



Volume 7, Number 2
2019

Salus Journal

An international, peer-reviewed, open-access journal for topics concerning
law enforcement, national security, and emergency management

Published by
Charles Sturt University
Australia
ISSN 2202-5677



**Charles Sturt
University**

Volume 7, Number 2, 2019

www.salusjournal.com

Published by

Charles Sturt University
Australian Graduate School of Policing and
Security
PO Box 168
Manly, New South Wales, Australia, 1655

ISSN 2202-5677

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Forensic Psychologists as Police Critical Incident Negotiation Advisors

Michael Lewis and Carol A. Ireland*

ABSTRACT

Negotiation teams are well established within tactical policing. Police agencies select and train personnel they deem suitable to act as negotiators during critical incidents. Consultants, such as forensic psychologists, have been considered as a means of increasing success during critical incidents through the specialist advice they are able to provide. However, there remains little research on the effectiveness of the advisor role and whether it is perceived by policing colleagues to be of benefit to the negotiation process. This will be discussed whilst also considering the consultancy process and how the forensic psychologist's skill set may benefit negotiation teams. This manuscript will focus predominantly on hostage-taking as an example, as this is where a significant portion of the literature originated.

Key Words: Forensic psychologist, Advisor, Critical incident, Crisis negotiation, Conflict negotiation, Policing

INTRODUCTION: CRITICAL INCIDENT NEGOTIATION CONSULTANTS

Negotiation is an established communication-based intervention used in policing practice and intrinsic to the successful resolution of critical incidents, such as hostage-taking and related crises. A 95 percent success rate has been reported for containment using negotiation strategies, with success defined as full resolution without fatalities (Blau, 1994; McMains & Mullins, 1996). Specialist teams comprising trained negotiators, an operational support unit, a designated command structure, and support personnel offer additional resources to a policing response when handling critical incidents such as hostage-taking, roof-top protests, and barricades.

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Yet, there is no “typical hostage scenario” (p. 343) with vast disparity in characteristics noted across incidents (Grubb, 2010). Negotiation teams must therefore be dynamic in their approach, adapting to scenarios as they unfold. Indeed, not all situations involve hostages; police negotiators are increasingly faced with people experiencing escalating personal crises (Noesner & Webster, 1997), hence the change in terminology from ‘hostage negotiation’ to ‘crisis negotiation’ (McMains & Mullins, 1996), and more latterly, ‘critical incident negotiation’ (Greenstone, 2005) to capture the variety of differing incidents.

With respect to critical incidents, approximately 50 percent of subjects are argued to present with mental illness, or experience emotional turmoil arising from personal problems or disputes (Fuselier, 1988; Strentz, 1985). Whilst this finding is dated, there has been little empirical investigation on the topic to determine any change in prevalence. It can be assumed, however, that psychopathology continues to have a role in crisis incidents given the increasing problems evidenced within society (Kane, Evans & Shokraneh, 2017). The importance of accounting for mental health during negotiation was formally acknowledged in the 1970s by the Federal Bureau of Investigation (FBI), who subsequently expanded their teams to include mental health professionals to advise on the mindset of the subject and consequent negotiation strategy (Butler, Leitenberg & Fuselier, 1993). Many regional police agencies within the United States (US) have since adopted this, with 58 percent of agencies utilising a mental health consultant (Fuselier, 1988), and approximately 88 percent of consultants tending to be a psychologist (Butler *et al.*, 1993). The use of such advisors is also in existence within the United Kingdom (UK), but to a lesser extent (Grubb, 2010).

Negotiation teams that use mental health consultants are generally rated as more effective than those that do not (Blau, 1994; McMains & Mullins, 1996). Butler *et al.* (1993), for instance, found police agencies report fewer incidences of death or serious injury when mental health professionals were utilised. Although findings indicate that mental health consultants, particularly psychologists (Ebert, 1986), can offer valuable contributions to the effective management and resolution of critical

incidents, it is not yet clear which aspect of their role is responsible for this success. It is important to highlight however, that psychologists rarely serve as a critical incident negotiator, and instead, assist as a backup and advisor to the negotiation team (Davidson, 1981; Reiser, 1982). This is to allow for more objectivity when evaluating the ongoing critical event.

Thus, there appears to be some agreement that psychologists working within police negotiation are to restrict their involvement primarily to that of a consultant, or rather, this is where their skill set is best maximised. There is scope for operational duties, although these directly relate to competence and familiarity with policing practice, but often encompass the psychological profiling of the perpetrator or individual in crisis/conflict, monitoring the psychological state of the negotiation team, proposing courses of action, and providing support to hostages and their family (Ebert, 1986; Fuselier, 1981). More commonly, the psychologist will be embedded within the team to undertake several non-crisis roles, which include screening and training negotiators, as well as briefing the command structure on the psychology of critical incident management that is critical at that time. This manuscript, however, focuses solely on operational duties so as to emphasise and convey the benefits of recruiting forensic psychologists as consultants to assist in such incidences.

Indeed, it should not be assumed that all psychologists are suitable for the realities of police work and their invitation to participate in crisis negotiation teams depends on: “1). Mutual acceptance; 2). Professional credibility; and 3). An ability to function in the operational setting” (Hatcher, Mohandie, Turner & Gelles, 1998, p. 462). Whilst this will be discussed in ensuing sections, it is important to initially note that there are barriers to overcome, with the first challenge requiring police officers and psychologists to understand their respective roles and functions. Familiarity with the Criminal Justice System (CJS) rather than solely mental health per se, is likely to facilitate a psychologist’s understanding of policing and offender management, thus somewhat bridging this gap.

Historically, clinical psychologists as opposed to forensic psychologists, appeared to be favoured as consultants in crisis situations

(e.g. Fuselier, 1988). As a specialism, forensic psychology is relatively late in its development, and consequently, there remains little scientific data on its application to critical incident negotiation. Whilst it is recognised, however, that neither clinical or forensic psychologists receive formal training in critical incident negotiation as part of their qualification, forensic psychologists are well positioned within the CJS and trained to predict the dangerousness of a given person in a specific context; therefore they have some utility during critical incidents where risk is of grave concern. Further, forensic services (e.g. the prison service) can tend to specialise in the training of psychologists as critical incident advisors, with such training being predominantly developed and undertaken by forensic psychologists. It is not the author's intention to disregard the skills of the clinical psychologist; rather, the aim is to highlight the core competences of the forensic psychologist, developed through a unique training pathway, that lends itself to the role of a consultant advisor in critical incidents.

To qualify as a forensic psychologist in the UK, a candidate must demonstrate competence as a consultant, acting in an objective and independent manner, providing advice and training to organisations on a specific matter. This role requires significant skill and expertise, and this manuscript is not suggesting that all forensic psychologists are suitable to advise during a critical incident. It instead proposes that those with detailed knowledge and credibility in crisis communication strategies and negotiation be considered. There are dangers in assuming similarities between a forensic and policing setting despite both broadly belonging to a wider criminal justice organisation. Some awareness of, or experience of working in law enforcement is thus recommended, as it would be unhelpful to assume that all structures and strategies to manage critical incidents are consistent across settings, although there are similarities. Policing culture is also a “unique and challenging phenomenon” (Sargeant, Antrobus & Platz, 2017, p. 348) and needs to be considered by an advisor during the formation of the consultancy relationship where trust is essential to collaborative working (Ireland, 2010a). Forensic psychologists as police critical incident negotiation advisors have a number of implicit factors which are relevant to a successful partnership with law enforcement

agencies and integral to the consultancy process. These factors will be considered in the ensuing section.

THE CONSULTANCY PROCESS: SPECIFIC CONSIDERATIONS FOR ADVISING IN POLICE CRITICAL INCIDENTS

Consultancy has a pivotal role in improving the functioning of organisations through the consideration of stakeholders, boundaries, culture and management. The *process consultation model* (Schein, 1988) captures this and identifies the consultant as offering expertise or a skill to an organisation where this may be lacking. Inherent to this is the process of organisational learning (Kubr, 1996), where a consultant is instructed to assist a client to work through a specific difficulty and resolve it. The onus of change, however, is on the organisation rather than the consultant, and consequently, is likely to be influenced by culture and resource issues.

Heavily laden bureaucratic systems, such as those arguably found within policing, may prevent change from being facilitated quickly, and as a result, momentum and motivation rapidly decline. Police organisational culture has also been described as a “tightly woven environment” (p. 348) where high pressure and often a highly discretionary setting lead to subcultural beliefs that act as a barrier to implementing change (Sargeant *et al.*, 2017). This becomes problematic for a forensic psychologist advising in a critical incident, especially when encouraging those with operational responsibility to consider both a range of potential management options, and consequences for the immediate and long-term for individuals directly involved and the wider organisation (Ireland, 2010b). Traditionally, the management of such critical incidents favoured a ‘command and control’ structure involving a ‘hard’ tactical approach where the risk of injury or death of both perpetrator and hostage was greatly increased (Dolnik, 2003). Moving away from this, a crisis communication strategy becomes essential for a peaceful resolution, yet requires the consultant advisor to “bring the negotiation process and command structure closer together” (Fisher & Ireland, 2010, p. 94).

Central to the development of this consultant-client relationship is trust. Forensic psychologists are embedded within the UK prison service and trusted to provide expert advice on risk, treatment and offender management. Arguably, this ‘trust’ manifests from the same three features Hatcher *et al.* (1998) posited that psychologists are to demonstrate in order to be held in esteem as police crisis advisors (now referred to as critical incident advisors). The first feature, *mutual acceptance*, relates to the relationship itself between the consultant and organisation. It argues for the need to work together in order to maximise success. In a critical incident, such as hostage taking, this becomes a challenge as the command structure is based on authority and rank, which has been earned operationally over a period of time (Fisher & Ireland, 2010). Indeed, for a forensic psychologist to arrive at the situation and refer to themselves as an ‘expert’ is likely to result in an unhelpful response, and an ensuing command structure that is resistant to psychological input.

Vecchi, Van Hasselt and Romano (2005) recommended the use of active listening to help establish rapport between the consultant and organisation, with the addition of empathy towards the client’s situation as means of building trust. Both active listening and empathy are considered core skills of a forensic psychologist (Passmore & Oades, 2014), and whilst active listening refers to a series of techniques (e.g. summarising, emotional labelling of situations, nodding and eye contact) adopted to demonstrate listening, empathy focuses on the ability to understand and share in another’s emotional state (Brodsky & Wilson, 2013). Once trust has been established, maintaining this becomes a priority and there is a need for the consultant advisor to be open and honest with the organisation, with a continuous dialogue that remains transparent and regularly sets expectations for both sides (Kakabadse, Louchart & Kakabadse, 2006).

Professional credibility is the second feature delineated by Hatcher *et al.* (1998) and focuses on the professional standing and credibility of the consultant to which their role relates. It is recommended that forensic psychologists be qualified for several years prior to embarking on such a challenging area of consultancy, as well as being familiar with the negotiation process, relevant theoretical models, command structure,

policing policies and legislation (Fisher & Ireland, 2010). There is also a requirement to understand the more human aspects of the critical incident (e.g. the subject's motive; Ireland, Halpin & Sullivan, 2014) and be familiar with current practices and emerging developments in forensic psychology.

Professional credibility extends beyond the knowledge of the consultant advisor and also encompasses perceptions of the members of the organisation for whom they are working. Consider a critical incident or when training police personnel, respect and acceptance from colleagues is essential for the consultant to be effective in their role (Fisher & Ireland, 2010). This is likely to develop over time as the psychologist attends critical incidents, yet in order to provide information pertinent to the situation and meaningful to command, it is proposed that forensic psychologists work more broadly as consultants in policing prior to taking on the role of critical incident advisor. This experience will inevitably aid understanding of policing practice, as well as determine suitability, and indeed ability, to operate in a field setting. It is also likely to be the main pathway to becoming a critical incident advisor, as at present, there are no structured recruitment programmes for such a role.

Ability to operate in a field setting is the final and third feature outlined by Hatcher *et al.* (1998). To avoid criticism, consultant advisors need to adapt to the field with pace and become desensitised to a situation that is likely, in the first instance, to be chaotic and stressful. There is the presence of real personal risk and a degree of resilience is thus required, yet forensic psychologists are thought to possess higher levels of this given the demanding environments and individuals with which they routinely work (Michalchuk & Martin, 2019). On-site, the advisor must be able to work collaboratively with police personnel whilst performing multiple roles, which include the assessment of and feedback on the negotiator's interaction, an ongoing evaluation of the mental status of the perpetrator or individual in crisis/conflict, and regular briefings with the on-site commander (Ebert, 1986). Figure 1 depicts the direct flow of information during a critical incident with the consultant advisor being at the centre of this.

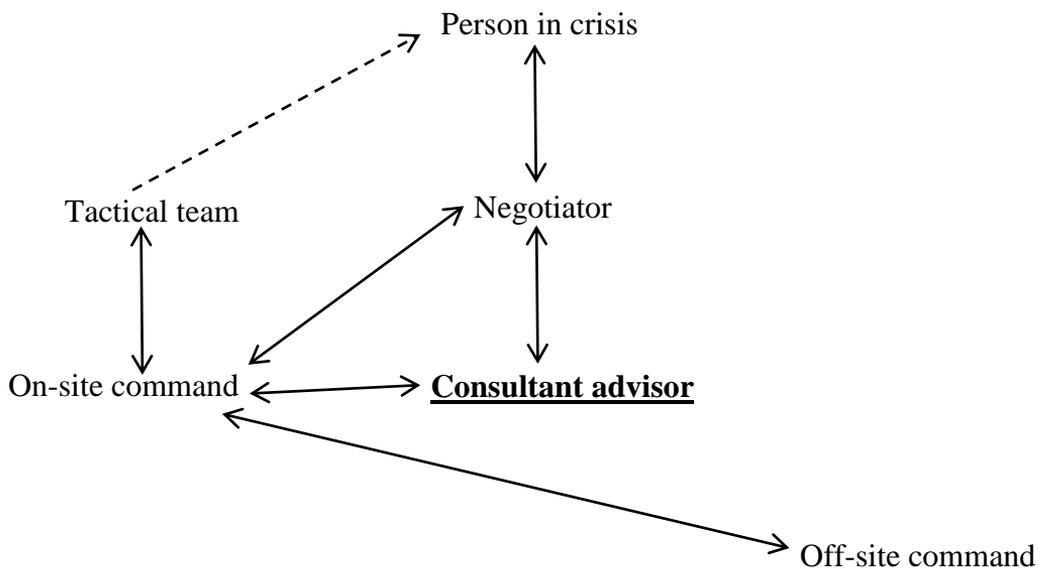


Figure 1: Direct flow of information during a crisis situation.

It becomes increasingly apparent that the consultant advisor role is that of a resource (Kubr, 1996) to aid the thought processes of key staff. This includes the negotiators dealing with the perpetrator or individual in crisis/conflict, and members of the command structure responsible for making high-stake decisions with regard to incident management. If the consultant is not accepted or respected by the organisation, the flow of information is likely to become disrupted, resulting in an unsuccessful outcome.

Thus, the role of the forensic psychologist as a consultant advisor in crisis situations has to be considered within the unique organisational setting, and subsequently, its culture (Fisher & Ireland, 2010). The consultancy process is also dependent on the advisor's professional standing, personal competences and strategic input. The utility of this input will be vital to the success of the role, as well as the ability to achieve a balance in terms of the command strategy and the approach recommended

by the advisor. Further, the psychologist as the advisor needs to be clear on their role, and not step past this. Nevertheless, the range of skills a forensic psychologist can offer to critical incident resolution is broad and these will be outlined next alongside theoretical models of critical incident negotiation.

KEY SKILLS OF THE CRITICAL INCIDENT ADVISOR

When considering the role of the consultant advisor, it is beneficial to envisage how their skills, competences and knowledge operate in the critical incident (Fisher & Ireland, 2010). A crisis, as one example of a critical event where someone is overwhelmed by a situation and their ability to cope has been exceeded, generally presents across four predictable stages (James & Gilliland, 2001), commencing with ‘pre-crisis’ and ending in ‘resolution’. ‘Crisis’ and ‘accommodation/negotiation’ manifest in between and it is during these phases, and to some extent the ‘resolution’ phase, that the consultant advisor is likely to have the most influence.

As the incident moves from ‘pre-crisis,’ where a person is described as stable and unaware of a problem, to ‘crisis,’ where there is an acute sense of ‘chaos’ characterised by high emotions, low rationality, instability and an inability to cope with a problem that is perceived to be a serious threat (Vecchi *et al.*, 2005). It is during the onset of the crisis that police negotiators are deployed to the incident due to the potential seriousness of the situation and threat to life (Fisher & Ireland, 2010). As coping fails, functioning of the person in distress becomes disrupted and they become unable to cognitively initiate rational problem solving; rather, their [in]ability to rationalise is now performed at an emotional level. Restabilising baseline functioning becomes the priority of the negotiator, and consequently, the consultant advising them. This phase is also likely to involve the initial development of a formulation of the presenting problem, including a profile of the person in crisis. The forensic psychologist is well positioned to provide such assistance given their working knowledge of risk assessment which is often applied to inform

decision-making, and in some instances, determine threat (Borum *et al.*, 1999).

Vecchi *et al.* (2005) delineates four techniques initially proposed by the FBI to lessen the emotional intensity of the situation and to aid the person in crisis progress towards more helpful problem solving. These techniques are embedded within crisis negotiation and involve: 1). Establishing communication and developing rapport; 2). 'Buying' time; 3). Diffusing intense emotion; and 4). Gathering intelligence to assist with negotiation/intervention strategies. Whilst these strategies are instilled during negotiator training (Johnson, Thompson, Hall & Meyer, 2018), the consultant is required to advise on this strategic approach and it maybe that this differs if a victim or hostage is present (Giebels, Noelanders & Vervaeke, 2005). Consideration is thus given to all aspects of the situation, with an aim of redressing the balance of perceived (or actual) power in the situation so that it is more in the direction of the authorities (Ireland & Vecchi, 2009).

Rapport building is commonly referred to in therapy to describe the manner in which a psychologist or therapist ethically forms an appropriately bounded relationship with their client. It is achieved through communication, whereby the clinician aims to match the client's language (Charlés, 2007) through personal expressions and active listening. Reflecting content back to the client demonstrates understanding and forms the basis of a relationship. This skill is integral to the work of the forensic psychologist and therefore lends itself to the training and support offered to critical incident negotiators in order to establish an effective relationship with a hostage taker or person in crisis/conflict, and understand the situation from their perspective. The negotiator must refrain from making value judgements about the person's behaviour and not challenge or reject them outright (Charlés, 2007). Indeed, this can be difficult for a police negotiator who in their everyday role is expected to uphold the law, arrest criminals and protect the public (McMains & Mullins, 1996). A different belief structure is thus required; one that is arguably context specific and informed more reliably by the goals of critical incident intervention.

