

# *Governance and Criminality*

## The 1995 New South Wales Election Campaign and Law and Order

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The reduction of violent crime became a key political issue in the 1995 New South Wales State election campaign. Some political commentators described the posturing surrounding this campaign as a 'law and order auction'. The voters of NSW were subjected to political grandstanding by the two major parties in attempts to present themselves and their policies as the toughest on serious crime, and criminal activity more generally. The tough measures promised in policy statements and in media reporting did not involve innovative new technologies but were, for the most part, an increase in existing practices. These included longer prison sentences, increased use of imprisonment, or legislative changes in sentencing procedures that removed judicial discretion; policies that often blatantly reflected recent regressive legislative changes in the United States and Britain. Cohen (1996:10) argues that:

[i]n the face of evidence that crime does not really respond to severe sentences or new police powers or greater use of imprisonment, governments still appeal to the old law and order rhetoric. The short-term political costs of admitting the futility of these methods are unacceptable. So: the sudden and volatile shifts of political mood — responses to popular feelings of rage and frustration after a particularly disturbing crime, cynical manipulations of the symbols of government power, politics that deliberately increase prison populations.

The NSW campaign was fuelled both by politicians and through segments of the media using the practice of invoking recent disturbing criminal events or focusing on particular serious offenders. It seemed that the perception was that these practices and their related policies appealed to public sentiments and would increase a party's electoral performance.

Throughout the campaign little attention was given to the available statistical data regarding criminal activity. Both the government and the opposition chose to ignore this readily available and officially sanctioned information that was often contradictory to perceived public sentiments, sentiments seen as essential to the success of their populist 'get tough' approaches. Ironically, this information is largely produced through governmental departments and is seen by many as essential knowledge in the pursuit of the economic governing of populations and to the production of the tactics, technologies, techniques and practices fundamental to this end.

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## Law and order: On the campaign trail

The 1995 election campaign 'law and order auction' began in earnest late in 1994 when the Carr Labor opposition outlined a 'get tough' policy on crime. This was seen as a change of direction for Labor, a party that had been seen as 'softer' on criminal justice issues. It was not surprising then that the Carr 'get tough' policy received criticism even from within the ranks of the Labor Party (Totaro 1995:10). Not to be outdone, the Liberal National Coalition state government introduced, for the first time in NSW, a law specifically designed to keep one man, convicted wife killer Gregory Kable, in gaol (Totaro 1995:10).

After extensive reporting of the recently introduced 'three strikes and you're out' policy in the United States — a policy that effectively means that repeat violent offenders face automatic life imprisonment — the coalition government introduced their own version along almost identical lines. This prompted the Labor opposition to promise a 'one strike and you're in policy'. It was aimed at offenders who committed what were to be categorised as 'horrific crimes'. The New South Wales Judicial Commission would be asked to establish 'binding' guidelines to provide life sentences for those convicted of committing 'contract killings, multiple murders, and attempted murder with violent sexual assault' (Totaro 1995:10). This would, in effect, take much of the judicial control out of the hands of judges and would attempt to standardise legal proceedings for such specific cases.<sup>1</sup>

The 'law and order auction' was further incited when political attention began to focus on one violent offender, Fred Many. Many had been convicted of sexual assault and attempted murder. He had served only eight and a half years of what had originally been a twenty year sentence. He was released only twenty days prior to the NSW election after his sentence had been reduced through remissions 'earned' whilst in prison, through his role as a police informant (Brown and Duffy 1991:150, 152). His release from gaol outraged the media and community groups, and resulted in an avalanche of political finger pointing.

At the launch of the coalition law and order policy, Premier John Fahey said that his tough new measures against repeat offenders addressed concerns within the community. 'Under our criminal sentencing laws', he said 'there will be no more Fred Manys' (McCarthy 1995:1). Opposition leader Bob Carr countered Fahey, however, by arguing that the coalition policy contained loopholes that would allow 'some offenders to walk free' (Totaro 1995:6). In the days leading up to the election, Fred Many became a household name; his photograph appeared in every newspaper, his image was seen on every television and was firmly embedded in the minds of the State's key political players (for example Totaro 1995:6, McCarthy 1995:1, Labor Party of NSW 1995:6). He became the living, breathing embodiment of injustice and the public was made to feel powerless, fearful, and outraged that such a person could be allowed to walk free from the State's justice system.

