

NOTES ON THE CULTURE OF PRISON INFORMING*

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A figure had haunted earlier times, that of a monstrous king, the source of all justice and yet besmirched with crime; another fear now appeared, that of some dark, secret understanding between those who enforced the law and those who violated it.¹

...

There was also a new culture and pecking order in the gaols. It had been developing through the seventies and had now arrived with a vengeance. The old school of prisoners convicted of standard offences like armed robbery, violence and petty crime had been replaced by the drug culture syndrome. Addicts and pushers were dictating events. Solidarity amongst prisoners was traded for a needle. Individuals would sell their mother for a fix. Nobody trusted anybody, as informants were everywhere. Solitary was no longer a punishment determined by the administration, but a protection demanded by the prisoners. Characters like Darcy, who hated drugs and all those associated with the trade, were relics of the past. Their values, discarded like a used syringe. The idea of 'copping it sweet', a forgotten principle.²

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The difference I noticed my second fall, there aren't no more real convicts since this crack shit come about. Convicts, they'd sit around talking about jobs, banks they'd held up, argue about how to blow a safe. Now you got inmates instead of cons and these guys are crazy. All they think about is getting dope and getting laid, looking to see who they can turn. See, once you get turned your pussy. Inmates, they'll snitch you for smoking a joint, anything, to get in good with the turnkeys.³

...

SHIRKER: Gimme the old days

TOSSER: Yeah. I can remember when you'd never even bother to spit at a uniform or a dog. Look at it now, but: nobody worries about chocolate frogs any more.

SHIRKER: You can drop off the 'nobody'. I dont ever talk to dogs or screws, mate. Anyone that does oughter be pinched for consortin', I reckon. My old woman used ter say, yer judged by the company yer keep ... 'n she was right: only dogs talk to dogs.

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1 Foucault, M, *Discipline and Punish* (1977) at 283.

2 Hay, R, *Catch Me if You Can: The life and times of Darcy Dugan* (1992) at 378.

3 Leonard, E, *Maximum Bob Penguin* (1992) at 98.

TOSSER: Yeah. Trouble is, but, yer never know these days who is a bloody chocolate and who ain't!⁴

...

In recent years, there has been a determined campaign designed to deprive law enforcement of the time-tested and valued confidential informant. This campaign of vituperation is part and parcel of Communist strategy to convert the courtroom into a forum to discredit the judicial process.⁵

INTRODUCTION

This paper will seek to make some preliminary and speculative comments on the culture of prison informing. Interest in this topic stems from research into what appears to be an increase in the use of prison informants in criminal prosecutions in Australia and in particular New South Wales in recent years. While it is not possible to demonstrate such an increase statistically, it is difficult not to draw the impression from media reports of particular trials that the calling of prisoner witnesses to give evidence of alleged prison yard or cell "confessions", while not entirely novel, is nevertheless an increasing, prosecution tactic.

The drift of the research so far⁶ is to locate such a development in the context of a set of conditions which encourage the use of prisoner informants. These conditions include:

- a shift to proactive policing practices
- restrictions on the ability of police to fabricate confessional evidence
- the nature of prison regimes and the availability of a range of incentives or rewards for informing
- the establishment and expansion of prison intelligence units such as the Internal Intelligence Unit in New South Wales and their control over witness protection schemes
- the increasing interpenetration of prison and police departments.

The concern has been to highlight the key issues arising out of these conditions in relation to the growth of prisoner informants, namely the reliability of evidence emerging from the informants, the integrity of the criminal justice system and the accountability of its agencies and practices.

One of the great difficulties in the research has been in trying to confine it to the specific issues thrown up through the use of *prison* informers, that is prisoners who give information or evidence in relation to what it is alleged other prisoners have told them in prison. The difficulty lies in the wide variety of types of informing and informants, which

4 McNeil, J, *The Chocolate Frog, The Old Familiar Juice* (1973) at 18.

5 J Edgar Hoover (1955) quoted in Harney and Cross, *The Informer in Law Enforcement* (1968) at 18-19.

6 Brown, D and Duffy, B, "Privatising Police Verbals: The Growth Industry in Prison Informants" in Carrington, K et al (eds), *Travesty! Miscarriages of Justice* (1991) at 181.

moreover overlap at points. Rod Settle has produced a useful typology in his research on informers. He separates out “indemnified dogs”, “chocolate frogs”, “gigs”, “anonymous grassing” and “respectable grassing”.⁷ These distinctions are important and it is easy to move back and forth between quite different types of relationships and impart a spurious unity to the various and diverse practices and cultures. It is a danger this paper, concerned as it is with the culture of prison informers, does not entirely avoid.

TAIL WAGGERS

G A Wilkes' *Dictionary of Australian Colloquialisms*⁸ defines dog as “an informer; one who betrays his associates, often in the expression ‘turn dog’”. It gives the derivation as United States, appearing in the 1846 edition of the *Oxford English Dictionary*. Most of the US literature on prison informing seems to use the term “rat” or “snitch”. “Dog” is the well established Australian term, directly or through rhyming slang derivatives such as “chocolate frog” (as in the title of a play by New South Wales prison playwright, Jim McNeil⁹). McNeil defines the term in the foreword to the play:

a dog is one whose conduct violates, or has violated in times past the informal ‘laws’ of prison society. A dog in prison is a criminal in the sight of those termed criminal themselves by ordinary society. And a dog should be judged, has to be punished, deserves to be ostracised and deprived — as criminals are.¹⁰

The persistence of the notion can be seen in the incident during the Tim Anderson committal in Sydney in 1989 when former prison folk hero Ray Denning was giving evidence. A large bone was placed on a railing in the courtroom by an ex-prisoner who then shouted out “you forgot your lunch, Denning”.

