation of convicts, the gold rush in the 1850s, the development of the Queensland sugar industry around the turn of the century, and wars, particularly World War II, that resulted in substantial migration of displaced persons. Trans-Tasman migration, which has always been relatively unrestricted, has fluctuated in response to economic conditions in both New Zealand and Australia.

One instance of a wave, that of the Cameleers, presents a story that is inherently both interesting and instructive. Cameleers, coming from the area north-west of India, notably Afghanistan, the Punjab, Baluchistan and Pakistan, were all called 'Afghans'. The period of their contribution was from the 1860s to the 1930s – with some still alive in 1950. About 20,000 camels were imported, together with about 2,000 Cameleers.

Their contribution was, in effect, to open up the Australian outback to Western development. They pioneered tracks, eventually becoming roads, used the only animal that could withstand working in desert conditions and, eventually, helped bring in the material that created the railways, which led to the camels being unnecessary. There are instances of their contribution to such famous expeditions as that of Burke and Wills, the first trek from the southern end of Australia to the Gulf of Carpentaria.

Although there is an admission of some racism it seems to have been minimal in the case of the 'Afghans', who were commonly regarded as honest and hardworking, and were seen to observe their religion without proselytising. Their good record, and absence of criminality, is more remarkable as they rarely brought women from their own culture; many took up relationships with local women, including Aborigines. We know much of the individuals through their exemption certificates – exempting them from the foreign language dictation test. Their value to the development of Australia, and their wish to go on the pilgrimage to Mecca, had to be accommodated. Their details are recorded on formal certificates.

When the usefulness of the camels had waned it became obvious the animals needed to be culled. The Cameleers had serious reservations about doing that and, in many cases, turned the animals loose. One of the consequences is that they ran wild and bred to the extent that they are now regarded as too numerous to count (see Jones & Kenny, 2010 for an account). One of the verbal relics of that wave of immigrants is that the train from Alice Springs to Darwin is called the 'Ghan'.

2

Policy, Population and Culture

In setting migration policy one must ever be mindful of the consequences. Elsewhere in this work it is noted that one must balance several considerations, such as the carrying capacity of the country, humanitarian aspects and the wishes of current citizens. It is also necessary to recognise that migration has consequences for the original country of migrants. Immigrants are not all of a kind, thus the various categories of immigrant might be placed on various dimensions. Let us take open intentionality versus deceitful entry to a chosen country. At one end of the continuum is the honest intention where there is a formal application to the potential host country by the aspirant (assuming that such formal means are available). Next in line of intentionality is where aspirants to stay have developed that intention only after the experience of being in the host country – let us call this converted intention. Among such might be deserting seamen, aircrew and tourist overstayers.

Next is the category of those who use legal means to enter the potential host country, but with the intention of staying, while pretending that their motives are otherwise. Here we might include those who enrol in an educational course in the host country only to expect to convert to full residence after a suitable time, occasionally by devious means. At the other end of the dimension are those who are illegal entrants who come by deceitful and illegal means. Here the problem is that they may do so, in their opinion, with good motives such as escaping persecution.

Migration may take many forms. Examples of these are cultural; economic, both up and down the economic scale; urban/rural or inter- and intra-urban; educational (again both upwards and downwards); psychological; and ideological. Any of these may be undertaken either

voluntarily or involuntarily on the part of the migrant. The form of migration that comes most readily to mind is that of geographical migration where people move from one country to another and which usually of necessity entails all or at least many of the other forms.

There have been several expositions of typologies of migration and they have chosen to emphasise different aspects. Petersen's (1958) now classic typology involves 'push' and 'pull' motives. His first category is 'primitive migration' (resulting from environmental push; for example, fire and famine). A second kind is also 'push' but the impetus comes from social rather than ecological agencies. This may be forced to a degree that depends upon social/legal compulsion. 'Free migration' is characterised by motivated individuals choosing to move for their own private reasons. The last type Petersen calls 'mass' migration and this is where free migration occurs in large numbers.

There are recurrent themes in the topic of crime and the foreign-born. These concern conventional criminality, second and subsequent generation immigrants, native peoples, wanderers, crime, racism, tourism, and the general topic of policy and values. The stereotypes accompanying these themes seem to defy all reasonable strategies of eradication. Information about the criminality of the foreign-born is a worthy topic both in its own right and for several other reasons. First, any criminological theory concerned with environmental influences is clearly implicated in areas where criminality is varied by environmental shifts. Second, the use of comparative cases is a timely antidote to theoretical parochialism. Third, the area of criminality and the foreign-born invites a consideration of behaviour that is a crime in one country but not in another.

Migrants do not always stay in the land to which they have migrated. Having tried migration with a view to settling, they may then decide to return to their native land. Such returnees then re-migrate with an adaptive review of their original decision. Further, there may be a two-stage migration. Having moved to one country the migrants use that experience as a review procedure and then move on to another place. Little is known about the criminality of returnees and two-stage emigrants.

Incentive systems

With respect to the attractiveness and quality of life it is noted that prosperous, democratic and politically stable countries are attractive to

potential migrants. A relevant account of nations' prosperity is given in the *Legatum Prosperity Index* (see References). In that source it will be seen that Australia ranks near the top of the table (7th out of 142 as of 2013).

Another relevant economic criterion is that of wealth disparity. If there is no wealth disparity, the attractiveness to economic aspirants to wealth is diminished. If there is too great a wealth disparity it does suggest either excessive competitiveness, or being 'connected' as a main criterion for success. One could see that a moderate wealth disparity, coupled with political stability in a tolerant society, could be most attractive.

A measure of wealth disparity is given in the *Gini Coefficient* (see References). On rates given as at November 2011 the Gini Coefficient for Australia was .30–.34 where 0 indicates perfect equality of income, and 1 represents perfect inequality where one person has all of the income and others nothing. The rating is similar to that for most parts of Europe and to Canada. The opposite is true of large parts of South America and South Africa.

On the matter of poverty, first there would need to be a change in the governments of most low-income countries. The corrupt élites who sequester the bulk of the income of most poor countries would have to be disempowered – not an easy task since often the military and the politicians are either one and the same, or are in collusion. All too often, we have seen how reluctant our politicians are to take even effective non-military measures against corrupt governments.

Economic motivation

Economic motivation is also a significant factor in migration. The right of unimpeded transfer of money to the home country is an important feature in preventing certain categories of financial crimes. Where strictures exist, the pressures to circumvent rules perceived as unreasonable must be greater. If migrants turn to crime, the benefits they bring to the economy would be largely offset. Such costs would not only be direct (such as property loss, increase in the cost of running the criminal justice system and so forth) but also indirect (such as the loss of general quality of life, and the costs of keeping a migrant criminal's dependants). It is curious that economic criminal activity forms part of GDP, as this comprises the market value of all officially recognised final goods and services. On that basis crime, terrorism, money laundering, drug dealing and forced prostitution all contribute (subject to

there being some official record of the transaction – or an estimated percentage).

This issue is one that concerns the contributions and costs that migrants might incur in the host country, with the attendant question of whether or not migrants cost more than they contribute. The costs and benefits are of three kinds: to the individual immigrant; to the country of leaving; and to the host country. With these there are the dual considerations of tangible and intangible effects. To provide a weighing of these factors is probably too difficult. If one were to consider only the tangible economic benefits, that, too, would depend on how strongly one valued economic growth against such issues as population growth. Significant here are the direct and indirect costs of crimes that may be committed by migrants.

Where migrants remit money to their home country it may be regarded as a drain on the host country and the local economy. Additionally, there are questions about whether or not the ‘brain-drained’ remit more. At least this latter question has an answer. Faini (2007) showed that more skilled migrants (the brain-drained) have a smaller propensity to remit, and offered some explanation of why that might happen. This raises the question of whether or not migrants are a net benefit or a net cost to the host community. The pros and cons of the benefits and costs of migration into Australia have been considered by Carrington et al. (2007). Their main conclusion is that, on balance, migration has created, and continues to provide, significant benefits, at least economically.

From time to time migration is blamed for the country’s economic ills. Inflation, for example, is sometimes attributed to an indigestibly high migration rate; proponents of that view fail to take into account the benefits of immigration. It can be argued that immigration increases the supply of labour and eases the competition for resources by growth industries. It diversifies industry and increases the scale of production, yielding both external and internal economies. That analysis is, of course, purely economic.

Selection processes

Most migrants desire permanent residence, and many of those aspire to citizenship, but it is up to the country entered to decide who stays. A number of people were deported from Australia in 2006–2007 (6,768): of that number, 2,335 were removed as ‘unlawful non-citizens’ under the Migration Act, or deported, while 4,433 were ‘monitored departures’. Illegal fishers accounted for 1,673 deportations. By way of comparison

it is noted that in 2000–2001 there were 9,054 enforced removals, 179 criminal removals and 290 repatriations (see *Deportation* in the References).

Asylum-seekers

Another form of approach concerns incidents rather than individuals.

The first incident concerns the influx of ‘boat people’ – those who seek refuge in Australia by arriving in small, often unseaworthy, craft, and enter Australian territorial waters without prior authorisation. These arriving craft were referred to as SIEVs (Suspected Illegal Entry Vessels). Often a tracking number was given to identify the particular vessel, for example, SIEV X.

In 2001 an Indonesian fishing boat, the *Lampar Bandung*, carrying 421 asylum-seekers, sank in a storm 70km south of Java – with only 45 survivors. The area of the sinking was inside the area for which Indonesia was responsible (its zone of search and rescue responsibility). It was also an area that fell inside an Australian border protection surveillance around Christmas Island – about 1,700km from the Australian mainland. The issues arising here include jurisdictional matters, areas of responsibility and the heinous exploitation by people smugglers packing the boats.

A second illustrative case is that of the *MV Tampa*. In 2001 a 20-metre wooden fishing boat, *Palapa I*, had 438 people on board. It was stranded about 140km north of Christmas Island. The rescue co-ordination centre was aware of the *Palapa's* distress, and asked local vessels to respond. In the event a Norwegian ship, the *MV Tampa*, picked up the survivors. The *Tampa*, under instructions from Jakarta, sailed for Indonesia. A delegation of passengers visited the bridge, and aggressively demanded to go to a Western country, and the captain agreed to go to Christmas Island. The *Tampa* asked the Australian government for permission to unload the rescued at Christmas Island, and that permission was refused, saying that the *Tampa's* captain would be prosecuted as a people smuggler.

Although food and medical assistance were provided, permission to land was still refused. Despite this the *Tampa* approached Christmas Island, but was boarded by Australian troops, who instructed the captain to move the ship back to international waters. The captain refused. Both Indonesia and Norway declined to accept the survivors. The refugees then boarded the *HMAS Manoora*, which took them to Nauru where they were held in detention camps, while 150 were diverted to New Zealand, granted asylum and eventually reunited with their families.

As a result of this event the Border Protection Bill of 2001 was introduced into Parliament, giving strong powers to the government to remove ships, to use reasonable force and to indemnify the Australian government and its officers from court proceedings. That Bill was not passed by the Senate, and provided an instance of the polarisation of attitudes towards those who sought to enter Australia using the excuse of duress. It also involved accusations of hypocrisy, Australia noting that Norway declined to accept the survivors, and Norway accusing Australia of evading its responsibilities. Further, the demand by asylum-seekers that they be taken to Australia led to discussions about the forcing of countries to take those who demanded entry, and to allegations of 'queue jumping'.

The third illustrative case of people entry was later called 'Children overboard'. This also occurred in 2001. SIEV 4, carrying 223 asylum-seekers, was intercepted by *HMAS Adelaide* 190km north of Christmas Island. The then Minister for Immigration and Multicultural Affairs, Philip Ruddock, reported that asylum-seekers had attempted to throw their children overboard, a claim repeated by other senior politicians. That conclusion was later called in to question; photographic evidence was challenged by a Senate Select Committee, with the Prime Minister saying that he acted on intelligence available at that time.

These general incidents illustrate the political nature of decision-making about migration policies. When all instances are taken into account it is clear that the debate on migration policies and outcomes is driven by a complex set of imperatives, and further guided by public reaction.

The suppression of dissent in Sri Lanka was the subject of an Amnesty International Canada report (2013). Its analysis provides evidence that the government of President Mahinda Rajapaksa suppresses dissent to the extent that it uses undemocratic means to reduce it. This issue is further complicated in that Sri Lanka is set to be the Head of the Commonwealth, taking over from Australia. Many boat people, those seeking political asylum in Australia, come from there; thus returning them to Sri Lanka is an Australian government option. To be then critical of the actions of the Sri Lankan government would be to expose the Australian government to charges of knowing the risks but returning people anyway.

In general, asylum-seekers in Australia have no right to work, and subsist on a small amount of money per week. Charities do much good work for those in need, but could also create an underclass of immigrants. Such immigrants might wait years for protection visas. This vexing

problem of asylum-seekers is not one of Australia's making, but one that it must endure. The morality of this burning question is addressed in the section on morals and policy (Part III).

It is one of the oddities of the system that 'illegals', those seeking asylum, should be subject to mandatory detention while those who overstay their visa are not. Persons who overstay their visa by more than 28 days become subject to an exclusion period that prevents them from being granted a temporary visa to travel to Australia for three years. This exclusion period applies whether or not they leave voluntarily. Even after the exclusion period has finished, the person cannot be granted a visa unless they repay any debt they owe to the Commonwealth, including for costs of removal, or make satisfactory arrangements to repay their debt.

Australia deals with prevention of illegal immigration by patrols, detention centres and by dealing with overseas governments, yet deals differently with those who come legally and stay illegally. Perhaps this does have something to do with the feelings about the cost of border protection and patrol boats, and the knotty question of the cost of sweeps to capture overstayers.

Processing offshore

Those seeking asylum and to be assessed were, under the Prime Ministership of John Howard, processed offshore. They were sent to other receiving countries, such as Nauru. Other places considered were Manus Island, Fiji and, most recently, Malaysia. This latter deal planned to send the arrivals to Malaysia, and to receive a quota of those in refugee camps in that country. One of the problems was that Malaysia was not a signatory to the appropriate covenant that protected certain human rights, and the scheme was rejected by the High Court. This enduring problem relates to the policy decisions of government. One would expect similar schemes to be tried in the future, with some successes and some failures.

It needs to be recorded that when Howard was Prime Minister he was in office for over ten years. Eventually the electorate tired of him and he not only lost government in 2007 but also his seat of Bennelong in Sydney, being only the second Prime Minister of Australia ever to lose an election and his seat on the same occasion. It is difficult to know whether it was a result of his policies (particularly in relation to 'boat people'), his personal style, or simply that the electorate tired of having the same person in the most senior position of government for such a

long time. Whatever the reason, some of his policies endured and later were copied: other policies were lowly regarded, and were abandoned. One of the issues that did seem to resonate with the electorate was the assertion that 'we will determine who comes into the country', with the corollary of 'under what conditions'. That issue was related to the matter of securing borders. Indeed, the role of border issues in the commissioning of crime, and its implications for global justice and for human rights, has been addressed by McCulloch & Pickering (2012), particularly in Chapter 1, where they address the criminalisation of migrants.

Points system

Australia has a points system for skilled migrants seeking permanent residency: it is used to select applicants on the basis of skills shortages in Australia. The allocation of points is based on age, English language proficiency, post-secondary education, qualification in a skill that is on the SOL (skilled occupation list) and the two-year study requirement of having completed at least a single qualification of two academic years of study within 16 months. The skilled independent (resident) visa is offered to students who have finished their studies in the last six months, people with a Trade Skills Training visa, or holders of a Recognised Graduate visa, or at least it was the position.

Recognition of overseas qualifications

There used to be a scheme called the Committee on Overseas Professional Qualifications (COPQ). That scheme was replaced by one called the National Office of Overseas Skills Recognition (NOOSR) that subsumed and revised the COPQ functions. Such functions included supporting a network of occupational panels and councils for specific professions and para-professions. Through these panels and councils, NOOSR provides expert advice on assessing overseas qualifications for prospective immigrants, immigration authorities, permanent residents of Australia, State and Territory registration or licensing authorities, professional or paraprofessional associations, employers and educational institutions.

Originally NOOSR had seven panels – dietetics, general academic qualifications, occupational therapy, social welfare, teaching, technical qualifications and veterinary science; and two councils – pharmacy and physiotherapy; it will, no doubt, add more. Its function is to develop '...fair, equitable and non-discriminatory processes for overseas qualified people'. What is puzzling about that definition is that

the functions should be professionally discriminatory. One would want to discriminate, but only based on relevant criteria – such as language, competence level and professional skill.

Migration agents

There is a class of practitioners in Australia known as ‘migration agents’. As such it is a requirement that they register with the Office of the Migration Agents Registration Authority (MARA). With that registration goes an obligation to have a detailed knowledge of Australian migration law as well as procedure, and to conform to professional and ethical standards. The purpose of being a migration agent is to make sure that their clients receive quality assistance, and to protect those clients who receive migration assistance. Among the issues that MARA addresses are fees, and disputes between agents and clients. Their activities are regulated, and their expertise is put to good use to assist those aspiring to become migrants.

Their specialist knowledge assists in advising on such matters as entry, resident status, visa matters and the like: they also help someone find an appropriate agent – someone who specialises in certain sorts of cases. The Office not only registers and assists but also provides advice about fees to be charged, and gives help in cases of dispute with agents (see *Migration agents* in the References).

National immigration policies

Some sovereign states have an immigration policy that is totally protective of their circumstances. There are countries, notably in the Middle East, that require that temporary residents must leave on a specified date: some even require that they return to their own country on a regular basis, and then apply for re-entry. The right to leave is circumscribed by law, requiring that the departing person has no unfulfilled obligations before leaving.

Another consideration in forming policy must be the indicators of consequences. For example, which groups are prone to be a drain on the public purse in terms of health and social welfare? Which groups are prone to crime? Which to mental health problems? Which to unemployment? Which to political troublemaking? Which to terrorism? That choice of indicators is fraught with difficulty. Which groups, for example, make good progress? Does that mean being better educated? More successful in business? Clearly, economic indicators are one set; social

and commercial circumstances are another; and education is a third. Added to this might be negative selection items – such as tolerance, the disposition to lawful behaviour, or smaller (or larger) families.

In determining migration policy the Federal Government must debate enduring dilemmas of values. Among the many considerations that apply in determining policy are the issues of the land's capacity to support incomers; the appropriate level of welfare and educational support to be accorded them; whether or not they are required to go where they are sent and work as directed for a first fixed period; and the overarching humanitarian considerations that apply. On this last point there are extra considerations: for example, what is Australia's moral duty to support those whose lands are being lost by inundation (such as Kiribati or Tuvalu) where they are sovereign States and wish to remain so?

One might question if that is different from cases where corrupt tyrants engage in torturing and killing dissenters? Taking refugees from corrupt regimes, it might be argued, props up those regimes by acting as a dumping ground for those unwanted by tyrants. The assumption of responsibility by Australia for those who flee must start somewhere. Should it be at the country of origin? The country of transit? On the high seas? At arrival?

Immigration in context: part of the general aid program

So far the policy discussion has been about migration issues. It is necessary to recognise that immigration to Australia is part of the larger issue of aid that might be offered to less fortunate nations. One of the contributions that developed countries can make is to train those from less developed nations, and then require them to return home to benefit their countries of origin. As previously stated, what is regrettable is that those who do go to a developed country to train often wish to stay there, thereby depriving their country of origin of the skills provided by a developed nation. Yet, to have a policy that mandates return may be harsh in individual cases, particularly if the trained professional has developed a liaison with someone from the host country. It is, yet again, an illustration of the conflict between general benefit to mankind and doing right by the individual. Those wishing to understand more about the complexities of this problem should consult Bevan (2012), who recounted an interview with Dr Emma Mawdsley of Cambridge University – an expert in overseas aid.

Another form of aid is the provision of agricultural experts, teachers or medical staff to needy nations, or providing money for underdeveloped

nations to set up their own infrastructure with a long-term aim of becoming self-sufficient. What is no help is to undertake to provide aid on a continuing basis to prop up countries that do not seem viable as nations. Further, in supplying goods, expertise and cash, the donor countries need assurances that such contributions are not siphoned off by corrupt politicians or officials so that a proportion of aid never reaches its intended target.

A final policy issue to be mentioned is that of migrants being directed, or choosing, to go to remote places. Here the dilemma is to what extent the State should provide services that are costly to set up and administer if choices are made to go to remote locations. Obviously, if a direction is made to go to a remote place on the understanding (say) that education and medical facilities will be adequate, the obligation to provide such services is more pressing.

Benefits and drawbacks of migration

It is clear that the effects of migration extend into every walk of life, benefiting in a wide variety of ways all Australian residents. Without migration, development in the arts, cuisine, support in the academic world, entertainment and social life generally could not have been as extensive as it has been. A major social implication of post-war immigration has been the widely ranging social benefits that have stemmed from it. Exposure to the cultures and values of other societies has not only enriched experiences of Australians as individuals, but has also provided a set of alternative values and practices against which to judge their own. On the negative side one must consider the need for specialist services, language difficulties and possible social clashes.

In substance there are many policy issues that need to be addressed, and have been addressed, by the Federal Government. Early on in the migration program there was an overt attempt to formalise the process, and to invest it with both insight and authority. To that purpose formal action was taken. Immigration was formerly the direct preserve of the Federal Government, but on 18 November 1949 the Immigration Planning Council held its first meeting. Its primary function was to formulate long-range plans for large-scale immigration that would take account of economic implications.

Population issues

Among the issues we can address is that of a burgeoning population. This can be broken down into, first, containing population growth;

second, reducing our wasteful consumption of natural resources; and, third, dealing with waste disposal. With relevant policies the problems of overcrowding and economic consumption would be ameliorated – possibly at the expense of ‘economic growth’. From this it follows that family planning is a must. One of the formidable barriers to this includes the views of some ideologically motivated organisations. It might be argued that contraception is a strong working principle but, to conform to certain moral standards, whether or not it is voluntary would need to be debated. In this a government policy, as has been shown, based on encouragement and incentive can be critical.

There are a variety of issues to consider with respect to population. On the one hand there is the UN view that having no children is not just a change of preference, it is a fundamental shift in the mindset: ‘It is the right of every woman/couple to reproduce and have as many children as they want...’ In fact, this is stated in Articles 12 in general, and 16 in particular, of the *Universal Declaration of Human Rights*.

Contrariwise, the planet can support just so many people, and the uncontrolled growth of humanity leads to an unsupportable situation with respect to potable water, arable land, food and the disposal of waste – as mentioned earlier. While technology may contain the situation in the short term, in the long term the same imperatives apply.

Australia ranks rather low globally in terms of population growth rates. From 1990 to 2010 the world population grew by 30 per cent. The countries with the highest recorded rates were in sub-Saharan Africa, Jordan and Saudi Arabia. For Australia the closest we can get is at the censuses of 1991 and 2011. For 1991 the population was 16,850,540; and in 2011 it was 21,507,717. That makes an increase of 27.6 per cent. In 2013 the population reached the 23 million mark, bolstered by a high migrant intake. Some countries, for whatever reason, take in very few migrants (such as Japan) while others (such as Turkey) take in a large number.

The largest number of refugees between 2005 and 2009 was hosted by Pakistan, with Iran next and Syria third (although the recent uprising against the Assad regime will alter that). Australia ranked 47th, hosting 22,548 (0.2 per cent of the global total; see *Refugee numbers* in the References). Other countries experienced a negative population growth, such as Romania and Bulgaria (see *Negative population growth* in the References). In the ‘Human’ website the clear conclusion is that a rapidly increasing population seems to distinguish, on the 10 listed indices, those nations with greatest suffering (see *Population growth rates* and *Human suffering index* in the References, and Camp, 1987).

The National Population and Migration Council

In 1975 a new National Population and Migration Council was set up by the then Minister for Labour and Immigration, Clyde Cameron. The Council had the power to appoint standing committees from its own membership that would report to full Council. The new government, in 1976, reconstituted the Australian Population and Migration Council, again consisting of a group of distinguished people with exceptional qualifications.

In the recruitment of immigrants there is always the question of 'what kind?'. Should they be free settlers, refugees or economic aspirants? The complications here are inherent. Proximity, difficulty of access, being adjacent to a failed state and so forth all have their impact. To assert that a country is not doing its share of taking refugees appears to virtually absolve the home country's tyranny and harsh treatment of dissidents. One should inquire as to why the tyrannical governments of the home countries of refugees behave as they do, and why they drive so many members of their own communities away? (See also *Failed states* in the References.)

Countries with significant minorities

A country may have a significant minority who are then denied autonomy, and who may choose to settle elsewhere – as in the case of Tamils in Sri Lanka. Those who wish to relocate will, inevitably, select somewhere prosperous, politically and socially stable, and tolerant of diversity. It is interesting to note that Tamils originated in India, but many do not choose to relocate there: instead they understandably choose somewhere more congenial to their interests. *National Geographic*, in September 2009, concluded that desertion from a state is the best indicator of its failure. There is also the problem of prosperous nations, such as Australia, which have become involved in a war (such as in Iraq) having a moral obligation to refugees from conflict who wish to settle in their country.

Cultural issues

There are cautions to be exercised in allowing in those who import their ancient hatreds, and teach the young to mistrust and revile certain groups and ideas. Further, there is a limit to the amount of diversity, and the speed with which it is implemented, that might benefit the host

country. It is in the light of such considerations that multicultural policy is formed.

Distinctions based on the multicultural policies and the welfare states of eight European countries were analysed by Koopmans (2010). He concluded that multicultural policies that give easy access to equal rights, and do not provide incentives to learn the local language and promote inter-ethnic contact, have some detrimental consequences. Among these are a low level of labour participation, increased segregation and a strong over-representation of those convicted of criminal offences. In that study attention was drawn to the UK. Studies such as this do emphasise that immigration policies bear a relationship to social participation and integration.

With respect to recognising cultural and ethnic groups, the Australian Standard Classification of Cultural and Ethnic Groups (ASCCEG) was issued by the Australian Bureau of Statistics (ABS) as an aid to classifying ancestry within the Australian population. The second edition was published in 2011. Its main aim is to provide a reference point in order to accommodate the need for statistical, administrative and service delivery to relevant parts of the Australian population. This may be considered by some to be a contentious issue as it promotes the idea of differences rather than commonality. Nevertheless one must appreciate the need for segmenting the population in order to deliver appropriate services to the right places. It is an ethnic and cultural base: had it been racial it might be viewed differently (see *ASCCEG* in the References).

The 2011 version of such a classification was preceded by two others, in 2000 and 2005 respectively. ASCCEG is used as an identifier and means of improvement of conditions rather than as an adverse discriminator. It presents a classification of cultural and ethnic groupings based on underpinning concepts based on the *Macquarie Dictionary of Australian English*. The concepts included those:

- relating to or peculiar to a human population or group, especially one with a common ancestry, language, etc;
- relating to the origin, classification, characteristics, etc., of such groups;
- relating to members of the Australian community who are migrants or the descendants of migrants and whose first language is not English;
- recognisable as coming from an identifiable culture.

Included in the distinguishing characteristics are a:

- long-shared history, the memory of which is kept alive;
- cultural tradition, including family and social customs, sometimes religiously based;
- common geographic origin;
- common language (but not necessarily limited to that group);
- common literature (written or oral);
- common religion;
- being a minority (often with a sense of being oppressed);
- being racially conspicuous.

Here one of the enduring dilemmas is whether or not to highlight racial and ethnic distinctions. To emphasise them is to recognise such differences: not to acknowledge them is to deprive those groups of some of their identity.

Within ethnic groups it is possible, and sometimes likely, that conspiracies are at work in migration matters, but how they might be played out is problematical. Just because there is little evidence does not mean that there are no conspiracies – it might just mean that they are concealed. The notion of conspiracies has been outlined by Bratich (2008). This work outlined some of the salient features of conspiracies that are claimed to be endemic (just because you're paranoid doesn't mean that they are not out to get you!). Here we must be cautious in not fostering the belief in conspiracies in the absence of persuasive argument or evidence. Where migrant groups engage in conspiracy the enclave-dwellers may find it easier to conceal conspiracies; conversely, they may also have draconian sanctions for those who breach solidarity.

Checks and balances

In allowing immigrants in to stay may afford them the opportunity to be aggressively different, to the detriment of shared or existing social mores in Australia. Contentious issues may include the maltreatment of animals, with ritual methods of slaughter that do not require prior stunning being a good example. Existing laws about slaughtering practice should prevail over ethnic requirements, but that is more honoured in principle than in practice, and herein lies the dilemma of how stringently to reinforce legal practices. It is frequently the case that a policy favouring the persecuted and the dispossessed may be at odds with the

long-term interests of the host or receiving country. The right of any sovereign State to admit or reject would-be citizens must be paramount: this view is tempered by the need to be mindful of helping present cases. Therefore checks and balances are needed.

Enclave issues

Three illustrative issues arise with respect to enclaves. The first is when a particularly difficult problem confronts Australian courts when the sentencing judge or magistrate is aware that whatever penalty he imposes, the defendant's own community will exert its own retribution or payback. There are some cases where this difficulty has been faced squarely by Australian courts: if they ignore the payback tradition, the defendant may be subjected to double punishment. A trial judge might impose a longer sentence for manslaughter than s/he would have done otherwise in an attempt to delay, if not prevent, the payback system from operating. This is a pressing problem for State Attorneys-General and, eventually, for the High Court of Australia, and has far-reaching implications.

A second relates to witness protection. It is possible that migrants might have a slight advantage over others. For one thing they can be concealed and protected within their own community; a second minor advantage is that they might more readily adopt another persona than would be possible for the native-born, as they do not have a history in Australia. Further, they can more readily be relocated to an overseas location of their national group's choosing. The UN has a documentary guide to dealing with witness protection, *Good Practices in the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*. The manual covers the issue of witness protection from the testifying in court stage through to relocation and re-identification – but does not address how it might differentially deal with migrant groups.

A third issue is identity theft. In recent times the world has become increasingly reliant on correct personal identification – particularly in the field of banking, passports and access to social services. The trend has been toward biometrics and DNA profiles. Identity theft in such a context involves not only economic costs but also increased prospects of terrorist activity, human trafficking and theft via the internet. Each case brings in its train a means of preventing future breaches of the same kind. Migrants may have more than one identity, and possibly more than one way of presenting themselves, and so may use a stolen identity,

involving falsifying documents, swearing false claims, and being, or remaining, in the country illegally.

Population growth

Developed nations seem to have sustained a low fertility rate – or at least a controlled fertility rate. Countries such as Japan and Italy have declining populations, and may become subject to the pressures for ‘replacement migration’ – or they may choose to stabilise at a lower population size. The drivers of growth, inflation and competition are not inevitable, and may become a new norm. Given that there might be a demand for labour that national policy proscribes, the time is fast coming when people-smuggling matches international drug trafficking as a significant concern.

It was put to the present author that boats arriving at Christmas Island (or any part of the mainland of Australia) deliberately scuttled their boats as soon as a navy warship, or Australian land, was in sight so that humanitarian considerations then applied to their rescue. One of the suggestions put for stopping people-smugglers would be to provide a seaworthy and provisioned craft to take the arrivals back whence they came – even if it involved towing them out of Australian waters. This solution does highlight a number of very difficult moral dilemmas, all of which are properly the preserve of the Federal Parliament.

One would confidently predict that people-smugglers will move on to the next stage. Given that plans are in place to stop asylum-seekers coming by boat, the traffickers can then take advantage of the government’s lenience towards those who arrive by air. There are two avenues open to traffickers: one is to masquerade as a visitor and then disappear into the community; the other is to forge identity documents. The latter seems to offer more advantages to the people-smuggler, given their dishonest entrepreneurship and misplaced creativity. As is usual the offender and the law are in constant interplay.

The Commonwealth of Australia is often seen to have the capacity to relieve overcrowding elsewhere with the use of currently sparsely populated areas; its population comprises a tiny proportion of that of the world as a whole (23 million out of nearly 8 billion). However, the solution of using sparsely populated areas would be purely temporary; further, most of Australia is uninhabitable. Conception control would be a much more effective long-term solution.

There is a movement that has the aim of moderating population size to a stable level, known as *zero population growth* (ZPG). The view of its

proponents is that more people does not mean better: how one substantiates this point of view depends upon whether or not one has a social or an economic view. The ZPG movement must contend with various fears (not all of which may be founded in fact). These include the worry that economic stagnation will occur; another is that the country would decline in importance ('populate or perish'). Although initially there will be fewer mouths to feed, later the position would be reversed – fewer babies mean a smaller workforce in twenty years' time. However, proponents argue that after seventy years or so of ZPG the structure and size of the workforce would eventually stabilise.

The ZPG movement is centred upon the intersection point of two themes – economics and the quality of life. The movement aims at a reproduction rate equal to replacement levels. Women must bear about 2.11 children, on the average, to replace themselves, their mates, single people and girls who die too young to reproduce. However, it has been noted that migration to Australia accounts for a substantial proportion of recent population increase. The recent growth in Australia's population far exceeds the internal birth rate, and thus has consequences for all social aspects, including crime.

Limits on family size may be achieved by governmental policy. China, for example, had a policy to limit family size, and one that was remarkably successful in practical or at least numerical terms. However, the one-time Chinese policy of limiting a family to one child required extensive internal political control over private life, which may be repugnant to some. It could also increase the abortion rate, lead to clandestine non-registered births, and to a revulsion towards the government that issued the edict.

Other places also provide examples of reducing fertility rates. In 1966, after the fecundity rate had been below replacement level for over five years, Romania passed an Act (State Decree No.770) that increased taxes on the single and childless, restricted divorce, banned the importation of contraceptives, and drastically limited abortion. Nine months after the promulgation of that decree the birthrate had tripled, thereby demonstrating the raw effectiveness of the government's policy; however, it did have the consequence of creating so many children that many ended up as homeless 'street-kids' (the so-called Children of the Decree).

3

Immigration Reports to Date

There is a plethora of official literature relating to migration that has been issued over the past century. Critical among these are Parliamentary debates on migration issues that have resulted in relevant legislation. However, it is worthy of note that there have been no Commonwealth Royal Commissions with immigration as their brief, although there have been recent calls and petitions for a Royal Commission into the treatment of asylum-seekers. There have, though, been some state government Royal Commissions that may be relevant. For example:

- 1904, Western Australian Royal Commission on the Immigration of Non-British Labour (Western Australian Parliamentary Papers, vol. 2, Paper No. A7).
- 1925, Royal Commission to Investigate the Social and Economic Effect of the Increase in the Number of Aliens in North Queensland, known as the Ferry Report (Queensland Parliamentary Papers, vol. 3).

If Commissions were to be established at a Federal level and reported they could lead to a change in government policy, or require a referendum to change the Constitution. There are means of changing the law and the Constitution but they are not easy. For a referendum item to succeed it needs to have the support of the majority of states and the majority of voters in each state. As mentioned previously, since Federation in 1901 there have been 44 referendums: of that number only eight have been successful. Obviously the view of the populace has been, historically, a conservative one.

The Dovey Reports

In the early 1950s the Immigration Advisory Council set up a committee to report to the Australian Federal Government on the conduct of

migrants. The committee consisted of four members and was under the chairmanship of the Hon. Mr Justice Dovey. Altogether, three reports were presented to the Minister for Immigration, in 1952, 1955 and 1957. The terms of reference of the committee were to investigate the conduct of migrants brought to Australia under the Commonwealth government's post-war migration scheme. It considered in some detail the problem of the incidence of crime among migrants and of the relationship between this and crime in the rest of the community. With the exception of these reports almost nothing was known of migrant crime in Australia, at least in the public domain. In this chapter these reports are discussed as a preliminary to a time-extended analysis (1901–66) aimed at showing the time context of the findings of the Dovey Committee (Dovey, 1952, 1955, 1957).

The Dovey Reports dealt with migrant crime rates at a time when the two largest groups of migrants (from the United Kingdom and Europe) both occupied crime rank positions that were below the median. In 1954, the European-born ranked 9/9 and the United Kingdom-born 5/9. The Dovey Committee dealt with crime rates on a Commonwealth-wide basis and at more than one stage of the judicial process. Offenders who committed the most serious crimes – most costly to the state, as well as socially costly – were dealt with in the prison system; therefore it seems not unreasonable to use prison as a criterion.

As a general conclusion, the 1952 report indicated that the incidence of serious crime among migrants was appreciably lower than in the community generally. (One would be surprised if this were not so since migrants are a biased group, as their acceptance into the country is based on not having a serious criminal record). Further features of the report can be noted:

- the statistics include offences by seamen and other transients;
- a large number of migrants came before the present careful screening process; and
- male twenty to thirty-five-year-olds, a high-risk group, are over-represented (41.5 per cent amongst migrants compared to 23.7 per cent in the Australian population).

For the twelve-month period ended November 1951, the crime rate (higher court offences) was 30.84 per 100,000 adult aliens and 47.10 for the Australian adult population. If one added the more serious of the offences dealt with in magistrates' courts, the rates were 285.7 per

100,000 for adult aliens and 520.1 per 100,000 for adult Australians (data and comments are from the 1952 report). For those crimes that may be regarded as repetitive (against such entities as property, and of forgery) and which therefore might be committed by persons with previous criminal records, the rate among migrants was approximately half the Australian rate. Of convictions recorded against migrants for offences of this character, more than 90 per cent were in magistrates' courts and less than 10 per cent in superior courts; that is, the majority were for minor offences.

An exception to this consistently lower rate is the category of crimes against the person dealt with in lower courts only, where the migrant rate was higher than that of the population generally. This was also true of sex offences dealt with in lower courts, and the committee was of the opinion that such a state of affairs should be attributed to the social inadequacy of hostel life and the imbalance of the sexes in places where migrants worked and lived.

As well as analysis of crime statistics, the committee undertook investigations into the ordinary behaviour of migrants as community members. Views were obtained from employers, trade unions, professional people and businessmen, state and local police in areas where there were concentrations of migrants, education authorities and other persons in different walks of life. The views of these groups were unanimous – all indicated that, with few exceptions, migrants were well-behaved, honest and aware of their social responsibilities. It was also noted that assimilation activities (undertaken by the Good Neighbour Movement, launched in 1950, and the longer-established New Settlers' League and its member organisations) were considered to be a valuable corrective for migrants whose conditions of life might otherwise have been conducive to crime.

One aspect of this report deserves particular attention. The Snowy Mountains hydro-electric scheme, begun in the late 1940s, was based on the town of Cooma in New South Wales. In 1951 the total population there was 4,000 of whom 2,500 were migrants. From 1 August 1951 to 17 December 1951, ninety-four charges were entered by the local police in Cooma. Nineteen of these were against migrants, the other seventy-five against Australians. The committee regarded this instance as significant and not atypical. Many of these migrants came from countries that recently were battlefields, where food and employment were difficult to obtain. The committee considered that where one would have expected anti-social behaviour and the exploitation of all means

of personal gain, it was gratifying to find such fears to be unjustified. Whether this was due to selection procedures or to assimilation programs – or both – is difficult to determine.

For 1954 the total conviction rate in higher courts only was 0.61 per 1,000 alien adult males and 1.14 per 1,000 adult males for the Australian population. When different groups were assessed the one that most closely approached the Australian rate was Eastern Europeans. Here, in superior courts only, the conviction rate for this group was about 90 per cent of the Australian rate. It should be pointed out that the reports do not say whether 'Australian rate' meant all those convicted in Australia, all those resident in Australia, or all Australian citizens excluding aliens. The most conservative assumption one can make is that it meant all those convicted in Australia. By this method the alien figures are included in the 'Australian population' figures and the mean rates are thereby brought closer together. In view of uninformed negative statements that appeared in the press in 1954, the committee drew particular attention to the low crime rate for Southern European migrants that, in all cases, was less than one-quarter of the Australian rate.

In 1955 the second Dovey Report was handed down. Its terms of reference were the same as before, but with this report it was also possible to make time comparisons. Since the 1952 report no change had taken place in the rate of crime among aliens, but the rate for the whole population had risen from 5.70 per 1,000 to 6.75 per 1,000. In 1951 the alien rate was 68 per cent of the overall Australian rate, whereas in 1954 it was only 58 per cent. The committee again regarded this as concealing a yet more favourable position with respect to aliens in that the alien group contained a high proportion of crime-prone persons (younger males).

Alien migrants who arrived under early post-war schemes (no longer in operation) had crime rates below the Australian average but higher than later arrivals. The 1945–50 group in 1955 comprised 56.4 per cent of the migrant population but were responsible for 68.1 per cent of migrant convictions. Again the committee pointed out that this position was particularly commendable when one considered the psychological stresses to which migrants were prone as a result of their relocation (such as an unfamiliar environment, loneliness, and the severance of familial ties).

The third and final report of the Dovey Committee, published in 1957, presented substantially the same picture – perhaps one that was even more favourable to migrants. For example, the rate for alien convicted offenders (both male and female) fell from 2.62 per 1,000 in 1954 to 2.18 per 1,000 in 1955, and the number of convictions fell

from 3.92 per 1,000 to 3.76 per 1,000. Among the Eastern European group (males only) the rate was 8.3 per 1,000 compared to 12.5 for Australians. The general decrease in the crime rate among aliens was, the committee reported, true for crimes both against the person and against property. Offences against the person constituted a greater proportion of all crimes committed by aliens than of crimes committed by Australians generally. Notwithstanding this fact, the rate was lower for aliens than for the Australian population.

The third report (p.5) indicated that 72.9 per cent of crimes by aliens were committed by single, widowed or divorced persons but the report does not say what proportion of the migrant population was in this non-mated condition. The Commonwealth government had recently implemented a policy of family migration and the facilitation of entry for fiancées and siblings of migrants already in the country. The Committee considered that this, together with the ready acceptance of suitably sponsored single women of marriageable age, was a potent factor in the continued and improved conduct of migrants. It should be pointed out that deportation is not an important factor in keeping down the crime rate and preventing recidivism among aliens. In 1954, of a total Australian population of 8,986,530, there were 1,160,837 persons born in Europe, and 125,629 born outside Europe and Australasia. Deportation figures for that period were: thirty-seven in 1952, twenty-nine in 1953, thirty-nine in 1954, and twenty in 1955 (January to June). For these three-and-a-half years the total was therefore 125 persons deported. Deportation is a matter of ministerial discretion. Cases are brought to notice where the offender is convicted of an offence that attracts a penalty of twelve months' imprisonment or more or for certain special offences such as prostitution.

There are several cautions to be borne in mind when considering the Dovey Reports. Norval Morris, in an appendix to the 1957 report, pointed out that there may well be an increase in crime as the children of migrants face the tension of cultural conflict between parental values and the moral values of the host country. He recommended more detailed analysis of the age of migrant children at arrival, and the period spent in the country.

The earlier reports sought information from chiefs of police. It is quite possible that the expression of favourable views about migrants' criminal behaviour might have been a self-fulfilling prophecy. If the police regard migrants as non-criminal in tendency they may well be disposed to exercise their discretion in favour of migrants in borderline cases. This may account for the lower crime rates reported later for migrant

groups. It is noteworthy that the migrants' crime rates are lower even though there was rivalry between those who meet in Australia but whose countries of origin have been traditionally opposed – Turks and Greeks, for example. It is also worthy of remark that language and communication problems, the reluctant acceptance of overseas qualifications by Australian authorities, and migrants' probable ignorance of many Australian laws, did not result in crime rates higher than those of the general population.

The Galbally Report

In 1978 the Galbally Report (named after the Chairman, Mr Frank Galbally) dealt with a wide range of immigration issues, and effectively established the multicultural policy of successive governments, with government policy moving very strongly away from earlier orientations towards assimilation. A significant outcome of the report was the establishment of the Australian Institute of Multicultural Affairs in 1979.

Academic reports

A small number of works on migrant crime in Australia have been published. Francis (1981) showed that, overall, migrants had a proportionally lower crime rate than the population as a whole. That work also included various other findings, some of which appear in this present work.

The work of Hazlehurst (1987) is well worthy of mention. She concluded that there was no substantial change to the earlier picture set out in the Dovey Reports, which were the first empirical considerations of Australia's migration policy since Federation in 1901. She also discusses a 1974 Prison Survey (see Francis & Cassell, 1975) that asked prisoners to respond to a detailed questionnaire; the results were:

- 1 The native-born had offending rates substantially higher than those found for the overseas-born and the general pattern of nativity groups at high and low risk was substantially consistent with the findings from the 1971 survey (National population inquiry, 1971).
- 2 The Australian-born tended to a higher frequency of driving offences and a lower frequency of offences against good order than was true for migrants.
- 3 Migrants had a lower juvenile offending history and a greater proportion were 'now married' – a point consistent with other studies that

show that early juvenile offending history and non-married status are positively related to higher crime rates.

- 4 Few of the respondents used social helping agencies or legal representation.
- 5 Six per cent of migrants were remanded in prison (compared to 4 per cent for the native). This is consistent with their being bailed less often. It can be inferred from this that the offences were more serious and/or their community ties weaker and therefore they were regarded as liable to abscond or intimidate witnesses.
- 6 What was mildly astonishing is that migrants pleaded guilty less often. It might be thought that the alien would be liable to confuse moral and legal culpability and therefore plead guilty more often. It is known how this is related to those incarcerated, but not to the pleas in courts in general. Perhaps natives plead guilty more often and therefore have a higher finding-the-case-proved rate, thereby increasing their prospects of incarceration. If the overseas-born plead guilty less often and have that finding upheld they thereby lower the rate.
- 7 Somewhat surprisingly, only 8.2 per cent of alien-tongue respondents used an interpreter in the judicial process. This seems to be a small percentage and deserving of further inquiry.

Regional studies

There are serious studies that, although particular to a certain place, act as exemplars of what might happen anywhere in Australia. One such work (Collins et al., 2000) provides an instance of what happened largely in the Western suburbs of Sydney. The continuing tension involved those of '...Middle Eastern appearance', and eventually became identified (rightly or wrongly) as Lebanese. The confrontations, with all of their political implications, are set out in that work, which provides facts, arguments and suggestions (see also Poynting et al., 2004).

One of the most well known consequences of that tension became evident in what became known as the Cronulla riot, a marker point in race relations, which occurred in the Sydney beachside suburb of Cronulla in December 2005. It took place between local young men and Lebanese young men over the issue of reclaiming control of the beach. An account of that riot is to be found in Poynting (2006), where it is put in the context of the then government's principle of 'reclaiming' the nation from asylum-seekers and the Muslim/Middle Eastern 'enemy'. Apart from any detailed explanation of why the riot occurred when it did, it is important to note that it arose from a general smouldering resentment

between native-born and migrant young men. In this it echoes other, earlier, studies involving male Lebanese (see Noble et al., 1999, for an example).

Use of case studies

There are also offences that are better illustrated with case examples rather than through statistical analysis. Among these are air-travel terrorism and/or hijacking, and kidnapping. (As a guide for policymakers as well as criminal justice practitioners on dealing with kidnapping the UN Office on Drugs and Crime in 2006 issued a *Counter-Kidnapping Manual*.) These are unusual incidents that highlight a principle that affects groups, or for which there is no overall reliable statistical data (see Abadinsky, 2010, for examples).

Three cases involving individuals can be used to illustrate the first point. One is that of Cornelia Rau. This 2004–05 case created widespread alarm in Australia about the culture and protocols of the Department of Immigration, Migration and Indigenous Affairs (DIMIA), as it was then known. The issue was one of mandatory detention. Rau was mistakenly imprisoned and then detained in an immigration detention centre for 10 months because DIMIA suspected her of being an unlawful non-citizen. She was in fact a German citizen and an Australian permanent resident, and had lived in Australia since she was 18 months old.

Rau had escaped from a psychiatric care facility in Sydney and was apprehended by police in Queensland. She gave false German names and claimed to be a German tourist. DIMIA instructed the police to imprison her because they had no record of her having entered Australia legally. After six months in prison, she was transferred to a detention centre. She was eventually identified by her family after they saw a newspaper report about her. She was released and readmitted into psychiatric care.

Rau's case raised several important issues, beginning with the conflict between DIMIA and the Federal Court over grounds for valid immigration detention. Is reasonable suspicion by the detaining authority adequate or should its officers be required to make enquiries to obtain objective evidence that confirms their suspicion? If they are unable to find such evidence, does reasonable suspicion alone constitute grounds for authorising ongoing detention?

As she was incapable of proving her identity because of mental illness, Rau's case became a celebrated cause. DIMIA's assumption was that she chose not to cooperate because she was an illegal immigrant. Her detention continued indefinitely: thus the question arises of what

obligation the authority has to reassess uncooperative detainees on the basis of mental health issues? Furthermore, as Rau's mental health deteriorated, she was confined at times to an isolation cell in prison and to a secure behaviour modification unit in detention for 'bad behaviour'.

Rau's case provides evidence that DIMIA officers seemed to have the right to send people to prison for lengthy periods without the involvement of the courts or independent assessment. This raised the following questions: what kind of training and management should immigration officers receive to carry out this responsibility? And should immigration detainees receive the same protection against improper or unlawful imprisonment as prisoners in the criminal justice system? To this the questions for policymakers are: 'Is mandatory detention the best system – and for whom? Or would a case-by-case assessment for detention result in better outcomes across the board?' Changes to DIMIA's practices and obligations were implemented as a result of an official enquiry into Rau's case.

A second case was that of Stefan Nystrom, and hinges on citizenship rights. He was born in Sweden while his mother was there on holiday, and he had lived in Australia, without leaving, for all of his life except his first 27 days. He had earlier served eight prison terms for 87 offences, and he had then been jailed for more than a year and thus became liable to deportation. The Federal Court quashed the convictions and ordered his release, but an appeal was heard in the High Court, which ruled unanimously that the Minister of Immigration was entitled to cancel the visa of someone who had never taken out citizenship. This was clearly a case of being technically right, but morally questionable.

A third case was that of Dr Mohammed Haneef, an Indian-born medical practitioner. He was arrested in 2007 on being suspected of 'terror-related activities'. He happened to be a cousin, once removed, of two participants in a Glasgow terrorist attack. Being detained without charge, an abrogation of the presumption of innocence, became an issue. On his eventual release his passport was returned, and he left Australia voluntarily. After a later inquiry his visa was restored, a decision affirmed by the Federal Court. When he returned to Australia in 2010 he received compensation for loss of income, for the interruption of his professional work and for emotional distress.

The Commonwealth and Immigration Ombudsman reports on such cases. As part of its continuing process of reform and resolving past issues, the Department of Immigration continued to actively pursue the resolution of status and compensation (where appropriate) for

people involved in cases referred to the Ombudsman in 2005. The Department also strove to reach out-of-court settlements fairly and reasonably so as to avoid undue costs and further distress to affected persons. During 2008–09 the department reached out-of-court settlements with 32 people for cases that occurred between December 1998 and March 2006.

These three specific illustrations all illustrate the need to apply the presumption of innocence, to gather objective evidence, and to pay attention to human rights. They also highlight the dangers of a relatively unfettered use of power, and the distinction between justice and technical rectitude.

Migrant crime elsewhere

British Commonwealth

During a history of domination, force and exploitation, Britain structured an empire the size and reach of which is unsurpassed. Upon the breakdown of that empire it was transformed into a Commonwealth, mainly comprising former Dominions and colonies. Membership is generally highly prized, and expulsion seen as a stigma. Such expulsions stem from a failure to conform to certain agreed social and political standards. For example, a series of military coups in Fiji resulted in its expulsion.

The transformation has been quite remarkable, and endlessly encouraging: the move from an Empire marked by violence, dominance, oppression and exploitation to a body in which membership is generally desirable quite gladdens the political heart. One of the initial consequences of being part of the Commonwealth was that it created certain rights, such as the right to emigrate from a (former) colony to the UK. Today national rights within the Commonwealth are well-defined, largely as the result of clarifying regulation. Each nation now may be treated as a separate entity, particularly as the British Commonwealth comprises about 28 per cent of all nations.

With respect to crimes committed by the overseas-born in the UK the situation is variable, and depends on the source countries of immigrants. In the context of Commonwealth countries, for the foreign-born from India and Pakistan, the crime rate is lower than it is for those born in the Caribbean. Following the expansion of the EU in the 2000s, concern has arisen over the influx of Eastern Europeans into Britain; this group has an impact on crime rates, but overall the problem does not seem to be perceived as nearly as serious as the sometimes improper accessing of social security payments and benefits.

Immigrant crime rates in the USA

Rumbaut & Ewing (2007) have shown that immigrants into the USA from Central America have lower rather than higher criminality, a conclusion that can be drawn from the last three censuses. Overall, the crime rates (with the exception of Cambodian and Laotian men) for the Asian-born in America were lower than for those from Central America. One of the most interesting findings in that study was that for all ethnic groups, a higher imprisonment rate was associated with being a high school dropout (see Rumbaut et al., 2006: and *US immigrant crime rate* in the References).

Incarceration risks seem to increase both for immigrants and for their children the longer they live in the USA. This is qualified by the fact that those who have lived in the USA for more than 16 years were less likely to be incarcerated. The risk of incarceration is higher not only for the children of immigrants, but for immigrants themselves the longer they have resided in the United States. However, even immigrants who had resided in the United States for 16+ years were far less likely to be incarcerated than their native-born counterparts. This interesting finding bears further investigation.

That immigrant crime rates are lower than for the native-born in the USA has been demonstrated by the Immigration Policy Center (see Martinez & Valenzuela, 2006; Rumbaut & Ewing, 2007). Further confirmatory evidence is available in Tonry (1997).

Canada

The conventional debates over immigration have also occurred in Canada. Chief among these involve questions of the overall benefit to Canada, and the pros and cons of provision of safe havens for the dispossessed. Li (2002) has argued that increasing migration has both economic and cultural benefits. Again, the overall crime rate for immigrants is lower than that of the Canadian-born.

Canadian immigration is not without its critics, as is evident in the website *Canada's immigration critics* (see References). From a crime perspective Chan (2005) examined 177 cases of deportation. From that study she concluded that gender and racial ideologies help influence decisions. She concluded that '...deportation practices are as much about differential exclusion as they are about enforced assimilation'.

A previous criminal record in an overseas country is not a necessary bar to entry to Canada. Among the factors to be taken into consideration are the seriousness of the offence, evidence of rehabilitation, and the time since being convicted – a point noted in the *Canadian Immigration Newsletter* (see References).

Among the insights brought to bear on the Canadian situation is Bauder's 2008 analysis of press coverage of immigration. In an examination of 490 reports in five national newspapers in Canada, reports and perceptions of immigrant issues were isolated. The theme that emerged most clearly was that of 'danger'. Furthermore, humanitarian, economic and political considerations outranked concern over cultural issues.

A consideration of migrant crime in Canada shows that immigrants are not proportionally overrepresented in crime figures. However, the picture varies when attention is paid to such variables as birthplace of father or of mother, Anglo background, and so forth (see Lynch & Simon 2003; also Hagan et al., 2008). For online reports see *Canadian immigrant crime* in the References.

Europe

With respect to Europe one may look towards the movement of individuals from member states within the European Union as well as the incursion of immigrants from places more distant in terms of geography, culture, economic development and religion. Economic drivers to migration are not the only force in play, but they are nevertheless powerful. An ageing workforce, the simple lack of human power, and the drive to economic growth create a need to fill vacant workplaces. But the long-term consequences of admitting guest workers, and issues of citizenship, create issues for policymakers.

Melossi's article (2003) asserted a relationship between immigration and crime in Europe. His opening line was: '[It] is well established that migrants are overrepresented in European criminal justice systems.' That view seems to be at variance with Solivetti's (2010: p.106) careful, cross-national analysis; one needs to be alert to issues such as type of crime, and which countries are involved. Awareness of this will enable us to seriously consider rival explanations for the dataset, and the conclusions that may legitimately be drawn.

The subject of immigrants as the authors and victims of crime in Italy was explored by Barbagli & Colombo (2009). They pointed out circumstances particular to Italy, such as the large number of illegal residents, the relative lack of internal controls and the substantial underground economy. However, despite two Acts of Parliament limiting immigration, there has been a smaller than expected consequence in terms of crime.

The work of Solivetti on Rome (2010) is a valuable addition to our understanding of migrant crime in both Europe and North America. Mixing theoretical insights and empirical data, he addresses migrant

crime in a wider context: relationships to crime in nations of origin, offences against migrants, humanitarian considerations, the gains to be made by immigration, as well as the problems presented for the host countries.

Greece

Spain, Italy and Greece are all immigrant recipient countries. In particular, all are accessible to incomers from North Africa. In the case of Greece it is also possible to arrive without taking a risky boat journey. Data provided by courtesy of the Ambassador for Greece in Australia shows the top ten countries of origin for people arrested for illegal entry and stay in Greece in 2009 (Table 3.1).

There are smaller numbers arrested from various African and Asian countries. Of the approximate 300,000 people who enter European territories, 70 per cent enter through Greece, with the main points of entry being borders with Turkey and Albania.

Switzerland

A recent report from Switzerland (Killias, 2009) has shown that immigrants are responsible for more than their expected rate of crime. That finding is based upon national survey data and statistics published since 1997. Further, self-report surveys show that victims do not report crimes to the police when they suspect that the offence was committed by a foreign national. Killias has further noted that, using international comparative data, the offending of migrant youths from the Balkans is more common in Switzerland than it is for those living in Bosnia-Herzegovina.

The explanation that Killias relies on is the importance of socialisation in the new culture rather than that of culture itself; the migration

Table 3.1 Countries by arrest for illegal entry

• Afghanistan	17,800
• Albania	63,500
• Bangladesh	1,400
• Burma (Myanmar)	1,400
• Eritrea	1,400
• Georgia	2,500
• Iraq	7,600
• Pakistan	4,800
• Palestinian Territories	10,700
• Somalia	7,700

context was more important than cultural aspects. What is persuasive about this argument is that it rests upon social dynamics rather than upon a static view of social and cultural perceptions. Those with a special interest in migrant crime in Europe are directed to Killias' insightful article.

The European Union

As a matter of policy, states may decide to unite to form a larger entity. The prime example here is that of the European Union – an entity without precedent. It is a union of previously warring states, has laws that span international borders, and citizens who can vote in European elections, but not the elections of states other than their own. The slow growth from the old Hanseatic League, to the Benelux union, to the Common Market, to today's sprawling political union is a remarkable feat. It guarantees working rights, a recognition of qualifications, and a monetary union for many of its member states.

One has to give praise to the way in which the EU has prescribed a set of minimum standards for civil society as a condition of membership; it has thus had a beneficial influence on those states that aspire to join but whose standards are unacceptably low. This is particularly so in the context of safeguards within the criminal justice system.

The matter of religious freedom is a peak issue. Europeans have spent many centuries building up to the notion that one should be free to worship without duress, and to be free from discrimination, harassment, even torture. One must also admire the implied social contracts, and the formal rules of the Union. To join, however, not only requires conforming to certain precepts but also a definition of eligibility to join. Should, for example, Turkey be allowed to join as part of its territory is in Europe but the major part of its land, and its capital, lies in Asia?

In the Eurostat statistical analysis (see *Eurostat sheet 58/2010* in the References) the caveat was offered that comparisons of crime statistics between countries may be affected by a range of factors, including:

- different legal and criminal justice systems;
- the proportion of crimes reported to the police and recorded by them;
- differences in the timing of recording crimes (for example, when reported to the police, when a suspect is identified, etc.);
- differences in the rules by which multiple offences are counted;
- differences in the range of offences included in the overall crime figures.

Figures for the prison population may also be affected by a range of factors, including:

- the number of cases dealt with by the courts;
- the percentage of convicted criminals given a custodial sentence;
- the length of the sentences imposed; the size of the population on remand;
- the date at which the survey was conducted (especially where amnesties or other early-release arrangements might apply).

The prison population should be measured as the total number of adult and juvenile prisoners (including pre-trial detainees) as at 1 September each year. The figures include offenders held in prison administration facilities, juvenile offenders' institutions, drug treatment institutions and psychiatric or other hospitals.

With respect to crime in Europe, *Eurostat sheet 58/2010* shows that in recent years crimes involving motor vehicle theft have decreased markedly; total crime is also in decline. The two offences that maintain a high rate are drug trafficking and domestic burglary. Figure 2 of that sheet shows that the trend from a low in 1999 rose to a peak in 2002–03 and then entered a steady decline to 2008. Table 1 in the sheet provides crime rates for the various countries of the EU and for each year from 2002 to 2008.

It is clear from that table that there is variation across nations and across time. After breaking down the various crimes and their rates, Table 8 presents the imprisonment rates for each member State. Again, as one would expect, the rates vary across nations and time. What is noticeable is that the Baltic republics have high rates, as does Poland. Low rates are to be found in Iceland, the Scandinavian countries, Eire and Northern Ireland.

Here one must raise a caution. The most recently available *European Sourcebook on Criminality* (see References) stated that only half of the total number of countries were able to provide figures on the percentage of suspected offenders who were aliens. In practice, the nationality or ethnic origin of the suspected offender is not always recorded in the relevant statistics; thus it is clear that no comparative ethnicity data on offenders is available from that source for Europe. Taking the 'Key Findings' from Europe it was concluded that no relationship could be found between the size of the prison population in a country and the level of recorded crime. The main factor influencing the prison population

size was the length of sanctions imposed and the number of serious offences – clearly a caution to be kept in mind.