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1 In response the New South Wales Law Reform Commission (1996:114) argues that '[t]he potential rigidity of such sentences interferes with the discretion of the sentencing judge which must be preserved if justice is to be done in individual cases. Further, the introduction of mandatory life sentences is likely to have an adverse impact on the efficiency of the criminal justice system. Persons facing such sentences are likely to be less willing to plead guilty of the charges laid against them. This will place an increased burden on the courts, and the prosecution and the law enforcement agencies.'

Perhaps the most blatant act of law and order auctioneering/electioneering seen in the entire campaign was the then Government's launch of its law and order policy. This took place in the presence of the families of victims of some of the State's most violent crimes of recent times, all of whom had been invited along by the government. Fahey's tough stance elicited a strong show of support from his audience which included Garry Lynch, the father of murder victim Anita Cobby, and Christine Simpson, mother of murdered school girl, Ebony Simpson. One member of the audience, Louis Soravia, said after the launch: 'Mr Fahey, today has given me a lot of heart ... it's about time politicians and judges got the message from the people on the streets. I think they are getting the message and they are delivering' (quoted in McCarthy 1995:8). The presence of these victims of crime at the coalition policy launch again helped to give crime a public face. These were ordinary people, proof that no person was safe from this violence. It was another attempt to persuade the voting public that laws were in need of amendment, another attempt at tapping into, and inciting, the perceived public sentiment regarding violent crime.

On the 25th of May 1995 the Labor Party was elected to government by a one seat majority. The ultimate political irony of the law and order issue in NSW, however, was made apparent some months later. While on a trip to Chicago, Mr Carr was asked by a news reporter about the state of crime in Sydney; Mr Carr's reply was that 'it's got very safe streets, it's a very manageable city that works' (cited in Humphries and Sharp 1995:10). This was of course a strangely contradictory reply from somebody who came into government on a platform of 'tough on crime, tough on the causes of crime'.

## **Statistics: A technique of government ignored**

This section of the paper will focus on the available statistical data relating to crime in NSW. I will argue that rather than violent crime being on the increase, as is suggested by the posturing of the political parties discussed above, statistical evidence suggests — albeit imperfectly — that violent crime in NSW is relatively static and has been for some time.

### ***The imperfections of crime statistics***

Crime statistics are inherently fraught with imperfection. I wish to show, however, that although these imperfections exist, the data have important implications for the efficient governing of populations. Thus, it may be useful to outline briefly the two main methods of collection of crime statistics and some examples of these imperfections; this paper does not contain space for a comprehensive critique.<sup>2</sup> The first method of data collection is via police reports. These reports are collated and sometimes analysed by the New South Wales Bureau of Crime Statistics and Research. The second method of collection is through victim surveys — the survey cited in this paper was published by the Australian Bureau of Statistics (ABS).

Data compiled from recorded police reports rely on offences being reported to the police. This process can present a number of problems. First, increases in police charges of particular offences may not, in fact, reflect a rise in the actual number of offences but a rise in public willingness to report such offences. This can be strongly illustrated with the offence of sexual assault since over the past decade a number of initiatives have been taken to encourage victims to report sexual assaults.

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2 For more thorough critiques of crime statistics see Matka (1990) and Hogg (1988).

Secondly, continual changes in laws can make statistical analysis of crime trends over a useful time period difficult (Salmelainen and Coumarelos 1993:1). Again sexual assault provides a useful example with numerous changes in classification having occurred over the past decade. There may also be a fine line between classifying a given incident into one offence classification or another, for example attempted murder and serious assault. This line is constantly shifting and relies on police discretion when laying charges (Australian Bureau of Statistics 1994:4).

Thirdly, increases in the recording of street offences may only reflect greater police presence, not an increase in actual offences. This has been the case in some Aboriginal communities which are constantly over-policed (Cunneen 1992). Over-policing was also identified as being one of the factors responsible for an 800 per cent increase in soliciting offences in NSW following the introduction of the *Summary Offences Act* (NSW) in 1988 (Matka 1990:3-4). Furthermore, an increase in the number of operational police can increase the recorded incidents of crime. Not only are police more likely to apprehend offenders on minor charges, it also seems likely that victims will report minor crimes if they believe that police may be available to deal with them (Matka 1990:2).

