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A historical perspective on juvenile justice reform in Queensland – *Andrew Trotter and Harry Hobbs*

The Queensland government has recently implemented a substantial package of juvenile justice reforms designed to deal with “a generation of arrogant recidivist young offenders”. These reforms, which have sought to sharpen the blade of the criminal law and strengthen the power to enforce it, have been heavily and almost uniformly criticised by the profession, the judiciary, and the academy. This article places the reforms in a historical context to illustrate that not only do they make undesirable policy, but that each is a step backwards which together unravel centuries of gradually calculated reform to improve the state of human rights in juvenile criminal justice. 77

The implications of jail time discounting for court sentences – *Andrew Torre*

Specific and marginal general deterrence are being increasingly discredited as useful sentencing objectives. One reason is that offenders discount jail time, sometimes quite substantially. As a consequence, there is a significant difference between the court’s sentence and the effective penalty. The latter is the offender’s perceived duration of the time in jail. Discount rates, which perhaps can be thought of as a measure of acclimatisation to the prison experience, potentially weaken considerably the likelihood of successfully attaining the objective of specific deterrence. In addition, since jail time discount rates increase as the sentence length increases, punishment burden increases less than proportionately. This means that successfully achieving marginal deterrence is even more problematical. Using New South Wales data for three different offences, mean estimates of jail time discount rates are obtained, and then used to adjust downwards court sentences and estimate their effective equivalents. Effective sentence elasticities are then computed to gauge the impact of sentence doubling. Very low values are obtained. The critical implications for sentencing suggested by this study are, first, that absolute general deterrence and specific deterrence are realistic sentencing objectives. Marginal deterrence, however, does not seem to be attainable, given the ubiquity of positive time preference. Secondly, subject to the proportionality constraint, relatively shorter sentences are likely to be more punitive than longer ones, and therefore more effective as specific deterrents. 91

A judicial contribution to over-criminalisation?: Extended joint criminal enterprise liability for murder – *Luke McNamara*

Scholarship on the problem of over-criminalisation – when criminal law is employed as a penal or regulatory mechanism beyond its legitimate limits – has tended to focus on the actions of the legislature. This article considers a judicial contribution to over-criminalisation: the common law rules on extended joint criminal enterprise in their application to murder. It argues that the current rules, which have operated since the High Court’s 1995 decision in *McAuliffe*, are an unacceptable departure from both the

principles that govern individual responsibility for murder and the principles of complicity liability (which should be limited to agreement/authorisation or intentional assistance). Unlike many forms of legislative over-reach, which Australian courts have little capacity to “check”, extended joint criminal enterprise is a common law instance of over-criminalisation which is within the power of the courts to remedy. 104

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