

Rethinking Crime and Punishment is a strategic initiative designed to increase the level of public debate about the use of prison and alternative forms of punishment in New Zealand



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Issue 39, July 2008

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Creating Criminals - the Impact of the Organised Crime Bill on Youth Gangs



Baroness Vivien Stern, in her recent visit to New Zealand, delivered a timely warning about how the market society creates criminals. In a thought provoking address, "Creating Criminals in a Market Society" she observed that New Zealand was not doing much in the way of decriminalization; not much about putting harm reduction before pointless punishment. She considered that New Zealand was in the business of "creating criminals".

In a thoughtful address, Baroness Stern pointed out how we create criminals.

1. We put on our crime spectacles when looking at certain people. We don't see people who are mentally ill, or addicted to drugs. The system chooses a different set of definitions and we get a different, and often tragic, outcome.
2. Instead of solving we decide to create more crimes. The presence of gangs in the community, becomes not a social problem, but a crime.
3. We create a nation of criminals to no good effect instead of looking at all the other possibilities. We fill the crime category with people whose acts can indeed be defined as criminal, but which should in fact be defined as manifestations of social distress.
4. We create new crimes to absorb all the socially annoying or uncomfortable acts that people engage in.

This increase in criminalisation affects mostly those at the bottom of society, the poor and the marginalized and the minorities. In England and Wales of the women sent to prison 15 out of every hundred had previously been an inpatient in a psychiatric hospital. Nearly four of ten had already tried suicide. Four of ten were drug users. Five out of ten had been the victims of domestic abuse and three out of ten the victims of sexual abuse.

Stern argues that crime control is really about managing people with problems whom society has failed to deal with. We have redefined problems of social deprivation and poverty as problems of crime and of controlling risky and annoying behaviour.

Once we have changed the shape of the issue, we put on different spectacles and instead of seeing that some people in their community have been left behind and that our social policies need re-thinking, they see a pool of people who are risky and need controlling, a pool of people different from themselves. Their victimhood is of no account once the label of offenders is fastened upon them.

To read Baroness Stern's paper, [click here](#). We recommend you also read her book 'Creating Criminals – Prisons and People in a Market Society'. published by Fernwood Publishing Ltd 2006. [You can purchase here](#)

Are we Creating Criminals? – the implications of the Organised Crime

The government's strategy to combat organised crime, is seen by some as a movement away from the policing of white collar crime and corporate fraud, to suppression of a growing underclass. Ron Mark MP, made a very valid point when he sought assurance that the expansion of the focus on serious organised crime and the increase in police resourcing to target this type of crime wouldn't be to the detriment of fraud investigation. ([Read Ron Mark's Press Release](#)) When we focus on the criminal activities of those at the bottom of society, we often shift resources away from the investigation of corporate crime, and re-define it as a matter of civil law. Certainly, it would seem that this legislation is not only targeted at the high end of organised crime, but the 'corner street' gatherings of youth gangs.

When the Minister of Justice, the Hon Annette King recently introduced the Organised Crime Bill she explained its purpose

thus:

“Organised criminal activity in New Zealand ranges from sophisticated transnational operations involving many millions of dollars to small-time street gatherings of patched gang members. It is these criminal groups, both large and small, who plague our communities with intimidation, extortion, illegal drugs, identity fraud, serious property crimes and violence. The tools needed to combat these diverse organised criminal gangs must therefore be comprehensive, flexible and effective”.

The new powers, penalties and law enforcement improvements will enhance investigations, facilitate prosecutions and provide tougher action against organised crime and gangs. Some of the key provisions include:

The prosecution of leaders and members of organised criminal groups who plan and organise these criminal businesses without “getting their hands dirty”. It is broad enough to capture recruiting of gang prospects, and the financing and strategic planning of gang activities.

Adds gang or organised crime participation as an aggravating factor for sentencing under section 9 of the Sentencing Act 2002. The list of aggravating factors in section 9 already targets elements of violence, premeditation, and severity that are inherent in gang-related offending.