Crime in the Netherlands

The article by Tonry & Bijleveld (2007) canvassed the issue of crime in the Netherlands. It is a study of importance not only in its own right but also because it follows a tradition of careful and extensive criminological studies and is characterised by a humane and liberal attitude to crime. Further, because of the extensive knowledge of English in the Netherlands its policies and outcomes have been widely disseminated. Apart from the direct expressions of Dutch experience it also contains useful comparative information concerning Europe. However, the authors do acknowledge that more could be done to understand policies related to imprisonment.

In the Netherlands there is a wide variety of ethnic groups, most of lower socio-economic status: some are from former Asian and Caribbean colonies and from South America, and now many come from places such as Iraq and Afghanistan. The recording of the criminality of such diverse groups produces, as one would expect, a corresponding diversity of answers. What is valuable about that study is its location in the context of a constantly evolving ethos in the criminal justice system.

Perceptions of immigrant crime: Europe

In a 2011 paper Ceobanu (2011) used the 2002/3 module of the European Social Survey to study any relationship that might obtain between public opinion and actual crime measures. While the finding was that personal experience of hard-core measures against immigrant crime had little impact, people are sensitive to having immigrant friends and dwelling in an immigrant neighbourhood, but also had an inclination to right-wing ideologies. It was also noted that countries with larger populations of non-European migrants create an impression that immigrants are disposed to crime, but that this seems to be independent of economic circumstances. Ceobanu did conclude that, generally, fear seems to be more about immigration than about crime.

Migrant workers in the Gulf States

The Gulf States provide a more non-Western perspective on migration. From the reading necessary for this work it was obvious that the writings varied in relevance, approach and contribution. The work by Owen

(1985) on migrant workers in the Gulf States is a valuable contribution, as is that of Auwal (2010). The conceptual level of analysis was most useful, as was the inclusion of some hard-core statistics. Auwal analysed the data in terms of migrants supplied from both Arab and Asian countries, gave an outline of labour law across Gulf States (including the lead-up to the Saudi Arabian law banning strikes), and considered the benefits to the countries that supplied migrants. Interestingly, the Gulf States have a smaller problem with crime as immediate deportation is a clear option.

International comparisons

A comparison of attitudes to immigration in a number of countries is given in Lynch & Simon (2003). One point of interest in their report is that the situation of illegal (as distinct from legal) immigrants shows that the crimes of immigrants to the USA present a lesser problem. It has to be borne in mind that the book dates from 2003, but it nevertheless does provide a valuable slice of information about public attitudes at that time.

Simon & Sikich (2007) posed the same questions as those posed by previous research, and across two time periods – 1995 and 2003. One of their questions concerned beliefs as to whether or not immigrants increased crime. Apart from the USA, where there was a decreased belief, there did not seem to be any shift in attitude over the two periods.

At this general level Lauritsen & Sampson (1998) made the valuable point that views of migrant crime are part of a larger range of attitudes relating to the crime rates of minorities of various kinds. That point also applies to minorities as victims of crime. Their argument assumes that the factors impacting on minority groups comprise many variables, including socio-economic deprivation, enclave containment of crime, associations and neighbourhoods. One might also consider the impact of the criminal justice system on such minorities. Consistent with this was a finding by other scholars in a meta-study that immigration may reduce rather than increase crime (Lee & Martinez, 2009).

International comparisons on a variety of crime indicators

Before proceeding, in order to give a contemporary context, it is useful to outline some indicators bearing upon migration. Tiffen & Gittins (2009), for example, have provided us with a useful comparison where Australia is compared to 17 other First World countries. That work, now in its second edition, covers a wide array of comparative data under a set of 16 headings with two additional explanatory chapters. It will be

noted that the analyses most often involve economic indicators, which are certainly among the most measurable.

On crime and social problems Australia ranked about middle, based on replies from participants as to whether they had been a victim of crime in the past year ('Crimes recorded by police per 100 population' [sic]). Australia's official crime rate is also around mid-table (Tiffen & Gittins, 2009: Tables 16.1 & 16.2.). On the matter of police, Tables 16.7 to 16.10 record that Australia had about the middle number of police officers per 100,000 population, and about the middle number of victims reporting to the police. Satisfaction with police response, and perceptions of police performance, were above the middle on both counts. On the public's feeling of safety (Table 16.12) Australia was also mid-ranked (see *Satisfaction with the police* in the References).

A note on Islamophobia

The 'contributions' of terrorists, a small minority, has generated a concept that has latterly become known as Islamophobia. This is marked by an aversion to Islam among those who are intolerant of the notion that others may have ideas contrary to their own. Such a cast of mind probably has little to do with Islam and much to do with the certitude of the proponents' own 'insights'. It may be found equally in minority political groups or religious sects and is inimical to the concept of multiculturalism and tolerance. It is by no means confined to Australia, nor to the 21st century. (See Aslan, 2009, for an account of Islamophobia in a wider context and its rise in Australia.)

Part II

Issues, Data and Interpretation

4

Crime Issues

There are crime prevention initiatives that may foreclose some options, but in so doing inspire adaptive behaviour on the part of offenders that can entail more inventive, or more devious, activity. In this respect offences by immigrants, and would-be immigrants, are pertinent. With a view to remaining 'one step ahead of the law', entrepreneurial criminals may engage in increasingly refined avoidance behaviour. The ingenuity and adaptability of crime prevention targets may be enhanced by new challenges, and with repeated strengthening, may constitute a more formidable threat than was initially the case. Marx (1990) documented an endless spiral of technologies and counter-technologies for crime and crime prevention (see also Francis & Coyle, 1976).

Offences particular to migrants

There are some offences that only migrants can commit, illegal entry and overstaying visas being examples. Migrants may also become the victims of extortion because, if they are illegal, they cannot complain to the authorities lest they be deported.

A prime example of a crime affecting migrants is in the area of driving licences. Some migrants believe that ownership of a car gives the right to drive, and will drive without one (in some places of origin licences may have been unnecessary, which influences attitudes and behaviour). Further, migrants from some countries believe that a bribe is necessary in order to get a licence. Offenders with such attitudes get a rude shock when attention is drawn to their misconceptions and they are subsequently charged with a crime. There are also social consequences; migrants brought up in countries where to be a driver is uncommon

means that an ingrained traffic sense is often absent among unqualified drivers, putting everyone at risk.

Other offences are related to the importation of cultural practices that in Australia are common crimes. With the immigration of young crime-prone males it is not surprising that the incidence of crimes involving the use of a weapon would change. Given the USA's preoccupation with firearms one would expect that to translate in Australia to offences committed by Americans in Australia, although we have yet to see any evidence of this. Similarly, and more strikingly, the immigration of young males from some Asian cultures, and from some places in Europe, brings with it a culture related to the use of knives as weapons. One might ask, for example, if knife crimes are more prevalent now than in earlier generations.

One of the main questions posed in this work is to what extent the overseas-born are involved in conventional crime – robbery, violence, graffiti, vandalism, fare evasion. Where the admirable and well-developed system of social support and social welfare (in its broadest sense) is subverted we call it corruption. This could include a complex of various activities that are broader than mere financial misbehaviour and can involve such activities as nepotism, political influence, and the creation of a generalised view that much is going on in society that is both hidden and illegitimate: it destroys the trust that is so essential to effective and moral activity (see *Corruption perception index* and *Transparency International* in the References).

State border security

In Chapter 1 of their book, *Borders, Mobility and Technologies of Control*, Pickering & Weber (2006) note that theorists are building structures that transcend state borders; these include transnational policing, supranational justice and peacekeeping. As they point out, where free movement within the EU is to be admired it must be subject to certain provisos. Moving from one country outside the EU, and then using that as a stepping-stone to get to a country on the margins of Europe, and thence into a EU country, is something that requires attention.

One of the most impressive aspects of the EU is its power and, perhaps most of all, its capacity for growth. It is not an entity that remains static; rather it is a dynamic superstate with as yet unknown potential. The world seems to favour unions of various kinds, such as ASEAN, the OECD, NATO, and free market zones such as NAFTA and the like. Provided that they are the result of discussion and free resolution they are

admirable. What do not appear to work are previous attempts to impose state union by force, where dissidents are often under pressure to leave.

Being forced out of one's country by exclusionary forces has significant legal implications. In response to such forces, states likely to be the target of fleeing citizens find themselves constantly revising their refugee policy, including what the government of the day perceives to be the wishes of the electorate. It is almost inevitable that some policies break humanitarian precepts, but that is no reason not to challenge them (see Grewcock, 2007). Of particular interest is Chapter 9 by Grewcock that carries the title '“Shooting the passengers”: Australia's war on illicit migrants'. This provides the interesting statistic that in 2000–01 there were over 4,000 boat arrivees in Australia, and that by the mid-2000s this had dwindled to near zero. The probable causes of that decline are given, and one must be aware that it was probably at the cost of a number of lives. (With respect to maritime arrivals and refugee status in this period, see *Asylum trends* and *Boat arrivals* in the References); however, in recent years numbers have dramatically increased (see Table 4.1).

From the data in Table 4.1 it can be seen that there has been a huge increase in numbers. No doubt this has been affected by issues such as tyrannies driving citizens away, the 'success' of people smugglers, the effect of armed political interference by foreign powers, and the belief among fleeing persons that Australia will accept refugees. Although in the context of other countries the refugee problem is relatively minor, the Federal Government has expressed the belief that unless the problem is contained then it will escalate to unmanageable proportions.

Table 4.1 Numbers of irregular maritime arrivals: persons (excluding crew)

	Boats	People
1990	2	198
1995	7	237
2000	51	2,939
2005	4	11
2006	6	60
2007	5	148
2008	7	161
2009	69	2,726
2010	134	6,555
2011	69	4,565
2012	278	17,202

Border control

The topic of border control has also been addressed by Grewcock (2009). This is commonly exercised at the borders of a country once people have arrived, but there is also an increasing focus on the carriers' responsibility. The perspective of using carrier sanctions rather than concentrating on border control was the subject of a paper by Scholten & Minderhoud (2008). Their view was that one can see carrier sanctions as a remote control mechanism to supplement direct border control, which can be enforced by both hard and soft legislation.

The issue of border deaths has been recently addressed by Weber & Pickering (2011). Those who seek to emigrate, and endure significant risk of injury or death in doing so, are the subject of this work. By using border control procedural comparisons between the US/Mexico border, the periphery of Europe, and 'boat people' travelling to Australia, they identify both secrecy and a failure to properly record as hallmarks. For example, the Australian coronial service does not record the visa or migration status of those subject to coronial enquiry, and Australian deaths in custody figures exclude detention centres (see *Deaths in custody* and *Detention* in the References). From this study it becomes clear that human tragedies, personal risks and administrative/procedural difficulties should be a focus of concern.

One minor group of immigrants, but one that attracts intense media interest, comprises those who arrive unannounced by small frail craft and are then put into mandatory detention. These highly visible entry-seekers are distinct from visa overstayers, who do not seem to be subject to mandatory detention. However, those who choose to come to Australia do not do so illegally; it is not an offence to seek asylum, but it is up to the receiving country to determine whether or not applicants can stay.

In addition to the prospect of detention there is the high risk of a marine accident. The current concern with the loss of life of those on their way to Australia has some interesting earlier parallels. From the time of the First Fleet in 1788 there was always the risk of loss of life, some of which occurred when the ships were approaching the Australian coast. The common route from Britain to Australia was via the southernmost part of Africa, Cape Agulhas. The route was then direct across the Indian Ocean and the Southern Ocean to the straits between Tasmania and the mainland. This was before there was a light at Cape Otway (on the southern part of the mainland opposite Bass Strait), but even after this, many ships were wrecked there. Loney (1993) reported 129 wrecks

and the loss of many lives. This loss of life on the Australian coast and its approaches is a historical echo of the current loss of life of 'boat people'. Those lost in Australian waters make up one part of the loss: another is the loss outside Australian waters. In a comprehensive account of convict days, Hughes (1987, p.362) noted that on the *Neptune*, a so-called 'hell ship', one third of her five hundred convict passengers died, even though he did not record how (see also Bateson, 1972).

One way to enter Australia to seek asylum is by sea in small craft: less obvious ways are to enter as a visitor and then overstay the visa or to gain a tertiary qualification from Australia and then stay on. What makes Australia attractive is that it has both political stability and economic prosperity. By way of comparison, it can be noted that in 2013 Spain had a serious recession with a very high unemployment rate, especially among the young. One of the effects of this was a substantial fall in immigration, despite the geographical proximity of the country to major sources of immigrants from North Africa and Europe.

Some immigrants arrive in order to escape persecution; others to find a more congenial environment. Motives are both mixed and complex. The government feels and acts upon an obligation to those seeking political asylum, quite understandably: what is less clearly expressed is the condemnation that should attach to the foreign authorities who drive people to emigrate.

Responses to asylum-seekers have changed constantly. Policies such as exclusion zones, offshore processing and mandatory detention have been amended and re-amended. In May 2013, for example, a policy of not allowing detention centres on Nauru and in Papua New Guinea (PNG) to be inspected by the Australian Human Rights Commission was instigated; the media were also blocked from entering. Here a curious point arises: the differential treatment in government policy given to those arriving by plane compared to those arriving by boat. (Those wishing to see a review of the legal issues on asylum-seekers to Australia should consult Blay et al., 2007; see also *Asylum-seekers* in the References.)

Mandatory detention

In the Australian context, not only is detention indefinite but it also creates a form of idleness that must generate despair. There is no case to have these people detained and not contributing to the common wealth. What is of serious concern is that an adverse assessment by the Australian Security Intelligence Organisation (ASIO) is carried out

in secret and those charged are not allowed to know details of the evidence collected (making it impossible to rebut). This denial of the right to know, to confront witnesses and to be assumed innocent until found guilty is a denial of habeas corpus.

One might be justifiably critical of the US government for its 'rendition' program; arresting people of foreign nationality and taking them to Guantanamo Bay in Cuba where they are detained, sometimes without trial. As Australia puts some asylum-seekers in mandatory detention, this raises the question of how different that might be. There is a difference in one sense in that people choose to come to Australia, but in Guantanamo Bay they were arrested without warrant, often in overseas countries where they had not broken the law. What is common to the two situations is detention without trial; in both cases morally improper detention is the common feature.

Those held in Guantanamo Bay are described as 'the worst of the worst', but we do not know that without a proper civil trial. In Australia an adverse ASIO judgement is sufficient to keep asylum-seekers in detention on Nauru or Manus Island where they do not have the right to test the evidence, confront witnesses or benefit from the presumption of innocence until proved guilty. Neither nation has clean hands on the matter.

Those who riot in detention centres may have a legitimate grievance in that their cases were not being dealt with in an appropriate manner or within a reasonable time frame. In 2011 there were riots in detention centres on Christmas Island, and in Villawood, a suburb of Sydney. The riots and fires destroyed nine buildings, and caused considerable other property damage. As a result 30 asylum-seekers faced criminal charges. New amendments to migration law will have their visas automatically refused if they are convicted of a criminal offence, whether or not they are genuine refugees.

Those who commit violence in detention centres be may now be excluded from consideration for settlement in the community. That judgement will be based on an assessment of their propensity to commit violent criminal acts. Threatened violence, including threats of self-harm, is a consideration in this. It is a real dilemma for decision-makers to balance genuine grievances with threats to state officials, and one cannot envy their position.

Detention facilities are not all of a kind. In Australia there are Immigration Detention Centres, mainly used for those in breach of visa conditions, or refused entry by immigration officials: Immigration Detention Facilities, which contain a range of unlawful non-citizens:

Immigration Reception and Processing Centres, used mainly for unauthorised boat arrivals: and Residential Housing Projects, which house women and children in family-type accommodation. With the exception of the last there do not seem to be sharp differences between the other categories.

According to the joint report from A Just Australia (a campaign managed by the Refugee Council of Australia) and Oxfam Australia (see Bem et al., 2007) between 2001 and 2007 Australia has spent more than \$1 billion to process fewer than 1,700 offshore asylum-seekers. Interception by defence forces costs an estimated \$100 million; there are construction costs, maintenance costs and processing costs; transport costs to move asylum-seekers offshore (\$5 million), as well as flying costs for staff and lawyers. To these costs must be added a comparison of expenses incurred as a result of offshore versus onshore processing; the report is clearly in favour of onshore processing as being both less expensive and more humane.

Against this one must place the deterrent value of harsh sanctions to those contemplating travelling to Australia. This involves issues of policy, expense and obligation. Where asylum-seekers are kept in indefinite detention there can be a justifiable complaint: when it comes to the United Nations making the complaint, however, one might question their achievements in ameliorating the issues that have given rise to the need for seeking asylum. Given that there is an inner circle (the Security Council) that has the power of veto, and given that the UN includes some states that drive out its citizens upon which other states can put pressure, it is disappointing that it does not do more. The veto has a perverse effect, in that it often is used to disallow progressive policies: it is curious that the Security Council includes France, a country that was overrun and occupied by the Nazi regime (as were Holland, Norway and so forth), and had to be liberated by the Allies.

With respect to the use of veto powers in the UN the record is held by USSR/Russia with 124, then comes the USA at 82, Britain at 32, France at 18, and China at 6. The issues that affect the exercise of the veto do, of course, vary: further, there are changing patterns of veto use. Since the mid to late 1990s its use has declined substantially. It is worth noting that the Security Council has five permanent members but also appoints ten non-permanent members for two-year terms. Australia has such membership for 2013–14. While deliberations occur formally (in the Security Council in particular, and the UN in general), there is no doubt a great deal of behind-the-scenes work that is of substantial value.

Treatment after arrival

The Australian government's handling of illegal entrants has, in some respects, been quite proper. Dealing with governments that are transit countries on the way to Australia is one; the preservation of national borders is a second; the requirement to vet incomers is a third; the right to determine population policy is a fourth. While prosperous countries have an obligation to assist the less fortunate, that must be balanced by the need to preserve the desirable elements of current society: an obligation to assist is tempered by the need to preserve.

Differences in rates of deviance may be due to various reasons in the groups within an enclave, whether or not it is in a city. For instance, personal violence may be related to the use of traditional magic, to culture conflict, to modern industrial banditry or to drug trafficking. A relevant question here is the extent to which extended families commit offences internally (for example, incest, assault) which are never revealed.

By way of contrast, recent evidence is available from Sampson (2009). He found that migrants revitalise inner cities: thus the problem of urban decay, of consequent crime and social dysfunction, may be ameliorated by locating immigrants in inner-city areas. The settling of migrants to inner cities could well add energy and enterprise, provide needed diversity, dilute the influence of dysfunctional population elements, and make abandoned buildings habitable. The presence of children, of families and of lawful activity could provide missing functional elements.

It has been observed that when migrants arrive in a country it is uncommon for them to be diffused throughout the community. More commonly they aggregate in communities or enclaves. When problems occur in culturally homogeneous communities it is more likely that they will be resolved within the enclave rather than by general community agencies. There may be exceptions in such cases as murder, where the internal means of coping are inadequate or where there is a pressing danger. One of the difficult methodological issues in investigating such crimes is the extent to which they are contained within the enclave. Here the problems arise from the differences between migrant enclaves and the host community; differentials between ethnic groups; and the differential in-enclave containment of different types of offences. All of these create difficulties in interpreting migrant crime data.

In the UK there are Immigration Removal Centres, currently housing approximately 2,500 people, with others in different forms of detention. Tracking illegal immigrants in the UK is a particular problem. This is

well illustrated by the UK Border Agency, which faces the significant problem of losing contact with asylum and migrant applicants. It was reported in 2011 by the Home Office Select Committee that the Border Agency had lost contact with 124,000 applicants in the last year (see BBC, 2011) and moved them to an 'archive'; the number of lost cases is equivalent to the population of Cambridge in the UK. Conversely, Japan admits few asylum-seekers, partly because it is a crowded country, and partly because the national ethos places emphasis on Japanese-ness and cultural homogeneity.

When cases are moved to the archive the UK Border Agency has effectively given up on them. MPs are reported as saying that 'The controlled archive has become a dumping ground for which the Agency has given up'. The archive, which comprises 455,000 cases dating back to the 1990s, is an appropriate context in which to consider the relatively small number of illegal migrants in Australia. Given the relative population of Britain (approximately three times that of Australia), and the massive influx of migrants into Spain, Italy and Greece, the Australian problem is a rather smaller one.

Migrants who arrive illegally and go 'underground' are in a poor situation. They cannot seek the conventional protection of the police and courts in social matters. If they are the subject of exploitation by employers or businesses, they are not in a position to resist, since the courts would be obliged to draw the complainant to the attention of the Immigration Department. The illegal migrant can, therefore, be commercially exploited and disadvantaged without means of redress.

One method of resolving these difficulties is for the Federal Government to offer amnesty to illegal migrants and to ask them to apply for formal recognition. One can never be certain if and when there will be future amnesties. The Whitlam government introduced amnesties for illegal migrants starting in 1974, and the last of its kind ended in 1980. In Australia the most recent immigrant amnesty was the Close Ties visa subclass in the 1990s, covering 'innocent illegals'. Those who entered the country illegally as children may be covered by this amnesty, but it covers very few people. It is unlikely that there will be others, one of the main reasons being that they encourage those who go underground to wait quietly until the amnesty, and then apply for residence.

Policies to discourage the employment of illegal migrants may entail the threat of severe penalties for employers and strict liability for hiring workers without proper documentation. This strategy is at first blush compelling; not only would it appear to protect disadvantaged workers against exploitation by unscrupulous employers, it would also serve to

protect employment opportunities for legitimate members of the workforce. In furtherance of these worthy ends, the State could enlist the resources of the employer in screening prospective employees. However, to shift such potential risks and administrative burdens on to the employer may encourage some to avoid employing members of ethnic minorities, legal or illegal, altogether.

This picture of apparent gloom can be mollified by the very real help given by many to asylum-seekers. Many are offered a range of services based on particular circumstances or needs and it would not be accurate to describe these as special privileges. For example, the Asylum Seeker Assistance Scheme (ASAS) is administered by the Red Cross and funded by the Department of Immigration: it provides financial assistance, advice and healthcare benefits to asylum-seekers who have been waiting at least six months for their protection visa to be processed.

Under the Integrated Humanitarian Settlement Strategy some refugees, some Special Humanitarian Program entrants and some among the Protection Visa subclass have access to on-arrival reception, short-term trauma and torture counselling, case coordination and assistance with finding accommodation.

There is an excellent website that features questions and answers about refugees and asylum seekers (see *Questions and answers about asylum seekers* in the References). This contains definitions of 'migrant', 'refugee' and 'asylum-seeker' and also draws useful distinctions between 'migrant' and 'refugee': basically, the difference is that migrants choose to move, whereas refugees are driven by concerns for their own safety. A refugee is defined as someone who is outside their own country and crosses an international border and cannot return for fear of retribution on the grounds of race, religion, nationality, membership of a particular group, or divergent political opinion. An asylum-seeker is 'someone who has fled their own country and applies to the government of another country for protection as a refugee'. The site outlines a variety of options, the subject of visas, and gives an account of Australia's humanitarian policy.

In all of this it is clear that the 'offence' of many migrants is that they were or are victims of socio-political crime. Those in power in other countries who seek to drive out dissidents are the real offenders, and asylum-seekers the victims. However, one category that deserves rejection comprises those who seek to evade the criminal law in their own country by seeking refuge elsewhere. Another is that made up of those who would be likely to bring communicable diseases to Australia. A third category is that of would-be terrorists. Making discriminations

and judgements based on such factors must be the very stuff of administrative nightmares.

The question of the political adaptation of migrants has been addressed by Bilodeau et al. (2010). In their study two questions were posed: one concerned the adaptation of those from authoritarian regimes; the second concerned pre-migration socialisation and its effect upon the move to a more democratic society. In principle they found evidence for the persistence of pre-migration orientation – a not surprising conclusion but it is pleasing to have it confirmed.

Deportation

Division 9 of the Migration Act of 1958 (Cwlth) covers the circumstances of deportation. The Minister may deport a non-citizen in certain circumstances. The deportation may occur where a person is convicted of an offence and at the time of the offence they were a non-citizen who had been a permanent resident for fewer than 10 years, and they were either sentenced to death or imprisonment for at least one year (s 201). They may also be deported if they are a threat to national security. Deportation is also possible where a person is convicted of certain serious offences in Australia and at the time of the offence they were a non-citizen. Migrants who are asylum-seekers can also be removed from Australia when they are found not to be genuine refugees. However, the terminology used is ‘removal’, not ‘deportation’.

Article 14 of the UN Declaration of Human Rights asserts that:

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

From this it follows that to seek asylum is not contrary to basic principles. What it does not assert is any obligation of any state to accept asylum-seekers. It does not automatically confer the right of entry: the right of acceptance must always be subject to the discretion of the host nation. However, what is equally clear is that all who seek asylum, for whatever reason, should be treated with dignity, formality and their cases processed speedily.

Forcible repatriation may condemn an individual to severe punishment or death in their country of origin for no offence other than

that of holding political views divergent from those of the status quo. As recorded elsewhere, in this respect it should be recalled that only some member states of the UN have authentically democratic regimes. This partly explains the number of judicial and non-judicial executions and their global distribution. The vicious circle may be broken at the national and international level by constructing criminal justice systems in accordance with the goals of the United Nations and specialised agencies for which the promotion of human rights plays a primary role. Fortunately, in some countries deportation as a means of crime control has a vanishingly small incidence.

Women

A particular problem exists for migrants from cultures with a history of subjugating women. Where such women migrate they do so as adjuncts to the males who control their lives. Lutz (1991), for example, outlined the special difficulties facing Turkish women migrating to the Netherlands, but her argument may have wider application. The confounding issue here is the mistaken identification of the subjugation of women with a particular religion. Lutz points out that men are the reference point in a wide range of cultures, religious and non-religious, and it is in such a context that women's status is set. It is in such enclaves that such subjugation may persist.

The difficult situation of women from 'traditional' cultures wherein they were considered second-class citizens could be compounded by the loneliness of having no job or wider community contact; they can be additionally alienated by having a lesser command of English, or of the country's home language. Differential access to services, and a disposition not to use them, could all combine to make life distressing. Lutz mentions barriers to obtaining referrals and services, and to the need for culturally appropriate services, all of which deserve a mention, as do diagnostic issues.

The view of women in some cultures stems from a view that women are, at best, human inferiors: they are viewed more as objects than as fellow humans. In 'civilised' societies violence against women is seen as contemptible, despite the fact that some members of such 'civilised' societies regard it as their right: in some cultures, however, physical punishment may be considered a norm. In dealing with special cases the plight of women is a difficult and compelling issue. The vulnerabilities to which they are prone are various, and are mentioned below as examples of the constant adverse discrimination that women suffer,

both in general and in crime-related circumstances (see Menjivar & Salcido, 2002).

Cultures that highly value female virginity and chastity may resort to killing when a female family member is thought to have 'dishonoured' the family ('honour killings'). In one case a Middle Eastern man tried to hire someone to kill his niece, who was in a relationship with the follower of another religion. The father argued that the family shame and the niece's forgiveness should mitigate his sentence (see *R v Qutami* [2001] NSWCCA 353, 28 June 2001).

One of the most heinous assaults involves the throwing of acid by young men at young women who have rebuffed them. The aim of the acid is to make them unattractive to others; it expresses an extreme form of jealousy. Although this is uncommon in Australia, many cases have been documented elsewhere in the world. Other cases of such violence occur where a family decides that a female who has committed a sexual misdemeanour should be killed to preserve the family 'honour'. It is hard for the Western mind to comprehend that one could kill one's own child on these grounds.

Forced marriages, in effect, give rise to a form of duress that is scarcely different from that caused by human trafficking. The Australian government has warned that new laws might be needed to stop teenagers being flown overseas by their families and forced into marriages. Such offences would, in effect, be punished as sex trafficking, and attract a substantial prison sentence. It constitutes, in the view of the Attorney-General, 'an abuse of human rights'. The national newspaper, *The Australian*, reported that teenagers as young as 14 had sought help from the Australian embassy in Lebanon after arriving in the country and being pressured or forced into marriage. Their parents had arranged the marriages, many without their knowledge, to protect them against promiscuity and other Western vices (see *Forced marriage* in the References).

In 2011 it was reported that, in Afghanistan, a woman, Gulnaz, was raped by a cousin's husband, had become pregnant and had given birth to the child. She was imprisoned for adultery, and would only be released on condition that she marry her rapist. To draw attention to this gross abrogation of human rights a film was made, but political pressure to have it banned created another furore. This is an excellent example of the clash of ethnic ways with the laws of 'civilised' nations. There is no doubt that forced marriages are a denial of human rights, and they must be dealt with accordingly.

In some cultures polygamy is permissible, but not in Australia. Having said this, it can be noted that although polygamy is legally

impermissible it can be achieved de facto. Consider a man married according to law, who deserts a wife and takes on a common-law wife. Further, suppose that the de facto wife bore two children, giving further solidity to the union. The man has, in effect, two spouses. It would be a matter for the courts to consider the division of property, the legality of the assumed partnership and loyalty that is owed. Where there is a punishment for polygamy, it would be difficult to decide on the relative rights of a legal spouse and a common-law spouse.

Prostitution is another social indicator that is clearly related to crime. Some prostitution may be voluntary: other incidences are cases of procurement. The pressure exerted on girls and women to become prostitutes must be greater where there is economic deprivation. There probably is also a relationship between prostitution and drug abuse. As both prostitution and drug abuse are illegal in most jurisdictions, many drug abusers have to resort to gaining a quick and untaxed income to support an expensive habit. Further, drug-addicted prostitutes are more likely to be regarded as outcasts even by such marginal groups as addicts who do not prostitute themselves. Additionally, this point might also apply to those who are non-addicted prostitutes (for further examples, see Aoyama, 2009).

In societies undergoing rapid industrialisation prostitution serves an economic function in two ways. In the first place, it helps to maintain a required workforce of young single men who do not then have to seek a wife and who might otherwise leave. In the second place, it allows entrepreneurs to extract large profits from the exploitation of the prostitutes, thus providing the entrepreneurs with capital that they may then use for other investments that are more acceptable to the general populace.

Despite this bleakly economic justification for prostitution the notion of human trafficking is morally repugnant, despite it being a global phenomenon. Any activity that involves threat, deception, coercion or fraud is contrary both to law and to notions of justice. That is not to say that women should not engage in prostitution if they so wish: what is to be condemned is when it involves any form of exploitation.

That rather cold-blooded account of prostitution in no way diminishes the case against women being forced into brothels. The UNODC has even produced a 'toolkit' to prevent trafficking in people (see *UNODC toolkit to combat trafficking in persons* in the References).

Judges have to decide on cases of breaches of principle, with a view to stopping it, despite whatever cultural traditions may be involved. We also need to recognise that our experience in dealing with Aboriginal

law and imposing Western standards was not always successful (for further information see *Violence against women* in the References).

One particularly salient cultural example involves female genital mutilation (FGM). There was a debate, now resolved, about the sexual mutilation of girl babies, and now there is a clear position that forbids the practice (for an account, see *Female genital mutilation* in the References).

It is also worth noting that women may also suffer more from imprisonment in Australia. Women of cultural and linguistic diversity (CALD) are often isolated and marginalised in prison, and thus receive more punitive treatment than the general prison population. There has been an increase in imprisonment for women, with a disproportionate number being from CALD backgrounds. Vietnamese women are nine times more likely to be imprisoned than are women of other backgrounds. It has been observed that there is a short supply of interpreters, which may have an adverse impact on access to both legal advice and contact with their families. Concern was also expressed, with anecdotal evidence, about the difficulties faced by those of minority faiths in being able to practise their religion. These difficulties are exacerbated by a corresponding lack of post-release services and assistance.

Women who are from an alien culture and imprisoned seem to suffer distinct disadvantages. Reynolds (2010) reported on gambling by Vietnamese women in the state of Victoria. There were reportedly 45 Vietnamese-born women incarcerated in Victoria in June 2010, representing nearly 14 per cent of all women prisoners, and 87 per cent of all women prisoners born in non-English speaking countries. The apparent reason for so many being imprisoned is gambling debts, and charges often relate to drug dealing and theft occasioned by a need to pay off the loan sharks who funded their gambling habit. A disposition to social isolation, to perceiving gambling as a means of acquiring wealth and a lack of English make these women ready targets. One might or might not regard gambling as deviant behaviour, but it certainly has clear social consequences.

While we may feel ambiguous about divorce there is less ambiguity about family violence. A study of that in relation to individual birthplaces would be helpful. A report on family violence, carried out by a consortium of Monash University (Victoria), the University of South Australia and James Cook University (Queensland), used telephone interviews over the three states. Results from the survey provide a good start and, with appropriate expansion, would provide a useful database (see *Family violence* in the References).

Eastal (1994: Table 1) notes that the birthplace/ethnicity of those accused of homicide in both intimate and non-intimate relationships was at a lower rate for the overseas-born than for non-Aboriginal Australians (Aborigines had a high rate for homicide in intimate situations). A further exception was in Victoria where the overseas-born also had a very high rate.

Children

How to treat children who are potentially immigrant is a vexing problem. Whether they come with or without their parents, whether the parents are unacceptable for some compelling reason and the exact age of the children are all factors that must be taken into account. Australia's immigration detention policy is inconsistent with the *UN Convention on the Rights of the Child*. In particular, Australia's mandatory detention system fails to ensure a child's right to be detained as a measure of last resort and for the shortest appropriate period of time. Among the disadvantages for children are:

- Long-term detention undermines a child's ability to enjoy a variety of other important rights;
- Children in immigration detention for long periods of time are at high risk of serious mental harm;

As a result of expressed concerns, an amended Act – the Migration Amendment (Detention Arrangements) Act of 2005 Cwlth – was promulgated. The amended Act made specific reference to protecting the rights of the child.

Since that time the issue of children in detention has been a recurring theme. On the one hand children have the right to freedom and a conventional home life; on the other hand it might be taken to imply that that can only be enjoyed by releasing their parents into the community even when this does not seem to be legally justified.

Some of the issues mentioned above are canvassed in Chapter 10, Victimology. In this work it is believed that so serious a matter deserves to be yet more widely canvassed, in all its different contexts.

Numbers arriving

In the context of asylum-seekers one can note that the problem in Australia is small compared to those European countries that receive

very high numbers (notably Spain, Italy and Greece). Of those three countries, Greece receives the greatest number, mainly because entering the country requires no sea journey. However, according to information received from the Greek Embassy, there was substantial variation year on year. The lowest number was zero for 2003, and the highest 4,175 for 1999–2000. There is no doubt that governmental policies had an impact; whether they arose from good or dubious motives remains an unanswered question.

The North African country closest to Italy is Tunisia. To a lesser extent Libya is also a potential source of refugees. Algeria is not geographically very far from Italy but, given its geographical position, its refugees are more likely to seek refuge in Spain rather than in Italy. Andrijasevic (2006) has written of the difficulty of balancing the rights and responsibilities of asylum-seekers at the EU's southern borders. One of his conclusions is that the policies designed to deter asylum-seekers might foster migration to neighbouring African states and encourage people-smuggling networks. Those seeking asylum in Italy commonly make their way to the Italian island of Lampedusa, a mere 113km from Tunisia. Since the early 2000s this has become the preferred entry point for asylum-seekers from Africa.

Spain had to fight to contain the numbers of illegal immigrants. The policies that were successful are hard to determine, and currently Spain is experiencing an outflow of people; perhaps the most effective deterrent is an economic downturn. Those who cross from sub-Saharan Africa are a small minority. Flows between sub-Saharan countries are much greater than those between sub-Saharan Africa and Europe. As recorded elsewhere, the problem in Australia is small compared to that suffered by a number of other First World countries.

People trafficking and organised crime

The issue of human trafficking is well covered in a book edited by Lee (2007). This work includes contributions from a number of authors, each of whom has a different perspective, and the work covers the topic comprehensively. The coverage includes a discussion of human trafficking in its widest perspective (Chapter 1). This deals with trafficking in all of its aspects, from slavery through prostitution and mercenaries to links with organised crime. The book also contains information about trafficking in Eastern Europe and Central Asia.

People trafficking was re-examined by Schloenhardt et al. (2009). They concluded that, despite their investigation, too little is still known about

the issue. They also make a plea to all stakeholders to clarify the issue and dispel myths on the subject. They also noted a lack of knowledge about Australia's human-trafficking problem: its very nature makes it difficult to acquire information. Such information as is available derives from anecdotes and media reports; no statistical evidence is available. Their work is an attempt to begin to place the trafficking problem on a firmer empirical basis with respect to both frequency and the social, economic and cultural issues involved.

Just as there is individual crime there is also organised crime: just as there are not very bright criminals so too are there those who are both intellectually bright and well-organised. The United Nations Office on Drugs and Crime has published a Report entitled 'UNODC and organized crime' (see *Organised crime* and the *UNODC world drug report* in the References). That Report held that transnational organised crime is a major threat to human security, and an impediment to the social, economic, political and cultural development of global society. It is also a worldwide phenomenon in what is, to such crime, a borderless world except when borders are there to be exploited, as they might be by those seeking international refuge. To this we might add that organised crime attempts to override democratically elected governments, and to induce a siege mentality that is inimical to quality of life (for a further discussion of the global reach of organised crime see Edwards & Gill, 2003; Schoenhardt, 2008).

Crime is a multi-faceted phenomenon and has manifested itself in different activities: among others, drug trafficking; trafficking in human beings; trafficking in firearms; smuggling of migrants; and money laundering. In particular, drug trafficking is one of the main activities of organised crime groups, generating enormous profits. UNODC works closely with governments, international organisations and civil society to strengthen cooperation to counter the pervasive influence of organised crime and drug trafficking. The *UN Convention against Transnational Organised Crime* is the main international instrument for countering organised crime.

It can be noted that a strict enforcement of laws, particular drug laws, may serve to neutralise opportunistic amateur dealers and thereby strengthen the market position of well-organised professionals. Supply-reduction strategies that lead to higher prices and higher profits can generate intense competition among drug dealers, which may manifest itself in energetic efforts to create new markets.

The UN Convention against Transnational Organised Crime was agreed in 2000. The UN provides technical assistance to fight organised

crime; as such it provides ‘...assistance to the signatories of the UN Convention [against] Transnational Organised Crime, and its related protocols’. Additionally, it provides training for criminal justice practitioners, and is involved in information-sharing and assessing trends in organised crime (UN, 2000).

Stereotypes often arise in discourse around organised crime and criminal foreigners, related to groups such as the Sicilian Mafia, and the Chinese Tongs and Triads. However, organised crime has been carefully documented the world over. In one country with a low rate of criminality (Japan) it has been noted that members of gangster organisations accounted for a fair proportion of the population of penal institutions, a proportion that increased following an increase in violence (see Johnson, 1997).

For the USA the special relationship between migration and organised crime has been documented by Cressey, originally in 1969 and with a reprint/update in 2008. The book’s title, *Theft of a Nation*, made it plain that the author considered organised crime to be a most serious issue. There has also been a useful literature review of the subject (Bruckert & Parent, 2002). They emphasise the need to collect as much core information as possible, but in a non-judgemental way. In their view, the collection of statistics in a positivist fashion is not appropriate for organised crime and would fail to allow a socially meaningful picture of that issue to be presented.

For a long time, there was little empirical evidence gathered on organised crime. Even the concept was elusive. In his seminal article, ‘God and the Mafia’ (1969), Hawkins equated finding proof of the existence of organised crime with that of proving the existence of God (see also Morris & Hawkins, 1971). The concept of organised crime is therefore relatively new; robber barons of earlier times infiltrating mainstream society have given way to what we now call organised crime: each can be seen as an attack on or a subversion of democracy.

One of the striking aspects of organised crime is its global pervasiveness: while it does not see borders as a barrier to its activities it may take advantage of differences between jurisdictions to gain political and economic leverage. The Australian Federal Government has joined forces with other countries, such as Britain, New Zealand and Canada, to create adaptive reactions. It is impossible to know the extent of criminal activity, nor of economic loss as a result of organised crime, but it must be appreciable. The two criminal activities with the most impact seem to be drug dealing and the associated money laundering, extracting money illegally and moving it about the world into financial ‘safe’ havens.

One proposal to combat organised crime is to require those with unexplained wealth to account for its source. This is clearly a matter that involves civil rights issues and a major concern is that the burden of proof lies with the accused/defendant to justify sources, an apparent abrogation of the principle of the presumption of innocence. At a lesser level, the capacity for random search and seizure has links to civil rights issues. At least one state police force in Australia has the right to such random searches, particularly for knives and cleavers. While it may catch and thus prevent some potential crimes it can also constitute a significant unwarranted intrusion into the lives of the innocent and, of equal importance, it is a right that has the possibility of being misused.

In *Gangland Australia*, Morton & Lobez (2007) provide a colourful account of Australian crime, based mainly on anecdote and press reports. If one were to believe a fraction of what they report it would still be a chilling tale. It is not a subject that lends itself to numerical analysis, and there are vast areas of criminal activity that remain obscure or hidden. Examples would include criminals who operate at a higher level, punishments for whose offences are often borne by their foot soldiers in return for future favours. However, although this work is not about organised crime, its general account is nevertheless clearly of relevance to any discussion of migration and crime.

Terrorism

One of the major sources of harm in recent times has been the enactment of legislation to counter terrorism. Democratic regimes that wish to preserve their way of life may, if threatened by terrorism, enact sometimes draconian counter-measures that may well end up destroying the very values and institutions they wish to preserve (see 'terrorism' elsewhere in this work).

The rise of the legal concept of terrorism stems from a concern over certain quasi-religious fundamentalists who seem determined to violently force others to accept their point of view. However, acting on this concern may have unintended consequences, such as loss of liberty. What is needed is a clearer definition of who is a terrorist. As the old saying has it – 'one person's terrorist is someone else's freedom fighter'. A useful broad definition might be that a terrorist is someone who seeks material gain from terrorism, or who seeks to impose his/her view upon the unwilling through violence: a freedom fighter might be better regarded as someone who seeks to be free from a particular tyranny that is oppressing them, either economically or ideologically.

This concept of terrorism has been around for a very long time, and religious fundamentalism or intolerance have often been part of its make-up. However, in the late 1990s and early years of the 2000s, a series of serious terrorist incidents inspired by radical Islam vastly increased concern over terrorism and gave rise to the concept of 'war on terror'. This is a particularly unfortunate term as war is commonly regarded as a conflict between nations with an identifiable resolution or end point. Terrorism, on the other hand, is diffuse and open-ended.

In Australia, what constitutes an act of terrorism is defined in Commonwealth legislation. The Criminal Code Act 1995 (Cwlth) states that a terrorist act is an action or threat of action where the action causes certain defined forms of harm or interference and the which is carried out or the threat is made with the intention of advancing a political, religious or ideological cause. Further, the Act states that 'the action is done or the threat is made with the intention of:

- i. coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or part of a State, Territory or foreign country; or
- ii. intimidating the public or a section of the public; and where the action
 - (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or
 - (d) endangers a person's life, other than the life of the person taking the action; or
 - (e) creates a serious risk to the health or safety of the public or a section of the public; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to: (i) an information system; or (ii) a telecommunications system; or (iii) a financial system; or (iv) a system used for the delivery of essential government services; or (v) a system used for, or by, an essential public utility; or (vi) a system used for, or by, a transport system.

The Federal Criminal Code in Australia makes it an offence for a person to commit a terrorist act, provide or receive training connected with terrorist acts, possess a thing connected with terrorist acts, collect or make documents likely to facilitate terrorist acts, or carry out

any act in preparation for or planning of terrorist acts. The penalty for engaging in a terrorist act is life imprisonment. The penalty for other terrorism-related offences outlined above ranges from ten years to life imprisonment (see *Terrorism [DFAT]* in the References).

As a result of concern about terrorism in Australia there have been several pieces of legislation enacted, notably the Anti-Terrorism Act of 2004 (Cwlth), which included amendments to the Crimes Act 1914 (Cwlth) in order to strengthen the powers of Australia's law enforcement authorities: it sets minimum non-parole periods for terrorism offences and tightened bail conditions for those charged with terrorism offences, as well as other legal initiatives. The Anti-Terrorism Act (No. 2) 2005 (Cwlth) amended the Criminal Code to allow for the listing of organisations that advocate carrying out a terrorist act as terrorist organisations; it also established procedures for preventative detention and control orders, and updated the offence of sedition, among other measures.

The word 'terrorism' is the only one used to describe terrorist acts or activities. There are also laws dealing with related topics such as 'politically motivated violence', 'treason', 'treachery', 'foreign incursions', 'national security' and 'organised crime'. Despite the limited use of terms such as 'terrorism' and 'politically motivated violence', and while few statutes deal specifically with 'national security', various Acts nevertheless deal with issues relevant to terrorism. They may be grouped by subject matter. For example: intelligence, surveillance, migration and quarantine control, nuclear, chemical and biological weapons, aviation safety, and criminal laws. They may also be grouped according to purpose.

The *Protective Security Risk Review* (see References) suggested four categories: intelligence, 'including threat assessments relating to terrorism and domestic violence'; prevention, 'to deny potential terrorists the means and opportunity to achieve their purpose and to defend the likely targets of their attacks'; crisis management '(involving) law enforcement and other executive action in the event of a terrorist incident'; and investigation or, in more explicit terms, 'criminal investigation, detection, apprehension and prosecution' (see also Federal Acts of Parliament (Commonwealth), on terrorism, p.xvii).

Since 2003 there have been several terrorist court cases. The *sub judice* convention requires that Parliament exercise its discretion not to comment upon cases while proceedings are in process. To date, relatively few cases have been brought to a close, although a number are in their latter stages. That is not to denigrate the importance of such cases. (For progress on terrorist cases see *Terrorism (DFAT)* in the References.)

Corrupt regimes are often associated with terror tactics designed to keep the populace 'in order'. Some non-democratic regimes also use terror as a putative means of subverting other nations to their world view – as though that could be achieved. The United Nations Office on Drugs and Crime (UNODC) has addressed this aspect of terrorism for a number of years now. Its activities have included the prevention of terrorism, addressing problems of counter-terrorism, amendments to legal systems to deal with terrorism, and providing input to national crime-fighting bodies.

As the UN states, 'We strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security' (UN, 2006: point 82). However, in spite of the vehemence of the UN position, there is still a balance to be established between maintaining civil liberties and the need to contain terrorism. Intercepting pirates on the high seas seems to be an admirable policy; intercepting vessels carrying humanitarian supplies does not – and there is a significant grey area between these extremes. The decisions in each case therefore become a matter of a difficult judgement call.

Under sedition laws, designed to give governments more power at the expense of civil liberties, one can be imprisoned for certain terrorist or related offences, and (legally) not allowed to tell your spouse. The erosion of certain civil rights therefore poses a significant problem. These rights include the right to confront accusers, the right to freedom under habeas corpus, the right to silence, the right to counsel, and the right to inform one's family. Maintaining the balance between preserving hard-won civil liberties on the one hand and protecting the citizens against terrorists on the other therefore poses a significant dilemma. While some argue that undue pressure to preserve civil liberties in the fight against terrorism means that terrorists have a greater opportunity to achieve their aims, a critique of laws promulgated in Australia in the early 2000s pointed out that, under them, you would be a terrorist if you:

- Agitated for Magna Carta and supported the barons against King John
- Supported Martin Luther against the Vatican
- Called for Charles I to be accountable to Parliament or otherwise threaten civil war
- Joined William Wilberforce in campaigning against slavery
- Raised money for George Washington and the rebel colonists

- Fought with the resistance against the lawful government of Vichy France
- Aided Mahatma Gandhi in the Salt March, and called for Indian independence
- Made a donation to help the release of Nelson Mandela from Robben Island prison
- Supported Fretilin and the independence of East Timor from Indonesia
- Took part in trade union protests of various kinds
- Be held in an Australian prison without being allowed to tell your spouse.

Anti-terrorist Acts therefore appear to be catchall pieces of legislation that appear to deny hard-won civil liberties, and could well become instruments of the suppression that they are designed to eradicate.

5

Legal Issues

There are extreme cases where the law seems to be a remote three-ring circus of irrelevance and entertainment, and far removed from the standards that operate in a particular culture. In Third World countries the laws enacted in the capital seem to be at a far remove from the concerns of rural peasant dwellers. Some cultures do not understand the laws forbidding bigamy; some cultures cannot understand that personal revenge is not permitted in the case of, for instance, a murdered brother or that the killing of a daughter who becomes pregnant out of wedlock is not permitted. It is as if there are two realms of discourse: the cultural one and the legal one. In some cases the cultural expression of values is at a far remove from the myriad of laws that constitute the body politic: the concept of *mala prohibita* may sound like a foreign abstraction to many. Power and pageantry, together with apparently mysterious processes, have little bearing upon their view of punishment, reparation and dispute resolution. Large formal organisations such as the police force may not respond to the special problems of migrants unless specific action is instituted.

Federation year

The moves toward autonomy found formal expression in 1901 when the Commonwealth of Australia was founded. Before that, the responsibility for migration rested with the six colonies (subject to the Imperial Parliament). On Federation, responsibility was assumed by the Federal Government (although an active role was not adopted until later). Immigrants enter Australia at present by permission of the Federal Government, but, excepting for a few Federal offences, their criminal

career is defined by the jurisdictions of the states. The Department of Immigration is aware of this problem and keeps a watchful eye out, on the states' behalf, for undesirable aliens.

A Federal Parliament was constituted in 1901. The power of controlling immigration rested with the Federal Government but, in practice, the act of selection of migrants remained a state issue until about 1920. Between 1901 and 1920 Commonwealth activity in this area was restricted to the determination of categories of people permitted to enter Australia.

The policies of the Federal Government were originally inclined towards the selection of Caucasians and collectively came to be called the 'White Australia Policy'. This policy effectively excluded non-European immigrants for the first fifty years of the Commonwealth.

The Minister for Immigration responsible for the administration of the government's post-World War II policy was Arthur Calwell. In that portfolio he represented the view that migration to Australia should be substantially European. Immigration policy after World War II argued that Australia had a duty to take a share of refugees from post-war Europe. Between 1947 and 1951 some 170,000 displaced persons from Europe arrived in Australia. In that same period 120,000 British, 10,000 Maltese, 10,000 other persons (including many Dutch citizens from Indonesia) and 160,000 unassisted immigrants arrived. The largest group were the British, the Italians and 15,000 Jewish and other refugees.

During this period total arrivals were about half a million people, of whom only 40 per cent were British. Prior to 1945, Australian policy favoured predominantly British immigration. At this point the principle was breached and this feature gave new direction and impetus to Australian society. What is remarkable about this influx of refugees and others is that although they were mainly young, unmarried and male, a group notoriously disposed to crime, their criminal involvement was substantially lower than might have been expected. The reduction in the influx of British migrants was recognised in 1973 by the government, which abolished the distinction between British and aliens with respect to citizenship. Identical rules for residence have since been applied to those of British and of non-British origin.

By mid-1978 the policy was reoriented towards restriction of immigration and selection on the grounds of family reunion, occupational eligibility or refugee status. It is plain that the post-war policy of wide encouragement and relatively unrestricted entry had come to an end. However, a major consequence of the post-war migration policy has

been substantial cultural diversity that has changed community habits, clothing, food and entertainment, and has had a substantial impact upon educational needs in Australia. The maintenance of ethnic pluralism is not necessarily at variance with social cohesiveness and it is the reconciliation of the requirements of pluralism with those of social stability that requires governments, at both state and Federal level, to tread a very difficult line with respect to social policy and control.

In the earlier period of the Commonwealth, one of the original means of restricting immigration to those of European origin was provided by Section 3 of the Immigration Restriction Act of 1901–35 (Cwlth), using a ‘dictation test’. The test had to be in a European language but the language selected was left to the discretion of the immigration officer and not the migrant doing the test. This could lead to such abuses as an immigrant from Poland being required to take a language test in Finnish or Erse (Irish Gaelic). (Interestingly, in 1930 The High Court held, in the *Kisch* case, that the test could not include Scottish Gaelic – see *Dictation test* in the References.) Presumably it would have excluded Erse on the same grounds.

This racially restrictive policy was gradually relaxed throughout the 1950s and 1960s and in the early 1970s the last remnants of the White Australia Policy were officially abolished with the announcement that future immigration was to be based on the ‘...avoidance of discrimination on any grounds of race or colour of skin or nationality’. Since that time, policies have actively encouraged a greater ethnic mix by emphasising equality of access for all groups. In 1977 a submission by the Australian Ethnic Affairs Council to the Australian Immigration and Population Council, *Australia as a Multicultural Society*, was presented (Zubrzycki, 1977). This advocated a charter that highlighted three main issues: social cohesion, cultural identity, and equality of opportunity and access. Later a revision was proposed – a fourth principle: that of equal responsibility for, commitment to and participation in society. Multiculturalism gradually became part of the Australian ethos with cultural diversity now generally being seen as advantageous rather than detrimental.

Rule of law and parliamentary democracy

The rule of law and parliamentary democracy are two political jewels. Where such values prevail nationally they may be either eroded or strengthened by union with larger bodies or with other political

entities. To enter such a union there is the need to be mindful of the loss of sovereignty that such a union may entail. Notwithstanding this, national sovereignty offers, as one of its main protections, citizenship and the entitlement to a passport. As such, the passport is a precious document, and any state that misuses such a document is in clear breach not only of the law but also of international understandings.

To be a member of a nation is to be at one with the national ethos, and this should prevail over any tribal loyalties. Thus the term 'ethnic' has unpleasant connotations in the expression 'ethnic cleansing', as though certain ethnicities were pollutants: cleansing implies removing dirt. At an international level it is one of the doctrines of hate that needs to be eradicated by the political process.

In processing before the law, migrants may be considered equal, but that proposition is more apparent than real for they may be disadvantaged in several ways. First, they may be ignorant of the contents of statutes to a greater degree than is the case with the native-born; second, the function of the system of justice may be unfamiliar to some migrants (for example, those from alien jurisdictions using the inquisitorial system, as distinct from the adversarial system, might find the latter difficult to understand); third, migrants from many places may be ignorant of aid for legal problems, such as Legal Aid, Tribunals and the Ombudsman; and fourth, migrants tend to come from lower socio-economic status groups than the national average.

The 'reasonable man'

When it comes to sentencing, the notion of the 'reasonable man' is relevant. In Australian terms, how should an Anglo-Saxon judge deal with a knifing affray involving, say, Sicilian immigrants? Is any form of violent intervention reasonably permissible? What is the permissible delay between knowing of a transgression and retaliating? What invasions of marital privacy should a European-Australian woman tolerate if married to a recently detribalised incomer when their normative systems are at variance? Such vexing problems of 'reasonableness' often become an integral part of the finding of guilt, particularly in cases involving personal violence.

Sometimes crime is seen as being somehow more grave than industrial or other inter-group conflict. We have institutionalised reasonableness in industrial conciliation; and since the threat to social order is less from criminal behaviour (indeed many serious crimes actually cement

the sense of community; see, for example, Erikson, 1966), we should be even more reasonable there. Perhaps one of the reasons that people apply a retributive philosophy to the individual criminal is that the latter cannot hit back. As a colleague (Stanley Johnson – personal communication) so aptly put it, concerning industrial, political or other inter-group conflict, we may be ‘...offended no less by the enemy than we are by a criminal, but we respect the strength of his political following and therefore do not bully but put our passions in their place, under the rule of conciliatory reason. So it should be with the individual criminal’.

Where there is an ethnically heterogeneous population the standard of reasonableness is no longer clear. The concept of reasonableness has a strong cultural component. The application of the British standard of ‘the man on the Clapham omnibus’, for example, is inappropriate in many contexts. This ‘standard of reasonableness’ is of particular relevance in cases of provocation, so what might provoke a Corsican beyond endurance, for instance, could leave a Canadian undisturbed.

The concept of the ‘reasonable man’ has been challenged in Australia. In a case of wife murder the High Court of Australia quashed the appellant’s conviction (substituting manslaughter for murder). The then Chief Justice, Sir Garfield Barwick, held that the defendant was emotionally disturbed by a disclosure by his wife and that it did not make him, in the Chief Justice’s view, other than an ordinary man of his ethnic derivation. In that same case, Mr Justice Murphy held that the objective test of reasonableness is inappropriate for a heterogeneous society (see *Moffa v The Queen* [1977] 138 CLR).

In this context the notion of the ‘reasonable man’ is problematical. As already pointed out, in the context of a widely diverse set of cultural patterns the ‘reasonable man’ is not easily describable. Police attitudes, legislative policy, the efficiency of the criminal justice system, and immigrants’ attitudes and experience all bear upon the crime rates of the foreign-born. Both the apprehension of criminals and their processing by the criminal justice system are integral parts of this situation.

Immigrants may not leave their cultural baggage behind. To many the laws of the country they have left remain salient in their minds. Therefore, one of the pressing problems here is that of which law shall prevail. Commitment to Sharia (the Islamic system of law) among some immigrant groups has placed pressure on mainstream jurisprudence. The response has typically been to reassert and reaffirm that the law of the land shall prevail. That is not to say that other forms of law should

not be considered, but the rule of law is still generally understood as being the rule of one law, however defined.

Powers of the Commonwealth

The Parliament of the Commonwealth of Australia has no general power to legislate with respect to crime. Offences must either fall within, or be incidental to, the exercise of a head of constitutional power. Thus Commonwealth criminal law concerns the responsibility of the Commonwealth to protect itself, the Australian Constitution and its functions, as well as to enforce its own laws.

In particular, legislative power to deal with terrorism may be derived from a mosaic of various direct and indirect sources. Section 51 of the Constitution provides that the Commonwealth may 'make laws for the peace, order, and good government of the Commonwealth...' and then goes on to nominate the areas that it will control.

Section 122 gives it plenary power to legislate, or over-ride legislation, for the government of the Territories. The Commonwealth may also be able to derive relevant legislative power from its 'inherent right of self-protection' and/or the 'character and status of the Commonwealth as a national government'. On the other hand, Commonwealth legislative power is hemmed in by express and implied limits that operate to protect individual liberties.

Technically speaking, the Migration Act 1958 (Cwlth) applies to everyone entering Australia, whether or not they are citizens. The law is generally concerned with the identification and classification of people entering the country. Immigrants who have been permanent residents for more than 10 years and have committed a criminal offence are no longer subject to the deportation provisions. The purposes of the Act are set out in s4 as follows:

s4 Object of Act

- (1) The object of this Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.
- (2) To advance its object, this Act provides for visas permitting non-citizens to enter or remain in Australia and the Parliament intends that this Act be the only source of the right of non-citizens to so enter or remain.
- (3) To advance its object, this Act requires persons, whether citizens or non-citizens, entering Australia to identify themselves so that the

Commonwealth government can know who are the non-citizens so entering.

- (4) To advance its object, this Act provides for the removal or deportation from Australia of non-citizens whose presence in Australia is not permitted by this Act.

Clearly one of the intentions of monitoring is to exclude those of criminal character or who constitute health risks. The whole notion of deportation has been canvassed by Nicholls (2007). His account is both historical and contemporary, placing deportation in a wider context. As he also points out, the founding of Australia as a penal colony was based on deportation from Britain.

Citizenship and deportation

Australian citizenship is of fairly recent origin. Until 1948 it did not exist, with Australians being regarded as British subjects. The Citizenship Act of 1973 (Cwlth) allows for citizenship by birth, descent or by naturalisation. The Act specifies that those born in Australia with at least one parent an Australian citizen are Australian. Since 1948 Australian citizens are classified by birth (provided the father is not a consular officer of a foreign power). A person born outside Australia may be an Australian citizen by descent, if at the time of birth either parent was an Australian citizen, if they were married or, if illegitimate, the mother was an Australian citizen or had the status of a British subject and was continuously resident in Australia. In any such case such a birth is to be registered at an Australian consulate within five years (or such further period as the Minister should allow).

In summary, the purposes of the Act are: to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens; to provide visas permitting non-citizens to enter or remain in Australia (with the intention that the Act be the only source of the right of non-citizens to enter or remain; to require those entering to identify themselves; and to provide mechanisms for the removal from Australia of non-citizens whose presence is not permitted).

When, then, are migrants considered as equal citizens? Perhaps that state is reached when they become Australian citizens. An applicant for citizenship must satisfy the requirements that he or she be of full age, can understand the nature of his application, is of good character, has an adequate knowledge of English, has insight into the responsibilities and privileges of Australian citizenship, intends to live in Australia

and has actually done so throughout the year preceding granting of the certificate (with some possible additions).

There are distinct advantages to acquiring Australian citizenship. These include an Australian passport, eligibility for permanent government employment, the right to vote in government elections and security from deportation. Australian citizenship also has great symbolic value for the population at large, in that it formally establishes membership of the national (and international) community.

Given what was noted above, the immigrant-to-settler change depends upon a number of issues: basic intention, circumstantial factors (such as buying a house, marrying and sending children to school) and absorption into the community. The converse question is also discussed – that of a migrant not becoming a settler. One might consider such features as the migrant's own acts (such as espionage or sedition) that may indicate an intention not to settle. The community's permission is also a factor to be considered. Surreptitious entry can never place a migrant beyond the reach of section 51 (xxvii) of the Constitution. The conversion of immigrant to settler may also be construed in a wide or in a narrow sense. For a discussion of High Court decisions on the matter, see Winterton et al. (2007).