Wilkes goes on to give a number of examples of its use, the first being J F Mortlock's *Experiences of a Convict* in 1864. Mortlock used the term to describe men betraying their companions or accepting authority over them, noting that sometimes they have their nose bitten off — the morsel being termed “a mouthful of dog's nose”. In 1895 Cornelius Crowe in *The Australian Slang Dictionary* defined “to turn dog” as to turn Queen's evidence. To dob or dob in, is also an Australian colloquial term, defined by Wilkes as “to inform against, implicate, betray.” Dob has a wider and more popular meaning, not restricted to the criminal justice system; giving any sort of information to authority about others.

Several of Wilkes' examples stress the use of the term as a verb, to turn dog. This usage emphasises the active process by which one becomes a dog, stressing the element of moral choice involved. The two old-lag prisoners in McNeil's play “The Chocolate Frog” refer to “putting” the newly arrived young prisoner Kevin “on the dog”, as in “Yer can't really put 'im on the dog, he's just ignorant, is all ...”.¹¹ This usage emphasises the

7 Settle, R (1991) unpublished, private correspondence.

8 Wilkes, G A, *A Dictionary of Australian Colloquialisms* (1978).

9 Above n4.

10 At 10.

11 Id at 28.

ascribed status of dog, a process less of becoming through ones own actions than a status denoted by others. It is then the defining by the peer group that is important rather than something inherent in particular behaviour. Shirker, one of the old lags, explains the process to Kevin:

Our forms is already *established*, if yer know what I mean? There no one in the nick here can point the finger of scorn at me or Toss. But you're *new* ter the scene, 'n *as* such yer'll be answerin' all kinds of questions in the next few days. All the crim's'll wanter know yer *form* ... 'n they'll be looking ter me'n Toss fer a rundown on yer. That's why we ask yer questions ... we're *entitled* to, see? It could be that yer a bit short of credentials. Might even be a chockie frog, or something': in which case, a'course, we'd have ter say so around the place."¹²

McNeil exposes the negotiated status behind the apparently uncompromising approach of Shirker and Toss. While Shirker invokes the once and forever status of the dog: "once a dog, never a good feller! Yer can't be a tail-wagger this week, 'n a good fella the next"¹³ Kevin's presence provokes a dispute between Shirker and Tosser in which Shirker reveals that he has long suspected that Tosser informed the police of his whereabouts after an escape many years before, "but it was just easier to fergive yer, yer know?" Tosser rejects this vehemently: "I ain't never lagged nobody!!!"¹⁴

This exchange highlights the way in which a strong rhetorical adherence to the inmate code hatred of informers is mitigated in practice by a range of pressures forged in the interests of harmony, company and friendship, and by a recognition that in many cases it is not possible to know conclusively (except where someone has formally given evidence in court or made a statement to police) exactly what did or did not happen in a particular instance. Prisoners realise how easily the process of "putting someone on the dog" can be motivated by personal malice entirely unrelated to an alleged incident of informing, or instigated by rumours put into circulation by police or prison officers for their own ends. The exact truth of events becomes impossible to unravel from the stories and myths that circulate in the rumour mill atmosphere of a prison. There is also an awareness that the "dog" tag can remain with a person and their relatives for a long time, decades and even lifetimes, carrying significant consequences in terms of reputation, future prospects, friends, and the possibility of physical reprisal or death. Thus, while a hatred of clearly designated informers who have sought official protection and whose status is widely known can be an important component in prisoner solidarity, the widespread use of the "dog" label within the prison as part of personal and faction fights can serve to break down prisoner solidarity and create a climate of suspicion and mistrust which militates against collective action.

McNeil's usage highlighting "dog" as an interactionist concept or label opens up clearer connections with prison culture and the "inmate code". In traditional prison and criminal culture the stigma "dog" is a way to maintain solidarity, lessen the chance of

12 At 37.

13 At 34.

14 At 48.

being betrayed, construct a notion of unity, in the sense of a shared moral value that it is immoral to inform, rather than a necessary approval of specific criminal activities. The transmission between prison and criminal subcultures outside the prison is important for the maintenance of an ethic against informing, for outside the prison informing can be carried out more anonymously and therefore with less risk. Herein partly lies Settle's distinction between "chocolate frogs" and "gigs", an abbreviation from fizz gigs, regular police informants outside the prison context. The possibilities of constructing an adherence to a shared set of values against informing are restricted in a broader societal context where there is little to unify the participants in the commission of the vast bulk of criminal offending. The possibility of unity is stronger in a specific subcultural professional and semi-professional criminal milieu around certain offences such as armed robbery, large scale car theft or break and enter, contract killing, drug dealing. There is no obvious principle for unity in either the offences (diverse) or the types of offenders. Many of the activities, apart from being illegal and thus in their nature secret, are individualistic, selfishly motivated, anti-collective. So while there is a rhetorical ethos of "crims as staunch and anti-authority" there is not a strong tradition or ethos of collective solidarity or action, except in a minority group of prisoner activists and militants who maintain a self identified "prisoner" or "crim" status outside the prison which they use openly in media, political, lobbying and welfare activities on behalf of prisoners. Individualism and conservative political preferences on the part of the "old guard" criminal elite often go hand in hand, witness Hay's reference to Darcy Dugan as "a Liberal voter at heart".¹⁵ Certain police practices (verbal) and antipathy towards informing provide one of the few vehicles for solidarity.

The position is rather different inside the prison. Informing is far more visible, particularly where it leads to some sort of segregation and protection. However even this is confused as a great many of the prisoners seeking to be placed on protection do so because of drug debts. The prison pecking order tends to be determined by a combination of reputation, physical strength and popularity. Reputation derives from the offence for which imprisoned, prior criminal record, stance towards prison officers and authorities, preparedness to act as prisoner representative, and physical prowess. Professional and semi-professional armed robbers, particularly those without drug habits, and career criminals, including stand-over men and contract killers tend to be high on the pecking order. These are also the sorts of prisoners more likely to ascribe to the code of not informing. Prison experience thus tends to refurbish the general, at least rhetorical, ideology of despising dogs.