These criticisms do not render the data compiled from such police reports meaningless. They do, however, indicate that care must be taken in their interpretation and analysis. Important, if less than perfect, indications of the trends and frequency of criminal activity are obtainable from this data, particularly in relation to specific types of offences. Rates of homicide, for example, are recorded with relative accuracy (Matka 1990:6).

Data compiled through the victim surveys, the second method I wish to discuss, can prove equally problematic.<sup>3</sup> The last major victim survey conducted in Australia was undertaken in 1993. This was a survey in which 52,300 persons over the age of 15 took part Australia wide (ABS 1994:vii).

In victim surveys, only crimes that involve a victim can be effectively estimated. Obviously crimes such as homicide, trafficking in narcotics, fraud, and many types of attempted crimes cannot be measured through this process (ABS 1994:vii). Further, crimes of a personal nature, such as domestic violence, are likely to be under-represented due to the relationship of victim and offender (Hogg 1988:30). Victim surveys are also likely to be limited both in the diversity of offences they are able to record, and the taxonomic structure of the questioning. Nevertheless, the value of victim surveys is that they do not rely on victims reporting crimes to the police. They are, therefore, more likely to be representative of actual crime rates. These are generally believed to be greater than rates officially recorded in police reports suggest (Hogg 1988).

### ***Crime in NSW: The statistical implications***

Not surprisingly it seems that public concerns in relation to law and order have been at their most extreme in the case of violent crime and crime against the person. Accordingly, issues of personal safety have been politically elevated, and the offences of homicide, violent assault, and sexual assault have occasioned the most political grandstanding. Much popular, political, and media discourse seems to be content to accept and perpetuate unproblematically the belief that serious crime is, if not totally out of control, at least increasing dramatically. Many would have us believe that we are living in a society which is

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3 For further discussion on the uses and limitations of victim surveys see: Criminal Justice Commission (1995) and Australian Institute of Criminology (1996).

substantially more violent and dangerous than it was for past generations. In order to evaluate whether this is the case it will be necessary to take a closer look at the available statistical information. I will begin with the more statistically substantial figures concerning homicide and then comment on probable trends in other offences.

### **Homicide rates**

Recorded crime figures indicate that since early in the century, homicide rates in NSW have dropped significantly (NSW Bureau of Crime Statistics and Research 1988, 1994). There has been little change since hitting a low in the early 1940s (NSW Bureau of Crime Statistics and Research 1988:1).

The rate per head of population has remained around 2 per 100 000 since 1983/84. In fact, the highest annual reported homicide rate for the century so far (around 3 per 100,000) occurred in the years before 1920 and has not been reached again since (NSW Bureau of Crime Statistics and Research 1995:10).

Recent data indicates that in 1992 that rate was 1.6 per 100,000 of population (NSW Bureau of Crime Statistics and Research 1994:2). Comparisons indicate that in NSW in 1982 there were 98 homicides, in 1990 there were 89. All the available statistical data indicate that homicide in NSW is relatively stable. In contrast to the figures mentioned above, motor vehicle accidents in NSW in 1981 claimed the lives of 25 per 100,000 of population. This indicates the relatively small likelihood of becoming a homicide victim in NSW as compared to becoming a traffic accident victim. Yet this type of comparison is rarely drawn in public, political or media discourse.

Furthermore, it appears that most homicides in NSW are committed not by strangers but by family members or close acquaintances. According to the NSW Bureau of Crime Statistics and Research (1994:3), in 80 per cent of the cleared cases of homicide between 1968 and 1992, the victim and offender were known to each other; 40.6 per cent of victims were killed by members of their own family; 38.3 per cent were killed by friends or acquaintances. Only 16.6 per cent of cleared homicides were committed by strangers (NSW Bureau of Crime Statistics and Research and Research 1994:3).