Deportation

It is likely that some countries manage to keep crime rates for aliens very low by deportation of suspects and/or offenders; these are often countries with a strict immigration policy that allows only temporary guest workers. A number of African countries have also practised the deportation of national groups in recent times. The deportation of citizens is, of course, contrary to the UN Declaration of Human Rights. Despite that Declaration, the numbers of people deported or exiled must be in the millions. In many cases the 'offence' leading to deportation was ephemeral (or politically motivated), with scant justification being provided. This is a variant of so called 'ethnic cleansing', mass exile or even mass murder.

Number of deportations from Australia

It can be seen from Table 5.1 that the number of deportations for criminal offences is very small indeed. The vexing problem of when to deport those non-citizens convicted of a criminal offence that involves a year or more in prison is one that has exercised the minds of many politicians. Not all offenders who fell into that category were deported. Such factors

Table 5.1 Number of deportations from Australia

Year	Deportations
1950	31
1955	97
1960	64
1965	68
1970	127
1975	125
1980	82
1985	23
1990	29
1995	33
2000	67
2005	59

Source: Reconstructed from Nicholls (2007, Tables 7.1, 8.1, 9.1, 10.1).

as whether or not they were citizens, how committed to the Australian community they were, and their family ties, had to be considered as the criteria for deportation. Both Ministerial discretion and appeals to the courts were involved, and all approaches have had a chequered history, a point discussed by Nicholls (2007, p.118).

One process by which cases may be heard is through the judicial system wherein courts are presented with the pros and cons of the application. Another system could be where there is a special hearing by an immigration magistrate (or Tribunal) who would hear the case, and determine within a fixed period whereupon the order to stay or go would be executed. This has the merit of removing many cases from the areas of Ministerial discretion that impose a work burden, and a volume that impedes the principled execution of Ministerial decisions. The Migration Act of 1958 is complemented by the Migration Amendment (Complementary Protection Bill) of 2011. This amendment does not contain the term 'deport', and thus the relevant Act is still the Migration Act of 1958. In this, Division 4, subdivision C deals with the circumstances of deportation. A complication here is raised by the issue of unaccompanied minors. From an official point of view they are likely under the guardianship of the Minister for Immigration. As such s/he has an obligation to treat them with extra consideration. Section 4a holds that minors are to be detained as a last resort; Section 13ab deals with the identification of minors.

Visas are a kind of permit: the conditions surrounding the issuing of visas to enter and remain in Australia can be found on relevant government websites (see *Visas* in the References). From these sources it can be seen that there are a variety of visas, each designed for a particular purpose: among these are those for working holidays, visitors, skilled work, employers, Australian families, students, as well as so-called bridging visas, which cover periods between the expiry of one visa and the issuance of another.

Dual citizenship

It is possible, under Australian law, to have dual citizenship. For example, those who are Australian citizens of Italian birth may also retain their Italian nationality. Indeed, the most extreme instance of this is the election of an Australian, living in Australia, as an Italian Senator. Nino Randazzo was elected by Italians who, although they live outside Italy, still have a vote. Senator Randazzo's electorate included Outer Mongolia, Shanghai, Hong Kong, South Africa, Egypt and Italian troops in Afghanistan and Iraq (see *Randazzo* in the References).

There are some distinct benefits of dual nationality: it facilitates movement between countries, it eases employment restrictions, it confers the right to own property in more than one country and it conveys such rights to progeny. Against that it might be said that dual citizenship puts people at risk of military service should they go to their other country of nationality; they may be denied legal exit from one of their countries, and it can lead to harassment by representatives from that other country.

About 50 years ago the United Nations' International Law Commission produced a survey of the problems of multiple nationality (UN, 1954). It found, amongst other things, that the problems of the conflict of laws in cases of nationality were both profound and unresolved. This problem of dual citizenship has since been regularly raised in the United Nations, but so far there has not been a clear and definitive directive.

Australian law permits dual citizenship as well as multiple citizenship. An Australian citizen may also become a citizen of another country through marriage. Alternatively, permanent residents in Australia can become dual citizens when they obtain Australian citizenship. The law in this area changed in 2002. Prior to that year, dual citizenship was not allowed for an Australian national who became a citizen of another country. The Australian Citizenship Act 2007 (Cwlth) is the relevant legislation (for the history of the debate about dual citizenship, see

Millbank, 2000). Dual citizenship is not permitted where another country does not permit dual citizenship. This is the case for Japan for example, which requires its citizens to decide between Japanese and another country's citizenship.

On the relinquishment of citizenship it can be observed that some countries do not allow those born there to relinquish citizenship – a precept that allows the native country to exercise duress in certain circumstances. A specific case of which the present writer is aware concerns an Australian-born man of an Australian-born mother and a European-born, but Australian naturalised, father. Upon wishing to visit several European countries, including the father's country of origin, this man was advised by the officials of that country that he was considered to be one of their citizens. As such he was liable for military service although he did not speak the language and had no aspirations to foster that national connection, and had never even been there. Upon payment of a fee he was allowed to 'buy' an exemption for three months – time to visit and then escape.

Just as one might wish to acquire Australian citizenship so too might one consider renouncing it, by making an application to the Minister under s 33 of the Australian Citizenship Act 2007 (Cwlth). The overwhelming majority of countries permit the relinquishing of citizenship on either a voluntary or involuntary basis and the process is reasonably easy. The rules vary from country to country, but bear most heavily on those fleeing from persecution, and on those who wish to renounce all ties with their former land.

There are many countries in which the process of relinquishing citizenship is highly complex and sometimes almost impossible to achieve. Greece is one such country; however, it is possible. Permission must be granted by the Greek Ministry of the Interior and will not be granted for those who have been prosecuted for a felony or have not served in the Greek military. It is also extremely difficult to relinquish Syrian or Iranian citizenship. Certain categories of persons are not able to renounce Vietnamese citizenship; for example, those serving in the military or with unpaid taxes; nor is it allowed where it affects national security. In Armenia it is not permitted where the person is deemed to have unfulfilled duties to the state. In Austria the person must have fulfilled their military service and have no criminal penalties of more than six months against them. This is also the case in Belarus. Burundi requires a court finding. Voluntary renunciation of citizenship in Cambodia is unknown at present as the country is in a state of transition, but it can be involuntarily lost through the acquisition of foreign

citizenship. One has to recognise that these examples are subject to periodic change.

Provided that it is not for an unworthy motive (such as wishing to escape criminal jurisdiction) there is a good case to be made for people being permitted to discard an unwanted and/or unconferrred nationality. In cases where no claim is made or wanted by a national born elsewhere it is difficult to imagine a justification for the bestowal of, and insistence on, an unwanted citizenship. However, despite due rational consideration and appropriate formalisation, as mentioned above, it is sometimes not possible to renounce a former citizenship. This could be called 'nationality duress'. 'Static migration' can occur where citizenship is conferred by fiat – Falkland Islanders might have become Argentinians, without consultation, had the Argentinians won in the Falklands war. The insistence on an unwanted nationality and the abolition of identity by fiat and legislation ('administrative genocide') are complementary problems that disadvantage the foreign-born. Finally, where people have suffered political degradations one of their escape routes has been to assume refugee status or seek political asylum. In recent years this route has been sought by an increasing number of people.

At this point it is worth noting that the High Court has ruled that no-one may be a Member of Parliament, of either house, if that person owes allegiance to a foreign power. Therefore it is unconstitutional to hold citizenship of a foreign country and to sit in Parliament.

Prescribing and proscribing breaches of the law

It might be said that those in positions of political authority prescribe what constitute breaches of the law. Thus the dispossessed (the horny-handed sons of toil, the hewers of wood and drawers of water) are disadvantaged by such codes. This applies *a fortiori* to migrants. However, what applies in individual cases may be averaged out in the mass and not be apparent in aggregated tables. In some countries the aggregation of data may show no discrimination by judges against certain races, but when one examines individual decisions, such a bias may become evident (or it may not be present). Further, adverse discrimination of a minor kind may compound through the stages of the criminal justice system to produce a larger end-effect.

In addition to Acts of direct concern to migrants, such as the Migration Act, there is other Australian legislation that is particularly relevant, particularly that dealing with discrimination. This includes the Racial Discrimination Act of 1975 (Cwlth) (that does not deal with religious

discrimination), the Sex Discrimination Act of 1984 (Cwlth), the Disability Discrimination Act of 1992 (Cwlth), the Equal Opportunity for Women in the Workplace Act of 1999 (Cwlth), the Age Discrimination Act of 2004 (Cwlth) and the Fair Work Act of 2009 (Cwlth). To this one should add the Australian Human Rights Commission Act of 1986 (Cwlth), mentioned elsewhere in this work.

Where complaints arise they are dealt with by an appropriate independent body. Apart from the Australian Human Rights Commission there is a Fair Work Ombudsman, a Fair Work Tribunal, the Administrative Appeals Tribunal and the Federal Magistrates Court. Where racial vilification takes place penalties apply. At a state level, the Racial and Religious Tolerance Act of 2001 (Vic) contains provisions that prohibit offensive behaviour based on racial hatred (Part IIA). In recent times there has been a debate that racial vilification laws might be used to threaten someone who insults another, thereby making a personal insult a punishable offence.

Most racial vilification legislation is at state level. In Victoria, the offence of serious racial vilification carries a maximum penalty of 300 penalty units for a corporation and 60 penalty units and/or six months' imprisonment for individuals. In South Australia, the maximum penalty for inciting racial hatred is a substantial fine for corporations, and for individuals a fine and/or three years' imprisonment (see the Racial Vilification Act of 1996 [SA]). In NSW the maximum penalty for inciting racial hatred is 100 penalty units for a corporation and six months' imprisonment and/or a 50 penalty unit fine for individuals (see the relevant section in the NSW Anti-Discrimination Act of 1977). In Queensland, the offence of inciting racial hatred through a public act involves penalty points for an individual, and five times that amount for a corporation (see the Queensland Anti-Discrimination Act of 1991). The Western Australian legislation prohibits racial harassment, but does not specifically mention the incitement of racial violence (see the WA Equal Opportunity Act of 1984). At a Territory level, in the ACT the offence of serious racial vilification carries a maximum penalty of 50 penalty units (see the ACT Discrimination Act of 1991).

What is needed is a Federal policy that covers the issues mentioned above. Here, as always, reputational matters come to the fore. It is curious that countries such as Australia, Britain, the Scandinavian nations, Spain and Germany are criticised for not taking in more migrants but the countries that drove many away receive much less criticism. This relates to that curious human phenomenon that someone who gives

little (say 50 cents to the Red Cross) is regarded as a miser but those who do not donate at all receive less criticism.

Social matters and the law

While ignorance of the substance of the law is no defence against a charge, no one person can possibly be aware of the entire list of the law's proscriptions; however, without the assumption of such knowledge the law could not operate. Furthermore, differences in legal codes and social mores between countries often lead migrants into unknowingly breaking the law of the host country. Sexual misbehaviour may result from a misunderstanding of legal norms. For example, it was recorded that in the past, Italian workers were astonished to discover that if they became sexually involved with a girl under 16, their willingness to marry her or the fact that she was already depraved do not absolve them from guilt, as was the case according to Italian law (Ferracuti, 1968, p.23).

While the migrant may be at more of a disadvantage with respect to the law than the native-born, there are certain sections of the native community that may be equally disadvantaged. It might be argued that one's position on the social scale is a greater determinant of how one stands before the law. Unless one has access to the relevant sources of information, one's knowledge of the law may be quite restricted, regardless of birthplace. Economic factors also play a role. While the doors of the courts are open to all, as the saying goes, so are the doors of the Ritz.

On a related issue the law can be at odds with cultural practices. In Australasia some traditional methods of hunting are regarded by the law as cruel. These include the slow slaughter of manatees, keeping animals alive but cutting pieces off them so that the remaining flesh will not go bad, using the pelts of protected species, cutting off shark fins and then throwing the shark back into the water, cutting the throats of live animals without first stunning them so that they bleed to death, and many others.

However, because of various treaties there is sometimes a legal protection given to those who use traditional methods. Which standard should prevail? Is all cruelty banned? Is the argument of 'tradition' sufficient to over-ride the call to humane-ness?

It is sometimes the case that what Westerners regard as cruel is based on religious doctrine. On one view, this resort to biblical precedent is selective. The sceptical might then ask, Why not stone adulterers to death? Not suffer a witch to live? Not eat pork? At an extreme there are sects that set themselves yet more apart by denying access of an

apostate parent, and of forbidding association with non-believers. To be even-handed one would require the law to conform to national secular ethical norms, and to stop asking for religious tolerance when faith interests are threatened. In light of this we can note that 'crimes' may be unwittingly committed by immigrants. As the rule of law is supreme it is imperative, therefore, that immigrants are fully aware of what the law proscribes.

Human rights

UN member nations' formal status as signatories to the Declaration of Human Rights is not automatic; even if they are signatories, their dedication to its principles may be more theoretical than practical. However, it is true to say that, even where there is national commitment to UN principles, minority groups such as migrants (and Aboriginal inhabitants) are still at some disadvantage with respect to the law. Different legal systems operate in different countries and cultures, thus making adjustment to a new system difficult. For instance, plea bargaining was not, until very recently, understood in German courts, making it difficult for a German migrant in places where such procedures are more commonplace. (This does not commonly apply to countries under English law, where there is no formal provision for plea bargaining.) To complicate this issue one needs to distinguish plea bargaining from such practices as charge bargaining, count bargaining and sentence bargaining (with a subset of fact bargaining).

The twin issues of whether someone is let in to Australia and on what grounds, and their treatment after arrival, both carry implications for human rights. Human rights apply not only to 'nice' people, but to all people – because they are human. It is our treatment of the marginal and the vulnerable that determines, in part, our degree of civilisation. To that end there are a number of Bills, Declarations and Covenants that guarantee human rights.

A Bill of Rights, sometimes called a Charter, is a statement of the rights and freedoms guaranteed by the State. Examples of the guarantees are the right to freedom of religion, to free speech, trial by jury, and freedom from racial or religious vilification. An ideal Bill of Rights would be so firmly entrenched that it is normally not alterable by Parliament: only a referendum would permit change. Australia is one of the few Western countries that does not have a Bill of Rights, but it does have a written Constitution that can only be changed by referendum; in Australian history since Federation it has been tested on several occasions, with most

proposed amendments being defeated; the prospect of change is not lightly taken by the electorate. Moreover, in order for a Constitutional change to be adopted it must carry a vote of the majority of voters in each state, and the majority of states.

Canada, New Zealand, South Africa, members of the European Union, the USA, France, Iraq, Afghanistan and the UK adopted the Human Rights Act (in conformity to the European Convention on Human Rights). Such Bills of Rights may be either constitutional or by legislation.

Having a Bill of Rights is no guarantee that it will be exercised by all members of a particular country. The United States, for example, has an admirable Bill of Rights that is constitutionally based, but which is not always honoured. For example, David Hicks, an Australian citizen, was arrested by foreign forces in Afghanistan and taken to the American detention centre at Guantanamo Bay in Cuba, where he was held without trial for over five years. Hicks was not tried under Australian law because he had not broken any such law, nor had he broken the law in the country in which he was seized. With that in mind one might ask why he was tried in a foreign country, and by a military commission that had no jurisdiction over him. It does seem that his rights were abrogated and, if one agrees with the facts, here we have a case of an unwilling migrant made a chance victim.

The practice of one country using other countries to perform 'rendition' is best described by the phrase 'the outsourcing of evil'. It is not only in breach of the principle of no cruel or unusual punishment but it may be carried out on 'suspects' who have given no legal recourse to the courts. In this situation one sees unwilling migrants being maltreated by a political status quo. It does seem likely, however, that such seeming injustices will be rectified in the same way that rights were eventually accorded to (former) slaves, giving them political equality with their Caucasian 'masters'.

Ideally a Bill of Rights will encompass not only individual rights to freedom of activity but also individuals' rights to be free *from* suffering state incursions into their rights. The latter can be characterised as crimes against humanity. However, legal rights must, for many, be so distant from their pressing daily problems as to seem only marginally relevant. More people die of poverty-related problems every day than died in the World Trade Center attacks, it can be argued, while a significant number of African children have no access to education, let alone potable water.

The admirable sentiments in any Bill of Rights need to be tempered by other considerations. For example, the right to freedom from discrimination must not extend to morally sanctioned discrimination (such as limiting the rights of convicted paedophiles to apply for jobs in schools). Further, such a set of rights needs to be matched by a corresponding set of obligations – this is infrequently mentioned. While citizens have rights against states, but also have obligations toward the body politic.

Various gaps not covered by national Bills of Rights or Constitutions are filled by conventions of various kinds. One such convention is the UNESCO International Convention on the Protection of Migrant Workers of 1980. This provides for migrants to be granted due legal process, and sets out their rights in relation to the criminal law, including the right to an interpreter. Articles 16–22 are especially relevant: in particular Article 18 notes:

Article 18

Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Covenants

Over the centuries there have been covenants of various kinds designed to democratise, equalise and confer human rights. In our culture perhaps one of the most significant is Magna Carta, in which the barons curbed the ‘rights’ of the monarch, perhaps the first shot in the battle against the doctrine of the Divine Right of Kings. A document that perhaps ranks with Magna Carta is that of the 1948 UN Declaration of Human Rights. Its 30 propositions set an international standard that is still current – and remarkable in that so many sovereign states have accepted its salience. As alluded to above, what is now needed by way of complementarity is a Declaration of Human Obligations.

Migrants arriving from places with little freedom, and from places with only token democracy, might well be pleased with Australian conditions. For that reason they may be more tolerant of seemingly minor breaches of hard-won freedoms, and less likely to protest or complain at

infringements: a perverse outcome of this is that, over time, civil liberties might become eroded. Such incomers may become more tolerant of seemingly minor human rights breaches but which, in the longer term, become major.

As the *World Summit* resolved in 2005 (see References) the acts, methods and practices of terrorism in all of its forms are aimed at the destruction of human rights and freedoms, and are a major threat to the wellbeing of all, politically destabilising and destructive of quality of life. However, conversely, one of the risks of the fight *against* terrorism is that, if pursued relentlessly, it may erode certain civil or human rights. These include the right to confront accusers, the right to habeas corpus, the right to silence, the right to counsel and the right to inform one's family of any charges. It is also the case that certain regressive or reactionary forces in society may regard the fight against terrorism as an opportunity to abrogate hard-won rights and freedoms. As another old saw has it – the price of freedom is eternal vigilance.

6

Police

The police are the first point of contact in the criminal justice system. At this stage of the judicial process the maximum amount of discretion is available. On contact with criminal suspects the police are required to make a decision about whether or not to proceed with a charge. This process is carried out with fewer formal safeguards. The lower court system is called either Petty Sessions or Magistrates' Courts. Until fairly recently it was called the Police Court. Because police officers were so conspicuous it is not surprising that the impression was gained that the courts were run for the police.

It is appropriate at this stage to note that there is no formal place in which police statistics on types of crime and birthplace are recorded. Some work on police registers in NSW was recorded in Francis (1981), but that data is almost certainly out of date by now.

It is the function of the courts to oversee charged cases. The British *Judges' Rules* (that govern the behaviour of police when in contact with criminals) are influential but not binding in Australia, but awareness of them does afford a measure of procedural protection to victims of the occasional less than scrupulous policeman. One would expect a correspondence between what happens at the police level of contact and the court outcome. Francis (1981) makes reference to a comparison between what happens at the police level and the court outcome. As one would expect and hope there is a substantial correspondence.

Perhaps the greatest area in which migrants are disadvantaged is the one of discretion. As one instance (in Britain), the law permitting arrest upon suspicion – the 'sus' or, now, 'stop and search' law – has received widespread criticism. The argument in favour of its use is that it aids crime prevention. Against this one might argue that a visible police presence would have the same effect. The danger of stop and search is that

it is police interpretation of intent that forms a reason for police intervention, rather than the actual commission of an offence. There are two points to support this argument. First, some people have criminal intent but do not commit criminal acts; second, since others cannot know an intent unless it is revealed in an action (or a later statement), such intent can only be inferred by police from observed behaviour.

Arrest on the basis of intent inferred by police from observed acts is a highly questionable procedure. A main point here is that stop and search may be used in a racially discriminatory manner. If this does occur, those discriminated against might no longer bother to assert their civil rights. Alternatively, guilty aliens may use the argument of 'prejudice' as a means of attracting sympathy to their case.

It should, of course, be noted that it is not only the police who are called upon to exercise discretion regarding the prosecution of crimes. Most police investigations take place as a result of information provided from another source, such as individual citizens or from corporations. It is these sources, as well as others such as social workers and the courts themselves, that also exercise discretion. Nightwatchmen and security guards form a sort of private police. Furthermore, with the advent of such influence the very serious question of equality before the law is raised. Those who are able to pay for it are provided with greater protection than are those who are not so able.

Within all Australian jurisdictions the police are instrumental in prosecuting criminals. In that role they are able to exercise discretion, and the question arises as to whether this discretion is exercised differentially for migrants. Many police investigations of crimes result from complaints. The report rate for crimes is affected by such variables as consent to the crime, reporting not being worth the time or trouble, the belief that the report would be without effect, fear of intimidation or embarrassment, unfriendliness towards the police, disagreement with criminal sanctions, not wanting to be involved and cases where the victim cannot report (murder) or does not know (fraud). It is not known to what extent these reasons impinge upon various nativity groups.

Some policing may act as a provocation to various ethnic groups. A peaceful protest, given a sufficient police presence, may escalate into an event of greater concern than would have been the case had the protesters been left alone. On the other hand, the police may rightly feel that an insufficient presence may leave the ordinary citizen unprotected: discretionary behaviour to the detriment of migrants can therefore be criminogenic. This may take a variety of forms such as unnecessary

stops, excessive violence in arresting, entering homes and workplaces, and unfavourable police reactions to assertion of one's civil rights.

Excessive surveillance and policing uncovers more crime and so the extent of crime is, among other things, a reflection of police activity. Mannheim's (1966) warning that police statistics simply 'reflect the activities of the police at any given time and place and are, therefore, greatly dependent on the interest taken by the police in a certain type of crime or certain classes of persons' is ever timely (Vol.1, p.33).

Technology always keeps pace in the police context, and that has been the case from the beginning. In Federation year in Australia action was being taken to establish a new system of criminal identification (fingerprinting) following the principles of a combined Bertillon and Galton method – modified to suit local conditions. It will be seen that the introduction of anthropometric methods was of particular importance. Most recently the use of electronics and DNA testing have constantly improved both procedures and justice.

One point deserving emphasis is the use of anti-terrorist laws in a discriminatory fashion, perhaps on the basis of 'looking foreign'. While police could be acting properly they could also be regarded as acting on a racial basis. A less discriminatory police force could 'balance' by targeting those who look ordinary in order to show that the relative numbers stopped and searched are in their proper proportions. This evening up of the statistics would rightly be regarded as an unwarranted intrusion into the right to go unmolested.

Police functions

The overwhelming majority of prosecutions are brought by the police, as distinct from the small number of private prosecutions. The initiation of police intervention may result, for example, from a call for service, a report by someone involved, or by police on patrol. If a crime has allegedly been committed, a decision has to be made as to whether or not it actually has. If it has, it is reported within the police hierarchy; a supervisor checks it, the appropriate criminal database is consulted for further information, and the incident is recorded. From there it will also go to the statistical recording section to become part of the overall crime report. This investigation and prosecutorial function is complemented by a crime-prevention function. The fact that police are known to have a presence and are a place of recourse, and that they can exercise civil control, are all factors in the respect they are accorded.

Staying with the crime-prevention analogy, another feature that reduces crime is the presence of a 'capable guardian'. There are several capable guardians in this situation; one is our human rights framework. Recent attacks on international students in Australia have brought to the fore the need for a greater focus on human rights, and underlined issues such as equality and discrimination based on race. Additionally, these attacks indicate that other basic rights, including housing, employment and public safety, have also been brought into question. Such issues are intertwined, and the Human Rights Commission can play a leadership and coordinating role on these matters (see Larson et al., 2011).

Educational providers are also 'capable guardians'. Where they have not already done so, they need to develop statements of best practice, and work to deliver a holistic experience for international students. There are many guardianship roles they can play, including a zero-tolerance approach to racist activities. In addition, constructing mentoring relationships can be taken on by various participants. Law enforcement is another capable guardian, though its role is more likely to be reactive than preventive.

Some police forces in southern Europe are called in to admonish or adjudicate rather than arrest. Expectations of such a role in Australia may not be fulfilled. What constitutes an offence in one country may not in another. Jakubowicz & Buckley (1975) cite an instance where some of the first migrants from Turkey to Australia slaughtered their own meat – as being the one way that they could eat it according to Islamic religious laws. As the authors say, it was '... not looked upon kindly by those in authority'. Another instance of norm differences is that of male urination in near-public, which is acceptable in some parts of Europe; another instance is the readiness with which Australian police force fingerprint on arrest; yet another instance is the comparatively emotional way in which southern Europeans express themselves: all are potential sources of misunderstanding.

Misunderstanding and the police

A confrontational situation can develop fairly quickly. The mode of address may be a bit assertive, a migrant may be sensitive to a perceived insult, the migrant replies in an unfamiliar manner that a police officer might see as insolent, and that could be accompanied by unfortunate gestures. Neither understands the point of view of the other: the police officer sees uncooperative insolence; the migrant sees hostility... and

so it might escalate. Police attitudes are governed by a host of factors: experience, instructions, personality, training and accountability should something go awry. Although police have wide discretionary powers they must be used sensibly.

Misunderstanding in encounters with the police can seriously disadvantage the non-English speaking person. An example was drawn to the writer's attention in which an Italian, with no knowledge of English, was approached by a policeman who asked questions that in themselves were quite reasonable. Because the questions were put rapidly and persistently (in English), the Italian could not understand and said, 'Basta, basta!' (Enough, enough!). This was construed by the policeman as 'bastard' and the Italian was arrested for offensive behaviour. This is also related to the level of emotionality differentials in different cultures. To the relatively phlegmatic Anglo Saxon some exchanges involving some nationalities might seem extravagant, and slightly aggressive or troublesome.

In the majority of Australian state jurisdictions senior police have discretion to bail in certain circumstances. Bail, as such, is a concept that may lie outside the experience of many European migrants. Countries such as France and Italy more commonly detain in custody pending trial. There may be substantial merit in providing the right of bail to many charged: there may be yet more merit in the Australian system of habeas corpus (compared to months in custody awaiting trial), yet to the alien the bail process may seem an exotic process depriving him of money for little discernible advantage. Thus with about a quarter of Australia's population born overseas, and the proportion with an alien outlook yet higher because of the number of children of the overseas-born, there is a case to be made for appropriate training to be given to the police in their role as 'explainers'.

Yet another function of policing is that of bearing a large part of the civil security burden, a role that must be seen as socially protective. Without a public perception of the police as a vital and positive social force the police's role would be made so much more difficult. However, from some migrants' point of view it may appear that police might be adopting the role of snooper. This may especially acute in socially depressed migrant areas where extremism flourishes, suspicion is rife and unsophisticated members of communities may become the unwitting tools for extremists. Within enclave groups the forming of social protection groups by local residents and private security organisations may occur. Little is known of such bodies, and of their interactions and attitudes within and towards migrant communities.

It will also be evident that police forces use outside resources of various kinds, and also form liaisons with relevant organisations. These include the national fingerprint registry (National Automated Fingerprint Identification Service [NAFIS], run by CRIMTRAC, a government agency located in Canberra), and the resources of Interpol: the police may also have liaisons with other relevant agencies, such as the coronial inquiry service and various social welfare agencies. Without such contacts and resources the police's role would be much more difficult. In each of these instances it is clear that migrants may be substantially implicated.

Police and attitudes

Any experience with the police following a personal encounter with them has a significant effect on developing attitudes toward the police. Degradation and material loss, as well as personal injury, make the victim feel vulnerable, and police treatment at that stage can crystallise attitudes towards the force as a whole. This feature may, in fact, be as potent in forming attitudes to police as that of perceived harassment. A further point worthy of note is that where there was disagreement over racial motivation, in some cases it may be that the victim, and not the police officer, was the one who had a racial motive. A remedy for a low report rate of migrant crime victims might involve the recruitment of police from appropriate cultural backgrounds. Such recruitment would probably require complementary education of migrant groups as well as the identification of their needs and values. One would not, for example, put a Greek-background policeman on patrol in a substantially Turkish area.

Styles of policing

The various styles of policing (repressive, communal, preventive, proactive and reactive) may be differentially suited to groups of particular national origin. Such strategies may be deployed in some sort of hierarchical order and may include leaving lesser offences for solution within the enclave, using conventional criminal procedures where appropriate and pursuing repatriation or deportation in cases of serious offences.

In Britain, for example, it has been argued that police powers were already too great, and used discriminately against black people, whether or not they were of alien birth. The issues are set out in *Policing against*

Black People (Institute of Race Relations, 1987) and are included here as a paradigm, without necessarily sanctioning the conclusions:

- (a) Black people are often given no reason for being stopped or searched.
- (b) Unnecessary violence is used to arrest blacks.
- (c) Juveniles are particularly subject to harassment.
- (d) The assertion of one's rights would seem to lead to arrest.
- (e) Witnesses or bystanders may also be at risk.
- (f) Repeated arrest is used to persecute individuals.
- (g) Black homes and premises are entered at will (*ibid.*, p.30).

Of course, stopping and questioning, or being asked to accompany an officer to the station, does not necessarily constitute a technical arrest – but since the vast majority do not know that they are legally entitled to refuse to go with the officer, for them the question is often academic (*ibid.*, p.33). The book went on to elaborate on some of these issues of rights and harassment. They recorded that they received 'numerous allegations that, when police stop and search black people on the streets who attempt to assert their rights – not to be searched without reason – they are treated with derision and told that such rights do not belong to them' (*ibid.*, p.34).

Awareness of such studies has, more recently, given rise to caution about using discretion when stopping or arresting those of alien appearance, and has led to criticism of so-called 'over-policing', where police interventions might be regarded as overkill in circumstances where minimum intervention would have been preferable.

One of the specified conditions of contact between police and public is that all are treated equally. In view of the cultural and language differences, as well as differing legal expectations, it is improbable that such equality can be fully achieved. When migrants arrive they bring their cultural baggage with them. New arrivals' expectations of the police may well differ from those of native-born Australians; in many cases they come from countries where there is more than one form of police (and where one may be a paramilitary organisation), and where contact with police can often be fractious or dangerous.

Complaints

A rise in complaints against the police may reflect increasing dissatisfaction with them. Alternatively, it might also be interpreted as a good

sign in that there is now a legitimate system for making effective complaints, without bringing adverse effects on the complainant. The most vulnerable – youth, migrants, the old and lonely – all need to be provided with clear, accessible and easy to understand information by their local state police about how to lodge a complaint against a police officer(s) if they feel their treatment has been unfair or problematic. This is a particular issue if, on asking for help in making a complaint, people have previously not received appropriate advice or have been fobbed off in various ways.

The most commonly reported complaints are: young people being stopped and/or questioned/searched in public; police ‘moving on’ young people without a legitimate reason; racist comments being made by police to young people; police refusing to provide their identifying details when requested; and police refusing to respect a young person’s right to silence. But more concerning reports of serious harassment have also been alleged involving the unwarranted use of force, explicit racist comments, and other practices that are potentially in contravention of various human rights charters. Negatively oriented differential policing of refugee young people, and other young people of ethnic minority status, create resentment, mistrust and alienation, and only serve to compound the potential problem (see *Complaints against the police* in the References).

In various studies it has been noted that the likelihood of reporting an offence to the police (or not reporting one) varies for different groups. Older people report feeling less safe, women report feeling less safe than do men; both are motivated by these feelings to report incidences of disorder as well as ‘crimes’. On the other hand, those of alien appearance or dress perceive, rightly or wrongly, that their reception is likely to be hindered by their appearance, and this may act as a disincentive to reporting offences.

Contentious issues

There are several contentious issues that affect perceptions of the police; these include profiling, the identification of suspects and police in-group loyalty. Profiling is the identification of features of a suspect that might aid a more precise identification. Thus one might know that a suspect has a particular *modus operandi*, and is a male of a certain height, with no visible scars or tattoos. It might also include extrapolating from known attributes to assign other attributes. In this context, it is imperative that racial profiling must be severely limited, based on the principle that in

policing one should rely on objective evidence rather than appearance or national origin; however, one has to recognise that profiling may provide clues about where to look for evidence.

There is a moral difficulty with making presumptions about people on a purely inferential basis, and especially with drawing ethnic inferences. However, it is inevitable that racial profiling will sometimes be used in practice, and will vary from one police force to another, especially given the paucity of laws dealing with racial profiling. In particular, the argument is often made that the police use stop and search powers in a discriminatory manner that amounts to racial profiling. In the future, if a group of youths, clearly identifiable by race, make allegations of being profiled, such an allegation should be properly tested in court.

In August 2010, a United Nations committee reported on Australia's compliance with its obligations under the International Convention on the Elimination of all Forms of Racial Discrimination (UN, 1965). One of the key concerns of the committee was that Australia's anti-terror legislation, and its application, may involve racial profiling. A specific concern was with the collection of the biometric data that is required for visa applicants from ten countries. This, it was felt, could amount to racial discrimination, contribute to feelings of stigmatisation of particular ethnic groups and be potentially contrary to Article 2 of the Convention.

A second, and related, issue is that of police notice of identification. One has the clear impression that to be identified as Caucasian, Negro or Asian is not, in the present day, politically acceptable. The British police have a neutral system of identifying that seems to be effective. The system is the IC (Identity Code) in which there are seven categories. The first of these is 'white person' (presumably Caucasian), and IC6 is an Arabic, Egyptian, Tunisian, Algerian or Maghrebi person, with IC0 as 'origin unknown' (for a fuller account see *Police ID of alleged offenders* in the References).

This does seem to be an effective and neutral means of identifying a suspect, and does not seem to suffer from political (in)correctness, or from simply being a broad description such as Tall, Rotund or Thin. It does seem to be a system that could be adopted by Australian police forces.

Attitudes

The police occupy one of the most exposed positions of all those who have dealings with the public in general, and migrants in particular;

the attitudes that migrants hold towards police are therefore of vital importance. Mistakes made by the police are apt to be blown up to exaggerated proportions. Police activity does not consist of isolated actions but instead collectively provides the foundation for an enduring impression. Migrants to Britain from former colonial possessions do not necessarily share the traditional British view of 'policing by consent'. Some regard police officers as outsiders and as the enforcement arm of the establishment.

One writer (Gronfors, 1979) once described the police as being 'permanently indignant'. In other words, they subscribe to conformist values that, to them, are a sign of good citizenship; for them any deviation from received normative values signals anti-establishment, anti-police attitudes. The police, Gronfors believed, saw a connection between unconventional values and offending. Gypsies, for example, as the only significant minority in Finland, have been forced to relinquish their right to impartial treatment. A final issue here concerns the feeling among some police that criticism of them stems from anti-establishment radicals, and from the 'race relations industry'. Police expectations may lead them to make particular decisions in relation to particular persons or groups that may then act as a self-fulfilling prophecy.

Migrants from southern Italy and the Balkans, for instance, may not realise the relative efficiency and incorruptibility of the host-country police. Their crimes against the person may be intra-ethnic. Decades of experience of misrule have incorporated forms of brigandage into their normative system and it requires considerable culture contact to eliminate these inappropriate modes of behaviour. Contact with these new standards must subject these migrants to tremendous psychological strain. These groups, on the other hand, engage in a great deal of chain migration. Friends and relatives bring friends and relatives, thereby forming ethnic and cultural enclaves, each member helping others into gaining an understanding of acceptable behaviour within the host country. However, if the state helps substantially with health and unemployment problems, migrants tend not to form mutual aid societies.

Ethnicity and race

Concentration upon the ethnicity of people rather than their individual qualities, including their birthplace and nationality, is a racist

distinction likely to produce nothing but social disharmony. In many places proper recognition of self-determination has now yielded to ethnic expediency. Racial discrimination is now not only practised but, in some places, enshrined in formal practice. A prime instance is that of Fiji where there is the Great Council of Chiefs or, alternatively, and more importantly, the Great House of Chiefs. That latter forum is open only to those of Fijian ethnic origin, and only then by lineage. Fijian ethnic Indians, although constituting almost 40 per cent of the population and having lived in the country for almost 150 years, are thus excluded from the political system because of explicit racism. The frequency of Fiji's military-political coups, and the political dominance of ethnically native Fijians, is a source of serious democratic concern, to the point that Fiji has been suspended from the British Commonwealth.

The racialised reporting of rape was the subject of an article by Warner (2004). Her focus on the issue was stimulated by a series of gang rapes in the west and south west of Sydney. In press reports on the crimes, emphasis was put on 'ethnic gangs' and to 'racially motivated crime'; the reports coincided with negative press accounts about 'boat people arrivals' and the attack on the World Trade Center in New York. One of the consequences was the increase in the severity of punishment for the offences, and the demonising of those of alien background. Warner aimed to provide a balance to the negative reporting and to unpack some of the criminal justice issues that arose, particularly in relation to sentencing, as well as soliciting some of the statements and views of the victims.

Public matters

Many accounts from the UK and Australia have made note of how provisions under new 'community safety' paradigms have justified measures to 'crack down' on anti-social behaviour. The problem has been that some of these behaviours are not perceived by young people to be anti-social and may, in fact, have had positive value for young people in terms of their individual development and feelings of belonging.

One theme focuses on police helping young people, through improving police attitudes, behaviour or demeanour towards young people. Previously, young people had seen police primarily, though not exclusively, as intimidators who created unease and anxiety amongst individuals or groups of young people in order to control their behaviour

and/or to demonstrate their enhanced power and authority relative to that of young people.

Young people identified stereotyping and racism, which could well include not being listened or responded to, and not feeling respected by officers, as inhibitors to better relationships with the police. The big change required in this situation would be for the police to avoid stereotyping and pre-judging. Improvement would occur if police showed more respect and understanding when encountering the young and patently alien. Having said that we do need to acknowledge that it is a two-way process, and the youth should also respect the police.

On the issue of bystanders it can be noted that when those who witness police malpractice try to intervene, they may find themselves subsequently being harassed or even arrested. Such forms of harassment may include the way in which premises are entered and searched. Although searches are generally carried out legally, with the authority of a warrant, other questions still arise. Police were reported to have been known to have arrived with a search warrant for something specific, for example, stolen goods, and left instead with a suspected illegal immigrant. In some, but not all, foreign jurisdictions evidence outside the warrant will result in the evidence being excluded.

Ethnic matters

When dealing with police, migrants may not be as aware as others of the safeguards that do exist. Additionally, police discretion may be exercised differentially (either advantageously or disadvantageously) with respect to migrants. Further, migrants' perceptions of the police will vary according to the migrants' country of origin. In alien jurisdictions the police may be seen as more of a quasi-military organisation than is the norm in Australia. Police may also be, as is the case in some other countries, expected to act as arbitrators to a greater degree than is generally the case in Australia.

In the UK mention is made of minority groups, but birthplace data is not reported. The categories used – minus birthplace – are 'white' and 'BME' (black and mixed ethnic), resulting in such minorities being presented as a homogeneous group. It is possible that recording birthplace might be considered 'racist', but the BME grouping can also be. There does not appear to be a statistic that breaks down offences by foreign origin of their perpetrators. What does receive some attention is the topic of terrorism, and understandably so.

There are several ways in which police–public relations may be improved, including a police ethnic affairs unit, police education programs, an ethnic advisory service run by the police and an on-arrival program. A different kind of strategy to improve police–community relations is to recruit more people of alien origin, through a policy of recruiting widely in different ethnic groups. What is also important is to be aware of how some ethnic officers might be received by other minority groups, and consider the assignment of such officers to appropriate beats.

One of the objectives of modern policing is to have police as community leaders, supporting local community initiatives. Satisfaction with the police on the part of various Australian communities has improved of late, being in the order of 75 per cent (see *Satisfaction with the police* in the References). Training has been a critical component in achieving this. Some police forces offer in-service training in order to aid their contacts with alien communities. Such training should have a practical rather than an abstract or ideological orientation. Informal attitudes among the police towards migrants are often formed inadvertently through confronting manners and customs unfamiliar to them.

Dealing with communities can sometimes have a negative impact on police officers themselves by exposing well-intentioned officers to situations where they lack the appropriate skills and knowledge to effectively engage with community problems. As Chappell & Wilson (1996) have argued, community policing requires police officers to deal with situations relating to the disturbance of public order. In multi-ethnic communities this requires them to have vast knowledge and specialist skills to negotiate and resolve disputes; however, the authors claim that there was little evidence in police training of a focus on the ‘interpersonal and social skills’ that are crucial for effective community policing. Fortunately, this has changed to some extent over the last two decades as police organisations around the world have responded to the challenges of multiculturalism and ethnic-minority citizens.

One might consider how moral panics result from the notion of refugee young people in Australia. The notion of ethnic youth gangs could well fuel public suspicion of refugees, and increase calls for police to use coercive strategies to deal with refugee young people. The result of this could be that groups of refugee young people may become a specific target of surveillance and police intervention. This foreshadows recent allegations of police discrimination against Sudanese young people, following the death of Dandenong teenager Liep Gony in 2007 (see

Windle, 2008). There are similar reports of human rights abuses against Somalian, Sudanese and Afghani young people in the Flemington area of Melbourne (Hopkins, 2009; Cunneen & White, 2011).

There is an over-representation of Pacific Islander youth in the juvenile justice system, perhaps related to the pressures on their parents to work long hours to earn money for themselves and their families. It was also noted that many of these young people are attracted to 'gangs' or groups of youths because these mimicked the sense of connectedness and interdependence that is highly valued in Islander cultures. Such gangs may become a pathway into criminal or anti-social behaviour.

Recruitment to the police

As mentioned earlier, police qualification-for-entry standards might need to be modified. For example, the Asian-born are, on average, shorter in stature than Caucasians. The wish to recruit the Asian-born might thus require a slight lowering of the height standard in order to attract more applicants from that group. Against this it has been said that the maintenance of current standards is more important than the recruitment of members of minorities. Moreover, the inherent antipathy of the electorate in general, it is argued, would militate against such recruitment.

It would be much better if some way could be found to bring the different community groups together in society as a whole, which may well lead to natural recruitment from minority ranks. To support this, it is worth bearing in mind that women have, fairly recently, constituted a significant addition to the force, reflecting their changing status in society generally. As well, given that their average height is less than that of men, the height problem seems not to have been an obstacle to their recruitment.

Some groups simply do not want to join the police, especially those who believe themselves to have been discriminated against and view the police as their natural enemies; to join them would be akin to ethnic betrayal.

It is interesting to note that the Metropolitan Police in London had a lower height requirement than did other British police forces, enabling them to recruit from a greater array of talent. (The 'Metros' thus became the butt of local humour, being called 'Metrognomes' on the beat, and so forth). In Britain informal opinion has it that some West Indians, for instance, do not usually aspire to police careers. A police career is

regarded by them as joining the 'enemy' and could lead to lowered esteem in the eyes of their fellow West Indians in Britain. That position should modify with time.

Policy matters

The manner in which police behave towards minorities has a basis in policy matters. It can be noted, for example, that young women are more likely to engage with police in seeking assistance or support, while young men were more likely to experience contact due to compliance issues such as traffic or criminal offences. However, these differences in types of contact may not result in differences in attitudes towards police. This appears to operate regardless of the reason for contact.

Studies that advocate an increasingly consultative approach have found that a partnership model can be effective. The 'listen and learn' approach has five parts of which the first four involve setting up a structured dialogue between youth and police. Stages 1 and 2 focus on the need to identify, explore and prioritise community safety issues for young people and the police; Stage 3 develops programs and strategies to address these priorities; and Stage 4 reviews and evaluates their outcomes for both young people and the police at the local community level before the cycle starts again. Stage 5 involves ongoing informal dialogue and exchange between young people and the police throughout the consultation cycle, including the use of web-based platforms to maximise outreach to young people who use information and communication technologies as part of their everyday lives, It also encourages contact with those young people who may be disengaged from school or other community-based settings. According to the evidence, the 'listen and learn' model:

- Assumes that a majority of young people and police have a positive and shared interest in and commitment to promoting enhanced community safety in their local area;
- Emphasises, encourages and resources the frontline role of operational police in becoming more knowledgeable about and connected to young people at the community level;
- Promotes mutual respect, tolerance, trust and genuine mutual understanding between young people and police;
- Helps develop confidence-building for young people when dealing with police as a key objective of the consultation and engagement process;

- Facilitates individualised contact and relationship-building between young people and police, particularly operational police, as a complement to larger-scale relationship-building exercises between groups or communities and the police.
- Invests in educating young people about police powers and actions, and police about young people's experience and needs regarding community safety and relationships with the police;
- Recognises that ongoing consultation with young people in the community needs to respond to the needs of young people from different backgrounds and stages of residence in Australia;
- Balances the role of police in the community as service providers, advisers and educators with their role as law enforcers.

Here a partnership with organisations such as schools, churches, youth groups and the like would be advantageous. The perception by police and youth groups should be that a police presence enhances safety in the local area; however, it can also place the safety of young people at risk, specifically because of police behaviour towards other young people. Where such contact takes place one of the specified aims of that contact is that all are treated equally. In view of the cultural and language differences, as well as differing legal expectations, it is improbable that such equality can be ensured.

Research studies

It is not surprising that so important a topic as effective policing should attract research attention. An example is a report (Pickering et al., 2007) of a study involving counter-terrorism policing and culturally diverse communities. It was the result of a funded cooperation between the Victoria Police and Monash University. The report concluded that there is a need for the development of good community relations, social cohesion as a preventative against terrorist attacks, and a need to have the police accorded appropriate prestige.

The general findings of the study by Francis et al. (2006) led to the conclusion that high proportions of Australian-born residents were related to lower property crime rates. More importantly, Australian citizenship was significantly related to lower crime rates across local government areas (LGAs). This should be placed in the context of the findings of the 1974 prisons study (discussed in Chapter 3; see also Francis & Cassell, 1976) that listed birthplace rather than citizenship. Although

interpreting official statistics presents problems, it is valuable to examine these comprehensive population data on crime and ethnicity.

Several ethnicity-related variables were also analysed, including the rate of arrivals in the past five years, the proportion of people born in a non-English-speaking country (NESC) and the prevalence of low English proficiency rates. A conclusion of that study showed low to moderately high significant and positive correlations between the rate of people born in an NESC country and the rate of arrivals in the past five years, crimes against persons, crimes against property and total crime. Low English language proficiency rates were significantly related to some categories of crime: negatively with the rate of property crime and total crime, and positively with a catchall rate for other types of crime. Whereas positive correlations may indicate a need for community development and crime-prevention activities to tackle the disadvantages associated with ethnicity, negative relationships seem to imply that ethnicity also contributes to community capacity. Additional investigation of crime and ethnicity variables is warranted to further explore these relationships.

A complementary approach to the study of crime involved the collection of a wide array of data. Carcach & Huntley (2002) concluded that crime rates are lower in areas with high levels of participation in community-oriented activities. A doubling in the rate of membership in community organisations has the potential to reduce violent crime by between one-fifth and one-third, and property crime by between one-twentieth and one-tenth.

Mention should also be made of conclusions made in the media. We need to recognise that media do not have, as their brief, the disinterested production of knowledge but, rather, are motivated by the need to sell papers or attract viewers and listeners. That is not to discount their contributions, but it is a call to caution in concluding something significant from their results and reports. An example of a report by a newspaper appeared in the UK *Daily Telegraph* of 26 May 2009. It reported that 'The Association of Chief Police Officers' study said that '...£14 million was spent on translators in the Metropolitan Police area alone last year and migrant crime had diverted cash away from other crime-fighting duties'. This follows research by the *Daily Telegraph* that found that crimes committed by those from Eastern Europe 'increased by up to 800 per cent in some parts of the country. The offences with which the police had to deal include extortion, pickpocketing, drink offences, human trafficking and the sex trade'. In this case, the journalism was

responsible. However, it is also true that there are other perspectives and other emphases.

Tourism

Yet another special group are tourists. A country of diverse population and ways may attract tourism, which can thus contribute to the economy. Collins & Jordan (2009) have noted how such features, including precincts such as Little Italy and Chinatown, might be attractive to visitors. They can provide a sensory experience that is not only visual but which boasts a range of novel smells, tastes and atmospheres. Festivals of various kinds also have their part to play. We do need to recognise, however, that they can also provide opportunities for committing crimes such as pickpocketing, deception and minor assaults. One might conceptualise tourism and crime in any one of several ways – by motive, by outcome, by type and by criminality. For a conceptualisation of these issues see Francis (2010).

The tourism literature places great importance on the cultural industries, and on the growth of cultural tourism in countries like Australia. Contact by tourists with the criminal justice system will be predominantly with police. The link between migration, ethnic diversity and tourism, which leads to what we call ethnic tourism, in Australia and elsewhere has received little attention from scholars. By ethnic tourism we mean not only tourism by ethnic minorities to countries like Australia but also the way in which non-minority tourists – in Australia, this means British, New Zealand and North American tourists – are attracted to ethnic precincts such as Thaitown and Koreatown.

These customers are often attracted by the presence of ethnic businesses, restaurants, shops and services set up by ethnic entrepreneurs. Some tourists may be seeking an 'authentic' ethnic experience in the precinct. This may involve the quality and style of food, the smells and sounds emanating from restaurants, the presence of locals and 'co-ethnic' customers and staff, and the décor and iconography of the streetscape, buildings and landmarks.

Ethnic communities and local governments may also hold ethnic festivals and events that attract both tourists and locals. Focusing on the links between migration, ethnic diversity and tourism, Collins & Jordan (2009) concentrate on the supply side of one site of the ethnic tourism industry in Australia: that of ethnic precincts in Australian cities. Drawing on recent fieldwork with tourists, entrepreneurs, ethnic community leaders, and local and state government officials in two metropolitan

ethnic precincts (Sydney's Chinatown and Perth's Northbridge), they explored some critical dimensions of the interface between migration, ethnic diversity and tourism.

The positioning of ethnic precincts as tourism products includes contradictory and complex issues of authenticity, employment, the representation of ethnicity, consultation with migrant communities, negotiations with local government authorities, and marketing and promotion activities. Collins & Jordan concluded that while historical patterns of immigration and immigrant settlement have changed over time, ethnic precincts are important, though changing, sites of urban ethnic tourism in Australia and thus fertile sites in which to begin to understand the complex and changing links between migration, ethnic diversity and tourism in contemporary cosmopolitan cities.

Conclusions

It is clear that there are no current and consistent police data that record birthplace of those suspected and/or arrested, and this appears to be true for each jurisdiction within the country. A second point is that it is becoming increasingly apparent is that police policy and training should focus more upon building community relations, and that an improved training regime should be pursued. Within such training it would be helpful to include at least some elementary instruction in recognising forms of mental illness, as well as training in sensitivity to cultural issues. This sensitivity, however, should not extend to the point of accepting all cultural ways as equally valid; rather, it should accord them due deference within the framework of Australian law.

A final point relates to allocation of resources. Police funding should not be regarded in isolation but should be seen in the wider context of related budgets for prisons, courts, social work and migration.

There are different imperatives that drive finance: banks and manufacturers have different perspectives on finance. Banks are concerned with maximising profit through investment and 'financial engineering' whereas manufacturers derive their profit from goods produced. From one perspective the point of money is to make more money: from another perspective the purpose of money is to improve the quality of life. With respect to crime it is obvious that money spent on preventing, and dealing with, crime, while finite, is deserving of the most efficient allocation possible.

Given that, it behoves us to allocate money in a manner that is both equitable and efficient. In terms of criminal justice that point has been

very well made by Sherman (2011). In the case of police funding, it might be worth considering the notion of shared funding with (say), immigration and social work. One of our evaluation imperatives is that we should consider the balance of funds allocated to police, prisons and the like in the light of budget allocations to cognate organisations. The Crime Harm Index (CHI) is a suitable measure to use as an indicator of quantified outcome. Clearly the optimisation of resources is imperative for efficient functioning. As Sherman pointed out, it is a matter of no small astonishment that there is so little public debate on such a crucial issue.

7

Courts

In order to be just and allow for special circumstances, the law employs a certain degree of judicial discretion. However, the very means designed to foster equality may, by their nature, be misused to produce the opposite effect. Some special features of the court process may operate differentially for migrants. Theatricality (in or out of the courtroom) is perceived differently in different cultures; the social suppression of women may create social conflict in some cultures; incomers of alien tongue may have used their bilingual children as interpreters, thus having a relatively immature and certainly not disinterested intermediary. Court judgements may need to take into account that the same penalty may have significantly different effects on people from other cultures.

These problems have been recognised for some time. Writing over eighty years ago, Abbott (1931) noted that 'impartiality and intelligence on the part of the judge are necessary but not sufficient. It was pointed out in these courts the migrant appears as complainant or defendant, ignorant not only of American law and court procedure but of the language as well'. The judge is dependent upon the interpreter for his knowledge of the facts: the intelligence, honesty and impartiality of the interpreter are almost as important as his own.

There can be no assurance that these qualities are present in the present system, or lack of system. Abbott and others noted the importance to the state that not only should an individual not be unjustly punished, or '... deprived of his liberty' but that an injustice should 'not result in the unfortunate belief that the courts are unfair to the foreigners and that those who are especially charged with the enforcement of law lend themselves to its defeat' (1931: p.406). It is also interesting to

note how much was published decades ago on sentencing issues; a topic as contemporary now as it was then.

Types of courts

We need to recognise that there are several different, but related, courts in Australia. They include the conventional three tiers: Magistrates' Courts, County Courts and the Supreme Courts of each Australian state. Additionally, there is the Federal jurisdiction that deals with matters that are not the province of states – family and marriage matters, for instance. At various state levels there are courts dealing with special areas of offending and with special groups: the subject of drugs is an example of the former; and indigenous courts the latter. They all, of course, have the same brief – to administer justice – and are usually coordinated by a court services integration program of some kind. At the apex of the Australian judicial system is the High Court, comprising seven judges. It is the final court of appeal, with the British Privy Council having been removed from the appellate jurisdiction in 1986. It should also be noted that points of exemplary principle, and of interpretations of the Constitution, are all High Court matters (see *Citizenship and the Constitution* in the References).

It is in the lowest courts in the three-tier system that the overwhelming number of criminal cases are heard and resolved. So far as can be determined from the data, migrants may be less often represented by legal counsel than are the native-born. Similarly, the use of court interpreters for those of alien tongue is rather less than would be expected. (See Chapter 9 for a further exposition of the various types of courts, and expository comments on each.)

The International Criminal Court

The International Criminal Court (ICC) was set up on 1 July 2002 (under the Rome Statute), and has jurisdiction from that date onwards. As of 2013, 122 foreign states have agreed to accept its jurisdiction. From the point of view of this work its significance is as the organisation that provides trials and sanctions for socio-political crime. Its brief is to consider war crimes, crimes against humanity and genocide.

Three nations, United States of America, Sudan and Israel, have 'unsigned' the Rome Statute, that is, withdrawn their acceptance of the ICC's jurisdiction. Of the seven cases currently before the ICC all are in Africa, which has been a source of conflict with bodies such as

the African Union. The ICC may not investigate a non-signatory state without the prior approval of the UN, and only states may bring complaints. This means that territories with an aspiration to use the Court, such as Palestine, are in a difficult position.

What is important here is that the ICC is one of the newest and most effective means of prosecuting internationally, and is seen to be a bulwark against socio-political crimes and a means of meting out justice at a global level.

Court statistics

It does seem regrettable that there are no current definitive court statistics available for Australian courts. This applies to both the criminal and civil jurisdictions – and to all levels of court. In order to be useful, such statistics would need to record birthplace; no such data is currently available.

In an earlier study (Francis, 1981) higher court statistics were gathered from New South Wales, Victoria and South Australia. In New South Wales it was found that the New Zealand, Yugoslav and German-born were over-represented in the figures (with Asians just over the native mean), whereas the Italian and Greek-born had low rates. In Victoria the New Zealand-born were not recorded separately, but, as with New South Wales, the German and the Yugoslav-born had elevated rates and, to a lesser degree, so did the Netherlands-born. The Italians had low rates and the Greek-born slightly above the native rate.

For South Australia the position was slightly different. As with New South Wales the Yugoslav and New Zealand-born had higher than native rates. That raised rate was also true of the Hungarian-born. The Italians had low rates as did the Netherlands- and Greek-born. For South Australia the particularly interesting feature was the low rate for the German-born for which a likely explanation was the existence of a 'receiving community' of old and well-integrated German settlement, dating back to the 19th century. Such conditions of assimilation of crime rates works in both directions. For a high-rate immigrant group the rates may fall with assimilation if the rates are high in the first instance.

One would have to recognise that this is a constantly changing picture dictated by various factors such as the size of the receiving community, how long they have been in the community, their motives for migration

and so forth, and one that is consistent with the LGA study reported in this work.

Migrants as administrators of justice

One of the interesting questions is to what extent is it justified to have a proportion of migrant judicial members – or, indeed, other court officials, such as Clerks of Court. It is equally interesting to assess the merit of having the bar comprised of a due proportion of migrant members. In terms of social justice one might consider it valuable to have the court represent the wider community; on the other hand there might be a case for ensuring the ‘arm’s length’ nature of hearings. One could imagine that if there were a judge of Palestinian background a defendant with an Israeli background (or vice versa) might feel that whatever decisions were made might not be disinterested. As with all such considerations, the perception is almost as important as the reality.

Studies of sentencing

Writing as early as 1971 Hogarth opened his book with the quotation: ‘There is no decision in the criminal process that is so complicated and so difficult to make as that of the sentencing judge.’ This decision-making is made yet more complex by the need to hear and sentence those of alien background. Court processes have for centuries been concerned with related adjudicatory and dispositional aspects. The adjudicatory process is circumscribed and guided by rules and precepts that exercise strict control to ensure that the finding part of the proceedings preserves the rights of the accused. In the case of the migrant such safeguards may not always be adequately exercised. The dispositional part of the process, the application of the penalty, is circumscribed by some, though fewer, safeguards, and is thus a fallible human process.

Interest in the application of penalties is not of recent origin. However, research and public debate in this area has been mediated by a number of factors. These include the apparent denial of natural justice in the dispositional aspect of criminal proceedings as well as empirical investigations of decision-making and how it may be modified. Fox & O’Brien (1975) referred to Sir James Stephens, writing in 1863 on the capriciousness of sentencing in the criminal law: ‘...without consultation, advice or guidance of any description whatever, yet the sentence is the gist of the proceeding, it is to the trial what the bullet is to the powder.’

The extent of the jurisdiction of the courts is, of course, extensive but there are particular problems with this wide-ranging authority. For instance, how does one deal with aliens and on what occasions are deportations appropriately ordered? Devlin (1970, p.187) also pointed out the distinction between recommendations for deportation differentially affecting aliens and citizens. How should one deal with the offences committed outside the jurisdiction, and what should one reasonably do with the mentally disordered offender?

There are two basic approaches to sentencing, one of them legal and the other a human decision-making process. Of course this distinction is only made for analytic purposes since in the courts themselves they are factors that operate jointly, with legal issues foremost. As to the human decision-making process the best known study is by Hood (1962) who examined the background characteristics of magistrates and the penal philosophies that they held. From the decision-making point of view the sentencing process has a number of problems. More recently the complex, and sometimes contradictory, issues relating to the imposition of sanctions has been addressed by MacKenzie et al. (2010).

There are relatively fewer constituted guidelines for sentencing than there are for trials (while recognising that it may not be possible to frame such guidelines). Second, the sentencing decision is not as publicly visible as is the finding decision (again recognising that this, too, poses a difficult problem). Third, sentencing sometimes appears to be done in less time and with less consideration than is accorded the adjudicatory part of the process, although it may be argued that consideration is given to the sentence while the adjudication takes place. This is clearly not the case in instances where a judge reserves his/her decision for due consideration.

In using an empirical approach to sentencing there are two basic approaches: to use a vast array of information where minor variations between cases are picked out in the analysis of a great number of cases. The alternative approach is to use a few cases and simulate realism while keeping the points under investigation under strict and precise control. Sentencing exercises commonly use this approach and in such cases either transcripts or enactment are used.

This second approach formed the basis of the Coyle & Francis studies (see Coyle & Francis, 1976a, 1976b; Francis & Coyle, 1978) on sentencing. The procedure adopted was to videotape cases and present these to magistrates for sentencing. There are several important points to note. Firstly, the production was professional. Secondly, the use of colour video made the presentation more realistic. Thirdly, the courtroom

professional roles were played by people who did that as an occupation. (This, as it turned out, had the dual merit of using people who needed no tutoring and, when shown to magistrates, the cases were accepted as realistic since the magisterial viewers knew that the enactment was by professionals who thoroughly understood what they were doing.) Fourthly, the videotaped cases were available for re-use and, being a recorded medium, were presented as invariable from one occasion to the next.