DOGS AND THE INMATE CODE

The transmission between prison and criminal subcultures outside the prison is highlighted in some of the penological literature on the origins and functions of the inmate code. Sykes¹⁶, Messinger¹⁷ and others have portrayed the inmate culture as emanating

15 Hay, R, *Catch Me if You Can: the Life and Times of Darcy Dugan* (1992) at xii.

largely from within the prison as a response to the pains of imprisonment, its function to lessen those pains through solidarity. Outlining the chief tenets of the inmate code they identify “the most inflexible directive” as being concerned with “betrayal of a fellow captive to the institutional officials: *Never rat on a con.*”¹⁸ They summarise the inmate code as follows:

- 1 Inmates give strong verbal support to a system of values that has group cohesion or inmate solidarity as a basic theme. Directly or indirectly, prisoners uphold the ideal of a system of social interaction in which individuals are bound together by ties of mutual aid, loyalty, affection, and respect, and are united firmly in opposition to the enemy out-group. The man who exemplifies this ideal is accorded high prestige. The opposite of a cohesive inmate social system — a state in which each individual seeks his own advantage without reference to the claims of solidarity — is viciously condemned.
- 2 The actual behaviour of prisoners ranges from full adherence to the norms of the inmate world to deviance of various types. These behavioural patterns, recognised and labelled by prisoners, in the pungent argot of the dispossessed, form a collection of social roles which, with their interrelationships, constitute the inmate social system.¹⁹

A different interpretation is provided by those who see the inmate code as originating in and expressing the values of the outside criminal subculture. Cohen and Taylor in the course of their study of the experience of long-term imprisonment in a high security unit express a number of reservations about the standard sociological accounts of adaption to institutional life. They argue that “the depiction of subcultures, underlife, and secondary adjustment tells us little about the meaning of such phenomena to the group concerned, and the way they can be used, manipulated or exploited in diverse ways.”²⁰

Cohen and Taylor note that one of the key themes in the literature arising from concentration camps, labour camps and political prisons is “the notion that one had to resist any attempt to be changed: one had to do more than remain alive, one had to remain alive and unchanged.”²¹ Some of the psychologically based prison literature sees the inmate code as central to maintaining a resistance to change through psychological treatment or therapeutic community programs. Warden John C Watkins, speaking at the American Correctional Association Congress in 1964, identified the key to successful “modification of subcultures” as breaking down the inmate code and in particular the “thou shall not tell” “religion” of the “solid convicts”. The aim is to break down loyalty to the inmate code and bring about a shift in loyalty to the prison administration. This is to be achieved by encouraging informing through the judicious use of rewards and

16 Sykes, G, *The Society of Captives* (1958).

17 Sykes, G and Messenger, S, “The Inmate Social Code”, in Johnston, N, Savitz, L and Wolfgang, M (eds), *The Sociology of Punishment and Correction* (2nd ed; 1970).

18 Id at 402.

19 Id at 405.

20 Cohen, S and Taylor, L, *Psychological Survival: The Experience of Long Term Imprisonment* (1973) at 133.

21 Id at 54.

individual “treatment”, such as being placed under stricter control and told that someone has informed on them, leading Jessica Mitford to ask “who is ‘rehabilitated’? The solid who refuses to inform on his fellows or the prison rat who succumbs to Dr Watkins?”²²

Harry Wilmer, a psychiatrist involved in a group living program for inmates in San Quentin in the early 1960s, also argues that it is essential to understand the role of the inmate code and the “rat” in prison in order to promote a successful treatment program. However rather than trying, like Watkins, to encourage and manipulate prisoners into informing, Wilmer is concerned that the inmate code which forbids informing blocks the attempt to open up communication therapy. He argues that

The ‘snitch’ role rigidifies the convict code or culture and reinforces the basic feeling of helplessness towards a dangerous and hostile world. When administration and security depend upon and foster snitching they perpetuate the warfare between police and criminal and assuage the guilt which the inmate might otherwise have for his hostile feelings towards police and all outside authority. Whatever positive feelings exist are thereby dissipated in further hatred and fear. The tighter the security the more potentially dangerous is the ‘rat’ concept to the captives and the greater need of custody to have informers from the very world they have closed off tightly.²³

It will not have escaped notice that all the discussion so far has been in the masculine form. The vast majority of studies on the inmate code have focussed on male prisons and the role of women in informing outside the prison has been neglected. There are however a few studies of women’s prisons. Rose Giallombardo in a study of a women’s prison²⁴ and three institutions for female juveniles²⁵ concluded that female prisoner subcultures are derived from sex-role stereotypes imported from the wider society and that snitching is more common in women’s prisons because women lack such a strong sense of solidarity. She also noted lesser inmate sanctions against informing in women’s prisons. Ward and Kassebaum²⁶ reached similar findings. Ester Heffernan²⁷ did not directly compare snitching for men and women but identified three major subcultures rather than one. Joyce Ward²⁸ in her description of the social organisation of a women’s prison in Britain noted the same apparent lack of solidarity and high level of informing as Giallombardo and Ward and Kassebaum, but explored a range of other interpretations. Ward concluded that the uncertainty which characterises decision making in prisons is responsible for snitching, not because the prisoners are women.