### **Violent assault**

The ABS victim survey does not deal with homicide for obvious reasons, however, this survey can be seen as a guide to the trends of violent assault, and to a lesser degree sexual assault. Its findings indicate that Australian rates of victimisation for assault dropped from 3.4 per cent of those sampled in 1983, to 2.5 per cent of those sampled in 1993 (ABS 1994:11). The NSW rate for 1993 was 2.6 per cent (ABS 1994:3). Although the overall victimisation rate for assault was significantly greater for males than for females, the opposite was true for assaults that occurred within the home. In 90 per cent of these cases the victim was known to the offender. For sexual assault matters, the Australian rate was similar in 1993 (0.6%) to that in 1983 (0.5%) although the 1993 rate for NSW was 0.8% (ABS 1994:1, 3). Saimelainen and Coumarelos in their study concerning sexual assault in NSW (1993:7) found that 'sexual assault offenders usually know their victims ..., and are quite often trusted by the victim'. These findings indicate stable and, or, decreasing rates of violent crime, and that a significant proportion of violent crime is committed by persons known to the victim, rather than by strangers.

### **Property crime**

It may prove useful to analyse briefly the occurrences of property crime in New South Wales. For, in the absence of a statistical indication of a rise in violent crime, or crime against the person, it could be argued that a rise in property offences may lead to the perception of a general rise on crime. The ABS data indicates that an estimated 6.8 per cent

of households experienced a break and enter offence or attempt in 1993, as compared with 6.1 per cent in 1983. The NSW figure for 1993 was estimated to be 5.7 per cent (ABS 1994:1, 3). In 1994, break and enter offences in New South Wales recorded a slight drop from the previous year. Robbery, however, rose significantly across Australia from 0.6 per cent in 1983 to 1.2 per cent in 1993. The NSW figure for 1993 was 1.3 per cent (ABS 1994:1). Some areas of property crime may be on the increase, and this might have contributed to the perception that crime is on the increase overall. Property offences, however, are more likely to be related to economic change and the inequitable distribution of wealth. Measures to combat these crimes would be more likely found in social policy rather than law and order policy.

These necessarily imperfect statistical data, officially sanctioned and generated by government departments, indicate that contrary to the opinions of many, violent crime is unlikely to be on the increase. Furthermore, the fear of strangers that is incited by reference to criminals such as Many seems largely unfounded or misdirected. Hogg and Brown (1990:199) argue that important dimensions of public policy and political culture have contributed to the widespread evasion of the fact that most offenders know their victims. Since claims of rising violent crime cannot be substantiated by the relevant statistical data, knowledge and discourse that inform much of the politics of law and order evident in the 1995 New South Wales election campaign, (and give such political rhetoric truth value<sup>4</sup>) must be found elsewhere.

## The operations of governmental power

### *Policy as attempts of governance*

The insights of Michel Foucault, and the work of Alan Hunt and Gary Wickham, prove useful in understanding the way in which the operations of governmental power, and discontinuity in the use of certain governmental technologies, can produce and give truth value to such political rhetoric. Hunt and Wickham (1994) have worked towards a theory they describe as the 'sociology of law as governance'. This sociology operates on the basis that socially-provided, always-already available objects such as suicide, health, crime, sexuality, and self discipline are subject to control or direction using always-already available techniques such as medical science, social work, law, policing, beliefs, statistics, and human sciences. These techniques are themselves objects of governance and so are also subject to attempts at control and direction (Hunt and Wickham 1994). I wish to suggest that throughout the NSW election campaign, various techniques in the form of policies were proposed in order that the socially provided object of crime be brought 'under control'. That is not to say that these techniques have been or will necessarily be implemented by either party when they hold government; much of this discourse is on the level of image and representation only. There is, however, the potential for legislative change.

Hunt and Wickham are interested in what they see as the necessary failure of the actions of government. Further, they believe that the perpetual aspect of governance has to do with the fact that governance is about *attempts* to govern. They argue that these attempts always fail

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4 'Truth value' refers to the credence given to specific ideas or statements, the status of utterances, and whether or not they constitute truths within the specific discursive field in which they are formulated. For a more extensive explanation of the Foucauldian notion of 'truth' and how it is constituted see Foucault (1980).

to some extent, they never completely succeed, thus opening opportunities for other attempts (Hunt and Wickham 1994:80).

This notion of government as attempts to govern becomes a particularly useful method of exploring the mechanisms of the policies of law and order. The perpetual promise to reduce crime can be understood as a series of complex, and continuing techniques of government that can never be completely successful. Models of crime control continually reappear and re-invent themselves in the political arena. It is necessary — although I don't want to suggest intentional — that these methods of control fail in order to make political space for the next model. Hunt and Wickham (1994:76) suggest that: 'social life is characterised by attempts to control or manage all known objects, including, crucially, other attempts, and by the fact that every attempt falls short of complete control or management'.