These studies addressed the question: 'Are migrants treated differently in the lower court system in the sentencing process?' Data were presented on lower court appearances by migrants and the native-born. The mock trials were filmed in a specially constructed 'courtroom' with all standard magisterial accessories. The scripts were based on actual court cases and were prepared with legal assistance. Two cases were filmed as simulation. In the first the defendant was depicted as being arraigned on a charge of assault and in the second the defendant was depicted as being charged with possession of marijuana. (These offences, as filmed, are within the summary jurisdiction of magistrates in the Australian states in which the experiments were conducted.) In both cases the defendants pleaded guilty and had two prior convictions for similar offences.

Three ethnic groups, chosen on the basis of previous studies, were identified within each of these cases: Dutch, Yugoslav and Australian. This was done by editing specific sections, or modules, of the tape. After the first filming run was made successfully the portion of the case identifying the defendant was re-shot. The take was re-done so that the identity of the defendant, name and birthplace, was changed. To make the film consistent the defendants' speech was dubbed over so that the accent was appropriate.

At a magistrates' conference in New South Wales 81 magistrates viewed the cases. In this sentencing session they were randomly divided into three approximately equally sized groups. Both offence categories were shown to each group with the ethnic identity of the defendants systematically varied across the groups. The magistrates were provided with report sheets setting out the possible range of sentences prescribed by legislation and asked to indicate if they were prepared to sentence the defendant on the basis of the videotaped evidence they had seen.

This experiment was repeated, in a slightly varied form, in the state of Victoria. On this occasion 24 Justices of the Peace viewed the videotapes. Two national identities were used: Australian and Yugoslav. Three offence categories were used (driving under the influence of alcohol was

added to the two categories listed above) and pre-sentence reports on the defendant were given to the justices.

There were no significant differences between the proportion of defendants 'sentenced' by the magistrates when ethnic identity was considered (Chi squared = 1.2, $df = 2$). Similarly, the Justices of the Peace did not show any bias in sentences given to the various ethnic groups. The use and potential use of videotape in the legal system has been the subject of a number of recent articles. This reported study appears to be the only report that has investigated sentencing parameters through the use of this medium. The failure to find any significant effects on sentencing due to ethnic identity is noteworthy.

This study on the effect of birthplace on sentence needs repeating to see if outcomes have changed over time. It also needs widening to include groups not represented in this published study (such as Iranians and Africans). Any future study should involve the use of both written cases and interviews with stipendiary magistrates. It is also held that this technique, developed to a more sophisticated level, lends itself to further valuable studies.

Courts are the lynchpin of the criminal justice system (CJS). Without their independence, and the respect for them that is rightly their due, the CJS would be in anarchy. It must be puzzling to migrants from some countries to find that the Australian judiciary are appointed rather than elected – but that may be part of their independence in that they need not be responsive to electoral issues: the drawback is that they may not respond to community concerns. On balance it is a matter of no small astonishment that the system works as well as it does.

In recent times there have been various moves to provide a broader base upon which sentencing judgements are made. Among such innovations are the provision of victim impact statements, and the provision of information on outcomes to sentencing factors. Given the difficulty in sentencing, and of balancing the various considerations within the framework of what the legislation permits, there is always someone who is dissatisfied. They may be victims, the family of victims, the perpetrator who feels that his/her case is being treated harshly, and of members of the public who have limited access to court information.

In addition to these considerations there is also the issue of quasi-judicial impact. Here the notion of plea-bargaining as practised in the USA arises, which also affects Parole Board decisions. A body such as the Parole Board has a significant function to perform and will take into account the sentencing judge's comments. In all of this process, justice must not only be done but also seen to be done. It is noteworthy that in

many jurisdictions sentencing is performed by the trial judge. That does seem to be a rational approach as they have heard all of the adduced evidence: the drawback is that they may need more information from experts, and they might possibly give reserved decisions to allow due time for reflection.

Given the great difficulties in sentencing, the problems of mandatory sentencing and of the need to evolve better systems, one would confidently expect the evolution of sentencing to produce yet further refinements. As such they must include implications posed by ethnicity.

When a defendant refuses to stand in court

There are some court cases in which unusual events occur. In May 2013 there was a case in Sydney in which a defendant refused to stand up when a magistrate entered the room. The magistrate was also female, although that was not a point at issue. Previously there was a case in 2011 in the USA when a Somali woman refused to stand for a judge. In both cases the defendants were removed from court. The dilemma here is that they claimed religion as a basis for their refusal; the question is whether or not this should have overridden the convention of respect. Both were resolved by removing the defendant from the court until the court convened, after which the defendant was brought in. An interesting corollary is 'Would one give citizenship to someone who refused to stand and broke the conventions of respect for the court?'

8

Prisons

Prison is the strongest sanction supporting the punitive sentences handed down by the courts and, as such, receives the more serious and intractable offenders. Information derived from the prison process should, then, afford complementary data to that afforded by the court system. Sets of data reported in Francis (1981) showed that information collected from each state on prisoners presented many consistencies and just a few variations.

The functions of the courts are relatively unambiguous; this is not the case with prisons. Their role may be seen as custodial, punitive or remedial – although the last role is limited. In 1958 J.K. Galbraith applied the phrase ‘the affluent society’ to the capitalist West. Since then the world has become more affluent. There are a number of reasons for this sustained improvement; these include advancing technology, better available resources and a favourable social system. There is, as Davis (1968) has argued, a key reason for this, namely the capacity of managers to ‘develop organizational systems that respond productively to the changing conditions of society’. Improvement is therefore can be effected as much by working smarter as by working harder.

Davis (1968, p.29) proposed four models of organisational behaviour. He named these as Autocratic, Custodial, Supportive and Collegial. Such an analysis is highly relevant to prisons, but would be easier to apply if there were general agreement by both professionals and by the community as to the purpose of prisons. In particular, if one of the purposes of imprisonment is to prevent recidivism then, as the process operates at present, this is no more than a triumph of hope over experience.

We should note that the prison system itself is funded to perform all its basic functions whereas external supervision, such as that by parole officers, can often be the poor economic relation, with overloaded staff and high caseloads. One needs some hard data showing that external

supervision is properly funded. One could well, also, imagine members of the public resenting the healthcare given to inmates while it is denied to ordinary citizens. In Europe, especially, as one would expect, a wide variation of practice exists. In this context debate over adequate support and funding needs to be engaged.

Prison medical and psychiatric clinics are staffed by professionals, at a financial cost to the system. It will be seen in the next chapter, on mental health and crime, that migrants use fewer such facilities than do the Australian-born, and their prison experience, with the exception of the understandable stress of imprisonment in a foreign country, involves smaller cost than is the case for natives.

The economics of some treatments can make them a significant variable. A 2010 report from the *Canadian Correctional Investigator* (see References) provides some useful data on funding and accountability gaps in Correction Service Canada's mental health care. The Service has a legal obligation and duty of care to provide mental health services '... including clinical treatment and intervention'. The report noted that there is some 'warehousing' in Federal penitentiaries, which is neither appropriate nor safe. Some six years ago there an overarching plan, with funding, was announced to provide access to mental health services in Canadian Federal penitentiaries.

In Australia there is a funding divide; prison funding is almost entirely a state matter, but the cost of healthcare within prisons is split between states and the Commonwealth. Prison costs are a significant drain on the public purse of both states and Commonwealth, and healthcare costs constitute a major proportion of these. With increasing incarceration rates, and with longer sentences, the costs escalate. Mental illness, drug abuse, terminal illness and HIV/Aids treatments are all expensive. However, attitudes towards health expenditure for prisoners vary widely.

By way of comparison, in the UK, every prisoner has a right to treatment, largely by the National Health Service; all prisons are required to have a medical officer. Even so, the issue of excessive costs often arises. A report from the Sainsbury Centre for Mental Health (Rutherford, 2011) noted with concern that the Dangerous and Severe Personality Disorder program cost £60 million per year for just 350 people.

Definitions

Prisons may take various forms apart from the conventional hard-core, high-security containment model. They include open prisons, police lock-ups, home detention and refugee camps.

Another issue relates to the validity of criminal judgements, to which the Howard League for Penal Reform has addressed itself. As it has argued, international recognition of the validity of criminal judgements is a means of bringing to justice those who commit offences abroad. To quote the League, '...the main drive towards [the] recognition and the repatriation of offenders is humanitarian. Punishment is increased by being served in a foreign land, and this is neither just nor humane' (see *Howard League for Penal Reform* in the References).

Conventional criminal statistics do not always present a comprehensive picture. In New Zealand or Denmark, for instance, such statistics are relatively clear indicators. However, there are more troubled areas of the world where imprisonment may be for political or religious reasons, or may result from the misapplication of mental health law. Further, the concept of 'prison' has a wider application: for example, those caught in refugee or internment camps because of political instability or crisis are, in effect, imprisoned without trial, but not recorded as prisoners.

The context of such judgement will include the seriousness of the punishment – the most extreme being that of the death penalty. Foreign-national prisoners are probably over-represented among those under sentence of death in some countries. Such over-representation may be caused by lack of consular and/or legal access. It has been noted that, overall, women migrant workers in prison are particularly vulnerable. The Vienna Convention on Consular Assistance requires that adequate interpreter facilities should be provided for both interrogation and trial.

Seemingly equal punishments meted out by courts are not subjectively equal for all groups. Imprisonment for someone from a cohesive extended-family cultural background is not the same as that for someone from a more individualistic culture. While in prison migrants may suffer further disadvantages compared to native prisoners: those of alien tongue may not understand orders and directions; an inability to converse may isolate them from their fellow prisoners; and separation from an extended family might bring a greater sense of deprivation and shame. Further, they have a disadvantage in being less likely to participate in practical training programs, and their entertainment (such as books or radio) can be of a lesser quality than that available to natives. Finally, their greater heterogeneity within the prison population may create social friction.

In matters of religion, migrant prisoners' preferred working days may be at odds with the received national standard, possibly due to requirements for prayer; their dietary precepts may vary from those of the host

community; and relevant clergy may be unavailable. Prison visits may present a problem, perhaps because of the lack of local compatriots, or of embarrassment or ignorance about prison visiting. The time that migrants spend in prison may be lengthier than for natives (for example, because of waiting for information from abroad). Those imprisoned for serious criminal offences may face deportation. Delays in decisions to deport and inability to meet the criteria for parole are further areas where discrimination can occur.

Migrants in prison may produce unwanted problems for the prison administration as well as needing extra manpower to supervise special cases, and as migrants are not citizens the host community may see itself as having the right (within limits) to treat them in a differential manner. Expatriating prisoners to serve their sentences in their own countries has much to commend it but there are several pertinent questions relating to this. These include: should the arrangement cover custodial cases only? How does one reconcile differences in penal provisions between countries? Whose consent is needed for a transfer? How does the sentencing country ensure that the repatriated criminals serve out their penalty?

In the broadest sense one can characterise prisons as walled and protected secure units for the containment of criminals. That definition is so coarse as to be almost valueless. For example, consider the example of transit camps. It is a historically charged term, and has become almost cognate with concentration camp. At one estimate there are nearly 33 million people currently living in temporary refuges. In some countries at particular periods there has been a profusion of camps. For example, in Argentina during the military dictatorship (1976–83) thousands lost their lives in such camps, although there is a debate over the exact numbers (somewhere between 9,000 and 30,000). (For a discussion of the issue of using transit camps to process asylum-seekers in the EU and elsewhere, see *Transit camps* in the References.)

While Australia does not have transit camps it does have detention centres for asylum-seekers. Transit camps existed in Australia during both World Wars and some existed into the 1950s. During World War II more than 4,000 Italian migrants were interned at camps in Australia, being treated as enemy aliens. Who is defined as an 'enemy alien' raises important issues. Given the history of the Hitler years, today's Germany is understandably reluctant to set up such camps, but could well envisage setting up regional processing centres for asylum-seekers.

The DIMIA Report for 1996 does not contain an exact figure for the number of people in mandatory detention in that year. However, a

parliamentary report provides a figure for the following year. In March 1997 there were 472 people in immigration detention in Australia. The Joint Standing Committee on Migration Report provides a graph indicating that there were fewer than 1,000 people in immigration detention in the years 1995–96. By 2000–01, 11,439 people were held in immigration detention. This figure represents a maximum number of 3,612 detained on any one day. In 2009–10, the number of people taken into immigration detention was 8,749. Of these, 15 per cent were living in the community and overstayed or breached visa conditions; 2 per cent were foreign fishers, 81 per cent arrived unauthorised by air or boat; and 2 per cent were in other categories. People in immigration detention at 30 June 2010 numbered 4,077. This figure included 3,867 irregular maritime arrivals (IMAs), six foreign fishers and 204 detained due to compliance-related activities or unauthorised arrival by air.

In the past ten years, transit camps have existed in Ukraine and Albania for Kosovar refugees (see *Transit camps* in the References). On the border of Thailand and Burma there are many refugee camps that could be described as transit camps. However, most of these are located on the Thai side of the border. Total numbers of people in these camps are unknown. In 2007 there were approximately 155,000 Karen refugees in five camps on the Thai/Myanmar border.

Australians in prisons abroad

In 2007–08 there were 970 Australians arrested abroad, and 211 in prison. During this period, intensive consular assistance was provided to 1,249 Australian citizens who were either arrested or imprisoned in foreign countries. In 2008–09, 1,019 Australians were arrested overseas, and 223 were imprisoned as at 30 June 2009.

Those awaiting trial or serving sentences are located in a number of countries, with many facing or convicted of drug-related charges. Of those a very small number of offenders were facing the death penalty. In the 2010–2011 DFAT *Annual Report* it was reported that 313 Australians were arrested or in prison overseas, and had received consular assistance (for further information see *Smartraveller* and *Australians in jail overseas* in the References).

Those countries without habeas corpus provisions for the speedy court processing of those charged will necessarily have a high population of remand prisoners. Some countries imprison without trial or conviction (for example, prisoners of conscience). Such national differences may confound the meaning of imprisonment for alien groups within a

country. It is clear from such instances that the problem of the transfer of prisoners to their home States is not one of overwhelming magnitude, but it is one of some moral concern.

Imprisonment – alien internment

A number of countries have instances of native-born citizens of alien ancestry being treated in wartime in a manner that seems unjustified. Internment without trial, non-specific charges and damage to reputations are features of such treatment. The 20th and early 21st centuries are an age of nationalism. If mass politics is the art of serving the national majority then some minorities can only be losers. In terms of scale this was never more true than during World War II.

People of German ancestry were interned in Australia in both World Wars, and Japanese-origin people were interned in the USA during the Second. In some cases this may have been for good reasons, but the blanket application of a draconian internment policy certainly created injustices. One of the most famous Australian instances is that of the Vienna Boys' Choir who were on tour in Australia when World War II broke out. They were detained as enemy aliens, and remained in detention for the duration of the war. After the cessation of hostilities some chose to remain in Australia.

The world prison population

In order to have a firm base for comparison it can be noted that on 30 June 2012 there were 29,383 prisoners in Australia, a rate of 166 per 100,000 of the adult population. It is further noted that the rate of imprisonment between 1993 and 2003 increased by almost 50 per cent, well above the 15 per cent population growth that occurred at the time, and continued to increase until 2009, when it levelled out. Australia's incarceration rate in 2012 ranked 112th out of 223 jurisdictions.

Prisoner numbers reflect the nature of the prison system and the political and social system. In the Scandinavian model, numbers tend to be a clear indication of tested criminality. At the other end of the scale are tyrannies in which the bulk of those in prison tend to be there for political reasons. More complex are cases such as Israel, which is a curious mix; depending on which source one consults, the picture varies.

We note that the rate of imprisonment in China in 2001 was 111 per 100,000. In December 2005, the rate of sentenced prisoners in China

was 1,565,771 or 119 per 100,000 of population. The most recent figure is 121 per 100,000. (However, this rate does not include those held in the extra-judicial 'Re-education through labour' system: see *Chinese re-education through labour* in the References.)

In 2009 the average European rate was 123 prisoners per 100,000 inhabitants. In 2009 Iceland, with a population of 320,000, imprisoned 39 people per 100,000 of population. At that same time the United Kingdom of Great Britain and Northern Ireland had a rate of 146/139/82 (England & Wales, Scotland and Northern Ireland, respectively), with an average rate of 122.3.

The USA has the highest per capita rate of imprisonment in the world. In 2001, there were 1,406,031 prisoners, representing 470 per 100,000 population. In 2002, the number of people in prison reached more than two million. The number of those imprisoned by the end of 2006 was 1,570,861, representing 751 inmates per 100,000. The number of people either in prison or on parole or probation reached 3 per cent of the population. The latest figure is 716 per 100,000.

By way of contrast the Canadian rate in 2001 was 133 per 100,000 imprisoned. The rate of imprisonment in 2005–06 was 110 per 100,000. In a different kind of country, Venezuela, the 2000 prison rate was 62 per 100,000. At the end of 2005, the prison population in Venezuela was 19,853, representing 74 per 100,000 population. In Australia the most recent rate is 130 per 100,000 (see *Incarceration rates* in the References).

Prisoner exchange

The Australian Prisoner Exchange scheme originated in 2002 with a bilateral arrangement with Thailand. Since then the scheme has been extended: for example, in the arrangement with the Administrative Region of the People's Republic of China that began in 2006. There is also an extradition treaty between Indonesia and Australia, although this does not include a prisoner exchange scheme. A prisoner may apply to transfer from Australia to a foreign country if a prisoner transfer agreement or arrangement is in place between Australia and the foreign country to which the prisoner wishes to transfer. The conditions are:

- the prisoner is either a national of the transfer country, or has community ties with the transfer country (note that some countries only allow nationals to transfer under the ITP Scheme);
- neither the prisoner's sentence of imprisonment nor the conviction on which it is based is subject to appeal;

- the offence for which the prisoner is serving a sentence would also be an offence in the country to which the prisoner seeks to transfer (this requirement may be waived in certain cases); and
- at least six months of the prisoner's sentence remains to be served, or one year if transferring to Hong Kong, Thailand or Cambodia (this requirement may be waived in certain cases). (See International Transfer of Prisoners Act 1997 [Cwlth]).

While difficulties do remain in this area, progress has been made by some countries. The Scandinavian countries have been foremost in this regard; Denmark, Norway, Sweden, Finland and Iceland were pioneers in transferring the enforcement of a sanction to an offender's home state. Aided by the close bonds between their countries and the similarities of their laws and institutions, they were driven to action by the increasing mobility of their citizens. Most notably, when unemployment soared in Finland, as many as 100,000 Finns could be found working in Sweden. The majority were young, unmarried, non-Swedish-speaking men – the 'anchorless'.

The offender can appeal against, but cannot veto, a decision. The sanction in the receiving country should resemble the sentence originally imposed. Certain sanctions, such as those imposed on the recidivist and the dangerous, should require enforcement by the receiving country. Overall, the system seems to have worked well.

If a prisoner is made to serve a sentence in a foreign country and is deported home at the end of the sentence, s/he is almost certain to have been deprived of the possibility of contact with his/her family during the sentence: further, s/he will have a reduced chance of reintegration into his own community. This is not in the interests of the individual, of his family if s/he has one, or of the community. Further, it might be argued that prisoners awaiting trial should have access to a professional advocate. Meetings to discuss the detention or legal proceedings should take place in the absence of all other persons, in so far as conditions of physical security and the security of the state permit. When prisoners are eligible for parole, they should be required to remain in the community. The questions that seem appropriate in this context are:

- As criminals convicted of a very serious offence they may well be unwelcome. Should they be paroled to their own state or country and, if so, how is supervision to be guaranteed?
- If they are supervised and break their parole conditions, what sanctions would be available?

- Should prisoners transferred to their home country be obliged to fulfil their original length of sentence, or should they be eligible for parole?

Foreigners in prison

If the foreign-born are sentenced to prison it may bear more severely upon them than upon the native-born. As mentioned, among the features that create this relative hardship are the absence of cultural companions, dietary or religious difficulties, problems with prison visits, and cultural 'shame' at being imprisoned. Current initiatives on the transfer of prisoners have been stimulated by these concerns. To emphasise a point made elsewhere in this work – objectively equal punishments meted out by courts are not subjectively equal for all groups.

Forfeited freedoms

When criminals are sentenced to imprisonment they necessarily forfeit certain freedoms and, if they are incarcerated long enough in some states, they also lose their right to vote. To ensure that minimum conditions are met, the United Nations Office on Drugs and Crime (UNODC) helps to both preserve and reform prisoners' rights. As it notes, '... effective criminal justice systems can only be [congruent with] Economic and Social Council resolution 2005/21 of 22 July 2005 on strengthening the technical cooperation capacity of the UN Crime Prevention and Criminal Justice Programme in the area of the rule of law and criminal justice reform'. Countries in various transitional phases are the main target of this action, whether the transition stems from an emerging economy, recovery from war or the supplanting of a dictator. In particular it applies to vulnerable groups within such states – such as dissidents, women and children (see *Drugs UNODC* in the References).

The punishments meted out may include deportation. A report from the Director of the Howard League for Penal Reform in 2006 notes that, *inter alia*, those facing deportation are less likely to qualify for early release. It also notes that deportees are more likely to be held in higher-security prisons, or not allowed to work outside the prison. Finally, it notes that significant financial resources and a large bureaucracy have been used to run the UK National Offender Management Service (NOMS), which employs 1,700 civil servants. One might glean from the comments about the NOMS that its brief was to monitor and

control foreign offenders. In fact, its brief is wider than that, as a view at its website will show (see *NOMS* in the References).

The Criminal Justice Reform Unit is part of the Rule of Law Section of UNODC. The Unit contributes towards the mandate of UNODC by assisting developing countries, countries emerging from conflict and countries with economies in transition in building the capacity of their justice systems to operate more effectively within the framework of the rule of law and with particular attention to vulnerable groups such as women and children. Aspects that receive most attention are penal reform, alternatives to prison, restorative justice, advice, law reform, and the provision of grants to non-governmental organisations.

Special needs

The UN has reported on prisoners with special needs (see Gunn et al., 1991) and outlined some of the particular disadvantages suffered by the incarcerated – particularly foreigners. Its report noted that foreigners are greatly over-represented in the criminal justice system of those countries with a large migrant labour force. However, country-by-country comparisons cannot be made with exactitude because some countries' figures include immigration detainees, and other countries do not practise adequate record-keeping.

The UN noted that in some countries people sentenced for the violation of immigration statutes are held in prisons, and make up a high percentage of the foreign prison population. It noted this pointed to an urgent need to implement policies and strategies designed to address these disadvantages, and that such an approach should address both imprisonment issues and subsequent re-settlement issues.

Typology of foreign prisoners

One can imagine a typology of foreign prisoners. One category comprises those emigrating in order to commit an offence; a second comprises those who, for some technical reason, do not have citizenship; the third comprises those in the country temporarily but legally (such as migrant workers). To these we might add a group whose very emigration/immigration is an offence in some countries (North Korea, Cuba). A final category, although of a different kind, consists of those involved in activities that are offences in the host country but not in the native land; this group might be construed as victims of misunderstandings.

Clearly those who enter with criminal intent are not victims: those who become defined as criminal as a result of cultural

misunderstandings (such as engaging in outlawed forms of consensual sex between consenting adults) occupy about the mid-point: those who are exploited because of their vulnerability (such as trafficked sex workers) occupy the 'victim' end of the spectrum. In all such cases, it is obvious that human judgement will be brought to bear in making assessments. Not all sentencing of migrants is unfair, but it can invite and invoke adverse comment and accusations of impropriety.

The difficulty of the tasks of judging and sentencing such cases needs to be recognised. This will have a particular impact on the seriousness of the punishment – the most extreme being that of the death penalty.

Prisons data: an analysis

The prison system is one of the critical components of the penal system. It provides the strongest of the range of punitive sanctions handed down by the courts; it is also the recipient of the most serious and intractable offenders (although its rehabilitative effects may be inadequate). It furnishes the clearest source of data about serious criminal offenders; while recognising the occasional error in apportioning guilt, individuals who end up in prison are as well-tested cases as we are likely to find.

The Australian quinquennial census records dwellings, and prisons are defined as dwellings: thus it is possible to find the numbers in each nativity group by a specially commissioned search. These data provide a near 100 per cent count of nativity groups in prison, thus providing a firm reference point to use in order to comment on any sample bias that might occur in a survey.

Tables from the 2001, 2006 and 2011 censuses were commissioned from the Australian Bureau of Statistics (ABS) by the present writer, and comprise tables showing Crime X Birthplace X Age. In order to calculate rates of imprisonment, data on the number of persons by birthplace, age and sex were added, derived by the author from the ABS's Tablebuilder program. Putting those items together, a table was constructed that gave rates for both the general population, and for males in the most crime-prone life period. Such rates were then ranked. The analysis of that data allowed conclusions to be drawn about the outcomes for males in the crime-prone years.

Birthplace, age and type of offence for this group were matched to data relating to the general population data to derive tables that allowed the construction of further tables giving rates for particular ages, birthplace groups and type of offence. These data from last three available censuses help show both continuities and changes over time.

Some cautions are to be observed here. First, when tables are constructed from different data sources they are reduced to common items. Over 150 nationality-birthplaces are represented in Australia but for the tables that have data in common this number is considerably reduced. Further, one must keep to the information common to all census years in order for comparisons to be made. In the event 25 birthplace data were recorded for 2001 and 2006, and 31 for 2011. This information is inclusive for each nativity group, and may therefore be considered to be population data rather than a statistical sample. Here the caveat is that there are a number of cases where birthplace is not recorded, and that may influence the statistics – particularly if it is a birthplace not recorded for some personally compelling reason. A further caution is that males in the crime-prone years were defined as those between the ages of 15 and 44. One would prefer a slightly lower upper age, but making it 44 was the only way that the data could be meaningfully combined and compared.

Offences of violence are recorded as homicide and related offences, acts intended to cause injury, sexual assault, dangerous or negligent acts endangering persons, and abduction and related offences. Further, in order to keep the datasets comparable, UK and Ireland are presented as a single group.

The analyses consider males in the crime-prone years, types of offence, and general population data. The recorded crimes have been divided into those involving personal violence and ‘Other offences’, meaning the rest. Personal violence was selected as it is the marker of most serious concern to the general populace, and one that has the capability of destroying personal quality of life. Additionally the overall prison rates by birthplace are given.

Results and conclusions

With data derived from Appendix Tables 8A.1, 8A.2 and 8A.3 the following correlation coefficients were found.

Table 8.1 Correlations: rates for crime-prone males and general population

	Personal violence	Other	Total offences
2001	.65	.88	.79
2006	.47	.75	.65
2011	.66	.82	.67

1. It will be noted that all of the correlations are significant at the $p < .001$ level with the exception of personal violence, 2006, which is significant at the $p < .05$ level. Also, the correlations in 2006 are less than for 2001, with some reversion in 2011. The general conclusion here is that whether one chooses the high-risk group of young males or the general population comparison, the overall effect is roughly similar. Further, the order of magnitude of the correlations follows the same broad pattern for all three census years.
2. Conclusion 1 may reveal exceptions in particular cases. Taking 2001, and using a rank disparity of ten or more for overall imprisonment, the overall imprisonment rate did seem to bear a relationship to younger crime-prone males for Greece, Italy and the Netherlands. For 2006 that was still true for Greece and Italy. For 2011 that was still true for Greece, Italy and the Netherlands. To these is added Malta, and a new listing, Afghanistan. All of this shows the ever-changing nature of immigrant criminality.
3. Taking the overall imprisonment rates for the general population it is clear that the Australian-born are imprisoned for a higher proportion of offences than those listed as overseas-born. The disparity in 2001 was a rate difference of 12, in 2006 it was 38, and in 2011 it was 6. Taking out the six new additional countries the difference was 26. Clearly this is a fluctuating figure and dependent upon which countries are included.
4. For some groups the rates are readily seen to be explicable in terms of young males in the crime-prone years: for 2001 leaders were Greece, Italy and Hong Kong. For 2006 substantially the same is true. For 2011 the exemplars are Germany, Greece and Italy. It will be noted that for the Australian-born the ranks for overall imprisonment rates are very similar in 2001 and 2011: in 2006 they are higher for the younger crime-prone males.
5. It will be seen from Appendix Tables 8A.1, 8A.2 and 8A.3 that some countries appear in the higher risk category, and then do not appear in the next census year. Others have appeared in the last censuses. Plainly the situation is a constantly changing one wherein some groups start as higher risk, and then have that risk lowered with respect to imprisonment. It needs to be borne in mind that this is a prison rate only, and may not reflect total crime, some of which does not attract a prison sentence.
6. What is not given is the extent to which higher imprisonment rates are matched by positive contributions. Country X, for example, might comprise those of entrepreneurial spirit whose efforts

are largely successful. This is another area that would repay more detailed examination.

7. In 2001 the violent crime rate was lower overall for the overseas-born listed groups compared to the Australian-born, and this was true for both younger crime-prone males and for the general population. For 'Other crimes' there is a slight tendency for the overseas-born to have higher rates for both younger crime-prone males and for the general population. For total imprisonment rates the overseas-born had lower rates for both younger crime-prone males and for the general population.
8. In 2006 the violent crime rate was lower overall for the overseas-born listed groups compared to the Australian-born, and this was true for both younger crime-prone males and for the general population. For 'Other crimes' there is a tendency for the overseas-born to have higher rates for both younger crime-prone males and for the general population. For total imprisonment rates the overseas-born had higher rates for crime-prone males, but this was not so for the general population. This may have something to do with the inclusion of six new countries.
9. In 2011 crime-prone males and the general population of overseas-born had lower rates than did natives: that was reversed when 'Other crimes' were considered. For overall imprisonment rates the crime-prone males had a higher rate than did natives, but the opposite was evident in the general population figures.
10. Using Appendix Tables 8A.1, 8A.2 and 8A.3 it will be noted that the trend in the percentage of personal violence crimes compared to the whole rose from 2001 (33 per cent) to 2006 (35 per cent). In 2011 it increased to 41 per cent but that was skewed by some high personal violence rates for five of the six new additional birth countries. When they were removed from the analysis the rate was then 37 per cent. Notwithstanding, this indicates a slightly rising proportion for personal violence.
11. From this general analysis we conclude that the prison findings are relatively robust, and are the result of independent well-tested cases in a court of law. The results do change over time, but that does not vitiate the main point about them being well-tested cases. Overall it is clear that the rate of imprisonment for the Australian-born is commonly higher than it is for the overseas-born.
12. It is clear that some groups are prone to imprisonment. What is now needed are more detailed studies that help clarify the reason/s for high rates among some groups and low rates among others. In 2001,

for example, Sri Lanka, Egypt and India had low rates: in 2006 countries with the lowest rates of imprisonment were India, Sri Lanka and Malta. How, for example, did Malta move from rank 16 in 2001 to rank 23 in 2006? As mentioned, an analysis of the underlying reasons for these rates, and the changes in rates, warrants serious further study.

13. Our general conclusion is that the analyses produce a largely similar result, but with some minor variations. It is clear that, overall, males in the crime-prone years yield results that are largely similar to those of the overall nativity group, although with some minor variations. Further, the overall rates for the overseas-born are lower than they are for native-born; absolute numbers are also quite small.

What is not known

The data that we do have would be even more useful if we were to have access to some critical items of information, including: the differential rate of guilty pleas by migrants; the use of bail; the types of offence as listed at court; and the use of interpreters at the trial. Those of alien origin might confuse moral and legal culpability, and therefore plead guilty with greater frequency. Further, while the frequency of use of interpreters is an influential factor, so is their linguistic ability in English. Defendants unable to express themselves well in English may well become frustrated and not do themselves as much justice as would a more articulate individual. However, this may apply as much to less well-educated natives as to those of alien tongue.

Another obstacle stands in the way of achieving equalisation of treatment of migrants and natives, particularly post-prison. Criminal justice workers, such as parole or probation officers or social workers, face extra difficulties when dealing with migrant clients, who not only have to adapt to the task of earning a living after penal treatment but also adjust to living in an alien community. We do not yet fully know the effects of this situation.

Concluding comment

From the above data it is clear that, as a whole, the foreign-born are at lower risk of imprisonment than those born in Australia. Further, in the census years cited there is a significant correlation between each of the offence categories. The data given also show that the existence of a cohort of young (15–44), crime-prone males does have some association

with the crime rate, for some groups: an unsurprising conclusion. It can also be noted over the longer term the rate of imprisonment changes. Initial waves of migration, often dictated by political considerations, can bring in the crime-prone who then, over a generation, accommodate to local standards and become more law-abiding.

Appendix tables

Tables 8A.1–8A.3 were drawn by the present author from two sources, reframed in a different manner and subjected to his own statistical analysis. Information on the birthplaces of offenders within prison was obtained by commissioned tables from the ABS. To those tables data was added on the number of persons by birthplace, age, and sex, derived by the author from the Tablebuilder program of the ABS.

The census population data (age and birthplace) was then used by the author to calculate rates of imprisonment. Putting those items together, a table (8A.1) was constructed that gave rates for both the general population, and for males in the crime-prone years. Such rates were then ranked. The analysis of that data allowed conclusions about whether or not the preponderance of males in the crime-prone years served as an explanation. From those tables rates and ranks were derived that allowed comparison, with inter-correlations being computed to see if the crime-prone-years explanation revealed disparities.

In recasting the data personal violence included homicide and related offences, acts intended to cause injury, sexual assault, dangerous or negligent acts endangering persons, and abduction and related offences. All other offences were categorised as 'other'.

Some cautions are to be observed here. First, when tables are constructed from varied data sources they include only common items. Over 150 nationality-birthplaces are represented in Australia but in the tables that have data in common this number is considerably reduced. Further, one must keep to the information common to all census years in order for comparisons to be made. In the event data were recorded for 25 birthplaces for 2001 and 2006, and 31 for 2011. This information is inclusive for each nativity group, and may therefore be considered to be population data rather than a statistical sample.

Here the caveat is that there are some cases where birthplace is not recorded, and that may influence the statistics – particularly if it is a birthplace not recorded for some personally compelling reason. A further caution is that males in the crime-prone years were selected as 15–44-year-olds. One would prefer a slightly lesser upper age but making

it 44 was the only way that the data could be meaningfully combined and compared. Where statistical probability statements are made the present writer has done so on the basis of a restricted number of available birthplaces rather than upon the population data for the recorded places.

Even though the present author is responsible for the construction and analysis of the tables some of the data were obtained from the ABS: their contribution is gratefully acknowledged.

Table 8A.1 Prison population by offence and birthplace 2001

Total population as at 2001. Crime prone years & Persons all ages				Types of offence and risk rates				
Country	Census	Census	Psnl viol	Males 15-44		Gen Pop		Other offences
	15-44	Total pop		Rate 100K	Rank	Rate 100K	Rank	
	Males	All						
Australia	3,001,108	13,629,685	6156	205	6	45	6	9405
Canada	7,410	27,289	7	94	16	26	10	16
China (excludes SARs and Taiwan)	35,484	142,780	18	51	19	13	19	76
Egypt	4,592	33,432	2	44	21	6	25	4
Fiji	12,970	44,261	32	247	3	72	2	34
France	4,189	17,268	6	143	13	35	7	14
Germany	10,668	108,220	16	150	12	15	15	35
Greece	9,575	116,431	16	167	10	14	16	59
Hong Kong (SAR of China)(a)	20,335	67,122	5	25	25	7	24	43
India	27,339	95,452	12	44	20	13	19	12
Indonesia	13,993	47,158	6	43	22	13	19	169
Italy	14,712	218,718	32	218	4	15	15	80
Korea, Republic of (South)	11,017	38,900	8	73	18	21	12	9
Lebanon	19,439	71,349	36	185	8	50	5	96
Malaysia	21,555	78,858	9	42	23	11	22	61
Malta	3,681	46,998	16	435	1	34	8	9
Netherlands	6,329	83,324	11	174	9	13	19	28
New Zealand	101,066	355,765	208	206	5	58	4	298
Philippines	21,954	103,942	19	87	17	18	13	29
Poland	7,481	58,110	8	107	14	14	16	15
Sri Lanka	13,887	53,461	4	29	24	7	23	5
Turkey	9,077	29,821	26	286	2	87	1	35
United Kingdom & Ireland ¹	187,512	1,086,480	297	158	11	27	9	345
United States of America	12,947	53,694	13	100	15	24	11	37
Viet Nam	50,894	154,831	99	195	7	64	3	454

1. Includes Northern Island, Isle of Man & Channel Islands.

Types of offence and risk rates

Males 15-44		Gen Pop		Total offences	Males 15-44		Gen Pop		Psnl viol rate as % of all crime
Rate 100K	Rank	Rate 100K	Rank		Rate 100K	Rank	Rate 100K	Rank	
313	11	69	9=	15,561	519	10	114	8	39
216	17	59	12	23	310	18	84	11	31
214	18	53	13	94	265	20	66	13	19
87	23	12	24	6	131	24	18	25	33
262	15	77	7=	66	509	11	149	5	48
334	9	81	6	20	477	14	116	7	30
328	10	32	17=	51	478	13	47	18	31
616	3	51	14	75	783	3	64	14	21
211	19	64	11	48	236	21	72	12	10
44	25	13	23	24	88	25	25	24	50
1208	1	358	1	175	1251	1	371	1	3
544	4	37	15	112	761	4	51	17	29
82	24	23	21	17	154	23	44	21	47
494	5	135	3	132	679	5	185	4	27
283	14	77	7	70	325	17	89	10	13
244	16	19	22	25	679	5	53	16	64
442	6	34	16	39	616	8	47	18	28
295	12	84	5	506	501	12	142	6	41
132	22	28	19	48	219	22	46	20	40
201	20	26	20	23	307	19	40	22	35
36	26	9	25	9	65	26	17	26	44
386	7	117	4	61	672	7	205	3	43
184	21	32	17=	642	342	16	59	15	46
286	13	69	9	50	386	15	93	9	26
892	2	293	2	553	1087	2	357	2	18
Mean rates of overseas born									32

Correlations $n = 31$.

Personal violence (Psnl viol). Young males X population 0.65 $p < .001$.

Other offences. Young males X population 0.88 $p < .001$.

Total offences. Young males X population 0.79 $p < .001$.

Table 8A.2 Prisons and total population 2006

	Types of offence and risk rates														Psnl viol rate as % of all crime										
	Census		Census		Psnl viol		Males 15-44		Gen Pop		Other offences		Males 15-44			Gen Pop		Total offences		Males 15-44		Gen Pop			
	15-44	Total pop	Total pop	Psnl viol	Rate 100K	Rank	Rate 100K	Rank	Rate 100K	Rank	Rate 100K	Rank	Rate 100K	Rank		Rate 100K	Rank	Rate 100K	Rank	Rate 100K	Rank	Rate 100K	Rank	Rate 100K	Rank
	Males		All																						
Australia	4,149,891	14,072,945	8,844	213	12	63	6	11,799	284	15	84	8	20,643	497	12	147	6	43							
Canada	9,074	31,612	6	66	20	19	16	13	143	22	41	17	19	209	22	60	17	32							
China	57,481	206,589	40	70	18	19	16	117	204	16	57	9	157	273	20	76	12	25							
Egypt	4,575	33,494	13	284	3	39	8	17	372	9	51	13	30	656	9	90	10	43							
Fiji	13,989	48,143	51	365	2	106	1	83	593	6	172	3	134	958	4	278	2	38							
France	5,098	19,185	6	118	15	31	9	10	196	18	52	12	16	314	18	83	11	38							
Germany	11,265	106,524	26	231	10	24	13	36	320	11	34	18	62	550	11	58	18	42							
Greece	6,825	109,989	18	264	6	16	21	49	718	3	45	15	67	982	3	61	16	27							
Hong Kong (SAR)	22,332	71,802	4	18	25	6	25	67	300	13	93	7	71	318	17	99	9	6							
India	55,313	147,106	28	51	23	19	16	24	43	25	16	24	52	94	25	35	25	54							
Indonesia	15,882	50,975	11	69	19	22	14	63	397	8	124	5	74	466	13	145	7	15							
Italy	9,442	199,122	23	244	9	12	23	61	646	4	31	20	84	890	6	42	22	27							
Korea	17,674	52,761	9	51	23	17	20	15	85	23	28	21	24	136	24	45	21	38							
(South)																									
Lebanon	18,891	74,850	53	281	4	71	4	145	768	2	194	2	198	1,048	2	265	3	27							
Malaysia	25,251	92,334	15	59	22	16	21	50	198	17	54	11	65	257	21	70	14	23							
Malta	1,975	43,701	12	608	1	27	12	6	304	12	14	25	18	911	5	41	23	67							
Netherlands	5,638	78,924	15	266	5	19	16	35	621	5	44	16	50	887	7	63	15	30							

New Zealand	118,046	389,465	270	229	11	69	5	437	370	10	112	6	707	599	10	182	5	38
Philippines	29,217	120,540	34	116	16	28	11	55	188	20	46	14	89	305	19	74	13	38
Poland	6,071	52,266	6	99	17	11	24	18	296	14	34	18	24	395	14	46	20	25
Sri Lanka	16,738	62,256	11	66	20	18	19	12	72	24	19	23	23	137	23	37	24	48
Turkey	8,878	30,491	23	259	7	75	2	44	496	7	144	4	67	755	8	220	4	34
UK & Ireland	181,031	1,088,417	323	178	13	30	10	305	168	21	28	21	628	347	16	58	18	51
USA	17,344	61,720	29	167	14	47	7	34	196	18	55	10	63	363	15	102	8	46
Viet Nam	44,575	159,849	115	258	8	72	3	510	1144	1	319	1	625	1402	1	391	1	18
													Average of listed overseas born groups					35

Correlations.

Personal violence (Psnl viol), Young males X population 0.47 $p < .05$.

Other offences, Young males X population 0.75 $p < .001$.

Total offences, Young males X population 0.65 $p < .001$.

Korea (South)	22,331	74,538	11	49	29	15	27	16	72	30	21	30	27	121	30	36	31	41	
Lebanon	15,402	76,450	62	403	8	81	8	164	1,065	5	215	3	226	1,467	6	296	5	27	
Malaysia	28,805	116,196	13	45	30	11	31	67	233	22	58	15	80	278	25	69	18	16	
Malta	1,184	41,274	11	929	2	27	17	14	1,182	4	34	22	25	2,111	2	61	21	44	
Netherlands	4,844	76,046	11	227	17	14	29	18	372	13	24	29	29	599	17	38	30	38	
New Zealand	120,412	483,398	354	294	14	73	9	416	345	15	86	9	770	639	15	159	10	46	
Papua New Guinea	6,748	26,787	28	415	7	105	4	20	296	17	75	12	48	711	13	179	9	58	
Philippines	36,814	171,233	44	120	22	26	19	57	155	26	33	24	101	274	26	59	22	44	
Poland	5,517	48,677	10	181	20	21	22	12	218	23	25	27	22	399	21	45	28	45	
Sri Lanka	22,161	86,412	17	77	24	20	23	29	131	28	34	23	46	208	29	53	24	37	
Sudan ¹	7,743	22,856	54	697	3	236	2	34	439	10	149	4	88	1,137	8	385	3	61	
Tonga*	2,361	9,209	23	974	1	250	1	12	508	7	130	5	35	1,482	5	380	4	66	
Turkey	7,541	32,845	27	358	9	82	7	34	451	8	104	8	61	809	10	186	8	44	
UK & Eire ²	163,809	1,168,401	328	200	19	28	16	289	176	24	25	26	617	377	22	53	25	53	
USA	16,549	77,010	25	151	21	32	14	41	248	20	53	16	66	399	20	86	16	38	
Yugoslavia (former) ³	18,930	137,227	58	306	13	42	13	83	438	11	60	14	141	745	12	103	13	41	
Viet Nam	41,470	185,039	120	289	15	65	11	654	1577	2	353	2	774	1866	3	418	2	16	
																			40

Mean rates of overseas born

1. Includes both Sudan and South Sudan.

2. Includes Northern Island, Isle of Man & Channel Islands.

3. Includes Bosnia/Herzegovina, Croatia, Macedonia, Montenegro, Serbia & Kosovo.

Correlations $n = 31$.Personal violence. Young males X population 0.66 $p < .001$.Other offences. Young males X population 0.82 $p < .001$.Total offences. Young males X population 0.67 $p < .001$.

9

Mental Health and Crime

There is a significant area of overlap between deviant behaviour, crime and mental ill-health. While some deviant behaviour involves creative individuals who are not anti-social, the main focus in this chapter is on the consequences of 'problem' deviance. To this end the chapter deals with connections between crime, mental health and birthplace.

Many overseas-based studies deal with ethnicity as defined by skin colour, but here birthplace is regarded as the criterion, one that is both related to culture and morally neutral. Further, available statistics that list birthplace are unambiguous; while one might argue that birthplace is only a guide to ethnicity it is a far clearer criterion than judgements about 'race'.

John Howard (1726–90), after whom the Howard League for Penal Reform is named, very early on noted the number of mentally ill and the sub-normal in prisons. Today, criminals or prisoners who are also diagnosed as 'mentally ill' incur a double stigma: a status as 'immigrant' can add a third dimension to it. The use of preventive detention under psychiatric care also raises concerns and may also improperly confound in the public mind the notion of 'mentally ill' with dangerousness.

The category of mentally ill might today include the cognitively impaired, the psychotic, and those with attention deficit disorder, brain injury, dementia and autism. It is doubtful if a catchall definition is appropriate: it could also lead to an erosion of civil liberties. One needs to be mindful of labelling as 'mentally ill' those whose disposition is not due to a psychiatric disorder, and who then might have their civil rights eroded by being dealt with under a system in which conventional safeguards are absent.

In recent years there has been recognition of a convergence between issues relating to mental health and the criminal justice system. This has

led to a blurring of the boundaries, the rise of 'forensic' mental health services, the creation of a mental health treatment requirement for people on community sentences, and the increasing use of indeterminate prison sentences. Imprisonment for public protection may erode conventional civil liberties. Rutherford (2010) has shown that more and more people are in touch with both mental health and criminal justice services, and that the laws governing each have brought them closer together during the past 20 years.

The overseas experience of mental health assessments for courts is also relevant. Reoffending rates could be cut by recognition of the relationship between mental ill-health and drug usage. Partly because of this, many prisoners are reconvicted within a year of release; such a 'revolving door' is expensive, as are means of dealing with it. One might advocate that, instead of a prison sentence, relevant offenders could be offered 'voluntary' treatment in hospital – sometimes in secure units. However, one would have to recognise that while such an amended system has merit, it is also open to abuse.

The convergence of crime and mental health also becomes an issue when people with mental health problems are brought into prison. The burden of addressing these problems may be to lose sight of the overall economic and moral issues that affect the wider prison perspective (see *Mental health of prisoners 2013* in the References).

Violence

It is sometimes thought in wider society that mental illness is necessarily associated with violent crime. However, a 2010 joint study by Oxford University and the Karolinska Institutet in Sweden showed that violent crime is much more commonly attributable to drugs and alcohol, and that schizophrenia seems not to be associated with violence unless it is mediated by a drug or alcohol problem. Another study by the same group also noted that bipolar disorder has a minor influence on violent crime unless it is compounded by substance abuse (see *Bipolar disorder* in the References).

Nevertheless, an understandable concern still exists about the connection between mental health and violence, and while there is no reason to suppose a strong connection, there is concern that some disorders may be connected to violence. It is clear from the study by Quanbeck et al. (2004) that those in the manic phase of bipolar disorder are more likely to be offenders than are those in the depressive phase. It was also clear that 'bipolar' inmates as a whole had '... significantly higher rates

of co-morbid substance abuse (as compared to bipolar inmates without an arrest history)'. Of particular interest here is the disposition of migrants to bipolar disorder, where there will be substantial personal and cultural variation.

Suicide

There are various forms of violence in prisons: they include riots, self-harm and suicide, violence of prisoners against prisoners, and the improper use of anti-psychotic medication. The suicide risk of those released from prison in NSW was highest immediately following release from prison. After six months it approached the rate of those still incarcerated. That general finding was less true of women and of Aborigines (see, for example, Kariminia et al., 2007). Rates are generally higher among people born in countries that have higher suicide rates (notably, English-speaking countries, and countries from Western and North Eastern Europe), and lower in immigrant groups from countries with lower suicide rates (including Southern Europe, the Middle East and Asia – see *Mindframe media* in the References). Looking at suicide rates in relation to birthplace, and in five-year blocs from 1974 to 2006, the highest overall rate of suicide was for those born in Eastern Europe: the lowest rate overall was for those born in South East Asia.

What is also interesting is the decline in the suicide rate for the Eastern European-born and the South East Asian-born after 1999. The overall mean rate for the Eastern European-born was 40.61 per 100,000: the overall mean rate for the South East Asian-born was 13.27 per 100,000 (see *Mindframe media* in the References). It was also reported that suicide rates differ between cultures; thus the reasons for suicide may have a large cultural component. The rates of suicide among the foreign-born reflect the rates in their countries of origin, but converge towards the native rate over time.

One of the most important conclusions there is that 'at a national level analysis of suicide deaths indicates that 25% of suicides are among the immigrant population, with 60% being from a non-English speaking background' (see *Mindframe media* in the References). What is interesting here is that the suicide rate of immigrants overall is less than their proportion in the community, but is higher for those with a non-English-speaking background. It was reported that 98 per cent of suicides were male: half of the persons who died were overseas-born. Of those born overseas 95 per cent of suicides were from non-English-speaking countries.

It might be argued that the role of stigma is critical to an understanding of suicide. One might further suppose that decreasing the stigma attached to suicide would be instrumental in lowering its rate. It might equally well be argued that decreasing the stigma can raise the rate: that is an empirical question. It can be noted that while suicide rates tend to reflect the rates of suicide in the country of origin, existing evidence may be interpreted to mean that the average suicide rate for migrants is consistently higher in Australia than in the country of origin. It can also be noted that a number of Culturally and Linguistically Diverse (CALD) sub-groups had been identified as having a heightened risk of suicide. These include the elderly, asylum-seekers and refugees, male migrants in rural and remote areas, and women.

The Community Affairs References Committee of the Australian Senate reported in June 2010 on *Suicide: The hidden toll*. The report, which contained 42 recommendations, did note that minority group data were not consistent (see Senate Community Affairs Committee, 2010). Such groups included Indigenous Australians, homosexuals and those from ethnic minorities. It stressed that the dearth of data made trends difficult to explicate, and thus failed to provide a basis for positive policies for suicide prevention. Programs for suicide prevention can only be based on hard-core data. Such data are also necessary for suicidal behaviour on the part of migrants to be properly understood.

Cases of suicide are listed according to Commonwealth criteria on an Australia-wide basis. However, they include only completed suicides, not attempts. It is also possible that some 'accidents' that prove fatal are, in fact, suicides, but are not recorded as such because the details are not known.

The mental-illness/crime connection

Jordan (2010) has argued that the mental health needs of the prison population are high, yet the prison milieu is not conducive to good mental health. From this it was argued that mental health services for prisoners ought to be both set in their proper context and properly funded. The social and situational variables within prison must be taken into account when devising and providing programs.

A summary of the connection between mental health and crime is given by Baldry et al. (2010). Among the points they note are that those suffering from a serious mental illness are over-represented in prisons, and that those with severe mental illness are more likely to be convicted of misdemeanours than are their mentally healthy counterparts.

Roughly 25 per cent of prisoners in Victoria had had contact with mental health services prior to imprisonment, and males with schizophrenia and co-existent substance abuse were 12 times more likely to be convicted than were males in the general population. Such statistics draw together the clear need for a better understanding of the connection between mental health, substance abuse and crime. This conclusion applies *a fortiori* to those of alien background.

Aspects of mental health breakdown

We might speculate upon the frequency of mental disorders among single, unstable foreign-born men who break down in the first years of arrival. One of the pressing questions, therefore, relates to personality disorders known to be associated with various forms of criminal behaviour. Schizophrenia and schizo-affective psychoses were more common among migrants from Eastern and Southern Europe. It is not clear whether this was a consequence of the selection procedures (self or other) or of the difficulties experienced by incomers in attempting integration. A useful website outlines mental health issues facing the overseas-born (see *Mental health and immigration* in the References).

Providing therapy for mental health problems also requires cultural sensitivity. For example, psychologists at Utrecht University in the Netherlands have found evidence that sharing a similar worldview with those who treat them may be more important for patients in therapy than sharing the same ethnic background. The authors of the research concluded that 'culturally sensitive indigenous therapists may treat ethnic minorities just as well as therapists with matching cultural backgrounds' (see Knipscheer & Kleber, 2004).

Triggers to psychological distress in the host country for migrants might include suffering stress through work problems, non-recognition of foreign qualifications, loss of ethnic identity, financial problems and costs of living, a newly developed desire to acquire expensive possessions, and concern over their children growing away from them. These comments apply *a fortiori* to the permanent settler. A different problem exists for temporary migrants. During the Six Day War in Israel, for example, many young, and not so young, Jews went to Israel to assist in the struggle. While attracting numbers of dedicated constructive helpers, this also drew a number of unstable characters who found their way into psychiatric care or who were repatriated. (Personal communication from professional workers in Jerusalem.)

Crime and mental health

Penrose, in 1939, wrote a classic article on the connection between criminal and psychiatric cases. He derived, for each of eighteen European countries, the proportion of the total population in mental hospitals and the proportion held in prison, expressed as 'rates per one thousand'. He rank-ordered the countries on each variable, and computed the rank order correlation between the variables. His finding was that there was a negative correlation between the two variables, and concluded that 'there is a definite incompatibility between the development of mental health services and the need for accommodation in prisons'.

Penrose's article does make the point that the situation is not necessarily simple. Among the difficulties he identified were that the formula depends upon the availability of beds, the quality of social services, the density of the population, and the birth rate; we would now also mention the immigration rate. He noted that '...attention to mental health may help to prevent the occurrence of serious crimes, particularly deliberate homicide' (Penrose, 1939, p.12).

A later study by Biles & Mulligan (1973) presented a similar analysis and conclusion for the six states of Australia, concluding that Penrose's finding is supported in an Australian context. Both the Penrose and the Biles & Mulligan studies pointed to differences in administrative procedures in the various jurisdictions (countries or states) as a possible explanation of the results. For example, if a particular jurisdiction places emphasis on psychiatric care, then persons convicted of a crime and showing even the slightest signs of mental disturbance are more likely to be institutionalised in a mental hospital than sent to prison. Additionally, there is a greater likelihood in such a jurisdiction of the early detection and institutionalisation of anyone suffering from mental illness.

This response could be effective in two ways: first, the person would be put away from society and would not be able to commit a crime even if they had the potential to do so. Second, a cure may be effected, so that, again, potential criminality could be averted. More recent studies have shown the Penrose hypothesis to have qualified explanatory power. For example, Kelly (2007), in Ireland, found an inverse relationship between the annual censuses of psychiatric inpatients and prison statistics. What was striking was that between 1963 and 2003, there was a five-fold decrease in the number of psychiatric inpatients and a five-fold increase in the average number of prisoners.

Large & Nielssen (2009) examined the relationship between the numbers of psychiatric beds and prisoners. This study covered 158 countries: it was found that, using multiple linear regression, the relationship was positive in low- and middle-income countries, but not for high-income countries. As the authors noted, the ability of the government to pay for custodial institutions, combined with cultural attitudes, constitutes an important variable. They concluded that in high-income countries psychiatric and prison populations are not related. Here we might comment that one would be interested in breaking down the 'high-income' countries into those with a small range of incomes and those with a large range of incomes (as calculated by the Gini Index).

Most recently Penrose's thesis was revisited by authors from the Royal College of Nursing in London (2010). Among other things, they addressed some of the drawbacks of linking mental health and crime, for example, conferring a double stigma, or conflating mental illness and crime in a unitary concept.

Penrose's valuable concept needed to be tested specifically on migrants, and that was done in a study by the present writer (Francis, 1981, p.141). A search was made for migrants who were in the prison system in a certain year and a check was made to see if those same people had appeared in the psychiatric system previously in that jurisdiction. A similar, simultaneous and complementary study was conducted in which migrants in the psychiatric system were checked to see if they had ever appeared in the prison system. The study was based on Western Australian data.

The names of 309 migrant prisoners were collected and checked for prior psychiatric hospital entry. Conversely 369 psychiatric hospital cases were checked for prior prison history. These numbers represent the entire number of migrants appearing in those two institutions for the year in question. From this study it became apparent that between 16 and 20 per cent cycle through the institutional systems designed to cope with deviants.

What these data show overall is the clear connection between prison beds and psychiatric hospital beds, subject to the qualifications mentioned. It is also apparent that the experience of migrants replicates that of other individuals and groups found in the various Penrose-type studies. From all of this we must affirm the broad validity of the Penrose hypothesis. Thus, the two major systems for coping with the deviant, prisons and the mental health system, are complementary. Further, it appears that the native-born are more likely to be admitted to a psychiatric facility than are the overseas-born. While it is recognised that the

Table 9.1 AIHW Report summary

-
- 25 per cent had a chronic condition (asthma, cardiovascular disease, diabetes, arthritis or cancer).
 - 35 per cent had tested positive for hepatitis C.
 - 81 per cent were smokers.
 - 52 per cent consumed alcohol at risky levels.
 - 71 per cent had used illicit drugs during the previous 12 months.
 - 31 per cent were referred to prison mental health services.
 - 37 per cent had been diagnosed with a mental health condition at some time.
 - 18 per cent were taking medication for a mental-health-related condition.
-

Source: author's extraction from the 2009 AIHW tables (Australian Institute of Health and Welfare, 2010).

'non-recorded' rate is fairly high, it is nevertheless likely that that explanation goes some way towards explaining the differences in admission rates (Table 9.1).

At this point it would be useful to note some of the general health issues facing prisoners. From the table it can be readily seen that health problems abound in the prison population, and that mental health problems are a significant part of such problems.

The AIHW Report (Australian Institute of Health and Welfare, 2010) also lists prison entrants. For 2009 it was noted that 89 per cent of prisoners were male – a finding similar to that found in all prison systems. Further, 68 per cent of prison entrants had been in prison previously, and 24 per cent had been in juvenile detention. We cannot conclude on birthplace issues from these data as we do not know the age at arrival of the overseas-born, nor whether they were subject to juvenile detention in another country.

What was of more interest was the fact that those born in Australia comprised 89 per cent of the prison population, a much greater proportion than that found in the general population. From this we must draw the general conclusion that, overall, the overseas-born are at less risk of imprisonment than are the native-born.

The AIHW stated that almost 40 per cent of prisoners reported having had a mental health disorder at some time; over 30 per cent were referred to prison mental health services, and almost 20 per cent were taking medication for a mental-health-related condition at the time they entered prison. A history of head injury was also common among prisoners. Over 40 per cent reported having had a blow to the head resulting in a loss of consciousness at some time in their lives (what

we do not know, however, is the incidence of such an injury in the general population). Over 80 per cent of prisoners were currently smokers; during the 12 months prior to entering prison more than 70 per cent had used illicit drugs, and over half had consumed alcohol at risky levels.

The AIHW report makes no mention of prison workplace safety, even though most prisons in Australia have formal work programs. However, the report's details of the general health and welfare status of Australian prisoners should be of more general concern to the community.

To put the figures into context, the 2006 Census recorded that there were more than 27,000 prisoners in custody in Australia, 3,700 of whom had visited a medical clinic in prison and 4,900 of whom who were taking prescribed medication (see *ABS, 2006 Census* in the References).

As a measure of the problems of general health and mental health should be noted that approximately 50,000 prisoners in Australia are released every year. It was also reported that of prison entrants some 27 per cent reported that a professional had advised them that they had some form of mental disorder, and 18 per cent were taking medication for a mental-health-related problem. This figure is largely consonant with the sample data reported in this study.

More recent data from the ABS is available for 2010, and shadows earlier figures. In that year Australia had 29,700 prisoners, of whom 21 per cent ($n=6,367$) are on remand (charged with an offence but unconvicted, and awaiting a court hearing or trial). Such prisoners are predominantly men (92 per cent), aged less than 45 years, with a prior history of adult incarceration (55 per cent) and a median sentence length of three years (excluding indeterminate, life-term and periodic detentions). Aboriginal and Torres Strait Islander people are disproportionately represented, comprising over one-quarter ($n=7,584$) of the prison population, compared with only 2 per cent for the estimated Australian-resident population.

General health

Persons born overseas generally enjoy better physical health than do Australian-born persons, if gauged by such measures as mortality and hospitalisation rates and the prevalence of lifestyle-related health-risk factors. These inequalities are largely explained by the 'healthy migrant effect', which ensures that, for the most part, only those migrants in good health migrate to Australia.

Inequalities in health status by birthplace, and changes in health advantage among migrants after arrival in Australia, provide insight into the effect of lifestyle-related health-risk factors on health outcomes. They might also guide health professionals in targeting education, screening and other health interventions.

Misuse of medication

In addition to prisoner-initiated violence there is the possibility of the misuse of officially prescribed anti-psychotic medication in prisons. The *Kelly Report on anti-psychotic medication in jails* (2010) provided evidence that many youth incarcerated in American juvenile facilities are receiving anti-psychotic medication even when not diagnosed with the disorder for which it would have been an appropriate treatment. One of the aims of the use of such medication was to make inmates more tractable – it is a means of chemical restraint in a situation where physical restraints are largely non-acceptable. However, one might argue that making young inmates tractable has the benefit of preparing them for more conventional therapy, even if this is not the actual aim of the use of the medication.