Achieving conversational flexibility, which in practice is also known as ‘therapist positioning’ (Fisch, Weakland & Segal, 1982), also lends itself to developing rapport during the critical incident in that the negotiator becomes more than an attentive listener; they liaise with the person in distress to assist in the management of the difficulty precipitating the incident (Charlés, 2007). Yet, such an approach is delicate and requires a skilled clinician to guide the negotiator through this process whilst preventing advising against any unintentional collusion or promises. It is only likely to be successful in the ‘accommodation/negotiation’ stage where the individual begins to work through the critical event by being receptive to suggestions and thinking more clearly about resolving the situation.

In therapy, an appreciation of the systemic factors surrounding the client is thought to foster therapeutic change. Gathering contextual information about the client’s situation, rather than focusing predominantly on psychiatric diagnosis or psychological dysfunction, can promote this appreciation (Charlés, 2007). There is a similar requirement in critical incidents to understand the events triggering the incident in order to identify factors that may lead to a peaceful resolution (Noesner & Webster, 1997). It is therefore the responsibility of the forensic psychologist as a police critical incident advisor to work collaboratively with the negotiator to gather intelligence relating to the person’s life circumstances, permitting a more productive and meaningful conversation for which suggestions can be acted upon.

Reducing the pace of this conversation is essential for demonstrating an appreciation that the person’s experiences are complex and require more than superficial understanding (Charlés, 2007). Inherent to this is ‘buying time’, and according to Vecchi *et al.* (2005), the passage of time itself is the negotiator’s greatest ally as it helps to decrease arousal. Engaging the person in discussions on matters unrelated to the situation enables the goals of negotiation to be achieved, allowing an opportunity for rational thinking to develop, and where normative problem-solving can then be employed. Verbally containing the person in this manner, again, requires skill and necessitates an objective understanding of both the

person and the context within which the critical incident resides, so as to avoid any triggers or emotionally-laden topics. The forensic psychologist is at an advantage here as their work regularly entails gathering intelligence or background information to inform risk. This involves exploration of historic, potentially traumatic experiences, which needs to be completed sensitively to avoid disrupting the therapeutic alliance. Advising on conversational themes to verbally contain the person in crisis is therefore likely to be a further strength of the forensic psychologist.

Conversation, or communication, is argued to occur on two levels, with the first relating to the 'story,' and the second, emotion (Vecchi *et al.*, 2005). The two levels interact with the story generating an affective reaction, and subsequently, an overt behavioural-based response motivated by the emotion. It is this affective reaction that brings about the critical incident and thus diffusing this becomes a priority for the negotiator. As such, critical incident negotiators dealing with individuals in emotional turmoil need to be adept at identifying and managing such emotions. However, research (e.g. Grubb, Brown & Hall, 2018) has identified police officers, including negotiators, to demonstrate self-reported emotional intelligence at a level greater than the general population. Yet, negotiators did not differ from non-negotiator trained officers on emotional intelligent behaviours, which highlights an area for enhancement and a clear role for the consultant advisor in aiding the assessment of communication levels for emotional content. Addressing intense emotions behind the content is crucial when influencing the person's behaviour during a critical incident and one that the forensic psychologist is able to assist with.

The skills and knowledge referenced above will be critical to bringing about increased stability. There is a need for the consultant advisor to triangulate information sourced through self-report, observation and collateral file information to provide material pertinent to the event (Fisher & Ireland, 2010) directly to both the incident commander and negotiator liaising with the person in crisis (see figure 1). In advising across the four phases of the critical incident, the consultant advisor has access to theoretical expertise in terms of models of negotiation strategy, with the *Behavioural Influence Stairway Model* (BISM; Van Hasselt,

Romano & Vecchi, 2008) considered flexible and a more dynamic problem-focussed approach to critical incident negotiation tactics (Ireland & Vecchi, 2009; Fisher & Ireland, 2010).

The BISM evolved from the *Behavioural Change Stairway Model* (BCSM; Vecchi *et al.*, 2005) and places emphasis on the interaction between the negotiator and person in crisis/conflict. It outlines the relationship-building process, which occurs across three phases (i.e. empathy, rapport and influence), with active listening underpinning each, as illustrated in figure 2.

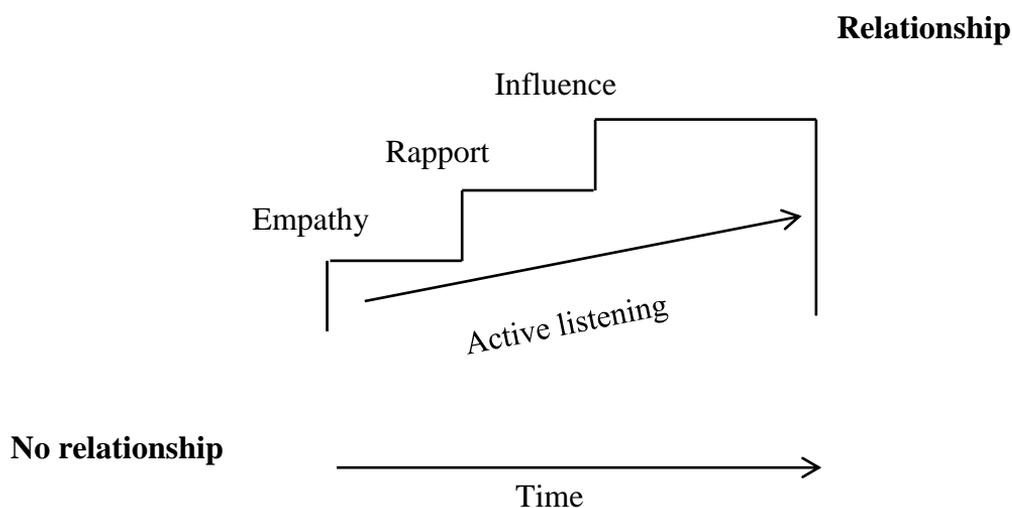


Figure 2: *Behavioural Influence Stairway Model (BISM; Van Hasselt et al., 2008).*

The person in crisis or conflict may not start at the lowest step; rather, they may commence at ‘rapport’ and dynamically move up and down the model as the situation unfolds. This dynamic approach permits the application of the model to a variety of scenarios, including those viewed at the extreme end of the spectrum relating to terrorism (Ireland & Vecchi, 2009).

During the negotiation process, the consultant, or indeed the forensic psychologist, is required to attend to the situation and map its locality on the model. The advice offered needs to reflect and be conducive to the phase being observed. It may be that communication exposes a change in motivation or vulnerability of the person in crisis/conflict, which means that a particular phase needs to be repeated. The model is forgiving in this sense and allows for advice to be provided on dialogue strategies that benefit from ongoing reflection (Fisher & Ireland, 2010).

CONCLUSION

The role of the police critical incident negotiation advisor remains within its infancy, particularly within the UK, and there is limited empirical evidence evaluating its effectiveness in assisting in the peaceful resolution of a critical event. Nevertheless, this manuscript goes some way to highlight the relevant skills and attributes of the forensic psychologist as a consultant advisor in such circumstances. It examines the consultancy process and identifies how the unique training pathway in forensic psychology instils an array of competences conducive to the operational advisor role in critical incidents; a role where understanding of relevant theoretical models is of equal importance. This manuscript concludes by recommending that future work investigates the organisational network of police agencies and their openness to external support, which in turn may enhance opportunities for forensic psychologists to be more embedded within the management of critical incidents in policing.

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The Expanding Security Gap: Australian Gendarmes and Policing

Ruth Delaforce*

ABSTRACT

Military and police cooperation assumes a different dimension in law enforcement operations that occur offshore, particularly transnational criminal environments. For police, military cooperation offers access to technology, resources, personnel and often operational strategies that are beyond law enforcement capabilities. However, there are challenges, as police seek to resolve investigations and ultimately prosecute offenders, while military objectives may include retrieval of an asset or individual, obtaining intelligence and planning for future operations. These two strategies are not always compatible, particularly where military responses may involve some transgression of law, while law enforcement objectives of identification, detention and prosecution of offenders are unlikely due to insurgency and war. This paper considers an Australian perspective on police responses to a range of transnational crimes, including drug importations and counter-narcotic strategies, kidnapping and terrorism. This historical trajectory illustrates a blurring of military and police roles in highly complex, operation-specific policy responses and development of a gendarmerie capability in the offshore environment, a trend being replicated across the globe.

Keywords: gendarmerie; military-police cooperation; security gap; Australian Federal Police.

INTRODUCTION

During the 1990s, the ‘security gap’ was regarded as a key factor for the (in)effectiveness of international military and police responses to a surge in intrastate conflict (Dziedzic, 1998). Since then, researchers, policy-makers and practitioners have considered ways that international collaboration and cooperation between the military and police might address these various gaps in peace-enforcement and peace-keeping

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operations, by timely deployment, enforcement of public order, and security sector reform (Harris and Jackson, 2011; Hills, 2007; Janssens, 2010, pp. 90-91; Neuteboom, 2010, p. 129). While Bronson (2002) considered the security gap as times “when soldiers become cops,” Andreas and Price (2001) observed that police were adopting military techniques and technologies, indicating a transition that could be framed as “when cops become soldiers.” Since 2001, military-police roles in the peace-enforcement, peace-keeping environment, indicate a widening of the security gap, reflecting a state transition “from war-fighting to crime-fighting” in the international domain (Andreas & Price, 2001, p. 35).

The security gap and focus upon intra-state conflict has been compounded by other factors, including terrorism, refugee and migration flows, and transnational criminal activity, often involving “actors outside international control regimes” (Berenskoetter, 2005, p. 80; Liotta 2005; Rollins, Wyler & Rosen, 2010). The links between criminal networks and corrupt political institutions in failed states, sites of peace-keeping missions, are noted as particularly problematic for police and the military with responses, such as in the case of Bosnia, being described as “militarised law enforcement” (Schroeder and Friesendorf, 2009, p. 146). A concurrent feature of global security governance has been the expansion of international policing investigations and crime control, with law enforcement agents operating in areas where the rule of law is not always recognised or easily enforced (see Andreas and Nadelmann, 2006; Cockayne 2013; Hills, 2009; Sheptycki, 2002). The linking of national security to crime prevention programs and investigations may also facilitate policing responses in an extra-territorial dimension (Andreas & Nadelmann, 2006; Andreas & Price, 2001; Hallsworth & Lea, 2011; Lutterbeck, 2004).

For police, conducting offshore investigations and crime prevention programs in hostile or high risk environments may have been, paradoxically, facilitated by the security gap identified in peace keeping operations, which presented opportunities for law enforcement to acquire military strategies and techniques. In turn, promoting law enforcement issues into national security priorities “changes not only policy discourse, but (the) exercise of state power” (Andreas & Price, 2001, p. 37). This paper traces the changed environment for offshore policing and the possibilities of militarised law enforcement through Australian responses, initially in the area of peace-keeping, and then expansion into other arenas

of countering criminal activity. The selected case studies illustrate the potential for an Australian gendarmerie and reflect the security dilemma faced by liberal democratic states where policing investigations occur in active conflict zones.

The Centre for the Democratic Control of Armed Forces (n.d) refers to the wide range of policing models described as “gendarmeries,” including “constabulary forces, civil guards, national guards, carabinieri, maréchaussées, republican guards, intermediary forces, armed police, frontier forces, internal troops, civil defence units, special forces, hybrid forces, paramilitaries or militias” (p. 2). Lutterbeck (2013) similarly notes the wide definitional scope of “gendarmerie,” where the narrower term in Europe is often applied to “police with military skillsets, with the legal status of soldiers’ and in “certain respects, controlled by ministries of defence” (p. 7). In this paper, the definition of “gendarmerie” is conceptualised as a law enforcement agency with “skills and training in specialist weapons and tactics capacity” and, more particularly, “stronger suppression capabilities than typical civilian police” including access to armoured vehicles and “light infantry weapons” (Centre for the Democratic Control of Armed Forces, n.d., pp. 2-4).

Scholarly and public reviews on gendarmeries or militarised police units in the global law enforcement environment have focused primarily on the maintenance of public order in international peace-keeping and post-conflict operations (den Heyer, 2011; Freisendorf & Penksa, 2008). However, Australian police now conduct overseas investigations in unique environments, where offender groups include state and non-state military personnel, criminals with use of military-grade weaponry, or criminals operating in conflict zones. A poignant example is the deployment of unarmed Australian police into the Ukraine, an active war zone, to investigate the deliberate downing of the MH17 aircraft and deaths of 298 passengers and crew (Ierino, Reid & Sheehan, 2015).

This paper proceeds with an overview of Australian police agencies and paramilitary units, with particular focus on the national law enforcement body, the Australian Federal Police (AFP). Case studies illustrating Australian transnational policing challenges are then considered, from peace-keeping/stability operations in the South Pacific, to counter-narcotic operations, and the kidnapping of Australian citizens. These cases illustrate not only a changed approach, with the introduction

of paramilitary units into offshore policing, but also law enforcement operations in hostile environments.

AUSTRALIAN POLICING AND PARAMILITARY UNITS

A federation of states and territories, Australian law enforcement comprises a national agency, the Australian Federal Police (AFP) in addition to police agencies at the state and territory level, the latter being responsible for public order, community policing, and investigation and prevention of crimes committed within the relevant state or territory.¹ The Australian Federal Police (AFP) is responsible for national criminal investigations, crime prevention, and the conduct of international liaison and operations. Following the 1978 terrorist bombing of a Sydney hotel, the AFP was established in 1979 through the integration of three law enforcement agencies: the Commonwealth Police (principally responsible for protective services to diplomatic missions and airports, and federal investigation of fraud and illegal drug importations), the Federal Bureau of Narcotics (a unit in the Australian Customs Service, whose remit was investigation of narcotic importations) and the Australian Capital Territory (ACT) Police Force (Baker, 2004, p. 148). The AFP is the principal policing agency responsible for national investigations of criminal activity in Australia, and international operations that impact upon Australia (AFP, 2019).

McCulloch (2004, p 313; 2001) traces the development of specialised paramilitary units within Australian state and territory police from the 1970s and creation of a specialist operations group in one state policing agency (Victoria Police) to address perceived threats from civil unrest in minority communities, anti-establishment movements and militant trade unions. Para-militarisation of the police was reflected and effected through joint police-military training, similarities in uniform, use of military weapons and equipment, application of “extremely high levels of force,” and the movement of personnel from military to policing roles (McCulloch 2001, p 1). Hogg (1982) also noted Australian developments in paramilitary policing through the establishment of ‘tactical response groups’ in New South Wales during the 1980s. Contemporary specialised paramilitary units in state and territory police forces now include counter-terrorist and hostage rescue capabilities.

Role convergence between military and police agencies in liberal democracies has been noted elsewhere, in particular, the use of military strategies and weapons to address civil protests and riots (see Campbell & Campbell, 2009; Kraska, 2007; Phillips, 2016; Weiss, 2011). In Australia, role convergence is similarly controversial, with commentators arguing there is a “well-established tradition that military responsibility is confined to dealing with external enemies under the control of civil authorities in wartime” and that the Australian Constitution “implies” a division between the military and police (Wootten, cited in McCulloch, 2001, p. 3). The paramilitary units within the police therefore represent the liminal spaces or threshold for the use of force, military equipment and techniques, in a law enforcement context (Harris & Jackson 2011, p. 106). McCulloch (2004) argues that the paramilitary units are indicative of an “increasing tendency towards convergence in philosophy and operations” for police and military, especially within a post 9/11 environment where the global war on terror offered a pretext for (further) militarisation of law enforcement (p. 313).

In contrast to the paramilitary policing developments in state and territory forces, the AFP experienced a short-term reversal of this trend. During the 1990s, the AFP internal structure underwent transition, away from a “military-style rank structure,” towards a more “team-based, professionally-oriented organisation” that reflected a ‘central intelligence organisation’ (Baker, 2004, pp. 150-151). According to former AFP Commissioner Keelty, such a transition “distinguished the AFP from state police bureaucracies with the traditionally-ranked military structure” (cited in Baker, 2004, p. 150). It is proposed that, while this transition away from paramilitary policing may be evident in Australian-based operations, it is the AFP’s involvement in peace-keeping and stability operations, and offshore criminal investigations, which has generated an opportunity to develop a gendarmerie, for both domestic and international deployment. In 2006, then AFP Commissioner, Mick Keelty noted that the Australian government was reluctant to endorse a gendarmerie, although the organisation faced challenges in overseas deployments requiring a “pseudo-gendarmerie” approach which involved “quasi peace-making” in addition to “peace-keeping” (p. 8).

In addition to its role in the investigation and prevention of transnational crimes - illicit drug trafficking, fraud and money laundering, people smuggling and cyber-crime - the AFP has also selected, trained and deployed civilian police officers for United Nations (UN) missions, including contingents involved in oversight of the 1999 East Timorese referendum (AFP 2000, 2001). In the following decade the AFP became more intensely involved in stability operations and police training programs, notably in the Solomon Islands (2003) and, later, the South Pacific (2004), South Sudan (2006) and Afghanistan (2007) (AFP 2013a). The expansion of Australian police contributions to peace keeping operations led to the creation in 2004 of the International Deployment Group (IDG) as a “standing (body with the) capacity to deploy Australian police domestically and internationally to contribute to stability and security operations, United Nations (UN) Missions and Capacity Development Missions” (AFP, 2013a). In 2013, the AFP reported there were “approximately 440 members deployed to UN Missions in South Sudan and Cyprus, international missions in Timor-Leste, Papua New Guinea, Nauru, Solomon Islands, Vanuatu, Samoa, Tonga, and Afghanistan,” and, of this number, 239 personnel were listed as being specifically affiliated with the IDG (AFP, 2013a, 2013c).

The IDG consisted of three components: an Australian-based unit, providing selection, training and support to mission personnel and “strategic advice to AFP executive;” a mission component, of sworn and unsworn personnel deployed to operations (or ready for deployment); and a Specialist Response Group, “providing ready response, highly-skilled tactical and specialist policing capability for rapid deployment to domestic and international operational situations” (AFP, 2013b). It is the development of a Specialist Response Group (SRG) that, it is contended, presages an Australian gendarmerie. Identifying a need for improved police-military interoperability, derived from analyses of the Solomon Islands mission, led to the merging of two Operations Response Groups into one unit in 2012, the SRG, which advertised its capabilities as “marksman, reconnaissance, negotiation, bomb response, and maritime, aviation and medical support”(AFP, 2013b).