The research has not as yet located any Australian studies of informing in women’s prisons but one woman prisoner we talked to argued that in fact informing in women’s prisons is rare. This was attributed not so much to a strong commitment to inmate solidarity but to the fact that women’s prisons were generally small and everything that

22 Mitford, J, *Kind and Usual Punishment* (1974) at 128.

23 Wilmer, H A, “The role of the ‘Rat’ in the Prison” (1965) 29/1 *Federal Probation* 44–49 at 49.

24 Giallombardo, R, *Society of Women: A Study of a Woman’s Prison* (1965).

25 Giallombardo, R, *The Social World of Imprisoned Girls* (1974).

26 Ward, D and Kassebaum, G, *Women’s Prison: Sex and Social Structure* (1965).

27 Heffernan, E, *Making it in Prison, The Square, The Cool and the Life* (1972).

28 Ward, J, “Telling Tales in Prison”, in Kassebaum, G (ed), *Custom and Conflict in British Society* (1982).

went on was noticed. Examples were given of harassment and assault of women prisoners who were thought to have informed. The point was also made that in the major New South Wales women's prison the prison is run by a clique described as "non-political lesbians" who liked to run the prison in their own way and resented interference from police and Internal Intelligence Unit Corrective Service officers.

As for women informers outside the prison context few high profile women informers seem to have emerged into the public gaze, partly perhaps because serious and high profile crime is generally a masculine domain, partly because women informers are less likely to be actually revealed by their police contacts in the sense of being used to give direct evidence. Alan Block writing on organised crime notes the "discrepancies between the sexually integrated underworlds of the nineteenth century and the sexually segregated world of organised crime advanced by contemporary scholars".²⁹ He goes on to argue that in fact women have been part of the 20th century underworld "but have been effectively removed because of a belief in conspiracy as the engine of organised crime."

Enamoured with proving some gigantic conspiracy hatched by the minds of master criminals (invariably men), writers have narrowed their focus so much that organised crime has been perceived as strictly parasitic, serving no needs and performing no functions apart from enriching criminals.

In not connecting organised crime either to real communities or to concrete criminal justice agencies except for the police, researchers have structured untold numbers of women outside the social reality of organized crime.³⁰

Whether the same could be said in the Australian context in the aftermath of studies such as Judith Allen's *Sex and Secrets*³¹ is open to debate. Certainly the careers of the famous madams Kate Leigh and Tilly Devine are popularly known.

Prostitutes are often regarded by police as a source of information on the whereabouts of particular criminal identities, criminals planning jobs, movements of stolen property and drugs, known criminals suddenly with large amounts of money, and so on. A major theme in policing prostitution, although undeveloped in the literature, has been this intelligence gathering function using the threat of arrest of the prostitute, harassment or closure of the brothel, or offers of arrest or protection from violent pimps/ boyfriends/ drug dealers, to elicit information. A prostitute working in the East Sydney lanes in the 1960s nicely encapsulates the lack of a clear cut antithesis between police and criminals in this comment: "A lot of girls were on with big time crims, after I broke up with a policeman I was on with a famous crim."³²

The life and career of Sallie-Anne Huckstepp provides a more contemporary example of a high profile prostitute and heroin user who had lovers from amongst major drug

29 Block, A, "Searching for Women in Organised Crime", in Datesman, S K and Scarpitti, F R (eds), *Women, Crime and Justice* (1980) at 194.

30 Id at 209.

31 Allen, J, *Sex and Secrets* (1990).

32 Perkins, R, *Working Girls: Prostitutes, their Life and Social Control* (1991) at 133.

dealers and state and federal police. She lived a dangerous life exploiting the ambiguity of the police/criminal relationship through her attachments and her key location as a point of transmission in the circuits of drug dealing and armed robbery. This ambiguity was reflected in the fact that at the inquest into her death the coroner was unable to choose between a number of suspects, criminals and police, who might have wanted her dead, and no charges have been laid in relation to her killing.

A British undercover police officer with an aptitude for mixed metaphors describing his work with informants identifies ex-girlfriends of traffickers as potential informants: "A good source of information was birds. That saying about hell hath no fury is dead right. If a drugs dealer breaks up with his chick, he had better watch out. The chances are that she will squeal, and we weren't too fussy how the information arrived."³³ However an article on how to handle confidential informers in the American police journal *Law and Order* (articles in this journal conveniently give a "reading time" estimate under the author's by-line) by Det Sgt Vernon J Gerbeth betrays a concern at the seductive power of female sexuality:

Another precaution that should be mentioned is the handling of female CI's. Women pose a unique problem in that there is always the question of whether or not there was any impropriety on the part of the male contact officer. Women are generally emotional, and any long term involvement between the male contact officer and the informant who is female can present a problem. It is a good policy to have a female contact officer assigned to a female informant, however this is not always possible.

The female CI is very effective. She is likely to "know" men, and generally gets what she wants. She is often overlooked as a threat by the male criminal and more or less accepted as part of the scenery. She is usually in a position to know exactly what is going on and can be of valuable assistance to the enterprising detective.³⁴

MOTIVATIONS FOR INFORMING

The classic account of informer motivations is provided by police narcotics agents, Malachi L Harney and John C Cross³⁵. As the title suggests this is somewhat of a police manual and one of the only book length treatments of informing. The flavour is perhaps imparted by the brief: "Let us endeavour to outline some of the considerations which might impel our antisocial, or at least antipolice, informer to give us his essential cooperation."³⁶ So the following classification of motives is not addressed specifically to prison informers.

- 1 *The Fear Motive*, arising from self-preservation. If under arrest the suspect might be looking for "sympathy, extenuation, mitigation" may "furnish us with direct evidence against other criminals".