One would also need to be attentive to any harmful side-effects, such as weight gain and the early onset of diabetes, a risk that may be enhanced by lack of physical activity. In the wider context one should ask whether such an approach is used in Australian prisons, particularly with those of alien ethnicity.

Also relevant here are the mortality figures by birthplace. A report by the Australian Institute of Health and Welfare outlined mortality figures by birthplace (see *Health inequalities in Australia, mortality* in the References). There it was noted that mortality for the foreign-born was consistently lower than for natives for the years from 1989 to 1999 (p.3). The report also noted that standardised mortality rates showed the Asian-born to be the consistently lowest for the years 1985–87 and 1997–99 (p.5). When looking at background data some pointers do emerge. For example, overweight and obesity for the Asian-born was significantly lower for both males and females compared to the Australian-born standard reference point.

Martin (1978) contains a report on a meta-study on the health of migrants. That work also includes an analysis of such issues as education, housing and trade unions, and their bearing on migration. In Table 5.3, Martin provides data on the nature of migrant health

problems for three blocs of years; mental illness/stress received 30 mentions in the 116 papers reviewed; suicide and attempted suicide had three mentions; and mental illness/suicide/alcoholism had one.

These data show that mental illness/stress had the largest number of mentions among all health problems presented in the papers reviewed. Medico-social and physical illness had about 15 per cent each. The concern with stress factors is not surprising, given that such a major life-change must affect migrants disproportionately, in addition to the reasons that drove them to relocate.

Special courts

A recent development in court procedure has been the institution of special courts. There is a good argument that special courts should operate, but always under the general judicial rules – with the conventional courts being supreme. The resolution of special problems, such as those relating to particular communities, mental health and Aboriginality, is well left to those special courts initially, but their deliberations should be subject to general judicial approval.

In March 2010, the NSW Law Reform Commission recommended that all courts be given the power to order an assessment of an accused criminal's cognitive or mental state, and to make an order following examination by an independent medical practitioner. That medical judgement would be used to decide on fitness to plead, to stand trial or plead a special defence. It is worth noting that the judgement would include a wide range of conditions, including ADHD, autism, dementia, brain injury and drug-related problems. The mentally ill – or cognitively impaired – comprise up to 20 per cent of sentenced prisoners, and thus constitute a significant problem.

The government of Western Australia has set up 'declared places' for the detention of mentally impaired offenders. Those found not guilty because of unsound mind will be sent to these places, but their cases will be retained under judicial review in order to prevent indefinite incarceration. In South Australia, the most common mental problems are depression, trauma and schizophrenia; the most common types of crime are assault, larceny, and property and driving offences. Mediating factors are recognised – poverty, homelessness, drug and alcohol usage, and inappropriate reactions to common situations. An illustrative case was that of a man with frontal lobe damage (and thus reduced impulse control) who just walked into shops, took clothes off racks, and then walked out.

In August 2010 the State of Victoria instituted a new 'mental health' court (the Assessment and Referral Court), which can be seen as an example of therapeutic jurisprudence. The aim of this initiative is to keep offenders with mental health problems out of the prison system. One of the difficulties here is striking the right balance between retribution and rehabilitation, and avoiding creating 'revolving door' offenders. It also has to be recognised that court processes may exacerbate problems and, conversely, that astute criminals may use this initiative to gain undeserved benefits.

The Assessment and Referral Court (ARC List) at the Melbourne Magistrates' Court began operation in April 2010. The \$13 million, three-year pilot aimed to rehabilitate people with significant mental illness, impairment, brain injury or intellectual disability that may cause them to commit crime through addressing underlying factors that may lead to their offending behaviour. This court follows a precedent of similar courts in South Australia, Tasmania and Queensland, as well as in Canada (Toronto's Mental Health Court) and the United States. Plainly, such courts need to be staffed by those who are both familiar with conventional court procedures and who have a commitment to the new approach.

At the time of writing (2013) every Australian state has set up such mental health courts and diversion programs in order to cope with special cases. In the Northern Territory there is a Mental Health Review Tribunal with a similar function, and in the Australian Capital Territory there is a Court Assessment and Liaison Service. Concerns about such courts have also been addressed by Aboriginal organisations.

Again, one is concerned about justice and equity. There may be those who use special pleading in order to gain from a perceived amelioration of their sentence. Thus the issue becomes a moral one. Does special consideration apply equally to all defendants? There is a rationale for special courts: sending the mentally ill to prison may be inhumane, expensive and often ineffective – particularly for minor offences and repeat minor offenders. Where carers are involved it could lead to their reluctance to report offences to police since the mentally ill could be abrasive enough to attack someone, and thereby collect a prison term. There is clearly a need for court oversight of detention.

Further, there is a need to distinguish forms of mental incompetence (such as impaired cognition, bipolar disorder and schizophrenia). While the concept of mental health specialist courts has much to commend it one would be hesitant to not have them subject to conventional legal safeguards. The decisions to refer to these courts have to be objectively

based, because their judgements may lead to a prison sentence, or, conversely, a different standard of judgement about release.

There is also concern that mentally ill prisoners may demand, and receive, better treatment than that accorded to ordinary prisoners. Such a differential could undermine community support for the system, and be regarded as unfair by non-criminals. The objectives of the criminal justice system, and those of mental health, are therefore not always necessarily coincident.

Processing in special courts can also lead to an infringement of family rights. At the court level, once a mentally ill patient comes under the purview of a Mental Health Act, their civil rights may be compromised. This may have a particular, adverse, impact on those from non-English speaking backgrounds.

For special courts to operate effectively a set of clear guidelines is crucial. An example of such guidelines is contained in the *Diversion and support of offenders with a mental illness*, promulgated by the Victorian state government (Thomas, 2010). This document covers issues such as accountability, cultural safety, quality, community protection and legal rights. Here one must balance a host of factors, a task performed by the appropriate judicial officers. An interesting counterpoint to this are the 11 guidelines proposed in the Australian Institute of Criminology Tipsheet 20 (Australian Institute of Criminology, (2011). These include a court-based mental health diversion program – including being responsible to the courts and subject to sanctions and research. Such programs are difficult to evaluate because they are, by nature, responsive to a variety of internal and external pressures and thus structurally fluid.

Special treatment

There is an argument that particular cases might be given special consideration. One could readily imagine that parole would be granted in exceptional circumstances, such as when the prisoner is terminally ill. On that basis one could also imagine a corrections department extending that provision to those incapacitated with long-term high-cost care issues, even though they may have a longer life expectancy. There may be qualifications to this, such as the program not being applicable to those with life sentences.

What is important to note here are the principles of maintaining balance and monitoring long-term effects (as distinct from a short political time-frame). Further, the extra expense of such courts gives rise to issues of cost-benefit. To this we might add the relevant rider – that while such

a court needs to have a clear understanding of ethnic issues, it must also acknowledge that all with whom it deals are subject to the law.

Post-prison

Incarceration is one issue; release from custody is another. An editorial by the Editor of the *Medical Journal of Australia* (Katelaris, 2011) noted that ex-prisoners have a death rate quite out of proportion to their representation in the community – about ten times the rate, in fact, with many dying of drug-related disorders. Andrews et al. (2011) and Kinner et al. (2011) provided evidence of the relatively high mortality rate of ex-prisoners within a short time of release. This research provides the first-ever national estimate of post-release mortality among ex-prisoners.

It was noted that the large number of deaths among ex-prisoners, particularly following release from custody, highlights the extreme vulnerability of these men and women once they return to the community, mainly because recently released prisoners often struggle with poverty, mental illness and drug problems.

Those freed from psychiatric facilities and sent in to the community are less likely than average to cope with ordinary social life. For that reason they may find themselves in situations where police attention seems to be appropriate – and thus they are more likely to end up in prison. Here one would ask the question, ‘Are prison officers appropriately trained to interpret and deal with behaviour problems stemming from mental health issues?’.

Consistent with these findings are those of Alan et al. (2011). They provided an analysis of linked inpatient and prison data for Western Australia. They concluded that one-fifth of adults released from Western Australian prisons (2000–02) were admitted to hospital within a year following release. This translated to 12,704 inpatient beds, at a great cost. Those most at risk were Aborigines and females. The authors noted that mental health disorders (such as schizophrenia and depression, and injuries to the head and face), accounted for nearly 59 per cent of all beds. This was 1.7 times the rate in the comparable non-incarcerated population.

It has also been noted that ex-prisoners often lived on the margins of the community before imprisonment, belonged to minority groups, were poorly educated, and often socio-economically disadvantaged. In addition, social inequalities were a factor in offending behaviour. Unemployment, unstable accommodation, poverty, limited prospects and reluctance to use (or unavailability of) community support services were

often part of prisoners' lives and potentially worsened upon release. Stigmatisation and limited post-release resources also raise the risk of recidivism.

Another related issue is reoffending. This is always more complex than it first appears. For example, one report in 2010 (Smith & Trimboli, 2010) used a carefully controlled study of 1,208 prisoners released over a 24-month period. It was found that there was no difference in reoffending between those with no mental health disorder and those with a substance abuse disorder. What was found to be significant was that those with a co-morbid non-substance abuse disorder and a non-substance mental disorder had a higher rate of reoffending (Smith & Trimboli, 2010). While it did report on Aboriginality it did not record birthplace. It should be noted that this analysis may be time-bound. When the initiative reported here comes to fruition it could well result in a reappraisal, and that would be entirely appropriate.

Self-help pamphlets

Self-help pamphlets provide useful information in standard languages, as well as in such exotic languages as Urdu and Kurdish, and cover a range of topics, such as anxiety, eating disorders, depression and low mood, controlling anger, bereavement, panic, and obsessions and compulsions.

The Patient Information Centre at Northumberland, Tyne and Wear NHS Foundation Trust received a commendation from the British Medical Association (BMA) Patient Information Awards in 2010 (see *BMA patient awards* in the References). This was awarded for a stress and anxiety leaflet initiative; the leaflets were designed specifically to respond to symptoms of stress and anxiety, with particular reference to prisoners.

These pamphlets are part of a larger package of leaflets produced by the UK NHS and written by clinical experts for mental health nurses (see *Mental health pamphlets* in the References). Such an initiative could be of at least some help in Australia.

Human rights, mental health and prisons

The issue of special treatment also has implications for human rights. The Burdekin Report (Burdekin, 1993) is an extensive two-volume work on the issue of human rights and mental illness setting out the results

of a national inquiry focusing on various groups such as mental health professionals, accommodation providers, carers, children, the elderly and Aborigines. Among the many interesting conclusions drawn was that accommodation with their families may not be appropriate for the mentally ill; they often live there because there is nowhere else to go.

Volume 2 of the Burdekin Report drew attention to some issues impacting upon migrants from a non-English-speaking background. Among those who choose to emigrate may be those with a risk of or a disposition towards developing mental illness; they may have suffered the privations of refugee status, or of living in a repressive regime (they may even have been tortured), while the elderly may be vulnerable by virtue of both infirmity and of alienation.

The situation facing women from traditional cultures wherein they were (or are) considered second-class citizens can be compounded by the loneliness of having no employment or external wider community contact; they may be additionally alienated by having a lesser command of English. As well, differential access to services, and a disposition not to use them, can make life distressing. Finally, the Burdekin Report makes mention of barriers to obtaining referrals and services, and the need for culturally appropriate services.

In this respect the migrant experience raises issues of human rights as much as highlighting criminological matters; the Burdekin Report places issues of alien cultures, race and ethnicity squarely in the human rights domain. However, one must maintain a balance between possible abuses of human rights and dealing justly with those incarcerated according to the law. What we do need to note is that experience of the criminal justice system, both real and perceived, has an impact on the mental health of culturally and linguistically diverse people in prison. Here the question is: 'How does one distinguish between the mad and the bad?'

One point of view is that the application of psychiatric labels deprives many of their human rights. The branding process can make the defendant appear a lesser person, diluting their right to be treated like anyone else and be afforded conventional safeguards and freedoms. While it is clear that some defendants are patently unbalanced, or desperately unhappy, such cases, it should be argued, are very rare.

Both data and observations bring up human rights issues, as well as leading to judgements about disposition to criminality. One must maintain a balance between avoiding possible abuses of human rights and dealing appropriately with those incarcerated according to the law.

Commentary

This chapter has addressed the issue of the overlap between mental health, migration and crime. The two major points addressed were: special circumstances that may render migrants more or less prone to criminal indictment; and evidence relating to their involvement in the criminal justice system. The overall finding was that while migrants are subject to special pressures that may potentially affect their mental health, the empirical data, at least those relating to prisons, do not support the notion that migrants are especially prone to mental health/crime problems.

These findings were not linked to particular areas of concern, such as the incarceration of asylum-seekers, nor were they related to issues of overall social (dys)function. They simply provide evidence about the connection between mental health, migrants and conventional crime as indicated by prison data. As such this chapter provides just one piece of a larger jigsaw.

One has to be aware of the methodological difficulties of presenting and interpreting these data. For example, although dealing with 'black' and 'white' (race) admissions to a psychiatric facility, Dein et al. (2007) did rightly conclude that a much higher level of admission for some groups may be largely attributable to differential attitudes concerning ethnicity and mental health. What may well occur is that there exists a justifiable belief that some sets of prisoners/patients suffer from mental health problems and staff may be sensitised to look for them.

One might expect differential rates for migrant groups because of different attitudes towards self-admission, or of family attitudes towards admission. Again, direct questioning in the community might reveal hidden cases of psychiatric illness, but if a sufferer or their family is reluctant to admit them to a mental hospital, they are not likely to admit the existence of the illness to an interviewer. Questioning of social workers and neighbours might reveal some 'hidden' cases, but the picture is still likely to be imperfect. From all of this one must conclude that while great caution is required, one should not be prevented from making reasoned judgements based on the best available data.

In dealing with mental illness, migration and crime there is a moral balance to be achieved between justice and equity. When some defendants exploit their special status in order to achieve a lighter sentence the issue becomes a moral one. Should such special consideration then apply equally to all defendants? Clearly, more information and discussion is needed in order to influence policy: equally, there is a need to

make explicit the existing policy principles, declarations and covenants that cover treatment of the mentally ill, and to follow such guidelines as have already been proposed.

Alongside such legal and moral considerations sits an economic one. The high cost of detention, canvassed by Jureidini & Burnside (2011), is a potential influence on policies favouring release into the community, thereby saving millions of dollars. Against this we can note that the existence of ready release into the community could encourage more to attempt the hazardous journey to Australia. It also needs to be noted that prison also presents an ameliorative opportunity for many who have experienced poverty, a poor diet, illiteracy and lack of exercise; for some, secure accommodation, an adequate diet, exercise and healthcare can seem attractive, even in prison.

Considering that migrants operate in an alien environment, but one that is probably more benign than the one they left, it is not surprising that they do not have a higher rate of mental illness than the general population, as was indicated by the prison data cited in this chapter. This prison sample provides one picture: one would imagine quite a different one were a study to be conducted based on data from refugee and asylum-seeker camps. The appropriate base complementary data for both would be the incidence of mental health problems in the community for both nativity groups. This work on migrants and crime is merely one aspect of the larger picture – but an important one.

10

Victimology

One of the most intractable problems of official figures is that of the 'dark figure of crime'. Not all crimes are reported, or known to the police, those suspected or known of are not necessarily prosecuted, and even those prosecuted do not necessarily result in conviction. By the stage an offender has been processed to the point of conviction by a court, his case has been extremely well-tested by objective evidence. It needs emphasis that figures listing official convictions comprise cases that are highly likely to involve genuine transgressions of the criminal law. 'False strikes', although always possible, are minimised.

To reach the conviction stage the offence needs detecting, there must be production of evidence and witness statements recorded, and the facts of the case must be tested and judged by an independent, competent and disinterested party. This is not to denigrate studies of hidden delinquency and victimology but they too have their drawbacks (sampling problems, fallible memories, boasting/concealment, victimless crimes).

Official figures give us data on well-tested cases; their failing is their inability to tell us something about those offences that have gone officially unremarked upon. In empirical studies respondents are asked to record offence incidents whether or not they were detected. Memories being as fallible as they are, some doubt can be cast on such studies. As an improvement, people may be questioned about incidents in (say) the last week or fortnight. Since this reduces the total of offences, it is necessary to question a large number of people in order to have sufficient data for making general estimates. However, such surveys may also call into question the extent to which people will boast of, or conceal, their offences. One can well imagine that some offences are matters of shame and others a matter of scarcely concealed pride.

Being the victim of a crime is an essential part of our understanding of crime in relation to migrants. Ferri (1968) was prophetic in pointing out the criminal justice system's neglect of the victim. To date some attention has been paid to the foreign-born as criminal offenders; rather less has been paid to the foreign-born as victims of crime. It is the purpose of this chapter to outline the various problems and issues that do arise in relation to this, in the hope that this will further the study of both victimology and of crime in relation to the foreign-born. It seems probable that in the near future there will be competition for the label of victim, both as a source of sympathetic consideration and as a possible source of material recompense.

The former Czech leader, Thomas Masaryk, has said that so long as there are martyrs we will continue to have tyrants. Martyrdom is a significant theme in mankind's long history and is given archetypal expression in myths, classical fairy tales and in various Old Testament stories. Most people are victims in some sense; they face the burdens of living under political systems that do not afford an acceptable degree of control over one's own life, the enervating effects of cold wars, the rise of domestic disorder and of crime, as well as financial mismanagement by governments and social alienation stemming from ill-understood consequences of technological advance.

Victimology, as a field of study, is rather younger than is criminology. Its concern is with those who are victims of various kinds. Early in its development there was a divide between studies that were concerned with those who were victims of any kind – including of wars or natural disasters, and those who were victims of issues arising from crime. With respect to migrants one may be concerned with those who were victims in their own land; those who were victimised in the process of emigration; and those who were victimised in the host country. Each of these is a separate area of study in itself.

Injustices to victims

People sometimes justify their victimisation of others by denigrating the victim. It is a principle of human nature to hate those one has injured and there is a wide variety of empirical evidence to support that proposition: it is also a complement to the Stockholm Syndrome, where victims become complicit in their victimisation. Victimisation may apply differentially to migrants. The subject of the foreign-born as victims of crime has received relatively less formalised treatment than has conventional criminology. This is mildly astonishing considering the importance of

migration in human history. Another form of injustice applying to foreign-born victims was described by Evatt (1995) in her analysis the inequities and insensitivities that arise when the law of one culture is applied to another.

A further injustice to victims may arise where the perpetrator has something material to gain. The change in host country attitudes towards migrants may be significantly affected by the need for workers and settlers. In some circumstances labour traffickers and housing exploiters may have drawn encouragement from the passive attitudes of the administrative authorities; in this sense migrants were victims of administrative unconcern.

It is difficult to calculate the costs of 'labelling' criminals. Serious offenders who have undergone a restitutive change may nevertheless find that their 'label' endures, making them still prone to victimisation by the criminal justice system. Such labelling can also be a barrier to their acceptance as candidates for migration, despite their desire to start afresh.

In some countries people sentenced for an offence actually committed may receive cruel and unusual punishments. Severing the hand of thieves or stoning adulterers to death are examples of victims who are treated more harshly than seems deserved, at least according to Western standards. There are also cases, mentioned elsewhere in this work, where adolescent girls are forced into marriage against their will, or where rejected male suitors throw acid in the faces of unwilling partners.

Peoples, nations, long-term settlers and the democratic process itself are all victims and losers in such a context. Perhaps the object lesson to be drawn here is to look forward rather than be historically oriented. To be locked into a cycle of ancient hatreds seems to be a recipe for social misery: vendettas have no place in a civilised society. Not to heed that lesson puts us in danger of becoming emotional archaeologists: keeping a spade behind the door for digging up the past does not help cultivate the Garden of Eden.

Drawbacks of being a migrant

To be a migrant is to be at least temporarily reduced in terms of social relations, to have an induced increase in helplessness, and can lead to being exploited in various ways, including denial of civil rights, housing difficulties and poor working conditions. While the ordinary citizen of the host country may have trouble with understanding the law, the wily local criminal may understand and try to exploit legal loopholes.

Within a wider framework, victimisation may result from transgressions of a wide variety of laws relating to, for example, civil rights, working conditions, deportation, blackmail, as well as housing conditions and crime generally.

The above is in addition to any disadvantages migrants might suffer as a result of criminal activity. Individuals have commonly been the focus of victimological studies but that ought to be extended to whole peoples, tribes and races. There are various typologies of victimisation of which few explicitly nominate the foreign-born. Of equal relevance here is the treatment of whole groups of peoples by deportation, severe political repression or even massacre. This may particularly affect the foreign-born.

This particularly heinous state of affairs would be even more widespread were it not for charters that govern minimum standards of behaviour. Supranational bodies, such as the Council of Europe, the United Nations and the World Society of Victimology, have, relatively recently, framed charters to protect the rights of victims and provide for redress. Such charters are meant to apply to all without reference to national origin. In some instances, such as the transfer of prisoners, considerations of national origin are relevant in order to diminish the disadvantages that would fall most heavily upon the alien. With this goes the relatively recent practice of having victim impact statements read to the court at trials.

Thus the methodological difficulties of victimology studies are more profound than is the case with offender criminology. Studies of hidden delinquency and the special problems of sample bias militate against precision and objectivity. Data about accidents, too, must be interpreted with caution. Migrants may be in more hazardous and noxious occupations; they may work more overtime and thus be less alert; and they may not follow local-language safety instructions so well. Explanations of such differences need to be based on firm data.

Immigrants as victims

The issue of immigrants as victims of crime has been comprehensively examined by Makkai & Taylor (2009). They concluded that although immigrants seemed less prone to be victims of crime, their experiences may lead to a redefinition of victimisation, thereby confounding the findings. Where immigrants are the victims of crime they are more prone to perceive the motivation as racially motivated; they also report higher levels of fear of crime. Citing the *International Crime Victims*

Survey (n.d.) the authors found that being unmarried and living in an area where drug use is common increase the risk of being a victim of crime.

The findings on migrants, as victims of crime, are a necessary complement to findings on migrants as the committers of crime. As Makkai & Taylor pointed out, the containment of problems within enclaves may distort findings. Further, although migrants are not overly represented in victimisation studies they do report a greater fear of being victimised than do natives. In addition to individuals being victimised one might also consider the plight of families, organisations and businesses. Makkai & Taylor also made useful reference to the differential victimisation of children and women and to their feelings of safety. Despite the authors drawing attention to methodological difficulties in data collection, theirs is a genuine attempt to come to grips with the issue.

Typology of victims

As early as the 1940s we had a set of categories of victim (for example, the young, the female, the depressed). These categories also included migrants (who were coupled with 'minorities' and 'dull normals'). A more succinct typology based upon five categories was proposed by Whitrod (1986). Recasting his classification to four we have:

- Primary victims – persons directly attacked or robbed;
- Individuals financially or psychologically dependent on primary victims – spouse, child, parent;
- Individuals whose lifestyles are greatly inconvenienced by excessive fear of crime;
- All income tax payers, ratepayers, insurers, consumers, and the like who have to pay higher charges because of the cost of crime.

One might also cite an emergent typology for victims: they include the sacrificeables, the undesirables, the unreachable and the untouchables. Migrants, it might be added, are more likely to appear in the first two categories but would not be absent from the latter two. More recently Karmen (2009) has provided a set of victims that includes:

- The deceived;
- Delivery truck drivers;
- Diplomatic immunity [victims of those with];

- Disabled (blind, deaf, mute, those with learning difficulties, for example);
- Frantic relatives [of crime victims or missing persons];
- Good Samaritans;
- Homeless adults;
- Hotel guests;
- Illegal migrants who cannot complain;
- Innocent bystanders;
- Motorists hurt in hot pursuit;
- Newborn;
- Prostitutes;
- Runaway teens;
- Tourists.

To this comprehensive list we would add victims of hate crimes, of fraud in general and, importantly, those who have an unwanted nationality conferred on them (or sustained), often to their detriment.

Migrants as victims

A person's failure to resist committing or to report an offence may make him/her guilty of criminal complicity (as in the old British notion of misprision of felony). In a host of ways the foreign-born may be especially likely to become victims of this: their alien appearance may dispose them to police notice; their linguistic, paralinguistic and non-verbal communication may foster misunderstanding and retaliation; their social, legal and economic vulnerability make them ready prey for the unscrupulous.

Levels of responsibility have been discussed by Hindelang (1976: 13). Victim identification may be based upon personal characteristics as well as upon behaviour. Given this, one could well argue that national origin is an important variable. Both countries and peoples may be victims, like individuals: terrorism can create multiple actual victims as well as vicarious ones.

The ways in which people respond to these concerns are various. As von Hentig (1945) so cogently pointed out, victims of crime may respond with apathy or lethargy; by submitting or conniving; by being cooperative or contributing or, lastly, by being provocative, or instigating or soliciting. There are many instances of the victim contributing to his own involvement and so Seligman's notion of 'learned helplessness'

(Seligman, 1975) is apposite here. It may be argued that one has a right, and even a duty, to self-help and to self-defend.

People-smuggling and exploitation

Trafficking in humans takes several forms, as will become evident. One form of trafficking, and perhaps the one with the highest public profile, is that of smuggling migrants. This is defined by UNODC as '... the procurement of financial or other material benefit of illegal entry of a person into a State of which the person is not a national or resident'. That same source defines human trafficking as '... the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them'.

Other forms of trafficking are associated with sexual exploitation, the exploitation of children, forced marriage, forced labour and organised crime. Virtually every country in the world is affected by these crimes, with the actual victims suffering most. The challenge for all countries, rich and poor, is to target the criminals who exploit desperate people and to protect and assist victims of trafficking and smuggled migrants, many of whom endure unimaginable hardships in their bid for a better life. As the United Nations agency focusing on the criminal justice element of these crimes, UNODC has made great efforts against human trafficking and the smuggling of migrants, underpinned by the UN and its protocols on trafficking in persons and migrant smuggling. (See *Human trafficking* in the References.)

There are reports of migrants who voluntarily migrate to work in Australia but who are later coerced into exploitative conditions. Australian Crime Commission reports (see the References) note that deceptive practices in contract terms and conditions appeared to be increasing among women in prostitution, while deceptive recruiting practices appeared to be decreasing. There are no reliable estimates of the number of trafficking victims in Australia. Notwithstanding, there must be many victims currently under debt bondage – real or imaginary.

Trafficking in persons, especially women and children, is a global phenomenon. It involves the movement of individuals by means of force, threats, deception, fraud or the payment of money for the purpose of exploitation (for further information, see *Human trafficking* in the References). Thai women started coming to Australia from the mid-1980s to work in the sex industry. Current estimates put the number in the hundreds arriving each year. From the research that has been done on these workers, we can identify a number of features of this migration (see also

White Slaves & White Australia: prostitution and the making of Australian society in the References).

Forced marriages and trafficking

Another, related form of trafficking and quasi-slavery is forced marriage, particularly when girls are sent overseas for marriage against their will. Such an act amounts to sexual trafficking. The distinction between a forced marriage and an arranged marriage is one of consent: in the former at least one of the partners does not act of their own free will.

In Britain forced marriages have been outlawed but Australia has yet to confront the problem directly. Australian courts have dealt with cases – common in Europe – where Western and international law clashes with traditional values. An Australian court may annul a marriage on the ground of duress. It is becoming increasingly obvious that forced marriages are a form of human trafficking.

There are studies that target particular nations. For example, the notion that Filipino women are subject to violence at disproportionate levels is the subject of an article by Cunneen & Stubbs (1997). They also are likely to suffer spousal homicide, although not all cultures suffer thus. For example, the notion that the second generation gets ‘lost’ between cultures is raised by Poynting (2009), and refers in particular to Muslim girls. Based on a series of interviews in 1997 and 2003 he concluded that the young women were not ‘lost’, but instead created for themselves a merged persona, and did so consciously, as well as managing a strategic response whenever racism occurred.

Sexual trafficking

One account of human trafficking addresses the specific issue of trafficking for sexual purposes. Goodey (2003) focused upon the issue of victimhood, and on responses to sex trafficking within the European Union. The study’s main concern was transnational crime, and the criminal justice system’s reaction to women who are trafficked for sexual purposes. Goodey argued for a three-pronged attack on the problem: prevention, prosecution and protection. The conventional threefold approach of ‘migration-crime-security’ should, she further argued, be balanced by a fourth element – victimisation.

Segrave et al. (2009) provide an empirical and criminological work relating to the rights of women in Serbia, Thailand and Australia that ranges widely over the issues affecting sex trafficking. Their work

provides accounts of processes and outcomes, as well as narratives about trafficked women, their advocates, policymakers and the criminal justice system.

Organised crime and trafficking

The issue of organised crime and human trafficking has been addressed by Schloenhardt (2003). His analysis highlights the movement of thousands of people across international borders, facilitated by organised syndicates of traffickers. As restrictions are placed on legitimate movements across borders, people smugglers step in to reap a profit. Schloenhardt's aim was to identify the major organisational and operational features of migrant trafficking, which include both trafficking in the willing (illegal migrants) and the unwilling (slavery of various kinds). As a form of crime involving migrants trafficking falls within the purview of migrant-criminal concerns. While by its very nature illegal trafficking precludes the possibility of gathering reliable statistics, the paper does address what is clearly an important issue (see also Bradley & Cartledge, 2011).

Global organised crime

This subject has been comprehensively addressed by Abadinsky (2010). His handbook contains much useful information that is complementary to the information contained in this work. The question of whether some immigrant groups are involved disproportionately in the drug trade has been examined by Paolil & Reuter (2008). They found that the answer is a qualified 'yes' for the European experience. Using research literature and careful reading of official data they found that some ethnic groups were highly involved, including Turkish and Albanian immigrants who control the importation and trafficking of heroin, and Colombian groups who dominate the cocaine trade. For cannabis and synthetic drugs the native population is dominant. The authors offer an explanation of these findings in terms of connections, trans-shipment opportunities and the (in)ability of police to gain access to immigrant communities in the countries where the drugs are consumed.

Perhaps the most commonly used drug, legal in many places, is alcohol. In many criminological studies it is assumed that alcohol causes aggression. The old saw, *in vino veritas*, may be true in some cases: in others alcohol may change the character of the person, and so it is

impossible to be definitive on this matter. Suffice to say that alcohol is, at its best, a lubricator of the wheels of social intercourse: at worst it is a disinhibitor that leads to violence and unprincipled behaviour.

The prospect of substantial and continued profit from the illegal drug trade is sufficient to attract aliens to the drug business in many countries: it is in this area that a migrant criminal element is often fostered. Policing and juridical measures that threaten profits, increase the probability of detection and lead to harsh penalties may all act to reduce the problem. However, as profits increase and the organisation of drug trading becomes more complex and sophisticated it becomes necessary to find a means of protecting the organisation. Criminal elements may then resort to trying to influence the higher levels of politics and of the bureaucracy.

Where such corruption penetrates such a high social level the prospect of cover-up is increased. A mass distribution system needs to be set up in order to run a large illegal drug organisation and this can only be maintained by means that lead one to suspect that there is more to organised crime than is reported in the media. Because of its hidden nature, organised crime does not yield factual data of the same order as that available for conventional crime.

A comprehensive and well-informed account of the relationship between drugs and crime was published by Ashcroft et al. (2003). Their report, addressed to police chiefs and sheriffs in order to aid control of the drug problem in the USA, canvassed the issue in a wide context. The report is underpinned by solid research, and its recommendations and considerations are designed to utilise that research for a beneficial outcome. The report does not address birthplace in relation to drugs and crime, but does refer to ethnicity. Its clearest finding is that there is a positive relationship between crime and drugs.

On this topic one might see more than one connection: one is that drug dealing is illegal; a second is that people are likely to commit crimes in order to secure enough money to fund their habit; a third is that those under the influence of certain substances might be more inclined to criminally offend. Organised crime depends upon, as one of its foundations, an available market for illegal goods and services: indeed, the illegal status of the goods and services defines this market. This illegality is the source of profit and the barrier to conventional legal commercial activity. Thus decriminalisation of various activities should reduce the opportunities for criminal entrepreneurship, although it will not, of course, necessarily reduce opportunities for political corruption.

Forced labour

The International Labour Organization (ILO) estimates that 21 million people in the world work under coercion in forced labour and slavery-like practices (see *International Labour Organization (forced labour)* in the References). This phenomenon has a specific implication for migration. The forced migration of slave labour to the Gulags is a particular historical example. In the contemporary world migrants who are in a country illegally can be threatened with being reported to the immigration authorities, or with deportation. These people are then vulnerable to workplace exploitation, under-payment and various other forms of maltreatment.

As of 30 June 2010 the estimated number of people who have overstayed their visas and are in Australia at any one time was 53,900 – about 0.02 per cent of Australia's population. Unlawful non-citizens have no entitlement to remain in Australia and are expected to depart. If an unlawful non-citizen refuses to leave Australia voluntarily, he or she may be detained and then removed from Australia at the earliest practicable opportunity.

Three government departments – the Department of Immigration and Citizenship, Centrelink (social security and services) and the Australian Taxation Office – work together in areas of the cash economy to locate non-citizens who are employed illegally, or who are claiming welfare payments and benefits to which they are not entitled.

Migrants are, *inter alia*, easy prey for criminals. Both relative helplessness and adverse discrimination may operate to their detriment. The explanations advanced to account for victimisation of the foreign-born may be applied with equal force to other adversely discriminated groups (such as the aged or the disabled). The accounts given here illustrate their possible application in the current context, and are not to suggest that their application in this context is unique. Public perceptions of migrants might be unjustifiably lenient or harsh as a result of selective reporting. In presenting news, media editorial policy will likely favour the assumed attitudes and interests of their readers, viewers or listeners.

ABS victimology data

A study by the Australian Bureau of Statistics in 1975 did not record birthplace or ethnicity in relation to other criminological variables. It did, however, record origins in English-speaking countries. From its analysis it is clear that for both males and females the prospect of

being a victim was substantially less if one was a migrant from an English-speaking country. The highest rate of victimisation was that of male migrants from non-English speaking countries. The lowest risk group recorded in the survey was that of female migrants from English-speaking countries.

A report three decades later did record the number of practical instances involving victims, distinguishing them by birthplace. In 2007 the ABS published a table 'personal fraud: 4528', covering issues such as identity theft, frauds of various kinds and bankcard offences; this showed that the overseas-born had proportionally more persons as victims of this offence than the Australian-born (see Table 10.1 below).

Overseas studies provide further helpful information. For example, in a UK-based longitudinal study of 411 males begun over 40 years ago, Farrington et al. (2006) noted the difference between reported offences and convictions; there were many more crimes reported than there were convictions: clearly, 'hidden delinquency' is substantial.

One of the testing grounds for migrant–host relations is in the area of entrenched racism, both latent and manifest. One can readily imagine that migration and criminality are entwined, and that some police have racist attitudes. Here there are two issues: on the one hand there is the argument that police – and the public – are racist without being overt about it; on the other hand a country with a high proportional migrant intake needs to defend itself against being swamped – with its migrant intake being simply dictated by its geographical location. While there is no excuse for violence or illegal behaviour by authorities, concern for maintaining national integrity is a factor in migration policy.

Special cases

One such case concerns students as victims. In Australia, a major concern, often mentioned in the media, is whether or not international students are the victims of crime out of proportion to their representation in the community.

Table 10.1 Fraud by birthplace (expressed in thousands)

	Credit card & bankcard fraud	Identity theft – total victims	
Australian-born	267.2	98.1	358.1
Overseas-born	116.1	25.9	141.4

In 2010 a workshop was convened by the Academy of the Social Sciences in Australia, the Australian Human Rights Commission and Universities Australia to locate and examine social scientific evidence so that issues relating to attacks on international students could be better understood, and positive outcomes attained. The workshop sought to propose ways to consider how to reduce race-related crimes against international students; to enhance the safety of international students in Australia; and to develop an evidence base that policymakers and university administrators could use to design relevant policies.

While there have been distressing acts of violence, Australia is generally regarded as a best-practice country in relation to its migration policies, its absorption of people from a variety of backgrounds and the experiences it offers to international students. However, notwithstanding this generally positive track record, there is always room for improvement, and recent problems have shown that such improvement is imperative. When an international student is assaulted is that student a victim of a race-related crime or a general victim of crime? This is an important central issue in this discussion. While the number of students actually assaulted was relatively small, the ramifications of the attacks were very significant in that:

- They signal a lack of safety in the community;
- They may constitute a breach of human rights;
- They cause problems for educational institutions whose educational futures and investment strategies have factored in international student numbers that may be impacted by such incidents.
- They cause problems for private sector businesses, large and small, that deliver goods and services to this population, or depend on it for labour.

The murder of a student from India in early 2010 brought the issue to a head. As mentioned previously, there was a great deal of media attention paid to this and other incidents, and accusations of bias were made, from all sides. Some attacks may be motivated by racial malice, and some may be purely opportunistic. Students working part-time to keep economically viable tend to work late at night, take shortcuts through dubious areas and make themselves vulnerable targets. For that reason one has to determine whether the attack was actually racially motivated rather than a 'mere' conventional crime.

That issue was addressed by a report by Larsen et al. (2011). They chose the five largest contributing nations of international students

to Australia: China, India, Malaysia, Korea and the United States of America. Their conclusion was that the jury is still out: if one corrects for the effect of such items as late working hours and use of public transport, one cannot conclude that there was a racial element to the attacks. However, we do have to say that a racial element was apparent in individual cases. It did not, however, seem to be a motivating factor in general.

Part of the problem of who, when and where is situational. In street crime victimisation is related to location, racial appearance, socio-economic status, and age and gender. Young people tend to be out more often at times and places where crime is more prevalent: crime statistics clearly show that young males are more likely than others to be victims of crime. Gender is also a risk factor, as men are more likely to be out late than are women, and women tend to manage exposure to risk more effectively. Here it can be noted that while victimisation seems to be universal, in some places it is more likely to occur than in others. As Eliza Doolittle might have said – ‘in Hampshire, Hereford, and Hartford, hooligans hardly happen’.

National victimisation

At a supranational level the prize award for melancholy statistics is probably shared by Nazi Germany and the Indian subcontinent. By 1950 about three million Sudeten Germans had been expelled from Czechoslovakia. In the period 1949–61 a further 2.74 million had fled from East to West Germany (as it then was). The partitioning of the Indian subcontinent led to an exchange of population between India and Pakistan and estimates of the number of permanent refugees driven from their homes range from eight to 11 million. Other political upheavals in Korea, Vietnam and, today, Iraq and Syria, have dislocated people on a scale that is difficult to grasp.

The Middle East is a continuing source of difficulty for refugees. In 1948 an estimated 550,000–600,000 Arabs left their homes to avoid the fighting in Palestine. That same year the 850,000 Jews in Arab lands were reduced, by exodus, to 50,000 (see Goodhart, n.d.). In a three-month period UNRWA (United Nations Relief and Works Agency for Palestine Refugees) Field Officers reported 21 murders, the disappearance of four refugees, the eviction, often at gunpoint, of 42 refugees, 45 other incidents of harassment, 15 explosions and 22 arrests. The Report does not consider this list exhaustive and states: ‘...in most instances, the violence was perpetrated by unidentified armed men’ (p.7). In UNRWA terms a refugee was a person whose normal residence

was Palestine for a minimum of two years immediately before the outbreak. The UNRWA website gives an excellent, though brief, account of Palestinian problems (see *Palestinians* in the References).

Yet another way of looking at typologies is to look to the legacies of colonialism, the problems of political repression and the plight of refugees, all of which add force to a need for redress. Victimization may occur in a number of ways, conventional criminal victimisation being but one. Political emigrés may have offences committed against them by agents of their former homeland; the children (especially daughters) of migrants from more traditional cultures may regard their parents' treatment of them as repressive; and the conditions under which immigrants live may be conducive to crime and to other forms of disadvantage such as a higher mortality rate.

Some countries carry out mass deportations: some sub-Saharan African countries have practised these in recent times. The numbers of people involved range from thousands to millions. In these cases their 'offence' was that of being of ex-national origin and the 'justification' was national security, although it is distinctly possible that the real reasons were economic and/or political. In many instances there was little justification given. An illustration from the 20th century is the so-called Armenian genocide when 600,000 Armenians were massacred by the Ottoman Turks during the course of deportation to Syria and Northern Mesopotamia. (The causes of that massacre are given in Lewis, 2010.)

Another aspect of victimisation involves prisoners of war. Take, for example, the war in Afghanistan. Afghan resistance forces might hold a number of foreign soldiers as prisoners, but if they find the logistics of maintenance too difficult they could use massacre as a solution (see Lewis, 2010). A number of the foreign soldiers are there on army service and their only 'offence' is 'doing their duty'. That 'duty' may consist of inflicting grief and bloodshed on some of the local populace. Where the justice of this lies is beyond the ambit of this work but it does raise the principle of soldiers as migrant offenders with the enemy as victims (or the reverse).

Victimization in the business world is endemic; it ranges from the exploitation of customers to market manipulation. A report from the Australian Institute of Criminology (AIC) (Taylor, 2006) on crimes against businesses examined two ethnically diverse communities (Chinese and Vietnamese), showed that businesses are victimised in different ways, and made a comparison with businesses run by English-speakers. For example, Chinese businesses were more prone to

shoplifting offences while Vietnamese businesses were at greater risk of burglary and vandalism. English-speaking businesses were more prone to robbery, verbal/physical abuse, and cheque and credit card fraud (this latter point is seemingly at odds with other evidence).

Workers within business are vulnerable to victimisation, ranging from threats to dismissal, closing the business, or legal action being taken against them. This is the mirror image of accounts of union force against employers. The question here lies with the circumstances of such duress and victimisation. A particular instance where exploitation might occur is where it is exercised against illegal immigrants. As we note, there are places where repressive customs prevail, and where large parts of the workforce are subjected to discriminatory conditions. Exploitation and marginalisation comprise a vicious circle from which there seems to be little chance of escape. Therefore, those who victimise the vulnerable are committing offences that closely resemble extortion. One might also note that inattention to or ignorance of occupational health and safety rules may also make the incomer more vulnerable.

Related to this is the problem of self-victimisation, when a migrant falsely believes him or herself to be ineligible for a particular form of legal protection.

In some cases religious/ethnic requirements come into conflict with the mandated safety of others. As an example, suppose that in a particular country crash helmets are mandatory for motorcycle riders, but Sikhs, who are required to wear a turban, are exempt. If, however, in a collision a helmet would have saved their life that is no help to others involved in the accident, who might suffer guilt. This sort of case is mentioned not as an anti-Sikh point, but simply to sharpen the perception of the moral dilemma involved where religious precepts and secular requirements collide.

There may be cultural victims, particularly second-generation migrants. An exemplar would be that of a girl born to migrant parents who came from a culture where traditional repressive views on the role of women were the norm. A child (particularly a female) of such parents born into a pluralist and open society might well have her parental values imposed upon her but it would be equally likely that her contact with peers from the host culture would dispose her to make comparisons unfavourable to the old ways.

In order to have a life similar to that enjoyed by her peers the girl may resort to deceit. Here the dilemma lies in how to create a balance between the rights of the parents to control the child, the child's rights to assert her autonomy and the rights of the family as a whole to lay

claim to control its members, since perceived misbehaviour may reflect on them collectively – particularly if they see women as chattels.

Fraud creates another class of victims. Table 2.1 of the ABS document 4528.0 (2007) gives an indication of being prone: the table lists fraud by birthplace.

It is apparent from the table that the overseas-born comprise about one quarter of the population, but are victims of just over 43 per cent of card frauds. In the case of identity theft the proportions are approximately what one would expect, but with respect to numbers of persons who are the victims of the two kinds of fraud the overseas-born comprise about 38 per cent of persons, indicating that the overseas-born are more prone to being the victims of fraud overall. That is understandable in that fraudsters may well prey upon those less able to comprehend local ways.

Strategies and research

In 2003 the Australian government implemented its anti-trafficking strategy. This has four elements to it: prevention, detection, investigation and prosecution. This initiative is designed to meet obligations to the UN Trafficking Protocol (see UN, 2000). It was ratified in 2005. This is complemented by a UN organisation called the Interregional Crime and Justice Research Institute with a liaison office in Rome (see *Interregional crime and justice research institute* in the References). From the research that has been done on trafficking, we can identify a number of features of this migration. Australia is a destination country for women from South East Asia, South Korea, Taiwan, the People's Republic of China (PRC) and, reportedly, Eastern Europe, trafficked for the purpose of commercial sexual exploitation. In addition, some men and women from several Pacific islands, India, the PRC, South Korea, the Philippines and Ireland are fraudulently recruited to work temporarily in Australia.

Consequences for the source country

Studies of migration are usually concerned with the consequence to the host country. Consideration should, however, be given to the losses incurred by countries from which migrants depart. We can never know what Africa has lost through slavery, nor Ireland through the vast movement of its people all over the world during its years of famine, and after. From a practical point of view, information on the victimology of the

foreign-born is crucial to a wider understanding of the impact of migration. Such information is vital to governmental agencies, to informed public debate and to defendants in the criminal justice system. (For a general introduction to slavery see Bradley & Cartledge, 2011.)

Some conclusions

It is likely that certain features of international crime are differentially connected to different groups: thus, for example, we might have one national group involved in sex trafficking, another in the illegal arms trade, another with drugs, and another with kidnapping and extortion. Again, because of the 'hidden' nature of most crime one cannot easily acquire reliable statistics; rather, reliance is placed on reported experience and case studies.

What is particularly apparent are the extraordinary profits that can be made from criminal activity, and the gross intrusions it makes into a legally ordered way of life. Given the substantial incentives to commit transnational crime, counter-measures must include cross-national cooperation in both legislation and policing. Additionally, the kind and magnitude of adverse sanctions, as well as legislated rearrangements that provide alternative disincentives to crime, must be contemplated.

Offender and offence areas: transient populations

A number of writers have drawn a distinction between offender and offence areas. Crime is not evenly distributed, spatially or temporally. For areas to be attractive to criminals they need a sufficient number of targets but not so many as to generate undue surveillance. Some cities have enormous transient populations. Others are close to national borders. Niagara Falls in Canada is an instance of a place that falls into both categories, with a transient population of over 12 million per year, and a location adjacent to the border with the United States.

In general, transients are viewed as victims rather than as offenders. Visitors do not, in general, take appropriate security measures to protect their property (for example, they tend to leave valuables in unlocked cars). In such an environment the identification of offenders is difficult (it may be that both locals and visitors offend). An enormous volume of traffic moves across the border at Niagara Falls, doing so with relative ease and with minimal checks compared to border crossings in other parts of the world.

Lombroso (1918) and Ferri (1968) long ago provided evidence that crimes against the person are more numerous in summer than in winter; this could be accounted for in many ways. For example, Perkovic (1985) has noted that the 'tourist season' in the Dalmatian region of Yugoslavia raises the rate of thefts and burglary. Moreover, the time of the year in which migrants move may relate to the place where they elect to settle. For example, Palestinian refugees moving through Jerusalem from the plains during the summer months may find it congenially cool and remain there. In the winter Jerusalem may be too cold and the migrants may move on to the Jordan Valley and the Dead Sea where it is noticeably warmer.

Draconian punishment

In December 2011 the *Melbourne Age* reported on an Australian man who received a sentence in a Saudi Arabian court of 500 lashes and a year in jail for the 'crime' of blasphemy. Mansor Almaribe, of Shepparton in Victoria, who was on the Hajj pilgrimage near the city of Medina, was arrested by the religious police for insulting companions of the prophet Mohammed. The punishment was subsequently reduced to 100 lashes, but it is still difficult to see how anyone could survive that treatment (*The Age*, 2011). To the Western mind, especially, it is scarcely conceivable that one could be accorded such a sentence; the incident throws into relief the sharp divide between Saudi values and Western ones.

The history of criminology shows unequivocally that draconian punishments do not work in the long term. One is reminded that when public hangings for offences such as pickpocketing were regular crowd-pleasers in London the attending crowd had their pockets picked. The removal of hanging for murder from the statute books in both Britain and New Zealand, its subsequent reintroduction, and then final removal did not affect the murder rate. This is not to say that there should be no severe punishments but rather that social arrangements, prevention and rehabilitation should also be part of that mix.

Objectives of an immigration policy

Studies such as the Dovey Reports (1952, 1955, 1957) introduced a deeper level of understanding into the immigration debate. Subsequently, *Australia as a Multicultural Society* (Zubrzycki, 1977) outlined the objectives that are here reclassified as internal and external. Among

the internal objectives are: the fostering of a nationally cohesive yet democratic society that recognises and accepts cultural diversity; the preservation and improvement of the environment; and the provision of equality of opportunity so that all persons, without discrimination, may live a full and satisfying life. External objectives include: national independence and security; meeting our obligations as an affluent nation; and developing and maintaining good relations with other countries. More recent statements on the objectives of immigration can be found in Department of Immigration and Citizenship (DIAC) (2010).

There will, of course, be a diversity of views on what the various objectives mean and what the best methods are of achieving them. Included in these considerations are: what constitutes an 'acceptable' standard of living, adequate defence capability or national security, or a 'full and satisfying life'; and what sacrifices should be made to ensure environmental protection? There is also the significant question of 'who are the victims?'

If the considerations were purely economic, Australia could contemplate the adoption of a guest worker system like those used by several European countries (for example, Germany) as a means of meeting labour needs that cannot be satisfied internally. This notion has some attraction, but the social implications may be undesirable in that the guest workers may not be committed to the host country and they may repatriate a substantial amount of the savings they have accumulated, thereby drawing wealth out of the economy. Further, they may take jobs that should properly be available to Australian-born job searchers. Alternatively such migrants may be reluctant to leave. While they may wish to settle, the host country insists on them remaining 'guests'.

Thus, in terms of the social implications of immigration there exist several interlocking issues: one is the absolute numbers of migrants taken into the country; a second is the composition of the migrant intake; a third is the duration of stay and intent of immigrants. In its earlier stages, Australia's immigration history was characterised by, amongst other things, the relative youth of the intake. Today, however, migrants coming to Australia can be classified under three broad headings: family reunion; refugees or asylum-seekers; and the occupationally eligible. The introduction of a high proportion of non-English-speaking, and sometimes illiterate, arrivals exerts pressures on the education system and interpreter facilities, and the intake of many very young or very old people exerts pressures on the social welfare system.

The wider context of migration

Migration is a part of life: its forms are not restricted to humans; indeed plants, animals and birds migrate, as do money, ideas and political ideologies. Without variation there could be no evolution, without evolution there is stagnation and death. The reasons for migration are wide and varied: a desire to escape war or tyranny, inundation by the sea or other natural disasters, for economic motives, for social mobility, or from a desire for a more congenial climate. The crude label 'migrant' therefore conceals some essential differences: an English remittance man is not the same as an Iraqi refugee.

In his account of Australia's convict past, Nicholas (1988) argues that the movement of convicts was part of a worldwide trend to forced expatriation. Apart from the transport of felons to New South Wales and Van Diemen's land, there was a parallel expatriation of Indian and Burmese criminals to penal colonies in Asia: in addition, the French, the Spanish and the Russians all moved people to North Africa, to the Pacific and to the New World.

We should also consider the role of women. In all there were 24,960 women transported to Australia (compared to 132,308 men). Discussion of their experience is beyond the scope of this book, but for a detailed account of their contribution, see Oxley's *Convict Maids* (1996).

From the earliest times, transportation was accompanied by a flow of free settlers. One of the consequences of this was that skilled craftsmen were able to supply physical infrastructure to nascent colonies, as well as bringing other special qualities. For example, such settlers brought respectability, independence and status: we should also bear in mind the guilds to which they belonged, and the influence that this could have had on the Australian trade union tradition. Thus, not all immigrants have to be seen as victims, although it is clear that many of them were, and are.

11

Communication

This chapter provides a background to messages and misunderstandings that bear a strong relationship to the genesis of crime, war and violence. As such, its analysis of communication is an attempt to shed light on what is often a murky area. The issues that arise include: lack of clarity in intent; definitions; which language should have salience; the use of interpreters in the criminal justice system; non-verbal communication; and the face veil as a form of concealment (face recognition is an integral part of our culture, as it may well be related to both language and the disposition to criminal behaviour).

Firstly, it is appropriate to clarify what is meant by certain terms. Nuances in meaning may cause confusion to many whose mother tongue is English, let alone for those of alien tongue. One may distinguish the foreigner by dress, skin colour, manner and demeanour, and context. Perhaps the most common identifier is that of 'race'. What constitutes 'race', as distinct from 'birthplace', is subjectively, and perhaps inconsistently, assessed. The most common identifier is skin colour, a marker with an especially strong status in the United Kingdom and the United States. The meaning of birthplace is also not unproblematic, and clearly defining such terms as 'crime' and 'migration' is also crucial.

The definition of terms is the first problem requiring resolution. It is not enough for the researcher to simply adopt the common-usage meanings of words. One should establish that the groups to be studied are homogeneous, thus giving them a specific identity that allows for properly scientific analysis. In this context, the term 'foreign born' is preferred here: it is more precise than terms such as 'alien', 'migrant' or 'new citizen'.

Crime is difficult to define, and so perhaps the best option is to look at it from a historical perspective. Harries (2007), in writing about law

and crime in the Roman world, defined it as ‘... an offence against the community’. A classic law dictionary (Osborne, 1964) extended that by defining a crime as ‘an act, default, or conduct prejudicial to the community’, and went on to write ‘... crimes are divided into treasons, felonies, and misdemeanours, in that order of seriousness’. In a circular sense one can see crime as being a breach of an Act that is defined as criminal; this has the same cogency as defining intelligence as ‘... what intelligence tests measure’. The German term ‘*strafrecht*’ (roughly, the law that punishes) seems an apt one, distinguishing it from the law that seeks redress.

In some places ‘crimes’ can result from legal redefinition. Many years ago, before Hong Kong reverted to China, its (British-run) government set up an independent commission to fight ‘corruption’. A very plausible interpretation of this action would be that the British colonial powers redefined as unlawful traditional Chinese practices that previously had been common and acceptable.

We do need to conclude that there is a broad understanding of what crime is, and that crime has a legal definition. Transgression of the law by migrants may take several forms, including criminal and civil. An immigrant may also have a negative influence on the host community without having committed any legal transgression. While this discussion primarily deals with formal legal transgression, it gives due recognition to other forms of dysfunctional behaviour.

Three points must be made here. First, crime is socially defined and therefore cannot be totally racially determined: what we can say is that, given a set of agreed values, crime may be culturally related. Second, crime rates vary as much within races as between races. Third, within a racial group crime rates may vary over time. It should also be noted that although crimes are socially and legally defined in particular jurisdictions, there are some types of legally proscribed behaviour that are substantially similar from one culture to another (for example, murder, theft and incest – each is prejudicial to the accepted order of things).

Further, although crime rates vary, within as well as between jurisdictions, this may be explained by factors such as a change in methods of recording or changed levels of police discretion. A general conclusion to be drawn is that biological and physical accounts of criminality have at least some explanatory power, but must be applied with caution.

Further problems emerge when dealing with the foreign-born and crime, such as the fact that what is considered to be a criminal offence in a host country may not be so considered by the migrant. This can be readily overcome by demanding that the foreign-born obey the laws of the host country. In return, the laws in the host country must protect the newcomer against violation of his/her rights. This, however,

highlights a greater problem that is encountered when conducting a comparison of migrant criminal behaviour in different countries; because of the wide variations existing in definitions of crimes from country to country only very broad categories of crime, commonly recognised by all the countries in question, should be used.

So far we have used the word 'crime' in a broad sense. It is a miracle of human discourse that a word as colourful, diverse and rich in shadings as 'crime' should convey to us any meaning at all. It is a tribute to the breadth of the human mind, but also to its craft and mental sleight of hand. This does not really get any better as one enters the process of definition. *Nullum crimen sine lege* is an old adage that is still the foundation of most definitions: 'crime is what the law says it is'. Those same argument could well be applied to 'mentally ill'. That term, too, is culturally loaded, varied in its interpretation, and may be used to stigmatised.

The word 'crime' carries with it the need to create a typology of crime. There are, broadly, offences against individuals or organisations: complementary to that is the category of crimes where the status quo, or the state, or a tyrant, offends against individuals in particular, or humanity in general. Examples of the former are robbery, assault and fraud: the latter category includes the abrogation of democracy, war crimes and genocide. the term can be further widened by including causing suffering to animals.

Definition of migration

In common usage the term 'migrant' is taken to mean one who leaves his/her place of birth to settle permanently elsewhere, while the dictionary tells us that to migrate is to 'move from one place to another'. Unfortunately, neither of these definitions is entirely satisfactory. If it is understood that the decision to migrate is made voluntarily, the early Australian convicts must be excluded from the category, as must refugees, even though the period of stay of both these groups is likely to be permanent. On the other hand, if it is taken that the move is to be permanent, European and Middle Eastern guest workers must be excluded, even though the decision to move has been made voluntarily.

The typologies mentioned present some vexing definitional problems. The UN Convention on the Rights of Migrants gives the definition of the term migrant as '... covering all cases where the decision to migrate is taken freely by the individual concerned for reasons of "personal convenience" and without the intervention of a compelling external factor' (see *UNESCO definition of migrants* in the References). This definition conveys a transitory view of migration, clearly distinguishing

migrants from 'settlers'. Rather than conceive of migrant versus settler it might be more fruitful to think of the concept as a continuum. The range would move from transients (for example, tourists) through frontier workers, seasonal workers to long stay, or from guest workers to settlers. The only category that seems to stand outside this conceptual continuum is that of the nomad – their aim is not to arrive for a period but, rather, to move.

Kivisto & Faist (2010) have noted that not all who cross borders are migrants. There are even cases of people who do not move but are the subject of a national boundary shift, and thus acquire a new nationality. Among non-migrants are students who eventually return home, diplomats, tourists, contract workers and cross-border workers who reside in one place and cross a border daily to work in another nation.

The dictionary definition is no more helpful than the common-usage one as it broadly includes any sort of movement, both inside and outside of any given country. While it may be relatively easy to identify and examine migratory groups within one country, such as the swagmen of an earlier period of Australia's history, or the Tuareg peoples of North Africa, it seems hardly feasible to consider as migrants those who move from one city to another within one country.

Therefore, a workable and useful definition of 'migrant' must be confined to those people who, for one reason or another, move between countries, voluntarily or involuntarily, permanently or for a limited period of time. Within this definition all easily traced movements may be followed, and all groups who migrate in this way, for cultural, economic, political or other reasons, are worthy of study.

Also relevant to the definition is the question of nationality or citizenship. The distinction between 'nationality' and 'citizenship' is not always clear. Nationality signifies the country to which one 'belongs', while citizenship is more concerned with rights and duties. A term such as 'Asian' is at best only a first identifying step. Ethnicity is not the same as culture, and nationality is not the same as either. York (2003) has provided some useful working definitions for more formal studies. The Australian Human Rights Commission also has an excellent document (see *Australian Human Rights Commission: Racial discrimination in the References*).

UN languages

People from a particular country feel defensive about their language; it is felt to be an extension of themselves, their modes of thought, their

expression and their identity. The French, for example, are insistent, evidence to the contrary, that French is *the* international language, whereas in fact it is English. French Presidents very rarely speak in English in public; no doubt they can, but they would suffer electorally if they were to do so.

Such a choice-of-languages problem beset the UN in its early years. The second Assembly resolution, adopted on 1 February 1946, outlined the rules of procedure with regard to languages. In that resolution, the Assembly decided that Chinese, English, French, Russian and Spanish should be the official or working languages (Arabic has since been added).

Any UN speeches made in one of the six working languages are interpreted and translated into the other working languages (documents are not published until they are available in all six working languages). Any representative may make a speech in a language other than the official languages, but in this case he shall himself provide for interpretation into one of the working languages. Interpretation into another working language by an interpreter of the Secretariat may be based on the interpretation given in the first working-language interpretation.

Migration and languages

According to Bryson (1990) the influx of immigrants into the USA produced a polyglot nation. At the turn of the 20th century New York City had more native speakers of German than anywhere else in the world except Vienna and Berlin, more Irish than anywhere else except Dublin, and more Italians than Naples or Milan. As such, one could readily imagine the existence of cultural and linguistic enclaves. It was only through social mobility, and the related need for a common form of communication, that these disparate groups became welded into a nation. This leads to the issue of communication across cultures and faiths.

This issue has been addressed by Ingram et al. (2008). The main thrust of their thesis was that there are two major means of promoting harmony, one of which is legislation. Acts that prohibit gratuitous antagonism are difficult to enact, controversial in nature, and may inhibit the right to reasoned criticism. The second means is education.

A properly designed and delivered educational program might not only have appropriate substantive content, but also provide a means of fostering use of a common language in which issues of importance may be discussed. Ingram et al. reported on two large-scale surveys: one in Australia and one in Japan. They agreed on the effectiveness of

this latter, educational, approach, and noted most strongly that certain elements of such programs are indispensable.