Researchers have focused upon the increased need for interoperability and communication between the AFP and Australian military in stability and peace-keeping operations (Goldsmith and Dinnen, 2007; Harris and Jackson, 2011). Increased collaboration with the

Australian military was predicated on past experience in peace keeping, particularly East Timor and the Solomon Islands. However, an examination of other events during the past decade – counter-narcotic operations, the overseas kidnapping of Australian citizens, and increased involvement in international police training programs – highlight the challenges and opportunities for the AFP in an offshore policing environment that are catalysts for a militarised approach. In contrast to peace keeping operations, these selected events (summarised in case studies below) are indicative of “policing in a foreign policy space” where “police are the new deployable arm of government” (Keelty, 2006). The selected case studies indicate not only an expansion of the security gap noted during peace keeping operations, but also illustrate the challenges of traditional policing responses in transnational criminal investigations and crime prevention programs.

THE ‘PONG SU’ HEROIN IMPORTATION (2003)

In April 2003 the AFP initiated an investigation into a 125 kilogram heroin importation involving a North Korean freighter, the Pong Su. As the freighter was in Australian waters, assistance was sought from state and federal government agencies, including the Australian navy and military special forces unit (Logue, 2003). Two men were previously observed landing on a beach in the southern Victorian town of Lorne, being detained the next day in possession of 50 kilograms of heroin, hidden in waterproof bags. Also located on the beach was the body of another male, believed to be an accomplice who had drowned during the landing, and a further 75 kilograms of heroin (Negus, 2003). A fourth male was later arrested, having remained in the vicinity of the beach. The men had previously been on board the Pong Su, which was then headed out to sea, sailing north along the Australian coastline. Ignoring directions by Australian authorities to head into the nearest harbor, the freighter’s captain continued to sail north. Following police communication to the Australian Prime Minister, Defence Minister and senior Defence officers, the military and navy were “told to prepare plans to arrest” the ship (Cornford & Malkin, 2003). After a four day pursuit in heavy seas, the ship was eventually boarded and the captain and crew detained “at gunpoint” by special forces personnel (Lewis, 2003).

The Pong Su, owned by a North Korean entity, was registered in the South Pacific island of Tuvalu (Cornford & Malkin, 2003). Police alleged that the ship's officers had arranged to stop the ship near the Australian coastline for the purposes of offloading heroin (Gregory, 2005). The AFP further alleged that the heroin had been loaded onto the freighter at the North Korean port of Nampo, although the drug smuggling network was based in South East Asia (Sydney Morning Herald, 2003). The Pong Su's political officer (also described as a "political vice-president") was stated to have a "powerful position on the ship" (Champion, cited in Gregory, 2005). The inference was that the importation was organised, or facilitated by, the North Korean government, while the seized narcotic was reported to be of 'unknown origin' (Casale et al., 2006; Collins et al., n.d; Perl, 2004). The three men previously detained and 27 crew members were charged with aiding and abetting the importation of heroin. At a preliminary court hearing in April 2004, 23 crew members were discharged due to insufficient evidence and later deported. Of the remaining seven crew members who stood trial, four detained on board the freighter (including the captain, first mate, ship's political officer and chief engineer) pleaded not guilty. The four crew members were found not guilty in a 2006 trial and later returned to North Korea (Carbonell, 2004).

The Pong Su's interception and detention of its crew is illustrative of "policing in a foreign policy space," a North Korean vessel in Australian waters (Keelty, 2006). The Pong Su was intercepted and ultimately detained by the use of military assets and personnel, with AFP officers reportedly not participating in the initial boarding and seizure of the vessel until it was secured (Cornford & Malkin, 2003). Jennings (2004) notes that the Pong Su incident highlights the "cross-jurisdictional complexity of many security issues" with a "blurring of security roles at the border," particularly coastal surveillance, and a heightened reliance and interoperability between police and the military. The incident highlighted "a policy shift in national security" where "the range of possible threats goes well beyond the capacities of individual government departments to counter" such challenges, requiring the Australian government to "strengthen its ability to use all the instruments at its disposal" (Jennings, 2004, p. 38).

In contrast to the deployment of military assets in a counter-narcotics importation, the following two case studies illustrate a reliance

by police on paramilitary tactics to enforce public order in peace-keeping environments.

TIMOR-LESTE AND SOLOMON ISLANDS (2006)

Unarmed AFP personnel were first deployed to Timor Leste in 1999 under the auspices of the United Nations Assistance Mission to East Timor (UNAMET) for the special autonomy referendum, a ballot that would determine whether the East Timorese would seek independence from Indonesia (Aglionby, 1999). Following the pro-independence referendum outcome and subsequent civil unrest and violence, an Australian-led peace keeping operation was established (INTERFET) in late 1999 that included armed police officers. The peace-keeping operation, including deployment of AFP officers, to Timor-Leste continued through the different mission phases until 2012 (AFP, 2013d). In April and May 2006, a surge in civil unrest – involving youth gangs, armed with weapons that included “machetes, knives, dart guns” – and violent confrontations with police patrols of five or less officers, prompted urgent calls for support from “more heavily armed military and paramilitary units” (Goldsmith, 2009).

The situation was exacerbated by the murder of nine unarmed Timorese police officers and injuries to another 25 personnel on 25 May 2006, perpetrated by members of the Timorese military, and subsequent “political in-fighting” that resulted in “the government (losing) control over its security forces” (Goldsmith, 2009; Goldsmith & Dinnen, 2007). At the time, Timor-Leste was being hailed as a “UN nation-building success story” although indicators of violence were evident, with increased urbanisation and mass migration from poorer rural areas, high unemployment, the presence of a “significant number of disaffected, martially-trained young men,” and former Timorese police who had joined militias and gangs in the civil unrest, fights and incidents of arson (Goldsmith, 2009, p. 123). The target for these groups were the “new international police” in Dili, the capital, that eventually required joint patrols of Australian military and police personnel to enforce order (Goldsmith, 2009). Without access to “weaponry capable of projecting non-lethal force over a few metres,” Australian police sought “military and operational responses” (Goldsmith, 2009, p 125). Goldsmith (2009) notes, in this instance, that understanding “local political complexities” was important in policing such an environment, in addition to the “need for

greater AFP and Australian military interoperability” particularly in relation to intelligence exchange (p. 131).

Peace-keeping was also a mandate of the Regional Assistance Mission to the Solomon Islands (RAMSI), established in 2003 following five years of “ethnic tensions” and an urgent request from then Prime Minister, Sir Allan Kemakeza, to the Australian government (RAMSI, n.d.). The initial mission comprised police from the Pacific Island Forum member states, being led and funded by Australia and New Zealand.² The AFP contribution to the mission was prompted by the Australian government’s concern that the Solomon Islands was violent and corrupt, a potentially “failing state” (Wainwright, 2004; Glenn, 2007). RAMSI’s objectives were to restore law and order, the detention of “militant leaders and criminals,” reform of the indigenous police force (the Solomon Islands had no military) and government institutions (Glenn, 2007). Although RAMSI military personnel were “granted full powers of arrest,” the principal security providers were international police officers, who conducted patrols with Solomon Islander police (Glenn, 2007, p. xii).

The mission was considered highly successful in the subsequent three years, with the restoration of law and order, weapons confiscation, and detention of militia leaders and former police personnel who had engaged in violence (Goldsmith & Dinnen, 2007, p. 1102; Fullilove, 2006). However, following a change in government in 2006, rioting and looting occurred, with local and RAMSI police “caught off-guard,” and urgent Australian reinforcements being arranged (Goldsmith & Dinnen, 2007, p. 1102). Australian police were “accused of over-reacting” with the use of tear-gas to control the crowd (Goldsmith & Dinnen, 2007, p. 1102). Allegations by newly elected Solomon Islander politicians, of bias and dominance of the Australian government through RAMSI, were then followed by expulsion of the Australian High Commissioner, appointment of parliamentary members who had just been charged with involvement in the rioting (one as Police Minister) and an Australian lawyer as Attorney-General, a person wanted by the AFP for questioning in regard to child sexual offences (Goldsmith & Dinnen, 2007, pp. 1104-1105).

An AFP operational response team, originally created in 2005 and previously deployed to the Solomon Islands following a prison riot, was called upon to assist in restoring public order. The unit’s presence was considered significant, as “the first time that Australian police have

deployed a complete tactical response team into an overseas mission” (Nautilus Institute, 2013). These incidents – including an earlier shooting murder of an AFP officer in 2004 - were noted by an AFP spokesman as indicative of “the inherent dangers involved in peacekeeping operations and capacity building” (cited in Stewart, 2007). An AFP proposal included:

(Having) its own fleet of armoured vehicles to send to hotspots around the globe by late next year (although) the AFP denies the move will transform it into a paramilitary force, saying the new so-called “protected armoured response vehicles” will not be mounted with guns or other weapons. Instead, the armoured fleet will be used to protect AFP officers from attacks while deployed on peacekeeping missions in areas of civil unrest, such as the Solomon Islands and East Timor... (The vehicles are expected) to be used by the AFP’s new overseas anti-riot squad (Stewart 2007).

The Australian policing responses in Timor-Leste and the Solomon Islands indicate not only a perception by its personnel on the “futility of ‘normal’ models of police patrol... (where) violence suppression became a major objective,” but also that their only defence was “deadly force” (Goldsmith, 2009, p. 126). The limits of policing and public order enforcement in a weak state indicate an increased reliance upon police-military and paramilitary responses.

The following two case studies highlight similar challenges in offshore policing, but instead an almost complete reliance by law enforcement upon military and private security resources and expertise, for the location, negotiation and retrieval of kidnapped Australian citizens in conflict zones.

KIDNAPPED: IRAQ (2005) AND SOMALIA (2008)

Challenges in the location, negotiation, and retrieval of kidnapped Australian citizens kidnapped in Somalia and Iraq illustrate the limitations upon traditional policing techniques. An Australian Senate Inquiry, conducted in 2011, followed complaints regarding government and police

responses by the family of Nigel Brennan, an Australian photojournalist kidnapped in Somalia in 2008 (Senate Foreign Affairs, Defence and Trade References Committee, 2011). Brennan was kidnapped, with a female Canadian colleague, soon after arriving in Somalia. They were held for 462 days by a group of Somali males, believed to have criminal rather than ideological or religious motivations. Brennan and Canadian colleague, Amanda Lindhout, were released after his family sought intervention from a UK private security company, AKE, who initiated contact with the kidnappers, negotiated a large ransom and successful retrieval of both Brennan and Lindhout (Brennan, Bonney & Brennan, 2011).

Brennan's family raised concerns with the Australian government responses, particularly by the AFP and Department of Foreign Affairs and Trade (DFAT). These concerns included confusion over ransom demands (the family being told that no ransoms were payable, and then asked to calculate their assets and financial resources), lack of country knowledge, refusal to engage a Somali interpreter for negotiations, no responses by AFP to "proof of life" telephone calls from the kidnappers and Brennan, and later refusal (by AFP and DFAT) to disseminate information to the private security company, citing national security clearance issues, despite AKE employees being former British Special Air Service personnel (Brennan, Bonney & Brennan, 2011; Senate Committee 2011). In response to a question at the Senate hearing, the Brennan family affirmed that "there was a total lack of information and intelligence on the ground of the situation" (Senate Foreign Affairs, Defence and Trade References Committee, 2011, p. 7). The initial negotiations, and later meetings by AFP officers with AKE representatives and a family member, were conducted from Nairobi, Kenya, the closest location to Somalia.

By comparison, the 2005 kidnapping of another Australian, Douglas Wood, in Iraq resulted in the deployment to Baghdad of a "six-member 'hostage response team' picked from the highest ranks of the military and Australian Federal Police counter-terrorist unit," led by a senior DFAT executive (Lorrimer, 2005; Wood, 2005, p. 2). Wood was reportedly kidnapped by the Shura (Consultative) Council of the Mujahideen of Iraq, an "umbrella organisation of Iraqi resistance fighters" (Lorrimer, 2005). Wood's family noted that AFP responses appeared to be "basic" with "antiquated" voice recording devices attached to home landlines, and that the "officers' expertise in negotiation strategies was limited" (Wood, 2011, p. 3). Wood was held captive for six weeks,

ultimately being released following a military operation conducted by US and Iraqi forces, with minimal law enforcement intervention (Sydney Morning Herald, 2005).

The two cases highlight operational difficulties for police, seeking to employ traditional hostage negotiation techniques in a conflict environment, where military support is often required. While the police may represent the first agency that families approach for assistance, with an expectation that overseas kidnapping cases be managed appropriately, the Australian Senate Inquiry indicated significant challenges, including cross-agency responsibility, information dissemination, particularly with private security actors, and communication with families (Senate Foreign Affairs, Defence and Trade References Committee, 2011). The Senate Inquiry (2011) recommended that regular meetings occur to facilitate “inter-agency coordination and cooperation” and that “a pool of specially trained personnel across all relevant agencies (should be established) ready to respond to an incident such as a kidnapping abroad” (p. xii). In 2013 the newly created AFP Specialist Response Group included a “police negotiation team” to assist “the Australian Government in responding to international incidents where negotiator skills are required” (2013b).

AFGHANISTAN (2007-2010)

In October 2007, four AFP officers deployed to Afghanistan, advising senior Afghan police and assisting in counter-narcotic training programs. In October 2008, the deployment also included the “embedding” of three AFP officers into the Australian military to increase “opportunities for interoperability” and to “strengthen liaison and engagement” opportunities. The AFP’s role, apart from police training and development programs, was linked by then Home Affairs Minister, Bob Debus (AFP, 2008) to opium production which was “fueling a Taliban-led insurgency that threatened regional and international security” (p. 23). In 2010, the Australian government funded AFP to conduct a \$32.1 million, two-year program, for Afghan police training and development. Between 2007 and 2010, more than 650 Afghan police officers were trained by AFP officers, who were also involved in “reinforcing the rule of law through placements in Kabul and Kandahar” (AFP, 2010). By 2011, an AFP

statement noted police personnel were engaged in a range of programs, being the provision of training, and secondment with international and national agencies, including the NATO “training mission,” Regional Afghan National Police Centre, a Counter-Narcotics Interagency Task Force and International Operations Coordination Centre. The statement further mentioned that the organisation adhered “to strict protocols prohibiting it from sharing data for military purposes or for the placement of identified persons on military targeting lists” (AFP, 2011).

A United States (US) Embassy, Canberra, cable, released by WikiLeaks, mentioned the deployment of AFP officers to Afghanistan being described by a senior Australian Defence Department official as “putting good money into a bad situation” and questioning whether the AFP could meet its objectives, given the “train wreck” that they were being tasked to work with, in the Afghan National Police (cited on Special Broadcasting Service, 2015). In another cable, US concerns regarding the deployment of police, rather than military personnel, to Afghanistan were mentioned (Benson, 2010). A further 2008 missive referred to then AFP Commissioner Keelty discounting a police role in counter-terrorism, and instead a focus on counter-narcotics. However, such operations were constrained by security concerns, where a UK private security company (Armor) provided protection for AFP personnel, the “high security cost” being perceived to “not justify the return of benefit” – a security gap that was being addressed through the private sector (McCallum, 2008). By the end of 2008, AFP personnel were instead embedded into the Australian military, for interoperability and liaison purposes, while later reporting again makes reference to limitations on the dissemination of data for “military purposes” (AFP, 2011).

AUSTRALIAN GENDARMES

Neuteboom (2010) refers to gendarmerie forces as a “hybrid” model, being police “tasked with regular policing duties’ in their domestic arena, although also capable of operating in situations that ‘are characterised by a higher degree of hostility or danger” (pp. 136-137). Interoperability with the military as well as police, and an understanding of “military command and control, logistics and culture” are necessary, such that paramilitary policing units may also operate in environments requiring military-type

responses (Neuteboom, 2010, p. 137). The AFP has been increasingly assigned a role by successive Australian governments in the ‘foreign policy’ or security space, more traditionally associated with the military than police. In doing so, police are being deployed into hostile environments for the purposes of training and capacity building programs, counter-narcotic operations, investigations and hostage negotiation. The security gap noted previously in peace keeping operations is expanding, correlated to the changing tasks and roles that the Australian government is setting for its Federal Police. This liminal space or threshold is such that police personnel must acquire dual skill sets; those applicable for more traditional policing arrangements in liberal democratic states, and military techniques suitable for hostile, high risk arenas.

The catalyst for greater military interoperability and later development of this gendarmerie stems not only from AFP experience in Timor-Leste and the Solomon Islands, but also reviews of policing performance and response in those stability operations (see Goldsmith, 2009; Harris & Jackson, 2011). Harris and Jackson (2011) refer to collaborative doctrinal development by the police and military, and enhanced “structural and policy-level cooperation and interoperability” to guide integrated agency approaches. Initiated in 2007, AFP personnel were seconded into Defence Joint Operations Command, with police enrolled into courses at the Australian Defence College (Harris & Jackson, 2011, p. 110). Further indications of interoperability and police involvement in military training occurred in 2011, with the involvement of AFP units (including Forensics and the International Deployment Group) in Operation Talisman Sabre, a major biennial exercise involving both the Australian and US military forces (AFP, 2011). The AFP (2011) described its involvement in the exercise as strengthening “understanding of each organisation’s capabilities and methods of operations.”

Gendarmeries involved in international security operations are assessed to be more flexible and capable, meeting both military and policing requirements, with speedier deployments (Centre for the Democratic Control of Armed Forces, p. 5). Lutterbeck (2013) highlights additional positive features of gendarmes as representing the “bridge between domestic and international security,” particularly in the context of “contemporary security challenges” (p. 11). A comparative analysis of gendarmeries in Turkey, the Maghreb and European states reflect similar security challenges, leading to increased expansion of these specialized

agencies since the 1990s, particularly in West European states. These challenges include “border control, counter-terrorism and riot control, to international peace operations” (Lutterbeck, 2013, p. 14). Although varying in origin – either as an arm of the military or separate policing institution – gendarmeries in Algeria, Austria, Belgium, France, Italy, Morocco, Spain, Tunisia and Turkey, have gradually been integrated into the centralised, internal security system of their respective state, with increased personnel numbers (Lutterbeck 2013, pp. 16, 54). For gendarmes in border control, there is also access to ‘heavier equipment, including helicopters and ocean-going patrol ships’ (Lutterbeck 2013, p. 28). The focus on internal security, particularly public order and counter-terrorism, has resulted in gendarmeries with specialised units.