33 Quoted in Dorn, N, Murji, K and South, N, *Traffickers: Drug Markets and Law Enforcement* (1992) at 131.

34 Gerbath, V J, "The Confidential Informant" (1979) 27/6 *Law and Order* 26-41 at 34.

35 Harney, M L and Cross, J C, *The Informer in Law Enforcement* (2nd ed, 1968).

36 Id at 40.

It is almost the universal practice of the police, prosecutors and courts to recognize the valuable assistance to law enforcement in this attitude of the informer. This recognition is usually translated in a practical manner as a recommendation for a lesser sentence, a more favourable consideration for parole or probation, the acceptance of a plea to a lesser count in the indictment or through some other favourable action within the discretion of the prosecution.³⁷

Or rather than fear of the law the fear can be fear of ones associates, a falling out among thieves “so there may come to us a frightened man who sees in the forces of law the lesser of two evils.”

- 2 *Revenge Motives*, an “all-consuming desire for retaliation”. This may arise from a lack of honour among thieves, jealousy, quarrels over women, being short-changed or undervalued.
- 3 *Perverse Motives*, such as wanting to eliminate competition, to strengthen his reputation as an informer in order to extort money from other criminals, the provision of false and misleading information in order to find out how much police know, or divert suspicion.
- 4 *Egotistical Motives*, as in the person who gets a kick out of telling a story and receiving attention, boosting their ego.
- 5 *Mercenary Motives*, as in those informers who do it for payment or reward.
- 6 *The Detective Complex*, as in those for whom crime detection is an attraction.
- 7 *Selective Law Enforcement* as in the informer who is opposed to certain types of criminal activity.
- 8 *Repentance or Desire to Reform*, through a desire to make restitution, repent or reform. Harney and Cross state that “this informer is infrequently seen, but he may be valuable”.³⁸
- 9 *Appreciation or Gratitude Toward Police or Prosecutor* stemming from “intelligent, discreet and considerate handling”.
- 10 *Demented, Eccentric or Nuisance Type Individuals* as in the “busybody” and “screwball”. While category 8, repentance or desire to reform warrants only 6 lines of Harney and Cross’s text, this category requires 11 pages! Perhaps the Australian police special branch handlers of the Richard Searys of the world might draw some lessons from this classic exposition of relative priorities.

In the Australian prison informer context most attention has focussed on informing for reward, Harney and Cross’s “mercenary” category. This has been described previously as a:

developing market in criminality; the volunteering of testimony in exchange for a range of privileges. These range from formal grants of immunity or informer sentence discounts to (prisoners allege) actual early release, favourable classification or transfer decisions,

37 Id at 41.

38 Id at 48.

access to witness protection programs, recommendations for bail, favourable parole assessments, day release, contact visits, phone calls, property, drugs etc.³⁹

While there is clearly a danger in reading motivation as being purely self serving, an expression of “rational choice”, untainted by more complex cultural factors, such explanations tend to have greater surface plausibility, at least amongst prisoners, than the “turned over a new leaf, desire to repent, redress and reform” script staged by and on behalf of notable prisoner informants such as Ray Denning. It is not difficult to see why when one considers the extensive benefits obtained by and offered to Denning, the quid pro quo for which seems plainly to have been the offer of both information and alleged gaol yard confessions by other prisoners in high profile cases. Rewards obtained by Denning included immunities on two major armed robberies including Queensland’s biggest ever pay-roll robbery, (“interstate blues that I’m promised will be dropped”), extremely favourable (and highly misleading) character evidence from police and senior prison officers when he came up for sentence on an escape charge in 1988, and when he appeared for the setting of a release date in 1991, police and prosecution failure in 1988 to notify the sentencing judge of offences committed while at liberty, charge reductions, speedy interstate transfer back to New South Wales from Victoria, a police recommendation for a \$250,000 reward in the Hilton bombing case, special access to the media, and an initial favourable miscalculation of his release date.⁴⁰

A major problem for the “change of heart” scenario is that it is supposed to have stemmed from around 1983 following his recapture after the 1981 escape. However he committed an armed robbery four days after escaping in 1988 and was caught in the lead up to another. Evidence to the New South Wales ICAC inquiry into informers in 1992 also suggested that while in prison in 1986 Denning was involved in a plan to smuggle a considerable quantity of heroin into Australia.⁴¹

INROADS INTO THE INMATE CODE ON DOGS

The existence of a strong criminal and prisoner code against informing and adherence to its proscriptions are open to a number of challenges. One of these is the increasingly familiar refrain that any prisoner solidarity has completely broken down with the advent of a drug subculture in the prisons. A second is the recognition that, far from being outcast, despised and weak, some of the key prison informers revealed in recent years have in fact been high profile and high status prisoners enjoying considerable power and influence in the prisons. This awareness coincides with similar revelations from Royal Commissions of inquiry and spectacular cases in recent years that some of the leading police informers in the outside “war against crime” and the “Mr Bigs” have not been the rather pathetic figure in the pub wearing a raincoat, the “Lonely” character in Callan, but

39 Brown and Duffy, above n6 at 199.

40 Brook, R, “Raymond Denning’s Best Planned Escape”, in Carrington et al, above n6 at 83–103; Anderson, T, *Take Two: The Criminal Justice System Revisited* (1992) 328–9.

41 Anderson, above n40 at 332; Independent Commission Against Corruption, *Report on Investigation into the Use of Informers*, Vol 2 (1993) at 283–288.

people recognised as being significant crime figures, in some cases media “Mr Bigs” or “Mr Big-Enoughts”, in their own right. A third challenge arises in the form of a whole set of changes in policing and prosecution practices dating from the early 1980s, initiated by the various inquiries into organised crime. These practices include a general shift to proactive policing and techniques, targeting of individuals and groups, electronic surveillance, the increased importance of immunities and sentence discounts, the establishment in some jurisdictions of specialised intelligence units within prisons, closer cooperation and interpenetration of police and corrections departments. Finally, certain changes that might be grouped uneasily under the heading of the shift to an information based society in which forms of power/knowledge derive largely from access to and the ability to feed into electronic media networks, have arguably had repercussion in the “closed” world of the prison. The following discussion will attempt to briefly flesh out these developments.