In Australia the Special Broadcasting Service (SBS) has since 1980 done an excellent job of presenting television programs covering a wide and diverse range of ethnic issues and information. It also presents news in foreign languages, as well as entertainment programs in a range of tongues. The channel would be admirably suited to providing basic information about Australia and, most importantly, providing English lessons. The value of such programming would exceed by far that of the citizenship test. It does, however, need to be noted that SBS has a pro-Sydney bias to the point that it is sometimes called the 'Sydney Broadcasting Service'. Notwithstanding, its potential to foster a common means of communication is not only possible but also likely.

The present writer once interviewed a person from one of the Baltic states. She was born there, as was her mother; thus the language at home was a Baltic language; all their emotions, family attachments and attitudes were rendered in that tongue. Subsequently this migrant went to school in Australia, where she received formal instruction in English. She said that it was like throwing a switch in her brain. When something emotional was being discussed or experienced it emerged in her mother tongue; rational arguments and factual information were expressed in English. Dreams with an emotional content were in the mother tongue; ideas and interactions with a cognitive component were in English.

Learning and teaching

In order to become part of a community, and to prevent a whole range of problems, the ability to understand and communicate is essential. In the Australian context, this means that the learning and teaching of English is crucial. One cannot understand offending, politics or even everyday social dealings without proficiency in the mainstream language.

In Australia all major institutions conduct their dealings in English; however, there is still the problem of the extent to which, and where, use of foreign languages is appropriate. In places such as churches, temples or mosques one can readily accept that services may be conducted in another language, such as Latin, Greek, Urdu, Mandarin or Arabic. In schools and universities instruction in foreign languages takes place, but usually only in the context of language teaching; it is usually not regarded as appropriate for instruction in subjects such as maths, chemistry, politics or history. In some cases, however, because of the location and composition of some migrant communities, instruction may take

place in a language other than English, such as Italian, Greek or Arabic. UNESCO has noted in relation to this situation that '... providing education in a child's mother tongue is indeed a critical issue'. In the light of the above considerations that may be a debatable point – particularly so if it were to disadvantage those being educated in their mother tongue to the detriment of their gaining a command of English.

While the two most populous Australian states, NSW and Victoria, each allows the medium of instruction to be in a language other than English, the dominant medium of teaching in mainstream schools in Australia is commonly English. Special schools, religious schools and the like may, however, teach general subjects in a language other than English.

One has to recognise that problems in dealing with English, or Australian, language or expressions can have significant ramifications, even for professionals. For example, immigrant medical practitioners from non-English-speaking backgrounds may fail, in important ways, to communicate accurately with their patients or, indeed, to hear and understand what is being said to them. Conversely, this may also affect fluent English speakers who are poor at understanding other cultural expressions.

The current arrangements for migrants to learn English vary. Although there is no English-language requirement for humanitarian visa entrants, humanitarian entrants are provided access to English-language teaching through the Community Services Settlement Scheme. Major providers of English language to migrants in Australia include the Adult Migrant English Program, Adult Multicultural Education Services (510 hours of tuition are available to permanent adult migrants with a sponsor and humanitarian entrants); there is also a professional organisation – the Association for Teaching English to Speakers of Other Languages (ATESOL).

Under the family stream for visas, there is no test for proficiency in English. Rather, the criteria for entry are based on the person's relationship to the sponsor – partner, child, parent and other categories of relationship. Where a test of English is to be applied it is done through the International English Language Test System (IELTS). Student visa regulations require a certain level of English proficiency and for students to provide the results of the IELTS test. Postgraduate students generally need a score of 7 on the IELTS scale. English proficiency will give up to 20 points to certain classes of visa applicants, and migrants planning to work in Australia require at least a vocational level of English, although in some cases English requirements will be lessened.

For example, in 2008 the South Australian government announced a scheme for reduced English-language requirements for a particular class of immigrants. People applying for the Skilled Regional Sponsored Visa are required to sign an undertaking that they will live for at least two years in a regional area with a low population; they need only possess an IELTS test score of 5.5. However, it is a requirement that applicants enrol in a TAFE Concessional English course within three months of their arrival in Australia.

Interpreters and the criminal justice system

It is clear that those less fluent in English are at a disadvantage when dealing with the criminal justice system. This may most commonly include those of alien tongue, but we could well extend it to those with various forms of linguistic impairment, a hearing impediment or learning difficulties.

In the context of the Federal Government, Section 23N of the Crimes Act 1914 requires an investigation official to secure an interpreter when questioning an arrested person who is unable to communicate with reasonable fluency in English. Another section of the Act stipulates that a constable/police officer must secure the services of an interpreter before performing certain actions. The right of an arrested person to an interpreter and the requirement to maintain a list of interpreters for Indigenous people also applies in the ACT in relation to certain offences under a section of the Crimes Act 1900 (ACT).

However, this writer has also seen interpreters in court who go beyond their competence and 'interpret' views and opinions before defendants have managed to express what they mean. In such cases the bench has admonished the interpreter and instructed them to interpret only the content of statements. The basic principles of access and equity require that no one should be disadvantaged in proceedings before a court. To this end the same principles apply with respect to having legal representation in court. Occasionally there is the need for a translator who translates documents of relevance; the same safeguards apply.

Several Australian states have different rules for securing an interpreter when dealing with the police and in court appearances. Where an interpreter is required he or she has to be sworn in to act as an interpreter in court proceedings. They should also be appropriately qualified in the exact language required; someone from (say) northern Italy should not be engaged in interpreting a Sicilian dialect.

Many decades ago, Abbott (1931) noted that a common complaint was that 'an Italian undertakes to translate dialects that he does not understand. The Pole, who knows Polish, is allowed to translate Russian, Bohemian, Slovak and the other Slavic languages. He may perhaps in rare cases have learned all these, but as a general rule he is able to understand something of what is being said because of the general similarity of the languages'. There is an inherent difficulty in the foreign-language-speaker's dependence upon the interpreter: what is less commonly appreciated is that the magistrate or judge is also dependent. However, the general propositions and arguments in favour of the use of interpreters are substantial, bearing in mind the caveats mentioned. It is only through an interpreter's accurate translation that the bench may sometimes know of something essential, and thus the honesty and competence of the interpreter is paramount. Problematic though the use of interpreters may be, it has to be said that in important cases their professional services are crucial to the cause of justice.

The use of interpreters promotes equality before the law by minimising the disadvantages posed by linguistic ignorance (and by the defendant's need to receive advice on unfamiliar legal matters and on legal representation). To see this issue in the wider context, one should also note, as mentioned above, that such assistance is needed equally by the groups of intellectually underprivileged, those with sensory impairment and those of underwhelming personality.

From the point of view of the criminal justice system, however, there are drawbacks to the use of interpreters. First, an interpreter slows down proceedings (and the thread of continuity may be lost); second, if a migrant defendant understands the language he/she may use the opportunity to give him/herself time to formulate an answer by unnecessarily using an interpreter; and third, interpreters may intercede beyond their brief and do more than just translate the exact meaning of statements.

During police interrogations an interpreter may be employed and thus have an interest in fostering a continuing good relationship between interpreters and the police. In such circumstances an interpreter could persuade a migrant suspect to act in a manner that suits police interests rather than the client's. To counter this, interpreters from ethnic communities could be used as at least a form of restoring balance. Conversely, the argument is sometimes advanced that migrants should 'learn the language' if they wish to live in a country, but it should be noted that, even where the language is being learnt, there is a transitory period when migrants are not fluent. Further, the stress of contact

with the criminal justice system may inhibit linguistic performance or ability.

Imagine the above difficulty when it is faced by the might of Australian justice. On 12 June 1978 in the Sydney Central Court of Petty Sessions the largest group of defendants in Australian legal history appeared before a magistrate. The 153 defendants, all Greeks, faced charges relating to an alleged \$42 million social security fraud. A panel of three prosecutors sat and there were more than thirty counsel present. In these overwhelming circumstances, especially when compounded by language difficulties, it is difficult to see justice being done. The case was dismissed.

Language problems and crime

Language difficulties may generate problems that could lead to criminal offences; the experience of prison could also exacerbate these problems. Incomers of alien tongue may experience social and cultural difficulties that may lead to frustration, which may in turn lead to depression, despair and psychosomatic illness. The inability of migrants to express themselves in the language of their adoptive country may also lead to a generalised perception of their linguistic incompetence. Poor communication skills can upset their social life in general as well as their sexual life. The period immediately after arrival appears to pose the greatest problem for those with limited proficiency in the language of the host country. Language problems experienced between teachers and their students can also make it difficult for people to learn about and follow cultural expectations.

Within prisons language problems add to the punishment. Those whose command of English is less than adequate can suffer a diminution of confidence, and feel frustration at not being able to make themselves understood. This can lead to apparent insubordination towards prison officers who then can come to feel that foreign-born prisoners are difficult and uncooperative; a prisoner, in an attempt to play safe by not answering, can easily worsen his/her situation. In the worst cases, language difficulties may generate problems that could lead to further criminal offences, further worsening the prison experience.

Another group for whom lack of English poses a special problem are the aged, both in terms of verbal expression and the whole range of non-verbal cues and the interpretation of actions and events. The non-English-speaking elderly are not only disadvantaged socially but also in their general ability to cope day to day – such as when shopping.

Ambiguity and language

Fluency in a language includes being able to express ambiguity. For example, when a successful novelist was asked, as he frequently was, to comment on a manuscript by an aspiring author his reply was, 'I will waste no time in getting to read your manuscript'. It requires a singular skill to put it thus.

Such ambiguity may have political consequences. For example, the Balfour Declaration of December 1917 promised the Jews a homeland in Palestine. However, it was not made clear whether that meant a Jewish state within the borders of Palestine, or a state that was coterminous with the borders of Palestine. As Arthur Balfour, the then UK Foreign Secretary, noted in 1917:

HM Government views with favour the establishment in Palestine of a national home for the Jewish people...[and further] it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine...

The ambiguity lies in the first of the above propositions rather than the second. Today, the situation is further complicated by the difficulty that Palestinians find in dealing with Israel. On being asked to recognise 'Israel' they question whether or not that means the present state, including the Occupied Territories, or the state of Israel as it was before the 1967 Arab-Israeli war. This provides a good example of how linguistic ambiguities can generate and perpetuate political conflict.

Special language problems

We communicate in various ways, and that includes the way in which we dress. Clothes tell us something about the way that a language is expressed. An exotic national dress is as clear an expression of difference as a different tongue.

Another significant language issue affects practising professionals. When qualified professionals from a foreign culture come to practise in Australia, they may lack a proper appreciation of the nuances of the local language. Colloquial Australian expressions such as 'dunny' (primitive toilet); 'pointing Percy at the porcelain' (men using a urinal); 'this arvo' (this afternoon); Sheilas (women); 'sticky beak' (a nosy person);

'bonking' (casual sexual intercourse); 'gurk' or 'chunder' (to vomit); and 'making the beast with two backs' (sexual intercourse) might either not be understood or be regarded as vulgar or offensive.

Local Government Area studies and language

The approach to the study of crime through the collection of a wide array of data is exemplified in the seminal work of Carcach & Huntley (2002). Using local government area (LGA) data from the eastern states of Australia, their study sought to test the proposition that participation in community-oriented activities corresponds with lower rates of violent and property crime. The authors examined variables such as crime, economic change, population data, social structures, local resources, informal control and participation in community organisations.

They concluded that crime rates are lower in local areas with high levels of participation in community-oriented activities, and that a doubling in the rate of membership in community organisations has the potential to reduce violent crime by between one-fifth and one-third, and property crime by between one-twentieth and one-tenth.

A complementary study was carried out by Francis et al. (2006), which utilised parametric data, and was a 'population' study rather than a 'sampling' one. Hidden delinquency and (dis)honesty of report are other factors that may have influenced the results, but the data were considered the best obtainable.

Data on police-recorded crime rates and selected ethnicity variables were obtained from all LGAs in Victoria. The general findings led to the conclusion that high proportions of Australian-born residents were related to lower property crime rates and, perhaps more importantly, Australian citizenship was significantly related to lower crime rates across LGAs. Although interpreting official statistics presents problems, it is valuable to examine these comprehensive population data on crime and ethnicity. The clear but unexpected relationships between birthplace and citizenship are deserving of further scrutiny. The study canvassed some possible explanations for the correlation between ethnicity and crime, some conceptual, others methodological.

The Francis et al. study (2006) involved a partial replication and expansion of Carcach & Huntley's (2002) research. Many measures examined by Carcach & Huntley (such as indicators of need or disadvantage and capacity) were incorporated in the study. Several ethnicity-related variables were also analysed, including the rate of arrivals in the past five years, the proportion of people born in a non-English-speaking

(NES) country, and the prevalence of low English-language-proficiency rates. Low English-language proficiency was significantly related to some categories of crime: negatively to the rate of property crime and total crime, and positively to a catchall rate for other types of crime.

Francis et al.'s study found that communities with a low rate of proficiency in English had a disposition toward higher property crime rates and a less pronounced, but still important, tendency to have higher drug offence rates. One conclusion of the study was that there were low to moderately high significant and positive correlations between the rate of people born in an NES country and the rate of arrivals in the past five years, for crimes against persons, crimes against property and total crime.

The correlations show that in LGAs where there was a high proportion of Australian citizens, the rate of each category of crime was lower, and strongly so for property crime. Looking at LGAs with a high rate of arrivals in Australia in 1997–2001, the correlations indicate higher crime rates, and strongly so for both property crime and drug offences. It seems as if the rate of arrival is a constant pressure on a changing social dynamic: the absence of a settled way of life may create a social turbulence that manifests itself in any one of several ways.

Contrary to the findings of some studies, the negative correlation between Australian-born citizens and crime rates was significant only for property crime. However, the correlation became much more robust when the broader category of 'Australian citizens' was used. That finding might bear one of several interpretations. For example, it may mean that the decision to become a citizen implies a commitment to local values and, therefore, a degree of assimilation to host norms (including those relating to crime): it could be an artefact of omitted variables; or it could also be interpreted to indicate that citizenship is a means of becoming more adept at evading detection for crimes committed. All these interpretations warrant further investigation.

Non-verbal communication

'Non-verbal communication' includes such things as dress, facial expression, demeanour and gesture. In a classic study, Morris (1977) went so far as to draw attention to certain international comparisons concerning the use of gestures – 'gesture maps' of Europe. For example, the common manner of summoning a waiter in some Latin countries would be regarded as preemptory and offensive to an Anglo-Saxon.

Interpersonal distance, and percentage and direction of gaze are further examples of non-verbal communication that may be the subject of inter-ethnic misunderstanding. One wonders how often annoyance, sexual availability and comprehension are misinterpreted in inter-ethnic conversation, and to what extent that generates criminal acts.

Facial recognition

Prosopagnosia is a condition where the ability to recognise faces is significantly impaired (although the recognition of other objects seems to be normal): it is, in other words, a form of face blindness. A socially disabling phenomenon, it must cause distress to sufferers, although many learn to cope. A complementary condition is one known as 'Möbius Syndrome' in which a paralysis of cranial nerves leads to sufferers losing the capacity for facial movement and expression (see Cole & Spalding, 2009). The absence of the capacity to provide facial cues is both distressing for the sufferer and, in the longer term, makes them unable to take up professions in which interaction is critical – medicine, psychology, the ministry, law, teaching. (It is salutary in passing to draw parallels between an incapacity to communicate via facial expression, and the denial of facial feedback arising from wearing a veil.) More importantly for this book, an inability to communicate via facial expression could lead to misunderstandings that may then lead to offending.

Ekman's (1985) work on lying has received lay expression in Gladwell's *Blink* (2006). Both make the point that facial expressions, no matter how fleeting or complex, are a vital guide to social interaction. Ekman's work (aptly called *Telling Lies*) explores those spontaneous, fleeting and non-stylised facial expressions where meaning can be communicated by telling micro-cues that are not ordinarily under conscious control.

Other intriguing questions include whether animals 'tell lies' (excluding the use of camouflage), whether animals have a conscience, and whether animals share human emotions. It is still a moot point as to whether or not facial expression of emotion is an emotion or a communication (or both). What is clear is that the grosser facial expressions are part of the way in which we communicate, and may be practised and used in stylised ways that are relatively easy to simulate. What is more problematical is the extent to which facial expressions are determined by biology, by culture-specific norms, or are just a form of stylised communication. It is for these reasons that awareness of the importance of facial expression in communication should be maintained.

The use of face coverings by females in some cultures is contrary to the usual norms and forms of social interaction in Australia. Much of our social life depends upon facial recognition, on feedback in conversation, and in mutual gaze; without these our social life is impoverished, and an advantage is conferred on the covered one, who has access to information denied to her (or his) interlocutor. It also has criminal implications. If people were to be permitted to wear a total facial covering, it could conceal the identity of someone intent on committing an offence. In this context it is significant that for some time banks have required that motorcyclists remove their helmets when entering their premises so that recognition is possible.

Further, the notion that men might be consumed with uncontrollable lust at the sight of a female face is absurd. It maintains, in effect, that men are not to be trusted; such a lack of trust is inimical to conventional social relations and courtesies. Furthermore, the idea that women's faces are to be concealed, whereas men's faces are not, is contrary to all Western notions of equality.

Here the issues involve not only facial recognition but also facial expression. Much of our social interaction is based on reading clues from others: their appearance and movement are as important in communication as the words they use. Our social interaction is predicated on being able to see faces, interpret expressions, and interact. The Man in the Iron Mask is a literally faceless character, the 'Elephant man', with his horribly disfigured visage, was the subject first of horror, then of pity. To indicate particular emotions we 'pull a face', in showing courage we 'face the music', and withdrawal from sociability involves 'self-effacement'; in Blake's 'Songs of Innocence' pity has a human face. Additionally, the vast international cosmetics industry provides a material testament to the importance we attach to the face.

As W.H. Davies so aptly put it in his poem, 'What is this life if, full of care, we have no time to stand and stare'. The apt couplet here is 'No time to wait till her mouth can/enrich that smile her eyes began'.

It has been found in studies in developmental psychology that babies seem to have an inbuilt capacity for attending to faces and to facial expressions. The seminal work on this topic is Darwin's *The Expression of Emotions in Animals and Men* (1998: first published in 1872). It had the explicit aim of demonstrating the continuity between humans and other animals and, in particular, to show phylogenetic continuity. That work was completed at a time when experimental methods were less sophisticated than they are now. In the intervening 140 years or so we have developed a better understanding than we had then.

Darwin explains the continuity between humans and other animals in terms of three underlying principles. In its way this later work is of as much significance as *On the Origin of Species* (1981, first published in 1859). The principles expressed by Darwin are based upon the 'constitution of the nervous system', and our biological heritage. These expressions are part of our biological nature and are significant in adaptation.

Darwin's conclusion was that these expressions of emotion stemmed from teeth shown in anger and were a precursor to biting; as he put it, the 'sneer is a civilised snarl'. Some expressions may no longer serve a direct biological purpose but still have communication value. While one may question the existence of universal expressions of emotion (with the exception of the 'startle response'), there can be no doubt that facial expressions of whatever kind are of enormous significance. Because of this, we have come to stylise them and use them as a significant source of social information.

The importance of the connection between facial expression and emotion was highlighted by a study at Cologne University (Zimmer, 2008). Women who had had Botox injections in the facial area found it hard to make an angry face. Their corresponding brain scans showed reduced activity in the areas of the brain that control emotions. They not only cannot express anger well, but feel it less. Zimmer's basic idea is that facial expression allows us to spy upon the intimate connections between brain and face. That topic has also been addressed by Finzi (2013), who substantiated the view that facial expression (or the inability to make it) can affect such issues as mood states.

The overall conclusion to be drawn here is that facial concealment is a socially disabling act. In Western culture one might tolerate headscarves, hair over the eyes, and various other forms of concealment. What does seem to be the stopping point is that facial evidence in social situations is crucial to our form of interaction, and deviations from that norm, such as full-face covering, are not acceptable.

There is a related concept, that of mind blindness. An instance of mind blindness has been given as showing an intelligent, well-educated person the film of *Who's Afraid of Virginia Woolf?* In a scene of intense emotion the subject looks at the light switch. In this case things were more interesting than emotions. One could equally well argue that the subject was embarrassed and thus looked elsewhere other than at the other people (this also occurs in autism spectrum disorders). Nevertheless, one takes the point that facial expression is a vital part of social interaction, and a crucial variable in social equality – quite apart from the risks of not being able to identify an interlocutor.

The overall conclusion to be drawn here is that communication is the very essence of social life: without it one would be bereft of one of the most significant parts of life. A point related to this is that of attractiveness, the main point here being that unattractive people suffer disadvantages by virtue of their appearance. A report in *The Psychologist* (see *Attractiveness* in the References) noted that the less attractive tend to be perceived as less smart and less sociable. Less attractive people have lower earnings, and attractive people enjoy social advantages. Another form of attractiveness is that of voice. Those who speak in fractured English, have voices that are harsh, piping or garbled are perceived to be less attractive. The AIC has a crime-prevention program for those from culturally and linguistically diverse backgrounds. Certainly such a first step towards dealing with this would be to increase language fluency (see Bartels, 2011). It is worth recalling the distinction between cognitive and emotional expression referred to elsewhere in this work. One consequence of unattractiveness might be an increased possibility of behaving in an anti-social manner.

Mental illness and language

Deviant behaviour may manifest itself in various behavioural ways: it may also be part of how we think. This relates to how psychotic symptoms are affected by language, a topic addressed by Bell (2009). He reported studies in which language-specific symptoms are in evidence: for example, patients diagnosed with schizophrenia reported auditory hallucination when speaking one language, but were insightful and non-psychotic when speaking another. He concluded that cultural sensitivity is a necessary but not sufficient condition for successful treatment of patients. He also asserted that it is not enough to have good translators – bilingual psychologists are more desirable.

Even for therapy in cases of lesser import there is a strong language component. For example, the assessment of the effectiveness of cognitive behaviour therapy (CBT) with Latinos in the USA is outlined by Organista & Munoz (1998). Although that is a particular and restricted use, it forms part of our larger understanding of the use of a particular form of therapy on a particular group.

Commentary

The basic policy orientation towards the issue of parallel societies within broader Australian society involves notions of assimilation, or integration, or other options. One issue of importance is the building of

a nation. To this end, residents and citizens need to be able to integrate at some basic level into Australian society. For this, a common form of communication is essential. That medium has to be the language of the country, and free expression and facial visibility are essential components of this. Such communication issues have criminological consequences.

From this one may consider that fluency in English should be a requisite for citizenship. As voting is compulsory in Australia (like 31 other nations), in order to make an informed decision at election time it is essential that the issues be understood from the electronic media, the print media and from election pamphlets. It is highly problematical to judge the kinds of knowledge that should be required for citizenship, but reasonable fluency in English would have to be one. It is the form of communication that welds peoples together, fosters understanding and allows people to be part of bodies both social and politic.

Part III

Method, Theory and Moral Issues

12

Social Matters and Indicators

Some international social indicators may help throw light on why people choose to migrate. Such indicators could generate hypotheses to be tested, and could help politicians and administrators decide on courses of action.

Among the indicators are variables of:

- Happiness
- Income equality
- Peace
- Corruption
- Life expectancy
- Fertility

It is to be noted that certain caveats apply, each of which is given on the relevant website (see *Human Development Index*, *Global Peace Index*, *Transparency International* in the References). First, two points can be noted: one is that the data on Peace is missing from the database; the second is that the population growth for Germany is 0.02 but is treated as zero as that is the conservative point of view. These data all derive from 2011 and 2012 except for the Gini Index. Such data as are available are derived from different years spanning over a decade. The justification for its use here is that changes in the Gini Index are very slow. This research aims to have an initial look at target and donor countries in order to identify some factors worthy of further consideration.

Mean differences on six social indicators

A sample of ten countries from immigration target countries and ten from donor countries was chosen. Comparative calculations were made

on each of the six variables, using the Student's-*t* test (see References). It was noted that life expectancy is about 10.7 years less for donor countries than for target countries, although this difference does not seem to be a statistically significant one. Of all of the comparisons between target and donor countries, only one factor emerged clearly, that of corruption: the result was significant at the $p < .001$ level. It is clear that donor countries have a significantly higher rate of corruption than do target countries, and there is no overlap: the worst performing target country is better than the best donor country with respect to perceived corruption (see Appendix Table 12A.1).

Correlation of social indicators

Using the same dataset the correlations of each of the six social indicators were calculated. For target countries two factors emerged as significant: one is that greater equality of income goes with greater peace ($p < .05$); the second is that peace and corruption are inversely related ($p < .01$). These may have one of several meanings: one is that income (and social equality as manifested by an income safety net) make for peace, particularly as funds are not squandered. A second is that the relative absence of corruption may become evident in mature peaceful democracies, characterised in particular by Scandinavian countries.

It is different for donor countries. None of the target country findings was significant: instead it was found that lower corruption relates to higher fertility ($p < .01$), and that lower corruption relates to higher life expectancy ($p < .001$) (see *Life expectancy* in the References). It is difficult to know what lower corruption and higher fertility have in common but perhaps easier to explain the inverse relationship between corruption and life expectancy. One could readily imagine that corruption deprives the already dispossessed of essential items such as clean water, good food and medical attention (see Appendix Table 12A.2).

It is also clear that target countries are predominantly European, particularly Northern European, the old British Commonwealth (UK, Australia, Canada, New Zealand), as well as the USA. Other countries could be contenders but their restrictive intake policies, and crowding, make them less relevant (Japan, for example). In presenting these data it is recognised that countries are listed on a selective basis (although they are selected before any analysis); however, we do have to work with the data available. Results may be indicative but not definitive, but do suggest further lines of valuable enquiry.

Fertility

It does appear that high population growth relates to various dysfunctional aspects of society. If this is really so then containing population growth is imperative. One means of containing population growth is encouraging the practice of contraception. Given that people will not forgo sexual intercourse we can only be concerned with outcomes. There are forces opposed to such contraception – largely those of the fundamentalist disposition in the three Abrahamic religions. Extreme orthodoxy by some of their proponents prescribes permissible sexual behaviour within certain limits, and proscribes all others: it appears that most fundamentalist religious outlooks proscribe artificial methods of birth control.

Another method is that of covert sterilisation, and this is where moral objectors become, perhaps justifiably, vociferous. If one is persuaded that the planet cannot support the projected population, living at a reasonable standard of consumption, then it is incumbent upon the proponents of that policy to provide an alternative to the ‘populate and perish’ argument.

To these issues we might couple a governmental policy of not encouraging fertility. Withdrawing government subsidies to young families might have an effect: families with young children would be economically disadvantaged and would, understandably, regard their deprivation as one that supports the more affluent. In other words, the short-term and the long-term consequences seem to be irreconcilable. To hold that population growth is ‘only X per cent’ is to ignore the problem of compound growth. To this problem we must add the increased consumption of natural resources, and the consequence of pollution (see *Fertility* and *Population growth rates* in the References).

Positive deviance indicators

Several positive deviance indicators can be addressed. For instance, there is that of educational attainment: for instance, tradesmen versus the university-trained. With respect to the latter a recent survey showed that nearly two-thirds of overseas students surveyed said Australia was their country of first preference for overseas students (see *Country of first preference of overseas students* in the References). This may change over time as the rules for being allowed to stay may change.

One might consider the positive contributions to be made by migrants. One positive place where one would expect that to apply is

in senior university positions. There are 39 universities in Australia. The chief executive of each is called a Vice-Chancellor. According to *Who's Who* 2010, nine are overseas-born and 10 others do not have their birthplace recorded; perhaps some of these were also overseas-born. The proportion of known Vice-Chancellors to be overseas born is 23 per cent, consistent with the proportion of the overseas-born population of Australia. We must conclude that the overseas-born make a significant contribution to Australian universities. An examination of the qualifications of staff also shows that they have studied at places out of Australia. Clearly academic work is an international enterprise.

To use one colleague's phrase, there is also a 'great brain robbery'. Australian university calendars originally showed that a noticeable proportion of academics gained a first degree overseas – which is at least a coarse indicator of migrant origins. The growth of Australian universities in the 1960s, combined with a high graduate production rate overseas, made Australian academic positions both accessible and desirable. Understandably, the bulk of the successful incumbents were from English-speaking countries, notably New Zealand, Britain and the USA.

The recent growth of both universities, and of university places, has imposed financial burdens on prospective students. The need to finance their studies, where formerly tuition was free (at least from the 1970s), has made a substantial difference. Those without appropriate financial resources, and those who have a marginal interest in university study, are more likely to be non-starters or dropouts.

Happiness

One could readily understand the higher end of the happiness scale of nations to be characterised by political stability, and those nations at the low end to be characterised by changing political circumstances or finely balanced ethnic/power struggles. Whatever the epidemiology of felicity, the study of the genesis of happiness in nations would include not only political stability but also such variables as disparity of income, freedom to get on with one's own life without interference, freedom of expression, the ready availability of opportunities for educational improvement, and a good healthcare system. Perhaps that is taking it too far since some small island nations (such as the Maldives or Tuvalu) are reputedly the home of happy people. This area is a rich vein, waiting to be mined.

Erasmus University in Rotterdam compiled an index of happiness in nations. It lists 95 nations, with a happiness index where 10 is

maximum. Of those at the unhappy end of the scale ten of the countries are former Soviet Republics (Ukraine, Armenia, Belarus, Georgia, Russia, Lithuania, Latvia, Moldavia, Bulgaria and Azerbaijan). Two are in the Balkans (Albania and Macedonia). Five are in sub-Saharan Africa (Tanzania, Zimbabwe, Angola, Ghana and Mali); and one east of the Sahara (Egypt). Of the remaining two, one is in the Middle East (Iraq) and one on the Indian subcontinent (Pakistan) (see *World database of happiness* in the References).

Those at the happy end of the scale – with scores of seven or more – comprise 24 nations. Ten of the 24 are northern European nations. It is also worthy of note that this includes all the four Scandinavian nations. The two second-ranking blocs, with five each, are those of Central/South America (Honduras, El Salvador, Guatemala, Mexico and Colombia); and of the British Commonwealth (Britain, New Zealand, Malta, Canada, Australia). Of the remaining four, two are Arab countries (Kuwait and Saudi Arabia); and two are undefined (the USA and Ireland).

There are 95 nations listed. Some defy categorisation. It is not sensible, for example, to link as 'Asian' such countries as diverse as Saudi Arabia and Japan. No explanation is proffered for these findings, but they do give one pause to consider the underlying reasons. The World Database of Happiness provides us with a national comparison database, and thus has some long-term stability. That data was reanalysed by the present writer who categorised the information into blocs.

It will be seen that Northern Europeans and the Old British Commonwealth nations seem to be the happiest. The sunnier climate of Central and South America is more apparent in the happiness ratings than it is for India and Pakistan. Sub-Saharan Africa seems not to have much to

Table 12.1 Happiness ratings out of 10 for blocs of countries

	Average happiness rating	No. of countries
Northern Europe	7.71	11
Old British Commonwealth	7.40	4
Central America	7.26	5
South America	6.71	8
Southern and Latin Europe	6.54	5
Former European Communist states	5.54	9
India & Pakistan	5.25	2
Sub-Saharan Africa	4.93	11
Former Soviet Republics	4.58	12

be happy about, nor do the former Soviet Republics – or is this latter a fitting stereotype of the soulful Slav? (Is that why much of their music is in a minor key?)

That analysis cannot be applied without reference to national prestige, but one could imagine the prestige of nations being determined by a mix of variables: among these would be economic advantages, quality of life and guaranteed basic human freedoms. How much one may rely on these, and the expertise and commitment that good and powerful friends may bring, are critical ingredients.

Ways to the creation of lasting happiness have been outlined by Peterson & Park (2009). They argued that the increase of happiness is an achievable goal: it does require lifestyle changes at the individual level, and economic and political changes at the national level. They argued that although genetics is a significant determinant, it does not mean that genetics will dominate every attempt at improvement. We are not at the total mercy of our genes. However, they do admit that they do not know if trained happiness is the same as the naturally occurring state.

The concept of happiness may comprise several elements. Among these are economic drivers – such as the disparity of wealth rather than its absolute magnitude. It would almost certainly include population characteristics – such as the size of population, rate of growth, diversity of cultures and urban/rural distribution. Honesty of dealing, at all levels, must feature and would range from political stability (the primacy of the ballot box), national and international reputation and justifiable national pride. There may be yet other features (see *Happiness* in the References).

In 2012 the Economist Intelligence Unit rated the world's most liveable cities. Melbourne (Australia) was first; Vienna (Austria) second; Vancouver (Canada) third. Of the top ten cities several were in Australia: Adelaide was fifth, Sydney seventh, and Perth ninth. Three Canadian cities appeared in the top ten, with a place each for Austria, New Zealand and Finland. It is interesting to note that all of these liveable cities are in target countries for immigrants.

Human development

The opportunity for human development is one of the drivers for migration. This is well addressed in the *Human Development Index, 2012* (see References). It uses (amongst other things) the criteria of living a long and healthy life, being educated and having a decent standard of living.

In the Index Norway ranked first, with Australia ranking second and the United States third: the next in the rankings were the Netherlands, Germany, New Zealand, Ireland, Sweden, Switzerland and Japan. At the other end of the scale the bottom ten countries on the Index were all in sub-Saharan Africa.

A second way of looking at attitudes, adverse discrimination and human development is to consider the *Scanlon report on social cohesion* (see the References). The 2009 report was completed by nearly 4,000 Australians aged 18 years and over, with the sample stratified by geographic location, supplemented with six local surveys.

An attempt to assess the level of bigotry was also carried out in the survey. Approximately one-tenth of people felt uncomfortable in the presence of those from other cultures (thus nine-tenths did not feel uncomfortable). Four per cent of respondents reported no fewer than one discriminatory incident per month, but that percentage was tripled in reports by Indians and Sri Lankans in those places where such national groups were concentrated. Here we might ask: is it the Australian-born who discriminate? We need to be cognisant of discrimination by the Australian-born against incomers, prejudice between incoming groups and not involving the Australian-born, and prejudice against the Australian-born by incomers.

This survey is supplemented by the Sydney Survey on Racism. Telephone surveys conducted by researchers at the University of Western Sydney between 2001 and 2008 polled 12,512 respondents and probed experiences of racism. One in five overseas-born respondents stated that they had experienced racism in education (see Table 1, Racism and the Tertiary Student Experience in Australia, Academy of the Social Sciences [*Challenging racism* in the References]). The responses from this large-scale survey could be disaggregated further, and some of the categories separated out (for example, the 'hardly ever' response). A smaller survey with 4,000 respondents was conducted by that same body in 2006. It focused on individuals' experience of racism and what they did about it. This study identified that 19 per cent of respondents stated they had experienced it. In this we need to bear in mind that many members of the public are so conventional of appearance and demeanour that they would not be subject to it. Further, how does one objectively define overt racism or harassment?

Of the 19 per cent some 75 per cent had been called an offensive slang name relating to their cultural group. Other incidences of racist language included: racist jokes (52 per cent), stereotypes in the media (63 per cent), verbal abuse (65 per cent), and offensive gestures

(51 per cent). The reporting of racist physical attacks was much less frequent, with approximately 6 per cent experiencing some form of racist attack. One of the significant issues here is that intent is a significant variable, as is the self-perception of racial abuse.

To revert to a time comparison, using the Scanlon approach: given the lack of systematic opinion polling in Australia, the 2009 Scanlon Foundation Survey is the first public poll to provide detailed exploration of attitudes to immigration since late 2007. The 2009 survey was conducted in a period of declining economic confidence, with predictions that Australia, along with all Western economies, would face the most severe challenges since the Great Depression of the 1930s. Despite the economic concerns, the Australian government maintained a large immigration program. During recessions in the 1980s and 1990s negative views of immigration had risen sharply; this experience raised the expectation that the 2009 survey would reveal a marked change in opinion since the optimistic times of 2007 when the first social cohesion survey was conducted.

One of the most compelling findings was the lack of change between 2007 and 2009. The 2007 survey provided evidence of a society that maintained a high level of positive outcomes, fostering a sense of belonging, social justice and worth. This continued to be so for 2009. With a comparison now available it concludes that social cohesion is being developed. There appears to be an increased participation in political life and slightly greater confidence in the Federal Government in its commitment to social justice and equity.

In response to specific questions the replies showed: a strong sense of belonging; pride in the Australian way of life; believing that maintaining that way of life and culture is important; seeming satisfaction with the financial situation of the country – 89 per cent indicated that ‘taking all things into consideration’, they are happy with their lives, and that Australia ‘is a land of economic opportunity where, in the long run, hard work brings a better life’. The greatest variation in the pattern of response occurs when the views of long-time Australians (those born in Australia, with both parents born in Australia) are considered.

However, to show that all is not sweetness and light it should be noted that about 10 per cent of Australians ‘... hold strongly negative views on issues related to immigration and cultural diversity, with a larger ambivalent group and higher negativity in some regions and amongst some birthplace groups’. Perhaps an explanation here is that social cohesion is frail where there may be ethnic tensions, and where

the dominant population in an area is from other cultures. As the report noted, this could lead to blaming immigrants for things for which they may, or may not, be responsible.

The general conclusion that may be drawn from the above studies is that Australia is attractive because it is politically stable, provides economic opportunities and offers a just way of life. The aversion that some Australians feel about immigration may, or may not, be well-founded, but will certainly include reference to the problems that migrants 'cause', which include offending against local mores.

Caveats on social indicators

Although they are primarily criminological works, both Penrose (1939) and Biles & Mulligan (1973) have suggested differences in administrations as explanatory factors in some of the ambiguity in their results. However, the effect of administrative procedures cannot be the explanation of the results of the present study since separate analyses may be carried out under separate administrative jurisdictions. When the jurisdiction has been held constant in this way, even though the actual rates of use of mental hospitals and prisons may be affected by the administrators of the particular jurisdiction, the relation of the rates for groups living within the same jurisdiction should not be affected by the particular administration.

From such figures, it is not possible to comment on the origin of the failure to adjust. The selection process might land differential proportions of the maladjusted in Australia; alternatively, the conditions under which migrants live once in Australia might dispose them to maladjustment. While it is recognised that a social-indicator approach has merit, at this stage the data available to examine those connections are difficult to access.

Absence of social indicators in Australia

Some indicators are required, but there are no statistics available. The present writer has investigated the national health scheme, Medicare, to see if it had any data that indicates fraud of the system cross-tabulated with birthplace. Such data is not collected. The same was tried with the national insurance council, with similar results. Similarly with bankruptcies, with the Australian Taxation Office, with the industrial accident cover, WorkCover, and with the Traffic Accident Commission

in the state of Victoria, the Motor Accident Authority of NSW, the Motor Accident Commission of South Australia, and Insurance Statistics Australia. The ACCC, APRA and the ASIC monitor dubious commercial practices and exploitative schemes. A search of each of these failed to find any data relating to frauds citing birthplace.

Maladjustment indicators

When one considers social indicators of maladjustment it is clear, from the low rates overall, that crime is only one of the major problem areas. As has been shown by Bagley et al. (1973), there is a strong correlation between the behavioural pathologies.

The relationship between six indicators of the failure to adjust by migrant groups in Australia was examined by Crabbe & Francis in 1980. These indicators were 'being sentenced to prison', 'being admitted to a psychiatric hospital', 'suicide', 'divorce and separation', 'unemployment' and 'permanent departure from Australia'. That gave a picture showing that psychiatric illness, criminality and suicide are strongly and positively related. Divorce and separation also relate positively, though not as strongly. Unemployment is slightly positively related to crime.

It would be admirable if one could find and use population data (in its proper inferential sense) to determine coping in relation to crime. Here there are two difficulties: one is that even where such indicators are present they may be ambiguous. For example, permanent departure from the Commonwealth could mean anything from dissatisfaction to an understandable and pressing need to be elsewhere.

Table 12.2 Social indicator negative measures

Negatives	Measures
Crime	Charges/imprisonment
Mental health	Mental hospitals intake
Unemployment	Official rate
Air pollution	Official data on pollution/physical measures
Natural disasters	Death rates from natural disasters
Man-made disasters	Number of wars, soldiers involved, death rates
Happiness	Web-based indices
Poverty	Debt, mortgage defalcations
Corporate defalcation	Corporate failures, bankruptcies
Tyranny	No democratic elections, overthrow of tyrants/dictators

Comparison on social indicators

Tiffen & Gittins (2009) provide a comparison base for many variables, extending far beyond those relating to immigration issues. Their coverage includes taxation, health, education, media, environment, telecommunications, to name but some. From this source it will be seen that Australia has a record that clearly makes it an attractive option for potential immigrants.

The argument in this book is essentially about crime relationships, but it necessarily must include civil matters, and it is regrettable that there are no statistics that cross-tabulate birthplace with civil complaints. In presenting these considerations it can be noted that there are many possible indicators, but what exactly they mean is a moot point. One might, for example, take divorce as a negative indicator, but it could equally be argued that divorce leads to a better second marriage and is thus positive and adaptive. Many other possible indicators of social malfunctioning share such a nature.

One of the more admired social purposes is to promote harmony. There are two approaches to this: legislation and education. What is equally clear is that neither is sufficient on its own. Education is to be preferred but sometimes it needs legislative backing. Legislation is an essential part of social progress, and reinforces the rule of law.

The continuity of ethnic heritage

Those migrants who maintain their ethnic heritage may not be in the mainstream of the host culture, but their existence in an enclave sustains them against a sense of alienation. Perhaps many prefer that to the attempt to obliterate evidence of their ethnic origin, which may be manifest in surnames, accent, appearance, mannerisms, and ingrained ways of thinking and acting. Migration exacerbates the problems associated with the generation gap. In societies where the young risk alienation from their parents, that process will be enhanced by their parents being oriented to another cultural frame of reference. Non-melding of cultures leads to an exaggeration of the generation gap, while too rapid a melding can lead to a loss of self-respect on the part of the immigrant.

To give due balance to an overview of racist thought one might conclude that there is a certain hypocrisy in attitudes that imply that only Caucasians, colonialists and Western Europeans repress other races. In the view of some Oriental nations, Westerners are a form of barbarian. Some cultures do not positively describe outsiders but, rather, regard

them as those who are 'not one of us': 'infidel', 'gentile' and even the word 'barbarian' itself are all instances of this.

The delinquent generations hypothesis

Broadly speaking, the delinquent generations hypothesis proposes that children born in certain years who pass through unusual social circumstances during early life are more likely to commit criminal offences than other people, and that this tendency remains from childhood to early adult life. The hypothesis is based on theories of child development that suggest that children born during years of stress that create abnormal family circumstances are likely to have a greater frequency of behaviour defects in later life. It was originally put forward in a report by Leslie Wilkins in a Home Office Research Unit Report (Wilkins, 1960) aimed at isolating factors that might assist in making forecasts of the future demand for different treatment facilities. Wilkins contended that in wartime the family circumstances of a proportion of the population are abnormal and this proportion may be large enough for the effects of such conditions to be noticeable in certain national statistics.

In support of his hypothesis Wilkins produced statistical evidence that, he claimed, showed that British persons who had passed through their fourth or fifth year in World War II were more likely to be convicted of a criminal offence. The validity of the hypothesis was challenged by Walters (1963) who made it clear that the statistics on which the analysis had been based were open to other interpretations. In reply Wilkins produced further evidence (1964) and referred to the results of a similar analysis carried out in Denmark (Christiansen, 1963–64). After this, two further analyses, one of Polish statistics (Jasinski, 1966) and one of New Zealand statistics (Slater et al., 1966) have also shown results similar to those of Wilkins.

Wilkins' analysis was based on the annual figures of young persons, eight to twenty years of age, found guilty of indictable offences during the period 1946 to 1957. Thus it was possible to examine the criminality related to each of the birth years 1925–26 to 1948–49. It was not possible, through simple direct comparison of the number of convictions alone, to say whether some birth years were more delinquency-prone than others, since the post-war increase in population increased the number of people at risk. Accordingly the statistics examined by Wilkins revealed the number of persons found guilty of indictable offences per 100,000 population at risk.

After allowing for the influence of disturbing factors (namely, age, population and crime pattern) an 'expected' value for the rate of those found guilty for each single age for each year was calculated from the average for that year and the average for that age. This expected value was then compared with the actual or 'observed' rate and a percentage deviation, either positive or negative, was calculated. The patterns formed by these deviations were then analysed in relation to the date of birth of the persons found guilty. The average deviation by birth groups was given at the foot of Wilkins' data table, and the highest average positive deviations were associated with the birth groups between 1935–36 and 1941–42. He therefore identified these groups as a delinquent generation.

To test his hypothesis, Wilkins examined the crime rates of two other groups, females in England and Wales and males in Scotland. Pursuing exactly the same methodology, he found a remarkable similarity in all sets of figures. The highest positive average deviations from the expected rate were associated with the birth groups between 1935–36 and 1941–42, the peaks aligning almost exactly in magnitude and period. Further analysis aimed at determining when the effect of the war was most evident led Wilkins to conclude: 'The greatest "crime proneness" is thus found to be associated with that birth group who passed through their fifth year during the war... Whether this means that disturbed social conditions have their major impact on children between the age of four and five is not proved, but this is a likely hypothesis.' (Wilkins, 1960, p.8).

The validity of the delinquent generation hypothesis has been challenged on several occasions. Walters (1963) examined the same data as Wilkins (crime rates for persons in the UK eight to twenty years between 1946 and 1957) and picked out two predominant trends:

1. A marked decline in the rates found guilty for young males (8 to 11-year-olds) from 1951 to 1957, and
2. A rise in the rates found guilty for young men (17 to 20-year-olds) in the years 1956–57. Walters held that these were independent trends and were not, as Wilkins had asserted, both dependent on a generation of above-average delinquency.

A more substantial criticism was launched against the hypothesis by Rose (1968) when he seriously questioned the validity of the statistical techniques that had been used by Wilkins and by subsequent

researchers who claimed to have substantiated the hypothesis. Examining the relevant crime rates for the period 1946–65 Rose was able to show that the trends that Wilkins had attributed to a delinquent generation held true for the whole period 1946–65.

This was despite the fact that the majority of the delinquent generation, identified by Wilkins as born between 1935 and 1942, were by 1960 too old to appear in the statistics, while by 1963 they had all reached the age of twenty-one and were therefore totally absent. In particular the rates of those found guilty (for 17 to 20-year-olds) continued to rise steeply despite the fact that the very generation which Wilkins had asserted was the cause of the phenomenon could no longer contribute.

Rose (1968) was able to show that within the post-war period, whatever the time period chosen for analysis, the generation identified by Wilkins' technique as having the highest average positive deviations would, in general, lie in the middle range of the birth groups under consideration. He concluded that the method of analysis is therefore clearly unacceptable as a technique for distinguishing between the relative delinquency of a generation, because it gives results which are not independent of the sample chosen (that is, time-period) (Rose, 1968, p.378).

The reason for the failure of Wilkins' technique can now be clearly stated; it is that the technique corrects for a time trend as if it were homogeneous over all ages and, of course, when identifiable differences in time trends are present the technique is therefore invalidated (*ibid.*, p.379). The statistical methods that have been used in an attempt to establish the validity of the delinquent generation hypothesis are arguably unreliable, but the hypothesis that the behaviour of children is influenced by factors in the family and social situation when they are old enough to recognise social situations for themselves, that is, four to five, is interesting and worthy of further investigation, especially in the area of migrant criminality (bearing in mind the criticisms of Walters and of Rose).

Migrant children whose parents emigrate while they are at a young age are, like children born during the war, subject to a radical change in their social situation, possibly coupled with the deprivation of one or both parents for a period of time if the parents migrate first and later send for their children. If there is any validity in the delinquent generation hypothesis it would certainly seem to have some application to migrant children. This point should appear most strongly in the young of those traumatised by the Vietnam war, and refugees from Afghanistan and Iraq.

Change in prejudice over a lifetime

It is a point of wonderment that a change in prejudice can occur within a lifetime. A novel idea has been put forward by Raskin (2009). People organise information according to formulae, some cultural, some personality-determined, and some from a common human frame of reference. Raskin held that people rate each other positively 62 per cent of the time, and negatively for the remainder of the time. That proportion approximates to a golden section. He asked, 'Do we do the reverse when evaluating stigmatised others?' This hypothesis is as applicable to the mentally ill, the impaired and the alien.

Raskin hypothesised that if we were able to reverse this golden section pattern it would add immeasurably to the quality of life – particularly for those adversely discriminated against. When positive attributes are understood and remarked '... does stigma recede?' Thus one might say of an adversely discriminated group, 'They have an excellent and mutually supportive family life' rather than, 'They are a bunch of wogs'. This intriguing notion would repay further research.

Research as sport

Acclaim in research and in policy might result in the bestowal of awards. As Cohen (1982) has so felicitously noted, an international criminological syndicate has evolved that '... bestows patronage and prestige in the form of scholarships, certificates, conferences and research grants... a kind of Olympic Games of crime is set up, with competitions in different events such as 'Reliability of Statistics', 'Lowest Delinquency Rates', 'Numbers of Psychiatrists' and 'Proportions of Trained Prison Staff'.

Table 12A.1 Means of differences between target and donor countries

	Target	Donating	Target	Donating	Target	Donating	Target	Donating	Target	Donating
	Happiness 100 = best	Gini Index low is =	Peace 1-5:1 good	Corruption 100 = best	Life expt Years	Fertility growth rate				
Australia	42.00	30.50	1.45	85.00	81.90	1.13				
Canada	43.60	32.10	1.35	84.00	81.00	0.78				
Denmark	36.60	29.00	1.29	90.00	78.80	0.24				
France	46.50	32.70	1.70	71.00	81.50	0.50				
Germany	47.20	27.00	1.42	79.00	80.40	0.00				
Netherlands	43.10	30.90	1.63	84.00	80.70	0.45				
New Zealand	51.60	36.20	1.28	90.00	80.70	0.86				
Sweden	46.20	23.00	1.40	88.00	81.40	0.17				
UK	49.90	34.00	1.63	74.00	80.20	0.55				
United States	37.30	45.00	2.06	73.00	78.50	0.90				
MEANS	44.40	32.04	1.52	81.80	80.51	0.56				
Afghanistan	36.8	28.40	3.21	8.00	48.70	2.22				
Egypt	39.6	34.40	2.02	32.00	73.20	1.92				
India	50.9	36.80	2.57	36.00	65.40	1.31				
Indonesia	55.5	36.80	1.98	32.00	69.40	1.03				
Korea South	43.8	31.00	1.83	56.00	80.60	0.2				
Mexico	52.9	51.70	2.36	34.00	77.00	1.09				
Philippines	52.4	45.80	2.35	34.00	68.70	1.87				
Sri Lanka	49.4	40.80	2.41	40.00	74.90	0.91				
Vietnam	60.4	37.60	1.67	31.00	65.50	1.05				
Turkey	47.6	40.20	2.41	49.00	74.00	1.2				
MEANS	48.93	38.35	2.281	35.20	69.74	1.21				

Table 12A.2 Social indicator correlations for target and donor countries

Correlations	Target countries		Donor countries	
	Correl.	Signif.	Correl.	Signif.
Happiness – Gini index	-0.20		0.57	
Happiness – Peace	-0.29		-0.51	
Happiness – Corruption	-0.05		0.20	
Happiness – Life expectancy	0.54		0.23	
Happiness – Fertility	-0.10		-0.49	
Gini index – Peace	0.68	p < .05	-0.09	
Gini index – Corruption	-0.47		0.19	
Gini index – Life expectancy	-0.51		0.43	
Gini index – Fertility	0.64		-0.24	
Peace – Corruption	-0.80	p < .01	-0.56	
Peace – Life expectancy	-0.35		-0.63	
Peace – Fertility	0.24		0.62	
Corruption – Life expectancy	0.12		0.87	p < .001
Corruption – Fertility	-0.05		-0.82	p < .01
Life expectancy – Fertility	0.13		-0.73	

Income equality & peace correlated p < .05.

Lower corruption & higher life expectancy correlated p < .001.

Peace & corruption inversely related p < .01.

Greater corruption & higher fertility inversely correlated p < .01.

13

Theory and Critiques

Theoretical expositions that are amenable to empirical verification have conventional scientific merit; they also produce a Spencerian tragedy (a beautiful theory slain by an ugly fact). One of the major difficulties in comparative work is the danger of ideological interpretation. The exportation of mono-cultural hypotheses to other and alien jurisdictions may be inappropriate: the application of Occidental explanations to Oriental countries is a form of intellectual colonialism. There is some merit in testing Western ideas in other contexts but what is dangerous is the possibly erroneous belief that such theories have necessary explanatory power.

Sociological accounts have tended to dominate criminological interpretations, particularly the notion of culture conflict. Many lands have been settled by a variety of peoples, and it is for such situations that we seek explanations. Some lands were settled by annexation, some by conquest and others by peaceful infiltration. For those already living there, population incursions have a variety of effects. It is only with the recent advent of immediate transmission of information that such issues receive consideration. The reporting of these issues may well sensitise the existing population and create concerns that would not otherwise exist. On the converse side one might say that the existing population has a right to know what is taking place and to be heard in policy decision-making. In practical terms we might note that the ease of modern communication, such as emails and social networking, has significantly reduced the sense of being cut off from the original society.

One can say that the theoretical importance of works on crime and the foreign-born gives new perspectives to conventional theories. It is most unlikely that a universal theory of race and crime is possible for so complex a situation. What may be done is to explicate features of

the situation. Theoretical expositions of the effects of migrations do not commonly take account of the substantial positive contribution made by exceptional migrants. Their knowledge, insights, dedication and fresh perspectives make them welcome additions.

An extended consideration of the theories of migrant criminality has been given by Wortley (2009). After debunking the migrant-criminal myth he went on to outline some theories to account for low immigrant criminality. He did conclude that greater contact and interchange between academics and policymakers would be of enormous benefit, as would the collection and collation of migrant information.

It is the intention here to point out that there is a most complex array of themes deserving of consideration in interpreting this work. Such themes have been well documented elsewhere, but the point is emphasised that the reasons for considering the problem of migrant crime in Australia are of historical as well as contemporary interest. It deserves the strongest emphasis that the issues discussed in this book may be applicable to other minority groups. It is also certainly not intended to convey the impression that these ideas are applicable only to the foreign-born. In fact, the converse applies.

In all of this, one is mindful of where hypocrisy might intrude. The ways in which concepts are defined may be intended to subvert the harm that they cause, or the methods that they wish to conceal. A former Minister for Immigration described solitary confinement as 'single cell occupancy', thereby making it sound attractive rather than negative. He also held that sleep deprivation is not torture: this has parallels in a recent foreign head of state holding that 'waterboarding' is not torture. One wonders if such utterances, were they to be visited on the 'definers' or their immediate family, would be regarded with such equanimity.

Methodology and confounding effects

Transnational migration often confounds two variables – a movement from one country to another and a shift from a rural to an urban community. Further, among examples of the consequences of international migration are issues such as language and dietary changes, both of which have powerful effects that may be synergistic. Although there are no known national statistics on the incidence of the foreign-born in the various legal systems there are, however, instances of local reports. The issue is clearly one of relevance.

Tonry (1997) outlines some of the salient questions that one should pose with respect to immigrant crime. For example, with

second-generation migrants does the Swedish supporting evidence go towards explaining why the second generation do not revert to native crime rates? Why, in the UK, are crime rates among the Bangladeshi-born less than those of the Afro-Caribbean? In the Netherlands one would expect Turks and Moroccans to have similar crime rates, yet Turks have a lower rate even though they are equally socially disadvantaged – why? Further, he questions what effect an active tie to the homeland has on behaviour. Do the crime statistics vary if one distinguishes residents and non-residents? Since many refugees have had horrible experiences does it affect their worldview, and their criminal statistics?

Lynch & Simon (1999) make a distinction between ‘immigrant nations’ and ‘non-immigrant nations’. In the former there is a high volume of immigrants, barriers to entry are low and naturalisation is encouraged. Non-immigrant nations are the opposite. Immigrant nations tend to have a lower rate of crime for immigrants. According to Lynch & Simon it is not possible to tell whether this is due to immigration policies or to the ability of immigrant nations to welcome and absorb newcomers.

Underlying most crime prevention failures is bad science. In this regard, perhaps the most common pitfall is the tendency to overgeneralise or, in experimental terms, to assume an external validity that is unjustified. General theory may be the ideal of scientists, but inappropriate application of general theory, or failure to account for situational variation, can be the bane of those who might seek to make a difference in the real world: what works in Wollongong might fail on Palm Island.

One of the most problematical issues is that of interpretation (what does it all mean?). To take a striking example, Moses took 40 years to lead the Israelites out of bondage and into the Promised Land, a total distance of only a few hundred kilometres. On that information one would have to have him fail Navigation 101. Another way of looking at the Exodus is that Moses ensured that it was a different generation that left Egypt from the one that arrived in Palestine. The facts are the same – the interpretation different.

The *Titanic* sank on her maiden voyage in 1912. One might seek explanations of certain events, keeping in mind that the level of explanation one offers for events can vary depending on one’s outlook. One explanation could be that the assertion by the company that built the ship that it was unsinkable was an instance of hubris and it made the Gods so angry that they were determined to show humans that arrogant pride can be misplaced.

Another kind of explanation could be that when the iceberg was sighted the order to put the helm reflected a stage of nautical practice when putting the helm to starboard meant that the ship's head moved to port: that convention was replaced by the understanding that putting the helm to starboard meant that the ship's head went to starboard, thereby ensuring consistency of command and effect. It might be held that the ambiguity of the order put the ship into danger.

Yet another kind of explanation was the fact that at the time when the *Titanic* was commissioned there was considerable unemployment among those qualified to be crew. Many of them, having been out of work, had lived in relative penury and deprivation: they also probably suffered from various nutritional deficiencies. The lookout in the crow's nest at the time when the iceberg was sighted saw it too late – and thus one might think the *Titanic* sank because of vitamin A deficiency leading to night blindness. One can see that explanation can occur at a variety of levels, and depends upon which level one chooses.

Differential rates of ethnic crime explanations

Explanations for differential rates of ethnic crime vary strikingly. One is that of differential handling by police and the criminal justice system; a second is that differences may stem from structural background factors to which these minorities are exposed; third, the developmental processes that such minority members experience have an influence; fourth, there are differential ethnic dispositions to crime; fifth, there is the issue of underlying ethnicity, that is, there are genetic racial differences. Clearly, not all of these have equal explanatory value, and some fly in the face of trends to equality before the law – the fifth kind, for example. Even if there are genetically determined factors that dispose people to crime that is no reason to believe that they cannot be ameliorated.

Unreal expectations can lead to draconian policies, as a result of duress put on the implementers of criminal policy. Situations can occur in which expectations may rise beyond the capacity of an intervention to deal with them. In such circumstances, the effects of rebound may be worse than the *status quo ante*.

Interventions may be seen to operate with an intended effect in the short term, only to have their impact reverse over time. Sherman et al. (1991) observed that short-custody arrest for domestic violence produced a deterrent effect in the short term, while longer custody arrests

had no appreciable benefit. In investigating any such effect the importance of time and sequence is prime – the temporal dimension to this perverse causality. This was evident in the ‘*Scared straight*’ study (see the References): in the short term it appeared to be beneficial; in the long term the effect was the opposite. Similarly, in the Cambridge-Somerville study (Powers & Witmer, 1951; Dishion et al., 1999) the adverse impact on participants was not evident for many years. The ‘short, sharp shock’ can be effective in the short term, but it can also habituate a potential reoffender to the notion of prison not being so bad: the notion of imprisonment loses its Kafkaesque quality, and on this the jury still seems to be out.

Anticipatory planning is central to policy development. One hardly needs reminding that large-scale interventions are best undertaken only after piloting or pre-testing. While they are in operation, crime prevention initiatives (or indeed, pilot studies) ideally should incorporate built-in feedback mechanisms, monitoring systems and contingency plans, in the event that negative consequences start to become apparent. Of course, interventions whose effects may not become apparent until after the significant passage of time are less amenable to corrective feedback. Some programs, apparently well designed and with the best of intentions, may do more harm than good.

The risk of being blinded by public pressure for a quick fix is a common feature of contemporary politics. The tendency to be dazzled by a particular technology or method may lead to its overuse and eventually to its diminishing effectiveness. Interventions that have particular symbolic value or resonance such as ‘boot camps’ for juvenile offenders, ‘toys-for-guns’ programs or mandatory sentencing structures based on the principle of ‘three strikes and you’re out’ should not be embraced uncritically.

On this issue of time-related solutions one is pressed to feel concern for the plight of some African countries where hunger, lack of clean water and disease are endemic (see *Hunger* in the References). To put resources towards an alleviation of poverty is clearly laudable, but this can lead to the diversion of resources from programs such as birth control that would result in fewer problems in the long term. Running across that issue is the cultural concern of the degree to which numbers of children are an expression of masculinity, and constitute a resource that takes the place of for social welfare in that they may care for their parents in their later years.

The most cynical explanation of counterproductive crime prevention would hold that authorities are less focused on longer-term realities than

they are with short-term image. In such a world, crime prevention programs exist not so much to prevent crime as to demonstrate official concern and the illusion of action. Ultimate outcomes, if less than successful, are likely to be seen as someone else's problem. Whether or not this is an intractable fact of life in contemporary Western democratic political systems cannot distract us here. For those who may be involved in the actual engineering of crime prevention programs, there are more scientifically significant considerations. We turn now to a practical discussion of what might be termed 'engineering flaws' in the design and implementation of crime prevention programs.