In Australia, a similar trajectory towards centralisation of internal state security at the national level has occurred, with creation of the Department of Home Affairs in December 2017, whose remit includes border control, counter-terrorism, and responding to organised crime threats (Department of Home Affairs, 2018). Agencies integrated into the Home Affairs Department include the AFP, Customs, Immigration, security and financial intelligence, emergency management, and transport security. By contrast to gendarmeries of other states, however, the integration of these agencies into one department has led to a slightly different trajectory. While the AFP continues with overseas deployments focused upon crisis response and criminal investigations, its role in international peace operations has reduced considerably, with no civilian police deployments recorded in 2018 and 2019 by the United Nations (2019). The ‘quasi-gendarmerie’ role it assumed in the early 2000s through ‘peace-making’ operations is now slightly muted. Transformation of the AFP into a gendarmerie appears to have slowed, particularly the offshore environment of peace-keeping. However, its focus upon counter-terrorism may still renew the concept of a gendarmerie, both within and external to Australian borders. It is another agency, the Australian Border Force (ABF) - formed in 2015 by the integration of Customs and Immigration, then being subsumed within the Home Affairs portfolio - that more clearly reflects a similar profile to the gendarmeries of other liberal democratic states. The ABF is responsible for land and sea border control functions, comprising armed officers, access to marine patrol boats and aircraft, and a military-style command structure (ABF, 2020). Future changes within the Home Affairs portfolio may facilitate ABF support for overseas

operations, a militarised agency whose personnel include sworn officers and skills that reflect a gendarmerie (Smith & Burton-Bradley, 2018).

Since 2001, the path towards militarisation of Australian law enforcement in offshore operations indicates a response not just to a ‘security gap’ but also mirrors a wider international propensity towards “an innovation of police power in the international sphere” with the “incorporation of military strategies” (Ryan, 2013, p. 435). The expansion of gendarmerie forces is occurring more particularly in liberal democratic states, with centralised internal security systems and military capabilities. While there is an increased focus upon police militarisation within states, it is also significant that a similar capability is being developed in the offshore environment.

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¹ The six states are: Victoria, New South Wales, Queensland, Western Australia, South Australia and Tasmania; the territories are the Northern Territory and Australian Capital Territory (ACT). The ACT is an anomaly compared to other police agencies, encompassing the capital city, Canberra, and an integral element of the AFP.

² The Pacific Islands Forum comprises 16 member states, being [Australia](#), [Cook Islands](#), [Federated States of Micronesia](#), [Fiji](#), [Kiribati](#), [Nauru](#), [New Zealand](#), [Niue](#), [Palau](#), [Papua New Guinea](#), [Republic of Marshall Islands](#), [Samoa](#), [Solomon Islands](#), [Tonga](#), [Tuvalu](#), [Vanuatu](#) (Pacific Islands Forum, 2013).

Will GPS Jammers Proliferate in the Smart City?

Tegg Westbrook*

ABSTRACT

The Smart City will rely extensively on consented and unconsented information about people's location and movements in order to fulfil its many ambitions. Utilising the Global Positioning System (GPS) is necessary and practical for Smart City agendas, as it provides time and positioning information which is essential for tracking systems. Nevertheless, the emergence of GPS-enabled tracking technologies over recent decades has spurred an increase in the use of GPS jamming devices (or Personal Privacy Devices (PPDs)). This article therefore argues that the normalisation of tracking in the Smart City may lead to the wider ownership of GPS jammers. To overcome this, the article explores the ways in which jammer proliferation can be overcome or avoided entirely taking examples of military, security, and civilian counter-jamming technologies and strategies.

Keywords: Smart City, GPS, jammers, privacy, counter-technologies, tracking.

INTRODUCTION

Structure of the Article

The article begins by outlining what the "Smart City" is and why the Global Positioning System (GPS) is important for meeting its overriding agendas. It then provides a short chronology of the development of GPS and jamming technologies and identifies why jamming may become more prevalent in the Smart City. The next subsection provides an overview of literature relating to GPS jamming and identifies current gaps in our understanding, particularly about how higher

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levels of tracking may lead to the proliferation of jammers. The findings section summarises the set themes relating to the proliferation of jamming devices based on an extensive review of media and literature. These themes are: globalisation and conflict; privacy concerns and other socio-technical forces; skewed and misleading marketing; and low risk, high reward criminality. Corresponding sections seek to identify causation between the present situation and the assumed increase in tracking in the Smart City by identifying ventures that pose risks of jamming due to their requirement of location, navigation and tracking information. It also explores the potential scale of interference based on known end-users and known ranges of jammers. The article offers possible counter-measures and alternative technologies, either built-in or as alternative navigation aids. Overall, the article concludes that privacy concerns must be seriously addressed by Smart City advocates if they want to avoid incentivising people to seek privacy illegally. To prevent this, more choice should be granted to current likely end-users of jammers – such as commercial truck drivers – to accept or decline being tracked. Greater reliance on GPS should also consider the possibilities this creates for criminals and even state actors.

What is the Smart City and why is GPS important?

The Smart City agenda endeavours to make cities more efficient, more environmentally friendly, more reactive, and more “liveable” places. It relies considerably on consented and unconsented access to data produced by people and objects to realise proactive and reactive societal, economic and planning solutions. Maintaining precision location and tracking information is necessary for achieving endeavours that involve, for example, autonomous vehicles, geofencing, and smart notifications. The Smart City utilises interconnected networks, such as the internet of things (IoT), cloud computing, remote sensors, artificial intelligence and the mobile infrastructure to merge “physical and virtual worlds,” utilising various “electronics distributed in different places including houses, vehicles, streets, buildings, and many other environments” (Komninos, Schaffers, and Pallot, 2011, in Ijaz et al, 2016, p. 613; Biswas and Muthukkumarasamy, 2016). It requires real-time information about the functioning of the city and will involve the widespread use of radio waves at different frequencies coming from a range of devices and systems. Free-to-use GPS, however, will presently discount much of the need for built-in navigation- and tracking-based systems.

Tracking and location information are useful for the Smart City agenda as it can provide real-time manageable data about the movements of people and objects with minimal resources. GPS is thus especially important for the Smart City agenda. GPS is a satellite-based navigation system that provides position/location and time information for no cost to a multitude of users and systems. In finance, for example, it speeds up algorithmic financial transactions, thus accelerating global economic growth. For emergency services it helps save lives by improving efficiency in navigation and positioning information and speeding up emergency response times considerably. It also helps to improve public safety by enabling crime-mapping and tracking for police. For general business activities it supports millions of jobs and services worldwide in aviation, shipping, mobile networks and power supply, including time savings and reduction of fuel (Hall, 2018; Coffed, 2016, p. 4; Deogawanka, 2016; Rajendran, 2017). In the United States alone, it has been calculated that GPS generates approximately \$122.4 billion in annual economic benefits (GPS World in Coffed, 2016, p. 4). In 2008, 6 to 7 percent of the European Union's gross domestic product (GDP) was directly dependent on the availability of GPS (Cameron, 2011 in Coffed, 2016, p.4).

A chronology of GPS and tracking

The modern, satellite-enabled roots of tracking dates back to the prelude of the Cold War, where in the 1950s navigation satellites were proposed, and eventually used, for the “prompt location and steering information to a variety of weapon systems,” including aircraft, missiles, and nuclear weapons platforms, “thus increasing their accuracy and lethality” (York, 1985, p. 18). The use of jamming as a method of degrading and disrupting radio communications began in the early 20th century, where electromagnetic radio waves were first used in military maritime communications. From the 1920s, radio waves were used for distributing mass media – and propaganda – to millions of listeners in their homes and workplaces. Inevitably, this spurred new developments into jamming technologies and jamming methods. Soviet governments, for example, attempted to jam Western propaganda movements, such as Radio Free Europe, by strategically placing jammers on buildings in dense urban locations. The launch of GPS satellites in the 1980s, among other things, changed radio communication and modern warfare radically, spurring developments into “steerable” smart weapons systems and the miniaturisation of antenna systems. This inevitably created a market for

new military jamming technologies by the US's traditional adversaries: if you can jam smart weapons and your enemies' navigational and communication capabilities, you degrade their ability to fight and communicate effectively. To this day, military jamming is a daily occurrence in conflict zones such as the Ukraine and Syria.

In what ways is GPS vulnerable?

From a technical perspective, distant satellites provide weak signals and therefore antennae systems have to be very sensitive. This makes them susceptible to several types of natural and human interference, including built structure obstruction; terrain/foilage obstruction; solar activity; human or software error; satellite malfunction; control segment failure; space debris; and other factors (RNTF, 2016, p. 5; Lyidir and Ozkazanc, 2004; Borio, O'Driscoll, and Fortuny, 2012). Interference can affect precise timing and position/navigation information, leading to the disorientation of systems and inaccurate navigation and positioning data. From a socio-economic and political perspective, since the collapse of the Soviet Union, and when GPS became available for civilians in the 1990s, jamming and counter-jamming technologies have created new markets in the civilian realm and ceased to be confined exclusively to conflict zones and repressed states. Now incorporated into civilian infrastructures, this has widened the scale of vulnerability (or "attack surface") of the System and provided new opportunities for state actors and criminals.

Correspondingly, as the findings below indicate, the emerging market for cheap and concealable personal tracking devices, and the wide use of tracking systems in freight industries, are also factors incentivising people to buy jammers. Likewise, GPS-enabled monitoring can generate a plethora of information about familial, political, professional, religious, and sexual associations of individuals (Elmaghraby and Losavio, 2014). It could provide thieves with information about whether someone has left home or gone on vacation. GPS jamming is thus no longer a feature of military engagements (e.g. for disrupting communications or misdirecting GPS-enabled smart weapons, ships and surveillance UAVs); Because GPS is now integral to our everyday lives, the market and availability for personal, low-power and inexpensive GPS jammers is extensive.

"Jamming is the transmission of a noise signal across one or more of the GPS/GNSS frequencies to raise the noise level or overload the receiver circuitry and cause a loss of lock" (Royal Academy of Engineering, 2011).

Jammers prevent GPS receivers from computing positions intended to be locally stored or relayed via tracking networks (Mitch et al, 2012). Jamming signals can be done discriminately by disrupting specific systems or indiscriminately by causing unintentional damage as a result of intentional jamming. Spoofing, on the other hand, is the generation of false GPS signals that are intended to alter users' perceptions of time and location.

How widespread is the practice of jamming?

There are no reliable statistics of the ownership of jammers available. However, it has been concluded in various studies that a significant consumer group for “personal privacy devices” (PPDs) are drivers in the freight industry and other motorists. A project named Sentinel, for example, was commissioned to detect and locate interference near an airport where sensors were put in place (Espiner, 2011). It found marked peaks in jamming interference during rush hour times, suggesting commercial drivers of company vehicles are very likely to be the main users. In the same study, and in many media stories, it was argued that GPS-enabled car insurance tracking, criminal tagging and asset tracking are factors increasing ownership of jammers. Other studies have confirmed this, suggesting that up to 30 percent of commercial drivers use such devices (RNTF, 2016, p. 12). Blurring these lines between illicit use and extra-curricular business activities (mentioned later) is the legitimate, licensed use of jammers in some sectors such as prisons (denying use of contraband such as cell phones), governance and diplomacy (preventing spying and eavesdropping on secret meetings and conversations), critical infrastructure protection (denying use of civilian UAVs near airports, for example) military convoys (protection against explosives using radio detonators) and various law enforcement activities. These jammers are significantly higher in price and level of sophistication. Military jamming equipment, on the other hand, is likely in the arsenal of every national military. Varying in power and sophistication, they are used for disrupting communications, surveillance capability, target accuracy, and navigational reliability for offensive and counter-offensive purposes (Westbrook, 2019, p. 7).

Fundamentally, what does the future hold for Smart Cities that will utilise tracking technologies on a wider scale than the present situation? If privacy is diminished further, will this accelerate demands for privacy

seeking devices? A review of literature will identify current gaps in our understanding regarding these questions.

Literature review

Academic studies into jamming and counter-jamming technologies and countermeasures are largely confined to the science and engineering communities. These studies have provided a plethora of practical, technical and policy-relevant findings that have informed risk and vulnerability assessments for the practitioner/military sectors and which are applicable to the Smart City context (see for example Lyidir and Ozkazanc, 2004; Kundu et al, 2008; Borio, O'Driscoll and Fortuny, 2012; Mitch et al, 2012; Di Fonzo et al, 2014, and many more; as well as national governmental and non-governmental institutions). Research into the geographical scope and implications of jamming has recently received some attention (for example from the Resilient Navigation and Timing Foundation, C4ADS and members, Westbrook, 2019) as well as how risk to critical infrastructure has changed over time because of the emergence of new jamming technologies and counter-technologies. More popularised attention in recent years has raised awareness about the implications of jamming, the types of end-users, the consequences resulting in our over-reliance, and implications for law enforcement (e.g. Hambling, Rutkin, Gearin, 2016; McKinlay, 2016; see also MarketWatch, 2017). Nevertheless, little dedicated research addressed the possible consequences of non-consensual tracking has on law enforcement, municipalities and businesses. Likewise, no research addresses factors that may lead to the proliferation of tracking and jamming devices, nor addressed the possible implications of the wider ownership and use of jammers in urban areas.

Likewise, academics interested in Smart Cities have contributed extensively in knowledge in the field of cyber-security and privacy implications, but, worryingly, none have addressed the potential implications of electronic interference from both a political and technical perspective, nor identified possible repercussions of the wider use of tracking and location technologies on the Smart City agenda. This article therefore addresses two significant gaps in literature relating to GPS jamming and cyber/electronic-security and privacy implications of the Smart City.

The next section outlines the various socio-technical, political and economic factors that currently influence the acquisition and use of jamming devices. Later, the article explores the implications for the Smart City, and later explores possible counter-measures and technologies.

FINDINGS

An extensive literature review has identified five prevailing themes driving the demand for acquiring and using jamming devices that may have implications for the Smart City agenda: (1) globalisation; (2) they provide low-risk, high-reward opportunities for criminals; (3) privacy concerns and other socio-technical factors; (4) skewed and misleading marketing and; (5) civilian jamming is not wholly separable from ongoing international political affairs. Many of these factors overlap with each other in various ways.

In reference to globalisation, consumers, even from the most remote parts of the world, are now able to access a range of products sold at competitive prices with little geographical restrictions. China is widely seen as the largest manufacturer and distributor of jammers. The rise of China as a significant economic power, and its vast industrial-base of producing cheap consumer electronics (such as tracking devices), is also a significant factor in the availability and competitive market for inexpensive GPS jammers (Westbrook, 2019, p. 10).

The easy availability and expense of jammers (less than 100 USD) means that there is a strong market and consumer base for both legal and legitimate commercial use (mentioned earlier) and illegal use. GPS jammers are often marketed as PPDs and this is appealing for people seeking privacy from distrustful partners, criminals, or the police. One catalyst for the PPD market is the corresponding market for cheap and accessible GPS-enabled tracking devices for civilian, police and security actors' use. GPS jammers are also marketed as cell phone jammers intended to create "quiet zones" in places such as on trains, in religious buildings, cinemas, theatres, restaurants, and to prevent distractions at work or in family settings. Cell phone jammers have also been used for practical jokes as well as cheating in video games such as Pokémon GO

(McNeil, 2016). This demonstrates that even the most trivial of matters – such as gaming – can influence consumer demand for jammers.

Jammers are also highly marketable because they are low-risk options for a variety of actors, not least because (1) they are easy to use (usually incorporating an on and off switch); (2) they are relatively inconspicuous, often pocket-sized devices that can be hidden and disguised as cell phones; (3) they can be difficult to detect and geolocate, particularly if used in vehicles where perpetrators are absent at the first point of alarm, or in cases where glitches and interference of a system, for example, could result from multiple eventualities (such as natural events or human/system errors) and; (4) they are relatively inexpensive.

Depending on the context and the intentions of the users, GPS jammers can provide high rewards proportional to various criminal objectives. Freight drivers might profit by working out of hours, and taxi drivers might avoid splitting profits with their management (GMT Connect, 2016). In Germany, some drivers have avoided GPS-enabled road tolling payments by using jammers (Messina, 2010). More determined actors – such as organised criminals – may acquire more expensive, sophisticated, reliable, high-power jammers to ensure that more high-stakes rewards are maximised. Criminals have been known to use GPS jammers successfully when stealing cargo or vehicles fitted with GPS tracking devices.

Importantly, whilst there is a high motive for privacy and criminality for a variety of users, there have been many reported instances of websites giving misleading information about laws governing the legal possession and use of jammers in some countries, and this should therefore be considered a factor influencing proliferation. GPS jammers are prohibited in countries such as the U.S., Canada, and Australia, while in the U.K., it is illegal to use GPS jammers, but not to purchase them. In France and Japan, cell phone jammers are legal for use in some public venues.

It has also been pointed out that marketers try to circumvent responsibility by including disclaimers “on their websites or in promotional material that the consumer bears sole responsibility for complying with all legal obligations regarding signal jammers” (Federal Communications Bureau, n.d.). Thus, these grey areas in domestic laws

are exploited and this inevitably leads to wider ownership of jammers and lower levels of accountability.

Existential to the above factors, global affairs, or more particularly ongoing conflicts and disputes in Eastern Europe, the Middle East and in South-East Asia, have national and local repercussions. As GPS gets incorporated into civilian infrastructure and systems, animosities between adversaries in military conflicts and political animosities in the civilian domain fuse together. Since GPS is owned by the United States, it is no coincidence that “privacy seeking” GPS jamming devices are produced en masse in China, and military jammers produced, sold and frequently used by Russia, North Korea and China in areas where the U.S. military operate. Indeed, GPS is undeniably a major soft and hard power tool for U.S. influence in so many strands of political and economic functions around the globe, so disrupting and degrading this system is a potential corrodent to its hegemony.

WHAT DOES THIS MEAN FOR THE SMART CITY AGENDA?

Fundamentally, whilst Smart Cities promise better living standards and more economic and social opportunities, they will challenge “our security and expectations of privacy” (Elmaghraby and Losavio, 2014). The simple hypothesis that this article puts forward is that based on the present situation where numerous individuals have sought privacy by subverting GPS tracking, future and present Smart City agendas will need take into consideration the possible implications of their actions. Not only is it the question of whether increased tracking might motivate people to buy privacy devices, but what opportunities will Smart City functions offer criminals? What intentional and unintentional damage might be caused if there are more end-users and more systems that rely on GPS?

Whilst we cannot answer these questions without speculating, we can try to identify the possible scales of interference based on Smart City initiatives that seek to utilise GPS at the present time, and also based on the known jamming ranges.

Scales of interference

Interference on GPS-reliant systems in Smart Cities will cause varying degrees of disruption that are not equally critical. At the lower-end of the scale, jamming could cause general inconvenience. At the opposite, there might be an increase in intentional and unintentional incidents leading to deaths and injuries, as well as disruptions to critical infrastructures, and impacts on business continuity.