“YOU CAN’T TRUST A DRUGGIE”

Much of the code against informing in prison has historically been oriented around protecting, or at least not disclosing, internal prison activities such as the making of home brew, bookmaking, planned escapes, holding of weapons, presence of contraband, commission of assaults and sexual assaults against other prisoners and, more recently, holding and use of drugs and drug dealing. It is the last, drug dealing and the emergence of a drug culture, which has been blamed by many prisoner commentators for the breakdown in the solidarity against informing in what has become a familiar refrain. Examples of this position can be seen in the quotes from Dugan, McNeil and Elmore Leonard at the beginning of this paper.

It is important to note that what seems at times a rather nostalgic and conservative evocation of the “good old days” when you could trust crims to know the rules and obey the codes, like not stealing from each others’ cells, does not only emanate from prisoners. As befits the close and ambiguous relationship between career criminals and detectives, police are also heard to bewail the passing of the days when crims were crims and you could trust them, to put their hands up to crimes they had committed, “to cop it sweet”, not to inform on police, and so on. While drug dependency has been exploited as a weakness in eliciting information, there is a danger to police that the junkie figure who has just given up his supplier, or agreed to become an informant, or set up a buy and bust, could also be encouraged to later reveal the nature of the deal or relationship with particular police, to other police or investigators.

While there is a tendency to see in the criminalisation of a particular type of illegal drug use and supply the origins of an entirely new culture opposed to the traditional inmate code, it is important to note the continuities, particularly in the relationship between criminality and policing. It bears remembering Vidocq, that remarkable criminal and adventurer who became chief of the Paris police and is seen as the father of the detective branch of the police. As Foucault remarks, in Vidocq

delinquency visibly assumed its ambiguous status as an object and instrument for a police apparatus that worked both against it and with it. Vidocq marks the moment when

delinquency, detached from other illegalities, was invested by power and turned inside out. It was then that the direct, institutional coupling of police and delinquency took place: the disturbing moment when criminality became one of the mechanisms of power.⁴²

It is these “complicities that crime formed with power” that are missed by commentators who assume that policing is the corrective application of investigative techniques to a preconstituted delinquency. Rather, in the figure of the informer, criminality becomes part of the currency that can be traded in the circuits of exchange through which a field of illegalities is produced, circulated, differentiated and managed. Indeed the prized informer is he who, like Vidocq, Denning and Neddy Smith, has an excess of criminality and the knowledges surrounding it, to trade. A paradox that does not entirely escape public notice is that those most heavily inscribed within an identifiable criminality have most to give and most to gain. The first-time drug dealer who is arrested on entering the market has nothing to offer and frequently will receive a heavier sentence than the long time player who can manipulate the prospect of a favourable exercise of police or prosecutorial discretion. This may take the form of licencing him to continue dealing on provision of information, or to identify others in the trade in exchange for rewards such as the reduction in the amount of drugs seized, immunities, sentence discounts and so on.

Rather than creating a new culture and relationship, the criminalising of a particular form of drug market extends and multiplies the circulation of criminalities, providing an over-abundance of infractions, opening up ever more opportunities for simultaneously working both within and against the forces of the illegal market. Whereas a more traditional criminal enterprise such as armed robbery provides only limited avenues of participation and knowledge to a defined and relatively small group of people, the widespread circulation involved in illegal drug markets amplifies those avenues and increases the flows of information and power between participants.

In some senses then the complaints of “staunch” prisoners of the old school about the breakdown of traditional inmate cultural codes is a complaint against the supersession or at least the waning of a more traditional, enclosed, craft-type delinquency based on long apprenticeships through the juvenile detention system and characterised by a career in which, to use Shirker’s words, form is established, over time, for all to see. Superseded by a legion of newcomers who are insufficiently acculturated in the rituals of collective insubordination and “copping it sweet”. Hence the common references to “plastic gangsters”, those who are seen as “instant” criminals, who have not paid their dues, and who are self engrossed, all show, unreliable, and like their alien choice of drug (heroin), motivated largely by self gratification. It might be said that the newcomers represent a “massification” of criminality, a move away from the traditions and practices of self identified and highly differentiated criminal subcultures often based on family, friends and area loyalties. With such a shift of personnel in the inmate culture comes a proliferation of opportunities for personal advantage through plugging in to the

42 Above n1 at 283.

information flows and networks of policing/delinquency in such a way that status is less clearly established, fixed and authorised by oppositional codes.

INFORMERS, ENFORCERS AND INSTITUTIONAL 'ORDER'

A second challenge to the strength of a dominant inmate code prohibiting informing is the status of particular key prison informers. While they may be disliked or feared, prisoners such as Denning, Heuston, Gidley, Wade etc do not correspond with the image of the informer as a weak and low status individual. An individual like Denning is a former folk hero of prisoner resistance. Some of the other key prison informers have been relatively powerful in the prison hierarchy, constructing their power out of physical intimidation, ability to manipulate the system to obtain better conditions and privileges not generally available to other prisoners, and tacit or in some cases active licencing by prison authorities to run sections of the prison as long as order is maintained and prison disturbances prevented. Giving evidence of alleged prison confessions in the trial of Tom Domican and Roy Thurgar known prison informer Ernie Wade admitted that he had stabbed more than 50 inmates and assaulted more men than he could count as a debt collector for prisoners and prison officers selling drugs. Admitting he had also used violence on behalf of prison officers to enforce discipline in the gaol, Wade said in court: "I either assault them or stab them or belt them over the head with something".⁴³

Marquand and Roebuck in a study of the "Building Tender" ("snitch") system operating in a Texas prison describe an open and highly formalised system of informing. "Building Tenders" (BTs) are an organised network of paid informants who function as surrogate guards. While being "hated but also envied, feared and respected", no stigma was attached to their deviant role.⁴⁴ The system is well described in their conclusion:

the official informers, called BTs and turnkeys, worked for and openly "co-operated" with the staff. These snitches, the most aggressive, older, and criminally sophisticated prisoners, were not deviants or outcasts. In turn, they cultivated additional snitches and with the staff's help placed these allies in jobs or positions throughout the institution. Ordinary inmate behaviour as well as that of low-ranking guards was under constant scrutiny. Therefore, the staff knew almost everything that occurred within the institution, permitting proactive control which prevented, in many instances, violent acts, group disturbance and escapes.