Policy statements launched in an election year provide the citizenry with information on how a political party, if elected, would *attempt* to deal with a socially provided object, in this case, crime. Citizens are then asked to make a choice of which party, and therefore which method, will be most appropriate. In other words the public is asked, as a function of electing government, to choose the next model of control; the previous model will, by the very nature of governance, have proven to have failed or fallen short of complete control or management. Each model will draw from the available socially-provided techniques which serve as a base of knowledge relating to a specific socially provided object. This base of knowledge will establish or make claim to a truth value within the available discourses of governance. In the course of the 1995 election campaign, it seems that the socially provided technique of crime statistics was almost totally ignored in policy statements and rhetoric in relation to the socially provided object of crime, by both the government and opposition. Rather than basing proposed models on crime statistics, these models relied on techniques such as popular beliefs and policing. It will now be necessary to study the implications of ignoring crime statistics by looking more closely at statistical knowledge and its operations and functions according to Foucault's notion of governmentality.

### ***Governmentality, statistics, and the populist approach***

Governmentality can be described as the 'ensemble formed by the institutions, procedures, analysis, and reflections, the calculations and tactics, that allow ... [a] very special albeit complex form of power, which has as its target the population' (Rose 1990:5). For Foucault, contemporary western society does not have a centre of power, hence, the state is not seen as the centre of government. Like other sites of governmental power — 'the disciplines, statistics, and the media ... , it [the state] is an instrument of government' (Pasquino 1991:117). The state is but one site of governmental power that cannot be reduced to a specific number of functions. Here it becomes clear that the operations of government, in the area of law and order, are much more sophisticated than simply the formulation of policies that will best keep the 'problem' under control. Policy can be influenced by power and knowledge that can operate from, and through, multiple governmental sites.

Foucault (1991:97) argues that the 'art of government', rather than seeking to found itself in transcendental rules, a cosmological model or a philosophico-moral ideal, assembles its principles of rationality in that which constitutes the specific rationality of the state. In other words, the concept of governmentality dispenses with the essentialist foundationalism which informs other models of political power. Here, population becomes the focus, and government becomes the contact point. The state is not seen as the source or origin of power or knowledge. Foucault suggests:

that techniques of domination — or power — and techniques of the self interact, where technologies of domination of individuals over one another have recourse to processes by which the individual acts upon himself[sic] and conversely, where techniques of the self are integrated into structures of coercion (cited in Burchell 1993:268).

Governmentality is described in simple terms as the 'conduct of conduct', a methodical and rationally reflected 'way of doing things' or 'art', for acting on the actions of individuals, singularly or collectively, so as to shape and modify the ways they conduct themselves (Burchell 1993:283).

For Foucault (1991:100), it is partly through the 'science of the state', also known as statistics, that population came to be the subject of needs and aspirations, but consequently the population also became:

the object in the hands of the government, aware, vis-à-vis the government, of what it wants, but ignorant of what is being done to it. Interest at the level of consciousness of each individual who goes to make up the population, and interest considered as the interest of the population regardless of what the particular interests and aspirations may be of the individuals who compose it, this is the target and the fundamental instrument of the government of population.

Here statistics are seen to be an essential element in the governing of the modern state. They both enable the population to have a measurement of their own needs, and allow government to increase its administrative power through knowledge of those requiring governance, the population. Statistics are part of this state rationality that Foucault speaks of, a knowledge base that enables the 'art of government', and which establishes an efficient conduct of conduct. It is a science that produces a knowledge of, and for the population at both the level of the collective and the level of the individual. According to this Foucauldian model, a modern state which excludes statistics as a technology or mentality of government jeopardises the enterprise of efficient governance.