Some forms of jamming – particularly military jamming and spoofing – could in theory seriously damage a nation, but in practice are unlikely ever being carried through. Other threats could cause only minor damage, but that damage is inflicted every day in many locations (RNTF, 2014, p. 2). The overall impact can depend “upon the number and type of affected users, duration of the disruption” and other factors, and the degradation of service can be insidious, without even noticing it is happening (ibid). At the extreme end of the scale, communications, power grids, traffic systems, financial transactions and stock exchanges could be affected. Nevertheless, aviation, shipping, and financial industries typically have backup systems and alternative navigation methods.

Overall, apart from some examples of accidental military jamming in San Diego in 2007, and intentional military jamming by North Korea directed at Seoul (on numerous occasions in early 2010s), both of which affected critical infrastructures, as serious as they were, they only caused general inconvenience for people in these cities – blocking cell phones, navigation data, malfunctioning ATMs, for example. Nevertheless, prolonged interference of the GPS system, like the aforementioned examples, also needs to consider the possibility that other opportunistic crimes may increase (ibid, p. 13). The increased pressure placed on governments to respond to malicious military jamming or spoofing activity could also escalate into conflict, as was in the case of the Iranian spoofing of an U.S. UAV in 2011 (Westbrook, 2019, p. 8-9).

Whilst disruption to satellite navigation system in normal road vehicles might disrupt many operations in the freight industry, disruption to Smart City ventures, including automated vehicles (including personal vehicles, buses, trams, trains and UAVs) and GPS-enabled geofencing technologies (incorporated into infrastructure and in vehicles), may have more serious consequences in terms of loss of life and major disruption to traffic networks. Such systems will rely on “centimetre- or millimetre-

precise coordinates for navigation or avoiding other objects” (Shaw, 2018). Motor vehicles will also provide a plethora of data for national authorities and private entities relating to an individual’s everyday activities and consumer habits.

GPS-reliant vehicles could potentially present spoofing opportunities for criminals and terrorists. Recent tests have confirmed that jammers were able to affect an 80,000 USD UAV by making the receiver believe that it was rising, not hovering, which made it plummet “...towards the ground in rather dramatic fashion” (Wood, 2013). Similar tests have been carried out on ships, which have revealed the vulnerabilities occurring because of momentary disruption of positioning information of up to 10 meters, which with poor visibility, narrow straits and rocky areas, could prove disastrous (University of Nottingham, 2016).

Will multiple users cause wider interference?

The implications of jamming cannot only be comprehended solely in qualitative terms, but in quantitative terms relating to their effective ranges and the possibility there will be multiple end-users (Westbrook, 2019, p. 10). This allows us to grasp the implications of jamming based on their effective ranges. Despite being inexpensive, the price of small devices does not appear to provide an accurate account of their power and ranges, thus manufacturer specifications are not accurate. Prominent researchers agree that the effective “ranges from a few meters to several tens of meters are advertised” online, “but the actual effective ranges are significantly greater. Claimed and true power consumptions range from a fraction of a watt to several watts” (Mitch et al, 2012). Overall, this makes it hard to predict if or how receivers are vulnerable to what devices and what ranges. Adding to this, companies and infrastructure managers can be reluctant to expose the weaknesses of their systems which inevitably makes it harder to understand or comprehend the implications of jamming in urban contexts.

Table 1. Likely users and ranges of GPS jammers

Likely End-users	Approximate Power	Approximate Distance	Urban Areas Affected and Potential Consequences	Notable Examples
Privacy seekers; criminals	one deciwatt < >	Few meters to 9.3 miles	Dense urban locations, civilian systems	London Stock Exchange, numerous airports.
Organised criminals; terrorists; state proxy actors, state/private security actors	one kilowatt < >	31 miles < >	Cities, regions, civil and military systems	No open access information available.
State-assisted terrorist and rebel groups, state militaries	10 kilowatts < >	94 miles – 124 miles < >	Cities, regions, small countries, civil and military systems	South Korea, San Diego Harbour (unintentional), Finnmark (Norway), Ukraine, Syria, Iraq, East Europe, Black Sea, South China Sea, and others.

From open access sources (Scott, Shaw, and Lo, 2013; Mims, 2011; Lynne, 2003; Westbrook, 2019)

Most non-state actors will not be able to acquire military-grade jammers because they are not available without an appropriate license in most countries. Nevertheless, drug cartels succeeded in spoofing surveillance UAVs used by Custom and Border Protection on the Mexico-U.S border, which required a high level of sophistication to accomplish (RNTF, 2016, p.14). Thus, it is clearly possible to produce or acquire

military-grade jammers and spoofers through the black market, especially in countries that lack laws and legislation for manufacturers, distributors, as well as related parts and components and intellectual property. But if one low-power jammer can impact dense urban locations, then multiple users could hypothetically affect systems in whole cities and regions. Thus, the quality and quantity of jammers are significant in different ways.

A recurring theme relating to the GPS jamming phenomena, however, is the increased use of intentional military jamming of urban civilian areas. Russia's "Zapad" military drills, involving thousands of soldiers in as near as 10km from Norway is likely to be deliberately provocative (Staalesen, 2018). The Norwegian Ministry of Foreign Affairs confronted Russian authorities over concerns that civilian aviation and communications systems had been repeatedly "jammed in connection with nearby Russian military activities" near Norway's Eastern Finnmark region (ibid; Westbrook, 2019, p. 7). South Korea's capital Seoul has been targeted frequently by North Korean military jamming; affecting aerial, naval navigation, as well as cell towers and vehicle navigation. Seoul and its major airport are close enough to the demilitarised zone to be affected by intentional and unintentional interference. Thus, some cities may require military anti-jamming systems incorporated into civilian infrastructures, while others in relative safety may opt for more accessible technologies available in the civilian market (Westbrook, 2019).

POSSIBLE COUNTERMEASURES AND ALTERNATIVE TECHNOLOGIES

Counter-jamming strategies and technologies

It is not within the scope of this study to outline the technical, legal, political and operational ways to mitigate jamming, as they vary between each study and country (see for example, Kundu et al, 2008; Borio, O'Driscoll, and Fortuny, 2012; Di Fonzo et al, 2014; Mitch et al, 2012). Since jamming affects the accuracy and reliability of smart weapons and communication systems, significant research has gone into counter-jamming strategies and technologies for military markets. Iraq's jamming of U.S. and coalition's smart weapons during the Second Gulf War spurred interest into lethal and non-lethal detection and geolocation technologies.

The U.S.-made home-on GPS Jam, or HOG-J, is a lethal example. Anti-jamming systems themselves have miniaturised, have become lighter and less power-consuming, and therefore have become more versatile for users and for installation in numerous devices and infrastructures.

For law enforcement especially, this has significantly improved monitoring, identification, tracking, and responses to, jamming, or GPS interference more broadly. One example is hand-held battery-operated radar systems, which can, for example, identify vehicles illegally using jammers. Devices the size of mobile phones also assist in detecting and geolocating jamming. Seizures at airports and international mail packages can also be an effective counter-jamming strategy. Whilst tightening laws on the trade and possession of GPS jammers as well as implementing rigid laws and legislation on privacy rights might be the most effective approach, there are some counter-measures in the military, security and civilian markets that could provide some measure of protection against jamming.

One of the many factors that makes GPS susceptible to jamming is the size of the antenna systems, as well as issues concerning standardisation and modernisation. This has already initiated state and private initiatives for modernisation as well as miniaturisation of antenna systems and receivers. Since antennas and receivers can be large and heavy; small and lightweight receivers, preferably low in power consumption, are being produced to allow more flexibility and versatility.

Whilst small antenna systems are less vulnerable to interference, fitting them to UAVs does not necessarily decrease their vulnerability, but as moving objects, they can be fitted with alert and fault detection systems (incorporated into receivers) that enable the vehicles to automatically steer away from interference, and even notify authorities and geolocate where interference is coming from. Lightweight technologies would be key to UAVs, whilst heavier systems can be incorporated into land vehicles. Whether this is practical or even a realistic countermeasure, however, is open to question (composite studies address this, for example Perkins et al, 2015).

Since fixed-reception antennas are also generally more susceptible to jamming than moving objects, adaptive array antennas (or “smart antennas”) could theoretically be adapted to emerging Smart City functions like UAVs and other vehicles that rely on GPS. Some smart

antennas have hemispherical coverage, allowing them to receive radio frequencies from more satellites than conventional antennas. Electrically steerable directional antennas could also potentially overcome jamming (Cole, 2015).

On the above points, some procedures for identifying and responding to jamming events in airports, for example, could also be replicated in the Smart City. Instead of having in-built systems or multiple people responding to and reporting jamming, it could be more cost-effective to have one jammer geolocation system that identifies instances of jamming to a single entity. It may be argued, however, that whilst managing this would be possible for an airport, a city with unique and complex physical and human landscape with possibly more end-users, as well as multipath reflections and “urban canyons,” might be less practical.

Some advocates have argued that finding alternatives to, or reducing our dependence on, GPS is most appropriate. Indeed, many governments, militaries and critical infrastructure managers have invested their resources into appropriate responses to GPS outages, including undertaking operations independent of GPS, utilising alternative technologies and improving risk assessments. This is transferable knowledge for cities and municipalities invested in Smart City initiatives. As for vehicle navigation, alternative or complementary systems from military technologies, such as laser-guidance, pre-programmed navigation images (of physical structures, roads, streets, pedestrian crossings etc.) and inertial, self-calibrating navigation aids (fitted with stable and precise clocks) are just some systems that could replace GPS as a navigation tool.

Indeed, considerable investment already goes into back-up navigation systems such as Loran (LONG-RANGE Navigation: China, Iran, Russia), and eLoran (Enhanced-Loran: U.K., U.S. and Europe). The superior eLoran system provides a means to maintain high-quality timing in the event of GPS vanishing by enabling “navigation by triangulating via low-frequency/longwave radio signals transmitted by fixed land-based radio beacons” (Vaas, 2014). Indeed, the connected and autonomous vehicle industry is already developing alternative technologies that address existing limitations of GPS. GPS black spots are created in dense urban locations (due to minimised satellite coverage) and GPS is sufficiently less effective underground, in buildings, tunnels and in crowded areas. Considerable investment also goes into internal navigation aids, collision

avoidance systems, intelligent speed adaptation, automatic braking systems, and geofencing technologies. These could provide potential alternatives in relation to inaccurate GPS information.

On the other hand, as an accompaniment to investing in alternative systems, strengthening GPS signals could overcome weak jamming signals. Indeed, recent military jamming aimed at disrupting Western military operations has prompted “much more significant investment in counter-space capabilities” (Lewis, 2004). One countermeasure has involved producing future generations of satellites with stronger signals, creating a more “distinctly separate GPS system for civilians and military [...] to avoid the targeting and disabling of all GPS systems” in military operations (GPS Jammers, 2013). Thus, improving signals might minimise the risk to GPS reliant systems if jamming “noise” is effectively weakened.

On the above point, the enduring capability race between major powers – on earth and in space – means that GPS signals are destined to become stronger and more reliable. The move of some great powers, aware of the potential threat of zero or minimal satellite navigation capabilities during wartime, have developed their own independent systems (The U.S. (GPS), Russia (GLONASS), China (BeiDou) and Europe (Galileo), IRNSS (India) and QZSS (Japan)) which include modernisation projects.

In summary, there are a range of developments in the military, security, and civil industries that might make the Smart City agenda more achievable if tracking technologies are, as they currently expected to be, important to realising its potential.

CONCLUSIONS AND DISCUSSIONS

Any aspect of privacy may disappear if people are more willing to sacrifice information about their location and activities in order to receive better services and or improve their living standards. This raises the question of whether the Smart City agenda may irrecoverably motivate people to seek privacy by illegal means.

Whilst we are not at the stage at which everyone is knowingly tracked, the real question is: where will the boundaries lie? Taking one example, electric vehicle manufacturers operating in China are obliged to incorporate systems that provide information about the location of cars to the government (Kinetz, 2018). Chinese officials state that this data is used to improve public safety and facilitate industrial and infrastructure planning, but civil society more broadly argue that this facilitates mass surveillance (ibid). There appears to be no open-source information indicating that this has led to a proliferation of jamming devices in China, but since there is a large industrial-base for such devices in the country, it cannot be ruled out that jammers are produced in the country for these very reasons.

Reducing the motivation to buy jammers could also be achieved by implementing stricter laws on privacy and possession and use of jammers, but also identifying the likely users. Since some commercial drivers are motivated to buy jammers, should “more” privacy be granted to these users? It is a legal paradox that in most Western countries companies seek consent from their workers to track their locations, but their refusal may result in dismissal, limited work, or outright rejection for hiring. The question remains whether citizens of Smart Cities going to have to sacrifice their privacy without refusal.

If tracking is necessary to create “liveable cities,” some military, security, and civilian technologies could reduce reliance on GPS or improve its strength, and therefore reduce possible widespread interference. But fundamentally, whilst jammers are, for good reason, illegal to use without license in most of the world, the goal should be to enable people to seek privacy legally and ensure that privacy is safeguarded to the point that privacy cannot be achieved only by illegal means.

The wider policy implications are glaring due to the multitude of actors using jammers – military or non-military. Overall the practice of jamming has become potentially deadlier as reliance on GPS expands and opportunities for criminality or military provocations increases (Westbrook, 2019, p. 12). Cross-border military jamming may become more prevalent if relations between states – on Russia’s and North Korea’s borders, for example – deteriorate further. Drug cartels spoofing U.S. government UAVs suggests that other Smart City functions might present

new opportunities for criminal and state actors and lead to more sophisticated criminal methods of achieving certain goals. Smart City advocates should consider the wider implications tracking not only on their agenda, but on the societies and economies as a whole.

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Melbourne's 'African Gangs' and Media Narratives

John Gaffey*

ABSTRACT

This paper examines the racialised media coverage of so-called 'African Gang' Crime in Melbourne, Australia. It argues that we can usefully examine such media coverage as a risk communication where relevance and authority comes from experiential rather than expert media voices. In the case of the Australian television program *A Current Affair's* coverage of this issue, when examined through the theoretical lens of parrhessia, experiential knowledge was found to be dominant. It was found that expert voices, such as those of the Victorian police were problematised by this media coverage. It is concluded that in this case, attempts by expert voices to undermine experiential media narratives were unsuccessful.

Keywords: African gangs, Risk, Parrhesia, Crime, Experts.

INTRODUCTION

In recent years so-called gang violence in the suburbs of Melbourne, Australia has become a frequent topic of both local and national news reports. The nebulous set of crimes that the media frames as "gang' crime' are those that possess an element of violence, occurring in the public sphere or 'on the street', involve several potential offenders, involve young offenders, and are sometimes carried out by an identifiable and recognisable group.

Media reporting of this issue has framed gang violence as a racial crime (Majavu, 2018; Nolan, Burgin, Farquharson, & Marjoribanks,

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2016). With Melbourne gang violence, the media identify the gang members as 'African' or some iteration of that label. From this, the crimes are classified as 'African' crime, constituting a racialisation of these crimes by the media (Majavu, 2018).

As with other examples of racialised crime coverage (see Martin, 2015; Poynting, Noble, & Tabar, 2001; Tufail & Poynting, 2013), a moral panic seems to be taking place (Hall, Critcher, Jefferson & Clarke, 2013). A key difference, and one that differentiates the coverage of this issue, is the role of the Victorian police. While the terms 'African' and 'gang' gained popularity with the media, the Victorian police maintained an alternate public position, stating they would not label these crimes as 'gang' or 'African' related (Wahlquist, 2018). As expert voices and what Hall *et al* (2013) would consider primary definers of deviance as part of a moral panic, the Victorian police have rejected the media narrative. A question remains however, about how effective this has been in shifting related media narratives.

This paper provides an analysis and critical discussion of some recent media coverage concerning 'African crime gangs' in Melbourne, Australia. While this coverage has been extensive, this paper examines the television program *A Current Affair (ACA)*. Race remains a central issue in this coverage and an important point of analysis, however this analysis uses a model of 'parrhesia' to focus on a separate issue, the authority of experiential knowledge when utilised in media coverage of crime. Parrhesia refers to rhetorical speech acts where judgements about the truth of information are informed by who the speaker is rather than the validity of the information provided (Foucault & Pearson, 2001). The term experiential knowledge here refers to the use of non-experts as the perspective-favoured voice of the media. Media coverage of crime may often incite the perspective of the victim, however, here experiential knowledge refers to information provided by a range of voices who are sharing their experiences, even when this is not a direct experience of crime victimisation.

This paper utilises the above approach to examine recent media narratives about gang violence in Melbourne and assesses if and how

experiential rather than expert discourse is used to frame gang violence as a type of risk. A further aim of this paper is to ascertain how the role of the police is presented by the media regarding ‘gang’ violence when the media narrative is constructed in a risk context.

CRIME IN THE MEDIA AS ‘EVERYDAY’ RISK

News programs that present more in-depth coverage and “current affairs”, such as *ACA* are not required to include the voice of experts, nor information delivered by experts. Rather, a more familiar presentation is one where someone with a particular experience provides the bulk of information to the audience. This is not limited to information about crime or victimisation, however this is one way programs such as *ACA* present such stories to their audience. When presented this way, the character can be understood as presenting experiential information about a risk, which may include some information about how to manage or negotiate that risk.

Over the past two or three decades, it has been widely argued that risk is becoming increasingly central to the management of our lives. In particular, this period which Beck (1992) has called “late modernity”, is a time where ‘one is no longer concerned with attaining something good but rather preventing the worst’ (Beck, 1992, p. 49). It is argued that the need to avoid negative outcomes has become a central and necessary mode of late-modern living (Beck, Giddens, & Lash, 1994; Giddens, 1990).

The risk society theory of Beck (1992, 2006, 2009) suggests the management of everyday risks is a central part of ‘reflexive modernity’. It is important to note at this stage of reflexive modernity we are inherently risk-averse. From this “reflexive” standpoint everything is a possible risk. Even the need to avoid risk becomes a risk demanding to be managed. We manage these risks in an environment where the information guiding the management of everyday life is removed from traditional social structures (Beck, 1992; Beck, Bonss, & Lau, 2003; Beck et al., 1994). Individuals are concerned with living a prudent, risk-averse life—what sort of job

should I get, who should I marry, what sort of washing machine powder will make my clothes the brightest, who do I vote for to keep me safe from terrorism? Broader risk-focussed questions may concern the late-modern individual as well—am I safe from crime, are the police doing a good job? According to this older risk society position, late modernity leaves us to navigate these risks and the questions they raise with little certainty and without recourse to expert knowledge (Beck, 1992).