Recognition that offending is more serious when it is committed for the benefit of, at the direction of, or in association with, an organised criminal gang

Doubling the penalties for committing offences from 5 to 10 years

To read more about the intent of the Bill, [click here](#)

The Impact of the Bill on Youth Gangs

The Act will be very difficult to implement, and there is a possibility that it could be used inappropriately against young people who, would respond more positively to the positive elements of a youth crime prevention strategy, rather than a heavy handed approach to what is essentially a growing social issue. Tariana Turia MP, in an impassioned speech, expressed this very real concern. She makes it clear that she does not condone violent and unlawful behaviour – a constant message from the Maori Party.

But she opposed the Bill, saying;

“We believe that as a Parliament we need to come up with much better answers than being behind bars. We call on society to stop isolating its young people and create a culture of inclusion. Let’s invest in young people in every way that we can. And I have to reflect on the issues we have given priority to in this Parliament. We have debated the Prohibition of Gang Insignia Bill; the SFO Abolition Bill; the Criminal Proceeds Recovery Bill; the Young Offenders (Serious Crime) Bill – all which emphasise violence and criminality and yet not one Bill has come to this House to address child poverty”

To read Tariana Turia's full speech, [click here](#)

A Strategy for Youth Gangs

What is missing at this time, is a comprehensive and public policy for how the nation should address the issue of youth gangs, other than through suppression and enforcement.

It has taken the USA over forty years to learn that tactics of the kind proposed, on their own, will encourage the growth of gangs in impoverished communities. Prosecution and prison will become symbols of status – an opportunity to refine criminal techniques, network with those of like intention; a place to perpetuate violence, and be violated.

Last month, the Office of Juvenile Justice and Delinquency Prevention, Department of Justice, USA, (OJJDP) published a report, “Best Practises to Address Community Gang Problems”. Based on a nation wide assessment of “what works”. It identifies five strategies in its model to combat community gangs:

Community Mobilization: Involvement of local citizens, including former gang-involved youth, community groups, agencies, and coordination of programs and staff functions within and across agencies.

Opportunities Provision: Development of a variety of specific education, training, and employment programs targeting gang-involved youth.

Social Intervention: Involving youth-serving agencies, schools, grassroots groups, faith-based organizations, police, and other juvenile/criminal justice organizations in “reaching out” to gang-involved youth and their families, and linking them with the conventional world and needed services.

Suppression: Formal and informal social control procedures, including close supervision and monitoring of gang-involved youth by agencies of the juvenile/criminal justice system and also by community-based agencies, schools, and grassroots groups.

Organizational Change and Development: Development and implementation of policies and procedures that result in the most effective use of available and potential resources, within and across agencies, to better address the gang problem.

[You can read the full report here](#)

Comment

Heading into an election, it is inevitable that the issue of gangs and how they should be dealt with, will be the topic of heated, and sometimes uninformed debate and discussion. The size of the gang population varies widely, with estimates ranging from 3,500 - 5000, (the New Zealand Police), a population the size of Wanganui (Ron Mark) to 60,000 (Police Association). There is an agenda behind each assessment.

Discussion on how best to deal with gangs has been largely unhelpful. It is unfortunate that the issue provokes an "either – or" debate, and polarises opinion. This is not a matter over which the "hard liners" or the "wet liberals" can offer effective choices. The best solution comes from a comprehensive strategy, such as the one proposed by the OJJCP report. Vigorous enforcement and suppression is needed at the top end – the hardened criminals and profiteers. Those same tactics are counter-productive for emerging gangs and gang members. As Vivien Stern points out, when we criminalise social problems, we create criminals.

It's time for government to develop a comprehensive strategy to combat youth gangs – but that doesn't mean that the government should run it. We need to mobilise community organisations, fund local initiatives, and engage local communities in planning strategies that transform communities and build social capital.

It's time for an effective intervention