Paradoxical cause

This notion of unintended consequences – a particular outcome is intended, and the reverse happens – has a long history. Within criminology it has been canvassed by Sherman (1993, 2011), Grabosky (1996) and, latterly, Morgan & Clarke (2006).

There is a view that people value the appearance of rationality, but often behave irrationally. Even in a limited setting, those policy entrepreneurs who are enamoured of a certain paradigm, such as rational choice or deterrence theory, may discover that not all targets of control are 'utility maximisers'. Some targets, in fact, may act in a very irrational manner. The threat of punishment may invite offending. We recall how the identical stimuli can elicit compliance from some individuals and provoke defiance on the part of others. Most recently in business the idea of strict compliance to induce ethical behaviour has been seen to be counter-productive. If all the steps are taken it can induce an attitude that 'I have ticked all of the boxes, and therefore I am ethical'. It is as if the box-ticking turns off the ethical switch.

Threatened restrictions on or prohibitions of the sale of certain firearms may inspire increased purchases of such weapons in anticipation of future non-availability. The inspiration may extend to guns in general, thus leading to an overall increase in firearms ownership. The potency of the firearm as a symbol (negative for some, but positive for others) is such that proposals to regulate the ownership of weapons may trigger strong resistance.

A discussion of street lighting in Glasgow noted how an intervention introduced as a perceived solution can actually worsen the problem it was meant to address. To illustrate how feelings, and indeed, the reality, of safety can be undermined rather than enhanced, one cannot improve upon the words of one female respondent, 'I think it's worse now. With

the lights, people can see you. When they couldn't see you they didn't know who you were. You could be anybody. Now they can see you're a lassie' (quoted in Nair et al., 1993).

It will have been noted that paradoxes abound in criminological approaches: Grabosky (1996) has termed it 'paradoxical cause', and it has application in a variety of settings. In child abuse, for example, it is important to bring the offender to book, but in doing so the victimised child is made to feel that the issue is very important – and thus any psychological or physical trauma experienced by the child is exacerbated.

Interdiction of youthful joyriders can bring about high-speed police chases that may end in extensive property damage, injury or death. Increases in potential penalties may lead to more violent resistance to police at the time of arrest. Other situations of police interaction with individual citizens or groups may entail reciprocal heightening of aggression – from dirty looks, to exchange of affront, to exchange of force. Creative policymaking and creative law enforcement require a good sense of when a situation requires benign neglect; where intervention is warranted, it should be delivered in a manner that minimises the potential for escalation.

The domain of environmental protection provides other examples of perverse incentives. Consider, for example, a system of rebates for the return of toxic waste generated in a manufacturing process. In the absence of a carefully designed pricing structure, such a program might create incentives to increase the production of toxic waste. One could, for example, dilute a substance and seek a rebate for the larger volume. Alternatively, one could produce 'counterfeit' waste, generating a substance for no other purpose than to claim a rebate. The incentive may be to breed noxious pests in order to claim a bounty for their extermination. Such a policy could produce the perverse effect of increasing the very problem that it was designed to address. It is, in effect, an invitation to fraud.

As already mentioned, warning messages may produce perverse effects. Merely by dramatising certain aspects of non-compliance, they can highlight the behaviour in question, bringing it to the attention of those who would otherwise be oblivious; or it could excite the curiosity of those who would otherwise be only vaguely aware. Worse still, they may entice the potentially rebellious. Symbolic protest is a common response to the moralistic injunction. Stern warnings from law enforcement authorities about the perils of various illicit drugs serve to publicise the substances in question in a manner which only the most creative

minds in the advertising industry could hope to rival. Denunciation by moral entrepreneurs can impel the eager consumption of controversial literature, film and related material.

A more basic scientific shortcoming is the apparent failure to understand the causal processes in which one seeks to intervene. One recalls the observations of Sherman (1993) that a deterrent stimulus perceived as fair will have its intended effect, while the identical stimulus, if perceived as unjust, will elicit defiance and resistance. We note that an invitation to empathy will have no impact upon the affectless; the spectre of shame has no effect upon the shameless.

It is possible, and even likely, that an intervention can trigger other causal processes. The functional disruption of related systems is familiar to students of ecology. McCord's (1978) follow-up analysis of the Cambridge-Somerville program suggests possible reasons for that program's outcomes. She observed that contact with program staff whose values differed from those of the participants' own families may have produced conflicts, resulting in subsequent dissatisfaction. Assistance and support provided by the program may have engendered dependency and expectations on the part of participants.

Here the issue is one of analysis. Tolerance is a highly regarded technique, but has some paradoxical effects; to what degree, for example, should we tolerate the intolerant? Such an analysis leads to an expression of some of the paradoxes of politics; if a society extends tolerance too far it runs the risk of being overtaken by extremists. A second paradox is that of democracy where, if the majority vote for a totalitarian form of government, there is no ground for resisting such an outcome. Clearly these paradoxes are connected, are a significant challenge and raise the general question of exceptions.

Ironies and side-effects

One of the side-effects of certain interventions is that of collateral damage. Measures, and countermeasures, may directly or indirectly lead to collateral damage of greater magnitude than that resulting from the target behaviour. Means of containing speeding traffic, such as speed humps, may occasion significant damage to vehicles (including emergency vehicles) failing to reduce speed sufficiently.

It is ironical that a well-intentioned study of participants and a control group should, on follow-up, reveal something unintended and unpredicted. One could well imagine that a follow-up study of program participants and a control group might reveal program failure

on a number of criteria. The measurement criteria originally intended (to measure levels of petty crime, say) might, on re-examination, reveal a high rate of mortality of participants.

Overly restrictive laws encourage mutually dependent relations between nominal adversaries. One hardly need mention the potential for corruption posed by certain types of prohibitions. Laws restrictive of (for example) alcohol consumption might lead to a prohibitionist cast of mind, but eventually the repeal of such prohibitions. In recent times the idea of prohibiting all drug use has led to calls for the repeal of such draconian laws.

Prevention programs

Here it appears that immigration policies are most effective when they aim to foster moderate multiculturalism where different groups are allowed to settle. It is abundantly clear that a policy of requiring commitment to the rule of law, and to parliamentary democracy, is essential. For a multicultural immigration policy to work it must require both a commitment to the basic values of the host nation and a willingness to tolerate a wide diversity of views and cultural practices.

It has become almost trite to quote Santayana's dictum that those who cannot remember the past are condemned to repeat it. But one can learn a great deal from disappointment. Failure analysis is central to the profession of engineering; so too should it become central to the professions involved in crime prevention and criminal justice. It is tempting to generalise from past policy outcomes that have met with apparent success. Closer examination, whether through replication or secondary analysis, may reveal nuances not previously apparent that can seriously limit the generalisability of findings.

There are several manifestations of bad planning. The time required to achieve program goals may be greater than originally anticipated, and planners may underestimate the scope and depth of the target problem, as well as the quantity and quality of the intervention required successfully to address it. Thus may short-term gains lead to ultimate failure. Therefore, those who design crime prevention programs would do well to engage in pluralist planning, and devise scenarios from a variety of institutional perspectives. They should invite independent analytical criticism and the search for likely interactions that may be overlooked by a program's designers. As mentioned, one might suggest an ongoing role for the institutionalised sceptic, one whose role it is to pose hard questions.

Just as the study of engineering failures does not imply that society should forsake the use of bridges or buildings, so the study of crime prevention failures does not suggest that crime prevention efforts should be abandoned. The analysis of engineering failures enables the subsequent construction of stronger bridges and taller buildings: the analysis of crime prevention failure can lead to the design and implementation of better crime prevention programs. Thus the objective here is not to cast a pall of pessimism over the enterprise of crime prevention, but rather to foster more analytical rigour in the planning, the implementation and the evaluation of crime prevention activity. It is one of the roles of research to find a way to build better systems.

One could perhaps be excused for concluding from the above discussion that nothing works, nothing can be made to work and any efforts to this end will only produce more harm than good. But this is not the case. The intended message was rather that rigorous policy analysis is an essential ingredient of crime prevention, and that there is a role for institutionalised scepticism (as opposed to cynicism) in the crime prevention enterprise. Just as knowledge advances through negative findings, so too can policy.

Meta-studies

One of the particularly valuable assessments that might be made is through the use of meta-studies. Yeager (1996), for example, looked at studies in Canada, Australia, the USA and Continental Europe and concluded that in Canada, the USA and Australia the rate of criminality of first-generation migrants is less than that of the native-born. That conclusion does not necessarily hold for Continental Europe, because of the variety of nation-states in Europe that introduce some unique factors which make it difficult to draw general conclusions. There it seems that the effect of higher criminality of the first-generation migrant is changed when demographic characteristics are taken into account (that is, with controls for age, sex and other socio-economic factors). It is by the tabulating and recording of the various studies that patterns might emerge which would otherwise be hidden.

Conclusions

What is plain is that each theoretical orientation has only some explanatory power. It imposes too heavy a burden upon any one particular conceptual structure to expect it to give total coverage. For each

'explanation' there is most likely to be some value in the form of explanation, and it may well be that theoretical concepts operate in conjunction with others. What is equally important is that without some overarching forms of explanation we will be operating in the conceptual dark. It can be observed that many explanations date back a few decades. As such they have become classical explanations, and subject to various forms of testing, and offer a commentary on more recent developments in sociological theory.

Theoretical approaches to account for migrant crime are most likely to assume some form of sociological explanation: while that is likely so we should also be alert to the possibility of personal and idiosyncratic factors. The criminal justice system is more capable of dealing with individual offenders, and has less to do with the social conditions that breed crime. This culture-conflict approach is one that attempts to link individual offenders with generation conditions. The concern here is not with culture conflict in general but rather with its restricted applicability as a mediator of crime.

The use of Western models of interpretation might be regarded as a form of intellectual colonialism. Other cultures may have a totally different way of conceptualising the issues. Genetics and crime is one instance; personality is another. Combining astrology, birthplace and crime is an example of an approach outside the conventional ambit. It is instructive to note what have been acceptable changes over time. The notion of Lombrosan 'stigmata', where criminals were seen to be identifiable by certain physical characteristics, is now almost universally rejected, but this has not prevented investigations of crime and somatotypology.

14

Special Problems: Some Basic Facts

To give some idea of the magnitude of migration these data, from the International Organization for Migration (IOM) website (www.iom.int), give both facts and commentary. In 2009 the IOM noted that:

- There are more than 200 million migrants in the world today, about 3 per cent of the world's population.
- That number, if in a single sovereign state, would constitute the world's fifth most populous nation.
- There are an estimated 20 to 30 million illegal migrants in the world today, comprising between 15 and 20 per cent of all migrant stock.
- In 2007 there were an estimated 26 million internally displaced peoples in the world in at least 52 countries – the result of conflict.
- In 2007 the estimated number of refugees reached 11.4 million people.

The IOM website does not seem to list more recent data but UNHCR does. In 2012 it listed 45.2 million displaced persons. It also noted that during the year the twin issues of conflict and of persecution forced an average of 23,000 persons per day to leave their homes and seek protection elsewhere, either within the borders of their countries or in other countries. It also noted that developing countries host over 80 per cent of the world's refugees, compared to 70 per cent ten years ago (see *Displaced persons* in the References). For the ratio of immigrants to native born the CIA website contains useful data (see *Ratio of migrants by nation* in the References).

The magnitude of such a problem is intimately related to the capacity to absorb incomers. Since World War II, Australia has demonstrated a substantial capacity to absorb a large number of different national

groups with commendable ease, and this is made yet more remarkable considering the proportion of these whose mother tongue is one other than English.

The physical realm of Australia

The Australian land-mass itself is 7,686,850 square kilometres and, if one includes maritime waters and the Antarctic territories, that encompasses a yet larger percentage of the world's area. To give a sense of perspective it is to be noted that Russia has over 17 million square kilometres and has the largest land area of any country; second is Canada; third is the United States of America; fourth is China; fifth is Brazil, with Australia coming in sixth. Australia is also the largest island in the world. With the relative ease of international travel Australia's isolation is no longer a major issue. With this goes development of international cooperation, of supranational counter organisations and of comprehensive computer databases.

Physical population capacity

The proposition that Australia has a limited capacity for intake is unquestionable, as is the notion that the government has an obligation to promulgate policies that will maintain and enhance the quality of life of its citizens. With this in mind, there is a clear need to have strategies and tactics in place as a firm guide, but there also needs to be both an orderly method of processing applications, and of considering cases that seem to be exceptional. Notwithstanding, the notion that no sympathy should be given to 'queue jumpers' is not readily sustainable: some countries do not have embassies (or centres) where aspirants may apply.

Government spending on immigration issues

Each year the Commonwealth of Australia spends a considerable sum on immigration issues, on border protection and in dealing internally and overseas with migration. In the year 2009–10 the budget-listed item for the Attorney-General's portfolio included 'Customs and Border Protection' as an item. Although the Attorney-General's Department covers Federal courts and the like it also includes security of air passengers and freight throughout the country. The amount spent comprises about two-thirds of that spent on new broadband communications and

the digital economy. At the high end of Federal spending is Defence, at about \$22 billion. The cost of the Department of Immigration is about \$639 million, with additional costs for border protection and patrol vessels. Even taking these extras into account the Defence budget is far more generous than immigration expenditure. While the navy (Defence) has a role to play in handling small boat arrivals, the difference in costs indicate the priorities that the government sets for particular items and traditions.

National sovereignty is also markedly affected by economic domination. Unlike legal and political issues, this aspect is less well governed and subject to virtually no sanctions. The overarching bodies that deliberate on international economic matters (such as the WTO) exist to discuss issues related to globalisation and economic/financial matters rather than specifically to control the excesses of economic power or to redress both historical and contemporary wrongs.

Physical aid to impoverished countries

The provision of aid has a number of complicating dimensions. Humanitarian aid is just that – provision of aid in the here and now. Starvation, privation, squalor and disease excite moral sympathy. In the longer term the provision of immediate assistance must yield to a long-term policy that prevents recurrences of privation or disasters. Here one of the most intractable problems is that of tyrannical regimes: one has in mind such places as Burma, Zimbabwe and certain African and Latin American dictatorships. We might also be concerned about regimes that have a strong ideological commitment, such as the PRC and North Korea.

Use of the earth's resources

If one were to allow relatively unbridled immigration, not only would the population increase but so too would the use of the earth's resources, and consequent pollution. Migrants from countries with low natural resource consumption rates will increase their consumption dramatically after they move to a Western country with a high consumption rate. Allowing people to leave countries with a low consumption of natural resources and relocating them in a country of high consumption has the potential effect of increasing the overall consumption of natural resources. However, while it is true that prosperity seems to lead to a reduction in the number of children that couples produce, the overall effect is yet to be determined.

The gene pool

Endogenous relations, such as those resulting from incest or from reproduction within small, isolated groups, tend to preserve characteristics and act as a genetic fixative, thereby diminishing the chances of advantageous (and disadvantageous) mutations. One clear consequence of migration is the diversification of the gene pool. The move towards racially diverse societies in the period since World War II has been substantial. If the point of view put forward here has any merit, that should have a long-term beneficial effect on society. However, it must be recognised that some migrants may bring with them a genetic or other predisposition toward or away from committing crime. In other words, there may be some genes that predispose various nativity groups to certain behaviours.

Positive assortative mating is where individuals seek to mate with those who are similar: negative assortative mating is where individuals choose to mate with those who are dissimilar. The diverse gene pool available in Australia provides plenty of opportunity to engage in negative assortative mating – thereby diversifying the gene pool yet more. However, it also seems that people prefer to mate with those who genetically resemble them; this is a possible basis for xenophobia. A contrary view is that individuals might have a mating preference for the exotic. The idea of assortative mating might also be extended beyond genetics to the realm of culture where people may be attracted to like (or to unlike) certain cultures.

With the diversification of the gene pool one might consider the idea that there are runs of genes that dispose people toward or away from crime: in other words genes could play a role in the development of crime dynasties, or, conversely, relatively crime-free societies. It could well be that families prone to crime are prone to other forms of disorder such as mental illness, social welfare problems and difficulties with employment. The existence of crime dynasties in the (convict) past may exemplify the social waywardness of earlier Australian society, which took several generations to be ameliorated.

This brings us to the idea of the meme: a notion first expressed by Richard Dawkins in his 1976 book, *The Selfish Gene*. It may be defined as a social practice or a cultural idea that repeats itself – interestingly the meme concept has become a meme itself. The notion of ‘cultural DNA’ is presented in Distin (2005). Among the points she makes is that memetic evolution is complemented by human creativity. Culture is one of the indispensable components of the meme and, as such, is one of the

key drivers of memetic evolution (see also Dennett, 1997; Blackmore, 1999).

Global warming

The expression 'global warming' seems to have yielded to the term 'climate change'. Notwithstanding, climatic variations will render some parts of the planet uninhabitable, and it is likely that as a result we shall have a new category of refugees applying for refuge in Australia. While this argument undoubtedly applies to some places, such as the Maldives or Tuvalu, it is not as persuasive in the context of places such as India or South East Asia. There are, without question, areas of such countries where oceanic inundation will occur. However, global warming will also make previously less habitable regions more habitable. Moving some of the Indian populace from (say) the Hooghly Delta to more mountainous areas (such as some of the old Hill Stations) may be necessary. Other areas may become available for agriculture of a kind once not feasible.

Whether it is incumbent on any country to be required to take environmental refugees is for the prospective host country to decide, and categories of would-be migrants need careful consideration. Those whose motivation for migrating is economic could claim environmental refugee status – just as some might claim to be refugees from political suppression rather than aspirants to a better economic life.

We must take into consideration that there is global warming, that there is an increased exploitation of physical resources and that increased economic prosperity utilises more of those resources. Melting glaciers in the Himalayas and elsewhere will have an influence on water supply (and flooding) to the lower Ganges and the Indus Basin, thereby affecting millions of people. A similar situation in the Alps, the Andes and Kilimanjaro will also have significant adverse effects. Plainly our environment has a finite capacity to support a constantly expanding population.

Personality

As Lombroso (1918: 70) noted '... when the tide moving men to emigrate is weak it draws the stronger and more intelligent, but when it becomes too violent it sweeps along good and bad alike'.

It is not possible to estimate the relative importance of this factor, but it is clear that the foreign-born do not stand on equal footing with the native in relation to the criminal justice system. The issue of plural law is

one that affects the foreign-born as well as indigenous peoples. In most societies the dominant culture determines both the content of statutes and the forms of legal process. For those not of the dominant culture there is a risk of double jeopardy (of being tried and punished by the dominant system and also by their own divergent group norms).

The proposition being asserted here is that personality is a substantial consideration in relation to both migration in general, and to crime in particular. Nativity groups are not homogeneous: those who choose to migrate from a country are unlikely to have personality profiles typical of parent communities. It is also unlikely that the migrant group itself is homogeneous in terms of personality characteristics since the motives and circumstances of migrants are variable. There is evidence that personality characteristics are related to crime. It is also likely that these characteristics are related to the disposition to migrate.

It does need to be pointed out that there is likely to be an array of personality dispositions that benefit from being afforded an opportunity to develop a new life and lifestyle. A newly arrived migrant with few resources has little to lose, and much to gain, from taking a risk – legal or otherwise. Given this, and the support of an extended family, many succeed in starting successful small businesses.

As migrants are, ultimately, a self-selected group it would be invaluable to know which personality variables relate to successful migration to Australia. There is an argument in favour of personality testing of a large group of migrants prior to migration, and the collection of a range of social and personal data. A set of long-term follow-up studies using psychological assessment should yield valuable results. One has to bear in mind that the decision to migrate and the successful settlement of migrants are personal matters; further, sometimes migrants come as families, and not all family members have the same personality profile.

There may be individuals whose personality suits the ethos that prevails in the host country. For example, a source country with rigid or formal social codes might be unattractive to some people, who might find that the culture of the host country is more congenial to their taste. To select an example: a Japanese national could find the formality of Japanese life stultifying, and would prefer the more questioning and slightly irreverent style common in Australia. The differential ability of migrants to accommodate themselves to a new culture probably relates *inter alia* to the degree of conformity present in a migrant's personality makeup.

The national character of the host nation may be modified by the arrival and/or inclusion of sufficient numbers of people from elsewhere

in the world. Selection policies can therefore have a profound effect on the direction national character might take. In yet another way national character may be modified by the selection of personnel (including immigrants) for institutions with a high level of public contact, the police being a prime example of such a social control agency.

An interesting converse side of that issue is the development of national character in countries that are suppliers of emigrants. Various African nations, the Irish Republic and Italy, to cite just three instances, have supplied millions of emigrants throughout the world. It is extremely unlikely that those places would have the same national character and ethos had the mass migration not taken place.

Fleeing from totalitarian regimes to (democratic) countries of first asylum affects the orientation of national character, as does the induction of substantial numbers from any particular cultural or faith orientation. As well, as noted elsewhere in this work, much migration involves not only movement from nation to nation but also relocation from a rural to an urban environment. Wilson (1985) has noted that tolerance for those who hold deviant and unpopular ideas is increased by urbanism.

A different kind of hypothesis relies on conventional studies on migration focusing on the effects produced by immigration: few scholars have given due consideration to the depleting effects upon donor countries. At a simplistic level one could hold that a criminal records office check (and perhaps bar) on intending emigrants means that fewer criminally inclined will emigrate. One consequence would be to raise the proportion of the criminally inclined in the donor country (as well as to lower it in the host country).

Countries that neither welcome nor provide emigrant stock, and there are many, have some immunity from that complementary effect. Interestingly, such countries receive little external criticism for not allowing immigration. Countries that do not allow or compel people to leave, however, are held in substantially lower esteem. It is difficult to overemphasise the point that migration studies have been almost exclusively concerned with the effect upon the host nations. The study of the consequences for donating countries is of equal relevance and would form a highly appropriate counterpoint to more conventional studies.

Statistical indicators may be used to assess national character. One seminal and significant work in this field is by Lynn (1971). The general thrust of that work is that social statistics may be used imaginatively to resolve such questions as: How can we objectively evaluate national character? What is the general attitude to topics such as abortion? How can we assess approaches to health prevention issues? From such

analyses one can gauge general tendencies. For example, we can use the prevalence of the use of anti-depressants to draw a conclusion; we can attempt to assess religiosity by attendance at religious services and we can assess literacy by the use of educational indicators.

More recently McCrae & Terracciano (2006) concluded that, based on validated assessments of personality profiles from over 50 cultures, perceptions of national stereotypes are unfounded. A similar study was carried out by Heine et al. (2008). Their approach was to examine a particular trait, that of conscientiousness. They found that behavioural and cross-national measures of conscientiousness were correlated with perceptions of national character, but not with self-reports or peer-reports. While we may make tentative conclusions about personality and national character it is clear that more detailed work of that kind needs to be carried out to set acceptable parameters. But it does seem likely that, despite certain methodological problems, a prevailing ethos often fosters particular national personality characteristics.

Writing in 2005 Pickering studied refugee deviancy, and how state responses might be considered themselves to be morally deviant. Her study compared and contrasted alternative models – law and order politics, and state crime. Among other things, she pointed out that legislation and policy are dictated by Parliament, which is dominated by white males. To counter this one would have to say that national interests deserve a stronger mention, as do the rights of existing Australian citizens, no matter who makes up the legislature.

National violence

According to data from Amnesty International (AI), one person is killed every minute by armed conflict or armed violence. That comes to half a million people every year, more than the populations of Darwin, Hobart and Canberra combined. AI also pointed out that ‘...12 million bullets are produced each year – almost enough to shoot everyone on the planet...twice’. Tens of thousands of child soldiers are involved in armed conflict across 19 countries. AI continues: ‘In the time that it takes to read this (paragraph) three people have been shot dead and many more injured, raped, or forced to flee their homes...’ (See *Arms trade* in the References). Such violence, with all its ramifications for migration, is certainly one of the most disturbing of contemporary problems.

15

Moral Issues

The general issue of the relationship between morals and the law is one of the fundamental issues of our time, indeed of any time. That debate was excellently expressed by a now famous interchange in the UK in the 1960s, known as the Hart-Devlin debate (see Devlin, 1963). Lord Devlin's original paper compared morals and torts (the civil law of wrongs). He distinguished between those things that are wrong in themselves (for example, those things that impinge on the sanctity of life), and those things that are wrong because they are prohibited (for example, a minor breach of a trading act). As Devlin wrote, 'real crimes are sins with legal definition'. Devlin's view is that lawmakers need the stuff of morals in order to fashion the law.

Hart (1987) contested Devlin's view by noting that it is not possible for a community as large and diverse as the UK to have a firm and unambiguous moral position; and that a supposedly common stock of ideas on right and wrong does not exist.

That point may be especially applicable to countries with substantial cultural pluralism. Further, although there is an obligation to obey the law, not all would hold that position without question. There is a corresponding need to consider laws that are patently unjust. The two significant questions here are whether the suppression of vice is the law's business (as it is the law's business to suppress subversiveness); and whether or not the realm of morality belongs in the law.

Society operates according to formal laws but, more importantly, according to informal codes as well. The difficulty of distinguishing formal laws from informal codes is well illustrated by Williams, referring to the unpublished work of the Canadian criminologist McNaughton-Smith (see Williams, 1971), who suggested that society operates on two codes: Code One equates to formal laws, statutes and regulations; Code

Two equates to our informal but general social understanding. When someone breaks our informal rules (Code Two) we think of legal sanctions that might be applied (Code One). ('What are we going to arrest him for, sergeant?' 'I don't know, but I'll think of something.') Rules perhaps should not be seen as fixed entities but, rather, as guides. Thus there is the apparent contradiction inherent in threats of 'working to rule'. As McNaughton-Smith asks, what are rules for if not for working to?

To extend the McNaughton-Smith analysis, offences against Code Two are argued not only in terms of Code One but also in terms of laws dating from a different context, and ones involving political options. If an option is politically unpalatable the argument for its rejection might take the form of being 'contrary to the wishes of the electorate' or 'financially irresponsible' or 'that option is a colonial relic'. All sections of society, from the experienced diplomat to the budding tradesman, will know the unwritten rules and that breaches will be sanctioned in ways that are subtle and very effective.

Those from some cultures (for example, Scandinavia) find the over-exercise of power by petty functionaries difficult to understand, and never to be admired. By way of contrast, there are cultures in which the firm exercise of bureaucratic function is seen as both normative and right. Such a diversity of viewpoint inevitably gives rise to misunderstanding, and to resentment.

One of the most frequent collisions of principle in migration issues is that between established law and ethnic ways. Prime instances here include the serious issues of the sexual mutilation of girl babies, forced marriages, extra-judicial killing, and lesser but still unacceptable issues such as spitting in public, taking over a public park for a private function, and causing a nuisance with a religious gathering.

Writers on the subject of the sexual mutilation of girl babies who have interviewed girls so treated have noted that some of the recipients of that treatment, when grown up, do not all seem to resent it, and do not think of it as mutilation. Nevertheless, it is contrary to Western ways and law, and just because some of those so treated do not resent it, it is no reason to permit the procedure. One never knows what they would have thought had they not been mutilated. Western females who, for instance, wish to have their labia surgically reconfigured at least freely choose the procedure as adults. Moreover, it is performed under proper hygienic surgical conditions. In the case of genital mutilation in some ethnic groups there is the very real danger of infection, shock and death. This is a particularly clear-cut example of the collision of cultures.

Another aspect of lawmaking is its need for constant updating. An excellent illustration of this is 'ecocide' – the destruction of the natural

environment or overuse of its non-renewable resources. The existence in the world's oceans of centres of pollution created by human disposal is evident, such as in the Sargasso Sea with its collection of noxious weed at the centre of an ocean vortex, and in many areas where concentrations of human waste and plastic detritus have been found.

Incidents of pollution such as that by oil companies in the Niger Delta, sand mining and resource depletion in various locations, Japanese whaling in Antarctica, and the difficulty of disposing of nuclear waste all pose a serious threat to the environment. Less clear-cut incidences would include the production of pollution by coal-fired power stations that not only pollute more than gas, hydro, wind or solar, but also consume a great deal of drinking-quality water to cool the process.

In all these cases the movement to exercise equality before the law may well upset those wedded to, or benefiting from, the status quo.

It does, however, afford the common man or woman some comfort to know that perceived corruption may not flourish undetected and unsanctioned. The relevance of this to migrant issues is the recognition of the world as one: what happens in one country has implications for all others. If ecocide were to become a crime then it would have to be an international offence, punishable by law.

Migrants of different faiths who arrive in Australia do, of course, bring their belief systems with them (as one woman from Sri Lanka said to the present author 'You can take the lady out of Sri Lanka but you cannot take Sri Lanka out of the lady'). What is hard for a very small minority to understand is that a tolerant secular society permits all sorts of beliefs, and tolerates all kinds of dissent. What is clear is that the Torquemada Principle should not operate: that is, the precept: 'When you know you are right you have a duty to have all others see it that way, even if you have to torture or kill to bring about such a belief.' If a 'holy' book enjoins death to apostates, that principle is morally wrong, and needs to be constrained by law. This is not to say that evangelical sects should not courteously evangelise but, rather, that they should respect the right of others to believe what they wish without fear of retribution. In all of this one must distinguish between thoughtful discussion and outright insult: it is partly what is said and partly how it is put.

Another moral dilemma in the criminal justice system relates to the treatment of the mentally ill who are also prisoners. From the judicial stage to treatment in prison they pose a special problem. If one of the main aims of criminal justice is to rehabilitate prisoners, it should do so. The difficulty here is that, having committed an offence, they can consume resources that could go to the law-abiding: on the other hand, a failure to treat them could exacerbate the criminal problem and leave

the public worse off. The current consensual view in Australia is that it is better to treat them rather than endure the extra problems that would be incurred in ignoring them as a special group: that applies, *a fortiori*, to those of alien background (see Chapter 9 on mental health and crime).

At the larger political level there is the issue of habitation. When Australia was founded as a British penal colony in 1788 it was declared a *Terra nullius* – an empty land. The larger principle here was whether or not British lore and law would prevail, even to the possible detriment of the original inhabitants. It was not until 1992 that the High Court of Australia established the doctrine of Aboriginal native title. The larger principle of whether Aboriginal natives should be subject to British law was originally addressed very much earlier in a NSW case (*R v Ballard*, 1829). In that case the judge, sitting alone, thought it essential to consult his brother judges on so important a matter. It is clear that making Aboriginal inhabitants always subject to British law is related to, but not quite the same as, native title. Indeed, the whole notion of the salience of due recognition of indigenous rights is under constant review and requires the making of fine distinctions. It does seem probable that a legal mind, already accustomed to making such distinctions, would readily do so; however, the general point about the recognition of previous occupants and their laws and occupancy is that it remains a most relevant issue – even to the point of making judgements about the form that colonial acquisition took place.

Almost parallel with that was a National Apology Day (National Sorry Day, inaugurated in 2008; see *National Apology Day* in the References) in which a national apology was given to the Aboriginal inhabitants of Australia, along with a public recognition of the wrongs endured by them, particularly the ‘stolen generation’.

The claims of the Aborigines have a parallel in the claims of the Maori peoples of New Zealand (although these were initially resolved by the Treaty of Waitangi in 1840); both raise some interesting moral dilemmas. It does seem that an overturn of the *Terra nullius* principle is right: it also appears that an apology to the descendants of the original inhabitants is appropriate. What also need to be taken into consideration are further questions such as: what is the claim of prior inhabitants? How does one determine Aboriginality? Is such a distinction a racist one that should be abandoned?

Indeed, this issue runs to the fundamental question of whether or not racist distinctions should be made. On the one hand, it is necessary to recognise that indigenous inhabitants have restitutive rights, and should have those rights acknowledged and responded to: on the other

hand, a racial distinction is made that may be open to exploitation. For example, those claiming to be of Aboriginal descent could be only a minor part Aboriginal, and predominantly Caucasian; they can be seen (rightly or wrongly) as using the compensation system for personal benefit. Here one might argue that the collision between the need to provide compensatory facilities for the indigenous and the development of a racially based policy to achieve them raises a most basic dilemma.

It is only comparatively recently that developed countries have become sensitised to this issue. Countries such as Australia, Brazil, Canada, some Central American nations, Fiji and New Zealand all have faced dilemmas that require sensitive and decisive action, even though there are also differences between them; thus, Fiji faces a problem of recurring military coups by native Fijians who have usurped the democratic rights of other Fijians, mainly from the Indian sub-continent, who have lived there for generations; in New Zealand they include the dispute over the Waitangi Treaty in relation to the rights of Maoris to behave contrary to New Zealand 'Pakeha' (European) law.

The Maoris claim these rights according to a claim that white settlers had wiped out the earlier inhabitants (the Morioris, whose remaining descendants live in the Chatham Islands, south east of New Zealand). That proposition is now not commonly accepted; King (2003) rejects that idea, and a much earlier publication (Reeves, 1898) does not even include the word 'Moriori' in its index.

The Moriori are indigenous to the Chatham Islands, and lived by a code of non-violence and passive resistance. Let us hypothetically suppose that the earlier (and not now accepted) claim of the Maoris displacing the Morioris were true, then we have an interesting question of principle. If the descendants of the Morioris were the original inhabitants of New Zealand, and were to reclaim the position that asserted their priority over the Maoris, how would that be resolved? Suppose, further, that Australian Aborigines had displaced another people, would that invalidate their claim to special consideration? All such issues are, at their heart, moral dilemmas that require extensive consideration and debate to resolve.

Moral IQ

One could readily imagine secular saints to include such people as Ghandi, Mandela, and the Dalai Lama. Clever tyrants might include such people as Napoleon and Hitler. The category of high moral IQ/low cognitive ability will include those who believe in behaving well but

Table 15.1 Matrix on cognition and moral IQ

	High cognitive	Low cognitive
High moral IQ	Secular saints	Naïve goodwill
Low moral IQ	Clever tyrants	Political unfortunates

do not have the intellectual capacity to bring it about. Finally, the low cognitive/low moral IQ category is exemplified in some recent less than admirable major world leaders.

Moral IQ is not the same as emotional intelligence. Where IQ measures cognitive ability, emotional intelligence is more concerned with the ability to perceive and understand the emotions of others. One could readily imagine an unscrupulous person perceiving and understanding the emotions of others, but using that information for selfish ends. Those with a high moral IQ may or may not have high cognitive ability, and may or may not have emotional intelligence (although the former is more probable), but nevertheless possess a strong internal sense of morality. One would wish for those with both high cognitive ability and high moral IQ to be involved in immigration debates.

Moral considerations may take several forms: one is based on notions of duty (the deontological approach); a second on character (Aristotelian virtue ethics); and a third looks at outcomes (consequentialism). Whichever view prevails one must recognise that these different approaches are not mutually exclusive. One might, for example, consider virtue ethics when looking at rioting in detention centres; duties in relation to taking in asylum-seekers; and consequentialism when considering the carrying capacity of the Australian continental mass.

Behind this lies the notion of free will. If one did not believe in free will then it would be a determinist world in which decisions and actions are pre-ordained. A report in *The Psychologist* (James, 2011) reported on the advantages of a belief in free will. Those who hold to determinism are more likely to '... cheat, be aggressive, and come up with fewer counterfactuals, to name a few examples'. A belief in free will, on the other hand, has the benefit of promoting pro-social behaviour.

James argued that to live in a world of diverse cultures we need to over-ride our animal instincts, and for that we need free will. On the other hand, determinism is a doctrine that has elements of despair about it. A fatalistic belief that a plane will crash contrasts strongly with a rational belief in good engineering and thorough pre-flight checks.

An enduring dilemma facing the study of criminality is the tension between being considered mad or bad. In dealing with this, the doctrine of human rights is useful in that it embodies principles that apply universally. Human rights principles set out the values by which we operate: they also remove caprice from decisions, and curb the untrammelled exercise of power. It is the experience of living in regimes where such a curb on power is not exercised that drives many to migrate.

It is interesting to observe that values are key to the development of migration policies, as they are to other political issues. The current debates over immigration quotas, the treatment of asylum-seekers or 'boat people', of how to treat those who overstay visas, and where overall political responsibility lies, are all values-related. However, this writer has gained the impression that some fundamentals are not discussed: for example, to whom or what are governments responsible?: The electorate? All permanent residents? UN precepts?

One could well imagine that the fundamental question is the first: to whom is the government responsible? If one were to ask questions *seriatim* it could involve (say): is the primary responsibility of governments toward those who elected them? How should one treat those who choose to come to Australia (legally or otherwise)? The balance could lie between preserving Australian society and being sensitive to those seeking to enter or settle. Should one give priority to those seeking refuge (on humanitarian grounds) or to those who can contribute both socially and economically?

In 2013 the Australian Medical Association addressed the issue of force-feeding hunger-striking would-be immigrants in detention centres who are protesting against their detention and the absence of due process. The AMA's subsequent proposal required medical practitioners to respect the wishes of those who make an informed and rational judgement (to go on hunger-strike, in this case). This principle is one of respecting personal autonomy, and one that operates by according respect to the suffering/dying who wish to end an intolerable torment. It is akin to the policy of Margaret Thatcher when she was British Prime Minister and Irish nationalists in British prisons decided to go on hunger strike. Her view was that the authorities had an obligation to provide food but it was up to the potential recipient to accept or reject it. This is the very stuff of moral dilemmas.

When migration policy is debated it must take account of values – of moral precepts. For example, humanitarian considerations are as significant as is that of population policy. Such debates in Parliament involve politicians at different levels of moral consideration. One of the

best-known approaches is that of Kohlberg et al. (1990). In this analysis Level One consists of the pre-conventional and involves such concepts as obedience and punishment. Level Two involves good relationships and good social order. Level Three is about the social contract, individual rights, empathy and universal principles. It is held here that debates on migration policy would be best advanced by debates operating at Level Three.

Part IV

Concluding Comments

16

Commentary and Conclusions

In current times migration has come to assume a salience that overshadows its previous importance, to such a degree that it might have implications for the Social Contract. Both Hobbes and Locke wrote of nations and government at a time when geographical relocation was not a prominent feature of social life. Machiavelli's earlier assertion about the malleability of human nature, that society and government were emergent phenomena, is more apposite. Were that not so, the social implications of substantial migration would be violently disruptive – perhaps the only exception to this being the concept of 'covenants'. The belief in a previous contract is often associated with a mystical understanding relating to some bygone time in a 'golden age' or a 'dreamtime'.

It is nearly half a millennium since Jean Bodin wrote of the emergence of the nation-state. One of the implications of such a concept has been the complex issue of conflicting loyalties to governments and rulers, the land, cultural heritage and fundamental moral precepts. The standard and quality of living in nations not in touch with other nations could well be impoverished as a result of such deprivation. The twin issues of the bar to entering a country, and limiting the right to leave, could mean for many that life is poor, solitary, nasty, brutish and seemingly long. From this general point one might assert the principle that all races are equal, but not all cultures are. Clearly there are some cultural practices that are to be condemned. Certain principles are indeed superordinate to cultures.

What does emerge from this current study is that, with respect to crime at least, migrants are not high on the list of crime problems; nor are they an employment problem, nor do they represent a disproportionate level of mental health problems. With respect to criminal

victimisation the position is more complex. While there are exceptions for some migrants with respect to these variables, the position is a constantly changing one.

There are several 'traditional' themes in the analysis of political systems. These include the creation of political sovereignty; the alliances between governments; the relationship between governors and the governed; and concerns with liberty and corresponding obligations. Insofar as political theorists may be associated with one of these themes, it is worth observing that none makes a feature of the role of the alien.

With all theories the divergence between preaching and practice is endemic. It is not self-evident that all men are born free and equal, nor are they everywhere in chains. Sovereign nationalism is a significant contemporary means by which population diffusion is controlled. It is one of the means by which the wavering geography of the human enterprise is influenced. The identification of people by their national origin is, in fact, a very recent phenomenon. Anselm of Bec was from Bec – not Normandy, or France: William of Ockham was from Ockham – not Surrey or England. It is timely to recall that passports were an early 20th-century innovation.

On the one hand, it is highly probable that the topic of crime and the foreign-born is intimately connected to the role that divisive nationalism presently plays; this may evolve further within the foreseeable future. On the other hand, we need to view crime within the framework of a general account of behavioural morality. Criminality should be seen not only within the context of law, both civil and criminal, but also within the framework of belief and ideology. The Comtean Positivist position has tended to divert attention away from ethical considerations in research. In his later writings Comte placed ethics and values in a more prominent position. No doubt that fate will also befall the debate on the criminality of the foreign-born.

It deserves the strongest possible emphasis that relating crime to birthplace is a first step only. Being born in Russia or Rarotonga does not make one more or less disposed to criminal behaviour. It is other features attached to being from a particular country, and subsequent treatment, that determine criminality – a conclusion that should be tempered by the influence of legal and administrative precepts in the adopted land. In considering the differential rates of crime for the foreign-born there appears to be substantial differentiation between groups in terms of proportions – but not of absolute numbers. It is clear that we are talking about minuscule proportions; crime rates of 70 per 100,000 are very small indeed.

It is worthy of note that the issue of crime is far more extensive than what is covered by the ordinary conception of 'cops and robbers'. It also includes cyber crime, forensic work, criminalistics, police culture, corporate crime, and international issues such as genocide and terrorism. This wider view should concern us.

It should be noted that migrants as a whole are responsible for less than their expected share of conventional crime. That is a first step only. Rather, it is much more likely that post-natal features of that ethnic identity dispose individuals to different attitudinal and opportunity structures. In this context one might ask about systems of informal social control. The differentials one sees this decade will most likely change in the next decade. Further, second-generation migrants have rates poised between the (low) first-generation migrant rate and the native rate.

Here it would be useful to note the various categories of crimes involving migrants. One includes offences committed by a tyrannical regime against people such that they feel compelled to migrate; a second involves harsh treatment of asylum-seekers on arrival; a third comprises conventional crimes that may be committed by migrants; and a fourth includes incidents of victimisation of migrants.

Constructive suggestions for debate

One proposal is worthy of debate – should those who wish to be refugees, and set up their own state, be given land to do so. They would have plenty of precedents to call on, and plenty of sources of advice. Such a proposal would relieve the pressure on current target countries, would likely attract beneficial international payments, and afford a social and political crucible that would invest us with a wider understanding of the workings of politics.

A second and separate suggestion is that a country might consider re-structuring their Upper House in order to provide fora for different constituencies. For example, Roma people in Europe are not held in wide regard, and do suffer adverse discrimination, compounded by the absence of both leadership and a due voice in the political process. If there were reserved seats in the European Parliament for significant minority groups – Roma or Kurds, for example – it would ensure that their voice was heard at legislative level, and would enhance the reputation of Europe for providing such a measure. Just as in Australia the Lower House represents the electorate seat by seat, the Upper House represents the states, so might the lower house of a larger political entity

represent its constituents and an Upper House provide a forum for discussion that necessarily includes representatives of the discriminated against and dispossessed.

One might also consider reform of the UN. Having a Security Council with power of veto makes that institution undemocratic, and is a good argument for its disbandment. Further, among the 193 UN member states, many are tyrannies: should they lecture other nations on how to behave? This is certainly another topic worthy of consideration.

Yet again, a wider view of migration involves significant moral debates: the loss to donor countries of those who choose to migrate, and the impact upon the existing culture of host countries. The issue of asylum-seekers and, to a similar or greater extent, visa overstayers poses problems. It is worth noting that asylum-seekers do present a financial and a humanitarian problem, but a seemingly disproportionate amount of time is spent on boat people in comparison to overstayers.

Consideration of migration should also canvass the notion of its impact on host-country citizens. One view is that the mere desire of people to come to Australia is not a compelling reason to accept them. A wider vision would look at all facets, including commitment to international conventions, the impact on the country, and relieving the 'push' pressure on migration by helping to modify the behaviour of tyrannical regimes.

Australia has a responsibility to would-be immigrants, but where does this begin geographically? And where politically? Immigration has not only changed the face of Europe, but has also revolutionised it. Immigration, particularly Muslim immigration, has planted in Europe a new set of competing values that are changing the face of that continent as we know it. There are attempts there, on the part of some at least, to make Europe conform to Muslim needs and beliefs: in other words, these attempts constitute a countervailing view to European law and lore. Consensus will, it is hoped, emerge.

Views on migration

The shortsighted view of Europe as needing a compliant workforce is one that has implications far beyond the simple economic drivers that gave rise to it. Immigration might make up for a falling native birthrate, but it also adds to social complexities far beyond the issues covered by simple economics. In much the same way the decline of the British colonial empire brought about social and legal complexities far beyond the

imaginings of those responsible for building it. The supposed, and real, benefits of diversity, of improved food choices, of the contemplation of competing values, and general cultural contributions must be matched against the problems raised by the imposition of foreign values and ancient hatreds, and the pressure to adopt ways alien to European traditions. Therefore the obligation to respect the wishes of citizens must be balanced by the need to be respectful of those seeking asylum, refuge or settlement.

Given a sufficient number of ethnically diverse peoples the pressure will be not for them to integrate, but for them to have the right to a separate but parallel existence, while still drawing upon the resources of the state to support the severely disadvantaged. Worryingly, the dominance of forms of organised religion reflecting a dominant and intolerant fundamentalist perspective might well have a renaissance.

Migration issues are the most pressing of modern problems, and need addressing: without such consideration the European gains of the past 500 years may well be dissipated. The tolerance of ideas contrary to 'received' wisdom is a battle that was fought over centuries. It would be ten thousand pities if such a battle had to be waged yet again against intolerance, certitude of belief, the arrogant assumption that the views held by any extremist should be given credence, or that there should be capitulation to terrorist ideologies.

Among the several issues that have emerged in this study is that it is surprisingly curious that the Australian government has never been reported as consulting Aborigines, the original inhabitants, about immigration policy. This raises the issue of whether or not Indigenous inhabitants' views should be sought. Significant here is the issue of where primary responsibilities lie. Clearly the Aboriginal inhabitants have just claim: on the other hand, should Parliament be basically responsible to *all* citizens, regardless of origin? These views need debate and resolution.

Pressing problems

Among the most pressing problems facing humanity are climate change and overpopulation. The capacity of Planet Earth to support an ever-increasing population is finite. Unimpeded population growth, combined with migration movements because of climate change, make it a most pressing issue. This planet's ability to provide both natural resources and the means of disposing of waste is limited by nature. The

development of arable land at the expense of wildernesses (such as wetlands and rainforests), over-fishing, ensuring the availability of potable water and the consumption of both ores and of fossil fuels are all inter-linked. How we manage these issues is vital to the survival of life on Earth.

As the population increases, the availability of land and the capacity to dispose of waste decrease. No doubt there will be innovative ways of stemming the inevitable (such as mass farming, the geo-sequestration of waste and new forms of energy): however, the time will come when technology can no longer provide solutions to such problems.

At the time of writing Earth was supporting over eight billion people, plus all of the animal life that is connected to human use and consumption. Given humanity's history of not being able to contain sexual behaviour, the only solution seems to be contraception – voluntary or otherwise. Methods of how to not only contain, but also to reduce, the population, are well known: the political will to apply them, however, is sapped by both populism and short-termism. These issues need to be part of the debate on immigration policy and practice. Whether we approve of them or not is irrelevant. The survival of life on Earth depends upon the implementation of population policies: in this, migration is a critical variable.

It will be appreciated that it is easy, and sometimes justified, to be critical of governmental immigration policy. Whatever decisions are made always include a moral dimension. Decisions should not only be invested with a political ideology but also with a sense of values. In Australia it is often the Prime Minister who determines how migration policy is shaped. One must bear in mind that the Prime Minister is not approved by the electorate, but simply elected by caucus as the leader of the party in government. As the Prime Minister has within his/her gift the awarding of ministerial portfolios it is clear that such ministers are beholden to him/her. The ebb and flow of hard-headed nationalism and of moral obligation are in constant interplay, a situation complicated by there being obligations towards people from countries with which Australia has engaged in recent wars.

Other considerations also arise, such as the provision of education for foreigners, crisis relief and the acceptance of refugees. The forms of aid that a developed nation may offer may be construed in a much wider context. It is naïve to suppose that the absolute amount of money given is proportional to beneficial outcomes. One needs to be mindful of: the proportion that is lost in corruption and inefficiency; the cost of

the delivery of services; administrative costs; and the extent to which volunteers are used. If one were to assert some propositions to guide a serious debate, they would include:

- Every sovereign state has the right to determine who is admitted to the country, and who is granted citizenship.
- There is a moral obligation to help those from other nations who are in straitened circumstances. There is a corresponding responsibility for potential incomers to conform to certain standards of health and behaviour while in the host country.
- The forms of assistance that may be offered to the disadvantaged can vary in both kind and in quantity.
- There is a limit to the amount of aid that a nation can offer if it is not to disadvantage its own citizens.
- There is a need to recognise the major places from which refugees and asylum-seekers come, and to use diplomatic means to stem the flow by helping ameliorate the conditions that drove them to emigrate.

The simple notion that there is one kind of aid – financial – is an unrealistic one. A shortage of water, food, housing and other amenities also stems not so much from a shortage of resources but from a surplus of people. Thus there are twin problems: one relates to the push-pull effects of a politically disagreeable environment; the other is rapid population growth in the host country. Here an obvious solution is to foster effective birth control. It is totally unrealistic to ask people to cease sexual activity: one might as well order the tides to stand still. To that end we need to recognise that there are pressure groups and religious organisations that are opposed to birth control, and that there is a pressing need to have their influence moderated.

With this goes the need to have a countervailing idea. In many Third World countries large families operate as a means of social security, providing more children to both join the labour market and to mind parents in their old age. This is a problem of both economics and of social policy. Among the various forms of ameliorative aid that might be offered are:

- Take in those in need, educate them and return them to their country of origin (as was done in the post-war Colombo Plan).
- Provide financial assistance for crises and/or disasters.
- Supply teachers from First World nations to educate those in disadvantaged countries.

- Provide equipment that would make the disadvantaged self-sufficient; fishing gear, well-digging and water-supply equipment, tools for contour ploughing.
- Help set up a separate state for refugees, probably on an island, and assist in its development.
- Give help to poorer countries to set up systems of government in their own country that would provide the kind of political system that, obviously to them, seems desirable.

Within the widest context crime may be viewed as including everything from simple housebreaking to genocide, war crimes, crimes against humanity and cruelty to animals. Offences of violence by conquerors, economic and political dispossession, slavery or forced labour and special problems faced by nomads do not ordinarily form part of the general picture of migration and crime. The conclusion one must draw is that typologies of migration reveal the restrictive nature of many theoretical explanations.

Some less appreciated consequences of migration

There are many curiosities relating to multiculturalism. For example, if we are committed to multiculturalism should we not require all children to attend a state primary school – no exceptions – thereby ensuring a total mix? These are the formative years in which outlook and attitudes are most readily formed. Such a policy would ensure that total cultural immersion would be provided in the formative years, along with learning about the diversity of peoples, emphasising the need for tolerance, and providing a common account of national identity.

With respect to population growth, there are distinct issues that must be dealt with. First, population growth needs to be matched to supporting infrastructure (such as transport, housing, energy supplies, schooling): second, the growth of the population should be considered in relation to the capacity of society to absorb such changes without too adverse an effect upon the current citizenry: third, in the light of dispersal requirements, one must consider directed labour for a fixed period, and deal with the issue of ethnic enclaves (and related issues such as face covering – see Chapter 11); finally, the finite capacity to support a population before people start to die of hunger, pollution and lack of water should be recognised. All of these considerations are deserving of Parliamentary debate.

On the positive side there are unintended beneficial consequences of migration from diverse backgrounds. A diversity of values means that the nation is less likely to fall prey to demagogues. Where there are politicians, intrigues and a diversity of views, a self-styled leader would have great difficulty finding a totally cohesive cohort of citizens willing to follow an integrated and prescribed set of policies.

There is another curious paradox of immigration policy; in order not to have a racist state one needs a racially based immigration policy. One cannot, for example, have a policy that favours (say) only Tamils, or Afghans or Latin Americans. To do so would be to produce a nation that would be a replica of the land that immigrants left. To have a mix of races and cultures, to make a multicultural society, one needs to have a policy that ensures the mix, and to do that, intake must be based on racial criteria.

A final comment

One has to sympathise with the Minister for Immigration (notwithstanding his being 'not being available to be interviewed' by the present author), and to recognise the difficulties of that portfolio, which combines economics, law, international covenants, national security, social and population policy and morality. The difficulty of balancing those considerations must be fraught with all sorts of social conundrums. There are no absolute 'solutions' – only policy decisions that are invested with values: whatever decision is made, it is bound to upset someone. Clearly, the notion of the UN is admirable but its constitutional basis and practice bears close scrutiny.

The focus of concern in this study is not upon the relatively small numbers of migrant criminals but, rather, upon explanations for the differentials between migrants and the native-born. This work does not have pretensions to definitiveness. It does, however, aspire to be seen as one that will foster and enlarge understanding of the relationship between crime and the foreign-born. In so doing the hope is expressed that it will also afford a point of departure for future studies, act as an early guide to those with practical concerns, as well as enhancing our understanding of an issue that seems to generate more heat than light.

References

Online sources

- Amnesty International*: www.amnesty.org.au/search/results?cx=008361881158091311113%3Amm7dcbuvmwi&cof=FORID%3A11&q=bullets&search.x=0&search.y=0
- Arms trade*: www.amnesty.org.au/armstrade
- Asylum boats and numbers*: <http://sievx.com/articles/psdp/20130129BoatArrivals1976-2012.pdf>
- Asylum seekers*: [www.sbs.com.au/news/article/1294102/At a glance-Who-takes-the-most-asylum-claims](http://www.sbs.com.au/news/article/1294102/At_a_glance-Who-takes-the-most-asylum-claims)
- Asylum trends*: www.immi.gov.au/media/publications/statistics/asylum/_files/asylum-trends-aus-annual-2011-12.pdf
- Attractiveness. The psychologist*, 19 (4), 2006: 199 and www.cpc.unc.edu/addhealth
- Australian Crime Commission*: www.crimecommission.gov.au
- Australian Human Rights Commission: Racial discrimination*. www.humanrights.gov.au/race-discrimination
- Australian Institute of Health and Welfare: Report on the overseas born in prison*: www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442453153
- Australian Standard Classification of Cultural and Ethnic Groups (ASCCEG)*: www.abs.gov.au/ausstats/abs@.nsf/mf/1249.0?OpenDocument
- Australians in jail overseas*: www.dfat.gov.au/dept/annual_reports/10_11/performance/2/2.1.html#assisting
- Bipolar disorder*: www.ox.ac.uk/media/news_stories/2010/100907.html
- BMA patient awards (BMA leaflets on stress and anxiety)*: www.ntw.nhs.uk/section.php?page=news&t=an&nid=44
- Boat arrivals*: <http://sievx.com/articles/psdp/20120124BoatArrivals1976-2011.pdf>
- Canada's immigration critics*: <http://cjsonline.ca/pdf/destination.pdf>
- Canadian Correctional Investigator*: <https://www.ncjrs.gov/App/AbstractDB/AbstractDBDetails.aspx?id=262813> and www.oci-bec.gc.ca: <https://www.ncjrs.gov/App/AbstractDB/AbstractDBDetails.aspx?id=262813>
- Canadian immigration newsletter*: www.cicnews.com/2012/10/canadian-criminal-rehabilitation-immigration-purposes-101927.html
- Canadian immigrant crime*: www.canadianimmigration.net/news/crime-and-canadian-immigration.html#.UgNERYLdEXw and <http://orangellp.ca/blog/immigration-has-lowered-canadian-crime-rates-why-are-we-surprised>
- Challenging racism*: www.uws.edu.au/ssap/school_of_social_sciences_and_psychology/research/challenging_racism/findings_by_region
- Chinese re-education through labour*: www.hrw.org/legacy/campaigns/china-98/laojiao.htm
- Citizenship and the constitution*: http://sydney.edu.au/law/slr/slr30_1/Irving.pdf

- Complaints against the police:* www.communitylaw.org.au/flemingtonkensington/cb_pages/files/VLF%20REPORT%20-Effective%20Investigation.pdf; see also Hopkins (2009) in Books and articles
- Corruption perception index:* www.transparency.org/policy_research/surveys_indices/cpi/2010 and www.transparency.org/cpi2012/results
- Country of first preference of overseas students:* www.timeshighereducation.co.uk/comment/columnists/australia-drive-for-international-students/2002507. article
- Deaths in custody:* http://artsonline.monash.edu.au/thebordercrossingobsevatory/files/2013/02/BN-5_Defining-Border-Deaths_Updated-Sept-2012.pdf
- Deportation:* www.lawhandbook.org.au/handbook/ch22s01s05.php#Ch135Se57581
- Detention:* www.globaldetentionproject.org/countries/asia-pacific/australia/detention-facts-and-figures.html
- Dictation test:* <http://foundingdocs.gov.au/item-did-16.html>
- Displaced persons:* www.unhcr.org.uk/about-us/key-facts-and-figures.html
- Drugs UNODC:* <http://books.google.com.au/books?hl=en&lr=&id=HB9PuEhHahQC&oi=fnd&pg=PA29&dq=organised+crime+and+drugs+unocd&ots=tkJlHgyHoG&sig=o1NzoKhFBXw2kMKw686Amv6nYC4#v=onepage&q=organised%20crime%20and%20drugs%20unocd&f=false>
- European social survey:* www.europeansocialsurvey.org
- European sourcebook on criminality:* www3.unil.ch/wpmu/europeansourcebook/; see also www3.unil.ch/wpmu/europeansourcebook/files/2012/06/Codebook_SBK_4th-ed_rev080918_r-11.pdf
- Eurostat Sheet 58/2010. Crime and criminal justice:* http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-10-058/EN/KS-SF-10-058-EN.PDF
- Failed states:* <http://ffp.statesindex.org/rankings-2013-sortable>
- Family violence:* www.austdvclearinghouse.unsw.edu.au
- Female genital mutilation (FGM):* www.who.int/mediacentre/factsheets/fs241/en/
- Fertility (see also Population growth rates):* http://en.wikipedia.org/wiki/List_of_countries_by_population_growth_rate
- Five hundred lashes:* www.theage.com.au/national/500-lashes-and-jail-for-aussie-in-saudi-arabia-20111207-1oill.html#ixzz1fs00zLXX
- Forced marriage:* www.womenslegaltas.org.au/news/change-to-forced-labour-and-forced-marriage-laws
- Gini Coefficient:* www.photius.com/rankings/economy/distribution_of_family_income_gini_index_2012_0.html
- Global Peace Index:* www.visionofhumanity.org/pdf/gpi/2013_GPI_Fact_Sheet.pdf and www.visionofhumanity.org/pdf/gpi/2013_Global_Peace_Index_Report.pdf
- Happiness:* http://worlddatabaseofhappiness.eur.nl/hap_nat/nat_fp.php?mode=1 and www.gfmag.com/tools/global-database/ne-data/11940-happiest-countries.html#ixzz29KmZQgoD and www.happyplanetindex.org/data at www2.eur.nl/fsw/research/veenhoven
- Health expenditure in Australia:* www.aihw.gov.au/expenditure
- Health inequalities in Australia, mortality:* www.aihw.gov.au/publication-detail/?id=6442467698
- Health following prison release:* <http://nhregister.com/articles/2013/07/22/news/doc51ede44218e54098240579.txt>
- Howard League for Penal Reform:* www.howardleague.org

- Human Development Index (economy)*: www.nationmaster.com/graph/eco_hum_dev_ind-economy-human-development-index; and http://en.wikipedia.org/wiki/Human_Development_Index
- Human rights*: <http://www.humanrights.gov.au/human-rights-homepage> and www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx; see also UN Declaration of Human Rights in Books and articles
- Human suffering index*: www.globalideasbank.org/site/bank/idea.php?ideaId=775; see also www.ncbi.nlm.nih.gov/pubmed/12179239
- Human trafficking*: www.humantrafficking.org/countries/australia
- Hunger*: <http://library.thinkquest.org/C002291/high/present/stats.htm>
- Immigration Restriction Act*: www.naa.gov.au/collection/a-z/immigration-restriction-act.aspx
- Incarceration rates*: en.wikipedia.org/wiki/List_of_countries_by_incarceration_rate
- Interregional crime and justice research institute*: www.unicri.it
- International Crime Victims Survey*: http://en.wikipedia.org/wiki/International_Crime_Victims_Survey
- International Labour Organization (forced labour)*: www.ilo.org/global/topics/forced-labour/lang--en/index.htm
- International Organization for Migration (IOM)*: www.iom.int/jahia/jsp/index.jsp
- Joint Standing Committee of Migration Report* (Canberra): www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/reports.htm
- Legatum prosperity index*: www.prosperity.com/Ranking.aspx
- Life expectancy*: www.worldbank.org/depweb/english/modules/basicdata/datanotbasic.html
- Mabo case*: <http://foundingdocs.gov.au/item-did-33.html>
- Mental and cognitive disabilities NSW*: www.mhdcd.unsw.edu.au/sites/ and www.mhdcd.unsw.edu.au/files/u18/pdf/MHDcdbackgroundOutlaws%20Conf1.pdf
- Mental health and immigration*: <http://alert.psychiatricnews.org/2013/03/immigration-may-contribute-to-mental.html>; see also <http://onlinelibrary.wiley.com/doi/10.1046/j.0001-690X.2003.00246.x/abstract;jsessionid=5680BEE37F11911BD84CCCE582D2DDBE.d04t03?deniedAccessCustomisedMessage=&userIsAuthenticated=false>
- Mental health of prisoners 2013*: www.aihw.gov.au/publication-detail/?id=60129543948
- Mental health pamphlets*: www.ntw.nhs.uk/pic/selfhelp
- Migration agents*: www.minister.immi.gov.au/media/media-releases/2010/cb10082.htm; see also www.mara.gov.au
- Mindframe media*: www.mindframe-media.info/for-media/reporting-suicide/Downloads/?a=6009 and www.mindframe-media.info/for-mental-health-and-suicide-prevention
- National Apology Day*: www.canberra100.com.au/calendar/view/750/national-apology-day/
- Negative population growth*: <http://geography.about.com/od/populationgeography/a/zero.htm>
- NOMS*: www.justice.gov.uk/about/noms
- Organised crime*: <http://link.springer.com/article/10.1007/s12117-007-9013-x#page-1> and www.unodc.org/unodc/en/organized-crime/
- Outcare*: <http://outcare.com.au/criminal-record-deportation-issues-for-migrants>

- Palestinians*: www.unrwa.org/palestine-refugees
- Police ID of alleged offenders*: <http://uk.answers.yahoo.com/question/index?qid=20090131044316AAxrHh9> and http://en.wikipedia.org/wiki/Classification_of_ethnicity_in_the_United_Kingdom
- Population growth rates*: http://en.wikipedia.org/wiki/List_of_countries_by_population_growth_rate; see also *Fertility, Negative population growth*.
- Protective Security Risk Review*: www.protectivesecurity.gov.au/governance/security-risk-management/Pages/Security-risk-management.aspx
- Questions and answers about asylum-seekers*: www.hreoc.gov.au/racial_discrimination/face_facts_05/refugee.html
- Racism report*: see *Challenging racism*.
- Randazzo*: www.sbs.com.au/dateline/story/transcript/id/600002/n/Italian-politics
- Ratio of migrants by nation*: www.cia.gov/library/publications/the-world-factbook/fields/2112.html
- Refugee numbers*: www.refugeesinternational.org/policy/field-report and https://docs.google.com/spreadsheets/cc?key=0AonYZs4MzLZbdEISazg4bE04MWIFVURmQW10TDVneHc&hl=en_US#gid=2
- Satisfaction with the police*: www.aic.gov.au/en/publications/current%20series/cfi/161-180/cfi161.aspx
- Scanlon report on social cohesion*: www.scoa.org.au/resources/387424_72752_Social%20Cohesion%20Report%202009_final.pdf
- 'Scared straight'*: <http://cjb.sagepub.com/content/10/2/209.short>
- Shipwreck*: <http://oceans1.customer.netspace.net.au/austrun-wrecks.html>
- Smartraveller*: www.smartraveller.gov.au/tips/arrest-jail.html
- Student's t-test*: http://en.wikipedia.org/wiki/Student's_t-test
- Terrorism* (DFAT) (Department of Foreign Affairs and Trade): www.dfat.gov.au/publications/terrorism/chapter1.html
- Transit camps*: <http://news.bbc.co.uk/2/hi/europe/3702634.stm>
- Transparency International*: www.transparency.org; see also *Corruption perception index*.
- UNESCO definition of migrants*: www.unesco.org/most/migration/glossary_migrants.htm
- US immigrant crime rate*: www.coloradoimmigrant.org/downloads/Immigrants%20and%20Crime%20Fact%20Check.pdf
- Violence against women*: www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/Violence_AgainstWomen
- Visas*: www.nationalvisas.com.au/skilled/skilledvisas.htm and www.immi.gov.au/visawizard/
- White Australia policy*: www.naa.gov.au/collection/a-z/immigration-restriction-act.aspx
- White slaves and white Australia: prostitution and the making of Australian society*: www.hawaii.edu/hivandaids/White_Slaves_and_White_Australia_Prostitution_and_Australian_Society.pdf
- World database of happiness*: <http://worlddatabaseofhappiness.eur.nl>
- World summit 2005: follow up of world summit: reaffirmation of UN principles*: <http://responsibilitytoprotect.org/world%20summit%20outcome%20doc%202005%281%29.pdf>
- All websites correct as of August 2013

Books and articles

- Abadinsky, H. (2010). *Organized crime* (9th edition). Belmont: Cengage.
- Abbot, E. (Ed.) (1931). *Report on crime and criminal justice in relation to the foreign born*. Washington DC: US Government Printing Office.
- ABS. (2006). *2006 Census*. Retrieved from www.abs.gov.au/websitedbs/censushome.nsf/home/historicalinformation2006
- ABS. (2011). *2011 Census*. Retrieved from www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/0
- The Age*. (2011). 500 lashes and jail for Aussie in Saudi Arabia. 7 December. Retrieved from www.theage.com.au/national/500-lashes-and-jail-for-aussie-in-saudi-arabia-20111207-1oill.html#ixzz1fsO0zLXX
- Alan, J., Burmas, M., Preen, D. & Pfaff, J. (2011). Inpatient hospital use in the first year after release from prison: a Western Australian population-based record linkage study. *ANZ journal of public health*, 35 (3): 264–269.
- Amnesty International Canada. (2013). *Sri Lanka's assault on dissent*. Retrieved from www.amnesty.ca/research/reports/sri-lankas-assault-on-dissent
- Andrews, J.Y., Forsyth, S., Wade, J. & Skinner, S.A. (2011). Sensitivity of a national coronial database for monitoring unnatural deaths among ex-prisoners in Australia. *BMC research notes*, 4: 450.
- Andrijasevic, R. (2006). *How to balance rights and responsibilities on asylum at the EU's southern border of Italy and Libya*. University of Oxford: COMPAS. Retrieved from <http://oro.open.ac.uk/12652>
- Aoyama K (2009). *Thai migrant sex workers: from modernization to globalization*. Basingstoke: Palgrave Macmillan.
- Ashcroft, J., Daniels, D.J. & Hart, S.V. (2003). *Towards a drugs and crime research agenda for the 21st century*. Washington DC: US Department of Justice.
- Aslan, A. (2009). *Islamophobia in Australia*. Glebe: Agora Press.
- Attractiveness. (2006). *The psychologist*, 19 (4): 199 and www.cpc.unc.edu/addhealth
- Australian Institute of Criminology (AIC). (2011). Tipsheet 20. Court based mental health diversion programs. *Research in practice*. June.
- Australian Institute of Health and Welfare. (2010). *Health of prisoners 2009*. Cat. No. PHE 123 and Issue 28 of October 2010 (same title).
- Auwal, M.A. (2010). Ending the exploitation of migrant workers in the Gulf. Retrieved from <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/forwa34&div=24&id=&page=>
- Bagley, C., Jacobson, S. & Palmer, C. (1973). Social structure and the ecological distribution of mental illness, suicide and delinquency. *Psychological medicine*, 3 (2): 177–187.
- Baldry, E., Dowse, L. & Clarence, M. (2010). People with mental and cognitive disabilities: pathways into prison. Background Paper for the National Legal Aid Conference, Darwin 2011. Retrieved from www.ntlac.nt.gov.au/doco/bpcpapers/People%20With%20Mental%20and%20Cognitive%20Disabilities%20-%20Pathways%20Into%20Prison.pdf
- Barbagli, M. & Colombo, A. (2009). Immigrants as authors and victims of crime: the Italian experience. *Sociology of crime, law, and deviance*, 13: 69–94.
- Barry, J.V. (1958). *Alexander Maconochie of Norfolk Island: a study of a pioneer in penal reform*. Melbourne: Oxford University Press.