Examinations of risk and everyday life by theorists drawing on governmentality theory provides a further conceptual framework. These theorists draw on the theoretical legacy of Foucault (see Dean, 1999; Foucault, 1988; Foucault, Burchell, Gordon, & Miller, 1991; O'Malley, 2009, 2012). Unlike the risk society view of risk, governmentality theorists view expert knowledge as part of a discourse system which affords a continuing source of certainty and is still relevant for managing risk (O'Malley, 2009, 2012). Proponents of the governmentality position argue that the self-disciplining and—due to neoliberalism—increasingly self-responsible subject manages risk according to expert and state-produced discourse (Dean, 1999; O'Malley, 2009, 2012).

The management of everyday risk, including keeping safe from crime, may not qualify as a “large-scale” risk; however, such behaviour can highlight how self-disciplining subjects manage everyday risks. Further, when presented as an everyday risk, the threat of crimes including the gang violence presented by the media examined here may transform this crime from exigent threat to be feared by the audience to everyday risk with little certainty in how it should be ‘managed’.

Regardless of form, the media has often been conceived of, and analysed as, an institution that can reveal something about the reproduction of cultural and social knowledge. In this sense the media, and in particular the “mass” media, has been examined as a mediator of various social/cultural artefacts and presumed necessities including ideology, social reality, cultural forms and discourse, to name a few (Holmes, 2005). A starting point for examining risk communication considers the role of

the media in terms of its ability to influence individual understandings of social phenomena.

MEDIA RISK NARRATIVES – EXPERIENCE VERSUS EXPERTISE

There have been significant shifts in news formats and distribution mediums, with the rapid growth of online news and the distribution of news through social media (Newman, Levy, & Nielsen, 2015; Watkins et al., 2015). Some suggest that this change provides some possibility for democratised risk information and that expert knowledge may no longer hold sole dominance among debated opinion (Bruns, 2015; Carlsson & Nilsson, 2016; Ceron, 2015; Hermida, Witschge, Anderson, Domingo, & Hermida, 2016). The position of this paper is that this is not a new phenomenon, despite the rapid expansion of information flowing through non-traditional media channels.

Traditional media formats, such as the television sources like *ACA*, can still be understood as reflecting this move away from certainty and expert knowledge. The late modern subject remains ‘set adrift’ among competing and debated information sources, forced to fend for themselves to navigate an increasingly risky world. Narrative news information uses experiential proxies in answer to reflexive audiences actively seeking non-expert information sources. Missing from this picture of the individual wading through a sea of information about risks, which take the form of competing discourses, is a way to conceptualise how this type of information gains authority.

Expert opinion has been a trusted source that helps form an individual’s sense of the world. However, at different moments in history, the relationship between the self-constituting subject and games of truth telling as an activity has shifted, as evident in Foucault’s example of the earliest mentioned parrhesiastic act in classical Greek literature. Here, ‘parrhesia’ is understood as a speech act, or conveyance of information, where the status or position of the speaker influences the perceived

validity, or truth, of the information. There have been historical changes that have led to a shift in truth telling as an activity which has the self-constituting subject as central through truth telling activities focussed on the care of the self. The self-constituting subject, so central to the workings of governmentality, pre-dated the governmental and liberal revolutions of the 16th and 17th centuries. It was this self-constituting subject that was laid siege to by expert discourse or knowledge throughout modernity (Foucault, 1988). It is the status of the speaker (expert) rather than the logical validity of the information provided that grants the information some authority.

Recent trends in social theory suggest that the relationship between expert knowledge and perceptions of truth has become problematised. As discussed above, the theoretical position of those such as Beck and Giddens, who discuss a late modern self-constituting subject, remain somewhat blind to the problem of truth telling from a Foucauldian point of view.

While there is confusion as to the role of experts in late modern discourse in the work of Beck (Mythen, 2004), these theorists agree that the late modern subject is a reflexive one who is assumed free to build their own life biography by choosing from a variety of information sources. This freedom is due to the evolution of late-capitalist societies and a resulting loss of trust in expert or scientific discourse. This expert discourse, if we look to the earlier work of Foucault, was instrumental in guiding our view of the world and provided a paradigm for the self-constituting subject to 'care for the self'. When considering this change and risk, O'Malley argues:

Governmental studies and analyses have been overwhelmingly concerned with risk and its encroachment into contemporary governance, and have rarely examined 'uncertainty' in detail. In part, this aversion to analysing uncertainty as a way of governing is based on the general hostility to the grand theoretical character of the risk society theorists for whom

uncertainty is a central concept. This takes its most specific form in a rejection of the idea of a rigid binary between calculable (risk) and ‘incalculable’ (uncertain) technologies of governance (O'Malley, 2012, p. 14).

This leaves the question of truth claims “hanging” in late modernity. Contemporary risk theorists such as Beck and Giddens identify what they considered disenchantment with expert knowledge, due in-part to its unintended consequences. The above extends this analysis if we consider this not as disenchantment but more precisely a problematisation of that parrhesiastic truth game, diminishing the validity of expert voices. This suggests that it is the contemporary negotiation of risk and uncertainty that promotes a lack of trust in expert knowledge.

It is useful to apply the above lens when considering how an audience comes to understand media information about crime. Positioning the characters as experiential proxies creates relevance for the viewer. When the viewer can relate to the victim, there may be heightened relevance. It will be seen as important to the viewer for reasons that go beyond simple heuristics, and this should be considered as driving relevance for the audience separate to sensationalised presentation, though this content is often sensationalised. It is important to the audience’s everyday lives because it applies to their navigation and management of risks. Through positioning the characters of these stories as a victim, there is a discourse of self-responsibility being drawn on.

MELBOURNE’S ‘AFRICAN’ GANGS AND THE ROLE OF THE POLICE

Media coverage of assumed ‘African’ gang crime in Melbourne has adopted familiar forms, using familiar framing techniques. The images shown are often not related to the direct experiences of the victim though these would be present when available. CCTV footage of street level altercations, burglaries, muggings and shoplifting are common elements.

ACA coverage of gang crime presents other crimes, with no clear link to gang crime, as evidence of an out-of-control crime problem. An example of this aired on ACA on the 20th July 2016 in a story titled “Enough is enough!: Now, the desperate families forced to arm themselves after a spate of violent home invasions.” The introduction to this story went as follows:

Now, the desperate families forced to arm themselves after a spate of violent home invasions. Tonight why they bought baseball bats and other weapons, fearful of Apex Gang attacks. These families they mean business. (“Enough is Enough!” 2016)

There is a further introduction by reporter, Reid Butler, which situates this story within a crime risk management narrative. Butler adds to the story introduction by highlighting that “these families’ will protect themselves even if it means breaking the law. They are not afraid of taking the law into their own hands if it means keeping everybody safe” (“Enough is Enough!” 2016)”

There is a distinction made throughout this story between the information provided via the voice of the police as compared to the information provided through the voice of community members. An opening scene comes from a Victoria Police media conference where the viewers are told that police appreciate that people are scared. This is then cut between street corner interviews of community members that focus on perceived failures of the justice system. The common theme presented is one of a failing justice system evidenced through quotes such as ‘everyone can get away with everything now’ and “there definitely has been an increase in crime” (“Enough is Enough!” 2016)

Media coverage that draws on the narrative of a failing or dysfunctional justice system has been discussed in research regarding the media and ideal victims (Greer, 2007). Ideal victims of crime are presumed to engender great levels of sympathy and are covered in the media accordingly. These victims often possess certain characteristics that make them ‘ideal’—worthy of broad public sympathy. Greer (2007)

identifies these characteristics as innocent, often young, random, and relatable. An ideal victim is one that shares no blame and is not culpable for the crime. In this story, the narrative does not assess victim culpability in relation to those categories that define whether a victim is deserving or undeserving of our sympathy. There is no focus on characteristics such as race, gender, social demographics, occupation, location, time of the offence. Rather, vigilantism takes on a contemporary risk management dimension where citizens are responsabilised and watchful (Walsh, 2014), while also being presented as a response to a threat to institutional norms (Johnson, 1996). The media examples above reinforce these points with content that does not include racially diverse voices. The experiential voices are presented as representative of the management of ‘everyday’ risk, while constructing Melbourne’s African community as ‘others’.

The broader discourse drawn from coverage of crimes affecting ‘ideal victims’ is one of failure – a failure of the justice system, the state or the community to protect the victim. Agents of the state, such as the police or the courts, are assumed to have failed, or perhaps policy has failed, allowing the offender to be ‘out on bail’ rather than incarcerated. The media coverage of gang crime in Melbourne also draws on a notion of the ideal victim, however the characteristics of the ideal victim here can be understood in a risk management context. Victims are presented as ideal by virtue of the nature of the crime itself – gang violence. It is not, however, accurate to assume that all gang violence or similar crimes would target random strangers. It is the voices of those who may become victims informing audiences of the risk of becoming a victim.

In the case of ‘African’ gang violence in Melbourne there has been a related narrative built around police responses. As discussed earlier, there was a great deal of political debate and finger-pointing leading into the 2018 Victorian state election. More common, and more enduring, is a media narrative focussed on potential failures of the police to deal with these crimes, or managing these risks.

On 22nd May 2017, ACA ran a story about a home invasion, suggesting it was carried out by an ‘African gang’. In this story, titled “Apex vigilante: Guilio says he's an ordinary dad forced to go to

extraordinary measures, to protect his family and neighbors [sic] from the notorious Apex gang”, the victim was framed as an ideal victim and the failure of the justice system served as an explanation for the crime. Presented through the experience of the victim, a narrative is developed that frames the crime as a failure of the police and the state/justice system more broadly. The police become emblematic of a problematic justice system.

As seen earlier in the story where the narrative focussed on direct vigilantism, there is an interplay between specifying the victim, or potential victim, must ‘take matters into their own hands’ and implying a failure of the justice system. In this story however, the victim states a need to deal with crime risk themselves as the police not only failed to protect, but have failed in their response (a warning to the viewers). The victim status translates into a layer of authority where the victim’s experience is now presented as authoritative – to be trusted.

POLITICAL CORRECTNESS AND THE POLICE AS BLOCKED RISK NEGOTIATORS

Following the presentation of a failed justice system, and the failure of the police and the state to protect, a new media narrative emerged. This was coverage that included both the above-mentioned victim narratives, contradictory media statements by the police, and an ongoing political debate. There were two shifts in this coverage that deserve attention here.

The first shift occurred in the lead up to the 2018 Victorian state election where law and order political debate refocussed attention towards presumed gang violence. Media coverage increased nationally during 2018 due in-part to comments made by federal politicians including then Home Affairs minister, Peter Dutton, and then Prime minister, Malcolm Turnbull. In a now widely circulated interview broadcast on radio station 2GB in January 2018, Peter Dutton claimed “people are scared to go out to restaurants of a night time because they are followed home by these gangs” (Karp, 2018). A broader attack on Victorian justice administration

and the Victorian Labor government followed: "... the state government's wrapped its police force up in this politically correct conversation - which I think they're trying to break out of and they are trying to do the right thing" (Karp, 2018).

Turnbull, then Prime Minister, in an interview aired on radio 3AW in the days that followed, added "I've heard people, colleagues from Melbourne say there is real anxiety about crime in Melbourne... You'd have to be walking around with your hands over your ears in Melbourne not to hear it" (Remeikis, 2018).

Then Prime Minister Malcolm Turnbull also stated publicly:

But what it is lacking is the political leadership and the determination on the part of Premier Andrews to make sure the great policemen and women of Victoria have the leadership, the direction and the confidence of the government to get on with the job and tackle this gang problem on the streets of Melbourne and, indeed, throughout other parts of the state (Remeikis, 2018).

This first shift then is one where political debate constructs the Victorian police not as "failed" risk negotiators, as seen in the media coverage examined above, but as "blocked" risk negotiators. Media coverage began to imply that the police were the victims of 'political correctness' with the implication that there has been a process of 'hiding the truth' and the allegation that they are 'not allowed to do their job'.

Perhaps the most powerful driver of the shift in media coverage that positions the police as potential victims of 'political correctness gone mad' is the way the ongoing police message concerning 'African gangs' undermined one part of a predictable cycle. Inserting political discourse into the debate reinforced this. The messages of Dutton and Turnbull were important signifiers to both the media and viewers that rather than being a failure of the police to negotiate risk on behalf of the community, the police were instead, themselves, the victims of a larger failure. The constant declarations by the Victorian Police that there was no 'African gang' problem had not interrupted ongoing media coverage that mirrored the

expected features of a more traditional moral panic. Rather than shifting media narratives away from risk-focussed coverage, increased politicisation of the issue allowed the media to present the lack of police support of their chosen narratives as an outcome of external pressure. This reinvigorated media coverage as this new narrative seemed to support the media's earlier position.

Programs such as *ACA* began running stories that implied that the Victorian police were not allowed to deal with the 'African crime gang' problem. In 2018 *ACA* ran multiple stories that highlighted this new narrative. Stories with titles such as "Sickening: Gang attack: Even the debate about gang violence in Melbourne is heated. How bad is it?" and "Proud Australians: It's an issue that's divided the nation - how to deal with violence committed by youths of African descent on the streets of Melbourne" were presented by *ACA* throughout the early stages of 2018. All carried the theme that police were being held back. This culminated in the story "Cops gone soft?: From gang violence and home invasions to smash-and-grab robberies and organised crime police have their work cut out for them" which aired in May 2018. In this story, *ACA* presented the familiar victim experiential narrative and followed this by interviewing a panel of former high ranking Victorian Police officers. One of whom stated "It makes me shake my head... It makes me ashamed, the position the Victorian police have gotten themselves in" ("Cops gone soft?" 2018).

The narrator follows this with:

...he says he greatly respects rank and file members but suggests they're afraid to act on young offenders, particularly African ones because they are worried about repercussions from management ("Cops gone soft?" 2018).

As the public view of a group criminalised by the media becomes increasingly negative, demands for some sort of intervention from the public also increase. In a successful moral panic there would be an official response where the state increases sanctions/interactions against the criminalised group. The media examples detailed above demonstrate that the media reporting met these criteria, but was to some extent forced to

work around the police and their refusal to align publically with the media narrative.

CONCLUSION

This examination of ACA's coverage suggests that while several voices are found in the public debate about 'African' gang crime in Melbourne, particularly when focussing on media narratives, some carry more authority. Of interest is the use of experiential victim narratives as a key element of related media coverage. Victim narratives in this context refer to the recounting of the experience of being a victim of crime or, as was often the case, communities or individuals convinced of their risk without direct experience. The recounting of experience as the main voice in reporting is not confined to coverage of crime, however when privileged by the media, experiential narratives can take on authority for risk averse, self-disciplining audiences. Further, experiential narratives in representations of crime exist in a relationship with other competing voices and competing narratives, including more specific expert voices such as the police.

The creation of relevance is commensurate with acceptance on the behalf of the viewer that they too are at risk of becoming victims or being drawn into a similar position. Thus, through parrhesiastic truth games, the viewer is compelled to accept the subject position of the narrative as a type of self-regulation. It would be deviant and irresponsible to ignore such information. Therefore, this type of information, provided through experiential proxies, can be defined as having governmental authority.

This discussion has explained how both media coverage and public opinion about 'African' gang crime has remained both a sensationalised and racialised topic despite official responses to the contrary. There may have been an expectation on behalf on the Victorian police that their sustained rejection as experts would have stifled the media narrative. However, this rejection gained little traction in the lead up to the 2018 state election. While there has since been a more sustained critique levelled at this coverage, media content between 2016 and 2018, as discussed here,

demonstrates that when negotiating perceived crime risks, experiential knowledge rather than expert knowledge holds significant authority and remains resistant to official attempts to undermine key narratives about risk.

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Your Ways or Our Ways? Addressing Canadian Neo-Colonialism and Restorative Justice

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ABSTRACT

In Canada, there is much focus on diversionary tactics and restorative justice programs designed to redirect offenders from the judicial processes and incarceration. This study examines the impact of race on accessibility to restorative justice, as well as the challenges of colonialism, and the potential role of neocolonialism in exacerbating the inequities of the Canadian criminal justice system with respect to restorative practice. This study of race-based access to restorative justice involves a critical examination of the origins of contemporary restorative justice through the application of Critical Race Theory. The phenomenon of over-representation of Indigenous persons in Canadian correctional institutions is considered in light of emphasis on reportedly Indigenous-based restorative practices in the Canadian criminal justice system. The study findings confirm that restorative justice practices in the Canadian criminal justice system are purported to be Indigenous based, but if one were to examine Indigenous culture and investigate the history of such practices, one would discover that this is not accurate. Moreover, Indigenous people do not enjoy the benefits of their alleged cultural traditions with respect to restoration of collective interests due to inequitable access to restorative practices built into the justice system. Despite this current reality, researchers continue to investigate restorative practice and practitioners continue to work toward the development of restorative justice programs that can be delivered in a manner respecting authentic Canadian Indigenous ways.

Keywords: Restorative justice, Canadian criminal justice system, Indigenous, colonialism

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INTRODUCTION

Restorative justice is certainly not unique to Canada: England, Scotland, New Zealand, Norway, the United States and European countries apply restorative practice to manage criminal behaviour (Government of Canada, 2019). Restorative justice can be defined as any process resulting from a harm caused to an individual or community by another individual or group (Government of Canada, 2019; Monchalin, 2016). The Centre of Justice and Reconciliation expands the definition to include the reparation of harm caused by criminal behaviour, accomplished through cooperative processes utilized by all parties, and resulting in transformation of people, relationships and communities (Bright, 2019). However, there is contention as to the origins of diversionary philosophies being utilized in Canada. This study's findings suggest that Indigenous ways that are purported to be the basis of restorative justice, in fact, are not reflected in the contemporary restorative practices.

In Canada, philosophies underlying the evolution of crime control and correctional processes include those brought over from Western Europe during the colonial era, those adopted from local Indigenous cultural practices, and even those based upon the work of, and ultimately imported from, New Zealand and Australia. Yet research demonstrates an incongruence of contemporary restorative justice and that of the traditional nature of Indigenous restorative justice in Canada (Daly, 1999; Lachhin, 2015; Tauri, 2016; Boyington, Aulakh, Kazarian, & Roberts, 2017). In fact, Boyington et al. posit that indigenisation is problematic with respect to the justice system. They claim that the belief that inclusion of a people does not guarantee the incorporation of their values, and that the addition of Indigenous justice workers does not improve the adversarial nature of the judicial system, which is “intrinsicly opposed to Indigenous values” (Ibid. p.337).