The ordinary inmates, as individuals, considered the inmate-guards as "rats"; however they lacked the influence, prestige and power to define and label them as such, that is to impute deviancy to the BT-turnkey role. Selection as a BT or turnkey meant assignment not to a deviant category but rather to an elite corp of pro-staff inmates. Within this system, the only deviants were the unruly ordinary inmates and weak lower-ranking

43 *Sydney Morning Herald* 21 June 1989.

44 "Marquand, J W and Roebuck, J B "Prison Guards and 'Snitches'" (1985) 25/3 *Brit J Criminol* 217-233 at 218; see also Marquart, J W and Crouch, B M (1984) "Coopting the Kept: Using Inmates For Social Control in a Southern Prison" (1984) 1 *Just Q* 491-509.

guards. Both these groups were stigmatised and labelled deviant by the staff and inmate-agents within the prison.⁴⁵

This is obviously an extreme example, and it is noteworthy that in a 1980 class action civil suit *Ruiz v Estelle* a federal court judge ruled that this form of prisoner control was corrupt, pervasive and deviant, holding it unconstitutional. Marquand and Roebuck note that "after purging the BT system, a power void resulted which generated an escalation in violence".⁴⁶ However the prison careers of some of the key prison informers in New South Wales mentioned above, such as Ernie Wade, lend support to the view that at certain times and in certain prisons prison administrations have relied upon particular, high status, heavy prisoners who are also informers to maintain institutional order through violence.

There has been a parallel recognition emerging through some of the Royal Commissions into organised crime and inquiries into specific incidents, including attempts to dismiss or discipline particular police officers, that some of the most powerful and autonomous detectives in recent years have enjoyed the confidences and even friendships of some of the people constantly referred to in the media as leading organised crime figures. Roger Rogerson for example had Neddy Smith and Chris Flannery among his informants. Whatever else might be said about them, such men hardly conform to the "stereotypical image of the informant as a weak figure, inhabiting the fringes of the criminal milieu hence a vulnerable link for police to exploit".⁴⁷ Rogerson was only eventually dismissed from the New South Wales police for publicly revealing that Smith was one of his informants. As Hogg notes, "it has become increasingly clear from recent cases that many powerful criminals act as police informants and do so from a position of strength, which derives primarily from their inside knowledge. The idea that there is a necessary, clear-cut and fixed antithesis between police and criminals is mistaken."⁴⁸

THE RISE OF PROACTIVE POLICING AND THE INFORMATION ECONOMY

A third condition which challenges the strength of the inmate code against informing is a whole set of developments that can be grouped under the heading of the shift to proactive policing and the rise of the information economy. Hogg outlines some of the new types of development: "plans to introduce electronic surveillance of offenders in some Australian jurisdictions, computerisation of fingerprint records, the extension of state powers and capacities for phone-tapping, the development of DNA fingerprinting, and the proliferation of other computer-based technologies and strategies for surveillance and intelligence gathering."⁴⁹

45 Id at 232-233.

46 Id at 232.

47 Hogg, R, "The Politics of Criminal Investigation" in Wickham, G (ed), *Social Theory and Legal Politics* (1987) at 135.

48 Id at 135.

49 Hogg, R, "Criminal Justice and Social Control: Contemporary Developments in Australia" (1988) 2 *J St Just* 89-122 at 99.

Hogg outlines the significance of the development of new computer technologies developed out of the various Royal Commissions and in particular the Costigan Commission.⁵⁰ Three key aspects of these developments of relevance to informers are the development of computer matching and tracking techniques which generates a different attitude to information gathering, encouragement for the cultivation of informers through witness immunities, and the development of targeting strategies.

The capacity to record and store large quantities of data on computer has led to a revaluing of what would formerly have been regarded as largely irrelevant information. Previously unless the information pointed directly to involvement in criminal activity it was seen as of little use. But now the information, innocent in itself, might be of considerable significance when matched against a range of other items of information, associations, networks, times, places, other activities, travel, accommodation, and so on. "The effect of this approach is to demand as extensive a system of surveillance and intelligence as possible, which is thereafter open to more specific forms of analysis and use."⁵¹

One such more specific use is the trend to actively target particular individuals and groups on the part of law enforcement agencies. This is one of the clearest indications of the shift away from traditions of reactive policing, reacting to citizen complaint, to proactive policing in particular areas, especially those involving largely consensual activities such as illegal drug use and supply. It is significant that the outbreak of prison informing in New South Wales and to a lesser extent Victoria seems to have arisen around very high profile cases which the police were under strong pressure to "solve" (Walsh Street trial, Hilton bombing) or in which key individuals targeted by law enforcement agencies (Domican) were involved. It is not the run of the mill break and enter accused who is alleged to have confessed to participation in serious crimes to known prison informers in a prison yard. Such "confessions" might be more plausible than those allegedly emanating from political activists with a history of opposition to policing practices such as police verbal or from career enforcers and underworld heavies. That they do not tells us more about the current state of proactive policing priorities and evidence gathering techniques than it does about any notion of correspondence with actually occurring events.