- Bartels, L. (2011). *Crime prevention programs for culturally and linguistically diverse communities in Australia*. Report 18. Retrieved from www.aic.gov.au/publications/current%20series/rip/1-10/18.html
- Bateson, C. (1972). *Australian shipwrecks: including vessels wrecked en route to or from Australia, and some strandings*. Sydney: Reed.
- Bauder, H. (2008). Immigration debate in Canada: how newspapers reported 1996–2004. *International migration and integration*, 9: 289–310.
- BBC. (2011). UK Border Agency attacked for ‘dumping’ missing cases. 4 November. Retrieved from www.bbc.co.uk/news/uk-politics-15581877
- Bell, V. (2009). Forum beyond boundaries. *The psychologist*, 22 (3): 190.
- Bem, K., Field, M., McClennan, N., Meyer, S. & Morris, T. (2007). A price too high: the cost of Australia’s approach to asylum seekers. In *The Australian Government’s policy of offshore processing of asylum seekers on Nauru, Manus Island and Christmas Island*. Glebe and Carlton: A Just Australia and Oxfam Australia.
- Bevan, W.H. (2012). Charity begins at home. An interview with Dr Emma Mawdsley. *Cambridge alumni magazine*. Issue 66. Easter.
- Biles, D. & Mulligan, G. (1973). Mad or bad – the enduring dilemma. *British journal of criminology*, 13 (3): 275–279.
- Bilodeau, A., McAllister, I. & Kanji, M. (2010). Adaptation to democracy among immigrants in Australia. *International political science review*, 31 (2): 141–165.
- Blackmore, S. (1999). *The meme machine*. Oxford: Oxford University Press.
- Blay, S., Burn, J. & Keyser, P. (2007). *Offshore processing of asylum seekers: the search for legitimate parameters*. Sydney: Halstead Press.
- Bradley, K. & Cartledge, P. (2011). *The Cambridge world history of slavery*. Cambridge: Cambridge University Press (Vol 1: to appear in 4 vols).
- Bratich, J.Z. (2008). *Conspiracy panics: political rationality and popular culture*. New York: State University of New York Press.
- Bruckert, C. & Parent, C. (2002). *Trafficking in human beings and organized crime: a literature review*. Research and Evaluation Branch Community, Contract and Aboriginal Policing Services Directorate: Royal Canadian Mounted Police, Ottawa. April. Retrieved from www.rcmp-grc.gc.ca/pubs/ccaps-spcca/traffick-eng.htm
- Bryson, B. (1990). *Mother tongue*. London: Penguin.
- Burdekin, B. (1993). *Human rights and mental illness: Report of the national inquiry into the human rights of people with mental illness*. 2 vols. Canberra: Human Rights and Equal Opportunity Commission. Retrieved from www.humanrights.gov.au/news/speeches/burdekin-national-inquiry
- Camp, S.L. (1987). *The international human suffering index*. Washington DC: Population Crisis Committee.
- Carcach, C. & Huntley, C. (2002). *Community participation and regional crime: trends and issues in crime and criminal justice*. Report No. 222. Griffith: Australian Institute of Criminology. Retrieved from www.aic.gov.au/documents/0/2/8/%7B0280A17B-5E35-4402-B130-5FB03A7C1FE5%7Dti222.pdf
- Carrington, K., McIntosh, A. & Walmesley, J. (2007). *The social costs and benefits of migration into Australia*. Canberra: Department of Immigration and Citizenship. Retrieved from www.immi.gov.au/media/publications/research/social-costs-benefits/contents_exec_summary_and_intro.pdf

- Ceobanu, A.M. (2011). The usual suspects? Public views about immigrants' impact on crime in European countries. *International journal of comparative sociology*, 52 (1–2): 114–131.
- Chan, W. (2005). Crime, deportation and the regulation of immigrants in Canada. *Crime, law, and social change*, 44: 153–180.
- Chappell, D. & Wilson, P.R. (1996). *Australian policing: contemporary issues*. 2nd edition. Sydney: Butterworth.
- Christiansen, K.O. (1963–64). Delinquent generations in Denmark. *British journal of criminology*, 4 (3): 259–264.
- Christopher, E. (2010). *A merciless place: the lost story of Britain's convict disaster in Africa*. Oxford: Oxford University Press.
- Clapperton, A., Sherker, S. & Cassell, E. (2011). *Epidemiology of rock fishing in Australia*. 2–4 November. Brisbane Convention and Exhibition Centre. 10th National Conference on Injury Prevention and Safety Promotion.
- Clark, C.M.H (1977–8). *A history of Australia*. Melbourne: Melbourne University Press.
- Cohen, S. (1982). Western crime control models in the third world: benign or malignant? *Research in law, deviance and social control*, 4: 85–119.
- Cole, J. & Spalding, H. (2009). *The invisible smile*. Oxford: Oxford University Press.
- Collins, J. (1991). *Migrant hands in a distant land: Australia's post-war immigration*. Sydney: Pluto Press.
- Collins, J. & Jordan, K. (2009). Ethnic precincts as ethnic tourism destinations in urban Australia. *Tourism, culture & communication*, 9 (1–2): 79–92.
- Collins, J., Noble, G., Poynting, S. & Tabar, P. (2000). *Keababs, kids, cops & crime: youth, ethnicity, and crime*. Sydney: Pluto Press.
- Coyle, I.R. & Francis, R.D. (1976a). Crime, migrants and unemployment. *Australia and New Zealand journal of criminology*, 9: 71–76.
- Coyle, I.R. & Francis, R.D. (1976b). Sentencing: applications of videotape in analysis and training. *Journal of behavioural science*, June.
- Crabbe, B. & Francis, R.D. (1980). The relationship between indicators of failure to adjust amongst nativity groups. *Australia and New Zealand journal of sociology*, 16 (3): 107–110.
- Cressey, D.R. (2008). *Theft of a nation: the structure and operations of organized crime in America*. New Brunswick: Transaction Publishers.
- Crock, M. & Berg, L. (2011). *Immigration refugees and forced migration*. Sydney: Federation Press.
- Cunneen, C. & Stubbs, J. (1997). *Gender, race and international relations: violence against Filipino women in Australia*. Sydney: Institute of Criminology.
- Cunneen, C. & Stubbs, J. (2002). *Migration, political economy and violence against women: the post immigration experiences of Filipino women in Australia*. In Freilich, E.J. et al. (Eds) *Migration, culture conflict and crime*. Dartmouth: Ashgate.
- Cunneen, C. & White, R. (2011). *Juvenile justice: youth crime in Australia*. Melbourne: Oxford University Press.
- Darwin, C. (1981). *On the origin of species*. Cambridge: Cambridge University Press.
- Darwin, C. (1998). *The expression of emotions in man and animals*. London: HarperCollins.
- Davis, K. (1968). Evolving models of organizational behaviour. *Academy of management journal*, 11: 27–38.

- Dawkins, R. (1976 [2006]). *The selfish gene*. Oxford: Oxford University Press.
- Dein, K., Williams, P.S. & Dein, S. (2007). Ethnic bias in the application of the Mental Health Act 1983. *Advances in psychiatric treatment*, 13: 350–357.
- Dennett, J.C. (1997). *Philosophical essays on mind and psychology*. London: Penguin.
- Department of Foreign Affairs and Trade (DFAT). (2011). *Annual report 2010–11*. Retrieved from http://www.dfat.gov.au/dept/annual_reports/10_11
- Department of Immigration and Citizenship (DIAC). (2010). *Report*. Canberra: AGPS.
- Department of Immigration and Multicultural Affairs (DIMIA). (1996). *Report*. Canberra: AGPS.
- Devlin, K. (1970). *Sentencing offenders in magistrates' courts*. London: Sweet and Maxwell.
- Devlin, P. (1963). *Enforcement of morals*. London: Oxford University Press.
- Dishion, T.J., McCord, J. & Poulin, F. (1999). When interventions harm: peer groups and problem behaviour. *American psychologist*, 54 (9): 755–764.
- Distin, K. (2005). *The selfish meme*. Cambridge: Cambridge University Press.
- Dovey, W.R. (1952, 1955, 1957). Commonwealth Immigration Advisory Council. *Investigation of the conduct of migrants*. Three reports. Canberra: Dept. of Immigration Library.
- Eastaie, P. (1994). Addressing violence against women in the home: how far have we come? How far to go? *Family matters*, 37: 86–93.
- Edwards, A. & Gill, P. (2003). *Transnational organised crime: perspectives on global security*. London: Routledge.
- Ekman, P. (1985). *Telling lies. Clues to deceit in the marketplace, politics, and marriage*. New York: W.W. Norton.
- Erikson, K.T. (1966). *Wayward Puritans*. New York: Wiley.
- Evatt, E. (1995). *Multiculturalism and criminal law: the work of the Law Reform Commission*. Compilation from AIC. Canberra (ISBN 0 642 22653 9).
- Face recognition (2009). *The psychologist*. July: 571.
- Faini, R. (2007). Remittances and the brain drain: do more skilled migrants remit more? *The World Bank Economic Review*, 21 (2): 177–191. Retrieved from <http://wber.oxfordjournals.org/content/21/2/177.short>
- Farrington, D.P., Coid, J.W., Harnett, L., Joliffe, D., Soteriou, N., Turner, R. & West, D.J. (2006). *Criminal careers and life success: new findings from the Cambridge Study in Delinquent Development*. London: Home Office (Research Findings No. 281).
- Ferracuti, F. (1968). *European migration and crime: collected studies in criminological research*. Strasbourg: Council of Europe.
- Ferri, E. (1968). *The positivist school of criminology*. Pittsburgh: Pittsburgh University Press.
- Finzi, E. (2013). *How Botox affects our moods and relationships*. Basingstoke: Palgrave Macmillan.
- Fox, R.G. & O'Brien, B.M. (1975). Fact finding for sentencers. *Melbourne University law review*, 10: 163–206.
- Francis, R.D. (1981). *Migrant crime in Australia*. Brisbane: Queensland University Press.
- Francis, R.D. (2010). Tourism and crime: a typological analysis. *Tourism, culture, and communication*, 10 (1): 33–44.

- Francis, R.D. & Cassell, A. (1975). *A national prison survey with particular reference to birthplace*. A report to the Criminology Research Council, Canberra.
- Francis, R.D. & Coyle, I.R. (1976). Migrants and violent crime. *Australian journal of forensic sciences*, 8 (1): 14–23.
- Francis, R.D. & Coyle, I.R. (1978). The sentencing process: a new empirical approach. *Proceedings of the Institute of Criminology*. Sydney University. 'Sentencing', 35: 13–27.
- Francis, R.D., Armstrong, A.F. & Totikidis, V. (2006). Ethnicity and crime: a statewide analysis. *Asian and Pacific migration journal*, 15 (2): 201–217.
- Galbally, F. (1978). *Migrant services and programs: report of the review of post arrival programs and services for migrants*. Canberra: Australian Government Publishing Service.
- Galbraith, J.K. (1958). *The affluent society*. London: Hamish Hamilton.
- Gladwell, M. (2006). *Blink: the power of thinking without thinking*. Leicester: W.F. Howes.
- Goodey, J. (2003). Migration, crime and victimhood: responses to sex trafficking in the EU. *Punishment & Society*, 5 (4): 415–431.
- Goodhart, P. (n.d.). *Forward to the double exodus*. Copy obtained from the Jerusalem Information Service.
- Grabosky, P.N. (1996). Unintended consequences of crime prevention. In Homel, R. and Clarke, R.V. (Eds), *Crime prevention studies. Vol 5. Administration, compliance and governability program*. Canberra: Research School of Social Sciences. Australian National University.
- Grewcock, M. (2007). Shooting the passenger: Australia's war on illicit immigrants. In Lee, M. (Ed.), *Human trafficking*. Collumpton: Willan Publishing.
- Grewcock, M. (2009). *Border crimes: Australia's war on illegal immigrants*. Sydney: Institute of Criminology Press.
- Gronfors, M. (1979). *Ethnic minorities and deviance: the relationship between Finnish Gypsies and the police*. Sociology of Law Series No 1, Helsinki University.
- Gunn, J., Maden, A. & Swinton, M. (1991). Treatment needs of prisoners with psychiatric disorders. *British medical journal*, 303 (Aug): 338–341.
- Hagan, J, Levi, R. & Dinovitzer, R. (2008). The symbolic violence of the crime–immigration nexus: migrant mythologies in the Americas. Retrieved from www.lexglobal.orgwww.lexglobal.org/files/035_hgan.symbolic_violence_crime_immigration_2008.pdf
- Harries, J. (2007). *Law and crime in the Roman world*. Cambridge: Cambridge University Press.
- Hart, H.L.A. (1987). *Issues in contemporary legal philosophy*. Oxford: Clarendon Press.
- Hawkins, G. (1969). God and the Mafia. *Public interest*, 14 (Winter): 24–51.
- Hazlehurst, K.M. (1987). *Migration, ethnicity and crime in Australian society*. Canberra: Australian Institute of Criminology.
- Heine, S.J., Buchtel, E.E. & Norenzayan, A. (2008). What do cross-national comparisons of personality traits tell us?: the case of conscientiousness. *Psychological science*, 19 (4): 309–313.
- Herzog, S. (2003). Does the ethnicity of offenders in crime scenarios affect public perceptions of crime seriousness?: a randomised survey experiment in Israel. *Social forces*, 82 (2): 757–781.

- Hindelang, M.J. (1976). *Criminal victimization in eight American cities: a descriptive analysis of common theft and assault*. Cambridge MA: Ballinger Publishing.
- Hogarth, J. (1971). *Sentencing as a human process*. Toronto: Toronto University Press.
- Hood, R.G. (1962). *Sentencing in magistrates courts*. London: Stevens & Sons.
- Hopkins, T. (2009). An effective system for investigating complaints against police. A study of human rights compliance in police complaint models in the US, Canada, UK, Northern Ireland and Australia. Retrieved from www.communitylaw.org.au/flemingtonkensington/cb_pages/files/VLF%20REPORT%20-Effective%20Investigation.pdf; see also *Complaints against the police*.
- Hughes, R. (1987). *The fatal shore*. London: Collins Harvill.
- Ingram, D.E., Kono, M., O'Neill, S. & Sasaki, M. (2008). *Fostering positive cross-cultural attitudes through language teaching*. Tenerife: Post Pressed.
- Institute of Race Relations. (1987). *Policing against black people*. London: Institute of Race Relations. See also www.irr.org.uk
- Jakubowicz, A. & Buckley, B. (1975). Migrants and the legal system. *Law and poverty series: Australian Government Commission of Inquiry into Poverty*. Canberra: Australian Government Publishing Service.
- James, A. (2011). Free will and cultural rules. *The psychologist*, 24 (9): 644.
- Jasinski, J. (1966). Delinquent generations in Poland. *British journal of criminology*, 6 (2): 170–182.
- Johnson, E.H. (1997). *Criminalization and prisoners in Japan: six contrary cohorts*. Carbondale: Southern Illinois University Press.
- Jones, P. & Kenny, A. (2010). *Australia's Muslim cameleers: pioneers of the inland – 1860s to 1930s*. Kent Town: Wakefield Press.
- Jordan, M. (2010). Embracing the notion that context is crucial in prison mental health care. *British journal of forensic practice*, 12 (4): 26–35.
- Jupp, J. (2003). *From white Australia to Woomera: the story of Australian immigration*. Cambridge: Cambridge University Press.
- Jureidini, J. & Burnside, J. (2011). Children in immigration detention: a case of reckless mistreatment, *ANZ journal of public health*, 35 (4): 304–306.
- Karimnia, A., Law, M.G., Butler, T.G., Levy, M.H., Corben, S.P., Kaldor, J.M. & Grant, L. (2007). Suicide risk among recently released prisoners in New South Wales, Australia. *Medical journal of Australia*, 187 (7): 387–390.
- Karmen, A. (2009). *Crime victims: an introduction to victimology*. Belmont: Wadsworth Cengage.
- Katellaris, A. (2011). Editorial. Why are prisoners dying after their release (Editor's choice). *Medical journal of Australia*, 195 (2): 59.
- Kelly, B. (2007). Penrose's Law in Ireland: an ecological analysis of psychiatric inpatients and prisoners. *Irish medical journal*, 100 (2): 373–374.
- Kelly Report on anti-psychotic medication in jails* (2010). Retrieved from www.youthtoday.org/view_article.cfm?article_id=4344
- Kiddle, M. (1957). *Caroline Chisholm*. Melbourne: Melbourne University Press.
- Killias, M. (2009). Paradise lost? New trends in crime and migration in Switzerland. In McDonald, W.F. (Ed.), *Immigration, crime, and justice*. Bingley: Emerald.
- King, M. (2003). *The Penguin history of New Zealand*. Auckland: Penguin.

- Kinner, S.A., Preen, D.B., Kariminia, A., Butler, T., Andrews, J.Y., Stooze, M. & Law, M. (2011). Counting the cost: estimating the number of deaths among recently released prisoners in Australia. *Medical journal of Australia*, 195 (2): 64–68.
- Kivisto, P. & Faist, T. (2010). *Beyond a border: the causes and consequences of contemporary immigration*. Thousand Oaks: Sage.
- Knipscheer, J.W. & Kleber, R.J. (2004). A need for ethnic similarity in the therapist-patient interaction? Mediterranean migrants in Dutch mental-health care. *Journal of clinical psychology*, 60 (6): 543–554.
- Kohlberg, L., Boyd, D.R. & Levine, C. (1990). The return of stage 6: its principle and moral points of view. In Wren, T. (Ed.), *The moral domain: essays in the ongoing discussion between philosophy and the social sciences*. Cambridge, MA: MIT Press: 151–181.
- Koopmans, R. (2010). Trade-offs between equality and difference: immigrant integration, multiculturalism and the welfare state in cross national perspective. *Journal of ethnic and migration studies*, 36 (1): 1–26.
- Large, M. & Nielszen, O. (2009). The Penrose hypothesis in 2004. *Psychology and psychotherapy: theory, research and practice*, 82 (1): 113–119.
- Larsen, J.J., Payne, J. & Tomison, A. (2011). *Crimes against international students in Australia 2005–2009*. Canberra: Australian Institute of Criminology.
- Lauritsen, J.L. & Sampson, R.J. (1998). Minorities, crime, and criminal justice. In Tonry, M. (Ed.), *Handbook of crime and punishment*. Oxford: Oxford University Press: Chapter 2.
- Lee, M. (2007). *Human trafficking*. Cullompton: Willan Publishing.
- Lee, M.T. & Martinez, R. (2009). Immigration reduces crime: an emerging scholarly consensus. *Sociology of crime, law, and deviance*, 13: 3–16.
- Lewis, E. (2010). Gertrude Bell and archaeology in Iraq: from World War I to the 'war on terror'. *The posthole*, Issue 9. Retrieved from www.theposthole.org/read/article/64
- Li, P.S. (2002). *Destination Canada: immigration debates and issues*. Oxford: Oxford University Press.
- Lombroso, C. (1918). *Crime: its causes and remedies* (trans. H.P. Horton). Boston: Little, Brown.
- Loney, J. (1993). *Shipwrecks along the Great Ocean Road*. Victoria: Marine History Publications.
- Lopez-Rey, M. (1970). *Crime: an analytical appraisal*. London: Routledge and Kegan Paul.
- Lutz, H. (1991). *Migrant women of Islamic background: images and self-images*. Amsterdam: Stichting MERA.
- Lynch, J.P. & Simon, R.J. (1999). A comparative assessment of criminal involvement among immigrants and natives across seven nations. *International criminal justice review*, 9 (1): 1–17.
- Lynch, J.P. & Simon, R.J. (2003). *Immigration the world over*. Lanham: Rowman & Littlefield.
- Lynn, R. (1971). *Personality and national character*. Oxford: Pergamon.
- Mackenzie, G., Stubbs, N. & O'Leary, J. (2010). *Principles of sentencing*. Sydney: Federation Press.
- Makkai, T. & Taylor, N. (2009). Immigrants as victims of crime: the Australian experience. *Sociology of crime, law, and deviance*, 13: 95–105.

- Mannheim, H. (1966). *Comparative criminology: a textbook*. London: Routledge and Kegan Paul.
- Martin, J. (1978). *The migrant presence: Australian responses, 1947–1977*. Sydney and London: Allen and Unwin.
- Martinez, R. & Valenzuela, A. (2006). *Immigration and crime: race, ethnicity, and violence*. New York: New York University Press.
- Marx, G.T. (1990). *The engineering of social control: the search for the silver bullet*. Unpublished manuscript. Massachusetts Institute of Technology.
- McCord, J. (1978). A thirty-year follow-up of treatment effects. *American psychologist*, March: 284–289.
- McCrae, R.R. & Terracciano, A. (2006). National character and personality. *Current Directions in Psychological Science*, 15 (4): 156–161.
- McCulloch, J. & Pickering, S. (Eds.) (2012). *Borders and crime: pre-crime, mobility and serious harm in an age of globalisation*. Basingstoke: Palgrave Macmillan.
- Melossi, D. (2003). In a peaceful life: migration and the crime of modernity in Europe/Italy. *Punishment and society*, 5 (4): 371–397.
- Menjívar, C. & Salcido, O. (2002). Immigrant women and domestic violence: common experiences in different countries. *Gender and society*, 16 (6): 898–920.
- Millbank, A. (2000). *Dual citizenship in Australia, current issues in brief No. 5 2000–01*. Canberra: Department of the Parliamentary Library.
- Moore, T. (2010). *Death or liberty: rebels and radicals transported to Australia 1788–1868*. Sydney: Murdoch Books.
- Morgan, R. & Clarke, R.V. (2006). Legislation and unintended consequences for crime. *European journal on criminal policy and research*, 12 (3–4): 189–211.
- Morris, D. (1977). *Manwatching*. St Albans: Tridd Panther.
- Morris, N. (2002). *Maconochie's gentlemen: the story of Norfolk Island and the roots of modern prison reform*. Oxford: Oxford University Press.
- Morris, N. & Hawkins, G. (1971). *The honest politician's guide to crime control*. Melbourne: Sun Books.
- Morton, J. & Lobez, S. (2007). *Gangland Australia*. Melbourne: Melbourne University Press.
- Nair, G., Ditton, J. & Phillips, S. (1993). Environmental improvements and fear of crime: the sad case of the 'pond' area in Glasgow. *British journal of criminology*, 33 (4): 555–561.
- National population inquiry. (1971). *Draft summary, First report of the National Population Inquiry*. Canberra: Australian Population and Immigration Council.
- Nicholas, S. (1988). *Convict workers: reinterpreting Australia's past*. Cambridge: Cambridge University Press.
- Nicholls, G. (2007). *Deported: a history of forced departures from Australia*. Kensington: NSW University Press.
- Noble, G., Poynting, S. & Tabar, P. (1999). Youth, ethnicity and the mapping of identities. *Communal/plural*, 7 (1) 29–44. Retrieved from www.uws.edu.au/_data/assets/pdf_file/0004/77017/Youth_Ethnicity.pdf
- O'Brien, E.M. (1950). *The foundation of Australia: 1786–1800: a study in English criminal practice and penal colonisation in the 18th century*. 2nd ed. Sydney: Angus and Robertson.
- Organista, K.C. & Munoz, R. (1998). Cognitive behaviour therapy with Latinos. In Organista, P.B., Chun, K.M. & Marin, G. (Eds.), *Readings in ethnic psychology*. New York: Routledge.

- Osborne, P.G. (1964). *A concise law dictionary*. London: Sweet and Maxwell.
- Owen, R. (1985). *Migrant workers in the Gulf*. London: Minority Rights Group.
- Oxley, D. (1996). *Convict maids*. Cambridge: Cambridge University Press.
- Paolil, L. & Reuter, P. (2008). Drug trafficking and ethnic minorities in Western Europe. *European journal of criminology*, 5 (1): 13–37.
- Patterson, S. (2011). Family history and contemporary issues. *Ancestor: quarterly journal of the Genealogical Society of Victoria Inc.*, 30 (5): 6–8.
- Penrose, L.S. (1939). Mental disease and crime: outline of a comparative study of European statistics. *British journal of medical psychology*, 18 (1): 1–15.
- Perkovic, M. (1985). *The victims of touristic criminality*. Victimology newsletter, Moenchengladbach, Germany, 4: 40–43.
- Petersen, W.A. (1958). A general typology of migration. *American Sociological Review*, 23 (3): 256–266.
- Peterson, C. & Park, N. (2009). Increasing happiness in lasting ways. *The psychologist*, 22 (4): 304–307.
- Petrosino, A., Turpin-Petrosino, C. & Buehler, J. (2003). Scared Straight and other juvenile awareness programs for preventing juvenile delinquency: a systematic review of the randomized experimental evidence. *Annals of the American Academy of Political and Social Science*, 589 (1): 41–62.
- Pickering, S. (2005). *Refugees and state crime*. Sydney: Federation Press.
- Pickering, S. & Weber, L. (2006). Borders, mobility and technologies of control. In Pickering, S. & Weber, L. (Eds.), *Borders, mobility and technologies of control*. Dordrecht: Springer: Chapter 1.
- Pickering, S., Wright-Neville, D., McCulloch, J. & Lentini, P. (2007). *Counter-terrorism, policing and culturally diverse communities: a final report*. Australia Research Council Linkage Project. Monash University.
- Pinker, S. (2011). *The better angels of our nature: the decline of violence in history and its causes*. Harmondsworth: Allen Lane (Penguin).
- Popper, K.R. (1945). *The open society and its enemies*. London: Routledge.
- Powers, E. & Witmer, H. (1951). *An experiment in the prevention of delinquency: the Cambridge-Somerville Youth Study*. New York: Columbia University Press.
- Poynting, S. (2006). What caused the Cronulla riot? *Race and class*, 48 (1): 85–92.
- Poynting, S. (2009). Lost girls: Muslim young women in Australia. *Journal of intercultural studies*, 30 (4): 373–386.
- Poynting, S., Noble, G., Tabar, P. & Collins, J. (2004). *Bin Laden in the suburbs: criminalising the Arab other*. Monograph 18. Sydney: Institute of Criminology. Retrieved from <http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/cicj14&div=9&id=&page=>
- Quanbeck, C., Stone, D.C., Scott, C.L., McDermott, B.E., Altshuler, L.L. & Frye, M.A. (2004). Clinical and legal correlates of inmates with bipolar disorder at the time of criminal arrest. *Journal of clinical psychiatry*, 65 (2): 198–203.
- Radzinowicz, L.A. (1948). *History of English criminal law and its administration from 1750*. London: Stevens.
- Raskin, J.D. (2009). Striking the golden section in stigma research. *The psychologist*, 22 (3): 202–205.
- Reeves, W.P. (1898). *The long white cloud*. London: Routledge & Kegan Paul.

- Reynolds, G. (2010). Pokies turn women to crime. *The Advocate*. Sunshine (Melbourne). 6 July: 4.
- Robson, L.L. (1965). *The convict settlers of Australia*. Melbourne: Melbourne University Press.
- Rose, G.N.G. (1968). The artificial delinquent generation. *Journal of criminal law, criminology and police science*, 50 (3): 370–385.
- Royal College of Nursing. (2010). Prison mental health: vision and reality. Retrieved from www.rcn.org.uk/_data/assets/pdf_file/0005/339377/003832.pdf
- Rumbaut, R.G. & Ewing, W.A. (2007). *The myth of immigrant criminality and the paradox of assimilation: incarceration rates among native and foreign-born men*. Washington DC: Immigration Policy Center, American Immigration Law Foundation. Retrieved from www.immigrationpolicy.org/special-reports/myth-immigrant-criminality-and-paradox-assimilation
- Rumbaut, R.G., Gonzales, R.G., Komai, G. & Morgan, C.V. (2006). Debunking the myth of immigrant criminality: imprisonment among first- and second-generation young men. *Migration Information Source*. Washington DC, Migration Policy Institute, June. Retrieved from www.migrationinformation.org/Feature/display.cfm?ID=403
- Rutherford, M. (2011). Blurring the boundaries: The convergence of mental health and criminal justice policy, legislation, systems and practice. Retrieved from www.centreformentalhealth.org.uk/publications/blurring_the_boundaries.aspx
- Sampson, R.J. (2009). Disparity and diversity in the contemporary city: social (dis)order revisited. *British journal of sociology*, 60 (1): 1–31.
- Schloenhardt, A. (2003). *Migrant smuggling: illegal migration and organised crime in Australia and the Asia Pacific region*. Leiden: Martinus Nijhoff.
- Schloenhardt, A. (2008). Transnational organised crime and international criminal law. In Bassiouni, M.C. (Ed.), *International criminal law*. 3rd edition. Leiden: Martinus Nijhoff.
- Schloenhardt, A. & Loong, M. (2011). Return and reintegration of human trafficking victims from Australia. *International journal of refugee law*, 23 (2): 143–173.
- Schloenhardt, A., Bierne, J. & Corsbie, T. (2009). Trafficking in persons in Australia: myths and realities. *Global crime*, 10 (3): 224–247.
- Scholten, S. & Minderhoud, P. (2008). Regulating immigration controls: carrier sanctions in the Netherlands. *European journal of migration and law*, 10 (2): 123–147.
- Segrave, M., Milivojevic, S. & Pickering, S. (2009). *Sex trafficking: international context and response*. Cullompton: Willan Publishing.
- Seligman, M. (1975). *Helplessness: on depression, development, and death*. New York: Freeman.
- Senate Community Affairs Committee (2010). *Suicide: the hidden toll*. Canberra: Commonwealth of Australia.
- Sherman, L.W. (1993). Defiance, deterrence and irrelevance: a theory of the criminal sanction. *Journal of research in crime and delinquency*, 30 (4): 445–473.
- Sherman, L.W. (2011). Al Capone, the sword of Damocles, and the police-correction budget ratio. *Criminology and public policy*, 10 (1): 195–206.

- Sherman, L.W., Schmidt, J.D., Rogan, D.P., Gartin, P.R., Cohn, E.G., Collins, D.J. & Bacich, A.R. (1991). From initial deterrence to long-term escalation: short custody arrest for poverty ghetto domestic violence. *Criminology*, 29 (4): 821–850.
- Simon, R.J. & Sikich, K.W. (2007). Public attitudes towards immigrants and immigration policies across seven nations. *International migration review*, 41 (4): 956–962.
- Slater, S.W., Darwin, J.H. & Ritchie, W.L. (1966). Delinquent generations in New Zealand. *Journal of research in crime and delinquency*, 3 (2): 140–146.
- Smith, N. and Trimboli, L. (2010). *Comorbid substance and non-substance mental health disorders and re-offending among NSW prisoners*. Sydney: NSW Bureau of Crime Statistics and Research.
- Solivetti, L. (2010). *Immigration, social integration and crime: a cross-national approach*. Abingdon: Routledge.
- Taylor, N. (2006). *Crime against businesses in two ethnically diverse communities*. Canberra: Australian Institute of Criminology.
- The psychologist* (2011). Free will and cultural rules. 24 (9): 644.
- Thomas, J.E. (2010). *Diversion and support of offenders with a mental illness: guidelines for best practice*. Melbourne: Victorian Government Department of Justice.
- Tiffen, R. & Gittins, R. (2009). *How Australia compares*. 2nd edition. Cambridge: Cambridge University Press.
- Tonry, M. (1997). Ethnicity, crime and immigration. In *Ethnicity, crime, and immigration: comparative and cross-national perspectives*. *Crime and justice*, 21: 1–29.
- Tonry, M. & Bijleveld, C. (2007). Crime, criminal justice, and criminology in the Netherlands. *Crime and justice*, 35 (1): 1–30.
- UN. (1954). Multiple nationality. Retrieved from http://legal.un.org/ilc/summaries/6_1.htm. Section d).
- UN. (1965). *International Convention on the Elimination of all Forms of Racial Discrimination*. Retrieved from www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx
- UN. (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. November 15. Retrieved from http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-12-a&chapter=18&lang=en
- UN. (2000). *UN Convention against Transnational Organised Crime*. Retrieved from www.unodc.org/unodc/treaties/CTOC
- UN. (2006). 2005 World Summit Outcome Document. Retrieved from www.un.org/en/terrorism/strategy/world-summit-outcome.shtml
- UNICRI. (United Nations Interregional Crime and Justice Crime Research Unit). (n.d.). *International crime victims survey*. Retrieved from http://www.unicri.it/services/library_documentation/publications/icvsv/
- UNODC. (n.d.). *Convention on Transnational Organized Crime*.
- UNODC. (2006). *Counter-Kidnapping Manual*. At: Available on request from [unodc.org](http://www.unodc.org)
- UNODC World Drug Report. (n.d.). At <http://books.google.com.au/books?hl=en&lr=&id=HB9PuEhHahQC&oi=fnd&pg=PA29&dq=unodc+drugs+and+crime&ots=tkJnMgGPvF&sig=Z-h4c-f4maLqFrk8qY4GmXpL65E>
- UNODC. *Toolkit to combat trafficking in persons*. Retrieved from <http://books.google.com.au/books?hl=en&lr=&id=QWB612hhLIEC&oi=fnd&pg=PR9&dq=>

- united+office+of+drugs+and+crime&ots=3vkovE8J7x&sig=SH7BKbxGzvYIS
INPKs5HeiZtzgg#v=onepage&q=united%20office%20of%20drugs%20and%
20crime&f=false
- Von Hentig, H. (1945). The first generation and a half. *American sociological review*, 10 (6): 792–798.
- Walters, A.A. (1963). Delinquent generations. *British journal of criminology*, 3 (4): 391–395.
- Warner, K. (2004). Gang rape in Sydney: crime, the media, politics, race and sentencing. *ANZ journal of criminology*, 37 (3): 344–361.
- Weber, L. & Pickering, S. (2011). *Globalisation and borders: death at the global frontier*. Basingstoke: Palgrave Macmillan.
- Weisman, A. (2007). *The world without us*. New York: St Martin's Press.
- Whitrod, R. (1986). Victimology: the study of victims in Australia. In Chappell, D. and Wilson, P. (Eds.), *The Australian criminal justice system: the mid 1980s*. Woburn, MA: Butterworth-Heinemann: 294–309.
- Wilkins, L.T. (1960). Delinquent generations. *Home Office Research Unit Report*. London: HMSO.
- Wilkins, L.T. (1964). Delinquent generations – a rejoinder. *British journal of criminology*, 4 (3): 264–268.
- Williams, W. (1971). *The four prisons of man*. Sydney: Australian Broadcasting Commission.
- Wilson, T.C. (1985). Urbanism and tolerance: a test of some hypotheses drawn from Wirth and Stouffer. *American sociological review*, 50 (1): 117–123.
- Windle, J. (2008). The racialisation of African youth in Australia. *Social identities: journal for the study of race, nation and culture*, 14 (5): 553–566.
- Winterton, G., Lee, H.P., Glass, A., Thomson, J.A. & Gerangelos, P. (2007). *Australian federal constitutional law: commentary and materials*. 2nd edition. Sydney: ThomsonReuters.
- Wortley, S. (2009). The immigrant–crime connection: competing theoretical perspectives. *International migration and integration*, 10: 349–358.
- Yeager, M.G. (1996). *Immigrants and criminality: a meta survey*. Ottawa: Government of Canada: Ministry of Citizenship and Immigration.
- York, B. (2003). *Australia and refugees: 1901–2002: an annotated chronology based on official sources. Information, analysis and advice for the Parliament information and research services*. Canberra: Social Policy Group.
- Zimmer, C. (2008). Darwin would have loved Botox. *Discover: the magazine of science, technology, and the future*, October 15.
- Zubrzycki, J. (1977). *Australia as a multicultural society*. Canberra: AGPS. Retrieved from www.eric.ed.gov/ERICWebPortal/search/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED155234&ERICExtSearch_SearchType_0=no&acno=ED155234

Index

- Aborigines 18, 70, 72, 95, 152, 158,
160–1, 163–5, 248–9, 259
- academic reports 42, 212
- acid throwing 69, 170
- adaptation 67, 204
- aid (*see also* Overseas aid) 28, 239
- alcohol 6, 124, 151, 157–8, 160,
176–7, 234
- alien internment 129, 132
- ambiguity 199, 217
- amnesty 65
- Amnesty International 24, 244
- ancient hatreds 31, 170, 259
- apostasy 95, 247
- area studies 200
- ASCCEG 32
- ASEAN 58
- ASIO 61–2
- Asylum Seeker Assistance Scheme 66
- asylum-seekers 23–4, 61–3, 66–7, 73,
130, 258
- ATESOL 195
- attitudes 13, 53, 57, 85, 103–4, 108,
113, 166, 179, 231, 243
- Australian expressions 195, 199
- Australians in prison abroad 129–131
- Australian Tax Office 178, 217
- bail 43, 78, 103, 141
- Balfour Declaration 199
- basic facts about Australia (physical
realm) 238
- bigamy 81
- bipolar disorder 151–2, 161
- birth control
birth control 36, 211, 261
contraception 30, 211, 260
fertility 211ff
- blurring of boundaries 151
- border control 60ff, 65, 176, 239
- brain drain 22
- British Commonwealth 46, 82, 109,
210, 213
- Burdekin Report 164–5
- CALD 71, 153
- Cambridge–Somerville study 230, 233
- Cameleers 17–18
- Canada 9, 21, 24, 47ff, 75, 96, 128,
161, 185, 210, 214, 235, 238,
- causal processes 230, 233
- Centrelink 178
- children overboard 24
- Chinese 15, 17, 36, 75, 133, 182,
190, 193
- Chisholm, Caroline 13
- Christmas Island 23–4, 35, 62
- citizenship 87ff
- civil rights 14ff, 76, 79, 98, 100–1,
150, 162, 170–1, 199
- classification by police 107
- clergyable offences 11
- climate 10, 188, 213, 259
- Code 1 and Code 2 45–6
- cognition (impaired) 150, 161
- confounding effects 171, 227
- consequentialism 250
- conspiracies 33
- Constitution 6, 14, 37, 86, 88, 92,
95–7, 120, 263
- corruption 58, 177, 190, 210, 234,
247, 260
- Court statistics 38–9, 49, 51,
121ff, 129
- Covenants 95, 97ff, 167, 255, 263
- crime prevention 57, 78–9, 99, 101–2,
115, 135, 175, 184, 186, 205, 228,
230–1, 234–5
- culture conflict 119, 183, 199, 226,
236, 255
- Darwin, Charles 203–4
- definitions 66, 128, 189, 191–2

- 'Delinquent Generation' thesis 220ff
 deontology 250
 deportation 23, 41, 45, 47, 53, 67–8, 86–9, 104, 123, 130, 135, 171, 178, 192
 depression 160, 163–4, 188
 Detention Centres 25, 60–2, 64, 130, 250–1
 deterrence 231
 Dictation Test 8, 83
 diplomats 172, 246
 distress at incarceration 132, 135–6
 double jeopardy 242
 Dovey Reports 37ff
 dress 106
 driving 42, 57, 124, 160
 drugs 120, 151, 157–8, 176–7, 185, 232
 drug smugglers 35, 74, 176
 dual citizenship 90ff
 dying 12, 163, 251
 dynasties of crime 240
- ecocide 246–7
 ecology 233
 emotional intelligence 250
 enclave dwelling 34, 64, 68, 108, 172, 193, 262
 environment 3, 20, 40, 61, 167, 185, 187, 219, 232, 241, 243, 247
 ethnic cleansing (mass murder) 84, 88
 ethnic tourism 116–17
 European Union 48, 50, 83, 96, 175
 Exile 88
- face
 face veil 189, 202
 facial recognition 189, 202ff
 facial disfigurement 11, 202–4
 facial expression 202–4
 facial recognition 202–3
 failed nations (failed states) 31
 false memories 68
 family matters 33, 120, 129, 223, 242
 Federation year 81ff
 female genital mutilation (FGM) 71, 246
 fertility (*see* population growth)
- Fiji 46, 109
 Fijian Chiefs 109
 financial context 117, 128, 246
 fingerprinting 101, 104
 firearms 58, 74, 231
 First Fleet 10, 60
 Foggartism 8
 forced labour 170, 174, 178ff, 262
 forced marriage 69, 170, 174ff, 246
 forfeited freedoms 135
 forms of law 85, 190
 forms of migration 20, 21, 188, 236, 258, 261
 fraud 70, 900, 173, 174, 179, 183, 184, 191, 198, 217, 218, 232
 free settlers 7, 10, 12, 14, 15, 31, 188
 free will 175
 frustration 198
- Galbally Report 42
 gangs 13, 75, 109, 111, 112
 gender 47, 181
 genocide 92, 120, 191, 257, 262
 Germany 93, 130, 139, 181, 187, 209, 215
 Gini Coefficient 21
 global warming 241ff
 God and the Mafia 272
 Gold Rush 15, 17
 golden section 223
 Great Britain (*see* United Kingdom)
 Greece 49, 65, 73, 91, 139
 Gross Domestic Product (GDP) 21
 Gulf States 52, 53
 guns 4, 230, 249
 Gypsies 108
- habeas corpus 62, 79, 98, 103, 131
 Haneef, Mohammed 45
 happiness 212, 213, 214
 Hart–Devlin debate 123, 245
 health expenditure 128
 health of prisoners 157, 158, 160, 162, 163, 164, 166
 High Court of Australia 25, 34, 45, 83, 85, 88, 92, 120, 248
 Home Office (UK) 9, 65, 220
 Howard League 129, 135, 150

- human development 74, 115, 203, 209, 214, 215
- human rights
- Australian Human Rights Commission 61, 93, 95, 180, 192
 - human rights (general) 25, 44, 32, 46, 69, 79, 95–8, 102, 106, 112, 122, 165, 170, 175, 191, 251
 - Human Rights Act (Europe) 73, 96
 - human rights and mental health 164
 - UN Declaration of Human Rights 30, 48, 67, 88, 95, 97
- human trafficking (people smuggling) 34, 35, 69, 70, 73ff, 115, 174, 175, 176, 184, 185
- identification code (*see also* classification) 34, 86, 89, 101, 104, 106, 107, 173, 185, 256
- identity theft 34, 179, 184
- IELTS 195, 196
- illegal entry 19, 23, 24, 49, 57, 59, 60, 73, 174
- illegal workers 65, 174, 183
- Immigration Planning Council 29
- Immigration reports 37ff, 42
- incentives/motives 8, 16, 19, 20, 32, 61, 73, 121, 185, 188, 232, 242
- Insurance Council of Australia 217
- International Criminal Court 120, 129, 171
- International Organization for Migration Studies 3, 237
- international students 90, 102, 180, 195, 212
- interpersonal distance 202
- interpretation 57, 100, 120, 190, 191, 193, 198, 201, 220, 226, 228, 236
- interpreters/translators 71, 115, 119, 141, 189, 196ff, 197, 205
- Islam 54, 77, 85, 102
- Israel 120, 122, 132, 154, 199, 228
- Italy 35, 48, 73, 90, 103, 108, 139, 243
- Japan 35, 65, 75, 91, 132, 193, 210, 213, 215, 242, 247
- Judges' Rules 99
- juvenile detention 157
- Kanakas 16
- kidnapping 44, 185
- knives 58, 76
- Kohlberg's theory 252
- Kon Tiki* 5
- Korea 4, 136, 239
- labelling 150, 170
- language, English 26, 27, 32, 33, 42
- UN languages 193
- learned helplessness 173
- law
- breaches of the law 70, 92ff, 98
 - civil law 62, 69, 121, 245, 256
 - conflict of laws 90
 - legal issues 81ff
 - legal pluralism 82, 245
 - legislation 6, 14, 37, 60, 76, 77, 78, 85, 86, 90, 92, 93, 96, 107, 124, 125, 185, 193, 219, 244, 257
 - mala prohibita* 81
 - Sharia law 85
- Legatum Prosperity Index 21
- less appreciated consequences of migration 263
- levels of the court 120, 121
- linguistic ability 141, 173, 198
- liveable cities 214
- local government 116, 117
- Local Government Areas (LGAs) 114, 122, 201
- Maconochie of Norfolk Island 15ff
- Mafia 75
- Magna Carta 79, 97
- maladjustment 217–8
- maltreatment 33, 178
- mandatory detention 25, 44, 45, 60, 61ff, 72, 130
- Manus Island 25, 62
- maritime arrivals 59, 131
- marriage 6, 41, 69, 90, 95, 120, 170, 174–5, 219, 246
- measurement 234
- media 60–1, 74, 115, 152, 177–180, 206, 215, 219

- medical treatment in prison 128,
 164, 251
 medication 152, 158, 159
 memes 240–1
 Mental Health Courts 45, 129, 151,
 160, 161–2
 mental illness and language 164, 205ff
 meta-studies 235ff
 Middle East 27, 43, 69, 152, 181,
 191, 213
 Migrant Workers Convention 97
 migrants as administrators of
 justice 122ff
 migration agents 27ff
 migration and language 18, 26–7,
 32–3, 42, 68, 83, 164, 189, 193–4,
 196, 198ff, 200, 206, 227
 migration intake policy 30, 179, 263
 military service 90–1
 mind blindness 204
 Minister for Immigration 24, 38, 45,
 82, 89, 227, 260, 263
 misunderstanding 94, 103, 136–7,
 173, 189, 202, 246
 misuse of medication 159ff
 Möbius syndrome 202
 Molesworth Committee 12
 money laundering 21, 75
 morals 207ff
 mortality 158–9, 163, 182, 234
 mother tongue 189, 194–5, 238
 motives 8, 19–20, 61, 73, 121, 188,
 242 (*see also* incentives)
 multiculturalism 7, 54, 83, 111,
 234, 262
 murder (and ‘honour’ killing) 6, 9, 64,
 69, 81, 85, 88, 100, 180–1,
 186, 190

 nation-building 50, 206
 national character 87, 173, 176, 214,
 242–4
 nationality 51, 62, 66, 83, 90, 92, 108,
 138, 142, 173, 192
 NATO 58
 naturalisation 87, 228
 Nauru 23, 25, 61, 62
 Neck verse 11

 Netherlands 52, 68, 121, 139, 154,
 215, 228
 New Zealand
 nomads/wanderers 20
 non-verbal communication 189, 198,
 201–2
 NOOSR 26
 numbers arriving 72ff
 Nystrom, Stefan 45
 New Zealand 17, 23, 121, 129, 186,
 212–4, 220, 248–9

 occupational health and safety 183
 OECD 58
 offences particular to migrants 57, 64,
 76, 183
 opportunity structure 257
 organised crime 73–6, 78, 174, 176–7
 overseas aid 28, 239, 260–1
 overstayers 19, 25, 258

 pamphlets 164
 Papua New Guinea 61
 paradoxical cause (unintended
 consequences) 231, 233
 parliamentary democracy 83ff, 234
 payback 34
 peace 58, 79, 86, 100, 209–210, 226
 Penrose-type studies 155–6, 217
 people
 people smuggling (trafficking) 34–5,
 69–70, 73–4, 115, 174–6, 184–5
 people vanishment 4
 perceptions of immigrant crime 48,
 50, 52, 178
 persecution 17, 19, 61, 67, 91, 237
 personality 103, 128, 197, 223, 236,
 241ff, 244
 physical aspects of crime
 climate (wind) 247
 diet (food, nutrition, hunger, diet)
 26, 39, 116, 129, 135, 167, 210,
 227, 229–230, 251, 259, 261–2
 diseases 9, 66
 genes (and DNA) 34, 101, 214, 240ff
 disease 9, 10, 66, 230, 239
 seasons 186, 192
 somatotypology 236
 pilgrimage 18, 186

- pluralism 83, 245
- points system 26ff, 195
- police discretion 41, 99–100, 103, 105, 110, 190
- police recruitment 104, 112ff
- pollution 211, 239, 247, 262
- polyglot 193
- population capacity 19, 35, 200, 237–8, 241, 259–260, 262
- population growth (*see also* fertility) 3, 17, 22, 29, 30, 35ff, 132, 209, 211, 214, 259, 261–2
- population policy 9, 19ff, 25, 27, 29–31ff, 33, 35–6, 41–2, 64, 83, 132, 167, 211, 239, 244, 251, 259, 260–1, 262–3
- Port Arthur 10, 13
- positive deviance indicators 211ff
- post-prison 71, 141, 163ff
- powers of the Commonwealth 86ff
- prejudice 100, 199, 215, 223
- presumption of innocence 45, 46, 62, 76
- prisoner exchange 133ff
- profiling 106–7
- prosopagnosia 202
- prostitution 21, 41, 70, 73, 174–5
- psychiatry 4
- psychological aspects of crime 232
- psychopathy 6
- public health costs 128

- qualifications 26, 31, 42, 50, 154, 162

- race relations 43, 102, 105, 108, 189, 219, 263
- racism 18, 20, 109, 110, 175, 179, 215
- Rau, Cornelia 44–5
- reasonable man 84ff
- recruitment to the police 112ff
- refusing to stand in court 126
- regional studies 43ff
- release into the community 151, 152, 158, 162, 163, 167
- religion 18, 33, 48, 66, 68, 69, 71, 95, 126, 129, 211, 259
- rendition 96
- responsibility 5, 6, 23, 28, 45, 81, 83, 86, 173, 251, 258, 261

- rights of the child 30, 69, 72ff, 96, 165, 183, 244
- ritual slaughter 33
- Roman Catholicism 9
- Romanian decree 36
- rule of law 50, 83ff, 95, 135, 136, 219, 234, 246

- Special Broadcasting Service (SBS) 194
- Scanlon Foundation 215–216,
- ‘scared straight’ 230
- schizophrenia 151, 154, 160, 161, 163, 205
- second-generation migrants 175, 183, 219, 228, 257
- Security Council (UN) 63
- selection processes 22ff
- sentencing 84, 109, 120, 126, 130, 137, 230
- sentencing study 122ff
- sexual trafficking 69, 174, 175, 184
- shipwrecks 12
- SIEV 23, 24
- skilled personnel 22, 26, 27, 28, 90, 111, 188, 196
- skin colour 5, 83, 150, 189
- slavery 73, 79, 175, 176, 178, 184, 185, 262
- Snowy Mountains Scheme 17, 39
- social functioning 4, 64, 103, 118, 166, 190, 219
- social matters
 - social indicators 27, 70, 118, 129, 200, 209ff, 211, 215, 217–19, 243
 - social interactions 103, 194, 202–4
 - socio-economic disadvantage 52–3, 84, 163, 235
 - socio-political crime 6, 7, 66, 120–1
 - sociological theory and crime 226, 236
- Soviet Union 4
- Spain 49, 61, 65, 73, 93
- Special Courts 89, 119, 120, 160ff
- special needs of prisoners 66, 97, 136, 137, 237
- special treatment of prisoners 16, 128, 162, 164, 171, 186, 247
- Sri Lanka 17, 24, 31, 141, 215, 247

- State border security 26, 58ff, 66, 73, 185, 199, 238
- stereotyping 20, 75, 214, 215, 244
- sterilisation 211
- stigma 46, 107, 150, 153, 156, 164, 191, 223, 236
- Stockholm Syndrome 169
- stop and search 99
- students as victims 180
- styles of policing 104ff
- substance abuse 152, 154, 164, 232
- suffering 13, 30, 153, 154, 155, 174, 191, 251
- suicide 152ff, 160, 218
- 'Sus' law 99
- Switzerland 49, 215
- Tampa* 23
- teaching in a foreign language 194
- ten-pound migrant scheme 17
- Terra nullius* 10, 248
- terrorism 21, 27, 76ff. 86, 98, 110, 114, 173, 257
- therapy 26, 154, 159, 205
- time factors 22, 47, 51, 53, 67, 72, 101, 123, 125, 162, 190, 220, 222, 229, 236
- Titanic*, as an example 228, 229
- Tolpuddle martyrs 11
- Torquemada principle 247
- torture 50, 66, 165, 227, 247
- tourism 20, 116ff
- trafficking in people (*see* people smuggling)
- transfer of prisoners 44, 130, 132, 133, 134, 135, 171
- transients 38, 185, 192
- transit camps 130, 131
- transportation 7ff
- treatment after arrival 64ff, 95, 159
- two-stage migration 20
- typology of foreign prisoners 136ff
- typology of victims 172ff
- tyrants 4, 7, 28, 169, 249
- UNESCO 97, 191, 195
- inintended consequences (*see* paradoxical cause)
- United Kingdom (and Great Britain) 6, 17, 38, 65, 87, 99, 108, 112–13, 133, 175, 186, 189,
- UNODC 70, 74, 79, 135–6, 174
- USA 47, 96, 120, 161, 181
- veil 203
- veto powers (UN) 63
- victimology 72, 168ff
- Vienna Boys' Choir 132
- Viet Nam 17, 71, 91, 181–3, 222
- violence in the colony 13, 46
- virtue ethics 250
- visas 12, 24, 57, 62, 66, 86–7, 90, 178, 195, 251
- voluntary treatment in hospital 151
- vulnerability 137, 173
- waterboarding 227
- wealth 21, 61, 71, 76, 187, 214
- witnesses 34, 43, 62, 105, 110, 168
- women
- Aboriginal women 18,
 - as *God's police* 13
 - culture 165, 183
 - face veil 203
 - feelings of safety 106
 - general 68ff
 - police recruitment 112–13
 - prison 129
 - prostitution 174–5,
 - social suppression 119, 184,
 - sponsored women 41
 - suicide 152–3,
 - trafficking 174–6,
 - victims 172, 181,
 - vulnerable 13, 136, 163,
 - women in the workplace 93
 - women's housing 63
- WorkCover 217
- world prison population 132ff
- zero population growth (ZPG) 35–6