This study applies the issues of colonialism, neocolonialism, and race issues to the accessibility of restorative justice practices in Canada. It first considers the inequity of contemporary restorative justice delivery in Canada and attempts to reconcile the access to restorative justice with the disproportionately high incarceration rates amongst Canadian Indigenous persons. It is a reality that incarceration is over-represented by our

Indigenous peoples in Canada (Government of Canada, 2019). Further to accessibility, this study will address the indigenisation of restorative justice in Canada and explore the impact of restorative justice philosophies from other cultures. According to the Royal Commission on Aboriginal Peoples (1993),

On the Canadian legal landscape, as in the experiences of other countries' dealings with Aboriginal peoples, various forms of indigenisation of the justice system have been experimented with. On the whole these have produced models that use the process of indigenisation as ways of injecting Aboriginally appropriate concepts and mechanisms into (or more likely adhering Aboriginal adjudicative mechanisms onto) the existing legal concepts and the prevailing justice system (p. 71).

If it is such a valuable approach to crime control, why is it that Indigenous people (the alleged originators of this system) are so overrepresented in Canada's correctional institutions? In fact, the cultural practices of Indigenous cultures are appropriated by colonial powers for reasons far from meting out justice, harm reduction and community reconciliation (Daly, 1999; Breton, 2012; Tauri, 2016). This paper suggests that the primary intention of the contemporary restorative practice in Canada is to ease the financial burden experienced by the courts and correctional system rather than the restitution of harms to the victim and community (Tauri, 2016), and the ultimate restoration of collective social interests.

This paper intends to explore the role of colonialism and neocolonialism in the evolution of Canada's justice "market" (as opposed to justice "system"), the introduction of early restorative justice programs to Canada, and to challenge claims that such programs are based upon the Canadian Indigenous cultures. Building on the effects of colonial history, this paper will explore the Critical Race Theory and paternalism with respect to the evolution of contemporary restorative justice in Canada. Finally, some Indigenous peoples' perspective on contemporary restorative justice will be examined.

PRECOLONIAL LEGAL SYSTEMS

Traditional North American Indigenous laws are aligned with contemporary restorative justice, in that they are closely related to restoring harmonious relationships that encourage each member of society to contribute to the repair of relationships within the entire community. Traditionally, qualities of character, such as honesty and harmony resulting from forgiveness, restitution, and rehabilitation were cornerstones of social life with respect to harms committed. Canadian Indigenous society was not legalistic until such systems were introduced by European settlers. Traditionally, conflict resolution, both personal and interpersonal, was guided by spiritual means nurtured by the influences and teachings of Elders, parents, and grandparents, rather than by formal police, courts and governments (Public Legal Education Association of Saskatchewan, 2006).

However, concepts of guilt, punishment and isolation by imprisonment or banishment (reserved in Indigenous justice for more serious offences such as murder and adultery) were more commonly seen in traditional European systems of justice models in seventeenth century Britain. The model of justice in place during the first wave of settler migration to Canada, brought over from Europe, was more formal and involved a robustly structured restitution process. However, this system provided few choices for a justice system implemented by a fledgling colony with the challenge of integrating a wholly different society found in the Indigenous population. In seventeenth century Britain, a common outcome was financial restitution, paid to the prosecutor (the victim) by the offender; a very flexible system involving the agreement between the victim and offender through bargaining rather than a specified penalty assigned by the courts (Friedman, 1995). Rarely was the outcome of a transgression corporal or capital punishment or transportation to a penal colony. Ironically, the Indigenous justice systems in place at the time were also deeply involving “restorative justice”. However, this is not the system that was employed upon colonising Canada with respect to Indigenous offenders. The Indigenous population was held to a more stringent penal system, including segregation, higher rates of imprisonment and capital punishment. Jacobs (2012) writes of the role incarceration played in the assimilation of Canada’s Indigenous people: “Assimilation through

incarceration is rooted in the early days of colonial settlement when the inaccuracy of early predictions that “Indians” could be segregated on temporary reserves where they would either die out or assimilate” (p. 2).

COLONIALISM IN CANADA

Canada’s experience with colonialism is typified by *settler colonialism*. Settlers from Europe primarily came to occupy (by way of force as well as deceit) the lands on which the Indigenous population lived. Settler colonialism is “inherently violent,” and “as its central function is the removal of peoples from their land by any means” (Monchalin, Marques, Reasons, & Arora, 2019, p. 213). In addition, colonial institutions are built upon the foundations of false narratives that espouse the incivility, unsophistication, and uneducated nature of Indigenous peoples; such narratives are applied with the sole purpose of assimilation of Indigenous peoples (Ibid.). With reference to the characteristic falsehoods utilised by colonialism, Hudson asserts that “[t]he narratives which constitute this Otherness of ‘lesser breeds without the law’ are necessary not only to justify colonialism and slavery; they are necessary also to constitute the western subject’s idea of (his) self-identity” (2006, p. 33). Monchalin (2016) contends that colonialism was a conscious choice made by settlers, not something inescapable, inexorable, or preordained by European philosophical thinking about the state of nature. Europeans could have followed the notion of the treaty commonwealth and entered into limited contractual alliances with Indigenous peoples, but this did not occur. This form of colonialism can be seen demonstrated throughout Canada’s colonial period through such examples as unhonoured treaty agreements, violent quelling of socio-political uprisings of Indigenous people, and residential schools. Some would argue that Canada has not evolved away from these trends with respect to its Indigenous people.

NEO-COLONIALISM IN CANADA

Critical Race Theory, a perspective that holds that racial conflict results in the internalisation of the racial identities created by the state into

the daily lives of individuals and social systems (Bailey, 2012), applies directly to the issue of the impact colonialism continues to have on restorative justice in Canada. The colonial narrative continues to have far reaching implications with respect to the internalisation of such narratives, such as the denial of colonialism and its impact on the Indigenous Peoples of Canada. Canadian politicians have denied this impact and, when acknowledging the truth, belittled Canada's colonial past (Lacchin, 2015; Fontaine, 2016; Freeman, 2017). Within the past ten years, two Canadian Prime Ministers, Stephen Harper (former) and Justin Trudeau (current), have publicly denied or diminished Canada's status as a colonial nation. For example, Canada's former Prime Minister Stephen Harper was quoted in MacLean's magazine stating:

There are very few countries that can say for nearly 150 years they've had the same political system without any social breakdown, political upheaval or invasion. We are unique in that regard. We also have no history of colonialism. So we have all of the things that many people admire about the great powers, but none of the things that threaten or bother them about the great powers (Wherry, 2019).

Meanwhile, Canada's current Prime Minister Justin Trudeau's response to concerns surrounding Canada's colonial history creates confusion regarding the current government's views towards Indigenous relations. During an interview, Prime Minister Trudeau recognised Canada's colonial history by stating, "We have consistently marginalised, engaged in colonial behaviours, in destructive behaviours, in assimilationist behaviours, that have left a legacy of challenges to a large portion of the people who live in Canada who are Indigenous peoples" (Fontaine, 2016). However, he qualified this by stating that Canada was "without some of the baggage that so many other Western countries have — either colonial pasts or perceptions of American imperialism" (Ibid.).

It is impossible for any nation with roots in European expansion, within the past three hundred years, to disavow any form of ongoing colonial systems, let alone any colonial past whatsoever (Coates, 2008; Breton, 2012; Jacobs, 2012; Freeman, 2014; Lacchin, 2015; Monchalin, 2016; Boyington et al., 2017). That any nation, in general terms, might diminish the past harms perpetrated on Indigenous populations

demonstrates the very proliferation of neocolonialism seen in contemporary times. Freeman assesses Canadian discourse on reconciliation, or what is traditionally seen as a process of decolonisation, essentially supporting a “top-down, government defined and controlled agenda, which is at best ineffective and misleading and, at worst, fraudulent and *recolonising* (emphasis added)” (Freeman, 2014, p. 213).

PATERNALISM AND CRITICAL RACE THEORY

One cannot explore Indigeneity in Canada without considering the impact paternalism has had on multiple groups. Canada’s Indian Act is a paternalistic and archaic piece of legislation (Coates, 2008), and remains in effect in 2019. In 1969, the Government of Canada embarked on an official path of reform of the Indian Act, starting with The White Paper 1969, calling for its revocation (Government of Canada, 2013). However, Indigenous people overwhelmingly rejected this due to the lack of consultation. They viewed the recommendation as a continuation of the tradition of the very paternalistic policies and approaches the White Paper had sought to address. The Manitoba Framework Agreement (early 1990s), Bill C-79 (1996), Bill C-7 (2002), and Bill S-216 (2006) all failed to achieve legislative status due to opposition of Indigenous leadership (Ibid.). Although there has been success in the implementation of additional legislation that has garnered support from Indigenous Peoples of Canada, the Indian Act remains in place. However, these reforms have led to additional legislated controls over Canada’s Indigenous peoples without the dismantling the paternal system of government.

Critical Race Theory provides a lens from which to look at the issues of over-representation of Indigenous people in the criminal justice system. Critical Race Theory suggests that race is a social construct created by the dominant group, where racialised categories are created through the development of norms, laws and public policies (Bailey, 2016). In Canada, the tenets of Critical Race Theory are demonstrated by the modern use of the Indian Act (Monchalin, 2016), continued land management through the use of reserves (Lacchin, 2015), crises of poverty, health, and substance abuse among Aboriginal communities, and persistent inequitable incarceration rates (Royal Commission on Aboriginal Peoples,

1993). Indigenous Peoples of Canada have little to no cultural capital, which is expressed as power when it is used to legitimate privilege, prestige, and hierarchical social relations, creating social distance and is instrumental in creating a gap between the dominant group and others in society (Bailey, 2016; Breton, 2012). Monchalin writes that “inequality, reinforced and intensified by capitalism, keeps those ‘othered’ from the system near the lower end of the hierarchy and in danger of being criminalized” (2016, p. 260).

Bailey suggests that in society, there may be “taken-for-granted ways of interacting in everyday life at the systemic and institutional levels, which may influence the work of those in institutions, but may or may not reflect conscious exclusionary practices on the parts of individuals” (2016, p.16). The formalising of restorative practices by the courts and justice system has inhibited the ability of Indigenous community’s ability to work toward self-determination in the justice arena (Hudson, 2006; Tauri, 2016), thus impacting the growth of social capital.

The over-representation of Indigenous people in the criminal justice system is influenced by both cultural and systemic discriminatory treatment of Indigenous groups. Poverty, poor education, systemic racism, and the colonial impact still enforced on Indigenous people contribute far greater to over-representation than high Indigenous crime rates (Hudson, 2006; Breton, 2012). When policing an area primarily Indigenous in population, most police calls for service are not criminal code violations, but social disorder situations (Brown & Newberry, 2015). According to the white paper, “The Dollars and Sense of Policing and Community Safety,” commissioned by the Canadian Association of Chiefs of Police, only 30% of calls for service relate to offences that are tracked in the Uniform Crime Reports (Ahlgren, 2015). According to the Aboriginal Justice Implementation Commission :

What constitutes criminal conduct and how it is punished are also related in part to economic considerations. The criminal law has made illegal some acts that are linked directly to poverty, such as vagrancy, public intoxication and stealing, and incarcerates those who are unable to pay fines, or holds in custody those who cannot post bail. There are other discriminatory barriers facing Aboriginal people

as well, including cultural ones (Aboriginal Justice Implementation Commission, 1999).

As most social disorder issues are non-criminal, the question of why Indigenous people continue to be overrepresented in custodial sentences must continue to be investigated.

The role discrimination plays in the over-representation of Aboriginal people in the criminal justice system is an important consideration. The work of Bailey (2016) applies Critical Race Theory to the racialisation of restorative justice. Her research focused on applying restorative justice to immigrant youth in Calgary, Alberta. In her work, Bailey, listed four specific types of exclusion that she argued ultimately distinguish a dominant group from others. The first exclusion was that of self-elimination. This was defined by Bailey as “where those in the disadvantaged position exclude themselves from the mainstream as they “adjust their aspirations to their perceived chances of success” (p. 168). This learned helplessness can be expected when offenders no longer feel that they will be offered access to certain programs, that the programs are designed to set them up for failure, or that the programs offered are not culturally relevant to them. The result of such self-exclusion can lead offenders to just give up and accept the criminal record without attempting diversionary measures. Another form of exclusion is the necessity to “over-perform in order to compete with those who possess the desirable social capita” (Ibid.). This exclusion can occur when the offenders are, or expect to be, required to perform more, or more cumbersome tasks than others. Reflecting upon the established over-representation of Indigenous people in the correctional system, it could be argued that this is a very real reflection of failure of Indigenous offenders to adequately avoid imprisonment. The next form of exclusion is seen through relegation, “where culturally disadvantaged individuals are relegated to the less desirable positions in society” (Ibid.). This can easily be demonstrated by virtually all systemic racial issues with Canadian Indigenous people, such as lack of access to economic capital, education, health, food, and security. These issues negatively impact access to restorative justice programs by nature of admittance to programs on-reserve/off-reserve and can introduce barriers to successful completion of programs due to health-related issues and lack of activities for which community service can be served. Bailey’s final identified form of exclusion is “direct exclusion [which] refers to the exclusion of those with the lesser valued capital who do not possess the

tastes that are deemed desirable” (Ibid.), or sheer racism. In Canada, all four of these types of exclusion are present in Indigenous social stratification, regardless of living on-reserve or off-reserve, levels of education or credential, and even regardless of economic standing.

RESTORATIVE JUSTICE IN CANADA: PAST AND PRESENT

During the development of restorative justice practices in the 1990s, elements of Canadian Indigenous culture came to be incorporated into restorative justice practices. Such components, including “the circle,” placed emphasis on Canadian Indigenous culture. Yet, although the programs were touted as Australian based, they were marketed by people who were not associated with the Māori people upon which the Canadian programs were allegedly based. Nor were those marketing the programs actively involved in the Australian and New Zealand restorative justice services. Tauri references an anecdote from Dr. Wenona Victor, a criminologist from Stó:lō (sic) Nation in British Columbia. She described receiving training on the implementation of family group conferencing, a restorative justice process. The training was marketed as a Māori based practice, but the Nation was shocked when the presenter was not, in fact, a Māori person, but of European descent. By the end of the training session, Dr. Victor “was convinced the Māori had lost their minds! There was absolutely nothing Indigenous about this [FGC] model of justice whatsoever!” (2016: p. 58). Cathy Fobister (2019, March), an Indigenous person who works as a crisis worker of a remote Indigenous community, reflected on this situation stating, the ways of Canadian restorative practices “are not our ways.” Fobister’s perspective reflected the point that Canadian Indigenous culture is steeped with real restorative *practice*, rather than the culturally appropriated and paternalistic version of restorative “justice”, prevalent in today’s Canadian Criminal Justice System. The discussion revolved around differing thoughts on the concepts of shame, guilt and accountability, and ultimately falls at the feet of transgenerational trauma, addressing the need to develop programs specific to Indigenous people and the need to identify issues currently addressed through the use of Gladue Reports (Hebert, 2017).

Historically, Canada rejected the Indigenous peoples' ways but now emphasises these ways, if in name only, to resolve the matters resulting from the very colonialisation systems that vilified them. Beyond paternalism, it is questionable why Canada found it necessary to look to Australia and New Zealand for models of restorative justice when Indigenous Peoples of Canada have a long history of restorative practices in their individual cultures. This decision to look outside of Canada's own Indigenous cultures for restorative justice practices reflects the country's paternalist policies. Tauri (2016) provides a perspective, writing of certain myths associated with restorative justice practices with respect to their alleged Indigenous roots. As Tauri explains, two restorative justice myths have been circulated amongst crime control markets. The first of these myths involves the claim that Indigenous influence is heavily involved in the creation and design of restorative justice programs. In reality, as Tauri argues, this has been "greatly exaggerated" (2016: p. 46). The Royal Canadian Mounted Police, for example, reportedly based its programs of restorative justice on the Wagga Wagga model founded in Australia (Chiste, 2013). However, this model was found to have originated in the United States from a program which had been based upon the Australian Wagga Wagga model, which was itself influenced by traditional Māori practices (Tauri, 2016). The result was a practice that was applied to Indigenous Peoples of Canada that had no roots in their own unique cultures; cultures which already contain their own traditional restorative practices. Some might argue that Indigenous peoples should not have to accept practices that are both not their way and continue to reflect the historical path of the colonial powers.

The neocolonialist approach used to create Canadian restorative justice programming involves the misappropriation of traditional practices of non-Canadian Indigenous cultures and the paternalistic application of same on Indigenous Peoples of Canada. Monchalin et al. state that "Indigenous voices and experiences have been largely rendered invisible and subsumed to colonial understandings of Indigenous peoples and societies as inferior and primitive. These early colonial understandings underpin the systemic stereotyping, discrimination, and labelling of Indigenous people as criminogenic" (2019: p. 217), and as such, it can be concluded that Canada's government, at the time of colonisation, did not believe Indigenous culture possessed the requisite strength to draw upon to adequately participate in restorative processes. Contemporary

restorative justice can be criticised for being selective about Indigenous social control conforming to some principles of restorative justice, while concurrently ignoring others.

INDIGENOUS REJECTION OF RESTORATIVE JUSTICE

Many Indigenous people now reject contemporary restorative justice on the grounds previously discussed in this paper. Specifically, Indigenous peoples have not embraced contemporary restorative justice due to its links to colonisation, paternalism and the misappropriation of Indigenous culture (Breton, 2012; Tefft, 2013). Breton (2012) writes of the rejection of restorative justice by Indigenous persons and characterises the reconciliation efforts with respect to root causation of harms as empty rhetoric by colonial power structures. She believes that restorative justice is used to serve the needs of the coloniser state, not to empower communities and liberate peoples. She goes on to state that if restorative justice practices fail to address colonial crimes of our history, the crime control networks risk losing credibility. Meanwhile, Tefft (2013) puts the failure of restorative justice for Indigenous people upon the failure of the Canadian justice system to embrace Indigenous values in favour of making the existing system more efficient. She writes:

These so-called restorative justice initiatives erode Aboriginal traditions by taking them out of their intended context and placing them within a western European system that is based on totally incompatible values. The traditions that are left are fragmentary and watered down, further whitewashing Aboriginal identity. Moreover, they attempt to appease Aboriginal people by giving the illusion that the system is culturally appropriate and non-oppressive, while hijacking their traditions and spirituality (Ibid).

Breton also describes contemporary Indigenous rejection of restorative justice:

Instead of working toward wholeness for colonised peoples, restorative justice functions as another tool of coloniser institutions, whose goal is not healing but for one group to justify and reinforce their domination of another (Breton, 2012, p. 47).