The Foucauldian conceptualisation of the state as de-centred, and the Hunt and Wickham model of governance as a series of *attempts*, also help explain the procedures through which alternative techniques of control can be introduced into political discourse. Beliefs based around a 'lynch mob' mentality held by some action groups, and the fear of crime so evident in public sentiment, can establish truth value within political discourse if one takes into account the productive possibilities of governmental power. These productive possibilities, operationalised via the population's requirements for knowledge and governmental imperative for the re-invention and re-constitution of models of control, actually produce truths. For if government is a 'contact point' as Foucault suggests, the production of truth can operate from vocal groups or individuals, through and/or from governmental sites such as the media and the state, and into policy. The coalition policy launch discussed above was a concrete example of this; state government officials, vocal action groups, and the media, all reaffirming each other's position: three specific sites of governmental power all producing truths and establishing and then reaffirming beliefs on which were based policies; proposed *attempts* of control reliant on, amongst other things, tougher penalties. This spiralling production of truth was based not on the rationality of a 'science of the state', but on a set of beliefs and moral ideals. In effect, what began as a counter discourse vis-à-vis the rationality of the state, became the dominant discourse in *attempts* of control in official policy statements and promises. This facilitated the disappearance from official political rhetoric of the technology of statistics, a technology that, as I have argued above, is seen as fundamental to the modern 'art of government'. It seems that the same mechanisms of modern liberal government that provide the means for efficiency, paradoxically embody the possibilities of inefficiency.



It is important to stress here that the implication is not that crime statistics were altogether banished from the field of governmental power, or that they ceased to function on the more mundane levels of the day to day operations of government, but that they were not represented or utilised within policy presented to the citizenry. Crime statistics at this level of representation became a counter or reverse discourse in the 1995 election campaign. They were invoked by various academics, the Director of the NSW Bureau of Crime Statistics and Research, some media commentators, the Director of Public Prosecutions, and some politicians. Many of these practitioners within the field of government who operate on the more mundane — but concrete — level of every day governance, seem to have been ignored at the level of electioneering rhetoric. This reverse discourse was limited in its productive political potential. Its only possible method of public dissemination, the media, had already focused on the 'good story' offered by the 'law and order auction'.

### *Governmental discontinuity*

I have argued above that crime statistics are inherently fraught with imperfection and open to the possibilities of misinterpretation and/or misrepresentation. Following Foucault, it has also been suggested that crime statistics are a technology or even a site of government, ultimately a tool of coercion. In spite of these short comings I am arguing for their reinstatement into the public representations of policy on law and order. Ultimately crime statistics offer a legitimately sanctioned site of government that can return some kind of 'scientific' rigour — albeit imperfectly — to the politics of law and order. Further, if officially sanctioned sites of government such as the NSW Bureau of Crime Statistics and Research, and the ABS are ignored vis-à-vis their position as governmental practitioners of 'truth' the entire enterprise of an 'art of government' intrinsic to the functioning and efficiency of modern liberal-democratic government is potentially compromised.

The interrogation of crime statistics and their operations within the field of government has made possible the identification of a discontinuity or disruption in the governmental usage of this technology, a silencing of the rationality of a 'science of the state' within official policy statements and election promises. There is no imperative to argue that crime statistics are above misrepresentation and/or misinterpretation, clearly they are not. However, as an acknowledged technique of government it is important they be utilised in both the formation and the public representation of government policy. If the governmentally produced, already-available, crime statistics had been utilised publicly in the 1995 NSW election campaign, the public beliefs and political rhetoric that led to the 'law and order auction' may have had their basis in 'truth' substantially diminished.

I have argued above that as a technology of government in the field of governmental power, statistics hold a privileged position. Yet, in the course of the 1995 NSW State election relevant crime statistics were ignored. The practices of efficient governmental rationality based on a 'science of the state' were abandoned — at least on the level of official policy representation — in the race for political power. The State's own technologies were displaced by techniques informed by knowledges reflecting popular beliefs, which had manifested and proliferated in specific sections of the popular media, through some action groups, and in moral codes. These knowledges in turn found their target in certain characteristics seemingly intrinsic to the modern subject, our fear of crime; they gained official sanctioning in the form of highly populist political manoeuvring at election time and resulted in specific election promises and policy statements.

Discourses of state rationality, which included crime statistics, were disrupted. They were, however, never completely silenced. Their position within the official field of governmental rhetoric and representation reversed. They became a technology of political resistance

and opposition; a counter discourse operating with limited effect. This discontinuity in the governmental field did not mean that crime statistics ceased to operate as a governmental object of knowledge, only that their position in the hierarchy of truth at the level of representation was shifted. As indicated above, however, discontinuities such as this provide the potential for legislative change based on popular beliefs rather than a recognised state rationality, which have the potential to be draconian, ineffective and inefficient.

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