The promotion of informing and undercover techniques can be seen in the practices of undercover entrapment, stings, arranged drug buys, the production of drugs under police sponsorship (Bungendore), officially authorised luxury car theft (Operation Trident Queensland), and prison informants. The offering of witness immunities, witness protection and sentence discounts were encouraged by several of the Royal Commissions, the Royal Commission into Drug Trafficking (1984) (Stewart Commission) in particular: "The Commission considers that any serious attempt to combat organised crime in Australia will require a greater willingness among Crown law officers to grant immunity to potential key witnesses, as well as a properly organised and funded protection scheme."⁵²

50 Costigan, F, *Royal Commission on the Activities of the Federated Ship Painters and Dockers Union*, Final Report, Canberra, AGPS (1984).

51 Above n49 at 100.

Justice Stewart castigated investigators and prosecutors for their apparent reticence: "It appears to the Commission that there has never been a sufficient effort to cultivate the informer in organised crime, especially the informer who is or has been part of the criminal syndicate".⁵³ The momentum for the cultivation of informers built up from such calls was increased with a continual stream of press and electronic media reports encouraging the forces of good in the war against organised crime. Prior to Sharon Davis' "Justice Gone to the Dogs" in December 1990⁵⁴ which triggered the ICAC inquiry only Andrew Keenan in the *Sydney Morning Herald* in a seminal piece in April 1988⁵⁵ raised any doubts about the credibility of some of the informers and the desirability of practices such as granting immunities to serious criminal offenders who in certain cases seemed to be more dangerous and deeply implicated than many of those they had been granted immunity to inform on.

PRISONS IN A POSTMODERN WORLD

Finally, and most speculatively, a few observations on the way in which the development of an information based economy, or as some prefer it, a postmodern society, might affect the nature of the prison experience and indirectly the strength of the inmate code.

The dominant metaphor of the prison is that of enclosure, segregation, separateness, behind high walls or razor wire those incarcerated are kept "out of sight" if not always "out of mind". Much of the discussion of the inmate code takes this enclosure, this separation, for granted, and reads the inmate code as the response to the "pains of imprisonment" in the "society of captives". Much of the political struggle around prisons involves the attempt to "penetrate" the secrecy of this closed world, bringing the light of accountability to bear on its dark recesses. In particular, penal practices which cut prisoners off from the outside world, the censorship of mail, the denial of reading matter, the restrictions on and the harassment of visitors, lack of access to the telephone, media access to prisons, are all subject to challenge.

While the struggle over communication in these forms continues, the explosion in the technology of communications opens up many other channels which are not so easily cut off or scrutinised. Many prisoners now have televisions or access to television. While computers and fax machines are not yet common in the prisons they are increasingly used for educational courses. Prisoners who wish to be informed of events and the sensibilities of the "outside" world have now better prospects than ever before. Indeed the intensity of the communication flows may be such as to challenge the very notion of an "inside" and "outside"; we are all, to some extent, inside the play of information flows and media simulations.

52 *Royal Commission of Inquiry into Drug Trafficking, Report*, by Justice Stewart, Canberra, AGPS (1983) at 531.

53 *Id* at 563.

54 Davis, S, "Justice Gone to the Dogs: Criminal Informers in our Justice System", ABC Background Briefing, 9 December 1990.

55 Keenan, A, "Do Police Use 'Tainted' Supergrass?" *Sydney Morning Herald* 13 April 1988.

There are clearly counter tendencies, such as one described previously as the “new transportation”, whereby new prisons are sited off in the hinterlands, well away from the populations they are supposed to serve, away from families and friends who are supposed to remain invisible, away from public transport routes, by the side of country roads where no-one walks.⁵⁶ However there are limits to this new exclusion. Satellites know such places. The connectedness of prisons with events in the outside world, particularly in the realm of criminal justice, policing and the courts, is shown by the speed with which prisoners came forward in both the Gundy and Brennan cases to proffer information that might assist the police to portray the two unarmed and unfortunate men, both shot by paramilitary police squads, David Gundy fatally, as more involved in criminality than they in fact were. Neither of these despicable pieces of character assassination were ultimately successful. But they were one response of police under threat. What were the mechanisms by which these false testimonies were so quickly forthcoming and what does the speed of their emergence tell us about the contemporary “isolation” of prisons and prisoners from the outside world of constant political crises and images?

The increasing recognition of the way power is no longer possessed or wielded but implicated in information flows and exchanges has led to a diminution of an oppositional politics founded on struggles by unified participants waged over a fixed territory, whether as manoeuvre or position. The new technology can pass over the heads of the bureaucratic censors, the substitutionist vanguard, the official, direct to those with a screen. Traditional forms of politics organised around the party, its rules, discipline and authority are diminishing. Forms of fixed identity politics shaped by unified class, gender or racial subjectivities are coming under the fragmenting challenge of discursively constituted subject positions, fractured and plural subjectivities.

While we may expect prisons to be among the most recalcitrant of sites they will not be totally immune from some of the effects of these tendencies. I have already discussed the extent to which penal relations have undergone considerable change under the hammer of the drug subculture. Traditional inmate cultures, organised in part around a proscription on informing, will come under challenge in the same way as political cultures based on established lines of authority and authorised interpreters of the word have come under challenge. Rather than merely reading the resultant ambiguity and uncertainty as a loss of ethics it could be interpreted as heralding a new ethics of personal responsibility and choice, constantly contested, shifting, open to reconsideration, against the comforting certainties of received, prescriptive, and often rhetorical codes.

To say this is not to promote the demise of inmate codes of solidarity and hostility to informing. But neither is it to pay lip service to their heroic nature. Rather it is to move from the realm of fixed essences of good and evil to a concern with the specific conditions under which certain sorts of behaviours become judged, and the reliability, integrity and accountability of the institutions, practices and ethics in and through which those judgments are made.

56 Brown, D, “Jailhouse Blues” *ALR*, April 1992 at 32.