Further, to repeat the clear and poignant statement presented earlier in this paper by Fobister (2019), who is of First Nations ancestry, contemporary Canadian restorative justice practices as they have developed are “not our ways.”

Acorn, in her book *Compulsory Compassion: A Critique of Restorative Justice*, approaches the Indigenous rejection of restorative justice from a deeper perspective. Her rejection is based upon the inability of non-Indigenous people to possess the requisite compassion, because it cannot be expected that people will feel compassion for people different than themselves (Kimel, 2006). Although there are numerous Indigenous-run restorative justice programs, many programs are not Indigenous-run, nor are they staffed with Indigenous people. Acorn writes of her appeal of restorative justice:

Thus the tremendous appeal of restorative justice seemed to lie primarily in its validation of my own and other people’s dissatisfaction with a legal system that depersonalises, desiccates, and fetishises justice in a way that deprives people of meaningful experiences of justice in relation (Acorn, 2004).

As such, it is far more legitimate to have one’s own people providing cultural programming with respect to producing and delivering culturally based programs. Wildcat also discusses the role of legitimacy in Indigenous matters, stating that:

relating to each other based on the Cree idea of miyo wahkotowin, and having formations of legitimacy taking root, will allow us to move beyond the current political landscape, which is so destructive to the future of our communities (Wildcat, 2011).

The core vision of going to the roots of harm and doing what it takes to put things right is experienced as empty rhetoric, invoked only when colonial power structures deem it advantageous to do so. The increasing misappropriation of Indigenous justice practices and philosophies without any significant application represents the continuation of colonialism and will only exacerbate the issues experienced by Indigenous People in Canada’s modern criminal justice system. Over the last 20 years, the Canadian judiciary has accepted that

Indigenous people require special consideration for their social and cultural circumstances with respect to sentencing (Government of Canada, 2019; Boyington, Aulakh, Kazarian, & Roberts, 2017; Hebert, 2017).

In 1996, the Criminal Code of Canada was amended to reflect the reformation of sentencing in Canada, specifically with the introduction of Gladue Reports (Hebert, 2017). However, the reality of such reformation is not demonstrated by the official statistics, as Indigenous over-representation in the correctional system continues to be skewed (Government of Canada, 2019, Malakeih, 2018; Aboriginal Justice Implementation Commission, 1999). The over-representation has been consistent, but with all restorative justice approaches over the years, said representation continues to increase. Statistics gathered by the Government of Canada continue to show the over-representation and, in fact, show a continued increase in this over-representation (Malakeih, 2018). The 2016/2017 data shows that Indigenous adults accounted for 28% of admissions to provincial/territorial correctional services, and 27% for federal correctional services, while representing only 4.1% of the Canadian adult population. Further to these figures, data demonstrates that the proportion of Aboriginal admissions to adult custody has been trending upwards for over 10 years, steadily increased from 2006/2007, when it was 21% for provincial and territorial correctional services and 20% for federal correctional services, respectively.

In light of the fact that Indigenous people are at a higher risk of custodial sentences, as restorative justice is a process that builds on the need to consider the cultural context of the offender, it is vital to investigate if access to restorative justice is widely provided. The legal framework to address some of these cultural considerations, embodied in the requirement for Gladue Report in the cases of Indigenous offenders, is in place in Canada. Gladue Reports are authored by trained Gladue Report writers, requested by a sentencing Justice, and presented for the purpose of addressing an Indigenous offender's "macro-circumstances, such as colonial history and enduring discrimination, as well as the offender's micro-circumstances, such as community, family and addiction" (Hebert, 2017). The benefits of the Gladue Reports pertain to the ability of Justices to consider the biographical and social information as mitigating factors for crimes committed by Indigenous offenders, and the resulting possibility of alternative or lesser sentences. The question remains as to

why this group continues to be over-represented in the Canadian criminal justice system.

Much of the crime committed by the Indigenous population is symptomatic of the erosion of traditional culture, and that the intergenerational trauma inflicted during the colonial era, and this is, arguably, the root cause of this group's over-representation in the Canadian Criminal Justice System. The Gladue Report requirements, although mandated by the judiciary, remain inequitable in their use and availability (Monchalin, 2016). Hebert (2017) confirms this assertion, as she acknowledges the benefits of Gladue Reports, but questions the disparity of its application. She writes:

...given this evidence that Indigenous offenders with a Gladue report have a significant advantage in sentencing, the great disparity in access to such reports across Canada creates an access to justice problem. Many Indigenous offenders still cannot enjoy the full extent of their sentencing rights pursuant section 718.2(e) of the Criminal Code, and the extent to which an Indigenous offender can benefit from a full Gladue analysis depends primarily on whether Gladue report funding is available in his or her location. This disparity in how Gladue is implemented among Indigenous offenders is paradoxical, considering that section 718.2(e) of the Criminal Code aims to address the disadvantage of Indigenous offenders versus non-Indigenous offenders. (Herbert, 2012, p.171-172)

It is clear that Gladue Reports are often not being made available due to lack of resources, lack of awareness, or blatantly being ignored by the trying Justices. Hebert makes the claim that “access to full Gladue reports is limited and not uniform across Canadian regions and jurisdictions and judges often do not have enough resources to fulfill their statutory obligations in sentencing Indigenous offenders” (Hebert, 2017: p. 170). She also points to the disparate nature of Gladue Reports when comparing urban and rural areas, individual provinces, and application with respect to men versus women and children (ibid). This can be seen in the rates of the Indigenous People in the Canadian correctional population with respect to geographical area; primarily rural provinces such as

Saskatchewan and Manitoba show a greater proportion of custodial sentences when compared to more urban provinces (Malakeih, 2018).

In order to develop empowering social capital in the indigenous population, Canada must address the very colonial and neocolonial harms systemic in its justice system. Breton (2017) describes the lack of restorative justice effectiveness with respect to the reconciliation processes being courted by Canada and the United States. As the theorist argues, any attempts to strengthen the justice system for Indigenous peoples will be in vain if North American countries do not holistically address the conditions which create much of the criminal and public order matters that bring Indigenous people to the attention of the police and into the courts. Davis, Hiller, James, Lloyd, Nasca, & Taylor (2016) ask some very pertinent questions related to overcoming of Canada's paternalism. Specifically:

Is it enough to hear the 'truth' about residential school history or the history of colonialism? Is it enough for settlers to recognise Indigenous territory? To grapple with their own implication in history? To support Indigenous struggles to alter the way things are? To actively interrupt and challenge processes that recreate settler privilege and Indigenous dispossession? To work on issues of restitution and returning land and land access? Indigenous dispossession? (p. 12).

Contemporary social conditions in Canada are not conducive to a short restorative process for long term resolutions (Boyington, Aulakh, Kazarian, & Roberts, 2017). Yet these are the circumstances for which many diversionary youth justice programs, and, to a larger extent, generalized community restorative programs are designed. Restorative justice, as a judicial practice, presents many challenges, such as lack of due process, self-incrimination, false confessions, and issues surrounding public shaming (Hudson, 2006). Restorative justice research must be conducted in a socially responsible manner and must contend with the challenges to individual rights for both victim and offender in order to reach the goal of restored relationships.

A VISION OF TRUE INDIGENOUS RESTORATIVE JUSTICE

The erosion of traditional Indigenous values and traditions Indigenous roots have contributed to the rising chaos in Indigenous communities (Boyington, Aulukh, Kazarian & Roberts, 2017), and some may argue that it has adversely eaten away the cultural influence behind restorative justice as a driver for indigenous justice. As it pertains directly to youth, Bailey's (2016) research addresses a concern that was raised as to "whether or not the aim of reconnecting youth to their community is possible with youth who are seen as existing outside of the community" (p. 8). What we must strive for at a more foundational level is a return to actual Indigenous peoples' tradition of true restorative justice by returning to the traditional social convention of group interest. Victor (2007) posits:

For Indigenous communities we need to go a step further, as the Stó:lo (sic) and other Indigenous Nations have done, and ensure our justice forums are our "own" as opposed to "alternative." Indigenous justice offered by Indigenous people for Indigenous people needs to find ways to not only address colonial harms, but to respect and make use of our own Indigenous teachings and concepts of justice (p. 16).

The Miyo Wahkotowin Community Education Authority model of Indigenous people of Maskwacis, Alberta, Canada provides insight into a contemporary program of restorative justice buttressed by legitimacy (Wildcat, 2011). The characteristics of a contemporary Indigenous program can draw legitimacy and influence when the practice is initiated by people who have chosen to come together to pursue the shared interest in community safety, harm reduction and relationship healing (Ibid). Atypical of contemporary restorative practice, such programs should not be dependent on one person or a small elite group of people for its continued success. As with many social coalitions, typical restorative justice groups are small in numbers, and do not survive slow periods of activity and as people move on to the next new thing. As stated earlier, the collective interest characteristic of traditional Indigenous cultural practices is a foundational aspect to restorative justice and that "restorative justice initiative and the form of citizenship it advocates will help to overcome these obstacles to creating formations of legitimacy. (Ibid, p. 939). Wildcat (2011) states that such programs must rest upon existing norms

and values within the specific communities that can be traced back to pre-reserve times, and it is these values that must be reflected in restorative justice to overcome the resistance of Indigenous peoples to buy-in to contemporary diversionary tactics.

One feature of the Miyo Wahkotowin model that diverges from the traditional Canadian justice model is that of the non-coercive and consensual aspect of such programs. While in some jurisdictions the police have a role in direct referrals to justice, most diversionary programs are typically referred by the courts, which presents the potential for coercion. If the participation of an offender is made mandatory (especially when the alternative is threat of criminal record and the potential for incarceration), the legitimacy will suffer and the potential for harm reduction and relationship restoration decreases. Wildcat posits that, for increased legitimacy, programs should operate in collaboration with other programs and systems that are interrelated with communities, both impacted and associated. Unfortunately, typically the Canadian system continues to compartmentalise restorative justice away from the affected communities and distances the victim in many cases. This can be successfully addressed, as Wildcat has demonstrated through the Miyo Wahkotowin Community Education Authority model. Wildcat (2011) speaks to the necessity of Indigenous identity for youth to grasp the concept of their own cultural restorative justice:

When Miyo Wahkotowin started to learn about restorative justice, it helped them to work on the question: ‘How do we make things fit into the belief we’re a Cree school?’ As the group began to learn more about restorative justice, they realised that it was simply part of the larger vision and mission of Miyo Wahkotowin (Wildcat, 2011, p. 930).

Finally, restorative practice programs should be independent and able to challenge any exterior forces that reflect non-core community interests beyond the need for public safety. As discussed earlier, most offences committed by Indigenous offenders involve public disorder and minor criminal offences. These offences involve, by and large, community harming behaviours with both general and specific victims, but generally do not involve significant public safety concerns. Therefore, the involvement of the criminal justice system is not always necessary, yet it

is the only system set up to deal with social control in general, and restorative justice specifically.

CONCLUSION

This study's findings suggest that the Indigenous ways that are purported to be the basis of modern, Canadian, restorative justice, in fact, are not reflected in the contemporary restorative practices. Research shows that the justice systems in Canada and Britain at the time of colonialism were incompatible with those of the colonised. Further, the colonisation of Indigenous Peoples of Canada included both the rejection of the local Indigenous-devised restorative-based justice system, and the forced adoption of a system resulting in the criminalisation of a disproportionate number of Indigenous persons. Aboriginal persons remain over-represented in the incarcerated population in Canada. Meanwhile, restorative justice was, and still is, not adequately accessible by Canada's Indigenous population. Research also demonstrates that Indigenous people are not fully embracing restorative justice in its current form, based on the false narratives of its origins. Still, there remains the opportunity to embrace authentic Canadian Indigenous practices and incorporate same into restorative justice programs. Indigenous Elders and professionals offer specific perspectives that can help to adequately address the unique circumstances involved in Indigenous criminal justice issues and diversion.

Restorative Justice research must continue, thus providing longitudinal data to support restorative practice in Canada. Canada's Indigenous culture revival continues to be embraced socially and academically, thus providing more investigation into authentic cultural means of strengthening community relations, interpersonal growth, and ultimately the reduction of the unequal application of justice products on the Indigenous peoples in Canada. While the racial issues of Indigenous people who interact with the justice system is not a new concept, the understanding as to how modern Canadian restorative justice practice is not as rooted in the principles of Canadian Indigenous culture as some may think, requires further exploration. Colonialism certainly has played a significant role in the evolution of Indigenous overrepresentation in the

Criminal Justice System. Further, the imposition of a substantially different means to achieve justice, the disenfranchising of the population, the insensitively co-optation of cultural ways for material gains, as well as neocolonialism have each served to exacerbate the issues.

This paper explored the history of colonialism and the development of restorative justice in Canada. The conclusion to be drawn upon considering the research presented is that restorative justice in Canada, while imperfect, has a future to positively impact all Canadians, Indigenous or otherwise. Understanding the issues and truths about Indigenous involvement with the criminal justice system helps point to a path of holistic restoration. That is, a system that aligns Canada's future path with its own true Indigenous peoples' traditional ways, thereby promoting restoration of the individual, of the family, of the community, and perhaps of the country itself. It is undeniable that emotional and psychological harms play a significant role in criminal and public disorder involving Indigenous peoples. Hudson (2006) posits that "[I]nking questions of identity and questions of oppression is surely at the philosophical heart of the restorative justice ideal" (p. 41). Using tools such as Gladue Reports, group family conferences, and youth justice committees, Canada can continue to work to identify and incorporate Indigenous identity and limit inherent oppression. In doing so, Canada can work toward decolonisation, and strive to remove neocolonial government processes from the criminal justice system and related areas. A return to the pursuit of community harmony should prompt Canadians to implement a more equitable application of the philosophy of *justice*, regardless of the transgressions that bring everyone to the table.

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BOOK REVIEW

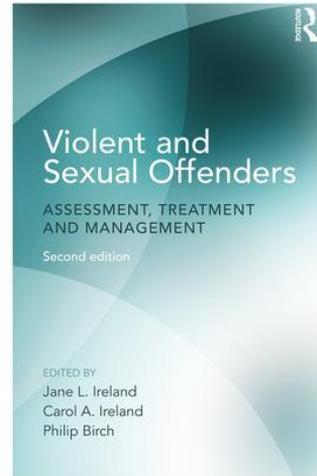
Violent and Sexual Offenders: Assessment, Treatment and Management (2nd ed.)

By Jane L. Ireland, Carol A. Ireland and Philip Birch

Routledge, Oxon

2019, 546 pages

ISBN: 9781138233102



Reviewed by Louise A. Sicard

Offender assessment, treatment and management, particularly that of violent and sexual offenders, has experienced consistent development throughout literature and practice. In 2009, Ireland, Ireland and Birch constructed the first edition of this text, which offered coverage of violent, sexual, domestic violence and stalking offenders. The first edition presented chapters that discussed key advancements such as stalking offenders, protective factors in risk assessment and the contention between static and dynamic risk assessment instruments. However, over the last decade since the release of the first edition, there has been a growth of research with significant implications to practice in this field. Accordingly, the editors have recognised the need for an examination of the progress made and issues raised during the last 10 years. Filling this gap, a second edition of ‘Violent and Sexual Offenders: Assessment, Treatment and Management’ has been published, providing a much-needed exploration of the current perspectives in this area.

Illustrating the expansion of research in the field, Ireland, Ireland and Birch (2019) present over double the chapters of the first edition. This second edition brings to light the recent research in areas explored within the first edition including violent, sexual, partner violence and stalker offenders. Importantly, the text also advances the reader's knowledge in contemporary areas of interest such as intellectually disabled sex offenders, female sex offenders who abuse children, cyber/internet sex offenders, terrorists and extremists. Through considering recent perspectives on core topics and examining emergent avenues of research in this field, this book successfully presents itself as a highly comprehensive source on violent and sexual offender assessment, treatment and management.

The text consists of 32 chapters that are arranged into four logical sections: (1) Risk assessment – current perspective, (2) Clinical assessment – current perspectives, (3) Treatment – current perspectives, and (4) Management – current perspectives. Dividing the chapters into these four sections is useful for the reader, as it effectively highlights the four distinct categories, while retaining the order of the process from offender risk assessment to offender reintegration and management within the community. It is noteworthy that this text separates risk assessment from clinical assessment, as there is a wealth of advancements as well as benefits and limitations to be expounded concerning actuarial and clinical assessment. Furthermore, each chapter has been contributed by authors who have extensive academic and/or practical experience within the specified area. Adding to this, the supporting references offered by the chapters are extensive and prove useful for further reading in the area.

Moving to discuss perhaps the most valuable aspect of this text: the implications to practice. This text is built on the work of 55 academics in the field, thus there is a thorough illustration of the various perspectives on offender assessment, treatment and management. However, arguably many of the chapters offer, what may be described as, a 'progressively positive' perspective on assessing, treating and managing violent and sex offenders. Often, previous and dated works on these offending groups,

particularly sex offender treatment, generally take a ‘negative’ approach through focusing on the offender’s risk and deficits. However, this text methodically considers the importance of adopting more contemporary, ‘positive’ approaches to violent and sexual offender assessment, treatment and management.

Exemplifying the underlying ‘positive’ perspective of the book, during the first section there are several chapters, as well as a dedicated chapter, to highlighting the value of protective factors within offender risk assessment. Further, the text explores newer offender treatment theories and models such as *desistance* which examines the pathways out of offending and the *good lives model*, which advocates for a strength-based, individualised and responsive approach to offender treatment. It is noted within the text that the *good lives model* is theoretically sound and has demonstrated merit and yet is only recently being used within treatment. Additionally, throughout section three of the text there is an underlying message that maintains the importance of employing diverse and alternative approaches to offender treatment and management, stipulating the significance of approaching an offender as an individual. Thus, it is suggested that this text may prompt practitioners, such as treatment program directors and facilitators, to consider the use of more individualised, strength-based and alternative treatments for this offending population.

Upon considering the readership of this book, it is assessed that this source will engage a diverse audience due to the all-inclusive coverage of the field of offender assessment, treatment and management. This book will be of primary interest to academics, researchers and practitioners in criminology, criminal justice and forensic psychology. Moreover, as the text provides chapters that delve into foundational theories, models and concepts to these aforementioned areas of study, it is believed that it would be appropriate for undergraduate and postgraduate students.

ABOUT THE REVIEWER

Louise A. Sicard, PhD is a sessional lecturer in Criminology & Policing in the Centre for Law and Justice at Charles Sturt University, Australia. She has previously held a teaching post at the University of Western Sydney, the University of New South Wales, Sydney, Australia. She recently completed her PhD at Charles Sturt University, Australia which focused on the use of music therapy as a treatment component with offenders, in particular those with complex needs.

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